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Book Review

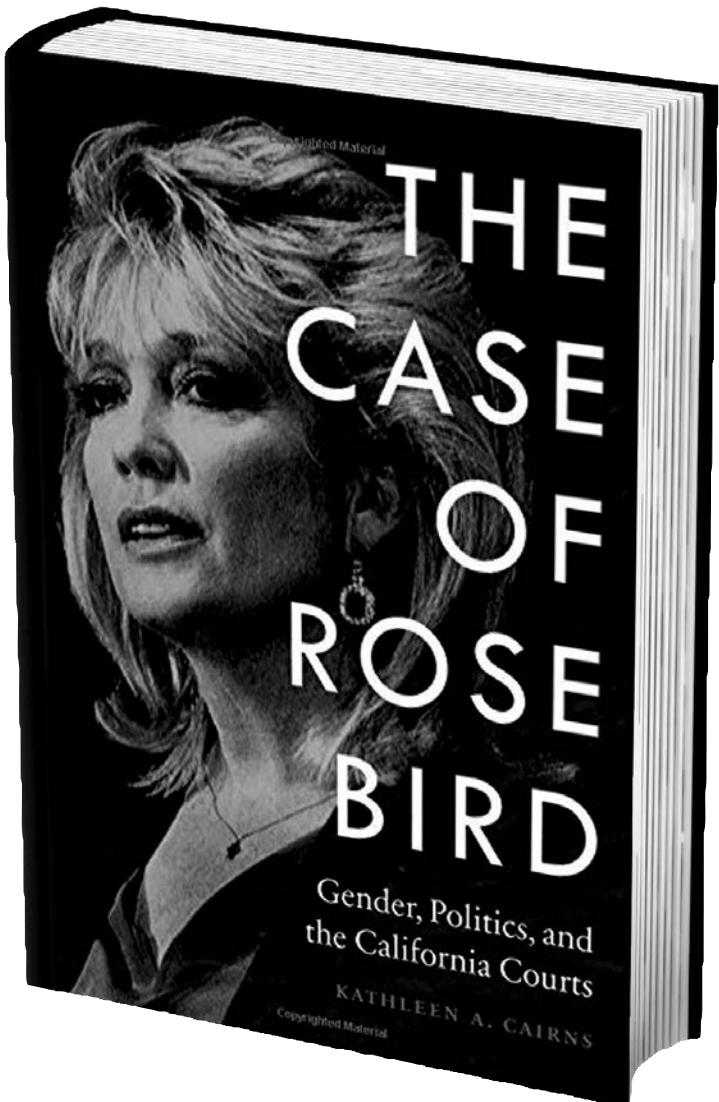
The Case of Rose Bird: Gender, Politics, and the California Courts, by Kathleen A. Cairns

by Shane H. McKenzie

The Case of Rose Bird is a compelling historical narrative of the rise and fall of the first female chief justice of the California Supreme Court. Professor Kathleen Cairns underscores the significance of death penalty politics in California, as she has in prior books on the first woman sentenced to death in California (*The Enigma Woman: The Death Sentence of Nellie May Madison*) and the third woman executed in California (*Proof of Guilt: Barbara Graham and the Politics of Executing Women in America*). Unlike her prior true-crime dramas, however, her most recent work delves into drama on the other side of the bench.

Within the context of the rise of feminism, judicial activism, and partisan politics, Cairns tells the story of an ambitious woman who dedicated her life to her career, but whose guarded nature all too often generated unnecessary animosities that turned suspicions into self-fulfilling prophesies. It is a story of tremendous personal accomplishment at the height of the second wave of feminism – Rose Bird was the first woman to win the moot court championship at Berkeley Law School, to clerk for the Nevada Supreme Court, to work in the Santa Clara County Public Defender's office, to serve in a California gubernatorial cabinet, and of course, to serve on the California Supreme Court, as chief justice, no less. But, it is also the tale of a tragic downfall – she was also the first California Supreme Court justice to be removed from office by the electorate and was so tainted by unrelenting character attacks that she never recovered, professionally or personally.

In presenting the background necessary to understand Rose Bird's leadership on the court, Cairns presents a detailed history of California law and its impact on the nation. California attorneys will appreciate how dramatically the state's Supreme Court has influenced American law. As perhaps the most pioneering and



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activist Supreme Court in the nation, California was the first state to overrule bans on interracial marriage (twenty years before *Loving v. Virginia*), to require that criminal defendants be advised of their right to counsel (a year before *Miranda v. Arizona*), and to determine that women had a fundamental right to choose whether to continue a pregnancy (four years before *Roe v. Wade*). California's high court also eliminated capital punishment (temporarily) four months before the U.S. Supreme Court did so nationally (in *Furman v. Georgia*). Though these rulings preceded Bird's time on the court, and indeed, the opinion overturning the death penalty was written by Justice Wright, a Republican appointee, it was Rose Bird that bore the brunt of the backlash that followed.

Attorneys may also appreciate Cairns' look into the inner workings of the Bird Court, which was described as "a seething cauldron of fear, suspicion, political hostility and petty jealousy." While it may be true that no one should see sausages or law being made, it is hard to look away. The personal stories about Bird and her colleagues are captivating, if not flattering, and include surprising details for those unfamiliar with these former justices, such as the fact that Marshall McComb was senile for the last seven years of his time in office, or that William Clark flunked out of college *and* law school *and* failed the bar on his first attempt before being appointed by his



close friend, Ronald Reagan. We learn that Stanley Mosk always believed that he deserved to be chief of the court, and never forgave Matthew Tobriner for voting to confirm Bird and helping her navigate her early days as chief justice. The justices were dismayed when Bird sold the court limousine and made them stay in cheaper hotels during conferences, and one justice even constructed wooden covers over glass partitions in his office so Bird would not know how late he worked. At times, the court of that era is portrayed more like Peyton Place than a venerated institution entrusted to protect fundamental freedoms, due process, and the rule of law. But, that is the point. As an institution run by human beings, it can be both.

It is impossible to read a history of Rose Bird without drawing comparisons to the present. Like Hillary Clinton, Rose Bird came from humble beginnings, famously wore pantsuits, and was labelled vindictive and difficult. Like Betsy DeVos, Bird was appointed by a historically razor-thin margin while her male colleagues with similar track records and inexperience sailed through the confirmation process. However, the comparisons drawn by Cairns go deeper than gender. Pointing to subsequent judicial battles from the nominations of Robert Bork and Clarence Thomas to the recent retention elections of judges like Marsha Ternus of the Iowa Supreme Court, who authored a decision overturning Iowa's ban on gay marriage, Cairns deftly traces the history of the politicization of the American judiciary from the ousting of Rose Bird. While Cairns emphasizes that the case of Rose Bird is unique, she also makes it clear that we continue to feel the political reverberations of her trail-blazing tenure to this day. □



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