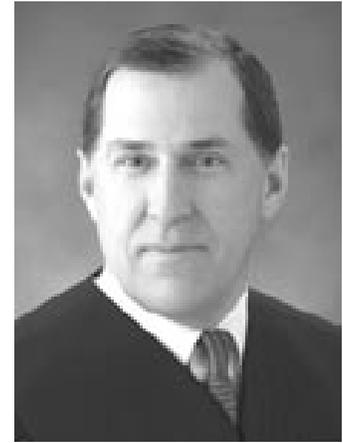


## **Honorable Robert P. Faust – District Court Judge**

Serving Salt Lake, Summit, and Tooele counties



### **Commission Recommendation: **RETAIN****

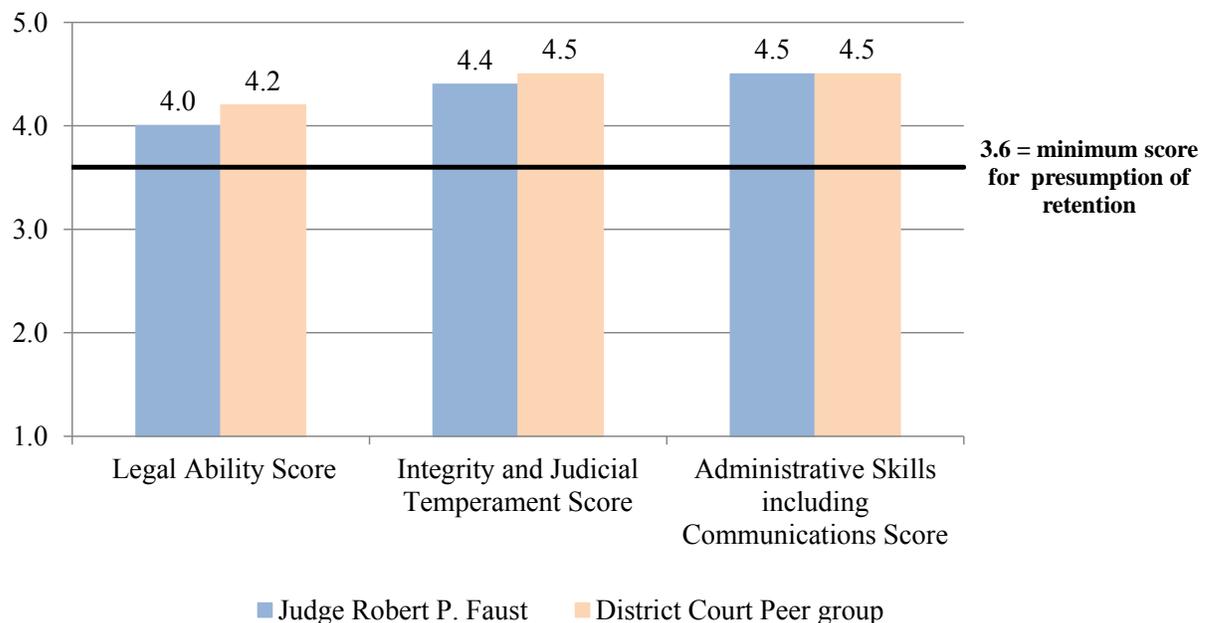
(vote count: 12-0 for retention)

Appointed to the bench in 2007, Judge Robert Faust receives mixed assessments from survey respondents while scoring consistent with the average of his district court peers in all survey categories. Survey respondents and courtroom observers report that Judge Faust runs an efficient courtroom and is courteous to those appearing before him. Some survey respondents, however, fault him for poor case preparation and questionable legal reasoning. Some perceive that his personal life or beliefs affect his judicial performance. Courtroom observers report that Judge Faust is an attentive listener, allows adequate time for courtroom participants to speak, and seems engaged with each case. Of survey respondents answering the retention question, 79% recommend that Judge Faust be retained.

The commission reviewed surveys and courtroom observation reports in addition to verifying that Judge Faust has met all time standards, judicial education requirements, and discipline standards established by the judicial branch.

Judge Robert P. Faust was appointed in 2007 by Gov. Jon M. Huntsman, Jr. After graduating from the J. Reuben Clark College of Law in 1982, he maintained a diverse litigation practice at Nielsen & Senior. After 1996, Judge Faust practiced law for the U.S. Postal Service and served as a Special Assistant U.S. Attorney. He served on the Utah Supreme Court Ethics & Discipline Committee and the Task Force on Bar Governance Committee and was President of the Federal Bar Association. Judge Faust was a member of the Federal Bar Foundation, American Trial Lawyers Association, American Bar Association Litigation Section, and the Utah State Bar Litigation Section. Judge Faust now serves as a Utah judicial delegate to the American Bar Association.

**This judge has met all minimum performance standards established by law.**



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# **The Honorable Robert P. Faust**

**Judicial Performance Evaluation Commission Report**

**Retention 2016**

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### II. Courtroom Observation Report

# I. Survey Report

## Survey Results

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### A. How to Read the Results

For Judge Robert P. Faust, 57% of qualified survey respondents submitted surveys. Of those who responded, 135 agreed they had worked with Judge Robert P. Faust enough to evaluate his performance. This report reflects these 135 responses. The survey results are divided into five sections:

- Statutory category scores
- Retention question
- Procedural fairness survey score
- Responses to individual survey questions
- Summary of adjectives

The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "District Court" on the charts.

The statutory category scores and the procedural fairness survey score represent average scores on a scale of 1 (inadequate) to 5 (outstanding). Responses from all survey respondent groups contribute to the average score shown for each category, with the exception of Legal Ability. Only attorneys answer the Legal Ability questions.

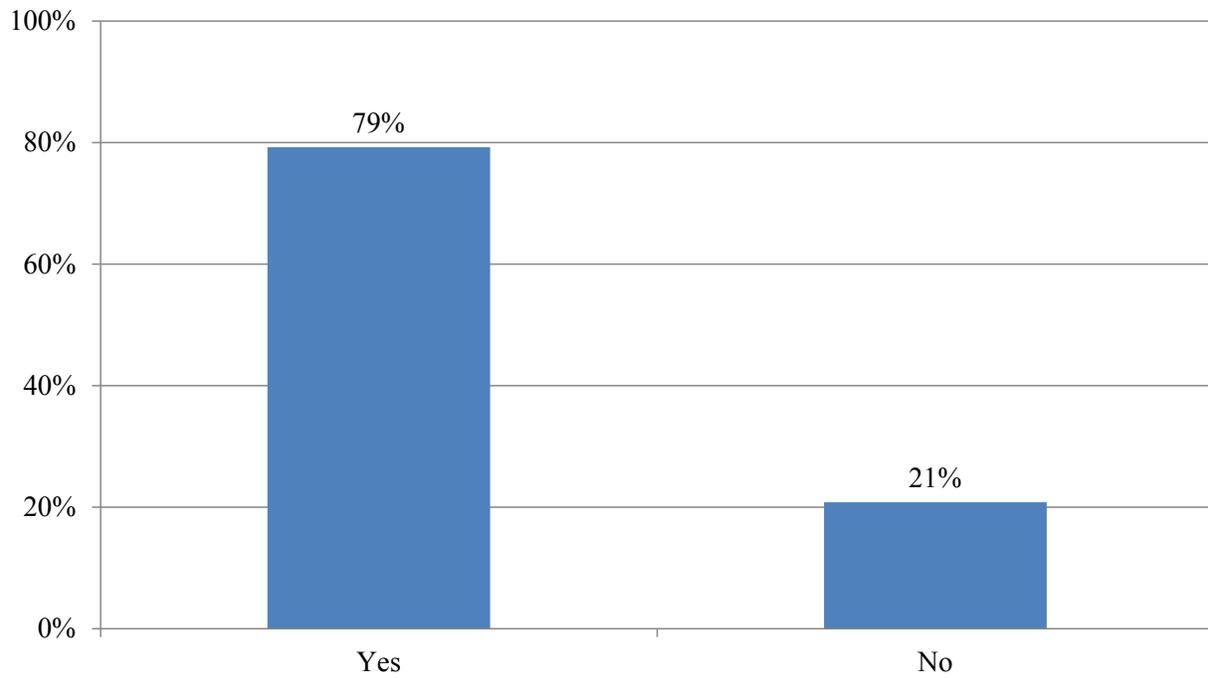
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to recommend retention unless it can articulate a substantial reason for overcoming the presumption in favor of retention. Similarly, if a judge fails to get a 3.6 in a category, the commission will vote against retention unless it can articulate a substantial reason for overcoming the presumption against retention.

For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness, and this determination will be made by the commission only during the retention cycle.

Respondents are asked whether or not they think the judge should be recommended for retention only during the retention cycle.

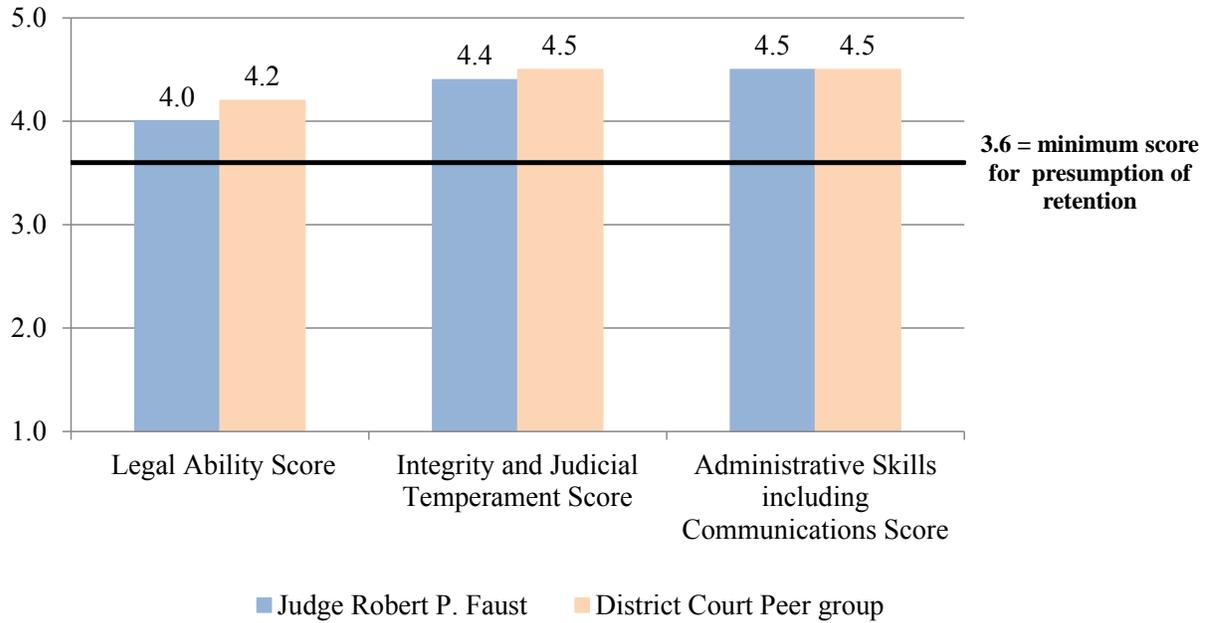
## B. Retention Question

**Figure A. Would you recommend that Judge Robert P. Faust be retained?**



## C. Statutory Category Scores

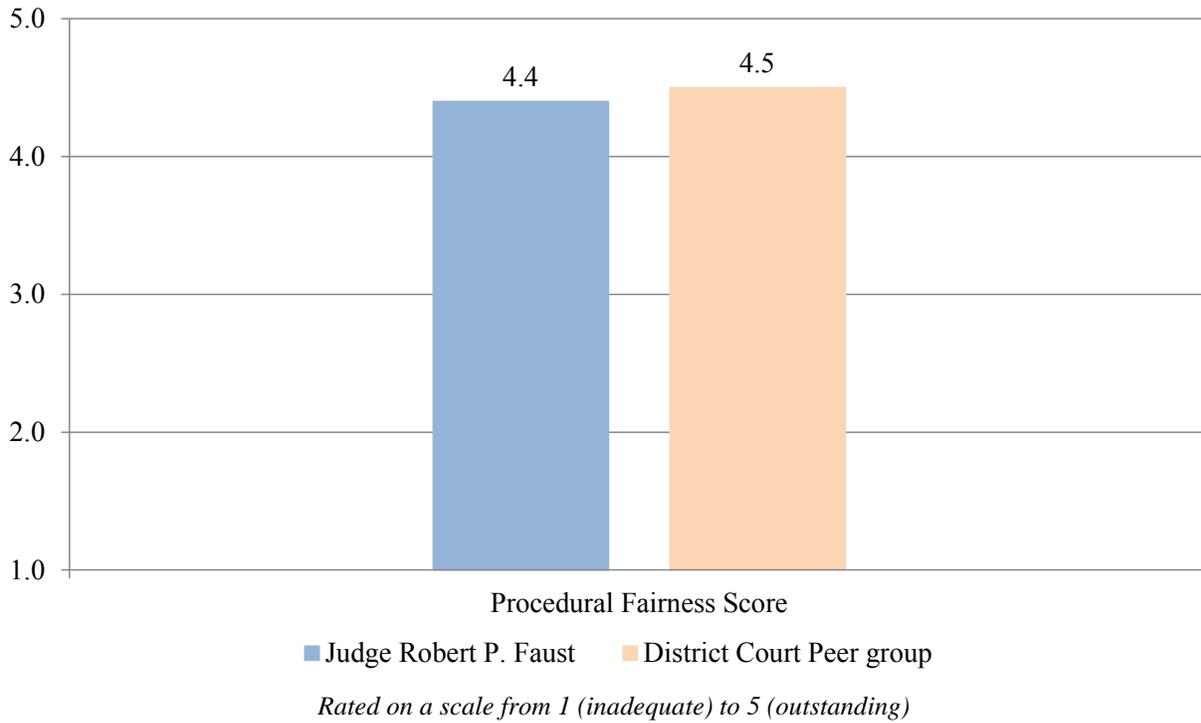
**Figure B. Statutory Category Scores**



*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

## D. Procedural Fairness Score

**Figure C. Procedural Fairness Score**



For procedural fairness, the judge must demonstrate by a preponderance of the evidence that the judge’s conduct in court promotes procedural fairness for court participants. This determination is based on courtroom observations and relevant survey responses.

**Table A. Overall Procedural Fairness Determination (for Retention Only)**

Category	Judge Robert P. Faust
Procedural Fairness	Pass

## E. Responses to Individual Survey Questions

**Table B. Responses to Survey Questions**

Category	Question	Judge Robert P. Faust	District Court
Legal Ability	The judge follows the applicable legal rules (e.g. civil procedure, criminal procedure, evidence, juvenile, appellate) that apply to the case at issue.	4.1	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.0	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	3.9	4.2
Legal Ability	The judge only considers evidence in the record.	3.9	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.0	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.2	4.2
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.5	4.6
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.4	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	3.8	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.2	4.4
Integrity & Judicial Temperament	The judge promotes access to the justice system for people who speak a language other than English, or for people who have a physical or mental limitation.	4.5	4.6

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

**Table C. Responses to Survey Questions (continued)**

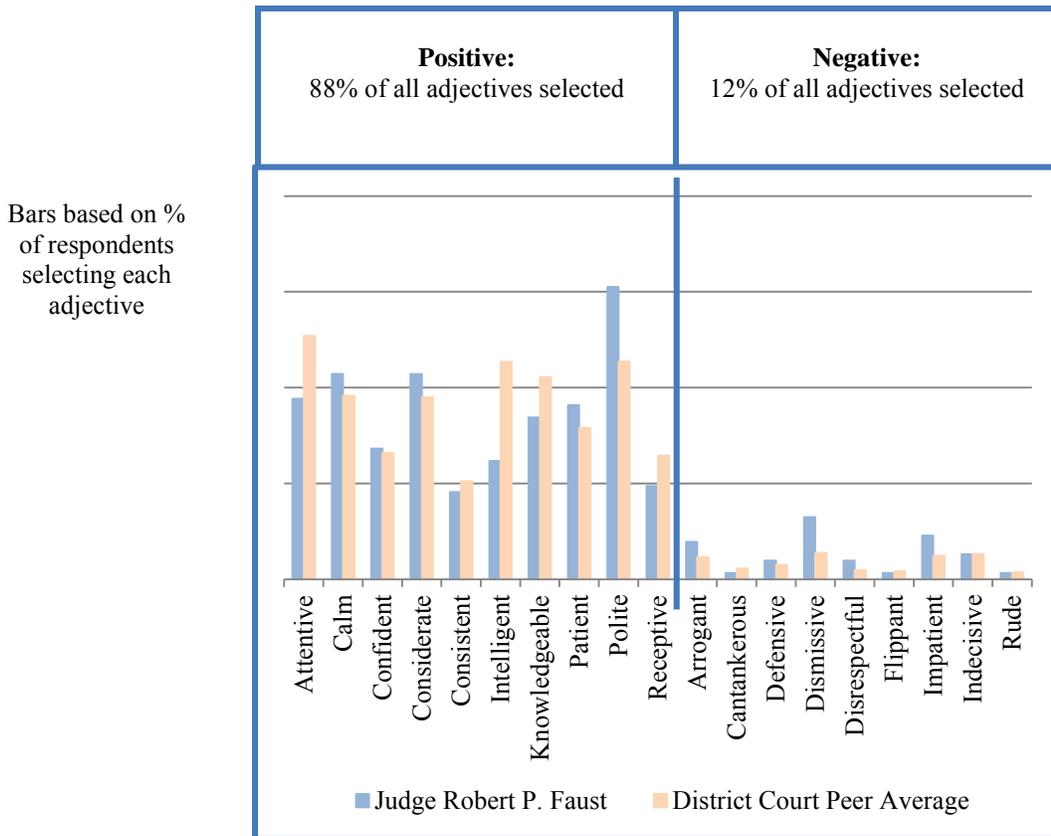
<b>Category</b>	<b>Question</b>	<b>Judge Robert P. Faust</b>	<b>District Court</b>
Administrative Skills	The judge is prepared for court proceedings.	4.1	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.6	4.6
Administrative Skills	The judge is an effective manager.	4.5	4.5
Administrative Skills	The judge convenes court without undue delay.	4.6	4.6
Administrative Skills	The judge rules in a timely fashion.	4.4	4.5
Administrative Skills	The judge maintains diligent work habits.	4.1	4.5
Administrative Skills	The judge's oral communications are clear.	4.5	4.5
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.0	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.5	4.6
Procedural Fairness	The judge is fair and impartial.	4.4	4.5
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.3	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.1	4.4

*Rated on a scale from 1 (inadequate) to 5 (outstanding)*

## F. Adjective Question Summary

From a provided list, survey respondents selected multiple adjectives to best describe the judge. The “positive” and “negative” labels at the top of the graph refer to the percent of all adjectives selected by all respondents that were either positive or negative. Each bar is based on the percent of respondents who selected that adjective. The adjacent bar shows a comparison to the other evaluated judges who serve on the same court level.

**Figure D. Adjective Responses**



## G. Attorney Demographics

**Table D: What are your primary areas of practice?**

Collections	1%
Domestic	20%
Criminal	14%
Civil	76%
Other	6%

Because many attorneys practice in multiple areas, totals may not equal 100%

**Table E: How many trials or hearings have you had with this judge over the past year?**

5 or fewer	76%
6 - 10	18%
11 - 15	3%
16 - 20	3%
More than 20	-

## Survey Background and Methods

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This report presents the results from the 2015 survey process, conducted by Market Decisions, LLC. A detailed description of the survey methodology is available separately on the Utah Judicial Performance Evaluation website.

### A. Survey Overview

#### 1. Description of Sample

The following groups are invited to participate in the survey process:

- Attorneys with appearances before the judge
- Court staff who work with the judge
- Juvenile court professionals who work in the judge's courtroom on a regular and continuing basis to provide substantive input to the judge (juvenile court judges only)
- Jurors who participate in jury deliberation (district and justice court judges only)

With the exception of the attorney survey, the survey contractor attempts to survey all court staff and juvenile court professionals who work with the judge and all jurors who reach the point of jury deliberation. The lists of court staff and juvenile court professionals are provided by the courts and by the Division of Child and Family Services and Juvenile Justice Services. A list of jurors is created after each trial. All lists are forwarded to the surveyor, Market Decisions, LLC.

For the attorney survey, a representative sample of attorneys is drawn to evaluate each judge based on appearances over a designated time period. The sample is weighted to select those with the greatest experience before the judge, assuming that these people will have a better knowledge base about the judge than those with less experience. Attorneys are first stratified into three groups: those with one or more trial appearances, those with three or more non-trial appearances, and those with one to two non-trial appearances. Attorneys within each sample are then randomized prior to selection. Selection begins with attorneys who have trial experience, then those with a greater number of non-trial appearances (if needed), and finally those with fewer non-trial appearances (if needed).

#### 2. Summary of Survey Methods

Surveys are conducted online, using web-based survey software. Each qualified respondent receives an initial email notification signed by the Governor, Chief Justice, President of the Senate, and Speaker of the House, requesting participation in the survey. Next, an email invitation, signed by JPEC's Executive Director and the Utah State Bar President, contains links to all the individual surveys each respondent is invited to complete. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by two additional reminder emails sent to respondents over the next three weeks. If a respondent completes only part of the survey, he or she is able to finish the survey at a later time. Once a respondent has completed the survey for a specific judge, that survey is locked and cannot be accessed again.

The number of questions included in the survey varies, ranging from 9 (jurors) to 24 (attorneys with an appearance before an appellate court judge). Each question is evaluated on a sliding scale ranging from 1 (inadequate) to 5 (outstanding).

Responses to individual questions are used to calculate averaged scores in three statutory categories: Legal Ability, Integrity & Judicial Temperament, and Administrative Skills. Judges also receive an averaged score in Procedural Fairness.

## **B. Evaluation Period**

The retention evaluation period for judges standing for election in 2016 began on January 1, 2014 and ended on June 30, 2015.

## REPORT OF COURTROOM OBSERVATIONS FOR JUDGE ROBERT FAUST

Four observers wrote 65 codable units that were relevant to 12 of the 15 criteria. One observer reported that the judge was not aware that JPEC observers were present, and three did not know if the judge was aware.

### Overview

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OVERALL ASSESSMENT	<ul style="list-style-type: none"><li>• Three observers were strongly positive about Judge Faust. Observer A expressed reservations in several areas (see “Anomalous comments”).</li><li>• Three observers reported that they would feel comfortable appearing before Judge Faust. Observer A was unsure if she would feel comfortable (see “Anomalous comments”).</li></ul>
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none"><li>• Three observers variously reported that Judge Faust listened carefully and always redirected his attention to speakers after referring to his computer. He was familiar with the cases, started court on time, and explained the reasons for delays caused by attorneys who had not arrived. He smiled and maintained strong eye contact, never raised his voice or used a sarcastic tone, and his body language modelled attentive listening. He was thorough and treated each case in the same way, gave plenty of time for participants to speak in exhaustive detail, and asked questions and courteously listened to extended explanations. He patiently asked questions to ensure participants’ understanding of procedures and was open and clear when explaining his reasoning.</li><li>• Three observers emphasized that Judge Faust was warm, patient, and remarkably polite, and he established a comfortable atmosphere. He frequently thanked participants, and he apologized when appropriate. Observers emphasized his equanimity and calm effectiveness when dealing with difficult situations or frustrated participants (see “Courtesy, politeness, and general demeanor”).</li></ul>
MINORITY OBSERVATIONS	<ul style="list-style-type: none"><li>• None</li></ul>
ANOMALOUS COMMENTS	<ul style="list-style-type: none"><li>• In stark contrast to the other observers, Observer A reported that Judge Faust displayed uncalled for sarcasm when telling a delayed defendant to relax and calm down while he rescheduled his appearance, and Observer A would have been offended when the judge repeated himself three times to an attorney as if she was not bright enough to get what he was saying (see “Courtesy, politeness, and general demeanor”).</li><li>• Observer A also gave markedly contrasting reports in some areas. Observer A reported that Judge Faust was looking at his computer or talking to clerks and not paying attention before making serious decisions, moved things along quickly and rushed through cases, interrupted and flustered attorneys, and in preliminary hearings rarely asked defendants to speak and provided little explanation of procedures and rights (see “Listening &amp; focus,” “Unhurried and careful,” “Considered voice,” “Provides adequate explanations”).</li></ul>

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### Summary and *exemplar language* of four observers’ comments

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<i>RESPECT</i>	
Listening & focus	<p>Two observers reported that Judge Faust <i>listened carefully, periodically referring to his computer screen, but always redirecting his attention to the discussion.</i></p> <p>However, Observer A <i>found it disturbing</i> when Judge Faust <i>was not paying attention and then would need to make a decision about whether someone would be tried for a crime or not</i>, some of which were <i>quite serious</i>. During one <i>police officer’s testimony</i> he was <i>looking at his computer, shuffling papers, and talking to his clerks as well as handing a paper to one of the bailiffs.</i></p>

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Well-prepared & efficient	Three observers reported that Judge Faust was <i>familiar with each case, with no stumbling over scheduling or missing documents</i> as occurs in some courts. He <i>reminded attorneys when there had been a previous judgment on a particular point</i> and was <i>good at weeding out the ‘noise’ of extraneous information</i> when attorneys tried to confuse the judge in order to extend the case.
Respect for others’ time	Three observers reported that Judge Faust <i>started court on time</i> and the proceedings <i>moved smoothly</i> . He explained the reasons for any delays, saying, <i>“There are some attorneys who are scheduled to appear in two different courts at the same time in this building. We have to wait occasionally, we appreciate your patience. Thank you.”</i>
Courtesy, politeness, and general demeanor	<p>All observers reported that Judge Faust <i>indicated with a smile and a hand gesture that he did not expect participants to rise, which one observer felt immediately established a comfortable atmosphere</i>. He was <i>warm, patient and remarkably polite, thanking each person who participated</i>. He spoke <i>with humility to an attorney, saying, “Thank you counselor, you said that so much better than I did.”</i> When the <i>recording equipment wasn’t working, he apologized for the glitch in the computer software that had just been updated</i>. In a custody case the judge thanked the individuals and said that <i>“was a noble thing you want to do.”</i></p> <p>Three observers emphasized Judge Faust’s <i>equanimity and his calm and effective manner of dealing with difficult situations</i>. In a <i>confusing case</i> he courteously explained e-filing requirements to an unrepresented defendant and the <i>expectations which were required</i>. In a <i>complicated long-standing case</i> regarding attorney fees, in which the <i>previous judge had retired</i>, Judge Faust <i>explained several times his interpretation of the previous decision</i> to the <i>very frustrated attorney</i> who was <i>pacing back and forth and stuttering in frustration</i>. The Judge <i>listened patiently but was getting frustrated and almost interrupted but refrained, maintaining his composure and professionalism</i>. When an <i>angry and impatient participant</i> who had been issued a warrant and arrived late, Judge Faust <i>effectively redirected his outbursts</i> by telling him, <i>“Stop. Relax, and we will handle this in order,”</i> and the participant <i>grew quiet and a little more relaxed</i>.</p> <p>In stark contrast Observer A reported a similar situation in which a <i>young man had been in the wrong courtroom for most of the morning</i>. When he finally showed up and <i>started to explain</i>, the judge <i>put his hand up and stopped him, telling him to relax and calm down, and not allowing him to speak, saying he would get a new date with a new judge</i>, and Observer A reported that <i>there seemed to be a bit of sarcasm which was not called for in this circumstance</i>. When Judge Faust <i>repeated himself three times regarding the consequences of waiving a preliminary hearing, making the attorney repeat back her understanding</i>, Observer A was <i>bothered and would have been offended as if she was not bright enough to be getting what he was saying</i>.</p>
Body language	Two observers reported that Judge Faust <i>maintained strong, direct eye contact and smiled at times</i> , and his <i>expression and body language modeled attentive listening</i> , for example when <i>resting his index finger thoughtfully on the side of his cheek</i> .
Voice quality	One observer reported that Judge Faust <i>never raised his voice or used a sarcastic tone</i> .
Courtroom tone & atmosphere	Observer A reported an <i>extreme amount of commotion and noise</i> . Attorneys had to <i>ask for repeat of questions and instructions</i> , and the observer <i>struggled to hear and understand</i> . Additionally, the <i>lack of preparation by state and city attorneys</i> led to more <i>dismissals of serious crimes</i> than she had observed in other courts.
<i>NEUTRALITY</i>	
Consistent and equal treatment	Three observers reported that Judge Faust <i>treated each case in the same way</i> . In one case he <i>shifted his attention back and forth between an attorney and witness, indicating he was paying heed to the arguments and give-and-take</i> .

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Unhurried and careful	Two observers reported that Judge Faust was thorough. He <i>examined and made notes on his copy of each document personally</i> , and he <i>restated</i> an attorney’s position, saying, “ <i>Just so we’re on the same page.</i> ” When an attorney mentioned that one of the individuals was <i>filing for bankruptcy</i> , this <i>brand new information shifted everything</i> , and <i>over the forcible disagreement of the attorneys</i> the judge explained that he <i>wasn’t a bankruptcy judge and was delaying a decision until he could either talk to a fellow judge or gather more information.</i>  In contrast, while Observer A noted that Judge Faust was <i>considerate of others</i> , she also commented that <i>he moved things along quickly and was rushing through the cases.</i>
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*VOICE*

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Considered voice	Three observers reported that Judge Faust <i>gave plenty of time to participants to testify in exhaustive detail</i> , and he <i>frequently asked probing questions</i> and was <i>willing to listen to extended explanations.</i> He was <i>very courteous</i> towards a <i>nervous</i> and unrepresented defendant facing eviction who could have been <i>overwhelmed</i> after the long and rambling presentation of the opposing attorney. The judge <i>told her to relax and take a breath</i> , and he listened to her and <i>helped when she made some errors acting as pro se.</i>  In marked contrast, Observer A was <i>not sure that everyone was able to speak as much as they would have liked.</i> A <i>couple of attorneys seemed flustered</i> when Judge Faust <i>asked a question and then broke into their answer with another question.</i> He <i>rarely asked defendants to speak</i> , but the observer wondered <i>if this is how it is in preliminary hearings.</i> However, in one case the judge <i>did allow a witness to speak at length through an interpreter.</i>
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*COMMUNICATION*

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Ensures information understood	Two observers reported that Judge was <i>patient</i> with an unrepresented participant, <i>explaining procedures</i> to her and <i>asking questions to ensure she understood.</i> He <i>pointed out to an attorney the only ways to get a continuance and let her respond and discuss until she was clear.</i>
Provides adequate explanations	Three observers reported that Judge Faust was <i>open and clear in explaining his reasoning.</i> He <i>took quite a bit of time to explain why he was not ready to approve a change in custody</i> , and he <i>talked about the statute and what it required.</i> He <i>explained his reasons for sustaining or denying objections</i> and gave <i>clear directions regarding next steps in the judicial process.</i>  In contrast, Observer A reported <i>very little explaining of procedures and rights</i> , and <i>most defendants were brought in, talked about, decisions made and they were taken away.</i>

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