

**Oral History of
HONORABLE FRANK Q. NEBEKER
First Interview
August 12, 2003**

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is the Honorable Frank Q. Nebeker, Senior Judge, District of Columbia Court of Appeals, and the interviewer is David W. Allen. The interview took place on August 12, 2003. This is the first interview.

Mr. Allen: Good morning, Judge Nebeker.

Judge Nebeker: Good morning.

Mr. Allen: My thought for today is that we begin with your early life and take it as far as we can but probably no further than your pre-judicial legal career.

Judge Nebeker: All right, we'll see how the time passes and feel free to interrupt me at any time you think it's appropriate that I be interrupted for clarification or whatever.

Mr. Allen: Okay.

Judge Nebeker: You want me to start in the beginning and I shall. I was born April 23, 1930, in Salt Lake City. My parents lived in Ogden, Utah, about thirty-five miles north of Salt Lake City, and my father had to make a rather hasty trip to Salt Lake where his brother was the doctor who was to deliver me. Coincidentally, while my mother and I were in the hospital, my father was down in the Hotel Utah, which was a grand hotel at the time, and he ran across a distant cousin by the name of Frank K. Nebeker. Frank K. Nebeker eventually came to Washington, D.C., and was a very successful tax lawyer and had been the Assistant Attorney General in charge of the Antitrust Division, when it first got started under the Roosevelt administration. Well, when my father met Frank K. Nebeker in the

hotel, that was the deciding point at which I got my given name, only my father's name was Aquilla, and it had been shortened to Quill for practical purposes. And, so I got the name Frank from Frank K. Nebeker and Quill from my father.

Mr. Allen: Do you think that being named for a distinguished Washington, D.C., lawyer in some ways shaped your destiny?

Judge Nebeker: No, I really don't believe that it did. My father was a lawyer, and my father and mother married and came to Washington about 1926 because he had two years of Law School at the University of Utah, and when they married he needed a job, and jobs were not that plentiful and certainly there was nothing that he could do there and go to day school. They didn't have a night school, the University of Utah. So, they came here and lived just off Dupont Circle. My dad was enrolled at George Washington University, where he subsequently graduated two years later, having gone to school at night. The Depression was in its full swing by the time he got back to Utah, and he became an Assistant County Attorney, which paid, I imagine, a grand sum of about \$2,000 a year, and then he set up his practice. Well, I went to public schools in Ogden --

Mr. Allen: And Ogden was the family home.

Judge Nebeker: That is correct. And I went to a school called Polk, named after President Polk. Incidentally, the streets in Ogden, Utah, at the time were named after the presidents. Thus, it's fairly easy for me at least up to Lincoln to give you the sequence of the presidencies, because the main street was Washington and it

went on up.

Mr. Allen: That would be very convenient, an automatic history lesson.

Judge Nebeker: It was, and it has proven to be that. Anyway, after grade school, I went to a junior high school there and then to Ogden High School. That's an interesting aspect. It was built during the Depression by the Public Works Administration. It still stands today as a monument, and a beautiful architectural monument. It isn't like most of these government buildings. It's still there and it's a grand old building. Well, then I attended two years at Weber State University. Then, it was known as Weber College.

Mr. Allen: You got an AA in history, according to your --

Judge Nebeker: That's correct. I'll back up just a little bit. In November 1941, my father, who had been practicing law and who was becoming quite successful, succumbed to arteriosclerotic disease and had a terrible heart attack. Well, it virtually wiped out his practice because at that time the treatment for such things was exactly the opposite of what it is today. So, he was basically sedentary for over a year and could not resume his practice of law. As the luck of the game would have it, a District Court judge, Court of General Jurisdiction, in Ogden, was shot by a disappointed divorce defendant, shot through the window in his bedroom with a shotgun. That put the wheels in motion for the Governor to appoint a district judge in Ogden to fill that vacancy (he appointed the city judge), and then the Mayor had the obligation to fill the city judge vacancy, and my father was appointed to that position, and then elected twice for six-year terms. So, I

suppose one of the divining factors in my life was the fact that my father was a judge for 12 years.

Mr. Allen: And that certainly made a difference in your view of the law and the possibility that it could wind up with someone on the bench.

Judge Nebeker: Well, I never had the idea that I would go on the bench at that time. I just knew what being the son of a judge was like and how my father used to live in fear that I'd take his car and go out and, as we used to say, "drag," reckless driving, speeding, that sort of thing. I think he might even have feared that I might have a beer or two while I was doing that, and so he put the fear into me that I could not embarrass the family and him and the office of the judgeship he held. So, I had additional impetus to keep my nose clean, and, fortunately, I did.

Mr. Allen: That's an interesting question: Is it your observation that judges and the families of judges hold them to higher standards of behavior and apparent rectitude in the community?

Judge Nebeker: Yes, my father certainly did. And I've had colleagues on the two courts that I've served who have reared children, and during that dangerous teenage era, I know that they also had set high standards, and I did with my children because they were teenagers when I first went on the bench. You asked about the influence that my father as a judge had on me, and he did have considerable influence particularly after I got into Law School because then we could talk about the law, and we did at great length. My father was an interesting man, and I suppose to a certain extent I've fallen far from the tree. How do you say

the --

Mr. Allen: The apple falls near the tree.

Judge Nebeker: The apple falls, well, far away from the tree. My father, though he was a municipal court judge, would have to conduct arraignments or preliminary hearings, and he became very controversial because he would not allow the police to testify as to any confession the defendant made because he'd never been warned. Now, this was back in 1948, '49, '50 and '51, and, of course, that all predated *Mallory* and *Miranda*, so he was sort of ahead of his time, but he had the same notion that you could not use a confession if it had not been knowingly and voluntarily given and, of course, he knew of the suppression doctrine, the exclusionary rule at the time, because it had come out earlier than that, but it had not gone to the area of confessions. In any event, he was very controversial in the newspaper because he'd crossed the police when they interrogated somebody without warning them, and as a result, my father warned me that, "Look, the police would like nothing better than to get at me through you. So, you've got to keep your nose clean when you're out in this town."

Mr. Allen: Well, that's a very interesting kind of sideline, how things develop. So, the criminal process and these continuing debates about protection of the rights of the accused versus the rights of the community – they were with you from a very early time.

Judge Nebeker: Very early time. I can remember my father teaching me all about the doctrine of *res ipsa loquitur* long before I ever got into that aspect of it in my torts class

in the first year of Law School. The way I went to Law School was this. After two years at Weber College I enrolled in the political science department at the University of Utah and went for a year. I was with friends in the neighborhood that we'd gone to high school together and we were now "batching it," if you will, living in student quarters.

Mr. Allen: This was in Salt Lake City?

Judge Nebeker: In Salt Lake City. And, so, at the beginning of the second year at the University of Utah, one of my friends said, "Well, I'm enrolling in Law School, instead of political science." And, I really hadn't given it any thought, but I thought, Well, that's a good idea. So, I went down with him, went to the Law School, presented myself to the registrar, who was very upset that they had no advance notice that I was interested in Law School. But, at that point there didn't seem to be the hurdles that there are today, and so, the registrar reluctantly pulled my transcript and came back about twenty minutes later and said, "I've talked to the dean, and it's okay, you're enrolled in Law School."

Mr. Allen: This was after a year --

Judge Nebeker: After a year at -- that means after three years of college. They had a combined program at that point at Utah where you could get into Law School for your fourth year and then get your baccalaureate degree.

Mr. Allen: So that the first year of Law School was your senior year in college?

Judge Nebeker: Was my senior year in college. They also had a different program in which you went to school six days a week, and as a result, a law hour was more than a

credit hour. And, in any event, we started Law School together, my friend and I, and it became obvious from the very beginning and it was not apocryphal to me because the dean said to us, “Look to the person to your left and the person on your right, because one of you is not going to be here at the end of the first quarter.” We were on a quarter system, and he was the contracts teacher.

Mr. Allen: The contracts teachers also seem to be a little tougher.

Judge Nebeker: Oh, they’re always tougher. And so there we were with the threat of being driven out of Law School at the end of the first quarter. Well, how I made it I’ll never know, but I succeeded at least in getting through. And I had met my future wife in my senior year of high school. We married in 1953 after I’d completed the two years of Law School at the University and decided – and we had talked about it at great length before – that we would follow in my father’s footsteps. So, when we married, we left in a 1951 Plymouth, which was the first car I’d ever owned, and we drove east and arrived in Washington, D.C., coming in on Route 29/211, the old Lee Highway, out there in Arlington.

Mr. Allen: We should probably get your wife’s name on the record.

Judge Nebeker: By all means. Louanna. Her maiden name was Visintainer. Her lineage is from the Tyrolean area of Italy and Austria. The name obviously is Austrian, but on her maternal side was Italian.

Mr. Allen: And she grew up in Utah as well?

Judge Nebeker: She was born in Rock Springs, Wyoming, and attended schools there until World War II began, and her father, who was a carpenter, a builder, then came

to Utah because of the war effort and was one of the people who worked on construction of what was then known as Bushnell Army Hospital, and it was a hospital for amputees. It's no longer there, although after the war it became quarters for some of the Indians – Indian tribes that were around in Utah, the Ute Indians and some of the others down in Arizona – but it's now been long destroyed. Well, they lived in Brigham City, which is where the Bushnell Hospital was, and Brigham is about twenty-five miles further north from Ogden, along the Wasatch front, but as the hospital had been finished and Lou's father was looking for work, he commuted to Ogden and had work there building houses for the people, the influx the war was bringing in by way of the so-called defense plants around there. There was Hill Air Force Base, now it's known as – it was Hill Field at the time – and there were two or three others. So, eventually, they moved from Brigham and he built the home that they lived in, not far from where I was reared.

Mr. Allen: And this puts you both in the same high school?

Judge Nebeker: And this put us both in the same high school and at Weber College. And, so, it was there that I courted her, and we were married in June. July. I'm sorry (don't let her know I slipped that one), married in July of 1953, just two months after my father passed away. He had arteriosclerotic disease. I can remember, and it's been very influential in my life, although I perhaps don't look it now, but my father would eat the fat off every beefsteak that was served at the table. My mother would eat very little meat and he would eat it. He was big on eggs.

He was overweight and he smoked and that's ultimately what got him.

Mr. Allen: Well, in that generation the dangers of smoking and high-fat diet weren't realized.

Judge Nebeker: They weren't realized too much, although, as I say, his brother, the doctor who delivered me in Salt Lake City, had some intelligence in this regard because he'd tell my father he had to quit smoking and he had to lose weight. So, they knew that much, but they didn't know why.

Mr. Allen: So, you had a father who was a lawyer and a judge, and an uncle who was a doctor.

Judge Nebeker: That's correct.

Mr. Allen: A well-educated family.

Judge Nebeker: Yes, we did. I'll never forget I also had an uncle, my father's brother, who was warden of the Utah State Penitentiary when I was a little kid, and he died of the same problems, I guess, because the entire Nebeker line was overweight and just had bad dietary habits. And on my mother's side of the family, that was the Homegrens, he was a landowner, a dry-land wheat farmer up in Box Elder County, and I had more recollection of my Grandpa Homegren than I do my Grandpa Nebeker because he died when I was very young. But the Homegren side of the family is apparently the healthy side of the family, and I'm hoping I have my mother's genes in that regard. My father died at fifty-nine, so I've outlived him by a few years and I plan to continue to do so.

Mr. Allen: Well, you look hale and hearty.

Judge Nebeker: God willing. Where do we want to go from here?

Mr. Allen: Well, we were at you and your wife's, as newlyweds, traveling east, coming into Washington, D.C., on the old Lee Highway, and you had finished a year of Law School, which was also your fourth year of college.

Judge Nebeker: I had finished actually two years of Law School by the time we were married and headed east. Well, we spent the first night in a rooming house right in the vicinity of the George Washington University Law School. It's near that old Francis Scott Key Hotel, which is now part of the land grab of GW. It belongs to them now. But we had a friend in Ogden. They were a couple – they were like ersatz parents to me, and he had a brother named Earl Packer. Well, we were slated to announce our presence in the city to Earl Packer, and we did the next morning. Now, our '51 Plymouth was loaded with all of our personal possessions, and it was a very generous wedding. We got all kinds of silver and china and other things to set up housekeeping, including pots and pans, and how my wife ever packed that car I'll never know, but it was obviously overloaded, but it made it. Well, we went to visit the next morning, and Mrs. Packer – Iris – looked at the car and almost blanched, and she said, "You cannot leave that car full of these things." Right then she ran in and got a manservant that they had in the house, and between the two of us we unloaded our personal possessions and put them in her basement until we could find an apartment.

Mr. Allen: And this was where in the city?

Judge Nebeker: On Q Street, 3013 Q Street. The house has a history, but I don't recall it now.

Mr. Allen: That would be in Georgetown?

Judge Nebeker: In Georgetown. It was a beautiful, old, semidetached house, three stories. It was wonderful. He was a retired Foreign Service officer, who at that time was working for Brookings Institution. He had been in Leningrad during the Bolshevik Revolution and was on a list that the Soviets would have arrested him had they been able to put their hands on him. He was a very interesting individual. Well, let's get back to --

Mr. Allen: So, you arrived at the Packers --

Judge Nebeker: And unpacked our--

Mr. Allen: And unpacked --

Judge Nebeker: And went back to the rooming house.

Mr. Allen: Now, had you been admitted to Law School here? Or were you just coming east with the thought of coming to --

Judge Nebeker: Had not been admitted. Both Lou and I went down and presented ourselves to the registrar at the George Washington University Law School just as I had done at Utah. And without any prearrangement, we were both accepted.

Mr. Allen: Lou is also a lawyer?

Judge Nebeker: Lou wanted to start Law School. She hadn't had any Law School. That story I'll get to in a moment. But in any event, we were both accepted in Law School at George Washington University. But in the meantime, or before that, we had this meeting with the Packers on Q Street. Then we went back to our rooming house for the night, parking the car in the back where we parked it in an alley

the night before. Got up the next morning and went down to the car to get ready to go hunt for an apartment, the trunk had been broken into.

Mr. Allen: Welcome to Washington.

Judge Nebeker: Welcome to Washington. What few items we had left in the car were gone. The spare tire was stolen. Fortunately, I had some theft insurance that replaced it, because we didn't have a whole lot of money at that time, but the one thing they left was a pair of Army combat boots which I had been issued in 1948 at the armory in Ogden, Utah, when I joined the Utah National Guard. I joined the 222nd Field Artillery Battalion in 1948, and I had transferred there --

Mr. Allen: At that time, you'd have been eighteen years old?

Judge Nebeker: At that time I was eighteen years old, and when we moved to Washington in 1953, I transferred to the Guard unit here in D.C., which was an antiaircraft 155 Artillery unit. That's a story which I think I can tell at this point. I signed up in the National Guard because of the beginning of the Korean War, knowing full well that we could very well be activated, but I'd rather do it that way than be drafted. Well, I'd worked summers for the Utah State Road Commission between college years, and it was 1951 when I was out staying in a camp working for the State Road Commission, and we heard that President Truman had activated the Guard units. So, I went to my boss and said, "I got to go down and report where I am." So, he told me to take a truck, and I drove the forty miles or so down to the armory and told them where I was. And they said, "Well, sit tight, we don't have any orders yet." And so I went back to work,

and our unit never got activated. We were the only unit in the state that did not. I am told, and I don't know how accurate this is, but I was told at the time that a unit from the city of Logan, Utah, which is where Utah State University is located, was activated, and it was a 155 Rifle, self-propelled rifle artillery outfit, and when it arrived at Fort Lewis, Washington, the Commanding General was upset because he wanted howitzers and he wound up with these so-called Long Toms that had a far greater range and were self-propelled, whereas the 155 howitzer was trail spades and the crews had to dig them in, and then if you moved them, you had to move them with the tracked prime mover. They were not self-propelled at all. And they had much shorter range. Well, be that as it may, my unit was never activated. And so, I was blest right away because the folks from Logan who went over to Korea took some casualties. I'm told that after the Chinese came across the Yalu River and there was that route that these Long Toms were almost overrun. They were bore sighting them into the oncoming Chinese, and ordinarily those Long Toms were miles behind any frontline, but it was just the luck of the draw, and I've been lucky ever since.

Mr. Allen: You signed up with the intention of making yourself available to go.

Judge Nebeker: Yes. The judgment was, my father concurred in, in fact he encouraged me, "Go with folks from your own hometown." Well, he didn't know, and I didn't know, they'd split you up pretty well afterwards anyway, but the idea was I'd rather do it my way than be drafted. And then the fickle finger of fate was very kind, so Lou and I were free to come east to Washington, and we did.

Mr. Allen: So, here we are, you're in Washington, the year is Nineteen fifty --?

Judge Nebeker: 1953.

Mr. Allen: 1953, and you're staying in a rooming house near GW, and you've enrolled at GW.

Judge Nebeker: And we'd enrolled at GW and then we finally got an apartment also on Q Street just a few blocks east of where the Packers lived, near the Bridge of the Buffaloes, I think it's been known as for all these years.

Mr. Allen: That's what my kids have always called it. Buffalo Bridge.

Judge Nebeker: Right.

Mr. Allen: Near Sheridan Square.

Judge Nebeker: Correct.

Mr. Allen: You were talking about the apartment on Q Street.

Judge Nebeker: Well, we had rented a little efficiency apartment on Q Street. Interestingly, it had a claw-foot bathtub in it. It went back that far and a so-called Murphy bed that folded into the closet.

Mr. Allen: Oh, yes.

Judge Nebeker: And you had to put it down in the living room in order to go to bed at night. Well, as I said, both Lou and I had enrolled in Law School at George Washington University, and, lo and behold, she didn't get more than the first few weeks of class in and was told that she was pregnant. And so we did some talking and she did some thinking – she had a job when we came here – she was working for CIA when part of it was down in the old temporary buildings on

Ohio Road or —

Mr. Allen: Ohio Drive.

Judge Nebeker: Ohio Drive. Thank you.

Mr. Allen: Near Haines Point.

Judge Nebeker: Right. Near the Lincoln Memorial.

Mr. Allen: Yes, in West Potomac Park.

Judge Nebeker: Correct. So, she had a job and I didn't, but let me finish the thing about Lou becoming pregnant with our first child. She decided, no, she was going to continue to work but she'd drop out of Law School. So, she did. And her only law degree now is vicarious through mine, but she's tolerated law discussions around the family through the last fifty years. We just celebrated our fiftieth wedding anniversary last month.

Mr. Allen: Congratulations. So, she is in a way an honorary lawyer.

Judge Nebeker: She's an honorary lawyer and a very indulgent one I might add, because then our son went to Law School. And she had to further put up with discussions of law around the house after he started.

Well, I want to go back to 1950 while I was still in Ogden. My father had been an operative within the Republican Party in Weber County and in Utah generally. And he had a friend, who was a paint-store owner – one paint store in Ogden and one in Salt Lake City. And his name was Wallace Bennett. And Wallace Bennett decided he wanted to run for the Senate. And I remember being present in my father's living room when Bennett came in and they had a

number of people there and they planned the original strategy for his campaign. Well, I was pretty naive. I was at Weber College, and I asked him if he would be a speaker at a political science club meeting that we had there, and he said he would. And so the appointed day came and I introduced him as the next Republican candidate for Utah senator. And he had not announced --

Mr. Allen: This is prior to his announcement?

Judge Nebeker: This is prior to his announcement. How naive I was. And he stopped me and said, "Oh, no, no." And I said, "I beg your pardon. He is not the candidate for the Republican Senator from the State of Utah." That's just an indication of what little I knew at the time, but nonetheless I talked with him, told him of our plans to come to Washington in 1953, and would he help me get a job. And, of course, he said he would. So, when Lou and I arrived here -- he's a senator, been here for a year or so; he was elected the same time General Eisenhower was elected.

Mr. Allen: 1952.

Judge Nebeker: 1952. And so I arrived and presented myself to his administrative assistant in the Senate Office Building, and they said they'd see what they could do for me. In the meantime Lou had this job at CIA, although she was at that time told that whenever she was asked, to say she was at the Defense Department.

Mr. Allen: I think there was a long time when I was young when the CIA wasn't really clear that there was a CIA.

Judge Nebeker: That's correct. And that's the milieu she worked in when she was there. I

remember we went to a reception, a party, given by the Packers in their home, and we were the youngest of the group. And somebody asked where she worked, and she said, "I work for the Defense Department." And there was a lot of laughter, and one said, "Oh, you're with the Agency." So, it was not a well-kept secret, even in 1953. In any event, I was told that they'd help me find a job, and the first place, of course, was the FBI and the fingerprint business. And I went down and was interviewed there, and I thought, Oh, I didn't know that I wanted this particular job, because at that point it was pure stacking BB's and tedious to an nth degree. In any event, we slept on that for a night, and the next morning I get a telephone call from Senator Bennett's office. There's a job at the White House, and would I be interested in it. And I think my reaction was, Where's the broom, yes. And so I went to the White House and was interviewed by a woman who was the head of the presidential files. I'll never forget her name, Betty Bonsteel. She lived there in Foggy Bottom, as I recall, in one of those high-rise apartments, though they were probably ten stories at the time. And, in any event, I wound up in the President's files, and I learned that I didn't know the alphabet.

Mr. Allen: You knew the order of Presidents, but you didn't know the alphabet.

Judge Nebeker: I knew the order of Presidents and I knew the order of the letters, but I didn't know it if I jumped into the middle of the alphabet, which came first without reciting the whole alphabet, which letter came first. But being in the files we had to alphabetize all the letters and the papers that were typed by a typing pool

so that you could cross-reference the letters and know how to find them, and then after we alphabetized these letters and these sheets of paper, then we'd have to go around to the file cabinets, pull the drawers open and file them, and it's that way that I learned the alphabet that I had never known before. You know, you know where "j" fits in the alphabet, the letters juxtaposed to it, without having to recite it. Well, I worked there while I was starting Law School, and you had earlier asked how come I started at GW and graduated from the American University Law School. Here's the reason. I was working at the White House in the file room at the time and walking the few blocks to George Washington at 5:00 or 5:30 to attend class. And I finished that first semester, and I was told by the registrar that they had certain resident hours that I had to have. And the upshot of it was that I would have had to duplicate some courses that I had already taken at the University of Utah in order simply to get the total number of hours necessary to graduate, and it would have taken me a full three years or four years of night school. In short, I wasn't getting any advance standing at all.

Mr. Allen: In the sense they weren't giving you credit for the Law School you had already attended.

Judge Nebeker: Basically, that's what it amounted to, or giving me such little credit for it that I would have had to duplicate classes in order to get the hours. Well, as luck would have it, I realized that down there on the little old building on the corner of G and 20th is the Washington College of Law. I had no idea of what it was

about, but it was a place that looked pretty inviting to me because it was geographically located convenient to the White House, and I could make it to school. So, I went in there and presented myself to the registrar.

Mr. Allen: And that was part of American University.

Judge Nebeker: That was then part of American University.

Mr. Allen: But not up at the AU campus.

Judge Nebeker: Correct. And it was a very small facility. I think it had two classrooms in it, one on the very top floor and one on the second floor, and then the dean's office and the registrar on the ground floor. It was a very narrow, semidetached building, I believe it's still there, I'm not sure. Yea, it is still there.

Mr. Allen: The building is still there, but AU has a glorious new building up at Spring Valley on Massachusetts Avenue for the Law School.

Judge Nebeker: Yes, it's probably one of the nicest Law School facilities in the country.

Mr. Allen: Yes.

Judge Nebeker: But, in any event, I presented myself to the registrar and she went into the dean. Now, this is the third time I've done this, and Dean Bookstaver came back out and said, "All right, you're accepted." Well, I got the advance standing that I needed, and as a result two years – that's three semesters – at American University and I can graduate.

Mr. Allen: And you're doing this at night while working days.

Judge Nebeker: Was doing it at night while working days, and then on Thursday nights I'd have to get out of class early, jump into the old '51 Plymouth, change into my army

uniform with the combat boots and drive out East Capitol Street to the armory and attend drill.

Mr. Allen: This was weekly?

Judge Nebeker: This was weekly, and then, of course, in the summer I'd go to Bethany, where at that time they had a range, they would shoot at drones, not drones, but they would shoot at sleeves being towed by a single-engine aircraft out over the water.

Mr. Allen: This was a manned aircraft.

Judge Nebeker: There was a manned aircraft pulling this sleeve, and, of course, the sleeve was the target.

Mr. Allen: You'd have to have a lot of faith in the marksmanship of the people below if --

Judge Nebeker: At this point I was a second lieutenant. I had taken what's known as the Ten Series correspondence course while I was in Utah, and thus became a second lieutenant.

Mr. Allen: You hadn't been an officer when you first enlisted?

Judge Nebeker: No, I started out as a private and ultimately wound up as a sergeant within the first year or two, got on the survey team because in college in taking the necessary math and so forth, and so they put me into the so-called survey team where you go out and survey the guns in and you know where the target is, you know where fire direction center was, and it was all done by trigonometry and logarithms.

Mr. Allen: Was it actual surveying with transoms and --

Judge Nebeker: Aiming circle. They did have BC scopes, and they were out at your forward observation post, and they made me a forward observer. And I was dumb again. I had no idea what a forward observer was.

Mr. Allen: That's the guy who goes out and puts himself very much in harm's way.

Judge Nebeker: That's the guy who's the main target for the enemy, because he's the eyes and they want to knock him out. They definitely were expendables. I didn't know that at the time, but, in any event, I would go out to the armory and attend drill on Thursday nights, and then during the summer when I was not in Law School - I didn't go to Law School in the summertime - we had the two-week encampment down at Bethany Beach, and that's the first time I had seen the Atlantic Ocean.

Mr. Allen: And that was before Bethany was a resort area?

Judge Nebeker: That's correct. There were just a few shack-type cottages there at the time. And the camp was right across the street that went north and south between Ocean City and Lewes.

Mr. Allen: It's now Route 1.

Judge Nebeker: Yes. The camp was right there. I've forgotten the name of the camp, but it was a small Army camp. And I walked across the street and down onto the beach one evening, and I saw this thing coming at me, walking sideways, and the only thing I knew was a tarantula because I had been reared in Utah where you had tarantulas and you knew to stay away from them. So, I backed away from this thing. I didn't know what it was. I went back to camp and asked and they

explained laughingly that it was a sand crab. So, I got introduced to the Atlantic Coast in that fashion. And, I might add that during those encampments – I went to two or three of them down there in the summers – I learned to love spiced shrimp and hard-shell crabs. That was one of the divining things I think that made my wife and I decide not to go west to Utah, but we had really decided that very shortly after we arrived. We loved Washington.

Mr. Allen: You're one of the cadre of us who come to Washington with the intentions not to stay and then somehow stay.

Judge Nebeker: That's exactly right. When we left Utah, the idea was we would go back there. Although my father used to say, "Well, you know, if you would stay in Washington, you won't have to milk mice."

Mr. Allen: I don't understand the expression.

Judge Nebeker: You couldn't make much money in practicing law in Utah at that time. The clients were all small, and as a result, your fees were not very big. That's what he meant by milking mice.

Mr. Allen: Maybe we can back up and ask you a question or so about your father's practice. What kind of a practice was it, a diverse kind of private?

Judge Nebeker: Not criminal. It was diverse: real estate, domestic relations, torts. When I was real young, before World War II started, he had a case in Fillmore, Utah, and it was about a man walking around inside a service station who stepped into a grease pit. At that time they didn't have the pneumatic lifts, they had a grease pit, and he stepped into it and hurt himself. And my father was trying the case

for the plaintiff, and they needed the plaintiff down there. He was working, and so my father arranged to have him flown down in a little single-engine Stinson airplane, and there was room for me, so my father said to my mother, "Well, put him aboard and let him fly down." I did. I was never so sick in my life from the buffeting around. That was airsickness, the first time I'd ever had it. When I got there at the airport, I could hardly walk. And they finally got me into the courthouse, and I went to the back bench of the courtroom and laid down. That was the only thing I could do. And my dad continued to try the case, and then we drove home afterward. But, as you can see, I had an exposure to law practice with my father. From the time I was fairly young I'd spend Saturday afternoons or mornings with him in his office, and then I'd go to a Popeye Club movie, all of which cost a dime or fifteen cents, a matinee in the afternoon, and then I'd go home with my father after closing his office.

Mr. Allen: And the practice was mostly for individual clients.

Judge Nebeker: Oh, I think it was almost exclusively individual clients, and he had an estate practice as well, which he continued after he took the bench because they would permit noncontested practice of law. So, Dad continued with his estate practice during that time up until the time he died.

Mr. Allen: Hence, the expression to you, You don't have to be milking mice if you don't come back to Utah.

Judge Nebeker: That's correct. He wanted us to stay in Washington, and, well I'll put it this way, I had converted to Catholicism before Lou and I were really engaged.

And she's Catholic, and we felt there just wasn't room for a Catholic practicing law in Utah, and my father knew it, and so he encouraged us to stay, and we followed his advice. Very shortly after we got to Washington, we knew this was where we belonged. We loved it and have never looked back.

Mr. Allen: So, the decision to stay really came with this advice from your father and with graduating after the time period you took moving to American University and here you were. So, your first job out of Law School was at the Department of Justice. Am I correct?

Judge Nebeker: Well, let me back up. I was in the file room of the White House for about eight months when there was need for a clerk, correspondence secretary was what it was called, on Mrs. Eisenhower's social staff. The file room was over in the Executive Office Building, the old State, War and Navy Building.

Mr. Allen: Yes.

Judge Nebeker: Under the steps, the east steps between the West Executive Avenue and the West Wing, but the Social Office was in the East Wing, and the Social Secretary was named Mary Jane McCaffrey. Her husband was the historian for the Republican National Committee. So, Mary Jane hired me to put together files for Mrs. Eisenhower, her social files. And then I wound up also being the coordinator for Congressional Courtesy Tours of the White House. The Congress staff would call me in the West Wing, and we'd set up a time that their constituents could come down and have a special guided tour of the White House, early before the walk-through tour of the public. So, I wound up doing

those two things, putting files together and organizing the special tours of the White House. As a result, I got to know a lot of staff on the Hill.

Mr. Allen: And I assume you would have encountered at least Mamie Eisenhower herself.

Judge Nebeker: Yes, and the President once or twice, but far be it for me to stop and speak to him. I knew better than that, but I had free run of the White House. The security – they knew who worked there. You didn't have to wear a badge or anything. The Secret Service people would wave you in, and you could walk – and I did – I'd have to often walk from the East Wing through the West Wing, down the stairs and across West Executive Avenue and into the Executive Office Building. So, it was quite an experience to be able to walk around in the White House that way. I got acquainted with the White House physician at the time, who was named Walter Tkash, I believe he spelled it, and he got a very reduced price for vitamins and stuff for our first child. And I remember that Mrs. Eisenhower had a birthday party – about 1955 – our first daughter was born in August of 1954, and they were very generous people, the Eisenhowers, and they invited their staff to various receptions, and so forth. They invited us to the judicial reception in the winter of 1953, right after I had started at the White House, and Lou wore her gown and I had to borrow a white tie and tails from the Packers in order for us to attend the judicial reception. They'd have a judicial reception and then they'd have a congressional reception and a diplomatic reception. Those were the days when you really –

Mr. Allen: This is the reverse side of the first tape and Judge Nebeker was talking about the

White House social season.

Judge Nebeker: We went to the judicial reception and the memorable part of it – other than hearing Hail to the Chief as the President and Mrs. Eisenhower came down the north front steps, the inside steps, and began to greet people – was the fact that Earl Warren was there and that he stepped back onto my wife’s gown and tore it.

Mr. Allen: Oh, dear.

Judge Nebeker: And I don’t think that had anything to do with my judicial philosophy, but at least it was a beginning. Well, we were also invited to Mrs. Eisenhower’s birthday party one time. And that was in the living quarters of the White House, so we got a chance to see the Lincoln Bedroom and the entire upstairs, and I can recall two things about that that we’ll never forget, my wife won’t either. As we were going through the reception line to greet her, Mrs. Eisenhower, she and Lou started to talk because their granddaughter had just been born. Mrs. Eisenhower and my wife began to talk about these newborn babies, and she talked with Lou for at least five to ten minutes keeping Allen Dulles, who was then Director of CIA, waiting in the reception line. He was immediately behind me, while they just simply talked baby stuff. Well, that was very interesting, and she was a gracious lady. She’d always send to newborns a letter, and I think we have one for each of our children, “Welcome to this wonderful world” letter, all in her own handwriting.

Mr. Allen: That’s marvelous.

Judge Nebeker: Well, in any event, as the party went on, we were up near the shrimp table, and someone was talking to the President and called him Mr. President, and Mr. President said, “Hell, I’m Mr. President downstairs, I’m Ike up here.” And that’s the nature of the man, I guess. He was just that way. In any event, I continued to work in the Social Office and met, among other people, his naval aide, who had an office in the East Wing as well. And because my father during his recuperation from his heart attack in 1942 wrote an iambic pentameter epic poem of short stories or anecdotes that he had been told by various people, his grandparents, and so forth, as they came across the Plains with the Utah pioneers – And so, I mentioned it to Eisenhower’s Naval Aide Edward L. Beach of the Run Silent, Run Deep book and movie with Clark Gable. And, he was a very interesting man, and he said, “I’d like to read that poem,” when I told him about it. And so, I brought it in. It was all typed and he read it and he said, “You know, I’m going to be meeting sometime in the near future with Robert Frost.” I’d like him to take a look at it to see what he thinks of it.

Mr. Allen: That’s a marvelous connection.

Judge Nebeker: And, I said, “Fine.” So, he kept the poem for a while and finally he did meet with Robert Frost, and he came back and said, “Frost doesn’t like it. Frost, you realize, is a free-verse poet, and this is so confined to the rhythm of iambic pentameter that he said it will go nowhere.” Well, he turned out to be right, because it never did, but, in any event, through that encounter I have an

autographed copy of Ed Beach's book, *Run Silent, Run Deep*. And things went on and I graduated from American University, and I went to Mary Jane McCaffrey and said, "You know, I'm looking for a job; I'd like to go to the Department of Justice." "Well," she said, "I think maybe I can do something about that." She called the Attorney General Bill Rogers, and she knew him by his first name and explained that she had me on the staff, that I graduated from Law School, and I was looking for a job in the Department of Justice. And so the next thing you know I'm interviewed down there, and here again is another one of these instances that I never forget but it in fact happened. I was interviewed in a small room with a conference table, and a number of people were there including someone from the Antitrust Division, and he interrupted the interview to say, "Are you a relative of this man?" and he pointed to a picture on the wall. Well, it was a picture of the Frank K. Nebeker, I earlier mentioned, when he was Assistant Attorney General.

Mr. Allen: And your namesake.

Judge Nebeker: And my namesake. And I said, "Well, yes, I am. He's a distant cousin, second cousin or so, of my father." And I explained how when the Mormons came west across Wyoming, they got to Fort Bridger and some of them took the Oregon Trail; the Frank K. Nebeker family took the Oregon Trail, and they stopped near the Bear Lake region between Idaho and Utah instead of going on to the West Coast, so Frank K. Nebeker was from the Nebeker people who were up in the Idaho/Utah border near Bear Lake country. And I explained this to the

people that were interviewing me that that's the relationship I had with Frank K. Nebeker, and eventually --

Mr. Allen: Frank K. Nebeker had been Assistant Attorney General --

Judge Nebeker: He had been Assistant Attorney General under the Roosevelt administration.

Mr. Allen: In the Antitrust Division.

Judge Nebeker: In the Antitrust Division, right. And, in any event, I was offered a job then in the Internal Security Division at the Department of Justice. It had been formed very recently from the Criminal Division, which at that time had an Espionage and Sabotage Unit in it. The Division was formed, I guess, as Congress saw all this spy stuff, Communist goings-on in the government and the beginning of the Cold War, and I don't think that the McCarthy era itself had anything to do with the creation of the Division, but there was espionage being committed, and the FBI had quite a unit that was investigating espionage both at the United Nations, that is, espionage activities at the United Nations, as well as the various foreign embassies here in Washington. And so I wound up being hired in the Espionage and Sabotage Unit.

Mr. Allen: Early in the Division's formation.

Judge Nebeker: Quite early in the Division's formation. The Attorney General at the time was a guy named Williams, I believe, and he was from Delaware.

Mr. Allen: How big was the Division?

Judge Nebeker: Well, it had a Foreign Agents Registration Act Division and it's still in existence somewhere over there in the Department. It had the Espionage and

Sabotage Unit and it had two or three other units within the Division, so I'd estimate maybe it had 75 lawyers all told in it. The work I'll just describe as reading FBI reports and making recommendations and 99.9 % of the recommendations was there's no prosecutive action to be taken. Of course, all that had to be run up through the boss and then the boss's boss, and so forth, before it finally got up to the Attorney General. But, just after I started at the Internal Security Division, there was a meeting at the Executive Office Building, and because I had been at the White House, these honchos in the Division decided that I should go along for this meeting. Now, why I don't know, but I did and, as a result, I was able to meet Edward R. Murrow.

Mr. Allen: Really.

Judge Nebeker: Who at that time was Director of the Voice of America, I believe it was, or USIA, one, I've forgotten which.

Mr. Allen: In that period I remember him from the interview shows he did later on and his early career was made with "This Is London."

Judge Nebeker: "This Is London" broadcast. Oh, it was a pleasure for me to meet this man. I didn't talk to him for very long, but for some reason Internal Security Division was up there conferring with him as the Director over something and I've forgotten what it was all about, but at least I got the opportunity to meet him, they figuring I knew my way around the White House, but, of course, we weren't going to do anything at the White House to begin with. I soon got tired of reading FBI reports. I've always said pushing papers, because that's what it

amounted to, although I did have fun when I'd be given a memo from the Office of Management and Budget on proposed legislation, and they wanted the views of the Department of Justice or the Internal Security Division if it was relevant to their role. And, so, I did enjoy writing the memos on legislation. It was something I could get my teeth into, and it proved to be very valuable to me later on in my career as a prosecutor and even as a judge to have gone through legislative analysis, the cause and effect of what the law is and what they're changing or what they're adding to it through legislation. But tired as I was of pushing papers, I made a contact over at the U.S. Attorney's Office, just on my own. The way it happened was this. Edward Bennett Williams was trying Jimmy Hoffa in the federal courthouse, and a bunch of us were given permission to go over and sit in the courtroom and watch and listen to that trial so that we'd learn a little something about trying cases, which, of course, we would never learn in the Main Justice itself. And, so, I went over to the U.S. courthouse, and I just happened to meet a man named Ed Troxell and he was the Principal Assistant U.S. Attorney for Oliver Gasch, who was the U.S. Attorney at the time. And, I just said to him, "Gee, I'd kind of like a job over here." And, well, he talked to me and I submitted an application and then was called over for an interview by Troxell and went back to the Department of Justice, and that was in the winter. I neglected to give you a date when I went over to the U.S. courthouse to watch that trial of Jimmy Hoffa. It was oh, fall of 1957 or early winter of 1957.

Mr. Allen: Now, Edward Bennett Williams at the time was serving in what capacity do you recall?

Judge Nebeker: He was the partner in —

Mr. Allen: He was partner in his law firm.

Judge Nebeker: In his firm and wasn't that firm —

Mr. Allen: Williams & Connolly.

Judge Nebeker: Williams & Connolly, yea, yea. Well, I was interviewed by Ed Troxell, and then it was wintertime, and nothing was happening. And, then the next thing I knew both Don Smith and I — Don Smith who became Judge Don Smith on the Superior Court — were detailed from the Internal Security Division as Special Assistant U.S. Attorneys because the allotment of U.S. Attorney vacancies was full in the office here, all 48 of them. And, so, we became the 49th and 50th in terms of our special assignment on detail. And Don and I served in that capacity until April, and by April Sal Andretta, who was the Assistant Attorney General for years in charge of the Administrative Division —

Mr. Allen: Of the Department of Justice?

Judge Nebeker: Of the Department of Justice, authorized additional slots in the U.S. Attorney's Office, and Oliver Gasch appointed both Don Smith and me to them.

Mr. Allen: So, that was when you became an Assistant U.S. Attorney?

Judge Nebeker: That's when I became an Assistant U.S. Attorney. We were assigned to the misdemeanor section, which was the counter. It was always referred to as the counter, over in old A Building at 5th and E. And that's where Ed Daly, who

was the chief of that unit, where we encountered him and he encountered us.

Ed Daly --

Mr. Allen: Is this where assistants always start?

Judge Nebeker: Most of the time that was where they would start. On rare occasions they would be put somewhere else.

Mr. Allen: And this was intake. This was where the cases come in?

Judge Nebeker: This is where the cases come in, and this is where you paper the case, either as a felony or a misdemeanor, and then you try the cases that are misdemeanors, sometimes the very day you paper the case if the assigned lawyer upstairs waives jury trial and asks for an immediate trial. You try the case off the seat of your pants, you've got a police incident report, and that's the only thing you know about the case. Somebody downstairs had papered it, and if it was a misdemeanor and a trial demand immediately, you'd try the case in what was known as U.S. Court. That was the court where cases were initiated, either preliminary hearings or arraignments if it was a misdemeanor case. And, marvelous experience. That's where you really learned.

Mr. Allen: And that court was a predecessor of what's now the Superior Court?

Judge Nebeker: That's correct. At that time it was the Municipal Court for the District of Columbia, and there was the D.C. Court of Appeals, and it was an intermediate appellate court. Petition for allowance of appeal could go from that court to the U.S. Court of Appeals for the District of Columbia Circuit. But it was known then -- the trial court was known then as the Municipal Court, and I think the

judges were paid all of \$15,000 a year, and I can recall as an assistant I was paid about \$5200 a year. Met some interesting people in that office. Charles Halleck.

Mr. Allen: Judge Halleck.

Judge Nebeker: Judge Halleck was there at the time. Walter Bonner, who was a sterling appellate lawyer when he ultimately moved to the appellate division was there. I met him. And as I said, Don Smith went with me. William Greenhall, Bill Greenhall, that's an interesting aside. Bill was also in the Internal Security Division, and he had been sent to Helena, Montana, or Butte, Montana. I don't know who he offended to be sent there in the middle of the winter.

Mr. Allen: Oh, he was stationed there.

Judge Nebeker: He was sent there for an espionage investigation of some kind. And Don Smith and I got appointed as the special assistants in February. And Bill came back at the end of the winter and he was upset because he was trying to get in the U.S. Attorney's Office, too. So, the next thing you know, Bill is also sent over – detailed – as a Special Assistant U.S. Attorney sometime in late March. And, in any event, we all were there on the counter together. It's a place where you make fast friends.

Mr. Allen: And the counter is called the counter because there physically is a counter?

Judge Nebeker: There was physically a counter, and the police would come in; it would just be a madhouse in the morning, particularly on a Monday morning. And you'd have police coming in that wanted their cases papered, and then you'd have citizens

coming in because they were injured in fights and whatnot and wanted to have a warrant sworn out for somebody that they wanted to have arrested and charged with a criminal offense. It was quite the wailing wall for the District of Columbia. I don't mean that in a pejorative sense at all, but it's where life really hit the road, or the rubber hit the road for young lawyers, and we'd try our first nonjury cases there and then we would try our first jury cases. And I can remember --

Mr. Allen: Was it a process where you spend some time on the counter and then move upstairs?

Judge Nebeker: And then you'd be assigned upstairs. You'd have people manning the counter --

Mr. Allen: And lawyers manning the counter aren't trying them. They're --

Judge Nebeker: That's right.

Mr. Allen: They're essentially interviewing the --

Judge Nebeker: The witnesses, the police officers --

Mr. Allen: or whoever the witness is and putting the file together?

Judge Nebeker: And making the initial prosecutive decision whether to charge it as a felony or as a misdemeanor. And there were certain rules you had. The District Court was trying to put a limit on the number of cases that could be brought, and obviously you bring the more serious felonies over to the federal District Court. So, we'd have a -- I've forgotten the number-of-stitch rule. If it was a cut, and it didn't have but so many stitches, you'd try it as a misdemeanor assault.

Mr. Allen: But if it had more stitches --

Judge Nebeker: But if it had more stitches, then you'd send it over as a ADW, assault with a dangerous weapon, and the Grand Jury Section would then handle it. And there was always the friction between well what is -- a federal judge would see this case -- what is this case doing over here, it shouldn't be over here, it should be a misdemeanor. And, sometimes they kick them back as a misdemeanor, the Grand Jury Section would. The whole idea was to keep as many of the cases -- they didn't have that many judges -- well, probably same amount even today. But, they had all the common law crimes as well as the federal crimes. And the District Court was just jammed with cases and the safety valve was the Municipal Court, where you'd break these cases down into misdemeanors, robbery breakdown into an assault and possession of a prohibited weapon and maybe a theft count of some kind and then you'd try these misdemeanor counts instead of one felony count.

Mr. Allen: Can I ask this question, was the nature of the criminal activity that you saw in D.C. at the time different from now? Was there less drug- and gang-related --

Judge Nebeker: No. There weren't the gangs at that time, but drugs were a major portion. Drug violence was rampant even at that time, but then there was also just the street robberies, the ordinary street crime that we still have today. It was, I'd say, basically the same.

Mr. Allen: Okay. So, you spent some time on the counter and then --

Judge Nebeker: And tried a few jury cases as I became more senior there. And then there comes

a time at which one should move on to higher office within the U.S. Attorney's Office, although I will say that the power you had after you became a bit seasoned – the power you had in that Misdemeanor Unit was awesome in terms of affecting people's lives, and you had to make these judgments rather quickly. It wasn't something you could contemplate over a protracted period of time. And you soon learned how to make these judgments, and you learned how to protect yourself. Ed Daly was a master as a teacher. He'd run literally Fourth Amendment Law School sessions at 4:30 in the afternoon so that everybody was up to date on the current Fourth Amendment law, which was grist for our mill. It was—an awful lot of what we had to do was to decide Fourth Amendment cases, and then as time had gone on, we had some confession cases we had to worry about, too. I don't think *Mallory* had been decided – maybe it had been decided while I was on the counter – I've forgotten the date of *Mallory*. But, in any event, Ed Daly also taught us how to protect ourselves, how not ever to get put in the middle, and for instance, if you no-papered a case, you wrote reasons on that police incident report --

Mr. Allen: No-paper, meaning –

Judge Nebeker: Declining prosecution. You'd write your reasons for having done so because it could often happen that that defendant would be turned loose and he'd kill somebody the next day, in particularly when you had the girlfriend or the wife coming in and saying, "He's beating me, he cut me." "And do you really want to prosecute him?" "Well, I don't know, I just want him to stop." "Well, if you

want to prosecute him, fill out this form” (an application for a warrant) and sometimes they would and sometimes you just say, “Look, I’m not going to prosecute this case, you’re just going to have to make him move out, or we’ll hold a hearing and bring him in and talk to him and see if we can’t get him to move.” And that was an interesting thing. We had a form, and as I recall it, it was blue, and it was a summons, and it began, “The President of the United States’ Greeting, You are hereby summoned to appear,” and then we’d fill in the blanks. The paper wasn’t worth legally --

Mr. Allen: It wasn’t an order of a court?

Judge Nebeker: It wasn’t an order of a court at all. It just started out “The President of the United States’ Greeting.”

Mr. Allen: So, it’s the Executive Branch summoning the witness or person which is, unless a court backs it up, really not a --

Judge Nebeker: You get the malefactor down there that way, and then you sit at the counter – you on one side of the counter and he’s on the other, and you read him the riot act and tell him he’s got to move out or whatever, knock this off. And if you decline prosecution in some of these things, and then the next thing you know, the guy’s charged with murder or some other serious crime, disfigurement crime. One person I forgot to mention is John Jude O’Donnell. John Jude came into the office a few months after Don Smith and I had, and to this day he’s just one of the most wonderful lawyers you’d ever want to run across. Well, Jude joined the club. That’s what we called it then. He had no-papered a case where

the husband and the wife were fighting and told them to break up and stop it, and the next day she poured boiling on his face while he was asleep on the couch. And when you joined the club, somebody got killed the next day. But, I know Jude had the boiling water case, and I think he also had one in which somebody died. He turned this guy loose and had not prosecuted him and the next day he killed his wife. It was serious stuff that we were doing there.

Mr. Allen: When a young lawyer was assigned this task, does he have someone reviewing the decisions he's made, or is he pretty much on your own?

Judge Nebeker: You're pretty much on your own. Ed Daly was there, and he had a principal assistant who was somewhat seasoned, and if you had a question – one of the things you learned is when to ask questions, and then you learned whether you could decide it yourself, but this power was rather awesome for these young assistants. At least I felt so, because —

Mr. Allen: And it's volume driven, there are just so many cases.

Judge Nebeker: So many cases, and then we'd always have in the afternoon after everything has sort of died down in terms of police officers coming in with cases or applying for warrants or whatnot, we'd have a period where we had set up hearings, in other words, citizens come in and complain. All right, we'll set this for a hearing in a week from now. Here's the summons. We'll have a police officer give it to me and we'll have this hearing. So, in the afternoon you have scheduled maybe six or eight hearings for each Assistant U.S. Attorney.

Mr. Allen: The Assistant U.S. Attorney is the hearing officer?

Judge Nebeker: Is a hearing officer.

Mr. Allen: It's not a judicial officer?

Judge Nebeker: That's correct.

Mr. Allen: Taking evidence, really.

Judge Nebeker: We'd take evidence, we'd find out if we were really going to prosecute this case or if we couldn't – we'd used to say often we grant common law divorces, because most of them were common law marriages. And we'd say, All right, you're divorced now. You can't live in peace. You're divorced. You get out of the house and don't bother her anymore. Well, this was the precursor of the stay-away warrants that are issued now by the courts. We were issuing them down there in the sense issuing them, a lot of bluff.

Mr. Allen: A legal standing was really a threat to prosecute if not —

Judge Nebeker: That's right. And sometimes it would work and sometimes it wouldn't, but this domestic violence business, we always handled that at the counter. And then as time went on, I think when Tim Murphy became chief of that division he established – it was either Tim or it was Chuck Work – a Domestic Violence Unit within that office over there. And it has developed now into a rather sophisticated way of handling domestic violence, but back in 1958 and 1959 it wasn't that way at all. We just handled it there on the counter.

Mr. Allen: So, then your next move was – we're backing and forth a little bit – you tried some cases, tried some jury cases, and then, as you said, it was time to move into a higher level.

Judge Nebeker: To move into a higher level, and what it amounted to – I'll tell a story on myself. I had something important that I had to do one day, and I called in and said I wouldn't be in until the afternoon. Well, Ed Daly reasonably could require that you let him know in advance if you're going to take time off. So, it reached a point where somebody was needed over in the Appellate Division, and I was the right candidate because I had not come in that morning. So, Ed Daly always said he fired me from the counter and that was fine, the best thing that ever happened to me, because the months that I spent there I realized trial work was not for me. I didn't really care for it. I didn't take to it that well. And I wound up in the Appellate Division, and all of sudden I found my niche. I loved that appellate work.

Mr. Allen: And appellate work in front of the bench or behind the bench has really been your career.

Judge Nebeker: It has. And, as I say, I've enjoyed every minute of it. It's 11. What time did you want --

Mr. Allen: It's ten 'til. I think two hours is a reasonable time. Do you want to quit now? Is there one more —

Judge Nebeker: Let's quit now. I can pick it up in my appellate work when I was working there with Carl Belcher as the chief of the Appellate Division, and I'll go into some detail next time about Carl and his educating me because he is – I think he's still alive – Carl is one of the most influential people in my life.

Mr. Allen: Okay, we'll take that up next time, and it's now ten minutes to eleven. It's still

August 12, and we'll resume on the 19th. Is that right?

Judge Nebeker: Yes.

Mr. Allen: Great. Thank you.