

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.

The hard, thankless, but steady work of the Democratic members of the Judiciary Committee have served to reduce judicial vacancies substantially during these last 16 months. We inherited 110 vacancies. Today, after 100 district and circuit court confirmations, those vacancies number only 58 and that takes into account the additional 47 vacancies that have arisen since the shift in majority. Without those additional vacancies, we would have reduced our inherited judicial vacancies to 10.

When Senator HATCH was chairman of the committee and a Democratic President occupied the White House, Senator HATCH denied that even 100 vacancies was a vacancies crisis, according to a column he wrote for the September 5, 1997, edition of *USA Today*. When a Democrat was in the White House, Senator HATCH repeatedly stated that 67 vacancies was the equivalent of "full employment" in the Federal judiciary. As of today, there are only 58 district and circuit vacancies total. By Senator HATCH's standards, we have reached well beyond "full employment" on the Federal bench in just 16 months.

Since the summer of 2001, when they allowed the Judiciary Committee to reorganize following the change in majority, we have moved more quickly and more fairly. Democrats have worked hard to confirm on average six district and circuit court nominees per month. The Republican rate of confirmation was half that during their prior years of control of the Senate, 3.2 confirmed per month in the 104th Congress, 4.25 in the 105th, and 3.04 per month in the 106th Congress. We have moved nearly twice as fast as they did.

Partisans on the other side of aisle interested in trying to create campaign issues have proclaimed their disappointment that a few nominees have not yet received votes in committee, despite our votes on 102 judicial nominees and our having attained results in 16 months that they did not come close to in twice the time during their last 30 months in the majority. I am concerned that the tone and language of hurtful remarks against the Democrats have been destructive. In truth, only 11 of the remaining nominees who have not yet had hearings have home State consent and peer review ratings, and some of those peer review ratings have come in only in the last few weeks. We have thus given hearings to 90 percent of the nominees eligible for a hearing.

The vitriolic rhetoric regarding committee consideration of the most controversial and ideologically chosen judicial nominees is troubling to me as a Senator and as chairman of the Judiciary Committee. I have worked diligently to hold a record number of 26 hearings for 103 of this President's circuit and district court nominees in the past 16 months and to bring as many as we could to a vote, given all of the competing responsibilities of the committee and the Senate in these times of

great challenges to our Nation. We have transcended the inaction of the prior 6½ years of Republican control. For example, during the 6½ years the Republicans chaired the Judiciary Committee, in 34 of those months there were no confirmation hearings for judicial nominations at all. In the past 16 months, the Senate Judiciary Committee has held 26 hearings for 103 judicial nominees, in addition to a second hearing for one of the more controversial nominees. I think Democrats deserve some credit for our diligence, fairness, and bipartisanship especially in contrast to the prior period of Republican control of the Senate.

In particular, we have held hearings for 20 circuit court nominees, confirmed 17 of them in this period, and reduced the circuit court vacancies from those we inherited. By contrast, circuit court vacancies more than doubled during Republican control, from 16 in January 1995 to 33 by the summer of 2001 when they allowed the Judiciary Committee to reorganize following the change in majority.

While the opposition party continues to inflame the public with skewed statistics, the reality is that we have approved far more judicial nominees for this President than past Senates did for other Presidents. This Democratic-led Senate has confirmed 100 district court and circuit court judges, including 17 circuit court nominees. In President George H.W. Bush's first 2 years in office, 71 judicial nominees were confirmed by the Democratic-led Senate. When a Republican majority was considering Senator Clinton's nominees in their first 2 years working together, 75 judicial nominees were confirmed. Even when a Republican majority was considering President Reagan's judicial nominations in his first 2 years, only 89 judicial nominees were confirmed. Thus, we have not only exceeded the confirmation achieved when the Senate and White House were divided by political party but the number of confirmations when Republicans controlled both branches. In less than 2 years, just 16 months, we have evaluated, held hearings for, reported out, and confirmed 100 judicial nominees of President George W. Bush.

While Republicans continue to play base politics and inflame certain quarters of the public with their skewed statistics, the reality is that the Democratic-led Senate has acted far more fairly toward this President's judicial nominees than Republicans acted toward President Clinton's.

The raw numbers, not percentages, reveal the true workload of the Senate on nominations and everyone knows that. Anyone who pays attention to the Federal judiciary and who does not have a partisan agenda must know that. Democrats have moved more quickly in voting on judicial nominees of a President of a different party than in any time in recent history. This should be beyond dispute, but I believe that partisan advisers told this Presi-

dent and the Republicans that it is a great election issue for them to complain that not every nominee has been confirmed. We have given hearings to 103 of the 114 judicial nominees now eligible for a hearing 90 percent, as of today, for those focused on percentages. The remaining 16 without a hearing either lack home State consent or peer reviews or both. Many of those were nominated only recently and are being used by Republicans to skew the percentages further because they know that the ABA is taking about 60 days to submit ratings from the date of nomination and some would not receive ratings in time for hearings this session. The committee has voted on 102 of the 103 judicial nominees eligible for a vote, 99 percent. And with the vote on Judge Dennis Sheed, we have cleared the Senate calendar of all judicial nominations rather than adopt the recent Republican practice of holding nominees over without a final vote and forcing them to be renominated and have second hearings in a succeeding Congress.

I ask fair-minded people to contrast what we have achieved in the past 16 months with the most recent period of Republican control of the committee. In all of 2000 and the first several months of 2001 before the change in Senate majority, the Senate confirmed only 39 judicial nominees, including eight to the circuits. Even if you look at the last 30 months of Republican control, they confirmed only 72 judges. In much less time, we have confirmed 100.

If you consider the first 24-months of Republican control instead of their last 30 months we have accomplished far more: more hearings, 26 versus 18, far more judicial nominees, 103 versus 87, and had more confirmations, 100, including 17 to the circuit courts, versus 73 with 11 to the circuit courts. We have reached the 100 mark for committee votes in less than half the time it took Republicans to vote on 100 of President Clinton's judicial nominees. It took them 33 months to reach that mark, while we reached that mark in just 15 months.

With these confirmations, the Democratic-led Senate has addressed a number of long standing vacancies. For example, we held the first hearing for a nominee to the Fifth Circuit in 7 years and confirmed her, even though Republicans refused to allow hearings for 3 of President Clinton's nominees to this court. We held the first hearing for a nominee to the Tenth Circuit in 6 years, and confirmed 3 nominees to that circuit in less than 1 year, even though two of President Clinton's nominees to that circuit were never allowed hearings by Republicans. We confirmed the first nominee to the Sixth Circuit in almost 5 years and have now confirmed two judges to that court, even though three of President Clinton's nominees to that court were never allowed hearings or votes. We held the first hearing for a nominee to

the fourth Circuit in 3 years, and confirmed the first African American appointed to that court in American history, even though that nominee and 6 other nominees of President Clinton to the Fourth Circuit, for a total of 7 in that circuit alone, never received hearings during Republican control of the Senate. Today, another of President Bush's nominees was confirmed to that circuit. These are just a few of the firsts we have achieved in just 16 months.

There were many other firsts in courts across the Nation. For example, we held hearings for and confirmed the first judges appointed to the Federal courts in the Western District of Pennsylvania in almost 7 years, even though several of President Clinton's nominees to the courts in that district were blocked by Republicans. They allowed none of President Clinton's nominees to be confirmed to that court during the entire period of Republican control. They also blocked the confirmation of a Pennsylvania nominee to the Third Circuit, among others. Democrats confirmed the first nominees to the Third Circuit and Ninth Circuit in 2 years, even though the last nominees to those seats never received hearings during Republican control of the Senate.

We have had hearings for a number of controversial judicial nominees and brought many of them to votes this year just as I said we would when I spoke to the Senate at the beginning of the year. Of course, it would have been irresponsible to ignore the number of vacancies we inherited and concentrate solely on the most controversial, time consuming nominees to the detriment of our Federal courts. The President has made a number of divisive choices for lifetime seats on the courts and they take time to bring to a hearing and a vote. None of his nominees, however, have waited as long for a hearing or a vote as some of President Clinton's judicial nominees, such as Judge Richard Paez who waited 1,500 days to be confirmed and 1,237 days to get a final vote by the Republican-controlled Senate Judiciary Committee or Judge Helene White whose nomination languished for more than 1,500 without ever getting a hearing or a committee vote.

As frustrated as Democrats were with the lengthy delays and obstruction of scores of judicial nominees in the prior 6½ years of Republican control, we never attacked the chairman of the committee in the manner as was done in recent weeks. Similarly, as disappointed as Democrats were with the refusal of Chairman HATCH to include Allen Snyder, Bonnie Campbell, Clarence Sundram, Fred Woocher, and other nominees on an agenda for a vote by the committee following their hearings, we never resorted to the tactics and tone used by Republican members of this committee in committee statements, in hallway discussions, in press conferences, or in Senate floor statements. As frustrated and disappointed

as we were that the Republican majority refused to proceed with hearings or votes on scores of judicial nominees, we never sought to override Senator HATCH's judgments and authority as chairman of the committee.

The President and partisan Republicans have spared no efforts in making judicial nominations a political issue, without acknowledging the progress made in these past months when 102 of this President's judicial choices have been given committee votes. One indication of the fairness with which we have proceeded is my willingness to proceed on nominations that I do not support. We have perhaps moved too quickly on some, relaxing the standards for personal behavior and lifestyle for Republican nominees, being more expeditious and generous than Republicans were to our nominees, and trying to take some of them at their word that they will follow the law and the ethical rules for judges.

For example, as I noted on October 2, 2002, we confirmed a personal friend of the President's, Ron Clark, to an emergency vacancy in the United States District Court for the Eastern District of Texas. Clark's commission was not signed and issued promptly. We learned later that Clark was quoted as saying that he asked the White House, and the White House agreed, to delay signing his commission while he ran as a Republican for reelection to a seat in the Texas legislature so that he could help Republicans keep a majority in the Texas State House until the end of the session in mid-2003. The White House was apparently complicit in these unethical partisan actions by a person confirmed to a lifetime appointment to the Federal bench. Clark, who was confirmed to a seat on the Federal district court in Texas, was actively campaigning for election despite his confirmation.

These actions bring discredit to the court to which Judge Clark was nominated by the President and confirmed by the Senate, and calls into question Judge Clark's ability to put aside his partisan roots and be an impartial adjudicator of cases. Even in his answers under oath to this committee, he swore that if he were "confirmed" he would follow the ethical rules. Canon 1 of the Code of Conduct for United States Judges explicitly provides that the code applies to "judges and nominees for judicial office" and Canon 7 provides quite clearly that partisan political activity is contrary to ethical rules. In his answers to me, the chairman of this committee, Clark promised "[s]hould I be confirmed as a judge, my role will be different than that of a legislator." As the Commentary to the Code of Conduct for United States Judges, (which applies to judges and nominees), states, "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges [which] depend in turn upon their acting without fear or favor. Although

judges should be independent, they should comply with the law as well as the provisions of this Code." The code sets standards intended to help ensure that the public has access to Federal courts staffed with judges who not only appear to be fair but are actually so.

Yet he was flouting the standards set by the code and the promises he made to me personally and to the Senate Judiciary Committee and, by proxy, to the Senate as a whole. That the White House was prepared to go along with these shenanigans reveals quite clearly the political way they approach judicial nominations. Only after the New York Times reported these unseemly actions, did the President sign Judge Clark's appointment papers. As Judge Clark hoped, he "won" the election and so the Republican Governor of Texas may be able to name a Republican to replace him in the state legislature.

With a White House that is politicizing the Federal courts and making so many divisive nominations, especially to the circuit courts, to appease the far-right wing of the Republican party, it would be irresponsible for us to turn a blind eye to this and simply rubber-stamp such appointees to lifetime seats. Advice and consent does not mean giving the President carte blanche to pack the courts with ideologues from the right or left. The system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to pack the courts with judges whose views are outside of the mainstream and whose decisions would further divide our nation.

I have worked hard to bring to a vote the overwhelming majority of this President's judicial nominees, but we cannot afford to make errors in these lifetime appointments out of haste or sentimental considerations, however well intentioned. To help smooth the confirmation process, I have gone out of my way to encourage the White House to work in a bipartisan way with the Senate, like past Presidents, but, in all too many instances, they have chosen to bypass bipartisanship cooperation in favor of partisanship and a campaign issue. Arbitrary deadlines will not ensure that nominees will be fairminded judges who are not activists or ideologues. The American people have a right to expect the Federal courts to be fair forums and not bastions of favoritism on the right or the left. These are the only lifetime appointments in our whole government, and they matter a great deal to our future. I will continue to work hard to ensure the independence of our Federal judiciary.

TERRORISM RISK INSURANCE ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the conference report to accompany H.R. 3210.

The legislative clerk read as follows: