



DAVID GINSBURG, ESQUIRE

Oral History Project
The Historical Society of the District of Columbia Circuit

**Oral History Project
The Historical Society of the
District of Columbia Circuit**

**United States Courts
District of Columbia Circuit**



David Ginsburg, Esquire

**Interviews conducted by:
Jeffrey F. Liss, Esquire**

April 8, April 22, July 15 and October 7, 1998

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NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

The contents hereof and all literary rights pertaining hereto are governed by, and are subject to, the Oral History Agreements included herewith.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcripts are available at other locations.

Such original audio tapes of the interviews as exist, as well as the original 3.5" diskettes of the transcripts (in WordPerfect format) are in the custody of the Circuit Executive of the U.S. Courts for the District of Columbia Circuit.

Historical Society of the District of Columbia Circuit

Interviewee Oral History Agreement

1. In consideration of the recording and preservation of my oral history memoir by the Historical Society of the District of Columbia Circuit, Washington, D.C., and its employees and agents (hereinafter "the Society"), I, David Ginsburg, except as otherwise provided herein, do hereby grant and convey to the Society and its successors and assigns all of my rights, title, and interest in the tape recordings and transcripts of interviews of me as described in Schedule A hereto, including literary rights and copyrights. All copies of the tapes and transcripts are subject to the same restrictions, herein provided.

2. I reserve the right to use the tapes and transcripts and their content as a resource for any book, pamphlet, article or other writing of which I am an author or co-author.

3. I authorize the Society, subject to any exceptions* contained herein, to duplicate, edit, publish, or permit the use of said tape recordings and transcripts in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

David Ginsburg 10/21/99
[Signature of Interviewee] Date

SWORN TO AND SUBSCRIBED before me this 21st day of October, 1999.

Amanda N. Palma
Notary Public Amanda N. Palma, District of Columbia

My Commission expires January 1, 2002

ACCEPTED this 5th day of December, 1999, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.

Daniel M. Gribbon
Daniel M. Gribbon

* Before any publication I request an opportunity to review and, if necessary, correct any errors I may find.

Schedule A

Tape recordings and transcripts resulting from four interviews conducted by Jeffrey F. Liss on the following dates:

<u>Session</u>	<u>Date</u>	<u>Number of Tapes</u>	<u>Transcript Pages</u>
1	April 8, 1998	2	25
2	April 22, 1998	2	19
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JEFFREY F. LISS

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December 16, 1999

David Ginsburg, Esq.
Powell, Goldstein, Frazer & Murphy LLP
1001 Pennsylvania Avenue, NW
Sixth Floor
Washington, DC 20004

Dear David:

Steve Pollak points out that we have two donation forms from you (see attached). I assume that the latter is intended to supersede the former, but would appreciate your signing below if that is correct.

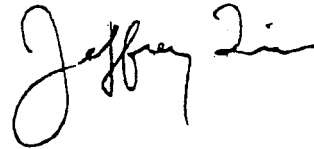
Also, I assume that the request in the latter form for an opportunity to review for errors prior to publication does not include the current intended uses, *i. e.*, having the transcript placed on the shelves of the libraries of Congress, the D.C. Historical Society, and the Federal Courts of the District of Columbia Circuit. Again, if I am correct, please sign below.

If either assumption is incorrect, let me know as soon as you can, please. If they are both correct, please return the signed copy to me.

I hope all is well and look forward to seeing you again.

Best regards.

Sincerely,



Jeffrey F. Liss

JFL/cpm

Enclosure

cc: Stephen J. Pollak, Esq.

Approved:

David Ginsburg

POWELL, GOLDSTEIN, FRAZER & MURPHY LLP

ATTORNEYS AT LAW

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July 19, 2000

Jeffrey F. Liss, Esq.
Piper Marbury Rudnick & Wolfe, LLP
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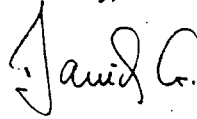
Dear Jeff,

The limiting sentence I added to my oral history was inane. Your thoughtful "interpretation" gives it far more content than the words contain – and I confirm with this letter, all that you extracted from an ambiguous and misleading sentence: your **First**, **Second**, and **Third** paragraphs are clear, precise and correct.

Thank you for giving content to a vacuity.

Warm personal regards,

Sincerely,



David Ginsburg

DG:anp

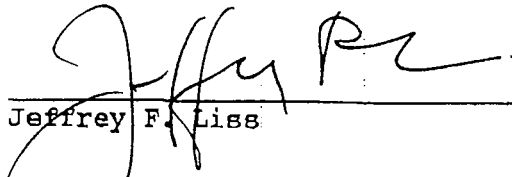
Historical Society of the District of Columbia Circuit

Interviewer Oral History Agreement

1. Having agreed to conduct an oral history interview with David Ginsburg for the Historical Society of the District of Columbia Circuit, Washington, D.C., I, Jeffrey F. Liss, do hereby grant and convey to the Society and its successors and assigns, all of my right, title, and interest in the tape recordings, transcripts and computer diskette of interviews, as described in Schedule A hereto, including literary rights and copyrights.

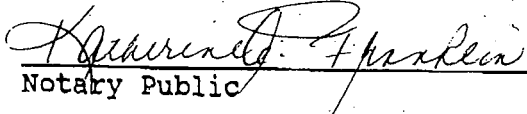
2. I authorize the Society, to duplicate, edit, publish, or permit the use of said tape recordings, transcripts and diskette in any manner that the Society considers appropriate, and I waive any claims I may have or acquire to any royalties from such use.

3. I agree that I will make no use of the interview or the information contained therein until it is concluded and edited, or until I receive permission from the Society.



Jeffrey F. Liss Date

SWORN TO AND SUBSCRIBED before me this
3rd day of December, 1999.

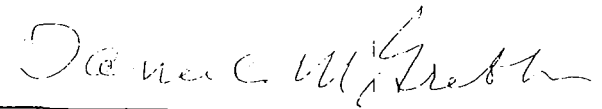


Notary Public



My Commission expires 9/1/2000

ACCEPTED this 12th day of December, 1999, by Daniel M. Gribbon, President of the Historical Society of the District of Columbia Circuit.



Daniel M. Gribbon

Schedule A

Tape recordings and transcripts resulting from four interviews conducted by Jeffrey F. Liss on the following dates:

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DAVID GINSBURG (April 20, 1912)

Education: Grammar and High School: Huntington, West Virginia
B.A.: West Virginia University, 1932
L.L.B.: Harvard Law School, 1935

1935-1939: Securities and Exchange Commission: Attorney,
Public Utilities Division, and Office of the
General Counsel

1939: Law Clerk to Mr. Justice William O. Douglas

1940-43: General Counsel, Office of Price Administration and
predecessor agencies

Presidential Certificate of Merit

1943-46: Served as private advancing through grades to
Captain, U.S. Army

Bronze Star; Legion of Merit

1945-46: Deputy Director, Economic Division, Office of
Military Government, Germany

1947: Deputy Commissioner, U.S. Delegation, Austrian
Treaty Commission (Vienna); Advisor, U.S.
Delegation, Council of Foreign Ministers (London)

1950: Administrative Assistant, Senator M.M. Neely (West
Virginia)

Since 1946: Private practice of law; present firm name:

Ginsburg, Feldman and Bress, Chartered
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Page 2

1959 to 1967: Adjunct Professor, International Law
Graduate School, Georgetown University

1968 to 1970: General Counsel, Democratic National
Committee

Miscellaneous: Chairman, Executive Committee, and Board Member,
National Symphony Orchestra Association (1961 -
1970).

Member, Presidential Emergency Board No. 166
(airlines) (1966)

Chairman, Presidential Emergency Board No. 169
(railroads) (1969)

Commissioner, The President's Commission on Postal
Organization (1967)

Executive Director, National Advisory Commission on
Civil Disorders (1967 - 1968)

Member, Visiting Committee, Harvard-MIT Joint
Center on Urban Studies (1969 -)

Member, Overseers Committee, John F. Kennedy School
of Government (1971 - 1977)

Trustee, St. John's College (1970 - 1976); Chairman
of the Board (1974 - 1976)

Member, American Law Institute (1972 -)

Member, Board of Governors, Weizmann Institute of
Science, Rehovot, Israel (1965 -); Honorary
Fellow, 1972

Member, Council on Foreign Relations (1974 -)

Publications: "Report of the National Advisory Commission on
Civil Disorders" (March 1968), Executive Director

"The Future of German Reparations", National
Planning Association (1952)

Articles in Law Reviews

JEFFREY F. LISS

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CURRENTLY

Nationwide Chief Operating Officer and Partner, Piper Marbury Rudnick & Wolfe LLP.

- ◆ Member of the firm's Executive, Policy, and Strategic Planning Committees.
- ◆ Duties include oversight of the firm's practice groups.
- ◆ Founder of The Marbury Institute, the firm's well-publicized professionalism and training initiative.
- ◆ Maintains an active business and environmental litigation practice, as lead counsel in cases in federal and state courts and agencies and before private arbitrators.
- ◆ Partner in predecessor firm (Piper & Marbury, LLP) since 1985.

PRIOR EXPERIENCE

Special Government Employee, Office of the White House Counsel (1996-1997).

- ◆ Assisted in the evaluation and confirmation of several Cabinet-level Presidential appointees (part-time appointment, concurrent with my law practice).

Partner (1981-85) and Associate (1977-81), Wald, Harkrader & Ross, Washington, D.C.

Judicial Law Clerk, Honorable Charles R. Richey, United States District Court for the District of Columbia, 1975-1977.

LAW TEACHING

Adjunct Faculty (since 1986); Georgetown University Law Center (Remedies, Legal History, Business Arbitration).

Visiting Professor of Law (Fall 1996), University of Michigan Law School (Remedies).

Adjunct Faculty (1986), University of Maryland Law School (Administrative Law).

Adjunct Faculty (1978-85), Washington College of Law, American University (Anglo-American Legal History, Advanced Civil Procedure – Discovery).

Visiting Faculty (1992), EPA Trial Advocacy Institute, Boulder, Colorado.

EDUCATION

J.D., University of Michigan, 1975

- ◆ Note and Comment Editor, *University of Michigan Journal of Law Reform*, 1974-75.
- ◆ Recipient, Louis Honigman Memorial Award, 1975.
- ◆ Intern, Center for Law and Social Policy, Washington, D.C., 1974.

- ◆ Research Assistant, Honorable Arthur J. Goldberg (during Center internship).

M.A. (History), University of Michigan, 1975

B.A. (Philosophy), with High Distinction, University of Michigan, 1972

- ◆ Honors in Philosophy and Class Honors.

CURRENT BOARD MEMBERSHIPS AND POLITICAL POSITIONS

Board of Directors, Historical Society of the District of Columbia Circuit.

Advisory Committee, D.C. Bar Foundation.

Board of Directors, Baltimore Symphony Orchestra.

- Member, Executive Committee
- Chairman, Strathmore Concert Hall Committee

Treasurer, Friends of Lt. Gov. Kathleen Kennedy Townsend (D. Md.).

BAR MEMBERSHIPS AND ACTIVITIES

Admitted to the District of Columbia and Maryland bars, to all Federal district and circuit courts in and for those jurisdictions, and to the U.S. Supreme Court.

Co-chair, D.C. Bar Civility Implementation Task Force (current).

Professional Editor, Court History Project, U.S. Courts for the District of Columbia (current).

Member, U.S. District Court (D.C.), Early Neutral Evaluation panel of mediators (1989-95).

Steering Committee, D.C. Bar Section on Courts, Lawyers and the Administration of Justice (1988-1992).

Member, D.C. Bar Committee on Continuing Legal Education (1989-1991).

Chairman, Subcommittee on Fiduciary Obligations of Corporate Representatives of the Business Torts Litigation Committee, Section of Litigation, American Bar Association (1988-1991).

Member, D.C. Bar Admission Rules Study Committee (1987-88).

PROFESSIONAL AWARDS AND RECOGNITION

Member, American Law Institute.

Fellow, American Bar Foundation.

Recipient, 1999 Pro Bono Service Award, Maryland State Bar Association.

Frequently-invited member, Judicial Conference of the District of Columbia Circuit.

Life Member, National Registry of Who's Who.

Rated "av" by Martindale-Hubbell.

(Publications and Speeches available on request.)

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.

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 22nd day of April 1998 at 10:45 a.m.

Mr. Liss: David, where we left off, you had been describing the teas you attended with Justice Brandeis, and you mentioned that you also had come into contact with Justices Black and Frankfurter, and I thought maybe we could talk about them a little bit. At law school, did Frankfurter ever speak of his ambition to be on the Court?

Mr. Ginsburg: He never spoke of it. I never heard him in any way refer to anything about the Supreme Court other than whether, for example, certiorari should have been granted or should not have been granted in this or that case, or the analysis of the case. But everyone around him, including the faculty, assumed that one day, with Roosevelt in office, the odds were that Frankfurter would arrive at the Supreme Court. I was in Washington when his name came up. The question was what problems would there be? I remember Ben, Tom, myself and others—Jerry Frank—all joined in preparing memos for him, materials that might be helpful in preparation for the confirmation hearing. There was some opposition, but it wasn't serious; he was confirmed without too much trouble.

Mr. Liss: Do you know if Ben Cohen was in on the discussions with the President when the President decided to nominate him?

Mr. Ginsburg: I don't know that. And I doubt it very much. Action would have been taken in the first instance—I'd guess the President would have received some recommendations from Cummings, who was then the Attorney General. It's unlikely, I think that the President ever spoke to anyone other than Cummings about that. For example, when the court packing plan came up in '37, Cohen and Corcoran told Joe Rauh and me that they had no knowledge of the plan. It originated with Cummings and came as a surprise.

Mr. Liss: How did you meet Justice Black?

Mr. Ginsburg: Justice Black I first met when he was a Senator, in connection with the Public Utility Holding Company Act. He was Chairman of the Committee considering the proposed law. Sometime after the Act was passed, Tom sent me up with a memo for him. I remember the meeting. Controlled, not loquacious, businesslike, clearly a Southerner. He seemed very self-assured. In no way unpleasant, indeed, likable. I came to know him and later played tennis with him, on the tennis court at his home in Alexandria. He was not a man who showed emotion, either of affection or hostility. He was reserved, controlled. Although good humored, he seemed to lack warmth. And for me, he did. But he was hardworking and a good Justice. Later when I clerked for Douglas, I came to see more of him on the Supreme Court, and came to like him more as I came to know him better. But he was a man who was uncomfortable, I think, with emotion, affection, even hostility. He had one set of attitudes, not too much laughter, just enough. Some enthusiasm, not too much. He simply sought to maintain stability and control, not only within himself, but when possible with those around him.

Mr. Liss: Did you know his clerks when you clerked for Douglas?

Mr. Ginsburg: I knew some of his first clerks and later, on a couple of occasions, I opened my home to his clerks who held a reunion there. They included many distinguished people, able people, first-rate lawyers.

Mr. Liss: How did the Douglas clerkship come your way?

Mr. Ginsburg: Well, I was based at the SEC throughout this entire period--

Mr. Liss: Although assigned over to Interior.

Mr. Ginsburg: Although assigned, not to the Interior Department, but assigned to Ben and to Tom personally. They happened to maintain their offices at that time in the Interior Department as the National Power Policy Committee. I suppose that was set up for purposes of

organizing the defense of the Public Utility Holding Company Act. When work lagged, and that wasn't often, I returned to the SEC. At one point I came to know Leon Henderson, who was a Commissioner at the SEC, one of five. Douglas was Chairman. Henderson was an economist, had been the economist for the Democratic National Committee. Able man, thoughtful and energetic, sometimes boisterous, always hard-driving. He needed help; I served for a while as Henderson's assistant. Then, from time to time, I would return to help when Ben called.

Ultimately, I returned to the SEC. This was after the Supreme Court's decision upholding the constitutional validity of the Public Utility Holding Company Act. Douglas asked me to serve as his assistant, and I did. I worked closely with him on opinions and the work of the Commission, including assisting other Commissioners as they needed help. Around that time, a new biography had been written about Teddy Roosevelt, who was one of Douglas' heroes. Jerome Frank, another Commissioner, close to Douglas, came into my office with the book in his hand, opened to a page and said, "Listen to this." He read a paragraph or two from the book. Then he said, "Work it into my opinion." He ripped the page from the book. I have a passion for books and respect them. The notion of just ripping a page out of a book and simply handing it to me—I was shocked. He had written the opinion in the Consumer Power Company case that first required competitive bidding for municipal bonds. Before that, those bonds had been sold and distributed on a friendly basis to cooperative brokers and dealers. The opinion was inordinately long and Douglas had asked me to find a way to reduce the size of the opinion. It would be too much for the brokers and dealers dealing with municipalities around the country. I took a shot at it and finally got the opinion down to twenty pages. It was a major effort that took weeks. I brought it in to Jerome Frank and said, "I think I've got it for you. The chairman was trying to find a way to get it into a form that could be more widely understood." He stopped, read it, thought it was good, and said, "I'll tell you what we'll do. We will use it as a summary of the case at the end." It

was in that summary that I tried to work in something about Teddy Roosevelt's life.

Douglas had been on the Commission for some years already; he and Abe Fortas had come from Yale (Abe first served as an assistant to Jerome Frank at Agriculture) to work on matters dealing with the New York Stock Exchange, the '34 Stock Exchange Act, and investigations that took place about that time. When Brandeis resigned early in '39, the question was who would replace him. Frankfurter and Black were there. The old men now on the Court were fewer than nine.

Mr. Liss: Right.

Mr. Ginsburg: There was an immediate feeling among the people I knew that the man who should replace Brandeis was Douglas. He was young, 39, and experienced. An effort would have to be organized to get the nomination through. In particular, there was a feeling on the Hill that geographic diversification was needed on the Court—in particular, for a Westerner. Douglas was known as a professor from Yale. In fact, he had, as a young man, been reared in the State of Washington. Yakima was the town. But he had spent most of his life as an adult in the East, teaching at Columbia and Yale and, for some time, in private practice. Tom and Ben worked with Senator Borah, and Borah finally spoke and endorsed Douglas as a man of the West. Since Borah himself was a symbol of the West, it all worked out. Douglas took his place on the Court.

Mr. Liss: Was there any concern about his age, about how young he was?

Mr. Ginsburg: There was talk that he was the youngest, at least in recent years, but that was not the basis for opposition. The opposition attacked his liberalism. I don't recall any serious opposition after Borah's speech. Douglas spoke with me during this period, assuming that he would be nominated by the President and supported by the Senate; he asked me to go with him as his first law clerk. I agreed.

Mr. Liss: At this time did the justices have just one law clerk?

Mr. Ginsburg: Just one law clerk. And, indeed, we had to work very hard. There was no thought of more clerks. The Justice, his secretary and I had a picture taken at the Court on April 20, which happened to be my birthday.

Mr. Liss: What year?

Mr. Ginsburg: This was in '39. I was older than most of the clerks; I was 27. I spent the rest of the term and the summer with him on one of the islands in the St. Lawrence Seaway, at a home that Douglas borrowed from a friend who was then, I think, the Secretary of Commerce. It was a thrilling experience for me. Stone was Chief for part of the time and Hughes was Chief before Stone. Stone had been the Dean of the law school at Columbia, and Hughes was the Chief when Douglas was appointed to take Brandeis' place.

Mr. Liss: Did you spend time over the summer looking at cert. petitions?

Mr. Ginsburg: Yes, working on cert. petitions that had been sent to us in Canada. I worked with a portable typewriter that I had brought with me, reading (sometimes in a boat as he fished), and we'd talk about some of the petitions. It may sound like a pleasant, easy vacation, but it was tough. Remember, this was '39. Hitler was moving fast in Europe. As the summer drew to a close, Thurman Arnold and his wife came for a visit. Douglas and he had been together at Yale and were very close. I knew Thurman and his wife quite well; we were all sitting around the fire together one night. Suddenly Mildred, Douglas' wife, came running out of the house saying that the Germans had attacked Poland. It was war. I remember the jolt that came through me. I felt certain from that moment that we would be in the war; we had all heard too many frightening details about the nature of the German rearmament, weaponry and war preparations to feel that Hitler could easily be stopped. Douglas had asked me to spend another year with him and I had agreed. The day after we heard the news, I told him that if it wouldn't

cause trouble, I would prefer to go back to Washington and begin work on what I was sure would be a vastly enhanced, much stronger rearmament program. He agreed.

Mr. Liss: Did you have an idea then as to where you would go to work on that program?

Mr. Ginsburg: I thought that what would have to happen first, and in fact it did so happen, is that hearings would be held on the Hill and a program would have to be developed. The TNEC was then in session—the Temporary National Economic Commission—which had been established to consider antitrust policy. Business, organized against FDR, had engaged in unlawful cooperation. However, TNEC was an economic inquiry. Leon Henderson was a member of that commission. I remember talking with Leon about the possible desirability of converting the TNEC to a Commission on rearmament. He agreed. Later, Leon went to New York to meet with Bernard Baruch, who had handled industrial mobilization during World War I. It was then that Baruch began his almost weekly visits to Washington consulting and offering guidance on these matters. I was assigned by Henderson, a member of the TNEC, to dig out as much as was available about how rearmament and economic mobilization had been done in World War I. I remember going down into the bowels of Archives, and visiting the Library of Congress to locate whatever was available in as much detail as possible. How had they accomplished it? And then a man named Leo Cherne—and Bill, who was later the head of the CIA—Bill—

Mr. Liss: Not Colby?

Mr. Ginsburg: No. Before him.

Mr. Liss: Before that.

Mr. Ginsburg: He was with Reagan. His name will come to me in a moment. It's well known [William Casey]. The three of us were assigned to do a draft of a mobilization law.

And over a period of months, we drafted, with help from others, the Industrial Mobilization Act of 1939.

Mr. Liss: Is this the act that established the War Production Board?

Mr. Ginsburg: No. That came later under an Executive Order. FDR acknowledged the existence of our draft, but decided to rely on an old World War I statute still on the books with which he was familiar. He set up a series of groups—one to deal with price control, one to deal with consumer interests, one to work on war production, one to deal with raw materials, another with labor, and so on.

Mr. Liss: All under an existing statute.

Mr. Ginsburg: All under an existing World War I statute.

Mr. Liss: Right. Which was still in effect?

Mr. Ginsburg: Which was still in effect, still on the books. How he remembered it I have no idea, but it was there. It hadn't been repealed and he just turned to it.

Mr. Liss: Wasn't he an Assistant Secretary—

Mr. Ginsburg: Of the Navy.

Mr. Liss: During the War?

Mr. Ginsburg: During the War.

Mr. Liss: That's probably how he remembered it.

Mr. Ginsburg: Yes. No doubt about that. But this law was enacted, I think, it was 1917. We are talking now about 1940. Well, Leon Henderson became head of the Office of Price Administration, set up by Executive Order. I had worked with him at the SEC and the TNEC and we got along well together. He asked me to become his General Counsel and I did. I was then 27. We worked together until I went into the Army at the end of '42.

Mr. Liss: What type of work did you do as General Counsel?

Mr. Ginsburg: When I left OPA, we had some 2,500 lawyers and about 7,500 investigators. We had a multi-million dollar budget. We had regional offices in each of the Federal Reserve districts of the country. We had smaller offices in all of the major cities of the United States. We prepared legislation and regulations to control prices and to enable us, if necessary, to ration. When Pearl Harbor came, all of this proved essential.

Mr. Liss: And it was in place by the time Pearl Harbor came?

Mr. Ginsburg: Shortly after. The Congress delayed the legislation, but after the attack, it was quickly passed and we went to work. Our first offices were in the Federal Reserve building.

Mr. Liss: Where was that at the time?

Mr. Ginsburg: On Constitution Avenue, where it is now. Later, we moved to a building on Massachusetts Avenue, a small building that had been a private home. We could no longer stay at the Federal Reserve Building because they were also growing to meet war needs. Our first effort was to get legislative authority because Pearl Harbor hit us before we had any legislation. We began with an Executive Order that created an Office of Price Administration, with the limited authority of an Executive Order. We obtained legislation in the spring of '42. I stayed with OPA until the fall in order to get legislation enacted to correct errors in the initial bill, particularly as the bill impacted agricultural commodities. The key opposition to us was headed in the Senate by Albert Gore, Sr., the father of Vice President Gore, who was working very closely with Bernard Baruch. But we managed to get the legislation through.

Mr. Liss: What was the basis for Senator Gore's opposition?

Mr. Ginsburg: He had accepted Baruch's thesis that all prices, wages, interest rates, everything that affected the level of inflation in the country, should be frozen as of a single date. Henderson felt, and those of us who worked with him were in full agreement, that the

prices of agricultural products were too low. We might not be able to grow the volume of food needed to support an army or armies and the civilian population if prices were kept at the levels that existed at the time. We opposed the freeze on agricultural prices. The House had enacted legislation that precluded control of farm prices until they reached 110 percent of parity. This simply meant that there would be an escalating upward spiral. When prices reached 110 percent, the cost of living would have risen and the parity price on farm prices would thus also rise. In fact, that's the way it worked. That was in the original bill—110 percent of parity. I remember working very closely with Kenneth Galbraith, who headed the Price Division as I served the Legal Division. By the end of the year—'42 toward fall—we got legislation through which amended the provision and enabled us to hold prices at parity and enabled us also to adjust agricultural prices as needed in order to produce the volume of food that was required. These were tough days. When Pearl Harbor hit, I remember going to my office in Tempo D on the Mall—temporary office buildings that had been built for war purposes—and remaining there through two nights.

Mr. Liss: These were built during World War I or built for World War II?

Mr. Ginsburg: World War II.

Mr. Liss: Because there were some that were there and then taken away, I guess.

Mr. Ginsburg: That's right. But the ones you're talking about were World War I, quite substantial buildings that after some 25 years were still standing. The Navy and others occupied them. The new ones I am referring to were at the other end of the Mall, near the Smithsonian. Temporary buildings were built not only for government occupancy but also for use by the young women and others who flocked to the city for the jobs as secretaries. We were planning to create a massive army—ultimately 14 million people. Many support staff and secretaries lived in the barracks built on the Mall. I remember going down when Pearl Harbor hit

to Tempo D—rushing down because our first concern was, what did the Far East provide that we would need for war mobilization.

Mr. Liss: I assume rubber was a key concern?

Mr. Ginsburg: Right. We had imported rubber from the Far East and obviously it was no longer going to be available. Many people in the country were rushing to buy tires, so we had to take control of the supply and ration tires. By this time, we had our legislation, we had the authority and we acted promptly. We set up ration offices and instrumentalities for rationing with ration cards. Teachers and schools throughout the country did the job and served us well. Gasoline also would be in short supply. We would need vast quantities of gasoline for trucks, planes and tanks essential for the war. We had to take control. I remember myself getting an A Card. An A Card entitled me to three gallons of gasoline a week, which effectively meant that I would take the bus, if there was one, and that was that. I spent the first three days at the office.

Mr. Liss: After Pearl Harbor.

Mr. Ginsburg: Immediately after Pearl Harbor. Trying to think through, what first had to be done? What were the priorities? Henderson was there, John Hamm, his deputy, Ken Galbraith, who headed price, and also the head of rationing. We worked out the systems for going forward.

Mr. Liss: How would you compare the activity, excitement and general atmosphere of the wartime effort to the atmosphere during the New Deal? Two very different challenges, but how were they similar and how were they different in Washington?

Mr. Ginsburg: In the late '30s, as part of the New Deal, or in the '30s, after FDR came in, there was a sense of desperation, a need for original and different thinking, because the thinking that had prevailed before under Hoover was simply not adequate to cope with the problem. It was in part an intellectual effort. What could we do to solve this problem? What

would get purchasing power into the hands of people that would enable them to buy, utilize reserves, require the production of other materials that put people to work, and so on? One sat back and thought, put ideas on paper, and tried to have them tested. In wartime, an enemy was attacking, and by this time we were fighting a war on two fronts. Germany had declared war on us. And of course the Japanese had attacked. I had spent a lot of time in previous months working on how we had responded in World War I. Many others, of course, were doing much the same thing, and beginning to put in place the processes and institutions needed for mobilization. Our big problem: how do you mobilize without inflation? That was our problem—how do you recruit, equip, send abroad a massive army without inflation at home? We knew the experience of Germany after World War I, Italy after World War I, books had been written on the subject, many had thought about it. We had to provide economic controls. The Federal Reserve was, of course, worrying about the same problem, and the Treasury Department, too, was at work and involved. But the instruments needed to effect control of prices and indirectly wages were the OPA and other instruments that had been created by FDR under the World War I statute. Our job was to work with Treasury and the Federal Reserve Board to prevent inflation. Others were cooperating. At OPA we did not have direct control of labor's wages. Others had to deal with that. But we had control of prices and rationing, and these were the key controls in use during the war. I won't go into the details, but we had individual price controls on particular commodities, and we also had a general price regulation that controlled almost everything else (there were of course some exclusions). We controlled rationing. We had rent control because that was a critical element in the cost of living. Baruch was right that in wartime you had to control everything; if some items began to move up, the cost of living would go up. Living standards would drop if you couldn't pay more and if you couldn't increase your income. This was a period of turmoil and testing. It was relatively easy to recruit able lawyers.

We had at the Office of Price Administration I think the greatest aggregation of the ablest lawyers that this country has ever seen.

Mr. Liss: Where did these lawyers come from?

Mr. Ginsburg: Many came from the faculties of the law schools because they no longer had students. They were headed for the Army. I had on my staff David Cavers, Henry Hart and Jim McLaughlin from Harvard, all of whom had been full professors.

Mr. Liss: Did you have any of your former teachers?

Mr. Ginsburg: They were former teachers.

Mr. Liss: Of yours?

Mr. Ginsburg: McLaughlin, yes; I knew them all while in school.

Mr. Liss: Right.

Mr. Ginsburg: There were many others. Nat Nathanson of Northwestern, others from Columbia, Yale and elsewhere. We had a very large staff although relatively few in Washington. I doubt that we had more than five or seven hundred in Washington. They were mostly stationed around the country, in district and regional offices.

Mr. Liss: Wasn't Bernard Meltzer part of the effort?

Mr. Ginsburg: Bernie Meltzer? Yes, he was—he later went to Chicago, teaching there.

Mr. Liss: Right.

Mr. Ginsburg: For a long time. I knew him at the SEC. I think he was with us at the OPA. I don't have a very clear recollection. I was spending most of my time trying to organize and deal with the necessary legislation, set up the structure, recruit, prepare a training manual—we published a loose-leaf service. We distributed our regulations much the way CCH, Prentice Hall and others do now. Each week I would communicate with our lawyers through the

service. These details were each major efforts. To organize a loose-leaf service for several hundred offices was not easy. And these matters were important; when prices are controlled effectively, profits are affected. If costs increase and prices are rigid, it becomes tough to do business. Most people understood that there were no real alternatives but, understandably there was opposition. I met LBJ, later President Johnson, when he was a young man serving on the Hill, with the head of the King Ranch, a Congressman from Texas. Later while in Congress, he came to me about price adjustments for people within the district. They couldn't be granted but I got to know him better then, and later worked with him.

Mr. Liss: Could you imagine that we could possibly organize such an effort to control the economy today, or is the experience you had something that simply cannot even be fathomed in today's economy?

Mr. Ginsburg: Our government responds most effectively only to the threat of catastrophe. Remember, there had been a Pearl Harbor and we had lost most of our Navy! The country understood it, and the Congress understood it. Now, of course, conditions are different; politicization is endemic and the economic and other threats are limited. If dangers and risks are sufficiently apparent and dramatic, the country and the Congress I think will respond fully and quickly to overcome whatever alternatives the politics might suggest.

Mr. Liss: Now, I interrupted you some time ago when you were about to relate that you entered the service.

Mr. Ginsburg: Oh. In the fall of '42, I was, as I pointed out, a young man. By then married, without children, in a position of considerable authority. You must remember the times. In race relations, the blacks suffered, but so too did the Jews. There was a good deal of anti-Semitism. In New Jersey, there were groups of Nazis, who called themselves Nazis. Throughout the country there was a great drift to isolation. "We don't want any part of this. . .

This war is their war, not our war." After the draft had been in effect for one year, it had to be extended. As the war began, the administration ultimately won—continuation of the draft was absolutely essential for defense—by one vote in the Senate. These are facts one never forgets. I was myself attacked as a Jew by some Congressman, I think, from Virginia. I was emotionally exhausted. We were working 18 hours every day. There was no day of the week, including Sundays, when we weren't doing something having to do with work. There was no relief, and I felt shaky. So I volunteered and went into the Army as a private; I was certain that I would be taken in the draft in any event. Bob Nathan, a distinguished economist in Washington and a personal friend, and I went in at the same time. We reported, traveled on the same bus to the same place, at that time called Camp Lee, not far from Richmond. When we got there a newspaper clipping with pictures of both of us had been pinned on the bulletin board, and underneath, handwritten: "These two sons of bitches arrive today." It was by no means a terrible experience, and in many ways, it was an enriching one. Bob was not in the best of health, and ultimately he was released. I was healthy enough and went through basic training, and the rest of it. I did everything from driving trucks to other less outdoor duties, and ultimately went to officers' training camp, and emerged as a Second Lieutenant. I was sent to England. There was need for Second Lieutenants because we were losing a lot of them in North Africa. And so, ultimately, I served in various places—supply, plans and training, other things.

Mr. Liss: How long did your service last?

Mr. Ginsburg: Nearly four years. I remained in the Army until toward summer of '46. Not quite four years. I came home once as the war was coming to an end in Europe. There was a need to allocate supplies between the European armies and the Far Eastern armies, and the General with whom I was working at the time and I came back. The plane was a four-motored one, the first I had seen. It landed in New York somewhere, and I agreed to meet him in

Washington since I wanted to see the man in New York with whom I had worked so closely, John Hamm, Leon Henderson's deputy. I got in a cab to go to his apartment, the cab drove off, and in a few minutes, I saw the driver, head down, shaking. I leaned over, he was crying and I said, "What's wrong?" He replied, "FDR died." I cried too. I visited John, and we talked about what had happened. That afternoon, late, I went on to Washington and did the work there that I had to do. Then back to Europe. This was April '45; shortly after I got back, I had a call from General Clay, Lucius Clay, whom I had known in Washington in the Office of Price Administration. Price control affected items that the Army bought so we had to maintain a relationship with the military in administering price control. I don't mean that we tried to price munitions, but the Army did buy many goods subject to price controls. Clay asked me to come with him to Berlin. What had happened in Germany after World War I—a terrible inflation that ultimately led to the destruction of so much wealth and human resources that many historians believe led quite directly to Hitler—we wished to avoid this time. He wanted help from someone involved with price stabilization, inflation control, in Europe with him. I thought it was necessary and agreed to come.

Mr. Liss: Now this was just before Germany surrendered.

Mr. Ginsburg: Yes.

Mr. Liss: But he was anticipating the need.

Mr. Ginsburg: Oh yes. He was scheduled to take over in Berlin, but he was still in Paris. Yes. I met with him and we talked about his concerns. I thought he was right, and got in touch with ex-OPA people who were in the Army. Carl Auerbach and Tom Harris, and a half a dozen or so others, and recruited them. We had worked together before. Henry Reuss, who later was elected to Congress and became Chairman of the Commerce Committee, joined us and a number of others. We gathered in Frankfurt before the war ended. Fighting was going on in

southeastern Germany. We set up offices in the I.G. Farben Building, and later the Economics Division, of which I was part, broke up I.G. Farben and made what's now three enormous chemical companies in Germany from that one. Months later I went with Clay to Berlin. Before we went to Berlin, in July, I had driven from community to community to set up rationing and price controls, and to recruit as many local people to do that job as we could find; some were, of course, Nazis. For this purpose, we had to use what we could find. And we did. In Berlin afterwards, we worked with the Russians, the French and the British. My job was to work on the Level of Industry for Germany. What industrial resources should be left with Germany? The Morgenthau Plan would have made out of Germany a pastoral country, an agricultural country. To me it was wrong and dangerous. To destroy the capacity for making goods on a continent that so desperately needed goods would be destructive. Many of us felt that way and ultimately Morgenthau's approach was rejected. But setting the initial levels of industry was tough because the French had one view, the Russians another and the British a third. We were ourselves trying to provide what Germany genuinely required. The first serious argument was over the level of the steel industry—how much productive capacity was really required. Now, the level seems laughable, but at the time, we sought the highest level that we could get. I think seven or eight million tons a year. Now they're producing 6 to 8 times that and more. We approached these matters with the hope that it would be possible to make of Germany a genuine ally. All of us had the experience of World War I very much in mind. Then the allies had created desperation. We had imposed on the Germans so many burdens and requirements that some historians tell us many later turned to “National Socialism” out of desperation and fear. We didn't want to risk that again, but hostilities were deep, and as the Holocaust “camps” opened we learned what really had happened under the Nazis. It was not only the 6 million Jews that had been slaughtered, but gypsies, the infirm, Catholics, intellectuals generally, and others. Opponents to

the Nazis were destroyed. I visited two of the camps; shock isn't quite the word that comes to mind. We were numbed by what we saw. But let's call it a day. The recollection saddens and burdens me.

This concludes the interview held April 22, 1998.

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.

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.

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