

**Misjudging the Judge—the Dallas Bar Poll**

**Full Report**

**By**

**Victoria L. Ray**

**&**

**Marci McClellan**

## **I. Introduction**

The Dallas Bar Association unfairly grades one of our society's most revered leaders, the judge. By submitting Judicial Evaluation Forms that are subject to discrimination, popularity, and party affiliation among numerous other failures, the Bar Association inadequately attempts to assess a judge's competence. Unsurprising is the overwhelming evidence supporting the falseness of these Bar Poll scores. The Dallas Bar Association's Judicial Evaluation Forms do not accurately assess a judge's competence. They are inadequately monitored, and thus result in voters being influenced by bias, party affiliation, peer pressure, and subjective reasoning. This article seeks to evaluate, criticize and correct the current judicial evaluation forms ("Bar Polls") used by the Dallas Bar Association. The Bar Polls present form fails to accurately represent the suitability of an individual judge and thus fails to effectively inform the voting public. This paper begins by discussing: (1) the bar poll process, (2) the reasoning behind bar polls, and (3) the Bar Association's policy in implementing the bar polls. We then demonstrate through empirical evidence that the bar poll methodology is flawed. Finally, we propose several changes be made to judicial evaluation forms in order to correct its failures.

## **II. What are the Bar Polls**

Every two and one half years, the Dallas Bar Association releases Judicial Evaluation Forms to its members with the intention that they rate those judges before whom they have appeared within the last two years. The questions presented to the attorneys are: (1) Is this judge hard-working? (2) Is this judge impartial? (3) Does the judge correctly apply the law? (4) Does the judge demonstrate a proper judicial temperament and demeanor? (5) Do you approve of the

judge's overall performance?<sup>1</sup> Attorneys may then respond "yes", "no" or "no opinion".<sup>2</sup> The Bar Poll's instructions include within its introduction the following statement:

"It is your own [statement], and in answering, you should be guided by your personal judgment, experience and knowledge of the judge being rated. IF YOU HAVE NOT HAD A CASE BEFORE THE JUDGE IN THE LAST TWO YEARS, PLEASE DO NOT RATE THE JUDGE. Your answers on the questionnaire should be based on your personal knowledge of these judges and all positions held by them during the last two years."<sup>3</sup>

The poll further provides some factors to be used in evaluating the judge's performance, such as "whether the sitting judge refers appropriate matters to assigned judges".<sup>4</sup> The Bar Polls are used to inform the public of judicial competency for voting purposes. The policy behind the Bar Polls could be described as an attempt to benefit the general public as well as its members, by providing criticism for the sitting judges.

### **III. How and Why the Dallas Bar Polls are Incorrect**

#### **a. Inaccurate Voter Representation**

A primary cause for the inaccuracy of the Bar Polls is that the votes do not represent those attorneys who have actually been before the court within the last two years. Rather the attorneys appear to be voting when and how they wish, with little understanding that they are limited as to whom they may vote upon. This is revealed by discussing Judge Charles Stokes and Judge Sally Montgomery. In 2003, Stokes' first year in district court (68<sup>th</sup> District Court), he received 379 votes, a comparable amount to his past years in County Court at Law No.5, when

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<sup>1</sup> Dallas Bar Ass'n 2003 Judicial Evaluation Form.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

he received between 326 and 381 votes on each Bar Poll.<sup>5</sup> However, Judge Montgomery received 445 votes during her first year in county court in 2003.<sup>6</sup> Both judges moved from one court to another in 2003; however, Montgomery received over 100 more votes despite the fact that Judge Stokes had been a sitting judge longer. In addition, according to our research, 532 lawyers appeared before Judge Montgomery in 2003.<sup>7</sup> Of those 532, only 248 were bar members eligible to vote on the Bar Poll.<sup>8</sup> Even if every one of the 248 voted, there remain 197 not entitled to vote.<sup>9</sup> This high, unaccounted number of votes establishes that there is inaccurate voter representation in the Bar Polls, and such a failure results in great unfairness to both the viewing public and the sitting judges.

#### **b. Discrepancy between Positive Bar Poll Responses and Reversal Rates**

Despite the detailed instructions and process of the Bar Polls, they inaccurately represent the competency of an individual judge. This is proven by the discrepancy that often exists between a judge's reversal rates and his or her Bar Poll results. Such an inconsistency indicates inaccuracy, because when an appellate court reverses the lower judge, this implies that the law was incorrectly applied.

For example, Judge Adolph Canales of the 298<sup>th</sup> District Court tied with Judge Sally Montgomery for the lowest average Bar Poll score in 1999.<sup>10</sup> However, Judge Canales also had

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<sup>5</sup> See Dallas Bar Ass'n 1993-2003 Judicial Evaluation Polls.

<sup>6</sup> Dallas Bar Ass'n 2003 Judicial Evaluation Poll.

<sup>7</sup> Anonymous Dallas Bar Asso. Member.

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□ *Id.*

<sup>9</sup> *Id.*

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□ See Dallas Bar Ass'n 1999 Judicial Evaluation Poll (This is an average of the negative responses percentages given to each of the six questions of the Judicial Evaluation Poll).

the lowest reversal rate for the period of 1997-1999.<sup>11</sup> Interestingly the judge with the highest reversal rate in 1999, Judge John Marshall, had the same average Bar Poll score as Judge Canales, the judge with the lowest reversal rate.<sup>12</sup> Another example of the inaccuracy of Bar Polls is evident in the 95<sup>th</sup> District Court Judge in 1999, Judge Sally Montgomery. From 1997 to 1999, Judge Montgomery had the second lowest reversal rate, but she also had the third highest negative responses in the Bar Poll.<sup>13</sup> Furthermore, when Judge Montgomery was in the County Court at Law No.3 in 2003, she had no cases reversed but the Bar Poll showed that she had the highest average of negative responses.<sup>14</sup> If the Bar Polls were accurately assessing the judges, the reversal rates should correlate with the responses to the judicial evaluations. Therefore, the presence of such drastic discrepancies conclusively establishes that the Bar Polls fail to accurately represent each judge's abilities.

### **c. Fluctuation in Bar Poll Responses from Year to Year**

Another factor supporting the inaccuracy of the Bar Polls is the frequent fluctuation in Bar Poll score from year to year. Both the Bar Poll scores of Judge Charles Stokes and Judge Sally Montgomery provide examples of such a variation. Judge Stokes had a consistently high positive response average while in County Court at Law No.5 from the years 1993 to 1999, varying 3.7 points at most.<sup>15</sup> However, when Judge Stokes began his position as the 68<sup>th</sup> District Court Judge, his negative response average on the Bar Polls rose to 26.5 in 2001, an increase of

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<sup>11</sup> Reversal Rates for 1999 Dallas District Court Judges (This is a reference to information which was interpreted, after gathering each disposition from each judge from the two years prior to the 1999 Dallas Bar Ass'n Judicial Poll. These dispositions were then computed and used to create a reversal rate, using a percentage system.)

<sup>12</sup>

□ *Id.*

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□ Reversal Rates for 1999 Dallas District Court Judges; *see* Dallas Bar Ass'n 1999 Judicial Evaluation Poll.

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□ *See* Reversal Rates in 2003 for Judges in the Dallas County Court at Law; Dallas Bar Ass'n 2003 Judicial Evaluation Poll.

<sup>15</sup>

□ Dallas Bar Ass'n 1993-1999 Judicial Evaluation Polls.

15.5.<sup>16</sup> This is an extreme fluctuation in light of the fact that Judge Stokes' average negative score was 11 in 1999, only two years prior.<sup>17</sup>

Judge Montgomery suffered from a similar fluctuation in Bar Poll results, despite no reversals in 2003, when she was a county judge. Although her reversal rate improved, the negative responses to the Bar Poll drastically increased when she moved from district court to county court.<sup>18</sup> As a district judge in 1999, Montgomery had an average negative response of 38.2.<sup>19</sup> Only four years later, she received an average negative response of 70 as a county judge—more than a thirty point difference.<sup>20</sup>

Although these variations in Stokes' and Montgomery's Bar Polls could be attributed to the move from one court to another, not every question of the Bar Poll is an evaluation of the judge's ability to apply the law. Rather, questions as to whether the judge is hard working, or impartial, or demonstrates a proper judicial temperament and demeanor are inquiries into the judge's other abilities, which should remain steady from year to year and court to court. No reasonable explanation exists for dramatic fluctuations in response to these questions, aside from the conclusion that the Bar Polls inaccurately evaluate the judges.

#### **d. Discrepancy between Response and Factual Evidence**

According to the 2003 Bar Poll, Judge Montgomery is the least hard-working judge in the county.<sup>21</sup> Fifty-nine percent of lawyers polled said that she was not hard working.<sup>22</sup> However,

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<sup>16</sup> Dallas Bar Ass'n 2001 Judicial Evaluation Poll.

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<sup>18</sup> Dallas Bar Ass'n 1999 Judicial Evaluation Poll.

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<sup>19</sup> See Reversal Rates for 1999 Dallas District Court Judges; see Reversal Rates in 2003 for Judges in the Dallas County Court at Law; see Dallas Bar Ass'n 1999 & 2003 Judicial Evaluation Polls.

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<sup>20</sup> See Dallas Bar Ass'n 1999 Judicial Evaluation Poll.

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<sup>21</sup> See Dallas Bar Ass'n 2003 Judicial Evaluation Poll.

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<sup>22</sup> *Id.*

<sup>22</sup>

according to a Dallas County Management Report of the three months prior to December 31, 2003, Judge Montgomery disposed of 891 cases, an enormous number of cases.<sup>23</sup> Ironically, the judge with the lowest disposition of cases (679) received the highest score on the question of whether he was hard working.<sup>24</sup> This discrepancy reveals the inability of the Bar Poll inquiries to accurately reflect the judge's specific abilities, particularly her actual work ethic.

#### **e. Inadequate Regulation**

Inadequate regulation of voters is a primary cause of the Bar Poll's failure and is at the core of each other weakness of the Dallas Bar Poll. Poor regulation has been a frequent criticism of bar polls in other regions, such as Houston and Arizona.<sup>25</sup> One article criticized the Arizona Bar Poll as follows: "The Bar Poll is inadequate in several respects....The task force believes that most voters never learn of the results of the Bar Poll,' but 'it is the sole source of information for voters.'"<sup>26</sup> Similarly, the Dallas Bar Poll misguidedly impacts the relying public and incorrectly emphasizes "popularity" and "reputation" despite the greater importance of judicial qualities, such as work ethic and correct application of the law.

A comparable bar poll also exists in Houston, where there are many critics who believe in its abolition or alteration. Houston, like Dallas, has three response options: "qualified", "not qualified", or "well qualified" rather than Dallas' "yes", "no" or "no opinion".<sup>27</sup> Critics of the

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<sup>23</sup> *Id.*

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<sup>24</sup> Dallas County Mgmt. Report For the Three Months ending Dec. 31, 2003, § VII County Courts at Law (Scott Secret p.7.1-7.3).

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<sup>25</sup> *Id.*; Dallas Bar Ass'n 2003 Judicial Evaluation Poll.

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<sup>26</sup> See John Pelander, *Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns*, 30 AZSLJ 643, 660 (Fall 1998); see Richard Trevathan, *Judging the Bar Polls*, 35 APR Houston Lawyer 6 (March/April 1998).

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<sup>27</sup> A. John Pelander, *Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns*, 30 AZSLJ 643, 660 (Fall 1998).

<sup>27</sup> See Richard Trevathan, *Judging the Bar Polls*, 35 APR Houston Lawyer 6 (March/April 1998).

Houston Bar Poll state, “no topic generates as much confusion as the timing and subject matter of our judicial Bar Polls.”<sup>28</sup>

Ideally, one article states that bar polls should be used for “judicial self-examination.”<sup>29</sup> However, the bar polls are more frequently used as a voter’s guide in election season. This reality necessitates that great change in the Bar Polls should be made. Not only do the Bar Polls fail to meet their goals, but also the mass is unfairly able to overshadow the minority of voters in Bar Polls, as this is enabled by lack of adherence to the basic instructions.<sup>30</sup> Because of the similarities between the Houston and Dallas Bar Poll, the criticisms of Houston’s Bar Poll are entirely analogous to the Dallas Bar Poll. As such, the Dallas Bar Association must similarly consider substantive change or complete discontinuation of these failing and misleading Bar Polls.

#### **f. Likelihood of Discrimination within Evaluation Process**

The Dallas Judicial Evaluation Forms further fail in their purpose because of the voter’s frequent incorporation of gender or minority bias in assessing the judge’s competency. This is exemplified through the judicial examples of, Judges Anne Ashby, Sally Montgomery, and Adolph Canales. The only two female judges of this study, Judges Ashby and Montgomery, both suffer from discrepancies between their Bar Poll scores and their reversal rates.<sup>31</sup> Judge Ashby is average (fifth lowest or sixth highest) in her reversal rate, but she has the second worst average negative responses to the Bar Poll (Canales and Montgomery tied for first).<sup>32</sup> As

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<sup>28</sup>

□ *Id.*

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□ *Id.*

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□ *Id.*; but see Cafferata Reynolds, *A Proposal for an Empirical Determination of Canon 5*, 65 SCALR 1639, 1661 (“However, the Bar Polls have little impact on elections. Voters are not influenced by Bar Polls because they do not tell voters anything about a judge’s philosophy and thus do not provide relevant information.”)

<sup>31</sup>

□ See Dallas Bar Ass’n 1999 Judicial Evaluation Form; see Reversal Rates for 1999 Dallas District Judges.

<sup>32</sup> *Id.*

previously discussed, Judge Montgomery had the lowest reversal rate of the County Judges in 2003 and the second lowest of the District Judges in 1999, but received both the worst and second worst responses to those Bar Polls.<sup>33</sup> Although these female judges' low Bar Poll scores could be attributed to other factors, the fact that both have very good reversal rates, but very bad Bar Poll scores strongly suggests that their sex was a factor in the subjective reasoning of the voters. This is unsurprising as job evaluations, such as these Bar Polls, are often adversely affected by sexist attitudes.<sup>34</sup> The Bar Polls are particularly susceptible to bias because of inadequate regulation. At least one commentator has made this distinction:

“When placed into ambiguous settings and asked to make decisions without clear-cut rules as guidance, evaluators tend to rely on their instinct, which unfortunately is a refuge for prejudice. Because performance evaluations in higher-level jobs are usually subjective, those evaluations are much more vulnerable to gender-based stereotypes than are blue-collar jobs.”<sup>35</sup>

Accordingly, the high level position of a judgeship, the inadequate regulation of the Bar Poll, and the history of sexual discrimination all reveal that bias and discrimination heavily influence the Bar Polls.

Not only is gender discrimination present in the Bar Poll process, but minority discrimination as well. Judge Adolph Canales, 298<sup>th</sup> District Court Judge, is the sole minority member within the focus of this study, and as such his data supports the contention that the Bar Poll is discriminatory. Despite Judge Canales' position as the judge with the lowest reversal rate

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<sup>33</sup> See Dallas Bar Ass'n 1999 & 2003 Judicial Evaluation Forms; see Reversal Rates for 1999 Dallas District Judges; see Reversal Rates in 2003 for Judges in Dallas County Court at Law.

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<sup>34</sup> Robert Brookins, *Mixed Motives, Title VII, and Removing Sexism from Employment: the Reality and the Rhetoric*, 59 Alb. Law Rev. 1 (1995) (“Studies consistently suggest that neosexist attitudes of personnel evaluators have adversely affected women’s job evaluations. For some time, sexist perceptions even compromised the professional assessments of women by some psychologists and psychiatrists, who ‘define[d] mentally healthy women as dependent, emotional, and passive.’ Consequently, some professionals have adjudged women who have displayed the stereotypical male traits of independence, stoicism, and aggressiveness as being mentally disturbed.”)

<sup>35</sup> *Id.* at 19.

of all District Court Judges from 1997 to 1999, he received the most negative responses to the Bar Poll.<sup>36</sup> Historically, Dallas County has had to battle discrimination, and therefore its presence in this study is expected. For example, in 1989, the United Latin American Citizens won a trial in which a federal judge ruled that Texas' system of electing state district judges illegally discriminated against Hispanics and African-Americans in nine urban counties, including Dallas County.<sup>37</sup> Although this 1989 decision referred to election results, similar discriminatory action is present in other aspects of the Dallas judiciary, such as the Dallas Bar Association Judicial Evaluation Forms.

### **g. Treatment as a Popularity Contest**

The Bar Polls are inaccurate because of the tendency to turn an objective process into a subjective popularity contest. Often, the lawyers voting base their opinions for answering “yes” or “no” upon the reputation of the judge in the lawyer’s workplace or his or her reputation among other colleagues, much like voting for class favorite in high school. This influence of rumor and reputation is a common criticism of the Bar Poll, as stated by a critic of the Arizona Bar Poll: “The Bar Poll was given too much weight by many judges who regard it as a popularity contest in which the judge must be sure not to displease too many lawyers, conversely many in the public regard the poll as the lawyers’ biased attempt to perpetuate in office judges who go easy on the lawyers.”<sup>38</sup> Although a rumor’s illusive nature makes it difficult to establish its

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<sup>36</sup> See Dallas Bar Ass’n 1997-1999 Judicial Evaluation Polls; see Reversal Rates for 1999 Dallas District Court Judges.

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□ Bruce Hight, *Settlement Suggested in Judicial Election Suit/Minorities Seek Quick Route to Change At-large System*, Austin American-Statesman, 1992 WL 10701917 (Nov. 23, 1992).

<sup>38</sup>

□ A. John Pelander, *Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns*, 30 AZSLJ 643, 660 (Fall 1998).

influence with hard evidence, the process by which the Bar Polls are conducted, within the influences of human nature itself, reveal this as a fatal weakness.

Despite the Bar Poll's severe flaws, the Dallas Bar Association is currently in the process of approving several recommended changes that actually worsen the Bar Poll.<sup>39</sup> One such change is the expansion of the requirement that the voting attorney have appeared before the judge in the last two years to four years.<sup>40</sup> Such a lengthy period of time changes what once could be considered a limitation to a mere guideline. Doubling the period of time that the bar member may use in assessing the judge is a drastic change which virtually removes any time limitation. If the judge were to improve his application of the law within the last four years, this would be immaterial because of this "limitation".

This is especially true when considering the next recommendation to the Dallas Bar Poll--changing the language from "to have appeared in the judge's court" to "personal knowledge."<sup>41</sup> Rather than limit the attorney to voting based upon his experience in the judge's courtroom, this not only encourages, but blatantly requires the attorney to base his vote on the judge's reputation or charm. One question that must be considered in these changes is how a voter can accurately assess the judge's correct application of the law, his impartiality, or any of the other inquiries, without being in the judge's courtroom? The purpose of the questions entirely fails without a requirement that the attorney have personally experienced the judge's courtroom process. These recommendations demonstrate that the tendency of the current Bar Poll to be a popularity contest is quickly becoming a reality.

#### **h. Common Use of Bloc Voting**

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<sup>39</sup> Recommended Changes to the DBA Judicial Evaluation Poll (submitted by the Judicial Evaluation Poll Subcommittee July 8, 2004).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

Another source of corruption in the Dallas Bar Polls is the common use of bloc voting within law firms. Often associates or partners discuss and choose how a particular judge should be rated in the Bar Polls, based upon the judge's past judgments, her willingness to assist the lawyers in their litigation process, or her leniency. Critics of bar polls have observed: "[It is often] improperly influenced by expensive marketing campaigns or by bloc voting by the big law firms with hundreds of lawyers."<sup>42</sup> Another article similarly criticizes: "The major criticism the HBA receives about the Judicial Evaluation Polls is that it can be distorted by large groups voting in mass, without adherence to the instructions provided by the HBA."<sup>43</sup> Bloc voting, when compounded with inadequate regulation of the voters, makes the Bar Poll, in essence, a college Homecoming Queen contest. Like the Greek system of a university, the firm members (also known as sorority or fraternity members) are instructed to vote for their candidate, the president of the fraternity or sorority or, in this case, the favorable judge. The ability to bloc vote in the Bar Polls disrupts the accuracy of the system and causes misrepresentation of the various judges, thus manipulating elections. Each lawyer should vote according to his personal opinions, rather than voting based upon the needs of the entire firm.

#### **i. Influence of Party Affiliation**

The final cause of Dallas Bar Poll inaccuracy is the influence of party affiliation. Frequently the Bar Poll voters will vote along partisan lines and thus not use their own personal opinions but those associated with the Democratic or Republican parties. Although party affiliation is significant during an election, determination of the judge's performance while in office should be based upon the judge's actual abilities and the voter's personal experiences, not

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<sup>42</sup> *Bar Polls/Lawyers' views of Judicial Candidates are Helpful*, 2002 WL 23225054 (Houston Chronicle Sept. 23, 2002).

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<sup>□</sup> See Richard Thevathan, *Judging the Bar Polls*, 35 APR Houston Lawyer 6, (March/April 1998).

upon whether the judge is a Republican or Democrat. An embodiment of this bipartisan voting contributes to the drop of Judge Sally Montgomery's Bar Poll scores. As the only judge within the focus of this paper, who has switched parties while in office, she provides an example of the great influence of party affiliation on the voters. While a district judge and a Republican, her average negative responses amounted to 38.2.<sup>44</sup> When later elected as a Democratic county judge, her Bar Poll disapproval rating rose to sixty-one.<sup>45</sup> This drastic increase may be attributed to a number of factors, including those outlined above; however her party affiliation was likely the preeminent factors of her increased disapproval, particularly as she became the only Democrat in an overtly Republican region.

#### **IV. Proposed Changes to the Dallas Bar Poll**

The numerous weaknesses present in the Dallas Bar Poll process necessitate immediate and drastic changes. One alteration is to monitor the attorneys who vote. The Dallas Bar must assure that the attorney is a Dallas Bar Association member and that the attorney has been before the judge at issue at least once within the last two years. Admittedly, this is a lofty goal because of the anonymity of the Bar Poll answers; however, the tendency towards misrepresentation outweighs the need for complete anonymity.

Other options are available such as the use of a bar number, rather than a name, as an identifier. This number could be read and recorded by employees who are required to contain these numbers confidentially. Although there is no clear answer yet to this dilemma, there are avenues available that would correct, or at least improve, the inadequate regulation of who votes on the Dallas Bar Polls.

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<sup>44</sup> Dallas Bar Ass'n 1999 Judicial Evaluation Poll.

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□ Dallas Bar Ass'n 2003 Judicial Evaluation Poll.

In addition to reformulating the anonymity process of the Bar Poll, more emphasis must be placed upon the importance of objectivity and honesty in answering the Bar Poll. Rather than a bloc voting system or popularity contest, the bar members must understand that the answers given will not only impact the judge but also the public at large—those who rely upon these Bar Polls for advice in elections. This could be effectively improved with the active encouragement of the Dallas Bar Association. Rather than merely having fine print instructions at the top of the Bar Poll ballot, the instructions should be large, bold and clearly mark the importance of voting based upon your personal opinions. Small print causes the voter to pay little if no attention to this very significant instruction—be honest when answering.

Another possible improvement to the Dallas Bar Poll is to begin comparing both the judge's reversal rates and the Bar Poll scores when releasing the Bar Poll to the public. By releasing only the Bar Poll scores, the public is at a disadvantage. Rather than be given both facts and opinions, the public is encouraged to base judgment entirely on the judge's popularity among voting attorneys. In order for the public to make an informed decision when voting, both opinion and fact are necessary. Therefore both Bar Poll scores and reversal rates should be provided.

As mentioned previously, the Arizona Bar Association has altered its Judicial Evaluation process into a less limiting and subjective process with wider access afforded other members of the judicial community. The process should be heavily considered as an alternative method for the Dallas Bar Association. Arizona, when faced with a similar dissatisfaction, replaced the conventional Bar Poll system with the judicial performance review (JPR) program.<sup>46</sup> There were several critiques of the Bar Poll system in Arizona, many like the ones raised in this paper. One

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<sup>46</sup> A. John Pelander, *Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns*, 30 AZSLJ 643, 648 (Fall 1998).

reason for change was the dissatisfaction with the exclusion of others involved in the judicial system, by only allowing the attorneys to vote subjectively upon the judges.<sup>47</sup> As a remedy, Arizona implemented the JPR program, which seeks reviews of judges from lawyers, jurors, litigants, witnesses, and courtroom and court administrative staff.<sup>48</sup> The JPR form asks lawyers to review judges in several categories including “legal ability, integrity, communication skills, judicial temperament, administrative performance, and settlement activities.”<sup>49</sup> The attorneys are then asked to rate the judges by “unacceptable”, “poor”, “satisfactory”, “very good”, “superior” or “can’t rate”.<sup>50</sup> In addition, attorneys are asked to provide a general background including race or ethnicity, gender, and which party they represent.<sup>51</sup> The survey forms also vary among courts asking additional questions concerning bias in appellate and superior court judges.<sup>52</sup>

These forms are then submitted to county committees, which review the surveys and make factual findings to be forwarded to an appointed Commission.<sup>53</sup> The county committee's factual report includes whether each judge "meets or exceeds" or "fails to meet" judicial performance standards, accompanied by a statement of the reasons supporting the finding.<sup>54</sup> The Commission then directly reviews the findings and submits their own factual findings to the reviewed judges, who have a right to appear and be heard by the Commission before the results

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<sup>47</sup>

□ *Id.* at 648-49.

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□ *Id.* at 673.

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□ *Id.*

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□ *Id.* at 674.

<sup>51</sup>

□ *Id.*

<sup>52</sup>

□ *Id.*

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□ *Id.* at 680.

<sup>54</sup> *Id.* at 681.

are disseminated to the public.<sup>55</sup> The success of the JPR system has caused its approval in Alaska, Colorado, and New Jersey.<sup>56</sup>

The Arizona process has alleviated many of the concerns with the traditional Bar Poll process such as bias, discrimination, and subjectivity. Specifically, Arizona has widened the field of persons surveyed, which increases the range of feedback the judges receive on their judicial performance. Since judges have a more thorough evaluation, they are able to increase their productivity and the integrity of the judicial system. While the JPR process is continuing to evolve, this is an alternative that could successfully alleviate the current problems with the Dallas bar process.

The above changes only highlight the improvements to be made to the Dallas Bar Poll process—yet, the ever-present battle against discrimination cannot be ignored. By recognizing that the Dallas Bar Poll is an imperfect vehicle for characterization of a judge, we begin the process of improving the criticism given to judges, the public’s understanding of whom the judges are, and establish that the Dallas Bar members are fair, intelligent people who realize the responsibility that is given to them when voting in the Bar Polls.

## **V. Conclusion**

The Dallas Bar Poll is subject to severe flaws, including inaccuracy, fluctuation, inadequate voter representation and regulation, discrimination, subjectivity, bloc voting, and the heavy influence of party affiliation. Without criticizing and correcting the Dallas Bar

<sup>55</sup>

□ *Id*

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<sup>56</sup> *Id.* at 652.

Association's Judicial Evaluation Polls, the public and the judicial community is perpetuating a manipulated and dishonest system of characterization. These overwhelming failures in the Dallas Bar Polls demand that the judicial evaluation process evolve or be entirely eradicated. Potential improvements include consideration of other identification methods, active encouragement to vote objectively and without discrimination, and the adoption of newer methods of judicial review implemented by other bar associations. Dallas's modern progression into the twenty-first century depends upon its ability to evolve into a society ripe with equality, honesty, and integrity, characteristics that are currently absent in the Dallas Bar Poll. We must endeavor to become this fair and just society by removing the failures of the Dallas Bar Poll.

**Authors' Biographical Information:**

This project stemmed from a request by the Mesquite Bar Association to the authors to research bias among bar association judicial evaluations in order that the Mesquite Bar Association might have a fair and impartial way to evaluate judicial performance.

**Victoria L. Ray:**

***Southern Methodist University Law Student***

B.F.A., 2002, Southern Methodist University

E-Mail: [torylee28@aol.com](mailto:torylee28@aol.com)

Victoria (“Tory”) is currently a third year law student at Southern Methodist University, with plans to graduate in May 2005. She began attending Southern Methodist University in 1998 for her undergraduate career. While at Southern Methodist University, she studied painting, art history, history and French abroad in Paris, South of France, and throughout Italy. She received a Bachelor in Fine Arts with Distinguished Honors from a major in Art History, and acquired a minor in French. As a law student, she is the Articles Editor for the Computer Law Review & Technology and is also a member of Phi Alpha Delta. She has been actively involved in the Youth Trial Advocacy Program and twice honored with Dean’s List.

**Marci McClellan:**

***Texas Tech University Law Student***

B.S., 2002, Texas A&M University

E-mail: [marcimcclellan@hotmail.com](mailto:marcimcclellan@hotmail.com)

Marci McClellan is a third year law student at Texas Tech University, with plans to graduate in May of 2005. She attended Texas A&M University in 1998 where she studied microbiology, chemistry, genetics and plant pathology. She received a Bachelor of Science in Bioenvironmental Science. As a law student, she participated in mock trial and moot court competitions and is the Executive Vice Chair of negotiations for the Board of Barristers. She presented a paper titled *Stachybotrys chartarum: Valid legal claim or frivolous lawsuit?* at the recent Bioterrorism and Public Health Symposium. Marci will also be participating in the Civil Clinic in the spring. In addition to her J.D. she is pursuing a certificate of distinction in Law and Science.