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Justice for Sale

By JAMES SAMPLE

Certain American values transcend partisan divisions. One is that money should not influence the courts. But with record sums pouring into judicial elections, the ideal of due process is giving way to a perception of pay-to-play justice.

This is not a matter of red versus blue. Seventy-six percent of Americans believe that campaign contributions influence judicial decisions, according to a 2001-2002 survey by Greenberg Quinlan Rosner Research and American Viewpoint; 46% of state court judges agree, according to a written survey by the same organizations. Separate recent empirical studies in the *New York Times* and the *Tulane Law Review* support the proposition that contributions not only correlate with decisions, but alter them.

John Grisham's latest bestseller, "The Appeal," is a shadowy tale of a chemical company that buys a favorable legal ruling by funding the election of the judge who makes it. Farfetched? Not according to West Virginia Supreme Court Justice Larry Starcher. In a scathing opinion last month, he decried a "cancer" of moneyed influence in his court, asserting that "John Grisham got it right when he said that he simply had to read *The Charleston Gazette* to get an idea for his next novel."

The citizens of 39 states elect some or all of their judges. These contests have become costly arms races. An investigation by the *Los Angeles Times*, "In Las Vegas, They're Playing with a Stacked Judicial Deck," revealed that even Nevada judges running unopposed collected hundreds of thousands of dollars in contributions from litigants. The report noted that donations were "frequently" dated "within days of when a judge took action in the contributor's case."

Business interests and trial lawyers both lay out campaign cash to ensure that sympathetic judges are elected. Both sides attempt to manipulate courts; business just happens to be better at winning. The U.S. Chamber of Commerce got involved in 13 judicial races in 2004 and won 12. Nationwide in 2006, business donors contributed twice as much to state supreme court candidates as attorneys, according to the National Institute on Money in State Politics.

Consider three recent episodes in light of the American Bar Association's requirement that judges disqualify themselves whenever their "impartiality might reasonably be questioned."

Lloyd Karmeier, the winner of a \$9.3 million campaign for the Illinois Supreme Court in 2004, was supported by \$350,000 in direct contributions from employees, lawyers and others directly involved with the insurer State Farm and/or its then pending appeal, and by an additional \$1 million from larger groups of which State Farm was a member, or to which it contributed. Almost immediately upon taking the bench, he cast a vote ending proceedings on a \$456 million claim against State Farm. A *St. Louis Post-Dispatch* editorial put it this way: "Although Mr. Karmeier is an intelligent and no doubt honest man, the manner of his election will cast doubt over every vote he casts in a business case."

Wisconsin Justice Annette Ziegler declined, in December, to recuse herself from a case involving Wisconsin Manufacturers & Commerce, which spent \$2 million -- more than her Ziegler's own campaign -- supporting her 2007 win. In light of that decision, as well as additional revelations that Justice Ziegler had ruled on 11 cases involving a company for which her husband was a director, editorials around the state called for her to step down from the case, and even from the bench. Not coincidentally, all seven of Wisconsin's Supreme Court justices, a broad majority of

Wisconsin's public, and even a plurality of self-identified "very conservative" Wisconsin voters support public financing of judicial elections.

In November, West Virginia Chief Justice Elliot Maynard voted in a 3-2 majority to overturn a \$76 million judgment against the companies of coal executive Don Blankenship. In January, photos surfaced depicting Messrs. Maynard and Blankenship vacationing in the French Riviera while the appeal was before the court.

The court is now reconsidering the case -- a dispute with mining companies on both sides. Justice Starcher, who criticized Mr. Blankenship's influence, disqualified himself and urged still a third justice, Brent Benjamin, to do the same. Justice Benjamin, whose 2004 campaign benefited from over \$3 million of Blankenship's support, has refused to step down.

Justice Starcher (who asserts the actual amount of Blankenship's support for Justice Benjamin was \$4 million) wrote bluntly: "Just think about it -- \$4 million! I know hardly a soul who could believe that a justice who benefited to this extent from a litigant could rule fairly on cases involving that litigant or his companies."

In the long term, we all lose when any decision reinforces suspicions that the biggest donor, not the best case, wins. Reforms range from commission-based appointment systems, to publicly financed campaigns, to more rigorous recusal rules. Without such measures, stories like "The Appeal" will fill non-fiction shelves.

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