

Statement of

The Honorable Benjamin L. Cardin

United States Senator
Maryland
December 16, 2009

OPENING STATEMENT OF

SENATOR BENJAMIN L. CARDIN

CONFIRMATION HEARING FOR

JAMES A. WYNN, JR.
U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

ALBERT DIAZ
U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

SENATE JUDICIARY COMMITTEE

December 16, 2009

The Committee will come to order. Let me thank Chairman Leahy for asking me to chair today's hearing.

Today we consider two of President Obama's nominations to the federal appellate bench. The nominees are James A. Wynn, Jr. and Albert Diaz, both from North Carolina, and both to be U.S. Circuit Judges for the Fourth Circuit.

I take a special interest in the 4th Circuit, as it includes my home state of Maryland. When President Bush was in office, in May 2008 I chaired the confirmation hearing for Justice Steven Agee, who served on the Virginia Supreme Court and was confirmed to be a U.S. Circuit Judge for the Fourth Circuit. Since President Obama has taken office, in April 2009 I chaired the confirmation hearing for Judge Andre Davis of Maryland, a federal district judge in Baltimore, who was confirmed last month to be a U.S. Circuit Judge for the Fourth Circuit. And finally in October 2009 I chaired the confirmation hearing of Justice Barbara Keenan of Virginia, who also serves on the Virginia Supreme Court, and was favorably reported by voice vote of our Committee to the full Senate in late October. She now awaits consideration by the full Senate. I am hopeful that we can confirm Justice Keenan to the Fourth Circuit before the end of this session of Congress.

I mention these nominations by way of background for my colleagues, because the Fourth Circuit has had one of the highest vacancy rates in the country. Today, out of the 15 seats authorized by Congress, 4 are vacant, which means that over one-quarter of the court's seats are

now vacant. Our Circuit Courts of Appeals are the final word for most of our civil and criminal litigants, as the Supreme Court only accepts a handful of cases. I hope that President Obama and the Senate will move quickly to nominate and confirm qualified candidates for these seats.

I also look forward to increasing the diversity of the judges of the Fourth Circuit. The Fourth Circuit is one of the most diverse Circuits in the nation, according to the most recent Census estimates. In terms of the Fourth Circuit - which consists of Maryland, Virginia, West Virginia, North Carolina and South Carolina - 22 % of the residents are African-American. North Carolina is even more diverse: 32% of the residents are African-American. By way of comparison, the U.S. population is 12% African-American. If confirmed, Judge Wynn would be the third African-American to currently serve on the Court.

Let me also note for the record that Judge Diaz was the first Latino to serve as a Superior Court judge in North Carolina. If confirmed, he will be the first Latino ever to sit on the Fourth Circuit. I am proud that this summer the Senate confirmed Sonia Sotomayor to be the first Latina ever to serve on the Supreme Court.

As I evaluate judicial candidates, I use several criteria. First, I believe judicial nominees must have an appreciation for the Constitution and the protections it provides to every American. Second, I believe each nominee must embrace a judicial philosophy that reflects mainstream American values, not narrow ideological interests. Third, I believe a judicial nominee must respect the role and responsibilities of each branch of government. Finally, I look for a strong commitment and passion for the continued forward progress of civil rights protections.

Judge Wynn

Judge James Wynn comes to this Committee with a broad range of both civilian and military judicial experience. Judge Wynn currently sits on the North Carolina Court of Appeals, the state's intermediate appellate court. Prior to taking the bench in 1990, he served as an appellate public defender and worked in private practice.

Judge Wynn also previously served as a certified Military Trial Judge and a Captain in the U.S. Navy Reserves. He served on active duty in the U.S. Navy JAG Corps from 1979 to 1983. As a military lawyer he tried over 100 courts-martial cases before sitting as a military judge.

He has received the Meritorious Service Medal three times, the Navy Commendation Medal twice, the Naval Reserve Medal, the National Defense Service Medal, and the Global War on Terrorism Medal.

He is the Chair of the American Bar Association's Judicial Division, a former Chair of the Association's Appellate Judges Conference, and a member of the Standing Committee on Minorities in the Judiciary.

He received his B.A. from the University of North Carolina at Chapel Hill, his J.D. from Marquette University Law School, and a Master of Laws from the University Of Virginia School Of Law.

Judge Wynn received a rating of unanimously well-qualified from the Standing Committee on the Federal Judiciary of the American Bar Association.

Judge Diaz

Judge Diaz also comes to this Committee with a broad range of both judicial and legal experience in both the civilian and military court systems.

Judge Diaz currently serves as a Special Superior Court Judge for Complex Business Cases, one of only three in the state of North Carolina.

Judge Diaz began his legal career in the United States Marine Corps Legal Services Support Section, where he served as a prosecutor, defense counsel, and ultimately Chief Review Officer. He then moved to the Navy's Office of the Judge Advocate General (JAG), where he served for four years as appellate government counsel handling criminal appeals.

In 1995, Judge Diaz left active duty in the Marine Corps and worked as an associate at Hunton & Williams with a primary focus on commercial litigation. He remained in the Marine Corps Reserves while in private practice, serving as Reserve Appellate Defense Counsel in the Navy's JAG Corps, a Reserve Military Judge in the U.S. Navy-Marine Corps Trial Judiciary, and a Reserve Appellate Military Judge in the U.S. Navy-Marine Corps' Court of Criminal Appeals. He resigned as a military judge when he retired from the Marine Corps in 2006.

Judge Diaz was the first Latino appointed to the North Carolina Superior Court when he was named as a Resident Superior Court Judge in 2001. In 2002, he was appointed as a Special Superior Court Judge and he was designated as Special Superior Court Judge for Complex Business Cases in 2005.

He earned a B.S. from the University of Pennsylvania's Wharton School, and received his J.D. from New York University School of Law. He also earned a Masters degree in Business Administration from Boston University.

Judge Diaz received a rating of unanimously well-qualified from the Standing Committee on the Federal Judiciary of the American Bar Association.

Let me conclude by just complementing the two Senators from North Carolina who are here today. The process they used to recommend these nominations to the President - working in a bipartisan fashion with each other and the White House - is a model for how we can improve the judicial selection and confirmation process going forward.

Before I turn to Senators Burr and Hagan to introduce our nominees to the Committee, I will first turn to the Ranking Member for any comments he would care to make.