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AM PAPERS

C-SPAN INTERVIEW WITH ROSE BIRD, CALIFORNIA SUPREME COURT JUSTICE

The following are quotes excerpted from a C-SPAN interview with California Supreme Court Chief Justice Rose Bird, videotaped in her Los Angeles office. This interview will air during a 75-minute programming package about the California Chief Justice election beginning Sunday, November 2nd at 10:00 pm ET and reairing Monday, November 3rd at 7:00 pm ET.

Q: Anthony Lewis of The New York Times wrote in a recent column: "The most significant political event in the country today may be the campaign to remove Rose Bird and two other justices from the California Supreme Court." What's your reaction to that?

RB: Well, I think there's an element of truth in that. And I don't mean it in terms of the careers of us as individuals, but for an institution itself. We have a number of different forces at work here. One of them is the far right -- people who believe very deeply there is one truth and that everyone must share that truth; if you don't, you don't belong in this society. And that's unfortunate. We've tried to have a dialogue with those individuals to tell them it's important in a diverse, multi-cultured society where we have every race, every religion, just about almost every viewpoint and culture here in the United States. We have to have a Bill of Rights that is a bill of tolerance, not intolerance. So instead of making fun of them (the far right), I think we need to have a very serious dialogue with them, because they've become more and more powerful within our political process. I think in the long run it's going to mean a society that is going to be pulled asunder, rather than brought together, and a society where we'll resent our differences rather than respect them.

Secondly, we have, I think, an attempt at the state level very similar to what you have at the federal level now...at the federal level, you have an attempt by the executive branch of government to achieve ends that they cannot secure through the legislative process by assuring a compliant and a pliant Supreme Court and Courts of Appeal. And I think you have the same thing here (in California) where you have powerful corporate interests who are unhappy with legislation that has gone through the legislation and then signed by the governor, as on the statute books, and a court that, over its history, has respected the legislative process. They (corporations) have not been successful there and I think they want a court of their clients, rather than an 'apliant' court, rather than a court of justice.

Then we have also, some very ambitious politicians. The governor, for example, of this state has run since 1972 on one issue -- the death penalty. And he has called for executions in this state when matters have been before the court itself -- he indicated to, for example, two of the justices that if they didn't vote for executions, he would come out against them (politically). They (the justices) did not do that (vote) in the way in which he wanted and he came out against them. I think we also have a number of other politicians who don't want to discuss the issues or who are afraid of this whole issue of the death penalty, because it's such an emotional issue and they have essentially made this a kind of litmus test for everybody in political life. I've said, for example, that if I look a little bit tired at this point -- it's awfully tough to run for governor, lieutenant governor, controller, the United States Senate and all the assembly seats -- because most of the people seem to be running against me and using me as, almost a litmus test.

Q: Were you suprised when that happened, that many of the campaigns that are going on right now in California one of the issues is Rose Bird?

RB: No, because I don't think courage has been a hallmark in politics in recent years. Also in 1982 you see there were three of my colleagues up, I was not up myself, and the same forces came out against them and tried to remove them, including the black on our court, the hispanic -- Justice Reynoso who's targeted again this time and Justice Kaus who retired recently because I think the process, in part, was such a painful and unpleasant one for a judge.

Q: Have you ever faced this kind of vote before?

RB: Yes, in 1978.

Q: What was that like?

RB: It was difficult. As a judge, I was recently appointed and I did not feel very comfortable in the political process and in the election process so I did not run a campaign at all. But that's not possible after the court has been targeted for so long.

Q: What would be your preference, life tenure for state judges?

RB: Well it's not a matter for me to decide. It's for the people and they've decided the election process is the one that they prefer. I think the problem here though is that the election process is being used in a very different way than was anticipated by the constitutional amendment that went through in 1934. If judges are going to have to mount campaigns and if, for example, every new governor that comes in decides that they, as he or she, would like to control half the court (and) most of us are up -- in 1978 I believe there were four up and this year there are six of the seven up -- so if you have a governor who decides that they don't want to play by the rules and don't respect the other branch of government, they can mount a campaign that's almost impossible for a sitting judge to do. We (judges) don't have access to the money nor to the powerful interests and we don't have the ability that a governor does to simply attack constantly, because we don't answer. All of our opinions are not even final for thirty days, and traditionally judges have not commented on it (opinions). So the election process is a difficult one.

Justice Kaus, who I mentioned earlier, said it was something like having a crocodile in your bathtub...

Q: You act as Chief Justice, what powers does that give you outside of the other justices?

RB: Well you're responsible for the administration of the court and of course you're the person who is identified for any criticism of the court, but under the laws and under the constitution really the only power you have in terms of the court itself is to convene the court, you're an equal among equals...In terms of the decisional side of the court, you're one vote out of seven.

Q: One of the latest polls that have come out in your race shows you as having a 60 percent disapproval rate, are you watching the polls?

RB: I'm like everyone else, I read them. I don't put a lot of value on them, because the poll that counts is the one on Election Day, on November 4th here. I think also that this (confirmation election) is still somewhat unique and I'm not ceratin how well the pollsters are able to predict with absolute certainty what's going to happen. I've always believed that you do your very best right to the end. And I'm confident

that we'll all be reconfirmed, it's a very tough, uphill battle.

Q: What issue do you think has been most damaging to you?

RB: Well the problem is that they've been very successful in using the death penalty, which is a very emotional issue, to successfully mask, I think, the fact that we have some who want a court that's pliant -- what I call a court of puppets, a court of politicians, a court of death and I've also used the phrase that what they really call for, in some ways, is a 'judicial lynching.' We've had the governor of this state and other public officials, including the speaker of the assembly, call for executions. They don't call for executions based on law or of the fairness of the trial or the requirements of the constitution, but based on it for a political motive to advance themselves and their own ambitions -- either to remain in the offices they now hold or to advance into national politics. That's why I use those words that are somewhat strong. What's happening here in California is very ugly, I think. And if people are willing to have individuals executed not because they've had a fair process and due process has been afforded them, but simply for a very personal political motive, I can't think of what they wouldn't do.

...If you look across the nation, for example, and take out states in the South which have always been atypical in this area -- there are twenty-seven states that have a death penalty law with the exception of three of those states that allowed an individual to go to his death without the benefit of an appeal, they let the individual forgo that. There have been no executions in those states. In California, by law you cannot forgo your appellate rights: I'm excluding California, in the twenty-seven states there've been no executions; I don't sit as Chief Justice of those courts, my colleagues don't sit on those Supreme Courts either. So it tells you that there are approximately seven hundred and fourteen individuals on those death rows -- that the death penalty has traditionally been unique in our jurisprudence, making certain that we don't make a mistake, because there's no coming back from it. So it is a long and meticulous process. And here in California, those cases don't go to our appellate courts -- our immediate appellate court system -- they're appealed directly into the Supreme Court...

Q: Did you know you wanted to be Chief Justice?

RB: No. I really didn't have any particular interest in being in the judiciary, partly because I saw some people who went into it who retired in some ways - and I was very interested in the intellectual life of the law. And I thought it would be a very quiet time and an intellectual time, rather than the kind of thing that it has developed into. It's much more a public role than even when I was a cabinet secretary in the governor's cabinet.

Q: How have you personally dealt with the kinds of criticism that you've been taking?

RB: ...As a woman, in this age of transition, if you are the head of a large corporation or an institution, or a head of a branch of government, almost everything about you is fair game. So that, they will write stories about what it would be like to date you, but if you said to them we're writing a story about what it would be like to date Chief Justice Burger or Chief Justice Rehnquist you would laugh, but you don't laugh about that when it involves a woman. Your hairdo, the way you dress, the way you speak, who your friends are - I've had reporters go out to my home and comment on whether my grass was green enough and how friendly my dogs were to them when they trespassed on my lawn. The invasion of the privacy of myself and my neighbors is a little unfair and I think also that whether your lawn is immaculately clipped has nothing to do with whether or not you're going to be a very good chief justice. But it's just part of what you have to accept as a woman. Also, in a society that is so geared to images, where image counts almost more

than substance. If you are supposed to look like Warren Burger and you look like myself, then you are going to have a lot of frustrations in the process because you have to prove yourself over and over again. I've often said that if you're the first of your sex or the first of your race or culture or religion that you're placed under a microscope, you're allowed no margin for error and the assumption is always made that you gained your position, not through merit, but for other reasons and so you constantly have to prove yourself over and over again...

Q: What do you think is the future of women in the Judiciary?

RB: ...We're a hierarchical, almost aristocratic body and it was a male dominated system and it was, I think, probably more than I've ever seen an Old Boy Network where things work through the process...When you open up a system that basically has been a closed one for many, many years and put for the first time women, asians, blacks and hispanics on to, for example, a judicial council--which is the rule-making body of the judiciary -- when you bring those meetings out of fancy resort areas, into a business setting and open them up to the press and the public for the first time, you get a lot of resentment. Those reforms needed to be done, but they didn't come without a price tag.

Q: Do you have a pet peeve about the states or federal judicial systems?

RB: No, I'm not a peevish person, frankly. I think there are a lot of things that need to be reformed and I think also that we need to have more of a dialogue with the people about the Bill of Rights and the Constitution, because I don't think this branch of government is very well understood. We're not a bottom line institution. We don't make decisions based on whether it's going to be helpful or useful to us. Following the law is a tremendously difficult, but fundamental role that judges play and you have to do that even when it's unpopular. In a majoritarian system, it's very hard to tell the people that you have to have a branch of government that says, even to you, that you're wrong when you have violated the Constitution.

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