

California Supreme Court Historical Society
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Second Place Entry

“Jerry’s Judges and the Politics of the Death Penalty: 1977-1982”

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Jerry's Judges and the Politics of the Death Penalty: 1977-1982

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.¹ Along with Bird, Brown appointed Wiley W. Manuel as the first African American to serve on the Court.² 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."³ 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."⁴ He further claimed, "Governor Edmund Brown Jr., not quite 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."⁵ 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 he also appointed 65 consumer representatives to various boards and commissions.

Jerry Brown's appointment of Rose Bird as the first female chief justice was immediately controversial, and she became the target of attacks from conservative groups who criticized her for being soft on crime. As Secretary of Agriculture for the Brown administration, she was criticized by agricultural interests in the San Joaquin Valley 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

¹ Preble Stolz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (New York: The Free Press, 1981), 84-87.

² Ibid.

³ "Confirmation for the Court, , *Los Angeles Times*, March 14, 1977.

⁴ Robert Pack, "Brown Rides California Toward Revolution," *Los Angeles Times*, August 21, 1977.

⁵ Ibid.

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.⁶ 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.⁷ Los Angeles Police Chief Ed M. Davis, who would later lead successful efforts along with Howard Jarvis to oust Bird, and was also an expected Republican gubernatorial nominee, criticized the governor for showing “disdain” for the Court in nominating someone with inexperience.⁸ 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.⁹ Despite the opposition to 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 was the first justice of the California Supreme Court to face serious challenge as the fall election approached in 1978. Throughout the year, the chief 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.¹⁰ In September, the California Republican Party, with one dissenting vote, announced their decision to oppose Bird in the November election, which

⁶ “Opposition to Chief Justice Nominee Voiced,” *Los Angeles Times*, February 16, 1977.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

put the party on record as against the chief justice.¹¹ The *Los Angeles Times* urged voters to retain her on November 7, while 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.”¹² 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.”¹³ 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.¹⁴ The third group was the executive committee of the California Republican Party who voted to oppose the 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 to Bird.¹⁵ The vote put Republican gubernatorial nominee Evelle J. Younger in a difficult position, since he had cast the deciding vote on her confirmation.¹⁶ Finally, the *Los Angeles Times* argued that “[these groups] criticize her not for what she has done but for what

¹¹ “GOP Opposes Justice Bird on Fall Ballot: GOP Votes to Oppose Bird,” *Los Angeles Times*, September 18, 1978.

¹² *Ibid.*

¹³ “The Attacks on Rose Bird,” *Los Angeles Times*, October 1, 1978.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

she might do, and in seeking a replacement more likely to do their bidding, are threatening the integrity of the judiciary.”¹⁷

Another group not included within the three previously cited, were prosecutors who in a District Attorneys’ poll opposed her 10-1.¹⁸ 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.¹⁹

The 1978 Gubernatorial Election

Rose Bird’s stance on criminal law, busing and Proposition 13 figured prominently in the campaigns by her critics to defeat her confirmation to the California Supreme Court. 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.²⁰ 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 issued raises 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, there had been sufficient movement of the victim to consider the act kidnapping. On January 27, 1977,

¹⁷ Ibid.

¹⁸ Bill Farr, “Prosecutors Back Rose Bird Ouster: Deputy Attorneys’ Poll Opposes Her 10 to 1, *Los Angeles Times*, October 25, 1978.

¹⁹ Ibid.

²⁰ Preble Stolz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (New York: The Free Press, 1981), 16.

the California Supreme Court granted a hearing in *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.²¹

School busing was another contentious issue which fanned the flames of discontent among many Californians with the state judiciary. In 1963, the American Civil Liberties Union (ACLU) filed a desegregation lawsuit against the Los Angeles Unified School District. In *Judging Judges: The Investigation of Rose Bird and the California Supreme Court*, Preble Stolz argued that an interesting 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 reflected 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. While Gitelson’s ruling was later overturned by the Los Angeles Court of Appeal, the California Supreme Court affirmed Gitelson’s decision in 1976. Stolz argued 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 Appeal 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

²¹ Ibid.

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. The courts seemed the latest battleground in the attempt by conservatives to turn back decades of what many perceived as liberal social engineering by judges across the nation, including California. 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.²²

In 1978, 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.²³

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."²⁴ 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.

²² 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.

²³ Jerry Gillam, "Prop. 7—a Bid for Tougher Death Penalty," *Los Angeles Times*, October 6, 1978.

²⁴ *Ibid.*

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 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.”²⁵ Herman Selvin wrote the *Los Angeles Times* that the GOP was threatening to politicize the judiciary, while 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.²⁶

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 abuses of the ballot.²⁷

William Endicott, a reporter for the *Los Angeles Times* stated that voters were showing none of their previous hesitancy to oust unpopular judges, largely a result of a generation of judicial activism.²⁸

²⁵ Craig Brown, “Letter to the Times: GOP Opposition to Chief Justice Bird,” *Los Angeles Times*, September 24, 1978.

²⁶ Loren Zeldin, *Ibid.*

²⁷ Stuart Campbell, *Ibid.*

²⁸ 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.

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 component 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.²⁹ The Bird Court faced similar opposition to rulings which were perceived to favor criminal defendants, and critics accused the chief justice of weakening the state's death penalty law. Despite *Los Angeles Times* polls that showed increased opposition to retaining 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.³⁰

Across the nation, the courts were the subject of criticism by those who argued that judges were promoting their own social vision of society in a series of rulings on civil rights, abortion, school busing, and criminal law. In a 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 Rights and must not go unchallenged"³¹ 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."³²

²⁹ William Endicott, "Rose Bird: Prop. 13 Adds Fuel to the Fire," *Los Angeles Times*, June 20, 1978.

³⁰ Joseph M. Gughemetti, *The People vs. Rose Bird* (San Mateo: Terra View Publications, 1985).

³¹ Edwin Chen, "Uphold High Court Power, Bird Urges," *Los Angeles Times*, October 12, 1981.

³² *Ibid.*

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 Clause³³

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.³⁴ In 1981, conservatives had a reason to rejoice when the Court declined to review a ruling by the Court of Appeal in Los Angeles which upheld the constitutionality of Proposition 1, with only Chief Justice Bird ruling to hear a review.³⁵ 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

³³ http://web.me.com/joelarkin/MontereyDemographicHistory/1979_Prop_1.html

³⁴ Myrna Oliver, "State High Court Oks L.A. School Busing," 1979, *Los Angeles Times*, September 7, 1978.

³⁵ Philip Hager, "Why Did it Duck the Integration Issue," *Los Angeles Times*, March 13, 1981.

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 1.³⁶ 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.”³⁷ 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.³⁸ Justice Stevens and Justice Byron R. White asserted that the only ““real life reason”” for the passage of Proposition 1, “was that the California courts were ordering busing to achieve public school desegregation.”³⁹ 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 14th 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 desegregated education than are required by the 14th Amendment to the U.S. Constitution.⁴⁰

In the 1980s, busing was not the only social issue influencing California voters and public policy makers, and the Bird Court quickly 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.

³⁶ Larry Stammer, “State Court’s Anti-Busing Action Creates Shock Waves,” *Los Angeles Times*, March 13, 1981.

³⁷ *Ibid.*

³⁸ Tim Mann, “U.S. High Court Questions Motivations Behind Proposition 1,” *Los Angeles Times*, March 23, 1982.

³⁹ Larry Stammer, “State Court’s Anti-Busing Action Creates Shock Waves,” *Los Angeles Times* March 13, 1981.

⁴⁰ Jim Mann, “High Court Backs Anti-Busing Law,” *Los Angeles Times*, July 1, 1982.

The Death Penalty in the United States

In 1972, the California Supreme Court's ruling in *California v. Anderson* invalidated the sentences of 107 on death row, including Sirhan Sirhan and Charles Manson. The United States Supreme Court soon after ruled in *Furman v. Georgia* that the death penalty, as administered then, was in violation of the Constitution's ban on cruel and unusual punishment. Across the United States, legislators in five states including California, pledged to reinstate the death penalty, and 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 author 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.⁴¹

Growing fear of rising crime rates in the 1980s only increased support for the death penalty and 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

⁴¹ Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2003), 264-265.

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 controversial issues such as busing, business, 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.

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 in 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 taxpayers \$12 million dollars.⁴² 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.⁴³ 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 find fault in her decisions.⁴⁴ 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

⁴² Richard Bergholz, "Effort to Recall Rose Bird Puts State GOP in a Quandary," *Los Angeles Times*, February 26, 1982.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

the judiciary. Former Chief Justice Phil S. Gibson, who served from 1940-1964 defended Bird and argued, “We have a system that works and we had better keep it. Rose Bird’s done a good job.”⁴⁵

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.”⁴⁶ In support of the GOP-sponsored recall attempt of the chief justice, Edwin Chen wrote in the *Los Angeles Times*,

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.⁴⁷

He went on to argue that the Court’s other liberal justices—Stanley Mosk, Frank C. Newman and the late Mathew O. Tobriner 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 unanimity in barely a third of the cases.”⁴⁸ 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

⁴⁵ Ibid.

⁴⁶ Edwin Chen, “Bird Becomes Predictable Advocate for Defendants,” *Los Angeles Times*, May 21, 1982.

⁴⁷ Ibid.

⁴⁸ Ibid.

her rulings.⁴⁹ 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.⁵⁰ Cruz Reynoso, who was appointed to the Court in January of 1982, defended Bird and cited statistics which showed that “90% of those arrested for crime are convicted and that the appellate courts have upheld more than 88% of those convictions.”⁵¹ Reynoso stated that the Court makes a rather easy target and argued that while the recall right should be “cherished,” there is a difference between “having the right ‘and exercising the right.’”⁵² 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?”⁵³ 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 from public criticism, they further argued that the idea “that their rulings should be subject to popular referendum . . . is a dangerous abuse of the recall process”⁵⁴

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.⁵⁵ Robert Fairbanks wrote for the *Los Angeles Times* that Jarvis’s efforts would succeed the failed attempts by conservative

⁴⁹ Jerry Hicks, “Bid to Oust Rose Bird Termed Recall Misuse,” *Los Angeles Times*, April 27, 1982.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ “At the Heart of the Controversy,” *Los Angeles Times*, March 9, 1982

⁵⁴ *Ibid.*

⁵⁵ Robert Fairbanks, “Jarvis May Sponsor New Campaign to Recall Bird,” *Los Angeles Times*, July 21, 1982.

fundraiser and Senator H.L. Richardson of Arcadia.⁵⁶ 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.⁵⁷ Fairbanks also wrote that the recall effort would employ the Orange County campaign firm Butcher-Forde.⁵⁸ Jarvis’s spokesman Joel Fox announced that he had been angered at decisions reached by the Court which in his view had weakened Proposition 13.⁵⁹ It was not long after Jarvis announced plans to recall 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.”⁶⁰ The *Los Angeles Times* called the decision a “potentially far reaching Supreme Court decision” that could allow Los Angeles elected officials to raise taxes.⁶¹ According to the article, prior to the decision, raising payroll or gross receipts tax was considered a “special tax” under Proposition 13, but the ruling would allow cities to impose new taxes with “a simple majority vote.”⁶² 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.”⁶³ 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.”⁶⁴ 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,

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Janet Clayton, “Ruling Could Give City Power to Boost Taxes,” *Los Angeles Times*, August 6, 1982.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Philip Hager, “High Court Eases Prop. 13 Tax Limit,” *Los Angeles Times*, August 6, 1982.

⁶⁴ Ibid.

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.⁶⁵

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 the criticism was directed at Rose Bird. In the summer primary, voters passed Proposition 8, commonly referred to as the Victim’s Bill of Rights. Jeffrey Kaye reported,

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 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.⁶⁶

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 in 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.”⁶⁷ The passage of the “Victims’ Bill of Rights” reflected broader discontent on the part of many in California in what they saw 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.”⁶⁸

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.”⁶⁹ The top Republican candidates in the state including San Diego Mayor Pete Wilson, running for the

⁶⁵ Ibid.

⁶⁶ Jeffrey Kaye, “Prop. 8 Will Dominate Politics, Helping GOP,” *Los Angeles Times*, June 11, 1982.

⁶⁷ William Schneider, “Race Is the Invisible—but Important—Issue in the Run for Governor,” *Los Angeles Times*, June 20, 1982.

⁶⁸ Ibid.

⁶⁹ Edwin Chen, “Uphold High Court Power, Bird Urges,” *Los Angeles Times*, October 12, 1982.

United States Senate, and Attorney General George Deukmejian, running for the Republican gubernatorial nomination, exploited Proposition 8 to enhance their tough-on-crime credentials.⁷⁰ 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.⁷¹

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 to support his tough-on-crime credentials.⁷² However, Bradley's 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 and had been responsible for getting crime measures passed in the state Senate under Governor Reagan, and was a strong advocate of capital punishment and Proposition 8—and perhaps more importantly, a foe of Chief Justice Rose Bird.⁷³

As attorney general, George J. 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

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² William Schneider, "Race Is the Invisible—but Important—Issue in the Run for Governor," *Los Angeles Times*, June 20, 1982.

⁷³ Ibid.

Court 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."⁷⁴ 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's nomination to the Court of Appeal in Sacramento.⁷⁵ 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 might vote in future cases, and that he did not want to appear to be trying to 'curry favor' with members of the commission."⁷⁶

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."⁷⁷ 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 Angeles Times*, the case involved two men: Allen Leory Engert, who was accused of strangling a young woman in May 1979, and John W. Gamble, who was charged with the August 1979 beating of a two-year-old girl. According to an article by Philip Hager, "Engert

⁷⁴ "Deukmejian Steps Over the Line," *Los Angeles Times*, July 17, 1981.

⁷⁵ Philip Hager, "Deukmejian, Bird Clash on Questioning," *Los Angeles Times*, September 20, 1982.

⁷⁶ *Ibid.*

⁷⁷ Philip Hager, "State Justices Reject Death Penalty Clause," *Los Angeles Times*, July 2, 1982.

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.⁷⁸ 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.⁷⁹ 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 Vincent 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, which could probably be considered the governor’s most visible legacy. In promising to appoint judges who would back the will of the people, he hoped to capitalize on efforts by the court to weaken Propositions 13 and 7 which had been passed by substantial margins by the voters. Deukmejian was quoted in a *Los Angeles Times* article stating, “The Brown-dominated court ... 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 that “the makeup of the California Supreme

⁷⁸ Ibid.

⁷⁹ Ibid.

Court in the years ahead is extremely important.”⁸⁰ In November, George 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.⁸¹ 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, “[Brown] had appointed 90 blacks, 71 Latinos, 34 Asian-Americans and 131 females to judicial posts.”⁸² 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

⁸⁰ William Endicott, “Deukmejian Says He’d Name Judges Who Back Voters,” *Los Angeles Times*, September 8, 1982.

⁸¹ *Ibid.*

⁸² Philip Hager, “Brown Leaves Imprint on the Courts,” *Los Angeles Times*, December 5, 1982.

taken a step toward justice by plebiscite.” While her critics were unsuccessful in removing her from office before the 1982 election, her increasingly controversial rulings on the death penalty fueled a more successful campaign to oust Bird and her liberal colleagues from the court in 1986.