

MINUTES

Judicial Performance Evaluation Task Team

March 19, 1984

The March 19, 1984 meeting of the Judicial Performance Evaluation Task Team was called to order at 7:35 p.m. by Albert Kullas. Task Team members present were: Robert Amundson, Larry Borger, Robert Clark, Robert Dorr, Richard Eason, Sonya Ellingboe, Don Forst, Richard Koepppe, Walter Maul, Charles McClure, Fitzroy Newsum, and Donald Schiff. Task Team Resource Group members in attendance were: Judith Barr, John Koops, and Albert Kullas.

Al Kullas stated that Dan Hoffman, Chairman of the Colorado Judicial Planning Council Committee on Judicial Performance would be available to discuss the Committee's Plan for Judicial Evaluation in Colorado if the Team wants such a presentation.

Task Team members reported on specific studies conducted by other groups; Don Forst presented a proposed Plan of Action for the Team. These presentations are highlighted below.

Charles McClure discussed a 1983 report by the American Judicature Society on qualification guidelines for judicial candidates. The report identifies nine criteria for judicial selection, with definitions and a series of questions for each criteria. The criteria are: age, communications, health, industry, integrity, judicial temperament, justice, professional skills, and social consciousness. Charlie pointed out that many of the criteria as well as the questions are appropriate for Task Team consideration.

Bob Amundson reported on work done by the Alaska Judicial Council in evaluating judicial performance and researching issues related to improving the administration of justice. The University of Michigan at Ann Arbor developed questionnaires for mail surveys of peace officers and members of the Alaska Bar Association. Copies of the questionnaires, including cover letters, are attached to these minutes. The Council report includes the results of the surveys. Bob pointed out that one problem with such surveys is the definition of measurement criteria having the same meaning for everyone. During Task Team discussion of the Council report, the issues of a vigorous publicity campaign and the cost of the evaluation and report were raised.

Walter Maul presented an overview of the Fiscal Year 1978-1979 Annual Report of the District of Columbia Commission on Judicial Disabilities and Tenure. In addition to reviewing complaints concerning the misconduct of judges, the Commission has the authority to remove, censure, or reprimand judges. Lawyers and laypeople assist the commission by

commenting on the qualifications of candidates for reappointment. The Annual Report states that volunteer insights and evaluations are infrequent but, when asked, lawyers will candidly comment. The report also includes the accrued expenses of the Commission for Fy '78-'79.

Don Forst presented a proposed Plan of Action for the Task Team through August 20. A copy of the plan is included with these minutes. Because of the volume of work facing the Team, Don urged that evaluation activities begin as soon as possible. A discussion of the plan included the following items:

- o Judith Barr offered publicity assistance through the League of Women Voters, which has the ability to hook into cable TV for half hour shows.
- o Dick Eason suggested that the Team seek assistance from the Bar Association in designing questionnaires, format, and logistics.
- o General discussion included merits of judges evaluating other judges, willingness of judges to submit to interviews, developing Team recommendations recognizing that some survey responses will be biased, and the fact that the Team must conduct a broad sampling in a limited time.

The Task Team addressed what groups are to be queried and who is to be responsible for organizing the questionnaires. A Team vote resulted in:

<u>Questionnaires for</u>	<u>To be Organized by</u>
Lawyers (who have practiced before judges)	Don Forst, Buck Newsum
Courthouse Personnel (Deputy Clerks of Courts)	Larry Borger
Other Judges (Chief Judge, Appellate Judges)	Dick Eason, Dick Koepp
Jurors	Bob Dorr, Sonya Ellingboe

Other questionnaires considered but voted down were for peace officers, litigants, and social workers.

The subgroups organizing the questionnaires were asked to discuss their questionnaires at the next meeting. In addition, all of the Task Team members were asked to review Don Forst's Action Plan and be prepared to offer comments on it at the next meeting. Don Schiff was asked to work on the interviews of judges.

Don Forst was elected Chairman of the Task Team by unanimous vote of the Team members.

The next meeting will be held at 7:30 p.m. April 2, 1984 in room M128 at Arapahoe Community College.

Respectfully submitted,

Sandra Bartlett
Secretary

Attachments:

Alaska Bar Association Questionnaires

Plan of Action

Article from Rocky Mountain News

CITIZEN'S COMMITTEE FOR EVALUATION OF JUDGES
 7073 S. Clarkson Street
 Littleton, Colorado 80122

Dear Juror,

Every election year, voters are asked to vote "YES" or "NO" on the retention of a number of judges. The Citizen's Committee for Evaluation of Judges, composed of persons residing in the Eighteenth Judicial District, is charged with providing meaningful information to voters concerning those judges up for retention. Your candid answers to the following questions will aid in evaluating the judge's performance.

NAME OF JUDGE: _____

Poor Adequate Excellent
 (Please circle one number)

The judge was unbiased (i.e., free from racial, ethnic, sexual, political, religious, social, economic, or his/her own personal bias)? 1 2 3 4 5

Rate the judge's physical health as it affects the discharge of his/her duties 1 2 3 4 5

Rate the judge's mental health as it affects the discharge of his/her duties. 1 2 3 4 5

The judge conducted the business and operation of the court in a proper manner? 1 2 3 4 5

Rate the judge as to punctuality. 1 2 3 4 5

The jury instructions read by the judge were understandable? 1 2 3 4 5

The judge gave adequate guidance to the jury in the understanding of the legal processes involved. 1 2 3 4 5

The judge acted fairly and courteous towards all litigants, witnesses and lawyers? 1 2 3 4 5

The judge conducted the trial proceedings with appropriate demeanor, dignity, and firmness? 1 2 3 4 5

If any "1" rating is circled, please comment: _____

M. J. #

Overall, do you believe this judge is doing a good job and should be retained? Yes _____ No _____

Friedman 6/4
Good
Answer
Answer
Boys
Outside influence writer?
Can't do
good
Contained Above
why not possible

Citizens Committee for Evaluation of Judges
7073 S. Clarkson Street
Littleton, Colorado 80122

Evaluation of Judge _____
(name)

Return to Gregory Langham
District Administrator's Office
By May 21, 1984

By COURTHOUSE PERSONNEL

The Colorado Judicial Institute is a non-profit corporation created to promote education of the public regarding the court system, communication between the courts and the public and a forum for discussion of issues concerning the courts. In cooperation with Arapahoe Community College it has created a Citizens Committee for Evaluation of Judges in the Eighteenth Judicial District. The committee is to devise a method for evaluating the performance of sitting judges and to report its findings to the general public prior to the upcoming election this Fall.

To assist the committee in performing this evaluation task we are asking courthouse personnel to complete this questionnaire on all judges of whom you have sufficient information. If you do not have sufficient personal knowledge or experience to provide an informed opinion about a given characteristic, please leave the appropriate response blank.

All replies will be held in the strictest confidence. Anonymous results will be tabulated, provided to individual judges for their information and utilized by the committee in making a final recommendation to the community.

For the following items, utilize this scale for your rating:

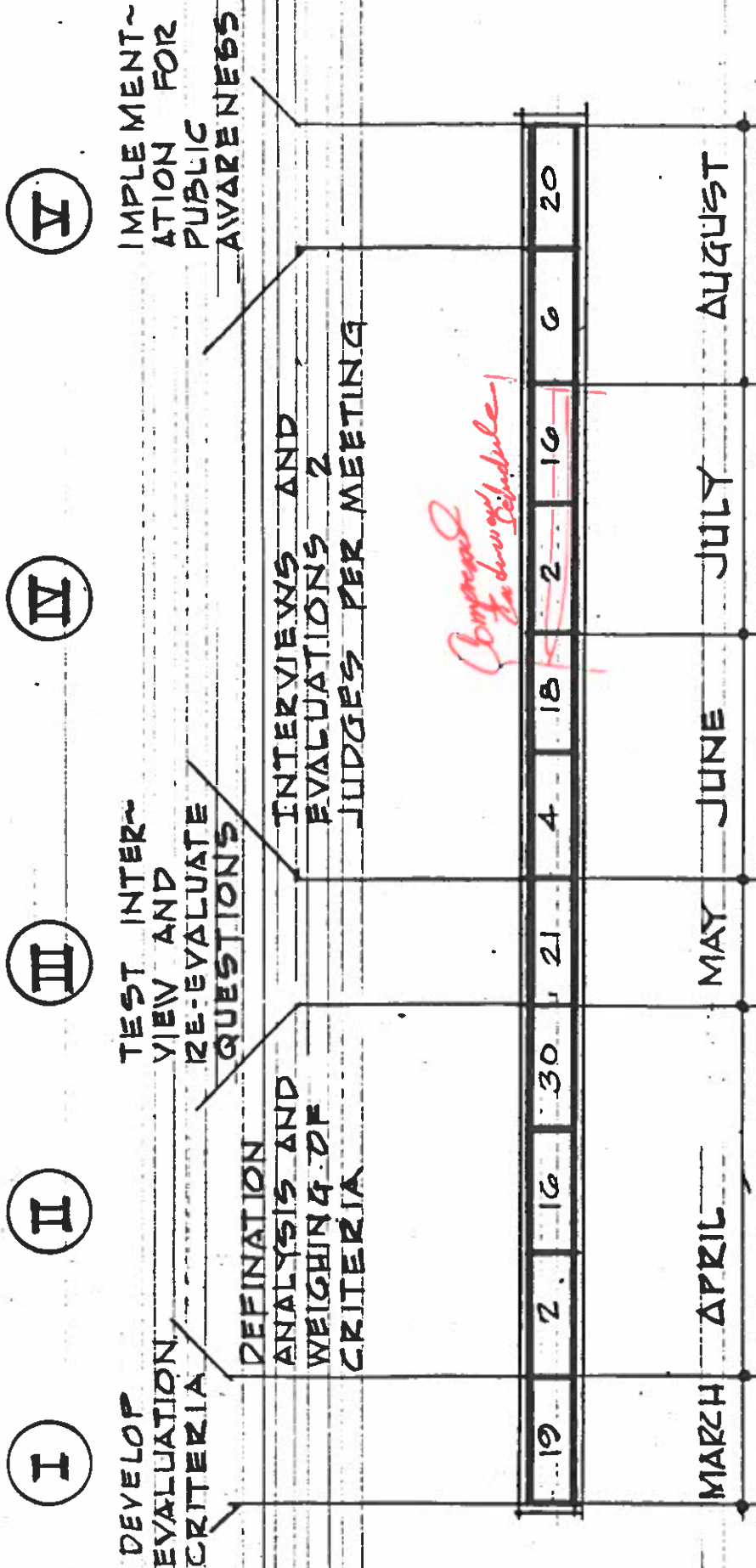
- 1. Unacceptable
- 2. Deficient
- 3. Acceptable
- 4. Good
- 5. Excellent

	Rating	Comment
1. Promptness in making decisions		
2. Adherence to schedules and utilization of time		
3. Courtesy and tact in working with jurors		
4. Courtesy and tact in working with witnesses		
5. Fairness in working with attorneys		
6. Decorum in courtroom		
7. Working relationship with the media		
8. Working relationship with the general public		
9. Ability to deal with controversial cases or situations		
10. Physical health or energy level		
11. Efficient management of administrative responsibilities		
12. Maintenance of high standards for court personnel		
13. Regular effort to improve own skills		
14. Regular effort outside courtroom to improve judicial system		
15. Willingness to work diligently		
16. Overall judicial performance		
17. Do you perceive the judge to have any personal problem that interferes with official duties?		

yes no

PROPOSED PLAN FOR JUDICIAL EVALUATION

MAR 19, 1984
DON FORST



Legislature

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Monday, March 19, 1984

Proposals to place judges before voters drawing fire

By BERNY MORSON

Rocky Mountain News Capitol Bureau

Proposals to let voters remove judges who issue seemingly inappropriate verdicts or sentences are drawing fire from the Colorado Bar Association, Gov. Richard D. Lamm and a few of the judges who have heard controversial cases recently.

The recall proposals are "the most dangerous threat to the judiciary you could conceivably have," said a spokesman for the Colorado Bar Association. The group plans an extensive campaign against the proposals, if they make it to the ballot next November.

Five House Republicans have launched or plan to launch campaigns to amend the Colorado Constitution to permit recall of judges or to alter the manner in which judges are selected.

A two-thirds vote is necessary in the House and Senate to place a constitutional amendment on the November ballot. Debate on the judicial reform proposals is scheduled to begin in two weeks, after the House completes work on the annual budget package.

The efforts come in response to complaints from voters about lenient sentences in controversial cases. The five legislators sponsoring constitutional amendments said they and their constituents were most outraged by an incident last summer in which Denver District Judge Alvin Lichtenstein sentenced a man to probation, including two years in the county jail work-release program, for laying his wife by shooting her five times in the face at close range.

Lichtenstein later withdrew from the case amid public furor, and another judge imposed a 10-year prison term.

The legislators said the proposals were triggered in part by the following cases:

● Littleton District Judge Kenneth Stuart, who handed down a 20-day sentence to a man who molested two girls, age 8 and 9. The same judge sentenced to three days in jail a man who raped a woman at a knife-point and gave a six-month sentence to someone who immersed a child in scalding water.

● Golden District Judge Joseph Lewis, who issued a 90-day sentence to a Lakewood man found guilty on two counts of sexual assault and one count of molesting a 9-year-old girl.

● Boulder District Judge Richard McLean, who earlier this month sentenced Elizabeth Manning to four years in

prison after she pleaded guilty to being an accessory to child abuse in the death of her 3-year-old son, Michael. Under current parole rules, Manning could be out by 1985.

● Boulder District Judge Murray Richtel, who in October sentenced Manning's boyfriend, Daniel Arevalo, to 10 years in prison for his part in Michael's death. Richtel rejected pleas from the district attorney that could have brought a sentence of up to 24 years. Arevalo could be released in as little as 4½ years.

Lichtenstein declined through a spokeswoman to be interviewed.



Kenneth Stuart

Stuart denied that a recall provision would have any effect on the sentences he hands down. "The canons of judicial ethics require a judge to make the best disposition (of a case), regardless of the public clamor."

But Rocky Mountain News accounts indicate that Stuart grew tougher on convicted criminals last year after Lamm referred to some of the judge's sentences as "outrageously light" and after members of the National Organization for Women began monitoring his courtroom.

Other judges said they would be conscious of a recall provision when hearing controversial cases.

"I'd like to think I wouldn't have" thought about recall during the Arevalo case, said Richtel. "But judges are human beings, and I'm sure there could be some sort of unconscious realization that the pressure is there."

Richtel added, "It would be wrong if that pressure were to affect my decision, but it would be naive to assert that it wouldn't have some effect."

"I wonder if the general public realizes that judges are supposed to be independent of public opinion," said McLean.

"I'm sure I would be conscious of it (a recall provision)," McLean said. Such a provision would be unfair to judges since "I don't know how I could do anything but follow the law," McLean said.

Key evidence was obtained from Manning through a promise by police of immunity. Police said they made the promise because they hoped the information would help them find the child alive.

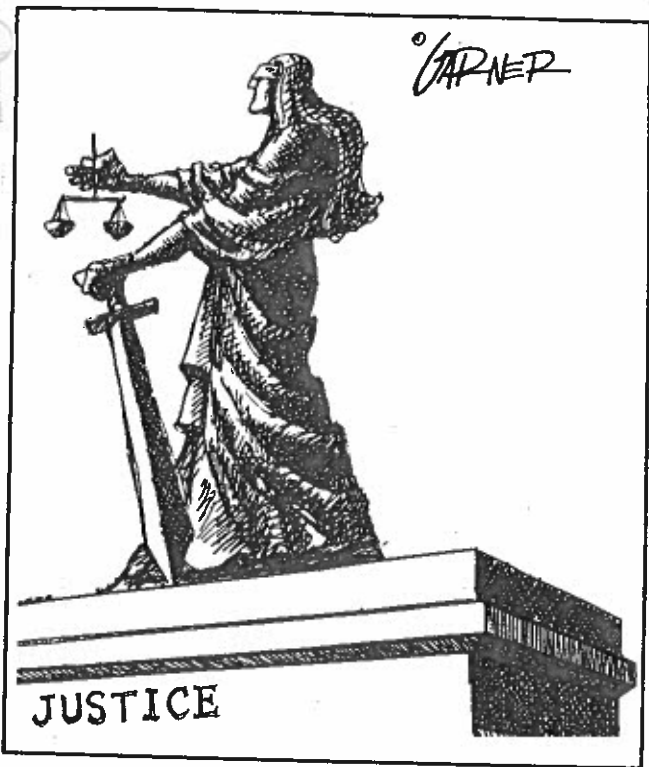
That evidence could not be admitted at trial after Michael was found dead.

A judge can't suspend rules on admissibility of evidence even in a case "where the defendant is obviously guilty" if the judicial system is to retain its integrity, McLean said.

McLean said he might support a recall provision that



Alvin Lichtenstein



Judges: Vote plan coming under fire

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No judge has been removed during the 17 years that process has been in effect. However, a number of judges appear to have retired after a commission investigation, leading to speculation that they acted to avoid public dismissal.

The proposals before the Legislature include:

- House Concurrent Resolution 1004 by Rep. David Bath, R-Arvada, which would initially retain the current appointment method but add a provision that judges coming up for retention face opposition. The opponents would be selected by a committee.

- H.C.R. 1005 by Rep. Frank DeFilippo, R-Golden, allowing recall elections for judges on petitions signed by 25 percent of the voters who participated in the preceding general election. Judges seeking retention at the conclusion of regular terms would have to win a two-thirds vote rather than a simple majority.

- H.C.R. 1006 by Rep. Chris Paulson, R-Englewood, requiring that judges win approval by the Senate after appointment by the governor.

- An as-yet-unnumbered proposal by Rep. Ruth Prendergast, R-Denver, setting up a committee of state leaders to nominate a slate of candidates to fill judicial vacancies. Voters would select a judge from the nominees.

- A proposal by Rep. Don Mielke, R-Lakewood, also unnumbered, providing for recall of judges. 1007

Lamm last week rejected all of those proposals. "I believe our present methods of judicial selection are excellent and that it is important to defend them," Lamm said.

A rundown of the proposals prepared by Lamm's legal adviser said rules of judicial selection and retention should not be altered because of "an aberration" such as the Lichtenstein sentencing.

"This whole business that judges shouldn't follow the law but listen to the people who don't know the law is a treacherous threat," said state Bar Association public affairs director Larry Weiss. No one talks about changing the way legislators are elected or retained when they make an unpopular decision, Weiss added.

State bar association executive director Charles Turner said his group "would do everything we could" to kill the reform proposals if they get as far as the ballot.

specified grounds for removal. But a blanket provision would "strike at the fundamental concept of an independent judiciary."

That view is not shared by Denver County Judge Larry Lopez-Alexander, who has sparked controversy by throwing three attorneys, including a public defender, in jail during the past year. Those actions have been characterized by other members of the legal profession as "intemperate."

"I'm a public servant. If I'm not serving the public, we ought to submit the case to the people and let the people decide," Lopez-Alexander said. "We're no less a



Larry Lopez-Alexander

part of government than legislators, and they're subject to recall.

Lopez-Alexander is more skeptical of a proposal to elect judges, which was initially included in one of the legislative proposals. The measure would have to bar campaign contributions to judges by lawyers or members of their immediate families, he said.

Judges now are appointed by the governor. Nominations are made by a citizens committee that may not have a majority of lawyers. Judges face retention at the polls after serving terms of four to 10 years, depending on the court they head.

The Colorado Supreme Court may remove judges on a recommendation by the Judicial Qualifications Commission, which investigates complaints.

See JUDGES, next page