

FOURTH CIRCUIT JUDGE ASSUMES SENIOR STATUS

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On January 30, 2018 Judge Dennis W. Shedd stepped down from his 15 years of service as an active judge on the United States Court of Appeals for the Fourth Circuit and assumed senior status.¹ Judge Shedd, along with Judge Paul V. Niemeyer and Judge William B. Traxler, Jr. of the Fourth Circuit, heard oral arguments on January 30 at the University of South Carolina School of Law.² After oral arguments, Judge Shedd was presented with the Order of the Palmetto Award by South Carolina Governor Henry McMaster.³

Judge Shedd was born in Cordova, South Carolina and graduated with a Bachelor of Arts from Wofford College in 1975.⁴ He went on to graduate from the University of South Carolina School of Law in 1978, and from Georgetown University Law Center with his L.L.M. in 1980.⁵ Judge Shedd was a member of United States Senator Strom Thurmond's staff from 1978 to 1988.⁶ During this time he also became chief counsel and staff director for the Senate Committee on the Judiciary.⁷

On October 17, 1990, President George H.W. Bush nominated Judge Shedd to the United States District Court for the District of South Carolina.⁸ Judge Shedd served on this court for 13 years until he was nominated by

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¹ *Fourth Circuit Judge Shedd Assumes Senior Status and Receives Order of the Palmetto, Latest News & Announcements*, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT (Feb. 5, 2018), <http://www.ca4.uscourts.gov/news-announcements/latest-news-announcements/2018/02/05/fourth-circuit-judge-shedd-senior-status-order-of-the-palmetto>. [hereinafter *Fourth Circuit Judge Shedd*].

² *Id.*

³ *Id.* The Order of the Palmetto is the highest civilian honor, and it “recognizes a person’s lifetime achievements and contributions to the State of South Carolina.” *Order of the Palmetto & Order of the Silver Crescent*, SCIWAY (last visited Feb. 7, 2018), <https://www.sciway.net/hist/sc-order-of-the-palmetto.html>.

⁴ *Senior Judge Dennis W. Shedd, Judges of the Court*, UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT (last visited Feb. 7, 2018), <http://www.ca4.uscourts.gov/judges/judges-of-the-court/senior-judge-dennis-w-shedd>. [hereinafter *Senior Judge*].

⁵ *Biographical Directory of Federal Judges, Shedd, Dennis W*, FEDERAL JUDICIAL CENTER (last visited Feb. 7, 2018), <https://www.fjc.gov/history/judges/shedd-dennis-w>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

President George W. Bush to the Fourth Circuit Court of Appeals on May 9, 2001 to fill the seat left by Judge Clyde H. Hamilton.⁹ He was confirmed on November 19, 2002 and received his commission on November 26, 2002.¹⁰ In addition, Judge Shedd has served as an adjunct professor at the University of South Carolina School of Law where he teaches Fourth Circuit Practice.¹¹

Judge Shedd graciously spoke with this author about his time on the Fourth Circuit Court of Appeals.¹² He explained that because he has taken senior status, he has the opportunity to take as much or as little of a case load as he chooses.¹³ His most memorable case while serving on the Fourth Circuit also happens to be one of his most recent cases.¹⁴ Judge Shedd was one of three judges on the Fourth Circuit that dissented from the court's holding affirming a nationwide injunction to Trump's travel ban.¹⁵ The dissenting judges stated that the executive order was constitutional and that it was incorrect for the court to have taken Trump's campaign statements into their decision.¹⁶ The Supreme Court issued an order which stayed the preliminary injunction of Trump's executive order.¹⁷ As the University of South Carolina School of Law notes, the Supreme Court's order "used reasoning similar to that argued by . . . [Judge] Shedd in his dissent to the Fourth Circuit's earlier decision upholding one of the injunctions in its entirety."¹⁸

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Fourth Circuit Judge Shedd*, *supra* note 1; *Directory, Dennis Shedd*, UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW (last visited Feb. 7, 2018), https://www.sc.edu/study/colleges_schools/law/faculty_and_staff/directory/shedd_dennis.php.

¹² Telephone Interview with Judge Dennis W. Shedd, Senior Judge, U.S. Court of Appeals for the Fourth Circuit (Feb. 8, 2018).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 571–72 (4th Cir.), *cert. granted*, 137 S. Ct. 2080 (2017), *and vacated and remanded sub nom. Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353 (2017).

¹⁶ *Id.* at 639; Mica Rosenberg & Dan Levine, *In blow to Trump, U.S. appeals court refuses to reinstate travel ban*, REUTERS (May 25, 2017), <https://www.reuters.com/article/us-usa-immigration-court/in-blow-to-trump-u-s-appeals-court-refuses-to-reinstate-travel-ban-idUSKBN18L2IO>.

¹⁷ *Trump v. Int'l Refugee Assistance*, 137 S. Ct. 2080, 2083 (2017); *Supreme Court's immigration ruling reflects influence of Judge Shedd's Fourth Circuit dissent*, UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW (last visited Feb. 9, 2018), http://www.sc.edu/study/colleges_schools/law/about/news/2017/20170629-shedd.php.

¹⁸ *Supreme Court's immigration ruling reflects influence of Judge Shedd's Fourth Circuit dissent*, UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW (last visited Feb. 9, 2018), http://www.sc.edu/study/colleges_schools/law/about/news/2017/20170629-shedd.php;

Throughout his time working for United States Senator Strom Thurmond, Judge Shedd was able to meet President Ronald Reagan, Ted Kennedy, Justice Antonin Scalia, Justice Stephen Breyer, Justice Clarence Thomas, and Justice Sandra Day O'Connor.¹⁹ During this time, Judge Shedd was also the first person to receive President Ronald Reagan's letter sent to Senator Thurmond which announced that he was resuming his power as president after undergoing surgery.²⁰ This was the first time in which the 25th Amendment was used to relieve and reinstate a president who was unable to serve.²¹

Judge Shedd states that he will continue to teach his Fourth Circuit Practice class at the University of South Carolina School of Law.²² When asked what advice he has for current law students, Judge Shedd instructed that no matter what one undertakes, no matter how menial the task is, one's standard should always be excellence.²³ Additionally, he said that students should be prepared to intelligently challenge what a professor says rather than to just accept whatever the current legal theory is.²⁴

There has been much speculation on who will fill the vacant seat now that Judge Shedd has assumed senior status.²⁵ The same day that Judge Shedd made his announcement, United States Representative Trey Gowdy revealed that he will not seek re-election.²⁶ While there were some rumors, United States Senator Tim Scott told reporters that Gowdy "does not want to be

Compare Trump v. Int'l Refugee Assistance, 137 S. Ct. 2080, 2083 (2017), *with* Trump, 857 F.3d at 657–8.

¹⁹ Telephone Interview with Judge Dennis W. Shedd, Senior Judge, U.S. Court of Appeals for the Fourth Circuit (Feb. 8, 2018).

²⁰ *Id.* See also Michal Kranz, *The 25th Amendment has been used 3 times to relieve presidents deemed unfit to govern – each case involving physical health*, BUSINESS INSIDER (Oct. 12, 2017), <http://www.businessinsider.com/25th-amendment-colon-trump-reagan-bush-unfit-president-2017-10>.

²¹ Kranz, *supra* note 20.

²² Telephone Interview with Judge Dennis W. Shedd, Senior Judge, U.S. Court of Appeals for the Fourth Circuit (Feb. 8, 2018).

²³ *Id.*

²⁴ *Id.*

²⁵ Kirk Brown & Nathaniel Cary, *U.S. Rep. Trey Gowdy apparently isn't interested in judicial opening*, THE GREENVILLE NEWS (Jan. 31, 2018 2:22 P.M.), <https://www.greenvilleonline.com/story/news/local/2018/01/31/gowdys-announcement-coincides-judicial-opening/1083641001/>.

²⁶ *Id.* Gowdy served for six years as a federal prosecutor and then as the 7th Circuit Solicitor for South Carolina. *About, Trey Gowdy*, UNITED STATES CONGRESSMAN TREY GOWDY (last visited Feb. 7, 2018), <https://gowdy.house.gov/about-trey>.

nominated for the open seat on the appeals court.”²⁷ Cumberland Law Review will follow the nomination and selection process for the vacancy on the Fourth Circuit and update once an appointment has been made.

²⁷ Brown, *supra* note 25.