

Statement of
The Honorable Dianne Feinstein

United States Senator
California
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Remarks by Senator Feinstein on the Nomination of Edward Chen

Edward Chen is my nominee.

I feel he's been done an enormous disservice in the statement made by the ranking member. And I really have to respond to it. Edward Chen is the longest pending judge here.

He is the first Chinese American in history to be recommended for the Northern District of California.

He is solid. He is tested. He has nine years of experience on the bench as a magistrate judge.

Now with regard to other nominees, we have heard there are concerns that if they don't have judicial experience there is no way to evaluate them. Well, gentlemen, Ed Chen has plenty. He has written more than 350 published opinions. Not one has been criticized.

I'm passing around a federal magistrate judge selection review panel report. This is a group of attorneys appointed by the court to evaluate magistrate judges for reappointment. There is not one negative statement in this report. More than twenty-five various attorneys were called. Assistant U.S. Attorneys and their supervisors weighed in. What they found him to be is balanced, smart, with good judicial temperament.

Please, read this yourself, because the ranking member's comments are all based on his advocacy as an attorney for the ACLU many, many years ago. And I'm going to get to that in a moment.

The Washington Times has written at length about one line in a speech when he talked about being at a funeral where 'America the Beautiful' was played and having some feelings of 'ambivalence and cynicism when confronted with appeals to patriotism.' They have used this to try to paint Ed Chen as unpatriotic. Nothing could be further from the truth.

How many of you have been to an internment camp that interned Japanese Americans during World War II? Well, I have, as a very small child. Tanforan Racetrack south of San Francisco was turned into an internment camp. My father took me down and I had a chance to look around. What you see is the abject humiliation, the hurt. You know, there are few things as a small child that stick with you, and they are usually things of great impact. This was something of great impact. Here were American citizens, simply because they happened to be of Japanese ancestry, interned for a substantial period during World War II. No evidence needed to be presented against them. No judge made the commitment. They were simply picked up and interned.

Well, the funeral in question in this speech was for Fred Korematsu. He was a Californian who bravely but unsuccessfully challenged the World War II executive order that forced these loyal Japanese American citizens across the West, out of their homes, and into locked internment camps. Judge Chen was one of the attorneys who worked later to have his conviction overturned.

It is hardly a crime to feel ambivalent in this context, I think. Congress was not ambivalent about it. In 1988, Congress passed, and President Reagan signed, the Civil Liberties Act. Now that contained reparations, and it was an official apology to these Japanese Americans. That was not ambivalent at all.

But the quote from The Washington Times is also not accurate. Chen went on in that speech to say that he was moved to tears when the congregation sang 'America the Beautiful' at Fred's funeral. And the reason was, and this is a quote, 'The song described the America that Fred envisioned. The America whose promised beauty he sought to fulfill, an America true to its founding principles.'

In my mind there is no question. Ed Chen is a devoted public servant. A patriotic American. And he would be an excellent federal District Court Judge.

He is supported by Republicans and Democrats, law enforcement and civil rights groups, judges and businesses. They include U.S. District Judge and Deputy Attorney General during the Reagan Administration, Lowell Jensen; former U.S. District Judge Fern Smith, also a Reagan appointee; California businessman and longtime Republican C.C. Ying; all seven of the deans of law schools in the Bay Area; the last 10 presidents of the Bar Association of San Francisco; the Police Commissioner; the Sheriff; the Deputy Sheriffs Association; the City Attorney; the former Chief of Police and the former U.S marshal of San Francisco.

Here are the letters of support.

And yet going back decades, comments made at a funeral of a man who resisted internment were used to characterize this judge as unworthy. When in 350 published opinions, not one has been contested. In this merit selection panel, you will see where attorneys say he's smart, he's balanced, he's reasoned, he has judicial temperament. This has been tested for nine years. He knows what he is doing. More than twenty-five lawyers could not find a negative about this man.

Now, I understand why somebody uses long ago statements when there is no judicial experience to back that up. Here there is judicial experience. It is reasoned. It's temperate. It's prudent. It's everything we want it to be. And yet I sit here, and I listen to nine years of expertise as a Magistrate Judge being slurred.

I've been on this committee for almost 19 years. It's wrong it's unjust, it's unfair. And I don't understand it. So I have to speak up. There are volumes. But to dismiss him because in a moving moment over a man that he represented and who was interned on an executive order that the Congress then said was a terrible thing, paid reparations, issued an official apology, that's just plain wrong. Thank you Mr. Chairman.

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Remarks by Senator Feinstein on the Nomination of Professor Goodwin Liu:

I want to take everybody back. This is an Appellate Court judge I want to say something about. It's over two years ago. His name is Leslie Southwick. He's for the Fifth Circuit.

All of my colleagues on this side were going to vote against him. Trent Lott said, 'Would you take some time and meet with him?' And I did, and I spent quite a bit of time, and I went back and he had participated in 7,000 cases and there were two cases which this side of the aisle found egregious. I spent a lot of time ferreting out the details of those two cases. I talked with him enough to really believe that he would be a fine judge. I voted for him, there may have been other Democratic votes for him. To make a long story short, he was confirmed.

I just got a letter, about a year ago, from him saying this is the second anniversary of my confirmation and then he goes on to say that your willingness to hear me out to measure my credentials and character for yourself then to vote for me despite the potential cost to yourself were indispensable. I never forgot that because that's what we are supposed to do.

And what's happening is a dumbing down of the federal judiciary. What's happening is a search for some speech, some quote, something that will disqualify and nullify the record of a judge. This is not the way we should conduct our business, and I think what Senator Whitehouse is saying, is for those of us that truly do want to work with the other side is that this arbitrary slurring of character is making it very difficult.

I remember Senator Hatch helping with Willie Fletcher. Willie Fletcher was pending for almost two years. He had no judicial legal experience, he was a professor, his mother had served as an appellate court judge on the 9th, took senior status and Senator Hatch bent over backward and helped with the confirmation of Willie Fletcher.

The judge now that I am going to talk about is in a somewhat similar situation. He is a professor, he graduated Phi Beta Kappa from Stanford, he was co-president of the Stanford student body, he was a Rhodes scholar at Oxford, a JD from Yale Law School, editor of the Yale Law Journal, two years at the Corporation for National Service working on service education initiatives, a law clerk to judge David Tatel on the DC circuit and Ruth Bader Ginsburg on the Supreme Court, Special Assistant in the Department of Education, an attorney at O'Melveny and Myers, a very well respected and prestigious law firm in California, and now a tenured professor and Associate Dean at the University of California, Berkeley, Bolt Hall School of Law. He has been a consultant to the San Francisco Unified School District. He is a recipient of both the Education Law Association's Award of Distinguished Scholarship and the University of California, Berkeley's highest award for teaching.

He has support from leaders on both sides of the aisle. Former Republican Congressman Tom Campbell has said that Liu 'will bring a strong reputation for integrity, fair-mindedness, and collegiality to the 9th circuit.' Not bad things.

Former Ford Administration Secretary of Transportation and Presidential Medal of Freedom recipient Bill Coleman has said that Liu, 'Will make a tremendous judge for the Ninth Circuit.' And prominent conservative Kenneth Star said that, 'Liu is a person of great intellect, accomplishment, and integrity and he is exceptionally well qualified to serve on the Court of Appeals.'

The American Bar Association has rated him well qualified and even Fox News legal commentator Megyn Kelly has called his qualifications 'unassailable.'

He has testified before us for three and a half hours, he answered more than 200 additional questions in writing, and he has already been reported out of this committee once.

Now here's the problem. He is young, not the youngest. I've got a list of all Republican circuit court judges that were appointed with no legal experience -- some of them really quite young. He has made some speeches, that's true.

He is basically a great mind and he is strongly supported throughout the constituency of the state of California and yet a speech, this speech, that speech is likely to create a situation where I've heard Republicans say they will filibuster his nomination.

Yet he is a remarkable young man, he is strongly supported, and yet this speech or that speech is essentially likely to kill his candidacy, and I just think that is wrong.

And I sense that the other side of the aisle has made some compact, or some decision that no matter what they are going to be negative on these judges. What does that say to those of us that when you have a judge and this side feels strongly that some of us may sit down with that judge, might evaluate that judge, and yes might even go against what others on our side want to do and vote for him and take the flak for it. Why would we ever do that again? And I got a lot of flak on Southwick. But, guess what? My joy is he has been a good appellate court judge and that's enough for me because I believe I did the right thing.

That isn't going to happen again, so this is a difficult moment, and I don't know what to say. Look, I can test any one of your speeches and go back, probably even my own, made 30-35 years ago and say, 'my goodness did I say that? I no longer believe that.' We ought to be capable of maturation, we ought to be able to change, we ought to be judged by the good things that we do in life, not our off moments. And that is no longer happening around here. And I think the result is going to be the dumbing down of the federal judiciary, and that's a tragedy.

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