

# **ORAL HISTORY INTERVIEW**

## **COLONEL EDWARD W. HAUGHNEY (RETIRED)**

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**“YOU WOULDN’T BELIEVE ME IF I TOLD YOU”**



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**COLONEL HAUGHNEY ORAL HISTORY  
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## COLONEL HAUGHNEY ORAL HISTORY SIGNIFICANCE

Colonel Haughney represents the consummate Soldier lawyer. He began his military career as an enlisted Soldier before completing Officer Candidate School and being commissioned a Field Artillery officer. He trained under General Patton in the California desert and fought to expand the Normandy beachhead after D-Day, serving as a forward observer for Infantry and Ranger units fighting across France. Following combat operations across France, then Lieutenant Haughney participated in the Battle of the Bulge, for which he earned the Bronze Star and his unit received a Presidential Unit Citation. Separated from his unit, he led two soldiers, on foot, for two days cross country in the dead of winter as he successfully escaped and evaded numerous direct fire engagements with the Germans. When he reached his artillery battalion, he assumed command as a Lieutenant, at times employing howitzers in a direct fire mode against attacking German tanks. Leading the only functioning artillery unit in sector, one Battery, reduced to three howitzers, fired almost continuously, over 1, 200 rounds in an eleven hour period, at times bringing indirect fire as close as 25 yards to U.S. forces [Transcript 50-74].

As a Field Artillery officer attached to Infantry units, he faced the difficulties of working for two different chains of command, similar to today's Brigade Combat Team Judge Advocate [Transcript 46-48]. He also provides a unique perspective on the employment of indirect fire in WWII, including firing into urban areas [Transcript 48-49]. Colonel Haughney provides a combat arms officer's perspective of how Soldiers were prosecuted and defended prior to the Uniform Code of Military Justice and the unfortunate role of undue command influence [Transcript 30-31; 91-97] as well as his experience writing part of the United States' brief to the Supreme Court in a line of cases which clarified the U.S. Army's jurisdiction over Soldier's off post misconduct [Transcript 195-196]. Judge Advocates interested in the origins of Colonel Haughney's service as the Staff Judge Advocate (SJA) for Military Assistance Command Vietnam (MACV) provides interesting parallels to any Judge Advocate (JA) who has been or will be assigned to Multi-National Corps or Force Iraq.

Throughout his service we see issue after issue of import to today's JA. Today's JA will take away numerous lessons from COL Haughney's amazing experiences, including (1) treatment of prisoners of war, including the conduct of military tribunals and commissions; (2) lessons learned when fighting an insurgency; (3) the difficulties of military prosecutions of U.S. civilians; and (4) how the diverse problems JAs confront require agile and adaptive leadership.

(1) Treatment of prisoners of war, including the conduct of military tribunals and commissions. COL Haughney has personally captured enemy prisoners of war (PW), providing a unique perspective from which to discuss the importance of PW safekeeping [Transcript 68-70; 72-73]. Having had a fellow Artillery officer from his unit killed in the Malmedy Massacre [Transcript 74] and later being stationed himself near Buchenwald Concentration camp [Transcript 78-84], COL Haughney knows firsthand the evils of war, then and now, and explains the origins of the Army's field manual 27-10 on the Law of War [Transcript 182-183]. As the MACV SJA, he ensured proper PW treatment during the Vietnam war, including the construction of PW camps [Transcript 144-146], involvement of the International Committee of the Red Cross [Transcript 145], and Article V Tribunals [Transcript 145-146]. As we continue to wrestle with the conduct of military commissions in the Long War/Global War on Terror, COL Haughney's little known

## ORAL HISTORY SIGNIFICANCE (continued)

experience during the Korean War of using military commissions to prosecute Korean spies in Japan is instructive [Transcript 179-182].

(2) Lessons learned when fighting an insurgency. As the former "mayor" of an occupied Germany city and later military prosecutor in post war Japan, COL Haughney provides an interesting historical comparison between U.S. occupations in post World War II and in Iraq [Transcript 81; 101-102]. As the former MACV SJA, he explains the inherent difficulties in fighting an insurgency, providing accounts of how the Viet Cong attempted to co-opt members of his own legal office [Transcript 190-194]. His War College paper on possible doctrinal changes necessary to fight an insurgency in Vietnam is amazingly applicable to the war in Iraq and should be required reading [Enclosure Insurgency Paper]. As the United States and NATO continue to battle the Taliban and poppy crops and heroin production in Afghanistan, COL Haughney offers insights based on his efforts in 1970 representing the White House to limit Turkey's poppy crop and heroin production [Transcript 170-178].

(3) The difficulties of military prosecutions of U.S. civilians. Today's JA cannot properly deal with the complexities of prosecuting civilian contractor misconduct in Iraq and Afghanistan in light of the Military Extraterritorial Jurisdiction Act without understanding the history of military prosecutions of U.S. civilians. COL Haughney is singularly qualified to provide that history. In Japan, he prosecuted the U.S. civilian daughter of a four star general who murdered her Colonel husband [Transcript 137-139]. The Supreme Court initially affirmed the case, but later reversed. As a result, later, in Germany, he deftly facilitated German prosecution of a U.S. civilian spouse who also murdered her husband [Transcript 140-142]. Later, in Vietnam, he initiated military prosecutions of civilians [Transcript 135-137; 143-144].

(4) How the diverse problems JAs confront require agile and adaptive leadership. COL Haughney's diverse international law experience is instructive to today's JA to "expect the unexpected" and to remain agile and adaptive. As COL Haughney learned, there is no field manual or regulation to advise you on how to handle an irate Ambassador to Luxembourg [Transcript 119-122]. There was no short course or continuing legal education for when COL Haughney deployed, on virtually no notice, to the Dominican Republic in support of OPERATION POWERPACK and helped draft the implementing document for the Organization of American States Inner American Peace Force [Transcript 125-131]. Similarly, while serving as the EUCOM legal advisor, he reported to the EUCOM commander one morning in Germany and by that afternoon was in Spain as the lead U.S. negotiator for an executive agreement with Spain following France expelling NATO [Transcript 149-169].

Colonel Haughney dedicated thirty years of service to the United States and over sixty years to the rule of law. The oral history of his life and career not only provide an example of a distinguished member of the "Greatest Generation," but a critical perspective from which to view current challenges the JAGC faces.

## COLONEL HAUGHNEY ORAL HISTORY BIOGRAPHY

Edward W. Haughney was born in Brooklyn, New York on 8 December 1917. He is the oldest of four children; he has a younger brother and two younger sisters. He attended elementary, junior high, and high school in Brooklyn. During two summers while in high school he worked as an apprentice steam fitter for the Luckenbach Steamship Company. In 1935, at the age of 17, he entered Brooklyn College but left after one semester and began working in Luckenbach's claims department. He later enrolled in night school at Brooklyn College. In 1939, at the start of World War II in Europe, he completed two years of college and a law qualifying certificate from New York State, and began law school at Saint Johns University. Following the Japanese attack on Pearl Harbor he entered the Army on 15 January 1942.

He attended basic training at Fort Bragg, North Carolina following which he was assigned clerical duties. He then attended Officer Candidate Prep School at Fort Bragg before traveling to Fort Sill Oklahoma for Officer Candidate School (OCS). Following his graduation from OCS he was commissioned as a 2d Lieutenant in the Field Artillery. He was initially assigned to Bravo Battery, 2d Battalion, 18th Artillery Regiment at Fort Sill which trained new soldiers attending the Field Artillery school.

On 15 May 1943, while stationed at Fort Sill, he married Regina Smith and she moved from New York to join him in Lawton, Oklahoma. In the fall of 1943, while attached to the 90th Infantry Division, he participated in a series of desert maneuvers under General Patton at Camp Iron Mountain in the California desert acting as the survey officer for an artillery battalion. On 12 February 1944, along with his artillery unit, he sailed from Boston to Scotland. Arriving ten days later, his unit traveled to England and occupied a manor house west of Birmingham. His unit, reflagged the 687th Artillery Battalion, prepared to enter combat and continued to train their 105mm howitzer crews in both England and Wales.

In June 1944, he arrived at Normandy, France and participated in combat operations in the hedgerows of the Normandy beachhead. In September 1944, he participated in liberating Brest from German occupation. He served as a forward observer for a variety of Infantry units, including the 2d and 8th Infantry Divisions and the 5th Ranger Battalion. Fighting across France, in October 1944 he arrived in Luxembourg and the Siegfried line, the German counterpart to the French Maginot line.

In December 1944 he participated in the Battle of Bulge, earning a Bronze Star. His participation in the Battle of Bulge began by being separated from his unit. He led two of his soldiers in cross country escaping and evading, on foot, for two days over frozen ground and fighting through direct fire contact with the enemy, including being pinned down by machine gun fire, attacked by German paratroopers, and being bombed by German planes. When he linked up with his artillery battalion, he assumed command as a Lieutenant, at times employing howitzers in a direct fire mode against attacking German tanks. His artillery battalion was the only functioning artillery in their sector. One Battery, reduced to three howitzers, fired continuously for almost an hour, and fired over 1, 200 rounds in an eleven hour period, at times

## BIOGRAPHY (continued)

bringing indirect fire as close as 25 yards to U.S. forces. His artillery battalion received a Presidential Unit Citation for their actions during the Battle of Bulge, the only artillery battalion to receive that award by itself and not as part of an Infantry unit.

After fighting their way across Germany his unit occupied the German city of Weimar, which was the capital of Germany after World War I. He was made the occupation Mayor of Weimar, responsible for ensuring law and order and that basic services were provided. While Mayor, and with the war not yet over, he made the difficult decision to not only reinstate the German police, but to arm them. He also dealt with the aftermath of the newly discovered Buchenwald concentration camp and its 20,000 occupants.

As World War II ended, he redeployed to Fort Bragg where he investigated claims. In February 1948 he returned to law school, graduating in January 1949. In February 1949 he passed the bar and transferred from the Field Artillery to the Judge Advocate General's (JAG) Corps. He spent the summer of 1949 at Pine Camp New York, which is now Fort Drum. In the fall of 1949 he conducted an observation tour at the Pentagon and in the spring of 1950 he changed station to Japan, arriving at the start of the Korean War. Assigned to a command responsible for administering the post war occupation, he served as a military prosecutor. While in Japan, he utilized military commissions to deal with captured North Korean saboteurs and he participated in the high profile military prosecution of an American civilian spouse, the daughter of a four star general, for the murder of her husband, a Colonel. After spending three years in Japan, in 1953 he returned to the JAG school in Charlottesville, where he attended the graduate course and authored a thesis on mental responsibility. Following the graduate course he stayed on the faculty at the JAG school, teaching International Law. He also taught Martial Law and, following OPERATION ALERT, a nationwide civil defense exercise, became the Department of Defense subject matter expert on Martial Law, traveling to various locations to teach.

Following his time at the JAG school, in 1958 he was assigned as the Chief of the International Affairs Branch for U.S. Army Europe. While in Europe, he dealt with another high profile overseas prosecution of an American civilian spouse for the murder of her servicemember husband. In 1962 he returned to the United States where he attended the Armed Forces Staff College in Norfolk Virginia following which he served as the Assistant Chief of the International Affairs Branch at the Office of the Judge Advocate General (OTJAG). While assigned to OTJAG, he deployed to the Dominican Republic during OPERATION POWERPACK to help create the Inner American Peace Force on behalf of the Organization of American States.

Following his return from the Dominican Republic he attended the Army War College in Carlisle Pennsylvania where he wrote a provocative paper on whether doctrinal changes were necessary in fighting the Vietnam War. In the summer of 1966, following the War College, he traveled to Vietnam to serve as the Staff Judge Advocate for General Westmoreland and Military Assistance Command Vietnam. While in Vietnam he established Article V tribunals to determine the status of captured enemy personnel. He also initiated military prosecution of civilians accompanying the force.

Upon his return to the United States in 1967 he served as the Chief of the International Affairs Branch at OTJAG until 1969, when he returned to Europe to serve as the legal advisor to the

## BIOGRAPHY (continued)

European Command (EUCOM). While at EUCOM he was sent to Spain where he served as the lead U.S. negotiator for an executive agreement with Spain. He was also sent to France and Turkey along with representatives from the White House to investigate heroin production and distribution.

He retired from the Army following his tour at EUCOM in 1972 and began teaching law at Dickinson College of Law. For thirty three years he taught a variety of courses, including law classes at Dickinson and the United States Military Academy, and public administration classes at Pennsylvania State University. As part of his duties at Dickinson, he also worked for the Public Utilities Commission, first reviewing and publishing decisions, and later writing the Commission's revised procedural rules. Throughout his time teaching, he was active with Dickinson's "Capitals of Europe" program in which he taught law courses in Europe over the summer, often with one or more U.S. Supreme Court Justice. In the summer of 2005 he retired from active teaching and assumed Emeritus status. He and his wife have three daughters and a son.



# COLONEL HAUGHNEY ORAL HISTORY

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1 [An oral history is an interview conducted over a number  
2 of hours based upon prior research by the interviewers. While  
3 prior research ensures that interviewers will adequately probe  
4 particularly interesting or historically significant events,  
5 the oral history interview remains a chronological  
6 recollection of the subject's career and insights.]

7 Q. As we begin, please state your full name and spell  
8 your last name.

9 A. My name is Edward Haughney; H-A-U-G-H-N-E-Y, middle  
10 initial W for William. I was born in Brooklyn, New York, on  
11 the 8th day of December 1917. The oldest of four children—a  
12 younger brother, Bob, two years younger, and then two sisters  
13 younger than Bob.

14 Brooklyn at that time was rural. We did not have  
15 electricity. I went to the local PS 169, then Junior High  
16 School 220, and then Manual Training High School. I  
17 participated as a member of several athletic teams; never was  
18 a star, but one of the starters frequently. In January of  
19 1935, I entered Brooklyn College, which was one month after my  
20 17th birthday. I did not find college to be as I had learned  
21 from the movies. You had to study and I had never studied in  
22 high school. So at the end of the first semester I went back  
23 working as a steam-fitters apprentice, which I had done for  
24 two previous summers. Halfway through the summer my father

1 found me a job with a steam ship company, in the office. Come  
2 September of '35, now firmly ensconced in an office job  
3 wearing a tie and shirt, I decided that I knew everything  
4 there was to know and there was not much point in going back  
5 to college. None of the people in the office including the  
6 bosses had ever gone beyond high school and that was it. But  
7 within the year, I began to realize there were a couple of  
8 things that I didn't know and maybe I should return to  
9 college. But by that time I was making--for those days--  
10 reasonable money, contributing to the family, so I decided to  
11 return to college at night. I finished a little more than  
12 half of a four-year day college program and my goal was now  
13 law school in '39.

14 In New York at the time you did not have to have a  
15 bachelors degree to enter law school. You had to have a  
16 minimum of two years of college and then obtain a law  
17 qualifying certificate from the State. I can't remember the  
18 specifics of that, but in any event, I obtained the law  
19 qualifying certificate, probably through some kind of an exam,  
20 and entered St. John's law school in September of 1939, almost  
21 the same day that World War II began. I continued working in  
22 the claims department of the Luckenbach Steam Ship Company.  
23 Then came December 7th of 1941. My brother Bob had been  
24 drafted and was in the Navy. All my friends were being

1 drafted and my number was about to come up. So that Sunday  
2 afternoon I decided to write a letter to the draft board  
3 asking for a deferment until my brother was released, so he  
4 could come back working and help the family financially.  
5 During the course of my typing, two friends dropped by and  
6 they told me I'm wasting my time; that we were at war. I told  
7 them to get out. They turned on the radio and sure enough  
8 Pearl Harbor had occurred.

9 I took the physical exam four days later, the 11th,  
10 passed it--everybody passed if you were able to walk in. And  
11 on the 15th of January 1942, I was in uniform. I was sent to  
12 Fort Bragg, North Carolina, and went through basic training.  
13 When that was over, they put me to work doing clerical work in  
14 the headquarters.

15 That was an 8 to 5 job, five days a week, and 8 to 12 on  
16 Saturdays. The rest of the time I was free. I had no other  
17 duties. I figured, well, if that's the way to fight the war,  
18 I can handle this.

19 But a month or two later there was a note, the first  
20 sergeant wanted to see me. I saw the first sergeant, and he  
21 said, on Monday, you go to the OCS [Officer Candidate School]  
22 prep school. I asked what's that? He said, well, that's a  
23 one-month course. And if you pass that, then you go out to  
24 Fort Sill and there are three more months at the regular

1 Officer Candidate School. And if you pass that, you're  
2 commissioned a second lieutenant. I said I don't want to be  
3 an officer. I'm doing a good job here. I'll just stay where  
4 I am. He said, I'll tell you what, I'll give you a choice,  
5 you'll either be over there Monday morning or your ass will be  
6 in the kitchen.

7 With an option like that, I was able to decide that I  
8 would be there. The course seemed to emphasize trigonometry.  
9 Fortunately I was halfway decent with math subjects. I had no  
10 trouble understanding the trigonometry. I passed and was sent  
11 out to Fort Sill. I finished the three-month course out there  
12 and was assigned to Battery B of the 2d Battalion of the 18th  
13 Field Artillery Regiment, which were school troops. They put  
14 on all of the demonstrations, did all of the practice firing,  
15 et cetera.

16 About the first thing I learned, as the battalion  
17 commander walked me around to introduce me to the mess  
18 sergeant, to the motor sergeant, and so on and so forth—the  
19 supply sergeant, was that as an officer my role was to accept  
20 responsibility—accept—he said, but you don't have to cook the  
21 food, but if you are the mess officer, you're responsible that  
22 the food is proper. And if you're the supply officer, you  
23 don't have to be counting the supplies, but you are  
24 responsible that the supplies are properly accounted for. So

1 I learned responsibility and accountability by a walk through  
2 with the battalion commander.

3 The first important job they gave me was to train new  
4 recruits. The colonel in charge of the regiment did not want  
5 to send the recruits to the field artillery replacement  
6 training camp where I had been trained, but rather wanted to  
7 train them right there and then integrate them into the unit.  
8 And so a senior lieutenant and I and some very good NCOs were  
9 tasked to be in charge of about 200 recruits that were brought  
10 in.

11 Basically I taught them what I had learned less than a  
12 year before in going through my basic training. I devoted all  
13 my time to it, and apparently I did quite well. Both the  
14 battalion and the regimental commander were quite pleased.  
15 And as a result four months and four days after I was  
16 commissioned, I pinned on first lieutenant bars. They  
17 promoted me that fast.

18 Come May of '43, I got married. I had known Regina ever  
19 since I had entered law school in 1939, four years before. So  
20 it was not a hurry up thing at all, but we had been dating  
21 sporadically. Obviously if I'm working full time for the  
22 steam ship company and going to school sometimes five nights a  
23 week, I didn't have much time for socializing. We got married  
24 on the 15th of May of '43. We were able to rent a very small



1 apartment in Lawton, Oklahoma, outside of Fort Sill, where I  
2 was stationed.

3 I was very active firing the guns. And one matter that  
4 you might want to delete was a little problem. I wanted to go  
5 away for a weekend. Normally we were only free on Sunday.  
6 But this particular day we had no demonstration for Saturday  
7 afternoon so we were through for that week. I went in to ask  
8 the new battalion commander--not the one that had escorted me  
9 around months before--for permission to leave for the weekend.  
10 He just had taken over. He was a hotshot Army polo player. I  
11 think he understood horses. But that's about all I can say  
12 that was complimentary. Clarence Harvey was his name. I went  
13 in and asked him. And he said, come in and close the door.

14 He said I understand you fired out the other day and I'm  
15 going to impose nonjudicial punishment. I was a little  
16 shocked. I said, no, sir. I'm going to demand a trial by  
17 general court-martial. He said, what? I replied, yes, that's  
18 my right. I'm going to have a trial by general court-martial,  
19 there's no evidence that I fired out. He said that's the  
20 report I got. I said only a lost round was reported. You may  
21 be a witness at my court-martial. And you'll be able to  
22 establish that I was operating two howitzers without a safety  
23 officer. The only question you asked me was why the two KPs  
24 [kitchen patrol], who were setting up the mess for the noon

1 meal some 50 yards behind the gun position--why those two KPs  
2 had their sleeves rolled up?

3 He now realized that he would look like a rear end of one  
4 of his horses when he failed to observe that I was operating  
5 without a safety officer, which was a no-no. I was protecting  
6 his butt, the firing for the students would have been  
7 cancelled and the battalion commander would have been  
8 responsible that a safety officer had not been assigned.

9 He said, well, that changes things. Yes. Enjoy the  
10 weekend.

11 When I came back Monday morning, I find I'm being sent to  
12 school for a month. The school was there at Fort Sill. I  
13 took it as punishment, but it turned out to be a blessing in  
14 disguise. I learned how to conduct surveys. I learned how to  
15 operate a fire direction center.

16 And, when I came back, the unit starts packing up. We're  
17 going out to California for desert maneuvers. We get out  
18 there in October of '43. It's a whole series of exercises,  
19 physical and otherwise. And the final problem is two  
20 divisions, one is attacking and one is defending. We were  
21 attached for that exercise to the 90th Division. There were  
22 also individual battalion exercises. In one, the unit is  
23 traveling and gets orders to stop and do some firing. They

1 have to run the survey, locate the target-locate the gun  
2 positions, so on and so forth.

3 The night before that exercise was to be conducted the  
4 surveying officer in the battalion had an attack of  
5 appendicitis. He was hauled off to have his appendics out.  
6 They then get a hold of me and said, you're going to run the  
7 survey tomorrow morning.

8 I didn't know a single member of the surveying team. I  
9 didn't know how many men they had, what duties they had, what  
10 equipment, where they were. I spent an interesting night  
11 trying to get organized. And the next morning conducted the  
12 survey that I expected was going to be part of the exercise.  
13 After I computed all the data, I sent it in to Major German,  
14 the S3 who was in charge of the fire direction center, and  
15 then I walked to the observation post. I came up in the rear  
16 and the guns were firing. The regimental commander, Pepper  
17 Clay, turns around, sees me, and then comes walking towards  
18 me? And I salute. He puts his hand out, congratulates me.  
19 It was right on target, blah, blah, blah. Pats me on the  
20 back. It was wonderful, et cetera.

21 I now have a friend who is the regimental commander. And  
22 the battalion commander and I are doing the best to stay away  
23 from each other.

1        When all the exercises were over, I did not know that we  
2        were over strength. The surplus officers became individual  
3        replacements. When Pepper Clay sees the list of officers  
4        staying with the battalion, guess whose name is missing?  
5        Mine. He calls Colonel Harvey and wants to know why I'm not  
6        on the list to go with the battalion? He was told that I  
7        flunked the physical. What do you mean flunked the physical?  
8        He has some tooth cavities.

9        A half hour later, two officers are standing in front of  
10       Pepper Clay, one is the dentist, and the other is me. Pepper  
11       Clay didn't get his name "Pepper" without a reason. He is  
12       chewing us out but good. He tells the dentist, I want you to  
13       put that guy in your chair. I don't care what you do to him.  
14       Pull out every tooth, fill every tooth, but when he gets out  
15       of the chair, he passes. Is that clear? We both replied,  
16       yes, sir.

17       Well, that was a very interesting afternoon. There we  
18       are out in the desert, plenty hot. We are in a tent. Do you  
19       know what they don't have in a desert? They don't have  
20       electricity. There is a Coleman lantern hanging about a foot  
21       away from my face giving off light and considerable heat. Now  
22       what do they use for a drill with no electricity? There is  
23       his assistant. A long string goes from the drill of the  
24       dentist down over the rear wheel of a bicycle. And the man

1 cranks the bicycle pedals with his hands and that turns the  
2 drill. We had a very interesting afternoon. Periodically,  
3 time for a break. There was no ice permitted anywhere but the  
4 PX [Post Exchange]. When we had a break I'd give some money  
5 to the enlisted assistant who would hop into the PX tent and  
6 get three beers. We'd each have a beer, and with another hour  
7 of fooling around, he would go back and get some more. Well,  
8 the bottom line is, I passed.

9 We get to England and we're assigned to VIII Corps  
10 Artillery. We're hardly in place when there's an inspection.  
11 It was more a raid than an inspection. As a result of the  
12 inspection, two officers are ordered to go up and report to  
13 General McMahan, the Corps Artillery Commander. One of the  
14 officers is Clarence Harvey. The other officer is me.

15 We ride up together and Colonel Harvey goes in first.  
16 And when he came out I asked him, are you moving up to Corps  
17 Headquarters? He said, yes. Well, that's all I needed to  
18 know. I told General McMahan, I was more than happy where I  
19 am. I knew nothing about the operation of a Corps. I much  
20 preferred to stay with the fellows I've been training with.  
21 He said I'll honor your preference. So Clarence Harvey and I  
22 split. One of the majors in the battalion became the  
23 battalion commander.

1           So at that I'm going to pause and let you throw some  
2 questions.

3           Q.    We can do this a couple of different ways.  I have  
4 about four or five.

5           A:    Go ahead.

6           Q.    Can you clarify where you went to college and then  
7 where you went to law school?

8           A.    College was Brooklyn College in Brooklyn. And the  
9 law school was Saint Johns University. And at that point in  
10 time the law school was also in Brooklyn. Now the Law School  
11 of Saint Johns is in Queens.

12          Q.    And when you were discussing the draft you were in  
13 school. There was no prospect of an education deferral?

14          A.    If you could walk into the—I remember one movie, Bob  
15 Hope is taking a physical, they shined a flashlight into his  
16 ear and you see it come out on the wall, you know—he passes.  
17 Everybody passed.

18          Q.    And then jumping back to when you were at Fort Sill  
19 and then you deployed on the exercise, I just wanted to  
20 clarify, when you say you went to the desert, where was that?

21          A.    They called it "Camp Iron Mountain," which was in  
22 California, very close to the Arizona border—very close to  
23 Yuma, Arizona. And we lived in tents.

24          Q.    Was this General Patton's desert training?

1           A.   Well, the answer is, yes.  I had never heard of  
2 Patton at that point in time.  Patton was more interested in  
3 the tanks and this was either self-propelled or drawn  
4 artillery-truck drawn artillery.  While we were at Fort Sill,  
5 believe it or not, we had horses at Fort Sill in '42.

6           Q.   If you could take us through, sir, your formal  
7 military training up to this point.

8           A.   Regular basic training?

9           Q.   Yes, when you got to Fort Bragg.

10          A.   Oh, well, it was marching.  It was firing the rifle.

11          Q.   And that was at Fort Bragg?

12          A.   Yes, Fort Bragg.  They had predestined the group I  
13 was in.  There were five regiments at Fort Bragg in the  
14 training center.  1, 2, 3, and 5 all trained on different  
15 artillery pieces.  The 4th Regiment, they called the  
16 Specialist Regiment.  Some of the batteries trained cooks.  
17 Some trained bakers.  Some trained auto mechanics.  Some were  
18 for radio.  Some were for surveying.  And the battery that I  
19 ended up in was for clerical.  So we learned about morning  
20 reports.  The sick books, the duty roster, all of the various  
21 types of forms.  We had an hour a day of typing.

22          Q.   And how was it that field artillery became your  
23 field right there?

24          A.   That's where they sent me.



1 Q. Was there some test that you did well on or a  
2 preference that you indicated or was it just random?

3 A. No, well, I had to report at a train station in  
4 Manhattan, which was a nickel subway ride. There they put us  
5 on a train, took us to Fort Dix. And as I mentioned last  
6 night, they gave us each a big box. Said put your name and  
7 address on it. Take off your clothes, here's your uniforms.  
8 We'll mail the box home. We went through a couple of IQ type  
9 of exams-questionnaires. And hopefully the decision was made  
10 based on that.

11 But in any event, I ended up in artillery. I asked  
12 around and one explanation said the tendency is that if you  
13 are big you're more than likely to be put in artillery than  
14 infantry because you're going to have to be lifting some of  
15 those heavy shells. That was the only explanation I received.  
16 How accurate it is, I don't know. I think it was simply a  
17 quota system. We need-we have a new class starting tomorrow.  
18 We need a trainload of fresh meat tonight. Let's not fool  
19 around.

20 Q. Then the next formalized training was when you  
21 arrived at Fort Sill?

22 A. Yes, the OCS.

23 Q. And where was that?

1           A.    Well, that was at Fort Sill.  We lived in little  
2   huts.  There were about six in a hut.  And there was a lot of  
3   reading.  A lot of classroom instruction, plus tactics, plus  
4   maneuvers, and, of course, a lot of practice firing and also  
5   the real firing of artillery.  Beaucoup demonstrations.

6           Q.    And the reason I got a little bit confused is  
7   because when we think of OCS today it's not branch specific.  
8   All the enlisted Soldiers will go to OCS together, get their  
9   commission, and then go off to infantry, artillery basic  
10  courses.

11          A.    Yes.

12          Q.    So that's kind of where I got tripped up.  But  
13  you're saying OCS was right off the bat.

14          A.    Oh, yes.

15          Q.    OCS was branch specific.

16          A.    Yes.  At Bragg it was called FARTC, Field Artillery  
17  Replacement Training Center.  As I said, there were five  
18  regiments, so several thousand at any given moment.  Infantry  
19  would be sent down to Benning.  That was the usual place for  
20  them.  Of course out in the west coast there were other forts  
21  that were used for that purpose.

22          Q.    To allow you to pick back up, if I understood where  
23  you had left off, your unit deployed from Fort Sill to  
24  England?

1           A.    No, we were out in the desert maneuvers.  And we  
2 went right from the desert all the way to the--at the end they  
3 called Camp Shank.  We sailed out of Boston on the 12th of  
4 February of '44, which is Lincoln's Birthday.  We left the  
5 harbor at night.  Everything dark.  No lights.  Big blizzard.  
6 A soon as we got out of the harbor the ship started going up  
7 and down.  Up and down.  I'd say 80 percent of the people on  
8 board are seasick.  I was in a large cabin, not the size of  
9 this--maybe a third the size of this, and there were, I think,  
10 eight of us in there.  We were all lieutenants, all from the  
11 same outfit.  And I was the only one who was up and around all  
12 the time.  A couple of them were okay when they stayed  
13 horizontal.  And I used to drive them nuts because I would sit  
14 in the chair and just sort of rock back and forth.  And they'd  
15 have to close their eyes because they couldn't stand to have  
16 anything moving at all because they were already doing that.

17           Q.    Do you recall the name of the ship?

18           A.    The name of the ship? Henry T. Gibbins.  It belonged  
19 to the American South African Line.  It had been a commercial  
20 carrier.  The next morning we rendezvoused off the coast of  
21 Newfoundland with the largest convoy apparently that they ever  
22 had.  And I mean this was large.  And there were about 20  
23 destroyers circling around.  In the center was an aircraft  
24 carrier and a battleship.  And then there were dozens of

1 tankers, dozens and dozens of freighters, dozens of troop  
2 ships. And as we got near England, more ships from the  
3 British Navy came out. Then the convoy was split. Some  
4 landed in Northern Ireland. Some came into England. The ship  
5 I was on went into Scotland. We went up the Firth of Clyde to  
6 Glasgow. Then they put us on the train and we went down to  
7 the Midland's area about 18 miles west of Birmingham, England.  
8 The nearest town was Starbridge. We stayed at an estate of  
9 one of the noble families. One of the women had been one of  
10 Henry VIII's wives. I think it was the Gray Family. Envill  
11 Hall was the name of the estate.

12 The officers stayed right in the manor building. They  
13 had Quonset huts on the grounds, and the enlisted were in  
14 those Quonset huts.

15 Q. When you left the U.S., what had you and the unit  
16 been told you would be doing?

17 A. We were told nothing. The idea is secrecy, secrecy,  
18 secrecy. They didn't want anybody talking. So we didn't know  
19 when we were going, where we were going. But I didn't think I  
20 was going to China. I was sailing out of Boston.

21 Q. And then where did you leave your wife?

22 A. She made her way from California back to Flatbush,  
23 N.Y. An only child, she was reunited with her parents.

24 Q. What unit were you assigned to at that time, sir?

1           A.    The same one that I was assigned to directly out of  
2   OCS.  It was the 2d Battalion of the 18th Field Artillery.  
3   They then gave us individual numbers.  The 1st Battalion  
4   became the 685th.  The 2d one became the 687th.  The 3d one  
5   became the 689th.  And the 4th one became the 693d.  So they  
6   had individual numbers.

7           Q.    About how long did the trip across the ocean take?

8           A.    It took exactly 10 days.  I said, we left on  
9   Lincoln's Birthday, the 12th, and we landed on Washington's  
10   Birthday, the 22d.

11          Q.    What were your duties in England?

12          A.    Well, yes, we trained and a lot of it was physical;  
13   out jogging, hikes, et cetera.  And one week a month we went  
14   to Wales where we were able to fire the artillery pieces.  We  
15   would have rifle practice right there on the estate, but we  
16   couldn't fire the artillery there.  So one week a month we  
17   went to Wales.  We didn't get to fire as much as we would have  
18   liked.  The weather was foggy in the morning.  It was almost  
19   noontime before you could see anything.  There were even wild  
20   horses running around.  That goes to show you how remote the  
21   area was that they gave us where we could fire.

22          Q.    I've seen depictions of U.S. service members in  
23   England, and it's depicted as a good time for some of the U.S.  
24   units.  What was the experience like when you were living

1 there? Was everyone apprehensive about going over to the war  
2 in mainland Europe at this point or are people enjoying  
3 themselves in England?

4 A. I think that's an individual reaction. All the talk  
5 was about invading somewhere in France. We were making  
6 success coming up through Italy. The African campaign was  
7 pretty much a thing of the past in early '44. So all of the  
8 talk was building up the forces in England ready for an  
9 invasion. When? We don't know. Where? We don't know.  
10 And about every other week there would be an alert and  
11 everybody was required to stay right on their bases. They  
12 were looking for any stragglers or deserters and things like  
13 that. And, also, when you hear the alert, you think that  
14 maybe the invasion is on. But when they pulled the invasion  
15 there was no alert.

16 Q. What was your job title at this point?

17 A. I was just one of the lieutenants. They called me  
18 the reconnaissance officer. The battery commander is a  
19 captain. Usually the senior lieutenant was the executive.  
20 The executive normally stayed at the gun position. And then  
21 the next one, and that happened to be me, is the  
22 reconnaissance officer, would either be the forward observer  
23 if we are working with the infantry, or if we're not working  
24 with them directly, setting up an observation post [O.P.], and

1 also responsible for the communication. The men who put in  
2 the wiring and operated the radios were under the command of  
3 the reconnaissance officer. The third lieutenant, who's the  
4 fourth officer in the battery, he had a mission we called cats  
5 and dogs; the motorpool, the mess hall, the supply were all  
6 his responsibility. So that's the four.

7 But we were trained to do all of the jobs. We did move  
8 around. And particularly if I was not out observing or  
9 forward observing or running an OP, I would take my turn as  
10 the executive in charge of the guns. In fact, on the second  
11 day of the Battle of the Bulge, I was the one in charge of the  
12 guns, because I had gotten some sleep the night before and the  
13 rest of them hadn't.

14 Q. What kind of guns and how many were in a battery?

15 A. A battery had four 105 Howitzers.

16 Q. Where they towed?

17 A. Yes, towed. There were essentially 10 on the team,  
18 a sergeant and usually two corporals and then the rest  
19 privates or private first class. One would be the driver of  
20 the truck that hauls the men and the howitzer. One of the  
21 corporals was the gunner and would be in charge of left and  
22 right-turns of the gun. Another was in charge of the  
23 elevation of the gun. Others had numbered positions. One of  
24 the Soldier's job was to prepare the fuse. And the other one



1 was to prepare the powder charge that propels the thing. All  
2 by the numbers, so once in a while you would hear them sing an  
3 artillery song, they'd count off and they'd count off the  
4 numbers. The reason for that is at night you couldn't see  
5 much. You'd say, count off so you could tell whether you had  
6 a number one, a number two and number three. Each had a  
7 specific job and a certain position. One cannoneer would be  
8 handed the shell and he'd have to turn and give it to another  
9 who would jam the shell with his right fist. Number 2  
10 cannoneer would close the sliding breach block and thereby  
11 forcing the right hand of #3 to the left and out of danger.

12 So each has a numbered position and it was mechanical--  
13 purely mechanical, but they practice it, practice it, practice  
14 it.

15 Q. And at that time what were the different types of  
16 rounds you were able to fire with the weapons system?

17 A. Well, day in and day out it was HE, which is high  
18 explosive. Now when they talk about shrapnel--shrapnel first  
19 appeared in World War I. Shrapnel was a shell filled with  
20 small balls which were ejected thru the nose of the shell.  
21 They haven't used shrapnel in a long time. Now the whole  
22 shell explodes and fragments of the shell go flying off in all  
23 directions. The newspapers called it shrapnel -- but  
24 technically it's the fragments of the shell itself.

1 High explosive is the usual one. But then we have smoke  
2 and we have phosphorous for starting fires. And believe it or  
3 not we even had some that were loaded with propaganda shells.  
4 You get a free pass, surrender, this guarantees your safety.  
5 We did not have any gas ones. I'm sure they had them, but we  
6 did not have any.

7 Q. What kind of range?

8 A. 12000 plus yards, which is about seven miles. And  
9 howitzers lob it at a high trajectory. So you could be  
10 located behind a hill and fire over the hill. Whereas a gun  
11 as compared to a howitzer has a long barrel one, and it shoots  
12 at a very low trajectory. If you shoot over a hill it goes up  
13 on the sky and God only knows where it would land.

14 Q. As you know with our generation we have laser guided  
15 and precision weapons systems. With a well-trained crew, with  
16 a surveyed in position and a forward observer, how accurate  
17 was the fire from 12 kilometers away with a 105 howitzer in  
18 1944?

19 A. Well, we thought we were pretty good. Obviously not  
20 as accurate as the laser, but the disadvantage with the laser,  
21 can you use the laser without giving away your position?  
22 Right? It's like shining a searchlight at somebody, right?  
23 Will that somebody know where you are? So we didn't have  
24 that.

1 Q. What were your living conditions like when you were  
2 in England, sir?

3 A. Living conditions? Cold. Cold. As I said, I lived  
4 in the manor house. The only heat--they gave us a couple of  
5 briquettes, maybe three or four, we'd put that in the  
6 fireplace at night to get a little bit of heat from that. And  
7 that was it, drafty and cold. And now the food, we drew food  
8 from the Brits. The meat--they called it lamb, but we called it  
9 mutton. These were sheep that died of old age, I'm sure. So  
10 when you walked into the mess hall all the GIs are going baa,  
11 baa. That's all you hear.

12 Q. Can you help orient us where in England you were  
13 located?

14 A. Right in the middle. Birmingham is pretty much in  
15 the middle. And as they say the nearest town of any size was  
16 Starbridge. Wolverhampton, Kidderminster were two of the  
17 other towns that were in the area. We were considerably south  
18 of Liverpool. And, of course, we were east of Wales.

19 Q. What was the name of the installation?

20 A. Envill Hall was the name of it. It belonged to the  
21 Gray Family. They had a very big field. I don't know what  
22 they used the field for--cricket--polo or something. But it was  
23 big enough that the two observation planes that we had, piper

1 cubs, were able to land and take off on that field. Not by  
2 much.

3 Q. So you arrived in England in February; you had this  
4 period of training, how long were you and your unit in  
5 England?

6 A. We were there until about the first of May. Now I  
7 said this outfit had been school troops at Fort Sill for  
8 years. We were very experienced at putting on all sorts of  
9 demonstration. Originally I was assigned to Able Battery, but  
10 when we got to England and the battalion commander left and  
11 the exec moved up and became battalion commander, there was a  
12 lot of shuffling went on. I ended up getting moved from A  
13 Battery to B Battery.

14 Well, they pulled B Battery out and they sent us to  
15 Wales. They wanted to test fire the various lots of artillery  
16 shells because they're manufactured on the assembly line.  
17 They didn't all weigh the same amount. And they may not all  
18 be the exact same shape. Before they distributed it they have  
19 weighed them and they put different stamps, which indicate the  
20 relative weight of the shells. But there could be other  
21 aspects of it. The powder charges that come with it; there  
22 were seven of them, each individual bag. The bottom line is,  
23 some lots were considered erratic and others were very  
24 reliable. They wanted to test fire all of the various lots of

1 105 ammunition, and Baker Battery, the one I was in, was  
2 selected.

3       Where do you find a level impact area in order to do the  
4 measuring? In England, you probably can't do it. Now as far  
5 as the actual testing, officers from the ordnance were in  
6 charge of that. The other officers and I in Baker Battery did  
7 the actual firing. We did not do any of the calculations.  
8 The only flat impact area that they could find was the Bristol  
9 Channel. But of course the Bristol Channel raises and lowers  
10 with the tide. Poles were emplaced to facilitate measuring  
11 the height of the impact area. They set up observation posts  
12 all along the cliffs on the coast. Each round as it hit and  
13 exploded was recorded. They also had sensors in front of the  
14 gun position, which measured the muzzle velocity of each  
15 round. We would warm up the howitzer with six rounds and the  
16 testing would begin. Each round would be fired and recorded  
17 exactly where it landed. Then another one and another one. I  
18 don't have it with me now, it's up in the room, the  
19 Presidential Unit Citation refers to us on one occasion, we  
20 were firing within 25 yards of our own position. And we had  
21 to be pretty confident that the shell would go where we wanted  
22 it to go. I normally would bring it in to about 200 yards,  
23 but sometimes you had to bring it in closer to them.

1        So we did that, and it took almost the whole month of  
2 May. And when we get back to our place near Birmingham where  
3 we had been since February, we were only there a couple of  
4 days when the invasion started. It was the 6th of June. A  
5 few days later we started moving south. And it was 10 days-2  
6 weeks after the actual invasion that we actually landed on  
7 France. We were on the Normandy beaches, but not on D-Day.  
8 Because of the test firing. In that big maneuver out in  
9 California we were attached to the 90th Division. The 90th  
10 Division was near us in England, and when we did land in  
11 France we were attached to the 90th Division. Corps artillery  
12 normally does not have a 105 outfit. So we were a little  
13 bastard outfit if you will. More often or not they would  
14 either attach us to one of the divisions as an extra artillery  
15 battalion, or they would give us a specific assignment. On a  
16 couple of occasions we were a 105 artillery battalion in  
17 direct support of the 5th Ranger Battalion.

18        Q. Was the accuracy determined by some rudimentary,  
19 like triangulation method?

20        A. Yes, you have a survey of the exact location of each  
21 OP. All of their instruments are calibrated and know  
22 approximately where the shell is supposed to land. As soon as  
23 it lands and there's a big splash, they will measure the exact

1 spot. They record that angle. If you know anything about  
2 trigonometry you know the distance the shell has traveled.

3 Q. That's why you were picked for field artillery.

4 A. Yes. Nowadays you have computers, but in the fire  
5 direction center we used slide rules.

6 Q. I'm assuming at this point the Mulberry Harbors were  
7 being set up?

8 A. Yes, and lots of captive balloons. They were on  
9 cables flying maybe 500 feet high, so that the dive bombers  
10 could not come in to strafe because they would hit one of  
11 those wires and shear off a wing or propeller.

12 Q. Can you walk us through the notification of your  
13 deployment leaving from England; what happened, how were you  
14 notified, the timing?

15 A. Well, I was not personally notified except from the  
16 battalion commander. Now how he was notified, I don't know.  
17 But we were being told to move from point A to point B. And  
18 we set up a convoy and made that move. And finally we get  
19 down to a port area. And then they'd say, okay, tomorrow  
20 you're going to board the ship. And we went aboard what they  
21 called a landing ship tank. We backed all the vehicles on  
22 board. When we crossed, they dropped the bow and you get off  
23 as fast as you could and get off the beach as fast as you  
24 could. You don't linger around.



1           The beach itself was secure as were the hills around it.  
2   But just a few miles inland where it was all hedgerow country,  
3   that's where the fighting went on for another couple of weeks.  
4   So my first combat experience was in the hedgerow country.

5           [Pause]

6           Q.   June of '44. I believe you were getting ready for  
7   hedgerow fighting in western France.

8           A.   We got off the beach, pulled inland and occupied a  
9   couple of fields in the hedgerow country. The Germans had no  
10   trouble hearing us move in. So all night long they were  
11   peppering us with mortars. They couldn't use artillery  
12   because each of the fields is bounded by the hedgerows.  
13   Hedgerows are dirt that is filled up four, five to six feet  
14   high, and then trees grow out from the tops. So the roots of  
15   the trees are what holds it in place. And artillery with a  
16   low trajectory could not--so it was all mortars flying over.  
17   And the next morning the field looked like it had been worked  
18   over pretty good. And actually we spent the night in  
19   foxholes. And some people had rescued doors from abandoned  
20   houses, and that makes a pretty good cover for your foxhole.

21           Lots of rain in Normandy. I remember getting soaked on  
22   many occasions and having this much water in the bottom of the  
23   foxhole. Probably the next day I was assigned to go out with  
24   an infantry outfit. I was given the choice of lugging the

1 radio or riding in a tank. I opted to lug the radio. And  
2 before the day was over, the tank hit a mine. I have a slight  
3 case of claustrophobia, so I'd rather be out than inside a  
4 tank.

5 But the first time I was out, we did not actually engage  
6 in any combat. The unit I was with was in reserve. In  
7 reserve is sort of a nerve-shattering thing; you're close  
8 enough that you're getting hit. You're not close enough to  
9 really see anything. And you can't move, so you have to take  
10 it. Luckily there are a number of bomb craters because the  
11 whole area had been bombed from the air. You didn't bother  
12 digging a foxhole, you just got into one of those big bomb  
13 holes. And sometimes there would be four or five in there.  
14 And one technique that I learned that I used successfully, I  
15 remember one guy, he's in there, and he's reading a paperback,  
16 and I said, you know, that's not a bad idea. Because you  
17 can't see anything and you can't do anything. You just wait.  
18 I liked sea stories, Captain Horatio Hornblower because there  
19 is this stuff bouncing around, but I'm in the middle of the  
20 ocean. And I found that very helpful.

21 It was probably the next day before we were actually on  
22 the attack. The Germans frequently would pull back at night  
23 but leave some mines behind. So you couldn't advance very  
24 rapidly. And on one occasion I'm very close to the company

1 commander and we decide, okay, this field looks pretty good  
2 peeking over the hedgerows. We start out, and we're just  
3 about in the middle of the field and we hear a German tank on  
4 the other side of the hedgerow. Luckily we took the right  
5 maneuver. We didn't try to run back. We ran forward and got  
6 up to the hedgerow. The tank comes directly over me. The  
7 muzzle of it—I'm lying on my back directly under it, and I  
8 thought, if that son-of-a-gun fires I'll never hear anything  
9 again because I would have gotten the full blast from the  
10 tank. But luckily it couldn't see anything and backed away  
11 without any firing at all.

12 Q. Could you tell what kind of tank it was?

13 A. No, but I could tell what the muzzle looked like. I  
14 wasn't that curious. I was more than happy to hear it. Both  
15 ears were working in those days.

16 We got a cease-fire. One of the hedgerows that had been  
17 pretty bloody as it changed hands back and forth, and both the  
18 sides decide to stop firing and let the medics and the  
19 chaplains go in. For about several hours there was no firing  
20 in that area. And then the shooting began again.

21 Q. Who initiated that, the Germans?

22 A. That I don't know. All I know is our orders—no  
23 firing. Just relax. Didn't always get full explanations.  
24 But it did happen. And it was for several hours.

1 Q. Before we go on any further, up until now with your  
2 basic training, your time at Fort Sill, out in the desert, out  
3 in England, is there anything that jumps out at you in terms  
4 of military justice, again, from the perspective of an  
5 artillery officer and if not, we can move on.

6 A. No. From the military justice, the only thing there  
7 is that I described to you last night about the four guys who  
8 got into the basement of a farmhouse and were drinking  
9 calvados, which is pretty potent. The battalion commander  
10 just took them to the Infantry and volunteered them as litter  
11 bearers. He went back the next day and two of them had been  
12 hit, evacuated, and he brought the other two back to pass the  
13 word around that you don't have to worry about a court-  
14 martial. If you goof off, you're chances are fifty-fifty of  
15 getting hit the first day.

16 Q. And this was in France?

17 A. Yes.

18 Q. These guys had broken into a house in France?

19 A. Yes. It was a farmhouse near our gun position. And  
20 there were live cows and there were dead cows and other stuff  
21 around.

22 Q. Were there men tried in England while you were  
23 there?

1           A.    Oh, yes.  I prosecuted one case.  A couple of GIs  
2 got drunk and they stole a British mail truck and went riding  
3 around.  Yes, that was one court-martial I was involved with  
4 there.

5           Q.    And you were the prosecutor?

6           A.    I was the prosecutor, yes.  No, wait a minute.  No,  
7 I defended that guy.  I defended that guy because it wasn't  
8 stolen with the intent to keep it permanently.  What's the  
9 lesser included?

10          Q.    Wrongful appropriation.

11          A.    Yes.  So I got that reduced.  About the 25th of  
12 July, they had tremendous aerial bombing, hour after hour,  
13 constantly bombers, bombers, bombers just coming one after the  
14 other.  And then the big attack to break through the German  
15 lines.  It was at Saint Lo.  And the unit I was with was given  
16 a job of playing defense-getting through the opening and then  
17 defending the breach.  Most of the units were sent towards  
18 Paris.  They came through the breach in the German lines and  
19 headed east.  There were fears there would be a German  
20 counterattack.  We held the defensive position because the  
21 Germans might try to close that up again.

22          So we were there, and it was around Rennes I remembered I  
23 did put in a survey.  So not only did I have a viewer here and  
24 a viewer there, I went ahead out there and had a complete

1 triangle to be sure that I had the 180 degrees and the reading  
2 of the instruments would read exactly that amount. I had a  
3 real precise situation. I remember doing that. There was a  
4 stream nearby, and some of the fishing was done with a hand  
5 grenade. Not exactly according to the book, but the fish  
6 tasted pretty good.

7 Then there was the invasion in southern France. That  
8 took the heat off the area we were holding. Now there's no  
9 chance of a German counterattack there because they have to  
10 defend the forces coming up from the south. Therefore, the  
11 VIII Corps moved to Brest. Brest is at the northwest corner  
12 of France. It's a seaport. German submarines operated from  
13 there. They had underground-underwater pens. And VIII Corps,  
14 which at that time included three divisions, moved into to  
15 take over Brest. Well, it took a little longer than  
16 anticipated. Not only did Brest have their regular defenses  
17 and huge guns, but a German division just happened to be there  
18 maneuvering at the time, we decided to surround it.

19 A tremendous amount of firing, some of it almost like  
20 Iraq; almost house-to-house in some places. We would blast a  
21 hole using a bazooka in the wall of a house, throw a grenade  
22 inside, rush into that room, throw a grenade into the next  
23 room; that type of stuff. I remember a couple of nights when  
24 I was acting as the exec, we were given 500 rounds for

1 harassing and interdiction fire randomly at a certain  
2 location. We'd fire maybe 8 or 10 rounds. Then we'd smoke a  
3 cigarette and relax a little bit. And then fire 2 or 3 more  
4 just to keep them off balance.

5 One of the most interesting experiences took place at  
6 Brest. I have an observation post. The infantry's front line  
7 was maybe 50 yards in front of me. They have a roadblock—a  
8 sergeant in charge of a squad. And my left boundary is a  
9 railroad track running north into Brest. I can see the  
10 railroad track on the aerial photos, I can see it on the map  
11 and I can see it on the ground. It made a good boundary for  
12 me. The right boundary doesn't figure in the story thus I  
13 won't bother even talking about it. I'm curious as to why the  
14 rail track suddenly stops. The aerial photo doesn't show any  
15 reason why it should stop, nor does the map. Why in the heck  
16 would they run a railroad up to nowhere? There's no space to  
17 turn around. Did they just go up and then they come back. The  
18 map may be old but the aerial photo was taken a day or so ago.  
19 I try my best to find an explanation and soon suspect the  
20 track goes into a tunnel. That's why it stops on the aerial  
21 photograph. And this tunnel must lead into the back of one of  
22 the submarine pens. That explains why there's no turnaround  
23 or anything else.

1       As the sun changes I keep looking and see that the tunnel  
2 entrance is blocked by a steel door. I became more curious. I  
3 use a 20-power scope and wonder what's behind the door?

4       Well, it didn't take too long. The door swings open.  
5 Out comes a flatbed railroad car with the biggest gun I have  
6 ever seen in my life. It is huge.

7       In World War I the Germans had a gun that was called "Big  
8 Bertha." They were dropping shells into Paris from 70 miles  
9 away with Big Bertha. This thing is huge. A couple of guys  
10 were needed to crank it up and it starts firing. Oh, what a  
11 target. It's for me. That's right on my boundary. Only in  
12 the Bible does David beat Goliath. A 105 against this thing,  
13 which probably fired a 2000-pound shell. The shell fired from  
14 the 105 weighs 34 pounds. So I asked for the 8-inch gun, part  
15 of VIII Corps artillery. They turned me down; no, can't have  
16 it. Well, it fired for about 10 minutes was cranked down,  
17 backed into the tunnel and the door closed. Every couple of  
18 hours it came out again. They fired away. Again I ask for  
19 the 8 inch, which fires about a 100-pound shell and is  
20 extremely accurate. No luck. I finally got discouraged and  
21 said it's probably just as well. They never stay out for more  
22 than 10 minutes. And my chances of getting a round in there  
23 during that period of time is pretty slow because I have to go



1 through my battalion fire direction center to the Corps fire  
2 direction center.

3 About two days later it occurred to me that I don't have  
4 to hit that gun. All I have to do is hit those tracks or hit  
5 that door with something big. They still wouldn't give me the  
6 8-inch. About the fourth day my phone rings. They asked can  
7 you see Big Bertha? Yes, they're firing away at something.  
8 Captain Reed from my fire direction center said the Krauts  
9 made a mistake. They're firing too close to Corps artillery.  
10 You've got the 8 incher.

11 We couldn't miss because the aerial photograph and the  
12 maps showed exactly where the tunnel was. The gun was backed  
13 into the tunnel before the rounds landed but they landed right  
14 on target. We never did see that gun in action again. I was  
15 told that the gun is now at Aberdeen Proving Ground  
16 [Maryland]. One of these days I'm going to swing by there to  
17 see it. It was huge.

18 On another day from that position, I see a German jeep  
19 coming towards the sergeant and his roadblock, carrying a  
20 white flag. I called the sergeant on the phone. I said  
21 there's a German jeep with a white flag coming. Don't shoot,  
22 but don't let your guard down. Let's see what he wants.  
23 There's an officer and his driver. The sergeant tells me that  
24 the officer wants to go back and talk to headquarters. I

1 called the headquarters and they finally say, okay. We  
2 blindfold the officer, put him in one of our jeeps and drove  
3 him to the battalion headquarters--this is for the infantry  
4 battalion headquarters. The German driver and his vehicle  
5 were held right there.

6 What was the purpose? To arrange a cease-fire to let the  
7 civilians out of Brest. The place was really going to be shot  
8 up. So a cease-fire was beneficial to the Germans to get  
9 civilians out of there and it was beneficial to us. That's  
10 two examples of cease-fires in the relatively short period of  
11 time--and to my knowledge there was no violation, for several  
12 hours they let the people go.

13 Q. Now this whole time you're supporting the 90th  
14 Division?

15 A. No. It was either the 2d or the 8th. When we first  
16 got to Brest we were supporting the 2d Division. And then I  
17 think it was the 8th. But, also, there we were in direct  
18 support of the 5th Ranger Battalion which held a sector  
19 between the two divisions. Now we're closing in and the pie  
20 is getting smaller. We've got to adjust. And eventually they  
21 got pinched out and we joined the Division.

22 It was interesting being with Rangers. Their tactics  
23 were quite different. At night I would always bring our  
24 artillery into what we called the normal barrage set to fire

1 200 yards in front. So if there's a counter-attack, without  
2 any horsing around, artillery could start shooting immediately  
3 into that area. I go up, it's starting to get dark, and I  
4 want to adjust the artillery. And there's one of the rangers,  
5 he's looking around, and I ask is anybody out in front here?  
6 He says, no, sir. I looked around and ask, where's your  
7 rifle. He's up there in charge without a rifle. He replied  
8 it wouldn't do any good here. I said, what do you use? He  
9 says just grenades. We're too close with all the woods to use  
10 rifles. We just toss grenades.

11 Q. 2d and 8th Divisions were both infantry divisions?

12 A. Yes.

13 Q. You mentioned aerial photography and having some  
14 maps. During this period, my understanding is allied forces  
15 were making pretty good progress across France. How were you  
16 able to keep up with maps as you move large distances in one  
17 day?

18 A. Believe it or not they had lots and lots of French  
19 maps. Where they got them from I don't know—but they had lots  
20 of them. So the maps were invariably French, augmented by  
21 aerial photography.

22 Well, eventually Brest fell. And there was quite a stock  
23 of alcoholic beverages. And it was divided up amongst all the  
24 units.

1 Q. Do you remember when?

2 A. About the end of September of '44. Normally every  
3 night German planes would be overhead, mostly for observation  
4 purposes. But around Brest there were no German planes. We  
5 had one heck of a bonfire right in the middle of the gun  
6 position. All sorts of beverages were poured into one of  
7 these big GI cans and the guys were just filling their canteen  
8 cups.

9 Q. That had to be ugly.

10 A. There were bodies all over the place. I had set up  
11 a little tent over my foxhole. I go to crawl in, there's a  
12 dog already in there.

13 Q. Any drunken misconduct?

14 A. No. Nobody was sober enough to be a witness I  
15 think. Well, now Brest having fallen, there were two other  
16 ports, St. Nazaire and Lorient. The U.S. decided not to  
17 actually attack them, but simply to cut them off and surround  
18 them. So some forces were sent to each of those places to  
19 blockade them, if you will. I might add that at Brest some of  
20 the firing was pretty dog gone heavy. When the Air Force was  
21 about to attack targets, we normally were given the location  
22 of suspected anti-aircraft positions. We were using the 105  
23 to fire at the anti-aircraft positions of the Germans. Then  
24 there would be Navy ships, who would be using their big guns

1 firing into Brest. And the Air Force, they're dive-bombing  
2 and strafing come out of the sun and come down. And then  
3 they're supposed to stop just before they reach friendly lines  
4 and zip over. It was awfully close for comfort--or too close  
5 for comfort. They would stop machine gunning--just zip right  
6 over you almost at ground level.

7 I had been out forward observing for about 48 hours with  
8 no sleep. The company commander I was with had been killed.  
9 It was pretty tough. So when I got back, I went into a  
10 foxhole. I slept. The next morning I'm sitting, still in the  
11 foxhole, writing a letter. Beautiful late summer, early  
12 autumn day, and all of that hell is going on. Our guns are  
13 firing like crazy. The Navy guns on the other side are  
14 shooting. The Air Force is dive-bombing. And the kitchen  
15 truck near where I had spent the night, they have a radio  
16 blasting. And Bing Crosby is singing "I'll be seeing you in  
17 all the old familiar places." Every time I hear that song, of  
18 course, I think about that incident. It was such a beautiful  
19 day, but all hell is breaking loose.

20 Well, we get orders to move east.

21 Q. When you were in England, or now when you're over in  
22 France, at any time were you working closely with any of our  
23 allies? Were you working closely at all with the Brits? Did  
24 you encounter the French resistance when you were in France?

1           A.   Well, you see them running around wearing a  
2 handkerchief on their arm. But I had no connection with them.  
3 I had some connection when we got to Luxembourg with the  
4 Luxembourgers, but that was also minimal.

5           So the way we worked it, moving, one jeep from each  
6 battery would go on ahead. We normally would eat early chow  
7 in the evening and then take off because still in September  
8 the days are pretty long there. And we would go for maybe a  
9 100 miles, and then when it got dark, we'd stop for the night.  
10 Then the next morning we'd move on to what our objective is.  
11 When we got there each battery jeep would pick a certain spot;  
12 this is for A Battery's guns. Here's where we can draw water.  
13 Here's where we could get ammunition. Here's where we can get  
14 gasoline. Find out what there was about the area. And  
15 somewhere around noon time or early afternoon, the rest of the  
16 battalion would come to that area. We'd guide them in. Pass  
17 the information on. Got early chow and take off again.

18           We did that all the way across France, right to  
19 Luxembourg, right to the Siegfried Line. We got there  
20 sometime in October--into Luxembourg and lined up right at the  
21 Siegfried line, which is their counterpart to the Maginot Line  
22 with tank traps all along, plus pill boxes, plus everything  
23 from a defensive point of view.

24           Q.   Were you walking or mostly in jeeps?

1           A.    Yes.  Because each day, as I say, the next objective  
2   would maybe be 150 miles.  We went through Paris.  But we  
3   didn't even stop.  It was just a case of going right through.

4           Q.    Can you give us a sense, sir, of by fall of '44 how  
5   much of your original battery was with you still?

6           A.    Casualties up till now have been very, very light.  
7   Very light up till now.  The Bulge is where we got clobbered.

8           Q.    So what was the plan for the Siegfried line?

9           A.    Well, I wish I knew.  I knew what my task was.  
10  There was a little crossroad group of about 30 houses.  And  
11  the name of it was Fuhren; it was in Luxembourg, right close  
12  to the Siegfried Line.  It was held by an infantry platoon.  
13  It was one lieutenant and about 40 men.  And they had about  
14  one or two machine gun sections added to the platoon.  So we  
15  held that little crossroad village.  I always had two men with  
16  me.  Sometimes I had more.  Because it was a stable situation,  
17  and I like to go ahead and use wire rather than radio whenever  
18  we could.  So we had wire communications back to the firing  
19  batteries.

20           Well, a lot of things were happening because we were  
21  there all through November until the start of the Bulge, which  
22  is the 16th of December.  We were there almost two months.  It  
23  was essentially a quiet area because the Germans were not  
24  coming out.  Could you see each other?  Yes.  Naked eye?  Of

1 course. Beyond rifle range? Yes. Don't congregate because  
2 you'd get three or four and the artillery shell would come at  
3 you. Now this is something that I always think about because  
4 of the date.

5 I had an accident and I was convinced I was in heaven.  
6 The only way in and out of this town with safety was in the  
7 dark because the Germans can see us the whole time. So  
8 supplies, replacement, food, mail would be brought in at dusk.  
9 But the Germans could hear the vehicles and start shooting.  
10 They would try to guess where in the road the sounds were  
11 from, the crossroad was pretty well zeroed in. They could hit  
12 that any time they wanted.

13 So this night I hear the vehicles, I know what's coming  
14 next. My observation post was in the loft of a barn. I climb  
15 up to the loft to see if I can spot any of the locations from  
16 which the Germans are firing. And, of course, the Germans  
17 firing starts at the same time. One round landed just at that  
18 intersection. My phone went dead. I knew exactly what  
19 happened because that's where we had our telephone lines. I  
20 sent two of the men, I said, go ahead and get that wire fixed  
21 and get back inside the barricade before they close it.  
22 Because once we closed the barricade it's strictly shoot first  
23 and ask questions afterwards. The area around it was all  
24 mined. One of the machine guns covered the barrier. The



1 barrier wouldn't stop anything if they wanted to really hit  
2 it. But there were tin cans and other stuff--and sometimes  
3 they even hung grenades on the barrier. So I said, get back  
4 in before they close that barrier.

5 I climbed down from my perch. I pushed the jeep, which  
6 we kept in the barn out into the road. I couldn't start the  
7 motor because they'd hear it. I raised the antenna and I was  
8 able to talk to the battalion on the radio. I reported that  
9 nobody got hurt, but the wires got knocked out. I've got two  
10 men down there to fix it. Finally things quieted down. I  
11 said good night and lowered the antenna, pushed the jeep back  
12 into the barn. Now its pitch dark. I look at my watch.  
13 Where the heck are those two characters? They should be back  
14 by now.

15 There was a long hill from the barn to that intersection.  
16 I look around. I couldn't bring the jeep down. But there was  
17 a bicycle. I had seen the men riding the bicycle. I hop on  
18 the bicycle and I start down the hill, pitch dark. As I get  
19 near the bottom, I discovered two things, both bad. One, the  
20 barrier is in place. Number two, there are no brakes of any  
21 kind on this bike. I hit that barrier. Flipped right over  
22 completely. Landed on my back. May have been knocked out  
23 momentarily. As I look up, leaning over me, is Saint Peter.  
24 There's this vision. He has a white beard. He has a Bishop's

1 miter. He's wearing robes. He has a Bishop's crook. He has  
2 an accolade standing on each side of him. Saint Peter. That  
3 was fast. I just got myself killed and I'm already in heaven.  
4 And then I hear some voices in English. It's one of my men.  
5 I said, help me out of here. I didn't get a scratch out of  
6 it. I had some aches and pains, but other than that. Well,  
7 the explanation is, it was Saint Nicolas Night. The people  
8 who remain--most of the houses were vacant, but some of them  
9 were occupied, had spoken to the infantry lieutenant and told  
10 the custom is that the children put their shoes outside that  
11 night and Santa Claus comes around and puts candy in the shoes  
12 of the good kids and sticks and coal and all for the bad kids.  
13 Could they come around that night? The infantry officer said,  
14 okay. But you have to come inside the barrier before we close  
15 it. We'll let you walk around and then we'll let you leave.  
16 And if you want to do it outside the barrier, well, we don't  
17 care what you do out there.

18       So they had come and were inside the barrier in order to  
19 distribute gifts. My men, after they finished repairing the  
20 wire, paused to observe the robes and the beard. I always  
21 remember the 6th of December when I actually thought I was in  
22 heaven.

23       We pulled lots of tricks. I'm sure they didn't fool  
24 anybody. We had tanks that were nothing but big balloons and

1 played recordings of tanks moving. They would be played in  
2 our area so the Germans could hear tanks. And if they used  
3 aerial photography they could see vehicles. But the vehicles  
4 were all blown up big balloons.

5 Occasionally there were raids. And a number of real  
6 close-close shaves. On a clear day I would ask to have one of  
7 the howitzers brought up. They would find a location maybe a  
8 half mile or so behind me. And that increased the range.  
9 Normally, I could only shoot about a mile into German  
10 territory. The weather was so bad that that was good enough.  
11 But on a clear day I wanted to have more range. They would  
12 bring up one of the howitzers and I could shoot several miles  
13 into German territory.

14 It worked very well. The day after a good shoot, it was  
15 again clear and Corporal Clark suggested we go back to the  
16 same O.P. I had a strange feeling and doubts. I said, no, we  
17 attracted too much attention. Go down and pick a spot on the  
18 north edge of the town. Clark and Peterson headed down. As  
19 we were getting set up we heard two explosions and the  
20 hedgerow which hid yesterday's O.P was blown to bits.

21 Had some of the people in the houses communications with  
22 the Germans? Most of the people spoke both French and  
23 Germany. In some of the houses there were pictures of  
24 relatives in German uniforms. So you didn't know who was

1 reporting on whom. But that was one very close shave. I just  
2 didn't feel comfortable going back there the second day.

3 Thanksgiving was celebrated there. I had two  
4 Thanksgivings. I got some food from my battalion. And when  
5 the infantry vehicle came up, I ate again.

6 Which leads us about to the time of the Bulge. So let's  
7 pause here and have some questions or comments.

8 Q. I'm curious about how mail was or was not working  
9 between you and your wife or you and your family back in the  
10 States.

11 A. They had something called v-mail. You wrote it on  
12 one piece of paper and you folded it up. And they apparently  
13 photographed them or microfilmed them or something. And when  
14 you got it it was really a copy of it. They called it v-mail-  
15 victory mail.

16 Q. And what about her mail coming to you?

17 A. She used v-mail. We had free postage. And it took a  
18 long time, of course, to get there.

19 Q. How long?

20 A. Ten days.

21 Q. Well, that's pretty fast. I'm just curious, as I  
22 think you and I have discussed, right now the JAG Corps [Judge  
23 Advocate General's Corps (JAGC)] has a big push to have JAGs  
24 [Judge Advocates] with the combat arms units. I'm just kind

1 of curious, you kind of had two bosses, I'm assuming. You  
2 have an artillery chain of command and the infantry unit  
3 you're supporting. Were they always in agreement, or where  
4 you ever in a position where you had the artillery chain  
5 telling you one thing and the infantry guys wanting you to do  
6 another?

7 A. Not really. Not really because if you were dealing  
8 with the infantry on the scene, we pretty much would agree  
9 that this is very risky, this is relatively safe, this so-and-  
10 so. Now at the headquarters level, perhaps that could happen.  
11 For example, one of the German cities that we were involved in  
12 capturing was Koblenz. Koblenz is where the Rhine and the  
13 Mosel Rivers meet. So it's a strategic location. And there  
14 was a lot of planning done. They decided to bring all the  
15 artillery they could get their hands on to that area. And we  
16 were prohibited from firing. So there was no giveaway that  
17 all our artillery was in the area.

18 What the artillery likes to do regardless of how many  
19 surveys you have or how many maps you have is that they like  
20 to register. We like to fire a shot at the target and be sure  
21 it comes somewhere close. But we were prohibited from  
22 registering. Prohibited from doing any firing. We brought  
23 everything in. I don't know if at the higher level that was  
24 mutually agreed. Whether there was any fighting about that at

1 all. But it was unusual. And then what was arranged was what  
2 they called a TOT, which is time on target. Each artillery  
3 outfit was given certain targets, and they had to do the  
4 calculation so that the rounds would land at exactly 11  
5 o'clock. We would be firing at different times depending upon  
6 the time of flight. We fired thus one, two, maybe a dozen  
7 rounds right after the other. It was one hell of a  
8 bombardment with no prior warning, no indications that the  
9 artillery was even in the area. And lots of white flags  
10 appeared. So it wasn't necessary to go in on the ground. It  
11 was strictly that time on target that brought a happy  
12 conclusion. That was Koblenz.

13 Q. I'm curious--and let me just preface this by saying,  
14 I mean no disrespect. It was a world war. Things were done  
15 differently. But when you're talk about firing artillery in  
16 an urban area, was it common place--if the enemy was in, say,  
17 the town of Brest, and you had evacuated the civilians, I'm  
18 not going to say indiscriminately, but pretty much firing  
19 artillery----

20 A. Well, it was pretty damn indiscriminate, yes.  
21 Because what they gave us as a target actually were the  
22 military ones. Anything that looked like a railroad  
23 martialling yard was a prime thing. And then anything  
24 connected with transportation; a bridge, a rail station and

1 like that. So we were given that to shoot at more or less  
2 indiscriminately. Also, major road intersections.  
3 Occasionally they would give us some specific things to stay  
4 away from like a known hospital with a big red cross on it and  
5 things like that. So we would stay away from that. But the  
6 rest of the time, like I say, we were firing and harassing in  
7 the middle of the night. Yes, a few degrees off one way or  
8 the other didn't keep anybody awake worrying about it.

9 Q. You were getting ready to describe how you had the  
10 good or the bad fortune to be in Bastogne or near Bastogne.

11 A. We had been there at the same location for almost  
12 two months. On the 15th of December, Baker Battery gets  
13 pulled out of the line, again. They have a special testing to  
14 go on. We were directed to go to Arlon, Belgium, which is 40  
15 to 50 miles to the rear. They have a new fuse that they want  
16 tested. We are at this point in 1st Army, not in 3d. These  
17 are called proximity fuses. They were very secret at the  
18 time. It has an acid vile in it. When it is fired, the  
19 firing will break the vile. The rotation of the shell would  
20 move the acid around within the fuse, which had a complete  
21 battery except for the acid. So when the acid mixes with the  
22 other ingredients, you have a battery, which creates  
23 electricity. That then transmits a wave. If an echo comes  
24 back it detonates the shell. It's designed primarily for

1 anti-aircraft so you don't have to actually hit the plane.

2 Just if it comes close to the plane it will detonate.

3 Also they wanted to see how it would work in trying to  
4 hit a target that is just beyond a ridge. If it just clears  
5 the ridge it will explode just past the ridge, which is where  
6 the enemy would be hiding.

7 My battery is brought back on the 15th. On the morning  
8 of the 16th, I'm busy putting out wire between the gun  
9 position and the observation post. It's a Saturday now, the  
10 16th. And the big shots from 1st Army are coming down the  
11 next day, Sunday, to see the firing of the shells with the new  
12 fuses on it. We didn't actually get the fuses. It was so  
13 secret. We knew about it. And they were going to bring the  
14 fuses down with them. Around noon time one of the trucks from  
15 the battalion come and they're saying, boy, there's a lot of  
16 fighting going on around A Battery. Then we start hearing  
17 more and more reports. At about 5 o'clock that morning the  
18 Battle of the Bulge had begun. The officer who occupied my  
19 O.P. called his first fire mission on a target behind him.  
20 Mid-afternoon we got orders. Cancel the demonstration. Get  
21 back. They pull up the guns and they take off. But I had  
22 miles of wire out. It takes longer to recoup the wire than it  
23 does to put it out. This is now the 16th of December, so it  
24 gets dark at 4:30 or so. We head back. I'm in the jeep and I



1 had two three-quarter ton trucks like a pick up truck. We go  
2 through the city of Luxembourg and it's quiet. Soon the whole  
3 area is lit. The Germans have huge search lights bouncing off  
4 the low clouds to keep the area at twilight so that they can  
5 continue moving even after dark, and, yet, not have lights on  
6 the vehicles. The whole area is eerie twilight. When I got  
7 within radio distance, which was about five miles from the  
8 battalion, there was lots of shooting going on. I called and  
9 asked where do you want me to go? And they said, come to the  
10 headquarters. So right away I knew there was little chance of  
11 getting back to the battery position the guns had been in.

12 The headquarters was located on a little stream. Above  
13 the stream was a north/south road. And above that a hill  
14 where Battery B was now in position. It's now close to  
15 midnight. I dug a hole and went to sleep. The next morning,  
16 which is the 17th, I got up and looked around. There are four  
17 guns pointing in four different directions. In the middle of  
18 the gun position there are some quad-50 calibers and twin  
19 boffers, anti-aircraft guns. Where they came from, where they  
20 got them, I don't know. But they're there in the middle of  
21 the position.

22 I said to the lieutenant, Rodman, who was also a lawyer,  
23 you did a good job laying the guns. Normally they're all  
24 pointing in the same direction. He said, well, look around.

1 Well, with the naked eye we're completely surrounded by the  
2 enemy. We are using the quad-50s and the 40 millimeters to  
3 keep them pretty much out of rifle range. But the Germans  
4 aren't interested in attacking us. They're interested in  
5 objectives further to the rear. They want to cover distance,  
6 not occupy real estate. The other officers had been up all  
7 night. I had gotten halfway decent sleep. Now I'm in charge  
8 of the guns. And we're getting directions to fire here, there  
9 and shooting at things, indirect fire. About mid-afternoon  
10 four American tanks come into the area. There was a major in  
11 charge of them. He asked do you have any communications? I  
12 said, yes, sir and handed him the phone. When he got through  
13 I talked to him a little bit. Then I called the battalion  
14 commander and said, we have four tanks here and they're moving  
15 on. The battalion commander says, okay, let's go with them.  
16 I give the order close station march and we start loading.  
17 But unfortunately we had more ammunition than we could carry.  
18 So we load everything we could, gasoline and the shells. The  
19 rest of them were in a great big pile. I had everybody move  
20 out. I took four incendiary grenades and waited until  
21 everybody cleared the field. It's dark now. My driver,  
22 Clark, brought the jeep down to the road at the rear of the  
23 convoy. Peterson, the radio operator stands on the hill by a  
24 path that I can take down to the jeep. I pull the pins and

1 toss two of them into the pile. I thought grenades have a 10  
2 second delay. Do you know the incendiary grenades do not have  
3 a delay?

4 Q. I did not know that.

5 A. There was a huge flash. I went flying backwards.  
6 Landed on my back, completely blinded. Can't see a thing. I  
7 could feel the heat. I got up and I start staggering away  
8 from the heat. Peterson kept calling my name. Eventually he  
9 grabs me by the hand and drags me down the path. I get into  
10 the jeep and off we go. We hear the shells exploding behind  
11 us.

12 I'm told we're passing through German vehicles all the  
13 time. It's one of those situations—in the dark. But I can't  
14 see a thing. I'm sitting in the front of the jeep. I'm out  
15 of it except for riding along. Come daybreak I'm pretty good.  
16 We stop, I'm given a map and told to go to a spot. That place  
17 was nothing but a crossroad, an inn. Nothing but forests all  
18 around. I always check with the infantry, but there are no  
19 infantry. The only Americans around were two lieutenants—  
20 engineers. They were the 44th Engineers. They had been  
21 building roads and their task now was to mine a bridge near  
22 that location. There was no infantry at all. Directly in  
23 front was a path down through the woods. Off to the right  
24 front was a blacktop road leading to the bridge they had

1   mined. It wasn't long before I see the Germans marching up  
2   the path. The first one has his hands above his shoulders.  
3   Geez, they've got us surrounded and this guy's coming up  
4   surrendering. When I put the glasses on, he's not  
5   surrendering. He's carrying a tripod for a machine gun or the  
6   base for a mortar. He's carrying it on his shoulders. That's  
7   why his hands are up. He's leading and the others behind him  
8   are carrying the stuff. I knew exactly what that meant.  
9   Their infantry, who were only carrying their rifles, probably  
10   can't use the path. They have to make their way through the  
11   woods. But those who are carrying equipment can use the path.  
12         So boom. I opened up with our artillery to cover that  
13   whole area--shooting it up. The area is soon pretty safe. Now  
14   there's no way in the world that they can come up with our  
15   artillery covering the area. The two engineers wanted to blow  
16   the bridge. I said, no, that would be too hasty here.  
17   Perhaps I didn't want to remain alone. But as the minutes and  
18   a couple of hours passed, I see the Germans behind me on the  
19   left and, also, on the right. We're going to be completely  
20   surrounded. It was a case of now or never. I said lets blow  
21   the bridge and it was destroyed. Still no infantry in the  
22   area.

23         We move back to the next bridge. We mine it. As soon as  
24   the Germans come within spitting distance, we blow the bridge.

1 Finally it's getting dark. We are in the outskirts of Wiltz,  
2 W-I-L-T-Z-Wiltz, Luxembourg, and things, for me, quiet down  
3 for the night because I can't see anything in the dark. I can  
4 hear things, but I can't see anything. We go into a factory  
5 building and decide this is as good a place as any to spend  
6 the night with my two men. That takes care of the Monday, the  
7 18th of December. It started on Saturday. Sunday was when I  
8 blew the ammunition and then Monday.

9 Tuesday morning, just at daybreak, all hell is breaking  
10 loose. We are in the middle of a tank battle. As I look out  
11 from the factory there's an open field of 200 to 300 yards,  
12 beyond is a forest. German tanks are popping in and out of  
13 the forest firing at American tanks which are hiding behind  
14 the factory. The noise is really deafening. Our tanks and  
15 tank destroyers are shooting shells at the Germans, who are  
16 hitting the building. But I have the radio and it has  
17 batteries. I call the battalion and adjust the artillery into  
18 the woods, which helped a lot. How did it help? First of  
19 all, I asked for quick fuses so that when the shells hit the  
20 tops of the trees they'd explode. I wasn't thinking about  
21 knocking out the tanks. What I was concerned with was a  
22 coordinated tank/infantry attack. Their tanks want to quiet  
23 our tanks and then the infantry would come along. Now a tank  
24 is a formidable foe, but it has its limitations. If you can

1 get a tank isolated from the infantry, it's like isolating a  
2 whale and the whale may not escape. But by firing in there,  
3 number one, it caused them to button up the tanks. They had  
4 to use their periscope. I was convinced, although I could not  
5 see them, that their infantry was waiting to come across with  
6 them. It seemed like forever, but it certainly couldn't have  
7 been more than an hour, the German tanks withdrew to attack in  
8 another location. There's no way they can tell where the  
9 artillery was coming from. They knew where our tanks were,  
10 but they couldn't tell where the artillery was. So they  
11 picked a new location as their infantry could not cross the  
12 open field. They swung around and went more towards the east.  
13 I was looking northeast from Wiltz. We had observers behind  
14 me or around the bend if you will. They begin to get into the  
15 action. But it was pretty quiet in my sector for now. The  
16 shooting that I did was all at long distance targets. And  
17 believe it or not, there were horse drawn convoys within  
18 range. A sickening sight is shooting at horse drawn convoys,  
19 with the horses jumping up, leaping, and blocking the road.  
20 It was not a pleasant sight. The battalion commander came up  
21 and looked around, but he didn't say anything.

22 In the early afternoon the Germans started to attack our  
23 gun positions and the fire direction center. As I'm talking  
24 to them I can hear the machine guns. The three firing

1 batteries are in a straight line. The two in the rear cover  
2 the movement of the first one. The first one displaces and  
3 takes a position in the back. They keep backing up playing  
4 leapfrog-backing up, getting further and further from me and  
5 Wiltz. Late afternoon I said to Clark, take the jeep gas it  
6 up and see if you can find some food. He leaves and about an  
7 hour later he returned saying the 28th Division Headquarters  
8 was moving out. He had some food and gasoline. We were ready  
9 to move because I knew there was no way that we were going to  
10 be able to hold this place much longer. Just at dusk word  
11 comes over the radio for an officer's call. I don't remember  
12 how they described the location, but we found it in the  
13 basement of a building. It was a scene out of a movie. There  
14 were probably 20 officers there. A Coleman lantern providing  
15 the light, there's a fire in the fireplace. All maps are  
16 being ripped from the wall and burned in the fireplace. I see  
17 an infantry lieutenant colonel from the 110th Infantry  
18 Regiment of the 28th Infantry Division. He asks for our  
19 attention. He said, not only are we surrounded, but the enemy  
20 is already in the city. In a few minutes I'm going to  
21 surrender the city to them. I want the medics and the  
22 chaplains to remain here with the wounded. The rest of you  
23 destroy your vehicles and try to make it to Bastogne about  
24 eight miles further west. Any questions? Well, you know who

1 had a question. I introduced myself. I said I'm still in  
2 contact with my battalion, but only by using the radio in the  
3 jeep. My batteries are dead, but on the jeep I can still talk  
4 to them and conduct some firing. Is that an order to destroy  
5 the vehicle or permission? He says if you want to try to make  
6 it in your vehicle, go right ahead. That ended the meeting.  
7 A couple of other lieutenants came and joined me. What do we  
8 have? We had an M-8 scout car. It looks like a tank, but it  
9 has wheels and rubber tires. And we had one half-track and  
10 about eight jeeps. We decided we'd try to make a run for it.  
11 And on that happy note we'll take a pause.

12 [Pause]

13 Q. Did I understand you correctly a couple of minutes  
14 ago to say that at one point your howitzers engaged in direct  
15 fire?

16 A. Yes. Wait until you see the citation, which I'll  
17 give you later. They were direct fire with some tanks. And  
18 we lost some of the howitzers with the tanks.

19 Q. Let me ask you this, what percentage of personnel  
20 decided to stay and surrender, stay and fight, versus what  
21 percentage decided to try and break out and get to Bastogne?

22 A. I have no idea. I know how many decided on the  
23 breakout. We decided to put the half-track in the front.



1 There were about eight jeeps. And then the M-8 scout car was  
2 in the rear.

3 Q. Is this a hodgepodge of Soldiers or are these all  
4 your artillery Soldiers?

5 A. No, this is a hodgepodge of everything. There were  
6 only officers at that meeting. The men knew there was  
7 something up and they asked for rides. I let four of the  
8 infantry climb onto my jeep. Clark is driving. I have an  
9 infantry Soldier in the middle. I'm on the end--more out than  
10 in. Peterson, the radio operator, is in the back plus three  
11 others.

12 Q. So you're the ranking officer?

13 A. We don't know. It's in the dark. They're asking  
14 for rides. Of course, we're all on the same team, so we took  
15 four of them. There were seven of us in the jeep. We start  
16 off with no lights. We were somewhere in the middle of the  
17 convoy. We make it out of Wiltz with no trouble. As we start  
18 down the highway we hit a roadblock. The half-track just  
19 knocks it out of the way and we continue on our merry way. I  
20 said, boy, that was a lot easier than I thought this was going  
21 to be. And, of course, the jeep in front of me and the one  
22 behind me are moving right along.

23 Maybe a mile later there's an overturned truck blocking  
24 the road. The Germans are shooting from behind it. We end up

1 coming to a dead stop. There's more shooting from the left  
2 side of the road. We are near the overturned truck. I put my  
3 right leg half on the ground in order to fire my carbine. As  
4 I shoot at the Germans on the left, Clark sees a chance to  
5 move ahead. He guns it and leaves me standing on one leg in  
6 the middle of the road. I didn't lose my composure. I dove  
7 myself across the hood of the next jeep and yelled at the  
8 driver, get going. I didn't block his view. I just laid  
9 across the hood. He followed Clark's jeep. When we got  
10 around the bend, things were quiet. Clark realizes he had  
11 lost somebody and stopped. We exchanged a few pleasantries.  
12 A jeep from our battalion had been right behind, but the jeep  
13 that I threw myself across was not from my outfit. Maybe they  
14 didn't make it past the first roadblock. I don't know. Now  
15 we're free or so I hoped. We're zipping along. We got about  
16 another mile on a straight path. It was not a real dark  
17 night. You could make out figures. We were directly behind  
18 the half-track and the area lights up with flares. They're  
19 waiting for us. I felt like we're riding down the middle of a  
20 bowling alley; woods on both sides of the road, no way of  
21 pulling off. We're heading right towards the blocked area  
22 with its nice bright lights.

23 The enemy hit the half-track with a bazooka which sent it  
24 spinning around. My jeep gets hit with machine gun fire. We

1 rolled over into the ditch on the right. But, as I say, I'm  
2 already half out and I'm out before it gets on top of me. And  
3 about that time the flares die. I manage to crawl into the  
4 woods. After some moving around I'm able to find uninjured  
5 Clark and Peterson. One of the infantry guys got hit in the  
6 arm--and I remember we put some kind of a bandage on it. I  
7 wasn't sure what to do or how to get there. I talked to a  
8 group of ten saying I'm still going to try to make it to  
9 Bastogne on foot. It's to the west. You can tell from the  
10 firing just where it is. I said, I don't think we have any  
11 chance of getting through as a group. I don't mind if you  
12 want to follow us, but don't get too close because we'll make  
13 too much noise. In effect, I said goodbye to the infantry and  
14 with Clark and Peterson, I continued to move through those  
15 woods. We're moving in a north direction. We had been going  
16 west on the road.

17 I'm still carrying the carbine walking ahead. One of the  
18 strangest things that has ever happened to me is about to  
19 occur. Somebody shouted "duck!" Now if you were going  
20 through the woods bending forward, carrying a gun and trying  
21 to peer ahead in the dark and somebody yells "duck", what move  
22 would you make? But I didn't. I threw myself backwards. I  
23 landed on my back in the ditch on the side of the road.  
24 Across the road a German machine gun sprays tracers six inches

1 above my face. I'm on my back and I can see everything. But,  
2 of course, I can't move. In English they're yelling at me,  
3 give up! Give up! And then they sprayed the area again with  
4 machine gun fire.

5 Lots of thoughts, lots of praying going on. I was  
6 convinced that this was the end. There is no way of getting  
7 out of this. So close to them I can hear their conversation.  
8 The lieutenant's name was Von London. My hearing was  
9 exceptionally acute. The slightest movement of my head with  
10 the helmet scrapping stones was almost like being in the  
11 middle of a church tower with the big bells banging. I  
12 couldn't stand the noise. I took the helmet off and laid it  
13 aside. All I had on my head was a knit cap that we wore in  
14 the wintertime under the helmet liner. The helmet liner and  
15 the helmet are gone.

16 I have one hand grenade. I'm on my back. They are  
17 diagonally across the road--do I throw it or do I not? I look  
18 at the branches of the tree above and they are too low. Any  
19 time I'm thinking of raising my arm, I get another spurt from  
20 the machine gun. There is a good chance of getting my arm  
21 sawed off if I raise it. And if the grenade hits the branch  
22 and falls on top of me, that's not good. Even if it hits the  
23 Germans, they probably have sandbags or something else that

1 they're behind. My chances of making a real good shot are  
2 slim. I decided, no, that's not the technique.

3 Suddenly opportunity appears. A truck comes down the  
4 road from the east. They fire on the truck. I roll into the  
5 woods out of the ditch. Clark is still there. He has his  
6 carbine pointing at me but sets that aside. Petersen is near  
7 by. We're back in the middle of the woods. What are we going  
8 to do? The roadblock that got the jeep is there. The machine  
9 gun that almost got me is there. Which direction do we go?

10 There were clouds and a bit of a moon. I finally decide  
11 on a plan. There's a one-mile distance between roadblock  
12 number two and roadblock number three. We can cross that road  
13 safely if we go east towards Wiltz and then cross that road.  
14 But we have to go over a hill and the hill doesn't have any  
15 trees. The side of the hill that we will be crossing is facing  
16 the machine gun. I cautioned the men, we're going to do this  
17 single file. Stay away from the top of the hill because we  
18 don't want to be silhouetted against the somewhat brighter  
19 sky. If anything happens, freeze. Like a deer freezing in  
20 the lights of the car.

21 We start off single file. I'm crawling first. Suddenly  
22 I hear a pop, which I recognized immediately as a flare  
23 pistol. It shoots up a parachute, a flare lights, and slowly  
24 descends. Luckily I had warned them about freezing. I was

1 convinced it was going to hit the only part of me that was  
2 exposed; the back of my neck. The rest of me was covered. I  
3 held my breath, I didn't want to scream or wiggle if it hit.  
4 Luckily it came very close, hit the ground, smoldered, and  
5 went out. We continued crawling.

6 Over that hill and we're in the woods. German guards are  
7 stationed at a house. That's as far east as we go and turn  
8 south. We cross the road that we had taken out of Wiltz  
9 between the second and third roadblock. We follow the road  
10 west, but walking in the woods, not on the road. What the  
11 heck can I do to help the cause? For the first time I see  
12 something that convinces me that this is more than a big raid.  
13 The Germans have already laid wire. Their wire is different  
14 than ours so I knew it was the German wire. I have a pair of  
15 pliers and start cutting the wire. Moving another 40 yards,  
16 cutting it again, and pulling the piece between the two cuts  
17 away with me. Hopefully we created havoc by cutting their  
18 wires as we went along.

19 Periodically a vehicle would come down the road and we'd  
20 simply hide in the woods. Finally, we come to a stream that  
21 is running generally west. There's too much going on on the  
22 road. I said we're going to get our feet wet but we're going  
23 to walk the stream. We know they're not setting up a  
24 roadblock on the stream. We go splashing along, splashing

1 along, splashing along. Feet getting wet of course, but we're  
2 making progress towards Bastogne.

3 Q. December in the snow?

4 A. Well, there's some snow, yes, on the ground. And  
5 I'm using the snow. I'm making a snowball and sucking on it.  
6 Finally, we come to a bridge crossing the stream. I climb up  
7 to see where we are. It's a paved road. To the west there's a  
8 farmer beginning morning chores. It's just beginning to get  
9 light. Probably about seven o'clock. I called the two men and  
10 said I'm going to talk to that guy. You cover me.

11 I used a few words in English. I tried a few words in  
12 French. I tried a few words in German. All I could learn  
13 from him was that there were no Americans around, but there  
14 were Germans. With that, I hear tanks. His house was right  
15 at a T-intersection. I was pretty sure this was the main road  
16 between Arlon, Belgium, where we had been at the start of the  
17 Bulge, and Bastogne. We jump into the woods and lie there.  
18 About 10 German tanks come down the road with infantry riding  
19 on all of them. They come to the intersection where we are.  
20 They turned right and went north towards Bastogne. As soon as  
21 they were out of sight, I decided we would go south towards  
22 Arlon. I wasn't going to try to make it to Bastogne in  
23 daylight following German tanks. I believe I gave it my best  
24 shot to make it into Bastogne.

1        We walked a little bit on the road towards Arlon heading  
2 south then went into the woods to take a break. All three of  
3 us took our shoes off, rung out the socks as best we could and  
4 we sat in a circle and massaged each other's feet. We smoked  
5 a cigarette and rested for perhaps an hour. As we left the  
6 woods somebody opened up with a "burp" gun. That's a  
7 handheld machine gun. But their accuracy was such nobody got  
8 hit.

9        I jumped over a little stonewall and started looking. I  
10 never saw who fired at us with that burp gun. Feeling  
11 confident we began to walk on the road. It's daylight. As we  
12 got near a village, I used the binoculars. If there was  
13 nothing going on, we would bypass, walk around the village.  
14 We didn't go anywhere that was too quiet.

15        Around noontime we get near a village with people  
16 standing together having a confab about something. We boldly  
17 walk in. There was a priest in the middle who spoke some  
18 English. I asked were there any Americans around? He said,  
19 yes, about one hours walk and they've just mined a bridge in  
20 that area. So we hotfooted it jogging towards the bridge.

21        As we get near there I realized we've got a problem.  
22 None of us knew the password. There have been reports of  
23 Germans in American uniforms. Again, I tell my two men to  
24 stay back. I handed one of them my carbine so that I wouldn't



1 look like a threat to the engineers at the bridge. I called  
2 to them in English, I'm coming up to talk. All I have is a  
3 pistol. Just don't fire. They wanted to know the password.  
4 I said, let's just talk first. They decided that I was not an  
5 enemy. I waived my men on to join us.

6 I asked, where are you guys staying? The Sergeant said,  
7 well, this house here. We just mined this bridge and we have  
8 another one that we mined. He said the people are friendly.  
9 We went into the house and they were friendly. They gave me a  
10 little glass of schnapps and some food. And a few minutes  
11 later a lieutenant--an engineer lieutenant came and he said,  
12 glad to see you, blah, blah, blah. I have to go somewhere.  
13 I'll be back in maybe a half hour and I'll give you a ride to  
14 our headquarters. Great. We relaxed. The ordeal is over - or  
15 so we thought.

16 After the Lieutenant left the sergeant called and asked  
17 me to come out. He said, what do you hear? I said, German  
18 tanks. He said, what do we do? I said, we blow the bridges.  
19 He yells orders and a truck comes from nowhere. They start  
20 throwing their gear on to it. I have the good sense to ask,  
21 are we where we want to be when we blow this bridge? He said,  
22 yes, sir.

23 Now for the first time I've got the shakes. Up to now I  
24 had been deadly calm. Cool as a cucumber. Not shouting or

1 yelling or anything else. I had completely relaxed once we  
2 got in the house and had a hot meal and the schnapps. Now I  
3 was afraid to have anybody look at me because my teeth were  
4 chattering and everything shook. It only lasted a couple of  
5 minutes. But the reaction was definitely delayed. Even when  
6 they had me in the ditch I was calm and pondering every move.

7 We blow the two bridges and ride to their headquarters.  
8 The headquarters is in a school building in a place called  
9 Vitri, which is actually in France. I was able to show the  
10 engineers on their maps the two bridges and the bridges blown  
11 the day before. I decide we'll spend the night here in the  
12 school. My men started to move into a classroom and I said,  
13 no we're going to sleep in the hall; too many windows in a  
14 classroom. So we sack out. And German paratroopers decide to  
15 visit the school.

16 We have a firefight and ended up capturing four of the  
17 Germans. The next morning I make a deal with the engineer  
18 major, I'll take the four prisoners to the PW [Prisoner War]  
19 camp if you'll let me use the truck. I had to promise on a  
20 stack of Bibles that I wouldn't hijack his truck, but send it  
21 back. My two men will do the guarding of the prisoners.

22 So that's how I got to ride back to VIII Corps Artillery  
23 Headquarters.

24 I'll stop right there.

1 [Pause]

2 Q. How bad were things when you managed to get back to  
3 the Corps Artillery?

4 A. Very bad. Very bad. We had two majors in the  
5 battalion. Both gone. We had nine captains. Two were left.  
6 Seven of them were gone.

7 Q. When did you get promoted to captain? Were you  
8 still a lieutenant?

9 A. I was still a lieutenant. The only battery  
10 commander who survived was the service battery commander  
11 because he was pretty far in the rear. All the other battery  
12 commanders were gone. The Assistant S3 [Operations Officer],  
13 Captain John Reed was killed and we recovered his body. No,  
14 it was not good.

15 Q. Was the unit functioning?

16 A. Well, that's going to be part of the story. I have  
17 the four prisoners and the vehicle. Along the road I see two  
18 more men from our outfit and pile them into the truck. At the  
19 Corps Artillery Headquarters I'm exhausted and in no mood for  
20 jokes and levity. There's a major, who I didn't know. I  
21 said, I have four prisoners out here. What do you want me to  
22 do with them? He said take them out and shoot them. I  
23 snapped back take them out and shoot them yourself. He said,  
24 oh, I'm only kidding. I said, great joke. What do you want

1 me to do with them? So he told me where the collecting point  
2 was. And where do you want me to go? He said, well, join  
3 this self-propelled 105-millimeter outfit that had one or two  
4 vehicles right there. He said, stick with them. I don't  
5 remember the number of the unit.

6 The prisoners were dropped off at the collecting point.  
7 The truck was released to go back to headquarters. I had my  
8 two men--the other two had wandered off to be attended to  
9 later. We rode with that artillery unit towards Florenville,  
10 where they would spend the night. And, as I said, I'm not in  
11 any mood for any joking. I told the captain of the outfit,  
12 "we're going to be in this house here." And that was exactly  
13 what I meant. In normal times this would not have happened.  
14 We simply pushed the door open. The three of us walked into  
15 the kitchen where there's a potbelly stove. We moved chairs  
16 around the stove, laid down our carbines, took off belt and  
17 shoes and cap. This is where we're going to be for the night.  
18 We didn't bother the people. I didn't talk to--or try to talk.  
19 We just wanted to be in a place that was reasonably warm and  
20 get some sleep. The next day I got word-- the service battery  
21 commander learned I was somewhere in the area and left  
22 information as to the location of our battalion which was just  
23 up the road. I was able to get a ride that day to where they  
24 were.

1        Now remember I hadn't shaved or brushed my teeth in  
2 almost a week--the same clothes. No changes of anything. And  
3 when I got back to the battalion about the only one there is  
4 the battalion commander. Apparently there was a meeting of  
5 the officers at the time the Germans captured the inn that was  
6 headquarters. That's how we lost several officers. Our  
7 commander had not been at the meeting. He was in worse shape  
8 than I because I had gotten a good sleep the night before. So  
9 *de facto*, I took over.

10        We still had guns in Baker Battery that were firing. And  
11 we may have had some in A. I don't think there was any in C  
12 Battery. We set up a defensive perimeter with infantry. This  
13 was at the southern edge of the Bulge. We still had our two  
14 airplanes. I remember one bit of good news, at just about  
15 Christmas the pilot told me that when he was flying up and  
16 down on the southern flank of the battle--he could see the  
17 American planes flying on the north side of the Bulge. So  
18 things were improving. Patton's plan, of course, was not to  
19 stop the Bulge where it was expanding, but to hit it where it  
20 had crossed over--to squeeze at the neck of the Bulge. The 3d  
21 Army then came up pretty much the same road that I came up the  
22 day or two before to join with the 1st Army that was on the  
23 north side of the Bulge. Day after day we got handfuls of  
24 replacements. Frequently stragglers from other outfits. We

1 got two new majors and a few other officers. From then on  
2 amongst the old group and even the new group I was the heir to  
3 the battalion commander because I had taken over for a day or  
4 so. As replacements came in he said to me, what job do you  
5 want? Any job at all. Do you want to command one of the  
6 batteries? I said, no. I'll handle the fire direction  
7 center. That's the school I was sent to.

8 As the replacements came in, I set up a rifle range and I  
9 had them all fire because a lot of times guys won't fire.  
10 They freeze. So they all had to fire some rounds. And I  
11 remember I took my pistol out and I fired. And I turned to LT  
12 Olson from supply. Let me have some more .45 ammunition. He  
13 said we don't have any. I had one round left in my pistol.  
14 And would you believe the next day I run into four Germans  
15 with one round.

16 Well, some of us are in Bastogne. And I set up in a bar  
17 with what maps I have. And German planes bomb it. Glass  
18 flies in all directions. There's about eight of us in the  
19 room. Seven get purple hearts. I didn't get a scratch.

20 In November, we had gotten authorization to send one  
21 officer at a time on a three-day pass to Paris. And, of  
22 course, they had a much bigger quota for the enlisted because  
23 there were many more of them. The battalion commander said I  
24 get first choice. I selected Paris for Christmas. I arranged

1 to send both Clark and Peterson-not at the same time, but  
2 individually. They got their three days in Paris. Naturally  
3 I didn't spend that Christmas in Paris. I spent it in  
4 Bastogne. The chaplain played Santa Claus. He gave me a  
5 toothbrush and a razor.

6 So slowly we get organized. We got a medic. Now we're  
7 getting supplies sometimes from drops from the C-47s. We are  
8 firing. We are at this moment attached to the 101st Airborne,  
9 who were occupying Bastogne. Now they move us to go through  
10 Saint Vith. I'm leading the convoy into Saint Vith, which  
11 changed hands several times. I had to round up a bulldozer to  
12 make a path. This place was that badly ruined. The streets  
13 were completely impassible with the debris of buildings blown  
14 in all directions.

15 About the four guys that I ran into with the one round.  
16 I was in the lead jeep and ran right into them on a road.  
17 They had emerged from the woods and did not hear us because  
18 our howitzers were firing. Luckily there were other jeeps  
19 behind me. We got credit for four captures. They seemed  
20 lost. Then about that time we resumed the trips to Paris. I  
21 was more than happy to go there riding in the back of a deuce  
22 and a half [truck]. When I returned they were pretty close to  
23 being back to full strength. But we lost over a third of the  
24 men and well over half the officers.

1 Q. When did you learn of what the Germans did at  
2 Malmedy?

3 A. Believe it or not I knew a Captain Miles who was  
4 killed. Yes, well, Star and Stripes periodically. We had  
5 radios. We'd hear news like that on the radio. Malmedy  
6 wasn't far. Thank the Lord I was not in Malmedy.

7 Q. You were with units that are taking German  
8 prisoners. Were you aware of any problems in terms of U.S.  
9 Soldier misconduct towards these German prisoners?

10 A. No, I was not aware of any. The collecting points,  
11 had MPs [Military Police] in charge. We simply pushed the PW  
12 inside the fence with no attempt to interrogate them. Just be  
13 sure they didn't have any weapons. I ended up with one  
14 pistol, which I still have. That was the only trophy--well, my  
15 compass. I brought that home with me because I had used that  
16 quite a bit. I had it with me during those events that I had  
17 just been describing. I owe the government their compass.

18 Q. What about learning of misconduct by the MPs or the  
19 guards of the German PWs?

20 A. Again, I had no connection with that whatsoever. Of  
21 course, after I got back to the battalion, as I say, I was the  
22 *de facto* deputy commander, but heard no such reports.

23 [Pause]



1           A.    How do you want to start? Do you want to start with  
2 questions or comments?

3           Q.    I think where we left off was that we wrapped up  
4 1944 and the Battle of the Bulge.

5           A.    In view of the time element I'm inclined to jump  
6 almost to the end of the fighting over there and tell where  
7 the Soviet forces were to meet us, and that situation.

8           The date is on or about the 15th of April 1945. We had  
9 reached a position south of Berlin, north of Czechoslovakia,  
10 and were ordered to remain in place to await the arrival of  
11 the Soviet forces. We'd been there for two or three days.  
12 The battalion commander received a phone call, wrote a couple  
13 of things on my maps, then took off with several officers from  
14 the battalion.

15           In the early afternoon I received a two-word message.  
16 "Rocket Zebra," which is our private code. And "rocket" meant  
17 move the battalion. And "zebra" meant to the place on the map  
18 to where he had put the letter "Z." Unfortunately like on the  
19 17th of December, we had more ammunition than we could carry.  
20 We had been in this spot for a couple of days and used the  
21 time to bring up more supplies, including ammo. So it was  
22 necessary to spend several hours moving ammunition to the  
23 nearest 105 artillery battalion. They, of course, helped and  
24 sent some trucks over. It was late afternoon before we got

1 rolling. I didn't know which route the CO [Commander] had  
2 taken. I suspected it was the autobahn. We were not  
3 prohibited from using the autobahn, but it was discouraged.  
4 If you ever get caught on the autobahn, you're a dead duck.  
5 There may be no place to pull off for 10 miles. You're safer  
6 if you stay on the secondary road. You can always pull off  
7 into a farmyard or behind a building. But time was beginning  
8 to be a problem and we had a long distance to go. I'd say in  
9 excess of 100 miles to where the "z" was on the map. I was  
10 cautious about entering the autobahn. But it looked okay.  
11 There were fresh tracks. No evidence of any mines. So off we  
12 go.

13 We're zipping along at a very good pace until dark. And  
14 it was a very, very dark night. Low clouds. You could not  
15 see a light in any direction. One of the problems with the  
16 autobahn, which I had not mentioned as of yet, was that  
17 several of the bridges had been blown. In fact, we had lost  
18 two vehicles, the guy's driving crazy, and they got to where a  
19 bridge should have been, but it wasn't. And off they went  
20 into space. After it got dark, I'm leading in the jeep. We  
21 would take turns jogging in front and moving at a snail's  
22 pace. Not being the most patient of men, I decided to risk  
23 driving with light. We hadn't seen an enemy plane in several

1 days. We turned on the lights and we went zipping merrily  
2 along at a very nice pace. Not one of my smartest decisions.  
3 We had gone perhaps a half hour, and without hearing any  
4 sound at all, I suddenly saw sparks directly in front of my  
5 jeep. At that instant a plane came over the jeep and then  
6 shot straight up into the air. Then I saw why he had missed  
7 us. Over the autobahn was a bridge. He couldn't see the  
8 bridge until the lights of my jeep picked it up. He came  
9 strafing and overshot us when he pulled up to avoid crashing  
10 into the bridge. He missed my jeep and went into the clouds.  
11 All the lights went off. The covers came off the anti-  
12 aircraft guns. When he swung around, he couldn't find us  
13 because it was pitch dark-absolutely.

14 That was pretty close. We arrived somewhere close to  
15 midnight at the "zebra" spot. As was our practice, there was  
16 one vehicle from each battery waiting. Each would cut into  
17 the convoy in front of their battery and lead them off in  
18 different directions. I was in Headquarters Battery at that  
19 time and was led to Weimar, which was a pretty good size city.  
20 In fact, it was the capital of Germany after World War I. We  
21 went to the biggest and best hotel in town, the Elephant  
22 House, moved in, and spent the night. The other batteries  
23 went off in different directions. The next morning I gather  
24 my maps and try to figure out where we are and get the

1 communications to the different batteries spread 20 and 30  
2 miles away from us.

3 I was able to account for Able Battery, Baker Battery,  
4 and Charlie Battery. I knew where Headquarters was because  
5 that's where we were. Service Battery? Where the heck is  
6 Service Battery?

7 As soon as we got communications going, I asked, where  
8 are you guys? We're about four or five miles north of you was  
9 the response. I look at the map. Five miles to the north of  
10 Weimar there was nothing. I said, what's up there? He said,  
11 it's a camp. What kind of a camp? And he said, if I told  
12 you, you wouldn't believe me. You have to come up and see it  
13 for yourself. I said, I'm going to kick your butt if I have  
14 to come up there. What's the camp like? You've got to see  
15 it. I won't tell you.

16 About a day later a delegation from the British  
17 Parliament comes and they want to see the camp. Then a  
18 delegation from Congress arrives and wants to see the camp.  
19 Everybody I run into asks have you been out to the camp?  
20 Curiosity finally got the better of me. I hop in a jeep.  
21 After I had everybody located, I really had no duties. My  
22 primary duty was to operate the fire direction center, but I  
23 could not because the guns are 30 miles apart.

1 I drive up. What is the camp but Buchenwald Concentration  
2 Camp. There were about 20,000 people still there. On or about  
3 the 11th of April, some American tanks got there, knocked down  
4 some of the fences, chased the guards away or captured them.  
5 Service battery moved into the camp as did a MASH hospital; we  
6 called a field hospital. They are right inside the camp to  
7 help. I won't talk about the details of the camp, but you  
8 have some idea what it's all about.

9 The battalion commander calls me and said, I'm making you  
10 the mayor of the town. I said, I don't know anything about  
11 being the mayor. He said, you're a lawyer, aren't you? No, I  
12 was a law student. He said, that's good enough. You're the  
13 mayor. I'll just mention a couple of things I did. And I  
14 keep thinking about this in connection with the occupation of  
15 Iraq. I'm down at city hall and there are all sorts of people  
16 wanting to talk to the mayor. I have one interpreter with me;  
17 a GI from the Bronx, who I think was speaking Yiddish instead  
18 of German. But at least we were doing some communicating.  
19 People wanted all sorts of things. They wanted a pass to  
20 move. They wanted a pass to cut down a tree. They wanted  
21 permission to do anything and everything.

22 I did insist that all weapons be turned in. How am I  
23 going to patrol this place? What do I have in the way of  
24 resources? The answer essentially is nothing. Even the

1 members of my fire direction team were manning check points in  
2 the town, little roadblocks and stuff like that. Single  
3 handedly I've got problems. I ask around and learn that the  
4 pre-Hitler mayor was still around. Using the German police, I  
5 have the mayor brought in. He spoke a little English. We  
6 talked and I made him my deputy with limited authority. Next  
7 the police found and brought the pre-Hitler chief of police to  
8 me. I made him the deputy chief of police. The police were  
9 all elderly men. There were no young males around. Women?  
10 Yes. Children? Yes. But fighting age males? No. I now  
11 have a deputy mayor and a deputy chief of police, but can I  
12 trust either one? And I need more resources. I call  
13 Buchenwald and have them select five for interviews. There  
14 were women in the camp, but I didn't actually see any. I  
15 drove to Buchenwald, interviewed them, and selected Jerry, who  
16 claimed that he was the manager of the biggest hotel in  
17 Prague. He spoke pretty good English. I said, Jerry, I'm  
18 taking you with me. Get your stuff. He said, I don't have  
19 any stuff. I took Jerry back to Weimar, sat him down next to  
20 the mayor, and he served as my full time spy to be sure that  
21 the mayor was doing no more and no less than what was  
22 authorized.

23 In the camp they were dying like flies. But that was a  
24 problem for the medics. I did nothing to interfere. I went

1 through some of the barracks and took some pictures. Later I  
2 just got rid of the pictures because I didn't need those  
3 memories. Some men were in fairly good shape. I was a little  
4 distrustful of anybody in pretty good shape. Were they  
5 informers? Their explanation was "I've only been in the camp  
6 a week or two." Could they be trusted? I'm not a very  
7 trusting person. Those in pretty good shape could go out and  
8 hitch a ride on a passing truck to Weimar. Some had scores to  
9 settle.

10       You know the looting that went on in Baghdad when the  
11 statue of Saddam Hussein was toppled? Naturally, I didn't  
12 know about Baghdad, but there's not going to be any rioting  
13 and looting on my watch. Would the police be able to control  
14 these guys without arms? The war's going on. I armed the  
15 German police with German Army rifles. I told them they had  
16 nothing to do with the Americans. We had peace and quiet  
17 because everyone could see that the police were armed. Not the  
18 time nor place to settle scores. I probably would have been  
19 court-martialed if it boomeranged. But there were no untoward  
20 incidents. We did lock up a number of people for being out  
21 after curfew. The next morning, at the prison, I chewed them  
22 out. I turned them loose and warned that if they got caught  
23 again they'd be immediately shot. I turned them loose because  
24 I didn't have the resources to hold onto anybody.

1       One or two incidents that occurred that were unusual. I  
2 noticed lots of people coming into the hotel. The hotel was  
3 operating. The manager claimed that he was Swiss and was a  
4 Swiss owned hotel; I took that with a grain of salt. The  
5 delegations were staying in the hotel. And I noticed two  
6 lieutenant colonels with Finance Corps insignia and SHAPE  
7 [Supreme Headquarters Allied Powers Europe], which is  
8 Eisenhower's headquarters, patches. What the heck are they  
9 doing in my town? Normally I'd go up and talk to them. I'd  
10 say welcome to Weimar. How can I help you? What brings you  
11 here? I couldn't get any information from or about them. I  
12 began to get concerned.

13       The duty officer called me in the middle of the night,  
14 saying we've got a problem and can you come down? I did.  
15 There are two officers from SHAPE. They want two vehicles and  
16 about 10 men and won't answer any questions. I said, well,  
17 what do you want them for? I can't tell you. Then what  
18 authority do you have to be here in Weimar? You're supposed  
19 to be at Eisenhower's headquarters. They pull out some  
20 papers, which looked good, authorization, and requesting  
21 assistance and all this kind of jazz. I convince myself that  
22 they are Americans. I'm a captain and they're two lieutenant  
23 colonels, so I tell the duty officer, okay, give them the two  
24 vehicles and the men.



1       The next morning the men and vehicles are back. The  
2 finance officers had the names and addresses of the German  
3 bankers. They were rounded up after midnight and brought to  
4 the bank. The vaults contained boxes of gold teeth and  
5 jewelry. Obviously items taken from the prisoners at  
6 Buchenwald Concentration Camp. The boxes were taken to a  
7 secure location. The drivers and the vehicles released. Oh,  
8 my God. I might have been a participant in one of the biggest  
9 heists in history. But about three or four days later in  
10 Stars and Stripes, there are pictures of the boxes of the  
11 jewelry and gold teeth.

12       There were a number of little incidents like that. But  
13 after no more than 10 days the regular civil affairs field  
14 team arrived and we were booted out. We're again in the muddy  
15 fields. I have fond memories of--not Buchenwald, but of the  
16 Elephant House Hotel. I'll pause for questions.

17       Q. Can you estimate the population of Weimar at that  
18 time?

19       A. No, I can't. I know the population of the prison  
20 was 20,000 at that time. It had been much higher. But as the  
21 Americans advanced many prisoners were moved. One other thing  
22 the battalion commander did, the Germans liked to go walking  
23 on Sunday afternoon. He permitted them to walk to Buchenwald,  
24 about five miles and back. Pictures were taken of them

1 walking there smiling and happy and joking. It was a nice  
2 April day. Coming back they were shocked and crying. All  
3 denied any knowledge of the camp. Some were obviously lying.  
4 But I think under Hitler you didn't ask questions. You knew  
5 something was going on, but it was a lot healthier if you kept  
6 your thoughts to yourself.

7 In fact, one of my neighbors in Carlisle was a woman from  
8 Berlin who had been evacuated to Weimar. She was there at the  
9 time I was. Just the Sunday before last, I was at a brunch  
10 hosted by some people from the law school. One of the guests  
11 was a man from Berlin who was eight years old in Weimar at the  
12 time I was the mayor. He didn't remember me.

13 Q. How much information did you have about what was  
14 going on in the camps?

15 A. I had never even heard of the camp.

16 Q. How much information were you receiving about what  
17 was going on in the Pacific?

18 A. Almost none.

19 Q. At this point it's the end of April. So I'm  
20 presuming that the war is almost over and the U.S. and Soviet  
21 forces and the Brits are closing in on Berlin?

22 A. Yes. It ended on the 11th of May.

23 Q. And so you moved out of Weimar and you just moved  
24 into a muddy field nearby?

1       A.    We moved somewhere. And slowly they kept moving us  
2 towards Nuremberg. The thought was that Hitler's last stand  
3 was going to be somewhere in the Alps, where Berchtesgaden  
4 was. That's why they moved us further south. But there was  
5 really no active fighting after we left Weimar.

6       Q.    When did you and your unit find out about Hitler's  
7 death and the surrender of the Germans?

8       A.    Probably we heard about the cease-fire. When the  
9 German generals signed. And probably at the same time Hitler  
10 committed suicide. There were rumors and the next day it was  
11 official. But, of course, we were more than happy to stop  
12 firing right away—as no one was shooting at us. Most of the  
13 officers in the unit had themselves a big party. I had just  
14 gotten word a day or two before that my father had passed  
15 away. I was not very jubilant. Instead of going to the  
16 party, I went to the hospital and visited our wounded who were  
17 there. I wanted them to know that it's over. And shortly  
18 after that, probably in June, they began to reassign people  
19 based on a point system. One point for each month in the Army.  
20 An extra point for each month overseas. Five points for a  
21 medal. Anybody who had more than 85, and I had more than 85,  
22 was entitled to immediately return to the States. Immediately  
23 didn't mean the next day, but they reassigned people to units  
24 that were to be returned to the states.

1       For the first time I'm transferred out of the 687th and  
2 put into a field artillery group. We slowly made our way  
3 through the so called "cigarette camps." A series of camps  
4 throughout France up to LeHavre were named after cigarettes.

5       A unit would move to a camp for a couple of days. When  
6 there was an opening they'd move up to the next camp. I'm in  
7 a paper unit. Only officers, no enlisted and no equipment. The  
8 major in charge was as anxious to get home as anybody. He  
9 signed a whole bunch of passes in blank. Everybody had a  
10 couple of passes in their pocket. We'd guess when we would  
11 move to the next camp and head to Paris. We were on a pass  
12 and would check into a GI operated hotel in Paris. After  
13 about two days we draw lots, and one of the group would go  
14 back to camp to check the location of our "unit." If he didn't  
15 return to Paris, we headed to the next camp.

16       Our move from Germany through France to the port was  
17 pleasant. I think we'll stop talking about World War II if  
18 it's okay with you.

19       Q.   Earlier you mentioned moving to link up with the  
20 Soviets. Did you ever link up with the Soviet Army?

21       A.   Only through liaison. The Soviets ended up having a  
22 liaison officer with us. The main activity was rounding up  
23 shall we call them—for the want of a better name, the "slave  
24 laborers," and moving them back to Poland and to the Soviet

1 Union. Some of them were anxious to go back if they thought  
2 their families were still there. Others were reluctant to  
3 return.

4 That was an activity performed by the three firing  
5 batteries. My activities in the Headquarters were sample  
6 surveys of the towns that we were occupying; how many people,  
7 how many old, what medical facilities did they have, how many  
8 people are in there, are there military wounded. What's the  
9 food supply situation—all sorts of those types of  
10 questionnaires. Whether anybody ever read them, I don't know.  
11 But that kept us busy going around gathering information.

12 I mentioned the other night about the battalion commander  
13 who took the four GIs and brought them up as litter bearers.  
14 He was pretty sharp. A directive stated that there could be  
15 no fraternization with the Germans. If you fraternized you  
16 would be fined \$65.00. He had to personally call the  
17 directive to the attention of everybody. He called a meeting  
18 and we got everybody together. He read the directive and said  
19 now, that's the law. I had to read it to you. I read it to  
20 you. Nobody in the battalion is going to catch you. I don't  
21 think this is a very good rule. I think many of you have  
22 relatives. Maybe your grandfathers and others came from here.  
23 I think we should try to make contact with the Germans. I  
24 don't think we should isolate them from us or us from them.

1 But the rule is you can't fraternize. So nobody in the  
2 battalion will ever report a fraternization case. If the MPs  
3 or an officer from another unit catches you and reports you,  
4 it's going to cost you \$65.00. Don't tell me that everybody  
5 else is doing it because I'm telling you, I know everybody  
6 else is doing it. But everybody else isn't getting caught.  
7 If you get caught you're going to be fined \$65.00 for getting  
8 caught, not for fraternizing. And that's it. Is that clear?  
9 It was.

10 Q. At this point you're still only a company grade  
11 officer, correct?

12 A. Yes, I'm a captain.

13 Q. What visibility did you have of any of the prominent  
14 U.S. generals, Eisenhower, Patton, Bradley? Had you seen any  
15 of them?

16 A. Oh, yes. Patton a couple of times. In England  
17 before we went in he had us all together and gave us the pep  
18 talk. The sanitized version of which is in the movie  
19 "Patton." On one occasion he came up the road with an escort  
20 and a siren blowing like crazy, and passed me up very close to  
21 the front. He was going up to see something. And his  
22 technique was that he was very visible going forward and  
23 invisible going back. He would come back with no fanfare. He

1 didn't want troops seeing him heading in the wrong direction.

2 But going forward, very visible.

3       Eisenhower, I met and shook hands with. But this was  
4 after the war was over. Bradley, again, sometime after the  
5 war. I was not talking to him. Bradley was much bigger than  
6 I visualized him. That's about my only recollection of  
7 Bradley.

8       Q. I think that was all I have. At this point was it  
9 back to the States and reuniting with your wife or was it  
10 still more military duties first?

11       A. With that 45 days TDY not countable as leave, I was  
12 able to leave Fort Dix immediately. Then I got assigned to  
13 Fort Bragg. I reported to an officer I had just come home  
14 with. He gave me a plush job looking for accidents and writing  
15 reports. I found that easy. And before long I'm in the IG  
16 [Inspector General's] office. I conducted a couple of  
17 investigations. I got a medal for one of them. In the  
18 swimming hole some Soldiers found ammunition, throw it onto  
19 the bank, it exploded and several were injured. I was ordered  
20 to investigate. I was able to find how it got there.

21       It was just plain hard work. We had to dredge the lake  
22 and bring all the ammunition. Write down the lot numbers of  
23 the ammunition. Then go through the records of all of the  
24 units that had drawn ammunition. There was only one outfit

1 that had drawn every one of the lots. Then I discover it was  
2 the only unit that never returned ammunition after firing.  
3 Now I have the suspect and soon a confession, and a medal. I  
4 was then put in the JAG office. I did a lot of court-martial  
5 work and slowly got away from claims. I did more prosecuting  
6 than defense. Several JAGs I worked for suggested I finish  
7 law school using the GI Bill, get the law degree. And if I  
8 wanted they'd support me for a regular commission in JAGC.

9 In February of '48, I returned to law school and  
10 graduated in January of '49. I took the bar in February,  
11 passed it, and was admitted to practice law in New York in the  
12 spring. I applied for a JAG commission and while it was being  
13 processed I served on active duty at Pine Camp, which is now  
14 Fort Drum, New York. A lot of National Guard units were  
15 training up there in the summer. When the summer was over,  
16 JAG brought me down to the Pentagon for an observation tour,  
17 and effectively transferred me from artillery to the JAGC.

18 In the spring of '50, I'm put on orders to Japan. The  
19 25th of June, the Korean War breaks out and I thought that  
20 they'd change my orders. But they didn't. I went to Japan in  
21 the summer of '50 and I was assigned to what they called  
22 Headquarters and Service Group. Then it became Headquarters  
23 and Service Command. Then it was called Central Command.  
24 Basically it was the occupation housekeeping unit for central



1 Japan. We had no direct role in the Korean War. Our role was  
2 the occupation.

3 Q. May I ask you a couple of questions on what you were  
4 just talking about?

5 A. Yes.

6 Q. I apologize because this maybe is going back two  
7 sections. You mentioned the citation that you received at Fort  
8 Bragg and I know you shared with me the Presidential Unit  
9 Citation that your unit received in Europe. What other  
10 citations did you or your unit receive while you were in World  
11 War II or in Germany?

12 A. Well, that was the only unit one. I got a Bronze  
13 Star out of the Bulge activities. On the way I got a couple  
14 of commendation ribbons.

15 Q. You mentioned that when you were at Fort Bragg you  
16 were both prosecuting and defense. This is an interesting  
17 time period for us because it's prior to the UCMJ [Uniform  
18 Code of Military Justice]. We're taught here at the JAG  
19 School about how the UCMJ came about due to actual or  
20 perceived abuses of military justice in World War II and just  
21 after. So I was curious if you could talk a little bit about  
22 the process when you're prosecuting and defending Soldiers as  
23 not even a lawyer at this point. What was the UCMJ process

1 like? And now looking back on it, what do you think of it in  
2 terms of fairness or unfairness?

3 A. Except for the command influence part, now that was  
4 prevalent, if a commander decided to refer the case to trial,  
5 he was convinced that the guy was guilty. If he had any  
6 doubts about it he'd normally handle it as an Article 15 or  
7 some other way. So I would say the word in the street, if a  
8 commander referred the case to trial, he was convinced that  
9 the guy was guilty. And he would be disappointed if there was  
10 a different outcome. Also, the word in the street was he  
11 would be disappointed if the sentence was anything other than  
12 the maximum sentence because he wanted to be able to exercise  
13 leniency if he was so inclined. But if the sentence is a slap  
14 on the wrist, he can't do anything about it.

15 So that's the word on the street. And I'm sure several  
16 commanders felt that way.

17 Q. We have heard stories or read in the Congressional  
18 Report allegations that commanders went so far as to berate  
19 panel members who didn't find an accused guilty or didn't  
20 impose what a commander viewed as an appropriate sentence,  
21 that the panel has let the commander down.

22 A. Yes, as I say, the word on the street was that the  
23 commander expected a fair trial and a stiff sentence. That  
24 was the way it was expressed, a fair trial and a stiff

1 sentence. However, I have had acquittals when both prosecuting  
2 and defending.

3 Q. Sir, when you say that you both prosecuted and  
4 defended, did you prosecute cases for some certain amount of  
5 time and then move to defense?

6 A. No, usually I prosecuted. But sometimes I would  
7 ask, I'd say, no, I'd like to defend this one. And normally  
8 they would accommodate me.

9 Q. How were you detailed as a defense counsel? Right  
10 now our Trial Defense Service is a stovepipe organization.  
11 How were defense counsel detailed?

12 A. By the CG [commanding general] or by the SJA [Staff  
13 Judge Advocate]. If detailed I would talk to my client and I  
14 would also talk to all the prosecution witnesses.

15 Q. How did it come to be that you would have even  
16 developed an attorney/client relationship with the client if  
17 you had also been prosecuting cases?

18 A. Well, because when the case came up they would  
19 assign me to play some role. And Article 32s were not then  
20 what they are now. But to the extent that I could meet with  
21 both the prosecutor and the witnesses, I would talk to them.  
22 And if I, as a prosecutor, had doubts about the guilt of the  
23 fellow, I would always ask to defend. I didn't want to have it

1 on my conscious that I had convicted a guy that was really  
2 innocent.

3 As I said, they would almost invariably say, okay, you  
4 want to defend this one? Go ahead and do it.

5 Now in a little later stage--this is in Japan. The war is  
6 going on in Korea. A lieutenant is charged with running off  
7 with some money in Korea. His story is that he had the money.  
8 They were under attack. He gave the money to the chaplain to  
9 hold. They got overrun. The chaplain got killed. He doesn't  
10 know what happened to the money.

11 So a weak case. It's his word against, what? The only  
12 thing known is he was given the money. He admits he had it.  
13 But did he steal it? And I'm to prosecute this. I called in  
14 the defense counsel and said, I've got doubts about your guy.  
15 Are you interested in a plea or something? No. I said, would  
16 he be willing to take a lie detector test? He said, oh, you  
17 can't use a lie detector. I said, I know I can't use it.  
18 Would he be willing to take a lie detector test? And I give  
19 you my word, if he passes it, I'm going to fight to have the  
20 charges dropped. If he flunks it, I can't use it, but he'll  
21 go to trial.

22 So he talks to his client. He's more than happy to take  
23 the lie detector test. I'm watching it through one of these

1 mirrors. Does he blow it? But good. He finally decides the  
2 best approach is to plead guilty.

3 Another one, this is a hit and run fatality. A busy  
4 street in Tokyo, just twilight, and there are trolley cars on  
5 the street. And then there's a traffic island about one lane  
6 in from the sidewalk where people would stand on that little  
7 island to get on and get off of the trolleys. A car comes  
8 along, jumps onto the island, hits several people. One fellow  
9 rolls over the hood, lands on his head, fractured skull.  
10 Dead. The car speeds off.

11 There were MPs and traffic police on the scene almost  
12 immediately as was the ambulance. Witnesses describe the car  
13 as a dark blue Ford. And they have a license number. Two CID  
14 [Criminal Investigation Command] investigators phone in. They  
15 get the name and address of the registered owner of that car,  
16 which is a U.S. license number. They ride out to that  
17 address, which is a good five miles from the scene.

18 It's in the suburbs. As they arrive its pitch dark, and  
19 there in the driveway is a dark blue Chevy, not a dark blue  
20 Ford, but the same license number. They look at it. They see  
21 no damage whatsoever. No dents. No scars. No broken  
22 windows, windshield. A man comes out of a house—a civilian  
23 employee. They put their hands on the hood. It's warm, so the  
24 car had been driven recently.

1           They ask is this your car? Yes. Was it in an accident?  
2 No, no accident. I just came home a half hour ago--something  
3 like that. They continue looking around. According to the  
4 report there's a pair of eyeglasses just lying on the hood of  
5 the car. They ask are these your glasses? No. He knew  
6 nothing about them. It turns out the glasses belonged to the  
7 man who was killed.

8           I get the two CID agents and said you're telling me that  
9 the glasses rode on the hood of the car--was it caught in the  
10 windshield wipers of anything like that? No. It was just  
11 sitting there. For five miles? I said, I don't believe it.  
12 You went to the scene of the crime. You talked to a couple of  
13 witnesses. You got the description of the car and the license  
14 number. One of you picked up the glasses. And since there  
15 was no damage to the car, you decided it needed some help.  
16 Then you find the glasses on the hood of the car. I don't  
17 want you to say anything about those glasses. I'll not ask  
18 you any questions about it. And I'm sure the defense counsel  
19 is not going to bring up the glasses. So glasses are not a  
20 topic. I don't believe you and the court's not going to  
21 believe you.

22           The Saturday before the trial I'm riding with a friend.  
23 He has the same make and model car, although not the same  
24 color. There's a pair of sunglasses in the glove compartment.

1 We stop and put it on the hood of the car and drive home. The  
2 glasses stayed there. This was a '51 model Chevy. They have  
3 a split windshield. Today windshields are one piece of glass.  
4 Then it was like the prow of a ship with two pieces of glass  
5 and a rod down the center. And even when the car turned, the  
6 wind would hold the glasses up against the windshield.

7 I apologized to the two agents. There was a conviction.  
8 There's a sequel to this that's a little disquieting. About a  
9 year later I'm walking into a club with friends and a man at  
10 the bar turns and said hey, weren't you the prosecutor in the  
11 case with the eyeglasses on the hood. I said, yes. He said,  
12 well, I was on the panel and I had a car just like it. I  
13 thanked him and said goodbye. I'm convinced that he tested it.  
14 There was not a damned thing I could do about it.

15 Q. When you were in Japan, were you near Camp Zama?

16 A. No, Camp Zama was maybe 10 miles out. Zama was sort  
17 of the collecting point when you got to Japan, you went to  
18 Camp Zama for processing. I thought even then that would be  
19 switched to Korea. But they had raided so many units in  
20 Japan, and they were looking for a prosecutor. By that time I  
21 had prosecuted dozens of both general and God only knows how  
22 many special courts-martial. They assigned me to Tokyo. The  
23 name of the unit changed, but for the whole three years we  
24 were in the same buildings, same location, same general work,

1    which was occupation.  Although for the last six months  
2    technically the war in Japan was over.

3           Q.    Would you say your job title at this point is  
4    prosecutor?

5           A.    Yes.  I was prosecuting.  I had made major but was  
6    reduced when I switched to JAG.  Later the A.B.C.M.R. [Army  
7    Board for Correction of Military Records] corrected that.  I  
8    was a captain at the time.

9           Q.    Currently, the prosecutor or trial counsel will  
10   provide full spectrum legal support to a command or a unit in  
11   any number of areas.  So in any given day the prosecutor will  
12   actually be handling a legal assistance question, a fiscal law  
13   question, an administrative law question.  So at the end of  
14   the day the prosecutor ends up spending a smaller percentage  
15   of the time actually prosecuting cases or separation boards.  
16   Were you strictly doing criminal law or were you advising a  
17   commander or units on other aspects of the law besides  
18   criminal?

19          A.    Well, when I got to Japan, the SJA thought that  
20   everybody should switch jobs every six months.  So for six  
21   months you'd be legal assistance.  You'd be claims for six  
22   months.  You'd be defense for six months.  That's the way he  
23   worked it.  So during that six-month period it was 99 percent  
24   in that field.



1       After less than a year I was promoted to major. Now  
2       there were two majors for military justice. The SJA was a guy  
3       who did not like to work. I cease prosecuting and he lets it  
4       be known that I am in charge of cases until the completion of  
5       the trial. The other major will review the record and write  
6       up the recommendations. If the two of you agree, put it in  
7       final. If you disagree, come in and see me. And if you  
8       disagree too often, I'm getting rid of the both of you.

9       Q.   How many captains were in the shop?

10      A.   I had eight captains. Four of them were full time  
11      prosecutor, and four of them were full time defense. Another  
12      major and some captains handled other matters.

13      Q.   You were the rater for both?

14      A.   Probably.

15      Q.   Today defense attorneys are rated separately so  
16      there is not an issue if she does too well for her client,  
17      that the SJA might hold it against her.

18      A.   You know, I can't think of ever writing any of their  
19      reports. I may not have had anything to do with it.

20      Q.   But if not you, then the SJA was actually rating or  
21      senior rating both the prosecutors and the defense counsel?

22      A.   Yes.

23      Q.   Your average military defense counsel, if he's  
24      representing Private Johnson, if he does his job well and

1 Private Johnson is acquitted, has he now earned the  
2 displeasure of the command and the SJA, who are in his rating  
3 chain?

4 A. The SJA, who was the boss during most of the three-  
5 year period, after a case, if it was a conviction, would have  
6 the accused and the defense counsel come into his office and  
7 talk. I was not present. If the SJA found anything that he  
8 didn't like--he would take some action. But if the accused and  
9 the defense counsel agreed that the trial was fair and just,  
10 he'd be inclined to approve--and he may reduce the sentence  
11 somewhat. But how he handled it, I don't know. But the  
12 defense counsel and the accused, he would interview him.

13 Of course, they had a right not to talk. I never  
14 inquired as to how he handled it.

15 Q. How long were you in Japan?

16 A. Three years.

17 Q. And you were accompanied? Was your wife with you?

18 A. I got there the summer of '50. She got there in  
19 February of '52. We left in the August of '53.

20 Q. When you were living and working in Tokyo, what  
21 contact or exposure did you have with General MacArthur?

22 A. None. I saw him many times, but no contact with  
23 him. His office was three blocks from mine. He was a  
24 showman. Everyday at lunch time he would leave at exactly the

1 same time. The MPs would be there. They'd block all traffic  
2 he would walk out, get in his car, and drive off. The traffic  
3 would resume. The same time everyday. It was a public  
4 appearance. Lots of Japanese would be lining up with cameras.  
5 I saw him a few dozen times over the three-year period. That  
6 was as close as I got to him. Of course, he wasn't there the  
7 whole three years. Ridgeway replaced MacArthur after he got  
8 into a fight with Truman.

9 Q. In my understanding of both post-war Germany and  
10 Japan, there were none of the problems with an insurgency like  
11 we're currently seeing in Iraq. Do you have any thoughts on  
12 how the U.S. handled things in Germany and Japan? For  
13 example, I'm assuming the U.S. forces in Japan were  
14 outnumbered by the amount of Japanese. If all the Japanese  
15 decided to rise up against the U.S. occupation, it would have  
16 ended poorly for the Japanese, but it would have been a very  
17 bloody campaign. And that never happened.

18 A. I think the smartest thing that MacArthur did was to  
19 keep the Emperor. He was not just the political leader; he  
20 was the religious leader too. And he was the symbol of Japan.  
21 He could have been convicted with others of war crimes, but  
22 political considerations are sometimes more important than  
23 legal. Keeping the Emperor there, and the Emperor saying no  
24 fighting. The war is over. We lost. That had a big effect

1 on it. And I think the people realized that by following the  
2 Emperor's advice it was going to be a less harsh occupation.  
3 Things could really get tough if they didn't. It wouldn't do  
4 them any good and it wouldn't do the Emperor any good to  
5 resist.

6 So keeping that symbol I think was very helpful. And,  
7 also, like I had done, they kept the Japanese police  
8 operating. They let the Japanese courts operate. Whereas in  
9 Iraq we wanted to close out everything and start from ground  
10 zero.

11 Q. Have you returned to Japan since?

12 A. I was up there for about a week in '67.

13 Q. Any thoughts on societal changes?

14 A. Even while we were there it was a tremendous growth  
15 in both construction—they started making cars.

16 Q. What about the demeanor of the Japanese?

17 A. They were very subservient. I never met a Japanese  
18 soldier who had anything to do with the Philippines. They had  
19 all been fighting the Russians. Of course, they only fought  
20 the Russians for a couple of weeks. But none of them would  
21 ever admit having been in either China or in the Philippines.

22 Q. Now I've heard the same thing of the Germans, that  
23 that they all claimed to have fought the Russians.

24 A. Right.

1 Q. And that no one was actually fighting the U.S. and  
2 the Brits.

3 A. Yes.

4 Q. They were all fighting the Russians. How did you  
5 end up going to Japan? Were you just told? Were you ever  
6 asked for a preference?

7 A. I was just told. I was not interviewed. No, almost  
8 all of my assignments, I was just plain told. It was only my  
9 last assignment, and that's when I went from the Pentagon to  
10 be the legal advisor at EUCOM, where there was pressure,  
11 pressure, pressure, because I now had about 28 years in. And  
12 they knew I could say sayonara any time.

13 The pressure. It's an interesting story--and you may or  
14 you may not want to use it. It will take a few minutes.

15 It was Good Friday of 1969, when General Hodson buzzes  
16 me--he's the TJAG [The Judge Advocate General]--to come in. He  
17 said, we've got a problem. Lou Shull is being relieved. He's  
18 the one star in USAEUR [U.S. Army Europe]. And George Prugh  
19 is to move there. And I would like you to take George's job  
20 in EUCOM [European Command]. I had replaced George Prugh in  
21 Vietnam. He had gone directly to EUCOM from Vietnam. When my  
22 tour was over, I came back to the Pentagon. I thought about  
23 it for a while and asked a couple of questions, then said, no,  
24 I don't think so. I'm getting close to retirement. I'll just

1 stick it out here for another two years. I have a house here.  
2 And the answer is no. I get back to my office and George  
3 Prugh calls from Germany. He gives me the big pitch that, you  
4 have a five-bedroom house, blanket travel orders. You get a  
5 car. You get a driver. I said, sorry George. I think I'll  
6 just stay here for another two years.

7 Bob Williams is a one star. Bob and I were pretty good  
8 buddies. Bob Williams calls me on the squawk box. He says,  
9 get in here. He said I just got a call from General So-and-  
10 So. He asked me to put a little heat on you because they want  
11 you to take that job in EUCOM. He gives me the big pitch to  
12 take it. I said, forget it. I'm just going to stay here.  
13 Now had they asked me if I would move directly to the USAEUR  
14 job my answer might have been a little different because the  
15 USAEUR job was one star.

16 At dinner that night the kids are all home because  
17 Easter's coming. And I said, boy, they really were giving me  
18 the work over today trying to get me to go to Germany. What  
19 did you say? I said, no. Why did you say no? Wouldn't it be  
20 nice to go there? So we have a family meeting. My wife votes  
21 I take the job. Your [Major Jenks'] mother votes I take the  
22 job. Ned and Terry vote to take the job. Only the youngest  
23 one, who's about to be a senior in high school, says no. I  
24 say no. The score is four to two against me.

1 I start thinking about it. Maybe I ought to consider it.  
2 I get up from the dinner table and called Bob Williams, the  
3 one star, at home. I asked, are you going to be home tonight?  
4 He said, yes. Would you mind if my wife and I come over. I'd  
5 like to talk to you some more about EUCOM. He had been the  
6 USAEUR JA before Lou Shull. He said come on over.

7 We went there and talked at some length. He convinced me  
8 that I ought to give it a try. I used his phone to call Bruce  
9 Babbit, the assignment officer. I asked if the EUCOM job had  
10 been offered to anybody? He says, no. We're waiting for you  
11 to get some sense. Are you going to be in tomorrow, which is  
12 a Saturday? He says, yes. I said, well, don't do anything.  
13 Let me sleep on this. I'll think about it and I'll come in  
14 and see you in the Pentagon tomorrow morning and you'll get a  
15 firm answer. Fine.

16 So I tossed and turned all night. I went in Saturday  
17 morning we talked details; when? how much time? I'll fly over  
18 within 10 days. The family will come when school ends  
19 sometime in June. And they'll come over on the United States  
20 rather than fly.

21 I said, okay. And that's how that came about. That was  
22 the only negotiated assignment. The others were more like,  
23 you'll either be there or your ass will be in the kitchen.

1 Q. Where were you ordered to go after your tour in  
2 Japan?

3 A. I was brought to the JAG School.

4 Q. And what was the approximate month and year of that  
5 transfer?

6 A. It was '53. August of '53, I left Japan. The  
7 second advance course started the end of August, early  
8 September—I don't know the exact date. And at the end of it  
9 they kept me on the faculty. Did they ask me? No. I think I  
10 mentioned to you the assignment officer then was General  
11 Hickman. He was a colonel at the time. He became TJAG. He  
12 was MacArthur's SJA. Different office, but we knew each  
13 other. He said I want to bring you to the Pentagon, but Ted,  
14 meaning General-Colonel Decker then, wants to keep you here on  
15 the faculty. I haven't decided what it will be yet. No  
16 asking what my preference is. I had heard rumors from the  
17 wives that I was probably going to be kept at the school. I  
18 asked him just one question. If I got to Washington, what job  
19 do you have in mind? He said it would be legislative liaison.  
20 But we'll let you know.

21 Q. Could you describe where the JAG School was at that  
22 point and the relationship between the JAG School and UVA law?

23 A. Okay, the JAG School was located in Clark Hall, the  
24 same building as the UVA law school. There was only one



1 library used by both schools. There was only one set of  
2 classrooms used by both schools.

3 The faculty offices were on the balcony around the  
4 library. There would be two or three JAG offices. Two or  
5 three faculty from the University, two or three more JAG, all  
6 interspersed. The first class in Classroom A might be used by  
7 JAG. The second hour it could be used by the law students--  
8 completely interspersed--the same library, the same classrooms,  
9 and a lot of congeniality between the two sets of faculty  
10 members.

11 Half a mile away was a building called Hancock House.  
12 All of the support for JAG was in that building. The  
13 statement was always made, there's more than a half-mile  
14 separating the two buildings. In other words, there were two  
15 different categories, if you will. They would be handling the  
16 correspondence courses, all publications, all paperwork and  
17 budget. And having nothing to do with the academic part.

18 Sometime later money was obtained and they built a new  
19 building behind Clark Hall to be used exclusively by the JAG.  
20 The faculty members did not move from Clark Hall, all from  
21 Hancock House moved to the new building. There was a little  
22 bit of discussion, shall we say, as to what name to be given  
23 the new building. The JAG people wanted to name it Marshall,  
24 for John Marshall, the famous Chief Justice, who happened to

1 have been General Washington's Judge Advocate at the time of  
2 Valley Forge. A good name for a military school. But  
3 Marshall and Jefferson were not always in agreement.  
4 No way in the world was Marshall's name going to appear on Mr.  
5 Jefferson's school. I don't know how that was resolved. But  
6 that's just a little side note.

7 Q. That's interesting. We were walking around the JAG  
8 School the other day. You said the only thing that you  
9 recognized in this building were the cannon.

10 A. Yes. Well, when the building that was built behind  
11 Clark Hall was finished, the commandant then was Nate Riger.  
12 He somehow managed to get the cannon and put it in front.  
13 They had a ceremony, taking pictures and all. He was very  
14 proud of the cannon, which incidentally is a Navy cannon, not  
15 an Army cannon. It was on some ship. The next day the damned  
16 thing is gone. He brings in the FBI and there are all sorts  
17 of threats-stealing government property. Mysteriously the  
18 thing is found on somebody's lawn. Nobody knows how it got  
19 there. Now I see that it's pretty well bolted down so you  
20 couldn't just get a couple of students and say, okay, lets all  
21 lift and carry this thing away.

22 Q. What were you tasked to teach on the faculty? What  
23 topics?

1       A.    Mainly International Law.  I also taught Martial  
2 Law.  Sometimes special projects would come up, I would have  
3 some role in it.  But it was basically International Law.

4       Now what are special projects?  Well, there was one--the  
5 Dalhart case.  Are you familiar with the Federal Tort Claims  
6 Act--the Dalhart case?

7       Q.    I'm familiar with the Federal Tort Claims Act.  I'm  
8 not familiar with the case.

9       A.    Well, about 1947, one of the ports in Texas blew up.  
10 And I mean the whole port blew up.  Over 500 killed.

11 Tremendous damage.  They were loading a French ship with  
12 fertilizer, part of the Lend/Lease Program, that had a very  
13 high nitrogen content.  And it exploded.  Was it sabotage?  
14 Was it negligence?  Was it spontaneous combustion?  There was  
15 nothing left.  Nobody knows.  And a lot of claims were filed  
16 against the U.S. under the Federal Tort Claims Act because it  
17 was part of the Lend/Lease Program.  But the loading was being  
18 done by commercial longshoremen, and the French owned the ship  
19 that was being loaded.  Negligence naturally is one of the big  
20 factors in the Federal Tort Claims Act.  But who was  
21 negligent?  Absolutely no proof.  Well, the bottom line, the  
22 case finally gets to the U.S. Supreme Court, and they decide  
23 that Uncle Sam is not liable.  This was a discretionary

1 function to have that type of packaging and that content of  
2 the nitrogen. That was not negligence. That was okay.

3 Then Congress passes a bill that the Army Claims Service  
4 will handle all of the claims. They approved the payment of  
5 the claims and the Army Claim Service will adjudicate them.  
6 Their decision is final and conclusive and binding on all  
7 parties. So they decide to round up quite a few JAGs and set  
8 up a branch office in Houston to handle all those claims. The  
9 task for the JAG School was to put on a course for those JAGs  
10 covering specifically step-by-step how these claims are to be  
11 handled and adjudicated.

12 I did have a minor role in that. And when it was over,  
13 they were sent down to Houston and everything went well. They  
14 got a nice commendation to hang on the wall. The adjudication  
15 was finally conclusive based on the instructions given here.

16 The martial law business, in 1956, there was a big civil  
17 defense exercise called Operation Alert. As part of the  
18 exercise President Eisenhower declares martial law throughout  
19 the country. Everyone immediately asks, what the hell is this  
20 martial law business? The DOD [Department of Defense]—the  
21 Army in particular wants to know where martial law is taught.  
22 And it turns out there's only one place it's taught, and  
23 there's only one guy who teaches it.

24

1           So I am the world's best expert because I am the only  
2 one.

3           A directive comes out, all military schools must include  
4 a course on martial law. That kept me busy.

5           I was sent around to talk about Martial Law at quite a  
6 few military schools. We set up a course for Leavenworth and  
7 three of us went there for a couple of days.

8           Q. Let me ask you this, sir, would you paint a picture  
9 for us of how frequently JAG attorneys would come back to the  
10 school for courses?

11          A. Okay, there's a basic course and the advance course,  
12 right?

13          Q. Yes.

14          A. Basic course they're usually captains and the  
15 advance course they're usually majors. Then there were  
16 special courses for the law officers, special courses for  
17 claims. And I don't think there's a regular coming back for.  
18 You'd only take one of those courses. You wouldn't take the  
19 law officer course if you're not destined to be the law  
20 officer. I'd say most of the people who came were reservists  
21 and National Guard. As part of their active duty they could  
22 take a two-week course here. And that would constitute the  
23 activities for the year.

1 National Guard and reserve officers were more likely than  
2 active duty personnel to attend those short courses. It was  
3 common that I would see somebody in the basic course and then  
4 see him in the advance course because I was here for five  
5 years. But I did not see the same National Guard and the  
6 reservists quite so often.

7 Q. I'd like to describe the composition in general  
8 terms of our graduate class and the staff and faculty here and  
9 have you compare and contrast. The 54th Graduate Course is  
10 approximately 79 members. A little over 50 of those are  
11 active duty JAGs. There are foreign officers from four  
12 countries. We have a variety of female and minority officers.  
13 We have several Marines, several Air Force, two Navy officers  
14 and a Coast Guard officer. And I think you saw some of the  
15 faculty that you've met here, there are females and minorities  
16 on the faculty, and there are other services represented on  
17 the faculty, particularly in the International Law Department,  
18 which has an Air Force officer, a Marine, and a Navy officer.

19 So in terms of size and composition, if you would talk  
20 about how the JAG School was then versus as it is now.

21 A. Well, most definitely much smaller. That was the  
22 most obvious thing. I think there were 25 in the second  
23 advance class, the one I was in, and they were all male Army  
24 JAGs. Later on while I was on the faculty, I know there was

1 at least one Navy JA because I got to know him pretty well.  
2 So occasionally Navy. I don't remember any Air Force. I know  
3 there was a Marine in one of the special courses. But it was  
4 almost exclusively Army male JAGs. That summarizes it.  
5 Women, they didn't exist as JAs at that time.

6 Q. I'm curious how you determined your course material.  
7 These days if you're on the faculty you receive a course  
8 outline from your predecessor that is probably 70 or 80  
9 percent of what you're going to teach and you modify that with  
10 some current case law. But it appears to be pretty  
11 structured, it does not appear that there's a wide range for  
12 the instructors to deviate. The phrase here is "teaching to  
13 the middle." I'm just curious how you came up with what you  
14 would teach and how you taught it?

15 A. I had one advantage; I was the only one teaching  
16 International Law. Those who were teaching, say, Military  
17 Justice, there were several of them. And, therefore, it had  
18 to be coordinated. You couldn't teach the same thing to the  
19 same group as someone else taught the hour before. So I had  
20 considerable freedom since I was the only one doing it.

21 Wally Self and I got along very well. He was in charge  
22 of the academic program. And he tried valiantly, but in the  
23 four years that I was on the faculty, he never got a single  
24 lesson plan out of me. He was insisting on it, but I said, I

1 just prepare fresh for each class. I don't just pull out  
2 notes from last year or the year before and the year before  
3 that and read them to the students. I did look over any notes  
4 that I have. But that's not my lesson plan. If there's a new  
5 case, and the fact that I did it one way last time, doesn't  
6 mean I'm going to do it the same way next time because I like  
7 to experiment. I based hypos on current events and applied  
8 international law.

9       The bottom line is, he never got a lesson plan out of me.  
10 So I had as much freedom as I desired in conducting the  
11 classes. And the exams--there was no prior clearance on that.  
12 I did a lot of experimenting with exams. One in particular  
13 was a disaster. I decided one way to get the students to  
14 really cover the material was to tell them in advance what the  
15 questions were. I gave them 10 essay questions. I said, the  
16 exam will consist of 4 of these 10 questions. I'll not tell  
17 you which four. You're going to have to study all 10 of them.  
18 And they got together and set up teams. They put two or three  
19 on each question. They researched very thoroughly. They made  
20 25 copies of the answer. Everybody had the same answer to  
21 every question. It was impossible to grade the damn thing on  
22 anything except penmanship.

23       That was one experiment I didn't try a second time.



1 Q. I'm fairly sure the students' approach to studying  
2 in the 54th Graduate Course is not unlike the approach of your  
3 students.

4 You know we have a court reporter here, she instructs  
5 other court reporters here. We have noncommissioned officer  
6 paralegals that come here for their training. My  
7 understanding is that none of that was going on when you were  
8 here. What interaction at all did you have with enlisted  
9 members of the JAG Corps when you were at the school?

10 A. There was almost none. We did have an infantry  
11 officer assigned because the advance class used to be taken  
12 down to Fort Benning for a week. He was in charge of that.  
13 One or two enlisted men were assigned to him. And he would  
14 give some class instructions here. A little bit about  
15 military tactics and stuff. But the enlisted people really  
16 had no role in that. But he would accompany us down there --we  
17 went down by train--Pullman car. Spend a week and come on  
18 back. I'm sure over at Hancock House there were a couple of  
19 warrant officers who handled supplies and things like that.  
20 There were some enlisted there, too. But they had no role in  
21 the academic part of the school. Court reporting classes  
22 started around 1957.

23 Q. Is there anything else you wanted to add for the  
24 time where when you were teaching?

1           A.    One big event, which also took considerable  
2 preparation.  It was the role of the academic department to a  
3 degree, was the annual JAG Conference.  So they would bring in  
4 lots of people for that.  It was usually about a three-day  
5 affair.  So that took some preparation.

6           Q.    Was that the senior personnel--the SJAs?

7           A.    Yes.

8           Q.    It's amazing how there are a lot of things that have  
9 changed in the Army and the JAG Corps when you were here back  
10 in the '50s.  But conversely it's amazing how little has not  
11 changed.  The World Wide CLE [Continuing Legal Education]  
12 lives on and is the biggest thing I'm sure the commandant and  
13 the dean would say that they have to deal with every year, and  
14 some of the other things you've mentioned in terms of  
15 students' attitude.  So it's fascinating how things have not  
16 changed.  I'm not sure if that's good or bad, but it is what  
17 it is.

18          A.    Now one other thing the graduate course had in my  
19 era and that was LOGEX, which was a logistical exercise.  It  
20 was a one-week affair, it was held at one of the smaller  
21 military posts here in Virginia.  We would go there for a  
22 week.  It was a paper exercise, you'd get messages that  
23 there's an accident.  Who's going to handle the claim?  Or  
24 then there's somebody has just shot somebody.  Who's going to

1 handle the court-martial? All messages back and forth. The  
2 faculty members would be operating as the umpires, if you  
3 will, and the students were the ones who had to respond to all  
4 the messages that were flying back and forth.

5 Q. You don't remember where that exercise took place?

6 A. I can't think of the name.

7 Q. So you had one week where you were down at Fort  
8 Benning?

9 A. Yes.

10 Q. You had another week exercise while you were here in  
11 Virginia?

12 A. Yes.

13 Q. That's interesting because the current graduate  
14 course, I think as I mentioned to you, we're going on a staff  
15 ride to Gettysburg. I think we have a trip planned to the  
16 Supreme Court in Washington, D.C. But we have nothing  
17 comparable to what you're describing. What kind of writing  
18 requirement did the graduate course have?

19 A. Well, you had to write one big paper in the graduate  
20 course. I wrote on insanity as a defense. That was my paper.  
21 That's the one that comes to mind. I'm sure there were short  
22 papers that had to be done. At the War College there were  
23 many more papers. Usually each course there was some kind of  
24 a paper you had to write.

1 Q. Was that paper published?

2 A. Yes. I know that the Air Force picked it up and  
3 they also republished it.

4 Q. We can go online and look for that.

5 A. God only knows where—but that had to be '53 or '54.

6 A long time ago—"Insanity As A Defense" was the title. The  
7 other paper that I said I gave you, that was the one dealing  
8 with the bulls that I described the other night. And that was  
9 at the War College that I wrote that.

10 [Pause]

11 A. Yesterday I mentioned one book, "A Time For  
12 Trumpets." I just found it over there. Just look at this  
13 chapter here. Remember I was talking about Wiltz? That's the  
14 city I was in when it was surrendered.

15 Q. Okay.

16 [Pause]

17 Q. There was another book about your Artillery unit  
18 that you mentioned.

19 A. Yes. I just pulled the other one off the shelf over  
20 there.

21 Q. So I think we left off with your service on the  
22 faculty. Was there anything you wanted to add about that?

23 A. No, I don't think so. I think we've exhausted that.

1 Q. So where were you assigned to after your service as  
2 a faculty member here, sir? What came next for you?

3 A. The second commandant under whom I served was Nate  
4 Riger. He got promoted to one star and was sent to USAEUR. A  
5 short time later my tour was up here and I went to Germany and  
6 worked for him in Heidelberg. I spent the years '58 to '62 in  
7 Heidelberg, mostly International Law. But a little bit of  
8 everything in there. Now will time permit spending much more  
9 time there?

10 Q. Absolutely.

11 A. One little bit of side effect. And I'm not sure how  
12 important this is in the long run. But there was a "Tempest  
13 in the Teapot." The four star general of USAEUR went into  
14 Luxembourg, visited the American Military Cemetery. Laid a  
15 wreath on General Patton's tomb. Made a few appropriate  
16 remarks and went back to Germany.

17 The next day the US Ambassador to Luxembourg reads in the  
18 paper how the general had been there and performed a little  
19 ceremony. He went ballistic. He considered it a very serious  
20 breach of everything--that a four star general would come into  
21 his territory without his knowledge and consent, and was  
22 extremely irate.

23 He started complaining to the State Department. And the  
24 State Department started complaining to the Pentagon. And the

1 Pentagon kept coming back to USAEUR wanting to know how this  
2 dastardly thing ever occurred? And how can you reconcile it  
3 and make peace? I called it a "Tempest in the Teapot." I  
4 think I would have been inclined to just forget about it, but  
5 the Ambassador was a gentleman--his last name was Wine. I  
6 can't think of his first name. He was President Kennedy's  
7 college roommate and had direct access to the President. That  
8 made the thing a little touchier. All efforts to placate him  
9 were unsuccessful.

10 I think he wanted the General's head on a platter. I get  
11 called in and I was told, I want you to handle this. Make an  
12 appointment. Go and meet with him. Promise him anything and  
13 we'll back you up. Of course, I'm a little leery of "promise  
14 him anything, we'll back you up." I did make the appointment  
15 and I drove to Luxembourg and I met him. He was about my age.  
16 We were both in I would say in our 40s. He was about the same  
17 age as the President. The Embassy there is very small. In  
18 fact, it's hard to even call Luxembourg a country.  
19 Technically it's a Dutchy. Just the two of us in his office.  
20 Nothing is going on. There are no people running in and out.  
21 There are no telephones ringing, messages being returned.  
22 It's very quiet and peaceful. I explain the best as I could  
23 that it was an oversight. There was no offense intended. The  
24 General's very sorry. I expressed sincere apologies. It will

1 never happen again. I can't get him off the subject. He  
2 wants blood. We talked about the Bulge, we talked about  
3 everything. And time went on about an hour. And I'm trying  
4 to figure, what's bothering this guy? It finally occurs to  
5 me--now I wasn't familiar with Beetle Bailey or General  
6 Halftrack then, but in retrospect, he was General Halftrack,  
7 who keeps waiting for word from the Pentagon and he never  
8 hears anything. This poor guy felt isolated. Nobody told him  
9 anything and he's resentful of it. So when I realize that was  
10 what's bothering him, I decided to exploit it.

11 With tongue-in-cheek, I said, I can't for the life of me  
12 figure out why the Army attaché didn't tell you that the  
13 General was coming. He said what attaché? I said, your  
14 attaché. Of course, I knew he did not have an attaché. He  
15 snapped, I don't have an attaché. I acted surprised. Well,  
16 that's probably the cause of the problem. If you had an  
17 attaché he would have alerted you to the fact and made all the  
18 necessary arrangements and clearance and everything would have  
19 been fine. What you need is an attaché. I said, I can't  
20 promise you a full time attaché. But here's what I can do for  
21 you. The U.S. attaché in Belgium can serve as your attaché.  
22 He will be with you every Friday as your attaché. He will  
23 brief you on any developments that are contemplated. Explain  
24 to you any events that have occurred. And keep you fully

1 informed of all activities. The ambassador gives me a smile.  
2 He's happy. We shake hands. The only one unhappy was the  
3 attaché who had to spend some time there.

4 That was probably my first Army JAG activity to-well,  
5 being a fixer is not a good term. But being sent in to try to  
6 adjudicate, mediate, arbitrate, and resolve a problem with the  
7 least amount of sound and fury.

8 Q. What was your official position at the time?

9 A. I was probably a lieutenant colonel. I was in the  
10 USAEUR Headquarters, which is the highest Army headquarters in  
11 Europe. International Law was my basic role. I had nothing  
12 to do with the courts-martial. I used to spend a lot of time  
13 up at the Embassy. During the occupation the U.S., British,  
14 French, usually the Canadians, also-in fact, most of the  
15 occupying powers, except the Soviets, would meet periodically  
16 to coordinate plans and ideas. They didn't want the Germans  
17 to be able to obtain, say, one little concession from one and  
18 force the others to agree to it.

19 I ended up being the representative, go up to the Embassy  
20 about monthly. Spend a day or so talking current plans there.  
21 Then the next day we would meet in the same building the  
22 British used when they occupied German after World War I.  
23 Spiritus, something like that was the name of the building.  
24 We would meet with the French and the Brits and usually the



1 Canadians and talk about problems. I had a lot of connection  
2 with the American Embassy there on a monthly basis. Then they  
3 began to use me for contact with the Germans on all sorts of  
4 matters. I'm beginning to move closely into almost a  
5 diplomatic arena. Not quite, but in that direction.

6 Yesterday afternoon—I don't know whether you were there  
7 when I was with a whole group of officers. One of them asked,  
8 what was your main contact in the International Law field?  
9 Was it the Justice Department? The State Department? And I  
10 said, definitely the State Department. Rarely did I have  
11 contact with Justice, but a lot with the State Department.

12 I'll elaborate on that a little bit. The State  
13 Department has a Foreign Service School. They run lots of  
14 short courses. I took quite a number of short courses at  
15 their place dealing with a particular country like France or  
16 Turkey or Italy. I would deal with the desk officer. They  
17 now have a fancier name for it. In the State Department there  
18 is an individual responsible for each country. He may not  
19 have too much authority, but he was a point of contact. If it  
20 dealt with something broader than one country, my contact  
21 would be with the legal advisor in the State Department. When  
22 I was in the Pentagon the legal advisor was Leonard Meeker. I  
23 got to know him reasonably well. On one occasion we two drove  
24 down from Washington to the JAG School here in Charlottesville

1 to talk to the students and the faculty about some problems  
2 connected with Vietnam. So I got to know Leonard Meeker  
3 fairly well. First, he was acting legal advisor. When  
4 finally confirmed by the Senate, I attended his swearing in  
5 ceremony. There was a little reception, sort of a tea and  
6 cookies type affair. There was no formal receiving line, but  
7 when I went over to congratulate him, he said I'd like you to  
8 meet the Secretary of State. What happened has puzzled me  
9 ever since. And I have no explanation for it. Why did he  
10 want me to meet the Secretary? Other people wanted to shake  
11 hands with him, so I waited. Then he takes me by the arm and  
12 we enter the Secretary's office. He seemed disinterested in  
13 meeting me. He didn't ask a single question. Dean Rusk  
14 immediately takes off on a tirade about American Ambassadors,  
15 that we send Ambassadors to a country and six months later  
16 they forget their role. They think that they are to represent  
17 that country in Washington, but their role is to represent the  
18 U.S. in that country.

19 I hear a long lecture about his dissatisfaction with  
20 American Ambassadors. And that was my meeting. No questions  
21 about me or anything. I can't figure for the life of me why  
22 Meeker brought me in to meet him, whether he wanted the  
23 Secretary to see me or whether-even possible-the Secretary

1 wanted to see me. Did they have some nefarious plans? Soon I  
2 began to get drawn into things that really were over my head.

3 Q. Can you kind of give me a general idea of some of  
4 the other legal issues that you handled?

5 A. May of '65, there's a revolution in the Dominican  
6 Republic. Tap Bennett, the Ambassador, convinces President  
7 Johnson it could be another Cuba--a communist takeover.  
8 Johnson sends in the troops and the United States occupied the  
9 Dominican Republic. The Soviets are taking advantage of this.  
10 They want the Security Council to become involved. The State  
11 Department convinces the Organization of American States [OAS]  
12 to assume jurisdiction. Friday afternoon, about 2:30 in the  
13 afternoon, I get a call from Ben Foreman, who's in the DOD  
14 General Counsel's Office. He said, we just got a call from  
15 the State Department. They've gotten the approval of the OAS  
16 to create an Inner-American peace force for the situation in  
17 the Dominican Republic. And the State Department says it's up  
18 to us, meaning the Pentagon, to create the Inner-American  
19 Peace Force. Len Neiderlinger was the permanent DOD Deputy  
20 General Counsel. He was never The General Counsel, but he was  
21 the day in, day out, year in, year out, the guy that ran the  
22 show. I viewed the General Counsel's job itself as a training  
23 program. They would bring somebody in who would more observe  
24 than anything. One in particular was Cyrus Vance, a big shot

1 lawyer in New York. He came in as General Counsel. He  
2 observed, then was made Secretary of the Army. Now he's  
3 McNamara's principle deputy.

4 Neiderlinger wants Ben and me to go to the Dominican  
5 Republic and create the Inner-American Peace Force. Ben said,  
6 go down to the War Room and find out what the military plans  
7 are. He went to the State Department to find out about the  
8 political aspects. We meet at Andrews Field at five o'clock  
9 in the morning. We've got a plane taking us down. Seven-  
10 thirty the next morning we are in the Dominican Republic  
11 creating the Inner-American Peace Force out of smoke, mirrors,  
12 and anything that looks halfway decent.

13 We move into the Embassy and start operating from there.  
14 It was quite an exercise. The Organization of American States  
15 sent five of the ambassadors down as a panel to supervise the  
16 operation. And as the days go by each finds some reason to  
17 find other places more acceptable than the Dominican Republic.  
18 Soon all five have disappeared. They have left the scene.  
19 The State Department has a problem. This is an OAS function  
20 and there's no OAS anywhere around. They finally convince  
21 Jose Mora, OAS Secretary General, to fly down. We put him up  
22 at the Ambassador hotel. I would meet with him everyday to  
23 report what progress was being made. All he wanted to talk  
24 about was the fact that his wife was in Washington. She

1 doesn't speak much English. She is lonely. She misses him.  
2 She's frightened. I pass that word to the White House  
3 representative. And guess what those bastards did?  
4 Kidnapping is too strong a word. They go to the wife and tell  
5 her that he's worried about her. He misses her. They help  
6 her pack. They put her on an airplane and fly her down. Jose  
7 Mora has no excuse for leaving-but has to hang around.

8       The only real problem I'm having is somebody named Lyndon  
9 Johnson. The Cyrus Vance that I mentioned a few minutes ago  
10 is down there. In the morning there would be a press  
11 conference. I normally attended that because I wanted to hear  
12 what was being made public. Cyrus Vance is explaining that we  
13 are here as neutrals. We're trying to stop the fighting.  
14 We've separated the forces, we're not playing favorites. And  
15 the press is saying, well, if you're not playing favorites,  
16 why is it you have advisors with the Wessen Y Wessen Forces  
17 and you don't have advisors with the Commmano Forces, who are  
18 the bad guys? He said we don't have advisors with either one.  
19 We have observers, but no advisors.

20       That night Lyndon Johnson sees what Vance is saying and  
21 then sees what the photographers have done. They've taken  
22 pictures right after the speech of American GIs riding on the  
23 Wessen Y Wessen tanks. And no American GIs anywhere near the  
24 Commmano forces. Johnson gets on the phone and is chewing out

1 Vance while I'm there. All Vance can say is, yes, Mr.  
2 President. Lyndon Johnson had really given him hell. He says  
3 call it whatever you want, get them the hell out of there.  
4 Yes, Mr. President. Vance tells me to tell General Palmer to  
5 pull our people back. I go to General Palmer. Criticizing the  
6 President is an offense under the UCMJ. I tell him what Vance  
7 told me to tell him. General Palmer just rolls his eyes up to  
8 Heaven. He doesn't say a word, but he didn't have to. About  
9 ten o'clock the next morning there is a call from the White  
10 House for a report. The caller is told we can hear some firing  
11 over in the northwest and a couple of planes came by here a  
12 few minutes ago, but they weren't shooting. And we're waiting  
13 for the reporters to come back. That's all you know? Yes.  
14 Hold on a minute. President Johnson's on the phone. He says,  
15 what do you mean? Just some firing, and a plane came by, and  
16 you're waiting for the reporters to come back. L.B.J. is  
17 told, Mr. President, we don't have anybody out there. The  
18 reporters are there and when they come back we'll find out  
19 what's going on. L.B.J. asked why don't you have anybody out  
20 there? Because you ordered us to bring them in. Send them  
21 back. We have to know what's going on.

22 Now that didn't affect me personally, but L.B.J. wants a  
23 foreign commander for the force. Whichever Latin American  
24 country provides the largest number of troops becomes the

1 commander. We have something like 30,000. Brazil is next  
2 with 4,000. Five others are smaller. The commander cannot be  
3 American. It has to a Brazilian, which, of course, few in the  
4 U.S. military would agree to. In writing the plan I decided  
5 to have three commands; with an Army commander, an Air Force  
6 commander, and a Navy commander. The Navy commander on the  
7 scene was Senator McCain's father, Admiral McCain. He would  
8 automatically be the Navy commander. We would have a USAF  
9 commander. General Palmer would be the Army commander. The  
10 Brazilian, as overall commander, had the title but little  
11 authority. The only forces really on the ground are the Army,  
12 L.B.J. won't buy that setup. He wants a real commander. I  
13 tried to have the staff under General Palmer who would be  
14 subordinate to the Brazilian commander. L.B.J. turns that  
15 down.

16 I go to Secretary Vance for help. He suggested an alter  
17 ego concept. Bob, meaning Secretary McNamara—Bob and I have  
18 this agreement that I have all of the powers that he has. I  
19 can exercise any of his powers just as long as he hasn't  
20 already exercised it. Set it up so that General Palmer is the  
21 alter ego of the Brazilian commander. He can do anything the  
22 commander can do. And put the staff under Palmer so he's the  
23 only one who knows what's going on. And that's what I did.  
24 It slips by the White House. Everybody's happy. Everybody

1 agrees. Ben and I plan a signing ceremony for the last Sunday  
2 in May. All of the forces are represented with their flags.  
3 About 11:00 in the morning Ben said, oh, my God we need a  
4 speech for the Secretary General. At 11:00 on Sunday morning  
5 he calls the State Department and requests a speech. About an  
6 hour later we have the speech in English, in Spanish, and in  
7 Portuguese. We round up Jose Mora. We have a nice table.  
8 Servicemen all around with the flags, TV cameras all over the  
9 place. Jose Mora sits down and reads the speech in a nice  
10 clear voice for the first time. This is a historic occasion.  
11 And then all of the representatives from the countries come to  
12 sign this document. And just as General Palmer is about to  
13 sign every light in the place goes out. They had so many big  
14 lights for the TV cameras that they overloaded the circuits.  
15 We round up candles. It looks like an initiation. Everybody  
16 signs. We're happy. Ben and I grabbed the next plane and  
17 come home.

18 So we have the Inner-American Peace Force set up by the  
19 Organization of American States. That kept the U.N. Security  
20 Council from touching it because the OAS is a regional  
21 organization under the UN with jurisdiction over regional  
22 matters.

23 Q. When was that signed, sir?



1           A.    The last Sunday in May of '65.  So look in the New  
2   York Times for the next day, the Monday after the last Sunday.  
3   I did not retain a copy because we didn't have extra copies  
4   around that were signed because as soon as it was over, Ben  
5   and I decided to get out of here before they tied us down with  
6   actually implementing it.  Creating it was one thing.  
7   Implementing it would be something else.  And besides, it was  
8   getting close to the time I was supposed to report to the Army  
9   War College.  The TJAG, General Bob McCaw, said don't let them  
10  keep you down there.  As soon as you got that project  
11  finished, get back.  I didn't hang around to see how it was  
12  implemented.  Well, it was implemented.  It was smoke and  
13  mirrors, but it served a political purpose.

14          Q.    I missed the transfer from Europe.  Then you went to  
15  Fort Bragg?

16          A.    After the four years in Heidelberg?

17          Q.    Right.

18          A.    I was sent not to Command and General Staff [CGSC],  
19  which is at Leavenworth, I went to a DOD school, which is on  
20  the same level.  It was called the Armed Forces Staff College.  
21  It was located at the Navy base in Norfolk, Virginia.  And as  
22  I say, it was on the same level considered as CGSC.  But run  
23  by DOD and it was dealing with not purely Army Command and  
24  Staff, but with Joint Command and Staff.

1 Q. And what year was that?

2 A. That was the fall of '62. It was a six-month  
3 course. It's not a year. I got there August/September, and  
4 January of '63, I went to the Pentagon. I was put in the  
5 International Law Section. And about a month later I was  
6 promoted to full colonel and then I took over that section.

7 Q. Anything of note in the War College?

8 A. Well, after the War College I went to Vietnam. That  
9 was the summer of '66, and I became the MACV [Military  
10 Assistance Command Vietnam] Staff Judge Advocate. Large  
11 office. My deputy was an Air Force colonel. And there was a  
12 commander and a lieutenant commander from the Navy. We had  
13 several enlisted. We had quite a few Vietnamese civilians,  
14 lawyers, and clerical types. And we had one or two branch  
15 offices. Counting everybody, there was about 75 people in the  
16 JAG office. That's counting them all.

17 One thing I did not realize when I got there—I did not  
18 have any overlap with George Prugh. He had left a week before  
19 I got there. So I had no chance to talk to him as to where  
20 the skeletons were buried or anything. The embassy was just  
21 down the street from my office. And the Ambassador was Henry  
22 Cabot Lodge. And why, I don't know, but no lawyer was  
23 assigned to the Embassy. And Lodge thought I was working for  
24 him. And Westmoreland thought I was working for him. And

1 every Monday morning we would have a meeting of the team at a  
2 table like this and at the head the two chairmen sat, Lodge  
3 and Westmoreland. And then the rest of us would be around the  
4 table.

5 Q. Did you sit in the middle?

6 A. I never sat between the two, but my position,  
7 unfortunately at times, was somewhere between the two. I  
8 never saw any disagreement between the two at the meetings and  
9 I wondered what it would be like for the two of them to be  
10 alone together. I thought that Lodge overstepped his bounds  
11 on quite a few occasions. Westmoreland is very cautious. He  
12 insisted that everything be fully staffed and he liked to have  
13 100 percent approval. I won't go into the details now. Any  
14 disagreement and nonconcurrence had to be resolved. Lodge  
15 would shoot from the hip. He would agree to something, but  
16 his agreements were rarely final. He could change his mind  
17 rather rapidly. The trick was to not be the first one to talk  
18 to Lodge but be the last one. I was just happy if I could  
19 avoid him completely. But he was not adverse to calling me  
20 and issuing all sorts of orders and directives which put me on  
21 the spot. Should I mention this to Westmoreland?

22 Let me give you one example. This is not anything that's  
23 going to shake the world but just to give you the flavor. He  
24 calls the Provost Martial and I in. The Provost Martial was

1 Nick Rudsiac. We were War College classmates and got along  
2 well. We would have a meal together probably five or six  
3 times a week. Sometimes breakfast. Sometimes lunch.  
4 Sometimes in the evening, but we kept in contact. Lodge was  
5 under instructions to reduce the number of Americans in  
6 Saigon. Lodge wants to know why there are so many Americans  
7 there. Why is it necessary that American MPs are directing  
8 traffic in Saigon? We respond because we want to keep the  
9 traffic moving. We're not directing all traffic, just on the  
10 roads that have convoys going back and forth to either the  
11 port area or to the airport. He orders us to pull the MPs off  
12 the traffic details. Do we tell Westy? Do we ignore it? Do  
13 we follow the order? I'm convinced that telling Westy would  
14 provoke a confrontation. I said to Nick, let's see what  
15 happens. It might work out. It might not. But the worst  
16 that we can be accused of is being a little slow in informing  
17 Westy. Go ahead. Pull the MPs. We notify the Vietnamese  
18 police that they are to take over the direct duties on those  
19 roads.

20 The next day Lodge has to go the airport to meet some  
21 dignitary. He gets caught in the worst traffic jam he was  
22 ever in in his life. He missed the meeting. Then he decides  
23 that the MPs will go back to directing traffic.

1       That's just one illustration. An American is picked up  
2 who is not connected with the forces. He's a drifter passing  
3 counterfeit twenty-dollar bills. And he ends up in the local  
4 jail. As far as I'm concerned he can stay in the local jail.  
5 Lodge calls me and he says get him out of there and out of  
6 here. He doesn't want Americans being tried by the locals.  
7 Well, I was willing to go along with this because I had a more  
8 nefarious thing in mind. I call the SJA in Hawaii. I ask if  
9 the U.S. attorney in Hawaii would be interested in a  
10 counterfeiting case. Yes, he would. I said, we're going to  
11 send you one. I go to the Minister of Justice--and, again,  
12 what is my channel to the local government? I could go to  
13 their military headquarters, but, also, I decided I could go  
14 to their Minister of Justice on a legal matter. I knew him  
15 fairly well. In fact, I was invited to his house a couple of  
16 times for dinner. I said, I'd like to get this guy. He said,  
17 you want him? You can have him. When do you want him? I'll  
18 have MPs pick him up this afternoon. The MPs get him out of  
19 the Vietnamese jail and bring him to my office. I tell the  
20 guy, I am not your lawyer. I'm not representing you. Do you  
21 have a lawyer in town? No. Do you want me to appoint  
22 somebody to represent you? No. I said, the Ambassador told  
23 me to get you out. I've got you out. I guess you want to get  
24 home? Oh, yes. I gave him my card with my phone number.

1 Give me a call in two or three days. I'll try to arrange some  
2 transportation and I turn him loose. Now I have to find a  
3 plane that does not stop in Guam because counterfeiting is one  
4 of the extra-territorial offenses. If it happens overseas the  
5 venue has to be where the individual first comes back to U.S.  
6 territory. Guam is U.S. territory. A lot of the planes  
7 refuel there. I have to find a plane that leaves Saigon, goes  
8 to Clark Field in the Philippines, which is independent, not  
9 U.S. territory, gets refueled and flies directly to Hawaii. I  
10 line that up. When he calls me a day or two later, I told him  
11 to be down at Than Son Nut at a certain time and you've got a  
12 flight home. He's very happy. Also, on the flight are the  
13 two MPs that had picked him up plus the counterfeit dollars.  
14 When they land in Hawaii he's arrested and ends up pleading  
15 guilty to counterfeiting there. So I was happy to go along  
16 with Lodge on that. But there were other times though I would  
17 have trouble with him.

18       So it was difficult because he would change his mind.  
19 And one of the things that haunted me was trying civilians. I  
20 finally bring it up at the Monday meeting. I had already  
21 talked to Westmoreland about it. He was mildly enthusiastic  
22 about it. I had talked to Wally Solf on several occasions; he  
23 had talked to Fritz Werner. Now I never met Fritz Werner, but  
24 Fritz Werner handled the appeal of the Smith case before the

1 Supreme Court the two times it was up there. And Fritz Werner  
2 was a friend of Wally's. Fritz thought that the situation in  
3 Saigon would justify the trial of civilians. This is the  
4 combat zone. Whereas the Dorothy Smith case, the peace  
5 treaty, there was a war in Korea, but there was no shooting in  
6 Japan.

7 Q. I don't want to throw you off. Do you mind going  
8 back and briefly describing the Smith case?

9 A. Okay. In a housing area in Tokyo-Washington Heights  
10 was the name of it--an Army colonel, lastname Smith, died as a  
11 result of a stab wound allegedly inflicted by his wife Dorothy  
12 Krueger-Smith, who was the daughter of General Krueger, a  
13 four-star Army General.

14 He was asleep and got stabbed in the back. He yelled.  
15 They had a live-in Japanese maid. She came. He told the maid  
16 to call another Army officer on the phone. She did. Colonel  
17 Smith got the phone and said these words, "Dot just stuck a  
18 knife in me. Come quick. I'm dying." I'll repeat it. "Dot  
19 just stuck a knife in me. Come quick. I'm dying." As far as  
20 we know, his last words. The ambulance came and took him to  
21 the hospital. A couple hours later he was dead. No doubt  
22 about who did it. The maid was trustworthy. While she was  
23 phoning, Dorothy Smith ran down to the kitchen, got a second  
24 knife, and the maid wrestled the second knife away from her.

1       The wife was charged with the homicide. They brought in  
2 a lieutenant colonel from Korea, Willy H. H. Jones—a JAG who  
3 had lots of experience as a criminal defense lawyer. Not  
4 much, if any, as a prosecutor. He was exceptionally good in  
5 closing arguments and very, very good in cross-examining. I  
6 was appointed the assistant counsel. Howard Levie, a full  
7 colonel, was the named defense counsel. The family paid to  
8 have other counsel flown over from the states. Willy H. H.  
9 and I worked well together. We looked at what the issues  
10 would be and decided that I would handle two issues. One was  
11 the jurisdictional issue. And two was the insanity defense,  
12 which we were sure would come up. She was convicted and  
13 sentenced to life. The Convening Authority approved. It went  
14 up through the then Board of Review. Went through the Court  
15 of Military Appeals. All being affirmed. Her father brought  
16 a habeas corpus suit, known as Kinsella vs. Krueger. The  
17 district court denied relief. Court of Appeals denied relief.  
18 The Supreme Court heard the case and issued a written opinion  
19 denying relief. One year later another case comes up, Reed vs  
20 Covert, another killing of a husband by a wife overseas. The  
21 Supreme Court grants certiorari. And this Fritz Warner, who I  
22 mentioned a few minutes ago, petitions the Supreme Court for  
23 reconsideration. They grant that and decide to reconsider the  
24 Smith case at the same time they hear Reed vs Covert. So



1 you've got a joint opinion in 1967. It's Reed vs Covert, but  
2 it covers the Reed and the Smith case. The Supreme Court  
3 holds in effect that a court-martial could not try a civilian  
4 for a capital offense in peacetime. Leaving open questions of  
5 wartime and non-capital offenses.

6 Q. So Mrs. Smith was an American civilian spouse who  
7 was prosecuted by the military over in Japan for a crime  
8 against her service member husband, correct?

9 A. Yes.

10 Q. And the basis for jurisdiction at that time, if I  
11 understood you from our conversation before, was language in  
12 Article II of the UCMJ, accompanying the force?

13 A. If they are serving with, or employed, or  
14 accompanying.

15 Q. And we have the case at 351 U.S. 470, which we'll go  
16 ahead and add to the end of this because I think it ties into  
17 what you're about to talk about with some of the issues in  
18 Vietnam. I think this is the creation of the loophole that  
19 arguably has just been filled and maybe not fully filled with  
20 the Military and Extra-Territorial Jurisdiction Act.

21 A. Yes.

22 Q. Where we're finally able to attach jurisdiction to  
23 civilian who commit misconduct with the force, peace or  
24 wartime. But turning back to civilian misconduct in Vietnam.

1       A.   Well, before Saigon—if I'm going to follow the track  
2 of the Smith case, the next episode is in my tour in  
3 Heidelberg. The day that we landed in Bremerhaven was the  
4 15th of August of '58. The same day in the housing area in  
5 Darmstadt, a woman, Emma Cheeves, disposes of her husband with  
6 a knife. It was in their quarters. A sergeant and his wife,  
7 both intoxicated, had a fight. Some neighbors call the MPs,  
8 who decide to take the husband, the sergeant, down to the  
9 drunk tank for the night. One MP has him on the left elbow.  
10 The other one has him by his right elbow. They're walking him  
11 out of their apartment. She comes up behind with a knife and  
12 stabs him in the back and he dies.

13       Charges are brought against her. This time it is a non-  
14 capital offense, like manslaughter—heat of passion. Is the  
15 Smith decision limited to capital offenses? The attorneys  
16 representing Cheeves initiate a habeas corpus in the DC court-  
17 Federal Court naming the Secretary of the Army as the  
18 respondent. A telegram arrives from the Secretary wanting to  
19 know what this all about. I was working with International  
20 Law. I had nothing to do with this case, which was being  
21 tried by a subordinate command. USAEUR did not exercise  
22 general court-martial jurisdiction.

23       I was told to answer the telegram. I got the details of  
24 the killing, and replied to the Secretary. Then I begin to

1 think what, if anything, would I do? Like Captain Ahab in  
2 Moby Dick, was I seeking to avenge the Smith case? Is this  
3 opportunity knocking on the door? I reread the agreement with  
4 the Germans. This was not the NATO Status of Forces Agreement  
5 [SOFA] per se. This was the Supplementary Agreement signed by  
6 U.S., British, French and Germany setting separate rules. It  
7 provided for primary U.S. jurisdiction when an American kills  
8 an American. But should we decide not to exercise our primary  
9 jurisdiction we had to notify the Germans.

10 The SJA, BG Nate Riger, and I went to the Minister of  
11 Justice for Hesse. Germany is a federal state, and most  
12 criminal jurisdiction in Germany is handled at the State  
13 level. The State Minister of Justice was familiar with the  
14 case. And he asked, what do you want me to do? I said, I  
15 just want you to do whatever you are required to do under  
16 German law. My role here is merely to notify you that I am  
17 going to recommend that the United States not exercise  
18 jurisdiction over Emma Cheeves. I can't guarantee that that's  
19 going to be approved, but that will be my recommendation. If  
20 we do not exercise it the Agreement requires that I notify  
21 you. I'm giving you advance notice that this, in my view, is  
22 likely to happen so that you can have some time to decide  
23 what, if anything, you might do or what, if anything, you are  
24 required to do under German law. He begins to salivate. He

1 asked was an autopsy performed? I said, yes, sir, by a German  
2 pathologist employed by the U.S. hospital in Frankfurt. What  
3 about the two MPs? There's a hold on them. They're not going  
4 anywhere until the case is tried. He asked for a few days to  
5 think about it?

6 We went up there on a Monday. Friday is the deadline set  
7 by the U.S. District Court to respond to the show cause order.  
8 The bottom line is my recommendation was approved and charges  
9 were dropped. She was freed at 10:00 German time into the  
10 custody of her lawyer. A dark green Mercedes with the word  
11 "Polizei" on the side and a blue light on the top waited. The  
12 German police arrested her for killing her husband. She was  
13 subsequently tried and convicted. She did not spend much time  
14 in jail because they gave her credit for about a year in  
15 pretrial confinement. I think the sentence was something like  
16 two years.

17 Q. How do you spell her last name?

18 A. C-H-E-E-V-E-S. Emma Cheeves.

19 Q. Thank you.

20 A. The defense counsel was screaming and yelling. I  
21 told him your mistake was not waiting until she was back on  
22 U.S. soil. But you had to rush to it. You had to prevent a  
23 trial and you left yourself open.

1 Q. I apologize for throwing you off, but we do  
2 appreciate going back and talking about Smith and Cheeves.  
3 And if that logically brings you a little bit later in  
4 Vietnam?

5 A. Oh, yes, now Vietnam--yes, there were offenses being  
6 reported. And what do you do? I had a lot of conversations  
7 with Wally Solf. He said, go ahead and try a case. He had,  
8 as I say, checked with Fritz Werner, who represented Smith at  
9 the appellate level. According to Wally, Werner thought that  
10 we had jurisdiction over non-capital offenses. I prepared a  
11 directive and I brought it up at a meeting. Both  
12 Westmoreland, who had cleared it, and Lodge went along with  
13 it. I urged caution and suggested fines in lieu of  
14 imprisonment. Fines for misconduct by persons employed by and  
15 serving with the United States. There would be no habeas  
16 corpus without confinement. Most of those tried were sailors  
17 on the commercial ships who got drunk and disorderly on shore.  
18 They'd be fined 50 or 100 bucks. There were several of them.

19 But as soon as the word began to get out that civilians  
20 were being tried, the press was up in arms. One night I spoke  
21 at the so-called Five O'clock Follies. This was the daily  
22 press conference. I had the opportunity to defend,  
23 unsuccessfully, the trial of civilians. The press was  
24 figuring that they were next. They might well have been.

1        One guy I decided to go after worked for CBS. He may not  
2 have been a full time employee. He was a photographer. After  
3 a battle he suggests that a GI cut off some ears. The GI said  
4 I don't have a knife. The photographer supplied the knife and  
5 takes pictures of ears being cut off. I wanted to try them  
6 both. CBS pulls him out of the country and denies everything.

7        As I say the press could very well have been next. Now  
8 Lodge begins to backtrack. He's not so keen on it. The State  
9 Department is not supportive. Just about that time my tour is  
10 up. We did succeed in trying several cases.

11        Q. Can you talk a little about Article Five tribunals?

12        A. Yes.

13        Q. If I understand you correctly you're dealing with  
14 NVA [North Vietnamese Army], Vietcong?

15        A. Yes, and innocent farmers. Three possible groups.  
16 The United States had gone on record saying that the Geneva  
17 Conventions would apply, period. So that was a decision I  
18 didn't have to make. It was made for me. Now the fact that  
19 the Geneva Conventions apply, does that mean that it applies  
20 to everybody in the world? Only those who meet the conditions  
21 are covered by the agreement?

22        The Geneva Conventions permit transferring prisoners from  
23 one detaining power to another. South Vietnam was a  
24 signatory, so prisoners of war held by the U.S. were

1 transferred to the Vietnamese. But how do you make the  
2 selection? After a battle a lot of people would be rounded  
3 up. The Vietcong and a local farmer were indistinguishable.  
4 They wore black pajamas. They wore sandals. And they wore a  
5 straw hat. And that's about it. If carrying a weapon they  
6 were Vietcong. If they weren't carrying a weapon and were at  
7 their land they were innocent farmers. That was basically the  
8 rule that applied. NVA soldiers wore distinctive uniforms.  
9 The determination that someone is not a PW, the presumption  
10 being that they are is to be made by an Article Five tribunal.  
11 I set up tribunals required by the conventions. General  
12 Westmoreland had Nick and I fly down and inspect the PW camps  
13 on an island south of Vietnam. They used ARVN [Army of  
14 Vietnam] forces to create the first camp. Then as the  
15 prisoners came they used them to construct additional  
16 facilities on the island. The island was pretty secure unless  
17 you were a real good swimmer. So we inspected it very  
18 carefully as permission had been given for the ICRC  
19 [International Committee of the Red Cross] to come down. We  
20 were down there again when the ICRC was there and found  
21 everything was proper. Now as far as I know that was the only  
22 place where PWs were held. Now those that we determined were  
23 not entitled to PW status were turned over to the Vietnamese  
24 and could be tried. But we never tried any of the prisoners.

1 A lot were releases because we decided they were innocent  
2 farmers.

3 Q. During your time in Vietnam were you dealing with  
4 any issues about prosecuting U.S. services members for-if not  
5 war crimes, offenses against the Vietnamese people?

6 A. Oh, yes.

7 Q. Can you give us some examples?

8 A. The regular court-martials. And I avoided using the  
9 term war crime. If it was a rape and murder, as far as I'm  
10 concerned it was a rape and a murder under the UCMJ. The  
11 loyalty of the victim, whether friend or foe, was not an issue  
12 in the case, it was a rape and murder. And I treated it  
13 accordingly.

14 Q. We had an International Law class with Major Watts,  
15 who you met the other day, and when I was in Iraq that was our  
16 philosophy as well. We charged attempted murder as attempted  
17 murder. Major Watts raised a point, and I'm just curious your  
18 thoughts, Major Watts' question was do we lessen the offense  
19 by not calling it a war crime and just calling it murder. In  
20 terms of our obligations under International Law or showing  
21 the international community that we have upheld our treaty  
22 obligations, have we lessened the offense if we don't call  
23 what constitutes a war crime a war crime?



1           A.   Well, my response would be if it is a definite  
2 offense under the UCMJ, spelled out as such, you charge them  
3 that way. Congress has set up the UCMJ and if rape and murder  
4 is an offense, and you commit rape and murder, that's what is  
5 charged.

6           Q.   Fair enough.

7           [Pause]

8           A.   One other thing, you talked about war crimes. If  
9 you're already charging under the UCMJ for a capital offense,  
10 you're complicating things by adding more offenses. Example,  
11 to try to throw in war crimes, well, you can't use a standard  
12 allegation.

13          Q.   Right.

14          A.   You can't cite a specific article in the UCMJ. You  
15 have to use the general article. You have to establish the  
16 citizenship of the various parties, so you're making it more  
17 complicated. And also you're throwing the book at the  
18 defendant because if he's already charged with a capital case,  
19 why pile on more things that are complications? You can't  
20 increase the sentence any because theoretically it's a capital  
21 offense. So I don't think you're degrading it by not bringing  
22 in war crimes. But you are complicating it considerably.

23          Q.   Especially with some of the offenses that Soldiers  
24 are committing in Iraq. Like you said trying to prove a

1 party, prove the existence of the war, international armed  
2 conflict. I don't think there's any disagreement that you're  
3 definitely adding evidentiary hurdles that do not exist for  
4 the enumerated offenses of robbery, rape, murder. I want to  
5 make sure that we discuss some of the I Law issues you  
6 mentioned to me. So however you want to proceed in that  
7 light.

8 A. Well, if it's all right with you, I'd like to talk  
9 about two events. One is that Spanish business. And the  
10 other would be about Turkey and growing poppies.

11 Q. Absolutely.

12 A. It's not mainstream, but it happened and it should  
13 be included. The date is the last Friday in June of 1970.  
14 I'm the legal advisor for the European Command in Stuttgart,  
15 Germany. I was having lunch at Kelly Barracks, which is about  
16 an hour away from Patch Barracks where the Headquarters is,  
17 with General Hodson, the TJAG, and George Prugh, who's the  
18 USAEUR JAG, one star, soon to become the TJAG. We were  
19 discussing over lunch the events of the morning, which was a  
20 meeting directed by the Secretary of the Army requiring all  
21 Army generals in Southern Germany to attend. We're talking  
22 about the My Lai incident and the instructions with respect to  
23 the Geneva Conventions.

1       Halfway through the meal and the discussion there's a  
2 phone call from my secretary. She says get back here. What's  
3 up? She said, I don't know. It's something hot. The boss  
4 wants to see you now. The now being immediately, of course,  
5 and the boss is a four-star Air Force General David K.  
6 Burchinal, who was the most talented individual I've ever  
7 known.

8       About one-thirty in the afternoon, I pop into his office.  
9 And although it happened 35 years ago, I still remember the  
10 brief conversation. He said, Ed, they want you back in  
11 Washington to negotiate a SOFA with Spain. I've set up a  
12 flight for three o'clock to take you to Madrid. Meet with the  
13 country team tomorrow. Find out what their needs are, then go  
14 onto Washington and check into the Pentagon Monday morning.  
15 Any questions? I gave the only answer which would have been  
16 acceptable and that was, no, sir.

17       Walking to my quarters, I had to think of dozens of  
18 things that had to be done. I got on the phone to my office  
19 while I'm packing, giving instructions as to some of the  
20 ongoing problems there. I told them to send a car around to  
21 take me to the airport. And I left a note on the refrigerator  
22 for my wife who was playing in a golf tournament that I'm off  
23 for Madrid and Washington. And I'll see you when I get back.

1        On the plane I was thinking, General Burchinal and I are  
2 on the same wavelength. He said, find out what their needs  
3 are. I agree with that wholeheartedly. Earlier in preparing  
4 for other negotiations with the Germans, I made the mistake of  
5 asking our side what they wanted. And they immediately  
6 responded. The responses were all akin to this; Dear Santa, I  
7 have been a very good boy this year. Here's what I would like  
8 for Christmas. And then they gave a shopping list. I would  
9 like a new Mercedes. I would like a set of Ping golf clubs.  
10 I would like. I would like. I would like, page after page of  
11 what they would like. And I had to go ahead and spend hours  
12 going back and saying, okay, now what are you willing give up  
13 for all of these things?

14        So it became necessary to whittle it down to what is it  
15 that you really need? Now I feel strongly on this. What they  
16 want is talk. What they need is substance. If an agreement  
17 does not satisfy the need, it's going to be broken at the  
18 various opportunities, but if the needs are satisfied you're  
19 going to have a degree of permanence. But learning what they  
20 want doesn't take any skill. Your side will tell you what  
21 they want. The other side will tell you what they want.  
22 You're not a genius asking what they want. You have to  
23 determine what they need and satisfy the need. That is

1 critical. And he had specifically said you find out what  
2 their needs are.

3 So Saturday the group in Spain was, of course, thrilled  
4 at the opportunity of canceling their plans for the weekend in  
5 order to meet with me and answer all my questions. It went  
6 pretty well. Sunday, I flew from Madrid to London, and from  
7 London to Dulles. And London to Dulles, dog gone if I'm not  
8 on the same plane as General Hodson and his wife, who I had  
9 seen just two days before. Fortunately he had a car waiting  
10 for him at Dulles, and I ended up being dropped off at Wally  
11 Solf's house. Wally and I were close friends. I frequently  
12 stayed at his house. He stayed at mine. And I knew that the  
13 welcome mat was out. During the time that I was in Washington  
14 I was staying with the Solfs. Of course, my wife, obviously,  
15 was in Stuttgart.

16 Now, I'll jump to the meeting Monday morning. There were  
17 10 to 12 of us. I knew perhaps half the people. I was the  
18 only one representing the Army. And there were Air Force,  
19 Navy, State Department, DOD, and CIA representatives. And one  
20 or two who wore civilian clothes, who gave their name, but no  
21 organization. So I suspected some Defense Security or  
22 something of that nature. Some of the things that I'm going  
23 to cover now I knew previously. Some of it I had learned from  
24 the briefing at Madrid, and some of it was new. We had been

1 kicked out of France by de Gaulle and getting from Germany to  
2 the three allies in the Mediterranean area, Italy, Greece, and  
3 Turkey from Germany would be a problem because you can't go  
4 east because of East Germany and Czechoslovakia. You can't go  
5 south because of Austria and Switzerland. And you can't go  
6 through France unless de Gaulle is willing to let you go. You  
7 can't rely on that. Spain is the third largest country in  
8 Europe after Russia and France. Spain has ports on both the  
9 Atlantic and the Mediterranean, and has a strategic location  
10 at the entrance to the Mediterranean. And Spain is isolated.  
11 Franco is still in charge, but his pals, Hitler and Mussolini,  
12 have not been on the scene for 25 years. He is definitely  
13 anti-communist, but he is anathema to the NATO members because  
14 of the--well, the Fascist dictatorship. So he doesn't have any  
15 friends. And we do have a MAAG [Military Assistance Advisory  
16 Group] unit there with some use of Torrejon Airbase and some  
17 use of Rota Navy Base. As soon as we were kicked out of  
18 France, we started talks with Spain about more access. News  
19 of that leaked out somehow and got written up by Flora Lewis  
20 in the Times and other articles in the Washington Post. You  
21 cannot carry on secret negotiations in a fishbowl. So they  
22 decided to put the thing on the back burner until things  
23 quieted down. A year and a half have gone by and the  
24 Spaniards are getting anxious. They issued a statement that

1 unless there is a Status of Forces Agreement by the 1st of  
2 September, the U.S. is out of Spain.

3       They continued the briefing. The State Department has  
4 worked out an arrangement with the Spanish Ambassador, which  
5 we called the Umbrella Agreement. It said that we are to  
6 station forces there and we're going to have love and kisses  
7 and friendship, and we'll work out the details. The plan is  
8 to work out—I don't remember whether they said 14 or 16  
9 specific short agreements covering a multitude of topics that  
10 I'll get to a little later.

11       Also, the State Department has a handshake agreement with  
12 Senator Fulbright, the chairman of the Foreign Relations  
13 Committee, that neither Senator Fulbright nor his committee  
14 will ask any questions or request any information about what,  
15 if anything, may be going on with Spain in order to keep this  
16 thing quiet. However, as a *quid pro quo*, no agreement with  
17 Spain will be signed before his committee had been fully  
18 briefed on the matter. That's the handshake agreement.

19       Now another restriction is that no agreement with Spain  
20 will be negotiated in Madrid while the American Ambassador is  
21 in residence. I never was given an explanation as to why that  
22 would happen. But I raised right away the question, how do I  
23 keep the American Ambassador out of Madrid? He said, well,  
24 we're going to help. We're calling a meeting of all American

1 Ambassadors to be held in Athens. And when that meeting is  
2 over he's due to home leave, so we're bringing him back to the  
3 States. So we'll help you on that. But remember, no  
4 negotiations while he is in residence.

5 Later on General Burchinal told me that the Ambassador  
6 had gone over the head of the State Department directly to the  
7 President on some matter. So as far as the State Department  
8 is concerned this guy is dead. And that's the way the game is  
9 apparently played.

10 Now I have questions. I said, there are 14 agreements,  
11 impossible to negotiate that in the eight weeks that we have  
12 before the 1st of September. It just can't be done. The only  
13 way we can handle that is to have two teams. I said there are  
14 enough people in this room to constitute two teams. And one  
15 team will have the "A" list and they will have seven or so of  
16 the agreements. The other team will be on the "B" list and  
17 they will have the other seven or so agreements. Therefore,  
18 the quota for each team will be one agreement per week. I  
19 said that's manageable. Will the Spaniards go along with  
20 that? I said it doesn't make any difference whether they go  
21 along with it or not. If on Monday morning we're going to  
22 have an A-Team topic for discussion, our A-Team will be there.  
23 And if in the afternoon a B-Team topic is for discussion, our  
24 B-Team will be there. If the Spanish want the same team to be



1 there morning and afternoon, fine. But I think they'll go for  
2 the two-team concept because that way if they're serious about  
3 this deadline two negotiations can go on at the same time. It  
4 was decided to have two teams. Phil Barranger, who is a  
5 Department of Defense civilian attorney, would head one team.  
6 That was known as the "Barranger Team." And I headed the  
7 other team known as the "Haughney Team." On my team I had an  
8 Air Force JAG, I had a Navy JAG, and a State Department guy.  
9 The State Department man was young. I'm not sure whether he  
10 was there to keep an eye on me or to learn the business. So  
11 we have two teams.

12 We had an informal meeting with the Spaniards, who had  
13 their people in Washington. That took place a day or two  
14 after the Monday morning meeting in the Pentagon. I explained  
15 how we're going to use the two-teams. They allowed that that  
16 was satisfactory. The main thing I wanted to get across is  
17 that while English and Spanish language versions were equal,  
18 all negotiations would be conducted in English. I had had a  
19 year of Spanish in college years before. I didn't learn much.  
20 I certainly was not about to fool around with translations.  
21 If both versions are equal I'll let the State Department worry  
22 about the Spanish version because all of the talks are going  
23 to be in English. And they agreed to that.

1           Then we flew over to Madrid. I stopped by, of course,  
2 Stuttgart on the way. A typical day would be as follows:

3           I would have breakfast with my team. And we'd discuss  
4 the day's topic. I would send one of them to go by the  
5 Embassy to see if there are any messages. The rest of us  
6 walked over to the foreign office where the meetings took  
7 place. It was just a three or four block walk. And then we'd  
8 have coffee in two different rooms. My team would be in one  
9 room and Barranger's would be in another. We had all agreed  
10 as to the topic. Almost without exception we would have a  
11 draft of the topic. Unlike a standard SOFA, we were drafting  
12 a lease of Spanish facilities. Although the Spaniards were  
13 well aware of the NATO Status of Forces Agreement, which is  
14 unclassified, and I would quote from that on many occasions,  
15 we were not negotiating a status of forces agreement.

16          A lot is written on whether it's better to work from your  
17 draft or the other side's draft. There are pro's and con's.  
18 What works best for me is the following:

19          If I am thoroughly familiar with the subject and I'm  
20 convinced that you can't possibly ask me any question about it  
21 that I can't answer, I would rather work with my draft.  
22 Really I'm playing defense. I'm defending my draft. I can  
23 show why this is better than a possible alternative. On the  
24 other hand, where I am less confident, I would rather use my

1 opponent's draft to work from. And that way I'm on the  
2 offensive; I can ask question, after question, after question.  
3 What does this mean? Why is this necessary? What experiences  
4 have there been using this? So sometimes I like to use the  
5 U.S. draft and sometimes the Spanish draft. All depending  
6 upon my degree of confidence.

7 We'd go back and forth until somewhere around noontime  
8 and then break for the day. We'd go to the Embassy and  
9 prepare several messages. One would simply be the text of  
10 anything that the Spanish had tabled. They may have given us  
11 a draft for something that we'd consider next week. We didn't  
12 have fax machines in those days. It had to be typed and  
13 proofread and sent by cable. One message would be text  
14 without comment. The second message was like the minutes of a  
15 meeting. We started at 9:30. Everybody was present except  
16 so-and-so, who supposedly was sick. And we discussed such-  
17 and-such. Didn't get very far. The Spanish seemed to be  
18 dragging their feet. We suspect that they don't have  
19 instructions on this so they're just playing around. Much  
20 like the minutes of any meeting. Sometimes there would be a  
21 third message that I would prepare. That would say, I need  
22 instructions on this. The Spanish are holding firm on that.  
23 Is there anything that we can offer? I'd be asking for

1 instructions on certain things. Sometimes I would be voicing  
2 objections to things.

3 We'd send those messages. It's now two o'clock or  
4 thereabouts. We'd have a very leisurely siesta time lunch.  
5 And we'd be back at four o'clock or so. Our messages were in  
6 Washington and the backup team, the control team, has met.  
7 They met automatically every workday morning at eight o'clock.  
8 And the messages are there because of the time differences.  
9 Each member is representing a different agency. If it's a  
10 question of the Air Force, then it's up to the Air Force  
11 representative to get an answer and bring it up to the control  
12 group. After we returned to the Embassy the phone would start  
13 ringing. Sometimes they wanted more information. Sometimes  
14 questions about my statement at the meeting. Sometimes we had  
15 to switch to a secure phone if we're talking about something  
16 that was classified. But a lot of times we could just make  
17 reference to a page number or paragraph.

18 By five or six o'clock we'd be through. Phil and I would  
19 usually have dinner together. The other members were on their  
20 own unless I decided to call a meeting at night to go over the  
21 plan for the next day. But basically we had one agreement per  
22 week as the quota. And 90 percent of the time we would be on  
23 that one; maybe 10 percent looking forward to other things.  
24 That was the way a typical day would go.

1 I did all the talking. My colleagues could slip me  
2 notes, but unless it was agreed to in advance, they were not  
3 to say boo. A lot of times I gave them the lead. Naturally  
4 when questions asked about what type of ships would be using  
5 Rota, I was in no position to answer, and that was given to  
6 the Navy guy. The same thing with how large a contingent  
7 would the Air Force have at this particular base? Again, I'm  
8 in no position. My Air Force guy had a responsibility to  
9 respond to that. Other than that, I did all the talking.

10 On one occasion I had three different versions, all of  
11 which had been approved--three different versions. In order to  
12 keep them straight I marked them one, two and three. I  
13 decided just to present the number one. One of the Spaniards  
14 said I see there's a number one written on the bottom. What  
15 does that mean? Is there a number two? I really believe in  
16 honesty. Don't try to lie your way out. Admit it. I said,  
17 yes. In fact, I have number two. Would you like to see it?  
18 Well, of course. And I also have number three. How about  
19 that? I presented copies of all three. We took about a half  
20 hour break so they could examine the three versions. When  
21 they came I said, all three versions have been approved. I  
22 thought that number one would be the easiest to sell. It  
23 would be most acceptable to you. I said I'm interested in  
24 getting things done.

1           Basically it was friendly. They would pull little  
2 tricks. They'd ask, can we go back over so-and-so? I said,  
3 wait a minute. We can't go backwards. We agreed on that.  
4 They'd say, but we didn't quite understand it. I said, quit  
5 your kidding.

6           On weekends I normally flew back to Stuttgart. I brought  
7 Phil back with me on one occasion. I had a nice house. There  
8 was plenty of room. Once or twice the Ambassador was in  
9 Madrid we moved to Washington. Again I stayed with the Solfs.  
10 We'd meet a couple of times in Washington. But 75 percent of  
11 the time we were in Madrid meeting at their foreign office.

12           The fellow who headed the Spanish team was Count  
13 Somebody-or-Other, a Spanish nobleman and friend of the exiled  
14 King. Franco had stated that he was going to permit the King  
15 to return. Spain would have a Constitution, they were moving  
16 towards a democracy. The Count was also on good terms with  
17 Franco.

18           So I'll pause for questions.

19           Q.   If I understood you yesterday, you were going to  
20 leave a copy of the agreement that was reached between the  
21 U.S. and Spain, for which you were the lead negotiator?

22           A.   Yes, I'll do that.

23           A.   No other questions? All right, I'll continue.

1 Things were not always rosy. There were some things that I  
2 thought were going to be trouble. But trouble came from a  
3 most unexpected direction. I didn't anticipate any difficulty  
4 negotiating an agreement on health care-military hospitals.  
5 I got a phone call at the embassy from the Surgeon General of  
6 the Air Force, which raised a red flag. How did he learn  
7 about me and my phone number? Instructions come from the  
8 control group in Washington. Everything is hush-hush. The  
9 Surgeon General said that sometimes the Air Force wives,  
10 sometimes Air Force female dependents, need an abortion.  
11 Abortions are prohibited in Spain and we have to fly them to  
12 England. I would like you to list abortion as a procedure  
13 that can be performed at military hospitals.

14 I listened. He's a two-star general-I guess a two-star,  
15 and I said I'll see what I can do. What I was intending to do  
16 was nothing. In Spain abortions are prohibited and both the  
17 patient and the doctor can go to jail. Under the standard  
18 NATO Status of Forces criminal jurisdiction provision, if a  
19 particular act is a crime in only one country, that country  
20 has the exclusive right to try it. Is abortion in 1970 a  
21 crime in the United States? The answer in some states, yes.  
22 At the federal government level-this is three years before Roe  
23 v. Wade, I don't know. If it's not a federal crime the  
24 Spanish have exclusive jurisdiction. There's no way in the

1 world that they're going to authorize American hospitals to  
2 perform abortions when they can't, unless there's really big  
3 inducements. I was not inclined to have any part in this.  
4 The instructions didn't come from the control group, but from  
5 the Air Force Surgeon General. He is not in charge. My  
6 decision is that I'm going to do nothing.

7       It's now time to draft the medical/hospital agreement. I  
8 suspect that the Surgeon General had contacted the control  
9 group, or the Air Force representative on the control group,  
10 and learned that the control group was not interested. Someone  
11 suggested that he call me directly and furnished my phone  
12 number. I figure the control group is not hot to trot on this  
13 issue either and asked them for our draft on the medical  
14 agreement. Now we get to fool around. They said, why don't  
15 you write it up? I said, no. Why don't you write it up? So  
16 we're playing games.

17       The Spaniards know that abortion is a bit of an issue.  
18 And occasionally not at the meeting, but outside, they would  
19 ask when is abortion going to come up as an issue? I said, I  
20 guess we'll just have to wait and see. There was a little bit  
21 of teasing going on. I can't get control to write the draft  
22 and they can't get me to write the draft. I asked the  
23 Spaniards to prepare the draft and we'll work from that. Oh,  
24 no. The situation here is completely unacceptable. It has to



1 be changed. I said, okay, what are the changes? No, it just  
2 has to be completely rewritten. You write a draft, they won't  
3 touch it. Time is running out. We're now in August. We've  
4 agreed to a number of things. I'm to prepare the draft and I  
5 refuse. Tempers flare. We're close to calling each other  
6 names. I said I'll tell you what. Here's as far as I'm going  
7 to go. Control, write up the draft any way you want. I will  
8 table it for discussion. But on the day it's due for  
9 discussion I'm sick. I will not be there. That's the best I  
10 can do. Take it or leave it. I didn't ask for this job. If  
11 you don't like the way I'm handling it, replace me  
12 immediately, but that's it. You write the draft, I will table  
13 it without comment, but on the day of discussions I'm sick.  
14 They respond no, no, no. You haven't been sick in your life.  
15 You're doing a great job. Everything is going real fine. I  
16 said I feel a cold coming on. I'm going to be sick. Take it  
17 or leave it.

18 Two or three days later control backs down. Okay, no  
19 reference to abortion. How did that come about? The issue  
20 went to the White House. President Nixon said don't raise the  
21 abortion issue. Abortion is not on the agenda. But we're not  
22 out of the woods.

23 Q. Did you not want to raise abortion because of a  
24 personal issue that you had or did you not want to raise it

1 because you knew it was going to be problematic and you  
2 weren't going to get anywhere?

3 A. I had two reasons. From a moral issue, I was  
4 opposed to it. I'm not telling other people they should or  
5 should not, but I was not going to be a facilitator for  
6 abortion. That's why I would not be at that meeting. Also, I  
7 didn't think there was a chance in the world that you could  
8 sell it because it's a criminal offense in Spain. It's a  
9 highly Catholic country. Both the doctor and the patient go  
10 to jail. You'd have to have some tremendous inducement to get  
11 them to even think of permitting it. It's an impossible  
12 mission. It would jeopardize the whole plan. So two grounds,  
13 the moral ground and the impossibility, were the two things  
14 that had me concerned.

15 There's something bothering the Spaniards about the Rules  
16 Governing Medical Services of the United States Forces in  
17 Spain. And I can't find out what it is. The Spain papers are  
18 playing up a little medical incident. A Spanish Air Force  
19 general goes to visit his mother in some mountain town that  
20 you can only get to by mule. While there he has an attack of  
21 appendicitis. The U.S. Air Force flies a chopper in, picks  
22 him up, takes him to the U.S. hospital, cut out his  
23 appendix, sew him up and he's fine. The papers are praising  
24 this to the sky. What a wonderful thing. Everyday there's a

1 big article about it. Now my suspicious nature begins to  
2 produce some results. I know there is censorship in this  
3 dictatorship. And what the press is doing is propagandizing  
4 the contrast between American medical services and the  
5 services that they are getting, and emphasizing the big  
6 difference. At the risk of the censorship they go as far as  
7 they can. It's now a political issue within Spain and, of  
8 course, anti-Franco press. I now understand why these guys  
9 won't talk to me, even when we were just having a cup of  
10 coffee on a break. They are split on the whole medical issue.  
11 They can't get any instructions one way or the other. How do  
12 we get out of that impasse?

13 Now just about all the agreements are in place. I wanted  
14 approval for any licensed American doctor to practice. We  
15 come up with this wording. I'm now reading from the final  
16 text.

17 "Medical personnel may perform medical services in Spain  
18 of the same type which such persons are authorized to perform  
19 in the United States Military Medical Facilities, subject to  
20 the limitations contained in this annex without prior  
21 examination or reevaluation of their professional  
22 certifications by the Spanish authorities provided that the  
23 medical treatment punishable by law of Spain may not be  
24 performed by medical personnel." So any medical treatment

1 punishable by Spain is prohibited. The word "abortion" is not  
2 mentioned, but everybody knows that's what they're talking  
3 about. Other wording in effect would permit us theoretically  
4 to use a surplus of doctors in Yugoslavia. That left open the  
5 possibility of not only hiring Spanish doctors, but  
6 possibility of hiring, say, Yugoslav doctors.

7 We still don't have the thing wrapped up. One of the  
8 things that's being created is a joint committee. There's to  
9 be two Americans and two Spaniards on the joint committee to  
10 handle problems that may arise in the future. I'm convinced  
11 that the Spaniards have their hands tied and can't agree to  
12 anything. The U.S. is pretty much unsettled. Washington will  
13 not draft the medical proposal and I have to write it. This is  
14 one of the agreements I wanted the Spanish to write because,  
15 thank the Lord, I've never been in a hospital in my life. I  
16 lack knowledge of medical procedures; I don't know what they  
17 mean in plain English. I was not about to have page after  
18 page of approvable and not approvable procedures when I don't  
19 know what they mean. And the language that I read you takes  
20 care of it. If it's authorized in a military hospital and not  
21 a violation of Spanish law, it can be performed.

22 [Pause]

23 The bottom line is I included in the agreement that the  
24 present practices and customs will continue, but some changes

1 are to be considered by the joint committee when they meet and  
2 they should take it up as an expedited matter. And, of  
3 course, in the joint committee there could be two votes for  
4 and two votes against. That's the way that thing went, status  
5 quo.

6 Everything is finally initialed. It's Friday and  
7 apparently some State Department money came in. We threw a  
8 nice big luncheon for everybody, and then flew back to  
9 Washington with the initialed agreements. A lot of  
10 handshakes, smile, patting on the back, and it's okay, it's  
11 nice working with you. I said good bye but was told not so  
12 fast. I said, what? The Fulbright hearings? No, no. We're  
13 taking care of that. We need a legal opinion. Since you know  
14 what's in these agreements, do they have to go to the Senate  
15 as a treaty or can it fly as an executive agreement? So I  
16 spent about three days in the Pentagon library doing research.  
17 I have two theories. Important things have to go to the  
18 Senate as a treaty. Unimportant things can fly as an  
19 executive agreement. However, if you need Congressional  
20 support like a new statute or an appropriation, big or small,  
21 you have to consult with Congress otherwise you're out on a  
22 limb. So if you need their support in the form of a statute  
23 or money you have to consult them. So it's not a big or  
24 small, it's whether you can do it without them. Now the NATO

1 Status of Forces Agreement is a treaty. The Japanese Status  
2 of Forces Agreement is a treaty. This is not really a status  
3 of forces agreement. And the agreement that it replaces,  
4 which was a MAAG agreement, is an executive agreement. So  
5 really I could go either way.

6 Friday of that week the Foreign Relations Committee is  
7 briefed. I was not there. They sort of kept me hidden. I  
8 asked how it went. Pretty good, but Fulbright wants it  
9 submitted as a treaty. I said, I just finished my opinion and  
10 concluded it can fly as an executive agreement. They said  
11 we'll hold on to it. Maybe we'll use it yet. The next day  
12 the Washington Post and the New York Times have big articles  
13 about the closed door meeting and briefing of the Senate  
14 Committee. Nixon goes ballistic. We get orders--have nothing  
15 to do with Fulbright. Don't return phone calls. Don't honor  
16 subpoenas. Don't have anything to do with Fulbright or his  
17 committee. Nixon approves it as an executive agreement. And  
18 then submits to the Senate for their consent for ratification  
19 an agreement that had been worked on completely separate from  
20 the Spanish thing. Along the Rio Grande whenever there's rain  
21 they have a flood. And some of the markers get moved. They  
22 have a full time commission whose job it is to replace any  
23 markers that may be moved because of flooding. And this is  
24 sort of an addendum which provides for the preservation of

1 artifacts found along the Rio Grande. He submits that to the  
2 Senate for their advice and consent. Was he rubbing salt in  
3 their wounds? The President flies to Spain, meets with Franco  
4 and all is love and kisses. Agreements are dated 25 September  
5 as the effective date. So this is for your archives [handing  
6 over a document].

7 Q. Thank you very much. That is a great story.

8 [Pause]

9 Q. I know you said you wanted to discuss your role with  
10 an issue dealing with poppy fields--opium production in Turkey.

11 A. Yes, it's an interesting story. Are you ready, too?

12 [Affirmative from the court reporter.] This is probably June.

13 The year is 1971. I'm still at Stuttgart as the legal  
14 advisor. The Chief of Staff, a three-star Army general is  
15 retiring, and General Burchinal is throwing a party for him at  
16 his house. My wife and I are guests. During the course of  
17 the evening I make some wisecrack to the Chief of Staff.  
18 Everybody laughs. I don't remember now what it was. A few  
19 minutes later the Chief of Staff says I told the boss--meaning  
20 General Burchinal--what you said and he wants to see you. My  
21 big mouth has got me in trouble again. I'm going to be the  
22 entertainment for the group tonight. He's going to pull  
23 something at the dinner table, ask me some convoluted question

1 that nobody can answer or give me another opportunity to make  
2 a fool of myself.

3 I wander over to where General Burchinal was telling a  
4 story. About five officers are standing in front of him  
5 listening. He gets to the punch line. Everybody laughs. I  
6 didn't know what the story was about, but I laughed too. I  
7 was determined not to open my big mouth. He said, Ed, I just  
8 had a phone call from John Ehrlichman in the White House. John  
9 Ehrlichman was the Domestic Affairs Advisor to Nixon. He is  
10 sending his assistant and Henry Kissinger is sending his  
11 assistant and I said, not me. He said, oh, yes, you're the  
12 third one. You are to go to Turkey and get the Turks to stop  
13 growing poppies. See me Monday morning. I got out of that  
14 easy, or so I thought. I thought I was in trouble, but just  
15 that little scare didn't mean anything. I began thinking,  
16 could it be real? Was he serious? Was he making this up?  
17 How the heck would Ehrlichman be calling from the White House  
18 putting a task on me? Oh, forget about it. But I spent the  
19 whole weekend--this was a Friday night--Saturday and Sunday  
20 almost like picking flowers; she loves me, she loves me not,  
21 this is true, this is not. I didn't realize it then, but  
22 after I got through talking about the Spanish thing, I can see  
23 how it's possible that the White House might have been behind  
24 it because the fight that I had with the control group in



1 connection with the negotiations ended up being resolved by  
2 the President. And secondly, my legal opinion that these  
3 agreements did not have to be sent to the Senate as a treaty,  
4 but treated as an executive agreement, was what they used to  
5 bypass Fulbright and the committee. So they may have known my  
6 name from those two incidents that had happened just the year  
7 before. So it's possible that this is genuine.

8 Monday morning I get to the office a little earlier than  
9 usual. Sure enough he's got me down on his schedule for very  
10 early. And he wasn't kidding. He said take the so-and-so  
11 plane- he had his own private Air Force plane-and meet these  
12 two at the American Embassy in Paris Wednesday morning.  
13 Ehrlichman's deputy is named Eagle Bud Crowe. And I can't  
14 remember for sure the name of Kissinger's deputy. I think,  
15 but I can't swear, Art Downey was his name. But I'm not sure.  
16 Bud Crowe was the senior of the two and he was representing  
17 Ehrlichman. Now does either name, particularly Crowe's name,  
18 mean anything to anybody? Because a year or so later-two  
19 years later with the Watergate thing, Bud Crowe is the head of  
20 the plumbers. What plumbers do is stop leaks. Bud Crowe ends  
21 up in federal prison for his role in that little caper.

22 Wednesday I fly to Paris and go into Ambassador Watson's  
23 office. Watson had been the head of IBM. And meet the other.  
24 We talk about the drug situation in France. And the suspicion

1 is that Marseille is where a lot of the stuff is processed  
2 into heroin. The French had a laissez-faire attitude towards  
3 it until some of the French began to use the drugs and die.  
4 Now they are a little bit more interested in the subject. The  
5 only hint as to what my role is--well, number one, I control  
6 the airplane. And number two, we're supposed to go and get  
7 the Turks to stop growing poppies. Turkey is under martial  
8 law. We decide our first stop will be Marseille. In Marseille  
9 we were met by Bureau of Narcotics and Dangerous Drug Agents.  
10 They took us around. We were interested in was seeing some of  
11 the places that had been raided which processed morphine into  
12 heroin. What pattern, if any, could we see? We noted that  
13 they liked a house that was isolated, that had plenty of water  
14 and plenty of electricity. They worked as a team. Everything  
15 they needed; all the food, all the beverages, all the  
16 chemicals, would be brought in. They had rented the place for  
17 a month and paid cash in advance. No checks could be traced.  
18 The renter would say that a recluse was recovering or some  
19 writer needed privacy to finish his novel. They would not be  
20 interested in meeting neighbors. In plain English, they  
21 wanted to be left alone. Chemists would process the raw  
22 morphine base into heroin. Some would wear masks because  
23 heroin is quite addictive. When finished they'd pack up and  
24 scatter until the next call.

1       We know what the house looks like; isolated, plenty of  
2 water, plenty of electricity, no nosey neighbors, and paid for  
3 in advance in cash. Now what chemicals do they need? One of  
4 the chemicals that they need is an acid. I can't remember the  
5 name of it. It is a commercial product, sold in drums and any  
6 legitimate outfit can buy it. It's not a secret. But it is  
7 necessary. That gives us our first clue. We can put bugs on  
8 those drums so that the drums can be traced. We can furnish  
9 some of our light observation planes, cross out the U.S.  
10 markings and with the permission of the French, use the  
11 markings of a French flying club. The planes can fly around  
12 and trace the movement of the necessary chemical. A little  
13 ingenious I think in retrospect. Did it work? Well, the  
14 answer is yes and no. It drove them out of Marseille and they  
15 moved to Corsica. But for a time it worked. Apparently they  
16 began to catch on. But that was after we had left.

17       We had use of a car in Marseille. Our plane is in  
18 Stuttgart. The 4th of July weekend is coming up. We made  
19 arrangements to meet the plane at the airport in Nice a couple  
20 of days later. Then we rode to San Tropez, a good place to  
21 spend the holiday. I'll not go into the details of being on  
22 the beach. It was an interesting beach excursion. When we  
23 drove to the airport, we run into a terrific thunderstorm and--  
24 in the mountains there along the Riviera the roads are

1 completely flooded. We had no choice but to pull off. We  
2 were late getting there. Of course, the plane waited for us.  
3 But now the problem is we can't meet the scheduled arrival  
4 time. When you're going to Turkey you'd better get there on  
5 time. Don't come early. Don't come late. If you can't come  
6 on time don't come at all. We couldn't make the entry into  
7 their airspace on time so we landed in Athens, Greece. We  
8 spent the night in Athens and got a new clearance for the  
9 following morning. Thus we got to Ankara a day late. We met  
10 with the Ambassador and quite a few of his assistants. One  
11 man who spoke Turkish, was the Agricultural attaché. He  
12 became our guide as we traveled around. Our first visit was  
13 to a place called Afyon. Afyon is the Turkish word for  
14 "opium." It's the name of the town, with miles and miles of  
15 poppy fields. The poppies are not like the ones that you see  
16 around Memorial Day, a little red flower. This flower is  
17 white, occasionally blue, but 90 percent of the flowers are  
18 white. They grow about as high as the table. It forms a bulb  
19 with the flowers on top. They use women and children to lance  
20 this bulb and some stuff oozes out. That's the raw morphine  
21 that oozes out. The next day they scrap that ooze that's  
22 dried. The men sit in the shade and drink coffee and smoke  
23 cigarettes while the women and the children work. It is a  
24 very happy situation as far as the natives go. Our

1 agricultural guide is checking samples. My role is to play  
2 the tourist. I wear a bright shirt with a camera around my  
3 neck. I have a pocket full of cigars and lots of cigarettes.  
4 I go to the men who are drinking coffee and smoking--of course  
5 I don't speak any Turkish, but hand out cigars. Then I take  
6 their picture, and what I'm interested in is not their picture  
7 but the background; the poppy fields. I take lots of  
8 pictures. Enroute to Afyon, we stopped at a mound in the  
9 middle empty fields and were told that this was reputed to be  
10 the tomb of King Midas. Midas of the golden touch. The tomb  
11 has been raided. Huge beams have been holding it up for the  
12 last two or three thousand years. Where did the wood come  
13 from? There's not a tree within a hundred miles in any  
14 direction. The agriculture guide tells us two thousand years  
15 ago this area was heavily forested--that goats are extremely  
16 destructive. Goats will eat anything. Anything that grows,  
17 anything you hang on the line, they'll eat. Now there's  
18 nothing growing. It's possible that those big timbers were  
19 locally obtained because the area once was heavily forested.

20 Is there a solution to the drug problem? The soil and  
21 the climate are ideal for wheat, but wheat is not labor  
22 intensive. Plant the wheat and two months later come for the  
23 harvest. Whereas growing poppies is very labor intensive.  
24 How do you keep the women and the children occupied if all

1 they're growing is wheat? It's a cultural problem that you  
2 have to recognize and address. Then there's the economic  
3 problem. They admitted to us that the night people—we would  
4 say black marketers, but they said night people as it was  
5 translated to us, are paying better prices than the government  
6 for the raw morphine that's gathered. Much goes into the  
7 black market. The raw morphine is turned into morphine base  
8 by a simple process. It's been reduced somewhat in size—  
9 apparently not in potency, and that is what's transported out  
10 of Turkey. Turkey may not have many facilities for turning it  
11 into heroin. It's smuggled out usually in trucks, but  
12 sometimes by ships to other parts of Europe. Truck beds you  
13 can hide this stuff. What we concluded was that we'd have to  
14 put up some money to get the Turks to grow wheat instead of  
15 the poppy and have strict controls on poppies that are grown.  
16 Some of it is used for medicinal purposes. A quota based on  
17 need would be useful. And you'd have to compensate the  
18 farmers for the change because they're going to make much less  
19 on their wheat field than before.

20 I did not participate in briefing the President in the  
21 White House, but the pictures I had taken were used to show  
22 close-ups as well as the fields. The United States did work  
23 out an agreement. The Turks were going to limit growing to  
24 certain areas and we'd pay farmers to grow wheat. Greece and

1 Turkey got into a fight about Cyprus a short time later with  
2 the U.S. in between. And that was the end of the poppy  
3 agreement.

4 We experienced temporary success. Turkey is not the main  
5 source of this drug; today it's the golden triangle in  
6 Southeast Asia, and, of course, Afghanistan.

7 Q. Once again I'm stunned by the similarities of some  
8 of your experiences to issues we're dealing with right now. A  
9 lot of what you just said you could completely transplant to  
10 Afghanistan where we're trying to eradicate the poppy fields  
11 and the production of heroin. It sounds great in theory, but  
12 what are you going to do for the farmer for whom that was his  
13 way of living? I think the opium production is now increasing  
14 because we haven't developed a viable alternative, whether  
15 it's wheat, whether it's subsidies or anything else. Is there  
16 anything that strikes you about what you've read or heard  
17 about the heroin production problem with Afghan farmers that  
18 you would comment on based upon your experience dealing with  
19 it in Turkey?

20 A. Well, of course, I've never been to Afghanistan.  
21 The closest I got was Iran. I've been to Iran. No, there's  
22 not much I can comment about. A couple of years later we're  
23 taking a package tour of Turkey, and the local guide starts  
24 talking about the poppy fields and how the American inspectors

1 were there--and on the agreement. I just listened. I didn't  
2 say anything.

3 Q. When did you visit Iran?

4 A. 1972 in the time of the Shah. European Command at  
5 that time included the Middle East. It doesn't anymore, but  
6 it did. It was technically a MAAG inspection of our unit in  
7 Tehran. I spent about 10 days there. Outside the main city of  
8 Tehran it's pretty primitive. There was a nice opera house,  
9 and a group of us decided we'd go to the opera. And I got  
10 somebody in the office to write out in Farsi, that's their  
11 language, directions for a taxi driver to go from our hotels  
12 to the opera. The hotel maitre de calls a taxi, we get in,  
13 show him the paper. And we ride around. We ride around. He  
14 stops, takes the paper, and shows it to three guys standing on  
15 the corner. Not one of them could read.

16 On the courthouse steps are typewriters with a guy  
17 standing there. They type letters for the people. You want  
18 to send a letter to somebody, your landlord, your wife, your  
19 girlfriend or whatever, they typed it, and you pay them a fee  
20 and. A tremendous number of people could not read and write.

21 We rent a car and driver. There were four couples. We  
22 went to Qom, a religious capital, maybe 60 miles south of  
23 Tehran. At noontime, we went into the best hotel in town.  
24 The hotel's restaurant would not serve us; you cannot dine



1 with women in public. We had to rent a room in the hotel and  
2 then get room service to bring the food up. So we're sitting  
3 on the bed, on the floor, the eight of us. Pretty primitive.

4 Q. If I could take you back because I've always thought  
5 that you have a very unique way of looking at issues and  
6 resolving problems. Almost invariably the solutions you come  
7 up with seem very obvious and straightforward, but yet, cannot  
8 be so obvious or somebody else would have come up with them  
9 before. And I think one example of that that we haven't  
10 discussed was, again, taking you back to when you were in  
11 Japan and during the Korean War and I believe it was Korean  
12 saboteurs.

13 A. Yes. The Korean War was going badly. This is now  
14 the fall of 1950. It started in June of 1950. American and  
15 South Korean forces getting pushed back, pushed back. They're  
16 down pretty far south. MacArthur has a bold plan to have an  
17 amphibious landing up in the north in the port area of Inchon.  
18 Now it's a very risky proposition because like the Bay of  
19 Fundy, tremendously high tides in Inchon. Time is extremely  
20 important. Many of his subordinate commanders advised against  
21 it, but MacArthur was adamant. And they went. It was a  
22 tremendous success. They had a good safe landing. They began  
23 to occupy areas in the north forcing the North Koreans to  
24 withdraw or get captured. So it was a great military success.

1 At the same time China is becoming active in the War, maybe  
2 not officially. American planes had been shot down somewhere  
3 near the border. The Chinese claim on their side of the  
4 border, we say not, it was on North Korea. The fact is they  
5 did have some American pilots as prisoners and were  
6 threatening to shoot them as spies.

7 I was handed a classified file. Told to study it  
8 carefully and make some written recommendations. What the  
9 file disclosed was that there was a North Korean spy ring  
10 operating in Japan which learned about the planned Inchon  
11 landings. We knew that they knew. General MacArthur has to  
12 make a decision. We knew how the ring operated. No  
13 subordinate was ever able to contact his superior. The low  
14 man on the totem pole could be contacted by his superior. The  
15 subordinate might be told, next Tuesday be feeding the pigeons  
16 at the monkey house in the zoo. If you have anything for me,  
17 have a magazine that you're reading. If you have nothing for  
18 me just feed the pigeons and I might just walk by. There was  
19 no way a subordinate could ever be tortured or otherwise  
20 forced to disclose much useful information about a superior  
21 because he just had occasional meetings and had no way of  
22 contacting. Our officials were convinced that it would be  
23 impossible for information about the Inchon landing to have

1 gotten up high enough for anybody who had any authority to do  
2 anything about it. So they went ahead with the invasion.

3 The next question is what do we do with the eight spies  
4 we got locked up? It's clearly spying. I thought of the  
5 German spies landing on the east coast of the United States in  
6 1942. Right? Military commission, death sentence--there's  
7 only one penalty for spying, that's the death penalty. I know  
8 the legal part, but I got a little conscience problem, am I  
9 going to start a series of tit-for-tat executions? If these  
10 guys are executed the American pilots are doomed. Are we  
11 going to play this tit-for-tat role? I sweated that one out  
12 for a while. My written report recommends charges for acts  
13 inimical to the security of the occupation, to wit: entering  
14 Japan illegally and remaining illegally without permission.  
15 Nothing about spying. A commission was appointed and a public  
16 trial. TV cameras were permitted before but not during the  
17 actual trials. I remember there was a little scuffle. They  
18 wanted to put name tags around each of their necks and have an  
19 MP behind each one. And the prisoners said no, only dogs have  
20 tags. They were all convicted of being illegal entrants  
21 against the security of the occupation, and sentenced to 10  
22 year terms. No mention was ever made publicly about the fact  
23 they were spies. I'm sure that a close observer would

1 probably conclude that there might be more to this than meets  
2 the eye. But it took care of that problem.

3 Q. What year was that? 1950-51?

4 A. Well, the invasion was the fall of '50. So it was  
5 sometime in '51.

6 Q. They were tried by a U.S. commission?

7 A. Yes, U.S. military commission.

8 Q. And you may have just said this, what was their  
9 sentence?

10 A. 10 years. That was the maximum that the commission  
11 could impose.

12 Q. And I apologize because I know I'm bouncing around.  
13 There are some issues we've talked about outside of here that  
14 I wanted to make sure we captured, and one of them  
15 particularly in light of the comments of some of the  
16 International Law faculty, if you could please repeat what you  
17 told me and the I Law faculty about how Field Manual 27-10 was  
18 developed.

19 A. Dick Baxter and I were JAGs in the Pentagon in '49.  
20 Dick was a genius—a little unusual. He would stand around the  
21 hall smoking cigarettes all day and about four o'clock in the  
22 afternoon decide it's time to do some work. He could do the  
23 work in an hour that the rest of us would spend all day  
24 fooling with.

1           Sometime after '49 when the United States ratified the  
2 Geneva Conventions, there was need for a manual. There had  
3 been some problems at some of the war crimes trials between  
4 the British versions of the '29 Geneva Conventions and U.S.  
5 versions of the '29 Conventions. It was decided to have one  
6 English version. Dick Baxter, this fellow I'm talking about,  
7 was appointed to represent the United States. He went to  
8 England and worked for about a six-month period with an  
9 internationally known International Law scholar, Hersch  
10 Lauterpacht. Working together, they came out with what is FM  
11 27-10. The U.S. version and the British version are identical.  
12 Dick Baxter later resigned. Stayed active in the reserves.  
13 And he used to give the people here a hard time on  
14 correspondence courses because he didn't always like the  
15 answer to some of the International Law matters. He began  
16 teaching at Harvard. He became the head of the American  
17 Society of International Law. He was the U.S. judge on the  
18 International Court of Justice. He and I kept in pretty close  
19 contact. One occasion while I was in Heidelberg sometime  
20 between '58 and '62, he was to come on active duty for two  
21 weeks. He contacted me and asked would it be possible to come  
22 to Heidelberg. I was able to arrange it and he was my deputy  
23 there for two weeks. I learned a lot from throwing  
24 hypotheticals at him in connection with issues that I was

1 working on. A couple of years later I ran into him in New  
2 York. We had a long lunch and talked about everything. A  
3 month later he was dead from some type of cancer. He was also  
4 helpful to me and some others who were interested in getting  
5 into academia.

6 Q. I don't know if you want to comment on what I  
7 understand is about 33 years of teaching law at Dickinson  
8 College in Carlisle, Pennsylvania?

9 A. I enjoyed it. My original plan was just to teach  
10 for five years after I retired. I had three kids in college  
11 and I knew I couldn't just live on the military pension. I  
12 found I liked teaching. They gave me tenure and five years  
13 suddenly became 10. It became 20. It became 30. And it  
14 ended up with 33.

15 Periodically I changed subjects. I didn't teach  
16 International Law too often. Most summers were spent teaching  
17 in Europe. In fact, I taught there this past summer even after  
18 I retired. Normally I taught comparative law, U.S. versus the  
19 code-Napoleon's version being in effect in the various  
20 European countries. Only the former English speaking colonies  
21 really use anything akin to common law. The others all go for  
22 codes.

23 Q. May we ask a couple questions just about  
24 teaching?

1           A.    Yes, okay.  You've got questions?

2           Q.    Yes.  I wanted to pin down when the date you left  
3 military service?

4           A.    November of '72.  And I started teaching at  
5 Dickinson September of '72.  How did I do that?  Well, it's  
6 like this, I had some friends who owed me some favors.  So  
7 they transferred me from Stuttgart to the Army War College.  
8 And we have a gentleman's understanding that I would work  
9 there, but I was going to retire in November.  And I would  
10 not, because of my seniority, ask for quarters on the base.  
11 That was part of the gentleman's agreement.  I had an option  
12 when you retire to collect accumulated leave pay in cash.  I  
13 did not want it in cash.  I wanted to remain on active duty to  
14 November in order to complete 30 years.  Over 33 years later  
15 that makes a difference.  So officially I'm assigned there.  
16 They would give me different projects, but only a couple of  
17 days work was needed because I had almost 60 days accrued  
18 leave.  So I got no cash for the terminal leave.  But I did  
19 extend it to November and then retired.  In the mean time  
20 around Labor Day, I started teaching at Dickinson.  And I  
21 lived in the guest house at Carlisle Barracks for the first  
22 maybe month or so until we had a house built.

23          Q.    Now you said you just finished teaching for about 33  
24 years at Dickinson and are now in an Emeritus status?

1           A.    Yes.

2           Q.    If you can even estimate, about how many times did  
3 you participate in the international program abroad over in  
4 Europe?

5           A.    Probably 15-maybe 20.  Some years I participated in  
6 both.  Faculty members with small kids really couldn't take  
7 advantage of that.  It would cost them an arm and a leg to  
8 haul their kids around.  And that's particularly true in the  
9 Capitals of Europe Program because we're busing from city to  
10 city, leaving at five o'clock in the morning and all that kind  
11 of stuff.  And imagine lugging diapers, etc.  So those with  
12 small kids, the wife would kill them if they're going to take  
13 off for a month.  Therefore, the competition for it was not  
14 the whole faculty-some of them just could not or would not or  
15 just had no interest.

16          Q.    Now I know from previous conversations that you  
17 would be teaching on some of these summer programs with some  
18 of our Supreme Court Justices?

19          A.    Yes.  For several years we have invited one of the  
20 U.S. Supreme Court Justices to be a lecturer for all or part  
21 of one of the programs.  And on two of the programs recently I  
22 think of at the moment, one was Ginsburg with us in Vienna,  
23 and the other was Scalia with us in Vienna.  The now deceased  
24 Chief Justice was with us, but I was not there at the time in



1   Strasbourg, France. Then there are a couple of Court of  
2   Appeals judges. One from the 3d Circuit who's sort of a pal  
3   of the professor at the law school who's in charge. They're  
4   two good Italian buddies.

5       I got to know Justice Scalia pretty well. Had lunch with  
6   him several days. Had dinner with him and his wife several  
7   evenings. I guess he and I are--well, we're both conservative.  
8   We're both Republican. So we got along. I'm sure there were  
9   others who didn't quite feel that way. We had one big  
10   farewell party where I sat next to his wife at the head table.  
11   We got along great. He would give a two-hour or maybe an hour  
12   and a half class everyday, entertained questions, and  
13   contributed quite a bit. Give some insight--not secrets, but  
14   insight as to how things are done procedurally amongst them.  
15   I learned that there isn't an awful lot of horse-trading  
16   between them. I wondered, if they say, I'm really interested  
17   in this. Can you support me? I got the impression that  
18   there's not much of that horse-trading.

19       How are the petitions for certiorari handled? Well, I  
20   found out from him that it's under the control of the Chief  
21   Justice. Each Monday he sends out a list of cases that he  
22   thinks cert should be considered. Any of the justices can add  
23   names to that list. Later in the week they vote. If four  
24   votes are in favor of it, certiorari is granted. If there's

1 not four votes, that's the end. But if you don't get on the  
2 list in the first place, you don't even get to the voting  
3 stage. So unless the Chief Justice or another Justice puts  
4 your name on the list you're wasting your money. And if your  
5 name is on the list it takes four votes to swing it.

6 Yes, as I say, a lot of the little things like that.

7 Q. In your long time at Dickinson, I know you were a  
8 very popular instructor.

9 A. Oh, yes.

10 Q. Would you describe any of the awards or recognition  
11 that you received during your time in Dickinson whether from  
12 students or faculty?

13 A. Pay raises. That's really it. They don't hand out  
14 faculty of the year or anything like that. You have an annual  
15 review from the Dean. And usually that letter includes a few  
16 praises and usually a pay raise of some kind. And that's  
17 about it. It might say I wonder if you'd be interested in  
18 teaching an additional subject or starting a different program  
19 because we have lots of clinics. We have a lot of teams--moot  
20 court teams in international law, admin law. In environmental  
21 law there are moot court teams all over the place. Would you  
22 be interested in coaching one of them? So that type of stuff.  
23 And occasionally by contract I was kept busy working on the  
24 side elsewhere. I don't like to spend a lot of time writing.

1 I would rather teach. Penn State has a branch in Harrisburg,  
2 which is 25 miles away, and they have a master of public  
3 administration degree. Every Thursday night for some time I  
4 taught over there. It was a three-hour seminar type approach.  
5 Also, I worked for the Public Utility Commission [PUC]. I did  
6 not seek that job. The Dean sort of talked me into it. I did  
7 a number of things there with students working for me. For  
8 several years we published PUC decisions. Students would do  
9 the initial screening and pick out cases. I think their  
10 secret formula was any case that had a written dissent would  
11 be selected for possible publication. But let's take an  
12 example. You could have a 1000 divorce cases, not one of them  
13 is worth publishing as a precedent. Do you get it? So we  
14 have hundreds of rate cases. Really not one of them is worth  
15 publishing. You have requests for licenses to operate  
16 taxicabs. Again, an awful lot of them are routinely approved.  
17 Why publish that? I did that for several years.

18 And then the Legislature passed a statute changing the  
19 system used by the PUC from having a referee to an  
20 administrative law judge. The referee was almost akin to a  
21 traffic cop. He would sit there and say, okay, you state your  
22 case and you state your case, and make a record, and he makes  
23 a recommendation. That's about it. Whereas, when they  
24 switched it over to an administrative law judge, the judge was

1 making rulings, admitting this, refusing that, so on and so  
2 forth, granting temporary relief and things like that. They  
3 needed entirely new procedures and by contract I wrote the  
4 procedures. Then I had to sell it to the commissioners and to  
5 the participants, too.

6 So, as I say, I kept busy with those types of activities.  
7 I was not interested in writing a bunch of stuff. I found  
8 when I did publish something, every law student who has to  
9 write on a subject wants to contact me by e-mail and obtain my  
10 views

11 Q. Now you had said there was something else or some  
12 other things that you wanted to talk about?

13 A. Yes, read my Bulls article. I was hoping that you  
14 might have glanced at it because I was going to ask you some  
15 questions as to can you draw any analogy between that and the  
16 situation in Iraq. Well, yes, what I'm about to disclose is  
17 that it's helpful and maybe essential to have the people on  
18 your side. If you can't get the people on your side you're  
19 not likely to be successful. And another one of my rules is  
20 you have to cut off the external source of supply. If there's  
21 an external source of supply it can go on forever. But if you  
22 can cut it off and you have moderate support from the people,  
23 you can win. But without those two things it's just going to  
24 drag on. You'll have another 100 years war on your hand.

1       What was the attitude of the people in Vietnam? About a  
2 month after I got there there was a three-day weekend—a  
3 holiday on the weekend. The office was open seven days a week  
4 from seven a.m. to seven p.m. The Vietnamese employees worked  
5 banker's hours five days a week, something like eight to five.  
6 And, of course, they had the three-day weekend. I would  
7 everyday walk through the offices. I'd stop. Smoke a  
8 cigarette. Talk to someone about anything. I asked a woman  
9 if she had gone anywhere over the holidays. And she said,  
10 yes, I went to so-and-so. I asked, where is it? She told me.  
11 I asked, how did you get there? She said, I went with my  
12 brother. He has a car. I said, oh, good. And being a bit of  
13 a wise guy I asked, did you see any Vietcong. She said, oh,  
14 yes. We stopped and paid our taxes. So she knew that that  
15 area had a Vietcong tax collector. And for her and her  
16 brother's safety she stopped and paid whatever the fee was.  
17 Come Christmas time I throw a little tea and cookie type party  
18 for everybody in the office. And a day or so later as I was  
19 walking through talking to one Vietnamese woman—a clerical  
20 type—she was not a lawyer like the other woman, I said, sorry  
21 you missed the party. She started to cry. I said, please,  
22 don't this was not a required affair. You were invited. Think  
23 nothing of it. She continues to cry. She said I have to tell  
24 you why I didn't come. My father and his brother operate a

1 sawmill on the edge of Saigon. They refused to pay Vietcong  
2 taxes. My uncle has been killed. And when you had the party,  
3 I had to go to the Vietcong and pay them \$10,000.00 in  
4 American money so my father would not be killed. That's why  
5 she missed my party. What is the loyalty and the attitude of  
6 the people?

7       How did the government operate? I alluded to the fact  
8 that I got along pretty well with the Minister of Justice.  
9 One night in Saigon there was some kind of a scuffle. Some  
10 shots were fired. Some screaming and yelling and an Air Force  
11 enlisted type grabs a pistol and runs down and gets into the  
12 fray, and he ends up shooting a Vietnamese policeman in the  
13 leg. He is grabbed and thrown into jail. The Chief of Staff  
14 tells me to get him out of jail. I go to the Minister of  
15 Justice and say I'd like to get the Sergeant. He said I don't  
16 know about that. Does Luan have him? I said, yes. About  
17 three years ago a news photographer died and the paper showed  
18 lots of his famous pictures. One of them is of a Vietnamese  
19 holding a pistol next to some guy's head. The picture is  
20 snapped just as the bullet hits his head and his hair stands  
21 straight up. It's an open-air execution by General Luan. When  
22 the Minister of Justice learns that Luan has him, he says I  
23 can't help you. You have to talk to the Minister of the  
24 Interior. Now Luan had the title, Provost Martial. He was

1 the head of the National Police, and he was the head of the  
2 Secret Police. Don't cross his path.

3 I go see the Minister of the Interior, who, in most of  
4 these countries, is in charge of the police. That's the  
5 standard practice. As soon as he heard what I want I thought  
6 he was going to have a heart attack. He said, I cannot do  
7 that. If I tell him to do it, he will not do it. You know  
8 him. Go to him as a friend. Have a drink with him. Talk to  
9 him. And ask him as a friend if you can have the sergeant?  
10 And he will say yes. But if I tell him to do it, he will not  
11 do it. Well, Luan was the last one in the world I would seek  
12 favors from. My only recourse is to report the thing to the  
13 Embassy. Ambassador Lodge has left and his replacement,  
14 Ellsowrth Bunker, is a very old experienced diplomat.  
15 Ambassador Bunker went to the President. As the meeting ended  
16 Ambassador Bunker said: tomorrow, Mr. President, I'll be back  
17 to file a protest. The President asks about the protest and  
18 is told about the shooting incident. The President said it  
19 won't be necessary for you to come back tomorrow. Luan turned  
20 the Sergeant loose.

21 So that's the type of government you're dealing with and  
22 the people in your own office. I was wondering whether any  
23 one of them had the task of keeping an eye on me and making  
24 periodic reports as to what I was doing. I mean, I wasn't

1 paranoid on the subject, but I was being very careful. And in  
2 a mild evening after having been cooped up all day, I would  
3 put on a sport shirt, get out of uniform and take a walk. I  
4 never routinely walked in the same places at the same time.  
5 So they can't report he walks along this street regularly in  
6 case anybody was out to get me.

7 Q. I want to take the opportunity to thank you. This  
8 has been a great experience for us. I know the JAG School was  
9 very excited about the opportunity to have you down here. 30  
10 years of service to our nation. Over 60 years of dedication  
11 to the rule of law. It's really been a privilege and we just  
12 wanted to thank you for taking the time and making the effort  
13 to come down.

14 A. Well, thank you. I enjoyed it. And as I mentioned  
15 to a couple of people, in thinking back I was able to tie some  
16 things together in a certain pattern that I wasn't aware of  
17 really at the time it went on. Now I did not go into great  
18 elaboration on that Dorothy Smith case. Remember we talked  
19 about it briefly this morning-about that Emma Cheeves case, I  
20 see a direct correlation in that. And I definitely was  
21 influenced by the fact that I thought that the decision to  
22 prohibit trials of civilians by court-martial was wrong, and  
23 the only viable option was foreign trials. So if you're  
24 worrying about the procedures permitted by the due process



1 clause, they're going to get more under a military trial than  
2 they are going to get at a foreign trial. Next would have  
3 been the O'Callahan versus Parker situation where my only role  
4 in the case was to write the portion of the brief dealing with  
5 the effect such a ruling would have on status of forces  
6 agreements. That if every offense by someone in uniform who  
7 meets the status of military commits an offense that's  
8 completely unrelated to the military they'd have to be tried  
9 by the foreign court because under our agreements if the  
10 offense violates both laws they both have the right to try,  
11 it's just a question of who has first priority. And if the  
12 United States is prohibited from exercising their priority  
13 because the incident was not service connected, the foreign  
14 government automatically has the primary right. And, again,  
15 what does the Supreme Court do? They legislate. They agreed  
16 with the Court of Appeals that you could not try the military  
17 for an unrelated to military offense in the United States.  
18 But overseas you could. Where did they find that in the  
19 Constitution? They legislate. And that's one thing that  
20 Scalia and I were agreeing on. That they do too much  
21 legislating. They don't say what the law is, they make the  
22 law.

23 Q. So you wrote part of O'Callahan vs Parker?

1           A.    Yes, and that was tried in '69. The spring of '69  
2 was the trial. I went to the Supreme Court for the hearing.  
3 And Solorio is the name of the case a couple of years later  
4 where they overturned O'Callahan. There were a lot of local  
5 prosecutors who weren't interested in trying the cases on or  
6 off the base unless it helped their career.

7           Q.    Interesting. Thank you so much, sir. We really  
8 appreciate it.

9           Q.    We look forward to memorializing your part in  
10 history here at the JAG School.

11          A.    Well, looking back all in all I figure I had a  
12 pretty good life. I have to say I had a good wife too because  
13 leaving suddenly as I've described with four kids, one of whom  
14 is the mother of your partner in crime, was a hardship for  
15 her, but she was able to cope. Some of the events were short,  
16 a month in the Dominican Republic-probably three weeks. But  
17 the one in Spain was almost the entire summer of '70. My  
18 mother had never been overseas. I finally convinced her to  
19 come over. She and a niece, my cousin, flew over to see me,  
20 her number one son. And, of course, I'm not there. I'm in  
21 Spain. But I did come home that weekend to spend at least two  
22 or three days with her.

23          I enjoyed the challenges that many of these things  
24 presented. And I have learned you're using tunnel vision if

1 you only look at something from the legal point of view. If  
2 the thing is important at all it could have some military  
3 aspects. It could have some political aspect. It could have  
4 some moral aspects. It could have some economic aspects. And  
5 if you base it entirely on just what the law says, your  
6 solution may not be a very good one. When I have different  
7 answers between the legal and the moral, I will tend to favor  
8 the moral approach. When the legal and the moral, like on  
9 abortion, lead me to the same answer then I'm really ready to  
10 proceed, no problem. And that's why I was willing to fight  
11 that thing tooth and nail as I described.

12 Q. I think while we're still on the record, sir, it  
13 would be important for you to describe the circumstances which  
14 warranted Major Jenks confinement in the D-Cell at Carlisle  
15 Barracks as a juvenile.

16 A. Well, he was only a juvenile in sheep's clothing.  
17 He was really a 90-year old man masquerading as a juvenile and  
18 acting like an infant.

19 Q. What offenses had he allegedly committed prior to  
20 the confinement?

21 A. I can't say any conduct worse than his normal  
22 because his normal was atrocious.

23 Q. Would you care to elaborate on what, if any, due  
24 process was afforded prior to incarceration?

1       A.   Eyewitnesses—all the eyewitnesses. And the most  
2   persuasive eyewitness was me. But your mother was always very  
3   protective even when you were sitting in a highchair, she  
4   wanted the highchair brought up right to the table so that you  
5   wouldn't have to throw things quite so far. I would push the  
6   highchair back a ways. But she thought that you had to be a  
7   participant. Well, at least it caused me to believe in  
8   miracles because I never thought he would survive to  
9   adolescence.

10       Q.   Thank you very much, sir.

11       A.   Thank you.

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**The oral history team from left to right: Major Jessica Golembiewski, COL (Ret) Ed Haughney, Major Chris Jenks, court reporter Library Conference Room, The Judge Advocate General's Legal Center and School, Charlottesville, VA. December 2005**





COL (Ret) Haughney in the 1950s



COL (Ret) Haughney in the 1990s





**COL (Ret) Ed Haughney marries Regina Smith on 15 May 1943**





**1964 Japanese Supreme Court visit to the U.S. Army's Office of the Judge Advocate General. Judge Advocates in the 2d row from left to right: Bob Williams, Bob McCaw, Charles Decker, Ken Hodson, and Ed Haughney**





**COL (Ret) Haughney visits The Judge Advocate General's Legal Center and School, Charlottesville, VA. December 2005**





**COL (Ret) Haughney with COL Greg Block, Dean of The Judge Advocate General's Legal Center and School, December 2005. Behind COLs Block and Haughney is a Navy cannon which was in front of the original JAG School in Charlottesville, VA.**





**COL (Ret) Haughney visits with the International Law faculty, The Judge Advocate General's Legal Center and School, Charlottesville, VA. 2 December 2005**





**COL (Ret) Haughney visits the Decker Room, which honors former The Judge Advocate General Ted Decker, during his December 2005 visit to the Judge Advocate General's Legal Center and School in Charlottesville, VA.**

# PRESIDENTIAL UNIT CITATION

An excerpt of War Department GENERAL ORDERS # 11 dated 30 January 1946 (PAR 20; as amended by GO#4, 7 February 1951):

"The 687th Field Artillery Battalion is cited for outstanding performance of duty in action against the enemy during the period 16-22 December 1944 in Luxembourg and Belgium. On 16 December 1944, the 687th Field Artillery Battalion, less Battery B, was reinforcing the 28th Infantry Division from positions south of Wiltz, Luxembourg. The enemy launched a strong attack early on the morning of 16 December which penetrated the infantry and surrounded the battalion. The battalion was heavily shelled. The howitzer crews, on 16 December, with great courage and determination fought off repeated enemy attacks against their positions. Battery B was returned to the battalion. It arrived and was emplaced on the night of 16 December 1944, having passed through enemy territory. Throughout 17 December 1944, Battery B placed a barrage around the positions of Battery A and C, enabling them to beat off a determined enemy attack and to displace to more advantageous positions. On the night of 17 December, The Battalion Headquarters and Battery B were surrounded but they broke out, made a night march through enemy territory, and went into position with Batteries A and C near Wiltz, Luxembourg, to support the defense of that city. All observation posts had been overrun and the personnel were missing. On 18 and 19 December, the battalion was the only artillery in the sector and, with outstanding initiative and admirable fortitude, supported the defense of the city of Wiltz. The supply lines were cut but the battalion trains fought through with ammunition and supplies. The batteries were in position in column and as the enemy attacked the first battery, it withdrew under the protecting fire of the remaining batteries. On the night of 19 December, the battalion succeeded in ~~disrupting~~ by placing the fire of Battery B within 25 yards of the remainder of the battalion. At 2200 that night the battalion was attacked on all sides and fought courageously for several hours. The battalion command post was captured and heavy casualties were suffered by both sides. On 20 December, the battalion fought its way to Bastogne and there reorganized. At 0200 on 21 December, Battery A was attacked from the south and by 0330 was engaged from all sides by machine guns, small arms, mortars, and grenades. At 0815, six enemy tanks encircled the position in the fog and attacked. The second section gun was destroyed after knocking out a tank at point blank range. After heavy fighting, the battery was overrun. The cannoneers withdrew only after dismantling their howitzers. The battalion then deployed four howitzers in antitank positions and defended them as riflemen against incessant attacks. The supported infantry withdrew at 2000 on 22 December 1944, and the three remaining howitzers in the battalion remained to cover the withdrawal, firing continuously for 45 minutes after all communications had been lost. In one 11-hour period, this 3-gun battery fired over 1,200 rounds against the enemy and was the only organized artillery in the sector. At 2300, the three remaining howitzers were withdrawn to a position south of Neufchateau, Belgium. The individual leadership, courage, valor, and tenacity of the personnel of the 687th Field Artillery Battalion, the success with which the battalion maintained its fighting efficiency in the face of superior odds, and its courageous stand are in keeping with the highest traditions of the armed forces. (General Orders 8, Headquarters 61st Field Artillery Brigade, 4 November 1945, as approved by the Commanding General, United States Army Forces, European Theater (Main).)



HEADQUARTERS  
IV CORPS UNITED STATES ARMY  
Office of the Commanding General

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GENERAL ORDERS )

NUMBER 214 )

Award of the Bronze Star Medal . . . . . I

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I. AWARD OF THE BRONZE STAR MEDAL - By direction of the president, under the provisions of AR 600-45, 22 September 1943, as amended, and Cir 6, Hq Third United States Army, dated 26 April 1944, the Bronze Star Medal is awarded to the following named individuals:

EDWARD W. HAUGHNEY, O-1170773, First Lieutenant, Field Artillery, Headquarters Battery, 687th Field Artillery Battalion, United States Army, for heroic achievement in action on 17 December 1944 in Luxembourg. When the enemy attacked his observation post in strong force, Lieutenant Haughney remained at his post directing fire with telling effect on the German forces until completely surrounded. He then aided in fighting off the enemy until ordered to withdraw, at which time he safely made his way through the enemy encirclement and reached friendly lines. His bravery and unswerving devotion to duty reflect the finest traditions of the military service. Entered Military service from New York.

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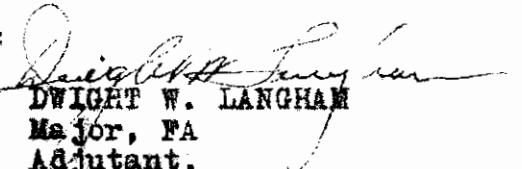
BY COMMAND OF MAJOR GENERAL ROBERTSON:

JOHN H. STOKES, JR  
Brigadier General, GSC,  
Chief of Staff

OFFICIAL:

/s/ P. H. Spivey  
/t/ P. H. SPIVEY  
Lt. Col. , A. G. D.  
Adjutant General.

A True Copy:

  
DWIGHT W. LANGHAM  
Major, FA  
Adjutant.

**ARE DOCTRINAL CHANGES NECESSARY?**

Course 4

Course 4:

Course 4 Individual Requirement

by

Colonel Edward W. Haughey

US Army War College  
Carlisle Barracks, Pennsylvania  
6 January 1966

## ARE DOCTRINAL CHANGES NECESSARY?

Bulls are big. Bulls are powerful. And bulls are brave. Yet in encounters with man, an adversary who is smaller and less powerful, bulls have been highly unsuccessful. Why?

For generations bulls have consistently adhered to a doctrine with such religious fervor and rigidity that any questioning is viewed as heresy. This would be understandable if adherence to this doctrine produced victories in all or in a majority of encounters with the foe. Unfortunately such is not the case.

Bulls can and have destroyed lions, the king of beasts, in mortal combat. No man, armed solely with a sword, is a match for a bull in the open unless he understands the strengths and weaknesses of the bull's unchanging doctrine.

Some ages ago bulls concluded that every red cape threatened their survival. In assessing their power position bulls logically concluded that their strength lay in their size, their straight ahead speed, their horns, and their willingness to employ this power against an enemy. This strategic appraisal led naturally to the development of tactics designed to take maximum advantage of their capabilities and insure victory.

The approach was simple, easily understood, and readily accepted by all rational bulls. Whenever and wherever the enemy was sighted the bull would lower his head and charge at breakneck speed. This tactic was successfully employed time and time again. Bulls also

believe that only by accepting every challenge could they demonstrate their determination. This determination, coupled with their great strength, would inhibit the enemy from issuing many challenges.

History does not record when man first came to the realization that bulls lacked flexibility. Bulls cannot distinguish between different hues of capes, they all look red. Bulls have no ability to assess which capes are serious threats to their survival and which are petty annoyances. Bulls cannot differentiate between the threat presented by the red cape and by the manipulator of the cape. Bulls are incapable of understanding that the greater the effort to destroy the cape, the weaker and more vulnerable they become. Bulls cannot ignore the challenge of the red cape for that would reflect adversely upon their honor. Finally confused, bleeding, and exhausted the hapless bull learns too late that his enemy is not the cape but the matador. His last thoughts, perhaps, dwell upon the folly of blind adherence to an inflexible doctrine which permits the enemy to choose the time, place, and method of combat, and to remain hidden until the moment of victory has arrived.

People, of course, are not bulls. Yet the similarity is amazing and bullheaded people do exist. The doctrine which won the last war is generally accepted as guaranteeing victory in the next. Only the vanquished need reassess their doctrine. The victor already possesses the magic formula for victory.

But circumstances and conditions change. Inevitably the day arrives when the doctrine fails to achieve the desired results. The

failure is attributed to faulty application of the doctrine. What is required is greater effort. The head should be kept down and the charge should be more vigorous if victory is to be achieved. Critics who suggest a reassessment of the doctrine are accused of creating dissention, thus giving aid and comfort to the enemy.

Does such a situation prevail in the United States today? Are we applying doctrinal concepts which are unsuited for the new environment?

Americans are pragmatists and realists. We accept new ideas, new hardware, and new techniques readily while retaining a sentimental attachment for the old ways of doing things. This creates a conflict when we seek to blend the best features of the old with the best features of the new. Too often no blending is achieved. We generally accept the new hardware and retain the old doctrine. This is not necessarily a workable combination. Doctrine may have to change as often as hardware and conditions change.

In World War I the United States fought to make the world safe for democracy. We were idealists who were convinced we could create a new and better world. The disclosure that some of our allies were fighting, not for democracy, but for spoils guaranteed by secret treaties, shattered our idealism. We were embittered and became skeptical. Our earlier doctrine of avoiding foreign entanglements, dormant for years, was readopted and given the new title, isolation. The League of Nations, although largely the creation of President Wilson, was rejected as was everything foreign.

In the period between the two great wars virtually nothing happening abroad was thought to affect the national interests of the United States. Japan annexed Manchuria. Mussolini invaded Ethiopia. Hitler initiated a campaign to conquer the world. Some American voices were raised in protest but for the country as a whole these affairs were foreign and thus of no concern to us. We were protected and isolated by two vast oceans.

On 7 December 1941 Japan proved conclusively the fallibility of our doctrine of isolation. We emerged from World War II, not only victorious, but as the world leader and sole possessor of the atomic bomb. The pendulum swung quickly to the other extreme. A world leader could neither live in isolation nor ignore any part of the world. Whereas formerly almost nothing abroad concerned us, we were now concerned with almost everything. Every solution to every problem was thought to require a "Made in the U.S.A." label.

The United States led in the creation of the United Nations which established its headquarters in the United States. We became a dues paying member of over five hundred international groups and associations. When the Soviet Union disclosed by words and deeds that she was renewing the struggle to spread communism throughout the world, we responded quickly by adopting the doctrine of collective security and concluding a series of interlocking military alliances with over forty nations. United States military personnel and bases were located throughout the world. Military and civilian

aid would strengthen non-Communist nations. Massive retaliation would protect them. Isolation and our fear of foreign entanglements were forgotten.

For a time it appeared that our policy of containment would be successful. Europe recovered, there was no widespread depression, the insurgency in Greece was overcome, and our two former enemies were becoming close friends.

But the Communists were active. They carefully analyzed our doctrines and implementing policies. Flaws were found which could be exploited. Like the bulls we lacked flexibility. We reacted rather than acted and our reactions could be anticipated with a fair degree of certainty.

Massive retaliation was found to be vulnerable. The Soviet Communists appear to have concluded that the United States would employ nuclear weapons only in the event of large scale overt aggression, and even then would be reluctant to do so. After Korea the Chinese Communists doubted that the United States would employ nuclear weapons under any circumstances.

Although recognizing that a miscalculation of United States intentions could be a fatal blunder, this discovery had considerable appeal for the Communists. By changing tactics the Communists could neutralize our stockpile of nuclear weapons. Further analysis of United States capabilities produced encouraging conclusions. When compared to the Communist world, one of our smallest and most precious resources is manpower. Could the Communists create

situations in which the United States would be required to forgo the use of nuclear weapons and at the same time pit limited manpower against their greatest strength? Could the situation also require the United States to maintain approximately a ten to one manpower ratio? Could the location be thousands of miles from the United States to maximize logistic problems? Could the terrain be such that sophisticated material and weapons would offer fewer advantages? Could the people involved and the nations of the world be led to believe that the United States was seeking to impose colonialism or neo-colonialism?

The Communists concluded that these questions were all susceptible to an affirmative answer. The solution was low intensity warfare in situations they called "Wars of National Liberation," which Chairman Khrushchev boldly announced early in 1961. The lessons learned in China, Malaya, Vietnam, Laos, and other insurgency operations enabled them to perfect their technique.

The United States, meanwhile, was becoming increasingly aware that even our closest allies did not share our view of the Communist threat. The United Kingdom, France, and Belgium, were surrendering their colonies. Many Western nations established diplomatic relations with Communist China and sought increased trade with the Communist bloc. The United States, however, would not and still has not faced up to the fact that the dream of collective security has become the victim of national self-interest.



Within the United States the doctrine of massive retaliation was examined and found to be wanting in low intensity warfare situations. A new panacea was found in the doctrine of flexible response.

But how flexible is this new doctrine? Can any doctrine be called flexible which commits the United States, in advance, to respond with whatever may be required to thwart every Communist threat? Flexible response implies a pledge of our national honor that any incursion beyond the present boundaries of the Communist world will be successfully resisted by the United States. This is noble, but is it wise?

Is it in our national interest to adhere to a doctrine which gives the enemy all the advantages of the initiative? What logic can justify permitting the enemy to choose the time and the place, to prepare the trap carefully, to waive a red cape, and to be assured that we will lower our head and charge into the ambush?

During 1965 the United States continued to maintain large military forces abroad to support current policies and commitments. In addition, new commitments were undertaken. The threat, real or imagined, of a Communist take-over in the Dominican Republic has been thwarted but no solution is in sight and periodic clashes continue. Having accepted the challenge the United States must now maintain military forces there and furnish substantial economic aid to an ineffective government for an indefinite period. Similar threats must be anticipated in Latin America and, unless there are doctrinal

changes, it can be expected that the United States will respond in a similar manner. Yet each success serves to increase our burden.

A far more serious situation prevails in Viet Nam. The 700 United States military advisors have swelled to 200,000. All branches of our armed forces are presently engaged in active combat. The geographic area has spread beyond South Viet Nam to North Viet Nam, the China Sea, parts of Laos, and possibly into Cambodia.

Vocal segments of the American public are critical of our involvement in Viet Nam. Doubt and confusion exists as to our objectives and the means employed to achieve them. There is, unfortunately, general agreement that we have not achieved what we have set out to accomplish.

If we escalated to prevent escalation, we were unsuccessful as the North Vietnamese have increased their involvement. If we bombed North Viet Nam to punish them, they have shown no remorse. If we increased our military forces to protect the South Vietnamese, such protection is lacking in most areas of the nation. If our efforts were directed to compelling negotiations, no negotiations have taken place or are scheduled. If we sought victory, the victory has eluded us.

At this writing no responsible government official claims that victory is in sight in Viet Nam or even that we have started to win. The most optimistic assertion is merely that we have stopped losing the war.

Our best efforts with modern equipment have been thwarted by an ill equipped foe who exists under primitive conditions. This is frustrating. When a bull is frustrated he lowers his head and charges harder. He cannot comprehend that a slow advance towards the matador would both conserve his strength and cause the foe to flee. The bull must achieve a quick victory by charging the cape.

Since our best efforts in Viet Nam have produced only a stalemate, will we pause to contemplate whether doctrinal changes are necessary or will we emulate the bulls and redouble our present efforts? Press dispatches report the 200,000 United States servicemen in Viet Nam will be increased to 400,000.

A United States defeat in Viet Nam is unthinkable yet a victory may be impossible. The key element is the loyalty of the people. Neither the Viet Cong nor the Government of the Republic of Viet Nam can succeed without the support of the people. The United States can assist Saigon in many ways. We can furnish massive aid. We can kill or capture the Viet Cong. We can limit the actions of North Viet Nam. We can occupy the country. But we cannot earn, for the Government of the Republic of Viet Nam, the loyalty of their own people.

In an important article published on 2 September 1965 to commemorate the anniversary of V-J Day, the Chinese Communist leader Lin Biao likened the United States to a "mad bull" in this revealing paragraph:

History has proved and will go on proving that people's war is the most effective weapon against U.S. imperialism

and its lackeys. All revolutionary people will learn to wage people's war against U.S. imperialism and its lackeys. They will take up arms, learn to fight battles and become skilled in waging people's war, though they have not done so before. U.S. imperialism, like a mad bull dashing from place to place, will finally be burned to ashes in the blazing fires of the people's wars it has provoked by its own actions.

However distasteful it may be, we must face up to the fact that the Communists have successfully neutralized our nuclear superiority with the Soviet concept of "Wars of National Liberation," and the Chinese "people's war," whereas we have not yet found an acceptable solution to this new challenge. Lessons have been learned from both successful and unsuccessful counterinsurgency operations, but insurgency takes many forms and when it becomes recognizable as such it is almost too late to defeat.

In Viet Nam the United States has made improvements in communication and mobility, but not in doctrine. Search and clear, pacification, and other techniques are being employed. But basically we are proceeding as we have always proceeded against an enemy--large ground forces supported by naval and air units. Once again we have accepted the new hardware and are attempting to apply the old doctrine to unique conditions. Can such efforts be successful against an elusive enemy?

Many suggestions have been forthcoming. The use of nuclear weapons, the destruction of Hanoi, the employment of gas, a halt in the aerial bombings, the blockade of North Viet Nam, the intercession of the United Nations, peace efforts by the Pope, the resumption of

the Geneva Conference, and repeated offers by the United States to negotiate, are all being tested or considered. But no new doctrine has been developed.

The Russian doctor and writer, Anton Chekhov, once noted that when a large variety of remedies were recommended for the same disease, it was a pretty sure sign that none of them were any good and that the disease was incurable. While we can hope that Chekhov's observation is inapplicable to Viet Nam, despite massive transfusions the patient has shown little sign of recovery.

We may in the end be compelled to conclude that whenever a government is so ineffectual, corrupt, or indifferent as to permit conditions to develop which produces a full scale insurgency operation, the time for United States concern has already passed.

EDWARD W. HAUGHNEY  
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