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SIDEBAR

## Looking Anew at Campaign Cash and Elected Judges

By [ADAM LIPTAK](#)

Vernon Valentine Palmer, a law professor at [Tulane University](#) in New Orleans, could not understand how justices of the [Louisiana](#) Supreme Court could routinely hear cases involving people who had given them campaign contributions. It seemed to him a raw and simple conflict of interest.

So he wrote polite letters to each of the seven justices, urging them to adopt a rule that would make disqualification mandatory in those cases.

Six months passed without a single response, and he wrote again. “I used seven more stamps,” he said, “and I still got no reply.”

Professor Palmer is a senior member of the Tulane law faculty and the director of its European legal studies program. He is not an expert on judicial ethics, but he knows a thing or two about the rule of law.

Peeved, he decided to take a closer look at the Louisiana Supreme Court. He recruited John Levendis, an economics professor at Loyola University in New Orleans, to help with the statistics, along with a half-dozen law students to crunch numbers and code cases. Their conclusions, to be published next month in *The Tulane Law Review*, are not pretty.

In nearly half of the cases they reviewed, over a 14-year period ended in 2006, a litigant or lawyer had contributed to at least one justice, sometimes recently and sometimes long before. On average, justices voted in favor of their contributors 65 percent of the time, and two of the justices did so 80 percent of the time.

The conventional response to such findings is that they do not prove much.

Judges do not change their votes in response to contributions, the argument goes. Rather, contributors support judges whose legal philosophies they find congenial and, incidentally, sometimes benefit when their judges apply those philosophies in a principled and consistent way that just happens to benefit them.

You may think that is a distinction without a difference, which is why you do not teach judicial ethics.

Professor Palmer was, in any event, able to address that objection by asking several additional questions.

He looked first at cases in which no one involved in the lawsuit had ever made a contribution, before or after the suit was filed, to establish a baseline. Some judges tended to vote for plaintiffs, others for defendants.

Justice John L. Weimer, for instance, was slightly pro-defendant in cases where neither side had given him contributions, voting for plaintiffs 47 percent of the time. But in cases where he received money from the defense side (or more money from the defense when both sides gave money), he voted for the plaintiffs only 25 percent of the time. In cases where the money from the plaintiffs' side dominated, on the other hand, he voted for the plaintiffs 90 percent of the time. That is quite a swing.

“It is the donation, not the underlying philosophical orientation, that appears to account for the voting outcome,” Professor Palmer said.

Larger contributions had larger effects, the study found. Justice Catherine D. Kimball was 30 percent more likely to vote for a defendant with each additional \$1,000 donation. The effect was even more pronounced for Justice Weimer, who was 300 percent more likely to do so.

“The greater the size of the contribution,” Professor Palmer said, “the greater the odds of favorable outcomes.”

A similar [study](#) of the Ohio Supreme Court conducted by The New York Times in 2006 continues to echo in that state. It appeared about a year after an appeals court there [threw out](#) a \$212 million jury verdict in a case involving a business dispute between two companies, and it caused the lawyers on the losing side to take a look at who had contributed to the campaign of the judge who wrote the decision. It turned out that the judge, William G. Batchelder, had received a lot of money from Robert Meyerson, the chief executive of the company on the winning side, the Telxon Corporation.

The lawyers for the company on the losing side, Smart Media, asked for a rehearing and got one, sort of. In November, a substitute panel of appeals court judges refused to undo the earlier decision, saying there was no procedure to allow that. Judge Robert Nader, dissenting, could barely contain his disbelief, saying the initial decision was infected by “approximately \$1 million in contributions from a very financially interested individual” to Judge Batchelder, a Republican, and to the local [Republican Party](#).

This was, Judge Nader wrote, “a classic scenario giving rise to every nuance of political influence in our courts which calls for self-disqualification.”

The case is now before the Ohio Supreme Court. Mr. Meyerson, the executive, has given money to two of its justices as well.

A couple of weeks ago, the [United States Supreme Court said](#) the Constitution had nothing to say about the way New York elects its judges. But several justices went out of their way to question the practice of electing judges. Justices [Anthony M. Kennedy](#) and [Stephen G. Breyer](#) said, for instance, that campaign fund-raising in judicial elections might be at odds “with the perception and the reality of judicial independence and judicial excellence.”

But you do not have to do away with elections and or even fund-raising to make a drastic improvement in the quality of justice in state courts around the nation. All you need to do is listen to Professor Palmer. If a judge has taken money from a litigant or a lawyer, Professor Palmer says, the judge has no business ruling on that person’s case.

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