Conference on
"Strengthening the Capacity of Parliamentarians, Judges and Prosecutors to Prevent Corruption in their own Ranks: Emerging Trends from Two Years of GRECO Round IV Evaluations" (International Anti-Corruption Academy IACA, Laxenburg, Austria, 10-11 April 2014)

Uniform and Transparent Procedures for the Appointment, Promotion and Evaluation of Judges and Prosecutors

Director of the German Judicial Academy

First Public Prosecutor Dr Rainer Hornung

Transparency in judicial and prosecutorial proceedings is one of the most important cornerstones in effective corruption prevention.
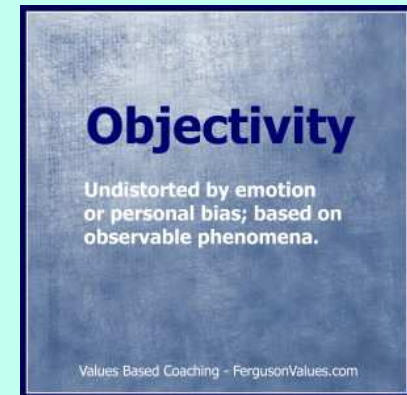
Transparency is essential:

- Concerning the content of, and the decision-making and decision-taking within an individual file / case (will not be dealt with in this speech)

- Concerning the appointment and promotion of judges and prosecutors based on objective evaluation criteria (the very core of this speech)

DEUTSCHE RICHTER AKADEMIE

JUSTIZ

Council of Europe

Group of States against Corruption

GRECO

IACA INTERNATIONAL ANTI-CORRUPTION ACADEMY

COUNCIL OF EUROPE — CONSEIL DE L'EUROPE

Transparent decisions in appointment and promotion proceedings in the judiciary are guaranteed when the evaluation and selection standards and criteria are:

- Uniform

- Objective (relevant + standardized)

- Valid (reliable, accurate)

- Not politically influenced

Uniformity

Following the same rule - The first drilled hole sets the height of them all.

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Objectivity

Undistorted by emotion or personal bias; based on observable phenomena.

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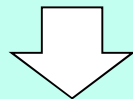

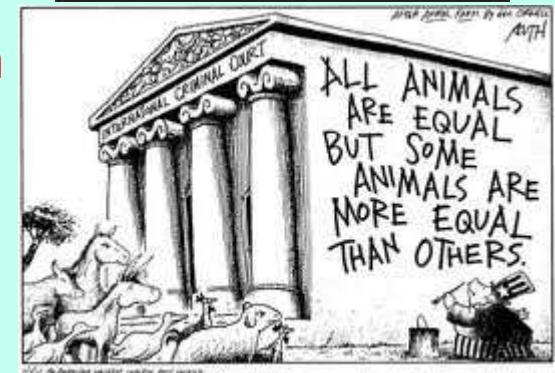A test cannot be Valid if it is Unreliable

Uniformity

- Does <u>not</u> mean that all GRECO member states should have an identical appointment and promotion system (or election system).

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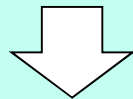
  Different judicial and prosecutorial cultures, backgrounds and settings have to be respected.
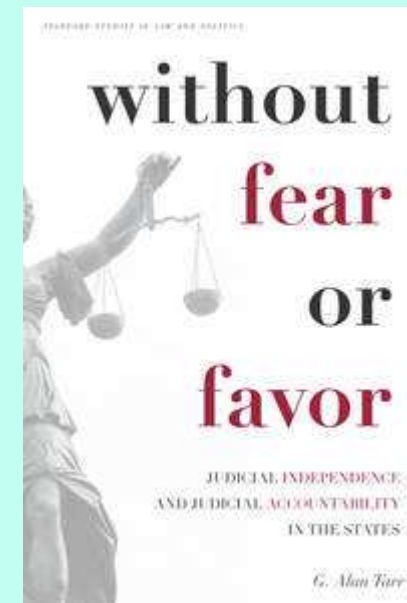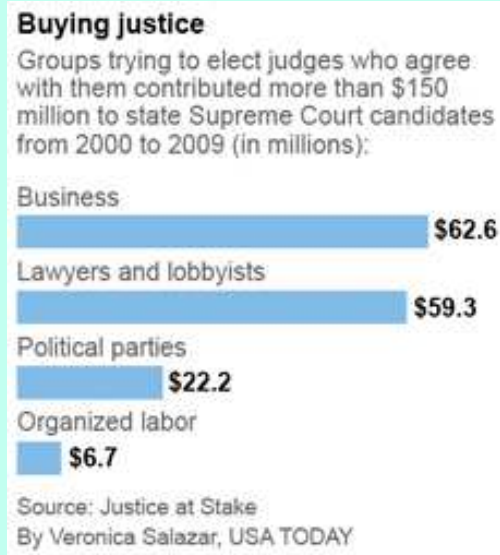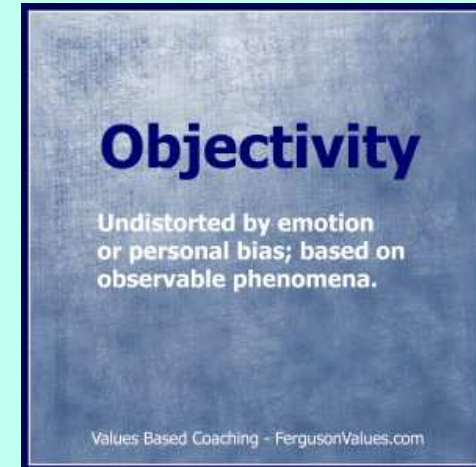
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- <u>But:</u> Within a given appointment and promotion system, the selection standards should be the same for each and everyone, irrespective of rank and "celebrity".

Objectivity (1)

Objectivity

Undistorted by emotion or personal bias; based on observable phenomena.

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- In view of the **principle of judicial independence** (prosecutorial autonomy), the **"good"** or **"bad"** content of a decision (judgment; indictment or dismissal) should **never** be an evaluation criterion.

Buying justice

Groups trying to elect judges who agree with them contributed more than $150 million to state Supreme Court candidates from 2000 to 2009 (in millions):

Business
$62.6

Lawyers and lobbyists
$59.3

Political parties
$22.2

Organized labor
$6.7

Source: Justice at Stake
By Veronica Salazar, USA TODAY

without fear or favor

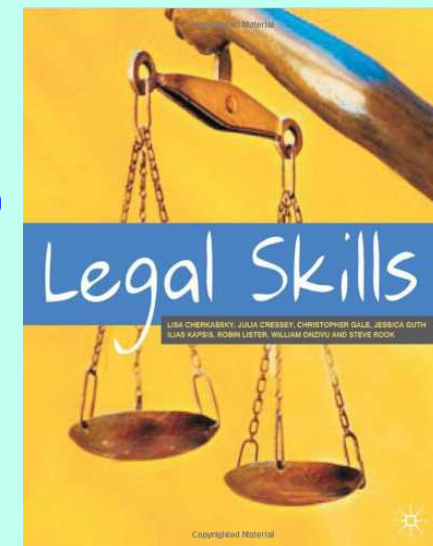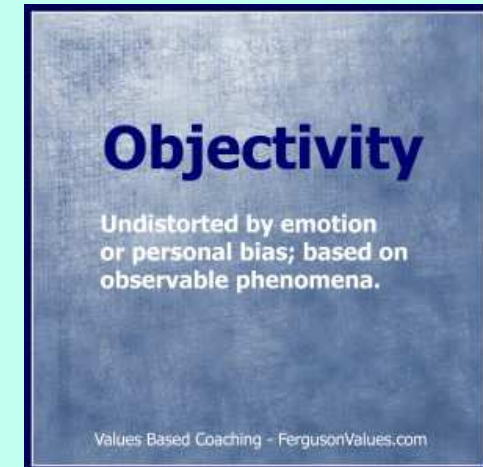JUDICIAL INDEPENDENCE AND JUDICIAL ACCOUNTABILITY IN THE STATES

G. Alan Tarr

Objectivity (2)

Relevant criteria for the appraisal of a judge or prosecutor may be:

- Legal and judicial capacities and skills

  (Does he / she grab the essence of a case easily? Are the proposed solutions practicable and enforceable? And accepted by the parties?)
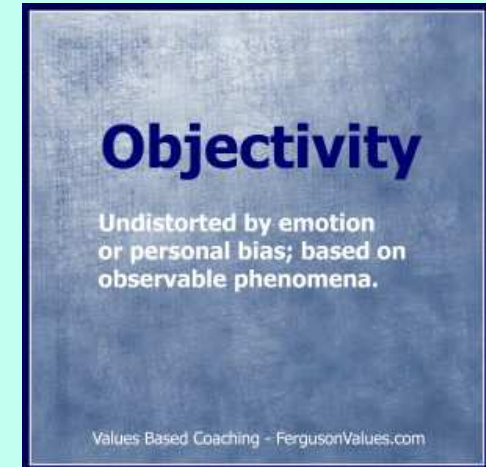
Objectivity (3)

Relevant criteria for the appraisal of a judge or prosecutor may be:

- Ethical and social capacities and skills

  (Does he / she show a decent and contained professional conduct? Is he / she adequately polite towards advocates and the public? Is he / she willing to help less experienced colleagues or colleagues in trouble?)
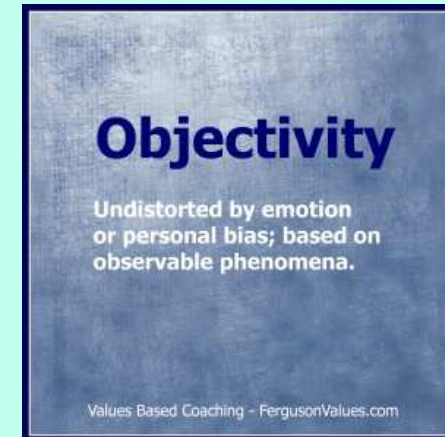

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Objectivity (4)

Relevant criteria for the appraisal of a judge or prosecutor may be:

- Administrative, management and leadership capacities and skills

  (Is he / she willing and apt to contribute to the proper functioning of the court / the prosecution service? Does he / she have an eye for budgettary constraints?
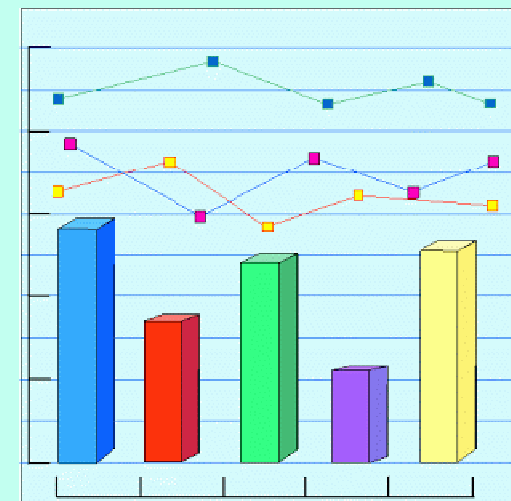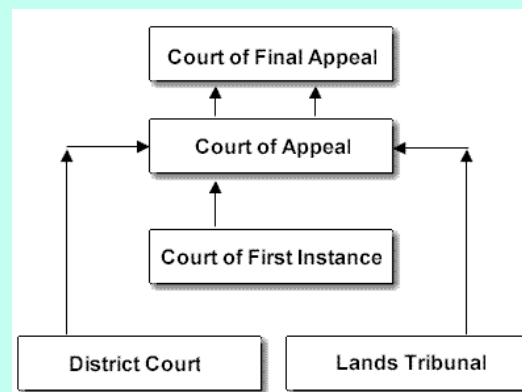 Can he / she motivate "subordinates" and lead them through change processes?)

Objectivity (5)

Relevant criteria for the appraisal of a judge or prosecutor may be:

- **Numerical performances**

  (Is he / she able to stem the workload? Can he / she detect priorities and react accordingly? <u>Problematic:</u> Are his / her decisions upheld or quashed in a higher instance?)

Objectivity

Undistorted by emotion or personal bias; based on observable phenomena.

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Validity (Reliability, Accurateness) (1)

Once relevant, objective and standardized criteria for the appraisal of a judge's / prosecutor's performances, capacities and skills are set, the next task is to guarantee the comparability – i.e. reliability and accurateness – of the evaluation reports by:
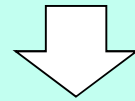
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- Implementing safeguards / mechanisms against overly friendly or overly optimistic appraisals

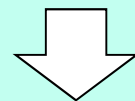- Training the evaluators (chief judges + chief prosecutors)
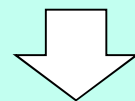
Validity (Reliability, Accurateness) (2)

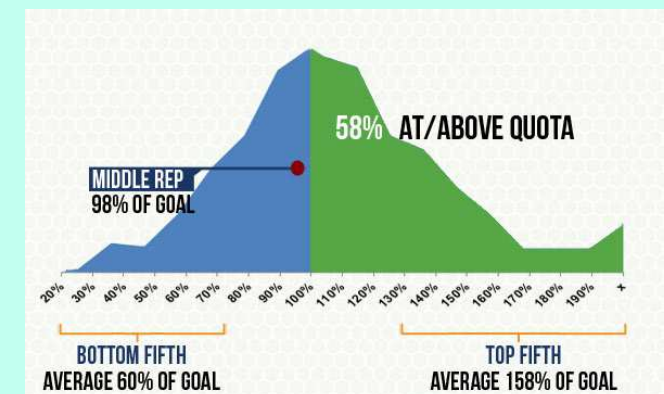Implementing safeguards against overly friendly appraisals

Appraisals are only a valid basis for appointment and promotion decisions if "happy sheets" are avoided (though it is much more convenient to assess each "subordinate" as "outstanding"….).

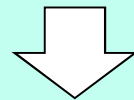Performance reports should be friendly in tendency, but always honest and credible.

Idea of "soft quotas" (e.g.: goal is not to have more than 3 % with the highest grade in a given system in a given period of time)

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EVALUATION
Outstanding
Very Good
Satisfactory
Marginal
Unsatis

58% AT/ABOVE QUOTA
MIDDLE REP 98% OF GOAL
BOTTOM FIFTH AVERAGE 60% OF GOAL
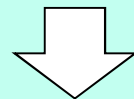TOP FIFTH AVERAGE 158% OF GOAL
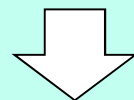
Validity (Reliability, Accurateness) (3)

Training the evaluators

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Chief judges and chief prosecutors are not necessarily "naturally-born" evaluators.

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They must learn how to assess and how to properly describe the strong and the weak points of the evaluated person (need for a "common code" with those who finally select – and those who decide on an appeal).

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DRA annually carries out hands-on performance assessment workshops!

A test cannot be Valid if it is Unreliable

Freeness of political influence (1)

Appointments and above all promotions concerning high-ranking vacant posts are only truly transparent and traceable if:

- An open competition procedure is launched (no pre-decision taken in closed chambers!).

- An up-to-date peer-to-peer appraisal without external influence of each and every candidate takes place (no complaisance appraisals!).
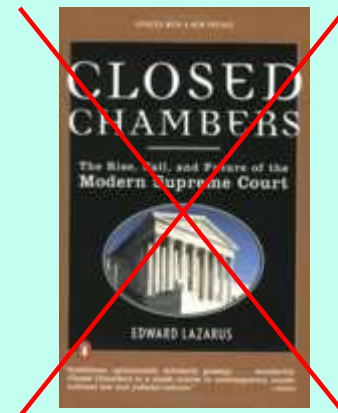
Freeness of political influence (2)

Appointments and above all promotions concerning high-ranking vacant posts are only truly transparent and traceable if:

- A politically independent / autonomous (elected) body (e.g.: panel in a court; high judicial / prosecutorial council; council for judicial / prosecutorial appointments; judicial appointments commission) has at least co-decision powers.

- An unsuccessful candidate for appointment or promotion has the possibility to challenge the decision in a court or another independent body.

Thank you for your kind attention!