



# Hon. Albert Diaz

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

by Robert P. Monahan



Captain Robert P. Monahan Jr. retired from the U.S. Navy JAG Corps in 2023, after serving as a trial military judge and as the Chief Judge of the U.S. Navy-Marine Corps Court of Criminal Appeals. He currently serves in a civilian capacity as the Senior Level Commissioner to Chief Judge Kevin Ohlson at the U.S. Court of Appeals for the Armed Forces in Washington, DC.

Like all new recruits arriving at Marine Corps boot camp, in the summer of 1978, 17-year-old Albert Diaz immediately stepped off the bus and onto yellow footprints painted on the ground, standing in the position of “attention” while being screamed at by drill instructors who had been waiting to welcome him. Little did he know that first step at Marine Corps Recruit Depot Parris Island, South Carolina would lead to a first class education at some of our nation’s finest universities, a commission as an officer in the Marine Corps, and the opportunity to serve as both a trial and appellate military judge, a state trial judge, and ultimately as the Chief Judge of the U.S. Court of Appeals for the Fourth Circuit.

Chief Judge Diaz’s path to the Fourth Circuit started with humble beginnings. His parents moved separately to New York City from Puerto Rico in the 1950s knowing little English and without either obtaining a high school diploma. Settling down in Brooklyn after marrying, they found blue collar jobs and started a family, with Chief Judge Diaz as the oldest of three boys. He did not give joining the military any thought until late in high school, when an older friend who had joined the Marine Corps shortly after graduation came home to the old neighborhood. Describing his friend as “bright but a bit of a ne’er do well,” Chief Judge Diaz was amazed at the transformation he had undergone at boot camp—he had left as a boy and came back as a man. After talking to his friend about his experiences as a new Marine, Chief Judge Diaz said to himself “I need that.” So, he went down to the local Marine recruiter’s office to see what opportunities were available to him. However, by this time, his parents had divorced, he was living with his mother, and at 17, he needed her permission to enlist. At first, she was dead set against it, but eventually she relented based on his promise that he would eventually go to college. Looking back, Chief Judge Diaz describes this as “the defining moment of my life. Not only did it provide me a way to obtain a formal education, but it exposed me to the importance of being part of a team that was greater than self.”

Chief Judge Diaz served as an enlisted Marine for two years, and during that time advanced to the rank



of Lance Corporal, which he describes as “the most dangerous rank in the Marine Corps because you think you know everything, but you don’t.” At that point, he successfully applied for the Naval Reserve Officer Training Corps (NROTC) and started his college studies at the State University of New York Maritime College located in the Bronx. Candidly, he admits that he chose to go back to New York City for school “because of a girl I was smitten with” who lived there. However, after they broke up, he transferred in his sophomore year to the University of Pennsylvania and its NROTC unit, where he graduated and was commissioned as a Marine Second Lieutenant in 1983.

Following commissioning and professional training, Chief Judge Diaz served as a ground supply officer for approximately two years. Then while newly married to his wife, Hilda, and stationed at the Marine Corps base in Twentynine Palms, California, he learned about the Department of the Navy’s Funded Legal Education Program, which sends Marine Corps and Navy officers to law school on a full scholarship while they remain on active duty, with full military pay and benefits. After he was selected for the program, he attended New York University Law School and returned to “the Fleet” as a Marine judge advocate (uniformed lawyer).

As a newly minted Marine lawyer, Chief Judge Diaz was stationed at Marine Corps Base Camp Lejeune, North Carolina, for approximately three and a half years, serving as a military prosecutor, defense counsel, and as the Chief Review Officer for the Legal Services Support Section, a role in which he scrutinized records of trial of completed courts-martial for their accuracy and completeness. Retired Marine Colonel (Col), and former military judge, Dave Anderson, remembers presiding over cases at Camp Lejeune in which then-Captain Diaz appeared as a prosecutor. Col Anderson says that he nicknamed Captain Diaz as the “quiet assassin” because he “was as calm as any counsel came but he had every duck lined up in court.” In essence, he left nothing to chance. Former military judge John Sparks, who now serves as a civilian judge on the U.S. Court of Appeals for the Armed Forces also remembers having then-Captain Diaz in court. “I was very impressed with his professionalism. He was always prepared and level-headed,” says Judge Sparks.

Chief Judge Diaz then transferred to the Washington Navy Yard in the District of Columbia, where he served as Appellate Government Counsel, representing the United States in court-martial appeal cases for almost four years. Around the same time Col Anderson became an appellate military judge in Washington, and Captain Diaz appeared before him again. Col Anderson says that at the appellate court, he could “always rely on everything in his briefs—both the facts and the law. He was always a straight-shooter, as honest as they come.” Later, after having just been promoted to the rank of Major and facing the prospect of likely being transferred overseas next, but with he and Hilda wanting some stability for their daughters, Chief Judge Diaz made the difficult decision to resign his active duty commission, remain in the Marine Corps Reserves, and start his career as a lawyer in the private sector.

Chief Judge Diaz joined big law in Raleigh, North Carolina at Hunton and Williams, a firm of about 400 lawyers. After about six and a half years, he moved to the firm’s Charlotte office. Chief Judge Diaz describes that while working at the law firm, “I learned a very important lesson, that although you need to be both a competent and accomplished lawyer, it is as important to establish and cultivate relationships.” This point was driven home to him when a friend and colleague, Hampton Dellinger, who had become Chief Counsel to North Carolina Governor Mike Easley, asked him if he would consider an appointment to the North Carolina Superior Court in Charlotte. Because he had been trained and served as a military judge at both the trial and appellate levels in the Marine Reserves, he was confident that he could do the job. However, as enticing as this opportunity sounded, it meant a substantial pay cut, as well as the requirement for him to run for election the following year. After Chief Judge Diaz and Hilda thought and prayed about the decision, they decided it was worth it because it provided him with the opportunity to resume full-time public service.

After Governor Easley appointed him to the Superior Court, as anticipated, Chief Judge Diaz was required to run for election a year later. Unfortunately, he lost at the ballot box, although by only approximately 500 votes, which he considers to be a “credible showing because he was new to the arena.” Looking back, Chief Judge Diaz humorously quips that by asking for a recount, he lost some votes in the final tally, which reminded him of the old saying “be careful what you ask for because you might get it!” However, the experience was not all bad because his then opponent, David Cayer, who went on to retire from the state judicial system and become a federal magistrate judge, is now a good friend. Another silver lining to losing the election was that the Governor subsequently appointed him to a non-elected seat on the Superior Court. As such a “Special Superior Court Judge,” he served for nine years before heading to the federal bench. During this time, he was selected by the Chief Justice of the Supreme Court of North Carolina to serve on the state’s Business Court, which handles complex commercial cases. Besides enjoying the subject matter, one of the benefits of serving on that court was that unlike at the Superior Court, Business Court judges could hire law clerks to help them write their decisions. This turned out to be good training for what was to come, as he developed a true enjoyment for writing judicial opinions and working with and mentoring law clerks.

Judge William Stetzer, who himself now serves as a North Carolina Special Superior Court Judge, remembers meeting Chief Judge Diaz when Judge Stetzer was the chief homicide prosecutor in Charlotte. Judge Stetzer was immediately impressed by Chief Judge Diaz because, as a new appointee to the state bench, he took the time to simply sit in the jury box and observe court, “rather than showing up with the belief that he had all the answers.” As time went by, Judge Stetzer also noticed that Chief Judge Diaz was genuinely concerned about the lives of everyone in the courthouse and the local bar. “He would walk up to me and ask about my wife by name and how my family was doing long after we worked together. He also shows up to be a part of everyone’s lives—promotion ceremonies, retirements, funerals—remarkably more so than anyone I’ve ever met and even after he had gone to the federal bench.” At his own investiture ceremony, Judge Stetzer mentioned in his speech about the importance of a judge treating all those who appear before him with dignity and respect. Afterwards at the reception, Chief Judge Diaz pulled him aside to emphasize “it matters what you say on the bench.” Months later, in a moment of frustration Judge Stetzer spoke sharply to a party that had appeared before him. That night, he wrote Chief Judge Diaz a note that said, “your words were ringing in my ears today in court.” Clearly, then, Chief Judge Diaz serves as a judicial role model for those who have followed behind him.

Sometime later, a vacancy opened on the U.S. District Court for the Western District of North Carolina in Charlotte, and the late U.S. Senator Kay Hagan, and

then U.S. Senator Richard Burr together established a bipartisan committee to vet potential candidates. Believing that he was ready to serve as a federal trial judge if given the opportunity, Chief Judge Diaz put his name in the hat and underwent the committee review process. Eventually, his name was sent up to Washington as a potential nominee for the district court seat. Months later, on April 1, 2009, he was sitting in his chambers when his assistant came in and told him that the White House was on the phone for him. At first, he laughed it off as an April Fool's Day joke, but his assistant emphatically replied, "It's true!" Sure enough, a member of the White House Counsel's Office asked him to come up to discuss federal judiciary opportunities. Much to his surprise, at the meeting White House Counsel Gregory Craig told him that the President was indeed interested in nominating him to the federal bench—but specifically to the Fourth Circuit—to which Mr. Craig added, "What do you think of that?!" Chief Judge Diaz quickly reflected on the fact that he had spent some time as a Reserve judge on the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) and that the best job he ever had in the military was serving as an Appellate Government Counsel representing the United States before the NMCCA and its higher court, the U.S. Court of Military Appeals (now named the U.S. Court of Appeals for the Armed Forces). At the end of the meeting, the White House Counsel told him, "Think about it. President Obama is thinking of the option." About two weeks later, Chief Judge Diaz was back at the White House for a more intense meeting at which his record and background were scrutinized. A few months after that, Mr. Craig called him to say that the President did indeed intend to nominate him to the Fourth Circuit.

Afterwards, both Chief Judge Diaz and James Wynn, another North Carolina state judge, who had retired as a Navy Reserve judge advocate, went through the Senate confirmation process together. Chief Judge Diaz described the experience as "intense, but compared to today's very politicized process, it was quite civil." After waiting for months, Chief Judge Diaz's nomination was finally considered on the Senate floor, where he was confirmed by a voice vote. He received his federal judicial commission on December 22, 2010, and since then has served on the Fourth Circuit with Judge Wynn, who was confirmed a few months before him.

True to form, Chief Judge Diaz's remarks at his investiture ceremony reflected the humble, thankful, man of faith who he is. He started by quoting Justice Thurgood Marshall who once said, "None of us got where we are by pulling ourselves up by bootstraps. We got here because somebody . . . bent down and helped picked us up." Chief Judge Diaz then thanked God and the individuals who helped him through the various stages of his career culminating with his confirmation process. He then focused on his family, saying, "If nothing else, it is a well-armed bunch, as we count four active or retired NYC corrections officers, and one NYPD sergeant in our

ranks. But there are also educators, nurses, and social workers mixed in as well." He also paid special recognition to his two daughters, Christina and Gabriela, of whom he said he was proud to be the father of the "beautiful, smart and mature women" they have become, and to Hilda, whom he said, "has put up with more than anyone should have to tolerate, and often sacrificed her professional ambitions so that I might realize mine." Finally, he honored his mother, who did not live to see him sworn in as a state trial judge, and he said, "although I'm certain she is watching today from heaven with great joy, I wish she were here in this courtroom to share this day with me and receive the credit that is rightfully hers."

In chambers, Chief Judge Diaz has had an enormous impact on those who have been fortunate enough to work for him. Samantha Ondrade currently serves as a Senior Counsel on the U.S. Senate Judiciary Committee for Senator Cory Booker of New Jersey and clerked for Chief Judge Diaz during the Fourth Circuit's 2016-2017 term of court. She says, "I am so grateful to have had the opportunity to work for a jurist and person like Chief Judge Diaz. He is a person of the highest integrity, and he demonstrates the utmost respect for the rule of law and to those working in his chambers, the attorneys practicing before him, and the communities the court impacts." As the daughter of immigrants, Ms. Ondrade looks to Chief Judge Diaz as an inspiration to those who may not typically see their life experiences represented at the highest levels of the legal profession. Indeed, when she sent him an email at the end of her clerkship to express her gratitude for his mentorship and the life-changing opportunity, he replied, "One of the many joys of my job is spending time with the best young minds that this nation has to offer . . . Where else but America can one rise above present circumstances and go as far as individual talent and grit will allow?"

Judge Diana Gribbon Motz served on the Fourth Circuit for nearly 30 years prior to attaining senior judge status. Having worked with numerous chief judges of the court during her tenure, she describes Chief Judge Diaz as the youngest and he is also someone who is "brilliant at his job, very low key, and modest." Moreover, she extols the job he is doing because "he is a natural leader," who "understands everyone's point of view" and "when he makes a decision," as the Chief, "everyone agrees, which is extraordinary with fifteen of us on the court." In fact, she asserts that Chief Judge Diaz "is extremely well-liked at the Fourth Circuit. No one at the court would say a bad thing about him even if you hooked him or her up to a lie detector!"

After more than fourteen years at the Fourth Circuit, Chief Judge Diaz warmly recalls his time so far on the federal bench. One of his fondest memories is the opportunity he had early on to sit on a panel with the late Supreme Court Justice Sandra Day O'Connor. Justice O'Connor wanted to stay active and exercised her prerogative under federal law to sit on federal circuit court cases after she had retired from the Supreme Court. The

practice of the Fourth Circuit is not to announce the composition of the judges on the panel until the day of oral argument. And so, Chief Judge Diaz remembers a young attorney who stepped up to the podium to make his argument and was shocked to see Justice O'Connor sitting on the bench. Unable to speak, the lawyer just stared at her and she stared back until she finally said, "Well, counsel, get on with it," to which he just replied "Wow!" and then proceeded to argue. Looking back, Chief Judge Diaz says, "here I was a kid from Brooklyn sitting on the same bench as Justice O'Connor. She couldn't have been more gracious."

Chief Judge Diaz had the opportunity himself in 2015 to sit by designation on another court—the U.S. Court of Appeals for the Armed Forces, an Article I civilian court that hears appeals in court-martial cases from all branches of the military. Having spent time on the other side of the podium there as Appellate Government Counsel for the Navy and Marine Corps, he felt honored to have had the opportunity to go back to hear cases from the bench. Judge Sparks of that court has kept in touch with Chief Judge Diaz over the years from their time serving together in the Marine Corps, and the two have become close friends since they each became civilian federal appellate judges. Both have been heavily involved in the past as members of the Appellate Judges Conference of the American Bar Association and of the Appellate Judges Education Institute. Watching Chief Judge Diaz hold

leadership roles in these organizations, Judge Sparks says, "he is the ultimate collaborator who is very skilled in moving a group from one place to another."

Asked to articulate his judicial philosophy, Chief Judge Diaz says that although some cases command more time and attention than others due to their complexity, to him, every case is important, and he keenly recognizes "we are writing for the community as a whole." He also says that "we must never forget that the parties want their cases decided fairly and promptly," and that "because we are dealing with real lives, I try to treat each case as if it is the most important one." He is also a big proponent of the Fourth Circuit judges' tradition stretching back to the 1940s and 50s of coming down from the bench into the well of the courtroom after oral argument, shaking the hands of each counsel who appeared before the court, and telling him or her how much they are appreciated for what they do. Many attorneys have commented in surveys conducted by the court how much this simple gesture means to them.

Reflecting on his truly remarkable professional journey, Chief Judge Diaz returns to where it all started. Without hesitation he admits that if he had not taken those steps to enlist in the Marine Corps and to stand on those yellow footprints, "none of this would have been possible. It was a life changing experience that drives me to this day." ☉

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