

Study says judges accept questionable money

AUSTIN (AP) — Forty percent of the \$9.1 million in campaign cash raised by justices on the Texas Supreme Court came from parties and lawyers with cases before that bench, according to a study released Monday.

A decade after the CBS program "60 Minutes" asked whether Texas justice was for sale, that question remains valid, said officials of Texans for Public Justice, the nonpartisan group conducting the study.

"It's the system that stinks," said Andrew Wheat, one of the study's authors. "Every court member up there has somebody who's paying the piper."

While plaintiff's trial lawyers were making the controversial donations 10 years ago, today's big donors are corporations, corporate defense lawyers and business trade groups, the study said.

"I don't think it smells any better," Wheat said. Supreme Court Chief Justice Tom Phillips, long an advocate for changing the way Texas picks its judges, described the report as brimming "with accusations and innuendo."

He said he is convinced no current justice "has ever been influenced by a campaign contribution."

However, Phillips added, "In the end it (the study) says only what everyone should already know — that Texas has a lousy system of judicial selection."

But statewide partisan campaigns are the law, Phillips said, and running takes money. "Almost any contribution can be criticized on some ground, as every citizen has an interest in the rulings of our courts," he said.

Craig McDonald, director of Texans for Pub-

lic Justice, likened the practice to the home team "paying a visit" to an umpire before a baseball game.

"Members of the highest court should not be allowed to solicit or accept money from people who are appearing before that court. That's the bottom line," he said. "We think any dollar linked to the docket is too much. It raises the appearance of corruption."

The study examined contributions to seven of

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Andrew Wheat
Study author

the nine justices, all of whom ran in the 1994 or 1996 elections. Texas Supreme Court justices are elected to staggered, six-year terms.

The seven raised a total of \$9,166,450 in contributions of \$100 or more. Donors closely linked to cases before the court contributed \$3.7 million.

Among other findings, the study said:

— Sixty percent of the 530 opinions issued by the court from 1994 through October 1997 "are tainted by the fact that at least one of these sev-

en justices took money from a contributor with close links to a party or lawyer involved."

— Lawyers and law firms contributed 42 percent, \$3.8 million, of the total. Of that money, 80 percent was described in the study as coming from "docket-linked" sources. Fifteen law firms with 113 cases before the court gave a combined \$1.5 million.

— Political action committees and executives of 50 corporations contributed 15 percent, or \$1.4 million.

In the mid-1980s, when the "60 Minutes" report aired, the Supreme Court was controlled by Democrats. Today, Republicans hold seven of the nine seats.

"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," the study says.

Texas is one of only nine states in which Supreme Court judges are chosen in partisan elections, the study noted.

It suggested changing to a system of judicial selection that would eliminate the need for campaign cash. Possibilities include gubernatorial appointment of Supreme Court justices, or appointing judges and holding periodic retention elections in which voters say "yes" or "no" to leaving them on the bench.

Numerous efforts to change the way Texas picks judges have failed in the Legislature.

Phillips, the chief justice, said he was pleased Texans for Public Justice was joining the call for judicial selection reform.

Lawyers say ranchers benefitted from show

AMARILLO, Texas (AP) — The Texas cattlemen who cite Oprah Winfrey for millions in losses might actually have made money from her talk show about "dangerous foods," a defense damage expert testified Monday.

Using the hypothetical argument that Winfrey's April 16, 1996,

episode caused a drop in cattle prices — and the defense stressed it was hypothetical — Bettina Whyte said plaintiffs have no grounds to claim damage.

"Is it your contention that, as a result of 'The Oprah Winfrey Show,' that Cactus Growers (owned by plaintiff Paul Engler) actually benefited to the tune of \$421,000?" Engler attorney Mike St. Denis asked.

"In fact, they did," answered Whyte, a damage specialist who has testified in dozens of federal court cases. She once even worked for David Mullin, who in this case represents cattleman Bill O'Brien.

Whyte explained that, even if Winfrey's show discussing mad cow disease prompted the cattle market to plunge, cattle feeders such as Engler and O'Brien benefited because they were able to buy animals at discounted prices.

Ave Tucker, a plaintiffs' specialist and a former co-worker of Whyte, earlier testified that Winfrey's show cost Engler and his company \$6.5 million. O'Brien's Texas Beef Group claims \$4.5 million in losses.

Tucker figured plaintiffs could have brought at least a \$62 per hundredweight price for the 2 1/2 months after April 16 if not for the show. Whyte based her calculations on a \$59 price for the three weeks following.

Her figure comes from reported cattle sales in the region a day

before the broadcast. Cattle raisers say not enough cattle sold that day to generate a valid benchmark price, so they use an average derived from the week before.

"When there's a greater volume to look at, don't you get a better idea of the market?" Mullin asked.

Whyte responded that her study of five months' worth of cattle trading showed that fair market value does not necessarily rely on large sales volume.

Engler and O'Brien are suing Winfrey, her production company and vegetarian activist Howard Lyman for business disparagement.

They say the show implied that U.S. cattle were vulnerable to mad cow disease.

The broadcast came a month after the British government attributed a handful of human deaths there to eating meat tainted with mad cow disease, which has never been discovered in the United States.

Accompanying Winfrey for the first time in court was longtime friend Gayle King, who sat next to her and sometimes exchanged words during lulls in the action.

Earlier, a beef industry spokeswoman testified that her organization knew Lyman, known as a strident anti-meat crusader, would be opposing their representative on the program but decided to go off with him anyway.

Alisa Harrison, who spoke in videotape, was in the studio audience when National Cattlemen's Beef Association specialist Gene Weber debated Lyman over the threat of mad cow disease.

Harrison said her group was familiar with Lyman, who chairs Eating with Conscience program for the Humane Society of the United States.



Winfrey

TABC rule preventing minors from entering bars dies

AUSTIN (AP) — Texans under the legal drinking age of 21 can continue to frequent bars — but still not drink in them — after the majority of the Texas Alcoholic Beverage Commission refused to act on a request to keep them out.

Mothers Against Drunk Driving asked the commission to draft a rule to prevent those under 21 from entering establishments that make more than half their revenues from the sale of alcoholic beverages, unless they were accompanied by a parent, spouse or legal guardian.

The move would have been the first step toward adopting such a

rule. It would have allowed the rule to be proposed for public comment and possible adoption.

But just one of the three commission members wanted to take that first step — John T. Steen Jr. of San Antonio. The other members, Martha S. Dickie and commission Chairman Allan Shivers Jr., both of Austin, said they did not see the need for it.

Shivers noted that the state already has rules that prohibit minors from buying or consuming alcohol in bars or restaurants.

"I have a hesitancy to impose any other regulations on society unless there is an overwhelming

harm to be remedied," he said.

Dickie added of the proposal, "I think it imposes a significant restriction on personal freedom and fools around with long-established cultural traditions in this state ... without any real evidence that it accomplishes anything."

Steen said he would like the commission to make an attempt at drafting the rule.

Kirk Brown of MADD said Steen's support is the first that the group has received from a TABC member.

Brown told TABC that those age 18 to 20 make up a disproportionate percentage of drunken drivers involved in fatalities, and that bars

are one source of alcohol.

"We believe it would save lives. We believe it would not jeopardize the business of responsible businessmen in the state of Texas," he said of MADD's proposal.

Tim and Barbara Worthy, owners of the Old Coupland Inn and Dancehall, raised questions about the proposal. Worthy said while he can understand both sides of the issue, at least clubs provide a controlled environment for underage Texans.

Without access to club entertainment, those who are underage may be more likely to get alcohol elsewhere and then drink and drive, he said.

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