

**COMMUNITY RIGHTS COUNSEL · PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY**

April 12, 2005

The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
United States Senate
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member, Senate Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senators Specter and Leahy:

We are writing to bring to your attention an important development concerning the nomination of William G. Myers to the Ninth Circuit Court of Appeals. Specifically, Karen Budd-Falen, the attorney for Wyoming rancher Frank Robbins, has asserted, with some documentary support, that Mr. Myers had "full knowledge of the [Robbins] Settlement Agreement and all of its terms" before the Agreement was executed. This assertion directly contradicts Mr. Myers' testimony before the Senate Judiciary Committee on this important matter. We urge the Committee to investigate this controversy further before a Senate floor vote on Mr. Myers' nomination takes place.

Mr. Myers Has Repeatedly Told This Committee He Had No Knowledge of the Terms of the Robbins Settlement Agreement Before the Agreement Was Executed.

In Mr. Myers' first appearance before the Senate Judiciary Committee in February 2004, Mr. Myers stated unequivocally that he "was not involved in the negotiations or discussions of [the Robbins] settlement, other than to tell a subordinate attorney that he had authority to try to settle that case." In his more recent oral and written testimony to this Committee, he has backtracked slightly, admitting that he "had brief conversations with Mr. Comer several times during the course of the settlement negotiations process."

Mr. Myers has maintained however, that these conversations with Mr. Comer amounted "to the effect that [Comer] was still negotiating." Mr. Myers has continued to state unequivocally that he was not informed of "the substance of the negotiations or any terms of the settlement." He has also asserted that he "did not read the settlement before it was signed by the client agency" and did not authorize the settlement terms. Mr. Myers claims

that the first time he reviewed the settlement was "approximately a half year after it was entered into."

Mr. Myers has been even more forceful in denying knowledge of the fact that the Robbins settlement agreement failed to cover the RICO claims brought by Robbins against BLM officials. Mr. Myers asserts that "he was not informed that the RICO claims were pending" and he asserts that "these issues should have been brought to my attention." He contends that Mr. Comer violated the terms of his office's Solicitor's Manual in not bringing these issues to his attention and he asserts that he would not have picked Mr. Comer to be the Regional Solicitor of the Rocky Mountain Region if he had known the details of Mr. Comer's conduct in the Robbins matter.

Frank Robbins' Lawyer Has Directly Contradicted Mr. Myers' Testimony and Produced Evidence that Mr. Myers Received a Draft of the Robbins Settlement Before Its Execution.

In the attached 12-page response to the Inspector General's Report regarding the Robbins Settlement Agreement, Karen Budd-Falen, counsel to Frank Robbins, directly contradicts Mr. Myers' testimony. Ms. Budd-Falen asserts that "all relevant parties within the Department of Justice and the Department of the Interior were kept informed about all aspects of the settlement negotiations and the Settlement Agreement." In particular, with respect to the fact that the Robbins Agreement was modified to exclude a settlement of Mr. Robbins' RICO claims, Ms. Budd-Falen asserts that "Cherry, Caramanian, Roberts, Kunz and Bill Myers (Solicitor for the Department of the Interior) were all notified of this change."

Ms. Budd-Falen's response also attaches a number of exhibits including the attached fax cover sheet indicating that Mr. Comer sent Mr. Myers a copy of a draft of the Robbins Settlement Agreement on November 13, 2002, several weeks before the agreement was signed by BLM. The fax is the first indication that Mr. Myers actually received a draft of the Robbins Settlement and it raises important questions about the accuracy of Mr. Myers' assertion that he was not informed about "any of the terms of the settlement."

Mr. Myers Discussed the Robbins Settlement With Mr. Comer After Mr. Comer Sent Mr. Myers the Robbins Draft.

Mr. Myers' calendar records indicate that Mr. Myers and Mr. Comer discussed the Robbins settlement on November 21, 2002, eight days after Mr. Comer sent Mr. Myers the Robbins draft and six days before a final, signature copy of the agreement was produced. As the fax from Mr. Comer to Mr. Myers indicates, by the time of Mr. Comer's fax and the Myers/Comer conversation, the Robbins settlement was essentially finished. In his fax cover sheet, Mr. Comer asks the recipients of the fax: "Does anyone have any other changes to the Robbins' settlement agreement?"

Mr. Myers has testified that this conversation was simply an opportunity for Mr. Comer to tell Mr. Myers that he was "still negotiating" the Robbins settlement. But this

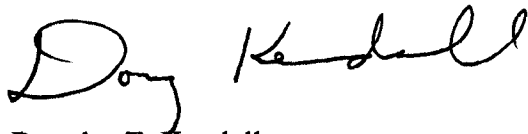
description seems implausible. The negotiations were essentially over by this point. It seems far more likely that Mr. Comer sent Mr. Myers a draft of the Robbins settlement and scheduled this conversation about the settlement to give Mr. Myers an opportunity to approve or object to the settlement and its terms. The timing of this fax and the conversation between Mr. Myers and Mr. Comer thus support Ms. Budd-Falen's assertion that Mr. Myers was informed of the terms of the Robbins settlement and undercut Mr. Myers' repeated assertions that he was out of the loop.

In sum, Ms. Budd-Falen has contradicted a central aspect of Mr. Myers' testimony to this Committee, and the available documentary evidence supports Ms. Budd-Falen's account. We urge the Committee to investigate this new information, with inquiries directed to Mr. Myers, Mr. Comer, and Ms. Budd-Falen, before Mr. Myers' nomination is considered on the Senate floor.

Sincerely yours,



Jeffrey Ruch
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Community Rights Counsel (CRC)

Cc: Members of the Senate Judiciary Committee