

Honorable L.G. Cutler – Justice Court Judge

Serving Salt Lake City Justice Court, Salt Lake County



Commission Recommendation: **RETAIN**

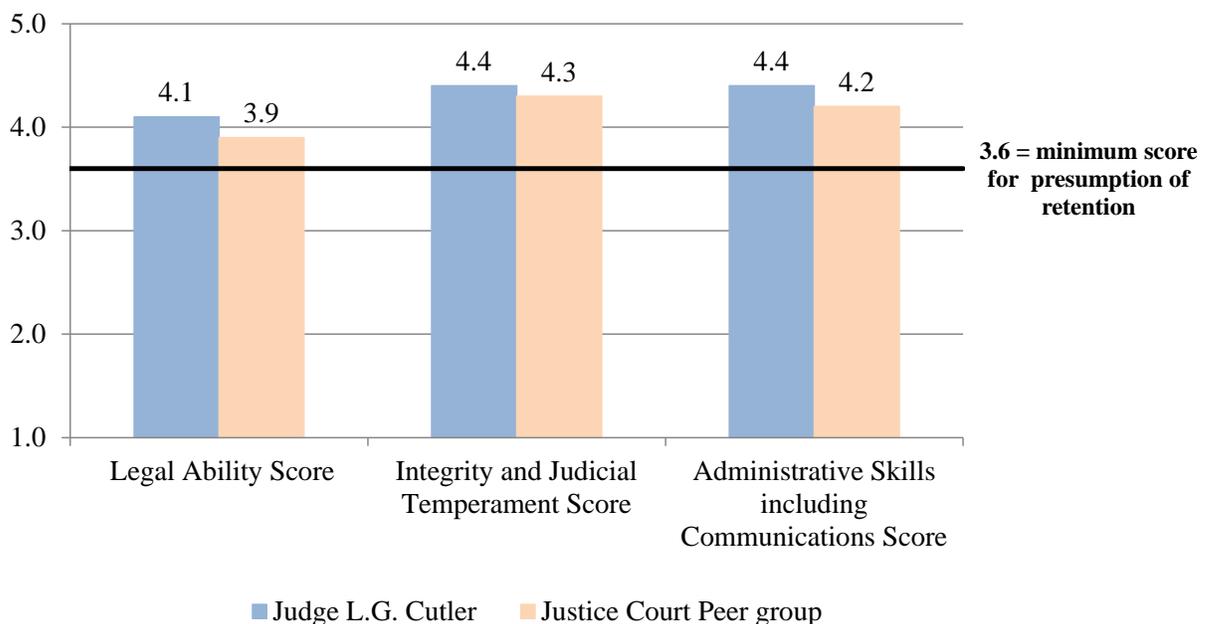
(vote count: 12-0 for retention)

Appointed in 2004, Judge L. G. Cutler scores above the average of his justice court peers in integrity and judicial temperament, administrative skills, and procedural fairness and consistent with the average of his peers in legal ability. Survey respondents choose 94% positive words from a list to describe Judge Cutler, viewing him as both considerate and receptive. Most respondents and courtroom observers characterize Judge Cutler as polite and respectful, although some respondents report that he is not as considerate of court staff outside the courtroom. Observers note that Judge Cutler consistently demonstrates personal concern for defendants, seeking their input, offering explanations to them, and carefully considering their individual circumstances before imposing sentence. All observers report they would feel comfortable appearing before him. Of 55 survey respondents answering the retention question, 48 (87%) recommend retention for Judge Cutler.

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

Judge L.G. Cutler has served the Salt Lake City Justice Court since 2004. He earned a bachelor's degree from the University of Utah in 1975 and a J.D. from the University of Utah College of Law in 1979. Prior to taking the bench, Judge Cutler served as staff attorney with Utah Legal Services and provided legal representation to indigent children, parents, and families in Juvenile Court. As a sole practitioner, his work focused on domestic law, guardian ad litem representation of children, and criminal defense. Judge Cutler also contracted with Salt Lake County communities to provide prosecution services for more than 20 years.

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



The Honorable L.G. Cutler

Judicial Performance Evaluation Commission Report

Retention 2016

Table of Contents

I. Survey Report

Survey Results	1
A. How to Read the Results	1
B. Retention Question	2
C. Statutory Category Scores	3
D. Procedural Fairness Score	4
E. Responses to Individual Survey Questions	5
F. Adjective Question Summary	7
G. Attorney Demographics	8
Survey Background and Methods	9
A. Survey Overview	9
B. Evaluation Period	10

II. Courtroom Observation Report

I. Survey Report

Survey Results

A. How to Read the Results

For Judge L.G. Cutler, 36% of qualified survey respondents submitted surveys. Of those who responded, 56 agreed they had worked with Judge L.G. Cutler enough to evaluate his performance. This report reflects these 56 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 "Justice 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.

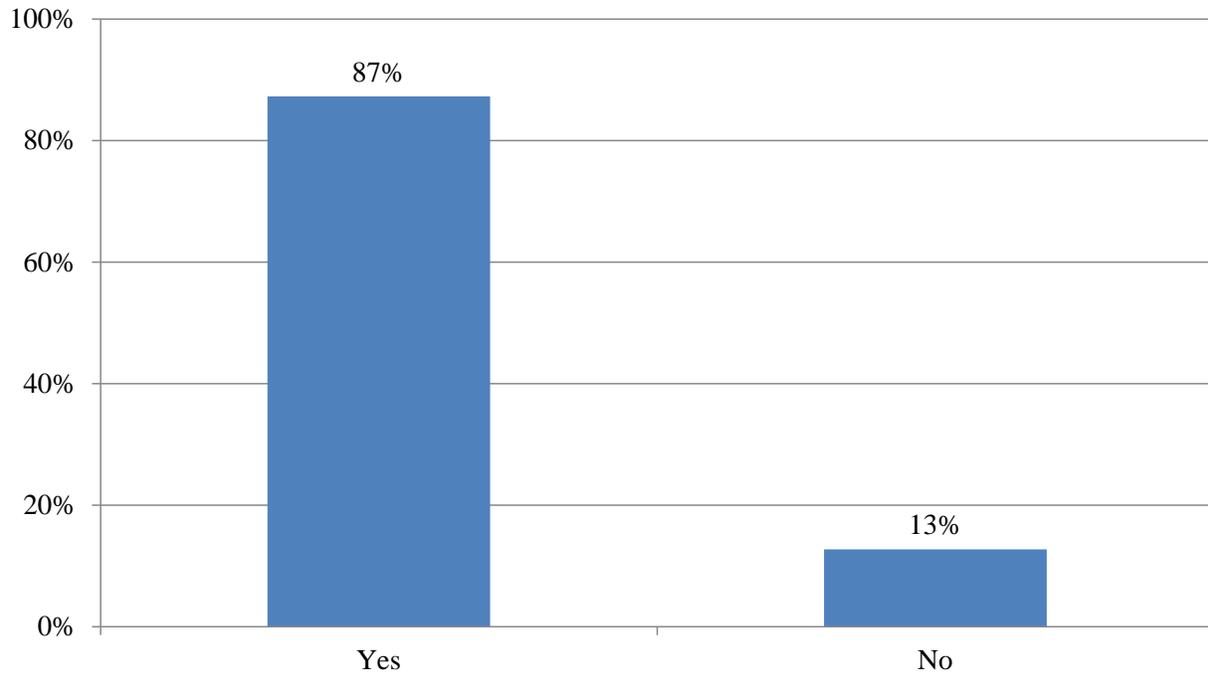
What does it take to "pass"? The judge must score a minimum of 3.6 on Legal Ability, Integrity & Judicial Temperament, and Administrative Skills to earn a presumption of retention from the Commission. That is, if a judge scores an average of 3.6 in each of these categories, the commission will vote to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

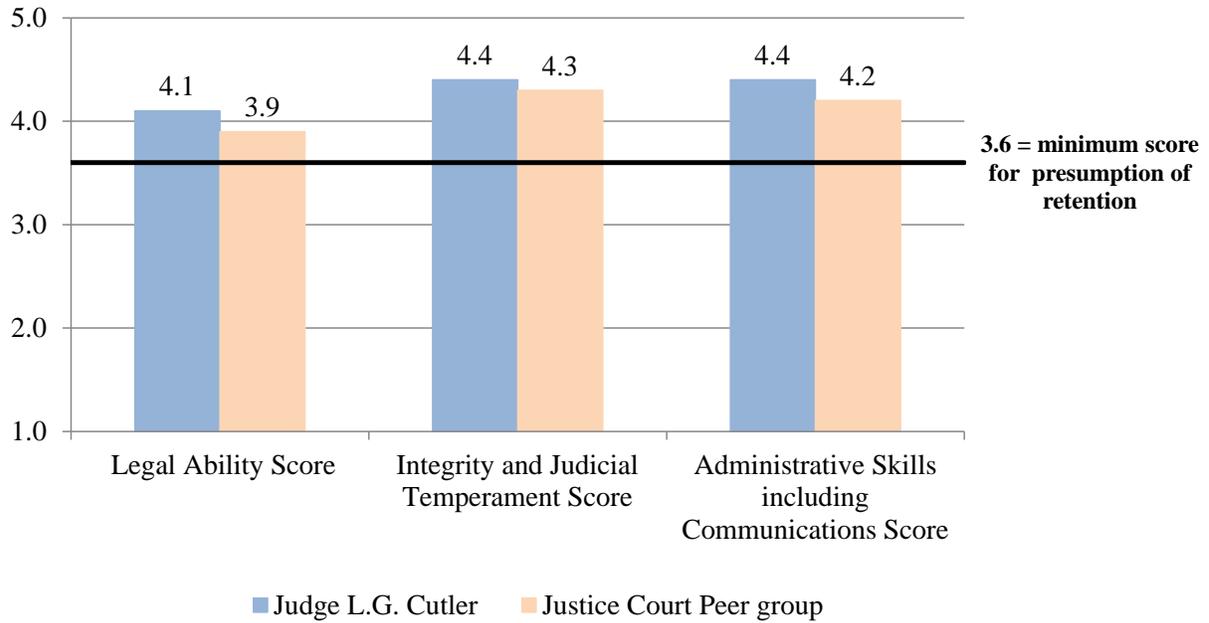
B. Retention Question

Figure A. Would you recommend that Judge L.G. Cutler be retained?



C. Statutory Category Scores

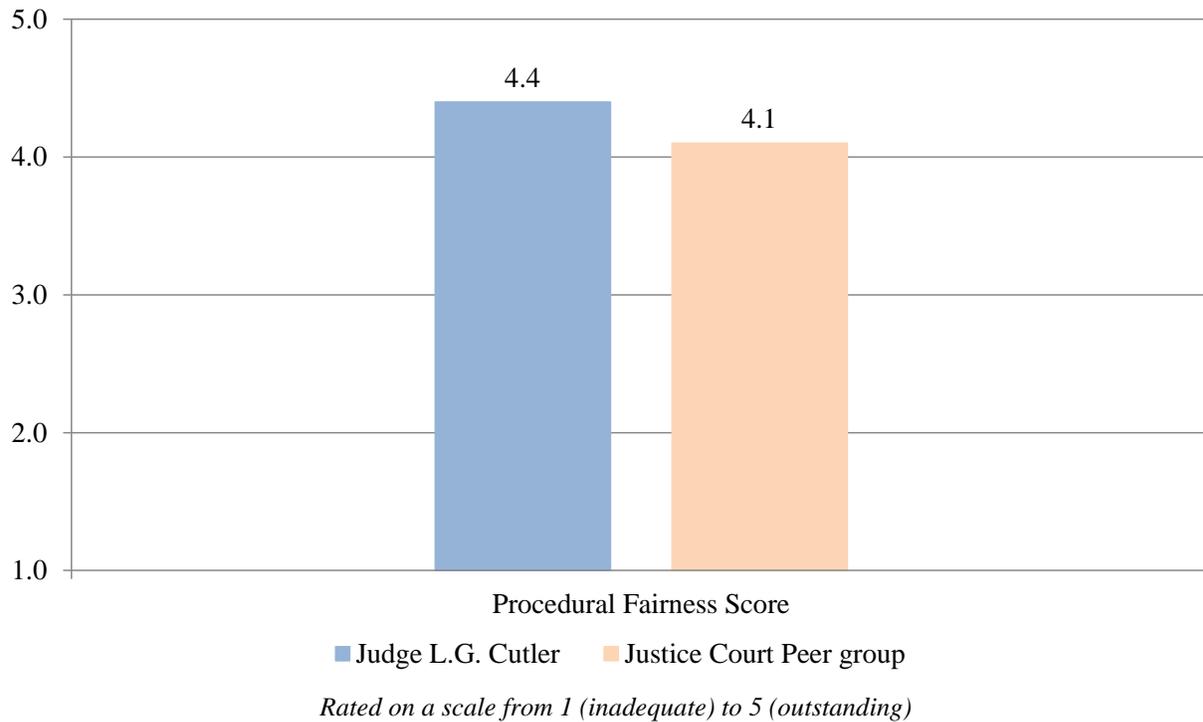
Figure B. Statutory Category Scores



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 L.G. Cutler
Procedural Fairness	Pass

E. Responses to Individual Survey Questions

Table B. Responses to Survey Questions

Category	Question	Judge L.G. Cutler	Justice 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	4.0
Legal Ability	The judge makes appropriate findings of fact and applies the law to those facts.	4.1	3.9
Legal Ability	The judge follows legal precedent or clearly explains departures from precedent.	4.1	3.9
Legal Ability	The judge only considers evidence in the record.	4.1	3.9
Legal Ability	The judge's written opinions/decisions offer meaningful legal analysis.	4.1	3.8
Legal Ability	The judge's written opinions contain a readily understandable, concise ruling	4.1	3.9
Integrity & Judicial Temperament	The judge makes sure that everyone's behavior in the courtroom is proper.	4.4	4.3
Integrity & Judicial Temperament	The judge appears to pay attention to what goes on in court.	4.6	4.3
Integrity & Judicial Temperament	The judge's personal life or beliefs do not impair his or her judicial performance.	4.2	4.1
Integrity & Judicial Temperament	The judge demonstrates respect for the time and expense of those attending court.	4.3	4.0
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.	4.7	4.4

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

Table C. Responses to Survey Questions (continued)

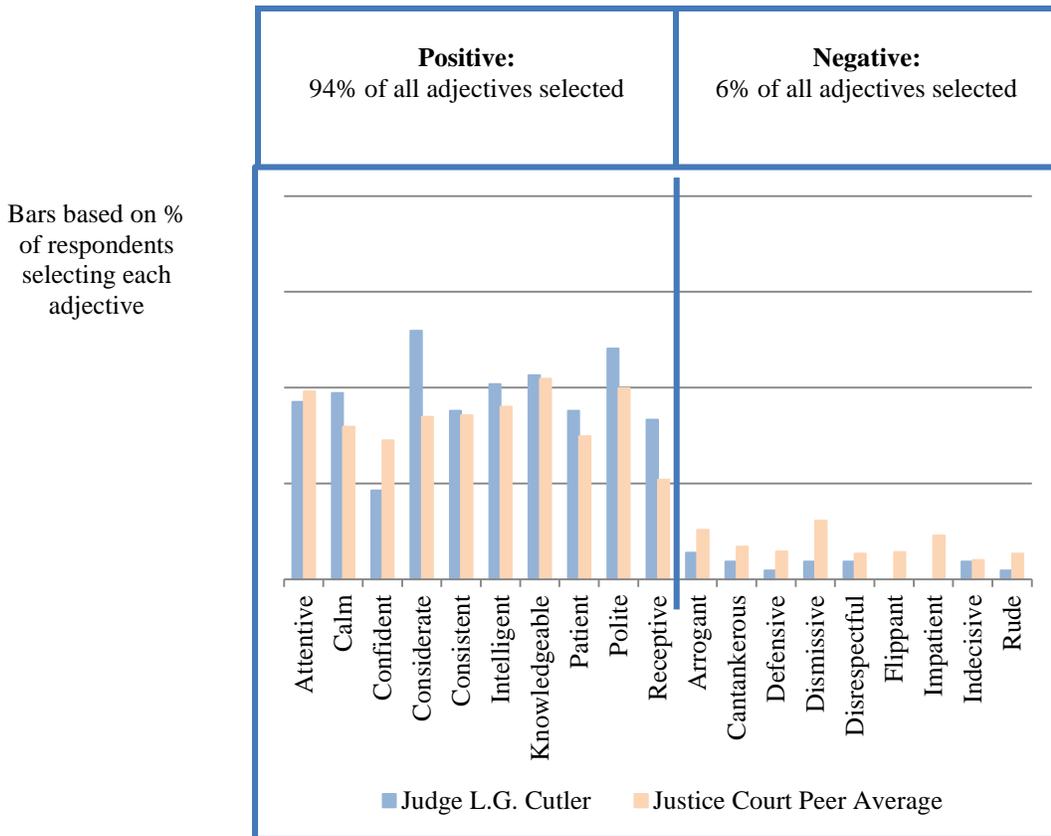
Category	Question	Judge L.G. Cutler	Justice Court
Administrative Skills	The judge is prepared for court proceedings.	4.6	4.3
Administrative Skills	The judge's interactions with courtroom participants and staff are professional and constructive.	4.5	4.1
Administrative Skills	The judge is an effective manager.	4.2	4.1
Administrative Skills	The judge convenes court without undue delay.	4.3	4.1
Administrative Skills	The judge rules in a timely fashion.	4.2	4.3
Administrative Skills	The judge maintains diligent work habits.	4.5	4.3
Administrative Skills	The judge's oral communications are clear.	4.5	4.3
Administrative Skills	The judge's written opinions/decisions are clear and logical.	4.2	4.1
Procedural Fairness	The judge treats all courtroom participants with equal respect.	4.5	4.1
Procedural Fairness	The judge is fair and impartial.	4.3	4.0
Procedural Fairness	The judge promotes public trust and confidence in the courts through his or her conduct.	4.3	4.0
Procedural Fairness	The judge provides the parties with a meaningful opportunity to be heard.	4.4	4.2

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	2%
Domestic	20%
Criminal	91%
Civil	15%
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	46%
6 - 10	9%
11 - 15	15%
16 - 20	-
More than 20	30%

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 L. G. CUTLER

Five observers wrote 95 codable units that were relevant to 12 of the 15 criteria. Two observers 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 enthusiastically positive about Judge Cutler, emphasizing that he valued every participant as a human being and treated everyone with the utmost respect.• All observers reported that they would feel comfortable appearing before Judge Cutler. However, one observer would not want to appear in SLC Justice Court due to the long delays in disposing of cases due to lack of court funding (see “Anomalous comments”).
WIDELY AGREED-UPON THEMES	<ul style="list-style-type: none">• All observers variously reported that Judge Cutler paid close attention and listened well, and the court ran smoothly and efficiently. He greeted the court in a friendly manner and began by explaining courtroom etiquette and what would be happening that day, and observers were impressed by Judge Cutler’s friendly demeanor and interactive style. He was also serious, professional and focused, and struck the right balance between gravity and dry humor. He leaned forward and made eye contact, speaking clearly in an approachable but professional tone. He addressed both sides of a case in equal measure, was deliberate and unhurried, and was meticulous in explaining defendants’ rights, potential penalties, the consequences of future violations, and his decisions. He repeatedly explained all aspects of the proceedings in detail.• All observers particularly emphasized with numerous elaborated illustrations that Judge Cutler valued every participant as a human being and treated everyone with utmost respect, consideration, and humility. He was genuinely concerned about defendants’ welfare, considered individual circumstances in sentencing, and focused on rehabilitation rather than simply punishing offenders (see “Courtesy, politeness, and general demeanor” and “Demonstrates concern for individual needs”).• All observers particularly emphasized Judge Cutler’s continual concern that participants understood the proceedings, their charges, and their rights, and from his first entering the court continually encouraged everyone to interrupt him with questions at any time (see “Considered voice” and “Ensures information understood”).
MINORITY OBSERVATIONS	<ul style="list-style-type: none">• None
ANOMALOUS COMMENTS	<ul style="list-style-type: none">• One observer reported at length on the lack of court funding that required 40% of cases to be continued. Judge Cutler apologized that due to this lack of funding he could not dispose of cases in a timely manner, and he requested early pre-trial motions and state subpoenas to the state lab in an effort to meet national guidelines for timely adjudication of misdemeanor cases (see “Courtroom tone & atmosphere”).

Summary and *exemplar language* of five observers’ comments

<i>RESPECT</i>	
Listening & focus	Three observers reported that Judge Cutler <i>listened well</i> , paid <i>close attention to questions and responses</i> , and gave his <i>full attention</i> to presented evidence.

Well-prepared & efficient	Two observers reported that Judge Cutler ran the court <i>smoothly and efficiently with no wasted time. Case documents were at his fingertips.</i> The courtroom was <i>orderly with little or no chatter.</i>
Courtesy, politeness, and general demeanor	All observers reported that Judge Cutler greeted the court with a <i>friendly welcome</i> , described <i>courtroom etiquette</i> and <i>what would be happening that day</i> , saying, “ <i>You may come and go. We won’t make decisions without calling you two or three times. I appreciate your patience, we have a long calendar. Any questions from the public I can answer at this time,</i> ” and concluded by saying, “ <i>We wish you the best,</i> ” or, “ <i>If you have any concerns you can always write to me later.</i> ” Observers were <i>thoroughly impressed</i> by the judge’s <i>friendly, patient demeanor</i> , his <i>interactive style</i> , and his <i>efforts to help defendants feel he was not the enemy.</i> He was <i>serious, professional, intense and focused, never bored or fatigued,</i> and <i>struck the right balance between gravity and dry humor</i> , for example replying to a defendant who had <i>expressed her gratitude and contrition</i> , “ <i>I hope you mean that, and not just saying it because you are talking to a man in a black dress.</i> ” Observers emphasized that Judge Cutler <i>valued every participant as a human being.</i> He told a defendant <i>worried that his young children would be disruptive</i> that <i>kids are welcome</i> , and <i>encouraged him to talk to the children and calm them.</i> He told a victim she <i>did not need to stand up while speaking, showing humility about his position and a desire to make her feel comfortable.</i> He displayed <i>wonderful accountability and responsibility</i> when apologizing for giving wrong dates to an attorney who was not present with a <i>defendant who had come from California with his whole family, doing everything in his power to make up for his mistake,</i> and he eventually scheduled a <i>special session late in the afternoon because he was the one responsible for the mix up.</i>
Body language	Two observers reported that Judge Cutler <i>leaned forward</i> and made <i>eye contact</i> with every speaker and during his sentencing. When <i>documents came before him he switched his attention back and forth between the paperwork and the defendant.</i> He often <i>laid his finger across his chin in a thoughtful gesture of contemplation and focused attention.</i>
Voice quality	Three observers reported that Judge Cutler <i>spoke clearly and distinctly</i> in a <i>friendly, approachable, and professional tone of voice.</i> It was <i>easy to hear him</i> , except when he <i>sometimes covered his mouth making it harder to hear what he was saying.</i>
Courtroom tone & atmosphere	One observer reported at length about the lack of court funding that required <i>40% of cases to be continued to allow the state additional time to respond to discovery requests.</i> Judge Cutler was <i>rightly upset</i> and <i>apologized</i> to the court that he could not dispose of cases in a <i>timely manner</i> , and he <i>commented that if pre-trial isn’t until seven months after the charge,</i> he could not achieve the <i>national guideline that 95% of misdemeanors should be adjudicated within six months.</i> While Judge Cutler could <i>not control</i> the funding of the prosecutor or laboratory offices, he compensated by requesting that <i>all pre-trial motions be requested 30 days before the next court date</i> and that the state <i>issue subpoenas to the state lab, as he knows the lab works subpoenas first.</i>

NEUTRALITY

Consistent and equal treatment	Three observers reported that Judge Cutler <i>allowed each side to present their case fully</i> , and he addressed both sides’ <i>questions in equal measure.</i> He was <i>consistent</i> with defendants who were <i>giving up their rights</i> in their pleading.
Demonstrates concern for individual needs	Four observers reported that Judge Cutler was <i>aware of people’s circumstances</i> and <i>considered their needs</i> and <i>mitigating circumstances</i> in sentencing and did not “ <i>throw the book</i> ” at anyone. He was <i>genuinely concerned about defendants’ welfare as individuals as well as the interests of the city</i> , and his actions focused on <i>rehabilitation rather than simply to punish the offender.</i> He <i>interrupted a very nervous defendant</i> , saying, “ <i>Let me comment so you can understand. Jail is not on the table – take a deep breath. You are not a bad person. You have made some bad choices,</i> ” and explained that he <i>would work with him on the fine, but the important part is to find out why the defendant’s decisions were made and come up with a plan to rectify.</i>

Demonstrates concern for individual needs continued	<i>Whenever he had the opportunity, Judge Cutler fit the sentence to defendants' circumstances. In one case he ordered court probation rather than supervised probation, but warning, "This will save you a visit but you are responsible for complying with the terms. It's up to you." He was realistic about what defendants could afford to pay, setting payment plans that "work with your budget. [But] if you don't follow through, we will invite you back to court. It's entirely up to you. What works?" He did not accept at face value a questionably-supported report of cannabis abuse, saying, "I'm not particularly impressed with this evaluation, let's get one that means something."</i>
Unhurried and careful	<i>Three observers reported that Judge Cutler was deliberate and unhurried and ensured that all names were read into the record correctly. He carefully recorded case information after making his decision, saying, "Let me make a note of..." He delivered explanations slowly and carefully to defendants and rather more quickly to attorneys who presumably were thoroughly familiar with the language and the law. When a 3rd year law student was serving as prosecutor, he ensured he had the proper paperwork to allow him to practice under the supervision of the prosecutor.</i>
VOICE	
Considered voice	<i>Four observers reported that Judge Cutler told the court on entering "If anyone wants to make a comment, please interrupt, raise your hand and you will be called on," and he repeated this numerous times. He never missed an opportunity to solicit questions and comments, saying, "If you change your mind, interrupt me," or, "This is a time to ask any questions. Are there any questions?" If a defendant asked to speak he would say, "Sure!" He gave parole violators a chance to explain themselves, and always allowed defendants to have a say before making a decision, saying, "This is your opportunity to say something, we don't want you to be surprised."</i>
COMMUNICATION	
Ensures information understood	<i>Three observers reported that Judge Cutler addressed the court, "Ladies and Gentlemen, please listen closely. The court is concerned that you fully understand your rights. Please interrupt or ask questions at ANY TIME," and asked if each defendant understood what rights they would be giving up. He ensured there was an interpreter present when needed. After each interaction he asked, "Do you fully understand? Are those the terms you understand?" When an alleged victim demonstrated by hand gestures how the accused pushed her out of the way he responded with his own hand motions to show he understood her intent.</i>
Provides adequate explanations	<i>All observers reported that Judge Cutler was meticulous in explaining defendants' rights and rights given up if they wanted to plead guilty that day. He explained the possible penalties and the graver consequences of future violations, and he explained that the drivers license department might make other decisions. He examined mitigating and aggravating conditions carefully, and he explained that during sentencing he will "bombard" them with information, and emphasized they should ask questions or interrupt to better understand. He clearly and specifically explained the proceedings and his decisions, and he repeatedly explained proper courtroom procedure step by step to an unrepresented defendant, explaining the law, how a trial proceeds, the difference between argument and testimony, how to approach the bench, and did everything to ensure the defendant was able to present evidence in a way acceptable to the court. He went into impressive detail to explain why it was the prosecutor's and not the court's responsibility to follow through on certain things, and he wanted to make sure everyone understood the reality of the court's limitations and why he was proceeding as he did, and the prosecutor understood the court's position and seemed satisfied with his explanation, if not what this meant for her workload.</i>