INTERVIEW WITH JAMES T. ROWAN

MAY 28, 2009

KEK: Hi, this is Karen Kalnins; I’m a Reference Librarian at the Oklahoma City University Law Library and today is Thursday, May 28th 2009. It’s about 9:05 or so in the morning and I am in Oklahoma City, Oklahoma here in the law office of Mr. James Thomas Rowan. Mr. Rowan is an attorney here in Oklahoma City, Oklahoma and this interview is part of the larger oral history project that the Oklahoma City University Law Library is sponsoring. As a part of that project we are interviewing attorneys and judges throughout the state of Oklahoma. So, welcome Mr. Rowan.

JTR: Well, thank you very much, it’s a pleasure to be selected as one of the lawyers to be interviewed.

KEK: Well, great, I was so pleased when you agreed to this interview this morning. What, what drew you to the law?

JTR: Well, I wish it was some noble reason. I had been drafted in the United States Army, I went through Infantry OCS and didn’t quite complete the course because there were people there who were more astute in leadership qualities than I was and they selected me out of OCS very close to graduation. So my alternate job in the army was mail clerk; which I was awarded after being an infantry officer candidate. I was reading a, you have a lot of time to read in the army, so I was reading a pamphlet about early outs. You can get out of the army 90 days early if you enrolled in school. And so I enrolled in Oklahoma University Law School with no other reason than to get out of the army.

KEK: Well, that is reason enough, that is reason enough.

JTR: Well, I grew to love my first semester at Oklahoma University Law School. It was unlike anything I had experienced at undergraduate. And so, I really was, it was my calling and I was just, I absolutely loved it once I got there but beginning there was not a noble path at all.

KEK: Well, it was in your mind at least, to get out of the service. And where did you complete your undergraduate degree?

JTR: Kansas State University in 1967. It was my fourth college. I started at OU for a semester, then went to Kentucky University, came back to OU, and then graduated from Kansas State University.

KEK: And what year did you enter into OU law school?

JTR: 1969.

KEK: And tell me about your time at OU.
**JTR:** Well, it was kind of an exciting time. The war was on, but it didn’t affect us much at all. And I really enjoyed the coursework and I was a single man and so my mantra was if it isn’t eating, sleeping, or studying, it’s wrong. And so I really tried to hone in on those things. I was terrified that my 2 years in the army had put me at a disadvantage to the young scholars who went straight through, because I was not used to reading heavy stuff. But I found out quickly I could compete and did very well in law school and enjoyed it.

**KEK:** Did you have any professors that you remember or that mentored you or any significant experiences while you were at OU?

**JTR:** There was one, Allan Salzman, who came to OU from Detroit and he taught criminal law and torts as well. So he and I got to be friends even outside of class. One summer after taking a workman’s comp course from him I was able to drive his furniture out to California where he went to teach at Stanford. And I got to stay in his house in California for two months for free, so that was a nice experience. But most of my college professors were really very sharp, nobody there was a dud in my mind and so I learned something.

**KEK:** Now just for the record, the war that you’re referring to, is that the Vietnam War?

**JTR:** Yes.

**KEK:** And were you in any kind of danger of being drafted or going to Vietnam?

**JTR:** Well, I should have by all accounts have gone to Vietnam. When I busted out of OCS and there’s no other way to describe it; 18 of us got kicked out, 16 went to Vietnam. Myself and Lorenzo Padilla did not go. Lorenzo had too many brothers in Vietnam as his category. My category was a little bit different. I had asked this Corporal O’Reilly kind of fellow you know from MASH character, to do something in the interim between the time I got kicked out and the time I was actually getting my orders. And so he assigned me to the OCS Battalion as the mail clerk and I think that my records were lost. And so therefore, I never went to Vietnam. I learned later on when I was in President Ford’s clemency program as an army lawyer that the army lost incredible numbers of records of people; lost track of them, it’s just an amazing phenomena that happens. When we went to see this one young corporal he said, “Well, there’s three choices. You can go to dog school, learn how to be a dog handler, then go to Vietnam. There’s a critical shortage of cooks at Fort Benning, Georgia and you can be a cook for six months, than go to Vietnam. Or you can go right away.” I said, “Well, I want to go right away but I want to have, there’s this thirty day period waiting for orders, I want to have something to do.” And that’s how I got to be a mail clerk. At the time my father was the, actually he was the Fifth Army Dental Surgeon at Fort McPherson, Georgia and you can be a cook for six months, than go to Vietnam. Or you can go right away.” I said, “Well, I want to go right away but I want to have, there’s this thirty day period waiting for orders, I want to have something to do.” And that’s how I got to be a mail clerk. At the time my father was the, actually he was the Fifth Army Dental Surgeon at Fort McPherson, Georgia; a full colonel in the army and next door to him was the adjutant general for the Third Army. And adjutant general means the head record keeper for all the southern states and they played golf together. So, I prefer to think that my records were lost other than my fate was sealed on the golf course but I never asked my father and he’s now deceased.
KEK: Well and that is, as you say, lost in the ethers of time.

JTR: Exactly, exactly. And he never volunteered and I never asked him if he intervened on my behalf. But I hope he didn’t because I was…..but reading the back of the Army Times many of my classmates at OCS were killed in Vietnam. 1968 was the Tet offensive and a very hot time in Vietnam. So, part of me was very much disappointed because there was an adventurous side and the other part was fairly relieved.

KEK: Absolutely, absolutely. Now what year did you graduate from OU Law School?


KEK: And, what were your plans after law school?

JTR: To get a job. I did not graduate in the top 10 percent of my class. I graduated probably in the top third. So, my first job was in Sulphur, Oklahoma working for Phil Hearst and Paul Reed. And he felt so bad about how little money they were paying me that they got me a place to live in subsidized housing where all the poor people lived. So, I got to learn a lot about how they live. As a single man, I remember one time I was coming out of the apartment to the shared washers and dryers and I had carefully taken my laundry out there and put it in what I thought was a washing machine. I put soap in there and a young group of children arrived and one twelve year old girl I suspect said, “Well, mister do you wash clothes very often?” I said, “Well, yes I’m pretty good at it.” She said, “No, I don’t think you are because you just put all that clothing and soap in a dryer and it’s my mother’s dryer so…..” So anyway, I learned a lot about life at that time. But it was two years working there before I actually; I went into the army JAG Corps as a direct commission.

KEK: How did those early experiences you think affect your later work?

JTR: Well, you learn from each individual experience and as a single man in Sulphur, Oklahoma where you had to drive half a day to get to where there was any excitement I was pretty bored in Sulphur pretty quickly. Although the legal work was very interesting; we represented the banks and represented all the establishment of Murray County I suppose and I traveled to several of the surrounding counties and I learned something very clearly, that a lawyer’s word was worth something. And that if you ever lost your integrity or reputation for integrity then you could not practice law. For example, in southern Oklahoma the lawyers, you told the truth to them. You could require the opposing side show up at a motion hearing a hundred miles from their home when a phone call would prevent the trip, save them some time, or you could ‘wool them around’ to use the vernacular down there and you could wool them around. And if you had the reputation of being a lying lawyer with no integrity then people would wool you around and you would have to go to all of these different things and you could not make any money practicing law unless your father was a banker or something. So I learned very quickly that most lawyers, I would say 95 percent of lawyers, are absolutely, 100% have
integrity and that really reinforces the stereotype I had before going into the law and I was very, very happy about that.

KEK: It sounds like it. So, what year did you enter into the army JAG corps?

JTR: In 1974 and I got a direct commission. I was very proud, my father, who was very disappointed that I didn’t get a commission before was able to pin the silver bars. I came in as a First Lieutenant; ten days later I was promoted to captain because lawyers were needed at that time. So I got sworn in at Fort Sill and then went to Charlottesville, Virginia for my military lawyer training. That was also a great experience because there were lawyers from all over the country and from all different kinds of law schools and we found out we had a lot in common, a lot of camaraderie and I really enjoyed being an army lawyer.

KEK: Tell me about your time in the JAG Corps; first, did they give you any kind of training going in?

JTR: Yes, we went through four months at Charlottesville, Virginia and at that time there four very gifted lawyers who later on became law professors at very prestigious colleges. It was Imwinkelreid, Gianelli, Gilligan, and Lederer were all army captains and they went on to write books on evidence, but they taught us. And it was a very intensive training for four months primarily on courtroom rules because most army lawyers try court martials, some of them go into specialized areas. My first job was with the 82nd Airborne Division. I was very impressed by the fact that I was originally assigned to Augusta, Georgia at Fort Gordon but an airborne paratrooper came to talk to us about how glorious it was to be a paratrooper and so with a couple of strokes of a pen I was diverted to Fort Bragg, North Carolina and became a member of the 82nd Airborne Division. And that was very exciting because it was a very elite unit, the people were very much motivated and most of the lawyers were single, like myself. We had a wonderful social life there and I really enjoyed it. One of my tasks was, my colonel called me in on a Thursday and said, “I want you to be in Camp Atterberry, Indiana Monday morning, on a temporary assignment,” which lasted four months for President Ford’s clemency program. At that time in 1975, many people had deserted during the Vietnam War and there were actually two clemency programs. One for people who ran away from the draft and never were sworn in and another for army deserters who for one reason or another left after they had been sworn in which is of course a crime, a capital crime actually at that time. So, President Ford in his wisdom devised a clemency program where people could come back, many of them were living overseas. So, Camp Atterberry in Indiana was kind of a reserve post; later on they moved to Fort Benjamin Harrison which was the army administrative center. The largest building in the army was the Pentagon, the second largest is Building 1 at Fort Benjamin Harrison and that’s where they keep all the army records. So, we met there and there were lawyers from the army, air force, marines, navy and we got people coming back with a promise that if you came back as a deserter, then you could be processed in 24 hours and receive an undesirable discharge which could ripen into a clemency discharge which was undesirable spelled a little differently if you did some
community service. And essentially it was an idea that we were going to heal the country because there was a lot of division back then. Some of my best memories are…we, as lawyers, were required to give a briefing to the incoming returnees in the morning and then an exit briefing in the evening and the idea was to get them done in 24 hours. Twenty-four hours, that was the mantra from the administrative people and the military people. Well, as you know every human story is complicated. So, there came through a person who in interviewing him had won a silver star in Vietnam and then deserted afterwards. And I thought, “Well, maybe this guy deserves a break.” Well, the commanding general of Fort Benjamin Harrison was a two-star general, I’ve forgotten his name, but he was very attuned to this kind of thing. And so, we were able to get him a general discharge which allowed him to receive veterans’ benefits because he had actually been a genuine hero as an enlisted man in Vietnam. Then, I was able to get him a GED by taking him downtown to Indianapolis, Indiana and having him take the GED test because he lacked that in order to….he wanted to come back into the army but the board said no, but you can have a general discharge. Another case was a man who had run away when his conscientious objector status had been denied and he lived in Canada and came down. So, the commanding general said that yes, he was denied due process. In denying his conscientious objector status he was required to receive a chaplain, and several other people had to sign off but an hour later, the bus was leaving, they put him on the bus, gave him a rifle, and off he went to Vietnam. Well he deserted because he thought he was mistreated. Well I got a wonderful letter from his family in California. They said, I don’t remember the details of the letter but it’s written on my heart, but that we want our son back under any circumstances, but coming back with an honorable discharge “means a lot to us.” And still, to this day, I think that’s the most wonderful thing that happened there.

KEK: It sounds like it. It sounds like you did incredible work, and how many people took advantage of this clemency program? And also, how long did this program last?

JTR: Well, it lasted about three months and it was wonderful because the army was hosting it. It was on Fort Benjamin Harrison so we invited marines, navy, and air force and JAG officers there as well. The vast majority of deserters were army people because you know the army fought that war, well for all intents and purposes. So most of the deserters were army people. The army was the only service that allowed the person coming back to tell his story and if it had merit to divert them from the undesirable discharge and stigma of which would ripen from a clemency discharge. And they could actually get an honorable discharge or a general discharge or some came back into the service after deserting for many years based on the advocacy of the attorneys. In the air force situation, marines or navy the response was if you got a story slick you go to the nearest air force base or navy base and tell it to them. If they like it they will do something nice for you, if they don’t like it you’ll be court martialed and given 5 years and a dishonorable discharge. So most people faced with that kind of reality would take the clemency discharge and move on. But the army was unique in that we actually were large enough and there were enough lawyers there to listen to individual stories and take the time. And as an aside from that I had a
mean old woman who was my superior. She was in the adjutant general’s corps and she rated me. In the army ratings are very important, if you don’t get a wonderful rating, you don’t get promoted. Well she gave me a terrible rating because I was interrupting the flow of things. In other words instead of getting them through in 24 hours, they oftentimes took a week to get an interview with the commanding general, to get the paperwork done, the up and down correspondence and it was very inefficient. So I was marked down for inefficiency because these heart rending stories took time to develop and substantiate, took hours of going through military records looking for records to substantiate the stories. But in a wonderful story my JAG commanding officer at Fort Bragg, North Carolina, Colonel Lasater, flew from Ft. Bragg to Ft. Benjamin Harrison and petitioned the commanding general for a new rating and I was able to get a new rating out of that. In fact the judge advocate general of the army commended all of the army lawyers who were there for their initiative; essentially, developing a procedure for processing these kinds of stories that no one had really foreseen. It really wasn’t part of the SOP so I was restored to my previous pretty good record.

**KEK:** Well wonderful.

**JTR:** Yeah it was really nice.

**KEK:** Now describe the process briefly. What did it entail in terms of just when someone walked in the door, how did you, what did you do?

**JTR:** Well when they came in, they got an initial briefing from the administrative people as to what was going to happen that day. They then were talked to individually by lawyers to find out what their situation was and if they really did qualify. So they went through each little step, it’s like a processing center. You know they are being processed out of the army. So the typists are busy typing up their discharges and things while these interviews are going on. And then at the end they got an exit interview from the lawyers to make sure that everything was under control. Then they got their undesirable discharge but with the promise of working community service in the communities that they were going to that eventually the undesirable discharge would ripen into a clemency discharge. Something they could hang on the wall saying that healing the country, welcome back, you are now a full citizen and all of the bad taste is wiped away. So it did have a wonderful…there were mistakes though. One fellow from Canada, he called from Canada and said “Am I eligible?” And we said “Yes you are eligible.” Then he went to Chicago and he called again; which is pretty close to Indianapolis and he said “Are you sure I’m eligible? Yes you are eligible.” And then he called from downtown Indianapolis to make sure a third time “Am I eligible? Yes.” As he walked into the gate he was put in chains and was about to be hauled off. They did give him the initial lawyer’s interview. Well what had happened was he was not eligible because he was sitting in a court martial and he’d left during the court martial. That was an obscure exception to the clemency program, if you’re sitting in a court martial being court martialed for some crime then you’re not eligible. Well, so profiles in courage, Captain Rowan ordered the sergeants, the MP Sergeants who had him in custody to stand outside the
door and I also ordered them to take off the handcuffs and leg irons. I then told the young man that he had been lured into camp, actually Atterberry, actually Ft. Ben Harrison at that time illegally because President Ford had just gone on television saying come on down. No one will be put into handcuffs, no one will be chastised or confined and if you don’t like what’s going on you can walk away. And this is the President of the United States on national television urging people to come back. Here’s a man in handcuffs in this building where lawyers of National Council of Churches, the ACLU, several other very left wing organizations who were also giving legal advice. A returnee could opt to go and get legal advice from any of these other civilian lawyers as well. Also there were news people and cameramen all over the place. My thought was to see on the front page of Newsweek my client in chains saying “It’s all a lie, don’t come.” And so, anyway the man told me his story. He had gone to Vietnam, had served 11 months, they gave him 2 weeks leave in Australia. He went off to Australia, met this beautiful blond surfer girl. They got married, had 4 children, he never went back to the army. So that guy was and actually I’m mixing up stories. The guy that was locked in chains they said you know I think the general is smart enough to give you some relief here because you can see this injustice. So I want you to stay in touch with me. So I showed him an open door and he left, but did call me back. I petitioned the general, the commander of Ft. Benjamin Harrison for an exception for this fellow. And the general said I’m not going to exercise any jurisdiction or do anything for someone who is not under my command, in my control. So I asked the guy to come back, trust me I’m a lawyer. Well he did. Needless to say the MPs, the Major that was watching over me so closely found my conduct to be probably criminal in letting a prisoner loose, certainly insubordinate. Probably an illegal order because I had no capacity, no, I was a captain and they were MP sergeants to order them to release the man. But all that unpleasantness was washed aside, the man came back and the general said “I’m going to go ahead and process you through like any other returning person. I’m going to approve the findings of the court martial; you were guilty of a crime but I disapprove the sentence of which was 5 years in Ft. Leavenworth and let you leave with your family.” It was a wonderful result but it shows some trust on the part of the returning man in me and in the general. There were just 20 or 30 stories as compelling. Anyway, it was probably the high point in my military career. I enjoyed that.

KEK: It sounds like it. It sounds like an amazing experience. Now just for the record, the clemency, that status, does that entitle the person to any kind of military benefits or retirement benefits or no?

JTR: No. It was essentially an undesirable discharge spelled differently. It was called a clemency discharge because the person was not prosecuted for desertion which was a crime in the military. They were not prosecuted and essentially restored to their citizenship status. They were not convicted felons so they could vote and bear arms and that kind of thing. So it was a healing process but it was a compromise between people who wanted to run them up a flag pole and others who thought they should be given complete amnesty.
KEK: Do think that the program achieved the desired effects, achieved what President Ford wanted it to do?

JTR: As much as possible in those very turbulent times. In 1968 there were assassinations; Robert Kennedy was assassinated, Martin Luther King was assassinated. So in the 70’s people were, well the war had gone on a long time and people were tired of the war. But there were still some really militant people who wanted… I would say there were a lot of scars. But the scars lasted for a long time, late 60’s to mid-70’s and even afterwards the army made the mistake of taking people out of Vietnam and sending them to Germany where they oftentimes would get into trouble because they had drug addictions. Then the Germans had a low tolerance for that. Anyway it was an interesting time and I enjoyed my 10 years in the army JAG corps. Got out essentially because my children had really not had a lot of contact with my parents who lived here in Oklahoma. So we got out and bought a home here in Oklahoma City and I went to work for the public defender’s office. Actually I tried to become a prosecutor but they didn’t know if I was tough enough or not to work for Bob Massey. So I went to the next floor and T. Earlie Gordon hired me as a public defender because I had had a lot of experience trying court martials and prosecuting them and so….. I spent about 10 years in the public defender’s office and that was quite an experience.

KEK: It sounds like it. Now what year did you leave the JAG corps?

JTR: In 1982. I was at Seneca Army Depot and I was the only lawyer there. My next superior was at Ft. Monmouth, New Jersey. So I was a one man shop. I was there for 2 years. My son was born there. My daughter was born in Germany; my son was born in Ft. Monmouth, I mean in Seneca Army Depot in New York. Then we got out essentially.

KEK: Right and then you said you moved here to Oklahoma at that point.

JTR: Right.

KEK: Well I see that we are about half way through so let’s go ahead and take a break and then we will continue on.

JTR: Okay, alright, thanks.

KEK: Hi, this is Karen Kalnins again and I’m a Reference Librarian at the Oklahoma City University Law Library and this will be the second half of the interview with Mr. James Thomas Rowan. We’re still here in Oklahoma City, Oklahoma and it is still Thursday, May 28, 2009 and it’s about 20 minutes till 10 o’clock or so in the morning. In the first half of the interview Mr. Rowan talked about how he went to law school, what he did and what were kind of his first jobs and experiences out of law school and his army experiences. Now I wanted to ask you Mr. Rowan, you said in, we left off at where you had come back to Oklahoma and you decided to become a public defender. Why did you decide to be a public defender?
JTR: Well I had this perception that as a JAG officer I was not going to be sought after by the best and brightest law firms in Oklahoma City; that my experience was not all that relevant to a lot of law that is practiced in Oklahoma. So I did know how to try cases, criminal cases. So I thought I would start with the prosecutor’s office and then when they turned me down or offered me a job actually in the juvenile division, I treasured that up and went up to the public defender’s office and got a job defending felony cases as a public defender.

KEK: So did you, you started right off the bat doing felony cases?

JTR: Yes. There’s no start up time at all. You’re thrown into the barrel and I very quickly had a complete docket. Times were better then, than they had been. At one time there were only 4 public defenders in Oklahoma County. They essentially prepared for their cases as they walked out of their office on their way to the courtroom. It was horrible. We had a very fine bunch of public defenders. They were all dedicated and probably professional wise it was the most satisfying time in my legal career as a public defender of Oklahoma County because of people like Bob Ravitz and Tim “Tarzan” Wilson and David Autry. There are a lot of good lawyers working and doing good defense.

KEK: Now just for the record, does Oklahoma have a statewide public defender system or is it just up to each county to set up a public defender system?

JTR: Yes. Well there is statewide Oklahoma indigent system and they have jurisdiction over all 77 counties. But 2 counties, Tulsa and Oklahoma Counties are carved out because they have populations of over 300,000. They have their own public defender systems. They are paid, I believe, from the county governments. Now occasionally there will be capital cases where they are farmed out to the Oklahoma indigent defense system in Norman or Sapulpa. But most of them are tried, the non-conflict cases are tried in Oklahoma County by public defenders in Oklahoma County. So I started out being essentially a straight felony docket. In 1988, I tried 25 cases, felony cases; actually it was 23 felony cases and 2 misdemeanors. I had learned a technique; it’s called a Colorado method for picking juries; it’s called isolate and insulate. It essentially makes the jurors very, very independent and self-reliant and not part of a herd. So the immediate impact was that the next 8 trials that I had after learning this method were all hung juries, juries could not decide. There was a special meeting of the judges in Oklahoma County as to whether or not to outlaw this method of jury selection. It is perfectly legitimate and there are no legal prohibitions to it, but it certainly makes jurors much more independent so that they have a harder time coming to a consensus. It’s just maddening to judges and prosecutors.

KEK: It sounds like it. Where did you learn this method?

JTR: Well, Posner and Dodd are the 2 professors, Larry Posner is from Colorado and Dodd I believe lives in Georgia now but essentially they use this method in Colorado to wonderful results. So they came through teaching it. So I took good notes and it worked very well.
KEK: It certainly sounds like it. Now what kinds of skills do you think an attorney needs to have to be a successful trial attorney?

JTR: Well I think life’s experiences. So often I’ve found that prosecutors who go straight through from law school into prosecuting and are trained in a very narrow way by the prosecutors, lack the life’s experiences of say playing pool in a pool hall or repoing cars or being in the military, just knowing about human nature. So that’s very important. I think being a voracious reader, to know something about how to tell a story and how to see humanity in your client’s story. All decisions in the courtroom and I imagine most decisions people make are made for emotional reasons. People go back and find cognitive or rational bases to support their emotional decision. So both sides are trying to establish the tone of the trial through emotions, through blatant appeals to emotions. Prosecutors, they have the advantage initially because they have a dead body with ugly pictures and horrible misbehavior on the part of my client. My client sometimes has a couple of stories to tell but the most important thing is that Americans hate to see an underdog beaten down unless they richly deserve it and this idea of proof beyond a reasonable doubt resonates with most Americans. So they really are able to do that and actually take that thought process from whatever limited backgrounds they come through. They may be car thieves themselves, but if they get on a jury then they try to rise up to the position that the law requires of them. I think most juries actually attain that. So I’m very happy with jury trials.

KEK: Sounds like it. Now when you started out, what was your case load like? How many felony cases did you have?

JTR: Well way too many. We had probably; the numbers were 1 a day, probably 360 to 400 cases, felony cases a year. Now most of them are kind of like a market where you bring in all the miscreants who are charged. You quickly plea bargain them out. And narrow them down to the 10% of tough nuts who might either be innocent or recalcitrant. They’re equally problems for public defenders both ways. I remember one time when I was in front of Judge Charles Owens and I was in a great ceremonial courtroom, the largest courtroom in the county. I announced ready for trial in 17 cases and the judge, there were a 100 lawyers there and many more defendants and people outside who couldn’t get in the courtroom. The judge turned to me and he says “Mr. Rowan, don’t you ever plea bargain your cases?” I said “Judge which one of my innocent clients would you have me plea bargain?” and I said it very loudly. “Just pick one and I’ll have him plea bargain right now, you know I will plead guilty right now.” Well of course massive hysteria and I had a history with that judge so he didn’t throw me into jail for contempt. But essentially we had too many cases. But if you had a reputation of being a trial lawyer and was not afraid of the courtroom then you got better plea bargain offers. And often times, in fact that day I went to trial and got an acquittal. Then I got many notes from people who took plea bargains because, I hate to use the word goon squad, but I will, of public defenders sent out by my boss to my clients while I was in trial to get them to take the plea bargains that they had turned down. Well actually the plea bargains had been cut in half, many of them who were offered 4 years, now they were offered 2 years; if they were offered time in the penitentiary, they
were offered suspended; if they were offered suspended, they were offered deferred. So many of them took deals that were kind of forced down their throats, but many people sent me cop out slips which is what the inmate correspondence is called. Asking me to come saying “Mr. Rowan, would you help me? This big bearded guy came in here and made me take a plea deal and I really felt like my will was overborn.” So I would come back and say “Yes.” My clients were left without a shepherd when I went to trial and so I’d come back and get them to withdraw their plea, or not get them to withdraw, but assist them in withdrawing their pleas if they were not happy.

**KEK:** How successful were you at getting guilty pleas withdrawn?

**JTR:** Under those circumstances, quite successful because judges generally believed that a lawyer and his client….there is a bond formed even if it is a public defender. And the public defender should be able to, the client should be able to have the public defender of his choice and respect that. Because there is a lot of trust between lawyer and client, I think oftentimes clients feel like they have a license to lie to their public defender, but I allow that. I say “If you don’t want to tell me the truth today then you can wait and tell me the truth later on. I’ll basically find out, but it just makes me work harder if you lie to me today. If I have to go find the witnesses that you’re making up in your mind that takes all my energy and please be honest with me.”

**KEK:** Absolutely. What is your thought process or what were your thought processes as a public defender in deciding who to plead out and who to take to trial?

**JTR:** The clients. I go to seminars where they say really it’s, particularly in capital murder cases, where we have an obligation to brutalize them into taking a plea bargain and avoid a trial. There are actually people who believe that. That there are people who are so defective in their thought processes that they got in this horrible mass murder situation that they really aren’t capable of working their way out and therefore we should overbear their will and compel them to plead. I don’t believe that. I think that each of us as long as we have a heart and soul, they are human beings and can make our own decisions no matter how defective we are on those very important decisions. But I would have a sliding scale, if it was a young 18 or 19 year old I would probably take on a fatherly role more and guide them through the thought processes with a heavier hand then I would with let’s say somebody who has been in the penitentiary 3 or 4 times. They generally were working me to see if I was going to fight for them or not. Oftentimes public defenders were disparaged because we got paid by the government. We weren’t good enough, “Are you a lawyer or are you a public defender? Well you’re wrong, I’m actually both. Well if I had a street lawyer then I could walk on this case.” I say “You know what, I’ll contribute $100 to you on finding a street lawyer. I really don’t need you as a client.” So anyway there’s lots of human stories and the give and take but it’s all deadly serious because even a minor case if it is mishandled can leave a terrible taste in a young person’s mind and sour them on the system forever. It can happen in city court, if they are mishandled, if they are mistreated. So you’ve got to treat each client’s case as very important. I did that, I did that.
KEK: It sounds like it. Tell me about some of your most memorable cases at the public defender’s office.

JTR: Well I had several. One was Harley McKelvey this was when I was at the Oklahoma Indigent Defense System in Norman. His fingerprints were in blood on a baseball bat. It was found next to a man who was bound with duct tape, hands and foot. And certainly the baseball bat was probably the murder weapon and my client’s fingerprints were on the murder weapon. It looked like a case where the guilt-innocence phase would be very short and you try to have a big mitigation phase. Well it turned out that in getting into the case we actually had the fingerprint examined by a fingerprint examiner in Fort Worth. He said “Well this could be your client’s fingerprint, I’m not going to lie to you, but it’s there. It’s a latent print that is smudged. It’s only about a quarter of a print and it may not be your client’s fingerprint.” So we got into a big argument over fingerprints. The way my client was caught was essentially, they ran the bat for prints, the local person. They saw my client’s fingerprints on the bat and brought him in and they said “Okay slick, why were you there at this crime scene?” And for 3 hours he lied very beautifully. He lied, made up things, wasn’t there, wasn’t there, wasn’t there. Finally when they wore him down, he said “Alright, here’s what happened. I was out there to buy my marijuana stash for the week, this was like a 7-11 for marijuana. You got out there at this trailer on the outskirts of Apache, Oklahoma and we would buy our ounce and leave. When we got out of the car, I tripped over something. I picked it up. It was wet and I threw it. Then I said oh my God, there’s a dead man. I got back in my car and drove off.” Five other people wanted marijuana that night, came up but did not touch the sticky thing and saw the dead man and also drove off. None of whom burdened the police with a phone call. It was not until the next day during light when somebody saw the guy in his front yard that the police were called. So my client’s story was not particularly good because his fingerprints were still on the murder weapon. After a long, long argument over fingerprints, of which I won’t burden you with, right before my expert from Fort Worth was going to testify, he said “You know, did you ever think of this? Look at the way the fingerprints are on the bat. They are in a position that is not in a par position, where he’d be wrapped around the bat and where he was using it as a weapon to beat somebody. It’s more up and down the bat and it looks like he may have picked it up with 2 fingers and tossed it like you said he did.” Well that testimony was enough to get him an acquittal in the case. So that was one of my 2 acquittals as a capital trial lawyer. In most capital cases there’s no question the person is guilty and the battle is fought between what to do with them. That’s where life’s experiences, storytelling and essentially the investigative skills become so important, because you’ve got to recreate the client’s story. It’s axiomatic that all human beings have a human story and you find that story and you present it to the jury. Our motto was “Support for the death penalty was a mile wide and an inch deep in Oklahoma” which means that everybody supports the death penalty, but if you proceed properly and you do a good job you can get a jury to say “Yes we support the death penalty, we’re very much for the death penalty, but not for this guy because of these reasons.”
KEK: How does a capital murder trial differ from a regular felony trial or a regular criminal trial?

JTR: Well it’s, the stakes are higher, which of course is kind of a simplistic answer. The safeguards are put in place to try to avoid the death penalty for anybody except those that are the worst of the worst. So you have aggravating circumstances that the court has, that the prosecutor has to prove over and above the fact that the client committed a premeditated or actually a malice aforethought murder. Or it can be a felony murder of where death is quite likely. If it’s one of the enumerated felonies, such as robbery or rape, and someone dies as a result and that can be a felony murder even though malice was not intended. But then you have aggravating circumstances, does the person have a prior violent past that makes them a continuing threat that makes them want to continue to commit crimes in the future, is the murder so heinous, atrocious and cruel that it just cries out for the death penalty. Is it killing a police officer in the performance of his duty or is it committed while the person is in the penitentiary? So those kinds of aggravating circumstances, if they are present and the person is death eligible and the elected district attorney in each county is the most powerful person in that county because he has the power to decide who lives and who dies literally by the charge that’s filed and the level of punishment sought. David Prater in this county, I’m very pleased with him, because unlike his predecessors, he is much more open to these human stories being told to him before he makes the charging decision. And that is a wonderful refreshing change over say Bob Massey and Wes Lane. One case I had in Oklahoma County where the guy’s story was particularly compelling. He was sold at birth to a... He was charged with killing a person over here at the Habana Inn where gays seem to frequent. My client was a head banging, hard rock, I can’t use all the descriptive phrases, but he was a very mean little kid at the age of 23 or so. But I had to find out how he got that way. And essentially his mother sold him to a pair of itinerants who were masquerading as Catholic priests. They actually bought him for $500. The idea was to raise him as free of all that motherly love stuff because he was a particularly bright kid, he had a 130 IQ. They were able to give him all kinds of advantages of language training and...in Virginia. So as the kid grew up he always questioned who he was and how he, where’s my mother and who’s my father and one of the 2 men claimed to be the father. They happened to be gay and this is a long time ago so they were not allowed to marry. So they did the next best thing and the older one who was a year older adopted the younger one and so Alexis Perryman grew up thinking that Rodger was his grandfather and Damen was his father. They’d be introduced that way at schools. But the Headmaster of the school in Virginia, Alexandria, Virginia was suspicious. He ran a very fine school for very fine young people with wonderful talents. He told me that almost all the parents came there with their little special kids and so he was teaching lots of special kids. But this couple was over the top as far as describing how wonderful Alexis Perryman was and so he grew up. He thought his grandfather and father were asexual because they never exhibited any sexual conduct around him until one day Alexis was raped by the person he thought was his father as the age of 12. They had built a dossier on this kid, Rodger kept all school records. They also built kind of a false record of how he was ADHD and a habitual liar. So when the 12 year
old went to the police to say, “I’d just been raped by that man over there,” they were able to say, “Let me show you the records.” They had false records totally manufactured about how he’d been seen by psychologists and he was a habitual liar. So the kid was raped a second time when nobody believed him. But the father said, well actually Damen Perryman was Raymond Soto, thought that was too close a call and he ran off. He absconded completely. And Rodger stayed here and eventually cooperated with the defense and gave me all of these records. We saw in the records that there was a California birth certificate, we were very suspicious. The investigator did a wonderful job of finding out that Damen Perryman was not the father, that this was a false birth certificate. Then there were stories about this being in West Virginia and essentially to make a long story much shorter; the investigator found the natural father and said, she said, I was there when she called him and said “Do you have a son named Danny?” Actually the boy’s real name was Danny but they renamed him Alexis Perryman. Anyway the father said “Yes I did, but many years ago I lost him. His mother and I were going through a divorce and I was about to get custody of all the children including my son Danny and so my wife just got rid of him and he was never seen again. She said he was kidnapped.” So they came from West Virginia and said we have good news and bad news. The good news is your son’s been found. The bad news is that he is about to face the death penalty next month. So they came out and we asked the jailor if Alexis Perryman could reunite with his family in the jail. And the jailor said “Absolutely not, of course not, why would they care after all these years. They haven’t been around him.” So there was no reunion at the jail. But Dan Owens was the trial judge and he ordered Alexis Perryman who was really Danny Cornell brought over to his jury assembly room and this meeting of maybe 15 relatives including his father, grandmother, sister and aunts and uncles. And this reunion took place and it was all videotaped about 3 hours worth. The judge was very, very lenient and he allowed this reunion to take place. He started hearing the stories about how they missed him. One of the things the grandmother had was a little worn paper bag and she brought out all these little children’s toys that she had bought for him. You know little pull ducks you know with strings and teddy bears and this kind of thing. She said “These are the toys I wanted to give to you. I bought them but you were gone before your birthday and so I couldn’t give them to you.” So anyway there wasn’t a dry eye in the place. And it was all captured on film by a deft defense lawyer who thought about the utility of this wonderful film. We edited it down to about 7 minutes of the most potent parts. We put country and western music background to it of a man who had been reunited with his father over many years and the judge listened to it and said “Alright, you can show the film. You cannot play the music behind it. It’s not part of the evidence.” So anyway even though Alexis Perryman and another young man had murdered this guy with a knife, a gun, bludgeoned him, set him on fire. Mercifully he died before the fire, he was set on fire. It was a horrible case, but he was given life without parole because of the story that was told. Most defendants do not have that kind of compelling story, but they usually… it’s close. It’s just a matter of finding it.

KEK: That just sounds incredible and luckily you had that videotape.
JTR: Yes and we also had in Rodger’s records…was the bill of sale essentially. The mother had signed the bill of sale saying, but what it said was it was a general power of attorney, “I am named Alice Trent. My husband, the father of this young man is in the penitentiary. He’ll have a much better life with these two priests and so I am giving them the authority to raise my child.” So it kind of was not really a sale, but they got $500. We had the cancelled checks. So Alice did not know, the mother testified at the trial. She did not know we had all these records. And also I took the time and effort and the money to spend, to use a DNA test to prove that he was not Raymond Soto’s son, that he was Danny Cornell’s son. I got her to acknowledge several documents with her signature on it and then finally at this last thing was the general power of attorney she gave. “Is this your signature? Yes. Let’s read this together, I’ll tell you what, I’ll read it and you just listen to it.” And as I read it about how she, you know the father was in jail and this kind of thing, she yelled out “This is a forgery, this is a forgery. I don’t know what it is.” It was very dramatic. I don’t feel bad about cheating her; you know tricking her at all. But really it just kind of emphasized how this kid was cheated out of a normal upbringing. How he had been beaten and raped and had to run away at the age of 12 to live on the streets. There was this little tribe of kids that lived around the Habana Club and they panhandled because gays are much more generous to outcasts like themselves. And then they would panhandle during the nights and then sometimes get in cars and go bash gay people during the day. So he had a horrible record as far as his misconducts of which the prosecutor was happy to point out.

KEK: Do you see any commonalities between your clients who are up for or up on a capital murder charge? Do you see any common threads in their stories?

JTR: Yes. I at one time supported the death penalty, but for everyone but my clients of course because I was a lawyer and egotistical. The main thing that I see common about them is that I found no Hannibal Lecter type people who were so dangerous that they had to be chained to the wall and have a mask put on them because they were such animals. Prosecutors normally try to marginalize capital defendants as the devil’s seed. They’re not really like us human beings. There’s something wrong with them. They’re really half-animal and therefore it’s easier to kill them because they are dehumanized. I found that the common theme among all my clients was that the 15 minutes of homicidal mania that they committed, usually it’s 15 minutes sometimes it’s longer, does not describe them as a human being. That there are many, many other things in their life that got them to where they are some good, some bad. I found that the one common theme in capital murder cases of people who were able to escape horrible childhoods and people who succumbed to that horror and became homicidal is that the people who escaped generally had one adult who they could unconditionally love and download their pain to. This is not an original thought with me, Wanda Draper, who is a Ph.D. Developmentalist who has worked for the Oklahoma University Medical School for many years, saw this as well and pointed it out to me. That so often if the kid does not have someone that he can talk to, download the pain of being raped or being abused or being out on the street alone, begging; if they don’t have somebody like that, then they could easily stuff it inside them. It’s like Thurber McGee’s closet.
if you’re well you’re not as old as I am, but Thurber McGee and Molly was a wonderful radio program and Thurber had this closet of where everything in the world was stuffed in this closet and when you opened the door it all came pouring out. And so often people who have borderline personality disorders, they get them because they stuff a lot of stuff inside them emotionally. And then when the right circumstances happen, then it comes out and they have a homicidal break, sometimes it’s a psychotic break as well but it’s harder to prove. They commit this act of which they are terribly remorseful for afterwards. Exceptions are of course people who commit assassinations because they figure in the cost of the assassination that they may be prosecuted and they may get the death penalty. So they set their price and it’s done cold-bloodedly. I’ve never had an assassination defendant where someone actually went out and murdered people for hire. I never had a terrorist like Tim McVeigh be my client although he almost was. So I’d have a harder time packaging those kinds of stories where they make this statement that my life is less important than my cause and therefore I’m going to sacrifice my life in order to make this wonderful statement which you may or may not comprehend. So those kinds of people are much more difficult to defend I would think. But I never had a terrorist or a sniper or an assassin. Most of the people I defend are in a situational… it’s a killing, where are a lot of emotions involved, alcohol, drugs and just lack of thought; oftentimes not being able to see the end game or a way out of the situation that they created.

KEK: Right, right.

JTR: So there basically are not a lot of problem solving skills.

KEK: How do you handle any kind of criticism you might get either now or when you were a public defender as to how can you defend these people? How can you live with yourself defending these folks who are up for capital murder?

JTR: Well it’s a wonderful thing and you get to raise the flag and say you know because I’m a good American. We in this country are very strong about the rights of individuals to make sure we get the right person convicted. In Oklahoma we’ve had 8 failures. We’ve convicted and sentenced to death 8 people who were later exonerated. So I feel it’s a great privilege to defend people who are condemned by the public, condemned by society because I get to test the society’s evidence and then I get to go and find that person’s human story and present it to 12 individuals and say “Is this really the person that needs to die after you hear all the path that he’s gone through and how he got to that horrible moment where he committed this horrible crime?” To me it’s a very high calling. I’m not advocating the crime he committed but I’m advocating for the person who committed it. Everybody abhors the crime, the victims who suffered horribly. In fact in most of my cases I go to the victim’s family, the homicide victim’s family and try and talk to them and just hear their pain. Because so often they are marginalized and pushed aside by everybody and no one comes and talks to them. I went down to Monroe, Louisiana one time for a fellow, Shelton Jackson who was convicted of killing a woman in Tulsa after knocking the woman’s child brain dead. The woman complained about it and she was killed. So I went down
to Monroe, Louisiana where this child was living with his grandmother and 3 sisters of the murder victim. I spent 2 days with them essentially. And they, essentially it was like going to kind of like catfish row, I was the only white person there. They opened the door and this deer in the headlights stare at me “Well, who are you? I’m Shelton Jackson’s lawyer and I’ve come to talk.” Well they beat me up for a while, I mean verbally, and screamed at me and then asked me why I was there. I said “I just want to listen. So I got my desk full of Shelton Jackson’s case and I wanted to see and hear firsthand the horror that my client committed.” So they told me the horror and how nice this woman was who was killed and they wheeled out the young man who was I believe 6 years old at that time. He’d probably been 4 when he’d been was beaten brain dead. He was a special ed child who could not control his movements, could not control his bowel movements. They still had a chair where he was able to sit in that chair. They’d take him off to school each day to try and educate him as much as they possibly could but he was horribly, horribly… She said “You know if you’d like you could come in and see the bed he slept in last night with me where he defecated. I hadn’t cleaned it up yet.” I said “No, that’s alright.” While I was there we finally held hands around the kitchen table and prayed for guidance. I asked them for nothing. They eventually came to realize that yes I was there to learn about what they were doing and if they felt that they could live with life without parole then it was fine but it would be their decision. So they essentially met with their pastor and told me to come back the next day and they were going to leave it in God’s hands. I refrained to say that God had sent me to tell them what to do. Even though I had failed in getting that family to agree to a life without parole for Shelton Jackson, I gained that moment in the closing argument where I would be able to turn to them and say I know something about your pain and what you’ve suffered and the jury would look over at them and if they are throwing rocks at me and staring at me and giving me the finger, then they realize oh my God, this guy’s a fraud. But if they are looking at me and they are nodding or any kind of an affirmation like that, that moment would be worth hundreds of hours of legal research because that’s where the emotional decision is made to live or die.

**KEK:** Absolutely, because the jury can tell if there is some kind of relationship between the two of you or not. When did you leave the Oklahoma County public defender’s office?

**JTR:** In 1992. I asked Bob Ravitz for a $100 raise and he said “No, we don’t have it.” I said “Fine. They offered me a whole lot more money at the Indigent Defense System in Norman so I’ll go down there and be a capital trial lawyer” and so I left. I left behind a horrible docket. I mean it was no better the day I left, 10 years after I started, than it was the day I got there. They had to assign 2 or 3 other lawyers to handle my docket of cases that were pending for trial, which you know I felt bad about but not enough to say I’m sorry I’m not leaving. So I left, just a pure economic decision. Working for the Indigent Defense System in Norman where we did nothing but capital murder trials was much easier in a way because we didn’t have as many cases. We could concentrate on the cases we had and we had, initially we had all the funding in the world. So we could put 2 lawyers and 2 investigators and later 3 lawyers on every case and work it to death. So actually there was grumbling among prosecutors around the state that “My God this
A team of elite lawyers is overfunded. They’re unfair. They file motions by the pound. They’re just unfair and it’s just not right.” So there was some thought about having an elite bunch of prosecutors follow us around and prosecute these capital cases. Then they realized that no, no, no. A horrible murder was the best way for the local district attorney to get reelected and to show how he’s tough on crime and so, no we’ll do it ourselves. So it was an exciting time, traveling probably tried cases in 25 different counties. Most counties don’t ever have a homicide or a capital murder case. Some of them have many capital murder cases. I did that for 10 years.

KEK: So that was another 10 years. What did you learn about that experience about traveling around and just focusing on capital murder cases?

JTR: Well I think it was, I’m not sure I learned so much but I definitely experienced things that I never would have experienced in other forms of law. I never had to ask whether my job meant anything or not because somebody’s life depended on it. So that was humbling and motivating. I really felt that I was making a difference. The 42 cases I tried and I viewed every case that went to trial as a failure in negotiating skills, because I always wanted to negotiate the case to life without parole. That was the school’s solution we were taught. There are many people who are condemned to death who are on, who could have had a plea bargain, who could have had life without parole or life. And so many lawyers don’t spend the time with their clients, so I lost 8 or 9 cases to the death penalty out of the 42. Because we really believed in what we did and some of them were horrible crimes. I’ve had clients who, one of who killed 5 people in 4 states in 4 days. Greg Ubron out of, he was sentenced to death in Ardmore. He killed 2 people in Kansas, 1 in Pampa, Texas, 1 in Ardmore, Oklahoma and 1 in Springer, New Mexico on a 4 day spree. I lost him to the death penalty because even though he was horribly damaged, he had a borderline personality disorder which was very, very…it’s a very severe condition. He went on a cocaine run and really couldn’t stop himself. In fact he tried to commit suicide by a shootout in Springer, New Mexico, but he finally gave up and they arrested him. He’s now dead. He was executed.

KEK: How many clients who were convicted of the death penalty or given the death penalty in the sentencing phase of the trial, how many have been executed at this point? Do you even know?

JTR: Of mine?

KEK: Yes, of your clients.

JTR: Probably 7. I lost Terry Short last year. Terry was a young man who threw a molotov cocktail, a fire bomb into an apartment complex on the Southside and he didn’t kill any people he was trying to kill, but a Japanese foreign exchange student was upstairs, he was an OCU student I believe, a music student and he fell through into the fire and was burned to death. He survived long enough for his mother to fly over from Tokyo. He died in her arms. He was a wonderful student, artistic. He loved America. His mother told him not to go, it was too far
away. She was a widow and begged him not to go. Terry was a mess. He threw this fire bomb into an apartment, not really intending to kill anybody, but certainly he lit up a bunch of people.

**KEK:** How does that affect you, the execution itself?

**JTR:** Well it would probably affect me a lot more, but I’ve got a pretty stable home life. I’ve got kids and they are great people to...I don’t download a lot of my troubles on them and stuff like that. But certainly they get my mind off of dwelling on the horrors of these cases that I lose. So I’m able to take it fairly well actually. The only thing that allows me to do that is to work very hard on the cases. If I ever had a capital murder case that I kind of half-stepped through and did not pour out my heart and soul and all my energy into it and they were to get the death penalty. That would probably be more than I could handle. So I’ve always been able to do my best in these cases and that has allowed me to keep my sanity essentially, because you do get very close to them. My first capital murder case was the Win’s IGA killing in 1985. Mark Fowler and Billy Fox went into the Win’s IGA and executed 3 people in the back of the meat locker. Mark was executed and so was Billy Fox for that matter. But that was my first capital murder case so I really got close to the family and got close to Mark and went to his funeral and I still think about it a lot. So yeah there are little marks on my soul that are there but they are not overpowering.

**KEK:** What are some of the things or are some of the important things that you need to do to prepare for a capital murder case or trial?

**JTR:** Well, to suspend disbelief and examine everything. Joyce Gilchrest taught us a very valuable lesson. Joyce was the corrupt crime lab person who worked for the Oklahoma City Crime Lab who manufactured evidence. And for many years, she was able to get away with it, because defense lawyers were afraid of science. Many people become lawyers because they are afraid of science. They are afraid to engage in DNA examination or into fingerprints or other scientific evidence. So often she condemned people by hair comparisons. She would look at their hairs and say “Well they are identical.” And that’s all the jury needed and defense lawyers were, and I include myself in this group, were starting off on even non-capital cases, rape cases and that kind of thing, where we would just cave in to that kind of scientific evidence. We wouldn’t test her or get experts to debunk her. So that’s an area that really is disturbing. So you’ve got to be, check the, well simultaneously while checking the evidence of guilt-innocence, immediately you’ve got to start on the examination of the client’s history. You get all the papers produced about them. Prenatal records, you get a genome chart of who their families are, track the mental illnesses in their life. And the Supreme Court has finally caught up with what defense lawyers have been doing for many years. In Wiggins and Williams are the 2 Supreme Court cases where basically it says that capital trial lawyers must do this kind of work. Oklahoma has an unconstitutional cap on the paying of defense lawyers, it’s a $20,000 cap for a hired lawyer to do a capital murder case, $5,000 for a 2nd chair. It’s escaped scrutiny because no one has had the courage yet to challenge it in court. But New Mexico and other states have challenged it and they have found that the American Bar Association’s guidelines for the effective performance in
capital cases condemns this kind of fee arrangement. The trouble is Oklahomans are really team players and they are so there are a lot of capital trial lawyers who are willing to take the case for this amount of money because they want to see the fellow get a decent defense. So it really hasn’t been a problem finding competent capital trial lawyers to defend cases at this reduced rate. But someday it may become a problem because lawyers are actually are sacrificing a lot to defend a case for $20,000. You can’t do a competent job for that. So you find the defendant’s story and usually, I’d say 95% of all cases it comes down to whose story, whose emotional story in that courtroom is going to prevail? The victims, the prosecutor’s emotional story or the defendant’s emotional story and that is where the battleground is. It’s not on guilt or innocence. But you’ve got to test it before you make a decision. Now one case, Alfred Mitchell, who killed a woman, she was an OU student at the Pilot House in Oklahoma City, killed her with a golf club and there were allegations of rape and anal sodomy as well. The woman was found naked in the Pilot House covered in blood. There were ants crawling on her body. It was horrible. But Joyce Gilchrest again using her mumbo jumbo electrophoresis which was the science between A, B, O blood typing and DNA found that my client’s blood type matched the semen found on the victim in the two areas that got the sodomy charge and the rape charge. However, Randy Bowman who was working at the public defender’s office after the trial served a subpoena on Bob Massey. And in this subpoena they asked for all the records. They came in and just grabbed the prosecution’s file. In that file was a sticky note that Joyce Gilchrest had written saying the DNA matches Philip Taylor who was Elaine, I’ve forgotten her last name, Elaine’s boyfriend and not Alfred Mitchell, which excludes Alfred Mitchell. This is Michael Vick who is not the dog handler but the, an FBI DNA expert. So this note was found in the file. Joyce then took it upon herself to send some different DNA out to California to Brian Raxall and Brian Raxall who’d written back a note saying this if fairly degraded DNA and I can only use the PLF method of basically replicating DNA to try to get enough to measure. I’ve done that, but it’s not as exact as the RFLP method and therefore I can’t exclude Alfred Mitchell. I cannot exclude Philip Taylor. Either one could be the donor. Well in DNA work that is not acceptable. So Joyce not only testified to her mumbo jumbo electrophoresis which was totally debunked...I did a good job of cross-examining her on that. But she then allowed Brian Raxall to testify to the DNA results knowing full well Michael Vick was waiting in the wings from the FBI lab to come and testify that all of the sexual material excluded Alfred Mitchell. Well Ralph Thompson the federal judge was the first one to actually call Joyce a liar. For a federal judge to call somebody a liar takes a lot but he found that there was no mistake made, there was no oops, no human error. It was done as a God awful lie. So Joyce and I were waiting to testify at the habeas hearing in federal court and also Michael Vick was there as well so Joyce knew the game was up essentially. I testified that well it’s a horrible case and it may have resulted in the death penalty no matter what, but with the sexual misconduct on top of the black on white, on top of every other factor it reduced my chances of saving his life to almost nothing and without that false testimony I would have had a chance to save his life. Well the judge, Ralph Thompson, being the conservative man that he is said well the, and I’m sure he didn’t say it this way, “Alfred, I’ve got some good news and
bad news, the good news is I’m going to take that horrible stain of a sodomy conviction off your record, I’m going to disallow the rape conviction but you’re still going to die.” Then the 10th Circuit helped Judge Thompson and gave Alfred a new sentencing trial. He later than was sentenced to death again and that is up for review and I think that they are going to get that case reversed as well. So there essentially I had a feeling that this evidence was false. The first thing was because the crime was discovered within an hour of its completion and the DNA would have still been viable and easily preserved for RFLP testing. But it just didn’t snap in my mind enough. You know and because I was essentially credulous, I was naïve. Then when Joyce Gilchrest, there’s a principle, a scientific principle called the Hardy Wine Theory that populations of the same genetic mix are randomly mating all the time. So therefore their genetic makeup is going to be or their electrophoresis proteins and enzymes are going to be pretty much the same. Well then my client had a black father and a Choctaw Indian mother. Well then she had to go to a base you know which was similar to that and she said “Well I got this Indian base from you know south California and this African-American base and therefore we can blend them together. Then she came in on the Monday after she had testified and told the judge, ‘Judge I made an error and I looked on the wrong line and instead of being 1 and 300,000 it should be 1 in 30,000.’ ” The judge at that point threw out all of her testimony and said that, this was in a Daubert hearing, “That you may testify only that there are similarities and that’s as far as you can go with electrophoresis.” But they had the DNA backup of which they used it this way in that essentially Philip Taylor had not had sex with Dewayne Scott for a week and therefore it had to be Alfred’s by elimination. So that was what the…so there’s that danger that the defense lawyers if they are lazy or afraid of science will not examine the prosecution’s case.

KEK: Absolutely. And obviously that’s very, very important.

JTR: It is.

KEK: To do as you are preparing for trial. How long were you at the Oklahoma Indigent Defense System?

JTR: I was there 10 years and planned to stay there 10 more years. But in that Shelton Jackson case that I talked about, I told my boss Mr. Bender that I needed a crime scene reconstructionist and he looked at me like I was talking Greek to him and he essentially said, and this is in 2002 when there was a financial crisis, but then there’s a never-ending financial crisis, but this was worse than most. So we were out of money for expert witnesses. I won’t tell you all of the ins and outs of how I actually pushed and pushed for it. But I did push. I was very pushy for it and I did push because I had a man’s life in my hands and I did take it very seriously. He’s got a budget and he takes it very seriously. So essentially I was fired over pushing for expert witness, money for an expert witness. Jim Bender was the federal, actually the state district judge who presided over the Ake trial in the very famous Ake vs. Oklahoma where he denied Ake money for a psychologist. I think it was a $1,000 or $2,000 and in a case where the defense was insanity. So Ake went to trial without the benefit of an expert claiming to be insane. The
Supreme Court of the United States reversed Mr. Bender and Mr. Ake got to survive. Hatch was the co-defendant, he was executed. The same man who made that decision was also the man who was the head of the Indigent Defense System because he was a good company man, worked his way up, had a reputation for fixing broken down systems and agencies. So he came to our system did a good job for the most part. But you know there’s always going to be tension between somebody who has to keep it in a budget and capital trial lawyers who want everything and are supported by the Supreme Court in a lot of areas about being able to get expert witnesses.

KEK: Absolutely and those are the kinds of resources you need.

JTR: So I was fired in 2002 and quickly formed my own corporation, went out on my own, of which was a scary thing at whatever age I was then. I was probably 58 or so. Anyway I found enough clients, so I half-way kind of resurrected myself and I’m doing private practice.

KEK: And are your cases mostly criminal defense cases for the most part?

JTR: For the most part, yes. I’m on a federal panel so I get federal cases and I’m on a federal habeas panel where I get to do reviews of ineffective assistance of counsel claims in state cases. And that’s kind of exciting because I really know what a case ought to look like when it’s tried in a capital level. So often, for many years some defense lawyers just didn’t get it. They put all their emotion and effort into the guilt-innocence phase and then when they heard the word guilty they just fell apart and called the client’s mother to cry for them and threw their hands up and let nature take its course which was usually the death penalty. There are fewer of those horrible cases nowadays, but there are still a few.

KEK: And just for the record a capital trial has two phases, the guilt and innocence phase and then the sentencing phase?

JTR: Right. Right for aggravation vs. mitigation. Yes there is a very complex procedure for actually trying to winnow out, to separate the worst from the worse of the worst. For people sitting on a jury most all homicides appear to be horrible. For a long time prosecutors could get away with calling any case heinous, atrocious or cruel or the person was a continuing threat on the theory that he killed this person, he’s probably more likely to kill somebody else. Or shooting a guy between the eyes is pretty horrible, but the Supreme Court of the United States has narrowed the interpretation of those two aggravating circumstances to the point where they’re used much less often. Some wonderful things are now happening in the country. I’m now the Chairman of the Coalition to Abolish the Death Penalty in Oklahoma. New Mexico just did away with the death penalty. New Jersey did away with the death penalty. Nebraska is thinking about it. And 8 other states are considering how expensive the death penalty is. It usually costs 3 times as much to give somebody the death penalty then it is to give them life without parole. So we are acquiring those records and statistics from other states and trying to get a scientific study that will pass accounting muster. In Oklahoma accountants have been…they can count in, the cost of
a death penalty can be accurately described but it has to be with the cooperation of people who have the actual figures.

KEK: Why is it so expensive to try a capital murder case?

JTR: Well it takes a year or 2 to get to trial. It takes the most experienced prosecutors and defense lawyer too has to be fairly experienced. In the federal courts at the habeas level, they are paid $175 an hour to try the case, actually to defend the case on habeas. I get the same amount when I do a capital federal trial of which I’ve done a couple. Terribly expensive, thousands of dollars and then running back and forth on appeal to Denver, the 10th Circuit or to Washington D.C. with those appeal processes. And then during the course of my career I have tried at the trial level 8 cases that were reversed and sent back for new trials. So that’s an expensive proposition when you go back and do the whole thing over again. Some people like Curtis McCartney who has just recently been exonerated, he went to 3 different trials until finally Judge Twyla Gray said there’s not enough evidence to bring you to trial. He was let loose. So it’s very expensive. It’s very time consuming. Probably lawyer time accounts for the biggest majority of the expense. If you put somebody in the penitentiary for life without parole they go to a medium security which is cheaper to house than a person on death row which has a much higher supervision. You can just do a, insurance companies have these mortality charts you can figure out how long they are going to live and generally figure out how much it’s going to cost them to be housed for life without parole. In death cases again it’s hard to get the actual figures but the best attempt was made in 2002 and we figured out it was about 3 to 1. That’s been born out from everything else I’ve read in other states that it’s usually $3 to $1 for a death penalty case. Because of the intense scrutiny and then when they passed the effective death penalty and anti-terrorism bill they truncated the appeal process by making the post-conviction and appeal take place at the same time. So you do cut down on time from conviction to execution. It doesn’t really cut down the amount of scrutiny because 2 different teams work those appeals usually. So you still have a lot of money on attorney review. But you raise the possibility of innocent people being executed which is a phenomenon that has actually happened.

KEK: Absolutely. Well Mr. Rowan do you have anything else? Is there anything that I haven’t asked you that you would like to talk about or say?

JTR: No, I’m really glad you came by. At this time in my life you know I’ve gone through a milestone; I just got my Medicare card. I just turned 65. So I’ve been doing a lot of thinking back on my career and how I would change things or how I would have my son who is in law school, what advice I would give him. And I’m pretty satisfied with the way things turned out. So I’m content. I’m not having a burr under my saddle. I haven’t accomplished all the things I wanted to accomplish. But hopefully my kids will do better than I did.

KEK: What kind of advice would you give to someone, like your son, who’s either in law school or just graduating from law school?
**JTR:** Well I would say beware of set views on exactly how your career is going to unfold. Follow your interests, things that get you out of the bed in the morning and that you’re excited about as opposed to trying to conform whoever you are to a stereotype of somebody who can grind out contracts. But if money is what motivates you then by all means go into corporate law or... but look for what excites you, because the money will follow. I’ve not made a fortune as a criminal defense lawyer but certainly I’m comfortable. But don’t make preconceived notions as to exactly how your career is going to unfold because you’ll be surprised by twists and turns. Most lawyers who set up their own practice take whatever comes in the door and all of a sudden you start getting a reputation for doing well in a certain kind of case and more of those cases follow the first one and so that’s how your career unfolds. It’s not through a lot of planning or that kind of thing.

**KEK:** Very good. Well, Mr. Rowen I see that we’ve gone well over the hour so thank you so much for your time, you’ve been so gracious today. I really appreciate you talking about your career and your experiences.

**JTR:** Well, thank you very much for coming to interview me because this is the nicest thing I’m going to do all day.

**KEK:** Well, wonderful, thanks again.

**JTR:** Thanks a lot.