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Jerry's Judges and the Politics of the Death Penalty: The Judicial Election of 1986

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By

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## Abstract

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Master of Arts in History

On February 12, 1977, California Governor Jerry Brown nominated Rose Elizabeth Bird as chief justice of the California Supreme Court, making her the first female member of the court. Throughout her tenure on the Court, Bird faced criticism over her stance on important economic and social issues facing the state such as Proposition 13 and the death penalty. Throughout the 1970s and 1980s numerous California politicians campaigned on law-and-order and anti-tax issues, and accusations of pro-defendant and anti-Proposition 13 rulings became the latest and most popular criticism of the Court by those such as Howard Jarvis and Attorney General George Deukmejian who would work hard to remove her and her liberal colleagues from the California Supreme Court. While the Court faced criticism over many of its death penalty rulings, the death penalty in general was in a state of flux across the nation after the United States Supreme Court ruled it to be cruel and unusual punishment in violation of the Constitution. In the 1982 gubernatorial election, Attorney General George Deukmejian criticized his opponent, Los Angeles Mayor Tom Bradley, for failing to take a position on Bird, and made the sort of people he would appoint to the bench an

important issue in his campaign for governor. Four years later, in the run up to the 1986 gubernatorial election, Howard Jarvis led efforts as co-chair of Californians to Defeat Rose Bird, an anti-crime and victims' rights group, to remove Chief Justice Bird, Cruz Reynoso and Joseph R. Grodin from the Court. While Chief Justice Bird was faced with insurmountable odds of a reelection victory, Governor George Deukmejian could relish his position to appoint a new chief justice and two associate justices and change the ideological makeup of the California Supreme Court. An often overlooked chapter of the New Right movement, the reconfirmation battle of Bird and her colleagues brought upon crucial and important questions about the importance of an independent judiciary and set a dangerous precedent for future members of the Court. Furthermore, through an analysis of this important event in California history, we receive a better picture of Howard Jarvis and the New Right's impact on the state's social and economic transformation in the last decade of the twentieth century.

## Introduction

In a 1964 speech to the American Political Science Association in Chicago, Republican presidential candidate Barry Goldwater lambasted justices on the United States Supreme Court for resorting to “raw and naked power” in controversial rulings on school prayer and reapportionment of state legislatures.<sup>1</sup> In campaign stops across the South, Goldwater further accused the Supreme Court for being responsible in part for the breakdown in law-and-order across the nation. The term “law and order” became an umbrella term in American politics for those advocating tougher penalties for criminals including: longer sentences, and the death penalty for those convicted of murder. In California, Republican Senate candidate George Murphy accused justices on the California Supreme Court of rulings which, in his view, favored defendants over law enforcement officials, and his opponent Senator Pierre Salinger called the attacks on the federal and state courts a threat to the independence of the judiciary.<sup>2</sup> The Los Angeles Times reported that a group of forty-eight lawyers (both Republican and Democrat), citing the inability of the United States Supreme Court to speak in its own defense, criticized Goldwater’s attacks on the Supreme Court and argued, “it was ‘especially regrettable’ that Goldwater has suggested that the present Supreme justices, who were appointed by four different Presidents, both democratic and Republican, ‘decide cases on the basis of partisan considerations or party ideology.’” In other speeches, Goldwater

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<sup>1</sup> Robert Thompson, “Johnson Hits Criticism of High Court,” *Los Angeles Times*, September 13, 1964, 1.

<sup>2</sup> “Goldwater’s Attack on Court Hit by Salinger,” *Los Angeles Times*, September 18, 1964, 6.

pledged he would “change the liberal character of the present Supreme Court by choosing more conservative men.”<sup>3</sup>

In the 1964 presidential campaign, Barry Goldwater moved law-and-order issues to the forefront in of American politics, making them part of the national consciousness for the following three decades. In a campaign appearance in Boston, Goldwater blamed “the rise in crime and violence on ‘moral decay in our highest offices and on Supreme Court rulings that he said hamper law enforcement, and pledged that, if elected, “he would wage an effective ‘war on crime.’”<sup>4</sup> While President Johnson won in a landslide against his Republican opponent, Johnson’s announcement the following February that he would send Congress a message on crime, highlights how the issue resonated with voters following the election. Goldwater called the speech “encouraging—and long overdue,” and warned, in a letter to the Los Angeles Times,

Lawlessness on the streets of America is becoming more critical every day. Once confined to the slums of the depressed areas of the country, the problem is now becoming all-inclusive. It is beginning to infect residential areas, suburbs and business districts as well as the tenement sections...In one sense, the President’s message on crime prevention could be the most important of all the proposals he has sent to Capitol Hill since he became Chief Executive. For a great society, on anybody’s terms, cannot flourish in the midst of widespread disregard for the law.<sup>5</sup>

A month later, in response to an FBI report showing increasing rates of violent crime and murder, Goldwater wrote that the situation was now so “serious” that it would take the

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<sup>3</sup> Robert C. Toth, “Lawyers Hit Goldwater on High Court Attacks,” *Los Angeles Times*, October 12, 1964, 9.

<sup>4</sup> Laurence H. Burd, “Goldwater Hits ‘Moral Decay’ in High Office,” *Los Angeles Times*, September 25, 1964, 6.

<sup>5</sup> Barry Goldwater, “President’s Promise of Action Against Crime Is Encouraging,” *Los Angeles Times*, February 12, 1965, Section A5.

combined efforts of government, the public, the police, and the judiciary.<sup>6</sup> He called the president's speech "a well-balanced presentation," but argued that more attention should have been given "to the prevalence of judicial leniency in the handling of hardened criminals." He further claimed, "Judges stand accused of 'coddling' criminals in city after city and of using various technicalities to release prisoners charged with serious offenses."<sup>7</sup> In November, Goldwater accused the president of abandoning the war on crime and argued,

Part of the problem, of course, is the great liberal preoccupation with defending the rights of the accused, carried now to such an extreme in many courts that the safety of thousands of innocent, law-abiding citizens has been sacrificed for the sake of a technicality or a procedure. The possibility of a misuse of police power often becomes the deciding factor in problems related to the best method of curbing law-breakers.<sup>8</sup>

By 1968, the issue of crime once again figured prominently in national politics. Not since the 1950s, had it seemed that politicians on the Right had such an effective political weapon to use against their liberal opponents. Meg Greenfield wrote in the Los Angeles Times that one could read " 'crime' for communism, [and] 'law and order' for Americanism," and called the issue "a menacing and therefore exploitable public problem"<sup>9</sup>

In the 1966 gubernatorial election, Governor Pat Brown's perceived lack of ability to curb the violence in Watts helped Reagan achieve a landslide victory against the

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<sup>6</sup> Barry Goldwater, "President's Crime Message Good but Soft on Judicial Leniency," *Los Angeles Times*, March 17, 1965, Section A5.

<sup>7</sup> Ibid.

<sup>8</sup> Barry Goldwater, "...And National Crime War Fizzles," *Los Angeles Times*, November 3, 1965, Section A5.

<sup>9</sup> Meg Greenfield, "In 1968, Read 'Crime' for 'Communism': Law and Order Issues Stirs Memories of Fifties," *Los Angeles Times*, August 25, 1968, Section L3.



two-term governor. In California, Goldwater's call for a national war on crime met receptive ears among many of the state's conservative politicians well into the 1980s.

The use of law-and-order issues was one method in which conservatives used to attack members of the California Supreme Court in the late 1970s and 1980s for rulings which were perceived as soft on crime. In the 1980s, the law-and-order issue was effectively used by conservatives to attack Chief Justice Bird of the California Supreme Court over her stance on the state's death penalty. Howard Jarvis, co-sponsor of Proposition 13, led successful efforts in 1986 to oust Bird and two of her liberal colleagues over their perceived bias in favor of criminal defendants. After the passage of Proposition 13 in 1978, Jarvis emerged a populist icon in California and national politics for leading the people's revolt against big government and property taxes. After the confirmation of Rose Bird as Chief Justice of the California Supreme Court the same year, Jarvis led early attempts to recall Bird over her stance on the tax measure passed overwhelmingly by California voters in 1978. While the 1986 campaign to remove Chief Justice Bird and two of her Brown appointed colleagues centered around the death penalty, Jarvis and others hoped that by removing the justices, Governor George Deukmejian could tilt the court to the right by naming three new justices. Thus, not only would Jarvis and others see a court more willing to carry out the death penalty, but one that they hoped would protect Proposition 13 and turn back years of liberal judicial "activism". Therefore, an analysis of the opposition against the Bird Court gives us a broader understanding popular support for Howard Jarvis and California's rightward shift in the 1980s.

## Chapter 1: The California Supreme Court, 1978-1982

On February 12, 1977, California Governor Jerry Brown nominated Rose Elizabeth Bird as Chief Justice of the California Supreme Court, making her the first female member of the Court.<sup>10</sup> Along with Bird, Brown appointed Wiley W. Manuel as the first African American to serve on the Court.<sup>11</sup> The Los Angeles Times wrote: “They are outstanding persons. They deserve confirmation. They bring the promise of new dimensions, new vitality, new qualities to a court already recognized as among the best.”<sup>12</sup> However, the outgoing chief justice, Donald Wright, who was consulted by Brown about Bird’s nomination, criticized the governor for appointing a chief justice with little experience. Wright “argued that [she] should be appointed at most to an associate justiceship, primarily on the grounds that naming Bird chief justice was simply a way for Brown to draw attention to himself and that the position needed an experienced judge.”<sup>13</sup> In nominating Bird chief justice, Brown felt that “[appointing] a woman would be a dramatic break with tradition and combined with the appointment of a black, as it was, it would be a very strong statement of [his] commitment to break up the old boy’s network.”<sup>14</sup> Furthermore, Robert Pack wrote for the Los Angeles Times that with their nominations, “A genuine social revolution is taking place in Sacramento—bloodless, quiet and little discussed.”<sup>15</sup> He further claimed, “Governor Edmund Brown Jr., not quite

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<sup>10</sup> Preble Stolz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (New York: The Free Press, 1981), 84-87.

<sup>11</sup> *Ibid.*

<sup>12</sup> “Confirmation for the Court, *Los Angeles Times*, March 14, 1977.

<sup>13</sup> Stolz, *Judging Judges*, 84-87.

<sup>14</sup> *Ibid.*, 84-87.

<sup>15</sup> Robert Pack, “Brown Rides California Toward Revolution,” *Los Angeles Times*, August 21, 1977, Section E1.

a thousand days in office, is slowly transferring power from the white, male elite groups where it has traditionally resided to the broader citizenry in California.”<sup>16</sup>

Prior to the nomination of Rose Bird as the chief justice, Jerry Brown had criticized the gender imbalance in state offices. In June of 1973, for example, he told a women’s meeting in Los Angeles that women held only one of the top 156 jobs in the Reagan administration.<sup>17</sup> As of August 1, 1977, of 1,862 appointments by Governor Brown, 575 appointments went to women, 182 to Chicanos, 141 to blacks, 53 to Asians, 28 to American Indians, and nine to Filipinos, and that he had appointed 65 consumer representatives to various boards and commissions. However, Assemblyman Daniel Boatwright (D-Concord) voiced his concern and argued that Brown’s appointments of women and other minorities may have bypassed other qualified individuals.<sup>18</sup> However, some thought that the governor had not gone far enough to diversify government appointees. Willie Brown, an African-American assemblyman, said that despite the appointments of several African-Americans, there were no black appointees at the “upper echelon” of his administration, except for the Secretary of Agriculture, Leonard Grimes.<sup>19</sup>

Jerry Brown’s decision to nominate Rose Bird as Chief Justice was immediately controversial, and she became the target of attacks from conservative groups who criticized her for being “soft on crime.” However, such criticism often the centerpiece of campaigns by conservatives to attack the Court on a host of issues unrelated to crime. Because of her prior position in the Brown administration as Secretary of Agriculture,

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

agricultural interests in the San Joaquin Valley criticized her for the passage of the Agricultural Labor Relations Act. San Diego Mayor Pete Wilson and Pasadena Police Chief Bob McGowen also voiced their criticism of her nomination. Mayor Pete Wilson voiced his dissatisfaction with Bird in a telegram sent to Attorney General Evelle J. Younger, both of whom were expected to run for the Republican gubernatorial nomination the following year.<sup>20</sup> The mayor further criticized Bird for bias during her tenure as the Secretary of Agriculture, her lack of judicial experience, and her perceived inability to deal with agricultural cases that may appear before the Court in an unbiased manner.<sup>21</sup> Los Angeles Police Chief Ed M. Davis, also an expected Republican gubernatorial nominee, criticized the governor for showing “disdain” for the Court in nominating someone with inexperience.<sup>22</sup>

Further criticism of Bird was voiced by Pasadena Police Chief (and President of Los Angeles County Peace Officers Association) Bob McGowen, who said that if Bird was confirmed to the Court, she would champion criminal defense attorneys and show little regard for the will of the public.<sup>23</sup> Despite the opposition of Governor Brown’s nomination of Rose Bird as chief justice, she was confirmed by the Commission on Judicial Appointments by 2-1, with Attorney General Evelle Younger casting the deciding vote to confirm her.

Chief Justice Bird became the first justice of the California Supreme Court to face serious challenge as the fall election approached in 1978. Throughout the year, the chief

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<sup>20</sup> “Opposition to Chief Justice Nominee Voiced,” *Los Angeles Times*, February, 16, 1977, Section D1.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

justice showed her unwillingness to take a public role in her reconfirmation, which was evident when she returned \$1, 200 in campaign donations. Russo-Watts, a campaign consulting firm, ran the “No on Bird Committee” and planned to raise more than \$500,000, mostly from agricultural interests, in their campaign to oust the chief justice.<sup>24</sup> In September, the California Republican Party, with one dissenting vote, announced their decision oppose Bird in the November election, which put the party on record as against the chief justice.<sup>25</sup>

While the Los Angeles Times urged voters to retain her on November 7, three groups came out in the fall election seeking the removal of the chief justice. A group of powerful interests, the Los Angeles Times explained, had raised more than \$750,000 to remove her and the election threatened to, “plunge her office into the brawling pit of politics.”<sup>26</sup> Joining the No on Bird Committee was the Law and Order Campaign, run by ultra-conservative Senator H.L. Richardson (R-Arcadia), who opposed her on grounds that she was “soft on crime.” In response, the Los Angeles Times countered that, “her record over the past year and a half demonstrates that she has been a strict constructionist in interpreting the criminal statutes and the California Constitution. She has not tried to lead the court in one philosophical direction or another.”<sup>27</sup> The group only cited one case, in which the Chief Justice ruled that under present criminal statutes rape is not defined as “great bodily injury,” but stated that the Legislature could redefine rape.<sup>28</sup> The third group, was the executive committee of the California Republican party, who voted to

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<sup>24</sup> Ibid.

<sup>25</sup> “GOP Opposes Justice Bird on Fall Ballot: GOP Votes to Oppose Bird,” *Los Angeles Times*, September 18, 1978, Section B1.

<sup>26</sup> Ibid.

<sup>27</sup> “The Attacks on Rose Bird,” *Los Angeles Times*, October 1, 1978, Section F4.

<sup>28</sup> Ibid.

oppose Chief Justice after the rank-and-file at the convention had already gone home, which was both administratively indefensible and a savvy way of showing Californians that the GOP remained united in their opposition of Bird<sup>29</sup> The vote put Republican gubernatorial nominee Evelle J. Younger in a difficult position, since he had cast the deciding vote on her confirmation.<sup>30</sup> Finally, the Los Angeles Times argued that, “[these groups] criticize her not for what she has done but for what she might do, and in seeking a replacement more likely to do their bidding, are threatening the integrity of the judiciary.”<sup>31</sup>

Another group not included within the three previously cited, were prosecutors who in a District Attorney’s poll opposed her 10-1.<sup>32</sup> David Ross, the president of the Los Angeles County Association of Deputy District Attorneys stated that the chief justice’s colleagues—Wiley Manuel and Frank Newman had a pro-criminal philosophy, believing that criminals were the true victims.<sup>33</sup> In response to the prosecutors’ decision, Peter Torge of Hollywood in a letter to the Los Angeles Times criticized the men and women of the Bar for involving themselves in “petty and partisan politics.” “Prosecutors,” Torge continued, “naturally want sympathetic judges—judges who will rule in their favor over any contentions made by the defense.”<sup>34</sup>

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Bill Farr, “Prosecutors Back Rose Bird Ouster: Deputy Attorney’s Poll Opposes Her 10-1,” *Los Angeles Times*, October 25, 1978, Section D1.

<sup>33</sup> Ibid.

<sup>34</sup> Peter Torge, “A Study in Unfairness,” *Los Angeles Times*, October 31, 1978, Section C4.

## Chapter 2: The 1978 Gubernatorial Election

In the campaign against Rose Bird's confirmation as chief justice of the California Supreme Court, her stance on: criminal law, busing and Proposition 13 were continuously cited by critics as reason for voters to oppose her in the fall election.

One of the most controversial rulings of the Bird Court before the 1978 gubernatorial election was the Caudillo rape case which centered around the two-hour sexual assault of a woman named Maria.<sup>35</sup>The jury in the trial decided that great bodily injury had been involved in the rape, and Caudillo appealed the verdict to the Court of Appeal for the second appellate district. Justice Ashby was confronted with three issues raised in the appeal. In terms of the evidence, Ashby ruled that the jury could have found Caudillo guilty beyond a reasonable doubt if it had been deciding the case based on evidence favorable to the prosecution. Second, Ashby stated that rape did constitute great bodily injury. Third, Ashby agreed that under current California law, that there had been sufficient movement of the victim to consider the act kidnapping. On January 27, 1977, the California Supreme Court granted a hearing of *Caudillo*. In the case, the Court majority ruled that rape did not constitute "great bodily injury" under current criminal statutes. In a separate concurring opinion, Bird wrote that the legislature could redefine rape, which it indeed did months before the fall election.

Another issue that fanned the flames of discontent among many Californians with the judiciary was school busing. In 1963, the American Civil Liberties Union (ACLU) filed a desegregation lawsuit against the Los Angeles Unified School district. In *Judging*

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<sup>35</sup> Preble Stolz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (New York: The Free Press, 1981), 16.

*Judges: The Investigation of Rose Bird and the California Supreme Court*, Preble Stolz argued that one feature of the case known as *Crawford v. Board of Education* was that the suit was brought to the state, rather than the federal courts. According to Stolz, this reflects the belief of ACLU lawyers that California courts “would be more receptive to their position than the federal courts.” Superior Court Judge Alfred Gitelson ordered the Los Angeles School district to submit a plan to desegregate the public schools. The unpopularity of the decision was evident when Gitelson was forced into a general election runoff at the end of his six year term, and lost his reelection bid. The Los Angeles Court of Appeal later overturned Gitelson’s ruling, however, the California Supreme Court affirmed Gitelson’s decision in 1976. Stolz argues that the Court ruling that “...the school board was obligated to take action to eliminate racial segregation in the schools whether or not the segregation was deliberately created...made the California law of equal protection more aggressive than existing federal law.” In 1978, a group called Bustop later asked division two of the Court of Appeals to repeal the desegregation plan which was eventually suspended in September. The California Supreme Court followed by ordering the desegregation plan to continue. Because these events happened so close to the confirmation election of Bird, the voters took into account the Court ruling months later in deciding whether or not to confirm her as chief justice.

Other issues that dominated the 1978 election was the state death penalty and Proposition 13, sponsored by Paul Gann and Howard Jarvis. In the summer primary, discontent with the judiciary was particularly noticeable. The courts seemed the latest battleground in the attempt by conservatives to turn back decades of liberal social policies. In the June primary elections, eleven municipal court judges were defeated,



while ten others were forced into general election runoffs, and five superior court judges were ousted while four others faced runoffs.<sup>36</sup> That year, Senator John Briggs introduced Proposition 7, in an effort to toughen the current death penalty law passed by the legislature in 1977 over Governor Brown's veto, arguing that it did not go far enough. The current law, written by then Senator George Deukmejian (R-Long Beach) mandated the death penalty for the following,

Murder-for-hire; murder of a person known to be a peace officer; murder of a witness to prevent courtroom testimony; murder in the course of committing or attempting to commit robbery, kidnapping, rape a lewd or lascivious act with a child under 14, or home burglary; torture murders, and multiple murders.<sup>37</sup>

If passed, Proposition 7 would expand the number of crimes which required the death penalty or life imprisonment without parole, and revise the law "relating to mitigating or aggravating circumstances, and increase penalties for first-and-second-degree murder."<sup>38</sup> That summer, California voters overwhelmingly approved Proposition 13 and Proposition 7, two measures that signaled to many that change was in the air in California. While Governor Jerry Brown won a sizeable victory for a second term, the passage of Proposition 13 and Proposition 7 reflected a growing conservative mood across the state and nation.

The letters written to the Los Angeles Times provide the best barometer of public opinion for and against Bird in the months and weeks preceding the fall election. Craig Brown wrote, "Reckless, outrageous, appalling and cowardly are a few of the many

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<sup>36</sup> William Endicott, 1978, "Rose Bird on Ballot, Judiciary on Trial Vote Viewed as Test of Public Discontent With Court System," *Los Angeles Times*, November 5, 1978, Section B1.

<sup>37</sup> Jerry Gilam, "Prop. 7-a Bid for Tougher Death Penalty," *Los Angeles Times*, October 6, 1978, Section B3.

<sup>38</sup> *Ibid.*

adjectives I would apply to the California Republican leaders who dared to put their party on record as being opposed to Rose Bird, the chief justice of the California Supreme Court.”<sup>39</sup> Herman Selvin wrote that Los Angeles Times that the GOP was threatening to politicize the judiciary. However, others voiced their opposition to confirming the chief justice. Loren Zeldin of Reseda wrote:

I oppose mandatory busing. And as I see it, the state Supreme Court is more responsible for this wasteful insanity than our imperious Board of Education. I am also confident that the five-person liberal majority will dispense with the state’s current death penalty as soon as they get a chance. Every person who shares my views on these subjects owes it to himself to really make his vote count this time.<sup>40</sup>

Finally, Stuart Campbell of Pomona voiced his opposition to California judges’ refusal to follow the public’s will and wrote,

The common law of the man in the street diverges widely from the ‘justice’ of the courts. In their splendid isolation, our judges ignore even the laws passed by the state legislature. Judges are accustomed to the freedom to abuse their powers because no one, at least of all you journalists bother to watch them in action ...And so, until the citizenry is given some more effective means to assert sovereignty over the judiciary, we’ll just have to make do with the abuse of the ballot.<sup>41</sup>

William Endicott reported for the Los Angeles Times that voters were showing none of their previous hesitancy to oust unpopular judges, largely a result of a generation of judicial activism .<sup>42</sup>

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<sup>39</sup> Craig Brown, Herman F. Selvin, Loren Zeldin, Stuart Campbell, and et al., “Letter to the Times: GOP Opposition to Chief Justice Bird,” *Los Angeles Times*, September 24, 1978, Section H4.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> William Endicott, “Rose Bird on Ballot, Judiciary on Trial Vote Viewed as Test of Public Discontent With Court System,” *Los Angeles Times*, November 5, 1978, Section B1.

### Chapter 3: The New Right Attack on the Courts

In 1969, Kevin Phillips argued, “a new national Republican majority could be created by politicizing a conservative populist agenda both in the North and in the South.”<sup>43</sup> William C. Berman, author of *America’s Right Turn*, stated that many of the victories achieved in the 1978 elections “came about as a result of the coalescing of forces on the right, which brought together various groups that opposed abortion and the Panama Canal treaties, as well as the Equal Rights Amendment and gun control legislation.”<sup>44</sup> This group later came to be known as the New Right, which would convert many to its anti-liberal and social agenda, and propel Ronald Reagan to the White House in 1980. Both Proposition 13 and 7 were the product of such activism on the part of the New Right, and reflected growing fears of rising property taxes and crime, which threatened many Californians’ access to the golden dream. Before the passage of Proposition 13, Ed M. Davis, the former Los Angeles police chief and Republican gubernatorial candidate, warned that he would support the recall of members of the California Supreme Court who voted to invalidate any measure of the proposition after its passage. The property tax measure was passed overwhelmingly in the June primary, and would continue to be a headache for the Chief Justice. A former Sacramento attorney told the Los Angeles Times in 1978 that if Rose Bird found herself on the wrong side of the property tax measure, it would be her Waterloo.<sup>45</sup> The Bird Court faced similar opposition to rulings that were perceived to favor criminal defendants, and critics accused

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<sup>43</sup> William C. Berman, *America’s Right Turn* (Baltimore and London: The John Hopkins University Press, 1994), 64.

<sup>44</sup> *Ibid.*

<sup>45</sup> William Endicott, “Rose Bird: Prop. 13 Adds Fuel to the Fire,” *Los Angeles Times*, June 20, 1978, Section B1.

the chief justice of weakening the state's death penalty law. Despite Los Angeles Times' polls that showed increased opposition to retain the Chief Justice in the weeks before the final vote, she was narrowly confirmed with 51.7% of the vote, and would later be subject to eight ouster attempts.<sup>46</sup>

In the 1980 presidential campaign, Ronald Reagan promised to appoint justices to the United States Supreme Court who opposed judicial activism, and were strict constructionists of the Constitution. As president, Ronald Reagan had the opportunity to name three new justices to the Court, and elevated William H. Rehnquist as Chief Justice. In appointing judges, Sean Wilentz states in *The Age of Reagan*, a new "centralized screening process drastically diminished the influence normally exerted by the American Bar Association in rating nominees." Wilentz goes on to state that the Office of Legal Policy within the Justice Department interviewed candidates about their opinions on controversial social issues including abortion, affirmative action, and crime.<sup>47</sup> He argues that this process was "enormously effective in placing new hard-line conservatives in the federal appellate and district courts."<sup>48</sup> In California, Attorney General George Deukmejian followed similar methods of screening nominees to the state courts. The historiography on the New Right in the years after Ronald Reagan's election to the presidency in 1980 neglects any significant analysis on the attack on the courts on the social issues that had dealt significant blows to many conservatives on issues including abortion, busing, and civil rights, and crime. Many of social policies that conservatives criticized were championed by liberal judges throughout the country. However, the

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<sup>46</sup>Joseph M. Gughemetti, *The People vs. Rose Bird* (San Mateo: TerraView Publications, 1985)

<sup>47</sup> Sean Wilentz, *The Age of Reagan: A History, 1974-2008* (New York : Harper, 2008), 187-189.

<sup>48</sup> Ibid.

accusation of judicial activism by those on the Right was not limited to liberals alone. Chief Justice Earl Warren of the United States Supreme Court faced similar criticism over rulings on civil rights, and criminal law. In 1964, the John Birch Society led a petition drive to impeach the chief justice. However, unlike members of the United States Supreme Court, justices on the California Supreme Court are subject to periodic reconfirmation votes after their appointment. This makes the politicization of the judiciary in California in the 1980s all the more important to a broader understanding of the Reagan Revolution. Similar to the ways in which Reagan hoped to turn back the legacy of the Warren and Burger Court by appointing left leaning conservatives, Howard Jarvis and others worked hard to remove liberal appointees of Jerry Brown to the state Supreme Court. By 1982, Rose Bird had become a symbol to many in California of “what’s wrong with the courts.”<sup>49</sup> Historian Betty Medsger argued in her analysis of the New Right Attack on the judiciary,

[The courts] were perceived as the last bastion of liberals, particularly on the federal level. The attack against California courts at all levels, went the New Right Reasoning, would provide a model that could be exported to other states and then used to combat the federal judiciary. If California could export Proposition 13, hot tubs, and Ronald Reagan to the rest of the country, then perhaps it could also nurture in the hothouse of its politics a plan to convince the country that an independent judiciary was a blight on the land.<sup>50</sup>

In 1981 “State of the Judiciary” speech, Bird warned that recent attempts by “conservative ‘radicals’ to strip the power of the U.S. Supreme Court to rule on abortion, school prayer, busing and other social issues jeopardize the Constitution and the Bill of

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<sup>49</sup> Betty Medsger, *Framed: The New Right Attack on Chief Justice Bird and the Courts* (New York: The Pilgrim Press, 1983), 5-6.

<sup>50</sup> *Ibid.*

Rights and must not go unchallenged”<sup>51</sup> She also accused the legislative and executive branches of ignoring volatile social issues by throwing them to the courts, and further warned, “ ‘Unfortunately, the temptation for judges to react to these pressures in the same manner as do politicians is likely only to increase in the coming years.’ ”<sup>52</sup>

The advocates of school busing had reason to believe that these fears had come true, when the Court voted to uphold a busing measure passed by voters in 1979. Proposition 1 limited the power of the courts to mandate school busing as a way to desegregate the state’s public schools and stated:

no court of this state may impose upon the State of California or any public entity, board, or official any obligation or responsibility with respect to the use of pupil school assignment or pupil transportation, (1) except to remedy a specific violation by such party that would also constitute a violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution, and (2) unless a federal court would be permitted under federal decisional law to impose that obligation or responsibility upon such party to remedy the specific violation of the Equal Protection Clause ...<sup>53</sup>

The proposition was an attempt by voters to curtail the power of what they viewed as an increasingly activist judiciary in the area of minority rights specifically. The measure was in large part passed in response to a decision by the Court in 1978 to allow busing to continue, as mandated by the 1976 decision in *Crawford v. Board of Education of Los Angeles*. Two of the justices missing from the four-sentence order to reinstate busing, were Justices William P. Clark and Frank K. Richardson, two appointees of Reagan.<sup>54</sup> In 1981, conservatives had a reason to rejoice when the Court declined to review a ruling by

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<sup>51</sup> Edwin Chen, “Uphold High Court Power, Bird Urges,” *Los Angeles Times*, October 12, 1981, Section A3.

<sup>52</sup> Ibid.

<sup>53</sup> [http://web.me.com/joelarkin/MontereyDemographicHistory/1979\\_Prop\\_1.html](http://web.me.com/joelarkin/MontereyDemographicHistory/1979_Prop_1.html)

<sup>54</sup> Myrna Oliver, “State High Court Oks L.A. School Busing,” 1979, *Los Angeles Times*, September 7, 1978, Section B1.

the Court of Appeal in Los Angeles which upheld the constitutionality of Proposition 1, with only Chief Justice Bird ruling to hear a review.<sup>55</sup> Many of those who had worked on minority interests across the state grew disillusioned at the Court's failure to review the constitutionality of Proposition 1. For them, it confirmed the fears of Rose Bird that the judiciary had been swayed by the rising conservative mood across the state. Henry Gutierrez, executive director of the Hispanic Urban Center, told the Los Angeles Times that minorities could no longer count on the Supreme Court to uphold minority rights, and that it had been swayed by the shifting political winds across the state in its decision to not review the constitutionality of Proposition 1.<sup>56</sup> John W. Mack, the president of the Los Angeles chapter of the Urban League, told the Los Angeles Times, "It appears that the Supreme Court has succumbed to the ugly conservative mood that's sweeping our state and this country and as a result has made a political decision that's tragedy because it reaffirms separate and historically unequal education for students of different racial backgrounds."<sup>57</sup> In the appeal to the United States Supreme Court, Lawrence H. Tribe, a law professor representing black and Latino schoolchildren in Los Angeles, told the Court that Proposition 1 had imposed a racial classification and was passed to stop desegregation in Los Angeles schools.<sup>58</sup> Justice Stevens and Justice Byron R. White asserted that the only "real life reason" for the passage of Proposition 1, "was that the

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<sup>55</sup> Philip Hager, "Why Did it Duck the Integration Issue?; High Court Stuns Friends and Foe Alike," *Los Angeles Times*, March 13, 1981, Section B1.

<sup>56</sup> Larry, Stammer, "State Court's Anti-Busing Action Creates Shock Waves," *Los Angeles Times*, March 13, 1981, Section D3.

<sup>57</sup> Ibid.

<sup>58</sup> Tim Mann, "U.S. High Court Questions Motivations Behind Proposition 1," *Los Angeles Times*, March 23, 1982, Section B1.

California courts were ordering busing to achieve public school desegregation.”<sup>59</sup>

However, in an 8-1 ruling, Justice Lewis F. Powell writing the majority opinion conclude that Proposition 1,

...stemmed from the legitimate desire of California voters to have children attend schools in their neighborhoods. Such a desire is not necessarily motivated by racial concerns and does not violate the 14<sup>th</sup> Amendment guarantee of the equal protection of the laws...Furthermore, the justices said, the ballot measure merely repealed previous California laws and court rulings that had given racial minorities greater rights to a desegregate education than are required by the 14<sup>th</sup> Amendment to the U.S. Constitution.<sup>60</sup>

While busing proved a volatile issue for voters, the Bird Court also became the target of attacks by those who argued that it was a criminal defendant court, and that her decisions were making society less safe. Such accusations by conservative politicians and other officials from around the state reflect growing discontent over what they perceived as the failure of the United States Supreme Court, and other courts from across the country to listen to the will of the people. This was evident in the reaction of states, including California, to the ruling by the United States Supreme Court that the death penalty was a violation of the Eighth Amendment’s prohibition of cruel and unusual punishment, and the use of law and order issues to attack liberal politicians and members of the court—including Chief Justice Rose Bird as pro-criminal and soft on crime. Howard Jarvis and other conservatives would later use the death penalty as the centerpiece of their campaign to oust Bird and two of her liberal colleagues from the California Supreme Court.

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<sup>59</sup> Larry, Stammer, “State Court’s Anti-Busing Action Creates Shock Waves,” *Los Angeles Times*, March 13, 1981, Section D3.

<sup>60</sup> Jim Mann, “High Court Backs Anti-Busing Law,” *Los Angeles Times*, July 1, 1982, Section B1.



## Chapter 4: The Death Penalty in the United States

In the late 1970s and 1980s, the use of law-and-order issues concerning crime and the death penalty provided a potent political weapon for conservative politicians across the country to attack liberals who were perceived as soft on crime. The death penalty had been in a state of flux as states across the country, including California, reacted to the United States Supreme Court ruling in *Furman v. Georgia* and declared that the death penalty, as administered then, was in violation of the constitution's ban on cruel and unusual punishment. Stuart Banner writes in *The Death Penalty: An American History* that in the Court's *Furman* decision,

In retrospect, *Furman* stands at the confluence of three broader, interrelated trends in constitutional law, all of which were at their high point in the late 1960s and early 1970s. Most important was the idea that constitutional law should be a vehicle for social change, and that the Court ought to promote change through innovative interpretations of the constitution.<sup>61</sup>

Secondly, *Furman* “was at the high-water mark of a second trend in constitutional law, the Court's gradual standardization of criminal procedure.” As Banner argues, because of the level that discretion within the criminal justice system was abused, the Court set about to create a set of rules and procedures—most famously in *Miranda v. Arizona*, which established a set of rules which police had to follow in the interrogation of suspects for criminal offenses. Lastly, the Court's *Furman* decision can be understood within the broader construct of other rulings used to mitigate the effects of racism including education, school busing, and affirmative action. Across the United States, legislators in five states including California, pledged to reinstate the death penalty, and

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<sup>61</sup> Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2003), 264-265

in California popular support for the death penalty was large enough for the issue to appear on the ballot in 1972. In the 1972 election, by a margin of 2-1, Californians amended the state constitution to reinstate the death penalty. In the next four years, thirty-five states and the Federal government enacted new procedures to readmit the death penalty. In the months and years following the Supreme Court decision, popular support for the death penalty increased across the country. According to Stuart Banner,

In March 1972, a few months before *Furman*, supporters outnumbered opponents 50 to 42 percent. The figures had barely changed in the previous few years. In November 1972, however, a few months after *Furman*, support beat opposition 57 to 32 percent. An eight-point margin had grown into a twenty-five-point margin in seven months. By 1976 supporters outnumbered opponents 65 to 28 percent, the widest gap since the early 1950s.<sup>62</sup>

The rising crime rates in the 1980s increased support for the death penalty as well as support for politicians and officials who ran campaigns on law-and-order issues. In the following years, Rose Bird was a potent symbol of what the GOP thought to be wrong with the criminal justice system. George Deukmejian, in his capacity as California's Attorney General and member of the Judicial Appointments Commission, used his position as a platform to question candidates for the Supreme Court on their stance on the death penalty and other related tough-on crime issues. However, as stated previously, criticism of Rose Bird and other Brown appointees as soft on crime was the most visible issue available to conservative politicians angered at the Court's prior rulings dealing with social policies, business interests, and Proposition 13. In 1982, California's rightward shift became more evident as George Deukmejian faced his democratic challenger Tom Bradley in the gubernatorial election.

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<sup>62</sup> Ibid.

## Chapter 5: The 1982 Gubernatorial Election

The 1982 gubernatorial election featured renewed attacks on the Chief Justice, especially by Republicans running for statewide election. The state GOP debated supporting the removal of Bird, but disagreed on whether the recall was the best way to achieve it since Brown could name her successor before he left office the following January. In February 1982, Richard Bergholz announced for the Los Angeles Times that Republicans had agreed to support her recall, and would try to qualify it for the November ballot so a special election would not have to be called, which would cost tax payers \$12 million dollars.<sup>63</sup> The Republicans would have to gather 553, 790 petition signatures by June 24, which Bergholz argued would stretch Republicans' resources, who also wished to gather a number of "no votes" on three referendums to overturn the redistricting plans passed by the Democrats.<sup>64</sup> While Lieutenant Governor Mike Curb, himself running for governor in the fall, came out in favor of the recall, Attorney General George Deukmejian (also a candidate), stated that he did not believe the recall process would be appropriate for the removal of a justice by those who have fault in her decisions.<sup>65</sup> Furthermore, Bird's predecessor Donald Wright, who was appointed by Reagan in 1970, said that the attacks made against her were unfounded, and that the GOP was trying to destroy the independence of the judiciary. Also voicing his criticism of the recall drive was former Chief Justice Phil S. Gibson, who served from 1940-1967 and

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<sup>63</sup> Richard Bergholz, "Effort to Recall Rose Bird Puts State GOP in a Quandary," *Los Angeles Times*, February 26, 1982, Section B3.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

stated, “ ‘We have a system that works and we had better keep it. Rose Bird’s done a good job.’”<sup>66</sup>

After five years on the Court, Edwin Chen wrote for the Los Angeles Times that the Chief Justice had took longer than initially expected to prove that her public defender background would predict how she would administer justice on the Supreme Court. He wrote, “Today, Bird is perhaps the court’s most predictable ‘pro-defendant’ member, reaching verdicts that have a favorable result for the defendant in about 75% of criminal cases reviewed by the court.”<sup>67</sup> That year the state GOP debated on whether to support the recall of the chief justice, and Chen reported some of the reasons why recall supporters were trying to remove her. He wrote,

She has voted to extend the exclusionary rule (which bars court use of improperly obtained evidence), to impose strict standards on the admissibility of confessions, to broaden the test for assessing insanity pleas and to oppose the death penalty. Bird has voted to grant ex-felons the right to carry concealed weapons in self-defense, to allow an accused child molester to use ignorance of a victim’s age as a defense and to overturn a guilty verdict based on a past conviction for a similar offense.<sup>68</sup>

He went on to argue that the Court’s other liberal justices—Stanley Mosk, Frank C. Newman and the late Mathew O. Tobriner often sided with the Chief Justice in criminal cases 70% of the time, but Bird took a more pro-defendant position; and, it was explained that, “the court as a whole has become divided on law and order issues, reaching

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<sup>66</sup> Ibid.

<sup>67</sup> Edwin Chen, “Bird Becomes Predictable Advocate for Defendants,” *Los Angeles Times*, May 21, 1982, Section B1.

<sup>68</sup> Ibid.

unanimity in barely a third of the cases.”<sup>69</sup> In Orange County, numerous law enforcement officials in the city announced their support of the recall drive against Bird, including Sheriff Brad Gates and chief homicide prosecutor James Enright, who all accused the chief justice of supporting criminal defendants in her rulings.<sup>70</sup> The Orange County Deputy District Attorney Anthony Rackauckas, took a nine month leave of absence in order to lead a Rose Bird recall drive in Sacramento.<sup>71</sup>

Cruz Reynoso, appointed to the Court in January of 1982, defended Bird and stated statistics that showed, “90% of those arrested for crime are convicted and that the appellate courts have upheld more than 88% of those convictions.”<sup>72</sup> He also explained the Court makes a rather easy target and stated that while the recall right should be “cherished,” there is a difference between “...having the right ‘and exercising the right.’”<sup>73</sup> An editorial for the Los Angeles Times argued that like the United States Supreme Court, the California Supreme Court faced similar opposition by many critics over social issues including the rights of criminal defendants, school busing for integration, school prayer, and abortion which “often affront the popular passions of the moment,” but asked, “but do we want the courts guided by the constitution or by the public opinion polls?”<sup>74</sup> However, popular discontent with United States Supreme Court decisions is mitigated by the fact that justices receive lifetime appointments after confirmation. While the Los Angeles Times agreed that judges should not be immune

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<sup>69</sup> Ibid.

<sup>70</sup> Jerry Hicks, “Bid to Oust Rose Bird Termed Recall Misuse,” *Los Angeles Times*, April 27, 1982, Section A1.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> “At the Heart of the Controversy,” *Los Angeles Times*, March 9, 1982, Section C4.

from public criticism, they further argued that idea “that their rulings should subject to popular referendum...is a dangerous abuse of the recall process.”<sup>75</sup>

The GOP announced plans in March to drop the recall drive in order to focus their attention on electing Republican candidates across the state. In July, tax crusader Howard Jarvis announced similar plans to begin a recall drive against the Chief Justice.<sup>76</sup> Robert Fairbanks wrote for the Los Angeles Times that Jarvis’ efforts would succeed the failed attempts by conservative fundraiser and Senator, H.L. Richardson of Arcadia.<sup>77</sup> Richardson’s recall attempt was supported by the Law and Order Campaign Committee, a group he founded in order to elect pro-law enforcement candidates.<sup>78</sup> Fairbanks also wrote that the recall effort would employ the Orange Country campaign firm Butcher-Forde.<sup>79</sup> Jarvis’ spokesman Joel Fox announced that he had been angered at decisions reached by the Court which in his view had weakened Proposition 13.<sup>80</sup> It was not long after Jarvis announced plans to recall the Bird that the Court ruled in a San Francisco case that cities did not need the two-thirds majority mandated by Proposition 13 to “impose a business payroll or gross receipts tax.”<sup>81</sup> The Los Angeles Times called the decision a “...potentially far reaching Supreme Court decision that could allow Los Angeles elected officials to raise taxes.”<sup>82</sup> Prior to the ruling, raising payroll or gross receipts tax was considered a “special tax” under Proposition 13, but the ruling would allow cities to

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<sup>75</sup> Ibid.

<sup>76</sup> Robert Fairbanks, “Jarvis May Sponsor New Campaign to Recall Bird,” *Los Angeles Times*, July 21, 1982, Section B3.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Janet Clayton, “Ruling Could Give City Power to Boost Taxes,” *Los Angeles Times*, August 6, 1982, Section B3.

<sup>82</sup> Ibid.

impose new taxes with “a simple majority vote.”<sup>83</sup> It was the third time, Philip Hager wrote in the Los Angeles Times, that “the court has upheld local revenue measures against legal challenges based on the sweeping property tax-relief initiative passed in 1978.”<sup>84</sup> In supporting a \$288 million-a-year transit tax in Los Angeles County, the Court announced that the tax passed by 54% of the voters did not require the two-thirds majority because “it was not aimed at replacing lost property tax revenue.”<sup>85</sup> The Court also supported “a special property tax levy” by the city of San Gabriel for its employees’ retirement fund. In explaining the Court’s decision, Hager wrote,

It said the tax—similar to levies imposed by about two dozen other municipalities—did not violate the 1% ceiling on property taxes mandated by Proposition 13 because it was aimed to cover indebtedness on obligations incurred before the initiative took effect.<sup>86</sup>

Despite growing anger at the Court’s rulings on Proposition 13, law-and-order issues remained the focus of much of the 1982 gubernatorial election. Much of this criticism was directed at Rose Bird. The Los Angeles Times reported in 1982 that when Rose Bird was spotted in a Palo Alto supermarket, the clerk told Bird that her boyfriend had abused her child but was told by the police that the chief justice had ruled that nothing could be done.<sup>87</sup> In the 1982 election, the two issues that topped voter concern were inflation (36%) and crime (33%). In the summer primary, voters passed Proposition 8, commonly referred to as the Victim’s Bill of Rights. Jeffrey Kaye reported that,

By approving Proposition 8 in Tuesday’s election, California voters not only enacted a measure that opponents say will throw the criminal-justice system into

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<sup>83</sup> Ibid.

<sup>84</sup> Philip Hager, “High Court Eases Prop. 13 Tax Limit,” *Los Angeles Times*, August 6, 1982, Section B1.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Edwin Chen, “Rose Bird—A Study in Contrasts,” *Los Angeles Times*, May 20, 1982, Section A3.

chaos, but also made certain that the so-called ‘victims’ bill of rights” would become a major issue in the November contests, largely to the benefit of Republican candidates.<sup>88</sup>

Just as rising property taxes in the 1970s had fueled the Great Tax Revolt that culminated in the passage of Proposition 13, growing discontent with the judiciary was reflected by the passage of the Victims’ Bill of Rights. As William Schneider reported, “It is a measure that aims to take power and discretion away from the criminal courts, just as Proposition 13 took power and discretion away from local governments.”<sup>89</sup> As soon as the measure passed, three justices on the California Supreme announced that they had particular “misgivings” on the measure. Chief Justice Rose Bird stated that the measure, passed with 56 percent of the vote, might have violated the single-subject rule for propositions passed by voters in 1948. The chief justice told Philip Hager in an article for the Los Angeles Times, “It is the court’s responsibility to strike the measure down if it violates that principle.”<sup>90</sup> In the fall, the Court ruled in a 4-3 decision, that the measure known as Proposition 8 did not violate the single-subject measure, but left room open for further legal challenges on separate provisions within the measure. The passage of the Victims’ Bill of Rights reflects broader discontent on the part of many in California for what they perceived as soft on crime liberal judges and politicians, and was described at the time as “...one of the broadest revisions of criminal law ever attempted in the United States.”<sup>91</sup>

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<sup>88</sup> Jeffrey Kaye, “Prop. 8 Will Dominate Politics, Helping GOP,” *Los Angeles Times*, June 11, 1982, Section D7.

<sup>89</sup> William Schneider, “Race Is the Invisible—but Important—Issue in the Run for Governor,” *Los Angeles Times*, June 20, 1982, Section E1.

<sup>90</sup> Philip Hager, “State Supreme Court Justices Openly Skeptical of Proposition 8,” *Los Angeles Times*, July 22, 1982, Section B3.

<sup>91</sup> *Ibid.*



In a 1982 speech, the chief justice warned that, “ill-advised, quick fix solutions for social ills” is the “headlong rush by legislators, the governor, the lieutenant governor and other public officials at every level to declare themselves generals in the war against crime.”<sup>92</sup> The top Republican candidates in the state including San Diego Mayor Pete Wilson, running for the United States Senate, and Attorney General George Deukmejian, running for the Republican gubernatorial nomination, exploited Proposition 8 to enhance their tough on crime credentials.<sup>93</sup> The Los Angeles Times reported that the Supreme Court promised to figure prominently in the Attorney General’s race, between Senior Assistant Attorney General George Nicholson, himself a co-author of the measure, and his Democratic challenger—Los Angeles County District Attorney John K. Van de Kamp.<sup>94</sup>

In the race for governor, Attorney General George Deukmejian ran against Los Angeles Mayor Tom Bradley. In television advertising, Bradley “stressed” his background as a police officer as well as his tough-on-crime credentials.<sup>95</sup> However, his support of Rose Bird and his position against the Victims’ Bill of Rights seemed for many to contradict his own tough-on-crime persona. George Deukmejian found himself in a good position to exploit the issue since he had been responsible for getting crime measures passed in the state Senate under Governor Reagan, and was a strong advocate

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<sup>92</sup> Edwin Chen, “Uphold High Court Power, Bird Urges,” *Los Angeles Times*, October 12, 1982, Section A3.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> William Schneider, “Race Is the Invisible—but Important—Issue in the Run for Governor,” *Los Angeles Times*, June 20, 1982, Section E1.

of capital punishment and Proposition 8—and perhaps more importantly, a foe of Chief Justice Rose Bird.<sup>96</sup>

As Attorney General, George Deukmejian did not hide his disdain for Rose Bird. In his capacity as Attorney General, George Deukmejian served on the Judicial Appointments Commission with the chief justice and Justice Lester W. Roth, which decides on the governor’s appointments to the Supreme Court and appellate courts. The Attorney General was criticized by the chief justice and others for misconduct in questioning nominees to state courts.

In 1981, the commission convened for the appointments of Appellate Justice Otto M. Kaus and Superior Judge Allen E. Broussard to the state Supreme Court, as well as two others for appointments to the Court of Appeal. All four appointees declined to answer the attorney general’s questions on “rulings and rationales in death-penalty, search-and-seizure, criminal insanity and other cases in which the attorney general has publicly disagreed with the court majority.”<sup>97</sup> In another incident, the Los Angeles Times reported that George Deukmejian and the chief justice had a heated exchange over the former’s questioning of Superior Court Judge Keith F. Sparks’ nomination to the Court of Appeal in Sacramento.<sup>98</sup> The nominee refused to answer the Attorney General’s questions on such controversial issues such as the death penalty, the exclusionary rule and mandatory sentencing on grounds, “that to respond might be misconstrued as how he

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<sup>96</sup> Ibid.

<sup>97</sup> Steven C. Burnett, “Deukmejian Steps Over the Line,” *Los Angeles Times*, July 17, 1981, Section D6.

<sup>98</sup> Philip Hager, “Deukmejian, Bird Clash on Questioning,” *Los Angeles Times*, September 20, 1982, Section B3.

might vote in future cases, and that he did not want to appear to be trying to ‘curry favor’ with members of the commission.”<sup>99</sup>

In August 1982, William Endicott wrote for the Los Angeles Times that the biggest “hurdle” in Tom Bradley’s quest for the governorship, was Governor Jerry Brown.<sup>100</sup> Throughout the campaign, Bradley worked hard to distance himself from Brown, and was constantly questioned about the policies of the governor.<sup>101</sup> According to Endicott, “ ‘I’m not Jerry Brown’ has become such a familiar Bradley phrase that some jokesters have suggested the mayor put it on his campaign buttons.”<sup>102</sup> Deukmejian accused Bradley of sharing the same political philosophy as Brown, and criticized the mayor for support of Chief Justice Rose Bird and Cesar Chavez, as well as his support of many of the governor’s judicial appointments.<sup>103</sup>

In the months leading up to the gubernatorial election, the Court faced renewed criticism over rulings on the state’s death penalty, and promised that the issue would be fresh on voters’ minds in November. In April, the Court voted 5-1 to overturn a provision of the Briggs’ initiative (Proposition 7) which provided the death penalty for crimes considered as “ ‘especially cruel, heinous, atrocious and cruel.’”<sup>104</sup> In the ruling, the majority ruled that the provision was too vague to properly guide judges. The case was the second time that year that the Court had struck down a provision within the state’s death penalty law passed by voters in 1978. As described in an article for the Los

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<sup>99</sup> Ibid.

<sup>100</sup> William Endicott, “Brown Legacy Is Bradley’s Biggest Hurdle,” *Los Angeles Times*, August 9, 1982, Section B1.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Philip Hager, “State Justices Reject Death Penalty Clause,” *Los Angeles Times*, July 2, 1982, Section B1.

Angeles Times, the case involved two men named Allen Leory Engert who was accused of strangling a young women in May 1979, and the second man—John W. Gamble, was charged with the August 1979 beating of a two year old girl. According to an article by Philip Hager, “Engert and Gamble challenged the constitutionality of the legal provision under which they could be executed,” which was declared unconstitutional in a prior 2-1 ruling by the state Court of Appeal. Attorney General George Deukmejian declared the ruling “ ‘inexplicable,’” and argued that juries across the state would be prevented from sentencing the worst killers with the death penalty.<sup>105</sup> Back in January, the Court ruled against another provision within the Briggs Initiative that required judges to notify a jury considering the death penalty that the governor could commute a lesser sentence. Before the ruling, a jury may have been swayed to approve a harsher penalty without prior knowledge that the governor had the power to commute a death sentence as well.<sup>106</sup> In October, the Court faced further criticism over the 5-2 reversal of a death sentence for a man convicted of murdering two women with a cast iron frying pan. In the ruling, the majority argued that the testimony of the psychiatrist along with the mother of one of the victims should not have been admitted in the trial of Vicent M. Arcega Jr.

Much of Attorney General Deukmejian’s campaign for governor centered around criticizing Brown’s judicial appointments, and telling voters about the kinds of judges he would appoint to statewide courts. In promising to appoint judges who would back the will of the people, he hoped to capitalize off controversial rulings by the Court to weaken Proposition 7 and 13 which had passed by substantial margins by the voters. In an article

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<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

for the Los Angeles Times article, William Endicott wrote of Deukmejian, “The Brown-dominated court, he said, has poked holes in both the state’s death penalty law and tax-cutting Proposition 13 and, although it upheld Proposition 8, may undo its provisions through future court challenges.” Thus, Deukmejian said, “...the makeup of the California Supreme Court in the years ahead is extremely important.”<sup>107</sup> In November, voters seemed to agree, and Deukmejian won a narrow victory against Mayor Tom Bradley. In the election, Justices Otto Kaus, Allen E. Broussard and Cruz Reynoso won with the lowest margin since 1934 “with one exception”—Rose Bird who won with less than 52 percent of the vote in 1978. Justice Frank R. Richardson, an appointee of Governor Ronald Reagan, won with 76 percent of the vote.

In the aftermath of the election, given the low margins of victory for the three Brown appointees or “Jerry’s Judges” as they were called, Tony Rackaukas, the director of the Recall Rose Bird Alliance in Sacramento, was convinced that if they could get the Chief Justice on the ballot through a recall attempt she would be defeated.<sup>108</sup> In his eight years as governor, Jerry Brown had appointed almost half of the 1,222 judges on courts across the state, almost double those appointed by Reagan and his father, Pat Brown. His appointment of Joseph R. Grodin, to replace retiring Justice Frank C. Newman, was the governor’s seventh Supreme Court appointment. Brown also made 61 appointments to the state Court of Appeal. His most visible legacy concerning his influence on the state’s judiciary was the appointment of women and minorities to the bench. Among the governor’s numerous judicial appointments, he “...had appointed 90 blacks, 71 Latinos,

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<sup>107</sup> William Endicott, “Deukmejian Says He’d Name Judges Who Back Voters,” *Los Angeles Times*, September 8, 1982, Section B22.

<sup>108</sup> *Ibid.*

34 Asian-Americans and 131 females to judicial posts.”<sup>109</sup> Chief Justice Rose Bird was the first female justice, while Wiley W. Manuel became the first African American, and Cruz Reynoso—the first Latino appointed to the California Supreme Court. It was precisely in the area of the state judiciary where Governor-elect George Deukmejian and other conservatives sought to dismantle Jerry Brown’s legacy. Phil Kerby wrote for the Los Angeles Times that if such efforts were successful, and a recall attempt to oust Rose Bird was approved, the state will “...have taken a step toward justice by plebiscite.”

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<sup>109</sup> Philip Hager, “Brown Leaves Imprint on the Courts,” *Los Angeles Times*, December 5, 1982, Section G1.

## Chapter 6: The Death Penalty Cases

In March 1978, a 2 ½ year-old Camarillo girl named Amy Sue Seitz, disappeared from the front yard of a Camarillo ranch home. Two days later, the girl's nude body was found in the front yard of a Topanga Canyon home. Friends and neighbors of the family announced a plan to raise \$5,000 reward for information leading to the murderer's arrest. The girl was found to have been battered, sexually molested, and strangled. Theodore Frank was later arrested, and told psychiatrists he had molested up to 150 children. During the 1979 trial, Theodore Frank, 42, took the witness stand in a bid to counter the prosecution's case against him. Frank argued that notebooks and letters taken from his Woodland Hills home should not have been introduced as evidence because they were related to his therapy as a court-declared mentally disordered sex offender, thus, were subject to doctor-patient privilege. The Los Angeles Times reported that the prosecution argued that the material "strongly reveals a bizarre modus operandi; and motive for the sadistic attacks against infant children such as Amy Sue Seitz." Superior Court Judge Byron K. McMillan denied a motion to declare the state's death penalty law unconstitutional, and allowed the prosecution's to "amend" their accusations against Frank to include that he was previously guilty of molestation of children under 14 in both California and Missouri. Frank was later convicted, and sentenced to death in the gas chamber at San Quentin. More than any other molestation case at the time, the murder of Seitz led to calls throughout the state for tougher legislation against sex offenders . In 1980, Patti Linebaugh, Amy's grandmother, founded the statewide group known as the Society's League Against Molestation (S.L.A.M) in memory of her granddaughter. By the end of 1981, the group had more than 30,000 members.

In April 1978, four young filmmakers drove to the Mojave Desert where they were to make a semi-documentary film for a class project. There they were approached by two men, David Murtishaw and Gregory Lufenberger, who asked the group for a ride because their car had broke down. The filmmakers told the group that they were “anxious” to finish the film and cold not take them at that time. The two then walked away, and returned twenty minutes later armed with small-caliber rifles. Three of the students were killed, and one escaped to testify about the murders. The Kern County coroner Richard Gervais told the Los Angeles Times that James Lee Henderson, a 24 year old University of La Verne Theater Arts major and expected to graduate the following month; Ingrid M. Etayo, 22, of Los Angeles were shot numerous times. A third person named Martha B. Soto, 22, of Los Angeles was later taken to Antelope Valley Hospital Medical Center in Lancaster where she later died. Lance Buflo, 22, a cinema student at USC, and the husband of Soto, escaped. Gregory Lufenberger was later released after ballistics tests found that his weapon had not been used in the killings. A Kern Country jury later sentence Murtishaw to death in what court officials said was the first death penalty case tried under the new death penalty rules enacted by voters the previous November.<sup>110</sup> As California law requires, Murtishaw’s death sentence, under law, was automatically appealed to the California Supreme Court.

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<sup>110</sup> “Man Given Death for Slaying 3 Filmmakers,” *Los Angeles Times*, February 7, 1979, Section B24.



## Chapter 7: The Rose Bird Court and the Death Penalty

The stories of the murders of Amy Sue Seitz and the student filmmakers were an example of the many cases that gripped newspaper headlines across the state, and drew increasing attention to the Rose Bird Court which many viewed as soft on crime, and anti-death penalty.

A National Crime Survey for 1984 found that while murder decreased by 4 percent and robberies declined by 5 percent, other violent crimes such as rape increased by 6 percent, and aggravated assault went up 4 percent. “Thus,” reported The Register, “the net overall rate of violent crime showed no change from 1983.”<sup>111</sup> Throughout the state, newspapers reported that Californians remained skeptical at official statistics showing that the crime rate was decreasing.<sup>112</sup> The California Supreme Court under Chief Justice Rose Bird came under fire by critics who blamed the court as the reason why the state had not carried out an execution despite a death penalty law that had been on the books since 1978. Martin Smith wrote for the Modesto Bee that such skepticism would make it more difficult for Bill Zimmerman, Rose Bird’s campaign consultant, to convince voters that they should reconfirm the chief justice for another twelve year term. Smith argued that the public’s concern over the rising crime rate could in part be explained by the improving economy which caused people to focus on more “other matters.”<sup>113</sup> Though two polls released in 1985 reported that respondents “are generally satisfied with their local government’s handling of community problems, fear of crime remains

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<sup>111</sup> Associated Press, “Rapes, assaults show increase as other crime reports fall, FBI says,” *The Register*, April 21, 1985.

<sup>112</sup> Martin Smith, “Doubts about drop in crime,” *Modesto Bee*, March 31, 1985.

<sup>113</sup> Ibid.

widespread... [and] more than one-third of those polled believe there's more crime today than there was five years ago.”

Throughout Rose Bird's tenure on the California Supreme Court, the Legislature and Governor George Deukmejian looked for ways to expand the imposition of the death penalty and make it harder for the Court to reverse death penalty sentences. An editorial written for the Hayward Review claimed that, “The state Supreme Court, led by Chief Justice Rose Bird is largely to blame for keeping convicted murderers away from the gas chamber...Bird and the majority of her colleagues on the bench have interpreted the state's constitution to suit their own political agenda and their own lenient approach to the criminal justice.” The editorial further called on the Legislature to adopt two measures, AB 1467 and ACA 14, supported by Assemblyman Gary A. Condit (D-Modesto), which would create a tougher death penalty law and make it harder for the justices on the California Supreme Court to spare convicted murderers from the gas chamber. If passed AB 1467 would expand the imposition of the death penalty and extend the minimum sentence for those convicted of first-degree murder in non-capital cases from 25 to 50 years. It would also require “expeditious” handling of capital cases and would prohibit judges from “striking or dismissing special circumstances which have been found by a jury.” ACA 14 sought to amend the constitution in order to “conform California's death penalty laws to federal court standards.” Furthermore, “it would remove independent state grounds in the determination of capital cases allowing both the prosecution and the defense the additional ability to appeal capital cases to the U.S. Supreme Court.” Lastly, it was aimed specifically at making it more difficult for Rose Bird to block the death penalty or reduce sentences to life imprisonment without the

possibility of parole.<sup>114</sup> After AB 1467 went down in defeat in the Legislature, Assemblyman Richard Katz in a letter to his constituents cited the fact that 22,000 Californians had been murdered since the passage of the death penalty law in 1978, and he called on death penalty supporters to pressure the Legislature to fix “loopholes in the law” so that executions could once again continue in California.

In a message to the Legislature on February 11, 1985, Governor Deukmejian outlined his Public Safety Program, and once again called on the California Supreme Court to impose the death penalty on the more than 170 murders sentenced to death since 1977. The governor asked Senator Ken Maddy and Assemblyman Phil Wyman to introduce the Death Penalty Restoration Act which sought to “make the court more accountable for its actions by requiring it to explain to the people why it is delaying each death penalty case,” and would also overturn some of the decisions by the Court which have prevented the state from carrying out executions. The governor mentioned two rulings that he would work to overturn if his plan for restoring the death penalty became law. The Court’s 1982 ruling in *People v. Williams* decided that a judge can reduce the verdict of life without the possibility of parole to that of life with possibility of parole,” but the Court did not decide whether a judge could extend this power to reducing a sentence of death. Deukmejian argued that the Death Penalty Restoration Act would “prohibit the reduction of a verdict of life without possibility of parole and preclude any future decision by the court which could use these powers to reduce a death verdict.” Secondly, he told the Legislature that the law would also overrule *People v. Spears*, which was decided by the Court in 1983. The ruling decided that juveniles between the

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<sup>114</sup> “Death penalty,” Hayward Review, April 18, 1985.

age of 16 and 17 could not be sentenced to life without the possibility of parole, and the Court decided that these individuals should be sentenced to life with the possibility of parole which carries a sentence of twenty five years to life, and possibly subject to the Youth Authority instead of prison. If the Legislature passed his bill, the governor argued, the judge or jury would have the power to minors tried as adults and convicted of first degree murder with a special circumstance would be sentenced to life without the possibility of parole or life with the possibility of parole.<sup>115</sup> In a letter sent out by the California Republican Assembly, Californians were asked to sign the petition asking that the Legislature pass the governor's Death Penalty Restoration Act. The letter stated in part, "This 1985 critical new law will overturn decisions by Rose Bird and the State Supreme Court which could take the infamous Freeway Killers and 95 other convicted killers off Death Row and give them new trials...In the six years since Rose Bird became Chief Justice of the California Supreme Court, the court has heard 33 death penalty cases. In 30 of those cases the court reversed the death penalty--and Rose Bird has voted against imposing the death penalty in every single case."<sup>116</sup>

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<sup>115</sup> George Deukmejian, "Governor Deukmejian's 1985 Public Safety Program: A Message to the State.

<sup>116</sup> Phil Wyman, "Governor's Death Penalty Restoration Act of 1985 Committee , Assemblyman Phil Wyman, Chairman: A Special Project of the California Republican Assembly."

## Chapter 8: The Judicial Election of 1986

In 1984, a group calling itself Crime Victims for Court Reform (CVCR) was organized to gather “No” votes on Rose Bird, and Associate Justices Cruz Reynoso and Joseph Grodin. A campaign brochure for the group called itself “a non-partisan campaign committee led by victims of crime along with civic leaders, prosecutors, law enforcement officials and concerned citizens who have themselves been personally or who are morally outraged by the senseless decisions of the Bird Court.” However, a look at the group’s leadership suggests otherwise. The head of CVCR was Bill Roberts who was a veteran Republican strategist who once worked as the manager of George Deukmejian’s gubernatorial bid, and the group was run by the conservative campaign consulting firm the Dolphin Group. The brochure accused the three justices of making the California Supreme Court “a forum of their personal and political beliefs by carrying protection for the criminal defendant to extremes.” Opponents of the Bird Court were also criticized for the length of the appeal process which the brochure added had increased to over 1, 350 days. According to an interview with the Dolphin Group, the campaign consulting firm for CVCR, the group was composed of parents and siblings of murder victims whose cases were not upheld or were not expected to be upheld by the Bird Court. The CEO of the group argued that many of its rulings on the death penalty showed that the state Supreme Court was disdainful of public sentiment, especially in its rulings on intent to kill.

The spokesman Crime Victims for Court Reform included Patricia and Robert Henderson whose son James had been murdered by David Murtishaw. When asked by the Riverside Press Enterprise about their involvement with the campaign to defeat the

three justices they replied that they "...want to change the judicial system that they believe may eventually set their son's killer free." The paper called them "unlikely spokesman," adding that Pat Henderson designs needlework patterns and her husband, Robert, is a retired glazier." "Even so," the paper continued, "...they are prepared to hold news conferences in their antique-filled living room; they mail fliers from their kitchen table; and they tell everyone to vote 'no'...when the California chief justice and two associate justices seek confirmation of their appointment to the State Supreme Court."<sup>117</sup> CVCR released radio spots featuring the victims of crime in an effort to urge voters to oust Rose Bird and two of her Brown appointed colleagues. In another radio spot, Patricia Henderson was interviewed about the morning she found out that her son, James Henderson, was murdered. Henderson told Ed Jaegels, a prosecutor for Kern County the following about hearing the news of her son's death,

I had just gotten up. I guess it was seven A.M. I heard someone knocking at the door. It was the sheriff. I answered the door, and the deputy asked if I had a son named James Henderson, how tall he was, how much he weighed, what color hair and eyes. I knew something was wrong then. My first thought was an automobile accident. And then I asked her to come in. She did. She didn't tell me what had happened. I called my other son, and he came over. She told him that Jim had been murdered in the desert. That's how I found out.<sup>118</sup>

Jaegels said of the reversal of the death sentence for Henderson's killer, David Murtishaw stated, "Rose Bird refuses to state the truth—that she opposes the death penalty and cannot apply a law repeatedly approved by the voters of California."<sup>119</sup>

Another group calling itself Californians to Defeat Rose Bird began their efforts in 1985 to unseat Brown's appointees in the 1986 judicial election. The group was

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<sup>117</sup>Sandy Pavicic, "Death Spurs anti-Bird campaign," *Riverside Press-Enterprise*, January 11, 1986.

<sup>118</sup>Mark Wood, "CVCR: Radio Spot: Patricia Henderson."

<sup>119</sup>Ibid.

headed by tax crusader Howard Jarvis, who had earlier threatened recall against Rose Bird for rulings which he saw as weakening important elements of Proposition 13. While the group called itself “the most effective citizen’s campaign organization in the history of California,” the group included among its chairmen: Pual Gann, Republican Senator Ed Davis, and Ross Johnson.<sup>120</sup> Around the same time that Rose Bird announced endorsements from 255 law professors, CDRB announced plans to start a radio series in their campaign to oust the three liberal justices. The Los Angeles Times announced that CDRB had invited reporters to the murder scene of two children in Bell Gardens whose killer, Harold Ray Memro, was “overturned after the Supreme Court ruled that the trial court erred by blocking Memro’s attempts to show that his confession in the cases was coerced by police.” The program called “Justice Denied” planned on airing on sixteen radio stations exactly a year before election day which was to feature “interviews with a variety of people who, from personal and professional involvement with the Bird Court and its decisions, wish to speak out.”<sup>121</sup> One ad scheduled to run November 18, 1985 featured Dianna Batts, who had recently served on a Pomona Superior Court jury in Los Angeles. The jury Batts served on “deliberated the guilt and subsequent death sentence of Robert Stansbury, an ice-cream vendor who kidnapped a 10-year-old girl, raped her and stuffed her body inside his truck, later dumping her into a flood control channel.” CDRB stated that though Stansbury’s case had yet to come before the California Supreme Court, like other death penalty cases, it would soon be automatically appealed to the Court and that the Court’s record in reversing 37 out of 40 death penalty sentences, a record which the news release said had gotten worse since her program was taped, led Batts to question

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<sup>120</sup> Letter to Ms. Hazel W. Baudistel, November 12, 1985.

<sup>121</sup> CDRB, “Court Report: CDRB Radio Documentaries on the Air,” vol. 1 no. 3, Fall 1985.

the wisdom of giving Stansbury a death sentence in the first place.<sup>122</sup> A spot scheduled for December 2<sup>nd</sup> was to feature Howard Jarvis who stated in the interview, “ ‘The Rose Bird Court has done everything in its power to destroy Proposition 13. The Farrell case took away the people’s right to vote on tax increases and the Carman case attempted to destroy Proposition 13’s one percent limit on property tax.’ ” “ Furthermore, Jarvis argued, “ ‘The only way the people of California can get back control of the government is to defeat those judges (Rose Bird, Joseph Grodin, Cruz Reynoso and Stanley Mosk) who are making decisions that put more power in the hands of the courts.’ ”<sup>123</sup> Former Los Angeles District Attorney Robert Philibosian said of the following year’s reconfirmation battle, “It is a positive step forward in the continuous battle by the law-abiding people in society to protect themselves from the murderers who prey on innocent victims.”<sup>124</sup>

Another spot featured one of the many prosecutors who came out against Chief Justice Rose Bird. Ventura County District Attorney Michael Bradbury in the interview with “Justice Denied “ called the murder of two-and-a-half year old Amy Seitz “his county’s most horrendous crimes,” and said of the subsequent reversal of her killer’s death sentence in the “Blood Thursday” rulings that , “My office is committed to retrying [Theodore] Frank. I expect he will again obtain the death penalty, but this will be a fruitless act, and waste of a tremendous amount of taxpayers’ money unless we can defeat Rose Bird, Cruz Reynoso, Joseph Grodin, and Stanley Mosk in the November, 1986 elections.”<sup>125</sup>

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<sup>122</sup> Janet Byers, “Four Guests Of One Mind: Different Vantage Points.”

<sup>123</sup> Ibid.

<sup>124</sup> Justice Denied/Program #1: Interview with Robert Philibosian.

<sup>125</sup> Justice Denied/Program #2: Interview with the Honorable Michael Bradbury.



Both groups were buoyed by the widespread support of the death penalty across the state. In 1985, political science professors Bruce Cain and D. Roderick released preliminary results of a survey conducted by the California Institute of Technology on support for the death penalty which found overwhelming support among Hispanics, Asians, African Americans and Anglos which they argued could threaten Democratic candidates who back Chief Justice Rose Bird. The survey found that 57 percent of the Hispanics, 73 percent of Asians, 47 percent of African Americans and 75 percent of Anglos interviewed for the poll backed the death penalty, which Cain argued, could "...mean trouble for the Democratic Party and Bird next year..."<sup>126</sup> Pollster Mervin Field released a similar poll finding a noticeable shift in support for the death penalty among women. Martin Smith argued in the Daily News, "The shift has been especially pronounced among women who, until the 1980s, could be counted upon to be notably less enthusiastic about the death penalty than men."<sup>127</sup> Field released a poll showing more support among women than men, and found that, "By a ratio of 6.5 to 1—84 percent in favor and only 13 opposed—women said they favored the death penalty. Men divided 81 percent in favor and 17 opposed." The increased anxiety over crime was partly to blame for the increased support, and Martin Smith argued that Democrats arguing for a "tougher-minded liberalism" would find themselves in a better position than those who insisted that "opposition to the death penalty [was] an essential part of the progressive vision..."<sup>128</sup>

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<sup>126</sup> Robert Knowles, "Asians, Hispanics dog Bird on Death Penalty," *Santa Monica Evening Outlook*, December 12, 1985.

<sup>127</sup> Martin Smith, "Women, blacks favor death penalty," *Daily News*, December 28, 1985.

<sup>128</sup> *Ibid.*

A series of death penalty reversals by the Bird Court in the lead-up to the 1986 election, allowed both groups to wage an effective campaign against the chief justice, while the leadership of both groups suggested other motives for seeking her ouster. This is evident in an article written in the Daily News about one of the co-chairmen of Californians to Defeat Rose Bird, Republican state senator Ed Davis. In a campaign appearance at Red Bluff, the state senator argued that, “I have a 100 percent voter record on agriculture, and try to represent those interests the best I can,” and made his dislike of the chief justice, who also served as Jerry Brown’s Secretary of Agriculture, where she helped draft the state Agriculture Labor Relations’ Act. The state senator who was running a campaign for the U.S. Senate at the time, made his support of agriculture evident in campaign appearances across the state. While the leadership of CDRB had various reasons to seek the removal of the justices, the death penalty seemed the most effective issue to insure the success of those efforts.

In 5-2 vote in December 1985, the Court upheld the conviction of Albert Brown Jr. but reversed the death penalty sentence “because the jury was improperly told to disregard any sympathy for him in deciding between a sentence of death and life without parole.” The ruling marked the 39<sup>th</sup> death sentence that the Court had reversed since the death penalty was restored in 1977. Justice Stanley Mosk and Malcolm Lucas voted with the majority on the constitutional question, but wrote separate opinions saying that the death sentence should have been affirmed. The Court had used earlier cases to “strike down or rewrite isolated provisions of the [1978] initiative,” including a 1984 ruling that declared that intent to kill must be proved before a defendant can be sentenced to death for a killing that occurs during the course of a crime, like robbery.” Assistant Attorney

General A.G. Edward O'Brien argued that the court created "new confusion in a footnote of [the] ruling," where Justice Grodin had written that judges in future cases should "instruct the jury as to the scope of its discretion and responsibility" as outlined in the ruling. In reversing Brown's death sentence, Grodin cited Riverside County Superior Court judge J. William Mortland's instruction to the jury "that it should not be swayed by sympathy for the defendant in choosing a sentence."<sup>129</sup>

In June 1985, the Court again faced criticism over the voiding of the death penalty for four convicted murderers, including Theodore Frank, convicted of the murder, rape and torture of two-year old Amy Sue. The Review called the death penalty reversals, "a record number of death penalty reversals in one day for the State Supreme Court."<sup>130</sup> The Pasadena, CA Star News reported the results of a field poll on June 22, 1985 which indicated that "two-thirds of California citizens believe the State Supreme Court goes too far in protecting the rights of murderers...Delays and technicalities have blocked implementation of the people's mandate, as the court showed recently when it reversed four more death penalty cases." Along with the field poll results, the paper also published a passage of Frank's diary which stated, " 'Children, made to order outlet for my anger and sex. Innocent, trusting, scared, vulnerable and submissive...I want to give pain to these little children. I want to molest them. I want to be sadistic. I want to harm them.'<sup>131</sup> In June 1985, Governor Deukmejian stated in a \$1000-a-plate fundraising dinner that Rose Bird would be hurt in the polls the following year because of overturning the sentence of Frank. Although he stated that he would take no part personally in the

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<sup>129</sup> "Ruling clears, clouds death penalty status", *Record=Searchlight*, December 6, 1985.

<sup>130</sup> "Court Does It Again," *Review*, June 11, 1985.

<sup>131</sup> "What They Said," *Star News*, June 22, 1985.

campaign against her, he told those assembled that he vote against her and may criticize her in campaign appearances. A Californians to Defeat Rose Bird news release called the cases overturned on June 6<sup>th</sup> the “Bloody Thursday” cases. Assemblyman Ross Johnson, one of the four directors of CDRB stated,

Thanks to Rose Bird and the ant-death penalty majority on the California Supreme Court, four more convicted murderers escaped the death penalty yesterday in a continuing pattern of excessive leniency. That makes Rose Bird’s record easy to remember-37 times in 37 death penalty cases she has voted to overturn the sentence and to protect the criminal. The Rose Bird Court itself has voted against the death penalty in 34 out of 37 cases.<sup>132</sup>

Senator Ed Davis said of the rulings, “The California Supreme Court has proved again that [it is] composed of a majority of wrong-headed, nitpickers.”<sup>133</sup> In two of the rulings, the Bird Court referred back to its decision in the Carlos case saying that “intent to kill” had to be proven during the trials. In response to the cases, Paul Gann asked, “Is there no case so brutal that the Rose Bird Court cannot summon up the moral courage to abide by the California State Constitution and send the convicted slayers to their justified ends? It would appear not.”<sup>134</sup> Despite criticism of the campaign, Gann stated, “The people of California have every legal and moral right to express their preference for law and justice when these four Supreme Court justices face a tribunal of voters on election day, 1986.”<sup>135</sup>

In August 1985, the police officer who survived the “Onion Field” shooting became the latest law enforcement personnel to come out against Rose Bird. Gregory

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<sup>132</sup> Janet Byers, “Bloody Thursday—Four More Killers Beat the System,” CDRB news release, June 7, 1985.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

Powell and Jimmy Lee Smith were convicted of killing Karl Hettinger's partner, Officer Ian Campbell, in a darkened onion field south of Bakersfield on in March 1963, and were twice sentenced to death only to have their cases thrown out on appeal. Karl Hettinger, told the California Commission on Crime and Punishment that the death penalty was not carried out in his shooting and that of his friend, and stated that Chief Justice Bird and other justices openly opposed the death penalty and allowed " "their moral philosophies to taint their interpretation of the law."”<sup>136</sup>

The Court continued to face mounting criticism over the number of death penalty reversals by the Bird Court. The San Diego Union reported in January 1986 that the Court worked late the previous Tuesday to decide twenty cases before Justice Kaus retired from the Court. The paper reported that it was not surprising the Court decided to reverse all the death penalty cases stating that,

After all, the majority's philosophical opposition to capital punishment is a matter of record. During the last nine years, the Bird Court has reversed 52 of the 55 capital cases it has decided. Similarly, we must assume that the high court will continue to find so-called procedural errors in the death-penalty cases that came before it in the next twelve months.<sup>137</sup>

The Union further stated that by, "Citing a need for a fail-safe jury system of justice for convicted murderers, the court has imposed intricate evidentiary rules and exacting burdens of proof." They cited as evidence of the Court's death penalty bias, the case of Bernard Lee Hamilton, who was convicted of the murder of an East San Diego housewife

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<sup>136</sup> "Onion Field cop opposes Bird," *San Jose Mercury News*, August 8, 1985.

<sup>137</sup> "Justice Denied," *San Diego Union*, January 6, 1986.

named Eleanore Francis Buchanan, and has death penalty sentence reversed on grounds that the jury must find intent to kill.<sup>138</sup>

The story of the convicted murderer of Amy Sue Seitz continued to attract media attention both in state newspapers and television. NBC News aired a special entitled “An NBC White Paper reported by Edwin Newman: Crime and Insanity, Who Killed Amy Sue? The Child Molester or The System That Let Him Go Free,” which focused on the psychological behavior of Amy Sue’s killer. The special reported about a letter dated July 25, 1977 from Ascardero State Hospital from A.J. Rucci, M.D., Medical Director, to Clyde Kuehn, state attorney regarding the warrant for him in Illinois, which stated that “He has been aggressive in his approach to therapy, and changed from detached, intellectualized individual who showed little concern for the seriousness of his offenses, into a sensitive, involved and feeling individual who is now open about himself, his history of child molesting behavior, and his understanding of the dynamics of his behavior in his life.” The psychological report read, “Mr. Frank appears to be the product of a successful treatment program. While not without conflicts, fears, and the need for continuing effort in dealing with the appropriate expression of anger, he presents a picture at the present time of a man who has developed enough inner strength to successfully meet his needs in the community without endangering others...”

Approximately one year later, two year old Amy Sue Seitz vanished. Such a report no doubt led the public to further criticize the system’s inability to address the problem of crime in California. The Daily News reported that despite the fact that the state’s voters had called for implementation of the death penalty, “...there’s good reason to fear that he

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<sup>138</sup> Ibid.

won't meet with the punishment he so richly merits, that instead he will 'die of old age,' a free man on the street,' as Ventura District Attorney Michael D. Bradbury recently predicted."<sup>139</sup>

On January 24, 1986, the Santa Cruz Sentinel reported that the 1980 triple murder at Fran's market east of Fresno "is now a pivotal case in the California Supreme Court's continuing review—some say undoing—of the state death penalty law." In 1980, Billy Ray Hamilton walked into a small market east of Fresno with a sawed off shotgun and shot three young store clerks, and had his death sentence reversed. The main issue was intent to kill and Hamilton's mental capacities during the commission of the crime. In a 4-3 decision, the Court upheld the conviction but reversed the death penalty because the question of intent to kill had been ruled irrelevant , and the determination of special circumstances in the murders—multiple murders and murder in the course of a robbery—applied to Hamilton's crime. The special circumstances charges led to the sentence of death for Hamilton. The Court ruled in December 1983 "that death penalty law must be interpreted as intent to kill, otherwise accidental deaths during robbery can bring death sentences. Court ruled that lack of instruction on grounds of intent was reason to reverse [a] death sentence."<sup>140</sup> The reports of other cases reversed by the court fueled the public's belief in the perceived bias of the California Supreme Court in dealing with death penalty cases.

On May 16, 1978, Dennis Holland returned to his home in Bakersfield carrying a lunch pail and Bible to find Carl Hogan, an "acquaintance from work," with a blood-

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<sup>139</sup> Daily News, "The Bird Court vs. justice," January 16, 1985.

<sup>140</sup> Jim Steinberg, "Death Penalty depends upon 'intent to kill,'" *Santa Cruz Sentinel*, January 24, 1986.

drenched sledgehammer and discovered the body of his wife and 4-year-old stepson bludgeoned and stabbed to death and his 1-year-old son “gravely wounded.” Hogan had his death sentence reversed in 1982 on grounds that the jury had considered improper evidence, and became one of the 52 death sentences the high court overturned out of 55. The San Francisco Chronicle reported that critics of the court used the Hogan case to argue that the “court’s majority seizes on technicalities as excuses to block executions.”<sup>141</sup>

In the months before the election, newspapers across the state debated upon whether or not the justices should in fact be forced to the electoral whims of the public. Gideon Kanner of The Los Angeles Daily Journal argued that courts have increasingly taken on the role of legislators, and as “...arbiters of social values, and makers of public policy—all without direct accountability of the electorate. To the extent judges have done so, they have diluted the historically more limited umpire-like role of the judge, so that now they govern us just as much as the other two branches of government.”<sup>142</sup> However, V.W. Hughes, a Pasadena City College professor of criminal justice, suggested that the elective process be eliminated and justices get fixed ten year terms. He asked, “Do we want our judges to be testing constantly for the public mood to determine how they should decide an issue? Or do we prefer them to be persons selected for their intelligence,

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<sup>141</sup> Larry Liebert and Susan Milstein, “A Senseless Killing,” *San Francisco Chronicle*, March 3, 1986.

<sup>142</sup> Gideon Kanner, “In Fairness, Even Judges Must Stand the Test of Public Opinion,” *The Los Angeles Daily Journal*, May 9, 1986.



experience, and good character who will decide each case on principle, as they see it [?]"<sup>143</sup>

As the campaign to oust Chief Justice Rose Bird intensified in late 1985, Proposition 13 was not left out of most mailings sent out by CDRB urging its supporters to oust Rose Bird along with two of her liberal associate justices. A letter sent to Ms. Hazel W. Baudistel stated that the chief justice continued her "perfect record" with the reversal of two more death penalty cases. The letter also urged Ms. Baudistel to write a letter to the Los Angeles Times to "alert" its readers about, "A court that refuses to enforce the death penalty and attempted to throw out Proposition 13."<sup>144</sup> Other mailings to supporters of CDRB urged voters to oust the justices arguing that,

Since Rose Bird was appointed to the court by Governor Jerry Brown, 20,000 innocent citizens have been murdered, but not one killer has been executed. The Bird Court has overturned 38 of the 41 death penalty cases which they have received. And Chief Justice Bird has voted against the enforcement of the death penalty in every single case.<sup>145</sup>

CDRB newspaper ads sought to strike at the heart of voters' emotions by using images of victims to urge them to vote against the reconfirmation of Rose Bird, Joseph Grodin, and Cruz Reynoso. One such ad, approved by Ed Davis for publication and scheduled to run around the Christmas season had the headline: "Karen Diane Green Won't Be Celebrating Christmas This Year, But the man who murdered her will." Karen Diane Green was seventeen at the time of her murder by her husband, Charles Green.

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<sup>143</sup> V.W. Hughes, "Why Not Scrap This Distasteful Process Entirely," *The Los Angeles Daily Journal*, May 9, 1986.

<sup>144</sup> Letter to Ms. Hazel W. Baudistel, CDRB, November 12, 1985.

<sup>145</sup> Letter to Ms. Rachel J. Mckinnis, CDRB, December 5, 1985.

As the campaign to oust Rose Bird heated up, the chief justice constantly argued that independence of the judiciary was at stake in the election. In response, Phillip E. Johnson, a law professor at the University of California , Berkeley, who once worked for Chief Justice Earl Warren, argued that the basic charge against Bird is that she “has abused the power of her office by promoting liberal ideological program on a number of subjects, especially the death penalty.”<sup>146</sup> Furthermore, Johnson stated, “We protect the independence of judges so that they can apply the laws evenhandedly, not so they can indulge their prejudices.”<sup>147</sup> Frank Clifford reported for the Los Angeles Times that Phillip Johnson’s statement “offers court opponents their first academic rejoinder to the endorsement of the court last month by 255 law professors in the state who said that the independence of the judiciary was at stake in the election.”<sup>148</sup> Furthermore, Clifford stated that, “The press conference and Johnson’s article were presented as part of ‘an impartial platform for discussion and expert analysis of the Supreme Court’ by a group calling itself the Supreme Court Project, which also said that it wants to ‘provide an alternative to organizations that promote or oppose particular issues or candidates.’”<sup>149</sup> The group’s director, John Kurzwel, said that “he is a conservative who had worked for Republican candidates, and against liberal causes such as a 1983 bill that would have prohibited employers from considering sexual orientation as a factor in hiring, firing or promoting.”<sup>150</sup> Kurzwel also told the Los Angeles Times that all the directors of the

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<sup>146</sup> Phillip E. Johnson, “Rose Bird, Responsibility Is as Vital as Independence,” *Los Angeles Times*, November 12, 1985, Section B5.

<sup>147</sup> Ibid.

<sup>148</sup> Frank Clifford, “Law Scholar’s View, Cited by Bird Foes, Sees Abuse of Power,” *Los Angeles Times*, December 17, 1985, Section A3.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

Supreme Court Project were opposed to the reelection of Bird as well as Stanley Mosk, Joseph Grodin and Cruz Reynoso.<sup>151</sup>

Further criticism of the Bird Court came from newspapers across the state. An article in The Sacramento Union reported on March 23, 1986 that, Chief Justice Rose Bird's campaign chairman for her group the Committee to Conserve the Courts, Anthony Murray, heads a "tax-funded group proposed and championed by her with the main objective of blocking implementation of the death penalty."<sup>152</sup> According to the article, the group calling itself the California Appellate Project, has the expressed purpose of "screening lawyers to handle the automatic appeals of convicted murderers sentenced to death."<sup>153</sup> It was also reported that Bird's campaign had benefited from contributions from CAP staffers and "other lawyers recommended by CAP for appointment in capital cases."<sup>154</sup> In the months before the election, newspapers also held Bird responsible for the declining prestige of the California Supreme Court. An editorial in the San Francisco Chronicle stated,

The prestige of what had been the finest of all state high courts has suffered severe damage under Rose Bird. A court that once enjoyed nationwide respect, even from those who disagreed with its opinions, has been reduced in stature by a long series of judicial, political, and personal misadventures under Chief Justice Bird. Public confidence has been shattered in a court that was once almost revered.

The San Francisco Chronicle listed a series of cases which they cited as proof of these "judicial misadventures." At the top of his list was Bird's stance on Proposition 13 which

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<sup>151</sup> Ibid.

<sup>152</sup> Michael Otten, "Bird's war on the death penalty," The Sacramento Union, March 23, 1986.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

she was reported as saying caused “discriminatory taxation and should be declared invalid.” The court was also accused of placing “a cloud on the private ownership of some 8 million acres of California land by ruling that century-old land grants from the Mexican government were invalid and that government bodies had the right to take away private property without first getting the permission of the owners, and without compensating them.” The Bird Court was also criticized for disqualifying a 1983 reapportionment initiative. Furthermore, the article reported that the court found there was no “‘great bodily harm’” under the law in a “savage rape case.” Lastly, according to the article, “The court has excluded confessions even though the trial record found that they were given freely and after warnings that they would be used as evidence.”<sup>155</sup> Furthermore, the article urged voters to vote no on Rose Bird, Joseph Grodin and Cruz Reynoso in order to “restore their highest court’s prestige and its former reputation for calm, unbiased, dispassionate appraisal of legal issues...”<sup>156</sup>

In 1985, Mervin Field released results of his California Poll which showed decreased support for Rose Bird’s reelection as chief justice. While voters were “narrowly divided” over the reconfirmation of Chief Justice Rose Bird in February, three months later that support had slipped ten points to 35% percent against and 30 percent in favor of her reelection.<sup>157</sup> Meanwhile, the polls suggested increased support for the reconfirmation of Stanley Mosk, Malcom Lucas, Joseph Grodin and Cruz Reynoso.<sup>158</sup> The same poll also found that 67% agreed with the statement, “Judges can generally be trusted to do what is right,” while the same poll found that 55% believed

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<sup>155</sup> “‘No’ on Rose Bird,” *San Francisco Chronicle*, October 5, 1986.

<sup>156</sup> *Ibid.*

<sup>157</sup> Mervin Field, “Rose Bird’s popularity slips 10 points in three months,” *Californian*, May 26, 1985.

<sup>158</sup> *Ibid.*

that, “Judges allow their own beliefs and political opinions to play too great a role in their rulings.”<sup>159</sup> A majority of liberals and conservatives polled in 1985 found that on the death penalty the California Supreme Court, “...has gone too far in protecting the rights of those convicted of murder,” while 54 percent of liberals and 53 percent of conservatives believed that the justices were “generally fair and impartial.”<sup>160</sup>

In 1986, the lower approval ratings for the California Supreme Court could in part be explained by the increasing concern over crime among women. Mervin Field found that for the first time, women polled in 1986 “were even tougher in support of capital punishment than men.” Among women, 84 percent were in favor of the death penalty, and 12 percent opposed; and among men, 81 percent were in favor and 17 percent opposed.<sup>161</sup> Martin Smith reported in the Dispatch, “The trend in women’s opinions on the death penalty raises the possibility that Bird’s core of support may be eroded as her opponents continue to hammer away on their accusation that she is blindly opposed to the death penalty.”<sup>162</sup>

In August 1986, the Los Angeles Herald Examiner released findings of a poll which showed that while voters viewed Rose Bird as an “honest qualified jurist,” a majority still opposed her reelection as chief justice. Melvin Field was quoted in the article, “ ‘The public’s strong support for the death penalty and the belief that the chief justice is personally opposed to it are directly linked to the desire to have Bird removed from the high court.’ ” According to the survey, 61% found that Bird “ ‘allows her

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<sup>159</sup> Mervin Field, “67% Assail State’s Top Court,” *San Francisco Chronicle*, May 7, 1985.

<sup>160</sup> Ibid.

<sup>161</sup> Martin Smith, “Increased support for death penalty means trouble for Demos,” *Dispatch*, January 3, 1986.

<sup>162</sup> Ibid.

personal opposition to the death penalty to affect her decisions’ and 62 percent agreed she ‘has gone too far in protecting criminal defendants.’” At the same time, the poll also found that 52 percent disagreed with the notion she was not qualified to serve on the court and 51 percent said she “ ‘makes rulings she believes are required by the state Constitution without bending to political pressures.’” While Bird showed high disapproval rates among the electorate, the polls showed that the electorate was still undecided on Cruz Reynoso and Joseph Grodin.<sup>163</sup>

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<sup>163</sup> Linda Breakstone, “Bird seen as honest, qualified, but majority still opposes her,” *Los Angeles Herald Examiner*, August 12, 1986.

## Chapter 9: The Business Cases

The death penalty provided the most emotional issue that critics of the Bird Court could use against the three justices, however, rulings involving economic and social issues were also used against Rose Bird and two of her Brown appointed colleagues. The Pro Life Council, the leading anti-abortion lobby in the state, announced in 1985 their own campaign to oust Rose Bird. Brian Johnson, the executive director of PLC said that although the Legislature had restricted funding for abortion, the Bird Court had consistently voted against such efforts.<sup>164</sup> In a 1985 meeting of the California Farm Bureau Association, 154 delegates applauded when their president, Henry Voss, told the group that the bureau would target Rose Bird, and Justices Joseph Grodin and Cruz Reynoso for defeat. Voss, still angered over Rose Bird's tenure as Secretary of Agriculture for the Brown administration, also told the group that the bureau would join efforts with the Western Growers Association to target the three justices. Daryl Arnold, the president of the Western Growers Association, angered over passage of the Agricultural Labor Relations Act under Rose Bird's tenure as Secretary of Agriculture, blamed Rose Bird for the current economic plight of growers across the state, and criticized her for rulings that in his opinion favored farm workers over the growers. One pro-Bird brochure issued during the campaign alleged that the Western Growers Association had given \$7,500 in the campaign to defeat Bird and two of her colleagues.<sup>165</sup> While acknowledging that Rose Bird abstained from all cases involving the Agricultural Labor Relations Board, Arnold argued that he still held her accountable for

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<sup>164</sup>Carl Irving, "Abortion foes to fight Bird," *San Francisco Examiner-Chronicle*, December 29, 1985.

<sup>165</sup>Independent Citizens' Committee to Keep Politics Out of the Court, "The California Supreme Court: A Court that has ruled for people over power."

the passage of the legislation while she served in the Brown administration.<sup>166</sup> While both Crime Victims for Court Reform and Californians to Defeat Rose Bird publically used the death penalty to urge voters to oust Rose Bird and two of her liberal colleagues, the agribusiness involvement in the campaign suggests that economic and social concerns were never very far from conservative concerns about the Bird Court. In the campaign to oust Rose Bird, Governor George Deukmejian singled out 31 rulings which he used to argue that the California Supreme Court under her tenure was anti-business. According to a Los Angeles Times piece by Frank Clifford, one of the rulings involved a man who sought damages after a false alarm over syphilis led to the breakup of his marriage. According to Clifford, “In its ruling, the court abolished a longstanding requirement that to collect damages for emotional distress a plaintiff must also suffer physical injury.”<sup>167</sup> Almost 40 % percent of the funding for the campaign to defeat the three justices in the 1986 election came from banks, investment firms, insurance companies, real estate developers, doctors and hospitals.<sup>168</sup> Meanwhile, Rose Bird received \$110,000 from the California Trial Lawyers’ Association, and Browne Greene and Charles O’Reilly, two of the states leading trial lawyers, donated \$77,000 to the chief justice’s campaign as well as office space for her campaign headquarters.<sup>169</sup> The California Trial Lawyers Association prevailed in 25 of 37 “friend-of-the-court briefs” filed with the Court since 1977, while Rose Bird’s campaign manager Stephen Glazer, argued that the

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<sup>166</sup> Susan Milstein, “Old Enemies Urge Ouster of Justice Bird,” *San Francisco Chronicle*, December 10, 1985.

<sup>167</sup> Frank Clifford, “Stands on Civil Cases Stir Praise, Criticism of Bird,” *Los Angeles Times*, March 9, 1986.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*



chief justice takes pains to disqualify herself from a case involving a contributor.<sup>170</sup>The chief received much support from union groups across the state, and an endorsement by the Labor Federation, “a coalition of all AFL-CIO unions in the state.”<sup>171</sup>The California State Employee Association Board of Directors also voted to endorse all justices up for reconfirmation in the 1986 election, stating that its decisions recognizing public employee’s right to strike merit support.<sup>172</sup>In The California State Employee for September and October 1986, they listed the following rulings which justified the groups decision to endorse the justices for reconfirmation,

The court upheld the constitutionality of the State-Employee Relations Act (SEERA) when it was challenged by anti-union groups in 1981. The court upheld an employees’ right to sue the employer for concealing safety and health hazards. The court ruled that employees cannot be fired for refusing to perform unsafe work. The court ruled that a union’s recognition cannot be withdrawn during a strike.<sup>173</sup>

In response to criticism over the Bird Court over its decisions in death penalty cases, the group noted that none of the murderers sentenced to death under 1977 or 1978 death penalty laws is back on the street.<sup>174</sup> In press conferences for a group calling itself the Independent Citizens Committee to Keep Politics Out of the Court was reported to be “...adopting the tactics of the opposition by personalizing the campaign—pitting victims of big business against victims of crime.” One of the “victims” at the press conference

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<sup>170</sup> Ibid.

<sup>171</sup> Carol Brydolf, “Union leaders greet Rose Bird with cheers,” *Oakland Tribune*, March 23, 1986.

<sup>172</sup> Mike Varacalli, “High court’s pro-labor stance merits support,” *The California State Employee*, September/October 1986.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

included John and Denise O'Connor who sued and won a ruling against the Los Angeles condominium association after they tried to evict the couple after they had a son.<sup>175</sup>

All three justices facing opposition by conservative groups were forced to respond to criticism over their record on the California Supreme Court. Crime Victims for Court Reform and Californians Defeat Rose Bird argued that Rose Bird, Joseph Grodin and Cruz Reynoso “present a common philosophical front as appointees of former Governor Jerry Brown, and this is reflected in their decisions.” In an article for the California Journal, Barry Winograd argued, “On the question of whether there is a ‘gang of three,’ it can be stated without equivocation that there is no common front composed of Bird, Reynoso and Grodin.” Of his analysis of 277 cases by the Bird Court, Winograd found that “there was not one opinion in which the three justices stood united apart from any other members of the court.” Furthermore, in every case which he found all three in agreement over an opinion, they were often joined by two or more fellow justices. According to Winograd,

Philosophical divergence also was reflected in the number of individual decisions written by Bird and Grodin in 1985. Bird wrote 13 individual concurrences and 25 individual dissents, while Grodin authored 12 concurrences and 3 dissents of his own.<sup>176</sup>

Winograd also found broad levels of agreement within the court which he stated was demonstrated in unanimous agreement in about 25 percent of cases.<sup>177</sup> In analyzing judicial decisions of the United Supreme Court, Winograd noted that Chief Justice Warren Burger and Justices William Rehnquist and Sandra Day O'Connor agreed in

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<sup>175</sup> Laura Mecoy, “Pro-Bird Group to use ‘consumer’ commercials backing whole court,” Oakland Tribune, September 8, 1986.

<sup>176</sup> Barry Winograd, “Are they a ‘gang of three’?,” California Journal (September 1986), p. 439.

<sup>177</sup> Ibid.

opinions in “80 to 90 percent of all cases” in studies conducted by the Harvard Law Review.<sup>178</sup> Furthermore, he argued, the evidence “places an added burden on the justices’ opponents to explain why all three justices should be attacked as a group.”<sup>179</sup> Despite criticism by conservative groups that the Bird Court was anti-prosecution, a five year survey which included 9973 criminal case rulings conducted by the California Journal found that, “...the Court ruled for the prosecution 8697 times (87 percent), with each justice’s pro-prosecution score no more than 5 percent on either side of the Court as a whole...[Rose Bird’s] pro-prosecution rate increased from 78 percent to 87 percent between ’81 and ’85.”<sup>180</sup> Ed Jagels, Kern County District Attorney and a spokesman for Crime Victims for Court Reform countered the results of the survey and argued that, “ ‘It is totally, utterly irrelevant to issue the Court’s record” on decisions which appeals are denied since those cases “do not set precedents that affect other cases.”<sup>181</sup>

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<sup>178</sup> Ibid.

<sup>179</sup> Ibid.

<sup>180</sup> Pat Soberanis, “A California Journal Survey: How biased is the Court?,” *California Journal* (September 1986), p. 436.

<sup>181</sup> Ibid.

## Chapter 10: A New California

Supporters of Rose Bird and other justices targeted for ouster by conservative groups distributed brochures about the court's progressive record on social and economic issues. In a brochure entitled "Protect the Rights of Californians: Retain the Justices," a group called the Committee to Retain the Justices listed a series of rulings which justified retention of the three justices. One such ruling was *re Marriage of Carney* which allowed disabled parents to maintain custody of their children. In *Suastez v. Plastic Dress-up Co.*, the Bird Court ruled "workers accumulate promised vacation time from first day of employment."<sup>182</sup> Another brochure by the Independent Citizens' Committee to Keep Politics Out of the Court entitled "A New California," described the progressive nature of the court in matters of civil and labor litigation and stated, "In the eyes of our California Supreme Court, everyone—whether they're rich or poor—stands equal before the law."<sup>183</sup> A group calling itself Lesbians and Gays for an Independent Judiciary distributed a brochure entitled "William Rehnquist v. Rose Bird," and sought to describe the differences between the Rehnquist Court and the Bird Court over gay rights issues. If efforts to oust the justices prevailed, the brochure claimed that "...Governor Deukmejian, who has vetoed AB-1 and AB-3667, this state's gay rights and AIDS anti-discrimination statutes, may appoint new justices and remake the Court." A Deukmejian Court, they argued, "would be a disaster for gays and lesbians." One of landmark rulings described

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<sup>182</sup> Committee to Retain The Justices, "Protect the Rights of All Californians."

<sup>183</sup> Independent Citizens' Committee to Keep Politics of the Court, "A New California."

in the brochure was *Gay Law Students v. Pacific Telephone* which the Bird Court ruled that workers could come out at work without fear of being terminated.<sup>184</sup>

However, the justices still faced criticism over groups who opposed their stance on the death penalty. While Justice Stanley Mosk was originally a target for defeat by conservative groups seeking ouster of three of his colleagues, the groups later abandoned those efforts to focus on Bird, Reynoso and Grodin. According to Jerry Uelman, “on the eve of the 1986 election, Mosk clearly distinguished himself from Justice Reynoso and Grodin with a substantial string of dissents from death penalty reversals.” According to a 1998 study of capital punishment and judicial decisions in California, Uelman argues that while examining the death penalty decisions of Rose Bird and Stanley Mosk, “[the latter] consistently voted to reverse death sentences during the period from January, 1981, through November, 1982.” Uelman also argues that between January 1, 1986 and November, 1986, the Bird Court reversed five more death sentences and Justice Mosk dissented in only one of those cases. Justice Mosk also “deliberately delayed” announcing his decision to run for reconfirmation until the August deadline. After deciding that he would run, he announced that he would not form a campaign committee or form a campaign, and his only expenditure would include “ ‘...the filing fee (\$1,989.78) and 22 cents for a stamp to mail my declaration to the Secretary of State.’”<sup>185</sup> In the early stages of Malcolm Lucas’ tenure on the Court, an appointee of Governor George Deukmejian, the justice was willing to join in death penalty reversals required by *Carlos*, although he abandoned this position almost a year before the 1986 judicial election.

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<sup>184</sup> Lesbians and Gays for an Independent Judiciary, “William Rehnquist v. Rose Bird: For gays and lesbians, it’s like Night and Day.”

<sup>185</sup> Jacqueline Braitman and Gerald F. Uelman, *Politics and Justice: The Life of Stanley Mosk* (Preliminary Draft, 2010).

Justice Cruz Reynoso unveiled what the Los Angeles Times described as a “militant media campaign” to defend his rulings on the death penalty, and tell voters that he had the support of law enforcement officials and had earned the “esteem” of Governor George Deukmejian. According to The Los Angeles Times, Cruz Reynoso, the first Latino member of the court, made no mention in the media campaign that he voted to reverse 44 of 45 capital cases, and that members of the largest law enforcement group, the 30,000 member Peace Officers Association as well as the Latino Peace Officers’ Association, all opposed his reconfirmation to the court as well as that of his two colleagues, Rose Bird and Joseph Grodin.<sup>186</sup> Meanwhile, one of Chief Justice Rose Bird’s chief supporters, Anthony Murray, the former president of the California Bar, stated that the court was not “deliberately delaying death penalty cases as its critics charge [but] trying to clarify a sloppily drafted death penalty initiative approved by voters in 1978.”<sup>187</sup> In the midst of the campaign, the California District Attorneys Association released a “white paper” dealing with the court’s record on death penalty cases, which its executive director later admitted had “some factual mistakes.”<sup>188</sup> In response, the Bird campaign released a 205 page response entitled “Let the Record Reflect: Errors, Distortions and Convenient Omissions in the CDA White Paper” which tried to counter allegations that the court was anti-death penalty. In an article for the California Journal, A.G. Block and Rick Ratcliff argued that based on the Bird Court’s 1984 ruling in *People v. Carlos* which stated that the death penalty required “intent to kill,” fourteen cases had been reversed

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<sup>186</sup> Frank Clifford, “Reynoso Unveils TV Ads Claiming That He Backed Death Penalty,” *Los Angeles Times*, September 30, 1986, Section A8.

<sup>187</sup> John Marelius, “Bird ally says critics distorting record,” *Daily News*.

<sup>188</sup> *Ibid*.

based on that ruling. Other cases had been reversed based on other reasons which included,

...a jury must be precisely instructed to weigh mitigating circumstances (*People v. Brown*); a judge may not tell a jury to disregard sympathy and pity when a jury is considering the death sentence (*People v. Easley*); it is a prejudicial 'half truth' for a judge to tell a jury that the governor may commute a life-without-parole sentence without also telling the jury that a governor may commute a death sentence (*People v. Ramos*).<sup>189</sup>

Rose Bird also tried to answer charges to letters released across the state by Crime Victims for Court Reform and Californians to Defeat Rose Bird which criticized the court over rulings involving rape, and alleged that the chief justice had allowed an abused child to return to her home, while in reality, the child's father was in prison and Bird had voted to keep her in foster care while allowing the mother, who was not involved in the abuse, to have visitation rights.<sup>190</sup> Radio interviews by the conservative groups involved in the campaign continuously alleged that convicted murderers were being freed by Bird Court rulings, which Steven Glazer called "the big lie of the campaign." According to Frank Clifford, "The anti-court commercial, which was aired by 19 stations around the state, featured the comments of a woman who had served as a juror in a death penalty case. Referring to the Supreme Court justices, she said 'They're just letting these killers go back on the street.'" State Senator H.L. Richardson (R-Glendora) whose Law and Order Campaign Committee also worked to oust Rose Bird, distributed a videotape which argued that at least one convicted murderer had been freed because of a Bird Court ruling. Clifford wrote that the tape which was made available in 500 throughout the tapes

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<sup>189</sup> A.G. Block and Rick Ratcliff, "A status report on the death penalty in California," *California Journal* (September 1986), 444.

<sup>190</sup> Steve Wiegand, "Pro-Rose Bird Forces Accuse Foes of 'Poison Pen Letters,'" *San Francisco Chronicle*, March 20, 1986.

alleged that convicted murderer Rodney Alcala, whose death sentence was reversed by the court, was out on the street, “ ‘a free man.’”<sup>191</sup> Although the reference to Alcala was later taken out of the videotape, Glazer noted that quotes by San Bernardino County district attorney saying that convicted murderers often go free as a result of retrial were left in the tape.<sup>192</sup> Supporters of Rose Bird were often quick to mention Donald Wright, former Governor Ronald Reagan’s appointee as chief justice to the California Supreme Court, who reversed 176 death penalty cases. One document entitled the “Wrap Up” stated that is efforts to oust Rose Bird and two of her liberal colleagues succeed,

...we will find that men and women of integrity will not serve in the temple of justice for it will be profaned. In the place of giants—we will have judicial wimps, who will be smart politically, and take the easy path dictated by the roar of the crowd. They will be reading the newspapers instead of the constitution—the polls instead of the statutes.<sup>193</sup>

This argument was central to Rose Bird’s campaign, and her supporters argued that the independence of the state judiciary was at stake in the election. Ellen Goodman wrote for the Los Angeles Times that, “The judiciary has never been totally isolated from politics. But when judges become one-issue candidates, when they make decisions with one eye on a pressure group and a pollster, this will be a different society.”<sup>194</sup> Bird said of her detractors in the campaign that what they really wanted was “lock-step justice,” and that

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<sup>191</sup> Frank Clifford, “Aide to Bird Disputes Assertions Killers Are Being Freed From Jail,” *Los Angeles Times*, September 6, 1986, Section A8.

<sup>192</sup> Ibid.

<sup>193</sup> “Wrap Up,” Petris Papers.

<sup>194</sup> Ellen Goodman, “Rose Bird’s Plight Has a Lesson for the Country,” *Los Angeles Times*, June 29, 1986, Section F5.



while she favored retention elections, she would leave it up to the people if they wanted a judiciary made up of politicians in black robes.<sup>195</sup>

The Los Angeles Times described the 1986 judicial election as the most expensive in the history of California, or perhaps the nation, saying that it would probably exceed \$7 million. Rose Bird's campaign manager, Steven Glazer, announced that the chief justice had \$1.1 million in the bank, mostly from money raised in 1985. Cruz Reynoso had about \$354,000 cash on hand for his campaign, and Joseph Grodin had about \$106, 446. Meanwhile, Californians to Defeat Rose Bird and Crime Victims for Court Reform raised \$4.6 million mostly through direct mail solicitations of \$100 or less.<sup>196</sup>

The campaign against Rose Bird effected statewide races, especially the gubernatorial race between Governor Deukmejian, and his Democratic challenger, Tom Bradley. Vicki Haddock reported for the Oakland Tribune that key opponents of Rose Bird "now say that the depth of anti-Bird sentiment may produce a conservative election-day bonus not felt since Proposition 13 sent shock waves through the political world in 1978." Senator Ed Davis, a campaign chairman for Californians to Defeat Rose Bird stated that in statewide races for key offices, opposition against Rose Bird would be the "litmus test."<sup>197</sup> State Senator H.L. Richardson sent letters to state legislators "demanding their position on Bird and threatening to run campaigns against them if they didn't

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<sup>195</sup> Frank Clifford, "Aide to Bird Disputes Assertions Killers Are Being Freed From Jail," *Los Angeles Times*, September 6, 1986, Section A8.

<sup>196</sup> Frank Clifford, "Chief Justice Amasses \$1.1-Million War Chest," *Los Angeles Times*, August 1, 1986, Section A3.

<sup>197</sup> Vicki Haddock, "Democrats run scared on Rose Bird," *Oakland Tribune*, April 4, 1986.

answer.”<sup>198</sup> Governor George Deukmejian criticized his liberal challenger, Tom Bradley, for refusing to take a stand on Rose Bird’s reconfirmation and argued that the voters have a right to hear where he stand since governors appoint judges. Bird’s campaign spokesman, Steven Glazer, argued that “...the governor has a 16-year record—rising in a crescendo when he was a member of the Commission on Judicial Appointments in the early 1980s—of probing judges’ political ideology, and attempting to curtail their futures on the bench if those ideologies do not suit him.”<sup>199</sup> In August 1986, Governor George Deukmejian released a statement saying that in the fall election, “I intend to vote for three members of the Court (Justice Lucas, Mosk and Panelli), and against three other members (Justice Bird, Grodin and Reynoso).”<sup>200</sup>

In June 1986, both Crime Victims for Court Reform and Californians to Defeat Rose Bird announced that they were merging to allow both groups to hone their message and pool their resources. The new California Coalition for Court Reform later announced plans for a \$900,000 media strategy including radio and televisions ads that focused on the court’s record on the death penalty. According to an article written in the Los Angeles Times, Lee Stizenberger, the campaign manager for the coalition of groups, announced that \$750,000 would be spent on television ads and \$150,000 on radio spots.<sup>201</sup> The ads often included the families of murder victims pleading for Californians to vote against Rose Bird along with Joseph Grodin and Cruz Reynoso. One ad feature Marianne Frazier, speaking in front of a picture of her daughter Robin whose killer had his death

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<sup>198</sup> Ibid.

<sup>199</sup> Sarah Botorff and Charley Roberts, “Bird Aides Attack Deukmejian ‘Tests’ For Judges Views,” *The Los Angeles Daily Journal*, October 17, 1986.

<sup>200</sup> Donna Lipper, “News Memo,” August 25, 1986.

<sup>201</sup> Frank Clifford, “Anti-Bird Coalition’s \$900,000 Radio-TV Ad Blitz Gets Going,” *Los Angeles Times*, October 8, 1986, 24.

sentence reversed in a 1984 opinion written by Grodin and signed by Bird and Reynoso. In a \$100,000 fundraising event in Riverside, Deukmejian attacked Tom Bradley for being anti-death penalty and stated, “when it comes to the war on crime, the mayor went AWOL long ago.”<sup>202</sup> Bradley for his part made a conscious effort, as a former law enforcement officer, that he was a supporter of capital punishment. In an appearance in Northern California before a group of county jail prisoners, Bradley told the group that without the death penalty, “ ‘all of us will be living in a jungle with no security, no protection.’”<sup>203</sup>

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<sup>202</sup> Leo C. Wolinsky, “Deukmejian Charges Bradley ‘Went AWOL’ in War Against Crime,” *Los Angeles Times*, August 23, 1986, 29.

<sup>203</sup> Bill Boyarsky, “ ‘We’ll Be Living in the Jungle’: Bradley Tells Inmates Why He Backs Death Penalty,” *Los Angeles Times*, January 9, 1986, Section A3.

## Chapter 11: The Verdict

While most news networks on November 4, 1986 had switched to entertainment news by 8pm when the results of the judicial election were announced, what happened that night warranted more attention. The Los Angeles Times announced the following day that voters rejected Rose Bird's reconfirmation by 66 percent or 4, 622, 066 votes, while Joseph R. Grodin went down in defeat with 57 percent of the vote or 3, 570, 569 votes, and finally, Cruz Reynoso, the Court's first Latino justice, was defeated by 60 percent of the vote or 3,874, 601 votes.<sup>204</sup> The Los Angeles Times declared that the results allowed a Republican governor to appoint a majority of the California Supreme Court for the first time since the Great Depression.<sup>205</sup> The campaign initiated against Chief Justice Rose Bird and two of her liberal colleagues was unprecedented in the history of the state, and raised vital questions about the role of the judiciary nationwide. In a memorial service in 1999 for Rose Bird, who succumbed to cancer at age 63, federal appeals court judge Stephen Reinhardt declared that her ouster from the Court, "is a black mark on the history of the state and remains a threat to the independence of the judiciary nationwide."<sup>206</sup>

The campaign against the chief justice and her colleagues ushered in a dangerous precedent for state supreme courts around the nation. Millions of dollars in special interest money continue to be spent on judicial races around the country. In 1987, David Zelkowitz, the CEO of the Philip Morris corporation, issued a speech on tort reform

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<sup>204</sup> From the Wire Services, "Deukmejian Will Appoint Bird's Successor in Month," *Los Angeles Times*, November 5, 1986, I.

<sup>205</sup> Frank Clifford, "Voters Repudiate 3 of the Court's Liberal Judges," *Los Angeles Times*, November 5, 1986, Section B1.

<sup>206</sup> Henry Weinstein, "Mourners Remember Bird," *Los Angeles Times*, January 20, 2000, Section A3.

before the Board of Directors which he presented the ways the corporation was trying to create a fair legal framework around the nation . Philip Morris concentrated their efforts in three states, including California. The corporation became actively involved in the removal of Bird and two of her colleagues from the court. Zelkowitz explained to the Board of Directors,

The Chief Justice and her colleagues had been responsible for turning the California Supreme Court into one of the most plaintiff oriented in the entire country. It was widely felt that if they were defeated the current Govenor George Deukmejian would be able to fill the vacancies with judges of a more balanced temperament. This has indeed occurred.<sup>207</sup>

Apart from the ways state courts have had to deal with the active participation of corporations in judicial races, they have also had to deal with the consequences of disapproval over controversial rulings on social issues. In November 2010, three members of the Iowa Supreme Court, including the chief justice were ousted over their ruling in favor of gay marriage. The campaign was initiated by Bob Vander Plaats, a Republican Sioux attorney and former gubernatorial candidate. The two cases together represent the problem state courts face as they deal with the controversial socials of their day.

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<sup>207</sup> Draft Remarks for David Zelkowitz Before the PM Board of Directors, 1987, University of California, San Francisco, Legacy Tobacco Documents Library.

## Bibliography

- Banner, Stuart. *The Death Penalty: An American History*. Cambridge: Harvard University Press, 2003.
- Bergholz, Richard. "Effort to Recall Rose Bird Puts State." *Los Angeles Times*. February 26, 1982.
- Berman, William C. *America's Right Turn*. Baltimore and London: The John Hopkins University Press, 1994.
- Block, A.G. and Rick Ratcliff. "A status report on the death penalty in California." *California Journal*. September 1986.
- Bottorff, , Sarah and Charley Roberts. "Bird Aide Attack Deukmejian 'Tests' For Judges Views." *Daily Journal*. October 17, 1986.
- Boyarsky, Bill. "'We'll Be Living in the Jungle': Bradley Tells Inmates Why He Backs Death Penalty." *Los Angeles Times*. January 9, 1986.
- Jacqueline Braitman, and Gerald F. Uelman. *Politics and Justice: The Life of Stanley Mosk* (Preliminary Draft, 2010).
- Breakstone, Linda. "Bird seen as honest, qualified, but majority still opposes her." *Los Angeles Daily Journal*. August 12, 1986.
- Brydolf, Carol. "Union leaders greet Rose Bird with cheers." *Oakland Tribune*. March 23, 1986.
- Brown, Craig et al. "Letters to the Times: GOP Opposition to Chief Justice Bird." *Los Angeles Times*. September 24, 1978.
- Burd, Laurence H. "Goldwater Hits 'Moral Decay' in High Office." *Los Angeles Times*, September 25, 1964.
- Byers, Janet. "Four Guests Of One Mind: Different Vantage Points." No date.
- . "Bloody Thursday---Four More Killers Beat the System." CDRB news release. June 7, 1985.
- CDRB. "Letter to Ms. Hazel W. Baudistel." November 12, 1985.
- . "Letter to Ms. Rachel J. Mckinnis." December 5, 1985.
- . "Court Report: CDRB Radio Documentaries on the Air." Vol. 1. No. 3 Fal 1985.
- Chen, Edwin. "Uphold High Court Power, Bird Urges." *Los Angeles Times*. October 12, 1981.

- . "Bird Becomes Predictable Advocate for Defendants." *Los Angeles Times*, May 21, 1982.
- . "Rose Bird—A Study in Contrasts." *Los Angeles Times*. May 20, 1982.
- Clayton, Janet. "Ruling Could Give City Power to Boost Taxes." *Los Angeles Times*. August 6, 1982.
- Clifford, Frank. "Law Scholar's View, Cited by Bird Foes, Sees Abuse of Power." *Los Angeles Times*, December 17, 1985.
- . "Stands on Civil Cases Stir Praise, Criticism of Bird." *Los Angeles Times*. March 9, 1986.
- . "Reynoso Unveils TV Ads Claiming That He Backed Death Penalty." *Los Angeles Times*. September 30, 1986.
- . "Aide to Bird Disputes Assertions Killers Are Being Freed From Jail." *Los Angeles Times*. September 6, 1986.
- . "Chief Justices Amasses \$1.1-Million Dollar War Chest." *Los Angeles Times*. August 1, 1986.
- . "Anti-Bird Coalition's \$900,000 Radio-TV Ad Blitz Gets Going." *Los Angeles Times*. October 8, 1986.
- . "Voters Repudiate 3 of the Court's Liberal Judges." *Los Angeles Times*. November 5, 1986.
- Committee to Retain the Justices*. "Protect the Rights of All Californians."
- Daily News*. "The Bird Court vs. justice." January 16, 1985.
- Deukmejian, George. "Governor Deukmejian's 1985 Public Safety Program: A Message to the State."
- Endicott, William. "Rose Bird on Ballot, Judiciary on Trial Vote Viewed as Test of Public Discontent With Court System." *Los Angeles Times*. October 6, 1978.
- . "Rose Bird: Prop. 13 Adds Fuel To Fire." *Los Angeles Times*. June 20, 1978.
- . "Brown Legacy Is Bradley's Biggest Hurdle." *Los Angeles Times*. August 9, 1982.
- . "Deukmejian Says He'd Name Judges Who Back Voters." *Los Angeles Times*. September 8, 1982.
- Fairbanks, Robert. "Jarvis May Sponsor New Campaign to Recall Bird." *Los Angeles Times*. July 21, 1982.
- Farr, Bill. "Prosecutors Back Rose Bird Ouster: Deputy Attorney's Poll Opposes Her 10-1." *Los Angeles Times*. October 25, 1978.

- Field, Mervin. "67% Assail State's Top Court." *San Francisco Chronicle*. May 7, 1985.
- Gilam, Jerry. "Prop. 7-a bid for Tougher Death Penalty." *Los Angeles Times*. October 6, 1978.
- Goldwater, Barry. "...And National Crime War Fizzles." *Los Angeles Times*, November 3, 1965.
- . "President's Crime Message Good but Soft on Judicial Leniency." *Los Angeles Times*, March 17, 1965.
- . "President's Promise of Action Against Crime Is Encouraging." *Los Angeles Times*, February 12, 1965.
- Goodman, Ellen. "Rose Bird's Plight Has a Lesson for the Country." *Los Angeles Times*. June 29, 1986.
- Greenfield, Meg. "Read 'Crime' for 'Communism': Law and Order Issues Stir Memories of Fifties." *Los Angeles Times*, August 25, 1968.
- Gughemetti, Joseph M. *The People vs. Rose Bird*. San Mateo: Terra View Publications, 1985.
- Haddock, Vicki. "Democrats run scared on Rose Bird." *Oakland Tribune*. April 4, 1986.
- Hager, Philip. "Why Did it Duck the Integration Issue." *Los Angeles Times*. March 13, 1981.
- . "Hight Court Eases Prop. 13 Tax Limit." *Los Angeles Times*. August 6, 1982.
- . "State Supreme Court Justices Openly Skeptical of Proposition 8." *Los Angeles Times*. July 22, 1982.
- . "Deukmejian, Bird Clash on Questioning." *Los Angeles Times*. September 20, 1982.
- . "State Justices Reject Death Penalty Clause." *Los Angeles Times*. July 2, 1982.
- . "Brown Leaves Imprint on the Courts." *Los Angeles Times*. December 5, 1982.
- Hayward Review*. "Death Penalty." April 18, 1985.
- Hicks, Jerry. "Bid to Oust Rose Bird Termed Recall Misuse." *Los Angeles Times*. April 27, 1982.
- Hughes, V.W. "Why Not Scrap This Distasteful Process Entirely." *Los Angeles Daily Journal*. May 9, 1986.
- Independent Citizens' Committee to Keep Politics Out of the Court*. "The California Supreme Court: A Court that has ruled for people over power."
- . "A New California."



Irving, Carl. "Abortion foes to fight Bird." *San Francisco Examiner-Chronicle*. December 29, 1985.

Johnson, Philip E. "Rose Bird, Responsibility Is as Vital as Independence." *Los Angeles Times*, November 12, 1985.

Kanner, Gideon. "In Fairness, Even Judges Must Stand the Test of Public Opinion." *Los Angeles Daily Journal*. May 9, 1986.

Knowles, Robert. "Asians, Hispanics dog Bird on Death Penalty." *Santa Monica Evening Outlook*. December 12, 1985.

Kaye, Jeffrey. "Prop. 8 Will Dominate Politics, Helping GOP." *Los Angeles Times*.

*Lesbians and Gays for an Independent Judiciary*. "William Rehnquist v. Rose Bird: For gays and lesbians, it's like Night and Day."

Liebert, Larry and Susan Milstein. "A Senseless Killing." *San Francisco Chronicle*. March 3, 1986.

Lipper, Donna. "News Memo." August 25, 1986.

*Los Angeles Times*. "Goldwater's Attack on Court Hit By Salinger." September 18, 1964.

*Los Angeles Times*. "Confirmation for the Court." March 14, 1977.

*Los Angeles Times*. "Opposition to Chief Justice Nominee Voiced." February 16, 1977.

*Los Angeles Times*. "GOP Opposes Justice Bird on Fall Ballot: GOP Votes to Oppose Bird." September 18, 1978.

*Los Angeles Times*. "The Attacks on Rose Bird." October 1, 1978.

*Los Angeles Times*. "At the Heart of the Controversy." March 9, 1982.

*Los Angeles Times*. "Deukmejian, Bird Clash on Questioning." September 20, 1982.

*Los Angeles Times*. "Man Given Death for Slaying 3 Filmmakers." February 7, 1979.

Mann, Tim. "U.S. High Court Questions Motivations Behind Proposition 1" *Los Angeles Times*. March 23, 1982.

---. "High Court Backs Ant-Busing Law. *Los Angeles Times*. July 1, 1982.

Marelius, John. "Bird ally says critics distorting record." *Daily News*.

Mecoy, Laura. "Pro-Bird Group to use 'consumer' commercials backing whole court." *Oakland Tribune*. September 8, 1986.

Medsger, Betty. *Framed: The New Right Attack on Chief Justice Bird and the Courts*. New York: The Pilgrim Press, 1983.

*Mercury News*. "Onion Field cop opposes Bird." August 8, 1985.

Milstein, Susan. "Old Enemies Urge Ouster of Justice Bird." *San Francisco Chronicle*. December 10, 1985.

Oliver, Myrna. "State High Court Oks L.A. School Busing." *Los Angeles Times*. September 7, 1978.

Otten, Michael. "Bird's war on the death penalty." *Sacramento Union*. March 23, 1986.

Pack, Robert. "Brown Rides California Toward Revolution." *Los Angeles Times*, August 21, 1977.

Pavicic, Sandy. "Death Spurs anti-Bird campaign." *Riverside Press Enterprise*. January 11, 1986.

*Petris Papers*. "Wrap Up."

*Record–Searchlight*. "Ruling clears, clouds death penalty status." December 6, 1985.

*Register*. "Rapes, assaults show increase as other crime reports fall, FBI says." April 21, 1985.

*Review*. "Court Does it Again." June 11, 1985.

*San Francisco Chronicle*. "'No' on Rose Bird." October 5, 1986.

Schneider, William. "Race Is the Invisible—but Important—Issue in the Run for Governor." *Los Angeles Times*, June 20, 1982.

Smith, Martin. "Doubts about drop in crime." *Modesto Bee*. March 31, 1985.

---. "Women, blacks favor death penalty." *Daily News*. December 28, 1985.

---. "Increased support for death penalty means trouble for Demos." *Dispatch*. January 3, 1986.

Soberanis, Pat. "A California Journal Survey: How biased is the Court?" *California Journal*. September 1986.

Stammer, Larry. "State Court's Anti-Busing Action Creates Shock Waves." Los Angeles Times. March 13, 1981.

*Star News*. "What They Said." June 22, 1985.

Steinberg, Jim. "Death Penalty depends upon 'intent to kill.'" *Santa Cruz Sentinel*. January 24, 1986.

Stolz, Preble. *Judging Judges: The Investigation of Roe Bird and the California Supreme Court*. New York: The Free Press, 1981.

- Thompson, Robert. "Johnson Hits Criticism of High Court." *Los Angeles Times*, September 13, 1964.
- Toth, Robert C. "Lawyers Hit Goldwater on High Court Attacks." *Los Angeles Times*, October 12, 1964.
- Torge, Peter. "A Study in Fairness." *Los Angeles Times*. October 31, 1978.
- Union*. "Justice Denied." January 6, 1986.
- Varacalli, Mike. "High Court's pro-labor stance merits support." *The California State Employee*. September/October 1986.
- Wiegand, Steve. "Pro-Bird Forces Accuse Foes of 'Poison Pen Letters.'" *San Francisco Chronicle*. March 20, 1986.
- Winograd, Barry. "Are they a 'gang of three'?" *California Journal*. September 1986.
- Weinstein, Henry. "Mourners Remember Bird." *Los Angeles Times*. January 20, 2000.
- From the Wire Services*. "Deukmejian Will Appoint Bird's Successor in Month." *Los Angeles Times*. November 5, 1986.
- Wolinsky, Leo C. "Deukmejian Charges Bradley 'Went AWOL' in War Against Crime." *Los Angeles Times*. August 23, 1986.
- Wood, Mark. "CVCR: Radio Spot: Patricia Henderson." No date.
- Wyman, Phil. "Governor's Death Penalty Restoration Act of 1985 committee, Assemblyman Phil Wyman, Chairman: A Special Project of the California Republican Assembly."
- Zelkowitz, David. *Draft Remarks for David Zelkowitz Before the PM Board of Directors*. 1987. University of California, San Francisco, Legacy Tobacco Documents Library.