

WHEN CITIZENS LOOK AT JUDGES:
COLORADO'S EXPERIENCE WITH JUDICIAL EVALUATION

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PREFACE

This report describes the pilot program designed and implemented by citizens to evaluate judges in Colorado's 1984 general election. The program was conceived by the Colorado Judicial Institute, a non-profit organization, and supported by the Institute and the Arapahoe Community College. It is a credit to its originators and supporters and should be of interest to judges, political leaders and others involved in or concerned about the process of evaluating judges.

While many people helped in preparing this report, the citizens and judges who participated in the evaluation program must be given a special acknowledgment for their assistance. While no person is mentioned by name in the body of the report, it was the candid comments and critical observations of the participants that made this report possible.

This research forms a part of the author's dissertation now in progress at the Graduate School of Public Affairs at the University of Colorado at Denver. Although the author volunteered to prepare this report--a task that might seem foolhardy in other circumstances--the study was worthwhile in and of itself because it draws attention to an innovative and important effort by concerned citizens to improve their judicial system.

SECTION ONE

Introduction

In 1974, Henry T. Reath, an attorney and then a member of the board of the American Judicature Society, presented a major address to the National Conference on Judicial Selection and Tenure in Denver, Colorado. Reath (1974:1246) spoke of the need for judicial evaluation as a counterpart to merit selection and retention of judges, and argued that,

Sound judicial evaluation is important not only to measure performance and determine which judges shall stay in office, but also because it has a most salutary effect in fixing accountability and helping to insure better judicial performance, even from those appointed or elected to serve for life during good behavior.

Then, as if to foretell the future in Colorado, he went on to describe the prerequisite of a judicial evaluation program.

The key to any successful program of judicial evaluation is active lay participation--people working in concert or as a part of a co-ordinated effort with the legal profession in a broadly based citizens' effort to assist the voters in making those important decisions on critical judicial positions (1974:1247).

Reath's prediction came true for Colorado ten years after his speech at the Denver conference. With the encouragement of the Colorado Judicial Institute, a nonprofit organization dedicated to the improvement of the state's judicial system, a group of thirteen citizens planned,

organized and implemented a broad-based evaluation of judges standing for retention election in the state's 18th Judicial District. This was the first time an unofficial citizen's group had conducted a comprehensive, formal evaluation of sitting judges anywhere in the country.

The Context of Judicial Evaluation

The formal evaluation of judicial performance by someone other than lawyers is a relatively recent phenomenon. While bar associations have long used bar polls to evaluate the individual performance of judges (Guterman and Meidinger, 1977; Philip, 1979), it has only been in the last ten years that groups of citizens, statutorily authorized commissions or councils, and the judiciary itself have begun to design and implement formal programs for evaluating judicial performance.

Colorado was not the first state to conduct performance evaluation of judges. In addition to the widespread use of lawyer polls and the familiar role of the media, several states had embarked on judicial evaluation projects in the late 1970s. Alaska, New Jersey, and the District of Columbia all had significant and very different evaluation programs by the beginning of 1980 (Bremson, 1983; District of Columbia, 1984; Handler, 1979 & 1984). By early 1983, the National Center for State Courts had commenced a pilot project with five states to design judicial evaluation programs (Farthing-Capowich, 1984). Later that same year, the American Bar

Association began a major effort to develop guidelines for evaluating judicial performance (American Bar Association, 1980 & 1984). Colorado's orientation was different, however, and its emphasis on total citizen involvement in the evaluation process made it stand out from these other programs.

In a way, judicial evaluation in Colorado symbolizes the tension between judicial accountability and judicial independence. Colorado adopted a merit selection system for judges in 1966. The program was controversial and, in fact, was placed on the ballot through the initiative process only after the state legislature refused to pass a resolution in support of the program. Voters approved the initiative by a margin of only 32,000 votes in a total of 547,000 cast (Wallace & Sites, 1974:12). Merit selection has been controversial ever since, and proposals to modify or do away with the system have been introduced regularly in the legislature. In 1984 alone there were five joint resolutions pending before the legislature to alter the selection system (Colorado Bar Association, 1984).

Partially in reaction to merit selection and to several appointments it disapproved, the legislature passed a statute in 1979 that required the Colorado Judicial Department to develop a plan for evaluating the performance of judges. The task of developing the plan fell to the Judicial Planning Council and the staff of the State Court Administrator's Office. The chief justice appointed a blue-ribbon committee

of lawyers, judges, educators, and lay citizens to assist the council. The committee was chaired by Daniel S. Hoffman, then dean of the college of law at the University of Denver.

The committee's final report recommended the creation of a commission on judicial performance to design and implement an evaluation program for the state judiciary. Although it was envisioned as a local program, the committee recommended full-time staff to assist the commission in the design and use of evaluation methods (Stott, 1980). The Judicial Planning Council presented the report to the Colorado Supreme Court in 1980, and the court, in turn, passed it on to the legislature. No further action was taken by either of these bodies to implement an evaluation program, and interest in judicial evaluation gradually diminished.

Surprisingly, the concept of judicial evaluation remained alive and began to receive considerable attention two years after the publication of the Council's report. In late 1982, the Colorado Judicial Institute, a non-profit association organized to conduct research relating to the administration of justice and to inform the public about the judicial system, organized an internal task force to study the feasibility of judicial evaluation. The association, which was in its fourth year of operation at the time, adopted judicial evaluation as a specific goal in late 1983. The Institute's goal evolved into an experimental program to evaluate judges in the 1984 general election. The program was designed and implemented by a committee of citizens

supported by the Institute and the Arapahoe Community College.

This new evaluation effort was extremely significant because it was organized and conducted entirely by citizens working, at times, in cooperation with the bar and the bench, but, for the most part, without the help of traditional organizations. The evaluation took place outside of the judiciary itself and without formal acknowledgement or approval from any governmental body. Moreover, it provided an unintended but useful test of the recommendations prepared by the Judicial Planning Council's committee.

Purpose and Approach

This report describes and analyzes the citizens' evaluation program and is designed to help the participants assess the outcome of the program and identify the conditions under which the program can be extended to other judicial districts within the state. To this end, the basic questions considered by the study are:

- How did the program work?
- Under what conditions can it be replicated?
- What are the implications of this study for judicial evaluation in general?

The study was organized around three major phases. The first phase entailed an examination of the detailed minutes and documents kept by the committee. These records were invaluable for determining the sequence of events involved in organizing and implementing the evaluation program.

The next step was a debriefing of committee members immediately after the general election in November. The citizens' committee was scheduled to disband after the election, and the debriefing was designed to obtain the impressions of committee members prior to their dispersal while events were still current.

The last phase of the study involved in-depth interviews with the participants in the program. Members of the Institute, the college, and the citizens' committee were interviewed about the evaluation program. Judges who participated in the entire program were interviewed for their impressions of the program. The comments and insights of all of the participants were then used to prepare this report.

Organization of the Report

The next section of the report describes the organization of the judicial evaluation program, paying particular attention to the manner in which members were recruited for the evaluation committee and the roles played by the two supporting organizations. Section Three takes a careful look at the evaluation process, the selection of evaluation methods, and the final outcome of the program. Section Four focuses on the various methods used to gather data during the program. The three sections that follow deal with the observations and reactions of the participants to the evaluation program. Sections Five and Six, which are based on interviews with committee members, resource people,

and judges, highlight the problems encountered during the evaluation and summarize the strengths and weaknesses of the program. The last section describes the conditions under which the program can be replicated in other judicial districts, and concludes with a few overall observations about this unique approach to judicial evaluation.

SECTION TWO

Organization of the Program

In many ways, the citizens' committee represented a true grass roots approach to judicial evaluation. Although carefully organized, the program essentially was an informal, nonprofessional project run by lay citizens who received support, assistance and direction from outside organizations at key points in the project. The evaluation program is described here in order to identify those features of the program that were essential to its success and, in all likelihood, critical to the replication of a similar project in another location.

Getting Started

The judicial evaluation project came about as a response to a perceived need by citizens interested in improving the judicial system. In 1982, the board of directors of the Colorado Judicial Institute, then a relatively young organization searching to establish its identity and to identify worthwhile community projects, began to consider the evaluation of judicial performance as an institute project. Members of the board were familiar with the Judicial Planning Council's study and were interested in judicial evaluation as

a possible means of providing voters with better information about judicial performance before retention elections. The Institute had participated with the League of Women Voters in compiling information on a select number of district and appellate court judges in the 1982 election. (This initial activity would result two years later in the publication of a statewide voter's guide to judges.)

Board members were convinced that there was a gap in the merit retention system that prevented an adequate amount of information from reaching the voters and helping them in making intelligent decisions about judges in retention elections. Although the Colorado Bar Association and several local bar associations had frequently conducted bar polls, the board believed that the general public did not trust polls, perhaps because of a misunderstanding about the nature of the close relationship between bench and bar. In short, there was a perception that while some people believe that professionals can give valid appraisals of other members of a profession, there are many more people who do not trust professional associations to monitor and discipline their members.

Judicial evaluation was thus viewed initially as an adjunct to the merit selection system and a way of making an essentially good system work better. In order to address the issue more directly, the institute's board created a task force or committee on judicial evaluation. Members of the task force were drawn from the board of directors and

included a former member of the Hoffman committee, an attorney involved in bar polling, a state senator, the president-elect of the Institute, and the Institute's executive director.

The task force began its work in January, 1983, by studying the organization of the Colorado court system, the background of the 1980 study, criteria used for judicial selection, and judicial evaluation projects in other states, especially those of Alaska and the District of Columbia. By June, the task force had developed a plan for conducting a pilot program to evaluate judges. The task force was convinced of the need for judicial evaluation but realized that neither the Institute nor any other group could hope to prepare a comprehensive evaluation of all of the 104 state judges (out of a total of 222) standing for retention in the 1984 general election. The task force decided, therefore, to recommend that a pilot evaluation program be organized in one of the state's 22 judicial districts.

Colorado's 18th Judicial District was targeted as a potential site for the pilot program. Ten of the District's judges--five each from the district and county courts--were slated for retention election in November of 1984. In addition, the judges sit in different courts in a rather large and diverse district comprised of Arapahoe, Douglas, Elbert and Lincoln counties. Arapahoe county forms the fast-growing southern part of the Denver metropolitan area, and Douglas county is experiencing even more rapid growth to the immediate south of Arapahoe county. Elbert and Lincoln

counties are essentially rural counties to the east of the two suburban counties. Like several other districts in the Denver area, the 18th Judicial District stretches across a variety of urban, suburban, and rural locations.

The test site was suggested by the state senator on the task force, whose district covers much of Arapahoe county. Several other task force members and a number of board members also resided in Arapahoe county, making it a natural site for the pilot program because of the makeup of the district, the rural and urban mix of the counties in the district, and the availability of committee and board members familiar with community organizations and leaders within the district. This blend of knowledgeable people and the right geographical circumstances, while not altogether fortuitous, would prove to be an important element in the success of the evaluation program.

Meeting in late 1983, the Institute's board approved the pilot program for the 1984 general elections. The board was willing to undertake the project to fill the gap it perceived in the judicial selection and retention process. Although the existence of merit selection was one of the reasons for sponsoring judicial evaluation, the program was not intended to be a defense of the merit system as much as a supplement to the system and a means of improving the overall quality of the judicial system. The board concluded that since judges were not free to campaign, the Institute could make a

contribution to the community as well as improve the quality of the judicial system by providing a way to give voters useful information about judicial performance. Since bar polls and news stories were the only sources of information about judges, there was a strong feeling that an independent analysis of the overall quality of judicial performance needed to be made available to the electorate. There was never any question whether or not the evaluation should be undertaken; instead, it was a question of how and when it should be done.

The Role of Support Groups

The Institute's most important decision during this phase of the program was the decision not to conduct the program itself. The board decided that the pilot project should be conducted by a committee of citizens from local communities within the 18th Judicial District and that no committee members could belong to the Institute. There were several reasons for this approach. For one, the Institute did not want to lose its position of independence and credibility with the judiciary as a whole. It had worked hard to increase its visibility with the judiciary and the public at large. The board felt strongly that an intensive evaluation effort might undermine this effort by alienating the judiciary and compromising the impartial posture of the Institute.

Another reason was that the Institute had become increasingly aware of the limitations on its lobbying activities as a nonprofit corporation. Having just become involved in raising money to put together a voter's guide on the judiciary, the board knew that it could not take an active, albeit nonpartisan or neutral, role in influencing the way people vote. Foundations and others who helped fund the voter's guide had clearly indicated that they could not support any activities that might imply a position for or against specific judges.

Finally, the board wanted the citizens committee to be free to make their own decisions and to come up with their own observations about judges. The idea of an independent committee comprised of members of the local community became even more attractive as the project gathered steam. At one of the early meetings, a question arose as to whether or not the Institute would approve or disapprove of any final report of the citizens committee. The committee was assured that the Institute would not censure the final work product, and, in fact, it did not.

Once the decision was made to begin the pilot program, the Institute was immediately faced with several practical problems. It had to find financial support for the program, select committee members, and identify a volunteer to chair the committee. The first problem was addressed in a creative way that helped establish the project as a truly local program. The solution was one of a fortuitous series of

events that underscored the importance of soliciting the advice and assistance of leaders who understand their local communities.

During the organizational phase of the project, the institute contacted an appellate court judge who had been a district judge in the 18th Judicial District. In a serendipitous exchange of ideas, the judge recommended that the institute contact the Arapahoe Community College to see if it would be interested in sponsoring the judicial evaluation program. The judge chaired an advisory committee for the college that was looking for ways to involve the college in community education programs outside of formal classroom settings. The advisory committee was trying to develop new strategies for the college to become more involved in the community, and it viewed the college as a facilitator for various kinds of community education projects. The college was suggested as a potential partner for the institute, one that could provide coherent staff work for the volunteers on the evaluation committee and that could give the institute greater credibility at the local level.

The president of the college agreed that the college's community services division could participate in and support the judicial evaluation program, and the dean of the division met with the president of the Institute and the chairman of the Institute's committee on judicial evaluation. He offered the division's help in providing facilities for meetings, a staff person to print and distribute minutes, and faculty

expertise in the surveying process, if needed during the project. Although student participation did not materialize, the project was envisioned as a way to give students experience in developing survey methods and providing staff support for this kind of effort.

Thus, the Institute and the college became the major support groups or collaborators for the evaluation program. They provided the initial organizational support that got the program started, and their roles proved to be complementary throughout the program. They both maintained an arms-length relationship with the citizens committee after it was organized, and they provided technical services during the pilot program. Their role as nurturing organizations was essential to the success and continuity of the project.

Selection of Committee Members

Selecting committee members proved to be more of a challenge than anticipated. The Institute did not have a preconceived idea of who ought to be on the committee other than it wanted a broad cross-section of community leaders. Members of the Institute's board first approached several well-known local leaders in hopes that one would accept responsibility for chairing the committee and, in that role, supervise the selection of other members. This approach failed, although the Institute did obtain a list of potential committee members for a second round in the selection process. By the time the Institute had entered into partnership with the college, it had an initial list of people for membership on the committee.

The two support groups eventually concluded that it was not necessary to get a chairman before organizing the committee. They decided instead to concentrate on pulling together the citizens group and to let a chairman emerge from the committee itself. This was a significant turning point in the organization of the committee. The people that had been approached to chair the committee had turned down the offer for different reasons. Some saw judicial evaluation as too innovative or risky, perhaps even presumptive and intimidating from the standpoint of the judiciary. Others agreed that it was a good idea and badly needed, but they did not want to accept responsibility for the project. As things turned out, the committee met as a group several times before a chairman emerged.

Once the initial approach was changed, the sponsors experienced little difficulty in putting together the final committee. Committee members were informed that the sponsors were organizing a citizens' committee to conduct a pilot program in judicial evaluation. Members could bring different perspectives to the committee but they had to have enough experience to know when to use caution in making judgments about the performance of individual judges. Prospective committee members were not always told the names of other potential members, and some people did not know who was on the committee until the first meeting of the full committee. As a result, some members of the committee were surprised at the first meeting to discover old protagonists on the committee.

The final committee was composed of fifteen members with diverse backgrounds, two of whom dropped out during the early committee meetings. Members' occupations covered the private and public sectors, and included an architect, two attorneys (one of which was a former judge), small business owners, a minister, a rancher, a public relations person, two engineers, and a doctor (see Appendix A). The sponsors realized early in the selection process that diverse economic groups would not be represented on the committee. The committee was essentially a white collar group comprised of moderate to well-to-do people with influence and leadership roles in their local communities.

The Organizational Meeting

The Citizens Committee on Judicial Evaluation held an organizational meeting in February, 1984. A large number of "resource" people attended the meeting, including the executive director of the institute, the chairman of the institute's committee on judicial evaluation, the dean of the community services program at the Arapahoe Community College, the appellate court judge involved in the organization of the committee, and others who had agreed to provide assistance to the committee (see Appendix B).

The meeting, which was chaired by the president of the Institute, was designed to give background information to the volunteers on the committee and to introduce them to the resource people who would provide technical assistance during the project. Representatives for the institute and the

college explained the roles of their respective organizations in the evaluation program, and explained why the 18th Judicial District had been selected for the pilot program. The appellate court judge who participated in early discussions with the Institute's board gave an overview of judicial selection in Colorado and discussed the history behind the Judicial Planning Council's study. The chief judge of the 18th Judicial District was on hand to indicate his commitment to the project.

The chairman of the Institute's task force on judicial performance had been designated as the liaison to the citizens committee, and he described the components of an effective evaluation in terms of sophistication, complexity, and the sensitivity on the part of evaluators. He also summarized the growing volume of research information on judicial evaluation and the Judicial Planning Council's recommendations which the committee later analyzed more thoroughly.

The committee was challenged to develop a fair and objective evaluation and to communicate the results of their evaluation as widely as possible to the voters within the district. The difficulty of this task was not lost on committee members who raised the following questions during the first meeting:

- What is the definition of a "good" judge?
- Is there a plan for advance publicity to establish the task force's credibility?

--Should the committee be involved in gathering data to support the public's perception that a judge should not be retained?

--Should the committee focus on establishing a criterion below which a judge should not be retained, rather than comparing judges?

These questions were considered again at the second committee meeting two weeks later. During the meeting, the Judicial Planning Council's recommendations were presented in detail, and several organizational matters were resolved, for example, the preparation of agenda and what to do in case of absences. A schedule of committee meetings was adopted for the next six months. Finally, committee members accepted assignments to study and summarize some of the literature on judicial evaluation.

Development of Specific Plans

The third meeting of the committee focused on the American Judicature Society's report on Qualification Guidelines for Judicial Candidates, the efforts of the Alaska Judicial Council in evaluating judicial performance, and the processes used by the District of Columbia Commission on Judicial Disabilities and Tenure to remove, censure or reprimand judges.

The committee then considered a proposed plan of action for the next six months (see Appendix C). The plan, which for the first time provided a written description of how to accomplish the evaluation, proved to be an important

milestone in the development of committee activities. For the first time, members could see the steps that had to be taken to accomplish the evaluation. Moreover, the plan created a sense of urgency by demonstrating how little time was available to accomplish the evaluation before the November election.

The plan galvanized the committee into action. After discussing the plan, the committee unanimously elected the author of the plan as its chairman. Even before the chairman was selected, however, committee members had discussed the problems of publicity, the need to obtain assistance from the Arapahoe County Bar Association, the merits of asking judges to evaluate other judges, and the willingness of judges to submit to interviews.

The plan was approved in the fourth meeting, and the committee decided immediately to develop four questionnaires for the evaluation. The questionnaires would be aimed at lawyers who had practiced before judges, courthouse personnel, e.g., deputy clerks of courts, other judges, such as the chief judge and appellate judges, and jurors. The committee rejected questionnaires for peace officers, which would have followed the Alaska model, litigants and social workers.

Since the primary goal of the evaluation program was to inform the electorate about the performance of judges, the committee also began to develop a program for publicizing evaluation results. As the first step in the program, the

Institute issued a press release describing the organization of the citizens' committee and outlining its purposes and objectives (see Appendix D). The press release was distributed to all the major newspapers in the Denver metropolitan areas as well as several local newspapers in the 18th Judicial District. The next step was to develop a public relations plan.

The committee discussed the need for a comprehensive plan for informing the public about the evaluation program during its first four meetings. Because of the Institute's experience with voter's guides, the committee was convinced that it would have to mount a major public information program to reach voters. Members were assigned to prepare a plan for contacting the press, television and radio stations, cable television and other interested organizations. Although a final, written plan was not adopted until several months later (see Appendix E), two committee members were immediately assigned to meet with a local newspaper editor to discuss appropriate methods for dealing with the press. Some of the activities considered by the committee included asking newspapers to assign a staff reporter to report on committee meetings, writing letters to the editor, discussing committee functions with community organizations, and contacting radio and television stations.

The committee received favorable news coverage because of these initial efforts. One prominent local newspaper ran an editorial supporting the evaluation pilot program (The

Independent, April 18, 1984, p.7), and four newspapers were represented at the next meeting of the committee, where members presented background information on the committee's purposes and plans. Two committee members were interviewed on the air.

Although some organizational problems would continue to surface during the ensuing meetings, the committee had essentially completed its organizational tasks by the end of the fourth meeting. This was a significant accomplishment considering the fact that only four months had passed since the Institute's board of directors had decided to proceed with a pilot program. The evaluation process itself, that is, the selection and refinement of evaluation methods, the gathering of data, and the analysis and interpretation of the committee's findings would take six months, from mid-February to the middle of August. This was very little time considering the committee met every two to three weeks, and it is interesting to see how the committee handled the complex process of evaluation. The evaluation process is considered in detail in the following section.

SECTION THREE

The Evaluation Process

One of the more striking characteristics of the citizens committee was its inclination toward action. The members were committed to the idea of evaluating judges, and they were willing--even anxious--to get on with that task. Clearly, the process for evaluating judges dominated committee discussions and activities from the very first meeting. While the support organizations had organized the committee and made sure that resources were available to carry out committee plans, the actual evaluation process was very much a product of the committee itself. It is important, therefore, to understand how the committee went about designing and implementing the evaluation.

In a nutshell, the evaluation process involved identifying evaluation criteria, designing the process itself, selecting evaluation methods, gathering data, analyzing the results, and making decisions about individual judges. These elements are common to most performance appraisal systems, and can be evaluated in a variety of ways (Bernardin & Beatty, 1984; Carroll & Schneier, 1982; DeVries, et al., 1981; and, Kane & Lawler, 1979). The committee also assumed the responsibility of informing the public about the

outcome of the evaluation, a task that has no counterpart in typical appraisal systems. Each of these functions is examined in this section.

Identifying Evaluation Criteria

The committee decided that its first priority was to develop evaluation criteria. The need for specific criteria or performance standards by which judges could be evaluated had been evident to the Institute during the formation of the citizens' committee, and the committee's plan of action emphasized the development of evaluation criteria as the primary task for the committee. But the committee did not have a clear idea of how to go about evaluating sitting judges. Although several states had experimented with evaluation techniques, there were no proven models for the comprehensive evaluation envisioned by the committee.

The committee first examined the American Judicature Society's 1983 Report on Guidelines for the Selection of Judicial Candidates, which identified nine criteria for judicial selection, together with definitions and a series of questions for each criterion. The criteria were: age, communications, health, industry, integrity, judicial temperament, justice, professional skills, and social consciousness. The committee concluded that it would be appropriate to use many of the same criteria as well as the questions used by nominating commissions.

The Institute had suggested a list of criteria for the evaluation in its first written circular on the pilot program. This list, which was based on an article by a law school professor, was comprehensive and covered the following criteria: integrity, legal knowledge and ability, judicial temperament, diligence, punctuality, health, age, professional experience, litigation experience, past professional conduct, financial responsibilities, political activity, character, patience, common sense, tact, social consciousness, and association and public service (Aynes, 1981).

In addition, the committee considered the American Bar Foundation's study on judicial performance polls (Maddi, 1977): This was one of the first research reports to examine lawyers polls, but rather than describing specific evaluation criteria, the study looked at the structure and techniques of lawyer surveys and suggested guidelines for conducting judicial performance polls. (Similar studies conducted by the Institute for Judicial Administration in 1976 and the American Judicature Society in 1977 were not examined by the committee.) Although the committee was generally aware of the American Bar Association's initiative to develop standards for judicial evaluation, the findings and recommendations from that program were not available when the committee began its search for evaluation criteria.

The committee's incursion into the limited literature on judicial evaluation did not produce a list of definitive

criteria at the beginning of the program. The actual criteria used by the committee gradually emerged over a period of several months as the committee developed questionnaires and conducted interviews with judges. In fact, committee records indicate that the final criteria were not adopted until the interviews with judges had been completed.

There was a practical reason for taking so long to adopt criteria. Everyone wanted a list of criteria before commencing the evaluation process and selecting evaluation techniques. The committee, however, could not spend all its time developing criteria if it wanted to complete the evaluation before the general election. The committee would have accepted evaluation criteria developed by other groups, but outside of the criteria used in bar polls, there were no standard lists of criteria for evaluating the performance of judges. The members also recognized the problems inherent in trying to develop valid and reliable criteria too quickly. In the end, the committee characteristically opted for action rather than waiting until after a list of evaluation criteria could be articulated and approved.

On balance, committee members believed that the process of reading background materials about evaluation criteria and coming to their own conclusions played an important role in the committee's education. Committee members recognized a need to educate themselves about the nature of judging and the operation of the judicial system as a whole. This was a

time-consuming process that had to be accomplished gradually while the committee proceeded with other activities. Even if acceptable criteria become available in the future, committee members concluded that a good evaluation program would have to allow time to educate citizens about the work of judging and the rationale behind specific criteria.

Designing the Process

The committee's second priority was to design the evaluation process itself. As a starting place, the Institute, acting in its role as a resource provider, had contacted the Alaska Judicial Council to find out more about that state's approach to judicial evaluation. Up to that point in time, Alaska's program was the only one specifically oriented toward voter education. The information distributed to voters was based on surveys of peace officers and members of the Alaska Bar Association. Copies of the questionnaires used in Alaska were distributed to committee members.

The approach to evaluation used by the District of Columbia Commission on Judicial Disabilities and Tenure was also discussed by the committee. In addition to reviewing complaints concerning the misconduct of judges, this commission has the authority to remove, censure or reprimand judges. The committee was particularly interested in the comprehensive reports on judicial performance prepared by the commission whenever a judge came up for reappointment by the

President. The committee noted with interest that lawyers and lay people assisted the commission and were given opportunities to comment on the qualifications of candidates for reappointment. The commission's annual reports suggest that volunteer insights and evaluations are infrequent and only when asked would lawyers comment candidly on judges.

In addition to these approaches, the committee reviewed the purposes and functions of Colorado's Commission on Judicial Discipline and the recommendations contained in the Judicial Council's 1980 report. Unfortunately, information about the pilot projects sponsored by the National Center for State Courts was not readily available to the committee at this time. The only other evaluation program of any consequence was the one being developed by the New Jersey court system to evaluate its judges. Designed as an in-house program, it clearly did not provide a model for the citizens' committee since it did not use lay citizens in the evaluation process nor did it release information to groups outside of the judiciary.

After discussing what limited information it could gather about judicial evaluation programs, the committee moved quickly to outline its own approach, which turned out to be a broad-based approach using surveys supplemented with a court watching program to observe judges in action. The final step in the evaluation process would be face-to-face interviews with individual judges. The committee decided not

to solicit evaluation information from what they perceived to be special interest groups, such as police and social workers

By its third meeting, the committee had voted on the types of questionnaires to use during the evaluation, and assignments were made to committee members to begin drafting questionnaires. Questionnaires would be developed over the next two weeks for lawyers who had practiced before judges, courthouse personnel, such as deputy clerks of court, appellate judges, and jurors. The committee also approved a weighting system for the various sources of information, as follows: lawyers 20%; courtroom personnel 15%; other judges 25%; court records 10%; and task force interviews 30%.

The four questionnaires became the central focus of the committee's formal data collection effort. Subcommittees consisting of one or two members worked independently to develop a questionnaire for each target group. By its fourth meeting, the committee had approved draft questionnaires for lawyers, courthouse personnel, and jurors, and minor changes were made to the questionnaires during the following meeting. All of the forms were reviewed by the committee prior to their dissemination. The questionnaires and the other techniques used by the committee during the evaluation program are described in detail in the fourth section of this report.

Analyzing The Final Results

The committee did not develop a method for compiling the

final evaluation until after the interviews. Because members had approached the evaluation process from different perspectives, there was no single or unified approach to the final evaluation. Some members used rather sophisticated matrices in order to come up with a quantitative measure for each of the sources of information, which they then averaged. Others favored an overall evaluation on the basis of what they had observed during the evaluation process.

After compiling the evaluation data in formats adjusted to individual needs, committee members then compared each judge's performance with the final evaluation criteria. The final criteria, which were selected after the interviews had been completed, were: competence in the law; fairness; industriousness; a perception as to whether the judge was doing a "good job;" and dedication. The committee voted on each judge by indicating a "yes" or "no" for each of the criteria. In order for a judge to receive an unqualified recommendation of support from the committee, the judge had to receive a "yes" vote from two-thirds of the committee, or what became known as the "consensus" vote of the committee.

The committee concluded that eight of the ten judges should be endorsed for retention without reservation. One judge received a "no comment" vote and one was given a "no opinion" vote. One judge was not able to participate fully in the evaluation process because he was located in a rural county some distance away from the main site of the committee's activities. The committee gave him a "no comment"

rating for retention because it did not have sufficient information. The "no opinion" vote reflected a divided vote on the part of the committee. The committee had "some concern about the judge's application of the law and his attitudes," and since the committee could not reach a consensus about the judge's performance, it decided not to vote in favor of retention.

The committee prepared a summary description or evaluation of each judge. Each member of the committee, whether present or not at the meeting during which a vote on retention was taken, was asked to prepare a two to three sentence evaluation or observation about each judge. These statements were combined in a summary paragraph for each judge which was edited and approved by the committee.

The evaluation summaries consisted of three to six terse statements about an individual judge's characteristics and performance on the bench. The statements were not uniform, that is, they did not discuss the same criteria in the same way for each judge. Rather, they were tailor-made statements that tended to address the same performance standards but with some variation in content and style. In some instances, the committee emphasized a judge's strengths without referring to any weaknesses, while in others, the judge's weaknesses were specifically mentioned. In the following excerpts from the evaluation summaries, the names of the judges have been omitted. (The full evaluation report is contained in Appendix K.)

- An outstanding judge who is thoughtful, compassionate and highly capable is what this committee found in [the judge].
- [The judge] rates high for his equal treatment of all persons, physical capability and courtroom demeanor.
- The [The judge] rated well in the "people skills--somewhat less well, but still above average in areas such as complex legal matters and docket efficiency.
- [The judge] is perceived as a fair and competent judge. He has shown an awareness in attempting to move cases along as quickly as possible to reduce time and inconvenience to the public.
- [The judge] is considered by this committee as well as by his peers, to be an exceptionally fine judge--very knowledgeable about the law, courteous, fair to all, and possessing excellent administrative abilities.
- The committee found [the judge] to be sensitive and responsive to public input. He is perceived as a responsible public servant who has a profound influence on the community. Various survey results rate him high in courtesy and compassion.
- [The judge] is credited with maintaining a good rapport with defense and prosecuting attorneys. Areas of concern are control of his docket and the balancing of outside community activities and caseload management.
- [The judge] is dedicated, articulate, and has a strong personality. He also has a reputation as being a "tough" judge which gives the impression of arrogance and insensitivity. This has a tendency to detract from the appearance of being fair and impartial.
- [The judge's] strengths are identified as: good knowledge of the law and procedure, equal treatment of all parties, preparation, and promptness in rulings. His weaknesses were identified as: docket efficiency, physical capability and restraint from prejudging cases.

Informing the Public

The committee completed the evaluation process by mid-September. By then, all of the voting had been completed and the evaluation statements had been drafted. The committee was ready to disseminate the results of the evaluation and had to decide on a specific course of action.

After working through a draft press release, a five-page press release was approved by the committee. The first page of the press release described the composition of the committee, listed the names of the committee members, and gave a brief description of the overall work of the committee. The remainder of the press release described the sources of evaluation information and the specific criteria used by the committee. Each judge received a specific recommendation for retention together with the summary paragraph of select statements about his performance.

The committee began to run out of time while trying to decide the proper approach to disseminating the evaluation results to the public. The committee met in mid-October to discuss specific methods for reaching the public. Members reported that they had contacted the leaders of political parties to find out if they could distribute the recommendations through the pre-election mailings of the political parties. Although political leaders expressed interest in working with the citizens committee in the future, they declined to become involved this year.

Resource people working with the committee had contacted local newspapers regarding publication of the committee's

recommendations. The results were disappointing. Several smaller newspapers agreed to publish the results, but the largest newspaper in town did not indicate any strong interest. Other ideas considered by the committee included the publication of a letter sized flyer that could be distributed to civic groups, social clubs, and churches, and committee members active in social clubs or other organizations volunteered to speak in different organizations.

The November, 1984, election marked the end of the pilot evaluation program in the 18th Judicial District. The citizens' committee held a debriefing meeting with the Institute's Board of Directors after the election. The chairman reported on the committee's activities and, notwithstanding the problems with dissemination, his report was optimistic and encouraging. He strongly suggested that the evaluation program should continue, although changes would have to be made in the way in which evaluation results are used and the committee's approach to the media.

The Institute's board has since decided to support additional evaluation programs, and plans are underway to conduct similar programs in other judicial districts prior to the 1986 elections. Several members of the citizens' committee have now joined the Institute and are working on a committee charged with furthering the evaluation project.

SECTION FOUR

Evaluation Methods and Techniques

The evaluation methods used by the committee can be divided into two broad categories. The first category included highly structured methods, such as the local bar association's lawyer survey, a court personnel survey, an appellate judge questionnaire, a survey of jurors, and the use of statistical data collected by the courts through the judicial district administrator's office. These formal methods emphasized the use and interpretation of quantitative data produced by opinion polls and caseload statistics generated by the courts.

The second category included several unstructured or informal methods for gathering qualitative information on judicial performance. In contrast to the more structured survey approaches, these approaches were organized around interviews with "insiders" or knowledgeable people, such as the chief judge of the judicial district, in order to get personal impressions of the performance of individual judges. The committee also experimented with a court watching program to obtain firsthand experience observing individual judges in action in the court system. The final and perhaps most critical phase of data gathering as far as

committee members were concerned involved interviews with the judges themselves.

These approaches produced a vast array of evaluation data that varied significantly in quality and usefulness. Each of the approaches is described in this section and continued on the basis of comments or observations from committee members. Problems that arose in gathering the data and the concerns of judges who participated in the program are discussed in the next section of the report.

Survey of Lawyers

The survey of lawyers or bar poll used by the committee produced the most sophisticated array of data and the data most widely accepted and used by committee members. The Arapahoe County Bar Association had conducted a bar poll for many years, and it agreed to cooperate with the committee in structuring the questionnaire for purposes of the committee's evaluation. As things turned out, the bar poll proved to be a ready source of evaluation information that did not require extensive research or design on the part of the committee, although one member of the committee provided considerable assistance in computer programming and analysis.

The committee secured an agreement with the bar association to redesign the confidential questionnaire used in the association's poll. The form was similar to the version previously used by the association but was revised to reflect the bar's involvement with the Institute and the citizens'

committee. The questionnaire asked attorneys to evaluate judges on a five-point scale ranging from a high score of "excellent" to a low score of "unacceptable." The form itself contained 21 questions, 20 questions covering a wide range of judicial characteristics and abilities, with a final or overall question related to whether or not the judge should be retained in office. The complete form is reproduced in Appendix F.

The bar poll questionnaire was completed by 124 attorneys. The committee compiled the survey results using a computer program developed by one of its members. A summary analysis of the results was prepared for each judge showing the average score each judge received on each of the questions. An overall average score for each judge was also computed. Overall retention votes from the last question in the survey were presented with no additional processing.

Figure 1 on the next page is an example of the actual results reported for one of the judges. (The judge's identity is this and the following three examples is not revealed.) In this illustration, the judge received an overall average rating of 3.33, with responses ranging from a high of 3.89 to a low of 2.71. He received thirty votes in favor of retention and 17 votes against retention.

The committee tended to rely heavily on the data from the bar poll. From a statistical point of view, the information appeared to be more accurate and specific than other sources of information used during the evaluation. The

FIGURE 1
 EXAMPLE OF ANALYSIS OF RESULTS
 FROM SURVEY OF LAWYERS

(N = 78)

Question (Presented in Order data displayed)	Response	Average Score
13. Physical capability	67	4.51
6. Equal treatment of all regardless of race/sex/social/economic status	71	4.45
3. Knowledge of criminal substantive law, evidence, procedure	55	4.42
5. Finding facts/interpreting law without regard to public criticism	69	4.36
7. Restraint from favoritism toward either attorney	72	4.36
1. Legal reasoning ability and comprehension	75	4.36
11. Courtesy	74	4.36
14. Punctuality	69	4.25
16. Familiarity with file and adequate preparation	69	4.22
12. Judicial temperament	74	4.22
17. Division clerk performance	64	4.14
8. Restraint from pre-judging outcome of the case	66	4.14
15. Docket control	67	4.13
20. Promptness in making rulings and rendering decisions	61	4.13
2. Knowledge of civil substantive law, evidence, procedure	61	4.11
10. Compassion	68	4.03
18. Cooperation in assisting other judges with their dockets	41	4.00
19. Accessibility for court business and for emergencies	58.	3.98
4. Consideration of all relevant factors in sentencing	53	3.98
9. Settlement skills	42	3.79
Average Overall Score	<u>1276</u>	<u>4.20</u>
21. Retention	Total = 78	Yes = 72 No = 6

committee had been heavily involved in analyzing the data and were familiar with the questions, many of which had been used in preceding bar polls. The poll also received more responses than the other techniques employed by the committee, and was thus perceived by members as being more reliable than instruments that generated fewer responses.

As a final comment on the bar poll, it is interesting to note that the committee also conducted a specialized survey of criminal attorneys working in government offices. During the evaluation program, the committee learned that some members of the district attorney's and public defender's offices were concerned about the effectiveness of the evaluation program. They were concerned, among other things, that judges who handle traffic and criminal cases would not be evaluated accurately. The committee addressed this problem by conducting a separate survey, using the same questionnaire the bar poll, to survey deputy public defenders and assistant district attorneys. The results of the smaller survey (less than ten respondents) were compiled and distributed to the committee. The results were very similar to the larger survey although the smaller pool revealed some differences for two county judges. The committee did not give any particular weight to these results, however, and it appears that the information was treated in the same way as the responses from the bar poll.

Survey of Court Personnel

The questionnaire for courthouse personnel was much simpler than the bar poll, but it used a similar five-point

scale (See Appendix G). It contained some of the same questions as the bar form, although there was a greater emphasis on the judge's ability to work with the general public, administrative personnel, and the general public.

Unlike the lawyers' questionnaire, the question in this survey on courtesy was expanded into a question about courtesy and tact in working with jurors and witnesses and fairness in working with attorneys. A new question on physical capability replaced the bar poll's question on mental and emotional stability. In general, the questions in the second were oriented toward working relationships and away from an assessment of legal abilities and procedural skills. The final catchall question was very different and asked whether or not the court employee perceived the judge to have any personal problems that interfered with official duties. Each question had a small space for comments.

Figure 2, as shown on the next page, shows the type of information compiled from the responses of court personnel and reported for one of the judges. In this example, the judge received an average rating for the responses to each of the questions, ranging from a high of 5.00 to a low of 4.00. His overall average rating was 4.63. This judge received fourteen negative notes and was not thought by court personnel to have any personal problems that might interfere with official duties.

FIGURE 2

EXAMPLE OF ANALYSIS OF RESULTS
FROM SURVEY OF COURT PERSONNEL

(N = 16)

Question	Average Score
1. Promptness in making decisions	4.54
2. Adherence to schedules and utilization of time	4.80
3. Courtesy and tact in working with jurors	4.64
4. Courtesy and tact in working with witnesses	4.67
5. Fairness in working with attorneys	4.50
6. Decorum in courtroom	4.54
7. Working relationship with the media	4.00
8. Working relationship with the general public	4.30
9. Ability to deal with controversial cases or situations	4.62
10. Physical health or energy level	4.80
11. Efficient management of administrative responsibilities	4.73
12. Maintenance of high standards for court personnel	4.80
13. Regular effort to improve on skills	4.73
14. Regular effort outside courtroom to improve judicial system	4.56
15. Willingness to work diligently	5.00
16. Overall judicial performance	4.86
Overall Average Score	4.63
Overall ranking = 1	
17. Do you perceive the judge to have any personal problem that interferes with official duties? Yes = 0 No = 14	

Survey of Jurors

A third survey form, a copy of which is included in Appendix H, was designed for jurors. It could not be used for all judges since they did not all have jury trials during the evaluation period.

Using a five-point scale ranging from a low score of one for "poor performance" and a high score of five for "excellent performance," the form contained nine questions plus an overall rating as to whether or not the judge should be retained in office. Jurors were asked about a judge's lack of bias, physical and mental health, punctuality, and whether or not he or she appeared to act fairly and courteously to all litigants, witnesses and lawyers. Other questions involved the judge's ability to conduct court in a proper manner, his or her demeanor, dignity and firmness in conducting court proceedings, and whether or not the judge gave adequate guidance to the jury in understanding the legal processes involved and whether jury instructions that the judge read were understandable. The questionnaires were distributed to jurors through the district administrator's office.

Figure 3 on the next page is an example of the type of data obtained from the survey of jurors. Participation in the survey was voluntary, and, in this case, the committee obtained responses from 19 jurors. (The sample size for each judge was different because the number of jurors participating varied considerably.) Jurors rated the judge using the

FIGURE 3
 EXAMPLE OF ANALYSIS OF RESULTS
 FROM SURVEY OF JURORS

(N = 19)

Question	Average Score
1. The judge was unbiased (i.e., free from racial, ethnic, sexual, political, religious, social, economic or his/her own personal bias)?	4.89
2. Rate the judge's physical health as it affects the discharge of is/her duties	4.79
3. Rate the judge's mental health as it affects the discharge of his/her duties	4.79
4. The judge conducted the business and operation of the court in a proper manner?	4.89
5. Rate the judge as to punctuality.	4.63
6. The jury instructions read by the judge were understandable?	4.79
7. The judge gave adequate guidance to the jury in the understanding of the legal processes involved.	4.79
8. The judge acted fairly and courteous towards all litigants, witnesses and lawyers?	4.89
9. The judge conducted the trial proceedings with appropriate demeanor, dignity, and firmness?	4.84
Average Overall Score.	4.81
Should the judge be retained for doing a good job? (favorable votes)	19
Overall Ranking =	2

scale described above, gave him scores ranging from a high of 4.89 (on several items) to a low of 4.63, for an average score of 4.81. Jurors were asked to vote "yes" or "no" for the judge's retention in office based on whether or not they perceived the judge to be doing a good job during the trial. This judge received a highly favorable response. Although one judge received a slightly less favorable (but still positive) rating, jurors cast positive retention votes for all judges.

Taken as a whole, the questionnaires used by the committee reflected the fact that they were developed by different individuals or groups. The questions were worded differently, the scales were not the same for all questionnaires, and some of the questions in each of the questionnaires would prove difficult to answer. These differences created some problems when it came time to aggregate the data. While all committee members had access to the same data, not all of the data were treated in the same way. Individual committee members tended to give greater credence to data they had helped collect.

During the program, quantitative data were kept separate and not mixed with less sophisticated data until after the interviews with judges. The qualitative data generated as part of the surveys, such as comments solicited from lawyers, open-ended questions, and letters to the committee, were generally set aside by the committee, although narrative answers to the bar poll were compiled by the bar association and shared with the chief judge of the district.

Appellate Judge Questionnaire

The questionnaire for appellate judges asked respondents to evaluate trial judges using a five-point scale, ranging from "strongly disagree" to "strongly agree." Questions in this survey dealt with a trial judge's knowledge and application of the law, the judge's knowledge of substantive law, procedural rules, and evidentiary law, and the making of a proper court record (See Appendix I). Other questions covered the judge's reasoning ability in reaching decisions or rendering opinions, the ability to deal adequately with cases involving complex factual issues, and the skill of issuing rulings or decisions that are well articulated and fully stated. Two questions dealt with the judge's overall ability as a trial judge and his or her ability to conduct proceedings in a courteous manner.

An example of the results from the appellate questionnaire for one of the judges evaluated during the program is shown on the following page as Figure 4. In this example, four appellate judges commented on the work of the trial court judge by responding to the questionnaire. They completed the questionnaire for each of the items listed, giving the judge a high rating of 4.75 and a low rating of 4.25. The judges average score was 4.52. The committee then gave each judge an overall ranking by comparing their scores. Although a questionnaire and letter was sent to all appellate judges, the committee did not get a large response from appellate judges. Several appellate judges responded by saying

FIGURE 4

EXAMPLE OF ANALYSIS OF RESULTS
FROM APPELLATE QUESTIONNAIRE

(N = 4)

Question	Average Score
1. Knows the substantive law applicable to the issues before the court.	4.75
2. Knows and applies the procedural rules applicable to the action or proceeding before the court.	4.50
3. Applies sound reasoning in reaching decisions or in rendering opinions.	4.25
4. Deals adequately with cases involving complex factual issues.	4.50
5. Issues rulings or decisions which are well articulated and full stated.	4.75
6. Makes proper rulings on evidentiary objections.	4.33
7. Allows attorneys to adequately make a record.	4.33
8. Shows awareness and concern that an adequate record is made of proceedings.	4.25
9. Appears to engage in conduct courteous to attorneys, litigants, witnesses and jurors.	4.75
10. Demonstrates satisfactory abilities and performance as a trial judge of a Colorado court of record.	4.75
Overall Average Score	4.52

Overall Ranking = 2

that they did not feel they could evaluate a particular judge under the provisions of the Code of Judicial Conduct. Others concluded that they should not participate in the evaluation because they might later be asked to disqualify themselves from participating on a case if it involved a judge of whom they had been critical in their evaluation. The judges being evaluated also expressed surprise at the use of the appellate court questionnaire and questioned its value as an evaluation tool.

The committee decided that the data gathered from the appellate questionnaire was not very useful because it was too subjective and no statistical link had been established between the appellate judges' responses and the number of cases on appeal for a particular judge. Some members felt that reversal rates would be an important factor in the evaluation since high reversal rates are not in the public interest. However, the committee recognized the difficulty in measuring reversal rates when cases could be reversed for something beyond the control of a particular judge and current statistical data or reasons for reversal are not available.

Interview with the Chief Judge

Members of the institute's board met with the chief judge before the evaluation program began to seek his support. He assured them that he was willing to cooperate with the committee's efforts. Further on in the program, the committee

asked the chief judge to participate in a discussion of the abilities and characteristics of individual judges. This occurred after the committee had gathered enough information to be knowledgeable about individual judges.

The committee was especially interested in asking the chief judge to comment on criticisms committee members had heard about some of the judges. This was an unusual role for the chief judge and one with which he was not entirely at ease. While he found it relatively easy to give complimentary information about his colleagues, he was very uncomfortable about questions dealing with information that criticized individual judges.

Court Watching

During the evaluation program, several members had expressed an interest in observing judges directly in the courtroom, and the committee decided to organize a limited court watching project. The project involved assigning two members of the committee to work with the judicial district administrator to select appropriate dates for visiting courtrooms. The administrator suggested that some days were better for observation than others because of the nature of court work. He wanted to make sure that the participants had an opportunity to see judges in action rather than visiting empty courtrooms or sitting through repetitious motion hearings.

The committee observed less than half of the judges slated for retention election, and came away from the experience with a sense of disappointment and very mixed reactions about court watching.

While the committee members enjoyed seeing the judges in action, they realized that they were getting a very limited picture of what judges actually did on the job. Some members voiced skepticism about the process, arguing that court watching required them to observe judges for very long periods of time and consumed too much time during the work week, thereby limiting participation to those who were not working. They also pointed out that the roles of judges are circumscribed by the legal system itself because trials are essentially conducted by attorneys. Since judges are only involved at a relatively few decision-making points during a trial, court watchers are not able to observe much of an individual judge's performance during the time they are observing the trial.

Other members thought the court watching process was well done, but were perplexed about how to transmit what they observed into some type of quantitative data that could be compiled and compared with the data collected from surveys. The members, as well as a few judges, also commented on the problem of weighting the evaluation data. They suggested that a court watcher who subsequently participates in the overall evaluation of a judge might be unduly influenced by the experience in court. In other words, observing a judge

for a few hours might have a more significant effect on the individual observer than reading the ratings of judges by lawyers who appear before the judge frequently.

The committee decided that it would take an inordinate amount of time to observe a judge during the course of even a moderately lengthy trial. Members also pointed out that watching one judge for a day might not be very meaningful, depending upon the types of cases and the difficulty of the proceedings. One member, in describing his experience, said:

I watched one judge one day for about three hours. It had been years since I had been on a jury, so [my experience] was this relative to what standard? Was he good or bad? I tried to fill out a qualification sheet and I labored over that. It was a tough one. [The judge] only comes into play through necessity. Is it a good day or bad day as far as the demands on the judge and how does it relate to other judges and what are the standards? [Maybe we need] one person becoming an experienced court watcher and doing that one task for all the judges.

The committee discontinued court watching midway through the evaluation program. This type of evaluation was not very productive and required more time and more observation than members could afford to give. Moreover, the committee concluded that when court watching is used, a judge should be observed by more than one observer, a condition that would require even more time from citizen participants.

Interviews with Judges

The last phase of data gathering involved interviewing each of the judges in the program. All of the judges were interviewed by the committee except for one who was located a

considerable distance from the site of the interviews and had not been able to participate in all phases of the evaluation.

Committee members agreed that the interviews would be as informal, objective and fair as possible. Members were supposed to keep their own notes, which could be discussed in between interviews. Committee members hoped to elicit the views of judges on a variety of topics while avoiding "argumentation." Members of the resource group were invited to attend as observers, but they did not actively participate in the interviews. All of the committee members did not participate in all of the interviews.

An interview questionnaire or guide was prepared prior to the interviews with the judges. Judges were told in advance what the interview would cover, although the committee voted not to give them copies of specific questions prior to the interview. Letters describing the interview process were sent to the judges before the interview. The letter included a copy of the bar poll results, and judges were told that weaknesses or deficiencies identified in the poll might be discussed during the interview.

The committee decided to conduct a mock interview with a judge from outside the district before interviewing the judges being evaluated. The appellate court judge working with the committee as a resource person agreed to participate in this process. The mock interview revealed some major flaws in the interview questionnaire and resulted in a complete revision of the initial draft of interview questions.

The final interview questions, which are reproduced in Appendix J, covered four areas: management, relationship to the public, sentencing, and attitude. The management questions dealt specifically with techniques that the judges had adopted to expedite or accelerate their docket. Judges were asked to comment on their skills at managing a docket, the use of their time, and methods for reducing the cost of the judicial process. The questions on the relationship of a judge to the public focused on how judges might be affected by public opinion. Judges were asked what misconceptions they thought the public might have about the judiciary and the judicial process. They were also asked whether or not they believed the media was fair in its treatment of judges.

The sentencing questions involved a discussion of sentencing philosophy. Judges were asked how they arrived at a sentence within the presumptive range and whether or not they felt the ranges established by the legislature were appropriate. Several questions about a judge's role in sentencing were aimed at determining whether or not judges viewed sentencing as a creative opportunity to be a "force for good in society." Other questions dealt with the appropriate level of sentencing, how judges decided when someone should be put on probation, and how jail conditions might affect sentencing. Plea bargaining was also raised as an issue as was the defendant's ability to pay when imposing fines.

The last section of the interview guide focused on judges' attitudes. Judges were asked to describe their

strongest and weakest points in terms of their judicial performance and to explain what aspects of judging were most rewarding or most disturbing. Other questions dealt with how judges might improve the judicial system, how they coped with stress, to whom they were accountable, and the types of outside interests or activities that they liked to pursue. Judges were also asked what they thought was the most important thing voters should know about judges before marking their ballots.

As might be expected, individual committee members demonstrated considerably different skill levels during the interview process. Some members had experience in evaluating employees or subordinates. Others had never done an evaluation before. Not surprisingly, questions from members of the committee varied in sophistication and content. Committee members also tended to form questions based on their experience in earlier phases of the project. For example, members who had been involved with the Arapahoe County bar poll tended to pull their questions from survey data.

The interviews produced some of the most controversial and problematic issues during the evaluation. For many members of the committee, the interview was the most important and influential part of the evaluation process. The interview was the first and only contact many members had with the judges, especially for those not involved in court watching, and the first time they could compare statistical profiles with real people. Because most members were involved, the

committee was able to obtain more pertinent information from the interviews than if only a few members had conducted the interviews and provided the information to the full committee. The interviews helped committee members get a handle on the personality of a judge, although some members felt that it would have been better to observe the judge in his courtroom rather than interviewing the judge.

From a different perspective, some of the resource people who sat on the sidelines during the interviews felt that the interview process was not particularly effective. They believed interviews were the weakest parts of the process, primarily because a judge (or any person for that matter) being interviewed would tell the evaluators what they wanted to hear. As one resource person commented, "at the end of an interview, all of these guys looked like good guys. They are all basically kind of good guys, but it didn't give the committee any more to really consider."

The questions used in the interviews came under particular criticism. Some observers thought that the questions were not well formed, and, that it might be better to use questions prepared by an outside group rather than coming up with new questions each time an evaluation is done. Judges reinforced this idea when they suggested that the evaluators did not know much about the judicial process. Other judges felt that the interviews were biased because of information that had been gathered by committee members in advance of the interviews. At least one judge said he could tell where the

committee had obtained critical comments about him because of the nature of the committee's questions.

Committee members also observed that judges would often have differing views about the same question or issues and, as a result, they became frustrated when trying to compare judges with performance standards. This sense of frustration is captured in the following comment.

One of the questions we asked the judges was what innovative techniques were they doing to help the docket. It was interesting to hear different responses in terms of how they thought they were being effective. One of the judges volunteered that he did not keep his clerk in the court. He felt the clerk was more valuable sitting in the office. Yet another judge said that the clerk should be in the court all the time. How can you have such a diverse point of view in the same judicial district? Both of them were bragging about what great docket control they had.

Certainly, the interviews became many things to many people. Some committee members saw the interview process as an opportunity to probe for specific weaknesses. As one member observed:

I would say that the [interview and data] were about equal [in importance] . . . because you could use the data to confront the judge with what were perceived weaknesses and very often get a clue to why those weaknesses appeared or maybe even a defensive attitude from his answer with respect to those weaknesses perceived in the data. I felt they were both equally important. I would not have wanted to have one without the other.

Others viewed the interview process as simply an opportunity to become acquainted both with the person and

with the judge's philosophy. Thus, many of the questions during the interview were philosophical in nature and were designed to get an indication of the type of person under the robes. Flexibility was the rule, and while a list of questions was available, committee members could ask judges about anything during the interview.

The mixed reactions to the interviews could have been anticipated since it was the first time that judges had really had an opportunity to sit down with their evaluators and the only time at which all of the evaluation information had come together for the committee members. It was a valuable exchange of information, but one that raised disturbing questions for all of the participants. Committee members and resource people alike agreed that the interviews were useful and that many refinements were needed in order to avoid problems such as those identified by the judges.

In conclusion, the evaluation methods used by the committee were designed to gather as much information as possible about the performance of individual judges. The committee characterized this approach on a "multi-based evaluation with multiple purposes." While the methods produced some very useful information, the breadth of the data collection effort created some significant problems. In the absence of a firm set of evaluation criteria, many of the methods or instruments contained overlapping questions, a problem that made the subsequent analysis and interpretation of data more difficult than it needed to be.

Administrative Statistics

The committee decided early in the evaluation program that it wanted to use caseload statistics maintained on a routine basis by the judicial district administrator's office or the state court administrator. The committee contacted the district administrator and learned that the only statistics kept by his office were the statistics compiled in the district's year-end report. The 1983 report (and the report ending in 1984) contained statistics on only three items: the number of jury trials per judge; the number of filings per judge; and the number of dispositions per judge. The annual report compiled by the state court administrator for the Colorado Judicial Department contains only aggregate statistical information for judicial districts.

This limited caseload information did not provide very useful data about the performance of individual judges. Committee members realized that the nature and types of cases that a judge may hear during any given period of time may vary considerably from judge to judge. The outcome of this brief incursion into administrative statistics was the committee's decision not to use this information extensively in the evaluation. As a result of this experience, committee members repeatedly identified the need for routine or basic information about a judge's workload as a major problem in the administrative system.

SECTION FIVE

An Assessment of the Program

The citizen's committee encountered several problems during the evaluation program, ranging from the reliability and validity of evaluation techniques to the utility of evaluation data and final results. Many of these problems could have been anticipated given the experimental nature of the program, and they are problems that are common to most, if not all, evaluation programs.

The committee grappled with two problems related to the credibility of an evaluation process conducted by an inexperienced group of lay citizens. One of the problems with credibility grew out of the concerns of judges about the objectivity and fairness of the evaluation methods. Judges were so concerned at one point that they delegated one of their colleagues to meet with the committee to discuss the way in which the juror questionnaire had been designed.

The other credibility problem proved to be a major stumbling block for the committee. This was the problem of dissemination--the ability of a citizens' committee to communicate with the public about its findings and to convince voters and other influential political groups that

it had developed a worthwhile and trustworthy product. This issue goes to the heart of judicial evaluation and creates a series of difficult dilemmas for judges and citizens. The problem is compounded by the fact that few evaluation programs in the private sector, where much of the research in performance evaluation is being conducted, have anything comparable to the public aspects of judicial performance evaluation.

This section will briefly consider each of these problems, first in terms of the evaluation and measurement difficulties identified by the committee, and then from the perspective of the judges and their overriding concerns about fairness and objectivity. The concluding part of this section deals with the unusual problem of dissemination.

Problems in Gathering and Using Data

Committee members were attracted to different aspects of the evaluation process. Some members concentrated on one part of the process or a specific evaluation method to the exclusion of other methods. They became specialists in using particular instruments and analyzing the data generated by those techniques. To some extent, this situation resulted from expediency and the logical need to assign committee members to specific projects. The final outcome, however, was that committee members were not equally familiar with all of the evaluation methods. Their comments and conclusions at the end of the project tended to reflect their experiences

with specific instruments or approaches rather than a good, overall understanding of the evaluation process. The members that did court watching, for example, knew about the strengths and weaknesses of that process, but did not know much about the bar poll. Those involved in designing questions for the bar poll and analyzing the survey results tended to place a high value on that particular data.

This approach made the process of aggregating the data extremely complicated and, in the eyes of some participants, created a very "imprecise tool" for evaluating judges. The problem became more acute as members tried to organize and assimilate the huge quantity of information generated by various surveys and interviews.

Committee members sifted through the material in different ways: some used the interviews to finalize their impressions about individual judges; others tried to reduce all of the evaluation information to a single summary sheet or matrix. Most members tried to analyze the information before the interviews were conducted so they could ask specific questions of judges or have judges respond to criticisms about their performances.

The committee also raised questions during the evaluation about the reliability of the information it produced. It realized that a one-shot evaluation, even where it is based on an aggregation of data from different sources, has significant limitations. Many resource people and a number of committee people suggested that evaluation data should be

collected on a more continuous basis, with regular "quality checks" run throughout the years in between formal evaluations. Committee members suggested that once evaluations are considered routine, then they should be conducted yearly for all judges in all the districts and not just at election time.

Before the program ended, committee members approached the administrator of the judicial district to determine if an ongoing process for judicial evaluation could be developed in the courts. They envisioned a model process that the district could implement by itself to accumulate facts and opinions automatically about a judge's performance throughout the two-year period preceding a general election. Members believed that statistical information is kept by the Judicial Department in so many different ways that it is difficult to obtain data concerning a specific judge. They felt that evaluation information should be obtained from people who are in contact with the judicial system on a day-to-day basis. Even litigants were perceived as useful sources of information, regardless of the outcome of their cases, because they could describe how they felt about their day in court.

The committee members recognized that they had been too involved with the data, possibly to the exclusion of more profitable committee activities. Some members felt that it was important to be involved in the design and collection of data, but most saw the value in having an outside resource group that could be entrusted with the task of obtaining

objective information about judicial performance. They suggested that the resource staff could be expanded and restructured to include people with research skills, then, as one committee member put it, you could have the proper combination of information "by design rather than by accident or fate."

This change would solve another problem involving the tendency of the committee to quantify all of the evaluation. Much of the committee's data had been reduced to statistics, and some members were concerned about developing statistics that the public would not understand. As one member observed, statistics do not tell the whole story about judicial performance:

I really think you're barking up the wrong tree in trying to evaluate judicial performance in terms of statistics. If you had a situation where every judge was doing exactly the same thing with the same docket, which in and of itself is virtually impossible, [then you might be able to use statistics.] Even if you were to construct the same docket for every judge, one judge might get some very difficult cases [that are] highly adversary and [that] takes substantial time to try . . . You have to remember that the judge is not the only drummer. The lawyers basically manage the litigation . . . I don't think there is any way you can measure production by statistics. You might be able to if you want to sit there and put a time clock on a number of hours [a judge] reports for work a day . . . Statistics in my judgment are basically meaningless. It is highly subjective as we've seen. What makes a good judge and how do you find it out . . . is a highly subjective thing in terms of what you are looking for and in terms of the opinion of those you are asking.

The pressure to obtain quantitative information about judicial performance was equally strong, as illustrated by the following comment from another member of the committee:

I disagree with what you are saying. I've heard a lot of times that no body can evaluate teachers because what they do is so subjective and so different and each teacher is a unique person . . . I think that these kinds of things can be done. If we couldn't evaluate even such a thing as people's attitudes, there is a whole field of research that has been done on evaluating people in terms of attitudes, so people who say it can't be done have not dealt with things like empirical indicators of people's behavior. You put a lot of emphasis on the interview. I did not. I think it is important that we interview the judges, but we are getting a judge at one time at one shot for an hour to an hour and a half. And I did a lot of court watching and I thought that was minimal. I got a lot out of it myself, but I would not use it above the data, as bad as the data is, what else do you have? What is better than that . . . I don't believe that it is unrealistic or unreasonable to assume that we can in some way get some data that will tell us something.

Once again, countering the argument that statistics really can't prove the quality of a judge, committee members argued that if you can't use some statistics then it is impossible to evaluate performance.

Everybody knows that you cannot measure fairness as fairness. It is a concept, you can't do anything with that. You have to operationalize it. So what does fairness mean? So when lawyers respond to whether or not this judge is fair, they are using some empirical indicators of that. What does he do that would give you the idea that he is

a fair judge or that he is a dedicated judge? These are empirical things. You can get data out of that. If you couldn't do that you couldn't measure anything about human behavior.

Judges' Concerns About Evaluation Methods

The judges' concerns with the evaluation focused on how questionnaires were developed and the use of evaluation data. Judges were especially concerned with the usefulness of the data, concerns raised by the committee members were similiar, albeit couched in different terms. Was the data accurate and did it reflect what it was intended to measure? Did the instruments actually measure the performance of a judge?

Colorado judges had previously expressed similar concerns about performance data. In a 1981 study of judge's attitudes toward performance evaluation in Colorado, researchers concluded that a majority of judges perceive evaluation as necessary and capable of providing useful information as long as the evaluation process is reasonably objective. Perhaps more important in terms of the present study was the finding that judges appeared to support the idea of incorporating various methods and including different groups in the evaluation process (Sterling, Stott, and Weller, 1981:424).

The ten judges who participated in this evaluation wanted to know how the data was collected and how it was going to be used. Would it be collected objectively? Would

the data actually show judicial performance? Several times, judges talked with the committee about these issues, and the same issues came up during the interviews after the evaluation program ended.

Judges expressed concerns in direct proportion to their familiarity with the evaluation methods and the resulting data: the more they learned, the greater their concerns and questions about procedures. The judges' interests focused on the more visible evaluation methods--those with which the judges were better acquainted like the bar poll, the juror poll, court watching and the interviews.

Judges had mixed views about the bar poll. Some felt that the committee relied too much on the bar poll, especially during interviews with judges when the committee seemed to concentrate on the weaknesses identified in the bar poll. Other judges saw the citizen's evaluation as a better process than the bar poll because it gave judges an opportunity to talk with the evaluators face-to-face and allowed input from a much larger group of people who came in contact with the judges.

A few judges were critical of the citizen's evaluation because they believed that an interview with a district attorney or public defender was given as much weight as the entire bar poll. They suggested a weighting system for the responses. Other judges observed that the committee's recommendations followed the results of the bar poll with only one exception. This raised some questions in their

minds about the need for such an extensive evaluation by the citizen's committee.

Juror polls were viewed with skepticism by judges, even when some judges had used such polls before. At one point the judges were so concerned about the juror polls that they sent a representative to the citizen's committee to comment on that particular form. The following comments indicate the extent of their concerns about this issue.

[S]ome of what they were doing just obviously was going to lead to information that would be valueless and we wanted to make sure that they understood that it was valueless. The principle point that came up before he went down to talk to them was the questionnaire being distributed to the jurors. The jurors did not have enough information to answer some of the questions, so if the committee got an answer from a juror, they had to understand that the answer was not worth anything because the juror didn't really know what they were saying. The only one that pops to mind when I say that was the question about [the judge's punctuality.] Because of the hundreds of reasons why a jury trial would be delayed that had nothing to do with the judge and yet because the judge cannot tell a jury [of these reasons, he] is the one who gets, "no, he is not punctual" on the questionnaire. The jurors just do not know enough to answer that question.

Judges conceded that while they have problems with court watching, they were not adverse to having court watchers since they are exposed to constant public scrutiny any way. One problem they observed involves the training of court watchers. Observers need training so they can recognize differences in types of courts. As one judge explained, the differences between district and county courts are very important and often overlooked by court watchers.

I found a basic problem with the committee's approach in not segregating county and district courts because many of the questions they asked could be answered differently depending on which court you sit in. Now, for example in the county court, the judge sits there all day every day and works with masses of people, many of whom have no lawyer . . . A district judge very rarely deals with pro se people. It is a more technical setting at all times . . . The county judge has a very narrow range of discretion in everything he does legally, but a very broad range of discretion humanly [or] publicly in . . . dealing with a case.

Concern was also expressed for the ability of court watchers to become knowledgeable about the courts.

I would like to see knowledgeable court watchers. I know you can't expect lawyers to give of their time, but the lawyers who vote on the bar poll are lawyers who participate in proceedings . . . to really qualify surveillance it has to be [by] someone knowledgeable . . . the person who came to observe my courtroom was not really sure what was happening. When he told me the day that he had come down, I was able to determine it was a motion docket . . . he didn't seem to understand what was happening in the courtroom, which is understandable and fine as far as public education is concerned, but as far as meaningful surveillance of a judge, I think it should be [by] someone knowledgeable.

Still another concern involved the brief exposure that the committee members received in the courtroom.

The committee had no comprehension of a judge's decision-making process, the fact that he has to write rulings [and make] written orders. We do an awful lot of work on motions to dismiss and so forth. They are all very important. It is a fallacy to think that the only thing that is important in a judge's life is the trial of a case.

One judge was dismayed to learn that the person assigned to observe his court ended up evaluating the referee. "Quite frankly I knew when the court watcher was there, but I don't remember seeing them in my court. I saw them in the referee's court. I am not sure he even came to the right judge. I think I saw him look in the window, but I know that he set in my referee's court. I was concerned about who he was watching."

Several judges commented on the need to give more attention to the design of questions and the relevance of the questions. They expressed concern about inappropriate questions and questions that didn't seem to relate to any specific area of judicial responsibilities. They suggested that the committee should pay more attention to identifying what it was they really wanted to know in the evaluation process and correlating the questions in various survey instruments, the letter sent to judges in advance of the interview, and the interview questions. The irrelevance of some questions may have been fostered by the committee's lack of understanding of the judicial decision-making process, a view summarized by one of the judges in the following comment:

I felt that the questions were the questions of lay people, and it was an educational process of the committee more than a true inquiry into the judge's role or the judge's particular person. But I didn't fault them for that because I felt it was an initial step, and it was a wonderful beginning of a communication between outstanding members of the community and the judge. I think that is fine because we don't have that now that

we are out of politics. Where it used to be that a judge would go face the community regularly and make his pitch and hear the complaints, establish rapport. Now the judges don't do that.

Another judge felt that the committee was predisposed to ask questions about things that were not necessarily relevant to an evaluation of judicial performance, especially in the area of sentencing. Judges had hoped that they would be asked about other topics, such as their views about life in general, and the judiciary, in particular. They became skeptical about the fairness or objectivity of the evaluation process because of the committee's preference for certain questions. A few judges doubted that the committee could approach the task in an unbiased way and suggested that the committee should have more advisory members who are practicing attorneys.

I think my initial concern was that the group doing the evaluation was genuinely setting out to do it objectively, and once those fears were allayed, I think I didn't really have any concerns about it . . . I think the group was trying to do a very objective and very impartial job. They were not a group setting out to grind any particular axes such as we see [where] the latest presidential proposals for cabinet positions are being evaluated by some extremely conservative right-wing groups, [that] are going to be publishing their evaluation for the senate to take into account in confirmation [hearings]. That kind of a group would just be a terrible thing to do an evaluation of judges, if we were being evaluated by any one of a number of the citizen's groups that take particular positions. So that was my biggest concern.

Judges had mixed responses to the interviews, but in general felt that the process was very successful. The interviews provided the first opportunity for them to come face-to-face with the evaluators, and some judges were pleased with the process and felt that a good exchange had occurred. Some judges reported serious problems with the interviews. One judge explained that he felt his interview was more of an inquisition rather than an exchange of information. On the basis of his experience he concluded that the evaluators were fishing for a particular weakness and that they violated their own policy by revealing appellate court comments. The judge suggested the committee should screen its members to make sure that they have not had experiences that would cause them to be biased against a particular judge. Another judge pointed out that the interview was uncomfortable because judges were dealing with nonlawyers "who have their own thoughts or hangups about what they want to talk to a judge about." From his perspective, a bar poll was preferable since it was based on the responses of knowledgeable people.

One final problem involved the confidentiality and credibility of the sources of information. One judge pointed out that he could tell where some of the comments came from in the final press release because of the types of questions that he had received during the interviews. He suggested that evaluation should be more of a committee product rather than such a heavy reliance on one person.

The credibility issue was raised by judges concerned about both the sources of information for the committee as well as the committee's final conclusions. One judge pointed out that he had been rated very low on his physical health. He said that he hadn't missed a day in court for many years and could not understand why he received that rating. As a result, he and other judges who know of his excellent physical health were very skeptical about the overall ratings. Other judges commented on their ability to identify the sources of negative information, not because the committee had divulged the identities of their informants, but simply because they knew who the people were in the court system that were constantly criticizing them. This raised a concern about the weighting placed on any given individual's evaluation of a judge.

The Problem of Dissemination

The final outcome of the evaluation was disappointing to many participants who had hoped that their efforts would produce a comprehensive evaluation of individual performance and a more significant and visible effect on the election. The committee had worked hard to gather a large amount of information about the performance of individual judges and yet there was no direct correlation between the evaluation and the election results. All of the judges standing for retention were returned to office with similar numbers of votes or similar voting patterns.

The members were not discouraged by the outcome; they simply concluded that the evaluation had a minimal influence on the election. Most were enthused about repeating the project or replicating it in another location. All of the members interviewed indicated that they had gained a great deal personally from the evaluation program. Members who had been negative about the judiciary had a greater understanding of the judiciary and the individual responsibilities of judges.

Other participants felt that the process of evaluation was valuable to the judges if not influential in terms of the retention election. The idea that the evaluation might have influenced the election was not entirely rejected.

Some suggested that the committee should not have expected a major impact from what turned out to be a positive evaluation.

The fact that the committee recommended that all judges except one be retained, may very well be translated into a higher percentage of "yes" votes in 1984 versus 1982 and 1980. Also you have to compare with the other districts across the state. I think it is too early to say that it didn't have any impact because we are falling into the same mistake again. The impact was really positive because the committee's report, was, for the most part, positive. Maybe it had a positive effect.

Members also pointed out that the election results for a judge who had received adverse publicity was about the same as the rest of the judges. The judge had received a good evaluation and members had spoken favorably of him during

presentations to community groups. The fact that the judge did not do worse was cited as a positive outcome of the evaluation.

Members of support groups and resource staff were more positive in their overall assessment of the program. They pointed out that the committee tried to be thorough and objective. Many felt that the evaluation did have some effect on the votes that would normally have been cast against judges. Gathering statistical information to support this point was problematic, but they argued that the appearance of committee members on radio shows, at breakfast meetings of community organizations, and in talking with friends and associates, had to have some effect on the election. In addition, members stressed that one of the more important effects was awareness on the part of the judiciary that it is being evaluated by the public. The view that regular feedback should be important to a judge was shared by committee members as well. While the project started out as a means of providing voters with information by the time it ended it was perceived as an important means of providing judges with feedback about their behavior and conduct.

Judges also expressed dissatisfaction with the results. A common concern was that the final evaluation did not provide much feedback for individual judges. One judge expressed the problem this way:

[The committee] had information from a lot of different sources, and I would assume that in that information there were both positive and negative

things said . . . It might be helpful to the judge to have access to that information--just to find out--and maybe make it anonymous. But if they had input from lawyers that said such and such is going on, it might be helpful for the judge to know that.

Judges had hoped that both the evaluation process and the outcome of the evaluation would be more sophisticated. Again, their concerns centered on the expectation that more information would be forthcoming after such an immense evaluation effort.

I really felt that the three or four sentence report of the committee about each judge . . . to be much less than desired. I didn't think it gave a fair approach to each judge. It looked to most judges like they were looking for something bad to say about them as well as something good to say about them. The way certain things were phrased was such that it was difficult to even know what they were saying. I think they should have set out a format [where they] list either strengths or weaknesses for each judge in exactly the same format. They should not do it in the way they did which basically had just a narrative comment about each judge . . . I don't know who wrote those, but I really felt that they were poorly drafted.

Another judge, also commenting on the need for more specific information, suggested that the evaluators should use a series of scales to summarize the results from each of the evaluation sources. A specific quality or characteristic of the judge could be given an overall rating.

[It] might be more helpful to find out that [the committee] had gotten information from a lot of different sources covering a lot of different areas of influence, and to find out that almost all of those [areas reveal] a weakness. I think that would be valuable to a judge. I would like to know if someone felt that this was an area in

which I could improve because it may be something I have overlooked completely. From that standpoint, the poll was not very helpful to me. Maybe that is because they didn't mention anything in a negative sense. The paragraph on me was all positive so that doesn't give me much room to [identify] where I need to improve on things.

Still, judges were realistic and positive about the outcome. They perceived the process as an important development for the judiciary, even where the information released to the public and to the judges was quite limited.

I would conclude that [the evaluation] is a commendable process that is long over due. The public should be well informed when they go to the polls, but they should not be informed on the basis of four to five sentences of conclusions about each judge. The evaluation should be geared towards informing the public, not advising them of opinion based on information they gathered.

Those judges who recognized the experimental nature of the program tended to be more philosophical about the outcome. Some thought that while the evaluation was inadequate from a personal point of view, they also felt that "it was very prudent because the public tends to disregard complex reports or comprehensive statements." It was prudent of the committee to word their conclusions succinctly because "one-liners can be comprehended."

Finally, one potential effect of the evaluation did not materialize. There was some fear that performance evaluation would influence the decision-making processes of the judiciary, that is, would cause judges to act differently. This was not the case, however. None of the judges felt they

were intimidated by the evaluation. Some described it as a stressful experience, particularly if they did not receive an enthusiastic evaluation, but all of them seemed to understand clearly the differences between personal conduct in the courtroom and legal decision-making. As one judge explained the difference:

We are not supposed to be swayed by public clamor or public opinion. I hope we are all strong enough to make our decisions based on the law and the evidence and not what the public clamor is demanding. On the other hand, I think that we can always look at our own performance other than in decision making--thinking [about] how we treat the people who are working for us, the victims, the lawyers, [and] how we conduct ourselves.

Other judges pointed out that the evaluation was no more threatening than running for judicial office in a contested political election. They believe that evaluation is inevitable. Several judges pointed out that because they are no longer in politics that people have begun to realize they don't know anything about judges, since the system is essentially one of life tenure, which, from the perspective of one of the citizens, is the primary reason to evaluate the judges in the first place.

One judge talked about a renewed effort to be a good judge and to treat people properly.

I think that we need to constantly work to improve our performance of what we do and to improve the public's understanding of what we do and their perception of what we are doing. I think a lot of the problem is just a lack of understanding of what we do. I don't say that

critically. It is just that people outside the judicial system do not have a lot of opportunities to really know what we are doing. It isn't possible to relate that to any outsider.

Other judges admitted that it should be "par for the course" when judges take office to realize they are going to be evaluated, criticized, and told what is expected of them.

Dissemination was acknowledged by everyone to be the weakest part of the evaluation, and criticism of the dissemination program took many forms. Committee members felt that they ran out of time and motivation, the summer hiatus having cooled the ardor and enthusiasm of many committee members who came back after summer vacations to talk about methods for disseminating the results. Others pointed out that it was difficult for people who had devoted so much time to the evaluation process to make a similar commitment to contact the media and others about the results, an observation which led to a recommendation that the committee should be divided into different teams for distinct purposes. A future evaluation project could separate the evaluation process from the dissemination of the results, with one group or committee working on evaluation and the other concentrating on dissemination.

There seemed to be several problems with communicating with the voters. To a large extent, the dissemination of evaluation results was dependent upon other organizations, including the press, that had to be convinced that the committee was nonpartisan and competent. Perhaps even more

importantly, the positive outcome of this evaluation was not necessarily newsworthy. One member expressed the problem this way.

I don't think that if the committee said the judges are satisfactory, which is essentially what became the committee's bottom line . . . that's not news. Public servants doing their jobs, that is not news. Who wants to read that? Public servants caught in scandal or public servants drunk and disorderly, that's news. The public only reacts to news. . . We should think about what impact the committee had on the judges and the department and the district and what impact this system might have in the future in the event of a really unsatisfactory judge.

Judges were disappointed in the dissemination process also. They pointed out that not only was there a problem with informing the public, but the judges themselves had not been informed adequately. Some had not been aware of the results until the preparation of the press release. All agreed that more needs to be done to get the word to the public.

I think [the committee] needs to look again at the process of making the results public. I think it ran into some very definite biases in the way the media perceived the results. The media did not want to, at least some of the media organizations, did not want to portray to the public that here is a citizen's group that says we have judges who are basically doing a good job. [The committee] should have anticipated that it might run into that and maybe tried to create a higher profile for the way they released their results.

Public funding was viewed as one way of improving the dissemination by some judges.

I think the only way [the results] can be disseminated appropriately is through some type of funding, and it seems to me that the only funding that would be appropriate would be public funding. I frankly think that if they enact such a program of evaluation [they should] also enact some type of funding mechanism to publish the results so that the citizens would know what these results were . . . That is the only way to get in the paper it seems to me. A few days before the election, the only things that are listed or read are in fact things that are paid for.

Committee members also observed that dissemination was not necessarily the only product or outcome of the evaluation. In assessing the effects of the evaluation, they pointed out that a report from an evaluation committee could be reassuring to the voters even if it made no difference in the election. Voters should feel confident that even if they do not know the judges intimately that some responsible group in the community has looked closely at judicial performance. From this perspective, the committee's responsibility was not to educate the public as much as it was to evaluate judges. If a judge is not qualified, then the committee or committees like it will have to deal directly with the problem of informing the public.

Finally, the amount of public exposure to evaluation results may be directly related to the credibility of the committee. The committee had no credibility to begin with, and it can only get credibility by improving and repeating the program. Members suggested that the goal of a citizens' committee should be to establish enough credibility that people would turn to the committee for information as they do.

for other organizations that provide information about political candidates or ballot issues.

Although dissemination proved to be the weak link in the pilot program, it was not for lack of trying on the part of the committee. The committee spent much time discussing dissemination and in designing methods for getting the information out. Many different media sources were contacted during the project, and the smaller local newspapers certainly gave the program considerable attention. Members appeared on radio and television programs and at speakers groups. Instead, the problems with dissemination centered on timing and "newsworthiness." The recognition of this problem led to the unanimous conclusion that dissemination would have to be carefully addressed in any future evaluation programs.

Overall, the evaluation process proved to be the most difficult and complex part of the program. The committee decided very early in the program to gather as much information as possible about the judges. This decision led to the creation of many different types of formal and informal data gathering techniques that produced more information than the committee could effectively assimilate. The resulting complexity--a factor frequently present in even simple performance evaluations--led to an outcome much less sophisticated than the process itself. While this effort was disappointing to some, it nonetheless was a valuable experiment in terms of future evaluation programs.

SECTION SIX

The Power of Citizen Involvement

The organization of the citizens' committee was one of the major components of the pilot program and the key reason for its success. While the evaluation and dissemination phases of the program encountered serious problems, the manner in which the committee was organized, staffed and administered worked very well, perhaps better than might have been expected given the limited resources available for the program.

The committee's organization was so effective that many participants have wondered whether or not a similar committee could be organized under less favorable conditions. With this question in mind, this section considers the reactions of the participants to the organization and operating procedures of the committee. The observations described here are based on interviews with committee members, resource staff, and judges whose comments provided critical insight into the committee's operations, the evaluation process and the overall effectiveness of the program.

Key Aspects of Organization

The screening and selection of members had a profound effect on the committee, and the resulting diversity of membership was viewed by many participants as the most important feature of the committee. Members of the support groups involved in organizing the citizens' committee described the selection process as a "branching or tree system" in which community leaders were identified by other knowledgeable and well-known people in the community. Members were either known by someone at the institute or the college or had to be referred by someone contacted by one of these organizations. The result was a committee whose members had different backgrounds, values, and levels of interest in judicial evaluation, yet when taken as a whole formed a very action-oriented and committed group of people.

The committee's composition was also considered a key factor by the resource staff and, as it turned out, by judges participating in the program. The resource staff (which includes members of the two support groups) felt that the committee should be composed of people with different perspectives and skills who would be cautious in making judgments about people's careers. The committee was advised by the sponsors early in the program that it needed to be sensitive to people's needs and fears when conducting the evaluation and using the resulting data. Committee members reported that no one on the committee was looking for a scapegoat during the evaluation and, they viewed themselves as compassionate in their approach to the final evaluation.

To a large extent the committee's composition was seen as fortuitous by all of the participants. Some resource people suggested that the institute would be hard put to find a similarly talented group in other locations. This view was countered by others who felt that although luck was a factor in organizing this particular group, a similar committee could be organized in other areas. The general consensus, however, was that it would be harder to do a second time.

Committee members also believed they were fortunate in having a variety of people on the committee with diverse technical skills. They questioned whether or not they could have dealt with the huge amount of data generated during the evaluation program if they had not had members with skills in computer programming and data analysis. While it might have been better to have a group of resource people available for specialized functions, members of the committee were able to accomplish these tasks.

Another important factor in the success of the committee was its size. The final committee had thirteen members, all of whom were able to play active roles in the evaluation and participate fully in committee discussions. Committee members suggested that future committees might include as many as twenty members with the idea that fifteen members would be quite active. This number would be large enough to handle the committee's activities yet small enough to encourage discussion and debate. A fifteen-member committee would also provide an appropriate ratio of committee members

to outside resource people or members of support groups. The members observed that if their committee had been smaller, it might have been unduly influenced by the larger number of resource staff.

While diversity and size were significant strengths, the committee's lopsided social and economic composition was viewed as a significant weakness. By the time the project was underway, the committee was already aware that it would be useful to have committee members from more diverse economic levels. The members recognized that they needed to have a broader minority representation because the areas or counties within the 18th Judicial District have a more diverse ethnic population than reflected in the membership of the committee. Appearing before the Arapahoe County Bar Association, one member of the committee was questioned about the white-collar composition of the committee, and the subject came up several times in the debriefing session. Committee members would definitely change this aspect of the program in organizing any similar project.

Judges were concerned about the composition of the committee but for a different reason. One judge pointed out that the selection of an evaluation committee is not unlike the selection of a jury, that is, the person who picks the jury is very important in the judicial decision-making process. Judges want to be assured that committee members do not have any particular axe to grind or bias, an issue addressed earlier in this report. One judge went so far as to suggest that evaluators should be elected.

Participants viewed the role of the two support groups as essential to the success of the project. The Institute's role in organizing the committee was critical, and the community college's ongoing support of the committee and its ties to the local community were considered essential to the project. The number of support groups was not so important as the functions they provided. The Institute gave impetus and direction to the committee. It was familiar with the concept of judicial evaluation and understood the judicial environment. It knew the right people to call upon for assistance at critical stages of the evaluation program. The college fulfilled the maintenance needs of the committee. It provided secretarial support, duplication and mailing facilities, and places to meet that were readily available and easily accessible. It also worked closely with the institute in screening the original members of the committee.

The committee members also pointed out that the resource staff--people who did not necessarily belong to the institute or work for the college--also performed critical roles in advising the committee. Resource staff would meet with the committee but sit on the sidelines and not participate in committee decision-making. Committee members reported that they did not feel constrained or controlled by resource staff. They felt sufficiently independent to make up their own minds on critical issues, and they did not feel compelled to follow the advice and counsel of resource people. The one change that was suggested for future committees was the

inclusion of an active member of the press on the resource staff.

Evaluation Purposes

The citizen's evaluation program was designed to provide voters with additional information on which to base decisions in judicial retention elections. Although other purposes for evaluation were mentioned during the study, the committee accepted this goal without question. Many members were compelled by the underlying logic of the goal, that is, voters need to have adequate tools for assessing the performance of all public officials, including judges.

Committee members were quick to point out during interviews that they had often felt frustrated as voters when they could not assess the performance of the judges whose names appeared on the ballot. One member indicated that prior to the evaluation program the lack of information about judges combined with his anger about the courts in general made him vote consistently against all judges running for retention elections.

Judges also evidenced strong concern about the lack of information available to the public about the court system in general. Evaluation was viewed as one possible method of getting more information out to the public. One judge suggested that "as long as you have such a vast degree of ignorance by the general public as to what goes on in the court system, maybe it can reassure people that the system is working well. It can reassure people that [judges] are doing a good job."

Another purpose of the evaluation program centered on the need to provide regular feedback on performance to judges. The committee's perception of this need was reinforced by several judges who expressed an interest in obtaining regular feedback. One judge suggested the evaluation process should be two-fold in nature:

I think judges need evaluation for their own sakes, and, from a purely abstract point of view, I think that the best purpose of it is to assist the judge in knowing what kind of job he or she is doing and what improvements need to be made because that is going to have the biggest impact right away on the judicial process. The other function, as long as we are in an elective system, is that it can assist the voters in understanding who they should vote for or reasons at least for the casting of their ballots.

The view that evaluation has internal and external functions was shared by most of the participants by the end of the project. Committee members still believed that the primary purpose of evaluation should be to inform the electorate, but many recognized considerable value in the feedback function as well. Although not all judges agreed, many felt that the internal feedback process would be important whether or not the merit selection and retention systems remain intact in the state. One judge said that:

I think the chief purpose [of judicial performance evaluation] should be enhancement of the judiciary. I don't think the judiciary is unlike any [other] profession. That is, when you start you are green and inefficient relatively. After you have been there five years or some period, your efficiency will be markedly improved if you are working at it. Even if you are not working at it, just by virtue of going through the experience you are going to become more efficient. . . so I think that judicial

evaluation within the system helps enhance the judiciary by helping the judges with their goals of being more efficient and more just.

Still another purpose for evaluation related to management practices in the courts . . .Comments by several committee members revealed that evaluation was an accepted fact of work life in their own jobs or professions. Because they had to go through evaluations, they believed that everyone's performance should be evaluated. To a much lesser extent, judges also reflected their experiences with evaluation. At least three judges had been through formal evaluation programs in other settings such as district attorney or public defender offices. Judges and citizens who had some experience with performance evaluation were more inclined to accept the basic rationale for evaluation.

Notwithstanding the underlying justification for performance evaluation, it was clear during this program that judicial evaluation was seen as a method for preserving the benefits of the merit selection process. Although it was not stated as a specific goal, committee members frequently mentioned the need to preserve the merit selection process. Resource staff tended to see evaluation as an adjunct to the merit selection system, and from their point of view, evaluation was a method for letting the public back in to the judicial selection and retention processes. Committee members observed during interviews that their personal involvement in the evaluation of judges gave them a much

clearer understanding of the judiciary and the roles of individual judges.

This point of view can be contrasted with that of judges. Judges were uniformly in favor of the merit retention system but less enthusiastic about performance evaluation. Judges who had gone through the retention election process several times felt that they were fairly well known in the local community and were not convinced that evaluation had a place in the merit selection and retention system. Some judges believed that proper selection is the most important part of the entire process, and that if you get the right judge in the first place, the rest of the system will take care of itself. Other judges saw the need for greater public information and hoped that the evaluation process, if well done, would be a method of saving merit selection, especially in small communities where the political process was particularly threatening. Evaluation was thus perceived as useful to the judiciary from a public relations standpoint, especially if a link could be established between judicial selection and evaluation programs.

Internal Committee Functions

The committee's group processes and relationships worked with little intervention from the support groups. The committee had a sense of community responsibility, and members evidenced a "real concern and awareness of public interest." Committee members believed that they worked well together,

primarily because they had an interesting task involving the development of a prototype. In other words, the project was a challenge because it had not been done before.

The committee's decision-making functions worked well also. Committee members were able to make decisions promptly and move on to other tasks. Some members suggested that decision-making functioned smoothly because people were oriented toward a specific goal and they had to get the project done within a very limited time period. In addition, the committee managed to avoid internal political confrontations since individual members did not represent particular constituencies. The committee's professed goal was to provide an impartial evaluation of judges, and members tried hard not to project an image of partiality or partisanship. This was an important feature of the committee's decision-making and a critical reason the committee was able to obtain the cooperation of judges.

Interestingly, the leadership and goal-setting functions of the committee worked better than the support groups had anticipated. Although they were not quite sure what would happen when they formed the committee and held the first two meetings without a chairman, the support groups were pleased that by the third meeting the committee had selected a chair and began to handle its own internal processes. The leadership role became that of seeing that decisions were made when needed; otherwise, the committee had a tendency to "just keep rolling," a characteristic engendered by the task orientation of the group.

Participants were not conclusive in their opinions about what might have happened if a chair had not emerged and a plan had not been furnished by the committee itself early in the program. There was some feeling that an outside support group would have to furnish a plan if a planner or leader did not emerge as part of the committee's initial group process. Other participants concluded that replication of the project would be greatly assisted if written materials and a proposed plan were provided earlier in the evaluation process.

The Learning Process

The committee went through several learning cycles in its development. For the most part, committee members were not familiar with the judicial system and it was necessary to spend a great deal of time learning about the judges and judicial procedures. This process was viewed by committee members as being at least as important as the evaluation itself. Many members felt that only after learning what judges do and how the judicial system functions were they able to understand and respect the existing system.

After the evaluation, some judges observed that the committee might need to have additional resource people who are very knowledgeable about the court system. As one judge observed,

I think [the evaluation] involved an awful lot of hard work by the citizens doing the evaluation and ideally, we ought to have a situation where the

people who do the evaluation don't start from the level of ignorance about the system that this committee started from, because they took several months just to learn about the process. . . [if this]. . . has to go on every time, it means that the evaluation process is always going to require a very big time commitment and a lot of education on the part of the committee members before they can ever get around to the evaluation process. I am not sure that this is a good thing. In the long run, that may eliminate any persons [who] desire to work in that field if they know it is going to be that long and that involved.

Another judge echoed this concern for greater awareness on the part of individual committee members.

As far as next time, I would expect it to be somewhat more sophisticated, especially as to the people involved and their ability to learn about the system before hand. I think one of the problems of this type, and it was probably totally unavoidable, is that the people involved on the committee were people that were finding out about the court system for the very first time. Hopefully, next time some of those people might be available for this committee again and I would hope because of their experience would already know a lot more and have gotten over some of the misconceptions and problems that they had to go through in forming a committee that could rationally evaluate.

To the contrary, some members felt that it was better to begin a citizen's evaluation project with people who are essentially uninformed about evaluation or the judiciary. This would allow everyone on an evaluation committee to start from the same place. Others thought that it might be more useful to have experienced people on the committee, a view moderated by the fear that a person with too much experience might tend to dominate the evaluation process. Opting for an inexperienced committee, committee members concluded that

former members of committees should assist new committees as members of the resource staff.

Time pressures had a significant effect on the committee's activities. The entire process, exclusive of the selection of committee members, took seven months. Much of the committee's time was spent in learning and doing activities that would not have to be repeated for a new committee. Moreover, voting on the retention of judges took place during a time when people were not as available because of summer vacations, and the members concluded that the final evaluation should be completed at least two months before the elections. They also suggested that everything should be completed in May so that critical decisions would not have to be made during the summer months. Dissemination could then begin after the summer and two months before the actual election.

The committee members believed that time worked for and against them during the evaluation process. On the one hand, many decisions were made because of the time pressures. The committee responded to these pressures and kept things moving. On the other hand, time became a critical factor during the dissemination of the final results of the evaluation. The committee simply ran out of time, and the pressure to get something before the electorate in time for the election was felt by everyone.

Judicial Participation

Committee members felt that the judges involved in the evaluation were extremely cooperative. They attributed this to several factors. For one, the chief judge of the judicial district had been very cooperative in working with the members of the committee. His early commitment to the project--a decision that brought some strong reactions from his fellow judges--set a tone of cooperation that was recognized and appreciated by the committee.

Judicial participation was not entirely voluntary, however. While some judges welcomed the evaluation program, others felt compelled to participate for fear they would be singled out and identified for not participating. These judges felt that participation was not voluntary and they might not have participated in the absence of such pressure. As one judge explained, "The pressure was just the fact that they said they were going to do it here and of course our chief judge said all right you may do it here. He did not tell me individually you have to go do it, but if I had not, that would have been negative feedback."

Other judges felt compelled to participate because of their visibility in the community. One judge, who supported the evaluation in general but still felt pressure to participate, said: "I think that some judges perhaps who had not been the subject of public attention could refuse to take part in [the evaluation] and just say that they didn't have confidence in the evaluation group. [They could say] I'll

let you do an evaluation but I am not going to assist your efforts. But I felt, given my very high degree of public visibility, that I had to take part. There was no way that I could not." Another judge expressed his concern about a different kind of visibility when he said, "I felt no one knew me in Littleton. I am a judge in the 18th district, and yet I am basically a circuit rider out here in the country and I wanted the people in Littleton to know who I am. I wanted them to know how I approached my work . . . This was an opportunity for me."

Still others had more ambiguous feelings. One member of the bench who had been through evaluations as an attorney, said that he felt compelled, but that it was a willing compulsion. Other judges concluded that the only choice they had was whether or not they should go to the interview, and that the rest of the evaluation process was beyond their control.

In summary, all of the participants thought the committee functioned well during the evaluation program. People were dedicated, they carried out their assignments, they were interested in the project, and worked well together. The committee was able to work out organizational problems and work through its group processes. The support groups and the resource staff provided appropriate assistance when needed, and the various groups were able to retain their roles. From an organizational standpoint, the program worked better than the evaluation process itself, which, as previously noted, created some significant but not unexpected problems.

The organizational aspects of the pilot program proved that the evaluation of judges by lay citizens is feasible. Without really intending to do so, the program became an actual test of the theoretical structure proposed by the Judicial Planning Council's Committee on Judicial Performance when it recommended an evaluation approach based on a combination of citizen involvement and professional assistance. (See Appendix L.) The citizen's evaluation program went one step further, however. It demonstrated that the use of ordinary citizens in an evaluation program can be a powerful tool in accomplishing a number of related objectives involving local communities and their respective judges. In spite of all the methodological issues, the citizens who participated in the program came away with better attitudes about the judiciary, a more sophisticated understanding about complexities of judging, and a considerable awareness of the problems inherent in the evaluation of judicial performance. More importantly, they had the satisfaction of knowing that they were able to accomplish what they set out to do.

SECTION SEVEN

Conclusions

The people who participated in the evaluation--the resource staff, support groups, committee members, and judges--were all aware that they were taking part in a novel experiment. This was the first time that a group of lay citizens had conducted a comprehensive evaluation of judges standing for retention in a general election. While several states now administer major evaluation programs, no citizens organization had tried to accomplish a comprehensive evaluation along the lines described in this report.

The organization and administration of the pilot program was a success by any set of criteria. The purpose of the program was clear to the committee members, the task was defined, the committee was organized with a broad and diverse membership of capable people, and the group functioned well together. The support groups were essential to the success of the project and a variety of resource people were called upon to provide technical assistance during the program. The evaluation process itself posed difficult technical challenges for the committee members, but evaluation methods managed to work even when less than perfect.

As befits an experimental program, the participants frequently raised questions about the appropriateness and effectiveness of their procedures as well as the program itself. The supporting groups--alternatively acting as sponsors, technical advisers and interested observers--were anxious to learn if the evaluation program could be replicated in other judicial districts. Committee members were also interested in the conditions under which the program could be conducted in other locations. Observers and evaluators alike wanted the program to succeed, but they maintained a healthy skepticism about the usefulness of the program and a desire to know if what they were doing was worthwhile. As might be expected, the judges being evaluated had serious reservations and questions about the evaluation process. Still, they were willing to participate in the project and many of them saw the evaluation program as a possible means of responding to public criticisms about the judiciary.

Conditions for Replication

This study has focused on describing the program and explaining how it worked in order to determine the conditions under which the program can be replicated in other locations. The report was prepared as a case study in order to make generalizations about the program and to arrive at propositions that suggest something about the effectiveness of the program or the conditions under which a similar program might be improved in the future. The following propositions resulted from the study.

1. An evaluation program should fill a recognized need and should have clear goals related to its primary purposes and functions. The experience of this project suggests that it will be very difficult to maintain the enthusiasm of lay citizens and the cooperation of judges in the absence of a perceived need for judicial evaluation. In this case, the concept of judicial evaluation was wholeheartedly supported by the Institute, it was an attractive idea to the community college, and individual members of the citizens' committee could easily relate to and support the basic concept. To a lesser extent, judges also subscribed to the concept of judicial evaluation, primarily because of increasing attacks on the merit selection and retention system. Without this pressure, the need for evaluation would not have been as apparent and the goals of the evaluation program would certainly have been less precise and convincing.

2. The responsibility for evaluating judges should be placed on members of the local community. Although Colorado has a statewide judicial system, each judicial district has unique characteristics that tend to reflect community preferences. The evaluation of judges in the 18th Judicial District succeeded because the citizens involved in the project had a vested interest in the judges being evaluated. It may not be possible nor even desirable to organize the committee in exactly the same way in other locations, but there is no question that the evaluation process should retain its essential community orientation. By leaving the

decision-making responsibility in the hands of local members of the community, an evaluation program can avoid becoming "bureaucratized" as just another state program.

Committee members are particularly effective when they are drawn from the community itself. The 18th Judicial District has a diversity of courts and judges; it covers urban, suburban and rural areas; and its character and idiosyncrasies were well known to the legislators, judges and institute members who participated in organizing the project. For this reason, knowledgeable insiders played key roles in supporting the program and assuring that it succeeded. Not only did the organizers and sponsors know something about the community, but they knew whom to contact in the community when the program needed assistance.

3. The prerequisite of a successful citizens' evaluation program is a strong support group that can nurture the program at critical stages during its development. In this case, the citizens' committee had two sponsoring organizations--the Institute and the community college--that provided essential support yet allowed the citizens' committee to set its own course and to arrive at independent judgments about judicial performance. The two organizations performed complementary roles: the institute was knowledgeable about judicial selection and the court system in general; The college provided day-to-day support for the committee's activities. Both groups were familiar with the local community and could call upon a variety of resources to

assist the project. It is unlikely that the evaluation could have succeeded without the assistance of these groups.

4. The citizens' committee should represent the community at large and should be comprised of experienced community leaders with diverse skills and abilities. Careful attention must be given to the selection of members for an evaluation committee. In this project, committee members were contacted only after they were recommended or identified by community leaders. For the most part, members were people with considerable experience in the community, and they had already proven in other settings that they would be dedicated committee members once they committed to participate in an activity. Even though the evaluation program had never been done before, the committee members were strongly committed to the project from the beginning.

All of the participants in this program agreed that a citizens' committee should have a diverse membership. Members should be drawn from different economic, social and ethnic segments of the local community. At the same time, committee members must be chosen first for their individual performance and second because they happen to represent a particular portion of the community. This would reduce the possibility that an evaluation committee might break into factions over the evaluation results for judges who appear to represent particular constituencies.

5. The citizens' committee should be supported by a resource group whose members are knowledgeable about the work of judging, evaluation processes and techniques, data gathering and analysis, and public relations. In this evaluation program, the resource committee was drawn from members of the Institute, the community college, the administrative office for the judicial district, and the judges themselves. During the course of the project, it became more obvious that the committee needed greater assistance in designing and selecting evaluation methods and techniques. It also needed more help in gathering data and analyzing the final results. This type of assistance could have been provided by a resource group composed of technical specialists or experts.

6. An evaluation committee composed of lay citizens should concentrate on understanding the nature of judging, selecting appropriate evaluation criteria, assimilating evaluation data, and making judgments about individual performance. The committee, overwhelmed with a tremendous amount of empirical data by the time they reached the end of the program, perceived the evaluation process as an extremely difficult task. Committee members spent the majority of their time obtaining and analyzing the data, and they struggled with issues and problems related to measurement principles and evaluation techniques. The evaluation process could be characterized as a search for evaluation tools, and this produced considerable worry about the credibility of the evaluation program.

Yet there is another side to this story. Committee members learned by doing. Although they spent most of their time designing and implementing the evaluation techniques, by the time the program was over they were familiar with the strengths and weaknesses of each technique. Arguably, members of a citizens' committee should not be immersed in the evaluation process to the exclusion of other important activities, but they should be familiar with evaluation methods and techniques. One method for doing this would be to allow the committee to select specific evaluation techniques from a "menu" of suitable methods without requiring them to develop the actual questionnaires and survey forms needed in the process. The addition of personnel specialists to the resource group would also help facilitate the actual evaluation.

7. Evaluation criteria should be more precise and relate to specific evaluation methods. The information gathered during an evaluation should have a direct relationship to the criteria or performance standards used in the evaluation. The citizens' committee was not able to define evaluation criteria before it became immersed in designing evaluation instruments and gathering data. The final criteria were not selected until after the process had been completed. This meant that much of the evaluation data had limited value for the committee since the criteria that were constructed to measure were rejected after the evaluation was over.

Although there are two sides to this issue, committee members would be willing to accept a list of criteria from a reputable outside source. Most citizens groups will not have the time or inclination to become involved in the development of appropriate criteria. Projects like the American Bar Association's effort to produce evaluation standards may help solve this problem. At the same time, some committee members pointed out that it was only through the process of struggling with criteria that they came to an understanding of the complexity of judging. Regardless of who develops the criteria, there should be a close connection or linkage between the criteria, which should be fully developed at the beginning of the evaluation, and the final outcome.

8. Many sources of information should be used during the evaluation and appropriate instruments should be designed for each source. Multiple sources of information about judicial performance, if measured properly, will increase the credibility and usefulness of the final evaluation results. The citizens' committee decided to seek information from many sources, specifically court personnel, jurors, appellate judges, and attorneys, and it rejected the use of police officers, probation officers and social workers, although some members would tap these groups as well. The committee also did a great deal of first-hand observation and obtained statistical information from the court's administrative office.

The commitment to obtain data from multiple sources created opportunities as well as problems for the committee. Different questionnaires had to be developed for each source of information, and the resulting information was often complex and difficult to handle. This also led to repetition and waste. As one example, all of the questions on judicial temperament that appeared in different instruments should have been related to a single overall value for temperament. But the resulting profile of a judge was invaluable since strengths and weaknesses identified by several sources produced a much more credible and comprehensive evaluation than one from a single source.

9. Evaluation results should be published in relatively simple and concise formats for distribution to the public at large with more detailed evaluations provided as feedback to individual judges. The information produced in the pilot program was relatively simple. Although some additional information might have been provided, many participants felt that this format was preferable for distributing evaluation information to the public. On the other hand, a number of participants were persuaded that judges should be given more specific information about their performance. While informing the electorate was viewed as the major goal of an evaluation program, citizens and judges alike concluded that improvement of the individual performance of judges was an important goal and that the information provided to the public was inadequate as feedback for a judge.

10. The evaluation program should include opportunities for committee members to meet face-to-face with the judges being evaluated. A key decision of the pilot program was to interview judges. The original plan called for an interview with each judge following the completion of data gathering. The committee conducted a test interview before the final interviews. The interviews became the focal point for the evaluation process. Many committee members had not had an opportunity to observe the judges being evaluated, and their perceptions of the judges were quite abstract. It was not until the evaluators came face-to-face with the judges that the evaluation process took on real meaning. The interview also offered judges an opportunity to meet the evaluators and to share their ideas or concerns about their roles as judges.

11. Evaluation results should be disseminated in a separate but parallel public awareness program. Dissemination of evaluation results is a critical part of an evaluation program that requires careful planning and implementation in order to be successful. In the pilot program, the committee literally ran out of time and motivation. The bulk of the committee's effort was devoted to the evaluation process itself. Evaluation started in the spring of 1984 and continued through the summer when many committee members found it necessary to attend to family activities. It was difficult for the committee to return

after the summer and to regenerate its enthusiasm about the evaluation program.

The dissemination process proved to be the weak link in the evaluation process, probably because people lost interest. Many attempts had been made to keep media representatives advised of what was happening, but at the end of the process there was very little interest in the actual findings of the committee. Other organizations had to be convinced that both the Institute and the citizens' committee were nonpartisan groups. Some political organizations, especially those with wide contacts in the community, were reluctant to distribute information that they had not been involved in producing, and, therefore, could not guarantee would be free from partisan comments.

Several ideas were suggested for improving the dissemination process. One was to make sure that the evaluation program has sufficient lead time to complete the program before any major vacation periods and then meet again to begin a separate dissemination process no later than 60 days prior to the election. Another suggestion was to separate the evaluation and dissemination functions. The committee could be divided into two subcommittees, one to handle the evaluation and the other responsible for dissemination. It would also be possible to leave dissemination to some other group outside of the immediate committee. Either way, the idea is to assign committee members to a more discreet function so that they would not burn out before they got to the dissemination phase.

12. The evaluation process should involve the people being evaluated. An evaluation committee should enlist the cooperation of the judiciary and should communicate directly and frequently with the judges being evaluated. Judges should have an opportunity to comment on evaluation criteria and they should be informed about the purposes and techniques used in the program. Many judges in the pilot program suggested methods for improving data gathering techniques. Greater involvement would also allay concerns with the fairness and objectivity of the evaluation process.

13. Evaluation programs should be flexible and adaptable in order to meet the needs of different geographical areas. The participants in the pilot program felt that the project can and should be replicated in other areas. It is important to note that the participants did not conclude, however, that the evaluation should be carried out in all judicial districts. There was a general consensus that the evaluation worked well in a metropolitan judicial district or at least a district with mixed urban and rural counties. There was some indication that a rural county may not have as great a need for formal performance evaluations as the urban districts. The pilot program did not appear to be as effective in the rural counties of the 18th Judicial District as it did in the urban counties. Committee members experienced a problem in working with the judges located outside of Arapahoe county, and they observed that there seemed to be less of a need for keeping the public informed of judicial performance in rural areas.

The distribution of the votes in the 1984 elections suggested that the rural judges received the same percentage of votes as did other judges in the district. One implication is that the smaller the geographical area, the more likely the residents will be familiar with the local judge. In smaller counties, a single local newspaper may be able to communicate with most of the voters in the county. Local media or even word-of-mouth may be the only vehicles needed for communicating with voters.

The committee concluded, however, that while evaluation techniques or dissemination methods may not need to be as complex in rural areas, that all judges should be evaluated. The evaluation simply may not need to be as extensive in every judicial district. Committee members concluded that other evaluation committees should have access to an array of techniques, but that each committee could tailor make the evaluation for their districts.

Concluding Observations

This experiment proved beneficial for all of the participants. The support groups found that they had created a unique program using community resources. The citizens came away convinced that the project could and should be done in other areas. The judges received feedback, albeit involuntarily, about how they were perceived. Some judges indicated that they would have welcomed additional feedback. All of

the participants became more familiar with the problems inherent in judicial performance evaluation. The participants also became more aware of the context in which judicial evaluation must occur, and they realize that evaluation, at least in Colorado, is one way to address the problems in merit selection and retention systems that can also open avenues of communication between the judiciary and local citizens.

The pilot program revealed a growing interest on the part of lay citizens in judicial evaluation. It has become almost axiomatic that the public--at least when referring to the electorate--does not know much about the administration of justice, in general, and the judiciary, in particular. This is not to say that voters are not interested in judges and the judicial system. The citizens that participated in the pilot program are concerned about courts and they are even more concerned about the quality of the judiciary. Citizens recognize the value of merit selection for judges but tend to deplore what seems to be insensitivity on the part of judges to public concerns.

These attitudes may at first suggest that merit selection may have unintentionally led to an invisible judiciary that appears to be unconcerned about public needs and interests. This impression of the judiciary was largely dispelled by the evaluation project. By the conclusion of the program, many participants felt that they understood more about the judiciary and the complexities of judging. They

believed that judges are interested in and responsive to the needs of the public.

The project also revealed that judges were generally supportive of performance evaluation and welcomed greater attention by the public. They had significant reservations, however, about evaluation methods and were greatly concerned about fairness in procedures and the meaning of specific evaluation results. Even so, judges expressed some very positive views about the involvement of the public in judicial performance evaluation.

It also became obvious during the pilot program that a citizens' committee cannot be able to assuage all of the public's concerns about the judiciary. Public frustration or anger with the judiciary cannot be solved entirely through performance evaluation. The complexity of the sentencing process was frequently cited by judges and other participants as one area where the faithful performance of judicial duties may simply run counter to public expectations. In this situation, the majority of the voting public may simply misunderstand or even disagree with the fundamental purposes of the judiciary in the American system of government. This problem cannot be cured by judicial evaluation programs or attempts to modify merit selection.

While the project did not develop a definitive model, it tended to reaffirm models suggested in the evaluation literature which emphasize the cyclical process of job analysis, determining the purposes of evaluation, developing

appropriate scales and instruments, observation and storage, data analysis, performance description or characterization, a rating, judgment or assessment, and taking specific action on final evaluation results. The project considered some very difficult questions and began to grapple with the problem of accountability versus independence of the judiciary. It also reinforced the idea that lay citizens working together with professional staff skilled in performance evaluation techniques can, or at least, should work together. The problem of dissemination and the effects of an evaluation on a retention election were not answered in this study.

Overall, the participants were enthusiastic about their experiences in the program, and while acknowledging weaknesses in the program they felt that they had accomplished what they set out to do; namely, to take a closer look at their judges. From this perspective, the project was a successful experiment in citizen action and participation.

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Beckman, Alan R. Judge in 18th Judicial District of Colorado. Aurora, Colorado. Interview, 29 November 1984.

Clark, Robert T. Minister, Member of Citizens' Committee for Evaluation of Judges. Littleton, Colorado. Interview, 12 November 1984.

Curry, Thomas S. Judge in 18th Judicial District of Colorado. Castle Rock, Colorado. Interview, 29 November 1984.

Eason, Richard. Former district judge in 18th Judicial District of Colorado and member of Colorado Judicial Institute. Denver, Colorado. Interview, 12 November 1984.

Forst, Don. Architect and member of Colorado Judicial Institute. Denver, Colorado. Interview, 8 November 1984.

Kelley, Robert F. Judge in 18th Judicial District of Colorado. Littleton, Colorado. Interview, 29 November 1984.

Kullas, Albert. President of Colorado Judicial Institute. Denver, Colorado. Interview, 7 November 1984.

Langham, Gregory. Judicial District Administration. Littleton, Colorado. Interview, 15 October 1985.

Lee, George P., Jr. Judge in 18th Judicial District of Colorado. Aurora, Colorado. Interview, 29 December 1984.

Levi, Thomas. Judge in 18th Judicial District of Colorado. Littleton, Colorado. Interview, 29 November 1984.

McClure, Charles. Engineer at Martin Marietta and member of Colorado Judicial Institute. Denver, Colorado. Interview, 9 November 1984.

Peterson, Robert. Dean of Community Services and Off Campus Education at the Arapahoe Community College in Colorado, and member of Colorado Judicial Institute. (Location?) Interview, 14 November 1984.

Rallis, Charles G. Judge in 18th Judicial District of Colorado. Littleton, Colorado. Interview, 29 November 1984.

Smith, Donald P., Jr. Judge in Colorado Court of Appeals. Denver, Colorado. Interview, 21 December 1984.

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Taylor, Ralph C. Judge in 18th Judicial District of Colorado. Littleton, Colorado. Interview, 29 November 1984.

Turelli, Richard D. Judge in 18th Judicial District of Colorado. Castle Rock, Colorado. Interview, 29 November 1984.

APPENDICES

APPENDIX A

Citizens' Committee for Evaluation of Judges

Robert Amundson
Educator
Denver

Sandra Bartlett
Secretary
Englewood

Larry Borger
Land Developer
Littleton

Robert T. Clark
Minister
Littleton

Robert Door
Attorney
Franktown

Richard L. Eason
Attorney
Englewood

Sonya Ellingboe
Small business
Littleton

Don Forst
Architect
Littleton

Annita Kurmenacker
Member, City Planning Comm.
Aurora

Walter Maul
Rancher
Kiowa

Charles McClure
Engineer
Littleton

Fitzroy Newsum
Engineer
Denver

Donald Schiff
Pediatrician
Littleton

APPENDIX B

Evaluation Resource Group

Flodie Anderson
President
Colorado Judicial Institute
Golden, Colorado

Judith Barr
Executive Director
Colorado Judicial Institute
Littleton, Colorado

Sandra L. Bartlett
Task Team Secretary
Colorado Judicial Institute
Englewood, Colorado

Albert Kullas
Chairman
Judicial Evaluation Committee
Colorado Judicial Institute
Littleton, Colorado

John Koops
Member of the Board
Colorado Judicial Institute
Denver, Colorado

Gregory Langham
District Administrator
18th Judicial District
Littleton, Colorado

Robert A. Peterson
Dean of Community Services
Arapahoe Community College
Littleton, Colorado

Vicki Russell
Administrative Support
for the Task Team
Arapahoe Community College
Littleton, Colorado

Donald P. Smith, Jr.
Judge
Colorado Court of Appeals
Denver, Colorado

APPENDIX C

PROPOSED PLAN
FOR
JUDICIAL PERFORMANCE EVALUATION TASK TEAM
March 15, 1984

I. DEVELOP EVALUATION CRITERIA

- A. Develop a list of criteria items from various reference reports, to consider in our evaluation.
- B. Analysis of what method should be used to secure information to evaluate the criteria items.

Example:

- 1. Report by other Judges.
- 2. Report from Court Room Personnel.
- 3. Task Force Personal Interviews.
- 4. Court Records.
- 5. Lawyers.
- 6. Future Court Watching Program (League of Women Voters).

We will require assistance from Resource Group on method of securing reports on Items 1, 2 and 4.

II. DEFINITION, ANALYSIS AND WEIGHING OF CRITERIA

- A. Assign a scoring method to apply to developed criteria.
- B. Develop a weight system on the value of various sources of information.

Example:

- | | | |
|----|----------------------|-----|
| 1. | Other Judges | 25% |
| 2. | Court Room Personnel | 15% |
| 3. | Task Force Interview | 30% |
| 4. | Court Records | 10% |
| 5. | Lawyers | 20% |

- C. Develop questions for interview.
- D. Analysis of possible answers to above questions.
- E. Evaluate our questions and information with objectives.

- F. Develop a concept plan on information dissemination.

Example:

1. Press Release.
2. Flyers.
3. Radio.
4. Community Organizations.
5. Non-profit Groups.
6. Television.

III. TEST INTERVIEW AND EVALUATION

- A. Set up a test interview with a friendly Judge, (perhaps Judge Smith), and proceed with a mock interview.
- B. After the interview, proceed with a mock evaluation.
- C. Then jointly with the Judge, re-evaluate the entire process of questions, weights to scoring and adjust as a result of this critique.

IV. INTERVIEWS AND EVALUATION

- A. Interview two Judges per evening.
- B. Privately discuss and record an evaluation conclusion following the interview.
- C. Then invite Judge to discuss the Committee's evaluation.
- D. If difficulty develops on an evaluation, then call a special meeting to be set aside for further review between the Judge and the Task Force Group.
- E. Possible Conclusions by the Committee:
 1. Task Force recommends Judge for re-election.
 2. Task Force does not recommend Judge for re-election.
 3. Task Force does not recommend any position for re-election.

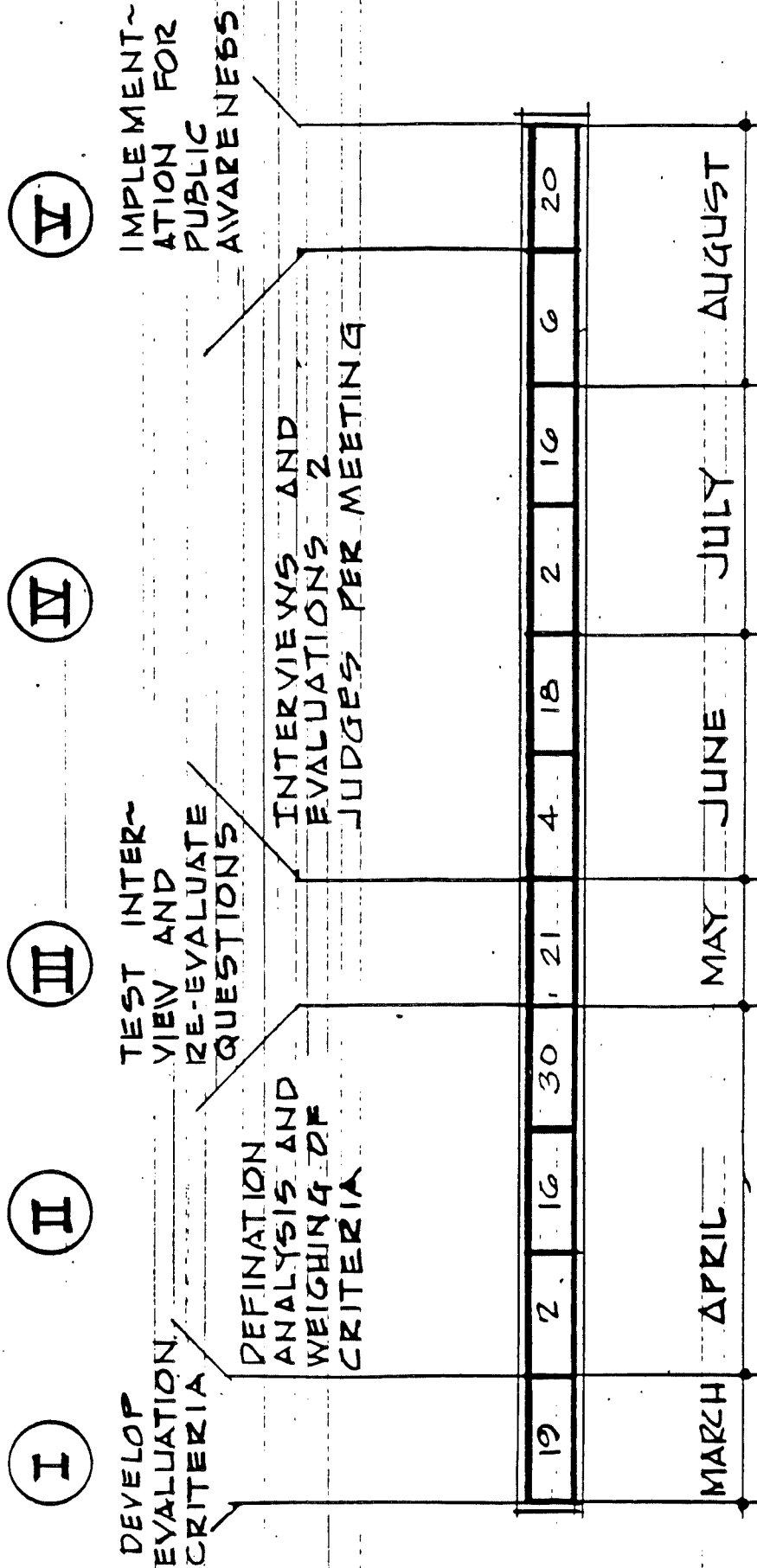
Conclusions to include 'brief' information on performance of judges and reason for committee's recommendation.

V. IMPLEMENTATION FOR PUBLIC AWARENESS

Develop specific program and method to inform public of recommendations.

PROPOSED PLAN FOR JUDICIAL EVALUATION

MAR 19, 1984
DON FORST



PRESS RELEASE**LORADO JUDICIAL INSTITUTE**

3 April 1984

7073 S. Clarkson St.
Littleton, CO 80122
303/794-2781

JUDICIAL REVIEW TASK FORCE ESTABLISHED**BOARD OF DIRECTORS**

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- * Dr. Chester Alter
- Mrs. Fiodie Anderson
- Mrs. Roberta Bradbury
- Mr. Frank J. Brainerd
- Mr. John E. Bush
- * Mr. Leonard M. Campbell
- Mrs. Margaret Cunningham
- * Dr. William C. Dean
- Mrs. Nellie Mae Duman
- Mr. David Ebel
- Senator Martha Ezzard
- * Mr. John Groves
- Mrs. Emily Howell
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- Hon. Howard M. Kirshbaum
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- Ms. Carol Larnivee
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- Mrs. Cassandra Sasso
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- Mr. Marvin Stone
- * Mr. Lester L. Ward, Jr.

EXECUTIVE DIRECTOR

Judith S. Barr

- * Denotes Honorary
Board members

More than 50 per cent of those voting in the last election did not cast a vote concerning the retention of judges. It is believed that the primary reason for this is that most voters lack information concerning judges.

In response to this situation, the Colorado Judicial Institute, an independent citizens group advocating court excellence, and the Office of Community Services at Arapahoe Community College have joined forces to establish a task force of community leaders to study and evaluate 10 judges who are up for retention in November in the 18th Judicial District of Arapahoe, Douglas, Lincoln and Elbert Counties. The intent of the Evaluation Task Force for Judicial Performance and Evaluation is to review and evaluate the judges.

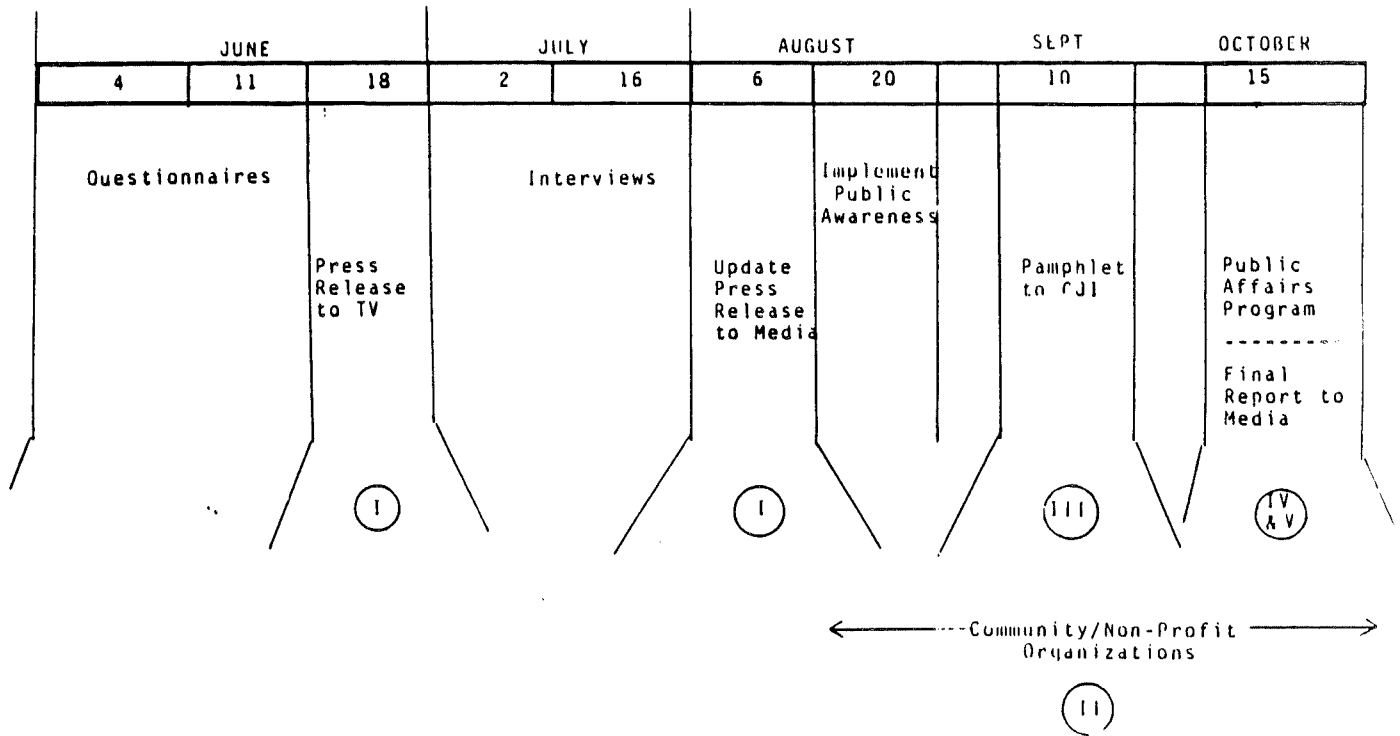
The Evaluation Task Force is meeting regularly and, by September, will develop a list of judges it believes should be retained. The evaluation will allow citizens to maintain their responsibility and judgment in this issue and not defer those responsibilities to the media or single interest groups.

Chairman of the Evaluation Task Force is Don Forst. Members of the task force are: Robert Amundson, Sandra Bartlett, Larry Borger, Rev. Robert Clark, Robert Dorr, Richard Eason, Sonya Ellingboe, Richard Koeppel, Anita Krumenacker, Walter Maul, Charles McClure, Susan McDanal, Fitzroy Newsum, Donald Schiff.

This cooperative program is a pilot project. If successful, it is expected that other similar task forces will be developed throughout the state.

APPENDIX E

PROPOSED IMPLEMENTATION PLAN FOR PUBLIC AWARENESS



6-4-84

**1984 JUDICIAL OPINION POLL OF EIGHTEENTH JUDICIAL DISTRICT
DISTRICT AND COUNTY COURT JUDGES**

PURPOSES

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 an effort in cooperation with the Colorado Judicial Institute and the Citizens Committee for Evaluation of Judges to evaluate judges against relevant performance standards rather than personal, social or political philosophies. A summary of the results will be disseminated to the public, to the judiciary, and to the bar.

INSTRUCTIONS

COMPLETION OF QUESTIONNAIRE

Please use the following scale to indicate your evaluation of the characteristics of each judge:

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

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 blank.

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.

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.

NARRATIVE COMMENTS

You are encouraged to make narrative comments about the judges. Should you choose to do so, please use the reverse side of the answer sheet in the space provided. Should you make narrative comments about particular judges, those comments will be made available only to the judge to whom they pertain.

CONFIDENTIALITY

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 disseminate to the press and to the public the results regarding those judges up for retention.

VALIDATION

The signatures and attorney registration numbers of responding attorneys will be validated and the results of the completed questionnaires will be compiled and tabulated by the Bar Association.

RETURN OF QUESTIONNAIRE

When you have completed the answer sheet, place it in the enclosed return envelope, seal the envelope, sign the return envelope and print your name and attorney registration number in the spaces provided on the outside thereof. Affix sufficient postage on the envelope and mail the envelope by no later than June 15, 1984. **FAILURE TO SIGN THE ENVELOPE AND PRINT YOUR ATTORNEY REGISTRATION NUMBER WILL INVALIDATE YOUR ANSWER SHEET.**

INTEGRITY

1. Rulings are free from influence by personalities or reputations of attorneys involved.
2. Rulings are free from predisposition to decide for plaintiff/defendant in civil case, prosecution/defense in criminal case, or husband/wife in domestic case.
3. Treats attorneys and litigants equally irrespective of race, sex or ethnic background.

JUDICIAL TEMPERAMENT

4. Is courteous, considerate and respectful to attorneys, parties, witnesses and jurors.
5. Is attentive during court proceedings.
6. Is mentally and emotionally stable.

DILIGENCE

7. Is accessible for court business and for emergencies during regular court hours.
8. Convenes court punctually.
9. Exhibits familiarity with file and adequate preparation.
10. Issues rulings promptly.
11. Is cooperative in assisting other judges with their dockets.

DECISIVENESS AND PROCEDURAL FAIRNESS

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

LEGAL ABILITY

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

OVERALL EVALUATION

20. Overall, this judge is doing a good job.
21. Should this judge be retained in office? (To be answered yes or no for those judges up for retention.)

**ARAPAHO COUNTY BAR ASSOCIATION - CITIZENS COMMITTEE FOR EVALUATION OF JUDGES
1984 JUDICIAL OPINION POLL OF 18TH DISTRICT COURT AND COUNTY COURT JUDGES**

Question	18TH DISTRICT COURT										ARAPAHO				EUBERT		LIMOUZIN	
	Charles A. Friedman	John P. Gairly	Richard L. Gaylor	Robert G. Bailey	George M. Lee	Thomas C. Lee	Joyce S. Steinhardt	Wendell K. Stuart	Richard H. Turrell	Alton M. Beckman	Richard W. Conchmann	Chris G. Mallis	Malcolm C. Taylor	Thomas J. Curry	Thomas M. Kirby	Garret M. Under	Questions	
1																	1	
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RETAIN	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	YES	NO	RETAIN	

PUT NARRATIVE COMMENTS ON THE BACK OF THIS SHEET
Remember to print your name on return envelope, sign your name and print your attorney registration number in the space provided

EVALUATION BY COURTHOUSE PERSONNEL

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

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

Evaluation of Judge _____
(name)

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 ___

APPENDIX H

EVALUATION BY JURORS

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: _____

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

APPENDIX I

EVALUATION BY APPELLATE JUDGES

CITIZENS COMMITTEE FOR EVALUATION OF JUDGES
7073 South Clarkson Street
Littleton, Colorado 80122

April 30, 1984

Dear Colorado Appellate Judge:

The Colorado Judicial Institute, believing that an informed electorate is essential to the preservation of an efficient and effective merit process for the selection and retention of judges, is co sponsoring (with Arapahoe Community College) a Citizens Committee for evaluation of judges in the Eighteenth Judicial District of the State of Colorado. The Committee has been charged with the formulation of a fair and impartial means for the evaluation of judges currently sitting in the Eighteenth Judicial District, and to accomplish such evaluation in order that information may be made available to the electorate in the District to assist them in their determinations with respect to judicial performance and retention of judges.

This Citizens Committee commenced its functions in February of this year and has met regularly since then to review various information available from informed sources dealing with appropriate criteria for the evaluation of judicial performance as well as numerous models employed both inside and outside the State of Colorado for the accomplishment of such purpose.

As a part of the evaluation, the Committee is of the view that the observations and opinions of appellate Judges are of substantial value in any process of evaluation of judicial performance of trial court judges and the Committee believes that the appellate bench of Colorado represents a valuable source of information which will help lead to a fair and objective evaluation of the performance of trial judges. The Committee's evaluation will include surveys of other groups, such as lawyers, jurors, court personnel, etc.

The Committee is, therefore, requesting that you review and complete the enclosed questionnaires relating to trial court judges sitting in the Eighteenth Judicial District. If you believe you do not have sufficient personal experience to provide an informed opinion concerning a given judge generally, or with respect to any particular question, please so indicate. Be assured that your individual replies and responses will be held in strictest confidence. No information relating to your responses

Page -2-

will be disseminated by the Committee except possible composite or average ratings or scores from various sources as they relate to a particular judge.

Please return the completed evaluation to the Committee at the above address by May 15, 1984.

Sincerely yours,

Citizens Committee for
Evaluation of Judges

Don Forst, A. I. A., Chairman

CITIZENS COMMITTEE FOR EVALUATION OF JUDGES
7073 South Clarkson Street
Littleton, Colorado 80122

APPELLATE JUDGE EVALUATION OF THE EIGHTEENTH JUDICIAL DISTRICT

EVALUATION OF JUDGE _____

Information Concerning Respondent

1. How many years have you served on the appellate bench? _____
2. How many years have you known the subject trial judge? _____
3. Approximately how many decisions of the subject judge have you had occasion to review during the last three years? _____
4. Have you served in the capacity of a trial judge in a Colorado court of record? _____ If affirmative, state the number of years of such service. _____

Evaluations of Judge

Please answer the questions below by filling in the appropriate rating number. Indicate a rating of 1, 2, 3, 4 or 5 in which 1 means "strongly disagree" and 5 means "strongly agree". If you have no opinion, please write "no opinion" in the space provided.

<u>Question No.</u>	<u>Rating</u>	<u>Comments</u>
1. Knows the substantive law applicable to the issues before the court.	_____	_____
2. Knows and applies the procedural rules applicable to the action or proceeding before the court.	_____	_____
3. Applies sound reasoning in reaching decisions or in rendering opinions.	_____	_____
4. Deals adequately with cases involving complex factual issues.	_____	_____
5. Issues rulings or decisions which are well articulated and fully stated.	_____	_____
6. Makes proper rulings on evidentiary objections.	_____	_____
7. Allows attorneys to adequately make a record.	_____	_____
8. Shows awareness and concern that an adequate record is made of proceedings.	_____	_____
9. Appears to engage in conduct courteous to attorneys, litigants, witnesses and jurors.	_____	_____
10. Demonstrates satisfactory abilities and performance as a trial judge of a Colorado court of record.	_____	_____

Additional Comments: _____

APPENDIX J

INTERVIEW QUESTIONS FOR JUDGES

Management

WHAT TECHNIQUES HAVE YOU ADOPTED IN YOUR DIVISION TO EXPEDITE AND ACCELERATE THE COURT DOCKET?

1. Are there things you can do to keep down the cost of the judicial process?
2. What do you think your best administrative and management skills are?
3. How many hours per day do you work? How do you divide your time? For instance, how many hours are spent in research?

Relationship to Public

HOW ARE YOU AFFECTED BY PUBLIC OPINION? HOW DO YOUR DECISIONS REFLECT PUBLIC OPINION?

1. What misconceptions do you think the public has about the judiciary and the judicial process?
2. In your opinion, is the media fair in its treatment of judges?

Sentencing

WHAT IS YOUR SENTENCING PHILOSOPHY?

1. How do you arrive at a sentence within the presumptive range?
2. Do you believe the presumptive ranges established by the legislature are too high, too low, or just right?
3. How do you see your role in sentencing?
4. Do you view sentencing as a creative opportunity to be a force for good in society?
5. In your opinion, what level of sentencing is most productive?
6. How do you decide who should be put on probation?
7. How do crowded jail conditions affect your sentencing decisions? What jails and hospitals have you visited to assist your judgments in sentencing?

8. Do you think plea bargaining is a meritorious process? Do you think plea bargaining encourages law breaking?
9. Do you consider the defendant's ability to pay when imposing fines?

Attitude

1. WHAT DO YOU CONSIDER TO BE YOUR STRONGEST POINTS AS A JUDGE? YOUR WEAKEST POINTS?
2. WHAT SUGGESTIONS DO YOU HAVE FOR IMPROVING THE JUDICIAL SYSTEM?
3. WHAT IS MOST REWARDING FOR YOU AS A JUDGE? WHAT IS MOST DISTURBING?
4. HOW DO YOU DEAL WITH STRESS?
- 5.a As a judge, to whom do you think you are accountable?
- 5.b What other interests or activities do you pursue?
- 5.c What pressures are most burdensome for you?
- 5.d What are the most important things a voter should know about judges before marking a ballot?
- 5.e What other questions should we have asked you?
- 5.f What do you think of this kind of Committee?

6-4-84

APPENDIX K

PRESS RELEASE

For release 9/24/84

The Citizens' Committee for Evaluation of Judges recently finished its seven-month investigation into the performance of the ten district and county judges up for retention in November, 1984 from the Eighteenth (18) Judicial District. The Eighteenth (18) Judicial District includes Arapahoe, Douglas, Elbert, and Lincoln counties. The Committee has met twice monthly since February to compile and evaluate information obtained from surveys of bar associations, court personnel, jurors, district attorney and public defender offices, Court of Appeals, personal interviews of the judges, and court watching. As a result, the Committee is making the following recommendations to the voting public concerning these judges. Eight (8) judges the Committee recommends for retention display the legal competency, fairness, industriousness, dedication, and job performance qualities that are essential qualifications for people holding their position on the bench. The Committee has "no opinion" on one judge and "no comment" on another judge.

The Committee cites the following specific reasons for its stand on each judge.

DISTRICT JUDGES:

Chief Judge Robert F. Kelley: Recommended for Retention

An outstanding judge who is thoughtful, compassionate and highly capable is what this committee found in Judge Kelly. In all polls, as well as our interview he rated high. We learned of his deep appreciations and concern for a courtroom that must be an arena of fairness. Judge Kelley possesses that quiet strength that is quite fitting to his task. In addition he has filled the position of Chief Judge with distinction and created a cooperative atmosphere between the judges in the Eighteenth (18) Judicial District.

Judge George B. Lee: Recommended for Retention

Judge Lee has held this position since 1975, having prior experience as a District Attorney and a Municipal Judge in this District. Judge Lee, in the various polls, rates high for his equal treatment of all persons, physical capability and courtroom demeanor. He currently sits on the Community Corrections Committee and has also instituted his own survey of jurors in order to provide feedback as to the courtroom proceedings. The Committee perceived weakness in judicial temperament and compassion.

Judge Thomas C. Levi: Recommended for Retention

Judge Levi rated well in the "people skills" -- somewhat less well, but still above average in areas such as complex legal matters and docket efficiency. He is perceived as a fair and competent judge. He has shown an awareness in attempting to move cases along as quickly as possible to reduce time and inconvenience to the public. He has expressed particular concern that the public know more about the day-to-day court proceedings instead of only the sensational cases.

Judge Kenneth K. Stuart: Recommended for Retention

Judge Stuart is considered by this committee, as well as by his peers, to be an exceptionally fine judge -- very knowledgeable about the law, courteous, fair to all, and possessing excellent administrative abilities. A vocal minority of the public has questioned some of his decisions. This committee, however, concludes that Judge Stuart is an outstanding judge and all available data supports this position.

Judge Richard D. Turelli: Recommended for Retention

The Committee found Judge Turelli to be sensitive and responsive to public input. He is perceived as a responsible public servant who has a profound influence on the community. Various survey results rate him high in courtesy and compassion. He is credited with maintaining a good rapport with defense and prosecuting attorneys. Areas of concern are control of his docket and the balancing of outside community activities and caseload management.

COUNTY JUDGES:

Judge Alan R. Beckman: Recommended for Retention Arapahoe County

Judge Beckman is dedicated, articulate, and has a strong personality. He also has a reputation as being a "tough" judge which gives the impression of arrogance and insensitivity. This has a tendency to detract from the appearance of being fair and impartial. This deficiency does not overshadow the fact that he is competent and has a good sense of the judicial system and what it means to the community.

Judge Thomas J. Curry: Recommended for Retention Douglas County

Judge Curry ranked well in many areas including judicial temperament and courtesy. Data indicates that he is not always prompt or accessible. His strengths, however, far outweigh his weaknesses. He is one of the youngest judges this committee reviewed and shows promise of becoming an outstanding judge.

Judge Garnet M. Foster: No Comment for Retention Lincoln County

The Committee was unable to evaluate Judge Foster due to a lack of sufficient information. Therefore, the Committee has "no comment" to make regarding the retention of Judge Foster.

Judge Chris G. Rallis: Recommended for Retention

Arapahoe County

Judge Rallis's strengths are identified as: good knowledge of the law and procedure, equal treatment of all parties, preparation, and promptness in rulings. His weaknesses were identified as: docket efficiency, physical capability and restraint from prejudging cases. Overall, Judge Rallis is perceived as doing a better than adequate job as a County Judge.

Judge Ralph C. Taylor: No Opinion for Retention

Arapahoe County

Judge Taylor has served as an Arapahoe County Judge for seven years. His previous experience was a twenty-five (25) year law career, including several years as a municipal judge in Littleton. He ranked well in punctuality, compassion and judicial temperament. Available evidence indicates that he may be fixed in his viewpoints and not consistent in following legislative law. With respect to his application of the law and his responsibilities as a judge there is some concern. The Committee spent a great deal of time discussing Judge Taylor's perceived performance. The Committee could not reach a consensus. Therefore, the Committee has "no opinion" to make to the public on Judge Taylor's retention.

CITIZENS' COMMITTEE FOR EVALUATION OF JUDGES

Background Information

The Citizens' Committee for Evaluation of Judges was formed in February, 1984 with support from Arapahoe Community College and the Colorado Judicial Institute. CJI is a non-profit, non-partisan citizen group whose purpose is to work for continued excellence in the Colorado courts. This committee was created to study ways to bring more meaningful information to the voters of Colorado prior to judicial retention elections in November, 1984. The Eighteenth (18) Judicial District, made up of Arapahoe, Douglas, Elbert, and Lincoln counties, was selected as a pilot project site because it is most representative of the state as a whole.

Citizens from each of the four counties were asked to sit on the Committee. The Committee is composed of thirteen citizens who are from all walks of life -- including one attorney and one former judge. No member of the Colorado Judicial Institute or Arapahoe Community College served on the Committee. Don Forst, a Denver architect who has served as chairman, explains that "when the Committee began its task, it was apparent that many of us had little knowledge of the selection process or responsibilities of judges. We have learned a great deal." He added, "Members of this citizens' committee do not pretend to be experts on the law. Our responsibility is to inform the voters by providing a citizen's perspective." Forst went on to explain, "A reasonable degree of excellence must be expected of judges. With the great volume of cases, it is logical and natural that errors in judgment will occur. However, this must be considered against a total record of judgment. This is what we have tried to do."

Information for Release as of 9/24/84

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APPENDIX L

RECOMMENDATIONS OF THE COMMITTEE ON JUDICIAL PERFORMANCE

The Colorado Judicial Planning Council approved the final report of the Committee on Judicial Performance in 1980 and submitted it to the Supreme Court for further consideration. The specific recommendations are as follows.

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 statewide guidelines established by the Commission. Evaluations 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 costs 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 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.

The Judicial Planning Council explained that a Commission on Judicial Performance should supplement the authority and responsibility of the Chief Justice to supervise and administer the Colorado court system. The Commission should not attempt to remove from the electorate the basic decision-making responsibility for retaining judges. The creation of

the Commission was seen by the Council as an investment in the future of the Colorado Judicial Department, and it cautioned that adoption of an evaluation program should be made with due deliberation and careful planning, with a realistic appreciation for the long-term commitment needed to make an evaluation program succeed.

Concluding Comment

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 careful, thoughtful and compassionate planning when designing or implementing methods for studying and appraising human performance.

Source:

Stott, E. Keith, Jr. A Proposal to Evaluate Colorado's Judges. The Colorado Lawyer 9 (November 1980): 2325.