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The Louisiana Supreme Court Defended: A Rebuttal of
*The Louisiana Supreme Court in Question: An Empirical and
Statistical Study of the Effects of Campaign Money on the
Judicial Function*

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“A lie can travel halfway around the world while the truth is putting on its shoes.”

Mark Twain (attributed)

“Figures often beguile me, particularly when I have the arranging of them myself; in which case the remark attributed to Disraeli would often apply with justice and force: ‘There are three kinds of lies: lies, damned lies, and statistics.’”

Mark Twain, *Chapters from My Autobiography*,
in NORTH AMERICAN REVIEW (1907)

I. INTRODUCTION

The purpose of this Article is to rebut, from a practitioner’s point of view, the argument authors Vernon Valentine Palmer and John Levendis set forth in their *Tulane Law Review* article entitled, *The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function*.¹ Briefly stated, Palmer and Levendis opine that “[s]tatistically speaking, campaign donors enjoy a favored status among litigants appearing before the justices.”² They conclude that

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1. Vernon Valentine Palmer & John Levendis, *The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function*, 82 TUL. L. REV. 1291 (2008).

2. *Id.* at 1292.

“the very qualities needed in the highest court—independence, impartiality, and adherence to the rule of law—may have been eroded by the corrosive effect of judicial campaign money.”³

However, this attempt to draw the Louisiana Supreme Court into disrepute suffers from numerous fatal flaws. First, the Palmer and Levendis claim that campaign contributions determine judicial votes is founded on a data set that abounds with errors in recording those votes and contributions. Brought to light by our initial review of the cases, these errors are so pervasive that the *Tulane Law Review* has posted an erratum notice and the Dean of Tulane Law School, Lawrence Ponoroff, has written a letter of apology to the Louisiana Supreme Court.⁴ Both the erratum notice and the letter of apology admit that the errors call the Palmer and Levendis conclusions into question.

Second, Palmer and Levendis use an incorrect statistical methodology. As explained in the companion methodological critique by economics professors Robert J. Newman, Dekalb Terrell, and Janet Speyrer, Palmer and Levendis ignore the relevant literature on the proper statistical test for dealing with the problem of “simultaneity,” which means they cannot determine whether contributions are affecting votes or whether a justice’s voting record instead drives the contributions he or she receives.⁵ Indeed, Palmer and Levendis seem to realize their statistical analysis is questionable. They claim that Louisiana Supreme Court Justices have been swayed by campaign contributions, but they later concede—and bury—in a footnote that “[i]t is worth observing that this Article does not claim that there is a cause and effect relationship between prior donations and judicial votes in favor of donors’ positions.”⁶ Palmer’s and Levendis’s concession—that their study does not show any cause and effect between a donation and a judicial decision—renders their assertions of improper influence, made throughout the body of their article and in their concluding paragraph, meaningless.⁷

3. *Id.*

4. Susan Finch, *Law Dean Writes of Regret Over Errors—Author Stands By Article’s Conclusions*, TIMES-PICAYUNE (New Orleans), Sept. 17, 2008, at M1 (discussing letter of apology and erratum notice); Letter from Lawrence Ponoroff, Dean of the Tulane Law School, to the Louisiana Supreme Court (Sept. 10, 2008), http://www.lasc.org/press_room/press_releases/2008/AR-TU_APOLOGY_LETTER.pdf.

5. Robert Newman, Janet Speyrer & Dek Terrell, *A Methodological Critique of The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function*, 69 LA. L. REV. 307 (2009).

6. Palmer & Levendis, *supra* note 1, at 1294 n.14 (emphasis added).

7. *See id.* at 1292, 1305, 1314.

Third, Palmer's and Levendis's arguments are based on a set of assumptions divorced from the common sense reality of legal practice. For example, they assume that unanimous decisions are inherently non-controversial and throw them out of their sample. They also rest much on their analysis on the patently false notion that each justice's combined "pro-plaintiff" or "pro-defendant" voting percentage across diverse areas of law provides useful information about that justice's judicial philosophy. More fundamentally, Palmer and Levendis never analyze the legal arguments or factual issues in any one of the cases in their data set. They never show that a justice's vote was improper or lacked a sound legal foundation.

Finally, the goal of Palmer's and Levendis's article is to justify an automatic recusal rule when a campaign contributor appears before a justice. No other state has such a rule, for the simple reason that it would allow litigants to donate strategically to justices they do not want deciding their cases. Thus, even if their study was not inherently flawed and invalid, their proposed solution to the problem they supposedly discover is unwise and unworkable.

Although unpersuasive on its face, the Palmer and Levendis article—and the authors themselves—generated a certain amount of publicity.⁸ Moreover, although the *Tulane Law Review* and Dean Ponoroff have admitted the data set errors call the claims of the article into question, at least one of the authors has indicated his intention to republish with corrected data and the same conclusions.⁹ Because the Palmer and Levendis article is fundamentally flawed and unfairly disparages the Louisiana Supreme Court and its justices, we have written this Rebuttal.¹⁰ Along with the companion critique on statistical methodology by Newman, Terrell, and Speyrer,¹¹ it responds for the Supreme Court to the contentions Palmer and Levendis make.

8. Adam Liptak, *Looking Anew at Campaign Cash and Elected Judges*, N.Y. TIMES, Jan. 29, 2008, at A14; Posting of Peter Lattman to Wall Street Journal Law Blog, *Tulane Law Prof Examines Whether Justices are for Sale*, <http://blogs.wsj.com/law/2008/01/29/tulane-law-prof-examines-whether-justices-are-for-sale/> (Jan. 29, 2008, 9:11 EST).

9. Finch, *supra* note 4, at M1.

10. The authors, private attorneys asked by the Louisiana Supreme Court to review, analyze, and check the accuracy of the Palmer and Levendis article, prepared an earlier version of this Rebuttal which was distributed during the General Assembly of the Annual Meeting of the Louisiana State Bar Association on June 12, 2008. Both the Louisiana Supreme Court and the *Tulane Law Review* placed that version of this Rebuttal on their respective web sites.

11. See Newman et al., *supra* note 5.

II. ERRORS IN RECORDING CONTRIBUTIONS AND VOTES

In a draft version that was circulated to the news media, the Palmer and Levendis data set was described as 181 cases decided between 1992 and 2006 with at least one dissenting vote, eighty-five of which had at least one "litigant or . . . lawyer who had donated to one of the justice's campaigns."¹² This changed substantially in the final version. This is how the published Palmer and Levendis article describes their method of selecting cases for their data set:

Our analysis included every case decided by the court from 1992 to 2006 in which (1) there was a donor to a *current* justice before the court, and (2) there was at least one dissenting opinion. All writ applications, criminal cases, and lawyer disciplinary cases were excluded. These criteria yielded a set of 186 cases falling within eight subject areas: torts/negligence, employment/labor, domestic relations/family law, constitutional law, government, real property, health, and "other."¹³

The shift from requiring a dissenting vote in each case to requiring both a dissent and a contributor before the court is a dramatic one, considering each version of the paper purports to reach the same conclusions. However, our main concern is with Palmer's and Levendis's errors in recording votes and contributions for their cases, regardless of how they were selected.

We first set out to check on a limited basis whether the Palmer and Levendis data set—the selected cases with votes attributed to the justices for "plaintiff" or "defendant" and receipt of campaign contributions from "winners" or "losers"—was accurate in recording contributions.¹⁴ To see, we examined the contributors to Justice John Weimer's campaign committee and compared those contributors to the Palmer and Levendis data set. We selected

12. Vernon Valentine Palmer & John Levendis, *The Louisiana Supreme Court in Question: An Empirical and Statistical Study of the Effects of Campaign Money on the Judicial Function* 4 (unpublished draft, on file with the authors).

13. See Palmer & Levendis, *supra* note 1, at 1297 (emphasis added) (footnotes omitted).

14. The Palmer and Levendis data table was originally available to the public on the *Tulane Law Review* web site. See Palmer & Levendis, *supra* note 1, at 1298 n.21. However, at the time of this writing, it has been removed. A copy is on file with the authors. VERNON PALMER & JOHN LEVENDIS, DATA TABLE FOR "THE LOUISIANA SUPREME COURT IN QUESTION" (2008) [hereinafter DATA TABLE].

Justice Weimer because he was the newest justice on the court, serving since 2001. Therefore, he had the fewest number of cases in the data set to review.

We went to the Louisiana Ethics Administration's website and downloaded the lists of contributors to Justice Weimer's campaign committee.¹⁵ The committee filed contribution reports covering the years 2001 and 2002. We then looked at all parties—plaintiffs, defendants, amicus or third parties—and their respective attorneys named in each of the cases Palmer and Levendis cited in reference to Justice Weimer. Next, we compared the parties and attorneys, to the extent possible, to the contributor list and the amount of contributions was noted and summarized.

To our great surprise, we found the Palmer and Levendis data set, at least insofar as Justice Weimer was concerned, contained substantial errors. Our comparison of the publicly available campaign contribution reports to the Palmer and Levendis data set shows: (1) errors in the amounts of contributions; (2) contributions where none existed; and (3) cases in which Justice Weimer did not participate. A certified public accountant verified those findings of errors in the financial contribution data attributed to Justice Weimer.¹⁶

For instance, in *Fontenot v. Reddell Vidrine Water District*,¹⁷ Palmer and Levendis show in their data set that Justice Weimer sided for plaintiff, and that plaintiff had contributed \$2,000 to the justice's campaign committee fourteen months before the decision.¹⁸ Our review of the records revealed no contribution to Justice Weimer's campaign committee by plaintiff or by plaintiff's attorneys.

In *Greater New Orleans Expressway Commission v. Olivier*,¹⁹ Palmer's and Levendis's data set attributes a \$500 contribution from the prevailing plaintiff to Justice Weimer's campaign committee,²⁰ yet the public records indicate no contribution to the justice's campaign committee from plaintiff or plaintiff's attorney.

In *Salvant v. State*,²¹ the Palmer and Levendis data set shows defendant contributed \$1,000 to Justice Weimer's campaign

15. La. Bd. of Ethics, Filings by John L. Weimer, <http://www.ethics.state.la.us/cgi-bin/la98/forms/CAN990366/> (last visited Dec. 15, 2008).

16. Letter from Holly Sharp, Certified Public Accountant, LaPorte, Sehr, Romig & Hand, to Phelps Gay & Kevin Tully, Partners, Christovich & Kearney LLP (July 25, 2008) (on file with authors).

17. 836 So. 2d 14 (La. 2003).

18. DATA TABLE, *supra* note 14, at 15.

19. 892 So. 2d 570 (La. 2005).

20. DATA TABLE, *supra* note 14, at 19.

21. 935 So. 2d 646 (La. 2006).

committee fifty-seven months before the case.²² Our search of the public records can find no such contribution from the defendant State of Louisiana or from the state's attorneys or their law firm.

While the mistakes discussed above are bad enough, Palmer and Levendis made even bigger blunders. In *ANR Pipeline Co. v. Louisiana Tax Commission*,²³ a tax case in which five interstate pipeline companies brought claims against the Tax Commission concerning *ad valorem* taxes paid under protest, Palmer and Levendis contend that plaintiff contributed \$1,000 to Justice Weimer's campaign committee and that Justice Weimer had voted for plaintiff.²⁴ Reading the case shows that Justice Weimer did not vote for plaintiff or for defendant. Justice Weimer was recused from the case, as the unnumbered footnote states: "Retired Judge Walter F. Marcus, Jr., assigned as Justice *ad hoc*, sitting for Associate Justice John L. Weimer, recused."²⁵

In sum, even our cursory review of the cases Palmer and Levendis selected and in which Justice Weimer participated yielded errors about who contributed, the amounts of contributions, and inclusion of a case in which Justice Weimer had not participated. Indeed, in at least six out of the twenty-four cases Palmer and Levendis claimed Justice Weimer sided with a contributor, they were wrong, a 25% error rate.²⁶ Given the errors we uncovered in the Palmer and Levendis data set, it seems reasonable to surmise that the data set would also contain numerous errors about the other justices.²⁷

We were able to check the entire Palmer and Levendis data set for other kinds of errors. We looked at each case to determine: (1) if Palmer and Levendis always correctly identified the party for

22. DATA TABLE, *supra* note 14, at 20.

23. 851 So. 2d 1145 (La. 2003).

24. DATA TABLE, *supra* note 14, at 16.

25. *ANR Pipeline*, 851 So. 2d at 1146 n. Justice Weimer was recused because he had ruled on a matter in the litigation while serving as a judge on the Court of Appeal. See Notice of Recusal, *ANR Pipeline Co. v. Louisiana Tax Comm'n*, No. 02-C-1479 c/w 02-C-2261 (La. 2003) (public record on file with the Louisiana Supreme Court).

26. The two other cases where we found errors are *Bailey v. Houry*, 891 So. 2d 1268 (La. 2005) and *Terrebonne Parish School Board v. Castex Energy, Inc.*, 893 So. 2d 789 (La. 2005). See DATA TABLE, *supra* note 14, at 19. In *Bailey*, the data table lists a contribution from the plaintiff of \$2500, but there are no public records of any contributions from the plaintiffs or their attorneys. Letter from Holly Sharp, *supra* note 16. In *Terrebonne Parish*, the plaintiff's contribution was listed as \$3500 when it was actually \$500, which means the defendant, not the plaintiff, was the net contributor in the case. *Id.*

27. We are continuing our investigation of the flawed Palmer and Levendis data set as it relates to other Louisiana Supreme Court Justices, including review of campaign contribution data on file at the Louisiana State Archives.

whom a given justice voted; and (2) if there would be further examples of Palmer and Levendis wrongly attributing a ruling to a justice in a case where the justice did not participate. To our amazement, we found more errors of both types than we imagined we would. Significantly, we found errors made in the data set in roughly 20% of the opinions included in the study. In other words, in thirty-eight of the 186 opinions included in the study, the information about the case on which Palmer and Levendis based their conclusions is just plain wrong in recording how a justice voted or even if the justice was on the panel that decided the case. In the appendix to this Article, we list those cases in the data set where we found Palmer and Levendis erred in recording votes or participation, and we identify their errors.

The significant errors we identify in approximately 20% of the cases Palmer and Levendis included in their data set call into suspicion whether *anyone* involved in the Palmer and Levendis article carefully read, let alone factually and procedurally analyzed, the cases while they compiled their data set. Palmer and Levendis do not claim they read any of the cases which comprise their data base. Instead, they report "[e]ach case was thoroughly read and analyzed by a researcher. Once the cases and contribution information were gathered, we entered our observations into a standard data table."²⁸ Neither the reader nor we know who the "researchers" were or what qualifications they possessed to "analyze" a single case. The mistakes in the Palmer and Levendis data set suggest the "researchers" read the cases superficially at best. Palmer and Levendis acknowledge in an unnumbered footnote that "[a]ny errors that remain [in their article] are of course [their] own."²⁹

We, of course, did not participate in creating the Palmer and Levendis data set. But we think we understand at least one reason the Palmer and Levendis data is compiled incorrectly. Pursuant to Act 512 of 1992,³⁰ an additional judgeship was created for the Court of Appeal for the Fourth Circuit to be elected from the First District of the Fourth Circuit. The new judge was "immediately assigned to the Louisiana Supreme Court" and remained on that court until a special election was held for a newly-created Orleans Parish Supreme Court district.³¹ To accommodate this eighth justice until the Court reverted to seven justices, the Supreme Court adopted amendments to Rule IV of the Louisiana Supreme

28. Palmer & Levendis, *supra* note 1, at 1298.

29. *Id.* at 1291 n.

30. 1992 La. Acts No. 512.

31. *Id.*

Court that were in effect from 1993 to their repeal in 2000.³² As amended, Louisiana Supreme Court Rule IV, Part II, provided:

PART II—Assignment of Writs; Deciding Cases.

Section 1. Each of the seven elected justices and the assigned justice shall participate and share equally in the cases, duties and powers of the court. The justices shall be assigned on a rotating basis to panels of seven justices, and the cases shall be assigned randomly to the seven-justice panels for decision.

Section 2. Each application for writs shall, upon being filed, be assigned to a panel of seven of the eight justices on a rotating basis. The justice who is not assigned to a panel may nonetheless participate in discussions of the application in conference, but shall not have a vote on any such application.

Section 3. Each writ granted for argument and opinion shall be reassigned to a panel of seven justices selected on a rotation basis, without regard to which justices participated in the grant of the writ. The seven justices on the panel will be responsible for the case through final decision and rehearing, if necessary. The justice who is not assigned to a panel may nonetheless participate in conference consideration and discussion, but shall not have a vote on the case.³³

In other words, from January 1993 until September 2000, the Louisiana Supreme Court had eight members, but a panel comprised of only seven justices—with the eighth not voting—would decide a given case. Examining the Palmer and Levendis data set, as outlined above, seems to indicate they did not understand this fact and therefore attributed to a Justice a vote in a case when, in fact, the Justice was not on the panel that decided the case. Reading the cases carefully would have revealed this information to the researchers who reviewed the cases and to Palmer and Levendis because the cases clearly state which of the Court's Justices was not sitting on the panel deciding the case.³⁴

The number of errors we discovered in our review of the data set calls into doubt not only the accuracy of Palmer's and Levendis's underlying data, but the conclusions they draw from

32. LA. SUP. CT. R. IV, pt. II (1993) (repealed 2000).

33. *Id.*

34. *See, e.g.,* Aucoin v. State, 712 So. 2d 62, 63 n. (La. 1998) (including a footnote, following the name of Justice Knoll, author of the majority opinion, which read, "Victory, J., not on panel. Rule IV, Part 2, § 3").

that data. If Palmer's and Levendis's data—the foundation upon which they built their thesis—is defective, their statistically-derived conclusions necessarily must fall. The letter of apology from Dean Ponoroff and the erratum notice posted by the *Tulane Law Review* both admit that the data errors call the conclusions of the study into question.³⁵ Because one of the authors has indicated an intention to republish with supposedly corrected data,³⁶ we have listed the voting and participation errors we found in an appendix as a means to help check any revised version. However, the list we provide should not be understood as final and complete. There is every reason to believe the recorded contributions for other justices will also contain mistakes.

III. PALMER'S AND LEVENDIS'S ASSUMPTIONS ARE FLAWED

Even if the Palmer and Levendis data set was accurate, their study is invalid because of its flawed statistical methodology and because of several unwarranted assumptions that underlie its analysis. We are not statisticians, so the methodological discussion is presented in the companion critique by several prominent professors trained in econometrics.³⁷ In summary, Palmer's and Levendis's neglect of the relevant social science literature on votes and campaign contributions led them to choose a statistical test that cannot adequately determine whether contributions are driving judicial votes or instead votes are driving contributions.³⁸ But even though we are not specialists in quantitative analysis, we are experienced lawyers. This provides more than enough grounding to discuss several unfounded assumptions at the heart of Palmer's and Levendis's argument.

A. *The Exclusion of Unanimous Cases*

First, Palmer and Levendis exclude all unanimous cases from their data set. They justify this by stating:

Our rationale for limiting the study to cases involving one or more dissents was to exclude simple and routine cases and thus hopefully to capture those in which, as shown by the court's own internal disagreement, the issues were significant and difficult. The purpose of this limiting

35. See Finch, *supra* note 4.

36. *Id.*

37. Newman et al., *supra* note 5.

38. *Id.* at 308–309.

feature, therefore, was to test the question of the influence of money in significant cases.³⁹

Palmer and Levendis take for granted—or ask the readers to accept—that limiting the scope of cases to those in which there is “at least one dissent” excludes “simple and routine” cases and captures cases involving “significant and difficult” issues. The authors never cite any authority or studies to support their assumption; nor do they provide the reader with specific case information upon which to accept or reject their hypothesis. Moreover, Palmer and Levendis ignore the scholarly literature that suggests unanimously-decided cases, rather than being “simple and routine” cases, are often ones involving “highly salient issues of public policy.”⁴⁰ Even a cursory review of unanimous Louisiana Supreme Court decisions shows many significant ones, which undermines the rationale Palmer and Levendis provide to explain their selection criteria. Moreover, the Rules of the Louisiana Supreme Court themselves cast doubt on this assumption.

The authors are either unaware of or overlooked Louisiana Supreme Court Rule X,⁴¹ which eliminates “simple and routine” cases from Supreme Court consideration. Under the Louisiana Constitution, a civil litigant only has a right of appeal to the Louisiana Supreme Court in a narrow range of cases, including death penalty cases and cases in which a lower court struck down a law as unconstitutional.⁴² Instead, a litigant who has not prevailed in the court of appeal may file a writ of certiorari with the Louisiana Supreme Court, asking that his or her case be accepted for review.⁴³ The court has discretion whether to grant a writ of certiorari.⁴⁴

Louisiana Supreme Court Rule X sets forth the “character of the reasons” the court considers in deciding whether to grant a writ of certiorari and hear a particular case.⁴⁵ Rule X requires that the

39. Palmer & Levendis, *supra* note 1, at 1297–98. Here we must note yet another error Palmer and Levendis made. In their data set, Palmer and Levendis included *Jurisich v. Jenkins*, 749 So. 2d 597 (La. 1999); but, *Jurisich* was decided without dissent.

40. See, e.g., Paul Brace & Melinda Gann Hall, *Neo-Institutionalism and Dissent in State Supreme Courts*, 52 J. POL. 54, 58 (1990).

41. LA. SUP. CT. R. X, available at <http://www.lasc.org/rules/supreme/RuleX.asp>.

42. LA. CONST. art. V, § 5(D).

43. LA. CODE CIV. PROC. ANN. art. 2166 (2002).

44. LA. SUP. CT. R. X, § 1(a).

45. The relevant section of Rule X reads:
Section 1. Writ Grant Considerations.

case or issue a litigant seeks to bring before the supreme court meet certain stringent considerations. The civil cases that the supreme court may consider on writ of certiorari are those where conflicting decisions by the various courts of appeal are involved; a significant issue of law is unresolved; a controlling precedent should be examined and perhaps overturned; a court of appeal has erroneously interpreted a law or the constitution so as to "cause material injustice or significantly affect the public interest;" or where a court of appeal has so far departed from proper judicial proceedings as to call for the court's supervisory authority.⁴⁶

Rule X thus excludes "simple and routine" cases from those in which writs of certiorari are granted by the supreme court. Palmer's and Levendis's method of allegedly winnowing out "simple and routine" cases from those involving "significant and difficult issues" merely injects a limitation (one or more dissents) which does not rest upon any objectively verifiable basis.

A brief review of cases the Louisiana Supreme Court has decided in which there was no dissent demonstrates that Palmer's and Levendis's thesis is wrong. For example, without dissent, the

(a) The grant or denial of an application for writs rests within the sound judicial discretion of this court. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons that will be considered, one or more of which must ordinarily be present in order for an application to be granted:

1. Conflicting Decisions. The decision of a court of appeal conflicts with a decision of another court of appeal, this court, or the Supreme Court of the United States, on the same legal issue.

2. Significant Unresolved Issues of Law. A court of appeal has decided, or sanctioned a lower court's decision of, a significant issue of law which has not been, but should be, resolved by this court.

3. Overruling or Modification of Controlling Precedents. Although the decision of the court of appeal is in accord with the controlling precedents of this court, the controlling precedents should be overruled or substantially modified.

4. Erroneous Interpretation or Application of Constitution or Laws. A court of appeal has erroneously interpreted or applied the constitution or a law of this state or the United States and the decision will cause material injustice or significantly affect the public interest.

5. Gross Departure From Proper Judicial Proceedings. The court of appeal has so far departed from proper judicial proceedings or so abused its powers, or sanctioned such a departure or abuse by a lower court, as to call for an exercise of this court's supervisory authority.

(b) The application for writs shall address, in concise fashion, why the case is appropriate for review under the considerations stated in subsection (a) above, in accordance with Section 3 or 4 of this rule.

LA. SUP. CT. R. X, § 1.

46. *Id.*

court in *Albright v. Southern Trace Country Club of Shreveport, Inc.*, held that denying a female member of a country club access to service in the club's "men only" dining room violated the woman's state constitutional right to be free from arbitrary, capricious, or unreasonable discrimination based on gender.⁴⁷ In *Louisiana Seafood Management Council v. Louisiana Wildlife & Fisheries Commission*, the court unanimously overturned the district court's ruling that a law banning the use of gill nets by commercial fishermen amounted to a taking of property without just compensation and therefore violated the takings clause of the Louisiana Constitution.⁴⁸ Also, applying the First Amendment rights of persons to have access to public records, the court unanimously held the divorce pleadings of a prominent businessman should be unsealed and open to the public just as everyone else's public records are.⁴⁹ Although there were no dissents in these cases, surely they involved significant issues and cannot be characterized as simple and routine.⁵⁰

B. "Pro-Plaintiff" or "Pro-Defendant" Voting Percentages Provide Little or No Useful Information About a Justice's Judicial Philosophy

Palmer and Levendis at least recognize that they need to find some way to account for judicial philosophy.⁵¹ Rather than contributions affecting votes, litigants might donate to justices with legal views or preexisting voting tendencies they support. However, Palmer's and Levendis's attempt to account for this possibility is woefully inadequate. For the cases in their sample, they calculate a justice's propensity to vote for plaintiffs or defendants when there is no contributor present.⁵² They then compare the voting percentage where no contributor is present with the voting percentages when either a plaintiff or defendant has contributed.⁵³ If a justice is significantly more likely to vote for plaintiffs when plaintiffs have contributed or for defendants when defendants have contributed, this supposedly shows contributions

47. 879 So. 2d 121 (La. 2004).

48. 715 So. 2d 387 (La. 1998).

49. See *Copeland v. Copeland*, 966 So. 2d 1040 (La. 2007).

50. Were Palmer and Levendis to apply their selection criterion (at least one dissent) to decisions the United States Supreme Court rendered they would exclude as "simple and routine" *Brown v. Board of Education*, 347 U.S. 483 (1954), a unanimous decision.

51. Palmer & Levendis, *supra* note 1, at 1302.

52. *Id.* at 1303-04.

53. *Id.*

had an effect, independent of a justice's preexisting judicial philosophy.⁵⁴

The problem is that their baseline for comparison—a justice's voting percentage for plaintiffs or defendants when no contributor is present—is a terrible proxy for a judicial philosophy. Palmer and Levendis never define the significance of a "pro-plaintiff" or "pro-defendant" voting record, but the unstated assumption seems to be that "liberal" justices will vote for plaintiffs while "conservative" ones will support defendants. However, a justice's combined pro-plaintiff or pro-defendant voting percentage reveals next to nothing about their underlying beliefs. Voting for a plaintiff means dramatically different things depending on the area of law or the facts in the case. Consider two of the cases from the Palmer and Levendis data set, both involving components of the utility corporation Entergy. In the first case, Entergy was the defendant, sued by plaintiffs with personal injury claims arising from a workplace accident.⁵⁵ In the second case, Entergy was the plaintiff, challenging a Louisiana Public Service Commission order that reduced the rates it could charge customers.⁵⁶ Yet by Palmer's and Levendis's reckoning, a vote against Entergy in the first case and a vote for Entergy in the second would both constitute evidence of the same pro-plaintiff "judicial philosophy," despite the absence of any common legal or ideological principle that would explain the two votes.

Indeed, in many circumstances voting for the plaintiff or the defendant has no wider significance at all. In cases where an individual sues a business for a tort or employment claim, or when an individual sues the government, a judge might have a "pro-plaintiff" or "pro-defendant" tendency connected to a real "conservative" or "liberal" underlying disposition. But in commercial cases between two businesses, or contract disputes between individuals, the mere fact of voting for the plaintiff or the defendant has no larger ideological or legal meaning. Unsurprisingly, social scientists trying to control for a judge's ideology or judicial philosophy rarely use pro-plaintiff or pro-defendant voting percentage. Instead they try to find some measure of ideological leaning independent of a judge's voting record.⁵⁷

54. *Id.* at 1305.

55. Perkins v. Entergy Corp., 782 So. 2d 606 (La. 2001); DATA TABLE, *supra* note 14, at 11.

56. Entergy Gulf States, Inc. v. Louisiana Pub. Serv. Comm'n, 730 So. 2d 890 (La. 1999); DATA TABLE, *supra* note 14, at 7.

57. See, e.g., Paul Brace, Laura Langer & Melinda G. Hall, *Measuring the Preferences of State Supreme Court Judges*, 62 J. POL. 387 (2000) (the PAJID

Moreover, when social scientists examine the effect of these underlying dispositions on judicial decisions, the ideological meaning of a vote for one party or another is determined by the facts in each case,⁵⁸ rather than an assumption that voting for or against the plaintiff has the same significance in all decisions.

C. Palmer and Levendis Never Examine the Legal Issues or Factual Questions in Any Case

The erroneous assumption that pro-plaintiff or pro-defendant votes have a common meaning regardless of context points to an even deeper problem with the Palmer and Levendis study. In presenting their conclusions, Palmer and Levendis fail to draw the reader to the specific facts of any case or show how a particular justice voted on the issues presented. This neglect highlights the disconnect between the authors' purely statistical approach and the real-life work of judges who address themselves diligently and impartially to specific cases with discrete issues to decide. Judges do not keep a scorecard of their rulings in favor of one party or another, nor do they decide a case by the flip of a coin. Instead, their duty is to decide particular cases on the evidence presented and on the governing law. For Palmer and Levendis to imply judicial bias or improper influence because of campaign contributions, without the slightest consideration of any particular case or cases is simply wrong and constitutes a disservice to the judiciary and the public. Palmer and Levendis fail to cite a single case, much less demonstrate how a case was decided improperly because of campaign contributions.

When a case is docketed in the Louisiana Supreme Court, it has a procedural history, a record, a myriad of factual findings and conclusions of law, prevailing and non-prevailing parties (except in those cases where both sides feel aggrieved by the decisions below), and discrete issues presented that the supreme court found worthy to consider when deciding to grant the writ of certiorari.⁵⁹ Any of these factors can influence a decision, yet Palmer and Levendis give them no attention at all.

matrix); JEFFREY A. SEGAL & HAROLD J. SPAETH, *THE SUPREME COURT AND THE ATTITUDINAL MODEL REVISITED* 321-22 (2002).

58. SEGAL & SPAETH, *supra* note 57, at 312-13.

59. As noted earlier, in considering whether to grant a writ of certiorari, the supreme court examines the important factors set forth in Rule X to determine if a case merits discretionary review. *See supra* text accompanying notes 41-46.

To illustrate the point, we examine here one of the cases contained in Palmer's and Levendis's data set. In *St. Jude Medical Office Building LP v. City Glass & Mirror, Inc.*,⁶⁰ the Louisiana Supreme Court addressed the issue whether the purchaser at a judicial sale of an office building had a right to intervene in the former owner's suit against the building's contractor for negligent construction. The underlying facts are briefly set forth below.

The St. Jude Medical Office Building Limited Partnership contracted with Spaw Glass, Inc. to construct the St. Jude Medical Office Building.⁶¹ Spaw Glass contracted with various subcontractors.⁶² The building was completed, after which the Partnership applied to Travelers for permanent financing.⁶³ Travelers advanced \$25 million on the Partnership's promissory note.⁶⁴ The note was secured primarily by a real and chattel mortgage on the building, the underlying property, and all related land and improvements. The note and mortgage contained *in rem* language limiting Travelers' default remedy to judicial sale of the property.⁶⁵

After closing the loan with Travelers, the Partnership discovered defects in the building's construction, including water leaks through windows and skylights and ground settling damage to the sidewalks and driveways.⁶⁶ The Partnership ultimately sued Spaw Glass and the subcontractors.⁶⁷

Thereafter, the Partnership defaulted on its note. Travelers filed suit in the United States District Court for the Eastern District of Louisiana, seeking recognition of its *in rem* mortgage on the building, a judgment for the amount due on the note, and seizure and sale of the building.⁶⁸ On November 24, 1990, the federal court entered a partial final judgment in favor of Travelers, recognizing its mortgage and awarding damages of approximately \$26 million.⁶⁹ Travelers executed on the judgment with a writ of *feri facias* directing the marshal to seize and sell the building. Travelers acquired the building at a judicial sale for \$7.5 million.⁷⁰

60. 619 So. 2d 529 (La. 1993); DATA TABLE, *supra* note 14, at 1.

61. *St. Jude*, 619 So. 2d at 529.

62. *Id.*

63. *Id.* at 529-30.

64. *Id.* at 530.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

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60. 619 So. 2d 529 (La. 1993); DATA TABLE, *supra* note 14, at 1.

61. *St. Jude*, 619 So. 2d at 529.

62. *Id.*

63. *Id.* at 529-30.

64. *Id.* at 530.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

After the United States Marshal had seized the property but before Travelers bought the building at the judicial sale, Travelers had petitioned to intervene in the Partnership's state court lawsuit against the building's contractor and subcontractors.⁷¹

In response to Travelers' intervention, the defendant contractor and subcontractors filed an exception of prematurity which the district court judge granted.⁷² The court granted Travelers leave to refile its petition if it acquired title to the building.⁷³ After purchasing the building, Travelers again filed a petition of intervention, alleging that it was subrogated to the Partnership's claims for construction breaches of express and implied warranties.⁷⁴ The Partnership and several of the defendants filed exceptions of no cause of action and no right of action.⁷⁵

The trial court sustained both exceptions and dismissed Travelers' petition with prejudice. Travelers appealed. The court of appeal, with one of the three judges writing a concurring opinion, affirmed the trial court's decision.⁷⁶ Travelers sought a writ of certiorari which the supreme court granted.⁷⁷ The supreme court, with two dissenting justices, affirmed the Court of Appeal.⁷⁸ In affirming the lower court, the five justices in the majority thoroughly reviewed the law, distinguishing the case Travelers cited in support of its alleged right to intervene, and so held that Travelers did not have a right of action and hence no right to intervene in the former owner's lawsuit against the contractor.⁷⁹

According to Palmer's and Levendis's data set, one of the five justices in the majority had formerly received (through a campaign committee, obviously) a contribution from the defendant in the case (or its attorney).⁸⁰ But of course, Palmer and Levendis concede in their footnote 14 that they do not show "a cause and effect relationship between prior donations and judicial votes in favor of donors' positions."⁸¹ The outcome of the case was not decided by the justice whose committee had received a campaign contribution, being a five to two decision. (Many if not most of the

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *St. Jude Med. Office Bldg. LP v. City Glass & Mirror, Inc.*, 608 So. 2d 236 (La. App. 5th Cir. 1992), *aff'd*, 619 So. 2d 529 (La. 1993).

77. *St. Jude Med. Office Bldg. LP v. City Glass & Mirror, Inc.*, 613 So. 2d 959 (La. 1993) (granting certiorari).

78. *St. Jude*, 619 So. 2d at 531.

79. *Id.* at 530-31.

80. DATA TABLE, *supra* note 14, at 1.

81. Palmer & Levendis, *supra* note 1, at 1294 n.14.

decisions in Palmer's and Levendis's data set were decided by a supermajority, either six to one or five to two.⁸²)

Nor do Palmer and Levendis show in *St. Jude Medical Office Building* that the "donee" justice's decision was flawed or inconsistent with prior jurisprudence. The decision is also a particularly good example of the problem with accounting for judicial philosophy by classifying a justice as a "plaintiff's judge" or a "defendant's judge."⁸³ What wider ideological significance can be found in voting for or against an intervener opposed by both the original plaintiff and the defendants in a case? Palmer and Levendis fail to analyze a single case on its merits, discuss the possible legal issues or approaches a court or a judge might take, or question the ultimate decision reached in any case. Finally, Palmer's and Levendis's flawed, simplistic statistics-only approach overlooks the fact that in *St. Jude Medical Office Building*, the justice whose committee had earlier received a campaign contribution decided the case like *eight other judges*: the district court judge; the three judges who looked at the issue and rendered the court of appeal decision; and the four other justices who were in the majority. Perhaps the better legal view on the narrow issue before the Court was the one adopted by the trial court, the intermediate court, and the four other justices on the Louisiana Supreme Court.

Instead of trying to account for the legal and factual issues that affect decisions, the Palmer and Levendis article assumes that apart from the impact of campaign contributions and judicial philosophy, decisions are determined by random chance, with a fifty percent chance of being decided one way or the other.⁸⁴ In reality each case arrives as a distinct, individualized matter to be reviewed and decided according to its merits, not on a coin toss.

D. Other Flawed Assumptions

Palmer and Levendis made other questionable decisions in constructing their study. They included as donors not just the parties themselves but any "lawyer who had donated to one of the justices' campaigns . . ."⁸⁵ The inclusion of attorneys as donors contrasts with the *New York Times* study of the Ohio Supreme Court which excluded attorneys from the main findings because "[l]awyers are far more likely than other contributors to give to

82. See DATA TABLE, *supra* note 14.

83. Palmer & Levendis, *supra* note 1, at 1303.

84. *Id.* at 1300-01, 1307.

85. *Id.* at 1294.

judges across the ideological spectrum, and they generally do not have the direct and consistent interest in the outcomes of cases that their many and varied clients do."⁸⁶

Another issue is Palmer's and Levendis's unstated assumption that when a party appears before the Louisiana Supreme Court, the justices know whether the party or his attorney has contributed to the justice's campaign election committee and know the amount of the past contribution. The article's authors state no facts to support this unstated conclusion, but merely assume it is correct.⁸⁷

Palmer and Levendis entirely fail to acknowledge (or fail to comprehend) that candidates for election to Louisiana judicial office, including those persons seeking election to the Louisiana Supreme Court, are prohibited from personally soliciting or accepting campaign contributions.⁸⁸ Instead, campaign committees of responsible persons may conduct campaigns for the judicial candidate, and the committee may solicit and accept campaign contributions and manage the expenditure of those funds. Palmer and Levendis accord little significance to the monetary limits placed upon a campaign contribution to a judicial campaign committee. Although a political action committee can give up to \$10,000 if it meets certain membership requirements,⁸⁹ other donors may give no more than \$5,000 to the campaign committee of a judicial candidate for the Louisiana Supreme Court.⁹⁰ This cap limits any one donor's campaign contributions to a judicial

86. *How Information Was Collected*, N.Y. TIMES, Sept. 30, 2006, <http://www.nytimes.com/2006/09/30/us/01judges.web.html>.

87. Palmer's and Levendis's data set is full of examples where the campaign contribution, say of \$500, was made four, five, six, seven, eight, nine, ten or eleven years before the case was docketed, let alone decided by the supreme court. See DATA TABLE, *supra* note 14. It stretches belief to suggest that a justice of the supreme court (1) recalls that his or her campaign committee received a \$500 contribution eight years before; and (2) with that ancient memory recalled, decided to vote in favor of the long-ago donor.

88. See LA. CODE JUD. CONDUCT, canon 7(D)(1)-(3) (2008), available at <http://www.lasc.org/rules/supreme/cjc.asp>. The campaign committee cannot solicit contributions for a judicial candidate's campaign any earlier than two years before the primary election, and contributions can only be solicited after the election to extinguish the campaign's debt, if any. *Id.* canon 7(D)(3).

89. If a political action committee has over 250 members, each of whom contributed at least \$50 to the PAC during the preceding calendar year, and it has been certified as meeting that membership requirement, it may give up to \$10,000 to a major office candidate. LA. REV. STAT. ANN. § 18:1505.2(H)(2)(b)(i) (2004).

90. *Id.* § 18:1505.2(H)(1)(a)(i), (2)(a)(i).

candidate to avoid any appearance of undue influence, a goal several professional organizations have endorsed.⁹¹

The authors also overlook the ten year term for a Louisiana Supreme Court Justice,⁹² which isolates the justices further from any past campaign contributions their election campaign committee may have obtained. This ten year period is longer than the six year period served by justices of the Ohio Supreme Court, the court that was the subject of the *New York Times* study to which Palmer and Levendis repeatedly refer.⁹³

IV. THE PALMER AND LEVENDIS SUGGESTED NEW RECUSAL RULE WOULD INVITE MISCHIEF

Palmer and Levendis advise their readers that “[w]e began this study with no preconceptions as to what we would find, and we emerge from it with results that draw into question the voting behavior of our highest court.”⁹⁴ However, based upon statements made to the press, it appears that Palmer had a preconceived interest and goal when he embarked upon his study. In an interview he gave to the *New York Times* in January 2008, Palmer related that he could not understand how justices of the Louisiana Supreme Court could routinely hear cases involving people who had given the justices campaign contributions.⁹⁵ Long before embarking on the study, he had written letters to each of the seven justices asking them to adopt a rule making disqualification mandatory in cases in which a donor was present. Six months went by without a response, so Palmer wrote again, bemoaning his use of “seven more stamps” that led to “still . . . no reply.”⁹⁶ According to the article, Palmer was “peeved” and “decided to take a closer look at the Louisiana Supreme Court” which led to Palmer’s and Levendis’s article.⁹⁷

Unsurprisingly, Palmer and Levendis use their conclusions to suggest that Louisiana judges, including the Louisiana Supreme Court Justices, should recuse themselves whenever a party or an attorney has contributed to their campaigns for election or re-

91. See, e.g., Marc E. Williams, *Welcome to the Judicial Silly Season*, FOR THE DEFENSE, Mar. 2008, at 1.

92. See LA. CONST. art. V, § 3.

93. Palmer & Levendis, *supra* note 1, at 1293, 1294 (citing Adam Liptak & Janet Roberts, *Campaign Cash Mirrors a High Court’s Rulings*, N.Y. TIMES, Oct. 1, 2006, at A1).

94. See Palmer & Levendis, *supra* note 1, at 1314.

95. Liptak, *supra* note 8, at A14.

96. *Id.*

97. *Id.*

election. Securing the adoption of such an automatic recusal rule is what drove Palmer to begin the study, and it is the intended result of his article. Apart from the numerous problems with the Palmer and Levendis article that have already been discussed, their proposed new rule is unwise and unworkable.

No state has adopted the proposal Palmer and Levendis advance,⁹⁸ and it is easy to see why. Were such an automatic rule in place, litigants or their attorneys could manipulate the system by donating campaign money to judges whose judicial philosophy and leanings the donors did not share and thereby guarantee that a particular judge or Justice would *not* hear any cases involving the donor. Rather than solving a problem that does not exist, Palmer and Levendis propose an unworkable "solution" that invites mischief and gamesmanship by attorneys and litigants to remove judges from deciding cases by doing nothing more than writing a small check to a campaign committee.

The better way to ensure campaign contributions do not influence a justice's decision in any given case is how Louisiana has approached the subject, namely by limiting the amount and timing of campaign contributions that can be made to a judicial candidate and preventing a judicial candidate from personally soliciting or receiving a campaign contribution. Palmer and Levendis overlook the obvious: it is not reasonable to suppose that a Louisiana Supreme Court Justice would surrender his or her judicial integrity because of the happenstance of having either a party or an attorney before the court who donated \$500 or \$2,500 to the justice's campaign committee two or ten years earlier. Palmer's and Levendis's faulty, statistically based study does not comport with real-life observations of the way justices of our supreme court undertake their duties. Their lightly concealed allegation of corruption is unwarranted and unfair.

V. CONCLUSION

Our experience tells us that judges do their utmost to be impartial. Naturally, each justice must individually decide the facts

98. Deborah Goldberg, James Sample & David Pozen, *The Best Defense: Why Elected Courts Should Lead Recusal Reform*, 46 WASHBURN L. J. 503, 520 (2007). Instead of providing for automatic recusal when a contributor is before the court, Louisiana law provides for recusal of any judge where there is bias, prejudice, or interest such that the judge is "unable to conduct fair and impartial proceedings." LA. CODE CIV. PROC. ANN. art. 151(A)(5) (1999). Additionally, Canon 3 of the Code of Judicial Conduct requires a judge to "perform judicial duties without bias or prejudice." LA. CODE JUD. CONDUCT, canon 3(A)(4) (2008), available at <http://www.lasc.org/rules/supreme/cjc.asp>.

and legal issues before the court as he or she sees fit, but each is bound by a duty to uphold the rule of law. Despite their efforts, Palmer and Levendis provide no solid evidence that the justices of the Louisiana Supreme Court have betrayed this duty. To the extent that Palmer and Levendis intended to provoke or contribute to the scholarly debate on the judicial selection process—whether through election or appointment—or on the rules for disqualification of judges in certain circumstances, they failed. Their article, replete with errors and false assertions, contributes nothing to the ongoing scholarly debate on these public policy questions.

The data set Palmer and Levendis constructed contains a myriad of substantial errors, including who contributed, the amounts of contributions, and attribution of contributions where none were made. Of more concern, the data set repeatedly mistakenly describes which justices ruled for which side of a case and shows that a given justice participated in a decision when, in fact, the respective justice did not participate in the voting, had recused himself or herself from the case, or was not on the panel that decided the case. These mistakes add up to a data set so profoundly untrustworthy that no valid conclusions about the court could be legitimately derived from it.

Even if the Palmer and Levendis data set were reliable (which demonstrably it is not), the Palmer and Levendis statistically based analysis, lacking reference to a single case and simplistically classifying judicial philosophy as either “pro-plaintiff” or “pro-defendant,” paints a false picture of our Louisiana Supreme Court Justices. The methodological critique authored by Professors Newman, Terrell, and Speyrer, which demonstrates that Palmer and Levendis employed faulty methodology in their study, buttresses our belief. At the core, the Palmer and Levendis conclusions do not withstand common sense and practical scrutiny.

APPENDIX

- The data table reports that Justice Kimball voted for the plaintiff in *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, but she was not on the panel; rather, her predecessor on the Court, Justice Luther Cole, participated in this case.⁹⁹
- The data table reports that Justice Kimball voted for the plaintiff in *Smith v. Matthews*, but again Justice Cole, not Justice Kimball, was on the panel.¹⁰⁰
- Chief Justice Calogero is listed as voting for the plaintiff in *Talley v. Succession of Stuckey*, but he recused himself and did not participate on the panel.¹⁰¹
- The data table lists Chief Justice Calogero as voting for the plaintiff in *Horton v. McCrary*, but Chief Justice Calogero voted with the majority's ruling that was favorable in part to the defendant, and also voted to rehear the case in favor of the defendant.¹⁰²
- Justice Victory is listed as voting for the defendant in *Stelly v. Overhead Door Co. of Baton Rouge*,¹⁰³ but he was not on the panel.¹⁰⁴
- Chief Justice Calogero is listed as voting for the plaintiff in *Martin v. Champion Insurance Co.*, but he was not on the panel.¹⁰⁵
- The data table reports that in *Garrett v. Seventh Ward Hospital* Chief Justice Calogero ruled for the defendant and Justices Johnson, Kimball and Victory ruled for the plaintiff.¹⁰⁶ In fact, Justices Kimball and Victory joined in the majority opinion for the defendant, not the plaintiff.¹⁰⁷ Chief Justice Calogero

99. 609 So. 2d 201 (La. 1992); DATA TABLE, *supra* note 14, at 1. Justice Cole's signed initials on the majority opinion can be found at *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, No. 92-CA-1433, slip op. at 1 (La. 1992) (public record on file with the Louisiana Supreme Court).

100. 611 So. 2d 1377, 1381 (La. 1993); DATA TABLE, *supra* note 14, at 1.

101. 614 So. 2d 55, 56 n. (La. 1993); DATA TABLE, *supra* note 14, at 1.

102. 635 So. 2d 199, 199 (La. 1994); DATA TABLE, *supra* note 14, at 1.

103. 646 So. 2d 905 (La. 1994); DATA TABLE, *supra* note 14, at 1.

104. When the court issued the *Stelly* opinion on December 8, 1994, Justice Victory was not yet on the court. The reference to Justice Victory's willingness to grant a rehearing came after the opinion was rendered and after Justice Victory had joined the court, starting on January 1, 1995. *Stelly*, 646 So. 2d at 905.

105. 656 So. 2d 991, 993 n.1 (La. 1995); DATA TABLE, *supra* note 14, at 1.

106. 660 So. 2d 841 (La. 1995); DATA TABLE, *supra* note 14, at 1.

107. The signed initials of Justices Kimball and Victory on the majority opinion can be found at *Garrett v. Seventh Ward Hospital*, No. 95-C-0017, slip op. at 1 (La. 1995) (public record on file with the Louisiana Supreme Court).

dissented in favor of the plaintiff and Justice Johnson was not on the panel.¹⁰⁸

- Justice Victory is listed as voting for the defendant in *Ledbetter v. Concord General Corp.*, but he was not on the panel.¹⁰⁹
- Justice Kimball is listed as voting for the plaintiff in *Leonard v. Parish of Jefferson*, but she was not on the panel.¹¹⁰
- Chief Justice Calogero is listed as voting for the defendant in *Olivier v. LeJeune*, but he was not on the panel.¹¹¹
- Justice Kimball is listed as voting for the defendant in *Smith v. Department of Health & Hospitals*, but she was not on the panel.¹¹²
- Justice Johnson is listed as voting for the defendant in *O'Rourke v. Cairns*, but she was not on the panel.¹¹³
- That data table lists Justice Kimball as voting for the defendant and Justice Victory as voting for the plaintiff in *Thompson v. State*, but in fact Justice Victory voted for the defendant with the majority, and Justice Kimball dissented in favor of the plaintiff.¹¹⁴
- Justice Knoll is listed as voting for the defendant in *Lejano v. Bandak*,¹¹⁵ but she was not on the panel.
- Justice Kimball is listed as voting for the defendant in *Banks v. New York Life Insurance Co.*, but she was not on the panel.¹¹⁶
- Justice Kimball is listed as voting for the plaintiff in *Jurisich v. Jenkins*, but she was not on the panel.¹¹⁷
- Justice Kimball is listed as voting for the defendant in *Joseph v. Dickerson*, but she was not on the panel.¹¹⁸
- Justice Traylor is listed as voting for the plaintiff in *Timmons v. Silman*, but in fact he joined the majority opinion ruling for the defendant.¹¹⁹

108. *Garrett*, 660 So. 2d at 842 n.1, 848.

109. 665 So. 2d 1166, 1167 n. (La. 1996); DATA TABLE, *supra* note 14, at 2.

110. 666 So. 2d 1061, 1061 n. (La. 1996); DATA TABLE, *supra* note 14, at 2.

111. 668 So. 2d 347, 348 n. (La. 1996); DATA TABLE, *supra* note 14, at 2.

112. 676 So. 2d 543, 544 n. (La. 1996); DATA TABLE, *supra* note 14, at 3.

113. 683 So. 2d 697, 705 (La. 1996); DATA TABLE, *supra* note 14, at 3.

114. 701 So. 2d 952, 957 (La. 1997); DATA TABLE, *supra* note 14, at 5. Justice Victory's signed initials on the majority opinion can be found at *Thompson v. State*, No. 97-C-0293, slip op. at 2 (La. 1997) (public record on file with the Louisiana Supreme Court).

115. 705 So. 2d 158, 171 (La. 1997); DATA TABLE, *supra* note 14, at 5.

116. 737 So. 2d 1275, 1277 n. (La. 1999); DATA TABLE, *supra* note 14, at 8.

117. 749 So. 2d 597, 598 n. (La. 1999); DATA TABLE, *supra* note 14, at 9.

118. 754 So. 2d 912 (La. 2000); DATA TABLE, *supra* note 14, at 10.

119. 761 So. 2d 507, 513 (La. 2000); DATA TABLE, *supra* note 14, at 10. Justice Traylor's signed initials on the majority opinion can be found at

- Justice Traylor is listed as voting for the plaintiff in *St. Bernard Police Jury v. Murla*, but he was not on the panel.¹²⁰
- The data table does not list a vote for Chief Justice Calogero in *Carrier v. Grey Wolf Drilling Co.*, but he was on the panel and joined the majority ruling for the defendant.¹²¹
- Justice Traylor is listed as voting for the plaintiff in *Clark v. State Farm Mutual Automobile Insurance Co.*, but he dissented from the majority's ruling in favor of the plaintiff.¹²²
- The data table lists Chief Justice Calogero and Justice Kimball as voting for the defendant in *Riddle v. Bickford*, but both justices dissented from the majority opinion that affirmed the lower court's ruling in the defendant's favor.¹²³
- Justice Johnson is listed as voting for the defendant in *Elevating Boats, Inc. v. St. Bernard Parish*, but she did not participate in the decision.¹²⁴
- The data table lists no vote for Chief Justice Calogero in *Hunter v. Wal-Mart Supercenter*, but he was on the panel and voted with the majority in favor of the defendant.¹²⁵
- The data table lists no votes for Chief Justice Calogero and Justices Traylor and Knoll in *Entergy Louisiana, Inc. v. Louisiana Public Service Commission*, but all three participated in the decision.¹²⁶ The Chief Justice and Justice Knoll ruled for the defendant, while Justice Traylor sided with the plaintiff.¹²⁷

Timmons v. Silman, No. 99-C-3264, slip op. at 1 (La. 2000) (public record on file with the Louisiana Supreme Court).

120. 761 So. 2d 532, 533 n. (La. 2000); DATA TABLE, *supra* note 14, at 11.

121. 776 So. 2d 439 (La. 2001); DATA TABLE, *supra* note 14, at 11. Chief Justice Calogero's signed initials on the majority opinion can be found at *Carrier v. Grey Wolf Drilling Co.*, No. 00-C-1335 (La. 2001), slip op. at 1 (public record on file with the Louisiana Supreme Court).

122. 785 So. 2d 779, 793 (La. 2001); DATA TABLE, *supra* note 14, at 12.

123. 785 So. 2d 795, 803 (La. 2001); DATA TABLE, *supra* note 14, at 12.

124. 795 So. 2d 1153, 1156 n. (La. 2001); DATA TABLE, *supra* note 14, at 12.

125. 798 So. 2d 936 (La. 2001); DATA TABLE, *supra* note 14, at 12-13. Chief Justice Calogero's signed initials on the majority opinion can be found at *Hunter v. Wal-Mart Supercenter*, No. 01-C-0299, slip op. at 1 (La. 2001) (public record on file with the Louisiana Supreme Court).

126. 815 So. 2d 27 (La. 2002); DATA TABLE, *supra* note 14, at 14.

127. *Entergy Louisiana*, 815 So. 2d at 27 (notation of Justice Traylor's dissent). Chief Justice Calogero's and Justice Knoll's signed initials on the majority opinion can be found at *Entergy Louisiana, Inc. v. Louisiana Public Service Commission*, No. 01-CA-1725, slip. op. at 1 (La. 2002) (public record on file with the Louisiana Supreme Court).

- The data table lists Justices Johnson and Knoll as voting for the plaintiff in *Industrial Co. v. Durbin*, but both justices dissented from the majority opinion that ruled for the plaintiffs.¹²⁸
- The data table lists Justices Knoll and Traylor as voting for the plaintiffs in *Gregor v. Argenot Great Central Insurance Co.*, but Justice Knoll dissented from the majority ruling for the plaintiff, while Justice Traylor was not on the panel.¹²⁹
- Justice Traylor is listed as voting for the plaintiff *East Baton Rouge Parish School Board v. Foster*, but he dissented from the majority opinion that ruled for the plaintiff.¹³⁰
- As noted above, the data table lists Justice Weimer as voting for the plaintiff, *ANR Pipeline Co. v. Louisiana Tax Commission*, but he was not on the panel.¹³¹
- Justice Victory is listed as voting for the plaintiff in *Talbot v. Talbot*, but he joined the majority opinion that ruled for the defendant.¹³²
- Justice Johnson is listed as voting for the plaintiff in *Hutchinson v. Knights of Columbus*, but she was not on the panel.¹³³
- The data table lists Justices Kimball and Traylor as voting for the defendant in *Hall v. Folger Coffee Co.*, but both justices dissented from the majority opinion that ruled for the defendant.¹³⁴
- Justice Weimer is listed as voting for the plaintiff in *Toston v. Pardon*, but he dissented from the majority opinion that ruled for the plaintiff.¹³⁵
- The data table lists Justices Kimball and Johnson as voting for the defendant in *Medine v. Roniger*, but both justices dissented from the majority opinion that ruled for the defendant.¹³⁶
- Justice Johnson is listed as voting for the plaintiff in *Louisiana Municipal Ass'n v. State*, but she was not on the panel.¹³⁷
- The data table lists Justices Traylor and Victory as voting for the plaintiff in *Trahan v. Coca Cola Bottling Co. United, Inc.*,

128. 837 So. 2d 1207, 1218 (La. 2003); DATA TABLE, *supra* note 14, at 15–16.

129. 851 So. 2d 959, 961 n., 973 (La. 2003); DATA TABLE, *supra* note 14, at 16.

130. 851 So. 2d 985, 1001 (La. 2003); DATA TABLE, *supra* note 14, at 16.

131. See *supra* text accompanying notes 23–25.

132. 864 So. 2d 590 (La. 2003); DATA TABLE, *supra* note 14, at 17. Justice Victory's signed initials on the majority opinion can be found at *Talbot v. Talbot*, No. 03-C-0814, slip op. at 1 (La. 2003) (public record on file with the Louisiana Supreme Court).

133. 866 So. 2d 228, 230 n. (La. 2004); DATA TABLE, *supra* note 14, at 17.

134. 874 So. 2d 90, 105 (La. 2004); DATA TABLE, *supra* note 14, at 18.

135. 874 So. 2d 791, 804 (La. 2004); DATA TABLE, *supra* note 14, at 18.

136. 879 So. 2d 706, 717 (La. 2004); DATA TABLE, *supra* note 14, at 18.

137. 893 So. 2d 809, 814 n. (La. 2005); DATA TABLE, *supra* note 14, at 19.

but both justices dissented from the majority opinion that ruled for the plaintiff.¹³⁸

- Justice Johnson is listed as voting for the defendant in *Lemann v. Essen Lane Daiquiris, Inc.*, but she dissented from the majority opinion affirming the lower court's judgment for the defendant.¹³⁹
- Chief Justice Calogero is listed as voting for the defendant in *Salvant v. State*, but he dissented from the majority opinion that ruled for the defendant.¹⁴⁰

138. 894 So. 2d 1096, 1110 (La. 2005); DATA TABLE, *supra* note 14, at 19.

139. 923 So. 2d 627, 637 (La. 2006); DATA TABLE, *supra* note 14, at 20.

140. 935 So. 2d 646, 660 (La. 2006); DATA TABLE, *supra* note 14, at 20.