JUDICIAL RETENTION EVALUATION PROGRAMS IN FOUR STATES
A Report with Recommendations

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Founded in 1913, the American Judicature Society is an independent, nonprofit organization supported by a national membership of judges, lawyers and other members of the public. Through research, educational programs, and publications, AJS addresses concerns related to ethics in the courts, judicial selection, the jury, court administration, and public understanding of the justice system.
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EXECUTIVE SUMMARY
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With financial support from the State Justice Institute (Award #SJI-96-12A-C-149), the American Judicature Society undertook a project to assess the impact of court-sponsored judicial performance evaluation programs that serve two purposes: improving judicial performance and informing voters in retention elections. Only four states, Alaska, Arizona, Colorado and Utah, had such programs in place for the 1996 judicial retention elections, the period we studied. Experience with retention evaluations varies from two to twenty years. Alaska first evaluated judges standing for retention in 1976, Arizona in 1994, Colorado in 1990, and Utah in 1990.

Performance evaluations as a response to the absence of information in judicial retention elections

All four states initially select their judges under a merit plan, whereby a nominating commission recruits, investigates, interviews and evaluates applicants for judgeships, and recommends a short list of the best-qualified candidates to the appointing authority. In each of the four states we studied the governor is the appointing authority. A traditional component of merit plans is retention elections, in which appointed judges seeking subsequent terms stand in uncontested, nonpartisan elections. In a retention election, voters are asked to respond yes or no to the question, “Shall Judge X be retained in office?” A judge who receives a simple majority of votes cast is retained. One rationale for the retention-election component of merit plans is to provide some measure of public accountability.

However, retention elections share with all judicial elections the problems of low visibility and lack of voter knowledge about candidates. To address these problems, some merit-plan states have adopted judicial retention evaluation programs. These programs are designed to collect systematic information about judges’ on-the-bench performance, using such criteria as legal, administrative and communication skills, integrity, impartiality, temperament/demeanor, punctuality, and compliance with continuing judicial education requirements. The evaluation commissions analyze this information, and then publicly disseminate the evaluation results and recommendations to voters as widely as resources permit.

In addition, as part of the performance-improvement component of the process, the evaluations are intended to provide feedback to judges about their relative strengths and areas in need of improvement.
How performance evaluation programs operate

All four programs are based on a common model. Each commission conducts surveys of court users (attorneys, and typically police officers, jurors, litigants, social workers, etc.) to measure each judge’s performance on a list of criteria or performance standards. Each commission also may meet with the judge under review, collect nonsurvey information such as a self-evaluation by the reviewed judge, caseload statistics, disciplinary sanctions, credit records, etc. Two states, Alaska and Arizona, invite public comment and hold public hearings. After analyzing information from survey and nonsurvey sources, the commission members author a summary of the evaluation findings and issue either a prescriptive or descriptive finding on each evaluated judges’ performance in office. For example, the Alaska and Colorado commissions issue a recommendation to retain or not retain each reviewed judge; Utah reports whether or not the judge is certified for retention; and Arizona informs the voters that the judge meets or exceeds or fails to meet performance standards. Commissions disseminate the information to voters in a variety of ways, including, for example, mailing the evaluation results to each household (Alaska), inserting the voter information pamphlet in newspapers (Utah); distributing pamphlets at libraries, banks, shopping centers, etc. (Arizona and Colorado), purchasing newspaper ads and posting evaluation results on Web pages.

All four states conduct midterm evaluations; these results are confidential and strictly for the judge’s guidance in improving his or her performance.

Summary of the assessment of judicial performance evaluation programs

The American Judicature Society (AJS) assessed the extent to which the Alaska, Arizona, Colorado and Utah retention evaluation programs are reaching their stated goals of informing voters and providing feedback to judges. The focus of our analysis is in making comparisons between programs. While these programs are based on a similar model, they also differ in some respects, and this permits us to isolate the strengths and weaknesses of specific programs. Finally, based on our assessment and suggestions from members of the project advisory committee, we conclude with recommendations for a successful performance evaluation program.

Data Collection. The data we use come primarily from three surveys that AJS commissioned or conducted as part of this study.

AJS commissioned an exit survey of nonrandomly selected voters in the largest locality in Alaska, Arizona, Colorado and Utah, measuring respondents’ attitudes toward the court system, their participation in judicial retention elections, and the extent of their use of performance evaluation reports. This nonrandom poll netted 1554 respondents, of whom about one-third reported receiving the evaluation reports or information based on the reports.

By design the voter exit survey sampling was not random. Therefore, our voter respondents are not representative of voters in each locality, and our analysis of the exit survey is strictly exploratory. These voters’ statements are valuable to this assessment, however, if only because they are the views of some citizens who are neither the evaluation commissioners nor evaluated judges, but they are not representative of all voters in each locality. We partly remedy
this shortcoming through a study of election outcomes data in Alaska retention elections, data that reflect the behavior of the population of voters in Alaska judicial retention elections.

AJS mailed survey questionnaires to all judges in the four states who were evaluated for retention in 1996; 70 percent of the judges responded. AJS also surveyed all commissioners who evaluated the judges standing for retention in 1996; 62 percent of them responded. We asked judges their attitudes toward, and satisfaction with, the evaluation process, and the extent to which they used the evaluation information to improve their own performance on the bench. We solicited similar information from commissioners so that we could make comparisons in the perceptions of both judges and commissioners. We also asked commissioners questions about, among other things, internal relationships between commissioners, the most useful evaluative criteria, and which respondent groups provide the most helpful information.

In addition, we asked each commission to provide a large quantity of qualitative material in the form of internal memoranda and public documents and reports that, among other things, gives us details about each commission's structure and procedures. We use this qualitative information to interpret the patterns of responses in our three surveys.

Voter exit survey

In order for these commissions to reach their goal of informing voters, voters must have access to the evaluation information, and they must find the information interpretable and persuasive.

Commission visibility and respondents' access to reports. While our sampling procedure does not permit us to say how visible these commissions are to all voters, we can report that the Phoenix-area respondents were least familiar with their state evaluation commission (30.7 percent report familiarity with the commission), and Anchorage respondents were most familiar (58 percent). This difference in responses is not surprising since the Arizona Commission on Judicial Performance Review has only been in operation since the 1994 retention-election cycle, while the Alaska Judicial Council has been conducting evaluations of judges for voters since 1976. In the two other localities, 54.6 percent of Denver respondents and 49.6 percent of Salt Lake City respondents report familiarity with the commission.

Roughly 40 percent of Anchorage and Salt Lake City respondents say they obtained a copy of the evaluation report. Fewer voter respondents in the Phoenix area (15.2 percent) and Denver (24.4 percent) report acquiring the report. In a related finding, Arizona and Colorado judges and commissioners also believe that voters in their states do not get the evaluation information. The most salient difference among the commissions is that only Alaska and Utah disseminated the voter pamphlets directly to households in 1996.

Respondents' use of reports. Among those respondents who were familiar with the evaluation reports, most report that the evaluation information either determined or assisted their vote choice in retention elections. The most frequent response was that the evaluation information assisted but did not determine their vote choice (from a low of 39.3 percent of Phoenix-
area respondents to a high of 62.5 percent of Denver respondents). A few of those respondents who received a report say that their choices were based solely on the evaluation information, with the highest percentage among the Phoenix-area respondents (26.8 percent) and the lowest in Denver (13.8 percent).

Of the respondents who said they received the evaluation information, 59.8 percent in Anchorage, 60.0 percent in Phoenix, 81.6 percent in Denver, and 72.7 percent in Salt Lake City say the information influenced their vote choices in judicial retention elections. These percentages are very likely to overstate the true influence of the reports on voters’ decision making. While the Denver respondents are the most likely of the four groups to find the information influential, they also are the most likely to find the evaluation report difficult to use. This may be a result of the format of the Colorado report to voters, which provides rich information about each judge but does so in a newspaper format with small type.

Many of the respondents who said they were familiar with the report say that the evaluation reports make them more likely to vote in judicial elections (64.6 percent in Anchorage; 66.1 percent in the Phoenix area; 72.0 percent in Denver and 68.1 percent in Salt Lake City), and that the evaluation reports make judges more accountable to voters (78.0 percent in Anchorage, 64.3 percent in Phoenix, 76.0 percent in Denver and 74.2 percent in Salt Lake City). These results are quite high, but they should be viewed with considerable caution. These respondents include only those who are familiar with the retention evaluation reports, and they are not representative of voters in each locality. It is likely that these results overstate the true feelings of the voting population. These findings would be quite strong, though, if they were replicated using a random selection design.

Statistical analysis of Alaska election outcomes. The sampling procedure in our exit survey of voters does not permit us to assess whether the general population of voters in each locality uses the evaluation information to differentiate between judges in their voting decisions. To partly remedy this shortcoming in our exit survey, we use Alaska election outcome data over judicial retention elections from 1976-96 to see if there is any statistical evidence that Alaska voters find the commission evaluations persuasive. Alaska is unique among the four states studied in that the retention recommendation is accompanied by a numeric rating. Each judge is rated on a 0-5 scale, where a rating of 3 is labeled acceptable in the voter information pamphlet.

Our analysis shows that Alaska voters take the ratings information into account. The higher the judge’s rating, the higher his or her percent affirmative vote, on average. In addition, supplemental analysis of these data shows that Alaska voters (1) appear to find the bar ratings most persuasive, (2) tend to rely more heavily on the evaluation information for district court judges (limited jurisdiction) than for superior court judges (general jurisdiction), and (3) tend to give greater weight to negative evaluations than to positive evaluations. These results cannot be generalized to the other states in our study, however.
Judges’ survey

In addition to informing voters, a primary goal of performance evaluation commissions is to provide judges with useful feedback. As noted above, we asked judges about the value of the evaluation findings and their attitudes toward the process. Our very high response rate from judges (70 percent) gives us confidence in the results. Their responses are summarized below.

Evaluations as feedback. A very high percentage of judges in all four states feel that the reports provide useful feedback on their performance, from a low of 73.5 percent in Utah to a high of 85.4 percent in Arizona. We have little evidence, however, for the specific ways the evaluation information influences judicial performance, since few judges report that the evaluations make them change their sentencing practices, affect the frequency of their public appearances, change their behavior toward the surveyed groups, or prompt them to take additional continuing judicial education courses. We conducted a follow-up survey of state judicial educators that found that few continuing judicial education courses are based on the performance results.

Other highlights of the judges’ responses are:

• A majority of judges in Alaska, Arizona, and Colorado agree that the evaluation reports accurately reflect their job performance, and in Utah a near majority agrees;
• A significant majority in each state agree that appropriate criteria are used to evaluate their performance;
• Nearly all judges in each state feel that evaluation commissioners are fair;
• Large percentages in each state say commissioners understand their role as judges;
• Majorities in each state agree that the commissioners understand the importance of judicial independence;
• Majorities of judges in each state say that the evaluation process makes them appropriately accountable for their job performance.

Fairness of the process. Outside of Arizona, judges express dissatisfaction with the fairness of the available appeals process if they disagree with the commission’s ultimate findings; a majority (but only a bare majority) of Arizona judges are comfortable with their available appeals process. It may be that Arizona’s emphasis on involving the judge in the evaluation process makes appeals less important. The Arizona and Colorado commissions are required to interview all evaluated judges as part of the evaluation process. Consequently, judges in Arizona (60%) and Colorado (61%) are more likely than those in Alaska (42.9%) and Utah (34.4%) to feel that they have an adequate opportunity to respond to the commission findings before they are made public than judges in the other states.

With the exception of Utah judges, judges feel that the evaluations accurately reflect their performance and that the process is fair and preserves judicial independence. A follow-up survey of some Utah judges found that their expressed dissatisfaction is partly from the Utah Judicial Council’s (UJC) apparent use of case processing as a standard to meet rather than as contextual information to help interpret the court user survey results. Furthermore, interviewed judges were particularly uncomfortable with the UJC’s exclusive reliance on the attorney survey for its evaluation. The Utah commission is clearly aware of this problem; a majority of Utah commissioners in our survey state that the UJC does not have sufficient
data to make an informed judgement about judges’ performance, and the UJC is implementing a juror survey for the 1998 evaluation cycle.

_Responding to interest group attacks_. Most judges in Alaska (77.8 percent) and Colorado (59.4 percent) feel that the evaluation information helps to counterbalance narrow political attacks on the judiciary; smaller percentages of judges in Arizona and Utah agree (45.0 and 41.2 percent respectively). Nearly half of the 22 judges who reported experiencing such a campaign used the report in responding.

**Commissioners’ survey**

We asked the commissioners questions that paralleled the questions on the judges’ survey so that we could compare judge and commissioner perspectives on the evaluation process. We also asked commissioners some questions on internal commission interactions. Here, too, a high response rate (62 percent) gives us confidence in the results.

Commissioners appear overly optimistic on whether the performance evaluations prompt judges to take additional continuing judicial education courses; this is contradicted by judges, who report that their own professional development needs are the determining factor. A very large majority of commissioners in all states feel that judges have an adequate opportunity to respond to evaluation findings before they are made public and that judges have access to a fair appeals process. Judges in all states except Arizona disagree. The Arizona commission places particular emphasis on involving all evaluated judges in the review process, and this may make appeals less important or necessary. Many of the Utah commissioners report that their commission does not have sufficient independence to objectively evaluate judges, and this may reflect the persistent introduction of legislation in the Utah legislature to change or abolish the evaluation program.

As a group, commissioner respondents identified the following groups of court users as suppliers of useful information (in descending order): Lawyers, court personnel and law enforcement officers. The least useful sources are, again in descending order, jurors, litigants and witnesses.

Criteria commissioners identify as most helpful in assessing judicial performance are impartiality, integrity, knowledge of the law and procedures, and appropriate judicial temperament and demeanor. Least useful criteria are administrative skills, service to the legal profession and to the community, punctuality, effectiveness in working with other judges and court personnel and compliance with continuing education requirements.

**Judges’ and commissioners’ views about performance evaluations**

We asked judges and commissioners open-ended questions about the benefits of and problems with the evaluation process. For the most part, judges’ comments fall under two main headings—the benefits to them and the benefits to the public. A main benefit to them is receiving feedback about their performance, “...the only way we get to see ourselves as others see us,” as one judge said. Some judges listed political benefits, such as preventing the
legislature from "enacting a worse process," and keeping them out of politics. Nearly as many judges listed informing the public as a main benefit.

Commissioners' responses on the benefits of the process mirror judges' in some respects. For example, commissioners agree that feedback on judicial performance, informing voters and minimizing the influence of partisan politics on the process are clear benefits. A few commissioners added increasing citizen confidence in the judicial process and providing a foundation for improving the judicial system as additional benefits.

Judges identified the following as problems with the evaluation process: concerns about evaluation methodology, inadequate funding of the evaluation program and inadequate dissemination of evaluation results to the public.

Commissioners cited methodological problems, inadequate funding, poor dissemination of the evaluation findings, and an apathetic and/or uninformed public.

Based on the results of this study and suggestions of members of the project advisory committee, the following recommendations were developed (see Section VII of the report for full text):

**Recommendations**

1. Establish clear rules and procedures for the performance evaluation process.

2. Provide adequate funding.

3. Develop clear, measurable performance standards.

4. When there is a sufficiently large pool of respondents, adopt standard random sampling and appropriate follow-up procedures when surveying court user groups.

5. Ensure confidentiality in surveys and in commission deliberations to promote candid responses by surveyed individuals and frank discussion among commissioners.


7. Mandate a procedure for judges to receive and respond to evaluation results before they are made public.

8. Establish an effective mechanism for disseminating evaluation reports to the public.

9. Establish a mechanism to incorporate evaluation results in designing judicial education programs.

10. Establish linkages with print media.
11. Leave the process open to amendment.

12. Establish training programs for all evaluation commissioners.

13. Involve the public in and educate them about the process.
I

INTRODUCTION
INTRODUCTION

Lack of Information in Judicial Retention Elections

Courts in a constitutional democracy are expected to serve as an independent or impartial counterweight to the more majoritarian elected branches of government. At the same time, constitutionalism requires some degree of citizen oversight and democratic accountability for all branches of government. Judicial merit selection plans are used in many states to strike a balance between independence and accountability. Under merit selection, a state’s governor must appoint judges from a list of names provided by a nominating commission. This procedure promotes judicial impartiality by minimizing the influence of partisan politics on the selection and tenure of judges at the state level. Merit selection systems “eliminate or drastically reduce the need for incumbent judges to turn to outside sources of income for campaign funds and thereby enable judges to preserve their independence in office” (Griffin and Horan 1982:94).

Under merit plans, citizen accountability is maintained to some degree through non-partisan retention elections. In retention elections, the judges appointed through the merit selection process periodically run for election unopposed after some term in office. Citizens are expected to vote for or against a judge based on past performance in office. Retention elections “still provide a small, but important, measure of public accountability” (Hall and Aspin 1987a:417).

Retention elections are no cure-all, however, for promoting judicial merit and judicial independence or improving courts’ accountability to citizens. Retention elections, “nonpartisan and issue-less, typically generate little publicity and less voter interest” (Mahoney 1989:211). The virtue of competitive elections (and perhaps the only virtue in the case of selecting judges) is that they produce and disseminate information about the candidates to voters (see e.g. Baum 1988-9:667, Dubois 1979:872). This is not true for retention elections:

Because a judge does not face an opponent but instead runs on his or her record, there are usually no campaigns, no issues, no combative personal confrontations. Judicial retention elections tend to be issueless and colorless, generally failing to generate much publicity (positive or negative) about incumbent judges (Hall and Aspin 1987a:418).

In addition, retention elections are nonpartisan, and so do not give voters the traditional voting cue of party label.
The resulting information vacuum can lead voters to skip the retention part of the ballot (Lovrich and Sheldon 1984; Lovrich, Pierce and Sheldon 1989; Hall and Aspin 1987a:417), or vote in an uninformed or undifferentiated manner (Griffin and Horan 1982; Hall and Aspin 1987b; Mahoney 1989:212). It also can leave judges standing for retention vulnerable to well-funded, single-issue opposition campaigns.

**Judicial Performance Evaluations as a Response**

A few merit selection states have adopted judicial performance evaluation programs as a solution to the problems attendant on retention elections. The programs systematically collect and analyze information about judges' on-the-bench performance, and make recommendations about judges to voters prior to a retention election.

Just as merit selection was proposed as a means of addressing the problem of the electorate's lack of knowledge about the background of candidates and their abilities to hold judicial office, proponents of judicial performance evaluations offer them as a means of generating information about sitting judges for retention purposes (Goldschmidt 1994:76; see Hallett forthcoming; Keilitz and McBride 1992, Rubenstein 1977).

This study collected information about the operation of four such evaluation programs: The Alaska Judicial Council (which conducted its first retention evaluations in 1976), the Utah Judicial Council (first evaluations in 1990), the Colorado Judicial Performance Evaluation Program (first evaluations in 1990), and the Arizona Commission on Judicial Performance Review (first evaluations in 1994).

The evaluation commissions generally have attorney, nonattorney, and, except for Colorado, judge members. These commissions conduct surveys of court users (e.g. attorneys, litigants, jurors, police officers, other judges) who have directly observed the judge's performance at work. The surveys ask the respondents to assess judges along dimensions such as integrity, legal ability, communication skills, ability to work effectively with court personnel and other judges, punctuality, and administrative skills. Some commissions also evaluate judges' compliance with case-processing standards, rate of reversal on appeal, and compliance with continuing education requirements. The commissions usually discuss the analyses and findings with the judges being reviewed, decide whether to recommend that the judges be retained or not, and then make the recommendations and review information available to the public prior to the election.

**Performance Evaluation Goals**

The purposes and goals of these commissions are twofold: to provide information about judges' performance to voters, and to provide feedback to judges to help the judiciary improve itself.
Judicial performance evaluations may improve voter knowledge for those voters who collect or have access to the available evaluation information, and who choose to make use of the information. The typical voter does not have the opportunity to see the performance of any of the judges on the ballot firsthand. “If voter participation in retention decisions is to be anything other than a symbolic gesture, citizens need information about judges and conviction that their vote can make a difference” (Mahoney 1989:212). This report makes an assessment of the efficacy of the four commissions’ means of disseminating the evaluative information and recommendations, and the relative helpfulness and persuasiveness of the evaluative information, based on survey exit poll survey responses from nonrandomly selected voters and from official Alaska election outcome data.

Judicial performance evaluations may improve judicial performance by providing systematic feedback to judges about how others view their performance, especially when commissioners review the court user survey results with the judge. “Even judges who do not understand they have a need to improve or who do not really care about their performance will find the data difficult to ignore and are likely to use this to make the necessary improvements to be retained or reelected” (Griffin 1995:7; see also Aynes 1981). In addition, the evaluation program may improve judicial performance simply because judges know the review will occur. Finally, one author contends that “the raw data collected from these evaluation programs are invaluable for the development and design of continuing judicial education” (Griffin 1995:7). Empirically, we are interested in whether judges use the commission findings to improve their own performance, and whether judges feel the evaluation process is fair, accurate, and preserves judicial independence.

For a variety of reasons, judicial performance evaluations may improve citizens’ confidence in the judiciary. The commissions involve the public in the evaluation process as commission members, as sources of evaluative information, and as recipients of the evaluation information. The evaluation procedures demonstrate a clear commitment on the part of courts to improve judicial performance and to take citizens’ views into consideration in the assessment of how well courts are functioning. Demonstrating any change in public confidence in the judiciary, based on the commissions’ work and efforts, is outside of the scope of this study. We present, instead, the responses from nonrepresentative groups of voters on this question descriptively, and these descriptive results suggest that this is a fruitful area for future systematic study.

In addition the evaluation information may provide a counterweight to narrow political attacks on the judiciary. “The thinking of many supporters of judicial evaluation commissions is that a judicial evaluation done by a ‘blue ribbon’ panel in which the public has confidence will counteract the false or distorted information disseminated by special interest groups bent on removing a competent judge from office” (Griffin 1995:61).  

1. Public confidence in the courts is difficult to measure empirically, and is an attitude that stems from a wide variety of factors. Citizen attitudes toward courts in large part are likely to be a function of their views of government in general, sometimes sensational news media representations of court proceedings, jury service and other contact with the courts. We do not have the data in this study to disentangle citizens’ attitudes toward courts that come from their exposure to evaluation reports from other factors that influence citizens’ perceptions of courts.

2. On this point, we examine whether the evaluation information helps judges respond to a political attack.
Pros and Cons of Judicial Retention Evaluations

While the information performance evaluation commissions disseminate to the public prior to retention elections may improve public confidence in the courts and help protect judges against interest group attacks, some commentators have raised concerns over procedural protections for judges in the evaluation process. A pressing concern is ensuring the independence of the courts from the will of the commissioners.

Lip service is paid to the obvious threat to judicial independence these commissions pose, with no more apparent safeguard than the hope that whoever the commissioners are, they will do the right thing.... If a judge’s right to remain a judge is dependent (or only influenced) by the will of a committee of 10 to 15 other people, sooner or later judicial behavior will be affected (Griffin 1995:7).

In addition, standards of appointment of commissioners, when such standards exist, encompass only geographic representativeness, and gender, race, and ethnic diversity; lawyer members need only to be a member of the bar. “If judges must be carefully selected and accountable, then surely those entrusted with evaluating the judges should be especially well chosen and especially accountable...” (Griffin 1995:7). On top of this, underfunding for some commissions makes it difficult for them to conduct statistically reliable and valid evaluations, to disseminate the information to voters, and to improve or expand the evaluation programs. Furthermore, not all states require training for commission members.

It is not clear though, how, in the absence of a judicial evaluation program, voters in retention elections otherwise could acquire neutral and systematic information to inform their voting choices. Bar polls in some states serve some of the same informational functions as performance evaluations, but these polls represent only lawyers’ perspectives (see generally Griffin and Murdock 1985; Koebel 1983). Lawyers observe judges firsthand, and have the training to evaluate judges on their legal ability, temperament, integrity, and so on. Lawyers, however, are not the only group of citizens with an interest in ensuring the proper functioning of courts. Law enforcement officers, social workers, witnesses, litigants, and jurors are also constituents of courts. “Part of a judge’s job is to be aware of the differing and sometimes conflicting perceptions of what is happening in a courtroom” (Mahoney 1989:212). If judges know they will be held accountable only by the organized bar, “there is the possibility that competing values held by the larger, non-lawyer public will be correspondingly discounted” (Wasby 1978:146).

Some have argued that this type of commission represents an obviously good idea, for the reasons stated above, irrespective of how well or poorly any particular commission is able to achieve its own goals. The American Judicature Society’s journal *Judicature* has editorialized, “At the very least these innovative attempts to provide meaningful information to voters and to improve judicial performance deserve serious consideration” (AJS 1991:178). And at an AJIS program discussing judicial performance evaluations, Utah Chief Justice Zimmerman stated, “What these polls do is permit judges to get some honest input anonymously from

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3. For a discussion of the impact of newspaper editorial endorsements on judicial elections, see Goldstein 1989.
people that they can almost never get any other way…... The self-improvement part of performance evaluations may be sufficient to justify their use” (Sampson et al. 1996:197).

How This Report Is Organized

This report makes an assessment of four programs in terms of their publicly stated goals. In addition, we describe the program designs so that courts in other states do not have to reinvent the wheel in designing their programs, and recommend key elements of a successful judicial evaluation program.

This report is organized in the following manner. Section II describes all of the data sources and highlights methods used to analyze data, as well as some methodological concerns in interpreting our data. Section III summarizes the structure and processes of the four evaluation programs. Section IV gives the results of surveys of voters, judges and evaluation commissioners we conducted as part of this project, summarizing and interpreting both quantitative and qualitative responses. Section V presents the results of a study we conducted on voters’ responsiveness to commission evaluations, using published election outcome data from Alaska judicial retention elections. Section VI gives detailed descriptions of the four evaluation programs. Section VII offers some recommendations for effective judicial evaluation programs derived from the information and analyses contained in this study.4

4. Appendix A contains the survey forms and the frequency distributions for the quantitative variables.
II

DATA SOURCES AND METHODOLOGY
DATA SOURCES AND METHODOLOGY

Our evaluation of these programs is based on both quantitative and qualitative information sources. In this study we conducted three separate surveys of the different participants in the 1996 evaluation process in Alaska, Arizona, Colorado and Utah, eliciting the attitudes toward the commission processes and its results. We surveyed nonrandom groups of voters in each state, all of the judges in these states who were evaluated for the 1996 retention elections, and all of the performance evaluation commissioners who conducted those evaluations. In the surveys, we also attempted to measure the perceptions each set of participants had of the other. We collected election outcome data dating back to 1968 for the county with the largest population in each of the four states from the secretary of state offices. Finally, we asked each commission to provide a large quantity of qualitative information, both internal memoranda and public documents. Below we describe each source of information and the analysis that is geared to each data type, and discuss the standards for the quantitative assessments.

Data Sources

Voter Exit Survey

AJS sponsored a nonrandom exit survey of voters on Election Day 1996. We asked some voters in one metropolitan area in each of the four states in the study to fill out a questionnaire as they left the polling place. The localities are Anchorage, Alaska (pop. 248,000); Phoenix, Arizona (983,000); Denver, Colorado (467,000); and Salt Lake City, Utah (160,000). We asked a social science professor at a university in each locality to hire and train twelve students to conduct the survey, three students in each precinct. The poll takers worked shifts between 7:30-9:30 a.m. and 4:30-6:30 p.m. Voters leaving the polling place were asked to participate in the survey. Poll takers were instructed to show respondents copies of the state commission evaluation report.

A main purpose of this survey was to measure the impact of retention evaluations on the

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5. We also collected judicial election outcome data from four additional counties to serve as comparisons in an impact study; these comparison counties were from states that have retention elections but do not have judicial performance evaluation programs. The impact evaluation gave indeterminate results and we do not report these results in this study. The data and analysis are available on request from the American Judicature Society.

6. The Phoenix-area precincts were all in Maricopa County suburbs; all of the other precincts were located in the city limits.
attitudes and behavior of some voters in judicial retention elections. In this vein, in addition to demographic information, we sought to measure:

1. These respondents' general attitudes toward the court system, such as whether they feel judges do a good job and are fair, and the role and efficacy of citizens in evaluating judges for retention;

2. These respondents' participation in retention elections, such as the reported rate of participation and their exposure to the commission performance evaluation reports; and

3. These respondents' use of the performance evaluation reports, including self-reported measures on the extent to which they found the commission reports helpful or persuasive in making voting decisions.

A few notes of caution in interpreting the voter exit survey results. We emphasize here and throughout the text that, by design, our sample of voters is not a random or true probability sample. We conducted the polls only in the morning and in the evening, before and after work hours when polling places get the most traffic, and it has been shown that one will not get a representative cross section of the voting population at these times (Bush and Lieske 1985). More importantly, voters' participation in the survey was entirely voluntary rather than voluntary following a random selection procedure. It is well known in survey research that when respondents choose to participate in a survey, usually they are different in important ways from those who choose not to respond (see e.g. Cook and Campbell 1979:356-9). In survey research, this is called selection bias. The respondents are those voters who were interested enough or had the time to fill out a survey.

In addition to the concerns about the selection of our respondents, judicial elections pose some unique problems for validly measuring survey responses. Since most citizens have little information about judicial elections, it is likely that they will not report their level of knowledge about these elections with much accuracy. It is common for respondents in surveys to claim to know more than they in fact do for a variety of reasons. In survey research, this is a form of response bias.

An illustration of how our groups of voter respondents are not representative of the population of voters in each locality as a whole can be seen in Table II-1. Here we compare voter respondents' reports of whether they voted in judicial elections with actual county election results data we collected as a part of this study. Table II-1 compares the percentage of our respondents that report voting in retention elections with the corresponding figures from the

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7. One random selection procedure would be to select every nth voter to exit the polling place, where n is a number and is termed the "skip interval," and then to try to get as many of each of these as possible to fill out a questionnaire (see e.g. Levy 1990:302-5, and 307). The skip interval is selected to make the probability of each voter being selected the same across precincts, and should remain constant throughout the day. Bush and Lieske (1985) discuss biases from sampling at different times of day, as we do here, and Bishop and Fisher (1995) investigate response bias in exit surveys. For an example of the perils of using exit poll data to make inferences about a population, see Trangott and Price 1992. Warrtier (1983), however, is an example of exit poll results reported in a major refereed social science journal.

8. We describe these data in more detail below. Alaska does not have counties, and so we report instead the results from the city of Anchorage. Each of the counties listed (as well as Anchorage) contains the precincts in which our exit poll was conducted.
secretary of state data we collected. A very high percentage of our survey respondents in these localities report having voted in the 1996 judicial elections compared to the results from each county (see Table II-1). This overstatement could have many causes. For example, it may be that our respondents happen to be more interested and involved in politics (and so are more willing to fill out a questionnaire than those who are not as interested in politics), or because morning and evening voters participate in judicial elections more than do those who vote at other times of the day, or because they overstate their participation.

<table>
<thead>
<tr>
<th>Table II-1: Comparison between respondents' reported participation rates and actual county participation rates based on the secretary of state election data. (Percent answering “Yes”)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported rate of participation in judicial elections for each respondent group in the exit survey</td>
</tr>
<tr>
<td>Did you vote in today’s judicial election?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Actual rate of participation in judicial elections, by county, measured from secretary of state voter data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anchorage</td>
</tr>
<tr>
<td>Average percentage of voters in county casting a vote in 1996 judicial elections</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question. Denver, Salt Lake City and the Phoenix suburbs are contained in Denver, Salt Lake, and Maricopa Counties, respectively. Alaska does not have counties, and so we report the Anchorage city results.

These results from the voter survey should not be taken as an accurate or exact portrayal of all voters’ behavior for the four localities. Two concerns discussed above, selection bias and response bias, are likely to work in tandem, where on both counts respondents are likely to overstate their knowledge in matters related to judicial elections. The results we report may overstate the visibility and impact of these evaluations on this group of respondents, and almost certainly overstate the actual impact on the population as a whole.

**How we use the voter exit data in this assessment.** Through the voter exit survey, we are able to present the views on the work of the evaluation commission of some citizens who are neither judges nor commissioners. This has considerable value to this report irrespective of our sampling procedures. We have strong prior beliefs that neither judges nor commissioners can or should be disinterested in the functioning of these commissions. Judges and commissioners are too close to the evaluation process to say how the process appears to a citizen who is not a direct party to the evaluation process. Informing voters is one of the primary goals of these commissions, and this evaluation would be incomplete if it made no attempt to assess voters’ use of and attitudes toward the evaluation reports, or if we were to rely exclusively on

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9. One study finds a typical participation rate of 63.8 percent in judicial elections (Hall and Aspin 1987).
10. Diversity in our respondents is improved to the extent the surveys were administered in precincts of varying social and economic populations. We do not have demographic data for voters in each precinct, but we can report that 50.5 percent of the respondents are female, and 23.7 percent non-white. Age and education are relatively evenly distributed across the categories, without pronounced differences between the localities. The frequencies of all demographic variables are given in Appendix A (Voter Exit Questionnaire).
judges’ and commissioners’ views of citizens’ behavior and perspectives. The distinction we make is that these voters’ responses are informative but they are not, and need not be, taken as representative.

Due to time and budget constraints, we did not adopt strict scientific procedures for sampling respondents, and so our assessment of voter attitudes is exploratory rather than definitive. Cook and Campbell, in their classic text on social science research design, explain why exploratory research may be preferred to stricter scientific procedures in relatively novel empirical areas as in this study. They write, “It is rarely desirable to conduct an experiment before preliminary conceptual or empirical work has been done…. Only after this step would one conduct a randomized experiment…” (1979:345). Conducting exploratory research in an area where there is no prior empirical research, such as the impact of evaluation reports on voter behavior in retention elections, is standard social scientific practice since it can lay the groundwork for more systematic future research. Conducting an exact scientific test without a firm base of empirical description risks discovering confident answers to the wrong questions.

The limit to exploratory data analysis is mainly that we cannot make inferences about the attitudes or behavior of the full populations of voters involved. Morris Rosenberg (1968), in his standard text on survey data analysis, *The Logic of Data Analysis*, recommends instead an inductive analytical approach for exploratory research. In this method of analysis the researcher uses data to sharpen his or her ideas. Rosenberg describes this inductive form of data analysis as follows: “[A]s the research analyst investigates a particular idea, his attention is captured by data which suggest new ideas, which in turn exert pressure to examine new data, and so on” (1968:207). This method of survey analysis, which we use throughout the report, makes no claims to inferring truths about the larger population. In our report, we combine the voter exit survey information with contextual information that we know about these four programs to make tentative claims about why these voters say what they did.

We emphasize that the survey results cannot be said to generalize to the voting population as a whole, even within a given locality, and should be thought of instead as a “snapshot” of a nonrepresentative sample of voters’ attitudes in four precincts in each locality. We do not claim that we have measured the true attitudes or behavior of typical voters in these localities. We have exercised caution when interpreting all results from the voter exit survey, taking care to say that we are reporting only what our voter respondents had to report about the performance evaluations. To the extent that the results of our exit survey are of interest, it is because they suggest results that warrant further exploration in a scientifically designed survey of voters using random sampling techniques (see Cook and Campbell 1979:345).\(^{11}\)

**Judges’ Survey**

We mailed surveys to all judges in the four states who were standing for retention and who were evaluated in 1996. Of 210 surveys mailed, 148 were returned for a relatively high response rate of 70 percent.

\(^{11}\) We report the results of an additional study of Alaska election outcomes that does speak to the population of voters in Alaska, which is the one state where measures for such a test exist.
The evaluation commission staff in each state provided us with the mailing list of 1996 evaluated judges. With each survey, we enclosed a cover letter from the chief justice in the corresponding state, on Supreme Court letterhead, that stressed the importance of this evaluation project and urged each judge to return a completed survey. Each judge was assured confidentiality.\textsuperscript{12} We enclosed with each survey a postage-paid reply postcard with the respondent judge’s name and address preprinted. We asked each judge to note whether he or she had completed and mailed the survey, or chose not to respond to the survey.\textsuperscript{13} We followed up with judges who did not return a postcard in two steps—first with a reminder letter, and later with both a reminder letter and a new copy of the questionnaire.

In addition to demographic and court-specific information, we gathered information about:

1. Judges’ general attitudes toward the state-sponsored judicial performance evaluations, including judges’ perceptions of whether voters use the information in voting, whether the evaluations provide useful feedback, and whether the evaluations are fair and accurate.

2. The ways judges use the performance evaluation information to improve their on-the-bench performance such as their sentencing practices or treatment of groups who use the courts, and whether the evaluation information helps to respond to interest group attacks on the judiciary.

3. Judges’ recommendations on how to improve the evaluation process, including open-ended questions on the main strengths and weaknesses of the process, what obstacles need to be overcome to improve the process, etc.

<table>
<thead>
<tr>
<th>Table II-2: Judges’ response rates by state</th>
</tr>
</thead>
<tbody>
<tr>
<td>AK</td>
</tr>
<tr>
<td>-----</td>
</tr>
<tr>
<td>Questionnaires mailed</td>
</tr>
<tr>
<td>Rate of response</td>
</tr>
</tbody>
</table>

Note: Overall, we mailed 210 questionnaires to judges and 70.0 percent responded.

\textit{Commissioners’ Survey}

We surveyed all commissioners who were involved in the 1996 evaluation process in the four states. We mailed 261 surveys and received 162 in return, for a response rate of 62 percent. We followed the same survey procedure that we used in the judges’ survey.

The questions on the commissioners’ survey closely paralleled the questions on the judges’

\textsuperscript{12} Judges could print their name on the survey form if they were willing to have AJS contact them to discuss their responses further. Judges were given this option at the end of the survey, and to make it clear that they were not expected to reveal their name, the question was listed as optional. Judges were also assured that AJS would maintain confidentiality even if they signed their name.

\textsuperscript{13} The 70 percent response rate only takes into account completed surveys—a judge choosing not to respond is not counted as a “response.”
survey, so that we could more easily draw comparisons between commissioners' and judges' views of the evaluation process. In addition, we asked questions regarding the internal operation of the commissions, such as whether lawyer and nonlawyer members were able to communicate as equals, whether the commission feels it uses valid measures of performance, and whether confidentiality safeguards worked as intended. In Table II-3, notice that the population of Colorado commissioners is disproportionately large. This is because Colorado has a decentralized structure, with one commission in each of 22 judicial districts that evaluate trial judges, and a central state commission that evaluates appellate judges and makes final recommendations to voters. For this and other reasons (which we outline below) we treat the commissions separately in reporting survey results.

<p>| Table II-3: Commissioners' response rates by state |</p>
<table>
<thead>
<tr>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Questionnaires mailed</td>
<td>7</td>
<td>29</td>
<td>211</td>
</tr>
<tr>
<td>Rate of response</td>
<td>57.1%</td>
<td>65.5%</td>
<td>62.6%</td>
</tr>
</tbody>
</table>

**Secretary of State Election Outcome Data**

The offices of the secretaries of state in eight states provided retention election outcome data for each presidential election year between 1968 and 1996. We entered the election data from the counties that contain the four localities where we conducted the voter exit survey. In addition, The Alaska Judicial Council's *18th Report: 1995-1996 to the Legislature and Supreme Court* provides numeric ratings for each judge evaluated since the inception of the Alaska evaluation program in 1976, along with each judge's affirmative rate in each election. We analyze data in Section V to evaluate whether Alaska voters use the report information to differentiate between judges in their retention decisions. This study helps to remedy the weakness of the voter exit survey data, which do not permit tests of the behavior of all voters in each locality. The limitation of this study is that its results cannot directly generalize to the other states, since the data only come from Alaska.

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14. We gathered data as well from matched counties in four other states to serve as a control in an impact study, which originally was going to be reported in Section V. From these data, for each presidential election year, we were able to calculate the rate voters affirm judges standing for retention, and the rate at which voters "roll off" the retention part of the ballot relative to the number voting for the United States president. We do not report the results to this study since they were indeterminate. Anyone interested in the data, research design and results may contact AJS. The design follows Cook and Campbell (1979:214-8) and Frankfort-Nachmias and Nachmias (1995:142-3). For this study, we matched Anchorage with Cheyenne (Laramie County), Wyoming; Phoenix (Maricopa County) with St. Louis County, Missouri; Denver (Denver County) with Omaha (Douglas County), Nebraska; and Salt Lake City (Salt Lake County) with Des Moines (Polk County), Iowa. While no locality or county can serve as an exact control for the counties in our study, we selected these comparison counties because they have some similarities in population, numbers of judges, and levels of court that have retention elections. Arizona and Missouri have retention elections only for appellate judges and trial judges in two major metropolitan areas. Like Colorado and Utah, Iowa and Nebraska have retention elections for all judges. Alaska and Wyoming both have a small, widely dispersed population and a small judicial branch.
Qualitative Information

We asked staff of each evaluation commission to provide a large quantity of qualitative information in the form of internal documents, annual reports, voter pamphlets, and copies of newspaper coverage of the commissions and their final evaluation reports and news articles about the reports and evaluation process. In addition, we asked for copies of the court-user survey instruments used in evaluating judges, a description of the commissions' strategies for disseminating recommendations to voters, and budget information. This information helped us construct the goals, structure and processes of the commissions. This information is summarized in Section III and reported in detail in Section VI. We use this qualitative information to help interpret the results from our three surveys.

Standards for the Assessment

The focus of our analysis is in making comparisons between programs, assessing which program features work relatively better, rather than in making clear judgments about the absolute success or failure of judicial performance evaluation programs in general. Since this is one of the first efforts at collecting survey data on judicial performance evaluations, we feel that no clear standard exists to make a definitive statement about what results indicate success or failure for these programs. For example, it is well known that voters in general pay little attention to judicial elections. In light of this, one possible standard for the success of a performance evaluation program with regard to voters is, did any voters find the information helpful? Another possible standard is, did a significant majority find it helpful?

What counts as a success for these programs by necessity is subject to debate, where some will see the glass half empty and some half full. We have developed our recommendations and bottom-line assessments in consultation with the project advisory committee, and we present all results on which our assessment is based in the report itself so readers may also enter this debate.
III

OVERVIEW OF THE JUDICIAL RETENTION EVALUATION PROGRAMS
OVERVIEW OF THE JUDICIAL RETENTION EVALUATION PROGRAMS

This section gives a brief overview of performance evaluation commissions’ goals, structure and procedures. We summarize much of this information in tables. A detailed description of the four programs is given in section VI. We use this program information to help interpret the quantitative survey results in the next section (Section IV).

Purposes and Goals

Judicial performance evaluation commissions generally have two audiences for their reports and recommendations: voters and judges. Evaluations serve to inform voters about judges’ performance in office to assist in their decisions on whether or not to retain a judge in judicial retention elections. At the same time, because the court user surveys are anonymous and the evaluation information comes from a variety of sources, the evaluations provide relatively objective feedback to judges on areas in which they may need to improve.

Arizona’s Rules of Procedure for Judicial Performance Review give the most comprehensive statement of commission goals. The commission is to

[A]ssist voters in evaluating the performance of judges and justices subject to retention; facilitate self-improvement of all judges and justices subject to retention; promote appropriate judicial assignments; assist in identifying needed judicial education programs; and otherwise generally promote the goals of judicial performance review, which are to protect judicial independence while fostering public accountability of the judiciary” (Ariz. S.Ct. 1993 Rule 1).

While each commission recognizes the importance of providing both information to voters and feedback to judges, each commission places a different emphasis on which audience is primary. The Alaska Judicial Council places primary emphasis on informing voters, while Arizona’s Commission on Judicial Performance Review places primary emphasis on judicial self-improvement. The Utah and Colorado commissions appear to strike a balance between the dual goals.
Structure

The commissions vary to some extent in their organizational structure. The Utah and Alaska evaluation programs are run by state judicial councils. Arizona has one 30-member commission that evaluates appellate judges and superior court judges from its two largest counties (Maricopa and Pima). Colorado has both a statewide and local or judicial district commissions. These local commissions in Colorado are responsible for evaluating trial judges, while the Colorado state commission evaluates all appellate judges.

In all four states, the central commission or the judicial council is responsible for establishing internal rules. The extent of this rulemaking authority varies as well. The Arizona Supreme Court issues quite detailed rules for the Arizona Commission on Judicial Performance Evaluation, while the Colorado statewide commission has authority to establish rules for how it and the local commissions evaluate judges.

Table III-1 below summarizes the scope of the judicial retention evaluation programs.
Table III-1: Scope of judicial retention evaluation programs

<table>
<thead>
<tr>
<th>Purpose(s) of evaluation</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retention recommendation by Alaska Judicial Council (AJC); information for voters; improvement of judiciary</td>
<td>Assist voters; judicial self-improvement; identify needed judicial education programs; protect judicial independence while fostering appropriate accountability</td>
<td>Meaningful information to voters; self-improvement of judiciary</td>
<td>Self-improvement of the judiciary; certify judges for retention; improve judicial education programs; provide information useful for the refinement of the Code of Judicial Admin.</td>
<td></td>
</tr>
<tr>
<td>Amendment procedures?</td>
<td>Yes; vested in AJC</td>
<td>Yes; vested in Supreme Court</td>
<td>Yes; vested in Judicial Performance Program</td>
<td>Yes; statutes changed by legis.; rules changed by Judicial Council</td>
</tr>
<tr>
<td>Year estab.</td>
<td>1975; 1976 was first eval.</td>
<td>1992; 1994 was first eval.</td>
<td>1988; first eval. 1990</td>
<td>1986; first eval. 1990</td>
</tr>
<tr>
<td>Judges covered</td>
<td>All</td>
<td>All Appellate and Superior Ct. judges in Maricopa and Pima Counties</td>
<td>All</td>
<td>All judges in courts of record</td>
</tr>
<tr>
<td>Midterm evaluations authorized?</td>
<td>Yes; judges due to stand in 2 years and retired judges serving pro tem evaluated</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes; all judges every 2 years; newly app. judges eval. after one year in office</td>
</tr>
</tbody>
</table>

Most of the commissions have a mixture of lawyer, judge, and lay members. Colorado is the exception; its commissions by statute have no judges and a majority of nonlawyers. Usually, commission members are appointed by officials from the elected branches and the courts. For example, membership in the Alaska Judicial Council is specified in the Alaska constitution as “three citizens appointed by the Governor and confirmed by the legislature (these three may not be attorneys, and must be appointed with due regard for geographic representation), three attorneys appointed by the Board of Governors of the Alaska Bar Association, and the Chief Justice, who serves as chair” (Cotton memo 3/21/94). The exception is the Arizona commission members (again, a majority of which must be nonlawyers), who are appointed by the Arizona Supreme Court. The Arizona Supreme Court, under its rules, is to solicit recommendations from the public in appointing commission members, and the commission should reflect “to the extent possible, the geographic, ethnic, racial and gender diversity...” of the state. See Table III-2 for a summary of commission membership and appointing authorities.
Table III-2: Commission membership

<table>
<thead>
<tr>
<th></th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of commissions</strong></td>
<td>1 (Alaska Judicial Council)</td>
<td>1</td>
<td>1 statewide; 22 district</td>
<td>1 (Utah Judicial Council)</td>
</tr>
<tr>
<td><strong>Number of commissioners/commission composition</strong></td>
<td>7: 3L; 3N/L; chief justice; 6J; try to evenly balance between Maricopa and Pima counties</td>
<td>30: 8L; 16 N/L on each commission</td>
<td>10: 4L; 6N/L on each commission</td>
<td>13: Chief Justice; 1 S.Ct. justice; 1 Ct. App. judge; 5 Dist. Ct. judges; 2 Juv. Ct. judges; 2 Justice Ct. judges; 1 mbr. of bar comm'n</td>
</tr>
<tr>
<td><strong>Lawyers elected or appointed by</strong></td>
<td>Board of Governors of AK Bar Association</td>
<td>AZ S.Ct from list from AZ Bar Board of Governors</td>
<td>Ch. justice (1) Governor (1) Spkr. House (1) Pres. Senate (1)</td>
<td>Elected by Board of Bar Comm'rs</td>
</tr>
<tr>
<td><strong>Nonlawyers appointed by</strong></td>
<td>Governor; legislature confirms</td>
<td>S. Ct.</td>
<td>Spkr. House (1) Pres. Senate (1)</td>
<td>No nonlawyer members</td>
</tr>
<tr>
<td><strong>Judge(s) elected or appointed by</strong></td>
<td>Chief justice serves ex officio</td>
<td>S. Ct.</td>
<td>Ch. justice (2) Governor (2)</td>
<td>No judge members</td>
</tr>
<tr>
<td><strong>Chair appointed by</strong></td>
<td>Chief justice serves ex officio</td>
<td>Chief justice or designee serves ex officio</td>
<td>Commission members</td>
<td>Chief Justice serves ex officio</td>
</tr>
<tr>
<td><strong>Commission diversity requirement?</strong></td>
<td>Yes, Const. requires due consideration for geographic representation</td>
<td>Yes</td>
<td>Not indicated</td>
<td>Geographic diversity for District Court judge members</td>
</tr>
<tr>
<td><strong>Commissioner disqualification requirement?</strong></td>
<td>Yes, for any relationship that might prevent impartial evaluation</td>
<td>Yes, if family member is evaluated</td>
<td>Not indicated</td>
<td>Yes; Judicial Council members cannot vote on their own certification</td>
</tr>
<tr>
<td><strong>Terms</strong></td>
<td>6 yrs. staggered; 2 term maximum</td>
<td>4 yrs. staggered; 4 yrs. staggered</td>
<td>4 yrs. staggered; 4 yrs. staggered</td>
<td>3 yrs.; 2 term maximum</td>
</tr>
</tbody>
</table>

**Evaluation Process**

Each commission collects and analyzes both statistical and qualitative information from a variety of sources in order to make its evaluations and recommendations. All four commissions conduct formal surveys of court users, gather caseload and assignment information
from court records, and may meet with the evaluated judge. The Alaska and Arizona commissions hold public hearings as well. Legislation passed in Colorado in 1997 authorizes public hearings by District Court commissions.

For the formal survey, the commissions evaluate judges on a variety of established performance criteria or standards. Each commission surveys court users (attorneys, and often jurors, litigants, police officers, peer judges, social services workers, etc.) as a way to measure each judge on each criterion. The Utah commission, however, currently only conducts an attorney survey, but is implementing a juror survey for the 1998 evaluation cycle. The following chart is a selected list of the criteria used by the Utah Judicial Council, and the corresponding measures for each criterion:

### Chart III-1: Illustrative performance criteria

- **Integrity**, including avoidance of impropriety and appearance of impropriety; freedom from personal bias; ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism; impartiality of actions; and compliance with the Code of Judicial Conduct.

- **Knowledge and understanding of the law and judicial branch rules**, including the issuance of legally sound decisions; understanding of the substantive, procedural, and evidentiary law of the state; attentiveness to the factual and legal issues before the court; and the proper application of judicial precedents and other appropriate sources of authority.

- **Ability to communicate**, including clarity of bench rulings and other oral communications; quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and sensitivity to impact of demeanor and other nonverbal communications.

- **Preparation, attentiveness, dignity and control over proceedings**, including courtesy to all parties and participants; and willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.

- **Skills as a manager**, including devoting appropriate time to all pending matters; discharging administrative responsibilities diligently; and where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.

- **Punctuality**, including the prompt disposition of pending matters, and meeting commitments on time and according to rules of the court.

Note: Taken from CJA 1993 Rule 3-111(2)

Generally, the court user surveys are mailed to a sample of legal professionals (e.g. attorneys and police officers) who have appeared before the judge, and some commissions distribute surveys in court to other court users such as jurors, court staff, and litigants (as noted above, Utah surveyed only lawyers in 1996). In all cases, the respondents are asked to mail their completed surveys anonymously to an independent data center for data entry and analysis. The data centers identify judges' questionnaires using a numerical code, and, when doing data entry and analysis, use the code rather than the judge's name to ensure confidentiality.

Respondents to the surveys are given space to write narrative or qualitative comments about the judge. In general, the commissions do not use the anonymous comments from the surveys in their evaluations, and simply forward them to the judge to consider as feedback on his or her performance. The Arizona Supreme Court, in its rules for the Arizona commis-
sion, reasons that anonymity enhances respondent frankness in narrative comments, but it also permits irresponsibility. Attributed comments, such as those made at a public hearing, are used in the Arizona commission's evaluations and recommendations.

The commissions collect other available information about each judge, such as judges' self-reports, docket statistics, disciplinary, legal and health records, and so on. Commissions have performance standards for this judge-specific data. Some of the commissions use information about the reviewed judge's caseload or changes in assignments as contextual information to help interpret results from the statistical analyses of the surveys. The Alaska Judicial Council notes, for example, that caseload and assignment can affect the number of peremptory challenges a judge receives. “Remember that judges with higher-volume caseloads are expected to have more challenges than those with lower-volume caseloads. Also, expect an increase in challenges whenever a judge is reassigned to a different caseload (parties have the right to challenge a newly assigned judge).”

Commissions vary on the extent to which they involve judges in the evaluation process. Arizona places particular value in meeting with evaluated judges because of its emphasis on judicial self-improvement, using conference teams to meet with each evaluated judge to work on self-improvement plans. Judges in all four states review the draft commission report before the commission makes the report public. Each commission permits the judge to schedule a hearing with the commission prior to its making the results public to provide additional material for the commission to consider. The Colorado and Arizona commissions are required to meet with the judge as a part of the evaluation process. The Arizona Commission on Judicial Performance Review assigns conference teams to meet with each evaluated judge to discuss the court user survey results, and to help the judge develop a self-improvement plan. Evaluated judges do not have easy access to appeals procedures in the event of a disagreement with the final commission findings; the commissions use any new information a judge may provide and revise a judge's evaluation at their own discretion.

The commission members meet prior to a retention election to review the statistical analyses of the court user surveys and any public input and other contextual information. The commission members vote on whether to recommend that a judge be retained, or to oppose a judge's retention. The Colorado commissions may have “no opinion” on whether a judge should be retained if they do not have sufficient evidence to reach a conclusion. The reason for a “no opinion” rating must be explained in the final evaluation report disseminated to the public. The Arizona Commission does not make a recommendation, but reports to the public that a judge either meets or exceeds, or fails to meet, performance standards.

All commissions deliberate in executive session; the Alaska and Arizona commissions vote publicly on a recommendation to voters. See Table III-3 for a summary of the evaluation procedures.
<table>
<thead>
<tr>
<th>When evaluation process begins</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan. before Nov. retention election</td>
<td>Ongoing for appellate judges; every 2 years for Superior Court judges, whether or not standing for retention</td>
<td>Sept. of odd-numbered year before retention election</td>
<td>August of odd-numbered year before retention election</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Evaluation criteria (not asked of all surveyed groups; see text)</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impartiality, integrity, admin. skills, jud’l temperament, legal skills and knowledge, overall performance</td>
<td>Knowledge of law and procedure integrity; impartiality; jud’l temperament; admin. skills; punctuality; communication skills; settlement activities</td>
<td>Integrity; legal ability; comm. skills; demeanor; docket management; punctuality; effectiveness working with participants in judicial process</td>
<td>Integrity; knowledge and understanding of the law and jud’l branch rules; ability to communicate; preparation; attentiveness; dignity and control over proceedings; skills as manager; punctuality</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Groups surveyed</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>AK Bar members; peace and probation officers who handle criminal cases; court staff; jurors for last 2 yrs. term [social worker/guardian ad litem survey begins 1998]</td>
<td>Lawyers, litigants, witnesses, jurors, other judges/judges, staff</td>
<td>Jurors, litigants, court personnel, probation officers, social service and law enforcement personnel, crime victims, attorneys</td>
<td>Attorneys [jury survey begins 1997]</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nonsurvey sources of information</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judge’s self evaluation; legal, discip. health records; attys. in 9-12 major cases handled by judge; judicial conduct comm’n; conflict of interest filings, other case information</td>
<td>Judge’s previous self-evaluations and professional goals</td>
<td>Caseload evaluation; interview with with judge</td>
<td>Compliance with cases-under-advisement standard; physical and mental competence; completion of 30 hours cont. ed. per year; in substantial compliance with Code of Judicial Conduct and Code of Judicial Admin.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public input</th>
<th>Alaska</th>
<th>Arizona</th>
<th>Colorado</th>
<th>Utah</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hearings, newspaper ads and PSAs encourage public comment</td>
<td>Public hearings; requests for public comment in writing</td>
<td>Public hearings authorized in 1997; public comments in writing</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>
Information Dissemination

The commissions publish their evaluation summaries and recommendations in voter information pamphlets. These vary in detail (see Appendix B for samples from each commission). For example, the Colorado pamphlet is in newspaper format, and provides several column inches of performance information for each judge. This is in contrast to Arizona, which in 1996 published easy-to-read pamphlets with some information about the commission's procedures, but only bottom-line information about whether judges met or exceeded, or failed to meet performance standards. The Alaska and Utah Judicial Councils publish their findings in their respective lieutenant governors' voter information guide, which are mailed to all Alaska households with a registered voter. The Utah guide is distributed as a newspaper insert. Commissions also place ads or inserts in local newspapers, run public service announcements, put information on Web pages, and so on.
| **Table III-4: Additional commission procedures and information dissemination** |
|-----------------|-----------------|-----------------|-----------------|
| **Judge interview mandatory?** | Alaska | Arizona | Colorado | Utah |
| | Council “may” interview; draft results shared with judge prior to final eval. meeting | Factual report must be sent to judge; judge can submit written resp.; conference team interviews | Yes, after receiving analysis of questionnaire results | Judge may request interview if he or she fails to meet certification standards |
| **Standardized report format?** | Yes | Yes | Yes for appellate commission, recommended to district commissions | Yes |
| **Recommendation to voters** | Vote “yes” or vote “no,” 60 days before election | Whether judge “meets or exceeds” or “fails to meet” performance standards | “Be retained,” “not be retained,” or “no opinion” (if insufficient information) | “Certified” or “not certified” for retention |
| **Confidential procedures** | Evaluation discussion closed; voting open | Evaluation discussion closed; voting open | Yes | Yes |
| **Public dissemination of information** | Official election pamphlet mailed to each household; ads in newspapers and other media; meetings with community groups; Web page | Factual report released after July 1, voter pamphlets distributed at primary polls, libraries, banks, shopping ctrs., courts, bar offices, etc.; Web page; survey data summaries and brief bios available at courts, libraries, etc. | 45 days before election for appellate comm’ns; 45 days for district comm’s; voter guide distributed in libraries, big business, etc., newspaper, Web page (not mailed to households in 1996, but mailing 1998 to voter households in legislative ballot analysis auth. by 1997 legislation) | Evaluation and other information included in voter info. pamphlet distributed by Lt. Gov. as a newspaper insert |

**Newspaper Coverage**

Newspaper coverage can be a blessing and a curse for evaluation commissions. Invariably, newspapers report on commission findings as news, sometimes in considerable detail. This information often will run in a voter information section on judges appearing on the ballot prior to election day. The main focus of newspaper coverage, however, is on the exceptional and controversial cases. A “do not retain” recommendation is more newsworthy than recom-
recommendations to retain. Even this more sensational coverage communicates information about performance review commissions, their methods and findings, as background information to the controversy. Occasionally an editorial will rely on the evaluation information to endorse a local retention candidate, or will criticize the program. Commentators in Utah and Arizona in the fall of 1996, for example, raised a concern that commissions nearly always recommend that judges be retained, which on the surface appears to some in the media to protect incumbent judges. It may be that these states’ merit plans tend to select good judges in the first place and mandatory judicial education programs hone their skills. Also, a judge who receives a negative evaluation may choose not to stand for retention, and that information would never reach the public. This is to suggest the importance for judicial performance evaluation commissions to establish ties to local media to explain how judicial selection, retention and evaluation programs function.

Issues the Commissions Raise in Their Memoranda

These performance evaluation commissions, as is true for most all organizations, study themselves to improve their own practices and performance. Here we summarize some salient concerns that these commissions have identified.

**Budget.** The budget is obviously central to administrative capacity of these programs, and it is clear that some commissions feel they do not have adequate funding. Colorado operates on one-tenth of the budget of the Arizona and Utah commissions. Colorado’s commissioners write, “Perfecting a judicial performance evaluation process which provides the public and judicial officers with the essential information given the limited resources has been a tedious undertaking. As a result, the program may be viewed in some circles as being stagnant and unresponsive” (Colo. 1996 Program Report p. 8). The “lack of funding has greatly inhibited the ability of local commissions to provide judicial performance information to the public” (Colo. 1996 Budget Information memo 1/15/97).

**Political Pressure.** Some commissions feel some forms of outside political pressure. The Utah commission in particular has felt some pressure from its state legislature. The 1996 Utah annual report suggests that the evaluation program is vulnerable to harmful legislative incursions because of a lack of staff assistance for investigating and implementing improvements to the program. “Legislators conclude that legislative control can be used to force the program into a mold of their choosing. Due to inexperience, the legislative response may be short-sighted; the dynamics of judicial performance evaluation are considerably more complex than is generally recognized” (Utah 1996 Annual Report p. 11).

This sort of external pressure could affect a commission’s ability to make impartial recommendations. Less obviously, this kind of attack could limit a commission’s ability to do its job well. The Standing Committee on Judicial Performance Evaluation advises the Utah Judicial Council on practices and procedures. The Utah annual report notes, “The dedication of the Committee and its staff to administering the current program and to resolving the topical issue of the day has precluded significant development of policies and procedures for the evaluation of justice court judges” (ibid. p. 11). “The Committee has identified a
host of issues for debate and development in the context of seeking a more rigorous evaluation of judges of all levels of court from the justice court to the Supreme Court. Because the development of new ideas does not qualify as an emergency, the Committee, as currently staffed, has difficulty turning its attention to these issues. If the Committee can reach an issue, the necessary investigation and analysis sometimes are not done or are too superficial” (ibid. p. 11).

**Providing useful information to voters.** The Arizona commission in particular has struggled with how best to communicate its findings to the public. In 1994, Arizona provided a detailed summary of evaluation results, along with a notation that the judge met or exceeded, or failed to meet, performance standards. In 1996, Arizona published only the bottom-line report on the extent to which each judge met performance standards. It appears there is a tradeoff between providing more information to voters, and voters’ desire or ability to use the information. Voters may not be willing to wade through hundreds of column inches of richly informative evaluation information. This suggests that commissions may need to consider the way they “market” their findings to the public in designing voter information guides.

**Low response rates among survey groups.** This issue arose most clearly in 1996 in the controversy surrounding the decision by the Colorado Commission on Judicial Performance to recommend that District Judge Lynn Hufnagel not be retained (see Section VI at pp. 103-104). When a response rate to a survey is low, the probability of biased results increases, which means that statistical analysis may be based mostly on the responses of those who have an axe to grind. Irrespective of the merits of Judge Hufnagel’s case, it appears that a low rate of response may have biased some of her evaluation results, and this harms the appearance if not the fact of commission impartiality.

**Issues related to the collection and analysis of court user survey data.** As Prof. James Lynch of the American University writes, “The ability of the surveys to fulfill their objectives turns on the discriminating power of the survey instrument, the adequacy of the sample design and the appropriateness of estimation procedures” (Lynch 1995:2). Prof. Lynch authored an assessment with recommendations of the Arizona Judicial Performance Review (CJPR) Commission’s court user survey procedures. Prof. Lynch recommends the CJPR adopt standard random sampling practices in distributing its survey to court user groups, since “the current design appears to distribute questionnaires to certain classes of consumers in a manner that does not ensure a known probability of selection” (Lynch 1995:3). Commissions need to employ a true random selection design, and then to minimize non-response, in order to make statements about the perceptions of the populations of court users that appear before a judge. A properly designed sampling procedure also can determine the minimum number of necessary surveys to distribute to make confident inferences about a judge’s performance, and as Prof. Lynch points out, “the money spent on processing an excessive number of cases from a non-probability sample could be used to fund the work necessary to draw a probability sample and to reduce non-response” (Lynch 1995:6). [See recommendation 4 in Section VII about random sampling and the importance of high response rates in court user surveys.]

Prof. Lynch also urged the CJPR to analyze responses to questions to eliminate any questions for a criterion that gives redundant information about a judge’s performance, and to increase the number of response categories to increase the variability in responses (Lynch 1995:7).
Increasing the variability in the court user survey responses would, for example, help to minimize the problem of the ‘halo effect’ in juror surveys (see below). Finally, Prof. Lynch advised the CJPR to consider constructing multivariate scales of judicial performance in analyzing the survey data, using the statistical technique of factor analysis, rather than comparing judges on each survey question separately. A scale measure will give more valid and reliable measures of the judges’ competence and performance, neither of which can be directly measured. A commission that wishes to incorporate any of these recommendations should consult with an expert in survey research and data analysis.

**The ‘halo effect’ in jury surveys.** The Alaska Judicial Council has struggled with the value of jury surveys, in which respondents almost invariably rate judges highly. The council has reinstated the jury survey despite the halo effect because it is a direct means for citizens to participate in, and become aware of, the evaluation program. Judges also find the qualitative comments on their clarity and the orderliness of the court proceedings useful. In addition, if a judge has lower-than-expected scores from jurors, this is meaningful information, even if the absolute score is high.

**Anonymous narrative comments in surveys.** Since the survey responses are anonymous, there is some debate about the value of respondents’ open-ended comments. The Arizona commission argues that anonymity promotes both frankness and irresponsibility, and feels it is best for these comments to be used only by the judge and judicial educators as feedback information.

More detailed information on each evaluation program may be found in Section VI.
IV

SURVEY RESULTS
SURVEY RESULTS

This section describes the results of the three surveys, and attempts to relate these results to known features of each program. In general, we try to compare results between commissions to assess the relative effectiveness of different program features, based on the survey information we have collected. We also compare results between voter, judge, and commissioner respondents, so we may base our assessments on the perspectives of all interested participants in the evaluation process. Included here also are samples of narrative comments judges and commissioners provided in open-ended survey questions.

Voter Exit Survey in Four Localities

As we describe in the data sources and methodology discussion in Part II, AJS conducted a nonrandom voter exit survey on Election Day, November 5, 1996, in four precincts in the largest locality of the four states in this study. The survey respondents reported their attitudes towards courts, whether they recalled participating in the judicial retention elections, whether they were familiar with the evaluation information, and whether and how they recalled using the evaluation information in their voting choices.

We caution readers not to interpret the survey results as if they reflect a truly random sample of voters in each locality, or are representative of voters’ attitudes in each locality or state. This is because we did not employ a random sampling design in the exit survey. As we mention on page 12, our respondents were drawn from a nonrandomly selected pool of voters leaving the polls on Election Day. We also conducted the survey only in the morning and evening, and not every exiting voter was stopped. For these reasons, these results should be considered only as illustrative or as a “snapshot” of some voters’ attitudes toward judicial elections and the evaluation reports in four precincts in each of our four localities, but as not representative of the voting populations in each locality as a whole.

It is important to note as well that, by construction of the survey, respondents who did not obtain the evaluation report, or any information based on the report, were not asked their opinions about the report. One will notice, therefore, that the number of respondents in the tables reporting results about their attitudes toward the reports includes only those familiar

15. We give the survey questionnaires in Appendix A.
16. Such a selection procedure for exit surveys is described in footnote 7, above.
17. We are far more confident in reporting the results of the judges’ and commissioners’ survey, which achieved 70 percent and 62 percent response rates for the entire populations, respectively (see judges’ and commissioners’ survey subsections in Section II).
with the official evaluation reports. On average, only about one-third of the 1,554 respondents reported familiarity with the reports. Indeed, the lack of knowledge about the existence of the report among two-thirds of voters, even recognizing the nonrandom nature of our respondents, suggests a major concern that warrants future exploration of judicial retention evaluation programs. Because of the design, we do not know whether the attitudes of those who were not familiar with the evaluation reports would be similar to what we report below in tables IV-4 and IV-5, if they had only somehow gotten a report. This is to add another layer of caution in interpreting the results from these tables.

As we note in Section II (p. 13), however, these voters’ statements are valuable to this assessment if only because they are the views of some citizens who are neither the evaluating commissioners nor evaluated judges. Judges and commissioners both have a particular stake and interests in the evaluation process itself, and it is likely that this will color how they perceive the commissions’ performance and efficacy. Our analysis in this subsection is exploratory, and we simply note where the pattern of responses suggests strengths and weaknesses of known features of these programs. ¹⁸ We do not make general claims about voters in each locality or assessments of the statistical confidence of any general statements. Instead, we state when differences in responses between groups, or contrasting responses between questions for a given group, suggest the efficacy or weakness of aspects of these programs.

**Respondents’ Sources of Evaluation Information**

**Reported exposure to commission evaluations.** Table IV-1 shows the relative visibility of each commission in our respondents’ eyes. As we note, the data do not permit us to say how visible these commissions are in the eyes of all voters. Descriptively, about half of those in our survey report they were aware of the existence of evaluation commissions, ranging from a low of 30.7 percent in the Phoenix suburbs, to a high of 58.0 percent in Anchorage. This difference is not surprising since Arizona’s commission is the most recently established (completing its first evaluations in 1994), while Alaska’s is the oldest (completing its first evaluations in 1976).

We also cannot report how many voters in each locality received an evaluation report. We can report, though, that a low number of respondents in the Phoenix suburbs and Denver report acquiring a copy of the evaluation report (15.2 percent and 24.4 percent, respectively), relative to Anchorage and Salt Lake City respondents (39.7 percent and 40.2 percent). Phoenix respondents report receiving the least amount of information based on the report (10.8 percent). One salient difference that may account for fewer of the respondents in the Phoenix area and Denver receiving reports is that the Alaska and Utah commissions disseminated the reports to each household, while the Colorado and Arizona commissions did not. (The percentages in the table indicate the proportion of those who responded “yes” to each question; the number in parentheses is the total number of respondents for that locality responding to the corresponding question).

¹⁸. We remedy this weakness to some extent in a study in Section V, below, where we evaluate data that comes from the full population of voters in Alaska. This study, however, cannot generalize directly to the other states since the data come only from Alaska.
Table IV-1: Respondents’ exposure to commission and reports  
(Percent answering “Yes”)

<table>
<thead>
<tr>
<th>Question</th>
<th>Anchorage</th>
<th>Phoenix Suburbs</th>
<th>Denver</th>
<th>Salt Lake City</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did you know that there is an official state-sponsored commission that</td>
<td>58.0%</td>
<td>30.7%</td>
<td>54.6%</td>
<td>49.6%</td>
</tr>
<tr>
<td>evaluates the job performance of judges and makes that information</td>
<td>(595)</td>
<td>(336)</td>
<td>(205)</td>
<td>(411)</td>
</tr>
<tr>
<td>available to voters?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Did you obtain a copy of the official report...?</td>
<td>39.7</td>
<td>15.2</td>
<td>24.4</td>
<td>40.2</td>
</tr>
<tr>
<td></td>
<td>(585)</td>
<td>(328)</td>
<td>(197)</td>
<td>(410)</td>
</tr>
<tr>
<td>Did you obtain any information based on this official report...?</td>
<td>32.8</td>
<td>10.8</td>
<td>35.6</td>
<td>34.8</td>
</tr>
<tr>
<td></td>
<td>(573)</td>
<td>(325)</td>
<td>(194)</td>
<td>(405)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.

A relatively large proportion of the Denver respondents were aware of their state commissions, but a relatively low percentage seem to have obtained the report information compared to the Anchorage and Salt Lake City respondents (Table IV-1). The relatively high visibility of the Colorado commissions to these respondents may reflect the much-publicized controversy in the 1996 election season, frequently reported in the print media, surrounding decisions by the Colorado commission to recommend against the retention of two women judges (described in Part VI at p. 103).

**Avenues for disseminating evaluation information.** Disseminating information to voters is among the most difficult aspects of effectively implementing these programs. Table IV-2 shows that respondents in all localities get most of their political information from newspapers, while Table IV-3 shows that, correspondingly, many respondents report getting evaluation information from newspaper coverage. (The number of respondents in Table IV-3 reflects only those who said they were familiar with the evaluation reports. We discuss the implications of this in the next paragraph.) That the Colorado commission was unable to include its recommendations in the lieutenant governor’s official voter guide appears to be reflected in Table IV-3 as well, in the low percentage of Denver respondents (16.4 percent) who said they got the evaluation information at home. Consequently, the majority of Denver respondents said they found the recommendations through the newspaper.
<table>
<thead>
<tr>
<th>What is your principal source of news?</th>
<th>Anchorage (N=602)</th>
<th>Phoenix Suburbs (N=350)</th>
<th>Denver (N=214)</th>
<th>Salt Lake City (N=424)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Newspaper</td>
<td>42.9%</td>
<td>39.7%</td>
<td>66.4%</td>
<td>44.1%</td>
</tr>
<tr>
<td>Television</td>
<td>26.2</td>
<td>32.9</td>
<td>24.3</td>
<td>28.3</td>
</tr>
<tr>
<td>Radio</td>
<td>8.5</td>
<td>6.9</td>
<td>7.5</td>
<td>8.5</td>
</tr>
<tr>
<td>Magazines</td>
<td>0.7</td>
<td>0.3</td>
<td>0.5</td>
<td>0.7</td>
</tr>
<tr>
<td>Online sources</td>
<td>0.3</td>
<td>1.1</td>
<td>1.4</td>
<td>0.5</td>
</tr>
<tr>
<td>All or most of the above</td>
<td>21.4</td>
<td>19.1</td>
<td>—</td>
<td>17.9</td>
</tr>
</tbody>
</table>

Note: Some respondents in each group checked more than one source.

Table IV-3 shows the relative use of each information source only for those respondents who actually acquired a report in some way. There are a large number of respondents who did not receive a report, and they are omitted from this calculation. As we mention above, it does not follow from these results that the respondents who did not get the evaluation information are also more likely to find the evaluation information through the mail, or in newspaper coverage, than through other information sources. It may be, for example, that relatively few of the respondents who did not get the evaluation information subscribe to daily newspapers. These results suggest that mailing to households and newspaper coverage appear to be relatively effective means to disseminate the evaluation information, but it also leaves open the question whether there are even better ways to reach the public.

<table>
<thead>
<tr>
<th>How did you get the official state-sponsored information...?</th>
<th>Anchorage (N=330)</th>
<th>Phoenix Suburbs (N=77)</th>
<th>Denver (N=122)</th>
<th>Salt Lake City (N=254)</th>
</tr>
</thead>
<tbody>
<tr>
<td>At home</td>
<td>43.9%</td>
<td>31.2%</td>
<td>16.4%</td>
<td>37.8%</td>
</tr>
<tr>
<td>Story in newspaper</td>
<td>24.8</td>
<td>31.2%</td>
<td>45.9</td>
<td>33.9</td>
</tr>
<tr>
<td>At a local library</td>
<td>1.8</td>
<td>5.1</td>
<td>2.5</td>
<td>2.0</td>
</tr>
<tr>
<td>From a community organization</td>
<td>4.2</td>
<td>6.5</td>
<td>4.1</td>
<td>3.5</td>
</tr>
<tr>
<td>Public service announcement</td>
<td>8.8</td>
<td>10.4</td>
<td>13.1</td>
<td>4.8</td>
</tr>
<tr>
<td>Friend or relative</td>
<td>8.5</td>
<td>9.1</td>
<td>11.5</td>
<td>7.9</td>
</tr>
<tr>
<td>Heard on a talk show</td>
<td>4.8</td>
<td>2.6</td>
<td>3.3</td>
<td>3.9</td>
</tr>
<tr>
<td>From a local or state government office</td>
<td>3.0</td>
<td>5.2</td>
<td>3.3</td>
<td>2.8</td>
</tr>
</tbody>
</table>

Note: Only those who report receiving the evaluation information answered this question. Since the respondents could check more than one source for the evaluation reports, the number of responses (N) exceeds the number of respondents for this question (see the tables in the next section).
Respondents' Use of Evaluation Information

We asked those respondents who reported familiarity with the commission recommendations or the commission report how they used the evaluation information in their voting choices. Notice that the number of observations from each locality for the questions in this section drops, since respondents who did not receive a report were not asked any of the questions on their attitudes toward the reports. We remind the reader again of a limitation in these data. Because those who were not familiar with the evaluation reports were not asked about their attitudes toward the report information, we do not know what their attitudes are toward the reports, or what their attitudes would have been if they had seen a report.

Reported use for evaluation information. Typically, the respondents who said they were familiar with the evaluation information report that the information assisted, but did not determine, their voting decisions in judicial elections (see Table IV-4). Many of these respondents report that their voting decisions either were helped by the evaluation information, or that their voting decisions were based solely on the evaluation reports. For example, 57.1 percent of the Salt Lake City respondents who were exposed to these reports say that the information assisted their voting decisions, and 15.9 percent exclusively relied on the commission recommendations in voting. In Anchorage, these percentages are 46.9 percent and 19.1 percent, respectively. The Phoenix respondents answering this question seem to rely exclusively on the report information (26.8 percent based their decisions solely on the recommendations); this may reflect the format of the Arizona commission report, which simply gives "bottom line" recommendations instead of detailed descriptive evaluative information. Relatively few respondents in each locality say they got the information but chose to disregard it. Anchorage and Phoenix respondents who answered this question chose not to use the evaluation information at a slightly higher rate than the other two respondent groups (26.6 percent and 26.8 percent, respectively); Denver respondents who answered this question were least likely simply to disregard the information (only 11.3 percent).19

<table>
<thead>
<tr>
<th>Table IV-4: Respondents' use of evaluation information</th>
</tr>
</thead>
<tbody>
<tr>
<td>How did the official...information ...affect your yes or no votes on judges?</td>
</tr>
<tr>
<td>My voting decisions were based solely on the information.</td>
</tr>
<tr>
<td>My voting decisions were helped by this information.</td>
</tr>
<tr>
<td>For a specific judge(s), I disregarded this information</td>
</tr>
<tr>
<td>Did not use the information at all.</td>
</tr>
</tbody>
</table>

Note: The number of observations in this table is smaller than the full set of respondents, since those who did not receive the evaluation information were not asked these questions.

19. Recall, though, from the analysis in section II (p. 12) that compares respondents’ self-reports to county data, this set of Denver respondents appeared somewhat more likely to overstate their participation than the other three groups of respondents. The differences reported here should not be overdrawn.
**Reported helpfulness of the evaluation information.** A majority of the respondents at each site who said they were familiar with the evaluation reports state that the information influenced their voting choices, added confidence to their voting choices, made them more likely to vote in judicial elections, and gave them a greater feeling of efficacy in holding the judiciary accountable (see Table IV-5). Most of the respondents in each locality who report receiving the evaluation information either agree or strongly agree that the official information influenced how they voted in retention elections, from a low of 59.8 percent in Anchorage to a high of 81.6 percent in Denver. This set of Denver respondents was most likely (70.1 percent) to report that the evaluation information clarifies in their minds the quality of the judicial candidates. This set of Phoenix respondents was the least likely (50.0 percent) to find that this information adds to their confidence in the quality of their judges.

It is interesting to note that Denver respondents also were the most likely to report that the reports made their voting choices more difficult (Table IV-5). That Denver respondents found the information both informative and difficult may reflect the format the Colorado commission uses to disseminate its findings, using a newspaper format with small type and detailed information on each judge. This is consistent with a trade-off the Arizona commission has perceived between how much information commissions present to voters and voters’ willingness to use the information. In 1994 Arizona published summaries of evaluation findings and reported whether the reviewed judges met or exceeded, or failed to meet, performance standards. In 1996, the Arizona JPE commission reported only the extent to which judges met performance standards.

In Table IV-5 below, strong majorities of these respondents in each locality say that the evaluation reports make them more likely to vote in judicial elections, and that the evaluation reports make judges more accountable to voters. In both of these questions, there was little variance between respondents in each locality.
Table IV-5: Respondents’ reports on whether the official reports are helpful in voting (Percent “Agreeing” or “Strongly Agreeing”)

<table>
<thead>
<tr>
<th>Statement</th>
<th>Anchorage</th>
<th>Phoenix Suburbs</th>
<th>Denver</th>
<th>Salt Lake City</th>
</tr>
</thead>
<tbody>
<tr>
<td>The official information...influenced my voting choices.</td>
<td>59.8%</td>
<td>60.0%</td>
<td>81.6%</td>
<td>72.7%</td>
</tr>
<tr>
<td>(254)</td>
<td>(55)</td>
<td>(76)</td>
<td></td>
<td>(183)</td>
</tr>
<tr>
<td>The official report made my voting choices more difficult.</td>
<td>12.2</td>
<td>16.1</td>
<td>25.0</td>
<td>8.7</td>
</tr>
<tr>
<td>(254)</td>
<td>(56)</td>
<td>(76)</td>
<td></td>
<td>(183)</td>
</tr>
<tr>
<td>The official...report adds to my confidence in the quality of judicial candidates.</td>
<td>56.3</td>
<td>50.0</td>
<td>70.1</td>
<td>62.8</td>
</tr>
<tr>
<td>(254)</td>
<td>(56)</td>
<td>(77)</td>
<td></td>
<td>(183)</td>
</tr>
<tr>
<td>I appreciated receiving official reports on the evaluation of the judges’ performance.</td>
<td>83.1</td>
<td>67.9</td>
<td>75.7</td>
<td>83.0</td>
</tr>
<tr>
<td>(254)</td>
<td>(56)</td>
<td>(74)</td>
<td></td>
<td>(182)</td>
</tr>
<tr>
<td>I am more likely to vote in a judicial election because of the official information....</td>
<td>64.6</td>
<td>66.1</td>
<td>72.0</td>
<td>68.1</td>
</tr>
<tr>
<td>(254)</td>
<td>(56)</td>
<td>(75)</td>
<td></td>
<td>(182)</td>
</tr>
<tr>
<td>The availability of official evaluation reports helps make judges in my state more accountable to me.</td>
<td>78.0</td>
<td>64.3</td>
<td>76.0</td>
<td>74.2</td>
</tr>
<tr>
<td>(254)</td>
<td>(56)</td>
<td>(75)</td>
<td></td>
<td>(182)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.
Note: The number of observations in this table is smaller than the full set of respondents, since those who did not receive the evaluation information were not asked these questions.

The full distribution of responses to these questions, as well as the responses on questions regarding attitudes towards courts, are given in Section VI, listed under the subsection for each commission.

Judges’ Survey

In this section, we examine judges’ general attitudes toward the judicial performance evaluation commission and process, including their perceptions of the efficacy of the commissions’ work in improving citizen participation in judicial retention elections, and the fairness of the evaluation process. We also examine how judicial performance evaluations affect judicial performance, as well as judges’ statements about the main benefits and problems with the process.

We surveyed all of the judges who were evaluated in the four states in 1996. We did two rounds of followup for the judges and reached a 70 percent rate of response (see Table II-2, page 15, for response rates for each state). Because of the high rate of response, we can be relatively confident that our findings here are representative of the views of these states’ evaluated judges.
*Judges' General Attitudes Toward Evaluations*

We asked the evaluated judges a number of questions about whether they think voters acquire and use the evaluation reports. Judges cannot be expected to know whether and how voters in fact use these reports. These questions instead serve to gauge judges' beliefs about the efficacy of the voter information component of these programs, which may affect their enthusiasm for and willingness to participate in the process.

**Judges' perceptions of whether voters use the evaluation information.** While judges in all four states believe that the reports provide meaningful information to voters, they tend to express some skepticism whether voters make use of the evaluation information and whether the reports make voters less likely to roll off, or more likely to participate in retention decisions (see Table IV-6). Alaska (77.8 percent) and Colorado (78.1 percent) judges are most likely to agree that the reports provide meaningful information to voters. Arizona judges are more pessimistic than judges from the other states, which may stem from the Arizona commission's decision in 1996 to publicize only the bottom-line recommendation on whether a judge meets performance standards (a simplification intended to make the information more easily used by voters).

Colorado judges are least likely to feel that voters will disregard commission evaluation information, with only 21.9 percent agreeing, and Alaska judges are next at 44.4 percent. The Alaska (55.6 percent) and Colorado (73.4 percent) judges feel most strongly that voters use the evaluation information to make voting decisions and that the reports provide meaningful information to voters. Recall that both the Alaska and Colorado commissions give relatively detailed descriptive information about judges' performance to voters.

Fewer Arizona and Colorado judges feel that the reports reach voters than in the other two states (see Table IV-6), and this pattern is consistent with what the voter respondents in these states report (Table IV-1). This again calls attention to the likely importance of distributing the reports directly to households as is done in Alaska and Utah, where a significant percentage of judges expects that reports do reach voters.

Judges in Arizona and Utah are skeptical whether the availability of the evaluation reports makes voters more likely to vote in judicial elections (29.3 percent and 23.5 percent, respectively). In these two states the reports only provide minimal summaries rather than descriptions in the reports to voters. Judges' skepticism here is inconsistent with the voting respondents' self-reports (refer back to Table IV-4), where majorities of the voter respondents in each locality who received a report say the information makes them more likely to vote in judicial elections. We cannot reconcile this difference here since our voter respondent data are not representative and so do not serve as a baseline to compare judges' relative skepticism toward voters' behavior. A higher percentage of judges in Alaska (55.6 percent) and Colorado (50.0 percent) feel that the reports prompt voters to vote in retention elections.
Table IV-6: Judges’ views on whether the evaluations inform voters
(Percent “Agreeing” or “Strongly Agreeing”)

<table>
<thead>
<tr>
<th>Statement</th>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports provide meaningful information to voters.</td>
<td>77.8%</td>
<td>43.9%</td>
<td>78.1%</td>
<td>67.6%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>Voters who receive…reports largely disregard them.</td>
<td>44.4%</td>
<td>58.5%</td>
<td>21.9%</td>
<td>67.6%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>Reports reach voters.</td>
<td>77.8%</td>
<td>57.1%</td>
<td>55.7%</td>
<td>72.7%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(35)</td>
<td>(61)</td>
<td>(33)</td>
</tr>
<tr>
<td>Reports make it more likely that voters will vote in</td>
<td>55.6%</td>
<td>29.3%</td>
<td>50.0%</td>
<td>23.5%</td>
</tr>
<tr>
<td>a judicial retention election.</td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>Voters who receive the…reports use the information</td>
<td>55.6%</td>
<td>41.5%</td>
<td>73.4%</td>
<td>29.4%</td>
</tr>
<tr>
<td>to make voting decisions</td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.

Judges’ views on procedural fairness. Table IV-7 reports judges’ views of the fairness and efficacy of the commission procedures. With the exception of Utah (discussed below), judges in general feel that the commission evaluations accurately reflect their performance on the bench, and that the evaluation process is fair and preserves judicial independence. Most judges in Arizona and Colorado are satisfied with their opportunity to respond to the commission findings before they are made public, but Alaska and Utah judges appear to be less satisfied with their opportunity to respond. This may be because the Arizona and Colorado commissions are required to meet with or interview each evaluated judge, while in Alaska the interview is discretionary and in Utah only judges who receive negative evaluations may request an interview (see Table III-4, page 29). Most judges in Alaska, Colorado and Utah are dissatisfied with the fairness of the appeals process if they disagree with the commission’s ultimate findings. The exception is Arizona, where a majority of judges are satisfied with the appeals process. It may be that the Arizona JPR commission’s strong emphasis on involving the judge in the evaluation reduces the importance of appeal.
Table IV-7: Judges' views of fairness of commission procedures
(Percent “Agreeing” or “Strongly Agreeing”)

<table>
<thead>
<tr>
<th>Statement</th>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports accurately reflect my job performance.</td>
<td>62.5%</td>
<td>56.1%</td>
<td>76.2%</td>
<td>48.4%</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(41)</td>
<td>(62)</td>
<td>(31)</td>
</tr>
<tr>
<td>The evaluation process undermines my independence as a judge.</td>
<td>22.2</td>
<td>33.3</td>
<td>14.5</td>
<td>50.0</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(39)</td>
<td>(62)</td>
<td>(32)</td>
</tr>
<tr>
<td>I have an adequate opportunity to respond to commission results before they are made public.</td>
<td>42.9</td>
<td>60.0</td>
<td>61.0</td>
<td>34.4</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(35)</td>
<td>(59)</td>
<td>(32)</td>
</tr>
<tr>
<td>The overall process used by the evaluation commission to collect information about my performance is fair.</td>
<td>66.7</td>
<td>66.7</td>
<td>60.7</td>
<td>57.6</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(39)</td>
<td>(61)</td>
<td>(33)</td>
</tr>
<tr>
<td>Appropriate criteria used to evaluate your performance as a judge.</td>
<td>100.0</td>
<td>74.4</td>
<td>79.5</td>
<td>75.8</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(39)</td>
<td>(62)</td>
<td>(34)</td>
</tr>
<tr>
<td>Judges have access to a fair appeals process if they disagree with the commission's report.</td>
<td>20.0</td>
<td>51.6</td>
<td>30.2</td>
<td>30.8</td>
</tr>
<tr>
<td></td>
<td>(5)</td>
<td>(31)</td>
<td>(53)</td>
<td>(26)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.
Note: Cells give the percentage of all judges agreeing or strongly agreeing with the statement among those who had an opinion on the statement.

Nearly half of the Utah judges feel that the Utah commission does not accurately capture on-the-bench performance in its evaluation, and that the Utah commission tends to undermine judicial independence (see Table IV-7).

In addition, only 25 percent of Utah judges feel that the commission accurately takes their workload into account (see Table IV-8). In states other than Utah, judges feel that the commissioners are fair, reasonably critical, and value judicial independence (see Table IV-8). We report below a follow-up telephone survey of some Utah judges to find out the causes of this expressed dissatisfaction with important parts of the Utah evaluation process.
Table IV-8: Judges' views of commissioners (Percent “Agreeing” or “Strongly Agreeing”)  

<table>
<thead>
<tr>
<th>Statement</th>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>The evaluation commissioners are fair.</td>
<td>100%</td>
<td>91.4%</td>
<td>85.2%</td>
<td>83.3%</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(35)</td>
<td>(61)</td>
<td>(18)</td>
</tr>
<tr>
<td>Commission is too critical of judges.</td>
<td>11.1</td>
<td>6.3</td>
<td>15.0</td>
<td>20.0</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(32)</td>
<td>(60)</td>
<td>(15)</td>
</tr>
<tr>
<td>Commission understands the workload of judges.</td>
<td>85.7</td>
<td>75.0</td>
<td>55.9</td>
<td>25.0</td>
</tr>
<tr>
<td></td>
<td>(7)</td>
<td>(32)</td>
<td>(59)</td>
<td>(20)</td>
</tr>
<tr>
<td>Commission understands the role of judges.</td>
<td>100.0</td>
<td>82.4</td>
<td>77.0</td>
<td>77.8</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(34)</td>
<td>(61)</td>
<td>(18)</td>
</tr>
<tr>
<td>Commission understands the importance of judicial independence.</td>
<td>87.5</td>
<td>76.7</td>
<td>70.7</td>
<td>62.5</td>
</tr>
<tr>
<td></td>
<td>(8)</td>
<td>(30)</td>
<td>(58)</td>
<td>(16)</td>
</tr>
<tr>
<td>Commission is too easy on judges.</td>
<td>0.0</td>
<td>29.4</td>
<td>11.7</td>
<td>5.3</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(34)</td>
<td>(60)</td>
<td>(19)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.

Follow-up Interviews with Utah Judges

To get some insight into Utah judges’ expressed dissatisfaction with important parts of the evaluation process, we were able to interview five Utah judges who gave us permission to call them by signing their questionnaires and supplying their telephone numbers. After reviewing Tables IV-7 and IV-8 to identify the areas of greatest concern, we developed a structured interview form to elicit these judges’ comments on the following issues:

◆ Performance evaluation reports accurately reflect my job performance.

◆ I have an adequate opportunity to respond to commission results before they are made public.

◆ The evaluation commission understands the workload of judges. And

◆ The performance evaluation process undermines my independence as a judge.

Since so few judges were interviewed, their remarks are only suggestive. Their comments are summarized below.

Final report accurately reflects job performance. Some of the Utah judges interviewed said they believe the final report is inaccurate because it is based entirely on lawyers’ evaluations and is too subjective (lawyers were the only group surveyed for the 1996 election cycle.) One judge suggested dropping out the top and bottom 5 percent of scores to compute a more accurate picture of performance. Another judge said the Utah Judicial Council’s pass/fail report to voters format was a weakness; the statistical measure is unfair and does not accurately reflect strengths and weaknesses. The UJC reports whether the judge received a 70 percent score in the attorney survey on each criterion. See Utah excerpt, Appendix B.
Adequate opportunity to respond before results made public. Although one Utah judge said that once the attorneys’ responses are compiled, the results are “pretty much set,” others said they had adequate opportunity to discuss their concerns with the Judicial Council. Most of the judges interviewed noted that they can request an interview with the Council within ten days of receiving the evaluation summary, although one judge would like to have 30 days to decide whether to request an interview. In addition, a couple of judges would like to provide more information to voters, either by showing pass/fail scores on all performance criteria or inserting their own messages to voters. One judge said that if a judge scores below 70 percent on one or more criteria, he or she would like the opportunity to explain the factors behind that score to the public as well as the Judicial Council.

The evaluation commission understands the workload of judges. Utah uses compliance with case-processing time standards as a performance criterion, which appears to be the basis for some judges’ concerns. Stating it “was not a big criticism but a concern,” one judge with a heavy caseload said that some members of the Judicial Council “have no comprehension” of his or her workload. In a similar vein, another judge described handling 40 cases in a morning, and expressed concern that some council members don’t take that high volume into account when preparing the final report. Another judge noted, however, that the council is open to explanations about failure to meet time standards. This judge referred to a situation in which some vacancies in a court overburdened other judges and led to a time lag in handling cases.

The performance evaluation process undermines judicial independence. One judge who disagreed with this statement said that some judges believe any scrutiny undermines judicial independence. Most of the judges interviewed trace their concerns about judicial independence to the fact that their evaluation results depend entirely on lawyers—the only group surveyed in 1996. One noted that “nice” judges score well, so the temptation is to tailor decisions to become more popular among active attorneys. Another observed that in criminal cases, “easier” judges get higher ratings, adding that a lot of criminal defense attorneys evaluate the judges.

Some of the interviewed judges noted, however, that other pressures influence their perception of the performance evaluation process, resulting in what one judge called a “siege mentality” on the part of some judges. Expressed concerns include media focus on a few decisions, the involvement of interest groups in the 1996 elections, statements from a few legislators who “want a judge thrown out so they can believe the process works,” and the activities of a revitalized judicial conduct commission. One judge added that there are not enough judges on the judicial conduct organization.

Impact of the Evaluations on Judges

As we mention in the introduction, the evaluation reports present both voters and judges with relatively objective information about judges’ overall performance. The availability of objective evaluations can help judges in giving a response to a negative interest group campaign during a retention election. These campaigns oftentimes focus on a single decision rather than the judges’ overall performance in office. The evaluation information may also
help judges improve their on-the-bench performance if judges feel the information is useful feedback they might not otherwise get.

**Responding to interest group attacks.** Majorities of the Alaska (77.8 percent) and Colorado (59.4 percent) judges feel that the evaluation reports help to counter negative interest group campaigns. Arizona and Utah judges are more ambivalent. While 45.0 percent of Arizona judges and 41.2 percent of Utah judges feel the evaluation reports help to counter these campaigns, about one-third judges in these two states could not say one way or the other (32.5 percent in Arizona and 35.3 percent in Utah responded “Don’t Know” on this question). Nearly half of the 22 judges in the survey who reported experiencing such a campaign actively used the evaluation results in responding to an attack. Given that judges rarely respond publicly to an attack, it is striking that nearly half, or 45.5 percent of the judges who had experienced a political attack, made a public response. A recent AJS survey of Midwest state and federal judges found (in contrast) that only 9 percent of Midwest judges who were attacked made some public response (Esterling 1998). Viewed from this perspective, this result suggests that the availability of the relatively objective evaluation information improves judges’ ability to speak publicly when publicly attacked.

**Usefulness of evaluations for performance feedback.** Tables IV-9 (a) and (b) on page 48 show that a very high percentage of judges in each state feel that the evaluations provide useful feedback on their general performance, from a high of 85.4 percent in Arizona to a low of 73.5 percent in Utah. Approximately three-quarters of the judges in Alaska, Arizona, and Colorado agree that the evaluation process makes them appropriately accountable for their performance in office. In Utah, 58.8 percent of responding judges feel that the evaluations hold them appropriately accountable.

We have little evidence, however, for the specific ways in which the evaluation information affects judicial performance, since few report that the evaluations changed their sentencing practices, frequency of public appearances, or the way they relate to surveyed groups (see Table IV-9 (b)). Very low percentages of judges in all four states say that the evaluations change their sentencing practices or their frequency of public appearances. Relatively low percentages of judges in all states report that the evaluations change their affect toward the surveyed court user groups. The one exception is that 38.2 percent of judges in Utah report that the evaluations change the way they treat their one survey group, attorneys, and this is consistent with what they report to us in the followup interviews we conducted of Utah judges (see pp. 45-46).
Table IV-9 (a): Whether evaluations provide feedback for self-improvement
(Percent “Agreeing” or “Strongly Agreeing”)

<table>
<thead>
<tr>
<th>Statement</th>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports provide information to me that will help me improve my performance.</td>
<td>77.8%</td>
<td>85.4%</td>
<td>76.6%</td>
<td>73.5%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>The evaluation process helps make me appropriately accountable for my job performance.</td>
<td>77.8</td>
<td>75.6</td>
<td>73.4</td>
<td>58.8</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(41)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>As a result of evaluation findings, judges are more likely to take continuing judicial education courses to remedy areas of weakness.</td>
<td>11.1</td>
<td>25.0</td>
<td>14.1</td>
<td>41.2</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(40)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>Judges in my state support the performance evaluation process.</td>
<td>66.7</td>
<td>45.0</td>
<td>57.8</td>
<td>38.2</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(40)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.

Table IV-9 (b): Whether evaluations provide feedback for self-improvement
(Percent “Agreeing” or “Strongly Agreeing”)

<table>
<thead>
<tr>
<th>Question</th>
<th>AK</th>
<th>AZ</th>
<th>CO</th>
<th>UT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have your evaluation results affected your overall sentencing practices?</td>
<td>11.1%</td>
<td>2.5%</td>
<td>6.3%</td>
<td>5.9%</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(40)</td>
<td>(63)</td>
<td>(34)</td>
</tr>
<tr>
<td>Have your evaluation results had an impact on the way you relate to individuals and/or groups that are surveyed by the performance evaluation commission?</td>
<td>22.2</td>
<td>10.0</td>
<td>21.9</td>
<td>38.2</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(40)</td>
<td>(64)</td>
<td>(34)</td>
</tr>
<tr>
<td>Have your evaluation results increased the frequency of your public appearances?</td>
<td>12.5</td>
<td>2.4</td>
<td>1.6</td>
<td>0.0</td>
</tr>
<tr>
<td></td>
<td>(9)</td>
<td>(41)</td>
<td>(63)</td>
<td>(34)</td>
</tr>
</tbody>
</table>

The number in parentheses is the number of people who responded to this question.

Table IV-10 on the next page shows that very few of the responding judges, and none in Alaska, Colorado, and Utah, are prompted to take more continuing education courses because of negative evaluations. This result does not necessarily indicate that judges do not improve their performance based on evaluation results. For example, a judge will not necessarily take continuing judicial education courses upon receiving low scores on judicial temperament or on impartiality. Courses on these topics may not exist, and continuing education may not be the most effective means to improve in these areas. We followed up on the possibility of this mismatch between evaluation feedback and available judicial education courses in a supplemental survey of state judicial educators. We report the results after the table.
Table IV-10: Why judges take continuing judicial education courses
(Percent responding “Yes”; judges checked all categories that applied.)

<table>
<thead>
<tr>
<th>I have taken judicial education courses because</th>
<th>AK (N=9)</th>
<th>AZ (N=40)</th>
<th>CO (N=64)</th>
<th>UT (N=34)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative performance evaluations</td>
<td>0%</td>
<td>7.5%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Positive performance evaluations</td>
<td>0</td>
<td>7.5</td>
<td>0</td>
<td>2.9</td>
</tr>
<tr>
<td>I am required to</td>
<td>11.1</td>
<td>60.0</td>
<td>67.2</td>
<td>52.9</td>
</tr>
<tr>
<td>My own professional development needs</td>
<td>100</td>
<td>95.0</td>
<td>92.2</td>
<td>100</td>
</tr>
</tbody>
</table>

Follow-up Interviews with Judicial Educators

The previous findings suggest the importance of the connection between the evaluation programs and judicial education programs in areas where these programs may be complementary. To gather additional insights on this issue, we surveyed the directors of judicial education in the four states, asking them the following three questions:

◆ Is there a mechanism for you to receive the results of judicial performance evaluations for retention purposes? If yes, please describe.

◆ To what extent do the results of judicial performance evaluations affect the design of judicial education programs?

◆ Do you have any suggestions about improving the linkage between the judicial evaluation body and those charged with designing judicial education programs?

Judicial educators’ responses indicate that three states, Arizona, Colorado, and Utah, have some kind of mechanism for relaying the results of judicial performance evaluations to the person or committee responsible for designing judicial education programs. The evaluation results tend to be nonspecific, however, and of limited value to state judicial educators. As we show below, the Colorado and Utah educators supplement the evaluation information with additional needs assessments. Alaska does not have a formally designated state judicial educator and is discussed separately below.

Arizona. In Arizona, when a performance evaluation cycle is completed, Judicial Performance Review (JPR) staff work with the evaluation commissioners to identify educational needs that surfaced in the evaluation results. For example, “judicial writing” may be identified as an area of weakness for some appellate judges. The JPR Committee then sends a list of areas in which continuing education may be needed to the planning committees for the state judicial conference, continuing education programs, and career development programs. A reported concern is that the description of educational areas or issues is not specific enough. What does “judicial writing” mean? Are the opinions too complex? Poorly structured? More specificity would be helpful to those who design education programs.
Suggestions for improving communication between the JPR Committee and planners of educational programs include:

- Appoint a liaison from the JPR Committee to the curriculum-development committee.
- Allow a curriculum committee member to observe a portion of the JPR process—for example, the final meeting when JPR Committee members discuss the implications of their overall findings, rather than a meeting to discuss specific judges or jurisdictions.
- Supply more details in the JPR report to curriculum planners, e.g., specific examples of problems that indicate a need for continuing education, some rank-ordering of problems by level of frequency or importance, etc.

**Colorado.** Evaluation commission staff in the state court administrator’s office relay to the state judicial educator a summary of the evaluation reports that are distributed to the public. The educator reviews the summary for trends that might indicate a need for additional training. For example, the 1996 evaluations indicated a need to respond to judicial demeanor issues. The state judicial educator has other sources of information on training needs, however, such as comments from judges who attend national conferences and return with ideas for educational programs, and suggestions from members of the judicial conference planning committee who receive feedback from colleagues statewide on the need for training on various topics.

**Utah.** A judicial performance evaluation committee staff person sends the state judicial educator “group data” information from the evaluations. This information gives the educator some indication of continuing education needs by showing the percentage of judges who scored less than satisfactorily in a given area. For example, the group data for one judicial region (consisting of five districts) indicates that about 5 percent of judges in the region scored poorly on “Demonstrates knowledge of the rules of procedure” and about 6 percent scored poorly on “Avoids arrogance.”

Since this information gives only general guidance in terms of educational needs, the educator also conducts needs assessments by surveying all appellate, district and juvenile court judges every three or four years. The educator also has informal conversations with the director of the judicial conduct commission, which helps her develop programs on ethics.

**Alaska.** There is little formal judicial education structure in Alaska and currently no mechanism for cycling educational needs identified during retention evaluations to a judicial educator. There is a fall judicial conference and another in May held in conjunction with the Alaska Bar Association’s meeting. For the past several years, two staff members for the Alaska Judicial Council (which conducts the performance evaluations) have served on the planning committee for the May judicial conference. As planning committee members, they have some input into topics for the conference.

**Summary.** This supplemental survey of state judicial educators suggests that these programs do not clearly link performance evaluation results to available judicial education coursework. Continuing judicial education may not be the most effective means to improve on some performance criteria such as temperament or punctuality. However, greater coordination
than currently exists between the performance evaluation commission and judicial education office may be profitable for developing educational programs addressing some of the criteria, such as legal writing and communication skills.

**What Affects Judges’ Attitudes Toward the Commissions?**

In this section we look at why some judges appreciate the evaluations and the evaluation program more than others. We conducted a cross-tabulation analysis using the judges’ survey, and give an overview of the results below.

**Time pressures.** The judges who feel they do not have sufficient time to process cases are 26 percent more likely than not to feel that the commission does not understand their workload. Perhaps as a consequence, these judges also are 8.6 percent more likely to view the evaluation process as unfair and 8 percent more likely to think the evaluations are inaccurate. In addition, the judges who feel they have insufficient time to process cases tend to feel that the evaluation process undermines judicial independence (they are 13.4 percent more likely than not to assert this). These patterns hold across states except that Arizona judges who report caseload pressures tend to feel that the Arizona commission is accurate in its evaluations.

**Judges’ attitudes toward accountability to citizens.** Judges who place greater value on judicial accountability to citizens may be more positive about the evaluation programs. Those judges who feel that citizens should not have a say in judicial retention have a greater tendency (by 18.4 percent) to feel that the evaluations do not help to make judges appropriately accountable to citizens. That is, these judges tend to feel that the evaluation information does not improve the quality of citizen participation in the process. In addition, a sizeable portion of the responding judges who feel they should not be held accountable to voters also tends to feel that the evaluation process undermines judicial independence (by more than 30 percent). Taken together, these latter two statistics show that judges who are less sanguine toward citizen involvement in judicial retention decisions tend to be the ones who feel that the commission is harmful to the independence of the judiciary.

**Jurisdiction.** Appellate court judges are distinctly more likely to feel that the commission is fair, knows the judges’ workload, and accurately portrays the judges’ on-the-bench performance, while trial court judges feel the opposite on all three counts. We do not have any information collected in this study to explain this interesting discrepancy.

**Summary.** That judges under greater caseload pressures are more likely to find the evaluation process unfair and inaccurate suggests the importance of using caseload information as contextual information to interpret the court user survey results (see e.g. explanation from the Alaska Judicial Council on page 79). Finally, judges’ beliefs about the appropriate accountability of courts to citizens can affect their views of how these commissions can harm judicial independence; this is an example of an “attitudinal barrier” that perhaps may be remedied through greater involvement of judges in the process.
Judges' Comments About the Main Benefits and Problems with the Evaluation Process

The judges' questionnaire contained a number of open-ended questions, including one asking their views of the benefits and problems with the process. Here we summarize comments from judges in each state about the main benefits and problems with the process.

Main benefits. Judges' comments about the benefits of judicial performance evaluations fall under two main headings—the benefits to them and the benefits to the public.

Many judges in all four states said an important benefit of the performance evaluation process was receiving feedback so they could improve their performance. One Colorado judge summed it up as follows: “...[T]he benefits are personal to the judge's continued professional development—it's the only way that we get to see ourselves as others see us.”

Additional comments on these issues include the following:

- It highlights shortcomings that we may not be aware of, [and] praises other traits that we likewise may not be aware of.
- Informing the voters of judicial performance; improving my own performance.
- Points out areas of concern and strengths to assist me in improving my job performance.
- Some measure of information about judges is made available to the public—generally an even-handed evaluation.
- It provides feedback and criticism (good or bad). These are useful to me and also to the public who are voting on retention.
- Feedback for judges. A measure of oversight with only minimal intrusion on independence.
- We need some evaluation process if we continue to have retention elections. Our present process is the “least bad” alternative available.

Judges in three states also noted that political benefits can accrue from a performance evaluation program. Typical comments included the following:

- It prevents the legislature from enacting a worse process. (Arizona)
- Self-improvement and avoidance of contested elections. (Utah)
- Keeping me out of politics. I would never have been a judge if I had to make promises to anyone or any group as part of getting my job. (Colorado)

A few Alaska, Arizona and Colorado judges said that positive evaluations are useful to counter
negative attacks. One noted that the evaluation report “[g]ives a general view of a judge’s competence without undue influence of single-issue groups.” Another judge noted, “Positive performance evaluations are useful to counter negative attacks; give some voters who know nothing about the judges up for retention something upon which to base their vote....” In addition, two judges (from different states) noted that positive evaluations tend to stem the tide of those who are voting “no” on all judges. Said one, “The public feels enfranchised and knowledgeable. It has softened the impact of the ‘vote no for all incumbents group.’ ”

Judges in all four states mention providing information about judicial performance to the public as often as the importance of providing feedback to the judges. Typical quotes include:

◆ The availability of objective information for the public.

◆ Gives the general public a basis for deciding to vote for or against a judge.

◆ As long as we must stand for election, there needs to be a process to provide information to the public.

◆ Providing the community a means by which they can learn more about judges and make a halfway intelligent voting decision.

◆ The public is better informed when making voting decisions and can weed out incompetent judges.

◆ Information is gathered and distributed to the public so that the public is informed and can make a reasoned decision about who should judge.

◆ The main benefit is to inform the electorate on judicial performance. Indeed, in [state name], it is the only means by which the electorate can obtain information, as campaigns are forbidden except in very limited situations.

In addition, some judges in Alaska, Arizona and Colorado cited accountability to the public as a benefit of the performance evaluation process. An Arizona judge commented, “Shows we are committed to self-improvement and are answerable to the public for our conduct of our office.” Interestingly, no Utah judge respondent mentioned accountability, which may reflect some Utah judges’ concern that surveying only lawyers impinges on their judicial independence. See the discussion of this on page 45.

Main problems. The most frequently cited problems that judge respondents reported cluster around the following themes: concerns about evaluation methodology, funding, due process for the judge, and inadequate dissemination of the evaluation results to the public. Some judges also commented on the negative impact of evaluations on judicial independence.

A number of judges in each of the four states expressed concern about the survey methodology used to elicit information about their performance. They cite failure to obtain a true statistical sample (or as one judge put it, “lack of wide cross-section of sources of data”) and poor response rates. Comments on this issue include the following:
• The pool of persons surveyed is so small that a few negative votes can skew the results, resulting in an unfair impairment of a judge’s reputation.

• They should have a 100 percent response rate. My “polls” were excellent, but I was lucky. The law enforcement poll said that 100 percent of law enforcement supported me—the new data (not published) showed that only 6 officers responded—it could have easily gone the other way. We must have professional, accurate polls, or it’s just not fair.

• The main problem has been the agency doing the evaluations. The process they have used in determining the number of responses to use resulted in statistically invalid sampling techniques. As a result, the survey published and used in some cases was not valid.

• Some of the commissions made recommendations based on invalid statistical data.

• Exclusive reliance on statistical information is a concern.

• Poor percentage of responses from those surveyed.

Colorado judges in particular linked the methodological problems to inadequate funding. “With more time and funds, a professional could be engaged to prepare the questions and to select a meaningful group for the survey,” said one judge. Another remarked on “lack of resources to adequately survey all groups”; and a third said that “inadequate funding to allow the commission to be trained and to interpret the data” was a problem. Judges in the other three states had little or nothing to say about this linkage.

A few judges noted due-process problems. One said there was “no due process for judges in the appeal of the recommendation [to the voters].” This is illustrated in Table IV-7, page 44, showing that in Arizona only a bare majority of judges agreed with the statement “Judges have access to a fair appeals process if they disagree with the commission’s report.” In the other three states only 20-30 percent of judges agreed with the statement.

Judges also commented on poor dissemination and public understanding of the final evaluation results. A sampling of comments:

• Poor dissemination of the results.

• Reports can be sketchy.

• Voters are apathetic—they don’t take time to read the information provided. They don’t care.

• Not enough hard data go to the public in an easy-to-understand fashion.

• The voters ignore the results.

• Public does not understand.

• Failure to effectively communicate meaningful information to the voters.
Finally, even though large majorities of respondent judges in all four states agreed with the statement, “Commission understands the importance of judicial independence” (See Table IV-8), some judges said the evaluation process erodes judicial independence. Their comments reflect the fact that a number of judge respondents (Table IV-7) agreed with the statement “The evaluation process undermines my independence as a judge.” The percentages who agreed range from a low of 14.5 percent in Colorado to a high of 50 percent in Utah. Again, see the discussion of interviews with some Utah judges on this issue on page 46.

In responding to our open-ended question about problems with the evaluation process, then, it is not surprising that the only comments about the impact of evaluations on judicial independence came from judges in the two states with the highest percentage of judges who agreed with the statement, “The evaluation process undermines my independence as a judge.” (See Table IV-7 on page 44.) The two states are Arizona, which has the newest retention evaluation program (33.3 percent of judges agreed with the statement), and Utah, in which 50 percent of judges agreed with the statement as noted in the preceding paragraph.

Sample quotes about judicial independence from Arizona and Utah include:

♦ It compromises judicial independence; judges concern themselves too much with popularity.

♦ It erodes judicial independence.

♦ It undermines judicial independence. People with negative thoughts are more likely to respond. Other negative thoughts result from disagreements with judges who run a tight and efficient court.

Commissioners’ Survey

We asked the commissioners questions on their attitudes toward the evaluation process that parallel the questions in the judges’ survey. This way we can make direct comparisons between the perceptions of the evaluators and evaluated judges on the fairness and efficacy of the process. We also asked commissioners to describe internal commission operations, and to state what they feel are the main benefits and problems with the process. This section also reports both commissioners’ and judges’ views on what obstacles must be overcome to improve the process.

As with the judges, our sample of commissioners included all of the commissioners who evaluated judges in the four states in 1996. We did two rounds of followup and reached a 62 percent rate of response. Because of the high rate of response, we can be relatively confident that our findings are representative of commissioners’ views in these states.

We do not display the state-by-state comparison tables in this section because of difficulties in making clear comparisons. Because the Colorado commission is really multiple commissions (one in each district and a state commission), it has a relatively large membership and
so accounts for a disproportionate share of our commissioner sample population. In addition, we have too few responses from Alaska and Utah commissioners to make a comparison of percentages in responses meaningful. Instead of detailed tables, we describe general patterns of responses and contrast these patterns with those observed in the voter and judge surveys.

Commissioners’ General Attitudes
Toward the 1996 Evaluation Process

Commissioners’ attitudes toward voters. Nearly all commissioners who responded believe it is important for courts to be accountable to citizens, with nearly all commissioners in each state agreeing that it is important that voters have a say in whether a judge stays in office. This strength in commitment to citizen participation in judicial retention is not only admirable, but can be expected, since commissioners volunteer their time and effort to oversee the evaluation process. A large majority of Colorado commissioners and a majority in each of the other commissions believe as well that voters in fact affect the quality of judges who serve in their community.

A majority of commissioners in all four evaluation programs believe that voters who receive a report make use of the evaluation information in voting, with Colorado commissioners by far the most likely to agree with this. Most of the commissioners in all states except for Arizona feel that the evaluation information makes voters more likely to vote on the retention part of the ballot.

How well commissioners feel they are reaching their goals. We asked the commissioners several questions measuring how well they feel their commissions are reaching their primary goals of informing voters and providing judges with useful feedback. Majorsities of commissioners in all four states feel that the reports reach voters and provide meaningful information to them on a timely basis. The Colorado and Arizona commissioners are the least likely to feel that the reports are reaching the voters, and this pattern is reflected in what voter respondents in Denver and the Phoenix suburbs report (see Table IV-1, p. 37), as well as in judges’ perceptions (Table IV-6, p. 43). Again, neither of these commissions was able to mail its voter information directly to households.

Outside of Colorado, all of the commissioners in this sample feel that the reports help judges improve their performance; Colorado reports a large majority on this question. Near majorities of commissioners in each state except Colorado, and about one-third of the Colorado commissioners, feel that the evaluations prompt judges to take more continuing judicial education to improve demonstrated areas of weakness. These commissioners are perhaps overly optimistic, however, since almost no judges responding in the judge survey report that either negative or positive evaluations lead them to do so (see Table IV-10, p. 49). As we found in our follow-up survey of state judicial educators, the connections between evaluation programs and continuing education programs often are not strong, and the evaluations

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20. The Colorado commission responses account for 81 percent of all commissioner responses.
21. Four out of seven Alaska Judicial Council members and seven out of thirteen Utah Judicial Council members returned surveys.
focus on some aspects of judicial performance that are not readily remedied through continuing education, like demeanor and temperament.

**Judges’ and commissioners’ views on strengths and weaknesses of final report that is disseminated to the public.** We included open-ended questions in both judges’ and evaluation committee members’ surveys to identify the strengths and weaknesses of the final report. Here we report what judges and commissioners had to say.

First, some background on the reports to voters. In 1996, Alaska and Colorado issued standardized and relatively detailed narrative summaries of evaluation findings, accompanied by recommendations to retain or not retain an individual judge. Alaska also reports a numeric rating of the judge’s performance on a scale of 1-5.\(^{22}\) Colorado has a third option, a “no opinion” recommendation. Colorado commissioners are required to explain why they are reporting “no opinion,” rather than making a “retain” or “do not retain” recommendation. Utah also issues standardized reports reporting only that judges are certified or not certified for retention. Judges who receive an aggregate score of 70 percent or better are certified; those whose aggregate score is below 70 percent are not. Arizona issued its first evaluation reports in 1994; the report for each judge contained brief biographical information and a summary of the results of surveys of attorneys, litigants/witnesses, jurors and court staff. The report concluded with a finding stating whether the judge met or exceeded performance standards or failed to meet the standards. Because of complaints about the length of the 1994 reports, in 1996 the Arizona commission did not issue evaluation summaries, only the bottom-line information for each judge—whether he or she met or exceeded, or failed to meet, performance standards. We give excerpts of reports to voters for each state in Appendix B.

**Judges’ views.** Major themes in the comments of judges in all four states on the strengths of the final report are (1) its brevity and conciseness; (2) the neutral and nonpartisan source of the report (i.e., the evaluation commission); and (3) the usefulness of the information to the voting public. Some comments on these issues follow:

- **Brevity**—the summary is brief and to the point.
- **The source (the commission) is nonpartisan and supposedly objective.**
- **Simple to read and understand.**
- **It gives the voters information that they certainly could not obtain themselves.**
- **Positive, good general information.**

Judges’ assessments of the weaknesses of the final report suggest that some of the weaknesses are the reverse side of the strengths. For example, some judges said the final reports are too brief and too general, and do not provide enough meaningful or detailed information. This was especially true in Arizona, where in 1996 voters were told only that the judges either met or exceeded, or failed to meet, performance standards. Representative comments from Ari-

\(^{22}\) See discussion of the relationship between numeric ratings and judges’ affirmative rates in Section V, beginning on page 69.
Arizona respondent judges include, “Not enough meaningful information,” and “It has so little info as to be worthless.” But some judges in Colorado and Utah also said more information should be given in the final report. Sample comments from these two states include, “Too much detail is withheld,” and “In addition to the concise summary, additional data should be available to those who are interested.”

Alaska respondents did not comment on this issue, perhaps because Alaska has had 20 years to refine its performance report to the public, and perhaps because judges there can, at their own expense, insert a page in the voter pamphlet with a photo, personal biographical information (e.g., education, work history), and a “position statement.” The insert costs about $50 per judge. See Appendix B for a sample insert.

A few judge respondents in Arizona, Colorado and Utah expressed skepticism about the reports’ usefulness to the public. “I don’t think the public as a whole [is] very informed, nor do they want to be informed. Besides special interest groups, I don’t think they care,” said one. Another commented, “The reports do not tell the public much and may be ignored by the public.” A third judge said, “Each judge who meets the standards looks the same.” Alaska respondents had no comments on this issue, perhaps for the reasons noted above.

Commissioners’ views. Respondent commissioners’ views on the strengths of the final written report vary within and across states. For example, while most Arizona commissioners who discussed this issue said their “bottom line” report (i.e., whether each judge met, exceeded or failed to meet performance standards) was fair, simple to read and understand, and accurate, one commissioner said the final report was “too brief.” Utah commissioners who commented were fairly positive, characterizing the strengths of their final report as “usable,” and “provid[ing] some effort at objective evaluation.” Colorado commissioners reported a range of reactions, as illustrated in the following comments:

- Brief, highlights strengths and weaknesses, easy to understand.
- Anything is better than nothing.
- The summary is too brief to adequately explain the conclusions.
- Gives the public a clear, concise snapshot of the judge so that they can be confident about their vote.

Alaska respondents did not comment on this issue.

Commissioner respondents’ comments on the weaknesses of the final report cover the reports’ content, their value to voters and voters’ use of the information, and dissemination. Not surprisingly, Arizona respondents frequently noted the limited content of their final report as a weakness. “Too simple and does not give enough information” captures the general sentiment. Colorado respondents were fairly evenly divided, as evidenced by the above quotes. Critics also noted the tiny font in the Colorado report (See Appendix B for sample) and the brevity of the reports as problems. Respondents from Alaska, Arizona and Colorado expressed concern and skepticism about voters’ use of the evaluation information. Typical comments include:
Still don’t believe the majority of the public pays attention, particularly if they have never encountered the system.

We need to let the voters know about it—I had the feeling it was largely ignored.

Not always used by voters.

Concerning dissemination, Alaska and Utah commissioners had no comments, probably because the reports are mailed to all voter households in Alaska and distributed broadly in Utah as a newspaper insert. However, Arizona and Colorado respondents said that poor dissemination is a weakness of their process. Representative comments include:

Can’t ensure it reaches every voter.

Difficult to ensure adequate dissemination.

Lack of public dissemination, lack of public interest.

How Commissioners View Themselves and the Evaluation Process

How commissioners view themselves. Nearly all of the commissioners in all four states feel that they themselves are fair, reasonably critical, and understanding of the judges’ workload and the judges’ role. Colorado and Utah commissioners’ perceptions here contrast to some extent with judges’ perceptions (which are reported in Table IV-8, p. 45). The starkest contrast is between Utah judges and commissioners, since only 25 percent of judges feel that the commission understands judges’ workload. None of the Utah commissioners believe they are too critical of judges, but 20 percent of Utah judges feel that the Utah commissioners are too critical. Finally, while all of the Utah commissioners feel they understand the importance of judicial independence, 37.5 percent of the judges disagree. We discuss above (at pp. 45-46) our followup survey with Utah judges to gauge the reasons for this relative dissatisfaction. Much of it appears to center on the sole reliance in 1996 on attorneys as a survey group, as well as the UJC’s apparent emphasis on case processing as a separate performance standard rather than as interpretive information to help place survey results in the context of a judge’s particular workload.

Commissioners on the fairness of the process. Nearly all of the commissioners responding from each state feel that the overall evaluation process is fair to judges. One exception is that nearly half of the commissioners in each state feel that the evaluations do not accurately reflect judges on-the-bench performance. The comparison table for judges’ perceptions is Table IV-7, p. 44. Comparing this perception to judges responses, an especially surprising finding is that Colorado judges (76.2 percent) have a higher tendency to believe that the evaluations capture on-the-bench performance than do Colorado commissioners (60.0 percent). This is despite the fact that there are no judges on the Colorado commission.23

23. We report this percentage for Colorado commissioner responses to this question because this result is so unexpected, and because there are sufficient numbers of Colorado commissioners responding to this question for the percentage to be meaningful.
As we mention above, only a bare majority of judges in all states feel that they have an adequate opportunity to respond to evaluations before they are made public. This belief contrasts with most commissioners’ perceptions that there are adequate opportunities to respond, although Utah commissioners tend more than the others to report this as a problem. There is a strong contrast as well between judge and commissioner views about the adequacy of available appeals processes. For example, only about 30 percent of Colorado and Utah judges feel they have access to fair appeals procedures (Table IV-7), while strong majorities of the commissioners in these states feel that the available appeals procedures are fair.

Internal Commission Operations.

Adequacy and fairness of the procedures. While almost all of the Utah commissioners responding to the survey believe that their evaluation process overall is fair, a smaller majority feels that the commission has enough data to make an informed judgment about judges’ performance. This may be because Utah surveys only attorneys and so does not have the benefit of differing perspectives on judges’ performance in court. (As noted earlier, Utah will survey jurors for the 1998 evaluation cycle.) In addition, only a bare majority of Utah commissioners feel that the commission has adequate independence to objectively evaluate judges; this may reflect that the Utah commission feels under siege from members of the state legislature (see the Utah qualitative section that discusses this on p. 112 in Part VI). Notably, significantly fewer Colorado commissioners feel that the Colorado commission uses valid methods to evaluate judges.24

None of the state commissions reports a concern over procedures to maintain confidentiality in respondents’ identities or of preliminary commission findings. This is with the possible exception of Colorado commissioners, many of whom feel that confidentiality of the information sources is not preserved. Several Denver newspaper articles during the 1996 election season questioned the confidentiality of the Colorado evaluation process when one judge recognized the responses to an attorney survey and apparently barred the attorney from her courtroom (see Denver Post, 10/4/96 p. B-3, or Rocky Mountain News 10/3/96 p. A-5).

Most useful sources of evaluative information. While it is clearly important to survey all types of court users in evaluating a judge’s performance, it may be that some groups provide better or more useful information than others. Commissioners who responded on this issue feel that the groups in the evaluation surveys that provide the best information were lawyers (32 votes), court personnel (13), and law enforcement officers (7).25 The groups commissioners felt provided the least useful information were jurors (15), litigants (9), and witnesses (8). Jurors in particular tend to rate all judges uniformly highly, and so their responses are not of much use in differentiating between judges’ relative performance (see the discussion of the “halo effect” on page 80). The Alaska Judicial Council debated the relative merits of surveying jurors, and for a while discontinued its juror survey on the advice of the council’s statistical consultant. The council reinstated the survey, however, mostly on the grounds that

24. This may be due to problems the hired statistician encountered in 1996 in collecting court user survey data.

25. Here and in the next paragraph, vote counts are based on responses from all Alaska, Arizona and Utah commissioners who answered these questions, and on responses from a random sample of 20 Colorado commissioner surveys, so as not to give Colorado undue representation.
it improves citizens’ input into the process and raised citizens’ awareness of the evaluation process.

**Most useful evaluative criteria.** Similarly, while it is clear that all performance criteria capture some important aspect of judicial performance, we are interested in whether some criteria capture more useful information than others. The criteria that responding commissioners feel are the most helpful in evaluating judges are impartiality (22 votes), integrity (21), knowledge of the law and procedures (20), and appropriate judicial temperament and demeanor (15). The criteria commissioners mention as least helpful were administrative skills (13 votes), service to the legal profession and to the community (13), punctuality (9), effectiveness in working with other judges and court personnel (9), and compliance with continuing education requirements (8).

**Writing evaluation reports.** In response to open-ended questions to identify the strengths of the report-writing process, commissioners gave responses that clustered around two major themes: the value of the group process, and the value of the report as a self-improvement guide for judges. Most comments came from Colorado and Arizona respondents.

**Value of the group process.** Comments on the extent of member participation in writing reports come primarily from Arizona and Colorado respondents. Representative remarks are shown below:

- Language is negotiated by committee members.
- Represents a consensus.
- Commission-driven, not individual.
- Duties were evenly divided, with all having final input.

**Guide for judges.** Even though they were invited to comment on the strengths of the report writing process, respondents (again mostly from Arizona and Colorado) made a point of discussing the value of the report to judges as a self-improvement tool. This makes sense, as judges as well as voters are the intended audience for the information. Some typical comments on this topic follow:

- Provides basis for recommendation/nonrecommendation; gives judges insight into their strengths/weaknesses.
- Opportunity to make a real difference by giving concrete suggestions and setting goals for improvement.
- It makes the judges aware of what various groups think of them to a degree.

Commissioners from all four states commented about weaknesses in the report-writing process, although, again, the vast majority came from Arizona and Colorado respondents. Their comments illustrate general agreement about process issues, as illustrated by the following comments:
Concerning the mechanics of writing the report:

- Not sure how to write something the public wants.
- Difficult to know what to include, how much? What is critical for the public to know?
- Seems to be too standardized.
- The report may be too impersonal and truncated to provide reliable insight into the workload and performance of a judge. Adjust-the-numbers statistical approach is easy to misunderstand or misconstrue; it has no humanity and little human feeling about it.
- It hinges on the communication abilities of the group writing the report. A more or less-fluent group could alter the effectiveness of the report.
- Can’t always find a good writer.
- The lawyers are selected to write up the evaluations, and because they must practice under these judges and are very recognizable in a small community, their reports are noncritical. They do the best they can in a very bad situation.

Colorado respondents in particular addressed issues of lack of time and inadequate data:

- Consumes too much time.
- Writers are short of time.
- One can only hope the decisions are fair due to lack of responses.
- Only as good as data collected.

**Pros and cons of standardized formats for writing evaluation reports.** Commissioner respondents in all states appear to have mixed feelings toward standardized procedures for writing evaluation reports. On the positive side, commissioners generally agree that standardized reports are a concise way to convey the information, provide voters with a means of comparing judges’ performance, and enhance fairness to judges. As one commissioner wrote, “Each judge gets to see the same evaluation of his/her performance.” Another noted that standardized formats are “easy to read, track results and measure improvement.” Finally, a commissioner summed it up by saying standardization is good, “because it makes it easy to draft the evaluations and it ensures that certain criteria are included in the evaluation report, so there is always a legitimate basis for the recommendation.”

On the other hand, some commissioners noted a few weaknesses of standardized reporting formats. Several said that uniformity makes it difficult to individualize the reports; one summed up this point of view when he or she wrote that the standard format “tends to gloss over or neutralize the more unique strengths and weaknesses of a particular judge.” Others said that the reports all sound the same, and such uniformity “contributes to lack of public interest.” Finally, some commissioners said that space constraints on standardized reports limited their
ability to say what they wanted to say. "Needs to be kept short, therefore can't be detailed enough," summed up one of the respondents. (See Table III-4, p. 29, for commissioners' use of standardized format reports.)

**Internal interactions.** Most commissions have lawyer and nonlawyer members, and all but Colorado have judge members as well (see Table III-2, p. 24). Three commissioners, all from the same state, identified in narrative comments some internal problems between members of different backgrounds writing final evaluation reports. One wrote, for example, that the "chairman...was a layperson who had little knowledge or information concerning the judge, the judicial system, or the legal profession. This is the greatest weakness and can be damaging to a deserving judge!" This is somewhat inconsistent with the aggregate information from the survey, which indicates that internally, members from different backgrounds communicate within the commission as equals.

### Commissioners’ Comments About the Main Benefits and Problems with the Evaluation Process

In this section, we report commissioners’ responses to open-ended questions on the main benefits and problems of the evaluation processes.

**Main benefits.** Commissioners’ perceptions of the main benefits of the evaluation process mirror those of the judge respondents in some respects and diverge in others. For example, responding commissioners in Arizona, Colorado and Utah agree with judges that feedback on judicial performance, accountability, and informing the public were key benefits of the process. (Alaska respondents did not comment on benefits of the process.) Sample comments include the following:

- Judges appreciate knowing what opinions are about them.
- Helps judges be accountable to the public.
- Judges have opportunity to see themselves.
- Voters have some measure of performance.
- More information to public about judges so they can make informed decisions.

Arizona, Colorado and Utah respondents noted, as did judges, some of the political benefits of performance evaluations. One commissioner said that performance evaluation "keeps the judicial system relatively free"; others noted, "It helps to keep the present judicial selection process from returning to the process of election of judges", "Supports merit selection/retention versus election", "Gives voters some confidence in the system." But a few commissioners noted other benefits:

- A foundation for developing an improved system.
Assists public in education.

Increases citizen confidence in the judicial process.

Main problems. There is some consensus about problems with the evaluation process. Only one Alaska commissioner replied to this question; the lack of comment could be attributed to Alaska's long history with retention evaluations and refinements made over the years. Problems mentioned by respondents in Arizona, Colorado and Utah include an apathetic and/or uninformed public and the difficulty of collecting ample, valid data. Representative comments are shown below.

Public does not understand.

Low public visibility.

Citizens don't analyze the information.

Getting enough people to fill out the forms.

Low responses to surveys.

Surveys statistically invalid.

Not enough good, reliable information.

Not surprisingly, some Arizona and Colorado respondents noted the difficulty in getting the evaluation results to the public, and several commissioners linked this to inadequate funding. In these states the final report is not distributed to voter households.

Judges' and Commissioners' Comments on Overcoming Obstacles to Improving the Process

We asked both judge and commissioner respondents about obstacles that must be overcome if changes to the evaluation process are needed. We summarize these here.

Judges' Perspectives. Fifteen out of the twenty Colorado judges who responded to this question mentioned inadequate funding as a problem. In contrast, only three of 13 Utah judge respondents, one of six Arizona judges and no Alaska judges who answered the question mentioned money issues.

A few Colorado judge respondents also identified politics as an obstacle to improving the retention evaluation process, but did not offer much detail about what that meant. A number of Arizona and Utah judges, on the other hand, were more specific, as illustrated in the following comments about politics and public perceptions:

Political (politicians') belief that judges need to be accountable.
Political—much of the public, including legislators, don’t understand the role of judges and the decision-making process; too quick to criticize decisions.

Mainly, political objections to perception that judges are too insulated from ultimate public discussion on office retention.

The attitude of some legislators and public groups seems to be that judges are lazy, inept and overpaid…. Perhaps with better education of those “critics” a better process would result.

In responding to this question, an Alaska judge noted that “the Judicial Council should do more to promote its information to the public so that the voters will know how important the process is to the judges, and to the public.”

**Commissioners’ perspectives.** Commissioner respondents in Arizona, Colorado and Utah identified money problems as a major obstacle to changing or improving retention evaluations. Many Arizona and Colorado respondents mentioned the need for more funding for wider distribution of the final evaluation reports. But Colorado commissioners also said more money is needed to improve the evaluation process—to improve survey methodology, for example, for commissioner training, and for something as basic as reimbursing commissioners for their evaluation-related out-of-pocket meal and travel expenses. A comment from a Utah commissioner also noted the need for additional funds to conduct more thorough evaluations.

Commissioners in the three states also generally agreed that changes in attitude were necessary to improve the process. Some respondents did not specify whose attitudes need to change, but a number of Arizona commissioners said judges should be more cooperative; this could be because their program was so recently established. Some Arizona and Colorado respondents also identified politics as an obstacle, but with little or no detail. One commissioner, however, noted that politicians needed to realize the value of evaluations; another pointed out that until Arizona Governor Symington’s resignation, the political climate “had been one of hostility to the courts”; and another cited “the legislature, which shouts a lot but refuses to either fund or look for reasonable solutions.”
V

ALASKA ELECTION OUTCOME STUDY
ALASKA ELECTION OUTCOME STUDY

The research question for this section is whether there exists evidence in judicial election outcomes that voters are differentiating between judges based on the commission evaluations and recommendations. Recall that the sampling procedures in our own survey of voters did not permit us to make this sort of assessment for the general population of voters in each locality. Here, we use the Alaska election outcome data over eleven elections to see if there is any empirical evidence that Alaska voters find the commission evaluations persuasive. One must recognize that these results do not generalize to the other states in the study. Empirically, we are interested in whether a commission recommendation to voters to retain a judge will make it more likely voters will vote to retain the judge. We measure the voters’ choices here as the percent of voters casting a “yes” vote to retain a particular judge, out of all voters casting a vote for a judge. We call this percentage the judge’s “affirmative rate.”

We only use data from Alaska because theirs is the only one of the four programs that provides numeric ratings for each trial judge running in each election dating back to 1976.26 For Alaska, then, we can make a direct comparison between all trial judges’ ratings and the percentage of “yes” votes each got in the corresponding election. This information enables us to examine empirically whether those trial judges who get a high rating tend to be retained by a larger margin, and those who get a low rating either tend to get retained by a lower margin or lose the election.

Method

For Alaska election outcome data, we examine whether there is some statistical association between the commission recommendations and numeric ratings and the percentage of “yes” votes for each judge. The numeric ratings are the aggregate results from the AJC’s surveys of attorneys and police and probation officers (PPOs) for each trial judge, both district and superior courts. The AJC presents the bar and PPO ratings to voters in its voter information pamphlet.27 Our hypothesis is that if voters find the Alaska Judicial Council ratings persuasive, then they will condition their support for a given judge on the AJC’s ratings.

26. The report does not give data for appellate court judges.
27. The Council publishes ratings from five surveys in an easy-to-read bar chart in its pamphlet. The value “3” is labeled “Acceptable.” These surveys ask “about the judges’ legal ability, fairness, integrity, temperment, diligence and administrative skills. An independent contractor carries out the surveys for the Judicial Council, to assure objectivity in its findings” (1995-6 Report, Appendix F, Attachment B). In addition to the Bar and
We measure voters' decisions by a "percent affirmative" statistic, which is computed for each judge by the number of "yes" votes the judge received, divided by the total number of votes the judge received in a retention election. We know this measure for each trial court judge standing in each election in Alaska between the years 1976 and 1996, inclusive.\textsuperscript{28} We also have measures from the AJC's Bar and Peace and Probation Officer (PPO) surveys for each trial court judge in each election. The ratings rank each judge standing for retention on a 0-5 continuous scale, where a rating of 3 is labeled in the pamphlet as "Acceptable."

The correlation coefficients we report in Table V-1 test whether there is a simple association between each Alaska trial judge's numeric ratings and the percentage of voters who vote "yes" for him or her (i.e., the judges' affirmative rate in a retention election). If, in general, the higher a judge's rating the higher is his or her percentage of affirmative votes, then the correlation coefficient will be greater than zero; the stronger the direct association, the closer the coefficient will be to 1.0. If there is no association between a judge's ratings and the percentage of voters who vote "yes" for him or her, then the correlation coefficient will be close to zero (0.0). If, counter-intuitively, judges' percent of affirmative votes were higher, the lower their rating, the coefficient would be close to -1.0.

We caution that a statistically significant correlation does not indicate that a high rating in fact causes voters to elect judges with a larger affirmative rate.\textsuperscript{29} It may be, for example, that some other factor causes both judges' ratings to be high and their percent affirmative vote to be high, and vice versa.\textsuperscript{30} A positive association, however, is consistent with the proposition that Alaskan voters respond to the AJC ratings. A zero correlation will suggest that Alaska voters do not respond to the AJC ratings.\textsuperscript{31}

**Results**

The correlations between the Bar and PPO ratings and the percent affirmative measure, for all trial judges for all elections, are presented in Table V-1 (see the first row). The correlation coefficients for both the Bar and PPO ratings are positive and statistically significant, and this is consistent with the statement that voters find the ratings information persuasive. Notice that while both of these coefficients are positive and statistically significant, the bar ratings are somewhat more highly correlated with the percent affirmative than the PPO ratings (0.48 and 0.35, respectively). This suggests that Alaska voters pay greater attention to the bar rating than to the PPO rating.\textsuperscript{32}

\textsuperscript{28} PPO surveys, the AJC reports to voters the results from a juror survey, a court employee survey, and a CourtWatch survey. The Alaska Council only provides the Bar and PPO survey ratings for each judge in its 1995-6 Report, Appendix F. See: Alaska Judicial Council, Eighteenth Report: 1995-1996, to the Legislature and Supreme Court.

\textsuperscript{29} The data are taken from the Alaska Judicial Council's 18th Report: 1995-6, Appendix F.

\textsuperscript{30} This is the well-worn caution that correlation does not prove causation.

\textsuperscript{31} In this case it is difficult to imagine what such factor might be, since voters have little other information to act on in retention elections.

\textsuperscript{32} This too must be qualified because the correlation coefficient, mathematically, only captures the degree of a simple or linear association, and so will not capture a more complicated association between variables such as a U-shape relationship. It is always best to examine scatter plots of the data as we do in Figure V-1, p. 72.
Table V-1 also reports the correlations specific to the Superior Court (general jurisdiction) and District Court (limited jurisdiction) judges. Comparing the coefficients between courts, it appears that the estimated correlation is higher for district courts than for superior courts, suggesting that Alaska voters rely more heavily on the evaluation information for district court judges than they do for superior court judges.

<table>
<thead>
<tr>
<th>Correlation between Judge Rating and Percent Affirmative Vote for:</th>
<th>Bar Rating Correlations</th>
<th>PPO Rating Correlations</th>
<th>Number of Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Trial Judges</td>
<td>0.48**</td>
<td>0.35**</td>
<td>159</td>
</tr>
<tr>
<td>Superior Court Judges</td>
<td>0.37**</td>
<td>0.23*</td>
<td>79</td>
</tr>
<tr>
<td>District Court Judges</td>
<td>0.54**</td>
<td>0.44**</td>
<td>80</td>
</tr>
</tbody>
</table>

**Significant at p<0.001  
*Significant at p<0.05

Note: The asterisks report the statistical significance for each coefficient; the more asterisks, the more significant the coefficient is in a statistical sense (meaning that one can be more confident that the true correlation coefficient is not zero).

Because the Council indicates that a rating of 3 is acceptable, it is interesting that Alaska voters seem to react differently to ratings below 3 than to ratings above 3. This can be seen best in a graph, or scatterplot, plotting each judge’s AJC Bar Survey rating against his or her percentage of affirmative votes (see scatterplot on next page). Each dot in this graph represents one judge in one election; the placement of the dot indicates the judges’ AJC Bar rating (bottom line of graph) and percent affirmative vote (vertical line at left of graph).

Notice in this graph that judges who have relatively high ratings in the AJC bar survey also tend to have higher affirmative rates. But notice in addition one can observe in the scatter plot that voters seem to take more sharply into account ratings when they are below 3 (or are not acceptable), but above 3 voters’ responses to ratings are relatively constant. The curved line suggests the typical relationship between the ratings and the percent affirmative. This suggests that Alaska voters are more persuaded by negative evaluations than positive evaluations.

32. Note that the Bar and PPO ratings measures are not very highly correlated (around 0.35). This means that it is possible to state their marginal effects on the percent affirmative vote. Multiple regression confirms that the changes in the bar rating have a slightly greater effect on the percent affirmative than do the PPO ratings, with both coefficients testing individually statistically significant.

33. It is for this reason that the correlation coefficients are positive.

34. That is, the relationship between each rating and the percent affirmative is not exactly linear, but changes slope around the value of 3. The line shown is the “bivariate quadratic linear regression line,” which is calculated mathematically to have the best fit to these data points. The PPO plot shows a similar pattern.
Figure V-1: Scatterplot: Percent affirmative vote by bar ratings all Alaska trial court judges [1976-1996]

Notice that voters seem to respond to the evaluation ratings below 3 more than they do to ratings above 3. The curved line is the (statistically) best fitting line to the data points, estimated by a procedure known as linear regression.

Summary. Together, these findings are consistent with the proposition that Alaska voters take the ratings information into account. The higher the judge’s rating, the higher his or her percent affirmative vote, on average. In addition, supplemental analysis shows that Alaska voters appear to find the bar ratings most persuasive, tend to rely more heavily on the evaluation information for district court judges, and tend to give greater weight to negative evaluations than to positive evaluations. These supplemental findings are consistent with what one might expect to observe if indeed Alaska voters were making use of the evaluation information in making judicial retention decisions.

We cannot generalize these findings to the other states in this study. However, for this one state where the data exist, the evidence is consistent with the proposition that Alaska voters rely to some degree on the commission evaluations when casting votes for judges.
VI

DESCRIPTIONS OF RETENTION EVALUATION PROGRAMS IN FOUR STATES
DESCRIPTIONS OF RETENTION EVALUATION PROGRAMS IN FOUR STATES

This section gives detailed descriptive information about each of the four retention evaluation programs in this study. These descriptions will especially be useful for courts and legislatures in states that would like to design their own programs, particularly for those elements from particular programs listed as recommendations in the next section.

In this section, we describe the following:

◆ Each commission’s purposes and goals,
◆ History of program adoption,
◆ The commission structure,
◆ The evaluation processes,
◆ Information dissemination,
◆ Summary of 1996 evaluation results,
◆ Program amendment procedures,
◆ The kinds of information about the performance evaluation programs reported in local newspaper coverage, and
◆ Budget information.

We also report our voter respondents’ attitudes toward the judiciary and the performance evaluation information in each locality where we conducted the exit polls. See pages 12-13 and 35-36 for cautions about interpreting the results of these exit polls.
Alaska Judicial Council Retention Evaluation Program

*Purpose and Goals*

The Alaska Judicial Council (AJC) historically has placed less emphasis on self-improvement for judges than on informing voters on judicial retention elections. This emphasis is in contrast to the other commissions we studied. The Alaska Judicial Council publicly states its judicial evaluation mission in procedural language: “Alaska's constitution and statutes require the Alaska Judicial Council to evaluate each judge standing for retention election, and to make its evaluations and any recommendations public prior to the election. The Judicial Council also evaluates *pro tem* judges...and may evaluate other judges” (Alaska 18th Rpt. 1996, p. F-1).

*History of Program Adoption*


*Structure of the Commission*

Membership for the Alaska Judicial Council is specified in the state constitution as “three citizens appointed by the Governor and confirmed by the Legislature (these three may not be attorneys, and must be appointed with due regard for area representation), three attorneys appointed by the Board of Governors of the Alaska Bar Association, and the Chief Justice, who serves as chair” (Alaska 18th Rpt 1996, pp. 1-2, Cotton 3/21/94 memo). Members serve staggered, six-year terms (DiPietro 1/27/97 letter).

The AJC does not have an established orientation program for new members, but does provide continuing education for current members. Each new member receives a copy of a member and staff manual and the most recent biennial report. The council periodically arranges workshops and educational programs for current members (DiPietro 1/27/97 letter).

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35. The AJC also nominates candidates for the supreme court, court of appeals, and superior and district courts under a merit plan.
Evaluation Processes

The AJC collects its information from surveys of professionals involved in the court system and from public input through testimony and letters. The council also surveys all jurors appearing before the evaluated judge. The council collects factual information about each judge such as peremptory challenge rates, appellate reversal rates, disciplinary proceedings, and credit history, and asks the judge to complete a self-evaluation.

Professional surveys. The AJC conducts surveys of the entire membership of the Alaska Bar Association, all active peace and probation officers, and, for the first time in 1996, all court employees. In addition, the judge under review submits a short list of his or her major cases, and the council sends a questionnaire to the attorneys of record in these cases.

The AJC mails survey forms for each judge to all active members of the Alaska Bar Association and to all peace and probation officers who handle state criminal cases. Each member of the bar is asked to evaluate all judges, stating the degree of his or her contact with the judge. In general, “ratings are tabulated only from replies by respondents based on direct professional experience with the applicant” (Alaska 1996 Web Professionals Survey page, p. 2).

Peace and probation officers do not evaluate appellate judges (since they do not appear in appellate courts) and they are not asked to evaluate trial judges on their legal abilities. “The ten to twenty areas of evaluation for each judge include impartiality, integrity, administrative skills, judicial temperament, legal skills and knowledge, and overall performance” (Alaska 18th Rpt. 1996, p. F-2). Space is provided on the evaluation form for qualitative comments. An independent contractor conducts the surveys. The following chart gives the AJC performance criteria and measures for the professional surveys.
Alaska professional survey, criteria and measures

Respondents are asked to rate the judge for each of the following criteria measures on the scale "unacceptable," "deficient," "acceptable," "good," "excellent," or "insufficient knowledge."

- **Legal ability:** legal and factual analysis; knowledge of substantive law; and knowledge of evidence and procedure (peace and probation officers are not asked to rate judges on their legal abilities).

- **Impartiality:** equal treatment of all parties; and sense of basic fairness and justice.

- **Integrity:** conduct free from impropriety or appearance of impropriety; and makes decisions without regard to possible public criticism.

- **Judicial temperament:** courtesy, freedom from arrogance; human understanding and compassion; and ability to control courtroom.

- **Diligence:** reasonable promptness in making decisions; and willingness to work diligently, preparation for hearings.

- **Special skills:** settlement skills; consideration of all relevant factors in sentencing; talent and ability for cases involving children and families (peace and probation officers are not asked to rate judges on settlement skills).

- **Overall evaluation:** overall evaluation of judge.

- **Basis for evaluation:** (a) Which of the following describes the basis for your evaluation of this judge? (direct professional experience, professional reputation, social contacts, insufficient knowledge to evaluate this judge); (b) If you have had direct professional experience with this judge, which of the following best describes the amount of that experience? (substantial, moderate, limited). Respondents are asked to rate only those judges for whom they have sufficient basis for evaluation. "Most of the analysis uses only responses from those who reported direct professional experience with the judge being evaluated" (Alaska 18th Rpt. 1996, p. F-2).

The attorney's questionnaire also asks the respondent's type of practice, length of practice in Alaska, gender, types of cases handled, and location of practice within the state. The peace and probation officer survey asks the respondent's type of work, length of time as an Alaskan officer, gender, location of work, and the population of the community in which he or she works. The AJC uses this demographic information to refine its analyses. The AJC prints an assurance of confidentiality on the survey form: "Responses will be aggregated for the sole purpose of statistical analysis. Identities of individual respondents will remain strictly confidential. Survey comments will be shared with the evaluated judges only after the comments are transcribed to assure confidentiality" (Alaska 1996 attorney survey booklet p. 1).

The AJC surveyed court employees for the first time in 1996. Court employees (excluding fellow judges) were asked to evaluate each judge on a five-point scale on the treatment of staff and others, management abilities, diligence, integrity and fairness, and overall performance. Court employees also were given space for confidential comments (Alaska 18th Rpt. 1996, p. F-2).

In addition to the general survey of the bar, the AJC sends a separate questionnaire to a sample of attorneys of the judge's choosing. Each judge under evaluation gives the Judicial Council a list of three trials, three nontrial cases, and any other cases "the judge found significant during his or her most recent term in office" (Alaska 18th Rpt. 1996, p. F-2). "The
Council contacts all of the attorneys in each case, sending a brief questionnaire that asks about the judge's fairness, legal abilities, temperament and administrative handling of the case" (Alaska 18th Rpt. 1996, p. F-2,3). The comments from these questionnaires are to corroborate the attorney survey "by giving evidence from attorneys who have had proven substantial experience with the judge," and the council considers this information in determining a recommendation on the judge's performance. These comments "typically do not differ strikingly from the survey findings" (Alaska 18th Rpt.1996, p. F-3). These attorneys are asked to characterize the judge's temperament and evaluate the judge's grasp of legal issues and facts, decisiveness, timeliness, and fairness. All questions are open-ended with space provided for confidential qualitative responses. The council gives these comments to the evaluated judge after making minor changes to ensure anonymity.

Judges' materials. The judge under evaluation is given a short questionnaire to detail the types of cases he or she handled in the review period, any legal or disciplinary matters involving the judge, and any relevant health conditions. The questionnaire also allows the judge to make comments that would help the AJC make its evaluation. In addition, the council staff reviews the Commission on Judicial Conduct public files, the public records for conflict-of-interest annual statements, and court data such as the number of peremptory challenges filed against a judge and the rate of reversal on appeal.

The AJC uses the judge material as contextual information to help interpret the statistical results from surveys. The AJC writes, "The Council scrutinizes performance-related data carefully, because the type of caseload or judge's location may play a major part in the numbers of challenges or appeals and reversals. A domestic relations judges assigned 6,000 cases in one year may have more challenges (and possibly more appellate reversals) than a judge handling 1,000 criminal and civil cases" (Alaska 18th Rpt.1996, p. F-3). In this vein, council members are instructed:

When evaluating [peremptory challenge information], please remember that many different factors can prompt litigants or attorneys to peremptorily challenge judges. While some parties might challenge a judge because they perceive the judge as unfair in a certain type of case, others might challenge a judge because they perceive the judge to be too fair and they hope that the case will be reassigned to another judge who is perceived as favoring their case. Other reasons to challenge a judge include wanting to delay proceedings, being unfamiliar with a new judge, or wanting to avoid the demands of a judge who insists on high standards or practice or timeliness (Web peremptory challenge page p. 1).

Please take care when comparing challenge records between judges with different caseloads. Remember that judges with higher-volume caseloads are expected to have more challenges than those with lower-volume caseloads. Also, expect an increase in challenges whenever a judges is reassigned to a different caseload (parties have the right to challenge a newly assigned judge). Understand also that because these data are recorded manually by the court system, they may not be complete or accurate (ibid.).

In addition, the council reviews criminal-history information and the credit history of each evaluated judge. Finally, the judge under review may request an interview with the Judicial Council, and the council may ask the judge to speak with council members during the
evaluation process “to respond to concerns raised by attorneys, peace or probation officers, or citizens” (Alaska 18th Rpt. 1996, p. F-3).

Public input. The AJC reinstated a juror survey for all trial court judges standing for retention in 1992. The AJC asks judges to forward a list of names and addresses of jurors from each jury trial, and mails a survey to each juror within a few weeks of the conclusion of the trial. Jurors are asked if the judge was fair and impartial, respectful and courteous, attentive, and if he or she exercised appropriate control over the proceedings. They also were asked to rate the judge’s intelligence and skill as a judge, and to rate the judge overall. Jurors are given space to write comments for each question.

The Judicial Council had surveyed jurors for its first two rounds of evaluation in 1976 and 1978. The council’s statistical contractor after the 1978 election advised the council to discontinue the juror survey, since “most jurors rated most judges ‘Good’ or ‘Excellent’ most of the time” (Skeers memo 4/18/96 p. 1, Alaska 1996 Web juror survey page, p. 1). This phenomenon, dubbed the “halo effect,” makes it difficult to statistically distinguish judges’ qualities.

In 1990, as part of a major public education program to encourage more public participation in the review process, the council conducted an experimental juror survey in Anchorage. They concluded that the juror survey served several purposes beyond statistically distinguishing among judges. The juror survey necessarily improves public participation in the review process, “Jurors responding to the survey become aware of the evaluation process by contributing to it” (ibid.). In addition, judges benefit from comments jurors make on temperament, clarity of instructions, courtroom control, fairness and the other dimensions. Finally, given the “halo effect,” “If a judge did not receive scores in the expected range, the lower scores...become useful information” (ibid.).

The AJC held public hearings throughout the state in 1996 using the legislature’s teleconference network and public meeting rooms. The council promoted participation in these hearings through statewide newspaper ads and public service announcements on radio and television. Public comments tend to counterbalance the juror survey results. “While juror surveys provided largely positive information about judicial performance, public hearings tended to attract persons who were less satisfied with judicial decisions” (ibid.). In addition, a court watchers group provided independent evaluation materials about some judges.

Table VI-(A)(1) on p. 81 shows that the AJC achieves relatively high response rates in its bar and police officer surveys. Both of these are mail surveys where the council follows up on nonrespondents, and follow up increases the survey response rates by about 10 percent. Each respondent in each of these surveys is asked to rate all judges for whom he or she has a sufficient basis for evaluation (appeared in the judge’s court, knows the judge socially, etc.).
Table VI-(A)(1): Response rates of groups surveyed by the Alaska Judicial Council

<table>
<thead>
<tr>
<th>Respondent Group</th>
<th>Number of Surveys Sent</th>
<th>Number of Surveys Returned</th>
<th>Rate of Response</th>
<th>Avg. Number of Surveys per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar Members</td>
<td>2,650</td>
<td>1,209</td>
<td>46.0%</td>
<td>203.85</td>
</tr>
<tr>
<td>Court Employees</td>
<td>486</td>
<td>190</td>
<td>39.0%</td>
<td>37.38</td>
</tr>
<tr>
<td>Peace and Probation Officers</td>
<td>1,241</td>
<td>547</td>
<td>44.0%</td>
<td>95.46</td>
</tr>
<tr>
<td>Jurors</td>
<td>2,500</td>
<td>2,921</td>
<td>42.0%</td>
<td>529</td>
</tr>
<tr>
<td><strong>Total/Avg.</strong></td>
<td><strong>6,877</strong></td>
<td><strong>2,921</strong></td>
<td><strong>42.0%</strong></td>
<td><strong>529</strong></td>
</tr>
</tbody>
</table>

Note: Information from DiPietro letter 1/27/97.

Information Dissemination

The AJC is required by law to make its evaluations and recommendations public at least 60 days prior to the election, as well as submit material for publication in the lieutenant governor's official election pamphlet. The pamphlet has a summary page for each judge up for retention and is mailed to each household. The council also made available to the public a comprehensive report with all nonconfidential information about each judge. In addition, in 1996 the council ran a series of advertisements giving the council's recommendations; the ads were published in newspapers statewide in the week immediately before the election. For the first time in 1996, the AJC posted extensive evaluation information and explanation on its Web page, including survey results from the jurors, court employees, bar, and peace and probation officers, comments from jurors, public hearing results, analysis of peremptory challenges and affirmance/reversals on appeals, and other public information about each judge. See [http://www.ajc.state.ak.us](http://www.ajc.state.ak.us)

Summary of 1996 Evaluation Results

The AJC recommended that all 13 judges who were up for retention be retained; six of these were superior court judges, and seven were district court judges. All were retained.

Program Amendment Procedures

The AJC reassesses its evaluation procedures after each retention cycle. Input comes from staff and council members, as well as from judges and members of the public. “Assessments have periodically resulted in changes to our procedures” (DiPietro letter 1/27/97).
**Budget Information**

The 1996 evaluation cost approximately $107,550, which includes the estimated staff time. In 1996, the council reduced costs by doing the survey mailing and some other administrative tasks in-house rather than through the independent statistical contractor (DiPietro 1/27/97 letter). Some of the bigger costs were the professional survey mailings (with follow-up for approximately 65 percent nonresponse from the first mailing) at more than $10,000; juror survey mailings at about $1,700; advertising hearings and recommendations in newspapers, $14,600; travel, $3,700; and staff time $60,000.

**Exit Poll Results for Anchorage Voter Respondents**

The following tables give a detailed breakdown of the Anchorage voter respondents’ attitudes toward the judiciary (Table VI(A)(2)) and toward the evaluation information (Table VI(A)(3)), as measured in our exit survey of a nonrepresentative sample of voters. See pages 12-13 and 35-36 for cautions about interpreting these exit polls. Notice that of the 594 voters surveyed, 254 (or 42.8 percent) report receiving the evaluation information. (These are the numbers reported in the far right column of each table.)

<table>
<thead>
<tr>
<th>Table VI-(A)(2): Anchorage respondents' attitudes toward the judiciary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statement</td>
</tr>
<tr>
<td>Judges in my state do a good job.</td>
</tr>
<tr>
<td>Judges in my state are fair.</td>
</tr>
<tr>
<td>Judges in my state are honest.</td>
</tr>
<tr>
<td>It is important that voters have a say in whether a judge stays in office.</td>
</tr>
<tr>
<td>My vote affects the quality of judges who serve my community.</td>
</tr>
</tbody>
</table>
Table VI-(A)(3): Anchorage respondents’ attitudes toward the performance evaluation information.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>The official information... influenced my voting...</td>
<td>15.4%</td>
<td>44.5%</td>
<td>19.3%</td>
<td>4.7%</td>
<td>16.1%</td>
<td>254</td>
</tr>
<tr>
<td>The official report made my voting choices more difficult</td>
<td>1.6</td>
<td>10.6</td>
<td>44.5</td>
<td>18.9</td>
<td>24.4</td>
<td>254</td>
</tr>
<tr>
<td>The official evaluation report adds to my confidence in the quality of</td>
<td>11.4</td>
<td>44.9</td>
<td>15.4</td>
<td>5.5</td>
<td>22.8</td>
<td>254</td>
</tr>
<tr>
<td>judicial candidates</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I appreciated receiving [the] official reports</td>
<td>37.0</td>
<td>46.1</td>
<td>4.3</td>
<td>0.4</td>
<td>12.2</td>
<td>254</td>
</tr>
<tr>
<td>I am more likely to vote in a judicial election because of the official</td>
<td>26.8</td>
<td>37.8</td>
<td>18.1</td>
<td>3.9</td>
<td>13.4</td>
<td>254</td>
</tr>
<tr>
<td>information</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The availability of official...reports helps make judges in my state</td>
<td>32.7</td>
<td>45.3</td>
<td>6.3</td>
<td>3.5</td>
<td>12.2</td>
<td>254</td>
</tr>
<tr>
<td>more accountable to me.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

To the extent that the results of our exit surveys in all four localities are of interest, it is because they suggest results that warrant further exploration in a scientifically designed survey of voters using random sampling techniques (see Cook and Campbell 1979:345).36

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36. We report the results of an additional study of Alaska election outcome data that does speak to the population of voters in Alaska, which is the one state where measures for such a test exist.
Arizona Commission on Judicial Performance Review

Purposes and Goals

The Arizona Commission on Judicial Performance Review (CJPR) was established in 1992 by constitutional amendment. The amendment's language emphasizes public participation in the evaluation process and the value in providing information to the voters:

The Supreme Court shall adopt...a process, established by court rules, for evaluating judicial performance. The rules shall include written performance standards and performance reviews which survey the opinions of persons who have knowledge of the justice's or judge's performance. The public shall be afforded a full and fair opportunity for participation in the evaluation process through public hearings, dissemination of evaluation reports to voters and any other methods as the court deems advisable (Arizona Constitution Article 6, sec. 42).

The Supreme Court rules for the CJPR are relatively comprehensive in their goals, noting the value of informing voters, self-improvement for judges, improving judicial assignments, and continuing education. The overarching objective is to protect judicial independence while fostering public accountability. The commission is to

assist voters in evaluating the performance of judges and justices subject to retention; facilitate self-improvement of all judges and justices subject to retention; promote appropriate judicial assignments; assist in identifying needed judicial education programs; and otherwise generally promote the goals of judicial performance review, which are to protect judicial independence while fostering public accountability of the judiciary (Ariz. S.Ct. Rules of Procedure for Judicial Performance Review in the State of Arizona, Rule 1).

The commission itself, however, tends to give primacy to judicial self-improvement.

The primary objective of Arizona's judicial performance review program is to facilitate the development and improvement of individual judges and the bench as a whole. Important ancillary goals include providing clear and accurate information to the public about judicial performance, aiding in the development of judicial education programs, and using the evaluation data to promote the efficient assignment of judges (Ariz. 1994 Report, p. 1).

The Commission on Judicial Performance Review is clear that it “has the duty of providing meaningful and accurate information about the performance of Arizona's judges to the public for its use in reaching decisions regarding retention of judges” (Ariz. 1994 Report, p. 3).

History of Program Adoption

A 1974 Arizona constitutional amendment provided for merit selection with retention election for statewide appellate judges, as well as trial court (Superior Court) judges in the two largest counties, Maricopa and Pima. In 1991, following a 1988 recommendation from a Supreme Court-appointed commission, the court established a Committee on Judicial Performance Review to develop a pilot review program. The pilot program was to experiment
with different survey and information distribution methods to demonstrate the feasibility of a permanent evaluation program. In 1992, Proposition 109 amended the state constitution to require evaluations for merit-selected judges. The amendment requires public input into the process as well as dissemination of the evaluation information prior to the general election. The court created the JPR commission in 1993, which completed its first evaluations for the 1994 retention elections (this paragraph is from Ariz. 1994 Report, p.1).

Structure of the Commission

The commission must “request public comment and hold public hearings on the performance of all judges and justices subject to retention” (Ariz. S.Ct. Rule 2(g)(3)). The commission is to review all trial and appellate judges standing for retention, including holding public hearings and soliciting comments, and publicly announce whether each “meets” or “does not meet” the performance standards. Finally, the commission is to help judges improve their own performance, and to recommend judicial education programs (Ariz. S.Ct. Rule 2(g)).

The Supreme Court appoints up to 30 members, including nonlawyers, lawyers, and judges. A majority of the CJPR must be nonlawyers (i.e. not lawyers or judges), and there can be a maximum of six judges (Ariz. S.Ct. Rule 2(a)). Commission members serve four-years, staggered terms, and may serve a second term (Ariz. S.Ct. Rule 2(c)). The chief justice selects the commission chair (Ariz. S.Ct. Rule 2(b)). Each judge is reviewed twice during a term in office, at midterm and prior to his or her retention election. For both the midterm and retention evaluations, three member “conference teams” discuss the evaluation results with each reviewed judge; this discussion is for the judge’s self-improvement only and the conference team members play no role in developing information for voters. The chair of the commission appoints each conference team, each of which must have a nonlawyer, a lawyer who is a member of the Arizona Bar, and a judge or justice. No more than one member of a conference team may be a member of the JPR Commission (Ariz. S.Ct. Rule 4(a)).

All CJPR meetings must be open to the public except when the rules require confidentiality; for example when deliberating on recommendations to voters, or during an appeal from a judge or justice regarding a “does not meet” judicial performance standards decision (Ariz. S.Ct. Rule 2(e)). Executive session is intended, according to the rules, to “promote open and frank discussion and accuracy in the performance evaluation process.” All commission voting on whether or not judges meet performance standards must be in public session (Ariz. S.Ct. Rule 2(e)).

To promote diversity in membership on the CJPR and conference teams, the Supreme Court is to solicit recommendations from the public in appointing commission members, and the commission chair is to solicit from the public recommendations for members of the conference teams. Commission and team members are to “have outstanding competence and reputation and...be sensitive to the needs of and held in high esteem by the communities they will serve.” The commission and teams should reflect, “to the extent possible, the geographic, ethnic, racial and gender diversity of those communities.” “Competence and diversity among the members will enhance fairness and public confidence in the judicial performance review process” (Ariz. S.Ct. Rule 5(a)).
To ensure impartiality in conference meetings and in evaluations, a commission or team member must disclose to the commission any relationship with a reviewed judge or justice (listing business, personal, and attorney-client) "or any other cause for conflict of interest, bias or prejudice," and disqualification if the judge or justice is a family member. Each judge or justice may submit a challenge to any commission or team member to the Supreme Court upon notification of commission or team selections (Ariz. S.Ct. Rule 5(c)).

Evaluation Processes

The CJPR is to conduct surveys mid-way through a judge or justice’s term, and again “no less than 9 months” prior to his or her retention election (Ariz. 1994 Report, p. 3). Arizona trial court judges serve four-year terms and appellate court judges and justices serve for six years.

The judge’s midterm evaluation is conducted for the judge’s self-improvement only, and “provides judges with information about how they and others perceive their work.” The midterm cycle collects and compiles quantitative survey information measuring the judge’s performance (described below) and narrative comments. As part of the mid-term review, the judge meets with a conference team to discuss the survey results. To prepare for this meeting, the evaluated judge completes a self-evaluation. “The questions on the self-evaluation form mirror the attorney survey forms, using identical response categories. This allows judges and conference teams the opportunity to compare the judges’ perspective of their performance with the opinions of respondents, and encourages further self-assessment” (Ariz. 1994 Report, p. 4).

The conference team is to help the judge produce a self-improvement plan using a standardized form. Self-improvement plans are used in future performance reviews to help gauge progress in problem areas. “An important objective of the judicial performance review program is to recognize judicial strengths and identify areas needing improvement” (Ariz. 1994 Report, p. 7). In this spirit, a summary of judges’ self-improvement plans is forwarded to the Judicial College of Arizona to “assist in developing more effective judicial education programs” (Ariz. 1994 Report, p. 5). Midterm evaluation information only goes to the judge, his or her presiding judge, the conference team, and the chief justice. The review commission does not consider this information in formulating a recommendation, and the conference team does not participate in formally evaluating any of its judges for a retention recommendation (Ariz. 1994 Report, p. 5).

A similar review process occurs during the election evaluation cycle, which begins at least nine months before the state general election. For the election evaluation, the commission additionally solicits public comments and holds hearings, reviews the statistical reports, publicly votes on whether the judge or justice meets performance standards, and disseminates the performance evaluation results to the public (Ariz. 1994 Report, pp. 3-4). In each election year, the commission must request written (and not anonymous) public comments, and hold a public hearing regarding the judges standing for retention. The commission is to consider this public input in its final performance evaluation and recommendations (Ariz. S.Ct. Rule 6(d)).
Data collection for the Arizona performance review is intended to accomplish two ends: to promote judicial self-improvement and to provide information to voters to help them decide whether or not to retain the judge or justice. The CJPR conducts multiple surveys of participants in court proceedings to measure judges’ performance on several standards for assessment. The survey forms are to solicit information corresponding to written performance standards that are approved by the Supreme Court, “such as knowledge of the law and procedure, integrity, impartiality, judicial temperament, administrative skill, punctuality and communication skills…” including “narrative comments” (Ariz. S.Ct. Rule 6(b)). In 1993, the commission developed, and the Supreme Court adopted, standards for judicial performance:

The judge shall administer justice fairly, ethically, uniformly, promptly and efficiently.

The judge shall be free from personal bias in decision making, shall decide cases based on proper application of law and procedure to the facts, and shall issue prompt, clear rulings and decisions that demonstrate competent legal analysis. The judge shall act with dignity, courtesy, and patience. The judge shall effectively manage the courtroom and discharge the administrative responsibilities of the office (Ariz. 1994 Report, p. 3, also printed on survey forms).

The CJPR surveys multiple court user groups for each judge. Under the Arizona Supreme Court rules, “anonymous survey forms eliciting performance evaluations shall be distributed to lawyers, litigants, witnesses, jurors, and other judges and justices and other persons who have been in direct contact with each judge or justice surveyed and who have first-hand knowledge of his or her judicial performance during the evaluation period” (Ariz. S.Ct. Rule 6(b)). For trial judges, “The types of people who may have contact with a judge include: jurors, litigants, witnesses, courtroom and court administration staff, probation and law enforcement officers, caseworkers, attorneys, court-appointed special advocate (CASA) volunteers and other judges” (Ariz. 1994 Report, p. 4). Presiding judges with only administrative duties get ratings only from his or her trial court judges, state and local officials, and court staff (Ariz. 1994 Report p. 4).

An independent data center prepares the survey instruments, processes the responses, and analyzes the survey data “in a manner designed to ensure the confidentiality and accuracy of the process” (Ariz. S.Ct. Rule 6(a)). While the court rules permit the surveys to be processed in-house, the commission contracts the processing to an independent data center so as “to maintain the integrity of the performance review process…” (Ariz. 1994 Report, p. 5). The commission selects the independent data center using a request-for-proposal process (Ariz. 1994 Report, p. 5). The commission staff mails the attorney survey, and court administrative staff distributes the other survey forms and reply envelopes directly to the respondents evaluating trial court judges. All survey respondents return completed forms directly to the data center in pre-addressed, stamped envelopes; “no survey forms are collected by judicial staff or administrative staff” (Ariz. 1994 Report, p. 5).

**Survey distribution.** The following charts identify the groups that are surveyed for each type of judge (trial or appellate), and the types of questions that are asked of each group (i.e., the criteria and measures). Each court user group is asked only those questions on which it may reasonably have information. For example, litigants are asked to rate judges on their communication skills but not their legal ability.
Arizona Superior Court survey distribution, criteria and measures

Respondents are asked to rate superior court judges on the following criteria, using the scale “unacceptable,” “poor,” “satisfactory,” “very good,” “superior” and “can’t rate.”

Litigants/Witnesses/Pro Pers who were sworn in and who testified (in juvenile cases, interested parties complete surveys):
- Integrity: separate questions on equal treatment regardless of race, gender, economic status, and basic fairness and impartiality.
- Communication skills: clear and logical oral communications.
- Judicial temperament: understanding and compassion; dignified, courteous, conduct that promoted public confidence in the court and the judge’s ability.
- Administrative performance: punctuality in conducting proceedings, maintenance of control over courtroom, hard worker.
- In addition, participants are asked how they were a party to the trial (plaintiff, witness, etc.) as well as race/ethnicity and gender.
- Space is provided for narrative comments.

Jurors and alternates who serve:
- The same as the litigants’ questionnaire.
- Additional questions under communication skills, i.e. explained proceedings to the jury, explained reasons for delays, clear explanations of the juror’s responsibilities, and clear instructions to the jury.

Court staff:
- The same as the litigants’ questionnaire.
- Additional questions on administrative performance, i.e. respectful treatment of staff, cooperation with peers, cooperation with staff, efficient management of calendar.

Attorneys who have appeared before the judge:
- Legal ability: legal reasoning ability, knowledge of substantive law, knowledge of rules of evidence, knowledge of rules of procedure, knowledge of laws pertaining to sentencing, and keeps up to date.
- Integrity: conduct free from impropriety; separate questions on equal treatment regardless of race, gender, and economic status; avoiding prejudging outcome of case; and basic fairness and impartiality.
- Communication skills: clear and logical oral communications/directions, clear and logical written decisions.
- Judicial temperament: understanding and compassion, dignified, courteous, conduct that promoted public confidence in the court and the judge’s ability.
- Administrative performance: punctuality in conducting proceedings, maintenance of proper control over courtroom, promptness in making rulings and rendering decisions, hard worker, efficient management of calendar.
- Settlement activities: appropriate actions in encouraging settlement negotiations, promotion of negotiation without coercion or threats, careful exploration of strengths and weaknesses of each party’s case, mediation skills, credible settlement appraisals.
- Space is given for comments, and the attorney is asked to note whether he or she represented the plaintiff or defendant, as well as his or her race/ethnicity and gender.

Administrative judge form:
- Integrity: separate questions on equal treatment regardless of race, gender, and economic status; basic fairness and impartiality; accepts responsibility; free from impropriety and the appearance of impropriety; demonstrates personal integrity; displays organizational integrity.
- Communication skills: gives clear and logical oral communications/directions; is accessible; establishes a clear focus for projects for which he/she is responsible; ability to listen effectively; conveys ideas well to others; creates a cooperative environment; keeps all parties informed.
about matters for which he/she is responsible; responds appropriately to the court department, court and city management, the public, and staff.

- Temperament: is courteous, is free from arrogance, exhibits conduct that promotes public confidence in the court and the judge's ability.

- Administrative performance: is well informed in all phases of work, is willing to make difficult decisions, is punctual, sets goals, makes difficult decisions in a timely manner, has common sense, is resourceful in resolving problems, has the ability to identify and analyze relevant issues, accurately assesses and attempts to secure the resources necessary for the effective functioning of the court system, accepts and incorporates diversity, coaches and develops others, cooperates with peers, cooperates with staff, asks for input before reaching decisions, is willing to work diligently, effectively delegates responsibility, is a team player, is willing to consider and implement change.

- Qualitative questions: 1) What do you think are the responsibilities of the presiding (associate) judge at this time? 2) What do you think the responsibilities should be? 3) What could the presiding (associate) judge do to better meet your needs? 4) What should this judge refrain from doing because it is not productive for your system? 5) Other comments.

- Respondents are asked to state their occupation.

**Judge self-evaluation:**

- The judge is asked to fill out a form indicating biographical information, judicial duties, recent continuing education, awards and recognitions, any service to the profession, and any recent disciplinary action.

- The judge is given space to comment qualitatively on each of the criteria that appear on the attorneys' survey, with each question on the attorneys' form listed as an example under each general criterion.
Appellate court survey distribution, criteria and measures

Information regarding appellate court judges and justices is solicited from the trial court judges and attorneys who were involved in the 60 most recent cases where the judge under review wrote an opinion, as well as from staff attorneys, judicial and court staff and from peer appellate judges. Respondents are asked to rate appellate judges on the following criteria, using the scale "unacceptable," "poor," "satisfactory," "very good," "superior" and "can't rate."

**Attorneys**

Commission staff mail surveys once a month to all attorneys listed in each opinion, two months after the opinion is issued. The survey pertains only to the judges authoring the opinion (including concurring and dissenting).

- Legal ability: legal reasoning ability, knowledge of law, decisions based on law and facts, decisions based on the record, clearly written and legally supported decisions.
- Integrity: conduct free from impropriety; separate questions on equal treatment regardless of race, gender, and economic status; basic fairness and impartiality.
- Communication skills and deportment at oral argument: attentiveness, patience, appropriate restrictions on counsel during argument, relevant questions.
- Judicial temperament: dignified, courteous, conduct that promoted public confidence in the court and the judge's ability.
- Administrative performance: promptness in making rulings and rendering decisions.
- Respondents were asked whether they represented the plaintiff or defendant, as well as their race/ethnicity and gender.
- Space is provided for comments.

**Oral argument attorneys**

A survey is mailed to each attorney who participates in oral argument for all judges on a panel; commission staff mails surveys once a month. This survey only has sections on communication skills, deportment and judicial temperament, using questions that are identical to the appellate court attorneys form.

**Superior Court judges**

Superior Court judges who presided over appealed cases are also surveyed. The same procedure is used for Superior Court judges as is used for attorneys. The form is identical to the appellate court attorneys' form, without sections on communication skills and deportment, and judicial temperament (i.e., the converse of the oral argument attorneys' form).

**Peer review**

For both midterm and pre-election review cycles, all judges that sit on the same bench as the judge under review are given surveys. This survey is for self-improvement only, and the results are not made public. The form is identical to the appellate court attorneys' questionnaire, with additional questions about administrative performance, i.e., hard worker, working effectively with other judges, working effectively with other court personnel, and effective handling of ongoing workload.

**Administrative review**

Those who observe judges with administrative duties (the chief justice and appeals court chief judges) are given a survey form specific to administrative functions, such as the presiding judges in each county and court administrative staff. This form is the same as for the superior court judges.

**Staff**

Staff who are not practicing attorneys, such as judicial secretaries, clerks, and others whom the judge designates are surveyed. The questionnaire is the same as the one given to Superior Court staff. Staff attorneys are given the attorney questionnaire.

The independent data center uses a coding for each judge to enter the survey data and to identify the statistical reports rather than the judge's or justice's name (Ariz. 1994 Report, p.
"[T]his system is intended to reduce potential bias on the part of the commission members. When reviewing statistical reports, preparing factual reports and making findings, the commission works only with code numbers, not the names of the judges and justices" (Ariz. 1994 Report, p. 6). Response rates to surveys are given in the following three tables.

### Table VI-(B)(1a): Response rates for the groups surveyed by the CJPR for Superior Court, Maricopa County

<table>
<thead>
<tr>
<th>Respondent Group</th>
<th>Number of Surveys Sent</th>
<th>Number of Surveys Returned</th>
<th>Rate of Response</th>
<th>Avg. Number of Surveys per Judge (N=35)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>18,798</td>
<td>6,993</td>
<td>37.2%</td>
<td>199.8</td>
</tr>
<tr>
<td>Litigant, witness, or pro per</td>
<td>8,013</td>
<td>2,805</td>
<td>35.0</td>
<td>80.1</td>
</tr>
<tr>
<td>Juror</td>
<td>5,913</td>
<td>2,101</td>
<td>35.6</td>
<td>60.0</td>
</tr>
<tr>
<td>Administrative judges</td>
<td>1,052</td>
<td>802</td>
<td>76.3</td>
<td>22.9</td>
</tr>
<tr>
<td>Staff</td>
<td>5,012</td>
<td>1,067</td>
<td>21.3</td>
<td>30.5</td>
</tr>
<tr>
<td>Total/Average</td>
<td>38,788</td>
<td>12,966</td>
<td>—</td>
<td>370.5</td>
</tr>
</tbody>
</table>

Note: Taken from AZ 8/19/96 document

### Table VI-(B)(1b): Response rates for groups surveyed for Superior Court, Pima County

<table>
<thead>
<tr>
<th>Respondent Group</th>
<th>Number of Surveys Sent</th>
<th>Number of Surveys Returned</th>
<th>Rate of Response</th>
<th>Avg. Number of Surveys per Judge (N=12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>7,026</td>
<td>3,017</td>
<td>43.0%</td>
<td>251.4</td>
</tr>
<tr>
<td>Litigant, witness, or pro per</td>
<td>4,883</td>
<td>944</td>
<td>19.4</td>
<td>78.7</td>
</tr>
<tr>
<td>Juror</td>
<td>2,938</td>
<td>670</td>
<td>20.7</td>
<td>55.8</td>
</tr>
<tr>
<td>Administrative judges</td>
<td>357</td>
<td>254</td>
<td>71.2</td>
<td>21.2</td>
</tr>
<tr>
<td>Staff</td>
<td>1,792</td>
<td>882</td>
<td>49.3</td>
<td>73.5</td>
</tr>
<tr>
<td>Total/Average</td>
<td>16,996</td>
<td>5,513</td>
<td>—</td>
<td>459.4</td>
</tr>
</tbody>
</table>

Note: Taken from AZ 8/19/96 document
Table VI-(B)(1c): Response Rates for the groups surveyed for appellate courts, Arizona

<table>
<thead>
<tr>
<th>Respondent Group</th>
<th>Number of Surveys Sent</th>
<th>Number of Surveys Returned</th>
<th>Rate of Response</th>
<th>Avg. Number of Surveys per Judge (N=8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney</td>
<td>4,342</td>
<td>1,404</td>
<td>32.8%</td>
<td>175.5</td>
</tr>
<tr>
<td>Superior Court judge</td>
<td>1,550</td>
<td>991</td>
<td>63.9</td>
<td>123.9</td>
</tr>
<tr>
<td>Administrative judges</td>
<td>52</td>
<td>52</td>
<td>100</td>
<td>6.5</td>
</tr>
<tr>
<td>Staff</td>
<td>23</td>
<td>21</td>
<td>91.3</td>
<td>2.6</td>
</tr>
<tr>
<td>Peer</td>
<td>260</td>
<td>77</td>
<td>29.6</td>
<td>9.6</td>
</tr>
<tr>
<td>Total/Average</td>
<td>6,223</td>
<td>2,545</td>
<td></td>
<td>318.1</td>
</tr>
</tbody>
</table>

Note: Taken from AZ 9/18/96 document

The data center retypes all narrative comments from the survey, omitting any names or other identifying information. Narrative comments are only distributed to the evaluated judge or justice, his or her conference team, presiding judge and chief justice (Ariz. S.Ct. Rule 6(c), Ariz. 1994 Report, p. 6). These comments are not to be considered in a judge's performance evaluation and only can be used in helping the judge develop a self-improvement plan (Ariz. S.Ct. Rule 6(c), Ariz. 1994 Report p. 6). In addition, narrative comments with names redacted can be submitted to the administrative office of the courts to help improve judicial education programs.

According to a Supreme Court comment to Rule 6(c), this provision with respect to narrative comments “resolves a tension between two competing goals.” The court would like to encourage the candor that follows from anonymity, but recognizes that “the opportunity to comment anonymously may also encourage irresponsible and inaccurate comments by persons having a motive to discredit a judge or justice.” The compromise lies in the fact that members of the public may publicly (and non-anonymously) comment on the judge’s performance as a part of the evaluation process. “We believe this compromise furthers the legitimate interest of the public in having access to information concerning judges and justices, as well as the legitimate interest of the judge or justice in not being the target of malicious or irresponsible anonymous comments” (comment to Ariz. S.Ct. Rule 6(c)). According to the commission, “[T]he Court strikes an appropriate compromise by accepting signed, written comments and holding hearings at which the general public, including survey respondents, may speak to the commission” (Ariz. 1994 Report, p. 6).

In an election-year evaluation cycle, under the court rules, the CJPR must request written comments from the public and hold a public hearing. “The public hearing shall be recorded and the comments of the public shall be considered by the Commission in formulating its findings as to whether the judge or justice meets judicial performance standards” (Ariz. S.Ct. Rule 6(d)).

The CJPR must compile a factual report for each judge, including the court user survey results, “pertinent” public comments, biographical information, and the final recommenda-
tion on whether the judge or justice “meets” or “does not meet” the performance standards.\textsuperscript{37} Once it compiles the factual report, the commission forwards the draft report to the judge under review, who may submit written comments in response to the report (Ariz. 1994 Report, p. 6). If the judge or justice disagrees with the report or finding, he or she may submit written comments to the commission. At least 15 days before dissemination of the evaluation findings to the public, the judge under review may appear before the commission or submit written comments. If a majority of the commission finds the judge or justice’s comments “meritorious,” the report to the public is to be revised consistent with the submitted comments (Ariz. S.Ct. Rule 6(e)).

In a meeting open to the public, the CJPR reviews each judge’s and justice’s factual report and votes on whether he or she “meets” or “does not meet” the performance standards; the commission finding is given by majority vote. The commission must “consider and weigh carefully the evaluation data developed in the survey process, public hearings, and written public comment” (Ariz. S.Ct. Rule 6(e)). The quantitative analyses cannot be “given dispositive effect in arriving at a conclusion,” instead a finding must be “accompanied by a statement of the reasons supporting it” (Ariz. S.Ct. Rule 6(e)).

**Involving judges in the process: conference teams.** As a part of each evaluation, the judge or justice meets with a conference team. “The purpose of this conference shall be to assist in identifying aspects of the judge’s or justice’s performance that may need improvement and to help the judge or justice to develop plans for self-improvement.” To prepare for the conference meeting, the judge or justice is to complete a self-evaluation “reflecting his or her perception of his or her performance as to each judicial performance evaluation criterion.” The self-evaluation form is identical to the standard attorney form, which permits the conference team to make comparisons between judge’s self-perceptions and the survey responses; this “encourages further self-assessment” (Ariz. 1994 Report, p. 4).

Conference team members receive one day of training on JPR program goals, the evaluation process, and interpreting statistical data. Conference team members are given detailed instructions on how to organize the team, how to schedule and prepare for a meeting with a judge, how to conduct a meeting with a judge, and general guidelines for how to make the meetings productive (including a list of “dos” and “don’ts”).

Prior to meeting with the judge or justice under review, the conference team reviews the statistical reports, the anonymous narrative comments, public comments, and the judge’s self-evaluation. “The team and the judge discuss the judge’s strengths and any areas identified as needing improvement, and prepare a written plan for self-improvement” (Ariz. 1994 Report, p. 5). The conference team assists the judge in developing a written self-improvement plan using the survey results and narrative comments and “objective data” which shows improvement in areas identified in any previous self-improvement plan (Ariz. S.Ct. Rule 6(f)). The self-evaluation is confidential and does not affect the CJPR’s decision to recommend. The members of the conference team may not participate in determining a recom-

\textsuperscript{37} Prior to 1996, county committees in Maricopa and Pima counties assisted the state commission by preparing factual reports for trial court judges (1994 Report p. 6). County committees had five non-lawyer, three attorney and three judge members. The state commission prepared factual reports on the appellate court judges who stand for retention statewide.
mendation to voters (Ariz. 1994 Report, p. 5). Each conference team is assigned to three or four judges or justices.

**Information Dissemination**

The CJPR is to disseminate its findings and recommendations in an election year to the public no later than three days after the primary election (and after June 30) (Ariz. S.Ct. Rule 6(e)). Prior to the general election, the commission publishes the factual report and produces voter information pamphlets. The commission printed its 1994 voter information pamphlet in newspaper format with narratives for each judge, as well as brief explanations for how judges are selected and retained, the performance standards, avenues for public input to evaluations, and an overview of the Commission on Judicial Performance Review. The pamphlet gave guidance for voters in each county to determine which judges and justices would appear on their ballot.

In 1996, the commission produced separate, easy-to-read pamphlets for Maricopa and Pima counties, as well as one for all other counties concerning appellate judges. The 1996 pamphlets only provided the bottom-line recommendation without narratives for each judge, as well as a brief description of how judges are selected and retained, the performance standards, and an overview of the review process. Finally, a telephone number was given for citizens to get more information.

In 1994, 250,000 English- and 25,000 Spanish-language voter information pamphlets were distributed statewide at “more than 300 locations” (Ariz. S.Ct. 1994 Report p. 2, 7). “Information was translated into seven Native American languages, and audio-taped for the visually-impaired. An “800 hotline” number generated more than 2,300 calls. Every major newspaper in the state published favorable editorials on the process. Local radio and television talk shows provided air time to discuss the program” (Ariz. S.Ct. 1994 Report p. 2). In addition, banks and credit unions distributed the pamphlets; movie theaters, and television and radio stations in Maricopa and Pima counties ran public service announcements. The factual reports were available for review at all county recorders’ offices and a number of public libraries.

In 1996, the commission pamphlets were distributed at primary election polling places, as well as at libraries, banks, shopping centers, county election offices, Maricopa and Pima county courts, and bar offices. The commission established a Web site. See [http://www.state.az.us/lsp/hrseld.htm](http://www.state.az.us/lsp/hrseld.htm)

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38. A paragraph explains why the commission could not make a recommendation for or against Judge William L. Scholl, who was under federal criminal indictment and suspended from judicial duties during the review period.
Summary of 1996 Evaluation Results

Fifty-five out of 56 judges who were evaluated in 1996 were found to “meet or exceed” performance standards. The commission was unable to evaluate Pima County Superior Court Judge William Scholl, since he was suspended from the bench during the review period (and standing trial in federal court on tax-fraud charges). All judges were retained.

Summary of Newspaper Coverage

Phoenix newspapers ran several stories on the CJPR and its evaluation processes and results, e.g. “Judges’ Futures Hinging on Issues” (Arizona Republic 10/29/96 A6), and “All Judges on Ballot Win Retention Vote,” Arizona Republic 11/6/96 E2. A number of newspaper articles reported the numerical ratings for each judge (see e.g., Arizona Times 8/9/96 p. 3). The Arizona Republic (10/31/96) had an extensive section on judicial retention that included a considerable amount of information on the CJPR as well as individual ratings information for each judge in a section entitled “Judge for Yourself.”

Some of the coverage of judicial retention elections focused on controversies surrounding two judges. William L. Scholl “was indicted on 11 felony charges of filing false tax returns and arranging bank deposits to avoid Internal Revenue Service reporting requirements.... Scholl’s trial started Oct. 1 in U.S. District Court...” (Arizona Daily Star, 10/29/96 p. 24). In Judge Lawrence H. Fleishman’s case, “The Arizona Commission on Judicial Conduct accused the judge of five counts of misconduct for helping tennis star Andre Agassi negotiate a $100 million contract with Nike, Inc., in 1994” (Arizona Daily Star, 10/29/96 p. 24). The commission found that Fleishman met performance review standards, but it could not evaluate Scholl since he was not on the bench during the review period. An editorial in the Tucson Citizen (11/1/96 A16) appeared to rely on Judge Fleishman’s performance evaluation findings in endorsing Fleishman’s retention, citing his “high marks from lawyers, jurors and others in his courtroom.”

Mark Genrich, in an editorial in the Phoenix Gazette, complained that the commission recommended that every judge who was reviewed be retained. “All of the judges, every single one of them listed on the commission pamphlet, were determined to meet judicial performance standards.” Genrich accused the commission of conducting a “farcical analysis that protects incumbent judges and tells the public nothing of the important rulings or qualifications other than the judge ‘meets’ or ‘does not meet’ judicial performance standards.” (Phoenix Gazette b–7 10/23/96). Genrich singles out a single criminal opinion of a single judge up for retention to support his claim that the CJPR analysis is farcical. This sort of editorial suggests the need for commissions to establish stronger links with the media to explain their processes.
Program Amendment Procedures/Revisions

Subject to approval by the Supreme Court, the CJPR is delegated the power to establish and revise the performance review program, including recommending written performance standards and procedures for collecting and analyzing performance information.

As we note above, the commission’s report to voters in 1994 contained extensive qualitative evaluation information in addition to the bottom-line recommendation for each judge. “The uniform response was, ‘It was too much; I didn’t read it.’ Our impression is that people are interested in the bottom line” (Sampson et al. 1996:196). The commission’s response was to print easy-to-read brochures listing the judges who appeared on the ballot in each locality, and an indication of whether or not the judge met performance criteria. While this format is easy for voters to understand, it is also not very informative. It is apparent the commission is still struggling to find the best way to present the evaluation information to voters. “If you talk to members of the public, they uniformly say they don’t know anything about the judges and they’d like to know more, but it’s very difficult to figure out how you create the vehicle for them to find out more” (Sampson et al. 1996:196). See also recommendations from an evaluator concerning low response rates among surveyed groups and survey methodology on pages 31-32.

Budget Information

The Arizona CJPR has the largest budget for conducting evaluations of the four commissions. Annual budget, including staff time and survey mailings:

1994: $249,500
1995: $349,400
1996: $256,400
1997: $339,100 (combined with budget for judicial nominating commissions).

Exit Poll Results for Phoenix-Area Voter Respondents

The following tables give a detailed breakdown of the Phoenix suburbs voter respondents’ attitudes toward the judiciary (Table VI(B)(2)) and toward the evaluation information (Table VI(B)(3)), as measured in our exit survey. See pages 12-13 and 35-36 for cautions about interpreting these exit polls. Notice that of the 339 voters who responded, 56 (or 16.5 percent) report receiving the evaluation information. (These are the numbers reported in the far right column of each table.)
Table VI-(B)(2): Phoenix suburbs voter respondents' attitudes toward the judiciary

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges in my state do a good job.</td>
<td>5.0%</td>
<td>47.2%</td>
<td>14.5%</td>
<td>5.3%</td>
<td>27.9%</td>
<td>337</td>
</tr>
<tr>
<td>Judges in my state are fair.</td>
<td>4.1</td>
<td>46.0</td>
<td>15.3</td>
<td>4.4</td>
<td>30.1</td>
<td>339</td>
</tr>
<tr>
<td>Judges in my state are honest.</td>
<td>4.4</td>
<td>41.6</td>
<td>13.0</td>
<td>4.4</td>
<td>36.6</td>
<td>339</td>
</tr>
<tr>
<td>It is important that voters have a say in whether a judge stays in office.</td>
<td>53.7</td>
<td>30.1</td>
<td>4.1</td>
<td>0.6</td>
<td>11.5</td>
<td>339</td>
</tr>
<tr>
<td>My vote affects the quality of judges who serve my community.</td>
<td>35.4</td>
<td>36.0</td>
<td>9.1</td>
<td>3.2</td>
<td>16.2</td>
<td>339</td>
</tr>
</tbody>
</table>

Table VI-(B)(3): Phoenix suburbs voter respondents' attitudes toward the performance evaluation information

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>The official information... influenced my voting...</td>
<td>14.5%</td>
<td>45.5%</td>
<td>9.1%</td>
<td>1.8%</td>
<td>29.1%</td>
<td>55</td>
</tr>
<tr>
<td>The official report made my voting choices more difficult</td>
<td>3.6</td>
<td>12.5</td>
<td>42.9</td>
<td>7.1</td>
<td>33.9</td>
<td>56</td>
</tr>
<tr>
<td>The official evaluation report adds to my confidence in the quality of judicial candidates</td>
<td>12.5</td>
<td>37.5</td>
<td>14.3</td>
<td>3.6</td>
<td>32.1</td>
<td>56</td>
</tr>
<tr>
<td>I appreciated receiving [the] official reports</td>
<td>30.4</td>
<td>37.5</td>
<td>3.6</td>
<td>1.8</td>
<td>26.8</td>
<td>56</td>
</tr>
<tr>
<td>I am more likely to vote in a judicial election because of the official information</td>
<td>26.8</td>
<td>39.3</td>
<td>5.4</td>
<td>3.6</td>
<td>25.0</td>
<td>56</td>
</tr>
<tr>
<td>The availability of official...reports helps make judges in my state more accountable to me.</td>
<td>30.4</td>
<td>33.9</td>
<td>5.4</td>
<td>1.8</td>
<td>28.6</td>
<td>56</td>
</tr>
</tbody>
</table>
Colorado Commissions on Judicial Performance,
Judicial Performance Evaluation Program

*Purpose and Goals*

Colorado's Commissions on Judicial Performance (CJP) try to strike a balance between their interest in informing voters and in helping judges improve themselves. In an AJS program on judicial retention evaluations, Dorothy Joseph, a public member of the Colorado statewide (appellate level) commission, stated that the commission's "goals are basically twofold: to provide Colorado citizens with fair, responsible, and constructive information about the performance of judges and justices up for retention, and to provide the judges and justices with useful information concerning their own performance for the purpose of self-improvement" (Sampson et al. 1996:190).

The CJP's public documents as well emphasize both sides of the evaluation mission. The Voter Guide states the commission's purpose is to provide "voters with fair, responsible and constructive evaluations of trial and appellate judges and justices seeking retention in general elections. The results of the evaluations also provide judges with information that can be used to improve their professional skills as judicial officers" (Colo. 1996 Voter Guide, p. 1). The commission's program report states, "The inherent self-improvement potential for judicial officers is as important to the process as the public accountability of the judiciary. By providing judges with an opportunity to reflect on their performance and improve their skills as judicial officers, the information gleaned through this evaluation and review process provides a definite advantage to the judges and the public they serve" (Colo. 1996 Program Report, p. 8).

*History of Program Adoption*


In 1983, the Colorado Judicial Institute (CJI), a not-for-profit citizens' group, adopted judicial evaluation as an area of study. In 1984, it ran a small-scale demonstration evaluation program in one judicial district, and in 1986 expanded the demonstration to five districts. CJI worked in cooperation with the bar and bench, but on its own initiative and without formal authorization or support from the Colorado state government. The information generated from these demonstrations "provided valuable input into the drafting process and the final shape of the 1988 Act that legislatively authorized retention evaluations beginning with the 1990 retention election cycle. (Mahoney 1989:213)."
Structure of the Commission

Each of Colorado's 22 judicial districts has a local performance evaluation commission to evaluate the trial judges up for retention in the district. Each commission has 10 members, and by statute, four are attorneys and six nonattorneys (Colo. 1996 Program Report, p. 1). A 10 member state commission evaluates Colorado Supreme Court justices and judges on the Colorado Court of Appeals, establishes rules for evaluating judges, and provides general guidance to the district commissions (Colo. 1996 Program Report p. 1). The chief justice, the governor, the president of the senate and the speaker of the house appoint members to both state and local commissions (Colo. 1996 Voter Guide, p. 1; Colo. 1996 Program Report, p. 1). The governor and chief justice each appoint one attorney and two nonattorneys. The speaker of the house and the president of the senate appoint one attorney and one nonattorney (Colo. 1996 Program Report, Appendix A). Members serve staggered four-year terms.

Evaluation Processes

CJP members receive training each year on the statute, rules and procedures, the Colorado Code of Judicial Conduct, interviewing techniques, and media relations (Colo. 1996 Program Report, p. 2). Commissions usually begin meeting monthly beginning in January of an election year (Colo. 1996 Program Report, p. 2).

The State Commission on Judicial Performance established the evaluation techniques for judges and justices up for retention (Colo. 1996 Program Report, p. 1). "The evaluation criteria were generally modeled from the American Bar Association's Special Committee on Judicial Performance Evaluation" (Colo. 1996 Program Report, pp. 1-2). Under the 1988 statute [Section 13-5.5-103(1)(a), 6A C.R.S. (1996 Supp.)], the criteria must include: "integrity; knowledge and understanding of substantive, procedural and evidentiary law; communication skills; preparation; attentiveness, and control over judicial proceedings; sentencing practices; docket management and prompt case disposition; administrative skills; punctuality; effectiveness in working with participants in the judicial process; and service to the profession and the public" (Colo. 1996 Program Report, p. 2; see also Colo. 1996 Voter Guide, p. 1).

For trial judges, surveys are given to individuals who have contact with judges inside and outside of the courtroom, including district attorneys, public defenders and private attorneys, jurors, litigants, probation officers, social services case workers, court personnel, and law enforcement officers; information is taken from docket statistics, interviews with the evaluated judge, and "other appropriate sources" such as court observations (Colo. 1996 Program Report, p. 2; see also Colo. 1996 Voter Guide, p. 1).

Survey distribution. The following charts list the groups that the CJP surveys for its performance evaluations, and lists the criteria and questions that appear on each survey. As in the Arizona surveys, not every question is asked of every group; groups are only asked questions on which they may reasonably be informed.
Colorado trial court survey distribution, criteria and measures

Trial court attorney questionnaire
Response categories are “strongly agree,” “agree,” “disagree,” “strongly disagree,” and “can’t rate.”

- **Integrity**: displays a sense of basic fairness and justice; finds facts and interprets the law without regard to possible public criticism; treats all parties equally, regardless of race, sex, age, ethnicity, social status, or economic status.
- **Legal ability**: displays adequate knowledge of substantive law, displays adequate knowledge of the rules of evidence and procedure, satisfactory performance as a motions judge (e.g. summary judgement, discovery), satisfactory performance as a settlement judge.
- **Communications skills**: written decisions are clear and thorough, oral decisions are clear and thorough.

**Juror questionnaire**: Same as attorneys’ questionnaire, except
- there are no questions on the judge’s legal abilities.
- under communication skills the questions are: explained proceedings to the jury, explained reasons for delays or interruptions of the proceedings, gave clear explanations of juror responsibilities.

**Courthouse personnel questionnaire**: Identical to the attorneys’ questionnaire, except there are no questions regarding the judge’s legal abilities.

**Litigant questionnaire**: (response categories are “never,” “rarely,” “about 1/2 time,” “most of time,” “always,” “can’t rate.”)
- **Integrity**: conducts self in a manner free from impropriety; treats all parties equally regardless of (separate questions for) race, sex, social/economic status; behavior is free from favoritism; displays a sense of basic fairness and justice.
- **Communication skills**: oral communications are clear and logical, conducts self in such a way as to instill public confidence in the court and the judge’s ability.
- **Preparation, control and attentiveness**: is courteous to all participants, is patient with all participants, maintains firm control of the courtroom.
- **Punctuality**: punctual in commencing proceedings.
- **Overall judicial performance**: “Keeping in mind your responses to each of the foregoing questions, what is your overall evaluation of the judge?” “recommend retention,” “do not recommend retention,” “no opinion.”
- Space is given for narrative comments, and for suggestions for improving the questionnaire.
- Demographic information (age, gender, type of case, race/ethnicity), and whether the respondent won, lost, or came out even in the case. Regarding the demographic information, the respondent is informed that it is “for statistical analysis only. The identity of the person completing this questionnaire will not be known or disclosed.”

**Law enforcement questionnaire**: Identical to the litigants’ questionnaire, except
- Asked number of years in law enforcement.
- Extent of experience with judge
- Not asked type of case or whether won

**Trial judge self-evaluation**: Asks for biographical information, case distribution, etc. (categories for following: “superior,” “above average,” “average,” “needs improvement.” In each section, the judge is given space to comment on strengths and goals for development)
- **Integrity**: Conduct free from impropriety; equal treatment regardless of race, gender, or economic status; avoid prejudging outcome of cases; basic fairness and impartiality.
- **Temperament**: Understanding and compassion, conduct that promotes public confidence in the court and your ability, dignified demeanor on bench, courteous to all participants in process.
- **Settlement activities**: Appropriate actions in encouraging settlement negotiations, promotion of negotiation without coercion or threats, careful exploration of strengths and weaknesses of each party’s case, mediation skills, credible settlement appraisals.
Since Supreme Court justices and Court of Appeals judges have little contact with the public, their evaluation surveys are given only to attorneys and trial court judges; appellate judges also interview with the state commission (Colo. 1996 Program Report, p. 2; see also Colo. 1996 Voter Guide, p. 1). All questionnaires and narrative comments are kept confidential.

Appellate court survey distribution, criteria and measures

Appellate court attorney questionnaire: (response categories are “strongly agree,” “agree,” “disagree,” “strongly disagree,” “can’t rate.”)

- **Integrity:** Conducts self in a manner free from impropriety or the hint of impropriety; renders opinions without regard to possible public criticism; treats all parties equally regardless of (separate questions on): race, sex, social or economic status, and age; displays behavior free from favoritism; displays a sense of basic fairness and justice within the context of the legal responsibilities of the judge.

- **Legal ability:** Demonstrates acceptable knowledge of constitutional law, substantive law, rules of procedure and rules of evidence, displays an ability to decide issues based on the law and facts, issues carefully prepared, legally sound written opinions.

- **Communication skills and deportment during oral argument** (if proceeding involved oral argument): Is attentive at oral argument.

Appellate level self-evaluation: Biographical information and assignments. (Response categories for the following are “superior,” “above average,” “average,” “needs improvement.” The respondent is given space to give comments on strengths and goals for development.)

- **Legal ability:** legal reasoning ability; knowledge of (separate questions on) substantive law, rules of evidence, rules of procedure, laws pertaining to sentencing; keeps up to date; decisions based on law and facts; decisions based on review of record; carefully written, legally supported decisions.

- **Integrity:** conduct free from impropriety; equal treatment regardless of race, gender, or economic status; avoid prejudging outcome of cases; basic fairness and impartiality.

- **Communication skills and deportment at oral argument:** attentiveness, patience, appropriate restrictions on counsel during argument, relevant questions.

- **Judicial temperament:** courtesy and dignity on the bench, understanding and compassion, conduct that promotes public confidence in the court and the judge’s ability.

- **Administrative performance:** promptness in making rulings and rendering decisions, hard worker, working effectively with other judges, working effectively with other court personnel, handling ongoing workload, timeliness of issuing written opinions.

- **Overall evaluation of judicial performance.**

For all levels of court, the office of the State Court Administrator sends questionnaires to a random sample of attorneys selected from automated case records. Responses from the other groups are gathered by the local judicial district administrators, who serve as staff to the district commissions. Respondents mail the completed questionnaires directly to the data processing center for entry. An independent statistician conducts analyses and produces a summary of the responses. In addition to the statistical summary, each commission reviews a statistical caseload evaluation “which includes a statistical review of the number and nature of cases handled by each judge” (Colo. 1996 Program Report, pp. 2,3). A total of 20,875 surveys were sent to participants in cases that terminated between March 1994 and August 1995.

In 1996 the state CJP established a follow-up process to improve the response rate among attorneys. Between 1990 and 1994, with no follow-up procedure, sampled attorneys re-
responded at a very low 28.4 percent. In 1996, each attorney survey form was assigned a confidential numbered code and tracked. “This allowed the commission to determine whether the respondent had completed the survey, and to remind the respondent of the value of completing the questionnaire through letters or by phone” (Colo. 1996 Program Report p. 4). With the followup procedure, the attorney response rate increased to 45 percent.

<table>
<thead>
<tr>
<th>Respondent Group</th>
<th>Number of Surveys Sent</th>
<th>Number of Surveys Returned</th>
<th>Rate of Response Returned</th>
<th>Avg. Number of Surveys per Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorneys</td>
<td>11,060</td>
<td>4,972</td>
<td>45.0%</td>
<td>104</td>
</tr>
<tr>
<td>Court employees</td>
<td>2,702</td>
<td>1,020</td>
<td>37.7</td>
<td>25</td>
</tr>
<tr>
<td>Law enforcement</td>
<td>2,316</td>
<td>900</td>
<td>38.9</td>
<td>22</td>
</tr>
<tr>
<td>Jurors</td>
<td>3,687</td>
<td>1,508</td>
<td>40.9</td>
<td>35</td>
</tr>
<tr>
<td>Litigants</td>
<td>1,110</td>
<td>215</td>
<td>19.4</td>
<td>10</td>
</tr>
<tr>
<td>Total/Avg.</td>
<td>20,875</td>
<td>7,265</td>
<td>34.8</td>
<td>196</td>
</tr>
</tbody>
</table>

Note: Table reproduced from 1996 Program Report p. 4.

The CJP must schedule an oral interview with each evaluated judge or justice no later than 15 days after the commission reaches an initial evaluation, and neither the commission nor the judge may waive the initial interview process. The commission must provide the judge all of the information it used in reaching its evaluation at least 10 days prior to the interview. No later than 10 days after the interview (or no later than 45 days prior to the last date for the judge to declare his or her intent to stand for retention) the commission must give the judge a written draft of the narrative profile; the profile draft may be shown only to the judge. If the judge chooses, he or she may respond in writing within 10 days of receiving the draft profile. The judge may also request an additional interview with the commission to comment on the draft profile. “After meeting with the judge, the commission may, but is not required to, redraft the narrative profile prior to publication” (Colo. 1996 Program Report, p. 3).

The CJP must publish the final narrative profiles and recommendations no later than 45 days prior to the election. A recommendation may be “retain,” “do not retain” or “no opinion.” A recommendation stating “No opinion” “can only be made when the commission concludes that the evaluation results are not sufficiently clear to make a firm recommendation” and must be “accompanied by a detailed explanation” (Colo. 1996 Program Report, p. 3).

**Information Dissemination**

Appellate judges run statewide, and trial judges run in one of 22 judicial districts. The Voter Guide gives a narrative evaluation summary (in tiny font) for all judges and justices in the state that are up for retention; trial court judges are listed under their district. Ninety-six judges and justices were up for retention in 1996. Each judge is given a recommendation of
“retain,” “do not retain,” or “no opinion.” The statute only requires a detailed explanation for the “no opinion” recommendation, but in practice the narrative profiles that accompany a recommendation “do not retain” are detailed as well. The commissions distributed approximately 600,000 copies of the Voter Guide in 1996 throughout the state. The commissions also posted their evaluations on the Web for the first time in 1996, giving even absentee voters access to the recommendations. See http://www.rmii.com/stl/courts/colcts.htm or http://www.usa.net/cobar/index.htm

Summary of 1996 Evaluation Results

In 1996, the commissions evaluated one Supreme Court justice, five Court of Appeals judges, 46 District Court judges, and 44 County Court judges. The commissions recommended that 91 of 96 judges and justices standing for retention in 1996 be retained. Three judges received “do not retain” recommendations, and two received “no opinion.” One of the judges receiving a “do not retain” recommendation was not retained by the voters.

Summary of Newspaper Coverage


Similar to the pattern of press coverage in Utah (see pp. 111 below), a considerable amount of newspaper coverage of the CJP and its processes focused on two judges who were not recommended for retention, District Judge Lynne Hufnagel and Denver County Judge Celeste C de Baca. While it is typical for newspaper coverage to focus on controversy, it is interesting to note that even this kind of coverage helps to disseminate information about commission operations to the public. For example, it was reported that two-thirds of attorneys said that Hufnagel had inappropriate demeanor on the bench, and the commission’s recommendation not to retain largely hinged on this result. Two papers reported that two-thirds of the attorneys surveyed, however, were defense lawyers apparently predisposed against her (see Denver Post 9/7/96, and Rocky Mountain News 9/7/96 or 11/1/96; Rocky Mountain News “Republicans Refuse Judge Appraisals” 10/12/96). The Rocky Mountain News ran an editorial in favor of the commission’s findings in Hufnagel’s case (10/24/96).

Some commentary in the Denver Post (Ewegen editorial, 9/15/96) accused the commission of gender bias, since Hufnagel and C de Baca were not recommended based on perceptions of their demeanor. The accusation is that attorneys apply a double standard that expects women judges to be particularly compassionate. For men, to be impatient with ill-prepared attorneys is perceived to be tough; for women, it is discompassionate. The CJP recommended gender bias as an area of study following the 1996 elections (see below).
Program Amendment Procedures/Recommended Areas of Study

The commission's enabling statute requires the commission to recommend improvements to the performance evaluation program. The 1996 Program Report identifies gender bias as an area of concern, probably following on the Hufnagel and C de Baca controversies. “It is alleged that female judges are perhaps held to a different and higher standard than male judges across the state in the area of demeanor” (Colo. 1996 Program Report, p. 5).

In addition, the state commission “feels that the information is not reaching the voters” (Colo. 1996 Program Report, p. 5). The commission tried to insert the information in an official “Ballot Analysis” (Blue Book). It was found, however, that including the retention information would increase the size and weight of the ballot analysis, increasing the postage and assembly costs beyond the commission's budget constraints. “The commission was forced to proceed at the last minute with alternate distribution methods, which did not prove nearly as effective as the blanket distribution achieved by the Blue Book” (Colo. 1996 Program Report, pp. 5-6). The commission conducted a quasi-experiment to determine whether mailing the information directly to voters has any effect beyond the commission's 1996 dissemination practices. An exit poll conducted in two districts that received a mailing, and in two that did not, demonstrated some measureable difference in voters' access to the recommendations (see Colo. 1996 Program Report, Appendix C).

Budget Information

FY 1996 was the first year the General Assembly funded the evaluation program. “The Judicial Performance program has received limited funding since its inception” (Colo. 1996 1/15/97 budget memo). The commissions received an average of $17,000 between FY1991 and FY1996. “This lack of funding has greatly inhibited the ability of local commissioners to provide judicial performance information to the public” (ibid.).

The other state commissions are allocated more than 10 times this amount; the commission tries “to make up the difference out of existing funds within the operating budget of the judicial branch, and that becomes pretty difficult” (Sampson et al. 1996:194). The commission finds frustration in its relative lack of funding. “Perfecting a judicial performance evaluation process which provides the public and judicial officers with the essential information given the limited resources has been a tedious undertaking. As a result, the program may be viewed in some circles as being stagnant and unresponsive. This program is at a crossroads. With the funding received this year, the commission finally has the capacity to overhaul the current process instead of patching together minor remedies in response to perceived problems or criticism. To evaluate the program based upon the current procedures would be ill-advised and premature” (Colo. 1996 Program Report, pp. 8-9).
Exit Poll Results for Denver Area Voter Respondents

The following tables give a detailed breakdown of the Denver voter respondents’ attitudes toward the judiciary (Table VI-(C)(2)) and toward the evaluation information (Table VI(C)(3)), as measured in our exit survey. See pages 12-13 and 35-36 for cautions about interpreting these exit polls. Notice that of the 204 voters surveyed, 77 (or 37.7 percent) report receiving the evaluation information. (These are the numbers reported in the far right column of each table.)

<p>| Table VI-(C)(2): Denver area voter respondents’ attitudes toward the judiciary |</p>
<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges in my state do a good job.</td>
<td>9.0%</td>
<td>55.5%</td>
<td>16.5%</td>
<td>2.0%</td>
<td>17.0%</td>
<td>200</td>
</tr>
<tr>
<td>Judges in my state are fair.</td>
<td>8.1</td>
<td>54.5</td>
<td>18.7</td>
<td>1.5</td>
<td>17.2</td>
<td>198</td>
</tr>
<tr>
<td>Judges in my state are honest.</td>
<td>9.5</td>
<td>54.5</td>
<td>15.0</td>
<td>1.0</td>
<td>20.0</td>
<td>200</td>
</tr>
<tr>
<td>It is important that voters have a say in whether a judge stays in office.</td>
<td>54.4</td>
<td>27.5</td>
<td>8.3</td>
<td>2.9</td>
<td>6.9</td>
<td>204</td>
</tr>
<tr>
<td>My vote affects the quality of judges who serve my community.</td>
<td>34.2</td>
<td>39.6</td>
<td>13.9</td>
<td>2.0</td>
<td>10.4</td>
<td>202</td>
</tr>
</tbody>
</table>

<p>| Table VI-(C)(3): Denver area voter respondents’ attitudes toward the performance evaluation information |</p>
<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>The official information... influenced my voting...</td>
<td>19.7%</td>
<td>61.8%</td>
<td>9.2%</td>
<td>3.9%</td>
<td>5.3%</td>
<td>76</td>
</tr>
<tr>
<td>The official report made my voting choices more difficult</td>
<td>3.9</td>
<td>21.1</td>
<td>43.4</td>
<td>17.1</td>
<td>14.5</td>
<td>76</td>
</tr>
<tr>
<td>The official evaluation report adds to my confidence in the quality of judicial candidates</td>
<td>14.3</td>
<td>55.8</td>
<td>16.9</td>
<td>3.9</td>
<td>9.1</td>
<td>77</td>
</tr>
<tr>
<td>I appreciated receiving [the] official reports</td>
<td>32.4</td>
<td>43.2</td>
<td>14.9</td>
<td>1.4</td>
<td>8.1</td>
<td>74</td>
</tr>
<tr>
<td>I am more likely to vote in a judicial election because of the official information</td>
<td>34.7</td>
<td>37.3</td>
<td>20.0</td>
<td>4.0</td>
<td>4.0</td>
<td>75</td>
</tr>
<tr>
<td>The availability of official... reports helps make judges in my state more accountable to me.</td>
<td>29.3</td>
<td>47.6</td>
<td>17.3</td>
<td>2.7</td>
<td>4.0</td>
<td>75</td>
</tr>
</tbody>
</table>

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Utah Judicial Council

Purpose and Goals

Like the Colorado commission, the Utah Judicial Council (UJC) states its mission in terms of the interests of both voters and judges. Chief Justice Zimmerman said, “The program now has two goals: The primary one is self-improvement. The secondary goal is to better inform the public when retention elections come around” (Sampson et al. 1996:191). This balance is reflected in the UJC’s public documents. Its goals are to “provide meaningful and relevant information to the public and applicable appointing authority to guide its decision on whether to retain or reappoint judges or commissioners without compromising the self-improvement goal of the Judicial Performance Evaluation Program or the independence of the judiciary” (Utah CJA Rule 3-111, Intent). “To provide each judge with information for his or her self-improvement; to provide the public with information upon which to make knowledgeable decisions regarding retention elections” (Utah 1996 Voter Information Pamphlet, p. 1).

History of Program Adoption

In 1984, Utah adopted a retention election system for judges, and “as soon as the amendment passed, legislators started putting pressure on the courts to repeal the portion that dealt with uncontested retention elections. In response, the Judicial Council offered legislation, which eventually passed, under which it would run an evaluation program to make sure the voters had some basis for deciding” (Sampson et al. 1996:191). In 1986, the Utah Judicial Council established a judicial performance evaluation committee and evaluation criteria and procedures. In 1989, the council conducted a pilot program of a biennial survey of attorneys, and approved implementation of a full attorney survey in 1990, along with minimum performance standards on the survey questions.

In 1991, the council conducted its first off-year evaluation for new judges, to enable “a newly appointed judge to identify problem areas and improve performance prior to the council’s certification decision” (Utah 1996 Annual Report, “Developments” section). The council published its evaluation results in newspapers and voter information pamphlets in 1994; prior to this, the information was available to voters only on request. County justice court judges were evaluated for the first time in 1994, and municipal justice court judges in 1995, for the self-improvement sections only. Legislation was proposed (but did not pass) in 1995 to place oversight of the evaluation program in the legislature. In 1996, legislation was passed to establish a juror survey, to publish a photograph and biography in the voter information pamphlet, and to report survey results to voters in greater detail.

Structure of the Commission

The Utah Judicial Council conducts the performance evaluations. There also is a Standing Committee on Judicial Performance Evaluation to advise the Council on the program’s operation. “The Judicial Council is established by the Utah Constitution as the policy-making

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body for the judicial branch of government and is required by its own rules and by statute to evaluate the performance of all judges” (Utah 1996 Voter Pamphlet, p. 1). The Judicial Council has 13 members, 12 judges and one attorney. The judge members are the chief justice (ex-officio); one supreme court justice; 1 judge of the court of appeals; 5 district court judges, 2 juvenile court judges and two justice court judges. Except for the chief justice, all judge members of the Council are elected by other judges at their level of court. The Board of Bar Commissioners elects the lawyer member. The Standing Committee has as membership one judge each from the Utah Supreme Court, the Court of Appeals, District Courts, juvenile courts, circuit courts, and the justice courts. A court commissioner and a practicing attorney are also on the committee.

The Utah Code of Judicial Administration (CJA) Rule 3-111(2) sets out the following criteria for judicial performance evaluation (these are also listed in the Utah 1996 Voter Pamphlet, p. 2):

- Integrity, including avoidance of impropriety and appearance of impropriety; freedom from personal bias; ability to decide issues based on the law and the facts without regard to the identity of the parties or counsel, the popularity of the decision, and without concern for or fear of criticism; impartiality of actions; and compliance with the Code of Judicial Conduct.
- Knowledge and understanding of the law and judicial branch rules, including the issuance of legally sound decisions; understanding of the substantive, procedural, and evidentiary law of the state; attentiveness to the factual and legal issues before the court; and the proper application of judicial precedents and other appropriate sources of authority.
- Ability to communicate, including clarity of bench rulings and other oral communications; quality of written opinions with specific focus on clarity and logic, and the ability to explain clearly the facts of a case and the legal precedents at issue; and sensitivity to impact of demeanor and other nonverbal communications.
- Preparation, attentiveness, dignity, and control over proceedings, including courtesy to all parties and participants; willingness to permit every person legally interested in a proceeding to be heard, unless precluded by law or rules of courts.
- Skills as a manager, including devoting appropriate time to all pending matters; discharging administrative responsibilities diligently; and where responsibility exists for a calendar, knowledge of the number, age, and status of pending cases.
- Punctuality, including the prompt disposition of pending matters, meeting commitments on time and according to rules of the court.

The Utah Judicial Council’s attorney survey has measures for each of these criteria. The attorney surveys are given on pages 109 and 110.

**Evaluation Processes**

Under the Utah Code of Judicial Administration Rule 3-111, the UJC is to survey attorneys who appeared before the judge or commissioner during the previous two years. The standing committee developed the survey with the UJC’s approval. “Subjects inquired into by the survey shall be drawn from but need not include all of the criteria” listed above. All questions in the survey are to be used for self-improvement purposes, but only a subset (those listed in
Part I of the questionnaire) is to be used in certification. The survey also is to have a “general retention” question, with the wording: “Taking everything into account, would you recommend the Judicial Council certify this judge or commissioner for retention?” The general question is not used directly in the council’s recommendation, but instead serves as an aggravating or mitigating factor when a judge challenges a recommendation not to certify (Utah CJA Rule 3-111(3)(A)(iii)(c)).

The Utah CJA Rule 3-111(3) sets out the following standards for judicial performance (minimum standards and procedure are listed also in the Utah 1996 Voter Pamphlet, pp. 3, 5). Each question in the attorney survey has six possible responses: “excellent,” “more than adequate,” “adequate,” “less than adequate,” “inadequate,” and “no personal knowledge”; the first three are to be taken as favorable responses. Scoring on each question divides the total number of favorable responses by the total number of responses, excluding all “no personal knowledge” responses. A satisfactory score on a question is 70 percent favorable responses. A judge or commissioner’s overall performance is satisfactory if 75 percent of the certification questions (not including the general question) have a satisfactory score and if the total number of favorable responses to all certification questions (again, not including the general question) divided by the number of valid responses equals or exceeds 70 percent.

In addition, the judge or commissioner must comply with continuing education standards, be in substantial compliance with the Code of Judicial Conduct and the Code of Judicial Administration, and demonstrate physical and mental competence. In addition, the rules give standards for timeliness of case determinations for trial court judges and commissioners, Supreme Court justices and Court of Appeals judges.

Beginning in 1997, the UJC will conduct a survey of jurors who appeared before the judge; the jurors needed to have either rendered a verdict or had at least three hours of trial time with the judge during the evaluation period. The wording for the general question is “Would you be comfortable having your case tried before this judge?” Response categories for all questions except the general question are “yes,” “no,” “no opinion,” and “no opportunity to observe.” The general question only has “yes” and “no” response categories. Scoring on the juror survey is the same as on the attorney survey. The bailiff is to distribute survey forms after the trial, with an attached card for narrative comments, as well as an envelope to return the card to the judge and an envelope to return the survey directly to the survey consultant.

Each judge’s performance is evaluated every two years whether or not the judge is standing for retention. An independent surveyor conducts the attorney survey. “Prior to the close of a judge’s term of office, the Judicial Council reviews the results of the attorney poll and other standards of performance and determines whether the judge is qualified for retention” (Utah 1996 Voter Pamphlet, p. 2). The attorney’s survey has a set of questions that are used only for self-improvement. The following charts list the attorney survey questions. The list of criteria that these questions measure are given in the previous section.
Attorney survey questions for district and juvenile court judges

Each question has six possible responses: “excellent,” “more than adequate,” “adequate,” “less than adequate,” “inadequate,” and “no personal knowledge.”

a) Questions for certification:
♦ Professional behavior is free from impropriety or the appearance of impropriety.
♦ Weighs all evidence fairly and impartially before rendering a decision.
♦ Behavior is free from bias.
♦ Discourages inappropriate ex parte approaches from attorneys or participants in a case.
♦ Demonstrates knowledge of the rules of procedure.
♦ Demonstrates knowledge of the rules of evidence.
♦ Applies the law to the facts of the case.
♦ Clearly explains the basis of oral decisions.
♦ Writes decisions in a clear and coherent manner.
♦ Maintains order in the courtroom.
♦ Demonstrates a familiarity with the pleadings, record, memoranda, and/or briefs that reflects preparation.
♦ Issues orders, judgements, decrees, or opinions without unnecessary delay.
♦ Taking everything into account, would you recommend the Judicial Council certify this judge for retention election?

b) Questions for self-improvement:
♦ Avoids abuse of discretion when sentencing.
♦ Avoids “playing favorites” among members of the bar.
♦ Finds the facts and interprets the law without regard to the popularity of the decision.
♦ Clearly explains court procedures.
♦ Behaves in a dignified manner.
♦ Behaves in a courteous manner.
♦ Avoids arrogance.
♦ Displays patience.
♦ Displays attentiveness.
♦ Rules on objections and evidence in a decisive manner.
♦ Allows sufficient time for case presentation.
♦ Effectively uses pretrial procedures to narrow and define the issues.
♦ Convenes court punctually.
♦ Manages recesses for the appropriate time and length.
♦ Behavior is free from bias on the basis of: a) gender b) age c) economic status d) race e) ethnic origin f) marital status g) local litigants and attorneys h) religion.
♦ Demographic variables: sex, age, years in practice, type of practice, area of practice, number of appearances before judge, number of judge’s opinions read, knowledge of judge is based on (reading opinions, appearances before, both, none).
Attorney survey questions for justices on the supreme court and judges on the court of appeals

Each question has six possible responses: “excellent,” “more than adequate,” “adequate,” “less than adequate,” “inadequate,” and “no personal knowledge.”

a) Questions for certification:
◆ Professional behavior is free from impropriety or the appearance of impropriety.
◆ Behavior is free from bias.
◆ Discourages inappropriate ex parte approaches from attorneys or participants in a case.
◆ Demonstrates knowledge of substantive law.
◆ Demonstrates knowledge of the rules of evidence and procedure.
◆ Demonstrates an ability to perceive legal and factual issues.
◆ Properly applies the law to the facts of the case.
◆ Demonstrates an awareness of recent legal developments.
◆ Opinions demonstrate scholarly legal analysis.
◆ Opinions are clear and well written.
◆ Demonstrates preparation for oral arguments.
◆ Taking everything into account, would you recommend the Judicial Council certify this judge for retention election?

b) Questions for self-improvement:
◆ Avoids playing favorites among members of the bar.
◆ Interprets the law without regard to the popularity of the decision.
◆ Written opinions include the essential elements of the case.
◆ Written opinions exclude superfluous information.
◆ Behaves in a dignified manner.
◆ Behaves in a courteous manner.
◆ Avoids arrogance.
◆ Displays patience.
◆ Displays attentiveness.
◆ Maintains the quality of questions and comments during oral argument.
◆ Issues opinions without unnecessary delay.
◆ Behavior is free from bias on the basis of a) gender b) age c) economic status d) race e) ethnic origin f) marital status g) local litigants and attorneys h) religion.

CJA Rule 3-111 advises that the independent surveyor should identify 180 attorneys who appeared before the judge during the evaluation period. The council suggests further that “the surveyor should favor attorneys with a greater number of appearances and attorneys with more recent appearances…” and should “pursue a response rate of 70 percent or more…” (Utah CJA Rule 3-111(3)(A)(ix)). Under Utah CJA Rule 4(D)(iii), the UJC is to take a judge’s contextual information into account in interpreting statistical results. “In evaluating failure to comply with a standard, the council shall consider workload, absence from the bench, inadequacy of administrative support or other extenuating circumstances identified by the judge which may have prohibited compliance.”

The UJC must meet no later than February 15 to determine if each judge or commissioner meets the performance standards (Utah CJA Rule 3-111(4)(a)). This meeting is to be in executive session. The council must give the judge under evaluation written notice of the decision within 10 days of the meeting. Judges or commissioners who are not certified for retention may request in writing a hearing before the council within 10 days of the notice. The hearing is to be held within 20 days of the request, and is also to be held in executive session. In addition to any mitigating information the judge may present, the council may in
its sole discretion consider: past performance evaluations, public or private sanctions from
the Judicial Conduct Commission (or Judicial Conduct Committee in the case of commis-
sioners), workload, absence from the bench, inadequacy of administrative support or other
extenuating circumstances identified by the judge or commissioner.

Information Dissemination

The UJC must provide its recommendations to the lieutenant governor for publication in
the state-wide voter information pamphlet that is mailed to households. The Salt Lake Tri-
bune distributed this pamphlet as an insert in its paper. All of the information the council
used to make a certification decision must be made available to the public. Information
collected for self-evaluation is not to be made available to the public. All information must
be made available to the public in the aggregate, e.g. compiled at the court level or by region,
upon request.

Summary of 1996 Evaluation Results

All of the 39 judges who stood for retention were certified by the commission for retention,
and only two judges were found unsatisfactory in any evaluation category.

Summary of Newspaper Coverage

The UJC received some general coverage of its efforts in Utah newspapers (see e.g. Deseret
News 10/22-3/96 “39 Utah Judges Seek Retention to Office”). As in Colorado, much of the
focus of newspaper coverage of the council process and recommendations was on the two
judges who were certified for retention, but received unsatisfactory scores on one or more
performance standards (see e.g., Salt Lake Tribune 9/29/96 B-1 “Attorneys Give 2 Judges
Unsatisfactory Marks”). One of these judges, David S. Young, was subject to a small-scale
opposition campaign, but was retained in office with 50.4 percent of the vote, “the smallest
margin of victory for any Utah judge since retention elections were put in place…” (Salt
Lake Tribune 9/29/96 B-1).

The Salt Lake Tribune conducted its own poll “to provide taxpayers more information about
their judges” than the council purportedly gives. The Tribune’s complaint was that the UJC
only reports areas where a judge did not meet the 70 percent standard for satisfactory perfor-
manCe, although the article reporting the Tribune survey results notes that the council will
report 5 percent increments in its next evaluation. The Tribune survey netted the same results
as the UJC, with the same two judges (Young and Wilkinson) found in need of improve-
ment in some areas.
Program Amendment Procedures/Recommended Areas of Study

The statutes governing the retention evaluation program can be changed by the legislature; the Judicial Council can change rules in the Code of Judicial Administration and Judicial Council rules.

The UJC’s 1996 annual report makes it clear that the survey consultant should have experience in conducting this sort of nonscientific survey; academic survey centers may not be ideal. “The survey of lawyers in the evaluation of judges is not a clinical, random sample survey used in social science research or political opinion polls. Although often spoken of as a single survey, it is really a multitude of surveys, one for each judge. The subject of the survey, the judges, is different from one survey to the next. The potential respondents are different. The sample size is different” (Utah 1996 Annual Report, p. 13). By its nature, the survey does not employ a large random sampling procedure. For example, “the task of the survey consultant is to coax a response without alienating the attorney [in] the process. If a lawyer chooses not to respond, oftentimes there is no alternative respondent because the survey is of a respondent pool so small that the survey is actually a census of all lawyers appearing before the judge” (Utah 1996 Annual Report, p. 13). In line with this recommendation, the report recommends hiring the survey consultant for longer than two years (which is the current contract period).

The UJC’s advisory group, the Standing Committee on Judicial Performance Evaluation, spends much of its time analyzing and responding to hostile or harmful legislation. One bill proposed that did not pass in 1995 “would have removed responsibility for administration of the performance evaluation program from the Judicial Council and placed that responsibility with the legislature” (Utah 1996 Annual Report, p. 9). The bill included surveys of litigants, staff, and court observers, and measures of the rates of reversal on appeal, but “the funding for the proposed new program was wholly unrealistic” (Utah 1996 Annual Report, p. 10).

To thwart similar legislation in 1996, the council proposed a bill that funded a survey of jurors in the district courts, and that provided more information to voters, including a brief biography, photograph, and finer reporting of the attorney survey results. This bill passed, and the changes became effective January 1, 1997.

Budget Information

The 1996 report suggests that the evaluation program is vulnerable to harmful legislative initiatives because of a lack of staff assistance for investigating and implementing improvements to the program. “As a result, the program is viewed in some circles as stagnant and unresponsive” (Utah 1996 Annual Report, p. 11). “Legislators conclude that legislative control can be used to force the program into a mold of their choosing. Due to inexperience, the legislative response may be short-sighted; the dynamics of judicial performance evaluation are considerably more complex than is generally recognized” (Utah 1996 Annual Report, p. 11). For example, “The dedication of the Committee and its staff to administering the current program and to resolving the topical issue of the day has precluded significant develop-
ment of policies and procedures for the evaluation of justice court judges” (ibid., p. 11). “The Committee has identified a host of issues for debate and development in the context of seeking a more rigorous evaluation of judges of all levels of court from the justice court to the Supreme Court. Because the development of new ideas does not qualify as an emergency, the Committee, as currently staffed, has difficulty turning its attention to these issues. If the Committee can reach an issue, the necessary investigation and analysis sometimes are not done or are too superficial” (ibid., p. 11).

Budget request summary for FY 1997/98

- Full-time staff $81,500
- Attorney survey $80,000
- Justice court pilot program $52,000
- Jury survey $30,000
- Total $243,500

The UJC lists tasks to maintain the existing program in its budget documents (Utah 1996 Annual Report, p. 10 fn. 1). The UJC estimates it requires a one-third to one-half time professional with secretarial assistance to adequately complete required tasks, such as:

- development and publication of the RFP for a survey consultant,
- analysis of bids and award of survey consultant contract,
- oversight of consultant services,
- maintenance of records of terms of office and judicial election schedule for approximately 230 judges and court commissioners,
- development of a twice yearly report of the Committee to the Judicial Council,
- development of the evaluation and certification schedule,
- communication with judges at appropriate stages advising judges of the next steps in the evaluation process,
- compiling and summarizing evaluation and certification information for the Judicial Council,
- preparing retention election information for publication and liaison with the Lt. Governor’s office for publication,
- communication with appointing authorities for municipal justice court judges,
- research and analysis of proposed policies regulating the evaluation program,
- drafting necessary amendments to rules and statutes,
- liaison with the Judicial Council.

**Exit Poll Results for Salt Lake City Area Voter Respondents**

The following tables give a detailed breakdown of the Salt Lake City area voter respondents’ attitudes toward the judiciary (Table VI(D)(1)) and toward the evaluation information (Table VI(D)(2)), as measured in our exit survey. See pages 12-13 and 35-36 for cautions about interpreting these exit polls. Notice that of the 418 voters surveyed, 183 (or 43.8 percent) report receiving the evaluation information. (These are the numbers reported in the far right column of each table.)
### Table VI-(D)(1): Salt Lake City area voter respondents’ attitudes toward the judiciary

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges in my state do a good job.</td>
<td>8.4%</td>
<td>56.7%</td>
<td>14.6%</td>
<td>6.2%</td>
<td>14.1%</td>
<td>418</td>
</tr>
<tr>
<td>Judges in my state are fair.</td>
<td>7.4</td>
<td>56.9%</td>
<td>14.4%</td>
<td>6.5</td>
<td>14.8</td>
<td>418</td>
</tr>
<tr>
<td>Judges in my state are honest.</td>
<td>10.3</td>
<td>56.5%</td>
<td>7.9%</td>
<td>5.3</td>
<td>20.1</td>
<td>418</td>
</tr>
<tr>
<td>It is important that voters have a say in whether a judge stays in office.</td>
<td>62.0</td>
<td>6.3%</td>
<td>3.6%</td>
<td>1.4</td>
<td>6.7</td>
<td>418</td>
</tr>
<tr>
<td>My vote affects the quality of judges who serve my community.</td>
<td>38.8</td>
<td>34.7%</td>
<td>11.0%</td>
<td>4.5</td>
<td>11.0</td>
<td>418</td>
</tr>
</tbody>
</table>

### Table VI-(D)(2): Salt Lake City area voter respondents’ attitudes toward the performance evaluation information.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No Opinion</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>The official information influenced my voting…</td>
<td>20.2%</td>
<td>52.5%</td>
<td>10.4%</td>
<td>2.7%</td>
<td>14.2%</td>
<td>183</td>
</tr>
<tr>
<td>The official report made my voting choices more difficult</td>
<td>0.5</td>
<td>8.2%</td>
<td>44.3%</td>
<td>21.9</td>
<td>25.1</td>
<td>183</td>
</tr>
<tr>
<td>The official evaluation report adds to my confidence in the quality of judicial candidates</td>
<td>11.5</td>
<td>51.4%</td>
<td>13.1%</td>
<td>4.4</td>
<td>19.7</td>
<td>183</td>
</tr>
<tr>
<td>I appreciated receiving [the] official reports</td>
<td>41.2</td>
<td>41.8%</td>
<td>2.2%</td>
<td>1.6</td>
<td>13.2</td>
<td>182</td>
</tr>
<tr>
<td>I am more likely to vote in a judicial election because of the official information</td>
<td>29.7</td>
<td>38.5%</td>
<td>11.0%</td>
<td>4.4</td>
<td>16.5</td>
<td>182</td>
</tr>
<tr>
<td>The availability of official… reports helps make judges in my state more accountable to me</td>
<td>33.5</td>
<td>40.7%</td>
<td>5.5%</td>
<td>2.7</td>
<td>17.6</td>
<td>182</td>
</tr>
</tbody>
</table>
VII

RECOMMENDATIONS
RECOMMENDATIONS

Based on the statistical analyses in this report, the comments of judges and evaluation committee members in Alaska, Arizona, Colorado and Utah about the strengths and weaknesses of their programs and the obstacles to improving them, and suggestions from members of the project advisory committee, the following elements appear to be essential to the effective implementation of a judicial performance evaluation program for retention purposes.

1. **Establish clear rules and procedures for the performance evaluation process.** Important decisions need to be made before the process begins. They include:
   - Identifying program goals (i.e., improve judicial performance, inform voters, help design continuing judicial education programs, improve public trust and confidence in the courts, etc.);
   - Selecting appropriate groups of survey respondents; in addition to lawyers, others with first-hand knowledge of the judges' performance also should be surveyed;
   - Choosing a format for reporting results to judges and the public (e.g., standardized format? statistical survey results only? narrative summary only? narrative and statistical results? give a prescriptive recommendation such as "retain" or "do not retain" as Alaska and Colorado do? present descriptive findings such as "meets" or "fails to meet" performance standards as Arizona does?);
   - Developing a dissemination plan to ensure that as many members of the public as possible receive the final report and recommendations (see Recommendation 8 below);
   - Identifying measurable criteria (see Recommendation 3 below);
   - Drafting detailed procedural rules to cover, for example, a process whereby judges can discuss evaluation results before they are made public (see Recommendation 7 below), how anonymous comments will be handled (i.e., accepted, used or not used by commissioners in formulating a retention finding, relayed to the judge, etc.), establishing confidentiality safeguards (see Recommendation 5 below); defining circumstances under which commissioners must recuse themselves, etc.

2. **Provide adequate funding.** The lack of adequate funding is a recurrent theme in both judge and commissioner respondents' comments, and improved funding would address many of their concerns. For example, adequate funding would permit the following:
   - Allow for valid and reliable surveying techniques; this could include, for example, surveying a sufficient number of groups of people (and a significant number of individuals within those groups) with first-hand knowledge of the reviewed judges (e.g., lawyers, litigants, court employees, peace and probation officers, jurors, etc.). A number of commissioners noted that, in their opinion, not enough laypeople are surveyed (see also Recommendation 4 below);
 Permit surveying sufficient numbers of individuals within those groups and allow follow-up mailings of those surveyed to improve the response rate; the goal is to give evaluation commissioners as much information as possible on which to base their evaluation reports;

 Permit the evaluation commission members and staff to explore and implement improvements to the process;

 Reimburse evaluation commissioners for per diem expenses such as meals and mileage;

 Publicize the performance standards and commission operating rules for the benefit of judges and the public.

3. **Develop clear, measurable performance standards.** This is critical, because the survey questions must be valid measures of the standards. An observable, behaviorally based criterion such as “Treats attorneys, witnesses and litigants courteously,” is easier to measure than a general standard of “appropriate judicial demeanor.” It also is important to review the “whole judge” in the context of his or her work environment. A criterion of “Meets case processing time standards,” for example, does not take into account the volume and nature of the cases a judge is handling. Professor James Lynch, who assessed the survey procedures of the Arizona Commission on Judicial Performance Review, offers several useful recommendations. For example, he recommends that evaluators analyze survey responses to eliminate any questions that yield redundant information about a judge’s performance, and provide a sufficient range of response options to elicit more differentiated responses. Differentiated responses help overcome, for example, the “halo effect” in jury surveys, where jurors almost always rate a judge highly. See “Issues related to the collection and analysis of court user survey data” on pages 31-32 for more about Professor Lynch’s recommendations.

4. **When there is a sufficiently large pool of respondents, adopt standard random sampling and appropriate follow-up procedures when surveying court user groups.** This is closely related to Recommendations 2 and 3 above. It is important to seek the advice of an expert in survey research and data analysis when designing sampling techniques, defining evaluation criteria and developing survey questions. Random sampling permits use of statistical tests of a judge’s relative performance. Rigorous follow up increases the response rate for each judge and helps ensure that survey results are not biased. A properly designed sampling procedure will identify the minimum number of responses necessary to provide a high level of confidence in the results. (For more discussion of the value of random sampling techniques and improving response rates, see pages 31-32 of the report). If circumstances do not allow for random sampling, for example when there is a small respondent pool, commissions should use a data center and statistician experienced in the use of nonrandom surveys. With smaller respondent pools, it is critical to follow up to get the highest possible response rate.
5. **Ensure confidentiality in surveys and in commission deliberations to promote candid responses by surveyed individuals and frank discussion among commissioners.**

According to some respondents' comments, this is especially important for attorney respondents in small jurisdictions and for court personnel. Since all respondents can be sources of specific comments that will help facilitate a judge's self-improvement efforts, safeguarding confidentiality is critical. Those who design the performance evaluation must make every effort to safeguard respondents' confidentiality by, for example, setting up a survey response-monitoring that effectively separates the respondent's questionnaire from the mailing list.

In surveys conducted for this report, we gave judges and evaluation committee members postcards addressed to the American Judicature Society that had the individual's name and address on the back, along with boxes to check indicating either that he or she had returned the questionnaire or chose not to participate in the survey. They were instructed to return the postcard separately from the questionnaire. In this way we protected their confidentiality while knowing who should be sent follow-up reminders. In 1996 Colorado coded its attorney questionnaires for follow-up with nonrespondents; respondents returned completed surveys directly to a data processing center.

Every effort also must be made to ensure confidentiality of commission deliberations so that commissioners can frankly discuss evaluation results and their proposed retention recommendation. This will enhance judges' confidence in the process.

6. **Establish strong self-improvement components of the performance evaluation process.** This can be accomplished by, for example, conducting midterm evaluations to give judges early notice of any areas in need of improvement before the retention evaluation; permitting judges to evaluate themselves for self-improvement purposes; using conference teams to discuss evaluation results with judges (see discussion of Arizona's use of conference teams on page 93); and provide judges with narrative comments from survey respondents if it will not impinge on respondents' anonymity. The ultimate goal is to provide very specific feedback to judges about their strengths and weaknesses. See also Recommendation 9 below concerning establishing linkages with judicial education planners.

7. **Mandate a procedure for judges to receive and respond to evaluation results before they are made public.** This is a sensitive and important aspect of due process for reviewed judges. Even though each of the four states studied permits it, only Colorado mandates interviews with reviewed judges to discuss evaluation results, and in Arizona, conference teams meet with all reviewed judges. (See Table III-4, page 29.) A significant number of judge respondents feel they do not have an adequate opportunity to respond to commission results before they are made public. See Table IV-7, page 44. But note also in Table IV-7 that significantly higher percentages of Arizona and Colorado judges agree they have adequate opportunity to respond to commission results before they are made public.

The performance evaluation programs should require that reviewed judges have an opportunity to meet with the full evaluation commission or a subcommittee representing
the commission’s composition (i.e., lawyer, layperson, judge) to respond to the findings, even if the results are positive, and especially if the results are negative.

8. Establish an effective mechanism for disseminating evaluation reports to the public. This also has funding implications, but deserves a separate recommendation. Since many voter respondents in Anchorage and Salt Lake City who reported getting the evaluation report said they received it at home (see Table IV-3, page 38), the most effective dissemination method may be direct mailing of the reports to households of registered voters, either as a separate document or as part of a state-sponsored mailing on other ballot issues. (Of course, there are other ways for someone to receive a report “at home,” e.g., delivered as an insert with a daily newspaper). Three states have put evaluation results on their website as a channel to reach the public (see Table III-4, page 29 of the report); other innovations should be explored; see Recommendation 10 about print media below.

9. Establish a mechanism to incorporate evaluation results in designing judicial education programs. This is closely related to Recommendation 6. If areas of weakness appear in the evaluation results, it will be helpful for the judge to have access to educational programs or special training to improve his or her performance. One mechanism might be a committee composed of judicial education staff and advisory board members and performance evaluation staff and several commissioners to develop a way to convey useful information about continuing education needs. The form in which evaluation results are conveyed to judicial education staff also needs to be defined. In Utah, for example, evaluation commission staff provide “group data” that gives the percentage of judges who score less than satisfactorily in a given area. In the section of the report on this issue (pages 49-51), educators said they need more specificity about educational needs identified by evaluation committees, although many also noted they draw on other sources for judicial education needs.

10. Establish linkages with print media. A significant number of respondent voters reported they received information about performance evaluation results from newspaper stories (see Table IV-3, page 38). In addition to being used as an alternative to direct mailing of reports to registered voters, media coverage is a supplementary medium to convey the information. However, unless editorial boards and reporters understand the purpose and goals of the process, the performance standards used and commission procedures, articles and editorials may focus on “report card” stories about individual judges. (See Recommendation 8 above.) Therefore, it is important that ongoing relationships with the print media in particular be established and maintained.

11. Leave the process open to amendment. Judicial retention evaluation programs are evolving entities. As noted in the summaries of the four states’ evaluation programs (beginning on page 73), they have a history of change—in groups surveyed, in procedural rules, in the form of the final report that goes to the public, in their dissemination plan, etc. It is important that the state supreme court, judicial council or other supervising body be able to make changes expeditiously as experience indicates.

12. Establish training programs for all evaluation commissioners. Such training should include information about the purpose and goals of the evaluation process; explanation
of the evaluative criteria; a thorough review and explanation of the commission’s operating rules, including confidentiality requirements, conflicts of interest, voting, etc.; and courtroom observations (by lawyers, too; a lawyer may be a commercial litigator or a prosecutor, and not be aware of the working environment of judges in, for example, domestic relations, traffic or other high-volume courts). The value of all commissioners’ participation—lawyer, layperson and judge—should be explained and emphasized.

13. **Involve the public in and educate them about the process.** Most current evaluation programs involve laypeople as commissioners; most of them involve laypersons as survey respondents. Some states, such as Alaska and Arizona, also hold hearings to allow members of the public to comment on judges who will stand for retention. The print media in particular can help educate the public about the process itself and the results of performance evaluations (see Recommendation 10). While judicial performance evaluation commissions probably cannot undertake general education programs for the public given their constraints on time and funding, an effort should be made to somehow explain the role of the judge, the personal and professional qualifications judges should possess, and the need for them to be independent decision makers.
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REFERENCES

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