Perceptions of Bias

DO CAMPAIGN CONTRIBUTIONSCREATE PUBLIC PERCEPTIONS OF JUDICIAL BIAS?

BY THOMAS E. McCLURE

In a number of cases, the Illinois Supreme Court suspended the licenses of lawyers who had loaned money directly to the trial judge who was hearing their clients’ cases. They made the loans to help pay for judicial campaign expenses. In each case, the court held that there was a violation of the disciplinary rule prohibiting lawyers from giving or lending “anything of value” to a judge. If, however, the lawyers had disbursed the funds to the judge’s campaign committee, rather than directly to the judge, the transactions would have been legal and would not have served as a basis for attorney discipline.

In another case involving attorney loans to judges, the Illinois Supreme Court addressed the disciplinary rule concerning a judge’s receipt of anything of value from a lawyer:

The general public would certainly consider it an appearance of impropriety if a judge were to accept a gift from a lawyer who has matters in the court on which that judge sits. Even if the matter were not to be heard by the judge to whom the gift is given, the public’s perception would be one of suspicion, enhanced, no doubt, by the potential subliminal influence on the favored judge’s colleagues.

In this opinion, the court noted that the law permits a lawyer to contribute money to a judge’s election campaign fund. But a judge’s receipt of lawful campaign
contribute contributions from attorneys who argue before the judge can still raise questions about the judge's ability to decide cases without favoring campaign donors.

I chose to focus on Illinois trial judges in order to investigate the relationship between judicial campaign contributions and perceived impartiality because of the high number of elected lower court judges in Illinois as well as the availability of relevant data over an extended period. Indeed, the Illinois State Bar Association conducts regular polls to evaluate judges on several criteria, including impartiality. And for decades, political committees for judicial candidates have been required to report campaign contributions, and the Illinois State Board of Elections has published this information.

**MIXED RESULTS**

**Relationship between campaign contributions and judicial impartiality**

Empirical research offers varying perspectives on the association between judicial campaign contributions and judicial impartiality. Some scholars find no evidence of an association. For instance, Ronald Rotunda found no relationship between attorney donations and favorable majority opinions by state supreme courts in Illinois, Michigan, and Wisconsin. Similarly, Margaret Williams and Corey Ditslear found little evidence suggesting that campaign contributions systematically influenced most Wisconsin Supreme Court justices — although other researchers have found evidence of potential influence among a few members of this court.

In a multistate supreme court study, Matias Iaryczower and Matthew Shum found an association between a judge's voting strategy and contributions made by business, unions, noncorporate lawyers, and education organizers. Likewise, Eric Waltenburg and Charles Lopeman identified a transitory association between judicial contributions and case outcomes in Alabama, Kentucky, and Ohio tort decisions. In a 50-state study of supreme courts, Joanna Shepherd found that contributions from pro-business groups, pro-labor groups, doctor groups, insurance companies, and lawyer groups increase the probability that justices will vote for the litigants favored by those interest groups. Using the same database, Shepherd and her colleague, Michael Kang, found that every dollar of direct contributions from pro-business groups is associated with an increase in the probability that a state supreme court justice will vote for business litigants.

Some scholars have found evidence of an association between contributions and judicial decisions in some states or contexts but not in others. For instance, Damon Cann discovered the existence of this association in Georgia cases. However, Cann and his colleagues, Chris Bonneau and Brent Boyea, found no such relationship in the Texas Supreme Court. Furthermore, in a separate study of the highest courts in Michigan, Nevada, and Texas, Bonneau and Cann found no evidence of any relationship between contributions and judicial decisions in Nevada but confirmed the existence of a quid pro quo relationship between contributions and individual justices’ votes in Michigan and Texas.

**Campaign contributions and the perception of bias**

Even with these mixed research findings about the actual relationship between judicial campaign contributions and judicial impartiality, many legal observers have noted that judicial campaign contributions can nonetheless create the perception of improper influence. Erwin Chemerinsky claimed that campaign contributions from lawyers and litigants “risk both the reality of undue influence and the appearance of impropriety.”

Both the public and the legal community believe campaign contributions influence judicial decisions. Laypersons appear to perceive little difference between an attorney lending money to a judge and contributing money to a judicial campaign. For example, in a January 2009 USA Today/Gallup poll, 52 percent of respondents considered the influence of campaign contributions on judges’ rulings to be a major problem, and 89 percent said it was at least a minor problem. More than 90 percent of respondents believed a judge should be removed from a case involving a party that donated to the judge’s election campaign. Members of the legal community have voiced similar concerns. For instance, in a 2001–02 poll of 188 state supreme court judges, 527 state appellate court judges, and 1,713 state trial judges, 26 percent of respondents said they believed campaign contributions have at least some influence on the decisions of judges; 46 percent believed campaign contributions have “just a little” influence on the decisions of judges. Only 36 percent believed that campaign contributions have no influence at all on the decisions of judges.

Because confidence in the judicial system depends upon the litigants’ impression that their cases are decided by an impartial bench, the mere perception of impropriety creates problems for the courts. As the former executive director of Pennsylvanians for Modern Courts Shira Goodman stated: The truth is perception is reality when it comes to the courts. We have a clear public perception problem when it comes to elected judges and the influence of campaign cash in the courtroom. But we must treat this as more than
a public perception problem — it is an issue that affects the position of our courts in our governmental structure.\textsuperscript{18}

In a 2010 study, James Gibson and Gregory Caldeira asked participants to review a series of hypothetical scenarios and assess the impartiality of a judge in the vignettes who had accepted campaign contributions. They found a moderate connection between campaign contributions and participants’ perception of judicial bias. Moreover, even if a judge recused himself or herself from a case involving campaign donors, a substantial minority of participants questioned the judge’s ability to be impartial.\textsuperscript{19}

Studies of state court systems tend to focus on state supreme courts.\textsuperscript{20} Literature on the relationship between campaign contributions and perceived judicial impartiality among trial judges is virtually nonexistent.\textsuperscript{21} Given that attorneys and members of the public are more likely to have contact with trial courts rather than courts of review, it is important to consider perceptions of the impartiality of trial judges. This article assesses the association between the perceived impartiality of trial judges and the campaign contributions they receive from three specific populations: attorneys, interest groups, and political organizations.

**DATA AND METHODOLOGY**

**Dependent variable**

The dependent variable in this study is the measure of a judge’s perceived impartiality using bar poll assessments of trial judges conducted by the Illinois State Bar Association (ISBA) for circuit court judges seated in the downstate Illinois counties, as well as in the counties that border Chicago’s Cook County (known as the collar counties). The ISBA does not evaluate Cook County trial judges, leaving that task to the Chicago Bar Association and the Alliance of Bar Associations for Judicial Screening, which use other methods for such assessments. In the year in which a judge faces an election, the ISBA mails confidential ballots to its members who maintain offices located in the judge’s circuit. The ISBA also provides ballots, upon request, to licensed attorneys who are not ISBA members. The ISBA furnishes ballots to between one-half and three-quarters of Illinois attorneys practicing outside of Cook County. Approximately 30 percent of the attorneys return their completed ballots.\textsuperscript{22} Before ballots are counted, attorneys must certify that they have sufficient knowledge of the judge’s qualifications to allow a fair, informed opinion of the judge’s qualifications. The ISBA does not count a ballot unless the attorney submits a signed statement that he or she evaluated the judicial candidate entirely on the basis of direct knowledge of a professional nature. The ISBA collects “yes” or “no” responses for several characteristics of each judge.

The impartiality rating for each circuit judge is determined by the percentage of “yes” votes cast by attorneys in response to the question: “Will the candidate act and rule impartially and free of any predisposition or improper influence?” The ISBA does not tabulate unreturned ballots and nonresponses to ballot questions. Likewise, the ISBA requires a minimum response from members of the bar before it reports the polling results. The dataset in this study includes 254 Illinois Circuit Court judges (based outside of Chicago’s Cook County) who were seeking their second term of office between 1994 and 2012. In Illinois, voters elect circuit court judges in partisan elections for six-year terms. Successful candidates can run for retention in nonpartisan general elections, which require the candidate to receive 60 percent of the votes in order to be retained for another six-year term. This data does not include the small number of judges for whom the ISBA did not report bar poll scores.

The lowest rating a judge can receive is 0 percent. This occurs when all of the attorneys casting ballots answer “no” to the question as to whether the judge is impartial. Likewise, vote tabu-
The total amount of dollars contributed to a judicial candidate by attorneys, the number of attorneys donating at least $150, and the number of attorneys donating at least $1,000 were associated with lower impartiality ratings at a significant level.

Independent variables
I gathered election finance information from publicly-reported campaign statements to create several independent variables. In Illinois, all political committees that receive or give contributions above a certain threshold amount must file periodic financial statements with the Illinois State Board of Elections (ISBE). Financial statements filed after 1999 are available online. The ISBE maintains physical copies of earlier statements. Campaign committees also must report a donation of $1,000 or more within five days of receipt. Every contribution from a donor exceeding $150 during a reporting period requires a disclosure of the donor’s name, address, and contribution amount. Although the statements do not require the inclusion of the donor’s occupation, I was able to identify attorney contributors.

I classified a donor as an attorney if one of three conditions was satisfied. First, the financial statement expressly labeled the donor as a lawyer. Second, a business donor’s name matched an Illinois law firm name. Third, the donor was found through the lawyer search tool on the website of the Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois. I categorized a donor as a political organization if its name identified it with a political party or candidate. I considered corporations, unions, and other organizations not expressly identified with a political party or candidate as interest groups.

The dollar amount of contributions to judges’ campaign committees varied greatly. Thirty-nine judges reported no contributions from any source, whereas nine judges received in excess of $100,000 for their judicial campaigns. The largest total amount of donations reported by a single election committee was approximately $500,000. The median total contribution to each judge’s campaign from all sources was $34,739. The median contribution from attorneys was $7,938. Median contributions were less than $2,000 for interest groups ($1,650) and political organizations ($1,515).

Control variables
I included the control variables from my 2016 study of the relationship between judicial elections and the ISBA’s impartiality ratings of Illinois trial judges. These variables are based either on the bar poll scores or the judge’s biographical data retrieved from Sullivan’s Judicial Directory. The mean bar poll rating is the average ISBA poll score each judge received on the following criteria included on the bar poll: integrity, legal ability, temperament, court management, and health. I also controlled for the number of years a judge has been an attorney, gender, graduation from an Illinois public university, graduation from a top 50 law school, prior service as an elective officeholder, ISBA membership, and civic involvement (membership in a community organization open to nonlawyers). Four control variables concerned prior legal experience: career prosecutor (only prior legal experience was as a prosecutor); prosecutor; public defender but never a prosecutor; and private practice experience. I added additional control variables that were not part of my 2016 study: “uncontested election,” which indicates that a judicial candidate was unopposed in either the primary or general election, and three variables, which denote the margin of victory for the judge in the primary election, the general election, and the election with the closest margin of victory (general or primary).

RESULTS AND DISCUSSION
When my analysis included the sole control variable of the mean bar poll rating, I found a significant association between the total amount of dollars contributed to a judicial candidate and
lower impartiality ratings. Likewise, using the one-control variable model, I found that when the number of contributors giving at least $150 increased, impartiality ratings declined at a statistically significant level. The results were the same when my analyses included the broader range of control variables. There was a relationship between the number of donors giving at least $1,000 and decreased impartiality scores, but that relationship was not statistically significant when the analysis included just one control variable. Instead, the relationship became statistically significant when the full array of controls were included in the testing.

Using the single control of mean bar poll rating, there were significant associations between attorney donations and impartiality ratings. The total amount of dollars contributed to a judicial candidate by attorneys, the number of attorneys donating at least $150, and the number of attorneys donating at least $1,000 were associated with lower impartiality ratings at a significant level. The results were virtually the same when I included all of the control variables.

The relationship between total donations made by interest groups and lower judicial impartiality was not at a statistically significant level, regardless of whether the mean bar poll rating was the sole control variable or all of the variables served as controls. Nor was the association between political organization total contributions and lower integrity ratings statistically significant under either analysis.

In sum, this study demonstrates the existence of the hypothesized relationship between lower impartiality scores and judicial contributions in general as well as for attorney contributions. However, there was no statistically significant association as to decreased impartiality scores with campaign donations made by either interest groups or political organizations. The absence of this correlation is not completely surprising given the lower amounts contributed to trial judges by these groups.

**CONCLUDING COMMENTS**

A limitation of this study's analysis is that the data came from a single state, Illinois, which has experienced high-profile instances of political corruption. Indeed, as of early 2013, four of the state's seven most recent governors had been imprisoned. Illinois also has fared poorly in state rankings of federal corruption convictions for public officials per capita (6th most) and in Oguzhan Dincer and Michael Johnston's survey of state political reporters regarding perceived legal and illegal corruption (2nd highest). On the other hand, a study by Damon Cann and Jeff Yates concerning the perception of state high courts ranked Illinois in the middle of the pack in terms of legitimacy (23 out of 50). Thus, it is unclear to what extent the results of this study of Illinois judges can be generalized and applied to the judiciaries of other states. A $10,000 contribution to a judicial campaign in Illinois may be more likely to create a perception of bias because the state already has earned a reputation for corruption. Alternatively, a $10,000 contribution might be more likely to generate the appearance of impropriety in a state in which public officials are presumably ethical because expectations are higher. Indeed, the implications of judicial bias may be more scandalous for a candidate with a moral reputation than a candidate who is already considered unethical. More research is thus needed to determine the extent to which judicial campaign contributions correlate with perceptions of judicial bias in states with a different political culture.

Additional research could also include a dependent variable that permits more nuance in perceptions of impartiality. The ISBA bar poll limits an attorney to “yes” or “no” responses to the inquiry about the judicial candidate’s impartiality. This choice forces attorneys to dichotomize their likely nondichotomous perceptions of a judge’s impartiality. This lack of gradation should be expected to attenuate the association between campaign contributions and perceptions of judicial impartiality. Indeed, attorneys who perceive a judge as being moderately impartial are forced to rate these judges either the same as judges whom they believe to be extremely biased or the same as judges perceived to be unquestionably impartial. Poll options that capture more shades of distinction, such as a 0–10 scale, would better permit researchers to estimate the association between campaign contributions and perceptions of judicial impartiality.

The final, and perhaps most important, avenue for future research would be to test for a causal relationship underlying the negative association between perceptions of a judge’s impartiality and the campaign contributions the judge has received. The nature of my research design does not support causal claims. Nevertheless, the results are consistent with at least two possible causal relationships. Initially, judges with lower levels of perceived impartiality may be more likely to receive campaign contributions than judges with higher levels of perceived impartiality. In this situation, donors would expect that their contributions would influence these lower-impartiality judges.

Alternatively, a judge’s receipt of campaign contributions could lower attorney perceptions of the judge’s impartiality. This is especially likely if attorneys learn through courtroom
gossip or other avenues about contributions made to a judge’s campaign. Although both of these options have normative implications, the possibility that campaign contributions influence the perception of judicial impartiality has implications for the institutional legitimacy of the courts. In this interpretation, the results strengthen concerns raised by research conducted by Gibson and Caldeira establishing a causal connection between acceptance of campaign contributions and judicial legitimacy and impartiality.

The citizenry’s perceptions of the legitimacy of the judiciary and its actors are critical to the viability of an effective legal system. Public confidence in the courts strongly correlates with perceptions that the courts are fair and that judges are fair. Federalist 78 notes that the judiciary has “neither FORCE nor WILL, but merely judgment.” The results of this study add correlational data to the literature about whether campaign contributions influence a jurist’s judgments.

THOMAS E. McClure is an associate professor and Director of Legal Studies at Illinois State University. He is a founding partner of Elliott & McClure, P.C. in Kankakee County, Illinois. McClure thanks Dr. L.J. Zigerell, Dr. Albert Klumpp, and Tom Newman of the Illinois State Board of Elections for their gracious assistance on this project.

EDITOR’S NOTE: A supplement to this article containing additional summary statistics, predictive models, and results may be found on the Judicature website. Find it at http://judicialstudies.duke.edu/editions-Fall-2018.

1 See, e.g., In re Lane, 535 N.E.2d 866 (Ill. 1989) (suspending lawyer for one year for contributions to judge); In re Lidov, 544 N.E.2d 294 (Ill. 1989) (suspending lawyer for six months for contributions to judge); In re Chatz, 546 N.E.2d 613 (Ill. 1989) (suspending lawyer for one year for contributions to judge).
3 In re Corby, 528 N.E.2d 694, 701 (Ill. 1988).
19 James L. Gibson & Gregory Caldeira, Judicial Impartiality, Campaign Contributions, and Recusals: Results from a National Survey, 10 J.


21 But see Thomas E. McClure, Do Contributions to Judicial Campaigns Create the Appearance of Corruption?, in Corruption, Accountability and Discretion 85 (Nancy Lind & Cara Rabe-Hemp eds., 2017) (discussing the association between perception of integrity and campaign contributions for Illinois trial judges).


23 Id. at 162–64.


26 Cann & Yates, supra note 20, at 28–29.

27 Id. at 24.

28 Benesh, supra note 17, at 703–04.