Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner
Wellstone
Wyden

NAYS—1

Feingold

NOT VOTING—6

Allard
Enzi
Hutchinson
McCain
Sessions
Torricelli

The conference report was agreed to.

Mr. DASCHLE. Mr. President, I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to table was agreed to.

ORDER OF PROCEDURE

Mr. DASCHLE. Mr. President, I know the distinguished Republican leader wishes to speak. I ask unanimous consent that he be accorded whatever time required. I know Senator MIKULSKI has an interest in speaking for 5 minutes following the distinguished Republican leader. I ask unanimous consent that request be accommodated as well.

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

The Republican leader is recognized.

UNANIMOUS CONSENT REQUEST—SHEDD NOMINATION

Mr. LOTT. Mr. President, last week, the Judiciary Committee pulled from their agenda the pending nomination of Judge Dennis Shedd to fill a seat on the 4th circuit court of appeals. That was contrary to all of the understandings as to what would happen with regard to that nominee. I think various Members on the judiciary committee on several occasions had been assured he would be given a vote. I think there is no question that Senator THURMOND had been under the impression there would be a vote on Shedd's nomination this year. Yet the nomination was removed from the calendar and, therefore, not even considered by the committee. A vote was not taken, and I presume it was blocked procedurally because there would have been enough votes in the Committee to actually report Shedd's nomination to the full Senate had there been a vote.

I understand that moving to the executive calendar is traditionally a prerogative of the Majority Leader. However, there has been an extraordinary and unprecedented violation of Senate rules and tradition in the manner in which Judge Dennis Shedd's nomination was considered in the Judiciary Committee. I also believe that the manner in which Senator THURMOND was led on regarding Judge Shedd's nomination constituted a slight of Senator THURMOND during the final days of his long and distinguished Senate career. I remind Senators that we depend very heavily around here on comity and trust to do the vast majority of our business on behalf of the American people. When that trust is violated or misused it is hard to conduct business as usual.

Mr. President, Dennis Shedd's nomination was finally put on the Judiciary Committee's agenda way back on Sept. 19, but was held over to the next mark-up which as it turned out was last Tuesday, October 8th. It is also my understanding that the normal practice is that when Senators in the Committee hold legislation and nominations over at a mark-up, the tradition and practice has always been that the items held over are placed on the very next mark-up.

In this instance, the October 8th mark-up was actually postponed from the previous Thursday, October 3rd, so that Chairman LEAHY could concentrate on passing the Department of Justice (DOJ) Re-authorization Conference Report. During the vote to invoke cloture on that bill, it is my understanding that Senator THURMOND was once again assured by Senator LEAHY that Judge Shedd would be on the mark-up on October 8th.

Unfortunately, that assurance as well as the practices and traditions of the Committee were violated last week because Judge Dennis Shedd's nomination was pulled from the committee's agenda—preventing the Committee from reporting him out to the full Senate. However, breeches in decorum regarding Judge Shedd and Senator THURMOND predate last week.

On July 31st, Chairman LEAHY publicly promised Senator THURMOND at a committee meeting that Judge Shedd would be voted on this year. When Shedd wasn't on the August 1st mark-up, Senator LEAHY assured Senator THURMOND's Chief of Staff that Shedd would be voted on immediately after the August recess. When Shedd was not on the agenda for the first mark-up after the Senate returned in September—which was Sept. 5th—Senator THURMOND then was assured that Dennis Shedd would be on the next mark-up on Sept. 19th.

While Shedd was actually put on that mark-up on Sept. 19th, he was held over to the next mark-up—which is the right of Senators in the Committee to do. And then, as I said previously, contrary to tradition and practice, Shedd was kept off the agenda for the last mark-up of the year by Senator LEAHY.

Mr. President, there is no doubt about Judge Shedd's qualifications. He has strong bipartisan support. One of his most ardent supporters is the distinguished Democrat Senator from South Carolina, Senator HOLLINGS. The ABA—the ''Gold Standard'' so often cited by Senator LEAHY—gave Judge Shedd a ''Well Qualified'' rating, its highest rating. So, it is not Judge Shedd's qualifications which are standing in the way.

He was appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, and has now served as a federal jurist for more than a decade—following nearly twenty previous years of public service and legal practice. In addition to his service on the District Court, he has sat by designation on the Fourth Circuit Court of Appeals on several occasions. Judge Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee when Senator THURMOND was the Chairman.

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Mr. President, Dennis Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times (less than one percent). So, it should be clear that Judge Shedd is the victim of a deliberate, calculated, attempt by outside groups to embarrass one of President Bush's nominees and not any deficiency in his professional training or temperament.

But Judge Shedd is not the only victim here. This is also an affront to Senator THURMOND in his final days as a Senator. We owe it to Senator THURMOND, as a sign of our respect and admiration for his distinguished service, to vote on the nomination of his former staff director before Senator THURMOND's career comes to an end—an action the Senator feels that Senator LEAHY gave him his word he would do.

Mr. President, the rules of the Senate provide a motion to discharge a nomination. I want to do that. But I am under no illusion that I would be allowed to make that motion and have it succeed under any circumstances. That has been tried on the other side of the aisle when I was majority leader, and I know that it would be interpreted as a

partisan vote and that the majority leader would have to press his members not to allow that to happen. But I feel so strongly about the unfairness of the treatment of this nominee and the way it has reflected on Senator THURMOND that I have to take some action.

The Senate must be in executive session in order to move to discharge a nomination. That would not happen. Having said that, we feel we must make another effort. Therefore, I ask unanimous consent that the Senate proceed to executive session; that the nomination of Dennis Shedd, to be a Fourth Circuit judge, be discharged from the Judiciary Committee and placed on the calendar; further, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Republican leader, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate; that following the vote the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Finally, I ask unanimous consent that this action occur prior to the adjournment of the 107th Congress.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DASCHLE. Let me respond briefly. It has been the practice of the Senate, since we have been in the majority, to take up all nominations that have been reported out of the committee. This nomination has yet to be reported out of the committee. There have been a number of others who have sought recognition and have asked to be heard on the Shedd nomination, which is why the nomination was tabled.

I hasten to add that, on that very day—I don't recall the exact number—a significant number of judicial nominations were passed out. I believe the number was 17. So there are 17 additional judicial nominations, which brings us close now to 100 judicial confirmations, if we deal with those 17 pending now on the calendar. More than 80 have already passed and were confirmed, and we have 17 pending and could be confirmed before the end of the year. That is close to an all-time record. I think that is all the more laudatory, given the fact that we have not been in the majority for the entire 2-year period of time. During that first 6-month period of time, the Republicans failed to confirm one judicial nomination; they failed on all counts to confirm even one. So the Shedd nomination is being reviewed. There are others who wish to be heard, and I respect the decision made by the chairman, in particular, that this nominee be given additional consideration, and that others who want to be heard be given that opportunity as well.

I do object.

Mr. LOTT. Mr. President, will the Senator yield for a question and a suggestion?

Mr. DASCHLE. I will be happy to yield to the distinguished Republican leader.

Mr. LOTT. Mr. President, we are in session this week—today and I presume tomorrow. I guess there is a possibility we will be in session again next week. In view of the commitments that were made that this nominee would be considered by the committee, is there a chance there would be another executive session or markup session of the Judiciary Committee either tomorrow or next week to further consider this nomination, because at least 2 weeks will have transpired between the last time it was supposed to be considered and when the Senate would go out for the election, and possibly even after the election?

The majority leader will note my UC just asked consent that it occur before the adjournment of the 107th Congress. I did not say today or next week, although, obviously, I feel strongly it should be considered soon. Is there a possibility something could be worked out in this regard?

Mr. DASCHLE. Mr. President, there is always a possibility, and I will certainly work with the Republican leader on all the nominations. He and I have talked on numerous occasions about how we might accommodate all of those nominees whose names are pending on the calendar. We have not yet been able to address those.

I would like very much to clear the calendar, to do as much as possible to get those who have been reported out cleared and confirmed prior to the time we leave. Clearly, I would work with him and certainly with the Judiciary Committee. I cannot make any commitments this afternoon without consultation with the Chair. But I think the committee has been more than fair and more than productive in its effort to move out of the committee the large number of nominations, both at the district and circuit levels. I will certainly consult with the distinguished Republican leader and the Chair in the coming days.

Mr. REID. Will the Senator yield for a question?

Mr. DASCHLE. I will be happy to yield to the Senator from Nevada.

Mr. REID. The Senator is aware when the Republicans were in the majority, we tried on a number of occasions to get a significant number of judges to have hearings. For example, I can remember last week Senator BOXER spoke to me about judges in California who waited over 4 years to have a hearing. Does the Senator recall that?

Mr. DASCHLE. Unfortunately, I do. I think if we go back, we would recognize there are a number of nominees who waited 3 and 4 years and never even got a hearing. Mr. Shedd was at least given a hearing. As I say, people are continually coming before the committee and seeking additional opportunities to address the committee on the Shedd nomination. That is far more than what a number of the nominees were given over the course of the Clinton administration.

We are hoping to rectify that, which is why we have confirmed as many judges as we have to date. As I say, almost 100 judges will have been confirmed if we clear the Federal calendar prior to the time we adjourn sine die.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, I believe I still have the floor. I was asking the Senator to yield. He was still, I guess, proceeding under his objection. I take my time back. I would like to put some other issues into the RECORD.

Mr. President, I do want to respond to the comments about the nominations that have been confirmed and those that are still pending. There have been 131 judicial nominations submitted by President Bush during the 107th Congress—32 U.S. circuit nominees; 98 district nominees, and one U.S. Court of International Trade judge. So far, 80 of the 131 nominees have been confirmed—14 U.S. circuit court judges and 66 district court judges. But the key figure is that there are still 49 nominations pending before the Senate, without final action 49 nominations. There are still 31 nominations pending in committee. Of the 16 U.S. circuit court positions that have not been confirmed—15 are still in the committee, just one is on the floor, and that one is the nominee for the Sixth Circuit, Mr. John Rogers, who has been pending on the Executive Calendar since July.

I thought there had been an agreement that we would move that nomination before the August recess. Again, that circuit court nominee has been pending on the Senate floor since July—almost 4 months ago. And there are 15 other circuit nominees in committee, some of whom have been waiting over 500 days without even a hearing.

As to district court nominees, there are still 15 of them in committee as well, and the 17 that are on the floor for consideration were just reported last week. I hope we will at least confirm those nominations before we leave, although on many occasions, we had to have recorded votes to move even district judges. I wonder if that means we are going to have to have 12, 14, 16, 17 recorded votes in the Senate on district judges to get them confirmed before we adjourn for the year. And, of course, the one USIT position is still pending in Committee and has been since December of last year.

The key point is the alarming number of vacancies on the federal courts—77, which is almost 10 percent of federal judgeships. I understand from the Judicial Council and from the Chief Justice, that over 30 of these nominations are for seats that are considered emergency vacancies that need to be filled.

We can always talk about percentages and numbers, Mr. President. For example, so far only 43 percent of this President's circuit nominations in his first 2 years have been confirmed. President Clinton got over 86 percent of his circuit nominees confirmed in his first 2 years in office, the first President Bush got 96 percent and President Reagan got 95 percent. Only 43 percent of circuit court judge nominations have been confirmed in this Congress compared to almost 90 percent for other Presidents over the past 20 years. That is a problem.

I know there have been disagreements in the past about nominations when I was majority leader, but we did move large blocks of nominations. We had some approved that were very controversial and others were not moved in the final analysis.

The problem with this particular nomination is not only the exceptional qualifications of the nominee and his history as a former judiciary committee staffer, but more importantly, the way Senator THURMOND has been treated in the process. Judge Shedd is eminently qualified for the job. He is a former staff director of the Judiciary Committee. And he has been a sitting Federal district judge for over a decade, confirmed by the Senate, probably unanimously. Nevertheless, after Senator THURMOND was given the word that he would have this nomination voted on before the year was out, this nomination was pulled from the calendar of the committee's last markup.

Mr. President, that is simply a tragic conclusion to an almost five-decade career in the Senate. It is also in my view a violation of the unwritten rules of civility about which we all talk and aspire to in the Senate. That is why I will make a continued effort to find a way for this nominee to be considered by the committee and confirmed by the Senate in this Congress before Senator THURMOND retires. Senator THURMOND, Judge Shedd, and the American people deserve better. Senator THURMOND as an icon of this institution in his final days deserves better. And the honor and traditions of the U.S. Senate deserve better.

I yield the floor.

EXHIBIT 1

SHEDD'S BACKGROUND

Appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, Dennis W. Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice.

In addition to his service on the District Court, he has sat by designation on the Fourth Circuit Court of Appeals on several occasions. Judge Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee.

Judge Shedd is well-respected by members of the bench and bar in South Carolina. According to South Carolina plaintiff's attorney Joseph Rice, ''Shedd—who came to the bench with limited trial experience? has a good understanding of day-to-day problems that affect lawyers in his courtroom . . . He's been a straight shooter.'' [Legal Times, May 14, 2001.]

According to the Almanac of the Federal Judiciary, attorneys said that Judge Shedd has outstanding legal skills and an excellent judicial temperament. A few comments from South Carolina lawyers: ''You are not going to find a better judge on the bench or one that works harder.'' ''He's the best federal judge we've got.'' ''He gets an A all around.'' ''It's a great experience trying cases before him.'' ''He's polite and businesslike.''

Plaintiffs lawyers commended Shedd for being even-handed: ''He has always been fair.'' ''I have no complaints about him. He's nothing if not fair.'' [Almanac of the Federal Judiciary, Vol. 1, 1999.]

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times (less than one percent). Since taking his seat on the Fourth Circuit in 2001, Judge Roger Gregory (a Democrat appointed by President Bush) has written opinions affirming several of Judge Shedd's rulings.

Mr. SANTORUM. Mr. President, will the Senator from Mississippi yield?

Mr. DASCHLE. Mr. President, what is the regular order?

The PRESIDING OFFICER (Mr. CARPER). Under the previous order, the Senator from Maryland, Ms. MIKULSKI, is recognized for 5 minutes. The Senator from Maryland.

ATTACKS ON THE CAPITAL REGION

Ms. MIKULSKI. Mr. President, this past year has been a challenging time for residents of the capital region. First there was the September 11 attack on the Pentagon. Then there were the anthrax attacks, and now a serial sniper is terrorizing the national capital region, attacking innocent people going about their daily lives. These attacks affect each and every one of us.

Here in the capital region especially, there have been seven attacks in Montgomery County and in Prince George's County in my own home State of Maryland. The sniper has also made three attacks in Northern Virginia. Our friends and our neighbors have been either injured or killed. Our schools are now locked down. Eleven of our neighbors have been shot, nine people have died, two others are still fighting for their recovery, including a child who was shot as he walked into his school in the accompaniment of his aunt, a nurse.

These senseless and brutal murders have left grieving families and terrified our communities. I wish to express my sympathy for the families of the victims. I want them to know they are not alone; that I am on their side and at their side; and also that the resources of the Federal Government are at the disposal of local government and local law enforcement to catch this criminal.

We in Maryland are deeply grateful for the support of President Bush, who has pledged the support of every Federal agency to be at the disposal of local government and local law enforcement.

I thank the Attorney General, Mr. Ashcroft, and the FBI Director, Mr. Mueller, for their immediate response when these attacks on our civilians occurred.

This killer must be brought to justice. It is going to take persistence and patience. It is going to take great detective work, which is already underway. I want everyone to know that just like the manhunt is not going to go away, Federal support is not going to go away, and the resources are not going to go away until this criminal is brought to justice.

So many of my colleagues have expressed their support. They have asked me how my constituents are doing. Well, let me tell everyone what I know about the Marylanders I so proudly represent. We Marylanders strongly believe when times get tough, the tough get going. We are unflinching in our determination to get through these attacks, to stand with each other, and to do all we can to support law enforcement to catch the criminal, to keep our businesses open, and also to make sure our children are safe.

We are particularly sensitive to these issues, but our grief and shock must be coupled with action. Congress must respond with deeds, not just words. This is why I believe one of our first actions should be to pass something called the BLAST Act. The BLAST Act deals with ballistic fingerprinting. It was introduced by our colleague, Senator KOHL. It would keep a database that includes the fingerprint of every bullet and shell to enable law enforcement to solve crimes by providing a scientific link between gun crimes and their owners.

Ballistic evidence has already helped us determine that these shootings were linked to the same killer. We now need the kind of legislation that just as we take fingerprints of criminals, we need to have the same type of fingerprinting on guns.

I know this is controversial, but let's begin the debate. Let's move this legislation through the committee. I know there are issues related to technology, there are issues regarding those who want to tamper with a gun in some way, but this is the United States of America. We have the genius in regard to technology. Let's solve the problems by doing something to make ballistic fingerprinting available, reliable, and accurate. Let's not solve it by doing nothing and saying there are too many problems.