

by the ABA majority. He graduated first in his class from Ohio University College of Law. He is a former law clerk to Supreme Court Justices Powell and Scalia. He has argued 9 cases and over 50 merits and amicus briefs before the U.S. Supreme Court, and he is a prior State solicitor in the State of Ohio.

Dennis Shedd, nominated to the Fourth Circuit Court, is a U.S. district court judge in South Carolina and has been since 1991. He is rated well qualified by the ABA and had 20 years of private practice and public service prior to becoming a district judge. His law degree is from the University of South Carolina, and he has a master of law degree from Georgetown. He is a former chief counsel and staff director of the Senate Judiciary Committee and counsel to the President pro tempore from 1978 to 1988. He is supported by both of South Carolina's Senators. Again, he is a former staffer.

The Senator from Nevada knows, as I mentioned this before—we used to have a tradition that we would give former staffers an expeditious hearing. But Dennis Shedd was nominated a year ago.

These are eight of the most qualified individuals you will find anywhere in the country for any such position. The fact that they have not had a hearing when they were nominated a year ago brings real disrespect and disrepute on this body. Shame on us. Shame on the Senate. We have only confirmed one-third of the district court of appeals judges nominated by President Bush. Eight people have to wait a year for a hearing? We are making these nominees wait around while their friends and associates are asking: When will you be confirmed? I understand you were nominated. You were nominated a year ago. You haven't even had a hearing.

How disrespectful of the judicial process can we be? I am ashamed of this record. I will state for the record now that I believe at various points we may well be back in the majority. I have been in the Senate—majority, minority, majority, minority. I think we will be back in the majority. I am committed to making sure that all judicial nominees are treated fairly regardless of who is in the White House and regardless of who runs the Senate. I think we owe it to the nominees. I think we owe it to the process. We owe it to the division of power between the executive branch, the judicial branch, and the legislative branch.

The legislative branch is wrecking this balance of power by not staffing and not allowing judicial nominations to be heard, to be voted on, to be confirmed. We have checks and balances. I believe the forefathers would be rolling over if they realized how slowly we were going on certain judges, circuit court appellate judges especially.

With all sincerity, there are ways we can go in this body to get people's attention to make sure these individuals

get fair consideration. My hope and desire is to give them fair consideration without exhibiting a pattern of "we will hold this up and hold this up; you will not be able to mark this up; not be able to get a quorum; you will not be able to do business." I hope we don't have to resort to that.

Senator REID is one of my very dear friends, Senator DASCHLE, Senator LEAHY. I urge them, give these people a chance. Give these eight people who were nominated to the appellate level a year ago, give them a hearing, and let's vote. There is no question they are eminently qualified. We should be voting. That is our constitutional responsibility. Let's do it. I will commit we will do it in the future as well.

I hope people will hear these comments made by myself and others and listen to us. Let's work together and treat judicial nominees fairly so we don't have to resort to various types of threats and intimidation and lack of cooperation to make our point to get these individuals consideration on the floor of the Senate.

I yield the floor.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### ORDER OF PROCEDURE

Mr. REID. Madam President, I was waiting to hear from the two leaders. Senator LOTT and Senator DASCHLE have spoken on a number of occasions. Senator DASCHLE is extremely anxious to get on with some substantive legislation in the Senate. The trade bill is pending. We virtually have been waiting all day for some Senators to come up with a proposal.

I have been told by the Republican leader that that answer will come at 4:15 today. I hope that is the case. I would therefore ask unanimous consent that the Senator from Pennsylvania, Mr. SPECTER, be recognized to speak as in morning business for up to 10 minutes, and then the Senator from Arizona, Mr. MCCAIN, although I think Senator MCCAIN may have been here first.

Mr. MCCAIN. I don't wish to speak as in morning business.

Mr. REID. It is my understanding the Senator from Arizona wishes to be recognized for purposes of a unanimous consent request. I ask that he be recognized for up to 5 minutes to make whatever statement he wishes in regard to that unanimous consent request and that, after that time, morning business be concluded.

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

The Senator from Pennsylvania.

#### JUDICIAL PROCEDURES

Mr. SPECTER. Madam President, I thank the Senator from Nevada for working this out for morning business. I have sought recognition to comment about two matters.

First, I compliment my colleague from Oklahoma for the comments he has made about the need to move ahead with nominees. It would be my hope that from the current disagreement we might work out a permanent protocol to solve the problem which exists when the White House is controlled by one party and the Senate by another party. The delays in taking up judges has been excessive.

This is the 1-year anniversary where some nine circuit judges, well qualified, have not even had hearings. But in all candor, a similar problem existed when President Clinton, a Democrat, was in the White House and we Republicans controlled the Senate.

I have advocated a protocol. Within a certain number of days after a nomination, the hearing would be held; within a certain number of additional days, there would be action by the Judiciary Committee on a vote; and within another specified time, there would be floor action, all of which could be expanded for cause. And an additional provision, not indispensable, is that if there were a strict party-line vote in committee, the matter would automatically go to the floor.

I thank the Chair.

I yield back the remainder of that time, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Arizona is recognized.

#### UNANIMOUS CONSENT REQUEST— H.R. 3529 and S. 2485

Mr. MCCAIN. Mr. President, I intend to propose a unanimous consent request that we take up the Andean Trade Promotion and Drug Eradication Act.

It is vital that we address this issue. ATPA expired on December 4 because Congress had not taken action on the legislation. The House of Representatives passed an extension on November 16, and the Senate has failed to do its work on this issue.

These countries need our help. It is in the United States' national interest not to see these countries degenerate into economic, political and, in the case of Colombia, armed chaos. We need to act on this issue. Why it has been tied to TPA and TAA is something I do not understand.

Perhaps the Trade Promotion Act and the Trade Adjustment Assistant Act are important. I think they are of the highest priority, but the Andean Trade Preferences Act—referred to as ATPA—is of time criticality. It expired. There are tariffs that these countries will have to pay.

These are poor countries. They have unemployment rates of 30, 40, 50 percent. Colombia is degenerating into

chaos. Peru is in a situation—if I might quote from the Christian Science Monitor:

Rebel groups' presence growing near Peru's capital. The Shining Path wants to show that democracy is weak, it can't handle problems with crime and corruption, and the government's inability to improve the country's economy.

Andres Pastrana wrote in the Washington Post on April 15:

Finally, continued U.S. support for planned Colombia and final Congressional passage of the Andean Trade Preferences Act will strengthen Colombia's economic security. The trade act will have a minuscule impact in the United States but will create tens of thousands of jobs in Colombia and across the Andean region. Enhanced ATPA now being considered in Congress will foster new business investment in Colombia.

These countries are in trouble. If these countries are not allowed to engage in economic development, are not given our assistance, with which we have provided them since 1991—this Trade Preference Act—then we are going to pay a very heavy penalty. We have already had to allocate a billion dollars to Colombia to help them militarily. Situations now are arguably worse than 2 years ago when we first began this matter. Every objective observer will tell you Colombia is in terrible shape. In Peru, people are losing confidence in democracy. In Ecuador—I have read stories about Hezbollah and other terrorist entities locating in these countries.

We don't have the time to waste fooling around with aid to steelworkers, or adjustments to health care, which are directly related to the Trade Promotion Act, not to the Andean Trade Promotion and Drug Eradication Act. I hope we can have some debate and discussion about that.

I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 3529; further, I ask unanimous consent that the Senate immediately proceed to its consideration, all after the enacting clause be stricken, and the text of S. 2485, the Andean Trade Promotion and Drug Eradication Act, be inserted in lieu thereof. I further ask consent that the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no other intervening action or debate.

Mr. NICKLES. Mr. President, reserving the right to object, I want to clarify the request that my colleague from Arizona made.

The request is we would move immediately to the Andean Trade Preference Act, which is a continuation of the current law going back to 1991 which would assist four countries—the Senator mentioned the four countries: Colombia, Peru, Ecuador and Bolivia, all of which desperately need our help.

The Senator's intention is to continue to assist those countries so we do not have punitive tariffs hit, I believe, by the 15th of this month, next week; is that correct?

Mr. MCCAIN. That is correct.

Mr. NICKLES. Mr. President, I compliment my colleague from Arizona. I hope we can do this and pass an Andean trade bill. I believe the vote on it will be 90-plus votes in favor of it. If we are successful in passing this, then we can continue to wrestle with and hopefully pass trade promotion authority and trade adjustment assistance. Correct me if I am wrong, this in no way would keep us from passing trade promotion and trade adjustment assistance in the future.

Mr. MCCAIN. It would have no impact.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I understand the frustration of the Senator from Arizona. Magnify that 1,000 percent for the majority leader. We have a bill on the floor—

Mr. LOTT. Regular order, Mr. President.

Mr. REID. The underlying vehicle is the Andean trade bill. I think we should move on to the trade bill.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

#### CONSTITUTIONAL RESPONSIBILITIES OWED TO THE JUDICIAL BRANCH

Mr. WARNER. Mr. President, Article II, Section 2 of the Constitution provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the supreme Court, and all other Officers of the United States . . ."

The debate before us today involves this clause of the Constitution, and this debate is a very important one. We should put aside partisanship and examine the very roots of our Republic to determine the respective responsibilities of the three branches of our government.

The magnificence of the "Great Experiment," a term used by the skeptics of the work of our founding fathers, is what has enabled our Republic to stand today, after over 200 years, as the longest surviving democratic form of government still in existence.

But, the survival of that "Great Experiment" is dependent upon the continuous fulfillment of the balanced, individual responsibilities of the three branches of our government.

Let's reflect on the historical roots of the "advice and consent" clause.

During the Constitutional Convention, the Framers labored extensively over this clause, deferring a final decision on how to select federal judges for several months.

Some of the Framers argued that the President should have total authority

to choose the members of the Judiciary. Others thought that both the House of Representatives and the Senate should be involved in providing "advice and consent."

Ultimately, a compromise plan, put forth by James Madison, won the day—where the President would nominate judges and only the Senate would render "advice and consent."

Such a process is entirely consistent with the system of checks and balances that the Framers carefully placed throughout the Constitution. Presidents select those who should serve on the Judiciary, thereby providing a philosophical composition in the judicial branch. However, the Senate has a "check" on the President because it is the final arbiter with respect to a nominee.

Throughout the debates of the Constitutional Convention, there appears to have been little debate on what factors the Senate should actually use when evaluating presidential nominees. It is likely that this silence was intentional.

The first test case arose with our First President! Soon after the Constitution was ratified it became clear that the Senate did not take its "advice and consent" role as one of simply rubber-stamping judicial nominees. This became evident when the Senate rejected a nomination put forward by our first President and a founding father, President George Washington.

President Washington nominated John Rutledge to serve on the U.S. Supreme Court. And, even though Mr. Rutledge had previously served as a delegate to the Constitutional Convention, the Senate rejected his nomination. It is interesting to note that many of those Senators who voted against the Rutledge nomination were also delegates to the Constitutional Convention.

From the earliest days of our Republic, the nomination process has worked. We must now reconcile and make sure it continues to work.

Based on history, it is clear to me that the Senate's role in the confirmation process is more than just a mere rubber-stamp of a President's nomination; but it is the Senate's Constitutional responsibility to render "advice and consent" after a fair process of evaluating a President's nominee.

This process illustrates well how our three branches of government are interconnected yet independent.

Thomas Jefferson remarked on the independence of our three branches of government by stating, "The leading principle of our Constitution is the independence of the Legislature, Executive, and Judiciary of Each other."

But, I would add that each branch of government must perform its respective responsibilities in a fair and timely manner to ensure that the three branches remain independent.

In my view, we must ask ourselves, is the current Senate posture of the nomination and "advice and consent" process during the early days of the Bush