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Judicial Selection and Voter Turnout in Jackson County

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TABLE OF CONTENTS

Introduction	1
History of Judicial Selection Methods and Their Use	2
Current Methods of Judicial Selection	6
Partisan and Nonpartisan Elections	7
Gubernatorial Selection	8
Legislative Selection	8
Merit Selection	9
Election vs. Merit Selection	10
Illinois	11
History of Judicial Selection Methods and Their Use in Illinois	12
Analysis of the Election Method of Judicial Selection	14
Voter Participation in Illinois/Jackson County	16
Influencing Factors on Judicial Elections	17
External Influencing Factors	17
Internal Influencing Factors	22
Study of Influencing Factors in Jackson County	29
Study of External Influencing Factors in Jackson County	30
External Study Conclusions	41
Study of Internal Influencing Factors in Jackson County	42
Internal Study Conclusions	48
Conclusions of Study in Jackson County	48
Conclusion	49

Table One - Method of Judicial Selection by State	7
Table Two - Voting in the 1992 Presidential Election by Age Group	23
Table Three - Voting in the 1992 Presidential Election by Education Level	25
Table Four - Characteristics of the 105 th Congress	29
Table Five - Voter Turnout for High Salience Races	32
Table Six - Comparing Voter Turnout	33
Table Seven - Voter Turnout For High Salience (Presidential) Races	34
Table Eight - Partisan Judicial Election Results	36
Appendix A - Judicial Retention Elections	52
Appendix B - 1990 US Census Data	53
Appendix C - Ballot Form	56
Bibliography	58

INTRODUCTION

The United States Constitution extended powers to the Judiciary branch as the third and final branch in its creation of a government. The judiciary has the authority under the Constitution to oversee the laws of the land and ensure that the other two branches (Executive and Legislative) do not create and implement laws that are in conflict with the Constitution or Bill of Rights, which were implemented to ensure that the government did not surpass its powers. Therefore, although the judiciary also has some built-in checks and balances, it still wields extreme power. The Constitution also gives full faith and credit to the laws of each state and allows each state to make its own statutes in addition to the federal statutes which often leads to many different laws and controlling legislation within each state of the country in entirety. Laws may vary greatly from state to state as each state defines its own way of doing things. This is true of the manner of selection of judges, the overseers of the significant power of the judiciary branch of each state's government.

Each state in the country has evolved in the manner by which judges are selected. This paper will examine the history of those selection methods, and identify the use of each of those methods across the country today. In addition to an overall discussion of the different processes and methods of selecting judges, this paper will also discuss in further detail the history of the systems used by the state of Illinois, a state that currently chooses to use a method of selection, partisan election, that has been popular countrywide since the early nineteenth century. The method chosen in Illinois has many supporters and also much opposition. It was with controversy that Illinois has chosen to adopt this method. It has also not been without controversy that Illinois chose to keep this method, a topic this paper will also examine in some detail.

It may also be important to look at this issue on a more personal, local level in order to try to determine if the method chosen actually functions adequately on a tangible basis as well as in theory. A convincing indicator of the success of a system based on popular election ought to be the participation of the local electorate in the nomination and election of judges in their county. To accomplish this more in-depth appraisal, this paper will examine the method in a case study focusing on one county in Illinois, Jackson County, in the southern part of the state, and will attempt to identify the viability of the system at the local level. In order to achieve this, this paper will identify some influencing factors at play during an election that may determine the level of participation in a judicial election. In order to identify these influences, the study will analyze statistical data from previous judicial elections, media materials, and a previous census. It will attempt to identify the functionality of the system in relation to the participation of the electorate, and determine if a system that is supposed to be one grounded in democratic theory actually is.

HISTORY OF JUDICIAL SELECTION METHODS AND THEIR USE

The method of Judicial Selection in each state is determined by the legislation of that state and is detailed in the respective state Constitution. The methods most commonly ratified and used in these constitutions have evolved over history from England and the colonies before the United States, through the War of Independence and the Civil War. Today, a reform movement is taking place at state level which continues the evolution of the different selection systems in place in each state, and which calls into question the values of each of those systems. For numerous years, each system used has had critics that attest to the positive factors of their favored plan and the negatives of other plans,

a situation that continues today.

Historically, each state within the United States has employed a variety of selection methods (Ashman, 1). Methods that were first employed were derived from those used in England and extended to the colonies. These systems began to change during an English Revolution in 1688 against the Stuart kings of England. The revolution led to a number of far-reaching changes in England in the distribution of power between the monarch and other branches of government (Ashman, 7). The Act of Settlement in 1701 permitted continuation of the previous system which allowed the king sole power to appoint and commission judges, but placed two important checks on the king. These checks established that the judge's term of office was to be based upon good behavior, and that the removal of a judge was to be only by approval and debate by members of the House of Commons and the House of Lords, both of England's Houses of Parliament. This freed judges from the belief that they merely served at the pleasure and prerogative of the sovereign, and any decisions that they made that were unpopular would lead to their removal from service (Ashman, 8). Due to these checks, the judiciary in England continued to grow more independent throughout the early eighteenth century. This was never more apparent than in 1761 when a statute was passed that allowed for the continuation of judicial power upon the death of the appointing monarch (Ashman, 8). Previously, when a king or queen died, the judges that were appointed by them during their reign were replaced with judges appointed by the succeeding monarch. The new statute provided that judges would not be replaced solely because their sponsoring monarch died. This Act was never applicable, however, in the colonies, which was left with the old system, following the trend in pre-revolutionary times of having different rules in the colonies from those in place in England.

Due to colonists having to live with the old, flawed system, when deciding what judicial selection system to adopt after the War of Independence, eight of the original thirteen states in the new United States placed the power of appointment of judges in one or both houses of the legislature (Ashman, 8). The other states chose to give the power of appointment to their governors with consent of a conformation committee made up of state legislators.

Beginning in the mid-1800's, the appointment of state judges by the executive or legislature was extremely curtailed. The era spanning from the election of Andrew Jackson in 1829 until the end of his tenure in office in 1837 was considered the era of "self-conscious American democracy" (Volcansek & Lafon, 88), and was called the era of Jacksonian Democracy. Jacksonian Democracy was motivated by general suspicion and distrust of official power. The feeling of the people was that government should not be used to promote narrow interests and confer special privileges. Jackson constantly emphasized that the majority was meant to govern, and that political appointments were a violation of this principle. This basic principle of Jacksonian democracy was translated into a variety of political reform movements that argued that all state officials should be elected, even judges, and thus accountable to the electorate. Delegates to the many individual state constitutional conventions held in the 1840's voted in nineteen of twenty-one states for constitutions that allowed for popular election as the process of selecting judges (Frontline). By the time of the Civil War, support for this Jacksonian principal of less powerful government had led to more changes in favor of the election system of selecting judges. This resulted in a total of twenty-four of thirty-four states utilizing popular election of judges at the time (Ashman, 9). Every state that joined the union from 1846 onwards ratified constitutions that provided for judicial elections (Frontline).

Dissatisfaction with the control afforded party "bosses" that was a consequence of the

electoral process, led to a counter-reform movement in the late 1800's. With the formation of a number of associations such as the American Bar Association, the call for the removal of politics from the judicial selection process became strong. The cry was led by bar leaders who attempted to limit the powerful political parties' influence over the selection of judges by suggesting a variety of reforms. These reforms included nonpartisan ballots which allowed candidates to run independently and separate judicial nominating conventions and elections which allowed for the selection of judges to be separate and distance from the election of other political officials. These methods proved inadequate, however, to remove the effective control of political party leaders over elections. Influence over selection and nomination by local and state politicians remained just as strong and difficult to separate. Throughout the nineteenth century, most states decided to retain the electoral system, but concern over the adverse effects grew. These adverse effects included lack of political independence and declining judicial quality. Concerns over their effects were increasingly voiced with the approach of the twentieth century. This, in turn, has led to an increase of hybrid systems and an expanding mix of systems being used within each state across the country during the twentieth century (Ashman, 10).

Still today the debate over judicial election methods remains a controversial and lively one. The culmination of the debate are these hybrid methods that have mixed and matched the methods of appointment and election. Support for a universal system throughout each state in the U.S. is strong to unify the country behind one method. Expressing strong support was a Judicial Research Foundation Task Force comprising thirteen of the most knowledgeable trial court judges at the time. They identified the problem as the diversity of the methods that each state uses to select judges and stated that "selection of judges on a merit basis is the logical and well-proven answer. Partisan

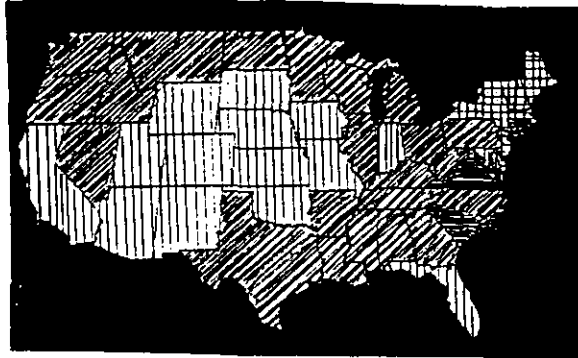
political election has too frequently and for too long failed to produce a sufficient number of judges capable of optimum judicial functioning. Nomination by a nonpartisan judicial selection commission and appointment by the Governor has proved to be the best method” (Logan, 64). Additionally, the Task Force found that “Better selection methods will come from a unified system of courts” (Logan, 64). No steps have been taken as of yet to achieve this and it is probably unlikely that sweeping changes would be adopted in each state to achieve this. Many varieties of selection methods still remain in place nationwide.





CURRENT METHODS OF JUDICIAL SELECTION

There are currently as many as five methods of selection at the state level. Two are electoral (partisan and nonpartisan elections); one is a functional equivalent of federal selection (gubernatorial selection); another is merit selection; and the last is legislative selection. As illustrated in Table One below, the methods utilized across the country differ greatly. They all offer advantages and disadvantages for each state in the selection of judges who are accountable to the public, the legislature, the governor, or who are independent. By far the most widely used system of selection is still the election system, with the next most popular merit selection or the Missouri Plan.

TABLE ONE

METHOD OF JUDICIAL SELECTION
BY STATE



-  - Election (partisan and nonpartisan)
-  - Merit Selection
-  - Elected by Legislature
-  - Appointed by Governor

PARTISAN AND NONPARTISAN ELECTIONS

In partisan elections, individuals run for judicial office for a fixed term under a party label. Candidates are nominated by partisan caucuses or primaries and then run on the party label in the November elections. Candidates may conduct a partisan campaign and be endorsed by party leaders and other candidates running for other offices. Nonpartisan elections are those in which judicial candidates must run without party designation and in which there are typically some restrictions as to the kind of campaign that may be waged. Candidates are generally selected by nonpartisan primaries and then run without party designation at a general election that is usually held in the spring

(Jacob, 99). Nonpartisan elections do not necessarily mean that political parties are unimportant, just that party labels so not appear on the ballots. In at least half of the states holding nonpartisan elections, parties actively campaign on behalf of candidates. Some states try to isolate judicial elections from partisanship by holding them separately from other elections. Judges are chosen by popular election in nearly half the states (Burns et al, 153).

GUBERNATORIAL SELECTION

Gubernatorial selection with the advice and consent of another political body (such as state senate, governor's council) is similar to the federal nomination system and is used only in the minority of states, probably a result of the migration to the election and Missouri plan methods during recent years due to reluctance in having judicial appointment powers focused in the hands of one person (Goldman and Sarat, 255). This practice is used in Delaware, Maine, New Jersey, Hawaii, New York, Massachusetts, New Hampshire, and Vermont (Burns et al, 152).

LEGISLATIVE SELECTION

Legislative selection is only used nominally (Goldman and Sarat). While the full legislature is involved in the process of selecting the person for the position, the governor is also very involved in the process, making it very similar to gubernatorial nomination with the exception that nominations come both from the legislature and the governor instead of solely from the governor. Care is taken in this process not to nominate anyone that is "personally obnoxious" to key members of the house

and senate. Members are polled as to their feelings about the appointment of a particular judge, following a similar system for selecting judges at the federal level (Abraham, 27). This practice is used only in Connecticut, Rhode Island, South Carolina, and Virginia (Burns et al, 152).

In both selection by legislature and by the governor, there may also be an informal process being set in motion in the background in which lawyers make their interest in becoming a judge known either directly or indirectly to other lawyers, bar associations, political leaders, and interest groups among many others, which then promote favored candidates. The names then go through the formal nominating process (Burns et al, 153). This allows input from interested parties, without giving them total control of the process.

MERIT SELECTION

Merit selection is the method advocated by judicial reformers (Goldman and Sarat, 256). This method is also known as the hybrid "Missouri Plan," which combines both election and merit selection and is named after the first state to adopt the plan in 1940 (Goldman and Sarat, 256). For each judicial vacancy a nominating council or commission consisting of members of the organized bar, the judiciary, and the lay public, select a small group of people qualified for the position, and present their names to the governor. The governor is legally required to make the final selection from this list of qualified people. Some states use this as their primary method of selection, while some have selected it as a method of filling vacancies that occur between elections. The candidate that the governor has chosen may serve for a short term (sometimes one year) before a vote is held at the next general election which asks the electorate if the candidate should be retained in office and serve a full

term. If a majority of the voters agree, the judge serves a new full term. If not, another candidate is selected using the same procedure. At the end of his or her term, the judge certifies a wish to have his or her name placed on the ballot, and the voters are again asked whether they want to retain that judge in office. Therefore, the judges run against their own records, not against another person or party (Burns et al, 156).

ELECTION vs. MERIT SELECTION

The argument over method of selection of judges across the country involves the debate between advocates of judicial independence versus those advocating judicial accountability (Sheldon & Lovrich, 162). Proponents of judicial independence state that it is more important that the judge be given the ability to be free in his decisions from considering the voter fallout of the decision. They believe that the system that allows for this best is that of merit selection. It allows judges to be appointed by their peers and remain at liberty from the repercussions of the electorate or the political party (in partisan elections), should they make an unpopular decision. Proponents of the election method of selection argue that judicial accountability is more important than judicial independence. As the governmental system of the United States is founded upon government by consent, electoral selection is seen as the best method of ensuring that it remains that way. Many people see both independence and direct accountability to the electorate as important, and see a combination of both as a solution. Judicial recruitment is also often seen as something that must blend both of these conflicting requirements (Sheldon & Lovrich, 168).

An additional problem that exists does not aid in the debate of which system is the best

method of selection of judges across the country. This obstacle is that theorists and social scientists on both sides of the argument have been unable to quantitatively demonstrate that the type of method used in selecting a judge actually makes a difference to the type of person who ends up serving at the bench (Sheldon & Lovrich, 170). Much research has focused on this subject, as many as twenty-eight studies from 1965 to 1982 (Volcansek, 81). In a comprehensive review of selection research, Gene Flango and Craig Ducat concluded that "Despite extensive research, no one has been able to show that different selection procedures produce differences in the characteristics of judges[,] decisions or courts" (Flango & Ducat, 39). Research continues into the characteristics and performances of judges who are selected using the different methods, and comparisons and contrasts of each method will continue in the future as it has in the past, but as individual judges are all different from each other experience, character, and morally, the limitations of the research will continue.

ILLINOIS

Illinois has chosen the partisan election system. Judges in Illinois are nominated by their party and compete in general elections, usually in November. Each judge, in keeping with the general system of electing judges, then later files his interest in retention which is consequently voted on again with a general election. The judge must receive a positive vote from three-fifths or more of those voters expressing an opinion in order to remain in office. The Constitution of Illinois allows for this process in Article VI - The Judiciary, Section 12, Election and Retention. The Constitution states "Supreme, Appellate and Circuit judges shall be nominated at primary elections or by petition. Judges shall be elected at general or judicial elections as the General Assembly shall provide by law" (White,

117). The requirement of three-fifths or more of the electorate who expressed an opinion doing so in the positive was changed from one-half or more in the 1970 Illinois Constitution (Kenney & Brown, 131). This was due to the fact that no judge had ever been denied retention and the requirement seemed too lenient. The present vote of three-fifths has not led to any judges being denied retention outside of a large investigation into corrupt judges in the Chicago area in 1990 when ten were dismissed. (Kenney & Brown, 131).

HISTORY OF JUDICIAL SELECTION METHODS AND THEIR USE IN ILLINOIS

In Illinois, the question of the type of method to use for selecting judges is as strongly debated as elsewhere in the country. The electoral system that is used is criticized by opponents as too reliant on party politics. These opponents advocate merit selection as a way to keep branches of the government separate. The conflict was never more apparent than in a compromise between proponents of the election process and proponents of merit selection in 1962 which allowed for initial partisan elections, but allowed the electorate to vote on whether to retain the judge as opposed to making the judge run against an opponent for retention (Kenney & Brown, 132). This compromise was the result of many months of debate between two opposite factions.

As with many prior constitutional conventions throughout American history, judicial selection became a major issue of the 1969-70 Illinois constitutional convention. Two sides hotly debated the issue for many months. Both sides had motives that were influenced by principle and by what position would best serve their interests (Kenney & Brown, 132). It was not resolved until almost the final day of debate (Kenney & Brown, 132). The two sides of the argument focused on whether

the state should retain elections for judicial selection, or change to the merit selection system. Those arguing for election stated that it was essential for an open, democratic society (Kenney & Brown, 132). Those favoring merit selection stated that it would bring more professionalism and better judges to the judiciary. A resolution at the constitutional convention was not achieved, and the argument continued. It was finally settled with a referendum for voters to select the method that they preferred. In the referendum, the results were 50.2 percent voting for election selection, and 43 percent votes for merit selection (Kenney & Brown, 133). As the results were so close, the compromise was made between the two systems. The results mirrored the split between the two sides with the suburban Cook County favoring merit selection and rural counties favoring the election system (Kenney & Brown, 132).

The argument in Illinois continues today as within each state in the rest of the country. The American Judicature Society, a nonpartisan organization with a national membership of judges, lawyers, and non-legally trained citizens interested in the administration of justice, sponsors an Illinois Committee on Judicial Independence (American Judicature Society) which publishes current efforts to revise the system. Current supporters of merit selection routinely debate and initiate discourse on the subject, including proposals for constitutional amendments. A Governor's Task Force on Judicial Merit Selection to propose a constitutional amendment was appointed by Governor Thompson in 1987 (Kenney & Brown, 137). The Task Force found that merit selection should be implemented with appointed screening panel reviews after the judge has served for ten years. The plan again brought much debate and was eventually defeated in the Senate Executive Committee by a vote of twelve to six (Kenney & Brown, 137). The subject remains an issue in the state of Illinois.

ANALYSIS OF THE ELECTION METHOD OF JUDICIAL SELECTION

As discussed above, Illinois has chosen the election method, but not without controversy. However, as this is the system currently in place, a deeper examination of the election method is needed in order to understand it more comprehensively. Because judicial selection methods are so controversial, it makes sense that many arguments extended by supporters as to the advantages and disadvantages of each system can be countered by logical reasoning. This is certainly the case with the election system. Proponents of the election method feel that election can achieve elimination of an elite group selecting judges. Thus the choices would be more representative of the people. They also feel that judges should be accountable to the people, like other elected officials, and that this would be accomplished by the election of judges just as in election of other public officials. Yet elections held to select other officials cannot be compared to those held to select judges. Under the Judicial Canons that govern election behavior for candidates of the judiciary, candidates are not free to speak about issues that may come before them, as they are forbidden to make prejudgements on these issues. They can only promote themselves as fair and honest. The campaigns of other elected officials are not bound by these regulations, thus they cannot really be compared. The Canons were initiated to provide for an impartial judiciary that cannot afford to make prejudgements on public issues. Judges “perform purely technical and narrow legal tasks . . . [thus] their (the public) participation in the process of staffing the courts is wholly unnecessary” (Dubois, 23).

Another asserted advantage of support for the election process states the need to remove elitist influence from the process. This may be undermined with the argument that most judges initially come to the bench by appointment, even when election is the primary method of selection

(Dubois, 109). If a sitting judge resigns in midterm, the governor is given the power to appoint a judge to fill the position. Furthermore, when a candidate has the benefit of running as an incumbent, s/he is more likely to be the winner of the judicial race in the next election - if he chooses to seek another term. Thus, the governor's influence enters into the selection process designed to eliminate elitist control.

The nomination of the candidates for open judicial seats is again another decision denied the public in the election method of selecting judges. Although interested candidates may campaign and received nomination without party support, party leaders generally get together to decide whom they will support and offer their select few to the public as affiliates to vote on during the primary elections. This tends to place limitations on the choice that the electorate has in the selection of the candidates that they have to vote for as they lack awareness of everybody running for election. This also takes the process out of the hands of those who know the candidates and their qualifications and puts it into the hands of party leaders whose loyalty remains party affiliation, not the general public. Again, without party support, an otherwise suitable candidate may be overshadowed in the election process while party supported candidates are given more recognition due to their affiliation.

Proponents of the election method indicate that through retention elections, the sitting judges are checked by the public, thus this method prevails over the merit selection in their eyes. By accountability, it is meant that if the electorate is not pleased with the performance of the judge, it has the power to remove him from office. Considered in this argument is that although voter turnout is higher for partisan elections as compared to nonpartisan elections, overall voter turnout for judicial primary and general elections is low compared to other political races. Voters are often not aware of whom or what they are voting for because they do not receive cues concerning how the candidates

stand on certain issues. Consequently, rather than make an irrational choice, most voters choose not to vote at all. There is a body of literature to suggest that low information leads to low turnout. If they do vote, they rely on such factors as party affiliation or a popular name, lacking enough information on the personal characteristics, experience or ideology of the nominated judge to fill a seat in the court. The average citizen does not make it a point to check the record of a sitting judge. In addition to this, a study on judicial selection found that "judicial elections do not serve as feedback devices for the judiciary" (Jacob, 1966), not providing the check as claimed.

VOTER PARTICIPATION IN ILLINOIS/JACKSON COUNTY

Traditionally, voter turnout in Illinois is high (Kenney & Brown, 33). The percentage of people in Illinois who participate in elections is above the national average of 50.1 percent in 1988 at a total of 53 percent (Kenney & Brown, 33). This is slowly declining each year as voters participate less in each election, and certainly participate less in lower level, less important local races. As judicial races are not as important to the majority of the electorate as that of president or governor of their state, participation in judicial elections locally could be expected to be low. In the 1990 U.S. Census, the total population of people reported to be living in Jackson County aged 18 or over, and therefore considered to eligible to vote, totals 49, 467 out of a total population of 61,067 (U.S. Census, 1990). In the judicial elections held in Jackson County in 1988, turnout totaled 20,400, or 41 percent of those eligible. As this turnout is below statewide norms for elections, unusual factors must exist which influence whether the potential electorate participates or not. In order to study whether these factors do determine electoral participation, they must first be identified.

INFLUENCING FACTORS ON JUDICIAL ELECTIONS

Voter participation is reliant on many factors, both external and internal. External factors determine whether potential voters will participate in a specific election. They may be described as outside influences that help determine the level of voter participation. These factors can range from knowledge of the candidates, publicity of the electoral race, and whether the race is partisan or not. Lack of information about an election often leads to lack of interest in participating in that election. Internal factors also determine whether a potential voter will participate in any electoral race. They tend to be more personal to the electorate and drive the likelihood of participation from inside the voter. These factors include the voter's sociological identity, some not subject to change, such as age, race, and gender, and others that are such as education and income level.

The primary argument of used to justify elections as the best method of selecting judges in Illinois is that the public should be allowed to select their judges, and that the system is grounded in a democratic principle. Therefore, examination of the electoral turnout is required to examine if voter participation is high enough to justify the arguments in support of the method.

EXTERNAL INFLUENCING FACTORS

The distinction of external methods versus internal methods is that they are controlled by outside influences that the voter cannot control. There are several external factors that have been found to influence the results of partisan judicial elections in Jackson County in any given year. These factors include election scheduling, bar association ratings, media coverage, party affiliation, and

incumbency. Although judges do not face an adversary after being elected to the bench, they do face a retention election, which can also be influenced by some of the above-mentioned factors. Below is an outline of current norms concerning each of the factors that have an external impact on the results of partisan and retention elections.

The first external factor that should be considered is the scheduling of elections. This refers to the year in which any given race for judicial office is held. In any election year, several races for office are held during the same election. Some races have a higher profile than others. These include presidential elections and gubernatorial elections. During presidential election years, voter participation is usually higher, a consequence of more publicity surrounding presidential campaigns. Other high profile campaigns include elections for governor and state senate. Surprisingly, however, even these races are sometimes not enough to persuade the electorate to vote on the day. Studies confirm that even in the case where governor and senate races would be considered high salience races, voter turnout decreases in non-presidential election years (Milbrath, 35). So, when comparing judicial election voter turnout, a comparison must be made between the percentage of turnout for the race that would be considered the most prominent for that particular election. This is to say that in presidential election years, the most prominent race would be the presidential race, and in non-presidential years, it would be the race for the office of Governor or Senator, and so on, whichever is applicable.

The next external factor that should be studied is bar association ratings on each judicial candidate. In spite of Canon Seven, the public does have a few other sources to look for information on judicial candidates. One is the bar association rating of judicial candidates which is supported in Canon Eight which focuses on ethical considerations, (EC 8-6). “Generally, lawyers are qualified,

by personal observation and investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of those who are qualified” (American Bar Association, 45).

In Illinois, the state bar association polls lawyers, the peers of prospective judicial candidates, and sitting judges. The questionnaire focuses on the candidate’s temperament , integrity, and other personal qualities that the bar association feels would characterize a good judge. After the questionnaires are returned, the association hands down a rating spanning from “Strongly Recommended” to “Strongly Not Recommended” based upon the information gathered. Analysis has shown that although voters may use this information as a cue in selecting judges, bar polls remain in question because the results of such polls are not always highly publicized and further, that lawyers who are polled are usually giving general answers because they often remain as uninformed as the average voter (Dubois, 67). Research also suggests that lawyers favor incumbent judges, possibly because they feel that prior experience is an important qualification or that they face a personal stake in the matter should negative responses concerning a sitting judge become known (Watson & Downing, 223). The results of a study conducted in 1987 by the Illinois Judicial Council Special Committee on the Selection of Judges found that although the bar association plays a significant role in judicial selection in Illinois, there are many cases that show abuse in the rating process, where the buddy system leads to poor ratings of opponents of colleagues and friends. (Hall, 19). Additionally, the system is often considered a way for the bar association to become involved in the election process. The bar association considers the merit selection method preferable to the election method as merit selection allows greater control over the process by the bar association and it’s members (Jacob, 57). Consequently in 1998, the President of the American Bar Association sent a message

to the bar membership condoning and reinforcing the need for judicial independence (American Bar Association Journal). Additionally in 1999, the American Bar Association again publically affirmed its commitment to merit selection in a report resulting from an Ad Hoc Committee on Judicial Campaign Finance, Standing Committee on Ethics (American Bar Association).

The third influencing external factor, media coverage, is associated in with the ratings of bar associations. The media is responsible for bringing the results of these polls to the public. "If voters are provided with information on judicial candidates . . . they use it," indicates a study reported in the *Social Science Quarterly* (Johnson et al). Newspapers may even rate the candidates to give the public a more informed choice. Again, the problem here could be lack of information on candidates. Although news reporters may be more apt to conduct a background study of how a sitting judge performs, they have no real basis for recommending a lawyer who has never served on the bench.

Judicial elections are also unique as compared to other partisan elections because the candidates are restricted by the "Code of Judicial Ethics." This limits the amount of media coverage that they will or may receive. Formally referred to as the "Canons of Judicial Ethics" (Canons). As outlined in Canon Seven (B) (1) (c) concerning political campaign conduct:

"A candidate, including an incumbent judge . . . should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact" (American Bar Association, 69).

Because of these restrictions, the public can gain little information in the media concerning judicial candidates. This may hinder the ability of the public to make an informed choice, as was concluded from an exit poll in Texas which showed that voters were generally unaware of differences

between the candidates on the ballot form (McKnight, 99). Such research suggests that people tend not to vote for judicial candidates, although they cast their votes for candidates in other races. Evidence of this can be seen when comparing voter turnout figures for a given election. Usually, there is a drop-off rate of persons who vote in the more visible contest as compared to those who vote in judicial elections, especially retention elections. In a study on degree of public awareness of judicial candidates and elections, it was found that “judicial elections are low-salience contests” (Ladinsky & Silver) which means that they are not high-profile enough to be important to the electorate.

These unintentional restrictions appear to stem from the belief that the judiciary is part of the government and must remain impartial and removed from public opinion. In developing these Canons, supporters feel that the judiciary protects its image of dignity and independence. (Crane, 125). Opponents feel that this is a “judicial myth” in the sense that the judiciary cannot remain impartial or removed from the selection process whether it is election or merit selection. According to Stephen Daniels and Frank J. Kopecky, “courts, as other governmental institutions, are political institutions, and judges, as other political officials, are political actors” (Crane, 125).

The next external factor that should be considered is party affiliation. A partisan election requires judicial candidates to run under a party label (usually Democrat or Republican). Therefore examination should be undertaken to determine whether voters use party as a cue when voting in judicial elections, much like they do in other partisan elections. In a study of the relationship of voting behavior and party affiliation, Phillip DuBois finds that “on the average, voters in the partisan states are more likely to cast their votes along party lines than voters in the mixed and nonpartisan states” (DuBois, 74).

The final influencing external factor relates to candidate incumbency. When a sitting judge vacates his or her seat in midterm, the governor appoints a replacement to serve until the term expires. Evidence indicates that the incumbent has the advantage of experience when running for election. Voters often identify with his or her name and feel that a candidate with a proven record of performance will be the best choice. Though this factor has been noted to be more influential in nonpartisan elections which lack party as a cue for voting, "the incumbent judge. . . may pull voters away from their usual partisan preferences" (DuBois, 88).

There are, therefore, five factors that may tend to influence judicial selection and voter participation in the election method of selection. These include election scheduling, bar association ratings, media coverage, party affiliation, and incumbency. These factors may be studied to perhaps determine the likelihood of voter participation in any judicial election, and if that participation is high enough to defend the use of the election method of judicial selection chosen in Illinois.

INTERNAL INFLUENCING FACTORS

In addition to external factors influencing judicial selection and voter participation, there are also several internal factors that influence the electorate's decision both whether to vote in an electoral race and also the vote direction that they cast. These factors mainly consist of demographic, social and economic factors such as age, gender, race, educational level, and social class.

The age of the electorate is a significant factor in determining whether someone will vote or not. In 1972, suffrage was granted to 18 to 21 year olds, increasing the number of eligible voters in the country. However, this population has a large proportion of people who pass up their first

opportunity to vote as voter turnout steadily declines each year (Flanigan & Zingale, 40). The likelihood of voting increase with age, as by the age of thirty-five, most people have voted on at least one occasion. A small portion of middle-aged to older group potential voters remain never having voted (Flanigan & Zingale, 41). Among all age groups, with 50 percent the 18 - 25 age range has the smallest group of people responding affirmatively to a Center for Political Studies 1996 National Election Study poll questioning whether they have ever voted (Flanigan & Zingale, 41) This gradually increases and levels off at age 46 and up with 80 percent of respondents answering that they had participated (Flanigan & Zingale, 41). Increased participation with age is likely due to the fact that older voters are more settled in their lives, are already registered, and have more time to experience voting as an expected activity (Schmidt et al, 341). In the 1992 election, 38.5 percent of those aged 18 to 20 turned out to vote and 70.1 percent of eligible people aged 65 and over turned out to vote. (See Table Two, Page 22).

TABLE TWO

VOTING IN THE 1992 PRESIDENTIAL
ELECTION BY AGE GROUP (IN PERCENTAGE)

AGE	REPORTED TURNOUT (%)
18-20	38.5
21-24	45.7
25-34	53.2
35-44	63.6
45-64	70.0
65 and over	70.1

Source: U.S. Department of Commerce, *Statistical Abstract of the United States* (Washington, D.C.: U.S. Government Printing Office, 1994). Data are for 1992.

Educational level is also significant in determining whether an eligible person will ever vote. The higher the education level of a person, the higher the possibility of participation in the electoral system. Pursuit of an education away from home by younger people, however, is determined to stop people from voting as failure to meet resident requirement. In addition to this hurdles of initial registration create barriers and desire to vote in short-term local level elections also deter students from voting. Therefore, in general, the more education a person has, the more likely they are to vote, with the exception of those in the process of gaining an education. Reported turnout in the 1992 presidential election was 30 percentage points higher for those with a college education than it was for those who had never been to high school (Schmidt et al, 341). One activist for low income workers states in the book *Politics and the Class Divide* that "I would say to a very large degree the better the education, the much greater chance that, not only are they aware already of what the problems are, but they're also more perceptive and responsive to solutions (Crouteau, 155). These references are almost always targeted toward the college educated. Many believe that high schools and grade schools teach only compliance and complacency and not creativity and other thinking schools. This suggests that those with a high school education will be less likely to vote (See Table Three), but that if they do, they may be more inclined to vote for an incumbent politician following the system that is already in place instead of looking toward creating a new one.

TABLE THREE

VOTING IN THE 1992 PRESIDENTIAL ELECTION
BY EDUCATION LEVEL (IN PERCENTAGE)

YEARS OF SCHOOL COMPLETED	REPORTED TURNOUT (%)
8 years or less	35.1
9-11 years	42.2
12 years	57.5
1-3 years of college	68.7
4 + years of college	81.0

Source: U.S. Department of Commerce, *Statistical Abstract of the United States* (Washington, D.C.: U.S. Government Printing Office, 1994). Data are for 1992.

Social class and related income is a third type of internal factor that may impact the likelihood of a person to vote. Differences exist in the economic and social interests of social classes, and these interests will determine whether a person will vote or not. The middle to high social classes are more likely to vote as they are usually more connected to community groups and organizations leading to familiarity and knowledge of the people involved in the process, which in turn leads to greater turnout. So, the greater the income, the more likely a person is to join a voluntary association (Crouteau, 49). Social class is of course linked to income levels. Wealthier people tend to be over represented in the electorate. In the 1992 presidential election, income levels of people who voted

in the election ranged from 40 percent of those eligible in the \$15,000 and under income level group to 70 percent of those eligible in the \$50,000 and over income level group (Schmidt et al, 341). Additionally, those people with low incomes and working class status are more likely to become disillusioned with a system that has not been particularly beneficial to them. The most common critique of workers toward politicians is that today's officials seem more out of touch with regular people (Crouteau, 57). Worker's believe that the government used to be more responsive than it currently is, and participation is seen as not making a difference in lack of response (Crouteau, 57). In addition, wealthy politicians are seen by the working class as promoting the interests of other wealthy citizens at the expense of workers (Crouteau, 57). Wealth, then, serves to isolate politicians from regular citizens, leading to disinterest in a system that does not serve the working class, leading in turn to lack of desire to participate.

Race is another factor in determining voting participation. Typically, and due to historical conditions, a white person is more likely to vote than a minority person. In the 1992 presidential election, whites participated at 59 percent of those who were eligible to 51.5 percent of blacks who were eligible (Schmidt et al, 341). Equal access to the ballot box and equal opportunity to participate in politics in other ways did not effectively exist for minorities until the mid 1960s (Conway, 24). Election procedures in place before this time tended to discourage minority participation by allowing local election officials to establish irregular hours for voting and to provide inadequate procedures for absentee voting in areas that were traditionally concentrated with a population of minorities (Conway, 24). With changes in these laws, participation for blacks has increased steadily, but when comparing blacks and whites of the same other internal factors such as class, education etc., blacks are still somewhat less likely to vote than whites (Conway, 24).

Additionally, blacks and other minorities are greatly under represented in government, causing a lack of identification with the government by blacks.

Gender is the fifth determinate of voting participation. Historically, women were denied the vote until granted suffrage under the Nineteenth Amendment in 1920. Until recently, women have been less likely to vote than men, when taking into consideration their greater population numbers in the United States. In the book *American Voter*, the author describes this phenomenon as resulting from the deeper ingrained roles of the female gender in the American culture that for many years made the man the person in the family to make the political decisions (Campbell et al, 484). Campbell et al. also found in their 1960 political participation interviews that many women referred him to their husbands to give the interview, still feeling uncomfortable about having an opinion about the topic and feeling that "politics is for men" (Campbell et al, 485). As women now vote more than men, the absolute size of their vote has increased to be larger than that of votes by men, not the average two-thirds that is has previously been the norm (Campbell et al, 484). Although this research discusses life and opinions in the 1960s in reference to political participation, and today women now vote more than men, America has still to elect some women president or vice-president. As with race, the characteristics of the federal level government still badly under represents the group when compared to the national population. The characteristics of the 105th Congress (1997 to 1999) reflect this: women comprised 11 percent of the House and 9 percent of the Senate. This compares to the 51 percent population of women nationwide as reported in the U.S. Census of 1990 (Schmidt et al, 399). (See Table Four).

When combined together, the demographic, social and economic factors described above represent a group of internal factors that affect whether a population participates in the political

process. These characteristics are either invariable (age, race and gender) or variable (education, income). Demographic factors that cannot be changed combine with factors that may be to shape the likelihood of voter turnout. The socioeconomic factors of education and income have been shown to significantly determine participation. The higher a person's socioeconomic status, the more likely is he or she to vote (Olsen, 151). Research conducted in the book *Why Americans Don't Vote* identifies three effects that socioeconomic status has on voter turnout: a) the higher the level of educational attainment, the more likely a person is to vote; (b) the less manual the occupation, the more likely a person is to vote; and (c) the higher the level of income, the more likely a person is to vote (Teixeira, 21). In addition to this, demographic factors such as age, race, and gender impact for participation but that impact changes across socioeconomic status. Thus, a young, black woman is more likely to vote if she is college educated and has a high income than is she were less educated and lower in social status.

Just as variable and invariable factors influence whether a person will participate in the political process, so too does the factor of whether the potential voter feels that his or her group is represented in the government or office pertaining to the election. The American system is a representative democracy where choices are made by a small group that effect the larger group (Flanigan & Zingale). The less the potential voter feels that he or she is or has been represented in the past or will be in the future, the less likely he or she is to vote. The groups that are less likely to participate in the political process include people who are black, female, low income, less educated or young. When examining these facts simultaneously with the characteristics of the federal government, groups who are less likely to vote surely feel under represented. The average federal elected official is a white, college educated male with a high income who is around fifty. The characteristics of the 105th Congress (1997

to 1999) show that women account for only 9 to 11 percent of politicians (Schmidt et al, 399). It is also true that 93 to 94 percent of politicians in Congress have college degrees (Schmidt et al, 399).

There were also no blue-collar workers in Congress (Schmidt et al, 199). (See Table Four).

TABLE FOUR

CHARACTERISTICS OF THE 105th CONGRESS
(1997 TO 1999)

CHARACTERISTIC	U.S. POPULATION	HOUSE	SENATE
Age (median)	33.0	50.9	57.4
Percentage minority	28.0	13.5	4.0
Percentage Female	51.9	11.0	9.0
Percentage with college degrees	21.4	93.0	94.0
Occupation			
Percentage lawyers	2.8	39.0	54.0
Percentage blue collar workers	20.1	0.0	0.0
Family Income			
Percentage of families earning over \$50,000 annually	22.0	100.0	100.0
Personal wealth			
Percentage of population with assets over \$1 million	0.7	16.0	33.0

Source: Schmidt et al.

STUDY OF INFLUENCING FACTORS IN JACKSON COUNTY

Research has demonstrated then, that external influencing factors of election scheduling, media

coverage, bar association rating, party affiliation, and incumbency and internal influencing factors of age, race, gender, economic status and educational level impact the participation of the electorate in elections. To examine the impact of these factors on judicial elections, this case study focuses on judicial elections in Jackson County, Illinois. This study identifies a hypothesis to identify possible influencing factors and the result of participation from each. It then examines available data in connection with those hypotheses in determining whether each hypothesis may be confirmed.

STUDY OF EXTERNAL INFLUENCING FACTORS IN JACKSON COUNTY

In order to determine which external factors influence voters in Jackson County in Southern Illinois, voter records were examined from 1976 to 1988. These records were selected in order to utilize information for both external and internal factors. As the last official census was collected in 1990, information from voting records from 1988 contained the data needed to allow examination of both factors, and was thus the last data to be collected. Although the focus of this study is the judicial election, it was necessary to collect data on voting behavior for other races such as presidential candidates, gubernatorial candidates, and senatorial candidates. While the 1988 election was the primary focus, data was also collected for previous elections to determine if patterns existed concerning Jackson County's voting behavior in judicial elections. During the period of 1976 to 1988, there were eleven judicial partisan elections and twenty-five retention elections; many occurring in the same election year. Several hypotheses can be inferred from the data gathered.

HYPOTHESIS ONE

Judicial election voter turnout figures will show a marked increase during presidential election years as compared to non-presidential election years.

METHODS AND ANALYSIS

Data comparing the mean voter turnout for judicial retention elections indicates that voter turnout is higher in presidential election years than for non-presidential years. The data shows that in the 1986 race for Governor, the actual voter turnout was 15,688. The mean voter turnout for judicial elections in the same year (see Appendix A) was 11,195.

These numbers increase to 21,185 and 15,318 respectively in 1988 when the race includes a presidential contest. Similar patterns can be determined when comparing high and low salience races from 1976 through 1988.

TABLE FIVE

VOTER TURNOUT FOR HIGH SALIENCE RACES
AS COMPARED TO THE MEAN VOTER
TURNOUT FOR JUDICIAL RETENTION ELECTIONS
JACKSON COUNTY, ILLINOIS

YEAR	HIGH SALIENCE RACE*	ACTUAL VOTER TURNOUT	MEAN VOTER TURNOUT IN RETENTION ELECTIONS	DIFFERENCE IN VOTER TURNOUT FOR HIGH SALIENCE RACES AS COMPARED TO RETENTION ELECTIONS
1976	President	24,132	15,594	8,538
1978	State Rep.	14,573	8,884	5,689
1980	President	23,829	15,139	8,680
1982	Governor	17,928	12,247	5,681
1984	President	25,896	16,674	9,222
1986	Governor	15,688	11,195	4,493
1988	President	21,185	15,318	5,867

* Determined by race in which the most votes were cast.

Because there were no judicial partisan elections in the non-presidential election years under examination, no conclusions could be formed about those elections. However, when comparing the mean voter turnout for judicial partisan elections to retention elections (see Table Five, page 31), the number of participants in the partisan races highly exceeds that of the retention elections. This could mean that more campaign activity between candidates in partisan election produces more interest and information about the election, both positive influencing factors relating to voter turnout.

TABLE SIX

COMPARING VOTER TURNOUT
FOR PARTISAN JUDICIAL ELECTIONS
AND RETENTION ELECTIONS
(BASED ON MEAN VOTER TURNOUT

YEAR*	VOTER TURNOUT FOR PARTISAN ELECTION	VOTER TURNOUT FOR RETENTION ELECTION	NUMERICAL DIFFERENCE
1976	22,552	15,594	6,958
1980	21,190	15,139	6,051
1988	19,622	15,318	4,304

*Included are those years in which partisan elections and retention elections occurred simultaneously.

When comparing actual voter turnout in high salience races to the mean voter turnout for the retention elections, an interesting note here is that during non-presidential years, the gap between those who vote in the high salience race and judicial race narrows. (See Table Seven, page 33). This may indicate that the voters who do participate in non-presidential elections are more apt to complete their ballots, or that as they are the most motivated and informed voters they have the knowledge about the race that enables them to make choices even in low salience, low information elections.

TABLE SEVEN

VOTER TURNOUT FOR HIGH SALIENCE (PRESIDENTIAL) RACES
AS COMPARED TO THE MEAN VOTER
TURNOUT FOR PARTISAN JUDICIAL ELECTIONS
JACKSON COUNTY, ILLINOIS

YEAR	ACTUAL VOTER TURNOUT	MEAN VOTER TURNOUT IN PARTISAN ELECTIONS	JUDICIAL ELECTION PARTY AFFILIATION OF FAVORED CANDIDATE	NUMERICAL DIFFERENCE
1976	24,132	22,552	Democrat	1,577
1980	23,829	21,190	Democrat Democrat Republican	2,639
1988	21,185	19,622	Republican Democrat Democrat Democrat Democrat Democrat Republican	1,563

Further evidence of differences in voter turnout can be found by comparing data in Table Seven and Table Five (pages 33 and 31). The gap between voter turnout for the high salience race and judicial partisan elections is not as wide as that of the high salience race and retention elections, possibly an indication of voter fatigue. Voter fatigue likely develops because the judicial retention question is placed by statute on the seventh or eighth page near the end of the ballot (See Appendix C). Voters who tend to vote only in presidential elections are not as interested in other sections on the ballot and tend to disregard some questions toward the end. Thus, it appears that voters brought out to vote by the presidential election may prefer to cast votes in all the contested races at the beginning of the ballot whereas the more dedicated voter tends to complete the whole ballot.

HYPOTHESIS TWO

Judicial candidates will not be elected or retained if they receive an unfavorable rating from the Illinois State Bar Association.

METHODS AND ANALYSIS

This hypothesis should be tested across two groups, candidates who are running for office and those who are seeking retention. In the data collected and studied, there were eleven separate partisan elections from 1976 through 1988 and seven retention elections in the same period.

Of the eleven separate elections, only four candidates were rated "Strongly Not Recommended" by the Illinois State Bar Association. The remaining candidates received favorable ratings, with the exception being the Republican candidate, Welch, who in 1980 was not given a rating because the Bar was not notified of his candidacy soon enough to issue a rating. Three of the four candidates that received an unfavorable rating lost his or her bid for a seat on the bench. Lowery (1988) the fourth candidate, defeated his recommended opponent by a mere 0.7 percent (152 out of 19002) of the vote, which appears to suggest that Lowery's reputation with the local electorate outweighed the ratings of the bar association.

Judges who are seeking retention must have fewer than 70 points out of 100 of totaled scores from completed questionnaires. Only Judge South was rate as "Strongly Not Recommended" during this period, but as data shows, he was retained in office. As noted in Table Three on Judicial Retention Elections, Judge Richman barely received a recommendation by the Illinois State Bar

TABLE EIGHT

PARTISAN JUDICIAL ELECTION RESULTS
JACKSON COUNTY, ILLINOIS

YEAR*	CANDIDATE	NUMBER OF VOTES	TOTAL VOTER TURNOUT
	(D) Green ✓	13,788	22,552
	(R) Ridgeway	8,764	
1980	(D) Hood ✓ (I)	11,168	21,924
	(R) South	10,756	
	(D) Howerton ✓ (I)	11,460	21,010
	(R) Powless	9,550	
Appellate Court	(D) Mays ✗	10,243	20,637
	(R) Welch ★	10,394	
1988	(D) Beedle ✗	6,460	20,400
	(R) Gilbert ✓ (I)	13,940	
	(D) Watt ✓ (I)	14,526	20,305
	(R) Isaacs ✗	5,779	
Supreme Court	(D) Calvo	10,423	19,762
	(R) Welch ✓	9,339	
Appellate Court	(D) Howerton ✓	13,003	19,736
	(R) Evers	6,733	
	(D) Chapman	10,849	19,234
	(R) Keenan	8,385	
	(D) Goldenhersch	10,059	18,913
	(R) Long	8,854	
	(D) Rarick	9,425	19,002
	(R) Lowery ✗	9,577	
	✓ Recommended by the <i>Southern Illinoisan</i>		
	✗ Strongly Not Recommended by the Illinois State Bar Association		
	★ Write-in Candidate; not rated by Illinois State Bar Association		
	(D) Democrat party affiliation	(R) Republican party affiliation	
	(I) Incumbent		

Included are those years when races were held for partisan judicial elections. Appellate and Supreme Court candidates have previous judicial experience, except for Long (1988).

Association. Categories such as judicial temperament, judicial integrity, etc. are weighed differently in importance, therefore a candidate can score below average in one or more, without bringing down the total score below the 70 points needed for recommendation. Thus, based upon the information here, judges who seek election are affected by their bar association ratings, whereas judges seeking retention are not.

It should be remembered, however, that in retention elections, judges are rarely removed from the bench. By looking at the actual voter turnout figures (Table Five, page 31) for these particular elections as compared to other retention elections of 1986, a vast difference can be seen when comparing the numbers of affirmative votes and negative votes. In the remaining four elections, the affirmative votes exceed 7,000 votes while the votes in this same category for Richman and South are below 7,000. Looking at the negative votes (“no”), the turnout figures are higher for Richman and South as compared to the other four judges. This information indicates two findings. First, when subtracting the negative votes from the affirmative votes, the difference is smaller for Richman and South, thus they were retained by a slimmer margin. Secondly, upon adding the total votes cast in each of these elections, the results show a higher turnout rate for the Richman and South elections. It may be inferred from this that because of the publicized negative ratings by the Illinois State Bar Association people had information on which to base their decision, thus the turnout was greater in these two instances. Additionally, it appears that voters came out not necessarily to cast their votes for these candidates, but rather to vote against them.

HYPOTHESIS THREE

Media coverage will have a positive effect on voter turnout in judicial partisan and retention elections.

METHODS AND ANALYSIS

Comparing data in much the same way as that in the category of the influence of the Illinois State Bar Association, the effect that a positive recommendation by the *Southern Illinoisan* area newspaper had on voter turnout was examined. (See Table Eight, page 36). For each judicial partisan race (except in the case of Mays v. Welch, 1980), one candidate was recommended over the other by the *Southern Illinoisan* in its Editorial section. Based upon the data, voter turnout was not influenced by the *Southern Illinoisan* as it remained significantly unchanged during 1980 when the newspaper did not express a preference. The results suggest that the newspapers endorsement may have, however, affected the success of the candidates. Based upon election results from these races, 70 percent of the favored candidates won their elections. Because none of the judicial retention candidates were termed "not recommended" by the *Southern Illinoisan*, there was no data to prove or disprove these hypotheses for retention elections.

HYPOTHESIS FOUR

Party affiliation will be a cue to voters in judicial partisan elections, much like it is for other

partisan elections.

METHODS AND ANALYSIS

When reviewing data represented in Table Eight (page 36), it appears that voters in Jackson County favor Democratic judicial candidates. In two of the three races where the Republican candidate was victorious, the results show very close races. First, the Mays v. Welch race (1980) was characterized by a “Strongly Not Recommended” bar association rating for Mays and no rating from the bar for the write-in candidate Welch. The public most probably was torn between its allegiance to the Democratic candidate and the negative rating of this candidate. Additionally, Welch, a republican, was endorsed by the *Southern Illinoisan*, yet was still defeated by the democratic candidate Mays. Turning to the Rarick v. Lowery race (1988), here again was the struggle of whether or not to choose the “faithful party” candidate. In this election, Lowery was well known in the area and his opponent was from Troy, Illinois, leading to a conflict between familiarity and party loyalty. This struggle combined with the conflicting ratings from the State Bar Association made for a tight race that was tipped in Lowery’s favor. The exception to this is the judicial race of Beedle v. Gilbert. This race defied the correlations made here concerning judicial elections and party affiliation. This race was extremely different and is described later.

The above synopsis shows that Jackson County voters tended to favored Democratic judicial candidates over Republican judicial candidates and is typical of the overall voting tendency of Jackson County. Another way to test whether party is used as a cue for voting in judicial elections is to examine voting in judicial elections where candidates are not free to discuss issues and to compare it

to the party affiliation for the favored candidate in the high salience races and the party affiliation for the favored candidate in judicial elections. (See Table Seven, page 33). This comparison will show if voters “carry-over” voting behavior from high salience races to judicial races. Upon examination of the data which shows very nominal differences in turnout, there is no true relationship here. This may be accredited to the minimal number of studied election years in which partisan elections were held.

HYPOTHESIS FIVE

Judicial incumbents in partisan elections will be victorious.

METHODS AND ANALYSIS

There were four judicial partisan races where one candidate was an incumbent running to be elected to his appointed seat. Every incumbent candidate proved victorious. (See Table Eight, page 36). There could be interrelated factors at work here. These same four incumbents were also recommended by the *Southern Illinoisan* newspaper. Though it could be that the newspaper gives preference to incumbents, relying on their experience to make them a good judge, a trait that voters also tend to follow. In addition to this scenario, all the incumbent judges were democrats, a factor that could also influence voters in a traditionally democratic county.

EXTERNAL STUDY CONCLUSIONS

It is easy to see how the external influencing factors were first identified during prior research of judicial elections. Upon comparing most of the election data, the relationship between factors is quickly recognizable. The hypothesis that judicial election turnout will increase during presidential elections was confirmed partially. It appears to be true that more voters turnout in presidential election years, although we actually see more participants in retention elections in non-presidential years. Another hypothesis that appears to be somewhat confirmed is that judicial candidates will not be elected or retained if they receive an unfavorable rating from the Illinois State Bar Association. Although the findings were not 100 percent perfect, there is evidence of an influence on voters by bar poll ratings. Even in retention elections, candidates seem to be retained by slimmer margins if they receive unfavorable ratings. Also an influence on public opinion, media coverage might appear to increase voter awareness. Thus, the hypothesis that media coverage will have a positive affect on voter turnout in judicial partisan and retention elections could probably be confirmed. Although it can be identified that Jackson County favors Democratic judicial candidates, it may be insufficient to warrant support of the hypothesis that party affiliation is a cue to voters in judicial partisan elections. The final hypothesis that judicial incumbents in partisan elections will be victorious appears to have somewhat strong support, with no incumbents having been voted out of office during the period studied (1976 to 1988). From all the hypotheses and data studied, it does appear that overall Jackson County may in fact follow noted norms of judicial elections.

STUDY OF INTERNAL INFLUENCING FACTORS IN JACKSON COUNTY

As mentioned previously, voter turnout in Jackson County totaled 20,400 in the judicial elections in 1988. This turnout is below the norms of 53 percent for the state in presidential elections at 41 percent of the 49,467 potentially eligible to vote. An examination of these statistics and the 1990 U.S. Census data may explain the reason for low turnout when looking into possible internal influencing factors as education, gender, race, age, and income. A comparison of expected turnout and actual turnout was conducted to see if Jackson County met normal voting conditions for each internal voting factor. (See Appendix A, page 50). However, it should be noted that this study is extremely limited and offers little beyond conjecture. It merely uses averages from census data and does not have any primary statistics to utilize. In order to study these factors in a more conclusive manner which allows for correlations between the influencing factors and voter participation to be drawn correctly, data would have to be gathered as to the actual characteristics of those who did vote in the judicial elections selected for review. As this is not possible for elections that have already taken place, a study was made of the averages and is limited in significance as mentioned above.

HYPOTHESIS ONE

Low voter turnout in Jackson County may be caused by a younger population than the state and national norms that lives in the area due to the presence of Southern Illinois University.

METHOD AND ANALYSIS

When reviewing the 1990 U.S. Census data in Appendix A, it shows that there is a potential electorate of 49,467 people, that is those aged 18 or over. The number of people in each age group shows 8,302 people aged 18 - 20 years (or 17 percent of potential electorate), 8,973 people aged 21-24 years (18 percent), 9,818 people aged 25 - 34 years (20 percent), 7,268 people aged 35 - 44 years (15 percent), 8,531 people aged 46 - 64 (17 percent), and 6,575 people aged 65 or older (13 percent). Previous information discussed relating to previous participation of these age groups shows that potential voters aged 18 - 20 years have voting participation rates of 38.5 percent. Potential voters aged 21 - 24 years have voting participation rates of 45.7 percent. Potential voters aged 25 - 34 years have voting participation rates of 53.2 percent. Potential voters aged 35 - 44 years have voting participation rates of 63.6 percent. Potential voters aged 45 - 64 years have voting participation rates of 70 percent, and potential voters aged 65 and over have voting participation rates of 70.1 percent. Therefore, statistically it can be expected that in Jackson County 3,196 people aged 18 - 20 years will vote, 5,335 people aged 21 - 24 years will vote, 5,223 people aged 25 - 34 years will vote, 4,623 people aged 35 - 44 years, 5,971 people aged 45 - 64 years will vote, and 4609 people aged 65 and over will vote. Thus, when applying national normal voting patterns to Jackson County could expect a vote of 28,957. The figures as previously mentioned for voting participation in the 1988 judicial election in Jackson County was 20,400, a difference of 8,557. Jackson County would meet the state norm of 53 percent if the additional 8,557 people had voted as expected. If the population of Jackson County was consistent with the national norm, the group with the highest population would be 25 - 34 year, it is possible that this discrepancy would be made up. Thus, it may be possible that the cause

of this low turnout in relation to the national average is caused by the larger young population who are less likely to vote, taking low percentage possibilities of turnout. Therefore, another county with an older population could expect a larger turnout if voting followed national norms. With almost 35 percent of the potential electorate being aged 24 years or younger, the effect on the total voter turnout in Jackson County may therefore be expected to be lower than the national norm for as long as younger people continue to vote less than older ones.

HYPOTHESIS TWO

A university town may have higher levels of college educated people, which should therefore translate into an increased voter turnout.

METHOD AND ANALYSIS

When reviewing the 1990 U.S. Census data in Appendix A, it shows that there is a potential electorate of 49,467 people, that is those aged 18 or over. The number of people in each education range shows 3,376 people with 8 yrs or less of schooling (or 7 percent of potential electorate), 4,420 people aged with 9 to 11 years of schooling (9 percent), 9,604 people with 12 years of schooling (19 percent), 21,086 people with 1 - 3 years of college, and 10,981 people with 4 plus years of college. Average statistics discussed relating to previous participation of these educational groups show that as education increases, so does the number of people who vote in elections. These statistics are as follows: people with 8 yrs or less of schooling have average turnout rates of 35.1 percent, people with 9 - 11 years of schooling have average turnout rates of 42.2 percent, people with 12 years of schooling

have average turnout rates of 57.5 percent, people with 1 - 3 years of college have average turnout rates of 8.7 percent, and people with 4 plus years of college have average turnout rates of 81 percent. Therefore, it could probably be expected that in Jackson County, an increase of voting participation for those in the college-educated category would occur that would lead to more turnout, certainly a turnout above national average, as a town in which a university is present certainly has a larger than normal presence of college educated people. When applying national normal voting patterns to Jackson County, the county could expect a vote of 31,952. The figures as previously mentioned for voting participation in the 1988 judicial election in Jackson County was 20,400, a difference of 11,552. Jackson County would meet the state norm of 53 percent if the additional 11,552 people had voted as expected. It may be possible that the cause of this turnout discrepancy is the large numbers of people who are in currently in college pursuing an education. This situation has been determined to be one in which people are more transient and therefore have a larger barrier to voting locally. Thus, although a large proportion of the potential electorate in Jackson County has a college education which should lead to larger voter turnout, the fact that many of them are transient and still studying leads to less turnout, with more restrictions are placed on the ability of those people to vote. The effect on the total voter turnout in Jackson County may therefore be expected to be lower than the national norm for as long as people attending college are less likely to vote than those who are not pursuing an education. (See Table Three, page 25).

HYPOTHESIS THREE

As Jackson County is located in a rural area, turnout will be lower than the national average due to the generally lower income associated with its geography and population.

METHOD AND ANALYSIS

When reviewing the 1990 U.S. Census data in Appendix A, it shows that there is a potential electorate of 49,467 people, that is those aged 18 or over. In order to examine income, however, the number of households is counted rather than individuals. The number of households in Jackson County who have an income of \$15,000 or less is 10,484. This figure is an astonishing 47 percent of the number of the 23,491 households counted. The median income for Jackson County is \$17,500 to \$19,999. National average participation of income groups shows that 40 % of people with an income of \$15,000 vote, whereas 70 percent of those with incomes of \$50,000 or more vote. Thus, it can be expected that in Jackson County the turnout would be lower than the state average if people followed traditional patterns for voting behavior. The figures as previously mentioned for voting participation in the 1988 judicial election in Jackson County was 20,400, only 41 percent of those eligible to vote, but almost exactly the figure that could be expected from a low income population. Jackson County would meet the state norm of 53 percent if the income median was increased. Thus, another county with a population that has a higher income, such as Cook County could expect a larger turnout if voting followed national norms. The effect on the total voter turnout in Jackson County of having residents with low incomes would be that of lowering the expected turnout.

HYPOTHESIS FOUR

Race and gender have no significant influence on voter turnout in Jackson County.

METHOD AND ANALYSIS

When reviewing the 1990 U.S. Census data in Appendix A (page50), it shows that there is a potential electorate of 49,467 people, that is those aged 18 or over. 51 percent of these are male and 49 percent of these are female. 85 percent of these are white, and 15 percent of these are minorities. Previous figures determine that women now vote more than men, and minorities vote less than whites. Thus, it could possibly be expected that in Jackson County the turnout would be higher than the national average if people followed traditional patterns for voting behavior. The figures as previously mentioned for voting participation in the 1988 judicial election in Jackson County was 20,400, only 41 percent of those eligible to vote, not the higher figure that could be expected from a predominantly white population. In relation to gender, however, the presence of almost equal men and women in the county indicates that voter turnout should be higher, as nationally the population consists of more women than men. Thus, another county with a more racially mixed, gender norm population could expect a lower turnout if voting followed national norms. The effect on the total voter turnout in Jackson County of having residents who are white and equally male and female should be a positive effect on turnout, not the negative 12 percent less of the state average that has occurred.

INTERNAL STUDY CONCLUSIONS

It is easy to see how the internal influencing factors were first identified during prior research of judicial elections. Upon comparing most of the election and U.S. Census data, the relationship between factors appears to be quickly recognizable, and Jackson County appears to fit the norms as far as voting averages in the different internal influencing groups are concerned. However, it must be noted that this study of internal influencing factors in Jackson County is extremely limited and offers little beyond conjecture. It merely takes averages from census data and does not have any primary statistics to rely on as to who actually did physically vote in each judicial election. In order to study these factors in a more conclusive manner which allows for correlations between the influencing factors and voter participation to be drawn correctly, data would have to be gathered as to the actual characteristics of those who did vote in the judicial elections selected for review. This is certainly not possible for elections that have already occurred, but most certainly will be in the future. Specifically a actual survey of those who vote would have to be conducted as to the characteristics that one wishes to review of people who are leaving a polling station. Under these conditions, it may be possible to correctly identify internal influencing factors in Illinois. Until then, research into these internal influencing factors should not be taken as accurate or significant.

CONCLUSION OF STUDY IN JACKSON COUNTY

A complete examination of voter and census data in Jackson County indicates that some factors may negatively or positively influence turnout and participation, as well as determine who will

be victorious in each election. It is possible to track external factors such as media coverage of the election to internal factors such as educational level, and when examined in Jackson County it appears that some factors may influence the electorate more extensively than others. In the case of external factors, it appears that voter turnout is more easily swayed by media coverage and the national importance of other voting opportunities being conducted at the time of the election. In the case of internal factors, data to correctly examine the influence of these factors on voter participation is not readily available. Conclusions can only be drawn on averages, an extremely limited study. It must therefore be determined that internal influencing factors in Jackson County cannot be significantly determined with available data without drawing conclusions from insufficient data. When trying to determine whether participation is at high enough levels to justify using the election method in Jackson County alone, with a 41 percent voter turnout, it appears that without a majority vote, it is possible that it may not be an effective method. Probably at least a majority turnout of 50 percent or greater, that is half of the potential electorate in the county, could possibly be considered enough. A turnout such as this may show that the election method of judicial selection is indeed based on popular election. Until then, people who argue democratic theory in support of the judicial selection method of election in place in Illinois will find no support in the data that I reviewed.

CONCLUSION

As previously noted, the United States Constitution extended powers to the Judiciary branch as the third and final branch in its creation of a government. With the extension of these powers and the further extension of full faith and credit to each individual state in the country, the federal judiciary

and the judiciary in each state has tremendous responsibilities. With each state making its own laws in relation to judicial selection within their state, concurrence as to the best method of selection is not evidenced. There are many methods that have both been used and evolved over time.

Each state in the country has a detailed history as to their choice of judicial selection method. These methods have evolved as the philosophies of how the country should be governed has changed, from the view that the state legislature is best qualified to select judges to the philosophy that government is strictly by consent, and that should include judges also. The selection method of election has been chosen in Illinois and has many supporters and also much opposition. It has not been without controversy that Illinois chose to adopt this method. It has also not been without controversy that Illinois chose to keep this method during its last constitutional convention and supporters of both methods continue to debate which system is best.

Looking at this issue on a local county level, one finds that participation in the election process is not necessarily representative of the people as declared by election method proponents. A further study into factors that influence voter participation may allow for some consideration of why the electorate choose not to vote, but many factors remain difficult to examine. One point may be certain, however, a system that relies on popular election cannot probably remain effective if voter participation continues to decline, the functionality of the system is most likely impaired.

The method of judicial selection in each state is determined by the legislation of that state in their constitution. The different methods have evolved over history to present time, although the methods themselves have not changed, each methods popularity has. The system of election that Illinois has chosen has often been attacked by the reform movement, especially as the local electorate participates less and less, and political parties and affiliated associations exert pressure for change and

participate more. Many see national unification as the answer, which may be the case, as a unified system is less easily questioned than an individual one. What is certain, however, is that the debate will continue whichever system is chosen. This debate should probably be driven by data and by objective standards as opposed to attachment to democratic principles.

APPENDIX A

JUDICIAL RETENTION ELECTIONS
JACKSON COUNTY, ILLINOIS

YEAR	JUDGE	RETAIN JUDGE?		% YES	TOTAL VOTES CAST	MEAN VOTER TURNOUT
		YES	NO			
1976	Clayton	11,547	3,497	77	15,041	15,594
	Kunce	12,843	4,349	77	16,733	
	Lewis	11,652	3,356	78	15,008	
1978	Chase	6,170	2,692	70	8,862	8,884
	Oros	6,605	2,840	74	8,905	
1980	Goldenhersch	10,059	4,468	69	14,527	15,139
	Richman	11,175	5,384	68	16,559	
	Howell	9,890	4,443	69	14,333	
1982	Lewis	9,146	3,307	73	12,553	12,247
	Bigler	8,503	3,610	70	12,113	
	Green	9,465	3,612	78	12,077	
1984	Henshaw	11,754	4,662	72	16,416	16,674
	Williamson	11,858	4,564	72	16,422	
	Spomer	11,635	4,841	71	16,476	
	Oros	11,557	4,816	70	16,473	
	Karns	11,889	5,161	70	17,050	
	Jones	12,455	4,756	72	17,211	
	Richman *	6,995	5,795	55	12,790	
1986	Howell	7,378	3,417	68	10,795	11,195
	Haney	7,673	3,080	71	10,753	
	Howerton	7,810	2,922	72	10,732	
	Lowery	7,277	3,088	70	10,365	
	South X	6,791	4,944	58	11,735	
	Richman *	6,995	5,795	55	12,790	
1988	Lewis	12,291	3,344	79	15,635	15,318
	Bigler	11,187	2,914	75	15,001	

* Barely received recommendation from Illinois Bar Association

X Strongly Not Recommended by Illinois Bar Association

All candidates received recommendation from the *Southern Illinoisan*

APPENDIX B

1990 US CENSUS DATA

Jackson County

PERSONS

Universe: Persons

Total	61,067
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HOUSEHOLDS

Universe: Households

Total	23,491
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SEX

Universe: Persons

Male	31,396
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Female	29,671
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RACE

Universe: Persons

White	51,991
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Black	6,342
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American Indian, Eskimo, or Aleut	109
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Asian or Pacific	2,178
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Other race	447
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AGE

Universe: Persons

Under 1 year	598
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1 and 2 years	1,409
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3 and 4 years	1,355
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5 years	692
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6 years	691
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7 to 9 years	2,048
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10 and 11 years	1,306
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12 and 13 years	1,210
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14 years	574
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15 years	552
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16 years	585
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17 years	580
18 years	1,890
19 years	3,168
20 years	3,244
21 years	3,151
22 to 24 years	5,822
25 to 29 years	5,409
30 to 34 years	4,409
35 to 39 years	3,870
40 to 44 years	3,398
45 to 49 years	2,559
50 to 54 years	2,051
55 to 59 years	1,913
60 to 62 years	779
62 to 64 years	1,229
65 to 69 years	1,888
70 to 74 years	1,637
75 to 79 years	1,432
80 to 84 years	912
85 years and over	706

EDUCATIONAL ATTAINMENT

Universe: Persons 18 years and over

Less than 9 th grade	3,376
9 th to 12 th grade, no diploma	4,420
High school graduate (includes equivalency)	9,604
Some college, no degree	16,959
Associate degree	4,127
Bachelor's degree	6,415
Graduate or professional degree	4,566

HOUSEHOLD INCOME IN 1989

Universe: Households

Less than \$5,000	3,765
\$5,000 to \$9,999	3,938
\$10,000 to \$12,499	1,409
\$12,500 to \$14,999	1,372
\$15,000 to \$17,499	1,231
\$17,500 to \$19,999	1,140
\$20,000 to \$22,499	1,021
\$22,500 to \$24,999	889
\$25,000 to \$27,499	987

\$27,500 to \$29,999	.....	666
\$30,000 to \$32,499	.....	840
\$32,500 to \$34,999	.....	538
\$35,000 to \$37,499	.....	650
\$37,500 to \$39,999	.....	444
\$40,000 to \$42,499	.....	474
\$42,500 to \$44,999	.....	381
\$45,000 to \$47,499	.....	430
\$47,500 to \$49,999	.....	430
\$50,000 to \$54,999	.....	559
\$55,000 to \$59,999	.....	453
\$60,000 to \$74,999	.....	958
\$75,500 to \$99,999	.....	531
\$100,000 to \$124,999	.....	157
\$125,000 to \$149,999	.....	106
\$150,000 or more	.....	122

**BALLOT FOR JUDICIAL CANDIDATES
SEEKING RETENTION IN OFFICE**

VOTE ON THE PROPOSITION WITH RESPECT TO ALL OR ANY OF THE JUDGES LISTED ON THIS BALLOT. NO JUDGE LISTED IS RUNNING AGAINST ANY OTHER JUDGE. THE ONLY QUESTION IS WHETHER EACH JUDGE SHALL BE RETAINED IN HIS PRESENT OFFICE.

CIRCUIT COURT JUDGE

SHALL GEORGE OROS be retained in office as JUDGE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT?	YES 122 →
	NO 123 →
SHALL MICHAEL J. HENSHAW be retained in office as JUDGE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT?	YES 124 →
	NO 125 →
SHALL JAMES R. WILLIAMSON be retained in office as JUDGE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT?	YES 126 →
	NO 127 →
SHALL STEPHEN L. SPOMER be retained in office as JUDGE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT?	YES 128 →
	NO 129 →
SHALL PAUL S. MURPHY be retained in office as JUDGE OF THE CIRCUIT COURT FIRST JUDICIAL CIRCUIT?	YES 130 →
	NO 131 →

APPENDIX C

JACKSON COUNTY

Shall the Property Tax Extension Limitation Law (35 ILCS 200/18-185 through 18-245), which limits annual property tax extension increases, apply to non-home rule taxing districts with all or a portion of their equalized assessed valuation located in the County of Jackson?

YES 140 →

NO 141 →

JUDGES INITIALS

**SPECIMEN BALLOT
GENERAL ELECTION**

JACKSON COUNTY, ILLINOIS
ELECTION TUESDAY, NOVEMBER 5, 1996

Gene J. Carl
Jackson

I HEREBY CERTIFY THE FOREGOING SPECIMEN BALLOT IS AN OFFICIAL BALLOT TO BE USED IN THE GENERAL ELECTION IN JACKSON COUNTY, ILLINOIS, TUESDAY, NOVEMBER 5, 1996.

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