

**Florence Ellinwood Allen**

by

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## I. A Woman of Firsts

Among pioneers in women's rights, Judge Florence Ellinwood Allen accomplished one of the most impressive records of any woman lawyer in the 20th century. Yet, at a time when women are entering the legal profession in record numbers, arguably few new attorneys know who this trailblazing woman was. An active suffragist and peace activist, Florence Allen in 1934 became the first woman to sit on an Article III federal court, a position that represents one of the pinnacles of success in the legal profession. By the year 2000, about twenty-five percent of all federal judges will be female. During much of the 1930s and '40s, however, Florence Allen was the only one.<sup>1</sup>

On numerous occasions, Judge Allen broke barriers, paving the way for thousands of women lawyers to follow her. In 1919, she became the first woman appointed to be assistant county prosecutor. In 1920, she became the first woman elected to be a judge, when she won a race against nine male opponents for a Court of Common Pleas judgeship in Cleveland, Ohio. In 1921, she was the first woman to preside over a murder trial with women sitting on the jury and the first woman to sentence a man to death.

In 1922, the voters of Ohio elected her the first woman to sit on a state supreme court. In 1934, she became the first woman appointed to an Article III federal court, when President Franklin Roosevelt nominated her to the Sixth Circuit Court of Appeals, covering Michigan, Kentucky, Tennessee, and her native Ohio. In 1959, she became the first woman to be chief judge of a federal circuit court.

During her lifetime, she acquired wide-spread acclaim and traveled the world, promoting women lawyers in other countries. By 1923, one writer declared her to be the most famous woman judge in the world.<sup>2</sup> Throughout the 1930s, '40s, and '50s, presidents considered her for the Supreme Court, although persistent sexism and the inability to envision a woman justice may have denied her that final "first."

Through all her great accomplishments, Florence Allen gave credit to the women's movement for her success. Women during her time and even today have returned the favor. One friend wrote in 1938 that "[a]ll the women lawyers, big and little, down to the newest graduate, take great courage from the things that you have done and the honors shown to you. It is sort of a vicarious glorification of all of us."<sup>3</sup> More recently, the newest woman appointee to the Sixth Circuit, Judge Karen Nelson Moore, described Florence Allen as a model for women throughout the country, and a model for presidents to think of women as potential judges. Every movement needs a pioneer, and she was a fitting person to fulfill that role.<sup>4</sup>

Judge Allen opened many doors during her lifetime for women lawyers. This paper is a brief account of the life of this woman, whose drive, ambition, and persistence made these accomplishments seem almost effortless.

## II. Florence Allen the Woman

Although Judge Allen's public life was well documented by the press, less is known about her private life. Even in her diary, as she became more famous, her entries deal less with her personal feelings and more with events. This paper can only provide a glimpse at who this woman was behind her public persona, perhaps leaving to future students to discover more about her private life.

In personal appearance, one writer described Judge Allen as "physically large compared to her peers, taller than average, well proportioned, poised, and confident in her manner."<sup>5</sup> Interviewers characterized her style of speaking as direct, dignified, reflective, and natural. Another writer praised her as "mentally vigorous, daring, cool, thoroughly honest, and less swayed in office by partisan or material considerations than most men."<sup>6</sup>

Given the hostility she faced by some men in the profession, she had a way of putting at ease those people who were uncomfortable with the idea of a woman judge. When she joined the Supreme Court of Ohio, one of the judges was "outraged" that he would have to work with a woman. Over the years, however, she won him over enough to be friends, though she never persuaded him that women should enter the profession.

When she first arrived for a meeting with her colleagues on the high court, she sensed "a certain uneasiness among the men." She was perceptive enough to identify the cause of their discomfort and told them that, although she herself did not smoke, they should feel free to do so themselves. The tensions then quickly diminished, as the male judges began smoking their pipes and cigars as they apparently had done before.<sup>7</sup>

She did not always have this confidence, however. She said that during the year she spent at Chicago University Law School, she felt very "shy" and awkward, particularly when her hundred male classmates would stand aside to allow her to enter classrooms first. When she was a little girl, she once worried about giving a speech to a debating society. Her mother's advice was simple and straightforward: "[D]o not begin by apologizing and saying what a poor speaker you are. If you are, they will soon know it. Make your point and sit down."<sup>8</sup> Florence said she followed that advice throughout her life. It apparently helped her during one law school summer break when she gave 92 speeches in Ohio's 88 counties in support of women's suffrage. One of her many talents appears to be her ability to project an image of confidence in the face of adversity.

## III. Childhood and Early Education

Florence Allen was born in Salt Lake City, Utah, on March 23rd, 1884. She was the third of seven children: four sisters, Esther, Helen, Elizabeth, and Kate (who died in infancy), and two brothers (Emir and Jack). Her father, Clarence Emir Allen, had moved out to Salt Lake City from Ohio for health reasons and was not expected to live. He recovered, however, and went on to win a seat in Congress in 1895 when Utah was admitted as a

state. Her mother, Corinne Tuckerman, was one of the first students to matriculate at Smith college, although she never finished to graduate.

Both of Florence's parents were supportive of women's rights and social justice causes in general. When Florence was eleven, her mother brought her to see Susan B. Anthony during a celebration when Utah became the second state to grant suffrage to women. Her father, for his part, introduced worker's compensation, eight-hour days, and six-day work weeks for his employees at a Utah mine and later promoted these causes as a legislator. Emir Allen also supported his daughter's political campaigns and was proud of her accomplishments.<sup>9</sup>

Throughout Florence's childhood, her parents emphasized giving their children a good education. When Florence was five, her family did not have much money, but her sisters and she wanted to give her father a present for his birthday. Florence's gift was to recite to him the alphabet, in Greek. As early as seven, she could read both Greek and Latin; at age nine, she was taking exams on ancient writers such as Cicero. On at least one such test, she exhibited some of the directness for which she later became famous: When asked "what was the nature of the Catilinarian conspiracy?," she wrote simply that "The nature of the Catilinarian conspiracy was bad and bloody."<sup>10</sup>

She acquired the nickname "Jo," although its origins are in dispute. According to her autobiography, her sisters and she would pretend to be characters from Greek mythology. Invariably, her sisters would choose to be goddesses, while Florence would play "Jove," the male leader of the gods. "Jove" later became shortened to "Jo." Another author claims, however, that "Jo" is a literary reference to the character Jo March in *Little Women*.<sup>11</sup> Either way, Florence had a fondness for taking roles in plays and games that involved bravery, heroism, and leadership, in other words, the roles usually assigned to men in those days.

Her grandfather was a famous teacher back in Ashtabula, Ohio, and when her father was elected to Congress, she moved there for an education. In 1900, she attended the College for Women at Western Reserve University, graduating in 1904 with honors in music. Her concern for social justice was already in practice in college, when she resigned a position in a Democratic women's group following statements made by one of President Woodrow Wilson's Cabinet members in support of compulsory military service. During this time, Florence also became an accomplished pianist.

After college, Florence lived for two years in Berlin with her mother and one of her sisters, while working as a journalist. She had wanted to be independent following graduation, but her father "insisted . . . on sending the family abroad, to have his daughters study music in Berlin; and much against her will [Florence] had to go along with the rest."<sup>12</sup> She disliked Germany and was happy to return to the United States in 1906. For the next three years, she taught at a Cleveland school, wrote music reviews for the *Cleveland Plain Dealer*, and pursued a Master's Degree in Political Science at Western Reserve.

#### IV. Law School in Chicago and New York

While she was pursuing her Master's Degree, one of Florence's professors suggested she study law, which she describes as "like a revelation from on high."<sup>13</sup> The fight for suffrage also motivated her, because she believed that "there were more important issues in life than piano playing."<sup>14</sup> She spent one year at the University of Chicago Law School, ranking second in her class and winning the admiration of her male classmates, who said she had a "masculine mind." Apparently, she was unhappy in Chicago, however, and wrote in her diary that she felt "blue." When Francis Kellor, the head of the New York League for the Protection of Immigrants, invited her to come to New York to work with that organization, she accepted and moved east in 1911. Although she wanted to attend Columbia, the school would not admit women for regular enrollment, so she attended New York University Law School instead. Even in the 1910s, N.Y.U. had a strong representation of women, with 80 female students out of its 650 total enrollment. In fact, in 1914, when 606 women were attending law school nationwide, about one in seven (or 82 students) went to N.Y.U.<sup>15</sup>

Because of financial and health problems (particularly with her eyes), Judge Allen eventually quit her job with the immigrant group. In 1913, she graduated from the law school, once again placing second among her classmates. She passed the Ohio bar the following year, earning the seventh highest score of all test-takers.

#### V. Florence the Suffragist

During her time at N.Y.U., Florence was actively involved in suffrage campaigns, both in Ohio and across the country. In 1911, Maud Wood Park, then head of the National College Women's Equal Suffrage League, picked Florence to be her assistant secretary. Her work with Maud gave her "fine training" that helped her in later campaigns.<sup>16</sup> In 1912, Florence became actively involved in an Ohio referendum to grant women the right to vote. She toured every county in the state, sometimes only meeting with a few women, to encourage them to support the campaign. During this time, she also learned to deal with hecklers, a useful skill for later political campaigns.

This and subsequent statewide suffrage efforts lost in Ohio, however, and women there did not gain the right to vote until 1920 with the passage of the Nineteenth Amendment. Nevertheless, Florence felt that she "would not swap the suffrage experience for anything else in [her] life."<sup>17</sup> As a judge, Florence looked back fondly on this time and worked with other women to preserve the history of the women suffragists, particularly those in Ohio. In later years, she expressed amazement at what these women had been able to accomplish:

The fact that the movement was carried on by women who, for the most part, had no money of their own and were totally inexperienced in organization, and that they won their fight in about two generations, makes a story often dramatic and always worth preserving.<sup>18</sup>

## VI. Life as a Young Woman Lawyer

After she graduated, Florence set up her own law office and volunteered at the Cleveland Legal Aid Society, in part because no firm would hire a woman. Although she did not receive a pay check for her volunteer work, she felt that she gained a good deal of experience that she would not otherwise have had and later advised young women lawyers to offer their services "even without salary" to gain legal training.<sup>19</sup>

She described her office to a reporter as a small room with barely any furniture: It "consisted of one chair, on which I sat, and another chair on which my client was to sit, when I had any!" A friend later provided her with a table and a "rebuilt typewriter" so that the chairs would not look "too lonesome."<sup>20</sup> Her first client was a man, who paid her \$5 to draw up his will. Her first case was for an Italian woman who sued her husband for divorce after he deserted her and their children; Florence received \$15 from the woman's brother for this service. By the end of her first year, she earned \$875. She apparently made more money in later years, because when she became an assistant county prosecutor, she wrote that she had to take a pay cut, even though she was earning \$3,000 per year.<sup>21</sup>

Although she took a variety of cases, she felt "the most important work I did during those first years was for the women, in their efforts to obtain municipal suffrage."<sup>22</sup> In 1916, she argued successfully before the Ohio Supreme Court, persuading them to uphold laws granting women the right to vote in municipal elections in the cities of East Cleveland and Lakewood. She was also involved in other Ohio campaigns for suffrage and traveled to others states to campaign for women's right to vote.

Interestingly, she almost did not make it to her oral argument before the Ohio high court because of her travels across the country. At the time, she was campaigning for President Woodrow Wilson out west in Montana when she received word that the case was to be argued in two days. She implored the train conductor to rush back East, telling him that she had to argue before the Ohio Supreme Court and that the train could be held liable if it failed to arrive on schedule. Although the conductor was skeptical, he eventually believed her when she began receiving wires from Ohio about the case. In the end, Florence made it in time.<sup>23</sup>

By 1919, Florence "was known as the best woman lawyer in Ohio."<sup>24</sup> That same year, the Cuyahoga County Democratic Party boss asked her to become assistant prosecutor for the county, the first woman in the country to hold such a position. Her first case involved a "gang of burglars," against whom she won conviction. She wrote that the job required her to "be willing to work hard and . . . [to] learn to be very patient with people,"<sup>25</sup> suggesting that the work could be trying at times.

## VII. Judge Allen and the "Black Hand"

When women gained the right to vote in 1920, Florence decided to run for Court of Common Pleas judge in Cleveland because she felt it was "an opportunity to do much good, from a woman's point of view."<sup>26</sup> At the time, there were only 84 women attorneys in Ohio, out of 6,500 lawyers.<sup>27</sup> She received enthusiastic endorsements from Cleveland's liberal mayor and from local newspapers. In the end, she beat nine male opponents for the job and earned more votes than the three male judges who were also elected, in fact, she won "by the largest popular vote ever given a candidate for the bench in that county."<sup>28</sup> She credited the women's movement for her victory, although it is interesting to note that only one-third of the women eligible to vote actually cast a ballot in that election.<sup>29</sup>

The other judges at first tried to typecast Judge Allen, by asking her to handle family court proceedings. She refused, however, and insisted on doing the same work as the men. As she later remembered, "I didn't see why I should sit on the Domestic Relations Bench, when I am an old maid, and there are many fathers on the Bench."<sup>30</sup> One editorial writer mused that he had "certainly never expected to live long enough to hear a spinster decline appointment as a judge of a court of marital relations on the ground that she was ignorant of the subject."<sup>31</sup>

From the beginning, women served on juries in Judge Allen's court. In fact, she said she wanted to become a judge in part "[t]o stimulate interest among women in the administration of justice and particularly in jury service."<sup>32</sup> During her two years as a county trial judge, she observed that:

It is the consensus of opinion among the bench and the bar here that the women's service as jurors has been quite as satisfactory as that of the men. . . . Owing to the fact that leaders in the women's groups made a point of serving on the jury here whenever they were called, we have always had an unusually high type of women represented on the jury.<sup>33</sup>

In 1921, with two women on the jury, she tried the infamous "Black Hand" case, in which a crime boss was charged with first-degree murder. The judge received threatening letters from the defendant's gang, telling her that the day the crime boss died, so would she. The letters included "several black outlines of a hand."<sup>34</sup> Throughout the trial, however, she "preside[d] with unruffled clam."<sup>35</sup> Police provided protection to the judge, but the proceedings had only one "incident," in which the judge had several men in the audience arrested for bringing guns into the courtroom. In the end, the boss was convicted and sentenced to the electric chair, the first time a woman in this country issued a judgment of the death penalty. Judge Allen felt that "capital punishment is a confession by society it does not know what to do with the criminal," yet she felt obliged to apply the law, even if that meant sentencing someone - man or woman - to death.<sup>36</sup>

In another prominent case, Judge Allen presided over the trial of the former chief judge of the Municipal Court in Cleveland. The chief judge was convicted for perjury in connection to a murder trial where he had been spotted at the scene of the crime with certain "disreputable" individuals. One witness even testified that judge himself shot the

victim. Judge Allen handled the case with dexterity, and one newspaper reported the dramatic scene when she sentenced the former judge to prison:

to his protest that the conviction had been unfair Judge Allen, rising behind the bench, replied soberly: 'You have had indeed a fair trial. It is a shocking thing when a judge of your high office is shown to have betrayed the truth and his honor, and I sentence you to the penitentiary.'<sup>37</sup>

During her two years on the bench, she presided over 892 cases and was only reversed three times by another court.<sup>38</sup> One contemporary observer noted that "[t]he sentences she has imposed have been strict, but in full conformity both with law and common sense, and certainly not diluted by the 'sentimentality' that it was predicted would follow woman's elevation to jury and bench." She viewed herself as a role model, by noting that

[I]t's so worth-while being a judge, because, if I make good, I can help prove that a woman's place is as much on the bench, in City Council, or in Congress, as in the home. This entrance of woman into other fields of activity can but demonstrate that her latent capabilities are unmined gold that the world cannot afford to be without.<sup>39</sup>

In the following decades, the world continued to enjoy the rich talents Judge Allen had to offer.

### **VIII. On the Ohio Supreme Court**

At age 38 in 1922, Judge Allen ran for the Supreme Court of Ohio on a non-partisan campaign, although her critics claimed "she would be a Democrat on the bench."<sup>40</sup> Even so, she received support from across party lines, "mostly from women" who formed "Florence Allen Clubs" to support her.<sup>41</sup> A number of pundits declared she had no chance to win, while others claimed that she legally could not win because women only had the right to vote and not to hold office. In the end, she won the second of two spaces open on the court, beating out six male candidates, some of whom had support from political parties. In fact, she received 50,000 votes over the man that came in third.

Her victory made her "the most famous woman judge in the world." Interestingly, Judge Allen believed that a woman could not reach this position by appointment: "Only by a direct vote of the people, can a woman reach the supreme Bench."<sup>42</sup>

Her election secured a liberal majority on the court.<sup>43</sup> She voted for a number of progressive causes, including workers' right, proportional voting, and peaceful picketing. She also ruled that a psychiatric exam was a matter of right for insane defendants.<sup>44</sup> During the 1920s, some critics accused her of being a "red," and, in fact, the Daughters of the Revolution put her on their infamous "black list" - rather ironic, given her staunch anti-communism in later years.

Despite being a woman of great legal ability, some reporters felt compelled to write about her hair. The Washington Post, in discussing her career path, made the observation that

"[f]ollowing her elevation to the State Supreme Court, she had her hair bobbed." Thirty years later, the paper remained fixated on her personal grooming, to the point of using it as a metaphor for her jurisprudence - rather than actually referring to any of her specific decisions: "Typical of Judge Allen's liberal viewpoint was her decision to bob her hair while a judge of the Ohio Supreme Court."<sup>45</sup>

During this time, Judge Allen actively made speeches for the growing anti-war movement, although she herself was not a pacifist and had supported U.S. involvement in World War I. Both of her brothers had died as a result of the war - Emir while overseas in 1918 and later Jack in 1924 from illnesses associated with his war injuries. Judge Allen felt she had lost both of her brothers to the war and that the conflict never would have happened "if women of the world had had the vote for the twenty previous years."<sup>46</sup> As part of these peace efforts, in 1925 she addressed a group in Washington D.C. on the "Causes and Cures of War," where she advocated changing the saying "The State can do no wrong" to "The State shall do no wrong."<sup>47</sup>

She won re-election in 1928, with a majority of over 350,000 voters. In that election, she received the endorsement of the NAACP, in part for a decision allowing a school board to forbid the exhibition of *The Birth of a Nation*. She would later lose the NAACP's support when she was being considered for a federal judgeship. Despite this, she was generally regarded as a liberal on the court.

Judge Allen became increasingly dissatisfied as tension and bitterness among the judges increased, to the point of revealing her discontent publicly. She also desired to be a legislator - a position that would always elude her. She ran unsuccessfully in the Democratic primary for Senate in 1926 and also lost a campaign for the House of Representatives in 1932 - the same year, ironically, when Democratic presidential candidate Franklin D. Roosevelt swept into office during the depths of the Depression.

## **IX. As a Federal Judge on the Sixth Circuit**

Judge Allen faced another re-election campaign in 1934 for the high court - a prospect she did not relish given her recent defeats at the polls. Fortunately, on March 6, 1934, President Roosevelt nominated her to a position that required no more elections for the rest of her life - a seat on the four-member Sixth Circuit Court of Appeals.<sup>48</sup> Despite the novelty of a woman federal judge, one newspaper reported that the decision came as "no surprise" back home in Ohio because she had proved herself to Ohioans through her stellar record on the state supreme court.<sup>49</sup>

When Sixth Circuit Judge Smith Hickenlooper died in late 1933, many influential feminists, including Maud Wood Park and Frances Perkins, campaigned on Judge Allen's behalf, writing letters in support of her nomination.<sup>50</sup> In fact, one woman, Carrie Chapman Catt, sent a letter to the head of the Democratic Party's Women's Division three days after Judge Hickenlooper's death, recommending Judge Allen for the vacancy. Her close friend and campaign manager, Susan Rebhan, helped to coordinate these efforts.

Even her colleagues on the Ohio Supreme Court put in a good word for her, saying she was a "good scout."<sup>51</sup>

The loudest opposition to her nomination came from the Cleveland and Cincinnati chapters of the NAACP. In her 1928 campaign for re-election to the state supreme court, Judge Allen had won the NAACP's support and was herself a member of the organization. In law school, she had refused to join a sorority when it would not admit a Jewish member. But when her name came up for confirmation, the local NAACP chapters spoke against her for her concurring vote in the case Weaver v. Board of Trustees of Ohio State.<sup>52</sup> In that decision, Doris Weaver, an African-American woman, sued Ohio State University when it did not place her in the same residence as white students in a housing arrangement/clinical course for the Home Economics major. The school offered her "similar, adequate facilities" apart from the white students and said that because students chose their own roommates, the school could not force the white women to live with a black woman against their will. The court agreed with the school, quoting Plessy v. Ferguson for support and noting that Weaver "has only been denied the social privilege [sic] of residing with white girl students and partaking in their family or communal life; of rooming, dining and sharing their common bathroom and toilet facilities."<sup>53</sup> The NAACP objected to this decision, although media such as the New York Times dedicated very little space to its complaints.

In the end, Judge Allen was confirmed unanimously by the Senate, although the head of Judiciary Committee forwarded her nomination to the floor "without enthusiasm." According to Attorney General Homer Cummings, "Florence Allen was not appointed because she was a woman. All we did was to see that she was not rejected because she was a woman."<sup>54</sup> The New York Times commented that, "[f]or better or for worse, woman is taking her place alongside of man in American public life."<sup>55</sup>

Her reception by her new colleagues on the Sixth Circuit was somewhat chilly. One judge "took to his sickbed for two days" in protest of her appointment. The male judges also frequently dined at clubs that would not admit women.<sup>56</sup> Even the building itself was hostile to a woman's presence: Judge Allen had to travel a long distance to use the women's restroom in the public area of the courthouse, and each chair in the conference room were equipped with "[c]ommodious spittoons."<sup>57</sup> Judge Allen persevered, nonetheless.

As a circuit court judge for the next three decades, Judge Allen worked very hard and was constantly busy with her work. She described her position as "a combination . . . of a monk and a traveling salesman. I shuttle back and forth between Cleveland and Cincinnati and have no life of my own in either city."<sup>58</sup> In 1938, she decided one of her most important decisions, in which she upheld the Tennessee Valley Authority, an important piece of FDR's New Deal legislation. She continued her work for peace and her interest in international law. She also traveled to other countries to discuss legal issues and women's entry into other nations' legal professions.

Although labeled as liberal, Allen described herself, somewhat paradoxically, as a "liberal conservative," while others described her as "middle-of-the-roadish." She identified with the liberal causes of her younger years, such as women's rights and peace, but became more conservative as time progressed and increasingly worried about communism.<sup>59</sup> Despite this trend in her politics, she always remembered the women's movement fondly and gave credit to that struggle for her accomplishments.

For the longest time, she was the only woman on the bench - appointments of other women were very slow in coming. The next woman was not appointed until fifteen years later, when President Harry Truman nominated Burnita Shelton Matthews to become the first woman federal district judge. Another woman did not sit on a federal circuit court until 1968, when President Lyndon Johnson appointed Shirley Hufstедler. During President Jimmy Carter's four years in office, the number of nominations increased, with ten women appointed to circuit courts and 28 to district.<sup>60</sup> In the 1990s, President's Clinton appointed more women than any other president, and by the year 2000, twenty-five percent of federal judges will be female.<sup>61</sup> With women becoming more and more present among the ranks of the federal judiciary, it may be easy to forget that during the 1930s and most of the 1940s, Florence Allen was the only one.

## **X. Candidate for the Supreme Court**

Presidents Roosevelt, Truman, and even Dwight Eisenhower considered Judge Allen for a Supreme Court nomination. The explanations of why she did not get an appointment are probably complex. Undoubtedly gender influenced the decision-making, despite assurances by Roosevelt, for example, that sex would not prevent a candidate from being nominated. Many of the men appointed had had more opportunities than Judge Allen, including educations at the most elite law schools, such as Yale or Columbia, which had not admitted women of her age as regular students.<sup>62</sup> Apparently, President Truman considered nominating Judge Allen but declined based on the negative reactions of the justices sitting at the time: They worried "that a woman's presence would inhibit their conference deliberations, where, with shirt collars open and shoes off, they decided the legal issues of the day."<sup>63</sup>

Through it all, her friends offered their support and encouragement. Eleanor Roosevelt spoke highly of Judge Allen, leading one of Florence's friends to comment that "[i]f [the First Lady's] spouse shows as good sense [as the First Lady has] when the next vacancy comes, I will agree that she showed marvelous judgment in selecting a husband."<sup>64</sup> In 1939, one newspaper erroneously claimed that Judge Allen was not selected because she was reversed so often on appeal, with one of the worst records of a prominent judge. Judge Allen was outraged at the criticism of her work, to the point of mentioning it in her autobiography almost 30 years later. At the time, she said she would "of course . . . do nothing about it," but her friend Catharine Waugh McCulloch took up the cause on her behalf, writing the Attorney General to set the record straight.<sup>65</sup> In fact, the judge had been reversed only twice on the Supreme Court of Ohio and once on the Sixth Circuit through that time. The Attorney General wrote back saying that the newspaper was in error and that he had "high regard for her ability and qualifications for judicial work." To

Judge Allen, however, "the malice behind the article was evident. They meant to kill me off forever."<sup>66</sup>

Despite feeling some disappointment, Allen herself doubted that she would be appointed to the Supreme Court, believing that no woman would reach the high court during her lifetime. In fact, it would be 15 years after her death, with the appointment of Sandra Day O'Connor, that a woman would reach the highest court. It took another 12 years before a president appointed a second woman to the high court - Ruth Bader Ginsburg, herself a tireless women's rights advocate.

In 1995, Justice Ginsburg gave a presentation to the Annual Conference of the National Association of Women Judges, honoring early women judicial pioneers such as Judge Allen. At the time, the organization had over 1,000 members, something unimaginable in Florence Allen's day.<sup>67</sup>

## **XI. Conclusion**

Judge Allen continued on the Sixth Circuit, eventually becoming the first woman Chief Judge in 1958. During these final years, the judge received numerous honors, including the establishment of a scholarship fund in her name at N.Y.U. Law School. In 1959, she took senior status and eventually retired from the court entirely six years later. In 1966, Judge Allen died of heart failure at the age of 82, leaving her house to her long-time live-in companion Mary Pierce. The New York Times reported that she had been in ill health since breaking her hip the previous year.<sup>68</sup>

Judge Allen was truly a pioneer and saw herself as a role model for other women entering the profession. She also always gave credit to the women's movement for the gains that she made and the accomplishments she achieved. She believed that women could have a profound effect on the world, both domestically and internationally, not just as individuals but as a group. She observed that,

You can hardly judge women's effect on politics merely from the action of individual women officeholders. . . . [I]t will take a long time for women's effect on politics to register so that we may properly appraise it. But the constant filtering into the home of information about government, through mothers now as well as fathers, is making itself felt.<sup>69</sup>

For those who remember her, Judge Allen was a remarkable woman and a source of inspiration for many others. Perhaps the best way to assess her legacy is to consider the words of one of her colleagues on the Sixth Circuit, who praised her for her years of service:

The heart and mind of Florence Allen will flame for generations as a beacon for thousands of young women who will take their rightful places in government, in the practice of the law, and in judicial service - and lawyers and judges yet unborn will read the words she has written, in the endless, ever-old and ever-new quest for justice.<sup>70</sup>

Thirty years after her death, Judge Allen remains a role model for those future generations.

### Notes from the Author

#### Unanswered Questions and Further Areas for Exploration.

I undertook this project as part of a semester-long course in Professor Barbara Babcock's Women's Legal History during the spring of 1997. By necessity, I could only delve briefly into the judge's life, covering the high points in her public career. Although I was unable to visit her collection of papers at the Western Reserve Historical Society in Cleveland, Ohio, I did find some of her letters, as well as interviews she did at various stages of her life.

Many questions remain for future students to explore, issues that are not fully dealt with in either her autobiography or other written materials on her life. For example, why did Judge Allen become a Democrat as a young woman, when her father was associated with Republican politics? What were some of the attitudes and circumstances that kept Judge Allen from ever being appointed to the Supreme Court? What was the judge's record on race - was Weaver an exception in her jurisprudence, or did it reflect a blind spot in the judge's quest for justice? Did she have a coherent judicial philosophy? What judicial legacy did she leave to the Sixth Circuit?

Finally, what was the nature of Judge Allen's relationships with her close friends Susan Rebhan, her campaign manager during the 1920s and '30s, and Mary Pierce, who lived with the judge during the last decades of her life? Susan was herself a lawyer, about the judge's age, who ran the judge's election campaigns until her death in 1935. Mary was a "distant" cousin and former school headmistress who lived with the judge and stayed at home to run the household. For awhile in the 1930s, all three women lived together in Cleveland. One biographer wrote that the women's "commitments to each other were deep and enduring, although each led a separate life and had an outstanding career;" the author also noted that "Susan and Florence were truly a remarkable pair." Over time, Mary's relationship with the judge "developed into a full-time role as companion and hostess." She would pack the judge's suitcase before trips and was in many ways like "the typical suburban wife" of the era. By the 1950s, the judge may have "sensed that her living arrangement [with Mary] might be considered odd [by the standards of the day], for she invariably explained that Mary, with whom she lived for more than thirty years, was a cousin, emphasizing, but never explaining, the blood relationship."<sup>71</sup>

These relationships were very important to the judge, and these women clearly served as close friends and companions, traveling with Florence and relocating with her when a case took her from their home. For the future author, I can only offer a little information about these women who meant a great deal to Florence, and all through materials found by other people. I have requested the Western Reserve Historical Society to send an index of the judge's papers, which future students could go through to find references to these women. In addition, researchers on Judge Allen could try to find a woman named

Joan Organ, a Case Western Reserve graduate student who is writing her thesis on the judge's life. Florence Allen revealed little of her personal life to the public, but a complete understanding of her necessarily requires examining the lives of those closest to her.

Future writers in this course might well consider researching Susan Rebhan's life - not only was she a tireless campaigner for the judge, but she also had her own legal career and ran her own campaign for Cleveland City Council - and won. She tired of politics after one term, however, and continued supporting the judge's political and career aspirations, including her nomination for a federal judgeship. Sadly, Susan died in 1935 at the age of 49 from intestinal influenza.

Finally, although I stressed throughout this paper that Judge Allen was a role model for women, I should note that she is equally a role model for men, too. Her persistence in the face of many obstacles is a lesson of value to any person, male or female. She never gave up on the causes she believed in and pursued them with vigor and energy. For anyone concerned with social justice, male or female, Florence Allen was a model of dedication and commitment to the progressive cause.

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### Endnotes

1. Editorial, 'The Clinton Courts', ST. PETERSBURG TIMES, Jan. 23, 1997, at 14A.
2. Allan Harding, 'The First Woman to Sit On a Supreme Court Bench,' THE AMERICAN MAGAZINE 19 (1923).
3. Letter to Florence Allen, from Catharine Waugh McCulloch (June 28, 1938).
4. Paul Hoffman & Craig M. Klugman, 'First Lady of the Law; The life and times of the trailblazing Florence Allen,' CWRU, at 61 (Aug. 1996).
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7. Florence Ellinwood Allen, TO DO JUSTLY 79 (1965).
8. Id. at 9.
9. 'Florence E. Allen Dies; Retired Federal Jurist,' WASHINGTON POST, Sept. 14, 1966, at B6 [hereinafter WASH. POST obituary]; Tuve, supra note [5], at 103, 129.
10. Harding, supra note [2], at 198.
11. Compare Allen, supra note [7], at 14 with Tuve, supra note [5], at 11.
12. Harding, supra note [2], at 198.
13. Allen, supra note [7], at 23.
14. Howard, supra note [6], at 2.
15. Tuve, supra note [5], at 23.
16. Letter to Mrs. [Maud Wood?] Park, from Judge Florence Allen (May 3, 1945). The letter refers to the "fine training" Maud Park gave Florence in Medina County,

presumably a reference to her work in the suffrage movement. Medina County, Ohio, is located southwest of Cleveland.

17. Letter to Mary Gray Peck, from Judge Florence Allen (Oct. 21, 1946).

18. Letter to the Ford Foundation, from Judge Florence Allen (May 23, 1960).

19. Survey Responses of Florence E. Allen, to the Study of the Vocational Application of Legal Training for Women (Mar. 12, 1920) [hereinafter Survey Responses, 1920]

20. Harding, supra note [2], at [?] (page number not provided).

21. Survey Responses, 1920, supra note [19].

22. Harding, supra note [2], at [?] (page number not provided).

23. Allen, supra note [7], at 36.

24. Howard, supra note [6], at 2.

25. Survey Responses, 1920, supra note [19].

26. Edith E. Moriarty, 'Woman Elected Judge,' INDEPENDENT WOMAN, Nov. 1920, at 11.

27. 'How Many Lawyers are There?' (1922) (based on 1920 census data) [located on microfilm for The Arthur and Elizabeth Schlesinger Library files, Bureau of Vocational Information, N.S. 10224, Reel 6, 1987],

28. Moriarty, supra note [26], at 11.

29. Tuve, supra note [5], at 55-56.

30. Percilla Lawyer Randolph, 'Judge Florence Allen,' WOMEN LAWYER'S JOURNAL 16 (Winter 1932); Harding, supra note [2], at [?] (page number not provided).

31. Allen, supra note [7], at 69 (quoting the Cleveland News, Jan. 1, 1921).

32. Elliot Field, 'Interesting People: The First Woman Judge of a Common Pleas Court Believes in 'Speeding Up Justice,' AMERICAN MAGAZINE (Oct. 1921).

33. Letter to Mrs. Burnita Shelton Matthews, from Florence E. Allen (Mar. 15, 1937), in Women Jurors in Federal Courts, Hearing to Amend Section 2 of the Act Approved June 30, 1879, So As to Permit Women to Serve on Juries in the Courts of the United States, Before Subcomm. No. 1 of the Comm. of the Judiciary, H.R. 3409, at 32 (Mar. 3, 1937).

34. The jury consisted of 10 men and 2 women, and a woman was chosen as foreman. Allen, *supra* note [7], at 56.
35. Harding, *supra* note [2], at [?] (page number not provided).
36. Randolph, *supra* note [30], at 17.
37. Howard, *supra* note [6], at 2.
38. 'Florence Allen, 82, First Woman On U.S. Appellate Bench, Dead: Ex-Chief Judge of 6th Circuit Also Served on Ohio Supreme Court,' N.Y. TIMES, Sept. 14, 1966, at 47 [hereinafter N.Y. TIMES obituary ]; Harding, *supra* note [2], at [?] (page number unavailable). Harding reports that Judge Allen presided over 600 cases. *Id.*
39. Field, *supra* note [32].
40. Tuve, *supra* note [5], at 64.
41. Ruth Bader Ginsburg & Laura W. Brill, 'Women in the Federal Judiciary: Three Way Pavers and the Exhilarating Change President Carter Wrought,' 64 FORDHAM L. REV. 281, 282-83 (1995).
42. Tuve, *supra* note [5], at 99; Randolph, *supra* note [30], at 15.
43. Tuve, *supra* note [5], at 92.
44. Evans v. Ohio, 123 Ohio St. 132 (1930).
45. 'Woman in Ohio First to Become Federal Judge,' WASHINGTON POST, Mar. 7, 1934, at 1, 2; WASH. POST obituary, *supra* note [9], at B6.
46. Tuve, *supra* note [5], at 48, 70.
47. Howard, *supra* note [6], at 2.
48. 'Florence E. Allen Named Federal Judge; First Woman to Get Place on Circuit Bench,' N.Y. TIMES, Mar. 7, 1934, at 9.
49. Howard, *supra* note [6], at 2.
50. Tuve, *supra* note [5], at 108-09.
51. 'Woman Named As U.S. Judge; First in History: Judge Allen Called a 'Good Scout,' CHICAGO D AILY TRIBUNE, Mar. 7, 1934, at 4.
52. 'Scores Rule on Racial Issue,' N.Y. TIMES, Mar. 14, 1934, at 11.

53. State ex rel. Weaver v. Board of Trustees of Ohio State Univ., 126 Ohio St. 290, 296-97 (1933).
54. Miriam Goldman Cedarbaum, 'Women on the Federal Bench,' 73 BOSTON UNIV. L. REV. 39, 45 (1993).
55. Editorial, 'Place Aux Dames,' N.Y. TIMES, Mar. 8, 1934, at 18. An editorial in the Washington Post commended President Roosevelt for choosing a woman who qualified on the merits but then went on to express concern about "one of the most amazing and socially undesirable developments" in recent times "the phenomenon of voting or appointing women because they were women." Editorial, 'Judge Allen,' WASHINGTON POST, Mar. 8, 1934, at 8.
56. Ginsburg, supra note [41], at 283.
57. Tuve, supra note [5], at 115.
58. Letter to Mary Gray Peck, from Judge Florence Allen (Oct. 15, 1946).
59. Tuve, supra note [5], at 126, 136, 196-97.
60. Ginsburg, supra note [41], at 286; Cedarbaum, supra note [54], at 40-42.
61. Ginsburg, supra note [41], at 288 (reporting that 54 of Clinton's 185 nominees for federal district court as of September, 1995, were women); 'The Clinton courts,' supra note [1], at 14A.
62. Tuve, supra note [5], at 125-26.
63. Ginsburg, supra note [41], at 283.
64. Letter to Florence Allen, from Catharine Waugh McCulloch (June 28, 1938).
65. See Letter to Catherine [sic] Waugh McCulloch, from Florence Allen (Apr. 13, 1939); Letter to Frank Murphy, Attorney General of the United States, from Catharine Waugh McCulloch (Apr. 17, 1939). See also Allen, supra note [7], at 112.
66. Id. at 112-13; Tuve, supra note [5], at 124-25.
67. Ginsburg, supra note [41], at 281.
68. N.Y. TIMES obituary, supra note [38], at 47.
69. Howard, supra note [6], at 2.
70. Allen, supra note [7], at 148.

71. Tuve, *supra* note [5], at 130-31, 190-91; WASHINGTON POST obituary, *supra* note [9], at B6.