The JPE Commission Toward a More Transparent and Informative Evaluation

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THE JPE COMMISSION

Toward a More Transparent and Informative Evaluation

The JPE commission is the key player in the JPE process. The commission generally has very few binding rules to follow and thus has a great deal of discretion in how to proceed. This preliminary investigation suggests the JPE commissions may be relying heavily on the attorney surveys to identify recipients of negative recommendations.

by REBECCA D. GILL and KENNETH J. RETZL

Introduction
One of the important innovations of the merit system of judicial selection is its attempt to maintain electoral accountability for judges while removing the need for judges to square off head-to-head in competitive elections. The retention elections used by most merit plan systems allow citizens the opportunity to remove underperforming judges at the ballot box. At the same time, they are designed in the hopes of minimizing the need for campaigning and fundraising that competitive elections increasingly require.1

A side effect of the absence of significant campaigning, however, is that the voter is left with precious little information with which to evaluate judges standing for retention.2 In contested elections, the campaign process provides information to voters about both the challenger and the incumbent.3 The challenger in the race has a strong incentive to make public whatever shortcomings the incumbent judge may have. Indeed, challengers typically seek out weak incumbents in the hopes that they will stand a better chance of winning.4 As a result, the public is exposed to information about an incumbent’s less impressive record. Where there is no challenger, there is no significant campaign, and voters get little information about the incumbent. Turnout in these uncontested elections is low, and ballot roll-off is high.5

The same lack of information plagues retention elections, which are uncontested by definition. Perhaps this is one reason very few judges lose retention elections. Previous research has indicated less than 1 percent of judges have been removed from the bench due to a failed retention election.6 States with retention elections have recognized this problem. The most important step these states have taken to counteract this dearth of information is the creation of formal, state-sponsored judicial performance evaluation (JPE) programs. These programs, universally modeled after the American Bar Association’s Guidelines for the Evaluation of Judicial Performance,7 aspire to provide useful, fair, and relevant information for voters to use when making voting decisions.

This research aims to determine whether JPE programs are actually providing useful, fair, and relevant information by discussing JPEs in general and specifically analyzing Colorado’s process of judicial evaluation. What we find is that Colorado’s evaluation tool suffers from gender bias, resulting in lower scores for female judges when we control for other mitigating factors. We urge all JPE programs to continue to monitor and evaluate their programs to guard against such bias. We agree with David Brody’s claim that some infor-
mation can be seen as better than no information to assist voters make retention decisions. However, we also agree with Christine Durham's claim that "we are expending too much time, money, and institutional credibility if the results (of JPEs) are contaminated by bias and are, therefore, unreliable." Our hope is that this research can begin a discussion to make reliable and effective JPEs a reality.

The Basics of Judicial Performance Evaluation

JPEs are a critical component of judicial selection, especially in states that hold retention elections for their judges. The presence of JPEs fulfills a number of important functions. First, JPEs provide voters with needed information to use when casting their ballots in a judicial election. The hope is that this information will turn retention elections into a viable tool for providing meaningful accountability. Second, it can be an important tool for protecting the quality of judges on the bench by incentivizing self-improvement. Finally, proponents argue that state-sponsored JPE systems can educate the public about the state justice system, increasing the legitimacy of the state courts.

While JPEs do provide a very valuable service to judges, lawyers, public officials, and voters, there is a question of whether such measures impede judicial independence. It can be argued that judicial independence is retained so long as evaluations are free of critiques of outcomes of specific cases. However, with any sort of survey instrument, respondents can use the survey to rate judges lower than actually warranted because of a (perceived) poor outcome in a specific case. Or, sometimes judges will only be evaluated by individuals who feel the judge deserves criticism, while those who feel the judge is satisfactorily completing his duties will neglect to complete an evaluation. These concerns are easily overcome with information that is included in the performance evaluation that is not derived from survey data (like courtroom observations and/or interviews with the judges themselves).

Although some observers have dismissed "the concerns about the subjectivity of legitimate evaluation factors" as "infinitesimal," most proponents of JPE systems have long recognized the importance of addressing concerns about the "fairness of survey methodologies and evaluation commission procedures." The judicial evaluation system in Colorado, and others of its kind, grew out of a self-conscious attempt to achieve both precision and fairness. Supporters of the model saw Colorado's JPE system as nearly ideal, anticipating that it would serve as a model for other states to follow. Currently, 18 merit plan states and the District of Columbia have a formal, state-sponsored JPE system in place, although Colorado's system is still considered the most comprehensive in the nation. These systems are all derived from recommendations contained in the ABA Guidelines, although states vary widely in terms of their adoption of the more complicated and expensive recommendations provided in the reports. All of these programs have a few important characteristics in common: They are organized as commissions that are state sanctioned as the official evaluating body for state judges; each uses at least one survey instrument to solicit evaluations of the judges from people outside the commission; they publish at least some of their findings for public consumption; and each contains some type of judicial self-improvement component.

The Role of JPE Commissions

In 2005, the ABA released its Guidelines for the Evaluation of Judicial Performance. These Guidelines urge all court systems to create an evaluation program, and they provide standards for the process. The main purpose of these systems is to promote self-improvement of judges, improve the overall quality of judges, and to provide information to individuals responsible for decid-
ing whether to reappoint, retain, or reelect judges. The ABA envisioned the JPE commission to be the central figure in this process. The commissions are charged with developing an evaluation program, administering it, gathering the required information, and analyzing and presenting the results. According to the ABA, the creation and staffing of JPE commissions should be the responsibility of the highest court or another “constitutionally mandated body.”

In instances where these institutions have not created judicial performance commissions, the ABA envisions the state bar association developing its own evaluation methods.

The criteria to evaluate judges are explicit. Judges should be evaluated on their legal ability, integrity, impartiality, communication skills, professionalism, temperament, administrative capacity, and any other criteria specific to jurisdiction or level of court that is deemed appropriate. Those who should be consulted during the evaluation process include judges, lawyers, and members of the public that are familiar with the system (e.g., jurors, staff members, witnesses, members of law enforcement, etc.). Unfortunately, the methodology for evaluating judges is less clear. Currently, there is no universal template, so states are left to devise their own evaluation instruments. The only guidance given by the ABA is to utilize experts when developing the evaluation tools.

There is one recommendation provided by the ABA that we believe has not been completed as diligently as necessary. According to the ABA, once evaluation programs are created and implemented, they should be evaluated periodically to ensure the information obtained is reliable and unbiased. In light of recent research that has indicated there is significant bias in several JPEs, it is critical that commissions and legislatures redouble their efforts to guard against any inherent unfairness and biases in their programs. By standardizing the work of commissions, their output can focus on the production of reliable voter information instead of the all-or-nothing recommendation that has come to dominate JPE reports.

The Case of Colorado

Colorado’s JPE system is the most expensive and ambitious of its kind. It attempts a “360-degree” review process by including a number of different metrics and constituencies in its evaluation process. The judges are selected through a merit system. By law, each judge serves an initial term of two years and must stand for retention during the next general election. In advance of these elections, each justice on the ballot undergoes a review process. These evaluations are conducted by the Colorado Office of Judicial Performance Evaluation.

The uniquely decentralized system is a hallmark of Colorado’s JPE commissions. The commissions were created by law in 1988 “for the purpose of providing voters with fair, responsible and constructive evaluations of judges and justices seeking retention.” The 22 judicial districts in Colorado each have their own commissions. Figure 1 shows a map of these districts. A statewide commission evaluates judges on the supreme court and court of appeals.

The commissions are made up of both attorneys and non-attorneys. The representation of laypeople on the commissions has been hailed from the beginning as an important contributor to the legitimacy and fairness of the evaluation process. Each member is appointed by an officer of state government: the governor, the chief justice, the speaker of the house, or the president of the senate. Each appointed commissioner serves a four-year term that is once renewable.

The commissions evaluate all judges on several dimensions of judicial performance, each derived from
the ABA's Guidelines. These performance categories include integrity, legal knowledge, communication skills, judicial temperament, administrative performance, and service to the legal profession and the public. The commissioners are instructed to use a number of different sources of information in their evaluations, including surveys of attorneys and non-attorneys, a judge’s self-evaluation, interviews with the judge, written judicial decisions, courtroom observation, and administrative statistics.

The commissions weigh a number of pieces of evidence in their deliberations, all of which must be shared with the judge evaluated. However, only a few components of the commission deliberations are ever made public via the official website: a short narrative, the aggregate-level results of the survey data, and the official recommendation of the commission. Three possible recommendations exist: Retain, Do Not Retain, and No Opinion. Additionally, if the commission believes a judge has a significant weakness, it can recommend a performance-improvement plan to address the area of concern.

From 2002 through 2012, the commissions evaluated 1,176 judges and made “Do Not Retain” recommendations in 17 cases; during the same period, a total of 10 judges lost their retention elections. Figure 1 shows the distribution of negative recommendations across the judicial districts.

There are many qualities about the Colorado JPE system that should be commended. It allows for considerable citizen input; it takes into consideration more than just attorney surveys; it surveys laypeople and collects additional evidence through interviews and work product samples; it also allows judges the chance to evaluate themselves and defend their performance to the commission.

The development of Colorado’s comprehensive state-sponsored JPE system was in part a reaction to the perceived weaknesses of the bar polls that were common in many states at the time. The independent groups pushing for a JPE overhaul argued that citizens had little faith in these polls, largely because “many [citizens] especially distrust lawyers.” But early studies of Colorado’s system revealed some disturbing findings. About 10 years into the system, a 1998 American Judicature Society study surveyed Colorado judges about their impressions of the JPE process. Only 61 percent of the judges agreed or strongly agreed with the following statements:

1) “I have an adequate opportunity to respond to commission results before they are made public”;
2) “The overall process used by the evaluation commission to collect information about my performance is fair.”

Only about 30 percent of judges agreed with a third question:

3) “Judges have access to a fair appeals process if they disagree with the commission’s report.”

Colorado addressed the concerns expressed by judges in question 1 and 3 above by incorporating an enhanced process through which judges can respond to the commission’s report in advance of its publication. Judges are now afforded the opportunity to respond to unfavorable recommendations with a statement of 100 words or less, which the commission must publish along with its report and recommendation. The first such response appeared in 2008.

The lackluster response to question 2 above, however, remains largely unaddressed. In the context of a system where judges almost universally receive “Retain” recommendations, it is difficult to attribute this to sour grapes. The only specific guidance provided to the commissions is what information must be consulted and which qualities ought to be considered; commissions are on their own when it comes to determining how to interpret, weight, and assemble this information.

To be sure, the commissions still rarely give “Do Not Retain” recommendations; indeed, only about one percent of the total evaluations
completed between 2002 and 2012 resulted in this negative recommendation. In some cases these designations can seem a bit arbitrary. In one example, a county judge was heavily criticized by lawyers in the evaluation survey for failing to maintain a professional demeanor in the courtroom. This judge’s retention score on the attorney survey was 20 percent lower than other county judges. His commission recommended retention despite these criticisms.44

Judges receiving negative ratings might justly complain. In fact, all but one of the judges who submitted a response to a “Do Not Retain” or “No Opinion” rating criticized the commissions’ selective use and arbitrary inflation of negative feedback. One judge noted that “[t]he Commission disregarded the overall presumptive ‘retain’ score on my performance survey results.” Another judge’s frustration was even more forceful; she ends her response with the typeface observation, a “MAJORITY (78%) RECOMMENDS THAT I BE RETAINED.”45

Unpacking the Commissions’ Ratings

It is difficult for the judges, let alone the public, to know exactly what sort of analysis underlies the decisions of these commissions. Certainly this is partly intentional, at least as it concerns the precise nature of the evidence presented to the commissions. The rules that govern the process require that the commission goes into executive session for “[c]onsideration of confidential materials as part of an evaluation of a justice or a judge, including deliberations.”46 Indeed, Part III of the ABA Guidelines also recommends that with the exception of the results intended for public consumption, “the data and results should be confidential.”47

Raw interview and courtroom observation data are not provided to the public, neither is the information solicited by the commissions from the district administrator about “information concerning the caseload, case types, open case reports, and case aging reports.”48 The judges must undergo a self-evaluation as well, but this information is also missing from the public profile. For appellate court judges, the writing samples are by and large publicly available, the exception being the one unpublished decision appellate judges are required to submit. However, the reports do not indicate which opinion the judge submitted.

Perhaps more alarmingly, the rules allow the commissions to interview other interested persons concerning the judge being evaluated. They are also authorized to accept unsolicited feedback from the public, as long as such submission is not anonymous.49 This information is not presented in raw form, of course, for confidentiality reasons. However, it is difficult for the public to have a sense of how the raw data are translated into the summary reports provided as voter information guides.

What we can do is to use the information we can access to determine what predicts positive recommendation results. To accomplish this, we have assembled a dataset that includes information from the publicly-available survey results, coupled with some additional measures to stand as proxies for judicial ability.50 Between 2002 and 2012, the Colorado JPE commissions conducted 623 pre-election evaluations of judges.51 Of these, five were “Do Not Retain” recommendations, and four were “No Opinion” recommendations. This means 98.56 percent of all commission recommendations were positive.

In Table 2, we present a number of bivariate analyses comparing values of some important variables for those who get positive as opposed to negative recommendations from the commissions. We have taken data from the publicly available performance evaluations and supplemented it with information from official judge biographies and other publicly avail-

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PN: [Table 1 about here]

PN: [Table 2 about here]

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able information (See Table 1). The results here show that the percentage of attorneys who recommend retention in the attorney survey is a strong driver of commission recommendations. In addition, judges who are perceived to be biased are more likely to be in the negative recommendation group. In the bivariate analyses, layperson “Retain” scores are also related to the commission’s recommendation. The average number of years since bar admission is slightly lower among those judges with negative recommendations. Finally, female judges are more likely to receive negative recommendations. There are a total of 165 evaluations of female judges in our data. A total of six female judges, or 3.64 percent, received negative recommendations. This is as compared with only 0.66 percent of male judges with negative recommendations.

PN: [Table 1 about here]

In Table 3, we report the results of a model predicting positive commission recommendations. We use a logistic regressional model to estimate the probability that any given judge will earn a positive (or “Retain”) recommendation from the commission. We have clustered the observations by judge to control for the non-independence of multiple observations when calculating the standard errors. In this model, we include only trial court judges, as attorney bias scores and layperson “Retain” scores were not collected by the state commission for the appellate court judges.

It is clear from this analysis that the effects of the attorney bias scale, the layperson “Retain” scores, and the time on the bench were significant in the bivariate analyses only to the degree that they overlapped with or informed the attorney “Retain” scores. Indeed, the summary results of the attorney survey are the most significant predictor of commission recommendations by far. This is represented graphically in Figure 2. This figure shows the important relationship between attorney “Retain” scores and the final commission recommendation. The probability of a positive recommendation approaches 1 as the attorney retain score approaches 100.

PN: [Figure 2 about here]

The more interesting finding is how little impact other measurable pieces of information have on the process. This is especially true given that attorney surveys have been shown in a number of different contexts to manifest gender bias and broader reliability and validity problems, even in states with sophisticated JPE systems.

It is important to remember, of course, that we are talking about an incredibly small percentage of evaluations that result in negative commission recommendations. Very rarely do incumbent judges get voted out of office—a fact that has been cited as a problem with JPE commissions. In Colorado, it is quite difficult even for judges of questionable quality to obtain a “Do Not Retain” recommendation from the commissions. In 2012, a county judge was criticized by attorneys for his unprofessional courtroom demeanor. The attorney “Retain” score for this judge was a full 20 percent lower than the other county judges that year. The commission expressed concern about the official’s use of biting sarcasm in the courtroom, but nonetheless recommended retention. Why did this judge get a “Retain” recommendation when others did not? It is difficult to say. In all, there were 37 evaluations out of 588 at the trial court level where the judge scored at least 20 percent below the average and still received a “Retain” recommendation from the commission.

Unfortunately, commissions give the public precious little information about how the recommendation decision is reached. The post hoc justification in the commissions’ blurb gives some clues, but the commissions vary widely in their attention to detail and precision in these
write-ups. Figure 3 presents a pair of actual recommendations from the 2012 cycle. The review of Judge Tallman provides a good deal of information about how the commission came to its decision to retain the judge. The narrative discusses potential problems with his skills, and it details how it obtained information that mitigated the potential problems. By contrast, the review of Judge Lutz shares very little information about the judge. It asserts some judicial characteristics, but it does not make clear how the commission would have come to these understandings.

PN: [Figure 3 about here]

As of now, there is no defined rubric to guide the evaluation process undertaken by each commission. It is impossible to know the extent to which the commissions vary in terms of general procedure, interpretation of evidence, and methods of distilling the piles of evidence into a rating. What we can see, however, is the difference among commissions in terms of the quality of information they provide to the public.

The discrepancies among commissions in terms of the narratives they produce are striking. It is of particular importance because these narratives provide the context voters rely upon when making their voting choices. Some commissions provide rich narratives that include background information about the judge as well as a detailed summary of both the positive and negative findings derived from the evaluation process. Other commissions include only the barest facts.

Some include no information whatsoever on the findings of the evaluation, positive or negative, and beyond the blunt instruction to “Retain” or “Do Not Retain,” they do not provide any helpful guidance for the voter.

Charting a Course for Effective Commissions

The JPE commission is the key player in the JPE process. The commission generally has very few binding rules to follow and thus has a great deal of discretion in how to proceed. The commission is generally given a list of job performance categories on which the judges must be evaluated, as well as a suggested list of information sources. However, it is usually up to the commission to decide for itself how to create operational measures of these job performance categories. The commissions also decide how to interpret and weigh the different pieces of information they collect.

This preliminary investigation suggests the commissions may be relying heavily on the attorney surveys to identify recipients of negative recommendations. In Colorado, especially, these commissions are spending a good deal of time collecting additional information, but it is not clear that this is contributing anything to the ultimate recommendations or narrative summaries that are the deliverable results of the deliberation process. Given the well-documented problems with attorney surveys, this may prove problematic.

The commissions should focus on improving and standardizing the constituent parts of the JPE. Performance surveys are centrally created in Colorado and should be revisited in light of recent scholarship on attorney surveys in JPE systems. The remaining parts of the process, however, are left mostly to the discretion of the individual commissions. There is no set protocol for interviewing the evaluated judges or others. There is no rubric, of which we are aware, for evaluating the merit of the written opinions or trial court transcripts. It is not clear what kind of information the judicial self-evaluation solicits, and we have little sense of the role it plays in the recommendation process. Indeed, we cannot opine on the propriety of any of these sources of performance data, since we have no access to the methodology driving the data collection process. Although the ABA is probably correct in asserting the need for confidentiality of the raw data, we see no similar need for secrecy in the
evaluation methodology.

The commissions in Colorado demonstrate a wide variation in the quality and depth of information they provide for voters. Each evaluation results in a summary recommendation about retention. However, some of the narrative reports provide precious little information to explain why a particular judge earned a particular recommendation. This single-minded focus on the summary recommendation is problematic. It seems to betray the stated goal of providing “information” to the voters; instead, it simply tells voters how to vote.

If commissions are going to produce firm retention recommendations as their output, there is a strong need for more transparent and rigorous procedures for interpreting and weighting the various pieces of evidence in the production of this recommendation. However, we strongly recommend avoiding this problem by discontinuing the practice. Although such recommendations are nearly ubiquitous in state-sponsored JPE programs, we ought not accept the practice without serious reflection on the implications. In states like Colorado, the commissions produce a narrative and a retention recommendation for each judge they evaluate. This information is then distributed to the public as widely as the commissions have the capacity to manage.

When the focus is on the retention recommendation, the distribution of this information amounts to a state-sponsored commission endorsement (or not) of a candidate for election. This is not to say that the commissions should provide no information or analysis to the voters; we strongly believe that they must. Even if we put aside the problem of confidentiality, it simply would not do to have the commission narratives be a mere accounting of the raw data obtained through the various evaluation components. The voters are generally laypeople, and they often lack the specialized knowledge needed to make sense of the various markers of judicial performance. This information needs to be contextualized for the voters. For example, it is not enough to say, 85 percent of respondents thought the judge had an appropriate judicial temperament. Voters need the commission to define judicial temperament and explain why the attribute is particularly important for a judge in a court of law. They need the commission to set this number against the judge’s peers, as well as against the judge’s prior performance. If the judge is flippant about the issue in an interview or a self-evaluation, the commission can explain to the voters why this might prove to be a continuing problem with this judge.

In pursuit of this goal, we suggest that states devise templates for their commissions to follow when writing their narratives and summarizing their findings. These templates should lay out the specific background information for all narratives to include. Narratives should include a space for a summary of the findings for each performance category. In turn, each summary should indicate the contribution of every source of information (e.g., attorney surveys, interviews, analysis of transcripts, etc.). Furthermore, the template should include a rubric for determining, for example, how one judge’s scores on a particular item are significantly different from the scores of her peers. The top narrative in Figure 3 comes much closer to this ideal than does the bottom one.

Of course, there is a fine line here between providing interpreted information and recommending a specific course of action to the voter. If the commissions are doing their jobs, some narratives will read more positively than others. The information provided by the commissions should be accessible enough for the layperson to make up her own mind but stop somewhere short of simply telling her how to vote.


13. White, supra note 11, at 652.


15. Id. at 1065.


17. White, supra note 11, at 1075.


20. Id.


22. Andersen, supra note 18, at 1376.


24. Id. at 1.

25. Id. at 4.

26. Id. at 2.

27. Id. at 3-5.

28. Id. at 5.

29. Id. at 5.

30. Id. at 3.


32. Brody, supra note 2, at 31.


35. Mahoney, supra note 19.


38. The recommendation of “No Opinion” is only utilized when the commissions are unable to reach a consensus on a judge or if there is not enough information to make an informed decision.

39. Mahoney, supra note 19, at 12.


41. These changes are reflected in the “Rules Governing Commissions on Judicial Performance,” which can be found here: www.coloradojudicialperformance.gov/documents/Rules.pdf.

42. The official Fact Sheet published by the Office of Judicial Performance Evaluation notes that between 1990 and 2012 a total of 29 out of 1,176 evaluations resulted in “Do Not Retain” or “No Opinion” recommendations. We know that nine of these happened in the 623 recommendations made between 2002 and 2012. This means that the positive recommendation rate between 1990 and 2002 was approximately 96.4%. The Fact Sheet is available at http://www.coloradojudicialperformance.gov/documents/factsheet.pdf (last visited Aug. 26, 2012).

43. Supra n. 35, at 4.


46. Rule 5(a), Supra n. 43, at 3.


48. Rule 10(c), Supra n. 43, at 5.

49. Rules 10(f) and 11(f), Supra n. 43, at 5-6.


51. In addition to these pre-election evaluations, the state commission has been conducting interim evaluations of appellate court judges since 2009; a total of 165 interim evaluations were completed between 2009 and 2012. These interim evaluations do not include retention...
recommendations, although the results are available to the public through the official website: http://www.coloradojudicialperformance.gov.

52. For county and district court judges, attorneys are asked if they believe a judge is biased toward the prosecution or defense. To create a measure of bias, the aggregate percentages of attorneys who believed the judge to be biased were offset against each other to obtain a net bias score. This score was folded on itself such that higher levels of bias toward either the prosecution or the defense are closer to the maximum value of 1, and less bias is closer to the minimum value of zero.

53. Gill et al., supra note 31.


57. In fact, there was one county judge in 2004 whose attorney recommendation to retain was a full 54 percent below the county judge average, and the judge still managed to receive a recommendation to retain from the commission.


59. Elek et al., supra note 54; Gill, supra note 54.

60. Rebecca Wood & Sylvia R. Lazos, Reflections in Response to the Nevada Judicial Education Project (Dec. 18, 2009).


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### TABLE 2. Bivariate Analyses of Commission Recommendations and Various Explanations

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<td>0.55</td>
<td>478</td>
<td>( t = 2.45 ) ( p = 0.007 ) **</td>
</tr>
<tr>
<td>Layperson Retain Score</td>
<td>89.25</td>
<td>82.89</td>
<td>590</td>
<td>( t = -2.13 ) ( p = 0.017 ) *</td>
</tr>
<tr>
<td>Critical News Stories</td>
<td>0.12</td>
<td>0.56</td>
<td>623</td>
<td>( t = 1.14 ) ( p = 0.142 )</td>
</tr>
<tr>
<td>Time Since Bar Admit</td>
<td>27.04</td>
<td>24.67</td>
<td>612</td>
<td>( t = -2.63 ) ( p = 0.012 ) **</td>
</tr>
<tr>
<td>Years on Bench</td>
<td>9.47</td>
<td>9.11</td>
<td>622</td>
<td>( t = -0.15 ) ( p = 0.442 )</td>
</tr>
<tr>
<td>Reversals</td>
<td>1.70</td>
<td>0.60</td>
<td>495</td>
<td>( t = -1.76 ) ( p = 0.929 )</td>
</tr>
<tr>
<td>Law School Prestige</td>
<td>2.81</td>
<td>3.00</td>
<td>620</td>
<td>( \chi^2(5) = 8.19 ) ( p = 0.146 )</td>
</tr>
<tr>
<td>In-State JD</td>
<td>53.77</td>
<td>33.33</td>
<td>619</td>
<td>( \chi^2(1) = 1.49 ) ( p = 0.222 )</td>
</tr>
<tr>
<td>Female Judge</td>
<td></td>
<td></td>
<td>623</td>
<td>( \chi^2(1) = 7.57 ) ( p = 0.006 ) **</td>
</tr>
</tbody>
</table>

The number of observations differs among these variables because 1) the pieces of information collected for appellate and district judges are different, and 2) the difficulty in finding suitable sources of biographical information for judges no longer sitting on the bench.

### TABLE 3. Logistic Regression Predicting Positive Commission Recommendations

| Model of Positive Commission Recommendation (Trial Courts) | Odds Ratio | Robust Std. Err. | z    | p > |z| |
|----------------------------------------------------------|------------|------------------|------|-----|---|
| Attorney Retain Score                                     | 1.079      | 0.023            | 3.57 | 0.000 | *** |
| Attorney Bias Scale                                       | 0.652      | 0.671            | -0.42 | 0.678 |
| Layperson Retain Score                                    | 1.033      | 0.051            | 0.64 | 0.519 |
| Critical News Stories                                     | 0.552      | 0.197            | -1.66 | 0.096 |
| Time Since Bar Admit                                      | 0.960      | 0.057            | -0.68 | 0.498 |
| Years on Bench                                            | 1.006      | 0.046            | 0.14 | 0.889 |
| Reversals                                                 | 1.551      | 0.957            | 0.71 | 0.477 |
| Law School Prestige                                       | 0.894      | 0.348            | -0.29 | 0.744 |
| In-State JD                                               | 3.591      | 3.184            | 1.32 | 0.188 |
| Female Judge                                              | 0.147      | 0.137            | -2.06 | 0.040 | *  |
| Constant                                                  | 0.045      | 0.187            | -0.74 | 0.459 |

Logistic regression with clustered standard errors, \( n = 574 \) observations, standard errors clustered over 348 individual judges. Wald \( \chi^2 = 91.16 \) ***. \( \text{Pseudo} \ R^2 = 0.292 \). Correctly Classified, 98.26%. These findings are robust to the inclusion of appellate court judges, which requires removal of the layperson Retain score (as this information is not collected for appellate court judges).
FIGURE 1. Commission Districts and Negative Recommendations

FIGURE 2. Predicted Probability of Positive Recommendation with 90% Confidence
FIGURE 1. Two JPE Commission Narratives from 2012

Fifteenth Judicial District
District Judge

Honorable P. Douglas Tallman

The Fifteenth Judicial District Commission on Judicial Performance unanimously recommends that Judge P. Douglas Tallman BE RETAINED.

Judge Tallman was appointed to the Fifteenth Judicial District Court in 2003. Before his appointment, Judge Tallman served on the Cheyenne County Judge from 1987 through 2002. Judge Tallman is a “native son” owning and operating the family farm and ranch in Cheyenne and Kiowa Counties prior to his judicial career. Judge Tallman believes judges should be actively involved in the broader community. He supports various service organizations such as the Lamar Hospice and Prairie View Health Resources. He participates in the Lamar Hospice Annual Golf Tournament, speaks to high school government classes about the judiciary, and serves on the Brandon Water Association Board. Judge Tallman has a varied workload. Approximately 50% of his cases are criminal cases. The remainder of his workload is comprised of domestic relations (15%), civil (15%), juvenile (10%), mental health (5%) and, probate (5%).

In its evaluation of Judge Tallman, the Commission reviewed data and survey results of lawyers and non-lawyers who are familiar with his work. The Commission also reviewed Judge Tallman’s self-evaluation, numerous written decisions, conducted a person interview with Judge Tallman, and observed Judge Tallman in court. Judge Tallman’s strengths are his professionalism and the great respect he has for the judicial system. This undervening philosophy guides the management of his courtroom and in the treatment of people in the judicial system. He strives to treat all litigants with respect and as if their case is the most important matter before the court. He allows all litigants the opportunity to completely and fairly present their positions. He refrains from ex parte communication and does not publicly comment on pending cases. He is not hesitant to recuse himself if there is a question about a potential conflict. In reviewing the survey results, the Commission noticed Judge Tallman rated below the average of the other district judges standing for retention in the area of promptly issuing a decision on the case after trial. The Commission questioned Judge Tallman during the interview on the practices he employs to reduce delays in the judicial process. In the Commission’s opinion, Judge Tallman satisfactorily responded by explaining his requirements for timeliness from attorneys, managing the order of the trial and, allowing timely filings. Judge Tallman did state that in criminal cases, he allows presentation of a full and fair defense. Judge Tallman stated he does not believe budgetary cutbacks have impacted his court’s ability to accomplish their jobs. Judge Tallman admits he can always improve his judicial performance. He retains a curiosity and interest in the law and states that he learns something new every day in his job. He relies on the judicial network and other judges to assist him and finds the network very useful in his job.

Of all attorneys surveyed about retention, 81% recommended to retain, 10% not to retain, and 8% were undecided or didn’t have enough information to make a recommendation. Of those expressing an opinion to retain or not to retain, 89% recommended to retain, and 12% not to retain. Of all non-attorneys surveyed, 75% recommended to retain, 11% not to retain, and 13% were undecided or didn’t have enough information to make a recommendation. Of those expressing an opinion to retain or not retain, 87% recommended to retain and 13% recommended not to retain. (These percentages may not total 100% due to rounding.)

Seventh Judicial District
Hinsdale County Judge

Honorable Alvin (Al) Lutz

The Seventh Judicial District Commission on Judicial Performance voted 9-0 (one member absent) to recommend that Judge Alvin (Al) Lutz BE RETAINED.

Judge Lutz was appointed County Judge for Hinsdale County on January 1, 2006. In his capacity as County Judge, he hears a variety of cases from misdemeanors to civil cases with a maximum value of $15,000. Judge Lutz also serves as the Lake City Municipal Judge. Prior to his appointment, Judge Lutz worked as Director of Corporate Security for the Wells Fargo Bank Corporation.

As a non-lawyer, Judge Lutz shows a strong willingness to prepare himself for each case, inclusive researching areas of the law applicable to the case. If he is assigned a case already in process, he reads the file thoroughly before sitting as judge to continue its progress. He also prepares by attending Judges’ conventions and actively reads appellate decisions to further his legal expertise and remain current in substantive areas of the law. Judge Lutz is very cognizant of the requirements of the often complex job of being a County Judge in a very small community.

Of all attorneys surveyed about retention, 100% recommended to retain. Of all non-attorneys surveyed, 78% recommended to retain, 9% not to retain, and 13% were undecided or didn’t have enough information to make a recommendation. Of those expressing an opinion to retain or not to retain, 89% recommended to retain and 11% not to retain.