

THE SAN ANTONIO DEFENDER

A Publication of The San Antonio Criminal Defense Lawyers Association

JANUARY/FEBRUARY 2006

Volume VII Issue 5

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VOTE IN THE PRIMARIES



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SACDLA'S FIRST ANNUAL JUDICIAL POLL

An Introduction

By Mark Stevens

In October, 2005, SACDLA mailed ballots to all local lawyers posing six "yes" or "no" questions about 51 elected judges in our county. The results were first published on our website in November, and we are printing them for the first time in this month's *Defender*.

Angus McGinty, more than any other single person, deserves the credit for this poll. Although there would have been no poll without the approval and work of our President, Jim Greenfield, and all the SACDLA Board of Directors, Angus was clearly the prime mover. He first proposed the poll in November, 2004, and then followed it up with a lot of hard work. Among other things, Angus researched other judicial polls, and figured out how to design, print, and mail the ballots. Thank you, Angus, for getting this ambitious project off the ground, and for seeing it through to the end.

Angus and I co-chaired the project. Neither one of us had ever conducted a poll, so our first effort was a learning experience. To a large extent, we made it up as we went. The next time we do a poll we will learn from the mistakes we made this time. And we would like to hear from our membership. If you want to be on the poll committee, or if you have any thoughts, get in touch with me, or Angus, or Jim Greenfield. Here are some of the issues that I think need to be considered before we do our next poll.

Should there be a judicial poll?

Some might think a poll is unimportant. If you feel this way, you are entitled to your opinion, and you should let us know.

As for me, I strongly believe that San Antonio needs an annual judicial poll.¹ We elect our judges in Texas,

but the unfortunate truth is that most voters are almost completely ignorant about the judicial candidates on the ballot. Lawyers, on the other hand, are well-informed about the judges they practice before, but our numbers are too small to have much direct impact on an election. Surely the average, uninformed voter would benefit from knowing what we lawyers know about the judiciary. In the letter that accompanied our poll ballots we made this bold statement: "By sponsoring this poll, we earnestly desire to help promote and maintain judicial accountability to the public." I think our poll accomplished its goal, and I would like to keep up the good work.

When should the next poll be done?

I support an annual poll, completed every year around the first of October. We have the money to do the poll annually, and there is no reason to do it less often. Judges should know they will be evaluated every year. Lawyers will respond better if they come to expect their ballots at the same time every year. Completing the poll by early October will allow us to distribute the results in advance of the general election in November, in the years when the general elections are held. And it provides useful information to anyone who might decide to challenge an incumbent, in time for the challenger to put together a viable campaign and obtain the necessary signatures to support their candidacy.

Some argue that we only need a poll in election years, and that the polls should be at a different time of year, perhaps before the spring primaries. If you have any thoughts on either the frequency or the timing of future polls, please let us know.

What questions should be posed, and in what format?

Angus and I were primarily responsible for the six questions posed in this poll. Our goals were to ask a small number of straight-forward, pertinent questions, the answers to which could be reported in an easy-to-read fashion. When creating our format and questions, we borrowed heavily from judicial polls done in Houston and Dallas.²

Some good people have disagreed, both with the questions we posed, and with the yes/no answers permitted. If you don't like any of our questions, or if you believe other questions should be asked, we would like to hear from you. Some think that, rather than merely "yes" or "no," a scaled response – say from 1 to 5 -- would be better. What do you think?

All lawyers, and all elected judges.

The State Bar of Texas listed 4,645 active, licensed attorneys in Bexar County, and, after some debate, we decided to mail ballots to every one of them. Obviously, this increased the cost of the poll, but I think it was clearly worth it. Polling all lawyers – defense lawyers, prosecutors, civil lawyers, and judges -- defeats the charge that the poll is biased against judges just because they regularly rule against criminal lawyers. Although it costs more to include all lawyers, the end result is certainly a poll that is more informative to the public, and more useful to the bar.

We would like your thoughts on what judges should be subject to the poll. If the primary purpose of the poll is to educate the voters, then it makes sense to include only the elected judiciary, and not, for example, federal judges and magistrates, state magistrates, masters, and referees, and city judges. How do you feel about this?

But limiting the pool to elected judges does not end the debate. Should we include appellate judges, and if so, which ones? The first poll included the seven Justices from the Fourth Court of Appeals, but not Judges from the Texas Court of Criminal Appeals, or Justices from the Texas Supreme Court. Should we exclude all appellate judges, should we include them all, or only some of them, and, if we include any, should we ask different questions about them than we do about trial judges?

The cost: You get what you pay for.

The poll cost SACDLA \$5,180.99. This was not a cheap project, nor did we want it to be. Postage was the largest expenditure, because we sent ballots to all lawyers in the county, and because we paid for the returns, in order to encourage the largest possible response. We wanted a reputable accounting firm to insure that the results were accurately and credibly tabulated, and Carneiro, Chumney & Company did an excellent job, at a reasonable price.³

Participation was excellent.

The experts told us to expect returns of five to seven percent. In fact, we received 942 responses, or 20.3%. We thought these numbers were outstanding. By way of comparison, the Houston Bar Association reported an 11% return on its 2005 poll.

Even though we were very pleased with the numbers the first time around, obviously we would like to do even better next time. Let us know if you have ideas how to get more lawyers to vote in 2006.

Is this just a popularity contest?

Some have suggested that the poll is really only a "popularity contest." I don't know what this means. Maybe it is what some people say to explain why their favorite judge did not do as well as they hoped. That sort of complaint is to be expected, and it does not bother me.

On the other hand, it is possible to imagine that some judges who were generally well-liked received higher results on certain, individual questions than they deserved, and that other less generally "popular" judges got lower scores than they should have. If this happened it is regrettable, since we all benefit from accurate poll results. The next time you vote, please carefully consider each individual question and try to answer it without bias. That you approve of a judge's overall performance does not necessarily mean you think he is punctual, or that she follows the law. Conversely, that a judge lacks the proper temperament does not mean he or she does not work hard.

Who should be doing this poll?

To me, the answer to this question is simple: the San Antonio Bar Association should conduct the poll. The Bar Associations in Houston and Dallas regularly poll their memberships, and there is no good reason this does not happen in San Antonio. For whatever reason, though, the San Antonio Bar Association does not, and never has. Hopefully, that will change next year.

In fairness to SABA, we did not give them a reasonable opportunity to join our effort in 2005. After SACDLA finalized its plans to do the poll, there was a brief discussion with SABA's leaders, but because of our time constraints, they were unable to get approval from their Board of Directors.

This year, I will propose to SACDLA's Board of Directors that we begin discussions with SABA's Board very soon, to give them a fair opportunity to decide whether they will co-sponsor a poll with us in 2006. If the cost of the poll concerns SABA, I will propose that SACDLA pay for it entirely. We have the money and, if that is what it takes to get SABA involved, I believe it is money well spent. Obviously, the two organizations will have to agree on the questions to be asked, how these questions will be answered, what lawyers will be polled, and what judges will be subject to the poll, among other things. If we can agree on the details, though, I see no reason why our 2006 effort cannot be jointly sponsored.

SACDLA has proven that we can do the poll by ourselves, if necessary. Even so, there are several reasons why joint-sponsorship is a good idea.

Even though we polled all lawyers, there seemed to be some perception that, because SACDLA sponsored the poll, it was a "criminal defense lawyer thing." This allowed some of our detractors unfairly to criticize the poll's scope and usefulness. That will be harder to do if SABA is involved.

SABA's involvement might also insure that the poll results receive more coverage in the media, and that will be a good thing. My only disappointment with the 2005 poll was the lack of publicity it received. If our goal is to educate voters who are not lawyers, then

it is essential that this audience have wide and easy access to the results of the poll. Our accounting firm -- Carneiro, Chumney -- printed the results in a very readable PDF format, and our webmaster, Chad Kraeft, promptly posted them on our website. Interestingly, the SACDLA website recorded 1237 hits the first full day the results were posted, up from 149 for the day before. Almost certainly, though, most of these readers were courthouse regulars. Everyone else was forced to rely on the San Antonio Express-News, which buried its pathetic little story on page 4B in its Saturday Metro section. Maybe the media would cover the story better if SABA was a co-sponsor.

I hope that I am wrong, but I predict that some in SABA's leadership will want nothing to do with the poll. If you are a member of SABA and you think it is a good idea for that organization to co-sponsor the next judicial poll, please contact your president and tell her how you feel.

Conclusion.

A well-done judicial poll will enhance accountability at the courthouse, and, that, in turn, will surely improve the quality of life for every lawyer who practices there. San Antonio has long needed this poll, and I am proud that our organization has opened the door. With your help we can have regular judicial polls from now on, and each poll can be better than the one before it. We look forward to hearing your thoughts on how this can happen.

(Footnotes)

¹ The opinions expressed in this article are mine alone, and not those of SACDLA, its Board of Directors, or its members.

² To view the Dallas Bar Association poll, go to www.dallasbar.org/judiciary/poll_main.asp. To view the Houston Bar Association poll, go to www.hba.org, and click on the link, "poll results."

³ Bob McAdams and Charlotte Hummel worked very hard for us at Carneiro, Chumney, and we appreciate their contributions to the poll.