October 26, 2007

The All-Woman Texas Supreme Court: The History Behind A Very Brief Moment on the Bench

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Available at: https://works.bepress.com/alice_mcafee/1/
On the surface, there is nothing particularly noteworthy about the case of Johnson v. Darr and, in fact, it was not the merits of the case that made the headlines. It was the makeup of the tribunal. Long before women in Texas were even granted the right to serve on juries and before any woman ever served as a judge on any of the lower Texas courts, the judges appointed to hear the case of Johnson v. Darr were all women. This was the first time a woman was appointed in any capacity to serve on the Texas judiciary and so the unprecedented nature of the event drew nation-wide attention at the time, including coverage in the New York Times. As an 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. And thus, in the retelling of the story of the all-woman supreme court, historians have either relegated it to a footnote or have ignored the event altogether. This conception of the event as an outlier, however, is historically flawed. In this article, I argue that the all-woman supreme court represents a key victory in the women’s movement in Texas and in 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 reconciled. And it is within this context that the all-woman court takes on greater historical significance. This article unpacks the history of the events leading up to the appointment of the three women to the supreme court in an attempt to locate this historical moment within the greater political climate of the day.
THE ALL-WOMAN TEXAS SUPREME COURT: THE HISTORY BEHIND A VERY BRIEF MOMENT ON THE BENCH

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

ALICE G. MCAFEE

I. INTRODUCTION

“...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...”

On the surface, there is nothing particularly noteworthy about the case of Johnson v. Darr and, 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 on juries and before any woman ever served as a judge on any of the lower Texas courts. This was the first time a woman was appointed in any capacity to serve on the Texas judiciary and the only time in Texas history that all of the justices on the Texas Supreme Court were women. And so, the unprecedented nature of the event drew nation-wide attention at the time, including coverage in the New York Times.

1 Staff Attorney, Texas Supreme Court, Austin, Texas. The author would like to thank Former Chief Justice of the Texas Supreme Court 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.
2 Statement made by Edith Wilmans upon learning that she was appointed by the Governor of Texas to serve as a special justice on the Texas Supreme Court. Edith Eunice Wilmans Malone, Edith Eunice Wilmans, THE HANDBOOK OF TEXAS ONLINE, at http://www.tsha.utexas.edu/handbook/online/articles/view/WW/fwi48.html. Wilmans later learned she could not accept the appointment because she lacked the requisite number of years of experience.
3 Johnson v. Darr, 272 S.W. 1098 (Tex. 1925).
4 Supreme Court of Women: First Such Body in the Country Meets in Texas Today, NY TIMES, Jan. 8, 1925, at 12.
Since then, the story of the all-woman supreme court has been retold countless times, usually in connection with the history of the admission of women into the legal profession. But as an 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.

And thus, in the retelling of the story of the all-woman supreme court, storytellers have either relegated it to the outer margins—to the footnotes of the history of women and the law in Texas—or have ignored the event altogether. Either way, the implication is that this was an incongruous episode lacking in any historical significance. This conception of the event would seem logical, given the seemingly minimal impact the event had on the immediate admission of women onto the bench. However, this conception is historically flawed.

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 reconciled. And it is within this context that the all-woman court takes on greater historical significance.

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7 See, e.g., Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History* (1998) (failing to mention the event or to mention the three women justices in her chronological table of first women judges and listing Sarah Hughes as the first woman judge in Texas).
In Part II, I will recount the story of the all-woman supreme court. In Part III, I will describe the context for this story in terms of the rise of 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 up to Texas’ ratification of the Nineteenth Amendment. Part IV focuses on the history of women and the law in Texas, including a history of women as lawyers and judges. Part V unpacks the history of the events leading up to the appointment 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, in my conclusion, I suggest how this interpretation of the history of the all-woman supreme court might contribute to a greater understanding of the history of women on the judiciary.

II. \textit{Johnson v. Darr: The All-Woman Court Presides}

In 1921, trustees of the 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.\footnote{Johnson v. Darr, 257 S.W. 682, 683 (Tex. Civ. App.–El Paso 1924), \textit{aff’d}, 272 S.W. 1098 (Tex. 1925).} 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.\footnote{\textit{Id.}} The deed to Jones was recorded two days later, but the trust agreement was not recorded until October of 1922.\footnote{\textit{Id.}} In the interim, Jones’ creditors attached the parcels and obtained a judgment for the debt and foreclosure on the land.\footnote{\textit{Id.}}

The Woodmen of the World trustees brought suit against the creditors to establish the trust agreement and prevent the transfer of land.\footnote{\textit{Id.}} The trial court granted the trustees one tract and the creditors the other tract.\footnote{\textit{Id.}} On appeal, the El Paso Court of Appeals reversed and
rendered judgment for the Woodmen of the World for both tracts of land. The defendants appealed the case to the Texas Supreme Court.

In 1925, the Texas Supreme Court’s appellate jurisdiction was exclusively civil, consisting of three judges—a chief justice and two associate justices—who were elected by the voters to six-year terms. In order to be eligible to serve on the highest court, an attorney was required to be at least 30 years old and have at least seven years of experience practicing law.

Chief Justice Calvin Maples Cureton was first appointed to the Texas Supreme Court by Governor Pat Neff in 1921 and was later elected to the court in 1922. Associate Justice Thomas B. Greenwood was appointed to his seat on the Supreme Court in 1918, and Associate Justice William Pierson was appointed to the bench in 1921. When the application for writ in *Johnson v. Darr* came before the Court in 1924, all three justices were members of local lodges of the Woodmen of the World.

A. Appointing a Special Court

Upon review of the application of writ of error, Chief Justice Cureton determined that he and the two associate justices of the Texas Supreme Court were disqualified from hearing the appeal because of their membership in Woodmen of the World. On March 8, 1924, Chief Justice...

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14 Id. at 684.
16 Id. at 24. The Court of Criminal Appeals was created in 1876 to deal exclusively with criminal appeals. Robert W. Higgason, *A History of Texas Appellate Courts*, HOUSTON LAWYER 20, 24 (Mar./April 2002).
17 Id. In 1945, the number of justices sitting on the court was increased from three to nine.
18 Id. See also TEX. REV. CIV. STAT., art 1514 (1911).
23 Id. The Woodmen of the World is a fraternal benefit society that was founded in 1890. The national organization is organized into local lodges and, until 1957, membership was not open to women. In the early 1900s, the
Justice Cureton certified the disqualification of all three justices to Governor Pat Neff, who by statute had the authority to appoint special justices to hear the case.24

In the contemporary retelling of the story, Governor Neff tried to appoint male judges or attorneys to hear the case, but every man offered the appointment ultimately had to decline, due to their own membership in the Woodmen of the World.25 Finally, one week before the case was scheduled for oral argument, Governor Neff hit on the idea that his only choice was to appoint women, since women could not be members of Woodmen of the World.26

Appointing three women to the Court, however, proved to be a difficult task. At the time of the appointments, there were fewer than thirty women lawyers in Texas, of whom fewer than ten would have been qualified under Texas law for appointment to the Supreme Court.27 Nellie Gray Robertson, county attorney for Hood County, was appointed to the position of special chief

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24 Tex. Const. of 1891, art V, § 2 (providing that “[n]o judge shall sit in any case wherein he may be interested”). The Texas Constitution called for the disqualified judges to certify to the governor, “who shall immediately commission the requisite number of persons learned in the law, for the trial and determinations of such cause.” Tex. Const. of 1876, art V, § 11 (1876); Tex. Rev. Civ. Stat., art. 1516 (1911).

25 Jeffrey Dunn attributes this idea that Governor Neff had no choice but to appoint women to an article in Texas Star Magazine written by Dean Moorhead and published in 1973. Jeffrey D. Dunn, The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court 14 (presented to the Texas State Historical Association Mar. 6, 2004) (on file with the author). See also, Dean Moorhead, Texas’ All-Woman Supreme Court, Texas Star Magazine (Houston Post), Feb. 11, 1973, at 13.

26 Id.

justice. Edith E. Wilmans, a former member of the Texas Legislature and Hortense Sparks Ward, a Houston attorney, were appointed to the position of special associate justice. Wilmans, who was the first woman elected to the Texas Legislature, was quoted in the newspaper as saying that her appointment was a “great honor 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.”

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

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 at the time, to inquire about the legal qualifications for the position. The story goes that Clamp jokingly retorted that women could be qualified to serve as special justices, if only the Governor could

28 Neff Names Three Texas Women to Function as Special Supreme Court, DALLAS MORNING NEWS, Jan. 2, 1925, at 1.
29 Id.
30 Mary G. Ramos, Texas’ All-Woman Supreme Court, TEXAS ALMANAC, 2004-2005, 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. Robertson missed the cut off by three months. Governor Neff had also offered one of the appointments to Emma R. Webb of Bastrop County, but she was disqualified due to her own membership in the women’s auxiliary of Woodmen of the World, the Woodmen Circle. Neff Names Three Women to Supreme Court, AUSTIN AMERICAN-STATESMAN, Jan. 2, 1925, at 1.
find three women who could agree on anything. Governor Neff did find three women, who, in the end, did agree. All three voted to affirm the Court of Appeals decision in *Johnson v. Darr*.

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. While working as a court stenographer, Ward took correspondence courses on the law, passing the Texas bar examination in 1910. She married Judge W.H. Ward in 1908 and they practiced together in Houston as partners in the law firm of Ward & Ward.

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

As President of the Houston Equal Suffrage Association and active member of the Texas Equal Suffrage Association, Ward fought for both the federal woman suffrage amendment and for Texas legislation allowing women to vote in state primary elections. Ward is, in fact,

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35 Id.
36 Id.
38 Id.
39 Id.
credited with drafting the Texas primary suffrage bill\(^{40}\) and becoming the first woman in Harris County to register to vote.\(^{41}\)

Ward was heavily involved in political campaigning, working on William Hobby’s gubernatorial campaign against James Ferguson in 1918 and eventually campaigning in several other elections outside Texas in 1924 at the request of the Democratic National Committee.\(^{42}\) She 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.\(^{43}\)

2. Hattie Leah Henenberg.—Henenberg attended the Dallas School of Law and was admitted to the Texas bar in 1916. She became active in the Dallas Bar Association where, from 1923–1924, she supervised the association’s Free Legal Aid Bureau.\(^{44}\) At the time of her appointment, she practiced law in Dallas in association with Albert Walker.\(^{45}\) According to news reports of the appointment, Henenberg was recommended for the appointment by several Dallas attorneys, including six women attorneys.\(^{46}\)

3. Ruth Virginia Brazzil.—Brazzil attended the University of Texas as a “special student” in law\(^{47}\) and became a member of the Texas bar in 1912.\(^{48}\) She worked for a Texas legislator while living in Austin. After moving to Galveston, she became assistant treasurer and assistant general manager for the American National Life Insurance Company.\(^{49}\) Curiously enough, Brazzil was opposed to women’s suffrage and, on the issue of whether women should hold

\(^{40}\) Id.
\(^{41}\) Id.
\(^{42}\) Id.
\(^{43}\) Id.
\(^{46}\) *Dallas Woman Named on Special Tribunal*, Dallas Morning News, Jan. 6, 1925, at 1.
\(^{48}\) Id.
\(^{49}\) Id.
public office, she stated that “there is little chance of the majority of our public offices ever being filled by women—there 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.”

She did, however, support women’s involvement in political reform activities because she hoped it would lead to “the enactment of better State laws looking to the protection of working women and children, and particularly the children.”

C. The All-Woman Supreme Court Presides

On January 8, 1925, the all-woman supreme court met for the first time. Chief Justice Cureton administered the oath in the consultation room of the Texas Supreme Court. Attorney General Dan Moody, Clerk of the Court Fred Connerly and Associate Justices Thomas B. Greenwood and William Pierson attended the ceremony.

According to newspaper reports at the time, Chief Justice Cureton explained the writ of error procedure to the special justices. The special justices could refuse to grant the writ of error, affirm the El Paso Court of Appeal’s decision, or grant the writ of error and hear the appeal. After a short deliberation, Special Chief Justice Ward announced the decision of the court. The writ of error was granted—oral argument was scheduled for January 30, 1925.

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.”

50 John William Stayton, *The First All-Woman Supreme Court in the World*, HOLLAND’S MAGAZINE (Mar. 1925) at 5, 73.
51 Id.
53 Id.
54 Id.
55 Id.
56 Stayton, *supra* note 50, at 5.
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.”\(^{57}\)


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.\(^{59}\) The Special Court held that the trust agreement was not required by statute to be recorded and therefore the lands were not subject to the creditors’ attachment lien.\(^{60}\)

In her concurring opinion, Special Justice Brazzil argued that “creditors have lost nothing by said transaction, there is no injury to prevent and no wrong to redress.”\(^{61}\) Henenberg’s concurring opinion stressed that “the attaching creditor is left with rights he had at common law, and can claim as against such unrecorded instrument, only the actual interest of [the creditor] at the time of the levy.”\(^{62}\)

Following consideration and denial of a motion for rehearing, the all-woman court retired its appointment.

### III. The Women’s Movement in Texas in the Early 1900s

Although many have dismissed the all-woman supreme court as bizarre and anachronistic, the event is consistent with the history of the women’s movement in Texas in the

\(^{57}\) *Id.*

\(^{58}\) *Id.*

\(^{59}\) *Johnson v. Darr*, 272 S.W. 1098, 1102 (Tex. 1925).

\(^{60}\) *Id.*

\(^{61}\) *Id* at 1103 (Brazzil, J., concurring).

\(^{62}\) *Id* at 1103 (Henenberg, J., concurring).
early 1900s. In this Part, I will discuss the rise of the women’s movement in Texas, including
the status of women in the early 1900s in Texas, the social causes that sparked women’s political
activism, and the organizational events leading up to the ratification of the Nineteenth
Amendment.

A. “A Great Age for Women in Politics”

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. Men occupied the public sphere of politics and business while women occupied the private
sphere of home and childcare. In this geography of gender segregation, the boundaries
between the sexes were carefully marked and rigorously defended.

In the early 1900s, the separation of men and women into separate spheres was firmly
entrenched in law and in societal norms and expectations. In fact, nineteenth century laws
served not to protect the rights of women but rather to “reinforce[] and reflect[]” this “highly
sex-stratified social order.” Women could not vote and were generally barred from holding
public office or entering most professions. Married women could not enter into contracts under
their own name, initiate legal actions or buy, sell, control or bequeath property. Strong cultural
and religious beliefs held at the time reinforced this concept of separate spheres, exhorting
women to “preserve the sanctity of the domestic sphere.”

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63 Suzanne Lebsock, Women and American Politics, 1880–1920, in WOMEN, POLITICS, AND CHANGE 35 (Louise E.
Tilly & Patricia Gurin, eds. 1990).
the social structure of male and female roles).
65 Id.
66 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.”).
67 Id. at 10.
68 Id.
69 See id. at 11 (1989) (noting that “popular ideology sought to reaffirm the centrality of domestic life” and that “the
message from the press to the pulpit alike was that women…should not stray from this ‘domestic altar.’”).
Despite the exclusion of women from the polls and from most of the traditional political spaces, the late 1800s and early 1900s have been called the “great age for women in politics.”

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. However, it was the later-formed federated women’s clubs that truly set the stage for women’s involvement in the political sphere. Groups like the Texas Federation of Women’s Clubs, the Texas Congress of Mothers, 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. In Texas, women’s organizations lobbied for child labor laws, reform of the juvenile justice system, minimum wage and minimum hours legislation for women workers and greater legal rights for married women.

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

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70 Id. at 35. The political activism of women as a group during the era was so great, William Chafe suggests 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 TWENTIETH CENTURY 16 (New York, 1991).
72 Id. at 15.
73 Id. at 21.
74 Id. at 2.
75 Id. at 21.
Christian Temperance Union.\textsuperscript{76} Eleanor Brackenridge, a leader in the Texas Woman’s Suffrage Association, was also a leader of the Texas Federation of Women’s Clubs.\textsuperscript{77} 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.\textsuperscript{78}

It was through the creation of, and participation in, these women’s voluntary organizations that women found their political voice and were able to enter the political discourse on their own terms, outside the traditional, male forums.\textsuperscript{79} It was in the course of these early club activities that women first began to formulate an ideology of equal rights for women.\textsuperscript{80}

B. Lobbying for Legal Rights and Formal Equality

One of the most significant early efforts to improve women’s legal status was the fight waged in the late 1800s and early 1900s for women’s property acts.\textsuperscript{81} In Texas, the concern over women’s legal rights sprung directly from their work on issues of working women and child welfare.\textsuperscript{82} Concern for working women and children victimized by scurrilous husbands, or middle class women losing their separate property due to their husband’s bad financial decisions, motivated clubwomen to lobby for greater legal rights for married women.\textsuperscript{83}

In Texas, even though the Spanish civil law influences softened the harsh English common law of coverture and allowed for community property between husband and wife, the

\textsuperscript{76} A. Elizabeth Taylor, \textit{Citizens at Last: The Woman Suffrage Movement in Texas} 79 (Ellen C. Temple, 1987) [hereinafter \textit{TAYLOR, CITIZENS AT LAST}].

\textsuperscript{77} \textit{TAYLOR, CITIZENS AT LAST, supra} note 76, at 128.


\textsuperscript{79} \textit{MCARTHUR, supra} note 71, at 1.

\textsuperscript{80} \textit{RHODE supra} note 54, at 11.

\textsuperscript{81} \textit{Id.} at 24.

\textsuperscript{82} \textit{MCARTHUR, supra} note 71, at 101.

\textsuperscript{83} \textit{Id.} at 102.
property laws were still weighted heavily in favor of the husband.\textsuperscript{84} Thus, even though the state recognized the wife’s right to her own property, it gave control of it to her husband.\textsuperscript{85} The Texas laws also gave the husband the sole right to manage his wife’s share in community property as well as her separate property.\textsuperscript{86}

In 1991, Hortense Sparks Ward, as Vice Chair of the Texas Congress of Mothers, played a key role in the battle. She wrote an article for the Houston Chronicle on the subject, “The Legal Status of Married Women in Texas.”\textsuperscript{87} Ward decried the legal status of married women as one unbecoming to the role of a good mother, stating that “a legal slave, though the chains be of rose leaves, does not make the highest type of mother.”\textsuperscript{88} Ward focused on the inherent unfairness of the present laws to married women, noting that a woman’s husband “may…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.”\textsuperscript{89} The article was later printed as a pamphlet and distributed free of charge to clubwomen across the state.\textsuperscript{90}

These efforts paid off. In 1913, the Texas legislature passed the Married Women’s Property Law, giving married women control of their separate personal property as well as of their personal earnings and income.\textsuperscript{91}

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. McArthur points out that

\textsuperscript{84} Id. at 101
\textsuperscript{85} Id.
\textsuperscript{86} Id.  McArthur recounts the story of one early suffragist consulting a judge on the legal rights of women in Texas to which the judge replied, “under the law of Texas women had no legal status.” Id.
\textsuperscript{87} Id. at 102.  See also, Hortense Sparks Ward, the Legal Status of Married Women in Texas, HOUSTON CHRONICLE, Apr. 1, 1911.
\textsuperscript{88} Id. at 102.  See also, Mary G. Ramos, Texas’ All-Woman Supreme Court, TEXAS ALMANAC, 2004-2005, available at http://www.texasalmanac.com/history/highlights/supreme/.
\textsuperscript{89} Id.
\textsuperscript{90} Id.  Id. at 102.  See also Debbie Mauldin Cottrell, All-Woman Supreme Court, THE HANDBOOK OF TEXAS ONLINE, at http://www.tsha.utexas.edu/handbook/online/articles/view/AA/jpa1.html; MCARTHUR, supra note 71, at 102.
\textsuperscript{91} Act of 1913, 33rd Leg., p. 61, ch. 32, § 1 (amended 1969) (current version at TEX. FAMILY CODE ANN. § 5.01) (Vernon 1986).  See also Debbie Mauldin Cottrell, All-Woman Supreme Court, THE HANDBOOK OF TEXAS ONLINE, at http://www.tsha.utexas.edu/handbook/online/articles/view/AA/jpa1.html; MCARTHUR, supra note 71, at 103.
the parallels between legal coverture and disenfranchisement could not have been lost on the women of the era, who would later fight for suffrage using the same “de-radicalized,” maternalistic arguments they used to support their fight for married women’s property rights.\footnote{McArthur, supra note 71, at 104.}

C. Women’s Suffrage

The fight for suffrage in Texas began at the constitutional convention of 1868 with the introduction of a declaration that all persons meeting age, residence, and citizenship requirements be deemed electors without distinction of sex.\footnote{Taylor, Citizens At Last, supra note 76, at 13 (citing Journal of the Reconstruction Convention, Austin, Texas 245 (2 vols. Austin, 1870).} The declaration failed as did two other resolutions calling for woman suffrage at the constitutional convention of 1875.\footnote{Id. at 14.}

In 1893, the Texas Equal Rights Association (TERA) was formed, with the goal of advancing “the industrial, educational, and equal rights of women, and to secure suffrage to them by appropriate State and national legislation.”\footnote{Id. at 16.} The TERA, however, was short-lived, ceasing to function in 1896, just three years after its formation.\footnote{Id. at 23.} A similar attempt in 1903 to form the Texas Woman Suffrage Association also failed to capture the attention of Texas’ women.\footnote{Id. at 25.}

It was not until the formation of a woman’s 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.\footnote{Id. at 26.} In 1913, women from local groups in seven Texas cities met in San Antonio and reactivated the Texas Woman Suffrage Association, convening annual conventions 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.\textsuperscript{99}

During this time, women leaders of the suffrage movement fought their battle on two major fronts, working to secure favorable public opinion as well as the support of male political leaders. In 1916, Austinite Jane McCallum became chair of public relations for TESA.\textsuperscript{100} Under her leadership, TESA publicized its fight for woman suffrage, ultimately securing the endorsement of its position from numerous Texas newspapers.\textsuperscript{101}

Women suffragists also lobbied for the support of Texas’ 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 Burmeister and Jess Baker took the suffrage cause as their own, introducing resolutions to authorize women to vote.\textsuperscript{102} And, even though these early efforts failed, suffragists were creating strong political allies and learning to wield their political power to build their coalition.\textsuperscript{103}

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:

\textsuperscript{99} Id. at 28.
\textsuperscript{100} Id. at 136.
\textsuperscript{101} Id. In an editorial endorsing woman suffrage, the \textit{Houston Chronicle and Herald} stated that: [t]he 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….
\textit{“The Fight for Woman Suffrage,” HOUSTON CHRONICLE AND HERALD} (undated clipping from late 1916 or early 1917), Minnie Fisher Cunningham Collection, Houston Metropolitan Research Ctr., Houston Public Library. Quoted in \textsc{TAYLOR, CITIZENS AT LAST}, supra note 76, at 136.
\textsuperscript{102} Id. at 36. In 1915, Representative Frank Burmeister introduced a resolution to give women the vote which failed to pass by just four votes despite strong opposition. Representative Jess Baker introduced similar legislation in 1917, which also failed to receive the necessary two-thirds majority.
\textsuperscript{103} 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.” \textit{Id.} at 152.
Included 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.104

In 1918, suffragists began working toward primary suffrage since the right to vote in primary elections could be conferred on women only by legislative act.105 Governor W.P. Hobby, a supporter of women suffrage, submitted the subject to the legislature, which was then introduced by C.B. Metcalfe of San Angelo.106 The legislation passed, and in 1918 women in Texas won the right to vote in primary elections.107 In June of 1919, Texas became the ninth state in the country to ratify the Nineteenth Amendment.108

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 Legislator for the primary suffrage bill and ratification of the Nineteenth Amendment.109 Ward 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.110 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.111

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104 Id. at 153
105 Id. at 37.
106 Id. at 38.
107 Id.
108 Id.
110 Id.
111 Id.
IV. WOMEN AND THE LEGAL PROFESSION

It is not surprising that the early women’s rights movement and the fight for women’s suffrage coincides 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.”

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.

It is also not surprising, then, that women’s attempts to enter the profession met with resistance.

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 for men only—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 intrusions into its own

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112 Drachman, supra note 7, at 2.
113 Id. at 2–3.
114 Rhode supra note 54, at 20 (“Efforts to secure women’s access to the professions aroused the same concerns as their efforts to gain the ballot.”). See discussion supra, at subpart IV(A).
In 1870 there were only five women lawyers practicing in the United States.\textsuperscript{117} In the landmark case, \textit{Bradwell v. Illinois},\textsuperscript{118} the U.S. Supreme Court upheld an Illinois Supreme Court decision to deny Myra Bradwell’s application for a license to practice law. The Court rejected the argument that the Fourteenth Amendment prohibited states from excluding women from the practice of law.\textsuperscript{119} In his concurring opinion, Justice Bradley expounded upon the idea of separate spheres and the woman’s role in the home, stating:

\begin{quote}
The 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. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.\textsuperscript{120}
\end{quote}

Justice Bradley goes on to say that the “paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.”\textsuperscript{121} However, despite the strongly-worded concurrence in \textit{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.\textsuperscript{122}

In the late 1800s and early 1900s, women were also denied admission into law schools. New York University was one of the first law schools to admit female students, first admitting

\begin{verbatim}
115 RHODE supra note 54, at 20.
116 See RHODE supra note 54, at 21 (noting that many people of that era saw this intrusion of women into law as a “particularly worrisome problem”).
117 RHODE supra note 54, at 23.
118 83 U.S. 130 (1873).
119 Id.
120 Id.
121 Id.
122 RHODE supra note 54, at 23. This acceptance of women, however, was not universal. Minority women were excluded from state bars and law schools throughout the first half of the twentieth century. “Throughout this period no more than twenty-five black women were reportedly in legal practice.” Id.
\end{verbatim}
women in 1891.\textsuperscript{123} Columbia University, however, did not admit women until 1927 and Harvard continued to exclude women from its hallowed halls until 1950.\textsuperscript{124} This exclusion is reflected in census data of the number of women lawyers in the U.S. during this time period. In 1920—the time period immediately preceding the all-woman court—there were just 1,738 female attorneys (a figure representing just 2.1\% of the total number of attorneys) across the country.\textsuperscript{125} At that same time, women represented only between 2 and 5\% of all law school graduates.\textsuperscript{126}

In 1910, there were just 558 women lawyers across the entire country.\textsuperscript{127} Only one, Hortense Ward, was licensed to practice in Texas.\textsuperscript{128} By 1924, there were only 30 women attorneys in the entire state of Texas.\textsuperscript{129}

The irony of this period in women’s history was that there existed “an inherent contradiction.”\textsuperscript{130} Namely, that women had, at least formally, won the right to practice law, but were still denied the right to vote.\textsuperscript{131} In fact, for many women lawyers of that era, attempts to open the bar to women was part of the broader movement for women’s rights.\textsuperscript{132}

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 had been. The task requires not only an education in the law but also experience (sometimes a minimum number of years of experience are required

\textsuperscript{124} \textit{Id.} at 57.
\textsuperscript{126} \textit{Id.}
\textsuperscript{127} Aldave, \textit{supra} note 5, at 289
\textsuperscript{128} \textit{Id.}
\textsuperscript{129} Jeffrey D. Dunn, \textit{The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court} 15 (presented to the Texas State Historical Association Mar. 6, 2004) (on file with the author).
\textsuperscript{130} Drachman, \textit{supra} note 7, at 36.
\textsuperscript{131} \textit{Id.}
\textsuperscript{132} \textit{Id.}
for specific seats) as well as strong political connections. 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. In 1886, Carrie Burnham Kilgore became one of the first women to serve in a state judiciary, and in 1921, Florence Ellinwood Allen became the first woman judge elected, rather than appointed.

The first woman to serve as a state supreme court justice was Florence Allen, who served on the Ohio Supreme Court from 1922 to 1933. Her term began just three years before the all-woman supreme court in Texas convened. However, like 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.

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

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134 Id.
135 Id. She served as a Master of Chancery in Philadelphia.
138 Id. Rhoda Lewis was appointed to the Hawaii Supreme Court in 1959.
139 This honor would go to Judge Sarah Hughes, appointed to the 14th District Court of Dallas in 1935.
140 As mentioned in the Introduction supra, 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., Aldave, supra note 5, at 292 (declaring Sarah Hughes as the first woman judge in Texas); Barteau, supra note 132, at 62–63 (failing to mention the event in her historical chronology of women judges).
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 set about trying 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 put forth in an article in the Houston Post Sunday magazine, The Texas Star, in 1973. That 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.

This explanation is based on an interview the author of the 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 since 1973. In the words of one such article on the event: “[M]ost male lawyers—and all three

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141 Dean Moorhead, Texas’ All-Woman Supreme Court, Texas Star Magazine (Houston Post), Feb. 11, 1973, at 13.
142 Id.
143 Jeffrey D. Dunn, The Legacy of Johnson v. Darr: The 1925 Decision of the All-Woman Texas Supreme Court 15 (presented to the Texas State Historical Association Mar. 6, 2004) (on file with the author). See also, Women in the
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. Neff *reluctantly* made feminist history.\(^1\)\(^4\) 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.”\(^1\)\(^5\)

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. In Part V, I recount the circumstances leading up to the all-woman supreme court and discuss 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.\textsuperscript{146} When a movement to impeach Governor Ferguson began, women suffragists supported the cause, rendering what Judith McArthur termed, “quiet assistance in the legislative investigation that culminated in his impeachment.”\textsuperscript{147} He was impeached in 1917 and succeeded by then-Lieutenant Governor W.P. Hobby.

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.\textsuperscript{148} In exchange for the primary suffrage legislation, suffrage leaders promised to campaign heavily for Hobby. The primary suffrage bill was passed during a special session in 1918. Soon after, women organized Women’s Hobby Clubs across the state.\textsuperscript{149} 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.\textsuperscript{150} The suffragists also heavily campaigned for Annie Webb Blanton, who was elected state superintendent of public instruction during the same election.\textsuperscript{151}

\textsuperscript{146} TAYLOR, CITIZENS AT LAST, supra note 76, at 37 (noting that suffragists regarded Ferguson as an “implacable foe of woman suffrage and of every great moral issue for which women stood.” (quoting Jane McCallum)
\textsuperscript{147} MCARTHUR, supra note 71, at 138.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
\textsuperscript{151} TAYLOR, CITIZENS AT LAST, supra note 76, at 38.
For both male politicians and the suffragists themselves, the lesson was clear: women represented a new and powerful force in Texas politics.\textsuperscript{152} In response, groups like TESA refined their political activities and organizational efforts. As McArthur notes:

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.\textsuperscript{153}

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.\textsuperscript{154}

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.

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 and 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

\textsuperscript{152} MC\textsc{Arthur}, supra note 71, at 140 (“Ferguson himself conceded that women apparently voted ten to one for Hobby.”).
\textsuperscript{153} MC\textsc{Arthur}, supra note 71, at 140.
\textsuperscript{154} T\textsc{aylor}, CITIZENS AT LAST, supra note 76, at 42.
participant in the Joint Legislative Council, an affiliation of women’s groups formed for the purpose of lobbying for issues of concern to women.\footnote{Texas State Library and Archives Commission, \textit{Votes for Women: The Women’s Suffrage Movement in Texas}, at http://www.tsl.state.tx.us/exhibits/suffrage/index.html [hereinafter \textit{Votes for Women}].}

The JLC represented the lobbying interests of the Texas Federation of Women’s Clubs, the Texas Mother’s Congress, the Women’s Christian Temperance Movement, the Graduate Nurses Association and the League of Women Voters.\footnote{Id.} 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.\footnote{Id.}

\section*{B. Governor Pat Neff and Governor-Elect Ma Ferguson: Endings and Beginnings}

Pat Neff was Governor of Texas from 1921–1925. 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.\footnote{Cottrell, supra note 31.} In Governor Neff’s 1920 gubernatorial campaign, women were instrumental in his defeat of anti-suffrage opponent Joseph W. Bailey.\footnote{Murphy Givens, \textit{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.}

In 1924, Governor Pat Neff declined 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. It was well-known throughout the campaign that Ma was running as a proxy for her husband, who could not run himself. Her campaign slogan was “two governors for the price of one.” At campaign rallies, she often turned the platform over to her husband. Instead of choosing between the two Democratic candidates, many women chose to support the Republican candidate, George C. Butte.
In 1924, and ironically enough despite the efforts of the Texas suffragists, Texas elected its first woman Governor.\textsuperscript{160} Governor Ma Ferguson took office in January, 1925, the same month that the all-woman court convened in the case of \textit{Johnson v. Darr}. During that same time period, women across the state were being elected and appointed to numerous public positions. In 1926, Margie Neal became the first women to be elected to the Texas State Senate while four other women were elected to the Texas House of Representatives. 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.\textsuperscript{161}

Recent scholarship on Governor Neff and his motivations behind the appointment of the all-woman court suggest 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.\textsuperscript{162}

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.\textsuperscript{163} At the end of 1924, Governor Neff had over 100 outstanding appointments\textsuperscript{164} 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.\textsuperscript{165}

\begin{enumerate}
\item[160] Votes for Women, supra note 154.
\item[161] \textit{Id}.
\item[162] Dunn, supra note 26, at 17.
\item[163] \textit{Id}.at 18.
\item[164] \textit{Id}.
\item[165] \textit{Id}.
\end{enumerate}
The strongest evidence, however, against the idea that Governor Neff had to appoint women to the court, comes from the fact that *Johnson v. Darr* was not the first, or the last, time that a special court had to be appointed 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, and in all of those cases he was able to find and appoint male attorneys.\(^{166}\) Male attorneys were also appointed to hear cases involving the Woodmen of the World in 1927.\(^{167}\) This, more than anything, dispels the idea that Governor Neff had no choice but to appoint women.

Thus, although the most common explanation given 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 not consistent with the evidence. This leaves us with the question: 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 had to resign, and that he had to appoint two other women to take their place, is further evidence of his intentions to 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

\(^{166}\) *Id.* at 19. The three special courts were Hutcherson v. Sovereign Camp, Woodmen of the World, 251 S.W. 491 (Tex. 1923), Sovereign Camp Woodmen of the World v. Ayres, 261 S.W. 1000 (Tex. 1924), and Wirtz v. Sovereign Camp, Woodmen of the World, 268 S.W. 438 (Tex. 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*.

\(^{167}\) *Id.* at 20. The two special courts in 1927 were Sovereign Camp, Woodmen of the World v. Patton, 295 S.W. 913 (Tex. 1927) and Sovereign Camp, Woodmen of the World v. Boden, 1 S.W.2d 256 (Tex. 1925).
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.”\(^{168}\)

This conclusion resonates with the Governor’s own thoughts on the subject. In a letter to Nellie Metcalfe of the Texas Woman’s Chamber of Commerce on the subject of the all-woman court, Governor Neff wrote: “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.”\(^{169}\)

This evidence of other special courts of appointed male attorneys for 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 the Texas politics.

C. The Legacy of *Johnson v. Darr*

Although *Johnson v. Darr* is famous regardless of the legal principles underlying the Court’s opinion, it is important to note, nonetheless, 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 the law books in 1925, including citings by the Fifth Circuit Court of Appeals,\(^{170}\) the Northern

\(^{168}\) *Id.* at 22–23.

\(^{169}\) Letter from Governor Pat Neff to Nellie Metcalfe, Jan. 9, 1925, The Texas Collection, Baylor University.

\(^{170}\) *Prewitt v. United States*, 792 F.2d 1353 (5th Cir. 1986).
District of Texas,\textsuperscript{171} and the Nevada Supreme Court.\textsuperscript{172} The courts have cited to the case to support various propositions, such as that: recording statutes should be narrowly construed;\textsuperscript{173} recording statutes do not apply to equitable titles;\textsuperscript{174} and the rights of the holder of an equitable title are not affected by failure to record the conveyance of the legal title.\textsuperscript{175} It was cited most recently by the Texas Court of Appeals of San Antonio in 2003.\textsuperscript{176} 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 to Johnson v. Darr, only one refers to the fact that the decision was made by the all-woman supreme court.\textsuperscript{177} 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, where she continued until her death in 1939. As a practicing attorney, regardless of her experience as an appointed justice of the highest court in the state, she never represented one of her client’s in the courtroom because she feared that the presence of a woman attorney would prejudice her client. She went on to write several articles for the Woman Lawyer’s Journal, and continued campaigning for candidates and issues. She died in 1944.

Not much is known of Ruth Virginia Brazzil’s life after leaving the court. She was postmistress in Bandera in the late 1920s or early 1930s and lived at various times in Center Point and Kerrville, Texas. She died in 1976.

\textsuperscript{172} Johns-Manville, Inc. v. Lander County, 240 P. 925 (Nev. 1925).
\textsuperscript{173} Prewitt v. United States, 792 F.2d 1353 (5th Cir. 1986).
\textsuperscript{177} Texas Indust. Accident Bd. v. Indust. Found. Of the South, 526 S.W.2d 211 (Tex. Civ. App.—Beaumont 1975) (making reference to the all-woman supreme court in a footnote)
Of the three women justices, only Hattie Leah Henenberg went on to pursue a career in public service. She was assistant attorney general of Texas from 1929 to 1931 and later served as special assistant U.S. Attorney General in 1934. From 1941 to 1947, Henenberg was an assistant district attorney in Dallas County, working on domestic relations cases.

In 1932, Henenberg wrote an article for the Women Lawyer’s Journal about her experience on the Court in which she declared that Johnson v. Darr was the leading case on the application of registration statutes to equitable titles.”¹⁷⁸ She died in 1974.

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,¹⁷⁹ tried and failed to win a seat on the Texas Supreme Court.¹⁸⁰ It was not until the appointment of Ruby Kless Sondock in 1982—fifty seven years after the all-woman supreme court—that another woman sat on the Texas Supreme Court.¹⁸¹ The first woman to be elected to the bench was Justice Rose Specter, who won her seat in 1992.¹⁸²

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

¹⁷⁸ Hattie L. Henenberg, Women of the Supreme Court of Texas, WOMEN LAWYER’S JOURNAL 16 (Aug. 1932).
¹⁸⁰ She ran against Justice Joe R. Greenhill, who had been appointed to the position the year before. For an interesting article on the election see Judge Mark Davidson & Kent Rutter, The Making of a Justice, TEXAS BAR JOURNAL, Nov. 2000, at 962. 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 965. Hughes lost to Justice Greenhill in one of the closest races in the history of the supreme court. Id. at 966.
¹⁸² Id.
anomaly. The linkages 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 at the end of the 1920s, not 1919, that marked the true end of the sustained political efforts of the early suffragists.\textsuperscript{183} 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 unified in their fight “drifted off in different directions.”\textsuperscript{184} 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.\textsuperscript{185}

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

\textsuperscript{183} Votes for Women, supra note 154.  
\textsuperscript{184} RHODE supra note 54, at 29.  
\textsuperscript{185} Id.
of equal opportunity for women lawyers has not yet come.”\textsuperscript{186} This quote exemplifies the sentiment many woman lawyers felt in the early 1930s as they became all too aware of the barriers they still faced within the legal profession. As 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.”\textsuperscript{187}

Three women 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.”\textsuperscript{188} 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. This time period was the pinnacle of political power for the women suffragists and events like the all-woman supreme court marked the culmination of all of their years of political blood, sweat and tears.

\textsuperscript{187} DRACHMAN, \textit{supra} note 7, at 248.
\textsuperscript{188} John William Stayton, \textit{The First All-Woman Supreme Court in the World}, HOLLAND’S MAGAZINE (Mar. 1925) at 5, 73.