

Senator STEVENS. Mr. Chairman, I would like for you and the members of the committee to know that I have known Justice Rehnquist now since the early fifties. I knew him then as an honest, decent and very sensitive but very brilliant young lawyer. We were part of a group that came here right after we got out of law school, and I had many discussions with him in those days. As a matter of fact, I think we even had one night when we went out on a double-date together. We spent time together as young men.

The CHAIRMAN. So you worked together and dated together; is that it?

Senator STEVENS. That is right.

Senator BIDEN. But not one another.

Senator STEVENS. He was not my date, Mr. Chairman. [Laughter.]

I was pleased when his name was submitted in 1971 to become an Associate Justice, and I supported it then with a statement on the floor, which I will be pleased to put in the record again here today.

But I want the committee to know that I have been appalled at some of the things I have heard here. I have known this man for many years, and I am, I think you all know, a person who prides himself in believing that we have been part of a generation that has brought great change to this country, and Bill Rehnquist has been part of that change. And he has been a very steady member of the Supreme Court. And I would urge that you report his nomination to become Chief Justice. As Senator Biden has said, he is going to be on the Court in any event. He has been a good member of the Court; he has been a very steady member of the Court. And I think he will use his brilliance and his capability to be even a greater leader of the Court as Chief Justice than he has been as a member, as an Associate Justice. He has followed very closely, in my opinion, the lead of the current Chief Justice in recent years, and I consider Chief Justice Warren Burger as a close personal friend, and I have great admiration for him, too.

I think the President has made an admirable selection to be the Chief Justice of the United States, and I would like to go on record as completely supporting his nomination.

The CHAIRMAN. Thank you very much.

Are there any questions of Senator Stevens?

[No response.]

The CHAIRMAN. If not, you are excused, and thank you for your appearance.

Congressman Rudd, we are glad to have you with us.

STATEMENT OF HON. ELDON RUDD, MEMBER OF CONGRESS, STATE OF ARIZONA

Mr. RUDD. Thank you very much, Mr. Chairman.

I am very privileged to appear before this committee with this group of distinguished Senators and your distinguished committee. I thank you for giving me the privilege to come and testify before the committee.

The CHAIRMAN. If you have a statement, you can give it at this time.

Mr. RUDD. I would just like to say that I noticed my friend and late colleague from the other body, my body, is now a member of this great body—the newest member, and this committee. I note that Senator Broyhill occupies the last seat on the committee. Senator Broyhill is used to dealing from the front of the line rather than the back of the line, but he will get used to this in about 30 seconds, I think.

Mr. Chairman, Justice Bill Rehnquist is a thoroughly good person who has a distinguished, very scholarly judicial track record and has served our country very well in that regard. No one has been more upright, more dedicated, more sincere, more contributive to our Nation's highest court than has Bill Rehnquist.

There has been some note taken in the media recently of his possible prior affiliation with one of the two great political parties, but in doing so, the terms "liberal", "conservative", "left" and "right" have been used, terms that I do not use myself, although sometimes I am tabbed that way with one or the other. But the membership in question, I think, had to do with the Republican Party. And that is why I would like to just appear before you today, and I want to tell you that in May 1963 in this regard, which may be helpful, during the course of an impeachment proceedings, two Democratic Party members of the Arizona Corporation Commission, by a totally controlled Democratic Party Legislature in Arizona, the Arizona House of Representatives selected Bill Rehnquist to represent them in these proceedings. Bill's selection was inspired solely, only, because of his integrity, his reputation as a legal scholar, without any thought to his possible political affiliation. And I will tell you the impeachment failed in the Arizona Senate, I believe by one vote because of a failure to get a two-thirds vote in the body consisting of 28 members, 24 of whom were members of or affiliated with the Democratic Party.

The only current living member of that then body is, the Honorable Sam Steiger of Prescott, AZ. But I say that only to indicate that up to this point, no one has paid much attention to what his political affiliation may have been in that regard. And the confidence that the opposite party—and I am not even sure that he was a Republican at that time—but what has been termed "the opposite party" from what he was registered, took great pride in selecting him.

But Bill Rehnquist and his nomination by the President of the United States as Chief Justice has been heralded across the Nation as a most reasonable, a most laudatory action, and I sincerely urge this great committee to approve that nomination.

I thank you, Mr. Chairman, for permitting me to be here.

The CHAIRMAN. Thank you very much.

For those of you who do not know Congressman Rudd, he is from Arizona; he is a very able, hardworking, dedicated Congressman, and we are very pleased to have him make an appearance here.

Any questions?

[No response.]

The CHAIRMAN [continuing]. If not, thank you very much, Congressman.

Mr. RUDD. Thank you, Mr. Chairman.

The CHAIRMAN. We will now ask Justice Rehnquist to come back to the stand. And Justice Rehnquist, I wish to remind you again that you are under oath.

Justice REHNQUIST. I am aware of that, Mr. Chairman.

The CHAIRMAN. Now, yesterday, for the first round we announced we would allow 20 minutes. I think, today, we will go back to 10 minutes. We have 60 witnesses to hear from today so we had better get busy—or, at least 50, I believe, today, and 10 tomorrow.

So we have asked the members not to duplicate questions. If you listen, and the question has already been answered, there is no use going over and over again. We can save time by that. We want to cooperate in every way we can, but we must move on.

Mr. Rehnquist, I have several more questions here I did not quite finish yesterday, but to save time, we will now allow other members to question you.

We will now turn to the able ranking member, Senator Biden.

Senator BIDEN. Thank you, Mr. Chairman.

Welcome back, Mr. Justice. I admire your physical constitution to sit as long as you did yesterday.

I spoke to my mother last night, and she said, "He did not get a chance to get up and leave, but you did. Are you going to keep him that long today?"

I want you to know, Mr. Justice, that the decision to keep you that long was totally the chairman's. [Laughter.]

And I want my mom to know that, too.

The CHAIRMAN. I might add, though, it was caused by long, drawn-out questions of some Democrats. [Laughter.]

Senator BIDEN. I might add for the record that you will find that there were more questions and more time absorbed by Republicans yesterday than by Democrats, as has been pointed out to me by two people in the press who kept a clock on. They pointed out every 20 minutes the bell went off for us; on an average, it was 22 minutes for you. At any rate, we do not want to talk about that.

The CHAIRMAN. Well, it is not very often, but sometimes the press is in error. [Laughter.]

Senator BIDEN. Mr. Justice Rehnquist, now that I have eaten up 2 of my 10 minutes, let me pick up where we left off, if I may, as I told you I would.

We talked—to bring you back in focus for a moment here with regard to the questions I was pursuing—about the role the Chief—

The CHAIRMAN. Excuse me just a minute. I noticed a long line of people out there that want to come to this hearing. Is there any reason they should not be brought in? Bring them in and fill up the chairs. They have got a right to be here if they want to. Fill every seat, and give them an opportunity to come in.

Senator BIDEN. We have got a couple empty ones up here.

Senator LEAHY. It depends if they are going to ask long questions or not, Joe.

Senator HATCH. We are willing to have them filled, of course.

Senator BIDEN. Do you think we might punch that clock again?

The CHAIRMAN. We will start over on the time.

Senator BIDEN. Mr. Justice, you and I spoke briefly yesterday about the role of Chief Justice Warren in the *Brown* case, and we ended, when my time was up, beginning to speak to the role of the Chief in the *Nixon* tapes case, which was as we both know—you, better than I—a different role; the Chief was in that case the one person that was slightly out-of-sync with the other eight Justices, according to historical—he ended up voting the same way, but the issue there was not the Chief bringing along a potential dissenter; the issue there was the Chief, who thought the tapes should be given up, having a rationale the same as the other eight Justices.

And I think it has been characterized by everyone as the Chief having compromised somewhat—not compromised in a bad way, but having compromised some to gain again total unanimity on the Court.

Is that your perception of how that occurred?

**TESTIMONY OF HON. WILLIAM H. REHNQUIST, NOMINEE, TO BE
CHIEF JUSTICE OF THE UNITED STATES**

Justice REHNQUIST. I do not have any perception of how that occurred, Senator. I did not participate in the case. I do not believe I saw any of the circulations. And it is just, really, as if I had not been there.

Senator BIDEN. Well, in the book "Brethren," the following exchange allegedly occurred, the following episode. When Nixon heard the results, the President said he hoped there would be "some air" in the opinion. He was speaking to General Haig. And Haig told him it was unanimous, and Nixon said, "Unanimous?" and Haig said, "Unanimous. There is no air in it at all."

"None at all?" Nixon asked.

"HAIG. It is tight as a drum."

After a few hours spent complaining to his aides about the Court and the Justices, Nixon decided he had no choice but to comply, and 17 days later, he resigned.

Now, if that is correct, that Chief Justice Burger subsumed his view to the Court as a whole so that there would be a unanimous opinion on what we both had agreed yesterday was a critical decision, if that is true would you be prepared to do a similar thing?

Justice REHNQUIST. I think the Chief Justice probably has a greater obligation than anyone else on the Court in those very rare, great cases where it is apparent that unanimity would be highly desirable to not only try to get colleagues together by way of consensus, but to himself adapt some of his views.

Senator BIDEN. I appreciate that answer, Mr. Justice, because this, as I have told you, is a very important part of my decision here. As I said, you are on the Bench, and you are on the Court, and God willing, you will stay on that Court in good health for some time to come. So the issue for me is the role of the Chief Justice here.

Let me ask you, do you believe, had you been Chief, would there have been the necessity in any of your 8-to-1 decisions where you were the dissent that you think you could have changed? I mean, can you imagine having changed? Do any of those decisions rise to that level?