



PAYOLA JUSTICE:

**HOW TEXAS SUPREME COURT JUSTICES
RAISE MONEY
FROM COURT LITIGANTS**

**By Bill Medaille
and Andrew Wheat**

Texans for Public Justice
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S U M M A R Y

- In their most recent campaigns, the seven Texas Supreme Court justices elected since 1994 (Justices Gonzalez, Hecht, Phillips, Cornyn, Owen, Baker and Abbott) raised \$9,166,350 in contributions of \$100 or more. Individual justices raised between \$689,918 (Abbott) and \$1,976,656 (Gonzalez).
- Parties and lawyers with official business on the court's 1994-1997 docket—or contributors closely linked to these docket parties—contributed 40 percent (\$3.7 million) of the \$9.2 million that the seven justices raised.
- 60 percent of the 530 opinions that the court delivered from 1994 through October 1997 are tainted by the fact that at least one of these seven justices studied took money from a contributor with close links to a party or lawyer involved in that case.
- Few justices took money from parties on the court docket out of political necessity. Only two justices (Gonzalez and Hecht) faced an opponent in their last primary. Only two justices (Cornyn and Baker) ran competitive general election races (winning with less than 55 percent of the vote). All seven of the justices except Owen ran with at least three times the amount of money that their opponents had.
- The best friends of the court were lawyers and law firms. These sources contributed 42 percent (\$3.8 million) of what the seven justices raised (80 percent of this money came from docket-linked sources). Vinson & Elkins and its lawyers led the pack, giving the seven justices \$244,018.
- The PACs and executives of 50 corporations contributed 15 percent (\$1.4 million) of the money raised by the seven justices; many of these companies (e.g. Enron, HEB, Coastal Corp, Houston Industries, Texas Utilities, Dow Chemical and Exxon) had cases on the court's docket.
- Contributing \$60,000 to the seven justices, the family of David and Richard Weekley (who head David Weekley Homes and Texans for Lawsuit Reform [TLR]) supports the court more than any other family (12 of the top 16 families contributing to the justices also gave TLR \$10,000 or more).
- The seven justices took nine percent (\$854,825) of their money from the PACs and employees of 30 trade groups, many of which file court briefs in support of members.
- Many employees of the same law firm or corporation often make bundled contributions to the same justice on the same day. The largest bundles involve dozens of employees contributing more than \$10,000 to a single justice.

Part One...

I N T R O D U C T I O N

IN THE LATE 1980s, A CORRUPTION SCANDAL engulfed the Texas Supreme Court. The nation's leading newspapers editorialized against the freewheeling way that Texas justices:

- Conferred outside of the court room with parties from just one side of a dispute; and
- Raised huge sums of campaign money from parties with business before the court.

This heightened media scrutiny peaked in December 1987, when the investigative program "60 Minutes" broadcast its Texas Supreme Court feature "Justice for Sale."

At the crux of the scandal was a simple disbelief. Could Texas Supreme Court justices be schizophrenic enough to rake in \$1 million in campaign contributions with one hand while impartially swinging the gavel with the other? This was all the more of a stretch given that parties with business before the court doubled as the justices' leading contributors. Concerns about this seamy side of the court reflect the relatively recent collision of the Texas Constitution (which mandates the election of supreme court justices) with exorbitant modern po-

litical campaigns.¹ Texas is the largest of just nine states in which voters select Supreme Court justices through partisan elections.²

In a 1973 trickle down from Watergate, the Legislature tightened campaign reporting requirements for Texas candidates, making it harder to ignore these judicial conflicts of interest. In the latter half of the 1970s, a little-known Supreme Court candidate pulled off an unusual upset. This upset benefited from voters who confused the names of the winning candidate with the names of unrelated public figures.³ Such flukes convinced political consultants that name recognition is the name of the game in statewide races at the periphery of the electorate's radar screen. When candidates cannot cash in on a famous name, name recognition must be manufactured with huge advertising expenditures.

Like today, the court majority prior to the 1980s was widely seen as favoring defense lawyers and their corporate clients over plaintiffs' trial lawyers, who typically represent citizens in damage suits filed against corporations and insurance companies. In

the late 1970s and early 1980s a high-stakes battle broke out for control of the Texas Supreme Court. The battle pitted corporate interests against the interests of plaintiffs' trial lawyers. By 1983, justices backed by plaintiffs' trial lawyers had garnered a court majority.

Two of the new trial lawyer-backed justices, Bill Kilgarlin and Ted Robertson, came to office with tens of thousands of dollars from controversial oil man Clinton Manges or his attorney, Pat Maloney.

In 1982, a trial court found that Manges, as manager of oil leases that he co-owned with a South Texas family named Guerra, had violated his fiduciary duties to that family by leasing their oil land to himself for a nominal fee. In a decision upheld by an appellate court, the jury removed Manges as lease manager and awarded the Guerras \$882,000 in damages.

Manges and Maloney appealed to the Supreme Court. After trial lawyer-backed Justice C. L. Ray unsuccessfully tried to persuade the court to sign a

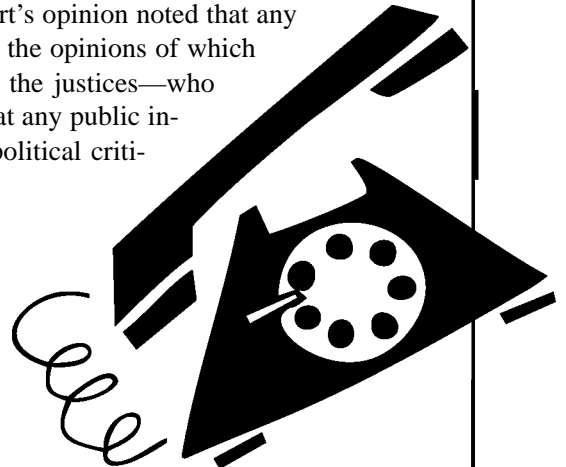
Bad Calls?

During the Texas Supreme Court scandal of the 1980s, serious allegations arose about justices improperly communicating outside of the court room with just one side of pending court disputes, an indiscretion known as *ex parte* communications. Investigations into such contacts reportedly prompted former Chief Justice C. L. Ray to instruct his secretary to shred his phone records.⁶ Nonetheless, that court did make some records of its justices' phone calls available (the records documented calls to lawyers with cases before the Supreme Court).⁷

Today's justices have gone out of their way to block independent reviews of their business phone records. In a July 24, 1997 decision, Attorney General Dan Morales ruled that judicial records "regarding the expenditure of public funds" or that "pertain to the day-to-day routine administration of a court are subject to the Open Records Act." The next day, Texans for Public Justice filed an Open-Records request for the Supreme Court justices' phone records.

Although the court typically addresses issues appealed from lower courts, this time the justices jumped right in, issuing a highly unusual opinion on August 21. The court held that the Morales ruling had erred and let it be known that it would not comply with it. The court's opinion noted that any further dispute in the matter would wind up in state district courts, the opinions of which are ultimately reviewed by the self-same Supreme Court. Finally, the justices—who wage \$1 million partisan campaigns to get elected—complained that any public inspection of the judiciary's administrative records would lead to "political criticism" of judges.

One current member of the court seems to have changed his tune



draft opinion in which the Guerras would “take nothing,” the final court opinion that preserved Manges’ role as lease manager and cut his total damages from \$882,000 to \$382,000. Manges-backed Justice Robertson initially indicated that he would recuse himself from the case, but reversed himself when it became clear that Justice Ray needed his vote to prevail.⁴

McGinnis, Lochridge & Kilgore, the law firm representing the Guerras, then filed a request for the court to rehear the case without the participation of Justices Kilgarlin and Robertson. This highly unusual request trained a spotlight on the financial conflicts of the justices. *Manges v. Guerra* and similar scandals prompted investigations of Supreme Court justices by the House Judicial Affairs Committee and the behind-closed-doors, Supreme Court-controlled Commission on Judicial Conduct.

It soon became clear that many interests with business before the court were busily stuffing the coffers of Supreme Court candidates in the 1980s. Pennzoil and its lead attorney, Joe Jamail, contributed heavily to justices around the time that the court declined to review an \$11 billion judgment that Pennzoil won against Texaco. The Texas Medical Association’s PAC also spent freely to elect justices who were likely to sympathize with the medical establishment in malpractice suits. Going into the 1988 election, the Texas Medical Association’s PAC spent \$27,500 on Justice Gonzalez alone.

When Chief Justice John Hill tried to confront the raging court crisis in 1987 by resigning to promote the merit selection of judges, Republican Governor Bill Clements appointed Tom Phillips as a temporary replacement. Chief Justice Phillips first ran for the office in 1988, when he limited contributions to his campaign to \$5,000 and headed a bipartisan “Clean Slate” of Supreme Court candidates backed by the business interests. Reacting to the Supreme Court scandals, voters tossed out incumbent Democratic justices financed by trial lawyers and replaced them with “Clean-Slate” justices financed by cor-

It soon became clear that many interests with business before the court were busily stuffing the coffers of Supreme Court candidates in the 1980s.



porations and their defense lawyers.

To this day, Phillips campaign materials credit him with salvaging the court’s reputation from being “ridiculed and pilloried.” Yet Phillips and three other incumbent justices raised more than \$1 million each in their 1996 races and much of this money came from contributors with business before the court. Phillips campaign materials also omit the role of citizen groups. After “60 Minutes” aired “Justice for Sale,” Texas Public Citizen, Common Cause Texas, the League of Women Voters of Texas and similar groups kept up the reform drumbeat. In 1992 and 1993, reformers released a two-part report called “Political Contributions to the Supreme Court of Texas: An Appearance of Impropriety.”

Responding to cries for reform, the Texas Legislature enacted the 1995 Judicial Campaign Finance Act. Though touted as fundamental reform, this law set indulgent contribution limits that allow Supreme Court candidates to take up to:

- \$5,000 from individuals;
- \$30,000 from PACs and lawyers associated with any given law firm;⁵ and

- \$300,000 from political action committees.

Few people realize that candidates can tap donors for these limits as many as three times: once for the primary, once for the runoff and once again for the general election.

Ten years after “Justice for Sale” aired, this study concludes that—while the faces and ideologies of the justices and their paymasters have changed—justices continue to take enormous amounts of money from litigants who bring cases before the court. The fact that the parties who finance the justices’ campaigns repeatedly reappear on the court’s docket documents the extent to which justice is still for sale in the Texas Supreme Court.

¹ Under the Republic of Texas’ Constitution (still recognized in secessionist pockets of West Texas), The Republic of Texas Congress picked supreme court justices. Subsequent state Constitutions flip-flopped between gubernatorial appointments and popular elections of justices. Popular elections have prevailed in every Texas Constitution since 1876.

² The other states are Alabama, Arkansas, Illinois, Mississippi, New Mexico, North Carolina, Pennsylvania and West Virginia. Thirteen states rely on nonpartisan elections, while most others state supreme court justices are appointed. See “State Court Organization, 1993,” U.S. Department of Justice, 1995.

³ Don Yarbrough, elected to the court in 1976, was confused with perennial gubernatorial candidate Don Yarbrough and former U.S. Senator Ralph Yarborough. Former Chief Justice Robert Calvert said he had the Calvert Whiskey drinkers’ vote bottled up.

⁴ See “Blind Justice,” *Texas Monthly*, May 1987.

⁵ When a firm hits this limit, its lawyers can keep making contributions of up to \$50.

⁶ See “Blind Justice,” *Texas Monthly*, May 1987.

⁷ See “The bar and the bench: too close for comfort?” *Fort Worth Star-Telegram*, August 26, 1983.

⁸ See “Judge halts order requiring justices to give testimony,” *Fort Worth Star-Telegram*, April 10, 1986.

Part Two...

M E T H O D

TEXAS IS ONE OF JUST NINE STATES WHERE VOTERS elect justices through *partisan* races.⁹ Texas' nine Supreme Court justices serve staggered, six-year terms.¹⁰ When a Texas justice fails to complete a term, the governor appoints a temporary replacement, without any confirmation oversight by the Texas Senate.

When researchers began this study in early October 1997, they examined Texas Ethics Commission campaign contribution reports covering the most recent election of the nine justices then sitting on the court. These justices included two Democrats (Justices Raul Gonzalez and Rose Spector) and seven Republicans (Chief Justice Thomas Phillips and Justices Nathan Hecht, John Cornyn, Craig Enoch, Priscilla Owen, James Baker and Greg Abbott). The two oldest of these contribution reports, those covering the 1992 elections of Justices Enoch and Spector, were discarded from the report for several reasons. First, as was the custom in 1992, these justices' contribution reports included negligible information on their contributors' employers. This omission makes it exceed-

ingly difficult to match up the names of their contributors—and their contributors' employers—with parties on the court docket.¹¹

Another reason for discarding the oldest data is that the court's composition was much different in 1992; three current members of the court (Justices Owen, Baker and Abbott) had yet to launch Supreme Court campaigns. To the extent possible, researchers wanted to focus on the track records of the current members of the court. While both Justices Spector and Enoch (who are not studied in this report) are up for reelection this year, reports on their 1997 funding were not filed with the Ethics Commission until January 15, 1998; their 1998 filings have yet to be filed.

For these reasons, researchers limited this study to seven justices—Chief Justice Phillips, along with Justices Hecht, Cornyn, Owen, Baker, Abbott and Gonzalez. Researchers gathered Ethics Commission reports for each of these justices for the 18-month period corresponding to their most recent election (the earliest of which occurred in Novem-

ber 1994). Some 18,000 contributions of \$100 or more were entered into a database. As this task was being completed in October 1997, Justice Cornyn resigned to run for Texas Attorney General. Cornyn was kept in the study, however, since he sat on the court throughout the period studied here.

Although the contributions data studied in this report are more complete than those found in older filings, incomplete employer data is still filed for some contributors. Since lawyers and law firms give more money to Supreme Court campaigns than any other profession, researchers cross-listed contributor names that lacked employer information with attorney directories to identify the profession and employer of these donors. Nonetheless, a shortcoming of this report—and a greater shortcoming of the contribution reports filed by court candidates—is that, of the \$9,166,450 contributed to the seven justices in the period studied, \$748,219

(8 percent) came from individuals for whom no employer information was readily available. As such, this study almost certainly underreports links between the court docket and the justices' contributors.

Researchers next entered data on the 530 opinions that the court issued from January 1994 (the year of the most recent elections of Justices Gonzalez, Hecht and Owen) to October 30, 1997 (when this section of this report was prepared) into a docket database. Finally, the names of the litigant parties in these cases, along with their lawyers and law firms, were cross-listed with the names and employers of contributors who gave the seven justices \$100 or more during the study period. The uncovered links between the court docket and the justices' campaign contributors are the focus of this report.

Election Cycle Studied

Justice	Contributions ≥\$100	Election Cycle Covered	Justice's Former Employer
Raul Gonzalez, D	\$1,976,656	7/1/93 – 12/31/94	Gonzalez & Hamilton
Nathan Hecht, R	\$1,932,341	7/1/93 – 12/31/94	Locke, Purnell, Boren, Laney & Neely
Thomas Phillips, R	\$1,339,311	7/1/95 – 12/31/96	Baker & Botts
John Cornyn, R	\$1,094,623	7/1/95 – 12/31/96	Groce, Locke & Hebdon
Priscilla Owen, R	\$1,081,773	7/1/93 – 12/31/94	Andrews & Kurth
James Baker, R	\$1,051,728	7/1/95 – 12/31/96	Southern Methodist University
Greg Abbott, R	\$689,918	7/1/95 – 12/31/96	Butler & Binion
Total	\$9,166,350		

⁹ The other states are Alabama, Arkansas, Illinois, Mississippi, New Mexico, N. Carolina, Pennsylvania and W. Virginia. Thirteen states rely on nonpartisan elections, while most other states appoint High Court justices. See "State Court Organization, 1993," U.S. Department of Justice, 1995.

¹⁰ The longest-sitting current justice, Democrat Raul Gonzalez, took office in October 1984.

¹¹ If the court issued 280 opinions in 1992 and 1993, and the average case involved seven lawyer and litigant parties, researchers would need to check for links between these 1,960 docket parties and the justices' campaign contributors. This is a huge task when no employer information is provided.

Part Three...

F I N D I N G S

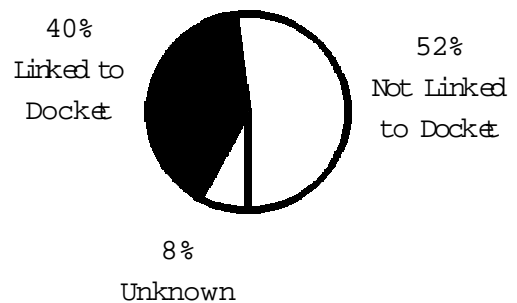
IN THE 18-MONTH PERIODS CORRESPONDING TO their most-recent elections, the seven Texas Supreme Court justices studied here (Justices Thomas Phillips, Raul Gonzalez, Nathan Hecht, John Cornyn, Priscilla Owen, James Baker and Greg Abbott) raised \$9,166,350 in contributions of \$100 or more. Of this \$9.2 million, 40 percent (\$3,690,363) was given by contributors who are closely linked to parties on the court docket for the period January 1, 1994 to October 30, 1997.¹² In fact, 60 percent of the 530 opinions that the court issued in this period are tainted by contributor-docket links.

Hardly a game of “Six Degrees of Separation,” these recurring links between the justices’ contributors and parties on the court’s docket are straight-forward. They involve contributions to the justices by:

- Parties with cases before the court (namely plaintiffs and defendants);

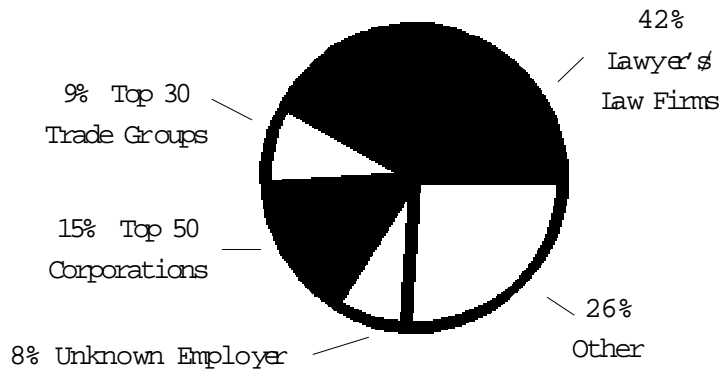
- The lawyers and law firms representing these parties before the court; and
- Employees (usually executives) of businesses with cases before the court.

Docket-Linked Sources Gave 40% of the Justices’ \$9.2 Million



¹² Docket-linked parties almost certainly gave more money; employer data were not readily available for individuals who gave eight percent of the \$9.2 million that the seven justices raised in the period studied.

Special Interests Finance the Justices



LEGAL AID

Lawyers and law firms account for \$3,818,125—or 42 percent—of the money that the seven justices received in contributions of \$100 or more. Of this amount, the report links \$3,059,914 (80 percent) to the Supreme Court docket.

The lawyers and PACs associated with the top 15 law firms that paid tribute to the seven justices contributed a total of \$1,536,255, or 17 percent of the total that the justices received in contributions of \$100 or more. Lawyers in these 15 firms all argued cases before the court. The court delivered 530 decisions during the period studied; Baker & Botts lawyers alone had a hand in 21 of these cases.

Vinson & Elkins is the firm that most supported the justices' political fundraising. Its lawyers and political action committee (PAC) contributed almost a quarter of a million dollars to the seven justices during the period covered by this report. Vinson & Elkins lawyers argued 12 cases before the court during the period studied.

When power lawyers appear in court, they know that it helps to know the law—and it helps to know the judge.

Two other top corporate law firms, **Fulbright & Jaworski** and Chief Justice Phillips' former firm of **Baker & Botts**, cleared \$160,000 each in contributions to the seven justices. During the period studied, Baker & Botts lawyers argued 21 cases before the court; Fulbright & Jaworski lawyers argued 17. The PACs and lawyers of three other defense firms contributed more than \$100,000 per firm. Of these, **Liddell, Sapp, Zivley, Hill & LaBoon** argued three cases before the court during the period

studied, while the firms of **Susman Godfrey** and **Kelly Hart & Hallman** each argued one court case.

Knowing the judge

The law firm contributions presented below count contributions by each firm's PAC as well as its lawyers. The contributions presented on page 12 show the individual lawyers who have contributed the most money. Ten attorneys gave more than \$10,000 apiece to the seven justices. Four of the top five individual contributors are name partners of their firms. Apparently, when power lawyers appear in court, they know that it helps to know the law—and it helps to know the judge.

During the Texas Supreme Court scandal of a decade ago, former Chief Justice Jack Pope criticized six fellow justices for attending a ball thrown by Corpus Christi trial lawyer Bill Edwards, who had just won an important Supreme Court case. "Supreme Court judges need to be careful with all attorneys, because if they don't have a case before you, they either had one or hope to get one," Pope said. Supreme Court justices do not "need the help of lawyers [with cases before the court] except for what they put in written briefs," Pope added.¹³

A *Dallas Times Herald* study helped fuel the court scandal in 1987 when it found that just eight lawyers and law firms contributed 18 percent of the

The Most Financially Persuasive Law Firms Appearing Before the Court

Law Firm (Lawyers & PAC)	Tribute To 7 Justices	Main TX Office	Supreme Case Load
Vinson & Elkins	\$244,018	Houston	12
Baker & Botts	\$169,993	Houston	21
Fulbright & Jaworski	\$164,634	Houston	17
Susman Godfrey	\$115,945	Houston	1
Kelly Hart & Hallman	\$108,460	Ft. Worth	1
Liddell Sapp Zivley Hill & LaBoon	\$100,873	Houston	3
Locke Purnell Rain & Harrell	\$87,373	Dallas	3
Bracewell & Patterson	\$87,125	Houston	11
Haynes & Boone	\$80,935	Dallas	12
Thompson & Knight	\$72,160	Dallas	10
Strasburger & Price	\$70,800	Dallas	9
Andrews & Kurth	\$69,640	Houston	4
Thompson Coe Cousins & Irons	\$58,100	Dallas	1
Gardere Wynne Sewell & Riggs	\$54,638	Dallas	6
Hughes & Luce	\$51,561	Dallas	2
TOTAL	\$1,536,255		113

money justices raised over the previous 10 years.¹⁴ This study finds that lawyers and law firms—many with cases before the court—contributed 42 percent of the \$9.2 million raised in the most recent election cycles of the seven justices studied here.

In a bizarre January 22, 1998 decision, the court appeared to pay back these major funders. The court majority (Justices Enoch, Gonzalez, Owen, Baker and Hankinson) held in *Bohatch v. Butler & Binion* that no legal barriers prevent a law firm from firing a partner who complains about a client being over billed. Justices Phillips and Spector dissented, arguing that the ruling wrongly suggests that “the rules of professional responsibility are subordinate to a law firm’s other interests.” Justice Abbott recused himself since the case involved the law firm he practiced with before joining the court.¹⁵

One disturbing court trend is that it is becoming

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Power Lawyers

Top Contributing Attorneys

Lawyer	Funding of 7 Justices	Supreme Cases		
		Self	Firm	Firm
Ben Vaughan III	\$27,750	0	7	

¹³ “A tale of high life on the high court” *San Antonio Light*, April 20, 1986.

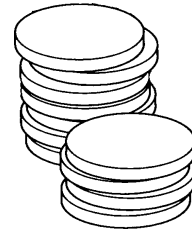
¹⁴ See “Showdown at the Supreme Court” *Texas Lawyer*, September-October 1988.

¹⁵ Justice Hecht concurred with the majority’s result, albeit with a different rationale.

increasingly rare for the public to know how individual justices weighed in on cases. A July 1997 Texas Citizen Action study, "The Texas Supreme Court in 1996-97," found that, for two years running, the court has issued more *per curiam* opinions than signed ones. In a *per curiam*, a court

One disturbing trend is that it is becoming increasingly rare for the public to know how individual justices weighed in on particular cases.

majority backs an anonymously written opinion, disagreeing justices fail to write dissents and the voting records of individual justices are kept secret. For justices who raise huge sums of money from parties who have business before the court, *per curiam* decisions offer a way to vote for financial backers without the accountability that an on-the-record vote imposes.



CORPORATE FRIENDS OF THE COURT

Direct contributions by the PACs and executives of 50 corporations supplied 15 percent (\$1.4 million) of the money that the seven justices raised. Houston-based Enron, America's largest natural gas corporation, has been the most lucrative corporate pipeline fueling the justices' war chests. During the period studied, Enron had three cases before the court and its executives gave the seven justices at least \$78,700. Two San Antonio firms were the next largest source of contributions. Top executives at H.B. Zachry construction company contributed \$61,200, while the top brass at Kinetic Concepts, a manufacturer of high tech hospital beds, gave \$57,800.

Executives of two other leading sources of corporate funds, TRT Holdings and H.E.B. Grocery, ac-

counted for more than \$50,000 each. Like Enron, HEB had a case before the court during the period studied. HEB now has another case pending before the Supreme Court. *HEB Grocery Co. v. Bilotto* is a premises liability lawsuit filed by a plaintiff who slipped and fell on an HEB property. Meanwhile, HEB Chair Charles Butt wines and dines the court. On October 21, 1997, he contributed \$5,000 to the San Antonio campaign kick-off for Justice Craig Enoch, an event that Butt graciously hosted in his home. Other major corporate contributors that also happen to pop up on the court's docket include: Tenneco, NationsBank, Diamond Shamrock, American General, Southwestern Bell and Shell Oil.

Top Corporate Court Boosters

Company	Funding of 7 Justices	Supreme Cases	Industry	Base
Enron Corp.	\$78,700	3	Electricity/Gas	Houston
H. B. Zachry Co.	\$61,200		Construction	San Antonio
Kinetic Concepts	\$57,800		Hospital beds	San Antonio
TRT Holdings	\$52,595		Energy/Hotels	Corpus
H.E.B. Grocery Co.	\$52,169	1	Grocery retail	San Antonio
United Services Auto Asc.	\$42,250		Financial services	San Antonio
Coastal Corp.	\$41,600	2	Energy	Houston
Wagner & Brown Ltd.	\$41,000		Energy/Investments	Midland
Hunt Oil Co.	\$40,950		Energy/Development	Dallas
O'Connor & Hewitt Ltd.	\$40,142		Oil/Investments	Victoria
Houston Industries	\$36,350	6	Electricity	Houston
Beecherl Investments	\$34,486		Development	Dallas
Weekley Homes/Properties	\$33,000		Development	Houston
Texas Utilities	\$32,600	2	Electricity	Dallas
Rutherford Oil Co.	\$31,250		Energy	Houston
Dow Chemical	\$30,100	3	Chemicals	Midland, MI
Halliburton Co.	\$29,900		Energy	Houston
Sterling Chemicals	\$28,500		Chemicals	Houston
Exxon Co.	\$27,750	4	Energy	Houston
Contran Corp.	\$27,500		Corporate raids	Dallas
David Weekley Homes	\$27,000		Home building	Houston
Farmers Insurance Group	\$26,859		Insurance	L. A.
Red McCombs Enterprises	\$26,743		Auto retail	San Antonio
Denitech Corp.	\$25,203		Copier leasing	Irving
Valero Energy	\$24,850		Energy	San Antonio
Texas Instruments	\$24,600		Electronics	Dallas
Brown & Root Inc.	\$23,600		Construction	Houston
Cogen Technologies	\$21,000		Electricity	Houston
Union Pacific	\$20,978	1	Railroad	Fort Worth
Helena Laboratories	\$20,414	1	Lab equipment	Beaumont
Total	\$1,061,089	23		

Executive Decisions

The largest individual contributors to the justices also are overwhelmingly drawn from top execu-

tives in corporations in which the bottom line is influenced—sometimes directly—by court decisions. The extent to which corporate giving is channeled

Payola Case Study

'Twofer' Tax Relief For 2 Top Contributors

HEB Grocery Co. v. Jefferson County *Enron v. Spring Independent School District*

In *HEB Grocery Co. v. Jefferson County*, the Court reversed an appeals court decision to rule that HEB, which operated six grocery stores in Jefferson County throughout 1992, should be permitted to pay inventory taxes on just one of its six stores there.

Under Texas law, businesses typically can opt to have taxes assessed on the inventory that they hold either on January 1 of the tax year or on September 1 of the preceding year. Jefferson County objected when HEB selected the earlier date (September 1991), because the company had only one store open in the county at that time. Four months later (January 1992), the company had six open stores in the county and a much bigger tax exposure. The County argued that using the earlier date would improperly let HEB duck 1992 taxes on five stores that it operated that entire year.

This decision benefited the justices' second-largest individual contributor, HEB Chair Charles Butt. All seven of the justices studied here were part of the May 5, 1996 *per curiam* decision. All seven also took money from the San Antonio-based Butt family, which owns the grocery chain. Altogether the Butt family gave the justices \$53,098 (90 percent from Charles Butt), in amounts ranging from \$2,000 to Justice Owen up to \$13,600 to Justice Gonzalez. Lawyers and law firms representing HEB also contributed \$17,379 to the justices, compared with \$11,061 contributed by firms and attorneys representing Jefferson County.

On the very same day as the earlier HEB ruling, justices unanimously reversed an appeals court decision, handing down a similar inventory tax ruling benefiting the justices' biggest corporate contributor (see *Enron v. Spring Independent School District*). Enron executives doled out \$78,700 among all seven of the justices, including \$24,500 from CEO Kenneth Lay. One month before the ruling, Lay gave Chief Justice Phillips \$5,000. This single court decision saved Enron \$15 million that it otherwise would have had to pay to educate children in Spring, Texas.

through top executives is illustrated by the fact that many of these executives listed on page 16 are from the same companies mentioned on page 14. Often

all—or almost all—of the money that the justices took from a corporation came from its top executives.

A striking characteristic of the top 16 individual families contributing to the justices' political campaigns is that 12 of them are major contributors to Texas' best-financed special-interest group, Texans for Lawsuit Reform (TLR), each having given the group at least \$10,000. In fact, only two of the top 15 (the families of David Dewhurst and Tipton Goliias) have not contributed to TLR. Many of these top supporters of TLR and the justices make lucrative livings in companies that attract lawsuits.

TLR President Richard Weekley heads a strip mall development company (Weekley Properties) and owns part of David Weekley Homes. The Weekley brothers' families contributed \$60,000 to the seven court justices in the period studied, making the justices more indebted to them than any other Texas family. At least part of the Weekley family's per-

sonal interest in the courts and the weakening of tort laws stems from its business. David Weekley Homes has been sued by dozens of angry customers, who allege, for example, that the company knowingly built inadequate foundations on shifting soils, causing new homes to crack.

After the Weekleys, the justices are most indebted to the San Antonio-based Butt family. The Butt family gave the justices \$53,098, with 90 percent coming from HEB grocery chain Chairman Charles Butt. The Butt family's grocery spent four years in a legal fight with Jefferson County, Texas, which said HEB owed more property taxes than the company cared to pay. On May 10, 1996, the Supreme Court ruled for HEB, helping out the justices' second largest individual contributors (see "Twofer Tax Relief," page 15).

The Court's Top Business-Class Supporters

Family	Funding of 7 Justices	Firm	Industry	Top TLR* Funder?
Dick/David Weekley	\$60,000	Weekley Homes/Properties	Home/mall building	X
Charles Butt	\$53,098	HEB Grocery Co.	Grocery chain	X
Reese/Rob't Rowling	\$52,195	TRT Holdings/Omni Hotels	Energy/Hotels	X
James Leininger	\$49,300	Kinetic Concepts Inc.	Hospital beds	X
Ray Hunt	\$40,000	Hunt Oil	Energy/Development	X
HB/JP Zachry	\$37,600	H.B. Zachry/Tower Insurance	Construction/Insurer	X
Louis Beecherl, Jr.	\$32,486	Beecherl Investments	Oil & gas	X
Gordon Cain	\$32,000	Sterling Chemicals	Chemicals	X
Pat/Mike Rutherford	\$31,250	Rutherford Oil	Oil & gas	X
Peter O'Donnell, Jr.	\$30,000	First National Bank	Banking	X
Harold Simmons	\$27,500	Contran/Valhi	Corporate raiders	X
Dennis O'Connor	\$25,800	O'Connor & Hewitt Ltd.	Oil/Ranching	
Dennis Berman	\$25,203	Denitech Corp.	Copier leasing	
Kenneth Lay	\$24,500	Enron Corp.	Gas/Electricity	X
Tipton Goliias	\$20,414	Helena Laboratories	Lab testing kits	
David Dewhurst	\$20,000	Falcon Seaboard Resources	Oil & Gas/Electricity	
Total	\$561,353			

* (Texans for Lawsuit Reform)

Father and son Reese and Robert Rowling gave the justices \$52,195. Texaco paid the Rowlings \$477 million for their Tana Oil company in 1987. The family's TRT Holdings diversified this money, buying up: one-third of downtown Corpus Christi, control of Corpus Christi National Bank and \$500 million worth of Omni Hotels.

The next family willing to contribute tens of thousands of dollars to Supreme Court campaigns is that of James Leininger. This San Antonio-based

owner of a high-tech hospital bed manufacturing company, Kinetic Concepts, gave the justices \$45,500. Leininger also is a major TLR supporter, as well as a leading funder of numerous conservative candidates and causes. His company has been the target of lawsuits and Food and Drug Administration complaints involving patients who contend that they have been thrown from, crushed or strangled by Kinetic hospital beds.

It is no coincidence that some of the strongest sup-



porters of TLR and the seven justices are executives from companies that have had cases before the court or that confront the kinds of serious liability issues that characterize the chemical, oil and gas, construction and medical device industries. Many of these industries are investing heavily in litigation protection from the claims of injured employees,

neighbors and customers.

BUSINESS AND TRADE GROUP GROUPIES

PACs and employees of business and professional associations are another source of major financial support to the justices. The top 30 of these con-

tributing groups gave a total of \$854,825 to the seven justices, or nine percent of all the money that these judges received in contributions of \$100 or

Trading Favors?

Donations From Business Groups Affected by the Court

Trade Group	Funding of 7 Justices
TX Society of CPAs*	\$116,450
TX Medical Association	\$98,217
TX Association of Realtors	\$51,000
TX Association of Defense Counsel	\$49,500
TX Restaurant Association	\$47,377
TX Civil Justice League	\$45,095
TX Association of Business & Commerce	\$41,250
TX Apartment Association*	\$39,250
TX Association of Insurance Agents	\$36,755
TX Chamber of Commerce	\$31,000
TX Dental Association	\$30,250
Texans for Lawsuit Reform	\$30,000
TX Auto Dealers Association	\$29,658
TX & Southwestern Cattle Raisers Assoc.	\$21,500
TX Association of Life Underwriters	\$16,500
Total	\$683,809

* Includes contributions from the Houston chapter of this group.

Payola Case Study

Unaccountable Accountants

Arthur Andersen v. Perry Equipment

Relying on Arthur Anderson & Co. (AA) audits that portrayed Maloney Pipeline Systems as profitable, Perry Equipment Corp. (PECO) paid \$4 million to buy Maloney in 1985. Maloney soon ran out of cash and declared bankruptcy.

In court testimony, one expert witness called this AA audit one of the worst he had ever seen, while an accounting professor testified that he would flunk a student who submitted such work. A jury found the auditing company liable for \$5.5 million in damages; the damages rose to \$9.3 million with litigation costs and Deceptive Trade Practices damages.

But Justice John Cornyn's unanimous decision of May 16, 1997 reversed lower court judgments by instructing the trial court to recalculate AA's damages with much tougher criteria. The trial court was ordered to determine if all of PECO's lawyers' contingency fees—which AA must pay under the Deceptive Trade Practices Act—were “reasonable and necessary.”

An analysis of recent court decisions by Texas Citizen Action called this one of the court's 10 worst decisions for consumers. This precedent “makes it harder for injured consumers to find lawyers,” the study said. Wealthy corporations can afford to contract attorneys by the hour, whereas consumers rely on the all-or-nothing contingency fees that the court targeted.

While the seven studied justices evenhandedly took \$250 apiece from employees of Arthur Andersen and PECO, the Texas Society of Certified Public Accountants gave them \$116,450.



more. The justices routinely pass judgment on tax cases, liability suits and other bread-and-butter issues that affect the members of these business, professional and trade associations.

Lest the justices forget where these contributor trade groups stand on cases affecting their members, the groups regularly file friend-of-the-court briefs with the court. For their part, the justices can hardly ar-

gue that they are unaware of these contributors. In the 1994 elections a brouhaha erupted after cur-

the Texas Civil Justice League (which promotes weaker civil justice laws) in its political fundraising mailers. “All I knew was they wanted to brag about the judges they had helped elect,” Hecht explained.

“Since they had helped me, I helped them.” Justice Hecht also appeared in a Texas Medical Association PAC video that appealed to members to contribute to court candidates who would be tough on

4

Payola Case Study

Turning Patient-Protection Laws Against Patients

St. Luke’s Episcopal v. Agbor

Dr. Suzanne Rothchild delivered the Agbor family’s baby with a permanently disabled arm in 1990. The parents filed a malpractice suit against the doctor and Houston’s St. Luke’s Episcopal Hospital. They accused the hospital of negligently giving staff privileges to a doctor who had been sued repeatedly and who lacked proper malpractice insurance.

The court determined whether or not patients can sue a hospital for granting staff privileges to reckless doctors. This question turned on the Texas Medical Practice Act (TMPA). The TMPA was passed to protect hospitals and doctors on medical review committees from suits filed by other doctors who are denied staff privileges because they are considered unsafe. Justice Gonzalez’s June 20, 1997 majority opinion stretched this law to not only shield hospitals from lawsuits by jilted doctors but also from lawsuits by the very patients whom TMPA was supposed to protect.

The dissenting opinions of Justices Cornyn, Spector and Phillips marvel at how the majority used a mangled interpretation of a law that protects patients to deliver a patient-hostile decision that shields the medical establishment from suits by malpractice victims.

Lawyers with Mayor, Day, Caldwell & Keeton which represented the defendants in this case, contributed \$44,600 to the seven justices, including \$28,450 to the five justices who voted with the majority.

The Texas Hospital Association (THA) contributed \$9,549 to five of the seven justices. Almost half of this amount (\$4,549) went to Justice Gonzalez, the author of the majority opinion. Concurring Justices Hecht and Owen received \$2,000 and \$1,000 respectively from THA. Dissenters Phillips and Cornyn received \$2,000 in THA money. Finally, Justice Hecht took \$500 from St. Luke’s President Michael Jhin in 1994.

(For another noteworthy ruling for malpractice defendants, see the court’s 1995 opinion in *Broders v. Heise*).



medical malpractice plaintiffs.¹⁶

The Texas Society of CPAs and the Texas Medical Association led the pack, raising \$214,667 for the seven justices from their accountant and doctor members. As it happens, the justices who took this money have the last word on malpractice suits filed against doctors and accountants in Texas courts. During the period in which the Texas Society of CPAs raised \$116,450 for the seven justices, for example, three of the so-called “Big Six” account-

ing firms had cases before the court.¹⁷ The court ruled for the big accounting firms in two of the three cases.

Doctors and other individuals employed in health care professions, along with the various health care PACs, contributed at least \$675,654 to the seven justices studied, or 7 percent of all the money that they raised.¹⁸

RAISING A BUNDLE

Many employees of a single firm often make same-day contributions to the same justice. These “bundled” contributions suggest that some top partners devise a political strategy for the whole firm. Bundled contributions raise questions about whether all contributors give to their favorite candidates or simply back whomever their superiors anoint.

Consider the frenetic fundraising by **Susman Godfrey** lawyers in the busy second half of 1995. On July 24 of that year, 14 firm members contributed \$20,600 to Chief Justice Phillips. On one day three weeks later, five members of the firm gave Justice Cornyn \$6,400. A week later, four Susman Godfrey employees gave Cornyn another \$6,600. After resting in September, 17 firm members po-

Bundled contributions raise questions about whether all contributors give to their favorite candidates or simply back whomever their superiors anoint

nied up \$9,750 for Justice Abbott on October 10. Before leaving for the holidays, 18 members of the firm wrapped up \$15,495 for Justice Abbott on

¹⁶ See “Justice appears in fund-raising tape,” *Dallas Morning News*, October 28, 1994; “GOP Candidates Hand Foes an Ethics Issue,” *Texas Lawyer*, October 10, 1994.

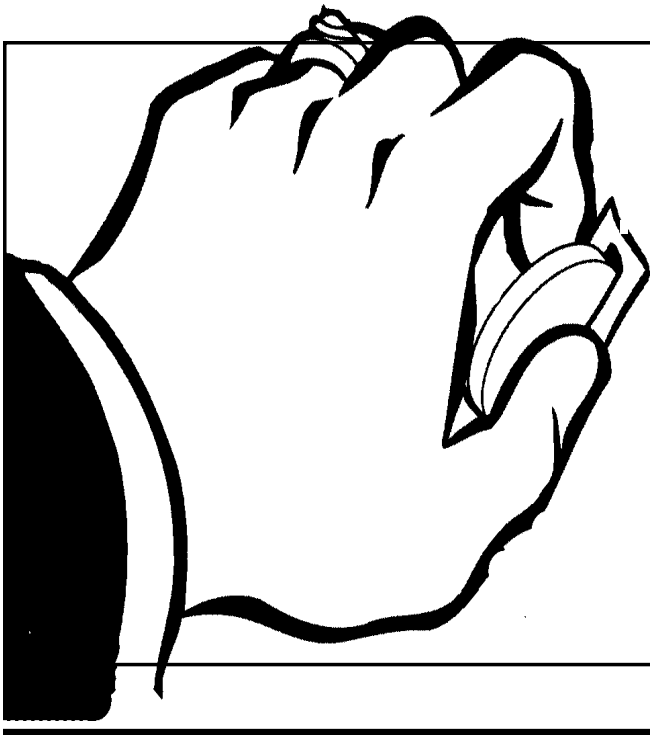
¹⁷ Arthur Andersen, Deloitte & Touche and Coopers & Lybrand.

¹⁸ This is almost certainly an undercount. It is based just on information disclosed in contribution reports. A more thorough accounting of this money would require that the names of unidentified contributors be cross-listed with directories of Texas physicians (as was done with attorney directories).

Howdy Partner!

Law-Firm Bundles With the Most Checks

Firm	# of Checks	Total \$	Date	Recipient Justice
Baker & Botts	48	\$10,950	11/13/95	Phillips
Bracewell & Patterson	46	\$14,000	11/30/95	Phillips
Baker & Botts	32	\$8,150	12/11/95	Baker
Liddell Sapp Zivley Hill & LaBoon	28	\$3,450	12/18/95	Abbott
Susman Godfrey	18	\$15,495	12/14/95	Abbott
Susman Godfrey	17	\$9,750	10/10/95	Abbott
Fulbright & Jaworski	14	\$2,850	5/28/96	Phillips
Baker & Botts	14	\$3,560	9/5/96	Baker
Susman Godfrey	14	\$20,600	7/24/95	Phillips
Fulbright & Jaworski	13	\$2,400	9/25/96	Phillips
Bracewell & Patterson	13	\$3,050	9/25/96	Phillips
Baker & Botts	13	\$2,600	11/30/95	Phillips
Total	270	\$96,855		



December 14. These five same-day bundles from Susman Godfrey lawyers in the latter half of 1995 add up to \$58,845.

While Susman Godfrey lawyers assembled the most lucrative bundles, **Baker & Botts** marshaled the most troops behind a single justice on one day. On November 13, 1995, Chief Justice Phillips collected \$10,950 from an exquisitely choreographed line of 48 lawyers from his former firm. For an encore a month later, 32 Baker & Botts lawyers gave Justice Abbott \$8,150. Chief Justice Phillips also took \$14,000 from 46 Bracewell & Patterson lawyers on November 30, 1995.

Law-Firm Bundles With the Most Money

Firm	Total \$	Date	# of Checks	Payee Justice
Susman Godfrey	\$20,600	7/24/95	14	Phillips
Susman Godfrey	\$15,495	12/14/95	18	Abbott
Kelly Hart & Hallman	\$15,000	10/6/95	5	Phillips
Bracewell & Patterson	\$14,200	11/30/95	46	Phillips
Kelly Hart & Hallman	\$13,000	11/30/95	3	Abbott
Baker & Botts	\$10,950	11/13/95	48	Phillips
Vinson & Elkins	\$10,911	3/3/94	9	Gonzalez
Susman Godfrey	\$9,750	10/10/95	17	Abbott
Vinson & Elkins	\$9,000	7/19/95	9	Phillips
Vinson & Elkins	\$8,850	4/1/94	6	Gonzalez
Kelly Hart & Hallman	\$8,485	11/9/95	3	Cornyn
Baker & Botts	\$8,150	12/11/95	32	Baker
Susman Godfrey	\$6,600	8/21/95	4	Cornyn
Fulbright & Jaworski	\$6,450	3/3/94	4	Gonzalez
Susman Godfrey	\$6,400	8/16/95	5	Cornyn
Total	\$163,841		223	

Corporate Teamwork

Law firm partners are not the only ones making a bundle. On February 25, 1994, four Enron executives offered up \$23,000 in Supreme Court contributions. This money took the form of two equal bundles of \$11,500 each, which went to Justices Hecht and Gonzalez. A month later, these four Enron executives and a fifth colleague gave Justice Gonzalez \$8,000 on April 1. Gonzalez's contributions report suggests that the justice held a gala corporate April Fool's Day fundraiser. Other bundles he received that day include:

- \$8,850 from six Vinson & Elkins lawyers;
- \$6,200 from 13 Exxon employees; and
- \$2,550 from 12 Baker & Botts lawyers.

Gonzalez's contributions report suggests that the justice held a gala corporate April Fool's Day fundraiser.

\$

Corporate Bundles

Employer	Total \$	Date	# of Checks	Payee Justice
Enron Corp.	\$11,500	2/25/94	4	Hecht
Enron Corp.	\$11,500	2/25/94	4	Gonzalez
TRT Holdings	\$10,100	7/21/94	3	Hecht
Enron Corp.	\$8,000	4/1/94	5	Gonzalez
Concerned TX Insurance Agents	\$7,241	5/6/94	5	Gonzalez
Exxon Co.	\$6,200	4/1/94	13	Gonzalez
Kinetic Concepts	\$6,000	11/1/93	3	Hecht
Kinetic Concepts	\$5,750	5/23/94	3	Owen
TRT Holdings	\$5,200	9/1/95	3	Phillips
Total	\$71,491		43	

WAR-CHEST JUSTICES

There was much more variation in the total *amount* of money raised by the seven justices studied here than there was in the *share* of money that each justice took from contributors with close links to the court's docket. Justice Hecht and Justice Gonzalez led the fundraising pack with close to \$2 million each. Four justices (Phillips, Cornyn, Owen and Baker) filled in the middle tier, raising between \$1 million and \$1.5 million. Finally, Justice Abbott, raised \$689,918 (see table on page 25).

The share of the justices' contributions linked to the docket ranged from a high of 46 percent (Justices Abbott and Cornyn) to a low of 32 percent (Justice Owen). But this variation appears to have more to do with the date of a justice's last election than it does with individual fundraising practices. Note that the three justices who had less than 40 percent of their money linked to the court's docket raised their money in the 1994 cycle. By contrast, the justices with greater money links to the docket did their fundraising in the 1996 cycle. There were

several reformist pushes for better contribution reporting in the early 1990s, reforms that noticeably improved contribution reporting in the 1996 cycle. Not surprisingly, more complete reporting makes it easier to detect contributor links to the court docket.¹⁹

There is no question that more complete reporting aids the detection of links between contributors and the docket. When, for example, the focus is narrowed to contributions from sources for which employer data was provided or uncovered,²⁰ the share of money linked to the docket rises an average of four percentage points for each justice. Looking just at these data, the percentage of docket-linked money ranges from 38 percent (for Justice Owen) to 48 percent (for Justice Abbott).

Cake Walks

Few of the seven justices were compelled to raise so much tainted money by political necessity. Five of the justices (Gonzalez, Phillips, Cornyn, Baker and Abbott) enjoyed dizzying financial advantages, raising between 14 times and 1,425 times what their main general election opponent had to spend (see page 28).²¹ Justice Hecht raised almost three times what his chief opponent had. Justice Owen was the only one of the seven who raised less money than her chief opponent, though the difference was so small that she and Democrat Jimmy Carroll ran with comparable amounts of money.

When the same general election races are analyzed by outcome, only two justices ran a close race, which is defined as one won by 55 percent of the

vote or less. Justices Cornyn and Baker ran these squeaker races, despite respectively having raised 14 times and 334 times the amount of money that their chief opponents had at their disposal.

While politicians sometimes must also raise and spend money to win their party's primary, just two of these justices faced such a hurdle. Five of the Justices (Phillips, Cornyn, Owen, Baker and Abbott) won 100 percent of the vote in uncontested primaries. Justice Hecht was the only Republican facing a primary challenge, winning 61 percent of the vote over challenger Charles Howell in 1994. Finally, that same year Democrat Raul Gonzalez faced two challengers for the Democratic

[continued, page 28]

All 7 Justices Practice Docket-Driven Fundraising

Justice	Contributions ≥ \$100	Money Linked To Docket	Docket- Linked \$ (%)	Election Cycle Studied
Raul Gonzalez, D	\$1,976,656	\$757,076	38%	7/1/93 – 12/31/94
Nathan Hecht, R	\$1,932,341	\$723,440	37%	7/1/93 – 12/31/94
Thomas Phillips, R	\$1,339,311	\$575,969	43%	7/1/95 – 12/31/96
John Cornyn, R	\$1,094,623	\$499,923	46%	7/1/95 – 12/31/96
Priscilla Owen, R	\$1,081,773	\$351,156	32%	7/1/93 – 12/31/94
James Baker, R	\$1,051,728	\$458,764	43%	7/1/95 – 12/31/96
Greg Abbott, R	\$689,918	\$324,035	46%	7/1/95 – 12/31/96
Total	\$9,166,350	\$3,690,363	40%	

¹⁹ Again, the quality of contributions reporting back when Justices Craig Enoch, R, and Rose Spector, D, last ran in 1992 was so poor that they were excluded from this study.

²⁰ This is true even though some of these contributors provided relatively useless employer data, such as “investor,” “retired” or “self.”

²¹ This table shows all the money that the current justices reported raising in their Texas Ethics Commission filings. This amount exceeds the money analyzed elsewhere in this report, which is limited to contributions of \$100 or more. To give the justices the benefit of the doubt, this money that the justices raised is compared with the amount that their chief opponent raised *or* spent, whichever was greater.

Payola Case Study

Dead Men Walking

American Petrofina et al. v. Russell Allen et al.

Almost 1,000 Gulf Coast petrochemical workers sued 55 corporate defendants to recover damages for on-the-job exposure to cancer-causing asbestos fibers.

Complaints against 39 of the defendants were filed after the expiration of Texas' statute of limitations, which requires suits to be filed within two years of a wrongful death. Attorneys for the dead workers argued that the corporate defendants fraudulently concealed evidence of the victims' asbestos exposure. The plaintiffs contended that the statute of limitations should be clocked from the time that the alleged fraud was uncovered, instead of the earlier time of the plaintiffs' deaths. While the trial court rejected this argument, the appeals court reversed the lower court decision and affirmed this plaintiffs' argument.

In a February 2, 1994 opinion, the Supreme Court unanimously upheld the trial court's decision, holding that the plaintiffs failed to prove their allegations that the defendants fraudulently concealed evidence of wrongful deaths. This case is notable for the huge sums of money that dozens of corporate defendants—and their lawyers—contributed to two of the presiding Supreme Court justices *within two months of this decision*.

At the time of the 1994 *Petrofina* decision three of the seven justices studied in this report were on the bench (Justices Phillips, Gonzalez and Hecht). Of these, Justices Gonzalez and Hecht were running for office and taking contributions in the first half of 1994.²² Justices Gonzalez and Hecht took \$91,952 from the employees and PACs of *Petrofina* defendants and their law firms in the two months following the decision. Justice Gonzalez outmaneuvered Justice Hecht, raising \$84,252, or 92 percent of this docket-linked money. The plaintiff lawyers did not contribute to these justices.²³

Petrofina Pipeline **Top Post-Decision Donations** **to Gonzalez & Hecht**

<i>Petrofina</i> Defendant or Defense Firm	Top Gonzalez & Hecht Contribs, 2/2/94-4/2/94
Baker & Botts	\$22,800
Dow Chemical	\$13,000
Bracewell & Patterson	\$8,950
Exxon	\$6,500
Fina Oil & Chemical	\$5,500
Phillips Petroleum	\$4,000
ARCO Chemical	\$3,000
Diamond Shamrock	\$3,000
Hoechst Celanese Corp	\$3,000
Texas Chemical Council	\$3,000
Total	\$72,750

Gonzalez's Top *Petrofina* Bundles

<i>Petrofina</i> Defense Employer	Total \$	Date	# of Checks
Exxon	\$6,200	4/1/94	13
Bracewell & Patterson	\$5,450	3/28/94	4
Baker & Botts	\$2,550	4/1/94	12
Ramey & Flock	\$2,200	4/8/94	3
Shell Oil	\$2,050	4/1/94	6
Total	\$18,450		38



ticket, winning the nomination with 42 percent of the vote.

While few of the seven justices faced tough financial challenges from opponents, Justices Phillips and Abbott arguably had the least need to go out on a limb and raise money from docket-linked sources.

Neither of these men faced a primary challenger or faced serious political or financial competition in the general election.

Few Justices Needed Tainted Money To Win

Justice	All Money Raised	Losing Opponent	Loser's Money*	Winner's Funding Advantage	Winner Share of Vote (Prmry)	Winner Share of Vote (Gen'l)
Raul Gonzalez	\$2,038,760	John Hawley	\$11,628	175X	42%	81%
Nathan Hecht	\$2,052,989	Alice Oliver-Parrott	\$738,748	3X	61%	56%
Thomas Phillips	\$1,386,903	Andrew Kupper	\$20,056	69X	100%	56%
John Cornyn	\$1,160,979	Patrice Barron	\$85,704	14X	100%	52%
Priscilla Owen	\$1,171,665	Jimmy Carroll	\$1,286,185	0.9X	100%	57%
James Baker	\$1,097,980	Gene Kelly	\$3,288	334X	100%	54%
Greg Abbott	\$712,309	John Hawley	\$500	1,425X	100%	84%
Total	\$9,621,585		\$2,146,109			

* Greater of amount raised or spent. Election cycle is same as in table on page 25.

Part Four...

C O N C L U S I O N S

THE SUPREME COURT OF TEXAS BECAME THE subject of nationwide ridicule in the late 1980s as a result of its justices taking huge sums of money from parties with business before the court. Just one current justice, Raul Gonzalez, sat on the court then. Most of the current justices first ran as “Clean Slate” reformers, who promised to clean up the court. As incumbents, however, the justices appear to have become what they set out to replace. Ten years after “60 Minutes” aired its Texas Supreme Court feature, “Justice for Sale,” this report concludes that today’s justices continue to sully the court’s reputation by raising millions of dollars from parties and lawyers who have business before the court.

To be sure, something has changed over the past 10 years: the paymasters who finance the justices’ political livelihoods. During much of the 1980s, plaintiffs’ trial lawyers were investing heavily in members of the Supreme Court. That court did not decide for the plaintiffs or their contributing trial lawyers in every case. Nonetheless, that court was widely regarded as a sympathetic venue for plain-

tiffs. As this report documents, corporations, corporate defense firms and business trade groups now finance the campaigns of the current justices. As with the plaintiffs’ bar in its heyday, this does not mean that corporate defendants and their lawyers prevail against plaintiffs in every case. Nonetheless, the current court is widely regarded as a sympathetic venue for defendants.

The analogy invoked in the title of this report, “Payola Justice,” reflects just this kind of court bias. Forty years ago, when rock and roll music was first becoming a commercial success, record promoters paid disk jockeys “payola” money to replay their records repeatedly. This pay for play could not guarantee a hit every time. But record producers—who were not in the business of giving away money for nothing—knew that the practice improved the odds.

The American system of justice, however, must be held to higher standards. It requires the people to have confidence that the rulings of

their courts are unbiased and impartial. Judges who raise millions of dollars from parties in their courts continually run the risk that they will squander this confidence. Nonetheless, the Supreme Court crisis of the late 1990s—like that of the late 1980s—transcends the personal foibles of individual justices. The Texas Supreme Court crisis is systemic, representing as it does the collision of two forces that, taken together, are incompatible with the interests of justice:

- The state constitutional mandate for the popular election of justices; and
- Exorbitant modern political campaigns.

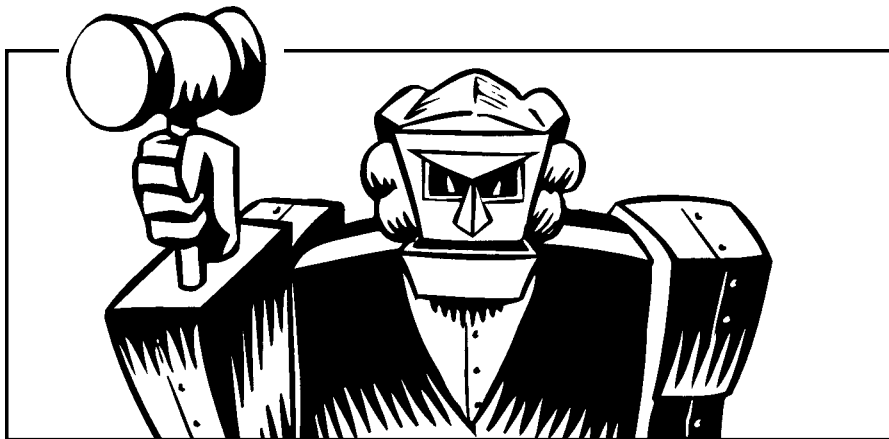
Any meaningful reforms must overhaul at least one of these two elements.

The Judicial Campaign Fairness Act, adopted by the Texas Legislature in 1995, promised to address the second of these issues: the problems posed by expensive modern campaigns. As this report indicates, however, those reforms have failed. This new law narrowed the campaign fundraising window to a 21-month period surrounding elections, which is when most fundraising had long been conducted anyway. Contribution limits were set at highly indulgent levels that candidates are permitted to hit as many as three times in a single election cycle (in the primary, runoff and general election). These reforms have allowed the justices who advocated them to continue to raise millions of dollars from

parties with business before the court.

Any significant reform must stop justices from soliciting and receiving campaign contributions from lawyers, law firms and litigants who have argued cases before the court or who may do so someday. The only way to halt these kinds of abuses is to end partisan elections of Supreme Court justices and to come to terms with the fact that few Texas voters can name a single Supreme Court justice or candidate. In recognition of this blind spot in the electorate, the Texas Constitution could be amended to provide for gubernatorial appointments of justices, subject to Senate confirmation. Appointed justices could serve for fixed terms or for life—as in the federal system. To depoliticize this process, the governor could be required to select appointees from a short list supplied by a broad-based judicial nominating committee.

Finally, to allow voters to remove the worst justices, appointed fixed-term justices could be subject to a periodic “yes” or “no” retention vote. In this case, a “no” vote by the electorate would trigger a new appointment. Such reforms, if properly designed and implemented, could end payola justice at the Texas Supreme Court, thereby restoring public confidence in the court and its rulings.



Part Five...



APPENDICES

I.	Top Contributors to Each Justice	32
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Law Firm

John Cornyn's Top Contributors

Law Firm (Lawyers & PAC)	Total \$	Supreme Cases	Other Donors	Total \$
Vinson & Elkins	\$47,120	12	Judicial Roundup PAC	\$15,000
Baker & Botts	\$29,080	21	Coastal Corp.	\$10,000
Fulbright & Jaworski	\$23,370	17	Quintana Petroleum	\$10,000
Liddell Sapp Zivley...	\$23,198	3	Red McCombs	\$9,276
Susman Godfrey	\$20,000	1	H.E.B. Grocery Co.	\$7,169
Totals	\$142,768	54		\$51,445

Priscilla Owen's Top Contributors

Law Firm (Lawyers & PAC)	Total \$	Supreme Cases	Other Donors	Total \$
Vinson & Elkins	\$21,800	12	TRT Holdings	\$14,000
Andrews & Kurth	\$19,574	4	TX Society of CPAs	\$10,250
Fulbright & Jaworski	\$17,108	17	Enron Corp.	\$8,600
Kelly Hart & Hallman	\$15,250	1	TX Medical Assoc.	\$8,261
Baker & Botts	\$13,950	21	Kinetic Concepts	\$8,250
Totals	\$87,682	55		\$49,361

James Baker's Top Contributors

Law Firm (Lawyers & PAC)	Total \$	Supreme Cases	Other Donors	Total \$
Vinson & Elkins	\$45,200	12	Coastal Corp.	\$10,000
Baker & Botts	\$26,260	21	TX Medical Assoc.	\$8,500
Kelly Hart & Hallman	\$23,000	1	H.E.B. Grocery Co.	\$7,500
Susman Godfrey	\$19,300	1	TX Restaurant Assoc.	\$6,100
Fulbright & Jaworski	\$15,256	17	Hunt Oil Co.	\$5,300
Totals	\$129,016	52		\$37,400

Law Firm

APPENDIX II.

ACTIVIST COURT

Like the scandal-plagued Texas Supreme Court of the 1980s, the current justices have been criticized for being activists who throw precedents out the window with decisions that benefit the special interests that finance their campaigns. In its July 1997 report, “The Texas Supreme Court in 1996-97,” Texas Citizen Action identified the court’s “Terrible Ten” decisions, which have helped tilt Texas court rooms to the favor of corporate board rooms at the expense of consumers. The Terrible Ten cases are presented here with any money that parties in these cases contributed to the seven justices studied in this report.

1. *Arthur Andersen v. Perry Equipment* (#95-0444)

Makes it harder for injured consumers to find lawyers and for plaintiff lawyers to fund future cases (see page 19).
\$500 linked contributions

2. *St. Luke’s Hospital v. Agbor* (#96-0085)

Shields hospitals that grant the right to practice to physicians who are known to be dangerous (see page 20).
\$45,100 linked contributions

3. *State of Texas ex rel. v. Hardberger* (#96-0643)

Trumps a legislative statute allowing voters to fill judicial vacancies, replacing it with the governor’s constitutional power to appoint replacements.
\$3,950 linked contributions

4. *Merrell Dow Pharmaceuticals v. Havner* (#95-1036)

Expands judicial rules covering expert testimony on novel scientific theories (so-called “junk science”) to cover all scientific testimony by witnesses.
\$0 linked contributions

5. *American Tobacco Co. v. Grinnell* (#94-1227)

Allows tobacco companies to dodge some liabilities for the harmful health effects of their products.
\$17,161 linked contributions

6. *Richey v. Brookshire Grocery Co.* (#95-0692)

Holds that merchants need not exercise care in filing charges against inadvertent shoplifters.
\$16,247 linked contributions

7. New Summary Judgment Rule

New rules on pre-trial motions for case dismissals add to litigant expenses and remove safeguards designed to prevent abuses.
\$0 linked contributions

8. *Gulf States Utilities v. Public Utility Commission et al.* (#94-1229)

Helps utilities stick consumers with costs that they typically cannot pass on to their customers.
\$0 linked contributions

9. *Texas Utilities v. Timmons* (#96-0247)

Holds that a frequently scaled electric tower was not attractive to the 14-year-old boy who was electrocuted while climbing it.

\$36,300 linked contributions

10. *Lefmark Management Co. v. Old* (#95-0983)

Shields mall managers who fail to report and remedy security problems from any liability for the deaths of customers who get attacked on the property.

\$0 linked contributions

APPENDIX III. TOP-DOLLAR DOCKET

**Supreme Court cases in which participating parties,
lawyers or law firms gave more than \$20,000 to the
seven justices.**

\$599,912	CSR Ltd. v. Link		\$	\$	6/14/96	95-0933
\$537,647	3M v. Nishika Ltd.		\$	\$	12/13/96	94-1124
\$537,318	American Petrofina v. Allen	\$	\$	\$	2/2/94	D-3099
\$378,758	Maritime Overseas Corp. v. Ellis		\$	\$	11/15/96	94-1057
\$333,785	Sage St. Assoc. v. Northdale Constr.		\$	\$	6/28/96	94-1037
\$332,093	GMC v. Bloyed		\$	\$	2/9/96	94-0777
\$318,668	Sosa v. Central Power & Light	\$	\$	\$	11/16/95	95-0834
\$308,624	City of El Paso v. PUC		\$	\$	6/22/94	D-3053
\$297,118	Angus Chem. Co. v. IMC Fertilizer		\$	\$	1/10/97	96-0743
\$288,163	Office of Pub. Util. Counsel v. PUC	\$	\$	\$	6/22/94	94-0016
\$286,268	State v. PUC	\$	\$	\$	6/22/94	D-3155
\$282,368	Amstadt v. U.S. Brass Corp.	\$	\$	\$	3/7/96	94-0123
\$275,077	Dow Chem. Co. v. Garcia	\$	\$	\$	11/2/95	95-0633
\$268,018	S & A Restaurant v. Leal		\$	\$	2/16/95	94-0844
\$260,168	Bigham v. Dempster		\$	\$	6/8/95	95-0081
\$259,168	PUC v. GTE-Southwest, Inc.	\$	\$	\$	4/13/95	D-2830
\$255,728	Nat'l Med. Enterprises v. Godbey		\$	\$	6/14/96	95-0401
\$252,128	Caterpillar, Inc. v. Shears		\$	\$	6/29/95	94-1148
\$250,411						

Total Linked Money	Case Name	Contributors:			Opinion Date	Docket #
		Parties	Lawyers	Firms		
\$216,200	Cities for Fair Utility Rates v. PUC	\$	\$	\$	6/28/96	94-1237
\$202,943	Occidental Chem. Corp. v. Banales	\$	\$	\$	6/15/95	95-0480
\$199,651	Parkway Co. v. Presley		\$	\$	6/15/95	D-4185
\$197,634	Saenz v. Fidelity & Guar. Insurance		\$	\$	6/14/96	D-4561
\$185,562	Prudential Secs. Inc. v. Marshall		\$	\$	11/16/95	95-0698
\$184,993	Transportation Ins. Co. v. Moriel		\$	\$	6/8/94	D-1507
\$178,093	Grant v. 13th Appeals Ct.		\$	\$	12/22/94	94-0581
\$177,229	State Farm v. Mower	\$	\$	\$	12/22/95	94-0558
\$176,584	Texaco v. Central Power & Light	\$	\$	\$	5/16/96	95-0434
\$173,943	Union Bankers Ins. v. Shelton	\$	\$	\$	6/22/94	D-3930
\$171,243	Office of Pub. Util. Counsel v. PUC		\$	\$	6/22/94	D-0679
\$170,243	Firestone Steel v. Barajas		\$	\$	6/28/96	95-0382
\$169,993	Velsicol Chemical. v. Winograd		\$	\$	7/9/97	96-0861
\$167,335	Edgewood ISD v. Meno		\$	\$	1/30/95	94-0152
\$166,634	Lofton v. Allstate Insurance.		\$	\$	3/30/95	94-0993
\$165,834	Memorial Hospital v. McCown		\$	\$	7/12/96	95-0316
\$164,734	Tilton v. Marshall		\$	\$	7/12/96	94-1233
\$164,734	Geary v. Peavy		\$	\$	6/22/94	94-0466
\$164,634	Thompson v. Cmty. Health Invest.		\$	\$	4/12/96	95-0335
\$164,634	Peterson v. Reyna		\$	\$	4/12/96	95-1123
\$164,634	Frank A. Smith Sales v. Flores		\$	\$	6/8/95	95-0224
\$164,634	Rosser v. Squier			\$	6/29/95	95-0370
\$164,634	Trinity Universal Ins. v. Cowan		\$	\$	5/16/96	95-1160
\$164,634	Ellis Cty. State Bank v. Keever		\$	\$	11/16/95	95-0859
\$164,015	Randall's Food v. Johnson	\$	\$	\$	1/12/95	94-0055
\$149,913	Huie v. Deshazo		\$	\$	2/9/96	95-0873
\$145,875	City of Abilene v. PUC		\$	\$	7/21/95	D-4044
\$130,260	Johnson Co. Sherriff's v. Endsley		\$	\$	6/28/96	95-0897
\$123,673	United States v. Marks		\$	\$	7/9/97	95-1257
\$121,435	Metropolitan Life v. Syntek Finance	\$	\$	\$	6/22/94	94-0443
\$121,060	Lone Star Gas Co. v. Lemond			\$	4/13/95	94-0525
\$112,979	Quest Chemical v. Elam			\$	5/25/95	94-1310
\$112,087	Burlington Northern RR v. Tuco Inc.	\$	\$	\$	6/20/97	95-1317
\$110,598	NationsBank v. Dilling	\$	\$	\$	5/10/96	95-0605
\$110,126	State Bar of Texas v. Gomez			\$	12/22/94	D-4218
\$109,960	Continental Airlines v. Kiefer	\$	\$	\$	4/12/96	95-0500
\$108,335	Hyundai Motor Co. v. Alvarado		\$	\$	2/16/95	94-0820
\$98,510	Texaco v. Garcia	\$	\$	\$	1/12/95	94-0745
\$93,232	Haynes & Boone v. Bowser Bouldin	\$	\$	\$	3/30/95	D-4448

\$92,225	Lenape Resources v. TN Gas	\$	\$	4/18/96	94-0278
\$91,860	ACS Investors v. McLaughlin	\$	\$	2/21/97	96-0100
\$85,935	George Grubbs Enterprises v. Bien	\$	\$	6/15/95	94-1052
\$81,388	Morgan Stanley & Co. v. Texas Oil	\$	\$	6/20/97	95-0085
\$81,210	Owens-Illinois. v. Estate of Burt	\$	\$	4/27/95	94-0262
\$81,210	Clayton Williams, Inc. v. Olivo	\$	\$	7/9/97	94-0044
\$81,035	Universal Services Co. v. Ung	\$	\$	6/15/95	94-1053
\$81,011	Peeler v. Hughes & Luce	\$	\$		

Total Linked Money	Case Name	Contributors:			Opinion	Docket #
		Parties	Lawyers	Firms	Date	
\$37,156	DPS Officers Assoc. v. Denton		\$	\$	4/13/95	D-4557
\$36,775	Bel-Ton Elec. Service v. Pickle		\$	\$	1/18/96	94-0657
\$36,350	Ofc. of Pub. Util. Counsel v. PUC	\$			6/22/94	D-4400
\$36,350	Houston L&P v. Atchison Topeka	\$			12/22/94	D-4505
\$36,300	Texas Utilities v. Timmons	\$	\$		6/20/97	96-0247
\$36,250	TX Workers Comp. Com. v. Garcia		\$	\$	2/9/95	D-4270
\$35,925	Butcher v. Scott		\$	\$	8/1/95	95-0170
\$35,925	Classen v. Irving Healthcare System		\$	\$	4/27/95	D-4597
\$35,900	Mercedes-Benz Credit v. Rhyne			\$	7/12/96	95-0159
\$33,800	City of Laporte v. Barfield		\$	\$	4/27/95	D-3836
\$33,706	Smithkline Beecham Corp. v. Doe			\$	7/21/95	D-4131
\$33,450	Martinez v. Humble Sand & Gravel			\$	4/20/94	D-4393
\$33,000	Jones v. Com. For Lawyer Discipline			\$	12/22/95	95-0586
\$32,902	Cantella & Co. v. Goodwin			\$	6/28/96	95-0819
\$32,800	GMC v. Tanner		\$	\$	2/16/95	95-0088
\$32,600	PUC v. Texas Utilities	\$			2/9/96	94-1071
\$31,950	TX Instrument v. Teletron Energy	\$		\$	4/20/94	D-3088
\$31,237	State Farm v. Azima	\$		\$	3/30/95	94-1324
\$29,050	Baptist Mem. Hospital v. Arredondo		\$	\$	2/9/96	95-0861
\$28,300	Alaniz v. Jones & Neuse, Inc.	\$	\$	\$	4/13/95	94-0767
\$27,750	Exxon Corp. v. Choo	\$			1/12/94	D-1693
\$27,500	Texaco v. Sanderson	\$		\$	5/25/95	94-0696
\$26,750	Cincinnati Life v. Cates	\$		\$	7/8/96	95-1150
\$26,525	Farris v. Ray			\$	3/2/95	94-130
\$26,250	Centeq Realty v. Siegler			\$	5/25/95	94-0573
\$26,000	Laidlaw Waste v. City of Wilmer		\$	\$	6/29/95	94-0566
\$24,250	Great Am. Ins. v. N. Austin MUD			\$	7/9/97	97-0081
\$24,250	CMMC v. Salinas			\$	7/12/96	95-0954
\$22,100	Crawford v. Ace Sign, Inc.	\$		\$	2/9/96	95-1199
\$21,650	Heritage Resources v. NationsBank	\$		\$	4/25/96	95-0515
\$21,600	Tate v. E.I. DuPont		\$	\$	11/15/96	96-0153
\$20,414	Helena Labs. Corp. v. Snyder	\$			11/3/94	94-0712

A C K N O W L E D G E M E N T S

Texas for Public Justice (TPJ) Director Craig McDonald is an architect of this study, which was a collaborative effort of the TPJ staff, including Aimée Daigle, Fred Richardson and Ethan Preston. Cinqué Hicks of Mood Indigo designed the page layout. Jason Stout of Stout Illustrations designed the cover. Texas Citizen Action's Walt Borges pointed out weaknesses in early drafts of this report. The authors gratefully acknowledge the assistance of the staff of the Texas Ethics Commission disclosure room in hunting down data for this report.