

That is what we are talking about. He said, "The Senate must be prepared to persuade. . . ." This is Mr. Fletcher, who wrote this article. He is an academic, a professor, so he can sit around and find time to write these articles. We are not dealing with a proven practitioner, a person who served as a State or Federal judge, as we normally have. We are dealing with a nominee who has never practiced law in his life, has never tried a lawsuit, has never been in court and had to answer to a judge. Yet, he is going to be superintending the largest Federal circuit in the country. This is what he wrote:

The Senate must be prepared to persuade the public that an insistence on full participation in choosing judges is not a usurpation of power.

That is all we are doing. We are telling the President of the United States—and it is going to get more serious with additional nominees to this circuit—that we have to have some mainstream nominees. We have to do something about the Ninth Circuit, where 27 out of 28 cases were reversed in the term before last, and 13 out of 17 were reversed in the last term. That has been going on for 15 or 20 years. It is not even a secret problem anymore. It is an open, acknowledged problem in American jurisprudence. The U.S. Supreme Court is trying to maintain uniformity of the law.

For example, this summer, the Ninth Circuit was the only circuit to rule that the Prison Litigation Reform Act—passed here to improve some of the horrendous problems we were having with litigation by prisoners—was unconstitutional. Every other circuit that addressed the issue upheld the constitutionality of this act, including the First, Fourth, Sixth, Eighth, and Eleventh Circuit have affirmed the constitutionality of the Prison Litigation Reform Act. But not the Ninth Circuit. It is out there again.

As a matter of fact, I have learned that they utilize an extraordinary amount of funds of the taxpayers on defense of criminal cases. In fact, they have approved one-half of the fees for court-appointed counsel in the entire United States. There are 11 circuits in America. This one is the biggest, but certainly not more than 20, 25 percent of the country—probably less than that. They did half of the court-appointed attorney's fees because they are turning criminal cases into prolonged processes where there is no finality in the judgment—a problem that America is coming to grips with, the Supreme Court is coming to grips with, and the people of this country are coming to grips with. That is just an example of what it means to have a problem there.

Mr. President, I will just say this: This nominee was a law clerk, in addition to never having practiced, and he clerked for Justice Brennan, who was widely recognized as the epitome of judicial activism. His mother is on this court today, the Ninth Circuit, and she

is recognized as the most liberal member of the court. Perhaps one other is more liberal. It is a problem we have to deal with.

I would like to mention this. In talking about the confirmation process, he made some unkind and unwise comments about Justice Thomas in a 1991 article. He questioned, I think fundamentally, the integrity of Justice Thomas. What kind of standard do we need to apply here? He believed a very high standard. This is what he said:

Judge Clarence Thomas did have a record, although not distinguished enough to merit President Bush's accolades. But Thomas backed away from that record, pretending he meant none of what he had written, and said that he never talked about *Roe v. Wade* with anyone and, of course, he didn't talk dirty to Anita Hill either.

The PRESIDING OFFICER. All of the Senator's time has expired.

Mr. SESSIONS. Mr. President, I think that was an unkind comment. I don't believe he is the right person for this circuit, and I object to his nomination.

I yield the floor.

Mr. LEAHY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 11 minutes 4 seconds.

Mr. LEAHY. Mr. President, Mr. Fletcher has waited a long, long time—nearly 3½ years—for this moment. He has been voted out of the Senate Judiciary Committee by an overwhelming margin twice. He is strongly supported by both Republicans and Democrats in this body. He has waited long enough.

I yield back the remainder of my time so we can go to a vote on Professor Fletcher.

The PRESIDING OFFICER. The question is on agreeing to the nomination. Are the yeas and nays requested?

Mr. LEAHY. Mr. President, I think the other side has forgotten to ask for the yeas and nays.

To protect them, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of William A. Fletcher, of California, to be a United States Circuit Judge for the Ninth Circuit? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Ohio (Mr. GLENN) and the Senator from South Carolina (Mr. HOLLINGS) are necessarily absent.

The result was announced—yeas 57, nays 41, as follows:

[Rollcall Vote No. 309 Ex.]

YEAS—57

Akaka	Bingaman	Bumpers
Baucus	Boxer	Byrd
Bennett	Breaux	Chafee
Biden	Bryan	Cleland

Collins	Inouye	Moseley-Braun
Conrad	Jeffords	Moynihan
D'Amato	Johnson	Murray
Daschle	Kennedy	Reed
Dodd	Kerrey	Reid
Domenici	Kerry	Robb
Dorgan	Kohl	Rockefeller
Durbin	Landrieu	Roth
Feingold	Lautenberg	Sarbanes
Feinstein	Leahy	Smith (OR)
Ford	Levin	Specter
Gorton	Lieberman	Stevens
Graham	Lugar	Torricelli
Harkin	Mack	Wellstone
Hatch	Mikulski	Wyden

NAYS—41

Abraham	Frist	McConnell
Allard	Gramm	Murkowski
Ashcroft	Grams	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Burns	Hagel	Sessions
Campbell	Helms	Shelby
Coats	Hutchinson	Smith (NH)
Cochran	Hutchison	Snowe
Coverdell	Inhofe	Thomas
Craig	Kempthorne	Thompson
DeWine	Kyl	Thurmond
Enzi	Lott	Warner
Faircloth	McCain	

NOT VOTING—2

Glenn Hollings

The nomination was confirmed.

Mr. WARNER addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Virginia.

If the Senator will withhold for one moment.

EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate now confirms Executive Calendar Nos. 803, 804, 808, en bloc.

The nominations considered and confirmed en bloc are as follows:

THE JUDICIARY

H. Dean Buttram, Jr., of Alabama, to be United States District Judge for the Northern District of Alabama.

Inge Prytz Johnson, of Alabama, to be United States District Judge for the Northern District of Alabama.

Robert Bruce King, of West Virginia, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I would like to address the Senate.

The PRESIDING OFFICER. The Senator from Virginia cannot be heard. Please come to order.

The Senator from Virginia.

Mr. WARNER. Mr. President, I see our distinguished colleague from West Virginia has risen.

May I retain the floor?

Mr. BYRD. Absolutely. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the motion been made to reconsider the vote by which the nominees were confirmed?

The PRESIDING OFFICER. By the agreement, that has been laid on the table and the President is to be immediately notified of the Senate's action.

Mr. BYRD. Very well, has the Senate returned to legislative session?

The PRESIDING OFFICER. It has not.

Mr. WARNER. Mr. President, I wish to address the Senate.

Mr. BYRD. Mr. President, somebody should ask the Senate return to legislative session.

Mr. WARNER. Mr. President, I wish to accommodate the Senate. I under-

stand that there is a need to move to something very quickly to the House of Representatives. Am I correct? If so, I would be happy to yield the floor, with the understanding at the conclusion of that I could regain recognition.

Mr. BYRD. Is this a legislative matter or an executive matter?

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

ORDERS FOR FRIDAY, OCTOBER 9, 1998

Mr. JEFFORDS. I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. on Friday, October 9. I further ask that the time for the two leaders be reserved. I further ask there be 15 minutes to be equally divided between Senators NICKLES and LIEBERMAN prior to the vote in relation to H.R. 2431.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. JEFFORDS. For the information of all Senators, when the Senate reconvenes on Friday, a rollcall vote will occur at 9:45 on passage of H.R. 2431, the religious freedom bill. Following that vote, the Senate may consider any available appropriations conference reports and any other items cleared for action. Therefore, votes can be expected to occur throughout the day and into the evening on Friday in an effort to consider the continuing resolution and any other legislative or Executive Calendar items.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. JEFFORDS. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:20 p.m., recessed until Friday, October 9, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate October 8, 1998:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2000, VICE JOE SCROGGINS, JR., TERM EXPIRED.

DEPARTMENT OF LABOR

KENNETH M. BRESNAHAN, OF VIRGINIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF LABOR, VICE EDMUNDO A. GONZALES, RESIGNED.

DEPARTMENT OF THE TREASURY

TIMOTHY F. GEITHNER, OF NEW YORK, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE DAVID A. LIPTON.

GARY GENSLER, OF MARYLAND, TO BE AN UNDER SECRETARY OF THE TREASURY, VICE JOHN D. HAWKE, JR.

EDWIN M. TRUMAN, OF MARYLAND, TO BE A DEPUTY UNDER SECRETARY OF THE TREASURY, VICE TIMOTHY F. GEITHNER.

ENVIRONMENTAL PROTECTION AGENCY

TIMOTHY FIELDS, JR., OF VIRGINIA, TO BE ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE, ENVIRONMENTAL PROTECTION AGENCY, VICE ELLIOTT PEARSON LAWS, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 1998:

THE JUDICIARY

WILLIAM A. FLETCHER, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT.

H. DEAN BUTTRAM, JR., OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

INGE PRYTZ JOHNSON, OF ALABAMA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ALABAMA.

ROBERT BRUCE KING, OF WEST VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

WITHDRAWAL

Executive message transmitted by the President to the Senate on October 8, 1998, withdrawing from further Senate consideration the following nomination:

FEDERAL MARITIME COMMISSION

JOHN A. MORAN, OF VIRGINIA, TO BE A FEDERAL MARITIME COMMISSIONER FOR THE TERM EXPIRING JUNE 30, 2001, VICE MING HSU, TERM EXPIRED, WHICH WAS SENT TO THE SENATE ON OCTOBER 5, 1998.