

Statement of

The Honorable Dianne Feinstein

United States Senator
California
March 17, 2005

Statement on Markup of
Nomination of William Myers
to the U.S. Court of Appeals for the Ninth Circuit
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Mr. Chairman, we have several nominees on the agenda, and I expect that most of them will be held over. However, I also expect that we will vote today on the nomination of William Myers to the 9th Circuit. I closely listened to Mr. Myers' testimony, and I have considered his written answers. As I did last year, I still oppose this nomination, and I will vote against his confirmation.

The fact is, there is no new information that Mr. Myers has offered to indicate that he will be evenhanded as a judge, especially when it comes to environmental issues.

If anything, Mr. Myers has offered some evidence that casts even more doubt on the wisdom of confirming him to the Ninth Circuit. Maybe Mr. Myers is ideologically biased. Maybe he is simply a poor manager, or an inattentive lawyer. Under any of these theories, he should not be a judge on the Ninth Circuit.

Robbins Settlement

Consider the settlement involving Wyoming rancher Harvey Frank Robbins, which was the focus of an extremely critical investigation and report by the Office of Independent counsel. Mr. Myers has confirmed for us that he did not read the settlement before it was finalized, and that he did not receive any substantive briefings on the settlement while it was being negotiated. At the same time, he states that he told his associate, Robert Comer, to try to settle the case. Comer's actions were the focus of much of the criticism of the Inspector General's investigation. Mr. Myers also informed us that he did not consult with the Department of Justice about the settlement, even though, as the Inspector General's report makes clear, the DOJ had grave concerns about the content of the settlement.

I simply do not understand why Mr. Myers would tell a deputy to settle a case, and then not ask for substantive progress reports. To me, at best, this indicates a lack of interest in the details of an important settlement.

Quechan Tribe

Also consider the case of the Glamis Gold Mine and the Quechan Tribe, in my home state of California. One of the opinions that Mr. Myers wrote as the Solicitor of the Department of Interior overturned a prior decision that had prohibited mining on land sacred to the Quechan Tribe.

At his hearing the other week, Mr. Myers defended himself for meeting with mining representatives, but not with tribal representatives, before making his decision. In fact, Mr. Myers said that what he did was similar to a court proceeding, specifically, to a summary judgment proceeding. But as every lawyer knows, it is almost unheard of in most cases for a judge to meet with one party to a dispute but not the other. I also note that Mr. Myers wrote to Senator Leahy that, before making his decision, Myers did not perform any research into whether the federal government owed special responsibilities to Native American tribes.

Mr. Chairman, in my view, Mr. Myers showed basic unfairness to a Native American tribe in making his decision the way that he did. He showed a flawed understanding of court rules by pointing to them to justify his actions. And he showed a lack of hindsight, by continuing to defend his mistake to us. This does not display the thoughtfulness or wisdom that I would hope all federal judges possess.

I note that a federal judge ultimately overturned Mr. Myers' opinion, holding that Mr. Myers had violated basic rules of statutory interpretation. In fact, as the judge held, he interpreted the word "or" to mean "and," and thus made it easier to justify the mining.

Yuba Mine

There is also the situation involving the Yuba Gold Mine, also in California, in which Mr. Myers recommended the federal government transfer to a private company a mining site worth hundreds of millions of dollars, when the company had no valid claim to the property. Mr. Myers wrote in his answers to Senator Kennedy that he never even requested an appraisal of the value of the property before making his recommendation. I note that after Mr. Myers left government service, the government reversed Mr. Myers recommendation supporting the land transfer.

Mr. Chairman, all of this is in addition to the other concerns about Mr. Myers. That is:

? He called the California Desert Protection Act "an example of legislative hubris."

? He wrote an article comparing environmental regulations to "tyrannical actions of King George."

? He has said that under the Constitution, property rights should be given the same heightened protection as free speech rights, even though such a philosophy would eliminate much of the underpinning of federal environmental laws.

? I still have serious reservations about whether he has the professional qualifications to serve on the Ninth Circuit. For a position as esteemed as a seat on the United States Court of Appeals, Mr. Myers has only a handful of years of actual litigation experience.

? I am concerned about the significance of the fact that American Bar Association gave Mr. Myers a partial "not qualified" rating. Not a single representative on the panel gave Mr. Myers a vote of "well-qualified."

Mr. Chairman, last year I opposed this nomination because I had deep concerns about whether Mr. Myers would be fair and evenhanded as a Ninth Circuit judge. I approached the nomination again this year with an open mind. But Mr. Myers has not offered any information to change my mind. In fact, some of his recent testimony that I have just discussed served to reaffirm my original thinking. So I will vote no on this nomination.

Thank you, Mr. Chairman.