

Bush Judicial Nominee Passes Big Senate Hurdle

By Trish Turner

President Bush's 5th Circuit Court of Appeals nominee has just made it over a seemingly insurmountable obstacle — a Judiciary Committee that appeared at one time to have all of the Democrats, a committee majority, against him.

But one Democrat, Sen. Dianne Feinstein of California, after having met at length with Leslie Southwick and been the subject of extensive lobbying by Republican Sens. Arlen Specter and Trent Lott, surprised colleagues and voted with Republicans, 10-9, to approve the nominee.

Feinstein, visibly struggling with her position in opposition to her fellow Democrats, told members she had visited with Southwick and found him to be "a good person" who is "not outside the judicial mainstream."

Responding to concerns that he could be a racist as a result of one majority opinion he joined that involved a state employee using a deeply offensive racial epithet, Feinstein said, "If I believed he was a racist, I would not vote for him. But I actually don't. And it's very hard for me to put that kind of appellation on someone if you don't believe it's true."

Feinstein asked the nominee to address the "odious concern" in a letter, and she read that letter aloud to her colleagues.

•Click to Read the Letter From Leslie Southwick to Sen. Feinstein

In it, Southwick says, "The court said that the use of the word "cannot be justified" by any argument. It could have gone far beyond that legalistic statement. Captured in this one terrible word is a long, dark, sad chapter in our history. This racial slur is unique in its impact and painful to hear for many, including myself."

The majority upheld a lower court ruling reinstating a white state social worker who had been fired for calling an African-American co-worker "a good ole nigger." The court found the agency acted properly in rehiring the employee, who had used the epithet only once and apologized to the co-worker. The ruling was eventually overturned by the Mississippi Supreme Court, but the court merely did this while asking that the lower court develop more findings in its ruling.

Senate Majority Leader Harry Reid, D-NV, in a statement agreed to schedule a vote on the nominee, and aides say that will come after the month-long August recess. However, Reid said: "I remain strongly opposed to this nomination."

The opposition on the committee zeroed in on the use of the "N" word in the case, looking beyond the technical ruling on which the majority formed its opinion, saying, as Durbin put it, "like a cross burning this word has particular meaning."

Much of the opposition today appeared to focus on what senators called the imbalance on this court, where President Bush has, so far, named only Caucasians, in an area that is about 40 percent African-American, as pointed out by the NAACP in its vehement opposition to this candidate. Chairman Leahy said, "I do share the disappointment from the black community. This Administration reneged on putting an African American on circuit court in MS.

Wade Henderson, president of the Leadership Conference on Civil Rights (LCCR), the nation's oldest and largest civil and human rights coalition, called for a filibuster of the nominee, "The committee's favorable vote for Leslie Southwick's confirmation is a slap in the face to African Americans and all people of good will. It belies the

committee's commitment to equal justice under the law and makes a mockery of the judicial confirmation process."

A former state appeals court judge with several controversial rulings on civil rights and gay rights cases, Southwick has garnered extreme opposition from the NAACP, People for the American Way (PFAW), and the Human Rights Campaign. The AFL-CIO opposes him for "consistently ruling against workers seeking compensation for injuries suffered on the job, often in dissent when his colleagues ruled otherwise." Glenn Sugameli, legislative counsel for Earthjustice, pointed FOX to his group's statement in opposition, which says, "His record as a judge, combined with Judge Southwick's own words, raise questions about his ability to be a fair and neutral arbiter of environmental and other cases that involve the interests of corporate defendants."

In a 2001 custody ruling giving a child to her father over her lesbian mother, Southwick joined the majority opinion, in which the words "homosexual lifestyle" were used. PFAW President Ralph Neas called the words "troubling," and the Human Rights Campaign, a gay rights lobbying group, says the words "denigrate" its members.

Still others see another motive behind the opposition. Sid Salter, Perspective Editor for the Clarion Ledger, has called all of this a "political smokescreen." He says it's "all about abortion." In his column, he says, "There are 17 seats on the 5th Circuit, two of which are now vacant. Of the 15 occupied seats, 11 are held by Republican appointees of either President Ronald Reagan or the two Presidents Bush. In other words, the 5th Circuit is a conservative court. The pro-choice groups don't want any other conservative judge confirmed to the 5th Circuit."