



PHOTOGRAPH COURTESY OF THE TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

# History Revisited

The 1925 all-woman court will be reenacted at the State Bar of Texas Annual Meeting.

BY DAVID A. FURLOW AND LYNNE LIBERATO

“**A**ll records were shattered,” proclaimed the *Dallas Morning News* on January 2, 1925, after Texas Gov. Pat Neff provided a “healthy New Year gift of recognition to the woman barrister of today.”<sup>1</sup> Neff had made U.S., Texas, and judicial history by appointing three women to a special court of the Texas Supreme Court.<sup>2</sup>

Above from left: Hattie Henenberg, Hortense Ward, and Ruth Brazzil comprised the all-woman Texas Supreme Court of 1925.

Ninety-one years later, the Texas Supreme Court Historical Society and its journal will present a reenactment of an oral argument before this “all-woman court” at the State Bar of Texas Annual Meeting in Fort Worth from 10-11 a.m. on Thursday, June 16, 2016. It will demonstrate how the three special justices of the all-woman court decided *Johnson v. Darr*, 114 Tex. 516, 272 S.W. 1098 (1925), an insurance case Texas courts cite to this day. The coordinators of the program are David Beck, chair of the society’s fellows program, and Warren Harris, a former president of the society.

The reenactment, which will center on the court’s three women justices, is unique because of the society’s access to previously unpublished archival documents, original photographs, and family records. Source materials include copies of original pleadings, motions, and correspondence among the Texas Supreme Court Clerk’s Office and the justices and parties. To prepare for oral argument, the reenactors will use original party briefs and judicial records that were photographed at the Texas State Library and Archives Commission in Austin.

Texas Supreme Court Justices Eva Guzman and Debra H. Lehmann and Judge Jennifer Walker Elrod of the U.S. Court of Appeals for the 5th Circuit will portray the three justices of the all-woman court. Former Justice David Keltner, a fellow of the Texas Supreme Court Historical Society, and Douglas Alexander, a fellow and former president of the society, will appear as the attorneys who argued *Johnson v. Darr*. Harris will get some assistance from us: Lynne Liberato will help present the program and David Furlow, the journal’s executive editor, will portray the clerk of the court and provide historical background.

The case before the court concerned whether trustees of the Woodmen of the World owned two tracts of land in El Paso or only one. In 1922, the 41st Judicial District Court of El Paso County granted the trustees clear title to one of the two tracts following a bench trial based on an agreed statement of facts and memorialized in findings of fact and conclusions of law.<sup>3</sup> W.T. Johnson, *et al.*, as the Woodmen’s trustees, appealed to the El Paso Court of Civil Appeals to recover the other tract of land. The appeals court reversed, and then the plaintiffs in error, J.M. Darr, *et al.*, brought the case to the three-man Texas Supreme Court on February 18, 1924.<sup>4</sup>

The case languished for almost a year because it presented a problem to the male Supreme Court justices. Woodmen of the World was a fraternal organization and mutual insurance company whose membership included many prominent and politically powerful men. That large group included all three of the justices.

After the court’s male justices recused themselves, Neff, an early proponent of women’s rights, appointed three women to take their place on January 1, 1925. But Neff’s staff failed to ask two of the appointees—Nellie Robertson of Granbury and Edith Wilmans of Dallas—whether they had the seven years of legal experience required by the Texas Constitution to serve on a special panel of the court.

Yet Neff had made a good choice with Hortense Sparks Ward of Houston. In 1910, Ward had become the first

woman to pass the Texas bar exam.<sup>5</sup> As former Texas Supreme Court Chief Justice Jack Pope later observed during a Friends of the State Library ceremony in Austin:

The first of her great achievements was to study and become the first woman in Texas to pass the bar exam. A second accomplishment was her enrollment as the first lady member of the State Bar of Texas, back when it was a voluntary bar.<sup>6</sup>

Ward drafted and lobbied for the Hortense Ward Act, also known as the Married Woman’s Property Law when passed by the Legislature in 1913. She demonstrated keen political acumen.<sup>7</sup> On the day her bill came up for consideration in the Texas Senate, Ward and her friends delivered red carnations to each senator, causing some of the men to change their votes.<sup>8</sup> She then led a successful campaign for women’s suffrage.<sup>9</sup>



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On January 1, 1925, Gov. Pat Neff notified the Texas Supreme Court of his appointment of a special all-woman court.

At the time of Neff’s appointments in 1925, fewer than 10 women in Texas had the seven years of experience necessary to serve on the Texas Supreme Court. After Robertson and Wilmans withdrew their names, Neff made substitute appointments to serve as associate justices: Ruth V. Brazzil of Galveston and Hattie L. Henenberg of Dallas. Ward became special chief justice and her colleagues became special associate justices.

A trailblazer, Henenberg had the added distinction of being the first Jewish member of the Texas Supreme Court. Admitted to the State Bar in 1916, she ran the Dallas Bar Association’s Free Legal Aid Bureau in 1924-1925.

Brazzil played a prominent role in leading South Texas women into social reform movements. Admitted to the bar in 1912, she familiarized herself with Texas property law as the assistant treasurer and assistant general manager of the American National Life Insurance Company in Galveston.

The three special justices first decided to hear the *Johnson v. Darr* case and then listened to oral argument. On May 23, 1925, the all-woman court affirmed the decision of the El Paso Court of Civil Appeals.<sup>10</sup> Ward wrote the opinion, while her colleagues Brazzil and Henenberg wrote concurring opinions.<sup>11</sup> In June 1925, the court overruled a motion for rehearing.

There are many resources that detail this fascinating part of Texas history.<sup>12</sup> The Texas Supreme Court Historical Society's e-journal, for example, has published articles about the all-woman court, including one written and illustrated by Ward's great-granddaughter, Linda Hunsaker.<sup>13</sup>

For additional information, go to the State Bar of Texas Annual Meeting page at [texasbar.com/annualmeeting](http://texasbar.com/annualmeeting) or email [annualmeeting@texasbar.com](mailto:annualmeeting@texasbar.com). **TBJ**

## NOTES

1. See James L. Haley, *THE TEXAS SUPREME COURT: A NARRATIVE HISTORY, 1836-1986* 168 (Univ. of Tex. Press 2013).
2. *Id.*
3. Brief for Plaintiffs in Error J.M. Darr, et al., Trustees, filed August 8, 1923, in the 8th Court of Appeals in El Paso, p. 1 (Statement of the Nature and Result of the Case).
4. Cover, case file from the Clerk's Office, 8th Court of Civil Appeals, El Paso, available at the Lorenzo de Zavala State Archives and Library Building in Austin.
5. See Haley, *TEXAS SUPREME COURT* 146; Betty T. Chapman, *HOUSTON WOMEN: INVISIBLE THREADS IN THE TAPESTRY* 93-94 (Donning Co. Pubs. 2000).
6. See Texas Supreme Court Justice Jack Pope, CHIEF JUSTICE HORTENSE SPARKS WARD, Chair Presentation Ceremony at the Friends of the State Law Library 1 (Nov. 16, 2000).
7. See Michael Ariens, *THE LEGAL STATUS OF WOMEN IN TEXAS, 1900-25*, paper presented at Tex. St. Hist. Ass'n Ann. Mtg. (Austin 2004); Haley, *TEXAS SUPREME COURT* 146, 278.

8. See Barbara Karkabi, *Judge O'Connor's nomination reminds us: Once Texas had an all-woman Supreme Court!*, *HOUSTON CHRONICLE*, July 13, 1981, Sec. 4, at 6.
9. Debbie Mauldin Cottrell, *All-Woman Supreme Court*, *HANDBOOK OF TEXAS ONLINE* (June 9, 2010), <http://www.tshaonline.org/handbook/online/articles/jpa01>.
10. *Johnson v. Darr*, 114 Tex. at 527, 272 S.W. at 1102 (1925); Haley, *TEXAS SUPREME COURT* 167-68.
11. *Johnson*, 114 Tex. at 527-28, 272 S.W. at 1102-03 (Judge Brazzil's Concurrence); 114 Tex. at 528, 272 S.W. at 1103 (Judge Henenberg's Concurrence).
12. See, e.g., Justice Eva Guzman and Kent Rutter, *Women and the Texas Supreme Court*, *Texas BarCLE The History of Texas Supreme Court Jurisprudence* (April 11, 2013); David A. Furlow, *Taking the Law into their Own Hands: Hortense Sparks Ward, Alice S. Tiernan, and the Struggle for Women's Rights in the 1910 Harris County Courthouse*, *HOUSTON BAR ASS'N APPELLATE LAWYER* (Sept. 2013), <http://www.hbaappellatelawyer.org/2013/09/taking-law-into-their-own-hands.html>.
13. See Linda C. Hunsaker, *Family Remembrances and the Legacy of Chief Justice Hortense Sparks Ward*, 4 *JOURNAL OF THE TEXAS SUPREME COURT HISTORICAL SOCIETY* 51-64 (Summer 2015), <http://texascourthistory.org/Content/Newsletters/TSCSHS%20Journal%20Summer%202015.pdf>.



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