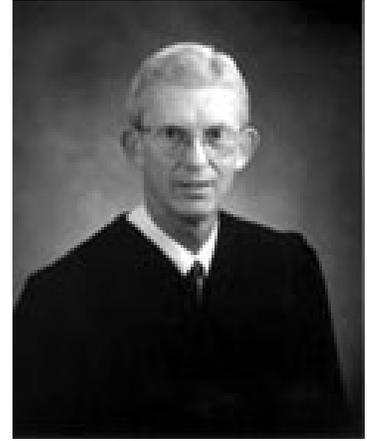


Honorable Bruce C. Lubeck – District Court Judge

Serving Salt Lake, Summit, and Tooele counties



Commission Recommendation: **RETAIN**

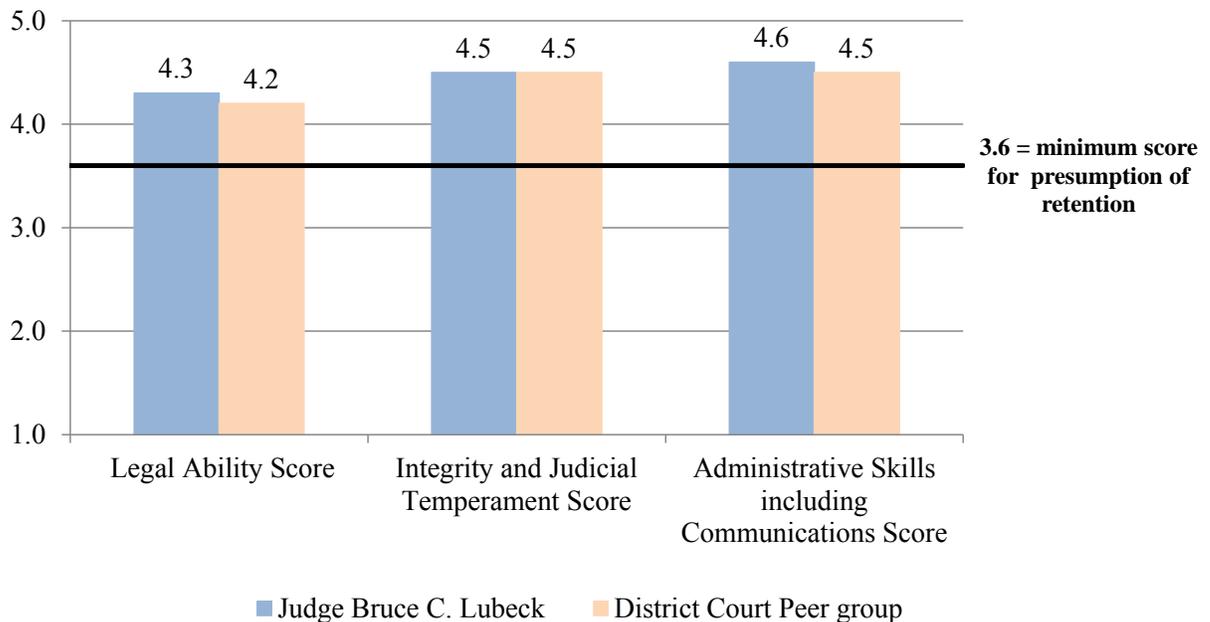
(vote count: 12-0 for retention)

Judge Bruce Lubeck is an experienced judge who scores consistent with the average of his district court peers in all survey categories. Survey respondents consider Judge Lubeck intelligent, fair, and well-prepared. Most survey respondents report that Judge Lubeck is a hard-worker who efficiently manages his court's daily schedule and listens to both sides, but speaks very bluntly. Some respondents describe him as impatient with attorneys and court participants. Courtroom observers report that Judge Lubeck acts professionally, decisively, and fairly. Most observers conclude that they would feel comfortable appearing before him in court. Of 69 survey respondents answering the retention question, 64 (93%) recommend that Judge Lubeck be retained.

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

Judge Bruce C. Lubeck was appointed to the Third District Court in 2001 by Gov. Michael O. Leavitt. He earned his law degree from the University of Utah College of Law in 1971. At the time of his appointment to the bench, Judge Lubeck was an Assistant U.S. Attorney, having served in that capacity since 1981. Prior to this, he was in private practice and was also employed by the Salt Lake Legal Defender Association. He has taught as an adjunct faculty member at Salt Lake Community College and the University of Utah College of Law. Judge Lubeck has served on the Board of District Court Judges since 2013.

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



The Honorable Bruce C. Lubeck

Judicial Performance Evaluation Commission Report

Retention 2016

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II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge Bruce C. Lubeck, 46% of qualified survey respondents submitted surveys. Of those who responded, 83 agreed they had worked with Judge Bruce C. Lubeck enough to evaluate his performance. This report reflects these 83 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.

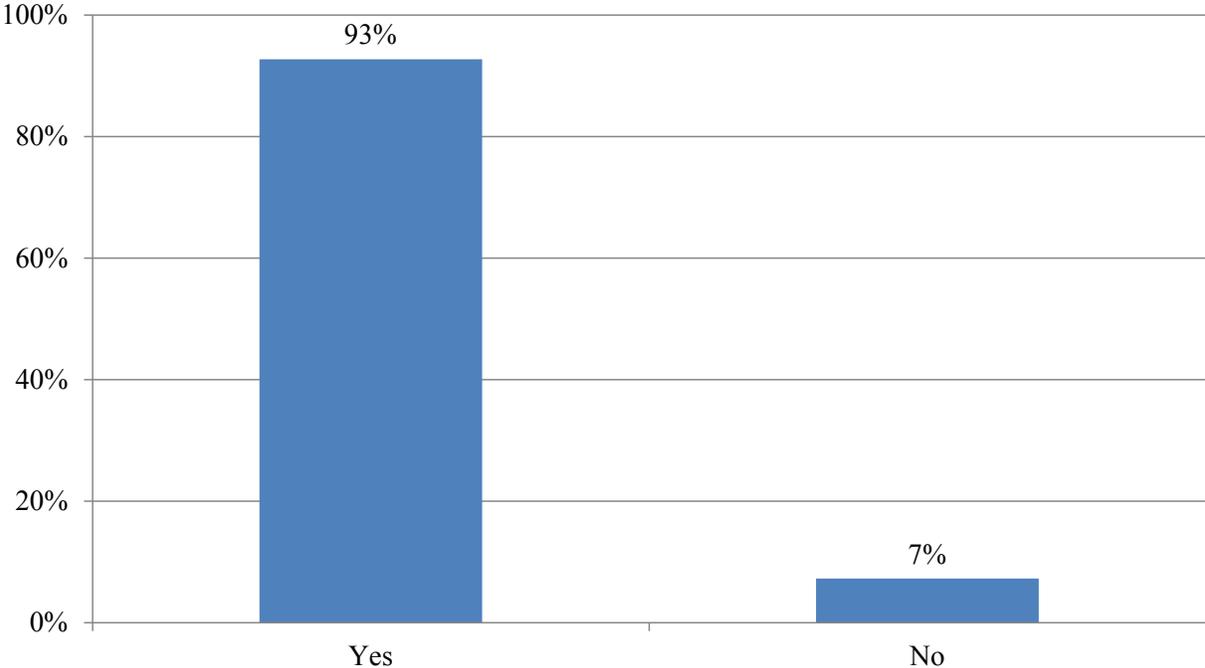
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to 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.

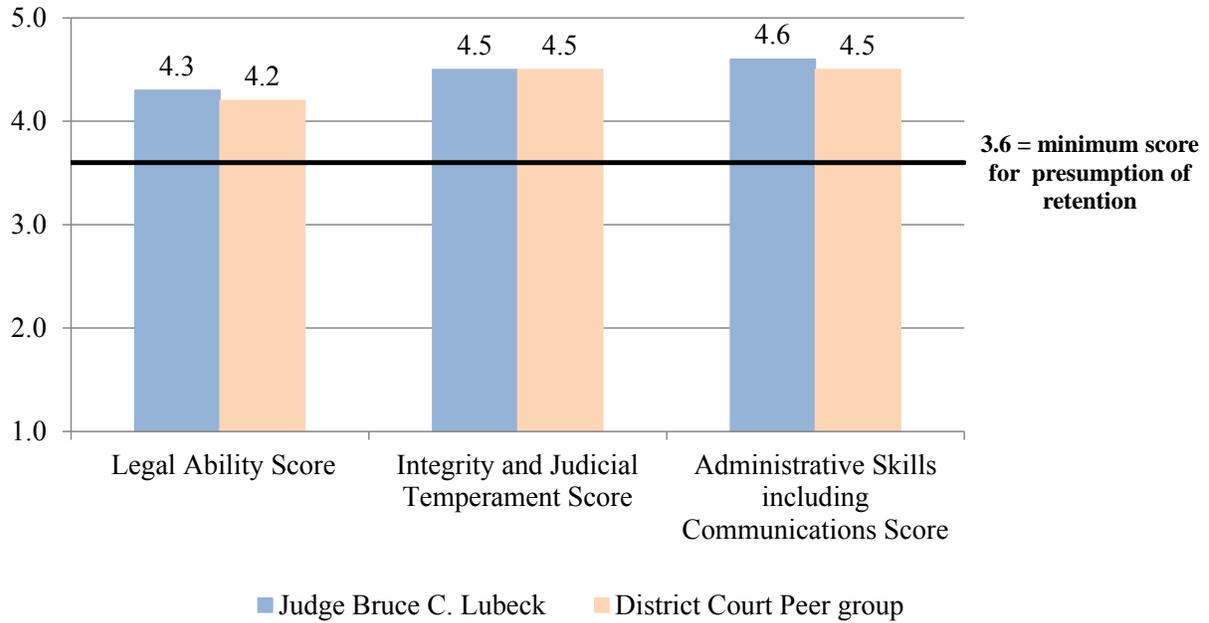
B. Retention Question

Figure A. Would you recommend that Judge Bruce C. Lubeck be retained?



C. Statutory Category Scores

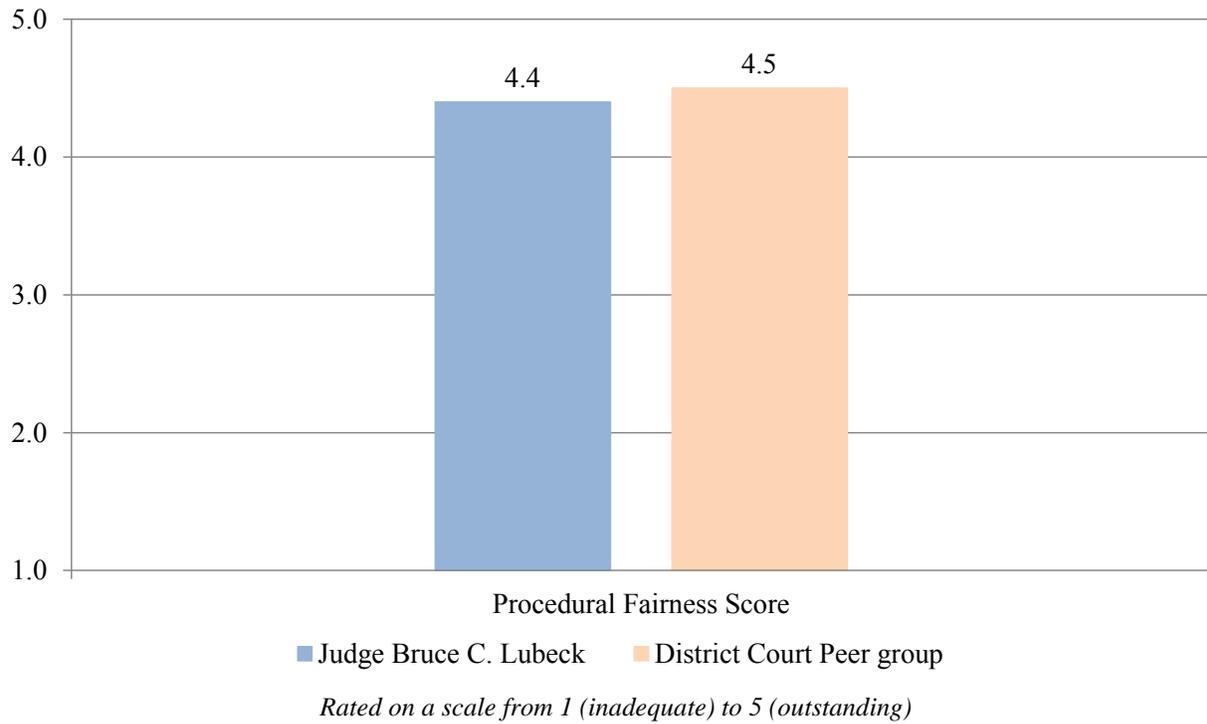
Figure B. Statutory Category Scores



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 Bruce C. Lubeck
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge Bruce C. Lubeck	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.	4.3	4.2
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.3	4.2
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.3	4.2
Legal Ability	The judge only considers evidence in the record.	4.3	4.2
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.4	4.2
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.5	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.	4.5	4.6
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.3	4.3
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.4	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)

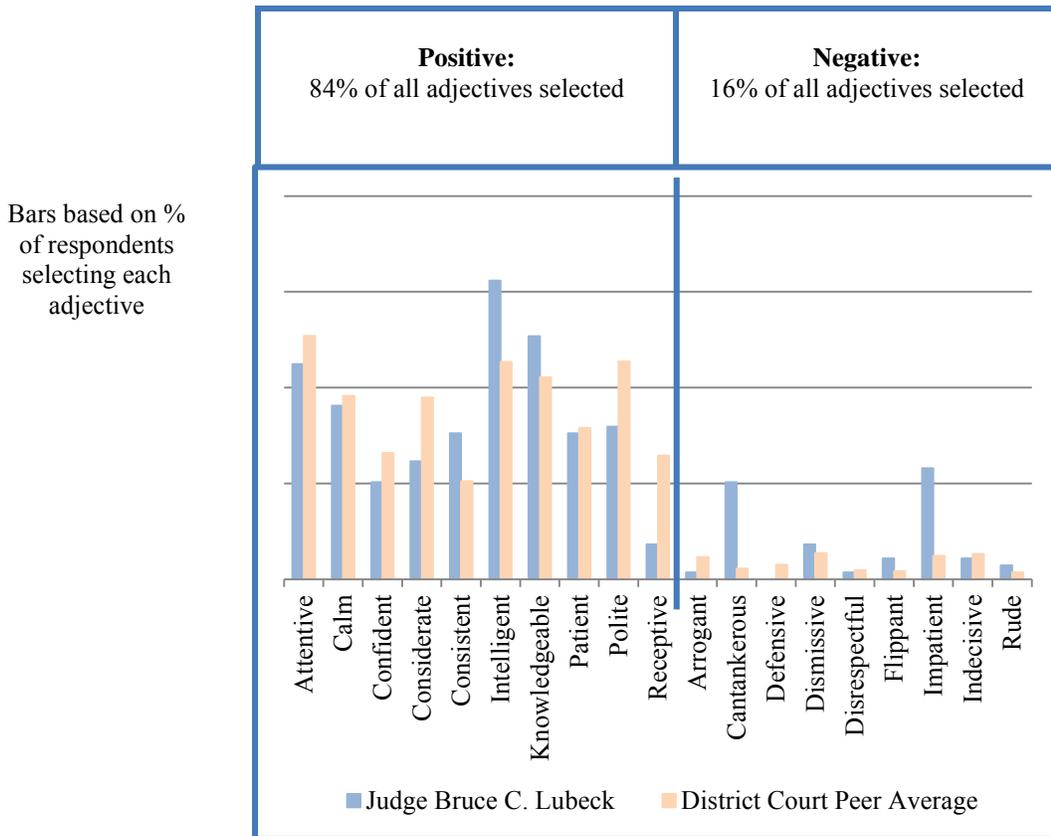
Category	Question	Judge Bruce C. Lubeck	District Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.4
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.4	4.6
Administrative Skills	The judge is an effective manager.	4.4	4.5
Administrative Skills	The judge convenes court without undue delay.	4.8	4.6
Administrative Skills	The judge rules in a timely fashion.	4.6	4.5
Administrative Skills	The judge maintains diligent work habits.	4.7	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.	4.6	4.3
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.4	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.	4.4	4.5
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.4	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	14%
Domestic	22%
Criminal	59%
Civil	25%
Other	2%

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	48%
6 - 10	17%
11 - 15	6%
16 - 20	6%
More than 20	23%

Survey Background and Methods

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 BRUCE LUBECK

Four observers wrote 73 codable units that were relevant to 14 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

OVERALL ASSESSMENT	<ul style="list-style-type: none">• All observers were positive about Judge Lubeck. Observer A additionally had some reservations (see “Anomalous comments”).• Three observers reported that they would feel comfortable appearing before Judge Lubeck. Observer A noted that Judge Lubeck treated people fairly, but the observer would still not want to appear in his courtroom (see “Anomalous comments”).
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge Lubeck listened intently, and was calm, orderly, efficient, and prepared. He accommodated participants’ schedules, and he apologized and explained the reason for his error when none of the witnesses called in a case were able to testify that day. He was professional and decisive, and he commended participants where appropriate. His expression was neutral, and he made eye contact when trying to understand a speaker’s point of view, but at other times when he looked at his desk his eye contact was curiously minimal. His tone of voice was respectful, but on occasion he spoke too softly to be clearly heard. He treated every defendant in the same impartial way and made clear his concern for fairness towards each participant in a case, going to great lengths to ensure fair treatment whether a participant was present or absent. He spoke clearly and understandably without using jargon, and he asked defendants if they understood what he said and the forms they had to sign.• All observers particularly emphasized that Judge Lubeck encouraged each side to speak, was good at asking questions and considering what defendants had to say, and was very thorough in his instructions and explanations of pleas and of his decisions.
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• Two observers reported that Judge Lubeck was thorough and careful, but one observer wondered if in one case the judge’s unhurried and patient approach was to the point of being non-productive (“Unhurried and careful”).
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• Observer A felt that Judge Lubeck’s brief greetings and dismissals of defendants, the very orderly and efficient atmosphere in the court, and the judge’s emphasis on hearing from attorneys rather than defendants, all felt indifferent towards defendants (see “Courtesy, politeness, and general demeanor,” “Courtroom tone & atmosphere,” and “Considered voice”).• In marked contrast to the other observers who emphasized Judge Lubeck’s impartiality, Observer A wondered about the judge’s neutrality in a domestic violence case (see “Consistent and equal treatment”).

Summary and *exemplar language* of four observers’ comments

RESPECT

Listening & focus

Two observers reported that Judge Lubeck *listened intently* and *asked probing questions*.

Well-prepared & efficient	<p>One observer reported that Judge Lubeck was <i>organized, efficient, and prepared for his cases</i>.</p> <p>However, one observer reported that in one session Judge Lubeck was <i>not as organized as he could have been</i> or prepared with a <i>plan in place as how to proceed</i>. Multiple witnesses appeared in court to testify, but he was <i>unable to use them and no one testified, which seemed to have wasted multiple people's time</i>.</p>
Respect for others' time	<p>Three observers reported that Judge Lubeck accommodated participants' schedules when setting court dates, asking one attorney, "<i>Does that work with your schedule?</i>"</p> <p>In the case in which none of the witnesses testified, Judge Lubeck apologized and explained the reasons, saying, "<i>The last time we were in court I felt the correct order of things was A, then B, and C. Now it is different. I put this hearing first and I was wrong.</i>"</p>
Courtesy, politeness, and general demeanor	<p>Three observers reported that Judge Lubeck's demeanor was <i>professional, decisive</i>, and he had a <i>good command</i> of his courtroom. He <i>commended</i> a participant in a child custody case on <i>what he was doing to raise his child</i> saying, "<i>Keep up the good work,</i>" and after asking one observer if she was in court for a case, said in a <i>warm tone</i>, "<i>You are welcome to be here. You didn't respond when we called the remaining cases and that is why I was wondering.</i>"</p> <p>However, Observer A commented that while Judge Lubeck addressed defendants, "<i>Ms. X, You've been charged with...</i>," <i>no other greeting was offered</i>, and he rarely said, "<i>Thank you,</i>" to defendants, generally dismissing them by saying, "<i>See you back here two weeks from today,</i>" or simply stating, "<i>Alright</i>" and turning to a new case, which <i>felt indifferent and not respectful to the defendants or the court process</i>.</p>
Body language	<p>Three observers reported that Judge Lubeck's facial expressions and body language were <i>neutral and appropriate</i>. When listening he <i>leaned over, made eye contact</i> with speakers, and seemed to be <i>trying to understand their point of view</i>. However, another observer reported that while the judge <i>looked at the defendant when it was very important</i>, for example when asking, "<i>Do you admit that?</i>" or, "<i>Do you understand that?</i>" the observer found it <i>curious</i> that Judge Lubeck's <i>eye contact was minimal much of the time and it was hard to tell if he was reading information on his computer or staring at his desk</i>. Another observer noted that the <i>computer screen obscured the view of Judge Lubeck when he leaned back in the chair</i>, and the observer suggested that he consider a chair that can be adjusted to allow him to be higher and more visible.</p>
Voice quality	<p>One observer reported that Judge Lubeck's <i>tone of his voice was respectful</i>, but the microphones did not seem to work, and <i>on occasion he spoke so softly he was difficult to hear</i>.</p>
Courtroom tone & atmosphere	<p>One observer reported that the courtroom atmosphere was <i>calm, patient, efficient</i>, but Observer A reported that <i>the courtroom process was orderly and efficient to the point of feeling indifferent</i>.</p>

NEUTRALITY

Consistent and equal treatment	<p>Two observers reported Judge Lubeck behaved in the same way regardless of a defendant's <i>race, age, ethnicity, or whether incarcerated or represented</i>. He made clear his <i>interest in fairness</i>, saying, "<i>I'm interested in both positions,</i>" or, "<i>I make up my own mind, but I like to hear both sides.</i>" An observer <i>appreciated his statements for the sentencing record</i> when stating, "<i>I believe fairness, justice, warrant more than probation,</i>" when not allowing leniency in a case of a <i>white male with financial means</i>. He was <i>fair and impartial toward all parties</i> when he noticed that a participant was <i>missing who was in court last time</i>, and he <i>questioned out loud how he could make a ruling if one of the key participants was not there to participate</i>, but <i>after hearing from the plaintiff's attorney and the defense attorney he allowed the hearing to proceed</i>.</p> <p>However, Observer A <i>wondered about the judge's neutrality</i> in one domestic violence case when the judge <i>uncharacteristically kept his hand over his mouth while listening to the defense</i>, and when <i>stating his reasons for sentencing</i> commented that, "<i>She is still down on the ground bleeding, I don't mean to be too dramatic... I can't erase those pictures from my mind.</i>"</p>
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Demonstrates concern for individual needs	Three observers reported that Judge Lubeck took all the time necessary to be fair to participants, whether present or absent. He helped a young defendant <i>work through his finances to pay court ordered expenses, using it as a teaching moment</i> and explaining that <i>“People were entitled to rely on him.”</i> He was concerned that a defendant’s action might <i>negate a plea agreement</i> , saying, <i>“I think it is worth taking the time,”</i> and after a discussion <i>all parties agreed how to proceed</i> . One observer felt he <i>may have even gone a bit overboard</i> on behalf of a mother who <i>could not pay for transportation from the jail</i> . He struggled with the <i>intent of her letter agreeing to the father’s sole custody but not using those express words</i> , considering both her interests and those of the child.
Unhurried and careful	Two observers reported that Judge Lubeck was <i>thorough and took time to listen to everyone</i> , and one observer <i>appreciated his unhurried and careful approach</i> . However, another observer reported that in one case Judge Lubeck was <i>unhurried and patient almost to the point of being non-productive, remarking several times that he had the rest of the afternoon to discuss and resolve the issue</i> of whether <i>proper service was the correct place to start and asking if maybe he had “got it backwards,”</i> and he <i>repeatedly asked follow up questions to ensure his complete understanding of the arguments from both the plaintiff and defense attorneys</i> .

VOICE

Considered voice	All observers reported that Judge Lubeck <i>encouraged each side to voice their points of view</i> . He was <i>good at asking questions and listening, thinking out loud and restating what he heard to ensure he had heard it correctly</i> . He was <i>patient and considerate</i> of a defendant who would not speak to him, asking for another evaluation before sentencing <i>in an attempt to offer the defendant a voice</i> . He was <i>firm</i> when telling a defendant that if he was <i>going to try to convince him to release him, “I’m not going to do that,”</i> but he listened and was interested in and considered what the defendant had to say, and he then explained his decision. He showed <i>great patience</i> when listening to a defendant <i>go on and on about how he just needed one more chance</i> , but after allowing the young man to talk he said, <i>“This AP & report is different from what you say. In fact, there are a series of disagreements [and] I am going to follow their recommendation.”</i> Observer A reported that while Judge Lubeck <i>listened</i> and did <i>not put time restrictions on anyone</i> , nevertheless <i>defense attorneys were the major voices heard in court</i> , for example when the judge said, <i>“I’ll have your lawyer tell me, then I’ll ask you,”</i> but <i>the defendant was not asked to speak again</i> . Another observer noted that the judge asked attorneys, <i>“What would the best outcome for your clients be?”</i> or, <i>“If everything went your way, what would your client do?”</i> and Observer A wondered if the judge had asked defendants, <i>“Do you wish to tell me anything about yourself or this case?”</i> he might have <i>received some responses from the defendants</i> .
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COMMUNICATION

Communicates clearly	One observer reported that Judge Lubeck was <i>very clear, careful to avoid legal jargon, and asked questions and worded his responses in user-friendly language</i> that could be <i>understood by those with limited education or no experience with the legal system</i> .
Ensures information understood	Two observers reported that Judge Lubeck <i>communicated in a way that would facilitate understanding, varying the delivery of his colloquy</i> to ensure defendants <i>understood what they were about to sign</i> , and asking, <i>“Do you have any questions?”</i> In one case the judge asked, <i>“If you admit to these counts, it will then cause the federal judge to find you violated the terms of your supervised release. Do you understand the resolution and the possible consequences?”</i>
Provides adequate explanations	Three observers particularly emphasized that Judge Lubeck was <i>very thorough in giving instructions to defendants</i> . He <i>delineated the possible consequences of rights given up</i> when entering a guilty plea, and explained, <i>“We will hold the plea in abeyance. If you live up to everything then you can withdraw the guilty plea and it won’t be on your record. That is a good thing.”</i> He asked, <i>“Have you talked with your attorney about a preliminary hearing and what goes on there?”</i> and when a defendant had not the judge said, <i>“I can explain that.”</i> Judge Lubeck was <i>clear about how his decisions were made and explained the reasons</i> .
