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The All-Woman Texas Supreme Court: The History behind a Brief Moment on the Bench.

Alice G. McAfee

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THE ALL-WOMAN TEXAS SUPREME COURT: THE HISTORY BEHIND A BRIEF MOMENT ON THE BENCH

ALICE G. MCAFEE*

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"I think it is a great honor to the womanhood of Texas that the Governor should select three women as members of a special court. Every day it is being demonstrated that woman's capacity to serve is recognized and her opportunities are multiplying."¹

I. INTRODUCTION

There is nothing particularly noteworthy about the case of *Johnson v. Darr*.² In fact, it was not the merits of the case that made the headlines—it was the makeup of the tribunal. The Governor of Texas appointing an all-woman special supreme court to hear a case would garner attention even today. But this was 1925, long before women in Texas were even granted the right to serve as jurors and before any woman ever served as a judge on

* General Counsel, Texas Supreme Court, Austin, Texas. The author would like to thank former Texas Supreme Court Chief Justice Joe R. Greenhill for his wonderful insight, comments, and suggestions. She would also like to thank Professor Zipporah Wiseman for her assistance in the early stages of this article. Finally, she would like to thank Jeffrey D. Dunn for sharing his research on this topic.

1. Statement made by Edith Wilmans upon learning the Governor of Texas appointed her to serve as a special justice on the Texas Supreme Court. *Neff Names Three Texas Women to Function as Supreme Court*, DALLAS MORNING NEWS, Jan. 2, 1925, at 1. Wilmans later learned she could not accept the appointment because she lacked the requisite number of years experience. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 3–4 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*).

2. *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098 (1925).

any lower court in Texas. This was the first time a woman was appointed in *any* capacity to serve as a Texas judge and the only time that all of the justices on the Texas Supreme Court were women. The unprecedented nature of the event drew nationwide attention, including coverage in the *New York Times*.³

Since then, the story of the all-woman supreme court has been retold time and time again, usually in connection with the history of women's admission into the legal profession.⁴ But as a historical event, the all-woman supreme court has proven to be problematic. For obvious reasons, three women sitting on the highest court in the state in 1925 does not fit logically within the chronology of women and the judiciary. In fact, it would be fifty-seven years before another woman was appointed to the Texas Supreme Court.⁵

In articles and scholarship on the history of women and the judiciary, narrators have either relegated the story of the all-woman supreme court to the outer margins—in footnotes of the history of women and the law in Texas⁶—or have ignored the event altogether.⁷ The implication is that this was an incongruous episode lacking any historical significance.⁸ This perception of the event seems logical given the seemingly minimal impact it had on the immediate admission of women to the bench. However, this notion is historically flawed.

3. See *Supreme Court of Women: First Such Body in the Country Meets in Texas Today*, N.Y. TIMES, Jan. 8, 1925, at 12 (announcing the all-woman Texas Supreme Court panel).

4. See, e.g., Judith Resnik, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 S. CAL. L. REV. 1877, 1894 & n.56 (1988) (summarizing the events of the all-woman Texas Supreme Court); Richard Connelly, *Shaking Up Texas' Male Judiciary*, TEX. LAW., Apr. 25, 1994, at 1, 30 (noting the all-woman court as an exception in Texas history); Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 291-92 (1993) (discussing the circumstances surrounding the "Petticoat Supreme Court").

5. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 299 (1993) (noting the appointment of Ruby Sondock to the court in 1982).

6. See, e.g., Judith Resnik, *On the Bias: Feminist Reconsiderations of the Aspirations for Our Judges*, 61 S. CAL. L. REV. 1877, 1894 n.56 (1988) (recounting the story in a footnote as an example of the Rule of Necessity).

7. See, e.g., VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 263 (1998) (failing to list the three justices in her chronological table of first women judges in America).

8. See *id.* (listing Sarah Hughes as the first woman judge in Texas).

The flaw in the retelling is the exclusive focus on the event as the story of the admission of women to the Texas judiciary. The all-woman supreme court, however, is also a story about the women's movement in Texas, and the struggle for political power and representation. It is within this broader historical context that the all-woman supreme court can best be understood, and it is within this context that the all-woman court takes on greater historical significance.

This article discusses the all-woman Supreme Court of Texas in light of its significance with respect to the Texas women's movement. Part II recounts the story of the all-woman supreme court. Part III places the story in context as it relates to the women's movement in Texas, including: the status of women in the early 1900s, the fight for women's property rights, and the events leading to Texas's ratification of the Nineteenth Amendment. Part IV focuses on the history of women and the law in Texas. Part V unpacks the history of the events leading to the appointments of the three women to the supreme court in an attempt to locate this historical moment within the greater political climate of the day. Finally, the conclusion suggests how this interpretation of the court's history might contribute to a greater understanding of the history of women in the judiciary.

II. *JOHNSON V. DARR*: THE ALL-WOMAN COURT PRESIDES

In 1921 trustees of Tornillo Camp No. 42 of the fraternal organization Woodmen of the World conveyed title to two tracts of land in El Paso, Texas, to F.P. Jones.⁹ On that same day, Jones signed an agreement to hold the land in trust and to reconvey the parcels to the Woodmen of the World when called upon to do so.¹⁰ Jones recorded the deed two days later, but the trust agreement was not recorded until October of 1922.¹¹ In the interim, Jones's creditors filed suit against him, obtaining a writ of

9. *Darr v. Johnson*, 257 S.W. 682, 683 (Tex. Civ. App.—El Paso 1923), *aff'd*, 114 Tex. 516, 272 S.W. 1098 (1925).

10. *Id.* at 683–84.

11. *Id.* at 683.

attachment against the parcels.¹² In December 1922, those creditors obtained a judgment against Jones and foreclosed on the lien.¹³

The Woodmen of the World trustees brought suit against the creditors to establish the trust agreement and to prevent the transfer of land.¹⁴ The trial court granted the trustees one tract and the creditors the other tract.¹⁵ The El Paso Court of Appeals reversed and rendered judgment for the Woodmen of the World for both tracts of land,¹⁶ and the defendants appealed the case to the Texas Supreme Court.¹⁷

In 1925 the Texas Supreme Court's appellate jurisdiction was exclusively civil,¹⁸ and the court was made up of three justices—"a chief justice and two associate justices"—which the people of Texas elected to six-year terms.¹⁹ To be eligible to serve on the highest court, an attorney was required to have reached thirty years of age and to have at least seven years of experience practicing law.²⁰

Governor Pat Neff appointed Chief Justice Calvin Maples Cureton to the Texas Supreme Court in 1921, and he was later elected in 1922.²¹ The Governor had previously appointed

12. *Id.*

13. *Id.*

14. *Darr*, 257 S.W. at 682.

15. *Id.* at 684.

16. *Id.*

17. *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098 (1925).

18. Robert W. Higgason, *A History of Texas Appellate Courts: Preserving Rights of Appeal Through Adaptations to Growth, Part 1 of 2: Courts of Last Resort*, HOUS. LAW., Mar.-Apr. 2002, at 20, 24. The Court of Appeals was created in 1876 to deal first and foremost with criminal appeals. *Id.* at 24-25. It later became the Court of Criminal Appeals. *Id.*

19. TEX. CONST. art. V, § 2 (amended 1981); accord Robert W. Higgason, *A History of Texas Appellate Courts: Preserving Rights of Appeal Through Adaptations to Growth, Part 1 of 2: Courts of Last Resort*, HOUS. LAW., Mar.-Apr. 2002, at 24 (noting the number of justices that the Texas Constitution allowed to serve on the Texas Supreme Court and the length of their terms). In 1945, the number of justices sitting on the court was increased from three to nine. *Id.* at 26.

20. TEX. CONST. art. V, § 2 (amended 1981); accord Robert W. Higgason, *A History of Texas Appellate Courts: Preserving Rights of Appeal Through Adaptations to Growth, Part 1 of 2: Courts of Last Resort*, HOUS. LAW., Mar.-Apr. 2002, at 20, 24 (delineating the requirements for serving as a Texas Supreme Court justice according to the 1876 Texas Constitution).

21. William C. Pool, *Calvin Maples Cureton*, in 1 THE HANDBOOK OF TEXAS 447 (Walter Prescott Webb ed., 1952), available at <http://www.tshaonline.org/handbook/online/>

Associate Justice Thomas B. Greenwood to his seat on the court in 1918²² and Associate Justice William Pierson in 1921.²³ When the application for writ in *Johnson v. Darr* came before the court in 1924, all three justices were members of the Woodmen of the World.²⁴

A. *Appointing a Special Court*

Upon review of the application for writ of error, Chief Justice Cureton determined that he and the two associate justices were disqualified from hearing the appeal because of their membership in Woodmen of the World.²⁵ On March 8, 1924, the chief justice certified the disqualification of all three justices to Governor Pat Neff,²⁶ who had constitutional authority to appoint special justices to hear the case.²⁷

In the contemporary retelling of the story, Governor Neff tried to appoint male judges or attorneys to hear the case, but every

articles/CC/fcu26.html.

22. W. St. John Garwood & Virginia Parton, *Thomas Benton Greenwood*, in 3 THE HANDBOOK OF TEXAS 357 (Eldon Stephen Branda ed., 1976), available at <http://www.tshaonline.org/handbook/online/articles/GG/fgr41.html>.

23. *William Pierson*, in 2 THE HANDBOOK OF TEXAS 377 (Walter Prescott Webb ed., 1952), available at <http://www.tshaonline.org/handbook/online/articles/PP/fpi17.html>.

24. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 41 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

25. *Id.* The Woodmen of the World is a fraternal benefit society that was founded in 1890 to provide life insurance benefits to its members and an active volunteer force to local communities. History of Woodmen of the World, <http://www.woodmen.org> (follow “About” hyperlink; then follow “History” hyperlink) (last visited Apr. 20, 2008). The Supreme Forest Woodmen Circle, serving as a women’s auxiliary to the organization, was created shortly thereafter and eventually merged with Woodmen of the World in 1965. *Id.* In the early 1900s, Woodmen of the World “was an influential political power in Texas,” and most of the legal community were members. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 41 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>. *But see* Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 19 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*) (questioning the political influence of the organization).

26. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 41 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>; *see also* TEX. CONST. art. V, § 11 (“No judge shall sit in any case wherein he may be interested.”).

27. TEX. CONST. art. V, § 11. The Texas Constitution calls for the disqualification to be certified to the Governor, “who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes.” *Id.*

man offered the appointment ultimately had to decline due to his own membership in the Woodmen of the World.²⁸ Finally, one week before the Court was scheduled to hear the case, Governor Neff realized his only choice was to appoint women since women could not be members of Woodmen of the World.²⁹

Appointing three women to the court, however, proved to be a difficult task. At the time of the appointments, women lawyers in Texas numbered about thirty, and it is likely that fewer than ten of those were qualified for a supreme court appointment under Texas law.³⁰ Governor Neff appointed Nellie Gray Robertson, county attorney for Hood County, to the position of special chief justice.³¹ Edith E. Wilmans, a former member of the Texas Legislature, and Hortense Sparks Ward, a Houston attorney, were appointed special associate justices.³² *The Dallas Morning News* quoted Wilmans, the first woman elected to the Texas Legislature,³³ as saying that her appointment was “a great honor

28. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 41 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>; see also Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 14 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*) (attributing the first appearance of the story to an article by Dean Moorhead in the *Texas Star Magazine*, February 11, 1973).

29. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 41 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>. But see Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 19 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*) (asserting that there is no evidence Governor Neff ever sought male appointees).

30. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 2 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*).

31. *Id.*; see also Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (identifying Robertson as the chief justice designee).

32. *Neff Names Three Texas Women to Function as Special Supreme Court*, DALLAS MORNING NEWS, Jan. 2, 1925, at 1; see also Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (listing Neff's original appointees).

33. Edith Eunice Wilmans Malone, *Edith Eunice Therrel Wilmans*, in 3 THE HANDBOOK OF TEXAS 1116 (Eldon Stephen Branda ed., 1976), available at <http://www.tshaonline.org/handbook/online/articles/WW/fwi48.html>.

to the womanhood of Texas” and that “[e]very day it is being demonstrated that woman’s capacity to serve is recognized and her opportunities are multiplying.”³⁴

All three women accepted the appointments, but both Robertson and Wilmans later resigned because neither had practiced law in Texas for seven years, an eligibility requirement for *all* supreme court justices.³⁵ Governor Neff then designated Ward as special chief justice, and Hattie Leah Henenberg and Ruth Virginia Brazzil as special associate justices.³⁶ The appointments were finalized one day before the court was scheduled to determine the disposition of the case.³⁷

B. *The Three Lady Justices*

When Governor Neff determined that he was going to appoint three women to the special court, he contacted H.L. Clamp, the deputy clerk of the Texas Supreme Court, to inquire about the legal qualifications for the position.³⁸ The story goes that Clamp

34. *Neff Names Three Texas Women to Function as Special Supreme Court*, DALLAS MORNING NEWS, Jan. 2, 1925, at 1.

35. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>. Wilmans lacked the requisite number of years by just two months. *Mrs. Wilmans Finds She Is Ineligible to Serve on State Supreme Court*, DALLAS MORNING NEWS, Jan. 5, 1925, at 1; accord Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (stating that Wilmans was two months short of the required seven years of practicing law in Texas). Robertson missed the cutoff by three months. *Id.* Governor Neff had also offered one of the appointments to Emma R. Webb of Bastrop County, but she was disqualified due to her membership in a women’s auxiliary of the Woodmen fraternity. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presentation to the Texas State Historical Association 19 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*) (citing a January 2, 1925 account in the *Austin American-Statesman*).

36. Debbie Mauldin Cottrell, *All-Woman Supreme Court*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/AA/jpa1.html>; see also Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (specifying the women Neff ultimately appointed to the Court).

37. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

38. *Id.*; Murphy Givens, *All-Woman Supreme Court Made History*, CORPUS CHRISTI

jokingly retorted that women could be qualified to serve as special justices if only the Governor “could find three women who could agree on anything.”³⁹ Governor Neff did find three women, and they did ultimately agree. All three voted to affirm the court of appeals’ decision in *Johnson v. Darr*.⁴⁰

1. Hortense Sparks Ward

As further proof of just how “early” the all-woman court was in the advancement of women to the judiciary, the woman appointed to serve as special chief justice was also the first woman licensed to practice law in Texas.⁴¹ While employed as a court stenographer, Hortense Ward took law correspondence courses and passed the Texas Bar Examination in 1910.⁴² Two years earlier, she had married W. H. Ward, who later became a county judge. The Wards practiced law together in Houston as Ward & Ward.⁴³

Early in her career, Ward lobbied for numerous social reforms, including women’s right to vote, workweek regulations for women, the right of women to serve in officer positions in corporations, and the creation of a domestic relations court.⁴⁴ She was also instrumental in the passage of the Married Woman’s Property Law of 1913,⁴⁵ writing a pamphlet entitled “Property Rights of Married Women in Texas.”⁴⁶

CALLER-TIMES, Apr. 5, 2000, available at www.caller2.com/2000/april/05/today/murphy_g/4274.html.

39. Murphy Givens, *All-Woman Supreme Court Made History*, CORPUS CHRISTI CALLER-TIMES, Apr. 5, 2000, available at www.caller2.com/2000/april/05/today/murphy_g/4274.html.

40. Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in *TEXAS ALMANAC* 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>; see also *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098, 1102–03 (1925) (relating the Texas Supreme Court’s decision).

41. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY’S L.J. 289, 290–91 (1993).

42. *Id.* at 290.

43. *Id.*

44. Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html>.

45. *Id.*

46. See *id.* (citing Ward as a “champion of women’s rights” who not only wrote articles and pamphlets, but “personally lobb[ie]d for many social reform measures”); Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in *TEXAS ALMANAC* 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (discussing the pamphlet).

As president of the Houston Equal Suffrage Association and an active member in the state association, Ward fought for both the federal woman suffrage amendment and for Texas legislation to allow women to vote in state primary elections.⁴⁷ Ward is, in fact, credited as paving the way for the primary suffrage bill in Texas, due primarily to her pamphlet on property rights.⁴⁸ Ward was heavily involved in political campaigning; she worked on William Hobby's gubernatorial campaign against James Ferguson in 1918 and eventually campaigned in several other elections outside Texas in 1924 at the request of the Democratic National Committee.⁴⁹ Ward attempted to gain a seat on the Texas judiciary in 1920—four years before her appointment to the court—running an unsuccessful campaign for county judge.⁵⁰

2. Hattie Leah Henenberg

Henenberg attended Dallas School of Law and was admitted to the Texas Bar in 1916.⁵¹ She practiced law in Dallas for several years with Albert Walker as an associate before becoming a solo practitioner.⁵² At the time of her appointment to the high court, Henenberg was active in the Dallas Bar Association, supervising its Free Legal Aid Bureau from 1924–1925.⁵³ According to news

47. Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html>.

48. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

49. Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html>.

50. *Id.*

51. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>; see also Sherilyn Brandenstein, *Hattie L. Henenberg*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/HH/fhe41.html> (naming the institution where she received her legal education as the Dallas Law School).

52. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in Texas Almanac 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

53. Sherilyn Brandenstein, *Hattie L. Henenberg*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/HH/fhe41.html>; accord Mary G. Ramos, *Texas' All-Woman Supreme Court*, in TEXAS ALMANAC 42 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (discussing Henenberg's

reports, Henenberg was recommended for the appointment by several Dallas attorneys, including six women attorneys.⁵⁴

3. Ruth Virginia Brazzil

Brazzil was a “special student in law” at the University of Texas⁵⁵ and became a member of the Texas Bar in 1912.⁵⁶ She worked for a Texas legislator while living in Austin,⁵⁷ and after moving to Galveston, she was employed by the American National Life Insurance Company as both assistant treasurer and assistant general manager.⁵⁸ Curiously enough, Brazzil was opposed to women’s suffrage, and when asked whether women should hold public office, she stated that “there is little chance of the majority of our public offices ever being filled by women[—t]here are too many men well qualified for that, and, as a rule, the average woman has more exacting, and, to her, more absorbing duties than those of a political nature.”⁵⁹ She did, however, support women’s involvement in political reform activities, hoping it would lead to “the enactment of better State laws looking to the protection of working women and children, and particularly the children.”⁶⁰

C. *The All-Woman Supreme Court Presides*

On January 8, 1925, the all-woman supreme court convened.⁶¹ Chief Justice Cureton administered the oath in the Texas Supreme Court consultation room.⁶² Attorney General Dan Moody, Clerk

involvement with the Dallas Bar Association’s Free Legal Aid Bureau).

54. *Dallas Woman Named on Special Tribunal*, DALLAS MORNING NEWS, Jan. 6, 1925, at 1.

55. Sherilyn Brandenstein, *Ruth V. Brazzil Roome*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/RR/froey.html>.

56. *Id.*

57. *Id.*

58. *Id.*

59. Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in TEXAS ALMANAC 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (attributing the quote to an interview in *Holland’s Magazine*).

60. John William Stayton, *The First All-Woman Supreme Court in the World*, HOLLAND’S MAGAZINE Mar. 1925, at 5, 73.

61. Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in TEXAS ALMANAC 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (attributing the quote to an interview in *Holland’s Magazine*).

62. *Id.*

of the Court Fred Connerly, and Associate Justices Thomas B. Greenwood and William Pierson were present at the ceremony.⁶³

According to newspaper reports at the time, Chief Justice Cureton explained the writ of error procedure to the special justices.⁶⁴ As justices, they could refuse to grant the writ, affirm the decision of the El Paso Court of Appeals, or grant the writ of error and hear the appeal.⁶⁵ After a short deliberation, Special Chief Justice Ward announced the decision of the court: “[T]he writ of error was granted,” and oral argument was scheduled for January 30, 1925.⁶⁶

One newspaper report of the proceeding stated that this was “no freak affair, but a tribunal thoroughly competent to sit in judgment and reach a conclusion just as sound as a decision might have been made with all the Mr.’s since Adam stacked behind it.”⁶⁷ The reporter went on to state that the women “were a good deal better looking than the Supreme Court which regularly deliberates on the third floor of the capitol.”⁶⁸

On January 30, the court heard oral argument in the case of *Johnson v. Darr*.⁶⁹ J. W. Morrow of Armstrong & Morrow of El Paso argued the case for the Woodmen of the World trustees, and Volney Brown of Goggin, Hunter & Brown, also of El Paso, argued the case for Johnson.⁷⁰ The issue for the court was whether the trust agreement signed at the time of the conveyance had to be recorded prior to a creditor’s claim in order to protect the trustee’s interest in the land.⁷¹ Affirming the court of appeals,

63. *Id.*

64. *Id.*

65. *Id.*

66. Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in TEXAS ALMANAC 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

67. John William Stayton, *The First All-Woman Supreme Court in the World*, HOLLAND’S MAGAZINE Mar. 1925, at 5, 73.

68. *Id.*

69. Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in TEXAS ALMANAC 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

70. *Johnson v. Darr*, 114 Tex. 516, 517–18, 272 S.W. 1098, 1098 (1925); accord Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in TEXAS ALMANAC 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (noting the attorneys responsible for the case).

71. *Johnson*, 114 Tex. at 519–20, 272 S.W. at 1098–99.

the court held that recordation of the trust agreement was not statutorily required, and therefore, the lands were not subject to the creditors' attachment lien.⁷²

In her concurring opinion, Special Justice Brazzil argued that "the creditors have lost nothing by said transaction; there is no injury to prevent and no wrong to redress."⁷³ Henenberg's concurrence stressed that "the attaching creditor is left with the right he had at common law, and can claim as against such unrecorded instrument only the actual interest of [the debtor] at the time of the levy."⁷⁴ Having announced its ruling, "the first all-woman Supreme Court in the land quietly passed into history."⁷⁵

III. THE WOMEN'S MOVEMENT IN TEXAS IN THE EARLY 1900S

Although some have dismissed the all-woman supreme court as bizarre⁷⁶ and anachronistic, the event is consistent with the history of the women's movement in Texas in the early 1900s.⁷⁷ This Part discusses the rise of the women's movement in Texas, including the status of women in early 1900s Texas, the social causes that sparked women's political activism, and the organizational events leading to the ratification of the Nineteenth Amendment.

A. "A Great Age for Women in Politics"⁷⁸

Feminist theorists have long used the construct of separate spheres—the public and the private—to conceptualize the historical position of women in society relative to that of men.⁷⁹ Men controlled the public realm of politics and business while

72. *Id.* at 527, 272 S.W. at 1102.

73. *Id.* at 528, 272 S.W. at 1103 (Brazzil, J., concurring).

74. *Id.* (Henenberg, J., concurring).

75. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in *TEXAS ALMANAC* 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

76. Richard Connelly, *Shaking Up Texas' Male Judiciary*, *TEX. LAW.*, Apr. 25, 1994, at 1, 30.

77. See Janelle D. Scott, *Hortense Sparks Ward*, *THE HANDBOOK OF TEXAS ONLINE*, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html> (delineating events of the early 1900s in the Texas women's movement).

78. Suzanne Lebsock, *Women and American Politics, 1880–1920*, in *WOMEN, POLITICS, AND CHANGE* 35 (Louise A. Tilly & Patricia Gurin eds., 1990).

79. See, e.g., DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 9 (1989) (discussing the social structure of male and female roles).

women existed in the private sphere of home and childcare.⁸⁰ In this geography of gender segregation, the boundaries between the sexes were carefully marked and rigorously defended.⁸¹

In the early 1900s, the separation of men and women into these spheres was firmly entrenched in both law and societal norms and expectations.⁸² In fact, nineteenth century laws served not to protect the rights of women but rather to “reflect[] and reinforce[] a highly sex-stratified social order.”⁸³ At the time, women could not vote⁸⁴ and had difficulty entering the professions.⁸⁵ Married women could not enter into contracts under their own name; initiate legal actions; or buy, sell, control, or bequeath property.⁸⁶ Strong cultural and religious beliefs of the time reinforced this concept of separate spheres, exhorting women “[t]o preserve the sanctity of the domestic sphere.”⁸⁷

Despite the exclusion of women from the polls and from most of the traditional political arenas, the late 1800s and early 1900s have

80. *Id.*

81. *See id.* (characterizing the demarcation between the gender roles as clear and respected by the law as well as philosophers and theologians).

82. *Id.* at 9–10.

83. *Id.* at 28 (“Courts’ assumptions about gender difference and their insensitivities to gender disadvantage helped sustain a social order in which women remained more separate than equal.”); *see also* MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 7 (The University of North Carolina Press 1985) (“Male authority remained supreme throughout the nineteenth century.”).

84. The Nineteenth Amendment, which gave women the right to vote, was ratified in 1920. U.S. CONST. amend. XIX.

85. *See* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 82 (1983) (discussing the difficulties women faced in entering the medical and legal professions).

86. DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 10 (1989); *accord* MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 25 (The University of North Carolina Press 1985) (noting that in the 1800s, married women could not own property, enter into contracts, or file a lawsuit).

87. *See* DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 11 (1989) (“[P]opular ideology sought to reaffirm the centrality of domestic life. . . . The message emerging from press and pulpit alike was that women . . . should not stray from their ‘domestic altar.’”). American society initially viewed the family as “the primary institution of American society.” MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 3 (The University of North Carolina Press 1985). As the family became more independent from society, the roles of husband and wife stratified, leaving “the newly isolated home a woman’s more exclusive domain.” *Id.* at 7.

been called “a great age for women in politics.”⁸⁸ Although the women’s movement eventually fought vigorously for equal rights as well as political representation, the original focus for women across the country and in Texas was quite different.

Beginning with the Woman’s Christian Temperance Movement in the late 1800s, women in Texas began to mobilize.⁸⁹ However, it was the later-formed federated women’s clubs that truly set the stage for women’s involvement in the political sphere.⁹⁰ The Texas Congress of Mothers,⁹¹ the Texas Federation of Women’s Clubs, and numerous local clubs and committees were formed in response to a growing women’s public culture, a culture focused on eradicating the perceived social ills of the time.⁹² In Texas, women’s organizations lobbied for child labor laws, “reform [of] the juvenile justice system, . . . minimum wage and m[a]ximum hour legislation for employed women,”⁹³ and greater legal rights for married women.⁹⁴

It was this fight for social reform and the growing “impatience and frustration with politicians who ignored their petitions and requests” that transformed these new activists from “clubwomen into suffragists.”⁹⁵ In fact, many of the women who would figure prominently in the fight for suffrage in Texas began their careers as clubwomen.⁹⁶ More than half of the women who eventually

88. Suzanne Lebsack, *Women and American Politics, 1880–1920*, in *WOMEN, POLITICS, AND CHANGE* 35 (Louise A. Tilly & Patricia Gurin eds., 1990). The political activism of women during the era was prolific. William Chafe has suggested that there were two Progressive eras—one led by men and one led by women—in American history during this time period. WILLIAM H. CHAFE, *THE PARADOX OF CHANGE: AMERICAN WOMEN IN THE 20TH CENTURY* 16 (rev. ed. 1991).

89. See JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN’S PROGRESSIVE CULTURE IN TEXAS, 1893–1918*, at 8 (1998) (“In the WCTU women took their semi-private church work into the public arena and liberated it from male oversight . . .”).

90. See *id.* at 21 (noting that involvement in “the federated club movement . . . taught women to think and act politically”).

91. *Id.* at 61.

92. See *id.* at 18 (stating that clubs like the Texas Federation of Women’s Clubs followed the national clubs and focused on social issues).

93. *Id.* at 2.

94. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN’S PROGRESSIVE CULTURE IN TEXAS, 1893–1918*, at 101–02 (1998).

95. *Id.* at 21.

96. See, e.g., CITIZENS AT LAST: *THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 128 (Ruthie Winegarten & Judith N. McArthur eds., 1987) (noting that San Antonio native

founded the Texas Equal Rights Association were members of the Women's Christian Temperance Union.⁹⁷ Eleanor Brackenridge, a leader in the Texas Woman's Suffrage Association, was also at the head of the Texas women's club movement.⁹⁸ Hortense Ward, the future special chief justice of the all-woman supreme court, was an active member of the Women's Christian Temperance Union, the Woman's Club of Houston, and the Sorosis Club, another local women's group.⁹⁹

It was through the creation of these women's voluntary organizations and participation in the same that women found their political voice and were able to enter the political discourse on their own terms outside the traditional male forums.¹⁰⁰ It was in the course of these early club activities that women first began to formulate an ideology of equal rights for women.¹⁰¹

B. *Lobbying for Legal Rights and Formal Equality*

One of the most significant early efforts to improve women's legal status was the fight in the late 1800s and early 1900s for women's property acts.¹⁰² In Texas the concern over women's legal rights sprung directly from their work on issues regarding working women and child welfare.¹⁰³ Concern for working

Eleanor Brackenridge led the Texas women's club movement and "reorganized the Texas Woman's Suffrage Association in 1913"); Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html> (last visited Apr. 20, 2008) (discussing Hortense Ward's involvement in women's clubs before becoming special chief justice of the Texas Supreme Court).

97. CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS 79 (Ruthie Winegarten & Judith N. McArthur eds., 1987).

98. *Id.* at 128.

99. Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html> (last visited Apr. 20, 2008).

100. See generally JUDITH N. MCARTHUR, CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN'S PROGRESSIVE CULTURE IN TEXAS, 1893-1918, at 1 (1998) ("Using their separate voluntary associations to forge a female public culture, disenfranchised women introduced their concern for domestic and social welfare into the political discourse.").

101. See DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 11 (1989) (noting that the clubs gave women self confidence to push for greater civil rights).

102. *Cf.* at 24 (explaining that the three decades following 1839 saw the enactment of married women's property acts in twenty-nine jurisdictions).

103. See JUDITH N. MCARTHUR, CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN'S PROGRESSIVE CULTURE IN TEXAS, 1893-1918, at 101 (1998)

women and children victimized by scurrilous husbands, and middle class women losing their separate property due to their husbands' bad financial decisions, motivated clubwomen to lobby for greater legal rights for married women.¹⁰⁴

Even though the influences of Spanish civil law in Texas softened the harsh English common law of coverture and allowed for community property between husband and wife, the property laws still heavily favored the husband.¹⁰⁵ Thus, even though the state recognized the wife's right to her own property, it gave control of a wife's property to her husband.¹⁰⁶ Texas law also gave "[t]he husband . . . the sole right to manage his wife's share of the community property [as well as] her separate property."¹⁰⁷

In 1911 Hortense Sparks Ward, as Vice Chair of the Texas Congress of Mothers, played a key role in the battle.¹⁰⁸ She wrote an article for the *Houston Chronicle* on the subject entitled "The Legal Status of Married Women in Texas."¹⁰⁹ Ward decried the legal status of married women as one unbecoming to the role of a good mother—"a legal slave, though the chains be of rose leaves, does not make the highest type of mother."¹¹⁰ Ward focused on the inherent unfairness of the present laws to married women, noting that a woman's husband "may even mortgage or sell every piece of furniture in the home, and she is helpless to prevent, even if her earnings have paid for every piece."¹¹¹ The article was later printed as a pamphlet and distributed free of charge to clubwomen

(opining that concern over married women's property rights was addressed because of the focus on other laws regulating women and children).

104. *See id.* at 102 (citing examples of arguments asserted by different classes of women in an effort to increase their legal rights).

105. *Id.* at 101.

106. *Id.*

107. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN'S PROGRESSIVE CULTURE IN TEXAS, 1893–1918*, at 101 (1998). McArthur recounts the story of one early suffragist consulting a judge on the legal rights of women in Texas to which the judge replied that "under the laws of Texas women had no legal status." *Id.*

108. *See id.* at 102, 179 n.16 (noting Ward's *Houston Chronicle* article, which explained the concept of coverture).

109. *Id.* (citing Hortense Sparks Ward, *The Legal Status of Married Women in Texas*, *HOUSTON CHRONICLE*, Apr. 1, 1911).

110. *Id.* at 104.

111. Mary G. Ramos, *Texas' All-Woman Supreme Court*, in *TEXAS ALMANAC 42* (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/>.

across the state.¹¹² These efforts paid off. In 1913 the Texas Legislature passed the Married Women's Property Law, which "gave a married woman control of her separate personal property [as well as] her personal earnings and income."¹¹³

Winning the fight for the rights of married women energized Texas clubwomen and encouraged them to set their sights on even greater rights for women. "The parallels between legal coverture and . . . disenfranchisement" could not have been lost on the women of the era; they would later fight for suffrage using the same "de-radicalized" maternalistic arguments they used to support their fight for married women's property rights.¹¹⁴

C. Women's Suffrage

The fight for suffrage in Texas began at the constitutional convention of 1868 with the introduction of "a declaration stating that all persons meeting age, residence, and citizenship requirements be deemed qualified electors 'without distinction of sex.'"¹¹⁵ The declaration failed, as did two other resolutions calling for woman suffrage at the constitutional convention of 1875.¹¹⁶ In 1893 the Texas Equal Rights Association (TERA) was formed with the goal of "advanc[ing] the industrial, educational and equal rights of women, and to secure suffrage to them by appropriate state and national legislation."¹¹⁷ The TERA, however, was short-lived; it ceased functioning in 1896, just three years after its formation.¹¹⁸ A similar attempt in 1903 to form the Texas Woman Suffrage Association also failed to capture the

112. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN'S PROGRESSIVE CULTURE IN TEXAS, 1893-1918*, at 102 (1998).

113. *Id.* at 103. *See generally* Act of Mar. 21, 1913, 33rd Leg., R.S., ch. 32, § 1, 1913 Tex. Gen. Laws 61, 62 (current version at TEX. FAM. CODE ANN. § 3.001-.002) (Vernon 2006) (noting that women's property rights are so engrained in current Texas law that a distinction between husband's rights and wife's rights does not even exist in the modern code, as it did in the original Act of 1913).

114. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN: THE RISE OF SOUTHERN WOMEN'S PROGRESSIVE CULTURE IN TEXAS, 1893-1918*, at 103-04.

115. A. Elizabeth Taylor, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), *reprinted in* CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS 13 (Ruthie Winegarten & Judith N. McArthur eds., 1987).

116. *See id.* at 14 (acknowledging that the suffrage resolution in 1868 was defeated by a vote of 52-13 and the two resolutions of 1875 were ignored in the official report).

117. *Id.* at 16.

118. *Id.* at 23.

attention of Texas's women.¹¹⁹

It was not until the formation of a woman suffrage club in Austin in 1908 and the Equal Franchise Society in San Antonio in 1912 that the suffrage movement in Texas began to gain the grassroots support it needed to sustain its activities across the state.¹²⁰ In 1913 women from local groups in seven Texas cities met in San Antonio and reactivated the Texas Woman Suffrage Association, convening each year after that. At the 1916 convention, the organization changed its name to the Texas Equal Suffrage Association (TESA) and passed a resolution asking the state Democratic convention to include woman suffrage in the party platform.¹²¹

During this time, women leaders of the suffrage movement fought their battle on two major fronts: they worked to secure favorable public opinion and the support of male political leaders. In 1916 Austinite Jane McCallum became chair of public relations for the TESA.¹²² Under her leadership, the TESA publicized its fight for woman suffrage, ultimately securing the endorsement of its position from numerous Texas newspapers.¹²³

Women suffragists also lobbied for the support of Texas's male political leaders. This was crucial because it was only through them that woman suffrage legislation could be introduced in the Texas Legislature. Politicians like Representatives Frank

119. See generally *id.* at 25 (discussing the short life of the Texas Woman Suffrage Association).

120. A. Elizabeth Taylor, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 26 (Ruthie Winegarten & Judith N. McArthur eds., 1987).

121. *Id.* at 28.

122. *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 136 (Ruthie Winegarten & Judith N. McArthur eds., 1987).

123. *Id.* In an editorial endorsing woman suffrage, the *Houston Chronicle and Herald* stated:

The fight for woman suffrage is the most remarkable of any campaign ever waged in this country, save perhaps the fight against whiskey.

A more striking evidence of womanly persistence has never been displayed in the history of any nation.

....

Fifty years ago the cause of woman suffrage seemed hopeless; now its success is assured.

Id. at 136–37.

Burmeister and Jess Baker took the suffrage cause as their own and introduced resolutions to authorize women to vote.¹²⁴ Even though these early efforts failed, suffragists were creating strong political allies and learning to wield their political power to build their coalition.¹²⁵

By 1917 the suffragists had reached a high level of sophistication in their lobbying efforts as evidenced by this legislative report prepared by TESA for the National Equal Suffrage Association on their legislative activities:

[Which i]ncluded writing and interviewing candidates before election, followed by congratulatory one to victors, with greetings at Christmas time. Headquarters established in Austin for attendance on Legislative session, (January and February) celebrated with a big Suffrage luncheon and evening mass meeting, presenting Miss Lutie E. Stearns of Milwaukee as the distinguished speaker; many legislators present and some converts to add to her laurels.¹²⁶

In 1918 suffragists began working toward primary suffrage because the right to vote in primary elections could be conferred on women by legislative act alone, unlike full suffrage which required additional ratification by Texas voters.¹²⁷ Governor W. P. Hobby, a supporter of woman suffrage, submitted the subject to the legislature at a special session, where C. B. Metcalfe of San Angelo introduced the proposed amendment.¹²⁸ The legislation passed, and in 1918 women in Texas won the right to vote in

124. A. Elizabeth Taylor, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 36–37 (Ruthie Winegarten & Judith N. McArthur eds., 1987). In 1915, Representative Frank Burmeister along with other members of the Texas Legislature initiated a resolution to give women the right to vote, which, despite strong opposition, failed to pass by just four votes. *Id.* at 36. Representative Jess Baker introduced similar legislation in 1917, which also failed to receive the necessary two-thirds majority. *Id.* at 36–37.

125. *Id.* at 152. In recognition of the political power these women were gaining (and using to support or oppose candidates), TESA named its fund for disseminating its suffrage literature the “Bailey fund” after staunch, woman-suffrage opponent ex-Senator J. W. Bailey because, as an opponent of their cause, he was “a man . . . who was politically dead, but did not know it.” *Id.* at 152.

126. Minnie Fisher Cunningham, Report of Texas Equal Suffrage Association (Sept. 1, 1917–Nov. 1, 1917), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 153 (Ruthie Winegarten & Judith N. McArthur eds., 1987).

127. *Id.* at 37.

128. *Id.* at 37–38.

primary elections.¹²⁹ Just one year later, in June 1919, Texas became the ninth state in the country to ratify the Nineteenth Amendment.¹³⁰

Hortense Ward played a pivotal role in the suffrage movement. She became president of the Houston Equal Suffrage Association in 1918, lobbying both Governor Hobby and members of the Texas Legislature for the primary suffrage bill and ratification of the Nineteenth Amendment.¹³¹ She wrote newspaper articles and a pamphlet entitled “Instructions for Women Voters” to help educate women about their newly won right and to encourage their political participation.¹³² In honor of her efforts, Ward was given the privilege of becoming the first woman in the history of Harris County to register to vote.¹³³

IV. WOMEN AND THE LEGAL PROFESSION

It is not surprising that the early women’s rights movement and the fight for woman suffrage coincided with the entry of women into the legal profession. Historian Virginia Drachman argues that women lawyers, in fact, “linked their cause directly to the campaign for woman suffrage.”¹³⁴ She notes:

Just as women suffragists claimed equal citizenship with men in order to win the right to vote, so nineteenth-century women lawyers claimed their status as citizens equal with men in order to justify their right to practice law. The demand that women practice law was almost as radical as the demand that women vote because its advocates dared to follow the suffragists’ challenge—to place women in the public arena, independent of their domestic ties, and as equal citizens with men.¹³⁵

129. *Id.* at 38.

130. *Id.* at 46.

131. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Women Texas Supreme Court*, Presentation to the Texas State Historical Association 6 (Mar. 6, 2004) (on file with the *St. Mary’s Law Journal*).

132. Janelle D. Scott, *Hortense Sparks Ward*, *THE HANDBOOK OF TEXAS ONLINE*, available at <http://www.tshnonline.org/handbook/online/articles/WW/fwn83.html> (last visited Apr. 20, 2008).

133. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 *ST. MARY’S L.J.* 289, 291 (1994).

134. VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY 2* (Harvard University Press 1998).

135. *Id.* at 2–3.

Thus, it is also not surprising that women's attempts to enter the profession were met with resistance.¹³⁶

Part IV examines this early resistance by discussing the history of women's entry into the legal profession and to the bench. This discussion underscores the theory that the all-woman supreme court is more contextually relevant and significant as an extension of the greater story of the women's rights movement in the early 1900s than as an event marking the beginning of the rise of women within the judiciary.

A. *Women Lawyers*

The quintessential public sphere—historically seen as a realm reserved only for men—has been that of the law. Deborah Rhode notes that “[o]ne of the clearest discussions of the separate-spheres ideology appeared as the bar contemplated women's intrusion into its own professional sphere.”¹³⁷ Therefore, it is logical that these efforts to enter this male sanctuary would be viewed as particularly dangerous to the cultural segregation of the sexes.¹³⁸

In 1870 there were only five women practicing law in the United States.¹³⁹ In the landmark case *Bradwell v. Illinois*,¹⁴⁰ the United States Supreme Court upheld an Illinois Supreme Court decision to deny Myra Bradwell's application for a license to practice law.¹⁴¹ The Court rejected the argument that the Fourteenth Amendment prohibited states from excluding women from the practice of law.¹⁴² In his concurring opinion, Justice Bradley expounded upon the idea of separate spheres and the woman's role in the home, stating:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender.

136. DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 20 (1989) (“Efforts to secure women's access to the professions aroused the same concerns as their efforts to gain the ballot.”).

137. *Id.* at 20.

138. *See id.* at 20–21 (noting that many people of that era saw this intrusion of women into law as a “particularly worrisome” problem).

139. *Id.* at 23.

140. *Bradwell v. Illinois*, 83 U.S. 130 (1872).

141. *Id.* at 139.

142. *Id.* at 138–39.

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.¹⁴³

Justice Bradley goes on to say that “[t]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.”¹⁴⁴ Despite the strongly-worded concurrence in *Bradwell*, within five years of the decision the United States Congress, as well as the Wisconsin and Illinois state legislatures, accepted the entry of women to the bar.¹⁴⁵

In the late 1800s and early 1900s, women were also denied admission into law schools.¹⁴⁶ In 1891 New York University became one of the first law schools to admit female students.¹⁴⁷ Columbia University, however, did not admit women until 1927, and Harvard continued to exclude women from its hallowed halls until 1950.¹⁴⁸ This exclusion is reflected in census data of the number of women lawyers in the United States during this time period. In 1920—the time period immediately preceding the all-woman court—just 1.4% of the total number of attorneys across the country were women.¹⁴⁹ At that same time, women represented between only 2–5% of all law school graduates.

143. *Id.* at 141 (Bradley, J., concurring).

144. *Id.*

145. DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 23 (1989). This acceptance of women, however, was not universal. *Id.* Minority women were excluded from state bars and law schools throughout the first half of the twentieth century. *Id.* “Throughout this period no more than twenty-five black women were reportedly in legal practice.” *Id.*

146. See John B. Wefing, *State Supreme Court Justices: Who Are They?*, 32 *NEW ENG. L. REV.* 47, 55–57 (1997) (noting that few women served as judges in the United States prior to the late twentieth century).

147. *Id.* at 56–57. *But see* ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 82 (1983) (stating that the University of Iowa, Boston University Law School, and Hastings Law School admitted women to study law before 1891).

148. John B. Wefing, *State Supreme Court Justices: Who Are They?*, 32 *NEW ENG. L. REV.* 47, 57 (1997); ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 203–04 n.63 (1983); *see also id.* at 169 n.51 (1983) (acknowledging that Yale accepted women into its law school in 1918). Portia Law School was an all women school of law that was established in part due to Harvard’s initial reluctance to admit women to its law school. *Id.* at 83.

149. VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 2 (Harvard University Press 1998).

In 1910 there were just 558 women lawyers across the entire country.¹⁵⁰ Only one woman (Hortense Ward) was licensed to practice law in Texas.¹⁵¹ By 1924 there were only around thirty women practicing law in the entire state of Texas.¹⁵² The irony of this period in women's history is that there existed "an inherent contradiction" in that women had, at least formally, won the right to practice law but were still denied the right to vote.¹⁵³ In fact, for many women lawyers of that era, attempts to open the bar to women were part of the broader movement for women's rights.¹⁵⁴

B. *Women and the Judiciary*

For women, winning a seat on the bench proved to be an even more arduous task than the fight for admission into the legal profession. The task required not only an education in the law but also experience (sometimes a minimum number of years of experience were required for specific seats¹⁵⁵) as well as strong political connections.¹⁵⁶ The first woman judge in the United States was Esther McQuigg Morris, who was appointed to a position as justice of the peace in Wyoming after the presiding judge resigned in protest to the passage of the state's Women's Suffrage Bill, sarcastically suggesting that the county commissioners replace him with a woman—which they did.¹⁵⁷ In 1886 Carrie Burnham Kilgore "bec[ame] one of the first women to

150. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 289 (1994).

151. *Id.* at 289 n.2.

152. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Women Texas Supreme Court*, Presentation to the Texas State Historical Association 2 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*).

153. VIRGINIA G DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 36 (Harvard University Press 1998).

154. *Id.*

155. See TEX. CONST. art. V, § 2 (amended 1981) (requiring that a Texas Supreme Court justice have practiced law or served as a judge in Texas for at least seven years); Robert W. Higgason, *A History of Texas Appellate Courts: Preserving Rights of Appeal Through Adaptations to Growth, Part 1 of 2: Courts of Last Resort*, HOUS. LAW., Mar.–Apr. 2002, at 20, 24 (noting that one must have at least seven years of experience practicing law in Texas to serve as a justice on the Supreme Court of Texas).

156. Betty Barteau, *Thirty Years of the Journey of Indiana's Women Judges 1964–1994*, 30 IND. L. REV. 43, 62 (1997).

157. *Id.*

serve in a state judiciary,”¹⁵⁸ and in 1921 Florence Ellinwood Allen became the first woman judge elected, rather than appointed.¹⁵⁹

Florence Allen was the first woman to sit as a state supreme court justice.¹⁶⁰ She held the Ohio Supreme Court position for eleven years beginning in 1922.¹⁶¹ Her term began just three years before the all-woman supreme court in Texas convened.¹⁶² However, similar to the experience in Texas, this most auspicious beginning did not lead to gender parity on the states’ highest benches. It was not until 1959 that another woman served on a state supreme court.¹⁶³

The all-woman supreme court was, in fact, the first time that any woman sat on a Texas bench. The reluctance of scholars to give this event a significant place within the official history of women judges¹⁶⁴ is likely because it was the highest court in Texas and involved not just one woman but three women sitting en banc, as well as the fact that it was ten more years before another woman served in any judicial capacity in the state.¹⁶⁵

158. *Id.* She served as a master of chancery in Philadelphia. *Id.*

159. *Id.* at 62–63. See generally, JEANETTE E. TUVE, *FIRST LADY OF THE LAW: FLORENCE ELLINWOOD ALLEN* (Univ. Press 1984) (recounting Florence Ellinwood Allen’s legal career).

160. John B. Wefing, *State Supreme Court Justices: Who Are They?*, 32 *NEW ENG. L. REV.* 47, 56 (1997).

161. *Id.*

162. See Mary G. Ramos, *Texas’ All-Woman Supreme Court*, in *TEXAS ALMANAC* 43 (Elizabeth Cruce Alvarez & Robert Plocheck eds., 2008–2009), available at <http://www.texasalmanac.com/history/highlights/supreme/> (discussing the 1925 all-woman Texas Supreme Court).

163. *Id.* Rhoda Lewis was appointed to the Hawaii Supreme Court in 1959. *Id.*

164. Numerous articles on the subject have either ignored the event entirely or defined it as merely a bizarre occurrence or “temporary departure” from the status quo. See, e.g., Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 *ST. MARY’S L.J.* 289, 292 (1993) (accrediting Sarah Hughes as the first woman judge in Texas); Betty Barteau, *Thirty Years of the Journey of Indiana’s Women Judges 1964–1994*, 30 *IND. L. REV.* 43, 62–63 (1997) (failing to mention the event in her historical chronology of women judges).

165. See Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 *ST. MARY’S L.J.* 289, 292 (1993) (noting that this honor would go to Judge Sarah Hughes, appointed to the 14th District Court of Dallas in 1935).

V. GOVERNOR NEFF AND HIS HISTORIC DECISION

The characteristic retelling of the story of the all-woman supreme court goes like this: the three justices of the Texas Supreme Court had to excuse themselves from the case because they were members of the Woodmen of the World. When Governor Neff tried to find three replacements, he could not find any male judges or lawyers who could accept the appointment because they were all Woodmen. According to this explanation, Governor Neff was forced to choose women since almost all male lawyers in Texas were Woodmen. Since women were barred from membership in the Woodmen, the story goes, women were the only ones eligible to hear the case.

This idea that Governor Neff had no choice but to appoint women was first suggested in an article in the *Houston Post* Sunday magazine, the *Texas Star*, in 1973.¹⁶⁶ The article recounted Neff's decision, stating that:

[Neff] apparently made numerous attempts to secure men to serve as special justices. . . . [E]ach time the governor offered an appointment to a prominent male member of the Bar, the attorney would respond by saying that he too belonged to the Woodmen of the World and was also disqualified. Finally, in frustration, Governor Neff decided to appoint three attorneys who, because of their sex, could not possibly be members of that organization.¹⁶⁷

This explanation is based on an interview the author of that article conducted with H. L. Clamp, who was deputy clerk of the supreme court at the time of the appointments. It is this explanation of the appointments that has been retold in almost every article chronicling the event.¹⁶⁸ In the words of one such

166. Dean Moorhead, *Texas' All-Woman Supreme Court*, THE TEX. STAR, Feb. 11, 1973, at 13.

167. *Id.*

168. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court*, Presented to the Texas State Historical Association 15 (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*); see also *Women in Law*, 37 TEX. B.J. 325, 327 (Apr. 1974) ("The three Supreme Court justices and *all otherwise qualified men* were WOW members and could not hear the suit. In a stroke of desperation or genius, the Governor appointed [women to these positions]. . . ." (emphasis added)); Marian O. Boner, *Women and the Law in Texas*, 45 TEX. B.J. 44, 45 (Jan. 1982) (explaining the reasons for the all-woman Texas Supreme Court). There have been two articles, however, that have sought to dispel the myth. See Murphy Givens, *All-Woman*

article on the event: “[M]ost male lawyers—and all three Supreme Court justices—in Texas bought insurance and sought political influence through Woodmen of the World, one barrister after another disqualified himself from judging the case. Lame-duck Gov. Pat Neff *reluctantly* made feminist history.”¹⁶⁹ Another author concluded that “the use of female justices was not common, and Neff resorted to it only after determining that he simply would not be able to appoint qualified men to the court.”¹⁷⁰

The key to this interpretation of the motivations behind the appointment is the idea that the women were chosen “reluctantly” and only out of necessity. By circumscribing Governor Neff’s options to that of either women or no one, this version of the story conveniently belies what would, no doubt, be a more accurate representation of his choice and, in the end, denies his choice any historical significance. If he had no option but to appoint women, there is no need for us, in retrospect, to see this event as anything but a temporary departure from the status quo. However, if his choice was not so limited and he indeed could have chosen men for the positions, his choices take on a greater meaning. Part V recounts the circumstances leading to the all-woman supreme court and discusses how the political and cultural power of the suffragists during the period immediately following their suffrage victory created a momentum that quite naturally accounts for the seemingly anachronistic appointment of three women to the Texas Supreme Court.

A. *Women and 1920s Texas Politics: A Celebration of Formal Equality*

In 1917 the Governor of Texas was James Ferguson, a vehement opponent of women’s suffrage.¹⁷¹ When a movement to impeach

Supreme Court Made History, CORPUS CHRISTI CALLER-TIMES, Apr. 5, 2000 available at www.caller2.com/2000/april/05/today/murphy_g/4274.html. (describing the Governor’s decision); Sue M. Hall, *The 1925 All-Woman Supreme Court of Texas*, St. Mary’s University School of Law (1980) (recounting the story of the all-woman special court of 1925).

169. Hollace Weiner, *A Case When Women Reigned Supreme*, 59 TEX. B.J. 890, 890–91 (Oct. 1996) (emphasis added).

170. Debbie M. Cottrell, *All-Woman Supreme Court*, THE HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/AA/jpa1.html> (last visited Apr. 20, 2008).

171. See A. Elizabeth Taylor, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN*

Governor Ferguson began, women suffragists supported the cause, rendering what Judith McArthur termed “quiet assistance in the legislative investigation that culminated in his impeachment.”¹⁷² He was impeached in 1917 and succeeded by then-Lieutenant Governor W. P. Hobby.¹⁷³

When Ferguson launched his campaign to regain the governorship in 1918 against acting Governor Hobby, his opponents (including prohibitionists) deemed him a threat. Suffragists saw this as their chance to gain at least a partial voice in Texas politics. Lobbying the anti-Ferguson Democratic party leaders, suffragists argued that if women were given the right to vote in primary elections, they would be able to vote for Hobby and against Ferguson.¹⁷⁴ In exchange for the primary suffrage legislation, suffrage leaders promised to campaign heavily for Hobby.¹⁷⁵ The primary suffrage bill was passed during a special session in 1918.¹⁷⁶ Soon after, women organized Women's Hobby Clubs across the state.¹⁷⁷ Within seventeen days, 386,000 women registered to vote in the 1918 Texas primary. Hobby won, with much of the credit going to the suffragists.¹⁷⁸ The suffragists also heavily campaigned for Annie Webb Blanton, who was elected state superintendent of public instruction during the same election.¹⁷⁹

For both male politicians and the suffragists themselves, the lesson was clear: women represented a new and powerful force in Texas politics.¹⁸⁰ In response, groups like TESA refined their

TEXAS 37 (1987) (“The suffragists rejoiced over the removal of Ferguson, whom they considered the ‘implacable foe of woman suffrage and of every great moral issue for which women stood.’”) (quoting Jane Y. McCallum, *Texas*, in *History of Woman Suffrage*, VI, 634, DALLAS MORNING NEWS, May 13, 1916).

172. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN* 138 (1998).

173. A. Elizabeth Taylor, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 37 (1987)

174. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN* 138 (1998).

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. A. ELIZABETH TAYLOR, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 38 (1987).

180. JUDITH N. MCARTHUR, *CREATING THE NEW WOMAN* 140 (1998) (“Ferguson himself conceded that women apparently voted ten to one for Hobby.”).

political activities and organizational efforts. “To that effect, local affiliates, with chairwomen and working committees organized down to the city, county, and precinct level, compiled detailed files on the voting records and political backgrounds of their congressmen and state legislators.”¹⁸¹ This early political campaigning and organizing served the suffragists well. When it came time to lobby for ratification of the Nineteenth Amendment, the women were ready.

They held mass meetings, circulated petitions, and made house-to-house canvasses. They established suffrage booths in department stores and theater lobbies. They asked ministers to endorse woman suffrage in their Mother’s Day sermons. They delivered five-minute talks before clubs and other groups and sponsored public lectures. It was estimated that there were almost fifteen hundred speakers in the field during the campaign.¹⁸²

On June 28, 1919, Texas became the ninth state in the country to ratify the constitutional amendment giving women the right to vote. For suffragists this was an incredible victory in a long-fought battle, and for many, ratification marks the end of an era. But the period immediately following ratification is inexorably linked to the momentum of the woman suffrage movement that led to many advances in women’s role in Texas politics.

In October 1919, the Texas Equal Suffrage Association, in recognition of the new role it needed to play, reorganized itself and became the Texas League of Women Voters. One of the League’s goals was to promote the participation of women in politics. The League was an active participant in the Joint Legislative Council (JLC), an affiliation of women’s groups formed for the purpose of lobbying for issues of concern to women.¹⁸³

The JLC represented the lobbying interests of the Texas Federation of Women’s Clubs, the Texas Mother’s Congress, the

181. *Id.*

182. A. ELIZABETH TAYLOR, *The Woman Suffrage Movement in Texas*, 27 J. S. HIST. 194 (1951), reprinted in *CITIZENS AT LAST: THE WOMAN SUFFRAGE MOVEMENT IN TEXAS* 42 (1987).

183. Tex. St. Lib. and Archives Comm’n, *Votes for Women!: Aftermath*, <http://www.tsl.state.tx.us/exhibits/suffrage/aftermath/page1.html> (last visited Apr. 20, 2008).

Women's Christian Temperance Movement, the Graduate Nurses Association, and the League of Women Voters.¹⁸⁴ From 1923 to 1929, the group (dubbed the "Petticoat Lobby") successfully lobbied for child labor laws, prison reform, schools, and mother-infant health care program funding.¹⁸⁵

B. *Governor Pat Neff and Governor-Elect Ma Ferguson: Endings and Beginnings*

Pat Neff was Governor of Texas from 1921–1925.¹⁸⁶ The reform-minded Governor had begun the practice of appointing women to serve on state boards and was the first Texas governor to appoint a woman to serve as his private secretary.¹⁸⁷ In Governor Neff's 1920 gubernatorial campaign, women were instrumental in his defeat of anti-suffrage opponent Joseph W. Bailey.¹⁸⁸

In 1924 Governor Pat Neff was unable to run for re-election, leaving two Democratic candidates: Felix Robertson, a leader of the Ku Klux Klan in Dallas, and Miriam A. "Ma" Ferguson, wife of impeached Governor James E. Ferguson.¹⁸⁹ It was well-known throughout the campaign that Ma was running as a proxy for her husband who could not run himself.¹⁹⁰ Her campaign slogan was "two governors for the price of one."¹⁹¹ At campaign rallies, she often turned the platform over to her husband.¹⁹² Instead of

184. *Id.*

185. *Id.*

186. Lois Smith Murray, *Pat Morris Neff*, in 3 THE HANDBOOK OF TEXAS 642 (Eldon Stephen Branda ed., 1976), available at <http://www.tsha.utexas.edu/handbook/online/articles/view/NN/frne5.html>.

187. Debbie Mauldin Cottrell, *All-Woman Supreme Court*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tsha.utexas.edu/handbook/online/articles/view/AA/jpa1.html>.

188. Murphy Givens, *All-Woman Supreme Court Made History*, CORPUS CHRISTI CALLER-TIMES, Apr. 5, 2000, available at www.caller2.com/2000/april/05/today/murphy_g/4274.html.

189. John D. Huddleston, *Miriam Amanda Wallace Ferguson*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/FF/ffe6.html>.

190. *Id.*

191. *Id.*

192. Tex. St. Lib. and Archives Comm'n, *Votes for Women: Aftermath*, available at <http://www.tsl.state.tx.us/exhibits/suffrage/aftermath/page2.html#ma> (last visited Apr. 20, 2008).

choosing between the two Democratic candidates, many women chose to support the Republican candidate, University of Texas Law School Dean George C. Butte.¹⁹³

Despite the efforts of the Texas suffragists, Texas elected its first woman governor in 1924.¹⁹⁴ Governor Ma Ferguson took office in January 1925, the same month that the all-woman court convened in the case of *Johnson v. Darr*.¹⁹⁵ During that same time period, women across the state were being elected and appointed to numerous public positions.¹⁹⁶ In 1926 Margie Neal became the first woman to be elected to the Texas Senate, while four other women were elected to the Texas House of Representatives.¹⁹⁷ Women were also serving in political offices across the state as county treasurers, school superintendents, county clerks, tax assessor-collectors, and on numerous state boards.¹⁹⁸

Recent scholarship on Governor Neff and his motivations behind the appointment of the all-woman court suggests that the Governor's actions were not the product of necessity. Jeffrey Dunn argues that the idea that Governor Neff tried fruitlessly to appoint male attorneys—an idea that originated from an interview with a deputy clerk of the court given nearly fifty years after the case was decided—is not supported by the historical evidence.¹⁹⁹ For instance, the lag time between the disqualification of the justices and the appointments was more likely the product of a general delay in political appointments rather than evidence that Governor Neff was in a continuous search for male candidates.²⁰⁰

193. Judith N. McArthur, *Women and Politics*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/pwwzj.html>.

194. Tex. St. Lib. and Archives Comm'n, *Votes for Women: Aftermath*, available at <http://www.tsl.state.tx.us/exhibits/suffrage/aftermath/page2.html#ma> (last visited Apr. 20, 2008).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. See Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court Presented to the Texas State Historical Association 21* (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*) (finding that Dean Moorhead's article, in which former deputy clerk H. L. Clamp, stated that Governor Neff had diligently searched for male appointees before settling on an all-woman court, became an embellished, colorful anecdote).

200. *Id.* at 18.

At the end of 1924, Governor Neff had over 100 outstanding appointments.²⁰¹ Furthermore, when the attorneys in the case inquired about the status of their writ application, the clerk of the court informed them that the Governor “appears to have overlooked the matter” and advised the attorneys to request that the Governor appoint a special court.²⁰²

However, the strongest evidence restating the view that Governor Neff had to appoint women to the court is that *Johnson v. Darr* was neither the first nor the last time a special court had to be appointed by him to hear a Woodmen of the World case. In fact, Governor Neff had to appoint special courts to hear three other Woodmen of the World cases before 1925; in each of those cases, he was able to find and appoint male attorneys.²⁰³ Male attorneys were also appointed to hear cases involving the Woodmen of the World in 1927.²⁰⁴

Thus, although the most common explanation for the appointment of the all-woman supreme court was that Governor Neff could not find any male judges to fill the positions, that explanation is contrary to the evidence. Then why did he choose to appoint women when he could have appointed men? Perhaps more to the point, why did he choose to appoint *all* women? In the absence of necessity, the appointment of an all-woman court can hardly be seen as a coincidence. It must have been a conscious decision on Governor Neff's part. The fact that two of the first women appointees resigned and that he appointed two other women to take their place is further evidence of his intentions to

201. *Id.*

202. *Id.*

203. *Id.* at 19. The three special courts were *Hutcherson v. Sovereign Camp, Woodmen of the World*, 112 Tex. 551, 251 S.W. 491 (1923), *Sovereign Camp Woodmen of the World v. Ayres*, 113 Tex. 564, 261 S.W. 1000 (1924), and *Wirtz v. Sovereign Camp, Woodmen of the World*, 114 Tex. 471, 268 S.W. 438 (1925). The special court in *Wirtz*, in fact, was held almost concurrently with the all-woman court. It was decided January 12, 1925, only four days after the all-woman court granted the writ of error in *Johnson v. Darr*. *Id.*

204. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court Presented to the Texas State Historical Association 20* (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*). The two special courts in 1927 were *Sovereign Camp, Woodmen of the World v. Patton*, 117 Tex. 1, 295 S.W. 913 (1927) and *Sovereign Camp, Woodmen of the World v. Boden*, 117 Tex. 229, 1 S.W.2d 256 (1925). *Id.*

appoint an all-woman court.

Given the Governor's reform-minded nature, his previous appointments of women, and his successful alliances with leaders of the women's movement during his campaign, it is not hard to imagine that Governor Neff intentionally decided to make such a symbolic gesture of support for women. The political and cultural momentum of the women's movement in Texas at the time makes this explanation even more likely. In his research on Governor Neff's decision to create an all-woman court, Jeffrey Dunn concludes that the most plausible explanation is that "he was genuinely interested in advancing the status of women in state government for its own sake and intentionally selected an all-woman court to encourage the notion that greater participation among women in state government would benefit the state."²⁰⁵

This conclusion resonates with the Governor's own thoughts on the subject. Governor Neff wrote a letter to Texas Woman's Chamber of Commerce member Nellie Metcalfe on the subject of the all-woman court in which he stated: "I am in hopes that this recognition of the womanhood of the State as attorneys will be helpful in many ways to those women, wherever they may be, who are fighting single-handed the battles of life."²⁰⁶

This evidence of other special courts of appointed male attorneys for the Woodmen cases and of Governor Neff's support for women's causes should dispel the myth that Governor Neff's hands were tied and that his decision to appoint women was a reluctant one. History suggests that quite the opposite was true. It is far more likely that Governor Neff made a conscious decision to appoint an all-woman court as both a show of support for women's political activism as well as an attempt to open new doors for women in Texas politics.

C. *The Legacy of Johnson v. Darr*

Although *Johnson v. Darr* is famous despite the banality of the legal principles underlying the court's opinion, it is important to

205. Jeffrey D. Dunn, *The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court Presented to the Texas State Historical Association 22-23* (Mar. 6, 2004) (on file with the *St. Mary's Law Journal*).

206. *Id.* at 23 (quoting Letter from Governor Pat Neff to Nellie Metcalfe (Jan. 9, 1925) (on file with the Texas Collection, Baylor University)).

note that the all-woman court's judicial opinion has withstood the test of time. The case has been cited over thirty times since its publication in 1925, including by the Fifth Circuit Court of Appeals,²⁰⁷ the Northern District of Texas,²⁰⁸ and the Nevada Supreme Court.²⁰⁹ The courts have cited the case to support various propositions, such as: recording statutes should be narrowly construed;²¹⁰ recording statutes do not apply to equitable titles;²¹¹ and the rights of the holder of an equitable title are not affected by failure to record the conveyance of the legal title.²¹² *Johnson v. Darr* was cited most recently by the Texas Court of Appeals of San Antonio in 2003.²¹³ The courts that cite to the decision do so not because of the historical significance of the judges, but rather because of the judicial precedent it created. In fact, of all of the cases citing *Johnson v. Darr*, only one refers to the fact that the decision was made by the all-woman supreme court.²¹⁴ In a very real sense, the all-woman court left an enduring mark on Texas jurisprudence.

D. *The Three Lady Justices*

Upon leaving her position as special chief justice of the all-woman court, Hortense Sparks Ward returned to private practice until her husband's death in 1939.²¹⁵ As a practicing attorney, she never represented one of her clients in the courtroom because she feared that the presence of a woman attorney would prejudice her client.²¹⁶ In addition to practicing law, she wrote several articles for the *Women Lawyers' Journal* and continued campaigning for

207. *Prewitt v. United States*, 792 F.2d 1353, 1356 (5th Cir. 1986).

208. *Citizens' Nat'l Bank v. Turner*, 14 F. Supp. 495, 496 (N.D. Tex. 1936).

209. *Johns-Manville, Inc. v. Lander County*, 240 P. 925, 926 (Nev. 1925).

210. *Prewitt*, 792 F.2d at 1356.

211. *Hellman v. Circle C. Props. I, Ltd.*, No. 04-03-00217-CV, 2002 CI 06644 (Tex. App.—San Antonio Dec. 10, 2003, no pet.) (mem. op.).

212. *Garrison v. Citizens' Nat'l Bank*, 25 S.W.2d 231, 233 (Tex. Civ. App.—Waco 1930).

213. *Hellman*, 2002 CI 06644, at *4.

214. *Tex. Indust. Accident Bd. v. Indust. Found. of the S.*, 526 S.W.2d 211, 218 n.9 (Tex. Civ. App.—Beaumont 1975) (making reference to the all-woman Texas Supreme Court in a footnote).

215. Janelle D. Scott, *Hortense Sparks Ward*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/WW/fwa83.html>.

216. *Id.*

candidates and issues.²¹⁷ Ward died in 1944.²¹⁸

Not much is known of Ruth Virginia Brazzil's life after leaving the court.²¹⁹ She was postmistress in Bandera in the late 1920s or early 1930s and lived at various times in Center Point and Kerrville, Texas.²²⁰ She died in 1976.²²¹

Of the three women justices, only Hattie Leah Henenberg went on to pursue a career in public service.²²² She was assistant attorney general of Texas from 1929 to 1931 and later served as Special Assistant U.S. Attorney General in 1934.²²³ From 1941 to 1947, Henenberg was an assistant district attorney in Dallas County working on domestic relations cases.²²⁴ In 1932, Henenberg wrote an article for the *Women Lawyers' Journal* about her experience on the court in which she declared that *Johnson v. Darr* was "[t]he leading case on the application of registration statutes to equitable titles."²²⁵ She died in 1974.²²⁶

VI. CONCLUSION: IN THE WAKE OF *JOHNSON V. DARR*

A fact that has not been lost in the retelling of the story of the all-woman supreme court is just how long it took to place even one woman on the state's highest court since that fateful occurrence in 1925. In 1958 Sarah Hughes, the first woman appointed to serve as a Texas district court judge,²²⁷ tried and failed to win a seat on the Texas Supreme Court.²²⁸ It was not until the appointment of

217. *Id.*

218. *Id.*

219. Sherilyn Brandenstein, *Ruth V. Brazzil Roome*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tshaonline.org/handbook/online/articles/RR/froey.html>.

220. *Id.*

221. *Id.*

222. Sherilyn Brandenstein, *Hattie L. Henenberg*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tsha.utexas.edu/handbook/online/articles/view/NN/frne5.html>.

223. *Id.*

224. *Id.*

225. Hattie L. Henenberg, *Women of the Supreme Court of Texas*, WOMEN LAW. J., Aug. 1932, at 16.

226. Sherilyn Brandenstein, *Hattie L. Henenberg*, THE HANDBOOK OF TEXAS ONLINE, available at <http://www.tsha.utexas.edu/handbook/online/articles/view/NN/frne5.html>.

227. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 293 (1993).

228. *Id.* Two authors have written an interesting article about the election. See

Ruby Kless Sondock in 1982—fifty seven years after the all-woman supreme court—that another woman sat on the Texas Supreme Court.²²⁹ The first woman elected to the bench was Justice Rose Spector, who won her seat in 1992.²³⁰

It is this lengthy gap in the timeline of the history of women judges in Texas that creates the misconception that the all-woman court was merely a fortuitous event with no links to the greater story of the progress of women. But the all-woman court was much more than an anomaly. The links between that event and the story of women's progress in Texas can be found not within the timeline of the history of women judges but rather within the timeline of the history of the women's movement. The "gap" in the timeline can be explained by looking beyond the narrow confines of the history of women in the legal field to the broader history of the women's movement and specifically to the time period immediately following the ratification of the Nineteenth Amendment.

The decade following the ratification of the Nineteenth Amendment represents not the end of an era but the culmination of one. The 1920s saw the political payoff for years of lobbying and campaigning on the part of suffragists across the state. Women were being elected and appointed to numerous political offices, and women were successful in their various reform-minded efforts.

Historians of the women's movement have noted that it was the end of the 1920s, not 1919, that marked the true end of the sustained political efforts of the early suffragists.²³¹ As the movement lost its common goal—suffrage—so too did it lose its momentum. The early 1930s was a time of decline for the women's rights movement as the suffragists who were once so

Judge Mark Davidson & Kent Rutter, *The Making of a Justice*, TEX. B.J., Nov. 2000, at 962 (stating that Hughes ran against Justice Joe R. Greenhill, who had been appointed to the position the previous year). Not surprisingly, gender was an issue in the campaign. Justice Greenhill, suggesting a distinct split in the vote along gender lines, stated that "the lawyers were all for me, but the legal secretaries were all for Sarah." *Id.* at 963. Hughes lost to Justice Greenhill in one of the closest races in the history of the Texas Supreme Court. *Id.* at 966.

229. Barbara Bader Aldave, *Women in the Law in Texas: The Stories of Three Pioneers*, 25 ST. MARY'S L.J. 289, 300 (1993).

230. *Id.*

231. Tex. State Lib. and Archives Comm'n, *Votes for Women: The Women's Suffrage Movement in Texas*, available at <http://www.tsl.state.tx.us/exhibits/suffrage/index.html>.

unified in their fight “drifted off in different directions.”²³² Despite all of the early successes in gaining representation in political offices, the number of women elected to public office in Texas actually declined from 1930 to 1950.²³³

It was also a time of disillusionment for women lawyers. In 1932 the president of the National Association of Women Lawyers proclaimed: “Although the dawn is in the sky, the day of equal opportunity for women lawyers has not yet come.”²³⁴ This quote exemplifies the sentiment many women lawyers felt in the early 1930s as they became all too aware of the barriers they still faced within the legal profession. As Historian Virginia Drachman suggests, women lawyers of the 1930s had come to “recognize[] the hard fact that women lawyers were far from achieving their goal of professional equality with men.”²³⁵

Three female lawyers-turned-judges heard oral argument on January 30, 1925, and ultimately reached a decision, as one journalist at the time explained, that was “just as sound as a decision might have been made with all the Mr.’s since Adam stacked behind it.”²³⁶ This event was not an aberration but rather an example of the early positioning of women in high-profile political appointments. As such, it was a key victory for the women in Texas who fought so hard for political equality. Events like the all-woman supreme court marked the culmination of all their years of political blood, sweat, and tears.

232. DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 29 (1989).

233. *Id.*

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