



# Hon. Richard E.N. Federico

## U.S. Circuit Judge, U.S. Court of Appeals for the Tenth Circuit

by Captain Brian L. Mizer



Captain Brian L. Mizer is a judge on the U.S. Navy-Marine Corps Court of Criminal Appeals. The views expressed in this article are his own and not those of the Department of Defense, the U.S. Navy, or the U.S. Navy-Marine Corps Court of Criminal Appeals.

**A**s a military officer and public defender, dedication to public service has been the cornerstone of Rich Federico’s career. He recently assumed a new position of public service, when on December 14, 2023, he became a circuit judge on the United States Court of Appeals for the Tenth Circuit. Appointed by President Biden, Judge Federico sailed through the confirmation process and received a commission to sit on the circuit that covers six states and eight federal districts.

Before being appointed to the Tenth Circuit, Judge Federico spent 22 years in one of America’s oldest and most prestigious law firms: the U.S. Navy Judge Advocate General’s Corps (JAGC). Judge Federico joins more than 65 other federal judges who are former judge advocates and brings a diversity and depth of experience to the federal bench that is emblematic of the Navy’s core values of honor, courage, and commitment.

Given that Judge Federico is originally from Hagerstown, Ind., a small town of about 1,700 near the Ohio border, one might wonder how he came to have a storied Naval career. But when you learn that both of his grandfathers were sailors who served in the Pacific during World War II—one of them on the legendary battleship USS Idaho (BB-42)—you might instead wonder if he wasn’t destined to wear a Navy bluejacket.

But there’s more. One of his grandfathers introduced his sister to a shipmate on the *Idaho*, and after seeing action in the Gilberts, Marshalls, Marianas, Peleliu, Iwo Jima, and Okinawa, the man Judge Federico knew as “Uncle Gene” returned home and later retired as Rear Admiral (Upper Half) Eugene H. Farrell. The judge’s father did his stint too, serving on the super carrier USS Kitty Hawk (CV-63) during one of her extended combat patrols at Yankee Station off Vietnam.

But while Judge Federico was naturally proud of his family’s service, he preferred to spend his time as a journalism major at Indiana University playing intramural basketball and writing for the *Indiana Daily Student*. That changed after he started law school at the University of Kansas, where he began thinking about starting his legal career in the Navy. Although he was initially drawn to the demands and culture of military service and to gaining litigation experience in



the courtroom, as he watched the attacks of Sept. 11, 2001 unfold on live television, his motivation to serve became turbocharged, like it did for so many others of his generation.

The Navy’s JAGC provides worldwide legal services to the Navy and its sailors in national security law, military justice, administrative law, and sailor and family legal assistance. The JAGC offers new attorneys the immediate opportunity to represent clients, often in a courtroom, and, as you might expect, the acceptance rate for initial applicants often hovers in the single digits.

This proved to be no obstacle for Judge Federico and, after receiving his commission and graduating from the Navy’s Basic Lawyer Course in Newport, R.I., the Navy sent him to Norfolk, Va., the same base where the *Idaho* stopped in December 1941 enroute to relieve the still-smoldering Pacific Fleet at Pearl Harbor.

When it comes to Naval bases, Naval Station Norfolk is peerless. It has four miles of waterfront and 11 miles of piers that nest more than 75 warships. When all five aircraft carriers are in port, the base teems with more than 85,000 sailors. It was there, on the Navy’s biggest stage, that Judge Federico tried his first cases and earned his reputation as a tenacious and talented pros-

ecutor. Recognizing his skill in the courtroom, the Navy next sent him and his wife Ann to Naples, Italy, where he would serve as the director of military justice at the Region Legal Service Office. That meant, just three years removed from law school in Kansas, Federico was the Navy's lead prosecutor in Europe and the Middle East, an assignment that required him to try cases in Italy, Bahrain, and onboard ships steaming in the Persian Gulf.

Unlike the civilian world, the Navy expects judge advocates to gain expertise as *both* prosecutors and defense counsel, so the Navy next sent Judge Federico to Guantanamo Bay, Cuba, to cut his teeth as a defense counsel. His first case was easy enough: the five-defendant joint, capital trial involving the men who allegedly orchestrated the attacks of Sept. 11, 2001. Federico was assigned to defend Ramzi bin al Shibh, a Yemeni man who allegedly unsuccessfully tried to enter the United States to participate in the attacks on New York and the Pentagon and hosted several of the eventual hijackers at his apartment in Germany as they were enroute to the United States.

Judge Federico was also assigned as lead counsel to represent an Afghan detainee, Mohammed Kamin, who was charged with providing material support to terrorism. Kamin was detained in his home country of Afghanistan during active hostilities with U.S.-led coalition forces before he was transported to Guantanamo. The representation of Kamin proved challenging due to significant language and cultural barriers and presented significant legal ethics questions that Judge Federico had to deftly navigate. It also took him to Afghanistan, where he led an investigative mission for his client's defense. Ultimately, the Pentagon dropped the charges against Kamin and, years after Judge Federico withdrew from representation, Kamin was released from Guantanamo and repatriated.

But the three years Judge Federico spent at the Military Commissions Defense Organization weren't wasted. They instilled a commitment to defending the rule of law under the most demanding circumstances any lawyer could possibly face and launched Judge Federico's career as a defense attorney.

The Navy rewarded his efforts by sending him to Georgetown Law to get his LL.M. for a year before returning him back to the courtroom, this time to the Defense Service Office in Jacksonville, Fla., where he would serve as the officer in charge. In that role, Judge Federico was responsible for leading a team of defense attorneys tasked with representing sailors at courts-martial and administrative proceedings across the southeastern quarter of the United States. Judge Federico handled the most challenging cases himself, including a first-degree murder trial and representing senior Navy officers before Boards of Inquiry.

After three years leading and mentoring the next generation of Judge Advocates, Judge Federico and his family decided to leave active duty and return to civilian life. They initially settled in Portland, Ore., where Judge



Federico leveraged his defense experience and joined the Office of the Federal Public Defender. While in Portland, Judge Federico quickly learned to practice in federal district court and argued before the Ninth Circuit. After a few years, he snatched an opportunity to return home and transferred to the Federal Public Defender's Office in Kansas, where he would eventually be designated the senior litigator and litigate cases involving terrorism and a swatting case that resulted in the death of a Wichita man in December 2017, among many others.

But Judge Federico's Navy adventure also wasn't finished. He continued serving in the Navy Reserve when he left active duty, initially as an appellate defense counsel representing sailors and Marines on appeal. In 2018, senior leaders in the Navy's defense bar asked that he be assigned to handle the case of a highly decorated Navy SEAL after allegations surfaced that senior leaders had steered the outcome of the SEAL's case toward affirming his conviction and two-year prison sentence for sexual assault. The military's highest court, the Court of Appeals for the Armed Forces (C.A.A.F.), an Article I civilian court sitting in Washington, D.C., had ordered a post-trial evidentiary hearing into whether there had been unlawful command influence in the SEAL's case.

Unlawful command influence is known as the "mortal enemy"<sup>1</sup> of military justice because the military's necessarily authoritarian command structure makes its justice system uniquely vulnerable to the inherent coercion of rank and command. It can be directed at witnesses, jurors, or even defense counsel, and it deprives service-members of their constitutional rights.

As the date for the evidentiary hearing approached, Judge Federico fell ill with pneumonia and called his legal team to inform them he may not be able to travel so they would have to proceed without him. However, Judge Federico knew his team, and most importantly his client, were counting on him, and he arrived in Washington still recovering. The next day, his examination of

Judge Federico in March 2003 aboard the USS Kauffman (FFG 59) in the North Atlantic.

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the Judge Advocate General of the Navy, a three-star admiral, went so well that his team asked him to examine two more admirals whose examinations had been previously assigned to other lawyers on the team.

Now, you could be forgiven for thinking that this entire episode sounds as if it came straight from the 1992 movie "A Few Good Men." But it happened, and Judge Federico knew that both a Navy SEAL and the JAGC expected him to zealously and ethically defend his client just as he had done so many times before. After the evidentiary hearing, the C.A.A.F. dismissed the SEAL's case with prejudice after finding the appearance of unlawful command influence.<sup>2</sup>

Not long thereafter, Judge Federico was selected for promotion to captain and the Judge Advocate General of the Navy selected him to serve as a military judge on the Navy's trial bench. All prospective military judges—active and reserve—attend a three-week course hosted by the Army's JAGC in Charlottesville, Va. Following the course, Judge Federico joined the Navy Reserve Trial Judiciary to support the active-duty trial judiciary and preside over court-martial proceedings at various Navy installations throughout the country. But he wouldn't stay on the bench long.

On July 12, 2020, a fire broke out on the

USS Bonhomme Richard (LHD-6) while she was pier side in San Diego for maintenance. The fire burned for more than four days and ultimately destroyed the \$1.2 billion vessel. The Navy initiated a criminal investigation as to the cause of the fire, and they once again turned to Judge Federico to lead the multi-agency, complex investigation.

Federico then returned to the bench where he presided in courts-martial until his nomination by President Biden in July 2023. He will soon retire from the Navy having obtained the rank of captain.

On Aug. 1, 1963, President John F. Kennedy—himself a Navy veteran of World War II—spoke at the U.S. Naval Academy and told the future Navy officers that, "any man who may be asked in the century what he did to make his life worthwhile, I think can respond with a good deal of pride and satisfaction: 'I served in the United States Navy.'" Judge Federico can proudly say the same in this century as he continues his lifetime of public service on the Court of Appeals for the Tenth Circuit. ☉

### Endnotes

<sup>1</sup>*United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986).

<sup>2</sup>*United States v. Barry*, 78 M.J. 70 (C.A.A.F. 2018).

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defendant for drug distribution, and he was sentenced to 120 years. This lengthy sentence was due in part to his attempting to put a hit on her, which resulted in her being under U.S. Marshal Service protection for several months. The 120-year sentence was reduced to 30 years, through sentencing reforms aimed at excessive sentences for crack cocaine convictions. This defendant who had once tried to have her killed, was a completely changed man after 23 years in prison and was able to get his sentence further reduced to time served based on a judicial determination that his trial counsel had provided ineffective assistance during sentencing and post-conviction. Judge Robinson testified on his behalf at the habeas hearing. After he was released—and at his request—she joined him on a speaking engagement at a juvenile detention facility in Kansas. He continues living an exemplary life, speaking to and mentoring juvenile

offenders. In 2014, Judge Robinson taped an interview with him, expressing her pride in him for overcoming so many challenges. In full circle, Judge Robinson had the honor of signing the order successfully terminating his term of supervised release.

Judge Robinson recalls, as she gets settled into senior status, the time went by faster than she ever could have imagined. Those of us that have worked with her through the years have long realized she was chosen, anointed, and equipped. Judge Robinson believes her calling was, and is to serve the public and the judiciary, and to blaze trails for the next generation of lawyers and judges. These days, Judge Robinson has found an additional calling, spending precious time with the newest addition to her family, granddaughter Charlotte! ☉