

*Fostering Judicial Excellence:
A Profile of Alaska's
Judicial Applicants and Judges*

May 1999

Alaska Judicial Council

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acknowledgments

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Chapter 1

Introduction

This report contains the results of the Alaska Judicial Council's study of the characteristics of attorneys who apply for and are appointed to the state court bench in Alaska. The project, funded by the State Justice Institute, attempts to answer questions frequently asked by those charged with nominating, appointing and evaluating state court judges. What types of attorneys are nominated and appointed to judicial positions? Does a certain type of education or experience correlate with nomination and appointment to the bench? This report describes the qualities of attorneys who have applied for the bench in Alaska since 1984, including their education, legal experience and personal characteristics. The report also describes the performance of judges in Alaska, primarily as measured by evaluation survey scores and percentage of yes votes received in retention elections. Finally, the report analyzes whether certain characteristics of those who apply and are appointed are related to performance on the bench.

Chapter One of this report describes the structure and membership of the Alaska Judicial Council, and outlines the project and its purposes. Chapter Two explains the constitutional, statutory and historical framework under which Alaska's judges have been selected and evaluated. Chapter Three introduces the data and describes its limitations.

Chapter Four describes and analyzes the data collected by the Council in the retention evaluation process. Chapter Five focuses on judicial selection data, describing the characteristics and qualifications of attorneys who have applied for or have been nominated or appointed to the state court bench in Alaska since 1984. This chapter also discusses the significance of applicants' characteristics and qualifications to the likelihood of nomination and appointment, and where possible, the relationships of appointees' characteristics and qualifications to successful judicial performance. Chapter Six contains a summary of findings, conclusions and recommendations.

A. The Alaska Judicial Council

The Alaska Judicial Council is an independent state agency in the judicial branch of government.¹ Established by the Alaska Constitution at statehood, the Council is charged with nominating candidates for all levels of state court judgeships and evaluating the performance of all judges and justices standing for retention elections. The constitution also instructs the Judicial

¹ Extensive material describing the Council, its duties and procedures, Council reports, judicial evaluation materials and historical information about judicial selection is available on the Council's website at <http://www.ajc.state.ak.us>.

Council to conduct studies and recommend improvements in the administration of justice.² The Council is charged by statute with evaluating the performance of judges, and with recommending to the voters whether individual judges should be retained in retention elections.³

1. Membership

The constitution sets the Council's membership.⁴ The Council is composed of three non-attorney members appointed by the governor and confirmed by a majority of the members of the legislature in joint session,⁵ three attorney members appointed by the Board of Governors of the Alaska Bar Association,⁶ and the Chief Justice of the Alaska Supreme Court, who serves as the *ex officio* chair.⁷ The Constitution further provides that Judicial Council appointments shall be made "with due consideration to area representation and without regard to political affiliation."⁸ Members serve six-year staggered terms, except for the Chief Justice, who serves for three years.

The Council's membership has become more diverse over time. Since 1981, the Bar and governors have appointed women and ethnic minorities to Council membership. The present membership includes three women and four men; one member is an Alaskan Native. Non-attorney members have come from all parts of the state and from a wide variety of backgrounds, including fishermen, businesspeople, employees of non-profit organizations, homemakers, and journalists.⁹ Because attorneys can not be current state or federal employees, most come from the

² Alaska Const. Art. IV § 9. The Council has conducted many studies since statehood on a variety of aspects of civil and criminal justice. For example, the Council has reviewed the criminal justice process, including sentencing, and has staffed criminal justice-related task forces and commissions. On the civil side, the Council has assessed attorney fee shifting, jury verdicts in tort cases and alternative dispute resolution, including the roles of tribal courts and councils. The Council often helps draft and implement justice-related legislation, and coordinates and facilitates inter-agency and inter-branch task forces and committees. A complete listing of the Council's research is available from the Judicial Council or on its website.

³ See AS 22.05.100 (duty to provide information to public on supreme court justice on retention); 22.07.060 (duty to provide information to public on court of appeals judge on retention); 22.10.150 (duty to provide information to public on superior court judge on retention); and 22.15.195 (duty to provide information to public on district court judge on retention).

⁴ Alaska Const. Art. IV § 8.

⁵ The governor's selection process typically depends on citizens asking for appointment to specific commissions, although the governor is free to vary the process as desired. The legislature typically confirms the governor's appointees to the Judicial Council.

⁶ Alaska has mandatory Bar Association membership for all attorneys practicing in the state courts. The Bar is an instrumentality of the state, funded primarily by members' dues. It provides Bar discipline, fee arbitration, continuing legal education, a subscription to the ALASKA LAW REVIEW and to a bi-monthly newspaper (the *Bar Rag*), and a variety of other services. Attorney members are appointed after an advisory poll among Bar members within local judicial districts.

⁷ Alaska Const. Article IV § 8. The supreme court selects its Chief Justice through a vote of the five-member court. Each Chief Justice serves three-year terms and may serve more than one term but may not succeed him or herself. Alaska Const. Art. IV § 2.

⁸ Alaska Const. Art. IV § 8.

⁹ The constitution prohibits state and federal employees or those holding "any other [state or federal] office" from serving on the Judicial Council. See Alaska Const. Art. IV § 8.

private sector, again representing the full range of practices. Occasionally a municipal or local government employee has served on the Council, and attorney Council members often have prior experience in the public sector.

2. Functions

Once appointed to the Judicial Council, members receive written materials describing their responsibilities, the Council's duties, its current projects, and the judicial selection and retention evaluation processes. Council staff arranges periodic training for members; however, much of the Council members' training comes through the actual processes of selection and retention.

Council members serve without financial compensation, but are reimbursed for travel costs. They typically meet in person, three to four times each year, often for two to three days. The Council tries to meet in the location of a judicial vacancy. If it is meeting for reasons other than a judicial selection process, it usually meets in Anchorage to reduce travel costs. Members also meet by teleconference several other times during the year, to handle administrative matters or to hold public hearings in remote locations.

B. The Project

The Council has been accumulating extensive data about judicial applicants and sitting judges since 1984. For this project, the Council broke down this information into variables, compiled the information into a database, and analyzed the data. The analysis describes characteristics of judicial applicants, nominees and sitting judges, and explores the relationships among the characteristics of judicial applicants and the likelihood of nomination, the likelihood of appointment and successful performance on the bench. The recommendations at the end of the report explore implications for nominating commissions and appointment authorities in other states as well as in Alaska.

C. Purposes of the Study

The study had two main purposes, one related to judicial selection and one related to judicial performance evaluations. First, the study sought to describe the performance of judges appointed to the bench in Alaska in the last fourteen years by examining a variety of variables gathered in the retention evaluation process.

Second, the study sought to describe the personal and professional characteristics of attorneys who have applied for and been appointed to the state court bench in Alaska in the past fourteen years, as well as the Council's evaluative data on these attorneys. The study aimed to identify which applicant characteristics were significantly related to the likelihood of nomination and appointment, and, to the extent possible, to the quality of performance on the bench. This information is relevant to efforts in Alaska and elsewhere to select a highly qualified bench, which in turn strengthens public trust and confidence in the courts and buttresses judicial

independence. Additionally, this information demonstrates that an informed selection and judicial evaluation process can result in an excellent judiciary.

Chapter 2 Background and Context

This chapter describes judicial selection and retention processes in Alaska and gives some historical information about the Alaska Judicial Council's role and procedures.

A. Judicial Selection in Alaska

Alaska has a unified court system (no local or county courts). The constitution establishes the supreme court and the general-jurisdiction trial court and gives the legislature authority to establish other courts.¹⁰ Since statehood, the legislature has created two other courts-- a limited-jurisdiction trial court (the district court)¹¹ and an intermediate court of criminal appeals (the Alaska Court of Appeals).¹² The Judicial Council screens and evaluates applicants for all four levels of state court.¹³

1. Constitutional and Statutory Framework

Alaska is almost unique among states in that it has enjoyed a merit selection system for judges since statehood. Delegates to Alaska's Constitutional Convention in 1956 and 1957 saw an opportunity to learn from the experiences of the existing forty-eight states, and chose merit selection as the system that would produce the highest-quality judiciary. They incorporated into the constitution a merit selection system for supreme court justices and superior court judges, and established the Alaska Judicial Council to nominate candidates for those judgeships.¹⁴ Minutes from the Constitutional Convention show that the delegates wanted a system that focused on objective qualifications and minimized the influence of politics on judicial selection.

¹⁰ See Alaska Const. Art. IV §§ 1, 2 and 3.

¹¹ See A.S. §22.15.010.

¹² See A.S. §22.07.010 (1980). The legislature also created limited-jurisdiction magistrate courts and an administrative judge in the Department of Revenue.

¹³ The Council uses a very similar nomination process, by statute, for the administrative law judge [AS 43.05.410(a)(f) and for the Public Defender (AS 18.85.030). Nominations for both positions go to the Governor.

¹⁴ See Alaska Const., Art. IV section 5. This system is referred to as the "Missouri plan," after the first state to adopt it. Typically, Missouri Plan states or jurisdictions rely on a small group of lawyers and non-lawyers in a non-partisan process that evaluates applicants for a judicial position and nominates candidates to the governor based strictly on merit, without any political considerations. The governor is free to use political factors or any others as long as he appoints from the short list of names. Most jurisdictions that use the Missouri plan, including Alaska, also require appointed judges to stand periodically in retention elections in which they run only on their record and not against an opponent.

The Judicial Council first met in 1959 to nominate candidates for the supreme and superior courts. Since then, the Council has met approximately 92 times to nominate candidates to fill 165 judicial vacancies.

2. Council's Selection Criteria, Standards and Procedures

State statutes and the Council's own Bylaws specify criteria by which judicial applicants should be evaluated. The Council's Bylaws also contain the standard for nomination and outline some of the procedures the Council uses in judicial selection.

a. Criteria for Evaluating Judicial Applicants

The Constitution requires that supreme court justices and superior court judges be citizens of the United States and of the state, be licensed to practice law in the state and possess "any additional qualifications presented by law."¹⁵ State statutes contain the most basic qualifications for judges. These statutory qualifications include citizenship, length of practice, length of residency and bar membership requirements for all four levels of courts.¹⁶

The Council's bylaws set out additional criteria for evaluating judicial applicants.¹⁷ The current Bylaws instruct Council members to nominate applicants whose "character, temperament, legal ability and legal experience" are of the "highest quality."¹⁸ Other qualities deemed important include honesty/integrity, impartiality/fairness, diligence, commitment to public service, writing ability, and administrative ability.

A factor that normally has not come into play in the nomination process is political affiliation. The Council's Bylaws instruct Council members to "prevent political considerations from outweighing fitness" in the nomination process.¹⁹ Experience confirms that the Council members have focused on merit rather than political considerations. While they may have differed on which applicants were the most qualified, they always have agreed that applicants should be evaluated based on how well they would perform as judges.

¹⁵ Alaska Const., Art. IV section 4.

¹⁶ See A.S. §22.05.070 (qualifications of supreme court justices); A.S. §22.07.040 (qualifications of court of appeals judges); A.S. §22.10.090 (qualifications of superior court judges) and A.S. §22.15.160 (qualifications of district judges).

¹⁷ The Alaska Constitution authorizes the Judicial Council to set its own rules. See Alaska Const. Art. IV, § 8. The Judicial Council adopted formal bylaws in November of 1966.

¹⁸ Article I, section 1 of the AJC Bylaws provides that the Judicial Council "shall endeavor" to nominate those applicants whose "character, temperament, legal ability and legal experience are demonstrated to be of the highest quality."

¹⁹ *Id.*

b. "Most Qualified" Standard for Nomination

The Bylaws also specify the standard that Council members should use to decide whether to nominate an applicant. According to its Bylaws, the Judicial Council nominates only the "most qualified" of the applicants.²⁰ In other words, the Council does not nominate every qualified applicant, but only those who are among the most qualified.²¹

c. Selection Process

In its earliest meetings, when the state's population and Bar were quite small, the Council did not have written nomination procedures and Council members relied heavily on their personal knowledge of candidates in making nominations.²² By the late 1960s, the Council had developed written selection procedures, and over the ensuing years the Council increased the use of objective criteria and has standardized procedures.

The Council's current judicial selection process is extremely thorough and comprehensive. It involves input from the Bar, the public and applicants' former employers. It includes information from credit reports, civil case files, criminal records and Bar files. Some of the information comes from anonymous or confidential sources and private files, and some from public information and public hearings.

The selection process begins with a letter to every member of the Alaska Bar Association advertising the vacancy. With this letter the Council sends a description of the court location, staffing, caseload, travel requirements, and the physical, emotional and intellectual requirements of the job.

(1) Application Form. Those who wish to apply must complete a written application detailing legal and non-legal working experience, community and professional activities, education, trial experience, involvement in litigation, income, military service, legal publications, age, residence, citizenship and a variety of other information. Most of the application is open to the public, but part is confidential.

(2) Bar Survey. Since its inception, the Council has sought information from the bar by way of an advisory survey. From 1959 until January of 1962, the Alaska Bar Association conducted the survey. In 1980, the Council took over administration of the advisory survey, making numerous improvements in its form and substance over the succeeding years.

²⁰ Article VIII, § 4. Mr. Ralph Rivers, member of the Judiciary Committee at Alaska's Constitutional Convention, explained that the merit selection process his committee proposed for Alaska was intended to be an "orderly screening process" in which the "judicial council will seek for the best available timber...." *Ak Const. Convention Minutes*.

²¹ If fewer than two applicants are determined to be qualified, the Council declines to submit any names and re-advertises for the position. The Council declined to submit names once since 1984: the Valdez District Court in 1996.

²² In the late 1950s, the Bar was about 150 members, among whom wide acquaintance was easy.

The current Bar survey is a written booklet sent to every active member of the Alaska Bar Association (a mandatory bar).²³ The survey first asks Bar members whether they are rating the applicants based on direct professional experience, reputation or other personal contacts. Bar members then are asked to rate the applicants they know in at least one of these contexts on a five point scale on six criteria: legal ability, integrity, fairness, judicial temperament, relevant experience and overall professional performance.²⁴ The survey also asks for comments about applicants' legal ability, comportment, diligence and other qualities. Most of the analysis of survey results uses only the ratings from those with direct professional experience.

An independent organization conducts the survey and analyzes the results. The statistical analysis includes average ratings on each quality for each candidate by range (i.e., excellent, good, acceptable, below acceptable, deficient). The Council releases numerical survey results to the public after notifying all applicants of the results.

The independent organization transcribes all respondents' narrative comments and submits them to the Council. The Council does not share the actual narrative comments with the individual applicants or the public.²⁵ These comments tend to be extremely candid. They run the gamut from extremely positive to extremely negative. Almost every applicant will receive one or two very negative comments. A Council member might consider one or two isolated comments as cause for concern only occasionally. However, a series or pattern of negative comments might prompt a staff investigation, and the applicant probably would be questioned about the concern in his or her interview with the Council. Council staff brings to the applicant's attention the substance of such comments, with the statement that the Council may wish to inquire about the matter at the interview.

(3) Reference Letters. The Council solicits detailed reference letters from two general character references, three persons who can evaluate the applicant's professional competence and former employers. The general character reference letters ask for a "frank statement" of the applicant's "integrity, honesty, industry, fairness, mental and emotional stability, decision-making ability, compassion and respect for others." The professional competence reference asks for an assessment of the applicant's "reasoning in prior decisions or opinions (if any), conscientiousness, legal knowledge and ability, ability to handle complex cases, objectivity and fairness, common sense, sound judgment, intellectual honesty, ability to make decisions, and intellectual and moral courage." Normally, these letters are overwhelmingly positive. Occasionally, however, a reference will suggest that the applicant is not well qualified or lacking in some respect.

²³ Appendix C contains a sample of the Bar selection survey.

²⁴ Over the years, some of the criteria in the survey instrument have changed somewhat. The most recent change was addition of "suitable experience" in 1995.

²⁵ Since July, 1994 the survey has given respondents the option of signing their names to their comments, with the statement that signed comments may appear more credible to the Council. Signed comments remain confidential. Before 1983, the Council shared narrative comments with applicants. The Council decided to stop this practice to reduce the number of irrelevant comments directed at an applicant's spouse or others uninvolved in the selection process. Since that time, although comments remain candid, they have tended to focus more on issues directly related to selection criteria.

The letters to former employers ask for employment verification and for a frank statement about the applicant's job performance, in particular "the quality of the applicant's legal ability, conscientiousness, objectivity and fairness, common sense and sound judgment, mental and emotional stability and honesty." These letters also normally are positive, although occasionally a former employer criticizes some aspect of the applicant's performance.

All references are confidential. The Council does not share them with the applicant. The Council does not forward them to the Governor for nominees, unless the writer gives explicit permission.

(4) Counsel Questionnaires. The Council sends a written questionnaire to attorneys identified by the applicants as having been involved in three recent cases that went to trial and three that did not. The questionnaire asks counsel to rate the applicant's competence as an attorney, temperament, conscientiousness on this case, and general comments. Responses to these questionnaires generally are positive, although respondents occasionally criticize some aspect of the applicant's performance.

(5) Staff Investigation. Council staff investigate applicants' criminal, civil, credit and professional discipline history and fee arbitration records. Council staff also investigate any other issues arising from this or other information. These records typically reveal nothing more serious than speeding tickets or other moving violations, grievances filed but dismissed as lacking in merit, or the occasional bankruptcy or real estate foreclosure. Occasionally, this investigation does reveal tax problems, credit problems, a criminal conviction or imposition of discipline by the Bar Association.

(6) Writing Sample. Council staff evaluate each applicant's writing sample. Staff rate the applicants' writing on a five-point scale. Criteria include proper use of grammar and syntax, clarity of legal analysis, organization and proofing.²⁶

(7) Public Hearings. The Council holds public hearings soliciting testimony on the applicants' qualifications. Attendance at these hearings varies significantly depending on the location of the community (urban or rural) and to some extent on the level of the court (supreme court vacancies may draw more interest than trial court slots). Normally, only a handful of people appear to testify. Testimony often is a mix of positive and negative comments. Some use the opportunity of a public hearing to complain about unrelated court decisions or to make general criticisms about other justice system agencies.

(8) Interview. Finally, the Council interviews each applicant in private session.²⁷ Council members typically use the interview to give the applicant a chance to explain strengths and weaknesses in his or her application, any criticisms raised in the bar survey, and the applicant's thoughts about serving in a judicial position.

²⁶ The criteria used to evaluate applicants' writing samples are explained in Appendix D.

²⁷ Applicants may request public interviews, although they rarely do so. The Council is not required to interview every applicant, but it has done so traditionally and believes that the interview is critical to its final decision in many instances. Occasionally the Council interviews applicants by telephone, but strongly prefers in-person meetings.

(9) Decision. After completing all the interviews, Council members discuss the applicants in a confidential, private session. They go into public session to vote on the nominees. The governor then has 45 days in which to appoint from the Council's list of nominees.

3. Gubernatorial Appointment Process

Gubernatorial appointment standards and procedures vary depending on the governor.²⁸ The Judicial Council forwards to the governor some of the information it has gathered about the nominees, including the completed application, the Bar survey results (but not the narrative comments) and the writing sample (but not the Council's assessment of the sample). Governors do not have access to the reference letters except those in which the writer explicitly asked the Council to forward them to the governor. Nor does the Council turn over confidential information from the criminal, civil, credit and professional discipline investigations. Unsolicited reference letters go to the governor unless the writer requested confidentiality.

Most governors have staff who screen the nominees, although the nature and thoroughness of this function varies. Most governors interview the nominees before making the appointment decision.

B. Judicial Retention in Alaska

All Alaska judges periodically must stand for retention (the term in office varies by level of court).²⁹ Since 1974, the Judicial Council has evaluated the judges standing for retention and made the results of the evaluations public. The Council also makes recommendations to the voters as to whether the judges should be retained in office.

1. Statutory Framework

The Council first evaluated judges standing for retention in November of 1974 (nineteen judges were on the ballot that year).³⁰ The next year, the Council submitted to the legislature a bill

²⁸ Four governors made judicial appointments during the term of the present study: Gov. William Sheffield (1982-86), Gov. Steve Cowper (1986-90), Gov. Wally Hickel (1990-1994), and Gov. Tony Knowles (1994-present). Three of the four were Democrats. The fourth, Gov. Hickel, was elected as a candidate of the Alaska Independence Party, although he primarily had been affiliated with the Republican party.

²⁹ Supreme court justices stand every ten years, court of appeals judges every eight years, superior court judges every six years and district court judges every four years. Retention elections occur at the same time as the general election. Justices and judges must stand in a "probationary" retention election. For district court judges, this occurs at the first general election more than two years after appointment. For other justices and judges, the election is the first general election more than three years after appointment.

³⁰ During that first evaluation process, the Council designed a poll and submitted it to all attorneys in the state. That poll included an appraisal of how well the attorney knew the judge and of the judge's integrity, moral courage, judicial temperament, knowledge of law, courtesy and consideration, industriousness, preparedness and promptness. The Council also made a poll available to the public for comment, examined financial disclosure documents, leave records, and continuing legal education programs for each judge. The Alaska Bar Association also

requiring performance evaluations of all sitting judges prior to their retention elections. The bill also required that the voters be informed concerning the results of the Council's evaluation and of its recommendations. In 1975, the legislature voted the bill into law. The law requires the Judicial Council to evaluate judges' performance and make that information available to the voters. The Council may, but is not required to, make recommendations to the public about whether judges should be retained in office.

2. Evaluation Standards and Criteria

a. Evaluation Criteria

State statutes do not specify criteria for the Council to use for evaluating judicial performance. The Council's bylaws do not list specific evaluation criteria, but do express the policy that "[t]he Council shall endeavor to prevent political considerations from outweighing fitness in the judicial retention process."³¹ In general, the Council's evaluation procedures reflect the view that information should include the perspectives of as many different groups as possible (i.e., professionals, jurors, litigants, employees) and that the public should be encouraged to participate in the evaluation process.

b. Evaluation Standards

Generally speaking, the Council's standard for a "yes" recommendation on retention is that the judge be "qualified." The fact that someone else might be better qualified is not considered a reason for a "no" recommendation.

From 1984 through 1998, the Council found all judges except one qualified and recommended retention in office. The exception was in 1988, when the Council found a superior court judge unqualified and recommended against his retention, based in part on "below acceptable" ratings from attorneys and some peace officers on integrity, impartiality and some of the judicial temperament criteria. The voters retained that judge in office, although with significantly fewer "yes" votes than typical for that year.

3. Evaluation Process

Since 1975, the Council's evaluation procedures have evolved into a thorough, objective review of each judge or justice. The Council tried new procedures in most years since 1976 and has revised the process frequently based on its experience.

conducted a poll evaluating judges up for retention that year. The Judicial Council recommended after a two-month study that two district court judges not be retained in office; both were retained.

³¹ AJC Bylaws, Article I, Section 2.

Beginning about a year before the retention election, Council staff begin to gather information about judicial performance. This information generally comes from three sources: professional evaluations, investigative materials specific to each judge, and public input. About six months before the retention election, the Council meets to interview any judges for whom they have questions and to vote on retention recommendations. After the vote, Council staff publicize the recommendations and monitor any campaigning that occurs. If a campaign is launched against a judge for whom the Council recommended retention, the Council usually responds in some way. If the Council has recommended against a judge's retention, it may bolster its usual extensive public education process with additional information.

a. Gather Information

(1) Professional Evaluations. The professional evaluations include written surveys of all Alaska Bar Association members, all active peace and probation officers, all court employees (for the first time in 1996), and social workers, guardians ad litem (GALs) and court-appointed special advocates (CASA) (all for the first time in 1998). The Bar and Peace and Probation Officer surveys ask each respondent to evaluate the judge on ten to twenty criteria, including impartiality, integrity, administrative skills, judicial temperament, legal skills and knowledge³² and overall performance.³³ The Council encourages respondents to add comments, based on their experience with each judge.

An independent contractor conducts the Bar and Peace and Probation Officer surveys and analyzes the results. The contractor issues a written report that the Council makes available to the public. The Council does not share the narrative comments with the public, although it does share a transcribed and edited version of those comments with the individual judges.³⁴

Other professional evaluations come from court employees and social workers, GALs and CASA volunteers. The court employee survey asks employees to use a five-point scale to evaluate judges' treatment of staff and others, management abilities, diligence, integrity and overall performance. The social worker/GAL/CASA volunteer survey asks respondents to rate the judges on a five-point scale on impartiality, integrity, judicial temperament, diligence, special skills (settlement skills, sentencing skills and talent for cases involving children) and overall evaluation. Both surveys have space for confidential comments. The Council publicizes the numerical results of these two surveys.

Additional professional evaluations come from attorneys identified by the judge as having a significant case before the judge during the judge's most recent term. The Council sends each attorney a questionnaire asking about the judge's fairness, legal abilities, temperament and administrative handling of the case. These responses typically do not differ greatly from the survey findings; however, they provide the perspective of attorneys who have had substantial,

³² Peace and probation officers, social workers and court employees do not evaluate on legal skills.

³³ Appendix E contains a sample of the Bar retention survey.

³⁴ The Council shares the comments with the judges to help them improve their performance. The comments are edited to remove references that might identify the respondent.

recent experience with the judge. The Council shares the transcribed, edited comments from the survey with the judge.

(2) Independent Investigation. Council staff review public records, including conflict of interest statements filed annually with the Alaska Public Offices Commission and separate forms filed with the court system, court case files and public files of the Alaska Commission on Judicial Conduct. In addition, Council staff investigate the number of peremptory challenges filed against a judge and the number of reversals on appeal. Staff analyze this data in the context of the judge's caseload or court location, and in comparison to other similarly situated judges.

(3) Public Input. The Council encourages input from the public through public hearings and juror surveys. The Council has been surveying jurors since 1990 (the Council had not surveyed jurors since 1978). Experience in 1976 and 1978 and since 1990 shows that jurors rate judges very positively. The Council also has conducted statewide teleconference public hearings since 1990 on all the judges standing for retention.³⁵ Public hearings, unlike juror surveys, tend to attract persons who are less satisfied with judicial decisions. Periodically during a judge's term, litigants or others may contact the Council with concerns or comments about judicial performance. These documents constitute a third source of public input. Taken together, they provide the Council with a range of public perspectives.

(4) Information Supplied by Judge. The Council also relies on a short questionnaire submitted by the judge describing the types of cases handled during the previous term, any involvement in legal or disciplinary matters, and health problems that could affect job performance. Finally, any judge may request an interview with the Judicial Council. The Council, in turn, may ask judges to speak with the Council members during the final stages of the evaluation process, to respond to concerns raised by survey respondents or citizens.

b. Vote and Publicize Information/Recommendations

About four to six months before the retention election, the Council members meet to review the performance evaluation information and to interview any judges for whom it has questions. It is the Council's policy to invite to an interview any judge whose performance review has revealed serious concerns. These interviews are held in executive session, as are Council members' discussion of the evaluation information. However, Council members publicly vote their recommendations on whether each judge should be retained in office.

Council staff then publicize the evaluation information and the Council's recommendations. A summary of the Council's evaluation information and its recommendation is printed in the Official Election Pamphlet sent by the Lieutenant Governor to every household in the state with a registered voter. The Council also publishes the recommendations and non-confidential information on its website.

³⁵ In some prior years the council conducted more limited public hearings.

Occasionally, a group or individual campaigns against a judge whom the Council has found qualified. In that case, the Council may, and always has, actively supported the incumbent's candidacy. Conversely, the Council has actively opposed the candidacy of the few incumbents it has found unqualified.

For the most part, campaigns in Alaska have been mounted shortly before the election date. Groups have waged only two substantial campaigns since 1984 (against a supreme court justice in 1988 and a superior court judge in 1998). Both were retained, although the supreme court justice received a yes vote about 5% lower than he otherwise probably would have received. In other years since 1984, groups and individuals have conducted grass roots campaigns against some trial court judges, with little effect on voters' actions.³⁶

³⁶ In 1964, the Bar actively and successfully campaigned against the retention of Justice Harry Arend as part of an effort to politically limit the supreme court's authority over Bar activities. He was not retained. In 1982, the two district court judges who the Council had recommended not be retained were not retained.

Chapter 3

Introduction to the Data

This chapter describes the data sets on which the discussion and analysis in subsequent chapters is based.³⁷ Understanding the data sets is particularly important because limitations of the data significantly restricted many statistical conclusions. Most of the limitations resulted from the size of the data sets; however other important factors also limited the conclusions that can be drawn from this study. These included the lack of data about significant aspects of the selection and retention process (*e.g.*, interview outcome for selection, factors in the governor's decision to appoint) and the structure of the databases.

This project created three main data sets, all containing information about judicial applicants and judges from 1984 through 1998. The first, the selection data set, consists of numerous fields about judicial applicants. The second data set, the retention data set, consists of data about judges each time they were up for a retention evaluation and vote. The third data set, the selection/retention data set, combines selection and retention data for judges who served long enough to be evaluated for a retention election, and who had selection application information available during the 1984 through 1998 study term.

The data was gathered, for the most part, from existing Council materials compiled for each judicial selection or retention evaluation. Staff designed the variables after consultation with the project's Advisory Committee.³⁸ Data was entered by the Council's research associate into a Microsoft Access database designed for the project, and was analyzed using SPSS³⁹ statistical software. The primary analysis used cross-tabulations to determine the statistical significance of relationships among independent and dependent variables. Additional analysis compared mean scores among different groups of applicants. Efforts to use other forms of analysis (*e.g.*, multiple regression, multiple classification analysis and similar programs) did not produce useful results because of the small amount of data available, and the structure of the data.

A. The Selection Data Set

The selection data set includes data from 501 applications for judicial positions from 1984 to 1998. The 501 applications were submitted by 303 separate individuals (some applicants applied

³⁷ The data sets are described in more detail in the methodology section at Appendix A.

³⁸ See Appendix B, Advisory Committee members.

³⁹ Statistical Package for the Social Sciences for Personal Computer.

for more than one position).⁴⁰ This data set includes almost 200 variables, many of which were bar survey results. Data was available for most, but not all, variables for each application, primarily because the data collected has changed over the years.

The selection data set also includes two subsets of data: the first for applicants nominated by the Judicial Council and the second for applicants appointed by the Governor. The nominees subset includes 194 nominations for 60 judicial positions.⁴¹ About 39% of applicants were nominated.⁴² The appointees subset includes 59 appointments.⁴³

The selection data set lent itself to at least three analytical tests. First, the applicants' characteristics such as age, years of practice, education and work history were cross-tabulated against the nomination and appointment decisions. This analysis suggested some findings about factors that influenced nomination and appointment. Second, the personal characteristics variables were examined for differences among appointees to the district, superior and appellate positions. Third, some of these variables were cross-tabulated against the "overall performance" rating on the selection Bar survey. These analyses suggested the findings reported in later chapters, although the small number of records, especially in the nominee and appointee subsets, limited the certainty with which conclusions could be drawn.

Finally, in some instances, applicants' characteristics could be compared to those reported for the general bar membership in the 1989 ALASKA BAR MEMBERSHIP SURVEY.⁴⁴ Where possible, applicants were compared to the general Bar membership.

B. The Retention Data Set

The retention data set includes data from 141 retention evaluations for 80 judges, many of whom stood for two (and occasionally more) retention elections during the period covered by this review. The data set includes information in about 38 variables. About half of those contain

⁴⁰ Just under half of the applicants in this database had applied more than once for a state court judgeship. About 8% had applied more than three times.

⁴¹ Note that a few individuals' names appear more than once in this data set because they were nominated to more than one position.

⁴² Six percent of applicants withdrew at some point before the nomination vote.

⁴³ Five individuals' names appear twice in this data set because they were appointed to more than one position during the fourteen years covered by this report. In addition, the Council conducted the selection process in 1996 for a Valdez district court vacancy, but found no qualified nominees and did not send any names to the governor. The Council re-advertised the position later and did find two nominees to send to the governor. As a result, the data set has one more position than appointment.

⁴⁴ The study was a joint effort of the Alaska Bar Association, the Alaska Court System and the Alaska Judicial Council, with the cooperation of the Juneau and Tanana Valley Bar Associations. See <http://www.ajc.state.ak.us/Reports/barmem.pdf>. The study relied on a written survey mailed to all 1,953 attorneys in Alaska. The survey asked about respondents' personal characteristics, career profiles, economic and productivity measures, participation in Bar Association activities, whether they had applied for a judgeship, gender differences and other professional information. The response rate for this survey was 55.5%.

information about evaluation survey scores from Bar members and Peace and Probation officers. The other half focus largely on information about judges' caseloads, per cent of administrative work, average number of trials, judicial district of the judge's court and percentage of yes votes cast in each retention. Some data was not available for five judges who retired before the Judicial Council made its recommendations in the retention election.

The small size of the data set, biases particular to the percentages of yes votes cast in each retention election and the number of variables available for analysis limited the analysis that could show how the judges' performance was related to other factors. Even the variables that showed statistically significant relationships with the performance evaluation scores typically had too little information to permit reliance on the findings. The outcomes of the analysis are useful primarily to describe the characteristics of judges, the performance evaluation process and the relationship (or lack of it) between retention evaluations and voting patterns.

C. The Selection/Retention Data Set

Forty-one judges were appointed after 1983 and were evaluated for a retention election. The third data set includes the selection information available for these judges and the judges' most recent retention evaluation data. This data set, although too small for more than a very limited statistical analysis, permitted some description of the characteristics of judges who were rated in the retention Bar survey.

Chapter 4

Judicial Evaluation and Retention

This chapter describes the data gathered in the retention evaluation and election process, and attempts to determine if any of the variables can be correlated with improved judicial performance. However, the lack of data limits this analysis.⁴⁵

A. Retention Vote

Judges in Alaska periodically stand for retention. Trial court judges appear on the ballot in the judicial district in which they work. Appellate judges appear on the statewide ballot. This study hypothesized that the percentage of “yes” votes judges received in retention elections could be used as a measure of judicial performance. This section analyzes retention voting patterns in Alaska from 1984 –1998.

1. Vote by Year

Table 1 summarizes the number of judges standing for retention from 1984 through 1988. It also presents the overall “yes” popular vote total from each election. The voters retained all judges in office during this time period.⁴⁶

Table 1: Vote Percentages by Year

Year	# Judges	Yes Vote %
1984	22	69%
1986	18	71%
1988	17	69%
1990	18	68%
1992	15	64%
1994	25	66%
1996	13	69%
1998	13	69%

Retention yes vote percentages may reflect voter choices based on issues other than the quality of judicial performance. Researchers have used them to analyze voting patterns by state, by level

⁴⁵ Refer to Chapter 3 discussing the limitations of the retention dataset for more discussion on this topic.

⁴⁶ The Judicial Council recommended against only one judge in this time period.

of court, and by judge characteristics.⁴⁷ Sometimes changes in yes vote percentages arguably resulted from the influence of other ballot issues on voting patterns, or on overall perceptions of the electorate.⁴⁸ In other years, although trends could be teased out of the data, little solid evidence supported any particular explanation of the trends.

Most judges received from 64% to 67% yes votes (31% of the judges), or from 68% to 72% yes votes (38% of the judges). Equal percentages (15% each) received 58% to 63% yes votes, and 73% or more yes votes.

2. Vote by Judicial District⁴⁹

A slight majority (53%) of the judges included in retention data set came from the Third Judicial District. Smaller percentages sat in the First (15%) and Fourth (18%) Judicial Districts. Five percent came from the Second Judicial District and ten percent were appellate judges.

The analysis of yes vote percentages examined judicial districts as well as year, since judges in some judicial districts consistently seemed to receive higher yes vote totals than those in other districts. Table 2 shows that the two variables were significantly related.

Table 2: Average Yes Vote Percent by Judicial District⁵⁰

Judicial District	Yes Vote Percent
First	73% (N=20)
Second	73% (N=7)
Third	66% (N=72)
Fourth	70% (N=24)
Appellate	66% (N=13)
All	68% (N=136)

⁴⁷ Hall and Aspin, "Distance from the Bench and Retention Voting Behavior: A Comparison of Trial Court and Appellate Court Retention Elections," *The Justice System Journal*, Vol.15, Number 3 (1992). Hall and Aspin studied retention elections in ten states. They found that although Alaska had the highest percentage of voters voting on judges, it had the second lowest average yes vote percentages for trial and appellate courts. (The average yes vote percentage for trial courts from 1964 through 1988 was 69.7%; for appellate courts in the same period it was 68.9%). Most other states had averages in the 73% to 78% range.

⁴⁸ For example, an official in Colorado said the state had tracked the influence of trials of national interest (e.g., O.J. Simpson, Oklahoma City bombing) and found that yes vote percentages tended to increase or decrease with the public's perception of the effectiveness of the justice system. (Advisory Committee meeting, 2/24/99). American Judicature Society staff also noted that 1990 and 1992 were low years for yes vote percentages throughout the United States. Observers believe that the change may have been due to less-favorable economic conditions during those years. Finally, the Colorado official said he believed that increased publicity improved yes vote percentages in 1998 for Colorado judges.

⁴⁹ Judicial district boundaries established at statehood divided the state into segments. Roughly, the First Judicial District covers Southeast Alaska (also known as the Panhandle), the Second Judicial District covers the North Slope and northwest Alaska, the Third Judicial District includes Anchorage, the Mat-Su Valley, Kodiak and the Aleutian Chain, and the Fourth Judicial District includes Fairbanks and the Yukon-Kuskokwim Rivers drainages.

⁵⁰ There was no overall rating for five appellate judges standing for retention in 1984 and 1986.

The percentages of yes votes were highest in the two districts with the smallest populations, the First and Second Districts. Percentages of yes votes were lower in the districts with the largest cities, the Third District with Anchorage and the Fourth with Fairbanks. In the First and Second Districts, no judge received less than 68% yes votes, with most getting over 70% yes votes. In the Fourth Judicial District, the yes vote percentages have dipped to 64%, but tended to be in the 68% to 72% range. By contrast, a number of judges in the Third Judicial District received yes vote percentages ranging as low as 58% (since 1984; lower before that) with only two going above 72%.

These differences among districts persisted over the years despite variations in the survey scores received by individual judges and larger fluctuations that may have been attributable to broader issues in elections. The variation suggests that judges who lived in districts in which voters had more opportunity to know them personally benefited by greater voter approval.

The substantial variations by Judicial District and the more limited range within each District (except the Third) for the percentage of yes votes presented problems for data analysis. The variations were large enough to conclude that yes vote percentage was not appropriate for use as a dependent variable in the analysis.⁵¹ Thus, percentage of yes votes could not be used as a meaningful measure of judicial performance and could not be compared to other data in this study. Instead, most of the retention analysis used survey scores from attorneys and peace and probation officers as measures of judicial performance.

B. Level of Court

Nearly half (48%) of the retention elections in the data set were for judges who served in the superior court and 43% for judges who sat in the district court. About 10% (N=13) were for appellate judges. Level of court was significantly related to judicial district, with a majority (66%) of the retention elections for district court judges occurring in the Third Judicial District, and a smaller majority of the retention elections for superior court judges (54%) also occurring in the Third Judicial District.

Table 3: Number of Judges Who Stood for Retention by Court Level and Year

Year	District Ct.	Superior Ct	Appellate	Total
1984	6	12	4	22
1986	11	6	1	18
1988	6	9	2	17
1990	9	8	1	18
1992	6	7	2	15
1994	8	15	2	25
1996	7	6	0	13
1998	8	4	1	13
Total	61	67	13	141

⁵¹ A larger data set might be more useful for analysis.

Level of court did not seem to be significantly related to judicial performance, at least as measured by survey scores on overall performance from the peace and probation officers and the bar association members.⁵² The peace and probation officers' scores did come near to positive results on the statistical significance tests.⁵³ They tended to favor district court judges with overall performance scores of "excellent" or "good." Superior court judges received somewhat lower percentages of excellent ratings and higher percentages of acceptable ratings from peace and probation officers.

C. Retention Bar Survey

The Judicial Council asks attorneys to evaluate judges standing for retention elections by completing a sixteen-question⁵⁴ survey. The survey is tabulated and analyzed by an independent contractor. The Council uses the survey information in its assessment of each judge's performance and publishes the survey results, along with its recommendations, throughout the state. The reported scores were summarized into six categories, including legal ability, integrity, impartiality, temperament, diligence and overall performance.

This section examines the scores attorneys gave to judges on these retention surveys. Taken as a whole, the scores showed that attorneys rated judges' performances very highly. Only two judges received below acceptable ratings on their overall performance, and most (79%) received good or excellent ratings on overall performance.

1. Distribution of Scores

When Bar scores were analyzed by their distribution among the levels of ratings possible (i.e., deficient through excellent) they showed some patterns of evaluations, but none were statistically significant. Attorneys gave judges in the more urban districts (Anchorage and Fairbanks, third and fourth districts respectively) slightly more "acceptable" ratings than in the other two districts. Judges in the second and fourth districts received the fewest "excellent" ratings, and judges in the first received the most. Table 4 shows attorneys' ratings on the overall performance variable of the retention Bar survey for judges in all four judicial districts.

⁵² Recall that yes vote percentage was not appropriate to use as a measure of judicial performance.

⁵³ The measure used was chi square with a significance level of .05 or better. In this instance the chi-squared figure for the peace and probation officers' evaluations was .087.

⁵⁴ The number of evaluation and demographic variables included on the survey has changed over the years; in 1998, the survey included 5 demographic variables and 16 evaluative variables, along with information about the amount and type of attorneys' experience with each of the judges evaluated. Every active member of the Bar Association was invited to evaluate each judge in the state with whom the attorney had some degree of experience.

Table 4: Distribution of Retention Bar Ratings by Judicial District

District	2 Below Acceptable	3 Acceptable	4 Good	5 Excellent	Total
First	0% (N=0)	10% (N=2)	50% (N=10)	40% (N=8)	100% (N=20)
Second	0% (N=0)	14% (N=1)	71% (N=5)	14% (N=1)	100% (N=7)
Third	1% (N=1)	24% (N=18)	42% (N=32)	33% (N=25)	100% (N=76)
Fourth	4% (N=1)	24% (N=6)	48% (N=12)	24% (N=6)	100% (N=25)
Appellate	0% (N=0)	0% (N=0)	38% (N=3)	63% (N=5)	100% (N=8)
All Judges	2% (N=2)	20% (N=27)	46% (N=62)	33% (N=45)	100% (N=136)

2. Analysis of Mean Scores

Table 5 shows that members of the Bar evaluated appellate judges as a group at higher levels than trial court judges. The scores also indicate that the Bar saw district court judges as performing at their positions about as well as superior court judges performed at theirs.⁵⁵ The analysis by mean scores and court level re-affirms the previous finding that most judges received good or excellent performance evaluations from the Bar.

Table 5: Retention Bar Ratings by Survey Categories and Court Level

Rating Category	District Ct	Superior Ct	Appellate	All
Legal Ability	3.7	3.7	4.0	3.7
Impartiality	3.9	3.8	4.0	3.8
Integrity	4.0	4.0	4.2	4.0
Temperament	3.9	3.8	4.0	3.9
Diligence	4.3	4.3	4.5	4.3
Overall Performance	3.8	3.7	4.0	3.8

Respondents to the bar survey gave judges overall high marks on integrity and diligence and somewhat lower scores on legal ability. District court judges scored slightly better on impartiality and temperament than did superior court judges, but the differences were not important. The scores did not indicate any areas of systemic weakness in the judiciary.

3. Relationship Between Bar Survey Mean Scores, Judicial District, and Yes Vote Percentages

A question raised by this study is whether the Bar's evaluation of judges was related to the percentage of yes votes given by voters in the retention election.⁵⁶ Table 6 divides the judges' mean overall performance scores into three groups: lower than 3.5, 3.5 - 3.9, and 4.0 or over. For

⁵⁵ The few differences between superior and district court judges in average scores were not important.

⁵⁶ Recall that the Judicial Council publicizes the attorney evaluation information available to the voters, as well as most of the other evaluation information completed.

each judicial district, the table shows the total number of judges standing for retention in that district and the average percentage of yes votes in that district. In the first and third districts, a positive relationship appeared. Judges with lower evaluations on the overall performance variable received a lower percentage of yes votes. The relationship did not hold true for either the second or fourth districts. The table also emphasizes the relationship between judicial district and yes vote percentages discussed earlier. Again, the first and second districts had higher yes vote percentages, the fourth was next, and the third was lowest.

Table 6: Yes Vote Percent by Judicial District and Bar Survey Overall Rating⁵⁷

Judicial District	<3.5: Acceptable or Lower	3.5 – 3.9 Good	4.0+ Excellent	All
First	71% (N=2)	72% (N=10)	74% (N=8)	73% (N=20)
Second	76% (N=1)	73% (N=5)	71% (N=1)	73% (N=7)
Third	64% (N=19)	66% (N=32)	67% (N=25)	66% (N=72)
Fourth	70% (N=7)	69% (N=12)	71% (N=6)	70% (N=24)
Appellate	--- (N=0)	66% (N=3)	63% (N=5)	66% (N=13)
All	66% (N=25)	68% (N=62)	69% (N=44)	68% (N=136)

4. Relationship to Retention Year

One study hypothesis was that survey scores might vary by year, as a result of influences unrelated to the performance of the judges standing in that year. The data did not confirm the hypothesis, showing no statistically significant results from either attorneys or peace and probation officers. Some patterns of interest did appear.

Attorneys rated some judges below acceptable in 1984 and 1988 on overall performance, but not in any subsequent year. With the exception of 1994, the highest percentages of judges rated acceptable by attorneys also occurred in the 1980s (in 1984 and 1986). A larger than average percentage also were rated acceptable in 1994. The highest percentages of excellent ratings came in 1988, 1992, and 1996. Larger percentages of good ratings occurred in 1990 and 1998. The clustering of lower than average scores in the mid-1980s, with fewer since that time may suggest that changes in the judges standing for retention resulted in better scores overall. However, because the finding was not statistically significant, little weight can be attached to it.

5. Survey Scores as a Dependent Variable

The most important overall finding about the survey scores was the uniformly high ratings given by attorneys and peace officers to most judges. Both bar members and peace and probation officers independently gave judges ratings of “good” or “excellent” 75% or more of the time on overall performance. Bar members evaluated 20% of the judges as “acceptable” and about 1% (N=2) as below acceptable on the overall performance item. Peace and probation officers were a

⁵⁷ There was no overall performance rating on the survey for the five appellate judges who stood for retention in 1984 and 1986.

little more likely that attorneys to evaluate judges as “below acceptable” (9%), and a little less likely to evaluate them as “acceptable” (16%). Appellate judges, evaluated only by Bar members, received only “good” or “excellent” ratings. Although the evaluating group may have made a slight difference in survey scores, none of the findings were statistically significant.

These relatively uniform high survey scores did suggest a finding. The Council's selection processes became more formal and objective in the 1970s and 1980s, responding in part to the increasing size of the Bar and in part to an increasing need for a knowledgeable and responsive judiciary. The high survey scores suggest that improvements in selection processes increased the professionalism and reputation of Alaska's judiciary.

Analysis of judges' overall performance scores by retention year suggested that ratings have improved over time. In the years between 1984 and 1990, judges received slightly higher percentages of below acceptable and acceptable scores. In the years since 1992, judges received slightly higher percentages of excellent scores and lower percentages of below acceptable or acceptable scores. Although the finding was not statistically significant, one explanation is that the quality of Alaska's judges, while generally high to start with, improved over the years.⁵⁸

The bar and peace and probation officer survey scores appeared to be more useful as a dependent variable than the yes vote percentages because the scores did not appear to vary by judicial district. On the other hand, the tendency of the Bar and peace and probation officers both to give high scores (good or excellent) to most judges limited their usefulness somewhat. The uniformity of the scores does not provide enough ways to distinguish among judges to make them most helpful in analysis of other variables.

6. Retired Judges

Five judges due to stand for retention retired after the retention Bar survey was conducted but still early enough not to be included on the ballot. These five judges averaged 3.2 on the overall performance item on the retention Bar survey, compared to 3.8 for the remaining judges who actually stood for retention. While these numbers were not large, they did suggest a finding. Lower-than-average (but still acceptable) performance evaluations may in some instances have been a factor in a judge's decision to retire instead of standing for retention. Judges may have based their decisions at least in part on attorneys' and peace and probation officers' opinions that they were no longer performing as well as others on the bench or were performing merely at an acceptable level.

⁵⁸ Although occasional low scores in some areas might indicate a need for improvement on the part of a specific judge, generally the scores showed strong satisfaction with judicial performance.

D. Peace Officer Survey

Peace and probation officers generally gave judges high evaluations, similar to those from the Bar members. They filled out similar survey forms, except they did not rate the judges' legal ability,⁵⁹ and they did not evaluate appellate judges. Their results, like those from the Bar, were summarized for the Council by an independent contractor, and reported throughout the state.

1. Distribution of Scores

Judges in the third judicial district were a little less likely than those in other districts to receive "below acceptable" evaluations from peace and probation officers. They also were less likely than judges in the first and fourth districts to receive "acceptable" evaluations from peace and probation officers (they were about the same as judges in the second district), and were most likely to have an "excellent" rating from peace and probation officers. Peace and probation officers in the second district did not give any judges "excellent" ratings, but did give 71% of those evaluated a "good" rating.

2. Analysis of Mean Scores by Level of Court

Table 7 shows retention performance ratings by survey categories and court level for the peace and probation officers. They rated district court judges slightly, but not significantly, higher than superior court judges in every category. Peace and probation officers' mean scores for all judges were slightly lower than the bar ratings, but still in the good range.

Table 7: Retention PO Ratings by Survey Categories and Court Level

Rating Category	District Ct.	Superior Ct	All
Impartiality	3.8	3.7	3.7
Integrity	3.9	3.8	3.9
Temperance	3.8	3.7	3.8
Diligence	3.9	3.8	3.8
Overall Performance	3.8	3.6	3.7

3. Relationship Between Peace and Probation Officer Survey Mean Scores, Judicial District, and Yes Vote Percentages

Table 8 gives the yes vote percentages averaged by judicial district and grouped by overall performance scores of less than 3.5, 3.5 to 3.9, and 4.0 or higher. The table shows that in the first, third and fourth districts, a lower evaluation from the peace and probation officers appeared to be related (although not statistically significantly) to slightly lower average percentages of yes votes; and a higher evaluation (3.5 or better) appeared to be related to slightly higher percentages of yes votes. The trend did not hold true for the second judicial district.

⁵⁹ They used a total of thirteen items to evaluate judicial performance.

Table 8: Yes Vote Percent by Judicial District and PO Survey Overall Rating

Judicial District	<3.5: Acceptable or lower	3.5 – 3.9 Good	4.0+ Excellent	All
First	72% (N=6)	73% (N=7)	74% (N=7)	73% (N=20)
Second	74% (N=2)	73% (N=5)	--- (N=0)	73% (N=7)
Third	64% (N=16)	67% (N=26)	67% (N=30)	66% (N=72)
Fourth	68% (N=6)	70% (N=10)	70% (N=8)	70% (N=24)
Appellate ⁶⁰				66% (N=13)
All	67% (N=30)	69% (N=48)	68% (N=45)	68% (N=136)

4. Relationship to Retention Year

The pattern of overall performance scores given by Peace and Probation officers resembles that found for Bar members. Again, although the finding is not statistically significant, the pattern is interesting. For Peace and Probation officers, the largest number of below acceptable and acceptable ratings were given in 1984 and 1988. In those years, and in 1986, the percentages of excellent scores were low. In 1994, 1996 and 1998, the percentage of excellent scores rose to well above average. In 1996 and 1998, Peace and Probation officers did not, as a group, evaluate any judge as below acceptable or deficient on overall performance.

E. Caseload

The Council gathered information about judges' caseloads during the retention evaluation process. This information included the percentage of criminal versus civil cases, the number of jury trials, and the percentage of time spent handling administrative matters.

1. Types of Cases

The characterization of caseload as civil or criminal came from the judges' completion of a brief questionnaire at the beginning of the retention evaluation process. Many judges (63%) reported that 40% or less of their caseload was civil cases. Twenty-five percent of the judges said that civil cases constituted 20% or less of their caseload and 36% said they had between 21% and 40% civil cases.⁶¹

In a separate, self-reported estimate on the judges' questionnaire, judges looked at the percentage of their caseload that was criminal cases. About half (51%) said that they had fewer than 60%

⁶⁰ Appellate judges are not evaluated by peace officers.

⁶¹ No data about the numbers of cases carried by individual judges during their terms was available. Generally, caseload numbers vary considerably by location. Because different courts have different types of support staff (e.g., masters, magistrates) and travel requirements, it was not possible to use the data available for each court site to calculate average caseloads.

criminal cases in their caseload mixes. Eleven percent said that they did mostly criminal cases (81% to 100% of the caseload).

Analysis of the data showed that for the most part, type of caseload was not statistically significant to how peace and probation officers assessed judicial performance, as measured by the overall performance scores on the surveys. A pattern did emerge, with judges having higher percentages of criminal cases tending to receive lower survey scores. Judges with higher criminal caseloads and lower civil caseloads were slightly, but not significantly, more likely to receive below acceptable scores from the peace and probation officers. Judges with moderate civil caseloads (21% to 60%) had the best chance of an excellent rating from peace and probation officers.

The trend reached statistical significance in the analysis of attorneys' evaluations, which differed slightly from the peace and probation officers. For attorneys, a higher percentage of criminal cases was significantly associated with lower scores on the bar surveys, and a lower percentage of criminal cases was associated with higher scores on the survey. Although the analysis did not show that a high percentage of civil cases (which was a separate self-report by judges) was statistically significantly associated with higher bar survey scores, this was the trend in that tabulation. Judges who reported higher civil caseloads also apparently were more likely to receive higher survey scores. One possible explanation for these apparent relationships between criminal caseloads and survey scores might be that criminal cases may have more polarized outcomes than civil cases, and thus survey respondents may have felt more strongly about the judges handling these cases than they did about judges handling primarily civil cases.

2. Number of Trials

Judges self-reported the number of trials over which they had presided in the past year. A few (primarily appellate judges) said they had not presided over any. About one-third had handled from one to twenty-four trials, and thirty percent had conducted 25 to 49 trials. The remaining judges had presided over 50 to one hundred or more trials in the past year.

The average number of trials handled by a judge did not affect survey scores from either group to any degree of statistical significance. Attorneys and peace and probation officers showed slightly different patterns of evaluation, but both groups evaluated judges with the fewest trials as slightly better than judges with other numbers. The exception to this trend was that peace and probation officers were most likely to rate judges who reported that they handled over 100 trials in the past year as good or excellent. Attorneys also rated this group well, but not quite as highly as those with the lowest number of trials.

3. Percent of Administrative Work

Judges also self-reported the amount of time that they spent on administrative work. About 61% said that they spent between 1% and 10% of their time in this way, with the remainder evenly split between no administrative work and over 10% administrative work.

This factor appeared to be more closely related to attorneys' evaluations of judicial performance than to peace and probation officers' evaluations, although neither analysis showed statistical significance.⁶² Excellent ratings from both groups were most likely to go to judges with 1% to 10% administrative work, while those with over 10% tended to receive ratings of acceptable more frequently. Peace and probation officers also were more likely to give judges in the 1% to 10% group below acceptable ratings.

F. Other Surveys

The Council conducted several other performance evaluation surveys in at least a few of the retention evaluations covered by this project. These included juror surveys, court employee surveys and a social worker survey.

1. Juror Survey

Jurors awarded uniformly high ratings to judges before whom they served. Overall ratings for individual judges by jurors, conducted in retention evaluations in 1996 and 1998,⁶³ ranged from a high of 4.9 (on a 5-point scale) to a low of 4.3. The average rating was 4.7. The response rate of jurors averaged 42%.⁶⁴ There was no correlation between the juror survey results and the other surveys conducted for each evaluation.

2. Court Employee Survey

Court employees were asked to rate judges in 1996 and 1998. The overall rating had a wider variation than the juror ratings. The lowest rating for a judge was 3.5 and the highest was 4.8. The average rating was 4.1. The response rate of court employees was 39% for both evaluations. The court employee scores on overall performance tended to be about the same as the attorney survey scores or slightly higher, but not as high as the juror survey scores.

⁶² The chi-squared for attorneys approached significance, at .084; the peace and probation officers' measure was not at all significant (.202).

⁶³ A juror survey also was conducted in 1994, however it used a different evaluation scale and the data was not included in this study.

⁶⁴ The response rate improved from 39% in 1996 to 44% in 1998, probably because the Council began sending surveys out very soon after the trial was over rather than months or even a year later.

3. Social Worker Survey

The Council surveyed social workers, guardians ad litem and CASA volunteers for the first time in the 1998 retention evaluation. However, the response rate to the survey was only 31%, with only an average of 3.9 respondents rating each judge. The average overall rating for all of the judges was 4.4.

G. Peremptory Challenges

Alaska permits each party in a litigation case one opportunity to reject the assigned judge (known as a peremptory challenge).⁶⁵ Most judges received few peremptory challenges.⁶⁶ Periodically, a few judges were challenged repeatedly by attorneys or parties, often because they were perceived as unfair or as unsympathetic to a certain type of case or defendant. The Council compiled data from the court system's records on the number, type (civil or criminal case) and timing of peremptory challenges for each judge during the judge's most recent term. For this analysis, peremptory challenges were characterized as "no problem compared to similar judges," problems of "limited significance," and a "significant number of challenges in repeated years."

A near majority of the judges (49%) had no peremptory challenge problem when compared to judges with similar caseloads. About one-third (31%) had problems of limited significance and 12% had significant problems with peremptory challenges in one or more years of their terms.⁶⁷

Data from the Bar survey scores was too sparse to be considered valid, but did show a statistically significant difference among judges' scores correlated to peremptory challenges. Those judges with significant challenges in repeated years were significantly more likely to receive acceptable ratings and less likely to receive good or excellent ratings. Those who had limited problems were more likely than average to get good ratings and significantly less likely to get excellent evaluations. Those who had no problems when compared to similar judges had the best chance of getting an excellent rating.⁶⁸

⁶⁵ AS 22.20.022

⁶⁶ Some types of cases result in more frequent peremptory challenges both in absolute numbers and in percentages of a judge's caseload than do others. The best example is family law cases, in which attorneys or parties file peremptory challenges much more frequently than in other types of cases.

Data on peremptory challenges was missing for about 35% of the judges who stood in earlier years when the Council did not compile this information.

⁶⁷ "Limited problems" when compared to judges with similar caseloads usually meant that judges had three to four times as many challenges as the less frequently challenged judges in that court and judicial district for that year. "Significant" problems usually meant that the judge had ten or more times as many challenges as the less-frequently challenged judges in that court and district. The percentages do not add to 100% because appellate judges who cannot be peremptorily challenged constituted 6% of the database.

⁶⁸ This cross-tabulation also had a moderately good eta squared statistic, indicating its ability to explain some of the variation in survey scores for attorneys evaluating judges in retention elections.

Peace and probation officers seemed less aware of peremptory challenge issues, or may have viewed them as indicative of positive traits. Although the results of the analysis were not statistically significant, officers were more likely to rate judges with some or significant numbers of peremptory challenges as acceptable or good. Judges who had no challenges did have a slightly better chance of receiving an excellent rating from peace and probation officers.

H. Interview

The Judicial Council occasionally interviews judges standing for retention, usually not more than two or three judges in any given retention evaluation. Eighteen judges were known to have been interviewed between 1984 and 1998 (no data was available for 1986), an average of just over two judges per retention evaluation cycle. Judges may request an interview, or the Council may wish to speak with the judge about information compiled in the evaluation process before making its recommendation. The interviews typically last about thirty to sixty minutes. With one exception during this study period, the Council has recommended every judge it interviewed for retention. The study hypothesized that an interview with a judge might correlate with survey scores. Although the data set was too small for a statistical analysis, the data showed that the average overall performance score for these eighteen judges was 3.5, as compared to an average score of 3.9 for all retention evaluations in the database.

I. Judicial Education

The Alaska Court System has set a specific program of education for each judge. All judges attend a three-week general jurisdiction course at the National Judicial College in Reno within one year of beginning their work as a judge. The course covers basic information about judging, including evidence, case law, writing and a variety of other topics. Judges then may choose to attend additional training in Reno for one-week (or two consecutive weeks) sessions every four years. The administrative director of the courts may approve administrative leave for this training, or for other approved training. Judges may have up to five days of administrative leave in non-Judicial College years for education, but must pay their own expenses.

Data kept by the court system indicate that between 1982 and 1998, judges took courses in several areas, with the greatest concentration in evidence (30), case management (14, including managing complex cases, judicial productivity, conducting trials, and a handful of others), judicial writing (12), special courts (11, including family courts, small claims and others), computers and technology, personal skills (10, including time and stress management, ethics, decision-making, etc.), dispute resolution (6), and miscellaneous (10).

Using the data set with the 41 judges who had both selection and retention information, overall performance scores on retention were cross-tabulated against whether the judge had taken any additional classes or not. Of that particular group, only fifteen judges had taken additional education. No statistical difference in scores appeared between the judges who had taken more courses and those who had not. In the larger retention data set of 136 retention events, education or lack of it was again cross-tabulated with overall performance scores. Again, no statistical differences appeared between the group of 45 judges standing for different retentions who had

extra education and the 91 judges standing for different retentions who did not. Neither data set had enough data to make accurate estimates of statistical significance, so these findings only suggest the possible direction of future findings.

Chapter 5

Judicial Selection

This chapter describes and analyzes data about the judicial selection process. It first presents general information about selection events encompassed by this study. It then describes applicant, nominee and appointee data organized into four categories: personal characteristics, employment and experience, investigative materials, and variables based on the selection Bar survey ratings. These descriptive variables paint a picture of an average applicant, nominee and appointee, including how district and superior court appointees differ from each other and from appellate court applicants and appointees.

The chapter then, to the extent possible, analyzes the degree to which variables may have influenced the nomination and appointment decisions. Also, some of the personal characteristics variables were cross-tabulated against the applicants' scores on the overall performance item on the selection Bar survey to understand how applicant characteristics related to their peers' observations as expressed on the selection surveys. Finally, the selection/retention data set is used to examine whether any of the selection variables might influence performance as a judge. The extent to which conclusions can be drawn is of course extremely limited.

A. The Selection Process

This section presents data about the judicial selection events encompassed by this study. It discusses the level and location of judicial vacancies, general information about nominees and appointees, and appointments by governor. Variables concerning individual applicants are discussed in subsequent sections.

1. Level and Location of Vacancies

There were a total of 59 vacancies during the 15 years covered by this study. Over 90% of the vacancies were trial court seats and slightly over half were superior court seats. Of the trial court seats, about two-thirds were located in one of Alaska's three largest urban areas: Anchorage, Fairbanks and Juneau. The remaining third were located in more rural parts of the state.⁶⁹

⁶⁹ These more rural court locations include Barrow in the northernmost part of the state; Kotzebue in the Northwest Arctic region; Nome in the Bering Strait region; Bethel and Dillingham in the southwestern Bristol Bay area; Homer and Kenai on the Kenai Peninsula; Ketchikan, Sitka and Wrangell in southeast; Kodiak Island; Palmer, on the road system just north of Anchorage; and Valdez in the Prince William Sound region.

Table 9: Level and Location of Judicial Vacancies

Court Level	Anchorage	Fairbanks	Juneau	Other	# Appointments
District Court	11	5	2	5	23
Superior Court	11	5	1	14	31
Subtotal	22	10	3	19	54
Appellate Court					5
Total					59
Average / Year					3.9

Table 10 shows the mean overall performance ratings from the Bar surveys (both selection and retention) by location, for applicants, nominees, appointees and retention judges. Looking down the column for applicants, little variation by location appears. Differences by location do appear among nominee scores, appointee scores and retention judge scores.

Looking across the rows from applicant to nominee to appointee for each location, noticeable differences occur. The mean scores were higher for nominees than for applicants, in every location.⁷⁰ They also were higher for appointees in every location except Nome, in which they were the same. The differences between applicant scores and nominee scores by location were statistically significant. Some locations had a better chance of having highly rated applicants than did others. The differences by location for appointment were not statistically significant.

Table 10: Selection and Retention Bar Survey Ratings by Location of Judicial Vacancies

City	Applicant Score ⁷¹	Nominee Score	Appointee Score	Retent Score ⁷²
Anchorage	3.4 (N=221)	3.8 (N=79)	3.8 (N=22)	3.8 (N=18)
Fairbanks	3.4 (N=80)	3.8 (N=30)	3.9 (N=10)	3.9 (N=7)
Juneau	3.5 (N=20)	3.8 (N=10)	3.8 (N=3)	3.8 (N=3)
Palmer	3.5 (N=30)	3.9 (N=12)	4.0 (N=3)	4.3 (N=1)
Kenai	3.5 (N=12)	3.8 (N=5)	3.6 (N=2)	3.8 (N=1)
Ketchikan	3.4 (N=16)	3.9 (N=7)	4.3 (N=2)	4.3 (N=2)
Sitka	3.3 (N=10)	4.0 (N=2)	4.2 (N=1)	4.2 (N=1)
Wrangell ⁷³	3.4 (N=8)	3.7 (N=3)	3.8 (N=1)	3.7 (N=1)
Homer	3.2 (N=12)	3.7 (N=5)	3.8 (N=1)	3.9 (N=1)
Valdez	3.4 (N=22)	3.9 (N=8)	4.2 (N=3)	3.2 (N=1)
Kodiak	3.2 (N=8)	3.4 (N=3)	3.6 (N=1)	3.4 (N=1)
Bethel	3.2 (N=12)	3.3 (N=6)	3.8 (N=2)	3.6 (N=1)

⁷⁰ This is consistent with other findings, reported below, that survey scores correlate significantly with likelihood of nomination and appointment.

⁷¹ This column and the two that follow it set out the overall performance rating on the selection Bar survey for, respectively, applicants, nominees and appointees.

⁷² This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey, for the group of 41 judges who had both selection and retention data.

⁷³ One superior court position is assigned jointly to Wrangell and Petersburg.

City	Applicant Score ⁷¹	Nominee Score	Appointee Score	Retent Score ⁷²
Nome	3.5 (N=3)	3.7 (N=2)	3.5 (N=1)	--- (N=0)
Barrow	--- (N=0)	--- (N=0)	--- (N=0)	--- (N=0)
Kotzebue	3.5 (N=5)	3.9 (N=2)	3.7 (N=1)	3.7 (N=1)
Dillingham	3.3 (N=8)	4.1 (N=2)	3.9 (N=1)	--- (N=0)
Appellate	3.7 (N=34)	3.9 (N=18)	4.2 (N=5)	4.2 (N=2)
All	3.4 (N=491)	3.8 (N=194)	3.9 (N=59)	3.8 (N=41)

2. Chances of Nomination and Appointment

On average, nine attorneys applied for each judicial vacancy. The number of applicants ranged from two applicants each for two vacancies, to 31 applicants for three seats on the Anchorage superior court. The Judicial Council nominated an average of 3.3 applicants for each judicial vacancy. This number ranged from two nominees for each of 14 vacancies, to 13 for the three seats on Anchorage superior court.

A judicial applicant stood about a 39% chance of being nominated by the Judicial Council for a particular vacancy, but about a 12% chance of being appointed by the governor. Table 11 sets out the number of appointments made by each of Alaska's governors from 1984 through 1998.

Table 11. Appointments by Governor

Governor	Term	# Appointments
William Sheffield	1982 – 1986	18
Steve Cowper	1986 – 1990	16
Wally Hickel	1990 – 1994	14
Tony Knowles	1994 -	17

B. Personal Characteristics

This section describes personal characteristics and qualifications of judicial applicants, nominees and appointees, including age, gender, residency and education.

1. Age

The average age of judicial applicants was 43 years.⁷⁴ The average ages for nominees (43) and appointees (42) were substantially identical. These compared with the average age of the Bar as a whole, at least in 1989, of 40.⁷⁵ The average age of district court applicants was younger, with close to half (43%) younger than 40, compared to 23% of superior court applicants and no appellate court applicants.

⁷⁴ A quarter of judicial applicants were between 35-39 and another quarter were between 45-49. Only 15% of applicants were older than 49 and only 3 were older than 55. Six percent were younger than 35.

⁷⁵ BAR MEMBERSHIP SURVEY, *supra* note 44, at 3.

Table 12: Average Age of Judicial Applicants, Nominees, and Appointees

	District Ct.	Superior Ct.	Appellate	All
Applicants	42 yr. (N=205)	44 yr. (N=261)	48 yr. (N=34)	43 yr. (N=500)
Nominees	41 yr. (N=76)	43 yr. (N=100)	49 yr. (N=18)	43 yr. (N=194)
Appointees	40 yr. (N=23)	43 yr. (N=31)	47 yr. (N=5)	42 yr. (N=59)

Age was not a statistically significant factor in either the nomination or appointment decision, or in the retention Bar survey scores of appointees. Younger applicants (under 40) had about the same chance of being nominated and appointed as older applicants, and scored comparably on retention Bar surveys.

Table 13: Nomination, Appointment and Retention Bar Survey by Age⁷⁶

Age	# Applications (%)	% Nominated	% Appointed	Retent. Score ⁷⁷
Under 40	154 31%	34% (N=53)	11% (N=17)	3.8 (N=11)
40 or Older	346 69%	41% (N=141)	12% (N=42)	3.9 (N=30)
All	500 100%	39% (N=194)	12% (N=59)	3.8 (N=41)

2. Gender

Almost four-fifths of applicants (79%), nominees (77%) and appointees (78%) were male. This is somewhat higher than the percentage of male attorneys in the Bar Association, which was 75% in 1989.⁷⁸ However, at least in 1989, male attorneys had significantly more years of experience than female attorneys did,⁷⁹ and years of experience (practice) made a significant difference in the likelihood of nomination.

⁷⁶ This table and numerous tables like it are used in this report to present a picture of the “success rate” of various types of applicants. The first column sets out the applicant groups included in the particular table, in this case age groups. The second column includes the number of applicants in each particular group and, in parentheses, the percentage of this group of all applicants. The third column, “% nominated,” provides the percentage of applicants of that particular group that is nominated. It also includes in parentheses the number of applicants of the group who are nominated. Similarly, the fourth column, “% appointed,” provides the percentage of applicants of that particular group that is appointed. It also includes in parentheses the number of applicants of the group who are nominated. Finally, the fifth column, “Retent Score,” taken from the selection/retention data set, represents the mean rating on the overall performance item in the Bar retention survey.

⁷⁷ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

⁷⁸ Bar Membership Survey, *supra* note 44, at Appendix I-4. The Alaska Bar Association reported that about 71% of attorneys were male in 1998.

⁷⁹ Bar Membership Survey, *supra* note 44, at 21.

Gender was not a statistically significant factor in either the nomination or appointment decisions or in the retention Bar survey scores of appointees. Female applicants had about the same chance of being nominated and appointed as males, and scored comparably on retention Bar surveys.

Table 14: Nomination, Appointment and Retention Bar Survey by Gender

Gender	# Applications (%)		% Nominated		% Appointed		Retent. Score ⁸⁰	
Female	103	21%	43%	(N=44)	13%	(N=13)	3.9	(N=11)
Male	398	79%	38%	(N=150)	12%	(N=46)	3.8	(N=30)
All	501	100%	39%	(N=194)	12%	(N=59)	3.8	(N=41)

3. Ethnicity

Ninety-seven percent of applicants were Caucasian. Ethnic minorities were nominated at a slightly higher rate than Caucasians, 5% of both nominees and appointees. The higher rate was statistically significant for nomination. A further analysis showed that ethnicity did not correlate with survey scores, suggesting that ethnicity may have played an independent role in the nomination decision.⁸¹ Ethnicity was not a statistically significant factor in either the appointment decision or in the retention Bar survey.

4. Marital Status and Children

About two-thirds of the applicants, nominees and appointees were married and had children.⁸² Marital status and offspring were not statistically significant factors in either the nomination or appointment decisions, or in the retention Bar survey scores of appointees.

5. Residency

a. Years of Alaska Residency⁸³

While only a few applicants were born in Alaska,⁸⁴ most had lived in Alaska for well over ten years at the time of application. Applicants and nominees had lived in Alaska an average of 18

⁸⁰ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

⁸¹ The chi-squared value for nomination was .047, meaning that there was about a one in twenty likelihood that the result was due to random chance.

⁸² Seventy-four percent of applicants were married; 78% had children; and 65% were married and had children. Sixty-eight percent of nominees were married and had children, while 70% of appointees fell into this category.

⁸³ The statutory minimum residency requirement for judicial office in Alaska is five years. Years of practice of law, a closely related variable, is discussed in the next section.

⁸⁴ Only 8% of applicants (N=42), 5% of nominees (N=9) and one appointee were born in Alaska.

years at the time of application, slightly longer than appointees (16 years), and noticeably longer than the average Bar member (11.6 years).⁸⁵

Table 15: Average Years of Residency in Alaska

	District Ct.	Superior Ct.	Appellate	All
Applicants	17 yr. (N=205)	18 yr. (N=261)	25 yr. (N=34)	18 yr. (N=500)
Nominees	17 yr. (N=76)	17 yr. (N=100)	25 yr. (N=18)	18 yr. (N=194)
Appointees	15 yr. (N=23)	16 yr. (N=31)	26 yr. (N= 5)	16 yr. (N=59)

District court appointees tended to have shorter residencies than superior court appointees.⁸⁶ Appellate appointees had the longest average residencies, with all five having sixteen or more years of Alaska residency.

Applicants who had lived in Alaska for 16-20 years were more likely than applicants with fewer or more years of Alaska residency to receive “excellent” ratings on the overall performance variable on the Bar selection survey. Applicants on either end of the years of residency spectrum fared significantly worse than applicants with 6-20 years of residency.⁸⁷

Years of Alaska residency and years of practice both appeared to influence the nomination (but not the appointment) decision, although these factors did not explain much of the variance.⁸⁸ Because years of residence and years of practice often were related, it is not possible to rate their relative importance in the nomination decision. Years of residency did not appear to influence the retention Bar survey ratings.

b. City of Residency

At least half of all applicants, nominees and appointees lived in the state's largest city, Anchorage,⁸⁹ when they applied for a judgeship (55% of applicants and nominees and 58% of appointees were from Anchorage). The next largest number lived in Fairbanks (20% of applicants, nominees and appointees). A smaller number lived in Juneau (6% of applicants, 8% of nominees and appointees). The remainder of applicants, nominees and appointees resided elsewhere in the state.

⁸⁵ See BAR MEMBERSHIP SURVEY, *supra* note 44, at Appendix I-3.

⁸⁶ Fifty-two percent of trial court appointees had between six and fifteen years of Alaska residency.

⁸⁷ No applicants with 1-5 years residency were rated excellent; 14% of applicants with 6-10 years residency were rated excellent; 16% of applicants with 11-15 years residency were rated excellent; 20% of applicants with 16-20 years residency were rated excellent; 7% of applicants with more than 20 years residency were rated excellent.

⁸⁸ The eta-squared for each explained about 3% of the variation in the nomination decision.

⁸⁹ Anchorage is home to about half of the state's population (around 255,000 in a state population of just over 611,000 in 1997).

A majority of applicants (65%), nominees (65%) and appointees (70%) applied for judgeships where they resided.⁹⁰ Even though a majority resided at the location of the vacancy, cross-tabulations showed no statistical significance between residence and location of vacancy. The fact that this tabulation was not statistically significant suggests that applicants who lived in the community of the judgeship did not possess a “home-town” advantage.

6. Education

a. Undergraduate

Applicants, nominees and appointees typically attended undergraduate schools in the Western States (about half of applicants, 46% of nominees and 40% of appointees),⁹¹ or the Midwest (22% of applicants, 28% of nominees and 34% of appointees). Eastern schools were the third choice (attended by 21% of applicants and nominees and 22% of appointees). Southern schools appeared infrequently.

Undergraduate school region was a statistically significant factor in the nomination but not the appointment decision. Applicants who attended undergraduate schools in the Midwest were more likely to be nominated than those who attended schools in the South or West. Those who attended Eastern schools did not have a better or worse chance than average of nomination.

Viewed in a different context, the overall performance variable of the selection Bar survey, undergraduate school region continued to be important. Applicants who attended colleges in the East and Midwest did better on the overall performance variable of the selection survey than those who attended schools in the South and the West.

Trial court appointees' undergraduate educations were similar to those of applicants and nominees.⁹² In contrast, three of the five appellate appointees attended undergraduate schools in the East. A judge's undergraduate school region did not appear to influence performance on the retention evaluation Bar survey.

b. Law School

Law school attendance mirrored that of undergraduate schools. Many applicants, nominees and appointees attended law schools in the West and Midwest.⁹³

⁹⁰ For example, 89% of the applicants for Anchorage positions resided in Anchorage, 98% of the applicants for Fairbanks positions resided in Fairbanks, and 85% of the applicants for Juneau positions resided in Juneau. Anchorage attorneys applied for positions in every community except Fairbanks and Juneau. Only one Juneau attorney applied for a position in Anchorage, and none applied for Fairbanks positions. A few Fairbanks attorneys, on the other hand, applied in Anchorage and Juneau.

⁹¹ Despite the popularity of western schools, only 8% of applicants went to college in Alaska.

⁹² District court appointees went to undergraduate schools in the West (48%), Midwest (26%) and East (26%), while superior court appointees went to schools in the Midwest (45%), West (32%) and East (18%).

⁹³ No law school exists in Alaska.

Nominees attended “prestige” law schools at slightly higher rates than did applicants or appointees.⁹⁴ About 24% of nominees had attended a prestige law school, compared to about 19% of applicants and appointees. Appellate appointees were more likely than trial court appointees to have attended prestige law schools (13% of district court appointees and 16% of superior court appointees, but three of the five (60%), appellate appointees).

Applicants who graduated from “prestige” law schools were significantly more likely to be nominated than applicants who graduated from other schools. However, they were not more likely to be appointed. Viewed in another context, applicants who graduated from prestige law schools were significantly more likely than others to receive “excellent” ratings on the overall performance item on the Bar selection survey.⁹⁵

Graduates from prestige law schools who were appointed and stood for retention did slightly better on overall performance rating on the retention Bar survey, but the difference was not statistically significant.

Table 16: Nominations, Appointments and Retention Bar Survey by Prestige Law School

Law School	# Applications (%)	% Nominated	% Appointed	Retent. Score⁹⁶
Prestige Sch.	95 (19%)	50% (N=47)	12% (N=11)	4.0 (N=7)
Other School	406 (81%)	36% (N=147)	12% (N=48)	3.8 (N=34)
All	501 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)

About 19% of nominees reported having received honors in law school, as did sixteen percent of applicants and about 10% of appointees. Receipt of law school honors did not appear to influence either the nomination or appointment decisions.

C. Employment and Experience

This section describes variables related to employment and experience gathered in the selection process. The variables include years of practice, most recent and prior employment, income, type of experience including amount of trial experience, outside activities, Bar Association activity and pro bono service.

⁹⁴ Prestige law schools were defined for purposes of this study as: Columbia, Stanford, New York University, Duke, University of Pennsylvania, Harvard, Yale, University of Michigan, Berkeley and University of Chicago. This list was compiled from the 1998 US NEWS & WORLD REPORT ranking and the 1998 Princeton Review.

⁹⁵ Applicants who attended prestige schools averaged 3.8 on the overall performance item in the Bar selection survey, compared to an average of 3.3 for those who attended other law schools.

⁹⁶ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

1. Years of Practice

The average judicial applicant had been practicing law for 14½ years at the time of application. Judicial applicants thus had more years of practice, on average, than members of the Alaska Bar, who had 11.6 years.⁹⁷ Nominees and appointees had just slightly more years of practice on average than applicants. (The average nominee and appointee had been practicing 15 years.) Large percentages of nominees (47%) and appointees (46%) had been practicing more than 15 years.

Of those appointed to the bench, appellate appointees tended to have the most years of practice, while district court appointees had the least. Just over half of superior court appointees had sixteen or more years of practice, while only a quarter of district court appointees had that many years of practice. All five appellate court appointees had over fifteen years of practice.

Table 17. Mean Years of Practice

Bar Members	Applicants	Nominees	Superior Ct Appointees	District Ct Appointees	Appellate Appointees
11.6	14.5	15.0	15.2	12.7	20.6

Years of practice did appear to influence the nomination (but not the appointment) decision. Applicants who had either 1-5 years of practice or more than 21 years of practice were significantly *less* likely to be nominated than those with different amounts of experience. Applicants with 16-20 years of practice were more likely to be nominated.

Further, the number of years an applicant had been practicing law was significantly related to his or her score on the overall performance variable of the Bar selection survey. Applicants with 16-20 years of experience were more likely than applicants with more or less experience to receive “excellent” ratings on the overall performance variable. This finding is consistent with the finding that applicants with 16-20 years of experience had a higher likelihood of nomination than those with different experience ranges.

Years of practice was not related to judicial performance as measured by attorneys’ ratings on the overall performance item in the retention survey. Nor was it related to Peace and Probation officers’ ratings on that retention item.

2. Most Recent and Prior Legal Employment

The employment history of judicial applicants was recorded for this study both as the most recent employment before application and as a list of all prior legal employment. These variables are used to analyze the nomination and appointment decisions in terms of three groups of experience: (1) judicial and law clerk experience; (2) prosecutor versus public defender

⁹⁷ See BAR MEMBERSHIP SURVEY, *supra* note 44, at 19.

experience; and (3) public sector versus private sector experience. The discussion is organized by level of court for the latter two groups.

a. Judicial and Law Clerk Experience

Table 18 breaks down judicial experience into experience as a judge (district, superior or court of appeals) versus experience as a magistrate. First, judges and magistrates clearly apply for vacant judicial positions at a much higher rate (17% of applicants) than their relative proportion of the Bar (4%).⁹⁸ Second, applicants whose most recent employment was as a judge (rather than a magistrate) were more likely than the average applicant to be nominated. The same could be said for applicants who had any prior experience as a judge. But in spite of their significantly higher nomination rate, they were appointed only slightly more often than the average applicant.

Table 18: Nominations, Appointments and Retention Bar Survey by Judicial and Law Clerk Experience

Experience	# Applications (%)	% Nominated	% Appointed	Retent. Score ⁹⁹	
Most Recent	Judge	52 (11%)	69% (N=38)	16% (N=9)	4.0 (N=4)
	Magistrate	30 (6%)	20% (N=6)	0% (N=0)	--- (N=0)
	All Applicants	501 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)
Prior	Judge	72 (14%)	67% (N=48)	18% (N=13)	4.1 (N=7)
	Magistrate	55 (11%)	33% (N=18)	6% (N=3)	4.0 (N=2)
	App Clerk	66 (13%)	61% (N=40)	18% (N=12)	3.9 (N=5)
	Trial Ct Clerk	50 (10%)	36% (N=18)	14% (N=7)	3.9 (N=5)
	All Applicants	501 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)

Prior employment as a judge also was related to selection survey scores. Applicants previously employed as judges received significantly more “excellent” ratings on the overall performance variable of the Bar selection survey than those who had not been judges.¹⁰⁰ Prior employment as a judge also correlated significantly with performance on the retention Bar survey.

Applicants whose most recent employment was as a magistrate, on the other hand, were less likely to be nominated by the Council and none were appointed. Applicants with prior experience as a magistrate did somewhat better, although still slightly worse than the average applicant.

⁹⁸ See BAR MEMBERSHIP SURVEY, *supra* note 44, at Appendix III.

⁹⁹ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁰⁰ Thirteen percent of scores given on the Bar selection survey were in the “excellent” range; however, 39% of applicants who had worked as judges received excellent scores compared to 9% of applicants who had not served as judges.

Applicants with prior experience as appellate clerks (but not applicants who had been trial clerks) were significantly more likely than those without to be nominated by the Council. However, this advantage did not carry over to the appointment decision.

b. Prosecutor / Public Defender¹⁰¹ Experience

Analysis of employment information revealed some interesting patterns among applicants and appointees who had worked as public defense attorneys and/or prosecutors. Tables 19-21 present applicant, nominee and appointee data, as well as retention Bar ratings, on prosecutor and public defender applicants for district, superior and appellate courts. The tables summarize data about most recent employment and about prior employment. The prior employment data primarily contrasts those attorneys who had prior prosecutor experience with those who had prior public defender experience. These groups are of course not exclusive. Applicants were subdivided into prosecutorial experience only, public defender experience only, and those with both types.

Applicants whose most recent employment was as a prosecutor applied for judicial positions at about three times the rate (15% of applicants) as their proportion in the Bar (5%).¹⁰² This application rate was greater for district court applicants (19%) and superior court applicants (12%), than for appellate applicants (6%).

The Judicial Council nominated applicants whose most recent employment was as a prosecutor at a slightly higher rate than the average applicant for district court (44% vs. 37%), and at the same rate for superior court (38%).¹⁰³ Appointment rates were similar to the average applicant. Thus, applicants whose most recent employment was as a prosecutor applied, were nominated, and were appointed at about three times their proportion in the Bar.

Applicants with prior (as opposed to most recent) experience as a prosecutor made up about a third of district court (34%), superior court (31%) and appellate (35%) applicants. These applicants were nominated and appointed at about the same rate as the average applicant for trial court vacancies, but did better for appellate positions. Two-thirds (67%) were nominated (vs. 55% for the average appellate applicant), and 33% of those who applied were appointed (vs. 15%).

¹⁰¹ "Public defender" as the term is used in this report includes attorneys working for the Public Defender Agency and the Office of Public Advocacy, but not private attorneys on contract with OPA. The Public Defender and Office of Public Advocacy are statewide agencies. Salaries are on a par with state prosecutors and other government positions. Both offices are considered prestigious positions. Directors look for attorneys with appellate or trial clerk experience as one of several indicators of legal ability. These characteristics may distinguish Alaska's public defense agencies from many in other states.

¹⁰² See BAR MEMBERSHIP SURVEY, *supra* note 44, at Appendix III.

¹⁰³ One of two applicants whose most recent employment was as a prosecutor was nominated for an appellate court position.

Table 19: District Court Nominations, Appointments and Retention Bar Survey by Prosecutor/Public Defender Experience

Experience		# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁰⁴
Most Recent	Prosecutor	39 (19%)	44% (N=17)	15% (N=6)	3.7 (N=3)
	PD	11 (5%)	73% (N=8)	18% (N=2)	3.9 (N=1)
	All Applicants	206 (100%)	37% (N=76)	11% (N=23)	3.9 (N=19)
Prior	Prosecutor	70 (34%)	37% (N=26)	14% (N=10)	3.8 (N=8)
	Only Prosecutor	63 (31%)	35% (N=22)	13% (N=8)	3.7 (N=6)
	Both	7 (3%)	57% (N=4)	29% (N=2)	4.1 (N=2)
	Only PD	34 (17%)	68% (N=23)	21% (N=7)	4.3 (N=5)
	PD	41 (20%)	66% (N=27)	22% (N=9)	4.2 (N=7)
	All Applicants	206 (100%)	37% (N=76)	11% (N=23)	3.9 (N=19)

Table 20: Superior Court Nominations, Appointments and Retention Bar Survey by Prosecutor/Public Defender Experience

Experience		# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁰⁵
Most Recent	Prosecutor	32 (12%)	38% (N=12)	9% (N=3)	3.8 (N=3)
	PD	13 (5%)	54% (N=7)	15% (N=2)	4.1 (N=1)
	All Applicants	261 (100%)	38% (N=100)	12% (N=31)	3.8 (N=20)
Prior	Prosecutor	80 (31%)	43% (N=34)	15% (N=12)	3.7 (N=9)
	Only Prosecutor	70(27%)	43% (N=30)	17% (N=12)	3.7 (N=9)
	Both	10(4%)	40% (N=4)	0% (N=0)	--- (N=0)
	Only PD	48(18%)	63% (N=30)	21% (N=10)	4.0 (N=4)
	PD	58 (22%)	59% (N=34)	17% (N=10)	4.0 (N=4)
	All Applicants	261 (100%)	38% (N=100)	12% (N=31)	3.8 (N=20)

¹⁰⁴ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁰⁵ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

Table 21: Appellate Nominations, Appointments and Retention Bar Survey by Prosecutor/Public Defender Experience

Experience		# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁰⁶
Most Recent	Prosecutor	2 (6%)	50% (N=1)	50% (N=1)	--- (N=0)
	PD	1 (3%)	100% (N=1)	0% (N=0)	--- (N=0)
	All Applicants	34 (100%)	53% (N=18)	15% (N=5)	4.2 (N=2)
Prior	Prosecutor	12 (35%)	67% (N=8)	33% (N=4)	4.2 (N=2)
	Only Prosecutor	9 (26%)	56% (N=5)	22% (N=2)	4.2 (N=2)
	Both	3 (9%)	100% (N=3)	67% (N=2)	--- (N=0)
	Only PD	6 (18%)	83% (N=5)	17% (N=1)	--- (N=0)
	PD	9 (26%)	89% (N=8)	33% (N=3)	--- (N=0)
	All Applicants	34 (100%)	53% (N=18)	15% (N=5)	4.2 (N=2)

The data for public defenders presented an interesting contrast. Generally public defenders applied at a much lower rate than prosecutors. They did much better than prosecutors (or any other group except judges) in the nomination process, but fared less well in the appointment process. The public defenders also appeared, as a group, to be exceptional applicants, measured by their selection Bar survey scores and their writing sample rating.

Applicants whose most recent employment was as a public defender were 5% of trial court applicants, about the same as their proportion in the Bar (4%). On the other hand, those public defenders who did apply had a substantially better chance than any other group except judges to be nominated. The nomination rate for public defenders to the trial courts was 63% (73% for district court and 54% for superior court),¹⁰⁷ compared to 38% for the average applicant and 41% for prosecutors.

The nomination rate for applicants with prior (as opposed to most recent) experience as a public defender also was significantly higher than either prosecutors or the average applicant. Sixty-six percent of applicants with public defender experience were nominated for district court compared to 37% for both prosecutors and the average applicant. This nomination rate for prior public defenders was slightly lower for superior court (59%), but was still significantly higher than prosecutors (43%) or the average applicant (38%). Further, the nomination rate of public defenders with no prosecution experience for the trial court was slightly higher than even public defenders who also had prosecutor experience. Fully eight of nine appellate applicants with public defender experience were nominated (as compared to eight of twelve with prosecutor experience). There were a total of 24 appointees with prior prosecutor experience compared to 22 with prior public defender experience.

¹⁰⁶ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁰⁷ One current public defender applied for an appellate position and was nominated, but not appointed.

In spite of public defenders' higher nomination rate, their appointment rate was closer to that of prosecutors. Using the most recent employment variable, 16% of current public defenders were appointed compared to 14% of prosecutors. (The differences were not statistically significant.) The percentage of the nominated public defenders who were appointed was 25% (4 of 16), compared to 33% (10 of 30) for prosecutors.

Table 22 presents the comparable writing sample average ratings and selection Bar survey scores for prosecutors and public defenders (using the most recent employment variable). As discussed elsewhere, the selection Bar survey and writing sample ratings are probably the best measures of applicant quality. The table shows that the higher nomination rate for public defenders may be explained by the significantly higher selection survey and writing sample ratings. It is at least possible that the lower application rate for public defenders (as opposed to prosecutors) reflects a self-selection process. In other words, it may be that public defenders who are not exceptionally qualified tend not to apply, perhaps because governors seem to give at least a small preference to prosecutors in the appointment decision.

Table 22: Writing Sample and Selection Score by Prosecutor and Public Defender

Group	Writing Sample	Select Score¹⁰⁸
Prosecutors	3.4 (N=73)	3.4 (N=72)
Public Defenders	3.8 (N=25)	3.8 (N=25)
All Applicants	3.4 (N=487)	3.6 (N=501)

Another explanation of public criminal defense attorneys' success in the nomination process, in addition to the high status of the agencies in Alaska and the demonstrated skills of applicants from the Public Defender and Office of Public Advocacy agencies, was a possible connection between service as an appellate or trial court clerk and employment by the agencies. Of the 108 applications in which the applicant had at any time served as a public defense attorney, 24% also had been an appellate court clerk and 15% also had worked as a trial court clerk. An additional 116 applications came from former appellate or trial court clerks who had not served as public defense attorneys.

Over three-quarters (77%) of the attorneys who had both public defense and appellate court clerk experience were nominated, as compared to 63% of the public defense attorneys who had not served any clerkship, 61% of the appellate clerks who had not worked as public defense attorneys, half (50%) of the public defense attorneys who had been trial court clerks and 36% of the applicants who had worked as trial court clerks but not public defense attorneys (see Table 23). Appointment rates, for all but the public defense attorneys who had been appellate clerks and applicants who had been public defense attorneys, were comparable to the rate for all applicants.

¹⁰⁸ This rating, taken from the selection data set, represents the mean rating on the overall performance item in the selection Bar survey.

Table 23: Nominations, Appointments and Retention Bar Survey by Law Clerk and Public Defender Experience

Group	# Applications	% Nominated	% Appointed	Retention Score
PD	108	63% (N=69)	20% (N=22)	4.2 (N=11)
Appellate Clk	66	61% (N=40)	18% (N=12)	3.9 (N=5)
Trial Clk	50	36% (N=18)	14% (N=7)	3.9 (N=5)
PD + Appl	26	77% (N=20)	31% (N=8)	4.2 (N=3)
PD + Trial	16	50% (N=8)	19% (N=3)	4.3 (N=1)
All Applicants	501	39% (N=194)	12% (N=59)	3.8 (N=41)

Clearly, the combination of appellate clerk and public defense attorney work gave applicants an edge. Because neither group separately had as large an edge, one hypothesis might be that some factor unique to attorneys who chose to do both kinds of work (and were selected in a very competitive environment to do those jobs) also gave them an edge in the nomination and appointment process. The 26 applications that met these criteria were filed by a total of ten attorneys. When listed individually, it appeared that eight of the ten had been appointed to the positions that they sought and the other two had been nominated, but not appointed. However, large numbers of applicants served in either one or the other position, but not both, and these applicants also had statistically significantly better chances of nomination. Service as both an appellate clerk and public defense attorney was not a statistically significant factor that differentiated that group from other public defense attorneys or other appellate clerks on likelihood of nomination. Service as a trial court clerk was not a statistically significant factor in nomination, either alone or in combination with work as a public defense attorney.

Analysis of writing sample scores and overall performance scores on the selection survey supported the hypothesis that the combination of appellate court clerk and public defense experience gave applicants a slight, though not statistically significant edge. Table 24 shows that applicants who had both types of experience had the highest scores on both writing ability and overall performance.¹⁰⁹ They were followed closely by applicants who had either public defense or appellate clerk experience, and then by applicants who had public defense and trial court clerk experience.

¹⁰⁹ Correlation analysis showed that employment as a public defense attorney was more significantly associated with good overall performance on the selection bar survey than was service as an appellate clerk.

Table 24: Writing Sample Rating and Selection Bar Survey by Law Clerk and Public Defender Experience

Group	Writing Sample	Selection Score
PD	3.8 (N=106)	3.8 (N=106)
Appellate Clk	3.9 (N=65)	3.7 (N=65)
Trial Clk	3.5 (N=49)	3.4 (N=50)
PD + Appl	4.1 (N=26)	3.9 (N=26)
PD + Trial	3.6 (N=16)	3.7 (N=16)
All Applicants	3.4 (N=487)	3.4 (N=491)

Employment as a prosecutor or public defender at time of application seemed to influence Peace and Probation officers' subsequent assessment of judicial performance as measured by the overall performance score on retention surveys. Peace and Probation officers evaluated prosecutors appointed to be judges as better than public defenders. Attorneys, on the other hand, did not seem to be influenced on retention evaluations by judges' employment at the time of application.

Prior work experience was significantly correlated with attorneys' assessment of judicial performance as measured by scores on the retention overall performance item. Appointees with prior employment as a public defender (but not employment at the time of application) received higher ratings. This pattern is consistent with the findings from the analysis of the selection database that work as a public defender significantly improves both selection Bar survey scores and chances of nomination.

In a somewhat surprising contradiction, Peace and Probation officers did *not* tend to give better overall performance scores to judges who previously had worked as prosecutors. Instead, past employment as a public defender correlated with higher scores from the Peace and Probation officers on the retention overall performance item. This finding seems somewhat inconsistent with the finding discussed above that officers gave lower retention scores to judges who had been public defense attorneys at the time of application and higher scores to judges who had most recently been prosecutors. Peace and Probation officers' evaluations of judges may be more negative for those who recently worked "on the other side" as opposed to those who most recently worked "on our side." At the same time, officers may react positively to judges whose association with "the other side" was remote in time and whose criminal defense backgrounds contribute to a unique understanding or insight into criminal practice.

c. Public / Private Sector Experience

Tables 25–27 present applicant, nominee and appointee data, as well as retention Bar ratings, on public and private sector applicants for district, superior and appellate courts. For purposes of this discussion, public sector included criminal practitioners (prosecutors and public defenders) and attorneys general (AGs). The tables do not include judges or magistrates in the public sector

group because these groups were discussed separately. Private sector attorneys were subdivided into solo practitioners, attorneys working at a law firm (with more than one attorney), and corporate attorneys. The “other” category included public interest employment, military work as a JAG, and a handful of diverse occupations.

The tables summarize data consisting of both most recent employment and prior employment. The prior employment data primarily contrasts those attorneys who had prior public sector experience with those who had prior private sector experience. These groups were of course not exclusive. Applicants were further subdivided into those with only private practice experience, those with only public sector experience and those with both types.

Attorneys whose most recent experience was in the public sector were more likely to apply for judicial vacancies than attorneys from private practice, although the number of private sector attorneys in the Bar was substantially greater. The public attorneys represented 29% of applicants and only about 26% of the Bar.¹¹⁰ Private sector attorneys, on the other hand, represented 50% of applicants, but about 70% of the Bar.¹¹¹ The private sector's representation was comparatively greater for superior court (56%) than for district court (45%).

Attorneys from law firms of at least two attorneys applied for judicial positions at a significantly lower rate than did their solo practitioner counterparts. Law firm attorneys made up 49% of the Bar, but only 24% of applicants. In contrast, solo practitioners made up 19% of the Bar, but 25% of applicants.

The under-representation of the private Bar (or at least attorneys from law firms of two or more attorneys) seemed less significant, however, when the prior employment variable was considered. Fully 88% of trial court applicants had private sector experience, while only about 60% had public sector experience.

The Council nominated 55% of the applicants from the public sector for district court. This was more than twice the percentage of the private sector applicants who were nominated (22%). The difference in nomination rate was less pronounced for applicants for district court with prior public or private sector experience, with a slightly higher number (but not percentage) of private sector nominees (65 versus 58).

¹¹⁰ See BAR MEMBERSHIP SURVEY, *supra* note 44, at Appendix III.

¹¹¹ *Id.*

Table 25: District Court Nominations, Appointments and Retention Bar Survey by Public/Private Sector Experience

Experience	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹¹²	
Most Recent	Public	74 (36%)	55% (N=41)	18% (N=13)	3.8 (N=7)
	Criminal	50 (24%)	50% (N=25)	16% (N=8)	3.8 (N=4)
	Civil (AG)	24 (12%)	67% (N=16)	21% (N=5)	3.7 (N=3)
	Private	92 (45%)	22% (N=20)	9% (N=8)	4.0 (N=9)
	Solo	50 (24%)	14% (N=7)	10% (N=5)	3.8 (N=4)
	Firm	41 (20%)	32% (N=13)	7% (N=3)	4.2 (N=5)
	Corporate	1 (<1%)	0% (N=0)	0% (N=0)	4.3 (N=1)
	Other	8 (4%)	25% (N=2)	13% (N=1)	4.3 (N=1)
All Applicants	206 (100%)	37% (N=76)	11% (N=23)	3.9 (N=19)	
Prior	Public	124 (60%)	47% (N=58)	16% (N=20)	3.9 (N=16)
	Only Public	17 (8%)	65% (N=11)	18% (N=3)	3.9 (N=2)
	Public & Private	107 (52%)	44% (N=47)	16% (N=17)	3.9 (N=14)
	Only Private	75 (37%)	24% (N=18)	4% (N=3)	3.9 (N=3)
	Private	182 (89%)	36% (N=65)	11% (N=20)	3.9 (N=17)
	All Applicants	206 (100%)	37% (N=76)	11% (N=23)	3.9 (N=19)

Public sector applicants also were appointed to district court at a higher rate than private attorneys. However, the final tally shows 20 appointees had prior public sector experience and 20 had prior private sector experience. The retention scores were identical for district court judges with prior public or private sector experience. District court judges who came directly from the private sector rated slightly higher.

In contrast, the percentage of applicants who were nominated for superior court was slightly higher for attorneys from private firms than public attorneys. Solo practitioners were nominated at a substantially lower rate. The appointment rate for superior court was almost identical for public and private sector attorneys, as were the retention scores.

¹¹² This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

**Table 26: Superior Court Nominations, Appointments and Retention Bar Survey
by Public/Private Sector Experience**

Experience		# Applications (%)	% Nominated	% Appointed	Retent. Score ¹¹³
Most Recent	Public	68 (26%)	41% (N=28)	10% (N=7)	3.8 (N=5)
	Criminal	45 (17%)	42% (N=19)	11% (N=5)	3.9 (N=4)
	Civil (AG)	23 (9%)	39% (N=9)	9% (N=2)	3.8 (N=1)
	Private	145 (56%)	34% (N=49)	12% (N=18)	3.8 (N=12)
	Solo	71 (27%)	24% (N=17)	10% (N=7)	3.8 (N=7)
	Firm	70 (27%)	46% (N=32)	16% (N=11)	3.8 (N=5)
	Corporate	4 (2%)	0% (N=0)	0% (N=0)	--- (N=0)
	Other	7 (1%)	0% (N=0)	0% (N=0)	--- (N=0)
All Applicants		261 (100%)	38% (N=100)	12% (N=31)	3.8 (N=20)
Prior	Public	157 (60%)	45% (N=71)	14% (N=22)	3.8 (N=13)
	Only Public	31 (12%)	58% (N=18)	19% (N=6)	3.8 (N=4)
	Public & Private	126 (48%)	42% (N=53)	13% (N=16)	3.8 (N=9)
	Only Private	100 (38%)	28% (N=28)	8% (N=8)	3.7 (N=6)
	Private	226 (87%)	36% (N=81)	11% (N=24)	3.8 (N=15)
	All Applicants		261 (100%)	38% (N=100)	12% (N=31)

**Table 27: Appellate Nominations, Appointments and Retention Bar Survey
by Public/Private Sector Experience**

Experience		# Applications (%)	% Nominated	% Appointed	Retent. Score ¹¹⁴
Most Recent	Public	5 (15%)	40% (N=2)	20% (N=1)	--- (N=0)
	Criminal	3 (9%)	67% (N=2)	33% (N=1)	--- (N=0)
	Civil (AG)	2 (6%)	0% (N=0)	0% (N=0)	--- (N=0)
	Private	13 (38%)	39% (N=5)	15% (N=2)	4.2 (N=2)
	Solo	4 (12%)	50% (N=2)	0% (N=0)	--- (N=0)
	Firm	8 (24%)	38% (N=3)	25% (N=2)	4.2 (N=2)
	Corporate	1 (0%)	0% (N=0)	0% (N=0)	--- (N=0)
	Other	0 (0%)	0% (N=0)	0% (N=0)	--- (N=0)
All Applicants		34 (100%)	53% (N=18)	15% (N=5)	4.2 (N=2)
Prior	Public	21 (62%)	62% (N=13)	24% (N=5)	4.2 (N=2)
	Only Public	9 (27%)	67% (N=6)	22% (N=2)	4.0 (N=1)
	Public & Private	12 (35%)	58% (N=7)	25% (N=3)	4.4 (N=1)
	Only Private	13 (38%)	39% (N=5)	0% (N=0)	--- (N=0)
	Private	25 (74%)	48% (N=12)	12% (N=3)	4.4 (N=1)
	All Applicants		34 (100%)	53% (N=18)	15% (N=5)

¹¹³ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹¹⁴ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

The data for the appellate court was less useful given the many fewer vacancies, and the fact that one of the two appellate courts has exclusively criminal jurisdiction. All five of the appointees had prior public service experience while three had private sector experience.

3. Other Employment Variables

This group of variables included number of legal jobs held, military service and prior career (whether the appointee had pursued another career prior to law school).

a. Number of Legal Jobs Held

Applicants, nominees, and appointees had held an average of 4 jobs at the time of application. Twenty-one percent of applicants, 26% of nominees and 24% of appointees had held 6-8 jobs at the time of application.

District court appointees had a slight tendency to have held more legal positions prior to appointment than did superior court appointees. Both groups tended to have held three to five different positions at the time of their application for the judgeship to which they were appointed.

The number of jobs an applicant had held was significantly related to ratings on the overall performance variable on the Bar selection survey. Applicants who had worked at either one or at six to eight jobs did better than those who had held more jobs, and better than those who had held only two to three jobs.¹¹⁵ This finding is consistent with the finding that a smaller percentage of the Bar evaluates applicants who have held two to three jobs. Number of jobs held was not related to judicial performance as measured by ratings given by attorneys and Peace and Probation officers on retention surveys.

b. Prior Career and Military Service

Only about 20% of applicants had significant nonlegal careers before becoming lawyers. Few nominees or appointees had pursued other careers (e.g., in law enforcement, teaching) before starting their legal career. A prior career in law enforcement or in the military made it less likely that an applicant would be nominated, but did not affect the likelihood of appointment.

A different question on the judicial application form asked whether applicants had ever served in the military. About 31% of applicants reported that they had served in the military, as did 25% of

¹¹⁵ Thirteen percent of scores given on the Bar selection survey were in the "excellent" range; however, 21% of applicants who had 6-8 jobs received excellent scores compared to 9% of those who had held one or two. Also, 16.5% of scores given on the Bar selection survey were in the "below acceptable" range, but 50% of those who had held more than eight jobs received below acceptable ratings.

nominees and 29% of appointees. Thirty-six percent of superior court appointees had served in the military compared to 17% of district court appointees.

4. Type of Caseload

The Judicial Council asked applicants a number of questions about their recent caseload and trial experience (generally limited to the five years immediately preceding application). Questions included percentage of caseload that was civil versus criminal, percentage of practice in federal courts and percentage of appellate practice.

a. Percent Civil/Criminal Practice

Fifty-six percent of applicants characterized their recent practices as over half civil. Forty-six percent of nominees reported practices over half civil, as did 51% of appointees. However, slightly more superior court appointees reported half or more of their caseload in civil cases than did district court appointees. With respect to civil caseloads, the district court appointees reported a wider range of civil caseload percentages than did the superior court appointees.

Applicants with 51% or more of their practices in the civil arena were significantly less likely to be nominated than those with less civil practice. This variable was not significant for appointment.

Applicants whose practices included the most criminal cases did better on the Bar selection survey's overall performance variable than those who handled fewer criminal matters. Applicants for whom criminal cases comprised more than 70% of their practice were more likely to receive "good" and "excellent" ratings than those with fewer criminal cases.¹¹⁶

Type of practice prior to appointment did not seem to make a difference for attorney respondents evaluating judicial performance, as measured by attorney ratings on the overall performance variable of the retention survey.¹¹⁷ Peace and probation officers, on the other hand, differed significantly in their evaluations of judges when the data was analyzed by type of prior practice, although the database was too small to permit firm conclusions. The data showed a clear pattern of higher scores for judges who had the most criminal experience and for those with small amounts of prior criminal experience.¹¹⁸ Judges without any criminal experience before

¹¹⁶ Thirteen percent of scores given on the Bar selection survey were in the "excellent" range; however, 20% of applicants whose practices were mostly criminal (i.e., 71-100% criminal) received scores in the excellent range. Also, 16.5% of scores given on the Bar selection survey fell in the "below acceptable" range; however, 10% of applicants whose practices were mostly criminal received scores in that range.

¹¹⁷ The characterization of caseload as civil or criminal cases came from the judges' completion of a brief questionnaire at the beginning of the retention evaluation process.

¹¹⁸ Fifty-four percent of scores given on the PPO retention survey were in the "excellent" range; however, 70% of judges whose caseloads were mostly criminal (i.e., 71-100% criminal) received scores in the excellent range, as did 71% of the judges who handled 1% to 10% criminal cases (selection/retention data set).

appointment, tended to receive lower scores on this overall performance retention survey variable.¹¹⁹

b. Percent Appellate Practice

Thirty-seven percent of applicants had some recent appellate experience. Nominees and appointees had more; 48% for each group. Appellate experience appeared to be slightly more prevalent among appointees to the superior court bench than those appointed to the district court but it was not statistically significant for either nomination or appointment for superior court applicants. District court applicants did benefit by some appellate experience which gave them a significantly better change of both nomination and appointment. Appellate court applicants may have improved their chances for appointment very slightly¹²⁰ by prior appellate practice, but it did not help their chances for nomination. However, few had more than eighteen appeals in the five years preceding their application for the judgeship.

Amount of appellate experience did not affect the overall performance rating on the retention survey one way or the other.

5. Trial and In-Court Experience

Three variables related to trial and in-court experience were reviewed. They were how often the applicant appeared in court, the number of trials the applicant had in the five years immediately preceding the application, and the percentage of those trials that were jury trials. As expected, applicants, nominees and appointees generally had strong in-court and trial experience.

a. Frequency of Appearance in Court

Applicant's, nominees' and appointees' recent practices were characterized by regular appearances in court.¹²¹ Seventy-four percent of applicants reported that they appeared in court "regularly" over the five years immediately preceding application, as did 72% of nominees and 64% of appointees. Frequency of appearance in court was similar for superior and district court appointees. A majority (68%) of superior court appointees characterized their practices as taking them into court "regularly," as did 65% of district court appointees. Two of the five appellate appointees reported being regularly in court.

¹¹⁹ Eight percent of scores given on the PPO retention survey were in the "acceptable" range; however, 33% of judges who had no criminal cases received scores in the acceptable range (selection/retention data set of 41 judges).

¹²⁰ Appellate court applicants had a slightly better chance of appointment if they had appellate practice; significant at $p=.057$.

¹²¹ The Judicial Council questionnaire asked applicants to characterize the frequency of their court appearances; choices were: "regularly," "occasionally," "infrequently," or "not at all."

Frequency of appearance in court was not significantly related to nomination or appointment. Nor did it appear to play a role in predicting judicial performance.

b. Number of Trials in Past Five Years

Most applicants' practices included substantial, recent trial work. Only 10% of applicants, 12% of nominees and 14% of appointees reported having no trials within the five years immediately preceding their application. Thirty-six percent of applicants reported over 31 trials in the previous five years, as did 38% of nominees and 34% of appointees.

Number of recent trials was not significantly related to likelihood of nomination or appointment. Nor was amount of recent trial experience before taking the bench related to judicial performance. While this finding may at first glance seem surprising, it should be remembered that the Judicial Council's application asked only about trial experience within the last five years. Appointees who came to the bench lacking recent trial experience may have had substantial trial experience earlier in their careers.

c. Percent of Jury Trials

Twenty-six percent of applicants reported that they had no jury trials, while 49% reported that over half their trials were jury trials. Sixty percent of nominees and 58% of appointees reported that over half of their recent trials had been jury trials. Fifty-eight percent of superior court appointees and 65% of district court appointees had tried 50% to 100% of their trial cases to a jury in the five years preceding application.

Percent of jury trials was not related to the appointment decision; however, it did appear to be significantly related to the nomination decision. Attorneys reporting no jury trials within the last five years, or less than half of their trials as jury trials were less likely to be nominated than those who reported half or more of their trials were before a jury.¹²² Percent of jury trials was not related to judicial performance as measured by the retention Bar survey.

6. Income

Each applicant was required to disclose his or her income for the three years immediately preceding the application. This analysis used the applicant's most recent income. Most applicants (64%) were making between \$60,000-\$149,000 per year when they applied for a judgeship, although a substantial minority (31%) were making less than \$60,000. The average applicant's income was \$78,000 per year. This was comparable to the average income of Bar members in 1988 (\$78,300) and 1987 (\$72,400).¹²³

¹²² Thirty-five percent of applicants with no jury trials and 28% with less than half jury trials were nominated, compared to 46% of applicants with more than half jury trials.

¹²³ BAR MEMBERSHIP SURVEY, *supra* note 44, at 15. Income depended heavily on age and years of practice, with more senior practitioners earning more than younger lawyers. *See id.* at 15-16.

Table 28: Nominations, Appointments and Retention Bar Survey by Income

Income	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹²⁴
< \$60,000	154 (31%)	24% (N=37)	10% (N=15)	3.8 (N=13)
\$60K - \$149K	320 (64%)	46% (N=147)	12% (N=37)	3.9 (N=23)
\$150K – \$250K	16 (3%)	19% (N=3)	13% (N=2)	4.4 (N=1)
> \$250,000	9 (2%)	78% (N=7)	56% (N=5)	3.8 (N=4)
All Applicants	499 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)

Income reported by nominees and appointees was similar to income reported by applicants. The large majority of those nominated (76%) made between \$60,000-\$149,000 in the year before their application. A small minority of nominees (19%) made under \$60,000 and a few (5%) made over \$149,000. The income picture was similar for appointees, except that a higher percentage of appointees (about 12%) made over \$149,000.

District court appointees tended to make less than did superior court appointees. While superior court appointees (74%) made between \$60,000 and \$149,000 at the time of application, 48% of district court appointees made less than \$60,000. This finding on income was consistent with the differences in employment between superior and district court appointees.¹²⁵

Income appeared to be somewhat useful in predicting an applicant's likelihood of nomination (and again, useful, although less so, in explaining appointment). It appeared that applicants making less than \$60,000 were significantly less likely than those making more to be nominated or appointed. Applicants making between \$60,000 and \$149,000 were more likely to be nominated. Applicants with incomes over \$250,000 had a clear edge in both nomination and appointment. In other words, applicants who made smaller amounts were less likely to be nominated than those whose income fell closer to the midrange.

An applicant's most recent income was significantly related to the applicant's score on the overall performance variable on the selection survey. Applicants making below \$60,000 were more likely to receive a "below acceptable" score and less likely to receive an "excellent" score than those in most other income categories.¹²⁶ Applicants making between \$60,000 and \$149,000 were most likely to receive "excellent" ratings.¹²⁷ These findings are consistent with the findings regarding the relationship between likelihood of nomination and income.

¹²⁴ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹²⁵ District court appointees were more likely to be working in the public sector at the time of application.

¹²⁶ Thirteen percent of scores given on the Bar selection survey were in the "excellent" range; however, 7% of applicants making below \$60K received scores in the excellent range, compared to 16% of those making \$60K-\$149K and 33% of the nine applicants making over \$250K. Also, 17% of scores given on the Bar selection survey fell in the "below acceptable" range; however, 26% of applicants making below \$60K received scores in that range, compared to 13% of those making \$60K-\$149K and 11% of the nine applicants making over \$250K. Because only nine applicants fell into the "over \$250K" category, those results should be viewed with caution.

¹²⁷ See note 127, *supra*.

Judges' most recent income before they took the bench did not significantly influence their judicial performance, as measured by their scores on the overall performance item in the Bar retention survey. Nor were Peace and Probation officers' retention scores influenced by judges' most recent income.

The fact that income was significantly related to attorneys' assessments of applicants' overall performance as measured on the selection survey and to the likelihood of nomination and appointment suggests that income may have been a proxy for other applicant characteristics. First, it may have been a proxy for the applicant's employment, length of practice, residency, and type of experience. Second, a lower income may have reflected part-time work or other characteristics that could indicate an applicant less willing or able to adapt to the requirements of a full-time judicial position. Third, a low income in some cases could indicate lack of success in private practice. Higher incomes could raise questions about the applicant's motivation for seeking judicial appointment, willingness or ability to function in a judicial (rather than an advocate's) role, or likelihood of being comfortable with a judge's salary; but these issues did not lessen the applicant's improved chances of nomination and appointment.

7. Outside Interests

The Judicial Council's application form asked applicants to list nonlegal organizations and clubs to which they belonged. For purposes of this study, applicants' descriptions of their nonlegal interests were grouped into three categories: significant, some and minimal/none.¹²⁸ Relatively few applicants reported a level of activity that could be characterized as "significant" (only 15%). About 37% reported some such activity, while almost half (48%) reported no or minimal outside activity.¹²⁹

Judicial applicants seemed to do less voluntary community service and charitable work than other members of the Bar, although the apparent difference also could be the result of the categorization done for this project. According to the 1989 Bar membership survey, 47% of Bar members spent up to 99 hours of the previous year on voluntary community service and charitable work, including religious organizations. Only 21% of attorneys reported spending no time during the previous year engaged in those activities.¹³⁰

Nominees and appointees also were unlikely to have engaged in a significant level of outside activities. About 88% of nominees and 85% of appointees reported minimal or insignificant

¹²⁸ Outside activities were broken down into categories of social, special interest, sports, youth groups, religious, political and charitable. The application also asked about Bar activity and other professional service activities.

¹²⁹ Of those involved in outside activities, 34% were characterized as engaging in religious activities, about a third in social activities, 29% in special interest activities, 28% in sports, 6% in politics and 2% in charitable activities. Applicants could report more than one activity, so percents total more than 100%.

¹³⁰ BAR MEMBERSHIP SURVEY, *supra* note 44, at I-6. Also, about 40% of the Bar membership reported spending some time during the previous year engaged in unpaid political work. *Id.*

community involvement. The level of an applicant's outside activities did not correlate significantly with either nomination or appointment.

8. Bar Association Activity

In contrast to the relative lack of community activity, almost half (49%) of applicants reported engaging in Bar Association activity. Bar activity increased with nomination and appointment, with over half (57%) of nominees and two-thirds (66%) of appointees active in the Bar Association. Typical Bar Association activity included participation in sections, special committees, fee arbitration and discipline panels, or membership on the Board of Governors. For comparison, 60% of respondents to the 1989 Bar membership survey reported bar association activities.¹³¹

Superior court appointees tended to be noticeably more active in the Bar (77%) than district court appointees (48%).¹³² Four of the five appellate appointees were active in the Bar. Bar activity was significant both for nomination and appointment. However, this factor did not explain much of the variance.¹³³

9. Pro Bono Service

A relatively small percentage of applicants engaged in pro bono service.¹³⁴ Only 30% had donated any pro bono services in the five years immediately preceding the application. Eleven per cent had contributed 1-19 hours, and 18% had contributed 20 or more hours.¹³⁵

Similarly, about 27% of nominees and appointees participated in pro bono service. About half of those who did participate had donated more than 20 hours in the five years immediately

¹³¹ *Id.* at 17.

¹³² This level of Bar activity may partly explain the fact that superior court appointees had substantially higher percentages of Bar members evaluating their performance than did district court appointees. Forty-two percent of the superior court appointees had at least 11% of the Bar members evaluating them on the Bar Survey compared to 21% of the district court appointees who had at least that many Bar members evaluating them. All five appellate court appointees had over 11% of the Bar members evaluating them.

¹³³ The eta-squared for both the nomination and appointment decisions was 2%.

¹³⁴ For purposes of this study, pro bono service was defined as donation of professional, legal services to low-income clients of the Alaska Pro Bono Program. The Alaska Pro Bono Program is affiliated with Alaska Legal Services Corporation. Donations of legal services to friends, relatives or others outside of the APBP were not counted as pro bono hours.

¹³⁵ The Pro Bono Services Coordinator's figures for 1998 indicated that 58% of Bar members eligible to participate were volunteers with the Alaska Pro Bono Program. Eligible members included in-state, active Bar members who were not judges, legislators, district attorneys, public defenders, legal services attorneys or law clerks (i.e., about 1650 eligible attorneys in 1998). Participation has been at the 58% level for about the last eight years.

preceding application.¹³⁶ Pro bono service was not a significant factor in either nomination or appointment.

10. Legal Publications

The Judicial Council's application form asked applicants whether they had published any legal articles. Seventeen percent of applicants had authored legal publications, as had 21% of nominees and 19% of appointees. Analysis suggested that applicants who had published legal articles were significantly more likely to be nominated than those who had not, although this factor was not a terribly important one.¹³⁷ Legal publications were not significant to the appointment decision.

D. Investigative Information

This section describes other information gathered by staff in the selection process. Variables include such things as Bar discipline, reference letters and selection Bar survey comments.

1. Writing Sample

Judicial Council staff (at the time of application) rate the applicants' writing samples on a scale from one to five, with 88% of the samples rated 3 (acceptable) or 4 (good).¹³⁸ The average rating for applicants was 3.4, compared to 3.8 for nominees and appointees. The average rating for district court applicants was slightly lower, while the average for appellate court was significantly higher.

Table 29: Average Writing Sample Rating

	District Ct.	Superior Ct.	Appellate	All
Applicants	3.3 (N=199)	3.4 (N= 255)	4.0 (N=33)	3.4 (N=487)
Nominees	3.7 (N= 76)	3.8 (N=100)	4.2 (N=18)	3.8 (N=194)
Appointees	3.7 (N= 23)	3.9 (N= 31)	4.2 (N= 5)	3.8 (N= 59)

An applicant's writing sample rating was one of the most statistically significant and important factors in predicting the likelihood of nomination and, to a lesser degree, appointment.¹³⁹ The sixteen applicants with the highest rating had almost a 90% chance of being nominated, while only one of 32 applicants with one of the two lowest ratings was nominated.

¹³⁶ Sixty-four percent of district court appointees worked in the public sector at the time of application, as did thirty-five percent of superior court appointees. Public sector employees may not do pro bono work.

¹³⁷ The eta-squared was 1%.

¹³⁸ This data suggests that the ratings would be even more useful if more broadly spread out.

¹³⁹ Bar survey ratings were the only variables with greater importance.

**Table 30: Nominations, Appointments and Retention Bar Survey
 by Writing Sample Rating**

Rating	# Applications (%)	% Nominated	% Appointed	Retent. Score¹⁴⁰
1 (worst)	15 (3%)	7% (N= 1)	0% (N= 0)	---
2	17 (3%)	0% (N= 0)	0% (N= 0)	---
3	215 (43%)	24% (N=52)	7% (N=15)	3.7 (N=14)
4	224 (45%)	57% (N=127)	17% (N=39)	3.9 (N=25)
5 (best)	16 (3%)	88% (N= 14)	31% (N=5)	4.1 (N=2)
All	487 (100%)	40% (N=194)	12% (N=59)	3.8 (N=41)

Retention Bar survey overall ratings also appeared higher for judges whose writing samples had been rated higher. However, this relationship was not statistically significant, at least with the small sample size of the selection/retention data set.

An applicant's writing ability might have reflected his or her professional competence in a number of ways. First, clear writing often is associated with clear thinking. Judges and other lawyers may have formed opinions as to an attorney's professional competence based on the clarity and logic of his or her writing. Also, writing style could reflect an attorney's temperament, for example, if the attorney routinely included exaggerated attacks in the written product. Finally, the level of proofreading and typographical errors could reflect the care with which the author approached all aspects of his or her work. When viewed this way, the finding of the significance of the writing sample seemed consistent with other trends reported in this study.

2. Bar Discipline and Fee Arbitrations

The Council had access to confidential Bar records, that staff reviewed to determine how many Bar complaints had been brought against an applicant, whether any of these complaints resulted in discipline, and the number of fee arbitrations in which the applicant had been involved. Only eleven applicants had any discipline imposed and it was only a private letter of reprimand in all cases. This variable was not significant in either the nomination or appointment decisions.¹⁴¹

On the other hand, the number of Bar complaints and fee arbitrations was statistically significant in the nomination decision. Applicants with larger numbers of complaints or fee arbitrations were significantly less likely to be nominated than those with fewer complaints. One possible explanation is that grievances and fee arbitrations can indicate sloppiness or a poor ability to communicate with clients even without grounds for discipline. There was no significant relationship to appointment or to the retention Bar scores.

¹⁴⁰ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁴¹ Of these 11 applicants, 4 (36%) were nominated and none was appointed.

**Table 31: Nominations, Appointments and Retention Bar Survey
by Number of Bar Discipline Complaints**

# Complaints	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁴²
None	257 (51%)	44% (N=113)	13% (N=33)	3.8 (N=24)
1-3	192 (38%)	34% (N=66)	12% (N=23)	3.9 (N=15)
3+	52 (10%)	29% (N=15)	6% (N=3)	3.7 (N=2)
All	501 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)

**Table 32: Nominations, Appointments and Retention Bar Survey
by Number of Fee Arbitrations**

# Fee Arbs	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁴³
None	429 (86%)	42% (N=179)	12% (N=53)	3.9 (N=37)
1-2	60 (12%)	25% (N=15)	10% (N=6)	3.9 (N=2)
3+	12 (2%)	0% (N=0)	0% (N=0)	3.7 (N=2)
All	501 (100%)	39% (N=194)	12% (N=59)	3.8 (N=41)

3. Prior Applications

Applicants who previously had applied for judicial positions were more likely to be nominated than applicants who had not previously applied.¹⁴⁴ This outcome may simply be a result of self-selection. In other words, applicants who were successful in being nominated may have been less likely to be discouraged and more willing to apply again.

Table 33: Nominations, Appointments by Number of Prior Applications

# of Prior Applications	# Applications (%)	% Nominated	% Appointed
0	262 (52%)	33% (N=86)	11% (N=29)
1	107 (21%)	40% (N=43)	16% (N=17)
2	61 (12%)	44% (N=27)	12% (N=7)
3	30 (6%)	43% (N=13)	3% (N=1)
4	18 (4%)	56% (N=10)	6% (N=1)
5	11 (2%)	73% (N=8)	18% (N=2)
6	6 (1%)	67% (N=4)	17% (N=1)
7	3 (<1%)	100% (N=3)	33% (N=1)
8	2 (<1%)	0% (N=0)	0% (N=0)

¹⁴² This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁴³ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁴⁴ The relationship between the number of prior applications and the nomination decision was statistically significant only after the number of prior applications was collapsed into three values: none; 1 – 3 prior applications; and 4 or more prior applications.

# of Prior Applications	# Applications (%)	% Nominated	% Appointed
9	1 (<1%)	0% (N=0)	0% (N=0)
All	501 (100%)	39% (N=194)	12% (N=59)

4. Reference Letters

The Council solicited reference letters from persons whose names were provided by applicants, and current and former job supervisors. While these references generally were positive, that was not always the case. Applicants with at least one significant negative comment, 14% of the total, were nominated at about one-third the rate of other applicants, and only 1 of 68 was appointed. This variable was statistically significant in both the nomination and appointment decisions. Further, applicants whose reference letters contained negative remarks were significantly more likely than other applicants to receive “below acceptable” or “acceptable” ratings on the overall performance variable on the selection Bar survey. This finding suggests that respondents to the Bar survey and the references chosen by the applicant shared similar perceptions about the applicant’s competence, at least on the overall performance measure.

Table 34: Nominations, Appointments by Negative References

	# Applications (%)	% Nominated	% Appointed
Negative Reference	68 (14%)	15% (N=10)	1% (N=1)
No Negative Reference	433 (86%)	43% (N=184)	13% (N=58)
All	501 (100%)	39% (N=194)	12% (N=59)

5. Comments

In addition to the references discussed above, the Council collected comments on judicial applicants from attorneys who recently had litigated against the applicant, the Bar survey, and public hearings. While it was impossible to code these comments in a completely objective manner, staff did identify about two dozen recurrent themes and made a yes/no determination whether these factors were present for each applicant. This determination was made not from the comments themselves, but from a staff summary prepared during the selection process. Most of the comments identified were from the Bar survey, with a few from counsel questionnaires.

Table 34 sets out the number of applicants for whom staff determined that the particular item applied, and the percent chance this particular group of applicants had of being nominated and appointed. There were too few records to draw any firm conclusions other than it appeared that these comments as a group did not have a large effect on nomination or appointment. There were, however, two exceptions. A pattern of comments that the applicant was “not diligent” or had a “poor temperament” had a statistically significant effect on both the nomination and appointment decisions. Also, applicants who received “poor temperament” or “not diligent” comments were more likely to score “below acceptable” or “acceptable” on the overall performance variable of the selection survey than those who did not receive similar comments.

Table 35: Nominations, Appointments by Comment Concerns

Pattern of Comments: Concern	# Applications	% Nominated	% Appointed
General Bias	108	44% (N=48)	14% (N=15)
Bias for Prosecution	17	24% (N=4)	12% (N=2)
Bias for Crim. Defense	14	71% (N=10)	14% (N=2)
Bias Against Minorities	15	40% (N=6)	7% (N=1)
Bias Against Women	18	39% (N=7)	11% (N=2)
Not Diligent	89	23% (N=20)	6% (N=5)
Slow	11	64% (N=7)	9% (N=1)
Arrogant; Egotistical	68	40% (N=27)	12% (N=8)
Poor Temperament	120	25% (N=30)	5% (N=6)
Concerns re Alcohol/Drugs	18	50% (N=9)	22% (N=4)
Not Strong Enough	16	25% (N=4)	6% (N=1)
Health Issues	17	41% (N=7)	24% (N=4)
Lacks Ability to be Rural Judge	15	33% (N=5)	20% (N=3)
Lacks Administrative Ability	23	44% (N=10)	17% (N=4)
Generally Limited Experience	250	36% (N=90)	10% (N=24)
Needs More Civil Experience	66	42% (N=28)	9% (N=6)
Needs More Crim. Experience	83	28% (N=23)	10% (N=8)
Needs More Private Practice	29	62% (N=18)	14% (N=4)
Needs More Trial Experience	32	47% (N=15)	9% (N=3)
All Applicants	501 (100%)	39% (N=194)	12% (N=59)

E. Bar Survey Ratings

This section describes variables gathered in the selection Bar survey ratings. It includes a discussion of the overall performance rating, survey ranking between applicants, ratings in such categories as integrity and temperament, and ratings by judges.

The most important variables for both nomination and appointment were related to applicants' scores on the Bar survey. These variables included: (1) the applicants' scores on the five or six items in each Bar survey;¹⁴⁵ (2) the applicant's rank (first, second, third, etc., relative to other applicants for the same position) in the Bar survey; (3) the percentage of all Bar members evaluating the applicant; (4) the judges' evaluation of the applicant on the overall performance variable; and (5) the applicant's score on the overall performance variable. Each of these is discussed below.

¹⁴⁵ Recall that the six items are professional competence, integrity, fairness or impartiality, temperament, suitable experience (in about half of the Bar surveys included in this analysis) and overall performance. An additional note about the selection and retention surveys of Bar members is that although Bar membership is mandatory for practice in the state courts, a number of attorneys in the state (some estimates put the number as high as 300 or more) practice only in federal courts or do not appear in state courts and thus are not required to be state Bar members. None of these attorneys receive the Bar surveys.

1. Overall Survey Rating

The following table shows that applicants awarded higher ratings on the overall performance variable on the selection survey tended to be nominated and appointed more frequently than those with lower ratings. The smallest group of applicants, those who received scores in the 4.0-5.0 range, had the highest likelihood of both nomination and appointment. This relationship was statistically significant in both the nomination and appointment decisions. The selection Bar rating also was a significant factor in retention Bar survey score.

Table 36: Nominations, Appointments and Retention Bar Survey by Selection Bar Survey Ratings

Bar Rating	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁴⁶
<3.0	81 (16%)	2% (N=2)	0% (N=0)	---
3.0 – 3.4	172 (34%)	15% (N=25)	1% (N=2)	3.9 (N=2)
3.5 – 3.9	173 (35%)	61% (N=106)	18% (N=31)	3.7 (N=25)
4.0 – 5.0	65 (13%)	94% (N=61)	40% (N=26)	4.1 (N=14)
All	491 (100%)	40% (N=194)	12% (N=59)	3.8 (N=41)

2. Survey Ranking

Survey rank also was significantly related to both nomination and appointment.¹⁴⁷ Thus, applicants ranked first on the overall performance variable were more likely to be nominated than those with lower relative rankings, and those ranked below fourth were less likely to be nominated than those with higher relative rankings. An applicant who was rated best on the selection survey was significantly more likely to be appointed. The eta squared percentages suggested that survey rank explained 41% of the variation among applicants in the likelihood of nomination, and 20% of the variation in the likelihood of appointment. The following table illustrates the findings.

Table 37: Nominations, Appointments and Retention Bar Survey by Selection Survey Rank

Rank	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁴⁸
1	63 (13%)	94% (N=59)	46% (N=29)	4.0 (N=20)
2	53 (11%)	80% (N=42)	23% (N=12)	3.8 (N=7)
3	57 (12%)	47% (N=27)	11% (N=6)	3.7 (N=5)

¹⁴⁶ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁴⁷ Survey rank was calculated from each applicant's average score on the overall performance variable.

¹⁴⁸ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

Rank	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁴⁸
4	63 (13%)	56% (N=35)	11% (N=7)	3.7 (N=5)
5	38 (8%)	29% (N=11)	5% (N=2)	3.8 (N=1)
6	36 (7%)	17% (N=6)	6% (N=2)	3.9 (N=2)
7	43 (9%)	9% (N=4)	0% (N=0)	--- (N=0)
8 or lower	138 (28%)	7% (N=10)	1% (N=1)	3.2 (N=1)
All	491 (100%)	40% (N=194)	12% (N=59)	3.8 (N=41)

3. Other Survey Categories

An applicant's scores on each of the survey variables were significantly associated with the likelihood that the Council would nominate the applicant. All of these variables had eta squared percentages that suggested that the survey scores explained 40% or more of the variation among applicants in likelihood of nomination.¹⁴⁹ The survey ratings explained only about half as much of the variation in the appointment decision, with eta squared percentages ranging from 10% to a little over 20%. This analysis suggests that survey scores were quite useful for predicting the likelihood of an applicant's nomination, but considerably less useful (although more useful than any other variables) in explaining an applicant's likelihood of appointment.¹⁵⁰ The following table illustrates the finding that applicants who did best on the Bar survey were more likely to be nominated and, to a lesser degree, appointed than other applicants.

Table 38: Selection Bar Ratings by Survey Categories and Nomination and Appointment

Category	Applicants	Nominees	Appointees
Prof. Competence	3.5	3.9	4.0
Fairness	3.6	3.9	4.0
Integrity	3.7	4.1	4.1
Temperament	3.4	3.8	3.9
Suitable Experience	3.4	3.8	4.0
Overall Performance	3.4	3.8	3.9

¹⁴⁹ The eta squared results are not additive, and do not provide the demonstration of independent contribution to the outcome that could be explained by, for example, a multiple regression analysis. However, multiple regression analysis was considered inappropriate for these data.

¹⁵⁰ The analysis could not take into account several factors in the appointment process that knowledgeable sources said played major roles. These factors included political party, monetary contributions, nominees' general philosophical positions on issues of concern to the appointing governor and other political considerations. The delegates to the Constitutional Convention clearly believed that this was an appropriate aspect of the selection process for the Governor. The fact that survey scores and other variables had some explanatory role in the appointments suggests that the governors also carefully considered the qualifications of each nominee.

4. Ratings by Judges

The score awarded by judges on the overall performance variable also tested significant in the nomination and appointment decisions.¹⁵¹ Applicants who received “excellent” or “good” ratings from judges were more likely than other applicants to be nominated. Applicants who received “excellent” ratings from judges were more likely than other applicants to be appointed. The eta squared percentages for these cross-tabulations were relatively large, suggesting that the judges’ rating explained a relatively large amount of the variation among applicants.¹⁵² The following table illustrates this finding.

Table 39: Nominations, Appointments and Retention Bar Survey by Selection Bar Survey Ratings of Judges

Judge Rating	# Applications (%)	% Nominated	% Appointed	Retent. Score ¹⁵³
<3.0	70 (21%)	1% (N=1)	0% (N=0)	--- (N=0)
3.0 – 3.4	79 (24%)	16% (N=13)	4% (N=3)	3.9 (N=3)
3.5 – 3.9	100 (30%)	46% (N=46)	10% (N=10)	3.9 (N=5)
4.0 – 5.0	83 (25%)	86% (N=71)	28% (N=23)	4.0 (N=12)
All	332 (100%)	39% (N=131)	11% (N=36)	4.0 (N=20)

5. Percent of Bar Evaluating

The percent of the Bar that evaluated an applicant also proved relatively important to likelihood of nomination. Applicants who were rated on the Bar survey by fewer than 10% of attorneys in the Bar tended to receive significantly lower scores on the overall performance variable than did those who were rated by 11-20% of their peers. However, the trend was not as strong for those who were rated by over 20% of the Bar.

The following table illustrates a related finding, that the percentage of the Bar evaluating applicants seemed to be related to likelihood of nomination and appointment. The table shows that applicants evaluated by 16-20% of the Bar were the most likely to be nominated, while those evaluated by ten percent or fewer of the Bar members were not as likely to be nominated. Applicants evaluated by over 20% of the Bar were almost as likely to be nominated as those evaluated by 11-15%.

¹⁵¹ The Bar survey contains demographic information, including whether the respondent is a judicial officer.

¹⁵² Eta squared for nomination was 41% and for appointment was 11%.

¹⁵³ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

**Table 40: Nominations, Appointments and Retention Bar Survey
by Percent of Bar Evaluating**

% of Bar	# Applications (%)	% Nominated	% Appointed	Retent. Score¹⁵⁴
1 - 3%	53 (11%)	15% (N=8)	4% (N=2)	--- (N=0)
4 - 6%	118 (24%)	29% (N=34)	8% (N=10)	3.8 (N=8)
7 - 10%	174 (35%)	43% (N=74)	11% (N=20)	3.9 (N=14)
11 - 15%	82 (17%)	46% (N=38)	15% (N=12)	3.9 (N=7)
16 - 20%	40 (8%)	70% (N=28)	23% (N=9)	3.7 (N=8)
Over 20%	24 (5%)	50% (N=12)	25% (N=6)	3.9 (N=4)
All	491 (100%)	40% (N=194)	12% (N=59)	3.8 (N=41)

One factor that might affect the percentage of the Bar that knew an applicant well enough to evaluate him or her on the Bar survey was the number of jobs the applicant had held. Those with the most people evaluating them (over 20%) had held four or more jobs. Those who had two to three jobs tended to be evaluated by smaller numbers of Bar members. Those who had held only one job were evaluated either by a sizable percentage of the Bar (16-20%) or by a very small percentage (1-3%).

6. Overall

The preceding analyses suggested that the Bar Survey scores had the greatest explanatory power in nomination and appointment decisions. The scores may in fact have been related to or measuring other factors. In order better to understand the relationships among Bar Survey scores, nomination and appointment decisions and other variables, we analyzed the nomination and appointment decision from the perspective of the overall performance score on the Bar selection survey. In other words, we used the overall performance score¹⁵⁵ as the dependent variable. We then matched applicants' overall score with the personal and professional characteristics previously identified as important to predicting likelihood of nomination and appointment. This analysis tended to confirm the hypothesis that an applicant's Bar survey scores were highly correlated with characteristics that predicted nomination by the Judicial Council and, to a lesser degree, appointment by the governor. Thus, the analysis suggests that the overall Bar survey score may have been a proxy for other characteristics significantly related to likelihood of nomination and appointment.

¹⁵⁴ This rating, taken from the selection/retention data set, represents the mean rating on the overall performance item in the retention Bar survey. The other values in this table are from the selection data set.

¹⁵⁵ Recall that the Bar survey asks attorneys to rate applicants on a five-point scale on six criteria: legal ability, integrity, fairness, judicial temperament, suitable experience and overall professional performance.

Chapter 6

Conclusions & Recommendations

The purposes of this review of data from the Judicial Council's files over the past fourteen years were to determine what types of attorneys were nominated and appointed to judicial positions, whether nomination and appointment were associated with specific applicant characteristics, and whether these applicant characteristics were associated with successful performance as a judge. The first part of this chapter summarizes the findings reported in the preceding chapters. The second part contains recommendations based on the findings.

The small number of judges who had both selection and retention information available hampered efforts to test the relationships between most applicant characteristics and performance on the bench. Having a larger database for analysis probably would show that other characteristics also were associated with judicial performance. A finding that a particular characteristic was not statistically significant in this study does not mean that the information is not valuable in the judicial selection process. Even without statistical significance, a nominating commission and appointing authority may find some information to be useful or essential to establish a context for viewing other information. Other information, such as criminal history, found not to be statistically significant in this study clearly is needed to make decisions that are in the public interest.

A. Conclusions

This review represents the first systematic analysis of selection and retention data for judges in Alaska. Taken as a whole, the information about judicial performance points to the conclusion that Alaska has a very well qualified judiciary. Retention survey scores awarded over the past fourteen years by both attorneys and peace and probation officers showed, on the whole, very high ratings for Alaska's judges. Moreover, the electorate's yes vote percentages showed that judges tended to be retained by high margins.

The high quality of Alaska's bench suggested in turn that the Judicial Council's selection process has, over the past fourteen years, succeeded in identifying highly qualified judicial applicants. This study helped identify the parts of the selection process that played the most important role in nomination decisions. Two tools identified as helpful in identifying qualified applicants were the written survey of all members of the Alaska Bar Association and an assessment of the applicant's writing ability.

Finally, analysis suggested that Alaska's bench has been improving over time. More recent retention evaluation scores tended to be higher than scores received by judges earlier in the study

period. While this trend was not statistically significant, it coincided with the Judicial Council's efforts over time to improve the thoroughness and objectivity of the selection process.

1. Findings Related to Nomination and Appointment

This review helped identify the most important aspects of the Judicial Council's selection process. Bar survey scores and survey-related variables turned out to be the most important variables related to nomination and appointment of applicants.¹⁵⁶ This finding suggested that a carefully designed and administered Bar survey can help identify highly qualified judicial applicants.

a. Survey-Related Variables

Applicants with higher Bar survey scores were significantly more likely to be nominated and to a lesser extent, appointed. Several variables related to the survey score also appeared to be important. The survey ranking (those in the top first to fourth positions were more likely to be nominated; those in the top two positions were more likely to be appointed), the percentage of the Bar evaluating each applicant (those who had between 11% and 20% of the Bar evaluating their performance were more likely to be nominated and appointed), and the score on overall performance from judges (those with better evaluations by judges were more likely to be nominated and appointed) all played a part in predicting likelihood of nomination and appointment.

Bar survey scores and survey-related variables explained a little under half of the variation among applicants for the nomination process and less than one-quarter of the variation in the appointment process. The findings suggest that other factors not measured in this study played a significant role, particularly in appointments. A carefully designed and administered Bar survey can meaningfully measure judicial applicants' qualifications, although it should not become the sole criterion for nomination or appointment decisions.

b. Writing Ability

A second useful tool for judging applicants' qualifications was an assessment of each applicant's writing ability. Writing ability, as measured by the Judicial Council's assessment on a five-point scale, was significantly related to the nomination and appointment decisions. Writing ability probably reflected a range of more specific skills. These may have included ability to do legal research and report it correctly; ability to organize thoughts and materials; fluency in correct use of the language; ability to present a well-balanced discussion of the issues in a case; and ability to present arguments and decisions concisely. Also, writing style may have reflected an applicant's temperament, for example, if the attorney routinely included exaggerated attacks in

¹⁵⁶ This survey asks attorneys to rate applicants on a five-point scale on the qualities of legal ability, temperament, integrity and overall performance.

the written product. Finally, the level of proofreading and typographical errors could have reflected the care with which the author approached all aspects of his or her work.

c. Employment

The Judicial Council's selection procedures also gather information about applicants' professional experience. Some of this information, including employment, income and years of practice, was related to the nomination and appointment decisions. Thus, it appeared that certain employment information could help identify qualified judicial applicants.

An applicant's employment, both at the time of application and prior to applying for a judgeship, was significantly associated in various ways with nomination. Judges who applied for other judicial positions were significantly more likely to be nominated, as were appellate law clerks. Applicants who were public defenders or OPA¹⁵⁷ attorneys also were significantly more likely to be nominated, as were assistant attorney generals. Prior experience as a public defender also was associated with a better chance of nomination, and with higher scores from peace and probation officers in the judicial performance surveys. The data on private sector employment was less clear. Most applicants (88%) had private sector experience in their backgrounds, even if they were employed in the public sector at the time that they applied for a judicial position. Employment at the time of application as a sole practitioner was associated with a lower chance of nomination.

Applicants came in larger numbers from different segments of the Bar. Prosecutors applied for judgeships at a rate three times their representation in the general membership of the Bar. Public defenders and OPA attorneys applied at a rate about equal to their numbers in the Bar. Attorneys in the public sector (prosecutors, public defenders and assistant attorney generals) applied for judgeships at higher rates than did lawyers in the private sector. More private sector attorneys applied for superior court than for district court.

d. Income

A fourth factor important to the nomination and appointment decisions was the applicant's income at the time of application. Applicants making less than \$60,000 at the time of appointment were less likely than those making more to be nominated or appointed. Applicants making between \$60,000 and \$149,000 were more likely to be nominated, and those making over \$250,000 had an edge in both nomination and appointment, but a bigger edge in appointment.

Income also was significantly related to the applicant's score on the overall performance variable on the Bar selection survey. As discussed in Chapter 5, however, income probably served as a proxy for other applicant characteristics including employment, length of practice, residency or type of experience, since all of those were related to income. Incomes below \$60,000 could have

¹⁵⁷ OPA is the Office of Public Advocacy. Its attorneys handle public defender conflict-of-interest cases as well as a variety of other cases.

reflected part-time work or lack of success in private practice. Applicants with incomes falling in the very top range had a better chance of both nomination and appointment than did applicants with low incomes.

e. Other Significant Variables

Other variables were statistically significantly related to the likelihood of nomination, although none were as important as the survey scores, writing sample, employment and income. These included years of practice (16 to 20 years had the best chance of nomination), years of residence (11 to 20 years had the best chance), attendance at a “prestige” law school, number of jobs held in the applicant’s legal career (6 to 8 jobs had the best chance of nomination), a larger percentage of jury trials, a substantial criminal caseload prior to appointment, participation in Bar Association activities, and the numbers of grievances and fee arbitrations. Negative comments about temperament and diligence on the Bar survey, and poor references were associated with lower chances of nomination and appointment.

Equally important were findings that the judicial nomination and appointment processes either were not, or were only minimally affected by factors that would have suggested inappropriate considerations. Gender, age, marital status and number of children played no part in these processes. Ethnicity was found to play a statistically significant but very minor role in nominations: Persons from ethnic groups other than Caucasian had a very slightly greater likelihood of nomination. Because the Judicial Council does not have data about political or religious affiliations of applicants, it was not possible to determine whether these characteristics affected nomination or appointment.

Some variables were not statistically significant, but still played an important role in the selection process. These included credit and criminal histories, level of community activity, regular appearance in court, and pro bono service. The lack of significance could be due to artifacts of the data collection, to the amount of data, or to other factors. The Council continues to believe that these are important factors to consider in judicial nomination decisions.

2. Findings Related to Judicial Performance

The judge performance evaluations and retention election data were limited enough by the small sizes of the data sets that they resulted in fewer findings than did the selection data. The trends that emerged from the data pointed out directions for future analysis.

In general, the retention Bar and PPO surveys and yes vote percentages suggested relatively high levels of public approval of judges’ performance in Alaska. This trend towards high yes vote percentages in Alaska held true even though the national trend has been towards lower average approval margins over the last 20 years. While a particular judge’s survey scores may have indicated areas for improvement, overall the scores did not show any areas of systemic weakness in the judiciary. Examining changes in retention survey scores over time suggested that judicial performance may be improving in Alaska (the trend was not statistically significant).

a. Bar Survey Scores

As discussed at the beginning of this chapter, judicial applicants who received high ratings from attorneys on the overall performance item of the Bar selection survey score tended to receive better retention evaluations from attorneys. This finding may suggest that attorneys who had direct professional experience with judicial applicants often could recognize qualities that predicted successful performance as a judge. This finding in turn suggested that the Bar selection survey was a useful tool in the Judicial Council's selection process, since it helped identify those applicants who would perform successfully if nominated and appointed.

b. Peremptory Challenges

Higher rates of peremptory challenges appeared to be associated with lower performance evaluation scores from attorneys. The Council's experience with peremptory challenge patterns suggested that large numbers of challenges often came from attorneys who perceived that the judge was favoring one side in a particular type of case, or that the judge was not well versed in the law or procedure of a certain type of case. It was not surprising that judges who received numerous peremptory challenges also would receive lower scores on the retention performance evaluation survey.

B. Recommendations

The findings and conclusions derived from the data suggested several recommendations. Some of these are specific ways that the Council could improve its selection and retention processes, while others apply to judicial selection bodies in other jurisdictions. The recommendations fall into three categories with a primary emphasis on judicial education.

1. Judicial Education

Several findings and conclusions held implications for judicial education. The Judicial Council recommends that courts' judicial education committees or staff consider the findings of this report and apply them as appropriate in their own jurisdictions.

First, it is important to share information about judicial performance with judicial educators so that educators can develop appropriate educational programs. The Judicial Council recommends that other jurisdictions develop systematic procedures for informing judicial educators about strengths and weaknesses identified by judicial performance evaluations.

The significant association of writing ability with a higher likelihood of nomination and appointment, as well as the possibility that it was related to better judicial performance suggested that most jurisdictions should consider ways to improve judges' writing skills. Several methods of effectively teaching writing skills exist, and the Council does not recommend any specific approach. Appointees lacking strength in writing ability should be urged to develop these skills early in their judicial careers.

Attorneys who came to the bench with a strong criminal practice background tended to do better than those with other backgrounds. Judicial educators should analyze the individual components of a criminal practice background to identify skills, knowledge and abilities relevant to judicial performance. Their presentations could focus on development of those skills and abilities.

Negative comments about diligence on the Bar survey were associated with a lower chance of nomination and appointment. These comments, to the extent that they might apply to an appointee to the bench, would suggest specific training to help change the judge's approach, as needed. For example, comments about diligence may reflect an applicant's inability to organize work effectively. Many approaches to organization exist, and books and training offer numerous suggestions for managing time and workload.

Temperament comments or lower survey scores in this category also point to directions for training, to the extent to which some appointees may need to change approaches to colleagues and those who appear in the courtroom. Most temperament comments fell into the categories of arrogance, aloofness, lack of civility and similar characteristics. These traits of temperament may simply be habitual approaches that would require relatively little effort to change, or they might be rooted in deeper character traits. In either case, some types of behavioral training can change behaviors enough to improve relationships among the judge and those with whom the judge works.

The association between large numbers of peremptory challenges and lower performance evaluations from attorneys also led to a recommendation. Judges or others might consider tracking challenges and reviewing the reasons for large numbers of challenges. Jurisdictions without peremptory challenges of judges could look at indicators within their systems of possible biases, inadvertent or other, on the parts of judges. Judges with peremptory challenge or similar problems might benefit from training in the Judicial Canons regarding impartiality and appearance of impartiality, or from training in the specifics of the types of cases in question that would allow them to present a more balanced view of their decisions.

In individual situations, lower scores on the performance evaluation surveys might suggest to a presiding judge or other authority the types of help that a judge could use to improve performance in specific areas. Identifying areas for improvement for each judge would help the judge or judicial education coordinator choose appropriate training. The Council recommends that courts in states with performance evaluations use the performance data to tailor individual training programs for each judge.

2. Judicial Selection Procedures

a. Bar Surveys

This review found that Bar survey scores helped predict nomination and appointment, and showed possible relationship to subsequent performance on the bench. Other jurisdictions might consider using Bar surveys to help with judicial selection. To be effective, Bar surveys should be

sent either to all members of the Bar or to a statistically valid sample of Bar members. Surveys that ask respondents to evaluate applicants on objective criteria are more useful than those that ask only for summary opinions such as "Would this applicant be a good judge?" The Judicial Council's experience has suggested that demographic information about respondents helps greatly in interpretation of Bar survey results. Ratings from particular groups of respondents (e.g., judges) often strengthen the general findings from the survey or pinpoint areas of possible concern. Bar surveys should rely only on ratings based on respondents' direct professional experience with the applicant for all major analysis.

b. Characteristics Unrelated to Bar Surveys

Jurisdictions without Bar surveys that do not wish to introduce them (for reasons of policy or resources) focus on applicant characteristics unrelated to survey scores. This review suggested two important criteria for evaluation: writing ability and criminal practice background.

All jurisdictions could consider integrating information about writing ability into their selection procedures. One means of measuring writing ability is to develop a relatively objective, standardized scale and set of criteria for assessing it. Other fields may have designed scales that could be adapted to legal writing. The Judicial Council should consider whether scores given on its writing scale should be spread out more, instead of clustering in the acceptable and good categories.

Other jurisdictions might consider the relationship between a criminal practice background and judicial performance in their trial courts. Many jurisdictions, including Alaska, use a majority of the trial court judges' on-bench time in criminal cases because criminal matters usually go to trial more often than civil cases. Attorneys aspiring to judgeships should assess the usefulness of a background in criminal practice, based on the caseload and expectations of their own jurisdictions.

3. Judicial Performance Evaluations

Attorneys and Peace and Probation officers gave good or excellent evaluations to most judges. This finding suggested that Alaska's bench is highly qualified, a finding that in turn suggested that Alaska's judicial selection procedures effectively identify highly qualified applicants. A strong merit selection process can be shown to result in a highly qualified judiciary.

The performance surveys used by the Council could serve as a model for other jurisdictions. While the uniformly high survey ratings were of limited usefulness in a statistical sense for this type of report, the surveys were extremely useful for evaluating individual judicial performance. They helped individual judges who wished to improve their performance learn about areas in which they were weak and strong. Judges could use this information to decide on future training. The surveys also provide objective, quantifiable data that can be publicized as desired, and more direct comments that can be very useful to individual judges. Jurisdictions that evaluate judicial performance without surveys should consider testing surveys in their jurisdictions. While surveys

should not replace information from other sources (jurors, court employees, etc.), they give an important perspective on a judge's performance.

4. Peremptory Challenges

The correlation between peremptory challenges and judicial performance found in this survey suggests that other jurisdictions should consider implementing a system of peremptory challenges along the lines used in Alaska. Such a system could have several benefits. First, it would give judges an early indication about attorneys' perceptions about their performance, as well as an opportunity to address and improve those perceptions. Second, the presence of peremptory challenges may give an extra incentive to judges to avoid behavior such as bias or rudeness that could lead to peremptory challenges.

C. Conclusion

This project has allowed the Alaska Judicial Council to collect and analyze data gathered over fourteen years of judicial merit selections and judicial evaluations. The results have provided the Council, and other jurisdictions with an informative and helpful view of the judicial selection and evaluation processes. The existing data strongly suggests that other jurisdictions can objectively measure a number of applicant skills and qualities that appear to be related to good performance on the bench. This information can guide merit selection and appointment processes, as well as suggesting topics for judicial training and education. The usefulness of the results even given the limits set by the small databases for some of the analyses, shows the need for continued compilation of data. The Judicial Council will add information to its database for each new judicial vacancy and retention election evaluation, and will periodically analyze the data. We encourage other jurisdictions to undertake similar reviews to increase the sum of knowledge about what makes a good judge.

Appendix A

Methodology

Appendix A: Methodology

I. Study Design

The review of judicial qualities began with the creation of three databases. The first, designed to capture information about judicial applicants used each application for a judgeship received by the Judicial Council between January, 1984 and July, 1997. Staff used most information contained in the application form used by the Council for each vacancy, supplemented by information from other sources, including applicant's Bar survey scores and comments, information from the interview summary sheet,¹ and information from the Bar's pro bono office. Suggestions by the project's Advisory Committee (see Appendix B) helped to structure the nature and number of variables included in each database.

Staff entered data from 501 applications filed by 303 individuals into the "selection" database. The second database, used to review the performance of sitting judges compiled information from 141 retention election evaluations performed for 80 judges. The third database, combining information from the two previous databases, contained information about selection and retention evaluations for 41 individual judges. This final database permitted staff to analyze associations between a judge's pre-appointment characteristics and that judge's performance on the bench, as measured by retention evaluation ratings.

The data were entered by the Judicial Council's Research Associate into an Access database designed by the Council's Executive Director. Data fields for the selection database included:

- ◆ Applicant's age at time of application, years of residence and practice, ethnic origin, gender, marital status and number of children at time of application;
- ◆ Applicant's significant non-legal employment (if any), all law positions (including clerkships) held, and employment at the time of application (with legal positions and current employment categorized in several ways, including judicial position, defense or prosecution, government, size of law firm, corporate or public interest attorney, and the like);
- ◆ Applicant's legal experience, including regularity of court appearance, level of court in which most practice was conducted and whether the court was state or federal, number of

¹ This two-page form has been prepared for each applicant for each vacancy since 1984, and includes summarized information from the application, reference letters, survey scores and comments, and staff investigation of credit and criminal history, Bar grievances, discipline and fee arbitrations, pass/fail Bar exam, and suggested interview questions.

- jury trials, administrative hearings and appeals in the five years immediately preceding application;
- ◆ Applicant's other activities, including pro bono work, Bar activities, legal publications and community activities;
 - ◆ Applicant's credit and criminal history, Bar or judicial discipline, number of grievances and fee arbitrations filed;
 - ◆ Applicant's Bar survey scores and general categories of comments; and
 - ◆ Level of court and location within the state for which the applicant filed this application, and Governor at the time of nominations for the position.

Data fields for the retention database included:

- ◆ Location and level of the judge's court;
- ◆ Bar and Peace and Probation Officer survey scores, juror survey scores, court employee survey scores, and CourtWatch survey scores (for those judges evaluated by CourtWatch);
- ◆ Retention year and the total number of retentions in which that judge stood prior to the retention being coded;
- ◆ Whether the Council recommended the judge for retention, whether the judge retired within the year before the date of the retention election, and whether the judge was retained;
- ◆ The percent of all voters casting votes in that judge's retention that were "yes" votes (referred to as the "yes vote percentage;")
- ◆ Judicial discipline, peremptory challenge problems, amount of public opposition;
- ◆ Judicial workload, including percentages of civil and criminal cases and administrative work and average number of trials per year.

The final database which combined information from the first two for 41 judges included all of the information from each database.

II. Analysis

The Council's Research Associate, under the direction of senior Council staff, began the analysis by running frequencies of each variable in SPSS (for PC, Version 8.0). Staff reviewed these data for inaccuracies, and made corrections and re-coded as necessary. Staff then cross-tabulated each variable against two dependent variables, "nominated," and "appointed." Many variables

required re-coding to collapse narrow categories into statistically-useful subsets of data. Chi-square statistics and eta coefficients were generated for each variable, to test the statistical significance of the cross-tabulation, and its usefulness in further analysis. From this process, tables were created that showed which variables appeared to be not useful for further analysis,² which were not statistically significant for either nomination or appointment, and which were significant for nomination, appointment or both. A second analysis used the applicant's Bar survey scores as the dependent variable. To confirm the importance of the statistically significant variables, staff generated an eta-squared value for each cross-tabulation, then ranked the variables in order from most important to least important. A third analysis used the mean scores of different groups of applicants as the variables for comparison.

Staff created a list of criteria actually used during the selection process by Council members, and the sources of information (e.g., application, survey comments and scores, reference letters) which the Council used to evaluate an application. The list served as a cross-check on the validity of the chi-square tests and eta-squared coefficients.

Similar analyses were carried out for the retention evaluation database and the subset of 41 judges for whom information about both selection and retention evaluations was available. In these smaller databases, most of the statistically significant findings were hampered by the limited number of cases. Larger databases would permit more reliable analyses, and might change the significance of some of the variables.

² Only a handful of variables appeared on this list, including Martindale-Hubbell ratings (data were unavailable for many applicants, and the M-H rating had been shown in a recent study to be gender-biased as administered in Alaska), number of arbitrations (data available for only a few applicants), and survey comments about whether the applicant was "bright" or "intelligent" (data were unavailable for many applicants, and inconsistently recorded for the remainder).

Appendix B
Advisory Committee Members

Appendix B

Judicial Profile Advisory Committee Members

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Appendix C
Selection Survey Form

Ketchikan District Court, First Judicial District

Mary P. Treiber

Basis for Evaluation

A. Which of the following best describes the basis for your evaluation of this candidate? Direct professional experience is limited to direct contact with the applicant's professional work. This includes working with or against the attorney on a legal matter (i.e., a case, arbitration, negotiation. . .). (check one)

- Direct professional experience Professional reputation
 Other personal contacts Insufficient knowledge to evaluate this candidate (go to next candidate)

B. If you checked direct professional experience, which of the following best describes the amount of that experience?

- Substantial and recent (within last 5 years) Moderate Limited

C. Please rate the candidate on each of the following qualities by circling the number that best represents your evaluation. Candidates should be evaluated on each quality separately. Use the ends of the scales as well as the middle. The tendency to rate an applicant "excellent" or "poor" on every trait should be avoided since each person has strengths and weaknesses. If you cannot rate the candidate on any one quality, leave that one blank.

1 PROFESSIONAL COMPETENCE	1 POOR Lacking in knowledge and/or effectiveness	2 DEFICIENT Below-average performance occasionally	3 ACCEPTABLE Possesses sufficient knowledge and required skills	4 GOOD Usually knowledgeable and effective	5 EXCELLENT Meets the highest standards for knowledge and effectiveness
2 INTEGRITY	1 POOR Unconcerned with propriety and/or appearance, or acts in violation of codes of professional conduct	2 DEFICIENT Appears lacking in knowledge of codes of professional conduct and/or unconcerned with propriety or appearance at times	3 ACCEPTABLE Follows codes of professional conduct, respects propriety and appearance of propriety at all times	4 GOOD Above-average awareness of ethics, holds self to higher standard than most	5 EXCELLENT Outstanding integrity and highest standards of conduct
3 FAIRNESS	1 POOR Often shows strong bias for or against some person or groups	2 DEFICIENT Displays, verbally or otherwise, some bias for or against groups or persons	3 ACCEPTABLE Free of substantial bias or prejudice towards groups or persons	4 GOOD Above-average ability to treat all persons and groups impartially	5 EXCELLENT Unusually fair and impartial to all groups
4 JUDICIAL TEMPERAMENT	1 POOR Often lacks compassion, humility, or courtesy	2 DEFICIENT Sometimes lacks compassion, humility, or courtesy	3 ACCEPTABLE Possesses appropriate compassion, humility, and courtesy	4 GOOD Above-average compassion, humility, and courtesy	5 EXCELLENT Outstanding compassion, humility, and courtesy
5 SUITABILITY OF THIS CANDIDATE'S EXPERIENCE FOR THIS VACANCY	1 POOR Has little or no suitable experience	2 DEFICIENT Has less than suitable experience	3 ACCEPTABLE Has suitable experience	4 GOOD Has highly suitable experience	5 EXCELLENT Has the most suitable experience possible for this position
6 OVERALL RATING FOR THIS POSITION	1 POOR Seldom meets standards of the profession	2 DEFICIENT Occasionally falls short of professional standards	3 ACCEPTABLE Consistently meets professional standards	4 GOOD Often exceeds professional standards	5 EXCELLENT Meets highest standards of the profession

Appendix D
Writing Sample Criteria

MEMORANDUM

TO: Judicial Council Members
FROM: Teri Carns
DATE: May 2, 1997
RE: Writing Sample Criteria

The Judicial Council asks that each applicant for a judicial position submit a sample of his or her writing for evaluation as part of the merit selection process. Until 1984, the writing samples were sent directly to the Council with no staff review. As part of a series of changes in the application and investigation process begun in 1981, and continued in 1984 and 1985, the Council decided to have staff review and briefly summarize each writing sample. The review was not intended to cover substantive areas, but to focus on the applicant's ability to communicate in clear and correct English.

Criteria used to evaluate the writing samples include:

- Correct grammar, including use of complete sentences, correct verb tenses, and accurate punctuation;
- Correct syntax, including structure of sentences, and use of words and phrases within sentences;
- Organization of the sample, including use of a logical outline or sequence of ideas;

- Conciseness of expression, including lack of repetition of phrases and ideas;
- Use of language to improve the readability of the sample, including use of active verb tenses, use of synonyms (as appropriate), use of less-common words and phrases or use of metaphors and similes to add interest or express an idea more accurately;
- Comprehensiveness of the writer's view of the subject, particularly emphasizing whether the presentation of the arguments seems balanced and objective rather than shrill and one-sided;
- Use of historical and other types of background information to give a larger context to the arguments made;

Another criterion is the appropriateness of the writing sample as an example of the applicant's ability to handle judicial writing duties. Are the facts stated? Are they stated understandably? Does the sample demonstrate any legal research ability, or does it rely primarily on transcripts, textbooks, or other such sources? Is the sample too short?

Proofing is important for two reasons. First, it indicates something about the care and pride a person takes in the work submitted. Second, it reflects the person's attention to detail and awareness of correct grammar and use of language. More than a few typos in a sample suggests that the person not only was not paying attention when they sent the sample to wherever it was going, it suggests that the person was not paying much attention to the judicial selection process. Alternatively, it suggests that the applicant does not value written work greatly, which would be a troubling characteristic in someone who wanted to be a judge.

The scale used for evaluating writing samples is somewhat similar to that used in the Bar survey. I have used five ratings: "below acceptable (1)," "minimally acceptable (2)," "average (3)," "good (4)," and "excellent(5)."

I would further define these terms along the following lines. "Below acceptable (1)" means that I could not see someone who was disorganized and/or inaccurate functioning well as a judge. "Minimally acceptable (2)" means that I have seen judges producing this kind of work, but that it is at best mediocre writing. "Average (3)" means that the writing is just that — average — or put in different terms, sufficient for the task but not especially good. "Good (4)" means the quality of writing that I believe we should expect of judges. "Excellent (5)" means writing that is outstanding in clarity, smoothness, persuasiveness, and balance.

Appendix E
Retention Survey Form

THIRD JUDICIAL DISTRICT

SUPERIOR COURT

Judge Michael L. Wolverton

Basis for Evaluation

will stand for retention in 2000

- A. Which of the following describes the basis for your evaluation of this judge? (CIRCLE ONE OR MORE)
1. Direct professional experience
 2. Professional reputation
 3. Social contacts
 9. Insufficient knowledge to evaluate this judge (GO ON TO NEXT JUDGE)

To rate this judge, circle one number for each criterion. If you lack sufficient knowledge to rate the judge for any one of the criteria, circle 9. (SEE INSIDE FRONT COVER FOR PRECISE DEFINITION OF THE RATING SCALE)

	Unacceptable	Deficient	Acceptable	Good	Excellent	Insufficient Knowledge
1. Integrity	1	2	3	4	5	9
2. Impartiality/Fairness	1	2	3	4	5	9
3. Respect for parties, attorneys, staff, etc.	1	2	3	4	5	9
4. Reasonable promptness in making decisions	1	2	3	4	5	9
5. Overall evaluation of judge	1	2	3	4	5	9

Comments: Please add any comments that you believe would aid the Judicial Council in its evaluations. These comments are anonymous to protect the confidentiality of the respondent. If more space is needed, attach another sheet of paper.

Print Name (Optional)

Providing your name is optional but does give your comments added credibility with the Council members. Your name will not be given to the judge. It will not be used by the Council to identify your ratings or your comments for other judges. The Justice Center provides the Council with a separate comment section on each applicant. Thus, you will have to write your name on each comment page for which you wish to identify yourself to the Council.