

Insights on LACBA's State Appellate Judicial Evaluation Committee

FOR THE PAST SIX YEARS I HAD THE HONOR of chairing the Los Angeles County Bar Association's State Appellate Judicial Evaluation Committee, affectionately called SAJEC. A standing committee for over 30 years, SAJEC evaluates candidates submitted by the governor for possible nomination to the appellate bench, typically for seats in Southern California. SAJEC is a small committee of 22 members plus a chair and vice-chair.

Historically, SAJEC membership often is a non-event, because if there are no vacancies, there are no candidates to evaluate. Court-watchers know, however, that Governor Jerry Brown's terms saw an unprecedented number of appellate vacancies and appointments—including over 50 new court of appeal justices. These vacancies meant that SAJEC had never been busier. For every open seat, numerous candidates were evaluated. All eight divisions of the Second District Court of Appeal gained at least one new justice. Division Five consists entirely of recent appointments by Governor Brown.

SAJEC evaluations are a thorough and time-consuming process, requiring evaluating written materials, reviewing survey responses, calling references, interviewing candidates, debating evaluations, and drafting confidential reports for the governor—all within a tight timeline. Evaluations take the form of a ratings system: not qualified, qualified, well qualified, and exceptionally well qualified. Numerous qualities factor into a rating, including breadth and depth of legal experience, professional skills (e.g., writing ability, scholarship), intellectual capacity, integrity, honesty, industry, impartiality, commitment to equal justice, temperament, collegiality, and many more. (SAJEC's website details the evaluated qualities and defines each rating.)

Maxims to Evaluate By

Despite the challenges posed by this laborious work, the experience was highly satisfying. Over the years, to help guide SAJEC's discussions, I created a script of maxims, shared here for the benefit of future committees engaged in similar work.

What's said in the evaluation room, stays in the evaluation room. We must avoid Stockholm syndrome. In seeking information, evaluators are most often flooded with positive feedback. This is a function of the truism that only the truly courageous are confident enough to say anything bad about someone who might get elevated. Because most input is positive, it takes hard digging to find the dirt. The best investigatory feedback is oral, rather than written.

Most judges like to see their colleagues get elevated; therefore, most commentary from fellow judges is positive. However, it is important to stay alert for competitive rivalries. Although most judges like to see their fellow judges get elevated, there are some who do not.

The governor only seeks evaluations of candidates who are strong to begin with. This was especially true with Governor

Brown. That said, there is no such thing as a perfect candidate. A contender who does not already have the job will never be fully seasoned or experienced enough. Expecting a candidate to have adequate experience in every possible area of the law to be appealed (civil, criminal, family, juvenile, probate, and so forth) is unrealistic.

Candidates are invariably on their best behavior when they are being evaluated and interviewed, but everyone has bad days. Invariably there will be unhappy lawyers who have appeared before a judge or unhappy opposing counsel who have negative thoughts about any candidate.

Making Friends and Enemies

Every time a judge rules, he or she makes one temporary friend and one permanent enemy. It is easy to make enemies practicing law, too. As one author expressed it: "Accruing adversaries is a sure sign that you're a bona fide member of your community. You can't be disliked without being known."¹

Actual transcripts do not always support lawyers' memories of hearings. Thus, it is important to obtain transcripts to evaluate whether the judge really did "lose it" on the bench. Nevertheless, actual transcripts may fail to capture tone.

It is not a good idea to compare candidates with one another. Each should be evaluated on his or her own merits. That said, it is worth keeping in mind the standards for what really is necessary to be remarkable or extraordinary. Beware of grade inflation. People are rarely as wonderful, smart, and unbiased as they think they are, or as their friends and family think they are. Yet, many amazing people are very modest.

Regardless of SAJEC's views, the only opinion that ultimately matters is the governor's. SAJEC's job is to fairly and critically evaluate candidates and provide useful feedback to the governor. Because we only evaluate candidates who are serious contenders, we serve as a backstop to ensure that there will be no local outcry about a choice and that down the road there will be no regret about a selection.

The fact that many of these maxims contradict each other mirrors the nature of folk wisdom e.g., "Absence makes the heart grow fonder" and "out of sight, out of mind." Evaluations are a heady blend of fact and subjectivity. I am exceedingly proud of SAJEC's efforts and have every confidence that the justices now serving will be shining examples of judicial excellence for years to come.

¹ MEGHAN DAUM, *THE UNSPEAKABLE: AND OTHER SUBJECTS OF DISCUSSION* 199, 214 (2014).

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