



Hon. Scott W. Stucky (Ret.)

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

by Andreas Kuersten



Andreas Kuersten is a Legislative Attorney with the Congressional Research Service of the Library of Congress. He clerked for Chief Judge Scott W. Stucky of the U.S. Court of Appeals for the Armed Forces from 2015-17.

One of the most renowned names associated with rural Kansas has always been larger than life: Clark Kent, or Superman. First appearing in 1938, The Man of Steel has long stood for “truth, justice, and the American Way” (as the motto goes). But truth can be more satisfying than fiction, and justice is rarely achieved as suddenly or fantastically as comics present. Almost exactly one decade after Superman arrived on the scene, so too did another rural Kansan—a real one—who embodies all of the same ideals.

Chief Judge Scott W. Stucky, who served on the U.S. Court of Appeals for the Armed Forces (CAAF) from 2006 to 2021, devoted nearly his entire career to public service. He has long held an unshakable sense of duty to his country and community, and an unquenchable curiosity for the world around him. To know the Judge is to feel welcome, heard, and supported. I can honestly say that my time in his chambers was the most enjoyable and fulfilling professional experience of my career, and every former clerk that I have spoken with has voiced similar sentiments. I’m honored to call Judge Stucky not just a mentor, but a good friend. Over the years, we’ve discussed everything from careers to children to world affairs, and, of course, the formative plains of his home state.

The Judge was born in 1948 to Joe and Emma Stucky on a wheat and dairy farm outside of Pretty Prairie, Kansas—population 480 back then. He was later joined by two younger sisters: Valerie and Judi. The Judge didn’t start school until he was seven because there was no preschool or kindergarten, but he taught himself to read earlier. He never found farm work appealing, and summer labor was particularly hot and dusty, so he always looked forward to the start of the school year when, during the week, he only had to milk the cows. Unsurprisingly, Judge Stucky excelled in school. He took a particular interest in history, government, and debate, and won numerous scholarly awards. On the farm, the Judge was known to drive the tractor with one hand while holding an open book in the other. I question the safety of this practice, but the academic results speak for themselves. After hearing from a number of interested colleges, Judge Stucky



decided to attend Wichita State University.

At Wichita State, Judge Stucky made a series of decisions that would shape the arc of his life. To satisfy the physical education (PE) requirement, he had the option of completing either two years of standard PE (which he describes as “nothing but endless calisthenics and running laps”) or two years in a Reserve Officers’ Training Corps (ROTC) program. He chose the Air Force ROTC and, after two years, decided to remain to seek an officer commission—thus solidifying his future with the military. This, in turn, informed the Judge’s thought process in pursuing graduate school. A historian at heart who contemplated a doctorate in history, the Judge had also greatly appreciated his undergraduate constitutional law course and, moreover, recognized that the Air Force would defer his service to pursue a juris doctorate. He settled on law school. Judge Stucky graduated from Wichita State *summa cum laude* in 1970 as president of the student government, a second lieutenant in the Air Force Reserve, and a member of Harvard Law School’s (HLS’s) incoming 1L class.

Law school began inauspiciously, with Judge Stucky arriving too late in the day to pick up his linens and spending the first unseasonably cold night with only a bathrobe for warmth. As a Kansas Republi-

can with an Air Force Reserve commission, and with the Vietnam War ongoing and the antiwar movement arguably hitting its zenith, he often “felt out of place” and homesick at the largely liberal northeastern law school. Yet the Judge eventually settled in and thrived on the intellectual rigor of legal education and the Socratic method. Perhaps what helped most, however, was meeting a certain woman. A month into law school, at a joint event between HLS and Wellesley College, Judge Stucky met a Wellesley sophomore named Jean Seibert from Washington, D.C., and was immediately taken with her warmth, curiosity, and sharp intellect. Though they didn’t begin dating until the spring, in the Judge’s words, “that was it.” Judge Stucky and Jean got engaged at the beginning of his 3L year and wed in August of the following year, following their graduations, at St. Barnabas Church in Temple Hills, Maryland. Their happy union would span 47 years, until Jean’s passing in 2020.

After passing the Kansas bar, Judge Stucky’s first orders were to report to the Brooks AFB legal office in San Antonio, Texas. There, he mostly provided legal assistance to servicemembers and retirees, and he and Jean each completed master’s degrees at Trinity University in history and economics, respectively. Jean also applied to law school during this time, so the Judge volunteered for duty in Southeast Asia in order to have his choice of bases when he returned, to be near Jean. In mid-1975, Jean headed to Cornell Law School and the Judge to U-Tapao Royal Thai Navy Airfield in Thailand, where he would work with Thai legal institutions handling drug cases involving American servicemembers. Though it was difficult to be apart from Jean, the Judge found his work fascinating and enjoyed the opportunity to participate in the workings of a foreign legal system.

In March 1976, Thailand ordered the U.S. to close its remaining bases and withdraw nearly all military personnel by July. This precipitated what the Judge succinctly calls “mass confusion.” Theft of government matériel became widespread, Officers’ Club alcohol was sold off for cheap, and everyone sought a port call date to leave. The Judge, however, felt responsible for a number of servicemembers still in Thai detention centers for drug crimes. They were ultimately transferred to an Army facility, then the United States, and the Judge returned stateside in May 1976 to Hancock Field Air National Guard Base near Syracuse, New York, roughly an hour and a half from Jean. At Hancock Field, Judge Stucky handled claims for and against the military, provided legal assistance, served as base defense counsel, and periodically flew up to Thule Air Base (now Pituffik Space Base) in northern Greenland to address legal issues.

When Jean graduated in May 1978 and Judge Stucky separated from service that August, they headed down



Above: Judge Stucky “driving” a tractor in his early years; Left: Judge Stucky during his military service.

to Washington, D.C. The Judge’s first post-military job was with a law firm practicing aviation regulation. He stayed there until 1983, when he became a branch chief with the Nuclear Regulatory Commission (NRC) and rejoined the Air Force Reserve. A year later, the Judge took a civilian position with the Air Force doing legislative work. Over the next 13 years, Judge Stucky meaningfully contributed to important legislation, including the Goldwater–Nichols Act, a bipartisan bill that made sweeping improvements to the U.S. Department of Defense. He was selected as a legislative fellow during this time and spent eight months working for Senator John Warner of Virginia, who would become an important supporter. The Judge was also able to cultivate his love of learning by completing a program at the Federal Executive Institute near the University of Virginia, the Program for Senior Officials in National Security at the Harvard Kennedy School of Government, studying strategy and politics at the National War College, and earning an LLM in international law from the George Washington University Law School (where he would later serve as an adjunct professor).



Jean and Judge Stucky on their wedding day.

Throughout this period, Judge Stucky and Jean were similarly engaged in family and community. Jean worked on Wellesley College alumnae affairs and volunteered for the National Cathedral, while the Judge joined and contributed to patriotic and hereditary societies, including serving as Commander-in-Chief of the Military Order of the Loyal Legion of the United States. The Stuckys also became parents, adopting two infant siblings: their daughter Mary-Clare in 1992 and their son Joseph in 1995. Both children have become successful young adults and the Judge never misses a chance to sing their praises.

In 1996, Judge Stucky was hired as Republican General Counsel for the Senate Armed Services Committee upon the recommendation of Les Brownlee, a former colleague from Senator Warner's office and, at the time, the Committee's Chief of Staff under Senator Strom Thurmond. The Judge served in this position for ten years under Senators Thurmond and Warner helping to annually produce the gargantuan National Defense Authorization Act, address thousands of nominations, and oversee the country's national defense apparatus. He calls his time there "a marvelous experience" and remarks that "the Committee staff, both Republican and Democratic, were the best on Capitol Hill."

But his time as a reservist had piqued another passion. Early in his tenure with the reserves, Judge Stucky first became a judge when he was chosen to sit on the

Air Force appellate court. The required analytical and intellectual engagement suited him perfectly and he spent much of the rest of his Reserve career on the court until he retired as a colonel in 2003. This experience made serving on CAAF, "the peak of the military justice system," the Judge's dream. His aspiration materialized in 2006, when there were two vacancies on the court under a Republican president. Senator Warren championed Judge Stucky for one of the positions and, following a White House interview, Judge Stucky received the call in August that he would be nominated. As he puts it, "the next months were a blur of filling out forms and watching the calendar." The Senate Armed Services Committee confirmed his appointment by unanimous consent in December.

Judge Stucky relished his time on the court in terms of both the fascinating work and the chance to so meaningfully contribute to military justice and his country. Before meeting the Judge, I remember hearing his name spoken of with distinct and consistent admiration from the JAG officers I worked with. Indeed, he developed a reputation across service JAG Corps as an incisive questioner and a concise and insightful opinion author. Judge Stucky was known for artfully weaving together multiple approaches to legal analysis. Ever the historian, he would discern relevant legislative history and, as he put it so eloquently in *U.S. v. Clark* (2016), "the tonic chord running through our cases." Judge John Sparks, a friend and colleague at CAAF, describes Judge Stucky as a pragmatist who kept in mind the practical effects of the court's rulings. The Judge was also always keenly attentive to appropriately balancing the government's need to field an effective fighting force and the individual rights that servicemembers possess as Americans, and that make this country worth fighting for.

Judge Stucky served on the court during a unique time in the history of military justice. The evolving use of increasingly powerful cell phones and the cloud gave rise to myriad new practices and, resultantly, novel and complicated issues regarding government authority and individual rights. Judge Stucky, in his dissent in *U.S. v. Nieto* (2017), prudently stated that appropriately assessing modern technology requires understanding its functioning and commonsensically applying doctrine to novel situations. Congress also instituted substantial reforms in response to revelations concerning widespread sexual crime in the military. For example, victims were afforded



Judge Stucky at his swearing-in ceremony.

counsel to protect and enforce their rights. This led to a singular argument before CAAF in *LRM v. Kastenber* (2012) involving three parties: the victim, the military judge who made a ruling below, and the accused. As a law student, this was my first time seeing Judge Stucky on the bench, and his engaging questions and thoughtful assessments made a lasting impression.

The military justice system also faced challenges to its independence during Judge Stucky's tenure. Chief Judge Ohlson, CAAF's current chief judge and a friend and colleague of Judge Stucky's, recalls the Judge consistently standing against potential threats to military legal process and the court. In Judge Stucky's concurrence-in-part and dissent-in-part in *U.S. v. Bergdahl* (2020), the Judge forcefully called out powerful actors by name who attempted to inappropriately influence military legal proceedings.

Judge Stucky was also fascinated by the history of military justice and CAAF (the Judge admits to, at times, feeling like "a frustrated historian"). He would readily recount these histories to anyone interested. Judge Ohlson fondly remembers Judge Stucky giving Chief Justice John Roberts a tour of CAAF and regaling the Chief Justice with the court's history, its importance, and the importance of the military legal system. Judge Ohlson has said that Judge Stucky "would have been equally happy serving as chair of a university history department as a judge."

Judge Stucky's chambers, for its part, was a won-

derful place for everyone who came through its doors, made possible in part by the expertise and kindness of his long-term staff, which included Colonel Jim Young (ret.), the Judge's commissioner who previously oversaw the Judge as Chief Judge of the Air Force appellate court, and Chief Petty Officer Ed McGugin (ret.), the Judge's administrative assistant. Judge Stucky was deliberate in creating a welcoming workplace that engendered intellectual engagement, rewarded inquisitive analysis, and valued not only competence, but also humanity. Every milestone was celebrated, from birthdays to departures to babies. Professor Ari Ezra Waldman of the UC Irvine School of Law (Judge Stucky's first law clerk) describes it as a place of "warmth and curiosity." In fact, Professor Waldman's first academic article addressed issues that had been before CAAF and resulted from Judge Stucky's encouragement to write. It was exciting to hear our names called from the Judge's office—a chance to engage in open and fulfilling discussion—and it was a privilege to work in his chambers.

The Judge's term ended in 2021, and he formally retired after serving his country for nearly half a century. His work has made an indelible impact on his colleagues and the law. Judge Stucky is a man of integrity, candor, and kindness, and a proud son of Kansas who, according to his friend and colleague Judge Sparks, "loves Kansas more than Dorothy from the Wizard of Oz." In turn, Judge Stucky is someone that Kansas (indeed, all of us) should be proud of. ☺