

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 7th day of October 1998 at 2:45 p.m.

Mr. Liss: This the last session, and by way of cleanup, I thought we would look -- because we have covered so many items pretty well -- I thought we would look at some of the activities in the government that you had beginning in the '60s, in the Johnson Administration. So perhaps you could tell us a little bit about that.

Mr. Ginsburg: I had come to know President Johnson when he first came to Washington, and later worked with him at OPA when he came to represent Texas farmers. After the Kennedy assassination, I was called to meet with him, and later with Joe Califano and others about a labor problem. I was appointed a member of the Board but I had had very little direct experience with labor matters. The issues involved a wage dispute with pilots and flight engineers in the civil aircraft transport industry. A strike was threatened. Establishment of the Board delayed the strike. We conferred with officials at the Department of Labor. I knew Jim Reynolds -- the Labor Undersecretary under Bill Wirtz. We worked hard on the issues. I was serving on a three-man board, and it was my introduction to labor at this level. We needed the support of the Labor Department for information and background. We held hearings; developed a record and drafted a report. I have difficulty recalling the exact results. I believe we were unable to prevent a strike, but I think matters were settled, as they should have been, between management and labor.

Mr. Liss: Was this an industry-wide strike?

Mr. Ginsburg: It was, I think, essentially industry-wide, but focused on one of the

majors. My recollection is unreliable and dim, but the experience served as an introduction to this area of the law and politics. Later, a comparable dispute arose in railroads I think in '69. Again, a strike was threatened. There were hearings. I served as the Board Chairman.

Mr. Liss: Was this, at this point, under Nixon?

Mr. Ginsburg: No, it must have taken place earlier because I recall discussions with LBJ.

Mr. Liss: So, you were approached first by a Democratic President, and then by a Republican President?

Mr. Ginsburg: Not on the labor issue.

Mr. Liss: Did you have contact with both Nixon and Johnson?

Mr. Ginsburg: Yes. I had known LBJ for a long time before he came to high office. Mr. Nixon I knew from my work at OPA, the Office of Price Administration. It was I, as General Counsel, who had invited him to come to Washington. He was recommended to me by a former law school teacher serving at Duke. He joined us as a member of the division dealing with rationing in OPA. I remember meeting him, nothing more. I didn't see him again until many years later in April 1971 when he was in the White House. The railroad hearings taught me a good lesson about labor problems, its forces, its leadership, and some of its strengths and weaknesses. Robert Nathan, a personal friend, represented labor and presented a masterful brief and oral argument. We again worked closely with the Labor Department in the preparation of an opinion that reflected the Board's views.

Mr. Liss: The issue again was wages?

Mr. Ginsburg: The central issue again was an increased wage demand, but there

were underlying fears in the labor movement stemming from doubts about the future of railroads. Civil aviation was taking over. Railroads were being cut back; jobs were being lost, and lines were being closed. There was an understandable tension between management and labor that had to be resolved. And it was resolved, somewhat more amiably and amicably than the issues that we had faced in civil aviation. These two boards were the beginning of an education in labor concerns that I thought was useful, important and, for me at least, illuminating.

In the late '60s, there was another serious labor issue involving the Postal Service, the largest employer in government other than the military. It had, at that time, close to three-quarters of a million employees, many at the lower levels of compensation. The Postal Service had provided an entry point and upward mobility in life for many of these employees. Postal employment had been subject to congressional control until the late '60s, under Postmaster General Lawrence S. O'Brien, a member of the President's Cabinet.

Mr. Liss: Do you remember who any of your co-commissioners were?

Mr. Ginsburg: Names tend to escape me, but some come to mind. The Chairman of the Commission was the Board Chairman of AT&T, Frederick R. Kappel. The labor movement was represented by George Meany, who, so far as I can recall, did not attend a single meeting of the Commission. Other members included Fred R. Borch, President of General Electric, Rudolph Peterson, head of Bank of America, and George Baker, dean of the Business School at Harvard University. The Commission recruited a first-rate staff headed by Murray Comarow and investigated the problems, developed recommendations, and made good use of outside consultants. Members of the Commission themselves worked hard. We visited Post Offices and saw problems on ground. We also tried to anticipate problems likely to arise in the

near future but were only partially successful, I may say in retrospect. We developed recommendations that were largely, but not fully, embodied in legislation and enacted by the Congress. For the first time in American history we ended political control of the Postal Service.

Mr. Liss: Now, did you know whether the President and his people had a preconceived idea as to how they wanted to see this come out?

Mr. Ginsburg: Their central objective was to remove politics from the Postal Service. The President himself was a prime mover, but Larry O'Brien, the Postmaster General, was the indispensable man. The work of the Postal Service was being distorted, was being handled inefficiently, as a consequence of congressional political control. No one in the Postal Service or elsewhere in the Administration could appoint even the heads of the Post Offices within local communities. Filling these jobs was the prerogative of members of Congress. That ended with the 1971 legislation. My own view is that it's time now to reconsider the Postal Service and its current problems, independent and self-sufficient though it is, paying its own way.

Mr. Liss: You think more should be done?

Mr. Ginsburg: More should be done now to insure its future as a self-supporting public service. Today a letter sent from Florida to California, or from West Virginia across the river to Ohio carries the same \$.32 postage, one of the lowest in the world. Everyone is free to use the postal system at a very low cost. The Postal Service also offers some collateral services, but private competitive organizations like FedEx and others are, of course, seeking to encroach, limit, delimit, and, if possible, privatize the Service—put it out of business. I think that would be very wrong. I think it would be a disaster for the employees, a human disaster, as well as the

destruction of one of those small, everyday ties that help hold the country together. These and related issues are now being debated on the Hill and within the postal community, as well as by mailers and postal service competitors.

Mr. Liss: Have you kept up in that field?

Mr. Ginsburg: Yes. I have friends who are professionally related to the Postal Service, and I have myself been an advisor/consultant on some of these matters. Over the past few years, I've tried to keep abreast of developments in this area, largely as a consequence of service as a member of the Commission on Postal Organization. And Murray Comarow is a personal friend.

Mr. Liss: I'm looking at your resume, and we have already spent a lot of time on the Advisory Commission on Civil Disorders

Mr. Ginsburg: I had one or two comments in my mind.

Mr. Liss: Good.

Mr. Ginsburg: I lived through the period when the South was almost at war with the Black community, and I learned more about racial issues in law school—and a good deal more when I came to Washington, and saw what was happening. I remember going to the theater and seeing Blacks turned away, denied the right to enter the National Theater. I joined in picketing the theater with friends because of what was happening there. And of course, as everyone knows, Blacks were not permitted in most restaurants and many other areas in our society. As I have explained before, in the late summer of 1968, something exploded in the Black society. Riots broke out in New Jersey, in Detroit, elsewhere around the country. Well over 100 communities were affected. I was on the West Coast with my family but was called

back and asked to serve by the President as the Executive Director of the National Advisory Commission on Civil Disorders. What I learned was powerful; I had not realized the depth of misery or the conditions of daily life for the Black community.

I worked on these problems for almost a year and rarely left my office in the White House. The Commission conducted investigations and hearings and recruited a staff of about two hundred, gradually reducing it. For me it was an emotional revolution. To understand how in fact we've dealt with the Black community, and other minorities including Hispanics, Indians, Asians and others was more than a shock.

The problem today is more complicated in part as a consequence of the influx of Latinos into the country. Immigration is changing the politics of the United States. Within about 30 to 40 years, the white majority that exists presently will become a minority. This is a vital development for the current and next generation. How shall we adapt to the changes? How shall we deal with minorities presently within our country? These complex matters put our future in jeopardy. Although speculative, it remains a serious problem despite President Clinton's recently appointed Commission. Nothing substantial is currently being done. This is wrong and I think dangerous. My work with the National Advisory Commission on Civil Disorders was a personal revelation that still moves and besets me.

Mr. Liss: Tell me about your work at the Kennedy School.

Mr. Ginsburg: I served on the Overseers Committee and learned a good deal about how the Kennedy School operates at Harvard. I also spent time in Cambridge with friends trying to decide what could be done to neutralize the partisan political implications of the Kennedy name. The School, as I saw it, had no political agenda; it sought better solutions. It's a

college within the University handled, so far as I can see, without regard to partisanship or politics. It seeks to learn what's right, what's effective, and how best to achieve it.

Mr. Liss: Is there any institution that serves a comparable role to the Kennedy School today that you know of?

Mr. Ginsburg: I believe Cornell, at the Rockefeller Institute, parallels some of the work being done by the Kennedy School. So, too, the School of Government (I'm not sure of the name) at Yale. The Kennedy School seeks the best people that we've been able to produce in the country and puts them to work on the tough and urgent problems of the cities, states and the federal government. KSG graduates are being recruited at all levels of government. You'll find Kennedy fellows in every federal department now, and being consulted at all levels of state and local government. I firmly believe that the work at the Kennedy School is important and worthwhile.

For many years I have also always been interested St. John's College. It has two campuses: one in Annapolis, and the other in Santa Fe, New Mexico. I watched with great enthusiasm the development years ago of the Great Books Program, both at Columbia and at the University of Chicago when Hutchins was there. When I came to Washington, I participated in several of the courses offered by St. John's tutors at the Federal Government's School of Agriculture. St. John's tutors came from Annapolis to work with classes at the School of Agriculture of the Department of Agriculture.

Mr. Liss: For employees?

Mr. Ginsburg: For Agriculture employees and others in and out of government.

Mr. Liss: And it's still taught by people from St. John's?

Mr. Ginsburg: Whether St. John's is still sending tutors there, I don't know.

Some years ago, I met the then Dean at St. John's and later became a member of the Board. I served as Board Chairman of St. John's for two years. I came to see how that college worked. In my view, it provides the best basic humanities education of any institution in the country. Its work with the Great Books, I think, is marvelous. One problem is how outsiders can find time to read them, and learn from them. The current Dean occasionally visits Washington, and I've met with him many times. Over the years, from time to time, there have been classes in clubs and even in private homes. Eight, ten or twelve people get together, work with one or two of the tutors who visit Washington periodically to lead discussions of the assigned readings. For me it was important, and a great pleasure. I still maintain my respect for and a tenuous relationship with St. John's.

Mr. Liss: And have you continued to follow developments in Israel?

Mr. Ginsburg: I've tried to follow what was happening both in Germany and in Israel. As we discussed, I served in Germany toward the end of the war as a result of my work at the wartime Office of Price Administration. I was Deputy Head of the Economics Division. I came to know General Lucius Clay, who headed Military Government in Germany. I was in the Army nearly four years, including about a year in Berlin, and came to understand a little of the role of Germany within Europe. One didn't need to go to Berlin to learn about the Holocaust. It was more enlightening to visit Poland or elsewhere in Eastern or Central Europe. However, living in Berlin gave me a greater understanding of the history of Germany, its problems, and its dangers. When I came to Washington after the end of the war and opened an office, fairly early in the game, I was approached by a professor from the Economics Institute in Kiel. During the

war, the U.S. had seized all privately owned German property located in the U.S. Private owners after the war sought compensation for the taking or whatever recompense they could get from the U.S. Government for their property. I undertook to look into that matter, and ultimately represented a group of owners for some years. I visited Germany almost every few months for a period of several years, and came to know some of the emerging German leaders, and something also of the thinking of the people. I was in Berlin often because I had married a German girl (now a U.S. citizen) whom I had met in Washington. We were married here and visited Germany quite often while traveling with her in Europe. In the last 20-25 years, I've spent a good deal of time abroad, as part of law practice in Washington. Incidentally, today marks the end of my independent professional career. I opened my office in '46, and closed that office just a few days ago; that's about 52 years mostly in private practice. I expect to continue practice in another firm as Counsel.

Mr. Liss: Well, I wanted to ask you about that. I'm sure it's a time of some sadness for you. But before we do that, I want to take the opportunity, drawing on your experience with Presidents from Roosevelt forward, to ask you about the events of the day, and specifically, how you feel about whether President Clinton's activities are worthy of potential impeachment, and how we, as a government, are doing in dealing with this problem.

Mr. Ginsburg: I must begin by saying that I think President Clinton has lessened the office. He has shown no awareness of the history or the role of the office of President in the world, or its significance for our own country. I would find it difficult to support him for any other public office. You ask whether he should be thrown out of office, as the present House effort seeks. No. I believe impeachment, for the reasons being urged, is not warranted under our

Constitution. We're dealing with a controversy between branches of government. The President is not an individual; he is the executive branch of the government. To enable the legislative branch in our system of government to undermine, to overthrow, to create a precedent for destroying a Presidency, is wrong and terribly dangerous. Tensions between the Congress and the President will encourage similar efforts in the future. Moreover, personal morality has nothing to do with what the Fathers intended as necessary for impeachment. I recognize that there is an argument on the other side. That the President has lied, or skirted the truth, that he has hurt the country, internationally as well as domestically, is true. But I think it's profoundly dangerous—tearing at our constitutional foundations—to permit the Congress to act as the majority party wishes to act.

Do I think the Congress likely to impeach Clinton? I think not; at present, I doubt that it will end in impeachment. I'm not sure what the House will do. It's quite possible that the House of Representatives will impeach him, but then the issue has to be decided by the Senate, and I do not think that the Senate will impeach him. One can argue that he lied under oath, and that's a very important fact. I recognize it. That he should emerge with no penalty would be unjust and unfair. I recognize that there are doubts about condemnation and censure, but I suspect that there will be ingenuity enough to find something that will constitute punishment, although what's gone on is surely substantial punishment in and of itself. I find the greater danger in a precedent that would enable politicians and partisan politics to oust, to impeach, to destroy a President and defy the polity.

Mr. Liss: Let me go back now to the dissolution of your firm.

Mr. Ginsburg: It's a time of sadness, no doubt, but what puzzles me is why this

happened. It wasn't an economic matter, or anything of that sort. But it raises questions about the practice of the law, and what's going on in the profession.

Mr. Liss: That's what I wanted to talk to you about. Please.

Mr. Ginsburg: Many years ago when I began, lawyers took as cases what came through the door. There were specialists even then in taxes perhaps in one or two other areas, but the many practice areas that we create today didn't exist, at least not in the form that they do today. When I was practicing with Harold Leventhal, we would talk with a client who had a problem. We would try to find solutions. If we couldn't, if the client persisted and the case warranted it, we might undertake litigation in the appropriate court, appeal if necessary, and again, if necessary and possible, take it to the highest court. I must have had a dozen or more cases of that kind in lower federal courts (and others in the Supreme Court) working on entire cases with only associate and support staff help from beginning to end.

That offers greater efficiency because each new lawyer who comes into a case must learn from the beginning at least a certain part or parts of the case. But it raises problems. Massive litigation of the sort that we see so often these days simply cannot be conducted by one or two or even a few lawyers. So we now create practice areas, practice groups, create specialists, very much like the doctors. Today it's no longer feasible to have a single doctor deal with our ailments. Each of us has a medical provider; a primary physician. Then there are the specialists to whom he sends you if he thinks it necessary; the primary physician directs medical traffic. I have been the beneficiary of that process. Setting up practice groups may lessen ties within the entity of the firm. Compensation can substitute for loyalty or even buy it. I'm afraid that to rely on collegiality for cohesion is not possible in these days of very large firms. When we were

smaller six, eight, ten, fifteen people—each member knew the other’s strengths and weaknesses, and ties of collegiality and friendship were strong. There was a sense of loyalty to the firm that these days may be growing less reliable.

Mr. Liss: Do you know a book by the current Dean of Yale Law School. His name is Kronman, it’s called *The Lost Lawyer*?

Mr. Ginsburg: No, I haven’t seen it, but I will look for it.

Mr. Liss: This is a book written in 1992 or '93 which laments the disappearance of the lawyer as statesman, and the notion is similar to what you’re saying, which is: increasingly it is difficult to find a lawyer who understands the client’s problems fully, deals with all aspects of the client’s problems, and is in a position to provide overarching guidance beyond technical advice on an individual problem.

Mr. Ginsburg: I will read it. But there’s another aspect. There’s been this immense growth in the size of firms. We have firms now that are quite similar to what accountants have done, a thousand, fifteen hundred, people or more. We now have many firms of several hundred to a thousand or more lawyers. Intimacies and friendships do develop. But essentially, it’s a corporate relationship, rather less intimate and controlling than a professional or personal relationship. The very large firms, in my view, will probably dominate practice in our larger cities, New York, Philadelphia, even Washington, Chicago, L.A., Denver. In smaller communities, I think there will, of course, be smaller firms near 20 to, say 50 lawyers. But I think the mid-size firms of our size (at our peak we had come to about 100 lawyers) will have difficulty. What actually happened to us is that a firm from St. Louis that had profited substantially from defendants in the tobacco litigation simply acquired our entire

Communications practice group. They wished to enter Communications in Washington and, without notice to the firm's management, effectively persuaded the entire group to leave, offering greater compensation and perhaps other benefits. It's hard, very hard, to set up barriers for people who wish to move in these circumstances. Years ago, a hundred lawyers was a large firm. Nowadays, it isn't. In our case, a dozen or so lawyers constituting all the professionally qualified people in our Communications practice, together with the entire support staff (about 22 people in all) were acquired. Then, another firm, this one from Miami, wanted to enter practice in Northern Virginia where a large number of high technology companies are located. It ultimately persuaded our entire Corporate group to leave. At that point, the vultures of our profession—by that I mean the employment agencies or placement offices, started calling the remainder of our lawyers with offers. I, too, received several calls. In a short time dissolution was inevitable. We tried hard to ensure that everyone had a place to go, including the support staff and others, we had few or no human problems. Having been the first person in the office, I chose to be the last one to leave, on September 30. Of course it was sad and hard. I felt a sense of personal defeat.

But there is, I think something more at work than the size of the firm and the development of practice groups. It has to do with the problems of management with which I have not been involved for years. Other firms have been able to avoid our problem, but it may take managerial and human skills and willingness to make financial sacrifices that many of us lack. The need to foresee, to anticipate human problems, to nurture personal as well as professional ties and to forego status may all be essential. It has become more important now to anticipate problems, to try to make life easier for the lawyers and the support staff and their families, and deal with them in a more humane way, with less rigidity.

For the future, I see the very large firms almost certainly dominating practice in the major cities, with substantial law boutiques also in a reasonably secure position. A friend who practices with a large, West Coast firm and who for years has headed an important specialty practice told me recently that he plans to leave the firm. It had grown too large; he was uncomfortable; he planned to set up a boutique. He and his colleagues would practice only their specialty. It's costly and hard to acquire or take over a boutique of 30 or 40 lawyers who are expert in only a single area. These two—boutiques and the large firms—seem destined to dominate law practice for a while, and the rest of the profession will have to struggle. The large firms can offer work, compensation and benefits that will appeal to many of the best young lawyers being produced; the boutiques will appeal to those intrigued by the specialty.

I'm at the end of ordinary practice but plan to continue in an Of Counsel role with another firm. I wish to continue to do such work as I can in whatever time remains. I look back on what has happened with sadness certainly but with full awareness of the inevitability of change.

In recent years I've watched the dissolution of several local firms; I think the pace of change will increase. The profession is in transition. We need more discussion of these developments in our professional publications. It would be reassuring and healthy to have the views of veterans and observers about these matters.

Mr. Liss: As we near the end of this history, I want you to assume that either the day after this transcript is made public or 50 years from now, a young, recent graduate from law school is about to embark on his or her career and for better or worse, has made the judgment to go into law. What advice would you have for someone starting a career today or in the future to have a satisfying experience in the practice of law?

Mr. Ginsburg: I can only answer about “today.” My children have asked whether I would go into law practice today. My answer has been “no,” I would not. I do not find in it the satisfaction in work, or personal relationships that I seek in a profession, and that lawyers have had almost uniquely. Moreover, I see the medical profession in jeopardy. Small groups are giving way to corporate control, living and working under rigorous regulation. The profession that I, myself, would enjoy, at least I think I would, is probably architecture. It combines aspects of art with a profession. But isn’t your question really whether I’d go into the law?

Mr. Liss: Well, my question is, assume you had someone who had made that choice, now what would you tell him or her?

Mr. Ginsburg: I’d try not to disclose my distaste for the profession as it now must be practiced; I’d urge him to return to his home community after graduation. I’d quote Brandeis who would have teas in his apartment usually on Tuesday afternoons and would invite friends and ask them to bring young lawyers and others in government with them. I was invited, came to know the Justice and joined in the Tuesday teas. My home was in Huntington, West Virginia. The Justice once asked me where I came from; he had himself emerged from Kentucky and Massachusetts. He asked what I planned to do after Washington, and I said I wasn’t sure, but perhaps go back to Huntington, perhaps look elsewhere. I remember that he placed his hands on my shoulders, and said, “David, go back home. Go back to Huntington. Practice law there. You’ll be happier and you’ll do well.” But at that time – this was '35, '36, I was totally content working in government. Working in government was itself rewarding and satisfying. And it can remain so, depending on the Administration. For years in our firm we rarely recruited lawyers unless they had had two or three years of government experience. In Washington, seat of

government, we felt it was necessary to know how the person feels on the other side of the table. Practicing law now with very large firms—although individual friendships I’m sure develop there as in smaller ones—is less likely to nurture that sense of familiarity, warmth or congeniality, that enables one to rush into a colleague’s office and say “I don’t understand this, what do you think?”

Practicing law as accountants must practice their profession, is not for me satisfying. Nor would it be satisfying for me to go into a corporation as House Counsel. I would, for the time being at least, avoid the profession. I’m unhappy about it. Each of us must find his or her own way. Some prefer cubbyholes where they can retreat and be comfortable. Others need a larger sense of involvement and living, associated with people and events within society—not so much tied to details and books as with the larger problems of community and nation.

Human betterment, increased understanding through science, or the creation of art, music, or literature—all are important as goals for a profession or for living.

The law, noble and indispensable as it is, is no longer generally practiced in the way that for me is comfortable—generally involved with government, creating, administering, interpreting, moderating or enduring the force or direction of federal law. Working for or with government as a client was also a marvelously satisfying commitment. The work from '35 until I went into the Army toward the end of '42 was enormously satisfying, providing many high points in life to look back upon and to take pride in.

Private practice has many rewards, including reasonably high earnings, the satisfaction of useful private work and public service and the strengthening of personal human ties. However, a corporate structure and the growing size of law firms, with the concurrent need for systems and

regulations that increased size demands are inimical to comradeship and the sense of professionalism that I at least found in earlier days. The computer is marvelously useful in the office, but it's a cold companion.

Of the abuses that have developed in the profession, little need be said. Many always existed—in the law and in other professions, a small army of individuals and professional associations have tried to end or limit them. My essential concern at this point is the consequence of bigness and its concomitant: specialization.

The pendulum may swing back and the practice, I think, has its rewards in smaller communities. The profession may, and I hope will, regain its sense of purpose.

I once started a cautionary sentence with LBJ, “Mr. President, I think that the politics...” Here the President stopped me and said “When you're in this office tell me what's right; I'll tell you what's politic. I know more about politics than you'll ever know.” LBJ was right, and his insistence on wanting to know the “right” answer first was one of the reasons why I respected him so. Whether that “right” answer could be accomplished or achieved or whether or how compromise was necessary was his responsibility; these other matters he knew best and would decide.

Politics, like the legal profession, has also changed; partisanship is overcoming statesmanship and the costs of running for office are under many commitments. As yet we do not know whether these changes are temporary. I can only hope so.