

# A WOMAN CHIEF JUSTICE OF THE SUPREME COURT?

## Is There A Precedent For This?

Three women have become Associate Justices in the United States Supreme Court. Sandra Day O'Connor was the first and has now retired. Ruth Bader Ginsburg's replacement on the Supreme Court is Sonia Sotomayor. Is it probable that at some future time there will be a woman chief justice – considering that the gender balance in the court is likely to shift more toward women in the future?

One of the early pioneer justices was Florence Ellinwood Allen who was appointed as an associate justice of the Ohio Supreme Court in 1922. Three years later in 1925, a very curious case developed in Texas when Governor Pat Neff was presented with a problem that all three male members of the Texas Supreme Court were members of an organization which was involved in an El Paso land dispute which came before the court. These members had to recuse themselves. Since membership in this fraternal organization was so prevalent, the governor finally resorted to appointing an all woman State Supreme Court with Hortense Ward of Houston becoming the Chief Justice. These women promptly decided the case in a state that did not allow women to sit on juries until thirty years later. Texas continued to break with tradition by electing Miriam Ferguson to the governorship shortly thereafter. However, it was not until 1982 that a woman, Ruby Sandock, was again appointed to be a justice on the Texas Supreme Court to fill the unexpired term of a male associate justice who died while in office.

A partial list of women occupying State Supreme Court Justice positions is as follows: Janice Holder – TN, Shirley Abrahamson – WI, Peggy Quinn – FL, Ruth McGregor – AZ, Jean Toal – SC, Rose Bird – CA, Marilyn Kelly – MI and Leah Sears – GA. Generally, what develops in the state courts tends to be later reflected in the federal courts.

These are precedents in the United States, but it does seem that there is a very early precedent in the Judeo-Christian tradition on which many of the US laws are based. Opposition to women serving in judicial positions still exists in the western world – both from a cultural and sometimes a religious basis. However, during the confirmation hearings for the US Supreme Court nominees, the issue of stare decisis often arises. A legal lexicon gives this definition:

STARE DECISIS - Lat. "to stand by that which is decided." The principal that the precedent decisions are to be followed by the courts. To abide or adhere to decided cases. It is a general maxim that when a point has been settled by decision, it forms a precedent which is not afterwards to be departed from. The doctrine of stare decisis is not always to be relied upon, for the courts find it necessary to overrule cases which have been hastily decided, or contrary to principle. Many hundreds of such overruled cases may be found in the American and English books of reports

So what is one of the ancient precedents about a woman assuming the position of Chief Justice of a nation? The irony of this scenario has been summed up in a recently released novel entitled *The Dove Code* [ISBN 978-158169-2990] by Chatan N. Kallah. It seems that two college students, Sarah and Kim, are researching some biblical questions while enjoying some cherry floats in a pizza parlor. As they are utterly absorbed in some Bible verses, they encounter fellow students, Fred, and later on Nancy - who is studying to become a lawyer. Sarah felt a tap on her shoulder, and it was Fred. We pick up the dialog of the novel in Chapter 1.

"My," said Fred, "I am so impressed to see you two reading the Bible. What brings on this burst of spiritual activity?"

"Oh," said Sarah laughingly, "I've decided to become a preacher and I'm just boning up on my scriptures."

"Well," said Fred, "while you're doing all your boning up, you will probably read somewhere in the Bible that we shouldn't have woman preachers and particularly not have women teach men!"

Unbeknownst to Fred, Nancy, the criminal justice major, had walked in and was in earshot when she overheard Fred's last statement.

She walked up beside Fred, put her hand on his collar, and said, "Fred, old buddy, if you don't like women preachers, what is your thinking about women lawyers or even women judges? Who knows, my colleagues voted me the most likely to become a Chief Justice of the Supreme Court someday. It's a joke, I'm sure, but wouldn't you love that?" Her brown eyes were flashing playfully as she looked up at Fred.

Fred sputtered with surprise for a few moments and then said, "Well, Nancy, I really like you personally, but women should not judge men! I would advise you to set your sights on a different goal more in line with a woman's true role in society. Now you know it's nothing personal!"

Nancy eyed Fred coolly and with her legal background, began framing a reply to Fred's criticism of her professed career.

Sarah chuckled to herself, as she remembered something written in the correspondence between her Aunt Myra and Uncle Andy. Could she remember where it was in the Bible and spring the trap? She quickly checked her Bible, found the verses, and decided to give it a try.

"Fred, do you think God would be upset if a woman were selected to be Chief Justice of the United States Supreme Court?"

"Oh, I know God would be displeased with that," responded Fred. "He would not want a woman setting in judgment over men!"

"Fred, I know you believe in the Bible. Right? So, I'm sure that you would not mind explaining these verses from the book of Judges to me concerning God's displeasure with a woman chief justice sitting in judgment over an entire nation. Fred, please read this out loud and then explain it to me," said Sarah.

*JUDGES 4:4-5 And Deborah, a prophetess, the wife of Lapidoth, she judged Israel at that time. And she dwelt under the palm tree of Deborah between Ramah and Bethel in mount Ephraim: and the children of Israel came up to her for judgment.*

Fred picked up the Bible and slowly began reading the first of the two verses that were pointed out by Sarah. "*And Deborah, a prophetess, the wife of Lapidoth, she judged Israel at that time.*" Fred looked sheepishly at the three smiling girls and said, "You're just trying to trick me. You're probably taking this out of context!"

"Come on, Fred, it's in the Bible. Just read the next verse to be sure you get the context of it," said Sarah.

"*And she dwelt under the palm tree of Deborah between Ramah and Bethel in mount Ephraim: and the children of Israel came up to her for judgment,*" read Fred haltingly. And then his face brightened and he said, "I can explain the answer to this. Deborah was elected judge over Israel by men.

She wasn't set in place as a judge by God. That's your answer."

Nancy's legal mind sprang into action and she said, "Fred, old personal friend, since I am just a mere upstart of a lawyer, would you please show me chapter and verse for your conclusions?"

"Well, I'm sure it's in the Bible; I just need some time to find it," said Fred.

"Before you start looking for the verses that prove your conclusion, Fred, I wonder if you would read this verse to us and tell us who set the judges in place over Israel?" questioned Sarah. "It's in the book of Second Samuel, chapter 7 somewhere...here it is...verse 11."

Fred picked up the Bible again and began to read:

*2 SAMUEL 7:11 And as since the time that I commanded judges to be over my people Israel, and have caused thee to rest from all thine enemies. Also the LORD telleth thee that he will make thee an house.*

"Now, Fred, who was it that commanded judges to be set over Israel? Was it God or man? I think when you read the context of this verse, it is perfectly clear that the LORD is doing the talking and *He* commanded the judges, even Deborah, to be the chief justices over Israel. Please explain this verse to us," requested Sarah.

"Well—uh—uh—you see—uh, you sprang this on me all of a sudden, I'll need some time to check this out. I'm sure my pastor knows the answer, " stammered Fred. "Let me—uh—get back to you later." And with that, Fred hurried to the counter, picked up the pizza he had ordered, paid his bill and left.

With that, the girls looked at each other, smiled, and then enthusiastically gave each other high fives. Nancy was very impressed with learning that Deborah was the chief judge of Israel and profusely thanked Sarah and Kim for the enlightenment. She told them that she liked what was in Sarah's version of the Bible and that Chief Justice Deborah had now become her role model. She even wondered if Deborah's position was more like a combination of say—the presidency and chief justice offices."

Later on in the book, Fred gathers his thoughts, and challenges Sarah to a debate about the role of women in the church - using some of his favorite 'proof' scriptures.

“1CORINTHIANS 14:34-35 **Let your women keep silence in the churches: for it is not permitted unto them to speak; but they are commanded to be under obedience as also saith the law. And if they will learn any thing, let them ask their husbands at home: for it is a shame for women to speak in the church.**

"See," said Fred. "There it is in plain English, or Greek, or Hebrew—whatever it was spoken in. How do you conclude anything different than that?"

"Actually, men are to keep quiet in the church, too," said Sarah.

"What? Then how could you have a church service? That can't be."

"Oh, yes it is," said Sarah. "Look."

*1CO 14:28 But if there be no interpreter, let him keep silence in the church; and let him speak to himself, and to God.*

"Oh, that one." said Fred. "You're taking it out of context. That's not talking about men keeping silence in the church, it talking about spiritual gifts and to keep quiet if there is no one in the church to interpret a message given in a tongue that is not the commonly spoken language of the church."

"Then, if I've taken the scripture for men to keep silent in the church out of context, then maybe you've taken the scripture for women to be silent in the church out of context."

"How do you mean?" asked Fred.

"Look at the verses on each side of it," said Sarah. "Isn't this whole chapter about spiritual gifts, not about gender of the person using the spiritual gifts?"

One is reminded of the ancient story about people looking at shadows appearing on the side of a cliff and trying to interpret those types and shadows. Eventually, both Fred and Sarah [and the rest of us as well] will have to reach a point where we turn away from the types and shadows, and turn around to see the reality of what is causing the shadows. Will we do it, or will we continue on in trying to interpret the stereotypes of those shadows passing by on the cliff wall? Can men be part of the bride of Christ? Does the 'woman' represent the feminine soul being in subjection to the inner man known as the spirit - or does it represent the natural woman being subjection to the natural man – or both?

Back to our original question, will the United States eventually have a woman Chief Justice of the Supreme Court? Does the changing gender balance in local and state courts reflect what will eventually happen in the Supreme Court? You be the judge.