



JUDICIAL PLANNING COUNCIL  
COMMITTEE ON JUDICIAL PERFORMANCE

COLORADO JUDICIAL DEPARTMENT  
TWO EAST FOURTEENTH AVENUE, ROOM 215  
DENVER, COLORADO 80203  
(303) 861-1111

MINUTES OF THE FIRST COMMITTEE MEETING

Thursday, July 19, 1979

The first meeting of the Committee on Judicial Performance was held on July 19, 1979, from 3:45 to 5:30 p.m. in the Supreme Court Conference Room at the address indicated above.

Committee members in attendance were:

Daniel S. Hoffman, Chairman  
J. Robert Allshouse  
Baxter Arnold  
Lewis T. Babcock  
Emily Bocko  
Julian S. Garza, Jr.  
Carol Green  
Alex S. Keller  
Ed Lehman  
George Manerbino  
Charles D. Pierce  
King M. Trimble  
Anthony Vollack

The following guests attended the meeting:

Paul V. Hodges, Chief Justice  
Colorado Supreme Court  
  
Donald P. Smith, Jr., Judge  
Colorado Court of Appeals and  
Chairman, Judicial Planning Council

Staff support for the Committee was provided by Keith Stott, Deputy State Court Administrator. James D. Thomas, State Court Administrator, Barbara Gletne, director of the SCA division of planning and analysis, and Carl Jacobson, SCA staff, attended the meeting as observers.

a good judge could help evaluate the performance of other judges, but this too has the appearance of being self-serving. Paradoxically, we don't know how well the public will accept evaluations that are mostly favorable.

The committee must come up with some kind of plan that will enable the public to be informed objectively as to the ability of judges, how they have performed in their offices, and whether they should be retained in office during an election. Judges are selected on the basis of merit in Colorado, but do they continue to perform on that basis? The Chief Justice closed his remarks with a quotation from the Journal of the American Judicature Society. "There is one key issue which remains unresolved...how do we effectively evaluate those who are chosen? The follow-up evaluation process in most merit selection states is either non-existent or episodic; either all judges are returned to office or else a single judge gets the axe from the bar. Basically, the bar and the public wallow along in ignorance reinforced by lethargy."

Remarks of the Honorable Donald P. Smith, Jr.

As chairman of the Judicial Planning Council, Judge Smith also welcomed the members of the committee. He explained that the committee on judicial performance is a committee of the Judicial Planning Council. The council and its predecessor, the Judicial Planning Committee, were created by directives of the Chief Justice for the purpose of doing long-range planning within the judicial branch of government; making appropriate studies and recommendations as to policies that should be adopted; passing on all applications for grant funds, federal or state, to be used by the judicial branch; and acting as a sounding board and advisory group for the Chief Justice in his role as chief administrative officer of the judicial system. In furtherance of these broad goals, the council has created several committees in such diverse areas as public education, adjudication, and judicial performance.

Judge Smith believes that Colorado has an excellent judiciary; however, there is no method in the state for evaluating the performance of good judges or determining those which are not as good. It is the responsibility of the judiciary to keep its house in order and to make sure that the public understands who judges are and what they do. This responsibility cannot be delegated to other organizations. The judicial branch has the responsibility for developing a performance evaluation system so that the electorate will know what they need to know in order to cast an informed vote.

used to evaluate judges. In this regard, there are at least two levels of examining judicial performance. One relates to the behavior of judges and seems relatively easy to ascertain. For example, are judges courteous to jurors, witnesses, and lawyers? Do they appear in court on time? Do they leave early? Do they communicate well and explain the process to those involved in the system? The other component has to do with the quality of a judge's work, that is, the actual intellectual quality of the judicial performance as distinguished from behavioral characteristics.

A second major task is to decide how the committee wants to gather information that will help it during the planning phases of the study. The committee may want to have public hearings at some phase during its work. Also, it may want to conduct a survey of judges to determine characteristics of judicial behavior and to learn more about what judges think are critical components of their performance.

And, finally, after gathering information about current methods, techniques, and attitudes, the committee must then develop alternatives leading to a plan for the evaluation of judicial performance. Hopefully, the committee will arrive at a point of consensus on its recommendations. But, conceivably, the final report may contain majority and minority viewpoints with perhaps a consensus with respect to a general working model.

At the conclusion of his remarks, the chairman referred to House Bill 1033 which was passed by the recent legislature. The bill, copies of which were distributed to committee members, reflects the legislature's concern about the evaluation of judicial performance. The General Assembly's perspective of the problem of judicial evaluation has played a role in the process that led to the formation of this committee.

#### Research Directions and Committee Activities

Keith Stott outlined in detail several research proposals and explained how they would be integrated in order to achieve basic objectives of the committee. These proposals were described in several memoranda distributed to committee members; therefore, no further explanation is provided in these minutes.

#### General Discussion

Under the direction of the chairman, the committee then discussed the presentations that had been made to it during the course of the meeting. The reactions and comments of the

with "a very delicate balance of powers' in addressing the problems of judicial evaluation.

4. There are multiple constituencies in the evaluation process. It may be that the final evaluation plan will have to involve jurors, court watchers, attorneys, and others, in order to meet the demands of these various constituencies. The members of the committee will have to avoid getting locked into personal predispositions. It is important to examine what has happened elsewhere even if the committee eventually discards other approaches. In this connection, at some point the committee may want to consider a system which provides a weighting system so that various social or community factors can be taken into account by means of a formula. For example, attorneys may be more equipped to consider the legal competence of a judge, whereas a lay person might evaluate the judge on his sense of fairmindedness, and so on.

5. The committee members need to remember that all of the judicial districts in this state do not operate the same even though they are part of the statewide system. This will affect the ability to conduct a statewide evaluation. The committee may have to examine how each district operates in order to arrive at uniform criteria for judicial evaluation. The judicial survey may need to take operational realities into account. In fact, the survey of judges may be very critical to the success of this study, and perhaps the survey research schedule should be accelerated.

6. Although the merit selection system is under attack, the charge of this committee is not to buttress the merit selection system nor attack it, but the subject of evaluation could have a significant bearing on merit selection. While individual members views about merit selection may vary greatly, the subject is incidental to the specific task of the committee. Even so, there may be direct links between selection criteria and subsequent judicial performance and evaluation.

7. It may be fortunate that this committee has begun its work at this time. The trend in other states seems to be that if an effective mechanism for evaluating judges is not devised by the judiciary, then citizen groups tend to jump in and do it themselves. The news media, for example, has begun to evaluate judges in several states, and some of their efforts are terrible and some are very good. It may be that there needs to be much greater citizen involvement in all aspects of the court system. If there is anything that a citizen is qualified to study and evaluate, it is how judges treat the users of court services. These observations reinforce the chairman's commitment to expand the membership of the committee.

### Evaluating judges selected by merit

Over the past decade, the concept of merit selection of judges has found increasing acceptance in the states. And as the May 1979 issue of *Judicature* clearly shows, the principle is now extending even to the federal bench.

A new day appears to be dawning when judges are evaluated on their ability rather than on their friendships, both political and personal. No one, of course, expects all politics to be removed from the selection process, but merit selection may make politics less arbitrary and irrational.

There is one key issue which remains unresolved, however—how do we effectively evaluate those who are chosen? The follow-up evaluation process in most merit selection states is either nonexistent or episodic: either all judges are returned to office or else a single judge gets the ax from the bar. Basically, the bar and the public wallow along in ignorance reinforced by lethargy.

A judge is selected on the basis of certain personal characteristics but there is no official, systematic effort to relate those characteristics to actual courtroom performance. Is there a correlation between the personal characteristics and effectiveness on the bench? As merit selection expands, there is a critical need to provide concrete feedback and relevant information to nominating commissioners. Otherwise, they will continue to operate primarily on the basis of hearsay and anecdotes.

The difficulty is that evaluation can potentially be diverted into political or personal vendettas. Bar surveys have been relatively unproductive because of low response rates, and other procedures have tended to be *ad hoc* or journalistic; they are normally prompted by either a scandal or a pending election. A better method is needed. I would like to suggest one that is less immediately result-oriented but potentially more useful.

As judges (and others, including district attorneys) are nominated by selection commissions and appointed by the executive, a record should be compiled in terms of relevant characteristics. The commission (through its agents) after a three-to five-year interval would then evaluate the judges' effectiveness in terms of the earlier identi-

fied characteristics. This assessment would be based on informal though systematic interviews with the judge, other judges, and relevant legal system personnel. The judge himself could provide a perspective as to how he perceives his effectiveness and what problems he encountered. Other judges could provide an alternative view from similar positions while other legal personnel could provide their views from a variety of perspectives.

The objective is not to evaluate for the purposes of retention but rather to assist the commission in future selections. The focus of the interviews is upon the judge's conduct of the office, not the context of his or her decisions. Therefore, the interviews would remain confidential with reports to the commission being made only in terms of general categories. No individual judge is to be singled out. Such openness is essential to the critical revision of the nominating commission's question list or its evaluation of legal experience or education criteria.

This evaluation does not imply a standardized homogeneous judiciary—just one that is competent to the extent that human beings can be. The fundamental value is ensuring equal justice under law. Good, even great, judges have been chosen by a variety of means in the past, but perhaps in the future we can make such choices more than accidental.

Roger Handberg  
Associate Professor of Political Science  
University of Central Florida  
Orlando, Florida