

## CHIEF JUSTICE SHIRLEY ABRAHAMSON WISCONSIN SUPREME COURT



BY ANN  
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Chief Justice Shirley Abrahamson was my close friend and colleague on the Wisconsin Supreme Court. We worked together for 24 years, until her retirement in 2019. She passed away on Dec. 19, 2020, at age 87.

Shirley's life journey began as the daughter of shopkeepers, immigrants from Poland with modest means who learned to speak English on the streets of New York. She rose to become a trailblazing jurist of national acclaim.

At the end of her 43-year tenure on the Wisconsin Supreme Court, she was not only the longest-serving justice in Wisconsin history, but also the lon-

gest-serving state court justice in the nation. She participated in over 3,500 cases and authored 535 majority opinions, 493 dissenting opinions, and 326 concurring opinions.

Her written opinions, however, tell only part of the story of her legacy. Shirley was a prolific author and scholar, writing countless law review articles that influenced the development of the law. She was awarded 16 honorary degrees and was selected as one of the 100 most influential jurists in United States history, dating as far back as United States Supreme Court Chief Justice John Marshall.<sup>1</sup>

ABOVE: SHIRLEY ABRAHAMSON AT HER 2019 RETIREMENT EVENT IN THE WISCONSIN STATE CAPITOL, SURROUNDED BY WISCONSIN'S GOVERNOR AND FIRST LADY, THE LIEUTENANT GOVERNOR, AND MEMBERS OF HER FAMILY. (PHOTO BY AMBER ARNOLD, *WISCONSIN STATE JOURNAL*.)

The many awards she received include the American Judicature Society's inaugural Dwight D. Opperman Award for Judicial Excellence; the American Bar Association's John Marshall Award in recognition of her dedication to improving the administration of justice; and the National Center for State Courts' Harry L. Carrico Award for Judicial Innovation for serving as a national leader in safeguarding judicial independence, improving inter-branch relations, and expanding outreach to the public.

But Shirley Abrahamson's enduring legacy exists not just in statistics, accolades, and awards. Rather it lies in her innovations in judicial administration, her significant contributions to the development of the law, and the indelible impression she left on the hearts and minds of so many who look to her with admiration and gratitude.

At her retirement event in 2019, which filled several floors of the Wisconsin State Capitol rotunda, United States Supreme Court Justice Ruth Bader Ginsburg in recorded video remarks said of Shirley: "Among jurists I have encountered in the United States and abroad, Shirley Abrahamson is the very best. The most courageous and sage, the least self-regarding."

I remember thinking when I heard those words that it must have been Justice Ginsburg who wrote the remarks about her longtime friend, because any staffer to Justice Ginsburg likely would have equivocated, saying "one of the best" or "among the best." But this was full-throated praise: "the very best."

Justice Ginsburg continued: "In her 40 years and more on the Wisconsin Supreme Court, as Justice, then Chief Justice, she has been ever mindful of the people — all of the people — the law exists, or should exist to serve. . . . As a

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lawyer, law teacher, and judge, she has inspired legions to follow in her way to strive constantly to make the legal system genuinely equal and accessible to all."

From the environs of a child in New York City to the pinnacle of the legal profession, Shirley Abrahamson developed a profound commitment to equal justice, accessible to all. Perhaps this was informed, in part, by her early personal experiences.

Her family's temporary move to New Jersey when she was in grade school illustrates a challenge that sheds light on the Shirley Abrahamson that was to become. When I asked Shirley in a recorded interview what she remembered about New Jersey, she recounted: "I remember that I wanted a library card. That seemed quite easy to me, because I had a library card in New York City. And so my mother and I went to the public library, but I couldn't get a card because my parents didn't

own property. You see, your family had to own property to get a library card. That meant my father had to take off work and go to the landlord to get a letter, and that was not an easy thing. First, he had to find him and then persuade him to write a letter saying that we paid our rent and were responsible people. Like a lot of landlords then, he did not have a secretary. But the landlord agreed to write a letter and I got my card."

Shirley explained that she "felt that my family was put into this second-class position. . . . My father was running a successful grocery business, paid his bills, and why I couldn't get a library card. . . . It just didn't make sense . . . and it didn't seem fair."

The example of a system that failed to provide equal access for all played out in another setting later in Shirley's young life. Shirley graduated college from New York University, magna cum laude, in 1953. Having skipped a few grades, she embarked upon her law school education at age 19.

As the only woman in her law school class, Shirley graduated at the top: She was first in her class at Indiana University Law School. Typically, the top graduate could expect a bevy of offers from law firms, but Shirley Abrahamson was no typical graduate. She was a woman and she was Jewish. The dean of the law school advised her that she should expect no offers from law firms, but he would try to help her get a job as a law librarian. Shirley had other ideas.

Upon moving to Wisconsin with her husband, Seymour, Shirley earned her SJD in legal history at the University of Wisconsin Law School and proceeded to add more "firsts." She was the first woman lawyer hired by a private firm in Madison, the first woman justice to serve on the ►

Wisconsin Supreme Court, and its first woman chief justice. And the list of firsts goes on.

What fueled Shirley as this trailblazing lawyer, justice, and chief justice? Justice Ginsburg nailed it when she spoke of Shirley's commitment for providing a legal system that is genuinely equal, regardless of status in life, and a system that is accessible to all. Add to the mix Shirley's brilliance and her work ethic. My former colleague Justice Janine Geske describes Shirley Abrahamson as "the hardest-working and smartest person I ever met."<sup>2</sup> With passion, energy, and brilliance, Shirley traveled the state and the nation sharing her commitment and spreading her message.

Her efforts were reinvigorated in 1996 when she became chief justice of the Wisconsin Supreme Court. United States Supreme Court Chief Justice William Rehnquist administered the oath to her before a crowd of 1,200 at the state capitol in Madison. At that ceremony she told those gathered, "To ensure a truly just legal system, one that reflects the history and hopes of this state, there must be greater public participation in the justice system."

Now, as chief, Shirley was off and running, because integral to her holistic concept of judicial administration was her resolve to engage the public in the court system. She was the queen of outreach for the courts. Where two or more were gathered to improve our system of justice, Shirley was there. In response to speaking requests, some on the court — myself included — would assess the anticipated size of the group, the travel distance involved, and our relationship to its purpose. No distance was too great or crowd too small in Shirley's quest to get the public more involved in the courts. These efforts to demystify the



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courts were anchored in her belief that the cachet of the courts depended on public trust and confidence in the system.

Among the many examples of her work to advance access to the courts, Shirley encouraged the establishment of pro se clinics in venues throughout the state. She developed a statewide Volunteers in the Courts initiative, which grew to a network of almost 5,000 volunteers. It provided volunteers an opportunity to understand

and appreciate how courts operate and gave the community a tangible stake in its court system.

The programs Shirley developed brought both the people to our court and our court to the people. With the popular Justice on Wheels program, we travel around the state to hear cases and meet with students and members of the community. An award-winning Court with Class program has brought tens of thousands of students to the state capitol over the years to hear oral arguments and to meet with a justice to discuss the court system. And if that wasn't enough, she strongly supported opening wide the doors to our administrative conference to allow the public to observe the justices debating and making administrative decisions. The Wisconsin Supreme Court was the first in the nation to open its administrative conferences to the public, which were televised statewide via a public access portal.

Shirley's efforts in enhancing judicial administration expanded as she assumed national leadership positions. She was elected president of the Conference of Chief Justices, which endeavors to promote reforms in state court administration. She also served as chair of the Board of Directors of the National Center for State Courts, which works closely with the conference, providing education and services to state courts.

But Shirley's influence in court administration reached beyond the courts of our sister states. As chief justice, she partnered with the leadership of the Wisconsin Tribal Judges Association to hold the first ever tribal court-state court conference in Green Bay, Wis. Featured at the conference were the state court-tribal court jurisdictional protocols that were developed as a result of an opin-



ion authored by Shirley.<sup>3</sup> Also featured as a national model was the Wisconsin State-Tribal Justice Forum, which Shirley instigated, consisting of state court judges and tribal court judges who would meet regularly to discuss and address inter-court relationships and issues.

Shirley's outreach efforts were often multipurpose. She had an uncanny ability to transform the mundane and ordinary into the extraordinary. As chief justice, she assigned herself to a one-week stint of presiding over small claims court in Milwaukee, and then turned her experience into a keynote speech at the annual conference of the American Law Institute, and subsequently both a named lecture and an article.<sup>4</sup> Likewise, Shirley traveled around the state telling her "Tootsie the Goldfish" story, which she created to teach statutory interpretation to students of all ages. It, too, was transformed into an educational aid for teachers and a journal article.<sup>5</sup>

Shirley was the engine behind a variety of innovative programs, of which I have highlighted only a few. Her efforts inspired others in Wisconsin and nationwide. Several of her programs were used as national models of modern-day judging and judicial administration.

I focus on Shirley's substantial contributions to judicial administration because the information is less readily available in one place for readers to access. Additionally, to discuss her impact on the development of the law over her 43 years of opinion writing and multitude of lectures and articles would take more space than this article allows.

Rather than undertake this herculean task, I instead refer the reader to [shirleyabrahamson.org](http://shirleyabrahamson.org), a website that commemorates Shirley's endur-

ing legacy.<sup>6</sup> There, the reader can find citations to her opinions in a variety of topic areas, which include criminal law, election law, public records, separation of powers, and new federalism.

I highlight only the last of this illustrative list — new federalism. Beginning in the 1980s, Shirley Abrahamson was a pioneer in the movement to revitalize state courts, giving renewed recognition to their significance. Part of this revitalization focused on giving birth to the renaissance of state constitutional law. Under new federalism, state courts may look to their state constitutions as providing greater protections of individual rights than the protections found under the federal constitution.

In a 1982 law review article on new federalism, Shirley concluded by invoking the words of an 1855 Wisconsin Supreme Court case, written only seven years after the adoption of the state constitution. The excerpt provided a foundation for her message in Wisconsin: "The people then made this constitution, and adopted it as their primary law. The people of other states made for themselves respectively, constitutions which are construed by their own appropriate functionaries. Let them construe theirs — let us construe, and stand by ours."<sup>7</sup> She suggested that the sentiment expressed may serve other states as well.

Shirley also predicted a renaissance of new federalism coming to the fore in the 1980s: "In view of the recent decisional trends of the United States Supreme Court . . . litigants will become more and more dependent upon their state courts in matters of civil liberties than they have in the recent past."<sup>8</sup> Perhaps Shirley was just a few years ahead of her time.

For those of us who look to Shirley Abrahamson with admiration and

gratitude, we say, "Brava, Shirley" for her wit, wisdom, leadership, tenacity, and devotion to the law.



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Among other positions, she currently serves as the chair of the board of trustees of the International Association of Women Judges.

- <sup>1</sup> John R. Vile, *Great American Judges: An Encyclopedia* 1-7 (2003).
- <sup>2</sup> Janine P. Geske, *Reflecting Upon an Extraordinary Career on the Wisconsin Supreme Court*, *Marquette Lawyer*, 62, 63, <https://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2019-fall/2019-fall-full.pdf> (2019).
- <sup>3</sup> *Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians*, 2003 WI 118, 265 Wis. 2d 64, 655 N.W.2d 899.
- <sup>4</sup> *Hallows Lecture of Chief Justice Shirley Abrahamson*, *Marquette Law*, 38, <https://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2004-summer/hallows-abrahamson.pdf>, (2004).
- <sup>5</sup> Shirley S. Abrahamson, *How Tootsie the Goldfish Is Teaching People to Think Like a Judge*, 21 *Judges J.* 12 (1982).
- <sup>6</sup> The website, established by The Chief Justice Shirley S. Abrahamson Legacy Committee, is dedicated to "preserving the legacy of Wisconsin's first woman justice," and contains a multitude of resources. In addition to referencing some of Shirley's opinions, it also provides details about her biography, a traveling exhibit, quotes, educational aides and further research.
- <sup>7</sup> Shirley S. Abrahamson, *Reincarnation of State Courts*, 36 *SW. L. J.* 951 (1982) (citing *The Attorney General ex rel. Bashford v. Barstow*, 4 Wis. 567, 758 (1855)).
- <sup>8</sup> *Id.* at 959.