



U.S. Senator Dianne Feinstein
on the Nomination of Edward Chen
to be U.S. District Judge
March 17, 2011

Executive Business Meeting
U.S. Senate Committee on the Judiciary

Mr. Chairman, my statements do not usually lend themselves to hyperbole. But I truly believe this judge has been both mischaracterized and treated unfairly. I've done my very best; as you pointed out this is the fourth time he's been voted on by this committee.

I have spoken with Senator Sessions three times when he was Ranking Member virtually pleading for a vote on the floor of the Senate. We have not been able to gain that vote. So I want to take a few moments to discuss Judge Chen. He was-

[Sen. Sessions: Madam Chairman if you'll personal privilege comment.

Sen. Feinstein: Go ahead.

Sen. Sessions: I did not oppose him having a vote as you and I have talked, but as part of the wrangle in the leadership that nominee never came up. And I'm of the view that if he's moved out of committee again he should get a vote at some point as we go forward.

Sen. Feinstein: Well thank you. I very much appreciate that and it certainly is a step forward.]

Let me give you the history. I have a bipartisan screening committee in different parts of the state. This is the Northern District of California. The committee recommended Judge Chen to me by unanimous vote, and I forwarded the recommendation to the President.

He is a solid, tested, respected magistrate judge.

Since April of 2001 – that's just shy of a decade – he has served as a Magistrate Judge in the Northern District of California. He has published more than 350 opinions, not one has been criticized. And in the year and a half of time he has been pending before the Judiciary Committee, there has not been one criticism of any of his opinions.

Last year, I distributed to each member of this Committee a Report from a Merit Selection Review Panel appointed by the Court to review Chen's first eight years on the magistrate bench.

And the results of that report are unequivocally positive. Here are some points:

Federal prosecutors who talked to the committee said his analytical skills were “exemplary” and his rulings were “balanced and well reasoned.”

Defense attorneys described him as “respectful” and “considered” in his judgments.

Partners with large law firms called him “prompt,” “well prepared,” “very intelligent,” and “decisive.”

Because of his solid track record on the bench, Chen’s nomination has support from Republicans and from Democrats. From law enforcement and civil rights groups. From seven law school deans and ten past Presidents of bar associations. From the Police Commissioner, the Sheriff, the Deputy Sheriffs’ Association, the City Attorney, the Former Chief of Police, and the Former United States Marshal in San Francisco.

But despite all of this, Chen’s nomination has been held up and we cannot secure a floor vote.

I think this is really absurd and dramatically unfair.

Chen has been criticized, I believe solely, because he previously worked as a civil rights lawyer at the ACLU. But we have almost a decade of evidence to show us that he has made the transition from advocate to fair and balanced judge.

As the Deputy Sheriffs’ Association wrote: “Chen has earned a reputation as an evenhanded jurist who is constantly mindful of the role that judges such as himself fulfill in our society: as keepers of the rule of law and public trust in our system of justice.”

And then we have debated ad nauseum a handful of quotes cut from speeches Chen has given. Let me address one in particular:

The *Washington Times* and members of this Committee have criticized Chen for a speech he gave to students after the funeral of a man by the name of Fred Korematsu.

Now many of you are too young to remember Fred Korematsu, but I want to take a moment to tell you: One of the singular experiences of my lifetime was when my father took me as a small child to a racetrack called Tanforan. That racetrack was down the peninsula from San Francisco. It was taken out of action as a racetrack and was turned into an internment camp during World War Two. It was fenced. There were small buildings lining the center portion of the track. And Japanese Americans were picked up one by one without due process and placed in this internment camp for the duration of the war.

Chen represented Korematsu. After Korematsu lost in the Supreme Court, which was at the time a very prominent case, Chen represented him in a suit to overturn his conviction for denying the executive order and resisting arrest and being placed in that camp. The Court overturned the conviction, and subsequently President Reagan signed the Civil Liberties Act issuing a formal national apology for the internment.

That's the context in which Chen, in a speech he gave to students after the funeral of Fred Korematsu, said that he sometimes felt "ambivalence" at appeals to patriotism.

And this has been used to try to paint him as unpatriotic. I don't believe for one minute this man was unpatriotic. And as often is the case, things that have monumental importance at the time, like the internment of Japanese American citizens without due process in our historical memory are just sort of skipped over and they become nothing. But I can tell you at the time, everybody was upset with this. It was one huge strike against the American justice system for just picking up people simply because they were Japanese Americans and interning them without justification.

Critics also fail to mention the rest of the speech. What Chen went on to say is that when the congregation sang "America the Beautiful" at Korematsu's funeral, Chen was moved to tears because as he said "the song described the America that he had envisioned. The America whose promised beauty he sought to fulfill, an America true to its founding principles.

So in my mind, the record is very clear. Edward Chen is a devoted public servant; he has proven that ladies and gentleman for a decade. He has been a Judge without any criticism, with 350 published opinions, not one red dot anywhere.

So a year and a half, this is the fourth time he has come out of the Committee. Please let him have a vote on the floor of the Senate. It is really the only fair thing to do. He has made a successful transition from advocate to a fair and balanced judge and he should not be punished for it.

Thank you very much Mr. Chairman.

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