INTERVIEW WITH MR. ROBERT GIFFORD

KEK: Well, good afternoon, today is Thursday, October 9th, 2008, and my name is Karen Kalnins. I am a reference librarian at the Oklahoma City University Law Library and today I am interviewing Mr. Robert Gifford. He is, right now he is working as a United States Attorney.

RG: Yes.

KEK: Is that correct?

RG: Yes.

KEK: At the western district of Oklahoma.

RG: Correct.

KEK: And today we are speaking in the Law, at the Oklahoma City University Law Library. And this interview is part of the oral history project that the OCU Law Library is sponsoring where we are interviewing attorneys and judges throughout the state of Oklahoma. And, I guess Mr. Gifford first I wanted to welcome you.

RG: Thank you very much.

KEK: Thank you, thank you very much for participating today in this interview. And I guess I wanted to start off with what drew you to the law? Why did you go to law school?

RG: Well, I’m from a very small town, a little town called Manford, it’s up in the northeastern part of the state. To be quite truthful, we didn’t even have a lawyer in town, didn’t really know anybody and I really didn’t get to, to come out of that small town most people join the military, went to a junior college, or went to a technical school of some sort. I received a small scholarship to play football and track and academic scholarship to a little school up in Kansas called Southwestern, sits in Winfield, Kansas. And while I was there I thought I wanted to be a journalist so, because I really enjoyed writing, and while I was in law school there was of course, or while I was in my undergraduate playing the sports, you know by grace I make, kept making good grades and during my junior year I realize that I probably would not want to have a career in writing. I didn’t want to focus, just to be a writer, I think there was a statement that somebody once said to me, “so you really don’t want to do anything with your life, you just want to write about other people’s lives.” Which I thought was inaccurate but then again it made me take a step back to examine what did I want, what all did I want to accomplish and I knew that I wanted to be able to do something with my life. Number one I wanted to be able to, I guess make an impact in some way or another but I knew that there was not any one thing that I could settle upon and of course I still am heavily involved with writing as a hobby. But because I went to law school, practice law, I do my writing mostly in a legal aspect,
not so much of course for the court, but I write for different publications. I have written for the Oklahoma Bar Journal on several occasions, I’ve written for small periodicals as a subject matter expert on criminal law or on military law since I have some background there. And I’m always working on article like on the Archeological Resources Protection Act or Native American law. So, I’m always reaching back to the things that started me there but at some point, why, what drew me to the law is I’m not really sure but this is where I’m at and I have no regrets. But a friend, I guess, to finally to get to the point here, is somewhere around the junior year of college a friend of mine pointed out to me that I did not have to be pre-law if I wanted to go to law school. So, I realized that I had all these new opportunities that were out there and no doors had been closed to me. And that’s how little I knew about law school was, you know I was twenty years old before I realized that I didn’t have to study law or study pre-law or political science to go into law school.

**KEK:** Wonderful, wonderful. And when did you finally decide to go to law school then?

**RG:** Well, once, during my junior year of my undergraduate when I realized it was an option I started looking into it and I want to give it my best shot and see if I can get into law school. I didn’t even know taking the LSAT, applying, so it was all a brand new experience so in, maybe it’s just my trait, once I decide, I’ve got my mind made up on something, I focus in on it so pretty soon I’m reading every single book about the law. Started reading John Grisham novels, started watching every television show that was on at the time that dealt with the law. I think LA Law was one of the shows that was out I don’t think, there were a couple of others that I still latch on to those where I still read a lot of law books. Which is I know a lot of people, if they are practicing lawyers, they stay away from that but I still tend to find myself going back into that. But I made up my mind, made a decision that I wanted to go to law school and that’s how I found my way into the law.

**KEK:** Well, wonderful. And where did you go to law school?

**RG:** I went to law school here in state. I went to the University of Oklahoma. Since I was going to my undergraduate up in Kansas I applied to all the schools in Oklahoma and Kansas and Arkansas and uh, I got into all of them. My sister was going to school; my younger sister was going to school at the University of Oklahoma so that drew me down to go to law school there.

**KEK:** And what year did you graduate?

**RG:** Graduated from law school in 1996.

**KEK:** And, how was your law school experience there, at the University of Oklahoma?

**RG:** I hated law school. You know anybody who says it was easy or they enjoyed it or it was, I, struggled, it was a brand new experience for me and maybe it was the learning to
think like a lawyer aspect, I’m not really sure. But I, what’s funny is that I love teaching, I still teach, I volunteer teach, I help out with moot court teams, I love to go down to the law school but my time in law school was probably one of the worst times of my life. And, at the time when I started law school, I had a serious girlfriend who lived in Spain, we went to undergraduate. So I was miserable wondering where our relationship was going. By the middle of my first year I decided that she was the one I was going to marry so I took, the day after my last final I got on a plane, flew to Spain, proposed, came back home for Christmas. And, then she flew back from Spain, she finished, she came back, we waited a year, so I went through my second year. She came back, got her Master’s degree. And, we got married right before my third year of law school which, and it was all a hectic time, I worked all through law school, engaged, married, trying to work through immigration aspects as well because she was not a citizen, still is not a citizen. So it was a hectic time and I had a lot going on especially you know I was not independently wealthy so I was really concerned about finances and just paying the bills and on top of that getting through law school so I do have fond recollections but overall I did not like law school and I would not be, would not do it again.

KEK: Well, I certainly appreciate your candor about the law school aspect of it. Yeah, I also found it to be quite a challenging time in my life.

RG: Now, don’t get wrong, I don’t regret going to law school, I would go to law school again but would not have to experience the feelings I had through that first year and second year and really even parts of the third year would really like to put it all behind me. It was a great experience, it was a growing experience and it was something I guess I’m glad I suffered through but you know, I would not wish those, that tension on anybody.

KEK: Absolutely, absolutely, and I can see the tension on the faces of our students here and it’s, it is not, I know that some of them are suffering just as you did. Well you finished law school in ninety-six and what state bar exams did you take?

RG: I just took the Oklahoma Bar Exam. You know after, after finishing law school and glad that was over, and you know took the bar exam, knock on wood I passed on the first time and you know, even though I finished law school it did not really feel like I finished until I passed the bar. And, you know even though you go through the graduation ceremony, it’s a wonderful feeling, I still say your true graduation is when you know that you’re done. And you’re not done, granted people take their law degree and go into other areas and then they feel done, but if you are going to continue on into the law you have to be a member of the bar. And at that point, I already knew where I was headed but it was all contingent on me passing the bar.

KEK: And, where were you headed?

RG: Well, my first foray into the law was pre-bar exam. I worked for the, my very first legal job ever was I worked for the Cherokee Nation which is in Tahlequah, Oklahoma. It is headquartered in their Cherokee courthouse which is also their capital building.
Very historic, beautiful building and there were about four or five of us and I’m a member of the Cherokee Nation and so I had a deep interest in it. And there were five of us that were hired, that we all worked together and the chief then was Chief Wilma Mankiller and I got to meet her. She was just a wonderful woman, fascinating, one of the most powerful women that’s probably ever walked in the state of Oklahoma and had a bigger influence nationally than most people may not even recognize. My supervisor at the time, his name was Chad Smith. Chad Smith is now Chief Smith of the Cherokee Nation, the Cherokee Nation as you may know is the second largest Indian tribe in the United States, probably one of the most developed tribes as far as business-wise, economically, and as far as programs for women, infants, and children through their gaming operations, through their mental, physical health programs, their school program. So, working for the Cherokee Nation was almost like working in a whole other state. Part of that program, working for the Cherokee Nation, is that you had to go through a several week Cherokee legal history where you got in to the in-depth studying of Indian law which I took in law school later, but I was so far ahead of the game. Chief Smith was an incredible instructor, back then he was not even contemplating running and I remember at the end of the year when I was headed back to school I had asked him if he had ever considered running for the, for chief of the Cherokee Nation and he kind of laughed and he said, “you know, it’s funny you asked, it has crossed my mind.” And, lo and behold several years later he’s the chief of the Cherokee Nation and uh, while I was in law school that tie there to the Cherokee Nation sparked an interest in American Indian Law which ties into a lot of what I do now in my civilian job. I finished law school and held a lot of legal jobs in between, working in DA’s offices, working for the state tax commission, working for the tribe, and then doing some volunteer work on the side as a legal intern. But my first legal job was as a Judge Advocate in the United States Army. It’s all court martial legal work and they don’t normally basically I knew that when I took the bar that I would not remain here in Oklahoma, that they were going to send me somewhere else. They never usually let you remain in your home state. So, I found out I passed the bar, had already been accepted in the JAG Corps, but it was contingent on the passing of the bar. If I didn’t pass, I was out. And, it’s not so much; it’s not the same as enlisting in the army. Basically, to become an officer you have to receive a commission that’s from, that comes from really the Congress and the President of the United States so as an officer, it’s not something that you sign up for, it’s something that’s bestowed upon you and you accept. So, I was offered a commission as a first lieutenant into the army. My military background was zero, no ROTC, no fathers or uncles that served in the military. My grandfather served in World War II, never talked about it, never spoke about it, so I always had a curiosity. Of course, coming out of my small hometown I almost enlisted but I got a small scholarship to a small school to play football. When I finished college that was one of the if I don’t do this, then I can do this, then I can do this. One of those if I can’t do this which was if I don’t get into law school, one of the considerations was go into the military. During the first year of law school I’m doing all the interviews and one of the JAG recruiters chatted me up one day as, she was up at the law school interviewing third year students, I was a first year student. And, that’s where I started getting interested. During my time in law school, actually before I started law school, the movie “A Few Good Men” came out, Tom Cruise. Everybody loved that movie. So, I loved that movie, I was fascinated with that type of work and the history,
and knowing that that could have been me in the military. Here I am in law school; I said this might be my opportunity to scratch that itch that has always been there to serve my country. Now this is all pre-9/11, so I went through the process. At the time in the mid-90s, the job aspects for lawyers was really slim. And what they attributed it to, they called it the LA Law effect. You may remember reading that after the TV show *LA Law* hit the airwaves, law school applications went through the roof. Right around the time from the early 90s until the mid-90s there were much more lawyers on the market than there had ever been before thus hiring was almost impossible whereas the Army JAG Corps also became much more selective at who they picked. So, the year, and I found out after the fact they did two boards, one right before Christmas and one in the spring. I applied the first time around, I was rejected. I got my rejection letter on Christmas Eve and I’ll never forget that. And, you know, I remember thinking how can I explain to my family that even the army rejected me. The recruiter called me himself. He said that he wanted me to keep trying, he said “don’t give up” and I was the only person he told that to. He said that he had recommended me but when the referrals went up, the selection process in 1995 and 1996 was 15 percent. Only fifteen percent of applicants got picked up. So, in the spring I got picked up and I was just amazed, I was grateful, I was thankful, I was just shocked especially when I found out that I had a lot of classmates that were not getting hired, did not have jobs. And it was a tough time and I know that things have you know, gone up and down, and I remember that in 1996 I was still, we were still suffering the *LA Law* effect, there were no jobs out there. My fist duty station was I had to report to Fort Lee, Virginia and basically showed up. I did not have boots, I didn’t have anything, I didn’t know how to salute. And with judge advocates, they don’t really go through what’s called basic training, but they do rush you through a two week salute school. My class of law graduates, we showed up out there, and there was about sixty-six of us, the far majority were reservists, the rest were going on to active duty, which I was one of them. So it was very neat that all of a sudden I show up, here I am from Oklahoma, here’s this guy from Notre Dame, this guy from Louisiana, from LSU, from law schools all across the country and you always wondered, how would I match up and all of a sudden here comes another guy, where’d you go to law school, I went to Harvard, I went to Yale. And all of them had these incredible backgrounds you know, I went to Penn, I speak Russian, I played on the rugby team or I spent my first four years studying in Spain. You know it was an incredible, eclectic group and of course I look back at myself and I’m thinking and I got picked up, no wonder they can be so picky. But it was a very interesting group, you know one guy played football, he played for the national championship for Penn State University, went to law school at Yale, clerked for an Eleventh Circuit judge and decided he wanted to go in the JAG Corps. And he had also played professional football briefly. So, it was a very unique group that I realized, you know when I was filling out the application what languages do you speak, I’m looking, this person speaks fluent Spanish and Russian and German. I’m English only, but it’s funny how things evolve that when it was all said and done and I ended up working with them later, when I’m trying cases against them as a defense attorney or prosecutor that really we were all on the same level which gave me great confidence in that the lawyers that are practicing in Oklahoma are just as good as they are anywhere. And I’ve always wondered about that, how would an Oklahoma lawyer match up against a lawyer from California or New York, you know,
we’re all cut from the same cloth and I think it’s all with, you know what you want as far as your spirit, your heart, your mind. It takes a special person to even want to go to law school, it takes an even more special person to stick it out and to see it through and to put up with the bar exam again. But, went to Fort Lee, Virginia, salute school, where this is how you wear your uniform, this is how you salute, here’s the customs, traditions of the military, you know let’s stand in line, let’s all take twenty shots of different immunizations. Let’s get you into the system, including doing background checks so that you can get your security clearances, after I got through all of that you know basically it was like trying to take a sip of water out of a fire hydrant. It was just all just blowing right, right past me. They sent me to the Army JAG school, we all went. The reservists finished that part and they returned home and they finished their schooling through correspondence courses. The active duty folks are sent to, on up to the Army JAG school. The Army JAG school sits in Charlottesville, Virginia next door to the University of Virginia Law School. While it doesn’t have a law degree, they do have an LLM program in military law that’s accredited by the American Bar Association and they, it’s an LLM they give to not only Army but Air Force, Marines, everybody as well as civilians. Now for me this was not the LLM program, I was being sent there to learn, basically it was like bar review but all military law subjects. Basically saying, alright, you know what assault and battery is, well this is how it applies in the military and how to find it under the Uniform Code of Military Justice. And, you had blocks or sessions, it was sort of like a semester long of law school in different areas talking about divorce, legal aid, legal assistance, taxes, what tax benefits affect service members, the rights of reemployment for reservists, the criminal law aspects, why we have a Uniform Code of Military Justice and how that works. We also studied the laws of war, the rules of engagement, federal contracting, working in different environments; you know you might be stationed as a judge advocate in Germany or Korea. How do you deal with a soldier who gets in trouble with the German authorities? All of these different aspects, all of a sudden it’s sort of like law school all over again that when I went to law school, all of a sudden, when I would listen to the news, I listened to the world a lot differently. I remember after going to law school the very first time I sat down on the airplane and looked at the back of my ticket I actually looked at the contractual obligations under the Warsaw Pact for the first time. And going to the JAG school also opened up my eyes up to a whole other world that, all of a sudden, when I turned on the news at night and they were talking about the Chiefs of Staff for each of the Armed Services and the Department of Defense and the Secretary of Defense it all had a new meaning and a different impact. After doing my semester at the Army JAG school in Charlottesville I was assigned to, my first duty station was Fort Knox, Kentucky.

KEK: Now, who, not to interrupt you, I don’t want to interrupt you too much, who were the instructors at the Army JAG school?

RG: The instructors at the Army JAG school are seasoned judge advocates. When I say seasoned, they departments, they have a criminal law department, they would have an administrative law department, they would have a, they called it the center of, oh, what was that department, basically they focused on the law of war, rules of engagement. Each of those instructors broke out separate topics, rules of evidence, and things of that
nature. And one of the most, this is a little side note, as you know we have not always had a Federal Rules of Evidence. In the mid-seventies, around 1977, 78, the Federal Rules of Evidence was implemented. The military operated off the same aspect, when the Federal Rules came into being they adopted the Federal Rules of Evidence in a court martial. They made a few tweaks here and there. The person who was responsible for getting those implemented into our system was the Assistant Judge Advocate General who the Assistant Judge Advocate General at the time was Wayne Alley. Wayne Alley, when he retired, became the Dean of the Law School in 1980 at the University of Oklahoma and was appointed to the federal bench here in the Western District of Oklahoma and he retired a few years ago so Judge Alley is General Alley who is responsible for the placement of the Rules of Evidence in the court martial system. General Alley also sat as a Military Courts Appeal Judge in the military. Their system is much like our civilian system but he was an appellate judge in the military courts and one of his most well-known cases is that he affirmed the conviction of William Calley who, if you’re familiar with the tragedy at Mei Lai in Vietnam. Lt. Calley was court-martialed for the tragedy. Many women and children were murdered by American soldiers; Lt. Calley issued those orders to happen. He was court-martialed, found guilty, and it went up on appeal, through the appellate process then, Colonel Alley, General Alley, Dean Alley, Judge Alley, was the military judge who affirmed that conviction. So, it’s just an interesting side note that there are so many things I’ve run across I find these Oklahoma ties and I’m a very proud Oklahoman. Anyway, the judge advocate school, the professors, are made up of instructors, seasoned judge advocates. All, at least a major, many lieutenant colonels, and colonels and they each have a specialty. Of course the instructors are hand-picked and selected. And in my current position I’m still in the army reserves right now and I was picked as an instructor. So I go back to the JAG school and I teach criminal law throughout the year. I’m not one of the full-time instructors, I guess I would be an adjunct but they bring me in to teach criminal law which is funny, I find myself back there as to where I started, especially as someone who had no, I was not ROTC, no long history, not a West-Pointer or anything like that. The instructors are very well-versed and it’s usually, if you’re active duty you will do a three year tour at the schoolhouse and after that you will go on, go on to other military assignments. That’s one of the things about the military is that you rotate every couple years, you don’t ever sit in one place. So, you may be lucky and you’re sitting in Hawaii at Scofield Barracks but your next duty station may be Fort Greely in Alaska or some of the less desirable locations. Any, you know, one of the less desirable locations is Fort Sill, Oklahoma. Now of course that ended up being my last duty station and I just mentioned in passing that I wouldn’t mind being stationed at Fort Sill and they jumped all over that. They were like “oh, I think we can make that happen,” and I said, “I bet you can” because not a lot of people who grew up in Denver, Colorado or New York City or San Francisco or, they come from all over, want to go to Fort Sill, Oklahoma and want to live in Lawton, Oklahoma. I loved my time at Fort Sill, Fort Sill is a beautiful post. Now I’ve been to Fort Carson is in Colorado Springs, Colorado. Colorado Springs is a beautiful place but the post is not very nice. Fort Sill, Oklahoma, granted it’s not the lap of luxury, but the post is probably one of the most beautiful posts in the military. There is a lot of history there, Geronimo is buried there, they have a long history, it pre-dates our statehood. I was at Fort Knox, Kentucky for two years, my first daughter was born there. It sits right
outside Louisville, I started off my military career, legal career, my first law job was what’s called legal assistance which we refer to mostly like legal aid here in Oklahoma where I would see service members, their wives, and military retirees. I would draw up wills, I would go over insurance, if they had debt collection issues I would work with them on number one, helping the debt collectors comply with the law as far as harassment, you know, invoking the Fair Debt Collection Practices Act. People would have issues with their credit reports, there are federal laws on that, and I would instruct on that and help them get to where they would need to be. People that would be, I would help advise people on whether or not they should file for bankruptcy or not or file for divorce and separation agreements and things of that nature. I only spent six months doing it. Usually the progression is that you start off there and then they move you to what’s called a trial counsel position, which is a prosecutor. And, it’s all up on timing and while I was there the next opening happened within six months so they moved me to be a prosecutor which is what I really wanted to do, I wanted to get into the courtroom. But in my six months, oh, and I also ran the tax center, I did taxes for all the soldiers and you might be familiar with the VITA program, the volunteer income tax assistance program that the IRS sponsors that lawyers and non-lawyers can get involved with to help lower income people get their taxes done. We operated the same program on post and I did taxes for retirees, and even did one for the commanding general of the recruiting command and I remember saying “Sir, you really need to, you know, think about, a lot about how your investments.” And I was a brand new lieutenant, first year out of law school dealing with somebody who owned properties and homes in four different states, made more money than as a two star general but he wanted to come to a judge advocate and I’m a brand new lieutenant and he had a very smart wife and I gave her some independent advice about her seeking someone to help with their estate planning on a professional basis. But in six months I had over five hundred clients. It was an exciting experience because number one it got me grounded, number two I had so much, I enjoyed so much helping people fix their problems. It was hard because I think human nature; you adopt someone else’s problems as your own. One of the more touching stories was that, one of my last clients was, he was a retiree, we set up the appointment, and when they called they said, “my father is a retiree and he needs to update his will.” And I was trying to make the appointment and they said well, he can’t get out, he’s got a lot of health problems. And I said I understand, but our policy is x, y, z, thinking that they just don’t want to come in. And they said well, this is what we’re trying to do, he’s going into surgery during next week, he may not come out, he doesn’t have a will. And I said I will come to you and they said well, he’s in and out a lot, and I explained to them about doing his will and he needs to be conscious and needs to be aware. I ended up drafting up his will, meeting with him, and then getting it all prepared and on his way to the hospital, they stopped and there he is with his oxygen mask and his family and I’ve got all these people out there serving as witnesses, basically executing the will in the front seat of this beat-up, old, station wagon knowing that he may not be coming home again. And it was very important to him that he got his effects in order. So, it was touching and even in, the good news is he came out of his surgery but he was a World War II vet and they said even if he comes out he doesn’t have much time left. So, that’s one of my memories doing legal aid, legal assistance, that I treasure and even though that was not my, “this is what I want to do with my law degree and law career,” it was
something that I treasure, I would not ever give up and if I was independently wealthy and did not have to worry about you know, paying bills and medical insurance and things like that, I’ve already got it in my mind what my retirement is going to be. I would love to go back to legal aid and work to help, you know, those who are less fortunate or just need help drafting my will, getting my effects in order. Not to be a specialist because most of those folks, they have simple wills and simple taxes and I can see that when I am retired, if I ever do retire, going back into something like that to do in my retirement on a volunteer basis.

Started off as a trial counsel, as a military prosecutor. Now, on a military base, exclusive federal jurisdiction, soldiers can be court-martialed, it’s just like federal court, however, wives who live on post, retirees who come on to post, people who are visiting on post, they get speeding tickets, they get DUIs, they visit the PX, the post exchange, they shoplift. So you can’t court-martial them because the military has no jurisdiction, that falls within the federal court so the U.S. Attorney’s office would have to prosecute those little, simple cases so as a trial counsel I did court-martial prosecutions, I did rape cases, I did shaken baby cases, I did computer child porn case which in 1997-98, that was all brand new, child porn was a brand new deal. People traveling, they think they’re talking to a teenager online and traveling to meet this teenager to engage in sex with, these were all new crimes. So, I was appointed as special assistant U.S. Attorney and I would go into federal court to handle these DUIs, shopliftings, and any felonies that happened on post. There are banks on the military post, there was a bank robbery that happened at Fort Knox, I know that sounds funny with the gold vault and everything but there was a bank there that the military used and I got to prosecute a felony case in federal court. And that’s where I kind of got the bug that, you know, this is what I want to do with my career, I want to be an Assistant U.S. Attorney. I love the military, I had my first daughter and that’s when I first started realizing that every two years I was going to be moving and I would have no control over my child’s education, what schools that she would go to, if I didn’t like her teachers I would have to say well, next year this, or next year that. That I would move into a community in which I would have no, no influence or no, I wouldn’t know the teachers and my wife also, she would have to put all of her career on a back burner and so I was thinking that I, going in I wanted to get the trial experience right away and I knew in the back of my mind that I had agreed to stay for three years. Well, after eighteen months, two years being on active duty at Fort Knox the army says well, if you will agree to extend, I had a three year obligation, if you’ll extend to a fourth year we’ll go ahead and move you and your family to a new location and we’ll try to put you in a job that you want. And I knew that the experience was important and I knew that I probably was going to be getting out, not because I disliked it but I knew that being settled, and this is going to, this is what’s kind of funny about looking back at my career, being settled was important to me. I said well, I want to stay in a courtroom, and they said well, by this time I was Captain Gifford, well Captain Gifford you’ve been a prosecutor, a SAUSA, which is the acronym for Special Assistant U.S. Attorney, and a trial counsel, we have people that don’t want to be defense counsel, would you be willing to defend soldiers accused in court-martial? And I said absolutely. You know I represent somebody who is accused of something that our
constitution says they didn’t do, presumed innocent. And service members are the best clients you could ever have.

KEK: So, so, did you feel, when you said sure, yeah, I’ll be defense counsel, when you started off in the JAG corps did you only want to do prosecutions, only want to be a prosecutor or did they plan that out for you?

RG: No, no, not at all. What attracted me to the JAG Corps, number one, the military itch, but more importantly I was a lawyer and I knew that what do I want to do with my future. When I was looking at law school, when I was a junior in college, I met a DA and she told me what she did. And I said I want to be a DA I love that, I love prosecuting, I like the fact that I could speak on behalf of a victim, I thought that was just the coolest thing. Another thing that I liked is that I, I know that there are people that are accused of crimes that, because of their circumstances and their lot in life made a bad decision. I know as a defense attorney you can say I can try to help these people, but I know as a prosecutor you have the decision as to whether or not even to charge the person and you have a lot more control on their destiny. So that I got to almost serve as a quasi-judge before it would ever go into court as to what would be the appropriate level of charging. And that attracted me and that’s when I, I figured that out when I worked in the DA’s office as an intern in law school was I could impact and help people more as a prosecutor than I could as a defense attorney. As a defense attorney, you’re playing catch up, as a prosecutor you’ve already laid the groundwork. So, I knew I wanted to be a prosecutor and when I was interviewing with the JAG Corps one of their big, strong selling points was they said, “within your first two years in the JAG Corps, it’s very likely that everyone in the courtroom, you could be trying a murder case, there will be an attorney on the other side defending this first-degree murder case, it could be a capital murder,” and they said “all of your witnesses, you’ll be in charge of all of it, and the odds are, nobody in that courtroom will be over thirty years old except for the judge and your jury panel.” They said but everyone else will probably be under thirty. They said, as far as trial experience you can go to the DA’s office and you might be doing DUIs and misdemeanors for several years and you’ll get put on a felony team but as a JAG, I can pretty much guarantee you’ll be trying some high-level cases dealing with experts that no one else ever gets to deal with till they are ten, fifteen years down the road in any DA’s office. So, that’s what got me hooked. So, yes, I knew I wanted to be a prosecutor and it came through. I’m trying a shaken baby case with doctors and experts in the field, the top experts in the field that we flew in from all over the country, doing computer cases where I am having to fly around the country to have people explain to me, and of course it’s common knowledge how the Internet works, but then it was such a new animal about what does it mean to download an image, I mean it was a completely new concept. And it was really groundbreaking for everyone so it was learning all this new language and here I am twenty-eight years old, learning about subdural, retinal hemorrhages and what happens to the eyes and the brain, you know, how to preserve evidence that came off a computer, you know the term images of making a mirror copy of a hard drive was just so alien to me then. But no it’s not a foreign term now, but it was then, if I would have said a mirror copy, people would say, “what’s a mirror copy?” So the JAG Corps followed through. But when they said, would you like to become a defense attorney a lot of it
depended upon, number one the army was real good about they don’t let you become a defense attorney until you’ve been a prosecutor first. They don’t want to entrust someone’s life, liberty, and the consequences of a conviction to someone who has never tried a case. So, you only become a defense attorney after you’ve tried cases. And I knew that I wanted to get back to Oklahoma, there was a defense counsel opening at Fort Sill, Oklahoma and I knew I was getting out. So, I said I would like to be a defense counsel, I show up at Fort Sill. My first day here, they are in the middle of a trial and they say “Would you like to second chair, we know you don’t know anything about the case,” they got me up to speed but they said if you want to, just kind of sit, learn, listen, maybe if there’s anything you can do to help so I sat second chair in this court-martial, in this computer porn case. I just prosecuted several of them. And, it was a mixed plea, he had plead guilty to some of the charges and he was fighting the rest of the charges. And, the government messed up the case on something that they didn’t know about. I knew about it, I had a good knowledge, I stood up, and I prepared the cross-examination. And, not only, what had happened became as a big shock and this was literally my first day at Fort Sill I got the case dismissed. Now, the guy, it was a mixed plea

KEK: Congratulations.

RG: I hadn’t met anybody other than my co-counsel, I didn’t know the prosecutors, in the JAG Corps it’s very collegial, you know you are at one end of the hall, they are at the other and there is sort of a written rule that you fight like cats and dogs but at the end of the day you shook hands because you guys were neighbors, you were comrades, and it worked out great. You saw each other at the officer’s club, you did Christmas parties together, and there were some people that struggled with that but the prosecutors liked me and it paid off in great dividends because number one as a defense attorney your client is not always innocent so I got a lot of good deals for my clients. I had several co-defendants in which my co-defense counsel would take theirs to trial, I advised my client to plead guilty, his co-defendant refused to plead guilty. And the difference in the sentences was dramatic and some of the best things were “Captain Gifford, I’m so glad I listened to your advice.” Now, of course he’s sitting in jail but he’s sitting in jail for eighteen months whereas his co-defendant is sitting in for five years. It was a shock. In going back to my first prosecution as a trial counsel, I had worked in the DA’s office, DUIs, have people sit in jail over the weekend, fourteen days, things like that, nothing that really ever shook me that made me realize the power of the prosecutor. First court-martial when they came back and they said fifteen years. It took my breath away that I said, I orchestrated something, and I made the right decision, but I realized that for the next fifteen years that soldier over there was going to be sitting in Fort Leavenworth for the next fifteen years of his life. That hit me hard, how much power a prosecutor actually had.

KEK: And that realization, how does that affect your work today?

RG: Well, that’s what made me a better defense counsel and spending time as a defense counsel at Fort Sill, it wasn’t just the counsel. He had a wife, he had kids, he had a mom and dad, he had a grandma that I had to sit with and work with every day. Along the
way, not to get off topic, but my experience, that first experience of sending someone to prison for a long time hit me hard, maybe I was soft-hearted, I think I still am. I still watch *Old Yeller* and cry. But working as a defense counsel I realized how much impact it had. Now because I didn’t ever take a loss personally, I mean I took the effects personally and it hurt, you know sometimes I would have to go shut my door to my office because it hurt to see how much someone else’s mistake affected his kids, his wife, and I’ve taken it with me and it’s made me a better prosecutor today. A lot of defense attorneys have said that probably out of all the prosecutors they’ve ever dealt with I have a greater appreciation of what they have to go through and what a family has to go through and they understand that I can’t just turn everybody loose, I can’t give probation to everybody, that there are consequences, there are people that they are a danger to society, they are a danger to children. A gentleman, he’s doing thirty years right now for computer child porn, he was a predator, he is a predator, he created some of the porn. There was a child that was involved and he was a victim, and he was a predator, not the vicious kind but he truly loved little boys. He loved them in a way that adults, consensually love one another, care for one another. He had with little boys and he had sexual urges. Those people, we have to protect society from them. But, there are those that, what someone does technically, is a felony, but in the big picture, do I want to give this person their first felony conviction? I think a misdemeanor is more appropriate. You know, perfect example, the guy is struggling to pay his bills, he has a wife and kids, he has no criminal history. Hurricane Katrina hits, he actually had lived in New Orleans at one point, no longer lived there, was here in Oklahoma. And, of course, you could go online, say I’m a victim, you got a two thousand dollar gift card. He committed wire fraud, he committed theft against the government, there’s a number of crimes he committed, all of them felonies. And, I said, I’m not going to give him his first felony conviction. And simply because he didn’t have one, he never committed another crime. If I gave him a felony conviction, he was struggling to find jobs as it was, a felony conviction was only going to make it harder on him. What did I get in return? I got a conviction, he got a misdemeanor, the government got its money back, he got put on probation, he’s not a convicted felon. I think justice was done. Did he commit a felony? Yes, he did. But, was the right result accomplished? I think so, the judge agreed with me, the defense attorney readily agreed with me because they knew the option was felony or misdemeanor. I think being a defense attorney and the impact of what it does to others has molded a lot of what I do now as an Assistant U.S. Attorney. And, I was a state prosecutor too, so this is where the joke turns into I wanted to settle down and control my career. I get to Fort Sill, I am doing very well as a defense counsel, I have a rape case completely dismissed before it ever gets, they dismiss it before they ever try it. It was one of those that it wasn’t, as I would have told the jury, as I explained it to the Staff Judge Advocate, this was not rape, it was regret. Long story short, two officers, they both went out drinking, male officer, female officer, he’s West Point, the leader of his class and he wakes up the next morning and they had sex the next morning and she says, “what happened last night?” And he says, “what do you mean, what happened?” And basically she, we brought in experts and everything to get the testimony established. She had a blackout and was actively involved with the acts but she had no memory of it. A couple weeks later one of her friends explains to her, “well, then you obviously couldn’t have consented, that’s rape.” It gets reported, the command has no option but to go
forward with charges. We have to go through a preliminary hearing and by the time we put on the evidence, I cross-examine the witnesses, they realize that, they dismiss the case. So, I had several victories like that and things are going well, I’m enjoying the army, going to make the army my career. They send me to Bosnia, my family stays here. In the meantime I had sent out some job applications to some DA offices, I wanted to go to the U.S. Attorney’s office but every JAG wants to go to the U.S. Attorney’s office, every DA wants to be in the U.S. Attorney’s office too. My thinking is, I’ll be a JAG, I’ll be a DA, I’ll get both, that will be something that will separate me from the rest of the pack when they’re looking through the resumes. I had applied to a bunch of DA offices but in the meantime I decided I’m going to make the army my career, at least for now.

**KEK:** So, how, how, did you sign another extension? You had extended to four years and now…

**RG:** Well, I had extended to four years, I was getting ready to cross over my fourth year, of course, they don’t put you out, you just stay in and you have a window and officers, you just don’t automatically, you’re out, you have to submit your resignation, just like you’re working in a job. I volunteered to go to Bosnia, at the time Bosnia was still a combat zone so my family was not allowed to go. I was the only defense counsel in the Balkans which included you know, Croatia, Bosnia, I was in Tuzsla at Eagle Base, I would go down to Sarajevo and Bosnia is a beautiful country. It was, it’s incredible what happened there, the genocide that happened there. You’ve heard of the term, “pushing up daisies,” I would go to the mass grave sites and that was one of the ways that they would think that they’ve found a mass grave, is that there would be all these poppies that would grow in a certain area of a field. They would gun down all these men and boys, they would use a bulldozer, dig a hole, shove all the bodies in. One case, five thousand men and boys twelve to seventy years old taken to this warehouse, shot down, the only reason we know about it is that two of the men that were shot had lived and hid. As the bodies collapsed on top of them, they stayed there and snuck out at night, made their way through minefields and told authorities. If I could take a break?

**KEK:** Yeah, we will now take a break.

**KEK:** Well, this is Karen Kalnins and it is still Thursday, October 9th, 2008, and this is the second part of the interview here with Robert Gifford. And he had been speaking in the previous, or the first part of the interview, about his time in Bosnia and that’s where we left off. He was describing what he did there. So, if you could continue Mr. Gifford.

**RG:** Oh, thank you. Well, I was a defense counsel in Bosnia but I also got to see a lot of the culture, the genocide that had happened there. It was fascinating because Sarajevo was home of the Winter Olympics I believe in 1984 and just to see the destruction that had happened there. I was there as a pure defense counsel but I talked about, I began my career as doing legal assistance and there weren’t that many JAGs that were there and there were soldiers that needed, they had other issues. They were there by themselves and they had financial issues that were happening back home, their wives were leaving them, things like that. So, I did a lot of counseling that I wasn’t sent there to do but the
JAG Corps was very glad that I was willing to step up and do it. I did the first court-martials in Bosnia. We didn’t even have a courtroom. It was interesting, you had to be armed at all times, had to carry a nine millimeter, in fact, to this day it’s kind of interesting that I can almost still feel, you carried a shoulder vest, officers carried the nine millimeter, the enlisted carried M-16s. I can still feel the gun pressing against my ribs. But usually in a court martial you would wear your Class A uniform, with all the ribbons and the real fancy uniform jacket, much like a suit. But in a combat zone you just tried a case in your camouflage uniform, the BDUs, the battle dress uniform. So I did the first court-martials in Bosnia, we basically built a courtroom and we had to fly the judge out of Germany, the military judge. He wore a robe, but it was interesting, that as you walked into the courtroom, you would have to check your firearm and I was standing in front of, doing a case in combat boots was always an interesting aspect. But, 24/7 you had to carry a firearm, when you went to go take a shower you had to take your firearm with you and you’d hang it right outside the shower stall. And there was a, Bosnia was just filled with land mines and I had one experience where I went jogging and accidentally went off on the wrong path into a minefield. And it was just an interesting concept as to what can happen. After Bosnia I come back home, wife announces that we’re having our second child, which is wonderful.

KEK: Well, congratulations.

RG: So, get back from Bosnia and she had found out right after I had left and she was holding off until I got back, and it was a short tour. And, the day I get back I get a call from the DA’s office in Tulsa asking if I would go to the DA’s office. And I wasn’t too sure because I had already thought in my mind that I wanted to make the army my career but I said, well, all along I talked about getting out. Luckily, Fort Sill, being just a three hour or so drive away from Tulsa, I drive up, I interview, I’m in civilian clothes and it just felt right. And it felt great. So, I leave the army, active duty as a captain, one day I’m active duty, I stayed in the reserves so I have never left the army. So, I stayed in reserves and went up to the DA’s office. Wife has to handle the move, she’s pregnant, and I don’t have any vacation time so she handles the move from Fort Sill to Lawton by herself. Pregnant, new baby, we get to Tulsa, we have our second child. And my time in the DA’s office was fantastic. Trials right and left, a whole new system, same theories, same basic law school theories, now Oklahoma state law.

KEK: And, and, just describe for me some of the differences between a military, a court-martial and, and say, the state case, and also now, your time in federal court, how do the three compare? Can you draw comparisons between the three?

RG: Absolutely. A court-martial mirrors what happens in federal court almost identical. However, one thing that they do not have in the military courts is that for a conviction, requires three-fourths conviction rather than unanimous. It’s still beyond a reasonable doubt, Rules of Evidence apply, there is a jury panel, a judge, the privileges are all there. State cases are basically the same, twelve people sit on a jury, guilt or innocence beyond a reasonable doubt. But trying a case in state court versus federal court is very different. In state court, at least here in Oklahoma, they, you can almost win or lose your case in
voir dire, in the picking of the jury. Also the same in a court-martial. In a civilian federal court, the judge asks all the questions, you don’t get to do much speaking to the jury. So, the case is a little bit different in that aspect. Pretty much everything is almost identical, now in a court-martial system, the prosecutor can bring the charges, but, they have a preliminary hearing, and then it goes to what’s called a convening authority. Now, a convening authority, in the military, is usually the commanding general of the post, non-lawyer. But what the general does is he looks to his staff judge advocate, “Colonel, you are the legal advisor to me, what do you recommend, do I approve of these charges?” The convening authority is kind of the equivalent of the federal grand jury. If he says yes, then it becomes a case, then it becomes prosecuted. One of the beauties of the military justice system, and this all ties into what happens at Guantanamo Bay, is that even if you get the prosecution, and you get a conviction, and you get a sentence, then it goes back to the convening authority for approval. Now, he cannot increase the sentence, he cannot increase the charges, he can reduce charges, and if there’s a conviction, he can throw out the conviction or approve the conviction and he can reduce the sentence, he cannot increase the sentence, he can reduce the sentence completely. And also in the military, there’s also discharges. There is the dishonorable discharge, the bad conduct discharge, then there’s also no discharges, that’s also part of the punitive system in the military. And that’s a big deal, it’s like a conviction. The state system, fantastic trial experience, there’s not a lot of formal writing because you have to try so many cases. I believe we filed in Tulsa County, seven thousand felonies in one year. I was there for one year and the U.S. Attorney’s Office in Kentucky really liked me and they wanted to see me go to a U.S. Attorney’s office. Now, I stayed in contact with them, they knew that I left active duty which by the way just so you know, when I left active duty from the United States Army I took a roughly $10,000 dollar pay cut to go to the DA’s office. All of this was my plan to go to the U.S. Attorney’s Office. Of course my wife was like, okay, and we got one child and another one on the way, but the goal was, I would like to get in the U.S. Attorney’s Office, and that was the end goal. Sometimes to take a step forward, you have to take a step sideways to keep going. So, I considered it a lateral move, as far as professionally, which it was, pay wise it wasn’t. But the U.S. Attorney’s Office contacted me from Kentucky; they said there’s an opening in the U.S. Attorney’s Office in Reno, Nevada. Now, I decided to leave active duty to get settled and we moved to Tulsa and had been there for about a year. My family, that’s where I grew up in that part of the state. So after being at the DA’s office for a year, we moved to Reno, Nevada. Of course again, I’ve got to start right away, I have to leave my wife and two kids behind, both of them under two or two and under two. So my wife has to handle the move all by herself and orchestrates all that moving cross-country again. And I’m out in Reno for five years. Now, I’ve stayed in the reserves. Now, ironically, I’ve been a prosecutor in the state or a state prosecutor, now I’m a federal prosecutor, during that entire time my role in reserves was I stayed as a defense attorney. So, I was still defending reservists and I would activate for a couple of years or weeks and do courts-martial, defending soldiers. So, as somebody once said, that they thought that was awful schizophrenic of me that I would prosecute during the week, defend on the weekends. And also in the military, somebody might get in trouble, they may not necessarily prosecute but they might administratively discharge them, no conviction, but they may not get the honorable discharge, they would get an administrative discharge. It could cost them some of their,
like they might lose the GI Bill, things of that nature. And I would have to represent them at an administrative board, did lots of those. But I stayed in reserves ever since then. While I was there I got promoted to Major, still keeping up with my military education, going out to the JAG school. And the JAG school started asking me if I would come out to help teach trial advocacy because I was obviously in the courtroom a lot. And I had a lot of friends that were still active duty and a lot of people knew me from active duty and reserves. After 9/11, they said 9/11 happened, in fact when I interviewed for my job in Reno, Nevada I interviewed on September 10, 2001. My flight out was on September 11th, obviously I didn’t get to leave Reno. And, at that time I started getting calls asking if I would want to come back on active duty and I was strongly considering it. U.S. Attorney’s office offered me a job; I became a federal prosecutor out there. Did everything, did Indian country crimes, tax cases, violations of, you know people stealing archeological, you know stealing petroglyphs and destroying things like that, bank robbery, covered the whole spectrum, illegal criminal immigration, trafficking, all that stuff. After 9/11 I was asked, they were sending, this is a joint effort, we want to send reservists in as well. Would you want to be one of the first reservists to go to 9/11 or go to Iraq? And of course as we were into 2002 and I said, I said, “Sir,” I said, “I signed on the dotted line, you want me to go, I’m going.” And they said “the Judge Advocates’ policy is that we only want people to volunteer, we don’t want to force anyone to go.” And I said “well, you wouldn’t be forcing me to go but,” I said “my wife, I’ve got two brand new little babies.” So I said, “if no one volunteers, I’m your guy.” They said “we have a long list of volunteers, but we wanted you first” which was a huge compliment and this was to go as a defense counsel to Iraq. And they said that they had some other volunteers so I didn’t volunteer. Just so you know the kind of people that are going over there, we are now in 2008, the people that are still going are volunteers. Of course there are people that are I don’t want to go, I hate to go, but for the most part they are lawyers who are saying, “I volunteer to go.”

KEK: So there are lawyers who are making that conscious decision?

RG: Sacrifice, yes, absolutely, absolutely. In fact, one of those lawyers is Oklahoma Bar member Major Scott Ryan who’s over in the Tulsa area. He’s a great American. Anyway, sometime around 2002 they started sending detainees to Guantanamo Bay. I was asked if I would volunteer for two years to go to Guantanamo Bay. Wife and kids cannot be with me of course. And I said “do you have other volunteers?” And they said, “we have a long list of volunteers, but we really would love for you to go.” And I said, “if you have trouble finding the people you want, I will go.” And they said, “don’t worry, we have lots of really good people.” So, I passed on two good opportunities to go. Both times as a defense counsel, one to Iraq, one to Guantanamo Bay, but both of them were for, the one to Iraq was for eighteen months, the second one was for two years. In 2006, when I worked in the DA’s office some of my colleagues there, my supervisors there moved to the U.S. Attorney’s office as federal prosecutors. They knew I was a federal prosecutor in Reno, they reached out to me, they said we have an opening, would you ever be interested in coming back to Oklahoma? Absolutely. That was my hope all along, was to get back, be closer to the family. Of course naturally right before we moved, right before I left Kentucky I had my first daughter, right after I had my second
daughter we moved to Nevada, and right when they offered me the job to come back to Oklahoma we had my third daughter. Of course I get here and they needed me to start right away. My wife has to handle the move from Reno, Nevada back to here by herself. This time with a brand new baby, and two other babies. So, my path of us settling down has hopefully, I’ve now reached it. So, I’ve come home, to Oklahoma, since I went to law school in Norman, I’m familiar with the town, so we’ve settled in Norman for now. And I was in the office for not even a year here and I get the phone call. “Major Gifford, you have been highly recommended well, along the way, I get the phone call, Major Gifford you’ve been highly recommended to join the JAG school.” “Would you be willing to come to the JAG school, not full-time, but to come out and be an adjunct and teach from time to time?” Fantastic opportunity so, now I’m an adjunct professor at the Army JAG School. About nine months later I get another phone call, “Major Gifford, appreciate your continued service and your time at the JAG school, we’re profiting greatly.” “We need some people and we need help for the commissions at Guantanamo Bay, we know that you have a wife and three kids” and they said, “but what we have is we have a short term assignment.” “You can turn it down, but would you be interested?” And my wife all along, we said that if the right thing came up, that would be intellectually challenging, contribute, part of history, and if it wouldn’t take me away from my family, which my girls, my wife understands that if they tell me to go, I’m going. If they ask to me to, I will ask you know, if I can go for a shorter time so I don’t have to leave her on her own, her family is all overseas and my family is in the northeastern part of the state so I will step forward at any time but if there’s other people that are jumping up and down I’ll let them have the opportunity but if they need me and they want me, I want to go. It was a shorter tour, and they wanted me to go join the prosecution office, we’ll do. And they said what we want you to do is, Supreme Court has ruled in United States v. Hamden. The commissions are getting ready to kick off, we have a large backlog of cases, at one time we had seven hundred detainees at Guantanamo Bay, we are down to roughly three hundred. We still have twenty thousand detainees in Iraq, another eight thousand in Afghanistan; we don’t expect to be bringing many of those over to Guantanamo Bay. We need someone to start going through these cases, telling us whether or not we have a good case, you’re a federal prosecutor we know you’ve been a state prosecutor, we know you’ve been on active duty as a military prosecutor, you’ve also been defense counsel active duty and reserves. In other words, we think that you can evaluate a case better than most people, you come uniquely situated. The commissions are being prosecuted by both Department of Justice and Department of Defense, DOD, Department of Defense, is taking the lead on it with Judge Advocates from all branches of service, army, navy, air force, marines, coast guard. DOD civilians are involved, prosecution and defense, same as, Department of Justice, is also sending over prosecutors as well, there’s also law firms that are doing pro bono work, some of them have been hired by families, a lot of the groups such as the ACLU have detailed attorneys to assist us. Well, law professors are getting involved, law students, working with law professors are getting involved, so I go down with the idea that I’m going to be just reviewing through cases, short term.

KEK: And how long was the, was the deployment going to be?
RG: Well, they talked about six months which meant that when I got there they were going to ask me to stay for longer. But I promised my wife that if they needed me to stay, that I would stay longer, that if I get there and I accomplish my mission, what I set out to do, that I would come home. Now luckily what it was, was that you will actually live in Washington, DC, be stationed in the Pentagon, and you will go down to Guantanamo Bay as needed. The prosecutors, defense attorneys, are all in DC, nobody is really at Guantanamo Bay other than, there’s a naval base down there but for the evidence, and to interview the witnesses you need to be in the states. Because there’s no really direct flights, because you may be having to go here, and go there, and interview people here. We don’t need to be trying to get you out of Cuba all the time which is not an easy deal. I get there and they say, well, well, before I get there they said we’ve got some issues with the prosecution office; we’re bringing in a new chief prosecutor. So, we’re going to let him decide but we still want to bring you out because we have a need in the convening authority, which I talked about in courts-martial, there is a convening authority. Usually in the normal courts-martial the convening authority decides whether or not the charges are good and decides whether or not to approve the charges, the conviction, and the sentence. In this case there is no non-lawyer convening authority; the convening authority is a civilian who served as a civilian on the Court of Appeals for the Armed Forces. She was the chief judge for fifteen years so she’s a lawyer and they’ve asked me if I would serve as the Deputy Director of Legal Operations and legal spokesman to the commissions. Which meant anytime, anybody, a reporter called and had questions, that I would be the point man. So, they said the reason being is that you can explain this better than anybody. So, I understood the commissions, what the Supreme Court ruled, and I knew the Commission’s rule, and I could sit down and talk to reporters about how it works in a court-martial and how it would work in the federal courts, because a lot of what’s been happening is that there’s a big misperception about what the commissions is.

KEK: What did the Supreme Court rule in Hamden and what was their, sort of, what was their charge to the commissions?

RG: Well, the commissions originally came about in 2002, President Bush signed a Presidential Executive Order putting together the system. Hamden appealed that saying it was not enough. And the Supreme Court says, President, you don’t have that kind of authority, Congress needs to come out with something. Everybody knew the writing was on the wall, the groundwork was laid, and Congress put together the military commissions in 2006 so what is going on now is not the same thing that everybody associates in 2002. 2006, the Military Commissions Act of 2006 was implemented by Congress and anyone who studied military law or is familiar with courts-martial says, “I’m looking at the Uniform Code of Military Justice and I’m looking at the Military Commissions Act, they look identical.” They are, which is funny because the press has not picked up on that. They know about it and I will go out on a limb here to say this, they just refuse to write about it. Now if the system that we use to prosecute our soldiers, sailors, and air men is good enough and enough due process for them, our military commissions are good enough for those accused of 9/11, the bombing of the Kohl, the bombings of the embassies, the unlawful enemy combatants that are caught on the
battlefield of Afghanistan and Iraq. When I talk to the press I said, the system that’s in
place for these gentlemen is the same process we give to our own national treasures, our
service members. Of course they never print that. No, it’s more fun to beat up on the
government than not. But, so what I became the convening authority is responsible for
number one, getting the courtrooms built, getting security clearances for everybody, I had
to get my security clearance upgraded from secret to top secret to TSSCI is the phrase
they use which is pretty much the highest you go. And just because I have that doesn’t
mean I get to see everything, I have to have a need to know. So, I would review the files,
I would provide legal advice to the convening authority on, the prosecution would bring
over the cases and they would be presented to the convening authority. I would review
the cases and help; I would give my opinion as to whether or no there was sufficient legal
evidence to proceed and whether or not the charges were appropriate. I would also deal
with victim witness issues; I met with a lot of the victim’s families from 9/11 in New
York City, the firefighter families, folks like that. I will say that the families that were
involved are probably some of the most amazing groups of people I have ever met in my
life. They are very, they’ve been through a lot and their stories, the stories that I’ve
heard, you know, I walked out of the room thinking I am such a small person. Especially
the firefighter families, they were amazing. One of the stories was a firefighter, he was
retired and he was out, he came back off his retirement to help dig out the bodies. One of
the bodies that was buried was his son, a firefighter, so it was. But he talked about being
only able to find a finger and he says if they could return to that to a family, that could
identify, that way there could be something in the casket for the family to bury. Meeting
with the families, letting them know what we’re trying to do so that they have access
to watch the trials of the 9/11 co-conspirators, it was just amazing. Now, I was not a
prosecutor, I was serving in a quasi-middle role because I was in charge of getting, you
know, whenever you have top secret evidence you can’t just walk into a room and lay it
on a table. You would have to have, they call it a SCIF, s-c-i-f. And so getting those
built in Guantanamo Bay, getting them built in Washington, DC for the movement of the
evidence. The movement of electronic transmission over the backbone of wires that the
evidence you know, did the government have it? Yes. But did we have access to it? No.
The CIA would own some of the evidence and trying to get a lot of that evidence
declassified or what evidence we could use, which is not unusual. Top secret evidence
was used during the Iran-Contra hearings, was used during the prosecution of Timothy
McVeigh, was used in the trial of Zacharias Moussaoui. It’s been used in courts-martial,
it’s being used in the military commissions, the rules and procedures that are used in the
military commissions for top secret evidence is the same as it is in civilian federal court,
is the same that they use in court martial. Thus, a lot of people have heard, well, they
have these secret trials, that’s not true. There will be no secret trials. Any evidence that
is used, that a jury will hear to convict a defendant, that defendant will see every bit of
that evidence. So, he has the right to confrontation of all evidence so whatever that jury
uses to decide his guilt and his sentence, that defendant gets to see the same evidence.
That’s the same procedure they use in our civilian federal court. Usually the way it
works, in just a brief summary, top secret evidence, Judge, here’s a reasonable
alternative, this is what we want to do, the judge says I agree, defense counsel, you
know, they’ll object, judge says no, it’s a suitable substitute.
**KEK:** For the top secret evidence?

**RG:** Right.

**KEK:** And then that way they wouldn’t have to release that top secret?

**RG:** Because some of that evidence was of national security, because there was no way to show this little piece of the puzzle without exposing all this other stuff. And that was one of the big concerns was that once you open up that can of worms it creates a big issue. And it wouldn’t be relevant to the trial but all of a sudden you know, it puts people’s lives in danger. People that are still on the battlefield in Iraq and Afghanistan, all of a sudden their names become known, people that just are normal civilians who have normal civilians who were on active duty that now have normal jobs here in the United States, all of a sudden they become a target. Things that really had nothing to do with the guilt or innocence but because their name is associated with it, there’s no reason to get into what their true identity was, it was not impeachable evidence, it did not go to the guilt or innocence, it was nothing that would infringe upon that defendant’s Sixth Amendment right which the government’s position was, the Constitution did not apply to the detainees because they were unlawful enemy combatants. I know I’ve been talking for a while but there’s a few differences between the court-martial system and what happens at Guantanamo Bay.

**KEK:** Yeah, if you could explain those.

**RG:** One of the, I guess the biggest one, is that hearsay may be admissible. Now, hearsay, a lot of people, lawyers in the United States, think that’s atrocious. Now, if, that’s a two-sided coin. It’s fun to say that in the press but as a defense attorney I would love to introduce as much hearsay about my client as possible, that’s a double-edged sword for the government. Think of all the evidence that the prosecution doesn’t get to know about or try to disprove on the day of trial when you start introducing hearsay. Secondly, the military, it’s hearsay may be admissible, not that it is admissible, might be admissible. That means the judge serves as the gatekeeper, it has to be presented to the judge and if the military judge is not satisfied with the hearsay, the jury doesn’t get to hear it.

**KEK:** So, is that done in an in camera hearing?

**RG:** Yes, it’s just a pre-trial hearing in which the prosecution will alert the judge that there will be some hearsay evidence and the judge has to establish whether or not it’s trustworthy enough, that’s it’s not hearsay upon hearsay upon hearsay. A lot of times another reason that hearsay needs to be used, has to be used, is that issues like the chain of custody. Private Snuffy recovered this videotape that shows the defendant, the detainee, with Osama Bin Laden. It was recovered in this cave in Tora Borah, this is just an example. Private Snuffy takes the audiotape, he hands it to his chain of command who hands it to somebody, to somebody, to somebody, why don’t I call Private Snuffy? Private Snuffy is dead, Private Snuffy died, this was not a police investigation, this was
not a law enforcement investigation. When there is a shooting in downtown Oklahoma City or Tulsa County or in Creek County the people that respond are law enforcement officers. What do they do? They rope it off, they quarantine the area. Why? Because they are looking for evidence. Why are they looking for evidence? To find the suspect and to build, prosecute that case. When Private Snuffy found that videotape in the cave in Tora Borah he was not thinking about prosecution, he was not thinking about the preservation of evidence, he was just trying to survive and when he didn’t survive the chain of custody is broken, therefore we can never prosecute this detainee. That, if we release him, he’s just going to go straight back to the battlefield. So, chain of custody issues is one reason. Secondly, you know, there’s always, you know, it’s got to be flexible enough. Now, the other thing that the American public needs to realize is that one of our biggest criticisms, critics of the Guantanamo trials, United Nations, overseas countries. Why don’t we use the International Criminal Courts? The International Criminal Court for the former Yugoslavia, for the atrocities that happened in Bosnia, the atrocities that happened in Rwanda, we have courts for them why don’t we use their standards? And, not to get on my soapbox but, ladies and gentleman, hearsay is admissible in those courts. You know, actually, I have a little chart that draws up all the comparisons between the two. You look at the, in the commissions, after a conviction, it goes to the convening authority for approval of a conviction and sentence. She had to approve of the charges in the first place. On the September 11th charge sheet six people were charged, it went to her. She only approved of five. She’s agreed to allow the death penalty to go forward, for them to seek death on the five so right away, one defendant has been kicked by her before it’s ever gotten to trial. Now these five will be tried. Let’s say they are convicted and the jury gives them death, it goes back to her, she could say well, I don’t like this conviction, I’m throwing that conviction out. I don’t like a death sentence for this one, I’m throwing the death sentence out, death on those. The defense can appeal to her to change her mind for others. So there is an appeal there. Second level appeal is to the Court of Military Commissions Review, it’s a three-judge military panel, military judge sits down there, it’s military officers that sit on the jury, they vote by three-fourths conviction, for death penalty it has to be unanimous though. So, just like our civilian system, court-martial for death penalty is also unanimous. It’s appealed to this three judge military panel just like we have a appeals court for the Tenth Circuit, it’s three judges. After that, it can be appealed to the DC Court of Appeals, a civilian court, after that it goes to the United States Supreme Court. The reason that’s ironic is that service members, soldier, sailors, air men, marines, don’t have that same direct route to the United State Supreme Court. They have an appeals process, but they don’t have, they don’t get that review by the DC Court of Appeals. So, detainees actually jump into Article Three courts faster than our own service members and they actually have four levels of appeals. They have the convening authority, the CMCR, the DC Court of Appeals, and then the United States Supreme Court. You, as a civilian walking out here on the street, how many appeals do you get? You don’t get near that many.

KEK: No, absolutely not, no.

RG: So, when I’m talking about due process, there is a lot of great due process. Hearsay may be admissible, judge serves as a gatekeeper just like in our own courts, judge serves
as a gatekeeper of the evidence. We’ve allowed hearsay because it’s practical because this is not a law enforcement investigation. The police did not show up out there on the desert to cordon off the area, to gather the evidence, Private Snuffy who’s just your eighteen year old who was in high school last year is running through the desert with his M16 finds this videotape, there’s a reason for all this. Also, if you want to make a comparison, after Nuremberg, the World War II military commissions, they had an appeal, one, and they were hung within two weeks. So, within two weeks of the conviction of some of the folks at Nuremberg, they were hung in two weeks. There was no United States Supreme Court appeal, the rules of evidence were not in place then, hearsay was admissible, and it was a lot different, and there was a panel of judges rather than a jury. A lot of people say well, it’s not fair that they’re being heard by a military jury, not a civilian jury. We have service members that are being held by Private Snuffy if he’s court-martialed, it could be heard by senior enlisted and senior officers. I think it was evidence, Hamden, that went all the way to the Supreme Court, the Supreme Court kicked out the President, the Congress reacted. Well, Hamden went to trial, he was convicted, he was found guilty basically of support of material terrorism. That’s the same charge we have in our courts here, in federal court. Easily twenty, twenty-five years here in our civilian courts. Military court, these men that sat on that jury, these people who have been in combat, they have the best experience to value what it means this person did. They gave Hamden five and a half years. Mr. Hamden has been sitting in Guantanamo for about that long. Now it’s taken a long time because there’s been all these challenges. The Supreme Court, stops the process, restart again, stops again, so there’s a reason it’s taken this long but these officers gave, what in their experience, serving in combat, recognizing that he’s an unlawful enemy combatant, realizing also that they’ve seen videotape of him not only, now Hamden was referred to as the driver of Osama Bin Laden or the bodyguard of Osama Bin Laden, which he was. What is not reported in the paper is that when he was captured he was captured with three, I believe it was service to air missiles he was hauling in the back of his car. Basically, was he engaged in a fight? No, he got pulled over basically, had three surface to air missiles, he was a part of the combat against American forces. He’s not in a uniform, he’s not a part of any organized army, he’s basically, he’s what’s called, the legal term is a belligerent. They don’t ever talk about that he had all these surface to air missiles. Basically, he’s arming the enemy or he’s going to shoot them himself, basically he got captured. So, yes, he was a combatant, yes, I’ve seen the video of him and Osama Bin Laden, yes, I’ve seen him serving as a bodyguard, yes, I’ve seen the statements where he admitted all this. And yes, I’ve seen the pictures of his car with the surface to air missiles. So, Mr. Hamden, he got a very light sentence and had he been tried in civilian court, I believe he would have gotten a more harsh sentence. There was a service member who was convicted of a war crime, reservist, came off active duty, left the army completely, the army had no way to prosecute him, they had no more jurisdiction, he was tried in civilian federal court. The jurors acquitted, hung trial, they said we are not equipped to listen to these cases. We cannot relate to these cases. So, the argument, and I guess what I’m getting to is when the argument is why don’t we try these detainees in civilian federal court, that’s where they belong, not even a month ago a jury said we are not equipped to listen to these types of cases. The commissions themselves, the system itself is based off our own military justice system which has been in effect for over fifty years which has
been reviewed and upheld by the United States Supreme Court. It’s been tweaked to allow in hearsay. Hearsay is used in our International Criminal Courts, it’s not used in courts-martial, it’s not used in our civilian court, we, as Americans, draw the line at hearsay in our civilian courts. But I will point out to you, as every lawyer knows, there are exceptions to the hearsay rule. There are a lot of different variances on the hearsay rule so hearsay can come in in different aspects. But hearsay, through a judge’s approval, serving as a gatekeeper, so it’s tweaked there. Okay, the second difference on military commissions. Torture. Now, as of right now the United States, the press hasn’t connected these two dots. The President of the United States has taken the position, as is the official government policy, we do not torture, we have not engaged in torture. Now, has there been a rogue soldier or rouge that has done something improper? That, I don’t know of, I know that people, the service members that committed the, that did the stuff at Abu Ghraib, that completely inappropriate, wrong, they were court-martialed appropriately, it was handled accordingly. Was that torture? You know, piling, you know, making the men be naked and pile on each other, you know, I think everybody has their own opinion about that. Was it wrong and inappropriate? Was it a violation of the law of war? Yes it is. Were they court-martialed, were they punished? Yes they were. In my eyes it’s a travesty because what those were, those were lower enlisted soldiers, not a lot of education or maturity, who acted out as a bunch of kids do. Basically, if you think about what a bunch of drunk frat boys do, that’s basically you got to remember that our service members, we draw them out of the same pool as those drunk frat boys came out of. They come out of the human gene pool. So, mistakes are going to be made. Getting back to torture, the government’s position is, we do not torture. The government has also conceded that we have water boarding. The connection is, does water boarding equate to torture? As I’ve pointed out that that is a decision that a military judge has to rule upon, has not ruled upon because it has not been brought forward. If a detainee has said I was tortured maybe not by Americans but by some other country, or if there’s been evidence that the government learned about, or information the prosecution’s position is, is that they are going to prosecute these cases and make every attempt to not use any evidence that was derived by interrogation that would be unlawful in our own courts. If there is information that, basically we’re going to try to prosecute these cases without evidence that came out of water boarding. But, if that’s all the evidence there is, we haven’t had that situation come up and knock on wood that any evidence that came out, a lot of that, a lot of these suspects, Khalid Sheikh Mohammad, KSM, the people who want to talk to him first and foremost, intelligence. They want to know, when is the next 9/11?

**KEK:** Where are the commissions now? What is the status of them? And how long did you actually end up serving there? Did you end up serving six months?

**RG:** Six months, I did a full six months. They’ve asked me to extend several times, they’ve asked me to come back, the Department of Justice has asked me to go back as a civilian. I’ve said well, if I can do this, if I can do that, they’ve said well, we’d like to put you on a prosecution team, and it was a fantastic experience. I served six months, lived in DC, went to Guantanamo about once a month, would be down there a couple of weeks at a time, lived at the naval base, the history, I could spend an hour just talking about that.
**KEK:** I know, we could, but I want to get you out of here.

**RG:** But my job there was to get the thing up and running. The commissions are up and running. When I got there, there were two cases that had been charged, when I left there were sixteen cases charged, including the 9/11 case, for September 11th, and including the bombings from the late nineties in Tanzania and Kenya, the bombings that came out of that. These commissions are not dealing with just the detainees that are picked up off the battlefield, the 9/11 co-conspirators is one, the people who participated in the USS Cole bombing in Yemen in early 2000 is another, and the bombings of the U.S. embassies in Kenya and Tanzania in the late nineties, that’s another case that’s being prosecuted. There are some other cases that you can also expect, in Bali, there was a bombing right after 9/11. Some of the people that were involved with that are being held as detainees at Guantanamo Bay and expect those to be prosecuted. I mentioned that there are two hundred and seventy-five detainees at Guantanamo Bay and expect those to be prosecuted. I mentioned that there are two hundred and seventy-five detainees at Guantanamo Bay, only eighty-five are currently expected to be prosecuted. The rest, they’re trying to get them returned to their home country, some of them they’re having trouble in returning. For example, the Uighers, they’re Chinese Muslims, they were picked up, they trained in those camps in Afghanistan, their intent is not to attack the United States they just got picked up in the wrong place, wrong time. China would like for us to return them to them, we do not want to do that and it’s been in the press lately. And we’re just trying to get a third country to take them and they’re called Uighers. And we’re trying to find a third country to take the Uighers. Some countries have taken some, some we are still trying to place. Technically, under the laws of war if a belligerent is picked up on the battlefield, they are held until hostilities end. Have hostilities ended with the war on terrorism? No, they haven’t. When will the war on terrorism end? We don’t know, technically we could hold everybody down there until the war on terrorism is over which could be indefinitely. Are there people down there that are going to be held indefinitely? I don’t think that decision has been made. Right now there are eighty-five they’ve got lined up they will be prosecuting. They’re at sixteen right now, I think they’re at nineteen right now. Right now, some are currently in trial, some are still in the motions process, some are at the convening authority waiting for her approval. My goal was to, when I got there, they said you’ve got to get the 9/11 case up and running and the embassy bombings up and running and we’ve got to get all these other cases up and running. You need to go out, start talking to the press, get them educated and to understand. Every day I was on the telephone with the New York Times, Miami Herald, the Washington Post. My first day there I sit down with Bob Woodward. I’m going to ABC, we’re talking to people from Newsweek, CNN, CNN International, Al-Jezera, the BBC, doing radio, television, newspaper, just to educate them and what I always told them, look, I work for the convening authority, I am not here to tell you that that man is guilty. I am here to tell you that this process is fair. And they would ask about why is it this, why is it that? The defense is doing a fantastic job and this is going to sound wrong but really it’s a compliment, they’re doing a great job at trying their case in the press. They have convinced the press that the commissions are unfair, no due process, torture. Prosecutors, as you know, under the ethical rules, have a special responsibility that they are not to try their case in the press. So the prosecution has had to be mum about the case. A lot of the individual facts about specific cases are not known to the world or to the press.
Prosecutors do their talking in the courtroom. I talked about the process so even though I couldn’t say, I can’t say Khalid Sheikh Muhammad is guilty as all sin, yes, everyone in the world knows he confessed, yes, they all know that he’s been labeled as this or has direct involvement in that. But, I’m not going to tell you that because I am here only to talk about the process. So, I would sit with reporters every day, I would also, my job was also to go to the State Department once a month, meet with the State Department. I would brief all the embassy workers on the status of the commissions because they would have to answer to their country about what was happening at the commissions. So I would draw up a little talking points so that they knew how the system worked and they could explain it. Especially when someone says well, this is how it works in American courts, courts-martial, the International Criminal Courts, and this is how it works in the military commissions. And every single time, the same response I got was I didn’t know that, I’m so surprised, I never knew. And, here’s the key phrase that I’ve heard every single time, I never knew they had that many rights. And that’s what I’ve been told repeatedly, over and over again. They have the right to remain silent, they have to be found guilty beyond a reasonable doubt, they have the right to free counsel, they can have other counsel at their table with them, but if they want to hire other attorneys and they get to keep their military counsel which they don’t get, you get a public defender, you hire an attorney, you lose your public defender in the civilian system. You get the right to cross-examine all witnesses, you get the right to see all the evidence that will be used against you at trial, if it’s a death sentence, it has to be a unanimous verdict, you have four levels of appeal, those are all rights that are very significant. Now, I also want to point out, there are two systems down in Guantanamo Bay. There are the detainees who have not been charged, they’re just being held. And then there’s the commissions, which is the trial process. Here’s the common response, well it seems awful unfair that somebody could be held down there in jail and not be charged. And I said, would it surprise you if I was to tell you that we do that here in the United States every day? We have people who are sitting here in our jails, held indefinitely, and they said, that’s not true. And I said, I can prove it to you. And they said name one thing. And as soon as I started to talk about it, they go “oh, I hadn’t thought about that.” In our American justice system, we have the criminal justice system. Now sometimes we have criminal aliens that are being picked up by immigration and held administratively and sometimes we decide to prosecute those people. Now some of those that we prosecuted we pull out of the administrative system and prosecute in our criminal courts. The commissions pull people out of the administrative system, the detainees, to prosecute and as I’ve said we have eighty-five. Now those eighty-five are basically, that’s our immigration down there, they’re holding these illegal aliens, except they’re illegal alien combatants, they are being held and a lot of them are being released. Now at one time seven hundred, most of them have gone back, we’re trying to get rid of the rest of them, some of them we’re having trouble finding a home for them, but, as far as could we hold some of them indefinitely? Yes. Are we going to? Don’t know yet. Do we do that here in the United States? We have, here in the United States, a group of aliens that we cannot release into society because they are a danger to society. They have not committed any further crimes. They may have committed some crimes but they have served their time and they are still sitting in jail, in immigration jail. And what I’m referring to is the Mario Cubans. The Mario Cubans, for example, we do not return Cubans to Cuba. Now, if you’re a Mexican and
you commit a crime, you get convicted, immigration picks you up and deports you. If you are a Cuban and you commit a crime, you get picked up by immigration or arrested, you are prosecuted, you are returned to immigration custody, and they give you a bail and you are free to walk out amongst the people. You’ve been ordered to be deported and the day that we ever establish relations with Cuba and there are some other countries that we have the same sort of status with, we will deport them as well. But right now, you have an order of deportation, here’s a work visa, go back, don’t sin no more, don’t break any more laws. There are those of course who can’t help themselves, they keep breaking the law. Immigration says fine, you’re a danger, you’re being held indefinitely until we ever open up relations with Cuba again. So, this all is prior to what happens down there so when I make that analogy, when I say, when they talk about this is not our American system of justice, and often we say, oh really? Let me remind you about something that you have forgotten about. And, now…

KEK: What is their reaction once you remind them about that?

RG: Shock because they said, I have forgotten about that. It’s something that’s really not discussed anymore. You know, granted, there’s not a lot of them but I guarantee you there’s just as many Mario Cubans sitting in an immigration jail than there are detainees sitting down in Guantanamo Bay. Also, as far as being held, you’ve got one of the big things there is the case of Omar Khadar. I served as a quasi-judge, I was asked to serve as a deposition officer, which is almost a judge, more like a traffic cop, referee, between the military prosecution while they deposed a special forces officer about when they captured, he’s a Canadian citizen, Omar Khadar. He was fifteen years old when he was captured, he killed some Americans, he is an unlawful enemy combatant, he is being tried down there. A lot of people are saying that you should not be trying someone who committed a crime as a juvenile. And I always tell people, I said, we have juveniles in our state system that we have adjudicated as adults and tried them as adults and they have gone to jail. If Omar Khadar had thrown a grenade and killed one of our police officers we would have prosecuted him as a civilian in state court or as an adult, not as a civilian, as an adult in state court. And I said, he is getting our American form of justice. So, the press has not been fair in reporting that. I will say that I am friends with all of them, I have sat down and spent a lot of time with them talking. One of the ones that I’ve enjoyed the most talking to was Jeffrey Toobin, he’s a writer for The New Yorker, former federal prosecutor in New York, was part of the Iran-Contra prosecution, and he’s also on CNN all the time. He’s their legal spokesman. Basically, educating them on the process.

KEK: And what did you find the most rewarding about that, about educating them?

RG: Well, I enjoyed bursting their bubble about secret trials when I would say there is no such animal. Well, I talked to the defense attorney and he started telling me X, Y, Z, and I would show them the rule. Well, this is rule 505 of the military commissions, this lays out the process and they’re reading it and okay, okay, but this doesn’t seem right that the press and the public can’t see that. And I wait, wait, let me show you courts-martial, rule 505, it’s identical. Well, it’s a courts-martial, that’s not my complaint, and I say, I know, I’m just letting you know that’s there. And I say, well, let me show you something else,
the Classified Information Procedures Act, it’s what they use in civilian federal court. And I say, read it, now look at the first one. And I say, it’s the same. And they say, so there’s no secret trials. I said, “like I said, there is no process, these are open trials.” And I say, granted, you know, Joe Sixpack can’t go off the street and say I want to go down to Guantanamo and sit and watch the trial. They’re not going to let him fly into Guantanamo. But, the government has bent over backwards to get the press down there. They arrange the flights, it costs the government taxpayer a lot of money to get these people down there. Now granted we tell the news agencies you need to pay this much, you know four hundred dollars for your flight, you know but we get them down there. And it’s not just the press. We invite the people that are the most anti-commissions, we make sure the ACLU has a seat, we make sure that Human Rights First, Human Rights Watch, the UN, that they are all there, they have seats. They want to come, they have a seat. We get their flights chartered, we get them down there, in fact we get them to, we make it available for them to do press conferences, we set up the equipment, we give them space to set up their laptops, phones, everything so they can report on this. Now, are they reporting it accurately? No. Are they reporting it fairly? I don’t think so. But are they reporting it? Yes. I think that, I’ve gotten to know the press, I still talk to them, I still talk to the people at the commissions every day, every single day I’m exchanging emails.

KEK: Even in your job now?

RG: Yes, even in my job now.

KEK: Would you ever want to go down there again or have you been asked to go?

RG: I, they have asked that if I’d be interested, well, if we brought you down for a short stint, would you be willing to go? Yes. They’ve asked me to go back as a prosecutor, this is, you know, I’ve been a part of it, it’s a historic thing, it was to be there in the Pentagon when they made the announcement on 9/11, I mean, I was, there were very few people allowed in there, you know, it was historic to me. You know when the General announced that he’d received the charges on the charging of the 9/11 co-conspirators, you know I get to tell my girls, did you hear what he said? I wrote that. And, you know, to go back, yes, but I would have to leave my family for two years. And, I’ve said, if you need me to work on cases, I have the top secret clearance, I can work on these cases but. Or, if you need me to fly back and forth and they said no, we want you to come here to stay which, I can argue that, they agree with me, yes, you can probably do the job, work on it from Oklahoma City and fly back when needed, and fly to Guantanamo when needed. But, as a practical matter, we just want everybody in DC. So, you know, it’s not out of the question, I’m done yet, it’s still ongoing, they have talked about having me come back out for when the 9/11 case kicks off to sit with the media and to sit with the victims’ families because on, when they did the Zacharias Massouri trial they piped … The trials are not televised. Civilian federal court trials are not televised. But with Zacharias Massoui, they televised it to the victims in a remote location. They’re talking about doing the same for the victims here of 9/11. So, they’ve asked that I might go and that way, AUSAs sat during the Zacharias Musoui trial, the judge would say, I’m taking a
break, and the AUSA would stand up in front of the victims’ families and say okay folks, this is what’s going on, this is what’s happened, they made this motion, the judge has to go back and read this stuff and he’s got to make a decision whether or not this or that. And, they’re going to need that because I interacted so well with the victims’ families and they thought that would be a great role for me. Another thing that the victims’ families really liked about me is that the victims’ families have groups, they have victims’ family groups, they have several groups. Every single one of those groups have interacted with and know the Murrah bombing group. And they talked about they said, oh, do you know so and so, no, oh, well he’s in charge of the Murrah family group and we’ve been out to Oklahoma City several times where we sat and talked about because the victims’ family groups in Oklahoma got with these groups and said look, this is what you need to be prepared for. And getting them ready for the press onslaught, the frustrations that they’re probably going to feel, and, when I told them I was from Oklahoma, and Oklahoma City, they, all of sudden, they were like, welcome to the fold, we trust you. It’s one of those aspects in that I’m in this unique situation in that I’ve been a military prosecutor, a state prosecutor, a federal prosecutor, I’ve been a defense attorney in the military, and now this added aspect that I’m from Oklahoma City, was here during the bombing, I was in law school at the time. In fact, I was driving into Oklahoma City when it hit. And that I have this unique set of skills I guess, more or less, that I can help in one way or another. I may go back as a prosecutor, I may go back just to sit with the victims’ families to help them cope and deal with the trial process. It might be as a role, as a professor to explain the process, to sit with the press, to explain to them what’s going on, why this is not that big of a deal. A lot of people think everything is a conspiracy, and the press has played a lot of it out that way. I think that, we talked about Abu Ghraib earlier, a lot of the taint Guantanamo Bay is because of Abu Ghraib. You take the military commissions, you take that process and you move it anywhere else, everyone’s going to say, that’s a fair system. A lot of people exchange what happened at Abu Ghraib as to what happens with Guantanamo Bay. Those are two separate worlds but they’re locked and interchanged and the world is always going to see one connected to the other. While I was there I made great progress in getting people educated. One of the things I do and this goes back to my interest in writing, is that I’m a big believer, as a lawyer, that the public needs to be aware of their rights and the laws. When I was in the military, I would write articles for the post newspaper. We called them preventive law articles. Basically, help people stay out of trouble. If you think about shoplifting, here are the ramifications, if you get a DUI, here are the ramifications, or these are your rights under the Fair Debt Collection Practices Act. I did a lot of that, I still do a lot of that. And in this aspect of me dealing with the press, it’s what I’m trying to do, I’m trying to educate them. And I’ve killed more articles than anything else. Not to say I suppress them, but all I did was that I took the time to sit with a reporter, and I would say, look, you write that, you’re generalizing the law. The reporter would say, well, I can do that, and I would say, if you write that, not only are you legally wrong, you will then be factually wrong. And those are words that every reporter backs down off of. So, a reporter bears a lot of power. But anyway, I demobilized from the commissions, I’m still very much involved, I may get involved again depends on how things play out, I’m back in the U.S. Attorney’s office, I’m part of the major crimes team. I do a lot of stuff I did out in Reno, Nevada; I’m the deputy ATAC which is the Anti-Terrorism Advisory Coordinator. So I do a lot of the stuff that
there may be issues that come out of our jurisdiction, may not be a prosecution or case, but because of my clearances and experiences I do have a role to play. In about two weeks I leave for Oman for a case that’s a murder for hire prosecution, that may be rearing its ugly head here. So, my experiences as a judge advocate, as a federal prosecutor, as a state prosecutor and as a tribal prosecutor have paid off. I still do Indian Country crimes and when I talk to the tribes about crimes in Indian country, I tell the tribes to be very careful because they want to have more power in their tribal courts. I said to be careful about what they wish for because the same criticisms that are being put out there on Guantanamo Bay will be what they experience by how they give no due process in these tribal courts and to be very careful and to be very cautious. So, everything comes full circle at one point or another.

KEK: It certainly does and Mr. Gifford I cannot thank you enough for your time and your experiences here today. I realize we’ve really, I mean we talked for two hours so thank you, it was more than I ever expected or dreamed of.

RG: Well, my pleasure. Thank you.

KEK: So, thank you again, very much.

RG: It was a pleasure.

KEK: Thank you.