

IN MEMORIAM

THE HONORABLE ROBINSON O. EVERETT

1928–2009

ROBINSON EVERETT: THE CITIZEN-LAWYER IDEAL LIVES ON

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With titles like “*The Lost Lawyer*,” modern writers about the legal profession have amassed a literature of mourning that grieves the demise of the lawyer-statesman and the citizen-lawyer.¹ According to much of this literature—with the rise of the large national and international law firm as well as the increase in specialization and the focus on the firm as a business—the pipeline from law to politics and law to public service, so critical from the time of the Founding through the early twentieth century, was severed for once and all. It is said that we shall never again see the likes of the little giant or the rail splitter or the Atticus Finches of small town America—lawyers, statesmen, and civic leaders. These writers obviously never met Judge and Professor Robinson O. Everett.

Until the day that he died last year, Professor Everett, known affectionately as Robbie, was the consummate lawyer-citizen,

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1. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); see also SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* 32–33 (1994) (“The worst damage is done invisibly, within the firm, where collegial relations become secondary to financial return and the young are inducted into a business rather than a mystery.”); Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality*, 50 WM. & MARY L. REV. 1169, 1180 (2009) (noting that while “some version[] of the citizen lawyer” is alive and well, “the ideal of the citizen lawyer as part of the calling of ordinary private lawyer[s] . . . is in recession”).

constantly thinking of ways in which he could improve the justice system and make his community a better place for all to live. He was full of projects and plans. Sometimes he acted through his role as a professor, sometimes as a judge, sometimes as a citizen, but always as an esteemed member of the Bar. Last year, Duke Law School's graduation speaker, Judge David Sentelle, said to our students that now that they were about to become lawyers, they could no longer muse about something gone awry: "*they* really ought to do something about that," because as law graduates, they were the "*they*" responsible to act and to keep our democracy operating smoothly and fairly. Robbie knew this well and never called upon others to do what he could do himself, although he frequently called upon others to join him. Whether through his tireless commitments to students, faculty, and staff at Duke Law School; his service as the Chief Judge on the United States Court of Appeals for the Armed Forces; his involvement with bar associations, civic groups, and professional organizations; and his assistance and counsel to the countless individuals he guided along life's path, Professor Everett took responsibility for the world around him not just as any caring citizen or neighbor might do, but as a person who had the good fortune and privilege to be a lawyer. He was living proof that the citizen-lawyer is and can be alive and well for all who have the character and determination to follow in that great tradition.

Professor Everett's career in the law would seem predestined. He was born on March 18, 1928, in Durham, North Carolina, the only child to the loving union of two local lawyers of great distinction—Kathrine R. Everett, one of the earliest women graduates of UNC Law School, and Reuben O. Everett, one of Duke University's first law students.² Raised in a close-knit family, Robbie often recalled as one of his proudest moments the day in 1954 when he and his parents were sworn into the U.S. Supreme Court Bar together.

Professor Everett graduated from high school in Durham at the age of fifteen. He then attended Harvard College and received his bachelor's degree in Government, *magna cum laude*, at the ripe old age of nineteen. Three years later, he graduated, *magna cum laude*, from Harvard Law School. Professor Everett returned to his native

2. Robbie once wrote that he became a lawyer because he was "the only child of two unique North Carolina lawyers[] who were great role models." Robinson O. Everett, *Lawyer Family: Lessons Learned for the Practice of Law*, in *LAWYER TO LAWYER: NORTH CAROLINA REFLECTIONS ON THE PRACTICE OF LAW* 15, 15 (2005).

Durham to practice law and began teaching at Duke Law School soon thereafter. At twenty-two years old, he was the youngest person ever to teach at Duke Law. And as he liked to joke, he “must have been a good teacher” because he became a full-time member of the faculty in 1957 and gained tenure in 1967.

After just one year of teaching at Duke Law, and with the encouragement of his mother, Professor Everett enlisted in the United States Air Force in 1951 during the Korean War and went on to a distinguished career in the military. Upon his release from active duty, he served as commissioner of the United States Court of Military Appeals and remained a member of the Air Force Reserve until his retirement in 1978 as a colonel in the Judge Advocate General’s Corps. As counsel to the Subcommittee on Constitutional Rights of the United States Senate Judiciary Committee, Professor Everett was also a major force contributing to the enactment of the Military Justice Act of 1968, which created the modern military court system. In 1980, in recognition of Robbie’s contribution to military justice, President Carter appropriately appointed him Chief Judge of the United States Court of Military Appeals, the highest civilian court in the military justice system. He served in this capacity for a decade, eventually taking senior status for the remainder of his life. It is not a surprise that he continued to teach at Duke throughout his tenure as a judge, commuting each week from Durham to Washington. Because of his energy, talent, and commitment to teaching and to judging, these dual careers did not compete but rather enriched one another.

Professor Everett also practiced law in Durham. He joined his parents’ firm in 1955, and continued in general practice at the aptly named Everett, Everett and Everett for twenty-five years. His legal practice included civil and criminal appeals, and real estate transactions. In perhaps his most famous string of cases, Professor Everett was both plaintiff and attorney in the landmark and controversial North Carolina redistricting cases, starting with *Shaw v. Reno*.³ He argued four times before the U.S. Supreme Court in connection with that case.⁴ In fact, he and another distinguished Duke Law Professor, H. Jefferson Powell, argued against each other in one

3. *Shaw v. Reno*, 509 U.S. 630 (1993).

4. In addition to *Shaw v. Reno*, he also appeared before the Court in *Easley v. Cromartie*, 532 U.S. 234 (2001), *Hunt v. Cromartie*, 526 U.S. 541 (1999), and *Shaw v. Hunt*, 517 U.S. 899 (1996).

of those Supreme Court appearances,⁵ surely a unique event in the life of Duke Law or any other law school. The academic-colleagues-turned-legal-adversaries remained personally and professionally close and deeply respectful of one another despite their widely divergent positions on the case.

Professor Everett also served in a variety of leadership positions in the legal profession, the Duke and Durham communities, and his church. He was involved in numerous local, state, and national bar organizations, committees, and projects, all of which recognized his formidable energy, creativity, and leadership. His contributions were often recognized in the many awards that he received, including the Morris I. Liebman Award from the American Bar Association. Though firmly rooted in Durham and North Carolina, he was a national figure in the law and in law reform. From his work with Senator Sam Ervin on the Military Justice Act to his service as a North Carolina commissioner to the National Conference of Commissioners on Uniform State Laws, in which role he labored on drafting committees for the Revised Controlled Substances Act, the Uniform Duties to Disabled Persons Act, and the Model State Administrative Procedures Act, Robbie contributed his talents and wisdom to the profession unstintingly and on a large stage.

But for all of his achievements as a practitioner, judge, and community servant, Professor Everett was most at home at Duke Law School where he spent over fifty years. He was wholly devoted to the Law School and to his students. Indeed, for many Duke Law alumni, Professor Everett is the embodiment of Duke Law School. He founded Duke Law's Center for Law, Ethics and National Security in 1993, well before the national spotlight was cast on these issues. He taught courses in military justice, criminal law, national security law, sentencing, and criminal procedure. His scholarly interests included not only criminal, military, and national security law, but also election law, redistricting, real estate law, and secured transactions.

Robbie was deeply embedded in the Duke Law community. He was a constant fixture at Law School events, always available to welcome new students into the fold; a faculty advisor to numerous law student organizations, including journals and Moot Court; and an active participant on numerous law school and university-wide committees. His dedication to this institution and the people within

5. *Reno*, 509 U.S. at 632.

its walls was unyielding. Any dean during Professor Everett's remarkable tenure will attest that he was a constant source of ideas for new programs, courses, or conferences that would expand opportunities for students, alumni, and colleagues.

He also was a quiet and generous source of financial support to the Law School and to many students in need of assistance. Often upon hearing of a student's struggles, Professor Everett would pay a tuition bill, purchase law textbooks, or pay for travel to a job interview. Sometimes students did not even know whom to thank for these acts of kindness. Robbie took a special interest in those who were in trouble or who might get lost among the competitive pressures of daily life in a top-tier law school. Offering a helping and guiding hand to these young people was his special mission, and he excelled at it. There are many alumni who received a hand, a home-cooked meal, or a word of encouragement from Robbie and for whom this simple act made all the difference.

When Professor Everett died on June 12, 2009, his quiet acts of kindness emerged in a flood of stories and remembrances offered up by Duke Law alumni. As word of his passing spread within the community, the great shock and sadness we all felt was tempered with gratitude for having been blessed by his example and friendship. Our tribute website filled in a matter of days with dozens upon dozens of memories from former students and friends who were touched by him, given a job, given advice, or welcomed into his home. Other memories were less intimate, but no less poignant; they spoke of his gentle manner and kind classroom demeanor. All who knew him recognized the deep well of good will he carried within.

Although Robbie and I did not know each other for very long, we were comfortable with one another right away. Perhaps our natural and easy bond reflected our common background of judicial service and our membership in many of the same organizations. Robbie frequently came down to the dean's office to have a word with me. Often he brought some distinguished guest he wanted me to meet. In other instances, he had an idea for a speaker, a program, or a conference that would enrich the education of our students. On many of these occasions, he wanted to talk about his deep concern that the justice system does not do enough to help convicted felons reintegrate into the community. He had not given up on the idea that people can change if they are helped. And he did not see us in groups. He saw each of us, even the most troubled among us, simply for ourselves. For all his accomplishments and successes, it was his determination to

help each person, one at a time, that is most inspiring, and which—in Professor Everett, as in others—united the lawyer as statesman and public citizen, with the lawyer as the defender and representative of individuals.

Professor Everett once said that the law “provides some wonderful opportunities for service to others and is also a means to a productive life.”⁶ This understated description was typical of Robbie. He did not deliberately set out to achieve greatness. He sought a productive life through service, but sought it so constantly, so energetically, and so unselfishly that greatness came to him unbidden and unsought. From the representation of individuals to the many projects on behalf of his community and nation, Robbie lived a life in the law in the greatest tradition of the Bar. Although Duke’s model citizen-lawyer has departed, his impact will long be felt by the many Duke Law graduates who do honor to his example by serving in that very same tradition. Long may it live.

6. David F. Levi, Duke Law, The Honorable Robinson O. Everett, 81, <http://www.law.duke.edu/news/story?id=3508&u=11> (last visited Feb. 15, 2010).

THE HONORABLE ROBINSON O. EVERETT: CHIEF JUDGE

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The appointment of Robinson O. Everett to the United States Court of Military Appeals¹ in the spring of 1980 began a unique period in the history of military justice jurisprudence. In late 1979, the Honorable Matthew Perry resigned from the Court of Military Appeals to accept an appointment as a U.S. district court judge in South Carolina. At the time and for a variety of reasons, the court was in disfavor with its military constituency.² The general counsel of the Department of Defense, Deanne Siemer, circulated a talking paper suggesting that the court be abolished and its function transferred to the United States Court of Appeals for the Fourth Circuit.³ Fortunately for history, General Counsel Siemer, following the advice of a selection commission appointed by President Carter, instead decided to recommend Professor Robinson O. Everett of the Duke University School of Law to serve as a judge of the court. He served the court as chief judge for over ten years and served two more years as an active senior judge. He remained in the service of the court until his death in June 2009. Indeed, he was planning on sitting on two cases within days of his death.⁴

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1. The court is now known as the United States Court of Appeals for the Armed Forces.
2. *See generally* 2 JONATHAN LURIE, PURSUING MILITARY JUSTICE: THE HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, 1951–1980, at 231–71 (1998).
3. *Id.* at 257.
4. The court's records show that Judge Everett participated in cases every term from the date of his appointment. In fiscal years 1994, 1995, 2001, and 2006, he sat on only one case. He did not sit on cases in fiscal years 2002, 2003, 2004, 2005, 2007, and 2008, but he was an active participant—as he was every year—in the court's activities and judicial conference. In 2009, he was preparing to participate in two cases when he passed away. *See United States v. Schweitzer*, 68 M.J. 133; *United States v. Asbury*, 68 M.J. 108 (both argued June 24, 2009, just days before his death).

Professor Everett was eminently qualified. He had served both on active duty and as a reserve Judge Advocate in the Air Force. He had written scholarly articles⁵ and a handbook about military justice.⁶ He was active in the American Bar Association and served on its Standing Committee on Military Law. He was known and well respected in the military legal community.

Chief Judge Everett wasted no time in applying his jurisprudential qualifications and intellect to the unique issues facing the military community. Prior to his appointment on the court, the military faced serious problems with morale and discipline, primarily arising from rampant drug use. A series of opinions authored by Judge Everett soon proved his understanding of the delicate balance between preserving “good order and discipline” and affording service members subject to the Uniform Code of Military Justice the protections of the Bill of Rights.⁷ Quite naturally, he could not have done it alone and had the support of his fellow Judge William Cook and, to a lesser degree, Judge Albert Fletcher, whom he had replaced as chief judge in 1980.

There were at least four significant areas in which Judge Everett made the most obvious impact: jurisdiction of the courts-martial over persons and offenses, application of the Fourth and Fifth Amendments to constitutional jurisprudence in the military context, recognition of the extraordinary writ jurisdiction, and vigilance against command influence. Furthermore, Judge Everett’s scholarship in the research and writing of his opinions was remarkable.

Following the Supreme Court’s decision in *O’Callahan v. Parker*,⁸ jurisdiction over the subject matter of a crime was significantly limited to “service connected” crimes and offenses.⁹ Most

5. *E.g.*, Robinson O. Everett, *The New Look in Military Justice*, 1973 DUKE L.J. 649.

6. ROBINSON O. EVERETT, *MILITARY JUSTICE IN THE ARMED FORCES OF THE UNITED STATES* (1956).

7. Brigadier General John Cooke, U.S. Army (Ret.), a recognized military justice scholar, recently presented a lecture, *The Legacy of Judge Robinson O. Everett*, in which he concluded that Judge Everett’s most notable contributions to military justice jurisprudence can be found in five distinct areas of the law. I have relied in large part on the citations, quotes, and scholarship provided by General Cooke. John S. Cooke, Brigadier Gen., U.S. Army (Ret.), and Deputy Director, Fed. Judicial Ctr., *The Legacy of Judge Robinson O. Everett*, Address at the 2009 Appellate Advocacy Symposium (Oct. 16, 2009). A revised version will be published in Volume 68 of the *Military Justice Reporter* in an appendix to the Memorial Proceedings for Judge Robinson O. Everett.

8. *O’Callahan v. Parker*, 395 U.S. 258 (1969).

9. *See id.* at 272.

notably, this decision affected jurisdiction over drug offenses occurring off of a ship, base, or other military installation. In the seminal case of *United States v. Trottier*,¹⁰ Judge Everett made it clear that drugs coursing through the veins of service members created a significant impediment to military readiness and fitness for duty.¹¹ He concluded:

In short, when we reflect on the broad scope of the war powers, the realistic manner in which the Supreme Court has allowed Congress to exercise power over commerce, and the flexibility which the Supreme Court intended for the concept of service connection so that, with the aid of experience, there could be a suitable response to changing conditions that affect the military society, we come to the conclusion that almost every involvement of service personnel with the commerce in drugs is “service connected.”¹²

In *United States v. Solorio*,¹³ Judge Everett recognized that alleged sexual offenses committed by a service member against the children of other service members—even off base—were the types of offenses that greatly affected good order, morale, and discipline, and were thus service connected.¹⁴ The Supreme Court used the *Solorio* decision to overrule the *O’Callahan* line of cases.¹⁵ Judge Everett’s wise and subtle applications of the Supreme Court cases cleared the way for prosecution of numerous offenses that were hampering the efforts of commanders to enforce command and control.

Judge Everett’s contribution to the law in the areas of Fourth and Fifth Amendment jurisprudence also played a key role in the military’s war on drugs. Regarding the Fourth Amendment, which provides for protection against unreasonable searches and seizures, Judge Everett recognized that the rights provided therein had force and effect in the military community.¹⁶ His jurisprudence, however, allowed for commanders, rather than the independent magistrates normally used in the civilian context, to provide these protections to service members. Concluding that the warrant clause was satisfied when a commander issued a search authorization based on probable

10. *United States v. Trottier*, 9 M.J. 337 (C.M.A. 1980).

11. *Id.* at 349.

12. *Id.* at 350.

13. *United States v. Solorio*, 21 M.J. 251 (C.M.A. 1986).

14. *Id.* at 256.

15. *Solorio v. United States*, 483 U.S. 435, 436 (1987).

16. *E.g.*, *United States v. Middleton*, 10 M.J. 123, 126–27 (C.M.A. 1981).

cause, he recognized two significant exceptions to the warrant requirement. He recognized the power of commanders to conduct ordinary, regular, and thorough health, welfare, and readiness inspections without notice and without probable cause. For example, in approving the use of a drug detection dog that had alerted on a soldier's personal locker to provide the necessary probable cause for an individual search, Judge Everett commented:

This is not to say, however, that in its application the Fourth Amendment does not take into account the exigencies of military necessity and unique conditions that may exist within the military society.

....

We are not deterred . . . by the fact that the sole function of the dog is to detect the presence of substances whose possession is criminally proscribed. If the area in which the commander roams is public as to him, and if a commander may lawfully use a drug-detection dog to enhance his own natural senses, then the conclusion follows that a drug-detection dog is a proper incident of a legitimate fitness and readiness inspection.¹⁷

In the area of self-incrimination, Judge Everett—recognizing that Article 31 of the Uniform Code of Military Justice provided great safeguards against self-incrimination—used common-sense application to limit the rule to “official interrogations” and not to mere conversations between military members. And one of the court's most important decisions validated the use of compulsory urinalysis inspection, holding that the program did not violate a service member's rights against self-incrimination and did not constitute an unreasonable search and seizure.¹⁸

This trilogy of cases—finding that drug use was always service connected thus subject to the jurisdiction of a court martial; giving commanders greater powers in conducting health, welfare, and readiness inspections; and approving the use of results of compulsory urinalysis inspections to prosecute service members for drug use—represented a major shift in the court's jurisprudence. Although many other factors and people contributed to the success of the military's war on drugs, these decisions played a major role.

17. *Id.* at 127, 129 (footnotes omitted).

18. *Murray v. Haldeman*, 16 M.J. 74, 80–83 (C.M.A. 1983).

In the third area impacted by his jurisprudence on the law of military justice, Judge Everett applied extraordinary writ jurisdiction and took an expansive view of the court's role in military justice. In the remarkable case of *United States Navy-Marine Corps Court of Military Review v. Carlucci*,¹⁹ the court was confronted with an extraordinary writ asking it to enjoin the inspector general of the Department of Defense from conducting an investigation into the judicial processes used to reach a court decision. Finding that the Court of Military Appeals had jurisdiction, Judge Everett said:

We are convinced that, in the exercise of its constitutional authority as to the armed forces, Congress may grant an Article I court, such as this Court, the power to prevent officials of the Executive Branch from interfering with the administration of military justice.

....

... We are convinced that it is within our inherent authority as the highest court within the military justice system and within our supervisory authority under the All Writs Act, 28 U.S.C. § 1651(a), to create an internal procedure for investigating complaints of judicial misconduct²⁰

Judge Everett sincerely believed that Congress intended for the Court of Military Appeals to behave and rule on matters in the same sense as any other federal court. He was not shy but courageous, and as a result, litigants before the court—whether they were government representatives or military service members—were assured an opportunity to be heard.

A fourth and important contribution to the law that is symbolic of Judge Everett's jurisprudence was his constant vigilance for command influence. He described command influence as “the mortal enemy of military justice” and was zealous in his belief that the court's most important mission was to protect service members from having their courts-martial tainted by it to any extent.²¹

Lastly, one should recognize that many of Judge Everett's opinions are so well researched and well written as to have importance far beyond their holdings. For example, in *United States v.*

19. *U.S. Navy-Marine Corps Court of Military Review v. Carlucci*, 26 M.J. 328 (C.M.A. 1988).

20. *Id.* at 330, 340 (citations omitted).

21. *United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986).

Matthews,²² the court was called upon to decide if the death penalty scheme found in the Manual for Courts-Martial met constitutional norms. In reversing *Matthews*'s death sentence, Judge Everett authored a scholarly work tracing the evolution of death penalty litigation in the Supreme Court. It is so thorough and clearly written that I assigned my criminal law students the case.

Any story of Judge Everett's role as a jurist and chief judge of the Court of Military Appeals would be incomplete if it stopped with a conversation about his cases, because his influence was far greater and reached farther afield than the cases themselves. He was a missionary for military justice and gave numerous speeches explaining and extolling the good aspects of the system. He founded three distinct programs to carry the message to the constituents of the court, to law schools, and to the general public.

Judge Everett's first project was his public awareness program. In addition to speaking to various bar groups, law students, civic clubs, and others, he commissioned the making of a documentary film that explained the court-martial process all the way through an appeal to the highest court. It was widely circulated to military judge advocate offices and to the Judge Advocates General School for use in training programs.

The second program is known as Project Outreach. This very successful ongoing program takes the court on the road—from the courthouse in Washington, D.C., to various law schools, military installations, military academies, and even on board a ship at sea—to hear a real case with the actual attorneys representing the government and the military appellant. This program has introduced hundreds if not thousands of civilians and military personnel alike to the workings of the court.

The third program was the Cameras in the Courtroom Project. Indeed, the Court of Military Appeals was the first court to allow cameras to broadcast a live oral argument from a federal courtroom.²³ Judge Everett was initially approached by Tim Dyke, who at the time was representing the television media industry.²⁴ Mr. Dyke was interested in getting cameras into federal courtrooms. Judge Everett persuaded my colleague, Judge Eugene Sullivan, and me that it was

22. *United States v. Matthews*, 16 M.J. 354 (C.M.A. 1983).

23. George C. Chalou, *A Pioneering Effort in Television: The U.S. Court of Military Appeals*, *FED. LAW.*, Sept. 2006, at 24, 24.

24. Mr. Dyke is now a judge on the United States Court of Appeals for the Federal Circuit.

an idea worth pursuing. The idea was not well received by the Senate Armed Services Committee nor by the military community, but the court nevertheless went forward. Several live hearings were ultimately telecast, including a death penalty case in which Judge Everett fielded live call-in questions about the process from the audience.²⁵

Judge Everett was also very active in the American Bar Association, the Federal Bar Association, the North Carolina Bar Association, and other service organizations. He supported and actively contributed to the continuing legal education of attorneys practicing in the military community—both civilian and military judge advocates—through his support of the Homer Ferguson Conference, a conference dedicated to furthering the legal education of attorneys practicing in military courts-martial. Because of his vast network of friends in the legal community, he was able to attract many legal scholars and premier trial attorneys and judges to present programs on evidence, jurisprudence, trial tactics, legal writing, and the like. The conference continues today, now known as the Judicial Conference of the United States Court of Appeals for the Armed Forces.

No commentary on a jurist is complete without an observation of his judicial temperament, character, and treatment of his fellow men, regardless of station. No one who ever appeared before Judge Everett at the Court of Military Appeals was heard to complain of the treatment he or she received by the Judge's even-tempered hand. He was well prepared and enjoyed an encyclopedic memory—perhaps even a photographic one—of what he had seen or heard along the way. He was kind to counsel, forgiving of the ill prepared, and willing to allow plenty of time to file briefs and papers with the court. He looked for and found goodness in his fellow man. It is an honor to have called him my colleague and my friend.

25. Chalou, *supra* note 23, at 27.

ROBINSON O. EVERETT AND NATIONAL SECURITY

SCOTT L. SILLIMAN†

Many have written about the tremendous talents and abilities of the late Judge Robinson O. Everett as a professor at Duke Law School, of the warmth of feeling for him and the high esteem in which he was held by those of us who were his faculty colleagues, and of his love and ceaseless support for his thousands of students throughout the years. I join in these accolades to a great teacher who will be sorely missed, but I write separately to highlight something of equal or greater importance to many outside the academy—his major contributions over the last half-century to the field of national security.

Robbie, as he was known to all, was a veteran and intensely proud of it. He served with distinction as a judge advocate (a uniformed military attorney) in the United States Air Force during the Korean War, and then stayed in the Air Force Reserve until he retired in the grade of colonel in 1978. In tribute to that service, he was given military honors at his burial in Fayetteville. A general officer commanded the honor-guard detail—a very unusual occurrence and one that was specifically approved in Washington by the Air Force Chief of Staff. The officer commanding the honor-guard detail was Air Force Brigadier General Steven Lepper, a 1984 graduate of Duke Law School and one of Robbie's former students.

Judge Everett was also instrumental in the shaping and development of military justice, the congressionally enacted system for dealing with criminal offenses committed by our men and women in uniform. Upon leaving active duty with the Air Force Judge Advocate General's Department in 1953, he was hired as a

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commissioner to Judge Paul Brosman, one of the three judges selected by President Truman to comprise the new United States Court of Military Appeals under the 1951 Uniform Code of Military Justice (UCMJ).¹ Three years later, Robbie authored one of the first authoritative textbooks on military justice.² In 1961, he became counsel to a joint Senate Armed Services–Senate Judiciary Subcommittee on Constitutional Rights, chaired by Senator Sam Ervin from North Carolina. The following year, this subcommittee held hearings that included a general assessment of military justice under the UCMJ after eleven years of operation.³ Robbie's association with and influence on Senator Ervin eventually led to the Senator's heavy involvement in a major course correction of the military justice system, the Military Justice Act of 1968,⁴ which greatly improved the system and made it inherently more fair and credible.

I entered active duty as an Air Force judge advocate in 1968 and spent the next ten years practicing and teaching military justice in this country and abroad. During this time, President Ford nominated, and the Senate confirmed, Albert Fletcher from Kansas as chief judge of the Court of Military Appeals.⁵ Because of his proposals to “civilianize” the court-martial system by enhancing the judicial authority of his court and of military judges at the expense of commanders' authority, Judge Fletcher's tenure as chief judge was marked by turmoil and tension between the court and the Judge Advocates General of each of the military branches. When Matthew Perry, one of the three judges on the court, indicated his desire to leave the bench in late 1977 and early 1978, there was hope in military circles that whoever was nominated to replace him should be not only a scholar of military justice but also someone who would be respected by those in the armed forces. The obvious choice was Robinson O. Everett. During this time, as the Assistant Executive Officer in the Office of The Judge Advocate General in Washington, I worked with

1. 10 U.S.C. §§ 801–940 (2006). The name of the court was changed in 1994 to the United States Court of Appeals for the Armed Forces. National Defense Authorization Act for Fiscal Year 1995, Pub. L. No. 103-337, § 924(a)(1), 108 Stat. 2663, 2831 (1994) (“The United States Court of Military Appeals shall hereafter be known and designated as the United States Court of Appeals for the Armed Forces.”).

2. ROBINSON O. EVERETT, *MILITARY JUSTICE IN THE ARMED FORCES OF THE UNITED STATES* (1956).

3. 2 JONATHAN LURIE, *PURSuing MILITARY JUSTICE: THE HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES, 1951–1980*, at 163–64 (1998).

4. Military Justice Act of 1968, Pub. L. No. 90-632, 82 Stat. 1335.

5. See 2 LURIE, *supra* note 3, at 228–30.

then–Brigadier General James Taylor, Jr., the Deputy Judge Advocate General of the Air Force, in moving Judge Everett’s nomination through the hallways of the Pentagon to the presidentially appointed nominating committee chaired by Deanne Siemer, who was then the Department of Defense General Counsel. No one objected to his nomination, and the committee submitted only one name to President Carter: that of Robinson O. Everett. Ms. Siemer also recommended to the president that Robbie be designated chief judge of the court, replacing Judge Fletcher, as soon as possible.⁶ President Carter agreed and, after confirmation by the Senate, Judge Everett took his oath of office as the new chief judge of the Court of Military Appeals on April 16, 1980,⁷ and served in that capacity until 1990. I am not alone in considering that decade the halcyon years of military justice. Judge Everett stayed on as a senior judge on the court after 1990 and was in senior-judge status and still sitting on cases when he died. Nine years before his death, and in honor of his lifetime devotion to and major impact upon the field of military justice, he was awarded the first Distinguished Life Service Award by the Judge Advocates Association. The award was then named after him.

Judge Everett’s influence upon and contributions to national security extend far beyond military justice. His writings and speeches brought about changes to the law that have had a major impact upon the legal tools for dealing with those who commit crimes of terrorism. For example, he co-authored an article in 1994 urging consideration of the use of courts-martial and military commissions for prosecuting violations of international law,⁸ a concept the Bush administration adopted and Congress later codified in the Military Commissions Acts of 2006⁹ and 2009.¹⁰ He also worked closely with Congressman Walter Jones of North Carolina in enacting the 1996 War Crimes Act,¹¹ which created criminal jurisdiction in federal courts for prosecuting war crimes committed overseas when either the victim or

6. *Id.* at 269.

7. *Id.* at 271.

8. Robinson O. Everett & Scott L. Silliman, *Forums for Punishing Offenses Against the Law of Nations*, 29 WAKE FOREST L. REV. 509 (1994).

9. Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600.

10. Military Commissions Act of 2009, Pub. L. No. 111-84, tit. XVIII, 123 Stat. 2574.

11. 18 U.S.C. § 2441 (2006).

the perpetrator was “a member of the Armed Forces of the United States or a national of the United States.”¹²

Few will ever match Judge Everett’s unparalleled record of participation during his lifetime of involvement in the American Bar Association. He was especially active as a member of the ABA’s Standing Committee on Law and National Security. Attending virtually every meeting, Judge Everett always offered sage advice on how the Committee should respond to proposed ABA resolutions or pending congressional legislation affecting national security, or on selecting programs the Committee could sponsor to inform the public debate on some issue. His counsel was unerring. In recognition of that, the Committee honored Robbie in 2000 by presenting him with the Morris Liebman Award for lifetime service to the organization. Only four others have been so recognized.

Beyond all this, Judge Everett had a vision of yet another way in which he could influence national security policy. In the 1980s and into the early 1990s, the University of Virginia’s Center for National Security Law was the only academic center dedicated to encouraging education, research, and publications in national security law, and to conducting conferences and seminars in that area of practice. The center’s founder and director, John Norton Moore, was one of Robbie’s students in the early 1960s.

Judge Everett was determined to establish a second center at Duke Law School: the Center on Law, Ethics and National Security. His enthusiasm for this endeavor was contagious, and I quickly accepted his invitation to retire from the Air Force, come to Durham, and join him in making it happen. He founded the center in September of 1993 and in all ways gave it his support—through his time, his energy, and his financial resources. In the early years, whenever he would travel from Durham, no matter where he might go, he would find an opportunity to promote his fledgling center and to try to foster interest in it. We soon began receiving invitations to speak, either individually or together, at local clubs and organizations and at North Carolina military installations. We also continued what Robbie had been doing for many years—offering courses in national security law and military justice not just at Duke but at the law schools at the University of North Carolina at Chapel Hill and Wake Forest University. He encouraged me to add North Carolina Central

12. *Id.* § 2441(b).

University to the list of law schools where we would offer a course in national security law, and I have been teaching there since 1995. In addition to its educational offerings, the center has organized and conducted an annual two-day conference at Duke each spring since 1995, focusing on the most current national and international security issues. Since 1996, the center has also been a major cosponsor, with the ABA Standing Committee on Law and National Security, of the annual two-day Review of the Field of National Security Law, in Washington, D.C. The center has also published numerous articles and monographs on significant national security issues. In short, throughout the past sixteen years, Judge Everett was instrumental in refining the center's purpose while expanding the scope of its programs and other activities. The center has come far since 1993, attaining national and even international recognition, and Judge Robinson Everett was the guiding hand all along that path.

Notwithstanding all of his many and varied contributions to the field of national security over the years, Judge Everett remained a humble and unassuming man, always looking to raise up others rather than himself. In the eyes of many of his colleagues, that humble generosity reflects who he was better than any of his heralded achievements, and it is that which I will cherish and remember most.

A TRIBUTE FROM A STUDENT

JAMES M. MARKHAM†

The first class of my first day of law school was criminal law with Judge Everett. Many students go through three years of law school looking for a mentor. I found mine within minutes.

Criminal law was my small-section class—the one with only thirty or so students—so we all had a chance to get to know the judge pretty well. He welcomed us into his home for dinner, invited us to local bar association functions, and developed a rooting interest in our intramural softball team. He took us on a tour of the Bennett Place Civil War historical site in Durham, not telling us at the time that his family had been instrumental in its preservation. His energy level in and out of the classroom belied the substantial health difficulties he faced that fall. There was no slowing him down.

Despite starting law school with no particular interest in criminal law, I went on to take criminal procedure, military justice, and the judge's seminar on advanced issues in criminal justice. Any student from any of those classes, and countless others from the preceding half century, could tell a story about how Judge Everett made his or her time at Duke better. So, although I realize that my own story is not unique, I am honored to share it as an example of what Judge Everett meant to his students.

My first year of law school was a busy one. My oldest son was born just a few weeks before classes started. My wife, Cara, was on maternity leave for the first month and a half of school before she returned to work as an intern at Duke Hospital. We were, at times, overwhelmed.

Judge Everett offered constant encouragement and support. “How's the good doctor?” he would always ask me, knowing that Cara was the one who was really bearing the brunt of things. He made sure I knew that families were welcome any time the class got

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together for a social function. He even attended my son's baptism at Duke Chapel and the reception at our house that followed the ceremony. Already a larger-than-life figure in my eyes, the judge seemed even bigger as he stood in our kitchen chatting with my dad.

Cara and I managed to get through our respective first years, and year two rolled around. Things calmed down considerably for both of us—fewer shifts for her, a little less schoolwork for me. I took part in on-campus interviewing that fall, looking for a summer job that would allow us to stay in Durham the following summer and after graduation. Right around the time I was deciding where to accept an offer, Cara found out that she was pregnant again. We were thrilled, of course, but unsure how we would make it all work. Once again, I went to the judge for advice.

He agreed to see me right away, and I'll never forget how he cleared off the stacks of paper on the chairs in his office to make a place for us to sit and talk. When I told him the good news, his first response, naturally, was to offer his sincere congratulations. But as I began to talk about my options for the upcoming summer and my concerns about them, there was a clear change in his demeanor. It was one of the very few times that I saw the judge, who was generally so easygoing, get serious. He carefully walked me through each option, challenging me to think about what was most important to me and which path would allow me to be the kind of lawyer and the kind of father that I wanted to be. It was a glimpse of what it may have been like to be one of the judge's clients: he listened carefully, cut straight to the core of the issue, and pointed me in the right direction.

Following the judge's advice, I wound up working most of that summer in Chapel Hill as a summer law clerk at the UNC School of Government. And, based in no small part on his recommendation, I stumbled into my current position on the faculty at UNC, teaching and writing about criminal sentencing and corrections. Several times before his passing, the judge invited me to be a guest speaker at his criminal justice seminars to talk about my work at the School of Government. I felt out of my league in an all-star lineup of presenters, but the judge welcomed me back as a full-fledged colleague—including the customary after-class dinner at Bullock's Barbecue in Durham.

In closing, I will compliment myself by saying that my connection with Judge Everett may have been particularly strong because we had a lot in common. We both have strong ties to Durham; my mother and father were born here, and I live here with my family today. We

both went to college at Harvard, although I started at age eighteen, which was about how old Judge Everett was when he graduated. We both served in the Air Force, although I finished my time as a captain, whereas the judge left as a colonel. And finally, we both have three children—all sons.

As long as I can continue to say I have something in common with Judge Everett, I know I am on the right path. If I am able to accomplish only a fraction of what he was able to accomplish over the years of his life, I know that my life will be a success.