



JUDICIAL PLANNING COUNCIL
COMMITTEE ON JUDICIAL PERFORMANCE

COLORADO JUDICIAL DEPARTMENT
TWO EAST FOURTEENTH AVENUE, ROOM 215
DENVER, COLORADO 80203
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MINUTES OF THE SECOND COMMITTEE MEETING

Friday, August 17, 1979

The second meeting of the Committee on Judicial Performance was held on August 17, 1979, from 3:30 to 6:40 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
Julian S. Garza, Jr.
Peter H. Holme
Alex S. Keller
Kenneth Kindelsberger
Ed Lehman
Charles D. Pierce
Roland Rautenstrauss
Edith Sherman
Anthony Vollack

The following guests attended the meeting:

Toni Worcester, First Vice-President
League of Women Voters
(substituting for Emily Bocko)

Cassandra G. Sasso
Attorney at Law
Denver

Staff support for the committee was provided by Keith Stott, Deputy State Court Administrator.

Welcome and Introduction

Dan Hoffman, chairman of the committee, opened the meeting by introducing four new members and the guests. New members

The Judiciary Section of the Denver Bar Association, working with many volunteers from the Young Lawyers, undertook to develop the questionnaire and to determine what type of analysis would be undertaken. Joyce Sterling, a professor at the University of Denver College of Law, was hired to assist in the design of the survey. The survey developed by this group was first used in 1978. It focused on certain judges in the second judicial district and was based on the opinions of attorneys with first-hand experience with the judges. Ms. Sasso noted that the "no warranties clause" of the survey stated that "the results approximate the truth only insofar as the responding attorneys did in fact rely on personal experience; insofar as the responding attorneys are representative of the entire population of attorneys who have recently appeared before the judges surveyed; and insofar as the responding attorneys are, in general, free from perceptual eccentricities and prejudices." (Copies of the questionnaire used in the 1978 survey were distributed to members of the committee.)

Ms. Sasso was asked if the DBA considered people other than practicing lawyers having a role in the evaluative process and, if so, had they been rejected as constituents. She responded that indeed the DBA committee had considered other non-lawyer sources of information. One possibility was to have jury commissioners provide jurors with short, simple questionnaires about some observable characteristics of a judge. Although the committee was attracted to this proposal, it was set aside as being too time consuming during the development of the 1978 DBA survey. Courtwatching was also discussed and discarded, probably because of the experiences of some of the committee members who had seen courtwatching in operation in Chicago.

Following her discussion on the background of the survey, Ms. Sasso described a number of details about the purposes and uses of the survey. Her comments are summarized below.

1. The goals of the survey were (a) to help judges become aware of areas in which they could improve, (b) to inform the public about judges who might not be qualified to be retained, and (c) to indicate to the public that lawyers are interested in the way the entire judicial system is working. It was also the committee's feeling that because of the public's fairly negative perception of the judicial system and lawyers, if those in the system didn't formulate a way of evaluating judges and lawyers, then the public would get its information from people who were much less informed about judges and probably through a highly persuasive media such as television.
2. Respondents in the survey were asked to evaluate the performance of only those judges before whom they had personally appeared in a hearing or trial in the preceding three years. The thought behind this instruction was that a person's performance changes, and a judge should be rated on the basis of fairly recent performance.

will be distributed to members of the Committee on Judicial Performance at a later time.

10. In response to a question about the "neutral" response category on the survey, Ms. Sasso explained that the DBA Board of Trustees was quite concerned about whether this neutral category could be counted as positive or negative. Neutral is neither positive or negative, but it is an opinion. The problem with the neutral category was that it led to some misinterpretations of the data particularly when people were looking for yes or no answers to questions. The neutral category will not go into the next survey. Instead, the new scale will be: not observed, strongly agree, agree, disagree, strongly disagree. However, by taking the neutral category out, people are forced to express either a positive or negative opinion, even though the expression of neutral can also be interpreted as an opinion. Forcing people into an opinion may be very important in retention elections, because many people believe that a judge ought to be allowed to stay in office unless there is some overriding reason why he should be removed. Neutral categories can make it more difficult to determine if a judge should be retained.

11. Using the statistical techniques of marginal distribution and correlation analysis, Professor Sterling has determined that a number of questions on the survey measure the same basic characteristics. Therefore, the next survey will eliminate some of those questions. (Questions two and three will be replaced by a new question regarding the ability of a judge to communicate his understanding and thought processes to attorneys and litigants. Questions 4, 11, 15, 17, and 20 will be eliminated. Questions 22, 23, and 24 will be replaced by one general question regarding biases, primarily because no judge in the second judicial district was perceived as being highly biased in any category. The DBA committee also inconclusively considered elimination of questions 7, 10, and 13.)

12. Comments were made by members of the committee regarding the heavy orientation in the survey toward bias in criminal cases. Most of the works of the courts is in the civil area, particularly in family. The emphasis on criminal cases may occur because this area is so visible and it is also of primary legislative concern.

13. The DBA committee, after talking with judges, has concluded that the survey should be done for all judges regardless of whether or not they are standing for retention election in a given year. So next year, the survey will be done for all judges except newly appointed judges.

14. The sample size for the next survey will be reduced. Also, the survey may be handled with two separate mailings: one to attorneys who have appeared in county court and the other to attorneys who have appeared in district court. The maximum number of questions will probably be about fifteen, perhaps as few as twelve. The format will also be simplified.

district to manage the system on a local level.

Discussion of the Survey of Judges

Keith Stott discussed the two surveys that are under development. The first involves the addition of several questions to the survey of court users now being developed by the research firm of Yankelovich, Skelly and White. This survey is not being conducted on a random or statewide basis. It is much more limited and is being done for the purpose of determining where the gaps exist in the public's knowledge about courts. After this market-type of survey is completed, the Judicial Planning Council hopes to use the resulting information to improve the Judicial Department's public information program. The committee discussed questions prepared for this survey and made suggestions for its improvement.

The second questionnaire is for a survey of judicial attitudes about performance evaluation. Mr. Stott outlined the structure of the survey, and then responded to questions about its use and purpose. Members made specific suggestions for improving the questionnaire.

At the conclusion of the discussion, the staff was instructed to proceed with the development of the questionnaires. The schedule for preparing the survey of judicial attitudes is to be moved up so that the survey can be distributed at the Judicial Conference which begins on September 24. Preparation of the survey to meet this deadline will require a limited pre-test which should be completed by the next meeting of the committee. Also, the staff needs to determine if data from the Yankelovich study will be available to the committee before the January deadline.

Schedule of Meetings

The next meeting of the committee will be on Friday, September 14. A subsequent meeting has been tentatively scheduled for October 5.

Adjournment

There being no other business before the committee, the meeting adjourned at 6:40 p.m.