Steve Maxner: This is oral history interview with Judge James Endicott, Texas Tech University, Lubbock, Texas in the Southwest Collections building on September 17, 1999 at 9:00 A.M. Judge Endicott, could you please begin this interview by describing briefly where you were born, where you grew up, your family life, your parents, what they did, and then the nature of your military experience, how it began.

James Endicott: I was born in Kansas City, Missouri on June 21, 1939. Originally born in the city and then later moved to a small farming community nearby called Orrick, Missouri. My father was born on the farm. He was a farm boy and went to the city probably in his teenage years. Worked as a commercial laundry driver which in those days was a great way to make a huge amount of money. My mother told me when they married that he was making the huge sum of 100 dollars a week which I guess was a fortune in those days. My mother was born and raised in Kansas City. She was working in this commercial laundry just as a laundry worker. My father was a little older than my mother, there was probably 10 years difference in their age and my father, being born in this farming community of Orrick. During the war there was a critical need for farmers and my dad went back to our family farm that he had inherited and he farmed 80 acres in this community and I want to recall that we moved back to the farm in about ’43, I have no exact memories of that myself. My earliest memories probably were of the farm and going to school and specifically I had 3 uncles who all served in World War II; one in the Army air corps, one in the Navy, and one in the infantry and I had memories of them all coming back from the war. They all lived with us for a while but my mother was sort of, her mother was dead and she was sort of the mother of the family by that point and I lived there…I guess we
went back to the city in about 1947 sticks in my mind, ’47 to ’48. I went to schools originally in Orrick, Missouri, then finished my grade school and high school in Kansas City, Missouri High School. I was, my father died when I was about 10 and for one year of those years we lived in Montana. We returned to Kansas City and I went to a military prep school for one year. My mother had remarried and I went to school, St. John’s Military Academy in Delafield, Wisconsin. That sort of started my interest in the military. My mother’s second marriage was not a very happy one and life was a little disorganized in the family and I think the structure of the military and the orderliness of it and you know, wearing the uniform, it just, at that point in my life it was very important to me and I returned to Kansas City the following year. My mother divorced her second husband, and I enrolled in the Kansas City high schools, and as soon as I was able I got involved in the junior ROTC program and ended up my senior year as the cadet colonel of the city ROTC program and again, I’m very proud of junior ROTC. I think it was a great program for me. I’m clearly an ROTC product. I had a scientific orientation, I was always fairly strong in the maths and the sciences and you know, took a fairly college oriented course. In my family, my mother was never, “Are you going to college?” it was just expected that I was. She had, by then, become an executive assistant to a local company president. I had an appointment to the Naval Academy by our local congressman but unfortunately my vision was not of such that I could get in the Navy and so I then got interested in the military colleges. I looked at BMI in Virginia and the Citadel in South Carolina and eventually focused on Charleston and the Citadel and General Mark W. Clark, the World War II general and Korea general, was the president of the Citadel and it looked like an exciting place to go so in June of 1956 I started my first year at the Citadel. Fairly uneventful, you know, 4 years at the Citadel with a return to Kansas City during the summers. My first training at Fort Benning was with senior ROTC camp. We went to Fort Benning in June of 1959. Returned to my senior year at the Citadel where I was a cadet company commander and then was planning to be commissioned in the infantry. As I mentioned, my academic orientation was more scientific and in history, I guess, the Sputnik, the Russian space efforts mushroomed in about ’58 or ’59 and there was a decree that went out that all new commissioned military officers that had sciences were to be commissioned in the technical branches. General John Medaris, the rocket general who had brought Verner Von Braham over from Germany was an ordinance officer and so I had applied, and I…my degree was in chemistry, I was a chemistry major. I had applied for infantry and
armor and artillery probably, and lo and behold my regular Army commission came back in the
ordinance corps and I said, “What part of no don’t you understand?” I can recall going to the
head of our chemistry department and explaining that…and I was not the top student in the
department but I was among the top and he had sort of seen a graduate training for me and I said,
“Colonel, I want to go into the infantry,” and I remember to this day how mad he was at me, but
the Army and infantry and that was what I wanted to do. It just so happened that a former
commandant at the Citadel, General Rueben Tucker, who was a famous airborne commander
from World War II, was now chief of the infantry branch and I went up to see General Tucker
and explained my situation and somehow we cooked up a deal that I would be originally
commissioned in the reserves, and part of that was I was not 21 when I graduated from college
and in those days, at least, you had to be 21 to hold a regular commission so I was originally
commissioned in the ordinance corps, in the reserves. I was detailed to the infantry and part of
the informal deal was that I was never going to wear those ordinance bars, I was always going to
wear infantry brags so I got commissioned in the ordinance corps on paper and immediately, like
as soon as we could get there, I reported for duty at the 101st airborne division. My graduation
speaker was General Westmoreland. Somewhat ironically later of course he became the
Vietnam commander. The other former Vietnam leader that was at the Citadel with me was
General Bill McAfree. Bill became later the three star deputy commander to General Abrams and
I went on to, you know, Fort Campbell. I served there, initially. Then I went to Fort Benning to
the infantry basic class and I, while I was not unhappy at Fort Campbell in the 101st, my
reflections at Benning were that all I could see me doing for the next couple of years was either
being on alert, because they were one of the first ready forces to go any place in the world, or
being on post detail and frankly in the time I was there, training seemed to be nonexistent. So I
had the opportunity to go to Germany. They needed some people in Germany and I gave up my
assignment with the 101st and then went to the 24th infantry division, which was then stationed in
Munich, Germany. I arrived there in December of 1990…or, 1960 and stayed there through
November of 1963. I started out as just a regular straight leg infantry platoon leader. I later
became a weapons platoon leader. A year into my infantry service as an officer I earned what
was then a fairly prestigious award, the expert infantry badge was considered quite an
accomplishment. It was a very demanding test of skills. I always admired someone with a
combat infantry badge and considered that one of our greatest awards but I’m also proud of that
expert infantry badge because of the skills that it indicated. I later became a company executive officer. I moved to the staff. I was an S-3 officer and an intelligence officer and then I commanded 2 companies in the 24th infantry as a Mech Infantry. We got the first armored personnel carriers in Germany and I had the dubious distinction of being the 1st person in Germany to ever sink a 113 armored personnel carrier to the bottom of a pond. While I was there I also was detail for a couple of months down to the special forces camp in Bad Tolz Germany and developed an affinity for special forces which I later myself became one. I finished that assignment and I went back to Fort Meyer, Virginia where I was assigned to the Old Guard, the Presidential Honor Guard. I told this a number of times, I was never in the United States when President Kennedy was our president. I left for Germany in December and he was inaugurated in January and ironically I would have been back at the Old Guard at the time of his death but I was delayed for some military reasons in Germany and came back in January to the Old Guard and of course he was already buried in Arlington. I was one of the primary officers responsible for security at the grave sight. I served in the Old Guard and had 2 very close acquaintances from Vietnam and the Citadel that I buried. One was, I think, the finest cadet that I ever knew and I’m sure he was one of the finest military officers. Dave Witter. Dave, the Daily sheet came in and I checked the sheet and I saw his name and I thought, “Gee, I mean, here’s one of the greatest guys I know and this is my company’s responsibility,” and I wondered if I really should do that funeral, and I said, “Well, that’s my ordered mission and he was my friend.” He was a year ahead of me at the Citadel and so I performed his service and then Dave Reagan, another Citadel acquaintance, he was General McAferee’s son in law and Dave had been killed. He was an advisor to a Vietnamese battalion and he was awarded the Distinguished Service Cross for his heroism and to add to that family tragedy, and that was a very difficult service for me, about a month later he and his wife had a daughter that died and I buried their daughter. I mean, here is a family who lost their husband and then a month or so later lost this infant daughter to some disease, whatever, and I guess those 2 services at Arlington certainly stuck in my mind. When I got there we were burying sometimes upwards of 30 people a day. Of course, I had not yet gone to Vietnam. Vietnam was still a fairly new war, it was fairly new. My company exec in the Old Guard, I’d since become a company commander, was a colonel, or then Lieutenant John Campbell. John had served with the Airborne Brigade in Vietnam with Pete Dawkins who had come back and John was awarded the Silver Star for gallantry. We later
had the company responsibility of escorting and providing for then Captain Roger Donlin who was the first Medal of Honor winner and the war was with knowing people who were there, seeing people coming and going, and you know it was clearly becoming a major part of the Army’s involvement. It was still a fairly remote thing. One of the memories I have also related to Vietnam when I was at the special forces camp in Bad Tolz on this temporary duty and I want to think this would have been about late ’92, early…or ’62, late ’62 to early ’63. They called all the officers together and they were looking for volunteers to go to this place called Indochina and since I was an officer there I participated in the briefings. Obviously, these special forces officers were more aware of the situation than I was. I mean, I’m sure I’d heard the name and they were looking for advisors and people to go over and that was just one of those things. I wasn’t going, I just tucked it away. I performed my duties, you know, with the Old Guard. On one occasion I had to escort a family to meet President Johnson. They were a Cuban-American family whose name escapes me but they had lost a son in Vietnam and the mother had written a very poignant letter to President Johnson and of course by then the war was becoming a major political problem for him and I met him there. I had the honor of doing all the military planning for President Johnson’s own inauguration when he was elected President. I did the state funeral for Douglas MacArthur and also Adalay Stephenson so the couple of years at the Old Guard were quite full. About this point I was a captain, I was scheduled to go back to the…Benning again for the infantry advanced course. I would now have been to Benning 3 times and I really wanted a little different scenery. I really wanted to go to the armor advanced course. I wanted to stay in the infantry but I really wanted to go there because of my mech infantry background but that didn’t work out so the infantry branch was talking about I would go and get a master’s degree in chemistry and go to Westpoint and teach chemistry and that didn’t seem real thrilling to me particularly and I had a cousin from Missouri, from Orrick, Missouri where I grew up, another farm boy, and he was in the Navy and he was going to Georgetown Law School, and I thought, “Well gee, that sounds like fun.” I had an uncle who was a lawyer who’d gone through the GI Bill and I checked on it and I applied for and took a leave of absence without pay while I went to law school. I was assigned at the Pentagon and this would have been, we would have been in these discussions in November of ’64, early ’65 and what I remember very vividly as it relates to Vietnam and I had been offered a chance to go to special forces and go to Vietnam. You know, there was sort of a mentality in the Old Guard and among our officers that if we don’t
get there quick, none of this war will be left for us so I went and talked to the infantry branch
about that and they said, you know, “We just think, you know, it’s going to be over. It’s a short
term thing but you need to think of your career,” and so I went ahead and enrolled in law school
thinking every day that the war wouldn’t be there by the time I got out which would have been
1968. As a student at George Washington University at our nation’s capital being an Army
officer I had the interesting perspective because the student protests and the government unrest
were sort of fermenting at that time and there was a major march on the Pentagon and of course I
was sort of a civilian but I was also an Army guy and I can remember vividly some of my law
school classmates coming, could I help them get in the Jag corps, could I use any influence and I
was a captain, I didn’t have any influence and lawyers particularly, they either went in the Army
as lawyers or they went in as infantry men. They got drafted and the thought of going to
Vietnam in the infantry wasn’t real exciting. But I finished law school in March of 1968 and
much to my surprise there was a Vietnam War left for me. In fact, it just kept getting bigger and
bigger. That’s the month I finished my school, which was of course the month that President
Johnson shocked the nation by indicating he was not going to run again. When I’d been in the
Old Guard, I marched on one of the joint staffs, all the services were represented and my Marine
counterpart was then Captain Chuck Rob who later became the President’s son in law and
Chuck, of course, was already in Vietnam. In May of 1968, yes, I got to Vietnam. I got there
right after Tet of 1968. I guess I was there at the height of the troop strength. What I recall
vividly, General Westmoreland was still the commander. Of course we’d gone through Tet. I
think the major shock on the American conscious that, you know, we say we’re winning the war
but it looks like we’re not. Of course from about May of ’68 to May of ’69 when I returned, you
know, there was a virtual news void for those in country. You had a couple of magazines, you
got Stars and Stripes, but you really became almost unaware of what was really going on in the
world because you just didn’t, you didn’t have communications, you just didn’t know. I started,
initially, I was assigned to the I Field force headquarters, a new corps headquarters. I had
originally been assigned to the 1st infantry division and I went to war wearing that big red 1
patch. I was technically still an infantry officer, I was now a major but I was getting branch
transfer and I was somewhat disappointed when I was diverted to this new corps headquarters as
would later become very significant with my My Lai experiences. My commander was
Lieutenant General William R. Peers who was of course the My Lai investigator. He had come
out of the 4th infantry division and was a very tough, focused...General Peers was not your
typical general. He was not a Westpointer. He came out of the China-Burma-India theater in
World War II. He was more of an oriental orientation. I thought he was a great field commander. I
thought the world of him as a field commander. Served 6 months there. One of the things that I
recall very vividly, particularly later in the My Lai situation is one day we were getting involved
in law of war issues, things like that, and when I got there in 1968 I was also sort of an informal
advisor to the special forces group which was in Da Trang which was where I was and these
issues came out of special forces more than other places and what I sensed was that the war had
gone from the advisory, the loosey goosey, you know, everybody you know, mission
accomplishment, and we were now becoming a fixed Army. We had rules, regulations, and that
sort of thing and I recall very vividly one day looking for some rules of war or rules of
engagement out of MACV and in our own headquarters we didn’t have it. You know we’re a
corps headquarters and we didn’t have these rules. Didn’t mean they weren’t binding, didn’t
mean they weren’t there, but at least even at a corps level of MACV we didn’t have these rules
and we tried, you know, a variety of cases. I recall one in particular. This was a case where
American soldiers had gone into a village. They had, the platoon sargent had told us this one
soldier that you know, to be a part of this platoon, to be a man, you’ve got to bring me a set of
Vietnamese ears. My...the defendant, the particular fellow involved was a, I think a fairly
typical American soldier. He took that word at face value and he went in a friendly village, shot
a friendly Vietnamese and cut off his ears and took them to the platoon sargent. The platoon
sargent was absolutely shocked and the lieutenant was shocked and ultimately the private, the
lieutenant, and the sargent were all court marshaled. That to me was, you know, a mini My Lai
situation. This was a law of war type crime. It was tried within the corps headquarters. The
soldier got his punishment, he did go to jail. The sargent got some punishment as did the
lieutenant but it was never what My Lai became, granted the numbers were small. One of the
legal ironies of that case was that the command structure was so incensed, so upset about the
mutilation of the corpse that they never charged the soldier with murder and in fact it was a
murder. He killed this fellow, and they only preceded on the mutilation issue, so sometimes
things in the combat zone to get a little fuzzed up but at least the system was resolved within the
combat situation. In December of that year I moved up to the 4th infantry division as the deputy
and served out 6 months in the division, coming back in May of 1968. As far as the My Lai
incident itself, and I’ll tell this little story and then I’ll get back to the primary version. When I was at the corps headquarters I went up to Saigon a number of times for meetings of whatever and we had to deal...I say Saigon, it was the Long Binh which was our higher headquarters. On one occasion I could not get into the normal BOQ and I went to the Billeting office and talked with this older looking captain which I would guess his age at about 40 to 45, considerably overweight and he was the Billeting officer and I said, “Gee captain, I need a place to go,” and he said, “Well, I’ve got a sort of a special BOQ. It’s over in the women’s area.” And he said, “One side is where I put special visitors and we put USO people,” and he said, “You can certainly stay there.” And we just struck up a conversation, and he said, “I live there,” and his name was Eugene Kotosh and Gene had his place there and from then on when I would go to Long Binh I would sort of look up my buddy Gene and we would stay there. Gene, I can recall one night over some beers or whatever and some other people there, talking about this rather screwed up unit he’d been in up in the Americal division and he was laying out some of the things that had happened. He would recall one battle where a lot of civilians had been killed and you know, it was just one of those things you were listening to the stories and didn’t relate it to anything particularly. That became a great significance in March of 1970 when I first became involved in the My Lai trials and I met my client and I was going through the picture book. They had a picture, mug shot book, and the S2 of task force Barker was this Captain Kotosh, and I looked at him and looked at that picture and I said, “Gee, Charlie, describe this guy,” and he said, “Yeah, he was a national guardsman, he came out of Nebraska I believe, he was just with us for a short time and left.” I said, “I know that guy,” and then it started to click and I said, “That’s the very guy that 2 years earlier I’d been sitting in Long Binh listening to these stories.” I went back to the Jag school and became a student, just a normal year of the war it was over. One of the interesting things that I recall from my experiences was that virtually everybody in the advanced class had been to Vietnam. The faculty, I believe at the time, had no one who’d been to Vietnam and when we got into the law of war training and some of the comments by some of these young instructors at times it became almost comical to hear how it was supposed to be and how it really was. I recall one day we were talking about the use of shot guns in combat and it was common to put a shot gun up in front. It was good to cut through the brush and to get through it and it was commonly done and used. In fact, I had a shot gun in my room so I knew
about shot guns in Vietnam and the instructor just insisted, “Well that would be a violation of the law of war,” and blah, blah, blah, “and we just don’t do that.” And I said…

SM: How is it a violation?

JE: Well I never understood that, but I said, “Captain, regardless of the legal issue,” I said, “I will tell you that our troops in Vietnam do use shot guns in combat situations.” I don’t know if he thought it was the kind of weapon it was, it inflicted, you know, unusual harm on the body or whatever but it was what I remembered was it was, “I don’t care what you know, I’m telling you we don’t do that.” Okay, okay.

SM: Were there any other incidences of weapons that were commonly used or techniques that were commonly used in Vietnam that they declared also against military law?

JE: I just remember that one particular situation. But by March of 1970, one day our director of academics came over and announced that I think 7 or 8 of us, and our class only had 18 people, 7 or 8 of us were to report Monday morning to Fort Mead, Maryland. We had no idea, you know, we had no idea what was going on. My Lai was sort of in the news, of course the incident itself sort of came to life in 1969. The incident happened March 16 of 1968 which was even before I went to Vietnam, I mean, it happened shortly after I got there. 7 or 8 of us were just told to report to Fort Mead, we didn’t know why and nobody could tell us. We didn’t know if we were going back to Vietnam, we didn’t know what was going on. Unknown to us at the time was several of our classmates were also had already been designated as prosecutors. This group who went to Fort Mead, we were all to be defense lawyers. On the particular day in question we were in our green uniforms. We were in a holding area and the defendants were in another area and literally we would be called to a common room. It was like Major Endicott meet Major Calhoun, report through that door, and we reported and the deputy SJA Jack Morton would read each of the defendants their charges. They would turn ashen white. We would say, “What in the hell am I doing here?” and then we were escorted out another door and outside that door was the national news media. Lights flashing, TV cameras, the Dan Rathers of the world, and we were like, you know, you talk about a deer in the headlights, it was like, boom, “What am I doing here and what is going on?”

SM: Now what year was this and the month?
JE: This would have been March of 1970. I think we sort of got the drift. What we saw on these guys, they all had on the Americal Division patch and by then we were starting to figure out, you know, what was going on so the defense team was really thrown out there. We had no preparation for handling the media. I’d never even talked to a reporter about anything that I recall and we’re thrown into the national media. Of course after the shock of this, I mean, we literally didn’t even have a copy of the charge sheets. We then had some time to get together with our clients and talk with them. One of the things the defense team, and I guess there was 10 or 12 of us total, that we did early on is we got ourselves together and we got ourselves into a network and we were talking. At this time as we later pieced it together, and part of the timing of all of this, the statute of limitations on many of these charges of course would have been over on March 16th of 1970 so it was a last minute fury and flutter to get people charged and I think by then Lieutenant Cally in fact had already been charged himself and you had going at Fort Benning was Lieutenant Cally’s case. At Fort McPherson was Captain Medina’s case. All of the officer cases were concentrated at Fort Mead. All of the white collar criminals, if you will, from General Coster down to others in the chain of command. One of the problems that we were having procedurally and I think the Army was having was originally the cases were handled by the local commander wherever the soldier happened to be. The very first of all of the My Lai trials, and this is totally almost lost in history, was the case of Sgt. Mitchell who was the platoon sargent to Lt. Cally. His case was tried at Fort Hood, Texas and he was acquitted and then, but that was just really almost lost partially I think because Fort Hood was a fairly remote place and wasn’t accessible, but the really big case became Cally at Fort McPherson and Fort Mead. All the different commanders all dealing with the same basic facts. I think the, and again, I was at, you know, the bottom end, I wasn’t at the policy end at the top. You know, the traditional model would be, again, whichever commander has the soldier would prosecute the case. By the time they started getting these large numbers of defendants of course people were all over the place. My particular client was at Continental Army Command at Fort Monroe and they were just all over so the Army made the decision that all of the criminal felony type charges, the people who actually shot someone, raped someone, did something, those would all be centralized at Fort McPherson and that was Captain Medina, Captain Kotosh, some of the enlisted soldiers. All of the white collar officer cases, the dereliction's of duty, the failures to do whatever, General Coster and that bunch, was all centralized at Fort Mead and then Cally was at Benning and they
just left it there and then of course Mitchell so you had 4 different general court marshal meeting
authorities. One of the other sort of interesting commentaries on a lot of what happened was that
the real diversity of experience of the counsel. Brand new captains out of the basic course were
basically defending the privates, the people who had the most serious charges. The officer cases,
we, all of those officers got fairly seasoned lawyers. I wasn’t as seasoned as a lawyer although I
was seasoned as an officer and we had all had Vietnam experience where the captains
representing the privates didn’t and it really looked pretty bad on paper because it looked like the
brass was getting the good lawyers and the privates were getting brand new guys and that was
just one of many procedural things that happened and I think again because maybe we were more
seasoned we had enough sense to set up this defense network particularly at Fort Mead where we
were really on top of stuff.

SM: Was that coincidental, do you think, that the better qualified, more experienced
lawyers were assigned to the officers?

JE: I never knew what the thinking was in that. Of course, a number of the defendants
got civilian lawyers. My particular client, Major Calhoun, opted just to go with his military
counsel and I was always very proud of that that, you know, he chose to just be represented by
me and he was, through some family situations, was very well off financially and had the
financial ability to hire anybody he chose to. Our particular approach was to, you know, to stay
low key, to be invisible where many of the defendants and particularly their lawyers really
wanted that lime light and wanted to get into the limelight. I recall one incident at Fort
McPherson of we went to the Medina trial and it was national news media and Mr. Bailey, F.
Lee Bailey had sent a message to his Jag assistant that he wanted me to basically report to him to
discuss the case. I said, “Well, gee, I’m sort of equal to Mr. Bailey,” I sent back to my Jag
captain assistant, I said, you know, “I will be at such and such location and Mr. Bailey is
certainly free to come to see me,” and of course F. Lee Bailey was an icon for defense lawyers,
one of the top in the country and very dutifully Mr. Bailey showed up. We chatted a little bit and
of course his client, Captain Medina and my client Major Calhoun, it was real critical on who
said what and who gave which orders and I recall very vividly at Fort McPherson that Bailey
loved to…everything was sort of timed around the media and he had his own, they had assigned
him a little defense building and he had his own place, and he took a long circular walk where he
would come around the far end of the court room from the defense building because that gave
the media about a 30 second shot of him walking into the court building and the drill of the day
was you’d go to the defense building and then you would be trailing along with your client as
that witness came in behind Mr. Bailey going into the court room and it certainly gave the
impression that F. Lee was running things. Well, on the day that we were to go in the building I
knew Fort McPherson and I’d sort of reconned a route and there was a direct route from the
defense building right into the side door of the courthouse, but there was no TV there. So, as Mr.
Bailey and his entourage led the way we said, “Yeah, we’ll be right there,” and we grabbed our
hats and we ducked across the street and unfortunately it cost him news coverage because there
was no story. There was no Major Calhoun following him and he was a little upset about that
but we just ducked right on in the court room because my guy again, he just didn’t want this
publicity. He really worked at staying out of the limelight, so. Well let’s take a quick break
here.

SM: What did you and your soldiers think about that, burying so many men coming from
Vietnam and it wasn’t really until, of course, after the Tonkin Gulf incident, the declaration of
support for the military activities?
JE: The Old Guard with very few exceptions, in my case particularly, we were not
Vietnam Veterans. I mean, there weren’t many people there. I think the first of the combat
troops had gone in and, you know, I think it was doing a job. I think the Old Guard people, the
tomb guards, you were so trained to perform in the public’s eye that one of the ways you
survived that public certainty was never thinking about what you were doing particularly. I had
some counsel when I first got there, particularly dealing with the grave site, that you assume
everybody’s a senator and you won’t be too far off. One day a representative from the state was
yelling at me about he wanted to move up in the line and I said, “Well sir, there’s 5 senators.
We’ll certainly put you in behind the 5 senators,” and you just had a mind set that you just did
your job very professionally and you didn’t think much about the circumstances. One of the
things in Arlington is they do not have any open casket funerals and the Old Guard, you know,
they practice ceremonial things with caskets and you’re just used to it. You’re around it. You’re
sort of removed from the families. You come in and do the ceremony and then immediately the
flag is presented by the chaplain and you’re out of there, and specifically we were not to
interface with the families. That was for the Arlington Cemetery staff and traditionally my
experience was that during the ceremonial part of the service most families are reasonably
composed and the real emotional break downs and out bursts and those things that can be
particularly hard, those are, those are sort of reserved. What I recall with the troops, there were
things that would impact on them more than that was burying children. We did occasionally
bury children and that was always sad because you knew what you had and you know, they were
just soldiers doing a job and they, you know, occasionally you would bury someone that you
knew like I did and that was always hard on you and we always clearly had the option that, you
know, you knew the rule. If it was somebody you knew you did not have to participate in the
service. The, you know, the public consciousness about Vietnam of course developed, you
know, later. I mean, while I was in law school we started thinking about it and I guess the real
heights of the Vietnam protest were in ’68-’69 I think, ’70, in that time period. But in those time
periods it wasn’t, you know, the large numbers just started happening and every community had
not yet had a death but I mean, after a while of course it happened every place.

SM: Well while you were in law school and the Vietnam War was progressing and the
buildup was increasing, in your classes was there a lot of debate and discussion about just the
whole nature of this war? The American intervention, no declaration of war, therefore it’s kind
of a supercession of the constitution, things like that?

JE: George Washington University Law School, in those days, was a fairly conservative
law school. Georgetown was more liberal, more socially oriented. The faculty at GW, I don’t
recall except for one professor…just didn’t bring it into the classroom. We had one professor
that was vocal outside the classroom and I can recall as a student I sensed that he just didn’t care
much for me. Of course, he knew I was Army. Never said anything to me, but I just had this
innate sense that he wasn’t real pro Army and whether it was anti Vietnam or just anti Army
itself I never pursued it. Again, there wasn’t any focused, in house classroom thing, and
probably the professional schools weren’t quite as involved. People were more getting on with
their career and you had a lot of out of state people. I think that was more of an undergraduate
phenomenon probably with the students.

SM: How about amongst your Peers and as Jag officers, did you discuss those types of
issues?

JE: You know, really I don’t recall that. Of course, I was a career Jag so I was in a little
different category. The Jag Corps did some things that I think in retrospect were sort of counter
productive. They had again, for a lawyer, you basically were either going to get drafted or you
were going to come into Jag Corps. You might get a direct commission as an adjunct general, some do that but the Jag Corps decided in Vietnam number one that they were going to be strictly a merit selection process. That is take the best people with the best backgrounds. They also went to a 4 year commission tool as opposed to 2 years so you’re a lawyer, you want to go in for 2 years, you don’t want 4 years, you take your chances with the draft or you might get a direct commission or you bite the bullet and you get a 4 year appointment. The World War III Jag Captains, as some of them were called after they went to Vietnam particularly, the pattern was you came in your first year, you were taking your basic training, you were going to an initial assignment, and your window to go to Vietnam was going to be during that second or third year. If you dodged that bullet, you knew you probably weren’t going to go. Now you’re wanting to get on with your career, you’re stuck with a 4 year commission tour. You’re not real happy with the Army. The other alternative is, you don’t dodge the bullet, you go to Vietnam, you put your time in, you come back, and you damn sure want to get on with your career and you’ve got 2 years left in your career. The Jag Corps, when I came in, we were tremendously short of majors. We had 160 authorized and we only had 40 and people at the Army Jag school, I can recall majors with a number of years of service resigning rather than going to Vietnam. I cannot myself conceive that I would have not served in Vietnam. I could not wait to get out of law school to go serve. Had I realized what war was really all about, I might not have been as anxious and as a lawyer, some of our people saw significant combat action. Some of us didn’t. I saw all that I ever wanted to see. You know, I’ve been shot at. I’ve returned fire. I don’t know that I’ve ever injured or shot someone but it wasn’t that I wasn’t trying to because they were shooting at me. The lawyers in Vietnam, again depending on where they were, you went out to the field, you go out and you do claims investigations, you do article 32 investigations, and you would just go out by yourself and I was again, partially because of my infantry background, I was working in the Pentagon when I was to go to Vietnam and they came around one day and said, “Well, we’ve got to get you qualified for Vietnam. Here, just check everything off.” I’d never seen an M-16 rifle. I had never seen the new gas masks. I was not going to go to Vietnam myself without having fired this rifle, so they said, “Okay,” so I go and get on the bus with everybody else and we go to Fort Mead and we fire the weapons, and you know, I was quite serious about it and it made me wonder if they weren’t just checking people off to go who’d never done any of these things, and this was one days worth of training on some basic things like
that, and the units I was in I was real insistent on people knowing how to use their weapons, carrying their flack jackets and their helmets. When I got to Na Trang, our captains were loading up in a villa. I was originally assigned to a 90 officer Hotel that had no security except for one indigenous guard with a shot gun and one day I asked him, I said, “What do you do with that shot gun?” and he said, “VC come and I shoot and run!” I couldn’t wait to get in the compound where I worked and there was an advisor, an Air Force officer who had a room. We were in an old French hotel with General Peers, where he lived, and I said, “Hey, look, let’s trade rooms. You want to live downtown, I want to live in the barracks.” I was constantly scared. When I first got to Vietnam General Westmoreland was in charge. Every night at 5 o’clock you’d put on your sieves and run down and eat, go downtown. When Abrams came in, changed overnight. No more civilian clothes, no more using the jeeps to toddle around town. You stayed and did your job as a soldier. Tremendous change in attitude when Abrams became the commander.

SM: Was this a positive change in your estimation?

JE: Oh yes. You know, one of the things Captain Kotosh had in his books, his records, and this came up during the trials, he was the Billeting officer down at Long Binh and he hired all the Vietnamese maids and he took care of all the generals and he had a book on everybody. You know, the senior commanders lived very nice in Vietnam. The soldiers were dying and they were, you know, breaking starch and flying out to the war and flying back at night and just the attitude about what we were there to do. You know, we weren’t there, in my opinion, to buy cameras and Seiko watches. We were there to fight a war, and I think part of the reason the war went on as long as it did with such ill direction is because we were living like that. I mean, I originally lived in a French hotel. It wasn’t plush but it was comfortable. At night you just slipped on your sieves and had a lobster caught out of the bay that day, you know, putting in an 8 hour day. Frankly, I couldn’t wait to get out in one of the combat divisions because I just, that’s not what I came to do. I came there to do my job. So you had a cadre of people that were there living fairly comfortably but liked the way they were living. You had all the underlying support people, the club people, the base camp and station people, that lived fairly nicely, and then you had the people actually out there doing the fighting and Abrams just came in and just said, “The hell with this,” and totally changed what we were doing. You know, there wasn’t this mind set with him, I think, that we were going to stay there forever. I often wondered, in the sequence of events, had Abrams preceded Westmoreland, had he been the first MACV commander after
General Harkin left, you know, would the war have come out tremendously differently? I think, you know, I have many positive thoughts about General Westmoreland but I think you know, he was not the forceful person that General Abrams was. I think General Westmoreland succeeded in his military career by pleasing his superiors. Abrams succeeded by being a soldier and General Westmoreland again has many good qualities, he took a lot of personal risk along the way as an airborne commander, but just totally different people. Abrams was hard chosen, cigar smoking, aggressive, and General Westmoreland was just not...that wasn’t his style. He was more of a political general where Abrams was more of a soldier. I think, you know, and many people and I think what convinced me that my feelings all along the ride was General Schwartzkopf during Desert Storm, you know, he spoke to those issues and he said he was never going to preside over another Vietnam and he didn’t. There’s that generation of Vietnam trained leaders which of course they have since passed out of the Army inventory. There just aren’t hardly any of them left. But, you know, as far as with my contemporaries, people I worked with and for, we just never talked much about it. It was just you were there, you did your job. Nobody particularly wanted to be there. You thought about going home. Everything was very much of an individual thing as I look back on it. You had your DEROS date and you focused on when you were going home and the day you walked out you didn’t think about what was left, who was behind. You just focused on getting yourself out of there in one piece and going home.

SM: So March 1970, you find yourself assigned to represent Major Calhoun. Now what were the charges that were brought against him?

JE: The essence of the charges were that Major Calhoun was the S3 of Task Force Barker. Task Force Barker was this battalion-sized task force that actually went into My Lai. It was the command headquarters for Captain Medina and Lieutenant Cally. My client, Major Calhoun, is the one who’d given the operations order the day before for the My Lai invasion, if you will. He was the operations officer on the radio throughout the day with Captain Medina and others and the charges against him were that he was derelict in his duties, that he had not properly assessed and followed up on reports that he got and that if he had properly analyzed this data and did his job as the S3, then this all would have been uncovered. The charge matrix that they ultimately filed as a result of the PEERS Report was that they went through each chain of command, if you will. They went through the regular chain of command, they went through the operations chain, the intelligence chain, the aviation chain, the artillery chain, the advisory chain,
and they said, “If all these people would have reported up what they knew, this cover up would not have occurred.” Unknown, although it’s known is the fact that there were even charges filed against chaplains at My Lai for not reporting things that they learned in their chaplain chats. My client’s story is reasonably simple; he gave the operations order. He was specifically charged by not reducing that to a written format, which to me was clearly, clearly contrary to Army policy. At Benning, you did oral op orders. It was, “Go here, A company here, B company here, C company here, move out!” That’s the way they operated.

SM: What article under the UCMJ did they try to file that under?

JE: It would have been under dereliction of duty, it’s in the ‘90s somewhere I believe, and that was the primary one that I recall. It was of those tenants and all the white-collar officer cases were really directed more at dereliction's of duty, failures to report cover ups, that sort of thing. The Task Force Barker had been in this area before. Again, this was a thrown together battalion to basically address this area. This was to be their last time into the My Lai area. They’d been in there several times before and of course that further facilitated the op order because they’d been there, they knew the territory. During the course of the day Major Calhoun is some miles away in the operations center talking on the radios. With him is Captain Louellen who is now living in Temple, Texas, Charlie Louellen. He is famous because of the famous Louellen tapes. Captain Louellen on that day had his personal tape recorder and he was just recording the radio traffic that had come in. You know, they’re getting reports initially of battles and during the course of the day except for one occasion, Major Calhoun was in the operations center, he did at one point take Colonel Barker’s helicopter and flew over the scene and one of the questions was, you know, “What did he see? What should he have seen?” It’s pretty clear to me based on my research and talking with Colonel Henderson who I knew personally. Colonel Barker of course was deceased shortly after My Lai, that Colonel Henderson and Colonel Barker both knew what was going on. They were there. Basically at the end of the day, around 15:00 or so, they had moved through My Lai, they’re going into their night logger positions, and Captain Medina…you know, there was concern even that day that things weren’t adding up right, the numbers weren’t looking right, how were these people killed, and there’s a famous radio transmission where Medina is saying, “Sir, we have 28 killed and we captured 3 weapons. The order is go back and we’ve got to verify how these people were killed,” and General Coster enters the battalion command net and says, “What’s going on down there?” and Medina says,
“Sir,” you know, “this is our report and we want to go to our night logger positions.” My client is telling him, “No, you’re going to go back!” Coster counter mans that order of the S3 to go back and Coster says something to the effect, “Well that sounds right to me, and proceed on to your logger positions.” Of course he’s flying up here, not on the scene. It was always my position that if General Coster not intervened, had in fact they been forced to go back to My Lai, and I’m convinced in mind again having talked to Captain Medina, studying the records, that Captain Medina was a sharp, battle seasoned combat commander. He knew what had happened that day. I think once Ernie got into the village he saw what had happened. He knew something was horribly wrong and figured that they could walk out and nobody would ever know. My Lai 4 was a very heavily concentrated enemy area, there’s no question about it. Clearly I think at the time that the women and children and old people were shot that they were defenseless, they were unarmed. That’s the story of My Lai is, you know, once you have disarmed people and you then put them in the ditch or shoot them in the back that’s what American soldiers do not do. Was there a massacre at My Lai on March 16, 1968? Yes, I’m absolutely convinced based on what I know, that there was. Why it happened? I think there was three primary actors that did most of the shooting. That is Cally, Sgt. Mitchell, and Paul Medlow. Paul Medlow was a private who lost his leg later and he was ordered to shoot people in the ditch with a machine gun. He didn’t want to do it, he did it because he was ordered to. Paul, of course at the time that this all broke was out of the Army and was a civilian and there is a very vivid TV thing where the mother is standing there next to her son with his artificial leg saying, “The Army made my son a killer,” and you know, he freely acknowledged what he did. Mitchell, who was tried and acquitted, and somewhat interestingly later was court marshaled and convicted of mal treatment of recruits, I think was a person who basically liked to kill people. That was the impression that one got, and you do see in a combat situation there are some people who just like to kill people. Rusty Cally, I think, was a misfitted commissioned lieutenant, an OCS graduate, a shake and bake lieutenant who honestly I think then and to this day thinks that his mission was to go in and do what they did. I honestly think Lt. Cally thought he was following orders.

SM: Like the private who went out and collected the ears?

JE: Yeah. I think Rusty Cally honestly thought that. One incident that I recall dealing with Lt. Cally happened at Fort Benning and Rusty was a very short person, small stature. We were going to his trial at Fort Benning and we had met with his military counsel, no, we had not
met the military counsel, we got in late. That is Major Calhoun and I. We grabbed a bite to eat
and we headed out to the defense building out at Fort Benning and we were supposed to meet
them about 7 o’clock at night and the door was locked and standing at the door trying to get in is
this rather slight lieutenant, and of course my client knew it was Rusty and he said, “Hi Lt.
Cally,” and “I’m Major Calhoun.” So here’s the star of the show himself who can’t get in the
building where his case is being processed and we go in and meet with his military and civilian
counsel and Rusty is sitting there reading magazines or comic books or something and I think
Rusty was totally overwhelmed by this. I think his military defense counsel who was a, I
thought, a first rate Army lawyer, Ken Rainey, was of course second chair to Judge Latimer, a
former judge of the court of military appeals and they had a totally different strategy on
defending the case. Judge Latimer who was preceding on the defense that Lt. Cally was given
the order to kill those people and he was just following orders. Clearly, at the time they
presented the defense, they knew that Cpt. Medina was going to deny that. They knew that my
client was going to deny that. The most they had was Medina saying, “Yeah, I probably gave
some order like, ‘We’re going to go in and kill everybody,’” but in the context they’d been in
this village 3 times, this was their 3rd time. They had taken some pretty serious casualties in
there and they were going back to a tough place and he knew it was not going to be a picnic. It
was a serious operation and they expected some very serious resistance and he said, “Yeah, you
know, I you do charge the troops up, ‘Yeah, we’re going to go get them,’ you know,” but clearly
that was the context.

SM: Wasn’t there any concern that that defense mitigated the responsibility of an officer
to challenge unlawful orders? That existed back in the ‘60s I’m sure.

JE: Well you know, we really had not thought through things like that. As part of my
duties at the Jag school, it was somewhat ironic that the Army picked us, but the Army gave a
mission to the Jag school to develop training materials on law of war and Major Paul Ray and
myself, we were both My Lai defenders, went to Fort Benning and the other part of our team was
Colonel Ken Raby, Al Raby, who was Cally’s counsel. R-A-B-Y, Kenneth A., and so the 3
Army Jag representatives that were there to develop this law of war training were defense
counsel and we spent a lot of time there at Fort Benning going through issues with field
commanders on, “How are you going to tell a private to disobey an order?” Well, you know,
there’s one school of thought that a private does what the private’s told. There’s one school of
thought that you draw the line someplace. Well, somewhat ironically the way we drafted the
training and it was eventually, and this was a priority project, we had to get something done
quick. Most of the My Lai training was very oriented on the defense because we were all
defense lawyers in the middle of our defense and we wrote the rules that favored our client and
we developed some guidelines that I believe are really followed to this day and they frankly
never existed before. I mean, you had the Nuremberg War Crimes Trials for the defense of
superior orders. That was just sort of forgotten. This is the first time it really ever came up
again, and we had to go out and tell the Army and train the Army and be able to tell privates in
the Army how you disobey an order, and that’s where we clearly came up with these alternate
channels, that you, you know, you go to the IG, you go to the Jag, and we trained these people
that you know, you have to listen and you have to report in what you’re supposed to do and you
know, we tried to fine tune it as to when a private…and we did focus on privates, I will say that.
You know, when does a private know what’s wrong, and I think we all felt that when you put
somebody in a ditch and say, “Shoot them,” that’s probably wrong. We emphasize, “Unarmed,
no danger to you,” that sort of thing. Lot’s of contemporary debate at the time, “Well, is this any
different than artillery, or artillery and gun ships?” The original story at My Lai was that gun
ships and artillery killed everybody. If it was gun ships and artillery, it was alright. They were
just as dead, but that was alright. They could kill people. But when the infantry guys shot them,
that was bad. How do you rationalize that? Well, I think you do. Being an infantryman is
tough, but you’re on the ground, you’re looking them in the eye, and when you know they can’t
harm you, you don’t shoot them. I taught a lot of those classes myself, and I was always able, I
think, to say it in a way, and I knew you had to have real bright lines. That was one of the first
times at least in the Army training that I recall where we really, on some legal issues anyway,
really developed bright lines where we said, “Look, this is it. You cross the line, you’re in
trouble.” But where Cally’s defense really made a horrible mistake in my opinion, because of
the legal system where you do have a presumption of innocence, once Lt. Cally got on the
witness stand and admitted to killing people, 16 is what I recall, and then saying, “I was told to
do it,” and taking the position, “I really didn’t know any better,” this American officer jury panel
just could not accept that as the norm, the custom, the standard. I think, had Lt. Cally never
taken the witness stand, I think there was considerable reasonable doubt about what he did and I
think he would not have been convicted, myself. I think that was a very tactical blunder on the
part of the civilian defense counsel to ever have him admit that publicly. Certainly they had very little proof of what he did, but to get up and admit it and sort of challenge the jury to, you know, find me guilty because I was told to do it, just wasn’t going to wash. And it didn’t, in my opinion.

SM: Well the question of evidence, that brings up some questions I had in reference to the PEERS Report. Of course, General Peers makes a number of rather broad allegations regarding the chain of command and of course that would include your client, Major Calhoun.

JE: Yes.

SM: I guess to maybe make reference to a particular quote, he said, “Within the Americal division at every command level from company to division, actions were taken or admitted which together effectively concealed the Song My incident,” and obviously you must disagree with this, or do you?

JE: Well, I’ll give a little perspective here, and this, of course, part of this is because I know General Peers. The 4th infantry division that he commanded in Vietnam was a regular infantry division that had procedures. It had some common standards. The Americal Division was a thrown together division of 3 brigades. I can recall very vividly during the trials or during the article 32s talking with Colonel Looper who was the artillery commander. You had no concept of a division artillery. You had people who were independent. The brigade commander had his own artillery battalion and he, as far as he’s concerned, that belonged to him. It didn’t belong to division artillery. General Coster talked about, he couldn’t even get people to wear the Americal patch. They still were wearing these separate brigade patches. So at the time of the My Lai incident, this was not a functioning division. Sam Coster was brought in to make it into a division and it just hadn’t gelled yet as a division. They were still thinking they were separate brigades. They were proud of their own units and they just didn’t have procedures in place that a normal division would have had. The artillery was one again where you assumed this was a typical division artillery battalion, but it wasn’t. It was a separate artillery battalion that was supporting My Lai. The division, what I think I do know is this was a functioning outfit at least up to the level of the brigade commander, and what I do know is, and I’ve talked to Colonel Henderson a great length personally, he was a pretty savvy brigade commander. He was an old time soldier, a lot of combat duty, and he was clearly on top of what was happening at My Lai. He knew. I think the assistant division commander also knew. I honestly don’t think General
Coster really knew what had happened and there was a very conscious effort by the ADC and Colonel Henderson to frankly, to hide what happened, and Frank Barker. Barker, right after the My Lai incident, went to Hawaii for R&R with his wife who I later interviewed, Dottie Barker, and he came back and did get command of a real battalion and he was killed shortly thereafter. Henderson did conduct a cursory investigation, which clearly, the report of it clearly showed either a total lack of facts or an attempt to conceal. That is, if you will, cover up 1 at My Lai, cover up 2 occurring about a year or so later when the Peers report started, and when you talk about cover up and My Lai you’ve always got to be very careful to distinguish which cover up because about a year or so later, once this started to come to light, and I think My Lai came to light in about, well I can’t remember exactly but there was a PAO type whose name escapes me right now…Ridenbower, Rod Ridenbower who goes back and he writes this letter…

SM: March of ’69.

JE: …about something dark and mysterious happened and at first people aren’t believing and then they start believing and then by March of ’70 they’re rushing around and filing charges. But once the Peers inquiry started and they start going back to the Americal division the then chief of staff calls some people together. They start looking for the Henderson report, they start looking for things, and they find them, and they get rid of them, and that’s the 2nd cover up where the unit, out of loyalty to the unit, is destroying records and covering things up. So you had 2 totally separate and distinct cover ups there but I think it was the structure, probably more so than anything else. I think the war was moving on. They were out of there, I mean I don’t think it infested everybody in the division. I think that’s an overly broad statement and one of the knocks on General Peers is that, again, General Peers was a good, solid commander. He commanded the 4th infantry division. He came back and commanded the corps. He came back and he was made chief of reserve components, not exactly the job that he wanted. Here was one of our most seasoned commanders and he’s seeing Westmoreland and Abrams getting promoted and he’s not getting promoted and he’s out of here. So he was available, they put him in this investigation. I think he had an axe to grind against Westpointers and who does he have on the chopping block but the former superintendent of Westpoint himself saying Coster? So I think General Peers had a little bit of a personal agenda also. He later, after he finished this duty, was sent to 8th Army in Korea to get him out of the way, whatever. But again, a man of good qualities, but I mentioned earlier this thing about not having the rules of engagement and I had
him on the witness stand, we called him as a witness under article 32. He came in, didn’t want to be there obviously, and I’m examining him. I think he sort of knew me but I didn’t tell him who I was until later and I asked him, because he was, I mean, some of his thoughts like on written operation orders, he knew better. Follow the rules of engagement? He knew better. I think he was rewriting history and I nailed him with that. I said, “Do you recall an incident in I field force on a certain date before something happened?” “Yes I do.” “And your headquarters, sir, would you believe that your own headquarters did not have a copy of these MACV rules of engagement?” “Well, I can’t believe that.” “Well what if I told you I was your deputy SJA and I could tell you that you didn’t,” and he was mad. He had steam coming out his ears, and he said, “Well, major, if you tell me that’s the case, then I’m sure you’re right,” and he just went on to something else, but I think the Peers inquiry of course was very politically charged. He had some political deputies, Bob McFraid and several others. I think the, and I’ve seen this over the years with the military. The military is a very, you know, loyalty to the Army is paramount and every time I’ve seen a major scandal in the military, the pattern is very much cut out. The people that are causing the problem draw the line and step away from it. I mentioned to you earlier about walking out the door and walking into the national media. I later went to the public affairs types and said, “I need help.” “We can’t help you, you’re the defense.” We were ordered to report to congress to testify before the Hebert sub committee under Mendel Webers. Of course Mendel Webers had announced that there will never be anybody tried for the My Lai incident as the chairman of the armed services committee. We walked up, and we’re going to appear in front of this congressional committee. I’d been to the capital once, but I didn’t know about appearing. My client didn’t. We went to Army legislative liaison and said, “We need help.” “We can’t help you, you’re the defense.” So we’re…and we’re cut out. I’m perceiving that this My Lai assignment is not conducive to my career. My boss is saying, “I need you here at work.” Time and time again I was challenged on why I was working on the My Lai trials. I’ve got a letter from the general counsel of the Army asking me, “Why are you representing this now civilian, Major Calhoun?” We were part of it too, we were just cast out. We were treated like they were. The Army just does not know how to sit down and sort the facts out, make some rational decisions, and one we were running into also is we had these 4 separate court marshal convening authority sometimes all going different directions. One commander is given captain, you know, I talked to you early about F. Lee Bailey. I mean, he pulled a very skillful deal for
Captain Medina. He cut a grant of immunity deal for him to testify with Cally. They just had to have Medina testify with Cally, and he basically immunized Medina from prosecution in his own case just by skillfully knowing what he was doing and part of it was the Cally convening authority and prosecuting team, Aubrey Daniels and his team, all they cared about was Cally. Nobody was caring about the Medina trial, or the Calhoun trial, or the Henderson trial. If you’d have had one strategy where you would have said, “Okay, we’ve got 15 people on trial here. Who are our primary targets. Do we have to cut some deals with somebody to get somebody else?” but by the time Medina got to trial they’d already gutted that case by his grant of immunity. So all they were going to get on him was just minor stuff, I say minor dereliction's of duty, things that had no significant penalties to it, and Bailey did just get a total victory in that case because a lot of evidence they were going to use, they just couldn’t get in there. So clearly from a lesson learned that was one of the mistakes the Army made where they hadn’t…I mentioned I’d done some consulting work on tail hook, and that was one of the things the Navy initially had all these commanders all over the place and they did consolidate their court marshal jurisdiction.

SM: So another part of the PEERS Report, you mentioned the political aspects of General Peers’s position and I guess perhaps some animosity towards Major General Coster. One of the allegations General Peers makes is that General Coster either was misleading or perhaps even lied about the 2nd formal investigation after receiving the first verbal report from Colonel Henderson. So would you think that that was more politically motivated or was General Coster perhaps misleading? Do you have an opinion?

JE: I believe, and this personal animosity, I think that was an institutional thing, and again that’s one of those things, that’s probably just Jim Endicott’s impression of what happened knowing the players. General Coster, I think, was indignant about what had happened to him personally. He had commanded this mess of a division in combat and when he turned it over to his successor it was functioning, it was organized. He was assigned as superintendent of Westpoint which was a crown jewel assignment particularly if you’re a Westpoint graduate to be the superintendent. I think, probably, he at his level did the job alright. The things that killed Coster more than anything else were like the counter manned order where my client was very much involved with him on that. Now, it depends on how you want to interpret this, and I think the Peers inquiry took every factual situation and resolved all doubt against the defendants and in
favor of the Army. If you could isolate this to a few people and make them the bad guys the
Army remains without fault. One of the underlying bedrock issues here in My Lai is the lies that
we allow ourselves to tell everyday in the war. How many people we were killing. The final
report that went up, I know it was 128 killed and I want to think 10 weapons. That sticks in my
mind. The weapons number was supposedly out of sequence. How could you kill 128 people
and capture, maybe it was 3 weapons? Well, that was a common, every day occurrence. We do,
we always inflated body count and I think the mindset is this thing when up to date means 128
means 15 or means 3 or whatever. What does it mean? And it was common to have enemy
encounters and then the enemy, whoever, they would grab the weapons and a lot of times you
find enemy dead with no weapons. That was very common. The numbers and the weapons
count, all of that made sense based upon what enemy they knew was in this village. Where it all
did fall apart was on this particular day there were no enemy there, it was these unarmed women and
children and old men. So it was who was killed and I always felt myself, although the enemy
releases were 700 and 1000, I’ve always felt very comfortable myself with the actual numbers
reported, that there were 128 people killed. I think that was a fairly accurate number. Then of
course, ironically, we have pictures and some things taken. I mean, that was always one of the
ironies of this. We have a PAO type there who’s taking pictures, you don’t…one of the
questions I was asked frequently when I was speaking was, you know, was this a planned
massacre? Well, I don’t think you plan a massacre. You don’t go in with PAO types and people
making tape recordings. I’m absolutely convinced what happened at My Lai happened, but I
think every inference was construed against the person who did it. I can give you a perfectly
valid explanation that General Coster’s counter manned order was totally innocent and benign
and it made sense, and he’s thinking, as a commander, thinking of his troops. I can skew it the
other way that it was part of a cover up. I mean, you can score that however you want to and
many of the things that the Peers inquiry did I think were out of touch of reality of the way things
really were in the division. If you scored it by the way it should have been in the division, yeah.
A lot of things were screwed up, but the Americal division was a screwed up division. It wasn’t
even, I mean, it wasn’t really a division at that time. It later became one. It took about 2 cycles
of commanders and part of the problem was getting rid of the old people, the people who’d been
with the 2nd brigades as Major Calhoun was. He was with the 11th infantry Henderson. Once
those people got out of there then the new people didn’t know any different. They thought they
were part of the division. They knew how it worked. These separate brigade guys were the ones
who weren’t cooperating, if you will.

SM: You brought up the issue of the larger context of the My Lai incident occurring
within the broader strategy and the bigger events and things like the body count and very early
on the body counts was basically, it became the litmus test of whether or not we were successful
or failing in our military operations. How much do you think that factored into creating this
mentality of, “Well, we need to kill people. We need to have those numbers,”?

JE: I think it, if your question is did they kill women and children just to raise the body
count, no, I don’t think that’s why they killed those people, just to say, “We don’t care what they
are, they’re dead people and we can count them as enemy kills.” I do think it certainly explains
to me 99% of why the numbers and the cover up and all of that didn’t register on the radar
screen. We have a famous message from Westmoreland, “Congratulations to the division on
your great victory. 128 killed and 3 weapons,” or whatever. I mean, that went through the corps
commander, General Cushman, the Marines, went to Westmoreland and we argued many times,
“Well, if Westmoreland with 4 stars couldn’t figure it out, how do you expect Stuffy Smith?
How do you expect my guys, a major, to know any better? Westmoreland thought it was alright.
He’s a theater commander, he ought to know.” So I, it’s my opinion that what happened
happened. Of the shooters, again as I’ve described, Medlow was a private who followed orders.
Mitchell I think was a guy that liked to shoot people, and Cally, I honestly think thought he was
following orders. I honestly do. I think as bizarre as it seems, he thought that’s what their job
was and there’s no question in my mind that those children would have grown up to be VC
soldiers. There’s no doubt in my mind that those women and even the old men had done things
to hurt our soldiers. This was a violently enemy camp. This was their family and friends and
they hated Americans and there’s no question about it and we had had some fairly significant
losses there and our people were mad. I mean, they had lost buddies at My Lai and they were
not going in there to make friends. This was not a pacification effort, it was a mission to kill
people and to destroy that VC battalion that was operating out of that area, so from that point of
view…but there was a point at which, I think, as Americans, we had to say, “Yes, it should have
ended at some point,” whatever that point was. Medina was charged with murder of a 16 year
old girl who jumped up and ran away and he shot her. Well, he was acquitted of that because he
didn’t know and he instinctively responded and shot her in the back. He did, but he didn’t know
what she was going to do. So that was one example of a court hearing the facts and deciding on
the facts that he was justified in killing her.

SM: More specific to the events surrounding your client, Major Calhoun. In 1969,
March of 1969, he was deposed by the Fort Mead inspector general Colonel Williams. You did
not represent him at that time, right?

JE: No, no.

SM: In that deposition he does relate his involvement in the brigade, the S3 position
battalion, all the events that you’ve already described and he does talk about his flight over My
Lai. Now what you said earlier in reference to his awareness to what was happening, one of the
things he says in his deposition was that he was 1500 feet above this place, all he could see was
burning huts and a burning village. He really couldn’t see people doing things. Was that
something that…was that contradictory in any way?

JE: As compared with warrant officer Thompson who landed and I don’t know if you all
have followed his later history where he was recently in the last year or so awarded the medal
and that sort of thing? Clearly he landed, Frank Barker for sure was on the ground, Henderson
was on the ground. At 1500 feet, and I can only relate myself to flying at 1500 feet what you
could see or couldn’t see, if you had people on the road that were shot laying on the road…I’m
not sure you would see that that distinctly. Again, I’m not blessed with the best eyesight and I’m
not somebody who probably flies a lot like a pilot, things would probably be more meaningful to
them of what they can see. I never felt there was any inconsistency there really. I mean, I think
why Charlie even went up, I don’t know that I even remembered why he went up. Again, I
probably have even forgotten that although I certainly at the time knew about it because we had
to rebut that factually one time or two, but 1500 feet is pretty high up and he was…and the other
part of, of course, his mission was that…and we never focused too much on the other 2
companies, this was a 3 company mission. Charlie company being there and then the other 2
being other places so as the S3 he had other things on his mind and just up flying around. I could
believe somebody 1500 feet would not have seen what was going on. The ditch, again, would
not have been that distinctive as to what it might have been. That’s, you know, that’s quite a
ways up there.

SM: One of the other things in that deposition, the very beginning he is told by the IG,
by Colonel Williams, that…or Wilson, excuse me, that he’s not a suspect in this. This is purely
to get information about the events and perhaps to press charges against others. Did that ever become an issue later when he was tried and when charges were brought against him? Here he’s being asked these questions without the benefit of counsel, and he’s told he’s not a suspect.

JE: I don’t know if we ever raised that up. As I recall, there was…and I don’t remember this sequence now, but I think the IG was the first formal investigation. There was a CID investigation, there was an IG investigation and I think the…I think many people were surprised at what happened as a result of the Peers inquiry. I mean, you talk about plowing new ground! This filing charges on all these different supervisory chains I think was unheard of. So I think, at the time, who would have thought that the S3 ever would have been charged? The commanders, I think the school of thought was that the commanders were responsible, they were ultimately responsible. I don’t think the staff people felt they were in any jeopardy, particularly. I think they all testified fairly freely during that phase of the proceedings. I’m sure I’ve read all of those statements over the years, I’ve just sort of forgotten them, but I know, and I believe it was in Cally’s statement to the inspector general, they did advise him and it was either the IG or the CID and in it’s own way it’s sort of dark humor but they basically say, “Lt. Cally, you’re suspected of murdering 200 people,” and he says, “Well gee, that sounds fairly serious!” Yes, it does. And he then either gave his statement or invoked his rights, I’ve forgotten what he said but because they did clearly advise him of his rights, I know early on. I think, you know, for whatever reason, he became an early suspect. I mean, he clearly…the focus was on him. I think, you know, as the cover up later developed and they dug and dug and dug that those parts of the inquiry were more predictable. It was the Peers inquiry that really seemed to go outside the envelope. There’s another interesting, humorous side to the Peers inquiry that only Army lawyers could appreciate, but Colonel Bob Miller who was the Jag, career Jag, assigned to the task force, the Peers inquiry. He was a Pentagon type and the Peers inquiry occurred in the Pentagon, down in the basement and all of a sudden it dawned on people that the statute of limitations on most of these charges was 2 years and they were rapidly approaching their statute of limitations and it became obvious that they had to get some charges filed. They get ready to type up the charge sheets and they realize that nowhere in the Pentagon did they have any charge sheets. In the middle of the night they’ve got to send somebody out to Fort Belwater to find the forms you actually use because the Pentagon doesn’t file charge sheets. So they’re scurrying around and literally the last day, in fact they filed them before the people were notified at least to
get them filed on time and I think Bob Miller actually filed most of the charges. Major Calhoun
was filed by another member of the team, he was sort of an add on with the chaplain. But no, I
don’t think we, from our particular point of view, and I don’t recall frankly that Major Calhoun
ever said anything totally inconsistent as the story went along. I think he was always basically
consistent and basically most of the charges that were filed against him were based on perceived
omissions and they weren’t based on anything he said. They were based on things he didn’t do
so from that perspective I don’t know that it would have…and you know, you raise an interesting
point at least from my point of view. What if I would have been assigned to him early on, based
on what I knew, what would I have advised him to do? I think I would have thought that
cooperating and trying to tell his story would have certainly facilitated his situation. I’m not sure
that I would have advised him to take the 5th. I think I would have said, “Tell your story, you
probably don’t have any risk,” again, because I think the charges were just sort of unheard of. I
mean, really even the Neurenberg trials, the people charged were the major commanders, the
major political leaders, the soldier types. Of course, I’m convinced, you know, in many ways
Major Calhoun was focused on more so because Colonel Barker was dead and he was the senior
survivor of the headquarters. If Fred Barker would have been alive, probably nothing would
have happened. It’s sort of interesting from the purely technical point of view of lawyering is
Colonel McKnight, the S3 of the brigade, Henderson’s 3, took the 5th almost immediately and his
charges got dropped early in comparison to Calhoun all though they were equally the same date
of rank. McKnight got promoted, went to command and general staff college, and went on to a
career. Major Calhoun was in a very awkward time in his life because he was on the promotion
list but not promoted, he was on the Leavenworth list but had not attended it, and he had a lot of
administrative exposure. The biggest battle I fought for Charlie Calhoun was the administrative
sanctions. You know, we got the charges dropped early, early, and then they lowered the boom
on him. They took away his leads of merit, they wouldn’t promote him, they didn’t send him to
Leavenworth, and he got out and went in the reserves and he was still flagged because of the My
Lai incident and they were going to put him in command of a reserve battalion and it just
continued to haunt him and we eventually kept fighting this and this is when I was having my
battles with the general counsel of the Army saying, “Why are you defending this civilian?” Of
course, I’d been authorized to and I was again, I felt very much at personal risk for my career
during the course of this event. I felt very much at personal risk myself. Did I ever pull a
punch? Proudly, I didn’t. I was probably too young and inexperienced. I’ll tell one other funny story, it’s funny to me, but early on it was obvious that we were not getting anywhere with the uniform people. The convening authority obviously did not have authority to act, so we and the defense community started dealing with the general counsel of the Army. We saw the T Jag as not having much control over this. That was a real political issue because at the time the general counsel had always been sort of an extra lawyer and the role of the Army general counsel wasn’t clearly defined. The current general counsel when this started was Bob Jordan and Bob took this an issue, either by assignment or his own personal choice, and really asserted his authority as the general counsel of the Army to direct the T Jag and there was a lot of bitter political battle because the statute says the Judge Advocate General is the legal advisor to the secretary and all of a sudden they’re getting shoved out of center stage. So I kept trying to go see general counsel Jordan and I wasn’t getting anywhere so I was in his office one day in the Pentagon and it was really driving the Army Jag leadership nuts because they didn’t have enough guts to ever order me to do anything. I knew they didn’t want me doing it, but every time I’d go on TDY, you know, I knew they didn’t want me to be there but they wouldn’t tell me not to. So I went to Jordan’s office and he was, again, not available to see me and I just happened to look and they had a sign out for him and it had POAC which was Pentagon Officer’s Athletic Center. A light comes on, I said, “Okay.” So I ran down to POAC and I look around and I sort of knew what Jordan looked like, couldn’t find him, and I was a member of the club so I went in and they had a male only, it was a male only club at the time and they had a steam room where you went in with a towel on, or no towel, and just steamed away. Sort of a boy’s thing, a men’s thing, and so I walked in the steam room and I’ll be darned who’s in the steam room but Bob Jordan. So I sort of sidle over to the general counsel and there’s 7 or 8 other people in the steam room and they're coming and going and we’re all sitting there wrapped in our towels, talking about whatever and I sat close to him, I didn’t immediately attack him, so I went over and some people left and I said, “Mr. Jordan?” He said, “Yes?” I said, “I’m Jim Endicott, I’m a Jag lawyer, I’ve been trying to see you.” He said, “Really?” “Yeah.” He said, “What about?” I said, “It’s My Lai, you know, it gets real interesting,” and so needless to say we talked and I got my point across on what was going on and you talk about it hitting the fan! I was stationed in Charlottesville at the Army Jag school and by the time I got back I had to, you know, we finished up our conversation, I went back to the office with him, gave him whatever papers, and I feel clearly that there was an effort
to isolate him from us and that he honestly didn’t know who we were trying to get to see. He
may have just been putting on a show, I don’t know, but anyway by the time I got in my car and
drove back to Charlottesville which was about a 3 hour drive, the commandant, I mean, I got a
message, I just went straight home, I had to go back to work and he was mad. He had been
called by the Pentagon and so I had to go back the next day and report to the deputy Judge
Advocate General and you know, after getting chewed on for about 30 minutes I just threw the
guantlet down. I said, “General, you know, sir, I work for you,” and I said, “You order me off
this case and I’m done with it.” I said, you know, “Tell me where to send the files.” I said, “I’m
out of here. You order me off the case!” “Well you know I can’t do that!” and I smiled and I
said, “Sir, I think that’s probably right.” And I said, “Sir, all I’m telling you is please judge what
I’m doing.” I said, “You know I’m doing the right thing for my client,” and I said, “I have never
done anything that I didn’t keep you all informed,” I said, “I’m just the guy doing the job,” and I
said, “You notice I hadn’t been going to the news media? We’ve been doing all this in house.”
He said, “You’re right on that,” and I said, “Yes, I’ve gone to the general counsel,” and I said,
“But by God, he was interested and we’re getting something new,” and I said, “We’re not out
there,” I said, “I’m a career Army lawyer, I’m not getting out. I’m not looking to go work for
one of these big defense firms, I’m going to do this job and when it’s over I’m part of the team,”
and he grouched and groaned and moaned and the irony of all that was that when I finally ended
up, boy did I get a nice efficiency report for the letter from him! I think they finally understood
what we were doing. I think the Army system if you show some personal integrity and you’ll
stand up, and I think part of, to get back to Coster’s situation we talked early about Peers, Sam
Coster was a proud man and I think what he could not understand and he had always had a good
career, he’d always had the right assignments, he went in this division as a brigadier general,
flocked to 2 star. I mean, Sam had always had the good assignments and he had a reputation of
being sort of ruthless with people and whopping heads off and was very career oriented. He
didn’t take a chance for anybody, and when they drew the line at him, and for example they
immunized General Kushman and Westmoreland. He couldn’t...he just couldn’t relate to it. It
was, “Why are you getting me?” He was also very bitter with Westmoreland, calling the shots
as chief of staff of the Army but he was theater commander. I lost a lot of respect for General
Westmoreland in that regard because he wouldn’t step aside. I mean, he clearly should not have
been involved in these cases. He should have just delegated it to the vice chief or to somebody
else, but he clearly had a conflict and he had a perspective because he’d been the theatre commander. And so Coster, I think, really felt that they hung him out to dry and they were just making a scapegoat out of him and I honestly think he felt he didn’t do anything wrong in that sense, and you know, one of the things that his, I don’t think we have a great concept of it yet, is command responsibility, supervisory responsibility, personal responsibility. The Army does have in it’s report of survey regulations, which is the reg on accounting for property, some pretty good definitions of those concepts. It’s a reg that something the Army maybe ought to look at to incorporate into the UCMJ. You know, what is the difference? As a commander, you’re responsible for all your unit does or fails to do and that’s a nice concept in general but when it comes to court marshal jurisdiction, does that make you a criminal just because some guy didn’t fill out a form right? But I think Coster, I don’t even know if Sam Coster’s still alive. I haven’t heard that he’d dead, but I’m sure he’s, to this day, a very bitter man, and he deserves great kudos, he was a great division commander, and My Lai happened early on in his command tour also so I think he just, he put this mess together, he made a division out of it, he was a tough commander, and My Lai had him…Americal division had some great combat victories. They were a good division, and I think everybody in that division that wears that patch of course you will always think, “My Lai, baby killers,” you know, that’s sad. There are some people who I know have served in the Americal division that will not wear the patch. They’re just embarrassed to wear it.

SM: What about Colonel Henderson’s role? And in particular…you mentioned that this happened rather early in the existence of the Americal division. It almost happened just as Colonel Henderson became commander of 11th brigade, didn’t it?

JE: Henderson is sort of a tragic story. Henderson was deputy commander to a couple of guys. The OK Henderson wanted to be a general in the worst way and a couple of lesser guys came in and got promoted as brigade commanders and so he assumes command where the last of the general’s go, and I don’t think he’d been in command 3 or 4 days when this all happened. He clearly was going to protect himself. He was a World War II, CIB, Korean CIB runner. I think he was a 3 CIB runner, I mean, he had fought in 3 combat wars I think if I remember that. Again, Henderson was not at Westpoint. He wasn’t a part of that inner circle. He was just a savvy old line guy that had survived and was a Colonel and just had lucked into getting…he wasn’t the kind of person getting a brigade command in Vietnam. He was sort of an over the hill
kind of guy. Got his command and then 3 days later this happens, or 4 days later. I think clearly
he was aware of the true state of the facts. Now I think he knew all these people were killed and
he knew exactly how they got killed. Did he really care? I think he knew they were killed, I
think he was consciously out to hide the facts, and I think he thought that it was going to be
forgotten and we were just going to walk away from it.

SM: In terms of what you raised as the whole issue of accountability or copability, now
how could…is this man responsible for covering up these incidents?

JE: Well certainly.

SM: But could you hold a commander responsible for these kinds of activities of killing?

JE: Yeah, I think, I think…

SM: Only 3 days later?

JE: I think the command failures there were…it happened. Was there a command reason
that it happened? Why the My Lai massacre happened, I think, can be explained by they had
been in that village several times. They knew that these were really mean people, that they were
expecting to go in and kill the enemy and the enemy wasn’t there, and it just happened. I mean,
misperceived orders, mean guy who just likes to kill people, it happened.

SM: Incompetent lieutenant?

JE: Yeah. It happened. Untrained, you know. He was over his head, he didn’t know
what to do, and again, I thoroughly believe he thought he was doing what he was supposed to.
Medina knew what happened, Henderson knew, and it was the failure to go and sort it out and,
you know, who should have been filing the court marshal charges at My Lai? Henderson, Frank
Barker? Should Medina have filed charges on Cally? I mean, Ernie Medina could have gone in
that village and sorted it out at his level and relieved Cally and said, you know, but again, you
had a company of American soldiers. You had to get them out of there. By dark the enemy was
going to be back. They had to get out of there. They knew that and what’s the greater good? I
mean, that clearly motivated Coster. He was thinking about the troops, saving them. Henderson
again, I think he, whether he was just, I think he had to know because I think he was there and he
had to know or should have known. You know, he should have known and the higher levels of
command should have known. Should Coster have had better procedures? Should he have
known? How much can you rely on your subordinates? I mean, from what Sam Coster was told,
particularly by General Young, his ADC, but for being there and going on the radio that day and
the counter manned order, the line may have been drawn there. I think that counter manned
order killed Coster more than anything else in the world because he just put himself in the
position, and I will admit, we helped that along. I mean, I was probably the prime mover of
nailing that one down pretty tight because that was one of the strongest things we had to work
with and we did have to pretty aggressively pursue that and I think we led with that at the
congressional hearings, and while that wasn’t any big deal I think we made it a bigger deal than
it really was, but that was one of the dramatic things that people would listen to. We had, this
case was so massive in scope as far as the volume of and the paperwork, I think they interviewed
over 400 witnesses at one time as I recall. I mean, we had the IG reporter, one of those, and I
don’t recall if I ever had the entire Peers Report. I mean, we had tons of documents. I got an
assistant counsel primarily just to help me keep track of documents we had so many of them.
But I think the magnitude of it, you had to…and there were so many issues with so many people.
You had to get to the sound pipes, you had to get somebody’s attention, you had to have a
grabber, and for us the grabber was almost always that.

SM: Do you think that was what allowed for the charges to be dropped against Calhoun,
against your client?

JE: I think that…

SM: Or what other factors?

JE: …the charges were dropped simply because they just weren’t supported by the facts.
They were based on a theory. You know, he was derelict in his duty because he didn’t reduce
the operations order to writing. I mean, the bidding procedures were you didn’t…there was no
requirements. It was nonsense. He made a very convincing case that everything that he knew,
he reported to his higher headquarters. Colonel McKnight, Major McKnight at the time, came in
and took the 5th on our article 32 about the questions and, “Did Calhoun report anything to you?”
Well, what’s the obvious conclusion for the 32 option? He was told. We were able to document
that the division knew, Calhoun knew, McKnight had to know, so how did McKnight find out
and how did it get to the division if McKnight didn’t tell them? So, and they acknowledged that,
that is the government, they said, “We acknowledge that the division G3 knew about this body
count, but you didn’t tell McKnight.” Well McKnight wouldn’t say that he did or didn’t and my
guy was testifying under oath that he did. The other thing that I think helped Major Calhoun
dramatically was how sincere he came across as a witness. I’ve dealt with many people over the
years, but this was a guy that gave 110% to everything. He lived and breathed Army. General
Fred Crosin wrote a letter in his support, and Crosin was one of the brigade commanders who
later went on to be a 4 star general and where most people were running for cover, Crosin went
to bat for Charlie Calhoun at great personal risk himself. It was not the thing to do to be coming
to the defense of My Lai criminals and Crosin did and just, you know, Calhoun was just an
incredibly sincere, good person and a lot of these guys just sort of took it and they just lived
through it. One of the ironies of My Lai is there were many people that actually went through
this process and went on to very successful careers. I think the aviation commander, Fred
Watkey, had a good career. I’m convinced that Major Calhoun could have survived this,
everything would have been restored, but he…this had been very hard on his family. One time a
national news reporter grabbed his daughter who was 6 years old and she was on her way to
school and he said, “What do you think about your daddy killing little kids like yourself?” I
mean, it was awful and the public affairs officers, particular at continental Army command, I
called in one day and said, “Look, you’ve got to give us some help,” and I got this same old
stuff, you know, “We can’t help you,” you know, “You’re the enemy,” yet this same woman was
feeding stuff to the national media and I nailed her good one time, I mean we planted a story
with her and it was not a true story and it got out into the national media and then I had her. I
went to the Army public affairs officer and said, “Look, this twist on this story came from my
head to your public affairs officer,” and in 24 hours CBS had it and I said, “It could only have
come from her because…and even my client didn’t know about this, and I said, “This has got to
stop,” and they did. Put the clamps on her and said, “You can’t release anything anymore.”

SM: A question about Calhoun’s involvement in the Peers inquiry, I don’t have a date
for this or when this happened, but one of the complaints in chapter 10 of that biggest part 1 is
that they were commenting on the fact that Colonel Barker was dead and Major Calhoun refused
to testify further on the grounds of such action might be self incriminating. When and why did
that happen? When did he decide to take the 5th?

JE: Well, that’s a good question. I don’t think, I mean, the Peers inquiry was over. It
was effectively over when I came on the case. They were still doing some wrap up and some
stuff. I want to think Charlie did consult with some Jag lawyer, I think. It clearly was not me, in
fact, if you would have told me that which you just did I would have probably said, “Did he ever
take the 5th,” I would have probably said, “No, I don’t think he ever did,” but I do have some
vague recollection of that, that for whatever reason, he did. But if he ever would have conferred
with a Jag officer prior to me coming in of course we would have had that officer on the case
too, so that’s one I can’t give much insight into. I tell you by the time I got on this thing it was
like drinking out of a water hose, the proverbial water hose. We were so damn busy just doing
what we had to do that…and on a personal level I think my wife was pregnant, our first son was
on the way and I had those considerations and she was expected to give birth in June and of
course in March and we’re thinking I’m going back to Vietnam, we don’t know what’s
happening, and we were going to stay on the Jag school faculty and I was, we were going to
move into a house. We wanted to be in there before the baby was born, our son, and of course it
became obvious early on that, you know, my future at the Jag school was very much in question
so I had a lot of personal concerns tagging at the same time all of this was going on. But again, I
don’t remember…that does…I can remember something about that and I don’t know if he just
figured it out for himself, it was getting sort of hot, I don’t know if they advised him of his
rights. Can you tell from the context whether they had advised him of his rights at the time?
Because I’m sure by then that they would have advised him by his rights.
SM: It’s not completely clear. All it does say, this is what they called the command
response to the Thompson report…
JE: Right.
SM: …and so I guess perhaps it may have become much less friendly in terms of the
first interrogation was he’s not suspect, perhaps. This one he is becoming more suspect.
JE: And I would say knowing Colonel Bob Miller who was the primary Jag advisor, by
then they clearly were focusing on these people and I think they probably would have, you know,
that’s just purely speculation that that’s what triggered him to take the 5th.
SM: So as legal counsel for Major Calhoun and being so intimately involved with the
My Lai trials, what do you think was most important about the massacre in the trials as, just as
the legal counsel involved?
JE: Well I think, at the highest end of the spectrum, I think the My Lai situation probably
had more to do with congealing public sentiment, I was trying to get the right word, against the
war than any other single incident that happened. I think this was one that you just couldn’t get
away from. I mean, it was on the news every night. I think, it’s just the one defining moment of
the war that everybody could agree that this was horrible. It was of such magnitude, of such
scope. It went on forever, it just couldn’t stop. I mean, it was, for our case, we were well into ’72 and I think we pulled out in what, ’73? When did we finally evacuate?

SM: Completely ’73.

JE: ’73. So it just, it just would never stop and Kent State was in this time period and Tet happened and that certainly shocked the country that by God we could lose over here and then this starts coming out and it was just so many people involved and so I think it really polarized the country and just congealed that public opinion on the top level. At the soldier level it certainly, if you were a thinking officer, a thinking NCO, you had to see what was happening to a lot of these people and say, “I been there myself.” I will tell you that after the My Lai incident broke, people who had previously talked freely about their war experiences and things became very quiet and secretive about things they’d seen and done, because there were some spin off My Lai’s of people that said, “Hey,” you know, “Have you heard about this and have you heard about that,” and of course the Army did track some of those down and there were some other sub My Lai people that were punished, not of any great significance. So I think people…and then of course the training that we’d talked about some where you were going out saying, “Look, you’ve got the right to disobey orders. Not only do you have the right, you’ve got a duty to disobey orders under certain circumstances.” So that certainly shook the command structure, I mean, you can’t believe the hate mail we got over that, you know, “What are you doing to this one.” You can’t tell a private he can disobey an order, that was not right, so again, it’s my opinion that if the right things would have happened that day, if Captain Medina would have bit the bullet, if Frank Barker, if Henderson would have, My Lai would probably be somewhere in there but it wouldn’t be…we wouldn’t be talking about it 30 years later, 31 years later.

SM: So do you think we’ve learned all the lessons we can from My Lai?

JE: I think the lessons need to be constantly repeated. I think that most career soldiers, particularly, and I’ve spoken to many groups over the years, civilian and military, and the approach that I take anymore when I speak to this issue is without discussing what it is, I just lay the pattern out and it’s like, “That couldn’t happen,” and I say, “Well, it did,” and this of course is what it was and so the potential is always there. I think we probably just don’t like to think about it so we probably haven’t completely learned the lesson, I guess. I would have thought at the time we had the bombings in the Marine barracks, was it in Beirut, that we would have
learned by then that we don’t put 200 people in a barracks. When I lived in Vietnam, the day I
walked into that 98 officer hotel with the guard at the front gate with a shot gun, I knew I wasn’t
supposed to be living in that barracks if I wanted to stay alive! What better target for a truck
load of dynamite than 98 officers in a barracks? And I was a lawyer, and I knew better, so
sometimes you do wonder if we learned those lessons and I think, of course there is a law of war
training, but there’s training on sexual harassment, there’s training on this, that, and other things,
and I would imagine that we are not still emphasizing that to the level that we should. You
know, the military is just a constant turnover. I lived near Fort Hood which is our biggest base,
and you’ve got, you don’t even have an annual cycle. I mean, people are just constantly coming
and going, so some of these bedrock issues, you know, whether you get this is basic training or
you teach this in a unit, and I have seen tailhook to sexual scandals in the Army, the cheating
scandals. We don’t want to believe it, then we believe it with a vengeance and we go over more
to the other extreme. We can’t ever seem to find that happy medium and say…should people
have been punished because of My Lai? Yes. Should my client have been charged? I don’t
think so, but could he have done some things different? Yes, clearly he could have. What would
have been a proper disposition? Maybe a letter of reprimand, who knows what it might have
been or should have been, but you’ve got to draw the line some place, and that’s always one of
my hooks when I speak to this is, “Where’s the line going to be drawn?” Are you going to be
above the line or below the line? I’ve talked to officer development classes about keeping copies
of records and sensitive things and you have some people who are very career conscious and you
draw the line and it can come down. The Army does not necessarily reward 27 years of faithful
service. If it’s convenient to let you have it, you’re going to get it. And I think My Lai, to a
certain extent, was brought on by political pressure. The Army was under intense pressure to do
something. They were under intense pressure from people like Strom Thurman and Mendel
Rivers that they weren’t going to do anything. I mean, Mendel Rivers, he is a major My Lai
player in the sense that if he hadn’t have died on us, he would have tied up the Army’s budget
forever as chairman of the armed services committee, but unfortunately Mendel Rivers died right
in the middle of all this and he was adamant that none of these boys are never going to be tried
for nothing. Of course, he was in the old powerful chairman era where you didn’t have to have
any reason for it, it just wasn’t going to happen. And it wasn’t, and my guy was from South
Carolina and it particularly wasn’t going to happen to him, and Strom Thurman got involved
with this very strongly for us because he went to Clemson as did my client and while I thought
we had an easy sell because of the facts, and of course part of the reason Thurman was easy to
work with, he’d fought in World War II, he knew what the Army was all about. You had sort of
like some of the issues that would come up in recent years with military, the debate of if you
haven’t served, could you understand? Well, there is a certain element to that. If you haven’t
been in the military, you don’t understand. I know Mr. McCray, who was one of the civilians,
didn’t understand a lot of this stuff and he…and Peers did. That’s one of the things that I felt
with him. He knew better on some of this. He just, he really just sort of said, “Well, it should
have been this way, it could have been perfect.” He’d been in combat enough. It isn’t always
perfect in combat. It’s rarely perfect.

SM: Given the similarities of recent foreign policies to what Vietnam was, a limited war
and supportive policy, is there any other advice you would give to other policy makers and
military commanders that they could derive from the My Lai massacre and the cover up and
trials?

JE: Well, I think what we’re seeing in Bosnia or Kosovo more particularly, what can we
learn on that level? We’re seeing…I think we cannot necessarily change people. Certainly in
Vietnam, one of the things we learned was there was age old conflicts and controversies that we
weren’t going to change. We were imposing ourselves on that situation. One of the great
successes I think in Bosnia has been the attitude of our troops over there. The American policy
is, “We don’t have any friends, we don’t have any enemies, we’re stacked. We’re on duty 24
hours a day, and if you cross the line, you’re in trouble with us.” In Vietnam, I don’t think we
were ever sure who our friends or enemies were and the Vietnamese that we shot in My Lai were
just like our comrades who were in ARVN uniforms. They looked alike, they fought alike, and
they had the same concerns and considerations. Did we put our soldiers in a situation they
couldn’t win in My Lai? Is it an area we should have gone in? One of the questions is, should
we have even been in there with ground troops? Did we ever really accomplish anything there?
One school of thought is we didn’t. It was an area we could have just isolated and worked
around it, but there was an intense desire to get a great victory there, and I think we mentioned
Colonel Henderson. He wanted a great victory. He wanted a victory because he was now the
brigade commander and I think at first he thought he got his great victory and then he realized
no, he didn’t. He got a bucket of shit, and that might have been part of what was really driving
his train. It was a calculated risk that, “If I do this, then nobody will ever know and they’ll think
I had this great victory,” and on the major policy level I think there’s nothing particularly from
My Lai there, I don’t think. It’s at a much lower operating level, but it’s…you know, having
clear rules and that sort of thing, and I think I’m very familiar with Bosnia and Kosovo. Bosnia
in particular because we’ve had troops from Fort Hood go and I just talked to enough of them
and again, that always on duty stack, “We don’t have any friends, we don’t have any enemies,”
attitude has really paid off in Bosnia. They have not bothered our troops in the least in Bosnia
because they’re sharp, they’re on the ball, and they’ll fire on them in a minute and they know it.
They respect us. But, their approaching Bosnia is very much like the Korean’s were in Vietnam.
They were the most highly respected troops over there because they, you didn’t mess with
Koreans and we didn’t have that same degree of respect, I’m afraid, over there.

SM: Perhaps one of the benefits of My Lai, if you could say this, because as you pointed
at, the emphasis, the new emphasis on new rules of engagement and that is…

JE: Well yes, and we do, I mean, we do have rules of engagement. People know what
that means and that is the first time that it ever became a great big issue I think was during My
Lai and you know, now Jag’s too, from the law of war perspective, a great component of what a
combat Jag shop will do today, Judge Advocate General’s shop in the Army, is they have their
operational law of people. The people that actually this is what they do. They work in the
operations centers. They’re there and in Vietnam during the My Lai situation the Jag’s were
conspicuously absent from this, from the discussions. They just probably weren’t brought in the
loop and I think the commanders think while they’re…the commanders are certainly better
educated on these issues, I think so, and you make a good point. I don’t know, you know, for
example, if the war college or Leavenworth if they teach…I certainly, when I was a student at
Leavenworth, there were several of us there and we talked about the My Lai situation. I don’t
know if that’s just one of the Army’s historical examples that’s tucked away. I mean, I think
there’s an abundance of information there to speak, and lessons to be learned, I think so.

SM: Alright, well it’s lunchtime and I think we should go ahead and break. Thank you
very much. This ends the interview with Judge Endicott, interview one.