

David Ginsburg (1912-2010), Lifelong New Dealer

*John Q. Barrett**

Copyright © 2010 by John Q. Barrett.
All rights reserved.

David Ginsburg, a 25-year old United States Government lawyer, had good reasons to be nervous as noon approached on Tuesday, February 8, 1938. He was seated at an assistant's table in the courtroom at the Supreme Court of the United States, just behind the table for government counsel who were about to argue a case. In minutes, the Justices of the Court would take the bench to hear arguments, scheduled to last six hours, concerning the constitutionality of the Public Utility Holding Company Act of 1935 (PUHCA), a major New Deal securities regulatory law.

New York lawyer Thomas D. Thacher, a former federal District Judge and subsequently the Solicitor General of the U.S., now representing a major holding company challenging PUHCA, was scheduled to argue first, resuming the presentation that he had commenced the previous afternoon. Near Ginsburg sat his colleague Benjamin V. Cohen, who was scheduled to argue third.

The government's lead advocate, ahead of Ben Cohen, was supposed to be Robert H. Jackson. He was, at that moment, Assistant Attorney General heading the Antitrust Division in the U.S. Department of Justice. President Roosevelt had recently nominated Jackson to become DOJ's number two official, the Solicitor General, and he was in the middle of a contentious Senate confirmation hearing.

Ginsburg knew that Cohen was upset that morning that Jackson had attended a "Little Cabinet" dinner the previous evening instead of working on his oral argument. Ginsburg, watching the clock above the Supreme

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). An earlier version of this text was posted to my Jackson Email List on July 14, 2010.

For an archive of selected Jackson List posts, many of which have document images attached, visit www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju.

To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to barrettj@stjohns.edu.

Court bench, also knew that Jackson was not yet present, and that he and Cohen had no idea where Jackson was.

With two minutes to spare, Jackson showed up—offering no explanation, he simply appeared and took his seat at the government’s table. His oral argument that afternoon was quite effective. As Ginsburg wrote a few days later to his former Harvard Law School professor Felix Frankfurter, Ben Cohen’s argument, beginning at the end of that day and concluding on the next, was even better. Jackson and Cohen soon won the case—in *Electric Bond & Share Company v. Securities & Exchange Commission*, the Supreme Court affirmed that Congress had acted within the scope of its constitutional powers in passing PUHCA, including two specific, important regulations on holding companies.

* * *

Charles David Ginsburg nearly missed his opportunities to work in Washington during the 1930s on PUHCA and other New Deal laws and legal battles. As a third year law student on Christmas break 1934, he had traveled to Cincinnati, the big city up the Ohio River from his boyhood home of Huntington, West Virginia, to interview for a job. He met with Walter Shohl at his downtown Cincinnati law firm, Dinsmore, Shohl, Sawyer & Dinsmore. Despite the ongoing Great Depression, Ginsburg received and accepted an attractive job offer. Returning to Harvard, he shared the good news with Professor Frankfurter. He approved—Frankfurter knew and respected the firm, he knew and admired Shohl (a Harvard law graduate and former judge) and thus he said, “Fine—excellent. But why not spend a year in Washington?”

With permission from Judge Shohl, who said that his Cincinnati law firm could use someone with Washington experience, Ginsburg followed Frankfurter’s advice. In 1935, Joseph P. Kennedy, chairman of the Securities & Exchange Commission (and a Frankfurter friend) hired Ginsburg to join the staff in the SEC’s office of general counsel. He soon decided that Washington was where he wanted to stay to live and work. When Ginsburg called Judge Shohl to explain, he understood and wished the young man luck.

For the next two-plus years, Ginsburg became involved in SEC legal opinion writing, legislative work and litigation. A large amount of his work, alongside government and private lawyers including Ben Cohen,

Tom Corcoran, Bob Jackson, Dean Acheson and Joe Rauh, involved first the passage and then the defenses in court, ultimately successful, of the constitutionality of the Public Utility Holding Company Act.

Ginsburg also worked on occasion at the White House with Judge Samuel I. Rosenman, the President's trusted assistant and primary speechwriter. Ginsburg, on loan from the SEC, assisted Rosenman with research and fact-checking and sometimes joined him in meetings with FDR.

Back at the SEC after the PUHCA litigation had concluded, Ginsburg continued to work closely with various commissioners, including William O. Douglas, Jerome N. Frank and Leon Henderson. In spring 1939, when Douglas was appointed to the Supreme Court, he persuaded Ginsburg to come with him as his law clerk. That September, following Germany's attack on Poland, Ginsburg declined Douglas's offer to stay on, explaining that he wanted to be more directly involved in the U.S. rearmament effort and the imminent, Ginsburg expected, U.S. involvement in the war.

David Ginsburg held a series of important government positions during World War II. In fall 1939, he worked with Leon Henderson, William J. Casey and others on draft rearmament legislation. FDR soon supplanted that undertaking by knowing of and reviving the still-authorized World War I-era Advisory Commission to the Council of National Defense. He appointed Henderson to head its economic stabilization/anti-inflation work and Ginsburg became its general counsel. He continued to serve in this position when the Committee was reconstituted a number of times, ultimately as the Office of Price Administration (OPA). (At OPA, Ginsburg hired a young Duke law graduate, Richard M. Nixon, who later in his career returned to work in the field of wage and price controls.)

In 1943, David Ginsburg enlisted in the U.S. Army as a private. He served in Europe, advancing to the rank of captain. After Germany's surrender, he worked for General Lucius D. Clay, head of the U.S. occupation government in Berlin. Among Ginsburg's tasks during the next year were liaison work with and trips to see his friend and former colleague Robert Jackson, then a U.S. Supreme Court justice serving at Nuremberg as chief prosecutor of Nazi war criminals.

* * *

In the late 1940s, David Ginsburg finally left public service for private law practice. With his friend Harold Leventhal, Ginsburg founded a Washington law firm, Ginsburg & Leventhal (later Ginsburg, Leventhal & Brown and ultimately Ginsburg, Feldman & Bress), that became a highly regarded powerhouse. (Both Leventhal and another colleague in the law firm, Harriett Zetterberg Margolies, had been lawyers on Jackson's Nuremberg staff.)

In addition to his diverse law practice and other *pro bono* activities, David Ginsburg remained active in Democratic Party politics. After World War II, he was a co-founder of Americans for Democratic Action (ADA). In the 1960s, Presidents Kennedy and Johnson each appointed Ginsburg to significant positions.

In 1967, LBJ, responding to riots and racial unrest in U.S. cities, created the National Advisory Commission on Civil Disorders, known popularly as the Kerner Commission, and appointed Ginsburg its executive director. Its March 1968 final report, which Ginsburg in large part wrote, explained the violence as a reaction to the white racism that created and sustained impoverished, racially segregated urban ghettos. The report, which was published commercially and became a national bestseller, recommended a range of neighborhood-building and civil rights enforcement measures as responses.

In recent years, continuing until his retirement at age 95, David Ginsburg practiced law wisely and mentored many at the Washington office of Powell Goldstein Frazer & Murphy LLP. Ginsburg, who as a young man worked with teachers and lawyers who were great writers, was devoted to the skillful use of language. He became a literary craftsman—the important, eloquent words of the Kerner Commission report, for instance, display not only David Ginsburg's intellect and his values, but also his very skilled pen. Throughout his decades of law practice, and especially in his final years, he found deep satisfaction in working with younger colleagues to improve their writing.

* * *

When David Ginsburg died in late May 2010 at age 98, he completed what Judge Walter Shohl had wished for him back in 1935—a life of much luck. Ginsburg's good fortune, he said regularly, began with

the people who filled his life. He is survived by his wife, children and grandchildren, other relatives, and legions of admiring friends.

A significant piece of David Ginsburg's legacy is the New Deal. He was, to my knowledge, the last living official who served at senior levels in the early Roosevelt Administration. He thus is survived by literally a planet of beneficiaries (including of course the people of Cincinnati and its region, who luckily never got him as more than a visitor.)

In Washington, David Ginsburg is survived by all of its best qualities, including individual and governmental dedication to law, and to the welfare of every person.

* * *

For NEW YORK TIMES and WASHINGTON POST obituary stories that supply further details on these and other aspects of David Ginsburg's great life, click [here](#) and [here](#).

For an audio recording and an edited transcript of David Ginsburg's 2002 interview with the SEC Historical Society's oral history project, [click here](#).

To listen to a great spring 2007 National Public Radio interview with David Ginsburg, recorded on the occasion of his retirement from law practice, [click here](#).

For a Robert H. Jackson Center video interview excerpt of David Ginsburg recounting the story that opens this essay, [click here](#).

For a brief description of David Ginsburg's Papers in the Manuscript Division at the Library of Congress, [click here](#).