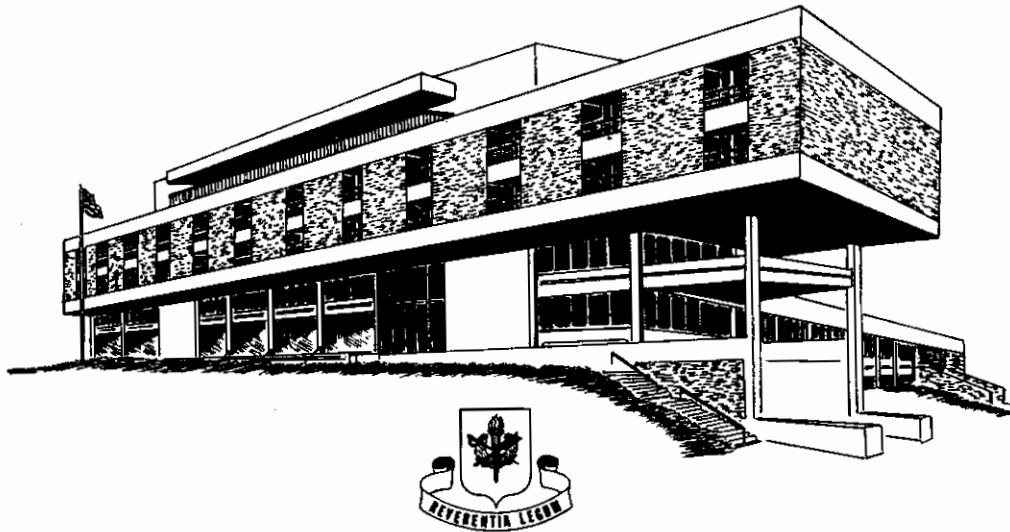


# An Oral History of

**MICHAEL NARDOTTI**  
MAJOR GENERAL (RETIRED)  
UNITED STATES ARMY (1969 - 1997)

The Judge Advocate General, United States Army



Interviewed by  
Major Kevin Boyle  
Major Michael McHugh  
48th Graduate Course  
May 2000

The Judge Advocate General's School  
United States Army  
Charlottesville, Virginia

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## TABLE OF CONTENTS

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|                               |     |
|-------------------------------|-----|
| Biography .....               | i   |
| Background Chronology .....   | iv  |
| Interview Plan Sequence ..... | vi  |
| Interview .....               | 1   |
| Index .....                   | 243 |

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**MAJOR GENERAL MICHAEL NARDOTTI**  
**UNITED STATES ARMY**

Major General (Retired) Michael Nardotti served as the Judge Advocate General from October 1993 through August 1997. While serving in that position he is often credited with developing the JAGC motto “Soldiers First”. However, that philosophy developed over a career spanning twenty-eight years.

MG (R) Nardotti was born in Brooklyn, New York on 30 April 1947. Shortly thereafter he moved to Long Island, New York and graduated from Uniondale High School. After graduation he became the first graduate of his high school to attend the United States Military Academy at West Point. Upon graduation in 1969, he received a Bachelor of Science Degree and was commissioned in the Infantry.

As an infantry officer, MG (R) Nardotti attended both the Infantry Officer Basic Course and the U.S. Army Ranger School at Fort Benning, Georgia. He then was assigned to the 5<sup>th</sup> Infantry Division (Mechanized), Fort Carson, Colorado, from February to August 1970. There he served as a reconnaissance platoon leader and headquarters company commander. In September 1970 he deployed to Vietnam and served as a rifle platoon leader with the 1<sup>st</sup> Squadron, 9<sup>th</sup> Cavalry, 1<sup>st</sup> Cavalry Division. He held this position until he was wounded in action in December 1970.

From December 1970 through May 1971, MG (R) Nardotti underwent extensive hospitalization and rehabilitation both in theater and at St Albans Naval Hospital. In May 1971 he was reassigned to West Point and served as a physical education instructor. In 1973 he entered Fordham Law School under the excess leave program. His first assignment as a judge advocate was in 1977 as a prosecutor and legal center officer-in-charge with the 3<sup>rd</sup> Armored Division in Germany.

Prior to his assignment in 1980 to Litigation Division, Office of the Judge Advocate General, MG (R) Nardotti attended the Judge Advocate Advanced Course. He remained at Litigation Division for five years and worked in both the Military Personnel Branch and the Torts Branch. While at Litigation Division he handled many of the Army's most complex cases to include defending the Army's Chaplains Program.

From 1985 through 1988 he served as the Staff Judge Advocate for the 1<sup>st</sup> Cavalry Division, Fort Hood, Texas. There he became one of the first Staff Judge Advocates to routinely send his judge advocates to all field exercises as well as on deployments. In 1988 he was reassigned to Fort Benning, Georgia and served as the Staff Judge Advocate for the U.S. Army Infantry Center until 1990. In 1990, MG (R) Nardotti attended the Army War College at Carlisle Barracks, Pennsylvania.

He then served briefly in the Contract Appeals Division, U.S. Army Legal Services Agency, before appointment and promotion to Brigadier General and assignment as the Assistant Judge Advocate General for Civil Law and Litigation. In October 1993 he was promoted to Major General and sworn in as The Judge Advocate General of the Army. While in that position he expanded the role of reserve component judge advocates and instilled his vision throughout the JAGC that judge advocates best serve their client, the Army, by understanding that they are soldiers first. He also successfully met several legal challenges to include the Aberdeen recruiting scandal, the courts-martial of the SGM of the Army, SGM Gene McKinney, and implementation of a new Homosexual Conduct Policy.

Following retirement in August 1997, MG (R) Nardotti entered the private practice of law. On 1 November 1997 he joined the law firm of Patton Bogg, L.L.P., in Washington, DC, as a partner. His practice areas include litigation, government contracts, and defense and national security policy.

MG (R) Nardotti's awards and decorations include the Distinguished Service Medal, Silver Star, Bronze Star, Purple Heart, Meritorious Service Medal with three Oak Leaf Clusters, Air Medal, and the Army Commendation Medal with "V" Device and Oak Leaf Cluster. He is also authorized to wear the Combat Infantryman's Badge, Parachutist's Badge, and Ranger Tab.

MG (R) Nardotti and his family, wife Susan, children Chris, Sarah, and Matthew, currently reside in Virginia and maintain close ties with the JAGC.

## **JUDGE ADVOCATE ORAL HISTORY PROGRAM**

### **BACKGROUND CHRONOLOGY**

SUBJECT: MG Michael Nardotti (USA Retired)

1. 1947: Born 30 April 1947 in Brooklyn, New York.
2. 1969: B.S., United States Military Academy at West Point.
3. 1969: Student, Infantry Officer Basic Course and Ranger School, Fort Benning, Georgia.
4. 1970: Reconnaissance Platoon Leader and Headquarters Company Commander, 5th Infantry Division (Mechanized), Fort Carson, Colorado.
5. 1970: Rifle Platoon Leader, 1st Squadron, 9th Cavalry, 1st Cavalry Division, U.S. Army Vietnam.
6. 1970-1971: Wounded in action in Vietnam; underwent extensive hospitalization and rehabilitation at Saint Albans Naval Hospital.
7. 1971: Assigned to West Point as Physical Education Instructor.
8. 1973: Entered Fordham Law School on Excess Leave Program.
9. 1976: Student, Judge Advocate Officer Basic Course, Charlottesville, Virginia.
10. 1977: Prosecutor and Legal Center Officer-in-Charge, 3d Armored Division, Germany.
11. 1979: Student, Judge Advocate Officer Advanced Course, Charlottesville, Virginia.
12. 1980-1985: Litigation Division, Military Personnel Branch and Torts Branch.
13. 1985-1988: Staff Judge Advocate, 1st Cavalry Division, Fort Hood, Texas.
14. 1988-1990: Staff Judge Advocate, U.S. Army Infantry Center, Fort Benning, Georgia.
15. 1990: National War College, Carlisle Barracks, Pennsylvania.
16. 1991-1993: Assistant Judge Advocate General for Civil Law and Litigation, Washington, D.C.
17. 1993-1997: The Judge Advocate General of the Army, Washington, D.C.

18. 1997: Retired from Active Duty in August 1997.
19. 1997: Joined the Law Firm of Patton Bogg, L.L.P., Washington, D.C., as a partner.

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|---|---|
| Researchers:                              | Major Kevin Boyle<br>Major Michael McHugh |
| Oral History Program Coordinator, TJAGSA: | Lieutenant Colonel Alan Cook              |
| Commandant, TJAGSA:                       | Colonel Calvin Lederer                    |



# JUDGE ADVOCATE ORAL HISTORY PROGRAM

## INTERVIEW PLAN SEQUENCE

Subject: MG Michael Nardotti (USA Retired)

Dates and Location of Interview: 15 Mar 00 and 31 Mar 00, Washington, DC.

### MAJOR SUBJECT AREAS

### DATE, LENGTH and LOCATION

- |  |                                  |
|--|----------------------------------|
| I. Pre-interview discussion                                  | 15 Mar 00, 30 minutes            |
| A. Oral History Program                                      | Law Firm Patton Boggs, Wash, DC. |
| B. Administrative Details                                    |                                  |
| II. Personal Background                                      | 15 Mar 00, 2.5 hours             |
| A. Early Education   | Law Firm Patton Boggs, Wash, DC  |
| B. West Point  |                                  |
| C. Infantry Officer Basic Course                             |                                  |
| D. Ranger School   |                                  |
| III. Military Service in Vietnam                             |                                  |
| IV. Early Judge Advocate Experience                          |                                  |
| A. 3rd Armored Division, Germany                             |                                  |
| B. Graduate Course   |                                  |
| C. Litigation Division                                       |                                  |
| V. Supervisory Judge Advocate Experience                     | 31 Mar 00, 9.5 hours             |
| A. SJA, 1 <sup>st</sup> Cav Div, Fort Hood, TX               | Law Firm Patton Boggs, Wash, DC  |
| B. SJA, U.S.A. Inf Center, Fort Benning GA                   |                                  |
| C. U.S. Army War College                                     |                                  |
| D. Contract Appeals Division                                 |                                  |
| VI. Service as a General Officer                             |                                  |
| A. The Assistant Judge Advocate for Civil Law and Litigation |                                  |
| B. The Judge Advocate General                                |                                  |
| 1. Relationship with other General Officers                  |                                  |
| 2. Philosophy as TJAG  |                                  |
| 3. Homosexual Conduct Policy                                 |                                  |
| 4. SGM McKinney Courts-Martial                               |                                  |
| 5. Aberdeen Scandal  |                                  |
| 6. Role of Reserve Judge Advocates                           |                                  |
| VII. Retirement  |                                  |
| A. Current Position  |                                  |
| B. Relationship with JAGC                                    |                                  |

Q. We'll start with your childhood and your education before you came into the Army. Where were you originally from?

A. I'm originally from New York. I was born in Brooklyn and grew up in Long Island. I left Brooklyn when I was about two years old. I started in Catholic school and then went into the public school system. I graduated from Uniondale High School, New York and lived in Hempstead which was the town right adjacent to it. My high school was about 2200 students. It had a heavy ethnic mix: Italian, Polish, Irish, and Jewish. The high school was about 22% African American. A very competitive area in terms of academic achievement and athletics. A good environment to grow up in.

Q. Were any members of your family in the military?

A. My dad served in World War II. I had several uncles who did the same. My dad served in the South Pacific. He was in the infantry but did a lot of things in the logistics area. He also was a musician. That was really the only contact that in terms of family that I had. No one in the family, either on my mother or my father's side, were career military.

Q. When he came back from World War II, is he one of the vets who got the housing bill to move out to Long Island which started the growth of Long Island?

A. He was one of the ones who took advantage of the GI loans that were so prevalent at that time.

Q. When did you decide to go to West Point?

A. When I was about in the 10<sup>th</sup> grade, as I was beginning to focus on what I was going to do, where I was going to go to school, I had just begun to develop an interest in the academies to see whether it would be an option for me. In my high school no one had ever gone to the military academy. We had numerous people go to the Naval Academy. We had six or eight people go to

the Naval Academy, including a lacrosse player named Jim Lewis who came to Navy and was an All-American in lacrosse and soccer. Our high school was known well enough at the Naval Academy and the recruiters – the coaches from the Naval Academy were frequently seen but the military academy – we didn't see too many folks around. In fact, the entire time that I was an athlete and when I really showed an interest in the academies, the Naval Academy coaches were around frequently, the Army coach was not. I always remember a trip that I took up to West Point with a group of varsity athletes. The athletic director who had been – I had known for years because he was a gym teacher, a phys ed teacher in my elementary school. He always demonstrated abilities that went well beyond being a physical education teacher. He became an administrator later on. We were taking the tour of West Point and touring all of the facilities and at one of the stops, as one of the Academy briefers was finishing talking, he said, "You know, I don't think you could ever make a mistake, coming to a place like this." I've always felt that way. I think I went into West Point with that thought that if you could make a career out of the military, that was fine. But with the kind of education that you could get there, education in ways that you don't find anyplace else, it would be a worthwhile experience no matter what. I actually – I guess I never really had any doubts about the quality of the education there. I've considered it on a par with the best schools in the country. Certainly the standards to get in were high enough, that was an indicator. My main concern was how was what about making the Army a career – was I really going to – was that something that would be right for me. What I did, it was obviously before I graduated – I guess about my junior year in high school – one of my older sisters – I guess I was a sophomore. This was fairly early on, it was when I was a sophomore because my older sister, who was a couple of years ahead of me had a friend whose brother graduated from West Point in 1957. When they knew that I was interested, the sister

said, "If you ever want to talk to my brother, please let me know." So I said "Well, I really would like to do that to find out what it's like being in the Army after you graduate from West Point." We made arrangements to meet. I went over and spent several hours with him, basically talking about what it was like – what Army life was like – and it sounded reasonable enough and sounded like a good opportunity.

Q. You mentioned recruiters for the Naval Academy looking at athletes. Were there recruiters from the sports program at West Point who tried to get you to go to West Point?

A. Actually, you know, no. I met the coach at West Point, but that was as a result my coach taking me up to West Point and meeting him. Actually, my wrestling coach was very good friends with the Naval Academy wrestling coach, Ed Perry, who retired a few years ago. He was there for maybe about thirty years. The first time I went to visit any school we went down to see one of his former students wrestling for Lehigh against Navy. That was the first time I met him. I was a sophomore at that time, and at the time there was a senior on the wrestling team who was being recruited, heavily recruited, by the Naval Academy. In fact, that was the first year that I met the Army wrestling coach on a trip that was really for the senior who wanted to go to one academy or the other.

Q. Did any other colleges try to recruit you for wrestling?

A. Yeah. Actually, I got a scholarship to Lehigh. I had a scholarship to Dartmouth although if I had gone to Dartmouth I don't think I would have wrestled. I would have probably played football because I figured I was small for a football player but I could have probably done it, played in the Ivy League. I couldn't have done it at a big school. The University of Pennsylvania – a coach from there came down to my school a couple of times.

Q. When did you decide on West Point over these other opportunities?

A. I think early on I had pretty much decided that if I could get into one of the service academies, I wanted to do that, although I wasn't foreclosing any options. It was interesting when I was talking to the Naval Academy folks that they knew I was interested in going to West Point. If I had gone to the Naval Academy, I probably would have gone to the Marines. I think I was – for some reason, that was my inclination. Not that I knew everything. I certainly didn't know a lot of things at that age, but I thought that's what I knew what I wanted to do and if I had gone to the Naval Academy, I would have done that. I thought it was interesting that the Naval Academy folks were selling their program in comparison to West Point as being in many respects easier. It wasn't as high stress as West Point! (laughing) My priority in terms of schools was – preference, let me put it that way – was the military academy, then the Naval Academy. I think probably since I was inclined toward engineering, I had a heavy math background, advanced math background in high school, I think I would have gone to Lehigh after that and then Dartmouth. What was interesting as I was going through this, Nassau County is a very competitive area. I was kind of following two tracks. You need a nomination to get in, of course, and I was pursuing the Naval Academy track with Senator Jacob Javitz from New York and the military academy with Congressman John Wideler. Pretty early on I got a second alternate appointment to the Naval Academy from Senator Javitz. Well, Congressman Wideler's policy was that if you had any kind of appointment to any of the service academies, he would drop you from consideration. So I was out of the running with his group, which was really my first choice. This is where the wrestling connection came in handy. Actually the West Point wrestling coach did come and see me compete in the state tournament in upstate New York. He was interested in getting me in and I was fully qualified, I met all the academic standards and went up there and took the tests and did all the things that you need to do to get in and they put

me in that group of people that's fully qualified to get in called qualified alternates. All you need is a nomination to get in. The Academy had a process, and they still do, they have changed the process somewhat in terms of how they handle selections from each Congressional district. At that time they were very helpful in finding out what appointments had not been used and inquiring with the Congressmen if they would be willing to appoint a qualified person. I wound up getting an appointment from Adam Clayton Powell in the 18<sup>th</sup> Congressional District of New York City, which was Harlem. Congressman Powell was one of a handful of I think four African-American Congressmen at that time. As I think I explained that at the last worldwide CLE that I spoke at, when we got to the issue of creating opportunity and seeking out qualified minorities and women, I said, "You never know where your opportunity is going to come from." As a high school – as an eighteen year old, seventeen year old high school kid, I had – I was oblivious to the larger considerations. All I understood is I worked very hard in high school, I had good grades, I participated in a lot of activities, I was in athletics, and I had all the qualifications. I just needed an opportunity.

Q. What was the reaction – you said you were the first in your school to go to West Point. What was the reaction of your classmates to your going into the Army? Was Long Island caught up in that "flower children" era back then?

A. Actually, we were ahead of that by a few years. If you were to go back and look at the – to answer your question, it was all very positive. Very positive from my fellow students and from the faculty at the school. The military, in particular the military academies, all of the service academies were held in very high regard at that time, and in fact what was going on in Vietnam at that time was still receiving public support. A lot of what you would read in the New York Times you would have to consider as very supportive of the effort in Vietnam. So that was

simply not an issue at the time that I went and it really didn't change a lot. I entered in July of '65 and I think when you – if you were to go down a historical timeline and you look at about early '68 around the time of the Tet offensive and then all of the tumultuous events of 1968 which is where things changed. Even at West Point we would go out on trips, wrestling trips, they would take some cadets to support the football team when they went out to different places. As things became more heated, as the debate became more heated, there was still a healthy respect for the military. I remember being invited to – after a game when we played Rutgers – to a fraternity party. That was probably early in my senior year so it was late 1968 and there was a lot of debate on college campuses about the wisdom of Vietnam. I had a very interesting discussion with folks at the fraternity over a few beers but there was never any hint of animosity toward people wearing the uniform. That came later in a different forum, but for me personally that was really not an issue before going and even after I returned home – we'll get to that a little bit later but I always was supported very well in the communities that I was in.

Q. When you were in high school thinking about going to West Point, you are seventeen years old. Did you think that you would be going to Vietnam upon graduation from West Point or was that too far in the future?

A. I went to the military academy with the full expectation that if Vietnam was still going on, that I would go.

Q. Was that something hanging over all your classmates' heads during the four years you were there and was there a different reaction among your classmates?

A. Yes. It was an interesting lesson in a lot of respects going to the military academy and being there at that particular point in time. Also as I grew up in the Army and learned more about different times, you find that there are a range of people who go to West Point for a range of

reasons. I went with the full expectation that I would go to Vietnam and it was because I assumed that your duty was to go where you were needed. There were plenty of my classmates who felt the same way but there were others who didn't. Not necessarily shirking their duties. One of my classmates told me whose father was a career officer, he said, I guess his advice from his dad is he doesn't need to volunteer because when they need you, they'll send you. They don't need to ask (laughs). I'm sure there were some people who were; to the extent they could influence things to avoid that duty, they would.

Q. Were they known on campus?

A. When the time comes to select your branch and you select your assignment, you know who's going where and there was some people – some of my very closest friends were getting married right after graduation. If I were getting married right after graduation I think I would have looked to go on to Europe and been comfortable with that because the assumption at that point was that the war was not going to end any time soon, that you could do a tour some place else and then you would wind up going to Vietnam. You would pay your dues sooner or later. I will say this – there was a fellow from my high school who shall remain nameless who went the year after me. After we graduated, we lost contact. The next time I ran into him was in Germany, 1978 time frame, and he had become a pilot. At this time in Germany, he was recovering from an automobile accident. He found out, he realized that I was a lawyer and he took the opportunity to complain a bit about the process that he was going through because he had been taken off flight status. I guess he kind of let his guard down during the discussion, because as he was talking, he said – I really can't believe he said this to me but he did – he said he went to West Point to avoid Vietnam, and he went to flight school to avoid Vietnam, and he came to Europe. There were people like that. I will say that and my impression is they were in the



distinct minority. When you look at the people who were there who served with distinction, with bravery, those who lost their lives – eighteen classmates of mine from West Point died in Vietnam. There was one group, a majority group but there were others that did not take that sense of duty in the same way. I remember a fellow that was the officer regimental commander at West Point. He was a full colonel and I worked very closely with him because I was the cadet regimental commander at this point. In some later discussions he mentions – he was class of 1949 so he went in July of '45, I guess. He said when the war ended, when it was really over, there were a bunch of resignations (laughs) so even at that time there was some of that. West Point is a place that I owe a lot to. I have respect for the institution. It is a place in which you can grow in many ways that you could not grow anywhere else, but it doesn't ensure that people who are qualified to get in and do get in always have the noblest intentions.

Q. What about when you would go home in the summers, – I know you don't get a full summer vacation, but your classmates from Uniondale who were going to traditional colleges or people from town and there's a chance that they were going to be going to Vietnam – how did that compare to the feeling at West Point?

A. I had – actually, some of my classmates – a fellow that I went through junior high and high school with who was the first person in my class who was a Vietnam casualty. He enlisted, went over. Several others saw some very intense fighting. A very close friend of mine was in the 173d Airborne Brigade, was a medic and was in some action that left a good part of his particular unit not entirely wiped out but close to it. These guys were doing that while I was at West Point. The sensing that I always had from the people that I visited in the limited summer breaks that I had was there was still a healthy respect for the military, a healthy respect for the military academy. They said they were very proud of the fact I was going. I just didn't get any negative

sense of that during that period of time. The first time I sensed some of that was after I came back, when I was wounded and came home. Some people were more critical, not of me, but of the people serving, but of the policy that the government was pursuing.

Q. Wasn't the guy from the movie "Born on the Fourth of July" also from Long Island? Was that around the same time-frame?

A. I think the high school was Massapequa.

Q. Right, it was about two towns away from you.

A. It was another one of the South Shore Athletic League teams (laughs) that we knew very well. Yeah, and as in all Hollywood productions, there is probably more entertainment, more of an entertainment factor than historical accuracy. I'm not saying that some of the – in terms of some of the events, the protest events – if that was what you wanted to do, if that's what you wanted to be involved in, there were opportunities to do that. In responding to your question about the environment that I was in, I didn't seek that out. I just was trying to get on with my life, just to continue. The people that I dealt with never indicated any bit of a negative attitude towards what I was doing or towards a career in the military.

Q. Up at West Point, aside from preparing yourself to go to West Point, were you involved in any activities?

A. Before going or at West Point?

Q. While you were a student at West Point?

A. I wrestled the entire time I was there. I learned that at the college level, if you're going to be in a collegiate sport, it's pretty much a year-round affair. That took up a lot of my time. I was a member of the honor committee, the cadet honor committee. I was a member of the Glee Club early on, I guess the first couple of years there, but I had to, given what was going on with

wrestling in terms of – and everyone’s dealing with the same academic load, so what you choose to take time-wise in participating with activities, you have to figure out where you’re going to make that up so you have to be very select about what you spend your time doing. Today it’s even more – I think the way the leadership development program has matured tremendously – but at that time, you had responsibilities as a cadet once you got past the first year. I think now they designate the third year – the sophomore cadets, the second year cadets as team leaders – but even at the time that I was a cadet, you had some responsibility. You were not a squad leader. You were not in charge of eight or ten or twelve people, but you had some responsibility to mentor the plebes and the roommate that I had at the time, and I took that very seriously. We were given some tasks by our squad leader to help train on some military subjects some of the new plebes. When I became a junior I was a squad leader and took that very seriously, even to the point of – we had to write up a squad book every night, how everybody was doing, and my company commander, a senior, was concerned that my assessments were so in-depth and elaborate that maybe I was taking too much time from my academics (laughs) but I assure you I was not in any academic trouble! Then, as a first classman, I became – you really don’t become a member, an active member of the honor committee until you become a senior in terms of being a voting member the way the committee worked at that time, actively investigating cases and voting on cases, but in the sophomore year, your classmates decide who was going to represent your company from your class and I was selected that year to start learning the process and taking part in it. As a junior, you become even more involved, and then as a senior, I was one of the honor committee officers. I was secretary of the honor committee. That has some administrative duties with it. Of course, one is that you have to attend all the full hearings. That took a lot of time because it was very important. After that, wrestling, and then I was a cadet

regimental commander so I was one of the – at the time, they had ten permanent cadet captains.

They don't have colonels and generals – cadet captain is the highest rank you have. They picked ten of them that hold that rank all year. Everyone else – all of the other seniors would rotate – at least this is the way it worked at the time – they would rotate positions, and you might be a captain for one detail or three details. A second one, you'd kind of get a break and the third detail, you might perform the same function but I was one of the permanent captains so I had responsibility as a cadet regimental commander – the first regiment of the Corps of Cadets for the entire year. So I had a full plate.

Q. I guess you probably took some military justice classes at West Point?

A. At the time the training in law – the education in law – was two full semesters. You spent one semester on constitutional law and then one semester on military law. There were – there may have been a few electives, but not much. The academics system at the time I went to West Point – as I mentioned, I had a very solid math background, and I was really inclined to go into engineering. That is where I thought my interests would be. I even took Russian language. The people who were advising me in high school said, well, if you're really going to get into engineering and math, German and Russian are probably things that you would want to do. I had taken four years of French in high school. That would have been easy to do, French at the academy, after that, but I decided to do Russian. The curriculum at that time – everybody was an engineer. Basically you had a very, very substantial number of hours. I think the academic hours were 155 or 160 – and when you threw in the military, the tactics courses and physical education, your total hours would be about 172 hours, something like that. So you really had a very full plate. But you took all degrees of math, chemistry, physics, ordnance engineering, mechanical engineering, civil engineering, mechanics of fluids, mechanics of solids, all that

stuff, and you didn't have the areas of concentration that they have today, which I think was the right way to go. They don't need that many engineers in the Army, and I've never understood, other than the discipline that you develop in going through that kind of academic environment, the actual utility of it down the road – I think they recognized later that you're not maximizing what you can get out of the individuals. Allowing cadets to go into the arts and humanities would serve the Army's interest more than sticking with the traditional engineering program. You look at the history of the Academy, it was originally an engineering school. It was meeting a specific need. When the Corps became so much more – I was there at a time when it expanded. It had been traditionally about 2500. The Air Force Academy and the military academy were at 2500. The Naval Academy, and don't ask me why there was this difference, because the numbers would have dictated otherwise, but the Naval Academy was authorized 4400. About the time that I went in, Congress leveled the playing field for all the academies, so the military academy was expanding up to 4400. I think it was close to 3800 or 4000 by the time I graduated, but it was still on the way up. Classes were getting a lot larger. I came in with twelve or thirteen hundred. 800 graduated. The classes after that were graduating 900 - 1000. When your numbers get to that stage, you've got to reevaluate what you're doing, how you're developing and growing the product that you're sending out as officers.

Q. While you were on the honor committee, did you have any interactions with judge advocates? Did they have one which worked with the honor committee?

A. No. The system was entirely different than it is now in the sense that the honor committee was supposed to be a cadet organization. And in truth, the results were not driven by the officer chain of command. Information about violations, if they didn't come from cadet reports, if they came – suppose it was a case of academic cheating. It would have come up through the

academic departments, to the Commandant of Cadets, and then given to the chairman of the honor committee to investigate and do what it thought was necessary. It was up to the committee to investigate it. If there was enough there to take it to a subcommittee – there were several levels but if you investigated and you found sufficient evidence that a cadet had lied, cheated, or stolen, or tolerated somebody, then you would put them before a hearing. You would pick twelve people to sit on, to vote – the chairman would preside, he would vote. As the secretary I would not vote because I sat on just about every case. Either the chairman or vice chairman would preside. Basically you would vote. It had to be unanimous. To the extent we understood it, it was proof beyond a reasonable doubt – I mean, we didn't get into preponderance or substantial – it was proof beyond a reasonable doubt. If the committee found that a cadet had committed an honor violation, it would advise the cadet of that and the cadet would have two options. They could resign in which case they would leave the academy and there would be no indication on their record of the circumstances of their departure. It would simply be, "cadet resigned". If they chose to fight the committee's decision, they would then select an officer board. This is where the judge advocate participation – then you would have what you know now as a 15-6 would be followed and the hearing pursuant, in accordance with 15-6 and they would have representation for the cadet. You'd have a recorder for the government, a prosecutor – I hate to call them prosecutors – but a recorder, a government representative. The cadet would be represented by counsel, and they'd have an officer board. The finding of the officer board would determine in truth what would happen to the cadet. Now, at the time that I was there, in the four years that I was there, there was no instance where a cadet who was found by the committee to have committed a violation did not resign. The alternative – because if they decided to stay, this is where what they called "the silence" was imposed that, in other words, if

a cadet found guilty by the committee elected to stay, basically the rest of the Corps would not deal with that person. That made news several years later when a – in fact, I was there about the time that this happened. I had come back to the military academy and they had a case where a cadet decided to fight that, to fight the committee's decision. He really was – came out favorably in the officer board because of a technicality. It was described as a command influence issue, and it had the appearance of that, but I knew the people who were involved and I – for what it's worth, I would have great confidence that it really had no impact. In fact, the evidence was very compelling. It was a case of academic cheating. It was a pretty rock-solid case but that cadet stayed. He lasted four years and he was on the front page of the New York Times when he graduated with a full story.

Q. How many cases did you have during those four years where somebody was found – a violation?

A. Well, as a sophomore and as a junior I didn't attend every case – you were not permitted to. As a senior, over the course of the academic year, if you figure that's about nine months – I don't know how many cases we actually investigated. I think we actually went to hearings in maybe ten or twelve cases. Some hearings were longer than others. That's a lot to throw on the shoulders of cadets. I mean, you think at the time that you're able to handle it and you do your best and you don't shirk the responsibility. You learn through life experience that so few things are as final as what we were doing in those days. I know people who left under those circumstances. They got on with their lives and they did just fine, but in virtually every other circumstance, even with serious criminal activity, you've got an opportunity to come back if you like. What you wrestled with in those days is that either you adhere to the code or you don't. What we would find particularly painful is that under the system in those days, if someone

turned themselves in for committing a violation, you really had no option, and there should have been. On reflection, there clearly should have been, because to have somebody who knows that the price of their integrity – of being totally honest – is going to be that they are going to have to leave. That's almost the ideal situation of what you are looking to develop in a honor system.

Q. People actually turned themselves in?

A. Yeah. I mean, not a whole lot, but there were some who did. There were times at West Point, and again, you learn this as you reflect back on life and look back on those experiences after the light of having been in the Army and experienced life for a while. I look back on certain of those things and it's not all pleasant memories. I think that to the extent that the cadets were told in those days the integrity of the Corps is on your shoulders and the foundation of the integrity for the Army is in the officer corps and flows from what you do here. That was taught or explained in various forums and while I certainly agree that integrity is the bedrock, to try to imply that that's on the shoulders of seventeen and eighteen and nineteen year-olds is wrong. I will explain a little more about that later because I'm sure you will want to get into a little bit about my experience when I went back to West Point. But there are some tie-ins for that that I think would be interesting.

Q. In your senior year is when you choose your branch?

A. Yes.

Q. So did you have any doubt that you wanted to go in the infantry?

A. No. I was – we had gone through all of the training. You start your first summer there as a new cadet, as a plebe, basic training. The next summer is roughly the equivalent of AIT and I enjoyed the infantry aspect of that. I don't think that in our artillery training we fired any rounds up into the picnic area at Bear Mountain, but I can't guarantee that. The summer before your



senior year up there, at least in those days, you'd make a tour of the major installations, all of the schools. So you would go to the armor center, the infantry school, and the field artillery school. You got the whole grand tour but I was – I knew where I wanted to go and my classmates knew as well. I had the choice of all the branches and I chose infantry. I had a lot of classmates that I have a world of respect for went armor – and armor that year did very well. Interestingly, I think the last branch selection, just this past year at West Point, they actually used up all the infantry slots that they had. There were people who wanted to go infantry who could not. I guess I was really sold on the philosophy that the fundamental in combat is the individual fighting man and all the other functions are there to support what the infantry essentially does. I think there's a lot of truth to that. When you talk about putting troops on the ground in a combat situation, what is it they are trying to support? Essentially what the infantry soldier – the mission of the infantry soldier. So I think – I'd like to think – I understood that, but of course that was in the mind of a 22 year old. I knew what I wanted to do and I selected the infantry. Several months later we got to select our branches, our assignments, and I picked the 1<sup>st</sup> Cavalry Division, volunteered for Vietnam. What I didn't understand at that time was – this was about in February of 1969, a few months before graduation, and in those days when you graduated you had 60 days leave. It kind of made up for the short summers. They don't do that any more. I think it's now 30 days leave, but they gave you 60 days, and then you would go to your schools. I was going to go to the airborne, Ranger, and then infantry officer basic, and then off to an assignment. In those days, because of the shortcomings they saw in lieutenants in infantry positions in Vietnam, the Army adopted as a policy that new lieutenants who were going to infantry assignments had to have an interim assignment in the States before they went to Vietnam. That's really the reason I went to Fort Carson. I went to Fort Carson, there were a number of other folks went to – a bunch of my

classmates, and a bunch went to Fort Bragg, but if you were infantry, you would go to that interim assignment. They said it was going to be four months and that could get extended, but that was the purpose of that. The irony of that was some of our classmates who went air defense artillery, who chose to go into Ranger school and in those days you could – if you were a West Point graduate and you wanted to go to all those schools whether you were infantry or not, you could go, which was wise, because in Vietnam, you never knew what you were going to do. What surprised some of my air defense classmates is they went through Ranger training and they went to their air defense training and then they went to Vietnam and they were assigned as infantry platoon leaders (laughter). But they didn't get the – the rule didn't apply, the policy didn't apply because the decision makers assumed that we don't have to worry about the field artillery men and the air defense artillery because they weren't going to those assignments, but the needs in the Southeastern Asian theater overcame.

Q. When you were at West Point and going through all those schools, did law school ever cross your mind?

A. No, as a matter of fact, I had – one thing that I did understand at the time that I graduated was that the only education that the Army would not pay for – advanced education – was law school. In order to encourage cadets to be thinking about a career and to understand what their options were, they would talk very freely about – and you saw this from the faculty that was up there – they were people who had gone out to their initial assignments, been platoon leaders, company commanders. Just about everyone had been to Vietnam. They had also been to Europe. Then they had come back for a tour and what would happen – after about five years of having done that, they would go back to graduate school, get their advanced degree, and then come back and teach. Some of that was – I think they would do that and then from their teaching assignment

they would go to CGSC and off to the next level. You had people in all academic disciplines, the hard sciences, math, social sciences. They all went to school, though, on the government's dime. The lawyers – there wasn't a similar program.

Q. There was no FLEP program?

A. No. Now, they were talking about it because at the time, and I didn't really understand this until later – the JAG Corps was in fairly dire straits in terms of retention. Actually, General Suter, when they complete his oral history, he's an interesting one – I'm sure he will talk about this – he used to say at some of his – because he was thoroughly familiar with personnel. He had worked in PP&TO several times. He was very familiar with what was going on at the time, and I think he said in the mid to early 70's, there were about 75 majors in the JAG Corps. I think he talked about this. He came to an Article 6 visit when I was at Fort Benning and was talking about that in 1975 – that there were 75 majors and then twenty, fifteen years later there were about 375. Things had just turned around dramatically, but the JAG Corps was dealing with a very serious retention problem. I don't know what they were retaining. It was very low, five to ten percent is what they were actually retaining. When you went around the JAG Corps, you saw senior people, many of whom were World War II veterans who were kind of reaching the end of their career or later and then the new captains who would come in, most of whom were going to go off and do other things and were not going to stay in the JAG Corps. To grow up the career force was something they were desperately trying to do. One of the things that they – one of the reasons, one of the justifications for the FLEP program was to encourage that, to fund officers with some experience to go to law school. Then they would have enough of a commitment where you kind of get them in stages. If they are in long enough that they have had some – two to four, I guess it is two to six years was the window – if you have some amount of

service there, plus you had law school and then the commitment after that, you have put a substantial investment in and you are more likely to keep people after that. It was either – at the time they were arguing about two things. There were efforts – I shouldn't say arguing – there were efforts in two directions. One was the funded legal education program, and the other was professional pay, because the doctors had professional pay. That was the way that you kept – at least, it was argued at the time – that you could keep a career force or build a career force. I don't know all of the inside arguments. Obviously the professional pay argument didn't go very far –

Q. People still argue that today –

A. But the funded program was the measure that helped significantly. I didn't start under that program. That was the other thing – my thought was in understanding how this worked, if you were going to go to school and incur an obligation, it's no problem doing that if the government's paying for your school. To do that and not – really not be on the same par. I knew about the excess leave program. I knew that you could go to law school, but you wouldn't get paid for it and you would have to pay for your own school bills. As a cadet, I said, "Why would you want to do that?" In fact, when I was – at the time when I graduated, I had taken four years in Russian language and history. It was probably enough for a minor in Russian, what I took. I had developed a deep interest in that. In fact, one of the summers – one of the training opportunities I had was to go to the Russian institute at the Army's Russian school, and that looked very attractive. That program would put you into grad school for a degree in international relations and Russian studies. You'd spend a year to two years in Garmisch. That would be worth the price of admission, basically becoming thoroughly fluent in Russian language. Then you would go out every other tour. What they would do is every other tour

would be a utilization tour. It was principally, I think, in intelligence assignments. That looked very attractive to me. I really didn't begin to give law school some thought until after I graduated.

Q. You said you had this developmental assignment because it was the policy. What kind of development did it provide?

A. In truth, not much. Well, not much in the sense of the operational perspective because the mission for the units for the 5<sup>th</sup> Division at the time was not Southeast Asia. You were preparing for the conventional Warsaw Pact warfare. You were not preparing for the kind of environment that we were engaged in South Vietnam. I went from – as I explained, I went through the school system, so I went through airborne, Ranger, and infantry officer basic, which was a bad rotation. After you have been through airborne and Ranger, to then go through the type of infantry officer basic course that we had at the time where you went out on squad drills with different colored helmets, a squad leader and team leader – that was not well received by the class of successful Ranger graduates. Our class was counseled very heavily by the leadership about our attitudes at the time. Let me just back up, the training environment at Fort Carson was really, I would have to say, a disaster for two things – one big thing, was money. At that point in time so much was being poured into Vietnam that the rest of the – to support the effort in Vietnam – that money to go around the rest of the Army, to do the things that you needed to do to keep your troops ready, was just not there. I got there in February, and the first time we got to go to the field was in July. At the time the Army was still in the mode of what was known at the time as CMMI – command maintenance management inspections, which were truly “gotcha” events. They would come in – the inspectors would come in, take a look at your vehicles, and they would give you passing or failing grades and if the tail lights were out, you'd get a failing – I mean, some very miniscule,

seemingly inconsequential shortcomings would mean success or failure. For company commanders at the time, it was a big deal. If you failed one of those major inspections, it was reflected in your evaluation. It was considered a significant failure. When I got there in February, they were getting ready for one of those. I went to a headquarters company to be the recon platoon leader, and after a few months – I was only there six months – and my company commander was tapped to go to Vietnam a second time. One of the lieutenants who had been there about a year who would have been the logical choice upon this captain's departure to be the next commander – he was tapped for Vietnam as well. There was a significant shortage of captains – experienced captains – coming in so I wound up being the company commander. I was – by the time I actually took command, I was a first lieutenant. The only reason – in fact, the company commander called me in and he said, "Congratulations! You're going to be the new company commander." I was, you know, pretty happy about that, proud of myself, but he said, "Before you get too big a head, you just understand one thing – the only reason you're getting this opportunity is we have enough experienced NCOs in this organization to keep you out of trouble." What he meant by that was the First Sergeant – First Sergeant Ellery – had 26 years in the Army. I was 22 – 23 years old at the time, but Ellery was 26 years in the Army, a veteran of World War II, Korea, and Vietnam. Most of the NCOs in the company – this is a headquarters company, a very large organization – over 200, 250 troops, about 90 vehicles, millions of dollars worth of equipment, but very solid, solid experience in the NCO ranks. In truth, that's what kept it steady. As happy as I was, and as happy as we all were in those days to go from second lieutenant to first lieutenant and then to captain in two years – we made captain in two years – and then we got stuck at captain because of the way promotions were run – I knew this at the time. We were moving too fast. You really need about four years as a lieutenant to

make mistakes, to learn, to lean on some NCOs, to have the opportunity for NCO's to be able to tell you, "No, lieutenant, this is the way you do it" or "This is the way you should approach that problem." Just to observe – just to watch other leaders and learn. I was a year out of West Point – here I was commanding a company. I had to sign for millions of dollars worth of equipment. There was a significant shortfall. The supply sergeant, under the watchful eye of his First Sergeant – I wound up signing for everything so that the old commander could go, but basically they were able to square things away. That part of the Fort Carson experience was worth it. Also, we got out there about the same time that General Bernie Rogers, who retired several years ago as a four-star – it was more than several years ago – he was the SACEUR – he was the Commandant of Cadets when I was at West Point. He was there almost three years – just about a full three years. He and his wife Ann always felt that the class of '69 were his cadets. He went up to be the division commander at Fort Carson about the time we arrived, and thank God, because he was really a forward-thinking person. He began the shift on this mentality on CMMIs. He encouraged commanders. He said, "What's important is, can you do your mission with your vehicles? If you come in and there's mud on the road wheels, so what? In fact, he said the better indicator of how good you are as a commander is, did you get out to the field and get all your vehicles back in and all your troops back in safely? That's a better indicator of how good your maintenance is than when somebody goes through the motor pool." I said before that it was – described it as a disaster. We were not able – we were not permitted to take our vehicles up until July because of fuel shortages. We could not take vehicles out of the motor pool for any distance. Basically we tried to maintain vehicles by starting them up every day. It was kind of a single-track strip behind the motor pool where you were permitted once a week to take each of the vehicles out and run them up and down and try to keep things circulating so you wouldn't

blow the seals. It was a disastrous way to try to maintain vehicles. Actually, it showed. We went out to the field in July. A number of the vehicles couldn't take it. Fortunately, nobody was hurt. We had a couple of breakdowns out there that could have been real disasters. I keep using that word – disasters. It was not a very pleasant situation. In that respect, it was not worthwhile in – it didn't prepare me operationally. The best training that I had in preparation to go to Vietnam was my Ranger training. The troops I had understood that, even though I was the new guy because there weren't too many people who had been through it. It wasn't like today where they have the Ranger units. The theory in those days was they would train officers primarily – they would have NCOs who would be trained as well – but more officers and your responsibility when you got to the unit was to basically pass on the benefit of the Ranger training that you had received in the training to your units. There was wisdom in that philosophy but depending on where you went, what the resources were and what your opportunities were, it would be pretty difficult to implement. In my situation going from that training to a mechanized infantry unit didn't necessarily lend itself to that kind of transition. It certainly did when I went to Vietnam.

Q. When you went to Vietnam, did you go with the platoon you had been training with at Carson?

A. No. They didn't deploy the units. Early on in the war, when they were sending units – when they were sending divisions over or units – some went with the units they had trained with. After that, it was done on an individual basis. That was one of the shortcomings of that. In hindsight, one of the real challenges of that war because you were sending individual replacements in on a massive basis. I suppose it was part of the effort to try to make what looked like a long – what was a long-term commitment more palatable. You were going to send people in there and they used to use the figure – it was thirteen months because if you went over by boat



you spent a month on the boat and you had to spend a year in county. Basically, you go over and you're stepping into a situation where – and you're seeing this on a regular basis, this continuous rotation of new people in – and it's not a situation that's the most conducive to unit cohesion, developing unit cohesion.

Q. How did you meet that challenge when you get there? You get this platoon, and now you're their leader. How did you create first trust – have them trust you and also unit cohesion?

A. This was interesting because the unit that I went to was B Troop, 1<sup>st</sup> Squadron, 9<sup>th</sup> Cavalry of the 1<sup>st</sup> Cavalry Division. I was in the division rear. Notwithstanding the fact that I had selected the 1<sup>st</sup> Cavalry Division as a cadet because it occurred to me later that this was kind of (laughs) an illusion that we were all operating under that somehow we could select our assignments when we were almost two years away from being in theater. There was a nice twist to that at the academy but nobody sat us down and said, "By the way, things could change. A lot could change between now and the time you go to the unit." As it turned out, I wound up going – had the opportunity to go there, and someone who was on the staff of the 1<sup>st</sup> Cavalry Division was one of the officers assigned at West Point when I was there. He was a tactical officer. He saw my name float through so he contacted me in the rear. He said, "Would you like to go to be the Blue platoon leader for 1<sup>st</sup> of the 9<sup>th</sup>?" I want to be a platoon leader – Blue, Red, whatever you want to call it, I'll go. I really didn't fully appreciate what they called the blues did. He said, "Okay. That's going to be your job." Over the next day or so, when people would ask, "Where are you going?", I said, "I'm going to 1<sup>st</sup> Cav to be a blue platoon leader," and they would kind of go (makes the Sign of the Cross) – one of these. Apparently the mortality rate of my predecessors was not very good. Or at least there was a series of people who held that job who didn't – who weren't in the job too long before they were carried out on a stretcher. To answer

your question directly, “How did I deal with it?”, well, I wasn’t sure how I was going to deal with it. I knew that I was going to be – one of the problems that I would have in that situation is if you have never been to Vietnam, and you go into a unit and everybody else has been there at least one day longer, you’re the new guy. Basically, the conclusion I came to was all you can do is do the best based on the training you’ve got. I was confident that the training I had in Ranger school was the best I could get because the people who conducted the training in Ranger school had all been to Vietnam, were all Vietnam veterans. Many had been there twice. The NCOs were terrific. They were brutally frank. I had to tell myself that – remember the lessons and apply them. You have to be firm. If you get some resistance, you know you are going to have to deal with that. Actually, it turned out easier than I thought in this respect. In the troop that I was in, I was the only officer who was not a rated pilot. They had one infantry position in that troop. It was called the platoon commander – not a platoon leader, it was platoon commander. It was because this infantry element – the concept of the division cav squadron was they had all these air assets, recon and the attack helicopters – Cobras – who would go out, basically look to find the enemy, and when they found something they would “bounce the blues”, is the expression they used. Get the blues up in the Hueys and drop them in. It was principally – we were not a long-term asset. Basically we would go in with as much ammunition and water as you could carry with the idea that there was going to be a short-term mission that you could do. You could get in faster and in situations where other units could not. It was before the days of air assault but we had to rappel, had to be able to rappel, into areas where we could not land. You would do that and then you may have to either cut an LZ or figure out another way out or get another location where you could bring in aircraft. They used them when aircraft went down. You’d drop the blues in very quickly because you could get the pilot out and secure the aircraft, secure

the commo and any classifieds. The Rangers in those days – the 75<sup>th</sup> Rangers were in Vietnam but in a recon role. What they would do is they would send out Ranger teams of four or five that would do recon. They did not have a “make contact with the enemy” mission. They strictly were recon but occasionally, if they got into trouble, they did make contact with four of them on the ground, they would need reinforcement very quickly and that’s where you’d have to send people in. That was the function of this infantry unit. I was also the only West Point graduate in the unit. I didn’t tell anybody that, but my platoon leader, SFC Eddie Smith, who was on his second tour in Vietnam, as he got to know me – it was not too long after I got there – he said, “You need to know something. All these guys know you’re a West Point graduate and they’re really proud of that – that you’re the only one and you’re theirs.” I was the only Ranger qualified person too. For somebody who had no experience, there were some things there that I had not – I didn’t think the West Point factor at that time would mean anything to the enlisted soldiers. That was kind of an unexpected plus. They assumed successful completion of West Point would mean that I had reached some level of competence as a young officer and the fact that I had successfully completed Ranger school was another plus. Another thing was that – this is where being able to do everything that your troops do, even to the point of being able to kick their ass if you need to, comes in handy. One of the M60 gunners that I had – they also found out I was a wrestler. This big guy – his name was Hargrove – Ken Hargrove – was always talking about, “We’re going to have to go mix it up sometime.” They’d either call you – it wasn’t “lieutenant”, it was “LT” or “Blue”, that was what I was referred to as, and that was a high compliment when they addressed you that way. He was always bugging me about, “When are we going to go three rounds here, Blue?” The other guys would kind of laugh about that. We had some down time one day and he was picking at me so I said, “Okay, Hargrove, let’s do it

right here in the dirt.” So we took off our gear. I was still in pretty good shape in those days. I tied him up in knots. The rest of the platoon saw it. He was never disrespectful but he stopped picking (laughter) after that. It wasn’t a big deal but it was kind of an additional thing that – the fact that I was willing to mix it up, even if he had wrapped me in knots. I think the fact that I was willing to do that in that environment was good. What really made the difference, I think, was the first time that we got into a firefight, all that training kicked in. The basic thing in terms of where you are supposed to be and laying down a base of fire and moving – all the stuff, all the things that they taught us, it (snaps fingers) clicked. I didn’t assess it that – I didn’t say to myself, “Boy, you really did a good job”. I just thought I reacted well and we were still kind of nervous after it was all over. But the troop commander told me, “Last night” – we had a Vietnamese scout with us – this troop commander we had was fluent in Vietnamese, so he had a very good relationship with all the scouts and spoke to them kind of off-line frequently, and he said that this scout went up to him afterward and said, “Blue really knows what he’s doing.” That’s all you need. In fact, the platoon sergeant said to me – that’s another kind of caution he gave me – he said, “These guys are going to – you know, you’re the new guy, you know it, they know it, but make no mistake about it – when the trouble starts, they are going to turn around and look to you. They are going to expect you to tell them what to do. They’re not going to say, ‘Well, I’m more experienced than you are’. They’ll look to you. You’re the leader.” He said, “Just be ready. Be ready to tell them what they need to do.” It doesn’t take long in that environment for that kind of thing to happen.

Q. How long was it from when you took over the platoon until you had that first firefight?

A. I guess a couple of weeks. We probably had – I was only there about three months when I was wounded. We were going on our missions daily. We didn’t always get shot at. We went

into situations where we thought we might, where we might do some – actually, the first time – that’s not true. It was less than a week. I was there a couple of days, we went into something, didn’t amount to much. The next time they caught some troops, some Viet Cong, in the open, and they dropped us in the middle of it in a very bad situation. It didn’t amount to a whole lot. The first time you come down in the aircraft and they are laying down fire, you say to yourself, “Well, this ain’t training anymore.” You get the idea. The basic lessons that you’re supposed to learn as a soldier – make sure you keep that weapon clean, and when you get into an environment, in a jungle environment, and you are around sand and dirt and other things, you’ve got to keep it really clean. Early on, in one of those events, I had a weapon jam because I didn’t do a good enough job cleaning my weapon. I had to do that in the middle of everything. It takes one time for that kind of thing to happen when you say, “That damned sergeant was right and I ain’t never going to let that happen again.” The things that the NCOs told us – and I have told this story at more than one time to folks – to audiences that I encountered – I used to tell this one to NCOs. Actually, it was more important for officers than for NCOs. When I was in Ranger school – in those days, they had three phases. You went to Camp Darby right around the Fort Benning area, then you went to Dahlonga, Georgia, to the mountains, which was really the hardest part, and then the last phase you were in Florida. The terrain is a lot better but they begin to take food away to really start to up the stress levels. You’d begin to get – I think this was in the mountain phase where this happened – we were carrying all-weather gear, Mickey Mouse boots, extra stuff, and the terrain was terrible. If you have ever been to North Georgia it is very demanding. We got to a location where the lane grader, the NCO, said, “Okay, this is our night position, dig in.” We were real tired. We dug in, but we didn’t dig in very well. Of course, through Ranger school you get a lot of yelling and other things, but as I noted at that time, when

NCOs get really angry, they don't yell. He called all these new lieutenants over, most of whom were West Point graduates, my classmates, and he didn't yell. He just said, "Look. What I am telling you here – what we are telling you here – is to give you the skills and the discipline that you need to make sure that when you go to Vietnam, a year later when you come back, you do come back, and that everybody for whom you are responsible comes back with you." He said, "If you ever lose somebody because you didn't do something that you know you should have done, you'll never forget it." That's all he really had to say. When he said "Dig in," I mean dig in up to here (motions to his neck). He said, "You don't dig in to here (motions to lower chest). You dig in up to here (motions to his neck) because I guarantee you the enemy's going to do that. They're not going to be sitting there giving you a free target." Those are things you remember.

Q. You said you were with your platoon three months and then you were injured. How were you injured?

A. It was December 6, 1970. It was late in the afternoon. We had been out on two missions that day, chasing some – our recon folks thought they had seen some troops, and we actually – early in the day, we actually jumped in on something. We rappelled in and chased after these guys. They had left their fires cooking, I mean they were having lunch or breakfast or something but we didn't catch up with them. Late in the day we figured the day was almost over. About four o'clock in the afternoon we get a call that there is a Ranger team in trouble. A recon team stepped into something. They thought it was a dug-in platoon. They were getting heavy machine-gun fire, rockets. So they said, "Bounce the Blues, no landing zone, you're going to have to rappel in." Now, there were 21 – we could carry 21, seven per helicopter. It was the UH-1s. If you were going to rappel, you could only take 18. You had to drop one from each

bird to store the extra weight. If you were doing the rappelling, it was a problem for that size aircraft, so we could only go in with eighteen. They said, "Hot LZ, expect to take fire going in." They kind of gave us where we had to go. We went in, we overflew the area. I would always be in the lead aircraft going. The standard stuff they tell you in basic leadership – you're the first in, last out. I was in the first bird in. Our designated point man and I were the first guys on the skids. He went down first, I went down second. Fortunately, we expected fire – we didn't know what – what do you do when you're going down a rope and somebody's shooting at you? You just go down faster (laughs), but we didn't take fire going in, or if we did, it was not heavy. We may have taken some, but it wasn't very heavy. We were able to get on the ground very quickly and we made it through. Everyone made the linkup at the Rangers, which was, as I thought back on this, it was fairly remarkable. These guys were scared to death, they were taking heavy fire, and we were able to kind of come in from behind and to link up with them. Four-man Ranger team, and when we linked up three of them were in the back. They had obviously not much of a perimeter, there were three in the back and the Ranger team leader was about ten meters out in front, still scoping out what was there. By this time the firing had stopped. When we were coming down we heard firing in the distance but as we made our way through and made the contact, they weren't taking fire at that point. We set up a perimeter and I crawled up with the platoon leader. I'm in the prone position. He was on my left and basically I said, "Okay, what have you got?" and he said, "We were taking heavy machine gun" – he thought it was 30 caliber machine gun fire, and they had some rockets previously but obviously everything was quiet now. He thought it was a dug-in platoon. He wasn't sure. Hell really broke loose when they first stepped into them. In the course of him telling me what was going on, he said, "This is a hell of a situation for a short-timer to be in." I said, "How short are you?" He said, "I've got nine days

left.” This is a kid. This is a kid. Eighteen, nineteen years old. I was twenty-three. The next oldest guy in my platoon – and that was probably the whole time I was there, the three months – my platoon sergeant, Eddie Smith, was all of twenty-eight. He may have not been with me twice. This was one of the days he was not with me. The next oldest guy to me was a twenty-one year old buck sergeant, Monty Cates. He tells me he’s a short-timer, and about this time, my radio operator, who is laying in the prone position behind me, taps me on the leg with the handset. He said, “Saber Six” – it was our troop commander who was in the air above us. I’m laying down. We were about shoulder to shoulder. I reach back to get the headset and just as I reach back, all of a sudden all hell breaks loose. Rockets, machine guns. I took shrapnel. Since I had turned, the shrapnel came here (points to a several-inch scar on his neck). These marks on my neck – I don’t know if you can see that, it’s kind of fading, that scar – but basically, I took shrapnel in the neck. If I still had been facing forward I would have taken it full face. Instead, I got it here (points to scar on neck). All hell’s breaking loose. My neck was numb, and I knew I’d been hit. I was bleeding and I really thought I was going to choke. The first thing is that it was numb and I couldn’t talk, I could only whisper. The Ranger had taken shrapnel in the head and he was, like I said, shoulder to shoulder, that far away. I crawled back and my medic wrapped me up as best he could. He wrapped me up around the neck. As it turned out, I could whisper. I couldn’t really talk. I had taken some shrapnel in the back, too. But we had this Ranger still out there, ten meters in front. He was severely injured. So one other guy and I crawled back out to pull him back in. I was on his right and the other guy was on his left. We were pulling him back and as I was pulling him back, I took an AK round in the arm. I still have a (unbuttons and rolls up left sleeve) – I took it right here (points to oblong indentation on lower arm). Actually, I was lucky because it hit the bone. If it had gone through it probably would



have taken a good part of my arm with it but it hit the bone and it hurt like the dickens. It was actually a tracer round. I still have it. The doctor who pulled it out gave it to me. We were able to get him back close enough that some other guys came out and pulled him in. The firing continued. We had one other guy hit, took a bullet in the shoulder blades, took it in the collar bone, his collar bone was fractured. We started this at about four. This is about eight-thirty at night so it's dark. We got a guy critically wounded. My radio operator, when I first got hit, was in a mild panic. He gets on the radio and he says, "Blue's critical. He's hit in the head." The pilots told me later, they said they thought I was a goner because they said what was coming out over the radio was you were hit in the head and wasn't looking good. I took the radio from him and I was able to kind of whisper through it but basically said, "I'm okay. I got speech problems but I'm okay. We got a man critically wounded so we're going to have to break contact." When this was happening, before I was able to get on the radio and calm things down, Sergeant Monty Cates really stepped up to take charge. He made his way up to me, said "Okay," and he made sure that we kept the perimeter, that we were doing all the things we need to do in that situation to keep everybody alive. He said, "Okay, Blue, tell me what you want to do." I told him what we needed to do and got the word out over the radio that we were going to break contact. From there we had guys making stretchers with their weapons and their ponchos so they could carry this guy out. They did that, they wrapped me up and the other guy. They dropped in another blue platoon, the 17<sup>th</sup> Cav, some distance. Here we are trying to make a night contact with another platoon, and miraculously, we did that without shooting each other. At this point there were fifteen to seventeen aircraft in this vicinity because we had three helicopters we came in on and they were on station, circling in case we got someplace where they could pick us up – they were there. They had what they call "Blue Max" teams – the Cobras – just the gunships would

come in. There were three sets of three that were in the – either they were shooting, or on their way, or on their way out to get rearmed, so that was nine, three, twelve that we had. We had at least two more pairs of our ships, which was a gunship and an observation element – there were four of those. The troop commander was floating around there, and the squadron commander was on his way, and so the medivac helicopter – the pilot said, “I’m not going in until you clear out some of that air traffic. We won’t get in and we won’t get out.” They cleared some lanes and this guy came in and couldn’t land, because we were in the middle of trees, so they dropped down a stretcher that you wrap the velcro things where you wrap somebody up like a mummy. They took the young Ranger out and then they dropped one of these T-bars. They open like a T and then you sit on it and go up. They got me and the other guy out. We went from there to Long Bin. Actually, we went to an intermediate fire base. Have you ever seen the beginning of “MASH” where they all run for the helicopters? I saw firsthand the efficiency of the medical teams. I came in and I was totally oblivious. We’re coming into a fire base – the helicopter pad on a fire base – and I see all these people standing around the pad. I’m thinking to myself, “What are all these people doing out there?” No idea. I figured they were going to get us down, take us someplace, put us in a Jeep. We hit the pad, and as soon as the skids touched down, people were coming from all directions. They were all medical people coming in, cleaning wounds, putting in IVs, putting a splint on my arm. They brought us in. We were in and back on the helicopter, in the air in five minutes. They had tubes and everything in on this guy who was critical, had him on a stretcher. They had us from the floor of the jungle to – and this was an intermediate stop, then they took us to Long Bin, where they had the big hospital. It was less than an hour and they had us on operating tables. This young Ranger didn’t make it. I found out later that he was nineteen, nine days left, and he had lost a brother in Vietnam. His mother had

written to the troop commander and said, "Please take my son out of the field. I've already lost one." The commander said to me, he said, "You know, I respected his wishes. He wanted to stay in the field right until the end. Now I'm going to have to live with that decision." (Pause). Tough stuff. I've told this to NCOs. The great words that I spoke frequently about NCOs, the importance of NCOs, was not because I read that in a book someplace and it's something nice to say. For me, the importance of NCOs and what they mean to the Army and to soldiers and to officers in particular is what I learned early on. When I came into the Army as a cadet I saw this. One of the things you do as a cadet is you go out to train with the real Army – at least one of your summers – they used to call it Army Orientation Training, AOT. I went to a unit in Alaska. There was a young captain – this was 1967 that I did this, the end of my second year – and the company commander was a first lieutenant named Marty Johnson. He sat us down, myself and one of my classmates were there. We were their new "third lieutenants" for the summer, cadet lieutenants, third lieutenants. The first thing he talked to us about were the NCOs. He said, "The First Sergeant in this unit has been to World War II and to Korea and Vietnam, and to say he's my right arm is an understatement. When you address the First Sergeant, you address him as 'First Sergeant'. 'Top' is okay. You don't call him 'Sarge' or 'Sergeant', you call him 'First Sergeant'." Through that summer, we appreciated the guidance but you understood. That First Sergeant in that company was – with complete respect for the authority of this young commander, and the First Sergeant really liked Johnson, and the NCOs really liked him. He was doing well as a company commander. He was on his way to Vietnam. You could see why someone in that situation would grow, in Johnson's situation could grow. As General Rogers pointed out one time, he said, "It's no coincidence that in the Army that we have our people who are least experienced in the officer ranks are basically paired with people with the most

experience. When you look at the NCO experience, the First Sergeants and the platoon sergeants at the company level – that’s intentional (laughs) – to be able to grow the leadership, the levels in the way they need to be grown.” My experience early on and as a cadet, when you went through the training in the various summers, they’d bring troops from the 82d and the 101<sup>st</sup> up and the NCOs would run the training. They were terrific. You learned early on that if you listen carefully, if you’re not afraid to ask questions and don’t worry about being embarrassed – they go out of their way to make sure you’re not – if you’re consistent and trustworthy and they know you have standards, you live by them and you make others live by them, they’re behind you solidly. I did something in Vietnam, which my commander thought was somewhat crazy. One of the troops, a guy that I liked, had – I guess before I got there – we used to leave a fire base each morning. We were at a place called Bearcat, which was a Thai base. That’s where we lived, and then we would go to a forward base which was our jumping-off point. Everybody had to be out at the aircraft at a certain time in the early morning. One of these specialists, a machine gunner, prior to me getting there, he had missed one time. We had about twenty-four people in the platoon and we would rotate. You had to take twenty-one out each day. You would try to rotate the other guys. The other three would be back doing things with the First Sergeant but they wouldn’t have to be out in the field that day. That rotation continued among the enlisted – myself and the platoon sergeant were out there all the time – but this guy, prior to my arrival, apparently had missed one day when he was supposed to be there so they were short. Shortly after I got there, he missed again. The platoon sergeant said, “You need to do something about this. It’s not good for the other guys.” I said, “Okay. The line’s drawn. Next time there will be action.” Well, he missed again. So I went to the troop commander and I said, “You need to Article 15 this guy. Take whatever money you can from him. He wasn’t where he was supposed

to be. We were short.” The commander thought I was nuts. He said, “You’re asking for trouble Article 15ing this young guy. Can’t you do this some other way?” I said, “Basically I told these guys that I was going to do something if this happened again.” I told him. I told the platoon leader, pulled him aside and said, “This is for you. You just understand what’s going to happen next time.” It was important to the rest of the platoon. I don’t know whether the commander thought I might get fragged or something (laughs) but basically, it got the expected reaction, which was that – this young fellow was not happy about it, but he had no complaints. I certainly wasn’t hearing any and the rest of the platoon wasn’t. He was one of the guys that I liked a lot and he wasn’t afraid to engage in banter. I think what the platoon was watching was – here’s a guy that seems to have a good relationship with the lieutenant, and what’s going to happen? Well, he eventually left the platoon. He said it was nothing personal but he needed a change so he went to some other unit. The fundamental lessons that you learn – again, you have to listen to your NCOs. I suppose if I had listened to the troop commander, I probably would have had some problems there. My arm, by the way – that’s as much motion as I have in my arm (makes a fist and turns it about 90 degrees) as a result of the wound. The radius and the ulna fused. At one time they intended to go in and do corrective surgery to see if they could get full motion. Then they saw how much it came back and said, “You know, we can’t guarantee that it will be better than that when we’re finished,” so we just kind of left it.

Q. Are you right-handed?

A. I am right-handed. The only problem I have is when I go through a toll booth and I’m trying to get change...(makes a motion with left arm and attempts to turn hand upward as if getting change but cannot get hand turned all the way up) (laughs).

Q. How long were you in the hospital in Vietnam?

A. I was in Long Bin for two weeks. The medical people – aside from these folks that met us on the pad but getting us in – the medical people were the most efficient and organized that I saw in Vietnam. The doctor who did this – two separate surgeons, one guy did this (points to neck) and the other guy did the arm – the guy who did my neck said, “You’re really lucky. That shrapnel came within a quarter-inch of your jugular vein.” My voice box was shattered – that was why I was having trouble talking – but he said, “In about a month that’ll come back.” He really did a marvelous job because I had kind of a hairline scar here and I suppose if I was willing to kind of lock my head in place I wouldn’t have had anything but I couldn’t do that. The other guy did the arm. The group in the hospital was terrific. I went from there to Japan, what was then the hospital at Camp Zama. It was my experience at Camp Zama – I was there for two weeks – if I had any fleeting thoughts of entering the medical profession, they left and were gone as a result of that. I was the only guy on my ward who could walk. I had serious wounds, but basically I was mobile. People had stepped on mines. One guy walked into a tail rotor, very serious limb damage. Not just injured but limbs lost. The importance of Japan was that it was the break point. In Vietnam in the hospital they gave you as much in the way of drugs, particularly morphine, as you needed – the painkillers – to take care of your problem. If you went to Zama you were on your way back to the States so they had to start taking you off. They brought in a youngster, and he was a youngster – he was seventeen, eighteen years old – who lost a foot. I don’t know if he stepped on a mine, but basically he had lost his foot. When they brought him in, they had sutured an artery and it broke open. They had to do some quick mending, otherwise he was going to bleed to death. They couldn’t give him any painkillers, I think for two reasons. One is he had made the transition but also because of the nature of the injury, they couldn’t do that. This young fellow was just screaming. He was in terrible pain and the doctor they called in

worked very confidently and consistently through all that, didn't bat an eye, just continued to try and calm him but did the work and saved the kid's life because he was able to suture him. I watched that doctor do that and I said, "I don't know if I could ever do that." That youngster – he got on crutches within a couple of days. He went around to every bed in the ward, apologizing for crying. I was there for two weeks. I was there for Christmas, then came back. I came through Walter Reed. They flew us into Andrews. I spent a night in Walter Reed and then they shipped me up to New York because in those days they would send you to the medical facility closest to home. Saint Albans Naval Hospital – I think it's now a veteran's facility – it was a naval hospital at the time and I was there for a week inpatient. I guess I had about five weeks inpatient. I was well enough at that point to be an outpatient. My folks still lived on Long Island but too far away. I was there for about four and one-half months. This was still healing up (motions arm). I had a cast on this and I had pretty severe nerve damage. I really couldn't move my hand much more than this (makes a fist with virtually no rotation). By about May my arm had closed up and I was in a capacity where I could go through rehab. They were looking to send me to some place where the rehab would be good and they decided West Point would be the place. I think the wisdom in that was shown later. I guess they figured if they sent me up to teach and coach wrestling, that as a matter of survival, either I'd get better or I'd be gone. It did work out well, going to the phys ed department. I was able to work on my personal rehabilitation. After I finished two years there, I had recovered a lot of the motion.

Q. When you were back in Vietnam, still in the hospital – today we have e-mail and phones and everything – did your parents know what was going on?

A. The Red Cross people came through. They were able to make arrangements for you to make one call. I don't know if it was on the MARS line or whatever the special communication

capability there was, but I got to make one call home. I wrote a bunch of letters so my parents – and I’m trying to think about how they got the word – they got the word that I had been wounded and then they got a note from me. I thought it would be good to talk to them on the phone and it turned out to be the worst thing because my voice was still not very clear. It was obvious I was having some problems. My dad told me later – he thought when I was telling them what was wrong with me that I was not telling them the full extent of my injuries. That didn’t cause them to worry less, it caused them to worry more. My dad – we never really had a long discussion about this before the fact but I found this out later from my high school music teacher who I saw before I went to Vietnam – he said that when I called home and told my parents I had volunteered for Vietnam – I was very proud of myself for going to Vietnam, this was where I needed to be – and my mother started crying on the phone. What did I know? I was twenty-two, twenty-one I guess. You see things differently later in life when you’re a parent and think of what it would mean when your child is going off to something like that. I think what a lot of people don’t appreciate these days is there was a point, and this was when I was going to West Point in the ‘67-’68 time frame, the casualties were two and three hundred a week. It slowed down by the time I got there, it was more like twenty-five to thirty. In relative terms, it had gone down dramatically, but if you’re thinking in terms of today’s environment, what do you think the public reaction would be to taking twenty-five to thirty casualties per week? That was the context in which my parents were evaluating my decision. My dad never said a word to me about it but this music teacher and I spoke and he said, “He knew you were going to volunteer. He knew it.” I wasn’t very good at hiding – I didn’t intend to hide my intentions, what I intended to do.



Q. When you went back to West Point, now you are on the faculty and this was only a matter of about three years –

A. Actually I was back there within two years because I got there in May of '71 which was very interesting because the class of '71 was getting ready to graduate. In those days June Week was the first week in June – graduation week was called June Week – so I got there about the middle of May. Within a couple of weeks that class was gone and then the class of '72 was the new senior class. Those guys – they were all men in those days – they were plebes when I was a first classman. I knew a lot of them, and particularly the ones who wrestled I knew. It was too early to go back. It worked out just fine in some respects. Personally, for me it worked out very well because what I was doing – the coaching – it was perfect. I had great rapport with the cadets and people that I knew. But in fairness to the cadets, you really need – that was the exceptional situation and there were reasons for it. As a matter of course – I guess I was the first one in my class to wind up back there – but that's too early to go back because you really need to be removed from the institution for a few years and have the benefit of a lot more experience if you're going to really help out, if you're going to really give the cadets the benefit of your experience. It was difficult in those circumstances – I loved it. I was glad to be there but it was because of very unusual circumstances. I think the advantage – the fact that I knew some of the cadets, I had been there not too long before, I came back there, I was severely wounded, and I was in the process of recovery – there was a dose of realism there for cadets.

Q. Was there any problem that now you are faculty, and these were your friends just a couple of years ago?

A. Well, no, because they were plebes. They were fourth classmen, and I was the regimental commander. I was a six-striper and I was in the 1<sup>st</sup> Regiment, which was the hardest regiment,

traditionally the straightest regiment. I was kind of a tough guy from their perspective so it wasn't like "this is your big buddy coming back" and all of a sudden it's different. I was on the faculty. There wasn't that discomfort. There were cadets, particularly some wrestlers, that I knew very well. They would talk to me very frankly about their problems here and there but it was never an issue that you're somehow betraying us or the friendship that you developed. It was a different kind of relationship.

Q. Did you ask to go back?

A. I didn't know what to ask for, considering my situation. I didn't know what really the options were, and I basically asked them, "What can I do?" Initially they weren't going to send me to the phys ed department. They just felt that it was – I had been treated at Saint Albans for quite a while. I was an outpatient there and I had a doctor down there. I don't know if that had any bearing on keeping me somewhat close – not really, they had great medical facilities up at West Point – but they were looking around for a place that would accommodate my particular need. It just happened to be West Point. There were actually a couple of possibilities up there. The Superintendent – the three-star Superintendent – had a senior aide and a junior aide. The junior aide was a lieutenant's position which had rarely been used. Initially they were looking at that and then that got filled. Then the Commandant needed an aide but he wanted a captain. I guess I would have technically met the requirements – I was going to be a captain within a couple of months. I got promoted to captain in June of '71. He wanted somebody who had spent more time as a company commander and had gone to the advanced course. There was a guy in the phys ed department who fit the bill and wanted to do that job so he moved over there and I took his spot in the phys ed department. It was a series of circumstances that just worked out to my great benefit.

Q. While you were up there as a phys ed instructor, did you have any interaction with the judge advocates?

A. I had been thinking when I was at Fort Carson – that’s when I began to think about the law, about possibly pursuing that. I talked to some judge advocates out there and it wasn’t anything very favorable. Even in the law department at the time, they divided into two camps with most of the judge advocates not being career oriented. There were some who were, some who had been to Vietnam, some who had been to Vietnam and were not career oriented. They just were not favorably disposed to the military. Looking back on it now and in the years following that, I could see why the JAG Corps had retention problems. There was something about the people that were coming in. Their focus was not on the Army as an institution they wanted to stay with or soldiers generally being a population of clients they wanted to hang around. In some respects, when you look at the Army at that time, to say it’s a night and day difference between soldiers of today and those days is a gross understatement. The people who were JAGs at that time were trying a lot of cases. I think that what they saw of the Army was the problem side. We’ll get into this when we talk about Germany, but the training side of it was almost nonexistent from a JAG standpoint because you didn’t have the opportunity to do that. I liked the people, but a number of them came from Ivy League campuses or from law schools where there were protests against the war. Some of them had eliminated ROTC. Either they were in sync with that kind of philosophy or they were sympathetic with it. They were not sympathetic with the Army as an institution. Of course this is post-My Lai and the Cali court-martial and a number of things that put the military in a less than favorable light. They really had no intention of staying around. I guess as I thought more about it, that’s where I really began to develop the idea that there was something I could do. If I became a lawyer, having served as a line officer, both as a – even

though it was brief as a company commander, I was only a company commander for several months. I saw that side of it. I worked with a stateside unit. I was in combat. I thought that there was an element of experience that I would bring to that that was not there in the vast majority of judge advocates at the time, the overwhelming majority. I thought that would be a plus. I thought I could add an element there that would be of benefit to commanders that I knew and to soldiers. I didn't understand how much, and I guess I thought it would be worth something. I didn't appreciate just how much that would be worth later, and I mean throughout my career. I will say honestly, I think I got more credit for that experience than I truly deserved. I won't say I'm sorry that I did (laughs). That's when I had to give serious thought to this idea of whether I wanted to do it under the existing terms of excess leave, which was my option. In fact, I went over to speak to the head of the Law Department at West Point. At the time, they didn't have an SJA office. They had one office, the Department of Law. The Professor of Law was the head of the department. The number two colonel doubled as the SJA. It was all under one roof. I went in to see Colonel Fred Low, who had been the head of the Law Department for thirty-five years, and I talked to some JAGs there about being a JAG. After I had done the more junior people, I went in to see him and said, "I'd like to do that. What do you think?" He said, "Why don't you wait a year? They're working this funded program. It looks like it's going to happen, but probably not until next year." I thought well, – at this point, if I wanted to enter school in the fall of '73, I was going to have two years at West Point. I really didn't want to do a third in the physical department. Now that I had made the decision that this was the direction I wanted to go it, I figured the sooner, the better, and I think that was right. I didn't want to spend another year. I didn't understand this at the time, but there was more wisdom in that than I realized because I was going to be a late starter as it was. I think I understood that much. All you had to do was

count up the years. It's '73 when you're going to start school, you're in school for three years, so you're coming out of there and you're running out of time as a captain. All those guys I had talked to that had very positive experiences – some of these guys that were a newer generation of JAGs who had good experience. They had been to Vietnam, been to Germany and just had terrific experiences. Some of them had been to Alaska. They really liked what they saw. They were getting good experience but they were doing that as captains. The caution that they gave was that you'll do that kind of stuff as a captain – you'll do the trial work, you'll do exciting things. As you grow up in the JAG Corps, you're going to turn more to management responsibilities. If you're going to stay long-term, that's something that you have to think about. I made the decision to do the excess leave option. I guess the board was in about February, and they said it would really help if you had a school acceptance before that. They said the year before I guess the Army picked somebody who didn't get into school (laughs). The board this year will remember that so they'll think about that. I applied to schools in New York because I was from New York – Fordham, St. John's, Brooklyn. I applied to Georgetown and later applied to NYU. I got accepted at Fordham right away. I applied in December and had an acceptance the first week in January. I was eventually accepted at St. John's and Brooklyn, wait-listed at Georgetown and NYU. I always felt grateful to Fordham because I had that acceptance before the excess leave board, and I'm sure it made a difference. They knew I was going to be in school. If they picked me, I was going to get to go to school. Fordham at the time was a Jesuit-run institution. If they ever shut down West Point, they could have just moved down the river to Fordham (laughs). Actually, in terms of working things out, it was very positive. The rest is history. I finished up the year at West Point. That summer, I went over to the Law Department at West Point and that is where I worked the summers. The deal was on the excess leave

program, once I started school and went on excess leave, I was off pay and I had to pay my own school bills. Because I had enough time on active duty, I qualified for the GI Bill, so I got some GI Bill money. When I think about it at that time, we had our first child on the way. Here I am, not getting paid. My wife is teaching school. People are looking at us, saying, "How do you deal with it?" We had some money saved. My wife had worked. We got married in June of '72.

Q. Did you meet her before or after you went to Vietnam?

A. After. We grew up probably five - ten minutes away from each other. She was a couple of years older than me. She was in Catholic schools the whole way so we just didn't cross paths. That's how I started in the excess leave program. On school breaks I would come back and do some claims work or whatever work they wanted me to do. At the time, the Freedom of Information Act and the Privacy Act had some new regulations dealing with that. One summer I worked on some of that. I did some recovery work for the claims judge advocate. I did some work on reports of survey and other things. In truth, it wasn't the best place to train. It would have been better for me if I had – and I didn't understand this at the time in that the people in the JAG Corps, the personnel people, were not as concerned with getting me out to an installation – in personal terms, it worked out very well because I didn't have to move. I went south to school in the school year then went north to West Point. It would have been better to do that OJT – the on-the-job training that they called it – someplace else. Even now, with the split in the office, it is probably better.

Q. How many judge advocates per year were we getting through the excess leave program?

A. Twenty-five. They could fund twenty-five a year. Excess leave – they weren't funding any of us. They were allowing twenty-five a year to go. At any given time, you'd have seventy-five in school, first, second and third year. Eventually I wound up getting picked up in the FLEP

program. They passed the program, and I figured, "I'm in the excess leave program. I made my decision. That's the way it goes." Have you ever heard of Colonel Tom Crean?

Q. Yes, sir.

A. Retired more than several years ago. He was Captain Tom Crean at PP&TO at the time. He called me and said, "You should know that while they passed the program to fund next year's group, they also" – and I didn't know what the twist was – but they "got an extra year's funds." They could fund 25 of the 75 in school. He said to me, "I recommend you apply. Basically you lay out your personal circumstances, what you are paying in tuition, all the factors." I did that and was selected for the program. The last two years I was funded. That made it a lot better.

Q. After you graduated from Fordham, where was your first assignment?

A. I wanted to go to Germany. I asked to go to Germany, and they accommodated me. I had talked – this was interesting – the people that I talked to, two of them had just come back from Germany from V Corps. They thought that given my seniority, it would be better for me to go to a corps because they thought there were more options in a corps. If you stay over there three years or maybe four years, in a corps you can get some experiences in that environment that you might not if you go to a division. I wrote a letter to PP&TO explaining all of the rationale that these guys had given me. I went through the basic course. Wayne Iskra, then Major Wayne Iskra who is now a judge in the immigration court, was the captains' assignments officer. He calls me into the room and he said, "You're going to Butzbach, 3<sup>rd</sup> Armored Division. You're going to work for John Fugh." I thought to myself, "Where the hell is Butzbach? Never heard of it." I said, "Thank you very much. I'm excited about that." I go home that night and a friend who had been to Germany gave me a road atlas so I said, "Let's take out the road atlas and see where Butzbach is." Couldn't find Butzbach, which got us real concerned. This map has every

town of 2,000 or more and we can't find this place that we're going to. Oh my God, what are they sending us to? It turns out that it was omitted improperly, but it was about twenty miles north of Frankfurt, the Butzbach branch office. They actually had a brigade right there, the largest armored brigade in the Army. They had another good sized brigade in Friedburg. It was an absolutely marvelous assignment. All I did was basically tried cases for a little over two years. I became the officer-in-charge of the office after about a year. I learned a lot of important lessons from the JAGs, young and more senior that I observed there and worked with and with the officers that we advised in that environment. You asked in here one question about, "Today most JAG offices have created a written mission and a METL. Did the offices back then have these?" No, at least ours didn't and I don't think many did because your mission at that time principally was a military justice mission. Did legal assistance, but legal assistance in those days was nothing close to what we're doing now. You were at a severe disadvantage in Europe trying to deal with problems that had any connection with issues in the United States. We didn't have the automation capabilities, limited libraries – it was very tough to take care of legal assistance needs. In truth, so much of the effort was on military justice because we were still in the process of, and this goes back to the attitude I saw in some of the judge advocates earlier – this was a problem Army. They had lowered during Secretary McNamara's tenure – he said we can take in a substantial number of the fourth quadrant, the lowest quadrant in intelligence, people who fall into that category, we think we can do something with them. Well, you can't. At least in most cases you could not and that was one of the reasons we had serious problems in the Army in the late '60s, early '70s. The great NCO Corps that I had seen as I was coming into the Army, they were leaving. They were at the end of their career and you weren't developing – the Vietnam experience had kind of torn the guts out of the NCO Corps. Sending people back for multiple



tours, not growing the NCO Corps, the focus is not on training so you had serious problems in the NCO ranks. You had serious disciplinary problems among troops. I went to Germany in those days with the full expectation that I was going to be trying drugs, serious assaults, homicides. I tried thirteen sodomies and rapes over there, multiple drug cases, you name it – it was over there. It was great trial work. But what's good for the JAG Corps is not good for the Army in that respect, in terms of – it was great experience, but that was a reflection of the problems commanders had to deal with, and it was just terrible. They were spending ninety percent of their time on ten percent of their troops. Training was getting better. Europe training was better – they could go down to Graf in those days, they would go to the field, but we didn't do that. We were working these issues all the time. If you weren't trying a case, you were investigating something, going through Article 32s, dealing with other disciplinary measures. Didn't do much in the way of boards those days. Defense counsel looked at a lot of Article 15 counseling and then you dealt with the turndowns, but basically even in those days not a whole lot of straight specials. It was BCDs and general courts-martial. I think I tried about 80 cases, probably 50 GCMs, half of those contested cases before GCMs, most juries. I think the 3<sup>rd</sup> Armored Division was trying about 350 cases per year. It was very substantial.

Q. How big was your branch office?

A. That was before Trial Defense Service. We had either five or six attorneys. At most times we would have an OIC, two defense counsel, two trial counsel, and we would have one officer doing legal assistance. The prosecutors either were three or two. I guess for most of my tenure there were actually only two. I had one brigade and the other guy had another and the two defense counsel. You're covering a heavy brigade, a couple of heavy brigades. About a ten-minute ride away was one brigade, and the other brigade was about a half-hour away. While

you tried to do a lot of things on the phone, it was always best to get out with the commanders, to where they were and talk to them out there – try to deal with their problems. What a marvelous experience, family-wise as well. I was not at all sure even at this point whether this was all going to work out long-term. My wife had never been away from home. She had been away to school but hadn't traveled a whole lot. Her dad was not in good health. By the time we left for Germany, we had two young kids. Our son was three, our daughter was six months old. I thought I would adjust well enough to it. I didn't know whether my wife was going to – we would be in Germany, it was a long way away, and we wouldn't come back to New York. West Point was there, but we were much more likely to go someplace a long way from home. When we got there, we went in – our sponsor took great care of us, and he set us up with a bachelor in one of the 3<sup>rd</sup> Armored Division offices who had a two-bedroom apartment. He brings us into his home with our two kids. We stayed with him for almost two weeks. Another guy in the office comes up and gives me the keys to his second car. He says, "Here, you're going to need this until your car comes in." We're there about two days and they have a welcome barbecue for us. We're part of the family. It was just a wonderful beginning. I asked one of the officers, "How do you possibly repay what you've given us?" He said, "You pass it on. That's the way it's done." That experience – and the Fughs, John and June Fugh, were wonderful people to have as SJA and the SJA's wife. They were very close to, very attentive to all the captains. June Fugh was kind of like the mother for all the – if one of the bachelor captains came in and they had a hole in their sweater, she said, "Take off your sweater." She had a needle and thread she would take out and sew it up. They would invite everybody to their home for parties, everybody – bachelors, and we were there about two weeks when the first event took place. We had our six-month old daughter. We were not comfortable leaving her with a babysitter yet. June said,

“Bring her. No problem.” She was on her best behavior – she was an angel. That’s the way the Fughs were. That was a good lesson for us early on about what are the things you need to do as an SJA – you need to take care of your people, and he did. He looked out for them. One of our defense counsel – again, these are the days before TDS – one of our defense counsel went out to give a lecture on legal issues to the enlisted soldiers in the 1<sup>st</sup> Brigade. Actually, it was one of the battalions, it wasn’t a whole brigade, it was one of the battalions. They sent a lawyer out there for one of the mandatory briefings. He did some of the mandatory briefings, telling them about legal assistance services, I think he may have covered some law of war stuff, but then he got into some issues about search and seizure. At the time, this idea of being subject to search coming into an installation was an item that was high on the agenda. Well, the battalion commander was standing in the back. He went through this explanation of when you come on the installation they have the signs that you’re subject to search. One of the soldiers said, “If you come up to the gate and you’re going to come in and you change your mind and decide you don’t want to be searched so you’re not going to go on the installation, can you turn around and leave?” He said, “Of course you can.” The battalion commander challenged him on that. “That’s not true. Once they step up to the gate they’re subject to search.” He said, “No, you’re wrong.” He (the battalion commander) said, “I’m sure the brigade commander would court-martial somebody who tried to walk away from that.” He said, “Well, I’ll defend any man in this room who gets court-martialed for that reason.” Of course the troops go, “Hooah!” That was interpreted as a challenge to the command, not just to the battalion commander but the brigade commander. The battalion commander calls the SJA, Colonel Dale Vesser (the brigade commander), later became a three-star, and this big brigade is one of the places where if you looked at the wall of pictures, the commanders – virtually every one of them made two, three-

star rank. This guy, Dale Vesser, turned out to be a guy who was on the move. He calls up, he's a colonel, he calls up the lieutenant colonel SJA and says, "I want this guy moved. I want him out of here." He explained the situation to him and said, "Let me come down there." So Fugh comes down, has a session with the defense counsel, has a session with the brigade commander, had a session with the battalion commander and – he worked in reverse order, he went to the defense counsel first, the battalion commander and the brigade commander – at the conclusion of his talk with the brigade commander – he didn't bring an entourage, it was just he and the brigade commander – he told the brigade commander, "I'm not moving him. Your commander was wrong, he was right. I'm not going to pull him out for that reason. If you're not comfortable with that, go to the division commander." Well, he didn't. That's the kind of thing that – those are the kind of stories you don't necessarily hear about when you talk about what it used to be like when the SJAs were responsible for defense counsel. Don't get me wrong – TDS was an idea whose time had come, it needed to be, and there were situations where SJAs weren't always as accommodating to defense counsel as they needed to be, but I will just tell you in my experience in observing John Fugh. At that time, he did what you would expect an SJA to do under those circumstances. I was a captain. I was an old captain, but I was a captain, and those are important lessons to see. I actually saw something – I'll tell you something later when we get to talk about when I got promoted to one-star and was there when John Fugh was the TJAG. There was another issue about personnel and John Fugh going head-to-head with a very senior officer and standing his ground.

Q. You mentioned that you learned a lot from General Fugh. What about the other commanders? You mentioned that you learned things from other commanders.

A. I learned how difficult it was for commanders to – let me step back. I learned after advising them on very sensitive issues how talented, how dedicated, how hard-working they were. Some were better than others. Then-Colonel Vesser was a superb commander. They weren't all that way. Some of the battalion commanders were outstanding, some were not. It was remarkable that we kept people of – when you ran across the people that were first-class, good officers, the kind of people you would like to be able to rely on in difficult circumstances. You really marvel at the fact that they stayed around the organization during those years. It was so important that they did because they were in the process of growing the next generation. It was extremely hard for them to train in the environment they were in. The money situation was better than what I had seen in the earlier years at Fort Carson but it was not necessarily good and they were training under difficult circumstances. They did that. It was the Warsaw Pact mission, that was what they were training for. In some respects, training for that was very difficult because I suppose the degree of monotony that goes into facing the same kind of situation in training on a continuing basis. They were doing that – trying to do that – when the Soviet Union was still a significant threat, and if there is any doubt in your mind about the evil that they were facing, all you needed to do was go out on the border, go to some of the border units, see the border area, and visit Berlin. You understood this was not some theory about an ideology that you happened to disagree with. This was a degree of repression that was extraordinary. There was something we had to be concerned about and needed to be defended against. These people were dedicated at a difficult time to meeting that mission. They were doing that at a time when it was difficult to train. The situation in Germany wasn't always as friendly as you hoped it would be. It was getting more difficult to train in Germany as Germany was growing. Notwithstanding the fact that we were now allies and we were not an occupying power, we were viewed as an occupying

power by some Germans. We interfaced with the commanders on an unpleasant side of their business, which was “what do I do with these troublemakers? How do I deal with this?” It’s not just a matter of getting rid of somebody. Later in the Army I saw more of this, the more expeditious use of administrative alternatives became an option. You could get rid of a lot of the problems before they became court-martialed, but in those days we weren’t boarding very many people for anything. They were jumping right to the big-time (laughs) in terms of the misconduct that required serious action. It was difficult, and they were very appreciative when you helped them out of those difficult situations. General Ron Griffith, who retired shortly after I did – he was the Vice Chief of Staff – we first met – we worked very closely as the vice and we worked very closely when he was the IG – we first met in Germany in that assignment. I was a captain, he was a lieutenant colonel. He was the commander of the 1<sup>st</sup> Battalion, 32<sup>nd</sup> Armored, Elvis Presley’s battalion in Germany (laughs). He is very fond of telling people the first time that we – actually, it was the second time we met – I tried one case before him, that was the first time that I ever saw him. I was the trial counsel responsible for the other brigade, but when we lost our other counsel I had to go down and cover that 2<sup>nd</sup> brigade. He had some serious problems that he had to deal with. He talks with great fondness of how we dealt with some of the problem children that he had at that time.

Q. Any of your other peers in Germany have military background or were they mostly direct commissionees?

A. Most were direct commissionees. John Cruden, who was a year ahead of me at West Point, he was class of 1968 and a JAG, he preceded me at 3<sup>rd</sup> Armored Division. By the time I got there, he had moved to Heidelberg, but kind of similar backgrounds. He had been an infantry officer, West Point, infantry, been to Vietnam, law school, so I was not a new phenomenon by

any means. We had seventeen captains in the office – I may have been the only one with prior service.

Q. Did you see any difference in how your peers formed relationships with their commanders because of their lack of service?

A. I saw it both ways. I think this was a function of anticipating the problem, and anticipating the difficulties, that a young officer without any military experience is going to have. We didn't do things in those days – there wasn't a set program of – in some divisions today or some corps organizations, what they do is send the new people out to shadow a company commander for a couple of weeks. You put them right into legal assistance, instead of trying cases where they are going to have a little bit more of an opportunity to figure out what's going on in this organization called the Army, before you throw them out where they're face-to-face with a commander. We didn't always have the luxury to do that. We didn't have the luxury of that rotation. We didn't send people to shadow a company commander – we had cases to try. We needed to get people into it right away. Commanders I would say for the most part were understanding of that. Quite frankly, their impression of JAG officers was not necessarily favorable and the expectation wasn't that they were going to find people who were soldiers in the JAG ranks. They were going to be lawyers, that's what they do. They come in, they try cases, and I suppose from the standpoint – the soldiers first philosophy is important, and we can get into that more later, but you may be soldiers – you've got to be soldiers – but you've got to be a damned good lawyer as well. That's what always made the difference. You would find that the guys who survived in that environment in terms of being able to try cases effectively and being able to lay out to a commander, more importantly than being able to try and win a lot of cases, effectively advising a commander, coming in with a complicated situation, being able to sort out the facts and give the

commander the critical facts, lay out the options, and make an intelligent recommendation. When you can do that in that environment, that's what the commander considers important. When they have a problem that falls into your area of responsibility, and you are able to come in there better than any staff member and kind of lay this out whether you are out of law school in a few months or you are a hardened officer with prior military experience, really doesn't make a whole lot of difference. They want the right answer. I saw plenty of young officers who had no prior experience who had the ability – they were good counsel in court. And this is where I think the litigation skills are important, whether or not you want to spend your life in court is not the point. In this business most of this is advocacy. It's always advocacy. You're always advocating for a particular position. If it's before a jury, before a commander. If you do that effectively, you're going to get where you need to be and you're going to take care of commanders' needs. There were many effective trial counsel, defense counsel – even the defense counsel, from that standpoint, they take a page from what they saw the good, experienced OICs and trial counsel doing. They go out and see the commanders, get to know the commanders. These were people who figured it out on their own. In the course of doing what could be very monotonous Article 15 counseling, where maybe eight of the ten people who would come in to see you probably did what they (laughs) and deserve what they get, but there may be the case where some things have been done wrong, and a good defense counsel develops a rapport with the commanders and basically is able to present it in terms of “you're on the verge of treating one of your troops unfairly,” which is not only unfair to the troop but is not good for you as the commander. Ideally, the trial counsel ought to be doing that, but an astute defense counsel will develop those relationships. When the commander calls the defense counsel, which I have seen happen, the defense counsels have to have done things right. They've developed the



right relationships and the right rapport. I've actually seen that more in cases in terms of numbers of people who have no military experience. You can get there. It's nice to have the experience. I've mentioned before that I probably got more credit than I was due. The fact that I was wearing a CIB counted for a lot. I think there were some commanders who thought twice about or they just didn't give me a lot of crap, quite frankly, about a situation. A lot of the line commanders had the experience. There were a lot also who hadn't been to Vietnam. They hadn't been in combat. One commander said to me one time, he kind of looked at all that and said, "But you have never been a commander of a mechanized infantry company in Germany." That's true. I'd been to Vietnam, but I was a mechanized infantry company commander in the States, but I wasn't in Germany. That was never the point. I've seen both sides of the street. I can't do your job better than you. We're not pushing being a soldier first – that was never my thought in this idea of the importance of being a soldier – you're not there to relive the glory days as an infantryman or anything else. What we tried to foster was the understanding that you're going to be a better lawyer, you're going to know your client better, you're going to be able to keep up with your client. If you can't do the things that soldiers need to do, you're not going to be there when your commander needs you. If you don't know what it is like to be a soldier, you're not going to understand what the commander is thinking, feeling, doing, when he's on the verge of making an important decision or what that particular soldier may have been thinking or feeling at the time that something went on. It gives you an ability to empathize with the client that would not otherwise be there. Again, the situation has changed. We have an environment in the Army where it's now expected. In those days it was not. They expected you to try cases. If you could come out to the field, and I did on a couple of occasions, but there

wasn't a whole lot of utility in that. We had other things that commanders expected you to be doing. They expected you to be moving the docket along.

Q. How was the relationship between the defense counsel and the SJA?

A. Let me tell you my relationship with the defense counsel. This was my first experience in the JAG Corps, and a lot of people found it unusual, but the defense counsel that I worked with, a guy named Bob Marks, who had been a prosecutor – he was brand-new to the Army, although he grew up in an Army family so he had some familiarity – his wife also was an Army brat, so they both were very familiar with the Army and liked to travel, understood a lot of things that some brand-new people to the Army would not understand – he came in, he was a prosecutor for about four months and then was moved over to defense. I came in to be the prosecutor. He had a son who was the same age as my daughter, about six months old. My wife and I and he and his wife hit it off very well right away. We used to do everything together. We would take vacations together. Actually, one of the other trial counsel said, “How can you guys be so close? You fight it out all the time.” I think it was best summed up by an older major, who was an Article 32 officer one day that we had for one of our cases. Before we got started, we had commented on some place we had been – we had been to Switzerland together or something – and he said, “Yeah, you guys are always together. It's obvious you're real good friends but there's no doubt in anybody's mind that once the gavel comes down, you guys will knock the crap out of each other!” It never got personal. It was always open, not violating any confidences, but basically there was an openness that was, and I think from the defense standpoint, from Bob's standpoint, it was important and in his client's interest to lay the cards on the table. There may be some risk in that, but he wasn't the kind of guy who would take a shotgun approach. He would focus his issues. My attitude was that if we've got the case, we've got the case. If we don't, if there's a

hole in this and we can resolve this short of that, let's do it. Why put everyone through the pain of the process? Where there were cases where we had – in those days, recruiter misconduct was one of the issues that could get you off the hook. If the recruiters lied to get you in, or the recruit revealed a criminal record and they said, "Don't put that down," and there were circumstances where issues like that would come up, how many ways do you want to deal with that? Deal with it in the way that's, from my standpoint as a prosecutor, that's in the best interest of the command, and he's going to deal with it in a way that's in the best interest of his client. We ought to be able to come up with the right resolution. As I said, it never became personal. We always – but nobody would ever doubt the vigor with which we represented our clients. I will tell you, I have not always seen it that way. I have seen it on occasion get personal and it shouldn't be that way. I've seen it happen in the civilian realm too. I suppose it has a lot to do with "what are your priorities in life?" Let me put it this way – I don't believe you serve the best interests of your clients when you get into that mode. If it gets to be personal, you better back away. If you can't make the proper adjustment, you ought to hand off the case to somebody else. Sooner or later you're going to make a decision which is not in the client's interest, whether it's the government or as the defense counsel. I will say this – the whole time in Germany, I was just prosecuting. I was a prosecutor, then an OIC. I was never a defense counsel. The first time I became a defense counsel was when I went to Litigation Division and I got to defend a very unpopular client, the United States Government (laughter). I have never made a secret of this, but I think that is a facet of my upbringing as a lawyer that I really needed that I didn't get. As a prosecutor, on the Government side, there is always somebody you can go to. Always. As a defense counsel, sooner or later there is a point at which it's just you and your client. As difficult as it is as a prosecutor to handle all the administrative baggage that goes with trying a

case, and in that respect it's harder, certainly it's more challenging, I think the other side of it – the stress that accompanies having somebody's fate in your hands to the extent that – you can't do anything about the facts but in terms of the representation, there's a stress factor there that doesn't have a parallel on the Government side. I think to be a complete advocate it's important to experience all that.

Q. Did defense counsel at all feel uncomfortable about working for the SJA? I know you didn't do it yourself, but. . .

A. From my perspective, it was a mixed bag. There were some who were very successful. Again, I was there for two years and about three months. John Fugh was there as the SJA for a year, then a fellow named Bill Eckhart came in to follow him. It depended almost entirely upon how the SJA handled it. If they were very professional about it and they were careful – it's not just in what they said but what they did. When I got there, this bachelor that my wife and my children and I stayed with was the OIC of the Giessen office, which was also in those days a good-sized office. He had been a defense counsel, then he became a prosecutor, then the SJA made him an OIC. Here's a guy who obviously was doing all things, including being a defense counsel, was not prejudiced. There were some others who would say, "Well, I don't feel I got a fair break." I think under Fugh and under Eckhart that was not the case. When I got there, the Chief of Justice had been a defense counsel, and he was plucked up to be the Chief of Military Justice. There were some great prosecutors. There's a federal judge by the name of Don Graham, African-American down in Miami. He was a defense counsel when I first got there, then they made him a prosecutor in one of the branch offices. The expectation was that if you stayed there for a normal tour, you were going to do both. I suppose some people might say, "Well, if you did a comparison of the ratings, the SJA would not rate their defense counsel the

same way they would rate their prosecutors.” I can’t say that that’s true. I would go on what I saw, which was people moving to jobs – you don’t put somebody that you have little regard for to be the OIC, and the OIC at Giessen – there was actually a one-star that was up there that they had some role in advising. You’re going to put somebody strong up there, somebody you have confidence in. Generally, in those jobs it worked. It doesn’t have to happen more than once. From the standpoint of the military justice system, if you have any instance where it looks like the rights of an accused may have been prejudiced in some way because the chief prosecutor, the SJA, even in terms of appearance, didn’t handle things in the right way, then you need to relook it. Even having said that, I would say that the trial defense service has meant a lot more than that. It’s not dealing with an appearance issue, it’s dealing with – when you look at the command influence issues that came up later on, what you have every confidence in right now with a trial defense service is that if those issues are there, they are going to be raised, they’re going to be fully litigated. There would always have been the shadow there that if the issues weren’t raised, under the old organization where the defense counsel worked for the SJA, if the issue were not raised, there would be somebody second-guessing in the back, saying it was because he was guy that senior rated them. I guess the Navy hasn’t gone – has the Navy gone to a separate defense service yet?

Q. They are just now going to one.

A. I will tell you, years after that, after the Army went to that concept, some conversations with naval officers – not JAGs, line officers – felt that was a definite plus for the Army and the way they administer justice, having a separate trial defense service that had a chain that basically protected those people from the appearance of influence or influence in fact.

Q. After you left Germany, you headed over to lit div?

A. I went to the Grad Course first.

Q. Was it the best year of your life?

A. It was the second best. We talked a little bit about this earlier. I'm serious when I say the best year I had was at Carlisle. I can tell you more about that later. We had a wonderful year at Charlottesville. As I said to you earlier, you look around the professional world and you're not going to find many situations where you get paid to go to school, number one. I always considered myself very fortunate to – and I know a lot of people did it – but I'll tell you, first of all, going to Charlottesville, to Fort Monticello, as opposed to many of the other places the Army can send you, if they are going to send you someplace for a year, that's an awfully nice place to be. To be in that environment, a school environment, as opposed to a true work environment, is something that is not just enjoyable but I think important. I think that's one of the reasons for the success of the Army that at regular intervals you have an opportunity to reflect, whether it's an advanced course, CGSC, the War College. You need that time to reflect on where you've been and where you are going. I could never bring myself to complain. I thought the faculty was marvelous when I was there. The contract law group was a terrific group. I think they had to meet a certain standard of comedic performance in order to be on that staff. Every one of them was accomplished in not just the specifics of what could be a very boring topic, but in the presentation, they were superb. They always added an element of humor as well as realism. The relationships you develop when you are there – the current XO, Joe Ross, and I sat next to each other for that year. I first met Joe there. He has got one heck of a sense of humor. He is not only a very smart guy, very talented, but very, very, funny and a terrific person. The relationships that you can develop in that environment – you are able to develop relationships in that environment that you can't do anyplace else. You can't keep the mask up very long in that

environment. Your classmates, your Graduate Course mates, get to know you. You see positives and negatives. I did not go into the Grad Course with the desire to come out number one. I wanted to go in there and learn as much as I could. I wanted to take enough time to figure out where I was going in the JAG Corps and what I really needed to do next and enjoy the year with my wife and family. There were actually some guys in our course, and I say guys – there were women in our course, too, but women were – there were men in our course who complained about grades. It did not endear us to the faculty. Actually, it was with the criminal law group. The chief of the criminal law department expressed some disappointment and some element of disgust that some people were coming in complaining about whether they got a 90 or a 96 – as if you really know 96 percent of the criminal law, 96 percent of what you need to know about search and seizure. Those are the kinds of things – and they're not lost on – the relationships you're developing are not just with your classmates, they're with the faculty as well. This is an organization that's rotating through, so if you're going to make an issue of something, you ought to choose it carefully. Overall, I say that just to point out that you kind of see the pluses and the minuses. You find people who you really get to know them. They would give you the shirt off their back, would do anything for you, will be there when you need them, and people that you develop a tremendous amount of personal and professional respect for, people that you're going to serve with for a long time. Was it a great year? Yeah.

Charlottesville's wonderful and the school – this is borne out – if someone ever gave you access to the evaluations that line officers give about courses that they take at the JAG school, the SOLO course (Senior Officer Legal Orientation), the GOLO course, frequently they say this is the best school I've been to in the Army. The reason is, the standards that are expected of the faculty there and the priority given to the teaching mission – there are a lot of talented officers

throughout the Army, but you won't find a school – and I'll say this even about the War College – the War College is more of a – the instructors act more as facilitators – they're getting the group with tremendous experience to open up. They intentionally do not handle it in a kind of lecture format because everyone is pretty much on an equal playing field when it comes to the kinds of experience they've got. The benefit of that environment is sharing the experiences. The JAG school has gone to that. There's less platform time now than when I was there. Even with that, I thought the people who were teaching us really knew their stuff. I was glad to have that opportunity. You never get that kind of comprehensive treatment of the law, ever, unless you took a year off and went to a graduate course, but even that, you can't do that and get the things that you need for your profession as a judge advocate. It's a great year. I think the fact that the other services have fought so hard to get a lot of people in there is evidence of that.

Q. Did you have any interest in staying there?

A. No. Let me say from a personal standpoint it would have been wonderful. Here I was, I went to Germany in 1977 so I was at the ten-year point when I finished in Germany, it was 1979 when I came home, back to the Grad Course. I was on the list, I was selected for promotion and promoted in 1978 so I got promoted – no ceremony – it was in a phone booth between Germany and Charlottesville. I came out with my gold leaves on but the effective date was sometime in July and I showed up at the JAG school in August without much fanfare, just pinned them on and went on with life. Because of my seniority, I didn't really think I could stay. I wanted to be a practitioner. Very honestly, and some people I suppose would wonder about my sincerity on this, but I guarantee you it is sincere. I did not feel I was qualified to teach. I thought I could go in the criminal law department, having had recent experience trying a lot of cases and been a credible instructor. I did not believe that I could go into other areas and do the same. The



administrative and civil law division had some subject areas that I would have loved to gotten into, but I would have been teaching what I learned out of a book that somebody told me about, not something that I did. I didn't feel comfortable instructing in that kind of environment. I really felt I had to go out and I had to be a working JAG again. I suppose if I could have gone back to Germany – at that point, I didn't know what I ought to be doing. I relied very heavily on the people who came down and kind of gave us some advice at the beginning of the year of things that were possibilities. What I really focused on was I had heard about the contract appeals division, I knew people who had gone to contract appeals division. I knew nothing about contracts, but what I did at the JAG school – and these are the days when you didn't get your assignments until February, so you had to make your decision on your electives before you knew where you were going. I had gone down to speak with the chief trial attorney for the Army. I went down there and expressed an interest. He took a look at my file, and he said, "Based on your trial experience and your law school performance, I think you can join this team." I did not take that as a guarantee, but I thought it was a definite – he didn't say, "Look for other employment," he didn't say that. I figured at least I was still in the running. I took all of my electives at the Grad Course in the contract area, contract disputes, advocacy, different courses that they had dealing with contract issues. When they came around for the assignments, when they started getting serious about that, they said, "Where do you want to go?" I said I'd like to go to contract appeals division. I think Barry Steinberg was the PP&TO. He kind of laughed. He said, "Well, I know where I'm going to send you." When the assignments came out, they sent me to Litigation Division. I was always intrigued by that because I did – I have admitted this before, this is not a first-time admission – the only class in the Grad Course that I almost failed – it is possible to fail a course – was the Federal Litigation course. Taught by my West Point

classmate, Brian Schiff. I think I got a 70 on his exam. We just disconnected entirely. My theory on how to respond to the question he was asking was different than what he was expecting but I just passed by the skin of my teeth. I did extraordinarily well in the contract courses. Rosey Rosenblatt was on the faculty. He told me numerous times some of the papers I wrote for some of those – he had saved them. This is a great response. I took from that that they looked at my work at the Grad Course and said, “Well, he’s got the contract stuff down so we’re not going to waste our time sending him there. Let’s send him to Litigation Division. He didn’t get this stuff right the first time. Maybe he’ll learn it in Washington.” As much as I was not excited about going to Washington, going to Litigation Division certainly was, I know, a great opportunity. They didn’t send everybody there. It made sense from the standpoint that based on what I was able to – my demonstrated performance as a trial counsel showed that I ought to be able to handle that experiment. I went to Litigation Division in June of 1980 to the military personnel branch. I stayed almost five years – not in that branch. I was in that branch for three years, and then became the chief of the tort branch. When I finished there, I guess I went from June of 80 to the end of January of 85. I would have needed about four more months to make a full five years, but at the time that was a long time in Litigation Division. I know the reason I was able to stay that long was because of the variety that I had in the kinds of cases I dealt with. Some guys or gals got in there and they got in one niche of cases and you could see very well that you’d get tired of that after about two years and it was time to move on. If you had some variety – variety is the spice of life – it makes it easier to do other things. I had some very interesting cases, and I worked for good people there. Scott Magers – I told this story at his retirement – Scott Magers was the chief of the military personnel branch. The guy that was the chief of the division was Arnold Melnick, who was a legend in the JAG Corps in the litigation

realm. This was his second tour at Litigation Division. He had been at Litigation Division previously in some of the years where some important law was made with respect to the law of military installations and other things. He was there in the early 70s when Litigation Division was much smaller but the cases were very, very significant. By the time I got there, he was in his eighth and ninth year of experience in litigation. He had a reputation as a guy who could really tear you up. Depending on who you talked to, he was hard-line or not a very pleasant guy to work with. The best advice I got from people who really knew him was always be straightforward with him. If you don't know the answer, tell him. Don't try to BS him. If you BS him, he will tear you up, and rightfully so. He expects you to come in, give it your best shot. If you're wrong, he'll tell you. If he disagrees, he'll tell you. Just deal with it that way. I never had a problem with Colonel Melnick. We didn't always agree, but I followed that advice. Basically you had to do your homework before you walked in. Scott Magers was a great mentor in a lot of ways. He was always there. He never threw you into the boss, into the lion's den, by yourself. You'd always go. He'd make you do your homework, he'd go through the presentation with you, and then you'd go in and see the boss. If you did your homework – if you had the qualifications to get into that division, you had the ability and you applied yourself, you were going to be 90 percent of the way there. The boss might disagree on the style, the approach, and invariably he was right. One of the lessons I learned there is again, the personal aspect of it, when you get so involved with a case that it almost becomes personal. There was a Reserve Colonel who was not selected for general officer. His name was Seldon Graham. Sued the Army, saying he was unfairly not selected for general. He wound up trying to get cert. We won in the District Court, won in the 5<sup>th</sup> Circuit, and he didn't get cert. There were points there where he really got to be – it was affecting the way I was writing. I had some phrase, some

sentence in there, and we were going through that, and Colonel Melnick struck that out. He said, "That's counterproductive. Message received." I say Scott Magers was a great mentor because he did a couple of things that I always remember. Were you ever in the D-ring of the Pentagon – have you been to the Pentagon?

Q. Two times.

A. It's hard to appreciate this unless you saw the offices the way they used to exist. The E-ring of course is the outer ring, the ones with the windows. Then you have the D and C rings which are internal rings and those are all the offices with no windows. When I first started work at Litigation Division, I went into a – it was actually separate from the rest of the military personnel branch, it was the only place they had a desk – I walked off the D-ring down a narrow corridor that had two small offices, and I mean eight by ten or eight by eight, it was really small offices and some larger offices, maybe ten by ten. The one I went into had a secretary with her desk, a high school student aide, and a desk for me. There were three of us in this. She worked for the civilian personnel chief, I was in the military personnel branch in the midst of all these tort litigators. You get in that environment, you start getting cases, you're working hard – if you're not careful, if your boss is not careful, it could look like you're forgotten. Scott Magers always made a point of coming back and saying, "How are you doing?" He said, "You're doing good work, I appreciate it, thanks for what you're doing." Not overdoing it, but just coming by – "Did you get out to POAC today, did you get your exercise in? Got to do that." My work was beginning to really – because of the cases I had, they were all coming to some critical points, and he said, "Okay. What is your plan for how you're going to handle this?" which was good. He was making me make sure that I was thinking ahead. I went down my calendar for about the next month, and basically I had myself working a number of weekends in there. He said, "No.

You're going to be here three, maybe four years. You've got to have your time with your family. You have got to recharge your batteries. You need to rethink this and give yourself that time off on the weekends and basically work it in a way that you can go for the long term." That was important. It was important for my supervisor to tell me you need to make sure you are taking care of yourself. That was a lesson I never forgot, and he was good about it. He always went to POAC. He made sure he did that because he knew it was important. He said if he said that to people and he didn't go out, they were going to judge him by what he does, not what he says. He was an excellent manager. He would always stand up for his guys. If we went through a briefing with him and the boss really got on end – he didn't do it with me, but apparently one time with one of the other officers it got so heated that Melnick threw them out, basically told Scott Magers and this other officer, "Just get out. You're wrong. Get out." Well, Melnick was wrong. Actually, what happened was Scott went back in later. He could do this. He could get in with the boss alone and say, "You're wrong on this one." Melnick rethought it and twice in the next two days he walked over to this other officer's office to apologize. Scott was my first supervisor. Fritz Fulberg was my second one and then I went over to be the chief of the tort branch. I know you wanted to talk a little bit about the chaplain's case. We probably should save that for next time because that gets into some interesting stuff. Just so you know, I had that chaplain's case but I was not the first guy on it. The litigation actually started in 1979. I was at the grad course when it made the newspapers that a couple of Harvard law students had filed suit on the theory that any expenditure of public funds for a religious institution like the chaplaincy violated the First Amendment, notwithstanding the military needs. They said it was unconstitutional and we believe – we have never confirmed this – but we believe this started as a writing project at Harvard. One of their constitutional law professors – basically his theory was

that this was a gross violation of the establishment clause of the First Amendment and if challenged would not survive. They started this in law school, and then both of them were hired by very good New York firms, and they continued the litigation while they were there.

Q. On their own, or for the firm?

A. They were on their own, but I guess the firms gave them some administrative support. They weren't signing pleadings representing that the firm was behind this. They were from that firm, but it was not firm representation. They were really doing it on their own. That case was started with counsel by the name of Roy Dodson, and after the initial round of motions when they got into some discovery, that's when I got into it which was about 1981. Then I wound up staying with that case even when I went over to the tort branch. I stayed on it because it went through appeal in the 2<sup>nd</sup> Circuit. We can talk more about that at our next opportunity. I did a lot of work also with several hundred cases that we wound up consolidating that involved promotion boards that had been conducted in the 1970s, in the 1975-1976 time frame. They were the '74, '75 and '76 promotion boards. They were called the relook boards. The reason they were called the relook boards was because the original boards – someone had made a decision in the Army not to include reserve officers in the board membership. Reserve membership is required by statute. When you have a problem with the composition of the board, the board is void. This involved promotions to major, lieutenant colonel and colonel and chief warrant officer three and chief warrant officer four, may have been two, three and four. We're talking about thousands of officers who had been looked at. So the Army, recognizing that it had done something wrong – these guys went to the Army Board for the Correction of Military Records first. In those days, they had what they called standby boards where they would have a new board look at a select number of files – not the whole population, they looked at a select number and decide whether a

person would or would not have been promoted – they didn't do that. They decided to redo the entire process. They actually relooked all of the files of these people who had been considered previously. The Secretary of the Army said, "If you're selected by any of those boards, you get promoted." In other words, the original board was '74 and '75. In those days, if you were a Reserve officer passed over by two consecutive boards, you were out of the Army within 90 days. If you were Regular Army, you had to be passed over for permanent promotion, but it affected the Reserves, so that's why the Reserve membership had to be there. The Army redoes that, so the only guys that were out of luck are the ones that have been nonselected four times. They sued, and they went into Federal District Court here in D.C. and also to the Court of Claims, and they won. In fact, the D.C. Circuit had pretty scathing words to say about the way the Army conducted this. It was evident when you looked at that that there was a substantial misunderstanding about how the board processes – they assumed that the fact that somebody had been passed over was a matter of record for the subsequent board. It was true in the Air Force. In the Air Force, they stamped those – there is a clear indication in the file that somebody who had been previously selected has been not selected. Even in their instructions in those days, they would put an advisory in there – note that this person has not been selected and the fact that a prior board has not selected them ought to be a factor in your consideration. The Army was the other extreme. You would have to work the numbers in your head to figure out whether somebody had been previously passed over unless some of the Army officers wrote to the board, saying I was passed over last year and this is what I've done since then. The court didn't understand that. It was only the first wave of cases that was tried in DC. We were now on the subsequent waves and I picked up those cases from a guy named Shields. There was a fairly substantial price tag and liability that was attached to that. I spent a lot of time on those cases,

the selection and promotion cases, the chaplains' case, and then some other personnel. Different personnel cases, some issues about medical disability, and other things I dealt with. Again, I was dealing with a certain amount of variety, and also I was getting into court in various capacities – hearings, other things – with some degree of regularity, most of it being either here or in New York. The chaplains' case was in New York so that added some variety. I could get on the shuttle and go up and do some things in New York, come down – or I was downtown over here. Some guys didn't have that luxury. They would work on certain cases and you really needed to get out of town after two or three years of that.

Q. You were at Litigation Division after being at the school, but also after a field assignment in Germany.

A. Right.

Q. Did you notice any difference among the judge advocates in DC compared to those in the field?

A. Fundamentally, no. For the people who came into the Corps and stayed in – and pretty much the people in Litigation Division were – you didn't find too many captains there. They were either senior captains, majors or above. Actually, Colonel Lederer was a captain at that time and he was probably one of the people who came in with lesser experience. That was a tribute to the abilities that he had shown early on in his career. He was shouldering a very substantial load while he was there and did an absolutely marvelous job. I point this out to you because the people you would find in Washington at that time, and pretty much the same thing you would find at Administrative Law, at Criminal Law, they had a field assignment and now they are at the next level. They were fundamentally the same, but when you are in this environment for a length of time, what you have to guard against is the inclination to think too much like a



headquarters person. The value of the rotation policy that the Army has, generally as well as the JAG Corps, is that you bring into the center of the defense universe people with recent field experience on a continuing basis. That's very important. Of course, people come to Washington, many of them come kicking and screaming. They say they would never come to Washington. A lot of people want to come to Washington, but some don't and then you get comfortable in this environment. You get settled into a civilian community, and the natural inclination is that the family's comfortable, we have good schools, nice living, could I extend it a little bit more? That's okay for family considerations and it is certainly in the Army's interest and the JAG Corps' interest in some of those jobs to make sure that you stay a length of time, because they are complex jobs. If you bring somebody to Contract Appeals Division or Litigation Division, there's a train-up time there to become a useful contributor that is more than what you would find at a post, camp or station as a junior judge advocate. So you want to get more out of them. I'd say that's probably the only – well, there's two differences. One is you think like a headquarters person and you have to be careful that you don't. You have to always remember that your reason for existence is to serve the soldiers in the field and to take care of the Army in the field. A JAG general officer predecessor – the very first time that I ever went to the Pentagon, it was when I was in the Grad Course and I think it was when we came in to be sworn in to the Supreme Court, we did that and then we visited the Pentagon in the afternoon – after being thoroughly unimpressed with the closets that the JAG iron majors were occupying, we sat down in one of the auditoriums there for a talk by several people. Dick Bednar, who was a one-star and the head of the – he was Assistant Judge Advocate General for Civil Law – at that time, it wasn't Civil Law and Litigation, just Civil Law. He came in, looked at us all and he kind of shook his finger at us and said, "You just remember. For those of you who are coming here, just

remember why you're here, why you serve here. It's for the soldiers in the field." If you have supervisors like that who are in the habit of continually reminding you, that's not a problem. But it is different, and I believe it's very important to have that service. I do not agree with the philosophy that it's better to stay in the field the whole time. If you want to broaden your horizons as an officer and if you want to be a more effective officer in the field, I think it's essential to have some kind of headquarters experience to see how decisions are made, how things happen. If you can do it at the Pentagon, that's fine. But you could go to other major headquarters and get a similar experience in the sense of headquarters versus field thinking. You recognize that it's tough duty. There are a lot of advantages to being assigned in the building in terms of having the opportunity to see the leadership in an up close and personal way that you just don't get in the field because it's impossible to get. That's why you run the TJAGs and TAJAGs ragged with the Article 6 business because you try to do something, get as close to that as you can but you can't if you don't live with them. I think the answer is fundamentally they're the same, and I think the proof of that is – how many people do you know or have you seen who have been in and out of assignments at the Pentagon and been terrific officers in the field? They have come back out as leaders, either as deputy levels, division chiefs or SJA levels. They have a broad enough perspective to understand what's going on at this end, and that affects how they do business, affects how they are mentoring young officers in terms of what to look forward to, what options are out there career-wise in terms of service. It's important service and for the people that I served with – for most of them, it was not a problem. There were some who would try to live the rest of their lives here, but they were a minority.

Q. Did you supervise any of those people?

A. That had the –

Q. Who would want to spend the rest of their lives here?

A. I'm trying to think of who – I think just about everybody – of course, when I was here, I was an action officer in the military personnel branch. I was the Chief of the Tort Branch, and everybody that I worked with at Tort Branch continued to serve, went on and didn't look to get out. Staying in Washington wasn't so important to them that they wanted to – they were fighting to stay there. There were some who we had, as I mentioned before, makes good sense to keep them there a little bit longer, but the set of people that I supervised at that time was not that broad. I had a good experience with everybody that I worked with. What I observed in Litigation Division was very positive. I'll tell you where the – and I went to Contract Appeals Division later for a very brief time – the risk of losing somebody in those days was probably greatest from Contract Appeals Division than anyplace else because the work is very, very challenging and so close to what you do in civilian practice around here, high demand civilian practice. When you have people litigating cases before the ASBCA and doing very well against some of the best firms, not just in the city but in the country on government contracts issues, when a client sees their attorney get their ears boxed, it's not unexpected that they may say, "Find out how long that person's going to be in uniform." I suppose the attraction and the opportunity for those folks was probably greatest at that time in their career. At the time I was at Litigation Division, if I had thoughts about leaving the Army, that would have been the best time to do it in terms of having an experience base and honed skills with which I could have readily have transitioned into the civilian market. Even now, we have hired four judge advocates in this firm since I have been here, and it's not because I went out and recruited them. They were looking around – their interest in the firm came to me indirectly. I became involved later in the interview process. They were hired because people with a number of more years than me at this

firm believed they had the experience base that would be worthwhile and would make them contributors. All four of them are doing exceptionally well, and they are all working for some of the most demanding partners– the most demanding partners in the firm in terms of litigation and litigation-related functions. That’s a good example of what you find in those circumstances. It can be a real hard choice. That gets a little bit far afield of your original question, but I think it is – to get into your question a little bit deeper, is this the kind of environment that could really pull someone away from the Army? Yes, it could.

Q. How do you guard against that? Do you visit an installation every once in a while maybe, to see soldiers in uniform?

A. We talked a bit last time about the soldiers first philosophy – how did I develop – for me, that was there from the beginning because I started that way. I also believe that, and when I began to speak to Basic Courses and to judge advocates at various places, it was important to understand what they are here for. When I first came in the JAG Corps – in the early 1970s, when I made the decision to go to the JAG Corps, the retention rate was exceptionally low, exceedingly low at that time. The JAG Corps was looked at, I’m sure, by many of those people as an opportunity to come in and get good experience, particularly trial experience – if you wanted to try criminal cases, you could do that. The Army was in bad shape in those days in terms of the misconduct that took place. A lot of it fell into the court-martial arena so you could try a lot of cases early and then you could step out, go to private practice, go to a U.S. Attorney’s office as a prosecutor, public defender without much difficulty at all. I know that’s important. The experience is important. Fundamentally, you have to understand why you’re here. If you really inculcate that value early, I think you’re never going to lose in this sense – you will lose people but they will never have the impression that there was a “bait and switch” approach in terms of why they were

coming in. You don't sell the JAG Corps primarily on the idea that it's good experience. You sell it on the concept that there is honor in service, it's important to serve, and whether you stay three years, four years, or twenty years, the time that you spend in uniform serving soldiers will be something that you look back on with great satisfaction. You'll be glad that you did it. I think for our career force, understanding that for the groups that we bring in, the direct commissions in particular, that you're going to always lose – traditionally lost – a lot of them after the first tour. Prior to the drawdowns of the '90s, that was not really a problem. In fact, in some respects it was a positive from a standpoint of giving you a ready base to build up your Guard and Reserve component forces. If you're establishing the right values early on, then these attractions that you may run into later on are not going to affect you. In other words, the opportunity to go out and make a lot of money, to go to a firm or go to a U.S. Attorney's office, while it may be nice, if your mission that you have accepted for yourself is "this is my professional undertaking for the time that I am in – to serve soldiers", then it's not going to be a problem. You are going to look for the opportunities to go back out to serve soldiers. As attractive as it can be when you look at it from one perspective about jumping off, say from Litigation Division or Contract Appeals Division, you have to understand what you are jumping into. A former JAG, who was working in the commercial litigation branch at the Department of Justice, that I worked a lot with on a lot of these promotion cases we talked about last time, we developed a good relationship and I did some good work for him. He said, "If you ever wake up one day and you want to litigate pretty much for the rest of your professional life, just let me know." I thought about that and as much as I liked that opportunity – and I'll tell you, early in my JAG career, I wanted to be in the courtroom and I wanted to stay in as long as I could. If it meant being – we didn't have the Trial Defense Service in those days, but it was conceivable that

if you were Chief of Justice, you could still get in the court. If you were more senior in the defense community, in addition to the management responsibilities you would have, you could still try cases. You could be a military judge. There were ways to get into court. As I really became more familiar with the opportunities, with Litigation Division, with Contract Appeals, you could build yourself a good litigation career. You could do field work and you could do litigation work basically through a career. One of the things you learn as you get older is litigation in many respects is a young person's game. You need the experience at the higher levels to manage things so that all these energetic young captains and majors are getting the mentorship and guidance to function the way they need to for the trial or defense or in a civil environment. But it takes energy. This point came home to me, and really I thought we effectively argued it as we were going through the drawdown in the early '90s, and there were arguments being made that those functions that the JAG Corps performed that appeared to be essentially civilian in nature where you could interchange civilian attorneys with military, that they should civilianize those, take those spots away. One of the places they were looking was Litigation Division. They looked at Contract Appeals Division. Why can't you hire civilians to do that? Well, the argument I gave back was that's a high-energy, high demand tour. In my opinion, the reason for the Army's success in both of those areas, and I believe we did it better than any of the services – the Air Force essentially civilianized their contract appeals. None of the services have dedicated – and this is not a knock at the other services, this is just a matter of fact – none of them have dedicated the personnel assets to litigation as much as the Army has. Maybe they haven't been sued as much (laughs), but they simply have not done that. What does that mean? There's that great opportunity, but if you look at a U.S. Attorney's office, many U.S. Attorney's offices, there's a fairly significant degree of turnover. If you looked at litigation in

civilian practice, you would probably find the same thing. Why is that? Because it can wear you out. I think the advantage for the Army is that you take somebody at that point in their career, they are really energetic, fit, ready – they have got the ability to stay in a fast race, but you are telling them that it is for a limited period of time. You are coming out of the field, it may be a great assignment, but you spend a year at school and you come up to Litigation Division. You are going to be here three to four years. It is going to be a high-demand job, but then you are going to go off and do something else. You may go to school again, you may go to CGSC, you go out to the field and the pace is going to change. You can pace yourself and you can really – it's a lot easier to make demands on people in those circumstances than if it were an open-ended commitment. You are going to be here for the rest of your professional life and we are going to wear you out in the process. There is a big advantage to that. I think that's where the Army makes a lot of money and the JAG Corps in particular. I have learned through experience that variety is the spice of life. I mentioned to you last time that I stayed at Litigation Division five years. The reason that I was able to do that and I was still standing at the end in large measure was because I had variety, both in the military personnel branch and then going over to tort branch. Not only substantively was there a change, but my responsibilities changed. I think that as comfortable as you may get in a particular job, and it doesn't have to be Army, it could be anyplace, it can tire you out, not just physically but emotionally, psychologically. I think that piece of it is important to understand. As long as the Army continues to operate the way the Army does and you treat judge advocates in that same way in terms of the rotational policy, you will continually have a base of people in those high-demand jobs who will do well, who will give it their all, and then move on and do other things. It is two-fold: number one, for the people who are in there, you get more out of them; for the people who are not in there, looking for

opportunities, that change-over is what creates opportunities. I think the importance of that fact became clearer to me as we were making some of the hard decisions and making the arguments to defend our end strength in the '90s.

Q. While you were at Lit Div, was the attack on the chaplaincy program one of your more demanding cases?

A. At various times it was. As with all litigation, there are various pieces that become critical. When I got into it, it started in 1979. I got into it in about 1981. By that time they had been through one round of motions to dismiss. When the first judge – Judge Jacob Micheler – he denied the motions to dismiss and said the plaintiffs are entitled to some discovery because there were some questions that they raised. On reflection, it helped the chaplaincy to go through an introspective exercise about how they were doing business. Fundamentally, we all looked at it continually. There were civilian attorneys for the government who got involved later in the case who really viewed it as a frivolous exercise. They were offended by it. It had gotten into some discovery, and getting into that kind of exercise where potentially this could have been more wide discovery. That's part of the process in discovery is negotiating what you are actually going to do. What we wound up doing instead of having the plaintiffs have the option of going throughout the world and talk – try to find information – we agreed that we would provide data from three places: Europe, to get the overseas perspective; we took one TRADOC installation and one FORSCOM installation to get the environments from two different major commands. Fort Campbell was one and I think we were collecting information from Fort Dix. That process of getting information through the Chaplain Corps – the client was the Army, but it really was the chaplaincy and the Chaplain Corps – and the Chief of Chaplains, CH (MG) Kermit Johnson, former infantry officer who became a minister later in his career and wound up being the head of



the Army Chaplain Corps. We all took it seriously, and we said it to them at the beginning that no matter how frivolous you think this claim is, this is serious Federal litigation. If you do not stay in control to the extent that you can, if you lose control of it, you never know what can happen. You may be left with a situation that could be intolerable. Managing the expectations and the input from the Chaplain Corps – it was a very, very sensitive issue with them to not try to justify the chaplain corps on the basis that they are counselors, that they do so many things that are non-religious in nature that it is really okay. They are offended by that, and they should be. The fundamental thrust of our argument was that the Army Chaplaincy is there to ensure the free exercise rights of soldiers. Certainly there's money, and a very simplistic analysis of that, you could say that you are spending a lot of money – and it was a considerable program – for religious purposes, that is to fund a chaplaincy, provide for all of the means necessary to allow soldiers, their family members and retirees – it is soldiers and family members, retirees are kind of an adjunct to that. To the extent that you are providing it to soldiers and their family members, retirees can take advantage of it. You don't go out and provide services solely for retirees. There were some sensitive dimensions to that. There were some surprises about how certain moneys were handled because they did try to delineate where funds – in other words, the appropriated funds – and we made this distinction, appropriated versus nonappropriated – appropriated funds for those functions that meet the needs of soldiers across the board. You need to have a chapel. It's not a Catholic chapel or a Protestant chapel – it is a chapel that can be used for all those purposes. You can use appropriated funds for that. If there is literature or other things that can be used on a communal basis, you fund that. For things that are peculiar to a particular denomination, for instance for Catholics, for the collections that they have and those funds that are collected out of the Catholic community, they use those to provide things that meet

the particular needs of Catholics – the Catholic religious education program. That is all funded out of the nonappropriated funds, or it was at that time. There were some careful distinctions laid out. As is always the case when you really bore into those things, you find that maybe some things are not done the way they ought to be done even though the regulations are there. As I said, this self-examination by the Chaplain Corps was important. I think they were certainly more sensitive afterwards. I think they appreciated their role in the sense of how it was officially defined. They appreciated the care with which we advocated the Army's position consistent with what chaplains believed to be their mission. We won that case at the District Court. We did two things in that case that were interesting. We tried to raise the taxpayer issue. They came in on taxpayer standing, and I haven't gone back to that stuff in a long time, the *Flast v. Cohen* twofold criteria that you need to demonstrate, but what's significant about taxpayer standing is that you do not have to show direct injury. You have to really understand the history of why that case was decided in that way that probably led the Supreme Court to come to that conclusion. It had to do with the secondary education – elementary and secondary education funding act, some legislation early on that was for school funding. Basically there were complaints about the use of that for religious purposes. After an extensive analysis and after the plaintiffs had exhausted all other legitimate means, they were left with no other alternatives but to seek redress from the courts. That led to the conclusion that we had to live with *Flast*. We tried to argue that at least initially, we believed that the taxpayer standing was not in question. They were students. We did not know what they were paying in the way of taxes. Secondly, that we thought it was an abuse of that concept, where we believed – and no one ever disabused us, we never were able to prove this firmly – the evidence we had that we could not rely on indicated to us that this began as an academic exercise that they were able to carry on once they became attorneys who were

working stiff – who had to work for a living. We raised the standing issue – it was a good-faith argument and I think we did it as well as we could – I thought the court took it very seriously because if you look at the decision, Katkoff v. Marsh – I think it is Katkoff v. Alexander at the district court level and it became Marsh later on – the judge spent a lot of time dealing with the taxpayer issue, which indicated to me that there was enough concern that he felt he had to dedicate a significant portion of his decision explaining why there was standing. He had less of a problem with the concept of spending public moneys for chaplains’ services or funding an Army chaplaincy. I will never forget this – I was at the oral argument and I won’t say that we took a beating on the standing, but the judge just wasn’t buying it. He said, “This argument” – the comedy is that I never heard it before – “smells of the lamp,” indicating that somebody stayed up late under the oil lamp working on this argument. We thought he was going to dismiss the standing out of hand. Obviously, his subsequent decision demonstrated that he gave it a lot more thought than just simply dismissing it. The part that was interesting was the plaintiffs’ position was that you could rely on private religious resources to meet the religious needs of soldiers. They had one example of a denomination, a rather small Protestant denomination, that sent a chaplain at their own expense to Vietnam to minister to soldiers. They did that, but within the confines of what you could do in a combat environment, which was that you could go to the same locations that you could send other civilians, that you could send the Red Cross representatives, most of the media, other sources in the large base, the secure areas. You could not send them out to fire bases and to other locations on a continuing basis – on a basis that would provide continuing religious support. You needed chaplains to do that. The judge that we had – it went from Jacob Micheler who started it and denied the motion to dismiss, he went into senior status – and the newest judge on the bench in the Eastern District of New York was Judge

Joseph McLaughlin, who had been the dean of Fordham Law School when I was there – not that he knew me or that made a difference – but he was there at a Jesuit institution. Someone mentioned to us that at his swearing-in there must have been eighteen priests present there for this Irishman who had deep religious roots, both in his professional life as a dean and personally. That's not what was key. What was key was – and we had some indication that he had service – he basically put it on the record when one of the plaintiffs, these young attorneys who had never served in the military, were talking about how you could provide this anywhere the service is. He said, "Even in Korea?" They should have realized something was coming, and they said, "Yes, even in Korea they can do that." He said, "You know, counsel, when you say that, I have these recollections of a place where I served. It just seems to me far beyond the realm of possibility that a civilian organization, privately funded, that does not have the duty and responsibility to minister to soldiers in the way that Army chaplains do could meet that need." One of the assistant U.S. attorneys who was sitting in the back of the room said as we were going through our argument on standing, he said you guys are in trouble on standing, but once Taegu came up, you had it made (laughs). His decision was a slam-dunk on the chaplaincy. We went up to the 2<sup>nd</sup> Circuit on that case, and by that time I had moved to tort branch, but I stayed with the case. Tom Folk, who is a brilliant attorney, one of the stars of the JAG Corps at that time, a bright guy who finished way up in his class every place – he was eighth in his class at West Point, and first in his class at the University of Virginia, and he was first in his Grad Course, and he was picked for the General Counsel, and he had been a former infantry officer – he and I worked the appeal. When it went up to the 2<sup>nd</sup> Circuit, the three judges we had – I think all three of them had served, two of them in World War II, one in Korea – and we had about a 98% win in the 2<sup>nd</sup> Circuit. The only piece – they didn't buy the standing argument but they had no problem

publicly funding chaplain activities almost across the board. The one exception was they had some question about, and they sent it back to the district court to have resolved, the issue of chaplains in major metropolitan areas. It was really unfortunate that they did that. Actually, it was a two to one decision, and Judge Meskill, who was a former Connecticut governor and served in Korea – I think in the Air Force, I think he was an Air Force fighter pilot in Korea – really had a very strong dissent and accused his colleagues of judicial nit-picking. In truth, they missed something that was in the record. They asked me a question – we had a U.S. attorney who was arguing and I got up to do part of it to respond to some questions from the court – and I don't recall that at the oral argument specifically the issue of chaplains in the metropolitan areas was asked, but we had addressed that in the brief because they raised it – they said you have fourteen chaplains in Washington at the Pentagon. It was very clear that the Office of the Chief of Chaplains – these people are doing principally administrative and staff support for a large organization in the Army. We had a handful of other chaplains who were burying people all the time over at Arlington. They missed that and they sent it back to the court. Judge McLaughlin was fit to be tied. We got that through the clerks. He wasn't as polite as Judge Meskill when describing it as judicial nit-picking. I left before that was finally resolved. Actually, the Justice Department was inquiring about the standing piece. They were giving serious consideration whether or not, as a matter of policy, they wanted to go after the taxpayer standing. They thought this might be a case to do it. They decided not to, but they looked at it. They had taken all our briefs and talked about our arguments on that point. Ultimately what happened – the case was essentially settled. It was dismissed with prejudice, basically to end the case. I thought that we – and this may have been viewed as – I don't know what the proper word would be, vindictive is too strong a word – but I thought we should at least have gotten some costs out of

the plaintiffs. There wasn't a whole lot there because there is a lot of things that you could not – we couldn't get any kind of attorney's fees. It's hard to argue that you can get staff support fees from people that are part of the chaplaincy but there was in the course of discovery a lot of reproduction costs and – it wouldn't have been a whole lot, but it would have been a couple of thousand dollars, twenty-five hundred, three thousand dollars – just as a matter of principle it would have been nice to show that these types of endeavors are not cost-free, not when you embark on what appears to be a frivolous exercise. One of the guys – it was interesting – in New York one of the supervisors at the U.S. Attorney's office was Jewish, and he said he served in Korea. He said, and I'm not sure what kind of Jewish event this was, but he said that actually, one time a priest came in to do it, to try to meet the needs of the Jewish soldiers – it was nothing that would have been in violation of anybody's deeply held religious beliefs – but he was facilitating something that was going on and he said, "Actually this guy did a better job than a lot of the members of the Jewish community trying to do the same thing." His point was that there was simply no question in his mind that the mission that they were trying to accomplish – all of our arguments about meeting the religious needs, the free exercise needs of soldiers – were real. The wife of a law school classmate of mine – I went up for one of the arguments and I stayed with some friends from law school – the husband of this law school classmate of mine is an atheist. He knew I was up there for this and he said, "I'm an atheist and even I believe it's constitutional to fund the chaplaincy!" I don't believe they had too many people in their corner. We weren't laughing about it after spending almost seven years in that litigation. It was quite an undertaking to be involved in. I was really happy to have had that experience. I was part of a team who did that – my timing was perfect to get into it at a time when it was fascinating. What won the case for us was that we got declarations from senior officers at the Pentagon. The key

declaration was from Kermit Johnson, the Chief of Chaplains, who explained what chaplains do and why. That makes very interesting reading. When I was in New York and was with my law school classmate – all of these were public filings, so I showed her that affidavit – she was a very bright gal, Jewish, didn't know a whole lot about the Army, but in reading the declaration she said this was a very compelling justification as to why you needed them. In addition to that, we had General Shy Meyer was the Chief of Staff of the Army, General Jack Vecsey was the Vice-Chief of Staff and had been nominated to be Chairman of the Joint Chiefs of Staff, General John Bagnul, the Commanding General of the 101<sup>st</sup>, and then we got the CINC USAREUR, General Fred Crosun, we got declarations from all of them about the importance of chaplains to them and the soldiers that they had commanded. You have Vecsey, who was a First Sergeant at Anzio, received a battlefield commission there and rose to the highest levels, and Meyer, who was a Korean War and Vietnam War veteran, Crosun was Vietnam – I don't think he was Korea, I think the only one who was Korea and Vietnam was – well, Vecsey was World War II, Korea, and Vietnam, Meyer was Korea and Vietnam, Crosun probably was Korea and Vietnam, and then Bagnul was probably just Vietnam – but you have these declarations – and they made an issue – they wanted to depose the declarants and the judge wouldn't hear it. He said, "This man's been nominated to be the Chairman of the Joint Chiefs and you want to go in there and depose him?" Basically they gave their opinions about why that was important, and either you accept that or you reject it. He said, "I'm not going to seriously entertain your assertion that what these gentlemen are saying is simply not true." He may have shown some inclinations our way at that point, but basically that is what really pushed the case in our favor very heavily. We needed something like that to give – and it was provided in this way, it certainly was to impress the court with the rank, but that was not as important as the experience that they had. What was

important about them was not the stars they were wearing on their shoulders at that time, it was what they had done before they got there, particularly in combat and what that need meant, personally and what they saw was important to soldiers in terms of their free exercise of religion. In essence, they were experts – if we had gone to trial, they would be subject to that – certainly, their backgrounds were sufficient and we laid that out clearly enough in the declarations that they didn't need to – there wasn't any need for the plaintiffs to depose them. That was important, and that case was the most demanding because of the visibility. When you have the Chief of Chaplains, and you are going in to get declarations from the Chief of Staff of the Army and others, you better have that stuff right. Probably the closest I ever came to getting fired was in that job because Scott Magers, who was my supervisor at the time, and I did something that our boss was not happy with. Arnold Melnick was the Chief of Litigation and I explained to you last time his lengthy experience. Most of the time he got things right, but not always. In one of the declarations we had to address this issue about where civilians could be on the battlefield because of this denomination they came up with that said, "We can go out and do this." Our argument back was, "They can go where civilians can go and the Red Cross and these other organizations do not have full access to the battlefield." It was in the declaration for General Meyer. We had a line in there addressing that the Red Cross does not have full access to the battlefield. They may get out there under the right circumstances, but they are not like a chaplain. They are not the equivalent of someone who is uniform who is moving with the troops all the time. That was our point. For some reason Colonel Melnick didn't think we had that right. We assured him we did. He said, "Well, take it out." So we took it out, but I double and triple-checked that. At the time that we were writing this, the Assistant U.S. Attorney from New York, who was really in charge of the case – she really had the say over everybody in the Army,



including Colonel Melnick – basically said we really need that. We need to put it back in. Scott and I said, “Okay. We’ll put it back in.” This affidavit is fifteen pages long, and Melnick gets it back, and our mistake was we did not tell him we put it back in. He goes over to see the TJAG at that time, General Hugh Clausen. In fifteen pages of reading, what line do you think he picks out?

Q. Red Cross?

A. The Red Cross line. And Melnick – first of all, he got surprised. Secondly, he thought we were wrong. I was down the hall toward the leadership doing something else, and I’m walking back and Scott Magers turns the corner of what was then the D-ring of the Pentagon and said, “Our careers are over. Meet me back in Melnick’s office.” I bumped into the assistant U.S. Attorney – she spent a week with us at the Pentagon, Marilyn Coe was her name – I said, “We’ve got a problem here.” So she came with us. It’s Magers, myself, and Marilyn Coe, and basically he said, “I thought I told you to take that out.” I answered, “We did take that out, but we put it back in.” I didn’t say she told us to do it. I said, “We put it back in. We are certain it is correct.” And it was right. There was no question about it being right. Before he had a chance to say anything, she stepped up and said, “I told them to put it back in there. I believe it is critical to our case. We are confident it is correct. We really need it in there.” He excused her and then he just looked at Scott and I and just said, “Don’t ever do that again.” So we survived that round, but it was obviously an important lesson learned. You fight that battle out with your boss – that is something that was really out of character for both Scott and I to do. We would never do that. The problem was we were trying to meet a filing deadline and the problem with getting signatures on these things – you get limited shots at the Chief of Staff of the Army. If we didn’t have that in there, it was going to be another very significant drill to get another affidavit

with the same stuff in it with one more line up there for signature and back and filed so we made the decision kind of – not necessarily in the heat of battle but on the way to the LD (laughs) and it had some interesting consequences. But it worked out just fine.

Q. After Lit Div, where did you go to?

A. I went to the 1<sup>st</sup> Cavalry Division.

Q. Was there CGSC back then?

A. The next real field assignment was 1<sup>st</sup> Cav but I went to the six month – you had two choices in those days, two options for CGSC, Command and General Staff College. You could go to Leavenworth or to what was – and it is still down there – the Armed Forces Staff College. They have now changed that, the education down there – they perform more of a specialty training mission for joint assignments – but at the time it fulfilled the staff college requirement. The reason I wound doing that was my wife was pregnant with our third child and he was due in the summer, when I was normally due to leave. They decided to leave me in place. I could go down to Norfolk. My son was born that summer. We stayed until – they didn't want to move us. That meant that the soonest they could move us was to send me to Armed Forces Staff College in January and not have to wait another full year. I didn't really want to do that, but I also didn't want to have to be moving my family. Basically, I asked them to consider that, if there was any way to do something different, and they came back with the Armed Forces Staff College option. I was very happy that they did. I road ran for six months. From there I went down and came back on weekends which I would not recommend to somebody with young kids. My son was ten years old at the time and I didn't realize until later how much that bothered him – that I wasn't there during the week. It got to be a very painful exercise on Sunday nights when it came time for me to leave. He really – he resented that. Resentment is too strong a word. He was hurt by

that. I know that there are times in your career when you have to do things, you have to have the separation – where you can control it, where you have an option, the option goes to the family. I didn't realize until we were into that how much that would – and my wife and I talked about it. We thought, "it is only six months, how bad could it be?" Do I want to move the family down there for six months? You learn a lot of lessons along the way about family considerations as you make those jumps. I'll just say this about the Armed Forces Staff College – I'm really happy that I was able to do that. Actually I had a preference to go there because it was more of a joint environment. I know you get some element of that at Leavenworth, but it really is an Army school and an Army environment. I really wanted to go to broaden my horizons more with the other services. It was good to be in that environment down there. I learned a lot.

Q. How did your family handle the other moves that you had?

A. Early on, it was not a problem with the kids because when kids are young, they can do that. The only time after that that it was painful was when we were at Fort Benning because the ages of my two older ones – we had the little guy and he was pretty safe because he was going to hit the critical school years for move purposes either at the end of my career or after I retired, because he was born in '84. I figured even if he got into high school, I would have to be out of the Army by '99 so we would be in pretty good shape with him. But the other two, my older son was starting high school when we went down to Fort Benning. My daughter was in 7<sup>th</sup> grade. She did 7<sup>th</sup> and 8<sup>th</sup> down there, and then we moved to Carlisle and she did 9<sup>th</sup> grade at Carlisle and then did the last three years in Virginia. My older son was starting high school at Fort Benning. He went to the public high school. There is a Catholic school down there, a very nice, kind of small Catholic school, 400 kids, and he really wanted to go there, so we changed in the second year and he was doing great. Then I got picked for the War College. I didn't know how

long I would be there. I was at 1<sup>st</sup> Cav for three years. I was at Fort Benning for two. I thought I might be there for three. I didn't know. At that time, the JAG Corps really didn't have any stated policy as to how long you would stay in – five years of being an SJA was a pretty long time in those days, two jobs. I was happy to be selected of course for the War College, but what that meant for my son is he had already been to two high schools, he was going to go to Carlisle. I asked about the possibility of coming to school here – coming to Washington because I pretty much thought I would have a follow-on assignment here, which wasn't necessarily the case. That wasn't foreordained. But I wanted to do that really for family reasons, to stabilize the school situation. I wound up going to Carlisle instead, so my son went there for his junior year. Then he came here for his senior year. He went to a high school, Woodbridge High School, that has three thousand kids in it. Walking in there as a senior is very, very tough. That was hard. He never got into any trouble – he is a good kid and he did fine. He could have done a lot better grade-wise (laughs). There were some bumps in the road there – let me put it this way, I shouldn't be that hard on him. He did fine. What it did do which was greatly for his benefit is that when he walked in here as a senior with that big a school – that kind of drove him to a small school for college. He went to a small school and now works for Merrill Lynch here in town. He's doing fine. He's engaged – the gal he met, he met because he went to that small school and all that probably would not have happened – he sees the benefit of that now. At the time, it was kind of painful. There was no way to break that up where either my son or my daughter would not have been bounced around because of where they were age-wise. My daughter was in only two high schools, one for one year and one for three years. If we changed that around, she would have been moving someplace in her junior and senior year. We saw that coming. Everybody adjusted on each move very well. When we moved from here, we had been here almost five

years but even then, with the kids it was okay. They enjoyed Texas. They adjusted fine there. When you get to the high school years, that's when it gets to be tough. Also, when you are trying to do things – if you want to try to get involved in many activities, that takes time. If you are going to go to Carlisle, where you have got one year and then you move on – the issue at Carlisle, if you have a child that is an athlete, is that – the rub there is that in the local high school, are they going to pick somebody who is there for a year to be on a team versus somebody that could be a longer-term asset? My son made the JV soccer team there and played and was treated well, but there were some other folks who felt that they had – in fact, some people who preceded us at Carlisle were told by coaches who said, “You know, your son or daughter really had the ability to make this team, but we've got kids here that we can bring along in the long term and that's how we have chosen to go.” There's logic in that, just not a whole lot of fairness. The year that we spent at Carlisle was the best year that we had in the Army, professionally from the standpoint of a learning environment at that point in your career, it's wonderful. You will never be in a situation – in fact, a very distinguished professor, Jay Luvoss, who was an historian and did the definitive biographies of Matthew Ridgeway and done a lot of research and writing on Napoleon – he had a course called “A Ride with the Great Captains.” It was a course where you picked out some person in history that you considered to be a great captain based on your definition of a leader or a great captain of history. What you were to do is go back to the original writings, memos and other things, not history books, but go back as close as you can get to original sources, and then write and do an oral presentation and write a paper on why you consider this person a great captain – or a great disaster. It wasn't limited to someone who was very good – it could be somebody who was very bad. At the beginning of that course – and he would kick this off by doing his, he would do one first on Napoleon to show you how it's done,

and then everybody had their turns. He said in discussing the course and his feelings about Carlisle, “You know, this is such a wonderful experience from the teacher’s standpoint because,” and he had taught undergraduates and graduate students, “undergraduates, especially today, are extremely bright. They really can do marvelous work but they simply don’t have the experience base to be able to fully appreciate and analyze these historical events and things like – when you talk about somebody you consider to be a great captain. Here I have a class of professionals who have had nineteen, twenty years in the profession. With that experience base and their intellectual abilities and their hard work in looking at the historical documents, you will get perspectives about leadership, about any variety of subjects that you just will not get – you can’t get – at an undergraduate level.” That really kind of capsulized the experience and why the War College is such a wonderful experience because you do that every day in the seminars. The people who run the seminars really aren’t teachers, they are facilitators. Their job is to get the seminar to share – to give their perspectives on various issues. There is obviously a structured program that you go through, but you get various perspectives based on considerable experience. They take great care in forming the seminars and not duplicating experience. Everybody has two international students, somebody from artillery, an aviator, civilian – they have senior civilians there from the State Department, Department of the Army, other places – but they design the seminars to maximize the diversity in terms of experiences. It really is just a tremendous experience. They shuffle them at half a year, so you get different seminar mates the second half. That’s a good experience.

Q. When you were at the War College – I know this is jumping ahead – your colleagues are people who have been in the Army for twenty years. They have relied on judge advocates as battalion and brigade commanders. Is there a difference in the way they treat you? When I went

to CAS3 as a captain, where not all your classmates have dealt with a judge advocate except as a trial counsel for an Article 15 and you are seen as a special branch – an outsider – and when it is time to do a class project, you're the guy who is drawing the rivers on the map while we make the plan. Is there a difference then when you are at the senior level how those people view judge advocates?

A. It depends entirely upon how you present yourself in that environment. There is a parallel here with my experience at the Armed Forces Staff College. I paid attention, I listened a lot and as lawyers, your analytical abilities are going to be as good as anybody's there. You would be surprised how well you can assess options and help develop strategies. When I was in the Armed Forces Staff College for the warfighting exercise that we had at the end, I was really kind of directing the operation, doing something that was totally out of the realm of JAG. I was treated like one of the line people. I was really pushed pretty hard by a couple of the warfighters in our seminar to do that. I think there was a little bit of reluctance on my part because that was not my normal role but this is the opportunity to do things like that. At the War College, again, if you follow your normal instincts as a lawyer, which is to listen carefully and be able to identify what's important in terms of the basic information – sort out what's important and what's not important – and take it through an analysis, you find and I found that you are listened to a lot. There was never in any of the exercises that we were involved in, in terms of whether it was something that was on the operational level or policy level, there wasn't that distinction about "you're a finance guy, you're a JAG, you're an aviator, you're an infantry, therefore there is only certain things that you can add." Everybody can add to everything else, and you can – whether you will or not depends on how you approach this with your seminar mates. It is like anything else – in any environment, if people perceive that you are someone who will listen to

them, value their opinion, and factor it in in a deliberate and considered way, you're listened to. They tend to kind of look to you on certain issues. On certain things, like when got into the ethics discussions, I think I was looked to more. The natural, I think, inclination is, "What does the lawyer have to say about this?" Also, how you handle yourself in other environments. It's not only the seminars. You do have a series of lectures. You have an opportunity to ask questions of the presenters. The ethics piece came up pretty early. That was one of the times where I had some pointed questions, not nasty, but some pointed questions about – somebody who was presenting made a presentation on ethics in the military environment, and I took issue with some of the things that he said. I did it in a very polite way, and it wasn't for purposes of self-aggrandizement or to make an issue, it was just that I had a legitimate question and I asked it. The fact that I stood up and wasn't afraid to ask the question, was not intimidated by the presenter, and it was early on in the year – I was told later by some of my seminar mates, they said, "I was kind of thinking the same thing. I'm glad you asked that." It's in how you handle yourself. The same instincts that you would follow if you go into a job and it is an environment that you are not known, if your mission in life is to work with the operators in the division and make sure that you are a member who can contribute to their mission, if you handle that in the right way, they are going to value your opinion, they are going to seek your opinion. They are not going to treat you like an outsider. They are going to treat you as another member of the team, another soldier, and you have a specific area of responsibility that's important, and you're going to make sure that they cover that.

Q. Getting back, after you were at Lit Div you went down to Fort Hood as SJA. How big of an office did you have down there?

A. A total of twenty-five. There were twelve attorneys, one warrant officer legal administrator,



and twelve – actually, there were twenty-four because there were twelve attorneys, a legal administrator, and eleven enlisted. There were two court reporters and nine 71Ds. That was a two-brigade division, which is what – at the time, the 2<sup>nd</sup> Armored Division and the 1<sup>st</sup> Cav were two-brigade divisions – it gave us about 13,000 troops each, and there were about a comparable number of Corps troops there, the Corps Support Command, other assorted organizations. There were 39-40,000 troops down there. It got larger later when they put a third brigade in with the 1<sup>st</sup> Cavalry Division but it was the standard size at that time. It was pretty much military justice and your normal administrative law actions – personnel-type – and legal assistance. The heavy lifting on the more exotic topics like contracts and claims was all done by Corps, although there were certain things that we teamed on. During tax season, we were at the front edge of trying to provide better tax services. Tom Crean – Colonel Tom Crean – was the Corps SJA. Jim Smizer was the SJA at the 2<sup>nd</sup> Armored Division for the first year. Tom Crean and I were both there for three years. We came in at the same time and left at the same time. Jim was already there so he left after a year and then Gary Leeling, Colonel Gary Leeling, came in behind Jim Smizer. Personally and professionally, it was a great time for me and that was a great situation because Tom Crean was a guy that – I mentioned to you last time – his getting me into the funded program, alerting me to that and encouraging me to sign up for that – he was at the school when I was there for the Grad Course, we were serving at the Pentagon at the same time, so we knew each other, knew each other's families. In fact, he and I taught religious education to the Catholic kids – the CCD class – at Fort Hood. At least one of those years we did that together. It was a great, great strength to me to be able to call Jim Smizer, Gary Leeling – getting to be a senior officer, and to rely on Tom Crean as a mentor in my first job as a staff judge advocate. That gives you a lot of comfort. Not that you are going to do everything that they say you ought

to do, but the fact that you talk a lot – General Butch Saint was the CG at the time. He was there for three years. He came in the same time we did. He could be a hard man to handle. Actually, Tom Crean as the SJA – I tell you, standing back and watching this, it really was a great credit to the JAG Corps because while the other staff sections – simply, the other staff members, most of them did not have the rapport with the CG that Tom Crean had. It became evident as the years passed, as we went through the three years, because there were functions that the CG, Butch Saint, was relying on Tom Crean to do that were in some respects unusual. You would have expected him to pick other members of his staff. Instead he went to Tom Crean, and it was a great measure of his confidence. Other members of the staff did not resent that. They just kind of looked at that with great admiration, that this guy who didn't always have good news for the boss had a good rapport with him and basically could go in and tell him the hard truths when he had to hear them. I was impressed by that, and it was a great source of pride. I think it was a real credit to the JAG Corps. I'm not sure that the younger people appreciated that. They really didn't have the visibility on that. I did because of what I saw on the 1<sup>st</sup> Cav staff and the same thing over at the 2<sup>nd</sup> Armored Division. I think, for the younger folks, they just didn't see it. Not that they should, and you can't go around to your troops bragging about this colonel down the street – they don't want to hear that every day. At the right time, when we farewelled Tom Crean, we said a lot of those things. It was a great cooperative environment in terms of – there was never a situation where if one of the organizations had a need, the others were not ready to leap into it and throw assets at it in the way that you wanted to help. We had a helicopter – a Chinook – went down, and I think we lost about five 1<sup>st</sup> Cav troops, including a battery commander – one of the artillery units. It happened on a Friday night. People were scattering to the four winds. We had a lot to pull together in that kind of situation. The first calls that I got

were from Tom Crean and then Gary Leeling about what could we do to help? We have legal assistance people standing by, ready to go – you tell us what you want, how you want us to help, not “we’re going to step in.” This was important from the Corps standpoint. Tom Crean did not insert himself in over – he just said we’re ready to help you. You tell us where you want us to send people. That was the way we operated down there and it was a very pleasant environment, a happy environment. I think Fort Hood is a terrific place to go if you are a young JAG because there are very – I guess it is probably, if you count them up, when you count up the number of young JAGs, it’s hard to find another – Fort Bragg has got a large community down there, but you have the Corps office, the division office, and the special organizations. Obviously the Corps and the division have the ability to mix, but I don’t think to the same degree that you have at Fort Hood. The missions at Corps – the Corps and the division at Fort Bragg and the special – there’s a lot of diversity that doesn’t necessarily make it easy to integrate. At Fort Hood you’re all pretty much doing the same thing, at least at that time. We had the European mission so everybody’s training for the Reforger and all that other – in fact, we did a Reforger while we were there. That was one of the things that Tom and Gary and I did – we took 20,000 troops from Fort Hood and went from there to Germany. As a young judge advocate, you get there and there have got to be I guess – what are the numbers there – seventy or eighty JAGs. How many places can you go where you are going to find that many of your contemporaries? I used to tell my folks all the time that you have to understand how important this opportunity is in the sense that if you are doing criminal law here, or you are a defense counsel, or you are legal assistance or ad law, you have two other shops that you can call – and I encourage you to do that – find out, if this is new, find out what they have done. There was that sharing all the time. That is a great environment to be in if you are new and learning the business – it’s a great environment. It was

a very happy community. For senior people, another thing that – this was a big difference between there and Fort Benning – here I was, a lieutenant colonel, there was not just Gary Leeling, but there was the deputy at the time was Jim Pauley, a lieutenant colonel, and then the division chiefs at the Corps were all lieutenant colonel positions. I think they had one senior major and the Chief of Ad Law, Chief of Criminal Law were lieutenant colonels. Your community of senior officers is big enough that when you go out to socialize, it's not just this old guy and a bunch of youngsters. It's very nice. I enjoyed the same benefit at my level that the younger folks did in that I had other guys that I could go to on the installation.

Q. You obviously had a lot of captains who worked for you at Fort Hood who were focusing on their job, whether trial counsel or legal assistance. As the SJA, how did you also get them to focus on the division's wartime mission?

A. You have to – and this became easier than the days when I was a captain. I described to you last time that all we did was try cases, because that was what was going on in the Army. Commanders spent ninety percent of their time on ten percent of their troops because they were getting in trouble. That is an overstatement, but the balance – you were spending a significant amount of time dealing with discipline. It was completely different. When I went, it was 1977, '78 when I went to Germany, '77-'79, and here I was at Fort Hood in '85 – I got there in '85 – and there was a very dramatic – of course, this wasn't Europe, this was stateside, but basically the caseload there was probably sixty GCMs and BCDs a year. If you added total courts – summarys, specials, straight specials, it went up to a number that looked moderately impressive, but basically you were dealing with about sixty cases of serious cases per year. The board business had picked up. The reason that I mention that is people were not in court all the time, they weren't doing that all the time, so you could impose other obligations. In order to justify in

their minds why this was important, first of all look at the division's mission and how do you fit in doing that? If we're going to deploy someplace, how are you going to add value? That's the kind of environment where it comes home to you, because when you're developing the list of who gets on what aircraft at what point in time, there's an order of importance there. Who is needed when? How soon are you needed? What are you going to be doing? Don't expect, and I said this a lot more as TJAG, don't expect necessarily that the commander – and certainly not the staff – to tell you up front where you are going to be important. You need to understand where you fit into the mission and how you can help. It's not a matter of other people, other branches or officers not liking JAGs, it's a matter of education. There are issues that you will see that they will not see. The first field exercise that we had that I went out with the 1<sup>st</sup> Cavalry Division was an exercise down in Florida. We took a bunch of folks down to a CPX – a command post exercise. There were a good number of troops but we didn't take companies and battalions down, it was the staffs. As we were going through the planning, initially there wasn't a place for the JAG in the headquarters setup. I kind of inserted myself into that, looking around to see where I could add value. When I got some familiarity with the exercise, we had the mission, the European mission, and in the planning there were certain scenarios where it was anticipated that there were going to be engagements and we would do certain things. As I listened through that, at some point I said to the G3, not in the midst of a briefing to embarrass him, but I sat down and I said, "There's an issue here that nobody's talked about, which was refugees. If this is our area of operations, we know there are populated areas here. The expectation certainly is that you are going to have refugees, people moving. Well, they are going to be moving in all places, including across the roads where you are going to be trying to get troops up. Is anybody dealing with that issue as to how you are going to handle the refugees?" That was something that had

never been considered in their planning. He actually got a little bit nervous. He didn't know whether this was one of those issues that had been lurking back there that they were expected to pick up and have a solution for, but he didn't. As it turned out, it really wasn't something that was anticipated in the exercise at all. The answer we eventually got back was, "That's the Germans' responsibility. They will take care of it." The lesson I learned from that, and the lesson he learned from that, is that, it's not a matter of manufacturing issues, it's a matter of looking at the issues from the perspective that you deal from and the issues that you have to be involved with and just apply the insights that you have based on your training as a judge advocate to see where there may be problems that you are getting paid to anticipate and if you can, make them go away before they become problems. I think we were, at that point in the JAG Corps, and I'm sure this was not an original thought by any means, but early on in my JAG career, I think that JAGs were viewed more as obstructionist from the standpoint that they are the people that will tell you you can't do that, and there was still some of that lingering into the '80s. This again was where the relationship with Tom Crean and Jim Smizer and later Gary Leeling was so important because we all – our view of that was the responsibility – and we all felt the same way about the involvement in the field, which was that you have got to get in there, you have got to insert yourself, you've got to become involved in what's going on and see, just as the logistics people are supposed to be anticipating what the problems are going to be in their area and they come up with solutions, you have got to do the same thing for those issues that fall into the lap of a judge advocate. You don't wait until it happens. You get in there and look at it and figure out how you can add value early rather than later. Also from the JAG institutional standpoint, to demonstrate that for those people who view judge advocates as obstructionist, they can be problem-solvers. They are team players. They are soldiers like you who have a role, they

understand and can perceive things that perhaps you can't because you are not trained to do that in the way that a judge advocate is. I will say that the commanders and staff were happy to have us out there, but they were really scratching their head as to where to use you. What we noticed – we knew at that time – we recognized pretty early on is that the way that the exercises were structured, there was very little anticipation of JAG involvement or an element – other than the traditional targeting – here's a church, and they are firing from the steeple, what are you going to do? The traditional war crimes problems – as we started to get into this, you would begin to see more of that surfacing, but more important than that were some of the more subtle issues that are not as readily identifiable and are not the traditional examples that you would find in a law of war class.

Q. Did you have any Warfighters while you were at Fort Hood?

A. No. They would go out to the National Training Center. For each of the three years that I was there, they would send a brigade out – Warfighter came later – but the focus at Fort Hood was National Training Center. Each of the divisions would send out a brigade to the National Training Center each year and you had a series of exercises leading up to – the preparation for that. We would get out to the field to try to get involved. This was a developing process.

Q. You said that when you first went to the CPX there was not even a spot for you at the headquarters. How much of your office would you want to send out to the field?

A. Initially, not a whole lot. We did have a mission back – I thought it was harder to manage the small office than to manage the bigger office at Fort Benning. When you think about it, it's not too difficult to figure out why. If you have got a certain workload and you are principally military – we didn't have any civilians – the Corps did, we didn't – anytime we went to the field, because our enlisted folks didn't have to go to the field, at least up to that time, they would get

tagged by the company First Sergeant, the headquarters company First Sergeant, to cover the duty in the headquarters. There was a duty NCO and other things. That was kind of the arrangement ahead of time. What that meant is that anytime the headquarters went to the field, we lost some enlisted personnel to provide support throughout the headquarters. You send a few more people out and all of a sudden, what are you doing for legal assistance? We still were trying cases, even though there weren't as many as back in the Germany days, there were still cases that had to be tried, there were still boards that had to be conducted, there was still legal assistance that had to be done. In tax season you were doing tax work so I didn't want to – first of all, I wasn't going to bring them out there until I figured out – in any numbers until we had a more clearly defined mission because I thought it could be very counterproductive and a considerable turn-off if you brought people out and all they did was sit. Now I had no trouble getting space – on that first exercise there was no place for me, but I'll tell you the G3, after a couple of initial discussions, he was happy to clear away some of his own desk space for me to have a place to hang my hat. You go into that environment and just the fact that you show up out there with your LBE on correctly, looking like a soldier makes a big difference. They kind of joke at first – “the lawyer's out here” – but then you insert yourself, you pay attention to what's going on. Even if it's not strictly legal stuff, if you are paying attention – and it's important to do that – get familiar with what's going on, who is out there, what are they doing, and where is the logical place for you to be part of that operation. In the subsequent exercises, we would carefully pick the people that I could take out there considering two things – what's a priority mission back at home station and what is it that we think we can do out here? One thing that I did do with our captains, and I asked the brigade commanders that went out to the National Training Center, the way the exercises were structured in those days, you didn't have a JAG.



There wasn't any JAG play but I wanted the captains to go out, not too many – whoever was the brigade trial counsel I wanted to go out with the brigade legal NCO and go through the exercise. I said, "If there is something to do out there of a legal nature, if there is a legal assistance issue or something else or somehow this becomes part of the issue, the problem, certainly do that. Otherwise you are out there to learn. You get into that, stay close to the commander and learn. This is an opportunity for you to go out and see what your clients do."

Q. Were other judge advocates throughout the JAG Corps doing this at the time?

A. I don't know how much. Certainly at Fort Hood. I don't mean to give the impression that I was the only one doing this or thinking this way. Certainly, with Tom Crean and Jim Smizer and Gary Leeling, they were all thinking the same way. We would have elements that would do various things, and they would send people out to the National Training Center. Actually Corps was better able to do that, because with the larger office you have more flexibility. Also, when you are working for the Corps commander, your accessibility for transportation and other things is a little bit different than the division. We were at the ground level there, trying to – and I would say ground level for me. I was a new SJA, an SJA for the first time. I don't know what was going on at other places when I was here at the Pentagon. I'm sure some of that was already going on. I have no doubt that it was going on to varying degrees, but we were all kind of fighting the same battle, which was "show your relevance." What is it that you will do that will add value? Rightly or wrongly, my view was you don't expect others to tell you how you can be important. Figure that out. That's what you get paid to do. You get to determine in some respects your own destiny. How important do you want to be? Be careful not to over-promise. This is another thing – you know what assets you have, you know what resources you have, and you know what your abilities are. Once you step forward and say, "We want to do this mission,"

make sure it is something you can do. Don't go off too quickly and make assurances about what value you can add when that may not be the case. The pre-deployment stuff – that became a big issue there. In some respects how successfully you are able to perform those missions is a product of other events. The Gander, Newfoundland, crash that killed the troops from the 101<sup>st</sup> taught a lesson very quickly about the importance of pre-deployment preparation but that was a lesson that preceded me at Fort Hood. When you go in there and you talk to the commander and you say, “We need to” – we were doing wills any time, any place people wanted them – the problem was getting people back to execute them. We would tell the story about the First Sergeant who had his will unexecuted, sitting in the glove compartment of his car, and now his family had to deal with that – there was no problem with the Commanding General getting people to fall in line on that. We were getting ready – it got serious when we were getting ready to deploy to Reforger. This was big time – we had 20,000 troops going, obviously a whole bunch out of the division, five or six, seven thousand out of the division – five or six thousand was the number for us – but it got to a point where we were not – this is one of the few times where I went to the CG and I said, “Look, we put out all the notices, we've gone through subordinate commanders, and we're just not getting the response. We have got piles of unexecuted wills.” He sent out a message to all the commanders that said – in fact, I had a list of the units that had a problem. I got at least one angry call from a commander saying, “You really didn't give me a chance to solve this.” I said, “Look. We have been doing this and – it was true, I acknowledge this, I should have gone to him individually first – but we were at a point where we were moving up to this deployment date and all these things weren't getting done. We had a time window where we had to do it. If I was going to get the CG to weigh in -- when I approached the CG, I said, “I'm not doing this to get any commander in trouble. The drill is –

let's get this stuff done, otherwise we could have some serious family problems if this is not taken care of." He did it in that vein. It wasn't that he – in fact, he didn't really – I said that I've got the list, not really for him to drop bricks on the heads of the commanders who had not followed through on that but just to get his imprimatur on the top, that this is important and you will get your troops there at these particular times. It worked. We cleared the backlog pretty quickly. That was an issue that was becoming increasingly important, but that's at the front end of the exercise. You get all that stuff done, and then once you go on the exercise, you have got the legal assistance piece of it that you have to deal with at home and over there and other issues. An interesting development for me was the Commanding General for the 1<sup>st</sup> Cav for the last two years – the first year it was Mike Conrad, who was a great, wonderful commander, and then John Yosock, who was the commander for the last two years, also a wonderful man, just a great officer. When we went over to Germany, he asked me to be the senior officer in what was called the 1<sup>st</sup> Cav forward location. That location was where we dealt with the coordination of people coming in and getting where they had to be, on the way out. To the extent that there were issues about equipment coming in or supplies of various natures, we were keeping an eye on that and coordinating that, and coordinating with the Corps element – a similar element which was in the same location. Not a job normally for a judge advocate. He wanted me there early, and he figured I needed to be there late also because of claims issues – there were going to be claims issues. He asked me to do that. He said, "Do you think that this is going to cause you any problems with the JAG leadership (laughs)?" Quite frankly, I didn't take it to the JAG leadership. I said, "I don't think I need to do that. I'm confident that their response would be as long as whatever you have us doing does not detract from a JAG mission, in other words if there is a legitimate mission that we need to do, that's got to be the first priority, but other than that,

I'll do whatever you want," obviously within legal limits. Tom Crean and Gary Leeling were very supportive of that as well and thought it was great – that a commander would have the confidence in a senior judge advocate to perform a function that normally he would pass to one of his other senior staff people. It made a lot of sense when you think about it. I could have stayed back – it was an option. It wouldn't have been a good option. It would have been a very poorly exercised option to send the deputy and stay back. You had to be forward. I felt I had to be forward with the commander. While I was there, there were going to be a limited number of things – I knew that – once the exercise started, because again those exercises were structured in a certain way which did not incorporate the kind of issues that JAGs are getting involved in now, but you had to be there to deal with the issues that did come up, more in the real world. They were saying this at all levels – General Saint said it to the Corps troops, and General Yosock, and I'm trying to think of the name of the 2<sup>nd</sup> Armored Division commander at the time – the most important part of this deployment is not who wins this warfighting exercise, it's going to be the condition in which we leave Germany. The claims issue at the front end was a really big deal, was going to be a very significant issue because at that point in time, the Germans were beginning to flex their muscle a bit more about limitations on training and the damage that was caused in the course of training and getting reimbursed for it. Most of that had been directed at the U.S. because, other than on the Reforgers, the largest presence was of course U.S. troops, and I suppose in some respects were the easiest target for that kind of thing. It was a very interesting experience going over there and observing the other forces. The U.S. troops, because of the very, very deliberate program of awareness, not doing undue damage, were very, very careful, very polite in every instance, didn't get into any – there were a couple of serious incidents, but in terms of the demeanor of the troops, in virtually all environments they drew compliments from

the Germans. What was particularly complimentary to the U.S. troops were the observations of the Germans who went out to assess damage claims. Here were the U.S. troops, they would go down a road in a tactical environment – what they really should do is get off the road, stay near the treeline, stay under some cover. The U.S. troops would, in order to preserve the environment, would not necessarily follow sound tactics. They would do something that would be out of the ordinary to do less damage. The Brits and the Belgians and the French didn't do that (laughs). In fact, it appeared that they almost went out of their way to tear up the parts of Germany that they could. The claims folks had several big sessions to give assessments of the damage, and the German inspector, the head inspector of all this, was very complimentary to the U.S. troops, and in so many words said, "Why don't the rest of you follow the example of the Americans?" The U.S. commander was actually – the other senior commanders went to him and said, "What are you trying to do – embarrass us?" That was an interesting result of what we had seen in terms of the preparation for deployment ahead of time. That was another situation where, again, I won't say that we were fighting our way – we were there, we were just trying to figure out the best way that we could be used in that environment. What we recognized pretty early in that process but we knew was going to take a lot of time is that you have got to do it at some levels – you can't do it at the Fort Hood level. In other words, when you go into exercises at the installation level, that's designed by somebody else, and they have to have as part of the system that develops those issues, the scenarios, a scenario that incorporates those issues which you now see at the JRTC. Clearly, the generation of commanders who have been through that environment, who have had the kind of deployments that we have had from the beginning of the '90s on forward, understand the importance of having a JAG within arm's reach at virtually all times. It was really, again, a product of the times. It became very apparent early on what needed

to be done, either by JAGs directly or JAG support of a team-building and team-training process that now – it's not like it was twenty and twenty-five years ago, about commanders not understanding or appreciating where they could effectively use their judge advocates. Over that three-year period that we were at Fort Hood, we were beginning to insert ourselves. We put people out there. We were measured in the way we did it because there was limited utility and, quite frankly, the mission was more “establish a presence”, be out there – if nothing else, be willing to take the shift on the radio from three to five o'clock in the morning to let them know that you are ready to do what they need to do. You are going to be out there in the rain, in the mud, doing all that stuff. You are part of the team. That is going to help you establish a rapport – then you get back into garrison. This isn't some guy who wears Class A's all the time and goes to court and comes down to see me about Article 15s. He is somebody who was out in the mud with me last week, and I'll talk to him, or I'll talk to her. That was the front edge of getting women down into those brigades. Jan Charvat was at 2<sup>nd</sup> Armored Division. In fact, they met and were married right there (“they” refers to Jan and John L. Charvat, Jr.). But Jan Charvat...

Q. She was his sponsor when he arrived.

A. Yeah. I think she was the first woman down there in memory – had to be the first one ever – to be a legal advisor to – a brigade trial counsel to a line brigade, it was a tank brigade. Amy Frisk, Amy Minkenow in those days, was one of the first women to go down to a – I think she had the main support battalion. She did the same thing. That was breaking new ground, getting women into that. First of all, they demonstrated that they could be soldiers too, that they could do the things that needed to be done. They would meet all the requirements and they were great lawyers. The soldier piece of it just enables you – that only gets you so far. You are a soldier, that's great. They will talk to you, they will seek you out. But you have to demonstrate your

worth as a lawyer. They know they have a soldier that they can rely on to do that, and they frequently – and this is another thing at Fort Hood. The Chief of Staff used to get us involved in all kinds of important writing. If the writing was of any significance, he would not just send it down for review. Many times he would send it down for first draft, and he would kind of laugh. I don't know what was going on, but one of the staff people had an issue, and he directed them down. He said, "Why don't you give it to these guys to get the first shot at it?" He kind of laughed. He said, "You know, you have this stable of great writers down there. We have to take full advantage of it." That's great – you have to keep it within the box in terms of – there are two things you have to be conscious of. You do as much of that as you can and still be able to do the mission that you need to do. Our view always was that we will take on additional missions that will help the command to the extent that we are able to do that and it doesn't detract from the things that we really need to be doing. There are some things that we took over at Fort Hood in terms of processing letters of reprimand and other things that were a total disaster in the division because the AG folks just were not able to handle it because of lack of personnel and experience. We took over some things that really were not our mission but we could handle it and we could do our regular job. In some future time, that could come back and pay some dividends. I am a firm believer that that kind of willingness at that point in time paid back dividends later when the drawdown was happening and commanders had to make decisions about who stayed and who went. The JAG Corps did so well in terms of retaining positions because they knew that these have multiple capabilities. They can do a lot of things. You don't get to demonstrate that unless you assert yourself. It's important to do that within the ability of your team to handle that. The other thing is that you have to do it in a way that doesn't look to the other staff sections like you are trying to grab their turf. The JAG community not only in the

division but in the Corps in those days – we were very sensitive to that. If the commander told us to do it, we would do it and that was it. There was no issue about that. If you were going to insert yourself, if you thought you could help the situation out, you went in with just that attitude. We think we can help you out. You get invited in that way. There is some diplomacy at the staff level that you have to make sure you are very attentive to when you are doing that kind of thing.

Q. As the SJA, you don't always hear the grumbling of your captains. Since this was sort of a new mission of having your folks go out to the field and doing other things like pull radio duty from three to five in the morning, did you know if there was any resentment among your folks to this? If so, how did you deal with that?

A. Actually, there wasn't a whole lot. What they found – and I'm not saying that there wasn't any at all – let me back up a minute. One of the lessons I learned out there was that, and consider that the last time that I had been in the field before that was when I was a senior captain in Butzbach, Germany – captains talk to each other. Even in those days, there was seventeen captains in the division, there was one major, the deputy, a guy named Pete Smith, and then the SJA. Captains talk. You know what's going on. All of a sudden you are out in the field again and you are "the Colonel," and there is a difference. As you get older, you will see this. You always think of yourself as – you are not a captain anymore, but you kind of think that way, that you are one of the team. But you learn, and sometimes you learn almost by accident and you have to be very careful of this. As the SJA, you're not everybody's pal. You are not a captain. You are a lieutenant colonel. They expect you to act like one. They expect you to be the boss. They expect you to make hard decisions. They like it when you pay attention to them and you're friendly and you socialize with them, but they don't expect you to be a captain. They are not going to talk to you like one and they are not going to tell you – one captain is not going to come



in and tell you bad things about another captain. They are just not going to do that. They are not even going to do that about their supervisors, which was a situation I had where one of the Chiefs of Justice that I had out there had some very serious problems with the captains. Fortunately for me, John Galligan, my deputy at the time, a major, was able to break through some of that. He bridged that gap. This is kind of a long way of getting to your point, but our sensing was that was not really a problem. I'm sure that they would have, if given their druthers, they would have preferred not to go out to the field, but I believe they understood the importance of what we were trying to do. I think where they really appreciated it was when they got back into the garrison environment and there was a noticeable difference in the way they were treated in terms of being a team member. Actually, I shouldn't say this like they went out kicking and screaming. I had a great group of folks out there. A couple of prior service people, people who would develop great relationships, and they looked for the opportunity. When I told some of these folks that I want you to go out to NTC, they were happy that I told them to do that. They got away from the drudgery of trying cases, and doing this Article 15 stuff – go out to the field, and this is a great opportunity because you are not going to have these other things – your responsibility is to get out there and learn and be close to the action, to the commander. Again, as I said, I cleared it with the commander ahead of time. I said, "He or she is yours to use to help you in your mission out there." I didn't sense that – that really wasn't an issue. One of the exercises with a very, very good – John Miller – who was a brand-new captain for me – you could see he was going to be a great one early on – but I remember him talking to me after one of the exercises, or I guess I went out to visit him, and I think it was an exercise at Fort Hood, but they just weren't being used very well. We thought we had advanced to the point where we would be able to do more, and on one particular exercise it just wasn't happening. He didn't

complain, he just told me that they're not really using us out here. We recognized by that point in time that there was more to this problem than we could solve there. Getting the people in place was only a part of it. We needed to do something else that was going to make a difference. I went out there, and we had a five-day a week PT program. We did that the whole time I was there, and that was probably more of a – it wasn't a sore point, but it was hard because we had people living down in Georgetown, Texas. Austin is about an hour away from Killeen, and Georgetown is a small town outside of – north of – Austin, so it is in the Fort Hood direction, but it is a pretty good haul in the morning, 35-45 minutes. When your PT formation is at 0630, these people are hitting the road at five-thirty in the morning, things like that put demands on folks. That was okay. I'm sure that was harder because that kind of thing would wear you out. That was probably more of a – you would probably have to ask some of the people who were there at the time whether they thought that was a real pain in the butt to do that – but that was probably harder for them than – even with our efforts in the field part of it, that wasn't so onerous. In fact, some people really thrived in that environment. I had a brand-new captain by the name of Alice Pils, who worked for me out there, and she went on the Reforger exercise. What I found out, shortly before we went on the exercise, was that she spoke fluent German. She wound up being the interpreter for General Yosock (laughs) on various events and did a terrific job. Some people who had seen her in the garrison environment, if she had a rocky relationship with them for one reason or another in the way she handled something, all of a sudden she became a key player on something that you would not have expected. She did a terrific job on Reforger. I think in that environment, as hard as it was, and it was not easy for the women to deploy on that, because conditions weren't always – we were in some hard-structure buildings for part of it. There were other folks who were out in the mud and it was a tough environment. The fact that they were out

there doing all that and that had some other abilities that enhanced the command's effectiveness really paid some dividends.

Q. When your folks went out to the field there sometimes wasn't always a whole bunch for them to do. Do you know if, at the same time, the senior leadership in the JAG Corps was thinking about inserting OCs at the JRTC, NTC and the BCTP?

A. I'm pretty confident that that was not the case. Let me just tell you – that was my perspective looking up from Fort Hood. Nobody was coming down, telling us, “You need to do this” or “We're thinking about this.” They didn't say that. When I was at Fort Hood, in the three years we had two Article 6 visits, General Overholt came down for one, General Suter came down – he was TAJAG at the time – and then we had another general officer visit. General Fugh came down, he was a one-star and he had been invited to come down and speak for Asia-Pacific Day. It kind of turned into a mini-Article 6 because he couldn't come down there and not see the community, so he visited all the offices. There was somebody there from the leadership all three years. At least one of the other one-stars at the time I was led to believe did not share the view that we had at Fort Hood about inserting ourselves. He took a more traditional view about how JAGs ought to be employed. If you need to go out there and try cases, that's one thing but certainly not use JAGs for performing functions that the operators ought to perform. In fairness, I never sat down across a table – our team at Fort Hood didn't sit down and say, “This is why we think this is important.” We didn't go through that kind of dialogue. My impression was that they were not pushing that. They were looking at other things, there were other things going on at the time. Actually, in the late '80s we got into some of the command influence – we were dealing with the consequences of the command influence cases from 3<sup>rd</sup> Armored Division. There was a lot of focus on – when they turned back 250-300 cases that had to go back for

retrials, there was a tremendous military justice issue that they had to deal with, so when I say that they were focused on other things, there were reasons why they were focused on other things. We were seeing it a different way. We knew all of that was important, and we certainly were poised to avoid similar – a repeat of those issues, but we had the luxury of being able to do other things. Our environment was conducive – we had the people who were thinking that way to begin with, and we're put in an environment where we could make strides. All that came together at the same time. I will say this about the JAG Corps at that time. Before the 3<sup>rd</sup> Armored command influence issue blew up, I was not an SJA. I asked myself, if I had been John Bozeman, Lieutenant Colonel John Bozeman, in that environment, what would I have done differently? How hard would it have been? He had a very tough – I don't know how much you know about – I'm sure that's still a big topic of discussion in the course of your year, but General Gene Anderson was a strong personality. He brought in a team with him. You don't see much of that today. He brought in his Sergeant Major, his Chief of Staff and others – that is the kind of environment where you may be asking for trouble if you are not shuffling things when you move from one command to another. The sensitivity to command influence wasn't there in those days because we hadn't had the disaster. It became a whole lot for SJAs after that because what you would do is say to this general, "Does the name Gene Anderson ring a bell?" They all knew General Gene Anderson and that he retired as a two-star. I think the expectation among the leaders – the general officer leaders at that time – was that he have gone further than that. But he didn't. That's an attention-getter. I'm sure they got different versions of the story. At worst he was trying to influence things, at best he wasn't really trying to do that but it was certainly interpreted that way and there were reasonable grounds to assume that he was trying to influence that. You get some explanations that – here's somebody who is saying that he had difficulty

with somebody who sends a case forward for a general court-martial and then they come in and say this person should not be discharged. There was a disconnect there for him. I suppose the best reading for him was that he was telling people to be consistent. If you don't think he should be discharged, don't recommend that at the outset. Then you would at least have a consistent standpoint. The flip side of that is that some people would say that, to the extent that happened in the case of soldiers accused of drug offenses, he had this very strong disagreement with them remaining in the Army and commanders who supported them. I wasn't there at the time. I don't know all that. I will just say that from the SJA standpoint, John Bozeman had an exceedingly difficult task to deal with. At least in the eyes of the court, he didn't deal with it sufficiently and that is why so many of those cases had to go back. That the kind of thing where you – I'm not sure what you do to prevent – once it's said, it's said. How do you undo it, other than what we know now? If something like that happened now, you would ship it off to a new convening authority and that's basically your fix. There is a mechanism that we know of that would come to mind if that issue arose. But in those days people weren't thinking like that. They thought they could repair it. I think he thought he could repair it to the extent that the CG was perceived to have gone out of the box. He thought he could bring it back in. I just wanted to lay the groundwork. One of the products of that was, for people like me who became an SJA in 1985, you didn't have to spend a whole lot of time telling commanders about the importance of command influence. That was a block of time where we may have been fighting battles that we weren't. The JAG senior leadership, of course, was dealing with the consequences of that so they were really looking in another direction. I'm speaking out of turn. When you listen to or read the eighteen hours of history that General Overholt will give you, obviously it focused on that period of time, and you will get an idea of what it was that he was focused on. But they

were trying to do the traditional TJAG/TAJAG task, which was get out, be visible in the field, tell the troops that they're doing important work, that they're doing good work, and they both did a terrific job with that. When we talk about Benning, I'll talk about General Suter – he came to an Article 6 visit at Fort Benning. It was the best Article 6 visit that I had ever been through. I think that was the view of the people at that office. He did a terrific job.

Q. Fort Hood was your first SJA job. Since you brought up the Article 6 visits, how was it different as an SJA preparing for an Article 6 visit, thinking “What is the TJAG expecting?” compared to being the TJAG and going on the Article 6 visits?

A. The experiences at both Fort Hood and Fort Benning were very different. First of all, at Fort Hood, even though there's pressure on because you're an SJA, you're not the person primarily responsible. There's a colonel on this post who is the senior JAG, and the success or failure of this really is on his shoulders (laughs) so the thing is, don't screw it up. I say that to say that there is less pressure because there is a senior guy who is in charge, there is another division – there is a little bit of pressure there because you want to make sure that everybody looks as good as the other one – but I will tell you again, because of the relationship that we had, it really was easy. First of all, Tom Crean was known by the JAG leadership very well. All the expectation was that he was going to be a general some day. He had worked for all these folks, and they knew him. He communicated with the leadership on a regular basis, and that gave us a lot of confidence that he knew – and he told us – what really we needed to do to make this trip right, not just for the TJAG but for the people who were going to be visited by him. The hardest part of a visit like that, when you go to a place like Fort Hood, is you know you are going to wear the person out. They are going to come down, they have three groups – with that many troops, there are a lot of places they've got to visit, they have enlisted people they want to see, so what do you

do that really – you can explain your mission in fairly short order. What do we do around here?

The drill was, you would bring the person in as the SJA talked and told them what we were doing, bring him around the office, and these are the people who do all the mission. Then they go in and talk to the CG alone and the CG says, up or down, they do the general officer handshake, and then they come out – that's the way it goes. That's probably – and I think each time we had him there was two full days of Article 6. I think they would come in, and we would have a social event on the one night, and then the Article 6 would start in earnest the next day. One division would have him for a half-day, the Corps would have him for a full day, and then the other division would have him for a half-day. On your half-day, what are you going to do with this TJAG who has been socialized the first night he came in, he's got a second social event, he's had all kinds of people with him at lunch, and then you are going to have a farewell social event. How are you going to try to minimize the wear-out factor? What we tried to do – we thought, he's coming to the 1<sup>st</sup> Cav Division, so what do we want him to do? We coordinated this with the 2<sup>nd</sup> Armored because they were a tank unit. "Okay, we'll have him do Bradley firing – you take him out to Abrams firing." I think we had General Overholt ride in a Cobra. We really looked at it as an opportunity to do two things – let him see our folks, talk to our folks, get the report from the CG, know we're doing well, but get out and talk to some of these troops. This is a big deal, to have a general officer. This is a JAG general officer in BDU's, coming out and we're going to put him on a Bradley and he's going to fire the main gun and see if he can hit the broadside of a barn. That's going to be a break from the normal routine and we think he'd enjoy it. We want to show him soldiers. How much opportunity does he have to do that kind of stuff? So, in that respect, we did pretty much the same thing with General Overholt and General Suter. I'm trying to think, with General Fugh. I don't think we did as much as that because

General Fugh was more focused on trying to spend more time with folks. Well, he had a commitment out there to speak at an event, and then there were some other things. This was Gary Leeling's idea, and I think it was brilliant. In those days you didn't always get the enlisted folks in with a separate audience with the boss, with the senior leader. Leeling set that up. He came up with that idea – that we ought to have General Fugh talk just to the enlisted folks. There are some audiences where they will talk to the officers and their wives or husbands and to civilians, but sometimes in those days there was a tendency to – I won't say intentionally – leave the enlisted folks out, but it was one more thing that complicated it, and quite frankly I think that in the past, some of the JAG Corps leaders were not as comfortable and didn't attach as much importance, quite frankly, to the enlisted force as the later leadership did. I'll get into more of that when we talk about when I first became TJAG and some of the lessons I learned early on from Sergeant Major John Nicolai that were important. Basically there was – and we all agreed readily when Gary Leeling came up with that idea because it made sense, but it took away from some of the other opportunities. Fugh's visit was a little bit different than the others.

Q. So you weren't an SJA who was painting the office and redoing the file cabinets for the TJAG's visit?

A. Not at Fort Hood, but I'll tell you about Fort Benning (laughs)! We had the luxury of being in a new headquarters – it was three years old. There really wasn't a whole lot that you had to do. While I told the folks – and I said this when I was TJAG, too – we expect the place to be clean. We don't want to be bumping into the walls and having paint on our clothes, but basically we know this is a working operation. Clean up your desk a bit, things should be orderly, but this isn't a white-glove inspection. I felt that way – actually, that was the way that I was treated on Article 6s when I was in Germany. Nobody came in and said, "This place needs a paint job.



You need to rebuild the front door frame,” or anything like that. The fact that TJAG is coming, our senior officer is coming, is important, but any time that you have a visitor to this office, it ought to be important. If you don’t have enough sense to get your office up to a certain standard of appearance on a continuing basis – in fact, it would probably be more of a detriment if they found out that you only did that for a visit as opposed to doing it for the benefit of the people that work for you and the visitors and clients that come in on a continuing basis.

Q. So what happened at the Fort Benning Article 6?

A. Fort Benning – General Suter was coming, and we fought like the dickens to get money to improve the office. When I went in there I was astounded that – let me give you a little bit of background on going to Fort Benning. After I got back from the Reforger of 1987 at Fort Hood, when they called me and started talking to me about where I was going to go next. I guess they mentioned Knox, Dix, or Benning. I was told later Benning was really it, but they give you a couple of others to throw in there. What I had not paid attention to was that the SJA at Fort Benning, Earl Lassiter, retired right after the JAG conference in ’87. I didn’t make it – I was in Europe for that at the Reforger so I wasn’t aware of all that. But he retired and they didn’t have anybody to replace him. They did not have a colonel to put in there that they could move at that point in time. The CG down there was a pretty tough customer. This was his third or fourth time as a general court-martial convening authority, he was a national wrestling champion at Iowa State, a national AAU champion. He still looked like he could handle people pretty – he could take on somebody pretty handily, wrestling-wise. He was a pretty hard-bitten soldier, was tough to deal with on military justice matters, didn’t like to deal a whole lot, didn’t like to give chapter 10s, was used to having his way and felt that he wasn’t treated very well by the JAG Corps – when a senior colonel retired, that there was no plan to get an O-6 in that job soon. They were

telling him, “next rotation.” Well, this is November, and he is looking at nobody coming in until the summertime. If I were in his shoes, I would have been – this is a major TRADOC installation, but they have FORSCOM and SOCOM assets here – this is a big deal. We have all the problems a major installation has and you are telling me that the best you can do is leave the deputy in place, the lieutenant colonel who is there, and you can’t do any better than that.

Apparently, they floated the idea with him about me going. Now, I was a lieutenant colonel, and I wasn’t even going to be in the zone until the next board, so he – and I don’t know what he had seen of my record at that point in time, but the fact that I was a lieutenant colonel was not impressive to him. He was not a guy I had served with. He didn’t know me from Adam. All he knew was, why weren’t you sending me an O-6? So I got a call from Walt Huffman, who was the Chief of PP&TO at the time. He said, “We don’t usually do this, but General Suter thinks this would be a good thing to do. This guy wants to interview you.” Normally you don’t do that. For two-stars, TJAG says this is your guy or gal, and it’s my judgment, my prerogative – you don’t put in those terms, but basically “I’m sending you somebody. Don’t send me any suggestions, because I’ll figure that out.” I don’t mean to be too – it may sound arrogant in that respect, but the reason you need to do that is – in that selection process, what is important for you to convince commanders of is that you have a very careful and considerate selection process which will take into account the needs of that command with the resources that you have available to give the best choice. For three and four-star commanders, you nominate to them, so they have a veto power. For two-stars, they get the person you send. Suter said, “We don’t normally do this, but I think it’s important in this case that you go down and see him.” So I said, “Okay.” That was fine with me. It wasn’t the policy piece at the TJAG level – I was oblivious to that – whatever you think is right. I flew down on Super Bowl Sunday – it was the year that

the Redskins won it, and we were still Redskins fans in those days, because we had come from Washington to Fort Hood, Texas – you know, root against Dallas – Washington Redskins – but I flew down – it was Washington and Denver, the big blowout when – who was the quarterback –

Q. Doug Williams.

A. Doug Williams was the quarterback. I think I flew to Atlanta, and then down, so at the airport I was getting bits and pieces of it. Anyway, I went down there that night, and they said, “Go down in Class A’s. Make sure you’re wearing everything.” I said, “Okay.” They didn’t explain all the politics, other than this guy is an infantry guy and I knew there was concern – it wasn’t that they were hiding anything. But basically said, “What we’re telling him is that he’s got to wait for you to come, but it’s important for you to go down. If he meets you we think he’ll be satisfied.” I went down there and I had all my stuff on. He was pretty pointed about – he didn’t go through the whole story about the way the JAG Corps was treating him, but basically he said, “And how soon is my friend John Yosock prepared to release you so you can come down here and take care of our needs?” I said, “Well, that’s a decision for people above my pay grade (laughs) to respond to, but I’m prepared to come here as early as we can accommodate the needs of both commands.” I left his office, and as I was told later, he was on the phone before I got out of the building, saying that “I’ll take him.”

Q. Did you wrestle him?

A. No (laughter). The drill was send down somebody who has all the infantry stuff. That didn’t tell him a damned thing about how good a lawyer I was. It’s the foot in the door. In that particular instance it was important to demonstrate to this guy that the person that they had selected was the right fit – and I think it was right. At that point in time the right person in the Corps at that level to go to Fort Benning was me. Not because – there was plenty of guys that

could have done that job, but in terms of the credentials that I had and the background that I had, it was a perfect fit for me to go there at that time. They knew from both General Yosock and General Conrad, if he bothered to talk to either of them, about my job at Fort Hood that would have reinforced it. The tricky part was that they hadn't had the O-6 board yet. I think the JAG Corps was going out as far as they could on a limb to say, "Don't worry about it. He'll get selected." Because I think his question was, "What if this guy doesn't get selected? What happens then?" I found out later that they virtually assured this guy that I was going to get picked and that I would be an O-6 someday. The problem was, though, that I would go down there and they would have the board that summer when I got down there. They would announce the results – I guess the earliest I could get out of there was May. I went down in late May, after John Yosock had retired. I went down there, left right after he did. So I was there in May, and the board happened that summer. I think the results came out in August or September, but I wasn't going to get promoted for another year. I didn't pin on until June of '89. Actually, I'll tell you something – this was interesting. This was the difference between the Pentagon and the field. In the Pentagon, where you see all the senior people walking around, it's not a big deal to be a lieutenant colonel by any means. It's not really a big deal to be a colonel, because you have so many – not just senior general officers and admirals, but you have senior civilians who have general officer equivalence – at least where the seating chart is important, at ceremonies – it's evident here because every time you go to a ceremony or they do introductions, you know where the order of things are where they list you in welcomes and where they seat you. John Wallace was my predecessor at Fort Hood, and he said, "You have to understand something. Being a lieutenant colonel – lieutenant colonels take out their own garbage in the Pentagon, but being a lieutenant colonel in a division is a big deal. Be ready for that." This is not like the JAG Corps,

where you have the Pentagon and captains and majors, and majors and lieutenant colonels, first-name basis, they work together, da da da – at that time, that was the way things went. Half the time, if you were a major, you were just about ready to get promoted to lieutenant colonel. The divisions between captains and majors and lieutenant colonels and colonels is a very distinct line, and it is a big deal. It was even more evident when I went down to Benning. This is what – there was a little bit of concern because going down there – and the housing issue down there is contingent on where you are going to be, what rank – and there is a difference between the lieutenant colonel (and colonel) housing. All those trappings – where you live – that makes a difference on the staff. For me going in, I think because of the unique situation, because of the big deal that the boss down there made of getting an O-6 – he made that moderately public. I'm sure he said to his Chief of Staff and others, "I'm going to really hold their feet to the fire and I want them to send me an O-6," and when he didn't get an O-6 – I know the Chief of Staff down there, who I became very good friends with later, told me that he was talking to the XO – Bob Murray, General Bob Murray, was then the XO – and they were talking a lot. He was the one who was getting the stuff about "this guy, surely he will be promoted." When I walked in down there, it was a little bit different than other lieutenant colonels coming in. To the extent that you can identify somebody who is going to be a colonel, that they are going to announce at any time, even though the board isn't out, they are going to announce at any time – personally, it was important because they got me into colonel's housing! More importantly, even though I was a lieutenant colonel, I was treated by the staff like "if he's not a colonel, he's going to be real quickly." Within a few months that was the case, but that is a big deal. At Fort Benning it was more so because you have the one staff. It's not like you are at three divisions, you have a zillion colonels and lieutenant colonels. Here you have one CG, a deputy CG, a two-star, a one-star, a

Chief of Staff, and really a handful of colonels – the brigade commanders and the principal staff members. From the JAG standpoint, you're even further separated. You were a lieutenant colonel before – you were “the Colonel”. Now you really are “the Colonel.” There are no other JAG colonels in sight. There's a lieutenant colonel, a couple of lieutenant colonels. In fact, when I went to Fort Benning, there were two lieutenant colonels in the office. One was the deputy, and one was the Chief of Claims. Both of them had been nonselected for colonel. Obviously, both of them had date of rank on me when I walked in. The leadership didn't say anything, but somebody asked me, “You're going in down there and there are two other guys that really outrank you. Is that going to be a problem?” I said, “I'm not anticipating ‘who is in charge’ issue.” I was sensitive to that, that these guys were senior to me. I didn't do anything to diminish the stature of these guys. It was very simple to me. I'm the SJA. We could all be captains here. If one of them was designated to be the SJA, that person's in charge. That's me. I certainly didn't do anything that would lessen the stature of the other two guys. One of the guys had been there, and this is a lesson in staying too long, he had been there six years.

Q. At the same installation?

A. Yeah. He either was in his sixth year or he wound up staying – and actually, they asked me about having him stay and I said yes. I thought it was a good idea because of the continuity. If I had it to do over again, I would say no. That's too long. This is a situation where family circumstances – he had a son and a daughter who made it through high school while he was there. I guess he hoped that they would consider him to bounce him up to the SJA job. The CG didn't want that to happen. He stayed on another year, and that worked out okay. It would have been better to bring somebody in, although I think there is wisdom in splitting the SJA and the deputy so you avoid trauma when you both come in at the same time and both leave at the same

time. The other guy, who was the Chief of Claims – and I became very good friends with – he really, not that I did anything in particular of note, but he somehow appreciated the way I handled the situation when I came in. He went out of his way to be respectful, even early on, in a situation where “Yeah, you’re the boss, but I’m senior to you.” You can’t underestimate the people skills part of it. It’s nothing any more special than treating people with the kind of respect and dignity that you would expect in similar circumstances.

Q. When you were down at Benning, did you have as much opportunity to get your people out to the field that you had at Fort Hood?

A. Let me explain it this way. No, because it was a TRADOC installation, and we were doing some other functions that didn’t make it conducive to that. In other words, when you have people working in the ad law shop, when you have a big legal assistance operation internally, when you have the claims operation, the ability of those people to interact with units becomes more limited. We were careful how we did this – there were a couple of guys there, FLEP officers, and they came in there one behind the other. When I got there one of them was the senior trial counsel. The other one was in administrative law. I agreed with the prior SJA that a good rotation – these are the kind of people that because of their familiarity with the Army, you could put them into ad law to deal with some of these issues that would probably send a new JAG captain – it’s not really the best place to learn about the Army on your first tour. You could throw them into that right away, and this will make them better trial counsel. Where we could – we certainly would direct them to issues where if it was closer to the field environment, we would plug them into that need. We had a fatality out at – of course, the Ranger training brigade was down there, and they did some training out at a remote – it wasn’t down at Eglin, it was somewhere else – there was a training accident. They selected a brigade commander to go out

and investigate. He said, "I need some help." I had this guy out of ad law go with him and he was with him – they went out tromping the turf where this happened, and the fact that he had a guy who was a good soldier, a JAG who happened to be a good soldier, was really important. He didn't have to come up to speed on any of the issues about what was going on in this training setting. That came very quickly to him, and he appreciated that. Things like that, if we could do that, we would do that. On claims issues that were related to any kind of field activity, you plug somebody into that that you are confident is going to demonstrate to the person who has got the responsibility or you are dealing with – that they are going to appreciate the level of this lawyer's appreciation and knowledge and skill set with respect to what it takes to be a soldier. We had one brigade of what was then the 24<sup>th</sup> at Fort Stewart. I'm sorry – this was a separate brigade initially and then later became a third brigade of the 24<sup>th</sup> Infantry Division. That infantry brigade was a FORSCOM unit. We had an engineer brigade that was a FORSCOM unit. We had the 75<sup>th</sup> Rangers who were headquartered at Fort Benning and they had one battalion down there. We had the School of the Americas, which was under the TRADOC umbrella at that time, and then the rest of the organization was pretty much under the TRADOC umbrella. You had three major commands that were represented there. It was much more complex than what you think of when you think about just a TRADOC installation. It is the home of the infantry, and all of the infantry officers come through there for basic and their advanced course. It's one station unit training for infantrymen coming in, so you have all that stuff going on. You have the training for the basic level infantryman, basic and intermediate level officers. Infantry doctrine is supposed to be developed out of that school. The CG is the Chief of Infantry. But you have a lot of other things going on. Just Cause took place when we were down there, and the 75<sup>th</sup> Rangers were part of that. The judge advocate who was part of the 75<sup>th</sup> Rangers wasn't under my supervision.



He was under SOCOM's supervision, Phil Lindley at the time. We talked early on and I was not looking at all to get into SOCOM's turf, but I did want to make sure that he understood that there was only one guy – he was the only guy there and he basically was the JA for the whole regiment so he would go visit the battalions at different places. I said that we are more than ready to help you out with some folks if you need it. There were times when we did that. During Just Cause what really helped them, surprising as it may be in 1989, where we had learned all the pre-deployment lessons, there were some Rangers who hadn't taken care of things before they left, including some officers. There were some wives who came in to us, wives of majors and senior captains, "I can't believe I'm in this predicament, but I am." The regiment, even though we didn't send anybody – Lindley went on the deployment, he was one of the first guys in – but in terms of the support we provided for Just Cause during the deployment and after, in terms of family support and dealing with legal assistance-type issues, they were eternally grateful to us for that. To answer your question, there weren't as many opportunities to get out and do that. A generation or so before me, whoever the SJA was, came up with a deal – in the 1<sup>st</sup> Cav, there was a MTOE and you saw that these are your bodies, one to twenty-four. I figured I would go to Fort Benning, okay, it's a TRADOC installation, TDA, but I thought there would be some list that I could go to that said, here are your people, one to fifty. Actually, I guess they had requirements up to seventy-five or something. We were in the fifty-sixty range. You couldn't do that there. What I explained to you before about this being a more complex organization, just the TDA, a TRADOC installation – you had certain positions in this engineer brigade, the 36<sup>th</sup> Engineers. You had certain positions in the 175<sup>th</sup> Infantry Brigade. You had certain positions in – there were several organizations, and somebody struck a deal several years before that took all those assets and centralized them at the SJA office. If you have ever been to Fort Benning, it really is

a great location. The CG's house is an old plantation house, riverside. The SJA office is the old post headquarters, right next door to that. They centralized everything there. But the deal was that those assets that you got from that brigade, the infantry brigade and the engineer brigade, really had to take care of their problems first. The idea was that as long as you can take care of our problems, which means that if we deploy or do other things, these people go with us, and I think the 36<sup>th</sup> Engineer Group – there was a deployment for some disaster relief in either Central or South America, they took the JAG asset with them – but basically they were their dedicated asset, but we could use them as part of a team to do other things. They could wind up trying cases for another command. There was no problem with that as long as that unit's needs got the first priority. We also had a position in the infantry school, it was an instructor's slot that they gave us. When you send somebody over there, they basically came under the supervision of the people there. You had to be real careful about who you sent over there and be very confident that whoever you were going to send over there had the ability and the self-confidence to be able to operate independently, to certainly follow directions given but have enough confidence and sense of independence that they made sure they were doing what was right for the Army from the JAG perspective. In other words, they are there to do a certain teaching mission, and part of that as I saw it was to demonstrate your value. This is a great opportunity to demonstrate your value early on to these young officers – know what a JAG is and that they can help you in a variety of circumstances. A lot of good work had been done before I got there in terms of consolidating an operation in a way that made sense, certainly resulted in much better legal services across the board, and met a variety of needs very well. Too much background, but, getting up to the Article 6, one of the things that really surprised me, shocked me I suppose, was the condition of that office when I went in there from the standpoint of – it didn't look like there

had been any kind of refurbishment or upgrades in some time. It was an old building that had high ceilings, and the first thing that struck me when I went in there were the light fixtures. They looked like they were out of place. They didn't give enough light in the first place, and they were hanging from a high ceiling. There had to be a better way to light the place. The halls were actually somewhat dark. It was a long, kind of an odd-shaped building, an extended V. No carpet, so you walk up and down the halls in boots and it's pretty noisy, people are trying to do work. The first thing I started trying to inquire is how do you go about trying to get some money to upgrade this place? One of the things that we could do that would enhance – and I said, “We're willing to do our part.” To make a long story short, we got two things out of the engineers, but we had to do some things. They dropped ceilings in the place, and they did it in a way that didn't really destroy the architecture. It improved the lighting, made it about a thousand times better. They were going to do all that electrical work. The place was not centrally air-conditioned. This was Georgia. They had window air-conditioners, and you had to buy your own window air-conditioner, which I refused to do. Even though I was the SJA, I refused to do that. I said, “I cannot believe that we are in Georgia and we don't have air-conditioning. This is intolerable that you don't have air-conditioning and secondly, that you tell these people that that's your office...”

Q. They would have to go to Wal-Mart to buy their own AC units?

A. What happened is that somebody would buy it and pass it on, but that was the state of things. I said, “There is no reason why we should accept that.” I raised an issue about that. It must have been exactly the right time. In fact, giving due credit to Earl Lassiter, my predecessor, he fought some battles over that and they were on the verge of kicking some money loose. When I got there, that had about happened – that was all in the works. The central air-conditioning was

going to happen, so that was about a \$300,000 investment. They went in to spruce up the appearance – they were going to drop the ceiling and get us carpeting for the whole place but they said if you want to paint the place, we can put you on a list but it will be a while. I said, “Okay, but I don’t want to put carpeting in and then paint the place. We’ll paint it.” So we did that, including me. I painted my own – I said, “Everybody, this is the drill. You paint your own office. If you want to help each other, that’s okay but you are responsible for your own office. If you want to team up with people and do it, that’s fine. The common areas we all pitch in on.” Everybody got in paint clothes including some of the civilians. We couldn’t say, “You have to do this.” The military folks – “Okay, gang, roll up your sleeves,” and what was hard about it is that it was two different shades. The wood paneling was oil-base. So we did oil-based paint, latex – but we got it done. We did it, including these gigantic windowsills. The other thing was, the outside of the building wasn’t very well landscaped. We said, “What kind of help can we get?” Again, “we can put you on the list and when we get around to you, we get around to you, but if you want to do some self-help, we will give you everything you want.” The CG drove by one morning, and we are out all there with rakes and shovels, in PT uniforms, planting bushes, raking leaves. We had the place spruced up outside, spruced up inside, and all that stuff happened. We did not launch into this because an Article 6 visit was scheduled. We had all this stuff in progress and then the Article 6 thing came up and we said, “This is good timing but we need to make sure we get it all done.” General Suter knew we had really got it done just before he got there. He was laughing about this being the typical place for an Article 6 – the paint still drying when the TJAG walks in the door. This gets you to the Article 6 visit – this was very unique. General Suter is coming in on a Sunday. I think he was going to spend two days with us and then go to Fort Stewart. Friday during the day we had the most horrendous rainstorm that I

had ever been in anywhere. I won't say it was hurricane – hurricane-like winds. We had a home that was facing one of the polo fields. The door blew open at one point. I went to shut it and the wind was blowing so hard that I actually had to lean on this door to push it around – that's how strong the wind was – to get it shut. Then it just rained cats and dogs. Wake up Saturday morning, sun is shining, we got too much water and the drainage at Fort Benning was notoriously bad – in fact, they were doing some major drainage work in the community. I get up and I go downstairs to the downstairs part of the house, the basement, and we got four inches of water. We have everything stored in there. My son's bed was down there. Saturday morning – the other thing that was a real surprise was that our oven breaks. Now, the reason that this is important is that the first night of TJAG's visit was going to be a dinner in my house with all the senior folks – the division chiefs and other folks. We were going through the drill of getting everything out of the basement – the basement had to be pumped out – get stuff dried off. My wife did the cooking for this thing – we didn't cater it, she did the cooking. So she is cooking stuff at our neighbor's house (laughs), bringing it back and forth, and by the time General Suter arrived on Sunday, we were ready, but, boy, we just – right up to the wire, literally. We had the flood that we had to deal with. In fact, I was driving him back from the airport and we had to go over a couple of bridges. The local streams were up four, five feet. They knew that we had been through pretty much a disastrous rain, but when he heard what we had been through, he appreciated the hospitality that much more. I learned a lot from his Article 6 visit. I had seen Article 6 visits before, including ones I had observed and been in, and I know – again, I learned this later – how tiring it is. You really want to get out, you want to be interested, and you want to show people that you are interested in what they are doing and paying attention. If you are on a long trip, it can get real hard. But General Suter, on that visit, did the best job that I have ever

seen of going through the office and after being through, he was able to say something – not just some cursory hello or something you think would be a canned response. He was able to engage in a conversation – even if it was short – in a way that made every person in that office feel important. The civilians in particular were really thrilled with the attention that they got. One of them was a former JAG, he had been in the JAG Corps for four years, been there four years, and then he had been there as a civilian for about nine years, and he said, “This is the first time, the first Article 6 visit at Fort Benning, where this hasn’t been like a stop on the southern golf tour.” He said they felt it was very meaningful. He did a marvelous job throughout the whole office, talking to civilians, enlisted folks, officers, and then he gave a very nice talk to the whole office together. It really was well done and so appreciated by the office. I remembered that and tried to emulate that as I went through – there were other things that I wanted to do, but I never forgot how well he did that. That was in my second year at Fort Benning. We took him around to see some soldiers – the airborne folks did a demonstration – if the timing had been right, we would have taken him out to one of the Ranger demonstrations since they do a good job out there. That was the first time – I really didn’t know General Suter very well. I mean, I had him at the Article 6 visit for that half-day at Fort Hood, but I really can’t say that I – I had spent the half-day, but we were moving around and getting him on the Bradley and other things. I got to spend some time with him at Fort Benning. I enjoyed it very much, and I really admired the way he handled that Article 6 visit. The people that were there really liked it.

Q. When you were at Fort Benning, did you have any problems with School of the Americas protests, when you were the SJA there?

A. We did. They were happening, and we were prepared for them. Their intentions were announced, and there were people who had been – I’m trying to think if they had some people

there who had been – you know, you go through the drill of barring them from post, advising them, and then if they come back on, then that's when you have the ability to do something in the way of a prosecution. I think we were anticipating that there might be some people in that category. As it turned out, whenever the scheduled demonstration was, we had the administrative law folks, who coordinated very well with the military police, the Provost Marshal's office. We had a designated area where they were going to do their protest. They came in, they could do it between this and this timeframe. It happened and it turned out to be a non-event. I cannot recall that anybody violated the restrictions. What we had set up as the place where they could demonstrate was what they used. They used it within the time allotted. There wasn't the need to deal with people beyond those limits. We were ready for that, but it didn't happen – it didn't go to the extremes it has since that time. I think it was after I departed there where there were some greater issues – where somebody found in the teaching material some objectionable passages about dealing with counterinsurgency – counterterrorism or counterinsurgency instruction included passages that have been excised. Quite frankly, from what I understood later – it happened during my tenure as TJAG – to find out how that actually made it into those teaching manuals was a pretty difficult task. It was more of a general objection to an institution that numbered among its graduates some people who – certainly to say they didn't have respect for human rights would be an understatement, that they had violated human rights, but in the context of the fifty or sixty thousand graduates, to suggest that the school be closed, that we should give up the opportunity to influence a new generation of leaders in Central American and South American armies in a very significant way seemed to be the absolute wrong approach. I know that issue is not over with, but I think some of the same principles apply. In terms of what they were doing in those days, I thought they were doing an

excellent job. I thought that what we did later in terms of the JAG Corps' contribution in getting a JAG on the staff down there and being involved in the instruction – by the accounts of the commanders who were there, that has been a big plus in terms of meeting the needs that were of concern to the protesters.

Q. You also had a capital murder when you were at Fort Benning. What goes through an SJA's mind when he is making the decision to recommend to the CG to go capital in a case?

A. The first thing is – in this particular case, as I was explaining earlier (in an unrecorded conversation), you have to be very careful not to get – just as you would as a prosecutor – not to get tied up in the emotions that would naturally flow from such a horrendous act. In this particular case, it was a double murder. It was a lieutenant and his girlfriend who had been murdered, bodies mutilated. It was a combination of gunshots and a knife. The murder committed with the handgun and – we couldn't determine just how much was done, whether some of the mutilation was done before or after – but it was a pretty horrendous crime. Early on, and this had happened before I got there – the actual crime took place before I got there – but there was apparently a disagreement on jurisdiction. It happened in Alabama. Alabama authorities exercised the initial jurisdiction on that and in their investigation they determined that there wasn't enough to go forward. It was a very difficult case. Well, it was only through the persistence of the father of the lieutenant that the case stayed alive. Through some very careful discussion and a very effective exercise of diplomacy at that level, we were able to reopen the investigation and to bring in some additional help. We had, in addition to picking up what the – there were certain things that were lost as a result of the passage of time. If this had been handled by the CID initially, it would have been – who knows what we may have been able to pull together on the case – but because of the passage of time, there was a loss of some of the



evidence. We don't know what we may have lost. Also, by this point in time, once we pulled things together, we got the assistance of an FBI crime scene analyst, and he actually testified at the trial. By the time we were ready to put this together to go forward to the CG, we felt – it was a circumstantial case – but we thought a very compelling one. Going back to the initial point about avoiding the emotion, you look at the circumstances of that crime, you look at an agonizing parent, and you have got to be careful that that's not what is driving your decision. In the first instance, be very clinical in terms of your analysis in terms of what you have, what you believe you can prove and then do the analysis of the factors that would justify this being thrown into the capital category. If you walk through that in a very deliberate and reasoned way, and as long as you are from the moral standpoint – if I felt that I had moral compunctions against capital punishment, then I should not be in a position who advises someone who makes decisions in that area. Initially as an SJA I think you have to come to that. You have to make sure you are where you need to be on that issue. I don't mean to take sides on the issue, but if you cannot give the decision-maker the full range of options, if your personal viewpoint is going to affect that, it is something that you better think about in continuing to occupy that position as an advisor. As long as you are satisfied that this is a lawful exercise of that authority, then you just take it – I don't want to say take it by the numbers, because that doesn't give due regard for that kind of decision – but basically the criteria is there, you walk through it, and you put it to the decision-maker in terms that are as clear as you can make it as to why this justifies going to that level. Then you just let the chips fall where they may in terms of taking it through to completion.

Q. Was the soldier ultimately convicted?

A. Yes.

Q. But not sentenced to death?

A. Yes, a life sentence. Again, looking back on it, we believed we had a compelling case but on the other hand, it was a very strong circumstantial case. There were certain statements made – nothing in the way of an outright confession – but certain statements, seriously incriminatory statements that assisted in that conviction but basically it was a very difficult case. Gary Probin did an absolute marvelous job in trying it. Don Powers second-chaired it. Bill Hudson – he was the defense counsel in the case. You never find out exactly what happened in deliberations. We know there was a lot of heavy discussion and some disagreement on various points, but the process went through to completion and that was the result we got and we were satisfied that – especially considering where we were at the starting point, where it was at a point where the Alabama authorities were not going to do anything with it. They didn't feel they had enough. They didn't have as much of an interest. You had two victims, a soldier and his girlfriend – I don't think she was from Alabama – and all the evidence was pointing to a soldier, so in terms of the interest of – was the victim a citizen of Alabama, was the perpetrator a citizen of Alabama – they didn't have the interest there to really drive them – give them a driving need to pull considerably more into this case.

Q. Following Fort Benning, you went on to what you described earlier as your best year in the Army.

A. Yes, that's right, the War College. As I explained earlier, going in – and I didn't know what to expect in terms – I would not have necessarily said going in that I expect this to be the best year of my Army career. I really didn't know what to expect. I knew it would be a good year because of everything we heard from people who had been there. As we talked about last time, anytime the Army sends you to school and pays for it, the starting point there is that – your threshold is very high in terms of disallowing complaints about anything. It was the only time in

my professional career where I could walk to work. Well, I shouldn't say that – at Benning, I could have walked to work. I didn't. I lived a little bit farther away. It was different from Benning in this respect – Carlisle Barracks is a very small community. You do get to know everybody very well. I mentioned this before – the level of experience that everybody – the other real pleasant factor about that was that there were at least seven or eight people, maybe more than that, seven or eight other officers, that I had known, that I had served with – there were only two JAGs in that class. Joe Fowler and I were the only two JAGs in the class. There were people in that class – four people who came with me from Fort Benning were selected for the War College, and the others – there were four or five more – I had at least two West Point classmates who hit the War College at the same time. One was on the faculty, one was in the class. There was another – and they were there with their families. We were there with our family. Another guy that I served with – he came into the Army in the phys ed department at West Point – he came in as a brand-new lieutenant to the Army when I was there in the phys ed department – he was there at the War College. You look around at the class and they are people that you have known for a long time, people in the faculty there you have immense respect for, and it's not only very enjoyable from the standpoint of "the pressure's off," you're in a school – I mean, you have to deal with the pressures of a school environment, but not like the normal work environment pressures. It's really a year to take advantage of not only the time with your family but the time and the environment with professionals where you can really learn a lot. I think I mentioned to you last time that there has been a considerable shift at the JAG School from what used to be a lot more platform time, lecture time, to seminar settings, and it is for the same reason. You get so much out of a seminar environment where you have professionals who are able to share experiences that are of value to each other. That's just a great environment to be in.

I thought the international students were particularly valuable to the course. I thought the smartest guy in the course was an Indian brigadier general who was in the same seminar the second half of the year. I watched him with great interest the first half of the year because he was one of the few foreign students who was not reluctant. Certainly, with the majority of the lectures that we had, U.S. military senior policy people – some of them gave great lectures, some of them would give you kind of the Rotary Club speech, and you get a lot of what you would expect from people involved in policy, and that doesn't always – international students and people from other countries generally don't necessarily see things the same way. I think the natural inclination for international students would be to sit back and listen and not challenge it. This officer would challenge them, respectfully. He spoke the Queen's English. He had the best language skills of anybody in the course, and it was interesting because when I was in his seminar, he would question people about their word usage, not to nit-pick them but "what did you mean by that?" When you thought about it, the point he raised was a very valid one. If you were using the word the way it was intended. He had a wealth of experience and he had been all over – been to Russia, been all over the world. One of the things that he did – he would go out to speak to students in high schools. He would say to them, "You are in paradise here in the United States. You have no idea. I have been all over the world, I have seen so many other places and no place is like the United States." He also explained an interesting experience with his son. I guess they had a difficult time understanding why teachers were not held in high regard in the United States. He said, "In India, teachers are revered persons. In schools in India, when a student addresses a teacher, they stand up out of respect. My son, when he started school, would stand up to address the teacher. At the beginning of year, he would get a little bit of laughter and some snickers when he did that. By the end of the year, some of the other students were doing

the same thing.” There were so many other great experiences. I got to go to the Soviet Union that year. I had never written for publication and I wanted to do that if I could. They were picking a team to go to the Soviet Union. They were doing a writing project on Soviet military reform. I went in to talk to the faculty member who headed that up and I said, “I would like to be involved.” There was a trip as part of this to Russia. He said, “Well, they won’t let special branch people do that.” There is some sense to that. People who were more likely to get into a joint environment where they need to have that broader base – that was their reason, as opposed to – not that a JAG couldn’t be in a similar situation, and I made that argument. What makes you think it wouldn’t be? I understood their rationale, and I said, “Okay, I understand that, but I still would like to be involved in the writing project. If I can’t go to the Soviet Union, I can’t go.” So I worked very hard on the writing project, and he wanted to take me – he was very happy that I was interested to do that, and he was particularly happy in the work I was doing on the writing project. I had no thoughts about making this trip until my fellow JAG in the class, Joe Fowler, said to me, “Explain to me again why you’re not going to the Soviet Union.” I said, “They have limited funds and they said that the first preference goes to line officers.” He said, “Well, you ought to check this out further. I know there is money. They have travel money there.” You get money for your writing project – they paid for you to go off to visit certain places. He said, “I turned in seven hundred dollars.” Whatever project he was doing, he didn’t use everything that he got. He said, “I know that there are guys who signed up for something where they had to go to Europe, and they didn’t make as many trips, so there is money going back in. You should check that out.” So I went to this teacher and I told him about that. I asked him, “Is that accurate?” He said, “That’s probably true. I’m sure that’s true, but what you are going to bump against is the money that they don’t use for students, they’ll use for faculty. You are going to

have to get over that hurdle. I'll support you on it. If you request it, I will certainly endorse it, but it has to go up several levels." I put the request in. Of course, it wasn't well received. They made every attempt to discourage – the guy who was the keeper of the keys to the funding, but I was entitled to get it taken up to the Commandant's level. I don't know how many levels it went through when they said no, but the Commandant said, "Send him." By this point in the year I had gotten to know him pretty well. He got to know the class very well. He knew that I had worked hard. I got high visibility early on because of one of my classmates breaking my leg. By the time we got to the springtime, I got on the trip to the Soviet Union, flew to Helsinki, spent a day in Helsinki to adjust to the time change. We took the train into Russia from Helsinki into Leningrad, then Leningrad to Moscow, then Moscow back to Helsinki, and it was fascinating because the Soviet leadership was still in force. They warned us ahead of time – we got to the Soviet border, and the Soviet authorities came on to search the train. I still to this day don't understand why they thought they might find some disgruntled Finn sneaking into Russia (laughter). I can understand going out, why they would search, but coming in, I don't know. They actually changed engines on the train. We got to the Soviet Union border – they put a Soviet engine on front of it. I guess in the old days they used to have a track problem because there was a change in grade of tracks or something, but they still went through that drill at the time. The Finnish train got to the border, they took the engine off and a Soviet train took you in. We pulled into Leningrad – the historic ride before the start of the October Revolution, 1917, was from Helsinki to then Saint Petersburg, now Leningrad, which was going to turn back into Saint Petersburg. The engine of the train that brought Lenin into the country is on display – it's behind glass. We got out of the train, we would look at that, "that's nice." We get on our bus, and we knew right from the beginning that this was going to be different. The Russian woman

who was our tour guide was very bright, spoke wonderful English, and was very, very blunt and candid about her comments. She said, “I hope you had a good trip in from Finland. I understand you saw the engine of the train that unfortunately brought Lenin to this country (laughs) and hopefully will take Gorbachev out.” It was an instructive few days. We hit Leningrad, then went down to Moscow, we saw a bit of the countryside, went about a hundred miles outside of Moscow, had some great opportunities to speak with some academics, some community people. Then we took the train back out from Moscow to Helsinki. Then we finished our writing project. I have a book of pictures that I took, just really interesting, fascinating. We took some video over there and made a presentation in class afterwards. My contribution was that I wrote a piece on Soviet legal reform, particularly with respect to the military. That wound up being a chapter in the book on Soviet military reform that was published later. So I accomplished my goal of getting something published while I was there. Actually, some people thought I was nuts because I really did work hard on it. I was working out of Soviet journals. I learned my first valuable lesson off of a computer. I was working off a laptop and didn’t go through the save exercise in the right way and I had about twelve pages done with a bunch of footnotes out of these Soviet journals and I lost all of that and had to redo it. But that only happened one time. Let me just backstep a minute and tell you the event for which I became known very quickly across the board of the class. They have the “old man sports” up at Carlisle. They encourage you to get out, really more for social reasons and to get to know your classmates than to really get out – and they specifically tell you “don’t make this life and death. First of all, you guys are old and you can’t take it so don’t do that.” They have rules like in softball, you are not allowed to slide, you can overrun the bases, things like that. They make it so that it’s not – they discourage the life and death, which is nice. I was playing softball. One of the things you had to

do there was – it was mutually supporting. They got all the umpires from the classes. If you were playing on a certain day, you had to supply the umpires for the games before or after yours. I remember on this particular day I was the first base umpire, and I was in the position where I could look across two fields and see players from four teams on both fields. Guys are walking around with braces on their arms, knee braces and all these – and I'm thinking to myself, I wonder if we should really be doing this? Two hours later, I was sprawled out on the field. I was not trying to be a hero – I tell that to everybody – I was the short center fielder, the ball was hit to me, clearly to me, I called it. We had an over-energetic left fielder, the captain of our team, then a lieutenant colonel – didn't make colonel in spite of this – comes screaming in from my right rear and, when he realized we were going to collide, instead of hitting up at shoulder level, he decides to drop down. He came down and hit me across the leg, right back across here (stands up and motions to just below his right knee). I caught the ball, which eventually everybody signed and gave it to me. I couldn't get up – I was able to sit up and from my knee down, my right leg was like this. I said, "This is not good." Of course, everybody comes running out. A guy who identified himself as a doctor from the other team comes out and he says, "Does this hurt?" I said, "No." "Does this hurt?" "No." "Does this hurt?" "No." He said, "I think you lucked out. I don't think it's broken." This is my leg. I found out later he was a psychiatrist. I guess he never did an orthopedic residency. What had happened is that I had a tibial plateau fracture, the big bone in the lower leg. It actually fractured. It was in two parts. So they took me over to the clinic and they did the X-rays and this was well above their level for handling. They took me downtown. The guy who saw me was the surgeon for the Dickinson College football team. He looked at the X-rays and knew exactly what it was. He said, "Tibia plateau fracture. What we have to do is a bone graft here, we have to do a brace" – his



competence was apparent from the first few words out of his mouth. But they needed authorization to do the surgery there. I think they actually thought about sending me to Fort Meade for surgery. That was supposed to be the closest place. It was severe enough that they said he needs surgery now and he shouldn't be taken in a vehicle. So he did the surgery. He actually put in a plate – he took a little piece of bone off my hip to do the bone graft and then put a plate and five screws in my leg. That was a Friday night, and I started on rehab on Monday. Never was in a cast. This is how far things have come. I think not that many years earlier I would have been in almost a half-body cast, or at least a full-leg cast, for a long time. Maybe this is a function of this happening in the civilian environment – basically they got me two braces, one that would keep my leg – that I could take on and off so I could shower – one that would keep it in one position and then another that had a hinge in it so I could move my leg. They started therapy on a Monday. They gave me a passive motion machine which I put my leg on. It would take my leg through the motions like this (makes motion like pedaling a bicycle with his right leg). It really prevented considerable atrophy in this leg. They wound up getting me an exercise bicycle that I was able to use at home later. At the War College, it is coat and tie at all your lectures. Here I am, with this big thing, so I became very stylish because I was the only person in the class who was allowed to wear sweatpants with my coat and tie. I was on crutches for a couple of months.

Q. Is that why you have a “no shorts” policy in all your offices?

A. (Laughter)

Q. While you were at the War College, you know that you are moving up in the JAG Corps.

Did you have a chance to reflect back to your time at Fort Hood and Fort Benning where you felt

that judge advocates, although they went to the field, were a little bit underutilized? Did you have a chance to think how, institutionally, you might be able to change that down the line?

A. Let me just put something in perspective. Joe Fowler and I laughed about this. We got to the War College in the summer of 1990, and the first thing that they said to us was, "You guys have to come in and review your records." We said, "Why?" "Because they are picking a new TJAG, and you guys are in the zone." This was true; they were having a board. This is when General Suter announced his retirement and they were going to pick a new one. In theory, when they pick a two-star, every colonel with one year or more in grade would be eligible. Well, I had been a year in grade. I said, "Yeah, okay, we'll check our records." We checked our records. They announced the TJAG so Joe and I – we believed we had the first members of our class to be passed over for two stars at Carlisle. In terms of impacting the institution, I will be honest with you – people may have some difficulty believing this, but my view of – and I think I told you this last time about my coming into the JAG Corps and expectations, knowing that it was a long shot to be a general. My sincere belief was that I would be competitive, that I could be in the running, but that is as far as it went. I felt that when senior commanders say things like, "This person should be a general officer," you have done what you need to do. You have satisfied the customer, you have demonstrated your competence, but there are plenty of people that can fill that position. You should never delude yourself into thinking that you are getting close, because it is just not that way. The system doesn't work that way. My thoughts were not on being a general officer, it was "When I leave here," and this breaking a leg complicated things because I didn't know what that was going to mean – they were talking to me about Litigation Division, which would have been a perfect fit. General Bob Murray had then become a one-star, and he talked to me about Korea, which sounded fascinating. I had never been to Korea, and that would

have been – he had been there, he knew what a great job it would be. They also mentioned XVIII Airborne Corps, and I would have liked to have done that, except that because of this problem (holds left forearm), to be honest with you, I don't know – if that became very serious, if they said, "You're going to XVIII Airborne Corps," I'd jump, and is this going to be a problem? I don't know. Those were thrown around there. But it was strictly, "What's your next assignment as an O-6?" Honestly, I was at this point in my career – in 1991 I was going to graduate – and I was figuring, "Okay, thirty years. You go to '99 and that's eight years coming out of here. That's two, maybe two and a half tours." You could do a short one someplace and I suppose if I went to Korea for a couple of years, you might get two more after that. Susan and I had talked about what we might want to do in finishing out, and I had serious thoughts about trying to go back to West Point to be on the teaching staff because they have two colonel's positions and I am from New York originally. I thought going to West Point would be wonderful. After we finished the year at Carlisle, I thought very hard about maybe Carlisle might be a nice place to finish up, on the teaching staff. I actually talked to the Commandant about that. I didn't want to stay there – they were looking for somebody to stay on the staff. I think if I had wanted to do that, I know I could have. The people at Carlisle would have liked to have had me, but the JAG Corps wouldn't have – that wouldn't have been the right fit. I thought I would go out and do something, do a couple of things in the JAG Corps, and maybe finish up at Carlisle. I didn't know what position I was going to be in. I didn't know what position I would have where I would be able to affect institutional thinking on that part of the business, injecting judge advocates more into the operational part of our business. In fact, they mentioned a number of places. The strongest signals that I was getting would be that it would be Litigation Division. That would be something far removed from that. Then when they came in and said, "Contract

Appeals Division,” I was floored. Scott Magers was the one who called me because he was the Assistant TJAG for Civil Law and Litigation, and the first thing that he said was “Sit down,” when I got to the phone (laughs). He said, “Are you sitting?” I said, “Yes.” He said, “What do you think of Contract Appeals Division?” I said, “What happened to Litigation Division?” I don’t think I told them this, but I think I mentioned to you I asked for Contract Appeals Division coming out of the Grad Course, so I was thinking to myself, “Better late than never. Sooner or later you get what you want.” But I said, “I have never been a contract law practitioner. How do you think the contract law community is going to react to this? The personal thing to me is, going in, I’ve got the litigation piece of it.” They said, “At Contract Appeals they need a leader more than anything else. You’ve got the litigation background and the management background that’s essential. The fact that you have never tried a case before the Board of Contract Appeals is less important.” As I have done previously, I said, “Okay.” I accepted that, and I was ready to go to the Contract Appeals division. Being very conscious of the shortcomings I had coming in – I went to the Basic Contracting Officer’s Course –

Q. You were senior to most of the people there?

A. I’m sure I was probably the senior guy there. The thing was this – I don’t think people, even though they don’t tell you everything as you get more senior that you would like to hear, once they said, “This is your assignment,” and people knew that I didn’t go lobbying for that job, because I would have not thought I was the right person. For the reasons that the JAG Corps leadership had, which were sound, I was the right fit. There were some voids that I had to fill. It wasn’t an ego issue with me to go to the Basic Contracting Officer’s course. That was fine. I went into the Contract Appeals Division with the idea that I’m starting at ground level. I have to manage it at the top, I have to lead the organization, but I fully intended to get in – to learn it

from the ground up, and at some point I expected that I was going to take a case. I was not going to just manage it. I would take a case. I probably would look for some dog of a case to take just to show that I wasn't afraid to do that and also, it's important that – and I always took this view as an SJA – good won-lost records don't impress me a lot. You take the cases as they come. There are some difficult cases that you really need to go forward with, and it could spoil your string of wins. You never can tell how things happen. You take them as they come. I think a good lesson to younger people is if I were a leader and I took a case and it didn't turn out well, they would take seriously when I say to them, "Get in there and do the best you can, and if we make the collective judgment that we need to go forward, if you don't win it, you just move on to the next case. Don't agonize over – plus, this is money. This is not about sending somebody to jail, too, so there is that part of it." Ron Cundick, who is just a tremendous – he had enormous talent in a lot of areas, he had an SJD, he had been an international law specialist as well as a contract law specialist, he had been there about five years. He had worked for General Schwartzkopf at I Corps and had gotten – I saw his file later – I know he had gotten great reviews. He had a lot of talent. He was the guy that I was following. We had the luxury of having – and this is one thing I did ask for and they granted it – a little bit more transition time. I needed to get to that contracting officer's course and I just needed to have the – I said, "Probably about a month," which was not always good when you are coming in. You probably should make a shorter transition, but I thought I needed that to make the transition. I got there in June – we graduated in June. I went to work right away. I wanted to take some leave later on in the summer. In fact, I came back to Washington and had to sit on a board right away – the CGSC board – and then went to work. June, July, August – I went to the Contract Law course in July. I went on leave the first couple of weeks in August, came back second half of August, and the plan

was that we were going to transition September first, our planned handoff date. When I finished the Contract Law course, I finished on a Friday, and I lived south so I came back across Route 3 through Fredricksburg and up, and I was going to try to make it to a ceremony, but between traffic and other things, I wasn't on time. So I called Ron Cundick and said, "I'm sorry. I'm tied up traffic here and I'm not going to make it. I'll just plan on seeing you on Monday." He said, "We got a call this afternoon or got word that all colonel's assignments had been frozen. Until further notice, we can't proceed with what we want to do. So the transition date that we had for the first of September, I'm not sure it's going to work." We both surmised that they had just picked a new general and that was the reason for that. I thought that what happened was once they picked a new general, that there is this grand shuffle among colonels, and that I might have been picked up in the shuffle, so they decided that they rethought the Contract Appeals piece and thought that maybe there was some other place where they had to move me – the great dance that goes on. The colonels' dance when something like that happens. I didn't think twice of it. I just figured that it's somebody else's issue and we'll just see what happens. We both agreed that it was fortunate that we hadn't handed off, because if something did happen, it would have been awkward to try to make another transition. For us, we were still in a situation if they needed to move me someplace – we didn't really say this explicitly, all we talked about was they said, "You can't hand off on the first of September." We talked later, kind of comparing notes, and both of us were thinking the same thing that maybe I was going to move and they wanted to preserve the option of keeping Ron Cundick there. I'm trying to think of when it was – it was after I got back from leave. I went over to – Contract Appeals Division was at Ballston at the time. Scott Magers, a one-star at the time, came over for a ceremony and he said, "I need to talk to you after this is over." I said, "Okay." I thought that maybe I was going to get the inside

scoop that there is this grand shuffle and you – since he is the one that told me I was going to Contract Appeals. He probably thought after he did this great job of building it up and convincing me that, if I was going to go someplace, he was going to tell me, “Okay, you are going to go to Korea, you’re going to do something,” and that would have been hard because we just moved back into our house – we would have figured it out. Scott is usually – always – pretty direct, but it was clear when we sat down that there was something that he wanted to tell me but he couldn’t tell me. He was talking – I don’t remember his exact words, but he was talking about sometimes the opportunity to lead comes earlier, at a time when you don’t expect it. You have to accept the fact that people make those decisions – people whose responsibility it is to make those decisions do that and there is good reason for it. Do your mission. “I understand that,” but, again, expecting to hear it’s Korea or Fort Bragg or someplace else, but he basically said, “You’ll understand soon enough.” So that’s got me scratching my head but I figured this must really mean that I’m moving, that I’m not staying here. He didn’t tell me to pack my bags but I’m taking that as the hint. Later in the day, I was over at the Pentagon for something, and I went up to the uniform store in the Pentagon, the tri-service uniform store. My green trousers were getting kind of raggy. I needed to get new trousers. So I had pulled off a couple of appropriate size normal trousers. I am walking around the store – I had to get something else – and Scott Magers shows up, just happens to bump into me. He looks at me and says, “What are you doing with those?” I said, “I need new trousers.” He took them out of my hand, put them on the shelf, and just walked away. I figured I probably shouldn’t pick them up right then and just go ahead and buy them. I was getting a message here somehow, but I still wasn’t entirely sure what I was getting. It wasn’t that long afterward that they announced the results of the board and I had been selected. I was genuinely shocked because I had actually

been in grade – I spent a year as a colonel at Fort Benning and I spent a year in school. Although I had a couple of years of a track record in an O-6 job – I had a couple of ratings as an O-6, but for anybody who looked closely at that, I had been a colonel in grade for a year, and then I had been in school a year. That would mean that the board would have to pick somebody coming out of school. I looked around, I was looking at these guys who were at Desert Storm – Walt Huffman, who I had known for years and respected. John Altenburg was a little bit young at that point – he was a lieutenant colonel at that point. But look at the O-6s that were there – Walt Huffman, Ray Ruppert, Mac Squires – there were some people that I had known for years, that I had respected, that from all accounts had done wonderful work, terrific work in Desert Storm, had worked for four-stars, three-stars – the highest level person that I had worked for was a two-star. My thought was that if they said to you, “Who do you think would be selected?” I thought Fred Green, who was then the legal advisor to the Chairman of the Joint Chiefs. “That’s the guy. I think they’ll pick him.” Where we were going at that point – I wasn’t thinking so much institutionally where we were going because things were happening in the JAG Corps that were going to take us in that direction. If Fred Green had been picked – he’s working in the Joint Staff, he’s working in an environment where he would be really sensitive to that and would be somebody, I would think, as a leader would really push that. Bill Greene – the honorary colonel – he was another one at that time. All kinds of candidates. I figured that where I would be competitive would be after the next job. They would pick a one-star and whenever the next go-around would be, I would be in a second O-6 job, either in Washington or someplace else, would have more of a track record, and then somebody would be in the position to make an intelligent decision. This was just too early. I never had an early promotion. I had been on time through my entire career. Quite honestly, as somebody pointed out to me once, there is a blessing in not



getting promoted early because you have more time to mature, and I felt that way. I mentioned to you that as a lieutenant, I became a captain in two years, which is way too fast. There are too many things that you don't know. In the JAG Corps I was on time at each level. It gave me the time to do the jobs that I wanted to do for as long as I really needed to do them to be ready for the next level. When I got to Litigation Division, I had been a major for a year, and that was good. I had been a lieutenant colonel for a year when I went out to Fort Hood. I wasn't a colonel but I was ready for that at that point in time, but this was really a shock. Interestingly, what it meant was – they announced this in September. I was promoted in December of 1991 so I had a little over 22 years, and as somebody mentioned to me right away, the only downside of this is that you could leave the Corps early – could leave real early. If I wasn't selected to be one of the two-stars, I would have left the Army at 26 years. I really felt at that point I wasn't ready. I thought I had more to do – I knew I had more to do as a colonel to be ready. As soon as it was announced, Scott was one of the first people to talk to me – the first person to talk to me was John Fugh, who informed me, and then they made the public announcement. Then Bob Murray called, because he had been picked for a second star, but Scott came back to me at that point and said, "Obviously I couldn't tell you this but this is what I was talking about. This is the way it is. You have got to be ready for it and just do your job. Do what's expected." They jumped me over sixty, seventy colonels. I will say that there was not a little bit of anxiety about that, about how that was going to sit with my fellow colonels, who knew how junior I was. If there was some bad feelings about it out there, I never got a hint of it. I never got anything but enthusiastic support from all of my fellow colonels and contemporaries in the JAG Corps who could have easily have been in my shoes. As Scott said, "The decision has been made because they needed somebody with real leadership ability. That was the reason." That's what he said the reason

was. That's what I got from somebody else, too, somebody else I had served at Fort Benning with and went to the War College with, was involved in that process, was there when the Chief of Staff was talking to the president of the board and saying, "Get me a soldier. Get me a leader." I'll tell you that I'm certainly proud of my record. It's like so many people in the JAG Corps that have these "this person ought to be a general officer" – there are a lot of people out there that ought to be general officers. It confirmed what I believed. When we went to the general officer – the slang term is the "charm course" – but the general officer's orientation course, the first thing that they said to us was, "Congratulations," but the second thing they said to us was, "Don't get too big a head because for every one of you standing out there, there are probably ten more of your contemporaries that can easily be standing in your shoes." I felt that way to begin with. What really confirmed that for me was – and this was the most difficult and unpleasant task I had as a general officer, which was when we had selective early retirement boards for colonels and lieutenant colonels, John Fugh was the TJAG, Bob Murray as the TAJAG sat on the board, Tom Cuthbert as a one-star, and I sat on the board as a one-star, and then there was a three-star president – actually, the War College Commandant, had been to Europe and brought back for that board, and then two other line officers sat on that board. I got to see the files of every one of my contemporaries, and that was within a year or two – at least within two years – of the time I had been selected. I knew what was in the files – and we looked at every single file. The way they do that process is just like they do a promotion board, except you do it in reverse. You score, and then you go from the bottom up instead of the top down. All of those files and all of those officers that I believed had outstanding records based on what I knew they had been doing and who they had worked for was confirmed when I saw their file. I didn't think I needed to be humbled. I knew that but it just confirmed it. It just makes it all the

more – the reality sets in that much more. Life is full of close calls. I don't know what made the difference on the board that selected me because I hadn't worked for anybody who had been on the board, but judging from those files, it could have been somebody else, easily. I never forgot that. I believed that going in. You know when I learned that lesson first? I will tell you this, this is something that I think is important for people to know early on – I didn't know it early on. When I was commissioned out of West Point, I had the distinct impression that if you worked hard, and you basically stayed out of trouble, and you were competent, that making colonel was something that would happen. If you wanted to put in the time and you worked hard, you were willing to go where the Army would send you, you could make colonel, and that would be a very respectable career. I really didn't understand the promotion – nobody ever explained to us the promotion system when I was at West Point, the stuff about best qualified, fully qualified, all that other stuff. Didn't have the faintest idea. It took me – and it's not that I was shielded from it – but I didn't have a need to really understand the process until I got to Litigation Division, worked all those promotion cases, read the statutes that govern promotions and understood that Congress intentionally set up a system where you would take the best qualified, not just fully qualified. The intention always was – and it says this right in the legislative history and the predecessor language – to be picking the numbers you need from the larger pool of people who are well-qualified to advance to the next level. It is a given that you will leave people behind who could go to the next level, and nobody ever really told me that. That's really a pretty risky proposition. When I got involved in these promotion cases, I looked at hundreds and hundreds of files, and the really good ones stick out, and the really bad ones stick out, but then there is this big mass in the middle that is real hard to distinguish. One of the guys who was not selected for promotion – I still remember this file – he had a letter in his file that was an endorsement to an

OER where his commander said, "This guy should be promoted out of the secondary zone," and he winds up being not promoted, not selected twice in the primary zone. I looked at his file. There was nothing I saw in the file that would have said to me that this is why. They made tough decisions, and it was hard, and it doesn't get any easier. So you get up to that level and you get to the level of general officer, and the selection process is that much finer. When it happens, you thank the Good Lord for smiling down on you that way, but the other part of it is now that you're picked, do your job. While I never forgot how lucky I was to get there, that didn't cause any hesitation on my part. This is where I had to start focusing on, institutionally, how do I contribute? What can I do for the organization? I spent two years as a one-star, and I think that worked, but if I had spent four years as a one-star or another year as a one-star, I would have been more ready. That time was kind of a tumultuous time at the Pentagon. We were dealing with the homosexual policy, the changeover of the DOD leadership, changes in the Army leadership, the change of administrations. We had a period there where we didn't have a Secretary for about a year. There was always a Secretary – we didn't have an approved political appointee for Secretary until the time I was getting sworn in as TJAG. Joe Reeder as the Undersecretary and Togo West as Secretary – Ken Gray and I were promoted to two-star and sworn in October 1, 1993. I think the Undersecretary and the Secretary came in shortly after that. The year before, the prior administration's appointees left. They submitted their resignations and they are gone January 20<sup>th</sup> of the new administration. There was a considerable amount of time there where we were wrestling with some serious issues and you have the uniformed leadership but you don't have the civilian leadership in place that you really need to address those problems.

Q. Which of the one-star positions did you occupy?

A. I had one in that two years, the Assistant Judge Advocate General for Civil Law and Litigation. Of course the other one was Military Law and Operations. There were four one-star positions at the time I started – those two, the Chief Judge of what was then the Army Court of Military Review, which is now the Court of Criminal Appeals, and then we had the position in Europe. As far as JAG general officer positions, certainly of the one-star positions, that was probably the best one. Not having done it, but being outside of Washington and working for a four-star commander in the European environment had to be quite a thrill, quite a challenge.

Q. Was the new homosexual policy your biggest challenge while you were a one-star?

A. It probably had the highest visibility, and it certainly had me working at the highest levels, both at the Army and with DOD, at least the highest levels that I operated at, which was the DOD General Counsel and the Chief of Staff level in the Army. I did that as a one-star, and after I was promoted, that issue continued. The bigger long-term issue was happening in terms of us strength-wise, manpower issues, where we were going to wind up in terms of end-strength and how we were going to continue to operate as effectively that we could in an environment that an outsider, and I'll just give you this observation – Jaime Gorelick, who was a terrific DOD General Counsel and the Deputy Attorney General through the remainder of the first Clinton administration, and who had come out of private practice – very, very talented, very, very capable. She had been president of the D.C. bar, was a successful litigator in D.C. practice. She was a great choice to be General Counsel of the Department of Defense. She came in, and as we were talking through the issues or looking at the issues of reductions in force, reductions in the strength levels in all the services and all of the associated problems that were going to come with that, the associated issues, she said, "This is the time we really should be increasing your legal assets to be able to deal with those with the idea that any drawdown in the JAG strength, the

legal strength, will come after you have settled the rest of the organization down. The multitude of problems that are going to be associated with the drawdown” – it made no sense to her that they threw the lawyers into the same basket as everybody else. You are reducing assets where your missions are actually going up. In the drawdown environment, the drawdown itself was going to have issues associated with it. What was happening in the Army at the same time was that the operational pace was going up, and JAG involvement in that was becoming more and more critical. That was apparent very early on as each of these deployments – one succeeded the other – and you took a look at the issues that were coming up. That was the most serious long-term challenge because it went across a number of sectors. The first thing you think about is the active duty officer strength – what your end-strength is going to be. You’ve also got to keep your eye on enlisted strength, and that’s more of a challenge because you don’t control it. We have much more direct impact on the officers. Our ability to affect the enlisted strength is different. It is not as strong. The other part also is that you are looking at a very capable Guard and Reserve force out there. They are going to go through some drawdown. You have to learn how to use them better. I think that, again, sometimes your opportunities and the successes you have are in large measure a function of timing and circumstances well beyond your control that set up an environment that help you achieve the goals you have to achieve. Desert Shield/Desert Storm demonstrated how dedicated members of the Guard and Reserve are and how much value added they can bring to the organizations. So we had gotten past the point – twenty-five years ago, you would not have seen the level of respect and high regard for the Guard and Reserve that you see today and that you saw in 1990, for a lot of reasons. There were some great people in the organization, and they survived, they stayed, they persisted, and stayed and made things better. But the demands weren’t there on the Reserves. They weren’t used nearly as effectively

as they should have been. They weren't in many respects taken seriously as soldiers because nobody said, "You need to be soldiers. You need to be just like the people that are wearing the uniform if you expect to be treated like them." As we got up to Desert Storm and in subsequent years, what it demonstrated to the Reserves is that if you are going to make that kind of commitment, if you are going to sign up, you have got to be ready to go when they call you. So the dead wood that was there and the people who really weren't serious about this commitment – they exited appropriately. What you found were, and this is for the people who served, the dedication of the Reserves really is rather remarkable. When you think about – it really is doing two jobs. These people are all employed full-time – just about all – in the civilian community. Then you ask them to carve out one weekend a month, carve out fifteen days for training some time during the year, and then, by the way, if your nation needs you, we may have to pull you out of your job for nine months. There were people who were doing things they weren't getting paid for, to help troops get ready for deployments. Coming down after work – I know the groups in New York, the things that they did to try to help units get ready to deploy. There were many, many other success stories or stories of dedication at the same level in other places. There was a young fellow in the Fort Campbell area – I think he was from Clarksville – private, solo practice – he basically shut down his solo practice and was activated, went to the war, and then came back. I'm not sure it would be a surprise – it's just a factor that goes over the head of most active duty folks, but clients don't wait around for you. If they need help, they are going to go where they can get it, and what that means for this officer is that when he came back and went back into private practice, he had to reestablish himself and build back up. You don't just pick up a steady stream of income immediately. That's an extraordinary level of sacrifice. To make the kind of sacrifices that the Reserves make and going off even now on the deployments they

done over the last several years is asking a lot. The reason I mention that is that early, we recognized that that was an issue we were going to have to face. We're going to have to do better.

Q. Had you had much dealing with the Reserves prior to this?

A. No. Again, this is with the team – the great Fort Hood team – Tom Crean and Jim Smizer and later Gary Leeling and I – one of the things that we did do is that we went down to San Antonio to some of the on-site training, so we began that. I started to realize at that time the talent that was out there but that was way too late to be learning it. I should have been learning that – the situation of my earlier JAG career wasn't as conducive to this. Our opportunity to bring in judge advocates and use them at the installations was a lot better, although at Fort Hood, it worked out better at Corps. They had the office space, they had missions that they could plug the Reserve and Guard people into – there was much more flexibility to do that than what we had at the 1<sup>st</sup> Cav, although we did use Reservists to do some legal assistance. There were some issues about quality of work that caused us to stop that. Looking back on that, I'm not sure that was necessarily the best way to handle it. One of our legal assistance officers questioned some of the things that they were doing. When we looked into it, the unit that was supporting us, the people that were supporting us, just were not doing things up to the standard that was needed. But the way to deal with that shouldn't have been to cut the program off, it should have been, "Fix the problem. We have to incorporate these people, make them effective members of the team." I didn't have sufficient background to deal with that issue the way it needed to be dealt with. That was certainly a shortcoming on my part. Thinking back to instances like that, and getting to know people in the Reserves for the first time as a lieutenant colonel – that's why I pushed that issue so hard as TJAG – that's something you can't do, you can't wait that long.



You've got to get them in early and what you will find is that there are people that stay around the Reserves just like people stay around the active forces and you'll bump into each other sooner or later. Those links that you develop over a career are awfully important. They get things done.

Q. The most recent missions like Bosnia and Kosovo – how much are we relying on the Reserves within the Judge Advocate General Corps?

A. Well, I can't speak to the last two years. Assuming that it has continued over what we had done previously, it was very considerable support. I don't recall the exact numbers on that, but I will tell you that two things happened. One was just the numbers coming in and helping. If nothing else, if you could plug in Reservists – if you are moving people forward, downrange, and you have holes in your organization that are not going to get filled, but you can backfill them with Reservists, that makes a difference. That means you can continue to operate at your home station at the level that you need, plus you can support the people that are deployed downrange. As that began to happen and we began to more effectively use Reserves, what the SJAs would find is that they really had the ability to intermingle with those assets. What I saw by the time I was getting ready to leave, on the last trip Article 6 to Europe, which was in May of '97, I went to Bosnia, I went into Hungary, Tasar, where we had a superb working relationship with the Hungarians. I learned in that whole sequence of trips that what SJAs were finding is that the assets that they have, the personnel that were in the Reserve components, could step into the shoes effectively of the active duty folks. And they were doing that. They were making them OIC's, putting them into important jobs at home station. They were sending them downrange to do a two or three month rotation of downrange duty, and that's a tremendous advantage. You increased your strength by however many bodies are being brought in and if you can use them in

those ways, it is a tremendous advantage. What that works against is the unit concept in the Reserves. They like to be deployed as units, but you can't always do it that way. In certain circumstances you can deploy them as units and use them that way. In fact, the first Bosnia rotation when we sent people over there, we just were not well enough organized to – and it wasn't just the JAG community, it was the active duty community over there. It was surprising because they had done so well for so many years in bringing Reservists in for short periods, for their couple of weeks. What they didn't think about was when you are going to bring them in for nine months or six months – the train-up and train-down, stand-down – now they have got different needs. Before, if they were there two weeks, somebody could give them a ride to work, get the refrigerator filled – if you do it one time, you'll probably make it for two weeks and then you get out to dinner, but if you are going to be there six months, you need wheels, you need transportation, you need accommodations that are good for the long term, and it was embarrassingly bad. It wasn't solely a JAG problem, it wasn't just within the JAG community, it was within other communities, but it was not something that as a family, a JAG family, helped us a whole lot. To the credit of both the Reservists who knew about that and the active duty folks who had the responsibility, that was turned around almost immediately. This is where paying attention to the Reserves is very, very important. After that first rotation, I was at an on-site in Chicago. As part of the Reserve on-sites, one of the things we would normally finish up with is the senior officer present, either TJAG or TAJAG or whatever one-star is there, will sit down with the Reserve leadership for that on-site and talk about – it's an open forum, whatever issues you want to bring forward. The people who were attending that on-site were scheduled to go on a rotation sometime in the near future. They had gotten reports back from the people who had been over the first time. Basically they laid that out on the table, not in a "you should fire

somebody about this” or blame somebody, but we need to get this fixed before the next time.

What had happened was embarrassing to us and to the Army, that they weren’t better prepared to make better use – to support the help that came on board. Identified the problems, took it to the people in Europe, said, “We have to fix this. We have got to do better.” And they did. The reports from subsequent rotations were that it was a night-and-day in terms of people ready to meet them and get their basic needs met and having an understanding of what their responsibilities were going to be. It was a credit, again, to the Reserve community and to the folks in Europe who wanted to make good use of their talents.

Q. Is the one team concept something that you would stress at the SJA conference back at the school?

A. Let me give you a little bit of background on what I was focused on when I came in as TJAG, if it’s okay to jump to that. Ken Gray and I were selected and confirmed by Memorial Day of 1993, but we were not going to get promoted until October. The reason there was such a delay there was because General Bob Murray did not have two years in as a two-star. If he had been required to retire right away, he would have had to retire as a one-star. When John Fugh left, and this was all agreed to at the senior leadership level in the Army, and obviously Ken and I had no problem with it – our clock would start when it would start. General Murray had to go to a certain point before he could retire and we could step in. So there was kind of a long hiatus there that was actually an advantage. The only disadvantage was that people would say, “When are you guys going to get promoted?” because that’s not the way it happens in the Army. Things normally move faster than that, in terms of if you are going to go into an announced position, not necessarily a promotion. What it gave us was an opportunity to really give a lot of thought to where we want – we got promoted on a Friday, October 1<sup>st</sup>, and we had the JAG CLE on the

following Monday, we had plenty of time to think. General Murray was entirely supportive. The planning of the conference and the long-term interests of the Corps were entirely in our hands, even though he was acting TJAG. During that period of time, the Vice Chief of Staff of the Army, who eventually went out to be the CENTCOM commander, he was the Vice Chief, and he said, "When you get promoted you need to come see me, because we are going to need to talk." The day that Ken and I got promoted, he came through the line, one of the first people in the line, shook hands, said, "Congratulations. Now come see me." I sat down with him and he said, "First of all, you need to recognize that this tenure is going to go pretty quick. Things will move pretty fast. It's going to go quickly. But you have to decide early on two, three, four at most things that you want to accomplish in your tenure, that you want to start either in the direction of change if it needs or strengthen if it needs that or movement in a direction which may very well go to completion some time long after you are gone. I'm sitting here as the Vice Chief on some planning for 2010. We're putting things in place now that we don't expect to see the seeds bloom until 2010. When you are in where you are now in the organization, you have got to think that way. You have got to be thinking of what's happening down the road for the team that you've on board, and what you will bring in during your tenure, when they are ten years, twenty years down the road, how can you affect the Corps in a way that supports the Army in the way it needs to be supported – what things do you need to do right now? Be ready for that. Decide what it is that you want to do, but don't be disappointed that the wisdom of taking this course or the true benefits won't be recognized until considerably down the line." Ken and I talked a lot about what it was – and we had talked about this before, too – there were several things we needed to do, and this is where the series of oral histories would be useful because some of the disruption in the Corps leadership in the late '80s, early '90s had some impact that

flowed into General Fugh's tenure. We were at a stage where we really had to heal that. Not that what happened at the leadership level really adversely affected what was going on out in the field. I'll tell you, as somebody who was in the field, things that happen at the headquarters – we have missions to do down here. Not that that's not important. It had more impact at the general officer level, that that was unsettled. We had a situation where General Suter never was confirmed. He was nominated but not confirmed. We had a one-star, John Bozeman, who was nominated and his nomination was returned. By the way, for the record I haven't often had the opportunity to say this, but I will tell you something – John Bozeman, he never got to be a general officer, but there are few people that I know demonstrated the level of character he did during all that time. His selection by the board was announced in 1989. He went on to serve – and, of course, things began to unravel on that not all that long afterwards. He served in Just Cause, served in Desert Storm, highly decorated Special Forces A-Team Vietnam veteran, so he had the record as a soldier in distinguished service and sacrifice well before that. Then he goes on, and as his fate is being determined, he's still serving well and with distinction. There aren't a whole lot of people who could do that. I'm sure there are people who, in a similar situation, would have hung it up and said, "I'm not going to do this." Certainly at some point he realized that he was not going to get promoted, and he continued to serve. He did his duty, went to the war, came back and later retired. Anyway, without getting into all the details about that, there was some residual there. One of the things that we felt we really needed to do through the Corps is heal that. There was a lot of concern – we wanted the support of the retired community so we reached out to the retired community in ways that hadn't been done previously because we value what has been done by people who have gone before us. We wanted to make sure they understand that they are always part of the family. In going forward in dealing with the team

that's out there, we had to do several things. One was – certainly with the active duty force, the active duty officer corps and their role as critical support staff to commanders, we needed to focus on how we were going to enhance that, how we are going to cure the problems we saw out at Fort Hood which is get them more involved, put them in a situation where they could demonstrate their competence and the value-added to commanders, and not have to fight their way into the TOC and explain their value each time but make it understood from the starting point by being involved in training. This is where involvement at JRTC, NTC and BCTP – get them used to the structure, so commanders see – it's not a surprise that they see a JAG involved in the play at JRTC, BCTP or NTC. That's part of the environment. So when you go out into the real operational environment, the expectation is there – if a JAG isn't out there, one of my team members isn't here. There are certain things that I expect out of that team member – these issues that we've been dealing with on a regular basis. We need to be thinking forward. How do we deal with that? How do we make sure that we're fully engaged and utilized without sacrificing what we do on our other missions? The military justice mission beyond all else is the critical piece. You have got to be able to meet the needs of good order and discipline through the efficient administration of the military justice system. If you do all the other stuff very well, that's great, but if you are failing in military justice, you are failing. It's not just a must-pass. You've got to do it well. There's too much at stake for soldiers and for commanders if you don't do that right. The difficulty that we were seeing there was, unlike twenty-five years ago when you learned justice very well because you had to, because everybody tried cases – and by the way, the system, how you handled cases, pretrial advice, post-trial reviews – everything that was involved was so much more detailed and involved so much more engagement by the SJA, the commander, the trial counsel, and the defense counsel in ways that simply were not – not so

much the defense counsel, really on the government side of things – you would be astonished at the detail of what used to appear in the pretrial advices that would go forward and what commanders had to go through before referring a case. It was far more than what's expected today. People knew justice in those days because it was the main event. The problem we were seeing in 1990, since the system had changed and because the Army had become so much better and there was so many fewer courts-martial, we were losing the experience factor. For the first time, what we were seeing was – you gradually went along, you lose the expertise at the captain level but you had the majors, the chiefs of justice and the deputies and the SJAs still had a lot of trial experience. Well, then that lack of experience gets up to the chief level, and then up to the deputy level, and then you are up at the SJA level, and you've got people at all levels who have not really had a whole lot of trial experience. How do you deal with that? That's something that we were looking at. What are we going to do as an offset for the experience? What do we do to compensate for that loss? That's what we really struggled with. How do we set up training, establish training standards for the Corps, for SJAs, to make up for what's not there? A military judge said to me – I think it was Dan Delorto, when he was a judge in Korea. It was one of my first Article 6 visits. Looks like he'll be the principal Deputy General Counsel at DOD. He said, "We now have less experienced counsel going into court on more complex cases sooner in their career than what we had grown up with." When I was trying cases, I went in pretty soon, but basically you had straight specials that you could go in and cut your teeth on. There were guilty pleas that you could cut your teeth on, and by the time you went in for your first contest, first knock-down drag-out, you have seven or eight courts under your belt. You had the luxury of being able to second-chair a couple with somebody who knew what they were doing. So by the time you got in there, you had some background. Now, in some places, all of a sudden you have

something very significant going on, and you have got a counsel who has never tried a case, or has tried one case, and how do you deal with that without destroying the motivation of that person by bringing in some hired gun, outside counsel, to come in and take the issue? We've got to be able to do that mission. Integrating into the operations setting better and maintaining the importance of military justice and dealing with the training issue was going to be important for the officer piece. The Reserve piece we have already talked about. We knew we had great talent out in the Reserves. In fact, and this tied into the military justice piece, John Galligan, who was the SJA down in Panama – he was U.S. Army South – they had had a training relationship with what was then the 4<sup>th</sup> LSO in New York where they had – the 4<sup>th</sup> LSO came down and did military justice training. In fact, General Rick O'Meara is a NITA instructor – the National Institute of Trial Advocacy – he is one of their certified instructors. What he used to do is he would bring guys from his LSO down there and, as part of their training, they did some advocacy training. As we talked through this, I said, "We have so many people in the Reserve community who try cases for a living. They are judges, prosecutors, private practice – they've got the experience we wish we had." Initially, in looking at the Reserves, our first thought with the Reserves is that could be the solution to the advocacy shortfall we've got, the experience shortfall. The other part of it too is if you want to, as you are looking at numbers that are going way down, you are saying, "We cannot afford this we-they attitude between the Guard, Reserve and active." Before I became TJAG, the Army leadership had said, "This is one Army, Active, Guard and Reserve, and the civilian force." It's just a matter of making it a reality. It wasn't like we were plowing new ground philosophically. The foundation had been laid. At this point it was just a matter of making people believers. Again, it wasn't like there was some great revelation that – the light came on and we stood up and said, "We need to do this." The seeds



were there. There were SJAs out there, as is frequently the case – the things that are adopted as institutional solutions, some forward-thinking SJA or people in the field were operating that way because they had the good sense to do that and somebody sees it at the top and says, “That’s a real good idea.” John Galligan, other people relayed similar stories about how they had made great use of the Reserves. We believed we really needed to do that. The most visible way would be to go – and we had to say to the Reserves, “We have the same expectations of you as we’ve got of the active force. You’re soldiers. You have got to be soldiers. You have got to be physically fit. You have got to look like soldiers. You have to know your soldier skills. When they say, ‘You’re going to deploy,’ they don’t give an extra two days to the JAGs to get their act together. The JAGs better be ready to go, ready to deploy and ready to do your mission.” The active duty officer corps and the traditional JAG role as well as the forward-moving role of operational – you have the Reserve piece of it. The other piece was the enlisted force. Sergeant Major John Nicolai taught me some of my most important lessons as a general officer. He is the sergeant major teaching me as a general officer important lessons. I remember him arguing with Colonel Dennis Corrigan, who was the Chief of PP&TO, about being able to refer to the whole JAG family as part of the JAG Corps. Some would argue that the JAG Corps is just the officer – because they are judge advocates, they are the JAG Corps. Well, if you look at the statute that defines that, there is a little bit of flexibility there in terms of other members as determined by the Secretary. I’d have to pull up the precise wording of it, but I will tell you that, and I have said this to enlisted folks and officers as well, my interpretation of that is that encompasses not just the officers – we all know who judge advocates are – but when you talk about the JAG Corps, that’s the whole team. That includes the enlisted people that are part of our force. It sounds like a small point, but it wasn’t a small point, but it wasn’t in the eyes of the enlisted. I

don't know if you have ever seen the old Corps coin – it was the school coin. That was the only coin we had in the Corps. The JAG school is the officer's school, and he said, "I'd like to talk to you about that as well," but he said, "That's the officer's school. It's on the coin. There is nothing on that coin which is called the JAG Corps coin that would say to an enlisted soldier, "You're part of this." One of the things he suggested – he said we need to have a coin that meets all the needs. That's why we – and I still carry this one around (pulls out JAG Corps coin from pocket). That was the coin we came up with. I think what you will take from that coin is that it applies across the board. For the oral history, I know they changed this after I left, and what it has in the front, I think it says, "The Army's Advocates since 1775." Now, what would your reading of that be?

Q. It refers to the judge advocates, the lawyers.

A. Obviously it was somebody else's decision and I didn't hear any part of the debate, but the only disagreement I would have with that is that by doing that, and particularly if you change this – and the enlisted force was very sensitive to this when we made the change – the first coin of these that was minted I gave to Sergeant Major Nicolai, which he gave back to me on my retirement. He presented it to me as a personal gift so I have the first coin minted. That was a big deal to the enlisted soldiers. We made a conscious effort every place that we went – talked to the officers, talked to the enlisted separately. It was active duty or Reserves. That's important. They want to be part of the team, they want to be treated like part of the team, they deserve to be treated like part of the team. They will assume more responsibility if you let them do that and they will also help accomplish the most difficult task that I think SJAs have, which is teaching new officers how to be soldiers. You have probably heard me say that a hundred times, and many people have heard me say that over and over again and are tired of hearing me say it, but I

was the speaker at almost every Basic Course graduation – any Basic Course graduation that I was in town for, I would speak, if I was in the country and not traveling, I would speak at, which was a lot of them. The message I gave to the young officers was that you need to rely on your NCOs. When you're new to the organization and you're a captain – you're not a lieutenant, you're not one of these lieutenants who have a couple of years to bounce around and make mistakes. Here you are, you have been in the Army six or seven months and you are a captain. That is a big deal in this organization. People salute you for a reason. When you say, "Move," they will move. It doesn't matter if you are only here six or seven months, they are going to do what you tell them to do. So you need to learn the business pretty quickly. When you look around, if you have – certainly the SJA has a mentoring responsibility and the more senior people – but if essentially you have got mostly other captains, contemporaries in a very similar situation to you, who do you turn to? Well, the people that you work with every day, if you are fortunate enough to work with some NCOs, even some young soldiers, they can teach you some things about basic soldiering that are important for you to know. If you have enough self-confidence, and it's not a matter of being humble, it's a matter of being realistic and understanding what solution is right there in front of you – if you are not afraid to ask for help, they will give you the help and you will have a friend for life. NCOs respect an officer who is willing to say, "I don't know it all and I can't do it all and I need you to tell me how to do it and I will be a better officer as a result." So if we wanted to get the maximum mileage out of that, we really had to pay closer attention to the enlisted force. While we really didn't have any right to ask this or to insert ourselves in this process, we showed up at some personnel briefings over at PERSCOM on our enlisted – it had to do with our enlisted people. That was a big deal to our enlisted team. The commander over there probably wasn't going to say, "No, you can't," but

there weren't many senior people who asked to do that. It was a source of great pride to our enlisted team over there that the head of the organization or General Gray or some of the other general officers thought it was important enough to show up over there and hear what they are doing with our enlisted force. Even though we couldn't tell them what to do with our folks, they knew we were interested and that we were watching. That stuff goes through the Corps like wildfire. You do that kind of thing and it pays dividends – a multitude of dividends, because it demonstrates that you are paying attention and that you are concerned. Sergeant Major Nicolai did some other things. When we still had the enlisted training at Fort Benjamin Harrison, he said, "We need to go out there and see how the ANCOC training is going." So we went out there, talked to the staff, and what we had planned – they were doing an FTX, they were in one of their graded exercises. We were going out to spend the night with them. They had just received horrendous rains before we went out there in Indianapolis and that part of the country. There were floods all over the place. There was nothing that we knew of that was going to shut down training, so we decided we would hook up with them and go through their exercise. We went out on the FTX, and whoever was leading the patrol – they were doing everything right, getting the security out, good noise discipline. They got to a point where they hit some water, and it wasn't really a river or anything, it was just kind of a swampy area, but the water was higher than normal because of the rains. Well, they went into that water, they wound up going in – the patrol leader was a female E-6, short, and that water came up to here (motions to neck)(laughs). We all just marched on through. The fact that we went out there with them and walked through the water – one of the lessons that I learned in Ranger school that never left me was that if you expect you are going to be in a wet environment, you bag up things that you don't want to get wet. We come up out of the water, and everybody had to dry out. They are taking

their socks off, wringing them out, and Sergeant Major Nicolai pulls out his wallet. Water is dripping – I reach back in my pocket, pull out my plastic baggie, and they get a big laugh out of that. I'll tell you what – that story went through the Corps. Actually, what went through the Corps – when you are trying to emphasize the importance of soldier skills – and this is important with our enlisted family as well – they see a lot of officers around not acting like soldiers, and they can get comfortable in that environment as well. You need to teach them the same lesson. I was in Europe the following spring, and the Sergeant Major of V Corps and I were having a chat. He said, "When you and the Sergeant Major went through the ANCOC course, went through the water, that went through the Corps pretty quickly and the message was sent." Again, I did that because the Sergeant Major said, "I think we ought to do this. We ought to do this." So I did it and it paid dividends. He also said, "We need to go to Korea in the wintertime, we need to go to Alaska in the wintertime. Everybody goes in the spring or summertime, but the troops get no visitors in the wintertime." So the first Article 6 visit we took, which was really the hardest in terms of the number of places and the length – it was about seventeen days – we went out to Fort Lewis. A division was there, and they had the corps there. We went out and visited an engineer district, because they had a lot of environmental things. We also went to see the U.S. Attorney, we went to see the hospital commander and there was a big Reserve on-site. We spent almost five days – we got out there on a Thursday night, we had Friday to do some Article 6 stuff, Saturday and Sunday were Reserve stuff, and then Monday and we left on Tuesday. So we spent a long time there. Went from there to Korea. Went from Korea – and we went all over. We went up to the division, all the places where the division was, Eighth Army, Taegu, visited the Korean TJAG, the Korean Vice Chief of Staff. Went from there to Okinawa. Went from Okinawa to mainland Japan, to Tokyo. Went from there to Alaska. We had to fly back to

Korea, then to Alaska. We were in Anchorage and Fairbanks. Went out to Greely and then came back. That was January – February of 1994. Again, relying on the Sergeant Major's judgment. Going into Alaska in the wintertime was a big deal. It meant a lot. For no other reason than to go out there to say – when you see how cold it is – and we made another trip later on – we ran with the crew in Anchorage and it was about seven below. I guess that was pretty reasonable. Then we went up to Fairbanks where it was thirty-five below and did snow skiing. To go up there and see what people live in. When they tell you it's state law that you have to put a sleeping bag and a candle and other things in your car because this is serious – if you have a breakdown, it is a life-threatening event if you don't have the things you need to survive.

Q. How do you balance work with Article 6 visits?

A. I'll answer that but let me add one more thing to one of the missions we identified early on. I said Reserves, enlisted, JAG missions in terms of integrating more – the other thing was automation. It really took us about a year to map this out and it was a result of Rob Van Hooser, who had been at the school running the automation. We brought him to Washington to head up our automation effort there. We saw as one of the keys to more effectively using our JAGs was the automation capability. I remember the days – and it really isn't – for people who deployed on Desert Storm/Desert Shield, this was the reality. When they were moving a JAG office forward, they were sending trunks worth of forms, books and other things – “ship the library.” If you really want to be an effective and efficient contributing team member, you can't be dragging trunkloads – you have got to have the capability to reach back – and not just reach into a trunk worth of documents. You need to be able to reach into the expertise that the Corps has in an increasingly complex environment that will give you the information that you need to know to answer very complex questions. I said this to many people – we throw captains in this new

operational environment. In the old days we expected captains to know a lot about military justice, to be able to try a case. That's a tall order on serious cases, but it is so much more difficult today to expect that not only should you be able to do that when you don't get a whole lot of opportunity to gain experience, but in the operational environment you need to know something about contracting, you need to know aspects of international law, rules of engagement, critical items that are going to mean the difference between success and failure and whether a commander or a unit gets in serious trouble as a result of failure to comply with an established standard of behavioral rules that, in the twenty-four hour a day media environment, are going to be on the front page of major newspapers of the world if you screw up. Aside from what it does, the personal impact, the institutional impact is so much greater because of that. It makes it that much more important. Our vision from the beginning was we need to get to the point where you can send a small team, a judge advocate, supporting NCO, maybe a couple of supporting NCOs, or maybe a five-person, six-person team, a couple of JAGs, a couple of NCOs in support. They have to be able to carry in with them into any environment whatever they need to respond to the commander's needs. Does that mean they carry in some CD's and things on their hard drive? That's part of it, but the other part of it is that they need to be able to reach back. We have this wealth of information at the JAG School. We finally got into the wide-area network that captured the School and what's up here in Washington. If the technology is there, why can't a JAG, through the satellite connection, be able to reach back in and tap into that and get what they need to know? There were some issues of rules of engagement, and I'm sure we reinvented the wheel on that several times, and we had files on certain issues that documented critical issues and solutions to them but they were locked in a safe someplace. How the hell do you get to them? You don't. So that was our long-term mission in the automation field. That

was going to contribute significantly to what we were going to be able to do. The idea was, you have got to be able to do that and not dominate, not monopolize the command's capability to use that. We don't need a workstation, we don't need a table with all this heavyweight equipment, we can do it with a satellite connection. You let us plug in and make the connection. We'll figure out the efficiencies necessary to get to be up and down on the system, to ask the question, come back later on, and get a response. It's doable. Guys like Mark Martins, when he was working in CLAMO down at the school, they were doing a lot in that environment and I'm sure they have improved by leaps and bounds from what they were doing in those days. I wanted to make sure I threw in that automation because that was a big part of our long-term thought. The specific question you had asked –

Q. Balancing the philosophy, the day-to-day legal work, plus the Article 6 visits.

A. If you are going to – one of the necessities of pursuing this vision of pulling in, really making the Reserves they're part of the family, not making them just feel good, but making them understand that what their duties and responsibilities are – you are a member of the team and this is what we expect of you. We made it very clear that the on-sites were a priority. There are seventeen on-sites a year, about seventeen. We need general officer attendance at all of them. If possible, we needed two-star attendance. I'll just say this one thing about one versus two stars. I remember John Fugh saying at one time that he was going to incorporate more of the one-stars in the travel. I would have been happy to do that, and I did a couple of trips. Actually, I went to some trips as a one-star that were not going to be covered by two-stars. I went out to the National Training Center. That wasn't on the two-star travel itinerary, so I did that. In fact, Colonel Lederer will have a great story about our experience. He and I went out to the National Training Center and had an interesting time getting back to the airport. After making a couple of



those visits, I said to General Fugh, “There is a difference between a one and a two-star going out. There is a difference between the boss going out and the other generals. Not that they are not important, not that they are not appreciated, but if the boss, the head of the organization goes out, it makes a difference for the troops,” I thought, “but also for the command.” You can disabuse me of that notion if you feel differently, but I thought it made a difference, having the TJAG or the TAJAG out there. It was important to have a one-star. It’s better to have a two-star if you can do that. So we said we really needed to be aggressive in doing that, and also particularly with the Reserves, it’s important for the boss to go out and talk to them. That first year I did five of the on-sites. I tried to maintain a similar level in the subsequent years. What I thought we had to contend with was this – we have two two-stars in the JAG Corps, and my thought was one of them has to be home all the time. The leadership has got to be able to touch a two-star if they need to. We would balance our schedules to do that. Actually, Ken Gray deferred to me on a lot of – I got, obviously, first choice on the trips (laughs), but he let me – I would decide where I thought I needed to go, and we tried to rotate it so they didn’t see the same person every year. He got more of the stay-at-home duty than I did up until the fourth year. I’ll explain why in a little bit. We tried to maximize the two-star’s appearance and then we would use the one-stars to make sure we covered all the bases. It is a real challenge when you look at the number of installations, places that we have JAGs, and want to cover them. You want to try to hit every place every two years. Some places you want to hit every year. It is probably a good idea to get down to Fort Hood every year. There’s too many JAGs there not to do that. Fort Bragg. Get to Europe. The numbers in Kosovo and Bosnia are not substantial in relevant terms, but that’s awfully important duty and it’s awfully important to get out there and tell those folks you are thinking of them and what they are doing is important. You try to balance that.

The Chief of Staff – I always took my lead from the Chief of Staff – what does the boss do and what are his expectations? He’s out, he tries to get out all the time, in fact. The thing that refreshed him more than anything else, in the midst of all the pressures he had to deal with, was that he could go out, get two or three hours of sleep a night over a five-day period, and come back and look refreshed because he spent the time with troops. That was his priority, and that’s what he was wonderful at. General Gordon Sullivan – one of the most inspirational speakers I have ever seen. He really could get troops and leaders energized, and a guy that understands – he can pick apart a problem and give you the common-sense solution every time. I established my pattern from what I saw him doing, and told him that at the beginning what I was intending to do. He said, “Go for it.” If he needed me, he would say so. Otherwise, he would expect me to do what I thought I needed to do. In fact, one time he – he was this considerate. This had nothing to do with an Article 6 visit, it had something to do with a trip that he was making. You remember the Black Hawk shoot-down? There were all kinds of emotional issues – real issues, highly emotional issues to deal with the families afterwards. The wife of one of the crew chiefs was making some noises about suing the Army, which would not have gone anyplace because of the Feres doctrine. General Sullivan was invited out – and this deceased soldier, his parents were separated. His wife was in one place in California, and his father in his community in Northern California spearheaded an effort to get some type of memorial to his son. What they eventually did was that they dedicated a park to him. They had a very nice plaque, and actually it was set into a very large rock, and it was just nicely done. Well, originally they asked for Secretary of Defense Perry to go out there. They wanted the “top guy” out there. He couldn’t do it. He turned around and said, “Since this is a soldier, General Sullivan, do it for me.” He said, “Of course.” This was decided late on a Friday, and I didn’t know whether it was his XO who said

this to him, but “maybe you ought to have Nardotti along. There’s this thing about the possibility of litigation that’s being talked about, and maybe you want to have your JAG go with you.” So I got the call from the XO, and he said, “What do you think about this?” I said, “Listen, I’ll do whatever the Chief wants. If he wants me to go with him, I’ll go with him.” He said, “He doesn’t want you to feel you are obligated to do this. If you want to go, you’re welcome.” I said, “Of course I’ll go.” So I showed up at five-thirty in the morning at Andrews. It was one of the greatest trips I have ever had – flying across country and back in the same day. We took off from Andrews Air Force Base in a C-20, flew out to California, went to the event. Members of the family – there were about fourteen family members – cousins, brothers, sisters, aunts, uncles – wanted to meet the Chief. The wife was there too. We talked a little bit about that, and of course General Sullivan is his own man. This was not a time to be concerned about was there really litigation possibilities. They are looking to talk to the boss. He knows what the issues are. He knows what the limits might be if somebody wants to take him down that road. It’s just too important for him. This is something he has got to do. He went in, talked to the family alone. He gave me a little of the discussion, but all I know is coming out of there, those family members were just – they were in tears, and even more tears after giving his talk at the dedication. He also agreed to – whoever the head of the veterans’ organization that was there asked him if he would be agreeable to answering some questions. And he did that. There were some hard ones thrown at him – not nastily, the crowd was very respectful, but there were some hard questions. As he was always, he was very straightforward. If he could answer it, he would. If there were some things that he couldn’t say – that he couldn’t answer – he wouldn’t do that. It was just a marvelous demonstration of leadership in action. This is what we have at the top levels of the Army. But this was the day of the JAG wine and cheese party here. Of course I

was going to miss that event, because I went to this thing. We are flying back, and we had invited the Vice Chief of Staff of the Army to the wine and cheese, and he said, "Yes." So the Chief is on his way back, and he is checking with his – he calls the Vice, "What did you do today?" just to get updated, and the Vice said, "I was at the JAG social event tonight. You took their boss away from them." He looked at me and he said, "Did you have something to go to tonight?" I said, "Yeah, but this was important." He said, "Why didn't you tell me?" For him to be personally concerned about the fact that I missed the social event, I thought was indicative of the kind of caring person he was. I still believe it was, if for no other reason just to give him some comfort riding out and back, it was nice. It was great to see him in that environment. That was consistent with what I said to you earlier in terms of the flexibility with which he – and he expected me to do certain things and to basically get focused on the troops that were part of our organization. I'll tell you, over the four years, we kept up a pretty vigorous pace over the four years. I was out of the office all or part of a day traveling for about 110-120 days per year. That includes sixty trips to Charlottesville. I would drive down there for graduations and other events, which I liked to do. It was, to be very honest with you, it was nice to get on the road at night, shut the radio off, and think for a couple of hours on the way down and the way back. It's always wonderful to go to Charlottesville. That takes its toll. I've told people – I believe there is wisdom in a four-year tenure for a lot of reasons. One of them is that if you do the job the way you ought to and you do the traveling that you ought to do, you're tired after four years. Walt Huffman asked me at Christmastime – he has obviously passed the two-year mark and he said to me, "Were you kind of tired when you finished?" I said, "I was very tired when I finished (laughs)." He said, "I'm awfully glad to hear you say that. I thought I was just getting old." Susan, my wife, worked. As much as she would have loved to travel – we had kids in college

and she was working. She made some trips – she made a trip to Europe and a couple of other trips, but she wasn't constantly on the trail with me. Ann Huffman has gone to just about all the trips. I also had a child at home. My son, who is now fifteen, in 1993 he was nine years old. It would have been a significant issue to deal with if my wife traveled continually and we have a nine, ten year old – in that age group – to be leaving on a continuing basis. Aside from the son being home, my daughter graduated high school in '94, so she was home too. She went off to college. Walt and Ann, their kids are all out of the house. What I was going to say, what makes it doubly difficult for them is at least when one travels and one is home, certain things are getting done back here when you're on the road. When they are both gone, personal things are piling up that they have to deal with. That takes its toll as well for them in terms of staying up with the game. The only event that caused me to actually cancel part of an Article 6 visit in the four years was the suspension of Sergeant Major McKinney. When the decision was made by the Chief that he was going to do that, it was decided on a Friday that he would do it on a Monday, I was supposed to leave that weekend for Panama. I didn't even ask the Chief. I just called Manny Supervielle, who was the SJA down there, and talked to Ken, and said, "I can't be gone. I'm not even going to ask him if I should go. I'm just not going to be gone." That was the only time I felt I really had to change something like that. I will say that the last year, as tempting as it was – I did a lot of traveling the last year, but I was very careful because we had the Aberdeen business – it was getting ready to break, and we knew that was coming before it actually happened. The SJA up there had us well wired into what was coming down the road, and we let the leadership know that, so that moderated it a little but we still did considerable travel right up to the end.

Q. You alluded to, when you talked about the Article 6 visits, some of the legal challenges that you had going on at the same time. As the TJAG, how actively involved do you get on these big legal issues that we all hear about, for instance the Aberdeen cases or the Sergeant Major McKinney case or the extremist organization case down in Fort Bragg?

A. On issues of policy – homosexual policy in particular, I was involved every step of the way. As much as I could be as the Chief of Staff of the Army's legal advisor. Actually, John Fugh allowed me, since I was the Assistant for Civil Law and Litigation and it was an issue that had grown out of litigation concerns and had a deep litigation background, he felt that I was suited best to do that. It allowed him to continue to do the things he needed to do with travel as TJAG and do other things, and I wanted to do it. He also thought, and I appreciated the opportunity, that it was a good opportunity to work with General Sullivan on a very difficult issue. The litigation part of it was very important because the DOD General Counsel that came in to really wrestle with that issue, Jamie Gorelick, she was the new DOD General Counsel, was a litigator. A lot of the discussion, a lot of the policy issues that we were going to wrestle with were litigation issues, so it made sense to have me deeply involved with that. You have to differentiate between issues like that and Aberdeen and Sergeant Major McKinney and the extremist cases because of the command influence issue and the sensitivity in getting the headquarters injecting itself into military justice matters. There is a role there, and I was involved and I was following it in great detail, but in a different way than the homosexual policy. What we were wrestling with in the homosexual policy – to appreciate the issue, you have to go back to the early 1980s when the policy that was under fire in the early '90s was developed. There was a point in time – and in the Air Force in particular – it was possible to be a homosexual in uniform. I think the way the Air Force regulations were written, it had some

qualifier in there. If under exceptional circumstances or extraordinary circumstances, by demonstrated performance, you could keep somebody in who was a homosexual. That was litigated, and the courts said that's too vague – what do you mean by that? It was one of the – it was a case that the Air Force lost and then the airman eventually settled and he subsequently died not that long afterwards from AIDS complications – but that case happened to be one of the ones that demonstrated that the earlier policy – they had to nail it down. Either they were going to open the door – not have a restriction – or they were going to say no. In saying no, and this was true of the policy – it was transposed into the statute – it's a homosexual conduct policy. As a practical matter, does it mean that homosexuals can't serve? Well, yes. It's built on the proposition – on the statement piece of it, which is the most controversial – if somebody says, "I am gay" or "I am lesbian," it is built on the assumption that someone who says that publicly is engaging in conduct which is what is prohibited by the policy, therefore you have a basis to eliminate them. That reasoning obviously was sound because before the statute and after the statute, DOD never lost at the circuit court level. There were some district court decisions which went the other way, but everything that went to the circuit court level affirmed the policy. Bill Suter actually said a while back when this issue was bubbling up, he thought it was never going to get to the Supreme Court because he didn't think it would make it past the circuits. The handwriting was on the wall fairly early about – while some courts did not agree with the policy, they weren't in a position to say whether the policy was good or bad, it was whether or not the policy was legally defensible, and it was – and it still is, notwithstanding some of the current attention. The difficulty for the Clinton administration coming in, and the Chiefs, was the difference between what the President believed he could do, number one, what he thought he had the authority to do, number two, what in theory looked like a good idea, that is, "Why not let

homosexuals, let them serve, and just put them out if they engage in conduct?” versus the Chiefs’ view that the consequences, without making any moral judgments about homosexuality – you don’t need to reach that to justify this policy. The Chiefs went out of their way to say that we are dealing with this from the unit cohesion standpoint, the unit morale standpoint, the practicalities of putting someone who is attracted to another person of the same sex in this environment.

When women in larger numbers came into the force, there are difficulties, there are challenges that follow that. You are going to have issues between men and women that you don’t have just with men. That’s obvious. The decision was made that the contribution of women to the Army was so significant that you cannot exclude that pool of talent and you deal with the challenges that wouldn’t otherwise be there. You deal with them because what you are getting in return, in terms of what women can do for the force, means so much. This is a discussion for another day, but the contributions of women in the Army – sometimes people fail to emphasize is what the role of women was when it was going to the volunteer Army and they disbanded the Women’s Army Corps and allowed women to go into a number of other branches. In that time when we had an Army with a lot of problems, women as a group had fewer discipline problems, were more reliable, were generally smarter. When you have the sexual dynamic, there are going to be consequences to that. The judgment of the Chiefs was that this is not a matter of discrimination – it is discrimination, but discrimination for the right reason. We discriminate against a lot of groups. We discriminate against people who are handicapped, people may not have the physical ability to meet the physical standards – you can go through a list of that. What does that have to do with the development of the policy? Well, you had a new administration coming on board. To say there was not an overabundance of people with military experience in the Clinton administration early on would be silliness. There was a virtual absence of people with military



experience, certain with people who were sympathetic to the views of the Chief or the Army in general on some of these issues. The President believed early on that, and I think this is where the failure to have people around him who understood not only the issue but the consequences of his actions, more significantly, really turned out to be a handicap. He learned a hard lesson. He believed he could order the services to do this and that would be the end of it. I suppose it was kind of a – they go back to the Harry Truman example of integrating the Army. That had its challenges as well. Truman did order the integration of the Army, but don't suggest that was easily done, and don't suggest that there are other authorities that have to be accommodated. In this case the President went out in that direction without any regard for the role of Congress in the process, and really without any serious regard for the role of the Chiefs. If you would go back and read the press reports of that time, Secretary Les Aspin was the Secretary of Defense at that time, and the way the press reports explained it, his advice, his explanation to the President was that the President could simply order the Chiefs to do this and it would be done. There was a memo to that effect that he was confronted with to his surprise on one of the Sunday press shows. So the cat was out of the bag before the President had a session with the Chiefs. Two things happened – the Congress, Senator Sam Nunn, became involved, saying "Not so fast. This is an issue that Congress has something to say about." When the President went over to talk with the Chiefs, again because of a lack of people on his staff in his immediate circle who would have been able to enlighten him about the abilities and the intellects of the Joint Chiefs, I think they figured they were going in – the expectation was that -- and this is one of the explanations we got later from people on the inside – their expectation was that they were going to go in and be confronted by some out-of-touch, arch-conservative military people who would not be able to compellingly articulate a position as to why this policy ought to be maintained. What they got

was just the opposite. But the President and his staff, whoever was present with him, understood that this was a serious undertaking and that the Chiefs' collective position was not the result of random thought processes or homophobic biases. It was a well-articulated position about the difficulties of doing this and why it was important for the President not to order it and to maintain a policy in line with what was already in place, that there were good policy reasons for doing so and that he needed to consider that. So he backed off. Then the process worked – the way the process did work was interesting, because it was a dramatic change from the Republican administration. If you can believe this, during the Republican administration, the service TJAGs were not permitted to communicate directly on any issues to the Department of Defense General Counsel. Any communications had to go through the Army General Counsel. That was the policy. Whether they followed that – John Fugh had no qualms about communicating directly with the DOD General Counsel – if you get to a point where they are all buying into that policy, you are funneled in your ability to communicate. That's another piece that I ought to – this may go beyond our capabilities today, but there was an issue there that John Fugh dealt with which he stood firm on which was very important to the JAG Corps. It had to do with the last Republican – Jim Haynes was the General Counsel of the Army at the time, and his view as General Counsel – the authority that he thought he had as the General Counsel in terms of touching all the legal services of the Army. That's another story, but basically during that Republican administration, you had to funnel everything through. That changed dramatically when the Democratic administration came in. First of all, we didn't have a new General Counsel on board for quite some time in the Army, and Jaime Gorelick's view of the world was quite different from her predecessor's. She came down to General Fugh's office to get briefed by him. She didn't say, "Come up to my office and brief me. I'll come to you." Her philosophy or mode of operation

was that – I guess somebody pointed out to her one day that because she dealt directly so frequently with the uniformed TJAGs and the uniformed side of the Army staff, the Army headquarters, that there was a lot of concern among the civilian side, the General Counsel and the Secretariat side. She said, “There are going to be some issues where if I need to talk to the uniformed TJAGs, I’m going to talk directly to the uniformed TJAGs. If the General Counsel chain is cut out, they are going to have to live with that. I’m sure there are going to be situations in reverse, where I will be talking to the General Counsel and not talk to TJAGs.” On this issue there was a lot more direct contact with the uniformed TJAGs. Quite honestly, because the players were not in place at the General Counsel, there was really Jaime Gorelick with the Chiefs and the service TJAGs. We had a lot to say with the development of that policy in terms of accommodating the Chiefs’ perceived service interests. You get arguments both ways to this day. Some people would argue on one side of that policy that it would be a lot simpler if they had an outright ban or were open entirely. Certainly that would be the easy way. I think what developed as the legislation was coming together was the conclusion by Senator Nunn, who obviously had a lot of agreement in the Senate, but I think the Chiefs felt this way as well. They were trying to preserve the status quo in that they knew there were homosexuals who were discreetly serving, and it was not the policy of the services to root out homosexuals and kick them out. It was basically you deal with it when it becomes an open issue. I will tell you that my experience in the field was – I recall one instance that had to do with this. It was an elimination board that had to do with a noncommissioned officer and it was a homosexual encounter but it was because of the conduct of the subordinate. It wasn’t that he said something and the commander went after him. There was nothing of that in my experience in the field. That’s not to say that the Navy and NIS – they did things differently than the Army CID, and

there were some allegations that they had surveillance outside gay bars, looking for servicemembers. They would take those situations, try to pursue those to conclusion in terms of doing something about them in the way of eliminations. The Army didn't do that. They didn't practice that. The commanders, if anything, were very careful. The regulations that governed how you dealt with that were different than other eliminations. They really made it incumbent on commanders to treat the situations carefully because of the obvious consequences that it could have for the service member if the allegations turned out to be true or if they turned out to be untrue – the damage you do in the process. The point was, how do you basically preserve the current situation to allow homosexuals to serve discreetly? Keep in mind, this is Nardotti's interpretation of this, my take on observing everything that happened, that that's what they were trying to do. Where they drew the line was when somebody has a public manifestation of their orientation, they have crossed the line in the sense that if you publicly state, "I am a gay or lesbian," we can assume that you publicly say that and you are engaging in the conduct and that puts the option with the Service to do something about it. You'll get different interpretations – you'll get some people, the homosexual rights groups, gay and lesbian activists will say that the policy lets you serve, lets homosexuals serve. It only becomes a problem if they engage in acts. Other people say this is really not very different from the other policy. It really isn't as a practical matter. If you go back and look at the testimony of the DOD General Counsel, Jaime Gorelick, and Secretary Aspin, you would not take from their testimony that the door had been opened to homosexuals. It stayed almost where it was. In a lot of respects it strengthened the basis for separation because of the statutory basis that you now have. You have the due consideration of Congress, agreed to by the executive. It's going to be very difficult for the courts to substitute judgment and say, "You can't do that." I suppose that the Chiefs at one

point, if they wanted to have a total ban on homosexuals, they could have pushed that issue and they may very well have gotten it. If you were watching that very closely, if they had wanted to force the issue – if they wanted to embarrass the President – they could have gone in that direction. They intentionally did not go in that direction. I think they had some basis to be a bit concerned about the way this process was being conducted because we were not being given – we got to some point where there were so many leaks of information. It was a legitimate concern by DOD. They were trying to develop this policy. At various points things were getting out on the street, and they were doing everything to control that. They would put numbered copies of documents out so they could tell if it leaked, who was responsible for it. Finally they just shut off the information flow and we were getting it very late. It put us as the service TJAGs in a very difficult position of advising the Chiefs on the consequences of going forward with this. We dealt with that as best we could. The Chiefs knew where they needed to go. They were careful in the way they exercised their prerogatives. If you followed the debate, there were some people at that time who suggested that the Chiefs were insubordinate, or being insubordinate in their opposition to the President on this issue. Judging from the way Vice-President Gore handled this in the debate – I don't know if he has been educated any better since then. He may have the same shortcoming in understanding this point, which is that the Chair – the Joint Chiefs – are in a different position than all other senior officers. If you ever look at the statute that establishes the Joint Chiefs of Staff and you look at the prerogatives of the Chiefs, any member of the Joint Chiefs can raise an issue to Congress that that chief deems important to the national defense. Very general terms. The only thing they are required to do is notify the Secretary of Defense. They don't need to get approval, they don't need to get approval from a Service Secretary, they can take it to Congress. They are the only senior officers that that applies to.

That clearly puts the Chiefs in a different position than other senior officers. It gives them a different responsibility with respect to what they can say to Congress. That was specifically put in there so that the Chiefs would have the ability to speak their mind on issues of importance to Congress, because they should. I don't think any of that was appreciated by the Administration early on. It was a very simplistic notion of "you're the Commander-in-Chief, these are your subordinates, you can tell them what to do and that's all there is to it." They learned a hard lesson. They came up with a policy that some people to this day would argue was fatally flawed, that it was too much of a compromise, and it was not legally defensible. I favored a clearer approach. I thought that trying to go this middle road – not a middle road, but this modification – was going to have some difficulties, one of which is how do you handle investigations? One of the things that we urged up front was the way it was being done before was actually more to the benefit of discreet homosexuals than what happens now. That was a logical result of some of the changes that they were making to the investigative process. It may sound like, "Aren't you being somewhat hypocritical by accepting that discreet homosexuals will serve and you have some kind of ban in place?" I don't think that anybody would deny that there have been homosexuals who have served with distinction, have done their duty. There is a lot of sense in saying, "Why not allow that situation to continue?" The problem becomes – what are the implications of saying that homosexuals can serve, saying that there are no problems with homosexual conduct, particularly when you have criminal statutes on the book dealing with homosexual acts – that criminalize homosexual acts. The policy turned out to be defensible. What it got down to – one of the things we had to be careful with, the service TJAGs, was never to forget our role with the Chiefs, which is give them advice on the best policy. When they are asking us, when they get down to the question of "Is this defensible or not?" – to give them the answer on that. There are

people who argued at the beginning that this compromise would never survive legal challenge. I disagreed with that. I believed that it could. I probably wouldn't have written it that way, and I think the Chiefs could have been more conservative if they wanted to, but I certainly couldn't tell the Chief that this was not a defensible policy. Was it something that could be litigated? Yes, but it's defensible. It's turned out that way. That's why the focus of this battle has shifted from the courtroom to increased action by the SLDN – the Serviceman's Legal Defense Network. They are trying to get more mileage out of attitudes and instances – unfortunately, some of the other facts that have happened in recent times – the murder that took place out at Fort Campbell, some of the other overt bias with respect to homosexuals clouds the issue. It clouds the issue as to whether this policy makes sense or not. We'll see where it goes. Until that policy was put to bed, we were deeply involved in it. Our views were not always heeded, and quite frankly we got the impression, and we think this was correct, that the Administration was talking to a number of different parties when this was going on. When they gave the press conference announcing the policy, the actual policy that was written and discussed clearly had been in the hands of homosexual rights advocates. I remember one professor from Georgetown who obviously had time to study and read and consider that, more time than we had, to see the final version. That was troubling, but I'll say that, in fairness, that the flip side of that, particularly with respect to Jamie Gorelick – she never injected her personal views into this. I'm pretty confident where I think she would have come out if asked as a private citizen, "What is your view of this? What would you say?" I think she would have been for no restriction. I'm guessing at that, but I feel that she would have felt that way. She didn't inject that into our discussions. She supported the policy of the administration – I didn't happen to agree with that, but she was doing what she had a responsibility to do. I have a lot of respect for her.

Q. In addition to developing the policy, did you give any guidance to Judge Advocate Recruiting And Placement Section about the fallout of the policy, for when the field screening officers would go out to the campuses?

A. There were a couple of issues there. We believed that once the policy was enshrined in statute, a lot of the problems should go away. It made sense to us to say that, "Look, you can disagree with the policy. Once the branches of government that decide these issues say it is going to be this way, are you seriously contending that you are not going to allow us onto campus, that you are going to use your disagreement with that policy as a reason to keep us off the campus?" Obviously some schools did. This did not happen overnight. Some of this was brewing probably from at least the mid-'80s, maybe earlier. As the gay and lesbian issues became more prominent in society, it got more attention on the campuses. There was more of an effort to aim at the institutions that they concluded needed to be changed in order to advance the rights of gays and lesbians. The leadership prior to our team chose not to be confrontational about that. In other words, if they were not going to let us go on the campus – and for a good reason. There were a lot of administrations that were sympathetic. Even though we couldn't go on the campus, they helped us to be able to interview, to reach their students in other ways that did not violate the AALS policy, the nondiscrimination policy, or other things. I guess this point was driven home to me, and this is a good example. My law school, Fordham – I was really saddened by the fact that we could not get on the campus, although I was invited to speak there, by the way. One of my law school classmates, in fact my moot court partner, who is now an admiral in the Reserves – not a JAG, a line admiral – he's a surface ship guy, Admiral Hank White – he practices in New York City and was very deeply involved in the law school, alumni affairs and other things. When they wouldn't allow recruiters to come on the campus, he



arranged to have an informational session where representatives from all the services were invited, and I went for the Army. I went, the Navy TJAG went, the Air Force did not send a general officer, the Marines did not send a general officer. We got to talk to the student body, and there were some people who challenged the policy. I won't say we straight-armed them, but basically said, "Look. This is a matter that is determined by the branches of government. This is the reason for it. We can disagree about it, but that's the way the policy is. There is a process – if you want to change that, you change the mind of Congress. Then the services have to change their policy. The process has worked and this is the result. The policy therefore is lawful and we will defend it in court." What I did not fully appreciate – I knew we had friends at the law school and I knew the dean at Fordham Law School, John Fearick, was a friend. He later told me at the last New York on-site that I did, which was in November 1996 – I paid him a visit. In fact, I just saw him two weeks ago. He was here for a Fordham event and I was invited as one of the local alumni. He was reflecting on that time. The issue has subsided to a great degree now, but he said that at Fordham University, which is a Jesuit institution, they came as close to fracturing the faculty/student – there was an element in the faculty on both sides of the issue, student elements on both sides of the issue. The most challenging time he has had in his ten years as dean was holding things together. He said, "There were some things I could do and some things I couldn't do. The recruiters on campus was just too visible an issue." In his estimation, they presented too much opportunity for – I won't say mischief – but perhaps mischief if somebody really wanted to make an issue of it. He had no desire to put either our recruiters or the school in that position. What some people failed to realize is that all during that time, notwithstanding the fact that Fordham would not let us recruit on campus, the New York on-site, where we brought in 250 uniformed officers and enlisted soldiers, was held at Fordham

University Law School every year for almost ten years. By the way, where normally they charge organizations for doing that, they got to a point where they just said, “You can do it,” and they didn’t charge us. I didn’t fully appreciate that – I knew that the dean had some very difficult things to deal with, so I didn’t have any personal resentment to him. I was unhappy that they didn’t realize two things – number one, we had jobs that we were going in ready to – opportunities for their students. They are mature students and they can make up their mind. This is an access issue that I think on legal terms, if we had decided to challenge it, there was some leeway. We have a policy, it is a lawful policy, it has been tested in court where we were winning at every turn, and your basis for excluding us is because we enforce a policy, a lawful policy? But you expend a lot of resources if you are going to do that, and you are hurting yourself in ways that you don’t need to. We still want to recruit. We don’t want to get in a combative mode with the law schools. We want to encourage those people who have cooperated with us in subtle ways, to let us – and the proof was in the numbers. The numbers at Georgetown, which was one of the most hostile in terms of institutionally hostile to the policy, we still would get thirty or forty applications during those years. Our point was – and I saw the wisdom of our predecessors. If you are getting the numbers, if you are getting what you want, you don’t need to make an issue of it. Call that as you see it. We figured we were really winning the war, and it was important to us to – and there were other ways you could exercise some leverage. This was done politically through the funding. The Solomon Amendment and some other means – those are the ways to deal with this. If you shut off the money, if you have ways of affecting the money, things change pretty dramatically. That took care of the problem in many significant ways as well. It was not something that we had to go into a survival battle over because we were getting such incredible numbers. In fact, we invited the Fordham Law School

placement director and many others – they get invited every year to the – not everybody the same year, but you get as many of the law school placement directors. You tell them what kind of program you have and the worth of the service you are performing, and you get the people you want.

Q. To what extent was there a difference, if there was any, among service TJAGs on the policy?

A. The service TJAGs all felt the same way. We wanted to basically take the policy that was in place and put it in the statute and in effect have a ban and not make it unnecessarily complicated by fine distinctions that were going to be difficult to make. We all felt the same way.

Everybody wasn't always as willing to stand up and say that. I tended to be one of the more vocal representatives of the services, not so much in a confrontational way. We just wanted to make sure our position was well understood, always within the confines of what the Chiefs had set as the parameters. We felt that was our obligation. Our role in that setting was interesting because – had we had a General Counsel for the Army, it would have been an interesting play there because I saw my role, and the other service TJAGs felt the same way, that when you are supporting your Chief of Staff in his role as a service Chief and member of the Joint Chiefs, that is different than his role as the Chief of Staff as subordinate to the Secretary. Therefore you should be able to advise him accordingly. If he happens to differ with the policy of the Department of the Army, that's okay. In fact, you are obligated to really do that. That argues for some distinction there that puts the service TJAG with the service Chief in his role as (member of) the Joint Chiefs and the General Counsel supporting the Secretary. You would expect the new Secretary of the Army, had he been there at the time, would have supported the Clinton Administration's desire to change. You would expect that. How could you not expect that? We were united on that, and we had the same inclinations in terms of the litigation vulnerabilities.

Notwithstanding the fact that it didn't come out entirely the way that we wanted, I believe personally – the others may feel differently – but I felt that we got – Jamie Gorelick gave us full opportunity to be heard. She didn't always agree, and we had more than a few arguments, but I felt that she respected our opinion, carried it into the equation, but she had other needs that she was obligated to meet. But I know that, particularly for Army judge advocates, she has immense respect for Army JAGs. In fact, she asked for a military assistant, Colonel Dennis Corrigan – signed him up. She thought so much of him that when she went over to Justice, she took him over there as a senior assistant.

Q. More generally, how often do you coordinate with other service TJAGs on issues?

A. For me – again, you are a product of the times that you grow up in. The first issue I dealt with as a one-star and later as a two-star was this homosexual policy issue. It had implications across service lines. If we had tried to go in with individual positions, not only would that have been inefficient, it would have been ineffective in terms of if we were all in agreement, trying to get the policy that we believed was in the best interest of the services that we represented. We understood early on that if you have got an issue that goes across service lines, you need to be coordinating with the other services before you take that position to DOD. There weren't many issues that followed that in my tenure where we didn't coordinate. We would meet on a regular basis. We would have lunch once a month. It's a working lunch, and then we would go over the issues that were hot in our particular areas. Litigation matters in particular – we made sure that the chiefs of our respective Litigation Divisions were coordinating because litigation, perhaps more than many other things, can impact across the services that everybody is surprised about or they haven't coordinated. There were very few issues – on our personnel strength issues, we talked among each other but we didn't send coordinated positions up to DOD because those are

issues we had to wrestle with within our services. We talked a lot about the common vulnerabilities or strengths that we had. On the issue of the consolidation of the JAG schools in particular, we had to coordinate on that. We had to respond to DOD inquiries about why we should or should not do that. Many more instances than not, we coordinated. If there was any question, we would talk about it. I won't say this is necessarily an exception to that, but you work within the confines of the particular issue. If the Air Force has got an issue about senior officer discipline, there are certain things that they can talk about. There are certain things they cannot talk about. I wouldn't expect the Air Force TJAG, if I were still in the saddle, to share with me what they are doing in a disciplinary matter of a senior officer. Once it breaks into the public domain, however, it's good to be fully informed. To the extent that they are moving down a certain path for certain reasons, it is good to talk about that to the extent that they can without violating the confidences they have within their services and discussions with their leadership. It was an excellent working relationship with the other service TJAGs. Again, we didn't agree on everything. For instance, on legal assistance, we pushed the Air Force very hard about doing more in the legal assistance arena, particularly in the tax area, because we had set up these very substantial programs, and we are helping out a lot of Air Force beneficiaries, including retirees. I pushed the Air Force TJAG at the time, very hard about arriving at some agreement as to how we might do business together. The Air Force fundamentally takes a different approach to legal assistance. They don't deal with it the same way we do by any means. I think there was a great concern about what it would mean to them resource-wise if they committed to that. It gets back to committing to something that you can't follow through on. There was a lot of good, important coordination. We were talking all the time.

Q. Where did the idea to consolidate the JAG schools come from?

A. When base closures were going on, we had several rounds of BRAC. You are getting rid of infrastructure, you are trying to get rid of bodies, you are trying to consolidate where you can. It shouldn't be a surprise that somebody sits down and looks at – there is a JAG school in Charlottesville, there is a JAG school at Maxwell Air Force Base, Montgomery, Alabama, there is a Naval Justice School in Newport, Rhode Island. You're lawyers. This is not like you are teaching infantry tactics versus surface warfare versus air combat. There is a manual for courts-martial that you all use – and that was one of the arguments. You use the same Manual for Courts-Martial, the same basic principles apply. A lot of what you guys and gals do – why couldn't civilians do anyway? That's another topic we will talk about later. Why do you have to have three schools? Why can't you send everybody to one school, shut down the other two? It's obviously an overly simplistic notion of what is needed. This is probably the best example of foresight on the part of the commandants of the respective JAG schools. This started a number of years ago – late '70s, early '80s – as the services were running their own programs, they were very careful to avoid overlap in the development of their programs. The best government contracts program for any of the services is at the Army JAG school, and they take advantage of that. You find Air Force and Navy people there. When environmental law and environmental issues became of increased significance, the Air Force took the lead on that, and the Army did not attempt to duplicate that – we do some environmental work, but there's not the equivalent of environmental law to the contract law program at the Army JAG school, and that was intentional. We take advantage of the Air Force's program, they take advantage of our contract program. The Navy grabbed the lead on some of the operational stuff. To be honest with you, I wish we had been more aggressive in doing that. We set up CLAMO to begin with, but quite

honestly what happened was CLAMO was established, and it kind of went into a period of dormancy. It wasn't revived until we resuscitated it in the mid-'90s. Also, the Naval Justice School and the Naval War College was overreaching in that they wanted to put out the definitive work on law of war. I attended a seminar they had on that, and the Marines came up and so did the Air Force, and basically we were all concerned about, "Did we want to entrust to the Naval War College the responsibility, even with assigning some members of the other services there, to develop doctrine or come up with the definitive piece on the law of war?" What we agreed to was a tri-service manual on the law of war. It would have law of land warfare, air combat operations. I don't believe it is finished yet. I was promised the first autographed copy of that but that's another matter. Because of the lack of duplication, we were able to do several things. Number one, they do different things. First of all, you are dealing with a significant population. You could not educate – and we ran the numbers on this – you could not meet the needs of all of the services in terms of the training of their basic training, the basic courses for their judge advocates and advanced training, particularly the short courses. If you ever were to take a look at the "horse blanket" – everything that is on the calendar – there is only about two weeks in the course of a year where something is not going on. That's a very, very busy place. That's a very full place on a continuing basis. You could not shut down any two of the schools and then meet all of those needs, put them into one location, without a substantial investment into increased facilities. We had numbers on that. In order to do that, you would have to spend this much to build. We also said that there are differences in the way the schools are run. The Air Force does paralegal training. The Army primarily is an officers' school. We have the course developmental folks, course developers for the enlisted training are located there. There is an increasing enlisted presence but the number of non-lawyer courses at the Army JAG school is

limited for a purpose. For reasons of ABA accreditation, there are certain portions that you need to stay within to keep your ABA accreditation. If your balance shifts too much in the direction of training of non-lawyers, you jeopardize your accreditation. For a long time we have had representatives of the other services in the Grad Course but if it is the same as it has been, you probably have about 70-75 members of the course?

Q. Sixty-six.

A. About fifty Army?

Q. Forty.

A. And all the rest are other services, a couple of international students? Yeah. That is a significant percentage of the group – a quarter to a third of the group are other services. That's significant. So we had the argument that for this long course, this Master of Laws course that we are presenting, we are taking care of needs of not just the Army, but the other services. We held it up as the example. This is what your other schools ought to be doing. Basically the issue went away. We had to brief that issue several times. We had to get reaccredited – we did that. The other thing was – and this was very important. We said there is a culture with each of the services that you will lose if you try to create a joint environment. Jointness is something – you are credible in the joint environment only if you know your service. That's why you do joint training somewhere down the line where you are a soldier, a sailor, an airman, or a Marine, and you know your business. You bring that to the table when you sit down with other officers. If you try to do that at the beginning, you're writing on a clean slate and all you will wind up with is confusion. If you want to inculcate a service identity into people who are in the Air Force, Army, Navy, or Marines, you need to do it early on. There is a service culture that you need to preserve at the beginning. If you go to a joint school you lose that. Those were all very



compelling arguments. The arguments were there. When you think about them they make eminent sense. What led to the inquiry perhaps was an overly simplistic view of a way to save money, spaces, and infrastructure. They also looked at the leases. That is an expensive lease at Charlottesville. The flip side of that is that we lease it, but the University of Virginia, the State of Virginia, pays for the upgrades and takes good care of us down there. The expansion was paid for by the State of Virginia. The old school – I'm sure they have told you this – went up to where the atrium is. The rest of it is new. That extension was done by the State of Virginia. You wouldn't get a comparable facility. You would get something much less than that. This is confirmed by line officers who come to the school. I think I mentioned this to you last time that if you look at the assessments, not only do they credit the faculty as the best instructors they have seen, but they kind of shake their head at how the JAG Corps wound up with Fort Monticello when they have got Fort Sill.

Q. Fort Leavenworth.

A. Fort Leavenworth, Fort Riley.

Q. Can you compare for us your role in policy development like the homosexual policy with some of the high-profile cases you had while you were TJAG?

A. In all of those instances what was the first concern was making sure that the leadership understood that while the Chief of Staff was not a commander, it is still possible for there to be command influence and they have to be particularly sensitive to that as the headquarters. For that reason, while they have every reason and justification in the world to know what is going on and to get facts they ought to be able to get, they cannot influence the action unless they are prepared, and the Chief doesn't have this prerogative because he is not a convening authority – the Secretary of the Army is. In theory, the Secretary could take something up to his level. The

Secretary of the Air Force several years ago in the Kelly Flynn thing – that’s an extraordinary option but basically she can do that. The Secretary of the Army can do that. The Secretary of Defense can do that. That’s extraordinary. Not only in taking that kind of problem to that level but it is an extraordinary lack of confidence in subordinates to take that out of their hands.

That’s another point to make with the service Chiefs and the leadership. You have gone through an exceptionally careful selection process to put people in these positions. You entrust the lives of soldiers to them every day in training and if a real-life mission comes up, that is what they are responsible for. You’re not going to trust them in this instance, to make sure that the case is thoroughly investigated and that the processes that might need to be followed are followed in the right way? That was never a problem with General Sullivan or General Reimer. Certainly they wanted to know, to the extent that it was possible for them to know what was going on, they wanted to know that. If there were aspects of this that were outside of the military justice arena in terms of investigative actions that they could get some information from, they wanted to know that. They were much more interested from the standpoint of the leadership of the Army – what did they need to do to help? Not to do the job of the people below them, but to help. This is, I thought, one of the best examples. Togo West did something when the extremist event happened that politically was right on the mark and really, as a result, saved the Army, I think, and field commanders a lot of aggravation. When the extremist activity had surfaced and they were deciding what to do down at Fort Bragg, General Shelton, the current Chairman, was the XVIII Airborne Corps commander. Jimmy Hatten was the SJA. They came up to the Pentagon. The Chairman briefed the Secretary of the Army at the same time Jimmy Hatten was briefing me on what the – not to seek approval, not to ask for intervention, to inform. This is what the command has done. I will tell you that what General Shelton had put in place within days of that was

exactly what needed to be happening in terms of dealing with events that had happened, being proactive in putting things in place that would prevent that, not only to prevent actions but to put some sensors in place that would get that information to surface when it was needed. My reaction after hearing that and knowing General Shelton was giving the same thing to the Secretary was, "Just let the commanders do their job. He's got it well in hand. Secretary West has got to understand that." I'm sure that he did. What was happening, and I'm not sure this was necessarily appreciated at field level, but there were a lot of noises being made in Washington by the Congressional Black Caucus and other organizations for an outside investigation. It was basically as a result of that the Secretary injected himself, not into that particular part of it, but stepping up to the plate and saying, "I'm going to establish a task force to get to the bottom of this in the Army – of extremist behavior," and he announced what he was going to do. And that was perfect. That shut off everything that was going on that the Congressional Black Caucus and other people were trying to generate in terms of outside activity. That demonstrated to them that this was being taken seriously at the highest levels, they'd thoroughly investigate, and the command had things well in hand in terms of the disciplinary proceedings that they could deal with. Civilian authorities were involved in some other aspects of it. That was a good lesson in, even when a commander is doing the right thing, sometimes they need top cover in order for them to continue to do their jobs. Timely action at the right level by a senior leader can make a big difference. The Chiefs take on all this when this was going on was basically being kept informed and of course, when these things happen how well it is handled by the command is either affirmation of the wisdom of the Chief's selection of that person for the position or, "Boy, was that a bad choice!" The extremists – that was a good example. The Aberdeen situation was more difficult to handle for a couple of reasons. First of

all, the extremist behavior was just that – it was extremist behavior. It wasn't the norm and the study really confirmed, when they went through the Army, while they found some things that they didn't like, there wasn't a general problem. There weren't extremist neo-Nazis infiltrating the ranks. That was under control. The Aberdeen piece surfaced a couple of more significant problems. It brought to the surface the problem of mixed-sex training, which in many respects was overblown. The reaction, if you remember some of the debate after that, they said, "You can't have mixed basic training." Well, Aberdeen is not a basic training installation. It's an AIT installation – they have been doing mixed training for twenty years. Really, the only person that I heard say this publicly, or the first person I heard say this publicly, I didn't hear any subsequently, may have been other people saying this, but Congressman Steve Bouyer, who was a JAG reservist, I thought put his finger right on the problem when he said, "What has happened at Aberdeen in large measure is a result of taking the downsizing, putting too much of the downsizing of the Army into the training base." That was very true. The Army Material Command and Training and Doctrine Command took the brunt of the cuts to protect the TO&E Army. What that meant was that you had in basic training situations where you had a higher degree of supervision just five, six, ten years ago, now you had situations where you were expecting more out of the – you had less supervision, you were extending the time of the people that had to perform those jobs, and quite frankly it created an environment where if somebody was inclined to misconduct, they were more likely to get away with it. The guy that was convicted up there – the NCO that was convicted and got twenty-five years who had improper relations with multiple AIT trainees was able to get away with that because there weren't as many eyes, quite frankly. You had problems as a result of the drawdown. It was a gender issue, which in some respects was not representative of what was going on in the rest of the Army. The

fact that it was geographically close to Washington didn't help because a congressman or a senator who wanted to get air time just had to take a bus ride up to Aberdeen and could get press coverage. They sure weren't running out to Fort Leonard Wood, where we were court-martialing more people than what they court-martialed up here, and there were a number of installations where they had more courts-martial. As always in those situations, the education of the public and members of Congress in particular is very difficult. You explain to them, "Trainee abuse is not something that really is a gender problem." We have had trainee abuse in males – down at Fort Benning, one of the more frequent disciplinary actions, not necessarily court-martial but Article 15, sometimes court-martial, was abuse of trainees. Male trainees being abused by male drill sergeants. Not sexually abused, but physically abused in some ways or money or other favors, a variety of situations that require disciplinary action. And the Army took that seriously, always has taken that seriously, and has court-martialed – instituted standards, and when they are not adhered to, the people are certainly taken out of that responsibility and disciplined appropriately. But some of that was lost in the Aberdeen equation. And then, of course, when they went into the investigations subsequently and tried to decide, "How is it possible that something like this? What happened to the commander? Why didn't he know this is going on?" In fairness to the commander, if you look at the responsibility – this is not somebody who has all his troops up at Aberdeen. He's got them scattered in many different places, which meant he was on the road quite a bit. In addition to that, when you are eliminating the NCO and officer support that could prevent these things from happening, there's going to be a problem. In that instance it wasn't what happens in the courts-martial – the courts-martial piece, the Chief knew, the staff knew, that is untouchable. There is a commander up there who is dealing with that. The only thing that became an issue, and it was dealt with before it could

really significantly impact on the process, the Commanding General, General John Longhouser, who had convened all those cases, was accused of sexual misconduct in a prior assignment, and to his great credit, he didn't get into a long weeping and gnashing of teeth. He stood up and retired, basically left the position. The timing of that was critical because we had a new convening authority for the follow-on action. If he had taken action in those cases, I think there would have been an argument that those cases had to be retried. So the timing of that was very significant. Interestingly, the SJA up there at the time, he said this later on – he was sitting in the SJA course. General Altenburg gave a presentation, and he was talking about the importance of training and being able to deal with a multitude of issues and specifically dealing with the military justice experience shortfall. He said, "You never know. You could be at some sleepy little post out there and all of a sudden all hell breaks loose in terms of a major case that you are going to have to deal with." He said he thought about that every day, because that is not a heavy justice operation up there. Test and Evaluation Command is up there, and they do a lot of procurement work, some legal assistance but really minimal justice. They got help up there. We sent some extra help up there because it was going to get out of hand pretty quickly. The SJA was smart enough to ask for help. I had said that to SJAs before. I said, "It's up to you. If we think you need help, we'll tell you that but we aren't going to shove it down your throat. If you know help is available and you don't ask and things turn out right, consider yourself lucky. If you should have asked for help and you knew you could and you didn't, expect consequences." But that was not an issue up there. They were not at all shy about – and the SJA did a terrific job keeping us advised well ahead of time. They were anticipating when the thing would hit the press. It got to be a lot of unpleasantness up there because it wasn't just the gender issue. The race issue was injected up there with at least one of the cases. They raised the issue that this is

only African-American drill sergeants. Of course they overlooked in the major case up there that there was at least one African-American woman that also had been victimized by this guy, but that part of it was handled about as well as you could expect. The problem with that is there is no fast way to do it. You can expedite the process but you have to go through certain steps. If the press has interest they are going to stay engaged. My advice under those circumstances to SJAs is that you have got to get it right before you do it fast. Just take your time. Do it right. If it is going right, it will become non-newsworthy very quickly. If you are screwing it up, you'll be on the front page. Do it right. When the McKinney thing was going on – I was gone by the time it was tried – but during the Article 32, while there were some controversial pieces, the communications to Frankie Hoskey, the SJA at the time, were, "Tell us what you need." We didn't communicate anything in terms of what the leadership wanted, expected. It was just "tell us if you need something. How can we support you?" On pieces outside of the justice piece, things like the public relations piece – they were going to try to close the Article 32. I will say that I thought there was wisdom in that decision, because we were looking to protect the privacy, to the extent that we could, of the victims. The court decided otherwise. Looking back on it, second-guessing – Monday-morning quarterbacking is easy – it probably would have been defensible, certainly would have been more defensible, if the 32 officer had been selective and said, "There will be an option of closing some of this depending on what we get into on the testimony," which would have basically said it's an open proceeding. He tried to close the whole 32, which was a mistake because you really couldn't justify that. That was their decision to do that, and we weren't going to go down and say, "Don't do that." You shouldn't have. There were several levels of ways to – that's why you have a Criminal Law Division at the Pentagon. They are there to help. They have the appellate divisions that can help as well. They are all

available. I think the right solution would have been if they were going to try to close it, do parts of it – be selective so that you can justify it and not try to be in the awful predicament of trying to justify shutting the whole thing when it should generally be an open proceeding.

Q. From our discussions it is obvious that you are the leader and the supervisor for the SJAs out in the field. While you were the TJAG, did you have any unique leadership challenges with the people who worked directly for you here in Washington?

A. Yes (laughs). You have anybody in mind in particular? I will tell you what I know you are asking about, in what was probably the most unpleasant event that I had to deal with as TJAG. This requires a little bit of background to understand how we got into this predicament. In the general officer community at large, when you get promoted to one-star – generally, promotions come later for line officers. They can come very quickly or more quickly for JAGs. That kind of complicates the equations in some respects. You could get promoted to general if you are moving along pretty quickly as a judge advocate and you become a general, you can leave before your time, so to speak. That's a fact of life. Normally, in the Army other than the JAG Corps, if you get one-star and you are not selected for your second star, the way it's done is that the officer is asked to retire, and he retires. They don't generally stay more than a few years, maybe four years, maybe five years. That's generally the exception. If you don't get that second star, the call will come from the Chief to say that it's time for you to retire, and you retire. That's notwithstanding the fact that the statute says you have five years. Five years or – I should have this memorized because I had to deal with it – you get thirty years or five years from your promotion date and if you are two-stars you get thirty-five years. Statutorily, I had thirty-five years. I could have said to the Army, "Send me someplace for the next seven years, keep me on the payroll." The statute allows that. In the JAG Corps in the '80s, it was a source of some



discontent among colonels at the time that we had some general officers, some one-stars, who were not selected for their second star and wound up staying on active duty as one-stars for eight or nine years. We had two-stars that were two-stars for six or eight years. In my career in the JAG Corps, when I came into the JAG Corps up until the mid-'80s, and my understanding of what had happened for a number of years previously, whoever the top two people were would generally go. The number two person would not throw their hat in the ring to be number one. That may have happened in the past, I should know this, but I don't think it happened very often. Frequently the top two retired, whether they came in together or not, they would go. You didn't see in the JAG Corps what you saw in some other places where they would fleet up. You have somebody go to deputy and then to the TJAG. That's not the way it worked. It was TJAG, TAJAG, generally the two would leave. And they would leave active duty. Now, there were exceptions to that. General Hodson went over to be the first Chief of the Court of Military Review. There were special considerations there because of the unique capabilities that he had. That position was a two-star position, interestingly, and I believe it was done that way so that they could make him the first Chief Judge because they wanted to take advantage of his talents. But generally it's up and you're out. In the early '80s, I think it was in 1981, when General Al Harvey was the TJAG and General Hugh Clausen was the TAJAG. General Harvey had a heart problem after about two years. General Clausen had two years in as TAJAG so when they had to pick a new TJAG they put him in as TJAG. He had four more years. He didn't just finish out the uncompleted tenure of his predecessor. He got a new four-year term. That was unusual circumstances, health-related, but it put one person in a two-star position for six years. His TAJAG, General Clausen's number two, was General Overholt. General Overholt, at the conclusion of General Clausen's tenure, basically stayed around and threw his hat in the ring for

consideration for TJAG. He gets picked. He spends four years, so he's got eight years as a two-star. General Suter is Overholt's TAJAG, and he puts his hat in the ring, and he is selected – he is supposed to be TJAG before the 3<sup>rd</sup> Armored Division difficulties impacted him. Everything kind of flows down. If you have that happening at that level, people at the one-star level were not moving and they didn't retire. If you went out and talked to the colonels who lived through that time, no matter how good or bad their records were, they would tell you "I never really had a shot at being a general because those people didn't move." We talked about the general officer piece before – a lightning strike doesn't even adequately describe it in terms of the likelihood – but certainly there is an impact, and you would like to have a chance. If you don't get picked, that is one thing, and you live with that, but if you never really got the chance because you didn't have the movement at the one-star grades, it doesn't help the morale. It's not good for the health of the Corps. It also, from the rest of the Army's standpoint, was not healthy either. Quite frankly, I have been told, although I was not a general officer at the time, but I was told subsequently that there was some bit of resentment that in the JAG Corps you had general officers, one-stars staying that long when that was just not happening in the rest of the Army. If you didn't move up, and the people who were in that boat had been considered and not selected for the next higher level, so they had a shot to move up. By statute, they didn't have to leave. They didn't have thirty years in. When the JAG Corps encountered these problems in terms of its general officer promotions, General Suter, who then was nominated but not confirmed. General Fugh was selected, and then you had the issue with John Bozeman – that caused a very careful examination of the rules governing general officers. Nothing changed in the statute. The statutes remained the same. In terms of the written guidance from the Secretary about what would happen with general officers, what was put into writing was this: each one-star would be

able to remain on active duty four years or have at least one look to a promotion to a second star, which means if you are there for four years and it was going to be two more years, you could conceivably stay six years. That logically wouldn't happen. The way the numbers worked out you might go to five, but pretty much it was four years, one look to two-star, and if you don't make it, you leave. Four years. Notwithstanding what the statute says, the understanding is, four years. As far as the top two, whoever is picked, you get two two-stars, and they go in together, and they leave together. Throwing the hat in the ring, and all this other stuff – that doesn't happen. You move on. This was all worked out in the early '90s. General Tom Cuthbert was the Assistant JAG for Military Law and Operations when all that went on. He had an extensive ad law background. He was the one who was involved in the drafting of that. He certainly understood the implications of all that, what it meant. There wasn't a legal obligation, because that's not what the statute said, but there certainly was an obligation of, I would say, loyalty to the institution to adhere to what you knew was the established policy. If you don't want to do that, you shouldn't accept a position as a general officer. When I was selected as TJAG – and let me explain something to you about the selection process for two-stars. The DOPMA rules – the Defense Officer Personnel Management Act rules – apply up through one-star, which means that whatever the board does, the board determination goes to the Secretary for approval or disapproval. The Secretary has no discretion to say, "Change order," "Promote this one, not this one" – either you approve what's there, or if you disapprove, you would have to have some basis to determine that – your instructions were not followed, it is unlawful, something like that. All that applies up to one-star. A two-star board is one thing, but when you are selecting not only for promotion but you are selecting for a position, there is discretion in the Secretary of the Army, at least under the rules at the time. The board was actually an advisory board. The board of

officers would, and in this particular case, at the time that I was selected and Ken Gray was selected, there were basically four for two slots. There was Ken and myself, Scott Magers and Tom Cuthbert. Two were going to get promoted, two were not going to get promoted. The advisory board sends a slate to the Chief, who can make recommendations, but the final decision is with the Secretary. If he doesn't like the order, he can change the order. I never was privy to the discussions at the time they took place. I never saw the results. I was told by people in a position to know that the issue was never with my selection. There was never an issue about who came out on the list and whether that was moved. That was not an issue. The issue was whether or not there was some movement with the other two-star position, the TAJAG position. Let me say I'm telling you this because I think it is important to make a record someplace about what happened with General Cuthbert and to give as much background as I can, but again, with the understanding that I was not a first-party participant to what went on. But, again, from people who did have that kind of knowledge. As it was explained to me later, there was, at least the advisory board recommendation was General Magers for number two, not General Cuthbert. The decision was made at the Chief/Secretary level to select General Gray. That was within their discretion. The results came out, and I suppose the person who would probably have the most right to be upset, understanding that it is a matter of discretion with the Secretary, would have been General Magers. He was actually told by a member of the board – improperly – that he was selected and that afterwards, he was not selected. I will tell you that Scott Magers, in every respect, following that occurrence, which I know he knew about, was a perfect gentleman, was absolutely loyal to Ken and myself, and while he vigorously would advocate positions that he believed in, once a decision was made, he was in full compliance, full support. I respect him. I worked for Scott Magers – I told you that. I have a lot of respect for him. He taught me some

good lessons. He was the one who was really affected. I don't know what Tom Cuthbert knew. He believed somehow that he had been shortchanged in that process. I don't know whether he believed he should have been TJAG or he should have been TAJAG, but he believed that what happened was improper and therefore he had a basis to complain. Now, he was an expert in administrative law. He knew what the rules were – and this was aside from the time issue – we haven't gotten to that yet. But on the selection process, he had to understand – I would never, never accept any explanation that he did not understand that, whether you like it or not, that is a matter of discretion. It's like the Secretary picking the three-stars. That's really what we are talking about. This is a more refined process than that. The three-stars are picked by the Secretary, picked in the sense that their names are sent to DOD and they are nominated, but that is a discretionary decision. This one has the benefit of an advisory board, but you are in the same process. So you can't be – I'm sure if you explained this to a lot of people, they would say, "Oh, horrors! I'm offended that there is a board" – it's an advisory board. They give a recommendation, and that is a hell of a lot more than what you get with the three-stars. You cannot, in my estimation, remove the discretion of the Secretary. The discretion of the Secretary is not often going to do something different, but to suggest to the Secretary that you can pick three-stars on your staff, but you can't pick this two-star – you have no discretion in that process. In fact, there have been some changes made which – unless they have changed this since I retired, that's effectively the decision now, that the board result is what governs, nothing else. It had nothing to do with this instance in the Army that drove that. It was a Navy issue that came up. People on the staff of the Senate, one who was a disgruntled former Navy JAG who feels he should have been a general officer – that drove a change to the legislation or some legislative language which really hamstring the Secretaries. When it was going to be time for Tom

Cuthbert to retire, what Ken Gray and I did, we would sit down with each of the one-stars, and this was after John Altenburg had been selected. Unlike the rest of the Army, we promote against vacancies. Once somebody retires, we can immediately promote them. We are not like the Army where people get frocked and they serve in the higher position for a year, two years and they don't get paid for this job they are doing. In the JAG Corps, if people leave when they are supposed to, then you fleet up, and everything is great. Altenburg gets selected. If General Cuthbert had retired when he should have, Altenburg would have fleetted up that summer. Ken and I talked with Scott Magers and Tom Cuthbert, basically, "When do you want to retire?" Scott Magers had it plotted out, when he wanted to do it, wanted me to do his ceremony – we talked about all of it. Basically, the plan was this – asked him what he thought we ought to do with the assignments of the people coming up, and of course Walt Huffman and John Cooke had been promoted by this time, so we had four one-stars. We were maxed out. We couldn't promote anybody. We would not take an Army vacancy. I would not go into General Officer Management and ask for one because we didn't stand in line and get frocked, so I didn't have the audacity to go in and say, "You ought to give us one of your spots so we can promote somebody because this guy won't retire." Tom Cuthbert said he was not going to retire. He didn't have to, the statute didn't require it. He felt that the process – he told both of us together that he was not going to retire but then when I had a personal session with him, he laid out what he perceived to be the unfairness and because of that, he was not going to retire. I told him that what he was doing was running dangerously close to plunging us back into the problems that we were just clawing our way out of. In my opinion, I did not believe that – first of all, I knew what the statute said. He didn't need to tell me that. I certainly believed he had an obligation to – understanding that this is a matter of Secretarial discretion – and I was not in a position at that

time to tell him what happened, to say that I know what happened for sure, but I had full confidence – I was told by an attorney that I respect very much, Tom Taylor, who worked for the General Counsel and who reviewed all that, that everything that was done was in compliance with the law and within the exercise of Secretarial discretion – and, by the way, there is no issue with you (laughs). I was confident that it was done right. I had no reason to believe otherwise. I said, “If that is the case, then you have a duty to step down. You owe it to the Corps. If you don’t do this, you are preventing us from promoting the latest selectee, which is not good for the Corps. That creates a personal hardship for Altenburg – I shouldn’t say personal hardship – but he should have the benefit of getting promoted, getting paid as a general officer, and doing the things that you expect of a general officer. You need to think long and hard about this, because once this happens,” and I had not at this point in time gone to the Chief of Staff – basically it was an in-house issue at this point – but I said, “Once you tell me for sure this is your decision, I have to take it to the Chief, and I will recommend to him what I think ought to be done, and this will change forever what follows. You should leave here with the flags flying and all of the accolades that should accompany an officer leaving after thirty-three years of distinguished service. If the last element of your service is in a demonstrated opposition to a policy which you know is lawful, which you helped to draft, in my opinion that type of disobedience, that type of failure to comply with what you know is the standard, colors the terms of your departure in terms of the way we can recognize you going out the door. I could not in good conscience go through a situation like that and farewell you formally and informally in a way that would make believe that never happened. Once you go down that road, things change.” He said he understood. I said, “By the way, Tom, I think you are misreading the Corps. They will never understand. There are colonels out there who would in their wildest imaginations would love to be general

officers, and they just will never, never understand how a general officer could be dissatisfied, how you could be unhappy with your lot in life because you disagree with the way somebody exercised their discretion.” He thought – and I want you to know, I have never talked about this issue like this with anybody other than a handful of people – and that includes the Chief of Staff and the JAG general officers – I have never talked to anybody about this issue other than at the general officer level, but it is important to make a record of it. General Cuthbert believed that the Acting Secretary of the Army, John Shannon, African-American, made the change. He may have said explicitly, certain impliedly, that he believed that the change was made because John Shannon wanted an African-American to be a two-star. When I took the issue to the Chief of Staff, he said to me, “Why in heaven’s name is he refusing to retire?” and I went into the explanation, he said, “John Shannon had nothing to do with it. I picked Ken Gray, because I knew he was a better man, and this proves it.” General Gordon Sullivan was not carrying a minority agenda, he was making a call as the Chief. That was his recommendation. It went to Shannon that way based on his recommendation. As a result of that, and the Chief could be emotional at times – if this had been a non-JAG general officer, there wouldn’t have been this problem, I assure you of that. I told him the problem is you have no mechanism to force him out. All you can do is appeal to his sense of duty, and I have done that, and obviously he has demonstrated, unfortunately after thirty-three years of service, that this is the way he decides to finish. The Chief said, “What do you recommend?” Originally, the Chief thought about sending him out of Washington, which may have caused him to retire if he had to leave Washington. He actually thought about sending him to an assignment that was a one-star vacancy out at AAFES, Deputy Commander. That was a possibility. It’s not like I had a veto over this, but I said, “No, don’t do that. This is our problem to deal with, this is my problem to deal with, and it is a



general officer problem, but basically this is a JAG issue. I don't want anything done that would appear to in any way give credence to his arguments by giving him – I consider a deputy commander position to be a significant position. I don't consider that to be a derogation of his position or authority in any way. If he insists on staying on duty in this way, we are going to have to deal with the shortfall. Until he retires, we can't promote anybody so he will work for me. I'll designate him a special assistant. I'll relieve him of duty. Currently at that time he was sitting as the Chief Judge of the Court of Military Review. I recommended, because I couldn't do this – I don't have this authority with general officers, I can do everybody else, but generals I can't – I recommended to the Chief that he relieve him of duty, not relieve him for cause but just relieve him of his duties as the Chief Judge, make the other assignments, and assign him as a special assistant to me. We set up an office for him at the Pentagon off of the E-ring. He had the support. He could rely on the front office. He had a telephone. He didn't have his own secretary but he had secretarial support as he needed it. He was to perform duties as assigned by me. I regret – I don't regret it, because it was a decision I had to do – it was unfortunate that I found myself in a position where I had to take action with respect to a general officer that was not intended to demean his service, but it certainly was a derogation of the stature that he had held as the Chief Judge who was one of the JAG general officers. I will say that was intentional, because he wasn't acting like a general. In my opinion an officer who blatantly disregards a policy that is lawful and he has a duty to abide by – if I had a way of forcing his retirement I would have done that. There was no way to do that, other than to put him in that situation until he retired. So he drew a paycheck as a general officer for those months, six, eight months, until he retired. He walked out the door with no ceremony, no award, no recognition for thirty-three years. I feel worse for the family than I do for him because I believe his wife and his daughter

and his son deserved for someone to stand up and say how important their father's service was. I will tell you that the general officers collectively came in to me in an appeal to do something for him, including an award, – quite frankly I was astounded that they asked that – and I said, “How could I possibly justify asking for a Distinguished Service Medal, a normal general officer award, for a general officer who has basically stuck his finger in the eye of the Secretary, disobeyed his policy? I can't do that.” One of the generals who I won't name asked if I had thought about a Legion of Merit at least, which I was not willing to do. Actually, I did not have the authority to do. You can't give Legions of Merit to general officers. I would not have that authority, and there are reasons for that. They don't want people stacking things up. I said, “Under these circumstances I could not in good conscience justify an award and I could not stand up – every award, every promotion that I have given I felt entirely comfortable with the good things that I have said about people and about their service. I was not going to be able to do that with Tom Cuthbert. There is no way that I could get up,” and I would think in the minds of the Corps a fraud to do this for a general officer – if this were a colonel in the Corps, or a lieutenant colonel, any officer in the Corps that did something comparable, if I had the means to put them out of the Corps I would do that. I certainly would affirmatively stand in the way of official recognition under circumstances like that. I would do everything in my authority to prevent that from happening. Do you think I should do less with a general officer? I couldn't do that. And it was a sad day when he left. He did come by to see me. I said to him, “I'm genuinely sorry it turned out this way,” and I don't regret it because it was a situation of his making. The last thing he said was, “Well, you did what you believed was right and I did what I believed was right.” As I said, that was the most unpleasant event and something that I certainly did not anticipate, and from an officer who before that time I had immense respect for. Actually, I thought Tom

Cuthbert probably would be the TJAG. The four people that they were considering when they had Tom Cuthbert, Scott Magers, Ken and myself – my wife asked me, “Who do you think is going to be the next TJAG?” and I said, “Well, you know, Tom Cuthbert has thirty-three years, he’s done everything, he’s a Harvard graduate, he has an engineering degree – intellectually, he is at the top of the class. He has had tremendous experience. He’s been involved in the military law and operations piece. He was eight years my senior at West Point.” Before this event, anybody that you asked would have had the ultimate respect for Tom Cuthbert as a soldier, as a lawyer. He would have gone in a different direction than I did. I don’t think he felt the same way about some of the soldier piece, but I thought Scott – actually, I thought Tom Cuthbert and Scott would be the number two because if you looked at the experience factor, both Ken and I were kind of in a comparable situation, although he had better experience than I did because he worked for a three-star down at Fort Hood. He had been a division SJA, then he had been a corps SJA. And then of course he had worked in the building, he knew a lot more about some of the building politics and certainly the personnel piece of the business, which is awfully important. We suffered from the same handicap in terms of the level of folks that we had worked for. Tom had been a corps SJA over in Europe, he had worked for a three-star. But Scott Magers worked for some of the toughest people. A lot of people don’t realize this. He worked for General Max Thurmond at TRADOC, who was a very, very demanding boss and the smartest – talk about a guy with intellect and energy. There were two other guys that were there that were immensely demanding bosses, and Scott did a wonderful job, a terrific job. He had served in Europe as the USAREUR JA in a difficult period of time when they were negotiating the supplemental agreement. On paper, you looked at those guys – I knew them and I had served with them and I said, “You know, when a board sits down and looks at all that, that’s who I think

is getting it.” So I have to figure out what I am going to start doing with myself at the twenty-six year point, when I have to go out the door early. If that had happened, that is exactly what I would have done. I would not have stayed anything beyond what the rule said. Again, this is the next thing that you don’t complain about beyond going to school for a year and getting paid for it. You get promoted to general, and you get to retire as one. You don’t complain about that under any terms either. That’s the story. Did you expect that I would tell you that?

Q. I didn’t know the whole story.

A. How much was generally known in the Corps about that?

Q. All we had heard – Colonel Lederer had told us – we had that class about two weeks ago. He just said that he didn’t retire and they kept moving him from office to office and he wound up having a broom closet. That was what we heard.

A. Actually, he moved one time. He moved into one office. It was on the D-ring. It was not a broom closet. Basically, he had furniture – it was an okay office. It was not a general officer office. You would not expect to find a general officer in there, but it was office space.

Q. Your story there debunks another rumor about yourself.

A. What is that?

Q. You obviously had strong feelings about retirement, when it was time to retire. There was a rumor that you refused to retire.

A. Oh, really? How could that –

Q. That you didn’t want –that you were looking for another job within the Army.

A. Well, let me tell you this. You take it for what it is worth. First of all, no jobs were offered. I never made any secret of the fact that – in fact, I will tell you that the day that General Gray and I were promoted to two stars, I had a letter on my desk from General Officer Management

Office – GOMO – signed by Al Branson, the Chief of GOMO. It said, “Congratulations on your promotion to Major General and appointment as The Judge Advocate General.” – a couple of other lines – “Your retirement date will be September 30, 1997,” and that is the truth (laughs). In the aura of this celebration of promotion to TJAG, just in case I had forgotten, I was reminded at the very beginning that this was a four-year tenure and that I would be gone at the end of four years. I understood that from the beginning and I never suggested to anybody otherwise. There were some people who came to me and said, “We think they figure to do something else with you because you are young to be leaving,” but I said that first of all, there may have been a time where that would have been a possibility, when they had a lot of general officer jobs, but in the time that I was TJAG – during the period of the ‘90s, they went from about 450 general officers to 300. Every general officer position that they had had meaning. There wasn’t a position that I could think of – because people asked me, “Don’t you think you could do something else?” I’m sure that I could do some things pretty well or parts of some things. I could probably do the – when they used to have two Deputy IG’s, when they had one that did the investigations, I could do that job. I think any lawyer could do that. But there is an inspections piece. Eventually they got rid of that second spot and there are only two, a two-star and a three-star. That is a good example, and a number of people mentioned it. “Why wouldn’t you be a good candidate to be the IG?” I said, “There is more to the IG than the investigations piece. There is an inspections piece and an understanding of how the Army runs and that requires, in my estimation, somebody who has done that – a division commander, a corps commander, somebody who has had that responsibility is the person you want in there making judgment.” How do you think it would go over with the Army if you stuck some lawyer in that position who is in essence making judgments about how a line officer has done their job? I couldn’t credibly – I can’t conceive of

how they would do that, number one. Number two, even if somebody decided that that were a possibility, I can't see how I could step out – this is different than the situation in the JAG Corps where opportunities are coming soon. This is your branch, your profession. Doing something like that takes you out of it. I just felt that that is not something I could credibly do. I think one of the important things you have to recognize is your limitations. What can you do and what should you do? Aside from the fact that at the end of four years I was ready to go, I was tired. I enjoyed every minute of it but I ran hard and I was ready to stop. I think there are two jobs in the Army, and I know they have gotten away with this with the other job, but I think the IG and TJAG are two jobs that ought to be the final stop. I think they ought to be the final stop because the calls that you have to make in that position, either as the legal advisor to the Chief, the military legal advisor to the Secretary, or as the IG, where you are making judgments, as a result of – certainly in a lot of cases – misconduct of officers in terms of investigations and judgments about how the Army is operating. There should never be created any situation that would suggest that at any time, you may have been swayed by the possibility of future advancement, that maybe you didn't call it exactly as you saw it because if you did, the reaction might have an impact on your future. You should have no future after that in the Army. For that reason, no one will ever accuse you of doing something that supported your personal advancement. That is dead wrong. The other thing that I will tell you is that there was a general officer who offered, who asked when I was getting within that last year before retirement, a retired officer, who called me and said to me, "You shouldn't be retiring. You should stay on. The Army can use you, and I will go to the Chief and ask him to do that." I said, "Don't do that. First of all, even if I wanted to do that, I wouldn't want you to intervene. Let the chips fall where they may. If the Chief were to ask me, I would sure think about it. I would not say no out of hand. I would sure

think about it.” My philosophy – I had things pretty much formed in my mind, and there was never, for the four years I was in there, I never had any expectation or reason to believe I would go beyond that. I told him not to do that. I asked him not to do that – I couldn’t tell him, but I asked him not to do that. I didn’t want him to do that.

Q. Do you see any wisdom in having the TJAG and the TAJAG begin their terms at different times instead of together?

A. I can see the argument that that helps with continuity, but I’ll tell you that I think I like the way we did it. I’ll tell you something – Ken Gray would have been a terrific TJAG. I’ll tell you something else about Ken Gray – if he had been inclined to go beyond, to try to throw his hat into the ring, there were people high up in the political ranks who would have entertained a change to the rules to allow him to do that. And he did not. He said, “No,” which to me demonstrates a sense of duty that demonstrates the correctness of the decision, that from the personal and professional standpoint, he could have served eight years as a two-star and been the top choice, top dog, but he didn’t. To get back to your question about changing that, I liked, and I thought there was great benefit, to coming in as a team, at least the top two. The continuity is taken care of with the one-stars that you have. We have such a small group of general officers – of course, it depends on your leadership style. I like to say that there wasn’t a whole lot that I had to decide myself. There were certain unpleasanties I dealt with that I had to deal with alone, as I just described, but virtually everything we did, everybody was on board with. They knew where I thought we needed to go, but they were in agreement with that. Quite frankly, I was on the board that selected John Cooke and Walt Huffman. My view, when I was on that selection board, was these are people who are great soldiers and they are great minds. I’ll tell you, when we got John Altenburg on board, when you think about Walt Huffman, John Cooke, John

Altenburg, and Ken Gray, that's a hell of a team. You know, I think it is part of your – first of all, if you do it right, if in developing where you want to go, you are doing it right with your team, it's not your legacy that you are developing or your philosophy, it is a philosophy that the collective leadership of the Corps has decided, "That's the way we want to go." As long as you are attentive to whatever changes need to be made to adjust fire as necessary, if you do that through the tenure, you will have continuity. Whoever gets selected, they were all on board. They are not going to dramatically change the direction of the Corps. I like the idea of the top two people coming in, and again, there is never an issue there, and there was never an issue with Ken Gray, any of the calls he made, any of the decisions he made, there was never and there could never be any issue about, "Well, he did that or he was affected by the possibility that he might be the next TJAG." I think it's too important for that. You look at the organization of the Pentagon. How many of them have a couple of two-stars at the top? They have a three-star and two-star, or two-star and one-star, but few have two two-stars there. Given the responsibilities of TJAG to be worldwide, you have the ability to send a two-star on the road on a continuing basis but you also have the ability to have somebody home. We decided at the beginning – we agreed at the beginning – as much as I needed to be there, when I'm home and the Chief calls a meeting, I need to be there. I don't send one-stars to that. I think if it's a staff meeting, if you are there, you go. TAJAG needs to be able to step right into the shoes of TJAG. For that reason, we always stayed attuned to the same issues. He needed to be fully up to speed on any of the sensitive issues that I was dealing with, either with the Chief on general officer discipline, with the Vice-Chief, because his recommendation would be my recommendation, and mine his. So I think there is wisdom in coming in as a team and leaving as a team. I think it is healthy for the Corps. When you are only talking about five general officers, no matter how good you think you



are, no matter how much you think people like you, to hang around eight years, that's a long time. That's a good way to become unpopular. Four years is plenty. I think the stature of both positions ought to be sufficient to satisfy anybody's desires or the goals that they set for themselves for professional achievement. I think there is value in that. The unfortunate part about the way the situation is set up now is now that we have only three one-stars, you are going to pick two out of the three. You really feel badly for the third person but again, at the general officer level, how can you complain? You think about picking between Huffman, Altenburg, and Cooke. You can't lose with any of those choices. But you make the best choice you can knowing that whoever is left is going to go off and in reasonably short order is going to do great in some other capacity.

Q. Speaking of choosing, how did you personally approach the general officer board, looking at all those colonels' files and trying to pick one?

A. Are you talking about when I was on the board that picked Huffman and Altenburg?

Actually, it was very interesting, because the president of the board was a four-star, General Joulwan. General Tom Schwartz, who is in Korea now, four-star in Korea, was a one-star at the time, I don't know if he was a the 1<sup>st</sup> Cav at the time or was at Fort Carson – he eventually became the Fort Carson commander – he was on the board. There was one more guy, African-American, light-skinned, came out of AMC. I don't think that this could happen today because there are some things that happened in the intervening time frame that really tightened up how boards can be conducted. Because I was the only JAG on the board – we all looked at the files, we all did a preliminary vote, kind of a yes-no to eliminate the obvious. The problem is, you sit there and this four-star knows a couple of the guys and this guy knows one or two, and so on, or maybe they know people that aren't even in the zone. The president of the board looks at me and

says, "You know these folks." I said, "Sure I do." Basically I went down and talked about each individual, about what this record meant. You start walking down a list of all those heroes – you have a lot of good things to say about them. But if you can add some insights that would not necessarily be there if you were just reading the file. Tom Schwartz, General Schwartz, said to me later, he said – and we were at West Point together, he was a couple of years ahead of me, class of '67 – he told me later, "I was really amazed ." They don't experience this on the regular general officer boards. On the Army general officer boards you may know a few people. I guess the way it had been done in years past, you kind of had your advocates in there but basically he said, "It was apparent that you really knew this community. We could only pick two," and I could go down the first dozen. There were people I had grown up with in the JAG Corps, served with, and I knew what these jobs were – and they were all in important jobs. You take a look at what Walt Huffman had done prior to his selection and John Cooke. It was interesting – John Cooke was the number two guy at the school, so it was unusual to pick somebody out of that position as opposed to the commandant. He could have easily been a corps SJA at that time. They needed him at the school. That was an example of something they would not have known at the board. I did know. There was a Corps need to have somebody down to stabilize the school and eventually he'd fleet up to be the Commandant. He was truly one of the great minds of the JAG Corps, certainly in terms of criminal law, the great mind of the JAG Corps. A great educator, a great leader, obviously had talents in the field. Had they been more concerned about grooming him for general as opposed to meeting a very important long-term need, they would have sent him out there. They didn't. You kind of lay all that out. Now I think the way the rules are – I would have to go back and look at them – they limit you a little bit more about you can say outside the record. You can talk about the records, but you have to be careful about injecting

things that are not fairly within the record. And there is good reason for that. You are supposed to be basing it on the record. On the other hand, when you get to the general officer level, if you really do know the community, the other members of the board are operating at a handicap if they can't take advantage of your knowledge. Of course you have to be very careful about the way you present that, to do it in an even-handed way and make sure that all these great candidates are getting a fair shake.

Q. Did you have to deal with as the TJAG contracting-out issues, contracting out attorneys at installations at a policy level?

A. Only from the standpoint, and we talked a little bit about this last time, about civilianizing Contract Appeals Division. There were similar things said about how can you reduce – it wasn't necessarily put in the A-76 context, it was simply a matter of can you convert these – there was some of that. Why couldn't you contract out? Why couldn't you contract out doing wills for soldiers, or at the very least why couldn't you reduce your uniformed numbers and go to civilians? Our argument on that – there is a couple of considerations. First of all – I told you the argument about Contract Appeals Division last time. I thought it was in the Army's interest in those positions where you theoretically could have civilians do that – in the long term, I don't think you would get the energy in those positions if you had people stay there for a career. I think it is in the Army's long term interest to put uniformed officers into those positions, let them have that responsibility, and then rotate them back out to the field. They have a dimension and a perspective that they did not have before. Again, particularly out at the installations, there are some things that you can civilianize – certainly in the legal assistance arena we have done this. We have civilianized a lot of those positions. But even then, contracting-out is different than civilianizing the position. If you civilianize it, they are part of your team. That is why, when

you talk about the soldiers and family members and civilians – they are all part of a team.

There's truth to that. The people who do the legal assistance at Fort Benning or Fort Sill or any other installation know the installation, they get to know the community, what kind of problems they have to deal with, and they deal with them as a part of the institution of the Army that's helping their own. It is not simply a contractual commitment, an economic proposition that somebody is performing a service and your relationship begins and ends with providing this will or this particular piece of paper you need for adoption. It is more than that. You preserve that when you make people part of your organization. It is good to have the option to put uniformed JAGs into those positions. It is a great position to get to know the Army. If you are brand-new to the Army, you do legal assistance, you deal with soldiers, family members, you learn a lot in that environment. I think that's true and that's very beneficial. Actually, though, I think the truth is that with some of the civilians, the experienced civilians we have in the legal assistance arena, they probably do it better because – if you are down in Georgia, and you are admitted to the Georgia bar, you can walk out in town and you have some influence with members of the community, the legal community you are a member of the bar of, and you have been there for the long term – that, I believe, is in the interest of clients. Having at least some portion of people who can do that – if you can get quality people to do that – they have a terrific legal assistance program – the Chief of Legal Assistance at Fort Benning is now a civilian. I think it's Jane Winand. She came on board when I was still there. I think they have three civilians down there. They have some uniformed people doing legal assistance, but it is a tremendous advantage to have civilians in that environment admitted to the local bar and putting JAG attorneys as legal assistance with them, as part of that team. In a way, that's the ideal situation. You can do that in a TDA organization. Obviously, you can't do that in TO&E. I'll tell you the issue did come in

at a pretty high level when we were talking about – the whole Army staff had to brief the then-Assistant Secretary of the Army for Manpower and Reserve Affairs, Sara Lister. I was briefing and she specifically raised the question of, “Why can’t you civilianize all these positions of legal assistance attorneys and why couldn’t somebody downtown do a will?” I went into a similar explanation that there is more to it than that. In theory, could you do it? Yeah, but do we believe that under those circumstances, you are going to meet the needs of soldiers and their family members in the best way? I don’t believe so. You’re putting it into a situation where you are buying a service off the street. It is not being provided by somebody who is a member of your community and team. That is as far as that went. We didn’t have to fight that battle. We also had to be careful because at that point in time, the JAG Corps had come down in its end strength, but the number of civilian attorneys had gone up dramatically, and even further now. I think the JAG Corps has done it in a very intelligent way. They have done it pretty much from the bottom up. It wasn’t dictated as policy, that you need to convert these positions. Installation SJAs with the concurrence of installation and unit commanders have made a decision that certain positions could be civilianized, and they have done that. Chief of Admin Law at Fort Benning is a civilian. That was one of the first. Actually, it made a lot of sense down there when you are dealing with installation issues and you need to have an established knowledge base in contracts, environment, and a range of complex issues. Some institutional memory on that is awfully important.

Q. If you were to rewrite the Code, given a free hand to do so, what would you change in it?

A. Rewrite the UCMJ?

Q. Yes.

A. You know, I have never found a provision in the Code that I have found so unreasonable, unrealistic or unworkable that I would consider that it needed to be rewritten. Take that from the perspective of someone who actively practiced and was engaged in court-martial a long time ago. That is probably the most valuable perspective that you have is the practitioner's view. The Manual changed, although the Code didn't change much, in terms of the way you administer military justice and the Uniform Code of Military Justice, changed dramatically with the several Manual changes that have occurred while I have been a judge advocate. The Code itself? I think that there is nothing that jumps to mind as something that would need to be changed in the Code. Let me put this gloss on it – I guess what I would say about the Code and military justice matters in general – the procedure that is in place right now, the ability and practice of reviewing what is in the Manual, what is in the Code, and assessing it and deciding – making recommendations, even though it may be a – it's not really that cumbersome a procedure, actually, to identify whether something needs to be changed and to start things in motion. There are a number of people you have to convince, obviously, but there is nothing that jumps to mind to me I would suggest needs to be changed. Did you have anything particular in mind?

Q. I guess the only thing I had in mind was deciding the value of sentencing guidelines like the Federal system.

A. Looking at it from the civilian side, if you follow the debate, the judges don't like the sentencing guidelines. If you asked that question because you perceive, or people generally perceive, a lack of consistency in sentencing, I'm not sure sentencing guidelines would necessarily cure it. Or it might cure it in a way that you don't like very much. I think there is a lot to be said about a system that allows the flexibility. Of course, as long as you have juries that sentence and judges that sentence – one thing that may make more sense is to let juries decide

guilt or innocence and let sentencing be handled by the judges. That may cure inconsistency, but even among judges, you can see significant inconsistency. Having said that, I think that is an overly simplistic view of the world. Unless you are there, and you have heard all the evidence, and you have eyeballed the witnesses, and eyeballed the accused, and heard everything, I think that it's not a good practice to second-guess what happens. I have great faith in the people we select to be on panels and the people we select to be military judges to administer the process and make those decisions as well as they can be made. I think we do far better than the civilian community because I think when you look at the cross-section in terms of educational background and experience of the people who make decisions on panels, you are several cuts above – many cuts above – some of the juries you find in the civilian community, many of the juries you find in the civilian community. I think they are very discriminating, I think they put the government to the test. I think sentencing is just a very difficult proposition under any circumstances. No, I wouldn't - without giving that one much more extensive thought and examination, I'm comfortable with what's working there now.

Q. Going back to Fort Hood for a minute, did you feel at all handicapped by the fact that you had not been a deputy when you became the SJA in terms of your relationship with the deputy when you first got there?

A. No. I think by that time in my JAG career I recognized you can't do everything. I had come from a position in the Pentagon where I spent my entire time as a major – I was promoted at the JAG school, so I spent a year in school and then my time as a major was at the Pentagon. If I had gone out to be a deputy someplace, I wouldn't have been in Litigation Division. You can't do everything. I think the reason I felt comfortable also is that in my time in Europe I had been an OIC. I had some management responsibility there. There were six attorneys in that office. I

wasn't running an office or a deputy in an office, but I had some management and leadership responsibility before. John Galligan and I – we had an unusual situation. We were both at the Armed Forces Staff College, so we had six months to get to know each other, so it wasn't like the two of us were walking in the door from separate directions. I had gotten to know John very well, and we talked a lot before we went down there. Neither one of knew what we were stepping into, but we had a good feeling. We liked each other, respected each other, and I think we complemented each other. The fact that I had come out of Litigation Division and dealt with military personnel policy and the tort piece of it, and he had such an extensive criminal background – I could not have asked for a better deputy for a lot of reasons. Personality-wise, in terms of people skills, and as a caring person, they don't come any finer than John Galligan, I will tell you that. Also as an expert in criminal law – he was a wonderful mentor to the captains. In fact, that's what made the difference in the communication. He encouraged them to come in. In fact, he would – I think that it originally was viewed as almost a painful exercise because before anything was brought into me, he would review it. He would ask all the questions. He would have the Chief of Justice come down, said, "Bring the counsel down here," and they would go through it. And he did it in a very instructive, very supportive manner. They knew he was going to ask those hard questions. What they would do is seek him out ahead of time. They would call him and say, "Can I come down and talk to you? I have some ideas about this," and he loved that. They respected and loved him for that. That's why I'm convinced that because of what he showed in that respect and other regards in terms of being a very caring person that they were willing to come in and talk to him about some things that they might otherwise be reluctant to discuss.



Q. I have a summary and a question about your time as TJAG. You talked about, when you were back at West Point, you thought – you were in the infantry and this was a Corps you could help with your background. When you were at Fort Hood, going out to the field, and you think that there is more that the judge advocates can do in the field environment given the chance. As you are TJAG, you are leading by example, by walking through the river, going to Alaska and running in the winter, and you are revving up the CLAMO program and you are spreading the message by getting the Reserves integrated. How do you think you were best able, now that you are at the top, to spread your message? How do you think you were best able to crystallize your message of soldiers first amongst the JAG Corps?

A. You do it in several ways. First of all, there is nothing better than a personal example. To be quite honest, if you have lived that way through your JAG career, if you have lived that example, it's easy. You just continue to do the same thing. If you lived your JAG life, if it were in an environment where you took every opportunity to assume more – the tasks that were more lawyerly in nature as opposed to soldierly. I don't mean that infantry versus legal skills, what I mean is lawyering in a soldier environment. You have to have the right mix. You want to be challenging, but you want to do it in the right mix. If you have not done that through your career it is awfully hard to change that at the top. Of course, is it likely that you will be at the top if you have done that? I think the Army leadership expects – and I think this was not me as TJAG. I think what was happening – and you could see this. I could see this at Fort Hood. I could see this at Fort Benning, that in a lot of damn good soldiers, I mean people who had some Army experience and maximize that in terms of their ability to get to know the client. Physically fit looking like soldiers. Setting the examples for new JAGs coming in. That was all happening in the mid 80's. The people I had working for me at Fort Hood, and you would see at the corps and

the division. Things were changing. I was not the leader there, I was one of the division SJA's, but things – that was happening. So you were developing a generation of leaders who were seeing these young captains and majors who were real solid citizens. They looked like soldiers, they understood soldiers, and by the way, they are damn good lawyers. They can get you out of – keep you from stepping into a minefield if you use them in the right way. That was happening. The expectation was growing, so by the time that I got to that level it was a nice icing on the cake for the Corps that, oh by the way, they happened to pick a leader who happens to have a CIB and is a Vietnam veteran, had some time as an infantry officer, and has had made it all the way to the top. But you don't do that alone. It doesn't make a hill of beans to the organization if you have got one person who does that. You have got a healthy organization, and I think as much as we saw the Corps improve during our tenure, that was as much of – I mean, we tried to set the best example we could. We tried to take advantage of the momentum that was there. But there is a great advantage of stepping up to the leadership position of an organization that has so much talent in it. It was heading in the direction that really fit me, and where I wanted to continue to lead the organization. I think the challenge is at that point is you want to continue to demonstrate that and you have got to do it by example. You go out to the field, get your fatigues on, get your BDU's on and don't be afraid to get out and do the things the troops expect you to do. I will tell you one thing that is very difficult – I learned this the hard way. When you get in this headquarters environment, you know you have to keep up your physical fitness, but what you do on your own here in your individual programs is not like what they do down at the 101<sup>st</sup> and the 82<sup>nd</sup>. You can never forget that. I went down to an Article 6 visit at Fort Campbell. Dave Carey was down there as the SJA. We went out for a run. This was at the end of February, and I had a particularly busy couple of months and a lot of travel, a lot of things going on back

here and not enough PT. We went out there and it was hard. I was fading. We went on a five-mile run at a pretty good clip. I don't know whether there was the kind of – the Article 6 juices were flowing in the troops. They were doing what they normally do, and unless you do that on a continuing basis, and I hadn't been, I almost was embarrassed. I wasn't, but I almost was. I said, "I will never let that happen again." That's very hard in this environment. That may seem to be an elementary point, but it is important to get out and run with the troops. John Altenburg is a terrific soldier, but he has had two hips replaced. He's done more soldierly things in his lifetime than most people ever dream about – jumped out of airplanes as much as he has done, he's a Vietnam veteran, he was in Desert Storm, he was in Haiti – he doesn't need to do that. He shouldn't do that because physically it won't allow him to do that. If you can, though, you ought to, because if you can and you're not doing it, the troops are probably scratching their head saying, "Why aren't you doing it?" That gets to be more of a challenge. Understanding that what you can do in your late forties and early fifties is not what you could do in your twenties and thirties, you go out and participate as you can, but you shouldn't expect to be out in front of the pack. If the youngsters aren't beating you, they ought to. What is more important is to send the message, to tell them what's important. If you don't talk about what's important at the top, it's never going to sink in. And you need to do it in a way that is sincere and accomplishes – not only gives them the compliments that they so richly deserve for the important service they are performing, but allows them to also look out in the future and see why things are going to get – what's coming down the road, how they have to deal with it, and how things can get better, and why it's important to stay as part of the team.

Q. What have you been doing since your retirement?

A. Well, here I am at Patton Boggs. I retired in September. I joined the firm November 1<sup>st</sup>. I have been in private practice here ever since, which I will say to you I did not – a year prior to my retirement, I did not anticipate I would be doing. I didn't think I would be attractive to a firm because, at this stage in my career, I was heading into something where I didn't have a business, I wasn't bringing in a group of clients, didn't have a business base, and I couldn't see how that would be attractive to a firm. I came down here the first time not to ask for a job. It was at the urging of my good friend and former partner here, Joe Reeder, former Undersecretary of the Army. I think I may have said this to you last time. He was after me. He said, "You are TJAG. You can't be unemployed. When you retire, you've got to go right into something. It's very important to the troops that are out there. They are going to be watching you very carefully and you have to set a good example (said with mildly sarcastic tone). What do you think about private practice?" I said, "I don't think it's right for me," because of this, that and the other thing and he said, when I told him what I wanted to do was something more of a leadership and management responsibility, he said, "Well, if I can set it up for you, would you want to go down and speak to one of the senior partners down there, Tom Boggs, just to tell him what you want and get his counsel? No obligation, you're not asking him for a job, just go down and see what happens." I came down. I thought I would get twenty minutes or thirty minutes. Boggs is a busy man. What I thought was going to be thirty minutes was an hour and a half to two hours, and he brought in one of the senior contract partners. They talked a lot about what they thought I could do, but at the end of the meeting I was still looking for more of a management position. They arranged a lunch for me with the executive director here, talked with him and one of the other senior counsel, and they passed my name on to a firm who was looking for an executive director. I went out to Denver for an interview. It was for a Milwaukee firm but the search team

was in Denver. I had a three or four hour interview and the guy said, "You know, you have great credentials but you have got one hole in your resume. Do you know what it is?" I said, "Yes. I have no business experience." He said, "I see it the same way. This position that you are interviewing for – the gentleman that is in it – as soon as we hire somebody, he's leaving, he's ready to retire. He is doing this as a favor to the firm, staying on this long. So that means whoever steps in is going to have to be able to come up to speed pretty quickly. How long do you think it would take you to make the adjustment?" I said, "I can't imagine that I would do it any quicker than six months, and that would be a very optimistic estimate." And he saw it pretty much the same way, so I knew I had a disadvantage and – he sent my name forward anyway – I made the final three – but the chairman of the firm happened to be a classmate of the Chief of Staff of the Army at the time, General Reimer. I found out later that he called General Reimer and said, "Tell me about this guy Nardotti." But soon after that, they had called to say, "Well, we selected somebody else to be the executive director because we had somebody – one of those final three had the same job in a smaller firm. This was a logical step. He would be able to transition. What do you think about private practice?" I interviewed with those folks. In the meantime, they kept asking me back here. About the third trip down, the senior counsel, John Camp, he does the partner recruiting and liaisons, he said, "You really ought to think about this private practice stuff. This may not be as hard a transition as you think it would be." So I really started thinking of it seriously. Then some people were talking to me and saying – Scott Magers was one, I talked to him after I retired – they said, "If you do management, you are going to be bored. You are a good lawyer. Unless you keep your hand in the law, you are probably going to be bored." So I thought more about it, and then after another free lunch or two with Patton Boggs, they made me an offer and I said yes. I came in initially in the government contracts

group, figuring that – at the time it was a separate group, I could do – although I had never been a government contracts practitioner, what they thought was I had done so much in the way of investigations, the Army had so many high-level investigations that they thought in the area of corporate ethics, standards of conduct, and internal investigations, I could fill a need in their government contracts group that my experience would round out nicely. Also I could work with the litigation – we are very flexible here. You are not really locked into a particular group. You can really work with anybody that you would like. It depends on the nature of the problem. But shortly after I joined the government contracts – and Joe Reeder had been back a month – he had been here fourteen years before he came into the Army as Undersecretary, then came back about a month ahead of me. About two months later, he was tapped to be the chief of the litigation group – the litigation practice group leader. He tapped me on the shoulder and said, “I’d like you to do the training for the litigation associates, because effectively we have no program.” So I really have my foot in two camps, the government contracts and litigation. Got heavily into training, and we really energized the litigation group training, enough that it got some attention of the management. The firm came to me after about a year and said that the management committee would like you to be the chairman of the training committee for the firm. So I started doing that my second year, and I have been doing it ever since. I am doing normal practice, things that I never thought I would get involved in. I have been involved in two major anti-trust cases, really running an active training program, and getting into a pretty broad variety of issues, doing a lot of defense and national security issues. Some in the litigation environment, but a lot of it is also – this firm does a lot of public policy work, handles a lot of issues on the Hill. I get to assist on that on defense issues. It’s a mixed bag. The variety –well, variety is the spice of life and there is plenty of spice in this place (laughs).

Q. How has the adjustment been from four years where they are rolling out the red carpet for you and hiding the paint brushes before you walk in the door to now being one among many people?

A. I had enough cautions before I retired about expectations when you leave, particularly as a general officer. In fact, when I was doing the transition work with – I went through the Army's ACAP – Army Career Alumni Program – they have got a couple of people there to help you with placements. One of them was looking for something for me in the management area, and he had some source that he had used, and he made the comment one day – he said, “This guy – really not doing very well with him. He said he would rather deal with a hundred colonels than one general.” I hadn't met the guy, but basically his experience was that too frequently, the generals who were making the transition expect life to be the same way. I had no delusions about that. I knew that life was going to change. I was ready for that. I knew in particular if I did private practice, and I came here as a partner – there are gradations of partners – but I knew that I probably would do some things that in some respects would be more suitable for an associate, but I did them anyway because I really needed the education, I needed to learn. I was prepared for that. I knew I had to come in here and roll up my sleeves and get to work. It is like when you go to the Pentagon to work on the staff there, you come a long way in the Army, been in the Army a few years, and you go to the Pentagon after ten years, think you have made something of yourself, and you are doing your own Xeroxing and taking out the garbage and doing the other things. Here everybody is on a first-name basis, senior partner down to secretary. That is the world we are in here. There are some Army guys in here who, to their dying day, will not call me by my first name. They just won't. I've encouraged them to. We are in a business environment, this is the way it is done here, and Tom Boggs is Tom Boggs and he expects

associates to call him, he expects the secretaries to call him by his first name. It's a different environment but I had no expectation of coming in and having – I share a secretary here. I share a secretary with an associate. That's the way it operates here. If I decide to change offices, if I move up to another floor, I cannot take my secretary. I take who is up there. It is a different environment. That is not an issue with me at all. But I'll tell you this – I will say this. I'm here, I'm in my third year and I was told by some people before I retired that you make two or three changes before you find a place that you are happy with, that is the right fit. I'm still here, because I like the people a lot. I was pleasantly surprised by the number of former military here. There are several retirees. Ty Hughes, who was one of our stalwarts in the acquisition community, is a part of this firm. He's a partner in the government contracts group. Rod Grandon, who is an associate – he was on active duty and served down at Tank and Automotive Command and Contract Appeals Division. Superb attorney. Right around the corner here. Four other JAGs came in – one Navy, three Army, within the last year. We have a bunch of people who have served in the military. The senior partner in the government contracts group – Vietnam veteran, served in Contract Appeals Division, spent five years in the JAG Corps, and was the founding partner of the government contracts group. I was warmly received, with a lot of respect from more senior people who know the military. I was really pleased and pleasantly surprised at the reception I got from the younger people. There is a healthy respect for the military. I wasn't sure how that would play with the younger folks, but it is there. They had some amusing comments. Some of these legal publications go to associates about – to get the inside scoop on the firm, and they collared a couple of associates here about the training program, asked them about a lot of things, but they asked about the training. It was kind of amusing how they said this guy Nardotti is the head of training, he was a general in the Army,



and when he says we are going to something, we do it (laughs). Lawyers generally – in the private sector, anyway – are notoriously bad managers. You can bring great strengths out of an environment like ours to an organization like this. You have to make the adjustment. This is not the Army. You don't treat people like they are in the Army in the same sense that there is a hierarchy and when you give some direction as a senior officer, certain things are going to happen. That doesn't happen in a law firm, not in a partnership. It's different. But the same things that work in the Army in terms of motivating people – when you pay attention and you are concerned about them, you try to mentor them and you show them dignity and respect, that goes a long way. I have dealt with people here the same way I dealt with people in the Army. I have many, many friends. Sometimes you can get caught up in this business environment and there are people – wonderful people here, but they get so buried in what they are doing that sometimes they need to be reminded about that. It's a pleasant environment. It's very challenging. It's hard. The hours are long, and you have to develop business. You have to bring business in, and that's hard. It's hard to do that, and it's a very competitive market out there. I'm doing fine for now. I'm very happy with the choice of coming to this firm. I think I was extremely fortunate because when I first came – Joe Reeder has now left the firm, he has gone to another firm – in the course of the first year, he spent a lot of time mentoring me. He was right down the hall. I was here, and he said, "Come on down. We need to talk about" this, that or the other thing that was new to you about private practice. I owe Joe Reeder a lot. The firm has been very good to me. He introduced me to a lot of people, and that can be a very difficult challenge, to become a known quantity. He inserted me, broke me into things. All I needed was an opportunity to demonstrate what I could do, and that's resulted in me being pretty busy. I still have a long way to go in the business development – I make no secrets about that. You learn something new

every day in business. This is not service to the nation, and I don't mean that in a derogatory way. It's just that the priorities are different. There is honor in service. No matter what else I ever do, I have that with me. I think as a result of that I understand priorities pretty well. There are people that grow up in this environment that know nothing else. The bottom line in a business drives what you can do and what you can't do.

Q. Do you still have any interaction with the JAG Corps?

A. Yes. I am invited to all the local functions. We are as busy now as we were then. Other than my travel, which made things very challenging, in terms of obligations, social obligations and otherwise – of course, we have things that go on in the firm. We get invited to Army and JAG Corps functions. We have to be selective about what we say yes to, but the JAG Corps has been very, very gracious about including us, inviting us to everything. We try to get to as much as we can. The wisdom is, when you retire as the TJAG, you really need to lay low for about a year in fairness to your successor, to let the successor really get established and not make it look like someone is hanging around too long. I mean, we were invited to everything the first year. We hung back and got more actively involved after the year had gone by. The Corps is – many, many people have been appreciative of the fact that we still stay involved. I will tell you this – I didn't go to the dining-in, just when I retired, but after that, I have been to each one of them. You really appreciate how much movement and change there is in the Corps. Just in the two and a half years since I have been retired – when I went to the last dining-in, a whole lot of new faces at the dining-in. It's important personally for me to stay connected. My wife said when we retired, "I think this is going to be harder on me than it is on you." It's ideal to retire in a place like Washington because you can stay connected. If we had gone someplace where we were out of the mainstream, it's a lot more difficult to stay connected. They are very good here about –

they do this with the general officer community in this area. When Colonel Moulin passed away, they personally called me and they do that for those kind of situations. So, yeah, I stay connected. What will happen is you quietly fade away as time goes by. I see it with some of the retired community – of the people who were senior officers when I was a lieutenant colonel and colonel. They stayed connected for a while, and then, as they know fewer people, they tend to go to other things. General Williams, though, Larry Williams and Harry Engle, who had retired back in the '60s, they stayed active until their respective deaths. I think that's really remarkable because it's not easy to do that, put on that old tuxedo one more time, but we'll continue to go as long as we are invited and there will be at least a few familiar faces.

Q. Thank you for your time, sir.

---

## **A**

Aberdeen · 180, 181, 202  
Altenburg, John · 151, 205, 213, 222, 224, 234

---

## **B**

Bednar, Dick · 72  
Bozeman, John · 115, 164, 209

---

## **C**

Clausen, Hugh · 88, 208  
Contract Appeals Division · 72, 74, 76, 147, 226, 239  
Crean, Thomas · 46, 96, 101, 104, 117, 159  
Cuthbert, Tom · 153, 210

---

## **E**

Extremist Organizations · 181, 201

---

## **F**

FLEP Program · 18, 45, 126  
Fordham School of Law · 44, 46, 83, 191  
Fort Benning · 18, 28, 90, 99, 102, 117, 119, 120, 122, 126,  
127, 132, 133, 135, 137, 138, 144, 151, 204, 227, 232  
Fort Carson · 16, 20, 23, 42, 52, 224  
Fort Hood · 95, 99, 102, 104, 110, 112, 114, 117, 119, 120,  
123, 126, 133, 144, 152, 159, 165, 176, 218, 230, 232  
Fowler, Joe · 138, 145  
Fugh, John · 46, 49, 51, 59, 114, 118, 152, 162, 175, 181,  
209

---

## **G**

Germany, 3rd Armored Division · 46, 49, 53, 96, 107, 114,  
209  
Gray, Ken · 155, 162, 171, 176, 211, 219, 222  
Griffith, Ron · 53

---

## **H**

Homosexual Policy · 155, 156, 181, 195, 200  
Huffman, Walt · 121, 151, 179, 213, 222, 224

---

## **J**

Johnson, Kermit · 34, 79

---

## **L**

Lederer, Calvin · 71, 175, 219  
Leeling, Gary · 96, 101, 104, 119, 159  
Litigation Division · 58, 64, 67, 71, 74, 76, 145, 152, 195,  
230

---

## **M**

Magers, Scott · 65, 67, 87, 88, 147, 149, 211, 236  
McKinney, Gene · 180, 181, 206  
Murray, Robert · 124, 145, 152, 162

---

## **N**

Nicolai, John · 119, 168, 169

---

## **O**

Overholt, Hugh · 114, 118, 208

---

## **P**

Patton Boggs · 235  
PP&TO · 18, 46, 64, 121, 168

---

## **R**

Rogers, Bernie · 22, 34  
Ross, Joe · 61

---

## **S**

School of the Americas · 127, 133  
Shelton, Hugh · 201  
Suter, William · 18, 114, 118, 120, 131, 145, 164, 182, 209

---

## **V**

Vesser, Dale · 50, 52  
Vietnam · 5, 6, 7, 8, 16, 17, 20, 23, 25, 29, 33, 36, 37, 38,  
39, 42, 45, 47, 53, 56, 82, 164, 233, 239

---

## W

War College · 61, 90, 93, 94, 137, 144, 145, 153, 198

West Point · 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 15, 16, 17, 22, 24,  
29, 38, 39, 40, 41, 43, 45, 49, 53, 64, 83, 138, 146, 154,  
218, 225, 232  
West, Togo · 155, 201