

Throughout American history, in times of crisis the judicial branch of government has continued to do its job. The courts must adapt to difficult times and continue to decide cases. So it was for the Supreme Court of Texas during the Second World War.

TEXAS SUPREME COURT GOES TO WAR

TEXAS WOMEN RESPOND TO THE COURT'S CALL TO DUTY

BY JUDGE MARK DAVIDSON AND KENT RUTTER

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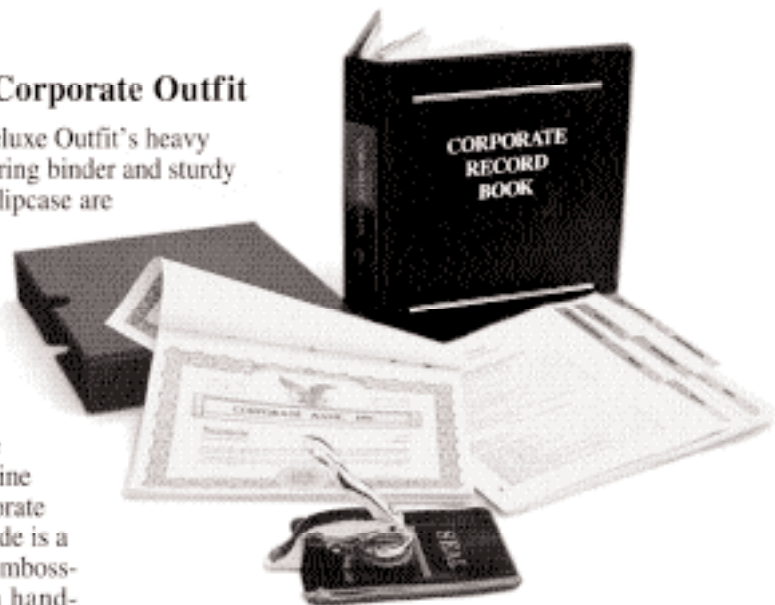
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The court was one of the first employers to face the problem that would soon face employers all over the country — replacing the servicemen.

The Day after the Day of Infamy

On the eve of World War II, the Texas Supreme Court was a different institution than it is today. The court, which had only three members,¹ and its entire staff officed in a corner of the third floor of the Capitol. The court included Chief Justice James P. Alexander,² Justice John Sharp,³ and Justice Richard Critz.⁴

On Monday, Dec. 8, 1941, the members and staff of the Supreme Court reported to work like most other Americans — in shock over the events of the day before. At 11:30 a.m., the three justices, six members of the commission of appeals, three briefing attorneys, and the clerks of the court gathered to listen to President Franklin D. Roosevelt's radio address asking Congress for a declaration of war. After listening to the speech, the three briefing attorneys announced they would resign to join the armed forces.

Each of the three — Clarence Guittard, Joe Greenhill, and J. V. Hammett — were leaving jobs that were prestigious, and, by the standards of the day, remunerative. The job paid \$200 per month.⁵ The briefing attorneys told the court they would wait until their orders came through, but they wanted to enlist as soon as possible.

Who Needs Rosie the Riveter when you have Barbara the Briefer?

The court was one of the first employers to face the problem that would soon face employers all over the country — replacing the servicemen. According to one person, the court feared that if the positions were simply left vacant, the legislature might cut off the appropriation for briefing attorneys, making it impossible to rehire the original briefing attorneys

after the war. The court arrived upon the same solution that many industries did — hire women.⁶ This plan was complicated by the shortage of women who had completed law school. It was simplified by the fact that most women who had graduated from law school could not get jobs as lawyers.

The court was blessed to find three women of extraordinary ability — Ione Stumberg, Mary Kate Parker, and Virginia Grubbs. The job offers came with one catch — the day the war was over, all of the wartime briefing attorneys would be expected to submit their resignations. One of the departing briefing attorneys, future Chief Justice Joe Greenhill, recalled, “Judge Alexander told us our jobs would be waiting for us after the war. Whether they were told they would be fired or simply asked to resign, I'm sure it was made clear to them from the beginning that these were jobs that would only last for the duration.”

Of the three new hires, the one best known to the court was Ione Stumberg. She had graduated first in her undergraduate class at Mary Hardin–Baylor and second in her 1937 law school class at the University of Texas, where she was editor-in-chief of the *Texas Law Review* and a member of the Order of the Coif. While in law school, she fell in love with and married one of her professors, George Stumberg.⁷ After graduation, she became a full-time wife and mother, raising the widowed professor's two daughters and having another daughter two years later. Stumberg's daughter Martha Edmunds noted that after her mother passed the bar, she did not seek a job as an attorney because she wanted to devote her life to her family.

In early 1942, Chief Justice Alexander asked Stumberg to become a briefing attorney. Stumberg wrote to her husband, who was serving in North Africa, and informed him of the



Ione Stumberg

opportunity. Professor Stumberg advised his wife, “I hate to see you work so hard, but these are special times and I feel you should try the job.” She accepted the position.

The second briefing attorney, Virginia Grubbs, started working for the court in March, two months before she graduated from the University of Texas School of Law. Grubbs had worked her way through law school in the office of Attorney General Gerald C. Mann. Beginning as a legal secretary, she was promoted first to the file room and then, while still a law student, to the position of editor of the Attorney General Opinions. A month after she began working at the court, she took a leave of absence when she married James Noel, a fellow employee at the Attorney General’s office.⁸

Virginia Grubbs Noel was the first of the women to leave the court. In April 1943, Baker, Botts, Andrews & Wharton, facing severe shortages in its legal staff, asked her to join the Houston office as an attorney. She worked on the railroad litigation docket, and shortly after she arrived became the first woman attorney to try a case for the firm known today as Baker Botts.⁹

The third briefing attorney, Mary Kate Parker, had been an attorney the longest. Parker received her undergraduate degree, Phi Beta Kappa, from the University of Texas at the age of 19, and received her law degree with highest honors from the University of Texas Law School in 1934. She found employment in the public sector, beginning as a researcher for the University of Texas before becoming the secretary to Marvin Hall, the chairman of the Insurance Board. When the war began, she offered to serve as a briefing attorney and the court hired her immediately.



Virginia Grubbs

Cases Decided During the War

When one considers the time it takes to get a case from its original filing in the trial court to the Supreme Court’s opinion, it is not surprising that a search of the court’s opinions from 1942 through 1945 make no mention of the war. But important cases were decided during that time. One was *Seay v. Latham*,¹⁰ concerning the slate of electors chosen at the 1944 Texas Democratic Convention to represent Texas in the Electoral College. The slate was openly antagonistic to the party’s probable nominee, President Franklin D. Roosevelt. A second convention named different electors who were loyal to Roosevelt. In a mandamus action, the court held that the party was not prohibited from replacing the first set of electors. As a result, the second “loyalist” slate represented Texas in the Electoral College.¹¹

An equally controversial case was *Ex parte Thomas*.¹² R. J. Thomas was a labor organizer who intentionally violated a statute requiring registration of those who undertook to solicit employees to unionize. The constitutionality of the statute was placed squarely before the court. The court held that the regulation of labor organizers was within the police power of the state and was not preempted by Congress’s enactment of federal labor acts. Ultimately, the U.S. Supreme Court held the statute invalid by a 5-4 vote.¹³

What role the briefing attorneys had in assisting the court in shaping these and other opinions is unknown. Greenhill says that before he left the court, Chief Justice Alexander would assign Clarence Guittard to argue one side of a case and assign Greenhill the task of arguing the other side. Which of the women argued which side of any case (if at all) is lost to history. It is clear that the backlog of the court declined dur-



Mary Kate Parker



Beth O'Neil

ing the war, and some of the credit for that should go to the briefing attorneys.

The Second Shift of Briefing Attorneys

In late 1944, the trend of the war was clearly going against the Axis powers, and most Americans started looking forward to the post-war world. When Professor Stumberg returned to teach law school in late 1944, Ione Stumberg left the court.¹⁴ The court promoted Mary Kate Parker to secretary to the court. While this change may sound like a demotion, she received a pay raise. The court's records reflect that Parker was paid \$206.50 a month as secretary, an increase of \$6.50 per month. Notwithstanding her new title, she continued to serve as a briefing attorney. The court then hired three additional briefing attorneys — Mel Ruth Ramsey, Beth O'Neil, and John Witcher. All three served for several months near the end of the war.

Beth O'Neil was a 1944 graduate of the University of Texas Law School. Since many law students who had begun their legal education in 1941 had gone off to war, her 1944 class at the University of Texas contained only eight graduates. O'Neil worked for the court from October 1944 until April 1945. She recalls, "We pretty much knew that we were being hired because of the war. I wasn't told that I had to leave when the war was over, however. I did leave when my husband was released from the service."

Mel Ruth Ramsey started working for the court on March 1, 1945, immediately following her graduation from the University of Texas Law School. She was assigned to help Chief Justice Alexander. "They only hired us because they couldn't find a man to do the job," she explained. "At first, they gave

us very little to do. Then, they let us read opinions of the courts of civil appeals for review. Finally, Chief Justice Alexander let me do some briefing for him."

Ramsey left the court in November 1945 when her husband returned from the service. That happened to coincide with the return to civilian status of Joe Greenhill, one of the pre-war briefing attorneys.¹⁵ Looking back, she says, "I thoroughly enjoyed it. It was such an honor."

By any standard, all of the wartime briefing attorneys were qualified, in a gender-neutral environment, for their jobs at the Texas Supreme Court. For women attorneys in pre-war America, however, a gender-neutral environment did not exist. Stumberg's daughter, Martha Edmunds, says of her mother what could be said of each of the women: "Had she been born 30 years later, she would have had a very different career. She was never bitter or upset about it, but accepting."

After the War

When the war ended, so did the tenure of the women briefing attorneys. The labor shortages that gave them their jobs turned into a labor glut. The records of the court indicate that the women all resigned their positions. All indications are that the resignations were voluntary and done with some degree of job satisfaction.

Stumberg clearly wasn't upset. She accepted the loss of her job as the way things were, and to a great degree she resumed her job as a stay-at-home wife and mother. She also worked as a research assistant for her husband, assisting him in his voluminous legal writings. Edmunds says of her mother, "She worked hard every day, she just didn't go to any office."



Mel Ruth Ramsey


After her husband's death in 1965, Stumberg briefly worked at the University of Texas Law School library before serving as an assistant attorney general under Crawford Martin. In 1971, at the age of 69, she accepted a new position with the Texas Senate, reviewing all legislation to make sure it accomplished the intent of the author without doing unintended violence to existing laws. She retired in 1988 at the age of 85, and died July 19, 1989.

Virginia Noel left private practice in 1946 and started a family. In 1947, she became one of the original members of the faculty of the University of Houston Law School, teaching legal bibliography. One of her students, former First Court of Appeals Justice Jack Smith, described her as "a brilliant lawyer and a fine teacher." She continued to teach after giving birth to her first three children, but she took a leave of absence in 1955 to have her fourth child and never returned. Her retirement from teaching did not end her service to the state or the legal profession. She was active in many causes, including the juvenile justice system. She died July 11, 2001.

Mary Kate Parker became Mary Kate Wall shortly after the war. She remained a "secretary" with the court until 1948, when she again became a briefing attorney for Justice Gordon Simpson. Jake Jacobsen, a briefing attorney who worked with Wall in 1947 and 1948, says, "Judge Simpson trusted her to know the law more than any other briefing attorney and most of the other judges." In 1949, Wall resigned when she joined the Attorney General's office, where she rose to a position of authority. A sign of the respect her legal skills merited is that she was a member of the team of assistant attorneys general working with Attorney General Price Daniel in the case of

WILL R. WILSON, SR.
Former Attorney General of Texas

A FOOL FOR A CLIENT



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A lack of good legal counsel... was among many factors that led Nixon to his downfall during the Watergate Crisis, and author Will Wilson, Sr., who served as chief of the Justice Department's Criminal Division under John Mitchell, examines each to reveal how the Watergate crisis evolved and how it may easily have turned out quite differently.

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U.S. v. Texas, also known as the Tidelands case.¹⁶ The issue tried before the U.S. Supreme Court¹⁷ was whether the United States owned mineral rights more than three miles from the shore, or whether Texas retained ownership as part of the 1845 treaty of annexation. To the state budget, this issue was of considerable importance. Later in her career, she worked in the Texas Legislative Council, specializing in election law legislation. She began the work on the recodified Texas Election Code before her retirement in 1979. She died May 31, 1998.

Beth O'Neil Atkins lives in Lamb County. After the war, she retired from the practice of law. "I wanted to get on with my life and raise a family," she said. She moved to New Mexico and raised two children before returning to Texas in the 1980s. She never renewed her law license after leaving the employment of the court.

Mel Ruth Ramsey Aikin worked for the University of Texas Law Library until her husband graduated from law school in 1947. After he passed the bar, they moved to Hereford. "I got on with being a mother," is how she described her post-war activities. In time, she returned to the practice of law, doing tax law and briefing other matters for her husband's firm. "No one else in the firm knew how to use WestLaw, and so I did that for them," she says with an air of accomplishment. Today, she and her husband, John Douglas Aikin, live in Paris, Texas.

America, War and the Courts

This article was conceived, researched, and, for the most part, written before the Sept. 11, 2001 attacks on New York City and Washington, D.C. As our nation and world engage in an all-out fight against terrorism, it is worth remembering the lessons of the past.

In the midst of the fight for democratic ideals in World War II, the United States continued to hold free elections¹⁸ and Americans' rights as members of a democracy remained inviolate. In the final analysis, the courts are the protectors of those rights. Like the men who served overseas, the women who served their country by responding to the Supreme Court's call to duty were patriots.

Authors' Note

This article would not have been possible without the assistance of many people who agreed to be interviewed about their knowledge of the characters and stories in this article. Among the people that were most helpful were Congressman Jake Pickle, Chief Justice Joe Greenhill, Martha Edmunds, Beth O'Neil Atkins, Patsy Spaw, Margaret Simpson Carlross, and Carol Noel King. We note that the number of lawyers who have memories of World War II is diminishing with every passing day, and we hope that bar associations around the state will do what they can to capture and preserve the history they represent.

This article would have been much better had it been written 15 years ago, when more of the subjects were alive. We hope that efforts are made to preserve the history of our legal system, since the judiciary is the one branch of government that bases its current rulings on those of the past.

Notes

1. The first Supreme Court after statehood had three members. The Texas Constitutions of 1866 and 1873 provided for a five-member

court, but the 1869 and 1876 constitutions provided for a three-member court.

2. Alexander was the newest member of the court, having been narrowly elected in 1940. He had served on the Waco Court of Civil Appeals, taught Civil Procedure at Baylor Law School, and helped draft the original Texas Rules of Civil Procedure.
3. Sharp had served as mayor of Ennis and president of the Ennis School Board before Governor Dan Moody appointed him in 1929 to the Commission of Appeals, a commission of six judges who wrote opinions that were (usually, but not always) adopted by the Supreme Court. Five years later, he ran successfully for the Texas Supreme Court. He was sworn in on Jan. 1, 1935.
4. Critz was up for re-election in 1944, in a contest that is the subject of another article.
5. A rough multiplier effect for 2001 dollars is 15.3. While \$200 per month, even adjusted for inflation, may not seem like a lot of money, the top law school graduates working for major urban firms were making only \$150 per month.
6. In doing so, the Texas Supreme Court beat its counterparts on the U.S. Supreme Court by two years. In August 1944, Justice William O. Douglas hired Lucile Loman, a graduate of the University of Washington, as the court's first female law clerk. The second woman was not hired until 1966. See Ruth Bader Ginsberg, *The First Female Law Clerks in Supreme Court Decisions and Women's Rights* 236, 236-37 (Clare Cushman, ed., 2001). By that time, the Texas Supreme Court had hired at least five peacetime women briefing attorneys.
7. Stumberg was a Rhodes Scholar who taught criminal law and conflicts at the University of Texas Law School for many years.
8. Noel was appointed a U.S. District Judge for the Southern District of Texas in 1961. He passed away in 1979.
9. The firm history notes that "the success of the firm depended on two other groups — associates and the nonlawyer personnel. There have really been three groups of associates other than those who became partners. One group ... would be those who served temporarily during World War II and then departed. A number of women lawyers filled this role long before women became a routine part of the employment practice." J. H. Freeman, *The People of Baker Botts* 179 (1992).
10. 182 S.W.2d 251 (1944).
11. Had the presidential race of 1944 been closer, the *Seay* opinion could have been determinative of the presidency in a manner not repeated until *Bush v. Gore*, 531 U.S. 98 (2000). In any event, it does constitute one of the first examples of judicial determination of election cases affecting national races.
12. 174 S.W.2d 958 (Tex.), rev'd, 323 U.S. 516 (1943).
13. See *Thomas v. Collins*, 323 U.S. 516 (1943).
14. There is some indication in Stumberg's letters to her husband that she took a leave of absence at some point in early 1944, only to return at Chief Justice Alexander's request. The records of the court do not show any such absence, but the records are incomplete.
15. It is unlikely the court would have fired Miss Ramsey against her will. Her soon-to-be brother in law was A. M. Aikin, Jr., a state senator from Paris, Texas. In 1945, he was the chairman of the Senate Committee on Contingent Expenses, and served on the Senate Finance Committee.
16. 339 U.S. 707 (1950).
17. The case was literally tried before the U.S. Supreme Court. U.S. Const. art. III, sec. 2, cl. 2 gives the court original jurisdiction in any case filed by a state against the federal government.
18. Great Britain and Canada postponed elections until after VE Day.

Judge **Mark Davidson** presides over the 11th District Court in Houston. **Kent Rutter** is an associate in the appellate section of the Houston office of Haynes and Boone, L.L.P.

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