

ROSE ELIZABETH BIRD: CHOOSING TO BE JUST

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I. Introduction

In a 1986 interview, Rose Bird said, “I’ve always said when you’re the first of your sex or race in a position, three things apply to you. One—you’re always placed under a microscope. Two—you’re allowed no margin for error. And three—the assumption is always made that you achieved your position on something other than merit.”¹ The former Chief Justice of the California Supreme Court certainly had experience in this area. She was the first woman to serve as a law clerk for the Nevada Supreme Court. She was the first woman to serve as a deputy public defender in the county of Santa Clara. She was the first woman to teach at Stanford Law School. She was the first woman to serve in a cabinet level position in the state of California. She was the first woman appointed to the California Supreme Court. She was the first woman to become Chief Justice of the California Supreme Court. And she was the first woman to be voted off the Supreme Court (among the first three ever to be voted off the Court). Clearly, Bird was an accomplished woman, and she knew the sense of pride in being the “first woman” many times over, and also difficulties in holding that title.

Rose Bird’s career as an attorney in California was quite distinctive, not just in the amount of firsts she listed on her resume, but also in that controversy seemed to follow her wherever she went. Despite the fact that newspapers covered her actions in public office, especially her years on the Supreme Court, extensively, the true story is hard to glean from the myriad newspaper accounts. Because she did take such a strong stance on many controversial issues, most accounts clearly reflect the understanding of stalwart supporters or the fury of a fierce opponent. Therefore, in attempting to reconstruct her life and career, this paper will take a different approach.

¹ Harriet Chiang & Joan Ryan, *Bird’s Passion for Principles Recalled*, SF CHRONICLE, Dec. 6, 1999, at A1.

Following her death, Rose left behind a small collection of papers—scrapbooks, of a sort—of the mementos she kept throughout her life. Because she was estranged from her only surviving family, two brothers, these treasures quite probably would have been destroyed but for the effort of her close friend and hairdresser, Frank Sack, who rescued the papers from her home shortly after her death. The collection consists largely of newspaper clippings, letters, and a few personal notes. I will attempt to give an account of her life based on what she kept, what was important to her. The majority of her clippings and keepsakes came from two main periods: her initial appointment to the California Supreme Court and the general election that followed, and her difficult battle to maintain her seat on the Supreme Court in the retention election of 1986. As a result, this paper will focus on these two areas, although it will attempt to frame these periods within the greater context of her entire life.

Interestingly, she seemed to take a great deal more care in preserving her appearance in the newspaper early on than in later years. A photograph and caption of her participating in an inter-high school student government summit is carefully laminated. Articles from early on in her judicial career are neatly cut out of the newspaper and pasted into scrapbooks, yet articles from later on in her career did not receive the same treatment; most of them are taped or pasted to blank sheets of eight and one-half by eleven paper and some are merely cut out and stacked together.

Among the clippings and mementos Rose saved was also a number of obituaries and articles about her after her death, collected by Mr. Sack, as well as a videotape of her memorial service, programs from a variety of services held for Rose, and two CD ROMs

containing scanned images of tokens she kept. These items were also quite useful in putting together this story.

II. Formative Years

Rose Elizabeth Bird was born on November 2, 1936, on a chicken farm outside of Tucson, Arizona.² Her father, who was 66 years old when she was born,³ was a hat salesman who, not surprisingly, went bankrupt during the Great Depression.⁴ Up until this point her mother, Anne, was a school teacher, but when their financial situation became precarious, she took a job installing plexiglass windows on transport airplanes at Davis-Monthan Air Force Base in Tucson.⁵

In 1941, Rose's parents separated, and her father died shortly after. Her mother moved Rose and her two older brothers, Philip and Jack, to New York state, where she worked at a plastics factory.⁶ In New York, Rose attended Sea Cliff High School in Long Island.⁷ It was here that Rose got her first taste of politics, both at the student government level and the federal government level. Rose served as an ambassador to the Interschool World Relations Council, representing Sea Cliff.⁸ In addition, in 1952, she volunteered on the campaign for Democratic presidential nominee Adlai Stevenson.⁹ She did not receive a great deal of support on the campaign trail because the area she was

² *Rose Bird: California Chief Justice, first female cabinet officer, first woman to serve on California's highest court*, POWERFUL PATHWAYS PROFILE GALLERY, available at <http://www.gse.harvard.edu/~cunninju/pro12.htm>.

³ Chiang & Ryan, *supra* note 1.

⁴ Larry D. Harfield & Anastasia Hendrix, *Rose Bird recalled as brilliant legal trailblazer*, SAN FRANCISCO EXAMINER, Dec. 6, 1999, at A1+.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ From a clipping whose source cannot be identified among Bird's collection of papers.

⁹ Harfield, *supra* note 4.

worked in was largely republican, but she still went on canvassing door to door in support of her candidate.

Rose did well in school, probably due to the encouragement and interest of her former-school teacher mother. Her mother's struggles as a factory worker taught her very early on how important it was to work hard and to train herself for a career that she would enjoy.¹⁰ After she graduated from high school in 1954, she went on to Long Island University, where she received a full scholarship. She majored in English (with minors in economics and history¹¹) with the intention of eventually becoming a journalist, a fact that many reporters, whose later dealings with her were at best chilly, found surprising.¹² She was fairly active on campus during her college career, serving as the student director of the Long Island University Forum of the Air and the editor of the school's yearbook, the *Sound*.¹³ She graduated from Long Island University *magna cum laude* in 1958.¹⁴

After she graduated from college, Rose received a fellowship to study at the University of California at Berkeley, but opted not to pursue that avenue right away.¹⁵ Instead, she worked for a year as a secretary to a research scientist at the Polytechnic Institute of New York to save up extra money for living expenses.¹⁶ When she did finally enter graduate school at UC Berkeley the following year, she chose to study political science. At first glance, this seems strange for someone who aspired to be a journalist, but there was a method to her madness: she wanted to be a foreign correspondent.¹⁷

While at Berkeley, Rose earned the prestigious Ford Foundation grant, which allowed her

¹⁰ Bob Schmidt, *Looking Ahead with Rose Bird*, San Jose Mercury News, March 20, 1977.

¹¹ *Id.*

¹² Harfield, *supra* note 4.

¹³ CURRENT BIOGRAPHY, May 1984, at 10.

¹⁴ Harfield, *supra* note 4.

¹⁵ *Id.*

¹⁶ CURRENT BIOGRAPHY, *supra* note 13.

¹⁷ Schmidt, *supra* note 10.

to serve as an intern in the state legislature for a year.¹⁸ She worked for state assemblyman Gordon Whitten, helping to draft legislation for the statewide testing of students.¹⁹ It was here that she decided to switch her program of study from political science to law; she felt lawyers had more influence on public policy.²⁰ So, when she returned to Berkeley the following year, it was not to the political science department, but the law school, Boalt Hall.

It was at Boalt that she met her future ally, and future governor of California, Edmund G. (Jerry) Brown, Jr. Both lived at International House while studying there.²¹ They became friends and Brown would eventually be, in part, responsible for Rose’s later notoriety as a state Supreme Court justice. In an interview the year before Rose’s death, Brown commented that from the very beginning, he had been struck by her ideas and forthrightness.²²

Even before she graduated from law school, Rose was getting attention from the press. The May 1965 issue of *Mademoiselle* featured an article highlighting what it was like for young women in law schools around the country. Rose was one of the featured students.

Rose Elizabeth Bird, 27, a tall, honey blonde who swims a quarter of a mile each day to break up the sedentary student routine, worked before law school as a legislative assistant to the California State Assembly. The experience convinced her that society is really shaped by law. “If you want to have an impact,” she says, “law is the key.” Now a senior at the University of California School of law (called Boalt Hall), Rose wants to get back into Government, but this time in trial work—generally a “for men only” area of law.

¹⁸ Harfield, *supra* note 4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Schmidt, *supra* note 10.

²² *Rose Bird: California Chief Justice, first female Cabinet officer, first woman to serve on California’s highest court, supra* note 2.

She knows there will be tough sledding ahead, but is determined to work in something like the California public defender’s office, arguing cases in behalf of indigent defendants. This kind of job is not lucrative, but it does provide a chance, she says, “to get seasoned fast in trial work—a fairly remote possibility for a woman in private practice.”²³

It appears that, as soon as she entered law school, she had a good idea of what she planned to do with her degree. Her professors tried to discourage her from becoming a trial attorney, telling her that it was nearly impossible for women to get that type of job.²⁴ But she was not deterred, and she did exactly what she set out to do.

III. Early Career

After graduating from law school in 1965, Rose clerked (as the first female clerk) for the Nevada Supreme Court.²⁵ She then went on to pursue her goal of becoming a public defender. She first applied for a position at the public defender’s office in Sacramento, but was candidly told that they would not hire a woman.²⁶ Her interviewer said that he had only ever seen one good female trial attorney, and she became a terrible alcoholic.²⁷ She next applied at the Santa Clara County Public Defender’s Office. The office of 10 attorneys took a vote as to whether or not she should be hired.²⁸ She only received two yes votes, one from a Hispanic and one from an African-American, but she was, miraculously, still hired.²⁹ Apparently, the men were reluctant to bring Rose on as an attorney because her presence might disrupt their boy’s club atmosphere. It was the

²³ *Girls in Law*, MADEMOISELLE, May 1965, at 90.

²⁴ BETTY MEDSGER, FRAMED: THE NEW RIGHT ATTACK ON CHIEF JUSTICE ROSE BIRD AND THE COURTS 14 (1983).

²⁵ Schmidt, *supra* note 10.

²⁶ MEDSGER, *supra* note 24, at 13.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Harfield, *supra* note 4.

office tradition for whoever won cases that week to buy drinks for the office and sit around telling trial stories on Friday afternoons.³⁰ They thought having a woman around would disrupt this practice, but Rose ended up winning cases and bringing bottles to their Friday afternoon get-togethers.³¹

Eventually, Rose was accepted by her colleagues and was even described by them as an excellent appellate lawyer.³² She went on to head up the appellate division, arguing a number of landmark cases before the California Supreme Court.³³

Rose also took a personal interest in some of her clients during her time at the public defenders office. For example, one of her one time colleagues at the public defender's office, Santa Clara County Superior Court Judge Taketsugu Takei, recounted a story at a memorial service for Rose where she showed a great deal of a compassion for a young prostitute she represented.³⁴ The girl, who had run away to San Jose from an Indian reservation, found she could not support herself on her own and was forced to resort to prostitution.³⁵ Rose argued the case with her usual vigor, and ended up winning. After the ruling, she gave the girl money from her own pocket to help her to return to her family on the Indian reservation.³⁶

In 1972, while she was working at the public defender's office, Rose also began to team-teach a clinical course in criminal defense at Stanford with Anthony

³⁰ MEDSGER, *supra* note 24, at 14.

³¹ *Id.*

³² Harfield, *supra* note 4.

³³ *Id.*

³⁴ Meredith May, *Rose Bird Tribute Honors Ex-Justice As Humanitarian*, S.F. CHRON., Jan. 17, 2000, at A15+.

³⁵ *Id.*

³⁶ *Id.*

Amsterdam.³⁷ She used her position at the public defender’s office to help give students first-hand criminal defense experience. She would collect cases from her colleagues that they believed were hopeless and give them to her students; despite the public defender’s office’s lack of hope in these cases, the class lost few of them.³⁸ A former student, the Honorable Joan Gottschall, District Court Judge for the Northern District of Illinois, described how Rose’s encouragement influenced her at one of her memorial services. Judge Gottschall went to trial on a shoplifting case that Rose had assigned her, which eventually ended in a hung jury.³⁹ She said that, throughout the trial, if she was too slow to object, Rose, who was sitting by her side at the defense table, would give her a swift kick in the shins beneath the table.⁴⁰ Through this, she learned the value of a timely objection. Rose’s efforts did not go unnoticed by her students, who awarded her a prize as the best professor at the law school.⁴¹

At the end of the 1973-74 academic year, Rose turned down a non-tenured faculty position at Stanford and left the public defender’s office with the intention of striking out on her own and starting her own practice.⁴² She never got that far, though. During the summer, she volunteered on her friend Jerry Brown’s gubernatorial campaign. Any time he was in the Bay Area campaigning, she volunteered as his chauffer.⁴³ He repaid her for her time after his election by including her in his transition team and appointing her as

³⁷ Videotape: Remembering Rose Bird: A Memorial Tribute to Rose Elizabeth Bird, 1936-1999 (JusticeVision 1999) (remarks of Darrell L. Sackl).

³⁸ Videotape: Remembering Rose Bird: A Memorial Tribute to Rose Elizabeth Bird, 1936-1999 (JusticeVision 1999) (remarks of Joan Gottschall).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Sackle, *supra* note 37.

⁴² CURRENT BIOGRAPHY, *supra* note 13, at 10.

⁴³ Harfield, *supra* note 4.

his Secretary of Agriculture and Services.⁴⁴ She was the first woman to hold a cabinet level position in the state of California.

It was as Secretary of Agriculture that Rose was first thrust out into the public eye, and first started to spark controversy among Californians. The Department of Agriculture and Services is the largest department in the state, combining the interests of the food and agriculture, the Franchise Tax Board, the state Personnel Board, and the Department of Consumer affairs.⁴⁵ Her appointment itself was unusual, not only in that she was the first woman in such a position, but because California's Secretary of Agriculture was typically a grower, which she clearly was not.⁴⁶ Despite her lack of experience in agriculture, Bird was committed to her job and pushed legislation that allowed farm workers to organize and afforded workers greater safety measures.⁴⁷ She also had a hand in the creation of the California Agriculture Labor Relations Board. Although many workers were probably grateful for her efforts on their behalf, she made enemies of many powerful agricultural interests.⁴⁸

The commitment to worker safety Rose showed during her tenure as Secretary of Agriculture probably extended from watching her mother's experiences in working in a plastics factory. Her mother suffered many adverse health effects related to her job, which gave rose a lasting interest in occupational safety and health, especially in regulating exposure to hazardous chemicals in the workplace.⁴⁹ One of Bird's major

⁴⁴ *Id.*

⁴⁵ Schmidt, *supra* note 10.

⁴⁶ *Rose Bird: Humane Radical*, available at <http://www.goodbyemag.com/nov99/bird.html>.

⁴⁷ *Rose Bird: California Chief Justice, first female Cabinet officer, first woman to serve on California's highest court*, *supra* note 2.

⁴⁸ *Fighter for the Disenfranchised*, S.F. Chron., Dec. 7, 1999, at A26.

⁴⁹ CURRENT BIOGRAPHY, *supra* note 13, at 11.

accomplishments as Secretary of Agriculture was to ban the short handled hoe. The design of the hoe forced farm laborers to spend hours daily stooped over in the fields.⁵⁰

Through all the negative attention she got from agricultural interests for being so adamant about the health and safety of workers, there was some press attention that Rose didn't seem to mind. She was quite fond of political cartoons drawn by Dennis Renault of the *Sacramento Bee*, and clipped his drawing and corresponded with him occasionally. His cartoons often did not depict her positively, but she seemed to appreciate his candor.

In 1976, shortly before her appointment to the state Supreme Court, Rose was diagnosed with breast cancer. She underwent a modified radical mastectomy, but refused chemotherapy and radiation therapy. Her doctors said that, without these treatments, she would not live longer than two years.⁵¹ Instead, she opted for alternative healing methods, emphasizing exercise, large doses of vitamin C, and a vegetarian diet consisting of mostly raw vegetables and wheatgrass juice.⁵² Dealing with her illness made her focus not only on her striving for good physical health by eating right and exercising, but also on what is important in life. In 1983, the *Los Angeles Times* quoted her as saying, "In a peculiar way, death can teach you what life is all about. It is a painful lesson and a difficult journey, but I am personally grateful that I was made to travel this path at a relatively early age. For I have learned much about myself, much about what I want out of life, and much about how precious life and people are."⁵³

⁵⁰ Todd S. Purdum, *Rose Bird, Once California's Chief Justice, Is Dead at 63*, N.Y. TIMES, Dec. 6, 1999, at B18.

⁵¹ Joe Hing Kwok Chu, *Others' Experience with Cancer: Rose Bird, the California Chief Justice*, available at <http://www.slipcue.com/obits/02/12.html>.

⁵² Maura Dolan, *Ex-Chief Justice, Opposed to Death Penalty, Ousted by Voters in '86*, L.A. TIMES, Dec. 6, 1999, at A11.

⁵³ Chu, *supra* note 51.

IV. Appointment to the State Supreme Court

Governor Jerry Brown appointed Bird as the Chief Justice of the California Supreme Court early in 1977. From the get-go, her appointment was controversial. Today, the idea of a woman seated on the state’s highest court does not phase most Californians—they now have three. At the time, however, it clearly was not common place. But Rose’s gender wasn’t the only thing that troubled people. Her youth was sometimes a concern; at only 40 years old, people wondered if she had the life experience necessary to do the job.

There was speculation that she was appointed because of her gender. One newspaper article reporting on her appointment stated, “Sparkling as the young woman’s record is, it is not one that would clearly establish a man’s credentials for the State Supreme Court.”⁵⁴ Rose herself even commented that this might have been a strong factor in influencing Brown’s decision to appoint. She said the reason she thought Brown appointed her was because he wanted to make a statement about competence and ability of women—and his record of appointing women was generally a good one.⁵⁵ But another criticism was that Rose had no judicial experience.⁵⁶ If Governor Brown’s goal was to appoint a woman to the high court, there were a number of women on California appellate courts and federal courts in California that might have fit the bill.⁵⁷ On the other hand, a number of U.S. Supreme Court justices were appointed to the high court without prior judicial experience, including Felix Frankfurter, Earl Warren, William

⁵⁴ *The governor’s choices for Supreme Court*, REDWOOD CITY TRIB., Feb. 16, 1977, at 16.

⁵⁵ Diane Johnson, *Iconoclast with Class*, LEAR’S, May/June, 1988, at 80.

⁵⁶ *The governor’s choices for Supreme Court*, *supra* note 54.

⁵⁷ Bill Bancroft, *Manuel Wins OK to Court*, OAKLAND TRIB., Mar. 8, 1977, at 1+. Before Bird’s nomination was announced, but after many had already learned that Bird was Brown’s candidate, many women’s groups lobbied the governor to appoint a more qualified woman, such as Herma Hill Kay, a professor at the University of California, or Shirley Hufsetdler, a Ninth Circuit judge. John H. Bunzel, *Younger Force Into Bird Choice?*, clipping of unknown origin in scrapbook.

Rehnquist, Lewis Powell, and Byron White.⁵⁸ Ex-U.S. Supreme Court Justice Tom C. Clark came to Rose's defense on this issue, noting that judicial experience was not necessary, and may even be a hindrance, on the high court.⁵⁹

Furthermore, Rose had established herself as an excellent administrator in her role as Secretary of Agriculture, which would translate nicely to the role of the chief justice as a central administrator to the state's court system.⁶⁰ When asked about her lack of judicial experience, Rose said that it should be measured by looking at the totality of the system, and that she has experience from being a teacher in getting people to look at the broader process of the system itself.⁶¹ She also felt that she had a very practical view of the system as a result of being involved in all three branches of government.⁶²

Along with Wiley Manuel, a Superior Court judge nominated to the court by Brown at the same time she was nominated, Bird's first obstacle to taking her seat on the court was to be confirmed by the Commission on Judicial Appointments. The three-member commission consisted of Justice Mathew O. Tobriner, the senior justice on the court and chairman of the commission, Parker Wood, the senior justice on the Court of Appeal, and Evelle Younger, the state attorney general. Tobriner, a close friend of Bird's, was expected to, and did vote to confirm her nomination.⁶³ Wood, on the other hand, was expected to vote against her confirmation. Several days beforehand, he sent a message to her that, if she could find a Protestant minister to testify that she was a good

⁵⁸ *Another First for California*, clipping of unknown origin in Bird's scrapbook.

⁵⁹ Dale Rodebaugh, *Ex-Justice Clark: A Judge Need Not Have Experience*, S.J. MERCURY NEWS, Mar. 12, 1977.

⁶⁰ *The governor's choices for Supreme Court*, *supra* note 54, at 16.

⁶¹ *Criticism ripples over Rose Bird*, S.J. MERCURY NEWS, Feb. 14, 1977.

⁶² *Id.*

⁶³ MEDSGER, *supra* note 24, at 17; Bill Bancroft, *Rose Bird Confirmed State Chief Justice*, OAKLAND TRIB., Mar. 12, 1977; *Younger Swings to Bird for High Court*, SAN MATEO TIMES, Mar. 12, 1977, at 1.

Christian before the Commission, he would vote for her.⁶⁴ Thinking it improper she refused, and he voted against her confirmation.

The opposition of Tobriner and Wood left Younger as the swing vote, which proved to be a difficult position for him. Younger was planning on running for governor on the Republican ticket in the gubernatorial election against Brown the following year,⁶⁵ and his actions with respect to Bird's confirmation could have played a significant role in his performance in the election. He received a significant amount of lobbying in both directions, the strongest of which came from Roger Mahoney, a Catholic bishop from Fresno and the former chairman of the Agricultural Labor Relations Board created by Bird while Secretary of Agriculture. Bishop Mahoney's letter said that his opposition to her appointment was based on "her questionable emotional stability and her vindictive approach to dealing with all persons under her authority," which he experienced while working with her on the ALRB.⁶⁶ He also said that "she has a personal temperament which enables her to lash out at people who do not agree with her. Her normal approach is the become vindictive, then to transfer her feelings to a long phase of non-communication," and that her appointment was merely a reward for loyalty to Governor Brown.⁶⁷

Bird's nomination was also opposed by 19 deputy district attorneys in Santa Clara County, who said she was underqualified for the position (at the time, there were about 80 attorneys in the office).⁶⁸ A number of republicans in state government, including 19

⁶⁴ MEDSGER, *supra* note 24, at 17.

⁶⁵ MEDSGER, *supra* note 24, at 17.

⁶⁶ *Rose Bird hit in bishop's letter*, REDWOOD CITY TRIB., Mar. 3, 1977, at 21.

⁶⁷ *Id.*

⁶⁸ *Rose Bird rapped*, clipping of unknown origin in scrapbook. When questioned about the opposition by these deputy district attorneys at her confirmation hearings, Bird noted that the senior deputies did not sign

(of 23) in the state assembly and 14 in the state senate signed a letter urging Younger not to confirm her.⁶⁹ Bird did have a number of supporters, as well, though. For example, Justice Lynn D. Compton of the Court of Appeal, a conservative Republican closely associated with Younger, wrote a letter to the *Los Angeles Times* endorsing Bird.⁷⁰ The Board of Governors of the State Bar Association also said that Bird was qualified to take on the position.⁷¹ Finally, the fact that law enforcement groups such as the California Peace Officers Association and the California District Attorneys Association did not oppose her confirmation was significant (they were expected to, as most of her career was spend as a public defender and she was labeled soft on crime).⁷²

Throughout the confirmation process, Younger refused to comment on his position regarding Bird despite the fact that he was asked quite frequently while campaigning for governor.⁷³ Throughout the confirmation process, he went significantly beyond what similar Commissions had done in the past in confirming justices to the court; he sent Rose a detailed, 14-point questionnaire asking about her legal experience, views on the death penalty, and states rights versus federal rights.⁷⁴ Younger said the reasoning behind taking such steps was because she had no previous judicial record to examine.⁷⁵ The Commission hearings were also convened, and televised for the first time, to determine whether or not Bird and Manuel should be confirmed. While Manuel testifies for three minutes and was speedily confirmed, Rose testified for 37 minutes, and

the letter, nor did any persons with whom she worked personally. George Newman, *Bird Appointment Meddling Charged: Bar Aides Accuse Governor*, S.J. MERCURY NEWS, Mar. 8, 1977.

⁶⁹ *Opposition to Bird Growing*, clipping of unknown origin in scrapbook.

⁷⁰ Joe Scott, *Bird Nomination*, OAKLAND TRIB., March 6, 1977, at 42.

⁷¹ *Bar Board Backs Bird*, clipping of unknown origin in scrapbook.

⁷² *Police Group Backs Bird*, clipping of unknown origin in scrapbook.

⁷³ *Younger Won't Talk About Bird*, clipping of unknown origin in scrapbook.

⁷⁴ *Panel Meets Today: Rode Bird Agrees to Answer Queries*, L.A. TIMES, Mar. 7, 1977, at 1+.

⁷⁵ *Id.*

63 witnesses testified on her appointment, an annotated list of which she kept in her scrapbook.

A few controversial issues arose during the hearings. First, one of the thousands of letters regarding Bird received by the Commission on Judicial Appointments urged that she not be confirmed because she had been the subject of disciplinary action while working for the public defender and was nearly fired.⁷⁶ In response, the Santa Clara County Public Defender, Sheldon Portman, made Bird's personnel file available to the public, with her permission.⁷⁷ There was nothing in the file that could have appeared controversial or damaging.⁷⁸ There were also accusations made by a Santa Clara County district attorney that Bird had made false representations to the court regarding a settlement agreement in order to get more favorable treatment for her client.⁷⁹

After more than 85 witnesses testified, with 47 still left, Younger announced that he was ready to make his decision. He voted yes to Rose's confirmation, although he did so "reluctantly." In a letter to the editor (of unknown origin) she clipped, an Oakland resident expressed his disappointment with Younger's decision, accusing him of supporting an unqualified candidate in order to gain women's votes in the gubernatorial election.⁸⁰ Part of the reason Younger voted for Bird in spite of the fact that he felt there were more qualified persons available was that he felt the governor should have great latitude in making appointments.⁸¹ "My limited responsibility requires only that I determine if Rose Bird is qualified. Absent any significant evidence to the contrary, I am

⁷⁶ George Newman, *Former Boss Opens Rose Bird's Personnel File*, S.J. MERCURY NEWS, Mar. 19, 1977, at 2.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Gale Cook, "Fraud" issue raised at Bird hearing, S.F. EXAMINER, Mar. 11, 1977.

⁸⁰ William A. Pitsker, *Younger's Vote*, a clipping of unknown origin in scrapbook.

⁸¹ *Criticism ripples over Rose Bird*, S.J. MERCURY NEWS, Feb. 14, 1977.

compelled to find that she is,” he said.⁸² In some sense, Younger really had no choice but to find Bird qualified because he had years earlier voted to confirm William Clark, Governor Reagan’s appointee to the California court, who was much less qualified than Rose.⁸³ Clark had not graduated from college or law school.⁸⁴ When asked how she felt about not getting a unanimous confirmation, as Wiley Manuel did, Rose said that everyone hopes for a unanimous vote but “perhaps it will cause me to work harder.”⁸⁵

Rose’s next hurdle was confirmation by the people; California requires that newly appointed judges stand for retention in the next state general election (which in this case also happened to be the gubernatorial election in 1978). During the nearly two years that passed between her initial confirmation and her first retention election, she was sworn in as the state’s chief justice in a former Supreme Court building in Old Sacramento⁸⁶, wearing a black pantsuit and a yellow hair ribbon.⁸⁷ As Governor Brown asked her to swear to defend the Constitution of the United States, she misspoke and flubbed her response.⁸⁸ She said, “I never could take directions from the governor.”⁸⁹ She began making changes to the state’s judicial system immediately. First, she set up a program of temporary judicial assignments to let appellate court judges sit on and learn how trial courts work and vice versa.⁹⁰ Also, she created a policy of not allowing judges defeated in retention elections who subsequently retired to be appointed to temporary positions.⁹¹

⁸² Bill Bancroft, *Rose Bird Confirmed State Chief Justice*, OAKLAND TRIB., Mar. 12, 1977.

⁸³ John H. Bunzel, *Younger Forced Into Bird Choice?*, clipping of unknown origin in scrapbook.

⁸⁴ PREBLE STOLZ, *JUDGING JUDGES: THE INVESTIGATION OF ROSE BIRD AND THE CALIFORNIA SUPREME COURT*, 88 (1981).

⁸⁵ Clipping of unknown origin in scrapbook.

⁸⁶ *Id.*

⁸⁷ *Justice Flubs Her Lines*, SAN MATEO TIMES, Mar. 28, 1977, at 8.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Elizabeth Pollock, *Bird Changes Policy on Assignment of Judges*, L.A. DAILY J., May 2, 1977, at 1.

⁹¹ *Id.*

A number of changes that she made angered others on the court. She offended the staff right off the bat by sending in a transition team of four young lawyers to learn the functions of each of the courts offices in order to prepare her to take on the administration of the court; the staffers felt that this was a criticism of their work.⁹² One person in particular, Ralph Kleps, the director of the Administrative Office of the Courts, took this particularly hard. While chief justices came and went, he had basically run the court administratively. After she was sworn in, Kleps asked Bird to sign documents delegating administrative powers to him as previous justices had. She refused to do so, thinking that it was unwise to delegate tasks you did not fully understand.⁹³ Instead, she would delegate functions to him on a case-by-case basis, as she deemed it was appropriate. Her approach does seem reasonable on one hand, but on the other, the administration of the courts was a huge job, and he had experience and a trained staff under him while she had hardly any knowledge of how the administration worked.

Another big change Rose made was hiring temporary, one-year law clerks rather than using the permanent staff for writing her opinions. She felt that the justices should do more of their own opinion writing, which angered the permanent staff, most of whom had been there longer than many of the justices.⁹⁴ This alienated the staff and made her turn elsewhere for criticism of her work. In an undated letter to Professor Gary Goodpaster, a professor at UC Davis Law School, thanking him for comments he made on an opinion called *Jackson*, she complained of the large, powerful, and entrenched bureaucracy at the court.⁹⁵ She said that critics of the her and the court say that the

⁹² MEDSGER, *supra* note 24, at 54.

⁹³ *Id.*, at 56-57.

⁹⁴ *Id.*, at 62.

⁹⁵ Undated letter to Professor Goodpaster among her personal papers.

quality of the opinions has decreased dramatically, but noted that they did not realize the opinions were being written by the same people.⁹⁶ Her actions to remedy the situation were resented, so she did not feel she could have a frank discussion on the law with anyone at the court. As a result, she invited him to take a look at her work and discuss it.⁹⁷

Many of the changes she made that upset the court staff so much were fairly petty. For example, she made several changes to her office, including removing heavy drapes in favor of Venetian blinds, purchasing a new desk (with her own money), installing new carpet, and rearranging the furniture, which was met with so much criticism that she had the furniture moved back to its original position.⁹⁸ Some complaints went so far as to criticize her style of dress. Then, of course, there were some not-so-petty feelings, particularly from associate justices such as Stanley Mosk who felt they should have been promoted to the chief justice position rather than her. The negative feelings among the court staff prompted many of them to campaign against her in the confirmation election; she also faced a fair amount of opposition from outside of the court as well. Two outside groups opposed her in the election: the Law and Order Campaign Committee, backed largely by H.L. Richardson, a Republican state senator, and No-On-Bird, an agricultural based campaign organization.⁹⁹ It is interesting that there was such a big push to get Rose defeated in the election because no judge in California had ever been voted off the bench by the electorate.

⁹⁶ *Id.*

⁹⁷ Undated letter to Professor Goodpaster among her personal papers.

⁹⁸ MEDSGER, *supra* note 24, at 65-67.

⁹⁹ *Id.*, at 73-74.

The campaigns against Bird focused on a couple of specific issues. One was *People v. Caudillo*. In *Caudillo*, the court, with Bird in the majority, found that rape did not constitute great bodily injury for purposes of a statute requiring increased sentences for felonies that involved great bodily injury.¹⁰⁰ The reasoning behind this was that the statute provided that there would be increased sentences for great bodily injury during a rape, robbery, or burglary; if rape was a crime that could be enhanced by great bodily injury, it couldn't very well be great bodily injury itself.¹⁰¹ This decision was not overwhelmingly well received by the public, and was probably part of the reason Bird maintained a reputation for being soft on crime.

Another issue was Proposition 13, where again Justice Bird's opinion was not favored by the public. Proposition 13 dealt with property taxes, placing a 1 percent ceiling on the tax rate and rolling back assessment values to 1975 levels or the value on the date of acquisition for property acquired after 1975.¹⁰² Taxpayers loved the proposition because it significantly reduced the property taxes they were required to pay (although it created host of other funding problems to complex to discuss here). The court sustained the law, with Bird as the only dissenting vote.¹⁰³ She dissented on equal protection grounds, saying that the law did not treat all property owning taxpayers equally.¹⁰⁴

Finally, Bird was attacked on the issue of school busing for desegregating the Los Angeles County School District. In the early 1960s, the ACLU filed a desegregation lawsuit against the school district. The pre-Bird California Supreme Court upheld the

¹⁰⁰ STOLZ, *supra* note 84, at 21.

¹⁰¹ *Id.*, at 21.

¹⁰² *Id.*, at 28.

¹⁰³ *Id.*, at 30.

¹⁰⁴ *Id.*

lower court's ruling that the school's needed to be desegregated. However, the court's opinion did not require busing to remedy the segregation. As a result, the district's busing plan, which was not very popular, was later challenged. The lower court judge, Judge Egly, refused to suspend implementation of the busing plan, but the appeals court overturned him. The Supreme Court, with Bird in the majority, suspended the Court of Appeals suspension order. Given the hostility to the busing plan, this affected Bird's popularity.¹⁰⁵

A considerable amount of controversy immediately followed the election as well. Rose was confirmed by the voters in 1978, but by a narrow margin. The electorate voted to retain her, but with only a 51.7% majority.¹⁰⁶ On the day of the election, the *Los Angeles Times* ran a front-page article accusing the court of withholding a key decision in order to help Bird's chances at the polls.¹⁰⁷ The decision, *People v. Tanner*, overturned a 1975 law that required prison terms for persons who used a gun during a violent crime. The article said that the decision was being delayed by Justice Tobriner, one of Rose's strongest supporters.

Tanner, the "use a gun-go to prison" case, was decided by a 4-3 vote with both Bird and Tobriner in the majority. It hinged on the fact that most people involved in the kind of violent crime the law covered would be going to prison anyway, and those that would not be going to prison probably should not have. For example, *Tanner*, the defendant in the case, was convicted of armed robbery. He worked for a security firm, and part of his job was to check on employee surveillance at a convenience store by shoplifting items. When the store cancelled the contract with the security firm, he

¹⁰⁵ *Id.*, at 33-37.

¹⁰⁶ MEDSGER, *supra* note 24, at 82.

¹⁰⁷ *Id.*, at 80.

decided to step up his efforts and used an unloaded .22 caliber handgun to stage a hold-up. Almost no one involved in the case believed that his crime warranted a prison sentence. The question was, did the law give the judge the discretion to not send him to prison and, if not, was it constitutional to take that discretion away? The court held that the legislature did not intend for judges to retain their discretion in violent crimes involving guns, and that such a law was not constitutional.

The accusations prompted Bird to request a hearing by the Commission on Judicial Performance to determine if any of the justices had acted improperly. The hearings became increasingly complex as they went on, and in the end, it seemed as though they were not only to determine the propriety of the justices' behavior, but also the extent to which the Commission itself could perform its duties properly. In the end, the Commission had an answer to the second question: there were deficiencies in the existing law that interfered with its carrying out its duties. As to the justices' behavior, the Commission failed to charge any justice with misconduct, but at the same time failed to clear any of the justices.¹⁰⁸

There is some speculation that Rose would have been more successful and not faced so much opposition from so early on if she had been appointed to an associate justice position, rather than chief justice, or if she had made changes slower.¹⁰⁹ She probably would not have agreed with this. First, she felt that she could not have made any of the positive administrative changes she did if she had started in a lower position.¹¹⁰ In such a position, she would have become part of the system and, if eventually elevated to the chief justice position, she would have been invested in it and would not want to

¹⁰⁸ *Id.*, at 194.

¹⁰⁹ *Id.*, at 63; *Fighter for the Disenfranchised*, S.F. CHRON., Dec. 7, 1999, at A26.

¹¹⁰ Joan Walsh, *Rose Bird: In Praise of a First Class Act*, L.A. WEEKLY, May/June 1986, at 20.

rock any boats. Also, because of her recent breast cancer diagnosis, she felt that she had to do things quickly because she had no idea how much longer she would be around.¹¹¹

V. Election Battle of 1986

During the rest of her tenure on the court, Rose would face a number of challenges and attempts to unseat her from the bench. She was the target of no less than seven ouster efforts during the eight years she spent on the court.¹¹² Only five of these efforts got to the point where petitions were circulated, and none gained enough signatures to require a recall vote.¹¹³

Most of the attacks in the 1986 election campaign had to do with her stance on the death penalty. During her time on the bench, Bird voted to overturn every death sentence that came before her, a total of 64 (and the court as a whole overturned 61 of them).¹¹⁴ Bird said that all of her death penalty decisions were based on flaws in the death penalty statute,¹¹⁵ but she also seemed to be strongly against the death penalty in general. For example, she participated in an anti-death penalty group called Death Penalty Focus, which awarded her the Aileen and Normal Felton Commitment to Justice Award in 1997.¹¹⁶

Throughout her judicial career and even continuing after her removal from the bench, Rose was constantly receiving hate mail and death threats.¹¹⁷ Most of it was connected with her anti-death penalty stance, including one post marked from Long

¹¹¹ MEDSGER, *supra* note 24, at 63.

¹¹² Wallace Turner, *Critics Try to Clip Wings of California's Justice Bird*, CHI. TRIB., Mar. 29, 1985, at C1.

¹¹³ *Id.*

¹¹⁴ Henry Weinstein, *Mourners Remember Rose Bird*, L.A. TIMES, Jan. 10, 2000, at A3+.

¹¹⁵ Ellen Goodman, *Behind Bird-bashing: The Chief Justice has modified neither opinions nor style*, S.J. MERCURY NEWS, June 27, 1986.

¹¹⁶ Mike Weiss, *Goodbye to a Rose that Thrived in Every Climate*, S.F. CHRON., Dec. 6, 1999, at A2.

¹¹⁷ *Id.*

Beach, California, that she kept among her personal papers.¹¹⁸ The letter, dated May 14, 1985, contains two newspaper clippings about death sentences and executions in other states. It comments on the articles:

“Rose, It is said that when a person is executed because they murdered an innocent person they do not murder (or rape, etc.) again.

“Give the murderer 20 years. He will only serve 7 years. That’s justice for the birds, in my opinion. This man (referring to one of the articles) has never said he was sorry for bludgeoning to death said woman. He is now “BEGGING” for HIS LIFE!!

“It’s too bad he didn’t murder a woman in California because the Supreme Court would find, somehow, an excuse to give him a 20 year sentence, then he would get out in 7 years, and then be able to prowl after more women, in my opinion.

“ONLY IN CALIFORNIA!!!”

Whether she kept this particular letter because it was the mildest, the strongest, or perhaps the funniest is unclear. Still, it is interesting as an example of the kind of criticism she received from ordinary folk, without access to printing presses or television broadcast equipment, as opposed to the typical criticism she received from the press.

Rose was not the only target of attacks in the 1986 election campaign. A republican group called the California Lincoln Political Action Committee apposed four of the 14 appellate justices who were on the November ballot from the Los Angeles 2nd Appellate District, all of which were Brown appointees.¹¹⁹ The group also campaigned against Bird and justices Cruz Reynoso and Joseph Grodin.¹²⁰ Another group, Crime Victims for Court Reform, also spearheaded a campaign against the three Supreme Court

¹¹⁸ Letter, unsigned, dated May 14, 1985, among Bird’s personal papers.

¹¹⁹ Claire Cooper, *New drive targets appellate court justices*, SACRAMENTO BEE, July 23, 1986, at B6.

¹²⁰ *Id.*

Justices.¹²¹ Although most criticism was focused on Bird, they wanted to make the public aware that it takes more than one vote to overturn a death sentence, so the responsibility did not all fall on Bird.¹²² Justice Stanley Mosk, another liberal on the court who was once targeted by conservative groups, managed to escape criticism during the 1986 election, which focused on the other three justices.¹²³

Governor George Deukmejian, who was running for re-election that November, also campaigned strongly against Bird. He pointed out that Bird consistently ruled against the people on popular initiative such as Proposition 13, the victims bill of rights, Proposition 8, reapportionment, and the federal balanced budget amendment.¹²⁴ Even President Reagan spoke out against Bird, arguing that she favored imposing a ridiculous strict liability law. He cited a case where a man was hit by a car while in a telephone booth; he sued the telephone company and won.¹²⁵ On its face this does seem a bit strange, but not so much when you notice that the door to the booth had jammed so the man could not escape, or that the company had placed the booth so close to the road it had been hit by a car on a previous occasion.¹²⁶

Some of the most controversial campaigning against Bird probably came from Sheriff John Duffy of San Diego. Duffy used his 200 deputies to distribute postcards to the public urging Bird to resign from the court.¹²⁷ Duffy ordered his deputies to

¹²¹ Frank Clifford, *Bird's Critics Take Aim at 2 Others: Reynoso, Grodin Targeted as Chief Justice Slips in Polls*, L.A. Times, June 15, 1986, at 1+.

¹²² *Id.*

¹²³ Lorie Hearn, *Mosk no longer target of anti-Bird group*, SAN DIEGO UNION, July 26, 1986.

¹²⁴ Laura Mecoy, *Governor Steps Up Attack on Chief Justice*, SACRAMENTO RECORDER, June 10, 1986, at 2.

¹²⁵ Charley Roberts, *Reagan Pushes Liability Reform, Raps Bird*, L.A. DAILY J., June 2, 1986.

¹²⁶ *Id.*

¹²⁷ Daniel M. Weintraub, *Board to 'Invite' Duffy to Meet; Lawsuit over Post Cards for Chief Justice at Issue*, L.A. TIMES, Feb. 21, 1985, at 1.

distribute the postcards on request and to make them available at all Sheriff's substations throughout the county; 15,000 postcards were printed for the campaign.¹²⁸

Bird did have some support for her during the campaign. State Sen. Nick Petris and former congressman Jerry Waldie were trying to let the public know that the issue with Rose Bird was not really the death penalty, but businesses and industry trying to overturn labor safety and consumer protection laws. The two men thought it was important for someone to get out there publicize these issues because, as a justice, it was not really appropriate for Rose to campaign for herself or speak about previous cases and thus could not defend herself.¹²⁹ She also earned praise from ABC news anchor Ted Koppel, who said after interviewing her that she was a very thoughtful and intelligent person, but that it was a shame the public could not see this because she could not sum it all up in a 30-second sound bite.¹³⁰

Bird hired political consulting firm Zimmerman, Galanty & Fiman to run her confirmation campaign.¹³¹ With Bird, the firm created and managed the Committee to Conserve the Courts, which aimed for a multi-million dollar campaign budget.¹³² However, Rose abruptly decided mid-campaign that she only wanted the firm to do her television commercials.¹³³ Instead, she hired on Washington-based consultant John Law, but that relationship was short-lived as well.¹³⁴ Upon Law's departure, Rose decided to

¹²⁸ Tom Greeley, *Use of Deputies Called Illegal; ACLU Sues Duffy on Drive to Oust Justice Bird*, L.A. TIMES, Feb. 20, 1985, at 1.

¹²⁹ Pat Keeble, *Petris: Business, industry behind campaign against Bird*, CONTRA COSTA TIMES, June 23, 1986, at 1A+.

¹³⁰ Howard Rosenberg, *Koppel Earns Stripes Riding a Techno-tiger*, L.A. TIMES, June 6, 1986 at 1+.

¹³¹ *Bird Employs Consultant for '86 Campaign*, L.A. TIMES, Feb. 27, 1985, at 15.

¹³² Wallace Turner, *Critics Try to Clip Wings of California's Justice Bird*, CHI. TRIB., Mar. 29, 1985, at C1.

¹³³ John Balzar, *Second Key Aide Quietly Leaves Bird Campaign*, L.A. TIMES, Dec. 17, 1985, at 3.

¹³⁴ *Id.*

head her campaign with a group of lawyers rather than political specialists, which some predicted could be disastrous.¹³⁵

And disastrous it was. When the polls closed, Chief Justice Rose Bird, along with Justices Reynoso and Grodin, was voted off the bench. When asked how she was taking her defeat, she smiled and said, “Just like a man.”¹³⁶ Shortly after the election, Governor George Dukmejian announced the appointment of Justice Malcolm Lucas, his former law partner and the most conservative justice on the court, to succeed Bird as chief justice.¹³⁷

Surprisingly, Rose’s long battle with breast cancer actually helped her to deal with her eventual defeat in the retention election. She said that any horrible things the media could print or broadcast about you pale in comparison to the idea that you might die.¹³⁸ “Considering your own mortality makes you reexamine your goals. You learn that winning, for example, isn’t everything, and that means are more important than ends,” she said.¹³⁹

The defeat of Rose Bird, Cruz Reynoso, and Joseph Grodin changed law, politics, and the judiciary in California forever. “The defeat of Rose Bird was significant because it created a new danger in this state, the danger of politicizing a judicial branch that had not previously been subject to political pressures,” said Court of Appeal Justice J. Anthony Kline, who served with Bird in Gov. Brown’s administration.¹⁴⁰ Prior to the justices defeat, the judiciary maintained its independence; there was little worry of being voted off the bench simply because it had never happened before. Rose once said, “It is

¹³⁵ *Id.*

¹³⁶ Richard Stengel, *Of tall winners, big loser, frogs and a Bird*, Time, Nov. 7, 1986, at 53.

¹³⁷ *Deukmejian Picks Ex-Law Partner to be Chief Justice*, WASH. POST, Nov. 27, 1986, at A13.

¹³⁸ Diane Johnson, *supra* note 55, at 80.

¹³⁹ *Id.*

¹⁴⁰ Dolan, *supra* note 52.

easy to be popular. It is not easy to be just.” Now that judges new the electorate was willing to vote them off the bench, they faced the possibility of having to choose between being popular and keeping their jobs, and being just.

VI. Final Years

After she was removed from the Court, Rose had difficulty adjusting to a more private life. This seems to be, at least in part, because those that remained in power would not let her leave. Her name was often used in political campaigns to associate candidates with being soft on crime or too liberal, or to associate them with her extreme death penalty stance. When her friend and supporter Jerry Brown ran for mayor of Oakland, she was not able to help out on his campaign in any way, despite her desire to do so. “I can’t,” she said. “Being associated with me would hurt him.”¹⁴¹ Even more than 15 years after her removal from the bench, her name was still being used for political smear campaigns, including Dan Lundgren’s unsuccessful bid for governor of California in 1999, where he implied that Grey Davis would appoint more justices like her to the court.¹⁴²

Her notoriety made it difficult to find work; most firms were reluctant to hire someone whose name evokes such extreme reactions for fear of losing clients.¹⁴³ Jerry

¹⁴¹ Mike Weiss, *supra* note 116.

¹⁴² Pat Morrison, *Bird’s Legacy is a Warning to Jurists*, L.A. TIMES, Dec. 6, 1999, at A3. Interestingly, although Davis attempted to distance himself from Bird during his political campaign, they did at one time have a relatively close relationship when he was Chief of Staff for Governor Jerry Brown. She even performed the wedding ceremony for Davis and his wife, Sharon, who wrote her a lovely thank you note advising her of all the compliments she received on what a lovely ceremony it had been. Undated thank you note among Bird’s personal papers.

¹⁴³ Joel Sappell, *Death Penalty Controversy Trails Bird*, L.A. TIMES, May 14, 1990, at A1.

Brown urged her to run for a superior court judgeship in San Francisco, but not surprisingly, she refused.¹⁴⁴

One might think it would not be so hard to a former state Supreme Court justice to find gainful employment, presumably many firms and law school faculties would want to add the name of someone who once held a position on the prestigious high court. And it was not for Justices Cruz Reynoso and Joseph Grodin, who were also recalled from the court at the same time as Bird. Reynoso became a special counsel in the Sacramento office of a New York-based law firm, and Grodin became a professor at UC Hastings College of the Law.¹⁴⁵ The only offer from a firm that Bird received was an from feminist Gloria Allred's Los Angeles firm in 1986; although Bird's collection of papers does not document the situation, the deal was supposedly soured and killed by her poor temperament.¹⁴⁶ She was also given an offer to join the University of California at Los Angeles' law school faculty, but turned the position down because it would not allow her to take care of her mother in the San Francisco Bay Area.¹⁴⁷

For a short time in 1988, Bird worked as a television commentator for two ABC affiliate stations, KABC Channel 7 in Los Angeles and KGO in San Francisco.¹⁴⁸ Her commentaries aired twice weekly, and pitted her up against Bruce Herschensohn, a conservative Republican United States Senate candidate.¹⁴⁹ She said that the reason she did the television commentary was to get people to think about new ideas.¹⁵⁰ She had only one limitation on what she would talk about: the California Supreme Court. She

¹⁴⁴ Chiang & Ryan, *supra* note 1.

¹⁴⁵ Sappell, *supra* note 25.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Stephen G. Bloom, *Jury's Still Out on Bird as Commentator*, SACRAMENTO BEE, Apr. 16, 1988, at A1+.

¹⁵⁰ *Id.*

commented that the justices and staff on the court already have a tough job (which she clearly knew from experience), and that they certainly did not need any additional criticism from her.¹⁵¹ When her segment premiered, it was advertised during the Superbowl and billed her as “the most controversial woman in California.”¹⁵²

Unfortunately, the segment did not live up to all the hype and was cancelled shortly after it premiered. It is unclear exactly why she was dropped. Some of her friends speculate that it was because the station was under pressure from advertisers to fire her.¹⁵³ The station said her employment was terminated because the show went through a format change.¹⁵⁴

When attempts to revitalize her career in some capacity other than as a judge or lawyer failed, Rose retreated to a quiet life living with her mother and Australian terrier, Miss Nellie¹⁵⁵, in their home in Palo Alto, California.

Interestingly, Rose never married. She was asked to comment on her single status when *People Magazine* reported on a study finding that college educated women who have not married by their 25th birthday have only a 50 percent likelihood of ever marrying, women over 30 have only a 20 percent chance of ever marrying, women over 35 have only a 5 percent chance of marrying, and over 40 the odds slip to below one percent. Her short and simple reply was merely, “I haven’t married because the right man hasn’t asked me.”¹⁵⁶ When asked what qualities her prince charming would have, she replied that he should be “courtly and judicious, who would follow the letter of the

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Sappell, *supra*, not 25.

¹⁵⁴ *Id.*

¹⁵⁵ She was quite fond of her dog; not only did she travel with her, but she even had notepads printed “from Rose and Miss Nellie.”

¹⁵⁶ Eric Levin, *The New Look in Old Maids: A study says that single-minded women may end up staying that way, to which some luminous ladies respond*, “So, what?”, *PEOPLE*, March 31, 1986, at 28.

law, but with some spirit.”¹⁵⁷ Surprisingly, the image that probably springs to mind is not the one she sees, but rather, someone like Woody Allen. “Now *there’s* a man who’s courtly and judicious,” she said.¹⁵⁸

Rose died at Stanford University Medical Center on December 4, 1999, at the age of 63. She requested a private cremation and no funeral, but although she was hated by some, she was also deeply loved by many; so much so, in fact, that she was memorialized in at least two services.

VII. Conclusion

Rose Bird accomplished quite a bit during her life. She was a pioneer for women, breaking new ground in many different positions and serving as a role model to many. It is a shame that her career was cut off so early and in such a devastating way. I think because of this, and because of her solitude after leaving the court, many people see her more as a tragic figure later in life than as the leader she had been earlier on. On the other hand, some people who knew her said her life was not tragic at all. For example, Mr. Sack said that she was not really the recluse people thought she was, she was out and about and active in the community.¹⁵⁹ He said, “it wasn’t that Rose didn’t have anyone—she had everyone.”¹⁶⁰ Despite having access to her personal papers, it still is not clear what was really the case. Her scrapbooks and collections seem to largely reflect what was being said about her in the media at any given time. What is clear, though, is that Rose had a great deal of courage, in taking on new positions that women had never had

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ Weiss, *supra* note 116.

¹⁶⁰ *Id.*

access to before, in battling breast cancer, in sticking to her principles on the death penalty despite extreme public opposition, and in surviving the bitter election defeat and removal from the bench.

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FUTURE LEADS

Although I spent most of my research time going through the boxes of papers collected by Frank Sack, I think there is still much more useful information that could be used in future papers if he is willing to let students in the future borrow the materials. Specifically, there are many personal materials, like letters and journal entries, that are potentially very significant.

I also did very little searching into her career as a public defender, which is an avenue with a lot of potential. She argued several cases before the California Supreme Court while working at the Santa Clara County Public Defenders Office, and I think looking into these cases could be very interesting. It also might shed some light on the perspective she had on the State Supreme Court when she was appointed and how this affected the attitude she went into the position with.

Timeline: Rose Elizabeth Bird

“It is easy to be popular. It is not easy to be just.”

- November 2, 1936:** Rose Elizabeth Bird is born on a chicken farm outside of Tuscon, Arizona.
- 1941:** Rose’s parents separate. Shortly after, her father passes away. Her mother (Ann), a factory worker, moves Rose and her two older brothers, Phillip and Jack, to New York. There, her mother installs plexiglass windows on airplanes. Rose attends high school on Long Island, where she was a standout student.
- 1952:** Worked on Adlai Stevenson’s presidential campaign.
- Rose earns a scholarship to Long Island University, where she majored in English and graduated *magna cum laude*. She intended to pursue a career in journalism.
- 1958:** Enrolled as a graduate student in political science at UC Berkeley. While at Cal, she took an internship in the State Legislature in Sacramento; it was here she decided to go into law, because lawyers seemed to have the most influence on public policy.
- 1965:** Graduated from Boalt Hall School of Law.
- Serves as the first female law clerk on the Nevada Supreme Court (clerking for the court’s chief justice).
- 1966:** Becomes the first female deputy public defender in Santa Clara County and eventually became chief of the appellate division. She also argues several cases before the California Supreme Court. She was rejected from the public defender’s offices of two other counties on the grounds that she was a woman before getting this position.
- First woman to teach at Stanford law school. She taught a seminar in criminal defense.
- 1974:** Volunteers on Jerry Brown’s campaign for governor. She frequently serves as his chauffeur when he is in the Bay Area, and later becomes an advisor on his transition team.

1975: Governor Jerry Brown appoints Bird as California's Secretary of Agriculture, a position usually reserved for a grower. She is the first woman to hold a cabinet level position in the state of California.

While Secretary of Agriculture, Bird emphasized consumer protection and worker health and safety, working to ban the short-handled hoe and pushing a farm labor bill guaranteeing workers' rights to hold secret-ballot union elections. She also has a major role in the creation of the California Agricultural Labor Relations Board.

1976: Bird is diagnosed with breast cancer. She undergoes a modified radical mastectomy. She refuses chemotherapy and radiation treatment, and her doctors predict that without these treatments, she will die within two years. Instead, she opts for alternative healing methods. She was quoted in the *LA Times* in 1983, saying, "In a peculiar way, death can teach you what life is all about. It is a painful lesson and a difficult journey, but I am personally grateful that I was made to travel this path at a relatively early age. For I have learned much about myself, much about what I want out of life, and much about how precious life and people are."

1977: Governor Brown appoints Bird the Chief Justice of the California Supreme Court. She is the first woman appointed to the court. Her appointment is criticized because she is very young (40) and has never served on the bench before.

While on the court she will vote to overturn a death sentence in each of 61 death penalty cases before the court during her tenure. There are now over 500 people sitting on death row in California, more than in any other state.

While on the court she also tried to curb excess on the court; she sold the Court Cadillac and refused to hold judge's conferences at fancy resorts.

There will be seven attempts to remove her during her time on the court, five of which will get far enough to circulate petitions for a recall vote, but do not get enough signatures to require a vote.

1978: Conservatives mount a campaign to remove Justice Bird from the court in her first retention election. The electorate votes to retain her, but just barely with 51.7% voting yes.

The day of the election, the *LA Times* publishes an article suggesting that the Supreme Court deliberately delayed issuing a controversial decision so as not to hurt Bird's chances at the polls. This led to public hearings by the state Commission on Judicial Performance, but no formal charges of misconduct were brought.

1982: Justice Matthew Tobriner, Bird's mentor on the court, dies after 20 years on the bench.

Early 1985: San Diego Sheriff John Duffy helps to mount a campaign against Justice Bird, using on-duty deputies to distribute campaign paraphernalia. The ACLU files a lawsuit against Sheriff Duffy and 200 named deputies on behalf of California Common Cause.

February 1985: Bird hires Zimmerman, Galanty & Fiman, a political consulting firm, to run her confirmation campaign. They create the Committee to Conserve the Courts, which charges conservatives with trying to set up a litmus test for judges. Bird eventually turns her back on the firm and decides she only wants them to do her TV commercials.

Bird hires John Law, a DC-based campaign consultant. By the end of the year, Law has also left the campaign, although the reason is unclear. Bird decides to go into the campaign advised by a group of lawyers rather than specialized political consultants.

March 1985: Three main conservative groups, California Bird Watcher, Californians to Defeat Rose Bird, and ???, begin major efforts to campaign against Bird.

March 1986: Bird, who never married, is asked to comment on a study finding that college educated white women who have not married by age 25 only have a 50% chance of doing so, and the odds get worse as they get older. She says, "I haven't married because the right man hasn't asked me."

November 4, 1986: Bird is defeated in the retention election. When asked how she was taking her defeat, she replied, "Just like a man." Justices Cruz Reynoso and Joseph Grodin are also defeated.

Governor George Deukmejian appoints Justice Malcolm Lucas, his former law partner and the court's most conservative justice, to succeed Bird as chief justice.

Bird is offered a position at feminist attorney Gloria Allred's office in Los Angeles. The deal falls through, and the media speculate it

is because of Bird's argumentative temperament. Bird also turns down a position on UCLA's law school faculty because it would not allow her to take care of her mother in the Bay Area.

1988: Bird is hired as a news commentator on two ABC affiliate stations, KABC-TV Channel 7 in Los Angeles and KGO-TV in San Francisco. She was to serve as a liberal counterpoint to conservative commentator Bruce Herschensohn. Shortly after getting the job, she was dropped. Friends said she believed it was because advertisers wanted her off the show, and network executives buckled under pressure.

Bird continues to have difficulty finding steady work. Reynoso and Grodin have managed to find jobs in private practice and as a professor at Hastings, respectively, but people are reluctant to hire Bird because her name continues to evoke extreme reactions.

November 9, 1989: Speaks at a forum on law and judges with Judge Robert Bork at UC Davis as part of a three-school lecture tour (UC Irvine and El Camino Community College). Although the point of the forum was to expose students to diverse viewpoints, student protesters who disagreed with Bork's views disrupted the event.

1990: Three years after losing the retention election, Bird spends her time at home in her pink cottage in Palo Alto with her ailing mother. She gardens and also makes audiotapes of books as part of a volunteer project to help blind law students. She volunteered at the East Palo Alto Community Law Project, and for some time, no one really knew who she was. Her transition from public to private life was not easy.

1991: Bird's mother passes away.

December 6, 1999: Bird dies of complications from breast cancer at Stanford University Medical Center. She was 63 years old.