

## **Honorable John M. Dow – Justice Court Judge**

Serving Tooele County Justice Court



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

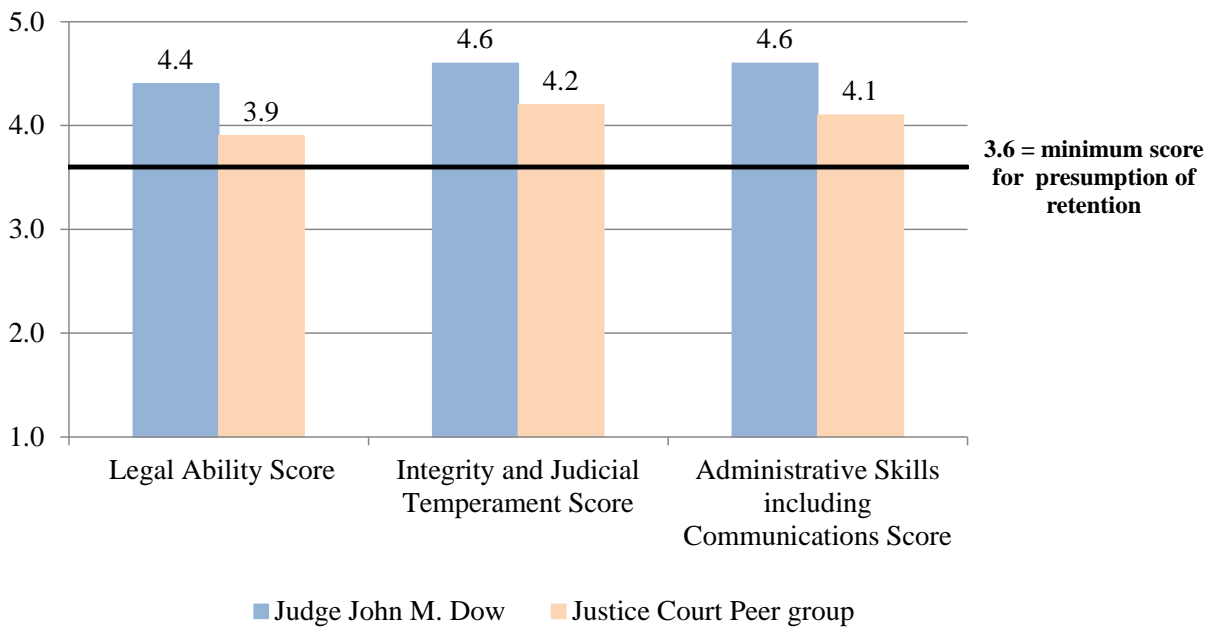
(vote count: 12-0 for retention)

Appointed in 2010, Judge John Dow earned survey scores higher than the average of his justice court peers in all categories. Survey respondents described him as calm, considerate, and consistent. Several respondents applauded his effective and efficient courtroom. Ninety-nine percent of the adjectives that survey respondents chose to describe Judge Dow were positive. Comments from courtroom participants were likewise positive. They reported that Judge Dow was organized and efficient, treated litigants fairly and with concern, and listened well. All observers reported they would feel comfortable appearing before Judge Dow. Of the survey respondents who answered the retention question, 97% recommended that Judge Dow be retained.

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

Judge John Mack Dow was appointed to the Tooele County Justice Court in May 2010. He graduated from the University of Utah and earned his Juris Doctorate degree from Pepperdine University School of Law in 1990. Prior to his appointment to the bench, Judge Dow worked for the Tooele County Attorney's Office, where he prosecuted felony, misdemeanor, and juvenile cases for 16 years. Judge Dow worked for the Tooele County Sheriff's Office while attending college, has been a volunteer firefighter, and served various positions including president of the Tooele County Bar Association, on the Citizen's Review Board for the Division of Child and Family Services, and on the Utah State Firefighter's Museum Board.

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



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# **The Honorable John M. Dow**

**Judicial Performance Evaluation Commission Report**

**Retention 2014**

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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 John M. Dow, 44% of qualified survey respondents submitted surveys. Of those who responded, 36 agreed they had worked with Judge John M. Dow enough to evaluate his performance. This report reflects the 36 responses. The survey results are divided into five sections:

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

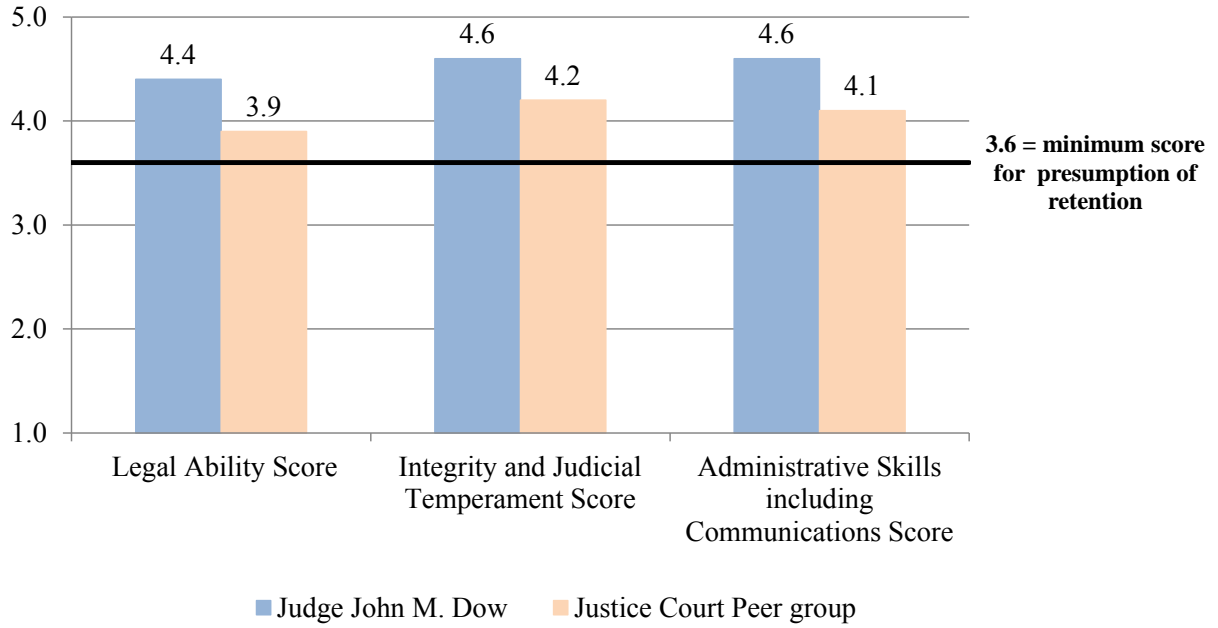
The results are shown in both graphs and tables. Each judge's scores are shown along with a comparison to other judges who serve at the same court level. The comparison group is called "Justice Court" on the charts.

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 these 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.

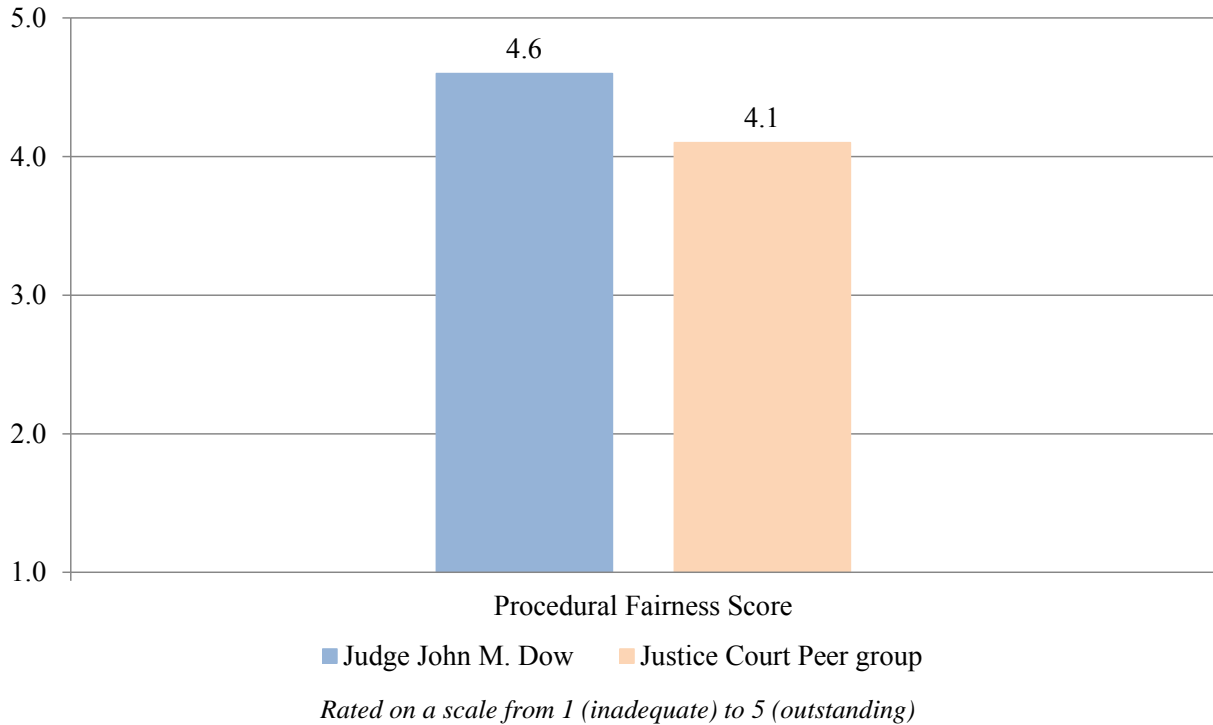
For procedural fairness, the judge must demonstrate that it is more likely than not, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for court participants. Judges will receive either a Pass or Fail in procedural fairness,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

## B. Statutory Category Scores



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

### C. Procedural Fairness Survey 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.

#### Overall Procedural Fairness Determination

| Category            | Judge John M. Dow |
|---------------------|-------------------|
| Procedural Fairness | PASS              |

## D. Responses to Individual Survey Questions

| Category                         | Question  | Judge John M. Dow | 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.     | 4.4               | 3.9           |
| Legal Ability                    | The judge makes appropriate findings of fact and applies the law to those facts.  | 4.5               | 3.9           |
| Legal Ability                    | The judge follows legal precedent or clearly explains departures from precedent.  | 4.5               | 3.9           |
| Legal Ability                    | The judge only considers evidence in the record.  | 4.3               | 3.9           |
| Legal Ability                    | The judge's written opinions/decisions offer meaningful legal analysis.   | 4.5               | 3.8           |
| Integrity & Judicial Temperament | The judge makes sure that everyone's behavior in the courtroom is proper.   | 4.6               | 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.   | 4.4               | 4.1           |
| Integrity & Judicial Temperament | The judge demonstrates respect for the time and expense of those attending court.   | 4.6               | 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. | 4.6               | 4.5           |

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

| <b>Category</b>       | <b>Question</b>   | <b>Judge John M. Dow</b> | <b>Justice Court</b> |
|-----------------------|---|--------------------------|----------------------|
| Administrative Skills | The judge is prepared for court proceedings.  | 4.6                      | 4.2                  |
| 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.  | 4.5                      | 4.0                  |
| Administrative Skills | The judge convenes court without undue delay.   | 4.6                      | 4.0                  |
| Administrative Skills | The judge rules in a timely fashion.  | 4.6                      | 4.2                  |
| Administrative Skills | The judge maintains diligent work habits.   | 4.6                      | 4.2                  |
| Administrative Skills | The judge's oral communications are clear.  | 4.6                      | 4.2                  |
| Administrative Skills | The judge's written opinions/decisions are clear and logical.                                     | 4.6                      | 4.1                  |
| Procedural Fairness   | The judge treats all courtroom participants with equal respect.                                   | 4.6                      | 4.1                  |
| Procedural Fairness   | The judge is fair and impartial.  | 4.5                      | 4.1                  |
| Procedural Fairness   | The judge promotes public trust and confidence in the courts through his or her conduct.          | 4.6                      | 4.0                  |
| Procedural Fairness   | The judge provides the parties with a meaningful opportunity to be heard.                         | 4.6                      | 4.2                  |

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



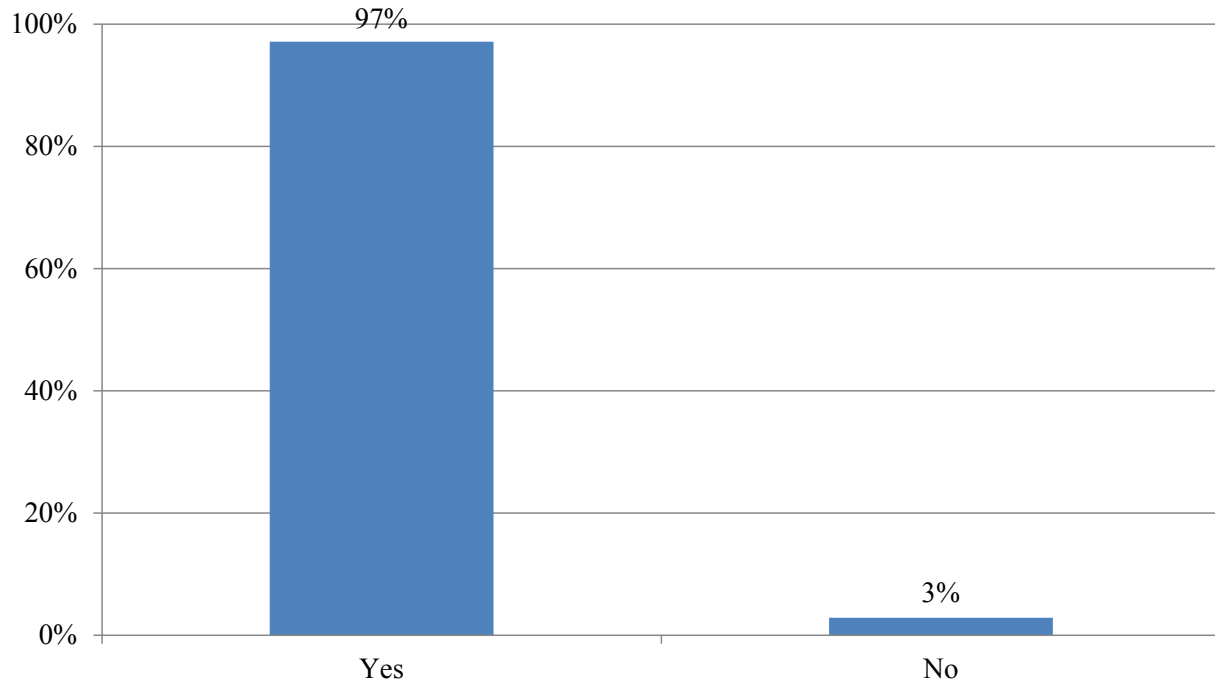
## E. Adjective Question Summary

|                                       | Number of Times Mentioned* |
|---------------------------------------|----------------------------|
| Attentive                             | 13                         |
| Calm                                  | 21                         |
| Confident                             | 11                         |
| Considerate                           | 20                         |
| Consistent                            | 21                         |
| Intelligent                           | 12                         |
| Knowledgeable                         | 11                         |
| Patient                               | 11                         |
| Polite                                | 16                         |
| Receptive                             | 17                         |
| Arrogant                              | 0                          |
| Cantankerous                          | 0                          |
| Defensive                             | 1                          |
| Dismissive                            | 0                          |
| Disrespectful                         | 0                          |
| Flippant                              | 0                          |
| Impatient                             | 0                          |
| Indecisive                            | 0                          |
| Rude                                  | 0                          |
| <b>Total Positive Adjectives</b>      | <b>153</b>                 |
| <b>Total Negative Adjectives</b>      | <b>1</b>                   |
| <b>Percent of Positive Adjectives</b> | <b>99%</b>                 |

Respondents were asked to select adjectives from a list that best described the judge. The number shown is the total number of times an adjective was selected by respondents. The percent of positive adjectives shows the percent of *all* selected adjectives that were positive.

## F. Retention Question

**Would you recommend that Judge John M. Dow be retained?**



## G. Attorney Demographics

### What are your primary areas of practice?

|             |     |
|-------------|-----|
| Collections | -   |
| Domestic    | 9%  |
| Criminal    | 94% |
| Civil       | 13% |
| Other       | -   |

### How many trials or hearings have you had with this judge over the past year?

|              |     |
|--------------|-----|
| 5 or fewer   | 38% |
| 6 - 10       | 22% |
| 11 - 15      | 13% |
| 16 - 20      | 6%  |
| More than 20 | 22% |

# Survey Background and Methods

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This report presents the results from the 2013 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 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 two-year 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 3 or more non-trial appearances, and those with 1-2 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 respondent receives an initial email invitation requesting participation in the survey. A separate email is sent for each judge that a respondent is asked to evaluate. A reminder email is sent one week later to those who did not respond by completing and submitting a survey. This is followed by three 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, the 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 2014 began on June 1, 2012 and ended on June 30, 2013.

# II. Courtroom Observation Report

## REPORT OF COURTROOM OBSERVATIONS FOR JUDGE JOHN MACK DOW

Four observers wrote 87 codable units that were relevant to 15 of the 17 criteria. Two observers reported that the judge was not aware that JPEC observers were present, and two did not know if the judge was aware.

### Overview

|                           |  |
|---------------------------|--|
| WIDELY AGREED-UPON THEMES | <ul style="list-style-type: none"> <li>All observers were positive about Judge Dow.</li> <li>All observers variously reported that Judge Dow was organized and efficient, and quickly and effectively got to the heart of each matter. He greeted and addressed each person by name and ended cases with “Good luck” and “Thank you,” and defendants were at ease with and thanked him in turn. He was professional and firm but also polite, patient, and kindly, with a conversational style and appropriate informality. He faced speakers directly and spoke in a clear, calm and approachable tone of voice. All observers particularly noted the concern Judge Dow demonstrated for defendants’ rights and interests, treating all defendants fairly or more than fairly in an evenhanded manner and assisting them in understanding the specific consequences of guilty pleas. He was unhurried and meticulous in ensuring the accuracy of court records. He gave all participants ample opportunity to speak, consistently asked for input, and listened intently to their responses which were reflected in his sentences. He was consistent in giving specific directions for fulfilling his orders.</li> <li>All observers reported that they would feel comfortable appearing before Judge Dow.</li> </ul> |
| MINORITY OBSERVATIONS     | <ul style="list-style-type: none"> <li>None</li> </ul>   |
| ANOMALOUS COMMENTS        | <ul style="list-style-type: none"> <li>One observer saw Judge Dow on a day that he had no clerk, and he was consequently required to write throughout the session. The observer felt that even with this liability, the judge was as attentive and involved as was possible (see “Courtroom tone &amp; atmosphere”).</li> </ul>  |

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

| <i>RESPECTFUL BEHAVIORS</i>   |   |
|-------------------------------|---|
| Listening & focus             | One observer reported that Judges Dow was <i>listening</i> and <i>gave litigants his full attention</i> .   |
| Well-prepared & efficient     | Three observers reported that Judge Dow was <i>organized</i> and <i>familiar with his cases</i> and that <i>little slips past this judge</i> . He <i>worked quickly</i> and <i>gets to the heart of a matter in an effective manner</i> . The court was <i>well run and efficient</i> , and one observer noted the <i>efficiency of having the clerk also serve as an official interpreter</i> .  |
| Respect for others’ time      | Two observers reported that Judge Dow <i>accommodated all requests</i> for future court dates. One noted that court started half an hour late but speculated <i>this may be because there were not a lot of cases and no sense of having to hurry things along</i> . The other observer noted that when the judge left the courtroom <i>because attorneys were conferring with clients and not ready</i> , it <i>might have been nice to explain to the court why the judge was leaving</i> .                           |
| Respectful behavior generally | Three observers reported that Judge Dow <i>greeted each person by name</i> and checked their birth date. He <i>addressed each person by name</i> , and when checking the pronunciation of foreign names <i>his accent was very precise</i> . Judge Dow <i>ended with “Good Luck” or “Thank you.”</i> Defendants were <i>at ease with him</i> , and many also <i>thanked him at the end of their case</i> , as Judge Dow conveyed that he saw them as <i>flawed but human, not just “bad guys” incapable of change</i> . |

|   |   |
|---|---|
| Respectful behavior generally continued | He kindly told a young woman <i>overwhelmed and sobbing with her first DUI</i> , “Take your time, it’s no hurry,” and looked away to allow her to regain her composure. When telling her “ <i>The best thing about mistakes, you can learn from them. Learn from them- you won’t be back,</i> ” the observer felt this <i>dignified treatment might inspire her to stay out of trouble.</i> |
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**RESPECTFUL TONE**

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| Courtesy, politeness and patience | Two observers reported that Judge Dow was <i>polite</i> and his <i>kindly tone set people at ease</i> . He <i>remained patient during very complex histories involving multiple charges in different venues</i> . He worked <i>patiently with good humor</i> and <i>without exasperation</i> when asking a defendant to produce insurance records, which required two trips to his car. Insurance charges were finally dropped, and the judge’s <i>smile and lightness</i> showed his <i>human side</i> . |
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|-----------------------------|---|
| Courtroom tone & atmosphere | All observers reported that Judge Dow was <i>professional</i> and <i>very firm about the consequences</i> of not following his orders, yet he had a <i>conversational style</i> and there was a <i>comfy, informal feel to the proceeding</i> . For example, he <i>waved his hand when people stood on his return</i> to the courtroom, and then they subsequently did not stand, which the observer felt was fine. One observer felt that participants were <i>more comfortable being in this court than other courtrooms</i> .<br><br>One observer reported that on the day of observation, Judge Dow had no clerk and was therefore writing throughout the session, which impeded his ability to appear involved with each individual. This observer expressed confidence that the judge would have been far more directly involved had the clerk been present. The observer made many comments to this effect in almost every area, for example, “ <i>Even with all the writing, he was not one step behind as is the case with some judges...if he was able to convey this even while looking down writing most of the time, imagine how powerful he could be if he curtailed the writing.</i> ” |
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|               |   |
|---------------|---|
| Body language | Two observers reported that Judge Dow <i>always faced the person to whom he was talking</i> , and his face <i>conveyed sincerity</i> , especially when discussing fees, for example saying, “ <i>If you can’t do it, let me know. I can always work with you.</i> ” |
|---------------|---|

|               |  |
|---------------|--|
| Voice quality | Three observers reported that Judge Dow’s voice was <i>clear, calm, pleasant</i> and <i>approachable</i> , and his tone was <i>interested but professional</i> . |
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**NEUTRALITY**

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| Consistent and equal treatment | Three observers reported that Judge Dow treated all participants <i>fairly, or possibly more than fairly</i> , with the <i>same pleasant, respectful, evenhanded, and professional</i> manner. He regularly <i>acted on behalf of the interests of the accused</i> , for example saying, “ <i>I’m going to enter a plea of not guilty, because I don’t think you’re guilty. You’ll meet with the prosecutor and see if you can work something out. It’s called a pre-trial conference.</i> ” He was <i>neither punitive nor patronizing</i> when telling one defendant that as long as the victim remained unpaid, he had to keep reviewing the case, and, “ <i>If you pay it off that would be great. You won’t have to come see me.</i> ” |
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| Acts with concern for individual needs | Three observers reported that Judge Dow was <i>very firm about protecting</i> defendants’ rights, telling each one <i>they did not have to plead at that time, and were entitled to a lawyer</i> . Whenever someone pled guilty, the judge invariably said, “ <i>Tell me what happened,</i> ” which in many cases <i>led the judge to dismiss some charges or change the plea to “not guilty.”</i><br><br>Judge Dow consistently showed concern for defendants’ situations and was <i>evenhanded in giving everyone any break he could</i> . In one case he <i>delayed a guest worker’s payment of a fine and review until the spring, when the defendant would be returning from Mexico to return to work</i> . He was <i>sincerely interested</i> in making punishments fit both the offense and the person’s own situation. In one case he said, “ <i>Let’s set a review date in case you don’t get the job, and we can convert it to community service if you don’t get the job.</i> ”<br><br>One observer felt it was an <i>innocent mistake</i> , but was concerned when the judge <i>asked a young woman to state her telephone number and address over the microphone, which she would not have wanted her daughter to have to do in a packed courtroom.</i> |
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|--------------------------------------|--|
| Expresses concern for the individual | <p>All observers gave numerous examples of Judge Dow’s concern for the interests and rights of defendants. He asked a homeless man, “<i>Where will you go if I release you? How do I know you’re not just gonna go use again if I release?</i>” The judged sighed, seemingly frustrated at his powerlessness to help the man, saying, “<i>I’m done with you. All I can do is wish you good luck.</i>” Judge Dow informed several young men <i>to their surprise</i> that they would then <i>automatically lose their driver’s licenses if they pled guilty to drug charges, and they changed their pleas.</i> He asked defendants how they would be able to pay fines, or if they preferred community service. He <i>always did what he could</i> to prevent defendants, especially on a first offense, from returning, saying in a kindly, fatherly tone, “<i>Don’t come back here with another alcohol offense, okay?</i>”</p> <p>One observer described Judge Dow <i>as a really good guy who wants to work with these defendants.</i> In one case he was willing to <i>stay late for a case review so that the defendant would not lose his job,</i> which is not a common habit among other judges the observer has observed.</p> |
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|-----------------------|--|
| Unhurried and careful | <p>One observer reported that Judge Dow was <i>unhurried,</i> in one case taking a <i>great deal of time</i> to sort out a complex history before continuing the cases. He was <i>meticulous in taking time to ensure that all court records were accurate,</i> and he <i>corrected mistakes at least twice.</i></p> |
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*VOICE*

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|                  |  |
|------------------|--|
| Considered voice | <p>All observers reported that Judge Dow gave <i>everyone ample opportunity and all the time they needed</i> to speak. He was <i>consistent in asking for input</i> before he made decisions, and he <i>regularly asked, “Is there anything you want to say?” or, “Any question about the documents you signed?”</i> before he imposed a sentence. He <i>always asked attorneys if they had any additional input</i> at the conclusion of each case. He <i>listened intently</i> with a concern that showed that <i>each person was understood and clearly took what they said into account, as reflected in the sentences he imposed.</i></p> |
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*COMMUNICATION*

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|--------------------------------|--|
| Ensures information understood | <p>All observers reported that Judge Dow <i>took the time</i> to ensure that a defendant <i>understood the consequences of each possible plea,</i> and when participants <i>didn’t know how they wanted to plead, Judge Dow slowed down to explain the situation and made sure they pled not guilty, to protect their rights.</i> He stopped one defendant from telling details of her story, saying, “<i>You have rights, you don’t have to plead anything.</i>”</p> <p>One noted that Judge Dow <i>often spoke rapidly when explaining and asking for pleadings, zipping through the explanation of giving up rights, but as the participants didn’t seem to be bothered,</i> the observer wondered if <i>this was how rights were handled in justice court.</i></p> |
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|                                |   |
|--------------------------------|---|
| Provides adequate explanations | <p>One observer reported that Judge Dow was <i>consistent in giving specific directions,</i> for example, “<i>Sign this. It’s your notice to return. Be sure you show up.</i>” He was <i>specific in outlining what a person needed to do to take care of fines, both the amounts and the dates when due.</i></p> |
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