



# Hon. Kevin A. Ohlson

## Chief Judge, U.S. Court of Appeals for the Armed Forces

by Hanson Causbie



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*“That those alone may be servants of the law who labor with learning, courage, and devotion to preserve liberty and promote justice.”*

—An inscription at the University of Virginia School of Law often invoked by Chief Judge Ohlson

**A**s a newly-minted Captain in the U.S. Army Judge Advocate General’s Corps in 1987, Kevin Ohlson decided that Fort Bragg, North Carolina, needed to celebrate the Bicentennial of the Constitution in a big way. And who better to plan it than Ohlson himself?

“I presented a year-long plan to my boss, the Staff Judge Advocate. One of the highlights of the celebration was asking a judge to address the role of the judiciary in our constitutional framework. Well, my boss said he knew the perfect person – Robinson O. Everett, the Chief Judge of the United States Court of Military Appeals. I remember thinking, ‘Who? What?’”

Nearly 40 years later, Ohlson now occupies the same position on the same court as Chief Judge Everett. (In 1994, the U.S. Court of Military Appeals was renamed the U.S. Court of Appeals for the Armed Forces.<sup>1</sup>) And Ohlson credits his interaction with Chief Judge Everett – who was profiled in this publication in 2001 – as being the inspiration for what has become the capstone of Ohlson’s professional career.

“I remember being mesmerized by Chief Judge Everett. He not only was a phenomenal lawyer and jurist, he also was an expert raconteur.” After listening to Chief Judge Everett speak about the vital role the court plays in balancing the rights of servicemembers with the need to maintain good order and discipline in the armed forces, Ohlson was hooked. “I pledged to myself that if I ever had the chance to be appointed to that court, I would seize the opportunity.”

That dream became a reality in 2013 when Ohlson was nominated by the President, and confirmed by the Senate, to serve as a judge on the U.S. Court of Appeals for the Armed Forces.

Ohlson’s career path was certainly not foreordained. He was born and raised in a quintessential



small New England town where no one he knew was a lawyer or a judge. “Growing up in the ‘60s, my hometown of Sterling, Massachusetts, probably had more apple trees than it did people. And the town’s claim to fame is that Mary Sawyer, the girl who inspired the nursery rhyme ‘Mary Had a Little Lamb,’ lived there in the early 1800s.”

During his senior year in high school, Ohlson was awarded an Army R.O.T.C. four-year scholarship. He used it to attend Washington and Jefferson College, which was founded in 1781. “W&J is a historic gem in Pennsylvania that put me on the path to professional success,” Ohlson states. During his time there, Ohlson was elected president of his fraternity, appointed as the commander of the corps of R.O.T.C. cadets, and inducted into Phi Beta Kappa.

Ohlson’s next stop was at the University of Virginia School of Law. During his third year, he lived in a Range Room in the heart of Thomas Jefferson’s “Academical Village.” “The rooms were small and spartan. In fact, they were little changed from when Edgar Allen Poe lived in a Range Room in the 1820s. I had to walk outside about 100 yards in order to get to the bathroom. In the cold winter months, walking from the showers in the morning was, shall we say, ‘exhilarating.’”

Upon graduating from law school, Ohlson received training to serve as an officer in the Judge Advocate General's Corps and then went to Airborne School. (He already had attended Air Assault School where he rappelled out of helicopters.) "To be honest, I hated jumping out of airplanes. It was dangerous. I remember a friend of mine who contrasted the cautious approach he and I took when parachuting to the fearless and gung-ho approach taken by the junior enlisted soldiers who surrounded us. My friend wryly noted, "Thank God for 18-year-olds or we wouldn't be able to have any more wars!" Despite Ohlson's apprehensions about being a paratrooper, he ended up jumping 32 times and into three foreign countries – Jordan, Egypt, and Honduras.

But of course, most of Ohlson's time at Fort Bragg revolved around lawyering, not parachuting. Early on in his tenure he was appointed under the Uniform Code of Military Justice to serve as the Article 32 Investigating Officer in a case where a soldier was accused of being a serial rapist and murderer. "I was responsible for reviewing the evidence in the case and making a recommendation to the commander about the appropriate charges to pursue. Among the witnesses who testified before me were two young women who were sexually assaulted, slashed in the throat with a straight razor, and left for dead. The crimes were ghastly." The accused was eventually convicted at a court-martial and sentenced to death.

Many years later, after the convicted soldier's direct appeals were exhausted, Ohlson received a letter from the defense counsel in the case. Enclosed was a small pencil portrait of Ohlson that was done by the accused during the Article 32 hearings. "I don't suppose too many people have caricatures of themselves that were drawn by a serial rapist and murderer," Ohlson dryly observes.<sup>2</sup>

Later, Ohlson became a prosecutor at Fort Bragg. In one case he handled, a soldier burst into the barracks one night and stabbed a fellow soldier who had been accused of molesting the first soldier's step-children. "Many people at [Fort] Bragg felt that the stabbing victim had gotten what he deserved, but I was unalterably opposed to any form of vigilante justice."

Although Ohlson "loved the people, mission, esprit de corps, and physical challenge of the military," he decided that he wanted to settle down. In the late-1980s, he left the active duty Army, joined the Reserves, and became a federal prosecutor in the U.S. Attorney's Office for the District of Columbia. At that time, Washington, D.C., was known as "the murder capital of the nation." Ohlson observes, "There were more than enough drug, gun, and violent crime cases to keep us busy. The pace was grueling but the work was rewarding."

In the fall of 1990, Ohlson received a phone call from one of his former supervisors at Fort Bragg checking to gauge Ohlson's receptivity to being recalled to active duty in light of the impending Persian Gulf War. Ohlson responded, "If you need me, sir, I'll be there."

Ohlson deployed to Saudi Arabia where on a daily basis he helped to advise the command staff on Law of War issues. "Unlike the combat personnel, in the course of my duties I only made two brief forays into Iraq. Once to survey the bombing damage done to an Iraqi schoolhouse, and once to investigate the circumstances of an Iraqi soldier's death." Although Ohlson now downplays his role during the war, the Commanding General of the XVIII Airborne Corps saw fit to bestow upon him the Bronze Star medal.

Ohlson's service during the Persian Gulf War had an unexpected consequence. Not long after he returned to Washington, the sitting U.S. Attorney appointed Ohlson as his special counsel. But after the 1992 presidential election, a new U.S. Attorney was confirmed to head the office. "I was convinced that I would be kicked to the curb by the new guy. But what I hadn't counted on was just how remarkable that new guy—Eric H. Holder, Jr.—would turn out to be. He was willing to give me a chance to prove myself."

Ohlson continues, "There's an old saying in Washington that if you have a plum job to fill, and if you have a pool of 10 contenders from which to fill it, after you make your selection you will be left with 9 enemies and one ingrate. Well, that aphorism doesn't apply to me. I will always be extremely grateful to Eric for the many professional opportunities he has provided me over the years."

But, Ohlson recounts, Eric Holder didn't just serve as a mentor and role model, he also served as a matchmaker. "Eric personally introduced me to the woman who would become my wife. And Carolyn is far more accomplished than I am. She delivered hundreds of babies as an obstetrician, she published a well-received book about health issues facing young women and girls, and she now is an associate professor of medicine. On top of all that, she has been a fantastic mom to our two adult children, Matthew and Katherine, who have turned into amazing human beings." Ohlson pauses and says with a grin, "Perhaps I'm a bit biased on that point."

In 1997, when Holder was tapped by President Clinton to serve as the Deputy Attorney General – the second-highest ranking position in the Department of Justice—he chose Ohlson as his chief of staff, citing the organizational skills Ohlson had learned in the Army. With a sprawling, Cabinet-level agency that consisted of more than 100,000 employees, had a budget of more than \$18 billion, and faced some of the most complex legal issues imaginable, they had their work cut out for them. "The key was that we had an extraordinary cadre of lawyers and professional staff to rely on, not only in the Deputy Attorney General's office itself but Department-wide. The dedication and professionalism of the employees at the Department of Justice was awe-inspiring."

When the political wheel spun again in the 2000 presidential election, Ohlson, who was a career government employee, first became an adjudicator, then the Deputy Director, and finally the Director at the Executive Office for Immigration Review, which provides oversight for

the immigration courts nationwide. But what he most remembers about his time there may surprise you. “I met with the movie star, Angelina Jolie, who was a United Nations special envoy for refugees,” Ohlson recalls. “My friends have been jealous ever since.” (During his time at the Department of Justice, Ohlson also encountered other celebrities, including Clint Eastwood and Aretha Franklin.)

With the next swing of the political pendulum in January 2009, Eric Holder became Attorney General and Ohlson became his Chief of Staff and Counsel. Ohlson recalls that time as “a whirlwind” as he reels off events and issues. For example, in February of that year President Obama addressed a joint session of Congress and Holder was tapped to serve as the so-called “designated survivor.” He and Ohlson flew by helicopter from Washington, D.C. to a “secure undisclosed location” for the duration of the President’s speech.

Ohlson also flew with Holder to Afghanistan to meet with President Hamid Karzai. “Being a student of history, I had an eerie sense that—in light of the extreme security measures they needed to take in Kabul in order to protect their own president—we could be in another Vietnam situation. Tragically, that premonition turned out to be accurate.”

Ohlson also accompanied the Attorney General to Egypt, to an African Union summit in Uganda, and to the United Kingdom. “I sat in disbelief one evening in London as I dined next to a member of the House of Lords in a magnificent, gilded room near Parliament.”

In addition, Ohlson attended meetings at the White House, to include the Situation Room; traveled to Guantanamo Bay, Cuba, to review the terrorist detention facility where Khalid Sheikh Muhammad, the mastermind of the 9/11 attacks, is imprisoned; and visited with Ethel Kennedy in her home as the Attorney General formally notified her that the main Department of Justice building would be christened the “Robert F. Kennedy Building” in her late-husband’s honor.

However, what Ohlson remembers most clearly is joining the President and Attorney General at Dover Air Force Base during the “dignified transfer of remains” of servicemembers and DEA agents who had been killed in Afghanistan. “The solemnity of that ceremony and the devastation of the family members will always haunt me.”

A couple of years later when Ohlson learned of an upcoming vacancy on the U.S. Court of Appeals for the Armed Forces, he sprang at the chance to be appointed. Once again, Eric Holder championed Ohlson’s cause, this time at the White House. “When I learned of the President’s intention to nominate me, I was enormously grateful,” Ohlson remembers. “But I also knew it was time to get out of the political hothouse. So, I stepped down as Chief of Staff and the Attorney General named me as the first Director of the Professional Misconduct Review Unit.” That newly-created office was responsible for handling all disciplinary actions and state bar

referrals when DOJ attorneys engaged in professional misconduct.

In the fall of 2013, the Senate confirmed Ohlson as a judge on the U.S. Court of Appeals for the Armed Forces. The Court was established in 1950<sup>3</sup> and was created under Article I of the Constitution,<sup>4</sup> just like the U.S. Court of Federal Claims and the U.S. Tax Court. The five judges on the Court are all civilians and serve 15-year terms.<sup>5</sup> They review on appeal cases arising out of military courts-martial.

“Perhaps the most high-profile opinions I’ve authored during my dozen years on the bench have been two death penalty cases, *United States v. Akbar*<sup>6</sup> and *United States v. Hasan*,<sup>7</sup> and the case involving Sergeant Bowe Bergdahl.<sup>8</sup> But *every* case is important,” Ohlson underscores.

Ohlson seems particularly dedicated to his duties as Chief Judge. During the last few years he has made it a point to build bridges both inside and outside the Court. For example, he has inaugurated an annual Employee Appreciation Day and sends personalized, handwritten notes to Court employees on their birthday. He also hosts receptions at the Court for lower court judges, meets with appellate advocates, and is diligent about attending Department of Defense retirement and promotion ceremonies, giving talks to government interns, speaking to military audiences, and judging moot court competitions. But he is especially proud of helping to foster a sense of collegiality among his fellow judges.

At the moment, however, Ohlson has set his sights elsewhere. For the first time in more than 30 years, he soon is scheduled to make an official visit back to his “old stomping grounds” of Fort Bragg, North Carolina. It’s clear that Ohlson sees his professional life as coming full circle as he reminisces about his encounter with Chief Judge Everett in 1987.

“When I go to Bragg,” Ohlson declares, “I’ll be looking for a glint of eagerness, ambition, and adventure in the eyes of the young JAG officers there. Who knows, maybe a few decades from now, one of them will be the Chief Judge of the United States Court of Appeals for the Armed Forces.” ☉

## Endnotes

<sup>1</sup>National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 924, 108 Stat. 2663 (1994).

<sup>2</sup>*United States v. Gray*, 51 M.J. 1 (C.A.A.F. 1999).

<sup>3</sup>10 U.S.C. § 867.

<sup>4</sup>U.S. CONST. art. I, § 8.

<sup>5</sup>10 U.S.C. § 942.

<sup>6</sup>74 M.J. 364 (C.A.A.F. 2015).

<sup>7</sup>84 M.J. 181 (C.A.A.F. 2024).

<sup>8</sup>*United States v. Berghahl*, 80 M.J. 230 (C.A.A.F. 2020).