

Oral History of Henry F. Schuelke, III
First Interview
October 11, 2011

This interview is being conducted on behalf of the Oral History Project of the Historical Society of the District of Columbia Circuit. The interviewee is Henry F. Schuelke, III, Esquire, and the interviewer is Louis R. Cohen, Esquire. The interview took place on October 11, 2011. This is the first interview.

MR. COHEN: Hank, why don't we start with your family. I infer there must have been a Henry Schuelke, I, at some point.

MR. SCHUELKE: Indeed there was. Actually I have consulted my slightly older sister this morning. She's the family historian and she refreshed me a little bit. And we are missing a little, a generation here or there, but she's going to follow up so I may be able to augment this. My father Henry F., Jr. was born in 1909 in Newark, New Jersey and passed away in 1991. His father, Henry F., Sr. was also born in Newark in 1885 and passed away in 1947. His father, my great grandfather, was born in the United States. I don't know the specific date but I think it must have been about 1860. And his father, my great, great grandfather emigrated from Germany at some time, probably between 1820 and 1830, near as we can calculate. He married Lena Knorr who was born in the United States. My grandfather married Margaret Cathrou Young who was 1 of 14 children, 8 of whom survived childhood. She was the eldest. She was the daughter of William Young who emigrated from Ireland to Newark, New Jersey in about 1850. And he married Mary Boylan. My grandmother, Margaret Young was born in 1885 and passed away in 1943. So, while I was on this earth for a year or perhaps a little less, I have no memory of my paternal grandmother. My

grandfather, Henry Senior who was born in 1885, passed away in 1947, and I do actually have a couple of fairly vivid memories of him, although I was but 5 years old when he died. The Young family, that is my grandmother's forebears, farmed. They had a celery farm in Newark, New Jersey on what is now Newark International Airport, and they sold the farm. Now, I don't know whether the Port Authority of New York and New Jersey existed at that time but they sold it to whoever built the airport.

MR. COHEN: In a condemnation or. . .

MR. SCHUELKE: I don't believe so, but I'm, I'm really not certain. My mother's side: my mother was born Eleanor Ann Carton in 1914 in New York City and passed away in 2001. Her father was Washington Edward Carton who was 1 of 10 children. He was born in 1886 and died in 1937. Her mother, that is my maternal grandmother, was Margaret Kiely, who was born in 1888 in New York City and died in 1979. Edward Carton, well his name was Washington Edward but he was known as Edward, was born in New York City but his parents at some point moved to Rumson, New Jersey. Rumson is now and has throughout my lifetime been a lovely northern New Jersey shore community. I'm missing a generation back because I know that my mother through the Carton side is a direct, was a direct descendant of Robert Morris, a signatory to the Declaration of Independence, but I'm missing a generation back to Morris. But her family was descended from Morris, I believe he was the first immigrant to

the United States. Had to have been in 1750s. I remember, this has always been a bit of family lore because Robert Morris was reported to have (a) been a very successful businessman and (b) loaned a substantial sum of money to George Washington during the winter that Washington and his army were in Valley Forge. This became a little bit of family lore because at some point when I was a kid, I remember my father taking up this somewhat quixotic quest to figure out whether he could sue the U.S. government for the monies that Robert Morris had loaned George Washington because Morris ended up in debtors' prison at some point before his death.

MR. COHEN: I didn't know that. I knew he was a financier of the revolution.

MR. SCHUELKE: Right. So, that's the genealogical sketch. I was born on November the 10th, 1942 at St. James Hospital in Newark, and I have a slightly elder sister, Margaret Ellen, who was born in June of 1941. So she's some seventeen months older than I. I had a sister Kathleen who was born in 1946 who passed away suddenly, apparently of an aneurism, about two years ago. And the youngest of my three sisters is Mary Beth who was born in 1957. My father always referred to her as "the bonus". You said you were interested in what it was like growing up in northern New Jersey.

MR. COHEN: To go back a generation, did your parents talk about the Depression?

MR. SCHUELKE: Oh yes.

MR. COHEN: Was your father poor?

MR. SCHUELKE: No, my father lost a kidney surgically. I mean if it had been in recent times I'm sure he would not have, but he did. He had some kind of kidney malady and they removed a kidney. And, as a consequence, he was not eligible to serve in the military although he was quite active in the bond, the war bond effort through the war. And actually, the fact that he had lived with one kidney for the rest of his life posed absolutely no problem. So it's good to know that if you ever have to lose a kidney you'll be fine operating on one.

The Depression: my grandfather, as was true on the Carton side of the family as well, was a very successful automobile dealer both in New York City and in northern New Jersey. So much so that he gave my father a Pierce Arrow Roadster for his 21st birthday, and they had staff at home—folks who constantly polished the cars in the family. Then came the Depression. My father had graduated from Seton Hall University with an undergraduate degree and had enrolled there in Law School and started the first year of Law School when the Depression struck, and dropped out of school to go to work. And he went to work for the Metropolitan Life Insurance Company. This would have been 1932, or 3 I think. He worked at the MET the rest of his working life and retired at the age of 65 as the Executive Vice President of the Metropolitan Life Insurance Company. Because we lived in suburban New Jersey throughout the time I grew up, my father commuted daily on the old Lackawanna Railroad from Maplewood, or South Orange, New Jersey into Manhattan every day. And

he was a great guy; difficult, at least for me, the only boy in the family, because he believed in the maxim: much is expected of him who is granted much. So he and I were at loggerheads throughout my teenage years, basically until I went away to college. One of the smartest people I've ever known, although he was a martinet, there's no two ways about that. My mother was a graduate of St. Elizabeth's College in Convent Station, New Jersey where two of my three sisters also matriculated. The third, the youngest one went to Georgetown. And actually back to education for a moment, I went to St. Benedict's Prep in Newark. My father was a 1927 graduate of St. Benedict's Prep so it was foreordained that that's where I was going whether I liked it or not. In the event, I did like it. And my mother was trained as a dietitian, and worked for a number of years, I don't remember precisely, while we were young kids, as the dietitian at St. James Hospital in Newark, which is where I was born and I think my older sister Margie was as well. And then when we were, I don't know, maybe 8 or 10 years old she ceased working, but when we were in college, that is my sister Margie and I, she went to—decided to work and taught in the West Orange public school system, West Orange High School, and taught marriage and the family. Probably completely politically incorrect today to have such course. And I vividly remember when I was in Law School she was still teaching and she had me come a couple of times for some seminar she was doing with these high school seniors, as some part of this marriage and the family curriculum in which I

was supposed to talk about dating. I thought, you know, I don't know what expertise I have in this subject; I'm a few years older than these kids and half of what I would say honestly about dating I don't think I want to say in front of my mother anyway, but that was kind of fun and interesting. My mother was a wonderful, wonderful woman. She was the happiest person I think I've ever known, which was true through her terminal illness when she was 87 years old. She was just happy as could be, at the care she was getting, she was happy as could be that we, the kids, were there in support of her, and she was the great lubricant in the family. As I said my father was difficult and a martinet. My mother always somehow knew what I was up to and managed to cover for me, so my father, unless it was absolutely necessary, wouldn't find out what shenanigans I was up to or. . .they used to go to the, when I was at St. Benedict's, to the annual parent teachers night, and I was at home debating about whether I should flee before they got home, or pretend I was asleep because I knew I was going to hear, "Yeah yeah, smartass, that's what they say about you," you know?

MR. COHEN: Is that because you were a behavior problem?

MR. SCHUELKE: Not in any significant way, no; in those days, when I was at St. Benedict's from 1956 to 1960, there were no drugs.

MR. COHEN: That's like 9th grade to 12th grade, something like that.

MR. SCHUELKE: 9th to 12th.

MR. COHEN: Oh okay.

MR. SCHUELKE: There were no drugs, nobody drank, only occasionally, maybe you know, at some event there'd be some beer, but it was very unusual. And, so it was more in the nature of pranks, you know, that kind of thing. Like one, for example, for which I became somewhat famous, I think I was a sophomore and St. Benedict's Prep was run by the Benedictine monks, who were great, they were unlike the Jesuits with whom I also had subsequent experience, for whom I have great respect. The Benedictines didn't fancy themselves these great intellects as the Jesuits did, and they loved sports, they were huge supporters of the athletic teams of the school, and they could be a lot of fun. And they'd go drink a beer with you. Now when I was a sophomore a new, rather young, Benedictine monk, Father Brown, arrived and taught, you know I don't even remember what course he taught. What I do remember is that we, at least the – a group of a dozen of us maybe, who were good friends and sort of full of ourselves you know as 15 year olds, thought that, oh this was a different story. This guy is a, sort of a twerp, and he seemed, I don't know, a tad effeminate to us, until one day somebody did something which really ticked him off. Turns out the guy was a judo expert, and he flipped this kid across the classroom and everyone was, "Wow!" So one day, somebody had done something, I don't remember what it was, and we were all detained—afternoon detention by him until whoever the culprit was fessed up; and nobody was going to do that of course. So school's over at two thirty or whatever it was, so it's three thirty, it's four thirty, and I really did have to

go to the bathroom. So I raised my hand, “Father, I got to go to the bathroom.”

“Nobody is leaving this room.” Okay. I think that was because he believed that we wouldn’t return and knew that as he was new to the school, I don’t think he was confident that he had the clout with the dean to deal with it.

So nobody’s leaving this room, so another half an hour goes by, I raise my hand again, “I’m tellin’ you Father I really got to go.”

“Nobody’s leaving this room.” Another, some period of time I insist. He says, “Alright, he says go out on the fire escape.” Okay, so I go out on the fire escape and I’m taking a leak off the fire escape and there was a quadrangle with, sort of a garden type center to it, and I didn’t realize this because I didn’t see him, but the Abbot, who was the head religious honcho of the Benedictine Abbey was walking with his breviary, saying his evening prayers or something. And when I, I don’t know to this day whether I actually hit him or not, but –

MR. COHEN: Was he wearing a hat?

MR. SCHUELKE: I don’t know. But this story became the stuff of legend, and I remember the night my father came back from one of these parent conferences having been told about this little episode. I always got much more hell at home than I did at school. One of his great punishments, which I suffered a number of times, was I would be sent to what he called “in Siberia.” Then I was restricted to my room in the house throughout the Christmas

vacation. My mother used to sneak food up to me, that sort of thing. So that's one of my fond memories of St. Benedict's Prep.

MR. COHEN: Was it an all-boys school?

MR. SCHUELKE: Yes. Yes.

MR. COHEN: Was the faculty all monks? Were there nuns?

MR. SCHUELKE: No, no nuns, no nuns. They were all men, there were some laymen. But I, but very very few, like there was the coaching, the football coach, the basketball coach, the wrestling coach, track coach. Excuse me, were laymen. And they taught some, well they taught Phys Ed for example, and you know, maybe a course or two, but otherwise no, it was all, it was all Benedictine monks. And they ranged from the type I described at the outset, hail fellow well met to quite pious. As a matter of fact there was one, Father Benedict, who taught religion who was a very pious man, but everyone respected him. Not everyone quite bought into some of the program; for example, one of my football playing colleagues who was a big strapping kid, whose name was Al Mara. Italian American family. And Father Benedict one day told us that, in dating, our objective should be to find a woman who was going to help us get to heaven, and Mara said, "Father you gotta' be shittin' me!" That was Father Benedict, and I remember they, they also when they built the new Student Union in my, I guess between my junior and senior year, but it was functioning by my senior year. And adjacent to the cafeteria there was a confessional so that if you wanted to go to confession, because they wanted to encourage you,

of course, to go to confession, go to communion, well you could go to confession right there. So I don't remember why, what possessed me to do this, but one day I did. And, I don't know if you're at all familiar with the confessional in a Catholic Church, but the priest sits in this little central booth, there's a penitent's little booth on either side, and he's got a little screen that he can open and close, not to see you but so he can hear. But otherwise you don't see him, he doesn't see you. And, you know, you're theoretically confessing through the medium of this priest, not actually to the priest, you're confessing your sins to God Almighty. And, of course this whole anonymity in the process is designed to encourage forthrightness. So I remember walking into that confessional, they had a little kneeler in there, and you kneeled down, and there was a spiel that we had all been taught, had been taught when we were in first grade probably. "Bless me Father for I have sinned, it's been 'x' weeks, or months since my last confession" and you know here's the list of sins that I have committed. After which the priest gives you a penance of some sort and then absolves you of your sins. Which is a great deal by the way, because then you can start all over again and you can go back next week and get absolved. It's a great system.

Anyway, I walk in there, I kneel down and I start into this spiel and Father Benedict says, "Well Henry." And I'm like, oh, you're not supposed to know who I am and he just recognized my voice. So those are vignettes from high school at St. Benedict's Prep. My father of course,

because he was an alumnus of the school, took a particular proprietary interest in the school and in my success of course, but also making sure that I was towin' the line. How big a school?

MR. COHEN: Yes.

MR. SCHUELKE: You know, I don't remember with any precision, I think my class was probably about a hundred. So four hundred total. Maybe five hundred. The school was historically, from the time my father went there through my time there, and probably for another thirty years thereafter, was a school for middle class white kids from suburban, northern New Jersey. Actually there were very few kids who actually lived in Newark by the time I was in prep school, because the demographics of the city were changing and the African American community was growing quite rapidly. In recent years, the school has become almost exclusively in service of the inner city and so I think the school is probably a hundred percent black and these Benedictines are completely devoted to their education. These kids are doing terrifically well; they have a fantastic rate of graduates who go on to college and so I've always been happy to lend my support, but it's a completely different school than it was in my father's time and mine, at least in terms of the demographic makeup of the school and the geographical area from which the kids come. When I was there and for many years thereafter, Seton Hall had a prep school as well. That was in South Orange, New Jersey. St. Benedict's was in downtown Newark. I grew up, until I was eleven or twelve, in what was called the

Vailsburg section of Newark, which was the westernmost community immediately on the South Orange border. Seton Hall was, and remains, in South Orange maybe a mile west of the South Orange – Newark line. And it drew from the same basic demographic group and so St. Benedict's and Seton Hall were always archrivals in all sports and whatnot. It's kind of like Georgetown Prep and who's their big—

MR. COHEN: Canton or St. Albans?

MR. SCHUELKE: St. Albans, right right. That kind of relationship. You mentioned the, in your email, an interest in growing up in Newark in the 1950's.

MR. COHEN: Mhm.

MR. SCHUELKE: We have, those of us who have paid any attention have come to know Newark in the last thirty or so years as a dysfunctional city with an extremely high poverty rate, an extremely high crime rate, all of which is quite true. Not so in the 1950's. I remember we used to, my Aunt, my father's sister, used to take us shopping on Broad Street in Newark. Broad and Market was the principal intersection in downtown Newark and Broad and Market is probably, I don't know, three or four blocks from the Penn Station in Newark. And there were major department stores and you could, you could walk the streets of downtown as a ten year old kid with no concern whatsoever and where I was until I was eleven or twelve in this so called Vailsburg section of Newark. It was like, I don't know, like Bethesda was in the 1970s maybe. You know, leafy tree-lined streets, and nice homes and crime was nonexistent. I don't ever remember even

thinking, oh I do remember actually, come to think of it. There was some report at some point, because I used to walk to school, this was another part, you know you think of Newark from today's perspective as this sort of forbidding hostile environment, but we used to walk to school. I don't know fifteen blocks, maybe something like that, to grade school. I went to the local parochial grammar school, Sacred Heart and where my mother had gone as a matter of fact. And I had a couple of these old superannuated nuns who had been there when my mother was there. But we'd walk these fifteen or so blocks to school, it was sort of a Norman Rockwell kind of a – . I know it's hard to believe, but that is the truth. And then when I was twelve we moved to Maplewood, New Jersey, which is a sister town to South Orange; they actually share some of the municipal government and the high school is common to both towns. And that was probably five or six miles maybe from the Vailsburg – South Orange line, and was a more affluent community, as it remains. My sister, who has, as a matter of fact, never married, lives in our family home as she has since she was thirteen years old. And she just turned 70, so I rag her about how old she is. So yeah, it was a delightful environment, well as I said my father could be a difficult character. We had dinner at home every night, the family and nobody wanted for anything. We weren't rich, but nobody wanted for anything.

MR. COHEN: Your friends were prosperous as well?

MR. SCHUELKE: Yes.

MR. COHEN: Did you have a car while you were at St. Benedict?

MR. SCHUELKE: No. No my first car, actually the first car I ever drove when I turned seventeen and got my Learner's Permit and my license was a 1952 Packard, which was my father's car, it was the family car at the time. Great car. Now the first car that I ever had in my own right was a Volkswagen Beetle convertible that my father bought for me when I was in—at St. Peter's in college. So I was 18 or 19. 19 probably. So after St. Benedict's, I did go to St. Peter's College in Jersey City, New Jersey. Jesuits. Whom I found quite engaging. I was never much of a student for lack of interest or application, or whatever. That was even true to some degree when I was in college, except for things that I really enjoyed. But I really liked, and was challenged by some of these guys, these Jesuits. I majored in English and had minors in Philosophy and French. And they really introduced me to and turned me on to literature and philosophical thought so I had a great time with that, and as a consequence I did quite well at it.

MR. COHEN: How are Jesuits systematically different from Benedictines?

MR. SCHUELKE: Well they're better educated first.

MR. COHEN: Because they've been to Jesuit...

MR. SCHUELKE: No, because far more of them have advanced degrees. It's, it would have been not unheard of, but unusual for the Benedictine monks who taught us in prep school to have PhD's. They're commonplace among the Jesuits. And the Jesuits historically, and for hundreds of years, have been

extremely proud of that rigorous education to the point of arrogance. And so you either respond well to that or you don't, you know you have, you have some Jesuit who tells you when you ask him, "Why did I get a B on the paper?" Answer: "Because you're not getting an A unless you teach me something, and nobody has yet." Now you either react in a very negative way to that, or you find it challenging. And I tended to sort of find it challenging, sort of a competitive streak, you know? I did well enough that I had scholarship opportunities to several law schools. I had in part, because we were not a wealthy family, and in part because my father and mother, but mostly my father who was the principal bread winner in the family, was determined that he was going to educate my sisters as well. It was on me for law school, for graduate education. And so I decided to take advantage of the scholarship opportunities, and I had a scholarship to Villanova Law School, which was tuition, board, books, the whole works so that's what I did.

MR. COHEN: Before we get there, double back a second. Sports? Did you do sports?

MR. SCHUELKE: I did.

MR. COHEN: Sports in high school? College?

MR. SCHUELKE: Not in college, no, in high school I did. Actually, starting when I was in grade school I always ran track. I was slight, and actually small. I grew five inches between the time I graduated from prep school and sophomore year in college. So lots of people didn't even recognize me. I went from 5 foot 8 and about maybe 140 pounds soaking wet, to 6'1" and, although

I've been thin almost all my life, but I went to 6'1" and 165 or something like that. And I was quite fleet of foot. To my knowledge, I could be wrong about this, but to my knowledge I still hold the schoolboy record for the 60 yard dash in the Archdiocese of Newark. And, and then so that's principally what I did. I could run from morning 'til night.

MR. COHEN: Friendships from back then? Or anything? Anybody you care to talk about?

MR. SCHUELKE: Not really. I have checked in from time to time with some childhood friends, some of whom were at St. Benedict's with me, some of them were neighbors in the community. The guys from St. Benedict's I talk to periodically because of St. Benedict's Prep alumni fundraising efforts, that sort of thing, but I have not maintained a close friendship through my adulthood with any of my St. Benedict's folks. And that's true of my St. Peter's College colleagues as well. Actually, I have had far more contact with guys from St. Benedict's than I have ever had with those from St. Peter's. And I think you know that was partially because St. Peter's was a city college. When I was there it was exclusively a commuter college. Now I moved away and lived in Jersey City with a couple of roommates in apartments for the latter two years that I was there. But everybody would go to school and go home. And so you didn't develop the same kind of relationships. Most of my school friends from over the years are from Law School. And even there, those relationships are not nearly as strong, constant, as my colleagues from the U.S. Attorney's Office here. And a

couple from my days in the JAG Corps. But my closest friends since 1972 have been my U.S. Attorney's Office colleagues.

MR. COHEN: You must have had a fiftieth reunion, had one from St. Benedict's, or have one coming up.

MR. SCHUELKE: Well actually we did have one last year which I did not attend. I actually intended to, but did not because of business travel. And I have the Law School coming up. Which I expect I will.

MR. COHEN: Before we go to Law School, tell me about your sisters.

MR. SCHUELKE: Well as I said my sister Margie always was a homebody. Even when we were kids. She's a lovely lady, a little difficult following her through school, particularly grade school, because she never in her life did anything wrong, so far as I'm aware of. And so I always got either directly, or by innuendo "Why can't you be like your, well behaved like your sister Margie?"

MR. COHEN: So that school was both boys and schools.

MR. SCHUELKE: That was both boys and girls. As are all the Catholic parochial grammar schools, as far as I know. She and I, despite the fact that she is as I had just described there, she and I have always been very close. She's the great family historian and I'm deeply in her debt because my mother was quite ill, terminally as it turned out, for about five years. And because Margie was at home and completely devoted to my mother in any case was her full time care giver and had it not been for her I don't know what the hell I would have done. She would have had to come here or she

would have had to be in assisted living. So I remain deeply in her debt.

My sister Kathy—

MR. COHEN: Did Margie have a career?

MR. SCHUELKE: Oh yes, she worked, she was dietitian as well, as was my mother, trained as a dietitian. Worked in the Veteran's Hospital in South Orange, New Jersey for a number of years. And then for many years, she's now retired, for many years she worked for what was then, I guess, H.E.W. in New York City. Doing, not only dietetic, but federally regulated nursing home compliance issues. So she'd go around and do inspections of nursing homes, so she's quite knowledgeable about nursing care, which also was quite useful to her dealing with my mother. Never married, as I said remains in the family home which my mother bequeathed to her quite sensibly and appropriately in my judgment. You know, like most families there are tensions from time to time. Some wag once said if it weren't for families you wouldn't have any problems at all. And so there was some, sort of sniping among my sisters and of course my mother wanted my advice with respect to the disposition of her estate. And while I engaged counsel for her up in New Jersey, because I didn't think it appropriate for me to do it, I did give her advice on some of these issues, which I then discussed with counsel she had up in New Jersey. And I told her that I wanted not to be, didn't want to be a beneficiary under her will so that I would have the luxury of not being accused of having any self interest in this. And she readily agreed to do that, she said, "makes perfect sense to

me, you don't need any of it, that's fine." Sort of reminds me. I tell this little joke about how somebody once put in his will, "and to Lou Cohen, who wanted to be remembered in my will, Hi there Lou." Which reminds me of another little vignette. I had a client now many years ago, a woman who was the former wife of a quite wealthy and accomplished Washington lawyer. He remarried and he made a couple of bequests to various charitable organizations that my client, the ex-wife, wanted to contest; and I'll never forget as a part of their divorce settlement he was obligated to make a half a million dollar bequest to her. And here's how it read in the will "To my former wife, Elizabeth, because I am legally obligated to do so and not because I have one whit of affection for the woman, the sum of \$500,000".

MR. COHEN: That's great.

MR. SCHUELKE: Great stuff. So that was Margie. Kathy, she and I were quite alike, physically. Unlike Margie, who sort of favored my mother's side of the family. I mean my father's side of the family. Whereas Kathy and Marybeth as well and I favored my mother's side. My mother had a brother, my Uncle Bob, whom I loved dearly. Great guy. And you would have thought I was his son. You would have thought had we been contemporaries that we were twins. Well, my sister Kathy and I were quite alike them in that regard. I can remember a couple of times being at the Jersey Shore in the summer and somebody walk up to me on the Boardwalk and say "You Kathy Schuelke's brother"? And so she and my

father, much as he and I were at loggerheads a great deal of the time, so were she and my father. She was less diplomatic than I so it was actually worse in some respects. At least at some point I developed the good sense to try to avoid confrontation. Not Kathy. She went to St. Elizabeth's College as well. As did Margie. So my mother, Margie, and Kathy all went to St. E's, which is a beautiful place in Convent Station, New Jersey, which is the home of the Sisters of Charity, the Catholic order of nuns. It's a quite good school as well. She then married. That was the source of a great deal of friction as well with my father. Her husband, Les Sari, was a perfectly nice good guy. But this came at a time when kids would come to pick up their girlfriend for a Saturday night date wearing jeans and running shoes or something. Well, this was completely unacceptable to my father. It was disrespectful and he should be wearing a suit and tie and so on. He was of a different age. Although I remember having some of those same sentiments about the kids coming to pick up my daughter. Because the sartorial dysfunction gets worse and worse you know. They ultimately divorced. Les had a tough time. Les went through OCS. And after basic went directly to Vietnam. He was a second lieutenant. I think in the second week he was there, he replaced the platoon leader, one of his buddies who flown over there with him, two weeks earlier. The casualty rate among lieutenants in Vietnam in '66, 7, 8 was enormous. They literally had a life expectancy measured in months. He was very severely wounded by a booby trap of some sort. He survived and then he actually

did quite well. He had multiple surgeries to his legs but he did okay. And he was a very good athlete and he continued. He was a good tennis player even after all of this, but it was a huge psychological scar. And I'm not sure when he learned that he had been adopted but he learned that sometime in adulthood. I don't remember if it was before he was in Vietnam or after he came back. And he was on this tear to identify his birth parents. And for reasons that are difficult to understand from the outside, the combination of these things proved to be destructive of the marriage. At least that is how it appeared to me. And they had three kids who are all doing pretty well. And have kids of their own now. But my sister Kathy was single, divorced and living in Winston Salem, North Carolina, because he had taken a job with Wachovia Bank right after he got out of the Army. And so they lived in North Carolina ever since. And so I saw sort of less and less of Kathy over the years and she had the various issues with my mother and with my sister Margie that never made any sense whatsoever to me. And so she became somewhat estranged. And as I said, they had three children. One of them is doing quite well as an investment banker in New York, their oldest son, then they have a daughter who is also doing quite well, she and her husband live in South Carolina. She sells medical devices for one of the major device manufactures. Which is a pretty lucrative profession. They do quite well. So they're doing fine. Although as I said, near the outset, my sister Kathy passed away a couple of years ago. Not having been ill so far as anyone

knew. She was found by a neighbor one morning in her laundry room. Suffered an aneurysm. Poof, gone. So that leaves three of us. My sister Marybeth, very interesting woman. Smart as a whip. Has been married three times. Undergraduate degree from Georgetown. And actually just recently last year got her master's degree from Seton Hall. She lives in Maplewood, as well. She has a son from her second marriage, who's a terrific kid, who's doing very well. He's an actor and playwright, set designer, and he's quite busy in New York and having a grand old time.

MR. COHEN: Interesting how many kids of that generation go into show business. We know a bunch of kids in Hollywood.

MR. SCHUELKE: Yep, interesting. So that's the family. Except for my [own] family.

MR. COHEN: Well, what I was going to sort of do is . . .

MR. SCHUELKE: Chronologically. Okay.

MR. COHEN: Let's go back to law school. Did you like law school?

MR. SCHUELKE: No. In a word.

MR. COHEN: Okay.

MR. SCHUELKE: This requires some psychoanalysis, self-psychoanalysis I suppose. I did not like law school. I did not like it from the first. I did not like the environment. I didn't like among the students this competitive study group approach to it. While I had some very good friends in law school, for the most part I didn't think much in the way most of these kids were operating. And I was more of an academic sort of loner. I didn't have any interest in the study group approach. I would typically cram. I would read

an entire casebook cover to cover before exams. I found it initially not terribly difficult, like first year. Using my own method, I enjoyed the Socratic debate process, when I came to class prepared, which was not always. You remember sitting there waiting for them to call your name. Mr. Cohen, oh shit. And to a significant degree, because I did not find it terribly difficult in the first year and I did pretty well I sort of lost interest in it. Except for a few courses that I really enjoyed.

MR. COHEN: I was going to ask you what courses you enjoyed.

MR. SCHUELKE: I liked con law, I liked criminal law. I remember having a third year seminar which I enjoyed more than anything else. Very, very smart guy was the professor. On the—what the hell did he call it? The philosophy of law or the process of law which I found to be quite interesting. I think part of the problem was I was ready to actually go do something, instead of living this academic environment for another three years when I was 21 years old. Because I have thoroughly enjoyed the practice of law. Now, you know, there are some cases that are not all that terribly interesting and there are some clients who are not all that attractive, but by and large, I have enjoyed it. I enjoyed thoroughly my time in the JAG Corps. To this day, I think the U.S. Attorney's Office is the best job that one can possibly have. I had a good time every day in that job and also felt like we were doing something useful. Which I think we were. But law school, not so much.

MR. COHEN: Anybody on the faculty stood out as great or terrible?

MR. SCHUELKE: There are certainly some who stand out as a matter of personality and methodology. We had a civil procedure professor who was the only one who did not employ the Socratic Method; he was a lecturer. And I think to this day I could quote some of that verbatim. He had a very droll sense of humor. So for example: *Erie v. Tompkins*. The 8:17 bound for Philadelphia departed Pittsburgh at 8:17. At 9:27 as it was approaching the station that—wherever, somewhere in Pennsylvania. The door to the mail car unexpectedly swung open smacking Mr. Tompkins who was on the platform in the back of the head and knocking him straight into legal immortality. And that's basically all I remember about *Erie v. Tompkins*, to tell you the truth.

MR. COHEN: That sounds like the way Jim Chadborne described that case.

MR. SCHUELKE: Is that right?

MR. COHEN: Maybe we have had the same civil procedure professor.

MR. COHEN: You haven't mentioned contracts. Which some people love.

MR. SCHUELKE: Ugh, I hated them. Hated it. Collins, Edward Collins was the contracts professor who had been at the school for years and quite well regarded in the field, but was dreadfully boring. And the subject at least for me was similarly dreadfully boring. So that was a chore. Torts was fun. And as I said, con law, criminal law. But property also dreadful. In the grand curriculum . . .

MR. COHEN: Elective courses?

MR. SCHUELKE: No. I think the only electives we ever had were third year.

MR. COHEN: Any extracurricular activities?

MR. SCHUELKE: Nope, nope. I had no interest in doing that. No I really didn't. My extracurricular activities were social.

MR. COHEN: What about friends, classmates, buddies, you particularly remember during that time?

MR. SCHUELKE: Yeah, several. Pat O'Connor who remains a friend of mine. Who is one of the founders of Cozen O'Connor you know the firm? Marty McGwynn who was one of the most ambitious people I ever met, talented guy. Practiced for a couple of years at Sullivan & Cromwell and ended up, and I couldn't tell you at what point, with the Mellon Bank and retired as its chairman about two or three years ago. And he and O'Connor are fast friends. And so, we keep up over the years with our respective families. John Cunningham—part of our scholarship for the room and board part of it was we served as proctors in undergraduate dorms. And I'll never forget Cunningham was one of the smartest people you'd ever find. Was a great gin player. And he used to take all his kids' money like every night. Playing gin rummy. He's the managing partner of Morgan Lewis in Philadelphia. Bob Nettune, now here's an interesting story. Nettune was a roommate of mine for a while in law school.

MR. COHEN: How do you spell that?

MR. SCHUELKE: Nettune. Also from northern New Jersey, his father had been a confidant, intimate I don't know, a professional associate of Bernard Baruch. And I don't know whether he learned that from his father or came to it naturally

but Bob was bound and determined that he was going to be rich. Smart guy, kind of neurotic, used to drive me nuts because when I wanted to disappear for a couple of weeks because I had to read an entire casebook before exams he just wanted to pick my brain. And he was one of those who would have reams of notes from the study group; all that sort of thing. Well, so we graduate and pass the bar and he went to work for a firm in New York. I don't remember the name but some midsized firm in New York. Hated it. Meanwhile, his younger brother, younger by two or three years, had gone to dental school and joined some practice in one of those leafy suburbs in northern New Jersey and he was making, I don't know what it was, but it was more than Bob was making as an associate in his law firm, cause in those days . . . I started out, I was the highest paid graduate in my law school class when I went to work for Standard Oil of New Jersey. Now, I'll describe that to you in a moment. And I was paid \$9,600 a year. So, Bob was probably making \$8,000 a year or something like that at his law firm. His kid brother joins this dental practice and he's making \$50,000 or something like that. So, he decides that he is going to be a dentist as well. So while he is working for this law firm, he goes to night school in New York to make up science credits. And he applies to and was accepted in a couple of dental schools, but at the 11th hour said "Well, shit, if I'm going to be a dentist why not be a doctor?" Could not get into a medical school. Very smart guy, terrific grades. I don't about the boards, but I'm sure he did fine on that. And the story was he was too

old because they had an obligation to produce doctors with the greatest longevity to serve the community. Or something like that. So he went to Guadalajara, Mexico and enrolled in medical school. Transferred back into the States and the University of Texas after one year in Mexico. Decided to do his residency in ophthalmology because he had done an economic study and decided that's where he was going to make a fortune. Particularly when he studied the communities around Dallas, somewhat east of Dallas, so there was a fairly substantial ranching population. So it was a combination he figured of rich ranchers or Medicare. All of whom were going to need cataract surgery. So, he moved, he opened his practice, he made, netted a million one in his first year in practice. That would have been, I don't know, '70, 7, 8 something like that. And he's now retired, but he had three satellite offices at the height of his practice and he accomplished his objective. He made a fortune and he enjoyed it. It's a very—cataract surgery is sort of high class auto mechanics, is my take on it. And this is after having discussed the subject with him. He wouldn't really disagree with that. But these people come in and they are damn near blind. They go out cause these are outpatient procedures and they can see, they think he's God. And he loved that aspect of it. I mean he got a kick out of it, but he also loved the fact that he could actually do this. But he really liked making a lot of money, which he did. And he lived in this very nice community, you know a family man and raised his boys. Funny guy.

MR. COHEN: I sense—I don't know whether you have the same one—that on the whole doctors who were thought a prosperous profession in our day, now with kids have fallen behind lawyers.

MR. SCHUELKE: I think that's true.

MR. COHEN: The general run of lawyers didn't then make all that much money.

MR. SCHUELKE: I think that's exactly right. And I think that you know the really successful doctors in those days were maybe making \$300,000 to \$400,000 a year. Which is a hell of a lot of money then. And I think that Medicare/Medicaid has been really tough on them. You know, despite the criticisms about the escalating costs of medical care, the fee for service approach has been significantly restricted. I don't think Nettune in the last 10 years could have done nearly as well as he did when he started and the first 10 or 15 years. And I think it's a rare doctor indeed in private practice who were to use our good profits per partner, are north of a million dollars. Where it's commonplace among lawyers in New York, Washington, Chicago, LA. So yeah, I think that's true. But he succeeded.

MR. COHEN: Maybe we ought to go to JAG but let me ask you this. Did you have a draft deferment?

MR. SCHUELKE: No. No. I had been commissioned through ROTC in college and I have a hard time reconstructing my thought process today but I think basically when I was in college when I was 19 and so I started in college in what 1960? The fall of 1960. And turning 18 that November. I just I think I assumed that I would somehow or other have to fulfill a military

obligation. Because this was while I don't know even if I knew it at the time, but by 1961, we had the earliest of the so-called advisors in Vietnam during the Kennedy Administration. But there was no expectation, at least that I was aware of, that there was going to be a draft and there would be a major war in Vietnam. I just sort of had this general sense that I ought to organize my life to prepare for this and do this in a sensible way. So, I went through ROTC and was commissioned when I graduated from college. I did get a delay in active duty to go to law school. Although there was no commitment on the part of the Army that I would be admitted to the JAG Corps I had to apply for transfer and I had to have passed the bar. But I did get a delay. And because I had been commissioned in the infantry, I would have been like my former brother-in-law, Les Sari, I would have gone into Vietnam with a three month life expectancy. Whatever it was. And by the time I graduated from law school in 1967, we had 300,000 troops in Vietnam. Or shortly thereafter. The Tet Offensive was January of '68. And so, I did apply for a branch transfer into the JAG Corps both because I thought that this would be a far more sensible way to spend my time in the Army given what I hoped and expected to do once I got out of the Army, even though it required an additional two year active duty commitment. JAG Corps was four years; my infantry commitment was two. And also I had no great desire to go get my ass shot off in Vietnam. And so . . .

MR. COHEN: Did you have any Army related activities when you were in law school?

MR. SCHUELKE: No. I graduated from law school in the spring of '67 and I took the bar exam, I guess, in July. I took the bar exam in New York on a Thursday and Friday. And in D.C. the following Monday, Tuesday and Wednesday. And I did that I mean I fully expected that I would be back in New York at the time. But I decided to take the bar exam here as well, just as a hedge. Cause I needed to have passed the bar somewhere. And I went on active duty in March of '68. Now to back up a bit, immediately after I graduated from law school, while I was studying for the bar, I took the New York bar review. Of course. I went to work, I mean I knew I was going into the Army come March, one way or another. And I had a friend who was actually a friend of the family who was a senior marketing executive at Standard Oil, New Jersey, in New York. And so I went to work for Standard Oil. This was before it became Exxon. And at Rockefeller Center which was and remains Exxon's headquarters. And it had nothing to do with the law. I was in this marketing department and I worked for this senior vice president and you know we'd fly off to Brussels every couple weeks. And I just had a great time. And it was lots of fun and quite interesting. And they made me an offer of permanent employment when I got out of the Army after four years. And they had committed to pay me upon my return the difference over four years in what my salary would have been had I stayed there and what Uncle Sam paid me in the Army. While I never did go back there, that was sort of moot. So I went on active duty in March of '68, the first duty assignment was at the JAG

school at UVA in Charlottesville, which was quite good by the way. They had a terrific faculty and my class, and I'm sure that this was true for a couple before me and a couple after me, was composed of some of the best and the brightest from the law schools around the country because of the draft. And so, there are a lot of guys who wanted into the JAG Corps to avoid conscription. As so it was highly competitive and a lot of very smart talented people.

MR. SCHUELKE: Yes. Yeah, they have their own quite lovely school. On the campus.

MR. COHEN: Is it connected to the law school?

MR. SCHUELKE: You mean physically? Or . . .

MR. COHEN: No, I meant as part of the law school?

MR. SCHUELKE: No, No. I'm not sure to tell you the truth what the precise terms of the relationship are whether they are just a tenant there or whether they, I don't really know. But they're not part of UVA law school. It's not like a school of the law school. And then my first assignment at the conclusion of the JAG school was in the staff judge advocate's office at Fort Bliss, Texas. Which is in El Paso.

MR. COHEN: I said we would come back to your family later, but you're not married at this point?

MR. SCHUELKE: No. Shortly thereafter I was. I arrived in El Paso, June maybe and we were married in September, back in New Jersey, and then she joined me back in Fort Bliss. This is my now my former wife. And the mother of my two children. So, you know I don't know what familiarity you have

with the staff judge advocate office operations but the staff judge advocate is the chief legal officer to the commander of whatever unit it is. And this was, Fort Bliss, is the home of the US Army artillery and the Commanding Officer was a two star general so that his staff judge advocate was either a Lieutenant Colonel or a full Colonel. And because it was a pretty big operation, in part because they also had a basic training and an advanced infantry training program going on at Fort Bliss. The office was a pretty good size and, I don't know, there were probably twenty of us maybe who worked for the staff Judge Advocate. And like most else in life I suppose, including the U.S. Attorneys' Office, when you start you're sort of the bottom of the pecking order and so you do a lot of intake for the kids, the troops, who have various kinds of problems. You know, marital problems, debt problems, you know there were parasites around all these military bases who were loaning money at usurious rates and selling cars that the kids can't afford, and so on. And then they want to sue them, and so we do a lot of that kind of stuff. And at that time, it since changed, but at that time each staff Judge Advocate served both as the prosecuting function in the courts martial process, and the defense so that if, you know, a half a dozen guys in an office were prosecuting cases then half a dozen of them were defending cases. And they typically would assign the younger guys to the defense function. Now, you know, one cynical view of that is the obvious, right?

MR. COHEN: Well spell it out –

MR. SCHUELKE: That, you know, there's a, there's a command prerogative on successfully prosecuting these cases so we're not going to put the newbie in as the prosecutor, we'll let the newbie be the defense lawyer. And, I suppose, depending on the command, and depending on the staff Judge Advocate there, there was some truth to that, and I think there certainly was in that office at Fort Bliss. But, it's also true that the staff Judge Advocate has to advise the command about the disposition of the cases, about what cases to prosecute, at what level, is it a special court martial, or a general court martial and with respect to sentence the Commanding Officer has the authority to decrease sentences. And so he gets advice from the staff Judge Advocate about that. Those are all classically prosecution functions. That's the government side of this and so the not-so-cynical view of this is that you need to have people who have some experience in—in that function, and in some of each I suppose. But to demonstrate in practical terms how this works, I tried to acquittal the first five cases I was assigned to as a defense attorney, then I became a prosecutor. We've had enough of that, is what they said.

MR. COHEN: So you didn't, any one person couldn't do both—prosecute and defend in different cases at the same time.

MR. SCHUELKE: Right, theoretically you could, but it typically, typically didn't work that way.

MR. COHEN: Like *Rumpole of the Bailey*.

MR. SCHUELKE: No, no, no. But you know, the interesting thing about it, I am a, as a product of my experience, I am an admirer of the military justice system. And, you know, my experience includes working there, but also includes, you know, close up and personal comparative analysis having been on the civilian side for all these years.

MR. COHEN: Did the office also give other kinds of advice, I mean advice about contracts, procurements, or?

MR. SCHUELKE: Yes. I never did any of that, but yes they did. They did. But you know it's interesting the old saw is that military justice is to justice like military music is to music. Well, I don't know about the music part, but to the extent that that denigrates the military justice system, in my experience, it's completely wrong. We had a lot, and part of this was the time and for the same reasons that we had a lot of smart people going—wanting to get into the JAG Corps. We had a lot of smart young lawyers who are now practicing in the JAG Corps. This is also at a time when attitudes born of campus life in the 19, early to mid-1960s produced a lot of people who, who were quite independent minded and questioning of the conventional wisdom, and a lot of people who were willing, if not delighted, to mix it up with the powers that be. So we had, we had a lot of these young kids who were very well represented.

MR. COHEN: What kinds of things were they accused of? Disobedience offenses? Deaths, rapes?

MR. SCHUELKE: It ran the gamut, there were a significant number of the peculiarly military offenses like disobedience of lawful orders, there were AWOLS, and desertions, but we tried a lot of garden variety crime. We tried robberies, burglaries, rapes; now and then, of course the Army had exclusive jurisdiction over any offense that was committed on the base, but the local D.A. was happy to have us prosecute somebody who raped some woman in the community, off the base, and so we did a lot of that. I don't remember, the brief time I was there, any murder prosecutions. A lot of that overseas, but I don't remember any in El Paso. But we did, we did the garden variety stuff, including some fairly complicated supply system fraud cases. Which were not terribly dissimilar from a lot of the white collar criminal stuff we've been doing for years.

MR. COHEN: Were there any jury trials?

MR. SCHUELKE: Yes. Yes, there was a before and after, however, with respect to that. In 1968, the Congress passed the Military Justice Act of 1968, which went into effect in October of 1969. For the first time, it required military judges who were not in the same command structure as the convening authority, that is the General who preferred the charges, so they're not within his command and he doesn't review their fitness reports, there's an independent judiciary headquartered here in Washington. Actually it's out in Falls Church, where it's physically located. And so first of all it mandated that there be such an independent judge and that the defendant had the option whether to have a bench trial before the judge or whether to

have a military jury. Therefore all courts martial were by a military jury and the ranking officer who need not even be a lawyer and acted as the presiding officer so you know with, with advice from the prosecution, he'd rule on matters of admissibility of evidence and so on and the military jury would render a verdict and would impose sentence. With the advent of the Military Justice Act of '68, the military judge occupied the position precisely analogous to a federal district judge. The military jury was simply the fact finder under instructions on the law given by the judge. If the defendant had opted for a military jury and if he were found guilty, the military jury would impose a sentence. If he opted for a bench trial the same as you have in the civilian federal system, the judge would make findings of guilt or innocence and impose sentence.

MR. COHEN: Was he incarcerated, this defendant, during this trial?

MR. SCHUEKLE: Sometimes yes, sometimes no...pretty much similar to what you'd find in the civilian system; if he's a flight risk yes, if it's a violent crime and he seems to pose a continuing danger he could be incarcerated. Yes.

MR. COHEN: Yeah but juries, how do juries get selected? Are the juries officers or ...

MR. SCHUEKLE: Yeah well, if the defendant is an enlisted person and wants a jury trial, he's got a right to have one third of the panel enlisted. Otherwise, they're officers and the officers are appointed by the convening authority, the commanding officer of the whatever unit has the authority to prosecute these cases. And you know so one of the...

MR. COHEN: Will there be defense objections to jurors

MR. SCHUEKLE: Yeah, yeah you can you can object for cause much as you can here, no preemptories but for cause. And one of the problems historically was command influence, whether real or by the juror perceived. You're a bird colonel, you are a G3. So you're one of the commanding general's principal staff officers. You work for him. He's appointed you to sit on this court martial jury. You're in with the ranking officer. Well you know what he wants. He would not have preferred this case criminally unless he wanted a conviction in the case and I think, I think that was a significant problem which was likewise significantly ameliorated by the new statute in 1968 because, principally because any defendant had the right not to have any of them at all and try this case before a lawyer who was independently assigned to the judiciary. It became kind of interesting how this played out.

Early on, particularly when I was overseas in Korea and Vietnam, well I should back up so you understand the chronology, I guess. I was in El Paso at Fort Bliss from about June of '68 until February of '69 when I got orders to go overseas and I was initially assigned to the staff Judge Advocate's office in South Korea just south of the DMZ in the Seventh Infantry Division, commanded by another two-star general. My boss, the Staff Judge Advocate was a Lieutenant Colonel—good guy, all the right instincts and intentions but he wasn't the strongest guy you could ever find. Not that I ever saw that play out in a way that worked to the detriment of any of those who were accused in the court martial process.

But just for example, you know, we were all this office and there were maybe 10 of us. We were all 25 or 6 years old and none of us has any interest in the military per se so our hair was too long and you know that sort of thing and he lived in dread that he was somehow gonna be criticized by command structure not only the commanding general but you know his fellows on the staff because, like the medical corps doctors who were all of the same age group and same vintage and...

MR. SCHUEKLE: same mentality and so I, I'll never forget him saying to me one day—the two of us actually. You know we're having a change of command ceremony on Friday; General so-and-so is gonna be coming through here and as he's departing the country, he was the commanding general of the Eighth Army. Three star, four star general so they're all in a tizzy about this and everything has to be perfect. Don't you guys have a case you can try up on the DMZ? They just want to get rid of us you know so nobody would see us and I remember that actually the commanding general of this Seventh Infantry division was a very smart and interesting guy and he would have these staff dinners once a month and each of his principal staff officers was invited to bring one of his junior officers and so I was invited against his better judgment to go to this dinner and I'm sitting and the general is sitting, I'm sitting there and the general's wife is sitting here. The general's wife is this very beautiful French woman. And so all evening over dinner, the three of us are engaged in conversation and the general...

MR. COHEN: The beautiful woman is sitting next to you.

MR. SCHUEKLE: Yeah and the gen, and my boss is like sitting down here. So, out of earshot...

MR. COHEN: The witness just pointed to his left.

MR. SCHUEKLE: Right. He, he's sort of out of earshot but evidently very worried about what's apt to come out of my mouth and the general was actually interested in what I thought about this, that or the other thing so I was perfectly happy to tell him what I thought. But that was kind of the dynamic you know that the poor guy was just scared to death. So, I tried cases there, as a prosecutor, from the time I got there in February until August because the new statute had been passed to be effective in October and they needed judges to comply with the statute as they were reorganizing so they sent me back to Charlottesville for the military judge...

MR. COHEN: You'd been in Korea from...

MR. SCHUEKLE: February 'til August or maybe early September and I came back to Charlottesville to the JAG School for the Military Judge Program. And...

MR. COHEN: We're now in 1969.

MR. SCHUEKLE: '69 and then I went back; now I'm a Military Judge, I'm no longer assigned to any local command, I'm assigned to the U.S. Army Judiciary back here in Washington and rode a circuit. So, I heard cases in Korea, Vietnam, Japan, Okinawa and I did that until the end of my initial overseas tour which was 13 months. So, I was transferred back to the

states in June '70. Is that right? Yeah, I think that's right. June or July of '70. I still had some 18 months remaining on my four year commitment.

MR. COHEN: If you're a judge, is that your sole function you're not prosecuting...

MR. SCHUEKLE: That's it.

MR. COHEN: ...and you're not advising?

MR. SCHUEKLE: No. That's the sole function. When I was overseas because it was the custom and because the judiciary powers that be didn't want to unnecessarily poke fingers in eyes, we wore uniforms but robes over the uniforms. When I was back stateside hearing cases, I didn't wear a uniform. We wore robes, judicial robes. And as you might imagine, this was not easy for some of these old senior military officers. You know you've got some kid I mean when I, when I started hearing cases as a Military Judge, I was I had just turned 25 years old. And so, you know you had some two-star general infantry officer whose been in the Army for 30 years who prefers some charges against some GI that obviously he thinks warrants prosecution and you've got this 25 year old kid who throws it out because of speedy trial issues or, or suppresses the confession or suppresses the fruits of a search and so forth. This was, this was not easy for these guys.

MR. COHEN: You must be 26. Turned twenty-six.

MR. SCHUEKLE: Turned 26 I guess in November. Yeah. Yeah. 25, 26 you know there. And so one should have been sort of sensitive to this and judicious in the way one operated. Well, I'm not sure we all were and even when we were

or I was, cause I was conscious of it, the outcomes that I thought were mandated by the law were not well received. Like for example, I remember I was back in the same Seventh Division in Korea now I'm back as a Military Judge. There was another one of these change of command ceremonies and so for a day or two before the ceremony they're all scurrying around to make sure there's not a scrap of litter anywhere and the grass is all properly mowed and this and that and part of the ceremony was a salute to be fired by a couple of howitzers. So they bring the howitzers down from an artillery unit on the DMZ and they're on the parade ground and they assign, I think there were two, young privates or PFC's on guard duty. They're supposed to be guarding these howitzers. Well, there's nothing whatsoever going on here. There's no conceivable danger that somebody's gonna come and drive away one of these howitzers. Alright, so dawn on the morning of the event, the Chief of Staff, who's the senior most officer under the General, who is a full Colonel and one of his minions is out doing a quick inspection to make sure everything's fine and they come upon this kid who's on guard duty who is asleep in the cab of a two and half ton truck which was hooked up to the 155 millimeter howitzer. So, he's assigned to the artillery unit so one of them calls up to his commanding officer in the artillery unit and gives him a ration of shit about the fact that one of his troops is asleep on guard duty and the guy says well, we'll take care of that. They charge him sleeping on guard duty, which is a criminal offense. Now, it should be a

criminal offense in the right circumstances; if we're in a combat zone and I'm supposed to be on guard duty and you're trying to get a cat nap in your foxhole when the enemy is a hundred yards away, serious business if I'm sleeping on guard duty. But this was sort of silly you know. I don't think that there was overt command influence in this. This, this was the perceived kind of command influenced the guy thought he'd better do this because the muckety muck is the one that reported it to him. So, they go through the whole process, they charge the kid, it's a Special Court Martial so, it's limited in its jurisdiction to six months confinement, reduction in rank and fines and so on and naturally the defense waived a military jury and tried this case before me. Well, I heard the evidence, it technically met the operative legal definition of the offense and I found him guilty. Now, I'm to sentence him. So, I sentenced him to pay a \$100 fine or something like that. Well, you would think that I had just released Charles Manson to the public. Now, did I, did I understand that they wouldn't be happy? Yeah, I guess I did and, and I certainly wasn't intent on poking my finger in anybody's eye but I thought that that was the right thing to do; I thought to lock this kid up was unnecessary, ridiculous. The kid had an unblemished prior record. So, and that led to this interesting phenomenon. Early on, after the new Act went into effect, virtually all of the defense lawyers would advise their clients to waive the military jury, try this case before the military judge. Because they're thinking of cases like that and as that case illustrates, I think they were right, if you're

talking about these peculiarly military offenses. Well, they had a rude awakening when it came to trial on violent crime. Because you know I tried cases in which a guy's charged with aggravated assault because he sliced up one of his fellows with a straight razor and the kid needed 400 stitches or something like that. Well, that kid was going to jail. Whereas a lot of the line military officers had this sort of "boys will be boys" view and it's more important that we put them back to work. So this process took a while for people to understand where the lines are. And so increasingly, when I was trying serious violent crime we'd have military juries as frequently as not. Unless there was some particular dispositive legal defense.

MR. COHEN: So you did preside over jury trials?

MR. SCHUEKLE: Oh, yes.

MR. COHEN: What about the appeals, what kind of appellate process was there

MR. SCHUEKLE: The first step in the process is administrative; the commanding general wouldn't have to necessarily be a commanding general, the commanding officer, it's called a Convening Authority, he is the one that convenes the court martial and he prefers the charges. Has to approve of the sentence and can reduce it. And so that is one step in the process. Then there is a two level appellate process. An independent judiciary here in Washington. The Courts of Military Review which is an intermediate court of appeals. And the Armed Forces Court of Appeals it's now called; when I was in it, it was called the Court of Military Appeals. It is

composed of judges who are not members of the armed services, who are civilians who are appointed by the President and serve for fixed terms. And a pretty good sophisticated court. And a very good appellate bar from JAG Corps. And I think that is true across the services. I mean I am obviously familiar with the Army. But I think that's true in the Navy, the Marine Corp, and the Air force as well. Because all of the services have an appellate function where lawyers are assigned to do the appellate work who are pretty good.

MR. COHEN: We have now been running more than two hours. I propose that we stop and start up again with your U.S. Attorney's Office experience.

MR. SCHUEKLE: Sure.