

A PLAN FOR JUDICIAL EVALUATION IN COLORADO

Report of the Judicial Planning Council's  
Committee on Judicial Performance

August 1980



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COMMITTEE ON JUDICIAL PERFORMANCE

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The Judicial Planning Council, organized in 1977 by the Colorado Supreme Court, conducts research to improve the state judicial system. The Council and its committees are staffed by the State Court Administrator's office. Portions of this project were supported by the Law Enforcement Assistance Administration, United States Department of Justice.

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## PREFACE

This report comes at a time of increasing public awareness of judges and their activities. The public is interested in what judges do, and how well they do it. In response, this report reflects the public's concern for improving the accountability of all public officials, not just members of the judiciary. It is also consistent with the charge given the Committee on Judicial Performance by the Chief Justice to develop a program to inform the public about judicial performance. Judicial selection, training, and discipline are related concepts, but the Committee concentrated on performance evaluation as the primary concern of the electorate.

This plan is the first major effort in Colorado toward formal, state-wide judicial evaluation. In this regard, Colorado joins with just three other jurisdictions in considering or implementing such a program.

A note of appreciation must be extended to all of the members of the Committee on Judicial Performance, who so generously gave of their time during the incubation period for this report. Our thanks are also extended to James D. Thomas, State Court Administrator, who provided the staff and support services for the project. Special thanks go to E. Keith Stott, Jr., Deputy State Court Administrator and staff director for the project, who prepared and wrote the succes-

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## SUMMARY OF MAJOR FINDINGS AND RECOMMENDATIONS

In June, 1979, the Judicial Planning Council, acting under the direction of Chief Justice Paul V. Hodges, created a Committee on Judicial Performance and instructed it to develop a plan to evaluate judges and inform the public about judicial performance. Pursuant to its instructions, the Committee considered recent developments in performance appraisal techniques, methods of evaluating judicial performance, and judicial evaluation programs used in Alaska, New Jersey, and the District of Columbia. In addition, the Committee held a series of public hearings in various parts of the state.

The report discusses the major findings resulting from the Committee's activities and deliberations. In summary, these are the major conclusions reached by the Committee:

- The primary purposes of judicial evaluation should be to help the public to evaluate judges for retention and to assist judges in their professional development.
- The voting public should have relevant information about the performance of judges. The information should not be so superficial as to be meaningless and misleading nor so complex and voluminous as to be beyond practical use by the public.
- The final decision on retention should remain with the electorate; therefore, evaluations should provide balanced profiles of judges rather than simple recommendations to retain or reject judges.

- Judges should be evaluated objectively, by relevant performance standards and adherence to principles of law and not on the basis of personal, social, or political philosophies.
- The actual evaluation should be done at the local level, but uniform standards and methods should be developed by an independent commission under the direction of the Supreme Court.
- Evaluation should be a positive and helpful experience. Individuals who have direct and recurring contact with judges should have a primary role in evaluation, and their reports should be independent of the control of any judge being evaluated. Before the release of information to the public, judges should have opportunity to discuss evaluation results with the group responsible for their compilation and dissemination.
- An evaluation program should be implemented in phases. The first phase should include the development and use of a uniform survey of (a) lawyers who appear before the judge who is being evaluated, and (b) jurors who have served in that judge's court. In the second phase, survey techniques could be supplemented with other evaluation methods or activities aimed at reaching other court constituencies.
- Evaluation results should be regularly and widely disseminated to the public through newspapers, radio, and television, or other appropriate methods that may vary with the locale.
- The entire program should be reviewed thoroughly within two years of its creation to determine if it is reasonably accomplishing its purposes.

On the basis of these and the other conclusions described more fully in the report, the Committee on Judicial

Performance recommends that the Supreme Court create a Commission on Judicial Performance to design and implement an evaluation program for the Colorado judiciary. The Commission would be relatively small with a majority of non-lawyer members. The Commission would be independently staffed and funded, although as a practical matter, it may be organized along regular administrative lines within the judicial department. Costs of operating the Commission would come from state general funds.

The Committee concluded that formal judicial evaluation can benefit both the public and the judiciary. Performance evaluation is not easy, however, and the successful implementation of such a program in Colorado will require adequate funding, progressive leadership, professional expertise, and considerable amounts of patience and enthusiasm. The success of performance evaluation programs in private and public institutions hinges on the interest and cooperation of those being evaluated. Research conducted during this study suggests that Colorado's judges are willing to support a performance evaluation program. The key remaining question is: Can the information collected, studied, and made available to the public make retention elections more meaningful and professional development more certain? This question is not easily answered, but on balance, the Committee feels that the risks inherent in experimentation are worth the potential benefits.

## INTRODUCTION

### Background

The Judicial Planning Council (JPC) was created by the Colorado Supreme Court to perform organizational, operational, and policy-related research to improve the judicial system. The JPC in turn created the Committee on Judicial Performance in June, 1979. Both the JPC and the Committee have memberships of judges, lawyers, and non-lawyers.

The Chief Justice spoke to the Committee at its first meeting. He said although lawyers and judges recognize that judicial selection in this state is based on merit, they are also aware that we have no method to evaluate judicial performance thereafter. The General Assembly expressed similar concern during the 1979 session. Therefore, the Chief Justice, acting under his constitutional authority to supervise all courts and judges, directed the Committee to develop a plan for evaluating judges and informing the public about judicial performance.

Developing an evaluation method for judges is not simple. Although much has been written about what makes a good judge,<sup>1</sup> the Committee found no specific guidelines,

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1. See Harry W. Jones, "The Trial Judges--Role Analysis and Profile," In The Courts, the Public and the Law Explosion (Englewood Cliffs, N.J.: Prentice-Hall, 1965), pp. 124-145; Maurice Rosenberg, "The Quali-

standards, or methods for measuring and applying the criteria to judges on the bench. Existing directions to judges regarding their behavior, such as the Colorado Code of Judicial Conduct, generally follow the ethical standards of the legal profession.<sup>2</sup>

The vagueness or absence of judicial performance standards and methods to apply them generates many questions. The Committee attempted to answer some through a comprehensive research program.

As a first step, the Committee studied techniques used by private and public organizations to assess employee performance. The Committee also inquired about any evaluation programs other states had for their judges. New Jersey, which has just completed a judicial evaluation study, shared its data with Colorado. The New Jersey study showed only Alaska and the District of Columbia had established comprehensive judicial evaluation programs, and no state other than

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ties of Justice--Are They Strainable?" 44 Texas Law Review (June 1966): 1063-1080; and, Arthur T. Vanderbilt, Judges and Jurors: Their Functions, Qualifications and Selection (Boston: Boston Univ. Press, 1956).

2. The Colorado Code of Judicial Conduct, adopted in 1973, provides that a judge should uphold the integrity and independence of the judiciary; avoid real or apparent impropriety in all activities; perform official duties impartially and diligently; regulate outside activities to minimize risk of conflict with judicial duties; regularly file reports of compensation received for quasi-judicial and extra-judicial activities; and refrain from political activity inappropriate to judicial office. One other of the seven basic canons cautiously encourages a judge to engage in activities to improve the law, legal system, and the administration of justice. All other governmental activities are circumscribed to avoid potential conflicts of interest.

New Jersey was seriously considering starting formal judicial evaluation in the near future.

As its second step, the Committee solicited the views of judges and the public about evaluating judicial performance. The staff prepared and took a survey of all state judges to determine their attitudes about evaluation criteria, methods for measuring performance, and effects of evaluation on judicial behavior. Ninety percent of the state judiciary responded. Portions of the judges' survey were coordinated with a survey of court users conducted separately by the Judicial Planning Council as part of its public education project. Both surveys are discussed in detail later in this report.

A different method was used to get public input. Several of the Committee's regular meetings were oriented to the public. At one meeting, for example, the Committee discussed the roles of newspapers, radio, and television in judicial evaluation and listened to a panel of journalism experts. In addition to its regular meetings, the Committee held "town meetings" in Greeley, Grand Junction, Durango, Pueblo, Colorado Springs, Denver, and Boulder. As a result, more than 200 citizens communicated with the Committee about the performance of judges.

The work of the Committee was affected by several other groups. Although judicial selection and discipline were not within the scope of the Committee's study, they have logical

relationships to performance and cannot be artificially separated from it. Consequently, reports of the Interim Judiciary Committee of the General Assembly, which investigated judicial selection procedures during late 1979, and the Colorado Bar Association Committee on Judicial Selection and Tenure, which studied both judicial selection and discipline, were used by the Committee.<sup>3</sup>

#### Organization of the Report

This report follows the sequence of what the Committee feels are basic questions: What methods are used to appraise individual job-related performance; how are judges presently evaluated; what should be the purposes and criteria of judicial evaluations; what do judges think about evaluation; when and how frequently should evaluations be performed; how should evaluation results be disseminated; and what would be the best evaluation program for Colorado? After considering these issues, the final part of the report contains the Committee's conclusions and recommendations.

This report reflects the findings and recommendations of the Committee in only the broadest sense. Evaluation of individual performance is very complex and fraught with pitfalls and difficulties. The report underscores the need for

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3. Colorado General Assembly, Legislative Council, Recommendations for 1980: Committees on Judiciary, and Health, Environment, Welfare, and Institutions, Research Publication No. 246, (Denver: December 1979), pp. 1-33; Colorado Bar Association, Report of the Judicial Selection and Tenure Committee, (Denver: November 21, 1979).

careful, thoughtful, and compassionate planning when designing or implementing methods for studying and appraising human performance. The fact that we are recommending a plan for evaluating judges--a process about which we know relatively little--is even more reason for caution.



## DEVELOPMENTS IN PERFORMANCE EVALUATION

### Focus on Accountability

Performance evaluation--assessing individual performance against objective standards or expectations--is an integral part of effective management. Standardized evaluation forms and techniques are familiar to many managers and employees. They are new, however, when applied to judges selected and retained on merit principles.

Performance evaluation concerns the judiciary because of increasing interest in, if not demand for, greater accountability of all public officials. Directed indiscriminately, the demand reflects, in part, a lack of or diminishing confidence in many of our public institutions.<sup>4</sup> Performance evaluation and accountability consequently have become catchwords for those urging that judges selected on merit be examined against "appropriate" standards and that the electorate, which has the ultimate retention authority, be informed of the results.

### Experience of Other Organizations

The Committee examined performance evaluation in pri-

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4. Howard R. Bowen, Evaluating Institutions for Accountability, (San Francisco, Jossey-Bass, 1974), p. xi.

vate business and industry, higher education, and state and federal governments. Much research has been done in these areas, and the experience of managers and social scientists in designing and implementing performance appraisal systems offers important lessons for the judiciary.<sup>5</sup>

First, the interest in evaluating the performance of judges is not extraordinary. Given the development of accountability in the private and public sector during the last twenty years, it was predictable that the judiciary would be called to account, especially once merit selection was adopted. Performance evaluation is not a passing trend; most large companies have implemented formal evaluation programs; many colleges and universities regularly evaluate faculty; and all states and the federal government have or are developing performance appraisal programs for merit personnel.

But performance appraisal may be more tolerated than accepted, and is frequently seen as one of the weaker links of management. It is considered vital, however, because more modern managers believe it impossible to manage an organization without accurate information about how the members of that organization are performing and meeting their responsibilities. Managers recognize that such judgments are made

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5. The bibliography at the end of this report contains a selection of articles and books used to prepare this section.

whether or not there is a formal system for making them.<sup>6</sup>

Second, development of a performance appraisal system is usually evolutionary. It is not unusual to see several models tested and rejected during the implementation of performance evaluation as an organization goes through cycles of experimentation and dissatisfaction. Many organizations are now shifting from measuring personality traits to measuring performance based on behavior and results, as managers conclude that only those factors and behaviors which are observable, measurable, and job-related should be evaluated.<sup>7</sup>

Third, successful appraisal systems require considerable time and patience and heavy commitments of people and money. For this reason, some managers have suggested abandoning small attempts to appraise performance--or else devoting the necessary time, effort and dollars to develop truly valid systems.<sup>8</sup>

Fourth, a performance evaluation system must be tailor-made to an organization. Although government has tended to follow the lead of business, there are considerable differences between business, government, and higher education

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6. Harold Koontz, Appraising Managers as Managers, (New York: McGraw-Hill, 1971), p. ix.

7. Robert I. Lazer and Walter S. Wikstrom, Appraising Managerial Performance: Current Practices and Future Directions, (New York: Conference Board, 1977), pp. 20-21.

8. Ronald J. Burke, "Why Performance Appraisal Systems Fail," Personnel Administration 35 (June 1972): 32-40.

approaches to performance appraisal. It becomes more difficult to appraise performance as roles become more complex. Even in business, it is lower management that is most commonly appraised. To paraphrase, the higher the position, the less likely it will be covered by a formal appraisal system, although many executives who are not formally appraised are still judged by "bottom-line," economic results. This explains why there is no model easily applicable to courts. The concepts in Colorado of merit selection of judges and retention elections are key factors that distinguish evaluation of the judiciary from other institutions, and even from evaluation of judges in other states.

Fifth, any analysis must link purposes and methods in performance evaluation. Performance appraisal served to determine rewards and stimulate improved individual performance in each of the private institutions studied; it had much less impact upon compensation in government and higher education where there is less emphasis on and availability of differential salaries. Similarly, performance evaluation of judges in this state cannot affect compensation. It can be a means of improving individual performance and definitely will be used to increase accountability by providing information to the electorate for making retention decisions. It is important, therefore, to learn what the public wants to know, and then determine the easiest and best ways to get it.

Sixth, public institutions have no measure of performance comparable to production costs, sales or profit in the

private sector. The quality of the education generated by a particular professor's style, for example, is much harder to measure than a change in profits. As a result, there is a tendency to turn to relatively simple measures of performance, such as student surveys. More importantly, all studies stressed that multiple sources of information should be used whenever possible: businesses use a variety of methods, universities use student and peer evaluations; government programs continue to seek multiple measures. A well-rounded program, therefore, will use a variety of approaches to performance measurement.

Seventh, an appraisal system's success depends, to a large degree, on the appraisers' understanding of the objectives, methods, philosophy, and terminology of the system, and using the maximum number of elements of "ideal" systems. Examples are objective standards, employee participation in ratings and interviews, frequent feedback, in-depth training in both performance rating and conducting interviews, personal consequences of appraisal ratings (such as pay and promotion), and multiple raters. Additional requirements include an appropriate environment for evaluation, a clear definition of purposes, valid and reliable techniques, job relatedness or relevance, standardization, adequate controls to keep top management informed, research to update and improve the methods employed, freedom from bias, and realism

and practicality.<sup>9</sup>

Eighth, all evaluation programs studied were concerned about the development of human resources; at least they all stressed this factor in descriptions of their programs. Private business, however, seems more dedicated to development of individuals' skills and potential than other organizations. The development of people is considered cost-beneficial: improvement in skills and abilities will ultimately benefit the company and its customers. Government programs also encourage individual development, but while higher education has supported qualitative development as a primary goal, it clearly has been affected by the use of quantitative performance activity data by legislatures as a basis of funding decisions.

Based on its research, the Committee concluded that valid appraisal is linked to organizational prosperity and even survival in the private sector. In public service institutions, however, performance evaluation is often linked more to credibility. Both are measures of accountability, tailor-made to the constituencies involved.

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9. See Jeffrey Kane and Edward E. Lawler III, "Performance Appraisal Effectiveness: Its Assessment and Determinants," Research in Organization Behavior 1 (1979) pp. 426-427; Morgan W. McCall, Jr., and David L. DeVries, Appraisal in Context: Clashing with Organizational Realities, (Greensboro, North Carolina, Center for Creative Leadership, 1977), pp. 3-4.

## OVERVIEW OF JUDICIAL EVALUATION METHODS

### Selection, Evaluation and Discipline

In a broad sense, the evaluation of judicial performance encompasses the selection, evaluation, and discipline of judges. Evaluation should be viewed as a comprehensive approach to judicial performance or conduct. But there is a marked tendency to view selection and discipline as separate concepts, neither of which relates to evaluation.<sup>10</sup>

Selection involves entry into the profession of judging, and discipline has to do with corrective action or removal from the profession. Both are evaluative, however. Little has been done, either in practice or the literature, to link the two concepts, a phenomenon that may be explained by the historical development of merit selection systems and disciplinary boards for judges during the last thirty years.

Thirty states and the District of Columbia have some form of merit selection. Seven of these thirty-one jurisdictions use merit selection systems for all judges. The twenty states without merit selection are divided between straight gubernatorial appointment and public election.

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10. The relationship of evaluation to professional development, an important aspect of performance appraisal in business, government, and higher education, is discussed at pages 39-42.

Legislation to create merit systems is pending in seven states.<sup>11</sup> States with merit selection systems typically use nominating commissions to examine judicial candidates. The commissions give a small list of nominees to the appointing authority, who then appoints from the list. Judges so appointed are usually required to stand for retention on their records at a general election.

The gradual development of merit systems for selecting judges has not matched the rapid acceptance of judicial disciplinary commissions. Since 1960, forty-nine states and the District of Columbia have created judicial discipline (conduct) commissions which supplement traditional removal procedures of impeachment, address, or recall. The State of Washington is the only exception, and legislation to create a discipline commission is pending there.

Judicial discipline commissions typically investigate complaints against judges and hold formal hearings. Sanctions proposed against a judge are generally subject to review by a state's highest court. Commissions are assisted by professional staff, and their organization and procedures vary greatly from state to state. Common grounds for discipline, removal or retirement are misconduct in office,

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11. Allan Ashman and James J. Alfini, The Key to Judicial Merit Selection: The Nominating Process, (Chicago: American Judicature Society, 1974), p. 2. Statistics in this citation and the one which follows were updated in a telephone interview with Larry Berkson of the American Judicature Society on January 17, 1980.



failure to perform judicial duties, conduct prejudicial to the administration of justice which brings the judicial office into disrepute, habitual intemperance, and a serious physical or mental disability.<sup>12</sup>

Colorado adopted selection and discipline reforms in 1966 by creating a nominating commission in each judicial district, a state-wide nominating commission for the appellate courts, and a state-wide "qualifications" or discipline commission.

Notwithstanding these significant advances, a missing link between selection and discipline, to some critics, is evaluation--determination of how well sitting judges are performing the work for which they were selected. Judicial performance evaluations deal with the day-to-day operations of judges, not the misconduct normally associated with judicial discipline. Are judges living up to the criteria by which they were selected? How well are they doing their jobs? Do their behaviors and capacities meet expectations? Judicial performance evaluation, thus, means appraisal of a judge's individual performance in carrying out judicial duties and responsibilities. It fills the gap between selection and the gross misconduct handled by discipline commissions.

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12. Irene A. Tesitor, Judicial Conduct Organizations, (Chicago: American Judicature Society, 1978), pp. 1 and 8-9. See also William Thomas Braithwaite, Who Judges the Judges? (Chicago: American Bar Foundation, 1971); Russell R. Wheeler and A. Leo Levin, Judicial Discipline and Removal in the United States, (Washington: Federal Judicial Center, July 1979).

Interest in performance evaluation is likely to increase as states acquire more experience with judicial merit selection systems, primarily because most merit systems presuppose periodic performance appraisal as the quid pro quo for protection against arbitrary removal from service. Also, the public's expectations for greater accountability on the part of all public officials are increasing, notwithstanding the long-cherished concept of judicial independence.<sup>13</sup>

Many private organizations, such as bar associations, civic groups, court reformers, and newspapers, have developed ways of monitoring or evaluating judicial performance. These methods, many of them informal and ad hoc, are considered in this section.<sup>14</sup>

### Lawyer Polls

Long before the advent of nominating and disciplinary commissions, bar associations were trying to improve state

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13. Wheeler and Levin provide a thought-provoking discussion of judicial independence, as it relates to judicial discipline, as well as other pertinent issues, in Judicial Discipline and Removal in the United States, pp. 59-76.

14. The evaluation of overall court performance has been the subject of other studies; for example, Wildhorn, et al., Indicators of Justice: Measuring the Performance of Prosecution, Defense, and Court Agencies Involved in Felony Proceedings. (Santa Monica: RAND, June 1976); and, Research Triangle Institute, "Performance Measures for the Courts System," a research proposal funded in late 1978 by LEAA. For a broader perspective on background of institutional performance evaluation, see Bowen, Evaluating Institutions for Accountability.

and local judicial systems by the use of polls.<sup>15</sup>

Bar polls or lawyer surveys are the names for the process used to solicit lawyers' opinions about the capabilities or qualifications of judges. The first bar poll was conducted by the Chicago Bar Association in 1873. A century later, slightly less than half of local bar associations and about a third of state-wide associations are active in bar polling. While many bar associations do not conduct polls, the majority of bar associations involved in judicial evaluation consider bar polling an appropriate method.<sup>16</sup> In some instances, polls are supplemented by other evaluation techniques, such as hearings, written evaluations, or interviews.

Bar associations see judicial improvement as the main objective of their polls. They believe lawyers should take part in evaluations because, as a group, lawyers understand the complexities of judging better than anyone else. Ethical canons also place a responsibility on lawyers to aid in selecting high quality judges.

Generally, bar associations do not advocate positions on judges who have been the subjects of their polls. They view polls as a public service and have left others, particularly the press, to inform the public and campaign for or

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15. This section is based on James H. Guterman and Errol E. Meidinger, In the Opinion of the Bar: A National Survey of Bar Polling Practices, (Chicago: American Judicature Society, 1977); and Cynthia Owen Philip, How Bar Associations Evaluate Sitting Judges, (New York: Institute of Judicial Administration, 1979).

16. Guterman and Meidinger, In the Opinion of the Bar, pp. 20-21.

against any judge. However, some associations no longer stay neutral. They support judges who do well in the polls while they ignore judges who do poorly. Only a few associations campaign against judges who do poorly in their polls.

In Colorado, local bar polls have been conducted in Boulder, Denver, Jefferson, El Paso, Arapahoe, Pueblo, and Mesa counties. In addition, the Colorado Bar Association has conducted several state-wide surveys. The polls have varied in complexity, sophistication, reliability, and cost. (Samples of bar polls used in Colorado are included in Appendix B.)

In 1978, the Denver Bar Association (DBA), using its own funds, developed and administered a survey about performance of judges and referees in Denver. It replaced an older and simpler lawyer poll of only those judges standing for retention. The 1978 survey covered all judges and more areas of judicial performance. For example, the 1976 poll asked only seven questions, and used a two-dimensional scale (yes/no or satisfactory/unsatisfactory) to respond. The 1978 poll contained three times as many categories, used rating scales, and analyzed the reliability of the responses statistically. Experience with the poll in the 1978 elections led to a number of improvements, including changing the rating scales, clarifying instructions, and eliminating redundancies and questions based on unobservable behavior.

## Court Observation

In the last ten years, court-watching--the personal observation of judges and courts--has rapidly increased in popularity. It is a relatively new activity and is primarily a result of a lack of public confidence in social institutions including the courts. Organized citizens have manned court-watching programs in California, Connecticut, Indiana, Ohio, Missouri, Massachusetts, Illinois, New York and other states. The Committee knows of no organized court-watching programs in Colorado.

Court-watching programs vary in quality. The best are staffed by persons well trained in the court-watching concept, court procedures, and observation techniques. Court-watching can be expensive, and most projects are staffed by volunteers because of funding constraints. Many court-watching programs have been sponsored by either public, non-profit corporations, such as The Fund for Modern Courts in New York, or private organizations with specific interests in courts or court proceedings, for example, the League of Women Voters, American Friends Service Committee, the American Civil Liberties Union, and church groups.

Some projects function only as a public presence in the courtroom. Others make detailed recommendations to judges or court administrators and promote court reform through legislation. Distorted findings and loss of credibility can result where court-watching is intentionally aimed at intimidating, proving a claim of discrimination, or rating a judge

according to perceived leniencies or sentencing practices.<sup>17</sup>

### News Media Evaluations

Many of the traditional methods for evaluating judges stop short of vigorous publication of evaluation results. Some bar associations publish their surveys, and the Alaska Judicial Council sends a summary of its various surveys to each voter in the state. Some disciplinary commissions make their letters of censure or reprimand public as part of their annual reports. But in most instances, the news media, primarily newspapers, are the most active in informing local communities on judicial performance.

Newspapers take different positions on judicial evaluation in accordance with their particular interests in a judicial system. In some states, newspapers conduct their own polls, while in others, they sponsor and finance polls with bar associations. Several Colorado newspapers and some in other states publish survey information from bar associations, supplemented with biographies prepared by judges and information from investigative reporting.

Radio and television also have been involved in evaluating judges though not to the same extent as newspapers. One reason for this may be the flexibility and space available for an in-depth newspaper report compared to a time-restricted

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17. This summary was prepared from U.S. Department of Justice, Law Enforcement Assistance Administration, Citizen Court Watching: The Consumer's Perspective, (Washington, D.C.: Government Printing Office, 1977), pp. 1-6.

radio or television broadcast. As a speaker explained to the Committee, people will obtain basic "lead" information from headlines, television, and radio reports. Then they turn to news articles for more thorough analyses of events that interest them. In Colorado, within the last several years, KOA is the only television station to have run an in-depth series profiling judges before elections. Other stations occasionally present programs on courts or specific cases of interest to the public, but issues, rather than judges, have dominated those programs.

#### Other Approaches

Lawyer surveys and court observation are popular methods for evaluating judges. Surveys of people dealing with courts are also used. The Alaska Judicial Council, for example, surveys police officers and jurors about the performance of judges. A few other states, including Colorado, have surveyed jurors but mostly on the basis of jurors' overall experiences with the court rather than their specific observation of judicial behavior. (Copies of juror questionnaires used in Colorado and New Hampshire are included in Appendix C.)

The Connecticut Supreme Court uses informal evaluations to make judicial assignments. In the past, the Connecticut Judicial Department sent a short evaluation form or questionnaire to the administrative (chief) judge to be completed for each judge under his supervision. The questionnaire asked for ratings on subjects such as overall administrative abili-

ty, specialization or expertise in certain kinds of cases, ability to control case flow, confidence and respect of members of the bar, cooperation among judges, and ability to accept order and directions. Now, informal conferences are held between the Chief Court Administrator (a justice of the Supreme Court) and the administrative judge to discuss a judge's performance, solely for the purpose of making effective judicial assignments.

Each of the methods described in this section is open to criticism about techniques, motivations behind the evaluations, objectivity of the analyses and displays of evaluation data, and criteria used to measure performance. None of them can be described as a comprehensive evaluation program such as those discussed in the next section.<sup>18</sup>

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18. Military judges in the United States probably receive the most complex and thorough evaluations of any type of judge. They are evaluated according to the regulations governing other officers in the service. A study of the military system is beyond the scope of this paper, but it is interesting to note that recent revisions of some military evaluation systems have stressed greater participation in the evaluation process by the rated officers. Also, the Administrative Conference of the United States is considering methods for evaluating the performance of administrative law judges. Administrative law judges are now selected on the basis of merit under more stringent conditions than any state or federal judge. See Thomas C. Mans, "Selecting the 'Hidden Judiciary': How the Merit Process Works in Choosing Administrative Law Judges (Part I)," Judicature 63 (August 1979): 60-73.



## COMPREHENSIVE JUDICIAL EVALUATION PROGRAMS

Bar polls, court observation programs, and evaluations by the news media usually are one-time events, and limited to specific judges, and without outside financial support, although some court-watching programs have received federal assistance. None of these methods has been used to evaluate all judges within a state-wide court system in a comprehensive, continuing program.

Three programs are exceptions, however, in Alaska, the District of Columbia, and New Jersey. These programs require regular, formal evaluations of all judges. They combine evaluation with either selection or discipline, and are publicly funded. Alaska and the District of Columbia have operated evaluation programs for several years, and New Jersey recently adopted an evaluation program for its judiciary. The programs are described in the following sections.

### Selection and Evaluation in Alaska

The Alaska Judicial Council is a constitutional commission independent of the state court system, with responsibility for conducting studies to improve the administration of justice, nominating persons for appointment as judges, evaluating sitting judges, and informing the public of

evaluation results prior to retention elections. The seven-member council is composed of three non-lawyers appointed by the governor, three lawyers selected by the state bar association, and the chief justice who, as the ex-officio chairman, does not vote on recommendations pertaining to the qualifications of individual judges.<sup>19</sup>

In Alaska, judges are selected through a merit system similar to Colorado's. When a judicial vacancy occurs, the council nominates at least two candidates and sends their names to the governor. Following an initial three-year appointment, a judge runs for retention on a non-partisan ballot. A Supreme Court justice, if retained, then serves a ten-year term, and Superior Court judges (the equivalent of Colorado's district judges) serve six-year terms. District Court magistrates (similar in jurisdiction to Colorado's county judges) are appointed by Superior Court judges for indefinite terms.

Unlike Colorado's nominating commissions, the Alaska Judicial Council also has a statutory duty to evaluate justices and judges seeking retention. Since the 1976 general election, it has conducted an evaluation of each such justice and judge. The choices of methods of evaluation and sources of information are completely under the control of the council. Since the beginning of its evaluation program,

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19. Thomas Brooks Jones, "The Selection of Judges in Alaska," Judges Journal 14 (Fall 1975): 77-80.

however, the council has based its evaluations primarily on surveys and interviews.

Each evaluation is conducted in two parts: a written survey of attorneys, peace officers, and jurors, and personal interviews with attorneys who have practiced before the judge. The surveys are carefully designed and controlled--the council uses the Institute for Social Research at the University of Michigan to assure objectivity and quality control--and improvements have been made each time the survey has been conducted. Although juror surveys are based on random samples, surveys of attorneys and peace officers include all members because the size of these two groups is too small for sampling purposes.

The three surveys use identical scales for evaluation. These range from 1.0 (poor) to 5.0 (excellent) with a space to mark if the participant lacks a sufficient basis for evaluation. An average score of 3.0 is "acceptable."

The council does not compare survey results between judges. The evaluation of each judge is based upon different numbers of responses because of the different mix of attorneys, law enforcement officers, and jurors surveyed. Only the answers of persons reporting experience with the judge are tabulated. The results are compared with the transcripts of the confidential interviews. (On occasion, results from these two techniques have been supplemented with observations by trained court-watchers.) The council then votes a "qualified" or "unqualified" rating for the judge.

A summary of evaluation results for each judge and the council's recommendations are published in the Official Election Pamphlet prepared by the lieutenant governor and mailed to registered voters in the state before each election. A judge rated "unqualified" by the council is entitled to prepare a written statement for publication in the pamphlet. Such a statement typically includes personal information, educational, political and professional histories, and the judge's response to the negative evaluation.<sup>20</sup>

The effectiveness of the Alaska evaluations conducted in 1976 and 1978 is hard to determine. In each election, the council identified several judges it considered not qualified for retention, but each judge was retained by a substantial margin. Subsequent research on the effect of providing voters with judicial evaluation information suggests that voters may supplement or substitute information provided by the council with news reports, personal knowledge, or "word of mouth." There also seems to be a general reluctance to vote against judges when a rating system does not show a significant disparity between judges who are recommended and those who are not, or, if it fails to provide some information about whether or not a judge's performance improved

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20. This summary description was compiled from: Michael L. Rubenstein, "Alaska's Judicial Evaluation Program: A Poll the Voters Rejected," Judicature 60 (May 1977): 478-485; Institute for Social Research, "Report of the Results of the 1978 Alaska Judicial Survey," University of Michigan, Center for Political Studies, August 10, 1978 (Mimeograph); and, the Official Election Pamphlet prepared for the November, 1978 election, pp. 78-84.

since the last election. In other words, voters want to know what's really wrong with a judge rated not qualified.<sup>21</sup>

The Alaska experience underscores the need for careful planning and demonstrates some of the problems at the beginning of an evaluation program. Conclusions about the effectiveness of the Alaska program are unclear. The evaluations and outcome of the 1980 Alaska elections may provide clarification.

#### Discipline and Evaluation in the District of Columbia

Judicial candidates in the District of Columbia are nominated by an independent commission and appointed to fifteen-year terms by the President of the United States, with the advice and consent of the Senate. Prior to the expiration of his term of office, a judge desiring reappointment files a declaration of candidacy for reappointment with the seven-member District of Columbia Commission on Judicial Disabilities and Tenure. The commission then prepares and submits to the President a written evaluation of the judge's performance and a statement of fitness for reappointment to another term. If no declaration is filed, the position becomes vacant, and the appointment process starts over.

The commission was created by the District of Columbia

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21. Northrim Associates, "An Analysis of the Results of a Survey for the Alaska Judicial Council," Anchorage, August, 1979. (Mimeographed.)

Court Reorganization Act of 1970, and subsequently was reorganized by the Home Rule Act which took effect in 1975. One member is appointed by the President, two by the District of Columbia Bar Association, two by the Mayor, one by the District Council, and the one judge by the Chief Judge of the United States District Court for the District of Columbia.

The commission uses four ratings in its evaluations. "Exceptionally well-qualified" applies to a judge whose work, dedication, demeanor, restraint, efficiency and legal scholarship are "preeminent" on the bench. "Well-qualified" applies to a judge who accomplishes the judicial function with distinction and in a manner consistently reflecting credit on the judicial system. "Qualified" applies to a judge who either satisfactorily performs his assigned duties or exhibits strong positive attributes which materially offset negative ones. "Unqualified" applies to a judge the commission considers unfit for service.

A judge seeking reappointment and rated by the commission as exceptionally well-qualified or well-qualified is automatically reappointed. If a judge is rated as qualified, the President may reappoint that judge or appoint another candidate. A judge rated as unqualified is not eligible for reappointment.

Reappointment evaluations are a large part of the commission's work even though its statutory responsibilities include investigating judicial conduct, imposing disciplinary

sanctions, and ordering involuntary retirement of judges for medical reasons. Each evaluation includes the following elements: a written statement by the candidate about his judicial career, including an analysis of his work and his perceptions of problems of the courts; an interview with the candidate; information volunteered from lawyers and laymen; results of any lawyer polls; and interviews with chief judges and others at the option of the commission.

The commission favors significant non-lawyer participation, even though it is required by law to have at least three lawyers and an active or retired federal judge. Since its reorganization in 1975, the commission has always had a physician as a member, and members of the clergy have been appointed twice. The commission elects its own presiding officer. The commission's jurisdiction covers about fifty judges, including active judges and retired judges recalled to active service.<sup>22</sup>

#### Judicial Evaluation in New Jersey

Judges in New Jersey are appointed by the governor with the advice and consent of the state senate. Reappointments follow the same procedure. Supreme Court justices and superior court judges serve initial seven-year terms. A reappointed justice or judge serves until he reaches retirement

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22. District of Columbia Commission on Judicial Disabilities and Tenure, Annual Reports for Fiscal Years 1976 Through 1979, (Washington, D.C.).

age. County judges must serve two five-year terms before being eligible for a tenure appointment. There are no retention elections involved.

New Jersey has the only state-wide judicial evaluation system adopted by a Supreme Court.

In 1978, the court appointed a three-member committee on judicial evaluation and performance "to determine whether such evaluation was desirable as a tool for the improvement of the judiciary in New Jersey."

During a year of intense study, the committee completed the national survey mentioned in the preceding section and examined a variety of proposals for judicial evaluation. Its basic premise was that the main objective of any system for evaluation of judicial performance should be to improve judicial performance on both an individual and institutional basis. Only secondarily should judicial evaluation constitute a basis for assignment of judges, support judicial discipline activities, or assist the governor in reappointments. The committee did not find any specific need to inform the public, given the nature of the appointment process in New Jersey and the absence of judicial elections. Instead, it stressed the professionalism expected of judges and concluded that judicial evaluation should not be permitted to interfere with the discharge of primary judicial duties. Judicial evaluation should be implemented so as "to advance sound, effective and efficient administration of justice" and pre-



serve and assure the "independence, integrity and competence of the judiciary."

The New Jersey Supreme Court adopted the recommendations of its committee in 1979, and then allowed time for the committee's report to circulate. The report received wide coverage in legal and judicial periodicals.

Early in 1980, the court appointed a permanent Committee on Judicial Evaluation and Performance along the lines recommended in the report. The committee is composed of a retired supreme court justice as chairman, a judge from the intermediate appellate court, an assignment judge (equivalent to a chief district judge in Colorado), a trial judge of the law or civil division, a judge from the chancery division, and two members from the bar association (the chairman of the standing committee concerned with judicial evaluation and a former attorney general who is also a member of the Advisory Committee on Judicial Conduct). Public members will be appointed in the future.

The New Jersey program, as adopted, provides for an assignment judge to assume the central role in evaluating judges within his vicinage (similar to a judicial district). The evaluation process will focus on judicial competence, productivity, and conduct in office.

The major source of information will be conferences between the assignment judge and reputable and knowledgeable attorneys to critique other judges' performance. The as-

signment judge will also interview a judge being evaluated, and meet regularly with judges in his vicinage to discuss and improve their performance. Appellate judges could comment on a trial judge's performance while reviewing the record in an appealed case. A professional staff to support the committee and develop and administer lawyer polls will be located in the administrative office of the courts.

Under the plan, each newly-appointed judge will be evaluated after two years of service. Tenured judges will be evaluated every five years but possibly with diminishing frequency. Nontenured judges will be evaluated more frequently and evaluations timed to help the governor make reappointments. Evaluations will be continuous and on-going with an emphasis on improving performance and enhancing judicial education rather than appraising for the purposes of reappointment. Informing the public about the performance of judges is not a purpose of the evaluation program.

The Committee on Judicial Evaluation and Performance has considerable flexibility and may alter various parts of the plan as adopted by the New Jersey Supreme Court. At the present time, the committee has initiated more debate on the standards of judicial performance. There is also much interest in determining how to train administrative judges to evaluate other judges.<sup>23</sup>

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23. Summary description based on: Alan B. Handler, "A New Approach to Judicial Evaluation to Achieve Better Judicial Performance,"

## Summary

The New Jersey plan is primarily an internal program consistent with judges not standing for election or retention. District of Columbia judges also are not elected, but evaluations are designed to assist the President in making reappointments. Only Alaska goes directly to the voters with evaluation results and specific recommendations about a judge's retention.

A broad spectrum of criteria is used in each of the systems, for example, legal knowledge, legal reasoning ability, knowledge of criminal and civil law, consideration of relevant sentencing factors, and human understanding. Alaska, with the most detailed criteria, publishes summaries of evaluation results for each judge. The District of Columbia evaluation letters, prepared for the President and published in the commission's annual report, are thorough and concise, but criteria are not as explicit. The New Jersey plan suggests the general criteria of competence, efficiency, and conduct, but it provides no specific details about the elements of each criteria.

All three evaluation programs emphasize improvement of judicial performance and independence of the judiciary. No program evaluates judicial philosophy. The District of

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State Court Journal 3 (Summer 1979): 3-10, 4-43; Supreme Court of New Jersey, "Report of the Supreme Court's Committee on Judicial Evaluation and Performance," March 8, 1979 (Mimeograph); and, Telephone interview with Justice Handler, June 13, 1980.

Columbia commission says it is immaterial to its evaluation whether the judge is "liberal" or "conservative," "lenient," or "severe," or whether commission members agree or disagree with the merits of a judge's decisions or the trend of his or her legal thinking.

The formal evaluation programs discussed in this section were tailored to meet specific needs. None are identical although common themes are evident. And, while each approach to judicial evaluation contains attractive features, no program provides a clear-cut model for Colorado.

## DISCUSSION AND ANALYSIS

### A Framework for Discussion

Several major themes emerged from the Committee's early deliberations and public hearings. The Committee used these assumptions as premises to test various ideas or proposals. For example, the Committee assumed the public is entitled to more information than it now receives about the judiciary. Colorado has a progressive court system, and its citizens have been active in creating new administrative structures and improved judicial selection and disciplinary systems. But these changes took place more than ten years ago. It now appears that the public's desire for information about judicial performance exceeds the judiciary's ability to provide such information. The public simply is not as familiar with the judiciary as it can or should be.

The Committee further assumed the judges themselves should be directly involved in the creation of any evaluation system. Studies of successful performance appraisal systems consistently conclude that those being evaluated should participate in evaluation design and implementation. With this in mind, the Committee, working through the Judicial Planning Council, conducted a survey to determine judges' attitudes about performance evaluation. The survey was conducted dur-

ing the 1979 judicial conference, and ninety percent of the state's 231 judges responded. Information from the survey was used by the Committee during its deliberations and for preparing the tables referred to in this section.

As another assumption, the Committee quickly concluded that evaluation of individual judges' professional performance would be extremely difficult. Performance appraisal is more an art than a science, and there are no applicable models to follow to design a judicial evaluation program. Performance appraisal methods used to evaluate managers are not easily transferred to judges. In fact, formal performance evaluation is rarely given to top executives in either the private or public sectors, because it is so difficult (1) to designate the proper evaluator, and (2) to define performance standards for leaders with complex roles and discretionary responsibilities similar to those of judges. Likewise, it is naive to suggest that judges be evaluated on the quantity of disputes resolved or cases processed. Although new studies about the complex roles of judges are now emerging, there is still a great lack of understanding about what judges do and the role of courts in society.<sup>24</sup>

Finally, the Committee decided that any system for evaluating judges must be practical. The system should be simple

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24. See John Paul Ryan, Allan Ashman, Bruce D. Sales, and Sandra Shane-DuBow, American Trial Judges: Their Work Styles and Performance, (Riverside, N.J.: The Free Press, Macmillan Publishing Co., 1980).

to administer, and results should be easy to analyze and understand. Performance evaluation should not be so complex and cumbersome that its costs outweigh its benefits.

These four assumptions:

- That the public wants and is entitled to more information about the judiciary,
- That any credible judicial evaluation system requires direct judicial involvement in its creation,
- That standards and methods for evaluating judges are very limited, and
- That the entire evaluation system must be practical and cost-effective,

served as guidelines in the Committee's deliberations. The Committee's findings are summarized in the following sections.

#### Purposes of Evaluation

The primary purpose of judicial evaluation should be to improve the judicial system. A well-designed and carefully implemented program should benefit the judicial branch of government while serving both private citizens and judges. For example, a systematic evaluation of judges can help assure that merit selection and retention work, by providing voters with information useful in deciding retention questions. Voters are concerned about the quality of the judiciary, and

many people expressed concern about the lack of sufficient information to decide whether or not a judge should be retained in office. Judicial evaluation should help nominating commissions verify and improve their selection techniques. Colorado has twenty-three nominating commissions with 165 members, and while each commission has some criteria for selecting nominees, none has formal methods for reexamining its criteria. A judicial evaluation system should enable them to learn if judges are living up to the standards by which they were selected and if these standards are realistic and practical or should be revised.

Regular performance evaluations should assist judges in their professional training and development. In the judicial survey, many judges commented on the lack of training available to improve specific judicial skills. In the absence of specific performance standards and techniques for appraising individual performance, judges are limited in their ability to evaluate their own behavior or skills. Even though continuing judicial education is mandatory for judges in this state, there are no methods for linking judicial performance and continued education.

Another problem with judicial evaluation is the lack of incentive. In the private sector the assumption is that excellent or improved performance is rewarded with increased compensation or other benefits. Unlike the private sector, public service offers little or no tangible reward for excel-



lence or high achievement. Judges and other public servants seek satisfaction in work well-done, and voluntary improvement of performance usually stems from a sense of professionalism and commitment to high standards and ideals. An evaluation system that offers recognition of quality and opportunities for improving professional skills can be viewed as an important benefit. On the other hand, an intimidating or premature or ill-conceived evaluation program may only increase the deterrents to entering public service without providing benefits for either the judiciary or the public.<sup>25</sup>

Performance evaluation should be integrated into the existing judicial system to meet a variety of organizational and individual needs. Selection, evaluation, retention, and discipline should be linked together in a common feedback loop. Standards used in selection, for example, should have some relationship to judicial performance and retention, and evaluation results should be used to design educational programs.

As a practical matter, there may not be sufficient funds for the simultaneous pursuit of all evaluation goals. This

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25. Table 10, Appendix A, shows that judges split fairly evenly in opinions about the effect of evaluation on decision-making and judicial independence. Judges' concerns were that evaluation might affect decisions unpopular with influential groups, influence sentencing decisions, and pressure judges to sacrifice quality in the interest of quantity. Table 11 indicates that judges also split their views about possible effects of evaluation on the ability of the judicial system to attract new judges. A common concern was that an improperly designed evaluation program or one that appeared to be unfair or biased would make it more difficult to attract lawyers to the bench.

does not minimize the importance of using evaluation data to pinpoint specific educational needs. In the face of limited resources, therefore, it may be necessary for the judiciary to develop administrative relationships that encourage coordination of the activities of nominating commissions, the qualification commission, continuing judicial education, and future performance evaluation programs.

#### Organization of an Evaluation Program

Judicial selection has traditionally been a local function in this state. And even though the Governor appoints judges, local nominating commissions are responsible for selecting qualified candidates. Local commission members are familiar with their communities and with the character and fitness of local attorneys.

Judicial evaluation also should be a local function. Judges should be evaluated by those they serve, and the information generated should be distributed to the appropriate voter population.

The Committee debated using local nominating commissions to evaluate sitting judges. The combination of nominating and evaluating functions appears to be impossible at the present time because of constitutional restrictions on the authority of nominating commissions.<sup>26</sup> Even if nominating

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26. Wyoming requires nominating commissions to screen judges seeking retention, Ashman and Alfini, The Key to Judicial Merit Selection, p. 15. Also, the Alaska Judicial Council is responsible for nominating and evaluating judges.

commissions could screen judges standing for retention, the Committee had serious reservations about combining selection and evaluation in the present political climate. The coordination of selection and evaluation should be encouraged, however, and criteria used for selection should relate to a judge's subsequent performance.<sup>27</sup>

Committees composed of local citizens and lawyers would provide the best vehicle for evaluating judges. Local citizens, however, cannot provide all the expertise needed to analyze judicial performance. Therefore, a coordinating unit or commission at the state level should be created to provide professional expertise, uniform standards for evaluation, and policy guidelines for dissemination and use of data. For economic and practical reasons, such a commission should be small, and to assure appropriate public involvement, the majority of its members should be non-lawyers. Evaluation techniques developed by the state-wide commission would be administered by the local committees. Until such time as local committees are organized, local bar associations would be asked to administer judicial evaluations.

The Committee also considered recommending that the Commission on Judicial Qualifications be authorized to conduct

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27. As a first step toward greater uniformity in procedures and selection criteria, the Colorado Bar Association has proposed model uniform rules for nominating commissions and a model application form for judges. See Colorado Bar Association, "Report of the Judicial Selection and Tenure Committee of the Colorado Bar Association," November 21, 1979.

performance evaluations. Only the Qualifications Commission presently evaluates any portion of judicial conduct. More accurately, the Commission evaluates judicial misconduct, an activity that often requires strict confidentiality.<sup>28</sup> During its public hearings, the Committee heard frequent complaints about Qualifications Commission secrecy imposed by the constitution. The same criticism was made of nominating commissions (whose proceedings are not constitutionally required to be secret). Judicial performance evaluation, on the other hand, generates information for public consumption, focuses on improving judicial performance or conduct, and increases public knowledge of the judicial system.

Selection, discipline, and evaluation are not necessarily incompatible, although present constitutional or statutory provisions prevent the use of the existing structures for evaluation purposes. As viewed by the Committee, however, the evaluation process--the development of performance standards and the appraisal of each judge in light of these standards--should be separate from selection processes and the discipline of judges for misconduct.<sup>29</sup>

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28. Colorado Constitution, Article VI, Section 23(b) states that a justice or judge of any court of record of this state may be removed for willful misconduct in office, willful or persistent failure to perform duties, intemperance, or by retirement for disability interfering with the performance of duties, which is, or is likely to become, permanent.

29. A clear understanding of court-related commissions is sometimes hampered by inconsistent labeling; for example, the name of the California Commission on Judicial Qualifications was changed in 1976 to the Commission on Judicial Performance. It is still a judicial conduct or discipline commission, however.

## Evaluation Criteria

The Committee discussed at great length these key questions of criteria: what makes a good judge; how can good judicial performance be recognized; and which performance measures will provide useful information to the judiciary and the public? Committee members and non-members agreed that it is easier to answer the inverse of these questions than it is to come up with positive, meaningful criteria for performance evaluation.

The Committee obtained a better understanding of evaluation criteria from the survey of judges.<sup>30</sup> One part of the survey asked for reaction to each of forty-seven criteria selected from the literature on judging or commonly used in bar polls. The criteria can be grouped in the six general categories listed below:

1. Technical qualifications, such as legal knowledge and ability, correct application of legal principles, intellect, quality of reasoning in decisions or opinions, and experience as a practicing lawyer.
2. Work capacities, including diligence and industry, control of court proceedings, efficient use of time, administrative ability, and punctuality and promptness.
3. Interpersonal abilities, such as neutrality and fairness, patience and tolerance, compassion and humanity, concern for parties and witnesses, the ability to communicate, attentiveness, kindness, and a sense of humor.

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30. The tables in Appendix A and the discussion of survey results in this section are based on "A Report on the Colorado Survey of Judges," prepared by Joyce Sterling, E. Keith Stott, Jr., and Steven Weller and submitted to the Judicial Council as a separate report.

4. Personal characteristics, covering such traits as conscientiousness, humility, general health, common sense, sound judgment, moral values and ethics, mental and emotional stability, independence, ability to make decisions, and a willingness to learn and improve.
5. Productivity factors related to workload, including the number of cases decided or opinions written, and the number of hearings held; and
6. Miscellaneous items covering speaking skills, writing ability, the reasonableness of sentences imposed, and the ability to handle complex cases.

The survey showed that judges see the criteria as having varying degrees of usefulness and validity. Table 1 (Appendix A) presents the scores the judges assigned to the various criteria. The combined scores for all judges who responded to the questionnaire are rank-ordered and presented together with the separate responses for appellate and trial judges. The judges selected ten criteria they felt most important for evaluating their performance:

1. Quality of reasoning in decisions or opinions;
2. Procedural correctness;
3. Conscientiousness;
4. Neutrality and fairness;
5. Common sense and sound judgment;
6. Intellectual honesty;
7. Ability to make decisions;
8. Legal ability;
9. Intellectual and moral courage; and
10. Ability to handle complex cases.

These criteria generally fall in the evaluation categories of technical qualifications, work capacities, and interpersonal abilities. The judges also selected ten criteria they felt least important for evaluating judicial performance:

1. Age;
2. Settlement efficiency;
3. Involvement in civic activities;
4. Quantity of hearings held;
5. Speaking skills;
6. Reasonableness of sentences imposed;
7. Administrative ability;
8. Appearance;
9. Sense of humor; and
10. Kindness.

These items are more related to personal characteristics, and several are from the productivity and miscellaneous categories which included criteria used less frequently in bar polls.

Although the combined scores suggest using one set of criteria for all judges, there are clear preferences between criteria for evaluating appellate judges and trial judges. Table 2 is a comparison of the rank orderings made by the two groups of judges. For the appellate judges, the top ten criteria essentially remain the same as the overall criteria discussed above. The differences appear in the top criteria

selected by trial judges for evaluating themselves.

For trial judges, five of the ten highest ranked criteria are the same as those selected by appellate judges, for example: neutrality and fairness; common sense and sound judgment; conscientiousness; the ability to make decisions; and intellectual honesty. They then chose some different criteria they felt more important: courtesy, consideration, and respect for others; attentiveness; mental and emotional stability; concern for parties and witnesses; and punctuality and promptness. This shows a recognition of the different functions performed by trial and appellate judges, the contact that a trial judge has with both the public and litigants, and his or her behavior with respect to other individuals.

Based upon these findings, the Committee suggests that different performance standards be developed for different kinds of judges. This suggestion is reinforced by the trial judges' choices analyzed by demographic characteristics. The survey showed significant differences between the choices of lawyer judges, and non-lawyer judges, all of whom are part-time and from rural areas. These differences indicate that rural, non-lawyer judges may view the role of a judge differently from urban or lawyer judges. The Committee concluded, therefore, that different types of evaluations may be needed for at least three types of judges: appellate judges, lawyer trial judges, and non-lawyer trial judges (or, in the alternative, that non-lawyer judges need additional



education in the judicial process and function).

The results from the judicial survey also suggest that there is considerable agreement among judges concerning evaluation criteria. That consensus overlaps with polls being done by groups such as the Denver Bar Association, particularly since criteria used in the Committee's survey were based on polls used nationally. Thus, it appears feasible, especially in Colorado, to conduct correlation studies of judges' own role perceptions, performance expectations of judges made by lawyers who practice before them, and the public's expectations, and consequently to reduce the criteria needed. A comparison of the rankings made by judges with the criteria used in the Denver Bar Association poll reveals that judges and lawyers consider skills and behaviors in the following categories to be most important: technical qualifications, work capacity, interpersonal ability, and personal characteristics. Further research could refine and simplify the criteria in these basic categories.<sup>31</sup>

The Committee's research on criteria is only a starting point for future studies. The determination of valid criteria based on specific judicial behaviors should be a first priority of the Commission on Judicial Performance.

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31. The 1980 DBA poll used 17 criteria, down eight from the 25 used in the 1978 survey as a result of a correlation study. It is likely that the list of 47 criteria in the judges' survey could be reduced in a similar fashion.

Elements and standards of performance must be selected; an effective data collection system must be created; methods of analyzing the data must be established; and, the fair, objective and proper use of evaluation results must be determined. The Committee stresses that judges should be evaluated on the basis of performance, and not on personal, social, or political philosophies. Performance evaluation is complex enough without considering personal philosophies. Besides, there is no evidence to suggest that Colorado judges are anything more than a cross-section of their communities representing a variety of political philosophies.

Overshadowing the problem of selecting evaluation standards is concern about the amount and complexity of the data that may be produced, and whether the costs of evaluating some components of performance will exceed the expected benefits. The problem of judicial productivity is a good example. Many techniques exist to measure judicial activity, but the quantity of matters processed does not provide a qualitative measure of productivity. Trying to analyze productivity, particularly in terms of a judge's efficiency and the quality of justice rendered, becomes mind-boggling when considered on a state-wide basis. This doesn't mean some attempt should not be made to examine productivity. It simply suggests that measures of activity are not meaningful measures of productivity and may have no relevance whatever to the quality of a particular judge.

To illustrate further, copious information can be col-

lected on simplistic productivity indicators such as numbers of hearings; numbers of orders; numbers of motions decided; numbers of settlements; numbers of trials to court or jury; complexity of matters heard, and so forth. After all this information is collected, analyzed, and explained, evaluators will have to distinguish between types of cases and individual judge responsibilities. The workload of the judge who handles a relatively few complex civil or criminal trials each year cannot be fairly compared with that of the judge who processes thousands of traffic cases. The measurable productivity of the chief judge of a district will be different from that of other trial judges who do not have the chief judge's administrative responsibilities. Thus, not only would measuring productivity be, at the very least, extremely complex and costly, but it is the type of information that would be difficult to disseminate and explain to the public.

As another illustration of information with limited public usefulness, voluminous detail can be collected about the sentencing practices of judges. But such information would be of little benefit unless the circumstances of each case also were analyzed. Trial judges sentence convicted defendants within statutorily-prescribed ranges of penalties, and they are generally guided by information in pre-sentence investigation reports and recommendations of prosecution and defense counsel. An evaluation of a judge on "harshness" or

"leniency" in criminal sentencing or supposed conservative or liberal beliefs could easily mislead the public if a comprehensive and costly analysis of the particular facts and the law of each individual case is not added.

Other examples may be cited, but this brief discussion of the extraordinary complexity involved in using productivity and sentencing to measure judicial performance warns of the danger in oversimplifying criteria, particularly in the initial phases of an evaluation program. It also serves to illustrate one of the basic differences between performance evaluation in the judicial system and evaluations conducted in large public or private organizations. A significant feature of many performance appraisal systems is an emphasis on results, whether this is the number of items manufactured or processed, or dollars of revenue produced. Justice, on the other hand, should not be mass-produced, and while performance evaluation is to be encouraged, performance measures should not affect judicial behavior in undesirable and unintended ways.

#### Methods of Evaluation

Performance evaluation is always complex. Private industry has spent large sums of money developing methods for appraising the performance of lower and mid-level employees. It has yet to be more than modestly successful in formally assessing high-level executives or professional staff.

It is even harder to appraise performance objectively

when intangibles are involved. The final indicator of performance in the private sector is profitability. There is no comparable indicator for judges. Unlike the marketplace, which provides a reflection of general public tastes or needs, justice is determined case by case and may even run counter to some public desires, perceptions, or expectations.

The more complex the activity or the greater the responsibility, the harder it is to evaluate performance objectively. Top executives, college professors, high-level government administrators, doctors, lawyers, judges, and many other professionals constantly exercise a high degree of personal discretion and judgment. This activity cannot be assessed in terms of numbers on scales or checklists.

Many qualities can be measured best only by colleagues familiar with professional standards or with similar backgrounds and abilities. The public hearings showed a general consensus that a judge's legal capabilities and qualifications could be evaluated best by other similarly qualified persons, for example, by lawyers who practice before the judge or by other experienced judges. The survey revealed feelings from judges. While judges show no strong enthusiasm for any of the specific methods of evaluation described in the survey (Table 3), they view lawyers who have practiced before them as the best qualified to evaluate judges in terms of technical qualifications, work capacity, interpersonal abilities, and personal character traits (Table 4). Surveys or polls and rating scales are preferred by judges for tapping the

opinions of lawyers who have practiced before them (Table 5). Evaluations based on achievement of goals or results, similar to the popular management by objectives approach used in industry, and the ordering of judges by ranking are viewed by judges as undesirable.

The Committee concluded that in the first phase of developing an evaluation program, the best method would be to survey lawyers who have practiced before the judge being evaluated. The Committee reasoned that lawyers' surveys would be an appropriate first step in evaluation because lawyers are knowledgeable in the areas in which judges are working, they have an opportunity to observe judges, they have a self-interest in making sure that there are good judges on the bench, and judges as well as lay citizens feel that lawyers are an appropriate source of information. Another important consideration is that surveys, although not entirely objective, are efficient, and they can reach many people at relatively low cost. Other evaluation techniques are more expensive.

The public, however, has some reservations about leaving judicial evaluation entirely to members of the "legal fraternity" to which judges belong. Although non-lawyers acknowledge that lawyers know the judicial process and are familiar with the work of judges, many citizens felt that other persons involved in the courts, such as other judges, jurors, and court-watchers, should participate in the evaluation process. Jurors, in particular, represent a cross-

section of the community, and they have first-hand experience with judges. The Committee concluded, therefore, that lawyer surveys should be supplemented by surveys of jurors during the first phase of an evaluation program.

Two different questionnaires should be prepared--one appropriate for lawyers and one for jurors. The kinds of characteristics jurors would be asked to comment on should be different from those evaluated by lawyers, although there could be some overlap. The use of juror surveys was also attractive because there may be a means, if not now, in the near future, of reaching jurors quickly and inexpensively. Juror exit questionnaires are used in several courts, and these forms could be adapted for evaluation purposes. In addition, the Alaska Judicial Council has surveyed jurors, and its experience could be studied by Colorado.

State-wide judicial evaluation based upon surveys will benefit by using computers for construction of questionnaires, data analysis, and sampling. For example, lawyer polls require accurate lists of attorneys and methods for matching attorneys with judges before whom they have practiced. In order to make the system work state-wide, the Supreme Court must improve its attorney registration list (a project that is now underway), and the Judicial Department must improve case data input generated by clerks in the courts. Although the Committee did not study data processing in the Judicial Department, it appears that sufficient data processing resources are now available to avoid creating

expensive new systems. If this were not the case, the use of lawyer surveys as the basis for performance evaluation would be seriously questioned because of its costs.

Participants in the public hearings and members of the Committee generally agreed that a trained court observer program would be a useful part of an evaluation system. Some people favored court-watching as an alternative to jury service. The Committee concluded, however, that the cost of training the large number of observers needed limits the wide use of court-watching, especially at the beginning of a comprehensive evaluation program.

The Committee considered using peer evaluations and interviewing knowledgeable lawyers. Once again, the potential cost of such techniques limited their usefulness during the first phase of an evaluation program. Peer evaluations may work in judicial districts with small populations and few lawyers or jury trials. After Colorado gains experience with survey techniques, performance evaluation may be expanded to include interviews with judges and lawyers, along the lines of those conducted in the District of Columbia.

In summary, the Committee found that bar polls supplemented with juror surveys would be appropriate methods to use initially in an evaluation system aimed at providing more information to voters about judicial performance. Existing bar polls need improvement. One place to begin is developing better rating scales and criteria using industrial performance appraisal methods. In addition, different approaches to



evaluation may be needed for appellate and trial judges and for judges in rural and urban areas. Surveys are appropriate with large lawyer and juror populations, but interviews or other methods should be considered where there are insufficient lawyers and jurors to provide a sound data base for a survey.

#### Frequency of Evaluation

In the Committee's survey, the judges were asked how often evaluation should take place. Their responses are summarized in Table 6. A plurality of judges favored evaluation every two years for each level of judge, but in no case did this choice receive a majority. There was a clear difference of opinion between appellate and trial judges on frequency of evaluations. Appellate judges most often chose evaluation twice per term for themselves while favoring evaluation every two years for trial judges. Trial judges generally chose evaluation every two years for all levels of judges. The difference in responses may be attributed to the longer terms of appellate judges, and, therefore, the likelihood of fewer benefits for retention purposes from more frequent evaluations.

The Committee concluded that every judge should be evaluated prior to his first retention election, and after that an appellate judge should be evaluated every four years and a trial judge every two years.

#### Use and Dissemination of Results

Interpretation and handling of evaluation results pose additional problems. Evaluation of professional performance

is complex, and reducing evaluation to misleading simple comparisons can be tempting. The differences between most judges are relatively small and difficult to measure. Therefore, evaluation should not rank judges on a comparative basis; instead, each judge should be compared only with an objective set of standards.

The Committee was concerned about how to present evaluation results to the public. Simply publishing a list of "qualified" judges or printing survey results without an explanation may not give voters adequate information to gauge the performance of a judge. Table 7 suggests that judges similarly would like a more complete presentation of evaluation results. While the majority of judges surveyed prefers that evaluation results be released with no recommendation on suitability for retention, a significant number favors a designation of "qualified" or "unqualified" based on predetermined standards. The Committee believes that a balanced "profile" of a judge should be prepared for public use. It would contain a description of the judge's background, his education and experience, and a report on the judge's evaluation results. The issue of applying a designated recommendation was of sufficient sensitivity that the Committee deferred its resolution to a commission, if one is formed, where the matter may be studied more thoroughly.

Evaluation results should be released to the public about three months prior to the election. Table 8 shows that about one-third of the judges surveyed prefer that

results be released within the sixty-day period immediately preceding the election. A similar number believe that results should be released at least four months prior to retention elections. The Committee's recommendation accommodates this divided opinion. The suggestion is flexible, however, and should be changed after further research of the preferences of judges, the needs of news media, and the experiences of local bar associations in releasing poll results to the public. All evaluations should be public, released in accordance with guidelines prepared by the state commission for the use and dissemination of results.

The commission should conduct regular studies to determine which performance criteria and publication methods are most helpful to voters and judges, and changes should be made as needed. Local evaluation committees should follow the state-wide guidelines established by the commission.<sup>32</sup> Evaluation data should be collected and disseminated locally, and local evaluation committees should communicate results to the public using all means reasonably available. Different programs could be developed for various areas of the state, if needed, but uniform guidelines should take into account the

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32. The Illinois State Bar Association manual for its Judicial Advisory Polls Committee contains guidelines for releasing results from bar polls. Some of the recommended procedures include advising candidates by certified mail of poll results prior to the general release and releasing the results on all candidates on a state-wide basis by sending results directly to candidates, circuit representatives, news media and presidents of local bar associations.

most effective ways of disseminating data.

During the survey, judges were asked to indicate how reliable they perceived a variety of sources of evaluation information to be. Table 9 indicates that judges have high confidence in the reliability of reports from evaluation committees, moderate confidence in the reliability of reports from a bar association or from the Judicial Department, neutrality toward reports from citizens' groups, and a general lack of confidence in the reliability of reports from the news media, newspapers, radio, and television. When asked a similar question in a survey of court users (litigants, jurors and witnesses) conducted by the Judicial Planning Council in early 1980, the users preferred reports from court-related groups over media reports. That study concluded that reports from groups incorporating citizen members as well as court officials would be most credible. In addition, the users expressed preference for reports from a review committee of judges and lawyers, the Judicial Department, and bar associations over media reports.<sup>33</sup>

On the basis of these findings, the committee suggests that evaluation results be released through local committees composed of lawyers and non-lawyers, as suggested earlier in this report. Local committees, however, should use news media for disseminating the results. The state commission

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33. Yankelovich, Skelly and White, Inc., "Research to Support Colorado Court's User Education/Information Program," May, 1980, pp. 35-36.

should develop guidelines for working with the news media.

### Conclusions

In summary, the Committee concluded that the voting public should have relevant, objective information about the nature and quality of a judge's performance. A method for evaluating sitting judges should be created, and it should be implemented regardless of the manner in which judges are selected. Complex evaluation should be avoided in favor of basic information that the public can use effectively. Evaluation results should appear as part of complete profiles of judges rather than simple recommendations to retain or reject judges.

The purposes of judicial evaluation should be to help the public make retention decisions, to enhance public confidence in the judicial system, to improve the judicial system by assuring that merit selection and retention work, and to assist judges in their professional development. Judges should be evaluated against relevant performance standards and adherence to principles of law. They should not be evaluated on the basis of personal, social, or political philosophies.

An independent commission with professional, full-time staff should be created and directed to develop uniform performance standards, coordinate evaluation programs, conduct research in performance measurement, and provide guidance for the use and dissemination of evaluation results. Because the

final decision on a judge's retention should remain with the electorate, evaluations should be done at the local level. State-wide uniform standards and methods should be used, administered locally for trial judges and statewide for appellate judges.

The evaluation program should be implemented in phases. The initial phase should include surveys of lawyers and jurors who have had direct experience before a judge. Subsequent phases could reach other constituencies. Individuals or groups who have direct and recurring contact with judges should have a role in evaluation. Any evaluation should be as objective as possible, and every judge should have the opportunity to discuss his evaluation results prior to publication. Results should be disseminated to the public through newspapers, radio, and television, or other appropriate methods that may vary with the locale.

The Committee believes that this evaluation program can improve the quality of judicial services available to the citizens of this state. But given the present limitations on professional performance appraisal the Committee suggests a regular review of the consequences of judicial performance evaluation. Therefore, the evaluation program should undergo a "sunset" review within two years of its creation, and regularly thereafter, to determine (1) if it is effectively informing the electorate about judicial performance, and (2) if it is improving the quality of judicial services.

Finally, the Committee concluded that evaluating judges and informing the public about judicial performance are challenging responsibilities. Succumbing to the temptation to achieve simplicity could lead to superficiality, and such a system would be worse than none. On the other hand, a comprehensive system could be so complex and time-consuming that its benefits would be more illusory than real. Judicial evaluation, therefore, should be carried out with a sense of perspective and balance.

## RECOMMENDATIONS

The Committee on Judicial Performance submits the following recommendations to the Judicial Planning Council:

1. Creation of Commission. The Supreme Court should create a Commission on Judicial Performance to design and implement an evaluation program for the state judiciary.
2. Organization and Staff. The Commission should be relatively small with a preponderance of non-lawyer members. As one illustration, the following composition might be appropriate: one appellate judge, one district judge, one county court judge, one lawyer, and five non-lawyers. Where feasible, a member should provide a bridge to another organization concerned with judicial evaluation. For example, the lawyer member could be on an appropriate bar association committee, another member could be on a nominating commission, and so forth. Likewise, some members could be chosen because of expertise in subjects of special interest to the Commission, such as statistical analysis and interpretation, personnel evaluation, or the workings of the news media. The Commission should have full-time staff assigned to it from the Judicial Department.



3. Initial Tasks and Priorities. During its initial phase, the Commission should accomplish the following objectives:

- a. Identify basic standards of judicial performance and prepare a set of judicial evaluation criteria;
- b. Monitor and evaluate all bar association surveys;
- c. Develop and test lawyer and juror surveys that can be used in different areas of the state;
- d. Prepare alternatives to surveys where there are inadequate sample populations;
- e. Develop and test a comprehensive evaluation profile for judges;
- f. In cooperation with newspapers, radio, and television, develop guidelines for use and publication of evaluation data; and
- g. Coordinate activities of mutual interest with selection and discipline commissions and continuing education organizations.

4. Local Implementation. Uniform standards and methods should be developed by the Commission, but actual evaluations should be done at the local level. For example, evaluation committees organized within judicial districts should follow state-wide guidelines established by the Commission. Evalu-

ations would then be conducted locally, the resulting data analyzed at the state level, and results communicated to the public through the local committees.

5. Funding. Expenses of the Commission should be paid from funds appropriated to the Judicial Department. A recommended first-year budget of \$97,000 (based on 1980 costs) would provide two professional personnel, a secretary, rent for facilities, operating expenses, travel, lodging, and per diem for nine Commission members, and limited access to specialists in performance measurement. The appropriation should be requested for the 1981 fiscal year.

6. Commencement. The Commission should be operating on or before July 1, 1981. This would give the Commission sufficient time to conduct its initial studies prior to the preparation of surveys for the 1982 general elections. In the meantime, the Judicial Planning Council may want to monitor and evaluate bar association surveys used in the November, 1980, elections.

7. Sunset Review. The Commission should operate for a minimum of two years. The "sunset" review should be conducted by the Judicial Planning Council or some other independent group. During the initial operating period, the Commission should conduct the activities outlined in these recommendations and participate in a full cycle of retention elections. The Supreme Court should then decide if the Commission should continue into a second phase in which it could

expand its evaluation activities to include: peer evaluation; trained court observers; surveys of court users, such as witnesses and litigants; and other appropriate methods.

#### Concluding Comment

The work of the Commission on Judicial Performance should supplement the authority and responsibility of the Chief Justice to supervise and administer the Colorado Judicial Department. It should provide the public and the judges information that will make retention elections more meaningful and professional development a reality. The Commission should not attempt to remove the basic decision-making responsibility for retaining judges from the electorate. The Committee sees the creation of the Commission as an investment in the future of the Colorado Judicial Department; one that should be made with due deliberation and careful planning and with a realistic appreciation for the long-term commitment needed to make an evaluation program succeed.

## APPENDICES

## APPENDIX A

### TABLES FROM THE SURVEY OF JUDGES

1. Criteria for Evaluating Judges
2. Comparison of Criteria for Evaluating Appellate and Trial Judges
3. Preferences for Methods of Evaluation
4. Groups Perceived as Best Qualified to Evaluate Judges Along Selected Dimensions
5. Perceived Utility of Various Methods for Obtaining Opinions of Evaluation Groups
6. Frequency of Evaluation
7. Preferred Method of Presenting Evaluation Results
8. Preferred Timing for Release of Evaluation Results
9. Perceived Reliability of Sources of Evaluation Information
10. Possible Effects of Evaluation on Decision-Making or Independence
11. Possible Effect of Evaluation on Ability of System to Attract New Judges

TABLE 1

## CRITERIA FOR EVALUATING JUDGES

Rank	Categories	Mean Scores		
		Combined Judge Responses	Appellate Judge Responses	Trial Judge Responses
1	Quality of reasoning in decisions or opinions	4.887	4.867	4.888
2	Procedural correctness	4.793	4.867	4.787
3	Conscientiousness	4.791	4.867	4.784
4	Neutrality and fairness	4.791	4.800	4.790
5	Common sense/sound judgment	4.719	4.667	4.723
6	Intellectual honesty	4.684	4.857	4.670
7	Ability to make decisions	4.682	4.600	4.689
8	Legal ability	4.668	4.800	4.657
9	Intellectual and moral courage	4.654	4.733	4.648
10	Ability to handle complex cases	4.618	4.800	4.635
11	Writing ability	4.644	4.600	4.648
12	Desire to improve/willingness to learn	4.641	4.600	4.644
13	Mental and emotional stability	4.630	4.667	4.627
14	Diligence and industry	4.589	4.600	4.589
15	Moral values/ethics	4.570	4.867	4.554
16	Independence	4.524	4.533	4.523
17	Studiosness	4.497	4.333	4.511
18	Substantive correctness	4.474	4.533	4.469
19	Intellect	4.464	4.667	4.446

TABLE 1 --continued

Rank	Categories	Mean Scores		
		Combined Judge Responses	Appellate Judge Responses	Trial Judge Responses
20	Attentiveness	4.419	4.333	4.426
21	Courtesy/consideration/ respect for others	4.307	4.000	4.333
22	Ability to communicate	4.276	4.400	4.266
23	Punctuality and promptness	4.232	4.400	4.218
24	Efficient use of time	4.209	3.933	4.233
25	Evidentiary correctness	4.132	3.857	4.154
26	Procedural correctness	4.126	4.333	4.108
27	Patience and tolerance	4.120	3.800	4.148
28	Dignity	4.094	3.867	4.113
29	Temperament	4.042	4.133	4.034
30	Compassion and humanity	3.906	3.933	3.903
31	Experience as a practicing lawyer	3.895	4.000	3.886
32	General health	3.828	4.067	3.808
33	Personal life and conduct	3.708	3.933	3.689
34	Management/control of court proceedings	3.684	3.133	3.731
35	Humility	3.642	3.467	3.657
36	Concern for parties and witnesses	3.568	3.667	3.559
37	Quantity of cases decided or opinions written	3.438	3.333	3.447
38	Kindness	3.387	2.933	3.425
39	Sense of humor	3.254	3.533	3.230

TABLE 1 --continued

Rank	Categories	Mean Scores		
		Combined Judge Responses	Appellate Judge Responses	Trial Judge Responses
40	Appearance	3.236	2.733	3.278
41	Administrative ability	2.885	2.533	2.915
42	Reasonableness of sentences imposed	2.821	2.357	2.862
43	Speaking skills	2.804	2.733	2.810
44	Quantity of hearings held	2.789	2.143	2.842
45	Involvement in civic activities	2.726	2.933	2.709
46	Settlement efficiency	2.599	2.429	2.613
47	Age	2.387	2.267	2.397

12-7-79



TABLE 2

COMPARISON OF CRITERIA FOR  
EVALUATING APPELLATE AND TRIAL JUDGES

Categories	Rank Order	
	Combined Appellate Judge Respondents	Combined Trial Judge Respondents
Quality of reasoning in decisions or opinions	1	17
Conscientiousness	2	3
Legal knowledge	3	21
Neutrality and fairness	4	1
Common sense/sound judgment	5	2
Intellectual honesty	6	10
Ability to make decisions	7	4
Legal ability	8	23
Intellectual and moral courage	9	13
Ability to handle complex cases	10	24
Writing ability	11	40
Desire to improve/willingness to learn	12	11
Mental and emotional stability	13	7
Diligence and industry	14	15
Moral values/ethics	15	14
Independence	16	18
Studiosness	17	32
Substantive correctness	18	27
Intellect	19	29
Attentiveness	20	6
Courtesy/consideration/respect for others	21	5
Ability to communicate	22	20
Punctuality and promptness	23	9
Efficient use of time	24	25

TABLE 2 --continued

Categories	Rank Order	
	Combined Appellate Judge Respondents	Combined Trial Judge Respondents
Evidentiary correctness	25	26
Procedural correctness	26	28
Patience and tolerance	27	12
Dignity	28	30
Temperament	29	16
Compassion and humanity	30	19
Experience as a practicing lawyer	31	36
General health	32	35
Personal life and conduct	33	37
Management/control of court proceedings	34	22
Humility	35	33
Concern for parties and witnesses	36	8
Quantity of cases decided or opinions written	37	44
Kindness	38	34
Sense of humor	39	38
Appearance	40	39
Administrative ability	41	43
Reasonableness of sentences imposed	42	31
Speaking skills	43	41
Quantity of hearings held	44	45
Involvement in civic activities	45	46
Settlement efficiency	46	42
Age	47	47

Scale: Ranges from 5 (strongly agree) to 1 (strongly disagree).

TABLE 3

## PREFERENCES FOR METHODS OF EVALUATION

Methods	Mean Score		
	Combined Judge Responses	Appellate Judge Responses	Trial Judge Responses
A rating scale indicating judicial skills or behaviors.	3.805	4.067	3.784
Interviews with judge.	3.754	3.733	3.755
A checklist of characteristics which describe the judge.	3.718	3.400	3.743
A review of tangible work products.	3.620	4.200	3.574
A survey or poll using rating scales or checklists.	3.563	3.600	3.560
A written report about strengths and weaknesses.	3.541	3.600	3.537
Interviews with others about the judge.	3.534	3.600	3.529
A statistical report of total work output.	3.053	2.667	3.084
A report showing degree of achievement of objectives.	2.449	2.733	2.246
A comparison and ranking with other judges.	2.239	2.133	2.247

Scale: Ranges from 5 (very acceptable) to 1 (very unacceptable)

12-6-79

TABLE 4

GROUPS PERCEIVED AS BEST QUALIFIED  
TO EVALUATE JUDGES ALONG SELECTED DIMENSIONS

Evaluation Group	Dimension	Percent of Respondents Naming as First Choice
<u>a. Technical Qualifications</u>		
Lawyers who have practiced before the judge.		52.9
Evaluation committee composed of judges and lawyers.		17.0
<u>b. Work Capacity</u>		
Lawyers who have practiced before the judge.		34.5
Chief or presiding judge.		19.7
Fellow judges in the same court.		13.3
Local court personnel.		11.8
<u>c. Interpersonal Abilities</u>		
Lawyers who have practiced before the judge.		54.7
An evaluation committee which includes citizens as well as judges and lawyers.		10.3
<u>d. Personal Character Traits</u>		
Lawyers who have practiced before the judge.		28.2
An evaluation committee which includes citizens as well as judges and lawyers.		17.8
Fellow judges in the same court.		12.4
The general public.		11.9

TABLE 4 (Cont.)

Evaluation Group	Dimension	Percent of Respondents Naming as First Choice
<u>e. Productivity Factors</u>		
Chief or presiding judge.		30.5
Lawyers who have practiced before the judge.		13.8
Local court personnel.		13.8
State court administrative officials.		12.8
Fellow judges in the same court.		10.8
<u>f. Overall Qualifications</u>		
Lawyers who practice before the judge.		35.4
An evaluation committee which includes citizens as well as judges and lawyers.		28.6
An evaluation committee composed of judges and lawyers.		12.6
<u>g. Retention</u>		
The general public.		33.2
An evaluation committee which includes citizens as well as judges and lawyers.		28.7
Lawyers who have practiced before the judge.		22.8

Note: Only scores above ten percent are shown.

12-7-79

TABLE 5

PERCEIVED UTILITY OF VARIOUS METHODS  
FOR OBTAINING OPINIONS OF EVALUATION GROUPS

Evaluation Group	Methods Selected As First Choice	Percent of Respondents
Chief or presiding judges	Written report	(33.0)
	Rating scale	(12.2)
Fellow judges in same court	Rating scale	(26.6)
	Checklist	(14.1)
Appellate judges	Tangible work products	(28.6)
	Written report	(20.6)
Lawyers who practice before judge	Rating scale	(25.9)
	Survey or poll	(23.8)
All lawyers	Survey or poll	(34.5)
	Checklist	(18.4)
Reporters	Informal interviews	(20.5)
	Survey or poll	(17.5)
State court administration	Statistical report	(40.9)
	Tangible work products	(16.5)
Local court personnel	Rating scale	(22.8)
	Statistical report	(15.6)
Law enforcement personnel	Rating scale	(23.2)
	Survey or poll	(18.5)
Evaluation committee	Written report	(30.5)
	Rating scale	(16.0)
Evaluation committee w/citizens	Written report	(27.4)
	Rating scale	(15.6)
General public	Survey or poll	(37.6)
	Rating scale	(16.7)
Trained citizen court watchers	Checklist	(26.0)
	Rating scale	(25.4)

TABLE 5 (Cont.)

Evaluation Group	Methods Selected as First Choice	Percent of Respondents
Jurors	Checklist	(32.4)
	Rating scale	(23.5)
Litigants, witnesses, etal	Checklist	(32.2)
	Rating scale	(20.0)

Note: Highest two percentage scores shown for each group.

TABLE 6

## FREQUENCY OF EVALUATION

Type of Judge	Per Cent of Respondents Favoring these Frequencies				
	Term in Years	Every Year	Every Two Years	Twice Each Term	Once Each Term
Supreme Court Justice	10	12.0	30.3	21.2	17.8
Court of Appeals Judge	8	13.0	30.8	28.8	14.4
District Judge	6	22.6	30.3	21.6	16.3
County Judge	4	27.9	42.3	24.0	2.4



TABLE 7

PREFERRED METHOD OF  
PRESENTING EVALUATION RESULTS

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<u>Method</u>	<u>Percent of Respondents Selecting Method as First Choice</u>
A description of the information obtained with no recommendation.	57.9
A designation of qualified or unqualified--based on predetermined standards.	39.9
A comparative listing or ranking of all judges in the district.	6.5

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5-13-80

TABLE 8

PREFERRED TIMING FOR  
RELEASE OF EVALUATION RESULTS

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<u>Time Period</u>	<u>Percent of Respondents Favoring Time Period</u>
Within the sixty-day period immediately preceding the election	32.8
At least four months prior to the election	29.2
As soon as evaluation re- sults are tabulated without regard to the election date	27.1
In the year prior to the election	5.7
At least eight months prior to the election	5.2

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5-13-80

TABLE 9

PERCEIVED RELIABILITY OF SOURCES OF EVALUATION  
INFORMATION

	Mean Score
Report from evaluation committee of judges and lawyers.	4.402
Report from evaluation committee of citizens & judges, & lawyers.	4.368
Report from a bar association.	3.976
Report from the Judicial Department.	3.569
Report from a citizen's group.	3.000
Newspaper editorial.	2.356
Television program.	2.210
Newspaper article.	2.205
Radio program.	2.185
Report from committee of the legislature.	1.990

Scale: Ranges from 5 (Very reliable) to 1 (Very Unreliable)

5-13-80

TABLE 10

POSSIBLE EFFECTS OF EVALUATION  
ON DECISION-MAKING OR INDEPENDENCE

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<u>Responses</u>	<u>Percent</u>
Perceive no effects	47.8
Uncertain about effects	17.9
Perceive Possible effects	34.3

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Mean Score - 2.135

5-13-80

TABLE 11

POSSIBLE EFFECT OF EVALUATION ON ABILITY OF  
SYSTEM TO ATTRACT NEW JUDGES

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<u>Responses</u>	<u>Percent</u>
Would not affect	37.9
Uncertain as to effect	26.6
Would affect	35.5

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Mean Score - 2.024

5-13-80

APPENDIX B

SAMPLE BAR POLLS USED IN COLORADO

1. Arapahoe County Bar Association Judicial Opinion Poll (1980)
2. Colorado Bar Association Judicial Poll (1980)
3. Denver Bar Association Lawyer Survey (1980)
4. Federal District Court Bankruptcy Judge Poll (1980)
5. First Judicial District Bar Association Poll (1980)
6. Municipal Court Survey for the City of Lakewood (1979)
7. Boulder County Bar Association Ballot and Evaluation Form (1980)

1980 ARAPAHOE COUNTY BAR ASSOCIATION  
JUDICIAL OPINION POLL OF  
DISTRICT AND COUNTY COURT JUDGES

INTRODUCTION

The primary purposes of this evaluation are to help the public in evaluating judges for voting purposes, and to assist the judges in their professional development.

This is a part of an effort proceeding statewide, to evaluate judges against relevant performance standards and principles of law, rather than personal social or political philosophies. The results will be disseminated to the public, to the judiciary, and to the bar.

INSTRUCTIONS

IF YOU HAVE NOT PERSONALLY OBSERVED THE JUDGE IN THE ADMINISTRATION OF ANY OF HIS (HER) DUTIES DURING THE PAST THREE YEARS, YOU SHOULD NOT RATE THE JUDGE, BUT RATHER SHOULD MARK AN "X" ACROSS THE JUDGE'S NAME AND LEAVE THE COLUMN BELOW BLANK.

THE QUESTIONS ASK THE DEGREE TO WHICH YOU AGREE WITH FAVORABLY PHRASED STATEMENTS. AGREEMENT WILL INDICATE A FAVORABLE ASSESSMENT ON A GIVEN CHARACTERISTIC AND DISAGREEMENT WILL INDICATE AN UNFAVORABLE ASSESSMENT. IN ANSWERING THE QUESTIONS, USE THE FOLLOWING RATING SCALE:

- 5...STRONGLY AGREE
- 4... AGREE
- 3... NEUTRAL
- 2...DISAGREE
- 1... STRONGLY DISAGREE

IF YOU DO NOT HAVE SUFFICIENT PERSONAL EXPERIENCE TO PROVIDE AN INFORMED OPINION ABOUT A GIVEN CHARACTERISTIC OF A PARTICULAR JUDGE, PLEASE PLACE AN "X" IN THE BLANK FOR THAT QUESTION. PLEASE DO NOT BASE YOUR ANSWERS ON THE OPINIONS OF OTHER LAWYERS WHICH YOU MAY HAVE HEARD.

TAKE THE QUESTIONS AT FACE VALUE. THEY ARE INTENDED TO BE STRAIGHT-FORWARD. YOUR STANDARD OF EVALUATION SHOULD BE YOUR OWN CONCEPTION OF THE HIGHEST LEVEL OF PERFORMANCE TO WHICH A JURIST SHOULD ASPIRE, NOT THE STANDING OF A JUDGE RELATIVE TO HIS PEERS ON THE BENCH.

YOU ARE ENCOURAGED TO MAKE NARRATIVE COMMENTS ABOUT THE JUDGES. SHOULD YOU CHOOSE TO DO SO, PLEASE USE THE REVERSE SIDE OF THE ANSWER QUESTIONNAIRE IN THE SPACE PROVIDED.

CARE WILL BE TAKEN TO INSURE COMPLETE CONFIDENTIALITY. THE SIGNATURES AND ATTORNEY REGISTRATION NUMBERS OF THE RESPONDENTS WILL BE VALIDATED AND THE RESULTS OF THE COMPLETED QUESTIONNAIRES COMPILED AND TABULATED BY MEMBERS OF THE JUDICIAL LIAISON COMMITTEE OF THE ARAPAHOE COUNTY BAR ASSOCIATION.

ALL REPLIES WILL BE HELD IN THE STRICTEST CONFIDENCE, EXCEPT AS NECESSARY TO SUMMARIZE THEIR CONTENTS IN A REPORT TO THE CHIEF JUDGE OF THE EIGHTEENTH JUDICIAL DISTRICT AND TO THE PRESS. SHOULD YOU MAKE NARRATIVE COMMENTS ABOUT PARTICULAR JUDGES, THOSE COMMENTS WILL BE MADE AVAILABLE TO THE JUDGES IN QUESTION.

WHEN YOU HAVE COMPLETED THE QUESTIONNAIRE, PLACE IT IN THE ENCLOSED RETURN ENVELOPE, SEAL THE ENVELOPE, SIGN THE RETURN ENVELOPE AND PRINT YOUR NAME AND ATTORNEY REGISTRATION NUMBER ("ATR") IN THE SPACES PROVIDED ON THE OUTSIDE THEREOF, AFFIX SUFFICIENT POSTAGE ON THE ENVELOPE AND MAIL THE ENVELOPE BY NO LATER THAN JUNE 30, 1980. FAILURE TO SIGN THE ENVELOPE AND PRINT YOUR ATR WILL INVALIDATE YOUR QUESTIONNAIRE.

## QUESTIONS

### INTEGRITY

1. Rulings are not influenced by identity, personality and/or reputation of attorneys involved.
2. Rulings are free from predisposition to decide for plaintiff/defendant in civil case, prosecution/defense in criminal case, and/or husband/wife in domestic case.
3. Treats attorneys and litigants equally irrespective of race, sex and/or ethnic background.

### JUDICIAL TEMPERAMENT

4. Exhibits understanding and tolerance toward both parties and witnesses.
5. Is courteous, considerate and respectful to attorneys, parties, witnesses and jurors.
6. Is attentive during court proceedings or during meetings in chambers.
7. Is mentally and emotionally stable.

### DILIGENCE

8. Is available for court business and/or emergencies when not on bench during normal working day.
9. Convenes court punctually.
10. Exhibits familiarity with file and adequate preparation.
11. Issues rulings promptly.

### DECISIVENESS AND PROCEDURAL FAIRNESS

12. Exhibits ability to make decisions.
13. Exhibits common sense and sound judgment.
14. Handles docket efficiently and appropriately.
15. Requires strict adherence to procedural rules.

### LEGAL ABILITY

16. Understands complex legal issues.
17. Readily understands issues in ordinary cases.
18. Clearly expresses written and oral rulings.
19. Rulings reflect a knowledge of current legal developments.

### OVERALL EVALUATION

20. Overall, this judge is doing a good job and should be retained.



DISTRICT COURT JUDGES

Q #	Richard L. Eason	Charles A. Friedman	John P. Gately	Richard D Greene	Richard L. Kaylor	Robert F. Kelley	George B. Lee	Marcus O. Shivers	Joyce S. Steinhardt
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									
11.									
12.									
13.									
14.									
15.									
16.									
17.									
18.									
19.									
20.									

COUNTY COURT JUDGES

Q #	Richard B. Cossaboom	Thomas C. Levi	Chris G. Rallis	Ralph C. Taylor	Richard D. Turelli
1.					
2.					
3.					
4.					
5.					
6.					
7.					
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11.					
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16.					
17.					
18.					
19.					
20.					



# THE COLORADO BAR ASSOCIATION

UNIVERSITY OF DENVER LAW CENTER / 200 WEST FOURTEENTH AVE. / DENVER, COLORADO 80204 / (303) 629-6873

## 1980 JUDICIAL POLL

The Colorado Bar Association again is conducting a poll of Colorado lawyers as to the desirability of retaining in office those Court of Appeals Judges whose terms of office expire in January 1981, and who stand for re-election in the November, 1980 general election under the terms of the 1966 amendment to the judicial article.

This is the sixth such poll conducted by the association since the judicial article was amended to provide for nonpolitical selection and retention of judges. It is being taken in response to the responsibility of the profession expressed in The Code of Professional Responsibility to advise the electorate as to lawyers' opinion of the qualifications of judges seeking retention in office.

The rules adopted for this poll are as follows:

1. Only lawyers who have knowledge acquired by reading the opinions of the judge involved, or by personal experience with him, or reliable information concerning him are requested to cast a ballot.
2. The ballot will be mailed to all members of The Colorado Bar Association. They will also be available from the bar office on request for nonmembers admitted to practice in Colorado, practicing or living in the state.
3. The names of the incumbents on the court who may stand for re-election next November are listed in alphabetical order on the blue ballot.
4. The lawyer is to check "Yes" or "No" to the same question that shall be addressed the electorate next November, namely, "Shall Judge X of Colorado Court of Appeals be retained in office?"
5. Along with the ballot is a separate sheet on which knowledgeable lawyers may express specific comments concerning a judge, both affirmative expressions of approval as well as constructive criticisms. These comments should be succinct and clearly labeled in separate paragraphs as to the individual judge to whom they are directed. They will be assembled by the same independent accounting firm which is handling the poll and transmitted in confidence to the individual judge concerned. Neither the ballot nor the comment sheet is to be signed.
6. The ballot after being marked, together with the comment sheet, if any, should be placed in the Ballot Envelope, sealed and the certification completed on the rear of the envelope. Then stamp and mail or return in person to The Colorado Bar Association. Failure to sign the certification will invalidate the ballot.

7. All ballots to be considered must be returned to The Colorado Bar Association office, 200 West 14th Avenue, Denver, Colorado 80204, so as to be postmarked no later than June 30, 1980.
8. Results of the poll as to each judge and comments, if any, will be made available in confidence to that judge prior to the date when he is required to declare his intention to stand for re-election.
9. After the time for such declaration has expired, approximately August 5, the results of the poll pertaining to all judges who have declared their intention to stand for re-election will be made public.

You are sincerely urged to cast your ballot in this poll for those judges whose qualifications are known to you by personal experience and firsthand knowledge.

Stevens P. Kinney, II, Chairman  
Judiciary Section  
Colorado Bar Association

6-6-80

COLORADO  
JUDICIAL POLL BALLOT

Court of Appeals

Shall Judge Ralph H. Coyte  
of the Court of Appeals      Yes \_\_\_\_\_  
be retained in office?      No \_\_\_\_\_

Shall Judge David W. Enoch  
of the Court of Appeals      Yes \_\_\_\_\_  
be retained in office?      No \_\_\_\_\_

Shall Judge Charles D. Pierce  
of the Court of Appeals      Yes \_\_\_\_\_  
be retained in office?      No \_\_\_\_\_

COMMENTS

Court of Appeals

---

Judge Ralph H. Coyte:

Judge David W. Enoch:

Judge Charles D. Pierce:

QUESTIONNAIRE - PAGE 1

INSTRUCTIONS

1. Please complete the section entitled YOUR CHARACTERISTICS first. These questions are solely for the purpose of making statistical correlations, and the responses will be reviewed only by our statistical expert.
2. Second, complete the questions on the following pages, entitled EXPERIENCE BEFORE JUDGE, regarding each and every judge.
3. Then answer the questions ONLY WITH REGARD TO THE JUDGES BEFORE WHOM YOU HAVE PERSONALLY APPEARED IN A HEARING OR TRIAL DURING THE PAST THREE YEARS by putting a number from 0 through 4 in the appropriate box. Those numbers indicate these responses:
  - 0 NOT OBSERVED (You have no experience before the judge on which to base an opinion relating to the specific question)
  - 1 STRONGLY AGREE
  - 2 AGREE
  - 3 DISAGREE
  - 4 STRONGLY DISAGREE
4. Please feel free to express constructive comments regarding individual judges by making handwritten comments on the back of the questionnaire. Identify the judge or judges to whom your comments refer.
5. The numbers in parentheses at the left margins are for computer use only. Please ignore them.
6. Place the colored pages of the completed questionnaire, including handwritten comments, in the survey envelope and seal it. Sign only the yellow signature slip, and place it together with the sealed survey envelope in the envelope addressed to the Denver Bar Association NO LATER THAN June 9, 1980. Failure to return both the signed signature slip and the sealed survey envelope will invalidate the questionnaire.
7. Responses shall be anonymous, and care will be taken to insure complete confidentiality. The signature slips will be validated and the results of the completed questionnaires will be compiled and tabulated by our independent consultant, Professor Joyce Sterling, University of Denver College of Law.
8. RETURN ALL OF THE COLORED PAGES OF THE QUESTIONNAIRE!

QUESTIONNAIRE - PAGE 2  
YOUR CHARACTERISTICS

[FOR COMPUTER  
USE ONLY]

(1-4)

(5-6) 1. Age \_\_\_\_\_

(7) 2. Sex (M or F) (1) Male \_\_\_\_\_ (2) Female \_\_\_\_\_

3. Race or National Origin

(8) (1) Caucasian \_\_\_\_\_ (2) Hispanic \_\_\_\_\_

(3) Black \_\_\_\_\_ (4) Other \_\_\_\_\_

(9-10) 4. How many years have you been appearing in court? \_\_\_\_\_

(11) 5. What percentage of your practice is devoted to litigation?

(1) 1-19% \_\_\_\_\_ (2) 20-39% \_\_\_\_\_ (3) 40-59% \_\_\_\_\_ (4) 60-79% \_\_\_\_\_

(5) 80-100% \_\_\_\_\_

(12) 6. How many trials, on the average, have you tried per year for the past three years?

(1) None \_\_\_\_\_ (2) 1-5 \_\_\_\_\_ (3) 6-10 \_\_\_\_\_ (4) Over 10 \_\_\_\_\_

(13-14) 7. Indicate your three primary areas of practice by putting the numbers 1, 2, and 3 next to the appropriate categories.

(1) Criminal Law (Prosecution) \_\_\_\_\_

(2) Criminal Law (Defense) \_\_\_\_\_

(3) Personal Injury (Plaintiff) \_\_\_\_\_

(4) Personal Injury (Defendant) \_\_\_\_\_

(5) Antitrust \_\_\_\_\_

(6) Securities \_\_\_\_\_

(7) Probate \_\_\_\_\_

(8) Natural Resources \_\_\_\_\_

(9) General Litigation \_\_\_\_\_

(10) General Business \_\_\_\_\_

(11) Family Law \_\_\_\_\_

(12) Other \_\_\_\_\_ . Please specify \_\_\_\_\_

(15) 7. Are you in private practice? (1) Yes \_\_\_\_\_ (2) No \_\_\_\_\_ (Private practice excludes governmental or corporate affiliation.)

(16) 8. If you are in private practice, how many other attorneys are associated with you?

(1) 1-4 \_\_\_\_\_ (2) 5-10 \_\_\_\_\_ (3) 11-20 \_\_\_\_\_ (4) 21-40 \_\_\_\_\_ (5) Over 40 \_\_\_\_\_

(17-18) 9. If you are not in private practice, please indicate your employer: (CIRCLE ONE)

(1) United States Attorney.

(2) Other federal agency. Please specify \_\_\_\_\_

(3) State District Attorney.

(4) State Public Defender.

(5) State Attorney General.

(6) Other state agency. Please specify \_\_\_\_\_

(7) A local agency. Please specify \_\_\_\_\_

(8) Legal aid agency (other than law school affiliated).

(9) Law school.

(10) Corporation.

(11) Other. Please specify \_\_\_\_\_

(12) N/A



QUESTIONNAIRE - PAGE 3

(0) Not Observed	(1) Strongly Agree	(2) Agree	(3) Disagree	(4) Strongly Disagree
------------------------	--------------------------	--------------	-----------------	-----------------------------

YOUR EXPERIENCE BEFORE EACH JUDGE:

- A. Estimate the number of times you have had a hearing or trial before each judge during the past three years [Put a number or a zero in every box at the right]:
- B. Estimate the amount of time you have spent in hearings or trial before each judge during the past three years [Put number of days, fractions thereof, or a zero in every box at the right]:

THE JUDGE:

1. Knows the substantive law.
2. Deals adequately with cases involving complex facts.
3. Issues rulings which are well reasoned and fully stated.
4. Allows attorneys to make a record.
5. Requires adherence to state and local rules of procedure.
6. Imposes sanctions commensurate with the severity of an attorney's failure to comply with state and local rules of procedure.
7. Makes proper rulings on evidentiary objections.
8. Maintains control in courtroom.
9. Handles docket efficiently.
10. Convenes court punctually.
11. Is familiar with the file prior to any hearing on motions to dismiss or for summary judgment, any trial, or any injunction hearing.
12. Is prompt in issuing rulings.
13. Is courteous to attorneys, litigants, witnesses, and jurors.
14. Rulings are not affected by the race, ethnic background, sex, or religion of the litigants or their attorneys.
15. Does not engage in behavior which prejudices the jury.
16. Sentences are appropriate to the seriousness of the crime and the circumstances of the defendant.
17. Should be retained.

JUDGE SPARR

JUDGE SANTO

JUDGE REED

JUDGE PLANK

JUDGE METZGER

JUDGE LILLY

JUDGE LICHTENSTEIN

JUDGE KINGSLEY

JUDGE JONES

JUDGE FULLERTON

JUDGE FLOWERS

JUDGE FLANIGAN

JUDGE CISNEROS

JUDGE BROOKS

JUDGE BARNES

DISTRICT JUDGES  
JUDGE ALEXANDER

QUESTION

A  
B  
1  
2  
3  
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11  
12  
13  
14  
15  
16  
17

MERIT SCREENING COMMITTEE QUESTIONNAIRE  
FOR ATTORNEYS WHO HAVE RECENTLY PRACTICED  
BEFORE THE BANKRUPTCY JUDGE REVIEWED

INSTRUCTIONS

The first three questions on the next page ask how much, and what kind of, personal experience you have had with Bankruptcy Judge \_\_\_\_\_ Each of your answers should be based solely upon your personal observations within the past three years. Please do not base your answers on the opinions of other lawyers which you may have heard.

The questions ask the degree to which you agree with favorably phrased statements. Agreement will indicate a favorable assessment on a given characteristic and disagreement will indicate an unfavorable assessment.

If you do not have sufficient personal experience to provide an informed opinion about a given characteristic, please leave the appropriate response for that question blank. If you have sufficient personal experience within the past three years but have no opinion about one or more characteristics, please respond by writing "no opinion" in the blank space.

On the last page, there is a short series of questions about your background and a place has been provided for individual comments if you desire to make such comments.

ALL REPLIES WILL BE HELD IN STRICTEST CONFIDENCE.

Please answer each question below by filling in the appropriate number. With regard to items 4 through 26 below please indicate a rating of 1, 2, 3, 4 or 5, in which 1 means strongly agree and 5 means strongly disagree. If you have no opinion, please write "no opinion" in the space provided.

YOUR EXPERIENCE BEFORE THE JUDGE

- 1. State the number of cases in which you have appeared before the judge during the past three years. \_\_\_\_\_
- 2. State the approximate number of contested motions in which you have actively participated before the judge in the past three years. \_\_\_\_\_
- 3. State approximately how many hours you have observed the judge in court or in chambers during the past three years. \_\_\_\_\_

INTEGRITY

- 4. His rulings are uninfluenced by the identity of the lawyers and parties involved. \_\_\_\_\_
- 5. His rulings are free from any predisposition to decide for a particular party. \_\_\_\_\_
- 6. His awards of costs and fees to trustees and receivers are fair and reasonable. \_\_\_\_\_
- 7. His awards of attorney's fees in appropriate cases are fair and reasonable. \_\_\_\_\_
- 8. He refrains from ex parte communications. \_\_\_\_\_

JUDICIAL TEMPERAMENT

- 9. He is courteous towards lawyers and litigants. \_\_\_\_\_
- 10. He conducts court proceedings with appropriate firmness. \_\_\_\_\_
- 11. He gives due consideration to the convenience of lawyers and litigants in scheduling proceedings. \_\_\_\_\_
- 12. He refrains from prejudging the outcome of a case during early proceedings. \_\_\_\_\_
- 13. He refrains from coercing settlements. \_\_\_\_\_

LEGAL ABILITY

- 14. He understands the issues in complex cases. \_\_\_\_\_
- 15. He readily understands the issues in ordinary cases. \_\_\_\_\_
- 16. His written rulings are clearly expressed. \_\_\_\_\_
- 17. His oral rulings are clearly expressed. \_\_\_\_\_
- 18. His rulings reflect a knowledge of current legal developments. \_\_\_\_\_

DECISIVENESS

- 19. He rules promptly on motions. \_\_\_\_\_
- 20. He insures steady progress of a case. \_\_\_\_\_
- 21. He is decisive in his rulings. \_\_\_\_\_
- 22. He decides cases with reasonable promptness. \_\_\_\_\_

DILIGENCE

- 23. He convenes court punctually. \_\_\_\_\_
- 24. His hearings and pretrial conferences reflect adequate research and preparation. \_\_\_\_\_
- 25. He deals with emergency matters expeditiously. \_\_\_\_\_

OVERALL EVALUATION

- 26. Overall, he is a good Bankruptcy Judge. \_\_\_\_\_
- 27. How many years have you been practicing law? \_\_\_\_\_
- 28. How many years have you been appearing in the federal courts in the District? \_\_\_\_\_
- 29. In how many pending bankruptcy cases do you have an appearance on file? \_\_\_\_\_
- 30. For any field in which you spend 5% or more of your working time, please indicate what percentage of your working time you spend in that field. \_\_\_\_\_

Antitrust (Plaintiffs).. _____	Business Litigation ..... _____
Antitrust (Defense) .... _____	General Litigation ..... _____
Banking ..... _____	Municipal ..... _____
Bankruptcy ..... _____	Patents ..... _____
Civil Rights ..... _____	Pers. Injury (Plaintiffs). _____
Commercial ..... _____	Pers. Injury (Defendants). _____
General Corporate ..... _____	Probate ..... _____
Criminal (Prosecution).. _____	Public Utilities ..... _____
Criminal (Defense) ..... _____	Business Real Estate ..... _____
Divorce ..... _____	Personal Real Estate ..... _____
Family ..... _____	Securities ..... _____
Labor (Management) ..... _____	Business Tax ..... _____
Labor (Unions) ..... _____	Personal Tax ..... _____

31. On the average, how many hours do you work a week? \_\_\_\_\_

32. Please check or specify your employer.

\_\_\_\_\_ None (sole practitioner)

\_\_\_\_\_ Private Law Firm

\_\_\_\_\_ Corporation

\_\_\_\_\_ Federal Agency (including U.S. Attorney)

\_\_\_\_\_ Non-Federal Agency

\_\_\_\_\_ Legal Aid Agency

\_\_\_\_\_ Law School

\_\_\_\_\_ Other (Please specify) \_\_\_\_\_

33. How many lawyers are employed at your place of business? \_\_\_\_\_

GENERAL COMMENTS:

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## BALLOT INSTRUCTIONS

The First Judicial District Bar Association has been contacted by the newspapers, radio and television stations and other groups interested in dissemination of public information about the judiciary for a more concise statement and comment. If you sign the individual ballot any questions or comments may be published. The Bar Association will have NO obligation to you to keep it confidential. Your name may be identified with the comments. If you do not sign the ballot comments will be confidential and will not be disclosed to anyone except the Judge in accordance with the previous procedures and practices of the Judicial Poll Committee.

To vote and comment please follow this procedure:

1. Complete the back of the return envelope.
2. Complete a ballot (blue) for each judge.
3. Put the ballots in the tan envelope and seal the envelope.
4. Put the sealed ballot envelope in the white envelope.
5. Seal white envelope and mail to: Olson, Shultz and Flowers, CPA's, 198 Union Boulevard, Lakewood, Colorado 80228
6. RETURN BY JULY 25, 1980.

This questionnaire concerns only the Judges who may seek retention in November 1980. We appreciate your help and support of this program.

JUDICIAL POLL COMMITTEE

By: Robert H. Sonheim, Chrm.  
and James Henry

C O N F I D E N T I A L

B A L L O T

Should Judge  
be retained in office:      Yes \_\_\_\_\_ No \_\_\_\_\_ No Opinion \_\_\_\_\_

His attributes are:      Superior    Average    Unsatisfactory

Knowledge and application  
of law

\_\_\_\_\_

Management of caseload &  
prompt decisions

\_\_\_\_\_

Judicial temperament

\_\_\_\_\_

Impartiality/integrity

\_\_\_\_\_

Physical and mental  
fitness

\_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If you are willing to permit the press and the public to have access to your ballot and comments, including your name, sign your name below. If you do not sign below your name and comments will remain anonymous.

\_\_\_\_\_

Print your name

X \_\_\_\_\_



1979 Municipal Court Survey  
for the City of Lakewood

Answer the questions regarding judges' performances ONLY WITH REGARD TO THE JUDGES BEFORE WHOM YOU HAVE PERSONALLY APPEARED IN A HEARING OR TRIAL, by putting a number from 0 through 4 in the appropriate box. The numbers correspond to the following responses:

- 0 Not Observed
- 1 Strongly Agree
- 2 Agree
- 3 Disagree
- 4 Strongly Disagree

		Studholme	Fairchild
I.	Legal Ability: The judge		
	1. Properly applies the law		
	2. Is clear and precise in rulings		
	3. Understands complex problems		
	4. Knows the law		
II.	Fairness and Competence: The judge		
	5. Requires adherence to state and local rules of procedure		
	6. Maintains control of the courtroom		
	7. Handles cases efficiently		
	8. Allows sufficient time for attorneys to explain their positions		
	9. Allows sufficient time for defendants to explain their positions		
	10. Consistently imposes fair sentences		
	11. Upholds the independence of the court		
	12. Starts court punctually		
III.	Bias: The judge		
	13. Does not favor the city		
	14. Does not favor the defendant		
	15. Treats defendants, witnesses and attorneys equally regardless of race or ethnic background		
	16. Treats defendants, witnesses and attorneys equally regardless of sex		



BOULDER COUNTY BAR ASSOCIATION

Boulder, Colorado

May, 1980

Dear Bar Member:

The Boulder County Bar Association is again conducting a poll of lawyers in Boulder County as to the desirability of retaining in office, the only judge, district or county, who may stand for re-election in the November, 1980 general election, should he choose. Also, the Bar Association through its Judiciary Committee and the district and county judges feel that it would be of great benefit to all of the judges if the results of a poll could be made available to them. This poll is, therefore, being taken in response to the responsibility of the profession, expressed in the Canon of Ethics and Code of Professional Responsibility, to advise the electorate as to the lawyers opinions on the qualification of the judge seeking retention in office, and also to advise the judges of some of the feelings, comments, and constructive criticisms by the members of the Bar who appear before them.

The poll includes an evaluation of each judge's performance based on specified criteria and a space for written comments. Specific comments concerning a judge, both affirmative expressions of approval as well as constructive criticism, are welcome and should be set forth under item 8.

The rules governing the poll and the ballots should be carefully followed and are as follows:

1. You will find a combined ballot and evaluation form for each judge enclosed along with an envelope for the ballot, a signature sheet for the lawyer, and an envelope addressed to the Boulder County Bar Association.
2. A lawyer voting on any of the ballots and making comments should place the ballots into the blank envelope and seal that envelope. The lawyer should then fill out the signature slip and insert it together with the sealed ballot envelope in the envelope addressed to the Boulder County Bar Association.

Please return the ballots, whether or not you complete all of them. The necessity for signing and returning the signature slip is so that the tabulator will know how many attorneys did not choose to vote, out of those given the opportunity.

After verification of the signature slips by the Secretary of the Boulder County Bar Association, the sealed ballot envelopes will be transmitted to an independent tabulator where the sealed envelopes will be opened and the ballots will be tabulated. The tabulator will then forward the results of the polls directly to the judges. Specific comments written on any ballot will be transferred to a separate sheet by the tabulator and the separate sheet will be sent to the judges. The ballots will then be destroyed.

If Judge            affirms his intention to stand for election on or before the time required by law, the results of this poll as to him will be revealed to the public. The results of the poll will not be made public as to all of the other judges.

Under no circumstances will any comment from the "Comments" section of the ballot be revealed to anyone other than the particular judge who is the subject of that comment.

All ballots MUST be returned to the Bar Office promptly and in any event, no later than            , 1980, so that the tabulator may accomplish its work and transmit the results in a timely manner to the judges for them to be of value.

Very truly yours,

Morris W. Sandstead, Jr.  
Member, Judiciary Committee  
Boulder County Bar Association

B A L L O T

FOR EVALUATION OF \_\_\_\_\_

Please indicate your rating of \_\_\_\_\_ performance in the areas indicated by each of the following questions:

	<u>GOOD</u>	<u>FAIR</u>	<u>POOR</u>
1. Has he adequate knowledge and understanding of the law?	_____	_____	_____
2. Does he have sufficient understanding of human relations to deal fairly and objectively with all persons coming before the Court?	_____	_____	_____
3. Is he industrious and prompt in the performance of judicial duties?	_____	_____	_____
4. Is he usually courteous and considerate toward persons appearing in his Court?	_____	_____	_____
5. Does he maintain proper supervision and control over Court personnel so as to avoid the exercise of judicial discretion by Court personnel?	_____	_____	_____
6. Is his conduct, when not performing his judicial functions, compatible with his duties as a Judge?	_____	_____	_____
7. Does he cooperate and work well with the other judges?	_____	_____	_____
8. COMMENTS:			

APPENDIX C

SAMPLE JUROR QUESTIONNAIRES

1. Jury Service Exit Questionnaire, Colorado Juror Utilization and Management Program
2. Juror Questionnaire from "Press and Public Information Manual for New Hampshire Judges," prepared by Judge Charles G. Douglas III for the New Hampshire Fair Trial--Free Press Committee and the Judicial Planning Committee, August, 1978, pp. 24-25



Dear Juror,

To aid the Court in more fully carrying out its duty to the fair administration of justice, I would appreciate your response to the following questions. This letter and your answers are not personalized because we do not need your name, but we do need a few minutes of your time to provide the Court with guidance and ideas. Your cooperation and that of the other jurors will be of great assistance and I thank you for your time.

1. Is the jury system necessary in our scheme of administering justice? Yes \_\_\_\_\_ No \_\_\_\_\_

2. Do you have confidence in the integrity and ability of our judges and respect for the court system generally?

In our Federal courts and judges? Yes \_\_\_\_\_ No \_\_\_\_\_  
In our State courts & judges? Yes \_\_\_\_\_ No \_\_\_\_\_  
In our local courts & judges? Yes \_\_\_\_\_ No \_\_\_\_\_

3. Do you think there is a lack of public information about court and judicial functioning. Yes \_\_\_\_\_ No \_\_\_\_\_

If so, who is to blame? (check one)

The courts & judges? \_\_\_\_\_ The public? \_\_\_\_\_  
The news media? \_\_\_\_\_ The schools? \_\_\_\_\_

4. Do you think governmental operations and public involvement therein would be improved by having greater contact between the public and judges in order to obtain first hand information about the administration of justice problems? Yes \_\_\_\_\_ No \_\_\_\_\_

5. Do you think that in sentencing the judge was (check one)

Harsh on criminals? \_\_\_\_\_ Soft on criminals? \_\_\_\_\_

Just about right? \_\_\_\_\_

6. What do you believe the function of sentencing is? (check one)

To rehabilitate the accused? \_\_\_\_\_  
To act as a deterrent? \_\_\_\_\_  
To punish the accused? \_\_\_\_\_

7. Do you think judges work hard enough?

In the Federal courts? Yes \_\_\_\_\_ No \_\_\_\_\_  
In the State courts? Yes \_\_\_\_\_ No \_\_\_\_\_  
In the local courts? Yes \_\_\_\_\_ No \_\_\_\_\_



8. Do you think that there was a double standard of justice depending upon who was being tried or accused? Yes \_\_\_\_\_ No \_\_\_\_\_
9. Do you think you could get a fair trial in this court? Yes \_\_\_\_\_ No \_\_\_\_\_
10. Were the "charges" or instructions by the judge on the law involved in a case (check one)  
Understandable \_\_\_\_\_ Helpful \_\_\_\_\_ Confusing \_\_\_\_\_
11. Were the Clerk and his staff friendly, courteous and helpful? Yes \_\_\_\_\_ No \_\_\_\_\_
12. What suggestions would you make to improve the physical quarters jurors must wait or deliberate in?
13. Was the judge punctual? Yes \_\_\_\_\_ No \_\_\_\_\_
14. Did the judge possess a proper judicial temperament and demeanor? Yes \_\_\_\_\_ No \_\_\_\_\_
15. Did the judge act fairly towards all litigants and lawyers? Yes \_\_\_\_\_ No \_\_\_\_\_
16. Was the judge courteous to the litigants, witnesses and lawyers? Yes \_\_\_\_\_ No \_\_\_\_\_
17. Did you approve in general the manner in which the judge conducted the business of the court? Yes \_\_\_\_\_ No \_\_\_\_\_
- If no, what could he do to improve?
18. What suggestions do you have for changing the methods used by the judge, clerk and bailiffs in the trial of a jury case based upon your personal experience as a juror?

Thank you again. Kindly mail the completed questionnaire in the enclosed stamped, self-addressed envelope.

Source: "Press and Public Information Manual for New Hampshire Judges," prepared by Judge Charles G. Douglas III for the New Hampshire Fair Trial--Free Press Committee and the Judicial Planning Committee, August, 1978, pp. 24-25

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