

Ranking Member Dianne Feinstein
Opening Statement—Nominations Hearing
June 14, 2017

Introduction

Good morning to all of the nominees here—I want to welcome you and your family and friends to the Senate Judiciary Committee today.

John Bush and **Kevin Newsom** have been nominated to important lifetime appointments on the courts of appeals. The federal courts of appeals are frequently the courts of last resort for most litigants because the U.S. Supreme Court hears such a small number of cases every year.

We are also considering a third nominee today, **Damien Schiff** who has been nominated to a fifteen-year term on the Court of Federal Claims. This court has nationwide jurisdiction and primarily hears monetary claims brought by Americans against the government.

Hearing Process / ABA Ratings

Mr. Chairman, thank you for working with me on the timing of this hearing in order to ensure that we had American Bar Association ratings for both Mr. Bush and Mr. Newsom before this hearing. As you know, given that appellate court judgeships are so important, it is rare to have two appellate court nominees considered at a single hearing. I believe it only happened three times in eight years of the Obama Administration. I hope, working together, hearings with multiple circuit court nominations will be as rare during this administration as they were during the last administration.

Blue Slips

I would also like to say a word about the Eleventh Circuit vacancy. Last year, President Obama nominated U.S. District Court Judge Abdul Kallon for this very same vacancy on the Eleventh Circuit.

Judge Kallon had been unanimously confirmed with the support of Senators Shelby and Sessions when he was nominated to the federal district court bench in 2009. I am sure Judge Kallon would have been an excellent Eleventh Circuit judge.

However, Judge Kallon did not receive a hearing in this Committee last year because Senators Shelby and Sessions did not support his elevation to the circuit court and thus did not return their blue slips. That is the prerogative of home state senators for judicial nominees from their states—including circuit court judges.

Now, Mr. Newsom is before us today because Senators Shelby and Strange returned blue slips for his nomination. That is how this process works, and I do not hold Mr. Newsom accountable for the Senators' decision not to return blue slips on Judge Kallon's nomination.

But I have seen in the media some comments from my friends across the aisle suggesting that blue slips have historically been less important for circuit court nominees than district court

nominees. **And respectfully, that's just not the case.** The fact that Mr. Newsom is sitting here before us today proves that fact.

Impartiality / Integrity

All of the positions that the nominees are being considered for today are very important. And when an individual brings a case before **any** judge, every person seeks the same thing: a judge who is prepared, a judge who will listen to their arguments, and a judge who will consider the case fairly and impartially.

Impartiality is key. Two of the nominees before us today—Mr. Bush and Mr. Schiff—have not only been practicing attorneys, but also prolific political and legal commentators. While prior involvement in politics **does not preclude** someone from being considered for a federal judgeship, I am concerned that Mr. Bush and Mr. Schiff have shown themselves to have such deeply-held views **that I worry litigants may doubt their ability to get a fair hearing before either of them.**

Their comments have not been limited to just one legal issue. Rather, both nominees have expressed **strident opinions on a wide range of political and legal topics, and in intemperate terms.**

I think this needs to be explored further and will ask questions of both nominees.

Thank you, Mr. Chairman.