AN EVALUATION OF JUDICIAL ELECTIONS IN MICHIGAN, 1948-1968

Thesis for the Degree of Ph. D.
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ABSTRACT

AN EVALUATION OF JUDICIAL ELECTIONS
IN MICHIGAN, 1948-1968

By

Susan Blackmore Hannah

The Michigan Supreme Court consists of seven Justices, nominated by partisan convention, but elected on nonpartisan ballots. The Circuit Court of Michigan consists of some one hundred trial court judges who are nominated by nonpartisan petition and elected on nonpartisan ballots. The dissertation is a study of the operation of the elections for these two judicial offices along three dimensions: voter participation, electoral competition, and the bases of electoral competition.

The first objective of the study is to determine if judicial elections in Michigan are truly elections. The levels of voter participation and electoral competition in nonjudicial elections for comparable state office are used as operational standards for "democratic" elections.

The second objective of the study is to determine if Michigan judicial elections are nonpartisan. We wish to know if voting alignments in judicial elections match those of partisan nonjudicial elections, and, if not, what other than partisanship are the major bases of support in judicial competition.

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It was found that the effectiveness of the judicial election as an election varies with the level of the court, the electoral situation, and the structure of the constituency. Supreme Court elections generate competition because of the partisan nomination system, compromised occasionally by incumbency. They generate only moderate voter interest, more in rural areas than in metropolitan. The bases of competition for Supreme Court are political, with the strength of the candidate's party and his own political experience weighing the most heavily.

Like Supreme Court elections, Circuit Court elections operate under a constitutional "double standard". Because the judicial incumbent is allowed a ballot designation, his return to office is usually assured and only vacancies are open for competition. In practice, two distinct adaptations of this double standard have developed. In the single-judge, multi-county, less populous circuits, an incumbent judge serves unchallenged on "good behavior." Upon a vacancy, however, the entire political community participates in the election of a successor, an election based upon political office and county loyalty. In the metropolitan, single-county, multi-judge circuits, an incumbent is more likely to be challenged during his tenure, but fewer in the political community are likely to be aware of, or interested in, the contest. The Court's "attentive publics" who make up the metropolitan judicial electorate are more responsive

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It was found that, in effect, Supreme Court elections are partisan, while Circuit Court elections are nonpartisan. A Supreme Court incumbent can win when his party doesn't only if he has unusual popularity, or a powerful political base of his own, or a weak challenger. Circuit Court incumbents, however, are rarely threatened by partisan fortunes, their only threat being the grudges or ambitions of court-related political officers. The prevalence of judicial candidates, for Supreme Court and Circuit Court, with political office experience has implications for the administration of justice in Michigan.

Having noted the existence of "judicial cultures" and the involvement of nonjudicial political office-holders in the judicial electoral system, the dissertation concludes that we need further investigation into the operational as well as personnel ties between the legal and political systems of local governments.

AN EVALUATION OF JUDICIAL ELECTIONS IN MICHIGAN, 1948-1968

By

Susan Blackmore Hannah

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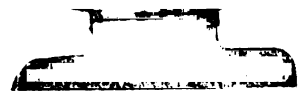
A number of people assisted in the preparation of this dissertation. At the outset I wish to acknowledge their special contributions and thank them publicly for their help. My greatest tribute goes to two determined women, Eleanor Blackmore and Sarah Hannah, without whose moral and material support the dissertation would never have been completed. The thesis committee, particularly its chairman Harold Spaeth, helped in the planning stages of the study and was patient with its erratic progress. My husband, Robert Hannah, has been at once prodding and tolerant. My sister, Martha Atwood, assisted with the children, leaving me free to work. I am most grateful to them all.



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CHAPTER I

OBJECTIVES, THEORY, AND METHODOLOGY

Objectives

The Michigan Supreme Court consists of seven Justices who preside over the state's highest court of appeal. They are nominated by partisan convention but elected on nonpartisan ballots for eight-year terms. The Circuit Court of Michigan consists of some one hundred judges, organized into circuits, who preside over the trial courts of general jurisdiction. They are nominated by nonpartisan petition and elected on nonpartisan ballots for six-year terms. Vacancies between elections in either office are filled by gubernatorial appointment.[1] The dissertation is a study of the operation of the elections for these two judicial offices along three dimensions: voter participation, electoral competition, and the bases of electoral competition.

The first objective of the study is to determine if judicial elections in Michigan are truly elections. The levels of voter participation and electoral competition in nonjudicial elections for comparable state office are used as operational standards for "democratic" elections.[2] Does participation and competition in judicial elections measure up to these standards? Is the performance of judicial

elections consistent, or does it vary with such factors as political structure or electoral situation?

The second objective of the study is to determine if Michigan judicial elections are nonpartisan. Given the unusual nomination procedure for Supreme Court Justices, the constitutional requirement of nonpartisan judicial elections is seriously weakened. Are voting alignments in Michigan's nonpartisan judicial elections really partisan ones? What role, if any, do nonpartisan bases of competition--such as candidate experience, geographic loyalty, ethnic appeal--play in judicial elections? Are voting alignments consistent, or do they vary with the office, location, or electoral situation?

The third objective of the study is a general one, to see the state judiciary in relation to other political institutions in the state political system. Many students of judicial process have called for a better model of the place of the courts in the ongoing political process. Focusing particularly on the recruitment and selection of judicial personnel (which is that point in the political process emphasized here), Herbert Jacob has called the state of our knowledge a "factual vacuum".[3] Hopefully the collection and presentation of basic information about the operation of state judicial elections in this research will begin to fill the gaps in our knowledge of judicial process.

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Research Design

The study is designed to produce a typology of judicial electorates based on the factors of participation, competition, and bases of competition. The basic unit of analysis is the judicial electorate. A judicial electorate is the set of voters casting a ballot in one of the elections for Supreme Court or Circuit Court between 1947 and 1966. Each electorate will be measured against a standard established for each of the three factors and assigned a rank. Chapter II will analyze the electorate terms of their size, relative to electorates for nonjudicial office. Chapter III will assign electorates ranks according to their degree of competitiveness. Chapter IV will identify the major bases for competition in each of the electorates.

Chapter V will explore the relationships between the three factors. Does competition affect participation? Is the type of competitive base predictable by the type of competitive electoral situation? Are there clear patterns of relationships between participation, competition, and competitive base which are grouped by the factor of electoral situation or circuit type? From this final typology, therefore, the basic operational patterns for judicial elections in Michigan can be identified.

Theory

Judges as political officers. In this study the judiciary is conceptualized as a political institution,

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interacting with other political institutions and interests in the larger political system. This conceptualization is important to the logic of the research because it justifies the court's liability to judgment under conventional political norms.

The logic of the "political jurisprudence"[4] approach is practically unassailable, either in fact or theory. Politics is essentially conflict; conflict arising over, and in the process of making authoritative decisions about goals and values for a society. In the role of adjudicator, courts are inevitably drawn into the very center of the political process. In any question about the application of the law, courts must make decisions that privilege one party over another, or "allocate values" in Professor Easton's phrase.[5] Choice as Justice Benjamin Cardozo wrote, is the inescapable fact of judging. The issue is not when, for the choosing is throughout, but how and on what grounds.[6]

As political institutions, courts are subject to analysis by the same models of decision-making applied to other political institutions. Mentors of this political process approach to state courts are Professors Herbert Jacob and Kenneth Vines. Their Studies in Judicial Politics was built from the proposition that state courts have long been actors in the state political system.[7] They argue that courts have been essentially "conservative" agents, acting in accord with the policies of the current political power holders.

The legitimacy of judicial authority. The sensitivity of the judiciary to state political trends raises the issue of a second theoretical issue, the legitimacy of judicial authority. From what source do state judges draw the authority to make political decisions? From the inherent authority of the Law? Tradition? or popular consent? A recent survey showed that a majority of those polled believed judges should be impartial and independent, but also, judges should be accountable.[8] The issue of judicial legitimacy presents itself as another paradox in the American political culture.

As a preface to a study of judicial elections in Minnesota, Jack Ladinsky and Allan Silver review the debate over judicial legitimacy.[9] Essentially they point out that one's opinion on the legitimacy of judicial authority is determined by one's conception of the judicial role. If one holds the orthodox tenet that judges are majestic, impartial translators of immuntable law and Justice, then the authority of judicial decision is inherent. To the traditionalists, judicial authority is legitimized by legal and traditional sanctions.[10]

If, however, one believes that judges are active political policy makers, daily interpreting the laws in order to deal with conflicts between groups and ideas in society, then judicial authority is legitimized, in a democracy, by popular consent.[11] As Peltason has candidly observed, "The Constitution, or anything else, is what the judges say it is

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The present research begins from the proposition that judges are political officers. In a constitutional democracy, therefore, they should gain authority, recognized as legitimate, to make political decisions from "the people". This is conventional democratic theory. Either directly or indirectly, all political officers in a democracy theoretically gain their authority from election.

One cannot, however, ignore so easily the "myth of judicial independence".[13] According to traditional persuasion, judges, apart from other political officers, are impartial and independent. And it is from this claim to fairness and impartiality, argue the traditionalists, that judges derive their authority to judge. Indeed, from the founding of the United States, an independent judiciary, above the controls of any other branch of government and the whims of public passions, has been a keystone of democratic government.

Alexander Hamilton, writing in the Federalist Papers in defense of executive appointment of judges, argued that "nothing will contribute so much as (the permanent tenure of judicial officers) to that independent spirit in judges which must be essential to the faithful performance of so arduous a duty."[14] Even the Antifederalist authors, who feared the absolute independence of the proposed Supreme Court, believed

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that "it would be improper that the judicial should be elective."[15] The core of the concept of an independent judiciary then is freedom from the very kind of popular accountability required by the election process. The debate over the propriety of judicial elections is a debate between theories of the judicial function.[16]

Methods of judicial selection. In the American experience, judges are thought to derive their authority from tradition and from the people. They are required to be at once above popular control and subject to it.[17] Methods of officer selection, it has been proposed, are primary indications of the sources of that officer's political legitimacy. Methods of judicial selection, therefore, must represent a compromise between complete independence and complete popular control. The national government has the President appoint its judges for life (independence), with the advice and consent of the Senate (accountability), and the threat of impeachment for incompetence (accountability).[18]

As of 1968, there were five different methods of state judicial selection.[19] Legislatures have exclusive power to select some or all judges in five states (accountability) for long terms (independence). Eight states allowed the governor or a local governing authority to appoint Judges (accountability) for life (independence). Ten states have adopted some form of the American Bar plan whereby judges are appointed by the governor from a list devised by a

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commission of laymen, lawyers, and judges (independence) and then after a trial term, are elected (accountability) to a life term (independence). All provide for a judge's removal if he appears incompetent or unable to fulfill his duties (accountability).

Over half of the states have elective judiciary: fourteen of these hold partisan elections; fourteen, nonpartisan. It is the purpose of this research to describe exactly what compromise between judicial independence and judicial accountability has been struck in the Michigan nonpartisan judicial election system. By subjecting judges to direct election for relatively short terms, Michigan has constitutionally opted for a method near that pole of the debate holding judges subject to popular control. How truly have Michigan judicial elections held to this ideal?

The selection of judges by direct election was adopted in the wave of Jacksonian democracy of the 1830's and 1840's. The nonpartisan ballot for judicial elections was a goal of the "good government" movement of the Progressive Era. Convincingly, Evan Haynes has documented the major reasons for the inclusion of judges in the direct election movement. He shows beyond a doubt that it was done by those who saw the judiciary principally in its political policy-making role. Therefore, believing himself in a less activist judicial role, he complains that "whatever may be the best provision for the judiciary, it seems safe to say that the

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solution of that problem which was adopted in the United States a century ago was arrived at almost completely without regard for the particular considerations of policy and principle which arise out of the nature and functions of the judicial arm of government...."[20]

In Michigan, from its earliest state history, the proponents of judicial accountability through periodic elections have held sway. In a realistic defense of judicial elections in Michigan, Stanley E. Beattie wrote in the Michigan Bar Journal that the history of the judicial selection issue in the state shows "The people are determined that they shall have the say not only as to what the law shall be but as to those who shall make, enforce and interpret the law."[21] Beattie emphasizes the fact that any nomination system is dominated by an oligarchy of lawyers whose interests are their clients. The movement of democracy, he asserts, is toward democracy in judicial selection, not away from it.[22]

Detractors of judicial elections in Michigan believe that "To secure the greatest measure of independence and quality in judicial talent, the courts should be taken out of politics." Among the deficiencies of the elective system are cited "Confusion and inadequate information on the part of the voters confronted with 'bed sheet ballots' for judicial office"; the hesitation of many qualified lawyers to seek judicial office in fear of the electoral process; and "undue dependence" on men who volunteer themselves and

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on "name candidates"; and on the "need of incumbent judges to engage in political activity for their reelection."[23] Despite this opposition, a number of attempts over the last fifty years in Michigan to institute some kind of appointment system have failed.[24]

Research on judicial selection. The few who have studied the actual operation of various judicial selection methods in the states question the merit of one particular method over another. Looking at the quality of the product, the judge, some have implied that political culture is more significant than the method of selection.

Adolf Berle, Jr. argues that the public will get as good judges as it demands no matter the selection procedure.[25] Watson and Downing's thorough examination of the first twenty years of the Missouri Plan of judicial selection in Missouri credit Plan judges with higher performance marks than elected judges from fellow lawyers.[26] Yet, in summary the authors confess that the political environment of the state is probably more influential in determining the quality of judicial personnel than the selection method itself.[29]

The difference that the method of judicial selection can make, however, is in the groups advantaged in access during the selection process. Speaking of the operation of the Missouri plan, Watson and Downing write:

> Whether the Plan eliminates politics in judicial selection is a false issue. Instead, the key issue is whether the particular kind of politics that evolved

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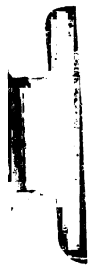
> under the Plan adequately represents the legal, judicial, public, and political perspectives thought to be important in determining who will sit on the bench.[28]

They state bluntly that the Plan was designed to encourage that variety of interests thought to have a legitimate concern in the selection of judicial personnel. They also state bluntly that "of the various groups that have a conceivable interest in the courts, the interest of the general public is the least substantial."[29]

In Missouri the change in selection methods did cause a change in the priority of groups interested in influencing judicial selection. Local partisan forces were played down, and the governor, the organized Bar, the sitting judiciary, and the courts' "attentive public", were played up. For Watson and Downing the important question is whether these groups adequately mirror the social and economic interests that come to the court for resolution. Can lawyers be trusted as caretakers of the public interest to reflect the needs and demands that society makes on the courts?[30]

One focus here is upon the groups advantaged by the nonpartisan judicial electorate. Who are they and do they adequately mirror the "dominant interest within the community"? Theoretically, able lawyers can be recruited as judicial candidates because they will not have to beg for party nominations or repay party patronage.[31] Ideally therefore special group interests will not be able to dominate judicial selection. At the bottom of nonpartisan theory, as Robert



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Wood perceptively notes:

> There is a belief that the individual can and should arrive at his political convictions untutored and unled; and expectation that in the formal process of election and decision making a consensus will emerge through the process of right reason and by the higher call to the common good . . . the citizen, on his own, knows best. . . .
>
> As a theory, nonpartisanship harks back to the traditional concept of local government, to Jefferson's high expectations for the rational capacity of the yeoman, and to that strand in American political reasoning that relies on unfettered individualism.[32]

That such "untutored" intelligence can be trusted to select able judges strikes many (lawyers, particularly) as extreme naivete.[33] Recent studies of judicial elections show that if professionals have little confidence in the ability of the electorate to vote for the most qualified lawyers, the electorate trusts itself even less. As a preparation for similar analysis of Michigan judicial electorates, it is relevant to review these studies.

In a study of "Public Attention to the Courts in Wisconsin," Jacob illustrated what he believed to be the inability and unwillingness of the electorate to exert control over the judiciary through elections. He found that elections for supreme court and circuit court justices are essentially different from non-judicial electoral contests because they fail to serve as feedback devices, channels through which popular attitudes can be brought to bear on the courts. He found judicial electoral contests lacking in the basic means for public control--that is party involvement, issue confrontation, or competition.[34]

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Jack Ladinsky and Allen Silver, who also studied Wisconsin, agree with Jacob that the judicial electorate is completely unique. Focusing on what seemed to them to be a particularly, issue-oriented campaign for the Supreme Court in Wisconsin, the authors found the electorate unaware of, or at best unwilling to use, its own strength. In public opinion polls, the public appeared to believe there existed radical judicial innovations in public policy. Yet, the electorate either acquiesced in the myth of judicial independence or ignored its ability to use the vote to remove the offending judges.[35]

Throughout the literature, researchers support these general propositions. Beginning with Kenneth Vines' study of the election of Supreme Court justices in Louisiana, it is over and over repeated that judicial elections practically always assure long and secure tenure in office, rarely offering any problems to an incumbent judge.[36] Everywhere it is taken as axiomatic, by the electorate as well as the judiciary, that a judicial officer, once elected, serves on good behavior. The compromise between judicial independence and judicial accountability becomes clear. Judges are initially elected (accountability), but never opposed in a bid for re-election (independence).

Henderson and Sinclair support this rule for Texas in a study showing that public opinion is of little actual concern in the selection of Texas state judges, who are

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nominally elected. In fact, in Texas more state judges reach the bench first by appointment than by election, a step away from direct election.[37] Malcolm Moos summarizes this corollary to the "judicial election-good behavior" rule for Minnesota, writing that "the nomination and election of judges on a nonpartisan ballot has actually been a plan of filling judicial posts by executive appointment, with popular ratification."[38] Emmett Bashful finds the corollary true for Florida;[39] John Wood, for Oklahoma;[40] James Herndon asserts that it is true nationally.[41]

For Michigan, Glendon Schubert proves how powerful a policy tool judicial vacancy appointment can be for a governor. In a matter of four years, a Democratic governor moved the state supreme court from one position to its opposite just by "packing" the Republican court with Democratic appointees.[42] Moos, in his Minnesota study, makes an interesting point that while incumbent judges are practically unassailable at election time, gubernatorial vacancy appointment becomes the device for asserting popular control over the judiciary: "Thus it is possible for a governor who has received a mandate from the people to make judicial appointments acceptable to them."[43]

It appears that a total reversal of roles and functions can occur. In order to end the tyranny of executive appointment over the courts, Jacksonian principles determined that judges be popularly elected, so to express the public

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interest in judicial decisions. Haynes, to recall only one, has stated that this decision was never thought through and never took into consideration the peculiar image that judges hold in the American political culture.[44] In practice, therefore, the selection functions have been radically altered. Elections work to keep a judge in office for good behavior, allowing him immunity from the pressure of public demands. It is through appointment by a popularly elected executive that the courts are kept aware of changing public will. Here election becomes the means of judicial independence and gubernatorial appointment the means of judicial accountability.

The purposes of this first section were to state the objectives of the research, to discuss important theoretical issues and to review the findings of other research on judicial selection. In summary, the objective of the study is to evaluate the effectiveness of nonpartisan judicial elections in Michigan as democratic means of personnel selection. This will be done by measuring the performance of these elections against conventional norms. Theoretically, judges, as political officers in a constitutional democracy, derive their legitimacy in part from the means of their popular selection. Judges have usually been excepted from the principle of direct election however because of the co-equal desire for an independent and impartial judiciary. All judicial selection methods, therefore, operate as compromises

between the ideals of judicial accountability and judicial independence. Experience has shown judicial elections, seemingly a manifestation of the norm of accountability, to be as subject to this compromise as any other method of judicial selection.

In the remainder of Chapter I, research methodology will be explained and the history of the Michigan court system presented. The section on methodology will define the general methodological orientation of the research. Each dimension of the research problem--participation, competition, and bases of competition--will then be explored in terms of how it is to be measured. The section on court history is intended to describe the structure and jurisdiction of the two courts involved, and to review the development of the method of judicial selection in Michigan.

Methodology

Research is conducted by techniques of analysis that, apart from the hypothesis they attempt to test, have a theory and philosophy of their own.[45] What one proves is often determined by how one proves it. It is important, therefore, to consider this research as conventional aggregate voting analysis, with all the assumption and pitfalls that entails.[46]

Aggregate voting analysis was developed first by Stuart Rice in his Quantitative Methods in Politics (1928),[47] and perfected by V. O. Key, Jr.[48] into a highly perceptive tool of analysis. The advantages of areal voting analysis are

that it can reveal patterns of voting behavior over time, point out their continuity or lack of it, and make comparisons between general social or geographical groupings on these bases.[49] Aggregate analysis cannot make predictions about individual voting behavior. The smallest unit of analysis here is the county judicial electorate because voting data is available in that form.

The methods of research here are also influenced by the newer systems theory of voting behavior.[50] Simply stated, the judicial election does not exist in a vacuum. It is affected by legal and structural factors, by the socio-economic characteristics of its electorate, and by its relationships to other, nonjudicial electoral subsystems.

In studying these electoral subsystems, it has been shown that electorates are office-defined, that is, different political offices have different electorates. Those who vote in state elections may not concern themselves with local elections, and vice versa.[51]

Another definition is illustrated by Norman C. Thomas' study of four Michigan referenda on calling a state constitutional convention and then approving a proposed constitution. He showed that as partisan issues decreased, electorate divisions were formed along other dimensions.[52] Not only are electorates office-defined, but they are partisan or nonpartisan-defined as well.

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The discussion now turns to each of the dimensions of judicial electoral behavior considered here--voter participation, electoral competition, and bases of electoral competition. The measurement techniques and comparative standards for each will be described.

Measuring voter participation. For purposes of this research, a "democratic" election has been defined as one with "acceptable" voter participation and electoral competition. The measurement task here is to establish a quantitative standard for "acceptable" voter participation. Participation in judicial elections can then be measured against this standard and assigned a rank according to how closely the standard is met.[53]

The "acceptable" participation standard is participation in nonjudicial elections of similarly defined geographical electorates. Participation in Supreme Court elections will be measured against participation in state gubernatorial elections. Both share a statewide boundary. Participation in Circuit Court elections will be measured against congressional, or state senatorial election participation. All three share roughly similar district boundaries.

If judicial turnout is approximately the same as nonjudicial turnout, the judicial election is defined as "open". Open judicial elections, involving most of the active electorate, encourage the possibility of broad judicial accountability through the ballot, the democratic norm.

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If judicial turnout is considerably less than non-judicial turnout, the judicial election is defined as "closed". A judicial election that operates as a "closed" election could be decided, if it is competitive, by a few interested voters. It could also be an indication, competitive or noncompetitive, of a public attitude of indifference toward the judicial election, or unwillingness to use it as a means of political control. Closed elections admit the possibility of accountability either to a few, or to none.

Meaning of participation. The actual motives of voters in voting have been analyzed on three levels. First, sociologists point out many of the social characteristics and conditions associated with higher turnout. In Seymour Lipset's summary, these include income level, education, occupation, sex, race, age, group membership, and conditions of electoral relevance, information access and group pressure.[55]

Second, V. O. Key and other political scientists emphasize the political correlates of voting. These standardly include the electoral rules, characteristics of the party system, regional situations, and circumstances of particular elections--whether or not they are competitive, "important", or offer clear alternatives.[56]

Third, there is the search for the attitude correlates of voting and nonvoting, represented by the work of

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Angus Campbell and his associates. They find voting to be behavior generated by orientations toward politics rather than an exclusive function of personality. The voter is more psychologically involved in politics than the nonvoter. The voter has interest in campaign for office, cares about who wins, has a sense of political efficacy and a sense of citizen duty.[57]

The aggregate data analysis approach of the present research cannot handle Campbell's hypothesis that judicial electors see their vote as an assertion of popular control over the judiciary (political efficacy). Survey analysis is the proper methodology for such an inquiry.

Aggregate analysis can, however, make statements about the relationships of political and social characteristics and voter participation. Chapter Two is intended to show what general social and political factors are associated with high turnout for judicial elections. While, therefore, no attempt is made to ascertain what judicial voting means to the individual, it is intended to devise reasonable hypotheses about what judicial voting rates mean for a political system.

V. O. Key asserted that turnout rates do provide a rough measure of the extent of the political involvement within the population. If affairs of state are conducted in such a way that extremely large proportions of the citizenry felt voting was pointless, the political health of the system

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would not be good.[58] Similarly, if voter participation in judicial elections is woefully low (because of no competition or no interest), it would be argued that the "political health" of the judicial election was not good, indeed that the election was in fact a sham.

In Gabriel Almond and Sidney Verba's Civic Culture the relation between voting rates and the character of the political system is given several possibilities, each indicating the character of that system's political culture.[59] In their Minnesota study, previously mentioned, Ladinsky and Silver likened the judicial elector to a model citizen of the "civic" political culture. In the civic culture, voters have a high perception of potential influence and a lower level of actual influence.[60]

Particularly relevant to the present research is the Almond and Verba proposition that there are political subcultures within a large national political culture.[61] There is a real debate over the validity of this idea among those who study local politics.[62] The positive support is especially strong, however, when considering nonpartisan elections, such as our nonpartisan judicial election. Take away nationally committed party labels and the more familiar cues of executive or legislative office, then purely local divisions of interest are allowed to show.[63]

The relation between political culture and voting rates has been mentioned to prepare for the possibility of

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differences between Michigan counties in their judicial electoral patterns. If voters, by voting, are expressing at least a positive orientation toward politics, does this rate of expression vary between local communities in judicial elections and not in other elections? Is the existence of a "judicial-political" culture a possibility?

Measurement techniques. A technique designated "percentage ballot" (abbreviated in the text as "% Ballot") was developed to score voter participation in elections for judicial office. It is a comparative ratio, expressing the relationship between turnout for judicial and nonjudicial office. Specifically the total votes cast by an electorate for a judicial office is divided by the total votes that same geographical electorate cast for the "top of the ballot" office.[64] "Top of the Ballot" identifies the partisan non-judicial office which, statewide, received the highest total of votes cast. This is used as an estimate of the number of voters who went to the polls that election. Recently the Michigan Official Census of Voters reports the size of the electorate. To standardize, however, the "% Ballot" measure is maintained throughout.

Each judicial electorate will be scored on its participation in each judicial election. Electorates will also be scored cumulatively, for all judicial elections in which they participated during the 1947-1966 study period. This cumulative score will be rated "consistent" or "inconsistent".

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The lack of consistency may indicate the significance of electoral situations in an electorate. Consistent "% Ballot" scores, on the other hand, may suggest a stable "judicial-political" culture.

The "% Ballot" score will also be used to relate voter participation to various social, structural, and political factors. Do scores vary with population? with circuit structure? with electoral situation?

Basic interpretation of the "% Ballot" score is that the higher the score, the more "open" the judicial electorate and the more nearly the judicial election meets democratic norms. The lower the score, the more "closed" the electorate, and the less likely the judicial election is conforming to democratic standards.

Measuring judicial electoral competition. The objective of Chapter III is to rank judicial electorates according to their degree of competitiveness. Using the conventional standard of 40%, an election is defined as "competitive" if the loser got at least 40% of the total votes cast, and the winner no more than 60%. This is adaptable to multi-winner circuit court elections because "total votes cast" in these cases is estimated by dividing the sum of each candidates' votes by the number of possible winners. This method assumes each voter voted for as many places as was permissible.

The conception of competition as a proportion of the votes cast is a narrow one. The phenomenon of political

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competition is multi-dimensional, multi-faceted. Recent development of spatial models of competition dramatize this subtlety and complexity. Particularly relevant are the models of the possible competitive patterns for different offices over time.[65]

A range of different competitive patterns within one office is also a possibility. Because of the hypothesized importance of incumbency in judicial elections, the presence or absence of an incumbent in the election could affect the degree of competition. Electoral situations, therefore, may have different degrees of competition.

Because of the supposed special status of incumbents in judicial elections, the degree of competitiveness in incumbent elections becomes a focal test for the democratic norm. Uncontested incumbent elections may mean satisfaction, ignorance, or indifference. It is impossible through aggregate data to perceive the meaning of no competition. Therefore, in this analysis, in order for the judicial election to fulfill the norm of democratic elections, a judicial incumbent must be challenged for re-election. With no challenge, there is no chance for judicial accountability through the ballot. The absence of incumbent competition will be the surest proof that judicial elections have been perverted into means of assuring judicial independence, rather than means of judicial accountability as initially intended.

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Political norms, as all other ideals, are rarely attained in this uncertain world. The norm of electoral competition is likewise at best only approximated in the complexity of political life. One of the greatest obstacles to its attainment is the uneven distribution of party loyalties over the electorate. While party loyalties are not supposed to influence judicial electoral behavior, perhaps incumbent loyalties serve something of the same function in that it may prove an obstacle to competition.

Given the political system-wide failure to achieve electoral competition for every political office, the standard against which judicial electoral competition is to be judged must be modified realistically. The rates of competition for state offices with comparable electorate definitions will be used, therefore, as the nearest approximation to the norm. Competition for Supreme Court office will be measured against competition for Governor; Competition for Circuit Court office, against competition for United States Congress and state Senator.

Those judicial elections with rates of competition comparable to rates of competition for nonjudicial office will be considered within the range of the democratic norm. Those judicial elections which do not have commensurable rates of competition will be judged as failing to meet even the broadest interpretation of a democratic election.

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Measuring the bases of competition. It is the objective of Chapter IV to prove (or disprove) the nonpartisanship of Michigan judicial elections. In order to ascertain the "nonpartisanship" of judiciaI elections by the use of aggregate data, the task is to identify in gross terms the principal bases of competition in contested judicial elections. The electoral divisions in judicial elections will be correlated with various known partisan, social, geographical, and candidate experience factors. If competition is found to be based upon any lines--social, geographical, incumbency, candidate experience--other than partisan, the hypothesis will be confirmed.

An analysis of the bases of competition in judicial elections has the additional advantage of giving a real insight into the recruitment of judicial personnel. Upon what bases of support do candidates challenge an incumbent, or vie for a vacancy? Which bases, or combinations of bases, appear to be the most successful for winning judicial office in Michigan? Do they vary between the Supreme Court and the Circuit Court? among electoral situations? among circuit types?

Briefly, the standards established to identify bases of competition are described as follows. First, bases of competition are identified as partisan if the percentage of the total votes cast given to the judicial winner is within ten percentage points of the vote percentage given to the

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partisan winner in the same electorate. Again, for Supreme Court, the partisan comparison is with the office of governor; for Circuit Court, with that of Congressmen. An additional requirement is that the "% Ballot" of the judicial electorate be at least 85%. Only as the size of the judicial electorate approaches that of the partisan one can this measurement technique have any validity.[66]

A secondary method of identifying partisan influences depends upon finding out the partisan affiliation of each judicial candidate. If partisan candidate and judicial candidate of the same party get the same proportion of the votes, obviously there is a strong partisan influence on the judicial election. This method can be applied readily to Supreme Court elections since partisan affiliations of the candidates are well-known. It will also be applied to Circuit Court elections where the necessary partisan affiliation information is available.

Second, bases of competition are described as non-partisan if any of the following criteria are met: (1) The judicial incumbent gets 70% or more of the votes cast. Bases of competition are described as "incumbent". (2) In multi-county circuits, no candidate carries all counties, but each candidate carries his own home county. Bases of competition are described, partly, as "sectional". (3) The job of each judicial candidate prior to the election is identified as "private" or "public", in order to ascertain

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the principal bases of personal support used to underwrite a judicial candidacy. If clear differences in the experience of candidates appear, bases of competition are described, partly, as "candidate experience". (4) Comparisons between the types of competitive bases in multi-county and single county circuits may suggest that social-economic factors (population) have an influence on the bases of competition in judicial elections.

Typology of judicial electorates. The objective of Chapter V is to compare an electorates scores for participation with its scores for competition and with its bases of competition. It is hypothesized that patterns of scores will appear based on circuit type (or in the case of Supreme Court elections, on population) and electoral situation (presence or absence of an incumbent). The basic research task is then to see which of these patterns fit the norms of democratic elections and nonpartisanship previously established. From the resulting evaluation the initial hypothesis--Michigan judicial elections are democratic and nonpartisan--will be shown true or false, completely or conditionally.

A final objective will be to suggest lines of inquiry that subsequent research into judicial selection, or courts in the political process in general, might follow.

Judicial System of Michigan: Organization, Jurisdiction, and Selection

Supreme Court. The Michigan Supreme Court traces its beginning to the Territorial Government of Michigan

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established in 1805, which authorized three judges appointed by the President of the United States. In the Constitution of 1835, the first constitution of the State of Michigan, a Supreme Court was provided, its members appointed by the Governor with the advice and consent of the Senate for seven year terms. In 1836 and 1838 the number of justices was increased to four, and the justices were required to hold annual terms in each of the State's three judicial circuits.

The Constitution of 1850[67] reduced the term to six years, increased the number of justices to five, and still required them to double as chief judges of the five circuits. In 1857, the system was reorganized, setting up a separate Supreme Court of four justices, elected at large for eight year terms. In 1887 the Legislature made it five justices and in the Constitution of 1908, eight. The Constitution of 1908 also established the bizarre system of nominating justices at partisan conventions, but electing them on non-partisan ballots.

The Constitution of 1963 provided for a unitary judicial system, divided into a supreme court, a court of appeals, a circuit court, a probate court and courts of limited jurisdiction established by two-thirds vote of the legislature. The Supreme Court now consists of seven justices, elected at nonpartisan elections, but still nominated at partisan conventions. The term of office is eight years, any vacancies being filled by gubernatorial appointment until the next general election.

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Incumbent judges may simply file with the Secretary of State to become a candidate for an election. It is the policy of both parties, however, to nominate their incumbents.

Until the Constitution of 1963, elections for Supreme Court were held during the Spring elections of odd-numbered years, except for filling vacancies. At present terms are staggered, so that two justices terms are filled at the November general election in even-numbered years.

The Appeals Court. The Appeals Court was established by the Constitution of 1963, initially consisting of nine judges serving for 6 years. The 1964 Appeals Court election, being the first election for judges of that Court, is included in the scope of this study. Judges are nominated by petition and are elected from three districts of approximately equal population in nonpartisan elections. An incumbent Justice simply files as a candidate if he wishes to be re-elected. These elections are held in the fall of even-numbered years. Vacancies are filled by gubernatorial appointment. In 1968 the number of judges were increased to twelve. The jurisdiction of the Court of Appeals is provided for by the rules of the Supreme Court.

The Circuit Court. The history of the Circuit Court begins in 1824 with the "second grade" of Michigan's Territorial Government, when the three judges of the Supreme Court were required to hold annual terms in certain counties.

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In 1835 the Circuit Court was established by name, but still chaired by Supreme Court justices. Since 1833, each circuit was allowed two "associate" judges to assist the presiding Supreme Court judge; these associate judges were elected in their circuit for three year terms.

With the Constitution of 1850 the office of Circuit judge became constitutional, elective for six-year terms. The Constitution of 1908 provided for the present structure of judicial circuits. As of January 1, 1971, there were forty-five judicial circuits, each consisting of one to six counties. For the bulk of this study, however, only 42 judicial circuits were organized.

The Constitution of 1963 did not alter the election principle, although qualifications for judges were spelled out. Circuit judges must be lawyers who have passed the State Bar examination, under 70 years of age at the time of election or appointment, must reside in their judicial districts and are forbidden to hold any other than a judicial office during their terms and for one year thereafter. Elections are held in the fall of even-numbered years. Like the Supreme Court, prior to this Constitution, Circuit Court elections were held in the Spring of odd-numbered years.

The jurisdiction of the Circuit Court has not altered in form since the Constitution of 1850. It is the court of general original jurisdiction for the state. For the majority of time covered by this study, the Circuit Court

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had original civil jurisdiction in all civil cases involving more than $1,000, and in all criminal cases punishable by more than a $100 fine or 90 days in jail (all criminal cases in Detroit, Grand Rapids, and Cadillac were taken by the Recorders Court, the Supreme Court, and the Recorders Court respectively). The Court also has jurisdiction over equity cases (divorce) and authorization to issue various judicial writs.

The Constitution of 1963 provided for a unitary system of courts, the District Courts, to replace the outmoded justice of the peace courts and municipal courts. Since the organization of that system, January 1, 1969, the Circuit Court's civil jurisdiction includes cases involving more than $3,000; criminal jurisdiction and authorization for writs were unchanged.

The new District Court and the Probate Court are not included in this study. The jurisdiction of the District Court is exclusive in all civil matters up to $3,000. It has criminal jurisdiction over all misdemeanors and ordinances and charter violations and preliminary examination in all felony cases. The Probate Court has exclusive jurisdiction over juvenile delinquents and estates. Both Courts are elected on nonpartisan ballots for six-year terms.

Judicial selection in Michigan. In his classic study of Judicial Tenure in the United States, William S. Carpenter has documented "the bald admission that partisan motives alone

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formed the basis for changes in the methods of judicial selection in the United States.[68] In the 1835 and 1908 Michigan Constitutions, circuit judges were to be nominated and elected on partisan ballots.[69]

In 1924 there was an attempt to amend the Constitution to provide for a nonpartisan election of judges. The move was sponsored as part of the national progressive drive to make all civic elections nonpartisan. The idea was to end the evils of partisan politics by the apocalyptic abolition of parties from politics. Reformers argued that judges were neutral referees--the old stork theory of judicial decision-making--therefore party affiliation was not only irrelevant but detrimental.[70] The issue, put on the ballot by initiatory petition, failed 559,851 to 501,580.[71]

Immediately after the adoption by the American Bar Association of the "Missouri Plan" of judicial election,[72] an energetic Michigan State Bar, under the leadership of George E. Brand, collected the petition signatures to have the Missouri Plan put on the November ballot in 1938. The State Bar plan was to have Supreme Court Justices appointed by the Governor from a list drawn up by a bipartisan, half lawyer, half layman nominating commission. The plan was overwhelmingly defeated 745,312 to 504,904.

The Brand attempt failed partly from a poor use of propaganda,[73] and partly from the concerted effort of the Wayne County Circuit judges, under the leadership of

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Judge Ira Jayne and Joseph Moynihan, Sr., to stop the Bar drive. Joining with one of the county bar associations, and many sympathetic Democrats who feared discrimination under the ABA Plan, the Wayne County judges gathered enough petition signatures to get the nonpartisan issue on the ballot again, for the April elections of 1939. Blessed by low turnout and a calculated compromise with the good government people, the nonpartisan election of all state judges was accepted 376,246 to 241,252.[74] Until now, this decision has been unchanged.

At the time of this writing, judicial selection is still very much alive and at issue in Michigan. In the Constitutional Convention of 1961-1962, the issue was re-hashed at great length, in general, Republicans for the idea of merit selection (the Missouri Plan), Democrats for non-partisan election.[75] The state bar was itself divided.[76] In an atmosphere of indecision, precedent seemed safest and nonpartisan primaries and election continued for the Circuit Court judiciary.

The state bar was agreed that the Justice of the Peace Courts had passed their usefulness, and for once found alliance with a substantial portion of the laymen. Politics intervened and no one plan for a replacement could get a majority. The convention left it to the legislature to devise a new system of inferior courts by January 1, 1969. This proved a most arduous task, requiring the meeting of

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ideal and real in painful compromise. The selection issue reappeared in all its legal and political nuance. The try for merit selection was quickly defeated, and an attempt to get it on the ballot by joint resolution was shelved.[77]

Behind the scenes, a Citizens Conference of the League of Women Voters, the American Association of University Women, the American Judicature Society, and the Michigan Citizens Committee for Judicial Selection and Tenure, met in Grand Rapids on October 20, 1967. They agreed on a slate of deficiencies in the present selection system and on a version of the Missouri Plan to correct them. The old cry "the courts should be taken out of politics" was used to rally signatures to put the selection plan on the ballot in November 1968, but it failed.

During the last general election, in November 1970, all four candidates for the Supreme Court inveighed against the present method of nominating Supreme Court candidates in partisan political conventions, but electing them on a non-partisan ballot. Justice Dethmers called it "the poorest, punkest, system of any of the 50 states in the United States. Our system has the evils both of appointment and election." They all endorsed some form of the Missouri Plan.[78] It was a Democratic year and both Democratic candidates won handily, in the process defeating Justice Dethmers, 24 years on the Court.

Given the high spirit of judicial reform nationwide, it is not unlikely that another movement will be launched in

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Michigan to adopt the Missouri Plan, at least for the Supreme Court. This movement, as other judicial reform movements, will proceed in a startling "factual vacuum"[79] about the actual operation of present court selection procedures. It is the larger goal of this research to fill that "factual vacuum" with information about the actual operation of the nonpartisan judicial election as it occurs in the state of Michigan.

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2. Anthony Down
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3. Herbert Jac
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4. Glendon Sch
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9. Jack Ladin
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Austin, 1965), 10

Chapter I--Footnotes

1. Incumbents for both offices who wish to run for re-election simply file an affidavit of candidacy. Michigan State Constitution (1963), Article VI. See also Laws Relating to Elections, compiled by the Michigan Secretary of State, Chapters XVIII and XIX.

2. Anthony Downs, An Economic Model of Democracy (Harper: New York, 1957), 23-24. Edward Shils, Political Development in the New States (Free Press), 47-81.

3. Herbert Jacob, Justice in America (Little, Brown; Boston, 1965), 207.

4. Glendon Schubert, "Academic Ideology and the Study of Adjudication," APSR LXI (March 1967), 106-29.

5. David Easton, The Political System (Knopf; New York, 1953), and A Framework for Political Analysis (Prentice-Hall; Englewood Cliffs, 1965).

6. Benjamin N. Cardozo, The Nature of the Judicial Process (Yale University; New Haven, 1921).

7. Herbert Jacob and Kenneth Vines, "Studies in Judicial Politics," Tulane Studies in Political Science, Vol. VIII (Tulane University; New Orleans, 1962). For other analyses of courts as actors in state and local politics, see Wallace S. Sayre and Herbert Kaufman, Governing New York City (Russell Sage; New York, 1960), Chapter 14; and James Herndon, "The Role of the Judiciary in State Political Systems," Judicial Behavior, Glendon Schubert, ed. (Rand McNally; Chicago, 1964), 153-61.

8. Carl D. McMurry and Malcolm B. Parsons, "Public Attitudes Toward the Representatives Roles of Legislators and Judges," Midwest Journal of Political Science (May 1965), 9, 170.

9. Jack Ladinsky and Alan Silver, "Popular Democracy and Judicial Independence," Law and Society, Reprint No. 22 (University of Wisconsin, 1967), 129-47. A sample of the debate in professional legal journals is in Bancroft C. Henderson and T. C. Sinclair, The Selection of Judges in Texas (Public Affairs Research Center, University of Houston; Houston, 1965), 109-17.

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964), 57.

16. Herbert J
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10. For a review of the traditionalist position, see Glendon Schubert, Judicial Policy-Making (Scott, Foresman; Chicago, 1965), Chapter Seven, "The Study of Judicial Policy-Making".

11. Herbert Jacob, "The Courts as Political Agencies--An Historical Analysis," in Studies in Judicial Politics. Kenneth N. Vines and Herbert Jacob (Tulane University; New Orleans, 1963), p. 9.

12. Jack W. Peltason, Federal Courts in the Political Process. Studies in Political Science (Random House; New York, 1955), 55. See also Theodore L. Becker, ed., The Impact of Supreme Court Decisions (Oxford University Press; New York, 1969). For federal district judges, see Jack W. Peltason, Fifty-Eight Lonely Men.

13. Many articles and essays have been written on this issue. Notable are Max Lerner, "Constitution and Court as Symbols," Courts, Judges and Politics. Walter F. Murphy and C. Herman Pritchett, eds. (Random House; New York, 1961), 185; Jerome Frank, "Cult of the Robe," Courts on Trial (Antheneum; New York, 1966), 254; and Murray Edelman, The Symbolic Uses of Politics (University of Illinois Press; Urbana, 1964), Chapters 5-7.

14. Alexander Hamilton is champion of the anti-election forces. The quote is from No. 79 of the Federalist Papers (New American Library of World Literature; New York, 1961), 469.

15. The complete quote, signed by the anti-federalist "Brutus", is: "But it would be improper that the judicial should be elective, because their business requires that they should possess a degree of law knowledge which is acquired only by a regular education; and besides it is fit that they should be placed, in a certain degree in an independent situation, that they may maintain firmness and steadiness in their decision." The Antifederalist Papers, ed. Morton Borden (Michigan State University Press; East Lansing, 1965), 225. The actual proponents of judicial election came during the Jacksonian period and were concerned chiefly with state judges. See the prejudicial but provocative article, Evan Haynes, "Judicial Selection and the Democratic Spirit," The Courts, ed. Robert Scigliano (Little, Brown & Co.; Boston, 1962), 57.

16. Herbert Jacob writes of the attempts to reform judicial procedures: "So far, the myth of judicial independence has been preserved and has protected the courts along with their antiquated structure and procedure. Whether the myth will continue to serve as a protective cloak depends

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17. For most state judicial systems, the terms of office for appellate judges are longer than terms of office for the major trial courts or the courts of limited jurisdiction. Book of the States (Council of State Governments; Chicago (1968-69), 126-27.

18. Executive appointment makes judicial accountability more awkward but nonetheless possible. Determined groups--which have included Presidents--have discovered any number of ways to circumvent court decisions with which they disagreed. One example is President Andrew Jackson's famous assessment of Chief Justice John Marshall's decision in the Cherokee Cases: "Well, John Marshall has made his decision, now let him enforce it!" in Charles Warren, The Supreme Court in United States History (Little, Brown; Boston, 1922), Vol. I, p. 759. One of the most popular methods of changing federal judicial policy has been changing judicial personnel. Various strategies used at one time or another in American political history are lobbying to influence presidential appointments and senatorial confirmation, impeachment, resignation and retirement, abolishing, creating, and altering the size of courts and court jurisdiction. Peltason, Federal Courts in the Judicial Process, op. cit., 29-42. Federal appointive judges are, therefore made accountable. Changes in court personnel, professional pressure, influence through cases tried, in, out, and through the judicial process judges are made aware of the "dominant" trends of public interest. Within the judiciary itself there are attempts at self discipline, new codes of ethics about proper behavior. Awkward, subterranean, yet no less real, means are found to hold appointive judges to account.

19. Book of the States, op. cit.

20. Evan Haynes, op. cit., 62.

21. Stanley E. Beattie, "A New Method of Judicial Selection: The Negative Argument," Michigan State Bar Journal 32 (May 1953), 42.

22. Other professional lawyers and judges have agreed heartily with Beattie. A Texas judge wrote "I am frequently appalled by the blanket assumption on the part of segments of the bar and the public that it is distasteful for a judge

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25. Adolf A
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26. Richard A.
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27. Herbert Ja
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29. Ibid., 33

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Frederick C. Spie
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to seek popular support for his election or re-election. My simple answer to that is that if it is distasteful for him to attempt to secure the good wishes, and therefore the political support of his constituents then he ought not to be a judge in the first place. In order to make sound decisions involving the lives, liberties and property of his fellow man, a judge should possess those qualities of character which draw people to him and which make the litigant who appears before him feel that he understands him and his problem." "Anointed Judges," 26 Texas Bar Journal 1015 (December, 1963), quoted in Henderson and Sinclair, op. cit., 116.

23. From the "Consensus Statement" released by the Citizens Conference gathered at a meeting at the Pantlind Hotel in Grand Rapids, Michigan, October 10, 1967.

24. These are reviewed in Beattie, op. cit., and in the last section of this chapter.

25. Adolf A Berle, Jr., "Elected Judges--Or Appointed?" The Courts, op. cit., 97.

26. Richard A. Watson and Rondal G. Downing, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan (John Wiley; New York, 1969), 353.

27. Herbert Jacob, "The Effect of Institutional Differences in the Recruitment Process; The Case of State Judges," Journal of Public Law 13 (1964), 117-18; Hughes, The Supreme Court of the United States (1928), 16-17; William S. Carpenter, Judicial Tenure in the United States (Yale University Press; New Haven, 1918), 212; Henderson and Sinclair, op. cit., 6.

28. Watson and Downing, op. cit., 332.

29. Ibid., 334.

30. By "attentive publics," Watson and Downing mean those interest groups in the community with a particular concern about court affairs, such as the press, civic groups, and parties likely to be before the court in litigation. Ibid., 334-35, 350-52. For their article devoted entirely to this point see Richard A. Watson, Rondal G. Downing and Frederick C. Spiegel, "Bar Politics, Judicial Selection and the Representation of Social Interests," APSR, LCI (March 1967), 54-71.

31. Eugene Lee, The Politics of Nonpartisanship (University of California Press; Berkeley, 1960), 180.

32. Robert C. W
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33. Examples of
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34. Herbert Jac
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36. Kenneth Vi
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37. Henderson

38. Malcolm M
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39. Emmett W.
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40. John Wood
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43. Moos, Op

44. Haynes,

32. Robert C. Wood, Suburbia: Its People and Their Politics (Houghton Mifflin; Boston, 1958), 157.

33. Examples of this vast propaganda literature are George E. Brand (then president of the Michigan State Bar Association), "Selection of Judges--The Fiction of Majority Election," Civic Victories, Richard S. Childs, ed. (Harper; New York, 1952); and "The Dictatorship of Irrelevancy," editorial in the American Judicature Society Journal 48 (December 1964), 124-25.

34. Herbert Jacob, "Judicial Insulation--Elections, Direct Participation and Public Attention to the Courts in Wisconsin," Wisconsin Law Review (1966), 803, 813.

35. Ladinsky and Silver, op. cit., 161-68.

36. Kenneth Vines, "The Selection of Judges in Louisiana," Studies in Judicial Politics, op. cit., 118-19.

37. Henderson and Sinclair, op. cit., 20-21, 10-102.

38. Malcolm Moos, "Judicial Elections and Partisan Endorsements of Judicial Candidates in Minnesota," APSR, XXXV (1941), 70.

39. Emmett W. Bashful, "The Florida Supreme Court: A Study in Judicial Selection," Studies in Government, No. 24, Bureau of Governmental Research and Service (Florida State University; Tallahassee, 1958).

40. John Wood, "Reform in Judicial Selection Procedure in Oklahoma," Oklahoma Government Bulletin 2 (February 1964), 1-6.

41. James Herndon, "Appointment as a Means of Initial Accession to Elective Courts of Last Resort," North Dakota Law Review 38 (1962), 60-73.

42. Glendon Schubert, "The Packing of the Michigan Supreme Court," Quantitative Analysis of Judicial Behavior (The Free Press; Glencoe, 1959), 129-41. See also S. Sidney Ulmer, "The Political Party Variable in the Michigan Supreme Court," Journal of Public Law 11 (1962), 352-62. Note that this partisan pressure works both ways. A Justice will try to time his retirement during the term of a Governor of the same party and persuasion in order that his successor on the Court will share his views.

43. Moos, op. cit., 74.

44. Haynes, op. cit.

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49. Ranney, op

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45. Abraham Kaplan, The Conduct of Inquiry (Chandler Publishing; San Francisco, 1964), Part I: "Methodology," 3-32.

46. Austin Ranney, "The Utility and Limitations of Aggregate Data in the Study of Electoral Behavior," Essays on the Behavioral Study of Politics, Austin Ranney, ed. (University of Illinois Press; Urbana, 1962), 91-102.

47. Stuart Rice, Quantitative Methods in Politics (Alfred A. Knopf; New York, 1928).

48. V. O. Key, Jr., Southern Politics (Random House: New York, 1949); American State Politics: An Introduction (Alfred A. Knopf; New York, 1956); A Primer of Statistics for Political Scientists (Thomas Y. Crowell; New York, 1966).

49. Ranney, op. cit.

50. For a review see Peter H. Rossi, "Trends in Voting Research: 1933-1963," Political Opinion and Electoral Behavior Essays and Studies, Edward C. Dreyer and Walter A. Rosenbaum, eds. (Wadworth Publishing; Belmont, California, 1966), 69-70. Examples of research done with an emphasis on electoral "system" and "structure" see Daniel Katz and Samuel J. Eldersveld, "The Impact of Local Party Activity Upon the Electorate," Public Opinion Quarterly 25 (1961), 1-24; Phillips Cutright, "Urbanization and Competitive Party Politics," The Journal of Politics (August 1963), 552-64. For an application of the concept of "structure" to judicial process, see Theodore L. Becker, "Judicial Structure and Its Political Functioning in Society," Journal of Politics 29 (May 1967), 302-33.

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52. Norman C Thomas, "The Electorate and State Constitutional Revision: An Analysis of Four Michigan Referenda," Midwest Journal of Political Science 12 (February 1968), 115-29.

53. The basic statistics texts used for the technical work of the dissertation are F. R. Hayes and D. Pelluet, Work Notes on Common Statistical Procedures (Scholar's Library; New York, 1958); V. O. Key, Jr., A Primer of Statistics for Political Scientists, op. cit.; Henry E. Garrett, Elementary Statistics (Longmans, Gree; New York, 1956); and Sidney Siegel, Nonparametric Statistics for the Behavioral Sciences (McGraw-Hill; New York, 1956).

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55. Seymour Li
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56. Lester W.
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57. Angus Camp
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62. The argum
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63. Oliver P.
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64. See furt

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54. Cf. Chapter II, Graph 2, where it is shown that turnout for state legislative offices is equal to turnout for state executive offices. The executive office turnout, therefore, becomes the basis for comparison.

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56. Lester W. Milbrath, Political Participation (Rand McNally; Chicago, 1965), Chapter 4; V. O. Key, Jr., Politics, Parties, and Pressure Groups (Thomas Y. Crowell; New York, 5th edition, 1964); Robert R. Alford and Eugene C. Lee, "Voting Turnout in American Cities," APSR, 62 (Spring 1968), 800-01.

57. Angus Campbell, Philip E. Converse, Warren E. Miller, Donald E. Stokes, The American Voter: An Abridgement (John Wiley; New York, 1964), Chapter 4.

58. Key, Parties, Politics, and Pressure Groups, op. cit., 636-37.

59. Gabriel A. Almond and Sidney Verba, The Civic Culture (Little, Brown; Boston, 1965), especially Chapter 5, "The Obligation to Participate".

60. Ladinsky and Silver, op. cit., 165-67.

61. For further discussion see Daniel J. Elazar American Federalism; A View from the States (Thomas Y. Crowell; New York, 1966), 79-116; Duane Lockard, The Politics of State and Local Government (Macmillan; New York, 1963), 238-52; and Samuel Patterson, "The Political Cultures of the American States," Journal of Politics 30 (February 1968), 187-209.

62. The argument is reviewed in Alford and Lee, op. cit., 812-13.

63. Oliver P. Williams and Charles R. Adrian, Four Cities (University of Pennsylvania Press; Philadelphia, 1963). J. Leiper Freeman, "Local Party System: Theoretical Considerations and a Case Analysis," American Journal of Sociology 64 (1958), 282-89; Gerald Pomper, "Ethnic and Group Voting in Nonpartisan Municipal Elections," Public Opinion Quarterly (Spring 1966), 79-97.

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71. Daniel S.
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66. Williams and Adrian, Four Cities, op. cit., 90-95. For a typology of the several possible relationships between partisan and nonpartisan electoral systems, see Charles R. Adrian, "A Typology for Nonpartisan Elections," Western Political Quarterly 12 (1959), 449-58.

67. A basic history of the Michigan Court system is given in The Michigan Manual, published biannually by the Secretary of State, Lansing, Michigan. For early court history see William Renwick Riddell, Michigan Under British Rule: Law and Law Courts, 1760-1796 (Michigan Historical Commission; Lansing, 1926). Copies of the 1835 and 1850 Constitutions of Michigan can be found in A Comparative Analysis of the Michigan Constitution (Citizens Research Council of Michigan; Detroit, 1961), vii-18. The present judicial structure is given in Article VI of the 1963 Constitution.

68. William S. Carpenter, op. cit., 73.

69. Michigan was early in the national movement that made state judges elective; Vermont and Georgia, 1777; Mississippi, 1832; Michigan, 1835; New York, 1846; Wisconsin, 1848; California, 1849; Kentucky, Missouri, Pennsylvania, Virginia, Tennessee, 1853; Kansas, 1855; Iowa, Minnesota, Oregon, 1857. Ibid., 155-93.

70. Charles R. Adrian, "Some General Characteristics of Nonpartisan Election," APSR 46 (Sept. 1952), 766; Eugene Lee, The Politics of Nonpartisanship (University of California Press; Berkeley, 1960), 28-39. For the national experience, see J. Patrick White, "Progressivism and the Judiciary: A Study of the Movement for Judicial Reform, 1901-1917", unpublished doctoral dissertation, University of Michigan, 1957.

71. Daniel S. McHargue, "Direct Government in Michigan," Michigan Con-Con Studies, No. 17.

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73. George E. Brand, "Michigan State Bar's Work for Judicial Appointment," Journal of the American Judicature Society, 22 (February 1939), 197-202.

74. Book of the States, op. cit.

75. Official Record of the Michigan Constitutional Convention, 1961-1962, Vol. I, 1256, 1313-1342, 1355-72, 1596-1604. For specific analysis of the judicial provisions

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76. In a poorly worded Bar Poll of 1962, in which 57% of the bar membership participated, a slight majority indicated that the Missouri Plan would be better for Supreme Court selection than Circuit Court selection. Michigan State Bar Journal, 41 (1962), 12-16. This poll was taken prior to the 1961 state Constitutional Convention in order to express the bar's opinion on the methods of judicial selection.

77. House Joint Resolution F, submitted February 8, 1968.

78. Kalamazoo Gazette (October 14, 1970), A-10, Col. 1.

79. Jacob, Justice in America, op. cit., 207.

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CHAPTER II

THE DIMENSION OF PARTICIPATION

Objectives

The research objective of Chapter II is to determine the rate of voter participation in Michigan Supreme Court and Circuit Court elections. Participation in elections for nonjudicial state office with comparable geographic constituencies will serve as a measure of comparison. We are interested in discerning the differences and similarities in judicial and nonjudicial electorates.

The specific research questions of Chapter II are : (1) How does participation in judicial elections compare with participation in nonjudicial elections? (2) Do judicial electorates vary with respect to their levels of participation? (3) What factors explain this variance or nonvariance?

Chapter II is organized into the following sections. First several methodological issues will be discussed: the offices selected for analysis, the time period covered, the measures of turnout employed. Second, the basic research questions concerning judicial and nonjudicial participation and their variances are answered. Third, some preliminary

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propositions about the function of judicial elections as channels of accountability or preserves of judicial independence are presented. Finally, a chart of judicial electorate turnout scores is completed. It is this chart that will be compared with findings in Chapters III and IV to treat the larger research issues of the dissertation.

Methodological Considerations

Judicial and nonjudicial offices. The judicial offices examined are state Supreme Court and Circuit Court. These represent the highest state court and the court of general jurisdiction in Michigan. The lowest level of Michigan's judicial system is the District Court; its first judges were elected in November of 1968. This Court is not included because it is too new to have created an identifiable impression on the Michigan electorate. The next judicial level, the court of general jurisdiction, is the Circuit Court and it is included for analysis. The appellate level is occupied by the Court of Appeals, established by the Constitution of 1963. It is included for certain aspects of the analysis, but again is too new to have produced stable voting patterns. The court of last resort in Michigan, the Supreme Court, is included for analysis.

The nonjudicial offices examined most thoroughly are United States President, state Governor, United States Congressman, state Senator and state Representative. Voting behavior for these offices serves as the criteria by which

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voting for judicial offices is assessed. Table 2.1 indexes the offices and the election years for which data was collected.

The office of United States President was chosen as the "top of the ballot" office every fourth fall election. It represents the maxim in voting analysis that the more powerful the office being decided, the more important the election is likely to be perceived, and the higher the participation is likely to be.[2]

By "top of the ballot" is meant the office for which, statewide, the most votes were cast. To standardize over the entire study period, this number of votes is considered an estimate of the number of people who went to the polls that election. It is possible that some who went to the November polls, for example, did not vote for President in presidential election years, or for governor in non-presidential years. It is more likely, however, that fewer failed to vote for these offices than for state legislator, for instance. Based on this higher probability, therefore, throughout the research the "top of the ballot" office, be it president, governor, or in spring elections, state school superintendent or state highway commissioner, will be taken as mobilizing the total electorate for that particular election.[3]

United States Congressman was chosen for several reasons. First, it represents the national legislative function, as

Office
President
Governor
Congressman
State Senator
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State Board of Edu tion
State Attorney-Ger
State Supreme Cour
Circuit Court
Appeals Court
District Court

TABLE 2.1

DATA COLLECTION

Office	Election Years	
	Statewide Totals	County Totals
President	56,60,64,68	60,64
Governor	56,57,60,62,64,66	60,62,64,66
Congressman	56,68,60,62,64,66	60,62,64,66
State Senator	60,63,64,66	66
State Representative	60,62,64,66	60,62,64
University boards	53,59,61,63,64,66,68	
State Board of Education	53,59,61,64	
State Attorney-General	60,62,64,66	
State Supreme Court	53,56,59,60,61,62,63, 66,68	53,59,60,61,62 63,66
Circuit Court	53,59,66	53,59,66, all vacancy elections 60-66
Appeals Court	64,68	64
District Court	68	

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the President represents the nation executive one. By its national dimension, the office is assumed a "powerful" and visible one and likely to attract voters. Second, it is legislative, thus representing a different set of political dynamics from the executive, and thus providing another base for comparison with the judicial. Third, congressmen are elected from districts, as are appeals and circuit court judges in Michigan. The congressional district--judicial circuit comparison in voting behavior could be a profitable one. Fourth, it is a partison election, providing a basis for several kinds of comparisons and contrasts with the nonpartisan judicial election. Fifth, it is also an election in which incumbency may play a part.

The office of governor was chosen as the executive representative on the state level, providing the state executive--state judicial comparison. Because they share a constituency, the gubernatorial-supreme court comparison is useful. In even-numbered non-presidential years, the gubernatorial electorate will serve as the "top of the ballot" and thus an estimate of the total number of state voters voting in that election. Another dimension of this office is the partisan one. Because state supreme court candidates are nominated in partisan conventions, it will be interesting to compare their electoral experience with that of the same party's gubernatorial candidate.

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The state legislative elections were included as the state counterpart of congressman. State senate elections were used for 1960, 1962, and 1964; for comparison, state representative elections were used for 1966. The office provides the legislative contrast, the district similarity, and the partisan contrast, as does Congreeeman. Moreover, since state legislative districts are smaller than Congressional ones, they are more analogous to judicial districts and thus a more valid comparison.

Time period of the research. Table 2.1 is an index of the judicial and non-judicial offices included in the study, specifying the election years for which statewide and/or country election returns were analyzed. Roughly the time period extends from 1947 to 1968, some twenty years, and twelve different general elections.

The justification for this particular time span has a number of points. First, it is the recent past, and hopefully relevant to our conception of the present operation of the political process in Michigan. Second, it covers a period of particularly dramatic partisan change in Michigan. Carolyn Stieber's book, The Politics of Change in Michigan, details these changes, emphasizing the influence of their two leaders, Democratic Governor Williams (1948-1960), and Republican Governor Romney (1962-1968).[4]

Considering the partisan shift in gubernatorial voting, it will be interesting to see if any change in turnout

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patterns accompanied this shift and if it in any way affected judicial election turnout, particularly for the state supreme court. Another provocative aspect stems from gubernatorial appointment of vacancies on the circuit court and supreme court. Did Romney appointees fare any differently than Williams appointees? Does the theory about gubernatorial appointment being the only "democratic" aspect of judicial recruitment hold true for Michigan?[5]

Third, the 1952-1968 period covers some important structural changes in the court system itself, most of them as a result of the Constitution of 1963. Of particular importance is the change from spring election in odd-numbered years, to fall elections in even-numbered years as the time for judicial elections. Other constitutional changes were staggered terms for multi-judge circuit courts, filling vacancies from the ranks of retired judges (repealed in 1968), more administrative power for the supreme court, and the establishment of two new courts, the Court of Appeals, and the District Court. Have these institutional changes affected voting patterns in judicial elections?

Fourth, the time period is long enough to indicate the basic levels of voter turnout.

Measurement of turnout: Turnout is measured in two ways. First used is the actual number of votes cast in a given county in a given election.[6] In the case of an office election for which there is more than one winner, such as is

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true of several judicial circuits, the total number of votes cast for each candidate is divided by the number of possible winners to estimate the number of voters participating in the election. This estimate assumes that each voter voted twice, if there were two winners, four times if there were four.[7] It is highly probable that this assumption flatters the diligence of the judicial elector and therefore results in an underestimation of the total judicial electorate. In the interest of a standard measure, however, the division was made wherever applicable.

The second technique used to measure turnout is labeled "percentage of the ballot" (abbreviated in the text as "% Ballot"). It is the percentage of the total electorate voting for a given office. This percentage is obtained by dividing the turnout in a particular county for a particular office by the county's "top of the ballot" turnout. For example, in Kalamazoo County in the elections of November 1968, there were 73,832 votes cast for President, the "top of the ballot" and estimate of the total electorate; 68,900, for United States Congressman; 67,667, for state representative; 48,070 for Justice of the State Supreme Court; 48,196 for District Court Judge; and 43,870 for Judge of the Court of Appeals. Considering the presidential turnout as an estimate of the total electorate, by % Ballot measures, 100% voted for United States President; 93.3% for United States Congressman; 91.6% for state representative; 65.1% for

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Justice of the Supreme Court; 65.5% for District Court Judge; and 59.4% for Appeals Court Judge. Figuring the % Ballot commanded by each office electorate in each county provides bases of comparison in electorate turnout among Michigan's 83 counties.

Judicial electorates are rated as "open" or "closed" according to the size of its % Ballot score. The scale is arbitrarily set as follows:

% Ballot	Score	Rating
85-100%	Very High	OPEN
75-84%	High	
60-74%	Moderate	CLOSED
0-59%	Low	

For some of the time series graphs and other comparisons, county averages are used. The county average is derived by dividing the total vote of the state, minus Wayne County's, by 82, all counties except Wayne. For most elections Wayne County turnout accounts for more than one-third of the statewide turnout.[8] The peculiarities of the Wayne County vote color any estimate of state patterns in voting behavior. Therefore in most cases Wayne County is treated separately. The data will show that this separation is justified.

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Research Question No. 1: How does participation in judicial elections compare with turnout in nonjudicial elections?

The question is subjected to two techniques of analysis. First, voting patterns are compared in terms of absolute numbers, expressed as mean county turnout. Second, a ratio of judicial to nonjudicial participation is used to explore factors of timing, level of judicial office, and locale.

Measuring participation by county mean. Figure 2.1 is a time series graph of mean county turnout (N=82 Counties) for the selected offices. Figure 2.2 is the same format for Wayne County (Detroit).[9] From these presentations, several voting patterns are obvious.

First, assuming that turnout is higher for the more important offices, there is a stable ladder of political priority for the offices compared: United States President, state Governor, United States Congressman, state Senator, Circuit Court judge, and Supreme Court Justice.

Second, the patterns of nonjudicial voting over the years follows the standard presidential year--high, midterm year--low pattern.[10] Gubernatorial, congressional, and state legislative turnout behavior clearly supports this rule. Looking at Supreme Court elections held in the fall (1956, 1960, 1962, 1968), the same rule controls.

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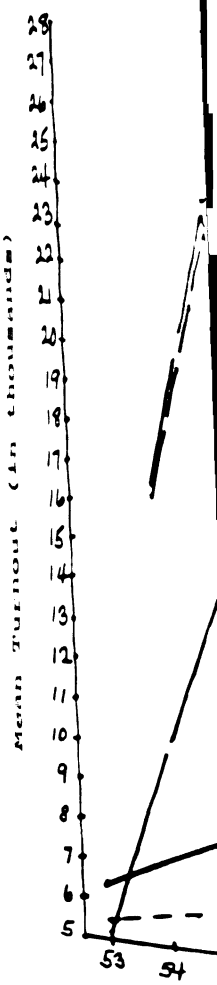
Fourth, there is no substantial rise in the numbers of voters voting in 1968 over those voting in 1952. However, in comparing presidential and Supreme Court turnout in 1960 with that of 1968, there was an 11.3% growth for the Supreme Court electorate and only a 5.9% expansion of the Presidential electorates.

Fifth, the difference in the state legislative electorate (the smallest of the nonjudicial electorates considered) and the Supreme Court electorate remained fairly consistent over the time reported. Roughly two-thirds of those who voted for state legislator also voted for State Supreme Court Justices.

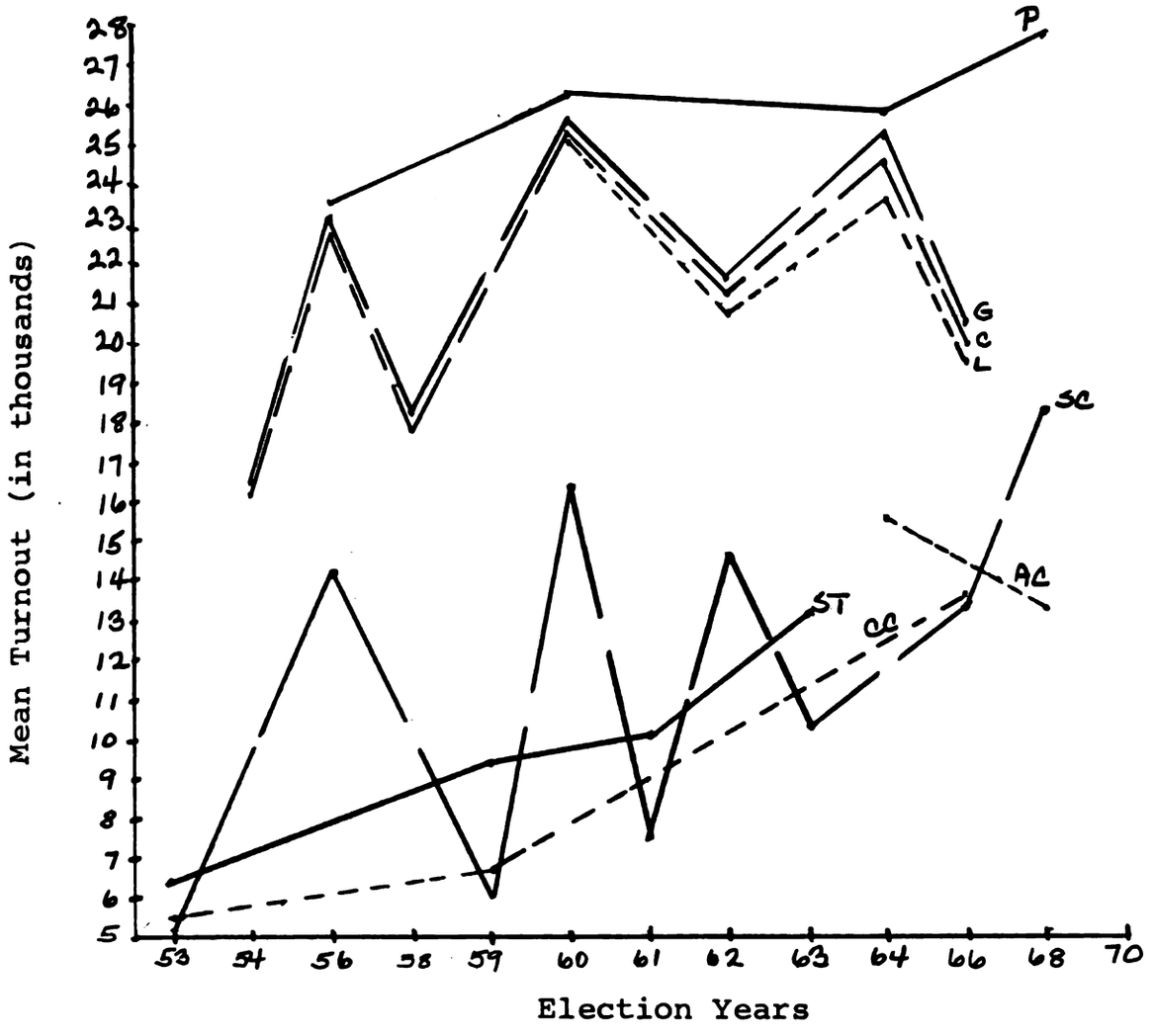
Recalling that Wayne County accounts for one-third of the state's voters, the comparison of Figure 2.2 with 2.1 is important. First, the same stable difference between judicial and nonjudicial offices is there, although in 1968 the difference decreases. Second, the priority of offices is altered in that state legislative races sometimes draw more voters than congressional races, and that circuit court races draw fewer voters than supreme court races. Both are reversals of the "outstate" pattern. The lower interest in circuit court races in Wayne County could be explained by the existence of the Recorders Court which

Figure 2.



President (P)
56-23564
60-26173
64-25711
68-27708
Governor (G)
54-16447
56-23304
58-18244
60-25644
62-21720
64-25396
66-20597

Figure 2.1: Mean Turnout (N=82 Counties)



President (P)	Congress (C)	Spring "top of the ballot" (ST)
56-23564	54-16148	53-6642
60-26173	56-22997	59-9440
64-25711	58-17906	61-10102
68-27708	60-25377	63-13112
Governor (G)	62-21202	Supreme Court (SC) 66-13584
54-16447	64-24826	53-5123
56-23304	66-20045	56-14202
58-18244	Legislature (L)	59-6102
60-25644	60-25209	60-16375
62-21720	62-20877	61-7827
64-25396	64-23785	62-14813
66-20597	66-19830	63-10297
		66-13340
		68-18222

Circuit Court (CC)	Appeals Court (AC)
53-5450	64-15589
59-6888	68-13159

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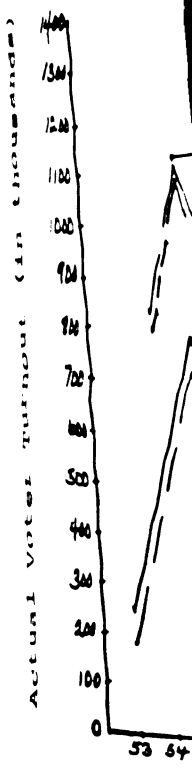
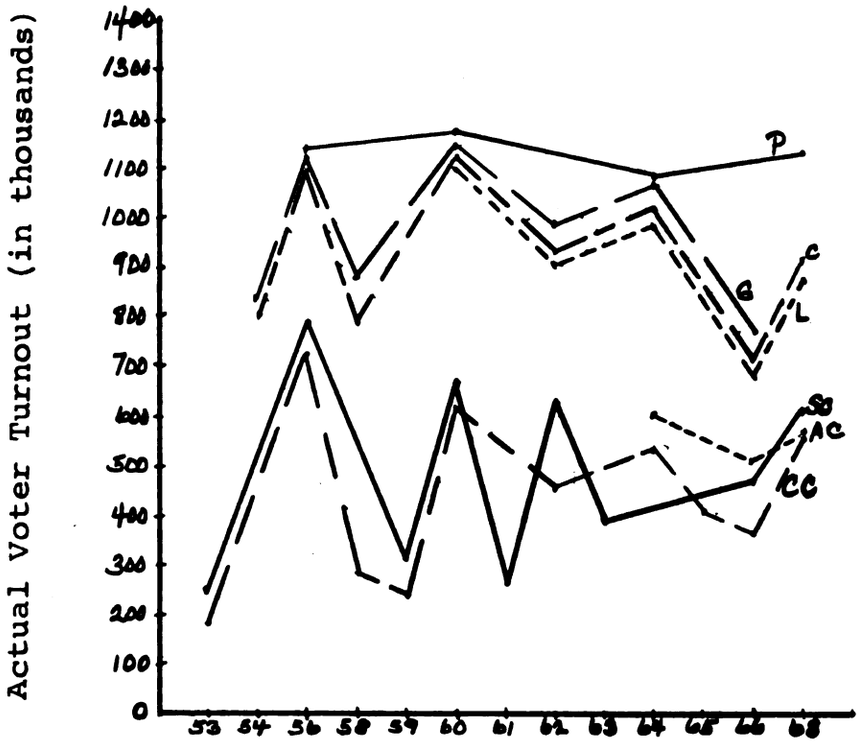


Supreme Court
53: 254,354
56: 799,811
59: 317,522
60: 671,791
61: 269,298
62: 631,337
63: 396,490
66. 472,137
68: 603,987
Appeals Court
64: 600,707
66: 502,783
68: 563,596
Circuit Court
53: 182,419
56: 735,255
58: 289,977
59: 241,972
60: 602,774

Figure 2.2: Wayne County Turnout



Election years

Supreme Court (SC)	President (P)	Congress (C)
53: 254,354	56: 1,148,245	54: 809,282
56: 799,811	60: 1,171,909	56: 1,108,953
59: 317,522	64: 1,094,724	58: 785,530
60: 671,791	68: 1,138,655	60: 1,130,661
61: 269,298	Governor (G)	62: 936,630
62: 631,337	54: 838,359	64: 1,023,890
63: 396,490	56: 1,138,655	66: 714,981
66: 472,137	58: 896,255	68: 921,437
68: 603,987	60: 1,153,210	Legislature (L)
Appeals Court (AC)	62: 983,743	60: 1,116,990
64: 600,707	64: 1,075,523	62: 919,163
66: 502,783	66: 772,931	64: 987,286
68: 563,596		66: 691,786
Circuit Court (CC)		68: 873,861
53: 182,419	62: 459,102	
56: 735,255	64: 534,924	
58: 289,977	65: 404,341	
59: 241,972	66: 368,704	
60: 602,774	68: 561,303	

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handles all criminal cases for the county, but which are handled by the Circuit Court in most other counties.

Third, Wayne County voting for nonjudicial office follows the same presidential-midterm pattern as the rest of the state. Fourth, the county also follows the spring-fall turnout pattern. Fifth, the County also shows that state trend of a growing Supreme Court electorate. Sixth, in Wayne County, as in the rest of the state roughly two-thirds of those who vote for state legislator also vote for Supreme Court Justices.

Inasmuch as one can deduce from a visual examination of the time series format, there are real differences in the size of turnout for judicial and non-judicial elections, for spring and fall elections, and for presidential year--midterm year elections.[11]

Level of office. In voting research, turnout is often explained as a function of the level of office, the argument being that the more politically powerful an office, the higher the turnout.[12] It has also been proposed that electorates for different offices are distinguishable.[13] Are these established axioms applicable to judicial elections? Do level of judicial office draw different electorates as do levels of non-judicial office? Specifically, are there different voter turnout patterns for Supreme Court and Circuit Court elections?

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The offices differ constitutionally in importance, the Supreme Court being the state court of last resort and the superintending agency for the entire state judicial system. The Circuit Court is the court of original general jurisdiction in the state's unitary judicial system. Supreme Court justices are nominated in partisan conventions, but elected on a nonpartisan ballot for eight year terms from a statewide electorate. Circuit court judges are nominated and elected on nonpartisan ballots for six year terms by voters within their circuits. There is a distinction in power of office and structure of constituency. How do voter turnout patterns compare?

In terms of total statewide turnout (minus Wayne County), there have been drops of 22, 35, and 2% for the elections of 1953, 1959, and 1966 respectively between turnout for Circuit Court and Supreme Court. In Wayne County the drop-off in vote has been stable at 28, 24, and 22% for the same three elections, but reversed, Supreme Court turnout being the higher. The net statewide gain is for the Supreme Court, although a small one.

According to the t-test reported in footnote 11, there is no statistically significant difference in mean county turnout for Supreme Court and Circuit Court elections. The reversed priority of outstate and Wayne County turnout however suggests real differences in the perception of the two offices from place to place in the state. The problem of variance is considered presently.

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Using absolute figures in an analysis of turnout results in a general statewide description of voting behavior over time. This broad analysis points up particular factors that have implications for the question of accountability in judicial elections. Most importantly it is clear that the question of accountability is not an all-or-nothing proposition. Lines of distinction must be made. Of these time is a factor. The old spring elections worked differently from the newer fall judicial elections. Level of judicial office may be a factor. Supreme Court electorates are different from Circuit Court electorates. Locale may be a factor. Wayne County judicial electorates have different priorities than outstate counties. To investigate these distinctions a comparative measure is required. It is to a discussion of a ratio technique that the study now turns.

Measuring turnout by "% Ballot". The ratio % Ballot is derived by dividing the turnout for the judicial election concerned by the turnout for the "top of the ballot" at that same election time. The resulting ratio is an estimate of the proportion of those who went to the polls who voted in the judicial election. The ratio permits comparison across elections, offices, and counties.

Figure 2.3 is a time series study of the mean county % Ballot commanded by selected judicial and non-judicial offices between 1953 and 1968. Logically the priority of offices is the same as that of Figure 2.1 which was based on

Figure

Mean "% Ballot" score

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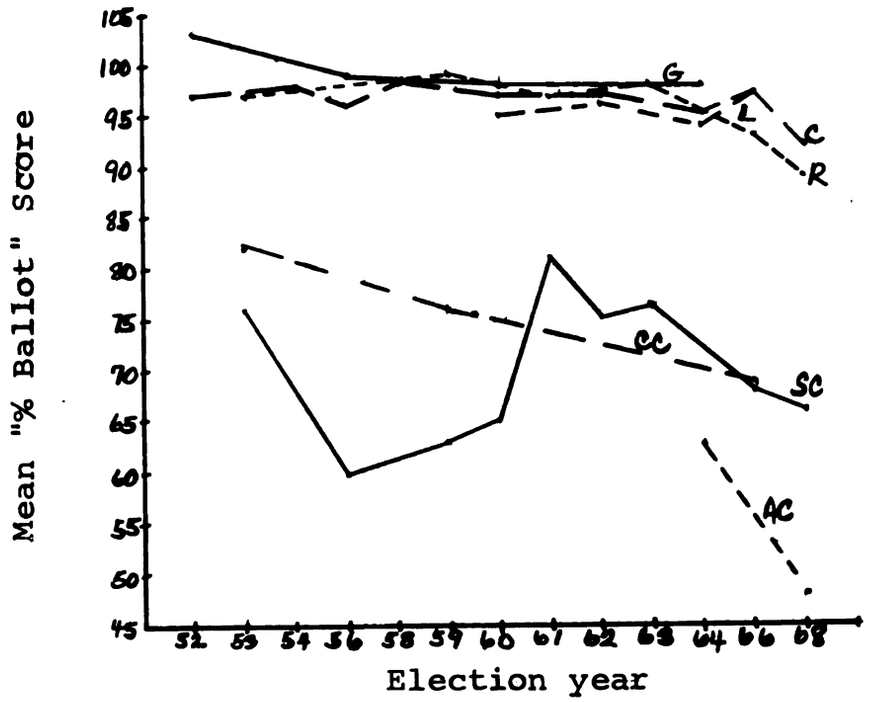
Figure 2.3: Mean "% Ballot" Scores (N=82 Counties).



Governor (G)
- 52: 103%
- 56: 99%
- 60: 98%
- 64: 98%

Congress (C)
- 52: 97%
- 54: 98%
- 56: 96%
- 58: 98%
- 60: 97%
- 62: 97%
- 64: 95%
- 66: 97%
- 68: 92%

Legislature (L)
- 60: 95%
- 62: 96%
- 64: 94%
- 66: 97%

University Regents (R)
- 53: 97%
- 59: 99%
- 61: 97%
- 63: 98%
- 66: 93%
- 68: 89%

Supreme Court (SC)
- 53: 76%
- 56: 60%
- 59: 63%
- 60: 65%
- 61: 81%
- 62: 75%
- 63: 76%
- 66: 68%
- 68: 66%

Appeals Court (AC)
- 64: 63%
- 68: 48%

Circuit Court (CC)
- 53: 82%
- 59: 76%
- 66: 68%

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means of actual turnout. In presidential years, the gubernatorial election garners 98-99% of the presidential turnout; Congress gets 96%; the state legislature, 95%; the Supreme Court, 60-65%; the Appeals Court, 63%. In midterm years, Congress and the state legislature will still get 95% or more of the votes cast, while the Supreme Court and the Circuit Court get less than 70%.[14]

Table 2.2 catalogs the percentage difference between "top of the ballot" turnout and judicial turnout for these elections.

TABLE 2.2

DIFFERENCE IN % BALLOT FOR JUDICIAL AND NON-JUDICIAL OFFICE

Year	% Drop to Supreme Court Turnout	% Drop to Circuit Court Turnout
1953	23	18
1956	40	
1959	39	30
1960	37	
1961	30	
1962	32	
1963	23	
1966	35	34
1968	34	
Mean =	33	28

Note: Wayne County omitted.

There is for Supreme Court elections a drop of approximately one-third of the voters who go to the polls. Circuit Court elections average only a slightly smaller loss of voters.

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Figure 2.4 charts the % Ballot for Wayne County. Because more Circuit Court elections could be included--vacancies to fill Wayne's large Third Circuit bench--a more complete picture of voting for circuit court is available. In general the pattern supports that of Figure 2.3 for the rest of Michigan. The reversed priority of Supreme Court and Circuit Court for Wayne County is shown by the 55 to 60% score for Circuit Court electorates and 70% for Supreme Court.[15]

From the Wayne County and the outstate patterns, two conclusions can be drawn. First, the % Ballot ratio dramatizes the differences in judicial and non-judicial electorates. Second, not only is there an apparent difference in the character of judicial and non-judicial electorates, but also there is a decided difference in the consistency of these electorates over the years. Non-judicial state offices consistently receive better than 90% of the votes cast, while state judicial offices vary widely in the percentage of the electorate they can mobilize.

The inconsistencies of judicial electorates are at once proof of their difference from non-judicial electorates and clues to understanding their true composition and motivation.

Before leaving the broad viewpoint gained by time series analysis, the relation of electoral timing and judicial elections deserves further comment. It is a firm rule of

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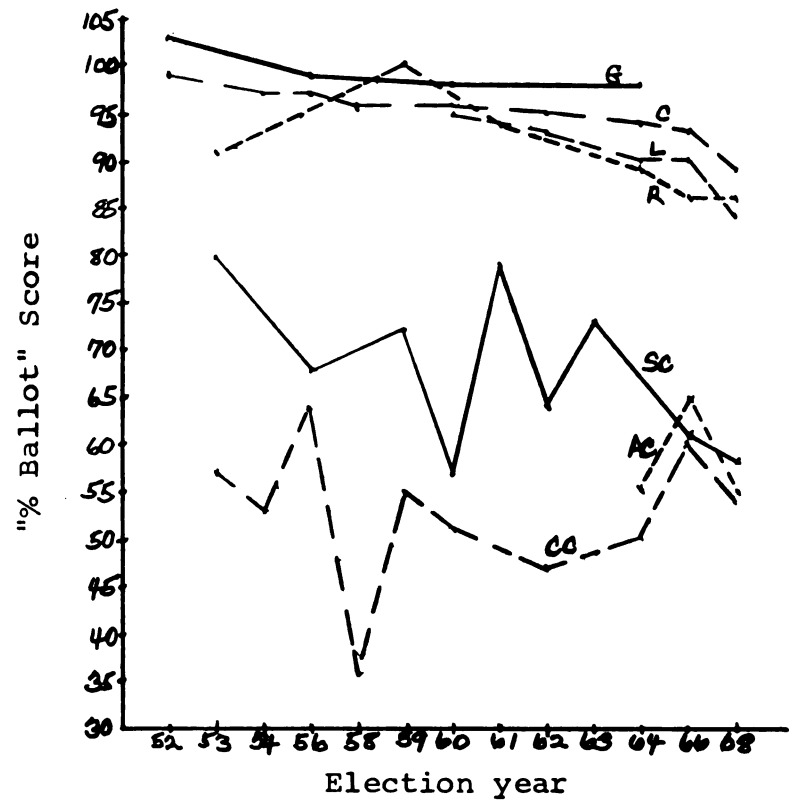
Figure 2.4: Wayne County "% Ballot" Scores.



Governor (G)
- 52: 103%
- 56: 99%
- 60: 98%
- 64: 98%

Congress (C)
- 52: 99%
- 54: 97%
- 56: 97%
- 58: 96%
- 60: 96%
- 62: 95%
- 64: 94%
- 66: 93%
- 68: 89%

Legislature (L)
- 60: 95%
- 62: 93%
- 64: 90%
- 66: 90%
- 68: 84%

Circuit Court (CC)
- 53: 57%
- 54: 53%
- 56: 64%
- 58: 36%
- 59: 55%
- 60: 51%
- 62: 47%
- 64: 50%
- 66: 60%
- 68: 54%

University Regents (R)
- 53: 91%
- 59: 100%
- 61: 94%
- 64: 89%
- 66: 86%
- 68: 86%

Supreme Court (SC)
- 53: 80%
- 56: 68%
- 59: 72%
- 60: 57%
- 61: 79%
- 62: 64%
- 63: 73%
- 66: 61%
- 68: 58%

Appeals Court (AC)
- 64: 55%
- 66: 65%
- 68: 55%

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voting behavior that turnout is affected by the time an election is held.[16] Presidential year elections promote the highest turnout. Midterm elections, which are often also gubernatorial year elections, are the next highest. Local elections, special elections held at a time other than fall national-state elections draw substantially fewer voters.

Michigan Supreme Court and Circuit Court elections follow this rule. In terms of absolute numbers, judicial elections held concurrently with presidential elections produce the greatest turnout; with gubernatorial elections, the next greatest; with spring elections, the next; with special vacancy elections, the least.

It is also standard that the different sizes of electorates produced by different electoral timing indicate different electorates. Electorates for special issues in spring elections are not only smaller but of considerably different character than fall electorates.[17]

Judicial elections in Michigan also confirm the corollary. As indicated in Table 2.2, the biggest difference in absolute turnout is spring versus fall timing. Statistically the absolute turnout in spring elections for Supreme Court and Circuit Court is significantly smaller than turnout in fall elections. But, the % Ballot for spring judicial elections is larger than the % Ballot for fall judicial elections.

Spring nonpartisan elections in Michigan were instituted purposely to remove certain offices from the pulls of

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partisan national and state politics.[19] Only minor state offices--Highway Commissioner, University trustees--ran under partisan labels. The bulk of the spring ballot consisted of nonpartisan local elections and nonpartisan state elections, including Supreme Court and Circuit Court. On the logic that the resulting small turnout was malleable, the 1963 Constitution did away with spring elections.[20]

Yet, despite the possibility of other factors--such as competition, circuit issues, or partisan affects--spring electorates showed an average 10% better participation in judicial elections than fall electorates. Standard explanations of voter motivation are probably operable here.[21] The few interested enough to turn out for locally emphasized spring elections were likely to be enough aware of local political affairs to vote in the judicial election too.

It is doubtful that the abolition of spring judicial elections has resulted in a large gain for electoral accountability. On the one hand, the size of the fall judicial electorate is considerably larger than its spring counterpart. Certainly a larger number of voters participate in fall judicial elections, supposedly increasing the spectrum to which judges must be accountable at election time.

On the other hand, the fall judicial electorate is a smaller proportion of the total fall electorate than the spring judicial electorate was of the total spring electorate. The difference averages around 10%. Perhaps it is simply

that the committed few who vote in judicial elections are those political activists who make it their business to vote in every and any election. These stalwarts would be more in evidence among the spring rather than the fall electorates.[22]

But perhaps also the "attentive publics"[23] of the court form something of a hard-core judicial electorate. Their numbers do not vary so much as those of other political interests and are lost in the complexity of fall elections.

Certainly the question of variance in judicial electorates is an exceedingly important one for understanding the dynamics of judicial elections in Michigan. On that consideration the research now focuses.

Research Question No. 2: Do judicial electorates vary in their levels of turnout?

First using the county unit as the basis for analysis, % Ballot for different judicial and nonjudicial offices can be examined. Table 2.3 displays the range, standard deviation, and coefficient of variation for the % Ballot means reported in Figure 2.3. The table omits presidential elections and gubernatorial elections held in midterm because these served as the base for figuring % Ballot. Values can achieve greater than 100% if the number of voters for the judicial election in a given county was greater than the number of voters for the "top of the Ballot" office. Evidently the occasion arises when the judicial election is of first importance to a county's voters. This unusual

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TABLE 2.3

VARIANCE OF % BALLOT MEANS
(N=82 counties)

	Mean % Ballot	Range	S.D.	C.V.
Judicial elections				
53 Supreme Court	76.0	87-63	5.4	7.1
59 Supreme Court	63.9	95-44	7.9	12.3
60 Supreme Court	65.9	94-39	9.4	14.3
61 Supreme Court	81.4	102-50	7.3	8.9
62 Supreme Court	75.0	88-50	8.2	10.9
63 Supreme Court	80.0	89-60	5.5	6.9
66 Supreme Court	69.0	98-51	7.3	10.5
53 Circuit Court	82.4	106-58	12.8	15.5
59 Circuit Court	76.5	106-44	16.1	21.0
66 Circuit Court	68.7	101-48	11.7	17.1
64 Appeals Court	63.9	75-42	6.8	10.6
		M =	8.95	
Non-judicial elections				
64 Governor	98.5	99-96	.6	.7
62 Congress	97.4	99-94	.8	1.4
64 Congress	95.7	98-91	1.3	1.4
66 Congress	97.4	100-91	1.4	1.4
60 State Senator	95.3	100-90	1.5	1.6
62 State Senator	95.5	106-65	5.6	6.0
64 State Senator	94.7	98-75	3.0	3.1
66 State Representative	93.9	100-91	1.7	1.7
		M =	1.98	

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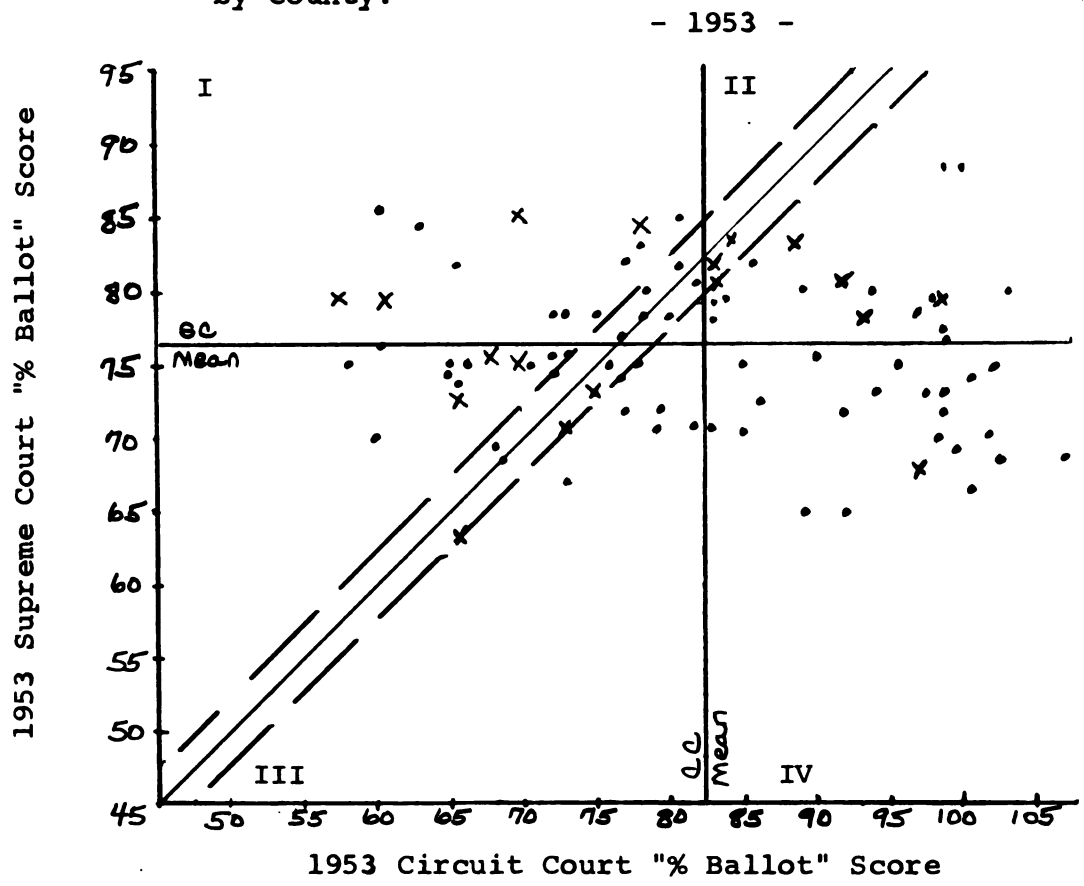
Comparing the S.D. of judicial and nonjudicial elections, it is clear that voters across the state respond quite differently to these two types of elections. A t-test for the equality of means confirms a highly significant difference in the mean standard deviations of judicial versus nonjudicial elections.[24] Counties vary widely in the percentage of voters participating in judicial elections while, in many instances, differ hardly at all in the percentage voting in nonjudicial elections.

Speaking to the level of office factor, Table 2.3 reveals that what is significalty different between Circuit Court and Supreme Court is the % Ballot commanded by each office and the way that this percentage varies over Michigan's 83 counties. Statistically there is a highly significant difference in the mean % Ballot for Circuit Court and Supreme Court elections in 1953 and 1959, but not for 1966. The variances, however, test unequal for all three elections.[25] Circuit Court voting varies much more widely than Supreme Court voting.

Suggested by Table 2.3, Figures 2.5a,b,c, diagram the % Ballot of each of the 83 counties in the Supreme Court election against the % Ballot for the Circuit Court election held at the same time. Each plot has been divided into four quadrants by the mean (N=82) % Ballot for the Supreme Court

Figure 2.5a: Comparison of Supreme Court and Circuit Court "% Ballot" Scores by County.



N = 83 counties
. = County of less than 100,000 population
x = County of more than 100,000 population

Figure 2.5b: Comparison of Supreme Court and Circuit Court "% Ballot" Scores by County.

Figure 2.5b: Comparison of Supreme Court and Circuit Court "% Ballot" Scores by County.

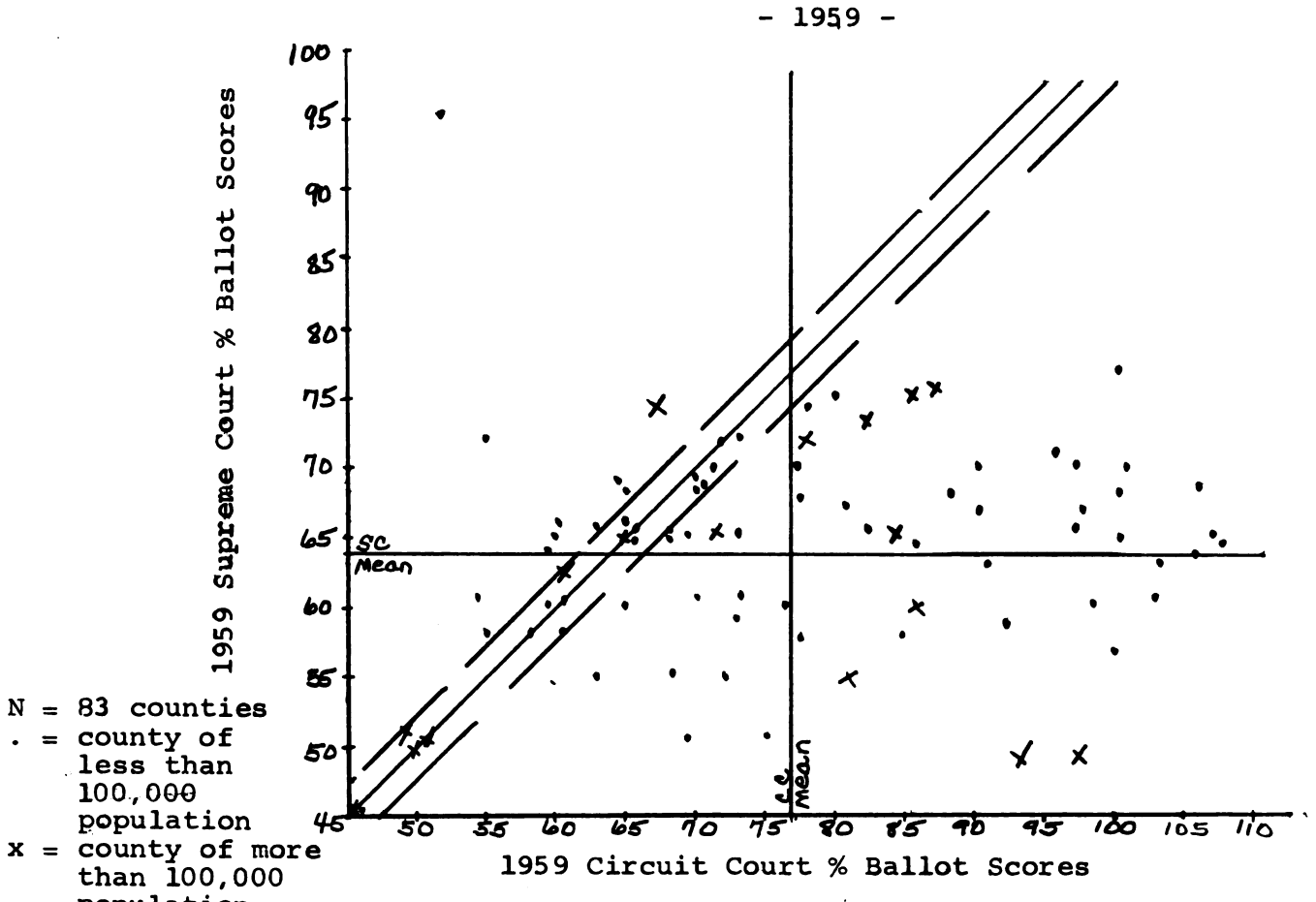
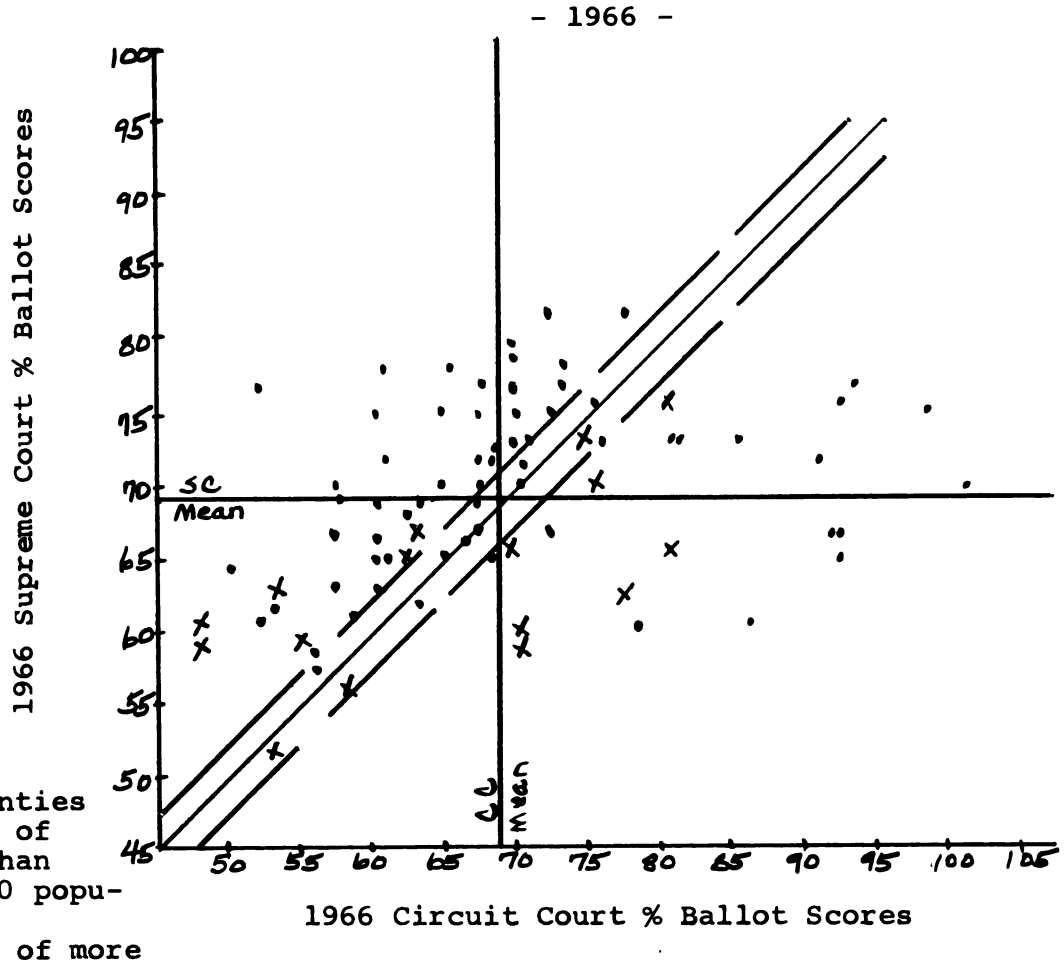


Figure 2.52: Comparison of Supreme Court and Circuit Court [illegible] by County:

- 1966 -

Figure 2.5c: Comparison of Supreme Court and Circuit Court "% Ballot" Scores by County.



N = 83 counties
. = county of less than 100,000 population
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and the Circuit Court respectively. The center axis intercepts all those points at which the % Ballot for Supreme Court equals the % Ballot for Circuit Court.

The legend identifies the counties of over 100,000 population, the counties appearing in each quadrant, and those counties having the same turnout for Supreme Court and Circuit Court. This last equality is defined as those counties whose Supreme Court and Circuit Court % Ballot score were within 5 percentage points of each other.[26]

The 2.5 Figures were designed to examine the differences in variance between voting for Supreme Court and Circuit Court. In effect the figures illustrate the S.D. scores reported in Table 2.3. Both dispersions about the means are wide, but the Circuit Court dispersion is wider than the Supreme Court.

Of major interest is the number of counties with equal turnout for Supreme Court and Circuit Court, challenging the hypothesis of different electorates for Supreme Court and Circuit Court. For 1953 only 27 counties, or 32.5%, had equivalent Circuit Court and Supreme Court electorates. For 1959, the proportion was 33.7%; for 1966, 38.5%.

Roughly two-thirds of the counties, and coincidently, well over two-thirds of the state's voters, produce enough difference in the sizes of their Circuit Court and Supreme Court electorates to suggest that these electorates are different ones. The similarity in electorate size and variance

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for state nonjudicial offices suggests that electorates for these offices are not as clearly distinguishable.

Because of the illustrated divergence in variance patterns for Supreme Court and Circuit Court electorates, the nature of these patterns will be discussed separately.

Research Question No. 3: What accounts for the variance in judicial election turnout?

Variance in Supreme Court electorates. Variance in Supreme Court electorates can be analyzed from two perspectives. First there are differences in electorates from election to election. Second, there are differences across the state, from county to county, in habits of participation in Supreme Court elections. These perspectives are explored in turn.

First, electorates differ from election to election. Figure 2.1, illustrating mean county participation from year to year; Figure 2.3, portraying mean % Ballot ratios over time; and Table 2.3, giving the distribution of these ratios across the state, all confirm this proposition.

As noted previously, timing is critical. Only for the 1959 election does a spring % Ballot drop below a fall % Ballot. Generally a higher proportion of the active electorate voted in spring Supreme Court elections than in fall ones. Yet there is variance among spring elections (64% Ballot to 81% Ballot) greater than among fall (65% Ballot to 75% Ballot). To explain these ranges factors of competition

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and partisan influences are considered in subsequent chapters.

From a second perspective, Supreme Court electorates vary internally as well as with each other. Table 2.3 states the range of % Ballot and its S.D. for seven elections. Figure 2.5 illustrates the dispersion of voter participation from county to county for three elections. These ranges can be dramatic, from 39% Ballot to 94% Ballot for the 1960 Supreme Court election.

Nonjudicial electorates for state offices do not vary internally as widely as judicial ones. Voters across the state appear to hold consistent perceptions, a consensus, of the political importance of the office of governor. Evidently the state public does not share an opinion on the political significance of the state's highest judicial office. How can this difference be explained?

Looking to the standard socio-economic hypothesis, participation in Supreme Court elections was correlated with several indicators.[27] Ranking the 83 counties on population in 1960, population in 1965, % urban, median school years, % in manufacturing, median income, % persons over 21 registered to vote in 1960, and % Ballot in the 1960 Supreme Court election, Spearman's Rho and Kendall's Tau correlation coefficients were calculated.[28]

The results are given in Table 2.4. The socio-economic ranks are all positively correlated. Population, % urban,

TABLE 5.4

CORRELATION BETWEEN VOTER PARTICIPATION AND SOCIO-ECONOMIC VARIABLES

Pop. 60	Pop. 65	Urban	School	Manu.	Inc.	Regis.	Circ. Ct.	Sup. Ct.

TABLE 2.4

CORRELATION BETWEEN VOTER PARTICIPATION AND SOCIO-ECONOMIC VARIABLES

	Pop. 60	Pop. 65	Urban	School	Manu.	Inc.	Regis.	Circ. Ct.	Sup. Ct.
	1	2	3	4	5	6	7	8	9
1		.96	.70	.45	.64	.62	-.61	-.39	-.40
2	.90		.70	.54	.67	.64	-.67	-.40	-.42
3	.53	.53		.47	.40	.50	-.38	-.16	-.25
4	.32	.38	.34		.30	.35	-.45	-.08	-.24
5	.46	.48	.28	.21		.50	-.43	-.33	-.26
6	.47	.50	.36	.25	.35		-.46	-.32	-.42
7	-.43	-.50	-.27	-.31	-.30	-.33		.16	.25
8	-.26	-.26	-.11	-.05	-.23	-.21	.09		.16
9	-.26	0.28	-.17	-.14	-.18	-.28	.15	.11	

Rho

Tau

Variables

1 Population 1960
2 Population 1965
3 % Urban 1960
4 Median School years 1960
5 % in Manufacturing 1960
6 Median Income 1960
7 % over 21 Registered to Vote 1960
8 % Ballot 1959 Circuit Court Election
9 % Ballot 1960 Supreme Court Election

median income, and % in manufacturing are most closely associated. All of the political variables correlated negatively with the socio-economic ones. The proportion of registered voters is inversely associated with a county's population. The judicial participation ranks are only weakly associated with lower population. There is no relation between turnout for Supreme Court and Circuit Court.

The ranking procedure, standard in voting research, can be challenged for Michigan data.[29] Due to the skewed distribution of population in the state, the intervals between counties in terms of population are very great, while differences among other socio-economic factors and political factors are not nearly so large. The impact of population is discounted by ranking.

Accordingly, counties were grouped in four nonparametric categories: (1) Wayne County (Detroit); (2) counties of over 150,000 population; (3) counties of over 50,000 population; (4) counties under 50,000 in population. Matching these classes with the mean % Ballot for each class is effected by Table 2.5.

Taking into account the skewed distribution of population in Michigan, Table 2.5 strengthens the inverse correlation between turnout for Supreme Court elections and county population. The less populous the county, the larger the proportion of the voters who vote in Supreme Court election. The association is stronger for fall than for spring elections.

TABLE 2.5

VARIANCE IN SUPREME COURT ELECTORATES

TABLE 2.5

VARIANCE IN SUPREME COURT ELECTORATES

Category	N	Mean % Ballot Fall 1960	Score	Mean % Ballot Spring 1961	Score
Detroit	1	57%	Low	79%	High
Metropolitan (over 150,000)	10	60%	Moderate	76%	High
Urban (50,000-150,000)	12	58%	Low	79%	High
City (20,000-50,000)	27	66%	Moderate	82%	High
Rural (under 20,000)	33	71%	Moderate	83%	High

There are distinctions between fall and spring Supreme Court electorates. Spring electorates are more stable across population size than are fall electorates. They are also, proportionately more rural. Fall elections, focused as they are on state and nation executive office draw voters uninterested in Supreme Court contests. This is truer for metropolitan than rural counties. Participation drops by more than 20% in Detroit for fall elections, by only 12% for rural counties.

A tentative explanation for some of the variance in participation in Supreme Court elections is local political culture. Do rural communities have different attitudes toward courts than metropolitan ones? Do rural communities see elections as a proper means to hold judges accountable while urban communities do not?

Variance in Circuit Court electorates. Participation in Circuit Court elections varies widely across the state. Figure 2.5 vividly illustrates county variance in voter turnout. Table 2.3 reveals the very high deviation of county % Ballot scores in Circuit Court elections when compared to the deviation in all other elections studied. This variance can be examined from two points of view, from election to election and from circuit to circuit.

From election to election timing is a determinate of variation in electorate size. Timing affects all circuits approximately the same way. As in voting for Supreme Court,

spring electorates are smaller in numbers, but represent a proportionately larger segment of the total electorate than fall electorates for all 42 circuits.

For the period under study there were 42 judicial circuits in Michigan. These varied in the number of counties they contained (ranging from one to six) and in the number of judges they required (ranging from one to 27). They also varied greatly in population (ranging in 1960 from 26,000 in the 23rd Circuit to over 2,500,000 in the 3rd Circuit). To ascertain the affect of these structural and socio-economic variations on participation variation, the 42 circuits were classified along three criteria: (1) metropolitan (over 155,000 population) or non-metropolitan (under 155,000); (2) multi-judge or single judge; and (3) multi-county or single county.

Cross-classifying the 42 circuits on these variables, four classes of circuits were arranged. Class I contains 10 circuits, all metropolitan, multi-judge, and single county. This Class I accounts for 70% of the state's population in 1965. All ten of the circuits fulfilled all three criteria for the entire twenty years of the study.

Class II is composed of seven circuits, six of which became highly urban (over 100,000 population), single county, and multi-judge during the period of study. Class II includes 11% of the state's population. One circuit in this class, the 20th, is a two-county circuit and only in 1966

multi-judge, but too heavily populated to be included in Class III.

Class III accounts for 17% of the state's 1966 population and 22 circuits. All are non-metropolitan, non-urban (under 100,000 population), multi-county, and single judge. Only three circuits (1st, 39th and 42nd) fall outside this classification. These are single county, single judge, non-urban. This small Class IV contains 2% of the state's population. Map 2.1 illustrates the distribution of the four Classes of circuits through the state.

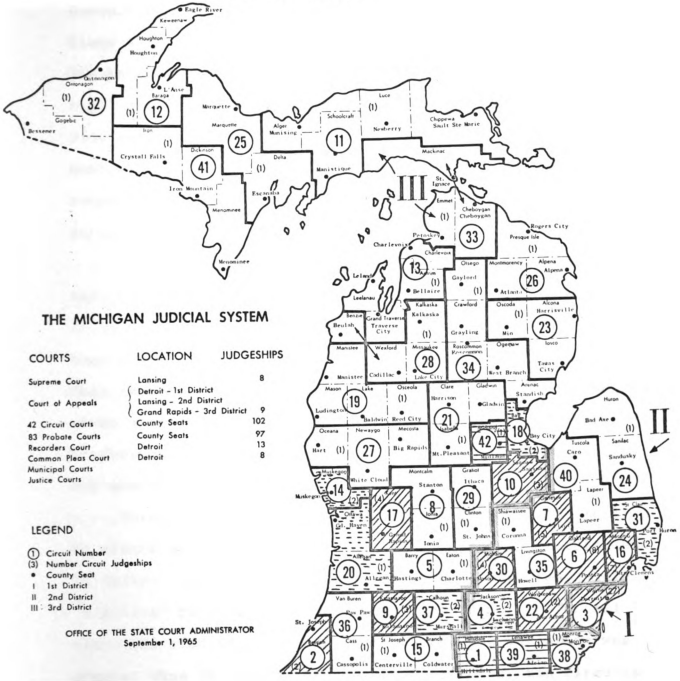
TABLE 2.6

STRUCTURAL-POPULATION VARIABLES AND PARTICIPATION IN CIRCUIT COURT ELECTIONS, MEAN OF 1953, 1959, 1966 AND 1961-1965 VACANCY ELECTIONS

Ratings	Classes I	II	III	IV	Totals
Very High (85-100% Ballot) "OPEN"			4		4
High (75-84% Ballot)	1	1	8	1	11
Moderate (60-74% Ballot)	6	6	10	1	23
Low (30-59% Ballot) "CLOSED"	3				3
	10	7	22	2	41

From Table 2.6 it is clear that arranging the circuits by these structural-social variables does produce different

Map 2.1: The Michigan Judicial System -- Circuits by Analytical Classes



patterns of voter participation. Nine of the ten Class I circuits have moderate participation or worse. Six of the seven Class II circuit are moderate participators. For Class III, the rural, multi-county, single judge circuits, 55% have high or very high participation ratings. The "big city" circuits have poor participation in circuit court elections by comparison.[30] Interpretation of this finding must wait on analysis of the criteria of competition and nonpartisanship, either of which may modify the effect of structure.

The question of intracircuit variation in participation can be answered simply: there is very little of it. It is unusual if counties in the same circuit vary more than a few points of each other by the % Ballot ratio.[31] This is commonsensical because each county electorate in a given circuit is responding to the same electoral situation. Intracircuit competition may explain what variance in turnout there is.

Returning to the perspective of variation from election to election, the S. D. for each county and each circuit mean "% Ballot" ratio was computed. For twenty counties, their "% Ballot" ratio did not vary more than 10 points for all elections studies. For eighteen others, the variation was greater than 20 points. In terms of circuits, ten circuits had S. D.'s below 10, and ten had S. D.'s above 20. Of the steadier voting circuits, 60% were Class I or Class II of the less consistent voting circuits, 70% are Class III.

From analysis of turnout rates and sociological and structural variables, a rough pattern emerges. The metropolitan circuits usually have consistently moderate to low turnout rates. The size of the electorate does not alter greatly with electoral situations. Evidently in the larger multi-judge, single county circuits there is a "core" circuit court electorate of interested voters that dominate circuit court selection.

While the less populous, multi-county, single judge circuits can produce their entire electorate for a judicial contest, the pattern is inconsistent. It is suggested that the larger public can become aroused with the electoral situation, and no professional hard-core judicial electorate exists. Chapters III and IV will permit the testing of this hypothesis.

There are four Class III circuits that are exceptions to this pattern. Circuits 19, 21, 33 and 41 all have consistently moderate to high turnout for judicial elections. Again factors of electoral situation and/or local partisan affairs will be examined for an explanation.

Participation and Judicial Accountability

This research proposes to evaluate the effectiveness of judicial elections as channels of communication between the public and the courts. A basic assumption is that communication between judges and the general public is desirable, indeed necessary if judges are to be responsible

political officers in a democracy.[32] It has been the objective of Chapter II to begin the assessment of judicial elections as a possible channel of communication by measuring voter participation in them. If a broad section of the electorate does not even participate in judicial elections, obviously no possibility exists for communication.

The criteria is participation in nonjudicial elections. Nonjudicial offices (President, Governor, Congressman, and State Senator) were selected for their comparative parallel constituencies. The state offices serve also as executive and legislative comparisons to the state judiciary.

The product of Chapter II is Table 2.7, a chart of Michigan judicial electorates by size and consistency. The basis of comparison was the "top of the ballot" electorate. This is defined as that office electorate which, statewide, contains the largest number of voters. It was found that participation in the selected legislative races nearly equaled that of the "top of the ballot" executive offices in size and variance. Therefore, comparison with less than the "top of the ballot" was redundant. A "very high" scoring judicial electorate is at least 85% of the "top of the ballot" electorate. A "high" scoring judicial electorate is at least 75%; a "moderate", at least 60%; and a "low", below 60%.

The data is interpreted by the concepts of "Open" and "Closed" judicial electorates. An "Open" electorate covers

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the Very High and High ratings and is 75% of the total electorate or more. Voter participation in the judicial electorate is open in the sense that a high percentage of those who come to the polls take advantage of the opportunity to express their opinion in the selection of judicial officers. Open electorates encourage the possibility of broad democratic accountability for judges. Public interest is high and active. Electoral accountability to a broad section of the community is possible in such a situation.

"Closed" judicial electorates, ranking Moderate or Low in % Ballot, are those containing less than 75% of the total electorate. These are labeled "closed" because they admit of two possibilities, neither of which approaches the democratic norm. First, a small electorate may be closed in the sense that it is composed of particular groups with particular interests in court affairs. Watson and Downing call these the court's "attentive publics".[33] Any accountability via the ballot in this case would be only to these "publics", the interest of the general public being unexpressed and unattended. Most studies of state courts argue that this is indeed the case.[34]

A second situation, however, could be indicated by the existence of a "closed" electorate. The voting public might find the ballot an inappropriate channel for communicating with judges. It might further consider any channel inappropriate, believing judges should be independent of public

and political pressure. Herbert Jacob and Jack Ladinsky both suggest this hypothesis in their studies of judicial elections in Wisconsin.[35]

Summary

The research questions of Chapter II, aimed at the dimension of participation, concerned the differences in judicial and non-judicial voting patterns and in the variance of these patterns. A summary of the findings produced by each of the lines of inquiry follows:

Research Question No. 1: Are there differences in voter participation between judicial and nonjudicial elections? Comparing state judicial and nonjudicial elections over a twenty year period, it was found that many of the same influences prevail. Timing and the pull of national elections affected both. Presidential election year turnout is the highest for whatever office. Fall turnout is higher than spring turnout for all types of office.

Timing, however, has its peculiar effect on participation in judicial elections. Voting in Supreme Court and Circuit Court elections drew a larger proportion of the total electorate when elections were held in April rather than November. Most probably this is an indication of the presence of a core of active democrats in the judicial electorate whose numbers are overwhelmed in the swell of voters attracted by the publicity of state and national executive races. This phenomenon is more apparent in Supreme Court

than in Circuit Court races, where local circuit situations appear to be controlling.

The essential differences in participation in judicial and nonjudicial elections are in character and consistency. The % Ballot commanded by all of the nonjudicial offices studied varied very little over the twenty year period. Participation in Supreme Court elections, however, varied nearly 20 percentage points. Circuit Court participation varied even more widely.

The data point strongly to judicial electorates distinct in character as well as size from the nonjudicial electorates. Survey methods, such as those used by Norman Thomas in his study of issue voting in Michigan, should be designed to identify the exact characteristics of the judicial electorate.[36] Yet the inconsistency of these electorates would make such a task exceedingly difficult. At certain times, there are open electorates, composed of nearly all of the voters going to the polls. For other elections, the judicial electorate is small, closed off from the general public.

Are there differences in participation patterns for Supreme Court and Circuit Court elections? Over the state, Circuit Court races often attract more voters than do Supreme Court elections. But again the essential difference is consistency. Supreme Court electoral participation is much more consistent, from election to election and county to

county, than participation in Circuit Court elections. Structural distinctions--election frequency, jurisdiction, constituency, nomination methods, length of terms--may account for the higher variance in the Circuit Court races.[37] It does not explain the overall lower voting prestige of the higher level of office.

Research Question No. 2: Do judicial electorates vary in participation patterns? Yes, over time and place, judicial electorates vary greatly in size and character. In this Chapter, three factors were explored to explain this variance; the timing of judicial elections, the level of office, and the socio-structural characteristics of the electorate.

Judicial elections held in the spring draw a higher proportion of the electorate, indeed a different electorate, than those held in the fall. Judicial elections held in presidential years get the highest numerical turnout; in gubernatorial years the next; in spring elections, the next; in special vacancy elections, the least. That proportion of the electorate participating in the judicial election, however, varys inversely with its absolute size.

Electorates for Supreme Court and Circuit Court vary also in size and consistency. Supreme Court electorates follows the pull of state and national trends, although erratically. The proportion of the electorate participating in Supreme Court elections, however, varies widely across the

state while remaining constant for state and national non-judicial office. Circuit Court electorates are even more inconsistent, following the pull of local politics.

Research Question No. 3: Population was found to be a factor in influencing the size of Supreme Court turnout. Arranging the data of Table 2.7 into classes of counties by population, from higher to lower, the pattern is clear:

Class	Open	Closed	Consistent	Inconsistent
I	--	100%	100%	--
II	20%	80%	60%	40%
III	17%	83%	50%	50%
IV	37%	63%	74%	16%
V	67%	33%	93%	7%

The less populous the county, the more open and more consistent the Supreme Court electorate.

Variance in Circuit Court elections follows only a slightly altered pattern. Here the classes of circuits are based on structural as well as social criteria.

Class	Open	Closed	Consistent	Inconsistent
I	10%	90%	40%	60%
II	29%	71%	14%	86%
III	64%	36%	18%	82%
IV	67%	33%	--	100%

Here again the less populous the circuit the more open the electorate. But for the Circuit Court, the less populous the circuit, the less consistent the electorate. The issues of particular electoral situations undoubtedly hold sway.

The existence of open or closed judicial electorates appears to turn on several conditions. One strongly suggested by this analysis is that of local political attitudes toward the courts. Watson and Downing's denunciation of the man in the street for his lack of concern with judicial affairs more applicable to the big city than to the small town.[38] Why do smaller communities show broader interest in the selection of judicial personnel than metropolitan ones?

The dimension of participation only begins the analysis of judicial elections, and raises as many questions as it answers. Logically the next question is one of the significance of participation. If judicial elections are not opposed, there is not a decision to be made by voting; is, therefore, participation in judicial elections meaningless? This is the logic of the democratic norm.

In Chapter III, the dimension of competition in judicial elections, several alternative theories of the relationships between competition and accountability are presented. It is there also that the relationship between competition and participation is explored. Is participation simply a function of competition?

TABLE 2.7

THE PARTICIPATION SCORES OF JUDICIAL ELECTORATES

I. The Supreme Court Electorate

A. By Election: (N=82 counties)

YEAR	MEAN % BALLOT	S.D.	SCORE	RATING
1953	76.0	5.4	High	Open
1959	63.9	7.9	Moderate	Closed
1960	65.9	9.4	Moderate	Closed
1961	81.4	7.3	High	Open
1962	75.0	8.2	High	Open
1963	80.0	5.5	High	Open
1966	69.0	7.3	Moderate	Closed
Wayne County (Detroit)				
1953	82.2		High	Open
1959	65.4		Moderate	Closed
1960	72.7		Moderate	Closed
1961	81.4		High	Open
1962	74.3		Moderate	Closed
1963	85.4		Very High	Open
1966	68.6		Moderate	Closed

B. By County*: (N=83 counties)

COUNTY	MEAN % BALLOT	Score	S.D.	SCORE
Alcona	76.9	high	7.9	consistent
Alger	74.2	moderate	10.0	inconsistent
Allegan	74.4	moderate	8.5	consistent
Alpena	82.8	high	6.1	consistent
Antrim	76.9	high	11.5	inconsistent
Arenac	76.8	high	6.3	consistent
Baraga	65.4	moderate	11.3	inconsistent
Barry	72.3	moderate	5.5	consistent
Bay	63.7	moderate	13.0	inconsistent
Benzie	72.4	moderate	6.3	consistent

*Elections included: 1953, 1959, 1960, 1961, 1962, 1963, 1966.
Mean % Ballot scores: very high (85-100%); high (75-84%); moderate (60/74%); low (30/59%).
S.D. scores: consistent (below 9.9); inconsistent (above 10).

COUNTY	MEAN % BALLOT	SCORE	S.D.	SCORE
Berrien	69.4	moderate	8.1	consistent
Branch	72.6	moderate	11.8	inconsistent
Calhoun	59.5	low	10.3	inconsistent
Cass	63.7	moderate	8.3	consistent
Charlevoix	72.3	moderate	5.3	consistent
Cheboygan	79.8	high	5.2	consistent
Chippewa	69.4	moderate	10.6	inconsistent
Clare	74.5	high	9.5	consistent
Clinton	73.9	moderate	6.6	consistent
Crawford	73.7	moderate	9.9	consistent
Delta	70.6	moderate	10.9	inconsistent
Dickinson	74.8	high	9.0	consistent
Eaton	74.8	high	5.9	consistent
Emmet	75.0	high	7.2	consistent
Genesee	78.0	high	7.4	consistent
Gladwin	75.8	high	6.9	consistent
Gogebic	70.3	moderate	15.1	inconsistent
Grand Traverse	73.9	moderate	10.1	inconsistent
Gratiot	76.6	high	7.5	consistent
Hillsdale	71.5	moderate	7.8	consistent
Houghton	70.3	moderate	8.7	consistent
Huron	75.9	high	5.1	consistent
Ingham	78.7	high	6.8	consistent
Ionia	74.0	moderate	8.1	consistent
Iosco	75.6	high	6.9	consistent
Iron	68.6	moderate	5.1	consistent
Isabella	74.2	moderate	9.8	consistent
Jackson	66.6	moderate	7.8	consistent
Kalamazoo	66.8	moderate	10.5	inconsistent
Kalkaska	72.4	moderate	8.3	consistent
Kent	67.5	moderate	13.0	inconcsistent
Keweenaw	73.3	moderate	8.6	consistent
Lake	70.0	moderate	8.0	consistent
Lapeer	75.2	high	5.9	consistent
Leelanau	77.5	high	6.3	consistent
Lenawee	64.8	moderate	12.5	inconsistent
Livingston	74.3	moderate	6.5	consistent
Luce	75.5	high	7.1	consistent
Mackinac	77.0	high	6.2	consistent
Macomb	66.2	moderate	10.2	inconsistent
Manistee	76.4	high	5.1	consistent
Marquette	69.6	moderate	13.1	inconsistent
Mason	78.7	high	7.5	consistent
Mecosta	75.0	high	7.7	consistent
Menominee	75.0	high	6.0	consistent
Midland	77.9	high	6.7	consistent
Missaukee	78.0	high	6.3	consistent
Monroe	59.9	low	12.5	inconsistent
Montcalm	72.2	moderate	8.1	consistent

COUNTY	MEAN % BALLOT	SCORE	S.D.	SCORE
Montmorency	76.3	high	7.8	consistent
Muskegon	61.5	moderate	10.1	inconsistent
Newaygo	80.3	high	5.9	consistent
Oakland	63.3	moderate	6.8	consistent
Oceana	71.4	moderate	7.8	consistent
Ogemaw	79.0	high	6.0	consistent
Ontonagon	75.4	high	8.7	consistent
Osceola	78.8	high	8.3	consistent
Oscoda	75.4	high	6.6	consistent
Otsego	78.2	high	5.6	consistent
Ottawa	67.2	moderate	13.2	inconsistent
Presque Isle	75.6	high	7.2	consistent
Roscommon	70.7	moderate	6.4	consistent
Saginaw	69.7	moderate	9.3	consistent
Sanilac	79.0	high	7.7	consistent
Schoolcraft	70.7	moderate	5.1	consistent
St. Clair	72.7	moderate	8.5	consistent
St. Joseph	69.6	moderate	7.3	consistent
Shiawassee	68.8	moderate	7.2	consistent
Tuscola	81.9	high	6.3	consistent
Van Buren	57.1	low	10.7	inconsistent
Washtenaw	70.1	moderate	9.6	consistent
Wayne	68.3	moderate	8.6	consistent
Wexford	75.0	high	7.1	consistent

II. The Circuit Court Electorates

The means are based on returns from the 1953, 1959, 1966 general elections and all vacancy elections occurring between 1960 and 1966.

Mean % Ballot ratios are scored as very high (85-100%), high 75—84%), moderate (60-74%), and low (30-59%).

S.D.'s are scored consistent (below 9.9); inconsistent (10—19.9); highly inconsistent (above 20).

Class I circuits are over 155,000 population, single county and multi-judge.
Class II circuits are over 100,000, single county and multi judge.
Class III circuits are under 100,000, multi-county and single judge.
Class IV circuits are under 100,000, single county and single judge.

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Class I Circuits (N=10)

CIRCUIT	COUNTY	% MEAN BALLOT	SCORE	S.D.	SCORE
2	Berrien	67.0	moderate	13.7	inconsistent
3	Wayne	42.5	low	17.3	inconsistent
6	Oakland	57.2	low	12.9	inconsistent
7	Genesee	79.1	high	7.8	consistent
9	Kalamazoo	63.7	moderate	10.4	inconsistent
10	Saginaw	59.8	low	9.0	consistent
16	Macomb	58.9	low	21.4	highly incon.
17	Kent	64.3	moderate	16.3	inconsistent
22	Washtenaw	60.9	moderate	8.9	consistent
30	Ingham	70.0	moderate	5.7	consistent

Class II Circuits (N=7)

4	Jackson	73.1	moderate	7.3	consistent
14	Muskegon	76.5	high	19.0	inconsistent
18	Bay	70.9	moderate	22.3	highly incon.
20	Allegan	68.6	moderate	13.0	inconsistent
	Ottawa	63.8	moderate	12.0	inconsistent
31	St. Clair	80.7	high	12.2	inconsistent
37	Calhoun	61.5	moderate	14.5	inconsistent
38	Monroe	65.4	moderate	25.3	highly incon.

Class III Circuits (N=22)

5	Barry	77.2	high	10.2	inconsistent
	Eaton	70.2	moderate	12.8	inconsistent
8	Ionia	68.7	moderate	14.2	inconsistent
	Montcalm	73.5	moderate	12.8	inconsistent
11	Alger	88.9	very high	14.9	inconsistent
	Chippewa	86.3	very high	19.9	inconsistent
	Luce	89.0	very high	14.5	inconsistent
	Schoolcraft	82.5	high	22.9	highly incon.
12	Baraga	74.8	moderate	11.2	inconsistent
	Houghton	72.1	moderate	17.6	inconsistent
	Keweenaw	75.0	high	22.7	highly incon.
13	Antrim	72.5	moderate	16.5	inconsistent
	Charlevois	77.5	high	9.0	consistent
	Grand Traverse	73.6	moderate	21.4	highly incon.
	Leelanau	77.9	high	13.9	inconsistent
15	Branch	71.3	moderate	24.6	highly incon.
	St. Joseph	72.0	moderate	21.3	highly incon.
19	Lake	85.6	high, very	8.7	consistent
	Manistee	88.2	very high	10.0	inconsistent
	Mason	91.1	very high	9.1	consistent
	Osceola	77.2	high	15.3	inconsistent
21	Clare	75.8	high	3.2	consistent
	Isabella	73.9	moderate	8.4	consistent
	Midland	83.9	high	10.5	inconsistent

CIRCUIT	COUNTY	% MEAN BALLOT	SCORE	S.D.	SCORE
23	Alcona	88.0	very high	14.9	inconsistent
	Iosco	86.0	very high	19.3	inconsistent
	Oscoda	80.9	high	14.4	inconsistent
24	Huron	81.7	high	17.3	inconsistent
	Sanilac	76.9	high	17.8	inconsistent
25	Delta	66.5	moderate	28.1	highly incon.
	Marquette	70.3	moderate	22.9	highly incon.
26	Alpena	86.4	very high	14.0	inconsistent
	Montmorency	79.6	high	15.7	inconsistent
	Presque Isle	77.0	high	21.5	highly incon.
27	Mecosta	79.2	high	19.4	inconsistent
	Newaygo	80.5	high	15.7	inconsistent
	Oceana	85.3	very high	16.9	inconsistent
28	Benzie	76.3	high	11.6	inconsistent
	Kalkaska	72.8	moderate	17.6	inconsistent
	Missaukee	76.9	high	9.9	consistent
	Wexford	80.3	high	15.5	inconsistent
29	Clinton	66.8	moderate	8.9	consistent
	Gratiot	67.8	moderate	10.3	inconsistent
32	Gogebic	94.1	very high	11.7	inconsistent
	Ontonagon	84.8	high	17.1	inconsistent
33	Cheboygan	70.1	moderate	1.5	consistent
	Emmet	94.1	very high	11.7	inconsistent
	Mackinac	75.0	high	9.9	consistent
34	Arenac	84.5	high	17.8	inconsistent
	Crawford	77.2	high	22.2	highly incon.
	Gladwin	75.4	high	15.8	inconsistent
	Ogemaw	79.9	high	12.8	inconsistent
	Otsego	73.5	moderate	14.9	inconsistent
	Roscommon	74.2	moderate	23.3	highly incon.
35	Livingston	69.8	moderate	24.8	highly incon.
	Shiawassee	75.8	high	3.2	consistent
36	Cass	66.9	moderate	11.9	inconsistent
	Van Buren	64.9	moderate	11.3	inconsistent
40	Lapeer	78.1	high	17.3	inconsistent
	Tuscola	76.7	high	24.4	highly incon.
41	Dickinson	75.2	high	8.4	consistent
	Iron	65.8	moderate	6.4	consistent
	Menominee	65.2	moderate	6.7	consistent

Class IV Citcuits (N=3)

1	Hillsdale	82.5	high	15.0	inconsistent
39	Lenawee	65.3	moderate	25.3	highly incon.
42	Midland (created 1967)				

Chapter II--Footnotes

1. Gabriel A. Almond and Sidney Verba, The Civic Culture (Little, Brown; Boston, 1965), 117.

2. The literature is reviewed in Lester W. Milbrath, Political Participation (Rand McNally; Chicago, 1965), 104.

3. Election returns for Michigan now include an estimate of the total electorate. In the interest of standard measurement, however, the % Ballot was used throughout.

4. Carolyn Stieber, The Politics of Change in Michigan (Michigan State University Press; East Lansing, 1970).

5. Malcolm Moos, "Judicial Elections and Partisan Endorsements of Judicial Candidates in Minnesota," APSR, 35 (1941), 69-75.

6. Voting returns, the basic data of the research, were obtained either from the Official Canvass of Votes, published after each regular election by the Michigan Secretary of State's office, or from a compilation by John P. White, Michigan Votes: Election Statistics 1928-1956, and the 1958-1960 Supplements, Papers in Public Administration, No. 24, Bureau of Government, Institute of Public Administration (University of Michigan; Ann Arbor, 1958).

7. For example, in the 1953 Circuit Court election, 95,737 total votes were cast in Oakland County (6th Judicial Circuit) for three winners out of a field of six. To estimate the size of the Circuit Court electorate, 95,737, was divided by 3, assuming that each voter voted for three candidates. Thus the estimated size of the judicial electorate in Oakland County in the 1953 election is 31,914.

8. Below is a listing of a number of judicial and nonjudicial elections. Beside each is given the percentage of the total state electorate accounted for by Wayne County (3rd Judicial Circuit):

Judicial		Nonjudicial	
53 Circuit Court:	29%	52 Governor:	39%
59 Circuit Court:	30%	52 President:	39%
66 Circuit Court:	25%	54 Governor:	39%
53 Supreme Court:	38%	56 President:	37%
59 Supreme Court:	39%	56 Governor:	37%
60 Supreme Court:	33%	58 Governor:	35%

Judicial		Nonjudicial	
61	Supreme Court: 30%	60	President: 35%
62	Supreme Court: 34%	60	Governor: 35%
63	Supreme Court: 31%	62	Governor: 36%
64	President: 34%	64	St. Senator: 34%
64	Governor: 34%	66	St. Representative: 30%
52	Congress: 39%		
54	Congress: 38%		
56	Congress: 37%		
58	Congress: 35%		
60	Congress: 35%		
62	Congress: 35%		
64	Congress: 30%		
66	Congress: 37%		

9. The computations for Figures 2.1 and 2.2 and Table 2.2 were done under the "Basic Statistics Program", Library Program No. 1.1.2, Western Michigan University Computer Center, Kalamazoo, Michigan.

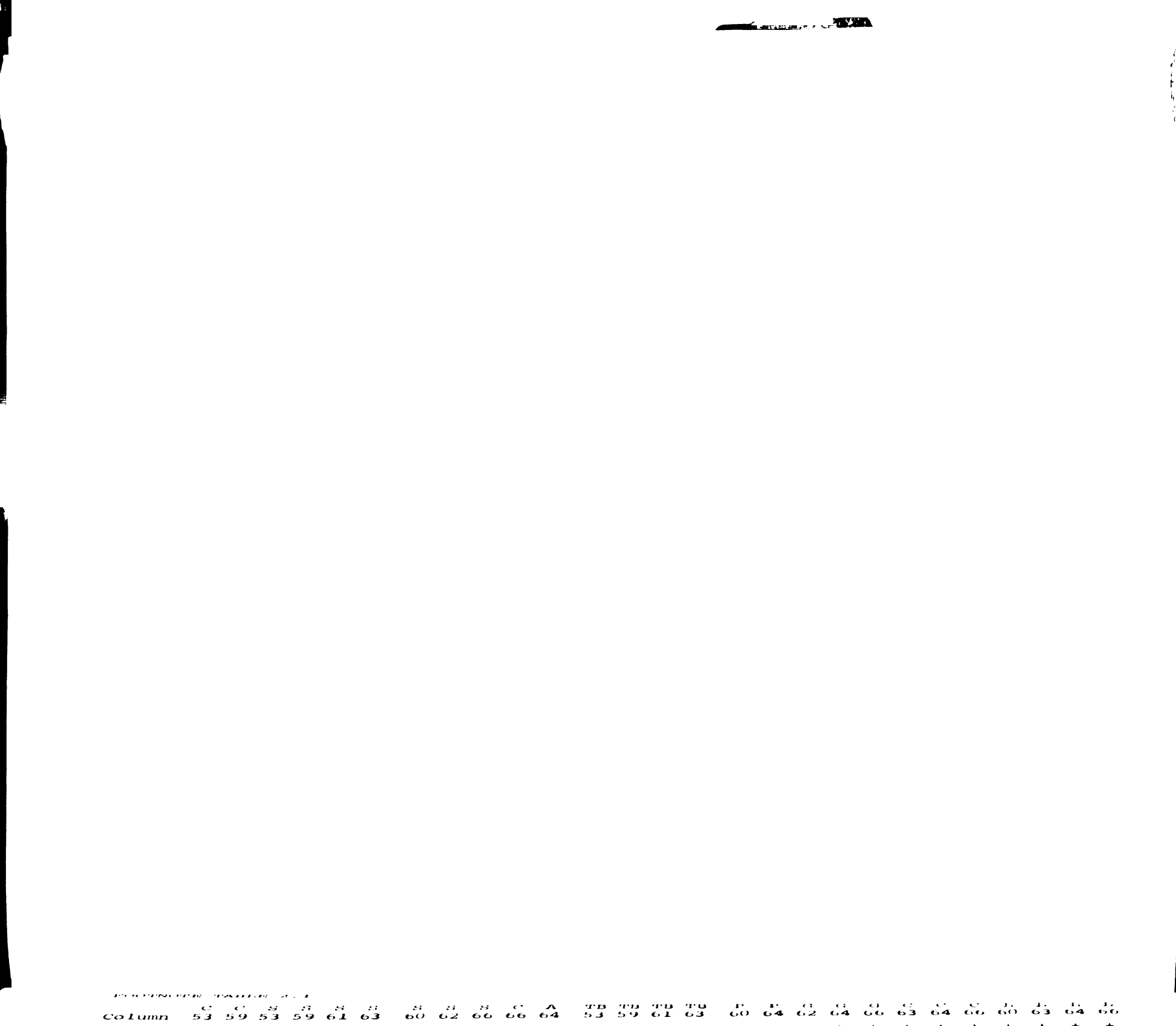
10. V. O. Key, Jr., Politics, Parties and Pressure Groups (Thomas Y. Crowell; New York, 1965), 581. See also Milbrath, op. cit., 104.

11. Subjecting the same data to statistical testing establishes the probability that these differences are certain and not functions of chance. Using the t-test for equality of means, the results are displayed in footnotes Table 2.1. The data is taken from 23 elections, indexed in the legend of the Table. Wayne County is omitted from this analysis.

On the basis of the time variable, the matrix was arranged in categories of spring judicial elections, fall judicial elections, spring nonjudicial elections, and fall nonjudicial elections. The significance patterns produced by the t-statistic roughly substantiate this arrangement.

County turnout means are equivalent for the spring judicial elections are significantly different for spring and fall judicial elections. The 1963 spring elections are the exception and must be explained by other factors. Jeapordizing the hypothesis that judicial and nonjudicial turnout are unequal, there is no significant difference in mean county turnout for spring judicial and spring nonjudicial elections. There is a highly significant difference in turnout for spring judicial and fall nonjudicial elections. Time appears to be a more powerful predictor than election type.

Fall judicial elections are equivalent in terms of turnout. Setting them against the fall nonjudicial elections, however, points up the presidential year--high, midterm year--low, pattern. The Supreme Court and Circuit Court elections of 1966 (a midterm year) are equivalent to nonjudicial elections in other midterm years (1962, 1966) but significantly different from presidential year elections in 1960 and 1964.



FOOTNOTE TABLE 2.1

Column	C 53	C 59	S 53	S 59	S 61	S 63	S 60	S 62	S 66	C 66	A 64	TB 53	TB 59	TB 61	TB 63	P 60	P 64	G 62	G 64	G 66	C 63	C 64	C 66	L 60	L 63	L 64	L 66
1) C 53		x	x	x	x	+	+	+	+	+	+	x	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
2) C 59			x	x	x	x	+	+	+	+	+	x	x	x	+	+	+	+	+	+	+	+	+	+	+	+	+
3) S 53				x	x	+	+	+	+	+	+	x	+	+	+	+	+	+	+	+	+	+	+	+	+	+	+
4) S 59					x	+	+	+	+	+	+	x	x	+	+	+	+	+	+	+	+	+	+	+	+	+	+
5) S 61						x	+	+	+	+	+	x	x	x	+	+	+	+	+	+	+	+	+	+	+	+	+
6) S 63							x	x	x	x	x	x	x	x	x	+	+	+	+	+	+	+	+	+	+	+	+
7) S 60								x	x	x	x	+	+	x	x	x	x	x	x	x	x	x	x	x	x	x	x
8) S 62									x	x	x	+	x	x	x	+	x	x	x	x	x	x	x	x	x	x	x
9) S 66										x	x	+	x	x	x	+	+	x	+	x	x	+	x	+	x	+	x
10) C 66											x	+	x	x	x	+	+	x	+	x	x	+	x	+	x	+	x
11) A 64												+	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
12) TB53													x	x	+	+	+	+	+	+	+	+	+	+	+	+	+
13) TB59														x	x	+	+	+	+	+	+	+	+	+	+	+	+
14) TB61															x	+	+	+	+	+	+	+	+	+	+	+	+
15) TB63																+	+	x	+	x	x	+	x	+	x	+	x
16) P 60																	x	x	x	x	x	x	x	x	x	x	x
17) P 64																		x	x	x	x	x	x	x	x	x	x
18) G 62																			x	x	x	x	x	x	x	x	x
19) G 64																				x	x	x	x	x	x	x	x
20) G 66																					x	x	x	x	x	x	x
21) Co62																						x	x	x	x	x	x
22) Co64																							x	x	x	x	x
23) Co66																								x	x	x	x
24) L 60																									x	x	x
25) L 62																										x	x
26) L 64																											x
27) L 66																											

x = no significant difference
+ = significantly (at p = .05) different
C = Circuit Court; S = Supreme Court; A = Appeals Court
P = President; G = Governor; Co = Congress; L = State Legislator
TB = "top of the ballot" spring elections

The lower right corner of the matrix formed by the fall nonjudicial elections illustrates the stability of nonjudicial voting patterns in Michigan. The electorate size is essentially the same throughout the time period covered.

A t-matrix gives statistical support for the time factor identified in Figure 2.1. It also confirms significant differences in certain judicial and nonjudicial electorate sizes. However, the test results suggest that the spring-fall discrepancy is relatively greater than the judicial, nonjudicial one.

12. Milbrath, op. cit., 104ff.

13. Joseph A. Schlesinger, "The Structure of Competition for Office in the American States," Behavioral Science, 8 (July 1960), 198. ---- Ambition and Politics (Rand McNally; Chicago, 1966), 127-29.

City Politics Reports, Edward C. Banfield, ed. (Joint Center for Urban Studies; Cambridge, 1959-61).

14. Basic Statistics Program, op. cit. For purposes of comparison, the % Ballot was figured for the Regents of the University of Michigan in 1953, 1959, 1961, 1966, and 1968; of Michigan State University for 1964; and of Wayne State University for 1963. This is an office of little campaigning, usually won on a straight party vote. It is interesting to discover that despite the lack of political importance in the office, the percentage of voters who voted in a university board election is very high, only dipping below 90% in 1968. The implications of this high turnout are several. First, one could explain it away as strict party line voting. Indeed the turnout could be used as an index of the number of voters who pulled the party lever in the voting booth. Second, it certainly casts doubt on the infalliability of the assumption that the more important the office, the higher the turnout. Third, it indicates that state voters do not discriminate between the three state universities in voting for trustees. Similarly, for comparison, the % Ballot was figured for several minor state offices--secretary of state, attorney general, and board of education--for the election years for Figure 2.3. For each of these, the % Ballot varies between 96% and 98%, averaging about the same or higher as congressional and state legislative elections. For this reason, the lack of any significant difference between state executive election turnouts, the minor state offices were omitted for detailed analysis.

15. The only comparable statistic on turnout to be reported in the research literature is from Watson and Downing, who found that in the 1964 Missouri Supreme Court election, 54% of those who voted for state attorney general also

voted for state supreme court: 45% for Jackson County circuit judges; and 37% for St. Louis city judges. On the whole Michigan voters are more likely to be participants in judicial elections than Missouri voters. Op. cit., 226.

16. V. O. Key, Jr., Parties, Politics, and Pressure Groups, op. cit., 602-19.

17. Norman C. Thomas, "The Electorate and State Constitutional Revision: An Analysis of Four Michigan Referenda," Midwest Journal of Political Science, 12 (Fall 1968), 115-29.

18. Mean spring % Ballot = 76%; Mean fall % Ballot = 68%. For Supreme Court, Circuit Court, and Appeals Court, the spring-fall differences is significant at p = .05.

19. Oliver P Williams and Charles R. Adrian, Four Cities (University of Pennsylvania Press; 1963), 88-90. Eugene Lee, The Politics of Nonpartisanship (University of California Press; Berkeley, 1960), 22.

20. Albert Lee Strum, Constitution Making in Michigan, 1961-62 (Institute of Public Administration, University of Michigan; Ann Arbor, 1963).

21. Angus Campbell et al., The American Voter: An Abridgment (John Wiley; New York, 1964), 56-60.

22. Robert A. Dahl, Who Governs? (Yale University Press; New Haven, 1961), 330-31.

23. Richard A. Watson, Rondal G. Downing, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan (John Wiley; New York, 1969), 334-35, 352.

24. The formula used is from F. R. Hayes and D. Pelluet, Common Statistical Procedures (Scholars Library; New York, 1958), 31. Also consulted was Henry E. Garrett, Elementary Statistics (Longmans, Green; New York, 1956), 94-96.

25. In tabular form the test results were:

Elections	Actual Turnout		% Ballot	
	mean	variance	mean	variance
1953	same	same	different	different
1959	same	same	different	different
1966	same	same	same	different

26. Two cautions are in order in reading these figures. Each dot represents a county, not population. The stars, representing counties of over 100,000 population, together

represent over 80% of the state's population. Nor do the dots represent judicial circuits. In Chapters III and IV the hypothesis that counties vote according to circuit electoral situations will be tested. It is a hypothesis which challenges the unspoken assumption here that each county is an independent unit. Given these caveats, the figures are useful in illustrating (dramatizing) to what degree voters across the state vary in their participation in judicial elections.

27. Angus Campbell, op. cit., 211-13, 244.

28. Library Program No. 1.10.1, No. 1.10.11, Western Michigan Computer Center (Western Michigan University; Kalamazoo, 1971).

29. Joseph LaPalombara, Guide to Michigan Politics (Bureau of Social and Political Research, Michigan State University; East Lansing, 1960), 8-13.

30. In the correlation matrix of Table 2.4, the percentage of the over 21 population registered to vote was shown to be inversely related to population. Urban counties have poorer political participation in general than rural counties. Therefore the lower urban judicial % Ballot, figured from an initially lower rate of voter participation in any election, compounds the difference in rates of urban and rural turnout for judicial elections.

31. Cf. Table 2.8.

32. Francis D. Wormuth and S. Grover Rich, Jr., "Politics, the Bar and Judicial Selection," Courts, Judges and Politics, Walter F. Murphy and C. Herman Pritchett, eds. (Random House; New York, 1961), 105-11.

33. Watson and Downing, op. cit., 335. For the argument that lawyers, as the largest of the courts' "attentive publics", are adequate "caretakers of the public interest" in the selection of judicial officers, see Richard A. Watson, Rondal G. Downing, and Frederick C. Spiegel, "Bar Politics, Judicial Selection and the Representation of Social Interests," APSR LXI (March 1967), 54-71.

34. Kenneth N. Vines, "The Selection of Judges in Louisiana," Studies in Judicial Politics (Tulane Studies in Political Science, Tulane University; New Orleans, 1963), 118-19. Bancroft C. Henderson and T. C. Sinclair, The Selection of Judges in Texas (Public Affairs Research Center, University of Houston; Houston, 1965), 90-95.

35. Herbert Jacob, "Judicial Insulation--Elections, Direct Participation, and Public Attention to the Courts in Wisconsin," Wisconsin Law Review (1966), 808. Jack Ladinsky and Allan Silver, "Popular Democracy and Judicial Independence," Law and Society Reprint No. 22, Wisconsin Law Review (1967), 161-69.

36. Thomas, op. cit.

37. Schlesinger would describe the Circuit Court constituency as an "enclave" of the Supreme Court constituency because the former is part of the latter. He speaks of the party tensions that result from trying to organize and campaign in enclaved constituencies. These tensions become those of the public in the nonpartisan judicial election. Public perceptions of the judiciary, ambiguous at best, are further tangled by perceptions of the several levels of judicial office. Ambition and Politics, op. cit., 126-32.

38. "Of the various groups that have a conceivable interest in the courts, the interest of the general public is the least substantial. Democratic theory nonwithstanding, the plain fact is that the man in the street is, for the most part, blissfully unaware of the activities of the courts. If he is disinterested and uninformed about public affairs generally, as recent studies have found most persons to be, he is even less concerned about judicial matters. Most individuals do not become personally involved in litigation; moreover, the courts, surrounded as they are with the trappings of majesty and suffused with ritual, are dimly understood by the average person. Nor are the usual signals and clues of party identification, personalities, and controversial issues present, which illuminate and order the legislative and executive worlds for the general public. Members of this public are likely to become interested in the courts only if there is a scandal in judicial administration or in the life of a judge. In the absence of such developments, the courts and the selection of judges have little or no salience for the electorate." Ladinsky and Silver are cited for support. Watson and Downing, op. cit., 335. This research disproves this argument by pointing out that public interest varies greatly from community to community in judicial elections.

CHAPTER III

THE DIMENSION OF COMPETITION

Objectives

The objective of Chapter III is to look at Supreme Court and Circuit Court elections in terms of their competitiveness, of what degree of choice they offer the voter. The rate of competition in these judicial elections will be compared with the degree of choice, or rate of competition, for state nonjudicial offices with similar geographic constitutencies. Competitive rates for Supreme Court elections will be measured against those for state governor; Circuit Court electoral choice will be measured against that offered in Congressional and State Senatorial elections.

Research questions are handled separately for Supreme Court and Circuit Court. The distinctions in structure between the two levels of judicial office were shown to produce distinctions in voter participation in Chapter II. We hypothesize here that there are also distinctions in the patterns of voter choice between the two courts, again the results of structural variables.

For Chapter III, the research questions are: (1) How does electoral competition for judicial elections compare

with electoral competition for nonjudicial elections? (2) Does electoral competition vary over electoral situations? This is the important issue of incumbency in judicial elections. How do judicial and nonjudicial patterns compare? (3) Is competition distributed evenly over the constituency (over counties in Supreme Court elections; over circuits in Circuit Court elections)? Is any variance accounted for by structural or socio-economic variables? (4) Is participation a function of competition?

Meaning of competition and no competition. Under democratic norms, elections should be competitive in the sense that the electorate is offered a real choice of alternatives in policy and leadership. Ideally it is through competitive elections that political leadership is held accountable for its decisions and made responsible to the public will.[1] How real the competition in judicial elections is in this sense will be investigated in Chapter IV. Here it is the objective simply to determine if voter choice exists in state judicial elections at the same rate it does in nonjudicial elections.

Research question number 2 is aimed at the heart of the competition issue for judicial elections. The bulk of the literature on judicial selection supports the general rule that once elected, incumbent judges are rarely challenged for re-election. The election system is effectively compromised by the idea of an independent judiciary into an

assurance that the judge will, in practice, serve on good behavior.

Given the special status of the judicial incumbent, the meaning of unopposed judicial elections deserves special comment. Political research suggests three aspects to the lack of competition in democratic elections. First, from the study of one-party constituencies, there is the hypothesis that there is no challenge from an opposition if it is perfectly clear that the challenger has no chance to win.[2] An incumbent in this situation is independent of public control through the ballot. Because experience has shown that long-term judicial incumbents, doubly protected in Michigan by a ballot designation, are hard to unseat, aspiring judicial candidates may be intimidated by the combination and wait for the incumbent's death or retirement to make a bid for the bench.

Second, another interpretation of the lack of electoral challenges to an incumbent is that the majority is satisfied with the incumbent and his policies. No electoral opposition to an incumbent appears because there is no dissident group on which it could depend for support. Uncompetitive elections in this instance have served an accounting function because the opportunity was there for a challenge, but none was necessary. The effect of no competition here is a vote of confidence in the incumbent.[3]

Third, a final explanation of the unchallenged incumbent is offered by survey research. Many voters believe that

for the sake of continuity and stability, incumbents (unless shamefully incompetent) should be re-elected. This does not reflect faith in the performance of a particular incumbent so much as it indicates acceptance of the principle of a stable and independent judiciary.[4]

Because of these strong obstacles to the appearance of competition in judicial elections, the strongest perhaps being support for the idea of an independent judiciary, the fact of any voter choice in judicial elections takes on added value. Yet, looking at the other side of the American orientation toward the courts, the desire for a responsible judiciary, there is a special need for voter choice at the time of judicial selection.

In a liberal democracy such as that of the United States, there is more than one channel for communication between the public and its political officers. Morton Grodzins, speaking particularly of American federalism, called it the "multiple crack" effect.[5] There are any number of points in the process of decision making where public interests can make themselves heard. One consequence of the "multiple crack", aided by the rising "costs" of information, is a diminishing use of elections as an indication of public choice between political policies. More frequently, the election serves to select and legitimize political leadership. The accountability of policy is effected in other ways.[6]

There are also "cracks" in the judicial process which permit influence on policy other than at selection time.

Most often discussed are influences on judges' decision-making by creating or not creating cases on some policy issues; on his opinion writing by persuasion through amicus curiae briefs; law review articles, and legal journals; and on the implementation of his decisions, "to maximize or minimize their usefulness, and to make these decisions mean what each interest wants them to mean."[7] Walter F. Murphy details influences within the courts, the "elements of judicial strategy" adopted by one judge seeking the alliance of others on a particular policy.[8]

But because of the peculiarly removed procedures by which the judicial process works, the more open process of personnel selection receives a great deal of public attention.[9] The selection of judges being one of the few points where public opinion can be brought to bear, the democratic norm would require a method responsive to public needs. Executives and legislators and administrators can be called to account in myraid ways. Judicial selection is one of the few channels for judicial accounting.

Admittedly the extent to which one believes that judicial selection methods are performing this "feedback" function depends upon whether or not one agrees with the policies of the present judicial incumbents.[10] Usually the first strategy a group unhappy with the tenor of court decisions takes it to try to influence or to change selection procedures. President Roosevelt's "court-packing" plan

of 1939 is perhaps the most famous, but the more recent stormy debates over the confirmation of United States Supreme Court nominees are just as apt an example. Still the best way to change a judicial policy is to change the judge.

Again, as this discussion is intended to show, we are caught between the need for an independent and an accountable judiciary. The fact of, or lack of, competition in Michigan state judicial elections is hypothesized as a manifestation of this paradox. On the one hand, the norm of an independent judiciary demands that incumbent judges should be re-elected. On the other hand, the norm of an accountable judiciary demands that their policies be put to a test before the electorate. Data presented in this chapter will illustrate how these "cross-pressures" have been handled in the Michigan experience.

In summary, Michigan incumbent judicial elections will be evaluated as having lived up to the norms of democratic elections if they are as competitive as nonjudicial offices with similar constituencies. For incumbent judicial elections that fall below the competitive rate of partisan, nonjudicial elections, however, the hypothesis of re-election on good behavior will be confirmed. Similarly, if judicial vacancies are contested, the norm of popular selection will have been met. If vacancies are uncontested, pre-empted by gubernatorial appointment, or, in effect, by

special group appointment, the democratic norm will have failed.

Measuring competition. What is electoral competition, or equally, how shall competition be measured? By electoral competition here is meant the closeness of the electoral vote for each candidate. Of the several measures of electoral competition used in current research literature, Eulau and Cutright's "percentage of the vote" is appropriate here.[11]

To be defined as a "competitive election", the loser must get at least 40% of the total votes case, and the winner no more than 60%. "Opposed elections" are those in which there are more candidates than seats, but the losing candidate gets less than 40% of the votes cast. Elections are defined as "unopposed" if there is only one candidate for each position to be filled.

Multi-winner elections. For all but single vacancy elections, each Supreme Court election requires voting for two candidates. In the seventeen multi-member judicial circuits, voters must choose from two to 27 in the field of candidates. Voting for "more than one" therefore is an important issue in analyzing competition for judicial office in Michigan.

The issue of multi-winner voting raises methodological problems for the voter as well as the researcher. New approaches in political science, particularly those of game

theory and related mathematical methodologies, consider the question of preferential voting. The strategy considerations outlined by game theory methodology indicate the complexity of a voter's decision in a multi-winner situation.[12]

The opponents of judicial elections in Michigan have complained loudly about "bed sheet" judicial ballots.[13] In response, the 1963 Constitution provided staggered terms for multi-member Circuit Court benches, thus reducing the number of judges elected at any one time. It remains to be seen what difference this will make in voting behavior.[14]

Throughout the study period of this research, however, the multi-winner ballot is a fact that must be dealt with. There are two aspects of the methodological problem raised by the multi-winner situation. First, how are the established ranks of "competitive", "opposed", and "unopposed" to be applied to the multi-winner situation? Second, how does one measure internal competition among candidates in a multi-member contest?

The first problem is solved by assigning the rank of "competitive" to any election in which at least one of the losers got 40% of the vote. The electorate involved in the uncompetitive contest is nonetheless also involved in a competitive one. It is assumed that this competitive half of the election takes precedence in the voter's perception of the election, which is hypothesized to be a factor in determining such things as voter turnout.

Two conditions, one structural and one methodological permit this application. First, by law in any judicial election there may be no more than two candidates for each place to be filled. If more than twice as many candidates as places file nominating petitions, a primary is held to reduce the number.[15]

The second condition allowing us to use the 40% standare for competition in multi-winner elections is the manner in which the base "total votes cast" was initially estimated. In Chapter II participation in multi-winner elections was estimated by dividing the sum of all candidates' votes (reported in the Official Census of Votes) by the number of places to be filled.[16] This procedure translates the situation into an approximation of one winner, two candidates. It is an approximation because the division step assumes that each voter voted for as many winners as required. As noted previously, the assumption probably overestimates the zeal of the judicial elector and therefore underestimates the number who actually voted, if only for one, in the election. As a result the 40% standard may be too strict in certain multi-winner elections, and is lowered in those instances. These will be described fully in the text.

The second methodological problem posed by the multi-winner situation is the measurement of internal competition. Which winners are "sure", and which barely won? Again a percentage of the vote scale is used. "Sure" winners are

defined as those receiving more than 75% of the votes cast against token opposition.

The anti-judicial election propaganda in Michigan makes much of the alleged detrimental effects of this token opposition or "publicity candidacies", lawyers who run for Circuit Court with no hope of winning but just for the free publicity gained in newspaper coverage.[17] As is true of both sides of the election debate, no evidence is ever advanced to support this allegation. The hypothesis will be tested here, using a 10% or less percentage of the vote to indicate token opposition.

The discussion now turns to the specific research questions, regarding judicial vs. nonjudicial competition, competition and electoral situation, competition variance between circuits, and competition as a determinant of participation.

Competition for Supreme Court

The seven Michigan Supreme Court Justices are nominated by party convention and elected on the nonpartisan ballot for eight-year terms. This bizzare arrangement is a product of partisan collusion and compromise. It is a prime example of traditionalist Evan Hayne's accusation that the methods of judicial selection in the American states have developed "without regard" for the peculiar functions of the judiciary.[18] On the other hand Herbert Jacob, a political process advocate, would argue that it is precisely because of those peculiar

functions that partisans have sought to control the courts.[19] Nonetheless, this unusual nomination procedure has a great impact on the pattern of competition for Michigan Supreme Court seats.

Each of the research questions--nonjudicial comparison, electoral situations, variance, and participation--consider the effect of electoral structure. Chapter IV takes up the issue of partisan involvement with voting in Supreme Court elections as a result of this unusual nomination method.

Research Question No. 1. How do competition rates for Supreme Court elections compare with competition rates for nonjudicial office?

TABLE 3.1

COMPETITION RATES FOR JUDICIAL AND NONJUDICIAL ELECTIONS

	Supreme Court	Governor	Congress	State Senate
% opposed	100%	100%	100%	98%
% competitive (loser > 40% vote)	58%	100%	41%	39%
N = base	26 state 1948-68	10 .state 1948-66	163 district 1950-66	166 county 1960-62

Using the "40% for loser" definition of competition, electoral contests for Supreme Court compare unfavorably with

gubernatorial elections with whom the Court shares a constituency and an awkward partisan association. This association insures 100% opposition for each judicial election, but obviously other than partisan lines are followed in actual voting. On the other hand, Supreme Court competition rates are higher than those for district legislative races, state or national. The skewed distribution of party strength in Michigan explains the relatively low incidence of real competition in Congressional and state senatorial races. What additional factors account for the lack of 100% competition in Supreme Court races?

Comparing Michigan's overall competitive rate with that for other states with elective judiciaries suggests that Michigan judicial elections are relatively successful in meeting the democratic ideal. Texas and Louisiana, both with partisan elections and both strongly one-party Democratic states, report that for roughly the same twenty year period, 86% and 59% respectively of the elections for state supreme court were unopposed.[20] Missouri, with active two party competition for supreme court seats before the institution of the nonpartisan court plan, enjoyed serious competition in 100% of her judicial elections (1917-1940).[21]

In nonpartisan states such as Wisconsin, Jacob reports that 79% of the elections for supreme court were contested between 1940 and 1963.[22] Moos reports another pattern for the nonpartisan state of Minnesota where lower court seats

are more competitive than supreme court seats because of the unique campaigning traditions for supreme court in that state.[23]

Research Question No. 2. Does competition for Supreme Court vary between electoral situations?

Perhaps the most important test of judicial accountability through the ballot is whether judicial incumbents are challenged for re-election. If they are not, the incumbent is electorally irresponsible, practically assured life tenure, and a blow is struck for judicial independence. If they are, the election is serving as a means of accountability for the judge to his constituency.

The advantage of the Michigan partisan nomination scheme for Supreme Court judges is that every incumbent is assured opposition in his bid for re-election. How real this competition is will be examined presently. It is precisely because neither political party in Michigan wished to give the other an edge through some executive appointment plan that the convention nomination system has been retained. The entire discussion is motivated by a cynical but realistic appraisal of the political significance of Supreme Court policy making. Whatever the notivation, the result has been to push Michigan Supreme Court elections nearer the democratic ideal than many other state Supreme Courts.

Taking incumbency as the touchstone, there are three possible electoral situations: (1) an elected incumbent is

up for re-election to a regular term; (2) an appointed incumbent is up for election to fill a vacancy and (3) no incumbent is involved. For all but five years of the period covered by this study, vacancies occurring between elections were filled by gubernatorial appointment.[24] The appointees then ran for election to the remainder of the term at the next general election.

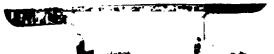
Table 3.2 provides the data for testing the hypotheses that rates of competition vary over electoral situations.

TABLE 3.2

COMPETITION IN SUPREME COURT ELECTIONS, BY ELECTORAL SITUATION, 1949-1968

Electoral situation	Elected incumbent up for re-election	Appointed incumbent up for election	No incumbent involved	Totals
N =	16	8	2	26
opposed	16 (100%)	8 (100%)	2 (100%)	26 (100%)
competitive	6 (38%)	7 (88%)	2 (100%)	15 (58%)
incumbent wins	13 (81%)	7 (88%)	--	20 (83%)
incumbent loses	3 (20%)	1 (12%)		4 (17%)

Incumbency. The few studies of judicial elections all contend that judicial incumbents are rarely challenged



and more rarely defeated.[25] In Michigan, between 1949 and 1968, there were 16 elections involving elected incumbents. In only six were the elections "competitive" by the 40% standard. In three of the six challenges, the incumbent was defeated. An incumbent winner rate of 81% appears to support the rule of judicial incumbency.

Comparing the experience of Supreme Court Justices with that of Governors, however, reveals similar incumbency rights. Gubernatorial incumbents won re-election 75% of the time between 1948 and 1966, giving them statistically only a slightly smaller chance for continuance in office than the Justices. Nationally, the incumbent winner rate for United States Senate and United States Congress is 85%.[26] Against these comparisons, the high return rate of judicial incumbents does not seem peculiarly judicial.[27]

Political legend has it, however, that there is something peculiarly judicial about the rights of incumbency. In 1939, soon after the adoption of the nonpartisan election for judges, the 1908 Michigan Constitution was amended to require ballot designations for "each incumbent judicial officer, who is a candidate for nomination or election to the same office.[28] Article VI, Section 26, of the 1963 Constitution clarifies "incumbent" by specifying that only "elected incumbents", not judges appointed to vacancies, be permitted the designation. In 1968, however, the Constitution was amended, returning to gubernatorial appointment

to fill vacancies and deleting reference to "elected incumbent" ballot designations, again allowing appointees to use this identification.

Because these provisions have been interpreted to grant ballot incumbency designations only to judges, and because it can be assumed with safety that the designation favors incumbents when all other names must appear without comparable embellishment, special reasons for judicial uniqueness have been advanced in Michigan. In the 1961-62 Constitutional Convention, the proponents of Article VI, Section 26, candidly conceded that the designation was intended to "provide tenure" and to give "stability to the judiciary of this state."[29]

As Maurice Kelman has observed in an article on ballot designations for the Wayne Law Review, "The constitutional provision for judges thus reflects two assumptions: That an incumbency label attracts votes and that it is generally desirable that elected judges be returned to office. The first assumption is one of fact, which few would dare challenge. The second is a policy judgment of the most provocative sort...."[30] The intellectual history of the proponents' argument is as old as the United States Constitution. The incumbency designation is a beautiful solution to this very old tension between an impartial, independent judiciary and a responsible, elective political officer. With the designation one might have democracy and life tenure too.

1966

Kelman illustrates that the tour de force of the ballot designation have not been effected with a clear conscience in Michigan. He recollects a 1940 case in which the Michigan Supreme Court itself ordered ballot rotation of the names of candidates for the office of Supreme Court Justice although there was no specific constitutional or statutory requirement for it. The Court felt that candidates whose names appear at the head of the ballot have a "distinct advantage", declaring that

> If it not consistent with fairness of purity of elections or the avoidance of misuse of elective franchise for election officials to prepare ballots in such a condition as will afford one candidate or nominees an unfair advantage over rival candidates or nominees.[31]

The paradox in American attitudes toward the judiciary is well expressed in this disapproval of "unfair advantage" by ballot position on one hand, yet acceptance of preferential ballot designations on the other.

Current political science raises the criterion of stability to a pinnacle in evaluation political system. And in the United States, courts were once usually ascribed a significant role in maintaining system stability, although current judicial activism in civil rights and criminal law now make this attribute debatable. But according to the traditionalists, the independence of the judiciary was intended to enable it to function as a stabilizer, to keep to the same rules despite brief shifts in public opinion. Re-electing the incumbent was a logical deduction from this position.[32]

Table 3.3 summarizes tenure on the Michigan Supreme Court. Clearly defeat at the polls is an infrequent path. Table 3.3 makes another point, one in keeping with the "re-elect the incumbent" rule. The longer a judge has been on the bench, the more invulnerable he is.

TABLE 3.3

JUSTICES LEAVING THE COURT, 1948-1968

Reasons	Number of Justices	Length of terms
Retired end of term	3	27 years, 24 years, 18 years
Retired midterm	5	22 years, 26 years, 6 years, 6 years, 9 years
Died	3	13 years, 25 years, 3 years
Defeated	3	5 years, 5 years, 1 year
	14	

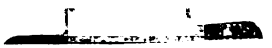
Of the six competitive elections in the twenty year period, five involved incumbents recently elected to vacancies who were running for their first regular term. The one remaining involved an initially appointed incumbent trying for his first full term. If an appointee survives the vacancy election and the first term election, barring partisan reverses, he is tenured for life.

Appointment as an avenue to the Court. The immediate question is, how many Justices were initially appointed? It is contended that most elective state judges initially reach the bench via gubernatorial appointment. Malcolm Moos considers this practice a perverse act of democracy: a popularly elected governor expressing the will of the people in staffing the courts.[34] It is this theory of indirect responsibility that supports the executive appointment of federal judges.

Of the 21 men who served on the Michigan Supreme Court between 1948 and 1968, 13 or 62% initially came to the bench through gubernatorial appointment. Comparative statistics put Michigan about in the middle range on this factor; Louisiana with 16% initially appointed, Minnesota at one time with 100%. The Michigan judicial election for Supreme Court therefore effects a compromise between direct and indirect responsibility of its justices to the voting public.

The critical issue, to be considered in the next chapter, is the strategic importance of these appointments to political policy. Are appointments used by the governor to create a court majority, thus as weapons in partisan policy struggles? The answer for Michigan, from Glendon Schubert's article "The 'Packing' of the Michigan Supreme Court,"[35] and Sidney Ulmer's study of partisan influences on the decision-making of the Court,[36] is definitely affirmative.

Vacancy elections. From Table 3.2, seven of the eight vacancy elections studied were competitive. This is evidently



the second principle of judicial elections in Michigan: it is proper to contest a vacant judicial seat. Both parties nominate strong candidates for these elections. In each of the eight, the governor had appointed an interim Justice. At the next general election the appointee stood for public confirmation. In all but one, Governor Swainson's appointee, Paul L. Adams in 1962, the appointee won. (Adams came back to win a regular term in a seat vacated by retirement in 1963.)

No-incumbent elections. Both of the elections which involved no incumbent, elected or appointed, were competitive. Evidently the judicial character of the election does not prevent contests when an incumbent is not involved. It is hypothesized that without the incumbency designation as a restraint, these elections are fought along partisan lines. This hypothesis is tested in Chapter IV.

Rules of competition. The rules governing competition for Supreme Court in Michigan are: (1) re-elect incumbents, particularly long-term incumbents; and (2) nominate "strong"[37] candidates to contest vacancies, either those filled by gubernatorial appointment, or those involving no incumbent. The compromise between judicial independence (Rule number 1) and judicial accountability (Rule number 2) is clearly evident in the operation of nonpartisan judicial elections for Supreme Court in Michigan.

Multi-winner situation. Internal competition in multi-member elections is also analyzed in terms of the percentage

of the vote given each candidate. Winning candidates with 75% or better of the total votes case are defined as "sure" winners. Losers with less than 25% of the vote are defined as "token" opposition. The objective is to select out the elections in which at least one seat was virtually uncontested. Secondly, it is desired to identify those elections in which the opposition was so divided or so weak as to constitute no opposition at all.

The only candidate for Supreme Court to receive 75% of the vote during the 1947-68 study period was ex-Republican Governor Harry F. Kelly (1942-46) when he ran for his second term on the Court in 1961.

There were five elections, however, in which candidates received less than 25% of the vote. Four were elections in which minor political parties had Supreme Court nominees (1949, 1951, 1953, and 1959). The partisan nomination system forfeits a primary, thus nominees from all legally constituted parties in Michigan can appear on the ballot regardless of the final number of candidates. Not since 1959 have any but the two major parties made Supreme Court nominations. When minor parties do nominate, token opposition occurred against ex-Governor Kelly's initial election to the Court (1953).

Competition and electoral situations. The implication of Supreme Court competition for the larger question of democracy in judicial elections is one of compromise between

accountability and independence. A majority of the Justices are initially appointed. Nearly all of these win their vacancy elections, althouth facing real competition to do so. Many of these face another serious challenge in running for a first regular term. Passing all these tests, the Justice is fairly secure.

Given this train of events, judicial elections do serve a function of accountability. The governor's appointment is usually challenged by the opposing political party, as often is his first regular term on the Court.

Tested early, his later years on the Court are usually safe from serious partisan challenge. Elections, therefore, give the "public" a voice in the initial selection of judicial personnel through party strategy. After that, the "public" leaves the judge independent. There is only rarely a late accounting through the ballot, and this is usually partisan.[38]

Supreme Court electoral patterns are confused by their close ties with partisan patterns. Candidates are nominated in party convention, although it is the policy of both parties to nominate the incumbents of their party. Michigan party politics, at the gubernatorial and legislative levels, underwent great changes during the period covered by this study. It remains to ask how deeply this change affected voting and competition in judicial elections.

Research Question No. 3. Is competition for the State Supreme Court distributed evenly over the constituency? Do socio-economic factors account for any variance?

In Chapter II it was shown that, relatively, smaller counties have a higher proportion of their voters participating in Supreme Court elections than do larger counties. In standard texts, competition rates are also said to be related to population. The maxim, the more population, the more competition.[39] Is this also true of judicial elections?

There is variance in the rates of competition from county to county in Supreme Court elections. In the 1966 November election, for example, two elected incumbents, both Democrats, were seeking re-election. One, appointed and elected to a vacancy only five years earlier, lost to a Republican. In some counties, the loser got over 90% as many votes as the winner; in other counties, this dropped to less than 60%. Again, in the 1959 April election, in which two Democratically appointed incumbents were seeking election to their first regular terms, some counties gave the loser 98% as many votes as the winner; in others, less than 50%.

Variance in competition is less for state Supreme Court than for state governor. In the 1966 gubernatorial election, one county gave the Republican candidate 23.6% of the votes it gave the Democrat. In another, the loser had 97.4% as many votes as the winner. The Supreme Court pattern is not a true copy of the partisan one.

The "most competitive" counties were arranged by population, using the five population categories of Chapter II.[40] The elections included were 1953, 1959, 1961, 1962, 1963, and 1966, purposely covering a variety of electoral situations. Holding the electoral situation constant, do population differences make any competitive difference?

TABLE 3.4

COMPETITION AND POPULATION

Population Class	N	% Ranked as "Most Competitive" in 53	59	61	62	63	66
I	1	0%	0%	0%	0%	100%	0%
II	10	20	20	30	10	10	10
III	12	8	8	41	16	24	40
IV	27	22	15	36	18	29	6
V	33	12	6	33	15	15	18

The only population associated pattern suggested by Table 3.4 is that the larger counties are more consistent in their voting patterns than the smaller counties. This hypothesis was also suggested by the data on participation in Supreme Court elections. In Chapter IV the association of competitiveness and partisan loyalties will be explored.

Perhaps it is partisan differences that best explain competitive differences among counties, regardless of population.

Research Question No. 4: Is participation a function of competition?

The hypothesized pattern is that competitive elections will produce open electorates; uncompetitive elections, closed electorates.

TABLE 3.5

COMPETITION AND PARTICIPATION

Year	Participation Rating	Competition Rating
1953	Open	Competitive
1956 (vac)	Closed	Competitive
1959	Closed	Uncompetitive
1960 (vac)	Closed	Competitive
1961	Open	Uncompetitive
1962 (vac)	Open	Competitive
1963	Open	Competitive
1966	Closed	Competitive
1968	Closed	Competitive

Only four elections meet the hypothesized pattern. Four competitive elections have closed electorates; one uncompetitive election has an open electorate. Again the time factor is more significant than the competition one; three of the four spring elections (identified by the odd-numbered years) have open electorates.

Looking more closely, 17 Supreme Court elections, all that were held between 1949 and 1968, were ranked for turnout and competitiveness using statewide returns. The % Ballot measure was used to estimate turnout; the percentage of total votes cast for the winner, for establishing competitiveness. The ranks were from highest to lowest. The Spearman correlation coefficient is - .316 for competition and participation in Supreme Court elections, a weak inverse relationship. According to this statistic, if there is any relation at all between competition in Supreme Court elections, it is a negative one. As competition increases, turnout decreases.

Competition for Supreme Court: summary. Competition in Supreme Court elections has been shown to be related to electoral situations, but not to voter turnout or population concentration. The unwritten rules of Supreme Court competition are effective statewide and appear to be: (1) re-elect long-term incumbents, and (2) compete for vacancies, gubernatorial appointees, and first term incumbents.

Elections function as accounting methods in a compromised fashion. Partisan involvement in Supreme Court elections by nomination procedures probably encourage what accounting there is. Justices come to the bench only after serious partisan electoral challenge. Either they are initially appointed and challenged in the vacancy election,

or they competed for a seat vacated by term retirement. Once elected, there is only slightly more than one chance in three that they will face serious electoral competition again. And the longer they serve, the lower those odds become.

Abetted by partisan competition, the nonpartisan judicial election for Supreme Court justices is a compromise between democratic accountability and judicial independence. Judges are selected in competitive elections, the democratic norm. But once elected, they are rarely subject to electoral pressure again, the norm of judicial independence. Is the same compromise effective in Circuit Court elections?

Competition for Circuit Court

Election laws. Unlike the Supreme Court, candidacy for Circuit Court can be achieved in two ways. Any elected incumbent Circuit Court judge may become a candidate by filing with the Secretary of State an affidavit of candidacy. Non-incumbents must have filed with the Secretary of State a nominating petition bearing the signatures of not more than 10% nor less than 4% of the total votes cast in the judicial circuit for secretary of state in the last general election. A primary is held if there are more than twice the number of candidates as there are persons to be elected. The primary and the general election ballot is nonpartisan.[41]

Vacancies are filled by gubernatorial appointment. The appointee then files as an incumbent candidate in the

vacancy election held at the next general election. Under the 1963 Constitution, vacancies were to be filled by the Supreme Court from the ranks of ex-judges and retired judges until an election could be held. A Constitutional amendment in 1968 returned to gubernatorial appointment.

Research Question No. 1. How do competition rates for Circuit Court compare with competition rates for other district, but nonjudicial, office?

Using United States Congressman and State Senator as comparison because of similarity in constituency size to judicial circuits, the relations are given in Table 3.6.

TABLE 3.6

COMPETITION FOR CIRCUIT JUDGE, CONGRESS, STATE SENATE

	Circuit Court	Congress	State Senate
Number of districts	42	19	38
Elections	1953, 59, 66 and 60-66 vacancies	1950-66	1960-62
% Districts with contested elections	44%	100%	99%
% Districts with competitive elections	39%	41%	43%

In terms of opposition, Circuit Court elections are opposed less than half as often as nonjudicial elections. But Circuits enjoy real competition as often as Congressional, or state Senatorial districts. While only 40% of the opposed elections are competitive, 88% of the opposed Circuit Court elections are competitive. Although less likely to be opposed, an opposed election is more likely to be competitive in the Circuit Court-legislative comparison.

Research Question No. 2. Does competition vary across electoral situations?

Using incumbency as the central issue, there are three possible electoral situations: (1) an elected incumbent seeking re-election, (2) an appointed incumbent seeking to win a vacancy election, and (3) no incumbent involved. Table 3.7 compares these situations in terms of opposition over the twenty year period. Table 3.7 focuses on three general circuit elections, and all vacancy elections held between 1960 and 1966. The pattern of competition closely follows that of the Supreme Court.

Overall, 47% of the judicial elections were opposed. This rate compares favorably with that of other nonpartisan judicial elective states. Herbert Jacob's report on circuit court elections in Wisconsin revealed that only 38% of the elections between 1940-1963 were contested. As in Michigan, the competition rate was higher for races that did not include an incumbent (69% to 20%).[42]

TABLE 3.7

COMPETITION AND ELECTORAL SITUATION, BY CIRCUIT

(Elections: 1953, 1959, 1966 and 1960-66 vacancies)

	Elected Incumbent	Appointed Incumbent (Vacancy)	No Incumbent	Total
Unopposed	72 (71%)	9 (39%)	1 (5%)	82 (56%)
Opposed	6 (5%)	1 (5%)	1 (5%)	8 (5%)
Competitive	23 (24%)	13 (56%)	20 (90%)	56 (39%)
Totals	101 (69%)	23 (16%)	22 (15%)	146

Incumbent Loses 8, 28% of contested elections.

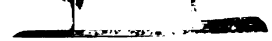
The majority of Circuit Court elections involve an unchallenged incumbent. When an incumbent was challenged at the polls, however, 79% of the time the challenge was real competition, and 35% of those seriously challenged, lost their judgeship.[43]

As for Supreme Court, appointees to vacant (or newly created) circuit seats usually face real competition, but rarely lose, in seeking electoral confirmation. And as for Supreme Court, the question arises, how many judges initially reach the bench through gubernatorial appointment?

Initial appointment. As noted in the discussion of competition for the Supreme Court, the masquerade of an appointment system behind the filling of vacancies in a

judicial elective system is a fact in a remarkable number of instances. The possibility was enough to convince Michigan's Constitutional Convention of 1961-1962 to alter the method of filling vacancies on the courts by gubernatorial appointment. Perhaps the long tenure of Democrat Williams as governor and his taste in appointees had soured the Republican Convention. For principle or partisan motives, the 1963 Constitution required that vacancies be filled by the Chief Justice from a list of retired judges who were not eligible to run for the seat in a vacancy election. Practice proved the idea unworkable. There simply were not enough retired judges to fill the seats. As a result, the Constitution was amended in 1968 to return to the practice of gubernatorial appointment, allowing the appointees to run for the seat in the vacancy election. From 1964 until 1969 therefore one could not come to the circuit bench by appointment.

Looking at the period 1947-1966, in the 42 circuits, 116 new judges came to the bench. This figure does not include judges initially elected in 1947. Of these 116 men, 46 or 39.7% were initially appointed to fill a vacancy. This figure is smaller than the percentage of Supreme Court judges initially appointed of 62%. The difference is probably more a comment on the age differences between Circuit Court and Supreme Court judges (the latter being older and more likely to die or retire midterm and leave a vacancy) and on the five year hiatus in gubernatorial appointments.[44]



Compared to other states, Michigan's circuit judge appointment rate falls in a middle range.[45] While 40% is indeed a sizeable minority, sizeable enough to color the conditions of judicial selection in Michigan, the majority of judges originally come to the bench through election.

"No-incumbent" elections. Sixty percent of Michigan's Circuit Court judges came to the bench in elections which involved no incumbent at all. Either an incumbent retired, leaving a seat open, or a new seat was created to commence with the next regular term. Table 3.8 reports that 90% of these are, by standards used here, truly competitive elections.

It is most likely therefore that any potential circuit court judge must at some point endure a competitive election. Either he is appointed and must face a competitive vacancy election, or he faces a competitive election for an open seat. Once an elected incumbent, however, the chances are only slightly worse than 1 in 4 that he will ever face competition at the polls again. The compromise between judicial accountability and judicial independence appears to be effective for all judicial elections in Michigan.

Vacancy elections. Because the vacancy election has aroused special interest in the discussion of judicial selection, it deserves closer analysis. In Michigan there were 53 vacancy elections held between 1949 and 1966; 36 involved appointees, 17 involved newly created seats. Sixty-four percent of the appointees were opposed in their vacancy elections;

71% of the new seats were opposed. The difference in the two came in primary contests. Seventy-one percent of the winners of new seats also had to survive a competitive primary; only 19% of the appointees were so taxed. The rights of incumbency are extensive.

Primary elections. Examining the occurrence of competitive primaries is also useful in discriminating regular term elections. Primaries are required by law if more than two candidates file for each available seat.

TABLE 3.8

PRIMARY COMPETITION FOR CIRCUIT COURT COMPARED (1962, 1964, 1966)

	Circuit Court	Congress
1. No primary	55 (71.4%)	21 (37.5%)
2. At least one primary	22 (28.6%)	35 (62.5%)
Competitive	16 (72.7%)	18 (51.4%)
Uncompetitive	6 (27.3%)	17 (48.6%)
Total possible primaries	77	56

Compared to nonjudicial offices, such as United States Congress or State Senate, between 1959 and 1968, judicial circuits have significantly fewer primaries.[46] Congressional districts are twice as likely to have at least one party primary; state senatorial districts, three times as likely.

As the electoral pattern, however, if a circuit Court primary is held, it is more likely to be competitive. The pattern is a copy of that for electoral competition.

Competition in multi-judge circuits. As of 1966 there were seventeen multi-judge circuits (seven circuits had 2 judges; four had 3; one circuit each had 4, 5, 6, 7, 9, or 26 judges). Considering the general term elections in 1953 and 1959, of the 27 multi-judge elections held, 17 (63%) were opposed. In eleven or 65% of these opposed multi-winner elections, there was a winner who received 75% or more of the votes cast. In all eleven cases, the "sure" winner was an elected incumbent. The incidence of these "incumbent-dominated" elections will be discussed further in Chapter IV.

In the 27 multi-winner elections, there were 8 (or 29%) with "token opposition", losing candidates who received less than 25% of the total votes cast.

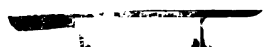
The 1966 election is a special case because in that election staggered terms for multi-judge courts were begun. As a result, candidates ran for 6 year, 8 year, or 10 year terms. In most circuits the incumbents filed for the 8 and 10 year terms and were unopposed and of these only 4 were competitive. The only two elections that did not involve incumbents were competitive. The 1966 election is an interesting application of the rights of judicial incumbency. Multi-judge competition therefore appeared in the 6 year term elections. Of the six, two had examples of "sure" incumbent winners, and two had "token" losers.[47]

Overall, multi-judge circuits have opposed elections (63%), but with several instances of "sure" winners and "token" losers.[48] The data indicate that the lack of meaningful competition in these elections is not so much the result of the multi-winner ballot, as it is the result of the "incumbent" ballot designation. If a fully informed electorate is the goal of the present critics of judicial elections in Michigan, it might be more efficient for them to direct their efforts at the ballot designation rather than the ballot format.

Competition and electoral situations: summary. The data on competition in Circuit Court elections reaffirms the rules of judicial elections: re-elect incumbents; contest vacancies. The interesting corollary from these circuit elections is that when a judicial seat is contested, incumbent or not, more than likely it is meaningful competition.

Research Question No. 3. Is there variance in rates of competition from circuit to circuit? Can this variance be explained in terms of socio-economic or structural variables?

The variables. As for the discussion of participation, the 42 judicial circuits were divided into four classes along three variables: (1) population, (2) number of counties, and (3) number of judges. Class I contains 10 circuits, all over 155,000 in population, all single county, all multi-judge. Class II contains seven circuits, all over 100,000



and all but one becoming single county, multi-judge during the time studied. Class III contains 22 circuits, all under 100,000, all multi-county, all single judge. Class IV contains three misfit circuits, alI under 100,000 and single judge, but also single county. Map 2.1 display the distribution of the four Classes across the state

Structure and competition. The question here is whether the social and structural variables defining the four classes are related to the incidence of competition. Table 3.9 summarizes.

TABLE 3.9

COMPETITION AND STRUCTURAL VARIABLES
(1947-1966)

	Elected Incumbent Unopposed	Elected Incumbent Opposed	Totals
Class I and II (N = 17)	43	33	76
Class III (N = 22)	59	9	68
	102	42	144

Note: Class IV is omitted because of too few cases)

Using a chi-square test, no significant difference was found between the four classes with respect to competition in vacancy or no-incumbent term elections.[49] Better than

50% of all vacancies were contested; better than 90% of all elections not involving incumbents were contested. For all circuits, the rule of contesting judicial vacancies applies equally.

There proved to be no difference between Classes I and II in the frequency that elected incumbents were challenged for re-election. There is however, as Table 3.9 illustrates, a highly significant difference between urban, single county circuits on the one hand, and the less urbanized, multi-county circuits on the other with respect to challenged elected incumbents. Incumbents were contested for re-election in 47% of the elections in Class I circuits, 38% of the time for Class II circuits, but only 14% of the time for Class III circuits.

Because Class I and II circuits are multi-judge circuits, and because it was found that multi-judge ballots are competitive 83% of the time, there is a positive relation between multi-winner ballots and competition. Challenges are more readily mounted against an incumbent who is on a multi-winner ballot than against one who stands alone, one incumbent, one seat.

Just as the abolition of spring judicial elections has ambiguous consequences for the democratic effectiveness of judicial elections, evidently the demise of multi-winner ballots through staggered terms shall also.[50] The rights of incumbency are mitigated by the long ballot. Having more

than one winner, the judicial ballot surrounded the judicial incumbents--with their highly visible ballot designation--with several names, perhaps thus reducing their attraction. On an urban, multi-judge bench, an incumbent cannot build up the kind of political support as can the single judge of a less populous circuit. Urban incumbents of multi-member benches as a result are more vulnerable to electoral challenge.

There appear to be two sets of "unwritten rules" for judicial competition in Michigan Circuit Court elections. For the multi-county, single judge circuits, the rules are the same as those for Supreme Court: (1) re-elect the incumbent, and (2) contest all vacancies, without the partisan entanglement. For the multi-judge, single county circuits, however, the rules are (1) challenge an incumbent if necessary, and (2) contest all vacancies.

At this point, it is not clear whether the higher competition in Class I and II circuits is a result of the multi-winner situation, or of the political consequences of an urban setting. The failure of competition to materialize against those incumbents who ran for the longer terms in 1966 is a suggestion that the length of the ballot is the crucial factor. Future elections under the new staggered term arrangement will provide conclusive evidence. The hypothesis is that judicial incumbents discourage competition in a single winner situation, but are not as intimidating in a multi-winner situation.

Appointees, primaries, and structural variables. Structural distinctions persist for the proportion of judicial appointees and the number of primaries. It was found that 39% of the new Circuit Court judges between 1947 and 1966 came to the bench by gubernatorial appointment. Because Circuit structure has an effect on competition, it is hypothesized that the incidence of judges initially appointed to their offices might also be related to the size and nature of the judicial circuit. Table 3.10 is a contingency table of initial access to the Circuit Court by the structure of the circuits.

TABLE 3.10

CIRCUIT STRUCTURE AND INITIAL ACCESS TO THE BENCH

	Initially Elected Incumbents	Initially Appointed Incumbents	Totals
Class I and II	50	30	80
Class III	18	15	33
	68	45	113

A chi-square test indicates that, contrary to expectations, there is no significant difference in the classes of circuits in terms of judges initially appointed to the bench.[51] Even though the 46% to 38% difference between multi-county and

single-county circuits is not persuasive, it is true that 8 of the 11 circuits whose entire benches were initially appointed between 1947-66, were multi-county, single judge. There is, simply as a result of actuarial tables, a probability that single judge circuits will be more dependent upon appointments than multi-judge circuits.

Primaries are only indirectly illustrative of structural consequences. Primaries become necessary if more than two candidates per seat file nominating petitions. The proportion of opposed primaries to opposed elections is not significantly higher for Class III circuits than for Class I or II. Class III circuits had opposed primaries for 68.5% of their opposed elections between 1947-1966; while 46.4% of Class I and II circuits enjoyed the same intensity in judicial competition.[52]

Opposed elections in Class III circuits mean vacancy or no-incumbent elections. The hypothesized explanation for the 69% opposed primaries is that counties in the circuit vie among themselves for the nominations and then, the election. In Chapter IV the prospect of county-defined divisions in the electorate in competitive multi-county circuit court elections is discussed in detail.

Competition and structural variables. It is clear that the structural differences created by the number of judges and/or the number of counties in a judicial circuit affect the state of competition and therefore the state of democracy

in judicial elections. The avenues of access to the bench are the same for both major classes of circuits; it is the probability associated with each path that are distinctive. Table 3.11 traces the general election history for each class of circuit.

TABLE 3.11

ELECTORAL SEQUENCES AND CIRCUIT STRUCTURE

Class I and II		Class III	
Judges coming by appointment (37%)	Judges coming by election (63%)	Judges coming by 46% appointment	Judges coming by election (54%)
Primary (31%)	Primary (30%)	Primary (33%)	Primary (22%)
Vacancy election (80% opposed)	Election (88% opposed)	Vacancy election (69% opposed)	Election (100% opposed)
Elected Incumbent (47% opposed)		Elected Incumbent (14% opposed)	

Which path is more conducive to judicial accountability through judicial elections? The ideal is 100% competition at every judicial election, and short of that, the 100% opposed, 40% competitive standard of state senatorial elections. For the election years studied, the weight of democracy in terms of electoral competition lies with the metropolitan, multi-judge, single county circuits. These circuits

accounted for 81% of the state population in 1965, and 75% of the circuit judges. For the majority of the Michigan public, therefore, the judicial election, by setting up frequent situations of competition, can serve as a channel of accountability and responsibility. Particularly in initial selection, the "public will" has ample opportunity for expression.

Research Question No. 4. Is participation a function of competition?

"Nonpartisan elections do not necessarily depress turnout if there is some competition for office."[53] A maxim of voting analysis is that to a great extent, participation is a function of competition. Is this true for Circuit Court elections?

General elections. In this study the concepts of open and closed electorates have been used to discriminate between high and low participation in judicial elections.[54] The hypothesized pattern is that opposed elections, regardless of electoral situation, produce open electorates; unopposed elections produce closed electorates. Does the pattern hold over structural differences in circuits? Table 3.12 illustrates.

First, the hypothesis is accepted. Seventy-eight percent of the elections fit the hypothesized pattern, associating opposition and participation.[55] Second, circuit structure does affect this association. Class I circuits

do not follow the pattern of positive relationship between opposition and participation. Circuit elections in Class I circuits are more likely opposed, but also more likely decided by closed electorates. The multi-judge ballot, while apparently encouraging competition, discourages participation.

TABLE 3.12

PARTICIPATION AND COMPETITION IN THE 1953, 1959 AND 1966 GENERAL ELECTIONS

Class	Number of elections fitting hypothesized pattern	Number of elections not fitting hypothesized pattern
I	16	14
II	19	2
III	57	9
IV	5	2
	97	27

Vacancies. Do vacancy elections, which are usually competitive, also produce open electorates? For the 17 vacancy elections held between 1962 and 1964, 13 or 76% fit the hypothesized pattern. Following the structural distinction of general elections, the four elections not fitting the pattern were all Class I circuits, the 3rd circuit--Detroit--accounting for two.

Primaries. The pattern does not hold, predictably, for primary elections. For Circuit Court primaries held in 1962, 1964 and 166, 78% did not fit the pattern, the large majority being highly competitive but suffering closed electorates. Again, however, Class I circuits accounted for the greatest deviance.

The judicial electorate in primaries represents a slightly smaller proportion of the judicial electorate in elections than is true of congressional or state senatorial electorates.[56] The judicial primary is more likely to be competitive, than the congressional one, but to attract proportionately fewer voters.

Participation and competition. It is generally true in Circuit Court elections that opposition produces higher voter turnout. The rule does not hold, however, for metropolitan, multi-judge, single county circuits. Nor does it apply in primaries. Both usually feature competitive elections whose outcome is determined by a relatively small proportion of the electorate.

Conclusions: Competition and Judicial Accountability

The objective of this study is to assess the effectiveness of judicial elections as true elections and therefore channels of political responsibility. The focus of Chapter III has been on competition. By democratic norms, all judicial elections should be competitive, permitting the

electorate a choice at each vacancy and each bid for re-election. Without electoral competition, the judicial incumbent is electorally irresponsible and unaccountable.

By democratic standards, it is also particularly important that public opinion is expressed at the initial stages of judicial selection. This is so because the "multiple cracks" affording access to the decision making processes of executives and legislators are not as frequent or familiar in judicial decision making. Competitive judicial selection is an opportunity for the electorate to say "not only what the law shall be but ... who shall make, enforce and interpret the law."[57]

Holding competition in nonjudicial elections as the democratic standard, it was found that while Supreme Court and Circuit Court elections fell dreadfully short of the ideal norm, they were roughly on a par with national and state legislative electoral practice.

The reason that Michigan legislative competition is not ideal is a skewed partisan distribution. For judicial elections, the reason is incumbency. Supreme Court justices and Circuit Court judges face a 30% chance that they will be challenged for re-election. For appointed incumbents, the odds rise to 60%. But the chances of competition in an election not involving an incumbent are 100%.

It was hypothesized that either the norm was met and judicial elections were serving as effective democratic

channels; or it was not and judicial elections were being perverted into an insurance for judicial independence; or perhaps some compromise had been effected by the tension of these two philosophies of judicial rolls. It is the compromise that appears from the data. There is sufficient competition at the initial stages of judicial selection by election to justify it as an election in most circuits. The majority of judges--Supreme Court and Circuit Court--come to their offices through competitive elections. Those initially appointed to vacancies undergo competitive challenges in the vacancy elections. Very few judges come to the bench without an opportunity for the electorate to have selected someone else.

Competition for the Supreme Court obeys two rules: (1) re-elect the incumbent; (2) contest all vacancies. Partisan strategy, always concerned in Supreme Court politics, occasionally puts policy ahead of principle and violates the rule of respect for the incumbent. Competition for Supreme Court, and the voting patterns it engenders, can be understood as the result of pressures to meet the demands of both judicial independence and partisan responsibility.

Circuit Court competition works from the same basic percepts of preserving judicial incumbency and providing democratic selection. For these courts of general jurisdiction, however, the tension pulling against this compromise is emitted by the structural, social, and political

circumstances of each circuit. The multi-judge bench is not so secure a haven for incumbents as a single judge situation. Metropolitan, multi-county circuits have fewer appointed judges, fewer competitive primaries, more competitive general elections, but less public participation in judicial selection than the multi-county, single judge circuits.

A compromise between judicial accountability and judicial independence is in effect for Michigan's judicial elections. The initial stages of selection are open and "democratic", but tenure is relatively independent of public challenge. The forces in the state working against this compromise, working in effect to break it and open incumbency to accountability, are the partisan interest in Supreme Court personnel, and the conflicting demands of metropolitan circuits on their multi-judge benches.

The caveat to this promising development for democratic judicial elections is the demise of the multi-member ballot. Denounced as an impediment to informed voting, it has been fractionalized by the introduction of staggered terms. There is some evidence to indicate that while the multi-winner ballot did discourage voters, it has encouraged candidates. The judicial incumbency designation has proved intimidating to potential candidates in the single winner situation.

Together the nonpartisan ballot and the single-judge incumbent make the smaller judicial circuits the most

faithful practitioners of the compromise. In their often complete mobilization to fill vacancies, however, these less pressured circuits can stack their participation and interest against the consistently competitive but consistently small electorate of metropolitan circuits.

The pull between the ideals of democratic judges and independent judges is well illustrated by competition in judicial elections. In the following Chapter, the bases of their judicial competition are investigated. Are nonpartisan judicial elections waged on partisan lines? on demographic lines? on geographic? on personality? Chapter IV considers these issues.

Chapter III--Footnotes

1. "As it is essential to liberty that the government in general should have a common interest with the people ... Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured." James Madison, The Federalist Papers, No. 52 (The New American Library of World Literature, Inc.; New York, 1961), 327. See also Gerald Pomper, "The Concept of Elections in Political Theory," The Review of Politics, 29 (1967), 480. And from a survey project, Jack Dennis, "Support for the Institution of Elections by the Mass Public," APSR 64 (September 1970), 819-35.

2. V. O. Key, Jr., Southern Politics (Random House; New York, 1949), Vintage Books Edition, 424.

3. Eugene Burdick, "Political Theory and the Voting Studies," uses a "theory of concord" to explain low political participation. In American Party Politics, Donald G. Herzberg and Gerald M. Pomper, eds. (Holt, Rinehardt and Winston; New York, 1960), 399-404.

4. Anthony Downs, An Economic Theory of Democracy (Harper & Row; New York, 1957), 23-24. Several of the propositions presented in Downs' syllogism suggested hypotheses tested in this research. Relevant here is Downs' point that "If his (the voter's) party differential is zero because all party policies and platforms appear identical to him, he weighs his long-run participation value plus the expected value of 'change' as opposed to 'no change' (or vice versa) against the cost of voting." 271-72.

5. Morton Grodzins, The American System. Daniel J. Elazar, ed. (Rand McNally; Chicago, 1966), 274-76.

6. Angus Campbell et al., The American Voter: An Abridgment (John Wiley & Sons; New York, 1964), Chapter 17. Also Downs, op. cit., 265-66.

7. For discussions of the influences on judicial process see Jack W. Peltason, Federal Courts in the Political Process (Random House; New York, 1955), especially Chapters 4-6.

8. Walter F. Murphy, Elements of Judicial Strategy (University of Chicago Press; Chicago, 1964).

9. Joel B. Grossman, Lawyers and Judges: The ABA and the Politics of Judicial Selection (John Wiley & Sons; New York, 1965). A thorough case study is David J. Danelski, A Supreme Court Justice Is Appointed (Random House; New York, 1964), a study of President Harding's appointment of Pierce Butler to the United States Supreme Court in 1922.

10. One contemporary point of view holds that the current frustration that many feel toward the courts proves that, somehow, present procedures do not allow judges to respond to the "dominant interest in the community" readily enough. Those who otherwise agree with the court's activist decisions worry that the widespread unhappiness they cause can only serve to undermind judicial legitimacy. And those who strongly disagree with court policies argue simply that because these decisions do not represent the will of the majority, they are indeed illegitimate. The debate is illustrative of the tightrope judges must walk between too much independence and too much accountability.

11. Phillips Cutright, "Urbanization and Competitive Party Politics," The Journal of Politics (August 1963), 552-54. See also Austin Ranney and W. Kendall, "The American Party Systems," APSR 48 (1954), 477-85.

12. Two examples are Duncan Black, The Theory of Committees and Elections (Cambridge University Press; London, 1958) at 75-83 where he discusses the multi-member constituency of a proportional representation voting system, and James M. Buchanan and Gordon Tullock, The Calculus of Consent (Ann Arbor Paperbacks, University of Michigan Press; Ann Arbor, 1965) Chapter 15, where the possibility of multi-member districts is discussed.

13. From the "Consensus Statement" released by the Citizens Conference gathered at a meeting at the Pantlind Hotel in Grand Rapids, Michigan, October 20, 1967. Typical of the reform literature is a polemical editorial in the American Judicature Society Journal 48 (December 1964), entitled "The Dictatorship of Irrelevancy," 124-25. The leading sentence if "Nonpartisan election of judges is the worst of the five traditional judicial selection methods used in this country." In the editorial, the irrelevancy of famous names, "succulent smiles", placement on the ballot, and opportunism are all ascribed to nonpartisan elections.

14. Campbell argues that the form of the ballot, as other formal political institution, "had their greatest impact on political behavior when the attitudes relevant to that behavior were weak." Op. cit., 154. From the data on participation presented in Chapter II, it is evident that "weak

attitudes" are certainly extant in judicial elections. Following Campbell's reasoning, therefore, the slightest hindrance, such as a multiple winner ballot, may discourage the voter. The application to judicial elections is obvious.

15. Cf. Laws Relating to Elections, compiled under the supervision of the Secretary of State (Lansing, 1965), sections 334-421.

16. For an example, see Chapter II Footnotes, footnote 7.

17. "Concensus Statement," op. cit.

18. Evan Haynes, "Judicial Selection and the Democratic Spirit," The Courts, Robert Scigliano, ed. (Little, Brown: Boston, 1962), 64.

19. Herbert Jacob, "The Courts as Political Agencies," Studies in Judicial Politics (Tulane University; New Orleans, 1961).

20. Bancroft C. Henderson and T. C. Sinclair, The Selection of Judges in Texas: An Exploratory Study (Public Affairs Research Center, University of Houston; Houston, 1965), 19-20. For Louisiana, Kenneth N. Vines, "The Selection of Judges in Louisiana," Studies in Judicial Politics, op. cit., 114-18.

21. Richard A. Watson and Rondal G. Downing, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan (John Wiley; New York, 1969), 229-40.

22. Herbert Jacob, "Judicial Insulation--Elections, Direct Participation, and Public Attention to the Courts in Wisconsin," Wisconsin Law Review (1966), 806-08. In this brief study, Jacob reviews several of the same sets of questions treated in this dissertation. He concludes that the legal restrictions, the level of office, and incumbency "severely limit competition in judicial election." As a result, "The general public continues to perceive judges and the court system as relatively remote from ordinary politics." The argument of the present study is that the politics of judicial elections are not so "remote" as Jacob implies. Electoral behavior in Michigan judicial elections is a near perfect reflection of public attitudes toward the courts.

23. Malcolm Moos, "Judicial Elections and Partisan Endorsements of Judicial Candidates in Minnesota," APSR 35 (1941), 72.

24. This five year period, 1964-1969, saw the failure of an experiment ending gubernatorial appointment to fill vacancies. Rather, the Supreme Court was to fill vacancies temporarily from retirement lists, until a vacancy election could be held. Gubernatorial appointment was restored by constitutional amendment in 1968. No vacancies occurred on the Supreme Court during 1964-1969.

25. Studies by Jacob, Ladinsky, Vines, Moos, Watson and Downing, Henderson and Sinclair all make this point. All have been cited previously.

26. Barbara Hinckley, "Incumbency and Presidential Vote in Senate Elections: Defining Parameters of Subpresidential Voting," APSR 64 (September 1970), 839.

27. Nonpartisanship in itself is alleged to give the incumbent an inordinate advantage. A Wisconsin study found a similar 81% winning rate for partisan county assemblymen (state legislators) and city nonpartisan aldermen or county supervisors for the incumbents seeking re-election. A. Clarke Hagensick, "Influences of Partisanship and Incumbency on a Nonpartisan Election System," Western Political Quarterly 17 (1964), 123.

28. Michigan Constitution, Article VII, Section 23 (1908).

29. Official Record, Michigan Constitutional Convention 1961-1962, Vol. II, p. 1480.

30. Maurice Kelman, "Ballot Designations: Their Nature, Function, and Constitutionality," Wayne Law Review 12 (Summer 1966), 758.

31. 295 Michigan 245, 249-50.

32. Jack Ladinsky and Allan Silver's study of two Wisconsin Supreme Court elections is a case in point. In both elections a challenge was mounted to incumbent trends of judicial policy in the election. Ladinsky and Silver were interested in the battle lines drawn not so much by the candidates' positions as by the manner in which the campaign was conducted. The challenger was blunt in his criticism of incumbent decisions. His was a true competition in the ideal democratic sense. Many citizens were disturbed by this "politicizing" of a judicial campaign, believing in the independence and respectability of judicial authority, that it should be above political challenge. The "Populist group" however felt no qualms about intervening in judicial policy via the ballot. The argument of the Ladinsky and Silver article is pertinent here. Real competitive challenges to

a judicial incumbent are mounted by groups who believe that elections are a proper forum for judicial accountability, although even they recognize limits to the issues that can be safely discussed during the campaign. Thus the fact of challenge becomes an unexpressed criticism of the incumbent. Whether losing or winning, barely or largely, the challenged incumbent is made publicly aware of the dissatisfaction of a sector of the public with his performance. In this indirect way he is being held accountable. Op. cit., 154-69.

33. Vines, "The Selection of Judges in Louisiana," op. cit., 116, shows a perfect inverse relationship between the number of elections and the number of times opposed.

34. Three fourths of the judges in Moos' study were appointed. Incumbents are rarely defeated. "Thus it is possible for a governor who has received a mandate from the people to make judicial appointments acceptable to them. In this way it is possible to appoint men to the bench who reflect the views of the appointing power and his party with virtual assurance that they will be re-elected." Op. cit., 74.

35. Glendon Schubert, "The 'Packing' of the Michigan Supreme Court," in Judicial Behavior, ed. Glendon Schubert (Rand McNally; Chicago, 1964), 273-78.

36. Three articles by S. Sidney Ulmer are to the point. "Leadership in the Michigan Supreme Court," in Judicial Decision-Making, Glendon Schubert ed. (The Free Press of Glencoe; New York, 1963), 13-29. Also "The Political Party Variable in the Michigan Supreme Court," in Judicial Behavior, op. cit., 279. And "Politics and Procedure in the Michigan Supreme Court," Southwest Social Science Quarterly, 46 (May 1966).

37. See Chapter IV for a description of a "strong" judicial candidate. Essentially he is one with successful political experience.

38. Chief Justice Dethmers, a Republican, was defeated in the Democratic onslaught of 1970 by two former Democratic state governors. Dethmers had been on the Supreme Court 24 years.

39. Phillips Cutright, "Urbanization and Competitive Party Politics," The Journal of Politics (August 1963), 552-64. There is a debate on this issue, emphasizing the importance of definition--what is "urban"? What is "competitive"? Cutright refers to these methodological problems.

40. "Most competitive" was a relative term. It refers to the counties in which the losing candidate got 90-95% as many votes as the winner. Accordingly, the "least competitive" counties were those in which the loser got no more than 75% as many votes as the winner.

41. See appropriate sections of Laws Relating to Elections, compiled under the supervision of the Secretary of State (Lansing, Michigan).

42. Jacob, "Judicial Insulation...", op. cit., 806-08.

43. In a study of judicial selection in Texas, a survey of newspapermen turned up the following estimates of reasons that judicial incumbents were challenged for reelection: Unfitted for or neglected position (63.6%); Too old or too long tenure (22.6%), and Politics of geography or faction (13.8%). Henderson and Sinclair, op. cit., 106.

44. Schubert, "The 'Packing' of the Michigan Supreme Court," op. cit.

45. Henderson and Sinclair, op. cit., 19-20; Vines, "The Selection of Judges in Louisiana," op. cit., 114-48.

46. The contingency tables are:

	(1959-1968)		
	Number of units with primary	Number of units without primary	Total
Circuit Court	30	79	109
State Senate	120	25	145
	150	104	254
Circuit Court	30	79	109
Congress	59	34	93
	89	113	202

X^2 for both significant at $p = .01$.

47. "Sure" winners and "token" losers do not always appear in the same election because of the infinite possibilities in voting divisions in multi-winner elections.

48. One stalwart ran in four 3rd Circuit elections. Frederick D. Bartholomew ran in 1947, 1953, 1955, and 1966. Evidently, in Texas, occasions of publicity candidates are more frequent. Henderson and Sinclair report that, in the estimate of newsmen, 42% of the contestants were believed to have entered a judicial election simply because of personal ambition rather than raising a substantial issue. Op. cit., 106.

49. X^2 = 14.4; highly significant at p = .01.

50. See Chapter II, p. 15.

51. X^2 = .3317, no significant difference.

52. X^2 = .9629, no significant difference.

53. Lester W. Milbrath, Political Participation (Rand McNally; Chicago, 1965), 96.

54. As discussed in Chapter I, an "open" electorate is one in which 75% or more of the total electorate voting in that election participated in the judicial election. A "closed" electorate is less than 75% of the total.

55. X^2 = .15.5, highly significant difference.

56. For election years 1962, 1964, and 1966 an average 38.3% of the general election congressional electorate participated in the congressional primary. For the same period, and in the same counties, 31.3% of the general election Circuit Court electorate participated in the Circuit Court primary (N = 22 counties having a judicial election in those years).

57. Beattie, op. cit.

CHAPTER IV

THE BASES OF COMPETITION IN JUDICIAL ELECTIONS

Objectives

The objective of Chapter IV is to test the hypothesis that voting in Circuit Court elections is nonpartisan, while voting in Supreme Court elections is not. This hypothesis is generated by the differences in the nomination methods for the two offices. By state constitution, nominees for Supreme Court are made at political party conventions. While incumbents may become nominees for reelection simply by filing an affidavit of candidacy, it is the practice of political parties to renominate "their" incumbents. Thus partisanly nominated, Supreme Court candidates are elected on nonpartisan ballots, lacking party identification. It is the hypothesis here, however, that the party affiliation of each candidate is well enough known to produce voting along partisan lines in the "nonpartisan" election. Michigan Supreme Court elections are hypothesized to be Type I in Professor Adrian's typology for nonpartisan elections: Elections where the only candidates who normally have any chance of being elected are those supported directly by a major political party organization.[1]

Circuit Court candidates, on the other hand, have for over fifty years in Michigan been nominated by nonpartisan petition. An aspiring candidate gathers at least 1% and no more than 4% as many signatures on his candidacy petition as votes cast in his circuit for secretary of state in the last general election. Incumbents become renominated by filing an affidavit of candidacy. If there are more than twice as many candidates as seats to be won, a primary is held. Nominating, primary, and election procedures are all detailed in state law, and are all constitutionally nonpartisan. It is the hypothesis here that Circuit Court elections are also, in practice, nonpartisan. They are hypothesized to be Type III in Adrian's typology: Elections where slates of candidates are supported by various interest groups, but political party organizations have little or no part in campaigns, or are active only sporadically.[2]

Partisan bases of competition. Although various studies disagree about the isolation of, or involvement of, partisan forces in nonpartisan elections, the relationship in most instances is one of degree rather than kind.[3] Partisan influence on Supreme Court elections has already been noted in patterns of participation (Chapter II) and in the structure of competition (Chapter III). What then is the correlation between voting for a Democratic candidate for governor and the Democratic candidates for Supreme Court? Further, is there a partisan influence in some Circuit Court elections?

In order to answer these questions using aggregate voting data, quantified standards for "partisan" must be established. A "partisan" election shall be one in which (1) the opposing candidates have opposing party affiliations, and (2) the percentage of votes given the nonpartisan judicial winner is 10% or less different from the percentage of votes given a partisan winner in the same constituency (usually the Congressional or State Senatorial winner), and of the same party as the judicial winner.

The second standard--similarity in nonpartisan and partisan voter divisions--is a weak one for several reasons. First, its validity increases as the size of the judicial electorate approaches that of the nonjudicial electorate. As a result it will be applied only in elections where the % Ballot is 90-100. Second, it cannot discern the degree of shifting party alliances below the "top of the ballot" office. Third, it can miss the judicial election that may have been campaigned openly along party lines but this was not evident in voting alignments because of incumbency designations. Despite these limitations, the data will show that a similarity in voting divisions is a good clue to the possibility of partisan influence in a nonpartisan judicial election.

Nonpartisan bases of competition. "Nonpartisan" judicial elections are defined as those elections decided upon any lines of identification other than partisan ones.

Going further, we wish to know what these lines might be, upon what bases of support judicial elections are waged, and which have proved to be the most successful bases, or combination of bases, from which to campaign for judicial office in Michigan.

Using the results of studies of nonpartisan elections and the few studies of judicial elections, these bases of nonpartisan competition are hypothesized to be (1) incumbency, (2) political background of the candidate, (3) private practice experience of the candidate, (4) sectional support, and (5) ethnic support. For the Supreme Court, the factor of political party strength is also considered. Each of these factors will be discussed in turn.[4]

The first hypothesized nonpartisan base of support in judicial competition is <u>incumbency</u>. Given the ballot of designation of all judicial incumbents and the alleged desire for stability in judicial office, it is hypothesized that some judicial elections will be dominated by the incumbent, especially if the challenger has no base of support of his own. The candidate who is also the incumbent is hypothesized to have a real competitive advantage over his challenger.

A second hypothesized nonpartisan base of support in judicial competition is the <u>political experience</u> of the candidate. A candidate who is holding some political office--prosecuting attorney, city attorney, probate judge, district judge, state legislator, etc.--is hypothesized as having a

competitive advantage over candidates without such offices. The political office serves as a base of support because it affords the candidate some public visibility not granted other candidates, and because it provides the candidate with a network of communication--in the day-to-day execution of his present office--for promoting his candidacy.

In considering Supreme Court competition, the political office factor is divided into state office and local office, in that order of importance. Those candidates who have been elected previously to state office have an advantage of publicity and established lines of communication not accessible to candidates without state office experience. Local political office, however, can be of use to the Supreme Court candidate, providing him with a smaller but perhaps closer knit support network that can be expanded through professional and informal lines across the state.

A third hypothesized nonpartisan base of support in judicial competition is the quality of <u>private practice experience</u> of the candidate. A candidate, more especially for Circuit Court than Supreme Court, with a long and highly reputed career of private practice in a community has at his disposal a support network of legal associates, clients, and perhaps bar affiliations. This "Establishment" support can be a real factor against a candidate without them.

A fourth hypothesized nonpartisan base of support in judicial competition is <u>sectional</u>. Sectional support can be

a factor in Supreme Court elections, encouraging voters to ignore party loyalties and vote for the "favorite son". A possible hypothesis from this point of view is that Supreme Court candidates from the Detroit area have a certain competitive advantage.

Sectional bases of support might also be a factor in multi-county circuits Circuit Court competition. The hypothesis is that counties vie with one another for the single judgeship. Thus candidates come from different counties in the circuit, and each county votes for its own. No multi-county Circuit Judge winner therefore will ever carry all circuit counties in a competitive election.

The final hypothesized nonpartisan base of support in judicial competition is ethnic affiliation. Is an obviously Irish name, or Catholicism, or race, an advantage or disadvantage? Supreme Court competition will be the arena of particular interest in investigating ethnic bases of support.

The patterns of competitive bases identified through this nonparametric tabulation are necessarily rough and broad. They will mark a beginning for more exact research, perhaps showing which factors would be the most fruitful to investigate. Nothing more is intended in the present study than to suggest something of the outline and complexity of the judicial election system. As Watson and Downing sought to investigate the groups advantaged by the Missouri Nonpartisan Court plan for judicial selection, so we seek here

to point, in broad terms, to the groups advantaged by the Michigan plan of nonpartisan judicial election.

Organization of the chapter. Bases of competition in Supreme Court and Circuit Court elections will be treated separately. The following discussion plan will be used for both: partisan influenced elections, incumbent-dominated elections, elections decided by candidate strength.

Bases of Competition in Supreme Court Elections

Partisan bases. The criteria for partisan influence on voting patterns in judicial elections are established as (1) candidates are affiliated with different political parties, (2) the % Ballot score of the judicial electorate is 90 or better, and (3) the difference between the partisan and nonpartisan winner's percentages of the vote is less than 10%, both winners being associated with the same political party.

All Supreme Court elections meet criterion number 1 because of the party convention nomination system. None of the elections meet criterion number 2. The highest % Ballot score was 81 in 1961. Although the strength of criterion number 3 is weakened by the failure of any Supreme Court electorate to approach the size of the nonjudicial electorate, the fact of partisan nominations for Court office makes the analysis of parallels in Court and partisan voting patterns important.

For all state elections between 1952-1966, the correlation between the Republican percentage of the vote for the "top of the Ballot" office, and the percentage of the vote cast for Republican candidates for the Supreme Court is -.14, practically negligible. Looking election by election, however, eight elections between 1952-1966 had less than a 10% difference in the partisan and nonpartisan winner's votes. These elections produced gubernatorial and Supreme Court winners of the same party, whether the judicial winner was an incumbent or not.

Elections in which the partisan winner's minus the nonpartisan winner's percentage of the vote was more than 10% were those in which incumbency played a bigger role, the incumbent winning whether his nonjudicial partisan colleague did or not. These were either long-term Justices, or Justices with previous partisan office experience and thus their own bases of voter support.

Table 4.1 identifies the principal bases of competition for Supreme Court elections between 1952 and 1968 along the factors of partisan strength and incumbency. Elections in which there were two winners are scored separately by the conditions of each winner's victory. The "(1)" after certain elections indicates that only one of the two seats open that election was an example of that electoral category.

"Partisan" elections are those in which the strength of the partisan vote appears to have pulled the Court vote

TABLE 4.1

PARTISAN AND INCUMBENCY FACTORS IN SUPREME COURT ELECTIONS, 1952-1968

Partisan	Partisan-Incumbent	Incumbent
1952	1953 (1)	1955 (1)
1955 (1)	1953 (1)	1961 (1)
1956 (1)	1957 (1)	1961 (1)
1957	1957 (1)	1962 (1)
1960	1963 (1)	1966 (1)
1962 (1)	1956 (1)	1966 (1)
1963 (1)	1959 (1)	
1966 (1)	1959 (1)	
1968		
N = 9	N = 8	N = 6

behind it either to confirm an appointee, to defeat a weak opposing incumbent, or to win a vacant seat. The mean difference in Democratic candidate percentage of the vote and Democratic Court nominee's percentage is 5% over these nine elections.[5]

"Partisan-incumbent" elections are those whose partisan winners were accompanied by a Court winner of the same party, but the Court winner had the additional support of an incumbency designation. The Democratic Court percentage of the vote was an average of 10.5% more than the partisan percentage for the eight elections.

"Incumbent" elections were those where the strength of the incumbent overshadowed the weakness of his partisan colleagues. In these five elections, the mean difference in

the partisan-nonpartisan percentage of the vote is 19.2%.

Vacancy elections to the Supreme Court, all involving gubernatorial appointees running for election, afford a chance to test the importance of incumbency and partisan influence from another point of view. Earlier studies by Glendon Schubert and Sidney Ulmer have shown the policy consequences of gubernatorial appointment to Court vacancies in Michigan. What are the electoral consequences?

Democratic Governor Williams (1948-1960) had six appointments, all but one of whom won his vacancy election. (The loser bowed to a popular ex-governor, Republican Harry Kelly.) Democratic Governor Swainson (I960-62) had two appointees. Both ran in vacancy elections in 1962, the election Swainson lost in his bid for re-election, and one appointee still turned in a victory. Republican Governor Romney (1962-1968) made no appointments.

The probability of a Supreme Court appointee winning his vacancy election is roughly equal to the probability of his appointing governor winning his re-election. The two Democratic appointee defeats came when a Democratic appointing governor was struggling to hold a narrow state majority, one evantually losing it. The first importance of partisan strength, followed by the mere fact of incumbency, is the pattern of competitive advantage for vacancy as well as term elections to the Supreme Court.

Population factors. To determine if population factors affect the bases of support in Supreme Court elections, as they

were shown to affect rates of voter turnout, two elections were compared. The 1960 vacancy election was largely determined along partisan lines. The 1966 election was influenced by incumbency as well as partisanship. If the population categories (defined in Chapters II and III) react identically to these different electoral situations, evidently the population factor is of no significance in Supreme Court competition.

Arranged by population class, each county was scored on whether or not it voted for the Court incumbents and whether or not it followed its party line in doing so. The Party identification of each county was taken from the 1960 and 1966 Congressional elections. The results are given in Table 4.2.

TABLE 4.2

POPULATION VARIANCE AND PARTISAN LOYALTY IN SUPREME COURT ELECTIONS

Population Class	% for Democratic Incumbents		% for Party Line	
	1960	1966	1960	1966
I: Detroit	100%	100%	100%	100%
II: over 100,000	40	40	70	50
III: over 50,000	20	80	92	42
IV: over 20,000	41	55	78	59
V: under 20,000	18	39	88	67

All population classes, save Detroit, reacted similarly to the two situations, following their party line more closely in the 1960 vacancy election than in the 1966 term election. (Class average for 1960 is 82% following party line; class average for 1966 is 55% following party line.) There is some indication, however, that the small and principally Republican counties, vote the Republican party line more consistently than larger counties of either party.

A model of competition for Supreme Court elections. We have seen that Supreme Court elections can be loosely categorized by the relative importance of partisan and/or incumbency factors in determining their outcome. We have also seen that this relation does not vary across the state with the distribution of population. The relative influence of the two factors are perceived in roughly the same way throughout the state.

In this section, a multi-factored model of competition in Supreme Court elections will be developed, based on the argument that a two-variable model is most likely an oversimplification, particularly because over one-third of the elections were explained as a combination of the two variables. The objective here is to identify the most successful combinations of advantages in winning an election to the Supreme Court.

It was earlier stated that conventional research has identified a number of personal attributes that can be of

advantage in an electoral situation. The hypothesis was offered that partisan strength, incumbency, previous state office, previous local office, unusual sectional support, and ethnic appeal were likely personal advantages in a Supreme Court election.

Table 4.3 presents a model of the relative importance of these factors as a test of the general hypothesis. The state strength of the candidate's nominating party (Factor I) and incumbency (Factor II) are hypothesized to be of greatest advantage. Next in usefulness is previous state office (Factor III), then previous local office (Factor IV), then private practice reputation (V), then sectional support (VI), and last, ethnic appeal (VII). The positive or negative rating for each Supreme Court candidate was decided upon by the following procedures:[6]

Factor I: A candidate was given a + if he was an elected or appointed Supreme Court incumbent.

Factor II: A candidate was given a + if his nominating party won the state office for which most votes were cast in that election. This rating ignores presidential party winners, believing them not as relevant as gubernatorial or other state office winners.

Factor III: A candidate was given a + if he then or had previously held state elective or appointive office.

Factor IV: A candidate was given a + if he then or had previously held local elective or appointive office. Probate judge and Circuit judge experience was included here.

Factor V: A candidate was given a + if he had had a lifetime private practice and an "A" rating by Martindale-Hubbel Legal Directory.

Factor VI: A candidate was given a + if (1) he was from Detroit, or (2) he was from the Upper Penninsula.

Factor VII: A candidate was given a + if (1) he was a Roman Catholic, or (2) he was Black, or (3) he had a name easily associated with an ethnic group.

Table 4.3 lists the 26 Supreme Court elections between 1949 and 1970, rating each set of candidates according to this model. The test of the general hypothesis is: for each election, the candidate with the most important +'s will win. If we give each candidate a score of 7 for a positive rating on Factor I, a score of 6 for Factor II, 5 for Factor III, 4 for Factor IV, 3 for Factor V, 2 for Factor VI, and 1 for

Factor VII, hypothetically the candidate with the highest score will win.

As Table 4.3 illustrates, if one could correctly estimate the ratings for Factor II (Party strength) before the election, one could correctly predict about 80% of the elections. In three elections, winners and losers tied in their scores, incumbents finally losing in two of these. Using this model of competitive advantage, with the added rule that in case of ties the incumbent loses, Supreme Court elections can be predicted accurately most of the time.

Two qualifications are in order. Omitted from the model is a method of discounting previous political or sectional support as the length of an incumbent's tenure increases, while adding to his advantage as an incumbent. Obviously the support accruing from previous office will be stronger the first or second time a candidate seeks a seat on the Court than when he runs for his third or fourth term. The long-term incumbent moreover has a special stature, especially with legal groups, not yet granted the one-term incumbent.[7]

Also omitted from the model is a method for awarding extra advantage to candidates with high state office experience, such as governor. It seems obvious that a candidate could make use of the support built up within his party and across the state at large during a term as governor more than the support resulting from a term of appointment to the Workman's Compensation Appeal Board, with its more limited clientele.

TABLE 4.3

TABULATION OF CANDIDATE ADVANTAGE IN SUPREME COURT ELECTIONS, 1949-1970
(* = winners)

Candidate-Party	Incumbent	Party	State Office	Local Office	Private	Section	Ethnic	Score
April 1949								
Bushnell (D)*	+	-	-	-	+	+	-	12*
Sharpe (D)*	+	-	-	-	+	-	-	10*
Moore (R)	-	+	-	+	-	-	-	10
Rigney (R)	-	+	-	+	-	-	-	10
April 1951								
Boyles (R)*	+	+	+	+	-	-	-	22*
Reid (R)*	+	+	-	+	-	-	-	17*
Ryan (D)	-	-	+	+	-	-	-	9
Lee (D)	-	-						NA
Nov. 1952								
Adams (D)*	+	+	+	-	-	-	-	18*
King (R)	-	-	-	-	+	+	-	5
April 1953								
Dethmers (R)*	+	+	+	+	-	-	-	22*
Kelly (R)*	-	+	+	-	-	+	+	14*
Adams (D)	+	-	+	-	-	-	-	12
Smith (D)	-	-	+	-	-	-	-	5
April 1955								
Black (D)*	+	-	+	+	-	-	-	16*
Carr (R)*	+	+	+	+	-	-	-	22*
Roth (D)	-	-	+	+	-	-	+	10
Brake (R)	-	+	-	-	+	-	-	9

continued

TABLE 4.3--continued

Candidate-Party	Incumbent	Party	State Office	Local Office	Private	Section	Ethnic	Score
Nov. 1956								
O'Hara (r)	-	-	-	-	+	+	+	6
T. Smith (D)*	+	+	+	-	-	-	-	18*
Edwards (D)*	+	+	-	+	-	+	-	19*
Simpson (R)	-	-	-	+	-	-	-	4
Nov. 1957								
Voelker (D)*	+	+	-	+	-	+	+	20*
Moynihan (R)	-	-	-	+	-	+	+	7
April 1959								
Edwards (D)*	+	+	-	+	-	+	-	20*
Voelker (D)*	+	+	-	+	-	+	+	21*
Baldwin (R)	-	-	-	-	+	-	-	3
K. Cole	-	-	-	-	+	-	-	3
M. Cole	-	-	-	+	-	-	-	4
April 1957								
T. Smith (D)*	+	+	+	-	-	-	-	18*
T. M. Kavanaugh (D)*	-	+	+	+	-	-	+	16*
O'Hara (R)	-	-	-	+	-	+	+	8
Childs (R)	-	-	-	-	+	+	-	5
Nov. 1960								
Souris (D)*	+	+	-	+	-	+	-	19*
Breakley (R)	-	-	-	+	-	-	-	4
April 1961								
Dethmers (R)*	+	-	+	+	-	-	-	16*
Kelly (R)*	+	-	+	+	-	+	+	19*
McLaughlin (D)	-	+	+	+	-	-	+	15
Boehm (D)	-	+	-	+	-	+	-	12

continued

TABLE 4.3--continued

Candidate-Party	Incumbent	Party	State Office	Local Office	Private	Section	Ethnic	Score
Nov. 1962								
O'Hara (R)*	-	+	-	-	+	+	+	12
Adams (D)	+	-	+	+	-	+	-	17*
O. Smith (D)*	+	-	+	-	-	-	+	13*
McGreagor (R)	-	+	-	+	-	-	+	11
April 1963								
P. Adams (D)*	-	+	+	+	-	+	-	17*
Black (D)*	+	+	+	+	-	-	-	22*
Holbrook (R)	-	-	+	+	-	-	-	9
Smith (R)	-	-	-	+	-	-	-	4
Nov. 1966								
T. M. Kavanaugh (D)*	+	-	+	+	-	-	+	17*
O. Smith (D)	+	-	+	-	-	-	+	13
T. E. Brennan (R)*	-	+	-	+	-	+	+	13*
Warshawsky (R)	-	+	-	+	-	-	+	11
Nov. 1968								
T. G. Kavanaugh (D)*	-	+	-	+	-	+	+	13*
O'Hara (R)	+	-	-	-	+	+	+	13
Nov. 1970								
Dethmers (R)	+	+	+	+	-	-	-	22
Piggins (R)	-	+	-	+	-	+	-	12
Swainson (D)*	-	+	+	+	-	+	+	18*
Williams (D)*	-	+	+	+	-	+	-	17*

Given these qualifications, the general structure of the model is supported by the data. All but two of the elections (1962 and 1970) are won by the candidate with the highest score on the seven factors. The failure in both cases is accounted for by the qualifications mentioned above.

In 1962, the inability of the model to discount the influence of state office experience after the first election explains why the election was incorrectly predicted. In 1970, two ex-governors beat a long term incumbent whose previous political experience support had undoubtedly weakened over 24 years on the Court. The other element in this election was that although the incumbent's party took the governor's office, it lost every other state office, weakening the effect of party strength for the incumbent.

The major point of the competitive model becomes dramatically clear in a listing of just the winner's ratings, in order of highest to lowest scores. Table 4.4 shows that incumbency is undoubtedly the greatest asset for a Supreme Court candidate. Twenty-six percent of the winners were incumbents, had a winning state party, and previous state office experience of their own. Twenty-three percent of the winners were incumbents with winning state parties. Another 23% won as incumbents with previous state office experience but without a winning state party. A small 8% won as incumbents with previous local office experience, but also

TABLE 4.4

COMPETITIVE ADVANTAGES OF SUPREME COURT WINNERS

	Factors						
	I	II	III	IV	V	VI	VII
Winners	Incumbent	Party	State Office	Local Office	Private	Section	Ethnic
Boyles (R-51)	+	+	+	+	-	-	-
Dethmers (R-53)	+	+	+	+	-	-	-
Carr (R-55)	+	+	+	+	-	-	-
Black (D-63)	+	+	+	+	-	-	-
Adams (D-52)	+	+	+	-	-	-	-
T. Smith (D-56)	+	+	+	-	-	-	-
T. Smith (D-57)	+	+	+	-	-	-	-
Voelker (D-57)	+	+	-	+	-	+	+
Voelker (D-59)	+	+	-	+	-	+	+
Edwards (D-56)	+	+	-	+	-	+	-
Edwards (D-59)	+	+	-	+	-	+	-
Souris (D-60)	+	+	-	+	-	+	-
Reid (R-51)	+	+	-	+	-	-	-
Kelly (R-61)	+	-	+	+	-	+	+
T. M. Kavanagh (D-66)	+	-	+	+	-	-	+
Black (D-55)	+	-	+	+	-	-	-
Dethmers (R-61)	+	-	+	+	-	-	-
O. Smith (D-62)	+	-	+	-	-	-	+

Kelly* (R-53)	-	+	+	+	-	+	+
P. Adams (D-63)	-	+	+	+	-	+	-
T. M. Kavanagh (D-57)	-	+	+	+	-	-	+
O'Hara* (R-62)	-	+	-	-	+	+	+
Brennan* (R-66)	-	+	-	+	-	+	+
T. G. Kavanagh* (D-68)	-	+	-	+	-	+	+
Bushnell (D-49)	+	-	-	-	+	+	-
Sharpe (d-49)	+	-	-	-	+	+	-

*Beat an incumbent.

without a winning state party support. The 20% who won without the asset of incumbency all had a winning state party for support, plus state or local office experience of their own.

Several observations about the relationships between these factors are in order. First, while incumbency is undoubtedly the strongest asset, it, alone, is rarely sufficient to win. In only two elections were the winners elected essentially on the strength of their long-term incumbency. And they were re-elected partly because the Republican chose to nominate weak (in terms of the factors used here) opponents.

Second, former state office is of particular asset to incumbents whose party did not take the top of the ballot state office. Logically, the more recently an incumbent held this office, the more significant a base of support it is.

Third, looking at the winners who were not incumbents, the poll strength of their nominating party is essential, and their previous political office experience, state or local, also important. One can ask here whether this political experience was more important in winning them the nomination or in winning them the election.

Fourth, the three winners who beat incumbents (Kelly in 1953, Brennan in 1966, and T. G. Kavanaugh in 1968) did so with strong partisan, local, and ethnic appeal. The point is

made that the importance of sectional support or ethnic appeal increases if a candidate is to run against an incumbent or for a vacant seat in what promises to be a tight race.

Last, the strong implication of Table 4.4 is that Supreme Court elections are decided by partisan political factors and are partisan elections in everything but name. The incumbency designation while undeniably an asset, must be combined with one of several partisan assets to insure re-election. As Supreme Court candidates for several elections have noted, the nonpartisan form of ballot fools very few. If the quality of justice depends on the quality of the judge, then justice in Michigan depends on the wisdom of the few who control the nomination process of the two major political parties.

Bases of Competition in Circuit Court Elections[8]

We are interested now in determining if the same factors of incumbency partisan strength, and personal political experience are as influential in Circuit Court elections as they were shown to be in Supreme Court elections. The discussion is organized by electoral situation: elected incumbent, appointee, no incumbent. The possible influence of partisanship, incumbency, candidate experience, and sectionalism is explored for each of the electoral situations. Bases of support in multi-judge circuits will be compared with those for single judge circuits.

Electoral Situation No. 1: Elected Incumbent Seeking Re-election

Surveying the 1953, 1959 and 1966 judicial term elections there were 123 elections in which one or more incumbents were seeking re-election.[9] Of these, 75% were unopposed. The remaining 25%, 30 elections, serve as the data set for this investigation of the bases of competition in Circuit Court elections.

Incumbency as a basis of support. Elections in which the incumbent receives 70% or more of the votes are defined as "incumbent dominated" elections. In these elections, whatever support the challenger may have counted upon was completely overwhelmed by the strength of the incumbent. While incumbency, and the incumbency ballot designation, is acknowledged as a competitive advantage whenever an incumbent seeks re-election, it takes on added strength if the challenger is "weak" and has no broad outside base, such as public office, from which to launch his challenge.

Table 4.5 catalogues the percentage of the vote received by each incumbent in the 10 contested circuits. The Table is arranged by circuit class, based on structure and population, and described earlier in the study.[10] Here, and in the remainder of this discussion on Circuit Court competition, elections are accounted for in terms of places to be won (i.e., in terms of winners). In order to understand the circumstances of each judicial victory, "N" becomes a number of winners in a given election year, not the number of circuits holding elections.

TABLE 4.5

PERCENTAGE OF THE VOTE FOR EACH INCUMBENT SEEKING RE-ELECTION IN 1953, 1959, OR 1966, BY CIRCUIT CLASS

Circuit Class	Unop-posed	Over 70%	Over 60%	Over 50%	Lost	Total
3rd Circuit	35%	56%	5%	2%	2%	52
Class I (N=9)	54	25	15	2	4	59
Class II (N=7)	68	13	9	0	9	31
Class III (N=22)	88	4	2	2	4	52
Class IV (N=3)	100	0	0	0	0	4
	61%	25%	8%	2%	4%	198

As is clear from column 1 of Table 4.5, the majority of Circuit Court incumbents are not opposed for re-election. But, as explored in Chapter III, they are more likely to be opposed in the more populous multi-judge circuits than in the less populous single-judge circuits. Furthermore, looking at column 2, 65% of those incumbents who were opposed got 70% or better of the vote. The competitive advantage of the incumbent in Circuit Court elections is practically overwhelming.

The objective of this section is to identify the principle bases of support in contested incumbent elections for Circuit Court. Using 70% of the vote as a standard, Table 4.5 shows that 50 of the 77 contested incumbent elections can be defined as "incumbent dominated." There was no real

competition, and thus no point around which bases of competition could form. These incumbent-dominated elections are certainly nonpartisan in that they are decided on lines determined by the personality, prestige, and ballot designation of the incumbent rather than party preferences.

How much of the dominance of incumbency can be attributed to the personal strength of the incumbent judge, and how much to the pull of the incumbent ballot designation cannot be tested in Michigan since no incumbent runs without the designation. The combination of personal strength and an incumbency designation is, however, practically (96% of the time) invincible.

Michigan's constitutional policy to allow judicial incumbents the advantage of a ballot designation directly supports the idea of the independence of the judiciary from popular control. It has, through the ballot designation, largely succeeded in compromising the electoral process in order to achieve this goal.

Incumbent elections in the 3rd Circuit (Detroit). Being the largest in terms of population and judges, the 3rd Circuit composed of Wayne County and the City of Detroit, is a special case. It has been shown in earlier chapters that voter participation is less, yet electoral opposition greater in the 3rd Circuit than elsewhere across the state. Looking specifically at the contested incumbent elections in the Detroit circuit challenges this earlier identified pattern.

Two of the last three general elections for Circuit judge in Wayne County have had twice as many candidates as winning places. In 1953 all 18 incumbents stood for re-election and won. In 1959, 16 incumbents sought re-election and 15 won. In 1966, because of the staggered term situation, the 17 incumbents seeking re-election opted for the longer terms, effectively eliminating all but token opposition.[11]

In the contested 1953 and 1959 elections, 24 or 85% of the aspiring incumbents got 70% or more of the votes cast. This dominance of incumbent suggests that the high frequency of opposition in 3rd Circuit elections is only a pretense. The real opposition, as the 1966 situation makes clear, is over the vacant seat. Incumbents are certainly not subject to popular control.

The alleged advantage of having a popular name, or a name similar to an incumbent, is applicable to the 1953 and 1959 3rd Circuit elections.[12] In both elections there were two Brennans, two Fitzgeralds, two Murphys, and two Websters. The one Fitzgerald who was not an incumbent, did not win. One cannot be sure therefore whether the confusion is caused by the name, or by the ballot designation.

The 1959 election, in which one incumbent lost his seat, provides another example of the "name game". Three candidates, all non-incumbents, had last names identical to three incumbent judges who retired that year. Perhaps the thought

was to capitalize on the public's familiarity with the name and thus "inherit" that seat on the Court. For only one, Joseph Moynihan Jr., did the attempt at inheritance succeed. The fact that name similarity is not unusual on the 3rd Circuit ballot and the fact that candidates apparently do believe name similarity could be an advantage on a multi-winner ballot does lend support to the "name game" theory. Whether the reduction of the ballot because of staggered terms will now diminish the attractiveness of the "name game" strategy remains to be seen. The defeat of two of these three name candidates suggests that name alone does not guarantee electoral victory. Voters appear to be more perceptive than candidates in this respect.

Partisan influences in elected incumbent elections. The data for this section are the 26 Circuit Court elections between 1953-1966 in which an elected incumbent sought re-election, was challenged, and received less than 70% of the votes cast (columns 3-5 of Table 4.5). The standards are: first, a less than 10% difference in the nonpartisan judicial election winner's percentage of the vote and that of the partisan congressional winner. Second, the opposing judicial candidates must be identified, if possible, as members of different political parties. And third, the size of the judicial electorate must approach that of the non-judicial electorate (a % Ballot of 90 or better).

Using the term elections for 1953, 1959, and 1966 for evidence no election met all three of the criteria set forth

above. Eight elections met the "less than 10%" difference in partisan and nonpartisan winners' percentage of the vote. In seven elections, either all candidates were Republican or the partisan and nonpartisan winners were of different parties. Only one election met the 90 score for % Ballot.

The one election to survive even a partial fulfillment of the criteria is the 1953 election in the 19th Circuit (% Ballot = 90; 8% difference in partisan and nonpartisan winners; candidates of different parties). Incumbent Republican Max Neal was running for his fourth term against Probate Judge Max Hamlin. Given this long incumbency, the fact that it is a multi-county Circuit, the likelihood of partisan influence in this election would have to be substantiated by field analysis.

It is the conclusion of this researcher that voting in nonpartisan incumbent judicial elections for Circuit Court in Michigan are nonpartisan. Using aggregate voting statistics and the criteria described above, no Circuit Court election involving an elected incumbent was shown to be decided along partisan lines. The influence of the ballot designation is undeniably the most important competitive factor in these elections.

Sectional influences. The possibility of sectional loyalties assumes a special consideration for Circuit Court election because of the existence of 16 multi-county circuits. Sectional support was shown to be a competitive

advantage in certain Supreme Court races. It is not unlikely that, in a multi-county situation, counties might vie for the judgeship. In earlier chapters it became clear that the office of Circuit Judge is of great political importance in these less populous circuits. Being the only Circuit Judge for a large geographical area, the office has wide political impact. The fact that multi-county circuits can mobilize more voters for Circuit Judge than for governor when a vacancy occurs testifies to the great community interest in who shall hold this important office.

In order to test the hypothesis of county competition for the Circuit judgeship, the multi-county circuits in which an incumbent was challenged for re-election were examined. If each county gave a majority of its votes to the candidate from that county, whether incumbent or challenger, the possibility of sectional support as a competitive base will be considered very real. The elections used occurred in 1953, 1959, or 1966.

Of the six multi-county circuits having incumbents seek re-election against a challenger, two were "incumbent dominated"--the incumbents received more than 70% of the votes cast. The other four elections, however, strongly suggest that sectional loyalties were used as a bases for competition. These four, all 1953 elections, took place in the 11th, 19th, 25th, and 35th Circuits.

Incumbents lost in the 11th and 35th Circuits. In the four-county 11th, the incumbent carried only his home county.

In the two-county 35th, each county voted for its "favorite son", the challenger's county being the most faithful and thus emerging the winner.

Incumbents won in the 19th and 26th Circuits. In the 19th, the challenger got the greatest support from his home county. In the 26th, the incumbent carried only his home county, but because it was the largest in population, he succeeded in being re-elected.

The evidence of sectionally based competition in multi-county circuit incumbent elections is persuasive. Simply the fact that in every case the challenger was from a different county in the circuit than the incumbent testifies to the use of county loyalty as a competitive base for challenging the incumbent. Take away the inhibiting presence of an incumbent, and most likely these sectional bases will appear even stronger. This proposition will be tested subsequently.

Personal experience as a basis of competition. The discussion of competitive bases in Supreme Court elections showed clearly that, particularly when challenging an incumbent, the candidate needed a personal political base on which he could depend for electoral support. State office, local office, or long and prestigious private practice were definite competitive advantages. Is this same pattern true in challenges to elected Circuit Court incumbents?

The set of incumbent elections examined here are those in which the incumbent received less than 70% of the votes

cast. The "incumbent dominated" elections will be considered as a special case later in the discussion. From available biographical information, the career of each incumbent challenger is recorded. The objective is to discover what experiences could be used as bases of support in realistically challenging an elected Circuit Court judge. The data covers 15 elections, involving 26 incumbents, six of whom lost to the challenger.[13]

Surveying candidate backgrounds, it was found that in 80% of these elections, the incumbent was challenged by a man who had a political power base of his own, either by virtue of holding political office, partisan or nonpartisan, or by holding political party office. The evidence strongly suggests that the other 20% probably were challenges also based on some base of personal support either via the local bar or clientele, or support gathered from a successful private practice experience.

By far the most frequent political power base from which a challenge to the incumbent was mounted was the partisan office of county prosecuting attorney. In Michigan, prosecuting attorney is a county office, elected on a partisan ballot. As noted earlier, however, the partisan support that won the challenger his prosecuting attorney office does not transfer cleanly into the judicial election arena. Most often this is simply because the incumbent and the challenger belong to the same political party.

The next two most frequent political bases were municipal judge and city attorney. Municipal judge is a non-partisan elective office. City attorney is appointed by the city council and usually goes to an attorney with the same partisan preferences as the majority of the council. Both offices are closely involved with the (as yet relatively unstudied) political-judicial-legal relationships in local government.

Of the eight successful challengers, five were in offices that work closely with the Circuit Court (Prosecuting Attorney, Municipal judges, United States Attorney). Given the professional association of these offices with that of Circuit judge, it is probable that unhappiness with the incumbents existed in some political quarters. Otherwise, without the support of these dissidents, it seems unlikely that the challenger would have risked his office and his working relationships to run against the elected incumbent.

Are the challengers in incumbent-dominated (incumbent receives 70% or better of the votes cast) elections also from public office backgrounds? Of the 29 candidates in these elections, only 52% had political office experience. This is significantly lower than the 80% proportion in the more competitive incumbent elections. From this comparison, one might hypothesize a positive relationship between success at the judicial polls and political office experience.

It will be interesting to notice, as this analysis progresses, if the contenders for Circuit judgeships in other

types of electoral situations come from political office backgrounds as preponderantly as these challengers. If the majority of Circuit Court judges in Michigan are recruited from public office rather than private practice, one might expect them to be particularly attuned to, or at least familiar with, the nuances of the local political system. Whether Circuit judges with political experience react differently on the bench than judges without it is a question for future research. One cannot help but expect, however, that the prevalence of judges with political office backgrounds has had some effect on the administration of justice in Michigan.

The heavy prepondernace of incumbent challengers with political office backgrounds also infers that the judicial election system advantages those with this experience. Watson and Downing observed that the various methods of judicial selection favor some groups over others.[14] It may well be that most challengers in incumbent elections are in public office because it is easier to campaign in a non-partisan situation from a formal base of support, such as that gained by having previous political experience, than from the less structured support gained in private practice. We shall return to this point in the discussion of vacancy and no-incumbent elections.

From the investigation of incumbent Circuit elections, it appears that two subsidiary rules must amend the rules of

competition in judicial elections developed in Chapter III:

(1) Incumbents have a strong advantage over any opponent, overwhelming any weak opposition.

(2) Strong opposition to an incumbent must be mounted from some established power base, most frequently a locally elected court-related office, such as prosecuting attorney, municipal or probate judge.

(3) The partisan associations of the strong public-office challenger do not transfer intact to the non-partisan judicial election, at least not for the voter.

Electoral Situation No. 2: Vacancy Elections

The question considered in this section is whether the hypothesized bases of competition--partisan affiliation, incumbency, sectional loyalty, political experience--are the same in vacancy elections as in incumbent elections. The data used are the 23 elections for 31 Circuit Court vacancies filled by special election between 1960-1966. Seventeen elections involved a gubernatorial appointee running for election to the remainder of the term. Sixteen elections were either newly created seats or occurred during the 1964-1969 ban on appointments and thus did not involve an incumbent. They are considered together in order to determine if the structural difference of a vacancy election (often occurring in the fall general election) from a term election (until 1964

occurring in the spring local election) makes any difference in the bases of competition.

Partisan influences. The three criteria adopted to indicate possible partisan influence in a nonpartisan judicial election are (1) a % Ballot score of 90 or better, (2) a less than 10% difference in the partisan and nonpartisan winner's percentages of the vote, and (3) opposing party affiliations of the candidates, and the same party affiliation of the partisan and nonpartisan winner.

Nine elections meet criterion number 1, testifying to the higher interest in vacancy elections than in term elections which usually involve an elected incumbent. Five of these elections also meet criterion number 2; two involving appointees; three, new seats.

Secondary source information was incomplete for the party affiliations of the candidates in four of the elections. The fifth, however, meets criterion number 3 exactly. There is some reason to suspect, therefore, that the 1965 vacancy election in the 18th circuit (Bay County) did not have a partisan dimension. Again, field research should be employed to confirm this suspicion. Two vacancy elections in the 7th Circuit (Genessee County) are also worth further investigation.

The evidence suggests a greater possibility of partisan influence in these vacancy elections, particularly in the more partisanly competitive counties such as Bay and

Genessee, than in incumbent term elections. We shall hypothesize that partisan influence will be implicated even more strongly in no-incumbent elections, because two of the three suspicious vacancy elections were for newly created seats and did not involve appointees.

Incumbency. Of the 15 appointees who ran for re-election during this study period, only eight (53%) were opposed. Of these eight elections, four were incumbent dominated. No appointee was defeated. The other four, however, were hotly contested elections, with an average % Ballot score of 91%. Two of these are suspected to have had some partisan influence. Nonetheless, the competitive advantage of the incumbent (and his ballot designation) remains overwhelming.

Sectional loyalties. The hypothesis here is that in a multi-county circuit, an appointee from one county will be opposed in the vacancy election by a candidate from another county in the Circuit. Between 1960 and 1966, only five multi-county circuits held vacancy elections, and two of these were unopposed. In all three contested vacancies, however, the hypothesis holds true. None of the winning candidates carried all counties in his Circuit. Each candidate, winner or loser, carried his home county. As shown now in incumbent term elections and vacancy elections, sectional (county) loyalties do serve as a base of competition in multi-county Circuit Court elections.

Political experience. Returning now to the full set of vacancy elections between 1960-66 (23 elections for 31 vacancies), the objective is to examine the background of each candidate to find if any held a political office that might have been used as a base of support in judicial competition. The hypothesis is that if a candidate holds a public or party office, he has an advantage over a candidate in private practice because he has at his disposal a structured network of communications through which he can promote his candidacy for Circuit Judge.

Table 4.6 compares the backgrounds of winners and losers in appointee and no-incumbent vacancy elections.

TABLE 4.6

CANDIDATE EXPERIENCE IN VACANCY ELECTIONS

	Unopposed	Winners	Losers
Appointees			
Public	57%	25%	43%
Private	43%	75%	57%
Unknown			
N =	7	8	7
No-appointee			
Public	100%	50%	36%
Private	0	50%	43%
Unknown	0	0	21%
N =	2	14	14

The most important development reported in Table 4.6 is the greater proportion of candidates with private experience for vacancy elections than was true of elected incumbent elections. Nearly 70% of the appointees were in private practice at the time of their appointment. And 57% of the challengers to these appointees were also campaigning from a private practice base of support.

The incidence of private practice candidates is not as great for the newly created seat elections which did not involve an appointment. Candidates were about evenly split between public office and private practice backgrounds. In either type of vacancy election, however, there were considerably more candidates in private practice than in elected incumbent term elections.

It is of political significance that the majority of gubernatorial appointees during the period studied were in private practice at the time of their appointment. If direct election appears to favor lawyers in public office, then gubernatorial appointment appears to favor those in private practice. The favors of one system are balanced by the favors of the other.

Circuit structure. Lastly, we are interested in whether circuit structure affected the bases of competition in vacancy elections. The hypothesis is that winners in multi-county circuits would come predominately from public office, whereas single-county circuit winners would more

often be from private practice. This hypothesis is based on the reasoning that public office visibility, particularly at a secondary level (such as the office of prosecuting attorney or municipal judge with which we are dealing here) is higher and thus of greater electoral importance in smaller communities than in larger ones. Further, it is suggested that the reputation established by a successful private practice and/or active bar association leadership would make more difference to the smaller judicial electorate of the court's "attentive publics" in the metropolitan circuits than to the larger less consistently court-interested electorate of multi-county circuits. Becoming mobilized, even though completely, only when a vacant seat occurs, the multi-county circuit electorate is logically more susceptible to the campaign of a candidate already familiar because of public office experience than to that of the candidate known only to his colleagues and clients.

In Chapters II and III the proposition was developed that there are important differences in the size and character of the judicial electorate in multi-county and single county circuits. Multi-county judicial electorates include every voter in the election in many instances. Single-county electorates represent, fairly consistently, a small group of the court's attentive publics. The reputation built up in public office, therefore, would have wider appeal to the multi-county electorate than to the single-county.

Looking at the 31 winners of vacancy elections between 1960-1966, the hypothesis holds true. The majority of Class I winners were in private practice, while the majority of winners in all other classes were in public office. We shall test this association again in the following discussion of "no-incumbent" judicial elections.

Electoral Situation No. 3: No-incumbent Elections

The third type of electoral situation with which we are concerned in judicial elections is the "no-incumbent" elections. This electoral situation occurs when an incumbent plans to retire at the expiration of his term, or when a new seat is created to commence with the next six-year term. Thus, at a regular election, there are Circuit Court seats vacant for which no incumbent is a candidate.

Looking again at the 1953, 1959 and 1966 general elections, there were 30 contested no-incumbent elections for 39 seats, and one uncontested no-incumbent election. The objective of this section is to examine those 30 elections in order to determine if partisan loyalties, sectional loyalties, or candidate experience appear as competitive assets in the elections. We also shall compare candidate backgrounds in multi-county and single-county Circuits.

Partisan influences. The criteria established as indicative of partisan influence in nonpartisan judicial elections are: (1) a % Ballot score of 90 or better, (2) a less

than 10% difference in the partisan and nonpartisan winner's percentages of the vote, and (3) opposing party affiliations of the judicial candidates, and the same party affiliation of the partisan and nonpartisan winner.

Eleven of the 30 elections meet criterion number 1, but of these only five also meet criterion number 2. None of the elections meet all three criteria. It can be concluded that, using the indicators developed here, there is no evidence of partisan influence in no-incumbent circuit court elections.

Sectional influences. We have hypothesized that in multi-county circuits, candidates will come from different counties within that circuit because they are able to use sectional loyalty as a base of support in the judicial campaign. The criteria adopted as indicative of the use of sectional loyalty as a competitive advantage are (1) candidates are from different counties in the circuit, and (2) each candidate carries at least his home county, and thus no winner carries all counties in the circuit.

There were 17 multi-county circuit no-incumbent elections held in either 1953, 1959, or 1966. Ten of the 12 meet the first condition; all 12 meet the second. It is clear that counties vie with one another for the election of a Circuit Judge when a vacancy occurs. Sectional loyalties were also used as competitive bases in challenges to elected incumbents or in vacancy elections.

Candidate experience. Based upon the evidence in contested incumbent elections, the hypothesis is that candidates with public office experience will be more successful in judicial elections than those without it. Table 4.7 presents the proportions of winners and losers in no-incumbent elections that are from public or private backgrounds.

TABLE 4.7

CANDIDATE EXPERIENCE IN NO-INCUMBENT ELECTIONS

	Winners	Losers
Public Office	67%	62%
Private Practice	33%	36%
Unknown	0%	40%
N =	39	39

As hypothesized, the large majority of candidates in no-incumbent judicial elections have had public office experience. Lawyers in public office are the groups most advantaged by the direct election system in Michigan. Table 4.8 displays the distribution of the types of public office over winners and losers.

As was true of challengers to elected incumbents, the offices of prosecuting attorney, municipal judge and probate judge are most frequently considered competitive assets in

TABLE 4.8

DISTRIBUTION OF OFFICE EXPERIENCE, WINNERS AND LOSERS IN NO-INCUMBENT ELECTIONS

	Winners	Losers	Totals
Prosecuting attorney	14	7	21
Municipal judge	4	9	13
Probate judge	5	1	6
City attorney	2	2	4
State legislator	1	2	3
Circuit Court Commissioner	1	1	2
County Clerk	0	1	1
Justice of the Peace	1	0	1
Party Office	1	0	1
State Commission	0	1	1
Private	13	14	27
Unknown	0	1	1
N =	42	39	81

judicial elections. Of these, probate judge and prosecuting attorney are the most successful bases, resulting in wins 83% and 67% of the time respectively. Again most of the public offices used as bases of support are closely related to the local system for the administration of justice. Having had experience in the political-legal system, public office lawyers make a bid for a judicial seat.

It was hypothesized in the analysis of vacancy elections that candidates with private practice experience would stand a better competitive chance in the metropolitan circuits where judicial elections are decided by a relatively smaller proportion of the total electorate, most likely representing

the courts' various "attentive publics", than is true of Circuit Court elections in the non-metropolitan, multi-county Circuits.

Arranging winners and losers by public or private backgrounds over the four Circuit classes, does show some difference in the classes in this respect. While 60% of Class I winners come from public office, so do 75% of Class III winners. Similarly, the majority of losers in Class I and Class III come from public office experience. Circuit structure does appear to have an effect on the type of candidates that present themselves in no-incumbent elections.

Summary: Bases of Competition in Michigan Judicial Elections

Supreme Court elections. Tables 4.3 and 4.4 scored each Supreme Court candidate on seven factors hypothesized to be possible bases of support in Supreme Court elections. The seven competitive factors were incumbency, party strength, state political office, local political office, private practice, sectional identification, and ethnic appeal. The tabulations show clearly that incumbency, elective or appointive, is the strongest position from which to campaign. Of almost equal importance, however, is nomination by the party eventually winning the "top of the ballot" state office in that election. An important asset to either incumbency or a strong party is previous state office experience. The local support factors--local office, private practice,

sectional identification, or ethnic appeal--become important if the attributes of the candidate cancel each other out on the first two factors, or if no incumbent is involved.

The balance between judicial independence and judicial accountability tilts toward the latter in the Supreme Court experience. The strong partisan influence on the elections, not only in the nomination of candidates and in voting patterns, but in the type of candidate selected to try for the Court, represents a form of partisan accountability.

We must note, however, that those to whom Justices are held accountable are the party leaders, not the general public. Because Justices are initially nominated by party convention (i.e., leaders), or appointed by the governor (a party leader himself), neither the lower echelon party workers nor the citizen at large is consulted. Party leadership acts as the middleman, the agent, in this procedure, translating, hopefully, the desires of the people into an appropriate selection. Since party leadership performs this function for many other state and local offices, that the judiciary should be subject to party control rather than public control is perhaps only the difference between theory and practice throughout the political system.

The judicial candidate is distinguishable from the partisan nonjudicial candidate however, in such a way as to increase the importance of the party in the selection process.

A potential candidate for nonjudicial office, if energetic enough, charismatic enough, and able enough, can cause a party to nominate him. He can make his bid for the nomination public, and appeal through all the communications media at hand for delegate or popular support. Inhibited by the myth of judicial independence, aspiring judicial candidates cannot work so openly. Broader public opinion is not sought for support. The nomination goes to the man the party leaders believe best represents party judicial philosophy and who has the best chance, as they assess it, to win.

Which type of candidate has the best chance to win? The data used here suggests that it is the candidate with the broadest state political experience, all other things being equal. An ex-governor is perhaps the strongest candidate of all. This past state office experience is undoubtedly helpful in winning the party's nomination, because party members already know the Candidate's success but it also thought to give the candidate a competitive advantage in the nonpartisan election because citizens of both parties will be familiar with his name.

The present study does not speculate on what decision-making difference the presence of so many Justices with considerable state political experience behind them has made on the Michigan Supreme Court; it can only hypothesize that it has made some difference. Studies by Professors Schubert and Ulmer tend to support this hypothesis.[15]

Each method of judicial selection favors certain groups over others. As far as the party nomination, nonpartisan election system for the Michigan Supreme Court is concerned, the favored group are past state office holders who are lawyers, active party men, and judicial aspirants. For their initial nomination (or appointment) and subsequent re-nomination, Justices are accountable to their party.

Judicial independence is not eradicated however in the party control process. The strongest position of a candidate is that of incumbency. Constitutionally, the incumbent Justice is entitled to a ballot designation as "incumbent", blantly encouraging his re-election.[16] Given the political advantage of the designation, parties usually re-nominate their incumbents. The constitutional decision for the designation was made by those believed in the desirability of judges being assured tenure in office rather than being threatened by popular accounting. That political parties have cooperated (though perhaps for more cynical reasons), and the voting public too, testifies to the continued strength of the myth of judicial independence in Michigan.

Circuit Court elections. Table 4.9 catalogs the base of competition identified in this study for each Circuit Court election held in 1953, 1959, 1966, or between 1960-65. The capital letters indicate the electoral situation:

A. Incumbent unopposed.
B. Incumbent opposed.
C. No-incumbent unopposed.
D. No-incumbent opposed.
E. Appointee unopposed.
F. Appointee opposed.

TABLE 4.9

BASES OF COMPETITION IN CIRCUIT COURT ELECTIONS

Circuit	1953	1959	1966	Vacancies
Class I				
2	A	B(2,3,5)	C	
3	B(2,3,4&5)	B(2,3,4&5,7)	D(4&5)	F(3,5); C; D(4&5); F; D(4&5)
6	B(2)	B(2);D(4&5)	D(4&5)	F&D(3,4&5)
7	B(2,3,4)	B(2,4&5)	B(2,4,7)	F(1,3,4&5); D(5)
9	A	A	A	D(5)
10	A	A	D(4&5)	
16	B(2,4)	B(2,3,4)	D(4&5)	D(4)
17	B(2,3,4)	B(2,3,4&5,7)	D(4)	C
22	A	A	D(4)	E
30	A	A	A(2,3,4)	
Class II				
4	A	B(3,4&5,7)	D(4)	
14	A	A	D(5)	
18	D(1,4)	B(2,3,4,7)	A	D(1.4)
20	A	A	A	
31	B(2,3,4,7)	B(2)	D(4&5)	
37	A	B(3,5)	A	E;E
38	A	A	D(4&5)	
Class III				
5	A	A	D(4&5,6)	
8	A	A	A	F(5,6)
11	B(3,4,6,7)	D(4,6)	A	
12	A	A	D(4,6)	
13	B(2)	A	A	
15	D(4,6)	A	A	
19	B(1,3,4,6)	A	D(4)	
21	A	A	A	D(4,6)
23	A	D(4&5,6)	A	
24	D(4,6)	A	A	
25	A	F(3,4,6)	A	E
26	B(3,4,6)	A	A	
27	A	D(4&5,6)	A	
28	A	D(4&5,6)	A	
29	A	A	A	E

continued

TABLE 4.9--continued

Circuit	1953	1959	1966	Vacancies
Class III (cont'd)				
32	B(2)	A	D(4&5,6)	
33	A	A	A	
34	A	D(4,6)	A	
35	B(3,4,6,7)	A	A	
36	A	D(4&5,6)	A	
40	F(3,4,6)	A	A	D(5,6)
41	--	A	A	
Class IV				
1	A	A	A	F(4)
39	D(4&5)	A	A	
42	--	--	D(4)	

The parenthetical numbers indicate the principal bases of competition in that election:

1. Partisan.
2. Incumbent-dominated. (Incumbent opposed, but receives over 70% of the vote.)
3. Incumbency. (Incumbent opposed, but receives less than 70% of the vote.)
4. Non-incumbent candidate in public office.
5. Non-incumbent candidate in private practice.
6. Sectional.
7. Incumbent loses re-election.

The table is arranged by classes in order to point up the differences in multi-judge and single-judge circuits. The "judicial electoral personality" of each circuit is identifiable in these patterns of competitive support.

Derived from Table 4.9, Table 4.10 gives the distribution of public office and private practice candidate experience over the four Circuit classes in contested incumbent, appointee, and no-incumbent elections.

TABLE 4.10

DISTRIBUTION OF CANDIDATES WITH PUBLIC AND PRIVATE BACKGROUNDS IN COMPETITIVE CIRCUIT COURT ELECTIONS (Taken from Table 4.9)

Circuit Class	N	All Candidates in Public Office	Public and Private Candidates	All Candidates in Private Practice
I	26	35%	50%	15%
II	10	60	20	20
III	21	62	28	10
IV	3	67	33	0
	60	50%	37%	13%

For Class I circuits, the metropolitan, single county multi-judge circuits, whatever partisan influence there may be in Circuit Court elections has not determined voting alignments. Partison loyalty is not obvious as a major base of electoral support in judicial elections at the Circuit Court level.[17] For 61% of the elections in this class, incumbency is the most frequent and the strongest competitive base.

As Table 4.10 reveals, when the incumbent faces competition, or when no incumbent is involved, public office becomes the more frequent base of support in a Circuit election. It was observed earlier that these public office holding candidates make up 67% of the successful winners

for contested non-incumbent elections, and 62% of the successful challengers to elected incumbents. Looking at all candidates in these elections however reveals that in 65% of the contested elections in Class I Circuits, at least one candidate is in private practice. This is a larger proportion than for any other class. The earlier hypothesis about the greater chances for private practice lawyers in a metropolitan rather than a multi-county circuit is further supported.[18]

Class II circuits evidence some partisan influence in their judicial elections. The 18th Circuit, Bay County, is the most indicative. Again, incumbency is the greatest competitive asset; 54% of the elections were either incumbent unopposed, or incumbent-dominant. Three incumbents in Class II circuits, however, lost to challengers during the study period. These were the "growing" circuits between 1949-1966, and perhaps the rapidly changing political climate had its impact in the judicial arena too. The political experience of Circuit Court candidates is the most common competitive base: only 40% of the contested elections had a private practice candidate.

The pattern is different for Class III circuits. Partisan influence is negligible, being only slightly suggested in the Upper Peninsula Circuits. Incumbency is by far the most important competitive base; 69% of the elections were either incumbent unopposed or incumbent-dominant.

For 19 of the 22 circuits the pattern is straightforward. The incumbent is unopposed as long as he seeks re-election. When a vacancy occurs, sectional loyalties and political experience become the strongest competitive asset. Only 38% of the contested elections had a private practice candidate. Class IV Circuits follow the Class III pattern.

As in the case of the Supreme Court, the observed advantages of past political experience for a judicial candidate deserves some comment. In a nonpartisan election, the party is not there to inform the voter of the qualifications of the candidates. Moreover, in the judicial election, few are there to inform the voter of what these qualifications even should be.[19] The political office holder, particularly one in an office near the courtroom, is in a good position to appeal to the voter not only because he has won his vote before, but because he can claim knowledge and experience in the judicial process and therefore also claim the qualifications to hold judicial office.

It was observed that while the direct election system has favored lawyers with office-holding experience, the appointing-to-vacancies system has favored the lawyer in private practice with good legal as well as political connections. Since roughly 40% of the Circuit judges were initially appointed, the effect is to balance the Michigan Circuit Court between judges with private practice experience and judges with public office experience.

The general objective of Chapter IV was to test the hypothesis that voting in Supreme Court elections was partisan while voting in Circuit Court elections was not. In broad terms, the data sustains the hypothesis. If we translate partisan influence as popular accountability, the Supreme Court elections are to the right of mid-point between the ideals of judicial independence (incumbency) and judicial responsibility (partisan support).

Circuit Court elections lack partisan influence in any overt sense. The major base of competition is incumbency, more so in single-judge circuits than in multi-judge ones. The overriding success of incumbency as a base of competition puts Circuit Court selection nearer the independence end of the scale than Supreme Court elections. The pull toward responsibility by Circuit elections is generated by the advantage to judicial candidates with previous political experience when a vacant seat occurs.

Chapter IV--Footnotes

1. Charles R. Adrian, "A Typology for Nonpartican Elections," Western Political Quarterly 12 (1959), 449-58.

2. Ibid.

3. Ibid.

4. There are other factors hypothetically significant in judicial elections, such as bar poll influence, newspaper coverage, candidate campaign activity. The limitations of aggregate voting data and secondary biographical material present their analysis here. These factors are opportunities for further research into the operation of state judicial elections.

5. Using county returns, the statewide voting pattern is even clearer. In the term and vacancy elections with close partisan-nonpartican vote percentages, Democratic counties vote for the Democratic Court nominees. The actual correlation between a county's vote for the Democratic gubernatorial candidate and the Democratic Supreme Court candidate is .73 for 1960, a partisan influenced elections. In elections overshadowed by long-term and/or popular incumbents, however, the correlation is lower, .44 for 1966, an incumbent influenced election.

6. The sources of information for each Factor are as follows:

Factor I: biographical material in the Michigan Manual.
Factor II: State of Michigan, Official Canvass of Votes for the election concerned.
Factor III: Michigan Manual, Martindale-Hubbell Legal Directory.
Factor IV: same as Factor III.
Factor V: Michigan State Bar Journal Roster, Michigan Manual, Martindale-Hubbell Legal Directory.
Factor VI: same as Factor V.
Factor VII: same as Factor V.

7. In the Henderson and Sinclair Texas' study it was observed that "when the bar does take a position in the bar poll, it is nearly always for the incumbent."

8. For a discussion of factors relevant in the recruitment and election of judges gathered from survey analysis, see Henderson and Sinclair, op. cit., 80-180. Their discussion provides a most valuable insight into the attitudes

behind the judicial election system, attitudes that can be only indirectly indicated in this study because of the limitation of aggregate data analysis.

9. "123" is arrived at by summing 36 elections involving an incumbent for 1953; 35 in 1959, and 52 in 1966 (counting the 17 8-year term elections and the 7 10-year term elections).

10. See Chapter One.

11. In the 1966 8 year-term election, there were 9 seats at stake, and 10 candidates, 9 of whom were incumbents. All nine incumbents won, the lowest getting 78% of the votes cast. This election is not considered contested for Table 4.5.

12. In the Consensus Statement released by the Citizens Conference (organized to petition for a state constitutional amendment abolishing the judicial system in favor of the American Bar Plan) in 1967, one of the "deficiencies" of the election system cited was "Undue dependence on 'self-starters' and 'name candidates' as a source of judicial manpower."

13. In the Henderson and Sinclair study of judicial selection in Texas, newspapermen were asked to cite why trial court incumbents had been challenged for re-election in their city. Some 64% were attributed to incompetence; 23% to age or too long tenure; and 13% to politics of geography or faction. To give the "flavor and substance" of these replies, the following is a listing in summary form of some of the reasons cited for mounting a challenge to a judicial incumbent: "nominee of bar against friend of senator plus county against county, unpopularity, lack of judicial temper and incompetence, personal pique over cases tried before incumbent, low moral character, bad record and continuing criticism, bar felt not qualified, personal weakness, blunt and tackless, county rivalry and too long in office, long tenure and lax handling of cases, challenger wanted job and salary, incumbent appointee and challenger had run before, desire for job and opposition in part of district, liberal against conservative, opposition to appointing governor, old age, challenger had union support, personal animosity, personal ambition, age and tenure of incumbent, district attorney wanted to step up, challenger wanted well-paying job, incumbent had job long enough, incumbent poorly educated and out of place, incumbent appointed so office open to choice by people, unpopular with some lawyers, people, dilatory, ill and neglected." Bancroft C. Henderson and T. C. Sinclair, op. cit., 106. The Selection of Judges in Texas (Public Affairs Research Center, University of Houston; Houston, 1965, 106. Undoubtedly a list drawn up by Michigan newspapermen would be very similar.

14. Richard A. Watson and Rondal G. Downing. The Politics of the Bench and the Bar (John Wiley; New York, 1969), 352.

15. Their articles were cited in Chapter I, footnote 42.

16. Cf. Maurice Kelman, "Ballot Designations: Their Nature, Function, and Constitutionality," Wayne Law Review 12 (Summer 1966), 756-72.

17. This is not to say however, that there is no other evidence of partisan influence in Circuit Court selection. In the case of a vacancy between elections, it is the usual practice for a governor to accept the suggestions of his party's executive committee in that circuit before making a vacancy appointment. It is highly probable, therefore, that every Circuit Court judge initially ascending the bench via vacancy appointment had the same party affiliation as his appointing governor.

18. The weakness in this argument is that in rural areas, there are fewer lawyers of any stripe, public or private, than in the metropolitan centers. It may be, however, that the legal business in the smaller communities is so dominated by a few successful lawyers that only lawyers in public positions are even interested in running for a judgeship.

19. It is the practice of most county bar associations to conduct a poll among its members on the qualifications of each of the announced candidate for Circuit Court. The results of the poll are usually published in the local newspaper. In an incumbent election, the bar poll almost always supports the incumbent. In a no-incumbent election, the candidate coming out on top in the poll usually makes the fact a real point in his campaign. The actual difference the poll makes remains to be studied.

CHAPTER V

EVALUATING JUDICIAL ELECTIONS

Objectives

The objective of Chapter V is to bring together the findings of the previous chapters in order to make an evaluation of Michigan judicial elections as "democratic" and "nonpartisan" means of judicial selection. This evaluation was set forth in Chapter I as the research objective of the dissertation.

A "democratic" election was defined as one involving the greater part of the electorate (participation), and one offering them a choice (competition). A "nonpartisan" election was defined as one in which voting alignments were based upon any grounds save partisan ones.

The findings concerning participation, competition, and the bases of competition in Michigan Supreme Court and Circuit Court elections are collected in Tables 5.1 (Supreme Court) and 5.2 (Circuit Court). The tables give for each election the number of winners and candidates, the electoral situation, and a rating for competition, participation, and the bases of competition. Numerical scores for each rating are added and given under the last column, entitled "Score".

The ELECTORAL SITUATION column tells whether the election was one involving an elected incumbent seeking re-election ("Incumbent"), or a gubernatorial appointee trying for election ("Appointee"), or no incumbent at all ("No-incum.").

The COMPETITION column rates the election "No choice" if the election was unopposed, with a numerical score of "3". The election is rated "Little choice", with a numerical score of "2", if the election was opposed, but the winner took over 70% of the votes cast. The rating "Choice", with a score of "1", is given to contested elections in which the winner received less than 70% of the vote. An election that gives the voter a real choice in candidates is nearer the definition of a democratic election than one which does not.

The PARTICIPATION column rates each election on the size of its judicial electorate. The "% Ballot" score developed in Chapter II is used. If an electorate has a % Ballot score of 85-105%, it is rated "Very High" and given a score of 1. A % Ballot of 75-84 is rated "High" and also scored as 1. A % Ballot of 60-74 is rated "Moderate" and scored as 2. A % Ballot below 59% is rated "low" and scored as 3. A judicial electorate that involves the large majority of voters active in the election is nearer the definition of a democratic electorate than one which does not.

The BASES of competition column rates each election on the number of bases of support represented in that election.

It is assumed that the wider variety of groups represented in the electoral support system, the broader section of the community spoken for, the more effective the election is as a means of democratic personnel selection. If candidates represent different bases of support (incumbent, public office, private practice), then the electoral bases are rated "Plural" and given a score of "1". If candidates represent the same generalized bases of support (public or private, but not both), the bases are rated as "Narrow" and scored as "2". If there is only one candidate per seat, then there is only "One" base of support. This situation is scored as "3".

Two sets of observations arise from these tables. First, it is useful to see the relationships between the three dimensions of judicial elections. Second, the patterns that these relationships have formed illustrate to what degree judicial elections in Michigan have met the standards ideally and constitutionally established for them.

State electoral standards. Before turning to these discussions, we wish to emphasize that this research has not been intended to argue that judicial elections should meet the rather strict standards of "democratic" elections. It is not the purpose here to pass judgment on the wisdom of using direct election as a method of judicial selection. It is the objective to assess the operation of judicial elections in Michigan against both the conventional measures,

and state electoral standards that have been constitutionally established.

To review, the electoral standards implied by the Michigan state constitution are as follows. For the Supreme Court, candidates are to be nominated in partisan convention, obviously granting to party leadership the initiative in their selection. Incumbents may re-nominate themselves, and by this fact are constitutionally encouraged to do so. Candidates then vie for the Justiceship in a nonpartisan election in which the Incumbent is allowed a ballot designation. If a vacancy occurs mid-term, the governor is allowed to appoint an interim Justice who then may run, with the Incumbent ballot designation, in a nonpartisan vacancy election.

The state law therefore holds that every Supreme Court election should provide a choice to the voter, albeit a choice expressed in more or less partisan terms. Yet, if an incumbent is running, the voter is encouraged to vote for him. The opportunity is always there for incumbents to be defeated, for personal or partisan reasons. The result is a "double standard": vacancies should be open, free elections, whereas incumbents should be returned to office.

This double standard is also intended to be applied to Circuit Court elections, and more clearly so because the incumbent is not assured the opposition produced by a partisan nomination system. Circuit Court candidates are

nominated by nonpartisan petition, with incumbents re-nominating themselves. Primaries reduce the number of candidates to two for each seat available. In the nonpartisan election, elected and appointed (in case of mid-term vacancies) incumbents are granted the "Incumbent" ballot designation. Again the opportunity is always there for the incompetent or otherwise unpopular incumbent to be defeated. The "double standard" is clearly intended: vacant judicial seats should be openly contested, but incumbents, unless incompetent, should be returned to office.

Measurement. For purposes of discussion, we shall use two sets of standards by which to evaluate Michigan judicial elections. First, the "Ideal" standards shall require choice, high participation, and plural bases of competition in every judicial election regardless of type. All elections with a score of "3" meet these standards, while elections with a score of "9" fail them completely.

Second, the State standards require choice, high participation, and plural bases of competition in every no-incumbent election, but not in incumbent or appointee elections unless incompetency is an issue. Under State standards, all no-incumbent elections should have a score of "3", while only an occasional incumbent or appointee election should score less than 9.

Electoral Patterns in Supreme Court Elections

Table 5.1 summarizes the relationships between electoral situation, competition, participation, and the bases of competition in Supreme Court elections, 1949-1968. The major pattern under each variable will be discussed. The concluding paragraph will point out where Supreme Court elections scores fall on a 3 (judicial responsibility) through 9 (judicial independence) scale.

All 17 of the elections included in the sample are essentially of the incumbent electoral situation category. Each election involves either an elected or appointed incumbent. The issue of judicial incumbent status is therefore present in every Michigan Supreme Court election.

All 17 also involve some degree of choice. For only two elections did a winner get 70% of the votes cast. The partisan nomination system assures that the voter will have a choice--that there will be competition--in Supreme Court elections. In four of the elections, the challenged incumbent lost his bid for re-election. This represents, roughly, a one in six chance of defeat for a challenged elected or appointed incumbent.

Participation varied between moderate (60-74% Ballot) and high (75-84% Ballot), with the average being about 67%. All except one of the high participation elections occurred in Spring elections. It was observed in Chapter II that the higher proportion of voters participating in Spring rather

TABLE 5.1

ELECTORAL PATTERNS IN SUPREME COURT ELECTIONS
(* incumbent defeated)

Year	Winners/ Candidates	Electoral Situation	Competition	Participation	Bases	Scores
1949	2/5	2 Incumbent	Choice	High	Plural	3
1951	2/5	2 Incumbent	Choice	High	Plural	3
1952	1/3	1 Appointee	Choice	Moderate	Plural	4
1953	2/4	2 Incumbent	Choice*	High	Plural	3
1955	2/4	2 Incumbent	Choice	High	Plural	3
1956	1/2	1 Appointee	Choice	Moderate	Plural	4
	1/2	1 Appointee	Little	Moderate	Plural	5
1957	2/4	1 Incumbent 1 No-incum.	Choice	Moderate	Plural	4
	1/2	1 Appointee	Choice	Moderate	Narrow	5
1959	2/5	2 Incumbent	Choice	Moderate	Plural	4
1960	1/2	1 Appointee	Choice	Moderate	Plural	4
1961	2/4	2 Incumbent	Little	High	Plural	4
1962	1/2	1 Appointee	Choice*	High	Plural	3
	1/2	1 Appointee	Choice	High	Plural	3
1963	2/4	1 Incumbent 1 No-incum.	Choice	High	Plural	3
1966	2/4	2 Incumbent	Choice*	Moderate	Plural	4
1968	1/2	1 Incumbent	Choice*	Moderate	Plural	4

than Fall judicial elections was a function of the demographic differences between Spring and Fall electorates in general. Spring electorates are smaller than Fall, representing a more politically active group. Those motivated enough to vote in the Spring local and minor state office elections are likely to be motivated enough to vote in the judicial elections also. This seasonal difference was also observed in Circuit Court electoral participation.

The one high participation Supreme Court election occurring in the Fall can be explained in partisan terms. In that election two appointees of Democratic Governor Swainson were up for election to unexpired terms. Swainson himself was running against Republican George Romney for a second term. The fortune of the Supreme Court appointees was obviously tied very closely to that of their appointing governor. Swainson lost, as did one appointee. The extra partisan dimension to these vacancy elections probably explains the extra voter participation.

The bases of competition in Supreme Court elections are usually plural, in the sense that candidates usually represent several levels of legal experience. In Chapter IV it was pointed out that most of the time these are levels of political experience. Discounting minor candidates, in only seven of the 17 elections (41%) did a candidate come from an essentially private practice background, and in only one election did a private practice candidate win. The strong

political background of the majority of Supreme Court candidates, and the large majority of Supreme Court winners, must certainly have implications for the policy-making behavior of the Court.

The most frequent pattern of variable relationships is that of an Incumbent election, offering choice to the voter, involving two-thirds of the electorate, and featuring candidates with a variety of political experience. This pattern falls well within the definitional boundaries of an "election", scoring below 6 on the 3-9 scale. Because of the strong partisan influence in Supreme Court elections, they meet the conventional standards of an election better than the state's judicial double standards (Incumbents should be returned to office; vacancies should be filled in open election).

Circuit Court Electoral Patterns

Variable relationships. The discussion of Circuit Court electoral patterns begins with some observations on the primary relationships that have occurred between the variables electoral situation, competition, participation and bases of competition. Table 5.2 summarizes these associations.

(1) Electoral situation and competition. The most common relationship between "Incumbent" election and competition is "Incumbent"-"No Choice". This is the pattern for 76% of the incumbent elections. The relationship meets the State double standard very well. Incumbents are returned to office, and only one-quarter of the time are even contested.

TABLE 5.2

ELECTORAL PATTERNS IN CIRCUIT COURT ELECTIONS
(* incumbent defeated; † sectional influence)

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
1953						
Class I						
2	1/1	Incumbent	No choice	High	One	7
3	18/36	Incumbent	Choice	Low	Plural	5
6	3/6	Incumbent	Little choice	High	Narrow	5
7	3/6	Incumbent	Choice	High	Narrow	4
9	2/2	Incumbent	No choice	High	One	5
10	2/2	Incumbent	No choice	High	One	5
16	2/4	Incumbent	Choice	High	Narrow	4
17	3/4	Incumbent	Choice	High	Narrow	4
22	1/2	Incumbent	No choice	Moderate	One	8
30	3/3	Incumbent	No choice	Moderate	One	8
Class II						
4	2/2	Incumbent	No choice	Moderate	One	8
14	1/1	Incumbent	No choice	Moderate	One	8
18	1/1	No-incumbent	Choice	High	Narrow	4
20	1/1	Incumbent	No choice	Moderate	One	8
31	2/4	Incumbent	Choice	High	Plural	3
37	2/2	Incumbent	No choice	Moderate	One	8
38	1/1	Incumbent	No choice	High	One	7
Class III						
5	1/1	Incumbent	No choice	Moderate	One†	8
8	1/1	Incumbent	No choice	Moderate	One†	8
11	1/2	Incumbent	Choice*	High	Plural	3
12	1/1	Incumbent	No choice	Moderate	One†	8
12	1/2	Incumbent	Little choice	High	Plural	4

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
15	1/2	No-incumbent	Choice	High	Narrow	4
19	1/2	Incumbent	Choice	High	Plural	3
21	1/1	Incumbent	No choice	High	One	7
23	1/1	Incumbent	No choice	High	One	7
24	1/2	No-incumbent	Choice	Very high	Narrow	4
25	1/1	Incumbent	No choice	Moderate	One	8
26	1/2	Incumbent	Choice	Very high	Plural	3
27	1/1	Incumbent	No choice	High	One†	7
28	1/1	Incumbent	No choice	Moderate	One†	8
29	1/1	Incumbent	No choice	High	One	7
32	1/2	Incumbent	Little	Very high	Plural	4
33	1/1	Incumbent	None	High	One	7
34	1/1	Incumbent	None	Moderate	One†	8
35	1/2	Incumbent	Choice*	Very high	Plural	3
36	1/1	Incumbent	None	Moderate	One	7
40	1/2	Appointee	Choice	Very high	Plural	3
41	1/1	Incumbent	None	High	One	7
Class IV						
1	1/1	Incumbent	None	Very high	One	7
39	1/2	No-incumbent	Choice	Very high	Plural	3
1959						
Class I						
2	2/3	Incumbent No-incumbent	Choice	High	Narrow	4
3	18/36	Incumbent	Choice*	Low	Plural	5
6	6/10	Incumbent No-incumbent	Choice	Moderate	Plural	4

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
7	4/8	Incumbent No-incumbent	Choice	Very high	Plural	3
9	2/2	Incumbent	None	Low	One	9
10	3/3	Incumbent	None	Moderate	One	8
16	3/6	Incumbent	Little	High	Plural	4
17	3/6	Incumbent No-incumbent	Choice*	High	Plural	3
22	1/1	Incumbent	None	Low	One	9
30	3/3	Incumbent	None	Moderate	One	8
Class II						
4	2/4	Incumbent	Choice*	Very high	Plural	3
14	2/2	Incumbent	None	Very high	One	7
18	2/3	Incumbent	Choice*	High	Narrow	4
20	1/1	Incumbent	None	Low	One	9
31	2/3	Incumbent	Little	Very high	Narrow	5
37	2/4	Incumbent No-incumbent	Choice	High	Narrow	4
38	1/1	Incumbent	None	Low	One	9
Class III						
5	1/1	Incumbent	None	Moderate	One†	8
8	1/1	Incumbent	None	Moderate	One†	8
11	1/2	No-incumbent	Choice	Very high	Narrow	4
12	1/1	Incumbent	None	Moderate	One	8
13	1/1	Incumbent	None	Moderate	One†	8
15	1/1	Incumbent	None	Low	One	9
19	1/1	Incumbent	None	High	One†	7
21	1/1	Incumbent	None	High	One	7
23	1/2	No-incumbent	Choice	High	Plural	3
24	1/1	Incumbent	None	Moderate	One	2

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
25	1/2	Appointee	Choice	Very high	Plural	3
26	1/1	Incumbent	None	Moderate	One†	8
27	1/2	No-incumbent	Choice	Very high	Plural	3
28	1/2	No-incumbent	Choice	Very high	Plural	3
29	1/1	Incumbent	None	Moderate	One†	8
32	1/1	Incumbent	None	High	One†	7
33	1/1	Incumbent	None	High	One†	7
34	1/2	No-incumbent	Choice	Very high	Narrow	4
35	1/1	Incumbent	None	Low	One†	9
36	1/2	No-incumbent	Choice	Moderate	Plural	4
40	1/1	Incumbent	None	Moderate	One†	8
41	1/1	Incumbent	None	Moderate	One†	8
Class IV						
1	1/1	Incumbent	None	Moderate	One	8
19	1/1	Incumbent	None	Moderate	One	8
1966 General Election						
Class I Circuits						
2	1/1	No-incumbent	None	Low	One	9
	1/1	Incumbent	None	Low	One	9
3	3/6	No-incumbent	Choice	Low	Plural	5
	9/10	Incumbent	Little	Low	Narrow	7
	9/9	Incumbent	None	Low	One	9
6	3/6	No-incumbent	Choice	Low	Plural	5
	2/2	Incumbent	None	Low	One	9
	2/2	Incumbent	None	Low	One	9
7	2/4	Incumbent	Choice*	Moderate	Plural	4
	2/3	Incumbent	Little	Moderate	Narrow	6
	2/4	Incumbent No-incumbent	Choice	Moderate	Plural	4

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
9	1/1	Incumbent	None	Moderate	One	2
	1/1	Incumbent	None	Moderate	One	8
10	1/2	No-incumbent	Choice	Moderate	Plural	4
	1/1	Incumbent	None	Low	One	9
	1/1	Incumbent	None	Low	One	9
16	2/4	No-incumbent	Choice	Low	Plural	5
	2/2	Incumbent	None	Low	One	9
	2/2	Incumbent	None	Low	One	9
17	2/4	No-incumbent	Choice	Moderate	Narrow	5
22	1/2	No-incumbent	Little	Moderate	Narrow	6
	1/1	Incumbent	None	Low	One	9
30	2/4	No-incumbent Incumbent	Choice	High	Plural	3
Class II						
4	1/2	No-incumbent	Little	High	Plural	4
	1/1	Incumbent	None	Moderate	One	8
	1/2	No-incumbent	Choice	High	Plural	3
14	1/2	No-incumbent	Choice	High	Narrow	4
	1/1	Incumbent	None	Moderate	One	8
18	1/1	Incumbent	None	Low	One	9
	1/1	Incumbent	None	Low	One	9
20	1/1	Incumbent	None	Moderate	One	8
	1/2	No-incumbent	Choice	High	Plural	3
31	1/2	No-incumbent	Choice	High	Plural	3
	1/1	Incumbent	None	Moderate	One	8
37	1/1	Incumbent	None	Low	One	9
	1/1	Incumbent	None	Low	One	9
38	1/2	No-incumbent	Choice	High	Plural	3
	1/2	Incumbent	Little	High	Plural	4
Class III						
5	1/2	No-incumbent	Choice	High	Plural	3

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
8	1/1	Incumbent	None	Moderate	One†	8
11	1/1	Incumbent	None	Moderate	One†	8
12	1/2	No-incumbent	Choice	High	Narrow	4
13	1/1	Incumbent	None	Moderate	One†	8
15	1/1	Incumbent	None	Moderate	One	8
19	1/2	No-incumbent	Choice	Very high	Narrow	4
21	1/1	Incumbent	None	Moderate	One†	8
23	1/1	Incumbent	None	Moderate	One†	8
24	1/1	Incumbent	None	Moderate	One†	8
25	1/1	Incumbent	None	Low	One	9
26	1/1	Incumbent	None	Moderate	One†	8
27	1/1	Incumbent	None	Moderate	One†	8
28	1/1	Incumbent	None	Moderate	One†	8
29	1/1	Incumbent	None	Low	One	9
32	1/2	No-incumbent	Choice	Very high	Plural	3
33	1/1	Incumbent	None	Moderate	One†	8
34	1/1	Incumbent	None	Moderate	One†	8
35	1/1	Incumbent	None	Moderate	One†	8
36	1/1	Incumbent	None	Low	One	9
40	1/1	Incumbent	None	Moderate	One†	8
41	1/1	Incumbent	None	Moderate	One†	8
Class IV						
1	1/1	Incumbent	None	Moderate	One	8
39	1/1	Incumbent	None	Low	One	9
42	1/2	No-incumbent	Choice	High	Narrow	4
Vacancies						
Class I						
7	1/2	Appointee	Choice	Very high	Plural	3
	1/2	No-incumbent	Choice	-	Narrow	5

continued

TABLE 5.2--continued

Circuit	Winners/ Candidates	Electoral Situation	Competition	Partici-pation	Bases	Score
3	2/3	Appointee	Little	Low	Narrow	7
	3/6	No-incumbent	Choice	Low	Plural	5
	4/8	No-incumbent	Choice	Low	Plural	5
9	1/2	No-incumbent	Choice	Moderate	Narrow	5
16	1/2	No-incumbent	Choice	Very high	Narrow	4
	1/1	Appointee	None	Low	One	9
3	1/1	Appointee	None	Low	One	9
	1/1	No-incumbent	None	Low	One	9
6	3/6	No-incumbent	Choice	Moderate	Plural	4
17	1/1	No-incumbent	None	Low		9
22	1/1	Appointee	None	Low	One	9
Class II						
14	1/2	Appointee	Choice	Very high	Narrow	4
18	1/2	No-incumbent	Choice	--	Narrow	5
37	1/1	Appointee	None	Low	One	9
	1/2	Appointee	Choice	Low	Plural	5
Class III						
8	1/2	Appointee	Choice	Very high	Narrow	4
21	1/2	No-incumbent	Choice	---	Narrow	5
40	1/2	No-incumbent	Choice	--	Narrow	5
29	1/1	Appointee	None	Moderate	One	8
25	1/1	Appointee	None	Low	One	9
Class IV						
1	1/2	Appointee	Choice	Very high	Plural	3

As noted in Chapter III, the metropolitan, multi-judge circuits are four times more likely to provide challenges to their incumbent judges than the less urbanized, multi-county, single-judge circuits.

The most frequent relationship between "No-incumbent" elections and competition is "No-incumbent"-"Choice", holding true 89% of the time. Again the State double standard has been realized. Judicial vacancies are relatively open and contested. There are no differences between multi-judge and single-judge circuits in this respect

"Appointee" elections split between "Choice" (50%) and "No-choice" (43%) competition. The State double standard is compromised in appointee elections about half the time. Evidently the gubernatorial choice is not beyond question. Multi-judge and single-judge circuits reverse their differences here, the former offering less contest to gubernatorial appointments than the latter.

(2) Competition and participation. At the conclusion of Chapter III we asked if competition and participation were related, basing the question on the conventional axiom that an election perceived as competitive produces a bigger turn-out than an election which is not. Using the concepts of "Open" (75-105% Ballot score) and "Closed" (below 75% Ballot score) elections, it was shown that opposed elections are "Open" and unopposed elections are "Closed" 78% of the time. The general association was confirmed.

Here we wish to use a more exact test, discriminating between "High" (75-105% Ballot score), "Moderate" (60-74%), and "Low" (below 59%) participation levels. The hypothesis becomes: "Choice" elections are associated with "High" participation, while "No Choice" elections are associated with "Low" participation. From Table 5.2, the "Choice-High" association is true for 63% of the "Choice" elections. But the "No Choice-Low" association is true for only 33% of the "No Choice" sample.

Because 85% of the elections in this sample offer no choice to the voter, it is important to ask why participation levels vary among them. As observed, only 33% have the hypothesized "Low" participation, while 51% have "Moderate" participation, and 16% have "High" participation. In the "No Choice" elections, the candidate's name appears on the ballot alone, clearly without opposition. Why then, one might inquire, do voters vote for him at all?

In a very rough sense, casting a vote for a candidate who has no opposition is casting a vote of confidence for him. The fact of his winning the election is obviously not contested, but a vote despite its uselessness can be perceived as an agreement with this state of affairs. Arguing loosely from the one-party electoral situation, the level of turnout is a measure of the popularity of the regime. The only available protest is abstention.

Using the "No Choice" participation level as a measure of confidence in the only candidate, we can explain the

differences in the levels of participation in "No Choice" judicial elections as differences in the level of satisfaction a Circuit electorate may have with its judicial candidates. In all sixteen of the "No-Choice-High" participation elections, the only candidate was an elected incumbent seeking re-election. If the unchallenged incumbent can persuade over 75% of the electorate to vote for him anyway, there must be a high degree of popularity and confidence in him. A "Moderate" participation in an uncontested incumbent election could be interpreted as satisfaction in the incumbent. A "Low" level of participation might indicate to the incumbent that many lack either knowledge of him or confidence in him.

The complexity in this fairly simplistic interpretation arises in the multi-judge, single-county, metropolitan circuits where it has been shown the active judicial electorate is small at best, composed of the Circuit Court's various "attentive publics" rather than the public at large. All of the instances of "Choice-Low" participation occur in Class I circuits. It is no wonder therefore that the majority (66%) of the "No-Choice-Low" participation cases do also. A "Low" level of participation in a "No-Choice", Class I Circuit election, particularly in the 3rd Circuit (Wayne County), cannot therefore be interpreted as an indictment against the unchallenged incumbent.

A second complexity arises in the multi-county, single-judge circuits. In 63% of the "Incumbent-No-Choice",

Class III elections, there is nonetheless evidence of sectionalism. If participation levels in "No-Choice" elections are seen as levels of confidence, then in many Class III circuits, the popularity of the incumbent judge varies from county to county within his circuit. In these situations, the incumbent gets a higher (at least 10% higher) participation rate in his home county than in the other circuit counties. A special tribute must go to the unchallenged incumbent who can get a "High" participation level in every county in his Circuit.

(3) Competition and bases of competition. The ratings assigned to elections in the BASES column are based upon the number of bases of support identified in that election. The possible bases are partisanship, incumbent, public office, private practice, and sectionalism. Narrowly based competition is that where the candidates represent roughly the same bases of support--all are in public office, or private practice. Plural bases of competition occur when each candidate represents a different general base of support.

Plural based competition is the most common. There are no differences in Circuit types in this respect. Although more candidates with private practice appear in Class I Circuit competition, candidates can use sectional interests as bases of support in Class III competition. The incidence of essentially "Narrow" choices in judicial election is restricted to less than a third of the "Choice" elections.

(4) Participation and bases. Given the general association that an election in which there is a "Choice" encourages a higher level of turnout, does the range of that choice also affect turnout? Is "High" turnout in "Choice" elections associated with "Plural" bases of competition? In about half of the "Choice-High" elections there were also "Plural" bases of competition. The level of participation is more closely associated with the type of Circuit and the fact of "Choice" than with the range of "Choice".

Electoral patterns. The patterns that the relationships between the electoral system variables of competition, participation, and the bases of competition turn on two structural factors, the type of election and the organization of the circuit. The most frequent patterns can be arranged under four electoral situations: the incumbent seeking re-election without opposition, the incumbent seeking re-election with opposition, an appointee seeking election to a vacant term, and an election that does not involve an incumbent. These will be discussed in turn, identifying the major pattern of variable relationships, its variance with Circuit structure, and its rank as a conventional "election". Which patterns support the idea of an independent judiciary and which the idea of a responsible one?

(1) The unchallenged incumbent. By far the most common pattern in the judicial electoral system is that of the incumbent judge seeking re-election without electoral challenge

but with the approval of the large majority of the active electorate. This pattern accounts for 38% of all the elections in the sample.

The distribution of this pattern does vary significantly with the structure of the Circuit. The pattern describes 16% of the Class I elections; 29% of the Class II; but 60% of the Class III. The multi-county, single-judge circuit has a distinctly different judicial "culture" than the metropolitan, single-county, multi-judge circuit. An unchallenged incumbent judge seldom gets more than half of the active electorate to "vote" for him, not so much because he is unpopular but because the judicial following is at best only two-thirds of the normal turnout. It is a case of less interest rather than less ability.

How does this pattern stand up to the standards of non-judicial elections? Does it fit the state's "double standard" for judicial elections? Using the scoring system of Table 5.2, scores of 3-6 are considered within the definitional limits of a conventional "democratic" election--one in which there is choice for the voter, participation by the larger proportion of the citizenry, and representation by more than one segment of opinion. Elections with scores of 7, 8, or 9 are considered to fall outside this wide boundary.

It will be observed in Table 5.2 that 79% of the incumbent elections have scores of 7, 8, or 9. All of the

uncontested incumbent elections with moderate to high participation fall within this range. Comparing these judicial elections with those for nonjudicial incumbents, the judicial elections fall outside our definition of a conventional election while the nonjudicial ones fall within it.

The State of Michigan, however, has constitutionally instituted a "double standard" for judicial elections by the establishment of the incumbent ballot designation. Under this standard, incumbent elections are not intended to be conventional elections but rather a means of assuring judicial tenure with an outlet for removing the incompetent. The electoral experience of the last twenty years in Michigan has fully lived up to this intention. Incumbent judicial elections are means of assuring judicial independence rather than judicial responsibility.

(2) The challenged incumbent. In 11% of the elections the incumbent is challenged for re-election, and in 29% of these challenges, the incumbent was defeated. The pattern here is choice for the voter, high participation by electorate and, in most cases, plural bases of competition (i.e., challengers from public and private backgrounds).

This pattern is distributed unevenly over the circuits according to circuit structure. Class I circuits had 43% of their total incumbent elections in this pattern; Class II had 27%; Class III, 11%; and Class IV 0%. As noted in Chapter III, incumbents are more likely to be challenged for

re-election in the metropolitan multi-judge circuits, than in the less urbanized single-judge circuits. Again, we cannot yet determine if this higher rate of competitiveness is attributable to the multi-judge ballot, or to the metropolitan political culture.

The experience of Wayne County (3rd Circuit) is illustrative. It was true that in 1953 and 1959 every incumbent was challenged for re-election in the sense that there were at least as many non-incumbents as incumbents on the ballot. It was also true that in 1959 one incumbent was defeated. But in 1966, it is also true that all incumbents opted for the longer term elections, drawing no opposition, while the six-year term election involved no incumbents and was highly competitive.

On the face of it, the 3rd Circuit seems highly competitive, what with two of the last three elections involving challenges to the incumbents and one incumbent defeat. But looking closer, three factors of the Wayne County judicial electoral system become consequential. First, there is consistently low turnout in judicial elections; % Ballot scores are usually below 50. The public attentive to the Circuit Court obviously represents a select group and a much smaller fraction of the community than in other circuits.

Second, the range of the percentage of the vote given to incumbents is broader in the Third Circuit than in any other. Some incumbents get as much as 94% of the votes cast.

Others get as low as 54%. Obviously within the select judicial electorate, differentiation among the incumbents is made. This percentage serves something of the same function as the level of participation in uncontested elections to indicate the level of "popularity" the incumbents have in the judicial electorate.

Last, incumbents are very rarely defeated. Only one of the last 33 incumbents who ran for re-election against opposition was defeated. The "Incumbent" ballot designation probably has added strength in the 3rd Circuit because there are so many seats to be filled and so few ways for the public to become knowledgeable about the qualifications of the candidates. Voters then vote by "name", alphabet, or lottery. Most often, obviously, they vote by ballot designation. Clearly in Wayne County the judicial election never meets the conventional standards of an election. Voting has become a pro forma procedure for keeping the incumbents in office.

Placing the challenged incumbent electoral pattern on the 3-9, judicial responsibility-judicial independence scale, all but the Wayne County elections fall below 6 in score and therefore within the boundaries of an "election". By raising a challenge to the incumbent, and occasionally defeating him, these elections are the best examples of the electoral system being used as a means of judicial accountability.

(3) The no-incumbent electoral pattern. Twenty-seven percent of the total elections studied were elections that

did not involve an incumbent. Of these, 82% followed the pattern of choice for the voter and high participation. Half of these had plural bases of competition; half, narrow. The distribution of this pattern varies with circuit structure, but in reverse of the previous patterns. There was more competition and higher participation in no-incumbent elections in the single-judge circuits than in the multi-judge ones.

Wayne County is again the case in point. Of the four no-incumbent elections in the 3rd circuit, one did not even offer a choice to the voter, and all had low voter participation. Vacancies on the 3rd Circuit are decided by an electorate composed of those especially interested in who judges shall be. While these offer the choice necessary for a true "electoral" situation, they do not provoke enough community interest to warrant calling it an open one.

No-incumbent elections fall on the judicial accountability side of the 3-9, judicial accountability-judicial independence scale. For 93% of the no-incumbent elections in the sample, the broad conditions of an "election" are met. Both the conventional and the state standards are met here. When vacant seats on the Circuit courts occur, they are filled in open elections with the large majority of the electorate participating as though they were contests for any other political office.

(4) Appointee pattern. Much like the no-incumbent pattern, the electoral situation involving a gubernatorial

appointee to a mid-term vacancy usually produces competition, high participation, and pluraI bases of competition. Only eight percent of the election sample presents the appointee situation.

As for the no-incumbent pattern, distribution over circuit structure shows that 20% of the Class I circuits follow the competitive pattern, while 60% of the Class III circuits do. Competition is keener for court vacancies in the single-judge circuits because the office is relatively more important in these circuits and community interest is therefore much higher. The three appointee elections in the 3rd Circuit produced only token opposition in one, and low participation in all.

Because of the presence of the incumbent ballot designation in the appointee elections, a lower proportion of these elections fall below the median score than do the no-incumbent elections. Fifty-six percent of the appointee elections are in the definitional range of an "election". Appointee elections straddle between the state standard which would call for the election of the appointed incumbent, and the conventional standard which would call for a clear electorate decision.

Conclusions

It was the objective of this research to determine if Supreme Court and Circuit Court elections in Michigan were "democratic elections" and "nonpartisan" elections.

Our conclusions can be summarized in the following set of propositions:

1. The effectiveness of the judicial election as an election varies with the level of the court, the electoral situation, and the structure of the constituency.
2. Supreme Court elections are partisan, compromised only occasionally by the considerations of incumbency. They generate moderate interest in the state at large, more in smaller counties than in the larger. They offer the voter a choice because of the partisan nomination system. The bases of competition are essentially political, with the strength of the candidate's party and his own political experience weighing the most heavily.
3. Circuit Court elections are nonpartisan. The degree of choice open to the voter depends upon the presence of an incumbent, and the degree of public participation depends in large degree upon the degree of choice. Constitutionally in Michigan a "double standard" exists for judicial elections. Incumbents are granted a ballot designation, making it State policy that incumbent judges be returned to office. Vacancies in judicial posts, however, are filled by conventional electoral procedures.
4. There are distinctly different judicial "cultures" within the state, associated with urbanization and

population. In the single-judge, multi-county circuit, the Circuit Judge is a powerful political officer. It is the practice for an incumbent to remain in office on "good behavior". When he finally dies or retires, the entire political community participates in the election of a successor, an election based upon political office status and sectional loyalty. In the metropolitan, single-county, multi-judge circuits, the judicial electorate is small, representing only those publics with a special interest in judicial affairs. The multi-judge ballot has generated more competition for judges in these circuits, but less community interest than in the less urbanized circuits. Private practice is a more successful base of competition in the metropolitan circuit because of the greater sophistication of the judicial electorate. The pattern in the metropolitan circuits keeps to the state's "double standard", but in a form complicated by the multi-judge situation and a smaller judicial constituency.

5. Third Circuit (Wayne County-Detroit) elections have the special disadvantages of a very large bench and a very small public. To an even greater degree than in the rural circuits, Third Circuit incumbents serve on "good behavior", their ballot designations

> becoming guarantees for re-election in a situation of ignorance and indifference. The occasional competitive vacancy election excites only the courts more "attentive publics", and is usually fought between lawyers or judges representing various of the "publics" among them. Not even the generous "double standard" of the state is met here. Neither incumbent nor no-incumbent elections can accurately be called elections.

It is traditional to close a research project with a call for future study on questions it raised but did not answer. Those questions which are of the greatest interest to me concern the relationships between the judicial election and the local political system. The ties in personnel have been noted in this study. It might now be useful to ask what operational ties exist. Does active community interest in economic development, or drug control, or zoning, or election law become translated into cases brought before the Circuit Court for solution? And how well does the solution offered there meet the "dominant interest" of the community? If the present research has been able to confirm the active association of the judicial and the political process, it has met its objective.

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