



Hon. Florence Ellinwood Allen

U.S. Court of Appeals for the Sixth Circuit • A Judge of Many Firsts

by Michael J. Gabrail



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The life and career of Judge Florence Ellinwood Allen is inspiring on many fronts.

Born in Salt Lake City, Utah, on March 23, 1884, Judge Allen showed a high level of intellect at an early age.¹ Her father served as a congressman after Utah became a state in 1896; and her mother served in a number of organizations, including the Congress of Mothers and the State Federation of Women's Clubs.²

After graduating from Western Reserve University (now Case Western Reserve University) in 1904 in Cleveland, Judge Allen spent two years in Germany studying piano with the hope of becoming a professional pianist. That dream was dashed after a nerve injury.³ Undaunted, Judge Allen chose a different path in life.

After returning to Cleveland, Judge Allen began teaching at the Laurel School while also attending classes at Western Reserve, graduating with a master's degree in political science and constitutional law.⁴ Because of Western Reserve's refusal to admit women into its law program, Judge Allen chose to attend the University of Chicago Law Department in 1909.⁵ Although she entered as the only woman in her class, by the end of the 1909 school term, Judge Allen was second academically out of all the students in her class.⁶

Ultimately, Judge Allen graduated from New York University School of Law in 1913.⁷ Having returned to Cleveland to begin a law practice, Judge Allen found her new goal challenged by, once again, her status as a female in early 20th century America: law firms would not hire her because she was a woman.⁸ Judge Allen persisted and fought discrimination. After starting her own solo legal practice, Judge Allen ultimately earned enough respect to be appointed as an assistant prosecutor of Cuyahoga County in 1919.⁹

At that time, women did not have the right to vote.¹⁰ That changed in 1920, when the 19th Amendment to the Constitution was ratified.¹¹ The same year, Judge Allen achieved a stunning victory with her election to her first judicial position, judge of the Cuyahoga County Court of Common Pleas.¹²

By 1921, Judge Allen had, in the span



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of seven years: (1) graduated from law school before women were guaranteed the right to vote in America, (2) opened her own law practice in Cleveland, (3) been appointed as an assistant Cuyahoga County prosecutor, and (4) been elected as a judge.¹³ But Judge Allen's rise to prominence as a female jurist would not end there: in 1922, she was elected to the Ohio Supreme Court, becoming not only the first woman to serve on the High Court, but also the first woman to serve on any state supreme court in the United States.¹⁴

While these accomplishments would make any lawyer feel as if his or her life had been a success, Judge Allen's life's work remained unfinished.¹⁵ In 1934, President Franklin D. Roosevelt nominated Judge Allen to serve as a judge on the U.S. Court of Appeals for the Sixth Circuit, making her the first female Article III judge in American history.¹⁶ Many judges on the Sixth Circuit were not quick to congratulate Judge Allen, let alone accept her as a fellow circuit judge. Judge Allen often ate lunch alone while her male colleagues had lunch at a local restaurant that did not permit women.¹⁷

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a passing car. As a result, the prosecution confessed error, Souter's conviction was vacated, and he was unconditionally released after 13 years of wrongful imprisonment.¹⁰

In many ways, *Souter v. Jones* captures Judge Moore's essence: careful attention to detail in order to get the correct result. As another of her former clerks explains, the judge is "both intellectually rigorous and incredibly collegial." She "absorbs information in a way that allows her to grasp the issues" and welcomes "frequent back and forth to make sure that she gets to the right conclusion." ☉

Endnotes

¹*E.g.*, *Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments*, 66 CORNELL L. REV. 534 (1981); *Appellate Review of Judicial Disqualification Decisions in the Federal Courts*, 35 HASTINGS L.J. 829 (1984); *The Foreign Tax Credit for Foreign Taxes Paid in Lieu of Income Taxes: An Evaluation of the Rationale and a Reform Proposal*, 7 AM. J. TAX POL'Y 207 (1988); *The Sham Transaction Doctrine: An Outmoded and Unnecessary Approach to Combating Tax Avoidance*, 41 FLA. L. REV. 659 (1989); *The Supplemental Jurisdiction Statute: An Important But Controversial Supplement to Federal Jurisdiction*, 41 EMORY L.J. 31 (1992).

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Judge Allen held her circuit judgeship for 25 years, finally retiring in 1959, but not before writing many successful books on the law and gaining attention as a possible nominee for the U.S. Supreme Court numerous times.¹⁸ ☉

Endnotes

¹NATIONAL PARK SERVICE, *Judge Florence Allen Biography*, www.nps.gov/romo/judge_florence_allen_biography.htm (last visited May 14, 2016).

²UTAH HISTORY TO GO, *Florence Ellinwood Allen*, historytogo.utah.gov/people/utahns_of_achievement/florenceellinwoodallen.html (last visited May 14, 2016).

³OHIO HISTORY CENTRAL, *Florence E. Allen*, www.ohiohistorycentral.org/w/Florence_E_Allen (last visited May 14, 2016).

⁴THE SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYSTEM, *Florence Ellinwood Allen*, www.supremecourt.ohio.gov/SCO/formerjustices/bios/allen.asp (last visited May 14, 2016).

⁵*Id.*

⁶*Id.*

⁷OHIO HISTORY CENTRAL, *Florence E. Allen*, www.ohiohistorycentral.org/w/Florence_E_Allen (last visited May 14, 2016).

⁸*Id.*

⁹*Id.*

¹⁰*19th Amendment to the U.S. Constitution: Women's Right to Vote (1920)*, www.ourdocuments.gov, www.ourdocuments.gov/doc.php?flash=true&doc=63 (last visited May 14, 2016).

¹¹*Id.*

¹²OHIO HISTORY CENTRAL, *Florence E. Allen*, www.ohiohistorycentral.org/w/Florence_E_Allen (last visited May 14, 2016).

¹³*Id.*

¹⁴*Id.*

¹⁵UTAH HISTORY TO GO, *Florence Ellinwood Allen*, historytogo.utah.gov/people/utahns_of_achievement/florenceellinwoodallen.html

³⁹⁵F.3d 577 (6th Cir. 2005).

²⁸U.S.C. § 2244(d)(1)(D).

³⁹⁵F.3d at 585–86.

⁵*Id.*

²⁸U.S.C. § 2244(b)(1).

⁷²⁸U.S.C. § 2244(b)(2)(B).

³⁹⁵F.3d at 590.

⁹*Id.* at 602.

¹⁰⁴Larry Pat Souter," National Registry of Exonerations, U. MICH. L. SCH. (June 2012), www.law.umich.edu/special/exoneration/pages/casetail.aspx?caseid=3656 (last visited Mar. 23, 2016); see also *Souter v. Jones*, No. 1:02-CV-67 (W.D. Mich. Sept. 20, 2005) (magistrate judge's report and recommendation); John Agar, *Murder Suspect Was "Done Wrong"; Attorney General Says Larry Souter Never Should Have Been Brought to Trial*, GRAND RAPIDS PRESS, July 6, 2005, at A1.



Circuit Judge Florence Ellinwood Allen at the first Sixth Circuit Judicial Conference in 1941. (Photograph provided by the Library & Archives of the U.S. Court of Appeals for the Sixth Circuit.)

historytogo.utah.gov/people/utahns_of_achievement/florenceellinwoodallen.html (last visited May 14, 2016).

¹⁶*Id.*

¹⁷Squire Patton Boggs, *Female Judges of the Sixth Circuit Court of Appeals: The Role of a HotPlate in Sixth Circuit History*, SIXTH CIRCUIT APPELLATE BLOG (Mar. 9, 2012), available at www.sixthcircuitappellateblog.com/news-and-analysis/the-women-of-the-sixth-circuit-court-of-appeals-at-the-forefront (last visited May 14, 2016).

¹⁸*Florence Ellinwood Allen*, UTAH HISTORY TO GO, historytogo.utah.gov/people/utahns_of_achievement/florenceellinwoodallen.html (last visited May 14, 2016).