KEK: Good morning, my name is Karen Kalnins and I am a Reference Librarian at the Oklahoma City University Law Library. Today is Tuesday, November 18, 2008. Today I will be interviewing Judge Wayne Alley and we are sitting here in a study room at the University of Oklahoma Law Library and that Law Library is in Norman, Oklahoma. So, and this interview is part of the oral history project that the Oklahoma City University Law Library is sponsoring. As a part of that we are interviewing judges and attorneys throughout the state of Oklahoma. So, welcome Judge Alley.

WA: Thank you.

KEK: I was very pleased when you agreed to do this interview. So, thank you so much for your time today. What initially drew you to the law?

WA: Well… nothing. It’s a somewhat unusual answer. My ambitions as I neared the end of college were to do something academic, probably to pursue a Ph.D. in history, and see if I could find a faculty appointment at some reasonably decent place. But when I finished college in 1952, I had a 2 year military commitment through ROTC and 2 years later, and 2 years of maturing later, I returned to Stanford, which had been my Undergraduate School, to commence Graduate work; and I looked about at the Ph.D. candidates who had been at that program for years and years and years struggling to learn Greek and had ragged kids that they couldn’t properly take care of; and so forth, and I decided that I had better restructure my ambitions. Now, what happened with me could not possibly be duplicated today. So, I’m fortunate I’m back in 1954. I had been on a student-faculty committee, the Board for Athletic Control, at Stanford with a Law Professor and I became very fond of him. I thought gee, I don’t want to be a Professor of History. I can’t think of another attraction. I think I’d better simply warehouse myself for a while and determine what I want to do with my life. The only candidates would be MBA or then LLB. So I went to see Professor Hurlbut to learn that he was head of the Admissions Committee at Stanford. I explained my situation and he said “You’re in.” Now, I had been a superior student. I had been Phi Beta Kappa and graduated with great distinction, which is the Summa Cum Laude and all that stuff. So I think there was little doubt that I would have been admitted had I gone through the ordinary processes. The only condition on my admission was that I would have to take the LSAT just to complete the record, which I did in the middle of my first year at Law School. Well, my conversation with Professor Hurlbut was on a Wednesday and classes began on a Monday. So, there I am a Law student. And there I was all the way through Law School at Stanford which is not nearly as competitive, either in admissions, probably, or in the classroom as it is now. But it was a very demanding thing. Throughout Law School I wondered frequently what the hell have I got myself into here because I really wasn’t drawn to it. But when I graduated, I was offered a position as a Law Clerk in the State Supreme Court to a wonderful fellow, a Justice of that court, George Rossman. After completing that, I went into the private practice of Law in a firm in which my dad was a Partner. I just didn’t like it. I didn’t like the means of completing most of our work, of
which was negotiation. I felt like I was in an Oriental Bazaar trying to buy a rug or sell
one. I simply didn’t care for that. I did care a lot for my father and I didn’t want to
abruptly say “I don’t want to work with you, good-bye.” I think that would have been
immensely hurtful. But in those days, now we are up to 1958.

KEK: Now what year did you graduate from Law School?

WA: 57’

KEK: Okay. And what was the composition of your Law School class like?

WA: We had 120 students admitted. That was the 2nd to last year in which the admitted
class was not sectioned. We sat as a group. Then, of course, there were smaller numbers
in the elective courses and the various required courses offered at different times during
the year thereafter.

KEK: Now when you say sectioned, what does that mean?

WA: That the first year class, as was true here in OU and probably still is, broken down
into groups smaller than the admitted group. When I was Dean here, we admitted 210 and
had a handful of transfers and consequently we had 3 sections of 70+.

KEK: Okay, very interesting. Okay and when you graduated you said you went on to
work for your dad.

WA: Well, ultimately yes after working in the Supreme Court.

KEK: Right. Tell me about your time at the Supreme Court. What was that like?

WA: Well it was wonderful. The Justice for whom I worked had been there a long time.
He had a considerable reputation. I remember for example in my Contracts class we had a
case that Judge Rossman had decided and our Contracts Professor was so complimentary
about it he said “I wrote Judge Rossman a letter. That I very seldom see anything this
right, on the button like this and so forth.” So I was delighted to have the opportunity to
work with him. He was a very paternal guy. His system, if he had confidence in his Law
Clerks, and he had only one incidentally, was that the Justice and the Clerk would
initially take responsibility for every other case in alternation. So, in the cases assigned to
me, I would prepare an opinion for his signature and editing obviously. Then in the cases
that he took, he would not look to me for any assistance. So, I really enjoyed that. At the
end of the term there, I could turn to the Pacific Reporter or the Oregon Reports and see
there a number of things that I wrote, that were essentially unchanged by Judge Rossman.
A very heady experience for a guy that age. I had the greatest affection for him, as I think
most Law Clerks do.
KEK: What did you learn, what did you, what was the most important thing you learned do you think from him?

WA: Well, I learned that the opinion that one produces has to be defensible in a number of ways. It certainly has to be acceptable to the other Justices. It has to be strong enough and well enough supported so that it could stand as a precedent and wouldn’t draw any jeers or sneers from the Bar. And the cases that might draw jeers or sneers tended to be those in which a Justice had a strong personal feeling and got skewed maybe away from where the statutes and precedent would take him. And I say him; there were no women at that time. And put out something that really indicated nothing but personal preferences to outcome or as we learned in Law School, teleological. I’m sure that you see that a lot. So that was important, a defensible opinion. Also, relatively, in so far as Law writing can be clear, clear and simple and direct language, which I think was of assistance in all the writing I did subsequently. Those are the 2 things.

KEK: Okay very good. So then you said you went on after that to work with your dad?

WA: Yes and other partners.

KEK: And what, what was that experience like for you?

WA: Well, it was a small firm. Let’s see, there were 6 of us. I worked primarily with a partner who was the son of the other senior Partner along with my father. We had a variety of cases and plaintiff’s work for the most part. I didn’t defend any tort cases, but I did defend commercial cases. I had a very, very interesting case that doesn’t arise here in Oklahoma very much, but a timber trespass brought by the State Forester against one of my remote relatives. It turned out to be a very, very difficult case that went to trial. That was my first unassisted jury trial and that was a very heady experience. I had a good result. Then we did estate work. We did family practice primarily for people who were employed with our other clients. That is, we didn’t take much walk-in family practice business. Of all the areas of law I can think of that aren’t brand new, like environmental law, new compared with those days, family practice has changed the most. For instance the concept of divorce based upon fault which I learned in Law School, and the defense of the complainant in a divorce case having himself or herself giving grounds for divorce to the other party, so that nobody could get a divorce. Didn’t that make a lot of sense. That was before equitable distribution statutes. So the division of marital property was simply a discretionary matter with the Judge without any guidelines. Similarly there were no guidelines for child support. And it was probably a lot more interesting and fun than it is now where everything is much more rigid. But I don’t want to overemphasize that. I had some really interesting cases. Had one, which was the wonder of the younger bar there in which I defended the divorce and actually beat it. Now I could never understand why my client wanted that. It just was absolutely a mystery to me but that’s what he wanted, so that is what he got.

KEK: So he didn’t want to get divorced?
WA: That’s correct. That’s correct.

KEK: And so, he ended up not getting a divorce?

WA: That’s correct. But neither did his wife, the complainant.

KEK: Right. So, how did you manage that?

WA: Well, by attacking her purported grounds and as I said before divorce had to be based on fault, and he had not given her any grounds, and her grounds were just legally insufficient.

KEK: So they ended up just..?

WA: Locked forever.

KEK: Oh my gosh…

WA: That’s why they call it the good ol’ days, I guess.

KEK: Yes, and whoever knows what happened to that couple.

WA: Well, they were so strange, whatever happened to ‘em, it was strange.

KEK: Yes I’m sure. Now you said you did…

WA: Incidentally, when the fellow came into my office and he said the problem began with an argument between me and my wife that I shouldn’t build my boat in the back yard over the septic tank. (And I said to myself this is going to be good, and it was.)

KEK: It sounds like it. Now you said you did some jury trials at that point, what did you learn from doing those jury trials?

WA: Well, I was so young and green, I’m sure I learned a lot. I learned most from observation of much more experienced lawyers either with whom I worked or on the other side. Their vocabulary, simple words, simple sentences, eye contact, maintaining a sense of how the jury is reacting to what they are doing. And I’ll just say parenthetically later when I became a Judge, I was appalled at how poor most lawyers are at that. They just, they don’t have an emotional feeler out for the jury, how they’re going over let’s say with a jury. I observed the very best of lawyers were just constantly in emotional interaction with the jury and could adjust. If they had a sense I’m not going over very well, they could adjust.

KEK: How important do you think that is for a trial attorney to have that emotional connection?
WA: Well, let me open with this observation, that was the subject of a lot of conversation with a lot of other Judges when I was active on the District Court in OKC. It’s a rare case that is won by an attorney in the face of adverse facts. Very, very unusual. So the importance of interaction with the jury, the importance of good communication and simple sentences and words is the avoidance of losing a case that you probably should win rather than winning a case that you probably should lose. The latter is very, very hard to do.

KEK: Interesting, very interesting. So how long did you work for your dad?

WA: A year and a half.

KEK: And what made you decide to go elsewhere?

WA: Well, the lack of enjoyment with the practice overall. In those days, there was one international crisis after another. Boom, boom, boom. And I had mentioned that I had had a period of active duty from 1952-54. I retained a commission in the Army Reserves and secured my return to active duty by being recalled just with a couple of telephone calls. That permitted me the face saving device of coming in to my dad’s office and subsequently into my parent’s home with a piece of paper saying “jeesh, look at this, you know, I’m mustered. I’m recalled to active duty. Well…bye, bye.” That was principally a device to leave the practice I was in. I did enjoy the Army very much, my earlier service, which isn’t usual. I mean I really liked it. And after a short time in the Judge Advocates General Corps to which I returned with a change of branch, I discovered, gee, I like this very, very much. So I remained as a career officer. I still regard that as my career incidentally. Being Dean here and being a Federal Judge, those were wonderful asterisks, you know, but my career was in the Army in my view.

KEK: What did you enjoy most about working for the Army or working in the Army?

WA: Well, there were many things. These are not in order particularly. But in civilian life, if a young attorney wants to defend cases and then prosecute cases and perhaps instruct someplace and do some administrative law, be a Judge, it’s necessary to quit one’s job and apply, get a job elsewhere. In the Army, it didn’t work that way of course. About every few years, I would get a change of station and new orders to go someplace else and do something completely different. I really enjoyed that immensely. I was a Defense Counsel for General Court Martial cases, felony cases. I was a prosecutor. I settled claims. I had an appointment on the faculty of the Judge Advocates General School at UVA, which was a marvelous assignment. I was a Trial Judge of the Army Judiciary and subsequently became Chief Trial Judge of the Army. I was a member in 2 different appointments in the Army’s Appellate Court, the first level appeal in the Court Martial system. I was Chief of the Criminal Law Division in the Pentagon, which is not as extensive, but is sort of roughly analogous to the Chief of Criminal Law in the U.S., I mean in the Justice Dept. Then my last assignment was in Europe, I was the senior military lawyer of all services, the senior military attorney there, and was a bureaucrat. From that I retired.
KEK: What was your rank when you retired?

WA: I was a Brigadier General.

KEK: So when you first, you went into your dad’s office and said I’m going into the Army what was your first post, where was that?

WA: It was Fort Sill, OK. And, I must say after that assignment, if anybody had asked would OK be your permanent home? I would have said “You’re crazy.” Fort Sill itself was a very pleasant place with wonderful facilities but Lawton, OK in the 50’s and the surrounding countryside was pretty dismal.

KEK: And what did you do there?

WA: Well, I was primarily a Defense Counsel. And I did on the side, as most young officers did, provide personal legal assistance for members of the service and their dependents, to do estate planning and draw wills and do tax returns for them and settle landlord-tenant problems for example. That was fun, that was satisfying. Especially in that entitlement to legal services was just that, it was an entitlement without regard to a showing of indigency or anything like that. It just like you’re entitled to medical services from the medical corps if you are a soldier. So I did legal work for Generals and Colonels and right on down through Privates and that was an enriching experience for a young person.

KEK: What did you learn from doing that type of work do you think?

WA: Well, let’s start with being a Defense Counsel. This is going to sound immodest, but in a General Court Martial an acquittal is relatively infrequent. That’s not a criticism of the military because in the U.S. District Court for the Western District of OK an acquittal is probably even more infrequent. As a Defense Counsel, I plead out maybe 2/3rds of my clients and I tried the other 1/3rd of the cases and I got acquittals in half of those. So I had immense satisfaction in that and had to have fairly well developed trial skills to be able to do that. And thus, in that respect, I had the advantage of a period of private practice in jury trials in civilian life when my opponent counsel typically did not. Never did as a matter of fact. In personal legal assistance, one of the things I learned with respect to senior officers, they may be commanders of things or high level staff officers and so forth but they are very dependent on specialists when they get outside of their own responsibilities. I might have a colonel in there with some particular problem and he’s just hanging on, you know, every word, what can you do for me kid. And that was important in later life too when I was advising high level officers, to say my expectation is that they’re going to be following my advice in all likelihood. Because they don’t feel confident outside their own area of expertise.

KEK: Absolutely, absolutely. How does the military, the Court Martial system differ from the civilian system?
WA: Well, in a general Court Martial trial, from the moment the prosecutor stands up to commence opening statement, until the instructions are completed, it’s absolutely indistinguishable from civilian practice. The differences are in pre-trial and post-trial. In pre-trial, and I’ll confine myself to General Courts which are the felony level courts, the first step is usually a criminal investigation by the CID. The packet is presented to the immediate Commander of the suspect who has the option of referring charges if he wishes and if so, forwarding up the levels of command with recommendations until they reach an Officer who has the power to convene a General Court. At the time I was practicing, that guy, typically a general, had to receive a pretrial advice from the Staff Judge Advocate analyzing the case and advising whether there was enough to go forward on trial. Now, at the backend, when the Court Martial retired to deliberate, 2/3rds could convict and I’ve had civilian friends recoil in horror at that “You mean, a unanimous verdict was not required?” And the comeback is “2/3′s are required to convict but 1/3′d plus a fraction is all it takes to acquit.” In other words, if the prosecution fails to meet its burden, then an acquittal follows. So a hung jury is almost unheard of unless somebody flips in the deliberation room. A General Court Martial had to have at least 5 members. And so at that minimum number that would be 4 who would have to, you know since you rounded up fractions, would have to concur in a guilty verdict. Similarly as the numbers enlarge. I don’t think I ever had a Court Martial with more than 9 or 10 Officers. Well an enlisted accused could ask for enlisted members for the court, but that was infrequent. It’s fairly rare and I think most of them felt I’d rather take my chance with Lt. colonels than sergeants. The sergeants know my kind too well.

KEK: Yeah, and how did the jury pool get selected?

WA: Well, the statute says that the officer convening the Court Martial will select those officers, and enlisted members if those are requested by the accused, best qualified by experience, training and temperament. In fact, the Staff Officer G1, which in personnel like matters, runs a wheel just like anybody else. You know, the honor and burden of being on a Court Martial simply rotates and the panel selected by that process has to go to the Convening Authority General for approval, but I never really heard of any disapprovals. So it’s not random in theory, but it is in practice. And incidentally, well before I leave the back end of a Court Martial, after the findings and sentence, the legal advisor to the Convening Authority has to write an analysis of the case and based upon that the Convening Authority can disapprove the findings, if the findings are guilty. He obviously can’t transmute a not guilty finding into a guilty one. But he can with respect to a guilty finding either just reverse it or make a determination of guilty of a lesser included defense. And then a great deal of sentencing information is presented in this too and he can reduce the sentence, but cannot increase the sentence.

KEK: Well very interesting, I appreciate that because I think not a lot of people know about the differences between a Court Martial or a military court and a civilian court. So how long were you at Fort Sill?

WA: ‘59 and ’60 and then I went to Okinawa. And really a great experience. I kept extending there. I stayed there for 4 years. It was under U.S. administration at the time.
And there was in place there in addition to being Commanding General of the US Army in the Ryukyu Islands, the High Commissioner of the Ryukyu Islands. The same guy was a 3 star general and he had an apparatus working for him called the U.S. Civil Administration of the Ryukyu Islands that was basically the government. There was a native parliament or diet but anything they did the High Commissioner could undo or redo. Well, in Okinawa I was the Prosecutor and settled some claims. The High Commissioner lost confidence in his civilian staff in the civil administration which turned out to be from the standpoint of the Office of the Staff Judge Advocate a very unfortunate development because we had to review and make an independent assessment of almost everything they did which was a host of work and we were really overworked. And sometimes do original work. Like I was asked, well directed, to rewrite the narcotics and dangerous drugs laws in the Ryukyus because of over the counter drugs that were being abused by soldiers and made many of them ill and certainly affected their qualifications for duty. And I did the auto insurance law for the Ryukyus, which is again very heady for a Captain as I was at the time. Well, the Vietnam situation was beginning to warm up during those years 60’ to 64’. One lawyer in the Army, one judge advocate was assigned in Vietnam in 1960 and by 1964 there were 2. But that’s insufficient of course to mount a criminal case. So during those 4 years I was the prosecutor for cases that arose in SE Asia, almost all of them from Vietnam and I had a lot, but also a smattering of cases in the Philippines and I had one arising out of Laos and one arising out of Cambodia. Now in the Philippines we tried our cases there. In Vietnam and the other Indo-Chinese former countries we tried the cases in Okinawa because of the governments. We tried General Court Martial felony court cases in Okinawa, as the local governments did not wish us to do that much of an exercise of our sovereignty within their jurisdiction. So I would have to go down there with investigators and prepare a case and then take a bunch of depositions of local witnesses who couldn’t be expected to fly to Okinawa and then go back home and try the case. But that was sure fun. I had a lot of exotic travel and the cases in Vietnam tended to be more colorful. Very colorful indeed. Here I could fill up the day, you know, with war stories about those experiences.

**KEK:** What was one of your most interesting cases from Vietnam?

**WA:** Well the theft of a truckload, ah shipload, of cigarettes. I mean a shipload! The theft was accomplished in a very complicated way by very knowledgeable people. That was highly interesting. I had a neighbor in Okinawa who was the commander of a Special Forces A-Team, name was Herman Duerrwachter and I had done wills and other things for his principal NCO, Master Sergeant, I guess, Sergeant Dillinnder. Well the A-Team was doing whatever they did in Vietnam and returned to their quarters in Dá Nang at a party, invited all kinds of floozies and other people there. And Troy Dillinnder got quite a snoot full and came into the room where most of the people were assembled and said “Too noisy in here” and he rolled a grenade across the floor. Now subsequently he says “It was a dummy, I know it was a dummy, the live ones and the dummies have different colors and blah, blah, blah.” But his commander picked up the grenade, it exploded. He was killed. Another Air Force Sergeant was killed. And probably the cream of the crop of prostitutes in Dá Nang all got shrapnel in them. So that was a, that was an interesting case to try. Of course it was almost impossible to defend although Sergeant Dillinnder kept
insisting that from the color of it he knew it was a dummy grenade and that the wily Viet Kong must have substituted one for the other. Which is not, that’s not a very compelling defense. The CID lab at Camp Zama, Japan of course did spectrographic paint analysis and destroyed that defense. That was a somewhat difficult experience emotionally because I liked Sergeant Dillinder as a client in civil matters and I wasn’t a close friend with Hermie Duerrwachter, but we were neighbors and I saw him around, knew his wife and so forth. The toughest case I had in Okinawa, and I’ll try to condense this, was the beating death of a child, Paul. By a Lt. Nicholson who lived a block away from us in gov’t. quarters there. And Paul was the same age as my son David. They were 4 and they used to play in the playground together. I would... I had a maid, everybody did in Okinawa then. But she would go up to the playground. When it was time for supper, I would go get them and say hi to Paul and so forth. And the next thing you know, Paul is DOA in the hospital, beaten unbelievably. Well, his wife, whom he’d met in Colorado Springs and whose job of all things was with Shepard’s, only person I met in my life who could sit there and do that, was advised by her attorney that there wasn’t anybody with jurisdiction to try her and that was correct advice. She was not subject to Court Martial jurisdiction and there was no local court who could try her. So she had a free pass. Consequently, she insisted that she killed her son, Lt. Nicholson being the step-father. She insisted quite credibly but the CID, I thought, just did an absolute masterful job of circumstantial evidence, like people who saw different cars in the driveway at different times. People who walked by walking their babies and could hear particular programs on the TV coming through the windows, open windows in the house. It was an absolute mosaic of circumstantial evidence where I could prove that the stepfather did it and the mother did not. He was convicted and I never felt better in my life. But those cases stand out. There were lots of others that were very interesting. The case of the soldier who bought a girl on time, the time payment plan in Laos, with a little book of payment stubs. He embezzled some funds in order to make the down payment and on a surprise audit that was discovered. So, gee, he lost his equity in the girl who went back and lived with her mother and he got tried and sent to prison. That was kinda fun.

**KEK:** That sounds very interesting. So it puts a whole new spin on this bride for sale or you could literally buy one.

**WA:** Yes.

**KEK:** Just sort of on installment.

**WA:** On the spot.

**KEK:** Yes, yes exactly.

**WA:** And he wasn’t permitted to consummate the marriage until he completed the payment, so he never got around to that, unfortunately. Lost everything.

**KEK:** Lost the whole schmeer on that one. Well, Judge, how did the war in Vietnam affect your work at that time?
WA: Well, the principal effect is that it provided a lot of work. And we could easily have kept busy with merely what was being generated within the Ryukyu Islands. We worked a great deal of overtime and under a considerable stress. I don’t really believe in subsequent life I’ve had to work as hard until the first couple of years when I was appointed as District Judge, we had all this oil field litigation. It affected my work in well, I’d have to put together my observations in those years, 60’ to 64’ then I went back for a full year ’68 and ’69 and then I went back for several months in 71’. So I saw the origins and then the build up, so that we had an enormous number of troops there and then the way it kind of, I saw the bell curve as the numbers declined at the other end. And, you know, we have to start with this proposition, you know if you take the king’s shilling you go where you are sent and you do what you are asked and personal opinions about things are immaterial. But, I thought the war was a bad mistake. That is, that there was a war was a mistake and the conduct of the war was not being well executed. What do I know, I’m a lawyer, you know, not a high level commander. But it just seemed to me, that we missed opportunities and the principal one was that, I thought, that in view of relations we had, we the US with Ho Chi Minh in WWII, that with more adept diplomacy we could have made him the Tito of SE Asia. Which he subsequently became you know, but all those lives later. And ah, I did have the feeling and in frustration expressed it. You could probably take 10 Sergeants Major and put them in a war room and they could come up with a better plan for executing the war then General Westmoreland did. But General Westmoreland was succeeded by Creighton Abrams. He wasn’t there very long before I came to the end of my term. Abrams was a much more capable man. But, I lost friends in the war. And I just think it was a great American tragedy. But I was there.

KEK: Right, right you were there and you certainly served during that time. Now what was your next station post after Okinawa?

WA: I was sent to Charlottesville, VA to attend the year long course at the Judge Advocates General School. Subsequently, that same course results in the award of a Master’s Degree, but that was not true at the time. And ah, UVA, a beautiful place and I was with a class of 55 contemporaries and we had a wonderful social life. And I was just as happy as a hog in slop there. And I always did like school. And I wound up as the honor student there and so was asked if I would like to stay and teach. Which I did for the following 3 years for a total of 4 there in Charlottesville, and it was just idyllic.

KEK: Sounds wonderful. And after that, what, where did you go?

WA: I went back to Vietnam, ’68 to ’69. This time as a Trial Judge, which was, I thought, for a lawyer the best assignment over there because lawyers assigned to ordinary units and formations remained in place basically. Might do a little local travel. But the Judges, there were 3 and then augmented to 4, would fly all over the country trying cases wherever they arose because the doctrine was, you would try a case as far forward as could possibly be done. It’s easier to take a Judge and the Court Reporter up there then it is to remove all the lawyers and the court members and the witnesses and bring them to the rear. So I had a really wonderful overview of the country, the countryside. It’s a
beautiful country. And what was occurring in the war nationwide. We were very busy. I had, I think it was 130 cases in a year. And probably most were guilty pleas but with extensive presentations in presentencing because a lot were homicide cases. Later on as an Appellate Judge, I had the My Lai case. Well at that time I got so incensed when people, ignorant people, would say, well this Lt. Calley was plucked out of nowhere to be the scapegoat. The only guy ever tried for anything like this. Well I had 36 1st degree murder cases in 1 year in Vietnam. And just as a statistical fluke, 18 of them were soldier vs. soldier, a U.S. victim. And the other 18 were Vietnamese victims. And some of them were multiple deaths. Nothing like the numbers at My Lai. But we routinely solved, the CID solved and then in the system, we tried these long before Calley. Now the Calley incident occurred when I was there but nobody was aware of it until much later. I wasn’t surprised when it occurred. I remember my wife became terribly ill and I returned to Charlottesville for a couple of weeks and was asked to speak at a course on the law of war there. And said what leads to the atrocity type of case is that the soldier ceases to regard the Vietnamese, called Gooks or Slopes or whatever, as people with souls and comes to regard them just as objects. Just as you would target practice on a beer can. And boy was that ever borne out later.

KEK: So do you think that, that theory explains why there were so many homicide cases at that time?

WA: Of Vietnamese?

KEK: Of Vietnamese, yep.

WA: Well, there were cases that were founded in other things. A big quarrel with a prostitute on the price, you know. Where the guy says it’s gonna be so much to begin with and then she tripled it when we were done and I had a handful of those. I had a handful of disputes over drugs. Not very many at that time. But, yes I had a couple of cases of killings of Vietnamese through some warped sense of revenge or thrill killings. I had some of those. And one I remember especially, 2 soldiers would come to a rice paddy or some kind of field and flush the Vietnamese toward the other end of it. And then there was another guy up there and then would kill ‘em when they got there. Terrible things.

KEK: Yes, war does terrible things.

WA: It sure does.

KEK: What about those killings, those by Americans who killed other Americans?

WA: Well, that’s a good question, because I tell you there’s a pattern, there’s a package that was present in every single one that I had. And that was a weapon. Well, of course they had a weapon. Influence of drugs, alcohol or extreme fatigue. And a grudge. And put those together and the result is a dead body. And some were so… well some were of course as reprehensible as a killing right out on the street corner here, but some were so sad. I presided over a case in which an American sergeant came back from a 3 day patrol.
They had hardly any sleep during that period of time and they came to a trail intersection and encountered a group of Marines who were fresh. And the Marine sergeant started jeering at the Army sergeant about how the Marines were so much superior and in better physical condition. “Look at us and you’re no good and we’re great and blah, blah, blah.” And the next thing you know there’s a dead Marine. The sentence that guy got, the American army sergeant, was very temperate. But one that I remember and will never forget, a service unit of some kind wasn’t in the field actually fighting the war. It included a black fellow, who was not at all filled with resentment, grudge or anything like that. He was young man of very good will. And he was the one who tended to inspire people to do the unit party at Christmas and take the candy out to the school, just an absolutely, thoroughly 100% worthwhile guy. The practice in his unit was to give a soldier his birthday off. His birthday came, he drank a 6 pack. He had another 6 pack. The adjacent unit had a number of less socialized black soldiers who started after this guy “Uncle Tom, Oreo, you’re just a butt sucker for the whitey” and so forth. And they just kept it up and kept it up and kept it up and he finally had enough and he took his weapon and killed a couple of them. One cannot say I blame him, but certainly, they got what they asked for. And that, I thought, now that’s the perfect depiction, you know of the weapon, the alcohol and the grudge.

KEK: Exactly, exactly and then where one side just sort of provokes the other until…

WA: Yeah, exactly, exactly…

KEK: Until, as you said, you wind up with a dead body.

WA: And I had a case referred to as capital, although it was, turned out to be a life sentence where a soldier had a grudge against his captain, Captain Opalika. And he lay in wait with an automatic weapon and fortunately he too was all beered up or he certainly would have killed the captain because at fairly short range he let fly with a barrage of bullets. And he just stitched the captain’s right arm right off. The captain got medical assistance, subsequently a prosthetic and was doing you know pretty good under the circumstances. But at the trial I will never forget this, the prosecutor brought the captain up to the point of the shooting, said “and when you fell did you see anybody with a weapon in his hands? Yes, I saw Specialist so and so. Is Specialist so and so present in this room? Yes and he pointed out with his stump.” That’s forensics of a very high nature.

KEK: Absolutely. It sounds very dramatic.

WA: It was.

KEK: Now tell me about your involvement in the Calley case.

WA: Well, I’ll have to quickly go over a couple of other experiences. From Vietnam to a really enjoyable year at the Army’s Command and General Staff College at Fort Leavenworth. And then because I’ve been in Vietnam, I’m entitled to a little payoff, you
know. So the Army sent me to Hawaii to be the Military Judge out there. And that was a 3 year assignment, but unilaterally it could be extended to 4. And gee, I’ve got a kid in high school, middle school, elementary school. They’re just, they’re ever so happy in Hawaii. I loved Hawaii. It just grabs…I wasn’t busy either. I mean 2 or 3 afternoons a week I could probably go to the beach. Well, I was there a year and ½ when the phone rang and it was a friend who was the Administrative Officer of Army’s Judicial system. And he said the Calley case has finally hit the court of military review for Appellate disposition. And a lot of guys in the 12 member court have had something to do with some My Lai case, if not Calley’s then somebody else’s case, and they would be unsuitable for dealing with the Calley case. So then, and frankly there are other Judges that have just been put on the shelf there, you know. And the Judge Advocate General is really unwilling to entrust this case to some others. So would you, would you be willing to take this by analogy to the Federal system, by designation? You would remain in your assignment in Hawaii. We’ll send out the record of trial. You can start working with it and then you can return for conferences and oral arguments and any other thing that would, in your view, be worthwhile for your coming back to Washington for a while. And I said sure, I’m underemployed here. In fact, I looked for… I went back to Vietnam from Hawaii. I went to Korea from Hawaii just to have things to do. So the materials came and a lot of them didn’t really require any study, but they came in 2 of these big gray mail sacks. And I duly started going through the transcript and looking at exhibits and dictating notes. And the phone rang again, same guy, my friend Colonel Tom Jones, and Tom says, “this situation has been reviewed and the Judge Advocate General has decided this is a controversial enough case as it is, gee the press is all over us and we just, we feel uneasy about having you do this part-time by designation. And if you are going to do this case it would entail a transfer to Washington from Hawaii and a curtailment of your tour from 4 to 2 years.” Then he said, “now Wayne,” and we’re dear friends, I worked for him at Okinawa, “Wayne, it’s entirely up to you. If you decide not to do it, no prejudice, no one would think the less of you. There wouldn’t be any adverse consequences if you said no.” And I said, “bullshit, I know an order when I hear one,” you know. So, I went to Washington and joined the Appellate Court. Actually, I was there on the Appellate Court from ’72 to ’73. Then I went to the War College from ’73 to ’74 and then back to the Appellate Court from ’74 to ’75. It was in that 2nd year that we actually got the opinion out and decided the case. Of course it went through all kinds of other courts. It went to the U.S. Court of Military Appeals whose name has since been changed, then a Habeas Corpus review, and a Court of Appeals review of that and a Supreme Court Cert denial. But it all came back to that initial Appellate review basically. And of course, there were many, many other cases that I had at that same period of time. It wasn’t a 100% devotion to the Calley case by any means.

KEK: Right.

WA: And that was fun. That was, let’s say, a little harkening back to days as a Law Clerk in the Oregon Supreme Court, to be an Appellate Judge.

KEK: How difficult was it to render that opinion, that Calley opinion for you? Or was it difficult?
WA: Well, I didn’t think it was any more difficult than any other case in the resolution of each issue. It was more complex only in the sense that there were more issues. But you know if you have, it’s just like the trial of 5 successive cases. It’s more work than trying one, but each little subdivision is not any more difficult. And of course I was aware of the scrutiny that that case had drawn. That was subjective pressure. But that had nothing to do with the inherent difficulty of the case.

KEK: And how was your role, or what do you think is the difference between being a Trial Judge and being an Appellate Judge because you had been a Trial Judge for a while and now you were in the role of an Appellate Judge? How did those roles differ?

WA: Well I was talking about that subject with another fellow on one of the panels on which I sat. A guy named Jim Mitchell who was kind of an interesting personality. And I said “you know being a Trial Judge is a lot more fun than this Jim.” And he said “well of course it is, this job is like reading about the circus.” And I thought, he’s got it. He’s got it. I as a Trial Judge had a great deal of interaction with the attorneys. I enjoyed ‘em very much. I lived on a military post. And had all of that pleasure available, the Officer’s club and military neighbors and so forth. In Washington, I just lived in a house out in the suburbs. That has nothing to do with the work, but it made it somewhat less appealing. But, you know, it’s the difference between good and better. I thought that being an Appellate Judge was a good job. I enjoyed it, just not as much as a Trial Judge. Just as, in later life, when I was a U.S. District Judge here, I went over to Denver a number of times and sat by designation. And that wasn’t as good an experience as trying cases.

KEK: So in your mind, it’s, for you at least, you would prefer to be a Trial Judge?

WA: Yes, oh yes, hands down.

KEK: What kinds of things did you learn from being a Trial Judge?

WA: Well, this can be, I have to say this, it’s extremely immodest, but I was a very, very good student in early life and remained on top of things. I had the same experience as a U.S. District Judge and as a Military Judge. I have to accept and live with the fact that there are a lot of lawyers who aren’t as swift as I was. And it was just a matter of trying to get into a communication with them when there was a barrier of some kind, ignorance of the law or poorly developed skills or whatever. And that I had to learn to swallow that frustration and live with that. Also as a Trial Judge, of course, everybody has to learn the virtue of patience and it can be sorely tried and stretched. You have to learn to avoid the temptation of wishing to leap over the bench and take over the trial and try it. Every Judge has experienced that over and over again. Learn to be comfortable with the relative passivity of a Judge verses the activity of the lawyers. But a positive was not really caring how the thing came out as would a counsel in the case. And especially let’s say in a big civil case on a contingent fee. My gosh, there’s a real pucker factor there. But for the Judge, well, so what, you know. I don’t care how it comes out. So I enjoyed that very much. I did. Another thing I enjoyed about being a Judge at both levels is that I could go
home or among friends could talk about my work. When I was representing people I couldn’t of course. That’s a burden.

KEK: Absolutely, absolutely. Well Judge Alley, I think we are going to stop the recording now and we’ll continue on here. I see we’ve gone way past the ½ hour. We’re into an hour. So we’ll go ahead and stop here.

KEK: Well hello this is Karen Kalnins again. I’m a Reference Librarian at the Oklahoma City University Law Library and this is going to be the second part of the interview with Judge Wayne Alley. It is still Tuesday, November 18, 2008 and the time is about it’s about 20 min. to 11 in the morning. We are still speaking here in Norman, OK at the Univ. of OK Law Library. Well, welcome back Judge Alley. The first part of the interview was very interesting and I think that we left off with your service as an Appellate Judge in the Army. What did you do after that?

WA: I was appointed the Chief Trial Judge of the Army and at that time that was an extensive system. It’s not so much anymore. The Court Martial business has been reduced greatly. Primarily because it’s a volunteer rather than a drafted Army. The conduct of the soldiers is different and better. But there were 55 Judges counting myself in the Army’s Trial Judiciary at that time and of course stationed all over the world. I enjoyed that position primarily because I could send myself places. Places I’ve never been before and try cases, in Panama, for example, I enjoyed that very much. Had good friends down there. And I’m just as happy as I could be in my little office and running the Trial Judiciary. After 7 months then I received a call that hey, this is too good to last, you’re being reassigned as Chief of the Criminal Law Division in the Pentagon. I had not previously worked in the Pentagon and had regarded it as a place of extreme high tension and uninteresting work and long hours and so forth. And indeed, it had been for Judge Advocates during the regimes of some of the Judge Advocates General. But when I went there, a new fellow was appointed as we call it, TJAG, the Judge Advocate General whom I had known in Hawaii. And just a marvelous man, gosh, I enjoyed the way that he operated. Which was relaxed and to the extent possible, everybody gets out of here at 5:30 p.m. And if you can’t do your work within the allotted day well then maybe we’ll have to get a little more help or something like that. He was a very interesting guy in the breadth of his reading and his interest, his dad was one of the Chiefs of Staff to President Eisenhower. His dad was a general also. So that, let’s see, I was there from ’75 to ’78. I thought the office was primarily reactive, putting out fires, things that happen here and there. There’s not too much satisfaction in that really. Well, one of the Articles of the Uniform Code of Military Justice is to the effect that the practice in a General Court Martial will be as similar to practice in a U.S. Court as is feasible to include the Rules of Evidence. The Federal Rules of Evidence, of course, had been promulgated years before I went there in ’75 and the Military didn’t have a Code of Evidence, although we had some instructional material basically. But we were almost a common law jurisdiction with respect to that. It just, it just happened on a rotation. I wasn’t elected to it or anything like that, but I became the Chairman of Joint Services Committee on Military Justice, which was supposed to be kind of a law revision Commission, but it had been years since it had done anything. I suggested that we form a working group and develop the Military Rules
of Evidence which turned out to be a very satisfying project. It was successfully completed. And it sort of transformed the Joint Committee. They became much more activists after that. Then, there were some instances here and there of commanders or maybe even senior judge advocates perceived as improperly interfering with defense counsel in the performance in the defense function. General Persons, the Judge Advocate General and I had a conversation about that and he said, and I was very encouraging, that we separately organize the defense counsel into a Trial Defense service. So that their reporting system is not through the normal chain of command or through any local office of the Staff Judge Advocate. In the military that is known as a stove pipe, which goes from the field directly up to somebody in Washington. So I was in charge of planning for that. That turned out to actually have a great many administrative advantages that we probably didn’t foresee when it was finally put on the ground in ’78. One administrative advantage was illustrated by this; there was a situation that developed at one of the installations in Europe in which a lot of counsel were necessary. So that the Trial Defense service could just marshal its own personnel assets and provide that, rather than the local JAG office having to beg and plead and get people to come on temporary duty and so forth, out of the hide of somebody else’s office in the field. So that worked out well. And then the training function was much easier with the Trial Defense service. It wasn’t a service in which an officer would go permanently. It was just an assignment, that once in that assignment, was insulated from outside pressures. So that worked out well. And there were a couple other things that were done in my 3 years in the Pentagon. I had many dear friends from years before working there; you know we had lunch together. Something else happened at the Pentagon, I know you earlier said off the record you weren’t interested in personal lives, but there was an officer named Paul Dommer, that I knew there. He was quite a bit younger than I. And I would see Paul and his wife at areawide social functions, the JAG picnic, the annual JAG ball and so forth. And I thought, gee, his wife is really something. Well, one day I’m in the Pentagon returning with a guy who worked for me from lunch back to the office. A little electronic gurney is scooting through the concourse towards the infirmary there with a sheet over a body. And you know we respectfully stood as it passed and so forth. Well, geesh if it isn’t Paul Dommer. A year passed by and his widow began to attend things. I was divorced and attended things. If I want to needle my wife, I just say the pressure of these other interested women was just so great. They demanded that we marry one another. Nothing else would be satisfying you know, within the JAG corps. So we met and got married under those strange circumstances, of the death of Paul at the Pentagon gym. Instant heart attack. Instant heart attack, poor guy.

KEK: What a wonderful story though, what a...

WA: We’ve been married 30 years now.

KEK: Oh my gosh…well see sometimes strange circumstances…

WA: Yes.

KEK: … can lead to a lasting relationship.
WA: Yes.

KEK: What do you consider your greatest accomplishment while there at the Pentagon? I mean, you did so many things, you wrote the Rules of Evidence, you…

WA: Well I had a working group actually do that, but supervised that…

KEK: Right, right.

WA: I think that, I think that was probably one of the 2, I had mentioned the Trial Defense service. Certainly those were the most time consuming. The rest of the actions in the office were just little individual problems of a discrete nature. We would just take care of it in a couple of days usually.

KEK: And do you think having those Rules of Evidence for Military Courts do you think that helped or hurt?

WA: It helped a great deal. It helped in one respect that the members of the Joint Service Committee and the working group anticipated. Even though there are codified Rules of Evidence, there’s a great deal of case law in amplification and explanation of them and we had grown so far distant from evidence practice in District Courts, that cases that appeared in the Federal Reporter were not very helpful for us anymore. And since we now have essentially parallel rules with some military wrinkles and also you know in the Federal Rules there is no coverage really of privileges but we did that as part of the Code itself. But we are now, we’re now in a much better position with respect to utilizing Federal sources. So that was good. Also the specificity of the Rules has been helpful in trial practice. I don’t expect a lawyer just to jump up and say I object Rule 301 or anything like that. But nevertheless there’s a text to which we can all refer and make rulings on that basis as opposed to what was earlier. The military practice was essentially all case law. So that worked out very well.

KEK: Sounds like it, that sounds like it. So after you were done at the Pentagon, what did you do?

WA: I was newly married. I think I, I thought, I’m nearing the point when I’ll retire and do something else. As much as I enjoy the Army, I love the military practice. But one is subject to a pretty early mandatory retirement, early in life compared with other professions. And I thought I’ll, yes, I’ll start looking around. I was a colonel at the time. And then, another one of these phone calls came along. We want you to go to Europe and be the head lawyer there. And we need you there in 2 weeks. And as I say, I’m a newlywed I’ve been married maybe 6 mos. and have step children, a dog as well as a new wife. But that was a General Officer position and of course I’m going to go. Now I was assigned while I was a colonel and promotion to be a general is a separate action done by a separate system. But I was pretty sure they were not going to send me over there you know and then humiliate me by passing me over for promotion. So that came along and
that was my last assignment. That was ’78 to ’81. Well my wife grew up in Germany. She came to this country as a 20 year old and she met her deceased husband Paul when she was working in Washington and he was a student at Georgetown Law School. They got married in Germany and Paul studied in Frankfurt for a while for a Master’s there. Marie had a brother there and a mother, she had already lost her father. Scads of cousins and so forth. So of course she was just overjoyed at an opportunity to go back and spend a tour there, which we did. I have a much more distinct recollection of it just on a personal basis. The travel and my in-laws and so forth than I do the business. It was a large enough operation so that I wasn’t personally involved in too many actions. It was just a question of reviewing whatever happened within my little bureaucracy there. A couple of things engaged a lot of personal interest and were major actions, but that wasn’t my typical day. It was just sitting there and saying yes, no, yes, no…

KEK: So it sounds like it wasn’t one of your most challenging positions?

WA: Far from it. The usual conception is the higher you go, the harder it is. But that was, I mean a pretty easy situation. And well you know, well you might ask if you had such reservations about things like the Vietnam War, why were you still in the Army? Well, I had not only reservations about the grand strategy of the U.S. in Europe, but I thought it was absolutely inane and that was we had 4 Divisions and a couple of Brigades over there and with this we were going to stave off the might of the Soviet Union and its satellites? Which incidentally in retrospect, probably could have been done, because they had a very hollow and ill-equipped and ill-trained Army as we found out. But we couldn’t whip up on the Russians with assets in Germany and consequently the reinforcement plan was that 4 additional Divisions would come from the United States to Germany. The soldiers would fly over with just the clothes on their back and just their personal weapons and pick up a Division’s worth of equipment in warehouses in Germany in what was called the POMCUS, the Prepositioned Overseas Material Configured in Unit Sense. The soldiers walk in one door of a warehouse filled with their tanks and artillery pieces and protective clothing and all and they go out the other end and fight the war. And I tell you I thought, this is the most ridiculous thing I ever heard of. The warehouses are going to be the subject of constant air attacks and missile attacks in the event of a Declaration of War. And in Germany there was a very large, in West Germany, a country that no longer exists of course, but there was a very large 5th column, very large. You know, I could just see us trying to drive tanks out of one of these POMCUS warehouses over the bodies of all these protestors lying down in the… so I thought, and I had to devote a lot of attention to it, because of real estate acquisition and stuff like that and the procurement of necessary things to make that work. So I decided early on I’m simply going to ignore that except to the extent I have to participate in things and enjoy life. I still was of a mind to retire soon, which I did at the end of that assignment in 1981. What would be fun? Well, an academic would… I’d like to have an academic appointment of some kind. So through correspondence I was able to set up interviews and I think it was 10 Law Schools perhaps. In January of that year, well we’re still living in Heidelberg and I have 6 months to go. My poor wife is absolutely beside herself because nobody ever retired from here to get a job in the U.S. You have to be in the U.S. to get a… and I said good gosh, have a little confidence. So I went from place to place interviewing and had a very good
reception here as should have been the case because I was corresponding with a Professor McNichols. After we exchanged basically some form letters, I was informed by a mutual friend, well heck, that’s Bill McNichols, you know he served with us in Charlottesville. I said well for heaven’s sakes I mean it’s not an unusual name but I just never made that connection. I didn’t know he’d gone into the Professor business. So who is Bill McNichols here, but he’s, he’s the head of the Search Committee. Consequently I got a very, very good reception here. I enjoyed the faculty and the interviews and called back to Heidelberg and said if I’m offered a position here I’ll take it because I like it here a lot. That’s what happened. I came here in ’81 as Dean and remained in that position until ’85.

KEK: And what did your wife say about moving back to the States and moving to Oklahoma?

WA: Well, we had been for a while. I took her out to dinner and she said “Wayne, are we going to die here?” Draw your own conclusions.

KEK: Right, right.

WA: Friends reassured her, friends that we made here as I said earlier. You know we didn’t know anybody here. Other people came here who were similarly unimpressed with this as a place as opposed to the University which was fine and discovered, well, it grows on you. And that’s happened. Now we can’t conceive of living anyplace else and we love it, we love it here. But it took a couple of years for that to happen.

KEK: Very interesting. Well tell me about the Law School when you came in ’81? What was the situation like and what were your goals as Dean?

WA: Well, that’s a real irony there. The President of the University at that time was a man name Bill Banowski who was a prodigious money raiser. Not to the extent of David Boren, but then the money wasn’t quite present in the same amounts. This is 1981. We are in the midst of an oil boom. All state agency budgets have been increased and increased and increased for several years since the mid 70’s. I was attracted to apply here because in the AALS Book on open positions, the Deanship here had the usual stuff, you know. Publication which I had done and scholarship, but it said a “record of significant achievement outside of academic life.” Well that’s very unusual because ordinarily a Dean is… comes right from Faculty ranks. So I asked Banowski about that and he said “Wayne we’re constantly getting new money. We’re just awash in new money and my expectation of the Dean of the Law School is going to be the intelligent good expenditure of new money on worthwhile programs.” So gee, that, that just sounds great. That’s a pleasurable challenge. Well, I returned to Heidelberg with a scheduled second interview here a month or so later. And along came a telegram from President Banowski that said “let’s just terminate the remainder of the search and forget the short list. I’m offering you the position if you want it.” And I thought, gee, that’s really flattering. So I accepted the position. I found out months and months later that there were 3 of us on the short list and the other 2 guys withdrew. So much for merit selection, you know. But that’s okay, that’s life. Sometimes the fates work in your favor, sometimes not. Now for that year, ’81 and
’82, I indeed had had a budget that permitted doing some innovative things, both with respect to physical plant and programs and library. And this was kind of the dawn of the computer age, so much of our planning was the introduction of much more automation and more computer training and so forth. We had about 3 computers here in the Library when I came. The development of the budget in ’82 for the following year, similarly, resulted in a budget of a lot of new money. I can’t remember how much. Well, July 5, 1982 the Penn Square Bank collapsed and immediately the energy industry collapsed with it and the banking system in Oklahoma. For the following 3 years when I was here, each year there was a significant budget cut. So instead of intelligently spending new money I wound up with a budget 20% less than I started with. That resulted in cutting back on Library acquisitions, not filling Faculty lines, a lot of economies that were unpleasant. No, no salary raises for 3 years for anybody. I think everyone likes to leave a position thinking well I… I did something. You know, as the military Rules of Evidence, in Europe I was partly responsible for getting the NATO Mutual Support Act through the Congress and that was kind of my monument there. And the only thing I can say about working here at OU for the 4 years is, well when I left, I guess it could have been worse. And that’s not deeply satisfying. So when the opportunity came up to become a Federal Judge, why it was doubly attractive. Obviously attractive in and of itself, even though it did result in initially quite a cut in compensation. I thought I’m sick and tired of telling Faculty members every year, well there’s nothing for you once again. Yeah, I really came to have a deep appreciation for the Law School and the University. I loved the place and so forth, but it just wasn’t satisfying.

**KEK:** No, it sounds like it. What did you enjoy most here about your time here as Dean?

**WA:** Well, students. I taught some. Being around students is just a rejuvenating experience and then faculty in a different way. When I worked at the Pentagon, I used to tell friends who were not in the Army that one of the great satisfactions of the Pentagon is, if you appreciated seeing ludicrous things, if you had a sense of the ludicrous it was a paradise. About half of what happened was absolutely ludicrous. And with respect to the faculty here half the time I would think to myself well I have to keep a straight face about this, but this is absolutely ludicrous. It was very entertaining. It really was. My 2 predecessors as Deans just, they had no interest in entertaining. Their wives had no interest in entertaining. One of them in fact was attending school here and she wound up as the Judge who had Bill Clinton’s case over in Arkansas. Well, my wife was an Army wife, you know and a senior officer’s wife, so she was used to entertaining a lot. And we did so, both with students and faculty. I think our faculty had a division which is very common. The research, publication oriented, theoretically inclined faculty vs. the we are here to train lawyers faculty. And I don’t just mean clinical subjects, but I mean those who even in the ordinary classroom work are more directly motivated by the desire to train. Some personal disputes arose out of this and so forth. I was at an AALS meeting when somebody came up and said “gee I understand the financial position of OK is desperate. What can you do for faculty morale under those circumstances?” And an answer just popped out and it, but it was right. That I said, “free booze and shameless flattery. That’s what you can do.” So we had a lot of parties. I tried to schedule them soon before faculty meetings, thinking you’re not going to find people having a drink together
in a nice conversation and then get into some kind of a bitter dispute. They may well be in a dispute, but the mood of it is going to be different if they’ve been in a social setting before that. The shameless, flattery part, I thought is just like with a politician. I mean you cannot lay it on too thick. The point never comes when a professor feels, “I think he’s pulling my leg.” It’s never there. I was out in Southwestern University Law School in Los Angeles as part of this interview process that resulted in being hired here. And I was chatting with a woman who was in her 30’s I guess, who said rather pompously, “oh, I certainly hope you find a faculty position since being a Law Professor is the ultimate ego trip.” And I told her “have you ever tried being a general?” There’s no comparison.

KEK: Right.

WA: Between the 2, but I…I thought about that later here that yes being a faculty member is an ego trip and the ego is an important component of the makeup of a lot of faculty members. And it just has to be catered to. And since we were in lean times it was more important than ever to do that.

KEK: Well that’s a very astute observation, very much so. Now you said when you were interviewing part of the requirements were, were outside research or publications.

WA: Yes.

KEK: So had you done a lot of publishing while you were in the Army?

WA: Well not compared with a professional academic. But I had published 5 articles, which is unusual for an Army officer. One of which was in the OK Law Review, that’s casting your bread on the waters. That came out in about I think ’61. So I probably in terms of learned journals published less than most people, but on the other hand I’d had the assignments on the U.S. Army Court of Military Review and had published reams of things, difficult things. And so that was available too for purposes of appointment and the tenure committee and so forth. I mean my articles would be a little pile like that. Opinions would be a pile like that.

KEK: So they can take both of those into consideration.

WA: Sure.

KEK: So how was it then that you got appointed to Federal District Court?

WA: Well, so far I’ve been telling you about flukes of fate. Okay, now here’s another one. A new position was added to the District Court for the Western District of OK. And Senator Nickles, being the only Republican senator here at the time, by custom got to make the recommendation to the President through the Justice Dept. for selection. He appointed a committee to assist him in that respect. And he was very, he was very upfront about this, he said I’m a businessman from Ponca City. I don’t, I have my own lawyer but I don’t know many lawyers. I don’t know anything about lawyers. So his committee was
what you’d expect of male and female and black and white and academic and practitioner makeup and lawyers and a few laymen and so forth. Well along comes the phone call and it’s from Judge Ralph Thompson. Gee, he said “we have this vacancy and we’re not, you know the, the sitting Judges, the 4 of us, are not too happy with the quality of the applicants. I want to ask you a question, what’s your party registration?” “Republican” but I went into this big song, “but I’ve never been active. I couldn’t be in the Army, you can’t and I’m not going to be an active Republican at OU since everybody here’s a Democrat and so forth.” He said “I didn’t ask you that, just what’s on the paper.” I said “well, Republican.” He said “well we, we would really appreciate your applying.”

Later, I found out that the sitting Judges were all together at lunch or some informal setting and kind of deploring, well, gee we wish we had a little better applicant pool here. When Judge David Russell said “God, you know I just, I wish somebody like Dean Alley would apply.” And I knew Judge Thompson well, I didn’t know Russell well at all. And Thompson said “well I’ll call him” and he did. So, I told him “in 2 days I’m going to Hawaii for a vacation that’s virtually prepaid and during that 2 weeks from what you tell me the period for receiving applications will have expired” and I said “I can get something done tomorrow and mailed to the Chair of the Committee but I can’t interview until I’m back from Hawaii.” So in the application letter you know I said I realize that there are these time periods that have been established and obviously I would not at all be chagrined if the response to this was you’re out of time. I, never before the last 2 days, I never really paid any attention to this opportunity. So when I got back, I had a message that I was to meet with the Committee that day. And so I quickly shaved and went before the Committee. There too, there were some fortunate things. There was one member of the Committee, a very prominent attorney down in Frederick, OK, who was a reservist in the Judge Advocates General Corps and I’d known him in that respect for a long time. I had a couple of other acquaintances there, I didn’t realize they were on the Committee. I had taken it as a goal here to do more for African American students, because it just seemed to me that psychologically they were a beaten down group. You know, we’re not getting job offers, we’re not this, we’re not that and so on. So I met with the BALSA Chapter at our home, come to think of it, after a nice meal, and said “I can find some money for your organization of a Frederick Douglass moot court team. And I can find some money for BALSA to sponsor an enrichment program for the Law School as a whole.” I said “you know I’m an outsider looking in, but it seems to me that your position here is going to be vastly improved if you take it upon yourself to do something for the Law School and something positive for yourselves like success in the Douglass moot court.” Well the first person they got for the enrichment program was Eleanor Holmes Norton. It was very well attended. That was before she was a delegate to Congress, but she was an EEOC head at that time and they had a couple of other all stars here. The Frederick Douglass team finished 2nd in the region the 1st year they participated, the 2nd year well then they won the national title. Alisha Haynes was one of the members of it.

KEK: Oh you’re kidding?

WA: Yeah I’m not, so we called up the Governor’s office and there was a Gubernatorial proclamation of this is BALSA Day and they had the guys up there in the Governor’s
office to hand them a plaque and all this sort of thing. It was a big deal. It was fun. Well, to bring that back to the Committee that’s meeting there, there were 2 black members and they had heard about these efforts to improve the lot of or elevate the morale however you want to put it of the black students and they were very appreciative of that. So they were real boosters within the Committee.

**KEK:** That’s wonderful. So they really supported you in terms of your appointment, yeah.

**WA:** Very much so, yeah.

**KEK:** And so…

**WA:** Not to mention my friends

**KEK:** Well, how could you go wrong?

**WA:** Well I was a minority of the Committee, but it all worked out.

**KEK:** It did, it did and then what year were you appointed to the Federal bench?

**WA:** 1985

**KEK:** And you had to go before the Senate as well?

**WA:** I did yes.

**KEK:** And how was that process?

**WA:** Well, another little war story. On the Judiciary Committee was a Senator Metzenbaum and he seemed to despise the Dept. of Defense and everything about it. Before going before the Committee the nominees were briefed within the Justice Dept. and I went in with 2 other people and the woman who briefed us, an Assistant AG said “now you, you’re not going to have any problem,” he was a state trial Judge in TN. “And you,” a U.S. Attorney in New Orleans, “you’re going to have a problem because you prosecuted Governor Edwards, a prominent Democrat and he was acquitted, you lost that case, you’re going to be confirmed, but you have to expect to take some humble pie.” Because the rule is when you shoot at the King don’t miss, that’s the rule. “And you, everything is going to turn out alright but Senator Metzenbaum can be a very sarcastic guy and just keep your temper and answer as sweetly as you can under the circumstances for whatever he comes up with.” Well with the other 2 guys you know I’m sitting there the questions are all love fest questions, Strom Thurman is presiding. And the time came, the question was asked, “has anybody appeared in opposition to any of these 3 nominations?” Well nobody was there but as is true in all congressional hearings not many Senators show up. Senator Metzenbaum was not present but the doors keep opening and closing and I thought the next guy that walks in there is going to be
Metzenbaum. That didn’t happen. Okay. The experience is all over. There was absolutely nothing to it. I went out into the corridor and a young man, by my lights, hustled up, I mean he was sort of almost running. And he said “are you Dean Alley? Well I’m so glad that I caught you before you left the building.” He said “my name is Larry Korea and I’m a graduate of the OU Law School and I really wanted to meet you.” I said “well, Larry how nice of you to come up and introduce yourself.” I said “are you working in the Capital?” And he said “well, yes I’m the Legislative Assistant to Senator Metzenbaum.” And he said “well, when the nomination was made I went into the Senator and I said look at this, isn’t this wonderful the Dean of my Law School is nominated.” And Senator Metzenbaum said “well, I certainly want to meet him, that would be wonderful.” And then in the corridor, Larry said “I’m sorry but another committee meeting intervened and Senator Metzenbaum is not available to meet you and pay his respects but he wanted me to convey his great satisfaction that you had this nomination.” All day long I’d been sweating bullets about this from the briefing in the morning until the hearing in the afternoon. So there too, life is a little bit fluky, isn’t it?

**KEK:** That’s right, that’s right and you see how your OK connections saved you from Senator Metzenbaum.

**WA:** Yeah, well, as I said it would not have been difficult anyway. Well it would have been unpleasant, but I was assured that all he likes to do is make people squirm and the Republicans organized the Senate at that time, so. Well another thing that happened was when I met with Senator Nickles whom I hadn’t met before my name popped up in his Committee. He said “Senator Boren has an absolute power of veto over this and he doesn’t even have to give a reason.” And that’s, you probably read about the blue card, he can blue card you although Nickles didn’t use that term. “So I’ll pass that through to the suggestion for my Committee and we’ll see what Boren has to say about it.” Okay, I got a call from Nickles a couple of days later. “I went to Senator Boren and he said ‘Well what do you expect of me, this guy is Dean of the Law School I attended and if I say he’s not qualified, what’s that going to do to my degree?’” Well so instead of simply refraining from opposing the nomination, Boren asked Nickles if he could join in the submission. So it was a bipartisan submission, which meant of course a unanimous Senate vote and very gracious of Boren I thought.

**KEK:** Very gracious indeed. Now just for the record, just explain what does the blue card mean?

**WA:** Well the custom is that the senior Senator in a state of the same party as the President gets to make the recommendation to the President, but the other Senator, who is junior but of the same party or the opposing party can simply veto it. And whether there is a physical blue card in the process or not I don’t know. But he can, he can stop it in its tracks. That’s happened from time to time. Infrequently, but it has happened.

**KEK:** Very interesting, so what year did you then take the bench?
WA: ’85. A little anecdote here. I can’t remember the day but it was in August ’85, 3rd week of the month and we did our naturalizations the last Friday of the month. And this was strictly, it had nothing to do with my appointment. It’s just that her case had been bubbling up like all others routinely handled. My wife’s naturalization administrative process was completed and so then she was ready to be presented for the ceremony. And that was a week or so after I was appointed and I was able to naturalize her.

KEK: Oh how wonderful.

WA: It was, it was a thrill.

KEK: It must have been. I bet that does not happen very often.

WA: I imagine not.

KEK: So you took the bench in ’85 and what was your initial impression as you took the Federal bench?

WA: Overwhelmed. A great deal of litigation fell out of the collapse of the energy industry and the banks. The caseload in the Western District of OK because of the energy connection was the heaviest per Judge in the country. I was appointed as a 5th Judge, we went from 4 to 5, so my docket was not made up of cases I inherited from a predecessor. My docket was made up solely of cases transferred to me by my colleagues on the bench. Well, imagine their criteria. Let’s get these old dogs out of the kennel and move them over here. But just in numbers, everybody’s caseload went down approximately 20% when I was appointed and it was still the heaviest in the country. And that remained so for about 3 years. Among the cases transferred to me, were the Penn Square Bank civil cases. Gee, I came in August of ’85 and it was at least 2 and ½ months I think in ’87, early ’87 or late ’86 that I tried those and that was 9 consolidated cases. And one thing that was good about federal procedures you could take the individual cases and pluck a claim and an issue here and a claim and an issue there and reconfigure them so you didn’t have to trial this case, then this case, but you could take issues in common in the cases and try those all at once. And that’s what happened in the Penn Square cases and it worked out very, very well to do that.

KEK: What was the most challenging thing about those cases?

WA: Well this isn’t unique to the Penn Square cases, let me go back to being a Military Judge. I was a Lt. Col. or a Col. and typically the uniformed counsel were captains maybe a major. So I had a great deal more experience then, and after all military criminal law is a finite body of law and I’d done it longer and knew it better and I thought I have kind of the psychic jump on the lawyers because of experience and knowledge. In the District Court similarly in a criminal case I felt perfectly comfortable. I’m not saying that I knew a lot more than the U.S. attorneys or their assistants, but at least this is what I’d practiced in Courts Martial. But in civil cases the counsel often were people who had devoted decades in the specialization of the case that came before me. And they really knew stuff
that I didn’t. With the assistance of wonderful Law Clerks, why I just had to burn midnight oil and get educated on civil cases. I hadn’t tried a civil case since 1959. The ones I tried were pretty straightforward, the ones I tried when I worked at my dad’s law office. Gosh you know here the intellectual property cases and oil field drainage cases and bank failure cases and the Director and Officer’s cases that the FDIC pursued took a lot of preparation for those cases. During the trial of the case, I thought I’ve got to take great care not to reveal my ignorance unnecessarily, though best just to keep your mouth shut on the bench and let things flow in the hopes that you’ll grasp it sooner or later. Which happened. So the disparity of experience in a specialized field was the greatest challenge in addition to the administrative challenge of, gosh you know, I’ve got 500 civil cases on the docket. How in the world are these going to be moved along? Well, it’s just, in the ways of the world; we got rid of them sooner or later. I think the Judges up there now have about 175, 180. So it’s a different life completely.

KEK: Absolutely, much smaller docket. And how was it to constantly learn new things substantively?

WA: Oh it was fun. That was wonderful.

KEK: And how many Law Clerks did you have?

WA: 2. Yes the structure of things is, the Supreme Court Justice if he wishes can have 4, I think Justice Stevens only has 2. A Court of Appeals Judge can have 3 and a District Judge can have 2.

KEK: And did you find it useful to have those Law Clerks?

WA: Oh, are you kidding? I gave a talk back at the Judge Advocates General School, right after somebody made a presentation on artificial intelligence, and commenced my remarks by saying “I know all about artificial intelligence, I use artificial intelligence, I call them Law Clerks.” Well they were wonderful.

KEK: Did you also have Law students ever come in and work for you, either…?

WA: Interning. I did that for 2 or 3 years and then decided I wasn’t going to continue with that. I didn’t have to spend much time with the students, but my Law Clerks did and rather than being a help for the employed Law Clerks, the interns were, oh not a burden, but a time diverter.

KEK: What, generally just what can you say about your judicial philosophy when you were on the bench?

WA: At the trial level, I don’t think there are too many cases that call for the application of an overall philosophical preference or ideology. At the trial level it’s a pretty much what the statutes say, what are the precedential cases from the Courts of Appeal, the Supreme Court. I did have and still have a belief that people in general should be
responsible for themselves. People should expect to take the consequences of what they do or what they decide. And of course in a lot of cases the plaintiff was extremely irresponsible. There are mechanisms to take care of that in some cases, like comparative negligence and all that, but contributory negligence is not recognized in products liability cases for example. You know, some people do some extremely bizarre things and there’s an adverse consequence. And they look around, who can I sue? Why you stupid idiot, what did you do this for to begin with? But that’s not the law. There’s some applications of that in the criminal law too. You have to be prepared, take what’s coming.

KEK: Absolutely. Now how long were you on the bench?


KEK: So you were working as a Federal Judge at the time of the OKC bombing?

WA: Yes. In the draw, I was actually assigned that case initially. The lawyers for McVeigh and Nichols immediately wanted me to recuse and I didn’t have much confidence that this would be upheld, but I did have confidence if the law on recusal were followed without regard to such things as PR and so forth, I was not recusable. And I put out an order to that effect and was promptly, not reversed, there’s no direct appeal from that, but removed on mandamus. Well that was a great relief actually.

KEK: Why do you think they removed you from the case?

WA: Well, that’s interesting. One basis is a likely perception of a, how do you put it, bias or lack of objectivity or whatever. That’s part of the statutory grounds and my feeling was, well, that perception of a disqualification based upon the appearance of things would have to be the perception of somebody who knows the situation. Knows the things behind the appearance of things. What is a Court of Appeals supposed to do, go out and take a poll? But instead they just say hey, the typical citizen would have questions about the appearance of things and so forth out of an ipse dixit. And they never got to this issue and I can understand why it would be the appearance of things from an insider’s standpoint who knows what happened or not.

KEK: Do you think if you had gotten the McVeigh case, do you think that you would have been somehow biased because you’re from OK or OKC?

WA: Well I’m not.

KEK: That’s true, you’re not.

WA: And I don’t have any friends or family even acquaintances, well the Clerk of Court was in the building. He wasn’t badly injured. But I only knew him officially. So, no..I wasn’t.. and as a matter of fact the lawyers actually disclaimed any actual bias and the Court of Appeals found there was no actual bias, but they founded it entirely on the basis of appearance. In fact in their mandamus opinion they said if it were identifying an actual
bias then their inquiry would be done because there is none obviously. Well, thereafter I attended workshops and circuit conferences and so forth. And Marie and I would go out to dinner whoop it up with friends and so forth. And here’s poor Dick Maitsch, who got the case, sequestered in his room with Marshalls right in front of the door, handing food in through the open door and so forth. So as I say, to be relieved of the burden of the case, was a great, that was a positive, very, very positive thing. But you know I went, look at those years in the Army. You know, I thought, I do my duty.

**KEK:** Right, absolutely, absolutely. Were you in the Courthouse the day that the OKC bombing occurred?

**WA:** I was not and you’re probably getting tired of these anecdotes, but every year the Federal Judges and other federal officials have to put in a financial disclosure report primarily based upon information that’s in your tax returns for the prior year, and I keep those at home. Well my secretary like all good secretaries, was a terrible nag, and she kept saying do this, do this, do this and so that day, well the day before I said “okay, Lynda, I’m going to go home and work this up.” Well when I got home I had discovered that part of the papers that she had presented to me were the wrong ones. So, I called her and of course she’s an excellent, super secretary and what greater satisfaction in finding out your secretary was in error? Ha, ha, ha, ha. My wife at that time was working in a travel agency in Norman, so I asked Lynda my secretary to fax papers down to that travel office. And I thought well in the mean time I’m going to get a haircut, I’m going to pick up some prescription drugs and so forth. So I left the house and in my wife’s office the first notification of the bombing first was erroneously that it was the Courthouse, not the Murrah building. And she knew I was going to be home working on this, but she called the neighbor to say “look through the garage window, is Wayne’s car in there?” And the neighbor said “It isn’t.” And she said “Damn him, he went to work.” She said that to her co-workers. Well in the meantime I’m tooling around, totally ignorant of all this until I got to her office and here’s a little black and white TV, and it’s “oh, you’re okay, you’re okay.” “Yes, I’m okay, what’s the…” you know… “look at this.” So of all days, that the one day that I picked to do my financials. And you know, I mentioned that in the recusal, I wasn’t there. Interesting thing about it is I wasn’t there and I had a Court Reporter, Courtroom Deputy, 2 Law Clerks, not a one was at his or her desk working when the bomb went off. They were all in the coffee room or out in the corridor, one came to work late, so… I said “well, you know, I’m happy nobody was injured, but on the other hand, it’s a little disturbing, the cat’s away, the mice are playing.”

**KEK:** Right, right. Then nobody was doing their work.

**WA:** Yes that’s right. Well, bless ‘em because the windows blew out in my office and the shards of glass tumbled through the rooms and that could have been, very… very, very damaging to somebody. In fact the most dramatic site that I could remember in my own office is that these shards of course are tumbling in random but some of them hit the bookshelf across the way with a pointy end out and there were dozens, maybe scores of glass shards dug into the backs of those books, the spines.
**KEK:** Oh my gosh, and I guess all of that had to be cleaned out?

**WA:** Oh yeah.

**KEK:** Well very, very interesting, very interesting indeed. So besides, now the McVeigh case which happened then, were there any other significant cases for you as a Federal District Judge after that?

**WA:** Well, not of that dimension. I don’t think I had any, let’s say, blockbuster cases. I had cases that took a long time in trial but probably of very little significance to people other than the litigants. And I didn’t publish a lot of stuff in the Federal Supplement either. I just, if I had a case that was really unique I presented it for publication, but otherwise I don’t think anything is gained by District Judges reporting their cases in the National Reporter system. It doesn’t amount to much for precedential purposes.

**KEK:** So you don’t think that the District Court opinions, well they certainly don’t have as much value as a Supreme Court opinion or a Court of Appeals opinion.

**WA:** Yes, yes.

**KEK:** So that was never your goal to get as many published as…?

**WA:** Yes, absolutely. Just the opposite.

**KEK:** Now throughout your career you’ve had so many different kinds of roles and you’ve gotten to observe so many different attorneys in action, what, what kind of advice would you give a new graduate of Law School in terms of your, all of your experiences?

**WA:** I think number one would be recognize that your most meaningful communication is going to be written communication. You may visualize yourself in a trial, swaying the jury, snowing the Judge, but that’s an insignificant part of the total workload of lawyers overall. You know, typically they’re producing opinion letters, other opinions to clients directly not opinion letters to the world. Correspondence on cases, drafting pleadings, drafting motions, drafting briefs certainly there’s oral communication within an office in the development of these, if you’re a young lawyer between you and the partner for whom you are working, but the product that counts is written communication. So, if you’re a talking lawyer, I don’t know where you are going to go. You know, you may say I want to be a litigator. They don’t try cases anymore. They do depositions and discovery and then the thing fizzles out in arbitration or settlement. So you are going to be a writing lawyer. Second, and I’ve done a little publication about this in the Bar Journal and so forth, you’ll be dealing with people whose standards are not yours. They may descend to personal name calling, or they may engage in discovery hanky panky and so forth. And resist the temptation of tit for tat. Just because the other person is practicing in a substandard way, don’t permit yourself to be drawn into that in response. Keep your own standards. Third, the life of an associate in a busy law office is a life of very long hours.
and professional burdens. But however you accomplish it, pay attention to the rest of your life. Pay attention to your family. Exercise regularly. I think that is supremely important for people in sedentary professions. If there is a spiritual dimension in your life, and there isn’t for many people but if there is one, pay attention to that too. Be a reader. Be a general reader. The best lawyers that I observed in trials were people who had broad, general knowledge about a lot of things and they only got that by reading a lot. And so I wouldn’t want to hear a Law Clerk in my office or hear a complaint by a Junior Associate, “well, I just don’t have time to read.” “Well, how come he does or she does, how come she’s so well rounded and well read, why can’t you be also?” So you could say, well you put all that together and I accounted for more than 24 hours in the day… but it can be done. It can be done.

**KEK:** Well, good advice. What is the best piece of advice that someone has given you along the way?

**WA:** Well, when I was in the Pentagon, it was a very busy office. There was encouragement at all levels from the Army, from the Pentagon on down, that officers take their leave. It’s for the benefit of the Army not the officer that the officer takes leave and refresh himself. Come back, ready to hit it harder and so forth. If we had accumulated more than 60 days leave at the end of a fiscal year, the excess over 60 simply got lopped off or lost. So, one of the generals for whom I worked called for a report on who was approaching the point when he would lose leave. And I was in that danger zone, let’s say. So he called me in and he said “ahh ahh ahh, blah blah blah, I want you to take your leave, it’s important to take your leave. Your family needs you to be with them and take some leave. Take a little vacation.” And feeling particularly bold, even uppity, I said “just in general, the reason I haven’t taken leave is because of the assignments you’re giving me.” And he said “Well, part of the responsibility of an officer is the development of the people who work for him so that they can take over in his absence and I’m confident that you’ve trained your office so that they can adequately do that.” Well his office was in the E ring, the outside ring of the Pentagon, with a lovely view of the Arlington Cemetery and it’s behind him. But you know he swung around with this dramatic gesture and said “See that, that’s nothing but indispensible men.”

**KEK:** That’s right.

**WA:** And that was good advice.

**KEK:** Excellent advice, excellent advice. Now, from when you started practicing law, from when you entered Law School to now, what do you think about the quality of legal education? Do you think that it has improved? Not improved? Is it better or worse?

**WA:** Well, I think it has improved significantly. You know, in Law Schools all over the country there’s this running debate about what should be the position of clinical studies in the Law School education. When I attended, there was no such thing. We might have a little moot court but that’s it. In that respect education is better. There’s, since the Watergate era, there’s been a much greater emphasis on professional responsibility and
ethics. That’s much better. I don’t…I would say comparing the Stanford Law School when I attended and the OU Law School when I was here, that at the Stanford Law School, there wasn’t any difference in the expectation of professors or the pressures they put on in the 2nd and 3rd years as opposed to the 1st year. My view, which may not be entirely accurate when I worked down here, was that we were too easy in the 2nd and 3rd year. That our standards weren’t sufficiently tough enough in those classes. When I was in Law School the very thought a student evaluation of faculty would be like every bit as preposterous as landing a man on the moon. Of course when I came here there was an elaborate system in effect for that. I didn’t think it was done well and tried for a couple of years to get that retooled. The University obliged some kind of system but it didn’t oblige any particular system in a unit like the Law School. And I thought we should have gone to a system where, if students wish to put in an anonymous evaluation that that would be presented to the professor in question for his or her self education. But that if that were to be presented to the Tenure Committee or for compensation review and so forth, they have to have courage of conviction and sign it. I really don’t know why, but the fact was that they were extremely resistant to that.

**KEK:** So they did not want to implement that type of…

**WA:** That’s correct. So I think myself that student evaluation of faculty has resulted in a diminution rather than an increase in standards of instruction. I think that no matter how a professor can disclaim it, the thought that to some extent my success depends upon what these kids think about me. I think that’s, I think that’s very unfortunate.

**KEK:** So you think that faculty, maybe a more appropriate method might be peer review or some other..?

**WA:** Yes, or a number of things.

**KEK:** A number of other things. Now, just as we’re wrapping up here, you have had a long and distinguished career in the military and you’ve seen the Vietnam conflict. Do you think that the military has learned or learned from maybe some of its mistakes in Vietnam in later conflicts or in later years or no?

**WA:** Absolutely, absolutely. When you say the military, I’m defining that as the uniformed services. The uniformed services, especially at the Command and General Staff College and the War Colleges, devoted a great deal of effort looking back at Vietnam and analyzing not only the strategy that lead to the war and how it was pursued during the war, but particularly on the ground tactics and what did well and what didn’t and so forth. And I think those lessons were applied very effectively in small operations like Granada and the 1st Gulf War. I think that had the current Iraqi War been left in the hands of the uniformed military, it would not have been done. Certainly the war in Afghanistan would have but I don’t think, I think that had you left it to the generals, I don’t think we would be in Iraq.
KEK: Well, very interesting. Is there something that I have not asked you Judge that you would like to say at this point?

WA: Well, you never asked me what I liked best.

KEK: No I didn’t. What did you like best?

WA: Well, I liked the Army best hands down. It was wonderful being Dean. It was a great honor being a Federal Judge and I enjoyed it. I whistled on my way to work and so forth. I’ve told friends and now you, you know when I die I’m going to be in Arlington Cemetery and it’s not going to say Judge on my tombstone. That was my most satisfying work and General was my most satisfying title.

KEK: Would you, if you had an opportunity to go back and serve at this point in some sort of role, would you, what would you say?

WA: I had that opportunity and said no. That was with respect to overseeing the military commissions. I got a call, an invitation to return to duty and do that. And the call came, not only after I had decided to retire from the District Court, but made the announcement that I am going to and I was 72. The call was from the Office of the Dept. of the Defense General Counsel and I just said I’m unwilling to assume this. I have myself, I’ve talked myself into the fact that I want to retire and that’s what I’m going to do. Then let’s go back to Arlington Cemetery, the guy who was appointed to that position and who was Major General John Altenburg, I knew very well. He did a great job. So, the country didn’t lose anything by my declining then.

KEK: Anything else Judge?

WA: That’s it.

KEK: Okay. Well thank you so much for your time today. I just, I can’t thank you enough.

WA: Well, it was pleasant and you probably got more than you asked for.

KEK: No, but it was wonderful and I really appreciate your time today.

WA: Well drive carefully going home.

KEK: Thank you. You as well.