

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 8th day of April 1998 at 11:00 a.m.

Mr. Liss: Mr. Ginsburg, first I want to say thank you for allowing us to take this oral history. We appreciate your cooperation and we know you have a lot to share. I thought we would start briefly with your childhood years by way of background. I know you were born in Huntington, West Virginia, correct?

Mr. Ginsburg: No.

Mr. Liss: No?

Mr. Ginsburg: I was actually born in New York City, April 20, 1912, so that this is nearly my 86th birthday. And stayed there until I was 8 or 9, and then moved to Huntington, West Virginia, as part of the family.

Mr. Liss: Where had your family emigrated from?

Mr. Ginsburg: My father was from Russia, and I believe he came to this country in the early 1890's.

Mr. Liss: What part of Russia?

Mr. Ginsburg: On the Black Sea, the name of the city was Ekaterinoslav; really the equivalent of Catherinesburg, or something of that sort. And my mother was from Lithuania, from the city that I knew as Kovno. Either from within the city or its outskirts. We had a good many family members, I know, in Lithuania; all of them were lost in World War II, in the Holocaust.

Mr. Liss: You were saying that you were born in New York and moved to Huntington.

Mr. Ginsburg: West Virginia, with my family. My father was a wholesale grocer in World War I. He had financial difficulties and we moved to Huntington where there was a substantial number of our family. Mostly on my mother's side. I resumed school there. Entering the 2nd or 3rd grade; perhaps the 4th grade, I don't remember. And went through school—all the way through high school. I graduated high school in 1928, the spring of 1928. I was the valedictorian of the class. We had a class of about 200. I remember working on my speech.

Mr. Liss: Do you remember what your speech was about?

Mr. Ginsburg: It was a statement of what we did not want to be. As I speak now, a sentence comes back to me that "we don't want to be phonograph records, whirling around a pin of memory, reeling out names and dates and places. We want to understand." That's been part of my life.

Mr. Liss: What determined your choice of college?

Mr. Ginsburg: I had won a debating contest while in high school and a scholarship that brought me to West Virginia University in Morgantown, WV. In Morgantown, I entered school in, I guess it must have been the fall of 1928, and remained there for four years. I did very well. My memories of the university years: a member of a fraternity, the sense of collegiality, of working with people, friendship with people, common interests, common objectives, great emphasis on scholarship, a tremendous amount of reading. Reading has been a dominant part of my life. As a child in West Virginia, I remember going to the library. Carnegie Library on Ninth Street and Sixth Avenue, where we were allowed to take out six books at a time. And I remember taking out a half a dozen books for the weekend, and spending the entire weekend devouring them. I went through the childhood classics, then James Fenimore Cooper, Mark Twain, and all the rest. I did well throughout school. I was graduated from high school at

a relatively young age - 16 - and entered college at 16.

Mr. Liss: Do you remember how the Depression affected your high school and college years?

Mr. Ginsburg: I was out of high school in '28, in the spring of '28. At that time, there was no sense of depression. There was no sense either of exhilaration or of prosperity. Our family was relatively poor, working very hard. I used to get up with my father at 4:00 in the morning to go down to the market to buy fresh produce from the farmers for the store. We all worked. I worked. Certainly my mother worked. It was a difficult life, but one that we did not, at least I did not, view as difficult. It was part of what was life. The joyous part was reading.

Mr. Liss: Was there much of a Jewish community in Huntington at the time?

Mr. Ginsburg: A relatively small community of about 600 people, of whom, approximately 400, I'd say several hundred, were related. Most of the people I saw were family members.

Mr. Liss: There was a synagogue in town?

Mr. Ginsburg: There was a synagogue and a reformed temple. We were members of both, but I attended the reformed temple. I went to Sunday school and was confirmed at age 14.

Mr. Liss: Now when you went to college, do you recall your major?

Mr. Ginsburg: Yes. I majored in economics, but I took more hours, I think, in philosophy than I did in economics. The reason was that I found the philosophy teacher extremely interesting and exciting. An Englishman, named Cresswell. I've forgotten the name of the man who headed the Economics Department—Ruffner! It comes back as I speak. There was

also a man by the name of Saposnikow—a sociology teacher. Throughout college, I was less interested in the courses than in the teachers and was attracted to those who had the best reputations and with whom I felt at ease and some kinship.

Mr. Liss: I'm curious about the discipline of philosophy in those days because I also was a philosophy major. But when I majored in the subject, it was heavily analytic and mathematical. In your day, certainly they would have known of Russell and Whitehead from England, but there probably would have been a lot more of what we came to call "continental" philosophy—moral philosophy—than in the '60s and '70s, when I studied it. What was the discipline like?

Mr. Ginsburg: Well, we began, of course, with the classics. There was Plato, and his successors, moving into the medieval philosophers, and then of course, into the French and the 18th and 19th century philosophers. We had almost no modern philosophy. Indeed, I can't recall a single—Morris Cohen comes to my mind. Cresswell would name a book, and if I could get hold of a book by any of the modern philosophers, I did, and read it, but it wasn't really part of the curriculum. I doubt that we explored anything that had been written in this century.

Mr. Liss: Did you ever reflect back later on whether the major in philosophy and in economics served you well as a lawyer? It must have in what you came to do immediately after graduation from law school. Especially the economics.

Mr. Ginsburg: Philosophy became part of what one was—and became imbedded in and enacted from the material that one read. If you read a novel, you'd look to see what motivated people, how they acted/reacted; philosophy helped one to understand a little better. It was not a discipline that one used. It was part of one's character, and part of one's basic

education; part of one's life. Economics was different. Economics led me to the business pages of the newspapers. It helped one to understand—not to understand with true insight—but at least to comprehend what the papers were talking about when they offered financial information, or when the government published statistics that gave the public concern. It enabled me to understand the consequences of unemployment later on, as the years passed and as the Depression deepened. I was out of college in '32. By that time, we knew the Depression. In my senior year I worked with a milk company to get small bottles of milk that I would bring to areas where children of the miners would gather. We would hand out the small bottles of milk on condition that the children who gathered there drank them, rather than take them back home for sharing with others. We wanted to ensure benefit to them, the particular kids who came; we did that through most of my senior year. Other activities in college: I certainly engaged in debating, with the debating team. Some theater acting. A great deal of physical activity. It's not that I was much of an athlete, but I remember becoming a manager of some intramural sports.

Mr. Liss: Manager of one of the teams?

Mr. Ginsburg: Of one of the intramural teams. Which brought me close to the athletes.

Mr. Liss: Were there people in the course of those years, which were right at the beginning of the Depression, who had to leave because they couldn't continue the tuition payments and didn't have the wherewithal to stay there?

Mr. Ginsburg: West Virginia University is a state university. Tuition in those days was almost negligible. I have no recollection of people leaving, although I'm sure that in a large university there were some. But, at the university in the years '28 through '32, many were

still part of the early twenties, and happily free of anxieties that were common later. By '32, the threats were apparent. But depressions had occurred in this country before. We had studied and talked about them in the economics classes we had at school, but there didn't seem to be an overwhelming threat. The banks seemed stable, although the stock market had broken. Most of us were very far removed from the stock market. It was something of a name and not much more. Ruffner and his colleagues were deep in classical economics. It wasn't Samuelson; they didn't offer the kind of economics that we know today.

Mr. Liss: Did you proceed straight to law school?

Mr. Ginsburg: In '32, I was graduated in the spring, and prepared for law school. Why law school? And where was I to go? I cannot explain it, but there was never a time in my life when I had not assumed that I would study law.

Mr. Liss: Does this date back to your childhood?

Mr. Ginsburg: I have no recollection of ever worrying about whether or not to be a lawyer. It was automatic. Did my parents inculcate that in my mind? I doubt it. They weren't trying to guide me or to direct me or to oversee that part of my life. Where it came from I don't know. But in any event, I was certain that I was going to law school. I heard about Harvard, and I wanted to go to the school that I thought was the best, at least for me. I had talked about law school while I was at the University in Morgantown. Indeed, I took a course or two at the law school while I was in the College of Arts and Sciences, just to see what the law was all about. That's what I wanted to do, and it never occurred to me not to do it. And so I entered Harvard—getting into Harvard in those days was not the problem that it is today. There was an economic problem, of course. The cost was much more than the cost in Morgantown.

Mr. Liss: How did you handle that?

Mr. Ginsburg: The family managed it. And there was also I think a scholarship of some sort—partial—in the first year, but I have no clear recollection of what it was. My parents dealt with it.

Mr. Liss: Had you ever been to Boston or Harvard until you arrived for law school?

Mr. Ginsburg: No. Indeed, I think the only city that I'd ever been in for any length of time other than Huntington and Charleston, West Virginia, was New York City.

Mr. Liss: Remind me again -- how old were you when you left New York City?

Mr. Ginsburg: When I left New York City, I don't remember whether I was—somewhere between 7 and 9.

Mr. Liss: And so, when you went to Cambridge, this was your first return to a big city?

Mr. Ginsburg: No, I had also been to several while I was at the university, on the debating team.

Mr. Liss: Right.

Mr. Ginsburg: The debating team took me to New York, where we debated, I remember, with New York University. We went to Pittsburgh, and to various other cities on the east coast. But I'd never been to Boston before.

Mr. Liss: Did you ever visit Washington during those years when you were growing up?

Mr. Ginsburg: No. When I came to Washington in '35, it was my first visit here.

Mr. Liss: Do you recall your impressions of Cambridge and Boston when you first arrived there?

Mr. Ginsburg: I loved both.

Mr. Liss: Tell me why.

Mr. Ginsburg: Boston was a marvelous book place. They had wonderful bookstores. Harvard University was surrounded by bookstores. The libraries were tremendous. There was an academic atmosphere. There were so many bright students. In my class at the law school, there were about 600 in the first year, of whom about a third did not return for the second year. By the time our class graduated, I think we had fewer than half of us who had entered.

Mr. Liss: Were there any women in those days in the class?

Mr. Ginsburg: There were no women. There were no blacks. There were no Hispanics. It was all white male. With a considerable Jewish component. I became friends with various people. A New York man by the name of David Hexter, whom I had known at West Virginia University. Joseph Rauh from Cincinnati. David Stern from Chicago. All are now gone. They were very close friends.

Mr. Liss: What was Joe Rauh like as a law student?

Mr. Ginsburg: Boisterous. Noisy. Bright to brilliant. He led our class. And a joy, for me. He was athletic. Gay. Humorous. Joe's liberalism didn't emerge so far as I could see until our third year in law school. We were both members of Professor Frankfurter's third year seminar on federal jurisdiction. Each of us would occasionally report on a particular assigned case. Joe was once assigned a case (I've forgotten the name) that dealt with the treatment of blacks in the south. He read it and, as we were required to do, went into the record,

in the library—and was shocked by what he found. He reported on the case. Frankfurter gave us the background. He made clear that this was still going on, Joe became involved, emotionally involved, spiritually involved. I think this was true of most of us in that class. We came to a better understanding of the law, as a social discipline and a means of enabling people to live together. That we hadn't understood before.

Mr. Liss: Was Frankfurter of the view that the law could be used as a social discipline?

Mr. Ginsburg: I can't answer that. He didn't particularly show his hand about his personal beliefs, but persisted, in the usual Harvard way, asking questions of all of us. The class was comprised of about 15, 18 people. We read widely. We enjoyed our classes. This was held on Saturday mornings. I think we all reacted differently to him as a person—ebullient, clever, informal, serious, and interested in people. He was particularly interested in the students who finally reached his class, with whom he had close, personal contact. We were invited occasionally to his home. He was at Oxford during our second year. There's a picture of him on my wall [pointing to office wall] taken when he was there. And when he came back in my third year, when we were taking his federal jurisdiction course, Harold Laski visited him. I remember going to his house, the conversations with Laski and with him, and the number of students from my class who were there. Laski was an impressive man. Fascinating to listen to, a wonderful conversationalist. One time Professor Frankfurter had an afternoon reception for students in honor of Laski. There was one cluster of students around Frankfurter and another at the other end of the room around Laski. They were both marvelously entertaining. But Laski was the new man on the block and, little by little, one could see people drifting from the Frankfurter group to

the Laski group. Ultimately, I saw Professor Frankfurter sheepishly join the group with Laski and the two were finally consolidated. It was amusing to watch. This was one of Frankfurter's rare defeats on the conversationalist front. There was warmth and vitality in the man — Felix—and a sense that he really wanted to help us understand what he understood. We knew in a remote way that he was involved with the new administration in Washington, with FDR. But we didn't know much about that, only what we read in the papers.

Mr. Liss: Did you begin laying plans for after graduation?

Mr. Ginsburg: The third year was, at least for me, a hard year. Trying to anticipate what I was going to do, where I was going to work. During the Christmas holiday, I went to Cincinnati, which was the nearest large city, reasonably close to Huntington. In Cincinnati, I approached various firms, one of them was Dinsmore, Shohl Sawyer & Dinsmore. I remember meeting with Judge Shohl and being offered a job. I came back to Cambridge and told Frankfurter that I planned to go to Cincinnati after graduation. I had been delighted by that prospect. Cincinnati was a place that I had enjoyed visiting. It had good music, good museums. It was a well-run city and a pleasure to visit. Later, the second or third time we spoke after I had returned, Frankfurter said, "Why don't you spend a year in Washington? I'm sure you can arrange a year off." So I called Judge Shohl, who said there was no reason why not. And so I had a year's leave of absence.

Mr. Liss: Before we go there, can we stay a little bit more with law school?

Mr. Ginsburg: Sure.

Mr. Liss: Today, I would say a majority of the courses are still taught out of the casebook in the traditional case method. Was that true at Harvard? Or did you have a variety of

approaches?

Mr. Ginsburg: Much depended on the teacher. In constitutional law, Powell used the casebook but, for the most part, the class ranged around the subject. We knew the treatises and we all had recourse to them. We read the cases and occasionally some records in procedure. We were fairly close to the casebook in criminal law—during the first year. For the most part, it was traditional Harvard law.

Mr. Liss: Was Frankfurter not that way?

Mr. Ginsburg: Much less. And in the seminars almost not at all. In the classroom, when he was teaching, for example, matters dealing with the Interstate Commerce Commission, he ranged around the economics and politics of problems. Who benefitted, and who suffered, and what the labor problems were, and the practical difficulties. And he gave a better idea of why the Commission dealt with problems as it did—far better than the text of the decision or the regulation would indicate. He was one who in the senior year began to open up the politics of government. Powell did, too, but generally in terms of the personalities of the members of the Supreme Court, the nature of these people, and how their outlook affected outcomes.

Mr. Liss: Now this would have been '33, '34, '35?

Mr. Ginsburg: That's correct.

Mr. Liss: So, Roosevelt was beginning to get his people on the court slowly.

Mr. Ginsburg: No, not yet.

Mr. Liss: Not yet?

Mr. Ginsburg: Not yet. No, this still would have been the nine old men.

Mr. Liss: When was Roosevelt's first appointment? Do you remember?

Mr. Ginsburg: Let's see. Hughes stepped down, and Stone came in as the Chief in '41. Black came on the Court in 1937; Reed in '38 and Frankfurter and Douglas in '39. This was all after '37 when FDR had his first appointee.

Mr. Liss: In the first term.

Mr. Ginsburg: It may have been the last part of the first term, but my recollection is that Black was first, early in the second term.

Mr. Liss: Looking back on it, can you remember the tendencies of judicial restraint, which Frankfurter later became famous for on the Court, reflected in the classroom?

Mr. Ginsburg: Certainly, the requirement of “case or controversy” in federal jurisdiction was a very important part of the course—that you had to have an ongoing, current, factual case before a decision could be rendered. There was a sense too that there were certain kinds of problems that the Court ought not to deal with—political problems. When he became a Justice, his insistence bothered other members of the Court. The Court had begun to grapple with almost anything that came before it. This was the period when the administration was desperately seeking to find ways to cope with the Depression. There was desperation throughout the country. Unemployment was growing. The cliché is that businessmen were selling apples on street corners; it was literally true. You sensed fear. When Roosevelt was nominated, in his inaugural address he said that we have nothing to fear but fear itself. That was reassuring. Hoover hadn't talked that way, and neither had Coolidge or Harding. The latter two didn't have the problems that confronted Roosevelt: banks were closing, businesses were going bankrupt. It was terrifying at law school. When the banks closed, I think it was in my first year. Harvard

announced that in the event of need, the University was willing to lend us \$10 a week until we could manage it. The University was not a palace isolated. We were very much part of what was going on. We didn't have television but there was radio. We'd sit around the radio on Saturday night and listen to what FDR was saying, and read the newspaper reports. And then, as time went on, we learned of the decision of the Court on the NRA, the National Recovery Act, outlawing it, of the unconstitutionality of the effort to help the farmers, eliminate child labor and much more. All were struck down by the Court. There was bewilderment. How could we get out of the morass?

Mr. Liss: Were you in law school when the decisions striking down, for example, the NRA occurred, or were you already in government?

Mr. Ginsburg: NRA came down sooner than the others, while I was still in law school.

Mr. Liss: Do you remember decisions like those getting attention at the law school?

Mr. Ginsburg: Absolutely. That was what Frankfurter did. We'd get the current decisions of the Court, and he would assign this one or that for us to report. We would, in this way, follow what the Court was doing. Frankfurter's pressing inquiry in every class was, why did the Court accept this case? What was the reason for it? What were they trying to do? Should they have accepted the case? What of the outcome? Was the case well argued? Were the underlying issues before the Court clear so that the Court could understand? My last year in law school was especially exciting, made so essentially by Frankfurter and, to some extent, also by Powell. Powell's primary interest at the time was the Commerce Clause, because the

government was largely relying on the Commerce Clause to justify federal action. We left law school in 1935 sensitized to the need for the Court to have greater regard for the conditions and needs of the country.

Mr. Liss: When I interrupted you, you were about to say that Frankfurter had steered you toward the government.

Mr. Ginsburg: Yes. As I said, after I got back from Cincinnati and spoke with him, he suggested, "Why don't you take a year off and spend it in Washington? In Cincinnati, it will be helpful to you." I later learned that he had then telephoned Joe Kennedy, who was at that time head of the SEC (it wasn't, I think, the SEC, but what became the SEC), and arranged it—this was all done quickly and with little or no correspondence. He sent people to Washington frequently, and there were many of us. I came with Joe Rauh toward the end of the summer in '35, and we began work at the SEC. We quickly were assigned to two men who were working with the White House, Ben Cohen and Tom Corcoran, to help them.

Mr. Liss: How did that work? Cohen and Corcoran were on the White House staff?

Mr. Ginsburg: No, at that time, Ben and Tom were, I think, tied for purposes of compensation, to the National Power Policy Committee at the Department of Interior, under Ickes. They had offices in the Interior Department, which coincidentally, is not far from the White House. We had offices both at the SEC and there.

Mr. Liss: Where was the SEC then?

Mr. Ginsburg: The SEC was at 18th and Pennsylvania on the corner. The building has since been torn down. I was on the 10th floor, I remember. The Interior

Department was just down the street, down 18th Street from Pennsylvania Avenue. We would really check in for work with Ben and Tom. Work with them was both exciting and grueling. They were there early in the morning, and it was a rare night that we would get home before 1:00 or 2:00 a.m.

Mr. Liss: What was their portfolio?

Mr. Ginsburg: Doing what the White House wanted done. That summer the Public Utility Holding Company Act of 1935 had just been passed. John W. Davis was leading the fight against it.

Mr. Liss: As advocate? Or as policy maker?

Mr. Ginsburg: As an advocate representing, allegedly, a dentist in Baltimore, named Burco who held a few shares of one of the big holding companies, and was suing the government to have it declared unconstitutional. Our big job—by that time our strategy in defending the law—was to take the Electric Bond and Share Company and use it as a test case. To get the facts about Electric Bond and Share required a substantial staff, and a year or more of work. We had to postpone Burco in order to let Electric Bond and Share go forward. The first objective was to tie Burco down for the time being. Tom and Ben recruited a young fellow at Covington & Burling, named Dean Acheson, to represent the government in the District Court trial in Baltimore, where Burco lived.

Mr. Liss: Was there an official—this is so different from today's government, obviously, in terms of lines of authority, but was there a government attorney or agency assigned to handle this case?

Mr. Ginsburg: Well, the Justice Department knew about the case. There Bob

Jackson was already involved. Certainly, Attorney General Cummings knew about it.

Mr. Liss: Right.

Mr. Ginsburg: Yes, Bob Jackson was involved.

Mr. Liss: Well, I think at some point he served as Solicitor General.

Mr. Ginsburg: I beg your pardon?

Mr. Liss: Didn't he serve as Solicitor General at some point?

Mr. Ginsburg: Oh, that was much later.

Mr. Liss: Okay.

Mr. Ginsburg: Indeed, he argued the case in the Supreme Court as Solicitor General. But—

Mr. Liss: But the inside team was being supplemented with—

Mr. Ginsburg: An outside lawyer was hired to come in, try the lower court case and speak for the Government. I don't think it's often done that way today. The same borrowing goes on for the White House. The White House doesn't pay all members of its staff; the numbers that you see—that "We've reduced our staff by so many"—often reflect that borrowed staff has been released. This has been done by all administrations. We worked on the Burco case very hard, and we lost others like it—but won most. Joe and I spent a lot of time on the Electric Bond and Share case; Joe left to serve as a law clerk to Cardozo. I remained with Ben and Tom. In the Bond and Share case the central issue, again, was case or controversy. We didn't want the case knocked out on that issue. Case or controversy was Frankfurter's meat and potatoes.

Mr. Liss: Did you ask your mentor to chime in?

Mr. Ginsburg: No, we had no contact with Felix during this period. At least, I didn't.

Mr. Liss: He was still at the law school.

Mr. Ginsburg. Yes.

Mr. Liss: Oh, he was not already at the Court.

Mr. Ginsburg: In '37, he was still at the Law School.

Mr. Liss: Well then you wouldn't have spoken to him, obviously.

Mr. Ginsburg: I certainly didn't. We began to win the lower court Burco-type cases, and ultimately, in the Supreme Court we preserved Section 11. Section 11 was a provision of the law that eliminated third tier and more utility holding companies. The Congress had foreseen the likelihood that the country's electric power could end up in the hands of three or four or five companies. The Federal Trade Commission, meanwhile, had investigated this issue and published 70 or 80 volumes of hearings on them; these became our Bibles. We studied the records, and, of course, gathered the facts about Bond and Share. Wendall Wilkie was Bond and Share's General Counsel. He later became the Republican candidate for President. I remember meeting him; he knew Tom and Ben well, and often met with them at night to discuss the case and other matters. It was interesting. There was friendship although they were antagonists.

Mr. Liss: Did you indicate that Robert Jackson argued the case?

Mr. Ginsburg: Yes, but he didn't prepare for argument in the way that Ben did (they shared the argument) or how Tom and others with whom I was working prepared. Jackson arrived in Court just a little late, stood up, and hemmed and hawed a little but ultimately got the issues to the Court. After the argument, I wrote a detailed letter to Professor Frankfurter reporting on the argument, ten or 12 pages. It's all reproduced in a biography of Ben Cohen. How the author got the letter, I don't know. But this was a very rich learning period for me,

particularly learning about Washington. The way that lawyers here think. The care with which a case is presented by the government to the Supreme Court. The effort that goes into it, the hours spent on it. I look back on this period as the great learning experience of my life, including law school. I came out with some appreciation of the commitment of people to their work. What was it that motivated them? Tom Corcoran, I think wanted to be Solicitor General and never achieved it. Ben may have had ambitions for the Supreme Court and I was close to him, but I never heard him speak of it. He was later a high official in the State Department and at one point one of our representatives to the UN. He served abroad. He traveled with the Secretary of State. He wrote speeches for Secretary Byrnes, one of which formulated most of our German policy. Was he fulfilled at the end? As I saw it, he extracted from his work the satisfaction that he required. Simply from his work. Not from honors or publicity. He was amused, I remembered, when he and Tom became figures on *Time* magazine at the end of the year. But he never sought a place on the Supreme Court, which he might have had, or sought other honors. Quietly, in the bowels of the Interior Department and at the White House, he did what was assigned to him.

Mr. Liss: What were some of the other types of matters you worked on during this period?

Mr. Ginsburg: During this period also, Sam Rosenman, Judge Rosenman, was one of the key speech writers for the President, and he occasionally needed help. I was assigned to work with him, did research for him, and came to like him very much. His wife was very much interested in housing, I remember. So, my first introduction to housing problems was through Mrs. Rosenman.

Mr. Liss: Did you on occasion get to see the President?

Mr. Ginsburg: Oh, yes. When he needed a speech or was planning a speech, he would call on Sam, and occasionally Sam would bring me in to listen to a talk with FDR about the ideas the President wanted to project. Sometimes he already had prepared notes about what he wanted to say, and sometimes he would just sit back and talk. "This is what I want to say, this is what I want to do, this is why I'm going at it in this way." He would explain the background so that we would know what he was trying to accomplish. It was a wonderful, enriching experience for me; it was the way that level of work should be done. The speeches that were written were FDR's speeches. This is what he wanted to do, and how he wanted to do it. It's not that Sam wasn't extraordinarily artful formulating language that could be easily understood, dramatic and powerful. But the speeches, I knew, were Roosevelt's.

Mr. Liss: Would he often edit after the speeches came back?

Mr. Ginsburg: Yes, when the speeches came back; it's not that he would rearrange paragraphs and so on or much of that. What he wanted was to speak simply. Any fancy or complicated word he'd reject. He sought always to simplify, sometimes to dramatize for emphasis. Yes, he would work on the text, edit it. Very often, of course, by the time that we saw what he had done, things were reasonably in shape for him, and the speech said what he wanted to say. Others, too, may have been at work with him. Certainly many others checked the facts.

Mr. Liss: Give me an idea of the size of the White House staff under Roosevelt.

Mr. Ginsburg: I was in the White House myself for a brief period during the Kennedy administration, and much longer with his successor, LBJ. Every office seemed occupied, with several people in each room. There was turbulence in the White House; traffic in the corridors. In FDR's day, there was quiet!

Mr. Liss: What about under Truman?

Mr. Ginsburg: It was still very quiet in Truman's time; he sought "six good men with a passion for anonymity." Six good men! We now have hundreds in and near the White House. I think President Clinton promised to reduce his staff by a third. He may well have reduced the numbers of people on the White House payroll, but I'd bet a good deal of money that there are at least as many as before working in the White House on loan from other agencies and departments.

Mr. Liss: When you speak of the White House, in those days, in Roosevelt's days—

Mr. Ginsburg: West Wing and the East Wing.

Mr. Liss: And the Old Executive Office Building?

Mr. Ginsburg: Oh, I'm sorry, down at 17th and Pennsylvania.

Mr. Liss: Right.

Mr. Ginsburg: There are a plethora of people there currently, but during Roosevelt's time, my goodness, it was quiet. The Secret Service people, of course were around, but there wasn't the bustle and the hustle. There was the Bureau of the Budget—which OMB was called at that time—and much earlier the defense forces and State. The direct contact between most of the other agencies and departments and the White House was limited to the President's need to provide guidance or for information, or a cabinet officer's need for a decision. The cabinet met, but rarely acted as a cabinet. I attended some preliminary meetings, but it was a quiet and different world until preparations for war were required.

Mr. Liss: From your perspective as a young lawyer, did Roosevelt engage on a

personal level when you sat in meetings with him?

Mr. Ginsburg: Oh, absolutely. By that I mean he often sought recommendations, information, facts, who had done what. When one agency or department sought to do one thing and another something just a little different, there was sometimes friction. Remember that we were still in the Depression. FDR was still trying to get the country out of it. There may have been 14 million people unemployed in a nation that, at the time, may have had 130 million people and perhaps a labor force of, what, 50 to 60 million? Economically we were in a terrible condition. There was a threat of communism, fear of communists, growing recognition that something very bad was going on in Germany, and a threat to the continent. We had never before seen conditions that existed then. In France and Germany there were recent unemployment levels of 12 or 13%. The percentages reached then are in dispute, but it's clear that, at times and in many places, levels of unemployment reached 25%. Imagine a quarter of the work force unemployed! Walking the streets, trying to keep families whole and together.

Mr. Liss: How did that affect the atmosphere in the White House and among the President's advisers? Was there a sense of urgency, a need to do something?

Mr. Ginsburg: Yes. There was a sense of urgency and a sense of need, but remember Roosevelt's personality. There was innate liveliness and gaiety in him—a willingness to laugh, a need to laugh. If he had suffered the reality he couldn't have remained in office. He was a crippled man who somehow, by enormous strength of character and body (he looked burly in his chair), kept going. The Supreme Court was knocking potential solutions out one by one, after they had been brought to action and some were beginning to work. Ideas were offered—but how to implement them? How to get the funds for them? Who should do them? Should it be

the federal government or the states? The basic effort of the New Deal was to focus responsibility on the federal government; the states, either because of corruption or ineptitude, were doing little or nothing! Today, state governors and city mayors are often extraordinarily able. State and local governments then were generally without resources, often corrupt and rarely effective. Roosevelt's joy in life, his zest, his need to avoid panic, to keep problems at a level that permitted thought, enable action and enlist support. He was unique in public life then and stands alone in my experience.

Mr. Liss: Did you work on the court packing plan?

Mr. Ginsburg: No. In '37, it evolved between Attorney General Cummings and the President, and I assume came out of the Justice Department. I remember that Tom, Ben, Joe and I met for breakfast at Joe Rauh's house on the Sunday after the court packing plan came down. None of us knew anything about it. None of us had any prior word. I'm now aware there's some evidence that Ben and Tom may have been briefed by the Attorney General, but that morning they denied any prior awareness. None of us expressed sympathy for the plan, although we all felt that we had to support the President. I don't think it's possible for people today to sense the morass of the economy in 1937. Nothing moved. No additional employment. The only jobs were the jobs that the cities with federal money were beginning to offer, and the work that various agencies—Hopkins, Ickes and others—were able to establish. But in the country, if you'd go back to West Virginia as I did from time to time, or elsewhere—in Pittsburgh, Cincinnati or Chicago—conditions were desperate. There were rumblings of revolution. People talked about that. How could one write a novel with a happy ending then? I don't know what the writers were producing then, but the mood of the country was marked by sadness and

deprivation. The Roosevelt years, the first two terms, were tough. I don't know of anyone in our history—possibly Lincoln—who had the personality and ability to do better than FDR did.

Mr. Liss: Can you recall a personal moment along these lines?

Mr. Ginsburg: Sam Rosenman was invited to dinner and I came along. The President was sitting at the end of the table, in his wheelchair, talking and joking. I wondered to myself, how in God's name could this man deal with it? He'd roll off to fix a drink, and was able somehow to maintain such stability in himself that he transmitted a sense of security to the country: one had to endure and get through. I know no one before or since who could have done that. This certainly wasn't Lincoln's mood, or anyone else who preceded him or came after him. So I look back on this period with awe. For FDR to have lived through that without being terribly wounded! One doesn't talk about that period with children—I don't. How can one explain it? We've seen nothing like it. I came to this city in '35. I remember going to a little hotel on DeSales Street across from the Mayflower, no longer there, spending the first night alone, streetcars down the avenue. What struck me, I remember, the first time I slept in a private home, is that I didn't hear the ice man—I heard something, but not the horses or the wagons. Here, I first saw an ice wagon that had tires on it, not the metal rims around the wheels that would wake me up every morning in Huntington. And in the summertime, was it hot! There was no air conditioning and the fans just couldn't reduce the humidity. It was a difficult period.

Mr. Liss: Where were you living during this period?

Mr. Ginsburg: In '35, I lived first with a man named Nat Nathanson, who at that time served as law clerk for Justice Brandeis. We lived in his home with his mother and sister, in an apartment house across from the Zoo, 3000 Connecticut Avenue. And it was through

him—really through Frankfurter, I suppose—that I met Brandeis. We'd go to his Tuesday teas.

Mr. Liss: How old was Brandeis at this point?

Mr. Ginsburg: He must have been near 80. Still vigorous, tall; not burly. He'd move from person to person and ask, "What are you doing, where are you, what's going on there?" He didn't read the newspapers (he made a point of saying this); he got information from people. I remember once, I was living with a group of four or five others at 1718 Q Street, not far from here. Paul Freund was there; we were all in the government. Paul was in the Solicitor General's Office, and we had been invited for dinner at the Justice's home. We had chicken soup, boiled chicken and some fruit afterwards. There was no smoking, of course. Certainly nothing to drink. And the quizzing that we went through, a cross-examination of what was going on in the world and what we thought of it, and what were the public reactions, and what the agencies were doing, and what was going on in the SG's office, what was going on in Ben's office—he knew Ben and Tom well—or the SEC. What kind of a man was Douglas (when he came to the SEC from Yale after Landis left).

Mr. Liss: I think we should talk about them, but I think we should do it next time. We're just about at the end.

Mr. Ginsburg: Okay. I have a 12:30 appointment. This is great. It brings back memories; I suddenly feel saddened, I don't know why.

This concludes the interview held on April 8, 1998.