

Shirley M. Hufstedler: The Long Reach of a Legal Life

BY KATHLEEN TUTTLE*

EDITOR'S NOTE: "Appreciations" is an occasional column noting the passing of California jurists and attorneys who made particularly significant contributions to the state's law and legal community.

A GREAT DEAL HAS been and will be said of the Hon. Shirley M. Hufstedler, the path-breaking former judge of the Ninth Circuit Court of Appeals, later the nation's first cabinet-level secretary of education, who died at the age of 90 on March 30, 2016. Tribute is paid here to a singular quality of hers voiced by so many upon her passing: her lifelong commitment to mentoring, teaching, and befriending generations of young California lawyers. That commitment and her accomplishments were celebrated on May 7 at Caltech's Athenaeum, where many Los Angeles legal luminaries gathered in her honor.

Second District Appellate Justice Dennis M. Perluss was among the several who spoke. His memories of Shirley Hufstedler date to the fall of 1971 when he began his second year at Harvard Law School. Hufstedler, relatively new to the Ninth Circuit (she was appointed in late 1968), had been invited to judge the Ames Moot Court Competition along with U.S. Supreme Court Justice Harry Blackmun and Second Circuit Judge James Oakes. "There was a buzz afterward about how extraordinary she was," Perluss recalled, noting how different the times were: just 10 percent of Harvard Law students then were women and the faculty was all male. Judge Hufstedler was then the only woman on the federal appellate bench anywhere in the country.

Upon graduation in 1973, Perluss began a clerkship with Hufstedler. "I was able to spend a year working at her elbow." Her hallmark traits included, the importance of thorough preparation, the underappreciated art of listening and, most significantly, the belief that while judges apply neutral principles to arrive at a result, they can and should be aware of, or at least mindful of, the impact their ruling may have. "They needn't be completely bereft of human compassion," Perluss noted.

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That was a departure from legal convention.

Perluss still remembers a case that prompted a particularly lengthy and compelling dissent from Hufstedler. It involved the government's warrantless interception and recordation of a private telephone conversation, raising the question of whether the Fourth and Fourteenth Amendments had been abridged. Hufstedler's dissent enunciated the primacy she placed (except in

unusual circumstances) on confidential communication and privacy in a free and open society. She concluded that the electronic surveillance violated petitioner's justifiable expectations of privacy, and cautioned that, "The fate of any one man enmeshed in the criminal process is never inconsequential."

After a second clerkship (with U.S. Supreme Court Justice Potter Stewart), Perluss joined the Los Angeles firm of Beardsley, Hufstedler & Kemble, founded by Shirley's husband (and partner in most everything), Seth Hufstedler. Shirley also joined the firm when her term as secretary of education ended following President Jimmy Carter's reelection defeat in 1980. As law partners, she and Perluss handled a number of cases together. Other than the year he clerked at the U.S. Supreme Court, Perluss remained in what might be termed the "Hufstedler orbit" from 1973 until he was appointed to the bench in 1999.

What explains this long association that began at a law school competition so long ago? For Perluss, there was richness in knowing the Hufstedlers. Not only were they gifted lawyers; they were naturally curious people who loved to learn and grow. They had an "extraordinary willingness to share life experiences, whether it was a good book, a hike, or an intriguing symposium." Moreover, their dedication to service — to the legal profession, the community and the nation — was contagious.

Los Angeles Superior Court Judge Helen I. Bendix, who clerked for Hufstedler in 1976-77, also attended the May 7 celebration and later shared her memories of the judge. Bendix's clerkship origins were unorthodox. By the start of her third year at Yale Law School, she had become friends with Pierce O'Donnell, an LLM student who had, in the two preceding years, clerked for Judge

Hufstedler and then for U.S. Supreme Court Justice Byron White. “Pierce asked me if I wanted to meet Shirley Hufstedler” who happened to be at Yale on business. They met in the law faculty lounge after hours. Bendix recalls that she brought brownies she had baked and was dressed like a student. O’Donnell made introductions, then left Bendix and Hufstedler; the two talked informally for about an hour. Shortly thereafter, Judge Hufstedler phoned Bendix to offer her a clerkship. “Only then,” Bendix said, “did it occur to me that that casual conversation constituted my clerkship interview.”

“She took such a strong interest in the development of me as a lawyer and a whole person...that was startling to me,” Bendix reflected. Whether cases heard that year concerned water law, civil rights class actions, antitrust conspiracies, corporate securities fraud, or criminal procedure, Hufstedler’s probity and innate sense of fairness were always evident. One case involved the denial of disability benefits to a lone person without status or clout. Hufstedler asked Bendix to draft a dissent. It became the majority opinion, holding that the appellant *was* eligible for disability benefits, and reversing and remanding the judgment.

Bendix’s husband, John Kronstadt (now a federal District Court judge in Los Angeles), was clerking the same year for Judge William P. Gray of the Central

District, a good friend of the Hufstedlers. They all became social friends. Dinners at the Hufstedlers were hands-on affairs. Shirley cooked numerous courses, made elaborate table centerpieces with flowers from their garden, and entertained afterward by playing the piano. The two women remained close in the decades that followed, attending many family celebrations, including Bendix’s swearing in as a judge in 1997.

Both former law clerks still marvel at Hufstedler’s breadth of interests. She was a Caltech trustee for nearly four decades, champion of Jet Propulsion Lab’s scientific endeavors, member of the Harvard Board of Overseers, veteran trekker in the Himalayas, enthusiastic gardener, board member of the Carnegie Endowment for International Peace, accomplished pianist, and voracious reader. “Yet,” Bendix noted, “she was not a dilettante, she didn’t just collect titles. She was actively involved and contributed.”

These are but two examples of the impact Judge Hufstedler had on lawyers who followed in her footsteps. Last May, however, the sizable Athenaeum courtyard was filled with middle-aged lawyers reminiscing about how, in their youth, Shirley Hufstedler had helped them to become better at the law, better at life, and closer to making a positive impact in the world. ☆



Official photo of the Ninth Circuit (with signatures) for the year 1973–74, during the clerkship of Justice Dennis M. Perluss. TOP ROW, L TO R: J. Clifford Wallace, Herbert Y. Choy, Eugene A. Wright, Walter Ely, Shirley M. Hufstedler, Ozell M. Trask, Alfred T. Goodwin, and Joseph T. Sneed. BOTTOM ROW, L TO R: James R. Browning, Charles M. Merrill, Richard H. Chambers (chief judge in 1973 when this photograph was taken), M. Oliver Koelsch, and Ben C. Duniway.

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