



JUDICIAL PLANNING COUNCIL
COMMITTEE ON JUDICIAL PERFORMANCE

COLORADO JUDICIAL DEPARTMENT
TWO EAST FOURTEENTH AVENUE, ROOM 215
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MINUTES OF THE SIXTH COMMITTEE MEETING

Friday, November 9, 1979

The sixth meeting of the Committee on Judicial Performance was held on November 9, 1979, from 3:30 P.M. to 5:40 P.M. in Room 210 Conference Room, at the address indicated above.

Committee members in attendance were:

Daniel S. Hoffman, Chairman
Emily Bocko
Ed Lehman
George Manerbino
Alex Keller
Charles Pierce
Bob Allshouse
King Trimble
Edith Sherman
Ken Kindelsberger

The following guests attended the meeting:

Professor Francis Jamison
University of Denver School of Law

Representative Anne Gorsuch
Colorado General Assembly

Staff support for the committee was provided by Keith Stott, Deputy State Court Administrator and Bob Cassidy, Field Services.

Welcome and Introduction

Dan Hoffman, chairman of the committee, opened the meeting by explaining that this meeting would be the last of the meetings in which we would receive input from outside sources except for the final report on the judicial survey. The remainder of the meetings will relate to the decision making process of determining what to do and how to do it.

Public Meetings

The committee shared observations about the public meetings that had been held during the last two weeks. The following comments were made about the meetings.

Durango Meeting

People attending the meeting struggled with what they wanted to know. Several were concerned with the fact that judges were not as informed in specialization areas, such as juvenile and family law and child abuse laws in the Children's Code. However, there was a definite feeling that there ought to be some form of informing the citizens about the quality of judicial performance. Perhaps the different types of people involved with judges should be surveyed, for example, police and social workers. Criticism was expressed by two lawyers who questioned the role of the committee in their community. They felt that judicial evaluation was a local problem because the people know the judges. They did not want the State interfering with their judges. No one expressed an interest in criminal sentencing unless this subject was brought up by a member of the panel.

Pueblo

No particular interest in sentencing patterns was expressed here either. Some comments prompted the panel to explain that the committee was not the evaluator or on a witch hunt but merely in an exploratory capacity to see what the people wanted. The question of specialized judges was raised.

Colorado Springs

Media coverage seemed to relay the message that the public meeting was a meeting for airing complaints of the judiciary. Many strong feelings were expressed against the judicial system. Prejudice was raised as an issue. The suggestion was made that maybe a committee of law professors could evaluate the written works of the Supreme Court. Multiple evaluation groups is probably what the public would like to see. The opinion was expressed that there are some dangers in relating raw data to the public directly, but it would be useful if given to some form of lawyer and non-lawyer committee evaluating the judges and, then, if necessary going to a judge to seek explanations of any inconsistencies or possible extenuating circumstances. A subjective evaluation of judges is wanted and needed. No agreement reached on who should select the evaluators.

Greeley

This meeting was similar to the others except that a judge explained to the people in attendance the type of workload a judge faces, the pressures, etc. The question was asked why not let the people decide whether they want to go back to the elective system? What are lawyers afraid of? One thought that was brought out was that the general public feels that all lawyers want to be judges, so they don't trust lawyers' opinions. Jurors were considered to be one of best groups to evaluate a judge. Another suggestion raised the problem of judges being pressured into decisions by the recommendations of district attorneys, public defenders, or defense attorneys. Maybe they should be polled as to whether or not a case was determined by joint recommendations. It was felt that press coverage would be adequate as the method of dissemination in a small community.

The general public is unaware of the limitations of a judge or how the whole system works. It has no idea of the mechanics involved in making a decision. It is also unaware of the Judicial Qualifications Commission and where to go if there is a complaint against a judge. Attendees seemed to be more interested in specific cases than the evaluation of judges as a whole. It was suggested that here were the everyday type of people who were instantly intimidated by the so-called "white middle class" professionals. Most judges do want accountability, however, they would like the public to keep in mind their basic humanity.

Further analysis of the meetings will be made after the last two meetings are held next week.

Comments of Francis Jamison

Professor Jamison has been counsel for the Judicial Qualifications Commission. He also has been a judge, a law school teacher, an examiner for the Judicial Qualifications Commission, and consultant on judicial education for the National Judicial College and American Academy of Judges.

Complaints about a judge come in to the commission, and if they have some substance, that is, other than matters from disgruntled litigants (which 80% of complaints received are) which belong to the appellant procedure, they are parceled out to an attorney in the state to investigate and get ready to prosecute and give recommendations. This is the job of the examiner. The examiner combines investigative and prosecutorial functions if a matter goes as far as a formal hearing.

Mr. Jamison expressed a desire to set up a public awareness system to inform the public on a national level about the judicial system. What it is and what happens. Judicial evaluation has been taking place for a long time, and has been done by judges and bar polls, and has not proved satisfactory. However, on a national level, it is presently being handled by judicial qualifications commissions. These commissions are presently stymied as to what the public wants because public interest is sporadic and usually related to a specific case. Court watcher programs have been good in that people go in all fired up after bad judges and after a few weeks of sitting in courtrooms begin to comprehend the problems judges and the judicial system are struggling against. As a result, court watchers become sort of apologists for courts.

Commenting on jurors as potential evaluators, Professor Jamison said that at least half of judicial districts would welcome questionnaires filled out by jurors. Judges would love this procedure because they would be rated highly. Jurors seem to see the judge in a god-like role because some lawyers don't do a good job, witnesses could be better, the police don't investigate as well as they should, and everyone should have recognized the defendant was lying, thus, the judge is the only one in the whole courtroom drama that seems to have a grasp of all of the issues and problems. Judges know this and tend to play up the jury; whereas, attorney rules of professional conduct prevent lawyers from being able to do this. In addition, the jury quickly realizes that every one in courtroom has an axe to grind except probably the judge and he is the person the jury identifies with, that is, the judge is the one person who is trying to be fair and impartial. Therefore, he would not like to see the evaluation of judges limited to jurors.

On the other side of jurors are expert witnesses, such as police officers, who have definite axes to grind against judges due to the fact that the police officers whole work is reviewed by the court. There is potential for vindictive situations to occur.

Professor Jamison said that the results of a survey of all groups affected by judges and personal interviews with different groups indicated that judges are rated highest by jurors and then in descending order by witnesses, defendants, defense attorneys or prosecutors, and police. There is a definite need to adjust all the competing interests. He suggested evaluation by agencies connected with courts all the time, e.g. police departments, social welfare, probation, business collection agencies, or other groups that have a fair amount of understanding about the court and are generally pretty tolerant. The welfare department specialist, for example could respond as to how a judge operates with hard facts. Social workers are very critical and work in a field that is highly emotional. They are often

upset when their decisions are not accepted and maybe overly critical.

The Judicial Qualifications Commission has recently started receiving more complaints, however, there is still a great need to give the committee more publicity and exposure. Of the twenty percent of complaints that are legitimate complaints, three major areas of concern are clear: (1) the judge is tyrannical, discourteous, or vulgar; (2) the judge is a drunk; or (3) the judge goes berserk in handling domestic relations. The majority of complaints received with regard to domestic matters are against judges who have been working in the same area of law for five, ten or fifteen years. It is normal for anyone working in a highly emotionally charged situation day in and day out to go a little crazy. The solution to this problem has been to remove the judge from those types of cases, but not necessarily to discipline him.

Nationwide, there is one commission per state and all are constitutional commissions. Municipal judges are not under this commission in Colorado, and, if a complaint needs to be made, it should be made to a city council or mayor. Since 1966 (the beginning of the Judicial Qualifications Commission) there have been twenty-seven judges that have resigned under pressure. There are presently three pending cases under investigation. Only one case in the time the Colorado Commission has been in existence was for lenient sentencing.

Commission has tried to get publicity for its annual report, but no successful method has been devised. Mr. Jamison concluded by saying that he feels the public is interested in the philosophical attitudes a judge possesses and not primarily misconduct. People want to know if a judge is conservative or liberal before they pull the lever. He would not like to see a combination committee used for evaluation and discipline.

Comments of Representative Gorsuch

Mrs. Gorsuch had no specific recommendation in terms of how the results of the committee efforts should be directed. However, she felt that the work of the committee is of extreme importance and is long overdue. She reiterated what the committee has heard before, that the public has been asked to vote in retention elections with no information on which to base decisions. The fact that voters do not have much information about judges weakens the viability of the court system. She expects the committee to be looking into a matrix of critical factors which should be considered in evaluating a judge, not necessarily the development of a system of analysis by other people who come in contact with the court. The ultimate solution is to see to it that the electorate has valuable, non-biased information, not necessarily the opinions or conclusions of others about a judge. (Mr. Hoffman mentioned that

we have survey information with a wide range of characteristics, but determining who makes the evaluation about those characteristics is the problem.)

The public seems dissatisfied with judges per se. But judges are not popular because people feel that they are not merely interpreting the law but making it. She used the example of mandatory busing. Public views that as an imposed policy change that came from a group of people called judges and the ultimate frustration is that they can't reach them. They can reach their elected representatives or senators but not judges on these types of issues.

The general feeling seems to prevail that the criminal justice system is a giant revolving door and the persons responsible for it are the judges. They feel that what judges say in court that has to do with how long criminals are incarcerated. Under the indeterminate system a judge could impose a sentence of five years, but the person would or would not serve that length of time depending on parole board recommendations. The new determinate sentencing system should cut down the apprehension public feels about sentencing, however, it should be more publicized.

Comments of Alex Keller on Determinate Sentencing

(Judges have stated that the hardest decision for them to make is sentencing.) In ancient times there was a fixed penalty for specific crimes. Here in Colorado prior to 1971, each criminal statute had a penalty sentence at the end of it and each statute had a separate penalty. However in 1971 the Moore Commission, wrote a new criminal code classifying five kinds of felonies and three kinds of misdemeanors. Section 18-1-105 of the Colorado Statutes gave the following ranges for penalties:

- Class 1 - life imprisonment or death
- Class 2 - 10 to 50 years
- Class 3 - 5 to 40 years
- Class 4 - 1 day to 10 years
- Class 5 - 1 day to 5 years

However, once an offender was sentenced, the judge immediately lost control of the case.

Under House Bill 1589--mandatory or presumptive sentencing act--the penalty options are:

- Class 1 - life imprisonment or death
 - Class 2 - 8 to 12 years
 - Class 3 - 4 to 8 years
 - Class 4 - 2 to 4 years
 - Class 5 - 1 to 2 years
- plus one year of parole for everyone.

This bill removes the parole board from determining sentencing. Under Section 309--crimes of violence--person must be sentenced to at least the minimum term. However, there are provisions for good behavior and earned time for skills learned. Also, in imposing sentences in the presumptive range, the court shall consider the nature elements of the offense, the character and record of the offender, and all aggravating or mitigating circumstances (everyone is now trying to find out what are aggravating or mitigating circumstances). Then the court has the discretion to find extraordinary mitigating or aggravating circumstances, and it may impose a sentence which is less than the presumptive, but in no case shall the term of the sentence be greater than twice the maximum. In all cases in which a sentence is not within a presumptive range, the court must make specific, written findings on the record of the case as to why a judge applied a certain sentence. The intent of the bill was to set specific guidelines for sentences and to have a chilling effect on judges who went outside the guidelines.

Representative Gorsuch joined in the discussion about the sentencing act, which she sponsored, and then stated that the committee should devise a system where the public can be given the facts about judicial performance. She feels that the public could and should deal with raw data.

Adjournment

Many committee members had other commitments, so the meeting was adjourned at 5:40 P.M. without considering the rest of the agenda.