

Mr. ASHURST. With respect to the nomination of Judge Clark, I voted in the committee to report his nomination favorably and will vote to confirm the nomination, if opportunity is given.

I appreciate the reasons of objection on the part of the able Senator from Nebraska to confirmation. Other Senators have notified me that they desire to make further investigation of this nomination.

The Senate has a historic policy of not hurrying the confirmation of judges. I respect that tradition, and have lived up to it. Therefore, much as I am in favor of the confirmation of the nomination of Judge Clark, I would not be a party to hurrying a nominee to confirmation, without proper investigation.

Mr. BORAH. Mr. President, I have no objection to a discussion of the nomination, but I should like sufficient time to be afforded for that purpose, so that a vote may be taken after full discussion. If the matter is to go over until later today, and should then be taken up at the very moment when the Senate is about to adjourn, of course we would have no opportunity to discuss and to vote on the nomination. I should like to have the matter discussed at the present moment.

Mr. ASHURST. Mr. President, I may say that from my viewpoint such action is in order.

Mr. BURKE. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BURKE. The confirmation of the nomination which is now under discussion at this time requires unanimous consent, as I understand.

The VICE PRESIDENT. It does. However, any Senator may move that the Senate, in executive session, proceed to consider the nomination for the purpose of debating it.

Mr. BARKLEY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BARKLEY. This nomination is on the calendar. I have no desire to rush it or to press for action at this time. It was partly for that reason that I saw no objection to the nomination going over. But it is in order for any Senator to move to proceed to consider the nomination.

The VICE PRESIDENT. Such a motion is in order.

Mr. BORAH. Mr. President, I move that the Senate proceed to consider the nomination of William Clark, of New Jersey, to be judge of the United States Circuit Court of Appeals for the Third Circuit.

Mr. BURKE. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. BURKE. I object to the motion to consider the nomination, as being out of order.

The VICE PRESIDENT. The motion is in order for the Senate to proceed to the consideration of the nomination. If the motion is agreed to, it is debatable, and any Senator who wishes to express himself upon it, may do so.

Mr. BURKE. Mr. President, the nomination appears on the calendar for the first time; and under the rules of the Senate may be considered today only by unanimous consent.

The VICE PRESIDENT. The Chair is informed by the Parliamentarian that as a legislative matter that statement is correct. This is the first such experience the Chair has had with an executive matter. The Parliamentarian advises the Chair that the same situation does not apply to executive matters. The Chair does not know just what rule covers the matter, but the Chair has been informed as stated.

Mr. BORAH. Mr. President, if the Senator from Nebraska desires to have the nomination go over to enable him to make a further investigation and to discuss it I have no objection, provided the Senator will agree to a vote on the question sometime during the day. If the Senator will agree to vote, I have no objection to the nomination going over.

Mr. BURKE. I will not consent to a unanimous-consent agreement unless the rules of the Senate require it. I should like to have a little further elucidation on the distinction between nominations on the executive calendar and bills on the legislative calendar. I know of no rule of the Senate which makes a distinction. The uniform procedure

heretofore has been that one objection on the first day a nomination is on the calendar is sufficient to cause the nomination to be passed over.

Mr. McNARY. Mr. President, may I be heard on the matter? If a nomination is reported by a committee one day, it must go over if there is objection to its consideration. If the nomination is reported on one day, and appears the next day on the calendar as an order, it may then be considered. Yesterday the report was made, and it has lain over for a full day. The nomination is now on the calendar, and must be considered if a motion is made and agreed to for its consideration.

The VICE PRESIDENT. That is what the Chair has ruled.

Mr. BARKLEY. Mr. President, I think the spirit of the rule and the custom in executive session have been that a nomination requiring unanimous consent for its consideration must go over if any Senator objects. However, when the nomination has been placed on the calendar, and has come over from a previous day, it is in order, in spite of objection, to move to proceed to consider it.

The VICE PRESIDENT. In a case requiring unanimous consent, a single objection is sufficient to cause the nomination to be passed over. However, when the nomination is on the calendar, if any Senator desires to move that the Senate proceed in executive session to consider the confirmation of the nomination of a judge, or any one other nominee, he is privileged to do so. As the Chair understands, the Senator from Idaho [Mr. BORAH] has moved that the Senate proceed in executive session to consider the nomination of Judge Clark. The question is, Will the Senate agree to that motion?

Mr. McNARY. Mr. President, I should like to be heard for a moment on the parliamentary situation. I think I am conversant with the rule. There is no difference between a legislative matter and an executive matter, so far as an order on the calendar is concerned. If today, or any other day, I offer a bill or report from a committee, before it goes on the calendar objection may be made to its immediate consideration. The same rule applies to matters in executive session. It is not now in order to object to the consideration of the nomination, because the report was made yesterday, the nomination is now on the calendar, and, therefore, is subject to a motion to proceed to its consideration. So there is no difference in that respect between a legislative matter and an executive matter.

The VICE PRESIDENT. The motion is debatable.

Mr. BORAH. Mr. President, before we vote upon the matter, I wish to repeat that if those who are objecting to consideration of the nomination will agree that sometime during the day we may vote upon the matter, I shall not insist upon it being taken up at this time. I merely wish to have it disposed of today. There are reasons why it should be disposed of at this time. The nomination having been reported and being on the calendar, there is very good reason why it should be disposed of at this time.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. BARKLEY. I feel very much as the Senator from Idaho does with respect to the nomination. I think it ought to be disposed of today. I have conferred with the Senator from Nebraska [Mr. BURKE]. I do not think his objection is captious. It was my understanding that his objection might possibly be obviated later in the day. Of course, there is no guaranty of that. If the nomination goes over, I shall cooperate to the full extent of my ability to bring about another executive session as soon as possible, in order that the Senator from Idaho may make his motion, in the hope that in the meantime the Senator from Nebraska, upon further investigation, may withdraw his objection. I am not in a position to say that the Senator from Nebraska will do so.

Mr. BURKE. I think it would be much better to have the matter come up later in the day. I do not wish, by giving unanimous consent, to waive any right of objection I may have. Apparently, under the rule, we would be in the same position when the matter came up later in the day, at

a later executive session, as we are in now. If that be so, I think it would be better to have the matter come up later in the day. I do not care, by giving unanimous consent, to waive any rights which may now be recognized, or may hereafter be recognized in the way of an objection.

Mr. LA FOLLETTE. Mr. President, will the Senator yield?
Mr. BURKE. I yield.

Mr. LA FOLLETTE. Every Senator here knows the practical situation with which we are confronted. If the nomination is not acted upon and disposed of now, and we return to legislative session and the important measures are disposed of, there will not be a quorum here after the 4 o'clock trains begin to leave in the afternoon. If the Senator from Idaho [Mr. BORAH] is to have an opportunity for determination as to whether or not the Senate will confirm the nomination, in my opinion, he must have it now or not at all.

Mr. BORAH. Mr. President, I ask for the yeas and nays upon my motion.

The yeas and nays were ordered.

Mr. CLARK. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state it.

Mr. CLARK. I am not concerned about this particular nomination, but I do think that, in justice to the procedure of the Senate, there should be some further elucidation of the ruling of the Chair a moment ago to the effect that there is a difference in the rule between the matter of legislative sessions and the matter of executive sessions.

Let me say that it seems to me that the meaning of the word "day" in the rules of the Senate is a matter which should have been cleared up long ago. The present state of affairs, so far as the late rulings of the Chair since I have been a Member of the Senate are concerned, is that in one case, namely, when the question is involved as to how often a Member may speak in the course of a day, the rule provides that a Senator may make only two speeches in the course of a day. That rule has been held by the Chair on several occasions in the past 3 or 4 years to mean that a Senator may speak only twice in 1 legislative day, which may mean a day extending over a whole session, or, as in the present situation, a day extending over nearly 3 months. On the other hand, if I understand the decision—and the Chair will correct me if I am wrong—the term "day" as applied to the executive calendar, means a calendar day. I, myself, am unable to discover any difference in the rule in the use of the word "day" in the one case and the use of the word "day" in the other case. Personally, I think the original ruling—that the limitation on the number of times a Senator may speak in 1 day applies to a legislative day—is erroneous, because I believe the use of the word "day" in every such case should mean a calendar day. I am unable to discover any basis in the rules for a distinction in the use of the word "day" in the case of debate and the word "day" in the case of reports. I should be very happy—and I am certain the Senate would—if the Chair would elucidate the basis of the distinction.

The VICE PRESIDENT. The Chair would be glad to do so, but he would also be glad if the Rules Committee could have at least an hour, or a day, to consider the various contradictory matters which have come up, as the Senator from Missouri has pointed out. Undoubtedly an executive day means a calendar day. As the Senator from Oregon [Mr. McNARY] has just pointed out, the nomination comes over from yesterday. We are in the same legislative day we had a couple of weeks ago. However, so far as executive sessions are concerned, it is another calendar day, as admitted by all. So the Chair thinks that undoubtedly the Parliamentarian is correct when he says that, as applied to an executive session, each calendar day, regardless of legislative days, is a "day" within the purview of the rule requiring a nomination to lay over 1 day.

The Chair agrees with the Senator from Missouri that when the rule says a "day" it means 24 hours, and does not mean a month.

Mr. CONNALLY. Mr. President, is it the opinion of the Chair that rule XIX, relating to debate, which says that a Senator shall speak only twice in a day, means 24 hours?

The VICE PRESIDENT. The Senator is now referring to legislative matters. The question under discussion relates to executive sessions, and what constitutes a day in executive sessions.

Mr. CONNALLY. However, the Chair suggested that there was a difference between legislative matters and executive matters.

The VICE PRESIDENT. There has been a difference, under the rulings of the Senate itself. The Senate has said that the rule relating to two speeches in 1 day means that if the Senate stays in session on 1 legislative day for 60 days, a Senator may speak only twice during the 60 days.

Mr. CONNALLY. That would not be the first time the Senate has been wrong.

The VICE PRESIDENT. The Chair is not responsible for the Senate being wrong.

The question is on the motion of the Senator from Idaho [Mr. BORAH] that the Senate proceed to consideration of the nomination of William Clark to be a judge of the United States Circuit Court of Appeals for the Third Circuit. On that question the yeas and nays have been ordered. The clerk will call the roll.

The Chief Clerk called the roll.

Mr. LEWIS. I announce that the Senator from New York [Mr. COPELAND] is detained from the Senate because of illness.

The Senator from Colorado [Mr. ADAMS], the Senator from South Carolina [Mr. BYRNES], the Senator from Virginia [Mr. GLASS], the Senator from Arizona [Mr. HAYDEN], and the Senator from Tennessee [Mr. MCKELLAR] are detained in a meeting of the Committee on Appropriations.

The Senator from North Carolina [Mr. BAILEY], the Senator from Ohio [Mr. DONAHEY], the Senator from Arkansas [Mr. CARAWAY], the Senator from New Hampshire [Mr. BROWN], the Senator from Alabama [Mr. BANKHEAD], the Senator from Mississippi [Mr. HARRISON], and the Senator from Montana [Mr. WHEELER] are detained in various committee meetings.

I further announce that the Senator from Tennessee [Mr. BERRY], the Senator from Illinois [Mr. DIETERICH], the Senator from California [Mr. McADOO], the Senator from Nevada [Mr. McCARRAN], the Senator from New Jersey [Mr. SMATHERS], the Senator from South Carolina [Mr. SMITH], the Senator from Oklahoma [Mr. THOMAS], the Senator from Utah [Mr. THOMAS], and the Senator from Indiana [Mr. VAN NUYS] are detained on important public business.

The Senator from Washington [Mr. SCHWELLENBACH] is detained on departmental matters.

The Senator from Maryland [Mr. RADCLIFFE] and the Senator from New Jersey [Mr. MILTON] are unavoidably detained.

The result was announced—yeas 61, nays 3, as follows:

YEAS—61

Andrews	Davis	La Follette	Pittman
Ashurst	Duffy	Lee	Pope
Austin	Ellender	Lewis	Reames
Barkley	George	Logan	Reynolds
Bilbo	Gibson	Lonergan	Russell
Bone	Gillette	Lundeen	Schwartz
Borah	Green	Maloney	Sheppard
Brown, Mich.	Guffey	McGill	Shipstead
Bulkley	Hatch	McNary	Townsend
Bulow	Herring	Minton	Truman
Burke	Hill	Murray	Tydings
Byrd	Hitchcock	Neely	Wagner
Capper	Holt	Norris	Walsh
Chavez	Hughes	O'Mahoney	
Clark	Johnson, Calif.	Overton	
Connally	Johnson, Colo.	Pepper	

NAYS—3

Gerry	King	Miller
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NOT VOTING—32

Adams	Copeland	Lodge	Smathers
Bailey	Dieterich	McAdoo	Smith
Bankhead	Donahay	McCarran	Thomas, Okla.
Berry	Frazier	McKellar	Thomas, Utah
Bridges	Glass	Milton	Vandenberg
Brown, N. H.	Hale	Nye	Van Nuys
Byrnes	Harrison	Radcliffe	Wheeler
Caraway	Hayden	Schwellenbach	White