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The Women Who Shaped Public Defense:

A Love Letter

If we were to inquire of wisdom through her sages and statesmen; of morality through her poets and preachers, and of sympathy through her orators and actors, what were the duty of the State toward those accused of crime, they would unite with a common voice in declaring that the citizens of a State are far more vitally interested in saving an innocent man from unmerited punishment than in the conviction of a guilty one. The common conscience of men, the great heart of the people, the law itself in its presumption of innocence and requiring twelve men to convict, all join in the fundamental idea that the protection of the innocent is far more important to the State than the prosecution of the guilty. Not only is the defense of the innocent important to the State, but it is an act that appeals to the better feelings and nobler impulses of men. It is the act that makes heroes, whom patriots praise and of whom poets sing

—Clara Shortridge Foltz, Public Defender¹

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¹ "Rights of Persons Accused of Crime," Aug. 8, 1893, Hall of Columbus, Memorial Art Palace, General Committee of The World's Congress Auxiliary on Jurisprudence and Law Reform, The Woman's Branch of the World's Congress Auxiliary of the World's Columbian Exposition, Chicago, Illinois. The speech has been reprinted numerous times. This article will quote from the ALBANY LAW JOURNAL: *Public Defenders—Rights of Persons Accused of Crime—Abuses Now Existing*, 48 ALB. L.J. 248 (1893) [*World's Fair Speech*].

This article draws heavily from the excellent work of Prof. Barbara Babcock. Babcock's writings on women in the law are legion. (See Barbara Babcock, *Alma Mater: Clara Foltz and Hastings College of the Law*, 21 HASTINGS WOMEN'S L.J. 99 (2010); Barbara Allen Babcock, *Inventing the Public Defender*, 43 AM. CRIM. L. REV. 1267 (2006); Barbara Allen Babcock, *Foreword: A Real Revolution*, 49 U. KAN. L. REV. 719 (2001); Barbara Allen Babcock, *Women Defenders in the West*, 1 NEV. L.J. 1 (2001); Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139, 1166–69 (1993); Barbara Allen Babcock, *Commentary, Western Women Lawyers*, 45 STAN. L. REV. 2179 (1993); Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849 (1991); Barbara Allen Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, 12 BIOGRAPHY 5 (1989); Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman"*, 30 ARIZ. L. REV. 673 (1988), reprinted with new introduction in 28 VAL. U. L. REV. 1231 (1994).

In our modern folklore, the criminal defense attorney is typically male. When portrayed at their best, they are a solemn and thoughtful archetype in the mold of Atticus Finch. In other forms, they are a harried antihero with a heart of gold, like Bob Odenkirk's Saul Goodman. You only need to look at our founding fathers to see celebrations of male criminal defense attorneys. The first formally recorded murder trial in our nation was handled by Alexander Hamilton, who was known for handling criminal defense matters pro bono.² Or consider John Adams's infamous pro bono defense of British soldiers charged for the Boston Massacre.³ Even the fun ones are male, à la Joe Pesci's famous portrayal in *My Cousin Vinny*. And then at their worst, the public defender is portrayed as a schlep in an ill-fitting suit with too little time and little wick left in the candle. Rarely, though, is the public defender portrayed as female. But it is to women that it owes its creation.

Decades before Justice Hugo Black would author *Gideon v. Wainwright*, women led the way in creating the public defense concept we have today—it is their spirit that breathed life into the institution, taking it from capricious charity to zealous, defiant advocacy. This article traces the careers, efforts, and contributions of three of those women in different eras. First, the founder. Clara Shortridge Foltz. A person of such industry she bent California law to suit her. Then, Mabel Walker Willebrandt, whose principled beliefs led her to work as both a public defender and a prolific prosecutor. And finally, Chief Justice Rose Bird, whose resolution should be the envy of us all. There is no argument in this essay or cause put forth except maybe to say that public defense has the same spirit of defiance and justice inherited from feminism, suffragists, and women.⁴ But, in truth, this is merely a chronicling act as an ode of thanks to these and other remarkable women.

Indigent Criminal Defense in the Nineteenth Century

Before 1900 indigent criminal defense was an arbitrary, ad hoc enterprise that rested more on the charity of men than principled adherence to constitutional protections.⁵ Indeed, as immigration swelled the U.S. population in the nineteenth century, many of the elites and scholars turned to criminal law as a tool to assimilate and socialize the nation's newest citizens.⁶ At the

² “The Courtroom Where It Happened: Hamilton as a Lawyer,” *The American Law Institute*, Oct. 6, 2016. See also, *People v. Levi Weeks*, 1800, First Murder Trial in the United States for Which There Is a Formal Record.

³ The History of Lawyer Pro Bono Services, Roger Williams University, October 18, 2019.

⁴ I will leave such arguments to better writers than me.

⁵ Michael McConville and Chester L. Mirsky, *The Origins of the Indigent Defense System*, 15 NYU REV. OF LAW & SOCIAL CHANGE (1986–1987, Issue 4).

⁶ NORCROSS, *The Crime Problem*, 20 YALE L.J. 599, 599 (1911). Indeed, in response to reformers, Norcross called for fewer criminal protections, including the elimination of the Fifth Amendment protection against self-incrimination.

time, the court would assign counsel from the bar.⁷ And so, indigent criminal defense was something of a *noblesse oblige* incumbent on being a lawyer; courts would appoint a member of the bar and attorneys could seek reimbursement from the county. And payment was far from guaranteed. Said another way, public defense was a charity—with the predictability and capriciousness that such would entail. As the California Supreme Court held in rejecting a motion for attorney’s fees for a lawyer who represented two indigent persons accused of murder: “Such a promise, however, cannot be implied where it is the duty of the attorney to perform the services when called upon by the Court to do so. It is ‘part of the general duty of counsel to render their professional services to persons accused of crime who are destitute of means, upon the appointment of the Court, when not inconsistent with their obligations to others.’”⁸

A 1919 report entitled *Justice and the Poor* authored for the influential Carnegie Foundation ultimately concluded that a court-assigned counsel procedure for the poor was “as a whole... a dismal failure, and that at times it... [was] worse than a failure.”⁹ Elite lawyers lacked any criminal defense experience, so were largely exempted from service. And while young attorneys would be willing to take cases to gain experience, critics remarked that their inexperience hurt their cases as often as they helped.¹⁰ In sum, they were no match for professional prosecutors. As one commentator wrote, “However amusing to the bar the custom of assigning criminal defences to its most recent accessions may be, the proceeding on its face is unfair. With legal education as it is, the fledgling is little more qualified to defend than the prisoner is to conduct his own defense.”¹¹

The Founder—Or, “A female attorney’s strange project”¹²

The story of the California public defender system begins in the 1870s with Clara Shortridge Foltz. Abandoned by her husband in her twenties, Foltz found herself a single mother of five children. Faced with becoming the sole breadwinner for a home before she even had the right to vote, Foltz decided to become a lawyer like her father. There was just one hiccup: California in 1878 did not permit women to be lawyers. And so, from the very beginning, Foltz forged a career standing up to power. She and another lawyer-suffragist

⁷ Parmelee, *Public Defense in Criminal Trials*, 1 J. CRIM. L. & CRIMINOLOGY, 735 (1910–1911).

⁸ *Lamont v. Solano Co.*, 49 Cal. 158, 159 (1874), quoting *Rowe v. Yuba Co.* 17 Cal. 61 (1860).

⁹ Reginald Smith, *Justice and the Poor*, The Carnegie Foundation (1919). As a result of Smith’s book, the American Bar Association created the Special Committee on Legal Aid Work.

¹⁰ Adelman, *In Defense of the Public Defender*, 5 J. CRIM. L. & CRIMINOLOGY 494, 496 (1914–1915).

¹¹ Smith, *Justice and the Poor*, at 113.

¹² Opinion pieces of the day derided Foltz’s proposal for institutionalized criminal defense. The *New York Times* called the idea “absurd” and a “female attorney’s strange project.” See Babcock, *Inventing the Public Defender*.

authored the “Woman Lawyer’s Bill” to strike the phrase limiting the practice of law to “white male citizens.”¹³

Getting the bill passed was not easy—the concept of female attorneys was widely ridiculed in society at the time. For instance, in response to her request to apprentice under him, a leading San Jose lawyer wrote, “My high regard for your parents and for you, who seem to have no right understanding of what you say you want to undertake, forbid encouraging you in so foolish a pursuit—wherein you would invite nothing but ridicule if not contempt. A woman’s place is at home, unless it is as a teacher. If you would like a position in our public schools, I will be glad to recommend you, for I think you are well qualified.”¹⁴ And when it came to the bill itself, “opponents said they feared that a female lawyer’s ‘seductive and persuasive arts’ would sway juries. When they were lawyers, women would next demand to become jurors and even judges. Others painted a picture of a female lawyer blushing and stammering when she had to cross-examine a witness on a sexual matter.”¹⁵

But she persevered and personally lobbied for the bill. After an initial defeat, the assembly narrowly approved it (37-35) and sent it to the governor’s desk. And when it looked like the governor would not sign it, she slipped past two guards and personally persuaded him to put pen to paper.¹⁶ That same year, Foltz passed the bar exam after three hours of questioning—twice the norm—and became the first female attorney in California.¹⁷ (Yes, back then one did not need to go to law school to become a lawyer.)

The fight was far from over. When she attempted to attend the newly formed Hastings College of the Law in 1879, the male students mocked her. As she once recounted in a speech, “The first day I had a bad cold and was forced to cough. To my astonishment every young man in the class was seized with a violent fit of coughing. You would have thought the whooping cough was a raging epidemic among the little fellows. If I turned a leaf in my notebook, every student in the class did likewise. If I moved my chair—hitch went every chair in the room.”¹⁸ The second day of class was no better. And on the third day, she and her good friend Laura de Force Gordon were informed that the

¹³ Babcock, *Clara Shortridge Foltz: “First Woman,”* reprinted with new introduction in 28 VAL. U. L. REV. 1231 (1994), at p. 1261 (discussing Foltz’s oral bar examination and her unanimous certification).

¹⁴ Barbara Babcock, *Woman Lawyer: The Trials of Clara Foltz* (2011).

¹⁵ Cecilia Rasmussen, *Justice Prevails for State’s First Female Attorney*, L.A. TIMES, Feb. 2, 2002.

¹⁶ Barbara Babcock, *Woman Lawyer*, 22–30.

¹⁷ Indeed, her Women’s Lawyer Bill was something of a precursor to a constitutional amendment prohibiting employment discrimination authored by her and other suffragists (former Cal. Const., art. XX, § 18, renumbered art. I, § 8.)

¹⁸ *Alma Mater: Clara Foltz and Hastings College of the Law*, 21 HASTINGS WOMEN’S L.J. 99, 103.

school had decided not to admit women.¹⁹ And while no written explanation accompanied the rejection, the school’s dean would say that the presence of a woman, particularly the *rustling skirts*, was bothering other students.²⁰ So, before even attending law school, Foltz waged a legal battle. She sued the school and ultimately the California Supreme Court held that she was entitled to be admitted as an attorney and study law.²¹ Of course, it was something of a pyrrhic victory—the legal battle took too long, and the victory came too late. As a single mother of five, she had to start earning a living and left Hastings without graduating.²²

As a woman lawyer without some type of “male benefactor,” attracting paying clients was difficult. And so, her primary book of business was helping women divorce their husbands and representing indigent criminal defendants by court appointment. Which, again, received counsel on an ad hoc basis.

What Foltz saw in these courtrooms was far from justice. As she would later explain in a law review article, she observed rampant “judicial crimes” whose protean nature infected every segment. Whether it was abuses committed by overzealous, unchecked prosecutors, the incompetence of unpaid, untrained, inexperienced appointed counsel, or the predatory nature of some members of the private bar.²³ Foltz saw all of this firsthand, even winning one of the first cases granting a defendant a new trial for prosecutorial misconduct, *People v. Wells*.²⁴ For Foltz, prosecutors were unchecked and fell prey to their own “vanity of winning” and “fear of newspaper criticism.”²⁵ And so, they could rationalize any behavior through the “assumption that the defendant is always guilty.” The *Wells* case was no different—against Foltz was an experienced prosecutor who was determined to beat Foltz (by that time, seen as “the famous woman lawyer”) and “[a]round and behind him, an army of police officers and detectives ready to do his bidding, and before him . . . a plastic judge with a large discretion often affected by newspapers.”²⁶

But even outside of egregious misconduct, Foltz faced constant ridicule in the courtroom. In 1889 or 1890, Foltz was appointed to represent a young

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Foltz v. Hoge*, 54 Cal. 28, 33–35 (1879).

²² Readers may recall from their own “intro to law” classes that the modern ABA model of bar admission was not widespread until the mid-twentieth century. Legal education was still through apprenticeships at this time.

²³ Foltz elaborated her arguments in two law review articles: Clara Foltz, *Duties of District Attorneys in Prosecutions*, CRIM. LAW MAG. & RPTR. 415 (1896) [hereinafter Foltz, *Duties*]; Clara Foltz, *Public Defenders*, 31 AM. L. REV. 393 (1897) [hereinafter Foltz, *Public Defenders*].

²⁴ *People v. Wells*, 100 Cal. 459 (1893).

²⁵ Foltz, *Public Defenders*, at 396.

²⁶ *World’s Fair Speech*, at p. 248.

Italian immigrant charged with arson. The prosecuting attorney was Thaddeus Stonehill, a Confederate captain from the Civil War who went by “Colonel” in daily life.²⁷ The “Colonel” was quick to use Foltz’s gender as part of his argument—demanding the jury ignore her because, “She is a woman!” and “cannot be expected to reason; God Almighty decreed her limitations, but you can reason, and you must use your reasoning faculties against this young woman.” Foltz’s response to the ad hominem was better: “If your Honor please and gentlemen of the jury: . . . Counsel opened his argument with the astounding revelation that I am a woman. It was a wonderful announcement—fit epigram for a god to have spoken. And yet, after this magnificent burst of blazing genius the sun does not appear to be darkened nor the moon paled by the contrast.”²⁸ After dissecting the case, the jury returned an acquittal without leaving the box.

So, it was with this experience that Foltz delivered her famous address at the Chicago World’s Fair. Her thesis was blunt: If we are to preserve and protect our justice system—a sense which requires that a person is presumed *innocent*—then, justice requires an adversary equal to the prosecutor.²⁹ After all, would an innocent man deserve something less? And so, in her speech she rejected the charity model of public defense and called on governments to create institutional public defender offices.³⁰

After her speech, she would take the show on the road. First in New York, where she promoted a bill to provide for an elected public defender.³¹ Lauded by some and sneered at by others, Foltz persevered.³² By 1912, Foltz had personally introduced similar statutes in sixteen states, and a decade later her count reached thirty-two.³³ She is even credited with the creation of the first public defender’s

²⁷ Babcock, *Western Women Lawyers*, 2185–2186.

²⁸ *Id.*

²⁹ Beliefs Foltz convinced the California Supreme Court to espouse in *Wells*, “It is too much the habit of prosecuting officers to assume beforehand that a defendant is guilty, and then expect to have the established rules of evidence twisted, and all the features of a fair trial distorted, in order to secure a conviction. If a defendant cannot be fairly convicted, he should not be convicted at all; and to hold otherwise would be to provide ways and means for the conviction of the innocent.” (*People v. Wells*, 100 Cal. 459, 465 (1893).)

³⁰ “For every public prosecutor there should be a public defender chosen in the same way and paid out of the same fund.” (*World’s Fair Speech*, at 249.)

³¹ See Babcock, *Inventing the Public Defender*, at p. 7, appendix, p. 49—note, this is a separately published edition of the same article appearing in the May 2006 edition of the *AMERICAN CRIMINAL LAW REVIEW*. While most of this article has used the publications pages, the appendix is not available therein. The appendix is available here: Appendix to *Inventing the Public Defender*.

³² ALBANY LAW JOURNAL called the proposal “a new and original idea,” 200 newspapers “mentioned and explained” it, HARVARD LAW REVIEW urged “consideration” (at least for big cities), while the NEW YORK TIMES sneered at “a female attorney’s strange project.” (Babcock, *Inventing the Public Defender*, at p. 1273, fns. 36, 37.)

³³ *Id.*

office in Los Angeles.³⁴ California soon generalized the model: In 1921, the Legislature enacted a statute enabling the creation of the office.³⁵

The Second Class

Before she became the most powerful woman in the federal government, Mabel Walker Willebrandt was Los Angeles County's first female public defender for women. Fresh out of the University of Southern California, she worked in the police courts representing women charged with prostitution, vagrancy, and other crimes against morals. Accounts describe her as representing more than 2,000 such cases.³⁶

Where Foltz was an iconoclastic firebrand who fiercely bucked traditional norms, Willebrandt was something of a principled legal purist. As a recent biographical piece noted, “Her unwavering faith in human redemption made her a folk figure. A madam she defended asked for advice on ‘going straight,’ saying she wanted to buy a house and raise her sons in a respectable environment. Carefully checking her client’s finances, Willebrandt advised her to keep at her profession for six more months—and then dipped into her own paycheck to help the woman make a new beginning.”³⁷

Foltz and Willebrandt took to the law in a similar way. In defending women accused of prostitution, she would call for the prosecution of the procurers of commercial sex; that is, the “johns,” as well. And if not, would demand they testify during the proceedings.³⁸ While that seems obvious by today’s standards, the early 1900s saw it differently. The male customer of a female prostitute was routinely freed while the woman was fined. So, making the john come to court and either face prosecution or testify was an act of defiance to the gendered enforcement. And when it came to testimony, a common tactic by prosecutors was to cast women as less—less rational, less honest, and (somehow?) dangerously cunning.³⁹

³⁴ Babcock, *Inventing the Public Defender*, at 1274–75 & fns. 33–38; Laurence A. Benner, *The California Public Defender: Its Origins, Evolution and Decline*, 5 CAL. LEGAL HIST. 173, 179–80 (2010).

³⁵ Benner, *The California Public Defender*, at 185–86; Stats 1921 ch 245 § 1 [enacting earlier version of Cal. Gov. Code, § 27700].

³⁶ *Mabel Walker Willebrandt: A Study of Power, Loyalty and Law*, 83 MICH. L. REV. 1057 (1985). See also, Cecilia Rasmussen, *The Pioneering Career of “Prohibition Portia,”* L.A. TIMES, July 2, 2000; “Mabel Walker Willebrandt,” Encyclopedia Britannica (rev. Aug. 21, 2025).

³⁷ Rasmussen, “*Prohibition Portia.*”

³⁸ *Book Review, Woman Lawyer*, 65 STAN. L. REV. at 402–03 (cataloging courtroom and press denigration of women’s “reason” and honesty); Babcock, *Inventing the Public Defender*, at 1279–82.

³⁹ Foltz, *Public Defenders*, 31 AM. L. REV. at 395–97.

Consider for instance the prosecution of Maria Barbella (or “Barberi”⁴⁰) for the murder of her partner, Domenico Cataldo.⁴¹ The district attorney “hounded and abused” the immigrant defendant on the stand. After the thorough badgering, he turned to the jury “*man to man*,” warning that acquittal would grant “every woman . . . who has an illicit relationship . . . the right to cut [a man’s] throat with impunity.”⁴² The trial judge reinforced the gender cue, instructing the jurors to “do their duty as men.” The jury answered this “call”—convicting her and sentencing her to death by the electric chair. Thankfully, the Court of Appeals later reversed, criticizing the circus of insinuation and invective.

While Willebrandt did not work on the case, she worked in the same environment that created such a conviction. And in such a climate, demanding equal consideration for the testimony of a woman held up to the testimony of a man was an act of defiance.

The Chief Justice

Decades after Foltz transcended barriers while caring for five children, women would still face a similar set of circumstances. Which takes us to our next figure, Chief Justice Rose Bird. Rose Bird grew up in poverty in New York, with her own mother struggling to care for three children after Bird’s father left the family.⁴³ As she forged her career, she was a woman of many firsts—the first female clerk for the Nevada Supreme Court, the first female public defender in Santa Clara, the first woman Secretary of Agriculture, and the first woman on the California Supreme Court, and the first to lead it.⁴⁴ All while moonlighting as an adjunct-clinician at Stanford Law School.⁴⁵ Although she lived nearly a century after Foltz, we can see the same principled courage that characterized Foltz and other early female leaders.

Modern public defenders often see themselves as stalwart defenders of principled due process. Rose Bird embodied that trait and then some. Her rise at the Santa Clara Public Defender’s office was quick, becoming the chief of

⁴⁰ As Babcock explained, “Maria Barbella was a poor immigrant who killed her lover, Dominic Cataldo. At her trial, two inexperienced and overmatched attorneys appointed by the court thoroughly botched the case, failing even to straighten out the spelling of her name so that she went down in legal history as Marie Barberi.” (Babcock, *Inventing the Public Defender*, at 1290–91.)

⁴¹ *People v. Barberi*, 149 N.Y. 256, 43 N.E. 635 (1896).

⁴² Babcock, *Inventing the Public Defender*, at 1291.

⁴³ Gerald Uelmen, *The Tragedy of Rose Bird*, 38 T. JEFFERSON L. REV. 143, 143.

⁴⁴ Rose Elizabeth Bird, California Supreme Court Historical Society (profile) (noting “firsts,” including first woman deputy public defender in Santa Clara County).

⁴⁵ Patrick K. Brown, *The Rise and Fall of Rose Bird: A Career Killed by the Death Penalty* (2007) at 4–5.

the appellate division within just eight years. She argued cases in the Supreme Court, Courts of Appeal, and the federal court. Even though public defense was much more institutionalized⁴⁶ as a practice by her time, Bird was still a trailblazer in her own right—she just did it on the bench.

The first hurdle was getting to the bench at all. When Governor Jerry Brown made her appointment, letters from Republican legislators flooded in, asking the Attorney General to vote her down. Indeed, nineteen of the twenty-three assembly Republicans and seven of the fourteen senate Republicans would send such letters.⁴⁷ And naturally, they contained many of the same staid attacks that have assailed strong women throughout the ages.⁴⁸ Ahead of the vote of the three-person Commission on Judicial Appointments, the votes of two were known, yes by Acting Chief Justice Mathew O. Tobriner—Chief Justice Donald Wright had retired—and no by Court of Appeal Presiding Justice Parker Wood, Second Appellate District, Division One. The vote of Attorney General Evelle Younger was unknown until the hearing which was held on March 11, 1977. Younger ultimately voted to confirm Bird, but issued a statement that, “the law does not require [the Governor] appoint as a judge the best-qualified or even a well-qualified person. My limited responsibility requires only that I determine if Rose Bird is qualified. Absent any significant evidence to the contrary, I am compelled to find that she is.”⁴⁹

During her tenure as Chief Justice, the California Supreme Court was confronted by numerous high-profile issues characterized by strong public opinions on both sides. Faced with these highly public, controversial cases, Bird did what strong people do: take a principled stand even if unpopular.⁵⁰ One of the first challenges was about Proposition 13 from the 1978 primary election—a measure that gave many home owners an immediate one-third reduction in property taxes.⁵¹ Bird authored the sole dissent, arguing that tax assessments of property of equal value would violate equal protection of the laws if the value changed widely based on when the property was acquired.⁵² Then came the “use a gun, go to prison” laws enacted in 1975—a bill designed

⁴⁶ Thanks in no small part to the work of predecessors like Foltz, Willebrandt, and others.

⁴⁷ Uelmen, *The Tragedy of Rose Bird*, at 144.

⁴⁸ One such letter derided her temperament, claiming she was prone to lashing out and projecting her feelings.

⁴⁹ Uelmen, *The Tragedy of Rose Bird*, at 145. It should be noted that Bird was not the only justice elevated to a high court without judicial experience. By 1986, fifteen U.S. Supreme Court justices had had no previous experience, including the well-regarded Earl Warren.

⁵⁰ At one time, it was not popular for women to vote. Or be lawyers. Or attend law school. Principled defiance and a commitment to equity is the throughline here, be there any.

⁵¹ *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal.3d 208 (1978).

⁵² *Id.* at 249, dissenting opn. Bird, C.J.

to make prison mandatory in cases where an offender used a gun in the crime.⁵³

But the most notable would become her stance on the death penalty. In her time on the bench, she voted to reverse 58 death penalty appeals since the enactment of a bill to restore the death penalty in California.⁵⁴ Her public stance against the death penalty ultimately became political fuel. This stance placed her squarely against the tough-on-crime wave that swept across California politics. After narrowly winning retention in 1978, she was subjected to several recall petitions, and in 1986, a highly partisan confirmation election, Bird and three high court colleagues faced voters. She and Justices Cruz Reynoso and Joseph Grodin lost substantially. Only Justice Stanley Mosk, a Governor Pat Brown appointee, survived.

The 1986 confirmation election campaign bucked the traditional non-partisan nature of judicial elections. Bird faced a well-funded campaign backed by Republican donors who believed that Governor George Deukmejian would appoint replacement justices who were more friendly to business interests than Governor Jerry Brown's three appointments—Justices Bird, Reynoso, and Grodin.⁵⁵ The entire campaign centered on the death penalty, replete with television ads and mailers. In the end, judicial independence was outspent by more than \$5 million dollars.^{56,57} Ultimately, Bird secured less than 34 percent of the vote.

And how did the Chief Justice take removal? In her own words, “How am I taking this? My answer is, just like a man.”⁵⁸

⁵³ Cal. Pen. Code, § 1203.06 [Deerings, 1975]. For more, see *People v. Tanner*, 23 Cal. 3d 16 (1978) (*Tanner I*), which resulted in a 4-3 vote rejecting the law imposing on judicial discretion. Various petitions for rehearing of *Tanner I* were filed, including one spearheaded by the California District Attorneys Association, which attracted more than 100 legislators of both parties as coauthors. A rehearing was granted by the California Supreme Court. Governor Deukmejian argued *Tanner II*, with oral argument held in Sacramento. The high court reversed itself in *People v. Tanner*, 24 Cal. 3d 514 (1979) (*Tanner II*). Justice Mosk's vote switch, without explanation, made it 4-3 upholding the law after being the swing vote in the earlier, 4-3 vote against the law. *Tanner* is also the case that almost cost Chief Justice Bird's confirmation election in November 1978 and led, at her request, to a Commission on Judicial Performance investigation and hearing which was open, also at her request, until it came time for Justice Mosk to testify, when he sued and got the law of closed hearings enforced. For the whole story on that hearing, see Preble Stoltz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (1981).

⁵⁴ Uelmen, *The Tragedy of Rose Bird*, at 148.

⁵⁵ While part of Governor Brown's cabinet, Bird's earliest victories included banning the use of the short-handled hoe and regulating toxic waste.

⁵⁶ Uelmen, *The Tragedy of Rose Bird*, at 149.

⁵⁷ Deukmejian's appointments certainly got the message—death penalty affirmances by the Supreme Court went from 7.8 percent to 71.8 percent after the election. In a mere two years, the California affirmance rate went from the third lowest to the eighth highest in the United States.

⁵⁸ Frank Clifford, *Voters Repudiate 3 of Court's Liberal Justices*, L.A. TIMES, Nov. 5, 1986.

Women Continue to Lead in Public Defense

Numerous public defender offices and appointment panels are run by women, including offices in Contra Costa (Ellen McDonnell), El Dorado (Teri Monterosso), Fresno (Antoinette Taillac), Monterey (Susan Chapman), Napa (Kris Keeley), Ventura (Claudia Bautista), Nevada (Keri Klein), Sacramento (Amanda Benson), San Joaquin (Judyanne Vallago), San Mateo (Lisa Maguire), Santa Barbara (Tracy Macuga), Santa Cruz (Heather Rogers), Shasta (Ashley Jones), Siskiyou (Lael Kayfetz), Orange (Sara Nakada), Solano (Elena D’Agustino), Stanislaus (Jennifer Jennison), Tulare (Erin Brooks), and Yolo (Tracie Olson). A woman (Galit Lipa) heads the Office of the State Public Defender. Fern Laethem was the first to serve as California’s State Public Defender.⁵⁹

While there is not widespread data on gender within the field, a few offices have made their demographics public. In Contra Costa County, 58 percent of the attorneys are female.⁶⁰ In San Francisco, 60 percent of attorneys and 60 percent of management are female.⁶¹ Moreover, the pipeline is strong: 56 percent of newly admitted attorneys are women and women make up the majority of government lawyering.⁶² On the federal side, three of California’s four defender organizations are woman-led: Jodi Linker (Federal Public Defender, N.D. Cal.), Heather E. Williams (Federal Public Defender, E.D. Cal.), and Kasha Castillo (Executive Director, Federal Defenders of San Diego).

And on the bench, female public defenders continue to gain representation. In the appellate courts, Justice Mary J. Greenwood (former Santa Clara County Public Defender), Justice Maria E. Stratton (former Federal Public Defender, C.D. Cal.), Justice Cynthia C. Lie (former Assistant Federal Public Defender and San Diego County Deputy Public Defender), Justice Laurie M. Earl (former Sacramento County Assistant Public Defender), and Justice Shama Hakim Mesiwala (an assistant federal public defender). On the California Supreme Court, Justice Kelli Evans (former Sacramento County Assistant Public Defender). And while not a Californian, one must mention Associate Justice Ketanji Brown Jackson of the United States Supreme Court (federal public defender).

Public defense has come very far from capricious charity. And it is intrinsically intertwined with the suffrage movement and the work of these and other notable women. The parallels seem obvious—the public defender

⁵⁹ Three men—Paul Halvonick, Quin Denvir, and Frank Bell—first held the job, and then Laethem.

⁶⁰ See Contra Costa County Public Defenders.

⁶¹ See San Francisco Public Defender: Diversity, Equity, and Inclusion.

⁶² See The State Bar of California, 2024 Report Card on the Diversity of California’s Legal Profession.

stands up to current paradigms, demands explanation, and excels. In some ways, the public defender is also the recipient of undeserved attacks not levied against their counterparts.^{63,64} And even still, women continue to lead the fight in public defense.



⁶³ John Donohue III and Eric A. Baldwin, *The Crisis of America's Public Defenders*, Op-Ed, Stanford Law School, Oct. 8, 2024.

⁶⁴ Or, see “dump truck”: noun, defined once by Presiding Justice Gardner of the Fourth District Court of Appeal thusly;

For the benefit of the uninitiated, “dump truck” is a term commonly used by criminal defendants when complaining about the public defender. The origins of the phrase are somewhat obscure. However, it probably means that in the eyes of the defendant the public defender is simply trying to dump him rather than afford him a vigorous defense. It is an odd phenomenon familiar to all trial judges who handle arraignment calendars that some criminal defendants have a deep distrust for the public defender. This erupts from time to time in savage abuse to these long-suffering but dedicated lawyers. It is almost a truism that a criminal defendant would rather have the most inept private counsel than the most skilled and capable public defender. Often the arraignment judge appoints the public defender only to watch in silent horror as the defendant's family, having hocked the family jewels, hire a lawyer for him, sometimes a marginal misfit who is allowed to represent him only because of some ghastly mistake on the part of the Bar Examiners and the ruling of the Supreme Court in *Smith v. Superior Court*, 68 Cal.2d 547.

People v. Huffman 71 Cal. App. 3d 63, 70 (1977).