

## Evaluating Judicial Performance: Editors' Introduction

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### Abstract

The articles in this issue tackle the conceptual issues associated with defining good judging and the purposes of evaluating judges, and ask such questions as: What values are central to the judicial role? What knowledge, skills, abilities, and other qualities are important to judicial performance? What does scholarship tell us about judging and judicial performance? What are the challenges in measuring judicial performance, the extent to which existing evaluation programs can capture what it means to be a judge, and the potential for developing multi-method evaluation programs? An underlying theme is the nature and desirability of linking evaluations of individual judges with evaluations of the court system and the ways in which results from performance evaluation can be incorporated into educational and other programs designed to promote improvements in the quality of the judiciary.

The papers cluster around three major themes: (i) Conceptual and methodological issues; (ii) Experiences of evaluating judges; and (iii) Empirical research findings.

### Key words

Judicial performance evaluation; quality of judiciary; courts and judging; empirical research and courts; methodologies for judicial evaluation; performance studies

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**Resumen**

Los artículos de este número abordan aspectos conceptuales asociados con el hecho de juzgar de forma correcta y los propósitos de evaluar a los jueces, y plantean preguntas como: ¿qué valores son básicos en el rol judicial? ¿Qué conocimiento, aptitudes, habilidades y otras cualidades son importantes para el rendimiento judicial? ¿Qué nos dice el mundo académico sobre el hecho de juzgar y el rendimiento judicial? ¿Cuáles son los retos en la medición del rendimiento judicial, hasta qué punto los programas de evaluación existentes pueden capturar lo que significa ser un juez, y el potencial para desarrollar programas de evaluación multidisciplinarios? Un tema subyacente es la naturaleza y la deseabilidad de unir evaluaciones de jueces individuales con evaluaciones del sistema judicial, y las formas en las que los resultados del rendimiento judicial se pueden incorporar en programas educativos, y de otro tipo, diseñados para promocionar las mejoras en la calidad del sistema judicial.

Los artículos se agrupan alrededor de tres grandes temas: (i) temas conceptuales y metodológicos; (ii) Experiencias de evaluar a jueces; y (iii) Resultados de investigaciones empíricas

**Palabras clave**

Judicial performance evaluation, quality of judiciary, courts and judging, empirical research and courts, methodologies for judicial evaluation, performance studies, Evaluación del rendimiento judicial, calidad del sistema judicial, tribunales y hecho de juzgar, investigación empírica y tribunales, metodología para la evaluación judicial, estudios de rendimiento

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## 1. Introduction

The judiciary and the courts are essential legal, social and political institutions. Judicial officers are sometimes the focus of negative public comment and scholars have identified declines in public confidence regarding the judiciary. Yet questions about judicial performance and its evaluation are complex and not capable of easy analysis within a single jurisdiction. As a result, there is no agreed upon basis for assessing the quality of judging whether generally, in specific courts, or of individual judges. International research on this important issue is especially challenging, as judicial selection and appointment processes are very different across and among democratic and democratizing nations.

On 9-10 of May 2013 an international group of twenty-two judges, law academics and social scientists gathered at the International Institute for the Sociology of Law (IISJ) to participate in a workshop on Evaluating Judicial Performance. The workshop was held in collaboration with the Academy of the Social Sciences in Australia with support from ASSA's International Programs Committee and received sponsorship from the (US) National Center for State Courts. The conveners of the workshop were: David Rottman and Jennifer Elek (National Center for State Courts, USA), Francesco Contini (Istituto di Ricerca sui Sistemi Giudiziari, Consiglio Nazionale delle Ricerche, IRSIG-CNR, Italy), and Kathy Mack and Sharyn Roach Anleu (Flinders University, Australia). Local administrative assistance, expertise and advice from Malen Gordo Mendizabal and José Antonio Goyenaga Yurrebaso guaranteed the success of the workshop, in academic and social dimensions.

All presentations and formal discussions were in English. With the exception of the Scientific Director of the Institute, all participants were in an environment and physical location not their own, and often far away geographically. This presented a unique opportunity for open and robust dialogue between judges, scholars and practitioners on a challenging topic, especially as in many judicial systems judicial performance is a private and personal matter rather than one of external evaluation. The exchange of ideas highlighted the diverse approaches to evaluating judges in the countries represented at the workshop and raised questions about the feasibility and desirability of abstracting evaluation systems from their national contexts. Nonetheless, there was general agreement that some issues associated with evaluating judges are global in nature, transcending differences between-legal systems, such as shared concerns over judicial independence and impartiality. Significant points of disagreement also emerged. Some participants were not persuaded that evaluating individual judges is desirable, noting potential unintended consequences for the judiciary as an institution. There also was disagreement on the boundaries of what is and what is not appropriate to include for evaluation purposes (e.g., courtroom behaviour only versus a broader investigation of the judicial role). Participants debated the respective merits of qualitative and quantitative approaches to evaluating judges and the manner in which social scientists should participate in judicial evaluations.

A key outcome of this workshop is this special issue of the *Oñati Socio-legal Series* that deals with judicial performance evaluation. Twelve of the papers presented at the workshop have been revised and published here. The articles in this issue tackle the conceptual issues associated with defining good judging and the purposes of evaluating judges, and ask such questions as: What values are central to the judicial role? What knowledge, skills, abilities, and other qualities are important to judicial performance? What does scholarship tell us about judging and judicial performance? What are the challenges in measuring judicial performance, the extent to which existing evaluation programs can capture what it means to be a judge, and the potential for developing multi-method evaluation programs? An underlying theme is the nature and desirability of linking evaluations of individual judges with evaluations of the court system and the ways in which results from

performance evaluation can be incorporated into educational and other programs designed to promote improvements in the quality of the judiciary.

The papers cluster around three major themes: (i) Conceptual and methodological issues; (ii) Experiences of evaluating judges; and (iii) Empirical research findings.

## 2. Conceptual and methodological issues

This first group of papers deals with conceptual and methodological issues necessarily entangled with judicial performance evaluation (JPE). In 'Conflicts and Commonalities in Judicial Evaluation' Richard Mohr and Francesco Contini explore the role of judicial evaluation within the broader framework of governance and the administration of justice focusing on the role and the contribution that research can provide to this field.

Jennifer Elek and David Rottman, with 'Methodologies for Measuring Judicial Performance: The Problem of Bias', provide a concrete example of how engaged research can contribute to judicial performance evaluation. They discuss how users' surveys currently adopted for JPE purposes in the US generate a systematic bias against women and minority judges, and describe techniques that may help to counter bias. The issue of gender equality on the bench is further analysed in 'Evaluating Judicial Performance and Addressing Gender Bias', where Angela Melville offers a critical assessment of the rationales commonly used for supporting gender equality, and suggests a new rationale, which emphasises the 'symbolic value' and the destabilising effect of gender equality on 'the existing fraternal legal norms that insist that the law is objective, neutral, and has no room for diversity'.

In 'Evaluating Judicial Performance Evaluation: A Conceptual Analysis', Joe McIntyre discusses the role and purpose of performance evaluation as a tool of judicial accountability with different institutional functions: promotions, retention elections and professional development. He argues that a comprehensive conceptual approach is essential to uncover the limitations and benefits of judicial performance evaluation programs.

## 3. Experiences of evaluating judges

The second theme offers an inside perspective on JPE. Professionals with extensive experience on the topic introduce different approaches and share their know-how in JPE and performance improvements.

Rebecca White Berch and Erin Norris Bass – 'Judicial Performance Review in Arizona: A Critical Assessment' – evaluate the strengths and weaknesses of Arizona's programme developed to inform citizens about the performance of judges who stand for retention elections. The system provides valuable information from a variety of sources (including lawyers and parties) and on various performance areas including procedural justice. The authors underline the improved work or effectiveness of judges as a consequence of the JPE program. In 'From Evaluation to Improvement: A Chief Justice's Perspective', Marilyn Warren relies on the experience of the state of Victoria (Australia), when implementing a series of approaches to JPE to raise issues about the risks and benefits of such programs. This culminates in a set of 'success factors' for judicial evaluation to succeed in the Australian context.

The next two articles deal with performance evaluation in civil law jurisdictions. 'Individual Evaluation of Judges in Germany' by Johannes Riedel discusses the sophisticated performance evaluation systems adopted by German judiciaries to provide a comprehensive account of judicial performance and its connection to the constitutional status of judges and with promotions to higher positions. The article is enriched by two Appendixes that offer insights of judicial performance evaluation in 23 European judiciaries and makes available the 'evaluation form' used in Germany.

Marie Hagsgård focuses on a new method to evaluate and improve individual and organisational performance. 'Internal and External dialogue: A Swedish Approach to Quality Work in Courts' analyses how the active involvement of judges, staff and stakeholders can become the key for judicial performance evaluation and improvement. Her article demonstrates how the method of internal and external dialogue leads to improvements in several areas of a local court and to a growing interest among judges and staff to constantly find ways to improve the way their local court is working.

#### 4. Empirical research findings

The third group of articles provides insight into research on evaluating judicial performance that may or may not be part of formal JPE programs. Sharyn Roach Anleu and Kathy Mack in 'Judicial Performance and Experiences of Judicial Work: Findings from Socio-legal Research' demonstrate that there is considerable diversity in judging which abstract models of JPE may not anticipate. Their empirical research shows that the practical and natural settings in which every day judicial work is undertaken entails time constraints, workload patterns, and dependence on the activities of others. These are factors over which the judicial officer may have little control, but which in turn may affect their behavior and performance. In her commentary on this article, Gar Yein Ng further articulates the dimensions of judicial performance: mental processes, organisational processes and social processes. She suggests that traditionally JPE is restricted to organisational processes, and so will be limited.

David Rottman and Tom Tyler – 'Thinking about Judges and Judicial Performance: Perspective of the Public and Court Users' - argue that the social psychological field of procedural justice can enhance the value of judicial performance evaluations by giving weight to the qualities of judicial performance that increase trust in courts by both the general public and individual litigants, as well as lawyers. The current use of procedural justice criteria in judicial performance evaluations is described, followed by suggestions for making that use more rigorous and more informative.

Philip Langbroek and Tina van der Linden - 'Researching Justification Texts of a First Instance Court: from Assignment to Results and Reporting' - offer a vivid account of the practical and methodological problems to be faced when quantitative methods are used to measure the features of justification texts of courts' decisions. In the final article: 'Formula Over Function? From Algorithms to Values in Judicial Evaluation', Francesco Contini, Richard Mohr and Marco Velicogna discuss the flaws of unidimensional evaluation systems and the incommensurability of the results of the multiple evaluative frameworks (economic, legal, sociological) required to overcome such flaws, and argue the need for political dialogue between relevant players in order to allocate the values appropriate to judicial evaluation.

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