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7 Stetson J. Advoc. & L. 1 (2020)

## **Forward: Two Judges' Reflections on the Growth of Veterans Law's Past and Present**

Chief Judge Robert N. Davis and Judge Michael P. Allen

United States Court of Appeals for Veterans Claims



# Forward: Two Judges' Reflections on the Growth of Veterans Law's Past and Present

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## I. Introduction

1. We are extremely excited to write the Foreword for the inaugural installment of a yearly special issue focused on veterans law in Stetson University College of Law's *Journal of Advocacy and the Law*. Both of us have served on the faculty of the College of Law and have fond memories of the people and the place. And we have not forgotten it while on the bench. Our Court, the United States Court of Appeals for Veterans Claims (CAVC), recently held two oral arguments at Stetson and we were thrilled, along with our newest colleague, Judge Joseph Falvey (another former law professor), to attend the grand opening of Stetson's Veterans Law Institute (VLI) under the leadership of its Director, Professor Stacey-Rae Simcox.

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- 1 The President of the United States appointed [Chief Judge Davis](#) as a judge of the United States Court of Appeals for Veterans Claims after his Senate confirmation in 2004. He became Chief Judge of the Court in October 2016. Prior to his appointment, Chief Judge Davis served as a Professor of Law at Stetson University College of Law and the University of Mississippi School of Law. He also was a lawyer at several federal agencies. He received his law degree from Georgetown University Law Center. Chief Judge Davis is a decorated veteran of the United States Navy.
  - 2 The President of the United States appointed [Judge Allen](#) to the United States Court of Appeals for Veterans Claims after his Senate confirmation in 2017. Prior to his appointment, Judge Allen had been a Professor of Law at Stetson University College of Law for 16 years. He also was a lawyer at the Boston-based law firm Ropes & Gray for nearly a decade. He received his law degree from Columbia Law School.

2. The VLI provides the perfect transition for us to discuss the Journal's decision to devote a yearly issue to veterans advocacy and law and why we believe it is so important. This yearly installment in the Journal in and of itself speaks volumes about the explosive growth the veterans law field has seen over the past 15 years and some clues about what the future may hold. When the Chief Judge took his oath of office in 2004, it was not really appropriate to even talk about "veterans law" as a cohesive field. Just consider the state of this subject in law schools. In 2004, there were no academic journals focused on veterans law, no veterans law classes, and no veterans law clinics. There were only 15 volumes of the *Veterans Appeals Reporter*<sup>3</sup> and very little veterans law scholarship by members of the academy.

3. A personal story involving both of us drives the point home about the state of the field at that time. It's best told through the words of the Chief Judge, although as you might imagine Judge Allen has an opinion concurring in part and dissenting in part!

## II. Chief Judge Davis

4. In December 2005, I made what turned out to be a fateful telephone call. I was on the judicial conference<sup>4</sup> planning committee at the time and working with then-Chief Judge Greene and Judge Hagel. Because of my academic background, the task fell to me to try to find an academic who could provide a fresh review of veterans law spanning the past two years. That is, someone who could talk about the significant developments in veterans law from 2004 to 2006.

5. I immediately thought about then-Professor Allen, my former colleague, who had taken over my Constitutional Law class at the law school and who was a Federal Courts and Civil Procedure scholar in his own right. As a tenured full professor, I was asked to review Professor Allen's teaching skill and writing. I sat in on one of his Civil Procedure classes, and was immediately taken with how engaging, entertaining and erudite he was. He was teaching a difficult subject that is usually perceived by law students as boring. Not only was Professor Allen's Civil Procedure class not boring it was entertaining and stimulated thinking and I could tell that his classroom was a fun place to learn. So, being familiar with his teaching and writing skills, I thought I would call him to see if he might be interested in providing the recent developments in veterans law for the 2006 Judicial Conference.

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3 The *Veterans Appeals Reporter* is published by West Publishing Company and includes the precedential opinions of the United States Court of Appeals for Veterans Claims as well as veterans law cases decided by the Supreme Court of the United States and the United States Court of Appeals for the Federal Circuit.

4 Like all federal appellate courts, the *CAVC* holds a judicial conference every two or three years.

6. The story gets interesting at this point, and funny, because I almost remember verbatim the way the conversation went. I called, he picked up and I said “Mike, we are looking for someone to do a review of recent developments in veterans law for the upcoming Judicial Conference.” He said ok and reached for the Association of American Law School’s law faculty directory in order to see if he could find someone knowledgeable about veterans law. I knew he wouldn’t find any veterans law scholars, but he didn’t know that. I continued, “Mike, I said, we would like to get someone who can bring a fresh perspective to the conference and a fresh perspective to the cases.” I don’t think you can ever accuse then-Professor Allen of being slow, but he was a bit slow on the up-take in this case. I finally said, “Mike, I would like you to do it.” Finally, the lightbulb went on and he said “oh, you mean you want me to do it.” Yes, I said, “we want a fresh take on all of this law during the past two years. We have a new court, new judges and we want a fresh perspective.” He very quickly told me he’d do it, but followed it up by saying “I don’t know anything about veterans law.” I responded, “of course, but that’s the point.” And so began Professor Allen’s journey.

### III. Judge Allen’s Response

7. I remember the telephone call the Chief Judge recounts much as he does. I may respectfully dissent from the highly complimentary comments about my teaching and writing, but I must concur that I was quite slow that day on the phone. I simply had no idea what then-Judge Davis was talking about. I knew nothing – literally nothing – about the CAVC or veterans law in December 2005.

8. I confess that I agreed to undertake the project to speak at the judicial conference because I rarely can say no. I decided to read every decision on veterans law from any court in the period from 2004-2006. And I have to say I got hooked. It was a fascinating area of law that had real world impact on people. While I expected this to be a one-time project, it changed almost everything in my professional life.

9. Over the course of the years after Judge Davis’s call I wrote several articles on veterans law. I also had the opportunity to testify before congressional committees and make substantive policy contributions to the field. I didn’t realize it then, but I was a part of the growth of veterans law. You never know when answering a phone will change your life.

10. To be honest, we have told this story from our perspectives in part because we like the narrative. It was a funny moment, something we speak about frequently, and one that ended up having significant effects on our lives. But as people say, there is more to the story. The fact that the Court had nowhere naturally to go to find an academic perspective on veterans law in 2005-2006 and that the person the institution turned

to didn't even know there was such a thing as veterans law, speaks volumes about the state of affairs at that time. But times have changed, and we're glad they have!

11. In contrast to the state of affairs a decade or so ago, today we proudly announce what is in some measure a second academic journal devoted to veterans law<sup>5</sup> (at least for one issue a year) and there are scores of articles in general academic publications on the subject. Many law schools across the country have courses on veterans law and there are several casebooks on the subject. And perhaps most significantly, today, there are more than fifty clinics at law schools nationwide that deal with some type of issue concerning our Nation's veterans. At the Court, we are about to publish our 30th volume of the *Veterans Appeals Reporter*.

12. The Journal's focus on advocacy as it relates to veterans law is also significant. It doesn't matter where veterans interact with the legal system, be it in connection with claims for benefits, the criminal justice system, estate planning issues, or laws providing them with special status, they need the assistance of lawyers (and other non-lawyer representatives) to advocate for their cause. A journal issue focused on how one represents veterans is important, especially as this field continues to grow in such multi-faceted ways.

13. This inaugural issue shows how broad the growing field of veterans law is. To be sure, it includes issues that come before the CAVC. For example, Ken Carpenter (a pioneer in the field of veterans law) and Sara Huerter discuss the Veterans Appeals Improvement and Modernization Act of 2017. That statute, which became effective in February 2019, changes the system by which veterans and other claimants may administratively appeal disputes about benefits. There is no doubt this a monumental change in the administrative appeal process, one that Judge Allen will certainly be wrestling with during his time on the bench.

14. A second article in this vein is the contribution of Alison E. Preston and Edgardo J. Rodriguez, two of Judge Allen's law clerks. They discuss effective advocacy before the CAVC from a clerk's perspective. Their reflections range from the big picture concepts to the importance of such "mundane" issues as editing. It is a perfect contribution to an issue focused on advocacy in the context of veterans law.

15. But the field of veterans law is broader as the articles in this issue reflect. Professor Simcox's contribution discusses veterans treatment courts. These courts have been established around the country and recognize that in many situations veterans who enter the criminal justice system have special needs and, often are in the system because of their experiences in the military. Professor Simcox is well-positioned to discuss this topic because she served as the reporter for the Uniform Law Commission's project on these courts.

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5 The other academic journal is the *Veterans Law Review*.

16. And then we have the contribution of Jeremiah Fues concerning the opioid crisis and how it affects veterans. Given the number of veterans who die from this crisis every day, his article is both revealing and disturbing. He reminds us that general problems in society often have special relevance to those who served to protect our liberty. As he makes clear, VA's implementation of policy has an effect not only on veterans but the national debate as well. This is just a sampling of the excellent articles included in this first issue.

17. We can't conclude without taking some pride in an institution that made a difference to our careers: Stetson. Stetson has been intertwined with the growth and development of veterans law in ways that are rather quite astounding.<sup>6</sup> To begin with, two of the nine members of the CAVC (the two of us) taught at the College of Law. That really is remarkable. The current General Counsel of the Department of Veterans Affairs is a Stetson Law graduate, James Byrnes. Stetson also has provided numerous interns and law clerks to Judges of the Court. And one of those law clerks, Angel Carracciolo who worked with Chief Judge Davis, now serves as a board member (veterans law judge) at the Board of Veterans Appeals. The VLI under leadership of Professor Simcox is at the forefront of legal and policy issues. And Stetson has been one of only two law schools (George Washington being the other) that has participated in the Court's moot court competition every year since it began in 2009. During that time, Stetson won the competition four times, appeared in the final round one other time, won seven brief awards, and had a student named the best oral advocate in the competition four times. (Chief Judge Davis has ordered Judge Allen to note that then-Professor Allen was the coach of the team from 2009-2016 including its four championships. Judge Allen again dissents.). And this tradition at Stetson continues today with the publication of the Journal's special issue on veterans law.

18. To conclude, thank you for asking us to write the Foreword to this inaugural issue. A lot happened between 2006 and today, and who would have thought that two former Stetson law faculty members would have ended up on the same federal court. This is such an exciting field. Who knows where this adventure will take us all in the future, but if the past is any indication, we have much to look forward to.

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<sup>6</sup> We also wish to acknowledge the support that the College of Law's administration has given to veterans' efforts on campus. Space is too limited to recognize all the law school's leaders but we specifically mention Dean Darby Dickerson who served as Dean in 2005 when she worked with Chief Judge Davis to establish an internship at the Court with Stetson and Professor Roy Gardner who served as Interim-Dean in 2011 when the VLI was organized.