

that sets the record straight. The letter of the several Senators was written on Monday, the letter which made a plea to the members of the committee to have a serious consideration of all 17.

The Committee met, pursuant to notice, in Room S. 224, The Capitol, at 7:50 p.m., Hon. Edward M. Kennedy (Chairman) presiding.

Present: Senators Kennedy, Levin, Culver, Metzbaum, DeConcini, Leahy, Baucus, Thurmond, Laxalt, Hatch, Cochran, and Simpson.

Staff present: Ron Brown, Chief Counsel; and Quentin Crommelin, Chief Minority Counsel.

Senator KENNEDY. The Judiciary Committee will come to order.

I believe that the members of the Judiciary Committee are aware of the nomination that was sent to the United States Senate on Stephen G. Breyer, of Massachusetts, to be United States Circuit Judge, Court of Appeals.

We had a unanimous vote in the polling, but a point of order was raised in terms of a member of the Senate, a point of order that a quorum was not present. And to ensure that the will of the Committee be expressed, I will ask now whether there is any objection.

Senator THURMOND. I move it be approved. Senator LEAHY. Second.

Senator KENNEDY. All in favor, say "aye." (Chorus of "aye.")

Senator KENNEDY. Those opposed? (No response.)

Senator KENNEDY. Let the record indicate it was a unanimous vote of the Committee that Mr. Breyer be approved for that purpose.

The second item on the agenda is S. 2849, private relief for Charles Jeffrey Greene. It is a private bill.

Senator DeCONCINI. I move it be approved. I move the approval.

Senator KENNEDY. Without objection, the private relief, S. 2849, is approved.

The third item on the agenda is S. 2798, Small Business Motor Fuel Marketer Preservation Act.

Senator SIMPSON. Mr. Chairman, I regretfully move that be put over. The reason is, even though we have had hearings at the subcommittee level, we have had more at the full Committee level.

More importantly, I think that there are abuses. I really do know there have been abuses.

Senator KENNEDY. The Senator is within his rights in doing so. There are—

Senator BAYH. There is no way we can persuade you to have a little more compassion in your heart for that small retailer out there who has invested his life savings in serving his community?

The answer is no?

Senator SIMPSON. The milk of human kindness is not soured totally on my breath, but I have been practicing law for 20 years, and I had a lot of poor guys come in that have been ripped off by the majors entirely with that little printed contract that left him with one can of oil and three batteries and tires and accessories and racks. So I know what that is. And I hope we can correct that in the next session.

But here we are at the eleventh hour. I don't see any reason to deal with that, or anything else. That is my feeling.

Edward has talked to me about it. I know about it. And I am voting this way in every Committee I am on at this late season of the session.

Senator KENNEDY. The Senator is within his rights.

The other thing are the nominations which have been up before us to varying degrees, and I would like to see if we can get—

Senator DeCONCINI. Mr. Chairman, could I speak for just a minute?

Senator KENNEDY. Surely.

Senator DeCONCINI. It won't be long.

Mr. Chairman, I realize the politics of where we are and the necessity of the minority, soon to be the majority, to want to permit the new President to make appointees, but I have been advised that when President Carter came into office he took the majority of the lame-duck unconfirmed judges and sent them up here. And unless I am mistaken, I would implore the members of the minority, who will control this body next year, to consider passing all of these. They have all been approved. And I would hope that the Committee would consider that.

By the way, the record does not reflect it but my staff member, who was present, tells me that prior to that time Senator THURMOND had walked out of the room and came back in.

Senator THURMOND. Well, that will be passed on to them for consideration. But I object taking up any more tonight. I think we lost our quorum now.

So apparently the quorum did not stick around.

Senator KENNEDY. We are unable to get the other members for a quorum. So there will—

Senator DeCONCINI. Well, Mr. Chairman, let me go ahead. Let us go ahead for just a few minutes and—in case somebody should show up.

There are a number of judges here, Judge Sachs, of Missouri—

Senator KENNEDY. I think we have looked into that particular matter, Dennis, and that doesn't happen to be the case. It is the understanding, at least of—

Senator THURMOND. Mr. Chairman, I object.

Senator KENNEDY. Well, we are out as a Committee. We are just talking.

Senator THURMOND. We don't have a quorum and I make a point of order.

Senator KENNEDY. While you are standing there we have one.

Senator DeCONCINI. Mr. Chairman, I—

Senator KENNEDY. To get back now, Dennis—

Senator DeCONCINI. I would at least like to express my opinion, Mr. Chairman.

There are a number of judges here that are dearly needed. In Ohio—

Senator KENNEDY. The Senator is within his rights in terms of making a point of order. We don't have a quorum. And so for the purposes of the meeting, we will adjourn. But for those who want to remain here for the discussion, of which I will remain here, we will proceed.

(Whereupon, at 8:00 p.m., the Committee adjourned.)

Ten minutes. It is perfectly obvious what happened.

So, Mr. President, this is a fine example of merit selection of judges. It is a disregard of the President's Executive order not once but twice. It is an agreement by the President that he would nominate a man who was not on anybody's list as soon as the election was over. There is the failure of the chairman of the committee to call a committee meeting after we came back to consider any of those other nominations. And then the selection of a man from the third list selected by the committee before the American Bar Association had made its report, before the Federal Bureau of Investigation had made its re-

port. I realize he had been on the committee, but so had Senator HOLLINGS' nominee been on the Court of Military Appeals which required a much more thorough background check.

Here was a man who has never tried a single trial case, who has argued one appellate case in his life.

Mr. President, I have nothing personally against Mr. Breyer, and I doubt that other Members have anything personal against him. I have no quest for revenge, I will say again. I do not believe you have to have any other motive than wanting the Senate to meet its responsibility to consider judges on their true merits in order to question how this nominee's name is before this body.

As I said earlier there has been a great deal of pious talk during these past few years about considering Federal nominees for judgeships on the basis of true merit. The idea is to get the judgeships out of politics. I am one of those who thinks that whenever you say, let us get the judges out of politics, or, let us get everything out of politics, what you are saying is, "Let us get it out of the hands of the people and put it in the hands of those who can manipulate."

Certainly, if there has ever been a case where a committee was manipulated it would have had to be this one because this committee on 2 occasions nominated 11 nominees for this circuit, only 1 of which was disqualified by reason of age. They had to go back and lick the calf a third time and come up with three more in order to get Mr. Breyer's name. The sacrificial lambs in this case, as I mentioned, are those 17 nominees who probably never will be considered and who will be left slowly twisting in the wind.

As I said earlier, Mr. President, in a few weeks I shall leave this body. Some of my friends and associates have suggested to me that I turn my head the other way and keep quiet about this nomination, and that would have been the easy way out. But I point out again that it has not been my way for 30 years of public life. When I retire from public life—temporarily or for whatever period of time it will be—on January 2, I will be able to do it with the knowledge that I have done my duty as I have seen fit. I will have my self-respect. I will have the knowledge that I did not deviate from my principles and that I did not fail to speak out against things which I think are wrong.

Mr. President, there are many other things I can say and probably will have to say about this, but I am willing to yield the floor at this time, with this proviso: I ask unanimous consent that my next speech be considered a continuation of the first speech on the legislative day.

The PRESIDING OFFICER (Mr. CULVER). Without objection, it is so ordered.

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. KENNEDY addressed the Chair.