



In Memory of Shirley Mount Hufstedler

Ruth Bader Ginsburg*

I appreciate this opportunity to recall the most Honorable Shirley Mount Hufstedler, a woman whose bright mind was well matched by her caring heart. Shirley Hufstedler had several careers in or involving the law—skilled practitioner, sage judge at trial and on appeal, fine teacher, perceptive scholar, and innovative member of the President's cabinet at the birth of a new department. In each of these roles, her performance sparkled with intelligence and humanity. She was the best among lawyers and judges, the most dedicated, the least self-regarding. The example she set inspired other women, legions of them, to aspire to, and achieve, satisfying lives in the law.

The future Judge Hufstedler graduated at the top of her 1949 class at Stanford Law School, where she cofounded the *Stanford Law Review*. According to her classmate, former Secretary of State Warren Christopher, Shirley's notes were in great demand as aids in preparing for exams. After a decade of private practice, Shirley served a term as Special Legal Consultant to the Attorney General of California in the complex Colorado River litigation, a case long pending before the U.S. Supreme Court.

Judge Hufstedler's judicial career began with her appointment to the Los Angeles County Superior Court in 1961, a judgeship to which she was elected the following year. In 1966, she was appointed to the California Court of Appeal. Two years later, in 1968, President Johnson appointed her to the United States Court of Appeals for the Ninth Circuit. It was a history-making appointment. Before then, only one woman had ever been appointed to an Article III appellate post, Florence Ellinwood Allen, appointed to the Sixth Circuit by President Franklin Delano Roosevelt in 1934. Shirley was then just nine years old. Judge Allen retired in 1959. No woman served again at the federal appellate level until Judge Hufstedler's appointment.

A quick change was made upon her 1968 confirmation. Engraved commissions for federal judges contained the pronouns "him" and "his." Those engraved pronouns were deleted; in their place, "her" and "hers" were written

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In Memory of Shirley Mount Hufstedler
69 STAN. L. REV. 611 (2017)

in by hand. As a Ninth Circuit jurist, Judge Hufstedler wrote opinions notably clear and concise. Ever mindful of the people law exists to serve, she never tailored her opinions to please the home crowd, or the White House crowd.

I first met the beautiful Judge Hufstedler in 1971, when she delivered the annual Benjamin Nathan Cardozo Lecture at the Bar Association of the City of New York. Her topic: “A Constitutional Right of Privacy.”¹ In the lecture, she warned of the destructive effect of “government voyeurism.”² She returned to that theme in 1978, in a speech titled “Invisible Searches for Intangible Things.”³ Caring about Fourth Amendment values was something less courageous judges might have muffled in the 1970s, all the more so, judges considered potential Supreme Court nominees. Also in that decade, Shirley delivered a paper at the Aspen Institute for Humanistic Studies in which she wrote of myths that can cramp the development of a society’s children. No myths, she wrote,

have been more pervasive and enduring than those that assure the dominant members of a society that their positions are secure, and even just, and which tell servient members why it is not only their destiny, but their duty to remain where they are. . . . If one believes that a human being is inferior and . . . tells the child early enough and often enough about his or her inferiority, the belief will be fulfilled, regardless of the treasures with which he or she was born.⁴

After eleven years of federal judicial service, Judge Hufstedler was enlisted by President Carter in 1979 to launch the Department of Education as its first Secretary. In her Department of Education days, Secretary Hufstedler faced skeptics at every turn. Some thought the department should not have been created. Others thought it should not be run by someone whose experience was judicial. Undaunted, she accomplished the monumental task of transforming a barely sketched concept into an operational department that advanced the well-being of children and parents throughout the nation.

During the Carter presidency, Shirley Hufstedler was considered by many to be *the* top candidate (not just the top *female* candidate) for Supreme Court appointment. A *New York Times Magazine* reporter wrote of her tenure at the Department of Education: “Scratching around the soil for detractors yield[ed] no worms . . . [S]he appears to have no enemies[;] not a single person . . . came

1. Judge Shirley M. Hufstedler, The Directions and Misdirections of a Constitutional Right of Privacy, Twenty-Eighth Annual Benjamin N. Cardozo Lecture Delivered Before the Association of the Bar of the City of New York 23 (May 11, 1971).

2. *Id.* at 24.

3. See Shirley M. Hufstedler, Invisible Searches for Intangible Things: Regulation of Governmental Information Gathering, Owen J. Roberts Memorial Lecture at the University of Pennsylvania Law School (Oct. 17, 1978), in 127 U.PA.L.REV. 1483 (1979).

4. SHIRLEY M. HUFSTEDLER, WOMEN AND THE LAW 5 (1977).

In Memory of Shirley Mount Hufstedler
69 STAN. L. REV. 611 (2017)

up with anything less than praise.”⁵ But no vacancy opened on the Court in President Carter’s term. *Sympathique* human that she was, the former judge and cabinet secretary testified in favor of my nomination at the July 1993 Senate hearings. She used the occasion to recapitulate the progress women had made toward true partnership with men in U.S. society.⁶ I wrote to her soon after her testimony: “Your grand statement was just right for the Hearings, and there is no one in America I am prouder to have in my corner.”⁷

In 1981, when President Carter’s term ended, Shirley returned to steady residence in California and reengaged in law practice in the company of her husband, distinguished attorney Seth Hufstedler, Shirley’s partner in life for sixty-seven years. Shirley described Seth this way: “He is a very, very kind man. A man cannot be very kind unless he is also very strong.”⁸

As a highly regarded attorney, Shirley Hufstedler was a proponent of sensible, workable change in the way courts are structured and operate. Among other things, she advocated nuclear arms control and worked diligently to establish closer relationships with our counterparts in former Eastern Bloc nations. And she chaired the United States Commission on Immigration Reform in 1996 and 1997. Of that effort, I wrote to Shirley: “Immigration reform is a daunting assignment, but the job could not be in steadier hands.”⁹ She also served on an assortment of boards, advisory councils, and visiting committees, running alphabetically from the Aspen Institute to West Point. She graced several law schools as a distinguished visiting professor, fellow, or guest lecturer. She was the recipient of high awards and honorary degrees by the dozens.

Former American Bar Association President Martha Barnett, the first woman to hold that office, spoke in praise of Shirley in 1995, relating that she was an enthusiastic grandmother, gardener, cook, and mountaineer.¹⁰ In her world travel as in her work as a jurist, Martha Barnett said, Shirley Mount

5. Phyllis Theroux, *The Judge Goes to Washington*, N.Y. TIMES MAG., June 8, 1980, at 41, 102.

6. *Nomination of Ruth Bader Ginsburg, to Be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary*, 103d Cong. 387-93 (1993) (statement of Judge Shirley M. Hufstedler).

7. Letter from Judge Ruth Bader Ginsburg to Shirley M. Hufstedler (July 25, 1993) (on file with author).

8. Theroux, *supra* note 5, at 104.

9. Letter from Justice Ruth Bader Ginsburg to Shirley M. Hufstedler (June 3, 1997) (on file with author).

10. Letter from Martha W. Barnett to Am. Bar Ass’n (Mar. 24, 1995) (on file with author) (nominating Shirley Hufstedler for the 1995 ABA Medal Award).

In Memory of Shirley Mount Hufstedler
69 STAN. L. REV. 611 (2017)

Hufstedler avoided “the beaten path” and instead “chose to traverse some of the most difficult and treacherous terrain imaginable.”¹¹

The *New York Times Magazine* reporter who interviewed then-Secretary Hufstedler in 1980 fixed on a comment the Secretary made as her limousine, cutting through Rock Creek Parkway, passed a hill covered with daffodils. “They last such a short time,” Shirley mused. “But they must think it’s worth it to make a brilliant show in exchange for curling up . . . the rest of the year.”¹² The Honorable Shirley Mount Hufstedler never made that exchange in her own life. She continued, each day, through every season, to make a brilliant show.

11. *Id.*

12. Theroux, *supra* note 5, at 104.