



2-9-2024

Panel 3: A Fireside Chat With The Honorable Judge M. Tia Johnson

The Honorable Judge M. Tia Johnson

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Military, War, and Peace Commons](#)

Recommended Citation

The Honorable Judge M. T. Johnson, *Panel 3: A Fireside Chat With The Honorable Judge M. Tia Johnson*, 68 Vill. L. Rev. 871 (2024).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol68/iss5/6>

This Symposia is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

2023]

TRANSCRIPTION OF THE 2023 *VILLANOVA LAW REVIEW*
NORMAN J. SHACHOY SYMPOSIUM:
*MILITARY JUSTICE REFORM: THE NEXT TWENTY YEARS**

PANEL 3: A FIRESIDE CHAT WITH
THE HONORABLE JUDGE M. TIA JOHNSON

MODERATOR: PROFESSOR BRENNER FISSELL**

PANELIST: THE HONORABLE JUDGE M. TIA JOHNSON***

PROFESSOR BRENNER FISSELL, VILLANOVA UNIVERSITY CHARLES WIDGER SCHOOL OF LAW: Alright welcome back everyone to our final session, which is the life and times of Judge Tia Johnson. Judge Johnson is the newest—

JUDGE M. TIA JOHNSON, UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES: Based upon several of the previous speakers they don't want me to have a job! Just saying.

PROFESSOR FISSELL: At least one, in a loud sweater.

So, Judge Johnson is the newest member of the U.S. Court of Appeals for the Armed Forces (CAAF) nominated by President Biden and confirmed by the Senate. It took over a year.

So anyway, she has been confirmed for a fifteen-year term. Judge Stucky's old chambers are now Judge Johnson's chambers. My old chambers where I worked for a year actually.

Welcome to Villanova Judge Johnson. We're just going to talk about life. And we have a lot of students in the room, and I think a lot of students are interested in learning about how to become a judge one day or what you did and your background. And we're just going to talk about the life and times of Tia Johnson.

* The 2023 *Villanova Law Review* Norman J. Shachoy Symposium, *Military Justice Reform: The Next Twenty Years*, took place on February 24, 2023 at Villanova University Charles Widger School of Law. This transcript has been edited and excerpted.

** Associate Professor of Law, Villanova University Charles Widger School of Law.

*** Judge, United States Court of Appeals for the Armed Forces; Adjunct Professor of Law & former Director, National Security Law LLM Program, Georgetown University Law Center; and Visiting Fellow, Georgetown's Center on National Security and the Law.

Judge Johnson is from Philadelphia. Tell us about Philadelphia and you said growing up in Philadelphia you've been in this area before.

JUDGE JOHNSON: Well, thank you. First off because I am a sitting judge, I have to do the "disclaimer." So, none of my comments should be attributed to the United States Government, the United States Court of Appeals for the Armed Forces, or even the Department of Defense (DoD). That's one thing Judge Stucky touched on a bit. By statute we are a civilian court. DoD provides our administrative support. They're what we call the "executive agent" but neither the Secretary of Defense nor anyone else in DoD can direct the judges or court. We're always mindful of that. This ensures the court's independence.

Growing up in Philadelphia. Yes, I grew up in Philadelphia. Notwithstanding the fact that I probably have a Southern accent by now, but that's the result of two things—I'm married to someone from Arkansas and I've spent most of my adult life in Virginia. Between school and work I did five tours in the Pentagon. I just couldn't quite get it right and they kept moving me among staffs. But I've spent most of my adult life in Virginia, so I do have a Southern accent. However, I still say "wooder," I can't shed that. I grew up in the city, as I shared last night, I was actually a tour guide. I was a Bicentennial tour guide so that tells you how old I am. But it was great growing up in the city with all the different influences. In high school, I became familiar with this area because I was raised Episcopalian and the Episcopal Diocese used to host a week-long Young People's Fellowship right down the street at Valley Forge Military Academy. We sat in classes and discussed theological principals and concepts like how the Episcopal Church was different from the Catholic one. So, I'm really familiar with this area and the whole Main Line area.

PROFESSOR FISSELL: And is it right that you went to Temple?

JUDGE JOHNSON: Law school, yep.

PROFESSOR FISSELL: We won't hold that against you here.

JUDGE JOHNSON: I also went to UVA so Wahoo!

PROFESSOR FISSELL: So why the military? Why join the Judge Advocate's General Corps (JAG)? Take us back to that decision point in your life.

JUDGE JOHNSON: The second question, "why JAG," goes back to the first question "why the military?" Whenever people ask me "why the military," . . . my answer is "by mistake." I either filled out something that I shouldn't have filled out or I don't know. When I showed up—I went to undergraduate at Hampton Institute, now it's Hampton University. When I showed up, I was enrolled in ROTC and I was like "what?" Back then you couldn't just drop ROTC. You didn't just go to the registrar and drop it. You had to have the Professor of Military Science (PMS) sign off on your drop-add. Back then the ROTC building was way off campus, so it took me probably until Wednesday or Thursday to get over there to try to drop it. By the time I got over there, the PMS gave me the whole pitch

about the benefits of ROTC. Put a pin in that, I have to give you all a timeline because I didn't realize the larger context and the impact it had on me until much later.

The context. I started undergraduate the same year that the first class of women went to West Point, August 1976. Two years after that, the Women's Army Corps was disestablished, fully integrating women into the Army. Why is that significant? Because now, many jobs that previously had been closed to women were now going to be filled by women. Which meant you had to have officers—female officers—in these units. That fact, the full integration of women, overshadowed most of my career and explains why I hit a lot of “firsts.” There was no one before me. That sounds like something Yogi Berra would say but that is the reason. When there is no one in the pipeline ahead of you, or no significant numbers in the pipeline ahead of you, you can hit the first of something fairly quickly.

So, going back to August 1976, and the PMS with my drop-add. He's giving me the hard sell. Because in his mind, he knows “I need to crank out x-number of women officers. This is a potential one standing here.” When his sales pitch didn't work, he pivoted to the pragmatic approach. He said “it's the Wednesday afternoon (or maybe Thursday morning) of drop-add. The chance you're going to find a class to fit your schedule is slim to none. So why don't you just keep it for a semester and then you can drop it.” So, I took the first semester just because I couldn't get anything else on my schedule. It was completely different; it was interesting and so I signed up for the second semester. By that point, they've sucked you in and I ended up being offered a ROTC scholarship my sophomore year.

PROFESSOR FISELL: It's so interesting the role of chance in life.

JUDGE JOHNSON: Oh absolutely, I'm a living, walking example of that.

PROFESSOR FISELL: Was there a reason you chose the Army or was that just . . .

JUDGE JOHNSON: Oh, it was Army ROTC.

PROFESSOR FISELL: Oh, it wasn't just a choice amongst the . . .

JUDGE JOHNSON: I told you it was a mistake Brenner!

PROFESSOR FISELL: I was at the after party last night so that's what that's about. So, tell us about your work with Status of Forces Agreements (SOFAs). Maybe explain what they are and how you had a career basically, I want to say, as an international lawyer.

JUDGE JOHNSON: Thanks. I am by training and experience an international/national security law attorney which raises probably your next question “how did you end up in that?” I did not study this in law school. I was very pragmatic about the courses I took. If Pennsylvania was testing it, I took it. The year I would be sitting for the bar, Pennsylvania added six topics to the bar, so that didn't leave a lot of leeway in course selection.

I went to law school on what was called an “Educational Delay” or “Educational Deferment.” Let me explain. Coming out of my undergraduate I was commissioned as a Second Lieutenant and granted an Educational Delay to go to law school. You can’t come on active duty as a judge advocate unless you are admitted to the bar. So, looming in the background is “you must pass the bar as quickly as possible to become a JAG.” So, I was very pragmatic about my coursework in law school. What Pennsylvania tests, that’s what you take.

I got interested in the practice of international law in the military by happenstance. I was invited the summer before my obligation would have run out to participate in a comparative law study of emerging democracies in Central and South America. I got a letter, in the old days guys things came by snail mail. So, I get this letter and I’m thinking, “wow this is incredible.” I investigated it, which meant you called long distance to Seattle, Washington to this organization called “People to People.” I had never heard of them; I didn’t know what their mission was. I learned they had originally been part of the public diplomacy mission of the U.S. State Department and had spun out as a separate organization. After talking to them I learned that I was selected because I was a uniformed attorney and they were building a delegation to send to emerging democracies, all of which were emerging out of military dictatorships. They thought it would be interesting to have a military lawyer as part of this delegation. Based upon that, I was able to pitch the trip to the Army and they actually paid for it! Again, I’m thinking, “you mean, you’re going to send me to Central and South America for a month? Game on.”

That was my first exposure to the practice of international law in the military. Prior to that trip, I hadn’t realized there were uniformed attorneys who did this. Once exposed, I became interested in international law. It is also what caused me to request to extend on active duty because, like I said, my obligation was going to run out in January ’88. I went to Central and South America the summer of ’87. When I got back I literally had to hand carry paperwork because in the old days guys there was no internet, there was no “I attach a PDF file to an email and send it to somebody.” My boss put me on a train to Washington, D.C. to drop off my paperwork to request an extension. My file went before the board. I was picked up and immediately reassigned to Korea.

It was in Korea that I was exposed to operational law which, under the old definition, was “the application of international and domestic law to the planning and execution of military operations.” I was single back then. Young, single, and around war fighters (back then, all men). Not that that was a defining reason for my interest (smile). When I left Korea I was then sent to the Graduate Course at the U.S. Army JAG School in Charlottesville. This is a year-long course where you earn a Master of Laws (LLM) in Military Law. I specialized in international and operational law and carried that specialty designation throughout my career. I later earned another LLM in International/National Security Law from UVA.

That explains why most of my leadership jobs were overseas. My husband once asked, “why do they always send you overseas?” I responded, “those international law degrees may have something to do with it.” Bottom line, most of the jobs I held were coded for the specialty area and tended to be overseas.

PROFESSOR FISSELL: What are SOFAs and why do we sign them?

JUDGE JOHNSON: SOFAs stand for Status of Forces Agreements, and they are primarily jurisdictional international agreements that the United States enters into—well if it’s bilateral it’s the United States and a host nation—whenever we send forces overseas. Or, because NATO is a multilateral treaty organization, we have the NATO SOFA, which was the first one, the NATO Status of Forces Agreement.

But they regulate, primarily, criminal jurisdiction over U.S. Military personnel overseas. Someone referenced, I can’t remember which panel it was, but if you, as Joe United States citizen, go into another country and commit a crime, you’re subject to national law. You’re subject to that host nation’s criminal laws. Countries don’t want to send their forces to another country and those forces become subject to the criminal laws of that nation; SOFAs allow the sending state to exercise criminal jurisdiction over their personnel. SOFAs also regulate things like customs, imports, and taxes. But the big stick is criminal jurisdiction over U.S. Forces.

PROFESSOR FISSELL: So, a good example would be, say, Sharia Law is Islamic Criminal Law. We would not have our uniformed service members subject to Sharia Law.

JUDGE JOHNSON: Correct.

PROFESSOR FISSELL: Do we have SOFAs whenever the military is deployed?

JUDGE JOHNSON: It depends. It is the policy of the United States Government to negotiate something prior to sending a sizable number of forces into a country.

PROFESSOR FISSELL: Do SOFAs interact with military justice in any way?

JUDGE JOHNSON: Yes, yes, they do. SOFAs grant jurisdiction to the sending state. That’s treaty language. And the way the United States (as a sending state) guarantees a host nation that we can and will exercise jurisdiction over our military personnel is through the Uniform Code of Military Justice (UCMJ) which is applicable to all members of the armed forces worldwide. That is why countries are comfortable with ceding criminal jurisdiction to the United States. They know we have a mechanism by which we can try these offenses whether they occur on or off base.

PROFESSOR FISSELL: So, this means when we’re walking around D.C. and we see some foreign military officers from a country that we’ve signed a SOFA with and they commit a crime here we send them back, we don’t prosecute them here.

JUDGE JOHNSON: Possibly. Now, there are some wrinkles because, as Professor VanLandingham noted in an earlier panel, most countries, particularly our NATO allies, no longer have a separate military justice system that mirrors ours. When we signed the NATO SOFA in 1951, most of our allies had a separate military system. That's why the NATO SOFA speaks to reciprocal jurisdiction. That is no longer the case. Your hypothetical raises the question, "what extraterritorial jurisdiction does the Australian criminal justice system have over its service members?" I'm assuming now that they no longer have a separate system, they filled the jurisdictional gap statutorily. But I don't know.

PROFESSOR FISSELL: But, for example, France has no military justice system at this time?

JUDGE JOHNSON: Correct.

PROFESSOR FISSELL: But I guess I wonder then, we would have to amend the SOFA to say, "you're going to at least prosecute in civilian court."

JUDGE JOHNSON: Not the NATO SOFA itself, but the U.S. could address it in a bilateral agreement with France. As the earlier panel explained, because a sovereign's domestic criminal courts cannot exercise criminal jurisdiction outside of national borders, a jurisdictional gap is created when a country moves the prosecution of military members to a purely civilian system.

PROFESSOR FISSELL: Speaking of civilian court, CAAF is a civilian court, but all the courts below you are military. Everyone was wearing a uniform. And then we get to your court and you're civilians. What do you think the role of CAAF as a civilian court is in this constellation of military courts?

JUDGE JOHNSON: Well, I think it was Judge Ryan who gave the history; it was either Judge Ryan or former Chief Judge Stucky, in whose chambers I now sit. There were concerns with ensuring that service members, once they don the uniform, had most of the constitutional protections and due process of civilians. That concern, coming out of World War II, is what prompted Congress to promulgate or enact the UCMJ. The UCMJ is a federal criminal statute that applies to members of the armed forces worldwide. Embedded in the Code, and our criminal procedure rules, are those constitutional and due process protections. To further ensure that the balancing took place, Congress, through the statute, created the Court of Military Appeals, our predecessor court. CAAF is an Article I civilian court that provides judicial oversight to the military justice system. It's not by chance that you have a civilian specialized court sitting atop that system. It's by design.

PROFESSOR FISSELL: So now I have one more question, then I want to get the room involved, especially law students. What advice do you have for law students interested in joining the military? And what do you look for in a law clerk? What would you be looking for? She has an open ad for a law clerk right now.

JUDGE JOHNSON: The second one is the easy one. Then I'll come back because I would have forgotten what the first half of the question was by that point.

What am I looking for in a law clerk? Someone who has a true desire for public service and at least an interest in criminal law. They must also recognize and appreciate that we are a specialized court and that there's a whole corpus of jurisprudence to be absorbed. And then, the normal indications of intellectual agility. I look at grades, and Law Review, but that's not dispositive. I'll look for other demonstrations that you have strong analytical and writing skills. If you come in with a great writing sample, I'll be satisfied. I also look for indications that they have good time management skills. Lastly, temperament. Are they a team player? Chamber dynamics is vitally important.

PROFESSOR FISSELL: So, you read the writing samples pretty closely then?

JUDGE JOHNSON: Well, I would. I tend to review the rest of the packet first, and, if it's a student I'll likely interview, I'll then read the writing sample.

What was the first half of the question?

PROFESSOR FISSELL: Advice to law students interested in the JAG Corps.

JUDGE JOHNSON: Oh, interested in the JAG Corps. That is slightly different.

PROFESSOR FISSELL: Or other related law careers.

JUDGE JOHNSON: Well, my advice, I mean, I taught at Georgetown University Law Center for five years. I served as the Director of the National Security Law LLM Program and part of that job was that I was the faculty advisor for the National Security Law LLM. So, I've advised a lot of students. I think what is most important during your law school career is that you take the time to try out things. You may think you're interested in something. Do an internship, do an externship, take a clinical, because the way it reads on paper and the way you actually execute legal duties in that area might be worlds apart. So, I would say, get that broad base of experience.

If you're thinking of the JAG Corps, most definitely get a broad base of experience because you will need it. I've been retired now for ten years but when I grew up in the JAG Corps and when I was a Staff Judge Advocate, the guiding policy for assigning functions in the first tour for a judge advocate was that you tried to expose them to the depth and breadth of our legal practice. We practice in the "six legal functional areas" (Military Justice; Administrative/Civil Law; Contract/Fiscal Law; Legal Assistance; Claims; and International and Operational Law). So, the career development goal was to expose them to at least two, sometimes three areas. Most judge advocates start in client services, Legal Assistance or Claims.

PROFESSOR FISSELL: Wills and stuff?

JUDGE JOHNSON: Yes, Legal Assistance is the general practitioner job. So that's client services essentially. You're interviewing, you're writing letters to landlords to keep people from getting evicted. Years ago, there was a push to increase JAG support in pro se representation. So Legal Assistance or Claims is where you develop client skills, but during that first tour, you'll also rotate to another section of the office, maybe Criminal Law, or Administrative Law. That's why it's important in law school to get that academic, doctrinal grounding because you're going to be called upon to practice in those areas. And you don't know what you don't know. For me, it was international law, I didn't do international law in law school. But after my first exposure to it, I thought, "wow, this is really interesting." So, just try to expose yourself. Same idea with job experiences. Again, at Georgetown, it's big law. It's OK to have that law firm experience, but also try to get some public service experience. Try different things. Maybe try to go to a nonprofit that specializes in something. Because I really don't think you can make a decision of whether you like or don't like, or are or are not interested in something if you have absolutely no exposure to it. You just never know.

PROFESSOR FISSELL: Thank you. So, I would like to have questions on my panel.

JUDGE JOHNSON: Yeah, I want questions.

PROFESSOR FISSELL: So, we're going to stop and invite the room. Maybe also if some of the uniformed personnel, we could actually unpack the definition of operational law. Does anyone want to weigh in, get involved in this discussion? Please raise your hand. Maybe we'll cold call.

JUDGE JOHNSON: I was a law professor. I can do that. I don't even need a seating chart; I'll just point to the third row.

But to answer your question, to unpack operational law one must first understand that the ultimate mission of the military is to fight and win the nation's wars. That sounds very eloquent. However, as I would tell people, at the end of the day our job (in the Army) was to break things and kill people. That might sound crude, it's probably from spending all those years with warfighters and war planners, but in its simplest form, that is the Army's mission. You can reduce each service's ultimate combat mission to that; we just use different means to achieve it. So, the combat forces are considered the pointy end of the spear. Everything else is somehow in support of that.

Going back to operational law. The Army used to define it as "the application of international and domestic law to the planning and execution of military operations." So, I advised war planners and warfighters on the use of force, weaponry, targeting, and other issues that arise in the operational context.

PROFESSOR FISSELL: You also said you were a SAUSA?

JUDGE JOHNSON: Yes, I was a SAUSA, which stands for Special Assistant U.S. Attorney. I was appointed as a SAUSA at my first duty station, with responsibility for two bases that were exclusive federal jurisdiction, meaning there was no state criminal jurisdiction on post. If you were a civilian and committed a crime, ranging from traffic offenses to misdemeanors or felonies, you were tried in federal court; Magistrate Court for misdemeanors and U.S. District Court for felonies. That's actually where I got my first criminal prosecution experience. I tried cases in federal court for over two years.

PROFESSOR FISSELL: And it was a lot of misdemeanors?

JUDGE JOHNSON: Yes, a lot of misdemeanors, but there were also some felonies that the U.S. Attorney's Office allowed me to handle. I was in court every Monday and we stayed in court until the docket was cleared. As a result, I prosecuted thousands of cases. That became a point of contention with a certain unnamed Senator during my confirmation hearing because I was asked, "how many cases have you prosecuted?" I attempted to clarify by asking, "do you mean criminal and military justice cases or just military justice cases?" I don't think he really processed my question and responded with something like, "yeah." So, I gave him the combined number of about two thousand. You should have seen his head snap up. He asked me again and I gave him the same answer. I received a question for the record on that one.

PROFESSOR FISSELL: But you had prosecuted courts-marital?

JUDGE JOHNSON: Yes! My first case, also during that first tour, was actually a felony murder. One trainee raped and murdered another trainee. There were lots of legal issues because the accused was a seventeen-year-old National Guardsman, and the victim was Regular Army. My supervisors thought I wrote well so I was detailed as the "third chair" to write briefs and argue motions. The two other trial counsels handled the case-in-chief. I again served as a prosecutor in my second tour in Korea. I was the Senior Trial Counsel for a year.

PROFESSOR FISSELL: I've got to follow-up, then I'll open it for audience questions, but I think this question is good for the law students to hear. You've practiced in many areas: criminal law, operational law, international law, national security law, and that's just while you were in the military. Then you served as a Presidential Appointee in the U.S. Department of Homeland Security (DHS), as . . .

JUDGE JOHNSON: I started at U.S. Immigration and Customs Enforcement (ICE) as the Special Advisor to the Director handling immigration law and policy before I was nominated as the Assistant Secretary for Legislative Affairs.

PROFESSOR FISSELL: OK. Immigration law, didn't know that, then legislative affairs, didn't know that. Then you taught law for how long?

JUDGE JOHNSON: Five years full time before I was nominated.

PROFESSOR FISELL: Now you are a Federal Court of Appeals Judge. Was that your plan coming out of law school?

JUDGE JOHNSON: Of course not! My plan coming out of law school was to pay back the four years I owed the Army and return to Philadelphia and practice law. But, as I explained earlier, the comparative law study to Central and South America changed all that. Everything after that's been "an audible."

In all seriousness, my career reflects my attitude that you need to be open to new experiences. I never, and I was going to say even now, but I'm kind of locked into this "judge" thing, right? Well maybe, if Congress doesn't do away with the court. But, I never had the set view of "this is going to be my career." When I went to law school, I was actually interested in civil rights. What propelled me to go to law school was civil rights. I grew up during the Civil Rights Era. And I saw these great civil rights advocates and attorneys and I wanted to be like them. I wanted to be the next Constance Baker Motley or Thurgood Marshall. I wrote my thesis in law school on an advanced constitutional law issue, Section 1983. I remember once my husband quipped at me "you kind of strayed far from that didn't you." And I immediately came back and said "no, actually I never left the Constitution I just came out of the Bill of Rights and went to the core Constitution, Articles I, II, and III." Because underlying many national security law issues is the tension between the coordinate branches of government. For example, I used to teach an upper-level seminar on Congressional Oversight of the Executive Branch. For the first time in five years, this past fall, I opened the class with "this is a separation of powers class." I did that because every year in the evaluations I had to read "I had no idea we were going to be reading all these Supreme Court cases." So, I told them up front, "this is a separation of powers class."

So yeah, I always stayed within the Constitution. And then of course the international law was an overlay. It was an opportunity that presented itself and it just seemed interesting and operational law was cool and exciting, and DHS was a one-off. I followed my boss there, who became the Secretary of DHS. But at Georgetown, I stayed close to the Constitution. My courses on the JD side fell under Constitutional Law and Governance. For the LL.M.s, they fell under National Security Law. That's a Georgetown thing, they cross-list courses under the JD and LL.M. programs.

PROFESSOR FISELL: Thank you so much. Now let's open it up for Q&A.

[Question and Answer portion omitted.]