

Testimony of
The Honorable Orrin Hatch

June 27, 2002

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Statement of Senator Orrin G. Hatch
Ranking Republican Member
Before the United States Senate Committee on the Judiciary
Hearing on the Nominations of

Dennis W. Shedd, to be U.S. Circuit Judge, Fourth Circuit
Terrence F. McVerry, to be U.S. District Judge, W. D. of Pennsylvania
Arthur Schwab, to be U.S. District Judge, W. D. of Pennsylvania

I want to welcome all the nominees today and ask that I be able to put statements for Mr. Schwab and Judge McVerry into the record. I look forward to voting for all the nominees in Committee and on the Senate floor.

You will forgive me, however, for spending some time welcoming Judge Dennis Shedd, for whom this moment must surely be both a life's milestone and a sentimental homecoming. I know this is a proud moment also for Senator Thurmond whom Judge Shedd served in various positions and including as Chief Counsel to this Committee.

Senators feel very strongly about their staffs. Our legal counsels make uncounted sacrifices to work for us and for the American people. We are surrounded by very talented lawyers who forego larger salaries for the sake of public service. Sometimes they put their personal opinions aside to advocate ours. We Senators take very personally when they are nominated and given the opportunity for yet higher public service. It has been the tradition of this Committee to give great courtesy to our former staffers. I certainly take it very personally, and I know that Senator Thurmond does too.

But we two former Chairmen are not alone in our good impressions of Dennis Shedd. 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 Shedd has strong bi-partisan 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 this 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."

It is no wonder to me that during his service on the District Court, he has sat by designation on the Fourth Circuit Court of Appeals on several occasions.

That leads me address a few issues that have been raised in the press and on the websites of the usual suspects in the last few days.

First, let me address the more ludicrous attempt to discredit Judge Shedd that was brought to my attention: that when he was confirmed to the District Court bench he had little experience in the practice of law. To ignore the remarkable experience Dennis Shedd had in legislative practice crafting historic laws while serving this Committee is some chutzpah. To raise an objection like that twelve years after the fact is just silly.

But let's be clear. When Judge Shedd joins the other members of the 4th Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the 4th Circuit. He will also add some diversity to that Court. The last five 4th Circuit confirmations have all been Democrats.

Interestingly, the last Democrat confirmed, Judge Gregory, has affirmed Judge Shedd's rulings in 11 appeals. Notably, Judge Gregory also agreed with Judge Shedd's ruling in the Crosby case, which found that the Family and Medical Leave Act was improperly adopted by Congress, a case which the liberal groups seem worked up about. I find it curious that no one asked Judge Gregory about his ruling in Crosby when he was before this Committee.

Judge Shedd has heard more than 5,087 civil cases, reviewed more than 1406 Reports and Recommendations of Magistrates, and has had before him more than 929 criminal defendants.

Judge Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times, less than one percent. 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 4th 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.

Mr. Chairman, Judge Shedd is known for his fairness, total preparation, and for showing no personal bias in his courtroom. This is not just my opinion; this reflects the opinions of lawyers

who practice before him. Judge Shedd is well-respected by members of the bench and bar in South Carolina.

According to the Almanac of the Federal Judiciary, attorneys said that Judge Shedd has outstanding legal skills and an excellent judicial temperament.

Here are a few comments from South Carolina lawyers: "You are not going to find a better judge on the bench or one that works harder." "He's the best federal judge we've got." "He gets an A all around." "It's a great experience trying cases before him." "He's polite and businesslike."

Washington's professional nominee detractors have been particularly misleading on Judge Shedd's record on employment cases. They have misleadingly pointed out that the Judge seldom grants summary judgment in employment cases in favor of the employee. Of course, few judges do. Such cases are inherently fact-laden and go to trial or settle, or the plaintiff too often fails to state a claim. They could have noticed that he has only twice been reversed in employment cases. But they didn't. They might have pointed out that in one of the appeals that he was invited to hear for the 4th Circuit, he reversed a summary judgment and remanded for trial a political discrimination case against a worker who was a Democrat. But they didn't.

Detractors have also tried to make irresponsible claims as to the Judge's criminal case record. In criminal cases, Judge Shedd has strongly defended citizens' Due Process rights from violation by the state. He has frequently chastised law enforcement for errors in search warrants and the questionable use of seized property. In fact, he has sanctioned the State for discovery problems. He is known for aggressively informing defendants and witnesses of their 5th Amendment rights.

Remarkably, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas.

The cases that come before a judge are often difficult. He has not been exempted. In one case, Judge Shedd allowed a detainee to engage in a hunger strike as a protest against government's attempt to force feed him.

Though some would seek to question Judge Shedd's respect for privacy, in two cases he protected HIV blood donor's confidentiality. In another case he ordered special accommodations to an HIV positive defendant to ensure his continued clinical treatment.

Of course, a smear campaign against a nominee is not complete without the suggestion that they are a foe of environmental rights. Judge Shedd's detractors have ignored the wetlands protection case where he handed down tough sanctions against a violator and ordered wetlands restoration. They also skipped over his decision in favor of National Campaign to Save the Environment. They missed his ruling to grant standing to a plaintiff challenging a road construction project on its environmental impact. They missed his ruling in favor of a woman protesting possible waste dumping in her community.

But the most breathtaking charge against Judge Shedd was the NAACP's, earlier this week, that he has "a deep and abiding hostility to civil rights."

I have to tell you I was outraged by this. It is a distortion far beyond the pale of decency, and I hope my colleagues will be quick to repudiate such rabid practices. In part, I am outraged because there are some who would profile Judge Shedd as merely a white male from the South and start from there to give him a certain treatment.

I should note that no less a figure than Ralph Neas noted in the National Journal in 1987 that the Judiciary Committee during Dennis Shedd's tenure had a "good" civil rights record.

If his record working for civil rights legislation on the Judiciary Committee were not enough an accomplishment for one lifetime for any man or woman, the truth is that each of the cases that have come before Judge Shedd involving the Voting Rights Act of 1965, plaintiffs have won their claims. In the Dooley case, a one person/one vote case, Judge Shedd gave the plaintiff a clear and strong decision. In another political rights case, he ruled to protect Plaintiff's right to make door-to-door political solicitations.

You know a lot about a judge by how they conduct their court room. As you know, Mr. Chairman, I have been a strong advocate for the protection of religious practices in the public square. It says a lot about Judge Shedd, especially in these times, that he allowed religious headdress in his courtroom.

Judge Shedd also 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 people 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 4,000-5,000 school children, he was chosen as United Way School Volunteer of Year.

Mr. Chairman, I would like to place in the record a very touching letter from one of Judge Shedd's former clerks, Thomas Jones, who happens to be a person of color -- an African American -- written in favor of Judge Shedd and sent just yesterday to Senator Leahy. 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."

Lastly, I would like to address the most repugnant attempt to smear Judge Shedd by taking his words entirely out of their context with regard to the neuralgic issue of the Confederate flag. According to one group's website and an NAACP release, Judge Shedd is accused of having made "insensitive comments as he dismissed a lawsuit aimed at removing the Confederate flag from the South Carolina statehouse."

Nothing could be further from the truth.

In fact, in the Alley case, a complaint brought by white plaintiffs -- not African Americans -- Judge Shedd never addressed the merits of the Confederate flag issue. Instead he stayed the

federal case to permit a parallel state action to go forward. The statements attributed to him were in fact questions to the counsel.

Judge Shedd explained that he was merely asking questions to explore the lawyer's legal theory. He stated: "Let me make it very clear to everybody. I'm not determining now whether or not the flag should be there at all."

Mr. Chairman, I would like to place into the record a portion of the transcript from the Alley case which places in context what Judge Shedd thinks about the issue of the Confederate flag in relation to other issues facing the African American community. His is a view shared by many African American leaders concerned with the issues facing their community.

Remarkably, although taking Judge Shedd to task for a Confederate flag case in which he never reached the merits of the issue, the liberal groups starkly ignore Judge Shedd's ruling in the Vanderhoff case, in which he did reach the merits of the issue concerning the Confederate flag. In Vanderhoff, Judge Shedd dismissed the claim of a fired employee who repeatedly displayed the Confederate flag on his toolbox in violation of company policy. Judge Shedd rejected the plaintiff's contention that he was dismissed because of his national origin as a "Confederate Southern American."

In sum, Judge Shedd's detractors have a habit of ignoring the positive and accentuating the negative. For these irresponsible liberal groups, fair is foul, and foul is fair, and the truth is what works for them.

Now, Mr. Chairman, let me welcome the two nominees to the District bench of Western Pennsylvania.

Terrence McVerry has a distinguished record of service in both the private and public sectors. After graduating from law school, Judge McVerry served in the United States Army Reserves and the Pennsylvania Air National Guard. Then he went to work as an Assistant District Attorney for Allegheny County, prosecuting hundreds of trials with an emphasis in major felonies and homicides. In 1972, Judge McVerry formed a private practice law firm where, for the next 17 years, he engaged in civil litigation representing individuals in a variety of matters including personal injury, real estate, contracts, family matters, estate planning, and small businesses and corporations. Judge McVerry was elected to the Pennsylvania House of Representatives in 1979 and served there for 21 years.

In 1998, Governor Tom Ridge appointed him to fill a judicial vacancy on the Court of Common Pleas of Allegheny County assigned to the Family Division. Currently, Judge McVerry is the Solicitor of Allegheny County where he is the chief legal officer and director of a governmental law department comprised of 36 attorneys.

Arthur James Schwab is a distinguished lawyer who has litigated and published extensively in the areas of protecting trade secrets, copyright infringement and employment agreements, including covenants not to compete. He graduated from the University of Virginia School of Law and served as a law clerk for then-Chief Justice Collins J. Seitz for the U.S. Third Circuit Court of Appeals. He then went to work at Reed Smith Shaw & McClay in Pennsylvania from 1973 to

1990, where he focused on both labor law and litigation involving complex corporate litigation, personal injury and civil rights matters. He litigated cases in approximately 24 different federal court jurisdictions and before 8 different federal circuit courts. From 1990 to the present, Mr. Schwab has worked for Buchanan Ingersoll P.C., a Pennsylvania law firm, as chair of litigation, chief council for complex corporate litigation, and partner.

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