Norman Sepenuk: An Oral History
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An Oral History

FOREWORD BY JUDGE OWEN PANNER

US District Court of Oregon Historical Society
Oral History Project
Portland, Oregon
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The Oral History Project of the District Court of Oregon Historical Society began in 1983. Through the efforts of Judge James Burns and his wife Helen, a gathering of lawyers, judges, and historians took place at the Society’s inception. The Honorable Robert F. Peckham, District Judge for the Northern District of California, discussed the Northern District Historical Society and the inspiration was born for Oregon’s District Court Historical Society, the second such organization in the country. The original Board of Directors of the Society was composed of twenty-one members with bylaws including the Presiding Judge of the Court, the Chief Justice of the Oregon Supreme Court, and the President and a representative of the Oregon State Bar. The original officers and directors included outstanding judges and lawyers – Judge John Kilkenny, Honorary Chair, Judge James Burns, Chairman, Randall Kester, President, Manley Strayer, Vice President, Elizabeth Buehler, Treasurer, Susan Graber, Corporate Secretary, and Robert M. Christ, Executive Secretary, along with many other top names in Oregon’s legal history.

The Society decided to collect, study, preserve, analyze, and disseminate information concerning the history, development, character, operations, and accomplishments of the United States District Court for the District of Oregon. It was therefore logical that the Oral History Project should be established to preserve the histories of the judges, law firms, and lawyers who actively practice in the Court. With the assistance of Rick Harmon and James Strassmaier, the Oregon Historical Society held seminars to educate volunteers in taking oral histories with a biographical and Court-oriented focus. The Oregon Historical Society has been most
cooperative in agreeing to maintain these histories in their permanent collection for study by scholars and other interested parties.

These oral history interviews have been taken by recording devices, and are either transcribed or transcription is underway. A transcript reproduces, as faithfully as possible, the original sound recording that reflects the special value of oral history, namely its free and personal expressiveness. Most of the transcripts in the District Court Collection have been lightly edited and reviewed for clarity and accuracy by the narrators. That process continues. It is through these wonderful oral histories that the story of the Court is told. We now have recorded nearly 120 individuals since the project began. The goal is to record the individual histories of all the judges of the Court, as well as those of participating lawyers. The Court has a rich tradition reflected in the activities of the judges and lawyers of the Court. The recording has been done not only by professional historians, but also by dedicated volunteers. As one such volunteer said, “The opportunity to interview someone that you always admired is truly an exciting experience.”

The history of the Court is being created by the men and women who have participated in its collection and activities. The Society’s goals are to collect as much of that history as possible, because is it the history of the law and those who make it that constitutes the moral development of humanity. All of us who are students of the law venerate it. We are also interested in the people who make it.

Judge Owen Panner
February 28, 2006
JB: It’s March 5, 1993 and I’m preparing to conduct an oral history of Norman Sepenuk. We are at Norm’s cabin at Black Butte, Oregon. Norm, will you give us your full name please?

NS: Norman Sepenuk.

JB: How old are you, Norm?

NS: Bad first question, Jeff. I’m losing my composure already. I’m very upset with that question. I’m going to be 60 in just a few months.

JB: That means that you were born when?

NS: May 22, 1933.

JB: Where were you born, Norm?

NS: Jersey City, New Jersey.

JB: And, what are your parents’ names?

NS: Abraham and Lillian.

JB: Do you have any brothers or sisters?

NS: I do not.

JB: Did you attend grade school and high school in Jersey City?

NS: I certainly did. Public School No. 17 where I went to grade school and Lincoln High School, both in Jersey City.

JB: Were you much of a student, Norm?

NS: Was I much of a student? I was a decent student, yes.

JB: You don’t want to expand on that?

NS: Not really. I was the classic good kid. I don’t even remember anything about grades in grammar school. I suppose I did okay. Maybe some—a few marks off for bad conduct. But I remember going through high school and yes, I did get good—not sensational grades, but I did reasonably well. I was not a particular studious person in high school. I had a very good time. I played various sports and did a lot of extracurricular stuff and I was not the grind in high school. But I got very acceptable grades.

JB: What do you mean, you weren’t a grind?

NS: I rarely studied after school. I see what kids do now. They come home and they study. At least at the high school I went to, you could get most of your work done at the school. We had what was called a “study period” and even though there was a lot of playing around in the study period or periods—I’m trying to remember how many we had a day. it was either one or two—you could manage to get some work done and it was really a minimal amount of effort after school. I hardly remember doing very much work at home, which was quite unusual.

JB: You were involved in sports and other extracurricular activities. What were your sports?
NS: I was involved mostly in tennis. I played varsity tennis my last three years in high school. I did some swimming, but not a great deal; it was mostly the tennis team. I used to do a lot of intramural stuff. It was back in the days where you go to somebody’s house and play on that person’s backboards—basketball and various sports like that where you just spend a lot of time in athletics on the sand lots: softball, baseball, what have you.

JB: Were you involved in student affairs—student body offices, that sort of thing.

NS: Yeah. I was on the yearbook and other stuff but I’ll be darned if I can remember what it was, but I was very active in high school.

JB: Were you a religious person?

NS: No, never religious. I was brought up Jewish and I am Jewish. I did become Bar Mitzvah’d when I was 13 years old; I went to the synagogue between the ages of 9 and 13. I went to Hebrew School; I hated every minute of it. Five days a week. Monday through Thursday and then Saturday morning. I would go to the synagogue and take part in the service there and sometime even Sunday morning we had Hebrew School. I did that for about four years. Then I was Bar Mitzvah’d and that was the end of it.

JB: More of going to the synagogue as an obligation more than as a belief?

NS: Pretty much. More of an obligation really to my grandparents. not necessarily to my parents, but particularly, my father’s parents were very religious people and I certainly wouldn’t have wanted to disappoint them. It was more or less true of my mother’s parents, but not quite. I’ll tell you, it wasn’t even debatable in those days; if you were a Jewish kid and you were born into a Jewish family you were simply Bar Mitzvah’d. In my own family my son Peter was Bar Mitzvah’d but it really surprised us that he wanted to do that. In fact he asked us about a year before his thirteenth birthday if that was something that he could do. I’m simply saying that today things are totally different. I think it’s more the exception than the rule that kids are the least bit religious, I should say, follow the trappings of religion. I was no more religious than my own children but I did, at least, touch the traditional bases.

JB: Many people know that you do have a very strong value system. Can you trace that system back to this period of your life? If it’s not religion, is there something else that made you think, in part, the way you do today?

NS: It’s very nice of you to say that I have a very strong value system. Can you trace that system back to this period of your life? If it’s not religion, is there something else that made you think, in part, the way you do today?

NS: It’s very nice of you to say that I have a very strong value system. I’m not sure that I do. I think I have a fairly primitive value system. Not too much different from anybody else’s. You know the Ten Commandments, don’t lie, cheat, or steal. Other than that my life is very ambiguous. My wife has a value system; she has a code. I graduated from college in 1954. I was a member of the silent generation. We used to have panty raids and we didn’t do very many things that really counted. In the 60’s, later on, came the idealism.
I’m ambiguous about most things. Marijuana, what have you—I always see both sides of an argument. Other than certainly having some sense of right and wrong, which I did get—I think that’s almost inherent—but certainly my parents were good people. I particularly remember a total lack of envy in my house. I never heard a single word of envy when I was growing up about, for example, how much money somebody else had or some other family had and that kind of thing. In that sense I think I had a good value system. Probably really mostly through my parents rather than through any religious influence.

JB: What did your father do for a living, Norm?

NS: He was an attorney.

JB: Did that influence you at all in becoming an attorney yourself?

NS: You know. I’m not sure it did. Certainly he didn’t influence me. Whenever we talked about it, and it was very, very rare that we talked about what I was going to do with the rest of my life, he always told me he didn’t care what I did. He overstated—like he would say, “You can even be a ditch digger as long as you do it well, and as long as you enjoy what you’re doing.” I know he meant that. I just sort of fell into the law almost by accident. I’ve always liked speaking. I’ve always found it fairly easy to get up in front of a group and say what was on my mind or to make a speech or to be in a play and what-not. I wasn’t particularly good in math or science so that ruled out a whole world out there. I just sort of gravitated into the law.

NS: No.

JB: Did your mother work outside the home?

NS: No.

JB: Which I think was, correct me if I’m wrong, fairly traditional in the days when you were growing up for the mother to stay at home and for the father to work outside?

NS: It was. It was rare that a mother worked outside the home and my mother—the classic housewife.

JB: As you got toward the end of your high school career, can you recall if you had any specific goals or aspirations in mind at that time?

NS: Not really. I had a very good life as I was growing up and a very normal life. And I was thinking that maybe I’d just want to go to college with my friends and I lived near a school called St. Peter’s College—a very fine Catholic college in Jersey City, which was about a block or two from my house. A couple of my very close and dear friends were going there. I thought it would be nice to go there and my father said, “Why don’t you apply to Princeton?” Princeton is this great school. It really didn’t even occur to me to go to Princeton. I applied to St. Peter’s College and to Rutgers and to Princeton. I didn’t get into Princeton. That was a great disappointment for my dad. I’ll never forget how disappoint-
ed he was when I didn’t get in there. And I said, Well, I might as well try to make my folks happy.” I had this “only child” feeling of a certain responsibility so I went to Rutgers and I got very, very good grades there, and to make a long story short, as a result of my very good record there I transferred to Princeton, which was rather unusual in those days. It wasn’t that easy to transfer. And that was it. I transferred and spent my last three years at Princeton and then my father graduated from Princeton in 1954. I say this with a smile because it was almost as much my dad graduating from college as it was Norman Sepenuk graduating from college. He was very pleased about that.

It’s tough in Oregon. I used to be a member of the Schools Committee for Princeton when I first came to Oregon. Now I’m too old. They keep me in the closet. They don’t want me meeting these young high school kids, but a number of years ago I used to do a fair amount of this. The kids in Oregon, you have to woo them to go east because here we have all these wonderful schools in the West, in Oregon, at Stanford and places like that. You have to extol the benefits of a place like Princeton, where as in New Jersey, in Jersey City, where I grew up, it has a very major reputation. Although I must say that at age 17, which is what I was when I graduated from high school, I had very little appreciation of these things. My dad had a much keener appreciation than I did.

JB: When did you graduate from high school?

NS: In 1950—mid-century. That was the name of our yearbook—Mid-Century.

JB: Were there any teachers in your high school, or was there anyone during that period of time, who had a special influence on your life as you look back?

NS: There was a teacher name John McKenna. I thought he was a helluva teacher. He taught Latin. That was in the days when people took Latin. I’m not sure anybody takes Latin anymore. And for reasons I’ve never understood. Latin was easy for me. Languages are easy to me. And so I was the only one in my class in high school who took four years of Latin. I entered a Latin contest at New York University, the Baird Latin Memorial Contest. This teacher was just great. He had various devices. You’re going to have to forgive me, this is a very pedantic thing to do but, for example, in Latin there are certain verbs that take the dative case—this gets very abstract and what-not. But he taught us these verbs. John McKenna did, and the verbs are: “envy, spare, believe, assist, favor. Hurt, obey, resist, command, serve, pardon. Add to these: threaten, to be angry with, and please.” Now, again, this is a terrible display of erudition and an empty one at that but still, that was the kind of teacher he was. I could bore you to death with other things that I learned from him. He was truly a fine teacher. John McKenna. I have very fond memories of him.

JB: Do you use the things that he taught you in your practice today? From time to time
you’ll hear people say that they’ve learned lessons from someone and they apply those lessons even years and years later.

NS: I’m not sure. Latin, of course, has some importance in the practice of law but Latin to me was important only insofar as it taught me the structure of a sentence. I really learned more about English in studying Latin than I did in studying English or English literature. That to me was the value of Latin. I just think it gives you a wonderful sense of the structure of the language.

JB: I sense that he instilled discipline in you, or at least what he required of you required discipline on your part, or am I reading too much into what you’re saying?

NS: He certainly was a main—he used to say, “I’m not going to be happy Sepenuk until I see you carrying a bucket of your own sweat.” I still remember him saying that. And he was that kind of person. But I must say that Latin was probably the only subject, the only discipline in high school, where I did do that. It was very rare that I worked hard in high school. Latin was the one exception. And it was largely due to the influence of McKenna.

JB: What was your major field of study at Princeton?

NS: History.

JB: Can you tell me a little bit about your course work at Princeton?

NS: Yeah. It was liberal arts in the broadest sense. Princeton is a very fine institution. I did take an awful lot of courses in history. Unfortunately, actually, as I think back on it now, it wasn’t as broad sweeping as it should have been or could have been. Those were back in the Korean War days. I was in the ROTC—Reserve Officers Training Corps—at Rutgers and again at Princeton. And that took a lot of my time. I was in the field artillery and there was a lot of stuff to that—a lot of math, trigonometry. I remember it was at least five hours a week. We had drills and so that took a lot of time. I look back now and, gee, if I could have only taken courses in philosophy and music and art and the traditional liberal arts courses rather than ROTC. For example, I also took two years of French and two years of Russian in college, languages which I dropped immediately thereafter. Again, I doubt the value of that kind of experience. I wish I could have taken more courses in philosophy, psychology, etc. In fact, on the subject of a language, I am a firm believer now, I didn’t know it then, in the discipline in taking one language and learning it well. If I had it to do all over again, I would probably have taken eight years of Italian, something like that. Four years in high school, four years in college and, perhaps, gained some fluency in the language rather than have no fluency in any language.

JB: At the time, was ROTC pretty much expected of people? You indicated a bit ago that you had a normal life and that meant moving from high school to college. Was ROTC part of that normalcy, if you will?
NS: Well, it was. Certainly not everybody took ROTC. I don’t remember the percentages, but my guess is that less than half my class, certainly less, was in ROTC. But if you knew you were probably going in to the service, as most of us did who were going to graduate from college in 1954, and if you wanted to be an officer, rather than an enlisted man that was the thing to do.

JB: Why is it that most of you were going to go into the service? What is it about that period of time?

NS: Well, that was a period of time when you did go into the service. As I recall there was the draft. People were going into the service. I’m trying to remember when the war ended. I think the war ended in 1954—the Korean War. But there was simply an expectation that you would be going into the service by way of draft or otherwise, but primarily by way of draft. So, again, that was the reason why most of us went through ROTC.

JB: During this period of time when you were at Princeton, and at Rutgers also, was there any one individual, or were there any two or three individuals who were particularly influential in your growth?

NS: You know, there really was not. I had some fine professors at both institutions but I can’t say that there was one person or one professor more than any other like I can say about, for example, John McKenna back in high school. There was a professor at Princeton—he later went to Stanford and by God—he still writes book reviews for the *New York Times Book Review*. His name is Gordon Craig. He is an expert on German history. He was an incredibly dashing figure. He looked like he belonged in the diplomatic corps. He dressed magnificently with great splendor and he had a cigarette holder and a cigarette that he constantly smoked during lectures. He was famous for being able to light up cigarettes without missing a beat in his lectures. And he lectured just wonderfully. He’s a stand-out recollection. I also had a professor at Princeton named Jeter Eisley. He was a military historian as well as an expert in American history. He was on MacArthur’s staff during the Second World War and he gave this wonderful lecture on Iwo Jima. Let me see if I can remember the opening: “Iwo Jima is shaped like a pork chop”—he was a southern fellow—and it went on from there. It was just a stirring lecture and we all gave him a standing ovation. Those are a couple of memories that I have.

JB: You said you weren’t—I’m paraphrasing now—but you led me to believe that you weren’t a great student as you went through grade school and high school. Did things change for you in college?

NS: Things did change for me in college. I say in all immodesty, I was a great student in college. I’m not sure why, but I didn’t start out as a great student at Princeton. I got very, very good grades at Rutgers and then I came to Princeton. I know what happened. I had sort of reached my goal. I had made my dad happy by going to Princeton. So my first semester there I really goofed around. I remem-
ber I went out for crew. In fact, I think about that with great delight because crew is a sport that demands incredible physical conditioning, and even then I was a heavy smoker. I started smoking when I was 15. I smoked until I was 45. Thirty years a pack to two packs a day. When I went out for crew as a sophomore—it’s such a joke when I think back on this—I remember saying I was going to go in training and I’ll cut my cigarettes to 10 a day. And most of the kids who went out for crew at Princeton were kids who had rowed at places like Exeter. Sixty percent of the class at Princeton, at least, were prep school kids. In any event, I was really behind the “eight ball” in even going out for crew. But I did last a half year. Probably could have come back for spring training but I didn’t study very hard so my first semester at Princeton I didn’t do well at all. I finally woke up and said, “Gee, I better”—again, part of it had to do with my parents—I always had the sense of obligation to them. So my last 2-1/2 years I did extremely well and I even remember, I should blush to remember this, I was 35th in a class of 640 students.

I always laugh at Bart Leach. Bart Leach was a professor at Harvard Law School, a very well known Property professor who wrote a classic book called the Rule Against Perpetuities. I remember Leach being in class one day and saying, “I took a course from Bull Warren, who was a famous Harvard Law Professor, and he said I got a 92, which is the highest grade Bull had ever given.” I was 23 or 24 at the time when I was in law school, and I remember saying to myself, Geez, here’s this old coot who remembers the grade he got. I can’t imagine reaching his age and still remembering petty things like grades.” And here I am, Jeff, spouting that I was 35th in a class of 600 and some odd—so, here we go.

JB: I think you’ve inferred — I’ve inferred, you’ve implied anyway—that part of the change was the result of your satisfying your father by getting into Princeton. There must have been more than that to your change in emphasis and becoming a good student. Can you pinpoint it?

NS: I think just the idea that I should probably do as well as I could do. I’m not sure it was anything more sophisticated than that. I finally got to realize well, I’m going here, and for goodness sake it’s costing my parents a fair amount of money to send me here, because I was not on scholarship or anything like that. I might as well try to at least do well.

JB: At that point had you given any thought in attending law school?

NS: Not really. I had simply assumed that I was going to go to law school for reasons that I think I mentioned before. Well, by gosh, yeah, all right, there may have been some element in that. We weren’t—the pre-law folks were not nearly as motivated as the pre-med. I roomed with two friends of mine who went to medical school, and they were obsessed with grades. At least back when we were going to college it was considered to be very hard to get into medical school. Probably still is. So they were very motivated. I still remember they had to do extremely well in a course called Histology.
and a course called Organic Chemistry. The law students—and I suppose particularly the so-called better law schools, I should emphasize that—like Harvard or Yale—I guess the notion was that you had to do fairly well in college. That was probably in my mind; that in order to get into a good law school I’d have to have good grades.

JB: What sort of practice did your father have—just to move back—and I’m thinking that his practice probably had something to do with your decision.

NS: It actually did. My dad, for a number of years—first of all, my dad was most happy when he was in politics. My father practiced law, but my dad, for example, was the head of the Young Republican Party in New Jersey. One of the proudest moments of my father’s life was when he introduced Wendell Willkie, who was the presidential candidate, in Jersey City—in Hudson County as a speaker. My father was very active politically. He was very much against a man by the name of Frank Hague. Frank Hague was the Democratic mayor of Jersey City for some 32 years. He ran the city with an iron fist. He had Norman Thomas deported—Norman Thomas the socialist—when Norman Thomas came to Jersey City, sent him back to New York on a ferry boat with the words: “I am the law.” Hague considered himself the law in Jersey City. As a matter of fact, he never made more than $8500 a year as mayor, and when he died he left an estate of some $8 million; the reason being that most of the people on the payroll in Jersey City would kick back a certain percentage of their money to him in order to retain their jobs. I know in 1993 that seems truly unbelievable, but Jersey City was a very corrupt, albeit very colorful city, in which to live.

But, in any event, getting back to my dad, he was really mostly interested in politics. He practiced law in partnership with a lawyer named T. James Tumulty, truly one of the most colorful people I have ever met. T. James Tumulty’s uncle was Joseph Tumulty who was Woodrow Wilson’s secretary. T. James Tumulty was an incredible overweight Irish guy who gave wonderful speeches, had a great gift of gab, and he and my dad were firebrands. They were very much against Hague. They used to go to German-American Bund meetings over in Yorktown when the Bund was back in the early 40’s, late 30’s, when the Bund was a rather pernicious influence—

JB: What is the Bund?

NS: The German-American Bund was a—by the way, I’m speaking more authoritatively than I have any right to speak, but I remember this from when I was only a child—5, 6, 7. I have also read articles about it that my mother had put in the scrapbook of some of my dad’s accomplishments—and it was a group that was agitating for some of the things that Hitler was agitating for. That Germany had a right to have its lebensraum, its living space, and Germany was not really evil, and all they wanted to do was annex the German-speaking part of Czechoslovakia, and part of Austria—the Anschluss—all this stuff. It was a group that propagandized in America for the
values espoused by Hitler. My dad, of course, who was Jewish, and I don’t have to give any historical comments on the meaning of that, and T. James Tumulty his dear friend and law partner who was Irish, just sort of banded up and they would go and they would attend Bund meetings. They would disrupt them and my dad was in fist fights and what not. I don’t want to paint the wrong picture of my dad—.he was a very nice, law-abiding guy, but this was something that he felt strongly about. And generally felt strongly about Frank Hague as the mayor. But in any event, he did politics and he also practiced law. He practiced criminal law primarily and then he became an assistant prosecutor in Hudson County and spent a number of years as an assistant district attorney. Then following that he went into practice again and did criminal law. Somewhat like I did, but I was a federal prosecutor for ten years and then my area of expertise, or practice, is in federal criminal litigation; my dad was mostly state.

JB: I wanted to ask you just one question about Princeton and then we’ll move on to another area. I haven’t asked you anything about your social life. What was the social life for Norm Sepenuk at Princeton?

NS: You could not have cars at Princeton. But you could have liquor in your rooms. In those days we drank, I mean, I started drinking my junior and senior years of high school. We used to all go over to New York City a lot. Jersey City is right across the river from New York. We’d take the subway and they had more liberal drinking laws there and what not, and we smoked and we drank. Drugs were unheard of. I mean nobody—musicians, maybe, took marijuana or whatever, but not the people that I hung around with. But at Princeton we did a lot of drinking. The social life revolved around the weekends when we had football games and we would have young ladies come down for the weekend. There was a rule at Princeton you could not have a young lady in your room after 6:45 p.m. and believe me there were a few people thrown out of school every year for violating that.

JB: Were you one of them, Norm?

NS: Sadly, no. [both laugh] The social life at Princeton, too, revolved around the eating clubs. Jeff. I don’t know whether we should even get into this because we could almost spend an entire tape on the Princeton eating club system which started back many, many years ago. F. Scott Fitzgerald has written eloquently about the eating club system. There was a lot of snobbery involved in it. There were various clubs that were considered to be the elite clubs. There were the not-so-elite clubs and it would take a long time to go into it but that was an interesting part of my college career. The whole idea of eating clubs, and who would get in the eating clubs, who wouldn’t get in the eating clubs, and what the criteria were, it was all rather artificial and fraternity-like. That system has been pretty much reformed now and things are much more democratic.

JB: Norm, we were just talking a moment ago about the eating clubs at Princeton. I know...
you don’t want to spend the rest of this interview talking about that, but generally, what were the criteria for becoming a member of an eating club?

NS: You simply had to be a sophomore. There was a selection process called the bicker where students in the clubs, the upper classmen, the juniors and seniors would come to your room and interview you and/or your roommates for a particular club. Except that certain clubs—let me give you an example—there was a club called The Ivy Club. You really couldn’t get into Ivy Club, which was the most prestigious club unless you had a certain pedigree. If you went to the Gilman School in Baltimore, and you played Lacrosse, or if you had some other kind of background that fitted you, and I say “fitted” to get you into the Ivy Club. For example, it was very rare, in fact it was unheard of, for a Jewish kid to get into the Ivy Club. I remember when a Jewish kid finally did get into the Ivy Club, it was in 1953 and it was Bo Goldman, who later became a very well known screenwriter. There was a club for the jocks, that was the Cannon Club, and the club for the intellectuals, that was Cap and Gown, or what not. That kind of stuff. That’s not hard and fast by the way. There are all sorts of exceptions to what I just said, but those were some of the kinds of criteria.

JB: I was thinking as you were talking that your being Jewish would be a disadvantage. Is that true? I use the term disadvantage advisedly.

NS: In those days, in other words, there was an actual quota. By the way, I don’t say this lightly, because I am not a member of the paranoid or conspiracy school. I mean I don’t see prejudice around every turn. But back in the early 50’s, and prior to that, there were unofficial quotas at some of the Ivy League schools and Princeton was one of them and I used to hear the figure six percent. No more than six percent in any class, certainly no more than that would be Jewish, and there were some problems. Discrimination, much more subtle than overt, and part of it was just, you know, unspoken. If you spoke to certain eating clubs, just like with respect to certain hotels in New England, you could not be admitted if you were Jewish. And that’s nothing that particularly concerned me since I don’t particularly care one way or the other, if I’m admitted to a certain golf club, or hotel or social club. I probably wouldn’t feel comfortable in any event, joining an organization like that if that’s the ethos—forgive that awful word—if that’s the ethos of that organization. I felt the same way at Princeton. I joined a club at Princeton, which probably, the club that was more or less at the bottom of the social ladder. Part of it being too, that I spent a year at Rutgers, and so when I got to Princeton, you know, I hadn’t formed the friendships that students would have formed. As I say, the selection process for clubs took place in the sophomore year. I was in a so-called Ironbound, two of my roommates and all three of us were Jewish and that was somewhat of a problem at Princeton. Three Jewish kids pledging that they wanted to join a club, the Ironbound, that we all had to be admitted or not admitted. We joined a club called Prospect...
Club, which was a cooperative club, for example, we waited on tables, you know. Most of the other clubs had waiters and they were usually black waiters and that kind of thing. At Prospect, we were much more democratic. We waited on tables and did things like that and it was a very interesting bunch of guys who. By the way, Princeton was not co-ed; it didn’t become co-ed until much later and it was great fun being at Prospect Club because it’s an extremely diverse and interesting group of people. For example, Ralph Nader was in my club and I used to play ping pong with Ralph and I could start rattling more names of people who were in my club who, you know, later became established in their field. It was an intellectually lively club.

JB: Was your attending public high school a disadvantage also?

NS: You mean in terms of getting into a club?

JB: Yes, or maybe even broader. We started talking about clubs a moment ago and then you moved into Princeton, in a more broad sense, when you talked about the six percent quota, for example.

NS: Well. I’m probably going to go a little far afield here, but I don’t think attending a public high school is a disadvantage. I’m a great believer in public schools. And I knew prep school kids at Princeton, kids who went to Andover and Exeter and what not, who would be probably to this day generally uncomfortable amongst the unwashed, you know, the clerks at the meat markets and what not. I’m just a great believer in public schools. On the other hand, there is no question that I did not get the kind of education at Lincoln High School that I would have gotten at a first rate prep school. I mean to this day. I will not have read books, nor done certain things, that these prep school kids did. You got a much better education at a prep school. I used to jokingly say when people would say what school did you go to? I used to say, “I went to the Lincoln County Day School.” I would say this laughingly instead of Lincoln High School, because at Princeton some of the kids did go to these so-called country day schools.

But no, I have never regarded it as any kind of disadvantage. I regard it as an advantage but certainly in the Princeton of that era, if I had gone to Exeter or Andover or Loomis, or Taft or any one of these prep schools where kids’ cliques had been formed and classmates. Kids went right from prep school into college and it was more or less just a continuation of their prep school life and they would get into the clubs where most of their prior prep school mates had attended. So that kind of thing, in that sense, it was a disadvantage, but only in that very narrow sense.

JB: You may have mentioned—when did you graduate from Princeton?

NS: In 1954.

JB: And you were in the ROTC. I take it that took you into the military?

NS: Yes. I was in the ROTC at Princeton
and became a Second Lieutenant and I spent two years in the Army, from 1954 until 1956.

JB: Can you tell us a little about your Army experiences? I’m afraid my background in the military is not good so I’m not very good at framing questions.

NS: Yes. Well, modesty prevents me from telling you about my true accomplishments in the Army. Jeff. I was in Airborne. I was Ranger. I did several combat jumps in Korea. I won two Silver Stars. And all of these are lies. (laughter). All these are lies. Jeff. No, as a matter of fact, I saw no combat whatever. I fought the battle of Baltimore and Washington. That is on a bar stool. I spent two years as an Army officer. I started at Ft. Benjamin Harrison, Indiana. I’m tempted to turn off the tape, but I won’t. I’ll regain my composure here. I was at Ft. Benjamin. Harrison, Indiana for three months. I was in the artillery by the way in Princeton and I went to Ft. Sill for my artillery training back between junior and senior year of college. I spent the summer there. I was very trained in the artillery, but when I took my final eye exam I flunked miserably, and I almost didn’t get any commission at all. I have very poor eyes and they decided they wanted to save not only my life and limb, but the life and limb of many other people by saying that I could not be a forward observer in the field artillery because of my lack of vision. So I had a commission in the Adjutant General Corps.

I laugh about this, but at the time, I remember walking into the Colonel’s office at Princeton, this is actually true, he was a West Point graduate and when I was told I was not going to get my commission in the artillery I was very upset about it. I had trained in this. I had spent a lot of time learning the trigonometry, and all the math, and how to line up a battery of 105 Howitzers and what not. I thought I was actually reasonably good at it and somehow I was embarrassed and ashamed that I would be getting a commission in a non-combat arm after I had spent four years learning how to be a combat officer. I walked into the Colonel’s office and I said, “I want to become an artillery officer. I said I’m not a hero. I’m far, far from a hero, but I spent all this time learning artillery and now I’m going to get a commission in a non-combat arm and I’d like you to intercede for me.” By the way, this is actually true, I’m not trying to portray myself as anything other than what I am, but I felt very strongly about it.

JB: Was this in 1954?

NS: 1954, At Princeton, after I had been told I was going to get a commission in the Adjutant General Corps. I still remember he said, “Look Mr. Sepenuk, you’re going to be in the Army and you’re going to do what your superiors tell you to do and you have been evaluated and it’s been concluded that your eyes are such that you simply can’t handle. We don’t want to take the chance of your glasses breaking or anything like that and being in a combat situation where that could happen. And so you will go into the Adjutant General Corps and I will not try to do anything for you.” I spent two years in the Adjutant General Corps and took my training in that, and
then I went to Ft. Mead, Maryland where I a post recruiting and re-enlistment officer. That was a separation center, at Ft. Mead, Maryland, and I would try to talk these people who were being separated from the service into re-enlisting. And I used to get up and make a speech every morning and I found that the enlistee’s who laughed the most when I said, “Now gentlemen, are any of you interested in re-enlisting?” were usually the ones who snuck around to my office to re-enlist. And, of course, in those days I had shiny belt buckles and shiny gold bars and a short haircut and what not and tried my best to look like a spit and polish military officer. Probably failing in the effort, but I spent a number of months there and then I went to Ft. Lee, Virginia where I was the billeting officer.

JB: Before you leave Maryland—did you actually believe in what you were saying as you tried to convince these young men to re-enlist?

NS: I did. I had a sense of public service and I think the Army, it’s a good life for a certain number of people, and certainly an honorable way to spend one’s life. I felt that then and I feel that now. I was very sincere in trying to persuade them to devote more of their life to public service. In any event, should I continue, Jeff?

JB: Yes.

NS: I was a billeting officer at Ft. Lee, Virginia for a massive military exercise called Log X, Logistical Exercise. And then I went to Camp Perry, Ohio for several months where I was the company commander of a headquarters company that maintained the place for the National Rifle matches. The National Rifle matches yearly are held at Camp Perry, Ohio and so we took care of the billeting and the feeding and that kind of thing. Fairly responsible job for a young 22 year old Lieutenant. I was discharged from the service back at Ft. Mead, Maryland. I must say, two fairly interesting years. When I look back on it now, a lot of a waste of time. I did incredible amount of drinking and going to the Officer’s Club every night and drinking and then running into Baltimore and Washington and trying to find young ladies for more drinking and what not. I wish there could have been simply six months of hard Spartan military training and I believe in that any way. I think everybody ought to have six months of some sort of public service including the military, if that’s appropriate, but, six, very meaningful months. And not any kind of fooling around but simply learning military protocol and some of the rudimentary stuff that you have to know to be in a military organization. Put that in the computer and then if trouble comes we can just press a button and find out who’s ready to do what. I think William Buckley has pretty much advocated that too. I’m on his side on this one. I’m not on his side on very many things.

JB: You mentioned that your father was very active in Republican politics. Did you through the period 1951-52, ’53, ’54—were you at all active in politics or did you have an interest in politics?
NS: No. I have never been active in politics. Well, I always had an interest in politics, but I have never been active myself, joining political groups and what not.

JB: As you look back. I gather that you think you wasted part of the time you were in the military but when you were there, were you enjoying yourself for the most part? Was it something a young man enjoyed doing?

NS: I actually had fairly responsible jobs and yeah, I had a certain amount of enjoyment. I just think it lasted too long. I suppose if I had been in combat I would have had a different view of it. But I was in the Army and a peace time situation never felt threatened and I’m not sure that’s the way to spend two years of one’s life.

JB: Did you make any friendships while you were in the Army that have endured?

NS: I made several wonderful friendships when I was in the Army. As a matter of fact, unfortunately, only one has endured to this day. A fellow named Jim McCabe who lives in Kentucky. Very close friend and we talk on the phone a few times a year. Always promise each other that we’re going to see one another. We did get together several years ago. He remains. I regard him as a very close friend.

JB: You left the military in 1956. What happened next in your life?

NS: My next stop was Harvard Law School.

JB: What led you to go to Harvard, Norm?

NS: If I wanted to become a lawyer, and Harvard, at least, when I was going to Princeton in the 1950’s, Harvard was considered to be—I always thought it was the best law school. I simply wanted to attend the best law school. And that’s how I went to Harvard.

JB: Had your father attended Harvard?

NS: Oh no. My father went to Fordham Law School. In fact my father went right from high school to law school. Back in his day, you didn’t have to go to college. In fact, back in his day you didn’t even have to go to law school. You could read law, they called it. You could apprentice yourself to an attorney and become a lawyer that way. Learn the law and then take the bar.

JB: What was the process for getting into Harvard in those days?

NS: Simply to apply and take the LSAT. I think the same as now. Take the law school aptitude test and have reasonably good grades in college. I’m sure there was no interview. I can’t imagine Harvard Law School requiring an interview. It wasn’t that personal. And that was it.

JB: You mentioned Raymond Leach. Were there any other professors that you particularly recall?

NS: Right, Jeff, that was Bart Leach.
JB: Bart Leach. I’m sorry.

NS: He was a very colorful character. I really enjoyed him. There was Stanley Surrey who taught Tax. Incredibly demanding professor—there used to be an expression “Sunday with Surrey,” because Tax was taught on Monday and those were in the days, maybe they still do this, but there was a lot of calling on people in class. It’s all this Socratic Method, and you would sit there, you would get called on, and the professors were rigorous in their questioning. To prepare for a Monday class you usually had to do a fair amount of studying on Sunday, so it was called “Sunday with Surrey.”

JB: How many were in your class, Norm?

NS: Oh goodness, there were about 450 students in my class. A very large class, divided into three sections of roughly 150 students each.

JB: Do you remember how you felt that first day? We hear from time to time lawyers talk about how frightened they were or how confident they were when they spent their first law day in a law school classroom.

NS: I was never frightened nor confident. I had a very bad attitude. As good as I was in college in terms of studying hard and getting very good grades, for one reason or another, when I got to law school, I wasn’t that interested in being a student. I had spent two years in the military. Here I was the ripe old age of 23, mind you, but for better or worse, I was an Army veteran. Even though a veteran is sort of a joke, you know. I wasn’t a veteran in the sense I had seen or been through the wars, but I had been out of college for a couple of years and I had mixed feelings about getting back to being a student.

And I was a bit of a cynic. I hung out with other people who had been in the service and I remember, a lot of them, we call them eager beavers— the kids who would raise their hands all the time and they would go up and talk to the professors after class. They couldn’t wait to ask questions and raise their hand, and we had nothing but— contempt is probably too strong a word— ridicule is the proper word. Me and my cynical friends, we were at the other end of the spectrum. We wouldn’t sit in our assigned seats. We would sit in one of the last two rows of the lecture hall. When the lecture was over rather than run in and study we would go to the Harvard cafeteria and we would have coffee and smoke and make fun of the other students. I’m overstating it a little bit but not a great deal. I studied. I had to study or else you would flunk out. But I studied only when I really had to. They say you can’t cram in law school but I did a lot of that. I studied when I had to study. I just wasn’t intellectually inspired when I was in law school, with some exceptions in some courses.

JB: Some of us have seen the movie *The Paper Chase* where Harvard Law School is depicted as a very competitive group of students who are cutting each other’s throats and doing everything possible to get their grade better than the next person. Was that the Harvard University that you attended?
NS: Fairly much. It was competitive, no question. In fact, there was always the joke of you know, the fellow who would leave his light on in his room, he fell asleep and wouldn’t turn it off and as a result of that two-thirds of the class stayed up all night studying. Because they would look over and see the light was still on and said, “Oh my god, I can’t go to sleep because so and so is still studying.” There was a lot of that kind of thing. There was a story, probably not true, but I shouldn’t say it wasn’t true because one of my law school roommates. Bill Condren told me about this. He was in his first year typing an exam, they had the writers and they had the typers, and a third of the way through the exam a student keeled over and fainted. And there was a sudden stop of typewriters, students looked over and then back to the typewriter, the clacking of typewriters. Nobody got up to help this guy. You know, the inhumanity is mind boggling. My roommate swore to me that was true. Eventually, somebody came in and dragged him away.

JB: Were you a member of any of the infamous study groups at Harvard? Or did you study pretty much on your own?

NS: No. I was in a study group my first year. And that was pretty much routine. You were in a study group. And that was just a good group of folks who got together and reviewed the material.

JB: Was Professor Corbin teaching at Harvard when you were there?

NS: No. He wasn’t.

JB: Are there any other professors, we’ve mentioned Leach and when I think of Harvard I think of many of our leading scholars.

NS: Goodness gracious, yes. And we had a bevy of very well known professors. I had Austin Wakeman Scott for Trusts. Very entertaining man. I’ll never forget, we would be going over something and he would ask a question of stuff that we had already gone over and a student acted puzzled. He’d say, “You know, I just cannot understand you birds. You treat everything as an original question. We’ve gone over this, it’s not an original question.” I still remember this. He called on a guy, Stan Bartel, he now practices law in Miami, and we were on the subject of unclean hands in the law of equity and trusts. He called on Bartel, and Scott was a masterful questioner, and he would say, “Mr. Bartel, that’s known as the Doctrine of . . . waiting for Bartel to answer. The answer he wanted was “unclean hands.” Bartel, I’ll never forget, said “dirty hands.” Scott became apoplectic. He really did. His face got beet red and he said, “Not DIRTY hands. Mr. Bartel, UNCLEAN hands.” In any event, Scott was a very colorful character...

Ten A. James Casner was a Property professor, very well known. David Westfahl who later became well known, I took Antitrust Law with Derrick Bok, who became the president of Harvard. Lon Fuller was a Contracts professor. Abe Chayes, a very fine teacher was there, taught Civil Procedure. A number of very well known professors. Warren
Seavy, who taught Torts, later went to Hastings. Louis Loss, an expert in Securities Law. Just a number of very well known professors. Mind you, not all of which were wonderful teachers. They were very smart and they were wonderful in their field, but not everyone was a great teacher by any means.

JB: Is there one who stands out?

NS: I liked Bart Leach. I just thought he was a wonderful. He was a very arrogant man, and if you came up to him after class, he wouldn’t talk to you. He would say you have very bright brethren, go and ask them the question. He said, “I’ve pretty much told you everything I know in class.” Another arrogant guy was Archie Cox, who later became the Solicitor General. I had him for Torts my first year. He would cut you off in mid-sentence. You’d be explaining an answer to a question and other students, by the way, would be wagging their hands while you were talking, and if Cox was not impressed with the quality of your dissertation, in mid-stream, he would cut you off.

JB: That is a very different image from the one Cox portrayed at the Saturday night massacre and the events that surrounded that during the Nixon administration.

NS: That’s right. He’s considered to be a very statesman-like figure and as a matter of fact, in many ways he is. I don’t want to downgrade Archibald Cox. He’s a very bright man and can be a very courtly kind of person.

But you know, it’s interesting you mention that, Jeff. He was my advisor. And by the way, Harvard Law School is a very impersonal place. I don’t want to give you the wrong idea. You saw your advisor once and very briefly and I had to go see him at one point because I wanted to take Advanced Tax and I needed special permission to take it. I don’t even know why but as a result of doing that. I had to defer taking Labor Law, which was his course. I eventually took his course, but I wanted to put off taking it for a year. That was Cox’s field of expertise. So I went in to see him and I said, “Professor Cox. I simply want your permission to take Advanced Tax... I’d like to defer taking your course for a year.” I’ll never forget what he said to me. He said, “Well, certainly. You have my permission, but, boy, I sure wouldn’t want to make tax law my life.” For one thing, I didn’t tell him I wanted to make it my life. He assumed that because Advanced Tax was classically considered the toughest course in Harvard Law School. Stanley Surrey taught it and it was considered the most rigorous of the courses and it was usually taken by students who did want to specialize in tax and of course. I hadn’t made up my mind at all. In fact, I probably knew I didn’t want to specialize in tax law, but I felt like taking it. And I thought it was rather a mean and cruel comment. Here was this very experienced law professor telling a young student who may have had his heart set on taking tax law and becoming a tax attorney that as far as he was concerned that’s not the life he wanted to lead. I thought, why did he have to deprecate the study of tax law? It made an impression on me. I thought it was insensitive of him. And I’ve never thought quite as highly of him as I would have because of that.
JB: During your career at Harvard, had you decided what you wanted to do in practice or had you not?

NS: Yes. I always had known that I wanted to be a trial lawyer. But I got to my last semester at Harvard Law School, and it was very interesting because I found that the surest way to kill an interest in an area of law was to take a course in it. Every time I took a law course in something, I knew I didn’t want to have a thing to do with that area of law: corporations, labor law, you name it, torts, contracts. So by my last semester I realized, my god, I’m not interested in any of this stuff. I am interested in becoming a trial lawyer and I had signed up for a course in Trial Practice. But if I take the course, and I had the same experience I had with all the rest of my courses, I’m not going to become a trial lawyer, so I dropped it. I decided not take the course in Trial Practice.

[laughter]

NS: He’s a distinguished San Francisco attorney, Jim Brosnahan—

JB: We’ve talked a little, Norm, about the excellent professors, or at least the well known professors at Harvard. Did any of your classmates go on to become well known practitioners?

NS: Well, let me think. Ruth Ginsberg started out in my class. She is now on the Court of Appeals for the District of Columbia [as Associate Justice of the US Supreme Court since her appointment by President Clinton in 1993.] She finished up at Columbia Law School because her husband was at Columbia Law School. Gee, this is embarrassing because I know there are a lot of students in my class who have gone on to become very distinguished practitioners and judges. I’m embarrassed that their names don’t come immediately to mind. Jim Brosnahan was a classmate of mine. He was the recent prosecutor of Weinberger—what was the name of the former Secretary of Defense? Caspar Weinberger.

NS: Yeah. For some reason I have more of a memory of my classmates at Princeton than at Harvard. Paul Sarbanes, for example, is a U.S. Senator from Maryland. I still remember him coming up to me during our junior year in college and he said, “Norm, you know, my ambition is to become a United States Senator from Maryland.” I remember saying to myself at the time, “Is this guy kidding? My goodness, all the vagaries and varieties of life and he thinks he’s going to be a U.S. Senator from Maryland.” But it shows you, if you have an early resolve, if you truly want to accomplish something, you can, indeed, do it. He’s a good friend of Clinton’s, fellow Rhodes Scholar. Don Rumsfeld was a classmate of mine. He later became Secretary of Defense. On a lesser level, Bill Hudnut, the mayor of Indianapolis...
for many years. Lou Rukeyser, the Wall Street Week guy. A number of other people achieved prominence.

JB: Rukeyser seems like an aristocratic sort of guy. Was he back then?

NS: I really didn’t know him very well at all. He’s a very entertaining fellow. I watch his show every now and then. He rubs me a little bit the wrong way. There’s this kind of arrogance and know-it-all kind of a thing. I think he feels he’s a very clever chap. [laughter] That’s the way he impresses me. As a matter of fact, he is a very clever chap.

JB: Was Ralph Nader a prominent figure on campus.

NS: Yes. By the way, Ralph Nader was the year after me. Ralph Nader was the class of 1955. No, Ralph was a classic oddball.

JB: Nerd?

NS: I went to Princeton during the age of conformity. You wore your white buck shoes and your khaki pants and your white shirt and it was all very informal. They called them Shoe—you know, the white buck crowd. Ralph was a non-conformist from the start. He’d wear his NYU sweatshirts. NYU at Princeton was sort of an anathema. Ralph was a revolutionary even then. He was always swimming against the tide. I have tremendous respect and admiration for Ralph. He’s a zealot, mind you, and he’s a little bit nutty, but an incredibly able person. If you don’t know what you are talking about, unless you are armed with facts and figures and theories and what-not, Ralph will cut you to pieces in a debate. He’s just an extremely—his whole life is his work. He’s not married, lives in a little modest apartment in Washington, D.C. He spends his life studying reading, and trying to find out as much as he can about the stuff he’s interested in. He’s a very formidable fellow.

JB: Norm, a few minutes ago you mentioned that at least by your third year of law school you knew you wanted to be a trial lawyer. Do you remember what led you to that decision?

NS: I just always thought that that’s where my strength was. Again, I have no hesitancy in speaking before groups. I’ve always been able to string words together. I’m trying to think of another expression other than I think fast on my feet, that cliché. But I’ve always thought of myself that way. I suppose part of it was the histrionic aspect of it, the dramatic aspect of it. I just thought that would be the thing that I would most enjoy doing.

JB: At that time were you identified with any causes or did you feel that you wanted to be a prosecutor, for example, or a criminal defense lawyer, or did you feel strongly about the sorts of clients you wanted to represent?

NS: Not really except I did think that I’d probably gravitate into criminal law. But I had no strong feelings. As a matter of fact, it took me a while to get into trial law because the firm I went with in Jersey City I started
working with the senior partner there, and because I had all this wonderful training in law school in courses like Advanced Tax and Property and what-not, for the year or so plus that I spent in that firm, I did mostly office work. It took awhile before I was able to phase into trial work which really didn’t happen for a few years. Do you want me to go into that now or should I wait on that.

JB: You mentioned that firm. What is the name of that firm?

NS: The firm that I went with was Smith James and Matthias. You mean following law school?

JB: Yes. Can you tell me how you became involved with that law firm? How you went to work for those people?

NS: I will. Jeff, let me back up a little bit. Back in 1959, when I graduated from law school, New Jersey required a clerkship. Sadly enough, thinking back on it now, that only lasted a few more years after I was admitted to the Bar, but it was a horrible, feudal system in that you had to clerk for nine months before you even took the bar examination, and you were almost an indentured servant doing this. I didn’t want to wait nine months after I graduated from law school to take the bar; I wanted to get on with my life. So each summer I would go back home to Jersey City and I clerked in a law office. The first summer I clerked for a man named Abraham Miller who was a criminal defense attorney. I made the grand sum of $15, that’s one - five dollars per week and I can assure you that I put in a minimum of 40 hour weeks. The second summer I worked for a fine little firm in Jersey City called Smith. James and Matthias that had essentially a commercial litigation practice but also did estate and trust work. I then made $35 per week. The third year I finished up my clerkship with Smith James and Matthias and I still remember the senior partner of the law firm, Forest Seyles Smith. Thinking back on him now, he was about the age I’m at now. He had white hair and he went to all the so-called right schools and belonged to all the right clubs. He was the senior partner. His grandfather had founded the firm. He said, “Norman, you are the first lawyer we’ve hired in a number of years and we’re looking forward to our association with you. We’d like you to come with us as an attorney. He says, we will continue your old salary of $50 per week until you pass the bar and then we’ll start you off at $80 per week.” I said, “Thank you very much, Mr. Smith.” I was very appreciative. At the time that was the way it worked in New Jersey.

So that’s what I did for three summers and then when I graduated from law school, I went with that law firm. I think back now—Forest Smith was a master at getting you to do things for him. He was really a very, a very—charismatic is not quite the right word—but you wanted to do things for Forest Smith. When I was in law school, he would occasionally write me a letter and would say, “Norman, I’ve got this problem.” It was like on collapsible corporations—I still remember Section 341 of the Internal Revenue Code, or some complex reorganization—these were
sort of real complex tax things. He’d say, “Can you give me a few thoughts?” I would love to do that. I was looking forward to the practice of law, to get out of the student realm and the academic realm. By the way, Jeff, one other thing I’m going to interject here, when I was in law school, another reason I knew I wanted to do trial work, or at least appellate work, at least argument, was that I did a lot of moot court work in law school and did quite well at that. I was much more animated and engaged in the moot court work than I was in my classes. But, in any event—where was I? I thought I would be able to digress here and immediately get back to what I was talking about. Where were we?

JB: You were talking about Mr. Smith writing you at Harvard Law School.

NS: Oh yes. I am impressed that you were able to immediately pinpoint where we were, Jeffrey. In any event, Smith would write me these letters and I would write back. I still remember staying up to 2, 3, 4 in the morning, writing back these single spaced, 12-15 page letters because again, it was my third year and I was taking Advanced Tax. I did this all free. It wouldn’t occur to me to have asked for any money for it. I suppose it didn’t occur to him to offer to pay me for it.

I look back on it the same way I look back on those days that those lawyers in Jersey City simply thought that it was their due to ask young attorneys to do things for them. I mean, I was lucky. I lived with my parents when I graduated from law school. They had a one bedroom apartment. I slept on a couch in a little tiny foyer because I couldn’t afford to do anything more than that. I couldn’t afford my own apartment on $35 or $50 a week. That was the system in New Jersey then, and to New Jersey’s detriment, they lost a large number of attorneys to other states. Lawyers went over to New York where the pay scale was considerably higher, that kind of thing.

JB: So your pay was the same as everybody else’s, basically.

NS: In New Jersey, yes. There were some law firms in Newark that were paying more than that, but that was generally the starting wage, $4,000 a year, something like that.

JB: Do you recall what sorts of cases you worked on when you were with the criminal lawyer? Is it Abraham Miller?

NS: Abe Miller, yes. Well, I just did some interviewing for him and I did research. This was in the summer time and, you know, Jersey City, in the summer time, the courts pretty much close. They are very inactive. One thing I get a kick out of—people talk about the wonderful pace of life in Oregon as opposed to the East and how laid back we are here and all this sort of stuff. That’s a lot of baloney. I truly believe that. It’s particularly a lot of baloney, for example, when you’re at Owen Panner’s
court when you go from nine in the morning until five. If you’re lucky to only go from 9 until 5. When I think back on Jersey City and, again, my dad was a lawyer so I know a little something about this. I mean, court started at 10, they’d go until 12. You’d come back at 1:30 or 2 and you’d go until 4. I mean you’d go four, four and a half hours a day. And the pace was much more leisurely in this hotbed of the east, Jersey City, than it is in Portland, Oregon. It was a different kind of thing. Now why am I talking about that? That relates to what? Why am I talking about the pace of things?

JB: I think it probably relates to the way you view your practice today but we’ll pick that up later in the interview. [laughter] You’ve expressed a bit of resentment about the way Mr. Smith treated you as a clerk, but nonetheless you went to work for that law firm. What was it about the firm that drew you?

NS: Oh, by the way. I just remembered. Jeff, why I told the story about Jersey City. You asked me what I did for Abe Miller, the criminal practitioner. The court was not open in the summer in Jersey City so I couldn’t view very many trials. There were some exceptions—there were a few trials, but by and large very few trials. So I did administrative work, interviews, legal research, that kind of thing.

Getting back to your subsequent question, the reason I was attracted to Smith, James and Matthias, it was a first-rate small law firm. There were six lawyers and they had a very wide practice. It turned out they didn’t do criminal law but they did just about everything else and I wanted to just go with a law firm and see where my interests were and to sort of experiment with the practice. Unfortunately, Forest Smith, who was the senior partner in the firm, sort of picked me out as his boy. He was an estate lawyer, a trust lawyer, and a tax lawyer. He was an office lawyer. Because I had been steeped—another word I don’t particularly like but I’ll use it—I had been steeped in that kind of law at Harvard Law School and was just loaded with stuff when I graduated. He grabbed onto me and I worked for him. I did a lot of fancy tax stuff and what not for about a year; all sorts of interesting tax and business questions until I told him what I’m really interested in is trial law. He let me go but the firm did commercial litigation and accident litigation. They defended insurance companies and I saw immediately that that kind of practice bored me to death. I still remember these depositions: “Now Mrs. Green, how far away were you from the intersection when you first saw the light turn green?” I can handle only so much of these so-called fender benders and I found them quite boring. Plus the fact that we would settle all our cases. I thought I was going to start trying cases. Well we would settle the cases in 90+ percent of the time. I was getting rather bored with the practice. I felt like I was practicing like a 55 year old rather than a 28 year old or whatever I was. How old was I when I graduated from—I was 26 when I graduated from law school. So I stayed with that firm for about a year and a half to two years and then the New Frontier beckoned. Kennedy became the president and
Bobby Kennedy was the Attorney General and, as I said, I was not particularly enamored or excited by the practice of law and it never occurred to me that I would go into government but there was obviously a very exciting feeling at the time generated by John F. Kennedy and I decided to apply for a job at the Department of Justice.

**Tape Two**

JB: It’s now March 6, 1993. We stopped the interview yesterday on the 5th. Norm, you were saying that the New Frontier had beckoned and you mentioned Bobby and Jack Kennedy. Can you tell us in more specific terms what took you to Washington, D.C. and the Department of Justice?

NS: Yes. As I say, I was not particularly happy practicing law. I found it a rather dull proposition, at least the way it was practiced with this firm I was with, although it was a very fine firm. It was something about the Kennedy administration and Jack Kennedy in particular that I found very appealing. He was young. He was energetic. He had great ideas to move the country and I simply wanted to be a small part of that. I went down to the Department of Justice and interviewed for the job in the Tax Division. I remember I was interviewed by John Jones. John was the first assistant Attorney General in the Tax Division. Louis Oberdorfer was the assistant Attorney General in charge of the Tax Division. I was notified shortly thereafter that I was to start as an attorney with the Tax Division.

JB: Why did you choose, or did you choose to interview with the Tax Division?

NS: Well, my idea was to go into criminal tax work. By that time, and thinking back now, when I say what was the value of going into private practice or going with that small firm, it had a great negative value, if I could put it that way. It enabled me to cut out large areas of the law that I never wanted to have anything to do with which was really most of the practice of law: accident cases, corporations work, bankruptcy work, tax work, advising businesses. I had concluded that none of that was for me. Real estate, closing titles, drawing wills, you name it, I didn’t want to do it.

The one thing that did appeal to me, although I had done it in very modest form up until that point, was trial work. In that area it seemed to me that the most interesting work was in the area of criminal law and particularly fraud and white collar crime because it wasn’t just a question of a bank robbery case. “Mrs. Jones, the teller, is the person who robbed the bank sitting in the courtroom?” “Yes, there he is.” The so-called direct evidence cases, the fraud cases, struck me as very intriguing and fascinating because you had to build the case step-by-step and determine a state of mind, a fraudulent intent, if you will. And that was the kind of work that I wanted to do at the Department of Justice. The difficulty is that the only openings in the department at the time were in the appellate section of the Tax Division and while I wasn’t very anxious to do appellate work, it’s something that I felt that I would be good at. I did a lot...
of it in law school. I like writing briefs. I like arguing cases. It seemed like an appropriate place to go. What made it more appropriate in this case was that Joe Howard, the fellow in charge of this little subsection that I went to, by subsection I mean I went to the part of the appellate division that specialized in criminal tax cases. What we did is we wrote briefs in criminal tax cases in the various courts of appeal throughout the country, usually at the request of the U.S. Attorney’s Office in a particular district. They were ill-equipped, for example, to handle the appeal, and sometimes I was chosen to be that attorney. In addition, I wrote a number of briefs in the Supreme Court.

But let me get back to Joe Howard. The reason that I was attracted to this particular subsection aside from the work, which I found interesting, was a fellow by the name of Joe Howard. Looking back now—because Joe was an old guy, he was probably my present age or close to it. He had white hair. He was a very inspirational figure to me, perhaps—. he’s on the same level with—remember I told you about John McKenna, my Latin teacher? Joe Howard was that same kind of person. He was a life-long government employee and he represents the best of the bureaucracy. The Department of Justice isn’t really run by the assistant Attorneys General, or the first assistant, or the top brass. The Department of Justice is run year-in, year-out, by its career employees. And there are a number of absolutely first-rate people who have been in the department for many years. They really run the department and make the day-to-day decisions and Joe Howard was one of those people. He was an incredibly hard worker, a very dedicated man, a complete gentleman, a very intelligent man. We got along beautifully. It was a pleasure to work with him as I did, roughly, for the next three years.

JB: Norm, I have a sense that you value hard work and long hours. Is that what you were doing at that time, doing a lot of hard work, if I can use that term loosely, and putting in long hours with the tax division?

NS: Yes. I don’t want to think that I value hard work and long hours per se because I do like to read books and I do like to travel, go hiking, and biking, and stuff like that but, I long ago concluded that the only way you can be successful in our business (and I suppose I can just generalize and say the legal business) is to work very hard. To me there is no substitute for determination and work. Of course, I’d throw in the element of resourcefulness, now that I’m a defense lawyer. You have to make the most of what you have and sometimes you don’t have much. But, yes, hard work is obviously important and looking back on it now, I really enjoyed it. I didn’t regard it as drudgery or I wasn’t conscious of the hours I was putting in because there was an espirit in the Department of Justice then. The Kennedys had, I must say, a knack for getting the best out of people.

Just a very quick diversion here I think it’s pertinent. Bobby Kennedy used to come around occasionally on Sundays to the Department of Justice, and he would go through the various floors and come into the offices.
He’d come in and introduce himself as he did with me once and say, “Hi. I’m the Attorney General. And who are you and what are you doing?” and it was fun for a young attorney. Also, when you had a successful result in a case, for example, I had two cases where we had very successful results in particular appeals, and I got letters from Bobby Kennedy. I’m sure that Bobby had a particular person in the Tax Division draft and write the letter, but he would sign it and then he added a little personal note of appreciation at the bottom of the letter. Again, to a 28-year-old lawyer, that’s pretty impressive. So the Kennedys, again, had that knack of getting good things out of people. I literally burned the midnight oil and enjoyed pretty much every minute of it.

JB: You say that Bobby Kennedy would, from time to time, visit the office on Sunday as if he expected to find someone there. Were there a lot of lawyers working on Sundays in the Justice Department?

NS: Absolutely. Saturdays, Sundays, nights. There was really a sense of mission that what you were doing was important. I think that was another gift of the Kennedys.

JB: I’m not sure that we pinned down the time that we’re talking about now. When did you go to the Justice Department?

NS: I joined the Department of Justice in November 1961.

JB: You were in the appellate section, if I may use that term loosely, you were doing appellate work in the Criminal Tax section. What was a typical day for you if there is such an animal?

NS: Well, at that time, a typical day for me and I look back on it now, Jeff, and it was incredibly idyllic. I can see now why appellate lawyers live so long. Forgive me Jeff. I know you’re a distinguished appellate lawyer. I shouldn’t say forgive me. I wish you the best. But I would come in about 9:30 because, you see, in Washington the traffic ends around 9:00. To get into Washington from where I lived, I always drove in. We used to play a game. We’d park in the mall. And then they would chalk your tire and you’d have to come out two hours later and move it or else you’d get a ticket. There were all sorts of games like that around town. I wanted to avoid the traffic so I would get in relatively late—about 9:30 and then I would just work like the devil all day long on briefs, reading records, researching the law, chatting with Joe Howard or some other fellow practitioners batting ideas off people, and just working. Working—writing, reading, thinking. Really, a wonderful life as I think back on it.

Sometimes not just with the luxury of one case. Sometimes I’d have a few cases going at any one time and I’d be writing briefs in the various Circuit Courts of Appeals, or I’d be writing briefs in opposition to certiorari. Occasionally, I’d be writing a petition for certiorari. That would generally be what my day was. I’d usually break for lunch. I can probably count on one hand the number of meals in my life I’ve missed. I say wryly, and then
I would generally work until fairly late, 6:30 or 7:00. I would avoid the traffic and then I would leave at a time when I could just sort of stream home.

JB: I’m not sure if you said you handled a case or a case or two in the United States Supreme Court, can you tell me a little bit about one or both of those cases.

NS: I wrote numerous briefs in opposition to *certiorari*. That was one of our functions. It’s interesting because it’s an exercise in depressing the issues. When you’re writing a brief in opposition, you want to show the court that there is really nothing to it. And we did that in virtually every case. And what we would do to further depress the issue we would write what we called a Memorandum in Opposition to Certiorari instead of a brief and that was a further tip-off to the Supreme Court. It was sort of fraudulent as I look back on it now although, at the time, we didn’t so regard it because we did try to make a good-faith effort to make a decision about the merits of a particular case. But if we called it a Memorandum in Opposition to Certiorari, that was a further clue to the Supreme Court that we thought the case had no merit. I did have a number of cases on the merits in the Supreme Court. I had a case called *Reisman v. Caplan*. I had cases called *United States v. Powell*, *United States v. Ryan*, *Jaban v. United States*. Those are all cases in which I wrote all or part of the appellate briefs.

JB: Norm, when you mentioned a moment ago writing a memorandum in opposition to a petition for cert, and if I may read between the lines, I understood you to say that the Justice Department was, in effect, sending the Supreme Court a signal. Was there a special relationship between the Court and the Justice Department so there were signals of this sort being sent? And, if so, did you have an understanding, or do you have an understanding, of how much credence the Court was put in the signals that you sent?

NS: Yeah. I think the Court relies to a great extent on government counsel. Certainly, there has always been a special relationship between the Solicitor General’s Office and the Supreme Court. When the Solicitor General opposes a cert petition—and, you well know, Jeff, better than I do—that a very, very small number of cases of cert petitions are granted every year by the Supreme Court, but if the solicitor general opposes the cert petition, by and large, the Supreme Court is going to go along with the Solicitor General.

On the very rare instances where the Solicitor General concurs that *certiorari* should be granted, the court usually follows that recommendation. And in those relatively rare cases where the solicitor general petitions for *writ of certiorari*, more often than not, that writ is granted. So there is a special relationship, and the thing is, every brief that was filed, every cert petition, and every brief in opposition to cert that was filed was reviewed by someone in the Solicitor General’s Office. The Solicitor General’s name, as well as my name and the name of the assistant Attorney General in charge of the tax division, was on each brief or memorandum.
JB: Norm, are you saying then, that the government so rarely petitions for cert that in all likelihood when the government does, or did petition, cert would be granted?

NS: That was certainly true when I was with the department. I really don’t know what the situation is now.

JB: Norm, when we began the interview or near the beginning of the interview, you said that one of the reasons you were drawn to trial work was your view of yourself as being quick on your feet and a good orator. Certainly the biggest part of appellate work is writing. Did you come to think of yourself as a good writer also?

NS: Well, let’s see, Jeff, you know that I’m second to none in admiration of myself. So, let me throw another ode to myself embarrassing as this is, yeah, I enjoy writing. I like to write and I think I do a good job of writing.

JB: What typically went into writing an appellate brief back in the early 60’s, when you were doing it?

NS: Wow. Well, the ability obviously you had to read the record very resourcefully. By very resourcefully, I mean, most of my work was in various courts of appeal and these were appeals from convictions for income tax evasion, by and large. And as you well know, the test on appeal in terms of sufficiency of the evidence is whether the evidence, viewed in the light most favorable to the government, is sufficient to support the conviction. Now, relatively few appeals concern the sufficiency of the evidence. Some did. I read the record with the view of extracting every ounce of benefit to the government. In other words, everything that was favorable to the government because that was my mandate. I was supposed to view the evidence in the light most favorable to the government because that’s the assumption the appellate courts make, and that’s the assumption that the appellate court indulges about the jury’s determination. It was a fun part of the job, reviewing the record and piecing together the statement of facts, which was very important in the case. And then considerable research on legal issues involved; being resourceful as you can, and some sense of integrity.

In fact, that worked to my disadvantage. The first case I had—let me give you an example—was United States v. Dunn. My god, was it US v. Dunn? It was a case out of Georgia in the Fifth Circuit. And the appellant filed his brief and one of the issues was that the prosecutor’s opening statement and closing argument was inflammatory and various prejudicial comments. The lawyer from Georgia was not a very good lawyer; the appellant’s lawyer. I was very young, idealistic, Department of Justice attorney and I felt it was my duty to restate his argument with great clarity and to show that he had really a better case than he thought he had. Mind you, not a winnable case, simply a better case than he thought he had. So in my brief, the government’s brief, I went out of my way to rephrase the argument and to make the issues very sharp and pointed so that there was no confusion whatever. I did that at the oral argument too. I did a lot,
you know, briefing and arguing these cases. And I lost that case. I’m sure the reason I lost it was that I just spelled out his argument too clearly. I never did that again.

I’m going to draw the analogy. I’m going to the practice in the cert cases by the government’s lawyers attempt to suppress the importance of the issues. They try to show the Supreme Court that this is really not all that important. And part of being an appellee and representing the government on appeals from convictions is to show the Court of Appeals. this is sort of frivolous and there’s not much to it. And, there are ways of depressing the issues. I’m talking very legitimate ethical ways of doing that. You never misstate the record or deliberately not put a case in or that kind of thing. I learned that lesson and I lost one other case in all the many, many briefs I wrote over the next three years, and that was a case I simply lost on the merits and not because I rephrased the appellant’s argument better than he could.

JB: You mentioned that you were traveling from circuit to circuit arguing cases. Can you give me a bit of a flavor of what that was like.

NS: This was not a continual thing. I don’t even remember the number of appeals I argued. I did argue appeals, as I recall, in every circuit of the country except the Second Circuit. I did write a brief in the Second Circuit. I never got up there to argue, but I did go to every other circuit. It was simply, you know, going out from Washington. D.C. and going into an area whether it be New Orleans, or St. Louis, or San Francisco. or what have you, and spending a few days there getting ready for the argument, arguing the case, and then coming back to Washington. D.C.

JB: What happened on New Year’s Eve of 1961?

NS: Now, that’s an interesting date. That’s the date that I met my wife. Barbara at a party in Washington. D.C. I had been there roughly a month or two and I had joined the Department of Justice, and Barbara had been there a few months. She was a lab assistant with the Geological Survey. She had majored in geology at Wellesley and was working as a lab assistant.

JB: So she was probably a lot brighter than you are.

NS: Indubitably.

JB: Was this love at first sight. Norm?

NS: I think it was interest at first sight, pretty much, yes. We sort of liked each other right away. The love part might have come a bit later.

JB: How long was it before you got married?

NS: We were married 18 months later.

JB: So 1963?

NS: June of 1963.
JB: You’ve mentioned earlier that you’re Jewish. Is Barbara not Jewish?

NS: Barbara is Unitarian. She believes in one God at most. You’re supposed to laugh at that, Jeff.

JB: I was busy trying to formulate the next question, Norm. Did that cause any problems in your courtship?

NS: A little bit. While I was not a religious really practicing Jew at all, somehow I felt that marriage would be a lot easier if I married someone who was of the same faith. I spent a lot of my time trying to discourage Barbara from marrying me, pointing out the differences in background and culture. When I say I spent a lot of my time, that’s an overstatement, we would discuss it occasionally, and I would throw up all these stereotypes. Barbara grew up in Grosse Pointe, Michigan, which is a hotbed of conservative Episcopalianism, and that kind of thing. I used to mention to Barbara—her parents and Grosse Pointe friends meeting—and even though my dad’s a lawyer, and my mom’s a neat lady— I would throw up all these stereotypical Jewish images. What about these Grosse Point people meeting these stereotypically Jewish people. Actually, I look back; we laugh about it. I would think about things like that, but eventually we concluded it’s not really very important.

JB: Once you decided to get married, did you have any difficulty in pulling off the marriage as they say?

NS: Not really. We did something fairly unusual. We decided to have a Unitarian minister and a Jewish rabbi. Max Bascom was the Unitarian minister from the Germantown Unitarian Church, old friends of Barb’s parents and their minister, and then we went beating the bushes in the Philadelphia area—Meadowbrook. Pennsylvania. a suburb of Philadelphia— to try and find a rabbi. And finally did find a rabbi. After a number of turn-downs, a liberal rabbi—I’m trying to think of his name, his name has suddenly flown out of my head— he said that there was no fundamental difference, Really, between liberal Judaism and Unitarianism. It was a joint ceremony. It was great fun.

JB: You said that his name has flown out of your head. Have you re-connected with him in recent years?

NS: Yes,. and that’s why it’s just awful I can’t think of his name because our daughter was married almost four years ago and it just struck me as being a neat thing to do if we could find that rabbi. You know, the only time we had met was back in June of 1963 in the Philadelphia area. I did a bunch of detective work and ran him down in a synagogue in Chicago and called him. “We’d be delighted if he could come out to marry our daughter. Would you do that?” And he said, “Fine.” And he did. At the top of the United States National Bank Building.

JB: In 1964, did you begin, or did you take on different duties in the Justice Department?
NB: Yes, I started to phase into trial work. Trial work is really what I wanted to do in any event. And incidentally, the appellate work, I can’t think of better training for somebody who wants to do trial work than to immerse yourself in appellate work for a few years to learn about the architecture of a trial: the feel of a trial, the scope of a trial, What’s permissible at trial? What is direct examination, cross examination, opening statements, closing arguments, evidentiary points, objections to evidence, and instructions to the jury? All the stuff that makes up a trial. I was able to get a unique bird’s eye view of what a trial was all about. So that when I phased into trial work I really felt as if I had been doing it for years and I saw—it’s a little strange, but I don’t really regard myself now roughly thirty years later—as any better trial lawyer than I was the first few cases I tried.

Obviously there have been pick-ups in craft, incrementally you gain in craft over the years. But, Jeff, what you gain in craft, I think you lose somewhat in intensity and motivation. Again, I think the appellate work really gave me a good feeling of confidence in what I was doing. When I started trial work it was really without the jitters or the anxiety that most young people have when they embark upon a career in trial work.

JB: I gather you were speaking strictly of the trial of a lawsuit when you say that your skills are, I’m paraphrasing now, not appreciably better now than they were many, many years ago. Because there is much more to trial work than simply trying the lawsuit. And we can touch on this later, but I’m thinking you’re probably much better in other aspects of trial than you were then.

NS: Well, I’m probably more efficient now. I certainly don’t have to spend as much time getting ready for a trial as I did when I was younger. I’m much more familiar now with the mechanics of the process. But my approach to the trial of the case and the structure of my questioning, the way I make a closing argument, or an opening statement, there really is very little difference today than thirty years ago.

JB: Again, we can talk about this later in the interview, and I’d like you to help me get back to this later. There are things about negotiating pleas and working with government lawyers when you’re a defense lawyer that you’re better at now than you would have been thirty years ago. But let’s put that aside for the moment and talk about that later in the interview.

NS: Fine.

JB: Tell me if you will, Norman, a general sense of what you were doing then in 1964 and when you began this trial work for the government.

NS: What I did, and I only did it for roughly a year, is I essentially joined the criminal section of the Tax Division; which is the section that actually review and write the prosecution memoranda with respect to people who are indicted and prosecuted for tax evasion. Very, very briefly here, Jeff, in criminal tax
cases there is an elaborate review process. The special agent of the IRS makes a recommendation for prosecution and that’s reviewed by his superior. Then it goes to the district counsel’s office in the particular area who reviews it and determines whether it should be forwarded for prosecution to the criminal section of the Tax Division of the Department of Justice. An attorney there then reviews the case, writes what’s called a Prosecution Memorandum either accepting or declining the prosecution. Then the case is forwarded from the Tax Division of the Department of Justice to the United States Attorney’s office with directions to prosecute, or in the rare case, giving the United States Attorney’s office discretion as to whether to prosecute. The kinds of cases I went out on the Tax Division were cases where the United States Attorney’s office, for one reason or another, was either ill equipped to handle the case, or the case was a political hot potato, or what have you. The members of the criminal section of the tax division would go out to various parts of the country under those circumstances and try the case. And the major case that I had was a case involving a gentleman named Bernard Estes. This was not Billy Sol Estes, but Bernard Estes from Dallas, Texas. It was a major case and I traveled to Dallas and spent two or three months preparing the case for trial and we started the trial and tried the case for two or three days, and Mr. Estes then changed his plea of not guilty to one of guilt and that terminated the case. That was really my last experience with the Tax Division, and following that I then came to Oregon.

JB: Who was the judge in that case if you remember?

NS: Well, as a matter of fact the judge in that case was Sarah Hughes who swore in Lynden Johnson as President. You remember that famous picture on the plane with Lyndon Johnson and Jackie Kennedy and Sarah Hughes. She was a very no-nonsense tough judge. But I thought she was quite good. She ran the trial very efficiently. And there was no question that she was the boss.

JB: Do you know where she eventually traveled? Did she become a circuit court judge?

NS: I don’t know. I really lost track of her.

JB: Did you work with a local lawyer in the US Attorney’s office in Dallas?

NS: A fellow named Barefoot Sanders was the United State’s Attorney in Dallas at the time. He happened to be a very good friend of Lynden Johnson. And Barefoot did become a judge on the Fifth Circuit Court of Appeals.

JB: You were in Dallas in 1964?

NS: Yes. Not long after the Kennedy assassination.

JB: You said you did that for only a year. You were trying these cases, and I gather just from the description you’ve given of them, that these cases were all unique. If they
couldn’t be handled by the local US Attorney. They were given to your group of lawyers.

NS: That’s correct.

JB: What was your next move then?

NS: I went back to Washington, D.C. after this Estes case and I had a call from Oregon asking me to come out to handle a criminal tax appeal with respect to a lawyer named Otto Heyder, who was a lawyer in Sheridan, Oregon, who was convicted of tax evasion. And the case was tried by a Department of Justice lawyer named Jack Cotton, and he was assisted by Chuck Habernigg, who was then an Assistant United States Attorney. This was a very complex case. It was actually a non-jury trial, in front of Judge Gus Solomon, but an extremely technical complex case. Sid Lezak was the US Attorney at the time and asked me to come out to write the brief and argue the appeal because they were short handed and simply wanted assistance in the case. That was my introduction to Oregon. That was February of 1965.

JB: Were you back doing appellate work in the Justice Department?

NS: Yes. For that brief time. This was simply a call that came in and Joe Howard, who I spoke of before, said, “Well you ought to get Norm Sepenuk to do this.” That’s why I got that case. I was more or less loosely assigned to the Criminal section with the understanding that I could do either trial or appellate work as the opportunity arose.

JB: Forgive me, Norm, why would you come all the way out to Oregon to write an appellate brief? Couldn’t you write it back in Washington, D.C.?

NS: The answer is yes. It’s sort of a funny story. Chuck Habernigg, who by the way is a dear friend of mine to this day — was the Assistant US Attorney on the case. Chuck was supposed to have sent me the entire record in the case and I told him to send it, whatever was the version then of express mail. I don’t think they had express mail, but I said get it to me quickly. Because that was a period of time, every now and then the Ninth Circuit gets, you know, their dander up, and they say no more extensions of time will be given. You’ve got to get the brief in, etc. etc. Because then you have to wait a year to get the argument. But that’s another story. To make a long story short, Chuck simply neglected to send the material, and as a result of that. I had to come out and spend 14 days in a deep black gulf of solitude.

I think Justice Holmes once said, “And it was six in the morning until midnight every day.” But we managed to file the brief on time and during the period. The occasional few moments when I came up for air I got to know Sid Lezak. We hit it off quickly and Sid said, “Gee, why don’t you come out here as an Assistant United States Attorney because we need someone on our staff.” I had seen enough of Oregon at that point to know that it was a very special place and when I told my wife about it she was delighted, since she spent time in the West and loves the West. And out we came.
JB: You make that sound like a very simple decision. But here’s a young guy who spent his entire life on the East Coast. Was it as simple as that?

NS: It really was. I knew that I wanted to do trial work, and I had enough of traveling. Certainly travel wasn’t all that it was cracked up to be. You got into a city, you really don’t know anybody except usually the person you’re trying the case with; although you do meet a few people here and there. You work all day long then you go out at night and drink and have dinner and go to bed. And it’s not all that glamorous a life. I knew that I did not want to do that year after year. I was looking for one place to sink some roots in and Oregon seemed like a wonderful spot. It was a relatively small office. It seemed that the opportunities were good. Sid told me that I would be handling most of the fraud and white collar crime cases in the office. We had one child at the time, Suzy. She was just a year old. And it just seemed like a very good thing to do. I didn’t agonize for a minute. I was very happy to come out here.

JB: And Barbara had been out here before?

NS: She had, very briefly. Barb’s a geologist, and she loves the West and had spent time in Montana, Wyoming, and briefly in Oregon. There was something about the West that appealed to both of us.

JB: You mentioned Chuck Hagernigg? Was he one of your first friends or is he just playing a bit part at the time, as they say?

NS: No. Chuck and I were friendly right from the beginning. I became friendly right away with several people in the United States Attorney’s office and friendships that have lasted to this day: Chuck Habernigg, Roger Rose. Joe Buley. and Jack Collins. And of course, Sid Lezak. Mike Morehouse. I’ve almost named the entire office. There was a fellow named Vic Harr, Bill Borgeson, a friend of mine to this day. It was a small office. There were 7 or 8 of us. Don Sullivan. I think that was the entire office and Don at the time was going to become Clerk of the United States District Court, and I took his place. I came out as a special Assistant United States Attorney, took and passed the Oregon Bar, was sworn in as an Assistant United States Attorney. Don Sullivan became the Clerk of the United States District Court. I remember at the time, Barbara played bridge with Don’s wife and some other women and it was publicized in the newspaper that Don was making, mind you, this was 1965, and Don was going to make $18,000 a year as Clerk of the United States District Court. That was a princely sum at that time. I think I started at $12,500 a year. All the ladies were kidding Marilyn, and what are they going to do with all that money?

JB: Am I right, Norm. that you now have been doing criminal tax fraud cases almost exclusively since you began with the US Attorney’s office?

NS: No. no. I handled a great variety of cases. When there were criminal tax fraud cases, I prosecuted them, but I prosecuted all sorts of cases: mail fraud, securities fraud, em-
bezzlement, bank robberies, Interstate auto theft, and receipt of stolen property. Immigration violations, alcohol, tobacco and firearm violations. A whole host of cases.

JB: Are you speaking now of the period before you came to Oregon, or after?

NS: No, it was afterwards. I became an Assistant United States Attorney in 1965. I prosecuted all kinds of cases, but there was an emphasis on fraud and white collar crime.

JB: But prior to your coming to Oregon. Norm. had you done—?

NS: No strictly criminal tax work.

JB: Alright. Who were the judges on the district bench when you arrived, Norm?

NS: Judges Gus Solomon and John Kilkenenny. Judge East had just left. I don’t know if he had formally retired or not, but essentially he had left the bench by the time I got out here.

JB: And did Judge Robert Belloni come along somewhat later?

NS: Judge Belloni, as I recall. came along in 1967. That’s my best recollection, about then.

JB: Do you remember the first time you appeared before Judge Solomon?

NS: I do.

JB: We often hear stories of Judge Solomon. Was that a memorable occasion for you or not?

NB: It was. It was in a criminal tax case called United States v. Kosher. I came to Oregon in September of 1965 and I prosecuted three cases in a row. I remember there was one case in September that I tried, United States v. Kosher. The next month was United States v. Yak Sum Yik, a Chinese restaurant owner, that was also Judge Solomon. The next month I prosecuted a case against Spencer Collins who was an Eugene accountant. It was a bench trial before Judge Kilkenenny. So my first two trials were before Judge Solomon. And yes, they were memorable experiences. Judge Solomon was a very demanding judge. I’m trying to remember whether I had any particular run ins with him when I first started. And the answer really is, no. I had a remarkably trouble free period with Judge Solomon. For one reason or another we got along very, very well. I’m sure he must have rebuked me on occasion, but he never truly savaged me, which he did do on a number of occasions to other lawyers. I have personally witnessed that.

JB: We were talking a bit ago about the special relationship between the Solicitor General and the US Attorney and the Supreme Court. Was there a special relationship, in one sense or another, between Judge Solomon and the US Attorney’s office in Oregon? For whatever reason, did he have more respect for the US Attorney than he might have for lawyers in general? Could you tell that?
NS: I would say the answer to that is no. Judge Solomon had a rather prickly relationship with the United States Attorneys’ office and more precisely I should say with the United States Attorney. Judge Solomon and Sid Lezak did not always see eye to eye on something. I think that we could probably spend the rest of the day talking about that, but I'm not sure that would be a profitable way to spend our time. There were clearly problems between Judge Solomon and Sid Lezak on the proper way to administer justice in the District of Oregon.

JB: Maybe we should leave that for an interview of Sid Lezak?

NS: Probably.

JB: Norm, when I began practice in 1972, many lawyers who practiced on the civil side were somewhat critical of Judge Solomon’s, what some would call tyrannical ways of running his courtroom. Did you notice a change in the way Judge Solomon ran his courtroom from that first appearance you made until his death in the 80’s?

NS: I think he certainly mellowed out in his later years, but there’s no question for many years, and I tried most of my cases in front of him when I first came to the United States Attorney’s Office. Many cases in front of him. I believe, at that time, I think he had had a heart attack.

NS: We’re back on. We just changed the tape here and I believe I was talking about a very hotly contested trial where Judge Solomon either had chest pain or some feeling of weakness and he was popping these nitroglycerine pills to stay on an even keel. But that was typical of the man. I mean even though he had heart problems and what-not, he was unstinting in his devotion to a case. He’d get there very early in the morning at the courthouse and every now and then I’d be working very early in the morning and there would be a call from Judge Solomon: “Sepenuk, come on up here. Let’s talk about this case we’re going to try today.” I’d come up and I’d usually say, “Judge, is this okay since my opponent isn’t here?” And he’d say, “Oh. don’t worry about that. I’ll call him later. I’ll talk to him.” And he would generally. I’m saying this somewhat humorously. He would call the other side and talk to the attorney on the other side, but I would say the best thing about Judge Solomon, aside from the fact that he was obviously intelligent and was a quick study and saw the point very quickly, was his passion for the right result. He truly had a commitment to justice. It was a nice feeling when you were before him to know that even though there might be a considerable amount of grief in the intervening periods, that when the chips were down, he would almost invariably reach the right result in a case. That’s a rather good feeling that you can entrust your case to him. I would say that was his cardinal virtue as a
judge. There were certain things about Judge Solomon which were not particularly admirable and I’ll leave that for the questioning if you do want to get into it.

JB: As you were just talking, I sensed a little bit of squeamishness when you described how Judge Solomon would call you into his chambers without the other lawyer being present. How would you deal with that situation? If I am correct that there’s a bit of squeamishness in your voice?

NS: Well, there was. I suppose if I had more integrity myself or was more a person of principle, I would have said, “No, Judge. I’m not coming up to your chambers to talk to you about the case.” I’m trying to remember, looking back all those years ago, whether that ever did cross my mind. It very well may have crossed my mind. Again, there is nothing that was particularly evil that went on in these sessions. He would call me into his office and say “What about this case; how long is it going to last; do you see any particular problems; something we should discuss out of the presence of the jury?”

I don’t want to make it sound as if he and I were conspiring to do things that shouldn’t be done, but even the kind of thing we did together, you know, I felt was not particularly appropriate without the other attorney being present. I do personally know that on occasion he would call the defense lawyer and talk to the defense lawyer and say, “Well what about it. what about this case any problems?” That kind of thing.

JB: What was your relationship with Judge Solomon over the years?

NS: I had a very close relationship with him. The simple fact is he liked me very much. He liked my work. I liked him very much. We got along very well. I think part of the reason for that is that I worked very hard and I was invariably well prepared, and he appreciated that. We had a very good and very close relationship. As I said, remarkably trouble-free with one exception. When I left the U.S. Attorney’s Office and went on the other side. I had a case once, the Mignot case. There was a guilty plea and a sentence. We appealed. It had to do with whether or not Mr. Mignot should have been allowed to withdraw his guilty plea. I filed a Notice of Appeal and I found out shortly thereafter that Judge Solomon was really upset with me. I ran into Palmer Lee who was a U.S. probation officer, and Palmer said, “I just came from Gus’ office and we were talking about you. And he feels like you’re a son who sort of stabbed him in the back for what you did in this Mignot case.” I remember being startled at the time because all I did was file a Notice of Appeal. Lawyers do that sort of thing—they appeal cases. It does happen. And, of course, to me, there was nothing whatever personal in it. I did feel that Judge Solomon made a mistake in not allowing my client to withdraw his plea. But you know, for a period of, goodness gracious, I think it was a year or two we had a very cool and distant relationship and then—now it’s coming back to me. He sentenced Mignot, I believe it was, to two years and then he decided to cut Mr.
Mignot’s sentence. I believe the reason—God, I hope I have this right—was this fellow in Idaho named Simplot (he was the potato king over there) had just gotten some great deal over in Boise (at least by Judge Solomon’s lights he had gotten a great deal) and Judge Solomon was furious about this. I think he called me—he may have even initiated it but maybe I did—but the short of it is that he decided to cut Mr. Mignot’s sentence, and that began our period of rapprochement. We later became very good friends again. We had a very good, close professional relationship—I was not socially friendly with Judge Solomon. Every now and then we would have lunch together, very rarely though. Every now and then I’d stop in and see him because I was over at the courthouse all the time. Anyway, it was a close relationship.

JB: Every now and again when lawyers gather to gossip, one lawyer will say that Judge Solomon would, from time-to-time, have his court reporter delete things from a transcript of a case that was going to be appealed or was on appeal. Have you heard rumors of that sort, and, if so, do you have any knowledge of that happening?

NS: You know. I have heard rumors of that sort for years. I don’t think it happened in any case that I had anything to do with. I’m not saying that it did happen or it didn’t happen. I just don’t know. I know his court reporter, Jerry Harris, very well and you know, I’m inclined to think that most of these stories are probably inflated or just simply not true. Because if it did happen, the aggrieved lawyer would certainly feel free to point that out either to Judge Solomon himself, or to the Court of Appeals, or file some sort of an appropriate declaration or affidavit concerning that. I’m not sure whether anything like that has ever happened.

JB: You’ve talked about Judge Solomon’s keen intellect and his ability to reach the right result. Is there a darker side to Judge Solomon despite your very good relationship with him personally? Did you see a darker side of his personality?

NS: Yes, I did. I sort of intimated that when I talked about our own relationship back when I became a defense lawyer, which took a year or two to repair. He was a man of very strong and passionate feelings. He had a definite code and if you didn’t live up to that code, or if he felt you violated that code, he could be very harsh in his judgments. Also, even though I personally rarely had a run-in with him, there is no question that I attended numerous court sessions. Aside from my own trials with Judge Solomon, I used to go “to call” occasionally when I was an Assistant United States Attorney. Remember in the days we used to do that, and he would run that once a month?

JB: What is “call,” just for the uninitiated?

NS: Okay, I’m not the best person to ask because as you know, Jeff, I’ve done almost exclusively criminal work. I did handle a few civil cases here and there when I was with the U.S. Attorney’s office. and that’s why I’m
somewhat familiar with the “call” system. Judge Solomon, once a month, would gather all the attorneys in every single case that was on the docket and he’d have a status report. He would proceed to do what he could to move the docket along. They were very interesting sessions, particularly with lawyers who came before him who were not prepared, didn’t really know what the cases were about, and had no idea about the details of the case. He could be very difficult with them, but the main point I wanted to make is that Judge Solomon, and I personally witnessed this, he could certainly be rude, could be intemperate and, at times, could even be cruel.

I’ll give just one illustration, and by the way, I rarely attended other people’s trials; very, very rarely. I happened to be watching a trial one day where Mike Morehouse was the Assistant U.S. Attorney. It was a criminal case, and Mike was making his opening statement. At one point in the opening statement, Mike said, “Ladies and Gentlemen of the jury, the defendant Mr. So-and-so, may or may not elect to testify. He certainly doesn’t have to testify and if he doesn’t, you can’t draw any adverse inference.” Well, that is the law, but Mike probably shouldn’t have said anything about that. That’s the kind of thing you leave to the judge. Judge Solomon flew off the bench. I mean, we all sat there in absolute amazement. He came down off the bench, walked over to where Mike was standing in front of the jury and said, “All right. Now, Mr. Morehouse. You can get up there where I am. You want to be the judge? You want to tell the jury what the law is?” He was livid with rage, and Mike Morehouse was absolutely stunned. You could tell he had no idea what to make of it. He was clearly shaken. And, by the way, Mike Morehouse was a very good lawyer and a very nice and decent person. If Mike Morehouse had been one of these lawyers who played fast and loose, or who cut corners and what not, maybe what Judge Solomon did would have been at least partially understandable. But Mike was a very decent guy and not flamboyant and very much to the point.

In any event, it was an incredible display of anger and terrible judgment on Judge Solomon’s part. Now, that was atypical. Please don’t think that I’m implying that Judge Solomon would do that frequently. He certainly wouldn’t. But he did blow up at attorneys and particularly where attorneys were ill-prepared. That kind of thing. He did not have the finest judicial temperament. It doesn’t alter my judgment about Judge Solomon. You could entrust your case to him, and that’s what really stands out, but he did not have the temperament, really, to be a judge.

JB: I suspect there is a great contrast between Judge Solomon and Judge Kilkenny?

NS: Yes, there is certainly a contrast. Judge Kilkenny certainly ran his courtroom, just like Judge Solomon did. Judge Kilkenny was a very—mind you, when I started to appear before Judge Kilkenny, I could be dead wrong about this, but I think Judge Kilkenny was already at that time in his mid-60’s. But he was a very vigorous guy and a man of
great presence on the bench. He didn’t tolerate any messing around. He was very bright, very forceful. He was a very good judge. He was very dubious sometimes about the government. It was very interesting, for example, Judge Kilkenny thought things like the Miranda rule—he was very critical privately of the Supreme Court and what he regarded as outrageously liberal and anti-police rulings. Yet when the chips were down and motions to suppress, for example, were filed before Judge Kilkenny, his attitude was, “Alright, Supreme Court judges. You want a Miranda ruling? I’ll show you some of the stupid consequences of your rule.” Sometimes he would rule against the government, not wanting to, mind you, but Judge Kilkenny—his instincts are conservative—and I think pro-government. He’s been that way as a Court of Appeals judge. I don’t want to say that he was unfair because, frankly. Judge Solomon’s instincts were also quite pro-government and, yet, I think both of them certainly tried to conduct a fair trial. Both of them, with the one exception of the temperamental defect in Judge Solomon that I mentioned, were excellent judges. Judge Kilkenny—I enjoyed appearing in front of him.

JB: You mention having lunch with Judge Solomon, and from that I infer to more personal relationship than you might have with another judge. Was your relationship with Judge Kilkenny anything like that?

NS: No. No. I had no social or personal relationship at all with Judge Kilkenny, and yet we liked each other very much. He’s written ten letters to me, and about me, which I’m not sure whether to go into here, which indicated that we had a close relationship.

JB: When you say you think it might not be appropriate to go into that here, is that because you’d prefer not to?

NS: Oh no. No. It’s just that we’re going to have to end this tape eventually, Jeff, and I just don’t want to start throwing too much rhetoric out. But some very nice letters and various situations I’ve had with Judge Kilkenny.

JB: What was Judge Kilkenny’s temperament on the bench?

NS: He was judicial, but tough. Again, no messing around in his courtroom. A lot like Judge Belloni. And as matter of fact, a lot like Judge Solomon: Judge Belloni, Judge Solomon, Judge Kilkenny, all three of those judges have what I call “presence.” They exude an authority beyond their physical stature. Judge Solomon and Judge Belloni. Particularly, were not men of impressive physical stature and yet, of course, they are perched up on top there with their black robes. That in itself gives them a presence, but the message clearly that flows from Judges Solomon and Belloni is one of “I am the Judge. I run the courtroom and you listen to me.” Judge Kilkenny was the same kind of judge.

JB: Let’s talk just briefly about Judge Belloni then. I’ve heard a number of lawyers say that he was, and is, short-tempered and difficult to get along with. I’m generalizing. With
that sort of introduction, what’s your impression of Judge Belloni’s temperament?

NS: I’ve always liked Judge Belloni very much. I consider him a friend. Again, we’re not socially friendly. Again, he’s somebody I have rarely seen. I’ve had lunch with him a few times. He was a very close friend of Bill Tassock, a mutual friend of ours. I have a particularly good feeling about Judge Belloni because the biggest case I’ve ever tried is United States v. Golden Rule Realty, back in, I believe, 1967. That was a massive fraud case. I could talk to you about that for hours, and I can assure you I won’t, but it was a major fraud case with six defendants in several western states: Hawaii, Colorado, Washington, Oregon, California, and Arizona. A real estate fraud, mail fraud, and securities fraud case. We prosecuted that case before Judge Belloni. It was his first major criminal case. Everyone was convicted, as they should have been. It was a three-week trial. I think in Los Angeles, Chicago, and New York it would have been a six-month trial, but we stipulated to massive amounts of evidence.

JB: Norm, you said you didn’t want to spend a long time talking about that case. Why don’t we digress for a second and, in the course of telling me about Judge Belloni, tell us a little about the defendants and what that case was about.

NS: Let me give you an example—they would come in to a place like Portland—they would buy distressed properties, mostly income producing properties like the Hollywood Townhouse in Portland. They would buy it with no money down. They would make payments on these notes and trust deeds which purported to show obligations in various states on property in the various states. It turned out that the property almost invariably consisted of rock piles out in the desert or cacti-strewn worthless land, but they were very skilled salesmen. Again, these were distressed properties. People were very anxious to sell them. These folks would come in and then milk the properties. They would ask people to pay six months’ rent in advance and they’d give them a free month. Things of that nature. They did this all over the West.

What they would do is they would take the money and then fail to pay the obligations. If they had done that in just one place, you would simply have a classic mortgage foreclosure and it would be a civil case, but there was an obvious pattern here, and they did it all over the West. They moved very, very quickly. What we did is— one advantage of being in Oregon as opposed to a place like California is that we have much less of a bureaucracy. Our Northwest SEC office, and our postal inspectors, together with me and Roger Rose, another Assistant US Attorney who handled the case with me, did a very intense and quick investigation. We tried that case and the indictment in that case was the first statement of what the case was all about. In other words, we didn’t even have a written report from the SEC or the postal inspectors because the case was moving that rapidly.
JB: Let me stop you for just a second, Norm. Can you explain in a little bit more detail the scheme that was being perpetrated by these fellows? They would buy distressed property and then would they turn around and sell to others sight unseen? Or have I missed something?

NS: They would not do that. They would simply let the property go into default and then use the money for their own personal purposes or send it to Switzerland, or what have you, hoping they were simply in default and eventually it would end up in bankruptcy or that kind of thing. It’s very complex and I suppose, Jeff, I should have reviewed the case more but that was the essence of it.

Judge Belloni, getting back to him, conducted the trial, as he usually conducts a trial. Let me give you one example about Judge Belloni. This case was tried in only three weeks, which was very short for a case of this magnitude. We put on, as I recall, 109 witnesses. One of the things Judge Belloni likes about me, because other lawyers have told me this, and he has told me this, is that I didn’t ask a single question in redirect examination. Judge Belloni has certain pet peeves. He doesn’t like expert witnesses, generally speaking, and he hates redirect examination. He said, “Norman Sepenuk called 109 witnesses and didn’t ask a single question in redirect.” All the defense lawyers were appointed lawyers. One of them was Art Whinston, a very nice person and a patent lawyer, but with experience in complex litigation. And, Art. bless his soul, is a very thorough fellow, and his cross examination became very detailed and tedious. At least tedious under Judge Belloni’s standards. At one point in the trial, Judge Belloni walked off the bench, came over to Art and stood there hulking over him in his black robes and he said, “You know, I don’t like what’s going on in this case. There is a real bottle-neck here, and the bottle-neck is you, Mr. Whinston.” And it had a very devastating impact on Art Whinston who did, I must say, curtail his cross-examination after that. And we tried the case, as I said, very quickly, very expeditiously. That was the beginning of my relationship with Judge Belloni.

JB: We just took a short break. Norm, as you know, my IQ isn’t very high and I was trying to piece together the Golden Rule Realty case. I still wasn’t clear on the facts of that case. Can you follow up on that just briefly?

NS: Yes. What really happened during the break was that it occurred to me, Jeff, that my explanation of the facts of that case was not really very clear. The reason why it’s not very clear is that I haven’t really thought about the case in the last 26 years and I hadn’t particularly been prepared to talk about the case. I’m still not because it essentially bores me to recount the facts of old cases even though it’s a case that I spent literally months in preparing, and knew cold at the time, but don’t particularly care to master right now on March 5 or 6, 1993.

What I did, I went to a scrapbook that I had back in the days when I used to keep stuff like that and Barbara used to collect all these clippings; something that I haven’t done for quite some time. For the historian, or for the
person who is interested in studying the case further, and, frankly, I can’t imagine who that will ever be. The Oregon Journal of August 4, 1967 carries an article summarizing my closing argument in that case, and also containing an editorial on August 9, 1967 by Jim Magmer entitled: “U.S. Attorneys Expose Phony Deals.” Both of those articles pretty succinctly summarize the nature of this fraud, which was buying distressed properties with essentially worthless notes and trust deeds on California and Nevada properties. Again, I’m not sure it would be very profitable or interesting to get into the interstices of that case.

JB: Let’s move back to Judge Belloni then. Tell us a little bit about your relationship with Judge Belloni. I guess we are still in the period of 1965 to 1968—right in there?

NS: Yes. My relationship with him began in that case, and it was a very good relationship, and it’s remained so to this day. I happen to like Judge Belloni very much and he’s a very pleasant, amiable man to be with. There was really two Judge Bellonis. There is the Judge Belloni who is just the person and Judge Belloni in chambers who couldn’t be more cordial, charming, and helpful. And then there is the Judge Belloni on the bench. Judge Belloni is one of those folks who become a bit transformed when he’s on the bench. He has a lot of authority, a lot of presence, and can be fairly testy and abrupt and short and curt and irritable with lawyers and litigants. He has that side of him. I took great delight the other night at a roast I took part in of the various federal judges including Judge Belloni and Judge Burns and Judge Panner and Judge Skopil. But I enjoy Judge Belloni. He’s always been very, very good to me. But, I have observed him in situations in court where he has treated some attorneys fairly roughly—not to the same extent as Judge Solomon, but he can be a rough hombre.

JB: How would you compare Judge Belloni’s intellect with Judge Solomon’s?

NS: That’s a tough one. It is so hard to gauge intellects. Judge Solomon, there is no question, Judge Solomon was a very, very bright man; probably a superior intellect. But Judge Belloni is a bright man. He’s a smart guy. When a federal judge falls short in his or her performance, I think it’s rarely due to lack of intellect. I think most people who ascend the federal bench, most people who hit the federal bench, have certainly sufficient raw IQ and brain power to handle the job. If there are deficiencies, or if there are very admirable traits other than brain power—I’m talking about judgment, temperament, that kind of thing, may have more of an impact than raw IQ.

JB: Was Judge Belloni ill at any time? I have a vague memory of Judge Belloni having tuberculosis or something of that sort?

NS: Judge Belloni has been ill in recent years. He certainly wasn’t ill during those years that we are talking about now. But in more recent years Judge Belloni has had vari-
ous health problems. I am assuming he has probably recounted that in his own oral history.

JB: I’m not sure that I’ve made this very clear, but we’ve been talking here the last few minutes about Norm coming to the U.S. Attorney’s Office in 1965 and we’ve been talking about roughly a 3-year period from 1965 to 1968. Is there anyone during that period, Norm, who was particularly influential in your life either professionally or on a more personal nature?

NS: Certainly Sid Lezak. Sid Lezak is the one who brought me to Oregon. And Sid had a very fine concept of his role as U.S. Attorney. I’ll tell this one anecdote at the risk of making this much longer than it should be, but when I was out here working on that brief that I told you about where I was spending night and day working on it, I was able to take a break one evening. I believe it was a James Bond movie that I wanted to see. In any event, I said to Sid because he was working late that night, “Would you like to go to a movie?” And Sid looked— [recording stops abruptly]

NS: Okay. We just changed the tape here and I was talking about Sid Lezak; about taking a break and asking him whether he would like to go to a movie. And Sid looked a little non-plussed, as if I said to him, “Would you like to go out and kill somebody?” He said, “Would I like to go to a movie?” “You know, I think I would. I think I’d like to see that movie. I’ve heard it’s very violent, and part of my role as United States Attorney is to determine acceptable levels of violence in the community. We have to do that in various cases, pornography cases. What are contemporary standards of morality and what not. So, yes, let’s go to that movie.”

I remember, at the time, being very amused by that and saying, Of course I never thought I would see Sid again. I figured I was out here for one shot, write the brief and go back to Washington, D.C. I said, “Let’s just to the movies.” I kidded him about his sociological stuff and what not. And by the way, not to give you the wrong impression, Sid is an absolutely delightful guy. I consider him a very close friend. He’s the reason I’m in Oregon. He is a life enhancing fellow. It’s a joy to be in Sid’s company. But he does have this part of him in that he exalts his role as United States Attorney. But having said that that was probably one of the reasons why I found it so much fun working for, and with, him. Because he did have a rather noble concept of his role as United States Attorney that the government does win only when justice is done. And that was impressive.

JB: Norm, was the US Attorney’s office a diverse group there? I say that because of the way you’ve described Sid Lezak. Was he the sort of guy who encouraged diversity of thought among the US Attorneys?

NS: That is an excellent question. Yes. And it’s been both the source of the strength of the office and some of the weaknesses of the office. Sid essentially would let everybody try his own case. I was going to say his or her own case, but it was all “his” certainly in those
days. Let me give you an example. Sid was a personal believer in full pretrial disclosure in criminal cases. And I have strongly felt for many years that that’s the way to go in criminal cases; complete, full discovery.

When I was a prosecutor, I used to turn over my entire case as quickly as I could to the defense lawyer; sometimes months before trial. Not just because I was fair, and I thought it was the only fair thing to do, but it’s the best tool we have to promote the prompt disposition of cases. The defense lawyers see the case through this full disclosure. More often than not, in the majority of the cases, they come and plead out. Get the case over quickly and spare you the necessity of having to spend much time and considerable effort in preparation.

In any event, Sid believed strongly in that. I believed strongly in that. Consequently, I would make full disclosure. There were other lawyers, and let me give you an example, Chuck Turner was one of them. Chuck Turner, who is a dear friend of mine, would hold back his case as a government lawyer, generally speaking, some exceptions. Chuck would not make disclosure of his case. He wanted to gain every advantage that he could. And under the federal criminal rules and procedures, which are very primitive rules. We all think we have this great system of justice in this country. There’s plenty wrong with the administration of criminal justice in this country and that’s one of them. The so-called Jenks Act.

The only time the government has to turn over its statements is after the witness testifies on direct examination. Well—what kind of pressure that creates. You have to take a break in the trial. There are time constraints. You’re sitting there reading, dozens and dozens of pages and what not. In the District of Oregon, it was very rare that an Assistant US Attorney was that bad. Usually, like Chuck Turner, for example, would usually turn stuff over the weekend before the trial was to start. At least you had some time, not nearly enough time, but some time. In any event, that was an example.

In the case of somebody like Chuck, or an Assistant US Attorney who felt similarly to Chuck, Sid would not intervene. Sid would not say: “Chuck. I want you to make full disclosure.” He would simply let each Assistant sort of do what he or she was comfortable with. And he felt that out of that diversity came strength. In that sense, he did not run a tight ship; that he asked everybody to adhere to his own point of view. But, there was a lot of diversity in the office. And everybody was pretty much their own free agent as long as they didn’t do anything obviously dishonest or unethical or over-reaching. That kind of thing.

JB: Let’s move ahead. Norm. You left the US Attorney’s office for a time, didn’t you, in 1968?

NS: I did.

JB: Why don’t you tell us a little about what happened in 1968?

NS: In 1968, I went to the John F. Kennedy School of Government at Harvard to get a master’s degree in Public Administration. The
way that came about is that at the time the National Institute of Public Affairs, a group back in Washington. D.C., were sponsoring what we called mid-career programs for government folks, lawyers and otherwise, who had reached a point in their career—I guess I was about 35 years old in 1967-68, sort of precisely in mid-career—to allow somebody to go to a school and reflect for a year. While you reflected, they paid your full salary and your tuition and your books and what not. Get away from the hurly burly and the nitty gritty and become a little more broad-minded, and dip in again into a liberal education. I thought it would be nice to take advantage of that. No Assistant US Attorney had ever done that. The program hadn’t been going that long, but I decided to apply for that. I was very delighted that I did receive that nomination. I was the first Assistant United States attorney in the country to do that.

The idea was through Ramsay Clark. Ramsay Clark was the Attorney General and his assistant was a fellow named Hugh Nungent—who was the first person to get that award—a very bright lawyer who was Ramsay Clark’s assistant. I was going to become the trouble shooter. I was going to go to Harvard, get a Master’s degree in Public Affairs, specializing in urban affairs, and I was to become the Department of Justice trouble shooter to the cities. this was at a time, if you will recall, the cities were “blowing up.” This was the ferment of the late 1960’s, riots in Washington. D.C. and stuff like that. Incidentally, I went back to Washington. D.C. to help them try cases against the rioters, but that’s another story. In any event, that was the point.

JB: Was it your intent. Norm, then to leave the US Attorney’s office in Portland for good?

NS: Oh no. I’m not sure it was that clear cut. The answer was yes. I probably would have left the office to do this trouble shooting work, but not necessarily fully for good. The troubleshooting was limited almost by definition. I might do that for a year or two years, whatever, and then probably return to the United States Attorneys’ office. As it turned out, I went back to the Kennedy School at Harvard, spent the year there, and received the degree. In the meantime, Nixon became President and Ramsay Clark, who Mr. [J. Edgar] Hoover had characterized as squishy soft on Communism—I say that with a smile. The short of it was that Ramsay Clark was then out. So all this trouble shooting business and all these great plans, went by the boards, which was really fine with me. By the time I had spent a year back East again I realized how much I loved Oregon and missed Oregon and was very anxious to get home. I came back after that year and resumed my job as an Assistant United States Attorney.

JB: Your son John was born in 1968? Were you in Washington. D.C. when he was born?

NS: No. We were in Oregon. Let me think now, isn’t that awful, I don’t remember this. We were in Oregon. Suzy, my daughter was born in Washington. D.C., but John was born—mow I’m remembering—he was born in Oregon, but when we went back to Cambridge in 1968,where I did that master’s program, John was just a 3 or 4 week old baby,
Suzy at the time was 4 or 5 years old and we lived in a two bedroom apartment in a high rise, Peabody Terrace in Cambridge. That was a far cry from our lovely suburban home in Portland.

JB: Not long ago I heard someone refer to Ramsay Clark as a traitor because he’s of late has spent so much time in Iraq and giving aid to some of our, or at least alleged to have been giving aid to some of our enemies. Was he thought of in similar terms back when you were at Harvard in 1968?

NS: He was thought of in similar terms by people like J. Edgar Hoover and Nixon and what not. But I thought Ramsay Clark was a hell of a guy. He wrote a very perceptive book. I don’t remember the name of it—about the administration of criminal justice in this country. Poles apart from his dad Tom Clark, who was a very conservative Supreme Court judge. I think highly of Ramsay Clark. Mind you, he’s very much to the left of where I’m at. I certainly don’t agree with all of his views, but I think highly of him in the same way I think of William Buckley, most of whose views I don’t agree with either. I think he’s an admirable fellow in that he’s had a consistent code and philosophy for many years that he’s generally stuck to and he expressed it very admirably and I’m sure very sincerely. I regard Ramsay Clark as the same kind of person. It’s good that we have people like him around.

JB: You indicated early on in this interview that, at least you implied that, you’ve not ever been interested in politics particularly. Is that correct and whether or not it is, what is your political affiliation?

NS: I’m a registered Democrat. Barb, my wife, was a registered Republican. but I think she’s changed to be a registered Democrat. I’m not even sure of that. I vote for whoever I want to vote for, but I’m a registered Democrat. I voted for Hatfield. And I’ve voted for all sorts of Republicans over the years. I don’t feel deeply any one ideology. I suppose it would be tough for me to go with a conservative Republican. On the other hand, I’m delighted whenever there’s a liberal Republican around that I can vote for; if I can use liberal and conservative in those classic ways.

JB: When you were back at the JFK School of Government did you meet anyone with whom you have remained good friends?

NS: Uh, no. [Laughter]

JB: The short answer.

NS: I really didn’t. It was just a one year interlude. We did meet some folks from Canada, the Luciers, who we have stayed friendly with for a number of years. But no absolutely lasting friendship.

JB: You returned to Portland in 1969. Is that correct?

NS: Yes in 1969. It was just the academic year. I suppose I got back in June of 1969. I
could have gotten back in June of 1968. I really don’t remember. But I got back somewhere in that ’68—’69 era.

JB: And when you returned, did you step right into a full case load?

NS: Yes. When I returned I did exactly what I did before I left. A full caseload of criminal cases.

JB: Are there any that stand out from that period?

NS: You know. I was thinking about this morning and it’s amazing, and again, I apologize, I probably should have studied the scrapbook and what not. It’s amazing how few of the cases stick with me. I do remember, it was shortly after I went back, I prosecuted a case against fellows named Arnett and Johnson. They were entertainment agents and it was a tax evasion case. Bruce Spalding was on the other side. And that was an interesting trial. You know, a whole host of cases, but for me to conjure up these cases, as I say, it generally bores me to recount cases. There are a considerable number of fraud cases that I prosecuted throughout this period and other kinds of cases.

JB: These days, Norm, I think there are a hand full of criminal defense lawyers and there’s the US Attorneys’ office. Back in the early 70’s was that true, were there 3 or 4 or a dozen very good criminal defense lawyers, or was the representation broader than that?

NS: You’re talking about the early 70’s now? I left the US Attorney’s office in 1972. So you’re talking about those last three years.

JB: Let me amend that to include the 60’s and 70’s.

NS: Alright. There were a few lawyers. I don’t think nearly as good as the caliber of the lawyers today. There were some interesting lawyers. There was a fellow named Oscar Howlett and when I first came to the US Attorney’s office, I remember Sid Lezak and other lawyers telling me: “Watch out for Oscar Howlett. He’s one guy we don’t want to lose to and be careful about him.” I never found Oscar that way. I had a number of trials against him. Oscar lived out of his head and out of his hat. He was a terrible book lawyer. His research was non-existent and he did his own typing. And his motions were dreadful. In fact, anything he submitted in writing was dreadful. But he was a very good natural lawyer. He had a wonderful gift of gab; was a very powerful speaker and he did very funny things. To me they were funny.

I didn’t see Oscar as an enemy. And he never struck foul blows with me. I enjoyed trying cases with him. I’ll give you one example of the kind of thing he used to do. I was prosecuting a case and Oscar was defending and I still remember the witness, it was a woman named Lydia Tidball. She was just one of many witnesses—you’re making me laugh Jeff—I’m going to have to get myself under control. I think I will. She was one of many witnesses in the case but Oscar decided

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to turn her into the government’s star witness. He got up in his closing argument and he spent most of his closing argument talking about Lydia Tidball, the government’s star witness. I mean he made her into this, and she wasn’t, she was just a person who had some relevant information. But Oscar would do things like that. And it was so outrageous, it was funny. In my rebuttal argument I tried to point this out. I remember doing it in a funny kind of way to the jury. Saying, that it is so outrageous it’s funny. But, he was very entertaining. I have very fond memories of Oscar.

There were a few other defense lawyers in town. One of them I don’t think I’m going to name him. He eventually resigned from the bar, but he was a very well known defense lawyer. Not a very good chap. By the way, I can count maybe on the fingers of one hand the number of lawyers I’ve met since 1965 in Oregon who I have no use for. And that’s a pretty small number. Generally, the bar here, it’s an admirable bar. Ethically—hard working with some, but very few exceptions. What question did you ask me? Why am I talking about—oh, the caliber of the defense lawyers.

Bob Carney is a guy I’ve always liked and respected. He did some defense work in federal cases. Bob did a fair amount of tax evasion work. He was a very careful guy, very conservative. He would always call over to me when he knew I had a case in the office ready to prosecute. He’d say, “Now, Norm before you indict Mr. Jones, please let me come over and talk to you because I want to talk to you about the case and see if I can persuade you not to prosecute or indict on a lesser number of charges.” After a while, I told Bob, “Bob you no longer have to call me. Whenever I have one of your defendants, I will call you. I will check with you. I just won’t willy nilly indict.” But one day, Bob was out of town and his secretary called me. I thought I would play a little trick, and she called to say “Mr. Carney is out of town, and he wants to make sure that he has a chance to talk to you about the Jones case before you indict.” I thought I would be mean that day and I said “Well, tell him he’s too late. We indicted Mr. Jones yesterday and there’s really nothing to talk about.” There was a dead silence on the other end. Of course, then I started to laugh and told her I was only kidding. But Bob’s probably hasn’t done criminal defense work in years, but he’s a fellow I have always liked and respected.

NS: Yes. I went back to Washington, D.C. in 1971. What had happened was this. There was something called the Brown Commission. And that was former Governor Pat Brown of California. I guess he was a former governor by then. He and a group of distinguished citizens had been commissioned to make a study of the federal criminal laws and they came up with a bill. I think it was S1 to revise and reform the federal criminal law in this country. At the time, it was a major subject of discussion in criminal law circles. And the Department of Justice thought it was an outrageous bill; far too liberal and very unsound. The Attorney General at the time, I think it was John
Mitchell, said, “We’ve got to get a response to this bill.” And maybe the response was this S1. That’s not important. But he said we’re going to form this team and we want to get a very experienced bunch of lawyers in here to write the government’s bill.

A seven-man team was created and two of the seven members were Oregons: Norm Sepenuk and Chuck Turner. We were asked to come to Washington to be part of this team. My mission was to write all the stuff on white collar crime, mail fraud, securities fraud, antitrust, what have you. Chuck, as I recall, did conspiracy and a few other areas. And we had an intense year back there. It was probably the hardest work I’ve ever done. By the way, Dave Robinson, who used to be a Deputy District Attorney and was an Assistant US Attorney in Portland—he’s a Portlander—at that time, 1971, was a professor at George Washington University. He was an advisor to our group. So there were three Oregons in this team. Chuck and I went back there for a very intense year. It was awfully hard. If you’re asked to write on a blank slate—write the criminal law of this country—that was fantastically hard, fantastically challenging. What is income tax evasion? What is conspiracy? What is attempt? What is solicitation? What is perjury? It required a tremendous amount of study and effort and writing and thinking and reading.

We became quite familiar with the legislative process. I testified before one of the Senate committees. It was an interesting year. Again, though, I was very happy to finish that year and get back to Oregon because it was not the kind of thing I wanted to on a long term basis. We eventually came up with a bill and then in much diluted changed form in 1987, many, many, many years later, through all sorts of political trading and jockeying and that kind of thing, the bill was passed. That was the Sentencing Reform Act of 1987.

JB: Norm, by then, by then I mean 1971, you had a third child. Is that right?

NS: Let me think. Peter was not born until 19—by God, you’re right. Peter was born in 1970. That’s right Jeff.

JB: When you spent this year back in D.C. with Chuck, did your family go with you?

NS: Yes. My family. Chuck’s family. Chuck and I were office mates in the Department.

JB: I’m speculating a bit here, Norm, but is it fair to say that your selection to draft the new part of the United States Code, was a reflection of your growing reputation in white collar crime nationwide?

NS: I’d love to just say yes to that question, but I don’t know. Perhaps. I don’t even remember why I was asked to come back and why Chuck was asked to come back. Sid Lezak may have had something to do with that. I just don’t know. I do know that I did try a case back in Washington. D.C. when they were short handed there. Did get to know some of the folks back there. I was also up in Alaska trying cases as an acting United States At-
torney at one point. This was after I got back from Harvard. Just by being there for a number of years. I did become known to people back in Washington, D.C. That probably had something to do with it.

JB: What was it like to testify before a Senate subcommittee?

NS: It was interesting. And certainly you feel you’re doing something on a national level. We get so immersed in the nitty gritty of cases we sometimes lose our perspective. And it was interesting in that I felt I was doing something that had national importance. It was fun. I liked doing it.

JB: When I looked at a televised hearing today, for example, I think it must be a frightening experience particularly for an inexperienced witness to testify before a very high profile committee. Did you have any sense of that?

NS: Not at all. These were not televised hearings for one thing. These were hearings before the Senate Judiciary committee. As I recall, it was even a subcommittee of that committee that were having hearings on the federal criminal code. I was testifying on various white collar crimes, and I think particularly on tax evasion, on this particular occasion. And it was a very relaxed informal session. I think I had to prepare my statement, which I inserted into the record, all that nonsense—permission to insert this into the record. All the stuff that goes on, and then questions afterwards. It was all very relaxed, very informal. No sense of an adversarial kind of a thing. They were just looking for information, and I was more than happy to give it.

JB: When you returned to Oregon in 1972? Back in the US Attorney’s office, so you had been there for about 8 years by now?

NS: Yes. Since 1965. Seven years or so with two stints back east.

JB: Were you getting a bit weary of government work by that point?

NS: Yes. I was. I was 39 years old and I was starting to re-assess. I thought it was time to leave the government for a lot of reasons. One is the government was becoming grayer and duller to me as time went on. Sid Lezak also used to talk about the tone and the mood in Washington when he went back there on trips for US Attorney’s meetings and what not. I remember at the time as a young Assistant US Attorney saying to myself, “Well, jeez, aren’t you sort of exaggerating that?” You know we have our jobs to do out in Oregon and does it really make much difference about who’s on top in terms of the tone and the mood.

I was a little bit cynical about that. But as time went on, I came to realize that Sid was right about that. There is a certain tone that is set by the people on top. I think it’s true with Clinton today. Kennedy was assassinated. Johnson came in. Nixon came in. Government became less interesting; that was one factor.
Another factor is. I really got tired of putting people in jail. Prosecuting is for young people. Chuck Turner is one of the few people I know who probably enjoys prosecuting as much today as he did 25 years ago. After a while, the great feeling of a jury verdict of guilt, and when you’re a government prosecutor you don’t really lose cases. You hardly lose. I never lost—forgive this immodesty—I never lost a jury trial when I was with the government. I shouldn’t have. You should only prosecute good cases, and cases beyond a reasonable doubt are evident. I’m not saying the cases couldn’t have been lost, but they were good cases.

When I first started, particularly a case I tried for a week or two weeks, or what not, you work very, very hard. And the guilty verdict would come in. I’d feel pretty good about that. Not just because I was sending some-body bad to jail. I rarely personalized this. There’s very few defendants I truly disliked. But I felt like I had an obligation to the agents who worked the case and all the people who put in effort on the case. I felt pretty good about it. It could last two, three days, seven days; sometimes as much as a week. But by the time I was through in 1972, literally, that feeling would last for moments. The jury would come in with a guilty verdict, and I’d say, “That’s fine,” and then five minutes later I was thinking about the next case.

NS: I remember every now and then when there is a jury verdict the wife of the defendant or the sister or the mother would immediately burst into tears and say, “Oh no!” and what-not. I reached the point where I was saying, “Gee. Do I really want to be doing this?”

Another factor, as I mentioned, the fact that government was becoming more gray and I got tired of putting people in jail. I was really looking for new challenges. The cases change but the process of convicting someone essentially remains the same. Finally, money was a factor. Here I was—39 years old, I had three children. We lived well. We had a nice house where we had a mortgage, not a very expensive house. We had one car. Not a new car by any means. And we had $7500 in the bank. We ate well and we went to movies and we had an occasional vacation and stuff like that, but essentially we were not saving any money and I said: “Three children, college, and what-not. Maybe it’s time to start making some money.” Those were all factors that entered into my decision to leave the government.

JB: Was this basically a decision that you and Barbara made together? Did you talk with anyone in the U.S. Attorney’s office about leaving? I guess a broader way to ask that question, is did you talk with other people about the decision?
NS: Not really. It was just a decision that I made. I did talk to Judge Solomon about it. Not to ask his advice. I didn’t ask anybody’s advice on whether I should leave or not because I knew I was going to leave. I didn’t know who I should practice with, or whether I should practice alone or with a firm. I had made up my mind that since I really didn’t have the money to start a solitary law practice that I would go with a firm, an office with a cordial bunch of folks as I could find and just do my thing and have some sort of overhead sharing arrangement with them. I was casting about and there were a number of firms that I could have done this with. There were four, five, or six firms, but I went up to see Judge Solomon and said, “By the way, I’m thinking of leaving the government. In an instant, his hand came down on the phone and he called Ray Kell and Cliff Alterman—he was a partner of Ray Kell’s—they had practiced together and Cliff Alterman had been his law clerk at one time and they were very close. He said, “Norm Sepenuk is leaving the government and he’s looking for a place to land and I think you guys would hit it off quite nicely.” That’s how I got over to Kell Alterman. They seemed like a nice bunch. I’ve officed with them now for over 20 years and it’s been a very happy association.

JB: Before you left, did you manage to spend most of your $7500 or before you began your new venture?

NS: Yes, that’s great. What happened was I left the U.S. Attorney’s office. I opened my private practice. I had no clients, none whatever and no promise of a client. I just assumed they would come in through referrals by other attorneys, but we decided to go to New Zealand where Barbara’s sister and brother-in-law lived. He’s a professional naval officer and he was on loan to the New Zealand Navy for a few years. We took our three young children and we flew over to New Zealand. We spent three weeks in New Zealand—a week in the south island and two weeks in the north island, half a week in a Fiji, and a couple of days in Hawaii and blew $5000. When I started in private practice in October 1972, I still remember we had $2500 in the bank and a house and a car and that was our net worth.

JB: You didn’t have a dog?

NS: I think we did have a dog then, yes.

JB: You said you weren’t making a lot of money and were saving virtually none. Nonetheless, there is a certain security in working for the government. You were leaving that—a frightening proposition. Where did you think your new cases would come from?

NS: Well I did have, for a very brief period a consulting contract with the government on the Federal Criminal Code. It was $100 a day. I did that briefly after I went into private practice because I was finishing up my work on the criminal code. Where I thought my cases would come from were from other attorneys’ referrals. There really wasn’t anybody in town at that time who was specializing in federal criminal litigation. Bob Carney did an occasional criminal tax case, but Bob was not
essentially a criminal lawyer. There was a bit of a void there. I figured that I would get referrals from other attorneys and that’s exactly what happened.

JB: Did you have in mind specializing in the defense of white-collar criminals?

NS: Yes. That’s exactly what I intended to do. I wasn’t going to confine it to that. I would take a criminal case and still do to this day outside of the area of fraud or business crimes. But I thought that would be the area that I would tend to specialize in.

JB: Do you remember the very first case that you had as a defense lawyer?

NS: Vividly. It’s very interesting. I should have gone through my scrapbooks, but if you were to ask me to recount cases, I’m sure I’m going to do a very poor job of it even though some of these were very well publicized and intense cases. I do remember my first case. Hmmm. This case didn’t result in an indictment so maybe I shouldn’t mention a name. I don’t think I will mention a name. He owns a rather large and well-known company in Portland to this day. It was a tax evasion investigation. I was able to persuade the Internal Revenue Service not to prosecute. I was able to show that there were all sorts of bookkeeping errors and a lack of criminal intent.

I’ll never forget— it’s funny because you talk about the transition from government to private practice—the fee part, of course, is what really bothers most lawyers—setting fees and collecting fees. Bruce Kayser, I still have a soft spot for Bruce an attorney in town who referred the case to me. The client came to my office and I remember I was going to ask him for a $750 retainer. I virtually gagged on asking him for it. “My god, am I going to truly ask this fellow to turn over $750 of his hard-earned money to me in this case?” But that’s the way I approached things at the time.

JB: When I asked about your first case, frankly, I was expecting to hear about a trial. That really leads to another question and that is: what is a case? Do you view your role now as being a negotiator and working to resolve a case before trial or do you look primarily to try lawsuits? That’s a broad question.

NS: I have a simple answer to that. I look to get the best possible result for my client. I am result-oriented, the way any lawyer should be. From the first time that a client walks into my office, I am looking for ways to successfully resolve the case be it through negotiation, trial, appeal, post-trial, or otherwise. In my field, where you are often not given very much to work—where you must be as resourceful and innovative and creative as possible, the first thing that I look to do is to persuade the government not to prosecute. Particularly in these crimes that are fraud: business crimes, white collar crimes. There is usually a lengthy period of investigation, and if you are lucky enough to get involved in the case early, if the case hasn’t been butchered or screwed up by another lawyer or by an accountant, or by the client, where—for example, admissions have been made, where courses of action have been initiated which are not very wise or prudent.
If you can write pretty much on a blank slate, there is all sorts of stuff you can do.

One of the best things I do in my practice is to tell my clients to keep their mouths shut. To claim the 5th Amendment. Not to talk. I’ve had more cases over the years that I’ve gotten from other lawyers where the client made the mistake of talking at the initial interview instead of keeping his mouth shut. If the client had not said anything, he wouldn’t have been prosecuted. It’s that simple.

There are all sorts of things that you do. You play a chess game with the government. Do you talk to the government or not? If you’re certain that your client is innocent, very rare in people who see me, then you want to get the case over as quickly, as cleanly, and as inexpensively as possible. But where a client has done something wrong, you’ve got to play the chess game. Should you turn over documents? Should you cooperate? Should you claim privileges? Should you not claim privileges? There is a whole host of questions. Then, if you’re convinced that your client is going to be indicted, and let’s say massively indicted, very serious crimes, you can negotiate. Sometimes you can persuade the U.S. Attorney’s office not to indict. If you can’t do that, you’re already engaged in an exercise in cutting losses. Instead of indicting on eight counts with a potential 30-year jail term they indict on one count with a potential three-year jail term. That kind of thing. You are always looking—aside from winning the case outright—to cut your client’s losses. When there is an indictment, if you are convinced that you can win the case, that the jury is not going to find guilt beyond a reasonable doubt, of course, you say to your client, let’s go to trial. If there are real problems in the case, though, and you think there is a chance of conviction, negotiation is extremely important. Particularly today when you have these horrendous penalties under the new sentencing guidelines and where prosecutorial discretion is absolutely—you have to deal with it because the government is very, very powerful. It has a great arsenal of power in terms of the statutes it can bring the case under. Again, the answer is, get the best result that you can either through negotiation or trial.

JB: You and I have had a number of private conversations over the years. From those, I’ve drawn the conclusion that the most important thing to do is to persuade the government not to indict in the first place. Whether or not I’m right about that, I have this sense that you and Bob Carney operate in much the same way. Is there anything to that?

NS: Yes. That’s a good comment, because those are the real wins. It’s wonderful to get an acquittal, just like it’s wonderful when you are a prosecutor to get a conviction, but the real wins are the cases that no one knows anything about. There are several people in Portland who are operating today in very well-known businesses and no one knows a thing about what happened to them. I know it and they know it, but people who were not indicted. Those are the real wins. Your name is not in the newspaper. You are not subject to the terrible anxiety and expense of defending a case after there has been an indictment. So if you can possibly get the government to
dispose of the case before that happens, that’s an incredible thing to do for your client.

JB: How do you go about doing that, if you can answer that in a generic way?

NS: You have to convince the United States Attorney’s office, or the investigator. depending on what stage you’re at, that this is a case that they are not going to win. They are simply not going to be able to prove guilt beyond a reasonable doubt or you can have a situation where there is guilt and it just would not be good prosecutorial discretion to proceed.

JB: Would you, in a particular case, have your client meet with an investigator or meet with the prosecuting attorney to convince that person that your witness is credible and telling the truth.

NS: Yes. I’ve done that and I’ve done that to personalize, to humanize the defendant. I’ve done it on a number of occasions—not always with success mind you—but on occasion with success. Simply the personal meeting between the Assistant U.S. Attorney, or the agent, or the postal inspector, or whoever, and the defendant is enough to persuade them that they should not go ahead with the case. I’ve also had polygraphs done. Most of my clients flunk their polygraphs, but, occasionally, someone will pass the polygraph. Government lawyers take polygraphs quite seriously.

NS: Yes. I say that with a smile. I usually do that to loosen a client up. A client comes into my office and says I really haven’t done anything wrong. I say, “If you haven’t done anything wrong, you probably shouldn’t see me because I get my kicks in this business out of being a craftsman, out of a challenge, and the guiltier you are—if I have a multi-defendant case—it usually pains me if I’m not representing the person who is most guilty. I prefer to represent the so-called “king-pin” because it’s more of a challenge to my craft rather than a lesser defendant. I get into that situation all the time where I’ll represent a lesser defendant or a witness and then a week later the top person will come to see me. By that time you have a conflict of interest and can’t handle it. I make a joke out of it, usually. I say, “I’ll send you to another lawyer.” We’ll talk about the case and I say, “I occasionally represent somebody who is innocent, but I have enough faith in the system that if you’re innocent, you’ll probably just be washed out of the system and will be able to convince the government not to go ahead with the case.” It’s a way of also getting that person, the client, to tell me what’s going on. Protestations of innocence are, more often than not, followed by a story which indicates at least some degree of guilt. I want the client to be as honest with me as he can.

JB: A moment ago I mentioned. I was paraphrasing your statement about not wanting to represent an innocent man. Have you
represented women defendants in your career?

NS: Relatively few. I have represented women defendants, usually along with their husbands where even though technically and theoretically there is a conflict of interest, the husband and wife have agreed. Usually in writing, to waive any conflict, because they simply do not want to go through the folder of hiring another lawyer and they want to present a common and unified defense. On the other hand, I’ve had cases with husbands and wives where there has been another lawyer representing the husband or the wife. Only relatively rarely have I represented women though I have had a number of cases.

JB: It’s probably a stereotype, but many of us when we think of bank fraud and tax fraud, we think of men and not women. Is the stereotype a fair one in your experience?

NS: Yes. Very few women, comparatively few women, commit crimes.

JB: I would imagine that there are some fairly basic differences between a prosecutor and a defense lawyer. Can you tell me a few of them?

NS: I haven’t ever reflected on that question. There are differences and there are many similarities. The difference, I suppose, is that when you’re a prosecutor you always believe in your case. You represent the United States, that’s your client, and you don’t initiate cases or try cases that you don’t feel deserve to be initiated or tried. It’s a very stressless occupation in that regard. I never lost a moment’s sleep when I was a federal prosecutor because I believed in every case that I prosecuted. I felt that every case was a just one.

As a defense lawyer, 98%+ of my clients are guilty, and I occasionally take cases to trial where a client is guilty. I must say that every case I take to trial I feel I have a crack at. If I have a hopeless case, I’m usually successful in persuading the defendant to enter a guilty plea for his own good. I have taken cases to trial where the defendant has been guilty in a technical sense, but a substantial dose of innocence too. You can’t believe in your case with the same fervor, except occasionally, you do. Occasionally, you get a case that you feel the government has overreached, it’s a miscarriage of justice, the case shouldn’t be prosecuted and then you have the same kind of feeling for your case that a government prosecutor has. That to me is the main difference. There are an awful lot of similarities between prosecuting and defending, but that wasn’t your question.

JB: I was thinking in terms of the way a case is prepared for trial and the vast resources that the government has against the defendant who, relatively speaking, has few resources.

NS: Resources was a very good word because that gets back to one of my favorite words, and that’s resourcefulness. When I hire somebody to work for and with me, I look for that quality. In many cases, you don’t have very much, so you have to extract every
ounce of good stuff from what you have, either on the facts or on the law. I look for that in people who I interview for jobs. As a defense lawyer, all you are trying to do is create a reasonable doubt. I think as a prosecutor your job is much tougher. The prosecutor does have the burden of proof and the prosecutor generally has more work to do than a defense lawyer. That’s not necessarily true. It’s not true in every case but, by and large, that’s true. As a defense lawyer, you’re back there in the bushes looking to shoot holes in the prosecution’s case, either on the law, or on the facts, or both.

JB: Have you ever represented, or been asked to represent a defendant, who was so bad—if I may use that word—that you couldn’t defend the person; couldn’t undertake the defense?

NS: No. I’ve been very fortunate. The cases that I have taken—I gave up appointed cases many years ago when I first started as a defense lawyer. I did take some appointed cases for a period of years, and some of those were pretty rough cases. One was a kidnapping case that I recall, a very brutal kidnapping. I’ve had very serious bank robbery cases that I’ve defended. But I can’t think of a case where I refused the case because the person was so bad. Now, of course, in federal court you have a great advantage. Obviously, as a retained lawyer I can pick and choose whatever I want to do. If I was a state court lawyer, and again I do very little state court work, that might get difficult. I mean, a rapist, a murderer, an arsonist, that kind of thing, I probably would find it very difficult to defend someone like that. Since I do mostly, almost exclusively, federal court work, I have rarely had that problem.

JB: How do you justify defending people that you know are guilty?

NS: That’s an easy one. The reason being that in our system, which is adversarial and not inquisitorial, that is the way the system is set up. Everyone is presumed to be innocent and my job is simply to keep the government honest. To make sure the government fulfills its duty of presenting, first a prosecutable case and then, secondly, a winnable case, i.e. a case where the jury can find guilt beyond a reasonable doubt. That’s the way the system works. It’s largely irrelevant what the actual state of affairs is. In other words, if my client comes in and tells me, “Yes, I did the deed. I committed tax evasion or I embezzled the money, or whatever, mail fraud, anything.” It’s nice to know that but really my inquiry is there proof of guilt beyond a reasonable doubt. What do the government’s witnesses say? What’s their documentary proof? I look at the government reports and what-not. If there is not guilt beyond a reasonable doubt based upon what the government presents, it’s my duty to try the case, and to enter a not guilty plea, and to try to get the client acquitted. I must say, the system rarely fails. It works in the overwhelming majority of cases.

Talk about knowing that you’re defending somebody who’s guilty. I must say, Jeff, unlike Perry Mason, my guilty clients are usually found guilty or plead guilty. My in-
nocent or substantially innocent clients are usually washed out of the system by way of no indictment or are acquitted. So the system usually works quite well.

JB: Is there an inconsistency your saying that it’s not your job, in effect, to pass judgment on the person who is alleged to have committed a bank fraud? For example, and what I sense was queasiness on your part about representing a rapist?

NS: It’s really almost an aesthetic thing, if you’ll forgive me. I chose the area of fraud and white-collar crime because that was the area of the law that most appealed to me because it involves mostly circumstantial evidence. And they are interesting cases to construct, to prosecute and to defend. A rapist, a murderer, an arsonist, yes, usually I’ll have great abhorrence of the act and I simply probably would choose not to defend. Those people have every right to the best possible defense, to the best possible lawyer, to the presumption of innocence and all the stuff that I talked about before about keeping the government honest, keeping the state honest. It applies in every case. But, for goodness sake, I’m a person, and I do have a revulsion. Over the years, most of the time, I like my clients because my clients are people mostly like you and me who usually took too much of the government’s money, didn’t turn square corners with the government or with investors and what-not. I’ve had a few clients over the years who I hated and I usually didn’t discover I hated them until after I was retained. But I didn’t drop the case because of my personal dislike for them. I kept going which was my duty to do.

JB: How does one go about retaining Norm Sepenuk as a lawyer?

NS: You just call me or come in and see me. Tell me about your case. We see if we can come to an agreement about the case—the fee and that kind of thing. Usually, it’s a referral from another lawyer.

JB: What determines, whether or not you will take a case?

NS: Part of it depends upon my current workload. If I am overwhelmingly busy and that’s going to be the case for quite awhile, I might not take the case. But if there is a gap or it’s certainly in my ballpark of the type of case I usually handle, the chances are that I will accept it. If there is a minimal amount of appreciation of the client’s case, and I do have to have some feel for the client—if it’s a client that totally turns me off, whether or not he can pay my fee, I’m not going to take the case. There has to be some rapport, some initial good feeling there about the client. Not necessarily about his case—it can be the worst case in the world. But at least about the client and then if it’s in my field, if it’s the kind of thing I do for a living, particularly if it’s in the area of fraud or business crime. It could be a drug case and it could be a number of other federal crimes. I would probably take the case. Then, of course, the matter of the fee, and that’s negotiated at the time.
JB: What goes into setting a fee?

NS: I wish I knew. It’s so difficult. It’s a guessing game. I look at the case and I see what I think it’s going to take and I usually charge on the basis of time, effort, skill, and result. And sometimes I tell the client that there will be a premium for successful result but, quite frankly, more often than not, I never follow through on that. It sounds good when I say it, but as a practical matter, I rarely follow up on that. The important thing in my business is to get some sort of a retainer because in many cases my clients, when they get to me, are already in trouble. They are strapped for money or they are on the verge of bankruptcy or their creditors are after them or something is happening which makes their financial future sort of bleak. Not all my clients, but a pretty good chunk of them. Again, you look at the situation. You look at how much time and effort is the case going to take.

Sometimes I will call the Assistant U.S. Attorney who has the case, or the federal investigator who has the case, and this is before I set the fee, to get the government’s perspective. Sometimes a client will come in and have a totally wrong slant on what the case is all about. I will check with the government and see what the future holds for the case, and then it’s a guessing game. Sometimes I guess too high and sometimes I guess too low. I try to be fair about it. Sometimes I’ll get a $25,000 retainer in a case where I only should have only gotten $10,000 and the reverse is true. I’ve gotten too little money; I’ve gotten too much money. It’s a guessing game and you try to at least cover the number of hours you think you are going to put in the case.

NS: I should add that sometimes I’ll take a case purely on an hourly basis, and that’s been more true for me in recent years. That’s particularly true of the larger cases where it’s obvious the case is going to entail many, many hours, and particularly where I have a client who it’s more or less obvious that the client can pay the charge. I’ll simply tell the client that I will do it on an hourly basis.

JB: Then will you still require a retainer up front?

NS: I usually require a retainer up front, but I’m not as concerned about that if I’m representing, let’s say, a corporate client, or a client who obviously seems to be solvent and will remain reasonably solvent over the months and years ahead.

JB: In the case you described a moment ago, where you got a $25,000 retainer and it turns out you only do $15,000 worth of work, and the next case you got a $25,000 retainer and it turns out that $35,000 worth of work is required. In each of those cases, do you work for the amount of the retainer and then one case eat $10,000, and in the other case keep an extra amount of money?

NS: No. I try not to. What I do is get the retainer, and then let’s say I dispose of the case where I get a $25,000 retainer and do $15,000 worth of work, you mean on an hourly basis?

JB: That’s right.
NS: I’m probably not working on an hourly basis. But let’s say I get the $25,000 retainer and I persuade the government not to indict. I think I’ve earned my $25,000 retainer almost regardless of the hours. I make this very, very clear in a letter to client right at the beginning of the case. But in the case where I go over the $25,000, what happens there is that I will then tell the client that additional monies are due, let’s say, on an hourly basis. If the client doesn’t have additional money, many times, occasionally, I get stuck in a case like that. I have had cases where I’ve had to stay until the bitter end just because I’ve committed to the case and I have filed an appearance and you can’t just willy-nilly ask the court to relieve you.

JB: Moving back in time just a little bit, to 1972, when you left the US Attorney’s office and went out on your own. What sort of relationship did you have with the lawyers who stayed behind with the US Attorney’s office?

NS: Excellent. As a matter of fact, I can count on two or three fingers the number of Assistant US Attorney’s in the last 20 years who I didn’t get along with. Very small number.

JB: How important is the relationship between the defense lawyer and the United States Attorney’s office?

NS: Very important. The fate of the case almost hinges on it in many cases. Unless you have some kind of rapport, unless you’re able to work with one another even though your adversaries, it doesn’t bode well for your client. One of the sad things over the years that I’ve seen, for example, is the prickly, I’ll use that word again, and tenacious and conflicting relationship between the Federal Public Defender’s office and the United States Attorney’s office. I’ve witnessed this at very close hand for many years now. The plain fact is that a number of the Federal Public Defenders and a number of the Assistant US Attorney’s just don’t like one another, and it makes particularly negotiating the case very difficult and then it makes the trial a much more cutthroat affair. I think usually to the detriment of your client. In the great majority of the cases, the government has one hell of a lot more cards than you do in their deck. If you put a chip on your shoulder, the government is usually very willing to knock it off. As I say, the odds are usually in their favor. So you have to be very careful about throwing down a gauntlet to government counsel.

I go out of my way, and I think it’s my nature in any event. I’m not naturally a pugnacious, combative person. I can be combative and pugnacious in the courtroom under a defined set of rules, but outside the courtroom I rarely attack and I rarely am very aggressive. I certainly don’t think of myself as the least bit abrasive in my relationships. I do go out of my way to get along with the Assistant US Attorneys, it’s the only way to practice law.

JB: You will remember underlining this question, because I won’t be clear on the surface of the question, is the issue of integrity. Have you ever been in the situation where it was in the best short term interests of your
client to take a particular position with the US Attorney’s office, knowing, however, that taking that position would damage your long term relationship and thus the interests of your clients in the future with the United States Attorney?

NS: Wow. That’s a great question, Jeff. You know, I can’t think of a case where that has happened. A case where I’ve taken a stand on a short term interest of my client for the sake of a short term interest and in the long run that damages the relationship that I have with the United States Attorney’s office?

JB: Let me give a bit of an example. That’s not quite on the book, but it will give you a flavor of what I’m asking. Sometimes you will hear of a lawyer having to take a legal position that he or she thinks is ludicrous. The lawyer may, although it presents some long shot chance of a positive result in this case, the lawyer because he or she doesn’t want to lose the respect of the court before whom he or she will have to appear in the future, won’t make that silly argument if you will. I’m just wondering if there’s an analogous situation or circumstance in the federal criminal practice?

NS: I don’t know if this gets to it at all. I had a recent case where a client of mine has threatened to commit suicide. I’m convinced the client will commit suicide and I raised an issue on appeal which I have to say is as close to being frivolous as any case I’ve ever had. I told you. I’ve had the good fortune that every case I’ve taken to trial, it’s been honorable, and I have always been able to argue with a head high and with the hope of winning the case. And every appeal I’ve taken, I felt has been well taken. I did have one case where I took an appeal, I think, primarily to keep the client alive. I was lucky enough to get the United States Attorneys’ office and the judge to agree that my client could remain out on bail pending appeal. It was a guilty plea coupled with a reservation of a right to appeal based upon a denial of a motion to suppress, which you can do in federal court, and in state, for that matter. And that case is pending. Essentially it was more or less a frivolous appeal on the motion to suppress issue, but a very strong appeal on a sentencing where we were claiming that the judge made a mistake in the sentencing. But that was a case where I didn’t feel good about the appeal, yet I felt it was absolutely essential to the interests of the client, i.e. to keep the client alive for as long as I can. That’s not quite on point with the question you asked, but it’s an aspect of it.

JB: It’s not clear to me Norm, how taking an appeal will keep the client alive?

NS: Okay. Let me explain this to you. I probably shouldn’t have brought this case up to start with, but let me very briefly. Two psychiatrists and two psychologists have told me that this client will not spend any time in jail. He will commit suicide. He was sentenced to ten years in jail. I’m convinced that he’s not going to serve a day in jail, but I had to keep him out of jail, and under federal law nowadays, if you plead guilty in a case, or if you are found guilty in a drug case, you have to show extraordinary reasons why you shouldn’t be
committed to jail. I can assure you this fellow could not show those reasons, but I was able to get the United States Attorney’s office not to oppose my request for release pending appeal and the judge agreed to go along with that. That’s what I mean by keeping him out of jail and preserving his life. Not quite on point. I suppose, Jeff, I really don’t have an answer to your question; not in my experience.

JB: Whether you know it or not, you have the reputation for being the foremost white collar criminal defense lawyer, certainly in the city and perhaps in the region. Have you given any thought to why people might think that way about you? What is about Norm Sepenuk, the lawyer, that brings people to that conclusion?

NS: I’m very good at clouding people’s minds. I’m very good at trickery and deceit. Thank you very much. It’s certainly gratifying to hear that. For one thing, I’ve been around a long time. I’m pushing 60 and I had a number of years with the United States Attorneys’ office doing the kind of work that I do and the last 20 years defending these kinds of cases. Simply by longevity, alone, I have developed a reputation over the years. I’m sure that has something to do with it. I like to think that the results I’ve gotten have had something to do with it. Word of mouth amongst prosecutors, judges, defense lawyers, and others. There’s a lot of ingredients that go into that. Sometimes reputations are well deserved and other times they are not. I can only hope that in my situation it’s well deserved.

JB: In a similar vein. maybe a less direct way of getting at this, what is your definition of a good criminal defense lawyer? What goes into making a good criminal defense lawyer?

NS: I touched on that before. And that is getting the best possible result for your client with the material and stuff that’s available. That to me is the definition of an excellent criminal defense lawyer. And there’s a lot that goes into that. And it starts, again, the first day that the client walks into your office. It doesn’t start or end at trial, it starts at the beginning of the case and you do what you can all along the line to either: one, win; or two, cut losses. And of course that includes a case not being brought.

JB: Do you have another view of what makes a good prosecutor?

NS: Honesty and integrity are really the key things with a prosecutor, I believe. You must have a wonderful sense, or a finely honed sense, of fairness and I always thought that Sid Lezak had that. I think Sid has a very nice sense of what’s fair and what’s right and what’s proportionate to the situation. That, to me, is what prosecution is all about. Prosecuting cases that deserve to be prosecuted, and that does include every violation of law. There’s a large area of prosecutorial discretion. And you have to know the difference.

JB: When I asked the question about what makes a good defense lawyer. I expected you to say something about honestly and integri-
ty. You didn’t say that about a defense lawyer, yet you did the prosecution.

NS: I had mentioned that before. Maybe I should have stressed it. What I think what I actually said was the defense has to keep the government honest. Obviously, as a defense lawyer you have to have honesty and integrity, particularly when you deal with prosecutors when you deal with judges, when you deal with juries. I mean there’s no reason why you shouldn’t be as credible, as honest, and have as much integrity as the prosecutor. I guess it goes without saying. I don’t really have to articulate it.

JB: I think it was in 1972 that Judge Otto Skopil was appointed to the district bench. Do you have memories of appearing before Judge Skopil?

NS: Oh yes. I appeared before Judge Skopil on a number of occasions.

JB: Would you care to share some of your observations in the same vein that we talked about what Judge Solomon, Judge Belloni, and Judge Kilkenny?

NS: Absolutely. Judge Skopil is a prince. He’s just a very, very decent, fine person. He’s what made America great. He’s one of those, I’ll say Calvinist, and I don’t mean it as rigidly as it sounds. Judge Skopil is a hard working, honest guy who’s got an awful lot of integrity. Speaking of integrity, he gets to the office very early in the morning, keeps his nose to the grindstone, and really does a job. Very conscientious man, and a very even tempered man. I always said that if Judge Skopil ever got angry with me. I’d probably kill myself because I would have done something so terrible to get him angry at me. I would just feel awful about it. He’s just a very fine person.

JB: Is he fine to a fault? I must say I’ve never heard anyone say anything about Judge Skopil as a judge. When I hear someone spoken of that way I wonder if maybe he is as I say, fine to a fault. Is he too nice a man?

NS: I don’t think so. I don’t want to give the wrong impression of him. He can be firm, and he is firm on many occasions. He knows what he is doing, and you have to careful. I mean you can’t go into Judge Skopil’s courtroom with the idea that you’re going to be able to do anything you want to do. He runs his courtroom. But he is just a very nice person. I don’t think to a fault. I roasted him by the way, a few months ago, at the Federal Bar Association dinner. I jokingly said after Judge Skopil sentences somebody, and he lets them out of jail for a while until he can self report to the institution. I spoofed the situation. I said Judge Skopil saying to the defendant. “And Mr. Defendant. I’m having some people over for dinner on Saturday night. I’d be delighted if you could join us.” As a matter of fact, Judge Skopil did that once with a defendant in a federal case.

I did have one instance, just to follow up on your question. I represented a fellow in a case and Judge Skopil sentenced him and then Judge Skopil said, “Best of luck to you, and is there anything you’d like to say?”
Judge Skopil had imposed a fairly harsh sentence, and he also said to him, as I recall, “I want you to be at peace with yourself.” It was a little incongruous, I must say. He had given a fairly harsh sentence and yet he was saying to the fellow, I want you to be at peace with yourself, and if there’s anything you want to say. The defendant said, “Well, yes. I don’t think this is a particularly just sentence, and I’m sort of upset about it.” There was a certain dialogue and Judge Skopil said, “I’m sorry you feel that way,” and what not. But that was an example, if I’m reaching for things—I might say that Judge Skopil was a little too solicitous there. I think that Judge Skopil should have let it go. But it’s very hard for me to say anything negative about Judge Skopil.

JB: If memory serves me, Judge Burns was appointed at the same time that Judge Skopil was to the district bench. Do you have memories of Judge Burns’ first coming on to the bench?

NS: As I recall, I hope I’m right about this, Chuck Turner and I were in Washington, D.C. doing this criminal code revision until 1972 until the fall. I think it was about that time that Judges Burns and Skopil came back for their hearings before the Senate committee, and I even seem to recall I may have even gone over to one of the hearings. And I seem to recall flying back to Oregon with one of them, In the same plane. It was right about that time. I remember when Judge Burns came on the bench.

JB: He had considerable experience on the trial bench in Multnomah County?

NS: Yes.

JB: Do you remember trying your first lawsuits in Judge Burns’ court?

NS: I don’t remember the first lawsuits, but I had a number of trials with Judge Burns, which I remember very well.

JB: What kind of judge was he?

NS: He’s very smart. He’s very knowledgeable in criminal cases. I don’t know how knowledgeable he is in a civil case, although I did try one civil case in front of him, too, an alleged civil rights violation case in Eastern Oregon. But he knows the law. I’ve always said that Judge Burns and Chuck Turner are two of the most knowledgeable people I know in the area of criminal justice and the administration of criminal justice. Judge Burns is a walking law library and every now and then he’ll pick up the phone, whether you’re a prosecutor or a defense lawyer and he’ll call and say, “This is “James the Just,” have you seen United States v. Hopkins, or what have you.” He’s very knowledgeable. He’s quite smart. He knows how to run a trial. Like Judges Belloni and Kilkenny and Solomon, and Judge Skopil, all of these judges know how to run a courtroom. Burns is no exception.

JB: I’ve heard it said that Judge Burns has difficulty making a decision. Has that been your experience?

NS: Yes. Judge Burns takes a long time on certain kinds of cases; motions to reduce
sentence, that kind of thing. I think I had a case where he sat for a year on a motion to reduce sentence. I know the Federal Public Defender’s office—they do more post-trial work and habeas corpus work, and that kind of thing, than I do. I do very little of that, but in those cases particularly, Judge Burns is notoriously quite slow. I base this primarily on conversations I’ve had over the years with members of the Public Defender’s office. I can’t complain particularly. In fact, I can hardly complain at all about Judge Burns in my cases in terms of delay. He’s been fine.

NS: I wouldn’t call him a hanging judge at all. I would say, for better or worse, that he has a tendency to favor the prosecution. It’s very hard for me to say that, because I like Judge Burns immensely. He’s a wonderful guy to have a cup of coffee with; he’s a lot of fun. I think he’s a fine human being, but I have always thought that he showed a tendency to favor the prosecution. He would probably deny that vehemently and he may be very upset if he ever heard this. And he may hear this tape, so Jim, hopefully I haven’t offended you if you’re listening to this tape, but that’s the way I feel about it. I have always felt that way.

I had some difficult times with Judge Burns over the years. I’ve tried a lot of cases before him. He’s interrupted me, I think, unjustifiably on closing argument when the government prosecutor did not interject. He interrupted me on his own and I don’t think it was justified. In one case, he admitted that it wasn’t justified, and in that case I was so furious after it happened that I went back to see him in chambers. I said, “I would really like you to show the same respect for me as I show for you. There was no reason why you should have interrupted me in my closing argument.” And he looked at that case and he agreed with me. He said, “Why don’t you file a motion for a new trial based upon my interruption and how it prejudiced you before the jury? And I’ll rule on it.” I did. I filed a motion for a new trial and we got to the sentencing and he forthwith denied the motion and he sentenced my client.

The other comment I’ve heard about Judge Burns is that he’s a hanging judge.

NS: The other comment I’ve heard about Judge Burns is that he’s a hanging judge.
don’t give it to them.” I clearly told him that I thought that his ruling were pro-government and anti-defendant.

I stormed out of his office in a blind fury. I had always heard the term “blind fury,” but I never really knew what that meant. But I could hardly see; I was so angry. I may have even walked out of the wrong door; or something. It was the low point of my life, because I pride myself on being in control. I almost never lose control and if I do lose control, it’s in a tightly disciplined—I might lose my temper with another lawyer, which happens about once every two or three years. I suppose I do it as much for some tactical advantage. Not to imply that my losing my temper isn’t real, it is; but somehow I feel that an expression of honest anger and emotion will do some good in that particular case. But with Burns, I just walked out in a fury. Jim Collins was with me and I was out of control. Never happened to me before, never happened to me since. Very highly embarrassing, and it was the culmination of what I regarded as his—what’s the word I’m looking for—his implacable anti-defendant stance. His pro-government position. With that all, I’ve had cases with Judge Burns where I think, you know, we have achieved a fair result. I’ve had sentencings with him where I think he’s been very fair in his sentencings. Yet, I’ve had some sentencings with him where I think he’s been outrageous. Hanging judge, no, by his lights, I think he feels they are all just sentences or he probably wouldn’t impose them.

I have had mixed results with Judge Burns. Generally he runs a good trial. Like his hours in a long case, we’ll go from 8:30 in the morning until 2:00 in the afternoon with a couple of long 15 or 20 minute breaks. That’s nice for busy individual practitioners like me. But I have resented the unilateral interruptions of closing argument because I always thought they came at a time when I was really making my case. I didn’t like or appreciate the interruption. Since that time, again, I don’t hold grudges and I don’t think Judge Burns holds grudges. I’ve roasted him a couple of times. I roasted him recently at a dinner; I roasted him a number of years ago when he retired as Chief Judge and I think we have a good relationship. I like the man, but I simply didn’t like some of the things he did as a judge.

JB: Let’s move on. We haven’t been keeping a very good chronology in the last hour or two. Let’s stick with judges for a while even though it’s a little bit out of our chronology. Judge Frye was appointed somewhere in the early 80’s, if I’m not mistaken. You’ve had a number of cases in her court I know. Can you share your thoughts with us?

NS: Yes. I have had a number of cases with Judge Frye. I like Judge Frye. She is one of a kind. She doesn’t go to the sentencing panel. I don’t know if you know this or not, but sentencing usually in federal court is on Monday and the judges meet as a group and they talk about the cases. They all get the presentence reports, and it’s still the responsibility of the individual judge. But they meet as a panel to try to avoid disparity in sentencing, and to get some uniformity. I’m not sure if it results in uniformity, but at least that’s the idea, to avoid this wild disparity in sentences. Judge
Frye, for years has not gone to that. She’s her own person. I’m not saying whether it’s good or bad. I’m just saying she doesn’t chooses not to go. And she’s also adopted her granddaughter and she’s very devoted to her granddaughter. [JB note: Tape ends. but I think it is incomplete]

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**Tape Five**

NS: I think I gave an example before. When Chuck [Turner] was an Assistant U.S. Attorney, he was very difficult in getting pre-trial discovery. I was appointed to represent a fellow named Jimmy Lee Napier. It was a kidnapping case. He was alleged to have kidnapped a woman in Portland, taken her to Vancouver, and beaten her badly to the point where she became a vegetable and never did recover consciousness; remained in a coma for years. Chuck felt very, very strongly about that case and it was a very hard fought case. The government had a difficult time trying to prove the interstate nature of the case and what-not. But Chuck gave me the discovery in that case one working day before trial. There were something like 40 or 50 witnesses. Chuck wanted to win the case and he felt in a crime as bad as that he didn’t want to give me any particular advantage.

Again, my own policy was just the opposite. I would give discovery weeks before trial. Sid Lezak’s policy was the same way. Chuck can be very relentless. I represented Steve Kessler—I don’t know if you remember that case from years ago—he was public enemy number one here years ago. It was a bank robbery case and a drug case. Steve Kessler had more legal problems than anybody I’ve ever known. I represented him in a federal court trial, and in a state court proceeding. Steve escaped from Rocky Butte at one point. Chuck spent 10-15 years after that—I think he still thinks about apprehending people in connection with that case. He’s the kind of guy—it’s very difficult for him to let anything go. In that sense, he’s a very tough implacable kind of guy. That’s just the way he is. On the other hand, he’s fair, he has integrity. You certainly can trust Chuck. I take him at his word. He doesn’t kick under the table. I’ve tried a number of cases with him. I can’t think of any foul blows that he has struck. He’s just a very vigorous and tough opponent.

JB: When you were describing the way Sid Lezak ran his office you said that Sid personally would give the defendant plenty of discovery, but that he didn’t require that of everyone. The example you gave was Chuck Turner holding back on discovery as you’ve just described. As U.S. Attorney, has Chuck Turner done the same thing Sid did? That is, give his Assistant U.S. Attorneys the discretion to hold back or to produce discovery as they desired?

NS: Yes. I don’t know if that has been the policy that Chuck has openly announced, but I know the way his office is run and I deal with those people all the time. Lance Caldwell, for example, is a prince on discovery. He’s wonderful. He’s the same way I used to be—my highest compliment to him. Lance absolutely turns over his case, but Lance turns into a ti-
ger at the time of sentencing. I think Lance asks for ridiculously high sentences. Chuck Stuckey is a very good friend of mine, a guy I respect greatly; we have a mutual admiration society going. Chuck is difficult in pretrial discovery; sometimes you get stuff from him and sometimes you don’t. Sometimes he’s close to the vest; sometimes not. I can say the same thing about other lawyers. Some are very good, some aren’t. I think Chuck Turner just lets everybody do their own thing.

JB: It’s now March 7, 1993. We finished interviewing Norm Sepenuk yesterday evening and now we’re continuing Norm’s oral history. When we left off yesterday, we had just finished a comparison of how the U.S. Attorney’s Office was run under Sid Lezak and later under Chuck Turner. When we were talking about District Judges yesterday, I neglected to ask you for your impressions of Judge Robert E. Jones, not to be confused with Robert P. Jones, and Michael Hogan. Would you care to share your perceptions or views of those judges with us?

NS: Yes. Judge Jones has not been on the District Court bench very long. He was a state court judge for many years. I first appeared before Judge Jones in a few trials a number of years ago involving a gentleman named Jack Rich, who used to be with the Port of Portland. Those were fraud cases, as I recall, one of which resulted in an acquittal and one of which resulted in a conviction. I liked Judge Jones. I had very good experiences with him in those two trials. I had been told by a few other defense lawyers in town that he was a very state-oriented judge. I didn’t find that to be true at all. I thought he was very fair. I thought he ran the courtroom very nicely. He was obviously very familiar with the case. He had read the trial memos. His instructions were excellent. He’s a very knowledgeable fellow. He knows the law of evidence very, very well. It was a pleasure to try a case in front of him. I enjoyed him very much.

Since he’s been on the District Court bench, I’ve only had a few matters with him. I’ve had a couple of pleas with Judge Jones, and accordingly a few sentences. He’s been very fair. I like the way he goes about things. Let me give you one example. I represented a lawyer named Harold Hutchinson who pled guilty in a case involving false statements to banks. Harold is a 75-year-old lawyer in town who has some heart problems and some cancer problems. It was admirable the way Judge Jones treated him. Of course, Judge Jones knew Harold Hutchinson, but not to the point where he had to disqualify himself from the case. But when Harold came before him to enter a guilty plea, Judge Jones, knowing how hard it was on him, proceeded to read through the plea petition in a very summary-kind of a way. He could have asked the usually open-ended question: “Do you understand what’s going on here today?” “Do you know that you have a right to not say anything?” Stuff like that. Many judges would have done that. They would have treated Harold like any other person. But, here is Harold, a 75-year-old attorney, not in the best of health and Judge Jones brought him through that very gently and very appropriately. He just had a very nice touch when he sentenced Harold to 500
hours of community service. The government had asked for a prison sentence. By the way, when the case was up for sentencing, I was not there. I had actually withdrawn from that case a day or two before because of a conflict of interest that I had learned about at the last moment, which I won’t go into here.

In any event, most of the work had already been done on the case by me. Judge Jones had previously advised me and Chuck Stuckey, the Assistant U.S. Attorney, that he was not going to send Harold to jail even though the government was requesting a jail sentence. He fashioned a very creative sentence and gave Harold 500 hours of community service in the library at Sheridan. He essentially said to Harold. “Set up that prison library system.” There is one there already, but Harold is going to bring some order into it, and from what I understand, he’s doing a perfectly wonderful job. I believe there was a fine of $10,000 or $25,000. In any event, it was a creative sentence. And from what I’ve seen of Judge Jones on the bench. I like what I see.

You did ask me about Mike Hogan.

JB: Yes.

NS: Unfortunately, I’ve had very little to do with Mike over the years. I have had a few matters with him. I’ve had a few pleas, and a few sentencings, and I testified as a witness in a post-conviction relief case that Mike came up to Portland to handle. I like Mike. I don’t see him very often. He’s got a wonderful reputation amongst the lawyers. He is an excellent settlement judge. He’s a very easy guy to take. I’ve only heard good things about him. I represent the Columbia River Log Scaling Bureau that has just been indicted, and there is going to be a 6 or 8-week trial before Mike in mid-October 1993 so I’m sure I’ll get to know Mike a lot better as a trial judge.

JB: I neglected to ask you yesterday. Norm, to describe some of your professional activities, some of the professional organizations you belong to. As you do that you might tell me how active you’ve been in those organizations, if any, and how you feel in participating in professional organizations.

NS: My hat’s off to anybody who participates in anything, particularly the lawyers I’ve known over the years who have been members of the Portland School Board, which is essentially a thankless task: Jonathan Newman, Joe Rieke. My goodness, those are hot-seat jobs. They are very difficult jobs. And credit these people, the lawyers that do that. Forget about lawyers—people on the school board generally—they do it as a public service. I’m a member of the usual groups: the American Bar Association, the Oregon State Bar. I was the first chairman of the Criminal Law Section of the Oregon State Bar. But specialization, as you recall, Jeff, was eventually voted down due in some part to that fiery speech that John Ryan gave. I was not there. I’ve heard so much about this speech over the years, but it apparently had a great effect, and we haven’t had specialization. I’ve been a member of various committees of the ABA. I’ve been in the anti-trust section and the tax section and the subcommittee on civil and criminal tax penalties of the tax section. I’ve been in the criminal
law section of the ABA. I was a member for a number of years of the Grievance Committee of the Oregon State Bar. And I’m a member now of the American College of Trial Lawyers. I was inducted into that a few years ago. That’s a group of trial lawyers constituting a fairly small percentage of the trial lawyers in this country. That’s been an enjoyable group to be with.

JB: If I may interrupt for just a moment. What other criteria for becoming a member in a general way—the criteria for becoming a member of the American College of Trial Lawyers? I know it’s a very elite group of lawyers.

NS: The criteria are to obviously be a trial lawyer, I think to be a member of the bar for at least 15 years, and then to be nominated by a member of the college, and seconded by a member of the college, and approved by the lawyers who are in the college. There is some sort of an additional review procedure at both the regional and national levels. Even though I’m currently on the membership committee, the whole thing was a mystery to me in that I didn’t even know that I was up for consideration until, I believe it was Chuck Turner, who told me he wrote a letter on my behalf to the appropriate person. Then a number of months after that I was told that I was invited to become a member of the college. I think it was started 40-50 years ago. It used to be a group that was mostly defense lawyers, and mostly insurance company defense lawyers. Then it expanded to the plaintiffs’ bar, personal injury and commercial litigation and that kind of thing. In more recent years it’s expanded to include people who do criminal law, like myself. I’m the first lawyer in Oregon who does criminal law who’s a member of this group. Then a year or two after I was admitted, Chuck Turner was admitted. He’s the first prosecutor who has been admitted to the organization in Oregon.

JB: Just to give us an idea of the caliber of lawyer who is a member—who are some of the other members from the Portland area?


JB: This is a broad question, and maybe not answerable, what do you view your responsibility as a lawyer in the community? As a lawyer, what do you view your responsibility in the community to be?

NS: I wish I could give you a sage, broad answer to that. I would simply say, simple-minded as it sounds, to be a good citizen, to try to take part as a citizen in the community’s work. I am a member of the City Club; I have been on various committees of the City Club. I haven’t done all that much community service, though. I’ve been a member of the boards of directors of various organizations like the Christie School. I’m the president now, almost by accident, of a group called the Institute for Judaic Studies, which is a study group. It’s not
really a religiously oriented group, which as I said, I got into by chance through a lawyer by the name of Roscoe Nelson who died a few years ago. But I’d say just to be a good citizen of the community. And because you are a bit more articulate than most, perhaps to use those skills on behalf of the community.

JB: Are there any other professional organizations or civic organizations that you’ve participated in over the years?

NS: No, other than what I’ve mentioned. As I said, Christie School and that kind of thing.

JB: What is the Christie School, Norm?

NS: The Christie School is a school out at Marylhurst College for disturbed young people; kids who have a background of being unruly and wild and off-balance. They go to the Christie School and they are given a home there.

JB: Is it a high school, a grade school—that sort of thing?

NS: No. It’s just a place where they can be comfortably. They do have instruction there but it’s not high school or grade school as such.

JB: To move on to just a bit different area of our interview. If I were to ask you to recall for us the most memorable case you tried as a prosecutor in the U.S. Attorney’s office, would you be able to describe that case for us?

NS: Yes, except that unfortunately we will be repeating ourselves. I told you yesterday I generally do not like recounting and for better or worse didn’t particularly review much material in preparation for this interview. But there is no question that the most significant and memorable case that I prosecuted was the Golden Rule Realty case, which we mentioned yesterday. I think I’m right about this, is the largest fraud case prosecuted at least in the 30 years that I’ve been present in Oregon. That was a very major, challenging case and certainly my most memorable case.

JB: Am I mistaken—is my memory correct that that also happened to be the very first case you tried in the U.S. District Court of Oregon?

NS: Oh no. That was the very first case that Judge Belloni, I believe, tried. I tried many cases before that. That was two years after I came to Oregon. There have been so many cases. I just feel I would bore, whoever is going to listen to this, to death to tell war stories. There was one very amusing case, as I look back on it now, United States v. Spencer Collins. He was a 68-year-old CPA from Eugene who was prosecuted by me in 1965, shortly after I came to Oregon. Roger Rose also took part in that case. Practically all the cases I tried I tried alone, but coincidentally enough, I’ve mentioned two cases in which Roger and I were co-prosecutors. That was a case before Judge Kilkenny, and Spencer Collins waived a jury. He was represented by a very well-known lawyer, Lamar Tooze, who was a gen-
eral, “General Tooze” everyone called him. The case involved the deductibility of certain payments made to an organization called the St. Genevieve Foundation that was set up by Spencer Collins as a charitable foundation in Lake Oswego. The fact is that the money that went into that organization was used to pay the expenses and living expenses of two sisters, two rather attractive middle-aged ladies who lived in Lake Oswego. They lived in this home—Spencer Collins called it a shelter for them. They had minor health problems here and there but it was obvious to the government that this was a purely personal manner. He paid for rooms at the Benson to watch the Rose Parade, numerous personal items. He said that this was all exclusively for a charitable purpose to take care of these two ladies who had health problems. I remember him taking the witness stand saying that he regarded all these deductions as for an exclusively charitable purpose. I went through a list, oh my goodness, 50-100 payments including the Rose Parade, and flowers, and a diamond ring. I said, “Did you regard this as exclusively for a charitable purpose?” He kept saying, “Yes. We had to keep their morale up,” and stuff like that. Judge Kilkenny was getting a big kick out of the case. In any event, he was found guilty and sent to prison. General Tooze did a beautiful job in defending him. General Tooze had the capacity to work himself into a frenzy, not an uncontrolled one, mind you. It was very well done. He accused these two women of all sorts of things. It didn’t work, but it was an admirable defense. That’s a case that stands out.

JB: Were the women sisters of the defendant?

NS: Oh no. They were simply sisters. I remember at one point Lamar Tooze asked one of the sisters—she had implied that something sexual had gone on, but she didn’t say that outright. In cross-examination he said to one of the sisters. “Now wait a minute, you’re not implying that there was any kind of hanky panky are you?” And the witness said, “Well, you know, he certainly tried.”

JB: There are other cases you’ve tried as a defense lawyer. Is there one that stands out in your mind that you defended?

NS: Again, very difficult to talk about individual cases because there have been a number. Steve Kessler does come to mind. He was “public enemy” number one a number of years ago. I had represented Steve in a federal criminal case involving being an ex-felon in possession of a firearm. I believe that was the charge. Chuck Turner was my opponent in that case. That case ended in a hung jury. Then a few years later, Steve was indicted on all sorts of serious charges in federal court for bank robbery and drug dealing and that kind of thing. He came to me and at that time I was a retained lawyer for him in the prior federal case. He asked me to become an appointed lawyer, which I hadn’t done for years. Somehow I felt I didn’t want to say no to him because I had developed somewhat of a personal relationship with him. He’s a very interesting fellow, very intelligent. I have a
number of letters from him. He’s a fine writer. He’s considered an ogre by law enforcement people but he has another side to him that very few people know about. I agreed to take part in that case and the security in that case—there were five or six defendants, all of whom had appointed lawyers—and the security for that case was incredible. We had a marshal sitting behind each defendant because everyone was scared to death about Kessler and a few other people on trial.

JB: What sort of man was he? What was his background to require that sort of security?

NS: He grew up in Coos Bay as I recall. And he had been in and out of jail for most of his life. Remember the Jack Abbott of Norman Mailer fame? He wrote a book called *In the Belly of the Beast*. But Steve had just been dragged up as a child; had been in and out of reform schools and prisons, but had somehow developed this rather reflective side of himself. And he was the hero type. Wherever Steve was a prisoner, he would always become the leader. He had a certain assurance and character in his own way. You know, there’s something about when somebody walks into the room you can tell if there is centrality, character, and presence, whatever you want to call it. Steve certainly had that and he just naturally drew people around him. But, getting back to the trial, there was enormous security. The jury was quite well aware of that. They knew they were trying a group of people who were considered very dangerous. That in itself was rather prejudicial. A very hard-fought case. Chuck Turner was the prosecutor. Jack Wong was his assistant, and then there was several lawyers representing the various defendants. Steve eventually was convicted.

Then when he was in Rocky Butte jail, I believe awaiting sentencing, he escaped. And, unfortunately, shot one of the guards who was trying to stop him from leaving. He virtually begged the guard not to do anything to try and stop him but the guard did. Steve shot the guard. The guard was very seriously injured and Steve was charged with attempted murder. I represented him in that state court case and he eventually pled to that charge after he was apprehended. He was at large for some six or eight weeks. That was a very interesting case.

BP: I’ve had many other cases. I like to think more fondly of acquittals. I represented Russ Joy, a labor leader, very well known fellow in Portland a number of years ago. He was the head of the Operating Engineers Union. He was acquitted in two trials for embezzlement of union funds. I had a very interesting case involving an osteopathic physician, Rick Howell, who was acquitted on some 102 counts of Medicare/Medicaid fraud. But, again, these are just war stories. I’m not sure that the facts of any of these cases that I could talk about, or in fact the kind of defendants, would add appreciably to the body of knowledge of the U.S. District Court.

JB: In describing the Kessler case, you mentioned that Chuck Turner was your opponent. Having known him for as many years as
you have, and having been his associate in the U.S. Attorney’s Office, what is it like to try a case with Chuck Turner?

NS: Chuck is a very meticulous lawyer. He’s very well organized. He has all of his exhibits lined up in these glassine envelopes. Everything is ready to go. He witnesses are always well prepared. He’s very good on the law. He submits good trial memoranda, sound jury instructions. He’s very well prepared on all aspects of the case. He’s very vigorous. He’s very forceful because he believes in his case. And Chuck is the man on horseback. He’s thinks there are good people and there are bad people.

Something just jogged in my head, Jeff, if you don’t mind. When I was talking before, I was being a bit critical of one or two of the federal judges who don’t grant continuances as readily as they should. Most of the cases I handle are cases in which the government has investigated for a year or two years, sometimes more. When they indict, they are lined up and ready to go. They have amassed a body of evidence, sometimes thousands of documents. As a busy defense lawyer, you simply can’t drop everything. You can’t be ready in sixty days. You need a very, very significant amount of time to get ready to defend the case like that. What irritates me, what’s gotten me angry over the years, at one or two of our federal judges, is that they don’t appreciate that burden in a fraud case. They think that it’s just any kind of bank robbery case or direct evidence case. You’ve got to have more time. You simply can’t say you’ve got to be ready in two or three months. It simply can’t be done.

But getting back to Turner, unfailingly well prepared, very vigorous, and a very formidable opponent.

JB: Each of us has our weaknesses as a lawyer. Knowing Turner as well as you do, have you identified a weakness in the way he tries a lawsuit that you try to exploit when you try a case against him?

NS: Not really a weakness. I think if I had one criticism of Chuck it’s his rigidity and his implacability, and his refusal, deliberate or otherwise, to see the shades of gray or the other person’s point of view. He does take some extreme positions. To that extent I try to point that out to the judge or the jury, whoever is trying the case. I think on a more practical level those extreme positions come out during negotiations and you see that in the way he approaches a case. Whether he should dismiss a case or not, to what extent should he exercise his discretion, I regard that as a weakness. I’m not sure Chuck would.

[End of Tape 5. side 1]

Tape 5. side 2

JB: I’d like to switch gears here now and ask you talk, maybe in broad terms, and be as specific as you like, also. You’ve been practicing in Oregon for about 30 years—roughly 20 years in private practice and 10 years or so as an Assistant US Attorney. I wonder if you
could make some comparisons about the way things are now as compared with the way they once were. We hear a lot of talk these days about the lack of civility among lawyers in the way they treat each other. Can you give us your judgment about how lawyers treat each other now and compare the way we treated each other 20 or 30 years ago?

NS: I’ve heard that too. I have to tell you though that’s simply not true in my experience. But you have to realize I deal with a very narrow field. I deal with fraud, business crimes, and some other federal offenses, drugs cases and what have you. I deal with really a hand full of United States Attorneys. That’s been my life for the 7 years in the US Attorney’s office, and 20 years as a defense lawyer. I essentially deal with just a hand full of lawyers. I deal with Chuck Turner. There used to be Jack Wong when he did criminal work. Chuck Stuckey. Lance Caldwell. I used to deal with Bob Weaver. I probably could name on no more than 10 fingers the number of Assistant US Attorney’s that I deal with, and I have dealt with over the years because those are the lawyers who handle these kinds of cases.

With a few exceptions, the civility has remained the same. For one thing, that’s my nature. I don’t throw gauntlets down. I think if you throw a gauntlet down you can only harm your clients’ interest. I may be repeating myself now; the government has most of the cards so you would be foolish in the extreme to just go in and hit on the government lawyer, throwing down gauntlets. You’re trying to get the name of the game and the name of the game is information. I’ve got to get as much information as I can from those Assistant United States Attorneys or from the investigating agents. And you don’t do it by being an SOB. You do it by being reasonable and cooperative. Because they don’t have to give you this information under the federal rules; they are not required to give you this information. The civility, I think, has not changed.

By and large, the quality of the people in the United States Attorney’s office has remained high. There are some exceptions. I don’t think I’m going to talk about the exceptions. There are three lawyers I can mention, four lawyers actually that I could mention that I have dealt with in the US Attorney’s office in the last 20 years that I can say bad things about. Two particularly; two were not good, and two were hot and cold. Sometimes I liked them and sometimes I didn’t. I’m not sure it’s going to be worth much for me to talk about that. But, the overwhelming number of cases in which I have dealt with the US Attorney’s office, there has been civility, cooperation; there’s been professionalism. It’s been generally a worthwhile experience.

JB: Just to digress for a moment. You mentioned that it’s in your best interests, and the client’s best interests, to be cooperative with the government, to be reasonable, because the government holds all the cards. I am wondering why the government would ever release information to you that it need not. It seems to me there’s more to it than just you being a reasonable person.

NS: Yes. Yes. One very good reason. They want to get a guilty plea. They know I’m not
going to plead a client guilty unless I'm absolutely convinced that the client is guilty beyond a reasonable doubt, and that the government can prove the client guilty beyond a reasonable doubt. They also know they can trust me with the information. In other words, I will not get information that—let's say a particular witness had said thus and so, and then I will not call that witness and try to twist his arm and talk him out of that. That's simply not the way it's done and that's not my style and it can't be done that way. Yes, aside from its more than them just wanting to be nice guys they are looking to dispose of the case.

JB: But to get back to the way you do things. If you were to call one of these witnesses and twist his or her arm you would do that about once and there would be no cooperation at all?

NS: Absolutely. You'd lose all credibility.

JB: Over the years, has there been a change in the type of defendant you've represented. I appreciate that's a broad question, but I hope you can get the sense of what I'm asking.

NS: Things are more sophisticated now. When I first came to the US Attorney's office, we used to prosecute Dyer Act cases, interstate transportation of stolen motor vehicles. We would sometimes prosecute cases that more appropriately belonged in state court. That almost never happens now. The only significant white collar crime work back in the 60's and 70's was mostly done by the Internal Revenue Service in tax evasion cases, and the postal inspectors in mail fraud cases. I should add the SEC in Seattle has always been an organization that's been very good in ferreting out securities fraud cases, although I must say they bring a heck of a lot more cases in Spokane than they do in either Seattle or Portland.

But in any event, the FBI was weak, certainly in the 60's and 70's when it came to white collar crime and particularly back in the 60's. They simply didn't focus on white collar crime cases. They were more concerned with their statistics and interstate transportation of stolen motor vehicles produced one hell of a lot more stats, as they called it. When J. Edgar Hoover would go before Congress, he would say, "We arrested so many people and we prosecuted so many people, etc." Whereas, in a fraud case you're only talking about one defendant or a handful of defendants, but you're talking about enormous amounts of work. That has changed, and now the FBI does very significant work in the white collar crime area.

In addition, what has really changed the face of criminal law in any event over the last, particularly, 15 years or so are the drug cases. Even the Internal Revenue cases—the tax evasion cases—there was a period of time when the majority of those cases were drug cases. The drug dealers they could not get on a drug deal were apprehended and arrested for a tax crime. Only now is that beginning to change. The IRS is now very slowly drifting back into the legitimate business people and professionals and the classic kind of white collar crimes cases.

I did want to mention bank fraud cases. That's been a very significant part of my practice for the last several years. A large
number of bank fraud cases, timber theft and timber fraud is also getting a lot of attention now. But the drug cases have just clogged the docket. I’m guessing, I should probably know these statistics more accurately, but I’m sure that at least half of the federal cases now are drug cases. In more very recent years, you find that a number of the major drug cases, the multi-defendant cases are cases involving Latinos, Mexicans, and Colombians. It’s ironic because almost invariably, these five or six multi-defendant cases wind up getting appointed lawyers, because they are not the people at the top. They are the mules and the water carriers and the people at the top are still pretty much escaping unharmed. Because particularly the Mexicans and the Colombians, they won’t talk. They keep their mouths shut. They don’t cooperate. Whereas, the Americans—I try to limit my drug cases, but I’ve had a number of drug cases over the years and my American clients almost invariably—I have very few non-American clients, almost invariably cooperate. And that’s true of most Americans who are arrested for drug crimes because the sentencing under the guidelines are such now—they are so vicious. They are so long, that in desperation most defendants cooperate with the government to lower their sentence.

JB: Let’s talk about the guidelines for just a second. First, what are the guidelines, and then what effect do they have on the way the justice system works?

NS: The guidelines changed sentencing in 1987. The guidelines became law. Prior to the guidelines it was discretionary sentencing. You could get up to five years or ten years or twenty years in jail, whatever the statutory maximum. It was up to the trial judge whether to give probation, six months, a year, what have you. Under the guidelines, sentencing is mandated and there are certain variables that are considered. And the trial judge, absent extraordinary circumstances, must follow those guidelines. For example, there are mandatory-minimum sentences. If you manufacture or grow more than 2,000 marijuana plants, for example, that’s a mandatory ten year sentence. The only way you can depart from that is if you cooperate with the government. If you cooperate then the government can move for a so-called downward departure from the ten years. The judge, at that point, can give whatever sentence he or she wants. Let me give you another example, if it’s a fraud case, and the loss to the victim or the government is a $100,000. You look to a table in the guidelines; if the loss is between $70,000 and $120,000, it’s x points. If it’s between $120,000 and $500,000, it’s more. You go up the scale or down the scale and you arrive at a figure. If the defendant has a leadership role in the offense you add a couple of more points. If he pleads guilty, and accepts responsibility, he gets a two point reduction. If he pleads guilty, and accepts responsibility very early in the game, he gets a three point reduction. If a gun is used, there is an increase in sentence. Believe me, we could talk about this all day. But the short of it is the discretion of the judge now has been seriously curtailed. Most judges don’t like it. And in fact, most of us don’t. The only time it’s good is when you
have a judge who is a very bad judge; a wild kind of judge. This particular judge I have in mind in another state, I will not mention his name, but I’ve had several cases with him in an adjoining state. He’s a federal judge. With that particular judge, I’m very happy to have the guidelines, because this judge is indeed a hanging judge. It’s nice to know that his discretion is limited. But it’s a very unhappy situation in a place like Oregon where we have good reasonable judges who want to do the right thing. And the guidelines make it very difficult.

It also gives the government enormous power in terms of how they can charge. If they charge one way and indict one way, it’s a ten year sentence. If they indict another way, it’s a five year sentence. If they indict another way, it’s a three year sentence. I spend an awful lot of my time at the United States Attorney’s office imploring, reasoning, in an effort to try to keep the case within reasonable bounds. But it certainly has revolutionized the practice of criminal law. And it’s a study in and of itself. I still haven’t mastered them; I’m still learning.

JB: I’ve heard many judges criticize the guidelines in general terms, and I’ve heard many lawyers criticize the guidelines in general terms. I’ve not heard a lawyer or a judge support the guidelines. What is the justification among lawyers, if there is one, for the guidelines?

NS: The justification for the guidelines is to eliminate disparity in sentencing. A fraud that resulted in a $100,000 loss in Portland, Oregon. If the defendant has two prior felonies you nick him as hard in New York City as you do in Portland. It was admirable effort to bring uniformity in sentencing, but the fact is that sentencing, to a great extent, is subjective and there are all sorts of things. The dynamics of the sentencing process can’t simply be reduced to mathematical terms. It’s a human endeavor and I think it would essentially put the process now into a strait jacket, that I’m sorry to say, it will be years, if ever, before we’re out of it.

JB: You anticipated my next question which is—is there any movement underfoot to redo the sentencing guidelines or to eliminate them altogether?

NS: I believe there is. I’m not as up on that as I should be. I do know there’s an effort to eliminate mandatory minimum sentences and there’s grousing. There’s a lot of literature in the field and the American Criminal Law Review and other publications, a lot of railing against the guidelines. I know of no fully organized disciplined effort to try to repeal the guidelines.

JB: We were talking about the drug cases a moment ago. What effect has this upsurge in drug cases had on your practice, and on the system generally, on the way criminal law is practiced in the district?

NS: On my practice, not a heck of a lot of impact because I simply take the drug cases that I want to take. You know. It’s that sim-
ple. I limit my cases severely. I don’t take every drug client that walks through my door. If I like the client, and if it’s in federal court, I take it. No state drug cases. But if I have a reasonable liking for the defendant and it’s a legitimate kind of a case—when I say legitimate, that I can handle the case legitimately and honorably—I will take the case. But I try to limit those.

As far as what impact it has on the docket as a whole, a very large impact. Tremendous resources are expanded in these cases and everybody works twice as hard because of the drug cases. There’s a strong argument that can be made, and I don’t think we ought to make it here, but people like Bill Buckley and Kurt Schmoke, the mayor of Baltimore, and a few federal judges, have advocated legalizing drugs. I should mention one little tiny footnote, when you receive a fee of more than $10,000 in currency in a drug case, you have to file what is called a Form 8300. And you disclose the name of the client and the amount of money that you’ve gotten from him and that kind of thing, and the date of receipt. I’ve had a number of those matters over the years. I file those forms and put the date of receipt and put the amount of the money, but I don’t give the name of the client on the grounds that it’s an invasion of the attorney-client privilege, and that kind of thing, and the date of receipt. I’ve had a number of those matters over the years. I file those forms and put the date of receipt and put the amount of the money, but I don’t give the name of the client on the grounds that it’s an invasion of the attorney-client privilege, and, perhaps, an invasion of my client’s rights under the Fifth Amendment, the incriminatory amendment, and the Sixth Amendment, the right to counsel. I’ve done that now for a number of years, and more recently, within the last few months, I was subpoenaed by the Internal Revenue Service to produce those names. I have recently refused to do so. I’m expecting a summons and enforcement action to be brought against me and there’s a couple of other lawyers in Portland who have this same thing. This is something that’s going on in the country right now and there’s going to be some test cases. And there will be subpoenas to testify. I will refuse and then eventually the Ninth Circuit will decide the issue. But it’s a disturbing problem because you don’t want to give information against a client. But it’s generally been held that revealing the name of the client—two circuits have held that revealing the name of the client is not a violation of the attorney/client privilege. Because the Ninth Circuit has not ruled on it, I think it would be improper on my part to simply voluntarily disclose these names. This is a just a little footnote. I’m not even sure I should have mentioned it. But, the drug business spawns a lot of problems.

JB: What do you intend to do if the court orders you to produce these records?

NS: I will very politely refuse and ask for a stay of any contempt citation pending appeal to the Ninth Circuit. I feel fairly confident that’s what is going to happen.

JB: And if the Ninth Circuit should require you to produce the documents, do you intend to do that?

NS: I hate to think about a Supreme Court petition. You know, I can think of better ways to spend my time than filing, but obviously I’m doing this without any kind of fee, to file a Supreme Court petition. Hopefully, by
that time, the law will have been decided in the Ninth Circuit and perhaps even by the Supreme Court. If I’m finally ordered to turn over the name of the client, I will do that. I’ve told clients this right at the beginning of the relationship. I will keep their name confidential, but that I will not go to jail as a result of that. They know that in advance. If I could be assured that maybe I could go to jail for a day or so, to be a hero, I’d be happy to do it. As long as the jail was air conditioned. [laughter]

JB: You mentioned a moment ago, the pressure that the drug cases are putting on the system and how hard everyone is working as a consequence. Going back to this matter of civility, have you noticed a change in the way that judges conduct a trial as a result of this increased pressure on their dockets?

NS: I really haven’t. Judge Panner, for example, would probably try a case very expeditiously regardless of the workload. But there could be this impact of an increased docket. You can’t discount the element of fatigue. I know a case that I had with Judge Burns once, as a matter of fact, it was the case I mentioned I believe yesterday, in which he interrupted me in my closing argument. Which he had done I think unjustifiably a few other times, and I was just outraged by it. I told you I went back in chambers and spoke to him. And he had rather graciously apologized to me at that time and mentioned the fatigue factor. He happened to be very tired and one of the defense lawyers, who I won’t name, had tried to sand bag him in this particular case and he was very upset by that and had to revise an instruction to the jury because of that. But he said he was just plain tired too. And so to the extent that the workload is increasing, it does result in fatigue and fatigue sometimes can produce bad decisions. In that respect, it certainly could be a factor.

JB: Some time over the course of the past few years, when you’ve mentioned to me there being three types of clients in your experience, I have forgotten the details of that. Does that jog your memory about your clientele and what sort of people you represent?

NS: Yes. It did occur to me after I had been practicing for several years that there are generally three categories of people who I see. The first is the truly bad person, the person who defrauds widows and orphans and doesn’t lose a minute’s sleep over it. I must say, I’ve had very few cases like that over the years. I can probably count on three or four fingers the number of defendants who have come to me in the last 20+ years who I regard as truly bad people; people I have grown to detest. The next group is the game players. And the game players are the people who have been playing games with the law or with other people for years and have never gotten nailed. I’m talking about the tax straddle people, people who devise those kinds of schemes. The people who love to engage in stratagems to make more money and to keep more of the government’s money than they have any right to. And those are the people, they’ve been living on the edge ever since they’ve been kids and didn’t have the good fortune to get nailed as a teenager when it wouldn’t have been nearly
as serious, where they would have just had their wrist slapped, or maybe spent a day in jail. Something like that. The game players, are not necessarily bad people, but on the edge. The third class, and I would say that probably constitutes the larger bulk of my practice, are the people who do what they do who don’t cut square corners with the government because they are desperate. They are in financial straits; they are not making enough money so they evade taxes, or they commit an antitrust offense, or they make a misrepresentation in a fraud case that they shouldn’t do. Many times with the idea that everything is soon going to be okay. And they will be able to take care of everything, but oftentimes it doesn’t work out that way. Those are generally the three categories of folks that I see.

JB: You implied that it’s difficult, or maybe it’s more accurate to say that I would think it’s more difficult, to represent a person who we truly don’t like, and I’m thinking back to this category of the very bad person as you described it. What do you do to get yourself geared up emotionally to represent that sort of person?

NS: You just grin and bear it. You usually don’t discover it until later on. If I had known it at the initial interview, I would have never taken the case. But some of the folks that I represent, in fact most of them, are rather charming, intelligent people. I don’t learn about the other side of them until we’ve gone along for a while. I suppose I can give you one quick example. I represented a couple in a tax evasion cases. It was as close to being tax protesters as anybody I have represented. I don’t represent tax protesters. I just have a rule. I do not want to represent those folks, and never have, and have turned down several requests to represent them. But this particular couple came into my office, they were very charming people, well spoken and I decided to represent them and I quoted a retainer. Then we sparred with the government over the next two or three years. They paid me about a third of the retainer that I requested and I did an awful lot of work for them.

Finally, the day came when they were charged. They came to see me, and in the intervening period I had learned how unreasonable they were and how almost sick they were in their attitude about taxes and the government and what not. At this point they owed me many thousands of dollars, solely on the time expenditures, regardless of the initial fee agreement. They said, “We’d like all our money back now because you didn’t succeed in preventing us from being indicted.” That’s the kind of thing I’m talking about. Even beyond that, there are certain clients who truly have no feelings about hurting other people, and, of course, that’s outrageous. I’ve never yet withdrawn in a case like that. In fact, I’ve only had one case that I’ve ever withdrawn from. But, you just have to go along. Essentially what you did is you made a mistake you didn’t know you made, a mistake at the start, but you continue on.

JB: Would you like to share with us the case that you withdrew from?

NS: No. I have filed a motion to withdraw.
from that case and the case is still pending. There’s nothing particularly dramatic and it’s not a very interesting story.

JB: Looking back at your 25 or 30 years of practice here in the district of Oregon, would you care to share with us a general observation of whether things are better or worse in the practice of law and why.

NS: I think things are very good in the federal district court in Oregon. I feel as good now as I did 25 or 30 years ago. Certainly not perfect, because we’ve got a long way to go in the administration of criminal justice in this country. I get back again to my pet peeve about pretrial disclosure. I debated Chuck Turner before the Lake Oswego Rotary Club a while back and Chuck got up and said we’ve got the greatest system of justice in the world.

And he was going on and on. I get up and say I don’t think that’s true. I think that’s a lot of baloney. We don’t have the greatest system of justice of the world at all because I taught a course at the University of Portland on World Criminal Justice systems and I have done a little research on that. I think the Western European countries in many respects have a heck of a better system than we do. For example, they do make their case available. They turn over a complete dossier of the case to the defendant, nothing as primitive as *Brady v. Maryland*. Do you know that rule, *Brady v. Maryland*, the rule which requires the government, upon request mind you, to turn over to the defense exculpatory material. For goodness sakes that should be the law; it’s sad that it took a Supreme Court case to establish that.

But we play it much too close to the vest in this country in terms of pre-trial disclosure. That’s the one major area that needs reform in the federal system. Western European countries, they are wonderful that way. Their sentences are far more humane; shorter than ours. Our sentences are far too long and they are becoming longer because of these guidelines. Certainly in the drug area—

NS: When you changed the tape we were discussing that the guidelines resulting in longer sentences in the drug area. Actually, in the fraud area that’s not particularly the case. There the guidelines are, I think, more reasonable, more or less in proportion with the seriousness of the offense. But getting back to your main point about how are things in the District of Oregon now? I think pretty doggone good due largely to the fact that everybody at least is trying to do a job. I mean, the judges are certainly trying to conduct the affairs of state fairly and with dispatch. The U.S. Attorney’s Office, the federal Public Defender’s Office—I know the lawyers in those offices very well, and they are trying to do a job. The private bar is in good faith. We’re lucky in this state in that we have relatively few obstructionists. I could toss off the names of two or three lawyers, and I’m certainly not going to do that—we all know who they are—but we have very few of those lawyers in Oregon. The great majority of lawyers in this state—way up in the 90th percentile—are trying to do a job.
I do a lot of parallel proceeding kind of work. I’ll represent somebody who has been indicted for bank fraud and then I’ll represent that same defendant who has been charged in the civil case by the FDIC or FSLIC. What I do in those proceedings is to try and utilize the discovery in the civil case so I can use it in the criminal proceeding. I’ve had a number of those cases so I occasionally do go to depositions and that kind of thing. That’s where I think we need tremendous improvement. As a matter of fact, Jeff, I recall I first met you at a deposition in the Wolfe case. I remember one of the bank directors being deposed. We got to know one another during those few two or three days of deposition and I thought that deposition went on for about five times longer than it should have. I think there is a lot of sloppy practice in civil work. I think lawyers take far too much time. Deposition practice, I find, is really outrageous. There is no sense of economy or efficiency or streamlining. Lawyers just keep running off at the mouth with a concomitant expense to the client. But from what I’ve observed, I really shouldn’t even be talking about the civil side of it, but I think the administration of criminal justice other than stuff that I’ve already mentioned, is in pretty good shape in Oregon.

NS: It probably should have changed my outlook and if I were more philosophical and a better person it probably would have. But you know, Jeff, it has had virtually no impact. What you are referring to is about 3-1/2 years ago I had bypass surgery. I was very fortunate. I happened to be walking up a hill one day and noticed a little tightness in my throat and said, “Hmm, I wonder what that is?” I noticed it a few times thereafter and to make a long story short, I went and had an angiogram and there was blockage in three arteries. I had a couple of opinions that I should probably have the bypass surgery rather than a process called angioplasty which wasn’t quite as finely developed 3-1/2 years ago as it is now. I thought about diet and exercise. I decided to have the surgery, which I did. I was in the hospital for five or six days and I was back at work, as I recall, in about 3 to 3-1/2 weeks.

I live my life now exactly the way I did before I had the surgery. I bike ride. I hike. I work very hard. I put in lots of hours. My life has changed virtually not at all. I wish I could tell you I was more philosophical and I realized the preciousness of life and I look out at the trees and I smell the flowers. I’ve read all the books on the subject. I’ve done a tremendous amount of reading over the years on how to conduct one’s life. My favorite author is Ralph Waldo Emerson. I’ve read most of his essays. I’ve read the *Meditations of Marcus Aurelius*.
Aurelius and I’ve read books by Seneca. I’m very well read on how to conduct your life. The trouble is I don’t live my life that way. I’m great coping with the problems of yesterday and I’m great coping about the problems of tomorrow, but I’m as miserable as anybody else in coping with today’s problems.

My clients come into my office. Many of the people I see are basket cases. Their hands are shaking and they don’t sleep well at night. They are total messes. They are very good at what they do. Some of them are very impressive people. I tell them that I’m going to be able to muster up the courage to rise to their problems. I say that jokingly. I tell them that I’m great at handling your problems it’s only our own problems that we screw up on. I don’t think it’s had any kind of appreciable impact. I try to watch my diet more now. I try to get more exercise. But essentially I lead the same kind of life.

JB: You mentioned early on that you were smoking two packs a day. Did this heart problem cause you to quit smoking?

NS: Oh, I quit smoking 15 years ago. I did smoke for 30 years from age 15 to age 45, but I didn’t have the heart thing until I was 56. No, I gave up smoking a long time ago.

JB: You also mentioned that you continue to do the same things you’ve done for years—bicycling and so on and so on. What do you do for enjoyment?

NS: In the nice weather I try to get out and cycle. I love to walk. I love to hike. I walked the Portland Marathon a few years ago. I walked the Portland Marathon last year. Unfortunately, I hadn’t trained for it because I was in a very busy period and hurt my foot. It’s only the last week or two that I’m able to continue walking again. I used to play a lot of tennis. I don’t know why since I’m perfectly able to play as much tennis as I want, but I’ve somehow gotten out of the habit of playing tennis. I play golf rarely. I go swimming occasionally at the Multnomah Club. I just bought a glove and a baseball and a dear friend, Matt Cohen, and I are going to start throwing a baseball around—just because we thought it might be fun.

JB: Don’t you think you’re a little old for that?

NS: Thank you, Jeff. Next question.

JB: You also read voraciously, I take it.

NS: I do read a lot. I suppose voraciously. I’m sporadic. I do like reading. Sometimes I go through periods where I buy books like mad. I have my books cataloged. I actually hired somebody to set up a card system. I have it set up by rooms: Bedroom 1,2,3,4; Den. I’ll be able to move from my house. I buy a lot of books and I do a lot of riffling. I’m sorry to say I don’t read nearly the number of books that I buy, but I enjoy reading.

JB: What are your tastes in reading?

NS: I’d say very eclectic. It’s just what strikes me. I get the New York Times Book Re-
view and I get the New York Review of Books and I buy magazines like Harper’s and Atlantic and I see and hear of books. I browse. I go into the Looking Glass Bookstore or the Catbird Bookstore or Powell’s and I browse around. I say, “Hmm, there’s a book. That’s supposed to be a good one. A Thousand Acres by Jane Smiley.” I’ll pluck it out of the shelf. It’s on sort of a hit and miss basis.

JB: We’re doing this interview at Black Butte, Oregon, not far from Sisters, in your cabin. Why did you buy this cabin?

NS: We bought the land in 1976, built the cabin in 1977. Not really thinking we had enough money—I’m a naysayer. I always say, “We bought the land and we’ll wait 5-10 years to build a cabin,” Barbara says. “No, let’s build it next year.” So we built a small cabin. We’ve added on to it since as the monies have become available. We bought the land and built the cabin largely for family togetherness. Our kids were young and we wanted a place to come to where we could be together—play Scrabble and get away from the TV set and give all of us a chance to spend time together. The kids learned to ski here at Hoodoo. Just one little diversion, Jeff, we’re talking about a vacation cabin. We live in a fairly nice house 15 minutes from downtown Portland, and we’re sitting out on our patio some spring evening or lovely summer evening, and I’ll say to Barbara, “Let’s get out of this hell hole and go over to our place at Black Butte.” Essentially, it’s one large vacationland. Our home in the Portland suburbs can really be our vacation home. So, we’re sort of spoiled. We love this cabin, although I’m sorry to say that we get here very rarely.

JB: You mentioned your children. This is a place to be together with your children. Where are your children now?

NS: We have three children. Susie, our oldest, she’s 29, she’s married. She lives in Portland. She has a little catering business. She’s serves very healthful, low-calorie gourmet meals which she delivers to your home or office in the afternoons. Then you bring them home and cook them up or put them in a microwave. Wonderful healthful meals. By the way, she’s going to have a child, which will be our first grandchild, sometime early July. She’s married to a fellow who works for Freightliner. He’s a computer guy—Eric Berkley.

My son John is in Osaka, Japan. John is a graduate of the University of Colorado. He graduated in International Business. He’s always been interested in Japan and the Japanese. He started taking Japanese as a junior in high school. He has studied it continually since then. He speaks the language quite well now and works for a Japanese company. He’s the only American. There are 100 employees. As I say, all Japanese employees other than John. He sells equipment to restaurants and hotels in the Osaka area. He’s looking, believe it or not, to set up a bungee jumping business in Japan this spring. Time will tell.

JB: For the benefit of scholars in the future, what is a bungee?
NS: Bungee jumping, you jump off either a building, a bridge, or a crane. You are attached to a flexible line, which goes around your waist and your feet. You jump hundreds of feet in the air and, hopefully, the line will not break and it will bounce back up again. It’s very, very exciting. He feels that the combination in Japan of faddism and perhaps kami-kaze will appeal to the Japanese. He’s doing this with a young fellow he went to Colorado with who has a bungee jumping business. In fact, his partner just appeared on the Regis Philbin show, talking about his business. Whether two young American kids can succeed in starting a bungee jumping business in Japan with the requirements of insurance and everything else to me is very doubtful, but I’m old and they’re young so, hopefully, they can do it.

Then finally, my son Peter will be 23. He graduated from Chapman College in Orange, California. He majored in communications. Peter is a performer. He’s an actor. He’s an emcee, and when they used to have these big shows down in school, he’d be the Master of Ceremonies. He’s got a great radio voice, so he’s done radio. He’s a movie maker. He wants to make movies. He’s an extremely talented kid. He lights up a stage. But, right now, he’s looking for a job in Los Angeles. He’s making very little money. He’s had a few parts down there, but, by and large, he’s still looking for work, looking for the break. I’m one of these fathers who does a full hover. My wife tends to leave the kids alone, but I’m like a hummingbird and I do my full hover. It’s very frustrating to me to see a kid like Peter who is so talented but, unfortunately, the only people who know how talented he is are the people at Chapman College who would see him do his plays and his acting and his movie making. He didn’t have an agent in college and now he has to go through all the stuff that you have to go through to make sure that other people know how good you are. He’s having head shots and getting an agent. He just joined Actor’s Equity because he had a line in a little movie that Margot Kidder starred in. He scraped together the $950 to get his Actor’s Equity card. So, we’ll see. Hopefully, Peter will make it in what he wants to do.

NS: Barb, for one thing, is a fine photographer. She literally takes thousands of pictures. We have albums floor to ceiling in our house. Every moment is recorded in our house. She’s also done a great deal of campaign photography over the years. Not for money but for friends. She’s done Joyce Cohen and Bill Rutherford and Ted Achilles, Dennis Buchanan, a number of other people who she just likes. She’s very non-ideological. It doesn’t matter whether they are Republicans or Democrats as long as she likes them. She’ll take pictures and help them put their brochures together. Also, Barbara has been very, very active in a group call CASA—Court Appointed Special Advocates. That group advises the circuit courts and the state courts about kids who are abused and battered. They are advocates for the child. So they have conferences with the family, with the mother, the father, with the
guardians, with the children. They make recommendations to the court about what should happen to these children. Barbara did that for a number of years until she burned out on it.

Barb wrote a cookbook a few years ago. She gathered together a whole bunch of recipes. Barbara and my daughter, Susan, have combined on cookbooks in our family over the years. One book was called *Kin Cooks* and I forgot the name of the next book. They are very interested in food and in cooking. Barbara thought she would do something for the benefit of CASA so she wrote a cookbook for them. Susie helped her and she also did it with Peg Bracken. I don't know if you know who Peg Bracken is. She wrote the book *I Hate to Cook Book*. She’s a wonderful lady who lives in Portland with her husband, John Ohman, whose son Jack Ohman writes the political cartoons for the *Oregonian*. We’ve become quite good friends with Peg and John.

Peg wrote an introduction to the cookbook for CASA. It’s called *Stolen Goods*. Its recipes were stolen from various folks hither and yon. Jack Ohman was kind enough to do the cover for it. It’s a wonderful book. They sold thousands of these books for CASA and have made a considerable amount of money for CASA. As a matter of fact, I think they are going to do another book for CASA sometime within the next year or so. Barbara also does a lot of work on greeting cards from CASA. Kids in the various grade schools do the artwork. They have raised an awful lot of money through selling these greeting cards. Some of the local folks like Norm Thompson have been kind enough to put publications for CASA in their catalogs. It’s been a wonderful experience and Barb is very dedicated to that organization.

**JB:** Norm, if you could choose a professional achievement that you are most proud of, what would that be?

**NS:** I don’t think there is any one thing. I know many lawyers consider it to be an honor to be chosen for the American College of Trial Lawyers and I’m gratified to be in the organization. But your question is what again? By the way, Jeff, should the record note that we just got back from a walk and perhaps we’re a little spaced out. I haven’t been drinking, but you know—tell me the question again?

**JB:** If you could choose a professional achievement that you were most proud of what would that be?

**NS:** Again, I can’t single any one thing out. I suppose that’s why I mention the American College of Trial Lawyers. I could mention a trial like the Golden Rule Realty case, or some of the cases that I defended, but I would say the professional achievement for me, and I truly never thought about this until this moment, is simply carrying on. I hope in an honorable, dedicated, professional way for the last 30 years. 10 years as a prosecutor and 20 years as a defense lawyer, without losing my optimism and my feeling that justice will ultimately prevail. It happens in most cases, unfortunately, it doesn’t happen in a few cases. By and large, the system does work and I’ve maintained my faith in the system. In my field, Jeff, a number of lawyers drop out, burn out
in the business, both on the prosecution side and the defense side, or become cynical about things. I don’t think that’s ever happened to me except momentarily. In that sense, I think it’s an achievement. I still like what I do. I still find it gratifying. I still think that things are getting better and will continue to get better.

JB: As we’ve talked these last few days, I come away with the sense that as you’ve grown and matured as a lawyer, you have pretty much done it on your own. You haven’t selected any one person to be your mentor nor has any person really taken you under his or her wing to teach you, if that’s a fair characterization. Have you taken it upon yourself to train anyone in particular?

NS: By the way, that is a fair characterization. I’ve had individuals over the years who have been inspirational for me like Joe Howard, who I mentioned. But by and large I agree with your statement. As far as my own mentoring, I’m actually part of a so-called mentor program and I’ve had a few attorneys under my wing, if you want to put it that way. Young lawyers who are new to the practice of law, and I enjoy that. I occasionally meet them for lunch, that kind of thing. I also work with a lawyer in the federal public defender’s appointed list. They have a new program now for attorneys who are new to the list, and who haven’t had great experience, to have a so-called mentor. I have an attorney on that list who calls me from time to time and we occasionally meet and bat cases around. I have two lawyers who do a lot of work for me. There have been three lawyers who have done a lot of work for me over the years. Jim Collins is one who recently left the U.S. Attorney’s Office, Dan Feiner is another, and Doug Stringer who actually offices with me and has for the last four years. All three of these attorneys are on their own but they do a lot of work with me. I don’t have a sense of being their mentor. Hopefully, they learn something from me, just as I learn things from them.

It goes without saying that I don’t know all the answers. Although, I hate to say something like that because I think of Felix Frankfurter. He was once interviewed for a book called *Felix Frankfurter Reminisces*, and he was a great believer in judicial restraint. He said to the interviewer, “Long ago I learned that I wasn’t God,” as if there was an issue over that fact. So, beware of the person who makes a proclamation about himself like I just did. Getting back to the point, I do work closely with these younger lawyers and, hopefully, they can pick up a few things. I sometimes make it a point, and I try to do this as humorously as possible, particularly when I’ve fouled up on something. I’ll say to somebody like Doug Stringer, “Doug, you’re never going to make any mistakes because you’re going to learn them all working with me.” I occasionally pause with Doug and will explain to him how I go about handling a particular kind of situation, or problem, or my approach to a particular case or problem so there’s that interchange, I say again, jokingly.

I was talking to Doug one day, Doug is about 34; I really don’t feel any sense of age discrepancy with him. As far as I’m concerned, he’s a peer as is Jim Collins, for example. We just work very closely together.
It’s certainly no kind of mentor-mentee relationship but I said to Doug one day, we were joking around about something, and Doug made some barbed comment to me and I said, “Watch out, Doug, I’m old enough to be your father.” There was a great laugh after that and Doug looked me straight in the eye and became very serious and said, “Norm, you’re older than my father.” So that was a fairly sobering moment.

JB: Throughout the interview, you stress your views about how to go about trying lawsuits or conducting criminal defenses and prosecutions. You have made it fairly clear about how you think lawyers ought to behave. Do you participate in any seminars or continuing legal education programs or other formalized activities to impart that sort of knowledge or at least your views to other lawyers?

NS: Well, I have spoken on a number of occasions to bar groups over the years. I used to give a talk on white-collar crime and defending white-collar criminal cases. I learned something about myself because I have taught—I forget whether we’ve discussed that or not—but I was an adjunct professor of law at George Washington University when I was back in Washington. I taught three years at the University of Portland, Administration of Criminal Justice, to law enforcement officers. I learned that I couldn’t repeat myself. I always taught a new course each time, which is very time consuming. I eventually stopped doing that after I did it for several years. The reason I mention that is this talk I gave on white-collar crime was a 50-minute lecture and I have to say in all immodesty, it was one helluva talk. It was very, very interesting. I put everything I had into it and I tried to make it as enjoyable and as succinct and as informative as possible. Then I was asked to give it again. I gave it the second time and I thought it was a good talk and then I gave it the third time and I was starting to bore myself to death though, hopefully, not the audience. By the fourth and fifth times, I realized I was at the end of my rope, I just could not repeat myself and I haven’t given that talk in many years because I was boring myself to death. I hate to repeat things. I have been part of bar programs. I’ve given talks on conflicts of interest, on various procedures in criminal cases. As I say, I’ve recently given a talk with Helen Frye on professionalism. I enjoy doing things like that. Did you mention, do I go to CLE sessions or—?

JB: No, I really didn’t. But if you think it’s appropriate or would like to share some of that with us, please do.

NS: No, I get my 15 points a year and that’s it. I try to do the bare minimum. Unfortunately, in my field, there aren’t that many useful seminars.

JB: You told me a couple of days ago, Norm, as we began this, that you are 60 years old. What are your plans for the future?

NS: Be very careful, Jeff, this is March 7, 1993. I will be 60 on May 22. I am 59 years old at the present time. What are my plans for the
future? Simply to do everything that I’ve been doing to this point. I have no plans to “slow down” as I think the expression is although I would like to write a book on comparative white-collar crime. Should I go on about this, Jeff, or is this going to unduly lengthen the tape.

JB: I wish you would.

NS: I have thought about this for years. Let me give you a quick example, particularly in the area of income tax evasion. In France, Spain and Italy, tax dodging is a national sport. So that’s the common and popular perception. In England and the Scandinavian countries it’s frowned upon. Here’s Israel, a country fighting for its very existence, and yet tax evasion—if you can believe the popular press—is rampant. Japan is a country where government service has always been considered to be a very honorable way of spending one’s life. I still think it’s true that a good part of the distinguished graduates of the University of Tokyo go into government service. You would expect that this reverence for government, you know the Emperor and that kind of thing, would extend to the obligation to pay one’s taxes. From everything I understand about Japan that is not true.

I would like to make a study of that phenomenon. I don’t think it’s ever been done before. I’ve canvassed the literature of the field and I’m satisfied that nothing like this has ever been done. I’d like to find out what are the laws with respect to tax evasion in these countries. What are the citizens’ responses to these laws? How is tax evasion enforced? What are the investigative techniques? What are tax evasion trials all about? What do judges do after a conviction? Are the sentences harsh or lenient? What is the attitude in these countries towards tax evasion? This could get into very sophisticated polling techniques—quantitative, qualitative analysis—it would be a fascinating study. Of course, I’ve never had the time to do that.

Someday, I would like to take a chunk of time off. I’m always jealous of my colleagues in the big law firms who can take 3-month, 4-month sabbaticals every five years. One of the curses of being a sole practitioner is that I’m virtually never away. I can hardly remember a vacation I’ve had in 20 years where I’ve gotten back to the hotel and there hasn’t been the red light blinking. You can almost never get away from your office. I rarely get away for more than a week or two. I would like to take a chunk of time off. I mean, a major chunk of time—perhaps a year, or two years or three years—to do this book. When and if I’ll do it, I don’t know, but if I had to put a time on it. I’d certainly like to start thinking about doing it and perhaps even doing it in, I’m going to say, two or three or four more years.

JB: Do you see yourself retiring from the practice of law?

NS: No, because I’m not that talented. I don’t have that many interests, I hike, I bike and I love to read. But most of the people I know who are successful retirees, have a wide variety of interests. It’s getting more and more common that people are retiring in their late 50’s, early 60’s.
NS: Before we changed the tape, we were talking about friends of mine who had retired and having the talent to keep themselves happy and busy. I don’t think I mentioned a friend of mine who is retired rather young, late 50’s, who hikes and bikes and go to yoga classes and looks after his stock portfolio. I couldn’t see myself doing that for more than a few months. On the other hand, I don’t know too many lawyers in my field—damn few as a matter of fact—who are zesting to practice law in the sense of being active in trial work after the age of 65. I know the judges carry on beautifully for post-65 and many years after, but I don’t know too many practitioners who do that. I know many practitioners who come into the office in their 70’s and 80’s, but they start winding down usually around their mid-60’s. At least that’s been my observation. Time will tell with me, I don’t know.

JB: How will you know when it’s time to quit, Norm, with all your stories about great lawyers who stayed on too long?

NS: I think your body, mind and your soul will tell you when you lose zest for the job, when you feel that you’re not performing up to par, when you lose motivation for what you’re doing, I think you know that it’s time to start wrapping up.

JB: I’ll be here to tell you, Norm.

NS: I’m sure you will, Jeff. [Laughter]

JB: How would you like to be remembered Norm?

NS: I am so bad at giving answers to cosmic questions. I am saying this with a smile. Ted Kennedy, who is not one of my favorite people, was being interviewed by Roger Mudd. I don’t know if you remember when Ted Kennedy was running for President and Roger Mudd said to him, “What do you expect to accomplish as president? What do you hope to accomplish? What are the qualities that you think you bring to the office of presidency?” Well, Teddy Kennedy was just awful, he was completely inarticulate. He was just a quivering bag of protoplasm [laughter]. Here I am faced with cosmic questions. What would I like to be remembered for? Nothing big, I’m going to have to give an answer in line with the answer I gave a while back on what I think is the most significant accomplishment. That is, carrying on the absolute best that I can over a period of years without becoming cynical, without losing hope. In the first 10 professional years, before my private practice, I was just trying to do the best damn job I could for my client, the United States Government, and that’s the way I feel now. Try to get the best results for my clients, as honorably and ethically as I can.

JB: I want to thank you for a very pleasant three days for me. This has been a very enjoyable experience for me and I hope you’ve enjoyed the interview.

NS: I think you have been masterful in the way that you have conducted the interview and yes, I have enjoyed it very much and I appreciate the opportunity to do this.

JB: Thank you.
Tape Seven

JB: Today is September 22, 2002 and I’m here with Norman Sepenuk to do his oral history. Norm and I had an interview in 1991 or 1992. We took a fairly extensive oral history then, but because Norm and I are both mechanical geniuses, we managed not to record part of that interview. What we’d thought we do this morning is pick up the parts of the interview that we missed in 1991 or 1992, and then talk a little bit about what’s happened in Norm’s life since then. The part that we missed: Norm in the initial interview had talked about a number of federal judges before whom he had appeared as a criminal defense attorney, and in his career as a prosecutor as well. He had talked about four judges that we managed to miss recording and those were Judges Frye, Redden, Panner and Marsh, all of whom were appointed to the District bench in the early 1980’s. We thought we would double back today on September 22, 2002, and pick up the part that we missed on those four judges. In the interim, when we did that interview, there have been, I think there have been four more judges appointed to the District bench—the District bench in the early 1980’s. We thought we would double back today on September 22, 2002, and pick up the part that we missed on those four judges. In the interim, when we did that interview, there have been, I think there have been four more judges appointed to the bench—Judges Haggerty, King, Brown and Aiken. We thought we would cover a little bit of that. As I said, we will talk a little bit about what Norm has been up to in the 8 or 9 years since. Norm, as I say, why don’t we pick up where we left off and tell us a little bit about Judge Frye and your dealings with her on the bench.

NS: Thank you, Jeff. I think we should explain that we have only one microphone here. The thousands of future historians who listen to these tapes, and the scores of lawyers and judges who listen to them as the years go by, should know that the delay from question to answer is due to the fact that we have to pass this little microphone back and forth. I should also mention that the losing, I’ll call it that, of the prior recording, Jeff, my dear old friend, attributed it to a mutual error on our part. Jeff knows me well enough to know that I never blame myself for anything. It’s all Batchelor’s fault. In fact, any screw up throughout these tapes is attributable to Mr. Batchelor.

So the question was, as I understand it, Jeff, to start chatting about some of the judges that I didn’t talk about or I talked about when we lost the recording. I’m at a bit of a disadvantage in that some nine or ten years have now gone by. Memories fade and these judges are all emeritus at this point, I believe. By the way, is Judge Jones included in that list? In any event, I think we were talking about Judge Frye, Judge Frye, again, is an emeritus judge now. I had a number of cases before her. I had a number of trials. I like Judge Frye. She is a very direct person. I think she’s a fair sentencer.

One thing strikes me as very notable about Judge Frye, I remember after the Tom Wolfe case. Tom was a Portland attorney who was convicted of fraud, much to my sorrow. He was a very good guy, good person. But after that case was over, Judge Frye said that she would have found him not guilty had she
been hearing the case without a jury. She sentenced Tom to three years imprisonment. We appealed. We lost the appeal. The case came back on a motion to reduce sentence and she cut his sentence to one year in prison, I think, Tom served 6 or 9 months. I forget. But in any event, one thing that does stand out in my mind about Judge Frye, though, and it was very disconcerting, is that she would almost never ask a question during oral argument. I’ve never had that experience with any other judge. I had many hours of oral argument before Judge Frye. She would usually sit there with perfect posture, ramrod straight, obviously listening very closely to the arguments of the lawyers but with nary a question. I look back and I’m saying all this really with a smile because it was strange, you never knew—she would sit, I would say, sphinx-like—how she was thinking. I will conclude this by saying that on a great majority of rulings she made in my cases, was right. She obviously considered the arguments, considered the matters very carefully and usually reached the right decision but there was very little, if any, give and take between the judge and the attorney.

JB: You mention her not asking questions during oral argument and motions, I wonder if that would be true of Judge Redden. I can anticipate that there are some differences in style. Tell us a little bit about Judge Redden and your experience with him.

NS: Well, yes, I think Judge Frye is almost unique and, again, I say this with almost affection, I do like Judge Frye. It’s just an observation I have about her.

No, Judge Redden, as well as all the other judges in my experience do question, some more than others, of course. Judge Redden’s questioning, I don’t think, is unique. I think when he has a problem, when he has a question, he simply asks it. I think like practically every other federal judge I’ve been before, Judge Redden is trying to do the right thing. He’s trying to reach the right result and he asks the questions that will illuminate the issues—whether it’s factual or legal. I think a nice touch with Judge Redden is that he’s a funny guy, he’s a witty guy. He has a wonderful sense of humor. One of my delights was to roast him a number of years ago when he took emeritus status. I was one of four or five or half a dozen roasters and he can give a roast and he can take a roast. He’s a very witty guy and really it’s a pleasure to appear before Judge Redden. Judge Redden has all the qualities, I think that a federal judge should have. He’s bright, he has good judgment, and he has a good sense of fairness. He’s a good man. I like him.

JB: As I recall, Judge Redden didn’t have a lot of trial experience when he went on the bench. He spent most of his life in the political arena if I’m remembering things correctly. Did you find, in the beginning, when he first took the bench that he had a fair amount to learn about how to conduct a trial or did he just kind of walk into the courtroom and act like he had been there a hundred years?

NS: No, I never noticed any, there was no indication that Judge Redden didn’t have the poise, or the savvy, or the knowledge to con-
duct a trial when he became a federal judge. As a matter of fact, to the contrary. Again, it’s an imperfect recollection. I do think that Judge Redden practiced law for a number of years in Medford. He’s just an on-the-line lawyer. So my guess is that he had considerable amount of litigation experience before he became a federal judge. I remember one of his very early cases was a case I tried. I represented an osteopathic physician who was charged with 102 counts of Medicare fraud. I bring that up because we got a “not guilty” verdict in that case. I only talk about cases that I’ve won. I never talk about my losses.

Judge Redden was the presiding judge in that case. He conducted it very, very well. Now that you’ve mentioned this—my goodness, I’ve plucked this out of my memory—I remember at one point one of the assistant U.S. Attorneys either in closing argument or cross examination (that I don’t remember) but there’s no question in my mind the assistant U.S. Attorney was crossing the line. He was getting into an area he shouldn’t have gone into. As a defense lawyer, I’m very reluctant to object particularly in a closing argument, if it was a closing argument. I’ve almost never objected in a closing argument. I rarely object during either direct or cross examination. I just don’t think it’s a good thing to do. I think it detracts from the case. I think the jury is thinking you have something to hide. And unless it’s something truly flagrant or important, I usually keep quiet. But in this one, this particular instance, I thought the government was going too far. I was on the verge of saying something but lo and behold Judge Redden came in and made some very apt comments to the prosecutor telling him that he thought it was an improper line of inquiry. He was very firm about it and obviously annoyed by it. And I mention that to bring out that Judge Redden has a very nice sense of fairness which is really what our business is all about.

JB: I think it was Judge Solomon who was called the fastest gavel in the West. I may be mistaken about that but certainly people have described Owen Panner in those terms. You’ve appeared many times before Judge Panner. Give us your reminiscences about Judge Panner and if you can think of a case you had before him, in particular. Tell us a little bit about that.

NS: I’ve had a number of trials before Judge Panner. One of them was a very notable case—the Kessler case—and there have been a number of others. One involved a chap named Tom Nevis who was convicted of bank fraud and there have been others that I have had before him. By the way, Judge Panner is really one of my favorite people. I think he is a terrific judge. One of the things I like about him—there are a lot of things I like about him—one is that he cuts it right down the middle. He was like Judge Leavy in that way. He kicks both sides in the teeth equally. He kicks the defense and the prosecution equally, and I like that. Yes, next to Judge Solomon he is the fastest gavel in the West. I think he prides himself on that.

I remember a case that I had with Lance Caldwell. I believe it was the Nevis case although I’m not sure now. It was a bank fraud case where Lance said this case was going to
take six weeks to try. Judge Panner said, “We have nine trial days and we’re going to get it done in nine trial days.” I remember Lance and I were both upset and we thought we’re members of the “Federal family,” we’re finally going to take a stand. We’re going to see Judge Panner and say it cannot be done in nine trial days. For one reason or another, I suppose the basic reason is that we both chickened out, we decided not to say anything, and to just do it. I must say it was laborious. We did go long hours. We didn’t go the usual 9:00 or 9:30 to 4:00 or 5:00. Sometimes we went until 7:00. But, by God, we did get the case done. Both Lance and I agreed at the end that it was well done. Neither one of us had any particular complaints about the speed in which the case was undertaken.

Generally speaking, Owen Panner is masterful at getting the litigants to do what he wants them to do. He has great presence. He is like Judge Belloni that way. Judge Belloni had great presence and great authority despite his rather small physical stature. Judge Panner, there is something that he has when he is on the bench that exudes authority. I have always wondered how Gerry Spence would do in Owen Panner’s courtroom. Gerry Spence prides himself on taking over the courtroom, creating an aura about himself and essentially controlling the course of the case. I seriously doubt that he could do that in Owen Panner’s courtroom. It’s inconceivable to me that any attorney would take the show away from Owen Panner. He’s a very decisive person; a very bright man. Has a wonderful sense of fairness. I think you can really entrust your case to him.

Of course, I’ve had contacts with Owen Panner, too, on the Inns of Court. I’m a member of the Owen Panner Inns of Court. He is the spiritual leader and mentor of that organization. He sets a wonderful example for the organization. In case this should turn into what sounds like a little bit of hero worship, let me set the record straight just briefly because we all, even I, make a mistake Jeff. I know it’s hard for you to conceive of that or for the people who listen to this tape as the years go by, the thousands of historians, but of all my appearances before Judge Panner, in this particular bank fraud trial, I was cross-examining a government witness. I must say that my cross examination was devastating and brilliant, forgive that immodesty. I was reaching a very decisive, crucial point of the case—I was trying to show that this witness who had pled guilty, essentially didn’t realize what he was pleading guilty to. This was a very complex area of the law and I was leading him through a cross examination to show that even the witness who pled guilty, had a misunderstanding of what the law was. I got to the crucial part of the cross examination, and Judge Panner said, “Now just a minute, Mr. Sepenuk. I took that guilty plea and if I didn’t think that was an appropriate guilty plea. I would not have taken it so why don’t you simply go on to another point?” That just squashed me, right then and there. Of course, I tried not to show that to the jury, but it was a blow to our case, I do think.

I have the utmost regard and respect for Owen Panner. I do think in this instance he was wrong. We did appeal the case. This was assigned as one of the errors on appeal.
and, quite frankly, I forget how the Court of Appeals handled it but I do know that we lost. I think we should have won on that point. In fact, as I recall, there was a dissent in that case. I could be wrong. But, in event, of all the matters I’ve had before Judge Panner that’s the only thing I ever took issue with him on.

JB: Judge Panner is also an excellent golfer, as you know, but I think, Norm, you’ve not the skills to play with him so we’re not going to go into that particular game. When we did this interview in the early 1990’s, I think Malcolm Marsh was still practicing law in Salem. He and you and I may have just come out of a case, the Wolfe case that you mentioned earlier. Why don’t you give us a little bit of your view on Malcolm Marsh, the lawyer, and then tell us a little bit about Malcolm Marsh, the Judge.

NS: Well, Jeff, the only case that I had with Malcolm, the lawyer, was the Wolfe case. Malcolm did, I believe, almost exclusively civil cases before he became a judge. Therefore, I would have had very little contact with him. The Wolfe case, of course, was a parallel civil and criminal investigation as you well know. In the Wolfe case, as I recall, Malcolm was representing the so-called non-equity partners at the Wolfe firm. I got to know him and, indeed, we were at depositions together. We shared a few drinks together, a cup of coffee together, and I realized then I was dealing with a very astute, careful lawyer. I have great respect for Malcolm and his legal ability, his legal thinking and generally his manner. He is obviously, again, a guy who has a wonderful sense of fairness. I really appreciated the meticulousness of his approach to dealing with and solving legal problems. He brought those same abilities, obviously, and that same style to the United States District Court bench where he has been a careful, meticulous, methodical judge.

I get a kick out of thinking about Malcolm because not long after he was on the bench, I’m trying to remember how long, might have just been months, he wanted to find out how he was doing. So he asked a group of lawyers, and I happened to be one of them, to be on a little committee to critique his performance, to make sure he was doing the right thing and performing his job correctly. Of course he was. I had nothing to say that was even remotely unfavorable and I think that was generally true of all the other lawyers on this committee. I believe we only met once. I told him it was ironic that the judges who least need criticism are the ones who seek it out. Malcolm really didn’t need the critiquing of other lawyers. He was obviously a first-rate judge but he did engage in that. I think he is a man of genuine humility and wants to do the right thing. It takes a person of security, a good feeling about himself, his own self-esteem and sense of worth to be able to have the confidence to ask a bunch of lawyers to critique him like that.

You have to be careful appearing before Malcolm. Malcolm will do LEXIS, whatever it’s called—the legal research and what not. Any day you appear before Malcolm he is, more than any judge I’ve known—Judge Burns, by the way, was excellent that way. Judge Burns was a true student of the law.
I’ll just add as parentheses here—of course we’re all saddened by his recent death—but Malcolm is really assiduous in legal research, whether he does it himself or whether he has his clerks do it. On more than one occasion, I would appear in his court and he would say, “Are you familiar with the Jones case or the Smith case?” He wouldn’t say this in any kind of self-satisfied, superior way. He was just indicating that there is other authority on the subject that we ought to know about that had very recently come to his attention. Malcolm is also a colleague of mine in the American College of Trial Lawyers. He’s altogether a delightful guy.

JB: If I’m remembering correctly, Norm, Judge Marsh was the judge in a case called United States v. Sepenuk. If you remember that case, will you tell us a little bit about that and how Judge Marsh ruled?

NS: Yes. Jeff, I think I’ll nick Judge Marsh now just like I nicked Judge Panner with the one thing that I thought he did wrong. I nicked Judge Frye a little bit with her lack of questioning. In fact, as I recall, I haven’t nicked Judge Redden. If I think about something on Judge Redden, I’ll come back to it. Actually, I think Judge Marsh correctly decided the case of United States v. Sepenuk. I get a kick out of talking about this. Maybe you shouldn’t have brought this up, Jeff. Should I be angry with you with bringing up the case of United States v. Sepenuk? This was an area of the law that really is not particularly active these days but in the old days, but it is still true, if a lawyer received a fee in cash of $10,000 or more, the lawyer has to file a form with the Internal Revenue Service stating that fact.

I had several clients over the years where I received $10,000 or more in cash. These were exclusively drug clients. By the way, the great bulk of my practice is fraud and white-collar crime but, more likely years ago though, I did handle some drug cases and most of these people would give their retainers in cash. I made a practice, as did a number of other lawyers, of obviously filing the form within the requisite period and stating the amount of money received but not giving the client’s name. It was my thought and a thought of a number of other lawyers around the country who were in the same business as I was, that to do that was a violation of the client’s rights under both the Fifth and Sixth Amendments. That is, the right to counsel in the latter amendment of the Constitution and that it would be unfair to disclose the client’s name, particularly if it was not an ongoing investigation. If the client was coming to you for legal advice in anticipation of an investigation, giving his name to the Internal Revenue Service is just an invitation to the government to come in and investigate. I thought under those circumstances, it was unfair.

In any event, after a number of years of this, the Internal Revenue Service decided to make an example of a rather small number of lawyers around the country. If I had to guess, I’d say certainly less than 50, and maybe 25 or less. I happened to be one of them. I don’t know why but I was. They brought an action against me to enforce a summons. They served me with a summons; asked me to produce the names and other information about
the clients. I declined. By the way, I told the clients that I would never reveal their names, when they first retained me, but that if the matter went to litigation and I was ordered by a judge to reveal their names, then I would do so. That’s exactly what happened. We litigated the case. My colleague, Doug Stringer, represented me. The case was briefed and argued. Malcolm held that I had to comply with the subpoena and rejected our argument in that case that the names of the clients were confidential. I get a kick out of it because the case was reported, as you say, *United States v. Sepenuk*. Colleagues of mine around the country, who I hadn’t heard from for years and years after law school, would call me, “I didn’t know you were a drug lawyer” would be their question. I view that as somewhat ironical.

JB: It just occurred to me that when we did our last interview we either did not talk about Judge Robert E. Jones, or he was part of the material that got erased from our interviews. Why don’t we loop back and give us your impressions of Judge Jones. Again, if there are any cases that stand out, give us just a brief synopsis.

NS: Yes. As a matter of fact, as I sit here now, I think we did talk about Judge Jones. If we didn’t, I’m just going to give you buckshot, very, very quickly. I had several trials before Judge Jones when he was on the state court bench. I had a number of matters with him on the federal court bench; two significant fraud trials before Judge Jones in state court. Of course, he’s a very knowledgeable, decisive guy. He is a master of the law of evidence. As you know, he and Judge Richard Unis taught evidence for years. He’s peppery and he cares about the law. He certainly runs his courtroom. I do have to tell you that before I had any cases with Judge Jones, I’d do the usual asking about—this was before I tried my state court cases—and some of the lawyers, one or two of the lawyers, said something about that he was sort of a martinet, that kind of thing. I didn’t find him that way at all. He was crisp, certainly, but very fair, very intelligent. He ran his courtroom beautifully; allowed both sides to try their case. I’m very high on him.

In federal court, I represented a lawyer before him in a fraud case—a lawyer who had pled guilty. Judge Jones obviously felt sorry for this lawyer—I’m not going to mention his name, even though it is a matter of public record because the case came out in the press—but Judge Jones took this lawyer through the plea procedure and, again, the lawyer at the time, I think, was probably in his early 70’s. It was obvious that Judge Jones had compassion for the lawyer and he took him through the plea procedure, very crisply, and very compassionately, asking mostly leading questions and that kind of thing. That stands out in my mind. Very sympathetic. Then we sentenced this lawyer I thought he came up with a brilliant sentence. It was all of his own devising, instead of sentencing the lawyer to jail and the lawyer had extreme health problems—it was very right of Judge Jones not to sentence him to jail, this followed the lawyer’s plea to a fraud charge.
JB: This is Jeff Batchelor again. We came to a rather abrupt halt a few minutes ago because we were at the end of a tape. We left off with Norm talking about Judge Robert E. Jones and his sentencing of a criminal defendant who was a lawyer in poor health. I’m going to ask Norm to just pick up where we left off. There might be a little bit of an overlap but, Norm—

NS: In any event, when it came to the sentencing, Judge Jones fashioned what I thought was a very innovative and creative sentence. Rather than send the lawyer to jail, which he really shouldn’t have done, the lawyer was in very bad health, elderly, poor health, Judge Jones decided to put the lawyer in charge, for a period of time, I think it was six months, of the prison library at Sheridan. The lawyer just did a magnificent job setting up that library. I remember I made donations to it and other lawyers did too. It was altogether a good ending to a very sad case.

By the way, Jeff, something just occurred to me, if you don’t mind, I was thinking back on Judge Marsh. I’ll say it’s amusing; it wasn’t amusing at the time. This was just a couple of years ago when I was already an old lawyer. I hadn’t taken an appointed case in years. Judge Marsh called me one day and said, “There is a chap who has fired two lawyers in federal court. He is charged with major drug offenses and he’s already fired two lawyers and I’d like you to take an appointment to represent him.” All I wanted to say was “No, I’m not going to do that.” Aside from the fact that I don’t take appointed cases, aside from the fact of my advanced years, and particularly in light of the fact that I was very busy at that time, I thought I was justified in saying no. The reason I brought this up was this federal family notion. You do feel a part of the federal family. I hope I’m not getting too trite or nostalgic here. But there is a sense when a federal judge requests you to do something that you do it. I’ve always felt that way. So rather than “no” which was my instinct, I simply said “yes, I will do it.”

The case started out, really, as a nightmare. He insisted he was going to go to trial. There was massive, overwhelming evidence against him. Six co-defendants had already pled guilty, at least four. And a couple of co-defendants in other cases implicated him. It was a hopeless case. But I worked on it and we had an investigator. He kept telling me—and his mother wrote me a very nasty letter saying, “Make sure –I’ll call him John— gets a fair trial because he’s innocent,” which is precisely what he was not. But the short of it is, after several months—this defendant really liked Judge Marsh. He felt that Judge Marsh was a very honest, sympathetic person who would understand his case. And after a while he just sort of saw the light and he said, “You know, I think I’m going to plead guilty. I think Judge Marsh will treat me fairly.” Indeed, that’s the way it happened. The prosecutor by this time had backed off a very hard-nosed position he was taking. We worked out what I thought was a very fair and reasonable plea agreement. And the sentence ultimately, as is true in most cases before Judge Marsh, was a
fair one. The client really felt good about the situation. At the beginning this was a bitter, disillusioned man who, by the time the case was over, I think it’s fair to say, that he felt that justice had been done. And I think a lot of it had to do with his feeling that Judge Marsh was somebody who was a fair and a just person, which, of course, is the case.

JB: Norm, let’s talk for a few minutes about Judge Hogan. You are free to criticize anything except his singing voice, of which I think he’s quite proud. So, that will be off limits, Norm, but tell me about your experience with Judge Hogan. I think, again, my memory isn’t as good as yours but I know you had a case involving a lawyer in Medford—Mr. Kellington—so when you’re talking about Judge Hogan, please talk about that case as well.

NS: Judge Hogan has been in Eugene for many years. I had matters before him when he was a magistrate and also as a U.S. District Court judge. Because of his location in Eugene fewer matters than before Portland judges. Yes, Judge Hogan, is indeed known for his singing voice, which he doesn’t hesitate to display on numerous occasions and, of course, for his ability to settle cases. He and Judge Leavy are justly known as the two judges who are able to really pound out an agreement amongst parties. I know that Judge Hogan has done that on many occasions. I hear stories that until 12, 1, 2, in the morning the parties are still trying to reach an agreement. Much more often than not, they do. There was one matter before Judge Hogan, the reasons that it’s notable and I think it’s also notable in Judge Hogan’s career. I think I’ll mention the name this time because it’s a reported case—Dan Kellington—who is a Medford lawyer I represented who was convicted of obstruction of justice. I don’t think I’ll go into the facts of the case, it’s too convoluted, but the short of it is Dan was convicted of obstruction of justice. I didn’t try the case. I was retained to file a motion for judgment of acquittal and/or a new trial, which I did. Much to our delight, Judge Hogan granted it. It was the first time he had granted a motion for judgment of acquittal in all of his years. I wish I could remember the number of years, Twenty some years on the bench. By the way, it was absolutely the decision he should have made. I don’t want to say it was brilliant lawyering, or that kind of thing. This was a guy who should not have been convicted. Judge Hogan rightly recognized that and dismissed the case.

By the way, the government did appeal that dismissal and in a 2 to 1 decision, they reversed Judge Hogan. One of the judges being your dear friend Steven Trott, voting for the majority. The case came back to Judge Hogan. He thereupon granted our motion for a new trial. I won’t get into that. The government again appealed. And again that was affirmed. The case came back for a new trial and we then filed a motion to dismiss the indictment. I realize I’m getting quite long-winded here. I’m not even going to get into the grounds. But Judge Hogan, for a legal reason we had discerned, dismissed the case and then finally, after Dan had been vindicated by the Oregon State Bar, we had a hearing before the OSB which ruled that Dan had done nothing improper, obviously the correct ruling.
We argued to the U.S. Attorney’s Office that if he’s vindicated by the bar, *a fortiori*, he should be vindicated by the United States Attorney’s Office. Kris Olson, about a week before she left office, dismissed the case so it ended happily. It was a very satisfactory set of appearances before Judge Hogan.

JB: Just a quick follow up, Norm. Judge Hogan has a reputation for being a very strict taskmaster and particularly in criminal cases, as I understand, he has a reputation for being pro-government. I’m wondering if you would comment on that, particularly, in the context of the Kellington case because, as you said, he had not granted a motion of this sort in all of his 20 or so years on the bench.

NS: I haven’t actually had a trial before Judge Hogan. I had a number of matters before him, a number of guilty pleas, including one in a very major timber case involving timber theft and fraud by timber companies. I can’t say that I’ve noticed him being particularly pro-government. It’s a tough question, Jeff, I’m thinking aloud as I speak here, to actually say that a judge is pro-government or pro-defendant. I don’t think the judges we have in Oregon, the federal judges, and I can speak generally now, are that way. I know other districts have had clearly had pro-government and pro-defendant judges. I’ll refer to the Ninth Circuit now. Classically, Judges Hofstetler and Ely have been considered to be pro-defendant judges. I think it’s fair to say that certain people regard Judge Reinhardt as a pro-defendant judge. There have been judges—God, I wish I could pluck them out now—but I’ll say it, yeah, as I recall, Judge Wallace was considered a pro-government judge on the Ninth Circuit, and others as well.

I really can’t say that any of our district court judges can be labeled either pro-government or pro-defendant. I think generally speaking that with rare exception—I know Judge Panner is an exception. Judge Leavy is an exception. I think they are rigorous in their cutting it down the middle. I don’t think either Judge Panner or Judge Levy has a shred of bias in them one way or the other. Generally speaking, and I’m not sure I’d be any different, Jeff, if I were on the bench, there is a feeling that the government has probably done the right thing. There is almost a presumption of regularity despite the fact that every lawyer who has been around for any period of time knows that there are overzealous FBI agents, Customs agents, all sorts of over-reaching and over-zealousness on the part of the government. But with that recognition there is still a feeling—just like the grand jury is told to not take the indictment as any kind of evidence of anything, it’s just a charge. But the truth is, in our heart of hearts, and I’m sure in the heart of hearts of the jury, there is the idea at least that something is wrong here. There wouldn’t be an indictment unless there was something wrong. I do think that’s a feeling on the part of most federal judges that the government has generally done the right thing and that I want to be shown to the contrary. I think it’s fair to say that Judge Hogan probably falls within that category.

JB: Norm, I’m going to instruct you not to use the phrase *a fortiori* or any other Latin
phrase for the remainder of this interview. I would like to shift gears though to your life in the last eight or nine years. I’ve known Norm Sepenuk many years now and one of the things I’ve always admired about Norm is his willingness to give back to the community that he’s a part of. I know that’s a big part of the last few years in Norm’s life. Take that as a lead-in to talk about your recent experience in Eastern Europe and Central Asia. There are a couple of other areas I’d like to ask you about but talk a little bit about that.

NS: I’m still laughing about your *a fortiori* comment so let me control myself here. Yes, it was in 1999 that I decided to get involved with a group called CEELI, The American Bar Association Central and East European Law Initiative. It’s a volunteer program of the American Bar Association for lawyers and judges to go to the post-Communist countries of Central and Eastern Europe and Central Asia and tell those countries about the American system with a view of improving, and creating in some cases, the rule of law in those countries which generally have broken down or, at the very least, have become antiquated under Soviet rule. It’s been certainly as interesting part of my life as any.

I’ve spent six months in Moldova, which, by the way, is a small country the size of Maryland in between Romania and the Ukraine. I spent six months there in 1999. In fact, I gave a talk about my experiences there before the United States District Court Historical Society shortly after I returned. I spent a month in Uzbekistan the following year. Last summer I spent a month in Bosnia. What we do, “we” being the volunteer lawyers in this program, we are invited into these countries, and we don’t impose ourselves on the country. We’re asked to come and we try to export from our country some of the better features of our system that we think are adaptable in these countries. For example, Moldova, like most post-Communist countries, like most countries in Eastern Europe, Central Europe, and Central Asia, did not have a guilty plea system. It is almost staggering to think about this. Every case in Moldova went to trial; a terrible waste of resources. The idea for it goes back to the central thought that it’s very easy to beat a confession out of someone, and so it just developed historically that every case would be tried, and there would be no such thing as a guilty plea.

What we did in Moldova is we met with judges, defense lawyers, prosecutors, parliamentarians, and law professors, and we showed them how effective the American system was. We had mock plea bargaining scenarios, entries of pleas, that kind of thing. So we showed these folks that in America a plea of guilty can be consummated only through a very careful process, only after the judge is satisfied that it was freely and voluntarily entered and only after the judge is satisfied that there is a solid factual basis for the plea. I’m happy to say that Moldova now has a guilty plea system. It’s been a great boon to their system as you’d expect. We did the same thing in Uzbekistan a few years ago. There are various other aspects of our system that we’ve talked about, Bail reform, pretrial detention in some of these countries is really scandalous. People stay in jail for little reason and they stay in
jail far too long. Then there are other specific pieces of legislation I’ve worked on such as tax evasion and money laundering. These are generally very corrupt countries. There are efforts to create and devise legislation that will prevent that, that will cause perpetrators to go to jail for significant periods of time. It has been a very interesting experience.

JB: Norm, since your experience in Moldova, I guess just very recently. I understand that you’ve been involved in a case in The Hague. I know that’s ongoing so you’ll probably have to be circumspect in what you say—but tell us a little bit about your experience in The Hague and just what you’re doing there now.

NS: I don’t think there is any particular need for circumspection because it is a known case. There is a general named Radislav Krstic. I represent him as co-counsel on appeal. A few years ago he was convicted of genocide and other war crimes before the International Tribunal at The Hague. When I was in Bosnia last summer, I happened to meet one of his Serbian lawyers. His Serbian lawyer asked me if I would become co-counsel with him on appeal and I said, yes. That case has occupied me for quite some time now—for roughly the last year. General Krstic is appealing his conviction.

JB: Norm, as you relate what you’re doing, will you tell us a little bit about the differences between justice—I’m not even sure of the name of the court, so you can tell us the actual name of the court—but how an appeal works there in contrast to how we do an appeal here in the United States.

NS: Yes. The tribunal is the International Criminal Tribunal for the former Yugoslavia, which is based in The Hague, as is the Court of Justice, as will be the new International Criminal Court which, by the way, our country has not ratified. We won’t get into that. Incidentally, I should add that there is an International Criminal Tribunal for Rwanda, too, because of the genocides committed in Rwanda several years ago. The appeal process is different before The Hague Tribunal because it’s a five-person appeal court; there are no jury trials. The trial of General Krstic was before a three-judge court. I should add parenthetically that one of the judges, the American judge Patricia Wald—and the opinion is not authored, you never know who writes an opinion—but I have it on very substantial authority that the American Judge Wald wrote the 255-page opinion in the Krstic case. I will say, sadly, on behalf of General Krstic that it is a very deftly written, formidable opinion. It is truly a brilliant opinion. I think the opinion is wrong. I say that with all sincerity. On the issue of genocide, certainly, I don’t think that General Krstic should have been convicted of genocide. That’s going to be one of our main arguments on appeal.

In any event, the system differs from ours primarily because on the appeal in The Hague Tribunal, you can introduce new evidence, evidence that was not available at the trial. As you well know, Jeff, being the appellate expert that you are, that’s not the situation in our country; you’re bound by the trial
record. One of the reasons this appeal is taking so long is that we are introducing new evidence. We had reason to think that the prosecutor did not produce all exculpatory material. We skirmished about that for several months. The prosecution, after denying that there was any exculpatory material whatsoever, has now produced about three or four feet of material saying that they are producing this out of an abundance of caution, and not because there is any feeling on their part that it was exculpatory. The fact is that there is evidence in these massive materials that we do regard as exculpatory.

I don’t think the case will be heard until next year. We are going to file one final brief with additional evidence. Briefs have been filed on the main issues in the case by both sides. The prosecution is also appealing. They think that the 46-year sentence, which this 52-year-old man received, is too lenient. They are claiming that essentially anyone convicted of genocide should receive a life sentence. There is no death penalty, by the way, at the Tribunal. So, it’s been a very interesting experience.

JB: I want to ask one more question on this tape, are there any other significant cases that you’d like to talk about that you’ve handled in the last years since we did this interview initially, or any other significant parts of your life that we might like to hear as historians?

NS: I wish I had thought more about that before this interview. There is nothing more boring than recounting cases. I know I don’t like to hear lawyers recount cases. I’m going to avoid it. There are cases that could be mentioned. I represented Jeff Grayson in the Capital Consultants case, which is certainly one of the major fraud cases in Oregon’s history. Unfortunately, well into my representation in that case I had to withdraw because there were certain dealings between Jeff and a union leader named John Abbott, which led to John Abbott pleading guilty. I had previously represented John Abbott in another matter; under the conflict rules I was forced to withdraw from the case. I no longer represent Jeff. He has a Chicago lawyer representing him. It’s really tragic. Jeff has had a stroke not long ago. He has pled guilty. I’m not sure that he’s even well enough to be sentenced. I don’t think I should talk about that case. It’s still a pending case. I represent a major power company now. I don’t think I’ll mention the name of the company, which is also now very prominently involved in an investigation. I also represent an official of another power company which is currently under investigation. But these are all matters that I don’t think I can talk about. I don’t think I particularly want to dredge up any past cases to talk about.

JB: Well, if you’re not willing to talk about any past cases, maybe you would tell us a little bit about what the future holds for Norm Sepenuk.

NS: Thank you, Jeffrey. It’s not that I’m not willing, it’s just that I think the capacity for boredom is great here. If I could give a re-
flection, do we have time, Jeff? I notice you’re looking at the tape. Just a reflection—one of the reasons that I’ve gotten involved in volunteer work is most importantly I enjoy that work. After so many years in private practice you tend to get grooved and you want to do something different, at least I do. I find this work satisfying in that it affects a country’s system. It’s not just dealing with an individual. You are making an impact and an imprint on another country’s system.

But there has been a change in the dynamic in criminal cases in Oregon largely because of the sentencing guideline situation. There are far fewer trials than there used to be. I used to try lots of cases when I was an assistant U.S. attorney. I tried lots of cases as a defense lawyer, up until the change made by the sentencing guidelines which started in 1987 and has continued apace since then. The short of it is the government has tremendous power to increase a sentence just by way of charging the case. They can turn a garden variety fraud case into a money laundering case which will triple and quadruple the sentence. Unless you’ve got a pretty dog-gone good case, unless you have a real fighting chance at it, you’ve got to be careful about going to trial. Unfortunately, you don’t try your best cases.

I’ll give just one example. I could give many examples. I had a case involving a doctor who was charged with 52 counts in a felony indictment of Medicare fraud. Two days before trial, the Assistant US Attorney said, “I’m offering you a plea to a single misdemeanor with no jail time, with very limited restitution,” and with every prospect of the doctor not losing his license. That was a case I think we would have won. We had Judge Panner as the judge who would have tried the case very fairly and I think we would have won that case. We had a wonderful defense. Now, did we have some problems? Yes. There were a few wrinkles in the case. Certainly, he could have been convicted. As a matter of fact, there were one or two of the counts of these felony counts that we were a little bit vulnerable on. I still felt we would have won the case. But what do you do in a situation like that? Here you have a plea to a single misdemeanor. Obviously, I put it to the client, explained the pros and cons. He was delighted to accept the plea, which he did. And the case ended happily. He’s written me nice letters since.

But, again, there is an example where the government, when they recognize they don’t have a good case, will do a lot of stuff to get rid of it. They’ll make you an offer you can’t refuse, if I can use “Godfather” language. Sometimes they will dismiss the case. The cases you try are cases where—I’ll give you another example. It’s public record, a chap who had the unfortunate name of Worm, whom I represented in a fraud case several years ago. In that case the government offered a five-year plea. That was not good. It was too harsh an offer. We went to trial in the case. We lost. Mr. Worm eventually received an 18-month sentence.
JB: We came to another abrupt halt on another tape that I wasn’t watching very carefully. Norm was talking about the case of *United States v. Worm* and the sentencing that followed the trial. I’m going to give the microphone back to Norm and ask him to pick up where we left off.

NS: It occurred to me that I might have, in anticipation of the end of tape, might have sped through that a little too quickly. What I mean when we talk about the sentencing guidelines—I should back up a little bit. Under the old system, the sentencing was totally a matter within the discretion of the United States District judge. If you had a case or at least you had some equities, you may have had a client who was maybe guilty—. I’ll just take a detour here. I have been very fortunate in that every case I have tried, I’ve always been able to make a legitimate argument. I have never tried a case that was just an absolute dead-bang loser. I don’t think there’s anything immoral or dishonorable about a lawyer trying a case like that. And if the client insists on going to trial, it’s the lawyer’s duty to do so. But I’ve been lucky over the years in that the great majority of my clients are people like us, Jeff, people who could be your next door neighbor. Good people. I do mostly fraud and white-collar crime work, as you know, and these people, what they are afraid of is going to jail. Jeff, what I want you to do is to bring me back to the thread of what I was saying. I’m going to hand you the microphone.

I’m having a senior moment here and you can now get me back on track. I want to see if you’ve been listening to me.

JB: I’ve been listening. Norm. When we broke from our last conversation, you were discussing how few cases are tried because the risks are so high under the sentencing guidelines but you did try a case— *United States v. Worm*—to Judge Frye because the offer of the guilty plea was so harsh that you couldn’t recommend that your client take it. The case was tried. Your client, Mr. Worm, was found guilty. The government was asking for an eight year prison term. Judge Frye gave the defendant 18 months. Maybe that’s the end of the story. I’m not sure, but that’s where we were.

NS: No, that’s actually not what I was referring to, Jeff. It’s always good to hear your voice, though. By the way, you screwed up because Judge Frye, she was asked to give an eight year prison term, not an eight month term. This is turning into an absolute fiasco. We probably should have shut the machine off. I’m groping now to find out what the point I wanted to make is. I was making a point about my clients being people of pretty high intelligence and now I’m back to the thread, Jeffrey, it suddenly popped in. What I want to say is that under the old system, the sentencing was totally in the discretion of the District Court. I mentioned that I had been lucky in that I’ve always had a fighting chance, I believe, in every case I’ve tried, which is a nice thing. If you have a client who has something to be said for him or her, then
you leave it to the discretion of the judge, even though technically they are guilty, the judge can take care of that. Under the old system the judge could just put you on probation. It was strictly within the judge’s discretion whether to give probation, six months, five years, etc. That all changed in 1987 with the sentencing guidelines and now it’s, without getting into too much detail, but there is almost a grid and the judge—for example, in a fraud case, if the loss is under $20,000 you assign a certain number to it. Between $20K and $40K another number; $40K to $60K and so on up the line. The more serious the dollar loss in a fraud case, or a money laundering case, or what have you, or a tax evasion case, the more serious the sentence. And the judge more or less has his or her hands tied. Now there are bases for downward departures like a single act of aberrant behavior. If a person commits a crime that’s a single crime of aberrant behavior, that’s a recognized departure. Extraordinary family circumstances are a reason for a downward departure. Extreme remorse. Post defense rehabilitation. I could go on and on, but the short of it is there are these factors but still there is not nearly the discretion that the judges had years ago under the old system. So you take a chance when you try these cases. Again, there are cases that obviously should be tried and are tried but I’m saying much more rarely these days than in the old days.

JB: Well that probably accounts for the infrequency of your appearance before the most recently appointed judges. At the beginning of this interview, I mentioned Judges Haggerty, King, Brown and Aiken who had been appointed to the bench since we last did the interview in the early 90’s. Take a moment, if you will, to talk a little bit about Judge Haggerty first and your experience with Judge Haggerty.

NS: I’ve had matters before all of these judges—guilty pleas and other matters but no trials for the reasons that I mentioned before. Judge Haggerty, interestingly enough, the only time I was ever sued was by a guy who turned out to be a paranoid schizophrenic, who sued not only me but a number of other lawyers in town. Judge Panner in his wisdom eventually banned this gentleman from filing cases with the United States District Court clerk. He was the kind of guy who represented himself. In fact, there was a case before Judge Ellis—that’s where he brought the case—in state court and Judge Ellis dismissed the case summarily, and he then sued Judge Ellis. A very unpleasant experience, the only such time that I’ve had an experience like that. But Acerer Haggerty was my lawyer. He was with the Schwabe Williamson firm at the time and I believe it was Acerer who filed a motion for summary judgment resulting in a case being dismissed.

As I say, I’ve had several matters before Acerer. He’s a no-nonsense kind of guy. I think he’s a fair guy. But I would say that you have to be careful with Acerer—and I’m saying this with a smile now, which might not come through on the tape—on sentencing. I would say Acerer is, well you’ve got to be careful because I think he can hit you pretty hard on a sentence. I’m not saying that the sentences are unjustified, but I would say that when
you are arguing a case before Aancer on a sentence, you should make sure that everything possible is done, that is.

JB: I wanted to interject with a question, Norm. That seems a little surprising to me given Judge Haggerty’s early practice with the public defender’s office. Should I be surprised about that?

NS: I’m sorry to say that I don’t know that much. I should know more about Aancer’s background. I take it that’s right? You’re nodding your head, yes. For the benefit of the listening public, we are passing this microphone back and forth so it makes it a little bit awkward. I’m sure that’s true, his prior background. But, you know, you bring your own temperament to being a judge and I think it can be very unpredictable. I should say, too, that I’ve had some very good results with Aancer in my capacity as a defense lawyer. I don’t want to give the wrong impression about Judge Haggerty. He certainly has been fair in several cases I’ve had before him. I’m not saying he’s been unfair in other cases.

I might as well give you one example of what I’m talking about. I had reached an agreement with an Assistant U.S. Attorney in a fraud case where we agreed to an 18-month sentence. Of course, in just about every case, unless the plea is agreed to, the sentence is agreed to by the judge, and that’s very unusual in the United States District Court of Oregon. Judges don’t like to have their hands tied. Very rare that they will accept a guilty plea arrangement where they are bound to a sentence; very rare indeed. You always tell the client that there is a chance that the judge will not follow the recommendation of the prosecutor and the defense lawyer. But, in your heart of hearts, you never really believe it. You know it’s possible but it doesn’t happen very often.

With Aancer it will occasionally happen because I know not only in this particular case where there was an 18-month agreement, he sentenced the defendant to 24 months. Now I’m not saying that the defendant was a wonderful person. As a matter of fact, the chap that I represented in that case was a pathological liar. I even had testimony on that aspect on the pathological lying. I had a psychiatrist from the medical school testify about this guy almost to the effect that he couldn’t help himself. It was almost a mental disease; it was inherent in the man, and I was trying to convince the judge of that. There is no question that the man was a terrible liar. And I’m sure that entered into Judge Haggerty’s decision. But it’s not very good when you reach an agreement with the prosecutor on a sentence to have the judge increase the sentence. As I said, he can be a tough sentencer. But he’s been fair in a number of cases that I’ve had with him. Again, I don’t say that he was unfair in that case. That sentence was regarded. I’m sure, by Judge Haggerty as what as appropriate to the case so that the seriousness of the crime was not unduly deprecated. I’m sure that he felt for the good of the public that was the correct sentence.

JB: Your comment about Judge Haggerty deviating from the plea agreement takes me to Judge Anna Brown in a recent, very high
profile case. She did not accept the plea agreement between the U.S. Attorney’s Office and Barclay Grayson, which is related to the case you mentioned a bit ago concerning Jeff Grayson. Tell me a little bit about your experience, if you’ve had any, with Judge Brown.

NS: Not many experiences, Jeff, at all. I did have a guilty plea before her of a very high level drug dealer who I represented, who actually received a ten-year sentence from her which was the sentence recommended by the government, and a sentence that we did not object to. As a matter of fact, it was a plea agreement. Again, this gets into trials and pleas and what-not. This person had a prior conviction and due to that conviction and the rather very large amount of illegal drugs involved in the case, the government could easily have charged, and received, a 20-year sentence. It was a very strong case for the government. So we did a compromise with the 10-year sentence. I say this with some amusement, one thing Judge Brown—and I’ll contrast with the rather summary but I still think very fair approach of Judge Jones. When he takes a plea, he’s very crisp about summary, and I think very effective. It’s usually over within a matter of 15 minutes or less, sometimes less than 15 minutes. Judge Brown is, more than any judge I’ve ever known, meticulous in going through a plea. I think it took about an hour and 45 minutes—close to two hours—to do the plea in this high-profile drug case I’m talking about. There were a number of counts but she absolutely crosses every “T” and dots every “I.” Is, as I say, meticulous in going through the elements of the offense, the factual basis, that kind of thing. I’m not making a judgment about it. It’s neither bad nor good, it’s her style. On the Barclay Grayson thing, I do know a great deal about that as I represented Jeff and, of course, I knew Barclay. That’s another example where I think Judge Brown felt—I know that the prosecutor and defense lawyer had reached an agreement in that case and, as I recall. Lance Caldwell, the Assistant U.S. Attorney had recommended, I believe, a home detention sentence of some 10 months. This is after Barclay Grayson had initially received two years in jail, had cooperated very significantly with the government. The government had initially recommended 18 months. Judge Brown gave Barclay two years. They came back on a motion to reduce the sentence. Barclay had not yet served any jail time. Because of additional cooperation of a very significant nature, as I understand it, the government then moved for a downward departure to a home detention sentence which Judge Brown turned down. She did reduce the sentence six months from 24 months to 18 months in jail. I think it’s fair to say that she felt that the home detention sentence, to use the term I used before, a term of art amongst lawyers in this field, it would unduly depreciate the seriousness of the offense.

I remember with Judge Burns, he was one who was also a fairly difficult sentencer. I talked at length about Judge Burns eight or nine years ago—he would use that term. When I heard that, I knew I was in trouble. And the fact that I say jokingly, and I have roasted judges about this, particularly Judge Skopil, one of the really truly wonderful judges, whenever you hear the term “agonized,”
you’re in big trouble. When judges agonize, you know they are going to hit your client with a harsh sentence. But in any event, and I make no judgments, again it’s a very high profile case; unions and other people clamoring for very high sentences. I’m sure that Judge Brown felt that she struck the appropriate balance in that case.

I should just hand the microphone back, but I know you intend to ask me, and I might as well do it now while I have the microphone unless you want to interject about Judge King and Judge Aiken. I might as well start with Judge Aiken because I have had very little experience with her. She’s down in Eugene. I did have a plea and sentence with her. She was very satisfactory; very well informed. She reminded me of Judge Jones—very crisp handling of the plea procedure, careful but crisp and effective. She reached the right decision in that case. Anytime a judge reaches the decision you thought the judge should make, of course, it’s the right decision. I’ve heard good things about her generally speaking from other lawyers.

That leads me to Judge King. I’ve known Mike King for years. We’re colleagues in the American College of Trial Lawyers. A first rate guy. A very good appointment to the bench. Very well liked by the bar. Is doing a very good job as a United States District Court Judge. He’s been very effective in handling the Capital Consultants case, which he’s still handling and he, together with Judge Leavy, has done a really good job in disposing of most of that case. A good part of the case has now been settled due to their efforts and various rulings that they’ve made. I think he’s been very fair in the criminal cases I’ve had in front of him. Not a harsh sentencer. I think a fair sentencer. Listens very carefully to the parties. His questions are to the point. For a man who has had very little experience in criminal cases, he is certainly a quick learner. He has picked it up very well. I have nothing unfavorable to say about Mike King. I think he’s a first-rate judge. I do have a case that is scheduled to go to trial with him in January of next year. I think that case will go to trial. I’m looking forward to that. I’ve had various motions before him that have required testimony as you’d expect. He handles the courtroom well, very courteous to the lawyers; a very effective guy.

JB: Norm, a few minutes ago I asked you what the future holds for you. We digressed a little bit so I’d like to come back and just close the interview with your comments about what the future holds for Norm Sepenuk.

NS: I wish I had some global, cosmic observations; I don’t. I might say again for the future historians, if anybody ever listens to this, we’re in a time of great tumult. 9-11 took place over a year ago. We’re still suffering the effects of that. The Middle East is in great chaos and turmoil. It is sad to see. I think a lot of it has to do with the fact that the leadership in most of these countries involved is just terrible and not nearly up to the level of the populace. The people are more wise than their leaders. As I’m saying this, I don’t think I’ll get into any more of this. That’s not what you want.

On a more narrow level, I see the future holds more of the same as to what I’m do-
ing. I still like what I do. I’ll continue to do that in terms of handling federal criminal cases. I’ll continue with my volunteer work for the ABA CEELI program. I’ll continue with the tribunal work. I’d like to do another case in the Tribunal. Frankly, I’d like to get a trial at that tribunal at The Hague. That’s pretty much it, Jeff.

JB: Thank you, Norm. We very much appreciate your taking time out of your busy schedule and I’m pleased you and I have had such a great friendship all these years. It’s been an honor for me to interview you. Thank you again.

[End of interview]