EXECUTIVE SESSION

NOMINATION OF DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to vote on the Shedd nomination.

The majority leader.

Mr. DASCHLE. Mr. President, let me remind my colleagues that the votes from here on out will be 10 minutes in length. And I intend to cut off the votes at 10 minutes. I hope everybody will stay on the floor and cast their votes so we can complete our work at a reasonable hour.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Mr. KENNEDY. Mr. President, I oppose the confirmation of Judge Shedd to the Court of Appeals for the Fourth Circuit. His nomination is also opposed by a large number of individuals, law professors, bar association and civil rights groups across the country, because he has not shown the commitment to the protection and vindication of Federal rights that is essential for this high position in the judiciary.

Judge Shedd has an unacceptable record in cases involving race and gender discrimination. In race discrimination cases, for example, he consistently grants summary judgment against African-American civil rights plaintiffs, preventing even close cases from reaching a jury, and he often does so with little or analysis. In one case, he granted summary judgment for the defendant after the EEOC determined there was a reasonable cause to find that the plaintiff was denied promotion and the denial was based on race. In another case, the plaintiff was denied a pay increase despite the recommendation of his immediate supervisor, where the employer was found by the State to have been discriminating against African-Americans on pay increases.

Judge Shedd has a similar record in gender discrimination cases. He granted summary judgment for an employer in a sexual harassment case in which the male supervisor's conduct was so inappropriate that Judge Shedd himself stated that the supervisor's conduct was ''sufficiently severe and pervasive to constituent a hostile work environment.'' Nonetheless, Judge Shedd granted summary judgment for the employer, finding no evidence that the plaintiff herself thought the work environment had been hostile. This ruling is impossible to reconcile with the facts of the case—the plaintiff had told her supervisor that his comments were offensive, she had reported the conduct to her supervisor, she had taken concrete steps to pursue the complaint, and she eventually quit her position.

In another case, Judge Shedd reversed a magistrate judge's decision to deny summary judgment for an employer. In this case, the plaintiff's supervisor had harassed both the plaintiff and a number of other female employees. Yet Judge Shedd dismissed this case, against the recommendation of the magistrate, because the plaintiff had complained to two different people, a supervisor and the company's chief financial officer, but did not complain to the president of the company, as required by company policy. Judge Shedd ignored the fact that the company's policy also called for the supervisor and the CFO themselves to report the plaintiff's complaints to the president, which they failed to do. Judge Shedd also relied on the fact that the plaintiff's complaint referred to ''harassment,'' instead of ''sexual harassment.''

These were not merely cases in which Judge Shedd ultimately decided on the facts that discrimination had not taken place. These are cases in which he determined that the jury should not even be permitted to hear the plaintiff's claim. Judge Shedd dismissed the vast majority of race discrimination cases brought by African-Americans, before those cases could reach the jury. By contrast, in the five discrimination cases brought by white males, Judge Shedd allowed four to go to a trial. This pattern is very disturbing. The people of the Fourth Circuit deserve better from their Federal judges.

In addition, Judge Shedd has often reached out from the bench to affect the litigation of the cases before him. In discrimination cases, he is known to raise arguments on behalf of the defense from the bench, even arguments not raised by the defendants themselves. He has gone so far as to dismiss cases on grounds not raised by the defendant. In one case, he initiated an inquiry into finances of an unemployed woman who had been granted pauper status by another Federal judge; Judge Shedd ruled that she did not deserve such status, in large part because of the money she had spent pursuing her claim, and recommended that the Fourth Circuit dismiss an appeal the woman had pending in a different suit. He published his conclusions, he said, because other judges may want to know of his personal findings shout this woman.

The States of the Fourth Circuit have a large minority population, the highest percentage of African-Africans of any circuit in the country, and they deserve a fair judiciary, committed to protecting basic rights.

For all of these reasons, I oppose this nomination. the administration can, and must, do better for the people of the Fourth Circuit.

U.S. CIRCUIT COURT NOMINEES

Mrs. MURRAY. Mr. President, I rise to express my opposition to the confirmation of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit, and the confirmation of Professor Michael McConnell to the United States Court of Appeals for the Tenth Circuit.

At every level of the Federal court system, federal judges have a tremendous impact on the rights and protections of all Americans. The federal judiciary effectively ended segregation and ensured a woman's right to reproductive choice. Every day we count on federal judges to protect our civil rights and liberties.

The Senate serves as the only effective check on the Federal judiciary. The Constitution gives the Senate the power to advise and consent to the President's judicial appointments. These are lifetime appointments. Furthermore, because the U.S. Supreme Court hears only a few cases, the Circuit Courts of Appeals are often the courts of last resort for citizens seeking justice from the federal bench. As Senators, we have a constitutional responsibility to evaluate these candidates.

I believe judicial candidates should be experienced, even-handed, possess a fair judicial temperament, and be committed to upholding the rights and liberties of all Americans.

Dennis Shedd does not meet that standard. He has failed to show this Senator that he possesses the characteristics necessary to receive a lifetime appointment to the Circuit Court of Appeals.

As a Federal District Court Judge, Shedd's rulings and actions on the bench indicate he lacks the even-handedness we expect from our federal judges. He has consistently sided with employers in workplace discrimination suits on issues ranging from sexual harassment to race and age discrimination. In fact, in his 11 years on the Federal bench not a single plaintiff in a civil rights or employment discrimination case has prevailed in his courtroom.

His willingness to inject his own personal bias about the rights of individuals shows he also lacks the requisite judicial temperament we should require in a Federal judge. He has shown hostility to those seeking justice from the bench by assisting the defense and granting summary judgment for the defense in a disproportionate number of cases.

Aside from employee rights and discrimination cases, he has also shown an unwillingness to uphold the basic civil liberties and rights of all Americans. He has favored a state government's ability to violate an individual's right of privacy by selling their personal information despite a federal law to the contrary. He also struck down part of the Family and Medical Leave Act, FMLA, by arguing a State cannot be sued under FMLA due to sovereign immunity.

He has further shown a disregard for protecting the rights of voters, and has displayed an insensitivity on issues concerning race.

Considering his history of narrowly interpreting the rights of individuals

and his hostility toward civil liberty protections, we can only assume he would not uphold the civil liberty of privacy, including honoring the Roe v. Wade decision. In fact, at his confirmation hearing he refused to commit to upholding the fundamental right of reproductive freedom.

Dennis Shedd's record clearly illustrates he is not even-handed, that he lacks the right temperament for the appeals bench, and that he has consistently failed to protect the rights and liberties of our people. He should not be confirmed for the Federal appeals court. I urge my colleagues to vote against this nomination.

I would also like to express my opposition to Professor Michael McConnell's recent confirmation to the United States Court of Appeals for the Tenth Circuit.

Professor McConnell has consistently expressed strong opposition to protecting civil rights and liberties, going so far as to call the Roe case ''a gross misinterpretation of the Constitution.'' He has also argued, contrary to existing law, that abortion protestors have a ''constitutional right to protect against abortion—forcefully and face-to-face.''

He holds extreme opinions on the separation of church and state and other key civil rights protections. Professor McConnell has severely criticized the Supreme Court's 8 to 1 decision in Bob Jones University v. United States. In that case, the Supreme Court held that the IRS may deny tax-exempt status to a religious school with racially discriminatory policies. Professor McConnell wrote that the racial discriminatory practices at Bob Jones University should be tolerated because they were religious in nature. He has also argued for giving religious institutions preferential treatment and has advocated direct federal funding of religious institutions. Clearly, Professor McConnell's opinion on the separation of church and state strays far from the mainstream and far from generally recognized conservative legal analysis.

Finally, Professor McConnell has argued for weakening both statutory and constitutional protections against discrimination based on race, gender, and sexual orientation through exemptions for private entities.

Like Judge Shedd, I believe Professor McConnell lacks the basic qualities needed to serve on the Federal appellate bench.

Mr. LEVIN. Mr. President, I will vote against the confirmation of Dennis Shedd to be a United States Judge for the 4th Circuit Court of Appeals. Judge Shedd's record as a judge on the United States District Court raises a number of concerns about both his approach on the bench and his commitment to equal justice—leading me to the conclusion that he should not be promoted to the second highest court in the land.

Of particular concern to me are Judge Shedd's extreme view on the limits of Congressional authority and his record of hostility to plaintiffs in civil rights and employment discrimination cases. This combination is extremely dangerous given the critical role that Congress plays in passing laws to ensure that Constitutional protections are afforded to all Americans. Further, I am troubled by what appears to be a lack of thorough consideration in Judge Shedd's approach. This is particularly unsettling given the significant Constitutional issues that have been at stake in his courtroom.

With respect to Judge Shedd's view of the Constitutional role of the Congress, two cases stand out, Condon v. Reno and Crosby v. South Carolina.

I voted for, and Congress enacted, the Drivers Privacy Protection Act in 1994 to limit the availability of personal information—such as photographs, social security numbers, addresses and telephone numbers, and even some medical information—contained in motor vehicle records. In Condon v. Reno, the state of South Carolina challenged the law, claiming that it was an unconstitutional infringement on the state's rights because it restricted South Carolina from setting its own standards for releasing State motor vehicle records. In Condon v. Reno, Judge Shedd ruled that the law was unconstitutional and in the process endorsed a view that—if permitted to stand—would have severely limited Congress ability to legislate under the Commerce clause of the Constitution. Judge Shedd's decision endorsed a view of congressional authority so far out of the mainstream that the Supreme Court ruled unanimously to overturn him in a decision written by Chief Justice Rehnquist.

Judge Shedd's decision in Crosby v. South Carolina Department of Health and Environmental Control also deeply troubles me. In Crosby, Judge Shedd adopted a magistrate's recommendation granting defendant's summary judgement—agreeing with the magistrate that the 11th Amendment doctrine of state sovereign immunity should prevent the plaintiff from suing the state for violation of the Family and Medical Leave Act because he believed that Act was an improper exercise of Congress's enforcement power under the 14th amendment. Despite the obvious and profound implications of this decision for Congress's authority, Judge Shedd offered virtually no analysis to support his decision. This is despite the absence of directly controlling precedent and the presence of a split among other Federal district courts on the issue. Acts of Congress are entitled to a presumption of Constitutionality. Ruling to overturn a Federal law should not be taken lightly. In a case of this import, Judge Shedd's failure to articulate a rationale for his decision is deeply disturbing. The fact that other judges may have reached the same conclusion as Judge Shedd is not the point here. Parties before the court on an issues of this magnitude are entitled to a judge's reasoning. Judge Shedd offered none.

The Crosby decision is not the only example of Judge Shedd's tendency to accept magistrate recommendations with little or no comment on important matters. In South Carolina, all cases under Title VII of the Civil Rights Act of 1964 are automatically referred to magistrates for pretrial matters. In important employment discrimination cases, Judge Shedd has often adopted magistrates' recommendations in favor of summary judgement. And he has done so without comment in many instances where it appears to me that comment was warranted. In fact, Judge Shedd has done so in cases where a party has raised an objection to one of the magistrate's recommendations and he was required to conduct a de novo review. In a number of these cases, Judge Shedd's rulings do not address the objections at all. Instead, his decisions simply adopt the magistrate's recommendations and pay lip service to his obligation by including a statement that he has conducted the required de novo review. Given the concerns I have about this approach in the Crosby case, this practice deeply concerns me.

Mr. President, nothing is more important for a judge than a commitment to equal justice. A review of Judge Shedd's record also raises the question whether this ideal is being upheld.

In a number of civil rights cases, Judge Shedd appears to have intervened in a manner that has tilted toward defendants. He has granted summary judgement for defendants on grounds not even raised by the defendants. He has ordered a defendant to file a motion to dismiss a case and later granted the motion. And Judge Shedd even granted summary judgment against a petitioner even though it appears that the defendant never filed a motion for summary judgement. These decisions raise serious questions about whether plaintiffs are getting a fair hearing in Judge Shedd's courtroom.

I was particularly struck by the Judge's answer to a question from Senator Edwards in his Judiciary Committee hearing earlier this year. Senator Edwards asked Judge Shedd whether he had ever granted relief to a plaintiff in an employment discrimination case. Judge Shedd could not recall a single instance where a plaintiff alleging employment discrimination was granted relief in his courtroom. Judge Shedd's inability to recall such a case is actually not surprising as a review of his published opinions failed to reveal even one such instance. Eleven years on the bench and not one of his published opinions reflects a favorable ruling for an employee in a discrimination case.

Mr. President, I'm afraid Judge Shedd's record simply does not support his promotion to the 4th Circuit Court of Appeals.

Mr. KERRY. Mr. President, I rise today to voice my strong opposition to

the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals. Although the President has pledged to nominate qualified individuals with outstanding judicial records to the Federal Court System, he has, time and time again, failed to make good on that pledge. Judge Shedd is no exception. During his tenure as a trial judge, Judge Shedd has exhibited extreme, even radical views on an array of important issues. Judge Shedd's record demonstrates that in cases involving civil rights, privacy, discrimination and federalism, he is willing to cross the boundaries of established case law and rule in a manner that is out of touch with mainstream thinking.

A few cases in particular merit the attention of this body. In a case demonstrating Judge Shedd's extreme stance on federalism, he struck down as unconstitutional the Driver's Privacy Protection Act, which we passed to ensure that states keep drivers' license information confidential. This legislation, designed as ''antistalking'' legislation, was drafted in part because antiabortion activists have used accessible drivers' license information to obtain the addresses of doctors who performed abortions in order to post that information on websites. Mr. President, this case was reversed unanimously by the Supreme Court, with Chief Justice Rehnquist authoring the opinion.

Judge Shedd also has a record of condoning serious civil liberties violations by law enforcement. In one particularly disturbing case, Judge Shedd dismissed a lawsuit brought against a corrections officer who had stripped an inmate naked and left him without bedding for 48 hours after the inmate confessed to not knowing the prison's rules concerning lights out. In dismissing the case, Judge Shedd merely stated that he did not think the inmate had been punished. In another instance, he imposed an inconsequential $250 fine in a case where a sheriff and a prosecutor secretly videotaped a jailhouse conversation between a defendant and his lawyer. Judge Shedd defended the penalty stating that he did not think the pair committed any civil rights violation. I am deeply troubled that we might appoint a judge who does not recognize the blatant civil rights violation in this circumstance.

Perhaps most troubling is Judge Shedd's overwhelming tendency to grant summary judgement against plaintiffs in race and gender employment discrimination cases, preventing the vast majority of such cases from going to trial. In a case involving sexual harassment in the workplace, Judge Shedd reversed the recommendation of a magistrate that the plaintiff be allowed to present her case to a jury, granting summary judgment for the employer even though Judge Shedd himself concluded that the supervisor's conduct ''clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile work environment.'' He relied, therefore, on a tortured interpretation of both the facts and the law to rule against the plaintiff in that case. This is one of many instances that demonstrate a clear pattern in which Judge Shedd has prevented cases brought by people of color and women from ever reaching a jury.

We routinely put aside our partisan differences to send qualified men and women to the federal bench because it is in the best interests of our country to fill seats with those individuals who have pledged to interpret the law objectively and without bias, whether or not they happen to be liberal or conservative in temperament. We place a great deal of trust in these men and women, as their appointments are guaranteed for life. Unfortunately, based on the records and statements I have reviewed, I do not believe we can place our trust in Judge Shedd to protect the civil liberties Americans of all races and beliefs have fought so hard to win. It is because of this that I will vote against his nomination.

Mr. EDWARDS. Mr. President, every judicial nomination that comes before this body is critically important. However, I take a particular interest in appointments to the Fourth Circuit, which includes my home State of North Carolina. The Fourth Circuit needs qualified, fair-minded judges who will put aside their personal views and follow the law. After reviewing his record carefully, I have concluded that Judge Dennis Shedd is not such a judge.

While Judge Shedd's record provides numerous reasons to oppose his confirmation, I am most troubled by his poor record on civil rights, where he has demonstrated an alarming propensity for putting his personal views above the law. Judge Shedd has repeatedly overstepped the bounds of judicial restraint and engaged in judicial activism on behalf of defendants in discrimination cases.

I raised this concern with Judge Shedd earlier this year during his confirmation hearing before the Judiciary Committee. Judge Shedd could not point to one instance in his eleven years on the bench in which an individual alleging discrimination—based on race, sex, age or disability—has ever won a case in his court. In the same period, there have been over 20 verdicts in favor of plaintiffs in other Federal courts in the State. In written questions, I asked Judge Shedd to say whether a victim of employment discrimination had ever prevailed in his courtroom. He could name no such case.

On the other hand, there is considerable and disturbing evidence of Judge Shedd's conduct in civil rights cases to benefit the defendant. To name only one example: in a sexual harassment matter, Judge Shedd overruled a magistrate's ruling allowing a case to go to trial, even though the plaintiff had offered sworn evidence that her supervisor had commented on her breasts, asked her graphic sexual questions, bought her panty-less pantyhose, and frequently stood behind her, rubbed her shoulders while trying to look down her shirt, and so on.

Finally, in a major case involving the Federal Government's power to protect the privacy of individuals' personal records, Judge Shedd sided against individual rights, and was reversed by a unanimous Supreme Court. There is no other case since 1995 in which a lower court has limited Congress's power and the Supreme Court has reversed.

Federal judges have no responsibility more important than enforcing our laws equally. Because Judge Shedd has proven his willingness to put his personal views above the law, especially in civil rights cases, I must vote against his confirmation.

I ask unanimous consent that a letter I received from a group of 16 North Carolina law professors addressing these and several other of Judge Shedd's decisions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNE 12, 2002.

Hon. JOHN R. EDWARDS,
U.S. Senate, Dirksen Office Building, Washington, DC.

DEAR SENATOR EDWARDS: We are writing to you—as individual members of the faculties of the School of Law of the University of North Carolina, Duke Law School, and North Carolina Central University School of Law—concerned that the Senate Judiciary Committee may be poised to act without conducting a full investigation of President Bush's recent nominee to the United States Court of Appeals for the Fourth Circuit, United States District Judge Dennis W. Shedd. We suggest that to act precipitously on this important nomination would be a serious mistake.

As you know, the Fourth Circuit is one of the region's most influential governmental bodies; its impact on constitutional, statutory, and regulatory issues in the Southeast has no equal apart from the Supreme Court itself. Moreover, a wide range of responsible observers concur that during the past decade the Fourth Circuit has become the most activist federal court in the nation. In certain crucial areas, including federal judicial efforts to confine Congress in the exercise of its traditionally broad national powers, the Fourth Circuit has no peer. It has led the way in attempting to narrow the Congress's Commerce Clause powers, see, e.g., Condon v. Reno, 155 F.3d 453 (4th Cir. 1998), rev'd, 528 U.S. 141 (2000) (challenging Congress's authority under the Commerce Clause to enact the Driver's Privacy Protection Act); Brzonkala v. Virginia Polytechnic Inst., 169 F.3d 820 (4th Cir. 1999) (en banc), aff'd United States v. Morrison, 529 U.S. 598 (2000) (challenging Congress's authority under the Commerce Clause to enact the Violence Against Women Act), its Section 5 powers under the Fourteenth Amendment, see, e.g., Brzonkala, 169 F.3d 820 (4th Cir. 1999) (en banc) (challenging Congress's authority under Section 5), and in promulgating aggressive conceptions of the Tenth and Eleventh Amendments. See South Carolina State Ports Authority v. Federal Maritime Comm'n 243 F.3d 165 (4th Cir. 2001), aff'd 122 S. Ct. 1864 (2002) (invalidating the FMC's authority over state port entities, previously -

granted by Congress under the Shipping Act of 1984, 46 U.S.C. §§1701 et seq., on Eleventh Amendment grounds).

As a federal district judge during the past eleven years, Judge Shedd has been a sympathetic participant in this judicial campaign to disempower Congress. He authored the original decision in Condon v. Reno, 972 F. Supp. 977 (D. S.C. 1997), and struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25, a decision later overturned in a 9-to-0 decision of the Supreme Court authored by Chief Justice Rehnquist. Judge Shedd also acted to invalidate the application of the Family and Medical Leave Act to state agencies, holding that ''Congress did not properly enact the FMLA under §5 of the fourteenth amendment, and therefore, has not abrogated [the State defendant's] eleventh amendment immunity from suit.'' Crosby v. South Carolina Dep't of Health & Environmental Control, C.A. No. 3–97–3588119BD, at 1 (D. S.C. Oct. 14, 1999).

Were Judge Shedd's highly protective views of state sovereignty, his skepticism about Congressional power, and his aggressive use of judicial authority the only issues presented by his nomination, they would suffice to require careful Senate consideration. However, we are concerned by three other features of his record: (1) an apparent skepticism of federal civil rights claims; (2) a marked sympathy for employers in employment disputes; and (3) an unusually vigorous use of Rule 56 of the Federal Rules (the summary judgment provision) and similar procedural provisions to wrest lawsuits from trial juries and end them by judicial fiat.

We are not prepared to say, at this point, that Judge Shedd has acted with bias in these areas, since so many of his decisions are unreported (and we have not been able to review the briefs in these cases) and since an unusual number of his reported decisions are merely brief orders that accept and adopt relatively summary reports from United States Magistrates. However, in some sixty-six cases that presently appear in the LEXIS online system, we note the following patterns. Judge Shedd appears never to have granted relief to a plaintiff in an employment discrimination case, although he has granted numerous summary judgment motions in favor of employers. See, e.g., Roberts v. Defender Services, Inc., C.A. No. 0:00–1536–19BC (D.S.C., Sept 27, 2001) (rejecting a female employee's sexual harassment and hostile work environment claims); Austin v. FN Manufacturing, Inc., C.A. No. 3:98–3605–19BC (D.S.C., March 23, 2000) (rejecting an African American employee's racial discrimination, hostile environment, and constructive discharge claims); Taylor v. Cummings Atlantic, Inc., 852 F. Supp. 1279 (D.S.C. 1994) (rejecting an older employee's age discrimination, fraud, and breach of contract claims); (Bailey v. South Carolina Dep't of Social Services, 851 F. Supp. 219 (D.S.C. 1993) (rejecting an African American employee's non-promotion claim, although backed by EEOC Determination of reasonable cause that plaintiff was not promoted because of his race); White v. Roche Biomedical Laboratories, Inc., 807 F. Supp. 1212 (D.S.C. 1992) (rejecting an employee's breach of contract and promissory estoppel claims).

In the Roberts case, for example, Judge Shedd granted summary judgment to an employer in a sexual harassment lawsuit, even after he noted that ''the alleged conduct [of Ms. Robert's supervisor] clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment.'' Roberts, supra, at 2. Judge Shedd concluded, nonetheless, that plaintiff Rogers raised no genuine issue of fact about whether she herself ''subjectively perceived the environment to be abusive,'' id., although it was undisputed that she had joined in making a formal complaint about her supervisor's abusive behavior to corporate headquarters, and then met with a corporate investigator to detail and protest the supervisor's sexually suggestive behavior.

We have also obtained a list of unpublished fifty-three federal race, gender, age, and disability cases in which Judge Shedd has dealt with cases on summary judgment. In most, he has granted defendants' motions and dismissed the cases, denying all relief to the plaintiffs. Since these cases are not reported, we have not yet been able to review them to discern whether they manifest bias, but the overall anti-plaintiff pattern is troubling.

The tendency by Judge Shedd to resolve cases on his own, short of trial, is also manifest in his use of Rule 56 summary judgment in other, non-employment contexts, see, e.g., Alston v. Ruston, C.A. No.: 9–99–244–19RB, 2000 U.S. Dist. LEXIS 11939 (D.S.C. March 9, 2000) (prisoner's Section 1983 and Eighth Amendment claim); Joye v. Richland County Sheriff's Dep't, 47 F. Supp. 2d 663 (D.S.C. 1999) (Section 1983 and Fourth Amendment, false arrest claim); Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784 (D.S.C. 1992) (attorney malpractice action), and by the use of other procedural devices, such as Rule 12(b)(6) motions to dismiss, see, e.g., Gray v. Petoseed Co., 985 F. Supp. 625 (D.S.C. 1996) (fraud in sale of contaminated watermelon seeds), as well as by use of Rule 50 motions to grant judgment notwithstanding the verdict, see, e.g., Storms v. Goodyear Tire & Rubber Co., 775 F. Supp. 862 (D.S.C. 1991) (wrongful discharge and breach of implied contract); Wilds v. Slater, C.A. No. 3:97–1608–19BD, 2000 U.S. Dist. LEXIS 20771 (D.S.C. March 7, 2000) (National Environmental Policy Act action for failure to file environmental impact statement).

In Alston, for example, Judge Shedd granted summary judgment on a Section 1983 complaint after somehow concluding, as a matter of law, that a prison guard had not used excessive force—despite an affidavit and a well-pleaded complaint from the plaintiff alleging that the officer had sprayed him in the face with tear gas without justification, advanced toward him ''swinging his fists and punching [plaintiff] in the mouth,'' and wielded a broomstick until other officers intervened. We do not, of course, know whether the plaintiff's version of these facts is correct or, instead, whether the correctional officer's version should be credited; we do believe it is impossible fairly to conclude that the conflicting evidence of record about what happened that evening raised no ''genuine issue of material fact.''

In another such case, Joye v. Richland Co. Sheriff's Dep't, Judge Shedd dismissed a Section 1983 claim brought by a person wrongfully arrested by sheriff's deputies under a bench warrant issued for his son. Despite the fact that the arrest warrant described a man aged 31, standing 5'11'' (while the plaintiff was 61 years old and stood only 5'8''), despite plaintiff's allegations that the arresting officers ''refused to inform him of the basis for his arrest or provide him with a copy of the warrant,'' despite the fact that ''the warrant . . . listed the driver's license of [the proper suspect]'' which ''differ[ed] from plaintiff's driver's license number,'' Judge Shedd granted summary judgment on the grounds that the defendants had ''a reasonable, good faith belief that they were arresting the correct person'' He thereby rejected, as a matter of law, the contrary conclusion of a United States magistrate that the officers were not entitled to a ''good faith'' defense on these facts since ''[a] simple check of the bench warrant should have revealed that Joye was not the person wanted.'' Joye, 47 F. Supp. 2d at 665–66.

Judge Shedd also appears to be willing to interject himself in unusual ways into ongoing judicial proceedings. In one case, Maytag Corp. v. Clarkson, 875 F. Supp. 324 (D.S.C. 1995), he went out of his way to draft and publish an opinion castigating a lawyer for making a closing argument urging the jury to decide a case on its notion of ''what is right and . . . what is moral and . . . what is just.'' Judge Shedd had submitted the case to the jury on a special verdict—limited to the question whether the defendant was liable to the plaintiff under a written guarantee—and although plaintiff's attorneys made no objection to the defendant's closing argument (and although the jury subsequently returned a verdict for the plaintiff), Judge Shedd felt the need to publish an opinion declaring that the defendant's appeal to morality, decency, and justice—what the Court termed the sympathy of the jury—was inappropriate: ''Therefore, while this matter is now closed, this Order should serve as a reminder to all counsel that arguments of the type addressed herein are improper and will not be tolerated in this Court.'' 875 F. Supp. at 330.

In yet another such example, Judge Shedd initiated, sua sponte, an inquiry into the finances of an unemployed party, living with her mother, who had been granted in forma pauperis status by another federal judge and whose case was already pending on appeal in the Fourth Circuit. Assaad-Faltas v. University of South Carolina, 971 F. Supp. 985 (D.S.C. 1997). Based on ''the prolific litigiousness in which she has engaged,'' id. at 986—specifically citing her use of a telephone to make long-distance telephone calls to the Fourth Circuit and her use of her mother's automobile ''to travel to the courthouse on a regular basis,'' as well as her practice of ''flood[ing] the Court and opposing counsel with numerous legal filings, many of which contain multiple pages and/or exhibits''—Judge Shedd revoked her in forma pauperis status and recommended that the Fourth Circuit dismiss her pending appeal, concluding that these acts were ''certainly indicative of the fact that she has financial resources available to her to fund this litigation.'' Id. at 988.

In our considered judgment, these cases suffice to raise red flags that should require the Senate Judiciary Committee to proceed only after the most careful review of Judge Shedd's full judicial record—most of which has only become available for consideration in the past few days. The Fourth Circuit does not, in our view, need another federal appellate judge who would constrain the authority of Congress in the 21st century by resort to outdated and reactionary views of federal power. It does not need a federal judge who would be hostile to African Americans, to women, to the aged, or to the disabled who bring serious claims of employment discrimination or other forms of discrimination prohibited by federal laws or the Constitution. It does not need a federal judge who would reflexively side with management against labor, with employers against employees. Nor does it need a federal judge who is dismissive of the precious right to trial by jury, cutting short legitimate factual disputes that, under the Seventh Amendment, properly belong to federal juries.

Sincerely,

John Charles Boger, Lissa L. Broome, Kenneth S. Broun, John O. Calmore, Charles E. Daye, Eugene Gressman, Ann Hubbard, Daniel H. Pollitt, Marilyn V. Yarbrough, Professors of Law, UNC-Chapel Hill, School of Law.

Christopher H. Schroeder, Jerome Culp, Professors of Law, Duke University, School of Law.

Renee F. Hill, David A. Green, Irving Joyner, Nichelle J. Perry, Fred J. Williams, Professors of Law, North Carolina Central, University School of Law.

One final note. The Fourth Circuit, as you know, presently is comprised of eleven judges, and there are four pending vacancies. Although North Carolina is the largest State within the Circuit, it has no current representation on the Circuit at all, and has had none since 1999, despite a federal statute that requires that ''in each circuit, there shall be at least one circuit judge in regular active service appointed from the residents of each state in the circuit.'' 28 U.S.C. §44.

South Carolina, the state in which Judge Shedd currently sits, has three judges currently on the Fourth Circuit. Judge Shedd's elevation would constitute the fourth. We respect our sister state, of course, yet we do not understand why, with a population less than half of North Carolina's, it should receive its fourth active judge while North Carolina languishes without a single sitting representative, and with only two seats even authorized.

Mr. DASCHLE. Mr. President, the Senate has confirmed 99 judicial nominees during the 107th Congress—all of which have occurred since Democrats assumed the majority. Democrats have also confirmed more circuit court nominees than Republicans did any of their prior six years of control. Today we are considering the nomination of Judge Shedd for the Fourth Circuit.

There has been much discussion over Judge Shedd's nomination, and I understand the Judiciary Committee has received hundreds of letters from individuals and organizations expressing concern over elevating Judge Shedd. While his nomination was reported out of the committee last week, there was considerable debate and many members raised serious concerns. I am troubled by allegations that Judge Shedd has a pattern of injecting his personal opinions into the proceedings before him, including—ordering defendants to make motions for summary judgment, and deciding on issues before they are raised.

I am also concerned about allegations that individuals raising employment discrimination claims before him are unable to receive a fair and impartial forum. I understand that through questioning by the Judiciary Committee, it was uncovered that Judge Shedd could not think of a single plaintiff in a civil rights or employment discrimination case who had prevailed in his courtroom—in fact, Judge Shedd has never granted substantive relief to a plaintiff in an employment discrimination case.

I am also concerned about his extreme views of the constitutional allocation of powers between the States and the federal government—views that are not shared even by the current conservative Rehnquist Court. In a 1997 case challenging the constitutionality of the Driver's Privacy Protection Act (DPPA), Judge Shedd held that the federal government did not have the power to require states to protect the confidentiality of state driver's license records. In a 9–0 reversal of Judge Shedd's ruling, the Supreme Court made clear that he had gone too far. The Senate has a constitutional responsibility to evaluate the President's nominees, offer advice, and grant—or withhold—its consent. I take this responsibility very seriously.

Unfortunately, in Judge Shedd's case I believe enough concerns have been raised about his judicial temperament to lead me to the conclusion that he should not be elevated to the Fourth Circuit. So, on this vote I plan to vote against Judge Shedd's nomination.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. There are now 2 minutes equally divided prior to the vote.

Who yields time?

The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise today to express my strong support for the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. Judge Shedd is a man of great character who will make an outstanding addition to the Federal appellate bench. He possesses the highest sense of integrity, a thorough knowledge of the law, and a good judicial temperament.

I want to assure my colleagues that Judge Shedd is committed to upholding the rights of all people under the Constitution. This fine man is truly deserving of such high honor, and he will serve the people of the Fourth Circuit with distinction.

Mr. President, I ask unanimous consent that letters of support for Judge Shedd be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

To: United States Senators.
From: Luonne Abram Rouse.
Re: Dennis Shedd.

Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.

The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust to weigh the issues with dignity and legal focus.

In 1982, Senator Thurmond was a guest in our home following a time when he and I had written communication concerning the Civil Rights Act. The Senator visited my home to personally thank me for the communication, and state that he had changed his mind and agreed to support the Civil Rights Act after dialogue with several African American leaders. During the same visit, he extended an invitation for me to be a guest chaplain at the United States Senate in Washington, DC. I responded with my presence in April of 1983, at which time I met Dennis Shedd.

Dennis and I have kept up with one another's growth and experiences. He has prayerfully supported my appointments in United Methodist Churches across racial lines in South Carolina, since 1986. The support he has shown for racial inclusiveness in churches, during a time in which leading sociologists claimed that there are no truly desegregated churches in South Carolina, has been encouraging to my ministry of intentionality and reconciliation in this period of church desegregation.

I am confident that persons will be able to communicate with this experienced Judge, and find him seeking to maintain peace with justice based soundly on the law. When this matter is concluded, I would like to have Hillary Shelton, another outstanding man and long time activist who has been an overnight guest in our home, to dinner and discover the real essence of Dennis Shedd as a judge of fairness and justice regarding issues of human rights.

Many people have sought to block Dennis Shedd's appointment to the 4th Circuit Court of Appeals, and some have led me to study his decisions closely. I respectfully ask those who would oppose him to consider that there is more to a decision than a final report reveals, and much more to the person having to issue the judgment regarding the same. I have known Dennis as a man of his word, who reaches decisions weighing the evidence with matters of law. I have been a long time advocate for women's rights and civil rights, and would never support someone whom I believed had personal issues outweighing legal judgment on matters concerning the same. Even is disagreement, his listening ear would grant the same respect offered to him by those with opposing views. And the respect he provides for one, I trust him to provide to others. As a political leader Senator Thurmond has been most respectful in communicating with me, and as a legal representative Dennis has been most receptive and respectful of my calls.

In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in them. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.

Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

I appreciate your prayerful action and reception of this letter.

LAW OFFICES OF JACK B. SWERLING,
Columbia, SC, January 26, 2001.

Re the Honorable Dennis W. Shedd.

Hon. ERNEST F. HOLLINGS,
U.S. Senator,
Columbia, SC.

DEAR SENATOR HOLLINGS: I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and in trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner.

All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law. In order to reach a just result in a recent case, Judge Shedd and his very able law clerks worked long into the night and started again early the next morning to study the transcripts and research all of the applicable federal law before ruling on my motion for a judgment of acquittal. His Order, with underlying factual and legal support, is a model for any jurist.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served in our District over these past years. On behalf of this lawyer, I would urge you to support his nomination.

Very truly yours,

JACK B. SWERLING.

JAN S. STRIFLING,
ATTORNEY AT LAW, P.A.,
Columbia, SC, October 2, 2002.

Re Hon. Dennis W. Shedd, U.S. District Judge.

Hon. CHARLES SCHUMER,
U.S. Senator, Leo O'Brien Bldg., Albany, NY.

DEAR SENATOR SCHUMER: By way of introduction, I introduced myself to you in the Tetons last summer when you and your family were hiking in cascade canyon.

I am writing you in support of Judge Dennis Shedd's confirmation as Judge of the Fourth Circuit Court of Appeals. I practice criminal law and can understand that a great deal of the outcry against Judge Shedd comes from the results of the criminal cases. From my viewpoint, Judge Shedd makes decisions which follow the law notwithstanding their popularity.

I have practiced criminal law for over thirty years and have had a substantial number of cases before Judge Shedd since he began as a District Judge. He has always been courteous to me and my clients and cognizant of the rights of all parties.

I think that he has been a judge who has been fair to all litigants and that he would continue in that manner in the Circuit Court.

Thank you for your consideration.

Sincerely,

JAN S. STRIFLING.

THE ''QUATTLEBAUM CASE'': WHAT THE LAWYERS SAY

E. Bart Daniel, the criminal defense attorney who represented the lawyer who pled guilty and was sentenced to jail for perjury (letter to Senator Hatch dated November 18, 2002)

I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, a United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a ''white collar'' criminal defense practice. I have appeared many times in court before Judge Shedd and found him to be courteous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in United States v. John Earl Duncan. Mr. Duncan was a practicing attorney who was convicted of perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33,386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge Shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, Judge Shedd was courteous and patient and listened intently to the many people who spoke on our client's behalf including my co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or I can be of any further support, please do not hesitate to call.

Jack Swerling, the criminal defense attorney who represented the Deputy Solicitor who was tried for perjury before Judge Shedd (letter to Senator Hollings dated January 26, 2001)

I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner. All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served over these past years. On behalf of this lawyer, I urge you to support his nomination.

Joseph M. McCullough, Jr., the criminal defense attorney who intervened on behalf of Quattlebaum in the federal prosecution to have the videotape suppressed at trial (letter to Senator Hollings dated January 29, 2001)

Having practiced law in South Carolina for more than 20 years, and as past President of the South Carolina Criminal Defense Lawyers Association, I have had occasion to be in Judge Shedd's courtroom frequently and have tried several cases before him. I have always been impressed with Judge Shedd's factual familiarity and legal preparation in every matter before him. I have found him to be extremely intelligent and a firm hand in the courtroom. I have always been impressed with his understanding of the law, and believe that he would be a strong addition to the Fourth Circuit Court of Appeals.

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, SC, November 18, 2002.

In re Dennis W. Shedd, Nominee to Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I, therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquiries, I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to rescuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards.

JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

THE SENATE,
STATE OF ARKANSAS,
October 11, 2002.

Re confirmation for Federal Judge Dennis Shedd (South Carolina) to the US Court of Appeals.

Hon. BLANCHE LINCOLN,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LINCOLN: I am writing this letter to provide my strongest possible recommendation for the Hon. Dennis Shedd, of

Columbia, South Carolina, who has been nominated by President Bush to sit on the U.S. Court of Appeals in Richmond.

Yesterday, I read the story in the A Section of the Arkansas Democrat-Gazette regarding the Senate Judiciary Committee's decision to delay confirmation of Judge Shedd until after the recess, after which Senator Strom Thurmond (R–SC) will have retired from the Senate.

I understand that you are not a member of the Judiciary Committee. However, I am writing this letter as one of your loyal supporters and good friends, and as a good Democrat as well. I want you to know that I cannot think of many people who would make a better Appeals Court Judge than Dennis Shedd.

Dennis and I are good friends from the days when we both worked in Washington, he for Senator Thurmond and I for Senator Bumpers. In addition, he was my landlord for over four years at the townhouse where I lived. We have kept in touch over the years as we got both got married and built families. I have also visited Dennis and his wonderful wife, Elaine, in South Carolina during the occasions my family vacations there.

However, taking friendship and political philosophies aside, I can honestly say that he has one of the finest minds I have ever encountered, including President Clinton and many others with whom I have had the good fortune to become well acquainted. Furthermore, his sense of personal and professional integrity is unrivaled, as is his knowledge and understanding of the law. He was one of the lawyers involved in the dissolution of the Heritage USA Bankruptcy (Jim Baker), and he gave half of his legal fees to victims. On one visit to South Carolina, I had the opportunity to sit in on a high profile case, and was very impressed with the way he dispensed justice in that proceeding, and with the relationship he had with the then Democratic US Attorney's Office. He has a wonderful family and is someone I would say is a true patriot.

In short, I believe Dennis Shedd has proven to be a good and valued officer of the court, and would make an excellent Appeals Court Justice. I believe the problem with the confirmation has more to do with the politics of having been chief of staff to the Senate Judiciary Committee when President Reagan was in office, and several Democrats see an opportunity for partisan retribution for some of the judicial politics of that era. I want you to know that I saw Dennis Shedd almost every day during that period, and there is no one who would deny his professionalism in handling these matters. The politics of that era had more to do with who was in power than it did with the staff. The US Senate, including Democrats, should move his confirmation forward.

Dennis is a self-made person who came from a small South Carolina town and worked his way through law school while a member of Senator Thurmond's staff, and who did such a good job was ultimately promoted. You know that I am a good and loyal Democrat. However, the fact of his political affiliation should not prevent or detract from all of these qualifications, and I sincerely plead with you to bring this up in the Senate Democratic Caucus with a request that the Judiciary Committee honor its word to Senator Thurmond, and move Judge Shedd's nomination forward and out of the Senate.

I think this is one of only a handful of letters I have ever written you. Thank you for your time, and please forgive the length of this letter. However, I do hope you will take this request seriously, and pass it on to your colleagues.

Sincerely,

KEVIN A. SMITH,
State Senate.

GARRY L. WOOTEN,
ATTORNEY AND COUNSELOR AT LAW,
Columbia, SC, November 18, 2002.

Senator ERNEST F. HOLLINGS,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR HOLLINGS: I am writing to express my strong support for the confirmation of Dennis W. Shedd to the Fourth Circuit Court of Appeals.

I have practiced law for over twenty years in Columbia, South Carolina. I handle primarily personal injury and criminal cases. My practice is a Plaintiff's practice. I have been a member of the South Carolina Trial Lawyers Association since graduating from law school and appreciate your strong support for that organization.

I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.

I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

With the kindest regards, I am.

Sincerely,

GARRY L. WOOTEN.

GREGORY P. HARRIS,
ATTORNEY AT LAW,
Columbia, SC, November 18, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, Senate Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: This is the second letter that I have written to you in support of the confirmation of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I believe that it is necessary to write another letter in light of recent accusations that I have read concerning Judge Shedd fairness and temperament on the district court bench.

I was the Deputy Chief of the Criminal Division in the U.S. Attorney's Office when Judge Shedd took the bench in 1992. As a federal prosecutor, I tried three cases in front of Judge Shedd. He was tough, but fair. In 1993, I entered private practice specializing primarily in federal criminal defense. Since entering private practice, I have tried seven cases in Judge Shedd's court and appeared on other matters on numerous occasions. During each of these trials, Judge Shedd was similarly tough and fair. It has been my experience as a federal prosecutor and a private attorney that Judge Shedd feeds everyone out of the same spoon.

As to his temperament, on occasion when he and I have disagreed over the admittance of evidence, the admission of a statement, or any other matter of law, he has been professional, courteous, and usually right. Nevertheless, even after these disagreements, he has never left the court room at the end of the day without a smile and a kind word to the lawyers.

It seems to me that those leveling the accusations at Judge Shedd have never even seen him in court, much less appeared before him. Almost all of us who have, strongly support his confirmation to the Fourth Circuit. If have any questions, please do not hesitate to contact me regarding my professional and personal feelings about Judge Shedd.

Regards,

GREGORY P. HARRIS.

NATHANIEL ROBERSON,
ATTORNEY AT LAW,
Columbia, SC, November 18, 2002.

Re nomination for the 4th Circuit Court of Appeals.

Senator EARNEST F. HOLLINGS,
Senator ORRIN HATCH.

GENTLEMEN: This is on behalf of Dennis Shedd and his nomination for the 4th Circuit Court of Appeals.

I have tried many cases, argued motions, and have done may guilty pleas before Judge Shedd since he became a District Court Judge in South Carolina.

I have found him to be open and honest with litigant members of the bar and witnesses relevant to the issues before him. He has at all times demonstrated the kind of judicial temperament that has made him a credit to our judiciary.

He has been accused by groups and organizations of being biased either for against certain issues that has not endeared him for the reasons expressed by those organizations that oppose him.

My experience with Judge Shedd has been professional, judicial, and he has never blocked or interfered with my representation of clients and those issues that I was required to make on behalf of the people I represented. I urge you and your colleagues to vote in favor of Judge Shedd being elevated to the Fourth Circuit Court of Appeals.

Thanks for your consideration.

Sincerely,

NATHANIEL ROBERTSON.

YOUNG AND SULLIVAN, L.L.P.,
ATTORNEYS AND COUNSELORS AT LAW,
Charleston, SC, November 18, 2002.

Re Judge Dennis W. Shedd, nomination, Fourth Circuit.

Senator ORRIN HATCH,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH: I have been in an eight week (8) long jury trial before Judge Dennis W. Shedd and many other jury trials, motion hearings, and sentencing hearings and appeals to the Fourth Circuit. I have appeared before Judge Shedd as much or more than any defense lawyer in South Carolina.

I am not a political crony of Judge Shedd, I am a trial lawyer. I was Chief Public Defender in Columbia, SC (1972–87) Adjunct Professor of Law, USC School of Law (1974–89), President SC Public Defenders Association (1972–88), Founder, SC Association of Criminal Defense Lawyers, Served by election ABA Criminal Justice Council, and was awarded the Bronze Star in Vietnam (1969–70).

Judge Shedd is a competent, fair, even-handed jurist and I urge your support for him to be a Judge on U.S. Court of Appeals—Fourth Circuit.

Tell any U.S. Senator opposed to Judge Shedd's nomination to call me, I am in my office.

Sincerely,

JOHN MCMAHON YOUNG,
Attorney At Law.

Mr. THURMOND. I thank the chair.

(Applause, Senators rising.)

The Senator from Utah.

Mr. HATCH. Mr. President, we are so proud of our senior Senator from South Carolina.

Mr. President, I rise today in support of the confirmation of Judge Dennis Shedd and to congratulate the President on getting his 100th judicial nominee confirmed. Yesterday, I made much more detailed remarks in Judge's Shedd's favor.

I am also glad for Senator STROM THURMOND. He is much loved in the Senate, he is much loved in South Carolina and throughout this country, and I know that he wanted to see his former Chief Counsel confirmed before the end of his long career in the Senate.

In the recent election, as far as I see it, the President took three issues to the American people: his Iraq policy, Homeland Security and his judicial nominees. The election showed that Americans trust this President including in his selection of judicial nominees.

The election indicated that voters rejected obstruction in the Senate, including on judicial nominees, and voters especially rejected the distortions of reputations that they read and heard about in hundreds of news stories, scores of editorials, and dozens of opeds . . . and that they saw on TV.

Voters sent us a clear message, it seems to me, that we should end the obstruction and maltreatment of judicial nominees. We need to evaluate judges or potential judges as unbiased umpires who call the balls and the strikes as they are, not as they alone see them and not as they want them to be. We must end the practice of projecting ideology to see if an umpire is pro-bat or pro-ball, pro-batter or pro-pitcher.

Our job is to determine the character and temperament of a nominee to the judiciary. Period. This is true of the trial bench, the appellate court, and the Supreme Court.

Again, I express my great satisfaction that the Judiciary Committee has favorably recommended the nomination of Judge Dennis Shedd of South Carolina for a vote of the full Senate.

When Judge Shedd was nominated to the federal trial bench, Chairman BIDEN had this to say to him: ''I have worked with you for so long that I believe I am fully qualified to make an independent judgment about your working habits, your integrity, your honesty, and your temperament. On all these scores, I have found you to be beyond reproach.''

This is high praise, indeed, and from a colleague from the other side of the aisle for whom we all have the greatest respect.

Judge Sheed has strong bipartisan support in his home state as well, and not only from Senators THURMOND and HOLLINGS. He is also strongly supported by Dick Harpootlian, South Carolina State Chairman of the Democratic Party, and himself a trial lawyer.

Dennis Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice. While serving the Judiciary Committee, Judge Shedd worked, among many other matters, on the extension of the Voting Rights Act, RICO reform, the Ethics in Post-Employment Act, and the 1984 and 1986 crime bills.

As Senator BIDEN put it: ''His hard work and intelligence helped the Congress find areas of agreement and reach compromises.''

Judge Shedd will add diversity to the Fourth Circuit Court of Appeals. The last five Fourth Circuit confirmations have all been Democrats. When Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit.

The American people should be grateful that President Bush has nominated Dennis Shedd to serve this country further. He has already served for nearly 25 years.

Judge Dennis Shedd has heard more than 5,000 civil cases, reviewed more than 1,400 reports and recommendations of magistrates, and has had before him nearly 1000 criminal defendants. He has been reversed fewer than 40 times, less than one percent.

In employment cases, he has only twice been reversed in his decisions. Remarkbly, in criminal cases, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas.

Now, detractors have made much of the fact that he has a relative few decisions that he has chosen to publish. But, in fact, he falls in the middle of the average for published opinions in the Fourth Circuit. One Carter appointee has published all of 7 cases, one Clinton appointee has published only 3, and another Carter appointee has published 51, only one more than Judge Shedd, despite being on the court for 10 years longer.

Notably, on cases involving the Voting Rights Acts, Judge Shedd has ruled for plaintiffs in each instance, an Act, I might add that he worked to extend in the Senate.

From his service in the Senate to his role on the South Carolina Advisory Committee of the United States Civil Rights Commission, Judge Shedd has been a leader on civil rights. He led efforts to appoint the first African American woman ever to serve as a magistrate judge in South Carolina and has sought the Selection Committee to conduct outreach to women and people of color in filling such positions. He pushed for an African American woman to be Chief of Pretrial Services. He has actively recruited persons of color to be his law clerks.

And because of Judge Shedd's work in an award-winning drug program that aims to reverse stereotypes among 4,000 to 5,000 school children, he was chosen as the United Way's School Volunteer of the Year.

This record stands in contrast to the distortions we have heard about Judge Shedd's sensitivity on civil rights.

The Judiciary Committee received a very touching letter from one of Judge Shedd's former law clerks, Thomas Jones and I placed in the RECORD yesterday.

Now this young man,—this young lawyer happens to be a person of color—an African American. He says:

> It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd . . . I trust the allegations are given the short shrift they are due.

I would like to read from a letter I received from Niger Innis who has inherited his father's mantle and is the national spokesman for the Congress of Racial Equality. We all know his father, of course, Roy Innis, who was a great leader of the civil rights movement in the 1960's together with Dr. King.

I received this letter even while I was on the floor of the Senate yesterday.

Mr. Innis writes:

> This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

He goes on:

> Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.
>
> Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.
>
> Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. . .
>
> We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Another letter I received while I was on the floor yesterday came from Phyllis Berry Myers, President of the Centre for New Black Leadership; another great name in the African American community.

Ms. Myers writes:

> The Senate can restore itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

And at 2:32 pm yesterday, while I was on the floor, we also received a letter from the former Chairman of the NAACP of South Carolina. The Rev Dr. Luonne Abram Rouse writes:

> Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.

The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust I trust to weigh the issues with dignity and legal focus. . .

Reverend Rouse wrote a remarkable letter and ends this way:

In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in time. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.

Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

But these are not unique letters. We have received letters from the people who know Judge Shedd. They are the ones that matter.

I want to take a moment to read a few excerpts from some of the letters we've received in support of Judge Shedd. Keep in mind that the letters are from lawyers who know Judge Shedd, who have practiced before him, and who are in the best position to assess his qualifications for the appellate bench.

The first letter is from J. Preston Strom, Jr. Mr. Strom writes:

I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who even-handedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analyses for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.

Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.

As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

Here is another letter. This one is from attorney Garry Wooten. He writes:

I have practiced law for over twenty years in Columbia. I handle primarily personal injury and criminal cases . . .

I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African-American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.

I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

Another letter, this one from Jonathan Harvey, states:

I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. . . . I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.

I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

In another letter, lawyer John Simmons writes:

In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.

In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

Finally, here is a letter from Howard Hammer. Mr. Hammer writes:

I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes. . . .

I have found Judge Shedd to be firm, just and deliberate in all my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

I could go on and on reading testimonials from lawyers in South Carolina who have regularly appeared before Judge Shedd and who strongly support his confirmation on the Fourth Circuit. Yesterday I entered other letters into the record.

Mr. President, Dennis Shedd is well qualified to serve on the Fourth Circuit Court of Appeals. I think so and the American Bar Association, hardly a bastion of conservative politics, has said so as well. In supporting his confirmation I for one express my gratitude on behalf of the American people for an entire life in public service.

Mr. President, I ask unanimous consent that letters of support for the confirmation of Judge Shedd be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF RACIAL EQUALITY,
New York, NY, November 18, 2002.

Hon. ORRIN HATCH,
U.S. Senate, U.S. Capitol,
Washington, DC.

DEAR SENATOR HATCH: This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.

Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.

Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. His efforts have championed the efforts to recruit and elect the first African-American U.S. Magistrate Judge in the South Carolina District, Margaret Seymour. He has actively sought minority and female candidates for other Magistrate Judge positions, and has directed the Selection Commission in South Carolina to bear in mind diversity in the selection of candidates for these positions.

Judge Dennis Shedd's accomplishments and service have transcended bi-partisan support even from his home state Senators, notably, Senators Strom Thurmond and Senator Ernest Hollings who wholly support his nomination.

In the interest of fairness, balance we ask you to look past the unfounded partisan attacks of propaganda against Judge Shedd and fairly examine his work for yourselves. We strongly believe Judge Shedd's accomplishments and contributions to justice and civil rights speaks for itself.

We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Sincerely,

NIGER INNIS, *National Spokesman.*

CENTRE FOR NEW BLACK LEADERSHIP,
November 18, 2002.

Hon. ORRIN HATCH,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: The Centre for New Black Leadership (CNBL) believes the Senate's judicial nomination system is broken and needs repairing.

We have watched with great trepidation as the Senate's role of ''advise and consent'' for Presidential nominations, especially judicial nominations, has become increasingly, ''search and destroy,'' ''slander and defame.'' It is a wonder that reasonable, decent people

agree to go through the confirmation process at all.

The confirmation process has become particularly brutal if the nominee is labeled ''conservative.'' Traditional civil rights groups mass to castigate and intimidate, as they do now, attempting to thwart the confirmation of Judge Dennis W. Shedd to the U.S. Fourth Circuit Court of Appeals.

Once again, we are witnessing the new depth to which public discourse and debate has sunk when fabrications, statements taken out of context, misinformation and disinformation can pass as serious political deliberation and debate. The vitally needed discussion about continued civil rights progress in a 21st Century world gets lost in the cacophony. Our nation and true civil rights advocates are poorer because of this.

The Senate can restore to itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

Sincerely,

PHYLLIS BERRY MYERS,
President & CEO.

ROSENBERG PROUTT FUNK & GREENBERG, LLP,
Baltimore, MD, June 25, 2002.

Senator PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: My name is Thomas W. Jones, Jr. I am an African-American attorney currently practicing as a litigation associate in Baltimore, Maryland.

Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd (''Judge Shedd'') on the U.S. District Court for the District of South Carolina. During my eighteen months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of Judge Shedd's jurisprudence or daily activities.

It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable Committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit.

Thank you for your attention regarding this matter.

Respectfully,

THOMAS W. JONES, JR.

E. BART DANIEL,
ATTORNEY AT LAW,
Charleston SC, November 18, 2002.

Hon. ORRIN HATCH,
104 Hart Office Building, Washington, DC.

Re Nomination of Dennis W. Shedd to Fourth Circuit Court of Appeals.

DEAR SENATOR HATCH: I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a ''white collar'' criminal defense practice.I have appeared many times in court before Judge Shedd and found him to be courtcous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in *United States v. John Earl Duncan* (3:99–638–001). Dr. Duncan was a practicing attorney who was convicted for perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33.386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, judge Shedd was courtrous and patient and listened intently to the many people who spoke on our client's behalf including co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or if I can be of any further support, please do not hesitate to call.

Yours very truly,

E. BART DANIEL.

J. KERSHAW SPONG,
Columbia, SC, November 4, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: Please allow this letter to voice my strong support for the nomination of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. Your support for Judge Shedd's nomination is appreciated, and, as a fellow South Carolinian, I hope you will continue to support him throughout this process.

Having worked with Judge Shedd in the U.S. Senate, and as a practicing lawyer in South Carolina, I know him to be a person of the highest integrity, professional competence, and judicial temperament. As you may be aware, the ABA, which reviews the nominees, has given Judge Shedd a majority rating of ''well qualified,'' its highest rating.

I am also concerned about the nominating process. I think many things have been unfairly said about Judge Shedd by outside special interest groups which have little basis in fact. It will become increasingly more difficult to get good and competent attorneys to step forward to serve in the judiciary if they have to go through this highly charged partisan atmosphere.

I hope for your continued support for this exceptional nominee and ask that you urge the Senate Judiciary Committee to bring this nomination to a vote before the end of Congress. After having to wait well over a year since his nomination, and more than several months since his hearing at the Committee, it is time for Judge Shedd to be confirmed to the Fourth Circuit.

Thank you for your consideration of my views.

Sincerely,

J. KERSHAW SPONG.

TOMPKINS AND MCMASTER, LLP,
Columbia, SC, October 31, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: I was extremely disappointed in your recent action denying Judge Dennis Shedd, nominee to the Fourth Circuit Court of Appeals, a vote on the Committee's October 8th markup. Despite your promises to Senator Strom Thurmond and other members of the Senate Judiciary Committee—and in contravention of Committee rules—you refused to schedule a vote to allow his nomination to proceed to the full Senate.

It would appear that you are bowing to the demands of outside interest groups who have unfairly characterized Judge Shedd's ruling on the district court. The facts are that he has been reversed in fewer than 1% of the more than 5,000 cases he has heard in his twelve years on the district court. After reviewing his record, the ABA rated Judge Shedd ''well-qualified,'' its highest rating. You once referred to the ABA rating system as the ''gold standard.'' In addition, Judge Shedd is well-represented by the members of the bench and bar in South Carolina, and has the bipartisan support of Senators Thurmond and Hollings—his home state senators.

The Senate Judiciary Committee has had nearly a year and a half to review Judge Shedd's record. I urge you to stop delaying a vote on his nomination. Judge Shedd, an exceptional nominee with the bipartisan support, deserves to be confirmed to the Fourth Circuit before the end of this Congress.

Thank you.

Yours very truly,

HENRY DARGAN MCMASTER.

STROM LAW FIRM L.L.C.,
Columbia, SC, November 18, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senator-South Carolina,
Washington, DC.

Re confirmation of the Honorable Dennis Shedd to the United States Court of Appeals for the Fourth Circuit

DEAR SENATOR HOLLINGS: I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who evenhandedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analysis for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.

Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.

As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

From my many years of practice before Judge Shedd, I can say that one admirable characteristic stands above all. Diligence. Each time I have appeared before Judge Shedd, it is clear that Judge Shedd has examined the entire case file and performed the requisite research necessary to frame the issues. For attorneys who vigorously represent their clients at every stage of the criminal and civil processes, a hard working judge is much appreciated. It is Judge Shedd's diligence in examining each case on its facts and the supporting law that makes him an excellent candidate for appointment to the United States Court of Appeals for the Fourth Circuit.

If you or anyone on your staff has questions, please contact me.

With regards, I am

Very truly yours,

J. PRESTON STROM, JR.

LAW OFFICE OF JONATHAN HARVEY,
ATTORNEY AT LAW,
Columbia, SC, October 1, 2002.

Re Nomination of the Honorable Dennis Shedd.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: I am taking the liberty of contacting your office on behalf of Judge Shedd.

I had heretofore been grateful for the bipartisan support of our senators and until recently thought that protocol would suffice to ensure his nomination.

However, recent developments concerning his nomination have compelled me to contact you to provide a recommendation based upon a hands on perspective.

I am writing to express my support for his nomination. I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. As I am sure you know, the Fifth Judicial Circuit encompasses Richland County and Columbia. My practice is focused in the Midlands. I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.

I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

I am grateful and appreciative of the support you have shown for his nomination and hope that my comments and insight will prove to be beneficial on his behalf.

Our State is fortunate to have been able to count on you as a steward for its interests and I thank you for your tireless efforts on behalf of our Country and State.

Yours truly,

JONATHAN HARVEY.

SIMMONS & GRIFFIN, L.L.C.,
Columbia, SC, November 18, 2002.

Re Judge Dennis W. Shedd.

Hon. ORRIN HATCH,
U.S. Senate, Committee on Judiciary, Washington, DC.

DEAR SENATOR HATCH: I am a former United States Attorney who now practices law in Columbia, South Carolina. Prior to entering government service and private practice, I served as a law clerk on the Fourth Circuit Court of Appeals.

Over the past twelve years, I have had the opportunity to appear before Judge Dennis Shedd in criminal cases as both a prosecutor and defense attorney. In addition, I have handled numerous civil cases before Judge Shedd as a representative of the plaintiff and defense.

In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.

In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

I respectfully write in support of Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit.

Thank you for your consideration of this matter.

With kind regards, I remain,

Sincerely,

JOHN S. SIMMONS.

HAMMER HAMMER & POTTERFIELD,
Columbia, SC, November 18, 2002.

Hon. ERNEST HOLLINGS,
Russell Senate Office Buildings,
Washington, DC.

DEAR SENATOR HOLLINGS I am writing regarding consideration of United States District Judge Dennis Shedd for a position on the Fourth Circuit Court of Appeals. As you know, I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes.

I have known Judge Shedd for over twelve (12) years. I have found Judge Shedd to be firm, just and deliberate in all of my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

With kind regards, I remain,

Very truly yours,

HOWARD HAMMER, P.A.,
HAMMER, HAMMER & POTTERFIELD.

The PRESIDING OFFICER. Is there any Senator requesting time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. LEAHY. 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.

Mr. LEAHY. Mr. President, I yield back the remainder of the time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The PRESIDING OFFICER (Mr. MILLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 250 Ex.]

YEAS—55

Allard	Frist	Miller
Allen	Graham	Nelson (NE)
Bennett	Gramm	Nickles
Bond	Grassley	Roberts
Brownback	Gregg	Santorum
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Byrd	Helms	Smith (NH)
Campbell	Hollings	Smith (OR)
Chafee	Hutchinson	Snowe
Cochran	Hutchison	Specter
Collins	Inhofe	Stevens
Craig	Inouye	Thomas
Crapo	Kyl	Thompson
DeWine	Lincoln	Thurmond
Domenici	Lott	Voinovich
Ensign	Lugar	Warner
Enzi	McCain	
Fitzgerald	McConnell	

NAYS—44

Akaka	Daschle	Leahy
Barkley	Dayton	Levin
Baucus	Dodd	Lieberman
Bayh	Dorgan	Mikulski
Biden	Durbin	Murray
Bingaman	Edwards	Nelson (FL)
Boxer	Feingold	Reed
Breaux	Feinstein	Reid
Cantwell	Harkin	Rockefeller
Carnahan	Jeffords	Sarbanes
Carper	Johnson	Schumer
Cleland	Kennedy	Stabenow
Clinton	Kerry	Torricelli
Conrad	Kohl	Wyden
Corzine	Landrieu	

NOT VOTING—1

Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ON 100 JUDICIAL CONFIRMATIONS BY THE DEMOCRATIC-LED SENATE

Mr. LEAHY. Mr. President, as the 107th Congress concludes, it is time to reflect on the important work we have performed for the American people. In the past few days, the full Senate voted on 20 of the nominees reported favorably by the Judiciary Committee in addition to the 80 judicial nominations previously confirmed. Since the change in majority 16 months ago, the Senate Judiciary Committee has voted on 102 of President George W. Bush's judicial nominees and has held hearings on 103 judicial nominations, some of whom have proven to be quite controversial and divisive. We voted on 102 of them, reported 100 of them favorably and this week the full Senate took the final step of confirming the last of these 100 nominees. This remarkable record compares most favorably to the 38 judicial confirmations averaged per year during the 6½ years when the Republican majority was in control of the Senate.

Last week, on the Senate floor, the Democratic-led Senate confirmed more judges in just 1 day than the Republican majority allowed to be confirmed in the entire 1996 session. In that year, the Republican majority allowed only 17 district court judges to be confirmed all year and would not confirm any circuit court nominees, not one. In contrast, last Thursday the Senate acted to confirm 17 district court nominations and, in addition, another circuit court nominee. In all, the Senate has confirmed 17 circuit court nominees and 83 district court nominees in just 16 months. That should put our historic demonstration of bipartisanship toward this President's judicial nominees in perspective.