
MILITARY AND VETERANS COURTS

MILITARY COURTS



by James S. Richardson Sr.

Chief Judge James E. Baker U.S. Court of Appeals for the Armed Forces

Chief Judge James Baker of the U.S. Court of Appeals for the Armed Forces (USCAAF) likes to remark that the best legal training he ever had was serving in the Marine Corps as an infantry officer: “There is a lot of yelling, and at a young age you are given the opportunity to make decisions for which you are held accountable.”

Baker began his “legal training” in the Platoon Leaders Class as a college freshman. He found a recruiting brochure on the floor of the college post office. In fact, the floor was littered with brochures, military service not being the first choice among college students in the 1970s as a career or summer camp option. The program, the Platoon Leader’s Class, has a student enlist in the Marine Corps during undergraduate studies and attend the Officers’ Candidate Screening Course at Marine Corps Base Quantico, Va., in two increments during summer vacation. Upon successful completion of the course and graduation from undergraduate school, the student is then commissioned a second lieutenant in the U.S. Marine Corps.

While Baker had not always planned to join the Marines, his choice of public service was a good fit. Baker, then and now, feels a keen sense of service responsibility and public duty. “Given the good fortune I had to go to a place like Yale, I felt an even greater sense of responsibility to serve. The only question was where. The Marines seemed like the hardest service I could perform.” Baker was also aware of the long tradition of public service, including military service, at Yale. This service symbolically dates to Nathan Hale and extends through the nation’s history. One of the Navy’s first six ROTC units was formed at Yale, which also served as one location for the Army’s Civil Affairs School during World War II. Twenty-seven names are on the Memorial Hall from the Vietnam Conflict alone.

Baker is also quick to point out that service comes in many forms, public and private. As an illustration, he recites the



names of more than 30 clerks who have worked in chambers and, like Bubba Blue describing the preparation of shrimp for Forest Gump, recounts their activities in all four branches of the military, the Peace Corps, the National Security Staff (NSS), the Agency for International Development, the Departments of Homeland Security, Defense, and Justice, state government, the judicial branch, the Congress, and as public defenders and prosecutors.

In Baker’s case, on graduation he reported to the Basic



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School where all Marine Officers—including lawyers—learn the basics of military tactics and life, then on to the Infantry Officer Course. He was subsequently assigned as a rifle platoon leader, weapons platoon leader, and company executive officer. Service as an aide-de-camp to the commanding general at Camp Lejeune followed. Baker resigned his regular commission to join the staff of Sen. Daniel Patrick Moynihan, for whom he had interned in college. Moynihan had served in the administrations of four presidents—two Democratic and two Republican, a fact Baker found appealing and consistent with his own nonpartisan approach to national security. Baker served as a legislative assistant and acting chief of staff until Moynihan encouraged him to attend law school in order to better prepare for a career in government. He returned to New Haven and, while completing his law degree, co-authored a book entitled *Regulating Covert Action* with Professor Michael Reisman. He also stayed in the reserves as an infantry officer. “I grew up in Massachusetts along the route the British took to Lexington and Concord. I liked the idea of being available if needed as an infantry officer,” Baker explained. He stayed in the reserves as an infantry officer until joining the court.

Upon graduation from law school, Chief Judge Baker joined the Office of the Legal Advisor at the State Department, known by the acronym “L.” There he served as a line attorney for the Intelligence, Counterterrorism, and Diplomatic Security bureaus, handled extradition matters, and served as the department’s liaison to the Iran-Contra Independent Counsel. He also spent a year in the Bureau of Oceans, Environment, and Science, serving as legal adviser at a number of treaty negotiations.

After three years at the State Department, Chief Judge Baker was seconded to the President’s Foreign Intelligence Advisory Board and then became deputy legal advisor to the National Security Council. As a career civil servant, he subsequently served as special assistant to the President and legal adviser to the National Security Council. In 1999, he received the Colonel Nelson Drew Award—the NSC’s highest honor, awarded in memory of a respected NSC (now NSS) staff member killed on a peace mission to Bosnia. The award is given for “distinguished contributions to the formation of peaceful cooperative relationships between states, and U.S. security policy for global peace.” In addition, the director of central intelligence presented Baker with the Director’s Award for “superior contributions in the fields of intelligence and National Security.”

In 2000, President Clinton nominated Baker to be a judge on the U.S. Court of Appeals for the Armed Forces (USCAAF). Upon confirmation, he was sworn in as the 18th judge on that court, and became chief judge upon the retirement of then Chief Judge Andrew Effron on Oct. 1, 2011.

As a judge of the USCAAF, Chief Judge Baker has continued to write on the issues of national security. In 2007, he completed his second book on the subject, *In the Common Defense: National Security Law for Perilous Times* (Cambridge University Press, (2007)).¹ He is also the author of numerous book chapters and articles on national security law and process. In addition, he has written about some of his legal role models, like Jack Downey, John Sparks, and

Peter Murphy. These are lawyers who have acted with moral courage and grace when the pressure was on. Baker hopes to encourage others to consider their own role models and how they might guide future conduct.

The Work of the Court

The USCAAF hears appeals of cases arising under the Uniform Code of Military Justice (UCMJ). In the military justice system, the trial court is known as a court-martial; it is presided over by a military judge, a judge advocate designated by the senior lawyer in each service to perform this function. The appeal of right is to a court of criminal appeals (CCA), and each service has a CCA. The CCAs are made up of senior military judges and colonels or, in the case of the Navy, captains. These courts usually sit in panels of three and can both review questions of law and find facts. From the CCAs, appeal can be taken to the USCAAF and, in certain cases, from the USCAAF to the Supreme Court.

The USCAAF is composed of five civilian judges. The Court always sits en banc, as a state Supreme Court might. The judges are nominated by the President, confirmed by the Senate, and appointed by the President to 15-year terms. As Chief Judge Baker notes, the civilian nature of the court is important, as it reflects the constitutional principle of civilian control and oversight of the military. As a result, judges cannot have retired from active duty. Such retirement could present an actual conflict of interest, because the secretary of defense retains authority to recall retired officers to active duty—which in theory he could do or threaten to do if he did not like a decision of the court. As importantly, a young service member might view a bench of retired military officers as a bench of retired military officers, rather than a civilian court.

In this regard, as in others, Baker places emphasis on the theory or reason behind the law and not just the result. As he explains, the military justice system is not well known or understood—it is rarely taught in law school. Therefore, it is all the more important for judges and practitioners to explain what it is they do and why. One can and should debate the merits of a particular legal provision or rule. Healthy debate should be based on knowledge of the law, rather than anecdotal reporting or myth. Such discussion is also an outstanding source of comparative knowledge and insight with regard to federal and state civilian practice.

The court’s docket is composed entirely of criminal cases with sentences of at least one year in confinement and/or a punitive discharge. Because personal jurisdiction under the UCMJ is based on service status, rather than the nature or location of the offense, a servicemember who commits a criminal offense in violation of U.S. federal and state law anywhere in the world is potentially subject to prosecution in the military justice system. Thus, the questions of law that

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—Chief Judge Baker

come before the court are the sorts of questions that might come before any state or federal court hearing criminal appeals and address a range of First, Fourth, Fifth, and Sixth Amendment questions, along with classic matters of criminal law dealing with the elements of offenses and evidentiary rules. Often the questions are whether, how, and why the law should apply differently—or in the same manner—in a military context.

The functioning of the USCAAF is unusual among federal courts of appeal. With the exception of death penalty cases and government appeals,² it is a court of discretionary jurisdiction. An appellant seeks review by “petitioning” the court for a grant of review. The court then determines whether good cause is shown to grant review, which takes a vote of at least two of the five judges. After granting review, the court can order additional briefs and oral argument before reaching a final decision.

For this reason, Baker considers the petition or “gatekeeping” phase of review to be as important as the opinion-writing phase. The petition is the key to the court house. The decision to grant a petition also determines whether or not a particular case is subject to potential Supreme Court review, as Congress has generally limited the Supreme Court’s jurisdiction to cases in which the USCAAF has granted review or relief. That means that for the large majority of cases, USCAAF will constitute the service member’s only civilian court review.

The court’s docket has declined by almost 50 percent during the last decade. This parallels a decline in the number of courts-martial in the Armed Forces generally and a corresponding decline in the number of annual petitions from approximately 2,000 in 2000 to 1,000 today. There are different theories and explanations for this decline, some of which go beyond the absolute incidence of misconduct.

Chief Judge Baker notes that the number of judges on the court is not just addressed to work load. It is also a source of relative stability to the law and thus military practice. Under its former structure with three judges, the retirement or departure of a judge and the appointment of his/her replacement could substantially alter the Court’s jurisprudence on an issue. However the present structure of five judges offers greater continuity, and more opportunity to spot and debate the issues at hand.

Outside the Courtroom

The Judicial Canons encourage judges to participate in extrajudicial law related activities as a means to advance understanding of the law, but also to ensure that judges do not become cloistered from society at large. Chief Judge Baker seeks to do this in two ways. He teaches or has taught national security law at five law schools, including the Georgetown University Law Center, Yale Law School, the University of Iowa College of Law, the University of Pittsburgh School of Law, and Washington University School of Law. He notes that many of his students have gone on to serve as judge advocates, and that one of the joys of serving on the USCAAF is the opportunity to meet and speak with judge advocates. “This is a bar composed of persons who have chosen to ‘uphold and defend’ the Constitution as their

mission. There is no higher calling in the law, and this what they do every day, one-small piece at a time, all of which aggregates into ‘the rule of law’ and a Nation that is both secure in its safety and in its values.”

He also meets with judges and lawyers from different countries, especially and including those engaged in military justice transformation. There tend to be two recurring and historic tensions with military justice: first, how to provide for a just and fair system of adjudication in a hierarchical culture that protects the accused from undue command influence; second, ensuring accountability and good order and discipline within militaries around the world that are not inclined to credibly investigate and prosecute allegations of misconduct.

Different countries and different systems have addressed or are addressing these tensions. Those that do not do so successfully are likely to have change thrust upon them from outside. This is an important source of comparative knowledge and insight for the United States model. One model may not fit all circumstances, especially given the variance in military size, missions, legal heritage and more. It would make little sense, for example, for New Zealand—with a military that may have ten courts-martial a year—to adopt a U.S. model of CCAs and USCAAF geared to address 5,000 courts-martial a year, including many in a deployed context. However, as a general matter, the adoption of the UCMJ in 1950 is a good illustration of how a military justice system can evolve in a timely manner, consistent with the rule of law, and at the same time preserve good order and discipline in an armed force. Whatever the system, it is clear from talking with judges from around the world that the federal judiciary in the United States remains a gold standard against which judicial independence and performance are measured. It is also clear that judicial process can have as much to do with a successful outcome as the substance of the law. The missing ingredient in some systems, for example, is not lack of commitment, but a lack of trained lawyers to exercise that commitment.

During his investiture, Chief Judge Baker summed up his feelings about the Court of Appeals for the Armed Forces as follows:

Law is at its best when it provides a structure where people can go about their business with confidence that they are safe to think freely and safe from physical intrusion. When government law enforcement does interfere, we must be treated fairly and in a manner consistent with democratic values. Our military offers so many people overseas the security and space for law to take hold, and one reason I am excited about this appointment is that I am part of a larger system which so many of you are part of, that gives our service personnel the confidence that as they help others, they too will be treated with respect and justice. ☺

Endnotes

¹Judge Baker’s book, *IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERIOUS TIMES*, was reviewed in the September 2008 issue of *The Federal Lawyer*.

²Review of affirmed capital sentence is mandatory.

Judicial Profile

CMDR. JEFFREY GOOD

Hon. Joseph H. Baum Chief Judge, Coast Guard Court of Criminal Appeals (Ret.)

CHIEF JUDGE JOSEPH H. Baum has been an abiding force in the field of military justice for the past half-century. He recently stepped down as chief judge of the Coast Guard Court of Criminal Appeals, having been the longest serving military appellate judge in U.S. history. He leaves a legacy of achievement that has profoundly shaped the modern era of military justice and helped guide development of military criminal justice into the world-class system it is today.



Chief Judge Baum's record of public service spans 53 years in both the Navy and the Coast Guard. At first blush, Judge Baum would not appear to be a likely candidate to have spent virtually his entire adult life with the sea services. His formative years were spent in the land-locked state of Tennessee. He graduated from high school in Memphis and then attended the University of Chicago under what was known as the "Hutchins Plan."

The Hutchins Plan refers to Robert Maynard Hutchins, the American educator who was the president of the University of Chicago from 1929 to 1945 and chancellor from 1945 to 1951. Hutchins advocated "a course of study consisting of the greatest books of the western world and the arts of reading, writing, thinking, and speaking, together with mathematics, the best ex-

emplar of the processes of human reason." His experience at the university was, as Judge Baum puts it, "a true liberal arts education."

Students under the Hutchins Plan advanced at their own pace. Chief Judge Baum proved to be a quick study and graduated in three years. He then immediately enrolled in law school—also at the University of Chicago. After a year, he transferred to Vanderbilt University Law School in his home state of Tennessee and graduated from that school. One of Judge Baum's law school professors, a reserve officer in naval intelligence, persuaded his student to consider joining the Navy. At the time, the Navy recruiting slogan was "Join the Navy, See the World," which struck Judge Baum as an exciting prospect, having seen little outside the Midwestern United States. So, he applied to Officer Candidate School, although not as a law specialist, as Navy lawyers were known at the time. Instead, Judge Baum joined the Navy as an unrestricted line officer. His first duty was as an ensign onboard the *USS Wisconsin*, where he served as personnel officer. He did, indeed, see the world—with cruises to the Mediterranean, Aegean, and South America. Unfortunately, his tour ended in a shipyard in Bayonne, N.J., where the *USS Wisconsin* was the last of the Iowa Class battleships to be mothballed.

From New Jersey, Judge Baum went to San Diego to serve as an assistant flag secretary and complete his three years of obligated service. Although he had never intended to stay beyond his initial tour, he was enjoying both the Navy and San Diego, so he decided to stick around "for as long as it was fun." He elected to put his law degree to use and applied for a position as a law specialist, the forerunner to today's judge advocate. He was accepted, jumped ahead a rank, and assumed duties as defense counsel, defending naval personnel at special (misdemeanor) and general (felony) courts-martial. He quickly developed a reputation as a fierce and fearless advocate—never losing a contested trial. One of the criticisms of the still nascent Uniform Code of Military Justice, when both prosecutors and defense counsel worked for the same military commander, was that defense counsel who were "too successful" would be quickly reassigned as prosecutors. Whatever the motive, Judge Baum was indeed quickly transferred to prosecution duties, where he handled the most serious cases, including several homicides.

Following his tour of duty in San Diego, he decided it was time to see more of the world and volunteered to serve as staff judge advocate on the world's first nuclear aircraft carrier, the *USS Enterprise*. Not content to sit behind a desk, he volunteered for many additional duties throughout the ship, including duties as junior officer of the deck. In Navy parlance, the officer of the deck is the captain's direct representative on the bridge of a ship with sole responsibility for the safe navigation and operation of the ship during a four-hour watch. The officer of the deck is assisted by the junior officer of the deck (JOOD). Although unusual for a lawyer, Judge Baum was able to qualify for this position because of his prior experience as a line officer onboard the *USS Wisconsin*.

Judge Baum proved his mettle as JOOD one moonless night in October 1962 when the *Enterprise* and a supporting cast of warships were called upon to enforce the naval blockade of Cuba. The *Enterprise* was steaming in tight formation under darkened conditions, meaning none of the ships displayed navigation lights. As the *Enterprise* maneuvered into the wind to launch aircraft, a ship that had been assigned as plane guard unknowingly turned into the path of the 90,000-ton ship. Judge Baum, who had been monitoring the radar, raised the alarm, and disaster was averted. Shortly thereafter, Capt. Vincent DePoix qualified Judge Baum as underway officer of the deck—an extraordinary accomplishment for a staff officer.

From the *USS Enterprise*, Judge Baum went back to shore duty at the Charleston Naval Base, where he met his wife, Hope. They had a son, Daniel, named after Judge Baum's great grandfather, who had been a private in the Confederate Army from Mississippi. From Charleston, Judge Baum and his family—including Hope's three children from a previous marriage, Beth, Rick, and Patricia—moved to Atsugi, Japan, where he served as staff judge advocate to the commander of Fleet Air, Western Pacific. In that capacity, Judge Baum was called in as counsel in the investigations of two horrific fires onboard aircraft carriers that were conducting combat operations in the vicinity of Vietnam—the *USS Forrestal* and the *USS Oriskany*.

On the morning of Oct. 27, 1966, the *Oriskany* was on station when a magnesium parachute flare exploded in a flare locker under the flight deck. The fire raced through five decks, killing 44 men. Many who lost their lives were veteran combat pilots who had flown raids over Vietnam a few hours earlier. Just eight months later, on board the *USS Forrestal* in the Gulf of Tonkin, a rocket accidentally fired from an F-4 Phantom parked on the flight deck and streaked across the deck into a 400-gallon belly fuel tank on the A-4D Skyhawk, an aircraft piloted by Lt. Cmdr. John McCain that was preparing for launch. The ruptured tank spewed highly flammable JP-5 fuel onto



Then-Lt. Cmdr. Joseph Baum on the bridge of the *USS Enterprise* with Capt. Vincent P. DePoix.

the deck. Spread by the wind, the flames engulfed the aft end of the stricken ship, turning the flight deck into a blazing inferno and killing 134 men. Judge Baum skillfully guided the investigations of both these cases. The report from the *Forrestal* fire led to Navy-wide changes in damage control practices, training, and equipment.

From Japan, Judge Baum and his family moved to Washington, D.C., where he served first as deputy and later as chief of the Navy's Criminal Law Department. His tenure was marked by several extraordinary innovations. Military justice is one of those rare areas in which the President has direct rulemaking authority. Judge Baum conceived the idea of having a formalized system of annually reviewing the Uniform Code of Military Justice as well as the *Manual for Courts-Martial*, which is promulgated by executive order and sets forth the Rules for Courts-Martial, Military Rules of Evidence, and other procedural matters. The judge's idea for a Joint Service Committee on Military Justice was ultimately adopted by the other services and the secretary of defense, and Chief Judge Baum was appointed as the first chair of that committee, presiding over its very first meeting in 1974. The Joint Service Committee continues to this day as an essential tool used by the President and Congress to fulfill their responsibilities in administering military justice.

In addition, Chief Judge Baum almost single-handedly preserved summary courts-martial as an effective tool of military discipline. A "summary" court is the lowest level of court-martial and does not have many of the rights that would attach to a criminal proceeding. An accused must consent to a trial by summary court-martial. In return, the potential punishment is limited (a maximum of 30 days of confinement). In 1972, the U.S. Supreme Court ruled that the Sixth Amendment

requires defense counsel in all criminal proceedings where confinement is a possible punishment, which arguably would include summary courts-martial. The Air Force and the Army began providing defense counsel in summary courts, which, of course, fundamentally altered the nature of the proceeding—making them considerably less “summary” in nature. Chief Judge Baum developed the theory that a summary court is not a criminal proceeding within the meaning of the Sixth Amendment, notwithstanding the possibility of confinement. The Navy therefore refused to provide counsel for summary courts, which unsurprisingly led to a class action suit against the secretary of the Navy. The case made its way to the U.S. Supreme Court, where Justice Rehnquist, writing for the majority, reached precisely the same conclusion as Chief Judge Baum had advanced: counsel is not required at a summary court-martial. Chief Judge Baum’s strategy therefore preserved summary courts as originally established by Congress and the President.

But Chief Judge Baum’s later accomplishments in the Navy were not limited to grand policy initiatives. He also proved that he still knew his way around the inside of a courtroom. On the evening of Nov. 22, 1975, a task force consisting of the aircraft carrier *USS John F. Kennedy* and a number of other ships, including the *USS Belknap*, were steaming in the Ionian Sea. As the carrier maneuvered into position to launch aircraft, the officer of the deck on the *Belknap* made a series of miscalculations that placed the *Belknap* directly in the path of the aircraft carrier. Recognizing his predicament, the officer of the deck summoned the commanding officer to the bridge, but by that time the ship was already in extremis. The two ships passed close together and the overhang of the *Kennedy*’s flight deck sheared off part of the superstructure of the *Belknap*, while spilling aviation fuel over the ship from a ruptured pipeline. The ensuing fire claimed the lives of eight sailors and injured another 48.

Based on the principle that a commander at sea bears absolute responsibility for the ship and her crew, a formal investigation concluded that the *Belknap*’s captain was responsible for the collision, even though he could not have prevented the disaster by the time he was called to the bridge. The commander in chief of the U.S. Atlantic Fleet referred charges against the commanding officer to a general court-martial. The commanding officer invoked a right provided to military accused known as “individual military counsel,” where an accused can request a military defense counsel by name. Based on Judge Baum’s almost legendary reputation, the commanding officer wisely requested then Capt. Joseph Baum. Although conventional wisdom assumed the result of the court-martial to be foregone, Capt. Baum put up a vigorous defense, getting three of four charges dismissed on motions. On the merits of the one remaining charge, Captain Baum meticulously cross-examined 18 government witnesses over the course of several days. At

the conclusion of the government’s case in chief, the military judge granted the defense’s motion for a finding of not guilty.

The result of the court-martial led to an uproar of criticism claiming that the military judge and the military justice system had eroded traditional notions of absolute command accountability. The chief of naval operations, Adm. J. L. Holloway, issued a lengthy statement to all flag officers and all commanding officers in the Navy to address the court-martial and the criticism that followed. Adm. Holloway charged that the criticism revealed “a serious misunderstanding of the role of military justice in the naval service.” This statement was, in effect, a defining moment in the evolution of military justice—from solely a commander’s tool for discipline to a true system of justice. It was an implicit acknowledgment that military justice, particularly the concept of an independent judiciary, had reached a certain maturity. To this day, a summary of the *Belknap* incident and ensuing court-martial, along with Adm. Holloway’s memorandum, are required reading for all prospective commanding officers in the Navy.

Chief Judge Baum’s record of historic achievement continued after he retired from the Navy and joined, so to speak, the Coast Guard. Virtually the first case waiting in Judge Baum’s in-box upon assuming duties as chief judge of the Coast Guard Court of Military Review was an interlocutory appeal by the government in the case of Yeoman 1st Class Richard Solorio. Solorio was an enlisted member of the Coast Guard in Alaska who was accused of sexually abusing the dependent daughters of several fellow Coast Guard members. The military judge had dismissed charges against Petty Officer Solorio on the basis that there was no “service connection” between the alleged offenses and the accused’s military service, as required by the Supreme Court’s 1969 ruling in *O’Callaban v. Parker*.

Chief Judge Baum immediately recognized the potential significance of the case. *O’Callaban* had been problematic from the start. Historically, courts-martial jurisdiction was conferred by the military status of the accused, not by the nature of the offense. In *O’Callaban*, however, the Supreme Court reversed that tradition and held that courts-martial could try only offenses that bore a service connection. The ensuing years saw seemingly endless litigation over what constituted a service connection. Solorio presented an ideal opportunity to revisit *O’Callaban*.

In an opinion written by Chief Judge Baum, the Coast Guard Court of Military Review reversed the military judge and reinstated the charges, thereby teeing the case up for further review. The Court of Military Appeals affirmed the decision, and the U.S. Supreme Court granted certiorari—the first military case ever to be heard on direct appeal. The U.S. Supreme Court likewise affirmed the Coast Guard Court and overruled *O’Callaban*, in what is likely one of the

most significant military cases of the 20th century.

Chief Judge Baum also took a principled stand in an unusual 1988 case, in which his sister court, the Navy-Marine Corps Court of Military Review, sought a writ against the secretary of defense and judge advocate general of the Navy. The judge advocate general, the senior uniformed lawyer of the Navy, had ordered the chief judge of the Navy-Marine Corps Court to assemble the court's commissioners the following morning to be questioned by agents of the Department of Defense Inspector General's Office. Ostensibly, this order was in response to a complaint that improper influence had been exerted against the judges in connection with the review of a high-profile and contentious appeal involving a Navy heart surgeon who had been convicted of manslaughter and negligent homicide. Others, however, viewed the action as a thinly disguised assault on the military judges following their reversal of the convictions.

The chief judge of the Navy court telephoned Chief Judge Robinson O. Everett of the Court of Military Appeals, the nation's highest military court, late in the afternoon and asked, "What time will the court be open for business in the morning?" Judge Everett recounts that he was "intrigued" with the question and pressed the Navy judge for details. The court promptly issued a stay the following morning. The extraordinary nature of the events is highlighted by Chief Judge Everett's wry subsequent comment that "I happened to have business in the vicinity of the Navy Yard that morning, so I decided to personally deliver the stay to the Judge Advocate General." A hearing was scheduled for 10 days later. Chief Judge Baum, on behalf of the Coast Guard Court of Military Review, submitted an influential amicus brief, despite the seeming lack of precedent or authority for a court to participate in a case as amicus. According to Judge Baum, "We couldn't find any authority for doing it, but I thought it was important, so I just submitted it." The Court of Military Appeals accepted the brief and cited it in its decision enjoining the inspector general from questioning court personnel. The court also appointed a special master from its own bench to investigate the allegations, which proved to be unfounded. The decision stands today as a watershed event upholding the independence of military judges from improper interference by executive branch officials.

Chief Judge Baum's jurisprudence has been characterized by an extraordinary dedication to the rule of law and the men and women of the Armed Forces. He describes the military justice system as "the finest criminal justice system in the country," with rights beyond that afforded by most other jurisdictions. But, the judge notes that "the system only works if there are judges and courts willing to enforce the rules." He is particularly protective of servicemembers' rights and demands strict adherence to the rules of courts-martial. "I've never been keen on harmless error. If there's an egregious error, judges should do something about

it—if courts don't enforce the rules, there's no incentive to follow them," he says.

As an Article I court with broad de novo authority to review factual and legal determinations of courts-martial, Chief Judge Baum has not been shy about taking the government to task for anything less than scrupulous adherence to the letter and spirit of the law. For example, the U.S. Court of Military Appeals cited him as "the most outspoken critic" of plea-bargaining practice in the military, a criticism that the court considered well-founded and one that led to extensive changes in practice. Senior Judge Everett, who was chief judge of the Court of Military Appeals during a portion of Chief Judge Baum's tenure, states that the chief judge "displayed tremendous talent on the bench."

Chief Judge Baum also leaves a legacy of volunteer activities. He has been a member of the Federal Bar Association since 1971, serving in several leadership positions. He is past chair of the Judiciary Division and past chair of the Military Justice Committee. He also served six consecutive three-year terms on the Rules Advisory Committee for the Court of Appeals for the Armed Forces, making him the longest serving member in the court's history. In July 2006, the FBA's D.C. Chapter presented Chief Judge Baum the Justice Tom C. Clark Award for outstanding federal service.

Throughout his career, Chief Judge Baum has demonstrated unwavering commitment to the rule of law, to the men and women of the Armed Forces, and to the nation. He has dedicated his life to serving his country and others. He is a leader in our community, an accomplished jurist, a mentor, and a patriot. **TFL**

Cmdr. Jeffrey C. Good currently serves as chief of the Coast Guard Office of Military Justice at Coast Guard Headquarters in Washington, D.C. He practiced before Chief Judge Baum as both appellate defense counsel and appellate government counsel. He is the immediate past president of the FBA Pentagon Chapter and president-elect of the Judge Advocates Association. © 2007 Cmdr. Jeffrey C. Good. All rights reserved.

Judicial Profile

MAJ. DEBORAH L. HOUCHINS

Hon. Thomas Cumbie U.S. Circuit Judge, U.S. Air Force

WE LIVE IN unpredictable times. The events of 9/11 materially changed the outlook of millions of Americans—military and civilian alike. That is the perspective that Col. Thomas Cumbie brings to the bench as a circuit judge hearing cases across the U.S. Air Force.

On Choosing Military Service

Judge Cumbie was born in Gainesville, Fla. He graduated from Florida State University in 1979 with a Bachelors of Arts in criminology. He received his Juris Doctor degree from the Florida State University College of Law in 1982.

Even though his father had served in Korea, Judge Cumbie's family did not boast a long connection with military service. In fact, it was only out of fascination with the mechanics of the military that he spoke to a friend in law school about his own military service and his excess-leave program status (which allows an individual to attend law school while still serving in the military). Judge Cumbie graduated from law school, was married, and began his legal career drafting state legislation in Florida.

During his early years, it occurred to him that trial work was where he wanted to focus his practice; it was an opportunity that was not readily available to him while he was drafting legislation. One day, his father-in-law, a retired fighter pilot, mentioned to Judge Cumbie that there were vast opportunities available to an individual serving in the military, particularly as a member of the Air Force. Judge Cumbie agreed to talk to a recruiter, and he has not looked back since.

By virtue of the Direct Accession Program—a vehicle for bringing civilian lawyers into military service—Judge Cumbie was commissioned as a first lieutenant in August 1985 and began active duty that same year. The Air Force Judge Advocate General's (JAG) Corps placed him at Fort Walton Beach, Fla. (Hurlburt Field), as a brand new assistant staff judge advocate (the functional equivalent of an associate in a law firm). Military lawyers are considered true generalists, and Judge Cumbie's initial placement was no different. A drafter looking for an opportunity to do trial work, Judge Cumbie was assigned as chief of civil law (most akin to civilian practice working on matters of domestic rela-



tions, employment, contracts, and administrative law). He flourished in this position, which he credits to the staff judge advocate and deputy staff judge advocate with whom he worked (much like senior partners in a law firm). These military attorneys themselves had had previous military careers before joining the JAG Corps, and they helped him transition from his civilian mind-set to a more military perspective. The result of their influence was that just one year after joining the Air Force, Judge Cumbie was reassigned to serve as the area defense counsel (much like a public defender)—a position that is reserved for more senior attorneys.

In military service, it is not uncommon for attorneys to move between areas of law and to change offices and locations frequently. In 1988, Judge Cumbie moved from being an area defense counsel in Florida to a position as circuit (or senior) defense counsel working out of Travis Air Force Base in California. The position of circuit defense counsel is extremely labor intensive, and Judge Cumbie's experience was no different. He averaged 200-plus days on the road that year, defending cases out of other attorneys' offices; he was so busy

that he managed to get home for the birth of his first child only a couple of days before the event, then left for another 19-plus days on the road.

The Air Force JAG Corps has an intricate system of management for its attorneys. Young attorneys are placed at bases or offices throughout the world—a long way away from where the organization’s senior leadership operates in Washington, D.C. Therefore, midlevel “partners” in the form of staff judge advocates and deputy staff judge advocates act as the senior leadership for the legal mission at the local level. Judge Cumbie’s next position was as a deputy staff judge advocate at Charleston Air Force Base, but even in this leadership position, Judge Cumbie was never far from the courtroom. In just two and one-half years his office tackled 53 criminal cases; Judge Cumbie tried or trained other trial attorneys for 52 of those cases.

The Air Force, like any other government organization, is no stranger to change. In 1993, the Air Force converted its structure to a new collection of major commands and numbered air forces to manage the infrastructure. Judge Cumbie’s sabbatical from the courtroom included his “next stop” at the numbered air force level, where he helped the Second Air Force (2AF) legal office provide seamless legal support while the major commands converted from Air Training Command to Air Education and Training Command, the system that exists today. Judge Cumbie spent two years ensuring a smooth legal transition for these projects.

Certain that he was never again going to see the inside of the courtroom as a major player in the arena of military criminal law, Judge Cumbie next pursued a professional military education (a career-making step for Air Force officers moving to a leadership position, which includes lawyers). After completing the year-long course of study, he moved to the position of staff judge advocate at Laughlin Air Force Base in Texas. He thought that surely this much time out of the courtroom meant he was done as a trial lawyer.

Then Col. Mike McShane asked Cumbie for identifying information and determined that Cumbie was too senior for trial work. McShane told Cumbie that, “if you can’t play in the game, refereeing is the next best thing” and submitted him for his first military judgeship. And Lt. Col. Cumbie assumed the new title of “Judge.”

The Uniqueness of the Judge Advocate General’s Corps’ Judiciary

Since becoming a military judge in the late 1990s, Judge Cumbie has served on the bench two separate times for a total of eight years. In the early 2000s, he briefly returned to management as a staff judge advocate at the second largest legal office under the control of an officer of his rank—only to find himself at the center of ensuring that the legal needs of the first round of departing soldiers were met in the wake of the 9/11 attacks. An eager servant of the people but still driven by his love for trial work, Judge Cumbie was able to limit his time away from the bench to that one tour at

Davis-Monthan Air Force Base in Arizona. He returned to the bench in 2003 and has stayed there ever since.

In the Air Force, serving as a military judge is not necessarily the optimal position for military promotion. It is an appointed, rather than elected, position and is assigned based on skill and ability as well as the needs of the service. Many military judges consider themselves lucky if they receive a single appointment to the bench and later return to the management of the service. In Judge Cumbie’s case, two appointments (and incumbency until retirement) speak volumes about his service on the bench. As if that were not enough to say about a long military career blessed with years of trial advocacy work, Judge Cumbie was also selected as chief judge of the Air Force’s Atlantic Region. His reputation clearly precedes him.

Why then did he choose a path that took him from promotions and leadership responsibilities to a lifestyle requiring countless trips around the circuit and hours of preparation for singularly important days of reckoning for those seeking truth and justice from the bench? The answer for Judge Cumbie is threefold.

First, military cases often take longer to try than civilian cases do. Even to plead guilty, the providency hearing (what must be proved before an Air Force judge may formally accept a guilty plea) may take longer than some litigated civilian trials. It has always been Judge Cumbie’s clear intent to ensure that the inherent fairness that comes with a system that demands that degree of proof prior to determining guilt is protected. And he feels that he can best achieve that goal from the bench.

Second, one of the best opportunities a judge has is to help develop the next generation of trial attorneys who will operate in that system. In the Air Force, after a trial, each appearing attorney has the opportunity to receive feedback from the bench about his or her performance in court. Young attorneys relish this feedback because it provides the best opportunity to hear a senior attorney and officer tell them how to accomplish their assigned mission better. And, according to Judge Cumbie, these mentoring sessions provide that chance to leave a lasting effect on the future of the system that he looks forward to serving every day.

Finally, Judge Cumbie keeps coming back day after day because the courtroom provides him something new every time. In his opinion, when he finds the issues before him are new—even after eight years on the bench—then that tells him he has not grown older than the concepts he serves. And it’s not just the issues involved in the cases, even though in the Air Force the matters before the court range from criminal matters (like theft, sexual assault, or even murder) to matters that are related to the military (like desertion and conduct unbecoming an officer). The opportunity to work with military juries provides something new to the courtroom as well, which is a plus for a senior criminal advocate with more than 500 cases to his name. In the Air Force, juries arguably represent the

defendant's peer group more closely, whereas in the civilian world, one might argue that a jury more closely represents society as a whole. A standard member of an Air Force jury usually has a college education and often has a graduate degree, such as a master's degree, and has certainly held a position of trust at the request of the agency, probably the equivalent in scope and monetary value to a trusted position in a large corporation. Without a doubt, every member of a military jury has had to receive and follow an order given by a superior officer, whether or not they agreed with that order or wanted to follow it. A judge's instructions to the jury are the equivalent of military orders, and the strict construction and adherence to them by jury members places the judge in a position where he or she can focus on matters of law rather than jury administration.

In general, focusing on matters of law is arguably the best part of a judge's job. In a system where the judge, the prosecution, and the defense are all paid by the same agency that is questioning the actions of the accused, some might say the system is skewed. But the Air Force military justice system and the JAG Corps in general pride themselves on the fact that justice is at the core of what they do. Judicial freedom is alive and well in the military justice system, and the best defense possible underlies each and every trial. In fact, the trial advocacy system in the Air Force is so separate and apart from the experiences of its participants that attorneys and judges can operate in the courtroom without fear that outcomes will be tied to their ability to be promoted. To Judge Cumbie, that

aspect equates to more time to support the system and the ability for whoever stands before him to get the best defense and the fairest trial possible en route to seeing that actual justice is served, and less time worrying about the politics that sometimes coincide with the execution of judicial activity.

The Culmination of a Distinguished Career

Col. Thomas Cumbie has faithfully served the U.S. Air Force since 1985—the better part of 23 years. An accomplished trial advocate, proven leader, and distinguished judge, Judge Cumbie will “soldier on” as long as he can positively serve the bench. What then? This legal mind—who has seen some of the most recent complex criminal cases found in the Air Force, who has led people, and who has prepared members of the Air Force for both good times and bad during the most significant events in military history since Vietnam—will finally get an opportunity to relax. **TFL**

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Judicial Remembrance

ELEANOR MAGERS VUONO

Hon. Robinson O. Everett Senior Judge, U.S. Court of Appeals for the Armed Forces

ON JUNE 12, 2009, Judge Robinson O. Everett died peacefully in his sleep at the age of 81. He was one of the nation's most respected experts on military justice and one of the longest serving law professors at Duke University, where he served on the faculty for more than 50 years. He remained active as a senior judge on the Court of Appeals for the Armed Forces and was preparing for oral arguments the week he died. Friends, colleagues, students, and members of the bar recall him as a generous, gregarious, and brilliant scholar. He was a fair and impartial judge, a beloved professor, and a mentor and friend to many.



It may have been fated that Judge Everett would become a lawyer. As the only child of two successful North Carolina attorneys, he was raised with a commitment to public service, along with his parents' example of hard work and professionalism. His mother, Kathrine Robinson Everett, was a pioneer for women in the legal profession. After the University of Virginia refused to admit her because she was a woman, she graduated first in her law class from the University of North Carolina in 1920—the same year that women won the right to vote. She argued—and won—her first case before the North Carolina Supreme Court only three months after graduating from law school. Judge Everett's mother practiced law until she was 97 years old.

Judge Everett fully expected that he would return to North Carolina after graduating from Harvard University Law School in 1950; he intended to join his parents' law practice. However, as is often the case, life had a way of interfering with Judge Everett's best laid plans. On his graduation day, North Korea invaded South Korea, and military service suddenly became a distinct possibility. "I was of draft age," Judge Everett recalled in an interview with this author shortly before his death. "My first concern was passing the bar exam, but on the second day of the exam, I saw in the newspaper that draft notices had been mailed.

I wanted to enter the JAG [Judge Advocate General] reserve program so my mother found an Air Force recruiter to swear me in during the exam lunch break."

Judge Everett enlisted in the Air Force and simultaneously applied to the Air Force JAG. Again, in one of those strange twists of fate, Paul W. Brosman, who later would serve as a judge on the U.S. Court of Military Appeals (now the U.S. Court of Appeals for the Armed Forces) was responsible for processing Judge Everett's JAG application. After being sworn in as a first lieutenant in the Air Force in April 1951, Judge Everett reported for a two-year tour of duty in Amarillo, Texas.

Just before his tour of duty ended in summer 1953, Judge Everett found opportunity in another accident of timing. He was on a one-week leave from the military in preparation for his intended return to civilian law practice in Durham, N.C., when a friend convinced him to travel to Washington, D.C., to attend the funeral of Sen. Robert Taft. While in Washington, Judge Everett arranged to be admitted to practice before the newly created Court of Military Appeals. The swearing-in procedure was an informal affair held in the chambers of one of the three new judges, Judge Paul W. Brosman. After the ceremony, Judge Brosman asked young Robbie Everett if he would like to serve as his commissioner at the court instead of returning

to North Carolina. When Judge Everett asked the clerk of the court to describe the position, the clerk explained that a commissioner was like being between a major and a colonel, which, Judge Everett laughingly recalled, “sounded like a big promotion to me.” Judge Everett took the job and spent the next two years as Judge Brosman’s senior staff attorney.

Judge Everett eventually returned to Durham in fall 1955. He taught at Duke University Law School and practiced law with his parents. Working under the name Everett, Everett and Everett, Judge Everett liked to refer to the firm as “Mother, Dad and Me.” The family made history together when all three Everetts were sworn into the Bar of the U.S. Supreme Court on the same day. Judge Everett later returned to the U.S. Supreme Court, arguing—and winning—the landmark racial gerrymandering case *Shaw v. Reno*, a case that involved congressional redistricting in North Carolina.

In the 1960s, Judge Everett became fully engaged in his lifelong work on the subject of military justice and the protection of the rights of service members. As was so often the case in his life, a combination of prescience and personal contacts brought him to the U.S. Senate Judiciary Committee’s Subcommittee on Constitutional Rights, chaired by Sen. Sam Ervin (D-N.C.). Judge Everett knew Sen. Ervin through his North Carolina roots—he had dated the senator’s daughter on occasion and knew the senator’s son at Harvard Law School. After overhearing a joke at a dinner party about the need to investigate the constitutional rights of service members, Judge Everett later suggested this in earnest to Sen. Ervin. The senator took the young Duke law professor seriously, appointing Everett as assistant counsel to the Subcommittee on Constitutional Rights, on which Everett served from 1961 until 1964.

At that time, the concept of military justice was an evolving one. The experience of World War II had introduced millions of young Americans to rules based on 18th- and 19th-century military penal codes. Until the creation of the Uniform Code of Military Justice (UCMJ) in 1950, service members accused of crimes often faced trials without lawyers or judges. Judicial review of courts-martial was rare. The new code was a major step forward and reflected the need for a modern code that would cover all the armed services—Army, Navy, Marine Corps, Air Force, and Coast Guard. The Subcommittee on Constitutional Rights continued the process of reform and improvement to the UCMJ, conducting extensive hearings and preparing detailed reports on the constitutional rights of military personnel with respect to military justice.

Judge Everett brought his experience as an Air Force judge advocate to his work on the subcommittee. He passionately believed in the concept of fairness for the individual. He also understood the great power exercised by commanders in the military justice system, and he recognized the need in those years for

significant reforms to that system. As Congress sought to balance the military’s need for good order and discipline with the rights of service members accused of a crime, Judge Everett provided a steady, experienced hand for the subcommittee examining this issue. The subcommittee conducted hearings into the issue of unlawful command influence; investigated the treatment of African-American soldiers stationed at Southern military installations; heard testimony about the creation of a civilian oversight court; and considered the rights of service members, dependents, and civilians accused of crimes while stationed overseas.

Judge Everett’s work in the Senate contributed to the historic passage of the Military Justice Act of 1968—the first major amendment to the Uniform Code of Military Justice since its creation in 1950. The new law brought about significant improvements for service members under the UCMJ, expanding the concept of fairness by establishing the modern military judiciary. The new law authorized a military judge at general and special courts-martial, expanded the right to free military counsel at various levels of courts-martial, and created intermediate appellate courts with appointed judges. In an interview earlier this year, Judge Everett recalled how both political parties worked together in a bipartisan fashion to bring about the passage of the Military Justice Act of 1968. He remarked at the absence of controversy attending passage of the bill, surmising that in the 1960s the Senate was a more congenial place than it is today, and the media played less of a role during legislative deliberations in those days.

In 1980, President Jimmy Carter appointed Judge Everett to serve as chief judge of the U.S. Court of Military Appeals. “The court was in need of leadership when Judge Everett arrived,” recalled Scott Silliman, executive director of the Center on Law, Ethics and National Security at Duke University School of Law. “He made it his mission to raise the stature of the court and improve the administration of justice. He worked hard to renew favorable relationships with the service JAGs and he brought management to the court.”

In particular, Judge Everett worked tirelessly to educate the public about the military justice system and the role of the court. He firmly believed that a better understanding of military justice would inspire greater confidence in the system. He knew that the court was not well-understood outside of military circles, as he was reminded one day in a conversation with the U.S. solicitor general. The two men were at a luncheon when Judge Everett mentioned that he would like to attend the Supreme Court argument in the case of *Solorio v. United States*, 483 U.S. 435 (1987). Judge Everett had written the opinion when the case was before the Court of Military Appeals. The solicitor general told Judge Everett that he was always welcome at the Supreme Court and to “please wear your uniform.” In fact, the civilian judges at the court wear the same

black robes as federal judges everywhere.

Judge Everett was very proud of the military justice system and sought every opportunity to highlight the business of the Court of Appeals for the Armed Forces. Under his leadership, the court began Project Outreach, which involved judges traveling to law schools across the country for oral arguments throughout the year. The court conducted oral arguments on aircraft carriers on two occasions, which allowed the sailors serving onboard to observe the court at work. Judge Everett received many invitations to speak at conferences and legal functions because of his warm, engaging personality and his natural affinity for people. He loved playing the role of chief spokesperson for the court, and he invited everyone he met on those trips to visit the court. Many people accepted these offers, including a young private who arrived at the security desk one day and asked to speak with the chief judge; she had been his driver at a military installation he had visited. Judge Everett was delighted to give the soldier a tour of the historic courthouse and take her to lunch with his staff. He relished every opportunity to connect with people like the young driver and to share the workings of the court.

Judge Everett passionately loved his work at the court, and he was particularly suited to the demands of the job. He had a brilliant mind and an incredible ability to retain and recall the details of each case he heard. Former FBA President Bob Mueller, who was Judge Everett's commissioner for 12 years, recalled how focused he was on each case that came before him: "Despite the thousands of petitions that required Judge Everett's attention, nothing received a cursory review. He was thorough with each case, and he would engage counsel during oral argument about specific details from the record of trial. He could assimilate volumes of information and he never forgot anything, whether in a conversation or a passage from a brief."

Judge Walter T. Cox III, a senior judge at the court, recalls that "Judge Everett was a scholar who wanted to see a trial done properly. If he saw an error, he was inclined to return the case so that it could be tried again. He was not soft on crime, but he felt strongly about the integrity of the system. Judge Everett was also very supportive of the military judges. He worked hard to increase the stature of military judges and he was very protective of their independence."

Brig. Gen. (Ret.) John S. Cooke, deputy director of the Federal Judicial Center, explained how the court's decisions during Judge Everett's tenure contributed to the development of the military justice system. "In five significant areas, Judge Everett authored opinions that brought clarity to the court's jurisprudence: (1) the scope of courts-martial jurisdiction, (2) the limits of search and seizure, (3) the right against self-incrimination, (4) extraordinary writs, and (5) the issue of



Photos courtesy of Duke Law School.

unlawful command influence."

With respect to the first issue, courts-martial jurisdiction once depended on a "service connection test," whereby crimes committed by military members had to relate to their military service. During Judge Everett's early years as chief judge, the court expanded that jurisdictional concept by finding a "service connection" in cases where service members committed crimes outside of a military installation. These opinions led to the landmark Supreme Court ruling in *Solorio*, in which the Court held that the jurisdiction of a court-martial depends solely on the status of the accused as a member of the armed forces, thereby overruling the old "service connection" test.

"In the areas of search and seizure and the right against self-incrimination, the Court of Appeals for the Armed Forces grounded its opinions in constitutional doctrine and opened the door to the military's urinalysis programs," according to Cooke. "Judge Everett also was very open to using the court's power and supervisory authority under the All Writs Act. *United States Navy-Marine Corps Court of Military Review v. Carlucci*, 26 M.J. 328 (1988) was a significant case in which the Court asserted the independence and integrity of its military judges against efforts by the Department of Defense to investigate allegations of judicial misconduct involving a lower court."

Finally, Judge Everett wrote the seminal opinion in *United States v. Thomas*, 22 M.J. 388 (1988), in which the court addressed allegations of a military commander's attempt to influence the outcome of a court-martial. On the subject of unlawful command influence, Judge Everett wrote the following: "Command influence is the mortal enemy of military jus-

tice. ... One of the most sacred duties of a commander is to administer fairly the military justice system for those under his command.”

After 12 years of active service on the court, Judge Everett took senior status and returned to North Carolina, where he founded the Center on Law, Ethics and National Security at Duke Law School, which is funded by a trust established in his mother’s will. The center offers seminars and sponsors conferences, which bring together policy-makers, scholars, and practitioners to focus on national security law and policy issues.

Throughout his long career, Judge Everett made support for bar activities a priority. He liked to tell the story about how his parents first met in 1924 as they embarked on the *S.S. Laconia* on its journey to London for the annual meeting of the American Bar Association. He recalled the emphasis his parents had placed on bar participation, taking him to the annual meetings of the American Law Institute in Washington, D.C., every year when he was a child. Judge Everett loved to host bar events at the court and he sat on numerous

committees for the Federal Bar Association, the American Bar Association, and the North Carolina Bar Association. Several years ago, when Judge Everett received the North Carolina Bar Association’s highest award, the former president of the North Carolina Bar Association, Norfleet Pruden, explained that the acid test for the award was whether, when the name of the recipient was announced, everyone’s reaction was, “Oh, but of course!” Judge Everett, as an educator, judge, public servant, bar leader, and private practitioner, surpassed that test.

Judge Everett’s legacy is strong. His big smile, warm laughter, and booming voice will be missed, but his example lives on in the lives he touched. **TFL**

Eleanor Magers Vuono served as a captain in the U.S. Army Judge Advocate General’s Corps until 2001 and was a law clerk in the chambers of Judge Andrew Effron, chief judge of the U.S. Court of Appeals for the Armed Forces, from 2006 to 2008.

VETERANS COURTS

Judicial Profile

JEFFREY C. GOOD

Chief Judge William P. Greene Jr. U.S. Court of Appeals for Veterans Claims

CHIEF JUDGE WILLIAM P. GREENE JR. grew up in Bluefield, a small coal town nestled in a broad valley in the southern Appalachian mountain range of West Virginia. The 1940s was an era of Jim Crow, with almost total segregation between the white and black communities in Bluefield. The only occasions on which he ventured into a white community were when he accompanied his grandparents or parents as they cooked, cleaned, gardened, or performed other domestic chores for white townspeople.

Chief Judge Greene learned the value of hard work from his grandparents, parents, and others in the tight-knit black community. His grandfather, once a school-teacher, worked on the rail cars that hauled rich bituminous coal from the region's many coal mines. Chief Judge Greene's grandmother worked as domestic help in the home of a white family. His father worked on the railroads while pursuing a degree in music and English from Bluefield State College, an institution originally founded in 1895 as the Bluefield Colored Institute to train African-American teachers for the country's segregated schools. After earning his degree, the judge's father worked as a high school teacher; but on nights and weekends he worked at many other jobs, including jobs at a local newspaper, as a gardener, as a musician, and as a facilities engineer at an elementary school. Chief Judge Greene's mother, also a graduate of Bluefield State College, taught piano and directed the church children's choir.

Chief Judge Greene's father was drafted into the Army shortly after the attack on Pearl Harbor. Like society at the time, the Army was officially segregated; black units required black officers. Because he had a college degree, his father was selected for Officer Candidate School and commissioned as a second lieutenant. Although most African-American units were relegated to support functions, Chief Judge Greene's father was assigned to the 92nd Infantry Division—the famed “Buffalo Soldiers”—the only African-American infantry unit to see combat in Europe during World War II.



After the war, the judge's father rejoined his family in Bluefield. He would have liked to stay active in the Army Reserves, but at the time there were no black units in the active Reserve, and the idea of a black officer commanding white troops was simply unthinkable. Therefore, he was forced into the inactive Reserves. Despite his status as an “inactive” Reserve, Chief Judge Greene's father was one of the first people recalled to active duty during the Korean conflict, where he served for a year, then again returned to his family in Bluefield. Only now, he decided to remain in the Army instead of returning to teaching and his many part-time jobs. He announced that the family would be moving to Fort Knox, Ky.—a daunting prospect for Chief Judge Greene, then nine years old. Other than short jaunts with his grandfather or father on local passenger trains, Chief Judge Greene had barely been outside of Bluefield.

The family arrived at Fort Knox in 1953, shortly after President Truman ordered the armed forces desegregated. His father was assigned an on-post house, and Chief Judge Greene attended one of several elementary schools on the massive Army post. For the first time, Chief Judge Greene had white neighbors and white classmates. He fell into his new routine

quickly and made many lifelong friends.

A few years later, Chief Judge Greene's father was transferred to Oklahoma to head up the ROTC program at Langston University, a historically black college. Chief Judge Greene was again thrust into a totally segregated environment in a small town in Oklahoma, where schools remained firmly segregated even in the wake of the Supreme Court's decision in *Brown v. Board of Education*. Chief Judge Greene attended a laboratory school located on the grounds of the university, where university students honed their teaching skills. Most of the actual teachers had either master's degrees or doctorates. Chief Judge Greene reports that he was "surrounded by an aura of intellectualism and excellence that instilled a lifelong respect for the value of education."

From Oklahoma, Chief Judge Greene's father received orders back to Fort Knox, but a lack of on-post housing required Chief Judge Greene and his mother to return to Bluefield for nearly a year. Chief Judge Greene finished the ninth grade in Bluefield and renewed many old friendships, including one with his future wife, Madeline. The idea of becoming a lawyer began to coalesce in his mind. His experiences in Langston convinced him that he should pursue an advanced degree. He thought about becoming a doctor or an architect, but he struggled with math and chemistry. He received inspiration and encouragement from James Redmond, the only African-American lawyer in the town, where he was widely respected and admired and a leader in the community.

The following year, Chief Judge Greene and his mother rejoined his father at Fort Knox, where the judge became captain of the basketball team and ultimately graduated from the post high school, Fort Knox High. His desire to become a lawyer was widely known among his classmates. In his yearbook, he listed lawyer as his chosen ambition, and the yearbook's cartoonist took the liberty of drawing a caricature of the judge standing at a lectern, apparently making an argument—in a military uniform. Although prophetic, at the time Chief Judge Greene had no intention of following his father's footsteps into the Army.

After graduating from high school, Chief Judge Greene attended West Virginia State University, which, according to the judge, "was and is a living laboratory of social change." West Virginia State was one of the first colleges to fully integrate, going from a totally black student body at the time of *Brown v. Board of Education* in 1954 to a 50/50 mix by the time Chief Judge Greene started his studies there in 1961. West Virginia State was a land-grant college, where Army ROTC was a required course. Despite not wanting anything to do with the Army initially, he quickly became gung-ho, polishing his boots with gusto and wearing his uniform with pride. He became the cadet commander and commanded the Pershing Rifles Drill Team. He recounts, "I was sickening, probably." When not engaged with ROTC, he studied political



Chief Judge Greene upon retirement from the Army by the Buffalo Soilder Monument at Fort Leavenworth, Kansas.

science, because he was still intent on becoming a lawyer one day.

But his Army ambitions won out temporarily. He accepted an Army commission and was designated to serve with the Armor Branch. He wanted "to jump out of airplanes and be an Army Ranger." Following graduation, he was visiting his father, who was then stationed at Fort Meade near Washington, D.C., while awaiting orders to jump school. His father encouraged him to visit the Army Personnel Command and review his record, advising him to "find out what's going on in your program." Chief Judge Greene got in his car and drove to the Pentagon, not sure just where the Personnel Command was. In a bit of serendipity at which he still marvels, he found himself lost in the byzantine belly of the Pentagon. While wondering around the building's E-Ring, he stumbled across a sign that read "The Judge Advocate General's Corps." While the judge stared at the sign, an officer passed by and introduced himself. Chief Judge Greene asked, "how do you get in JAG, anyway?" The officer brought him into the office and explained the various options—one of which was the "excess leave" program, in which regular Army officers could earn service credit (but not pay) while pursuing a law degree. Chief Judge Greene quickly assembled an application and was accepted, on the condition that he take the LSAT and find a law school that would admit him for the next semester—no mean feat given that it was already June.

He called West Virginia University College of Law but was informed the class was filled. But the former registrar at West Virginia State was now the registrar at Howard University, so the West Virginia registrar sent Chief Judge Greene to him. Luckily, Howard still had an opening and Chief Judge Greene was admitted a scant six weeks before class started. For the next three years, Chief Judge Greene studied at Howard and interned in Army JAG offices at the Pentagon and the military district of Washington, D.C. He also found

time to marry his childhood sweetheart, Madeline, and have a son, Billy. Chief Judge Greene graduated from Howard University Law School in 1968, passed the West Virginia Bar, and was commissioned as an officer in the Army Judge Advocate General's Corps.

Chief Judge Greene's first assignment was at his old stomping ground of Fort Knox, where he performed duties as a courts-martial prosecutor and trial defense counsel. At the time, Army courts-martial practice was a high-volume business. In 1968, the Army was the largest it had been since the Korean War, and the majority of the troops were conscripts—many none too happy to be in the Army. When he first arrived in his new office, there were case files stacked several feet high on his desk—cases waiting to be tried. Many of his clients were facing their second or third courts-martial. It was not unusual for him to take four or five clients into court for a mass arraignment and then try their cases one after the other. Chief Judge Greene discovered that he was a natural for trial work. "It was where I belonged," he says. He found that his childhood experiences of learning to get along with a wide variety of people under a wide variety of circumstances gave him a natural rapport with the soldiers. When he wasn't in the courtroom, he spent most of his time in the barracks, talking with his clients, unit leaders, and witnesses. Because military defense counsel have relatively few resources at their disposal, they typically act as their own investigators. He developed a reputation as a fierce advocate, and soon soldiers from all over the post were seeking his services—on cases involving everything from being absent without leave to premeditated murder.

During this time, Chief Judge Greene and Madeline had their second son, Jeff. In 1970, knowing that it was just a matter of time before he received orders to go to Vietnam; Chief Judge Greene decided to take his destiny into his own hands and volunteered. He was told "we'll call you back," and about a month later, he received a return call asking if he'd consider going to Hawaii instead. His first thought was "well, I like this organization." He didn't realize it at the time, but his tour in Hawaii was closely tied to events in Vietnam. Racial polarization and racial tensions in the Vietnamese theater were escalating. Drug use was rampant. Racial confrontations led to violent crimes. There had been a particularly violent race riot at a military prison in Long Bien. The perception, if not the reality, was that a disproportionate number of minority soldiers were being court-martialed. Many black soldiers facing court-martial wanted a black defense counsel, but they hadn't seen any in uniform. At the time, of the 1,500 JAGs in the Army, 12 were African-American and none of them were serving in Vietnam.

Instead of sending an African-American defense counsel into Vietnam—and potentially further exacerbating racial tensions—the decision was made to transfer many of the Vietnam cases to Hawaii for trial. Chief Judge Greene estimates that he tried more than

a thousand cases during his three-year tenure in Hawaii. Toward the end of his tour, he received several offers from civilian practitioners to leave the Army and work in private practice in Hawaii. But he had remaining obligated service from the excess leave program, and the Army wouldn't let him resign. Instead, Chief Judge Greene was selected for advanced training at the Army JAG School in Charlottesville, Va.

In 1973, Chief Judge Greene was selected to head up the Army Judge Advocate General Corp's recruiting program. Although he was well-known and well-regarded for his courtroom prowess, this position cemented his reputation as a rising star in the Army JAG Corps. He met or exceeded the Army's JAG recruiting and accession goals, despite the Army's popularity being at an all-time low following the Vietnam War. He increased the number of minority JAGs by 200 percent—from 30 to 90, including the first female African-American JAG officer. Chief Judge Greene proudly points out that he recruited the current leadership of the Army JAG Corps, including Maj. Gen. Scott C. Black, the current judge advocate general of the Army. It was during this tour that Chief Judge Greene began his long association with the Federal Bar Association, where he remains a member of the Pentagon Chapter.

From this post, Chief Judge Greene was off to Wuerzburg, Germany, as the deputy staff judge advocate for the Third Infantry Division, where he put the minor in German language he had earned in college to good use. Among his many other duties, he was called in as an observer under the Status of Forces Agreement when American soldiers were tried in German courts for local offenses.

In 1980, he was selected to attend the Army's Command and General Staff College. He was then assigned as chief of the Criminal Law Division at the Army Judge Advocate General's School in Charlottesville, Va., on the grounds of the University of Virginia. He developed a comparative law class and advanced trial advocacy course attended by JAGs of all the services. Chief Judge Greene also developed a reputation as an expert in military criminal law. By the end of his three-year tour, his oldest son was approaching his senior year in high school, and Chief Judge Greene was facing the prospect of another duty assignment overseas. Instead of uprooting his family for a typical three-year tour of duty, he elected a one-year unaccompanied tour in Korea as staff judge advocate to the Second Infantry Division. Although he missed his family terribly, the conditions were rugged, and the work was relentless, he describes the year as his most rewarding tour of duty. It was here that he felt he could "put it all together"—drawing on his many varied experiences to be the lead legal adviser dealing with everything from settling minor tort claims to combating black marketing and conducting international diplomacy.

Following his year in Korea, Chief Judge Greene

was selected for the prestigious Army War College, a high honor for a JAG, where he studied alongside the future leaders of the U.S. military. Following graduation, he was assigned as the staff judge advocate at the U.S. Military Academy, where he had to face an entirely new set of unique challenges, such as compliance with the rules set by the National Collegiate Athletic Association and academic honor codes. He describes himself as a “West Point groupie” and says he “never wanted leave.” He even considered taking a permanent teaching position at the academy.

But the lure of new challenges and new experiences led Chief Judge Greene to accept yet another position as a staff judge advocate—this time at Fort Leavenworth, Kansas, the home of the U.S. military’s only maximum security prison. During this tour, Chief Judge Greene was involved in the construction and dedication of the Buffalo Soldier Monument, which was located on the garrison grounds. Chief Judge Greene also began to seriously contemplate his post-Army career. He considered various options, including teaching and politics.

Some years earlier, an old friend of his—the deputy chief U.S. immigration judge at the time—had encouraged Chief Judge Greene to consider taking a position as an immigration judge. Chief Judge Greene submitted his résumé but later decided that he wasn’t ready to leave the JAG Corps. Four years later, however, he received another call—this time from a new deputy chief immigration judge, who had come across Chief Judge Greene’s old résumé and invited him to interview for a position. Although Chief Judge Greene hadn’t yet decided to leave the Army, he thought, “when opportunity knocks, you can’t say ‘wait, let me pack my bags.’” He flew to Washington for an intense interview and, a short time, later was notified that he had been selected and his name would be submitted to the U.S. attorney general.

But then the reality of leaving the Army hit home. He had been, in effect, a part of the Army since the age of nine. With his stellar record, he was a leading candidate for the highest ranks of the JAG Corps, yet he longed for the opportunity to return to the courtroom, and he knew that, if he wasn’t selected for flag rank, he would face mandatory retirement in three years. By then, the opportunity to be an immigration judge might have slipped away. After agonizing over the decision for a few days with Madeline, he came up with an unorthodox, if effective, decision-making method while walking from his on-post house to work one morning. “The left foot is ‘yes,’ and the right foot is ‘no,’ and wherever I was when I stopped at my desk, that was going to be the decision.” He landed on his left foot and immediately sat down to call Army headquarters to announce his retirement.

Three months later, in June 1993, he was appointed as an immigration judge in Baltimore, Md., and also covered Buffalo, Pittsburgh, Harrisburg, and Philadelphia. He found the work of an immigration judge to



Chief Judge Greene with his family.

be grueling, but rewarding. He handled approximately 1,000 cases per year on all manner of immigration matters. He developed a reputation as an exacting, yet compassionate, judge. Throughout it all, he never lost his appreciation for the profound impact his decisions had on the individuals who appeared before him. He notes, in typically understated manner, that “they were important decisions.”

Although he was reveling in his return to the courtroom and the work he was doing, opportunity knocked yet again in 1996. Another old friend informed him of a search for potential candidates for appointment as a judge on the U.S. Court of Veterans Appeals. Chief Judge Greene elected to throw his hat in the ring. In early 1997, he was interrupted in court by a phone call from Madeline. Fearing a family emergency, he was relieved and excited to learn that the White House had called and the President intended to nominate him to the veterans’ court. After nearly a year of being vetted and confirmed by the Senate, Chief Judge Greene was installed as a judge on the Court of Veterans Appeals on Nov. 24, 1997.

The U.S. Court of Veterans Appeals was renamed the U.S. Court of Appeals for Veterans Claims in 1998. A national court of record, established under Article I of the Constitution, the court has exclusive jurisdiction to provide judicial review of final decisions by the Board of Veterans Appeals (BVA), an entity within the Department of Veterans Affairs. The court itself, however, is completely independent of the department.

Veterans’ claims related to entitlement to benefits for service-connected disabilities, educational benefits, vocational training, and other programs are first adjudicated in the various regional offices of the Department of Veterans Affairs; those decisions may be appealed to the BVA. Until 1988, there had been no judicial review of a BVA decision; but in 1988 Congress passed the Veterans’ Judicial Review Act, establishing the U.S. Court of Appeals for Veterans Claims, which consists of seven judges, who are appointed to 13- or 15-year terms. The senior judge is designated

as chief judge. Chief Judge Greene assumed duties as chief judge on Aug. 8, 2005, when the last of the original seven judges retired.

Chief Judge Greene, as a veteran himself, considers it a great honor to serve on a court that is dedicated to ensuring justice for the men and women who have served our armed forces. He states that he has the “greatest regard for the veterans that come before this court.” Life as an appellate judge, however, has taken some adjustment. A gregarious and outgoing man, Chief Judge Greene reports that he misses the almost constant interaction with colleagues, clients, and litigants that he experienced in his former life as an Army JAG and immigration judge. But his experience in high-volume litigation has served him well. The Court of Appeals for Veterans Claims is one of the busiest federal appellate courts in the nation, with the volume of appeals it handles increasing almost daily. At the end of 2005, the court received an average of 200 appeals per month; less than two years later, that number stands at more than 300 per month, with every indication that the increase will continue. Chief Judge Greene describes the sheer volume of cases as the court’s most significant challenge, but he says that he looks forward to meeting that challenge with his six colleagues, with whom he greatly enjoys working.

One major project the chief judge hopes to see through in his remaining five years on the court is the construction of a dedicated courthouse in the metropolitan Washington, D.C., area. The court is currently housed in comfortable—albeit nondescript—commercial office space in downtown Washington, D.C. The General Services Administration has completed a feasibility study for construction of a Veterans Courthouse and Justice Center, which will house the court, along with the appellate litigation branches of various veterans service organizations. Chief Judge Greene is hopeful that Congress will support construction of a dedicated courthouse and justice center for veterans as a symbol of gratitude and respect to the veterans and their families who have given so much of themselves in the service of the nation.

In speaking with those who have known and worked with Chief Judge Greene, it is readily apparent that he has an extraordinary talent for building and maintaining personal relationships. Maj. Gen. William K. Suter, USA (Ret.), clerk of the U.S. Supreme Court, has known Chief Judge Greene personally and professionally for more than three decades. Gen. Suter states, “Bill is a wonderful and decent man—no one can say a bad thing about him. He is a bright lawyer, a talented leader, and one with whom you want to associate. He was a splendid Army judge advocate and is respected as a fair and impartial immigration judge and a Court of Veterans Appeals judge.” Gen. Suter also notes that Chief Judge Greene is well-known for his keen sense of humor, and smile, “which is always showing.” It is also reported that Chief Judge Greene

can do a fantastic Ray Charles impersonation.

Chief Judge Greene’s personal pursuits include photography, golfing, and traveling to visit with the many friends he and Madeline have acquired over the years. His oldest son, Bill, currently lives in Chicago; his youngest son, Jeff, is an Army physician in San Antonio. Between the two, they have yielded five treasured grandchildren for the chief judge and his wife.

In reflecting upon his career, Chief Judge Greene remarks that he has been extraordinarily lucky. As Thomas Jefferson once commented, “I’m a great believer in luck and I find the harder I work, the more I have of it.” And Chief Judge Greene’s career is marked by no shortage of hard work. He reports that the words of advice he received from his grandfather upon entering first grade in Bluefield, West Virginia, have served him well—“If a task has once begun. Never leave it till it’s done. Be the labor great or small. Do it well or not at all.” “Doing it well” aptly characterizes Chief Judge Greene’s impressive career of public service. **TFL**

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Judicial Profile

JIMMY CHATSUTHIPHAN

Hon. Bruce E. Kasold U.S. Court of Appeals for Veterans Claims

JUDGE BRUCE E. KASOLD believes in simple truths. Not simple as in narrow-minded truths, but simple as in succinct and straightforward. A retired Army lieutenant colonel, Judge Kasold strives each day to live, work, and play in a manner consistent with the famous motto of West Point, his alma mater: “Duty, honor, country.” Along with that, Judge Kasold lives by the familiar golden rule:

“Do unto others as you would have them do unto you.” The golden rule has special meaning to Judge Kasold, because it was instilled in him at a young age by his parents and his faith. Judge Kasold also cherishes a third pearl of wisdom learned later in life from his former boss, now retired Sen. John Warner of Virginia. Paraphrasing the senator, Judge Kasold firmly believes that, “there is no end to what we can accomplish if we just work together as a team and not worry about individual glory.” Judge Kasold admits that he is by no means perfect; he has drawn strength from these truths throughout his distinguished career in law and public service.

Born in 1951 at St. Albans Naval Hospital in New York City, Judge Kasold was raised as an “Army brat.” He grew up with his parents and two brothers in different parts of the country—New York, California, Florida, North Carolina, and New Mexico. His father, Edward, worked as a city employee before enlisting in the Army when World War II broke out; he was awarded a Bronze Star with oak leaf cluster for heroism in combat as well as the Purple Heart. Edward Kasold enjoyed serving his country so much that he remained in the Army after the war and retired as a lieutenant colonel. Judge Kasold’s mother, Louise, worked as a nurse’s assistant. His parents met through a chance encounter in New York and were married at the Vatican, where the pope blessed the attendees and any children they might have in the future. Indeed, Judge Kasold has felt extremely lucky and blessed throughout his life.

After returning to New York, Judge Kasold first attended St. John the Evangelist School, then Mercy High School—both in Riverhead, N.Y. While in high school, Judge Kasold earned membership in the National Honor Society and played on the varsity basketball and ten-



nis teams; he is most proud of earning an award for giving 110 percent effort in tennis. Judge Kasold originally thought about attending the U.S. Naval Academy, because he had become enamored with the legends of such naval leaders as John Paul Jones. In fact, Judge Kasold was instilled at an early age with the notion that service to one’s country is an important duty.

As fate would have it, Judge Kasold received an early offer to enroll in the U.S. Military Academy at West Point. He was honored to receive this offer, but delayed accepting it for several months in the hope of receiving an offer from the U.S. Naval Academy. When he thought that offer was not forthcoming, he set his sights on serving his country as a soldier. Two weeks after being accepted at West Point, he got an offer to attend the U.S. Naval Academy, which he declined, honoring his commitment to West Point. A fan of “Perry Mason” and other television shows related to law, Judge Kasold liked the law and knew he could argue issues back and forth with the best of them; however, having chosen to go to West Point, any thoughts of serving the law had to remain down the road.

West Point presented a demanding academic curriculum and rigorous physical regimen. Judge Kasold focused his studies on a combination of hard and soft sciences, and took over 20 credit hours per semester, as did every cadet at West Point. He just missed making the tennis team (he was the unfortunate 13th man on a 12-man roster), but he enjoyed playing intramural squash, lacrosse, soccer, and even flickerball (a hybrid of softball and football). He endured a particularly grueling summer of cadet field training at Camp Buckner, where he learned to use a rifle, trained for combat, and participated in orienteering exercises. It should come as no surprise that Judge Kasold credits much of his success to his years at West Point. He praises the academy for “teaching you how to handle many different situations.” He remembers that “they put you through a lot,” but that ultimately “you come to realize that you can make it through anything if you just keep going.”

After graduating from West Point in 1973, Judge Kasold served in the Air Defense Artillery of the U.S. Army as a platoon leader and training officer. He was stationed at Fort Bliss, Texas, in 1973; at Edgewood Arsenal in Maryland from 1973 to 1974; and at Fort Carson, Colo., from 1974 to 1976. As a young soldier, Judge Kasold immediately put to good use a valuable lesson he had learned at West Point: When a superior officer (or boss) is looking to lay blame, the best answers are “Yes sir,” “No sir,” and “No excuse sir,” and to then work harder to accomplish the mission. Another lesson he learned in military service was the importance of emphasizing “teamwork, trust, and truthfulness”; “The three t’s,” as Judge Kasold calls them, are the keys to success. Therefore, it is not surprising that Judge Kasold refers to his chambers affectionately as “Team Kasold.” He is proud of the work of his current and former staff members and notes that, “once Team Kasold, always Team Kasold.”

While serving as a platoon leader with the Air Defense Artillery, Judge Kasold again reflected introspectively about his long-term goals, and the thoughts he had about becoming a lawyer came back to him. As a training officer in the Army, Judge Kasold enjoyed working with military rules and regulations. His mind made up, he applied for an extremely competitive program through the Army, which would fully fund up to 25 officers to attend law school. Months passed, but on the eve of his assignment to South Korea for a year-long tour of duty, Judge Kasold was notified that he had been selected for this program to attend a public university in his home state. Given his many travels, figuring out where that university was proved no easy task. As it turns out, Judge Kasold’s parents had moved to Florida while he was at West Point, so his records listed Florida as his home state.

From 1976 to 1979, Judge Kasold attended law school at the University of Florida, where he was a member of the *Law Review* and was named to the Order of the Coif. Judge Kasold recalls, however, that “overstudying” and focusing too much on narrow issues caused

him to struggle initially in law school classes. He acknowledges that learning the law is vitally important but stresses that understanding the law is equally important. The judge found success in law school once he learned how to relax, take time to understand the issues, and “see the bigger picture.” He spent both summers between semesters at the U.S. Army post in Fort Rucker, Ala., where he received on-the-job training as an assistant defense counsel in 1977 and as an assistant prosecutor in 1978. But it was not “all work and no play” for Judge Kasold, the law student—he also found time to take a bartending class. Judge Kasold jokes that by doing this, “he figured he’d certainly pass the bar one way or the other.” Judge Kasold did indeed pass that bartending class and later the Florida bar exam after he graduated cum laude from law school in 1979.

After graduating from law school, Judge Kasold served in the Judge Advocate General’s (JAG) Corps from 1979 to 1994, during which time he ended up working in several different capacities: prosecutor, command legal advisor, claims adjudicator, legislative counsel, civil litigation counsel, and assistant general counsel to the Army general counsel. He was stationed at Fort Belvoir, Va., from 1979 to 1981; at the Pentagon from 1981 to 1983; and in Charlottesville, Va., from 1983 to 1984. During his time practicing civil litigation, Judge Kasold represented the Army in medical malpractice and other tort litigation cases. He also handled numerous collections matters under the Medical Care Recovery Act, and he is proud of the fact that he suggested amendments to the law to permit the government to recover expenses for medical care under state no-fault provisions that ultimately were enacted. While in the JAG Corps, Judge Kasold pursued further studies, earning an LL.M. in 1982 from Georgetown University and an LL.M. equivalent in 1984 from the military’s graduate law program at the University of Virginia’s Judge Advocate General’s School.

From 1984 to 1987, Judge Kasold served as legal counsel to the VII Corps Artillery Commanding General in Augsburg, Germany, prosecuting cases and advising on a wide array of administrative law matters. During his tenure in Augsburg, Judge Kasold benefited from some incredible opportunities to travel, including trips to the Alps, the Berlin Wall, Austria, Denmark, Italy, and even as far afield as Egypt and Turkey. He followed through on his requirement that he and his staff work hard during the week, and his advice that, when permitted, they all play hard during the weekends and while on leave. Even though his work in Augsburg was extremely challenging, Judge Kasold views this post as one of his most enjoyable and rewarding experiences.

Judge Kasold returned to the United States in 1987 and worked for several years as an assistant general counsel at the Pentagon in the Army’s Office of General Counsel. One of the highlights of his career occurred when he held that position: Judge Kasold (then Maj. Kasold) found himself inside the White House

Situation Room with William Barr (who later became the 77th attorney general of the United States) and J. Michael Luttig (who later became a well-known judge on the Fourth Circuit Court of Appeals) at a meeting to discuss the possible use of the military to address riots on St. Croix in the U.S. Virgin Islands. Not expecting to speak at the meeting, Judge Kasold was asked by the soon-to-be attorney general to brief Adm. William J. Crowe (then the chairman of the Joint Chiefs of Staff) and attendees in the situation room on the legal authority for calling up the nation's troops to quell the riots. Apparently, Judge Kasold's answer was acceptable, because he was asked to attend future meetings, and he and William Barr eventually became friends.

Judge Kasold was later chosen for a fellowship to work on Capitol Hill, where he spent half his time working for the Senate Judiciary Committee with former Sen. Joe Biden (now vice president), and the other half working in Sen. John Warner's office. Judge Kasold relished the opportunity to work on diverse assignments that ranged from arranging a committee hearing on advances in scientific equipment to helping on drug enforcement and money laundering investigations, to drafting part of the Senate's crime bill and legislation to authorize the transfer of government property to the commonwealth of Virginia for expansion of the state's prisons, to handling a variety of constituent matters.

After serving in the Army for more than 20 years, Judge Kasold embarked on a new challenge and joined the law firm of Holland & Knight in its Washington, D.C., office as a commercial and government contracts litigation attorney. In joining the firm, he discovered a great mentor in the late Chesterfield Smith, one of the giants of the legal profession and co-founder of the firm. Smith became one of Judge Kasold's strongest supports on the road toward his appointment as a judge. Judge Kasold enjoyed private practice very much, particularly the aspect of helping the firm's clients achieve their goals.

After a few years in private practice Judge Kasold once again heard the call of public service. From 1995 to 1998, he served as chief counsel to the Senate Committee on Rules and Administration, where he marshaled the Senate's largest series of campaign finance hearings in a decade and conducted an investigation into allegations of election fraud for a Senate seat. It was the first time since the 1950s that the U.S. Senate had conducted a full-scale investigation into an election. Judge Kasold recalls that this hotly contested investigation created major turmoil in the Senate at the time. Under the leadership of Sen. Warner (then chairman of the Senate Committee on Rules and Administration), Judge Kasold worked his way through the tough political issues related to campaign finance and the investigation of the contested election. Afterward, because both Republicans and Democrats were still speaking to him, Judge Kasold believes that people perceived his handling of these matters to be fair.

Prior to his appointment to the bench, from 1998 to 2003, Judge Kasold served as chief counsel to both the secretary of the Senate and the sergeant at arms of the Senate, advising Senate leaders on legal matters and issues at the forefront of the nation's political landscape, including the Electoral College, the impeachment of President Clinton, and the historical management of an evenly divided Senate. He also counseled Senate leaders on a multitude of administrative claims and personnel matters. An avid tennis player, Judge Kasold managed to carve out time for some competitive match play with Sen. Warner and former Sen. Rick Santorum of Pennsylvania. The judge also loves the game of squash, playing regularly both then and now with Sen. Arlen Specter of Pennsylvania. From 2001 to 2002, Judge Kasold served as president of the Capitol Hill Chapter of the Federal Bar Association.

In 2003, President George W. Bush appointed Judge Kasold to the U.S. Court of Appeals for Veterans Claims. Established in 1988, the court is located in Washington, D.C., and consists of seven active judges. The court has nationwide jurisdiction to review decisions made by the Board of Veterans' Appeals, an administrative entity within the U.S. Department of Veterans Affairs. The typical appeals heard by the court involve claims of entitlement to disability compensation, survivor benefits, or other benefits such as education payments, home loans, and waivers of indebtedness. It is an exceptionally active court, deciding more than 4,800 federal appeals in 2007 alone. Although the court issues its fair share of opinions rendered by a three-judge panel, it is the only federal appellate court in the country that also issues dispositive single-judge decisions in cases where novel issues of law are not presented.

Chief Judge William P. Greene Jr. of the U.S. Court of Appeals for Veterans Claims remarks that "it is such a pleasure to have Judge Kasold as my colleague on the court and friend." Judge Greene also notes, "Having known Judge Kasold since we served together in the Army JAG Corps, I knew of his great reputation as a brilliant attorney and a hard worker. He is indeed a talented lawyer and applying his strong work ethic and dedication to duty, he has become an exceptional appellate judge."

Judge Kasold enjoys serving on the federal bench. He feels fortunate to have a high level of independence and the ability to do what is right. When grappling with a complex issue, Judge Kasold likes to "pull it left and pull it right" to test whether a certain point of view will hold true even in the most extreme of situations. Himself a veteran, Judge Kasold has a deep appreciation for our nation's veterans and feels proud to serve on the court that provides them the procedural due process they deserve. He navigates his law clerks through the complexities of the law related to veterans and enjoys working with his clerks. Judge Kasold believes that one of the court's greatest continuing challenges is to ensure uniformity in its decisions in light of the court's

extensive use of single-judge opinions. At the same time, he greatly appreciates the single-judge opinion as a tool that allows the court to administer judicial review in a more timely manner.

Despite all the extraordinary achievements in his professional life, Judge Kasold believes that perhaps his greatest achievement in life is somehow convincing his beautiful wife, Patricia, to marry him. Judge Kasold is deeply proud of his wife and his son, Adam, and finds strength and happiness in their total support and love. In his spare time, Judge Kasold enjoys going to the theater, playing bridge, traveling abroad, and spending time at home with his family and two dogs. He is also an emeritus member on the Board of Directors of the Pentagon Federal Credit Union.

Judge Bruce E. Kasold has friends in high places. He has worked and played throughout his illustrious career with some of the most influential people of our generation. But his relationships are not what define him. Although he may hit balls in the air with political bigwigs, Judge Kasold stays grounded and lives simply. He works extremely hard, and he does not care who gets the credit for the result. His accomplishments are prolific, but he remains a humble and

devoted public servant. He has not always succeeded at every endeavor, but he is always determined to succeed. Judge Kasold finds inspiration in something Sen. Specter once told him: "Life is like a game of squash—you can be down 14 to 1, but it's not over until the last point is won." And that's the honest truth. **TFL**

Jimmy Chatsuthipban was a law clerk for Judge Kasold from 2005 to 2006. He is an associate in the Washington, D.C., office of Gray Plant Mooty, where he litigates and resolves a wide range of commercial, franchise, and real estate matters. He would like to acknowledge the assistance of Dorothy McKinney, Judge Kasold's assistant, in the preparation of this profile.

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