



JUDICIAL PERFORMANCE EVALUATION IN THE STATES

THE IAALS JPE 2.0 PRE-CONVENING WHITE PAPER

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INTRODUCTION

It has been nearly fifty years since the first state judicial performance evaluation (JPE) program was instituted in Alaska. Since then, nearly twenty states have implemented or experimented with official JPE programs.¹ But momentum for JPE programs has slowed in recent years—perhaps even to the point of retrenchment—provoking important questions about their future. This convening aims to examine those questions.

IAALS is particularly well-suited to host this discussion. It has been a clearinghouse and a source of policy innovation on JPE from the time it opened its doors more than fifteen years ago. Beginning with its first major publication in 2006,² IAALS has issued nearly twenty reports and policy papers, and has hosted multiple conferences, on JPE programs and best practices. Over the years, IAALS has also promoted thoughtful advances in JPE such as review of appellate opinions,³ crafting JPE surveys to address implicit bias,⁴ and extending JPE to the federal courts.⁵

In 2007, the National JPE Working Group was founded at IAALS as a means for state JPE coordinators to exchange information and ideas on a regular basis. Fifteen years later, that Working Group continues to meet quarterly, and many of its members served on the JPE 2.0 Task Force that brought this convening to fruition.

I. GENERAL PURPOSES OF JUDICIAL PERFORMANCE EVALUATION

At the most basic level, JPE programs are intended to provide a snapshot of a judge’s performance with respect to the *process* of judging. JPE programs intentionally avoid assessments of case outcomes and focus instead on the behavioral qualities that one would expect of any judge: knowledge of the law, impartiality, excellent communication skills, an appropriate professional

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¹ In Arizona and Missouri, programs are known as judicial performance review, or JPR. As used in this White Paper, “JPE” is intended to include both JPE- and JPR-designated programs interchangeably.

² INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., SHARED EXPECTATIONS: JUDICIAL ACCOUNTABILITY IN CONTEXT (2006).

³ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS.: AN OPINION ON OPINIONS: REPORT OF THE IAALS TASK FORCE ON APPELLATE OPINION REVIEW [hereinafter AN OPINION ON OPINIONS] (2012).

⁴ NATALIE KNOWLTON & MALIA REDDICK, LEVELING THE PLAYING FIELD: GENDER, ETHNICITY, AND JUDICIAL PERFORMANCE EVALUATION (2012).

⁵ Rebecca Love Kourlis & Jordan M. Singer, *A Performance Evaluation Program for the Federal Judiciary*, 86 DENV. U.L. REV. 7 (2008).

demeanor, and a strong administrative capacity. An evaluation assesses each judge's performance during a specific time period, typically the preceding two to four years.

Given this framework, all state JPE programs begin with the stated goal of fostering professional self-improvement within the judiciary. Periodic evaluations can help identify a judge's professional strengths and weaknesses, as well as potential areas of improvement. Evaluation results can be used to identify a judiciary's collective strengths and weaknesses, and to develop targeted judicial training and education programs.

In many states, JPE programs are also designed to educate elected officials and the general public about the performance of the judiciary. JPE's process-oriented approach offers an important alternative to the conception of judicial accountability as adherence to the will of the majority.⁶ Because JPE focuses on outcome-neutral qualities of judging, it sends a message to the public that the best judges are not those who reach politically desirable outcomes but rather those who discharge their duties impartially and professionally and provide each litigant with a full and fair opportunity to be heard.

Finally, a number of states use JPE to give meaningful information to those charged with deciding whether to retain or reappoint sitting judges. In many western and midwestern states, JPE is used as a component of a larger "merit selection" plan for judges. Under that plan (described in more detail below), the governor initially selects a new judge from a list provided by a nonpartisan nominating committee. When a judge's term is up, the public votes whether to retain the judge for another term. JPE programs are designed to assure that voters are adequately educated about the judges on the retention ballot, by conducting evaluations in advance of the retention election and providing a report and recommendation to the public.⁷ Similarly, in five states, Puerto Rico, and the District of Columbia, where the state legislature or another government body is responsible for reappointment decisions at the end of a judicial term, JPE results are transmitted to decisionmakers in advance of the retention or reappointment decision.

⁶ Rebecca Love Kourlis & Jordan M. Singer, *Using Judicial Performance Evaluations to Promote Judicial Accountability*, 90 JUDICATURE 200 (2007).

⁷ This structure for judicial selection and retention is thought to "best balance[] the dual goals of impartiality and accountability" in the judiciary. JUSTICE SANDRA DAY O'CONNOR (RET.) & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., THE O'CONNOR JUDICIAL SELECTION PLAN 1 (2014).

II. HISTORY OF JUDICIAL PERFORMANCE EVALUATION PROGRAMS

Alaska initiated the first formal JPE program in 1976. Over the next three decades, JPE programs slowly spread to other states, first in the retention states of the Mountain West, and then steadily to other areas of the country. By 2006, when IAALS began tracking JPE programs, nineteen states plus Puerto Rico and the District of Columbia had instituted state-sanctioned judicial performance evaluation programs, while ad hoc, private JPE programs (typically run by the bar or a local newspaper) operated without official authorization in fourteen other states.

It is no coincidence that official JPE programs began in states featuring judicial retention elections. Such states typically choose their judges through a “merit selection” or “nonpartisan court” plan, which was first proposed by Professor Albert Kales in the 1920s. The plan called for a nonpartisan commission to review candidates for open judgeships and recommend the top candidates to the governor, who would then choose from among the finalists presented. After a period of time, the newly appointed judge would stand for retention, an unopposed election in which the voters would decide whether to retain the judge for another term or to remove the judge from the bench. The plan promised to eliminate party affiliation as the primary driver of judicial selection, and to assure that high-quality judges were selected, while maintaining the public’s voice through retention elections. In 1940, Missouri became the first state to implement the nonpartisan court plan to select some of its judges, and by 1980 many western states had followed suit, jettisoning contested elections in favor of commission-based appointment followed by accountability to the voters.

Over time, states became concerned that voters lacked sufficient information about their judges to cast an informed retention ballot. Without adequate knowledge, ordinary voters ask lawyer acquaintances how to vote, base their decisions on low-information signals like the judge’s perceived gender or ethnicity, or even cast their votes randomly—if they vote at all.⁸ JPE programs were designed to address these concerns. Sitting judges would be retained by a nonpartisan evaluation commission (typically different from the nominating commission), which would issue a report on each judge and make a recommendation to voters about whether the judge should be retained. The voters would always have the final say, and could disregard the commission’s recommendation. But voters who wanted information on each judge’s performance would have it available. In retention states with JPE programs, such reports and recommendations were inserted into printed voter guides starting in the 1980s and were also posted to dedicated websites by the late 2000s.

⁸ See Jordan M. Singer, *Knowing Is Half the Battle: A Proposal for Prospective Performance Evaluations in Judicial Elections*, 29 U. ARK. LITTLE ROCK L. REV. 725, 727-28 (2007).

In 1985, the American Bar Association endorsed judicial performance evaluation, established a special commission to advise states on JPE programs, and issued its first set of recommended JPE standards and criteria.⁹ These criteria largely matched what had already been put into practice in Alaska and other early adopter states, and are discussed in detail in Section III below. In February 2005, the ABA reiterated its JPE recommendations, while revising its standards and developing model surveys to incorporate more social science methodology.¹⁰

The decade from 2000-2010 saw robust expansion of JPE programs across the country. Established JPE programs broadened and honed their evaluation tools, introducing interim evaluations for judges between retention cycles and upgrading the process for reviewing written appellate opinions. Elsewhere, JPE programs grew in size and stature. In 2000, Massachusetts began a program to evaluate its trial judges in order to enhance training and professional development. In 2001, New Hampshire substantially revised and updated its program as well. JPE programs were subsequently introduced in Virginia, Missouri, and portions of Kansas, and expanded to additional trial courts in Arizona. In 2011 the North Carolina Bar, with the consent of the state supreme court, began formal evaluations of both sitting judges and their challengers in contested judicial elections.¹¹ And in 2017, Idaho began a JPE program for its trial judges to promote professional self-improvement, similar to the program in Massachusetts.¹²

Just as these programs were expanding, the value of JPE to contextualize judicial performance was being demonstrated like never before. In 2010 alone, political activists sought to unseat state supreme court justices in Alaska, Colorado, and Kansas, in each instance based on dissatisfaction with a single case outcome. Each of the targeted justices had a strong performance evaluation going into the election, and each was retained by a comfortable margin.¹³ The same year in Iowa,

⁹ AMERICAN BAR ASSOCIATION, BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE (1985) [hereinafter 1985 ABA GUIDELINES].

¹⁰ AMERICAN BAR ASSOCIATION, GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE WITH COMMENTARY (2005) [hereinafter 2005 ABA GUIDELINES]; *see also* Jennifer K. Elek, David B. Rottman, and Brian L. Cutler, *Judicial Performance Evaluation in the States: A Re-Examination*, 98 JUDICATURE 12, 14 (2014).

¹¹ While candidates without judicial experience cannot be evaluated in precisely the same manner as sitting judges, a form of “prospective performance evaluation” can nevertheless capture many of the same qualities and criteria. *See* Singer, *supra* note 8, at 725. The North Carolina program asked attorneys to evaluate their colleagues seeking a position on the bench on the same six criteria as were applied to sitting judges. *See, e.g.*, NORTH CAROLINA BAR ASS’N, JUDICIAL PERFORMANCE EVALUATION SURVEY—PHASE II SURVEY RESULTS 2 (Feb. 2016), <https://www.ncbar.org/wp-content/uploads/2016/03/jpe-phase-ii-full-report-final-pdf.pdf>.

¹² *See* State of Idaho Judicial Branch, Judicial Performance Evaluation Program, https://isc.idaho.gov/main/judicial_performance_evaluation_program.

¹³ *See* Larry Aspin, *The 2010 Judicial Retention Election in Perspective: Continuity and Change from 1964 to 2010*, 94 JUDICATURE 218, 228-29 tbl.3 (2011); Jordan M. Singer, *The Mind of the Judicial Voter* (2011), MICH. ST. L. REV. 1443, 1492-1496 (2012).

however, three justices of that state’s supreme court lost their retention elections after activists waged a similar campaign to remove them on the basis of a single case outcome. Unlike the other states, Iowa did not have a JPE program. While it is probably too much to say that a robust JPE program would have changed the election outcome in Iowa, there is no question that the lack of a JPE program made it more difficult for voters to place a single decision in the context of the justices’ overall body of work.¹⁴

Despite these benefits, since 2010 observers witnessed a slow but steady deterioration in support for state JPE programs. The Kansas legislature defunded its JPE program in 2011. In 2014, the Tennessee legislature allowed its program to sunset, and a proposal to implement a JPE program in Oklahoma failed to gain requisite legislative support. In 2019, the North Carolina Bar defunded its program. And in 2020, a joint program between the courts and the state bar in Florida came to a quiet end after lawyers effectively refused to participate for fear that their anonymity in survey responses would be compromised.

Today, sixteen states, plus Puerto Rico and the District of Columbia, have formal JPE programs that are authorized by statute or court rule—three states fewer than fifteen years ago. Several other states continue to have informal judicial evaluations conducted by state and local bar associations or local newspapers, with the results disseminated to voters prior to an election. Detailed information on official state programs can be found at the chart located in the Appendix to this White Paper.

III. EVALUATION CRITERIA

While the American Bar Association was not the first organization to develop JPE or identify the criteria for judicial evaluation, it did harness the work previously done at the state level and lend its imprimatur to the JPE process. Today every official state JPE program utilizes five criteria first articulated by the ABA in its 1985 *Black Letter Guidelines for the Evaluation of Judicial Performance*: legal knowledge, impartiality, clarity of written and oral communication, judicial temperament, and administrative capacity.¹⁵ A sixth criterion, the judge’s involvement in the legal and local community, has also been adopted in a smaller number of states.

A. LEGAL KNOWLEDGE

ABA Guideline 5-1 explains that “A judge should be evaluated on his or her legal ability, including the following criteria: legal reasoning ability, knowledge of substantive law, knowledge of rules

¹⁴ See Jordan M. Singer, *Meaningful Information, Meaningful Retention*, 60 BUFF. LAW REV. THE DOCKET 1, 8-9 (2012).

¹⁵ See 1985 ABA GUIDELINES, *supra* note 9; see also 2005 ABA GUIDELINES, *supra* note 10.

of procedure and evidence, [and] keeping current on developments in law, procedure, and evidence.”¹⁶ These criteria are fundamental to accurate and consistent application of the law. Notably absent are any ideological, philosophical, or policy considerations: the ABA cautions evaluators “to disregard their personal feelings about a judge’s decisions.”¹⁷

B. IMPARTIALITY

ABA Guideline 5-2 focuses on judicial integrity and impartiality, counseling that judges should be evaluated on:

- Avoidance of impropriety and the appearance of impropriety;
- Treating all people with dignity and respect;
- Absence of favor or disfavor toward anyone, including but not limited to disfavor based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
- Acting fairly by giving people individual consideration;
- Consideration of both sides of an argument before rendering a decision;
- Basing decisions on the law and the facts without regard to the identity of the parties or counsel, and with an open mind in considering all issues; and
- Ability to make difficult or unpopular decisions.¹⁸

Stressing that “[b]oth the appearance and the quality of fairness are essential,” the ABA encourages JPE programs to help judges identify any perceived or actual biases they may carry in order to avoid favor or disfavor toward anyone in the courtroom.¹⁹

C. CLARITY OF WRITTEN AND ORAL COMMUNICATION

ABA Guideline 5-3 counsels that judges be evaluated both on “clear and logical communication while in court” and “clear and logical written decisions.”²⁰ Clarity of communication—the ability to explain a decision or a procedure in concise and understandable terms—is vital both to the sense of justice in a current case and the efforts of attorneys and judges to apply the decision as precedent in future cases.

The balance between written and oral decisions will vary from court to court. In appellate courts, where written decisions often have precedential value, clear written analysis is a top priority. In trial courts, where written orders and opinions are often shorter and rely on existing precedent, but

¹⁶ 2005 ABA GUIDELINES, *supra* note 10, Guideline 5-1.

¹⁷ *Id.*, Commentary to Guideline 5-1.

¹⁸ *Id.*, Guideline 5-2.

¹⁹ *Id.*, Commentary to Guideline 5-2.

²⁰ *Id.*, Guideline 5-3.

where direct oral communication with attorneys, parties, witnesses, and jurors is commonplace, a judge’s verbal communications and mannerisms may be of greater importance. The ABA explicitly counseled in 2005 that judges and JPE programs should “recognize the potential negative impact of verbal and nonverbal communications such as tone of voice, facial expressions, eye contact, hand motions, and posture.”²¹

D. JUDICIAL TEMPERAMENT

Judicial temperament is that “elusive quality” that includes “patience, courtesy, dignity, and compassion.”²² What constitutes an appropriate judicial temperament is necessarily context-specific, but certainly encompasses a sense that the judge is exercising a steady hand over the proceedings: firm but fair, patient but not dilatory, kind but not overwrought, always in control of the courtroom. ABA Guideline 5-4 counsels that assessments of judicial temperament should expressly consider whether the judge is acting in a dignified manner, treating people with courtesy, acting with patience and self-control, and dealing with pro se litigants and litigation fairly and effectively.²³

E. ADMINISTRATIVE CAPACITY

A good judge is well-organized. Especially in courts with heavy dockets, preparation and promptness are necessary for efficient adjudication. Judges should be prepared for each day’s events, resolve motions and other requests in an expeditious manner, keep the parties on track, and use technology as appropriate to provide access to the court and the court’s decisions. ABA Guideline 5-5 builds on these considerations, recommending that judges be evaluated on (among other administrative skills) punctuality and preparation for court, making decisions in a timely manner, managing the court’s calendar efficiently, using settlement conferences and alternative dispute resolution as appropriate, fostering a productive work environment with other judges and staff, adopting practices to assure a broad and diverse pool of applicants for court employment, and acting to remove physical, cultural, and linguistic barriers to the justice system.²⁴

As Guideline 5-5 suggests, case management is an important—although not exclusive—component of a judge’s administrative capacity. Proper time management, preparation, and the ability to guide a case to an appropriate and tailored resolution are central to the judicial role. But administrative capacity is also intended to capture a judge’s ability to work well with colleagues

²¹ *Id.*, Commentary to Guideline 5-3.

²² *Id.*, Commentary to Guideline 5-4.

²³ *Id.*, Guideline 5-4.

²⁴ *Id.*, Commentary to Guideline 5-5.

and court staff, to anticipate and work to resolve practical challenges to the administration of justice, and to comply as necessary with directives from court system authorities.²⁵

F. COMMUNITY INVOLVEMENT

Although not a distinct criterion adopted by the ABA,²⁶ some state JPE programs account for a judge's involvement in the legal community and the greater community in which he or she lives. The information sought can come in many forms, with some states affording it greater weight than others. Utah, for example, requires judges to participate in no fewer than 30 hours of continuing legal education each year,²⁷ and Colorado requires judges to participate "in service-oriented efforts designed to educate the public about the legal system and improve the legal system."²⁸

While intended to give the evaluators a more comprehensive view of the judge as a citizen and a professional, considerations of community involvement have sometimes conflicted with the desire to evaluate judges anonymously. In Missouri, for example, evaluators adopted a policy of reviewing each judge without knowing the judge's identity in order to reduce the risk of implicit bias in the evaluation process. However, anonymous evaluation made it far more difficult to assess the judge's contributions outside of the courtroom, since the recitation of these specific contributions might reveal the judge's identity—and indeed Missouri's JPR Committee voted *not* to include a judge's service outside the courtroom as part of its review process.

IV. EVALUATION TOOLS

The traditional tools of judicial performance evaluation have been selected to provide evaluators with information on the judge's performance with respect to one or more of the criteria described above. This section describes the most commonly used tools.

A. SURVEYS

The most frequent—and most controversial—tool of judicial evaluation, surveys of court users have been a staple of JPE programs since their inception. Every state JPE program relies in part on surveys of attorneys who have recently appeared before the judge. Some states have also

²⁵ See, e.g., Colo. Rev. Stat. 13-5.5-107(e).

²⁶ The ABA did fold certain aspects of community involvement into its "judicial temperament" criterion, including "participating and providing leadership to an appropriate degree in professional development activities and ... court improvement and judicial education activities," as well as "[p]romoting public understanding of and confidence in the courts." 2005 ABA GUIDELINES, *supra* note 10, Commentary to Guideline 5-4.

²⁷ Utah Jud. Perf. Eval. Comm'n, Full Evaluation Details, <https://judges.utah.gov/process/full-time-evaluation-details/>.

²⁸ Colo. Rev. Stat. 13-5.5-107(1)(f).

developed separate surveys of court staff, litigants and witnesses, and jurors. Juror, litigant, and witness surveys are typically distributed shortly after the respondent's specific case has closed. Attorney and court staff surveys, however, are not directly tied to the close of a single case, and may ask the respondent to consider the judge's performance across a range of cases over the preceding two to three years.

Surveys are primarily distributed through email addresses on file with the court, which contain a link to an electronic survey instrument. Email addresses, however, may not be available for some constituencies, including certain self-represented litigants, jurors, witnesses, or attorneys who appeared before the judge but were not counsel of record. Some states have employed creative solutions to reach these constituencies, including letters and postcards sent through U.S. Mail, posting QR codes in jury rooms which link directly to an electronic juror survey, and posting survey forms on a public website to include court users who did not receive a survey directly but who wish to provide feedback.²⁹ Survey responses are typically compiled by an external provider, and a detailed survey report is crafted for each judge.

Consistent with the primary goals of JPE, survey questions focus on judicial behavior related to the process of judging rather than case outcomes or other non-process-oriented criteria. Until the early 2010s, survey questions typically asked respondents to state how strongly they agreed with statements like "The judge treats everyone in the courtroom fairly" or "The judge keeps control over the courtroom." In the past several years, however, some states have questioned whether these types of statements truly provide useful information. One concern is that the statements are not distinctly teasing out different qualities of the judge's performance, but rather addressing the general quality of what might be called "judginess."

Another set of concerns arises from the inherent subjectivity of surveys. First, there is a growing awareness that survey instruments may unintentionally invite responses that reflect racial or gender bias, by implicitly associating ideal judicial behavior with stereotypical characteristics of middle-aged white men. The issue of survey bias is explored in Section VII below. Second, and relatedly, some survey respondents provide feedback that is wholly inappropriate, either by commenting on characteristics of the judge that are unrelated to his or her ability to be an effective jurist, or by criticizing specific case outcomes. Judges have noted that the personal attacks in particular are hurtful and disconcerting, and many states now vet survey responses to remove irrelevant personal comments before they are sent to the judge or any evaluation committee. Third, survey respondents themselves have also expressed occasional skepticism that their answers are truly anonymous, making them hesitant to provide honest and complete feedback.³⁰ Attorneys in particular have

²⁹ See, e.g., Colorado Office of Jud. Perf. Eval., Citizen Feedback, <https://www.coloradojudicialperformance.gov/feedback.cfm>.

³⁰ See Elek et al., *supra* note 10, at 15.

indicated reluctance to complete surveys—or to even provide information on their years of experience, type of practice, and demographic characteristics—for fear of being identified. This may lead those who know the judge best—the individuals who work with the judge on a daily basis or who appear frequently before the judge in the courtroom—to offer incomplete or sanitized responses.

While they must be viewed with appropriate caution, the subjective perceptions captured by surveys are also arguably their greatest strength. Objective measures of judicial performance (like docket data) can roughly capture a judge’s commitment to providing fair procedures, but they cannot fully capture the parties’ feeling that they have been treated fairly and with dignity, and have been afforded the opportunity to tell their respective stories.³¹ These factors lie at the core of procedural fairness, and have been shown repeatedly to be the foundation of judicial legitimacy.³² Put differently, survey responses from those who appear before the judge provide a window into judicial performance that cannot be duplicated merely by reviewing docket data, written orders, or even the perceptions of disinterested outsiders.

The need to capture the experience and perceptions of self-represented litigants deserves special mention. A 2015 study by the Civil Justice Initiative found that at least one party (typically the defendant) was self-represented in 76% of state civil cases.³³ A follow-up national study of domestic relations cases by IAALS and the National Center for State Courts yielded similar results, with 72% of cases involving at least one self-represented party.³⁴ These numbers represent a dramatic change from just thirty years ago, when both sides were represented by counsel in 95% of cases.³⁵ Self-represented litigants experience the court differently than do attorneys (or those represented by attorneys), and their input is instrumental in JPE as a judge’s performance arguably takes on even greater urgency for those who do not have an advocate on their behalf.

B. CASE MANAGEMENT DATA

Data reflecting the judge’s management of his or her docket during the evaluation period are frequently used to provide context for the subjective assessments found in survey responses. Case management data can provide useful information on the types of cases the judge was asked to handle, as well as relative rates of case disposition, forms of disposition, and time to disposition.

³¹ Jordan M. Singer, *Attorney Surveys of Judicial Performance: Impressionistic, Imperfect, Indispensable*, 98 JUDICATURE 20, 21 (2014).

³² David B. Rottman & Tom R. Tyler, *Thinking About Judges and Judicial Performance: Perspective of the Public and Court Users*, 4(5) ONATI SOCIO-LEGAL SERIES [online] 1046, 1049-50 (2014).

³³ CIVIL JUSTICE INITIATIVE, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS 31 (2015).

³⁴ FAMILY JUSTICE INITIATIVE, THE LANDSCAPE OF DOMESTIC RELATIONS CASES IN STATE COURTS 29 (2018).

³⁵ CIVIL JUSTICE INITIATIVE, *supra* note 33, at 31.

While each docket is different and there are no “ideal” disposition rates or times, docket data can put subjective assessments of timeliness and fairness into broader context.

C. COURTROOM OBSERVATION

Some state JPE programs incorporate direct observation of the judge in the courtroom. Direct observation can help contextualize both survey comments and docket data by giving the observer a better sense of how the judge’s courtroom operates, the types of attorneys and litigants who tend to appear, and the nature of the judge’s caseload. Courtroom observation can also identify areas of strength or weakness that may not be apparent from survey and docket data, such as the judge’s ability to be heard, body language, and general control over the courtroom.

Live observation can be time-intensive and requires that the observers know what judicial qualities, skills, and behaviors to look for. This has led to different approaches in different states. Idaho’s JPE program asks mentor judges to observe the proceedings of new judges during their first 18 months on the bench and provide feedback. Colorado requires the members of its commissions to observe the judges they are evaluating, recording their observations on a worksheet specially designed for that purpose.³⁶ And Utah utilizes trained citizen volunteers with “a broad and varied range of life experiences” to observe trial judges across the state.³⁷ Utah’s program asks observers to record their observations on a specially designed form that emphasizes the importance of procedural fairness, offering a brief account of each element of procedural fairness (neutrality, respect, and opportunity to be heard) and providing several examples of judicial behavior that relate to that element.³⁸

In light of the challenge of traveling to some rural courtrooms, as well as advances in video technology that make remote observation more reliable, Utah explicitly permits observation through video and audio when necessary.³⁹ After the COVID-19 pandemic forced Utah’s courts to move to videoconference proceedings in 2020 and 2021, the courtroom observer program followed suit: 95% of observations in that period have taken place via the Webex platform. Results

³⁶ Colorado Office of Judicial Performance Evaluation, Courtroom Observation Trial Judge Retention Matrix, <https://www.coloradojudicialperformance.gov/documents/6b.Courtroom%20Observation%20%20Trial%20Judge%20Retention%20Matirx.pdf>.

³⁷ Utah R597-3-3(5). Colorado is similarly implementing a volunteer court observer program which will select participants through an application process and require them to undergo extensive training before joining the program. *See* Colorado State Comm’n on Jud. Perf., Rules Governing Commissions on Judicial Performance, Rule 11 (adopted March 2, 2021) [hereinafter Colorado Rules]. Applicants will not be admitted into the program if their circumstances suggest even the appearance of bias for or against a judge. *See id.*

³⁸ *See* Utah Courtroom Observation Report, <https://site.utah.gov/judges/wp-content/uploads/sites/33/2015/10/Courtroom-Report-2016-final.pdf>.

³⁹ Utah R597-3-3(8).

have been mixed: some observers lauded the system for allowing them to hear everything the judge and parties hear with the same clarity, while others bemoaned technical difficulties.⁴⁰ Colorado's rules also permit video observations, but stress that "[I]n-courtroom observation is preferred."⁴¹

Skeptics have expressed concern about the reliability of citizen observations of judicial work. Courtroom observation programs, however, capture a perspective of the courtroom experience that is wholly different from that of trained attorneys or even case participants. Indeed, observers drawn from the general public can bring a sense of detachment, common sense, and ordinary experience to their assessments. Moreover, their views can reflect what the public typically expects from a judge: seriousness, inquisitiveness, fair and dignified treatment of everyone who appears before them, good communication and time management skills, and patience. Indeed, even some states without official JPE programs have seen the creation of private court observer programs to provide similar feedback to the judiciary.⁴²

There is a cost to training observers and reimbursing them for travel expenses, especially in large states where travel is extensive. The growth of videoconference hearings post-pandemic, however, might present opportunities for more widespread electronic courtroom observation, at least in some courts.

D. REVIEW OF WRITTEN ORDERS AND OPINIONS

While surveys and courtroom observation can partially capture perspectives on a judge's oral communication skills, these tools are less effective at capturing written communication skills. Some state JPE programs accordingly ask judges to provide a representative sample of recent orders or opinions for review by the evaluation commission. Judges have largely supported this evaluation tool: in a 2011 IAALS survey, 89% of appellate judges indicated that opinion review should be part of the appellate evaluation process.⁴³

In 2011-12, IAALS spearheaded a campaign to extend and improve the process of reviewing appellate opinions. A specially constructed Task Force made the following recommendations:⁴⁴

⁴⁰ UTAH JUD. PERF. EVAL. COMM'N, 2022 JPEC REPORT TO THE COMMUNITY 3, https://drive.google.com/file/d/1JWb5eAGrudH8EiWbiDd0xBvg_c12p_c9/view.

⁴¹ See Colorado Rules, *supra* note 37, Rules 12(b) and 13(b).

⁴² In Louisiana, Courtwatch NOLA has recruited more than one thousand volunteers to observe criminal proceedings in New Orleans since 2007. See <https://www.courtwatchnola.org/about-us/>. And in New York, the Fund for Modern Courts has operated a citizen court monitoring program for four decades. See <https://moderncourts.org/citizen-court-monitoring/>. Both programs share their observations with local courts in an effort to improve the quality of justice.

⁴³ AN OPINION ON OPINIONS, *supra* note 3, at 1.

⁴⁴ See *id.* at 2-5.

- At least five opinions should be selected for each appellate judge, representing the judge’s full term on the bench. If the judge selects the opinions, they should include a range of case types, and ideally include one concurrence or dissent. If the commission selects the opinions, they should be chosen randomly.
- Each opinion should be reviewed by more than one member of the commission, ideally a mix of lawyers and non-lawyers. The commission may also seek the perspectives of competent independent reviewers like law professors or retired judges.
- All opinion evaluators should receive adequate training to ensure consistency in conducting the evaluation and understanding the purpose of the evaluation.
- Reviews should adhere to predetermined criteria, focusing on the clarity, structure, and explanation of the legal determination rather than the substantive outcome.
- Direct opinion review should be supplemented by other criteria related to the opinion writing process, such as use of law clerks, adherence to court rules for publishing opinions, and ensuring reasonable training and supervision of court staff.

E. INTERVIEWS WITH EVALUATED JUDGES

In several states, judges meet with the evaluation commission as part of their formal evaluation process. These interviews provide the commission with an opportunity to flesh out any questions or concerns raised by the information it has collected, and give the judge an opportunity to clarify or expound upon aspects of his or her performance record. Interviews may be an integral part of every evaluation (as in Colorado), or may be used only in circumstances in which the commission feels that it needs more information (as in Arizona).

F. SELF-EVALUATION

Some states ask judges to complete a self-evaluation, which can be used to identify areas of disconnect between the judge’s own assessment of his or her performance and the assessments of others who interact with the judge professionally. Self-evaluations vary significantly in format. Alaska’s self-evaluation, for example, simply asks the judge to “[p]lease assess, in one or two paragraphs, your judicial performance during your present term.”⁴⁵ Other self-evaluation instruments ask specific questions designed to provoke broader conversation with the commission. Colorado’s appellate judge self-evaluation, for example, asks the judge to “describe how you

⁴⁵ The self-evaluation question is part of a larger questionnaire in which the judge is asked to provide information on his or her caseload, participation in court committees and bar and community activities, and (if applicable) recent trials. *See, e.g.*, Alaska Judicial Council Performance Evaluation for Judge Pamela Washington 3-11 (2020), <http://www.ajc.state.ak.us/judges/jdgret/washington20.pdf>.

ensure that your conduct is free from any appearance of impropriety” and further asks “What do you think makes a clear written opinion?”⁴⁶

G. PUBLIC COMMENTS

Finally, some state JPE programs solicit comments on the performance of individual judges from the general public. Such comments can be delivered in writing (often through the state commission’s website, and often at any time, not just the evaluation period) or through public hearings. In some circumstances, public comments must include the author’s name and address to ensure their integrity.⁴⁷

Because comments can come from anyone—not necessarily an individual who has personally interacted with or observed the judge in the courtroom—they must be taken with a grain of salt. And indeed, public comments are more apt to include material that is either outside the scope of the stated performance criteria or which represent dissatisfaction with a particular case outcome. Yet public comments (like volunteer courtroom observation) remain valuable both as a supplemental source of information, and as a popular check on an otherwise internal process.

IV. EVALUATION PROCEDURES

A. PROCEDURES IN STATES WITH RETENTION ELECTIONS

States which use JPE for retention elections employ comprehensive evaluation procedures, beginning with the selection and training of the evaluation commission. Most states feature a single statewide commission, composed of a mix of lawyers and citizen volunteers.⁴⁸ To minimize concerns about partisanship or capture by a single branch of state government, the appointment of commission members is frequently divided among several appointing authorities. New Mexico, for example, allocates appointments of its fifteen commission members among the Governor, Chief Justice, House and Senate legislative leaders, and the President of the State Bar.⁴⁹ Commissioners typically receive training before beginning their service.⁵⁰

⁴⁶ Colorado State Comm’n on Jud. Perf., 2018 Appellate Judge Self-Evaluation, <https://www.coloradojudicialperformance.gov/documents/2018%20Appellate%20Judge%20Self-Evaluation%20Final.pdf>.

⁴⁷ See, e.g., Colorado Office of Jud. Perf. Eval., Frequently Asked Questions: “I would like to evaluate a judge. Can I do that?”, <https://www.coloradojudicialperformance.gov/faqs.cfm>.

⁴⁸ Colorado has a unique structure, featuring a statewide commission that evaluates appellate judges as well as 22 district commissions that evaluate the trial judges in their judicial district.

⁴⁹ See New Mexico Jud. Perf. Eval. Comm’n, JPEC Commissioners, <https://nmjpec.org/en/staff/jpec-commissioners>.

⁵⁰ See, e.g., Colorado Rules, *supra* note 37, Rule 10 (requiring annual training for commission members).

Each retention state begins the JPE process by identifying judges who will be facing a retention election in the coming election cycle. The state's JPE office or commission then collects information on each judge, including some combination of survey data, case management data, representative written orders and opinions, comments from courtroom observers, information on the judge's service to the judiciary and the community, information gleaned from public comments and hearings, the judge's self-evaluation, and an interview with the judge. The full range of information on each judge is then made available to members of the evaluation commission, who review it, discuss it, and develop a preliminary recommendation for each judge.

For many years, commissions typically offered a simple "Retain" or "Do Not Retain" recommendation for each judge. This approach had the benefit of reaching distracted or low-information voters, but was also criticized in some circles as telling citizens how to vote. Consequently, such recommendations have been replaced in many states with statements as to whether a judge has met (or not met) prescribed minimum performance standards. Utah, for example, requires each judge to receive an average score of 3.6 on a 5-point scale for survey questions reflecting Legal Ability, Judicial Temperament, and Administrative Capacity, in order to meet the performance standards for these criteria.⁵¹ If a judge meets the established performance standards, he or she is presumptively recommended for retention (and vice-versa); however, the commission may overcome the presumption if it provides a justification for its decision.⁵² Arizona has a similar approach, requiring each judge to have an average of at least 2.0 on a 4-point scale for each survey category, and to have no more than 25% of survey responses in any category rate the judge as "unacceptable" or "poor."⁵³ Arizona judges who do not meet the presumptive standards are invited to respond to the commission's concerns, either in writing or in person, before the evaluation is finalized.⁵⁴

JPE commissions in retention states have also moved toward a policy of completing their initial recommendations before the date on which each evaluated judge must declare an intent to stand for retention. This timing allows a judge who does not receive a positive recommendation (i.e., "Do Not Retain" or "Does Not Meet Performance Standards") to choose not to stand for retention. If a judge selects this option, the judge agrees to retire at the end of the term and the commission's evaluation is not made public. If, on the other hand, a judge chooses to stand for retention notwithstanding the negative evaluation, he or she is free to do so, and is typically permitted to draft a brief statement in response to the commission's recommendation which is placed next to the commission's findings in the state's voter guide or JPE website.

⁵¹ See Utah Jud. Perf. Eval. Comm'n, Full Evaluation Details, *supra* note 27.

⁵² See Utah Jud. Perf. Eval. Comm'n, JPEC Recommendation, <https://judges.utah.gov/process/>.

⁵³ See Arizona Comm'n on Jud. Perf. Rev., Frequently Asked Questions, <https://www.azcourts.gov/jpr/About-JPR/Frequently-Asked-Questions#8>.

⁵⁴ See *id.*

In the past fifteen years, retention states have also begun implementing interim evaluations to provide another set of data before the judge faces a retention election. Interim evaluations are conducted midway through the judge's term and follow the same procedures as retention-year evaluations, except that the results are not made public. Interim evaluations allow judges to identify particular strengths and weaknesses earlier in their tenure, and permit evaluators to assess the extent to which the judge was able to address any weaknesses between the interim evaluation and the retention-year evaluation.

B. PROCEDURES IN STATES WITH OTHER FORMS OF RETENTION

Three states—Connecticut, South Carolina, and Virginia—select judges through legislative appointment, meaning that legislators effectively stand in the place of voters for both initial appointment and retention decisions. A fourth state, Vermont, charges its legislature with judicial reappointment decisions only. Connecticut, Vermont, and Virginia have accordingly created JPE programs to assist legislators with reappointment decisions.

Virginia's JPE program operates similarly to those of retention states with respect to the evaluation criteria. The primary instruments of data collections are surveys, which are distributed to attorneys, court staff, and jurors.⁵⁵ Survey results are tabulated by Virginia Commonwealth University, and the results (compiled as an evaluation report) are sent to the evaluated judge and a facilitator judge assigned to work with that judge to identify areas of possible professional self-improvement.⁵⁶ When the judge's term is coming to a close, the evaluation report is also sent to the appropriate committee chairs in both houses of the Virginia legislature for consideration of reappointment.⁵⁷

In contrast to Virginia, Connecticut and Vermont rely on committees to collect information on each judge's performance and provide recommendations to the legislature. In Vermont, the committee is composed entirely of legislators; in Connecticut, it is composed of twelve citizen volunteers from around the state. Their reports are transmitted directly to the legislature and are not generally made public.

Some jurisdictions (like Hawaii and the District of Columbia) use commissions to make judicial retention decisions, and JPE programs operate in a similar manner to legislative retention states. In Hawaii, for example, JPE scores and comments are made available to the state's Judicial Selection Commission, which makes the retention determination. While individual JPE results are

⁵⁵ Virginia Courts, Judicial Performance Evaluation Program: Questions and Answers for Attorneys, <https://www.vacourts.gov/programs/jpe/faqs.pdf>.

⁵⁶ *See id.*

⁵⁷ *See id.*

not made public, Hawaii does issue an annual report which discusses the collective performance of all evaluated judges in that cycle.⁵⁸

C. PROCEDURES IN STATES LIMITED TO PROFESSIONAL DEVELOPMENT

In some states JPE is used exclusively for purposes of professional development and self-improvement. Such states adhere to the same evaluation criteria as retention or legislative reappointment states, and typically seek information from a range of sources including surveys, case management data, and courtroom observation. Because evaluations in these states are not used for consideration of retention or reappointment, however, their JPE programs tend to be more leanly staffed and share fewer details about evaluation results with the public. Indeed, several such states strictly prohibit the dissemination of any information about individual judicial evaluations.

One “professional development only” state, New Hampshire, issues an annual report to the public on the collective performance of that year’s evaluated judges. For other such states, like Idaho and Massachusetts, the results of judicial evaluations are shared only with the evaluated judge, judges or court employees responsible for training and professional development, and JPE staff.

VI. PERSPECTIVES ON JUDICIAL PERFORMANCE EVALUATION

A. JUDICIAL PERSPECTIVES

Limited empirical research in the 1990s and early 2000s suggested that judges were, on the whole, quite positive about the use of JPE. In a 1998 study conducted by the American Judicature Society, the majority of judges in four states with JPE programs indicated that their respective states used appropriate criteria to evaluate their performance, that evaluation commissioners understood the importance of judicial independence, and that the evaluation process made them accountable for their job performance. Moreover, nearly all judges in the study indicated that the commissioners conducting their evaluations were fair, and a very high percentage of judges in each state agreed that evaluations provided useful feedback on their performance.⁵⁹

IAALS conducted the next significant study a decade later. In 2008, it surveyed nearly 200 Colorado judges about their perceptions of the state’s JPE process. As with the 1998 AJS survey,

⁵⁸ See, e.g., THE JUDICIARY, STATE OF HAWAII, JUDICIAL PERFORMANCE PROGRAM 2021 REPORT (Dec. 1, 2021), <https://www.courts.state.hi.us/wp-content/uploads/2021/12/JP21REPT.pdf>.

⁵⁹ KEVIN M. ESTERLING & KATHLEEN M. SAMPSON, JUDICIAL RETENTION EVALUATION PROGRAMS IN FOUR STATES: A REPORT WITH RECOMMENDATIONS vii (1998).

the Colorado survey showed that judges strongly approved of the state’s evaluation criteria.⁶⁰ The Colorado survey also indicated strong support for the use of courtroom observation and case management data in the JPE process.⁶¹ At the same time, many judges indicated deep concern about the quality and validity of survey data, and about one-third suggested that survey comments were not truly anonymous.⁶² Most judges in the study supported broader dissemination of evaluation results to the public,⁶³ and most stated that JPE helped their professional development.⁶⁴

Utah also queried its judges about their JPE experiences after the close of the 2018 and 2020 evaluation cycles. The Utah surveys focused on the details of the evaluation process rather than larger questions of judicial independence, judicial accountability, or transparency. Overall, Utah judges expressed satisfaction with their evaluation experience, although some indicated a desire to become better educated about the process.⁶⁵

While these studies were valuable, until very recently there had been no systemic effort to ascertain how judges across the country felt about JPE programs and the JPE process. In late 2021 and early 2022, IAALS undertook a far more comprehensive survey of 658 judges across eight states with a range of JPE programs.⁶⁶ The survey elicited thousands of quantitative data points and hundreds of open-ended comments.

A complete analysis of the survey results will be made available to convening participants in a separate document, but a few items are worth highlighting here. First, in the aggregate, the judicial respondents indicated satisfaction with the JPE process in their respective states. In particular:

- 68% of respondents agreed or strongly agreed that “Overall, I am satisfied with the JPE/JPR process.”
- Nearly 82% of respondents indicated that they felt adequately informed about their state’s JPE process.
- 72% of respondents agreed or strongly agreed that “Going through the JPE/JPR process has been beneficial to my professional development.”

⁶⁰ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *THE BENCH SPEAKS ON JUDICIAL PERFORMANCE EVALUATION: A SURVEY OF COLORADO JUDGES 3* (2008).

⁶¹ *See id.* at 14, 20.

⁶² *See id.* at 4-11.

⁶³ *See id.* at 26.

⁶⁴ *See id.* at 28.

⁶⁵ *See* UTAH JUD. PERF. EVAL. COMM’N, 2018 EXECUTIVE SUMMARY OF RETENTION JUDGE FEEDBACK SURVEY 2 (Mar. 5, 2019); UTAH JUD. PERF. EVAL. COMM’N, EXECUTIVE SUMMARY OF THE 2020 RETENTION JUDGE FEEDBACK SURVEY 2 (Apr. 5, 2021).

⁶⁶ Participating state judiciaries included Alaska, Colorado, Hawaii, Idaho, Massachusetts, New Mexico, Utah, and Virginia. IAALS extends its gratitude to those in each state who helped facilitate distribution of the survey and associated follow-up.

At the same time, respondents were less convinced that JPE helped their relationship with the general public. Only 26% of respondents agreed that their JPE program increases their judicial independence, and only 33% agreed that the JPE program “helps the public understand the work that I do.” Moreover, almost 37% indicated that the JPE program “does not increase my accountability to the public.”

The IAALS study also asked, “When you think about JPE/JPR in your state as a whole, do you have specific concerns about the evaluation process?” More than 58% of judges responded affirmatively. The survey invited respondents to explain their views on this issue through open-ended comments. While the comments ranged widely in scope and were often state-specific, three broader themes emerged. First, while appreciating attorney concerns for anonymity, many judges stated that receiving anonymous feedback made it difficult for them to improve because they were unable to put the feedback into context. Second, several judges expressed concern about low response rates for attorney and other surveys, especially because judges believed that attorneys with poor impressions of the judge would be more motivated to complete the survey and the overall data would be negatively skewed. Third, many comments indicated a high level of fear and stress about JPE, with an associated belief that the process is being weaponized by the legislature and lawyers.

While there is no reason to doubt the sincerity of these perceptions, there is some reason to question if they are fully accurate. The experience of the Alaska Judicial Council, for example, has been that attorney surveys are returned at a rate of about 25%, which is typical for most other respondents and most other types of surveys. Moreover, most of the judges evaluated each year in Alaska receive high scores from attorneys (4 or higher on a 5-point scale). It may be that even small numbers of poor ratings and negative comments (understandably) stick in the minds of judges, making them seem more common than they actually are.

B. PUBLIC PERSPECTIVES

Much of the public remains unaware of the existence of JPE programs in their respective states, and even fewer confidently understand how such programs work. This is true even where JPE is conducted for the express purpose of educating voters about judicial performance. In a 2018 survey of Colorado voters, for example, a slight majority (53%) of respondents who participated in that year’s election reported being aware of judicial evaluations conducted by the state, but only 8% of the same respondents visited the state commission’s website to obtain information on judges.⁶⁷ A 2020 survey of Utah voters yielded similar results. There, 62% of respondents reported being aware that evaluations of judicial performance are provided to Utah voters before a retention

⁶⁷ MARKET DECISIONS RESEARCH, 2018 COLORADO VOTER KNOWLEDGE ASSESSMENT 5-6 (2019), [https://www.coloradojudicialperformance.gov/documents/Voter%20Poll%20Report%20\(2018%20Retention%20Election\)1.pdf](https://www.coloradojudicialperformance.gov/documents/Voter%20Poll%20Report%20(2018%20Retention%20Election)1.pdf).

election, but only 22% recalled hearing or seeing anything about the evaluations or where they could be found in the six weeks prior to the election.⁶⁸

Outside of the JPE context, the public *does* have distinct perspectives on the legal system more broadly, including the level of trust and confidence that should be afforded to state and local courts. IAALS conducted a detailed study of public trust and confidence in the courts in 2020.⁶⁹ That study, which was based on long-form, one-on-one interviews with nearly forty members of the public, revealed a core commitment to the rule of law and an expectation that courts will protect the rule of law through their own behavior and rulings. The authors of the study explained:

We consistently heard a desire for fairness in decision-making, equal application of the law, transparency, and a system that supports order and stability. We also heard concerns about behaviors that starkly contrast with these values—bias in decisionmaking, advantages for the wealthy, politically driven rulings, and lack of access to the courts.⁷⁰

When asked to elucidate the ideal characteristics of judges, participants in the IAALS study emphasized themes of integrity, independence, fairness, diligence, and avoiding impropriety and the appearance of impropriety. “Essentially, participants described wanting nothing more from judges than what has been promised to them: judges who act independently of political motivations and who behave in accordance with existing ethical codes.”⁷¹

Because public trust and confidence are the lifeblood of judicial legitimacy, public perspectives are critical in fashioning JPE programs. And the public perspectives articulated in the IAALS study (and elsewhere) mesh well with the core criteria for judicial performance evaluation and offer an opportunity to use JPE both as a tool of civic education and civic engagement. That is, JPE has the potential to facilitate a two-way conversation between the courts and the public, with citizens expanding their understanding about the work of the courts and the judiciary learning how it can be more accessible to, and trusted by, the people it serves. From the judges’ perspective, however, that opportunity has not been fully seized: only 33% of respondents in the recent IAALS judges’ survey agreed that “The JPE/JPR program [in my state] helps the public understand the work that I do.”

⁶⁸ DIANE MEPPEN ET AL., JUDICIAL PERFORMANCE EVALUATION COMMISSION 2020 ELECTION SURVEY (Dec. 2020).

⁶⁹ See LOGAN CORNETT & NATALIE ANNE KNOWLTON, PUBLIC PERSPECTIVES ON TRUST & CONFIDENCE IN THE COURTS (2020).

⁷⁰ *Id.* at 11.

⁷¹ *Id.* at 12.

C. COURT USER PERSPECTIVES

There has been relatively little research into what court users (like attorneys, litigants, witnesses, and jurors) specifically know or think about JPE. One significant study, however, suggests that those who have engaged with the legal system think about judicial performance somewhat differently than does the general public.⁷² The authors examined the results of a large survey of California residents, some of whom had participated in the court system in some capacity and some of whom had not. While procedural justice was the primary determinant of trust in the courts for both groups, the authors' analysis of the data led them to conclude "that having experience in a courtroom leads people to put more weight on certain aspects of procedural justice, such as whether judges follow rules, whether they listen carefully, and whether they are viewed as being in touch with their communities."⁷³ The authors also found that while attorneys care about procedural justice, their formal training and repeated interactions with the courts lead them to be more concerned about case outcomes than a sense of procedural fairness.⁷⁴

For their part, attorneys report that they are supportive of programs that educate judges about their performance and identify judges who are underperforming, but are also reluctant to provide their own feedback unless they are confident that their anonymity will be preserved. These reports are supported by the only rigorous recent study of attorney attitudes of JPE, a survey of attorneys practicing in Nova Scotia during the implementation of its JPE pilot program in the 1990s. While not an American program, the Nova Scotia pilot was quite similar in criteria and approach to the JPE programs found in this country. Attorneys cited three concerns from their experience: (1) surveys that were too long or detailed would discourage participation, especially if an attorney had to evaluate multiple judges;⁷⁵ (2) anonymity was essential to build trust in the process, but was often compromised by the small size of the bar in rural areas and the specialized nature of legal practice;⁷⁶ and (3) attorney feedback did seem to make a difference, especially with respect to judicial demeanor.⁷⁷

⁷² See Rottman & Tyler, *supra* note 32, at 1050.

⁷³ *Id.* at 1053-54.

⁷⁴ *See id.* at 1052.

⁷⁵ See Dale H. Poel, *What Do Lawyers Think About Judicial Evaluation? Responses to the Nova Scotia Judicial Development Project*, 10 INNOVATION J. 7 (2005).

⁷⁶ *See id.* at 8.

⁷⁷ *See id.* at 10.

VII. ISSUES WARRANTING FOCUSED CONSIDERATION

A. IS THERE DIMINISHING ENTHUSIASM FOR JPE?

As noted above, the growth of JPE programs hit a high-water mark about a decade ago. Since then, a handful of states (including Florida, Kansas, North Carolina, and Tennessee) have dropped their JPE programs or left them on the books without appropriating any funding. By contrast, only one state (Idaho) has formally adopted a new JPE program since 2011.

The seeming drop in enthusiasm for JPE has been driven in part by the judiciary itself. Judges have long expressed concern, for example, that open-ended questions on attorney and litigant surveys can produce unconstructive comments that are not related to the judge's performance on the bench. At minimum, such comments are unhelpful; too frequently, they amount to personal attacks. More recently, judges have expressed concern that even quantitative survey responses are susceptible to implicit bias, leading women and judges of color to receive lower ratings than those given to their white male peers. Several states have revised their survey instruments in recent years to attempt to reduce the risk of bias and solicit more useful information about each judge's performance. But some judges continue to express concern that survey tools in particular are not well-aligned with the characteristics of an increasingly diverse judiciary.

The current ennui surrounding JPE may also be a product of the contemporary political and social climate. JPE was originally envisioned as a means of insulating judges from politics by leaving their selection and evaluation to a bipartisan (or nonpartisan) group of experts. JPE in particular was proposed as a way for relative experts to evaluate the judges and provide information to members of the public (or similarly situated others) who lacked the resources to assess judicial performance on their own.

Today, however, two of the fundamental assumptions that gave rise to the structure of JPE are being called into question. First, there is a growing skepticism that American institutions in general perform their duties fairly and without bias. This skepticism extends not only to courts—which are increasingly seen as making decisions based on politics⁷⁸—but also to the organized bar, which has been painted both as partisan and blindly protective of the judiciary. Indeed, one of the more common critiques of JPE programs among state legislators over the past decade has been that attorneys have too much influence in the evaluation process and use their political clout to protect

⁷⁸ In a November 2021 Quinnipiac poll, for example, 61 percent of respondents said that the Supreme Court is mainly motivated by politics. *See* Quinnipiac University, “Majority Says Supreme Court Motivated by Politics, Not the Law, Quinnipiac Poll Finds,” <https://poll.qu.edu/poll-release?releaseid=3828>.

judges.⁷⁹ While studies continue to show that most Americans want and expect their judges to be fair and impartial, our current hyperpartisan climate is providing fertile ground for skepticism and distrust of the judicial evaluation process.

Relatedly, the United States is currently experiencing a broad and pervasive distrust of experts. On both sides of the political spectrum, there is an emerging narrative that those with expert credentials are no better equipped than those possessing “ordinary common sense” to handle complex topics involving the economy, social issues, and public health. For JPE, this means that fewer members of the public will readily accept the determination of an expert commission that a judge does (or does not) meet expectations for professional job performance. It may also mean that funding and administrative support for JPE commissions, or for that matter any program affiliated with the courts, may come under greater scrutiny.

It is not clear whether the increased efforts to politicize court structure and operations (whether JPE, judicial selection, discipline, recusal, or decisional outcomes) and decreased public trust in experts and institutions are relatively temporary trends, or whether they present long-term challenges. In either event, JPE programs will have to navigate this political reality, and consider how to stay relevant and trusted even among a wave of populist sentiment. Put differently, JPE programs need to make conscious decisions about what their role should be in a tumultuous political climate.

B. TRANSPARENCY

How much information about judicial performance should be made available to the public? There is currently wide variation in the amount of information that state JPE programs provide to the public, both with respect to the JPE process and with respect to the final evaluation results. On one end of the spectrum, established retention states like Alaska, Colorado, and Utah have detailed public websites which contain considerable information on the operation of their JPE programs, including the source(s) of legal authorization for the program, the identities of JPE commission members and staff, the detailed rules and procedures for judicial evaluations, and historical evaluations of every judge stretching back a decade or more. On the other end of the spectrum, Massachusetts, which uses JPE only for judicial self-improvement, provides some basic public information on its program but no information on the performance of individual judges. In between, states like Hawaii and New Hampshire release reports on the collective performance of the judiciary during each evaluation cycle, but do not provide information on individual judges.

⁷⁹ As one of the first acts toward gutting its JPE program, the Tennessee legislature passed a bill in 2009 that stripped the state bar of any role in nominating members of the state’s JPEC, instead leaving appointments entirely to the legislature itself. See Penny J. White, *If It Ain’t Broke, Break It—How the Tennessee General Assembly Dismantled and Destroyed Tennessee’s Uniquely Excellent Judicial System*, 10 TENN. J.L. & PUB. POL’Y 329, 362-63 (2015).

Attorneys and some members of the public have complained about lack of transparency in JPE programs, especially in states in which they are asked to complete surveys but never learn the results of judicial evaluations. Lawyers have reflected that they see their completion of JPE surveys as an important service to the legal profession, but have less of an incentive to participate if they cannot see the results—or, for that matter, even know whether their contribution made any meaningful difference.

The future of JPE transparency will also be influenced by advances in technology. The public is increasingly accustomed to having on-demand access to information about its institutions, and courts are no exception. Even before the COVID-19 pandemic, some states had begun livestreaming their proceedings, and the pandemic further opened many courts to real-time videoconferencing, allowing any interested observer to view live proceedings.⁸⁰ State courts have also made concerted efforts in recent years to provide information to litigants and jurors through their smartphones and social media,⁸¹ and to provide remote access to law libraries, legal aid centers, and self-help centers.⁸² Legislators, too, have upped their demands that courts use modern technology to increase transparency.⁸³ It is not a stretch to think that public expectations about access to JPE information would follow these trends.

Transparency in JPE programs relates the broader issue of judicial branch transparency as well. While state court systems now employ public information officers, they still lag behind many other industries with respect to sharing information proactively. But the traditional view of the cloistered judiciary speaking only through courtroom orders and written opinions is at odds with public expectations about its government and institutions in the twenty-first century. While judges themselves typically do not bear the responsibility for disseminating JPE results, it is worth examining whether there is a more extensive role for the courts in publicly promoting, explaining, and committing to the JPE process.

⁸⁰ See Jordan Singer, *COVID and the Courts: Where We Are and Where We Might Be Going*, THE INTERDEPENDENT THIRD BRANCH (Apr. 24, 2020), <https://interdependentcourts.com/2020/04/24/covid-19-and-the-courts-where-we-are-and-where-we-might-be-going/>.

⁸¹ See Susan K. Urahn, *The Modernization Our Civil Litigation System Needs*, GOVERNING (Nov. 1, 2018), <https://www.governing.com/archive/col-technology-modernization-civil-legal-system.html>; see also INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., EIGHTEEN WAYS COURTS SHOULD USE TECHNOLOGY TO BETTER SERVE THEIR CUSTOMERS (2018).

⁸² See generally INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., PANDEMIC POSITIVES: EXTENDING THE REACH OF COURT AND LEGAL SERVICES (2020).

⁸³ See Jordan Singer, *Making Sense of the Recent Congressional Testimony on the Courts and Technology*, THE INTERDEPENDENT THIRD BRANCH (Jun. 30, 2020), <https://interdependentcourts.com/2020/06/30/making-sense-of-the-recent-congressional-testimony-on-courts-and-technology/>.

C. INFORMING THE PUBLIC

As the Utah and Colorado voter surveys discussed in Section VI illustrate, states have long confronted the challenge of a citizenry that demands transparency about government operations yet pays little heed to information that is made available. How can JPE programs most effectively capture the attention of the public and educate it about the JPE process and evaluation results?

A related issue—perhaps too early to be called a trend—is the diminishing power of a positive performance evaluation to inoculate judges from public anger over a controversial decision. Although JPE is designed to help the public contextualize specific decisions within the judge’s larger body of work, the rapid growth of social media and consequent ability of activists to sharpen attacks on judges makes it easier for the public to equate judicial performance with a single case outcome. This condition was vividly illustrated in Alaska in 2018, when a trial judge lost his retention bid after a social media campaign charged him with giving an inappropriately soft sentence to an admitted sex offender.⁸⁴ The judge’s strong overall performance evaluation, which in prior years might have helped voters contextualize a single controversial decision, was wholly overshadowed by social media attacks.

Effective dissemination of information to the public is a function both of messaging and technology. An IAALS study in 2016 found that “Good messaging is clear, concise, and compelling. It connects people to an issue through their existing, closely held values, rather than trying to convince them they have different values.”⁸⁵ To this end, JPE messaging might focus on a few key concepts, such as citizen’s rights (“You have a right to decide which of our state’s judges stay at their job and which don’t . . . By exercising that right with an informed vote, you ensure that our proud tradition of fair and impartial courts continues”), civic duty (“We all have a duty to vote for judges we can trust to arrive at unbiased decisions based on an honest review of the facts”), and the evaluation process (“We all deserve to be judged on our skills and performance. Judges are no different. So our state has developed a process to fairly and accurately evaluate each judge’s work and report that back to you”).⁸⁶ In the same way, the IAALS study found, data about each judge’s performance should be presented as simply as possible and should address the citizen’s most basic questions: Why does this matter? What is the evaluation process and why should I trust it? Which judges will I be voting on? And what did the evaluation process have to say about these judges?⁸⁷

⁸⁴ See Jordan M. Singer, *Judicial Recall and Retention in the #MeToo Era*, 55 CT. REV. 36 (2020).

⁸⁵ INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., JUDGES AREN’T SEXY: ENGAGING AND EDUCATING VOTERS IN A CROWDED WORLD 3 (2016).

⁸⁶ *Id.*

⁸⁷ *Id.* at 4.

Technology presents both a challenge and an opportunity for effective JPE messaging. Both new and legacy media increasingly cater to specific constituencies, making it more difficult to reach a broad swath of the public with a few targeted ads. The ubiquity of social media suggests that it is an effective way to reach many citizens, but here too the situation is complicated by opaque algorithms that reward emotionally charged, edgy, or controversial posts that are not appropriate for judicial offices.⁸⁸ Moreover, studies suggest that even among those who use social media, only a small percentage trust those sites for political and election news, and substantial pluralities or majorities actively *distrust* social media as a source of reliable political and election news.⁸⁹

D. BIAS

As noted above, many observers have expressed concern that JPE surveys systematically score female judges and judges of color lower than male and Caucasian judges, rendering the former at a disadvantage with respect to retention or reappointment, and hindering demographic diversity on the bench.⁹⁰ Beginning in the early 1990s, analyses of survey data periodically reported that such disparities did in fact exist.⁹¹ While these studies were of limited geographic and temporal scope, and in at least one instance focused on an unofficial survey administered by a local newspaper rather than an official JPE program,⁹² they nevertheless raised important questions about the quality and reliability of survey information. In particular, the studies demanded attention to (1) potential bias in the wording of survey questions, and (2) potential bias in the perspectives of survey respondents.

A 2012 study by two IAALS researchers attempted to expand upon these studies by examining several cycles' worth of survey data from four well-established JPE states—Alaska, Arizona, Colorado, and Utah.⁹³ The study found that while there were differences between the scores for

⁸⁸ See *id.* at 8; see also Jonathan Haidt & Tobias Rose-Stockwell, *The Dark Psychology of Social Networks*, ATLANTIC MONTHLY, Dec. 2019.

⁸⁹ Only 15% of Facebook users in a Pew survey, for example, said they trusted the site for political and election news, while 59% said they distrusted the site, and 19% neither trusted nor distrusted it. See Mark Jurkowitz & Amy Mitchell, An Oasis of Bipartisanship: Republicans and Democrats Distrust Social Media Sites for Political and Election News (Jan. 29, 2020), <https://www.pewresearch.org/journalism/2020/01/29/an-oasis-of-bipartisanship-republicans-and-democrats-distrust-social-media-sites-for-political-and-election-news/>.

⁹⁰ KNOWLTON & REDDICK, *supra* note 4, at 6.

⁹¹ See, e.g., Joyce S. Sterling, *The Impact of Gender Bias on Judging: Survey of Attitudes Toward Women Judges*, 22 COLO. LAWYER 257 (1993); Christine M. Durham, *Gender and Professional Identity: Unexplored Issues in Judicial Performance Evaluation*, 39 JUDGES J. 11 (Spring 2000); GARY K. BURGER, ATTORNEYS' RATINGS OF JUDGES: ST. LOUIS 1998-2006 (Feb. 15, 2007); Rebecca D. Gill et al., *Are Judicial Performance Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada*, 45 LAW & SOC'Y REV. 731 (2011).

⁹² See Gill et al., *supra* note 91.

⁹³ See KNOWLTON & REDDICK, *supra* note 4.

male and female judges, and for Caucasian judges and judges of color, the differences were in fact small—typically no more than one-tenth of a point on the rating scale.⁹⁴ At the same time, the largest differences in scores based on gender or ethnicity occurred “in areas where past research suggests that implicit biases may come into play.”⁹⁵ Reflecting on these findings, the IAALS study concluded:

The gender- and ethnicity-based differences found in evaluation scores cannot be definitively attributed to one factor or another, but past research suggests that implicit biases may provide one potential explanation—that those who evaluate judges may unconsciously rely on stereotypes of fixed notions about appropriate roles and behaviors for women and men and for minorities and non-minorities. Respondents may be invoking these biases in assessing such qualities as judicial competence and judicial demeanor.⁹⁶

In light of these studies and supporting anecdotal evidence, several state JPE programs have worked to revise their survey instruments in recent years. One revision has been to direct survey respondents to complete a structured free recall exercise before beginning an assessment of a particular judge. Structured free recall asks survey respondents to recall positive and negative behaviors observed during their appearances with the judge, along stated performance dimensions.⁹⁷ It is based on social science research suggesting that focusing on actual observed behavior, rather than assumptions or heuristics, leads to more focused and accurate assessment.⁹⁸

A second, related set of revisions involves the rephrasing of survey questions to focus on the *frequency* of judicial behaviors rather than the respondent’s general impressions of those behaviors. For example, an older JPE survey asked respondents to rate the judge from “Excellent” to “Poor” with respect to “maintaining control over the courtroom.” A newer survey designed by the National Center for State Courts for the JPE program in Illinois, by contrast, asks respondents to note how frequently they observed the judge “take measures to curb unprofessional attorney behavior during a proceeding.”⁹⁹ By requiring respondents to recall the frequency of observable judicial behaviors, such surveys reduce the likelihood that responses will be based only on generalized impressions of the judge.

Some states have also begun efforts to raise awareness of implicit bias among survey respondents. In 2019, for example, the *Utah Bar Journal* published a short article from a member of the state

⁹⁴ *See id.* at 1.

⁹⁵ *Id.* at 2.

⁹⁶ *Id.*

⁹⁷ *Id.* at 31.

⁹⁸ *Id.*

⁹⁹ *Id.* at B8-B9.

bar explaining the basics of implicit bias and how it can affect perceptions of judicial behavior.¹⁰⁰ The article took on a constructive tone, building on fairness and accuracy as core values of the legal profession. The article was later posted on the state’s JPEC website, and was accompanied by information about how the Utah JPEC was working to minimize the potential impact of implicit bias in the overall evaluation process.

Best practices further counsel that survey data be read in context with a variety of other information sources (including docket data, self-evaluations, courtroom observation, written opinion review, and public comments), and vetted by a diverse commission.¹⁰¹ This contextualization helps assure that survey data alone does not create an inaccurate or incomplete impression of the judge’s performance. A practical question is whether JPE programs of more limited scope or means (such as those that use JPE only for professional development purposes) can realistically account for this wealth of contextualizing information.

E. JPE, JUDICIAL DISCIPLINE, AND JUDICIAL RECUSAL

Judicial performance evaluation is distinct from judicial recusal and judicial discipline. Recusal (or disqualification) concerns situations in which a particular judge should remove herself from a case due to a conflict of interest. Judicial discipline arises from violations of relevant codes of judicial conduct.

Notwithstanding efforts to define these concepts with bright lines and sharp edges, judicial discipline, judicial recusal, and JPE tend to blur in the mind of the public. And this (perhaps understandable) blurring raises the question of whether, and to what degree, JPE programs should explicitly account for judicial recusal and discipline.

To date, different states have taken different approaches. Some states have made concerted efforts to keep the concepts separate. Colorado, for example, maintains its Office of Judicial Performance Evaluation separate from its Commission on Judicial Discipline, and the state’s JPE process deliberately does not account for judicial discipline. Other states, however, fold certain information regarding recusal and discipline into the regular JPE process. Utah requires, as a performance standard, that a judge “not be the subject of more than one public reprimand issued by the Judicial Conduct Commission or the Utah Supreme Court.”¹⁰² Alaska tracks public files from the state Commission on Judicial Conduct, as well as recusal filings, peremptory challenge filings, and

¹⁰⁰ S. Grace Acosta, *Implicit Bias in Attorney Evaluations of Judges and Why It Applies to Everyone, Even You*, 32 UTAH B.J. 18 (July/Aug. 2019).

¹⁰¹ KNOWLTON & REDDICK, *supra* note 4, at 30; *see also* INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *TRANSPARENT COURTHOUSE REVISITED: AN UPDATED BLUEPRINT FOR JUDICIAL PERFORMANCE EVALUATION* 4-6 (2017) (discussing commission membership and training).

¹⁰² *See* Utah Jud. Perf. Eval. Comm’n, Full Evaluation Details, *supra* note 27.

conflict-of-interest forms.¹⁰³ And Arizona requires its JPR Commission to inquire of the state's Commission on Judicial Conduct about discipline that has been imposed on any evaluated judge.¹⁰⁴

Any express inclusion of judicial discipline in the JPE process requires delicacy because disciplinary hearings, and some disciplinary sanctions, may be treated as confidential. If these factors are taken into account, how should legitimate concerns about confidentiality in the realm of judicial discipline be balanced against the demand for transparency in the realm of JPE? Moreover, to what extent should that answer be influenced by demands to increase the transparency of judicial discipline itself?¹⁰⁵

F. JPE AND PROFESSIONAL DEVELOPMENT

To what degree are JPE programs meeting their stated goals of improving judicial performance, both for the individual judges under evaluation and for the judiciary as a whole? The IAALS judicial survey indicated that most judges (72%) believe that JPE has been beneficial to their professional development, but judges in the same survey expressed doubts about their ability to improve in response to anonymous comments. Of course, there is a wealth of potential information outside of survey comments that can assist a judge to make targeted improvements, including mentoring programs and judicial education courses. What are the best practices for using information gleaned from JPE to improve professional development? And can JPE-related information also be used profitably to help judges when the time comes to transition away from the bench?

G. FUNDING

Finally, it is worth considering funding mechanisms. Many factors influence the administrative costs of JPE programs, including the number of judges evaluated, the size of the JPE staff, the cost of survey administration, the methods (if any) of informing the public about evaluation results, travel costs for commissioners and court observers, and whether program staff have duties beyond JPE.

Most official JPE programs are funded exclusively through legislative appropriation. This relieves the burden of finding external revenue sources, but also creates the risk that legislators will reduce funding to inadequate, or even nonexistent, levels. In both Kansas and Tennessee, state legislatures

¹⁰³ See Alaska Judicial Council, Retention Evaluation Procedures, <http://www.ajc.state.ak.us/retention/retproced.html>.

¹⁰⁴ Arizona Comm'n on Jud. Perf. Rev., Rules of Procedure, <https://www.azcourts.gov/jpr/About-JPR/Rules-of-Procedure>.

¹⁰⁵ See, e.g., Michael Karlik, *Q&A: A Conversation About Judicial Discipline, Transparency and Culture in the Wake of the Colorado Revelations*, COLORADO POLITICS, Feb. 16, 2021 (featuring a conversation with IAALS' Rebecca Love Kourlis and Russell Wheeler).

did exactly that, keeping JPE programs on the books while defunding them entirely. While legislative partnership in JPE is certainly desirable, one might ask whether alternative sources of funding can be found, and from where.

A related question, especially for new programs or programs wishing to expand, is how much is needed to fund a comprehensive and trusted JPE program. Existing JPE program budgets differ widely, from near zero (i.e., JPE is entirely internal to the judiciary and is folded into the duties of an existing administrator's position) to \$1,000,000 per year or more. Historically higher budgets may reflect programs that set a single budget for both JPE and judicial merit selection procedures.¹⁰⁶

¹⁰⁶ These figures were derived from a survey of IAALS JPE Working Group members in 2019.

OVERVIEW OF OFFICIAL JUDICIAL PERFORMANCE EVALUATION PROGRAMS

STATE OR JURISDICTION	OPERATION AND AUTHORIZATION	STATED GOALS	COMMITTEE COMPOSITION	PARTICIPATING JUDGES	FREQUENCY	PUBLIC DISSEMINATION?
Alaska	Alaska Judicial Council (Alaska Stat. §§22.05.100, 22.07.060, 22.10.150, 22.15.195)	To provide information to voters for retention elections; to provide useful feedback to judges for self-improvement	7 members: Chief Justice (ex officio chair), 3 attorneys appointed by state bar, 3 members of the public appointed by governor.	All judges	Prior to retention election	Yes – Included in election pamphlet mailed to every voter; detailed evaluations posted on website. Alaska Judicial Council also uses social media, paid media, and community presentations to disseminate evaluation results.
Arizona	Commission on Judicial Performance Review (Ariz. Const. art. VI, §42)	To provide information to voters for retention elections; to identify needed education and training programs; to promote appropriate judicial assignments	34 members, all appointed by state supreme court: up to 6 attorneys, up to 7 judges, the remainder members of the public.	All appellate judges; Superior Court judges in Coconino, Maricopa, Pima and Pinal Counties	Every two years (mid-term and prior to retention election)	Yes – Retention reviews are mailed to voters and made available on Arizona courts webpage. Mid-term performance reviews are confidential.
Colorado	Office of Judicial Performance Evaluation (OJPE); State Commission (for appellate judges) and 22 district commissions (for trial judges) (C.R.S. §13-5.5-101 et seq.)	To provide information to voters for retention elections; to provide useful feedback to judges for self-improvement	State commission has 11 members: 5 attorneys and 6 members of the public. District commissions have 10 members: 4 attorneys and 6 members of the public.	All judges	Interim evaluations within first 2 years on bench, with optional follow-up. Regular retention year for all judges.	Yes – Blue Book of Ballot Issues (election information) sent to all voters prior to election; also available on OJPE website.

STATE OR JURISDICTION	OPERATION AND AUTHORIZATION	STATED GOALS	COMMITTEE COMPOSITION	PARTICIPATING JUDGES	FREQUENCY	PUBLIC DISSEMINATION?
Connecticut	Judicial Selection Commission (Conn. Gen. Stat. § 51-44a <i>et seq.</i>)	To provide recommendations to the governor on new judicial candidates and candidates seeking reappointment	12 members, two from each Congressional district. No more than 6 members may belong to the same political party, and no more than 6 members may be attorneys.	New judicial nominees and incumbent judges seeking reappointment	Upon seeking reappointment	Only evaluation criteria and procedural rules are made public. Judge may request that hearings concerning reappointment be open to the public.
D.C.	D.C. Commission on Judicial Disabilities and Tenure (Title 11, Appx. IV433)	To evaluate judges' performance and fitness for reappointment or senior status	7 members, including 4 attorneys, 2 members of the public, and a federal judge.	Those seeking reappointment or senior status	Upon seeking reappointment or senior status	Reports are sent to the President of the United States and posted on the Commission's website.
Hawaii	Committee on Judicial Performance (Supreme Court Rule 19)	To improve judicial performance; increase the efficiency of judicial management; provide the Judicial Selection Commission with information for retention and promotion decisions; improve judicial education programs; and public trust and confidence in the courts	12 members, all appointed by Chief Justice: currently includes 3 judges, 5 attorneys, 3 members of the public, and Administrative Director of the Courts	All full-time judges, and a limited number of per diem judges who appear to have worked on substantive matters.	As retention and appointment decisions warrant	Summary reports are disseminated through circuit law libraries; individual results are kept confidential.

STATE OR JURISDICTION	OPERATION AND AUTHORIZATION	STATED GOALS	COMMITTEE COMPOSITION	PARTICIPATING JUDGES	FREQUENCY	PUBLIC DISSEMINATION?
Idaho	Idaho Supreme Court program	To promote professional self-improvement	None	Trial judges	Nine months and 18 months into initial term, then every three years	No – results are kept strictly confidential.
Illinois	Illinois Supreme Court Rule 58	To promote professional self-improvement	Internally designated by Supreme Court	Circuit and Associate judges	No regular timetable; 150-175 judges randomly chosen for evaluation each year	No – evaluation data is confidential, with a limited exception for internal use if judge’s conduct negatively affects court operations or public confidence
Massachusetts	Supreme Judicial Court Judicial Performance Evaluation Committee (M.G.L. ch. 211, §26-26b; Sup. Ct. R. 1:16)	To promote professional self-improvement	19-member advisory committee, all selected by the court system	All trial judges	Every three years	No – report goes only to evaluated judge, Chief Justice of the relevant trial court, and Chief Justice of the Supreme Judicial Court
Missouri	Judicial Performance Review Committee, administered by The Missouri Bar in partnership with the courts (Supreme Court Rule 10.50)	To educate voters in advance of retention elections	21 members: 2 from each of six trial circuits, and 3 from each of three appellate districts; total of 9 lawyers, 9 members of the public, and 3 retired judges	Appellate judges and trial judges in the six Circuit Courts which use the Missouri Nonpartisan Court plan (i.e., merit selection)	In retention years	Evaluation results posted on dedicated website and distributed widely to the media via press conference and press releases
New Hampshire	JPE Advisory Committee (New Hampshire Supreme Court Rule 56)	To promote judicial self-improvement; to provide information to the public about the overall performance of the judiciary	Judicial, bar, and legislative representatives	All judges, including marital masters	Every three years	Annual summary report for entire judiciary is presented to Governor and other top state officials

STATE OR JURISDICTION	OPERATION AND AUTHORIZATION	STATED GOALS	COMMITTEE COMPOSITION	PARTICIPATING JUDGES	FREQUENCY	PUBLIC DISSEMINATION?
New Jersey	Judicial Evaluation Commission operating under auspices of New Jersey Supreme Court (RGA 1:35A-2-4)	To provide feedback useful for self-improvement; to assist with reappointment decisions; to enrich judicial education programs	3 retired judges	All judges	Second and fifth year after appointment	No public dissemination. Reports are shared externally with Governor and Senate Judiciary Committee
New Mexico	Judicial Performance Evaluation Commission (N.M. Ct. R. 28-101 et seq.)	To improve judicial performance; to provide information to voters for retention elections	15 members – 7 lawyers and 8 members of the public. Members are selected from nominations by the Governor, Chief Justice, and legislative leaders	All sitting judges except those running in a partisan election	Midterm and prior to retention election	Yes – Retention evaluations are posted on commission’s website, published in newspapers, and promoted through paid media. Midterm evaluations are confidential.
Puerto Rico	Judicial Evaluation Commission (within the Office of the Chief Justice of the Supreme Court) (P.R. Laws Title 4, §73 et seq.)	To promote self-improvement; build education programs; recommend allocation of resources; make recommendations on renomination and promotion	9 members, including 1 supreme court justice, 1 member experienced in managerial and administrative affairs, and at least 1 member of the public.	Trial judges	Every 3 years for Superior Court; every 4 years for District Court; every 3 years for Municipal Court	No public dissemination. Annual report provided to the Chief Justice, the Administrator of the Office of Court Administration, and the Governor (in cases of renomination and promotion).
Rhode Island	Judicial Performance Evaluation Committee (R.I. Sup. Ct. R. 7.1 et seq.)	To promote judicial self-improvement; to improve the design and content of continuing judicial education classes	11 members – 6 judges, 3 members of the state bar, 2 members of the public familiar with the judicial system	All judges	Every 2 years	No – sent to Chief Justice of Supreme Court and Chief Judge of each district court only. Disclosure of data is heavily circumscribed.

STATE OR JURISDICTION	OPERATION AND AUTHORIZATION	STATED GOALS	COMMITTEE COMPOSITION	PARTICIPATING JUDGES	FREQUENCY	PUBLIC DISSEMINATION?
Utah	Utah Judicial Performance Evaluation Commission (Utah Rev. Stat. 78A-12-101 et seq.)	To provide information to voters for retention; to provide information to judges for self-improvement	13 members, appointed by different branches of state government. At least 2 members, but no more than 6, must be attorneys	All judges	Trial judges face midterm evaluation after three years and final evaluation after five; Supreme Court evaluated at three, seven, and nine years	Yes – published on JPEC website and in paid and social media
Vermont	Joint Committee on Judicial Retention (4 V.S.A. § 608)	To make recommendations to the state legislature on judicial retention	8 members – four from the House of Representatives and four from the Senate	Judges seeking retention	Prior to retention elections	Report for each judge seeking retention presented to the General Assembly for consideration
Virginia	Office of the Executive Secretary, Supreme Court of Virginia (Va. Code §17.1-100; Rules of Sup. Ct. of Va. 9:1 & 9:2)	To provide information to judges for self-improvement; to provide information to legislators for re-election	JPE Advisory Committee advises Chief Justice on program (currently 1 justice, 10 judges, 2 retired judges, 1 circuit court clerk, 1 attorney, and program director (Ex Officio))	All justices and judges	Three times in initial term and twice in subsequent terms	Records are confidential except the final reports, which are sent to the Chairs of the House Committee for Courts of Justice and the Senate Committee on the Judiciary and are available on Virginia’s Legislative Information System Website

Note: This chart reflects official judicial performance evaluation programs only. State and/or local bars conduct independent judicial evaluations or attorney polls in California, Florida, Illinois, Iowa, Kansas, Kentucky, Maine, Michigan, Nebraska, New York, Ohio, Pennsylvania, South Carolina, Texas, Washington, and Wyoming. In Maryland, a private website with no apparent connection to the state or the bar (www.mdjudicialevaluations.com) offers lawyers a chance to “complete an evaluation” for eventual publication. In Nevada, evaluations are conducted by a newspaper, the *Las Vegas Review-Journal*