STEVEN MAXNER: This is Steve Maxner, conducting oral history interview with
Judge Herbert Green on the 9th of May, year 2000 in the Special Collections Library interview
room at 3:10 in the afternoon. Judge Green, would you begin, please, by giving a brief
biographical sketch of yourself?

HERBERT GREEN: Well, I was born in New York in December of 1941. I basically
grew up there. I went to school, high school there, and I went to college at Queens College in
New York and then I went to law school at the University of Texas, and then from there I came
into the Army. Actually, I left school in June of ’66 and went to Washington to work at the
Federal Communications Commission. I worked there for 3 months or so and then came into the
Army in October of 1966 and basically just stayed.

SM: And that was you voluntarily went into the Army?

HG: Well, back then it was a choice of poison because you had the draft and there were
no numbers where you if you had a high or low number you had a better chance. It wasn’t like
that. It was if you were a warm body, the draft board took you, so you had really planned on
coming in the service whether you had gone in as a draftee or you enlisted or you got a
commission as an officer. There were various choices, but you were going to be on one of those
tracks so my senior year of law school I guess I started talking to the Army and actually I talked
to the Army and the Air Force and the Army accepted me right away, depending on the bar
results. I took the bar exam in June and the results don’t come out usually until…well then they
didn’t come out until late August or early September, no, it would be September and the way it
worked was they had a class, a basic class, starting probably the end of September and it didn’t
look like I could make that class because of the bar results. Then the draft board got involved
and they said, “Well, we’re going to draft you anyhow,” and I wrote them and I said, “I’m going
into the Army for 4 years,” and they said basically, “We don’t care. We have a quota and you’re
a body and you match,” and so I called the Army back and I said, “What can I do?” and I
remember I talked to Charlie White who was in the career management office and he said, “Can
you come in in 20 days?” and I said, “Sure!” So I did, and so in those days the basic class of the
JAG corps was you had 2 phases; you had a 2 or 3 week phase at Fort Lee where you got
oriented to the Army and then you had a 10 or 12 week phase at Charlottesville where the Judge
Advocate General’s school is and you went through the class and learn about military law, and
so I missed the first phase and I went straight to Charlottesville. In fact, I had this telegram, it
was about a 13 page telegram, and I showed up at Charlottesville and there was nobody from the
class was there yet. It was a Thursday the 13th of October and they were coming in on the 14th so
I turned in this telegram. You've got to understand I didn’t know anything about the Army; I
mean nothing. I gave them the telegram and they said, “Well who are you?” and I said, “Here,
this is all I know.” So I give them the telegram and then about an hour later he gives me a card,
that was the oath of officer tags. He said, “Sign it,” and I took a minute to read it and he looked
a little disconcerted that somebody would actually read it. I signed it and swore in and so that’s
how I became an officer in the Army. So, when you say volunteer, I volunteered but then
they…I had had at that point no intention of staying in the Army any longer than I had to. I was
doing it basically to beat the draft at that time.

SM: And if you would have been drafted, you could have been thrown anywhere.
HG: Oh, yeah. I’d have been an enlisted guy and…
SM: No choice.
SM: So when you arrived at Charlottesville, you didn’t have uniforms or anything?
HG: Well, I did. What I did is this Charlie White, when I talked to him I said, “Well,
what do I need?” and he told me the type of uniforms I should buy and I had gone over to the, I
don’t know, the Quartermaster sales store at Fort Meyer, Virginia because I was working in
Washington then, just across the river, and he gave me a list of things to buy, and I bought them.
I had uniforms that I needed there. It wasn’t much because I didn’t really need all that much
down there; the basic green uniform, and then what I did, they had to send me to Fort Lee
anyhow for a day so I went down and they told me to buy a blue uniform so I bought that. But, that was basically what I had, but not much else.

SM: So what was the regimen at Charlottesville like?

HG: Charlottesville was just like going to school, only it was longer hours. I can’t recall exactly what it was then, but we run 5 days in a week and we run about half a day on about half the Saturdays and they taught us, well, what we called in those days we probably had a few hours of claims law and a few hours of international law, but the bulk of it was what they called military affairs and military criminal law. Military affairs is basically all the ash and trash that doesn’t come in some other category; all types of law involving say personnel eliminations, all kinds of law related to that. Then I guess half the class or half the time was criminal law because that’s what we did mainly in those days. Some claims, some we called legal assistance, personal legal affairs and individual, but basically it was, well, the large part was criminal law.

SM: The personal legal affairs, you mean things like powers of attorney?

HG: Power of attorney, yeah, wills, divorce, stuff like that, Soldiers and Sailor’s Civil Relief Act problems. You had a lot of soldiers. Yeah, especially that and because the Army was so big being separated from home you have all the things that arise out of that so they taught us about that.

SM: Now when you talk about criminal law, you're talking about starting in the uniform Code of military justice…

HG: That’s right.

SM: —and other aspects of criminal law like Article 32 investigations and things like that?

HG: Yeah, that’s all part of that. The uniform Code is an amazing document. I’ve spent my whole life working with it, but it’s an amazing document because it sets up a lot of different procedures as well as sets up that the criminal statutes, you know, the crimes. The Article 32 is Article 32 of the Code and that creates…what that Article basically provides is that before you can have a general court martial you have to have an investigation which is required by that Article of, the Code, and then of course the Code gives the President the authority to create procedural rules and he’s done that in the manual for court-martials, so the Code is really a small document. The Manual’s a massive document and so they call it the manual as well. That’s where the guts of the actual military law resides.
SM: Now did you know when you got to Charlottesville that you would be going to Vietnam?

HG: No, no, but expected it. Most of us had expected, in those days, that we would go to Vietnam. An awful lot of my classmates did go to Vietnam. I don’t think we thought about it then. I had my…when I got there; I had my assignment to go to Fort Sam Houston. That was my first assignment. Back then, they did not send anybody directly from the basic course to Vietnam, so I knew I wasn’t going right away and because I was a direct commission and not an ROTC graduate they sent me to other schooling as well. When I left Charlottesville I didn’t go to Fort Sam. I went to Fort Knox. There were about 15 of us and we went into Fort Knox to go into the Armor Officers Basic Course which was a fun thing to do. I mean, it was interesting. It was probably a waste of time but in theory it was good to have us learn more about the Army. As it is I learned a little about tanks and that helped me later on I guess. I dealt with armored officer personnel. So, I didn’t know where I was going but I expected that I would go to Vietnam or I thought that that was a good possibility.

SM: Now were you branched JAG or were you branched armor?

HG: No, I was a JAG. What they did is they just took us and like I said, about 15 of us, and they sent us out there but we were JAG branched and we were members of the Judge Advocate General Corps. We were just taking a ten week vacation in the winter in Kentucky and basically that’s what we did. We got there in early January and stayed until early March and then we finally, finally got to our duty stations.

SM: The training at Charlottesville was...do you think that was effective in preparing you to be a JAG officer, especially once you got to your follow on station at Fort Sam Houston and you became a JAG officer?

HG: It wasn't too good. It was okay, but it wasn’t great. I was fortunate enough later in my career to go back to Charlottesville to be the chief of the criminal law division. One of the things I concentrated on heavily was the basic course, but it gave me some flavor but it was like the old drinking out of a fire hose; they threw so much out at you, and since I had no real background to understand military law and the military, it was a lot that went by me and I couldn’t put a lot of the information...I got a lot of information but I didn’t know where to put it. I got a little bit out of it, I mean, it wasn’t bad and it could have been a lot better. That’s what I strive to do when I got back here 15 or so years later to make it better. I’ll give you an example;
what I did, when I got back to Charlottesville as chief or the criminal law division in 1979, one of the first things I did in the basic course is I taught about the first 15 minutes of when we got the class to the criminal law section of the course which was, in those days, the last half of the course and I went in with the whole class and every basic class. I had them bring the manual of court martial in because that has the Code in it, the constitution. The first thing I do is I had them open up their manual, turn to the constitution, and I showed them Code 1, section 8 which says congress has the power to create the rules that govern the land and Naval forces, and I pointed that out to them and I said, “Alright, now this is the start of military law. This is where it all comes from,” and then I showed them the Code and I said, “Okay, congress has done that by enacting the Code,” and this is the law, this is national law of our congress, and I showed them Code 36 of the Code which says the President has the power to promulgate the procedural rules and I said, “He’s done that, and that’s the manual.” I did that for a reason; because I felt that I never got that background, that foundation when I was in the basic class. There was a lot thrown at me, but I never got the perspective of where it was. You know, Vince Lombardi used to start every practice with the Packers, I mean every summer training by saying, “Gentlemen, this is football,” and I wanted to do the same thing; start at ground zero and work from there. So, that’s where I started. I also concentrated a lot more on practical exercises at the basic course. I had my guys create some what we call trial techniques; how lawyers do certain things, how they handle certain pieces of evidence, how they could impeach a witness by a prior inconsistent statement or something like that. We had them working hard while I was there. We had to work them long hours because we were doing all these practical things. We taught them the law, but we also taught them how to do things because I wanted them to at least, when they got to their duty stations, I wanted them to be able to get into a court room and at least feel maybe not comfortable, but at least it would look familiar to them or understand what was going on. So, I guess a lot of that was a reaction to the basic course that I didn’t think was as good as it could have been, although some of the teachers were really good, I mean really good teachers. In fact, when I was there just that the… I don’t know, maybe it was me and maybe I was at sea because I hadn't had that military training of any kind.

SM: Did the practical training that you instituted in Charlottesville when you went to the basic course, did you have mock trials?
HG: Yes. We had…what I created was, I think…we had a guilty plea mock trial and we had a not guilty plea mock trial. That was already there. I strengthened the trial techniques, these how to do certain things. Also, I think we had a confessions exercise, how to get a confession with evidence. I also had them do a search and seizure exercise, how to do that. So, I added a lot to what we had and I structured, put emphasis, on these practical exercises because that’s not what, when I was there, in Charlottesville the only thing we had was one long trial. None of these other things. It was just very mainly lectures.

SM: Did you get feedback from your students on the stuff you introduced and whether or not they thought it was helpful?

HG: Oh yeah, well, we gave critiques and we got…we took a look at them and what they said. Some of them didn’t like the way we did it, hard on them. I got so much criticism it was amazing; they used to laugh because my feeling was that a couple of weeks, a couple of months, these guys were going to go into a courtroom, they’re going to have a SOB like me for a judge, and they better have their act together. So, in fact I guess I’ll digress. I remember after I’d been in Charlottesville I was assigned as a Staff to Judge Advocate. Then the phone rang one day about 6 o’clock and I was the only one there so I answered it and it was some JAG captain calling and I mentioned my name and he said, “Oh, yeah. You were my judge in moot court in Charlottesville.” I said, “Oh yeah?” He says, “I tried to clean my uniform 4 times and I still can’t get the sweat stains out!” and I felt that was good because that’s what I wanted; that’s how I wanted them to feel, so he would be…he’d have his act together when he got into real court.

SM: The move from Charlottesville to armor school; now when you arrived in armor school, how did they greet you? Here, you're a JAG officer coming down to Fort Knox. How did they treat you?

HG: I tell you what happened; we were assigned to a detachment. I don’t know how many were in the class, maybe 100…yeah, probably about 100 students all together and Captain Brown was the detachment commander and called the 15 JAG officers into his office. We’re all captains. He says, “Listen you guys, I know you’re JAG officers, I know you’re not here to learn the armor. Just don’t screw up the class for the guys who are. You’ll stay in the back, you just don’t make a mess of this training,” and we didn’t. We sort of took it seriously, but we didn’t take it seriously. We didn't interfere with his work because for these guys it was life or death. But, we enjoyed riding on the tanks and shooting the mortars and shooting the tank guns at the
stationary ranges and doing the exercises and the night map exercise and stuff like that. I mean, we enjoyed that. Classes were awful, but so we just kept out of their way and treated them with respect and it was great. It really was great.

SM: How did the other armor branch students act toward you knowing that you’re only there because they made some decision to send JAG officers through armor school?
HG: I think we had mutual respect. Like I said, we didn’t interfere with their training. We knew that for them it was deadly serious. They knew for us it wasn’t, but they saw our enthusiasm. We participated. We crawled under the wire and we did everything so we weren’t special in that regard and so we had a lot of fun together, really...

SM: Did armor school…what was the most important thing you took away from armor school whether it was an immediate benefit or something that was important later on?
HG: Oh, maybe understanding that the language of armor, and understanding what an armor does and armor’s more than just an artillery piece; it’s the shoot, move, and communicate. That was, I guess, you know, learning about the armored branch really and how they did their business.

SM: Did that help you relate to other, not just armor officers, but other combat arms personnel later on in your career?
HG: Maybe the armor people, like in Vietnam I did a lot of work with the 11th cav and in Germany I worked a lot with the 2nd cav and some armor people as well. Of course when I was in the division we had a lot of armored personnel, I could talk to them, but not as much as you might think. Of course, by that time I was a little more mature and understood the Army a little better.

SM: So you went from Fort Knox to Fort Sam Houston, Texas?
HG: That’s right, that wasn't…
SM: I’m sorry.
HG: Go ahead.
SM: I was just going to say what unit were you assigned to?
HG: That was my first assignment. I was assigned to the post JAG office. In those days at Fort Sam, you had several offices; you had the 4th and that was 4th Army headquarters and they were located on Fort Sam. I was assigned to the post headquarters, commander of US Army garrison, Fort Sam. We had the Garrison Judge Advocate office; actually, it was post
Judge Advocate Office. Then it was...Brooke Army Medical Center had its own Judge
Advocate and I think there may have been a Judge Advocate teaching at the medical field service
school. I can’t recall that exactly. So, we had at least 3, maybe 4 JAG offices on post and I was
in the installation JAG office.

SM: By being in the post JAG offices, you support all of the major units on post or
just...

HG: Well the major units other than Army headquarters and the hospital were the US
Army medical training center. The medical training center trained all the corpsmen. The
medical field service school trained the officers so they trained the doctors and the nurses and
other medical officer types. The service school, I don’t know if it came into the garrison or not.
I’m not sure that it did, but we had very little dealings with them. We dealt with the...the
medical training center was the main unit who we worked with other than the garrison
headquarters company and the MPs and stuff like that. We had a pretty small office. We had the
Lieutenant Colonel who was the JA and then we had Gene Powell and Harold Nathan and myself
were the three captains and then a couple of months later Mike Fletcher came in as another
captain and we had an enlisted man who was a lawyer. He was drafted, see, so he was working
there and he did our legal assistance. Well, he didn’t do all legal assistance. Harold Nathan was
in charge of that. I did a little bit of everything. We were real small.

SM: Did you do a lot of trial work there?

HG: Not a lot, but we were a special court jurisdiction so we couldn't try general courts.
That was Army, and Army did one in the 9 months I was there so it wasn’t a big deal. We, what
we had at Fort Sam is like I said, we trained the corpsmen and conscientious objectors came in 2
categories back then; you had those who were exempt from military service, and those who were
brought into the service but given duties consistent with their beliefs. Well, we had a number of
conscientious objectors who were in the Army who believed that their beliefs really exempted
them from all military service and they believe they were drafted improperly, and from time to
time we had one who refused orders or refused to do something or did something incompatible
with military service so we wound up trying these guys for willful disobedience. It was
usually...best I could recall, gosh, we’re going back a lot of years, about the 5th week of training
they were given a rifle and that’s when push came to shove and they refused to fire the rifle and
then they were given orders to fire and they’d refuse and then we wound up on a court martial. I
think I defended several and I prosecuted one or two. It was always a special court martial and it
was almost...there wasn’t much you could do. The evidence is pretty clear. Maximum
punishment was 6 months confinement, 6 months forfeiture of 2/3 pay, what we called six and
six, and I once got up there in court and I argued, “Gentlemen, you’ve got no other numbers
except 6 and 6,” and I think they gave the guy 5 and 6, you know, as a moral victory. But, the
really wasn’t much that you could do. We were stuck. The draft boards put them in the Army.
The service regulations provided that those in the Army that felt that they belonged out of the
Army felt they were wronged by the draft board could appeal; could go through an
administrative procedure. The problem was that when that got to a certain level above the post
level in Washington, they sent it over to the selective service system and the selective service
system decided if they made a mistake. Well, needless to say, that was a useless exercise. This
is 1967 so this is before the major anti war activities, before federal courts might be more willing
to give habeas corpus relief or things like that. It was pretty tough on these guys, who some of
them probably legitimately did not belong in the Army, I mean legally didn’t belong in the
Army, but they were there anyhow. So, that’s basically the kind of work that we did; a lot of
work with the conscientious objector issues and I had other court martials. I prosecuted and
defended probably some thieves and some other types. It wasn’t anything real significant.

SM: The conscientious objectors and those court martials; to your knowledge, did that
remain the punishment or the...you mentioned, for instance, in the questionnaire that one of the
things that happened over the course of your stay in Vietnam was when you first got to Vietnam,
prosecution for drug offense was a court marshal. When you left, it was a Code 15 and I was
wondering if a similar change occurred with conscientious objectors?

HG: Not the time I was there. My boss, the JA, the post judge advocate, had a rule that
after trial he would call the individual into his office and if the individual had promised to go
back to being a soldier, we would suspend his sentence because we didn’t want these guys in jail.
We want them being soldiers, I mean, the Army of the institution, and its funny how once...I
remember this guy said, “No, no, sorry Colonel, I can’t do that. I’m going off to jail.” Two days
later he calls us, “Hey, I found a place in the Bible that says I can do it!” So we took him out and
he was a soldier again... I don’t think, in the time I was there, the policy didn’t change. But, you
know, it couldn’t because you had to have it. You had to have that legal coercion to get soldiers
to do soldier jobs and soldier work because you’re fighting a war and so you have to do things
like that that you might not do at other times. AWOL during that time was pretty serious.

AWOL in peacetime is really not as serious. Of course, it isn’t as plentiful either.

SM: How would AWOLs be handled?

HG: Well, probably the best example I’ll tell you is in 1969, I was a military judge in
Fort Gordon, Georgia, and in those days we had these…oh, they called them…they changed the
name every couple of months, but they called them special processing detachment and many of
the installations would pick up these soldiers who were AWOL. We had the SPD at Gordon and
Gordon was responsible for the AWOLs in the southeast and every week they’d send a bus to
Florida stopping at various places and picking up the AWOLs who’d been apprehended. That
was called a gator run, and they’d send one bus up into Tennessee, and North Georgia and pick
up all the people off there and bring them down. Most of them were tried by regular special
court martial. I used to do them. I remember 2 days a week I’d go over and try the AWOL cases
and we tried anything from 10 to 15 cases a day and they’d come in and they’d say, you know,
they’d give me one story or another, none of which was legally a defense, and then they’d send
them to jail for 2 to 5 months depending. In those days the Army had the Army retraining
brigade at Fort Riley, Kansas. That was a way of getting soldiers back to duty. So, a lot of them
would come in and say, “I want to go to the retraining brigade,” and I’d say, “Well you know
I’ve got to sentence you to X amount of time in jail to do that,” and they said, “Yeah,” and I said,
“Okay,” and I’d give them 3 or 4 months and they’d go off to Fort Riley. That’s how they did it
there. Other installations probably tried them by general court martial or BCD special because I
guess the command feeling was you had to give them a reason to stay around. You had to make
the price real high in order to…you’ve got to have an Army! What if the whole Army goes
AWOL? That’s how they did it there. Then they had other…but they did try a lot of general
courts there at Gordon so they must have made a distinction between desertion. A lot of this was
desertion that they’re trying as AWOL, but I guess they made their own choices on why some
big people went by special court and one by general court. It could have been the length of the
AWOL. It could have been some other reasons.

SM: Question back to the conscientious objectors?

HG: Yeah?

SM: Did many of them or did all of them take the Judge Advocate up on his offer if
they’d go back to soldiering that he would suspend their sentence?
HG: No, no. They went to jail. In fact, it was the exception.

SM: It was the exception?

HG: It was the exception. They went to jail, they got a 6 month sentence, and they served 5 months and then they’d come back. Then we’d go through the drill again 2 or 3 times, yeah.

SM: So there were a lot of guys that would stick to it? They wouldn’t give in?

HG: Yeah. Some of these people were…I’m not going to give you a percentage how many, but a lot of them were honest, they were sincere, they shouldn’t have been drafted in the first place, they were wronged; they were absolutely…they were wronged by their government.

SM: What did you and your fellow Staff Judge Advocates think about that, that particular predicament in particular?

HG: We didn’t like it. I didn’t like it. But, we were hamstrung. There was nothing much that we could do about it. We were sworn to follow the law. You couldn’t go into a court martial and argue the guy’s illegally in the Army because this was wronged and that was wronged. You probably couldn’t even get that into evidence, and so you just brought up their sincerity and hoped that the members of the court would give them a more lenient sentence based on their beliefs. The command really weren’t missing either. They would tell you to follow the admin procedures and you did that, and of course they…but like I said, when the selective service system got in there, it was very frustrating, very frustrating for us and we were not happy with it; considerably unhappy with it.

SM: And there was no higher appeal authority than the selective service to determine whether or not a person was…

HG: Well eventually probably some organizations represented these claimants in federal court. Now I remember in ’69 in Fort Gordon they would have these [habeas corpus] petitions then, but as I recall that one wasn’t…back there, it wasn’t successful. Maybe in other parts of the country it may have been more successful. I imagine San Francisco you had a better chance of getting a habeas corpus petition for a federal court than you would in Georgia.

SM: What would you and your fellow officers talk about with regard to what was going on in Vietnam?

HG: ’67 it was still a good war. I volunteered to go to Vietnam. I called probably, oh, in June-July called career management and told them I wanted to go to Vietnam. We felt, well I
wouldn’t say we, just a prevailing view among the officers was that it was a good war, we’re
doing the right thing, there were important national issues and interests involved, the domino
theory was alive and well. Basically, it was a place to go. What we were doing was right and we
should serve over there because we were serving the interests of the country over there in a just
cause.

SM: What about from the stand point of your international law training?
HG: My international law training, you’re talking about 2 or 3 hours! I mean, I told
you Charlottesville wasn't much. There was nothing in international law that I related to that. I
mean, if it was mainly the political side of that; the geopolitics, the communists, and us, the free
world and the communist world. I can’t think of anything that was of significance.

SM: Do you remember why you were still at Fort Sam Houston before you went to
Vietnam when General Westmoreland came back to the United States and made his…I guess he
made some speeches and stuff in congress and it was in late ’67 that he made that rather
infamous comment to congress that the light was at the end of the tunnel, we would win Vietnam
shortly?
HG: Well, I don’t remember if I remember those comments at the time. Sometime after
that, those comments took on…everything in ’66 and ’67 took on a different light in ’68 and ’69.
While you were living through ’67, they were starting to get discordant voices, not many, but
you started to hear some. But, they were crazy; they didn’t know what they were talking about.
They were just…there’s always a few, so I don’t think what he said, it doesn’t stick out in my
mind.

SM: It didn’t register at the time? It wasn’t a topic of conversation amongst you and
the other officers that you worked with or anything like that?
HG: I don’t think so. I mean, we talked about Vietnam, but our office by this time I
was the deputy post Judge Advocate; been there 3 months and got promoted to deputy because I
was a senior guy by a day or two. I don’t know how that happened. The deputy left and so there
was a colonel and these 4 captains who didn’t know what they were doing and then that poor
guy. Actually, I was the only bachelor so I was more concerned about dating nurses than I was
with other things. I used to spend a lot of time doing that.

SM: So when did you get word from your branch that you were definitely going to be
going to Vietnam?
HG: Well I called them again. I told you, I called them early in June-July, and I called
them back in August and I told them, I said, “I hadn't heard from you guys.” Maybe I called
them early June or something, and I called and I spoke to Barney Brannen who was in up there
and I said, “Barney, I want to go to Vietnam.” He said, “Yeah, your name was mentioned that
you were eligible.” I said, “Well, I actually volunteered,” so we talked and he said, “Okay.” I
told them January would be a right time to go and he said, “That’s fine,” and so finally I knew I
was going to Vietnam and I think August of ’67 I went back to Charlottesville for the law
Vietnam course. I don’t remember a lot of what they taught us there, but I think we were taught
how to do things and some probably war stuff and stuff like that, but at that time I knew I was
going and I probably got my orders in September I guess, maybe October.

SM: But you don’t recall what they taught you at that course with law and war and stuff
like that?

HG: No, I almost think that after being in Vietnam a year that the way they should have
taught that course was put you in a room with a telephone that wasn’t connected to anything and
told you to make a phone call. That’s as bad as communication I learned in Vietnam, but I can’t
recall anything specific. One guy had been to Vietnam, came back, and told us how they had
tried a civilian by summary court martial and he was bragging on how they did it as a practical
solution, and I thought that was a travesty. I really don’t recall much about the class other than
being there. Probably I learned something, I just can’t recall what it was.

SM: I take it what you mean by that being travesties or stipulations that civilians are not
tried by military courts constitutionally?

HG: Well, under the Code, there is an exception that said that civilians accompanying
the forces in the field can be tried by court martial. That’s one of the exceptions; I think there’s
another exception, but I can’t recall it right off. But, when you try somebody by summary court
martial, that proves nothing. That’s just…and he was setting this up as a great feat and I say its
just hogwash. So, that’s the only thing; I remembered about that.

SM: So you left I guess early January? You arrived in Vietnam in early January?

HG: Yeah, I left Fort Sam before Christmas and I visited my folks, and then I went up
to San Francisco for a few days, and then I got to Travis sometime around the middle of January.
I should have known right then that things weren’t going to go right. I had a 4 o’clock port call.
That would have been a 6 o’clock flight, and I’m leaving there and I’m calling my folks to tell
them that I’m about to leave and they called my name and my plane was delayed 12 hours, so I
all night at Travis and we left sometime in the morning, flew to Hawaii, got to Hawaii about
dawn, spent a couple of hours walking around Honolulu airport, got back on the airplane, flew
across the Pacific to Guam, walked around that airport for a few hours, then got on the plane,
flew to Clark Field in the Philippines, walked around there for a few hours, then finally got to
Vietnam and it was in the evening, I have no idea what day it is, I just…sometime before the 20th
of January of 1968 I arrived in Vietnam at Bien Hoa. I remember they loaded us on the busses
and took us to the 90th replacement detachment, yeah, I guess that’s what it was called, and you
had to drive through Bien Hoa and I remember seeing what looked like it was the ram-shackled,
corrugated tin type places, over crowded and not real nice but it was evening, so we got to the
Repot Depot, spent the night there. Of course I had had my sun and so the next morning they
came and picked me up and took me up to 2 field force which was…I don’t remember the
highway number but you had the main Long Binh post which is a real big post, and then just off
of that was the 90th replacement battalion or detachment, I guess battalion, and then just past that
in another compound was II field force plantation compound and that’s where we went so I had
about a 5 minute ride to my office, to my command and that’s where I went. I got there the next
day.

SM: What do you remember about first arriving in Vietnam, I mean, right away, first
thing right off the plane? What’s it like?
HG: Hot, humid, very uncomfortable climate, really so disoriented by being on a plane
so long, you don’t really care much about anything and you just don’t know what’s happening.
It’s just being real quiet and trying to find out where we’re going. I mean, what's happening
next.

SM: What was the unit like when you arrived the next day?
HG: Well, the Staff Judge Advocate was temporary. The old one had left before
Christmas and the new one hadn't come in yet. The deputy, as it turns out, was on my plane with
me, so I met him on the plane. There were two other officers there, Tom O’Connell and Ned
Felder, and so it was the 4, no, 5 person office – I mean 5 officers – and then we had a Warrant
officer and we had some enlisted guys. Like I say, they gave me a room in the BOQ. We had
these 2 story wooden buildings that we had and they got me a room there. I don’t really
remember much else about getting in there, but I just processed in I know. I don’t recall that,
and then I started the work. I think what they did in the beginning is they made me assistant trial
counsel and let me think, yeah. I’m not sure if I was assistant trial counsel or assistant defense
counsel. I don’t recall right now, but I know that within about 3 or 4 days I had a flight out to
Tay Ninh, no, I had to go beyond Tay Ninh; I flew to Tay Ninh and then got on another
helicopter and flew up to a fire support base. I was interviewing some witnesses for a court
martial that was coming up the next week. I just can’t remember if I was defending or
prosecuting in that one, I don’t remember. So, we’re just in country and we’re flying to this fire
support base and the night before they had just had a ground attack and there were bodies still in
the water, so welcome to Vietnam. But, I did what I had to do and I went back to Tay Ninh and
talked to some other people and I remember the funniest thing; they didn't even have jungle
boots for me at the headquarters. I got them from a sergeant up at Tay Ninh. He got me a pair of
jungle boots, and then because I flew back to Long Binh and the next week we were in trial in
this case. It was a forgettable case in that respect to me because I don't remember all that much
about it.

SM: Do you recall what the charges were?
HG: No, not that case. I don’t have any recollection. Of course, now, this is very late
January in 1968 and I remember the 30th or the night of the 31st but our boss comes into us. Now
he is, by this time, we had gotten our new Staff Judge Advocate. He had come in, so he was
brand new over there. He was a screamer now, a nice guy, but a screamer, and he went to the 5
o’clock briefing and then he came back and said to us, “You guys better stick close to your
helmets tonight,” and for the first time they had blacked out the compound and 3 o’clock in the
morning on either the 30th or 31st I heard these strange noises and I woke up in my bed and I
said, “Holy shoot, we’re getting hit,” so the rockets came in, they were rockets, and I think they
stopped and ran downstairs to the bunker which is in the BOQ area and a bunch of officers were
there and the rockets, by that time had stopped, we're standing around and so I went back in my
room because I had slept that night in Bermuda shorts and shirt, so I went back, put on my
uniform, put on my helmet, well, I had my helmet, got my pistol out I guess, and we didn’t have
flak jackets, and went back to the bunker area and then some small arms started coming in and
these guys started locking and loading and I’m saying, “I don’t think I want to be standing
around these officers while they’re locking and loading,” so I just walk in the bunker and I laid
down and I fell asleep. I must have been tired! The adrenaline was going, I slept for a couple of
hours and I got up about 6 and I guess I cleaned up and then went to eat and while I was standing
in line in the mess hall the loudest explosion, the loudest explosion I ever heard in my life went
off. They had blown up…the sappers had gotten in the night before and I guess the charges went
off and blew up the Long Binh ammo dump and I remember we all ran outside and I looked
around and I was still holding my plate. I didn’t have any food on it, I mean, I was just holding
the plate. So that was my introduction to Tet. The night was pretty dicey. There was an NVA
regiment…there was some heroism that night I’m sure all over the country, but right across the
highway, or actually we had about 3 strands of barbed wire, that was all we had on security. The
security in that place was very poor. This was the corps headquarters. Across the highway was a
widow’s village. I guess widows of ARVN troops lived in it. All the MPs that night had just
gone over there. They decided, “Hey, we better check this out,” and so they drove through the
village and didn't see anything, and as they were exiting the village they took some fire from the
village and so they knew something was up. So, there was a shooting going on back and forth.
Meanwhile, as luck would have it, we were training Cobra pilots at Bien Hoa and there were
instructor pilots over there and the General Weyand got them up in the air and they killed over
100 NVA right along the highway, right across the highway from our compound. So, we
probably would have been overrun. We’d have been in some serious trouble that night had not
these MPs done their job by getting in there and alerting to what was going on. I was real
impressed by that luck. That was the first night of Tet and after that we were in no danger.
General Weyand brought up a lot of the troops and we were covered. There was a lot of noise
that night. I didn’t sleep until the next night, but we were really safe.

SM: Was there much action around the headquarters besides what happened, what you
just described as far as bases that were near?

HG: I don't think so. I’m not sure as to the north…no, probably not the north, probably
to the east of us was the 199th infantry brigade and Weyand brought in some cav, 11th cav, and
they were outside of our area so we were okay. I don’t think there was anything real close to us.
I don't recall. I don't think there was anything of any significance close to us.

SM: What about the trial work that you did that you do recall as far as…

HG: Okay, yeah.

SM: Important cases that stick out in your mind?
There were several that were important. One was the...I’m trying to think in order; the first one was this...well, they all came in the latter half of the year, the important ones. There was this murder cases, Zeller and Holley. They were two troops and they were in a truck and they were riding down the highway with the 3rd guy driving and Holley is fooling around with his weapon and he says, “My weapon is jamming on me,” an M-16, but the driver says, “Hey, I’m having trouble with a tire. I’m going to pull over at that Vietnamese tire shop.” So, he pulls in there and Zeller, I mean Holley, says, “I’m going to go test fire my weapon.” Zeller says, “Well, I’ll go test fire my weapon.” So Zeller and Holley go out behind this building, behind this tire shop, big open field, and one of them shoots in one direction and the other of them says he shot 90 degrees in the other direction. At about the 45 degree mark a Vietnamese winds up dead, so those are the basic facts of the murder case. I’m defending Zeller, and another guy is defending Holley when we go to court. They’re charged with murder, and we conceded...there was some evidence, and we conceded that the death occurred from an M-16 round. But, our theory was they couldn’t prove who did it. The government couldn’t prove who did it and that these guys weren’t working as criminals in a criminal enterprise where both are liable for all the acts of the perpetrators. These are just two guys shooting, test firing their weapons. Well, the jury compromised. They were charged with murder that carried a life sentence. The government theory is they were doing...the government couldn’t prove intent to kill, but the government said they were doing a reckless act, evincing a wanton disregard for human life which is murder three under the uniform Code of military justice, Code 118 paragraph 3. Our theory is, “You can’t prove who did it.” Well, the jury compromises and finds them both guilty of negligent homicide. I mean, obviously compromised and obviously they rejected the government theory but they didn't want these guys to get away with something. Zeller, no, Holley got 6 months and no kick from a general court. Zeller got 9 months because he also had an unrelated marijuana charge that they tried with it. So, we did our best and that case went up to the court of military review which was the first appellate body and they reversed the convictions, on the same theory that we argued in trial, that these guys were doing a lawful act in a lawful manner, and therefore they were not acting in concert to do a criminal act, and therefore you had to prove which one did it so they both were absolved of the homicide. Now there’s postscript to this as there always is; Zeller winds up in Germany a couple of years later, and Zeller is convicted of fragging an officer, or for attempted murder, and he got 19 or 20 years
there. On the same judge, Jack Crouchet who was the judge at the Zeller trial in Vietnam, is the
judge in Germany. Another interesting thing in that case that could only happen in Vietnam; we
walk in to start the trial and Crouchet sees these two M-16 rifles on the floor and he says,
“Whose rifles are those?” and he said, “Well, they’re the accused rifles.” “You mean the murder
weapons?” I said, “No! These guys had to come from Bearcat this morning, they had to be
armed!” Bearcat was about 20 kilometers down the road from their headquarters and hey, if
you’ve got to travel! Now that’s something only seen in Vietnam. Another interesting on that
line with weapons; we had…I defended…well, we had about 6…5 or 6 Special Forces soldiers,
al en listed, charged with using certain means to gather information from witnesses, from VC, so
what happened was they got the VC in a room and they used some electricity on him and he
talked and then they took the guy to a doctor and the doctor turned them in. So, they’re all
charged with various offenses and…but they only charged the enlisted guys and they gave
immunity to the officers which was dumb from a prosecution stand point. Well, as it turned out
my guy wound up with a Code 15 oral reprimand. He was getting out of the Army anyhow, so
that was great. But, the funny thing, we had the Code 32 investigation and we had 6 accused, or
maybe 5 accused, 6 defense lawyers, I think one had two, we had a prosecutor and we had the
investigating officer so we had what, 12 or 14 of us in the room, everybody carrying a weapon; a
loaded weapon! You ought to try that here. But, you know, that’s just some of the things that
happened in Vietnam. I was going to say, another case…

SM: Let me ask you a question about the Zeller and Holley case?

HG: Yes.

SM: They didn't have any form of ballistics as far as to verify the…

HG: No, no they didn’t. But, they had the description of the wound which was, as I
recall, characteristic of an M-16; small entry, large exit wound. These guys were firing at the
time, so I think there was a witness. There was a Vietnamese witness out there. There was
reason to believe that one of these two shot. Sometimes, in trial work, its better to concede stuff
that isn’t going to hurt you, rather than…it just goes through what the main issues were in the
case. I think it was a better tactic to argue, “Okay, one of them did it but you can’t tell which
one,” I mean essentially that, and that’s what we did. That was our theory, and actually it proved
out, but not in the trial.

SM: And no word about what happened to Holley in the future?
SM: And with the Special Forces case, what happened as far as the officers? Were they eventually brought in and charged and tried as well, or did the immunity hold?

HG: No, no, the officers were given immunity and they testified at the 32, so they were free. I mean, they were absolved. I don’t know if they made the Army a career, I doubt it with that somewhere in the background, but they couldn’t be charged at that time. That was a bag of worms coming in there anyhow. It would have been a mess. Of course, if we had to defend that argument, of course you had enlisted members on the court, you had to let the officers go and hanging the E5s and E6s, and it would have been a mess for the government and they knew it.

SM: So none of the Special Forces guys were actually brought to trial?

HG: Not that I’m aware of, no.

SM: They all pleaded some lesser…

HG: They all got Code 15s or reprimands or something. Like my guy’s getting out of the Army, gets an oral reprimand. Big deal. That’s not a conviction, that’s a clean record.

That’s the way to do it; take it and run.

SM: Did you hear of other incidences of torture while serving as Staff Judge Advocate?

HG: Well, at this time I was a trial lawyer.

SM: A trial lawyer?

HG: Yeah. Torture? No, but I had…well; I’ll tell you another case at the time. I’ll let you decide. It wasn’t torture. The unit is out in the field 3 days after Tet…3 weeks after Tet; NVA and VC bodies all over the place, you know, a lot of kills. My client is accused of telling an enlisted guy to go out in the field, chop off the head of a dead body, because he wants to clean up the head and put the skull on his track. So, the enlisted guy cuts off the head of a dead body. The body’s been out there 3 weeks, its decomposing. He brings the head back. The head is then boiled in a pot of water. There are pictures of my client standing next to the pot of water, and he boils the head and he cleans off the skull. So, my guy is a sergeant E7 with 20 years of service and he’s charged with violating MACV directives by ordering the soldier to chop off the head and by boiling the head in a pot of water, and the government has, well, from a defense stand point the evidence is awful. Apparently, there was a soldier who was going home, so the soldier’s out in the field taking motion pictures and in the beginning of the picture he takes a picture of this body with the face up and at the end of this reel of film, you have this head in this
pot of water with my client stewing, so obviously an alibi is no defense. He was there, and we had to figure out how to defend that case. The charge was 2 parts; boiling the head, or ordering the soldier to chop it off, and boiling the head. The government had all these pictures and I had to get these pictures, I mean, I had to keep these pictures out of evidence because that would inflame the jury, so the theory was that what we do is we pleaded guilty to the boiling the head part, and not guilty to the part about the ordering the soldier to do it, and fortunately because of the way we pleaded the pictures weren’t necessary, so we kept the pictures out. He got convicted of the whole thing and he got a, I don’t know, I think he got a one grade bust or a fine…yeah, I think a one grade bust and a fine of not much money, and he was very pleased and so was I because he was facing the loss of a 20 year career. That was one of those unique Vietnam type cases.

SM: So the actual charge was violating MACV directive?

HG: What we did, I think, what I was told the Army did or the command did, is to avoid violations of the law of war, so basically what we did is we took all violations of the law of war and made them MACV directives. Then you could charge them that way and avoid having war crimes. So, we had them committing a war crime and Calley never committed a war crime. He ordered a hundred or so people killed, which is murder, but not a war crime because we could do it that way. A legal way of avoiding a blemish of having the United States commit a war crime. From a political standpoint, I don’t have any problems with that. I mean, same act, but if it helps your country it doesn't hurt anybody. It doesn't hurt the client, so it’s no big deal.

SM: What did you as a trial judge, a trial lawyer, and the other gentlemen working with you as trial lawyers, what did you think of that particular aspect of how the United States was conducting itself from a legal standpoint? Here we have we have been very strong supporters of the law of war. After World War II we kind of pushed that in terms of trying Nazis and things like that and then we’re trying to skirt the issue here in Vietnam, “Oh, we’ll just make it…” that kind of stuff?

HG: I didn’t mind it. That didn't bother me. Of course, we were down at the bottom and we didn’t see much of a big picture, but that really didn’t bother me. My concern, because I was defense counsel, my concern when I had cases to prosecute was that we put these criminals in jail and prosecute these criminals and I wouldn’t worry how we did it. It has to be legal and it has to be right and all that and ethical and encouraged by the law and legal profession, but
whether you get Al Capone for tax evasion or murder, I don't care, as long as you get them, and it's the same thing so that didn't bother me. I got involved, well, in serious war crime murder case that wasn't successful. I prosecuted this one. On September 22, 1968 a unit of the 82nd is on patrolling somewhere north, I don't recall where. Their patrol’s out with their company commander, Captain Kapranopolous, Captain K. the men called him. They see to their front a bunch of VC or who they believed to be VC and I think they are. They send one patrol with a lieutenant in one direction and they send another patrol with a sergeant or an E7 or so in another direction. This happens extemporaneously, but the one with the lieutenant, they get out there and the VC is wounded. Shots have been fired. Loomis calls back and tells the radio operator - Maitaliano I think his name - tell the captain, “We’ve got a prisoner.” Kapranopolous gets on the phone and says, “I don’t want any prisoners.” Loomis gets on the phone and says, “Captain, I told you, he’s down and he’s wounded.” Kapranopolous says, “I don't want any prisoners.” Third transmission, Kapranopolous basically says, “Shoot him.” I don't remember the exact words, but the radio operator shoots the guy, and they kill him. Loomis had told Kapranopolous, “He’s down, he’s wounded, he’s down, he’s wounded,” and all, and he said…meanwhile, over here on the other side they capture another guy. He’s surrendered. Kapranopolous gets on the radio and says, “You know what to do,” and they shoot that guy and kill him. Now, normally as a prosecutor, because I was a prosecutor, you have a tough time proving the radio transmissions and all that. Well, in this case I had no tough time doing that because first of all I had the lieutenant at the receiving end of one and up on the hill, standing right next to the captain, is another lieutenant, a field artillery officer, the spotter and he hears the captain on the radio. So, had an iron clad case of him uttering 'prisoners shot', I mean just iron clad. This was an independent brigade of the 32nd commanded by General Bolling. I had heard that he wanted to just white wash the whole thing. His Judge Advocate named Van Buren I think it was Van, no, Neil Buren, I think that was his name, he said, “You can’t do that. You’ve got to send it up to corps.” They sent it to us, we ran the 32, and it was a clear case of murder, we go in, we try the case. I think I’ve got an excellent case. I mean, I’ve got these 2 lieutenants. The jury acquits; yeah, and it’s not surprising. We had what we called - I’m sure you’ve heard the term "mere gook rule" - jury nullification, and that’s what the jury did, and in fact about 6 months later my Staff Judge Advocate, or about a year later, my Staff Judge Advocate told me that he had seen one of the members of the court at Leavenworth. So, I was very impressed, and he said that the
member of the court had told me yesterday that, “You know what we had to do,” or “We know we did it, but…” They even argued that…this was before Calley, before our conscience was totally clear even though it should have been, I got up and one of the things I argued on the merit system was that, “You know, a lot of people argue that this was dirty war and that they fight dirty and we don’t, and we should also.” I said, “Maybe its one of the things, the saddest part, as an American soldier is that we don't do things like that. We don't kill the prisoners.” I was…we knew what the issues were in the case. I mean, legally it was an easy case for me but getting over that hurdle was just impossible. It was the fact…even the defense counsel said it after the trial, he said, “You know my strongest argument was one I couldn’t make.” He was an ethical guy and he put on his case and lying from the unit, a lot of fudging from the commander but he called General Bolling as a witness and Bolling was character witness and they asked Bolling, “Well where do you think this might have happened,” or “Why are they edgy?” Bolling said, “Well, you know, the unit just had a sapper attack and they had lost some men and blah, blah, blah, they were on edge,” and I remember I got up to cross examine Bolling and my boss, the SJA was sitting in the audience and he closed his fist at me a couple of times, I mean to get him, but he knew I was…I mean, I’m not bragging, but I’m pretty tough, I was mean. He got up and I got up and I said, “General, this incident with the sapper attack, that happened at 29th of August, in there something like that?” He said, “Yeah.” I said, “That was more than 3 weeks before, wasn't it?” He said, “Yes sir, it was,” and I said, “No further questions, General.” I sat down and he just sat there. It was just one of those cases that you couldn’t win. What we would do, we would try the captain first and then we would try the radio operator. Their excuse was, the radio operator said, “Well, the prisoner made a move at the medic who was attending him and so we shot him to defend him,” which was hogwash, but that was the "mere gook rule" and that was one of the real facts of life that we had to overcome, and couldn't. But, like I said, we knew the case we had before we tried it. I mean, at least as a command General Kerwin who was then the commander, and my boss and myself, we said, “No, you cannot let this go un…” not unpunished, but you cannot ignore. You have to do what’s right and let the chips fall where they may and that’s what they did.

SM: So why don’t you go ahead.

HG: Okay, there were two other matters about this Kapranopolous case that came up. One was, the unit had a motto called “Wine, women, and body count,” and they got these buttons
like Avis had these round buttons and they had that written on there, “Wine, women, and body count,” and they kept that on their uniforms. The other thing I wanted to mention about this case was that shortly after that the Army made a war crimes film and this case was the basis of that film How to Handle Prisoners. It was a good case to use in the sense that you couldn’t use names and you could use the scenario and nobody had any…no individual would be libeled or slandered in any way. That’s the only two things about that case, that I recall.

SM: Was there any sense amongst the people involved in the case or the command that one of the bad things about killing prisoners is that you’ve got the Chu Hoi program; you’ve got a lot of propaganda about, “Well don’t get captured because Americans will kill you, they’ll torture you and kill you!” Was there any sense that this is kind of bringing that to fruition? You’ve got to be careful because it is counter productive to kill prisoners.

HG: Of course it was and everybody knew that, you’d know that, but when you teach some of this stuff you pose the scenario where you capture somebody where if you have the unit exposed on that out in the field without support and they have some enemy, clearly enemy, no issue about that, how do you handle them? If you keep them alive, you may expose yourself to peril, so those are the dilemmas. For an academic exercise, the answer’s real simple. For a practical exercise, it’s not, and so that’s why we have to teach the law of war and that’s why the Army, well, when I say the Army because I’m familiar with the Army, but the services over the years have spent a lot of emphasis on how to properly accord yourself in accord with the law of war.

SM: Now the film that was produced as a result of this, for war crimes, was that something shown to all incoming soldiers?

HG: This was an Army training film, so I’m sure that it was wide spread. Now this was 1970 vintage film from the 1970s vintage film, so I’m sure there’ve been several interactions of other types thrown in since, but just that this case was a classic of how not to handle, you know, not to do things. We never got into the issues of whether the unit was in peril or danger because the captain denied giving the radio transmissions, he denied ordering the prisoners shot, things like that, so you never got into a justification; it just never happened. But, that was real life back then.

SM: What other cases?
HG: Well, actually yeah, when I think back each case seemed to have a life of its own; interesting, I mean, all the weird things like I had this kid I’m’ defending. He goes into the Tan Son Nhut finance office with an unloaded pistol and he says, “Stick them up!” and he loaded out with 6,000 dollars, he gets on his moped, goes a little bit, has an accident, and gets caught. Okay, this kid, yeah, you think, "What kind of bum is he?" and you find out this kid had not only served a year in Vietnam, but he served it twice and when he came back from either the second…alright, in those days if you extended for 6 months they gave you a 30 day leave in the States or wherever you wanted to go. So, he came back from the second 30 day leave, so he’d been there already 18 months, and he winds up with his girlfriend, he doesn’t go back to this unit, and his girlfriend says, “My mother needs some money,” and one thing leads to another and so he does this. So, we’ve got a good soldier here; I mean, really a good soldier who, as luck would have it, hasn’t harmed anybody. The money’s recovered, and so yeah, I was lucky. When I defended, most of the guys I defended were good guys. They did stupid things, but were good guys and when I prosecuted; I was prosecuted evil people who did evil things. Now, I think that was more of just my perspective at the time. But anyhow, this guys’ name was Sharp and we got a general court martial and plead guilty on what he’d done. He pleaded guilty to the AWOL there and the desertion, I mean, the robbery. The jury gave him 15 months and no discharge, and we were thrilled. The time was nothing, I think they commuted that, but he got no discharge and that was the thing we were really excited. I defended a…I’m trying to think, Sgt. Oldham. Sgt. Oldham, another super troop with a strange record. The VC mines a road up somewhere and Oldham’s in the 11th cav. They mine a road, they blow it up, and then 2 Vietnamese trucks go into the hole. I mean, like you couldn’t see the big hole in the middle of the day? So, Oldham gets up there with his troop; he’s a lead scout. What they’re trying to do is clear the road to get the trucks out and get the hole filled in. Well, the Vietnamese, it’s happened so often, they’re climbing all over the place. You couldn't separate them, you couldn’t get anybody back. So Oldham picks up a hand grenade and he pulls the pin, and he holds it up to get people to get back. He’s not going to hurt anybody. So, he does that and the Vietnamese get back. So, Oldham goes to throw that grenade out into the rice paddy. Well, just as he does that some Vietnamese of course doesn’t get back. He comes by on a bicycle or something or a moped. Oldham throws it, the grenade hits the moped, clashes into the crowd, and kills 3 and injures a bunch of people. So now, we’re charging…Oldham is charged with involuntary manslaughter
which carries a punishment of 3 years for each killing plus an aggravated assault. So, we’re in court trying to figure that one out. I mean, this is unique to Vietnam; I mean, where else could you have these weapons cases except in a war zone? And Oldham, everybody loves Oldham. Oldham is the greatest…one of those great soldiers, a lead scout, and in a cav platoon. In fact, the trial counsel, there’s an old saying in law, I’m sure you heard it, “Never ask a question you don’t know the answer to.” Well, he says to the commander, the captain, he says, “Well, you think Oldham has the maturity and the ability to be a lead scout?” and the captain says, “Well, the other night we had to go ten klicks and we wouldn't have made it without him,” and this is a military juror, I mean, they’re not going to…and oh, that jury goes out; I swear they weren’t out but about 2 minutes, came back with a 2 grade bust and that was it, a general court. That was pretty good since he was facing 11 years. We had offered to plead guilty and try for…I forgot what kind of a deal. We asked for a pretty sweetheart deal. My boss said, “Run that through Patton.” Patton at that time was commander of the 11th cav so we ran the deal through Patton and Patton says in typical Patton mythology, “I’m going to kill the son of a bitch. I don't want to do anything for this guy,” so after the trial I was kind of happy with the outcome Patton but he could do it. The biggest, toughest job I had there was involving the Long Binh stockade riots. The way it starts for me, it’s the very end of August 1968 and I’m flying from II field force to Saigon and you go right down the highway and like I said, I don’t think its Highway 1 but whatever highway that was and you fly right on the outskirts of Long Binh post and I look over there and the stockade looks…I said to myself, “Gee, it looks like the stockade had a fire.” That didn't mean anything to me. I got to Saigon and my friend and I went to Tokyo. I had a week of, not R&R, leave in Tokyo. So, I’m over there and then the next day or 2 days later I’m in the Sanno Hotel in Tokyo and I pick up the Stars and Stripes and it has a story about the riot and I said, “Uh-oh, Long Binh stockade had a riot. I’m going to be busy when I get back.” Well, when I got back we got the new SJA. Now, this is my 3rd SJA in the time that I was there, and he says, “Y’all are prosecuting from now on. You’re not defending.” I said, “You know, I like to defend.” He says, “No, you’re too mean to defend. You’re prosecuting.” So, I got this tiger by the tail. Now, the way they did it, the command took a big task force of CID agents and they went in the stockade and interviewed everybody they could find, got statements and that, but they only could correlate the statements only by name. Like, if one witness had given the names of 10 people, you could find those statements under any of those 10 people. But, if they said, “I
saw this guy hit some other guy in front of tent four,” you couldn’t find that statement. You had no way of retrieving that statement. Well, what they did is they gave all these…they took all the charges, or they took the statements, they sent it up to USARV headquarters, the JAG office there, they prepared the charge sheets. Then, they sent it to each command and we prosecuted the people from our command who were in the stockade and I wound up with 4 of them including Private Coppage who was really the leader of the riot. The way it was…alright, the stockade was over crowded; it was terribly over crowded. The riot was really a race riot, it was black on white. That’s what the riot was; that’s what the causes are, there are a lot of causes including the heat, the over crowding, the conditions which weren’t good for people to live in. But Coppage…that night the riot starts. Coppage is in this one compound and he leads a bunch of the rioters, all blacks, towards the fence. There’s a guard there. Somebody cold cocks the guard. They get out into the main compound. Coppage then goes into the mess hall and gets something to eat and then he goes down. He leads a bunch of blacks down to the box. The box was the segregation area, administrative segregation and disciplinary segregation, and there are 2 white MP guards down in the box and Coppage is going around and he’s squirting some liquid in each of the cells. What they did was they let the blacks out of the cells, these are individual cells, but white prisoners were kept in the cells, and he’s spraying this liquid; its some kind of a…we think it was a flammable liquid, he’s trying to kill people. He tries to light this liquid and he can’t light it. Meanwhile, I mentioned these two white guards and I mentioned that for a reason, because this is a race riot. These guards get on top of the box and there’s a whole bunch of angry blacks ready to kill them, and then one of the most amazing things that I’ve ever heard of happened; a guy named Planter, who’s a prisoner, Planter is the informal leader of all the blacks in the stockade and there’s no evidence that he’s rioting that night. Now, he may have been in the box at that time or not, I don’t recall that, but Planter says to these 2 guards, “If you come down, I’ll get you out of here safely.” And these guards come down and they follow Planter and Planter takes them about 100 yards across this rioting compound of prisoners, and they get out unscathed. I mean, you only see that in the movies, but that’s the truth. As it was that Planter was never prosecuted for anything that happened that night. Planter was prosecuted for some drug offense, I think, and eventually the Court of Military Appeals reversed his conviction on a legal issue, whatever legal issue was related to his case. But, that was an amazing thing to happen that night. Now Coppage, when we tried before and had a mistrial,
Coppage pleaded not guilty. He was found guilty and given 15 years; a relatively easy case to try because the evidence was so overwhelming. One guy was tried and pleaded not guilty. I could have had a very weak case. My only witness against him was a white prisoner who was convicted of manslaughter and who should have been convicted of murder and the judge let all the evidence in to show that the guy really should have been convicted of murder so I was stuck arguing to the members that they should believe this murderer; not the easiest prosecution, but we knew it going in, but you take the evidence the way you find it. Now, some of the evidence we had to put together. Like I told you, these statements weren’t correlated except by name. Now as it turns out, Zeller [], Zeller is serving his sentence at that time. I talked to Zeller and Zeller tells me about what happened and all so I used Zeller as a witness. I also found out – I got two cases, and I forgot the names of the accused – they happened in adjoining tents, the crimes, whatever the crimes were. So, I’m saying to myself, “Okay, the CID only calls these by names, but I have these two and since they’re adjoining tents maybe somebody, some of my witnesses from tent A saw something in tent B,” so I started interviewing witnesses that way, and I dug up some evidence on 2 more people that we were able to use in prosecuting. It was so tough. It was…first of all we had this mountain of evidence, and you had this at the stockade and it’s in Vietnam and you can’t use phones because the phones really don’t work. I was at the stockade every day interviewing people and trying to find out what happened. The CID did a good job, but they were overwhelmed. I had to concentrate on just a few things. I remember calling my boss and saying, “Hey Barney, I found out there’s a witness in Tay Ninh.” He says, “Hey, I know the commander. We’ll call him and you’ll get your witness.” That’s how it worked; it was just incredible the amount of extra work you had to do for simple stuff. I remember, I think I felt more professionally pleased at my work for the stockade riot cases than I think I’ve ever done anything because of how hard it was to put it together because of the logistics, not because of the outcome or anything. The trial was the easy part. I always found that if you did all your preparation, the trial wasn’t as difficult and it really wasn’t, but that was a tough, tough thing to put together. One other case, Steve; did you need anything about the riot?

SM: Well, I was curious if the…what the riot conditions resulted in in terms of any changes at the stockade and the over crowding and the conditions and such?

HG: Oh, a sea change, a sea change. First of all, they had a lot of damaged areas so you couldn’t put as many prisoners there. They cleared out. They realized they had screwed up.
They sent a lot of prisoners all over the Far East; Okinawa, other places. They started really curtailing the number of pretrial confinements. They watched that very closely. They brought in a commander to the stockade called Ivan Nelson; naturally Ivan the Terrible but in his case it was well earned. Ivan straightened that place out. He made it as tough as nails to be in there. Prisoners, if they saw an officer or a prisoner come to attention, they take his cap off and slap his thigh and say, “Prisoner Jones, sir!” The salute is considered a privilege, and prisoners were not given the privilege of saluting, so that’s how they had to do it. Every prisoner who went in the stockade spent 14 days in a conex, in administrative segregation, to get the message across to him or to get his attention. I don’t, and I didn’t, agree with all his methods. I mean, I believe in a war zone, especially in a war zone, a stockade should be very, very tough; not cruel and not torture, but very, very tough because the idea is that you want the soldier to know…the soldier has a mind set that he would rather take his chances with the enemy in the field, than he would with Ivan Nelson in the stockade. And I don't have any problem with that because stockade serves a different purpose there, but I think he probably went over the line in some respects. I never had to defend it, I never had to justify because I didn’t have any cases that involved that. That was a different command. That was USARV who had to answer to that. I just had to do my own thing. But yes, the stockade changed immensely and the command, the senior commanders understood they could take care of…they could control the stockade and not let every commander who wanted put prisoners in in pretrial confinement for any reason or no reason at all; well, not no reason at all, but for any ridiculous reason. In fact, I defended a guy at the same time where that issue came up. Ulysses Sorey was his name and Sorey was in the 199th infantry brigade and Sorey is on guard duty outside of Saigon in the suburbs of Saigon. Sorey gets off his tour of duty and he goes, instead of his unit, he goes to the whore house, and looking for his favorite whore. Hey, we ran the 32 in the whore house so this is again, Vietnam. It was natural there, it is not natural in [?]. Sorey, looking for his favorite whore gets involved with another whore and somehow she winds out getting shot with his M-16. I don't think she was killed…no, she was not killed, but she was shot with the M-16 and Sorey’s in there by this whore house which is in an off limits area. Well, he’s charged with aggravated assault and being in an off limits area. Sorey is in the stockade at pretrial confinement at the time of the riot and he does nothing. He does absolutely nothing. He doesn't commit any offense that night at all. So, I asked the command to take him out of pretrial confinement or at least review the reason why
he’s in pretrial confinement and they gave me the, “Hell no, he’s staying, drop dead captain! Who the hell are you?” I said, “Fine.” One of the I guess one of the ways I operated was, “I don’t screw with you, you don't screw with me. You screw with me, I screw with you.” That’s just the way it works. So, at the trial the only person who can prove he’s in an off limits area, that Sorey received the order not to be there, was the battalion commander. That morning, the morning of trial, the trial was to start at 1:00 in the afternoon, that morning the adjutant for the battalion calls up and says, “The battalion commander isn't coming.” So trial counsel gets on the phone and says, “Okay, that’s the way you want to be, but I’m going to tell our Chief of Staff who’s a one star general that your battalion commander’s not cooperating.” So the battalion commander shows up. Now, we have already decided we were going to plead guilty to the being in the off limits area but not guilty to the ag assault. My defense was some accident theory. But, I didn’t tell it to the government because they screwed with my client by not even looking at the pretrial confinement. So, we go to the courtroom. The courtroom is a Quonset hut and the anti room is the waiting room and then you had the main courtroom. The main courtroom has an air conditioner in it, the waiting room doesn’t, so we had to walk through the waiting room to get through the main courtroom. Here’s the battalion commander, first of all, scared - he’s scared - because he can tell the general on him, he’s sweaty, I mean, you can’t sweat more than this guy can. I walked right by him and walked in there and pleaded guilty and the trial counsel, the trial says, “This is a surprise,” and of course the battalion commander didn’t have to come. I said, “Hey guys, you screw with me, that’s the way it goes. If you guys had shown a decency, just a little decency, you wouldn’t have had to do this, but the hell with you.” Well it turns out Sorey’s convicted; not that that was a big surprise, but his First Sergeant takes the stand. This is about 10 o’clock at night. His First Sergeant had spent about 2 hours at the NCO club and he wasn't just eating. I remember he came in, big guy, infantry company First Sergeant, Leroy Wimbush, I just remember the name. He says, “First Sergeant Leroy Wimbush, report!” because in those days you actually reported to the President, and he says, “Yes, Sorey's a good soldier. You give him back to me and I'll take care of him." He got like a nothing sentence. I mean, he got some time, he got some confinement, but my boss said, “Now he’s served enough. He was in pretrial time served. He’s out, he’s back in the unit,” so that was Ulysses Sorey but I always talk about that one because of the way the damn battalion commander just would not even give me the time of day and I said, “The hell with you. You want to play it that way, then I’ll play it that way.” And
that's the way I’ve always been. You shoot straight with me, I’ll shoot straight with you. I shoot
straight, but you play games with me, then boom; you reap what you sow. That’s how I look at
it. I’m trying to think of any other cases of any interest. It’s more interest for me because I did
them. That’s about…oh no, I have one other one that was another one where I was defense
counsel and I was going after somebody. It was a captain; this captain’s a nut case, I mean a real
nut case, and he was really riding my client. He was riding him one day unmercifully and I don’t
know, one day he got into confrontation with my client and he’s chewing him out or something
out in the field and this sergeant walks over, or maybe not a sergeant but some E4, E5. While
the captain is chewing out my client, this guy says something or laughs. So, my client punches
him or does something. So, the captain jumps on top of my client, rips him down, ties him up
with rope or something. So, the defense is going to be tough. My defense is the captain angered
my client so my client punched the third guy. I mean, that’s pretty tough to sell to anybody, but
the captain’s a nut case and I find out about him and I start getting all this information about him,
so asked the command to run a psychiatric evaluation on the captain, which upsets everybody.
Boy, the general hit the roof. I gave my boss a whole bunch of stuff and I had on the captain and
I said, “Yeah, you can tell the general this and this is why I ask it.” I wasn't just playing games.
I mean, I had some stupid things that this guy did. This guy flies off the handle all the time and
all this, and then there was an issue of illegal command influence. Apparently the battalion
commander had called all his officers together and said, “When I have a court martial, I want my
courts to be tough. I don’t want anybody getting tapped on the wrist,” which is, of course,
illegal. So I found out about that and I asked for a change of venue, change out of the command,
and I get it; moved from the 199th infantry brigade to II field force artillery, and we go to trial
and here the captain is testifying, and I said to the captain, “You know, you fly off the handle a
lot, don’t you?” and he says, “No, no, no.” I said, “Remember the time that you went through
that village and you shot up the whore house with an M-50?” and he says, “It was a 60 caliber.”
And my guy got like a nothing sentence, I mean a nothing sentence; one grade bust maybe at the
most. I talked to one of the members afterwards and he said, “As soon as he answered like that,
we knew what we had; we had nut case that never should have been.” I don’t know how this is
going to look, but basically what I did, like I said before, when I was defending, most of my guys
other than Zeller I guess, were really good people who did stupid things and the sentences
reflected that and I got lucky. When I switched to prosecution, I got some evil people; the
stockade riot, the murder case which didn’t turn out that way. I had some others, I’m sure, but I
can’t remember. Anyway, I had those and so it was easy to prosecute those and you could get
much more substantial outcomes because you’re dealing with bad people doing bad things. I’m
not bragging about how good I was, it’s just that I was lucky, too.

SM: And like you said, I think the decisions as far as the punishments, that kind of
validates what you said.

HG: That was about all the trials I had. Trials are so hard to put together because of the
logistics that you couldn't try that many. I had a flight evaluation board, they’re one of those
weird cases. Only in Vietnam. I represented a pilot, and this pilot…well, at an earlier time he
had killed somebody by running a skid into him, but I wasn't involved in that at all. What
happened is when I got involved with him, he was accused of…it had something called a
command pilot and a pilot on a helicopter…this is vague. My guy was senior to the other guy,
but whether he was the command pilot or the pilot, I don't know and he had been suspended.
The command, this is the 11th armored cav, they had the worst…I mean, they may be a great
combat unit, and they were, but when it came to administration they were terrible which was
great for a defense lawyer. So, my guy was charged with taking over the helicopter while the
other guy was the command pilot or something and they were going to pull his ticket; they
wanted his license to fly that airplane, and we got in there and just really made a farce out of it.
The command was so sloppy with the paperwork that by the time we got through going through
everything, nobody knew who was what and everything and they said, “He can go back to flying
again.” Again, lucky that they had…you know, you don’t do it with a lawyer, you just fall into
this. This is a mess; you guys are nuts! I guess that was about all.

SM: No other aviation trials?

HG: Well, that was the only aviation thing. I'm trying to think. No, that’s about all.

That’s about all we had. We didn’t have that many cases, but the cases were interesting and you
could spend some time enjoying them or putting them together. The good thing was back then,
every trial was a jury trial. So, you had to get up and you’d stand in front of members, you had a
Lieutenant colonel. I was captain less than 2 years in the Army. You had to stand and stare
these guys in the eye, look at the eagles on their collar and talk to them and oh, wait a minute,
and get results. There was one other case that I recall. Another one of these ‘only in Vietnam’
cases. This aviation unit, it was an aviation unit I guess. Okay, this aviation unit is stationed at
Bien Hoa and this is after Tet. They had the USO troupe come by for some party. Now, okay, the unit is stationed at Bien Hoa, the enlisted men live on Bien Hoa, and the officers lived downtown in another compound. After Tet, for some reason, they had to lock up all their weapons. They didn’t have individual weapons, but they left them in a locked container. They had the USO show, or they had some kind of a traveling show; the officers and enlisted men are there. The officers leave and they go back to their compound. The enlisted men stay behind and they start drinking too much. A sergeant who had the key to the locker opens the locker, the guys go downtown, shoot up the Bien Hoa police station, and kill a Bien Hoa policeman. So, in the time honored tradition that sometimes prevails, and here I mean when common sense doesn’t, somebody’s got to blame; somebody is to blame for this. So, they offer the company commander, a major, and the platoon leader, a captain, Article 15s for this! That’s right. They’re living downtown and they’re incumbent. There was a rumor going around that because of the outcome you’d never have to pursue it, but General Palmer who was then the USERV deputy commander but the guy who worked at Long Binh, the guy that ran the day to day operations of the headquarters, he said, “Somebody’s got to pay for this,” and they took it so that…they offered these guys Article 15s and they were in the 1st aviation brigade, yeah, I think the 1st. I’m trying to think if it was 1st or 12th, but I think it was 1st, and we’re saying, “Hey, the officer’s turned it down! It’s going to end their career,” and the case was just ridiculous, so they referred it to a regular special court martial. Now, you don’t try officers by special court martial. Legally, you can, but you don’t. The last thing you want in the Army is an officer with a court martial conviction on active duty, you know, its just stupid. Well, we went to the general and said, “This is ridiculous, it’s an old case, and its speedy trial,” and they dismissed the charges and substituted written reprimands not to be filed anywhere. It was just the stupidity of even trying a case like that or even thinking about blaming these officers for what happened. It was just absurd.

SM: Were there any other instances like that that you recall where there had to be someone to pay so they brought charges against a commander or a platoon leader or platoon sergeant?

HG: Going back over Vietnam, I can’t think of anything. There’s one thing I want to mention about Vietnam and that was one of the, I mean, a complimentary thing. General Weyand was our CG on the first half of my tour there, and General Ryan, it was after Tet…I
guess, like I said, I don’t recall. I think we got a hit on Tuesday or Wednesday night, whatever it
was, but on that Sunday, the following Sunday, General Weyand brought all the officers in the
headquarters to the amphitheater that we had there and he got up on the stage. I remember he
stood up there and he took his helmet and he had it on his side and we stood at ease, and for a
half hour he just explained to us everything that happened and where it happened and why it
happened and what we did about it; he just told us all about it. He basically said, “We knew they
were coming, we didn’t know where, and we just prepared ourselves as best we could and then
we fought them,” and I was just so…so…I don’t know, proud or honored by Weyand would
come down and take the time because this is still only 5 days after Tet and he’s corps
commander. He’s got divisions engaged, and he came down to take the time to tell us just what
happened. I thought that was just an example of leadership, and the way a general’s supposed to
be, unlike….well, he in fact covered himself in glory in Vietnam because he was a soldier and I
think he knew what was happening, but he didn’t command until it was too late to do anything
about it. I guess that was my professional time in Vietnam. I guess that covers it.

SM: How were you treated on your return? By the time you came back in 1968, the
Vietnam War’s got a different flavor in the United States.
HG: Well, that’s true, but I’m in the Army so I go and I visit my folks, I spend a couple
of weeks with them, I visited old friends of mine; college classmates and stuff. I spent about 2
weeks with them and then I went to Fort Bliss and I was back doing Army stuff. El Paso was not
a hot bed of anti war activities so I never saw anything. I don’t think I ever saw any anti war
stuff in the 6 months…I only spent 6 months at Bliss. I was the chief military justice in the Staff
Judge Advocate office. I had both prosecutors and defense council working for me; well, I
supervised them and tried the case, but really I can’t think of any anti war stuff that was touching
me directly. I mean, not directly, wasn’t anything directly, but even close. El Paso was a, at
least where I lived, and El Paso depended a lot on Fort Bliss, the economy there, and it was a
pretty military town so I didn’t see anything of any consequence. I never saw any of this
Vietnam backlash or anything like that.

SM: When you got back into the United States and continued to work as the Staff Judge
Advocate and as a trial attorney here as well, did you try any cases in the United States while the
war continued that were related to the Vietnam War?
HG: Yeah, come to think of it. In July of ’69, I left Fort Bliss. I got there in January and I left in July and became a military judge. I got to Fort Gordon, Georgia, and one of the cases we had, we had a couple of these kids; specs, I mean, privates and trainees, 19-20 year old kids. They go down to a radio station in Augusta and got on the air and made some anti war statements; I don’t remember what, but nothing that by that time half the politicians in the United States hadn't uttered, and they also distributed some literature on the installation. There were 4 of them; I said 2, but there were 4 of them. So, they were charged, all 4 of them were charged with making disloyal statements and distributing the literature on the installation without permission which is a violation of [?] some anti war track or something. Now, the first case, we had 3 judges at Fort Gordon and we brought in a 4th to do a 4th case, so I tried…the first guy, the judge dismissed the charges. I actually made a mistake on legal grounds it was a bad ruling from a legal point of view, but he ruled and that was it. So then I got the second case, and there was a lot of publicity on this case. They had an ACLU lawyer from Atlanta and this kid, the kid I was trying was from New York, somewhere on Long Island, and his…I guess his folks or somebody delivered the newspaper there and there was a newspaper up there called Newsday, and then it was Long Island Newsday. They kept writing a lot of stories on it and a lot of AP stories. We had a pretty good group of people there and reporters for the trial. And these kids, not the statute, but the crime of disloyal statements is making statements disloyal to the United States; it’s not making statements that the Army doesn’t like, and this was a bench trial in other words, I decided the findings and sentence if there would be a sentence. Clearly, the guys had distributed the literature and military law’s clear, its content neutral, that every installation has regulations. If you want to distribute literature on post, you’ve got to have permission, and that’s reasonable, so I found him guilty of that offense. On the anti war statements, like I said, I don’t remember basically what the statements were, but they were just anti war statements, you know, “We don't belong in Vietnam, get out of Vietnam, this or that,” to that tenant. Certainly not disloyal to the United States, but the Army didn’t like it for soldiers who would do that, so I found him not guilty of that and gave him a restriction or something. I didn’t give him much punishment, but that was the anti war case I remember. Then, when I went into Germany that was a hot bed of problems. In Germany, the Army was faced with…I was in Germany in ’71-’75 as a judge…race, drugs, and some anti war stuff, or the war was over, it was anti military; terrible combinations. We had…I remember I tried a case. The guy’s name was…well, there was a
couple of things. One was Larry Johnson was his name. No, I think it was Larry Johnson, but
anyhow he was black. He decided that Portugal was oppressing blacks in Mozambique. The
United States and Portugal were both members of NATO, therefore the United States was
complicit in this oppression and that he would no longer serve in the Army, so he quit the Army
and he quit wearing his uniform, and so we had these people over there, the Lawyers Military
Defense Committee. They were sort of left wing, I’m not going to call them subversives, I don’t
mean that, but they were fairly anti military/anti war. So, we had that kind of a case. And, we
had haircut cases where troops decided they didn't like the Army anymore, they were quitting the
Army, and they started refusing to get haircuts. We had an officer do that. We had a whole
bunch of these types of cases. Now the Larry Johnson case turned out to be very significant in a
strange sort of way. The defense came in and made a motion for the prosecution to disclose all
the wire tapping. Well, the prosecutor gets up and says, “Wire tapping? What wire tapping?”
Now, under the statute at the time, the defense, in order to get more of a response from the
government, the defense had to make a threshold showing that there was wire tapping. Well,
didn’t have any evidence, so all the government had to do was affirm or deny the existence
of it and they said, “There is no wire tapping.” Okay, that ended that. Well, the next week in the
Overseas Weekly, they published transcripts of a wire tapping involved in the case! What
happened was this disaffected MI enlisted man gave these transcripts to the OW and they
published it. Well, then it hit the fan. Then it became a big thing, and then the judges now, for
every case that these lawyers represented, these lawyers for the military defense committee
represented clients in these haircut cases, now they’re saying wire tapping and they throw in the
transcript and we’d say to the government, “Okay, now you’ve got to get affidavits from the
military intelligence people,” and they started giving these mealy-mouth affidavits and we said,
“That ain’t good enough. Not that this general doesn’t know it, he has to say whether it exists or
not,” and that led eventually to the discovery of all the wire tapping in Berlin and the Berlin
Democratic Committee was being wire tapped and that’s how this all hit the fan; from this
innocuous case of this poor troop who wouldn't wear his uniform, and it was Germany was just a
hot bed of this stuff. Another case I tried, the Che Guevara poster case. A soldier wanted to
hang a picture of Che Guevara on his billet’s wall. Well, the command charged him with
violation of an order to take it down or something like that, and I was really good and actually
that case gave me problems because I didn’t see a great problem with a poster case. No, I don’t
say that. I didn’t like it, in the Army billet’s, but I didn’t want to make some issue out of free
speech and I had the lawyers military defense committee represent this guy and they’re yelling,
“Free speech, free speech, free speech!” and I don’t want to get in the 1st amendment; I want to
get rid of this case on some other grounds. You never want to make a 1st amendment issue out of
nothing. So, I said, “Okay, they’re claiming illegal order, 1st amendment, all of that,” and I said,
“Okay, why don’t we hear this case as a motion to dismiss based on illegal order and then if you
lose, then we’ll have the merits, then I’ll hear the merits.” They said, “No, no, no!” How did it
go? I’m trying to think. I want them to do it as a motion to dismiss, and they said no. Or the
other way around, I’m not sure which. No, maybe it was, anyhow, we litigated the case and we
were litigating it on the merits, that’s what it was. The captain takes the stand, the company
commander orders it down, and he says, “You know, I had no problem with this poster, but I had
a problem that if this poster went up and then somebody put up another poster and then some Ku
Klux Klan guy will put up a picture of the Grand Dragon of the Ku Klux Klan and a black would
get upset and then I’d have a race riot and no.” I said, “You can’t have the poster up.” Well
there’s a USERV that said that the poster itself had to be a clear danger to the morale or
discipline of the unit; the poster, not the third poster down the line. So I’m sitting there, and I
say to myself, “Thank you, there is a God. Now I’ve got my out. I can dismiss this thing
without making a finding on the Constitution and get out of this thing without causing a big
uproar;” and one of the things lawyers do would be…you’re taught this on your first day as a
lawyer, you make the narrowest ruling you can make which covers the issues in the case. So,
you don’t start by saying, “The constitution prohibits this!” It’s, “Some regulation prohibits
this.” So, I remember what I did; I recessed the court, I went back, I wrote out my ruling, I mean
I actually wrote it out. I went back into court, I read my ruling, I said, “This is not a 1st
amendment issue, this is a regulation issue, and the charge is dismissed,” and I remember the
lawyer from the lawyer’s defense, no, I wrote [?] on the merits. He insisted on the motion, that’s
what it was, so then he gets up and says, “But your honor, you don’t just do this anywhere. We
don’t have an acquittal!” and I said, “Mr. Whatever your name is,” I said, “You had your chance,
and you didn't want it. Therefore, you’ve got your ruling. Goodbye. Case adjourned.” But, that
was I guess the last of the anti war stuff. By that time, probably the war was over, and the issues,
I guess, were simmering down in Europe because we’re getting a lot of, lot of drug cases. We
were trying so many drug cases that we didn’t have time for any of these other cases. Drugs
were just rampant. We tried heroin cases everyday; I mean, heroin cases were just ridiculous.
The Army was really in bad shape over there. Heroin use, heroin transfer, heroin distribution
and sale; there was a lot of it, honest. It was just rife.

SM: Were there a lot of the cases that you tried against heroin users? This is back to
a stereotype, the stereotype of the Vietnam veteran as a drug user. Were many of the heroin cases
that you tried, users, Vietnam veterans that you recall?

HG: Not anything out of the ordinary. Actually, not really because by that time, by that
time the Army had wised up on some of its personnel policies. What we did is we had a…during
the war, if you served your 2 years, if he had served his time in Vietnam he went
automatically to discharge when he got out. If he had 6 or 9 months or maybe even less to do,
they assigned him to a year somewhere which was a mistake, but because of personnel shortages,
I guess we had to do that. Eventually we wised up and realized that these guys were just causing
trouble. I mean, they wanted to be out of the Army, they served a year in Vietnam, they served a
year in hell, they only had 4 or 5, 6 months to go; why are we screwing around with them? The
Army started to get more enlightened and started to discharge these guys when they got back
from Vietnam. So, I’m talking about mid ’72, ’73, ’74, ’75; by that time, most of these guys
were either…probably some of them were Vietnam people, but they were thinking about staying
in the Army longer as opposed to just the initial tour, so I don’t…I never recall that being a
factor or that being something that caught my mind.

SM: This is CD 2 of the interview with Judge Herb Green. Alright sir, would you go
ahead and continue by discussing your post war perceptions of the Vietnam War and in
particular, how was the Vietnam War important to you in your military career and tell us how
important to you personally, your Vietnam War experience?

HG: One of the reasons was…I went to Vietnam for several reasons. One, I had no
intention of making the Army a career. It was going to be the great adventure of my life, and I
went to serve my country. You know, George Bush says the duty for your country thing. Well, I
believe in that. So, that’s how I went, and afterwards, well, I can’t describe the contempt that I
have for our leaders; for the lying, for the killing, for killing our American soldiers that I hold
them totally responsible for, for the American government, for the people, the personnel leaders
who lied to us, I have nothing but contempt for those people. I am totally disillusioned by the
generals who ran that war, not knowing…not having the foggiest idea what they were doing;
Westmoreland, Harkins, not Weyand. Weyand I have total respect for, Abrams, I think Abrams knew it was a bad thing, but Abrams tried to make the best of what we had. I think some of the greatest books I’ve ever read in my life are [?] the trilogy that I call Halberstom’s Best and Brightest, Sheehan’s *A Bright Shining Lie*, and I can’t remember the author of the third book but *Once Upon a Distant War* about a correspondent in Vietnam the same time that she and Halberstom were over there; totally upset about what we did, why we were there – not why we were there, but because the leaders couldn't honestly figure out something. They didn’t know what was happening a lot, deliberately lying like McNamara who’s flat out responsible for most of the deaths of American soldiers in Vietnam. So, that’s how I feel about it. When the facts came out I felt totally different. What I knew in ’67, I found out I didn’t know in ’69 and ’70 and ’71, and the butchery that went on. I still remember, I think General Zais was the commander at Hamburger Hill, and how many hundreds of Americans were slaughtered there. They go up this hill for no reason at all, and he’s proclaiming a great victory. I still get upset about that to this day. I mean, you’re talking about a guy who made the Army a career and loved the Army, he loves the Army, he loves the institution, but what he did in the Army; as an American citizen I cannot accept what those people did, those so called ‘leaders’ can just upset me.

SM: How much is your perspective tainted by events like My Lai as well? How did My Lai affect you when it broke, and the outcome of the My Lai trials; how did they effect you as a career Staff Judge Advocate?

HG: Its hard to…well, on one level, what Calley did is just absolutely beyond language, its intolerable, its disgraceful, its abominable, but what Nixon did and basically letting Calley off the hook may be only compound to this; its not worse, but its close. It’s contemptible. The thing I’m proud of about My Lai is when the powers that be got a hold of it, that they did something about it and they prosecuted those who they believed were responsible for it. Once you go into a courtroom, the outcome is no longer can be controlled by leadership; it’s an independent jury or panel of members and that’s what it was, so they found him guilty. Did they give Calley life? Yes, they did, and then it was subsequently cut down to about 3 years is all he served, which is a disgrace for what he did. There is no excuse, no way. I’m not a combat soldier, I never served in combat. I mean, I been shot at and I had some rocket attacks [?], but I can’t accept that any pressure was so great that it would cause them to mow down women and children and kids.
That’s just getting back to the Nazis, or close to it. But, so that’s where the travesty is, the
tragedy. The Army, the powers that be, responded appropriately and they tried him and you
accept that. I accept that, but I don’t accept what Nixon did because what Nixon did was purely
political. He didn’t have the guts to stand up and do the right thing.

SM: Were there any other ways that you think the My Lai trials were important for the
Army and for military justice in general?

HG: I don't think it affected the JAG corps itself because the only, I mean, I can’t
conceive of any Army lawyer trying to hide that or push that aside or under the rug. I think the
Army learned a lot from My Lai. It again revised its war crimes training. It made war crimes and
moral war training very important; I don’t mean very important, but it gave us center stage and it
gave it some emphasis that it hadn’t been doing. In fact, only the 30 years since then, they
incorporate law and war problems into extra field exercises and they have JAGs out in the field.
I say that; when I was Staff Judge Advocate, I found that to be a waste of time. It’s nice to
practice law wartime stuff, but when you have a daily agenda of work, that becomes almost a
luxury. When like I was the division SJA in Europe, having a big division and having a monster
case load, I couldn’t afford that kind of time. I had daily work that had to be done. The rules are
speedy trial. It didn't stop because I had to send some JAG out to the field to practice law war
stuff, and frankly the law war stuff was never a great interest of mine. I mean, I was a criminal
lawyer all the way and to me there’s a difference between right and wrong. I want to put this the
right way; I guess that the probability of war was not significant when I was SJA, so to me the
daily work of doing criminal law was much more important than the law of war, and when you
have limited resources you have to allocate them according to your best judgement and that’s
what I did. So, I didn’t do much with law and war. I thought that the Army did as an institution.
SM: And do you know if they picked up…put more training in the school at
Charlottesville?

HG: Oh yes, yes. A lot more, a lot more. The international law division which trains
there has done a lot. They have greatly increased it, greatly increased it.

SM: And is that the bi-product of the Vietnam war, do you think, increasing it?
HG: Yes, yes. And I wouldn't be surprised…yeah, I’m sure it is. The Army learned a
lot from Vietnam. We learned a lot of things; that was one of them. We did bad things in
Vietnam and we did stupid things in Vietnam, but we learned and the leadership of the ’70s, of
the late ‘70s and ‘80s shaped the Army. You know when General Abrams became the Chief of
Staff, he started to turn the Army around and then General Myer and there won’t be a hollow
Army anymore because that’s what we were after Vietnam. But, the Army did a lot to be proud
of. I mean, the Army that came out of Vietnam, the Army of 1970 and ’71 and ’72 was not the
Army that fought in Desert Storm, was not created by…that Army could never have done Desert
Storm because we were hollow, but the leadership of the Army, the country in the ‘80s.
President Reagan I think deserves a lot of credit for this; they created the Army that could use
overwhelming force in the desert. Sure, we were helped by the type of, you know, terrain and
element that we had there, but we also had the equipment and we had the power. 7th corps was
probably the most powerful armored Army ever, you know, on that 5 day battlefield. That Army
was the strongest Army, the most powerful armored Army ever assembled or ever probably for
the foreseeable future on. So, we learned a lot of lessons from Vietnam and war crimes, war
training and law and war training [?] and My Lai contributed to it, unfortunately.

SM: You mentioned in the questionnaire about US involvement in certain places. I
think if I read this correctly, the question was, “What do you think about US military
intervention into other countries,” and your response is, “It depends on the country, the issue,”
and you thought Panama and Grenada were good, and Haiti and Bosnia and Kosovo were not
very good. What were the biggest differences, and in your perspective did these involve legal
issues or were they primarily just from the standpoint of national interests and stuff like that?
HG: Not legally, I mean, not legal issues. It’s just as an American citizen taking a look
at his political views. I thought that Panama with the drugs, and Noriega presented a distinct
threat to us, although I never said…I was out of the country when that happened. I was so far
out of it that we were skiing in Austria and we’re driving back home to Germany and I was
stationed in Germany in ’89 or ’88, I don’t remember which, and we’re driving up the Autobahn
and I could pick up the Voice of America from Munich and that’s the first I heard about the
invasion of Panama. That may have been 2 or 3 days after it happened. Now, I thought we went
there for the right reason, the same in Grenada. That tends to be a threat, especially with that
long airfield they were building there. Somalia was ridiculous, especially when we changed the
mission. Bosnia, what I don’t like about Bosnia is the whole way we did it. We always had the
thing in the Middle East. We gave the Israelis arms and we sold them arms and let them do their
own fighting. Bosnia, we wouldn't sell arms to the Muslims. They were getting murdered by the
Serbs, and we sat back and did nothing. Then, we went in when we shouldn’t have done it…I mean, we did everything backwards there. Kosovo was just ridiculous also. Now, Haiti was absurd to put troops into Haiti. You know, we just bowed to CNN journalism, but that’s…I mean, that’s just talking as an American citizen.

SM: What did you think about the bombing in Kosovo?
HG: We did it the wrong way. John McCain was right; if you’re going to go in and do a war, you do it. You don't pussy foot around the way we did, extended, high level bombing. In fact, did you see this week Newsweek has a big story on the lack of effectiveness of the bombing? I was watching MSN last night with Chris Matthews and apparently we said at the time we had destroyed 120 tanks and the true number is 14, artillery pieces the same way. I mean, we did that all wrong. Type targets in Kosovo, we finally got somewhere, but that was ridiculous. We didn’t know what we were doing. You can’t, well, this thing that you’re writing your thesis on; you can’t have a war without casualties. You can’t do that, and that’s what we want them to do. But, from a [?], draft dodging President, that’s what I would expect.

SM: What are the major lessons you think we should take away from the Vietnam War?
HG: Well, good question. I think it’s really in what sphere. Militarily, we learned the lessons. The old…it’s attributed to Powell but it came from Wineberger, the 6 points of knowing what our mission is, knowing what our interests are, knowing that…well actually it goes back to Clauswitz. What are you trying to achieve, and then you do it. We didn't know what we were trying to achieve. It actually goes back to knowing what our interests are, knowing what we’re trying to achieve, look at the end before the beginning, and then doing it to get there as quickly and as efficiently as possible and so militarily we fought the war wrong, but then again we didn't understand what the war was about; and of course the sanctuaries where they just killed Americans and killed others, and I mean enemy. It didn’t do us any good, so from a military standpoint, we got that. From a political standpoint, again knowing what are we doing over there, getting the facts. I always tell my guys, the guys that worked with me, “What are the facts? [?]” So looking back on it, especially hindsight now, but we didn’t know anything about Vietnam. We didn’t know who was fighting. We did it all wrong and then when we were involved in and then when we were involved in the ’63 coup that started us down the wrong road. But, the politics, the world politics, the cold war, the domino theory which was accepted; I think we’ve learned our lesson. I mean, we [?] but its some of these interventions you wonder if
we really did learn what really are our interests? What was our interest in Somalia? You don’t
send the military in to feed people [ ], but that’s again, you know, those types of things I think
we hurt ourselves in the immediate years after the war. We retreated too far in some things. We
did stupid witch hunts like Frank Chase, or Frank…the Senator from Idaho, Chase? And his
gutting of the CIA and going after that.

SM: Church?
HG: Church, Church, that’s right. Things like that [ ] literally bad isolationism. Thank
goodness for Ronald Reagan; not that everything Ronald Reagan did, but he made us, from a
geopolitical standpoint, I think he did great for his country. He brought us back from that…I
don’t know abyss at the end of the war, but he should have brought us back. I think about that.

SM: Anything else you’d like to add?
HG: I don’t think so. I just think back on my experience in Vietnam. Like I said, since
I was down at the bottom; I mean, I wasn’t [ ], but in what I did I was down at the bottom as a
trial lawyer. To me it was certainly, as a profession, made a rewarding year; trying cases,
trying…actually basically just trying cases. That’s all I ever wanted to do. So, I got to do what I
really wanted to do and I did it in a strange place; not a strange place, but I mean a strange
environment. Like I said, everybody’s packing weapons, and everybody’s…but the kinds of
crimes, we’ve got serious stuff. That was a good year. I’m glad I went there from that point of
view. I’m upset the disillusionment that occurred as a result of what I found out, but I’m glad I
went, and you ask did it have any effect on my military career? I don’t think it had a personal
effect. I learned a lot about how to be a trial lawyer, but it helped to be a Vietnam veteran at
least for assignments or for promotion, I guess, if there was going to be a, well, you know, RIF
gets promoted, so if there was ever a discriminator, I’d go [ ] you know in that respect. That’s
just a minor personal thing, but it [ ] meant something to me to serve and I’m glad I did. That’s
about it I guess.

SM: This ends the interview, the first interview, with Judge Herb Green.