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Selection Method and Judicial Background Characteristics

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ABSTRACT

This study explores social background characteristics of the judges serving in the lower trial courts of two states which utilize different methods to choose judges and which, if any, of Max Weber’s types of legitimate authority is more supported by a specific method. Colorado ascribes to the “Missouri Plan” in which the governor initially appoints the judge who must then eventually face a retention election (keep the judge or remove them). Kentucky formally uses a contested non-partisan election system wherein the judge must also run against an opponent for re-election. However, about 45 percent of these Kentucky jurists are in fact initially appointed by the governor due to politically timed retirements and resignations. While almost all prior research on such characteristics has addressed United States Supreme Court Justices, United States Circuit Court of Appeals judges, and various state supreme court judges, this study is the first to specifically address state lower trial court judges or to consider Weber’s typologies. More specifically, mail surveys were sent to all justices serving on the Kentucky District Courts as well as all those serving on the Colorado County Courts inquiring about 35 variables in eight major categories: localism, political party, demographics, religious affiliation, family background, income upon attaining the bench, prior legal experience, and occupational background. The Kentucky judges were also asked how they initially attained their position. Results are grouped into three findings.

First, cumulative results are presented for all of the Kentucky District Court judges and then for the Colorado County Court jurists. Second, the Kentucky judges are separated into two groups dependent upon whether they initially came to the bench via election or appointment. However, no statistically significant difference was found between these two groups on any variable. Third, the Colorado judges are compared and contrasted with all of the Kentucky judges, regardless of how the latter initially attained their position. Chi square and logistic regression analyses indicate that the Kentucky jurists have stronger localism traits (number of generations living in respective county, in-state undergraduate, and in-state law school), are more likely to be affiliated with the Democratic Party, to be white and not Spanish/Hispanic/Latino, to have a religious affiliation (Baptist), to have previously practiced law in a partnership, to have had one or more grandparents who held public office, and to have a relative who has been a judge. Further, the Kentucky judges were found to have lived in their respective county and state about ten years longer, although the Colorado judges were found to be about four years older and initially attained their judgeship at a later age.

Finally, predicated upon these findings, Max Weber’s three types of legitimate authority (traditional, charismatic, and rational-legal) are explored as they relate to each method. The traditional framework of authority based upon family background and local ties is more
supported in the Kentucky model while his rational-legal authority dependent upon merit is more supported by the Missouri Plan model used in Colorado.
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CHAPTER ONE
INTRODUCTION AND OVERVIEW

In a complex democratic society such as ours, those who wield judicial power and authority greatly impact the lives of its citizens. Judges must interpret and apply both law and facts in reaching their decisions in legal matters. These ultimate decisions are obviously tantamount to the intended function of the position. Hence, the main focus of research in the judicial area concerns the bottom line of the office—“What does the judge decide?” This is important in establishing precedent to which future judicial holdings must abide.

However, a grossly understudied aspect of our judiciary which may carry important ramifications for society remains mostly unexplored, especially for those judges who serve at the trial court levels of the system. This aspect involves questions regarding the social characteristics, backgrounds, and previous experiences of our trial judges and has remained mostly unaddressed. Moreover, the answers to these questions may reflect not only possible requisite intrinsic as well as extrinsic qualifications to obtain and hold on to a judicial position, but also tap into whether democratic representative principles are applied. The roles of many sociological and demographic factors may come into play. Additionally, the type of judicial attainment system employed by a particular jurisdiction may also play a part in what social characteristics are found requisite to become a trial judge in a specific locale. Finally, the question of whether the theoretical underpinnings of sociologist Max Weber are at work is also at issue. Weber argued that a judiciary composed of independent actors who are not influenced by societal influences and who base their judicial decisions on previously determined legal precedent is necessary to allow a capitalistic system to successfully function (Ross and Wittich, 1968). Moreover, Weber argued that three types of legitimate authority
could exist in society: traditional, charismatic, and rational-legal. While this study is not concerned with charismatic authority, the other two types of authority are at issue. Traditional authority holds that the law is administered by a generally ascriptive model based on principles such as family background, religion, and wealth. Rational-legal authority, on the other hand, is centered on the law being administered by a highly organized staff of well trained professionals who have achieved their positions based on merit. Hence this study will also explore whether Weberian principles are at work in our lower trial courts. In short, this work will explore all of these concerns in an effort to determine: 1) “Who are our trial judges?”; 2) “Are there particular social background characteristics incumbent to a particular judicial selection method?”; and 3) Is one of Max Weber’s legal typologies more prevalent based upon selection method?”

There are two methods used in the selection of state judges in the United States. Appointment by the governor or legislature is utilized in 29 states. Some of these states allow for gubernatorial appointment from a list of candidates selected by a nominating commission. However, these commissions are usually appointed by the governor as well. Hence, the literature generally makes no distinction between these two alternatives. (Helland and Tabarrok, 2002). The remaining 21 states determine their trial court judges via popular elections. Partisan elections are utilized in 8 of these jurisdictions, while 13 rely on nonpartisan elections where party affiliations do not appear on the ballot nor are candidates nominated to run by a political party (Sobel and Hall, 2007).

The Kentucky District Court and the Colorado County Court have been selected as the forums for this study as they employ different systems in bringing a judge to the bench. These states also have approximately the same overall populations and their largest cities (Louisville
and Denver) also share a similar size. The primary method for attaining a Kentucky District Court judgeship is by non-partisan election. The choice of Kentucky also allows for a “within” comparison of judges who have attained the bench via non-partisan election with those who have been appointed by the Governor of Kentucky to fill an unexpired term. This occurs when a particular judge leaves or resigns their office due to death, health concerns, alternate appointment, retirement, or even impeachment. Hence, one may obtain a trial judge position in Kentucky via one of two varied methods. The Colorado County Court has been chosen as an example of a strictly appointment-type jurisdiction which employs the “Missouri Plan” (in 1940 Missouri was the first state to adopt such a system) in which all trial judges are initially appointed by the Governor of Colorado and only face a retention election every four years in which they must receive a majority vote in order to maintain their position. No state once adopting the system has repealed it (American Judicature Society, 2009) and it has been well received over the last half century (Colquitt, 2007). The background and social characteristics of those individuals who have utilized these three different pathways to the trial court bench will be explored in an effort to ascertain whether the varying ways of attaining a judgeship make any difference in who actually serves as a trial judge. These aspects will be considered as they relate to the following research questions which drive the within study.

**Research Questions**

The following study is undertaken to explore and investigate the following research questions as they relate to the courts of interest:

**Q1.** What are the demographic backgrounds, personal and social characteristics, and career and educational experiences of the judges of the respective state courts in Kentucky and Colorado?
**Q2.** Are those judges who are appointed by the Governor of Kentucky to fill an unexpired term similar to or different from those who achieved their position through election?

**Q3.** Are those judges who are appointed by the Governor of Colorado under the “Missouri Plan” similar to or different from those in Kentucky?

**Q4.** Are the characteristics of either of Max Weber’s legal typologies (traditional authority based on ascriptive characteristics or rational legal authority based on merit) more prevalent based upon judicial selection method?

**Sociological Significance**

Research into these questions is important and needed in order to:

1) Attain accurate information regarding demographic, personal and social characteristics, career and educational experiences, and common paths to the position of trial judge. This can give useful information for making a decision to run in an election or re-election (or retention), to attempt to achieve an appointment to the position, as well as for judicial training and education.

2) Determine whether previous political experience and ties to political groups are necessary to attain a judgeship.

3) Assess whether the systems in question result in judges with similar or different backgrounds and characteristics achieving the bench. In other words, do the three paths to the bench make any difference in who becomes a trial judge?

4) Provide a basis to compare with other judicial systems that employ alternate means of trial judge selection.
5) Provide a basis for future comparisons with other courts in both Kentucky and Colorado.

6) Provide a basis to further investigate the extent to which the characteristics of trial judges in Kentucky and Colorado proportionately represent the citizen groups of the respective states in order to assist in determining whether these groups are politically relevant.

7) Obtain predictive information regarding particular judicial decisions. Prior research, although concerned nearly exclusively with appellate and supreme courts, has shown that social backgrounds and experiences may affect the content of decisions. While this study does not examine judicial decisions themselves, it may provide much needed information about trial judges and afford an indirect way of predicting what a particular judge’s decision may be.

8) Assess whether either of Max Weber’s theories (traditional authority based on ascriptive characteristics or rational legal authority based on merit) is more indicative of either judicial selection method.
CHAPTER TWO

THEORETICAL FRAMEWORK

The conceptual framework of this study is rooted in Max Weber’s model of legal systems. While much of Weber’s work involved the development of capitalism in Western Europe and its relationship to particular legal systems in those countries, he was also concerned with how political systems and internal characteristics of the legal profession shaped the overall legal system. As such, Weber devised an “ideal model” of a legal system which would allow a capitalist system to function (Roth and Wittich, 1968). This model may be conceptually explained in two parts.

In the initial part of his model, Weber utilized the idea of a “formal” or “independent” type of system with its internal procedures developed independently of any external societal influences. Hence, there is to be limited, if any, input by entities such as political parties or religious organizations on the system. Second, Weber conceived the concept of a “rational” or “universal” type of system with the overall objective of the universality of law. Here Weber was concerned with applying the same consistent decision criteria to all similar cases (Schmidhauser, 1979). This concept is now more familiarly known as precedent or stare decisis.

Further, Weber also was concerned with the concept of domination and argued that three types of legitimate authority could exist in society: traditional, rational-legal, and charismatic. Utilizing the analysis of Trubek (1972), traditional authority originated in culture and tradition and holds that obedience is owed to individuals designated by custom, that legal cases may or may not be determined by precedent, and that the law may be administered by a
generally ascriptive patrimonial model resulting in a great amount of discretion by those in charge and very little, if any, predictability of the rules.

The second type of authority is rational-legal and is what Weber (Roth and Wittich, 1968) argued was required in more complex societies. Here the aforementioned concepts of independence and universality enter the picture. Obedience is owed to enacted rules which are promulgated with objective and universal standards. Cases are decided by formal rules and justified by the independence and universality of the decision-making process. The administration of justice is deemed to be crucial in this model and is to be administered by a highly organized bureaucratic staff of well trained professionals. Moreover, these professionals are to be chosen on the basis of merit and not by ascriptive principles such as family background, wealth, ethnicity, religion, kinship, and the like.

Charismatic authority is Weber’s third type and looks to obedience to be paid to individuals who are considered to be extraordinary and/or endowed with some type of special powers. In this model, case decisions are justified based on revelation and the law is administered by an ad hoc staff, themselves often chosen on charismatic qualifications. Again there exists a great deal of discretion and very little predictability of rules. It must further be noted that there may indeed be judges who have attained their positions based upon force of personality rather than (or perhaps in addition to) ascriptive or meritorious principles. Moreover, neither judicial selection method addressed in this study (election or appointment) could be argued to be immune from being influenced by the personalities of those involved. Voters, nominating commissions, and governors may all be impressed by and persuaded to support a particular candidate. However, as the main theoretical underpinnings of this study
involve comparisons and contrasts of the first two types of Weber’s legitimate authority, charismatic authority is not at issue.

To Weber, merit-based judicial selection should maintain formal independence from the two political branches of government. This ideal conception was based on the training and career paths of judges in the continental European judicial systems at the end of the nineteenth century which utilized a model of independent meritocracy (Schmidhauser, 1979). However, in the American models studied herein, appointment based on merit is ultimately located in the hands of the governor who serves as the head state executive. Nevertheless, merit is deemed to be the sole overriding factor and some neutrality is at least offered by the use of the aforementioned nominating commissions.

This study will address whether there exist similarities and/or differences in the background attributes of lower trial court judges dependent upon their particular mode of ascension to the bench. More specifically, if attaining a judgeship is found not to be contingent on such attributes as education, family background, parental occupation, age, gender, kinship, or localism, then findings in each of these categories should be proportionally represented in the particular court. If, on the other hand, the attainment of a judgeship is in fact contingent upon these particular attributes, the result is a model in which the findings in each of the categories are disproportionally represented. The former model represents what is essentially a democratic prototype, while the latter is based on a ruling elite system.

Moreover, within the framework of these two models more specific factors may be analyzed. The existence of some type of career ladder or other type(s) of mode of ascension may be detected and any particular qualifications inherent for the attainment of a lower trial court judgeship may also be exposed. Further, one can determine whether
these criteria are ascriptive or if they are consistent with Weber’s ideal conception.

THE COURT SYSTEMS

In order to determine whether social background characteristics influence who attains a judgeship in Kentucky and Colorado one must initially be apprised of the differences between the courts of each state. This not only includes the specific legal matters for which each court is responsible but also how the respective judgeships are attained. Moreover, although non-partisan election is the “official” path to the bench in Kentucky, many judges in that state also reach the position through gubernatorial appointment. This allows for further comparison of the Kentucky judges depending upon their particular selection method. The following provides a general overall description of the courts in each state as well as more specific information pertaining to the subjects of this study, the Kentucky District Court and the Colorado County Court.

Kentucky

There are two general levels of courts in the Commonwealth of Kentucky; appellate and trial. The appellate courts include the Supreme Court and the Court of Appeals. These courts generally review the judgment of another court to see if an error was made, generally cannot hear any new evidence, and must rule on what was presented to the trial court. The trial courts in Kentucky are divided into Circuit Courts, which have general jurisdiction, and District Courts, which have limited jurisdiction. This type of jurisdiction means that District Courts may handle those types of cases which the Kentucky General Assembly has, by statute, said may be heard there. These cases include juvenile matters, city and county ordinances, traffic offenses, probate matters, misdemeanor criminal offenses, felony
preliminary hearings (which establish probable cause to keep a defendant charged with a felony), guardianships, conservatorships, voluntary/involuntary commitments, child abuse and neglect cases, domestic violence matters, small claims suits, and civil cases involving less than four thousand dollars ($4,000.00). Further, appeals from the District Courts are initially made to the local Circuit Court. This tiered court system was established by the passage of the Judicial Article to the Kentucky Constitution in 1975, and went into effect July 15, 1976.

Ninety percent of all individuals involved in Kentucky court proceedings appear before the District Courts. There are 116 District Court judges in 60 judicial districts in the Commonwealth. These districts vary in geographic size and the number of judges is based upon population and caseloads. They vary from single-county multiple judge districts (Jefferson County which includes Louisville) to four-county districts served by a single judge who travels the district hearing cases. According to the Kentucky Administrative Office of the Courts, in 2008 the District Courts recorded 855,814 cases filed and 837,478 cases disposed.

District judges serve four year terms and are elected in a regular election on a nonpartisan ballot. However, should a vacancy in a District judgeship occur through death, retirement, incapacity, withdrawal, or impeachment, the position shall be filled through gubernatorial appointment from a list of three names presented by a judicial nominating commission. The appointee shall serve until the next succeeding election or until the remainder of the term, depending on the time of the vacancy in relation to the next succeeding election (Kentucky Constitution § 118, §152). Under this system an individual may attain a judgeship without first having to face the voting public. It also gives them the distinct advantage of incumbency if they run for the seat in the subsequent election.
Finally, in order to be eligible to serve as a Kentucky District Court judge, one must be a citizen of the United States, a licensed attorney in Kentucky for at least two years, and have been a resident of the Commonwealth and of the district from which they are elected for two years immediately preceding their taking office (Kentucky Constitution § 122).

**Colorado**

The state of Colorado also employs a tiered system of courts comprised of County Courts, District Courts, the Court of Appeal, and the Supreme Court. The court which is similar to the District Court in Kentucky is the County Court in Colorado. Every county in the state has a County Court with at least one judge. These courts also have limited jurisdiction and handle misdemeanor criminal matters and civil actions involving no more than fifteen thousand dollars ($15,000.00). There are 110 County Court judges in Colorado (not including Denver). In 2007, the Office of the Colorado State Court Administrator reported that there were 551,197 cases filed at the County Court level and these courts were able to terminate 525,547 cases during that period.

In order to qualify to serve as a County Court justice, the individual must reside in the county in which they serve. The necessity of a legal background is contingent upon the respective county. Seventeen counties (mostly containing the largest populations) require the judge to be admitted to practice law in Colorado. However, the remaining 47 counties only have a minimum requirement of a high school or general equivalency diploma (13 COLO. REV.STAT. § 6-203).

The County Court system in Denver differs from those in the rest of the state and is not included in the within study. It functions as a municipal as well as a county court and is
paid for entirely by Denver taxes rather than state taxes. The seventeen Denver County Court judges are appointed by the mayor of that city (DenverGov, 2007).

In 1966 the voters of Colorado passed a constitutional amendment which provided that the state judges be appointed rather than elected on a political ticket. When a trial court vacancy occurs, a judicial nominating commission, consisting of a commission for each of the state’s twenty-two districts (each of these in turn is comprised of seven members) interviews applicants and recommends two or three individuals to the governor for consideration. Each judicial district nominating commission consists of a justice of the supreme court designated by the chief justice, who serves as chairman ex officio and has no vote, and seven citizens who reside in that judicial district, no more than four of whom are members of the same political party, and there must be at least one voting member from each county in the district. In all judicial districts having a population of more than 35,000 inhabitants, the voting members consist of three persons admitted to practice law in the courts of Colorado and four persons not admitted to practice law in the courts of the state. In judicial districts having a population of 35,000 inhabitants or less, at least four voting members must be persons not admitted to practice law in the courts of Colorado, and it is determined by majority vote of the governor, the attorney general and the chief justice, how many, if any, of the remaining three members must be persons admitted to practice law in the courts of the state. Members of each judicial nominating commission selected by reason of their being citizens admitted to practice law in the courts of this state are appointed by majority action of the governor, the attorney general and the chief justice. All other members are appointed by the governor (COLO. CONST. art.VI, § 24). Once appointed, the commission must meet and select the nominees based upon written applications, recommendations, and personal interviews within 30 days
after a vacancy occurs (due to death, retirement, resignation, removal, or as authorized by certification of a negative majority vote of retention). The governor then has 15 days to select one of the nominees. The chosen judge then serves an initial “probationary” term of two years. After that time a retention election is held in which voters decide whether to retain the judge. A simple majority vote to retain is required to keep one’s judgeship. After serving the initial two year term, County Court judges serve a term of four years before again facing a retention election (American Judicature Society, 2009).

Why Study This Particular Court Level?

The decision to study these “lower” trial courts rather than those that handle general jurisdictional matters (including felonies and higher monetary jurisdiction in civil suits) was made for a number of reasons. First, there has been little, if any, research on the social backgrounds of these types of judges. Almost all of the background research involves judges at the appellate level. Moreover, most of these studies explore the relationships between social backgrounds and actual judicial decisions, not the possible correlations between social backgrounds, the system utilized to attain judgeship, and the likelihood of achieving the position.

Second, these courts and judges are those with which ordinary citizens are most likely to come into contact. Those with less serious legal problems outweigh the numbers of those with larger and more serious problems which ultimately come under the jurisdiction of “higher” trial courts and appellate courts.

Third, these courts handle the largest caseloads and are also a primary source of revenue for the government (assessed fines and court costs). The overall number of cases at
this level is highest and the dockets of the individual judges are fuller. More cases also result in more money to fund the entire judicial system.

Fourth, due to these large dockets the decisions of these judges serve as important influences on public attitudes toward the courts and justice system. Further, the cumulative impact of a large number of “minor” decisions may affect the lives of a great number of individuals.

Finally, these judicial positions are often used for judges to gain experience and reputation, often serving as testing fields to assess both one’s ability and public support. Therefore they are often used as stepping stones to attain a position on a “higher” trial court or at the appellate level.
CHAPTER THREE

LITERATURE REVIEW

The following review of the research on selection method and judicial background characteristics is divided into five categories. First, a brief summary of background factors and how they relate to particular judicial decisions is presented. The remaining four categories address Weber’s theory on types of legitimate authority as it relates to both the particular court as well as to the selection method used. Weber was concerned with whether an individual attained a judicial position based upon ascriptive attributes (Weber’s traditional legal authority) such as family background in politics, parental occupation, or localism as opposed to attaining the position based on merit (Weber’s rational-legal authority). Therefore, research on these opposing forms of judicial background characteristics is presented and is further divided into four groups in this review. First, a description of the characteristics of judges serving on particular levels of courts is presented. This allows for later comparison of the findings in this study of trial court judges with those of judges grouped by specific level of court. Second, the particular background characteristics are then individually addressed, also providing a basis for comparison with the findings of this study. Third, the characteristics of the judges are categorized by particular method of selection to the bench (Missouri Plan or election). This is followed by a fourth category which addresses only election states which nonetheless have mid-term appointees as well as elected jurists.

Numerous studies and, in particular, law review articles have addressed the subject of judicial selection (appointment versus election), but few have actually explored background characteristics of judges, especially for lower trial court judges. Those that have been concerned with these factors typically concern themselves with whether particular experiences
and traits could be a factor in the decisions (holdings) handed down by judges in specific types of cases. Some of this research has also compared judicial decisions relative to background characteristics such as political party affiliation (Democrats are more likely than Republicans to side with private parties against businesses) (Nagel, 1961), general decision-making in criminal cases (Democrats are more apt to side with criminal defendants than are Republicans) (Nagel, 1962), dissent behavior (Judges who had prior experience as non-political lawyers are more likely to dissent) (Ulmer, 1970), and rulings in sexual harassment cases (young and Democratic judges are more likely to side with the plaintiff than are older and Republican jurists) (Kulik, Perry, and Pepper, 2003). Schmidhauser (1962) attempted to show whether background characteristics, such as prior judicial experience, political party affiliation, family tradition of holding a judgeship, and experience in corporate legal practice, of members of the United States Supreme Court were correlated with a judge’s decision to follow existing legal precedent, (i.e., *stare decisis*); only prior judicial experience was found to be a positively correlated factor. Other research has focused on comparing the system of selection with judicial decisions and has looked at success rates by categories of appellants (state or state agency, criminal defendant, corporation, superior economic litigant, and inferior economic litigant) concluding that no statistically significant relationships were observed between recruitment systems and success of any of these groups of appellants in state supreme courts (Atkins and Glick, 1974). Further, a comparison of sentencing in driving while intoxicated cases based upon selection method also found no distinguishable differences based upon selection method (O’Callaghan, 1991).

Furthermore, specific levels in the hierarchy of American courts and background characteristics have also been examined in relation to judicial decisions. Nagel (1962)
explored characteristics of state appellate judges and linked them to a liberalism scale which he used to assess judicial holdings. Unfortunately, this research omits trial courts and has focused almost exclusively on intermediate appellate courts and courts of last resort. Nagel may have focused on these higher level courts because the overall number of judgeships in these courts is quite low in comparison to trial court judgeships. These courts also are ascribed a higher status and the impacts of their decisions are more far reaching because of the precedent they set. The focus on these courts may also be due to biographical data being more easily attained and available on the people holding these positions.

The above referenced studies have attempted to find some correlation between background characteristics and/or method of selection in relation to actual judicial rulings of particular judges. However, the present study is not concerned with “what” a specific judge may decide. Instead, it focuses upon “who” serve as judges in our courts, specifically the lower trial courts in Colorado and Kentucky. This particular focus is important to ascertain the individual and collective backgrounds of those jurists and whether those attributes result in a judiciary based upon Weber’s ascriptive model or in his alternative merit-based model.

Hence, the following literature review is organized around a four specific themes relevant to the present study. First, the background characteristics of judges serving on particular levels or types of courts are considered. This provides a description of the general make-up of each court type and allows for comparisons and contrasts with the prior literature. Thus for the federal system, the United States Supreme Court, the United States Circuit Courts of Appeal, and the United States District Courts (trial level) are individually discussed below. For state judiciaries, the state supreme courts are discussed. Findings are presented from studies which cumulate state supreme court data from a number of states as well from
studies focused on data from courts of individual state supreme courts. The lone study involving state trial courts is also discussed.

Second, this review focuses on particular background characteristics of the judges. Hence, specific traits such as age, ethnicity, religion, prior legal experience, localism, and backgrounds of family members are considered independently and then presented by respective court type. While these traits have all been explored in the previous studies that comprise the remainder of this literature review, the present study also presents them characteristic by characteristic. This affords the opportunity to compare the findings of this study with the distinctive characteristics of judges previously only presented in the research on a court by court basis.

Third, as one of the issues of this paper, a review of background characteristics of state judges who came to office by different methods-- the Missouri Plan (as in Colorado) or election (as in Kentucky) is also undertaken. This comparison assesses whether the two methods result in judgeships being held by individuals with collectively different background traits. This in turn may also allow an assessment as to whether Max Weber’s traditional authority or his rational-legal type of authority is more indicative of particular selection methods. Weber’s concepts of class, status and power may also be considered.

Finally, since the comparison of mid-term appointees and normally elected judges in Kentucky is the other concern of this paper, research involving background traits of those who reach the bench by either of these two methods is reviewed as well. Consistent with the prior theme, this comparison is germane in determining collective differences between those who come to the bench via these two different methods as well as whether, and how, Weber’s frameworks apply.
By Specific Court

Prior research relating to judicial background characteristics is all presented on a court by court basis rather than characteristic by characteristic. Hence a court by court comparison is also included in this literature review in an effort to be better able to compare the background characteristics of the judges of the Kentucky and Colorado lower trial courts to those that have been previously researched. Virtually no research of this type has been done on any trial court and none has addressed a lower trial court. Thus the present study investigates a novel court level which may possess judges with similar and/or different backgrounds than those levels previously studied.

The earliest study (Ewing, 1938) examining judicial background characteristics of members of the United States Supreme Court reviewed biographical information including place of birth, age, education, and prior experience in public office of these judges who served from 1789 to 1937. Schmidhauser (1959) expanded upon this initial research, extended the time frame to 1957, and considered background information such as father’s occupation, occupational heredity (does one hold a job similar to that of their parent), ethnicity, birthplace, religion, education, prior work history, and political party affiliation. He then expanded the scope of his research with a second study (Schmidhauser, 1979) that encompassed not only the Supreme Court but also the federal appellate judiciary, utilizing the same background characteristics of his initial study but updating the data through 1976. These three studies found the typical Supreme Court justice to be male, white, well educated, high status Protestant, and reared in an upper middle class or high class politically active family (often with judicial backgrounds). As will be seen below, few studies have considered the influence of mothers or other female relatives such as aunts, a flaw this study addresses.
In addition to these studies which focused on ascriptive characteristics, and in keeping with the underlying Weberian theme of the present study, merit based achieved characteristics have also been explored regarding members of the Supreme Court. Ulmer (1962) looked specifically at public offices previously held by members of the Court from 1789 to 1960, finding that about one half had held national administrative, and/or state administrative, and/or state judicial, and/or state legislative posts and that as time has evolved, a consistent downgrading of the importance of state offices in the background of the justices was accompanied by a consistent upgrading of the importance of a prior federal office in attaining nomination to the Supreme Court. Finally, Grossman (1965) reviewed data on characteristics of judges appointed to the Supreme Court, United States Courts of Appeal and The United States District Courts from 1946 to 1962. He concluded that lawyers who had engaged in private practice and those with prior state court judicial experience were becoming increasingly more likely than those who lacked these traits to be appointed to the federal bench over that time span.

Considering federal courts other than the Supreme Court, Goldman (1965) acquired data on background and political characteristics of federal appeals court and federal district court (trial level) judges appointed by the Eisenhower and Kennedy administrations. The focus of this research was on social mobility, whether a class-based “power elite” existed, and on political commitments. The author concluded that these appointees tended to come from middle-class backgrounds and that whatever social mobility they may have attained was primarily within that particular class (although the Eisenhower appointees tended to be of a slightly higher status as determined by their educational background and major occupation at time of appointment). Goldman’s (1974) similar later study on the Johnson and Nixon
appointees to these same courts. again found no evidence of a socio-economic “power elite” as the appointees tended to come from middle-class backgrounds. However, he did note that judicial or prosecutorial experience had become a prominent consideration in the recruitment process.

A profile of judges on the United States courts of appeals from 1891 through 1992 (Haire et al, 1994) found them to be predominately white male Protestants who attended elite law schools.

Specifically as to trial court judges in the federal system, in 1976 Hall undertook an historical study regarding background attributes of federal lower court judges, defined as those sitting on district courts, the circuit court for the District of Columbia, and as of 1855, the Court of Claims. Hall reviewed judges sitting in the courts during the antebellum era Second American Party System (1829 to 1861), which saw the rise of broad-based massive political parties. He found that one-third came from elite backgrounds while another 46 percent came from well-to-do origins. Approximately three-fifths of the judges’ fathers participated in politics, usually at the local level and 17 percent of the fathers previously held a judgeship themselves. Over 70 percent were of English and Welsh origins. They were also politically active as over three-fourths of the judges had previously sought elective office. Over 55 percent served in some type of legislative capacity and nearly 29 percent held positions in the federal Congress. When comparing region of judicial service with region of birth, not a single judge in this era was appointed from one state to serve in another, even in newly created states.

As part of an effort to create a classification system for state supreme courts, Fino (1987) compiled data on 245 state high court justices who served in 1975 and 270 justices
who held office in 1977. The vast majority of the judges were found to be male, white, and Protestant (96.7 percent, 98.1 percent, and 71.3 percent respectively in 1977). Approximately eight of ten justices were found to have been born in-state with almost 60 percent coming from a small town. Most attended both in-state colleges (71 percent) and in-state law schools (65 percent). About 11 percent of the justices acquired an Ivy League undergraduate education while over 17 percent attended an Ivy League law school. Almost 45 percent had prior prosecutorial experience and/or held a previous judgeship and about three in ten had held some other political office.

The seminal study involving background characteristics of judges was done in 1933 and involved state supreme court and federal judges (Mott, Albright, and Semmerling, 1933). These researchers considered 16 characteristics compiled from a sample of 685 supreme court justices from 32 states who held office between January 1, 1900 and December 31, 1929 as well as all of the 434 federal judges in the United States District Courts, Circuit Courts of Appeal, and Supreme Court who held office during that time. While the main focus of this study was on differences between state and federal judges holding positions higher than the trial court level, Mott and his colleagues noted the gradual development of a judicial profession within the legal system itself, wherein judges were found to come from a group of professionally conscious attorneys who had superior training. These researchers also detected a growing tendency to promote prosecuting attorneys to judgeships. Further, this initial study also considered educational background, urbanity (as opposed to ruralism), and prior public offices held by the respective judges.

A later comparison study (Glick and Emmert, 1987a) of background characteristics, investigated 300 state supreme court justices who served in 1980 and 1981 as well as of 56
federal appeals court judges who had been appointed by President Jimmy Carter. The decision to explore the latter group was based on the belief that “the emphasis on judicial qualifications probably reached its peak during these years” (Glick and Emmert 1987a:109). Race, sex, religion, government career experience, undergraduate education, law school, age upon reaching court, and type of prior law practice were considered. Compared to state jurists, the federal judges were found to be much more diverse, with females more than six times as likely, and blacks more than 30 times as likely, to attain judgeship. Attending a private or prestigious undergraduate school and law school was much more prevalent in the federal sector as was having prior experience as a prosecutor or previous private practice in a firm larger than four partners.

In the comparison of characteristics of the 1961 to 1968 state supreme court justices (Canon, 1972) with those from 1980 and 1981, Glick and Emmert (1987a) found that more than two-thirds of the jurists in both time frames were born in-state and attended in-state undergraduate and law schools, denoting strong evidence of localism. Similar characteristics were also found for legislative and previous judicial experience. However, about three times as many Jews were on the bench in 1980 and 1981 than in the 1960s and the number of Catholics also increased by almost 50 percent. The only other background characteristic that changed was that it became much less likely to have prior prosecutorial experience in the latter time period. Only about 21 percent of the judges in the early 1980s had previously served as a prosecutor as compared to over 51 percent in the 1960s.

In 1997 Wefing published a study which addressed background characteristics of state supreme court justices who held office as of July 1996. He found that there were 261 men and 66 women holding office at that time with an average age of 58.6 years old. 37 of the justices
were minorities. Concerning religious affiliation, 59 percent were Protestant, 30 percent were Catholic and about 6 percent were Jewish. While this study focused on political affiliations, Wefing determined that nearly half of the justices attended both undergraduate as well as law school in their respective states and that over two-thirds had prior judicial experience.

Using data on background characteristics of state supreme court justices who served on January 1, 1994 (n = 333) and May 1, 2000 (n = 341), Bonneau (2001) continued the ongoing quest to ascertain the composition of state supreme courts and published the most recent study to date. This author considered the Glick and Emmert (1987a) data as well as the limited information from the 1960s as reported by Canon (1972). The percentage of female justices increased from Glick and Emmert’s 1980-1981 low figure of just 3.1 percent, to over 15 percent in 1994, and then climbed to over 25 percent by 2000. A similar increase was evidenced in the rise in the representation of racial minorities serving at the supreme court level as 8.7 percent of the judges were non-white in 1994, a number that climbed to almost 12 percent by 2000. Changes in the religious background of judges were also evident. Bonneau found about the same percentage of Catholics (approximately one-fourth) on the courts as did Glick and Emmert but the percentage of Jews steeply declined from 11.2 percent to just 6.2 percent by 2000. Localism was also found to be of importance in this latter study as 65.7 percent of the justices had in-state births and 60.5 percent attended in-state law schools. However, the quality of legal education was found to be a larger factor in Bonneau’s study as 26.2 percent of the high court judges were found to have an elite law degree in 1994 and 24.5 percent were found to be similarly educated in 2000. This compares to Glick and Emmert’s 1980-1981 data which showed only 16.2 percent of the judges to have graduated from an elite law school. Finally, Bonneau drew upon three variables relating to political and legal
experience of the justices. Former prosecutorial service was found to be of more importance at both points of time in his study (approximately 31 percent for each) than it was in 1980-1981 (21.5 percent), but this was still far short of Canon’s (1972) finding of over 51 percent for state supreme court justices serving from 1961 to 1968. Having been previously elected to public office was found to be of less importance by 2000 as only 15 percent of the judges had prior experience in that capacity, about a 5 percent decrease from both the Canon and the Glick and Emmert data, although these studies considered only prior state legislative office. Previous judicial experience was also found to be of ever-increasing importance as the number of justices with prior service steadily grew from about 58 percent in the 1960s to 72 percent by 2000.

Other studies related to judicial background characteristics include some which involve the supreme courts of specific states. One of the earliest works studied the makeup of the Supreme Court of Ohio from 1803 to 1947 (Hoopes, 1949). In his conclusion Hoopes notes that over this near century and a half that an average justice would not come from a well-known family, nor be the son of a lawyer or judge. Over the latter 50 year period, most justices went to an Ohio college as well as a law school in the state and lived in a well-populated non-rural county such as Hamilton or Cuyahoga. Additionally, 43 percent were found to have had prior judicial service, 23 percent to have had some type of legislative experience, and over that time one fourth were found to have had served in a prosecutorial capacity.

The Minnesota Supreme Court was the focus of a study (Heiberg 1969) which reviewed background characteristics of the justices who served on that court from 1858 to 1968. Among other things, the author was able to produce a detailed account of the paternal
occupations of these justices, finding that 55 percent of the fathers had engaged in high social
status occupations the bulk of which included lawyers, prosperous farmers, and proprietors.
Place of birth, ethnic origin, religious affiliation, education, governmental and judicial
experience, and primary former occupation were also considered. Utilizing the most recent
historical period (1931 to 1968) denoted by the author, most justices had high social status
fathers, had about the same chance of being born in a rural, small town or urban setting, had
ethnic roots in the Scandinavian countries of Norway and Sweden (closely followed by
England and Ireland), were affiliated with the Lutheran Church, and had only about a 50
percent chance of attending an in state undergraduate college while having nearly a three-
fourths chance of receiving their legal education in the state. About one-third of the justices
were found to have had prior judicial experience, 22 percent had some local government
experience. Nearly one in four had no prior judicial or governmental experience whatsoever.
Finally, Heiberg found that over this 37 year period 36 percent of the justices had been judges
before reaching their position on the Minnesota Supreme Court, followed by 22 percent who
were general law practitioners and 18 percent who had served as governmental attorneys.

Donn M. Kurtz II (1995) researched members of both the Louisiana Supreme Court
(1812 to 1988) and the United States Supreme Court (1789 to 1988) in a study directed at the
political activity of their families. Almost 44 percent of the Louisiana jurists and more than 62
percent of the federal justices were found to have come from politically active families, the
vast majority in both instances following fathers and/or uncles into political office. Moreover,
of these justices, 51 percent of the state judges and 42 percent of the federal judges had within
two preceding generations at least one family who held a judgeship.
The most comprehensive study to date on state trial court judges was conducted by a team of researchers headed by John Paul Ryan (Ryan et al, 1980). These scholars received survey responses from 3,032 of the approximately 5,000 judges serving in trial courts in the fifty states and the District of Columbia in 1977. Unfortunately, judges in lower trial courts were specifically excluded from this study, providing no direct comparison data for that particular trial court level. Furthermore, the major focus of the research was on judicial work styles and performance, not background characteristics. Nevertheless, a number of personal attributes were compiled. Ryan and his colleagues found the average age of the jurists to be 53.5 years old, that 96 percent were white, and that only 2 percent were female. Additionally, 54 percent were found to have engaged in private legal practice, 24 percent had prior judicial experience at the lower trial court level, and 10 percent had previously served in a prosecutorial position. Finally, as to legal heritage, 10 percent of the judges were found to have had grandfathers who also had been either an attorney, judge, or elected public official. Moreover, when parents of the judges were considered this figure doubled to 20 percent.

**By Specific Characteristics**

A review of the literature on judicial background characteristics may also be presented on a characteristic by characteristic basis. Although prior research has not been presented in this fashion (instead being presented in court by court models), a closer review of the extant literature allows for such an analysis. Moreover, querying specific characteristics such as age, ethnicity, religious affiliation, education, prior experience in the legal field, ties to a particular jurisdiction (localism), and family background can provide valuable information in assessing which of Max Weber’s legal typologies is actually followed in the United States. This in turn
allows the findings of the present study to be compared with other judges as a group (as opposed to by specific court).

**Age**

A review of the studies that involved the age of an individual when initially attaining the particular judgeship in question reveals that most of them acquired their positions between the ages of 49 and 55. More specifically, from 1789 to 1958 the average age at appointment to the United States Supreme Court was 51.9 years (Schmidhauser, 1959). If only the period from 1900 to 1930 is considered the average is 54.7 years (Mott et al, 1933). In the Circuit Courts of Appeal the mean age for the period 1891 to 1992 was 54 (Haire et al, 1994) as it was from 1900 to 1930 (Mott et al, 1933). If only Johnson, Nixon, Ford, Carter, and first term Reagan appointees are considered (1963 to 1985), the average age at appointment was 52.3 years and the Federal District Court appointees of these presidents averaged 49.8 years of age (Goldman, 1985). Mott and his colleagues found the District Court judges to average 49.5 years old over the 1900 to 1930 period.

Regarding state judges, Fino (1987) determined the average age of novice supreme court judges to be 52, while Mott’s (1933) team found the average age to be 50.7 over the time frame from 1900 to 1930. Further, Hoopes (1949) much more specifically found the average age of appointment in 1947 for Ohio Supreme Court justices to be 62. Finally, in the only study to consider state higher trial courts, the average age upon attainment was determined to be 53 (Ryan et al, 1980).

**Ethnicity**

Only three studies have explicitly addressed judges’ ethnicity and all found the vast majority of their subjects to have family ties to the British Islands. More specifically, 84
percent of United States Supreme Court justices from 1787 to 1957 (Schmidhauser, 1959) were found with such connections. Further, a study of the United States District Court judges who served from 1829 to 1861 as well as the United States Court of Claims judges from 1855 to 1861, revealed that 95 percent of these judges also traced their heritage to there. Only one study considered the state level and it specifically focused on the Minnesota Supreme Court from 1858 to 1968 (Heiberg, 1969) finding that only 63 percent of the judges had ties to the British Isles, while 12 percent claimed Scandinavian roots and another 7 percent German.

**Religion**

The religious affiliations of studied judges are generally organized into the three major categories of Protestant, Catholic, and Jewish, with the Protestants sometimes further delineated by specific denomination or by the more comprehensive categorizations of “high status” and “low status.” The higher status group is consistently comprised of Presbyterians, Congregationalists, Episcopalians, and Unitarians, while the lower group is made up of the remaining Protestant denominations. From 1789 to 1957, 70 percent of the justices of the United States Supreme Court were deemed high status Protestants (38 percent Episcopalian, 17 percent Presbyterian, and 13 percent Congregational or Unitarian), 12 percent low status Protestants (4 percent Baptist and 3 percent Methodist), approximately 7 percent were Catholic, and about 3 percent were Jewish (Schmidhauser, 1959). From 1933 to 1976, Episcopalian membership dropped to 19 percent, while both the Catholic and Jewish affiliated justices increased to approximately 11 percent each (Schmidhauser, 1979).

Concerning the United States Courts of Appeals, Schmidhauser (1979) also revealed that from 1789 to 1976, only 45 percent of the judges belonged to high status Protestant denominations and 14 percent to lower ones. Further, 17 percent of these judges were found to
be Catholic, Jewish, or Quaker. Goldman’s studies of the Eisenhower and Kennedy appointees to the United States Courts of Appeals and the District Courts (1965) and of the Johnson and Nixon appointees to the same positions (1974) show that Protestants made up about two thirds and Catholics about one fourth of these appointments during both periods, while Jewish representation increased from 4 percent to 10 percent from 1965 to 1974. Finally, Reagan first term appointees saw an increase in Catholics to 32 percent while Protestant and Jewish appointees fell to 61 percent and 7 percent respectively as compared to previous appointees.

Studies of the state supreme courts show that those affiliated with lower status Protestant denominations comprise a higher percentage of judgeships when compared to those affiliated with higher status Protestant groups, Catholics and Jews. While Wefing’s (1997) inquiry of those holding office in 1996 found that 59 percent were Protestant, 30 percent were Catholic, and 6 percent were Jewish, the remaining studies further break down the Protestants to reveal that 42 percent of those on the bench from 1961 to 1968 (Canon, 1972), 30 percent of those in 1977 (Fino, 1987) and 1980 and 1981 (Glick and Emmert, 1987a), and 41 percent in office in 1994 and 2000 (Bonneau, 2000) were affiliated with low status denominations. These same studies find respectively, that high status denominations made up 39 percent, 40 percent, 29 percent, and 20 percent of the positions. Catholics in these studies ranged from a low of 18 percent from 1961 to 1968 (Canon, 1972) to the above mentioned 30 percent detected by Wefing (1997) in 1996.

The only study concerning a specific state supreme court (Heiberg, 1969) found that over the years from 1858 to 1968 the majority of the Minnesota Supreme Court members
were high status protestants (58 percent) while 13 percent were Catholic and only 2 percent Jewish.

These findings show that high status protestant jurists were eventually replaced with those of lower status denominations while Catholics and Jews continually increased their representation on courts throughout the last century.

**Prestige of Education**

The perceived quality, prestige, or “eliteness” of judges’ post-secondary educations has drawn attention as well. Most scholars, for example Glick and Emmert (1987a), have deemed private schools as being more elite, with Ivy League institutions holding the paramount positions. This holds for undergraduate colleges and universities as well as law schools, although for many of our earliest judges simply completing some type of formal legal training, or even just graduating college put one’s educational achievements far beyond those of the general public. Some authors also equate the eliteness of education with family wealth, especially for those judges who attended prestigious institutions before diversity came to be emphasized (and academic scholarships awarded based on merit).

A study of the educational backgrounds of United States Supreme Court justices who served between 1789 and 1957 reveals that over 70 percent attended “high standing” undergraduate institutions or studied under “top-flight” private tutors or at private schools (over a third completed their undergraduate educations at Ivy League schools), while over 83 percent went to law schools of high standing (nearly a third in the Ivy League) or had a private apprenticeship under a prominent lawyer or judge (Schmidhauser, 1959). When only the period from 1933 to 1976 is considered, 34 percent of the members of the Supreme Court were found to have attended high quality undergraduate schools while 58 percent graduated
from law schools of that caliber (Schmidhauser, 1979). This same study also revealed that over the same time 36 percent of the United States Circuit Courts of Appeals judges obtained high quality undergraduate degrees but only 41 percent received their degrees from law schools deemed as high quality. Further, in a circuit by circuit study over the years 1891 to 1992 (Haire et al, 1994), the modal law school, in seven of eleven circuits, for the appellate judges was found to be an Ivy League institution (Harvard in particular). The same was found for the judges who were on the bench as of just 1992.

Goldman’s (1965) study of Eisenhower’s and Kennedy’s appointees to the United States Circuit Courts of Appeals as well as the District Courts found that only a little more than one fourth of the judges came from high status undergraduate institutions. This same percentage held true for law school degrees as well. Johnson and Nixon appointees to these same courts had over a 30 percent chance of obtaining their degree from a public undergraduate school while about the same number came from private non-Ivy League schools. However, 20 percent of the judges did obtain an Ivy League undergraduate degree. As for law school attendance, the same approximate figures were detected for each school type but Ivy League attendance increased to about one fourth (however, 40 percent of Nixon appeals court appointees were Ivy Leaguers). About half of all Reagan first term appointees to the United States District Courts received a private non-Ivy League undergraduate education while another 16 percent did attend an Ivy League institution. As for the law schools of these judges, again about half went to private non-Ivy League schools but only about 8 percent obtained Ivy League law degrees (Goldman, 1985). Finally, about one half of the United States District Court judges who served from 1829 to 1861, as well as the United States Court
of Claims judges who were on the bench from 1855 to 1861, were found to have at least graduated from college (Hall, 1976).

A review of the literature pertaining to state supreme courts shows that 11 percent of the justices were undergraduate Ivy Leaguers and that 18 percent could make a similar claim regarding their law degrees (Fino, 1987). In 1994 about 26 percent of these justices had graduated from an “elite” law school, decreasing to 24.5 percent by 2000. (Bonneau, 2001). Studies concerning specific state supreme courts reveal that most of the Ohio Supreme Court justices serving from 1803 to 1947 received in-state educations at both the undergraduate and law school levels (Hoopes, 1947) and that the justices of the Minnesota Supreme Court on the bench between 1858 and 1968 had only a 12 percent likelihood of attending an Ivy League law school, with 43 percent graduating from a Big Ten institution (Heiberg, 1969).

Hence, the Supreme Court the justices were more likely than their counterparts on other courts to have received an elite education at both the undergraduate and law school levels, although the likelihood of both decreases over time. Only about one fourth to one fifth of the Circuit Court of Appeals and United States District Courts judges attended elite institutions at either level and their numbers decrease over time as well.

**Prior Legal Experience**

A large number of studies have investigated the prior legal occupational backgrounds of those holding particular judgeships. As the courts that have been considered are almost all on the appellate level, it is not surprising to find that most of the judges have prior judicial experience, having “moved up” to the specific court in question. Further, scholars have found that a prosecutorial background is often desirable to attain a judgeship as well. Many positions
have also been filled by those who have held legislative or some type of generic “previous public office” or “elected position.”

Studies of the members of the United States Supreme Court indicate that many of them have held previous judicial positions. From 1789 through 1960, 39 percent of the justices had experience as judges on some lower level, with 18 percent having served in federal courts and 21 percent coming from state ranks (Ulmer, 1962). This same study further determined that of all national administrative positions, the Office of Attorney General filled 7 percent of the openings, while prior legislative experience was possessed by 18 percent of the justices. However, another study which covered nearly the same time period (1789 through 1957) found that only about one fourth of the justices had previous service as “primarily” state or federal judges but almost 54 percent were “primarily” politicians (Schmidhauser, 1959). When this same author did a follow-up study, part of which examined the time from 1933 through 1976 and added the federal appellate courts into the mix, about 34 percent of the Supreme Court justices and over 56 percent of the appellate judges were found to have held prior judicial posts (Schmidhauser, 1979). Further, as to types of lawyers entering these judgeships, the former study found 12 percent of the Supreme Court justices entered their positions directly from a corporate attorney job while the latter revealed that for the 1933 through 1976 period, over 26 percent of the higher court members and almost 30 percent of the appellate court judges had been corporate attorneys for the majority of their legal careers, although not necessarily immediately before their appointment. Another study (Mott et al. 1933) which looked at the United States Supreme Court, the Circuits Courts of Appeal, the United States District Courts, and the state supreme courts over the period 1900 through 1929, found previous judicial experience for 61 percent, 73 percent, 34 percent, and 53 percent of
their members respectively. Moreover, over 98 percent of the federal judges and almost 84 percent of the state judges had experience in public office.

As to studies involving federal courts other than the Supreme Court, an investigation of each of the United States Circuit Courts of Appeal from 1891 through 1992 found that anywhere from 34 percent to 59 percent of the judges in a particular circuit had previous judicial experience and that overall approximately 40 percent had served in a prosecutorial position sometime in their career (Haire et al. 1994).

A review of the backgrounds of the Eisenhower and Kennedy appointees to both the Circuit Courts and District Courts found that 35 percent of the judges had previously served in such a capacity, with 9 percent having been a government attorney and over one fourth coming from the private practice sector having practiced in a firm larger than two attorneys (Goldman, 1965). When the Johnson and Nixon appointees to these same courts are considered, 41 percent were found to have been in the judiciary at the time of their appointment, 13 percent were prosecutors, and 26 percent came from private firms with more than five lawyers (Goldman, 1974). Goldman (1985) then did a third study comparing Johnson’s, Nixon’s, Ford’s, Carter’s and Reagan’s first term appointees to each of the two courts separately. Regarding the District Courts, each of these presidents chose persons with prior judicial backgrounds respectively in 34 percent, 35 percent, 42 percent, 54 percent, and 50 percent of their appointments. These figures range even higher from nearly 54 percent by Carter to over 70 percent by Reagan when the Circuit Courts of Appeal are considered. Further, prosecutorial experience was a positive factor in 39 percent to 50 percent of these presidents’ District Court appointments while the appellate courts choices with this characteristic ranged from a low of 19 percent (Reagan) to a high of 47.5 percent (Johnson).
Additionally, for both courts, all but Carter appointees to the District Courts more often came from moderate size law firms (5 to 24 partners/associates) if the appointee came from the private sector. However, both Reagan and Carter more extensively appointed law professors to the appellate courts (as opposed to the District Courts), 16 percent and 14 percent respectively. Finally, a study of the lower federal judiciary in the antebellum period of 1829 to 1861 found that almost one half of the judges had no previous background experience as a judge (Hall, 1976).

A number of studies address the previous legal experience of those who serve on state supreme courts. Of the justices who served in these positions from 1961 through 1968, 58 percent had been a trial judge, 51 percent had been a prosecutor and 19 percent had been members of the state legislature. Moreover, approximately 40 percent of the jurists had served in at least two of these capacities before coming to the state supreme court (Canon, 1972). Approximately two thirds of all state high court justices in 1975 and 1977 were found to have judicial experience, about 45 percent had a prosecutorial background, and almost one in three held elected political office sometime in their career (Fino, 1987). For these same courts over the period of 1980 and 1981, 63 percent were found to have judicial experience, over 21 percent had prosecuted cases, and 20 percent had served in the state legislature. These justices also averaged 14.5 years in the practice of law (Glick and Emmert, 1987a). Another study revealed that as of 1996 over two thirds of all state supreme court justices had prior judicial experience (Wefing, 1997). This finding was replicated in a study of judges sitting in 1994 and then found to increase to 72 percent for those justices on the bench in 2000 (Bonneau, 2001). This study further found in 1994, as well as in 2000, nearly two thirds of the state supreme court judges had formerly served as prosecutors.
In regards to specific states, a review of the Supreme Court of Ohio members from 1904 to 1947 indicated that 43 percent held prior judicial positions, 25 percent had prosecutorial experience, and 13 percent were prior state legislators (Hoopes, 1949). Additionally, from 1858 to 1968 approximately 43 percent of justices on the Minnesota Supreme Court held previous judicial office, nearly one fourth had held executive or legislative positions, 18 percent were general practitioners, and 10 percent served as corporate attorneys (Heiberg, 1969).

Finally, in the only study concerning higher state trial courts Ryan (1980) found that in 1977 nearly 23 percent of the judges had experience in a lower court, 11 percent had served as prosecutors, and 8 percent had held public office. However, 57 percent of these judges had engaged in private practice as their primary occupation.

These findings show that prior judicial experience is a valuable tool in obtaining any type of non-trial court judgeship. Moreover, for the federal courts this is more important at the Circuit Court level than for the Supreme Court. Most state supreme court justices also have prior experience on the bench. Prosecutorial backgrounds, while found at all levels, appear to carry more weight in achieving a state judgeship than in the federal courts where previous private practice is more the norm.

**Localism**

Localism, or the historic ties a judge may have to their particular jurisdiction, is a further trait that has been considered by many researchers. Most studies have been concerned with state of birth and whether a particular judge attended an in-state undergraduate institution and/or law school. Concerning federal judgeships, of those serving on the United States Circuit Courts of Appeals from 1891 to 1992, between 40 percent and 67 percent (depending
upon circuit) were found to have earned a degree from a law school within the geographical confines of their particular appellate circuit. The average was 53 percent (excluding the small District of Columbia Circuit). When only the judges who served in 1992 are considered, this figure decreases to only 51 percent. (Haire et al, 1994). A review of the antebellum United States District Courts of 1829 to 1861, along with the federal court of claims from 1855 to 1861, shows that for those in the New England, Mid-Atlantic, and Upper South states over 85 percent of the jurists were born in their region of judicial service (Hall, 1976).

Regarding state courts of highest jurisdiction, a study of those serving from 1961 to 1968 found that 75 percent of the justices had in-state births, 74 percent had graduated from an in-state undergraduate institution, and 65 percent came from in-state law schools. (Canon, 1972). Another study which focused on just 1977 state supreme court jurists reported that 78 percent could claim to have been born in their particular state and that 71 percent and 65 percent respectively had graduated from a college and law school located in their state (Fino, 1987). Additionally, Glick and Emmert (1987a) found similar results when they reviewed these judges in 1980 and 1981 and found that over 78 percent had been born in-state while almost 70 percent had attended an in-state college and 69 percent an in-state law school. However, these statistics appeared to have been reduced in the 1990s for those on the state supreme court bench as in 1994 only 68 percent were found to have in-state births and 62 percent hailed from in-state law schools (Bonneau, 2001). Wefing (1997) saw both of these figures fall to just 60 percent for those serving in 1996 although Bonneau’s (2001) study of those sitting in 2000 revealed that 66 percent had in-state births and 60 percent had received their legal education from in-state schools.
Only two studies address specific supreme courts of specific state and, again, both report only general findings. A study of Supreme Court of Ohio justices from 1803 to 1947 found that after 1847 “almost all” were born in Ohio (Hoopes, 1949). The second study focused on the Minnesota Supreme Court from 1858 to 1968 but only considered births in the United States as a whole, determining that nine in ten of the judges had in-country births.

**Family Background**

A small number of studies have investigated the backgrounds of family members of judges, particularly from the standpoint of the father’s education, political background, and social background. Schmidhauser’s (1959) review of the fathers of United States Supreme Court members from 1787 to 1957 found that 90 percent were involved in high status occupations with wealthy farmers and attorneys each accounting for approximately one fourth of this total. Many were also active in politics as almost one in four had been involved at the state level as either a legislator (10 percent) or in the judiciary (11 percent). Additionally, another 14 percent had participated in politics at the local level. However, when Schmidhauser considered only the justices who served from 1933 to 1976, 6 of the 26 positions were found to be occupied by men who came from humble (family engaged in low status occupations) backgrounds. This short period 1933 to 1976 contains one half of the total of 12 justices from the entire period of 1789 to 1976 who had fathers engaged in low status occupations (Schmidhauser, 1979). Further, this study also found that from 1933 to 1976 over 23 percent of the Supreme Court justices had a family member in politics through paternal, maternal, or marriage ties. Moreover, none were found to have the same types of relatives who had held judicial positions. This finding contrasts to prior eras of the Court with justices who all had strong political or judicial kinship ties. Another study of the Supreme
Court, considering the years 1789 to 1988, reported that 63 percent of the justices came from politically active families (fathers and uncles) and over one half followed a judge. These judges were also found to have held their first public office, if any, at a younger age than those from non-politically active backgrounds and also reached the Supreme Court sooner (Kurtz, 1995).

The only study which has addressed judges on the United States District Courts covered the pre-Civil War era from 1829 to 1861 (Hall, 1976). One third of the judges had fathers with elite backgrounds, 40 percent came from well-to-do families, and only 21 percent from humble upbringings.

Regarding state supreme courts, the only comprehensive study was done with a short one-year window (1977) and considered whether a grandparent or parent had been a judge, lawyer, or an elected official. Ten percent of these justices had a grandparent who had served in at least one of these positions while 20 percent could claim that a parent had been so employed. Heiberg’s (1969) research on members of the Minnesota Supreme Court who served over the years 1858 to 1968 revealed that 55 percent had fathers with high status occupations (12 percent wealthy farmers and 12 percent lawyers) while 37 percent held low status jobs, mainly as small farmers. Finally, a review of Louisiana Supreme Court members from 1812 to 1988 found that 44 percent of the judges had a father or uncle who was politically active and 42 percent of them had such a family member previously hold a judgeship (Kurtz, 1995).

In short, members of the United States Supreme Court come from families with the highest rate of public office service as opposed to other judgisheships. They also are more likely to hail from well-to-do families.
Missouri Plan vs. Elected

The first research done that involved background characteristics across state selection systems at the trial level was done by Jacob (1964), comparing characteristics of state trial court judges who came to the bench via one of five different methods: partisan (party affiliated) election, nonpartisan (non-party affiliated) election, legislative appointment, straight gubernatorial appointment, and gubernatorial merit selection based on the Missouri Plan, which had originally been adopted in 1940 for use in Missouri’s two largest cities. Although Jacob utilized 850 trial court judges in 1955 from 12 states, the Missouri Plan, unfortunately, had not yet come into fashion. Of the 850 judges, only 12 came to their position through that means. (It is probably not surprising to note that these judges came from St. Louis and Kansas City. However, the remainder of Missouri had not yet enacted the Plan and was still using a partisan election system.) Jacob himself notes that this small number of judges, “although constituting all those in office in 1955, makes our conclusions regarding the effect of the plan highly tentative” (Jacob, 1964:107). Nevertheless, Jacobs came to a number of conclusions.

First, Jacob utilized a “localism index” based upon whether a judge was born within the boundaries of their particular court’s jurisdiction and whether the judge attended an in-state law school. He found that only partisan elections gave preference to locally born judges and that nonpartisan elections actually favored those not born in the jurisdiction. For the Missouri Plan judges, an in-state legal education was found to be nearly universal among them and the Missouri Plan jurists had the highest index of local ties as well. Jacob speculated that this underscored the influence of the local bar under the plan as opposed to members of
the business community (who he believed would pay more attention to expertise and other attained traits).

Jacob also determined that the Missouri Plan, as well as partisan elections, gave little preference to those who had previously served in public office, although when the Plan did give preference it was to those who had prior service as a district attorney. Additionally, elected judges were found to be better educated than those who came to the bench under the Plan.

Utilizing the aforementioned “dual system” in use in Missouri in the 1960’s in which only two jurisdictions in the state actually appointed judges, Watson and Downing (1969) made a comparison of background characteristics of the Missouri Plan appointed trial judges in St. Louis and Kansas City with those of the other trial court judges in that state who came to the bench via partisan elections. Comparisons of the characteristics of judges were also made in these two areas before and after the Plan went into effect, although many of the jurists were active in both time frames. The method of selection was found to make relatively little difference in regards to characteristics of age, party identification, localism (in-jurisdiction birthplace, in-state legal education), and prior judicial experience of the judges who were appointed or selected.

This study was updated in 1986 when Tokarz examined women judges and merit selection under the Missouri Plan in the State of Missouri. Using both higher level trial judges and appellate court justices, including the state supreme court, all of whom sat on the bench in 1985 and 1986, the percentage of in-state educated judges (88 percent of the trial judges and 77 percent of the appellate judges) remained fairly consistent with the Watson and Downing data. Previous prosecutorial experience remained important as well; both studies showed 47
percent of the judges at the trial court level to have prior prosecutorial experience, while the percentage for the appellate judges rose from 54 percent to almost 70 percent. The percentage of judges holding prior political office also remained constant at about 17 percent for all judges. The number of trial court jurists with prior judicial experience, however, was found to increase nearly three-fold from just 9 percent in the original Watson and Downing study to 26 percent in the Tokarz data.

Canon (1972) examined characteristics of 441 state high court justices who served between 1961 and 1968 also based upon their method of selection and whether their background characteristics would differ by system. He considered educational attainment, place of education, birthplace, prior legal experience, party affiliation, and religion in assessing whether the particular type of selection system would differ in the backgrounds of those who respectively came to the bench via different methods. Canon found very few differences between recruitment systems and what variations that did occur were based on geographical regions of the country as a whole. He also found that the Western states (including Colorado) were less likely than those older more established Eastern states (Kentucky) to have judges who hailed from established political families.

Glick and Emmert (1987b) also produced a second study using their same previously noted 1980-1981 state supreme court data but this time they compared selection systems. They considered the classification system of Flango and Ducat (1979) and thereby employed a five category grouping: partisan election (n = 83), non-partisan election (n = 72), legislative selection (n = 14), gubernatorial appointment (n = 48), and the Missouri/merit Plan (n = 85). Missouri Plan judges were found to be over twice as likely to have attended prestigious law schools as those who were elected and were also more likely than their elected counterparts to
have practiced in a law firm comprised of more than five attorneys. However, the Missouri Plan judges were not found to have more legal or judicial experience nor were they more likely to have partisan political careers. They also were more apt to be high-status Protestants (Episcopalian, Congregationalist, Presbyterian, and Unitarian). Finally, localism, based on whether judges were born in-state or educated in-state, was found to be less important for the Missouri Plan judges than those who attained their judgeships by the other systems.

Fino’s (1987) previously mentioned study also compared selection methods and background characteristics for judges who attained the bench via different systems. She considered straight gubernatorial appointment, the Missouri/merit Plan, partisan election, and non-partisan election systems. The highest proportions of locally educated judges were found in the elected courts, while the highest proportion of those educated in Ivy League schools was found in straight gubernatorial appointment states. Missouri/merit Plan jurisdictions had the highest percentage (63) of justices with prosecutorial experience. However, when controls for geographic region were introduced all the relationships became statistically insignificant. Only the finding that elected judges were more likely to have once held other elected political office was found to be significant.

In short, these studies find that few real differences in background characteristics of the elected judges and the Missouri Plan judges exist. However, localism and in-state legal educations were more of the norm for the Missouri Plan jurists in the 1950s. By the 1980s localism was found to be of little importance and judges who had attended more prestigious and non in-state law schools were more likely to serve in Missouri Plan jurisdictions. The one consistent characteristic was that of prior prosecutorial experience.
Mid-Term Appointees vs. Elected in “Elected States”

The current study also seeks to compare lower trial court judges in the Commonwealth of Kentucky who have initially come into their positions by different means: non-partisan election and gubernatorial interim appointment. Not all judges attain their position at the typical replacement times. Some are elected and others are appointed mid-term to replaced judges who have retired, resigned, or died. The work of James Herndon (1962) brought to light a fact that surprised a number of people, including many legal scholars. Reviewing the members on state supreme courts from 1948 to 1957, Herndon found that in the states that had systems to elect judges, over half (55.8 percent) of all the justices serving on the supreme courts of those “election” jurisdictions had in fact been appointed by the governor in mid-term. Furthermore, for those states that held a non-partisan election, over 70 percent of the justices were found to have been appointed in this fashion.

In 1973 Stuart Nagel went a step further and published the initial study that compared the background characteristics of elected and interim appointed state supreme court justices. Utilizing data from 1955 Nagel found that elected judges were more liberal in their decisions regardless of political party affiliation. However, and more important to this study, Nagel determined that Catholics (considered a minority) were more than two times as likely to be initially elected rather than receive a mid-term appointment to a judgeship. Furthermore, those who attended a high tuition law school, had greater judicial experience, and had received scholarly honors were much more likely to be elected than to be appointed in mid-term.

The following year Atkins and Glick (1974) analyzed data from state supreme court justices who had served in 1966. They found that 40 percent of the judges serving in states utilizing partisan elections, and two-thirds of those in state using non-partisan elections, were
actually appointed to their positions. However, these authors also found that the “social characteristics,” in particular the educational background, of the judges to be comparable regardless of method of selection.

The second study of Glick and Emmert (1987b) mentioned above also took a brief look at mid-term appointments in election states and found that three-fourths of the appointed state supreme court justices who sat on the bench in 1980 and 1981 were actually born in-state while almost 90 percent of those who were actually elected were born there. No other meaningful or statistical differences on any other variables were detected.

The aforementioned Fino (1987) study also considered differences between formally selected (by whatever means particular to that state) and interim appointed judges serving on the same state supreme court. Again, once controls were introduced for the confounding effects of region, few statistical differences in judicial background were detected: interim appointees were more likely to come from small towns (60 percent), have prosecutorial experience (53.6 percent), and be Protestant (47 percent).

As ethnic diversification of the bench has become an issue, studies have addressed judicial characteristics and the impact of judicial selection method on minority judicial representation. Michael Smith (1983) obtained background data from 185 of the 288 black judges sitting on the bench nationwide in 1972. Initially it was determined that of the judgeships listed as elective, 77 percent of the jurists had actually been appointed. This study also determined that although over half of the judges were born in the South, only 10 percent actually sat there. Three-fifths claimed to have come from working-class homes. One quarter had a history of working in civil service positions and over 16 percent had been career prosecutors. Nicholas Alozie (1988) found that the overall method of selection had no
statistical impact on the proportion of black judges on state courts, but did conclude that the number of available black attorneys was the most significant factor. Barbara Graham (1990), realizing that a high percentage of judges were actually appointed in election states, took this issue a step further and determined that appointment increases black representation on state trial courts, while election decreases it. This finding was in turn supported, albeit marginally, by Esterling and Andersen (1999), who also found that judicial nominating commissions enhanced diversity but that governors showed no clear tendency to either promote or discourage diversity in making their appointments.

The most recent examination of the staffing of state supreme courts through interim appointments was conducted by Holmes and Emrey (2006). These authors reviewed justices who served on elected state supreme courts from 1964 to 2004 and found that 52 percent were actually appointed in mid-term. Wide variation across states was also detected: only 18 percent of the judges in Pennsylvania were found to be appointed while over 90 percent of both Georgia and Minnesota supreme court justices were mid-term appointees. They also found support for the importance of mid-term appointments in promoting diversity as 11 percent of the interim appointees were nonwhite while just 4 percent of those elected were nonwhite.

The only purely trial court study which compares elected and mid-term appointees is that of DuBois (1983) which considered judges serving on California’s major trial court (the California Superior Court) from 1959 to 1977. Of the 739 jurists, 662, or almost 90 percent, were found to be appointed to their positions. Over this period the elected judges were more likely to be female (6.7 percent) and nonwhite (9.1 percent) than the appointed judges (2.7 percent and 3.7 percent, respectively). Religious affiliation (about 25 percent Catholic, 15
percent Jewish, and 57 percent Protestant), age at time of selection to the Superior Court bench (49), in-state undergraduate education (approximately 80 percent), attendance at an in-state law school (about 84 percent), and the proportions of elected and appointed judges born in the county of their judgeships (24 percent) were all found to be roughly the same regardless of method of selection. The only dimension on which the judges were found to differ was that of their legal experience prior to attaining the bench. Over two-thirds of the appointed judges were drawn from the non-governmental sector while only 40 percent of the elected judges came from that background. Conversely, almost 60 percent of the elected judges had spent half or more of their professional lives in public careers as opposed to less than a third of the appointed judges. Finally, 54 percent of the elected judges had previous judicial experience (with a median time of 7.5 years), while about 47 percent of the appointees were found to have such prior experience (with a median of only 4 years).

These studies show that elected judges are more likely than mid-term appointees to be white, to have practiced law in the public sector, to have prior judicial experience, to be non-Protestant, and to have an in-state birth.

**Overall Implications**

Based upon the aforementioned research, and the recognition that so little data on state lower trial court judges has been attained and examined, the expected findings of this study are difficult to predict. However, it appears that the typical District Court judge in Kentucky (elected) and the typical County Court judge in Colorado (appointed by the governor under the Missouri Plan) may share a number of attributes despite the method of selection. First, it appears that the mean age when one initially attains a judgeship is in one’s early fifties. This also gives the individual ample time to gain some type of experience in the legal field before
taking the bench with the best estimate of that experience coming from a prosecutorial background, especially in Colorado where the Missouri Plan is used. While neither court would be expected to have a majority of their members with degrees from elite undergraduate institutions or law schools, most judges would probably hold degrees from in-state institutions at both educational levels, while the Colorado jurists may be expected (although the studies disagree) to have a higher percentage of in-state legal educations, perhaps due to the influence of the local bar on the nomination process used in the Missouri Plan jurisdictions.

While no study exists regarding any state court other than a supreme court, it may be expected that the lower trial courts would also be filled with members of lower status Protestant denominations. Those state supreme courts previously studied are so comprised and most of these justices on these state supreme courts will have originally served as a judge in some inferior state court. However, of the judges that are in fact high status Protestants, the Colorado judges, appointed under the Missouri Plan, are expected to be greater in percentage than their Kentucky counterparts. It may also be predicted, again albeit without any prior studies on state trial court judges but based on data on state supreme court jurists, that a good number of judges (although not the majority) in both states would come from non-humble families who had a history of holding some type of public office, perhaps even a judgeship.

As to Kentucky District Court judges specifically, the majority will probably be found to have been initially appointed to their position mid-term, as opposed to elected. These appointed jurists may also be found to have attended higher tuition law schools and received more scholarly honors than their elected counterparts. It is further predicted that the appointees will be more likely to be a member of a minority group, to have practiced law in the private sector, to be Protestant, and to be born out of state.
All of these background characteristics may be utilized in assessing whether Max Weber’s concepts of regarding legal systems are at play in the lower trial courts of Kentucky and Colorado and, further, whether the particular judicial selection system impacts his concepts differently. While the present study does not propose to examine the amount of input that a political party or religious organization may have on a specific system, it does however consider affiliations that a judge may have in each.

As to Weber’s types of legitimate authority (charismatic, traditional, and rational-legal), the first relies on the endowment of some type of special powers and the study at hand does not lend itself to this concept unless it could be argued that charismatic individuals excel at attaining votes or appointments. The traditional model would be supported by strong family histories of public office and judicial employment. A well-to-do background may also assist in this regard but may only give an individual the opportunity to gain a law school education (and a higher quality one). Finally, the rational-legal model of authority composed of a highly organized legal staff of well trained professionals chosen on the basis of merit is the type that Weber contended was needed in complex modern societies. Hence, if the systems studied herein are in fact based on this concept, or differ therein, factors such as ethnicity, religion, family background, and localism should be found to be of less importance than those involving merit such as education and type of experience.

The purpose of this study is twofold. The first is to acquire information on background characteristics of the judges who serve on the lower levels of the trial courts of the states of Kentucky (District Court) and Colorado (County Court). This provides data on the heretofore unresearched lower trial court judges and further affords the novel opportunity to compare and contrast these judges with those of previously studied courts. The second purpose is to
compare and contrast the background characteristics of subsets of these judges dependent upon selection method: Kentucky elected judges vs. Kentucky appointed judges; and all Colorado judges vs. all Kentucky judges. The following research questions drive the overall purpose of this study:

**Q1.** What are the demographic backgrounds, personal and social characteristics, and career and educational experiences of the judges of the respective state courts?

**Q2.** Are those judges that are initially appointed by the Governor of Kentucky to fill an unexpired term similar to or different from those who initially achieved their position through election?

**Q3.** Are Colorado judges, who are all appointed by the governor under the “Missouri Plan,” similar to or different from all those in Kentucky?

The first research question simply seeks to acquire knowledge as to “who” are serving as judges in the two respective courts. This also allows for comparisons and contrasts with prior research findings on both a court by court basis as well as on a characteristic by characteristic basis. The other two research inquiries are based upon comparisons within courts (Kentucky appointed/Kentucky elected) and between states (Colorado/Kentucky). The data obtained will provide information in assessing whether Max Weber’s traditional and/or rational-legal models are applicable to the specific method of judicial selection.

This chapter has reviewed the prior research relevant to the present study. The next chapter presents the methods used in obtaining and analyzing the data obtained in exploring the selection method and judicial background characteristics.
CHAPTER FOUR

METHODOLOGY

This chapter explains the methods used in carrying out the study. The study participants are identified and a description of the data collection process, and the subsequent analysis of that data are presented.

Participants and Data Collection

The population of this study includes 226 potential judge participants. This represents all 116 Kentucky District Court judges and 110 of the 127 Colorado County Court judges. The 17 judges in Denver were omitted from this study as they are appointed by the Mayor of Denver, not the governor. A survey was sent via United States mail to each of the 226 judges in early January 2011. A second identical survey was mailed in late January 2011 to those judges who had not returned to the researcher a separate card evidencing their participation (and assuring the anonymity of their individual survey responses).

The Kentucky judges returned 69 of the 116 surveys which resulted in a response rate of 59.48 percent. Thirty-seven of those responding indicated that they had originally attained their position via election while 32 were initially appointed by the governor. The Colorado jurists returned 69 of the 110 surveys, thereby achieving a 62.72 percent response rate. A response rate in a mail survey of 50 percent is considered adequate (Babbie, 1990).

Surveys with return self-addressed stamped envelopes, cover letters, and consent forms (Appendices A1, A2, B1, B2, and C) were mailed to all sitting Kentucky District Court judges (n = 116) and all County Court judges in Colorado (n = 110). The survey was totally anonymous, with no identifying marks or numbers. A self-addressed stamped postcard (Appendix D) listing the name of the recipient also accompanied each survey. Each
respondent was asked to return the postcard separately from the survey. This afforded the opportunity to ascertain which recipients had responded without compromising their identities and, further, provided a listing of nonresponsive recipients. These judges were sent a follow-up letter (Appendix E1 and E2) along with copies of the survey, self-addressed stamped return envelopes, and consent forms approximately three weeks after the initial mailings. The surveys sent to all judges were identical with the exception of one additional question posed to the Kentucky judges asking them whether they were initially elected to their position or appointed by the governor to fill an un-expired term of office.

**Survey Questions**

The variables utilized in assessing the differences in background characteristics of the lower court trial judges relevant to this study were selected in an effort to focus on attributes, both ascriptive and not, that allow for the assessment of differences and/or similarities of those who attain these judgeships via different methods and their relation to Weber’s legal typologies. There are three selection methods: 1) the non-partisan electoral method employed by the Commonwealth of Kentucky; 2) the gubernatorial appointment method employed by Kentucky utilized when a sitting judge resigns, retires, or dies in order to fill the un-expired term of office; and 3) that of the State of Colorado which uses a more time consuming and complex gubernatorial appointment system based on merit (Missouri Plan).

The descriptive analysis reports the background characteristics of each of the groups of jurists. A chi-square analysis of the judges based on the three respective selection methods is also done. However, in order to utilize a chi-square analysis, if there are a large number of small cells, the practical alternative is to combine categories in such a manner as to eliminate
those cells (Blalock, 1979). Hence, a number of the answers to a particular survey question are collapsed and recoded as described below.

Max Weber’s theoretical framework concerning merit selection of judges may be explored through the survey. Is the attainment of a judgeship contingent upon education, family background, parental occupation, age, gender, kinship, and/or localism? If so, is the ruling elite system actually utilized more than the merit prototype? Further, are there differences in the Kentucky judges dependent upon their method of reaching the bench? Finally, does the overall “Missouri Plan” of gubernatorial appointment utilized in Colorado result in a different judicial makeup than that of the election system utilized in Kentucky?

The survey questions (Appendix A1 and A2) address critical factors useful in assessing background differences and/or similarities of the judges of the courts at hand. The variables are grouped into eight main categories which can in turn be used to assess whether the particular method of selection is more reflective of Weber’s traditional authority based on ascriptive characteristics or his rational-legal typology based upon merit.

Initially, the degree of localism is addressed. The Weberian model of traditional legal authority based on ascriptive characteristics is at issue here. Where was the judge born? Was it in-state? Did the judge attend an in-state undergraduate institution? Was their law school also in-state? How long have they actually resided in their particular county? Do they belong to a family that has lengthy and established ties there? If so, for how many generations? Moreover, have any of these family members ever held, now or in the past, public office or a judgeship (going back three generations)? This time frame is utilized as it expands most of the prior research which only looked to parental characteristics. These last survey questions are recoded as either “none” or as “one or more.” These recodes are necessitated by the small numbers of
individuals who report more than one relative having served in either public office or as a judge. More specifically, of the responses to the question asking the “number of relatives in public office in my generation,” 110 indicated “none”, 19 chose “one,” only 3 selected “two,” and just 1 reported “four.” The responses related to the “number of relatives in public office in my parents’ generation” were 104 for “none,” 25 for “one,” and only 4 for “2.” The final question relating to number of relatives in public office queried the number of relatives who held public office in the respondents’ grandparents’ generation. One hundred five indicated “none,” 20 reported “one,” 3 chose “two,” 2 selected “three,” and just 1 said “five.” Further, the same questions are posed inquiring about the number of relatives in each generation who have held a judgeship. In this case the categories are also condensed into “none” or “one or more.” The original responses to the number of relatives serving as judge in my generation were 111 who said “none”, 18 reported “one,” 3 indicated “two,” and 1 chose “three.” Answers to the question of the number of relatives who have held a judgeship in my parents’ generation were 122 “none,” 9 reported “one,” and just 1 said “two.”

The second category queried is that of affiliation with a particular political party. Are the jurists Democrats, Republicans, or a not a member of either party? While an individual is certainly free to choose political party affiliation, it is not merit based and falls into Weber’s ascriptive typology.

Third, inquiries explore a demographic base for the judges. Questions relating to the particular jurist’s current age, their age upon initial attainment of their judgeship, their gender, and ethnicity are posed. These too are ascriptive characteristics.

The fourth main category taps into the religious affiliations of the judges, another ascriptive characteristic. Are there particular religious denominations to which most of the
judges belong? Originally, eight Protestant denominations (Baptist, Congregationalist, Episcopalian, Lutheran, Methodist, Presbyterian, Unitarian, and other), Catholic, Jewish, other, and none are listed as alternatives on the survey. The lack of the number of responses in some of these categories again necessitated recodes. While 29 of the respondents said they were Catholic, 23 indicated they were Baptist, 20 reported they were Methodist, 23 picked “other Protestant,” and 25 claimed no religious affiliation. Only 1 judge said they s/he was Jewish, 1 said Congregationalist, 5 reported Episcopalian, 3 chose Lutheran, 4 were Presbyterian, and another 3 claimed “other.” Thus, these categories are ultimately collapsed into Catholic (29 responses), Baptist (23 responses), Methodist (20 responses), other Protestant (36 responses), and other/none (29 responses). For the logistic analysis religion is further condensed into just three categories: Catholic, Protestant, and other/none.

Fifth, the average yearly income of the judges over the three year period immediately preceding their attainment of the bench is addressed. Do the judges share common economic backgrounds which may be seen as informal ascriptive prerequisites to attain a judgeship? Six original categories are presented: less than $35,000/year (10 responses); $35,001 to $50,000/year (22 responses); three categories each based on additional increments of $50,000/year (36, 31, and 22 responses respectively), and more than $150,000/year (10 responses). These are recoded into three sections: less than $50,000/year (32 responses), between $50,001/year and $100,000/year (67 responses), and more than $100,000/year (32 responses).

Sixth, prior legal experience is also queried. This is a powerful indicator of Weber’s merit-based rational-legal typology. Experience provides information not only about the length of time previously involved in the practice of law but also the particular legal
position(s) formally held. The main emphasis of practice over the three year period immediately preceding attainment of the bench is questioned. Originally 13 categories are presented from which to choose which also received the following respective number of responses: 1) general corporate and business (4 responses); 2) probate, trust, and taxation (1 response); 3) domestic relations (13 responses); 4) negligence and/or compensation law principally for plaintiff (5 responses); 5) negligence and/or compensation law principally for defendant (5 responses); 6) negligence and/or compensation law about equally for plaintiff and defendant (0 responses); 7) labor law principally for unions (0 responses); 8) real property (6 responses); 9) municipal law (2 responses); 10) administrative law (5 responses); 11) criminal law as prosecution (35 responses); 12) criminal law for defendant (20 responses); and 13) other (19 responses). These categories are recoded into four groups: probate and taxation (14 responses), negligence (10 responses), criminal (55 responses), and other (36 responses). Size and type of law firm (both the majority of time since admitted to the bar, as well as upon attaining their judgeship) are also queried. Original categories for each of these questions and their response numbers for each include solo practice (38 responses since admission, 48 responses upon judgeship); two person partnership (14 responses since admission, 11 responses upon judgeship); partnership of 3 to 5 lawyers (16 responses since admission, 10 responses upon judgeship); partnership of 6 to 10 lawyers (1 response since admission, 0 responses upon judgeship); partnership of 11 to 29 lawyers (0 responses since admission, 1 response upon judgeship); partnership of 30 or more lawyers (2 responses since admission, 0 responses upon judgeship); salaried in law firm of 1 to 5 lawyers (6 responses since admission, 4 responses upon judgeship); salaried in law firm of 6 to 10 lawyers (no responses in either category); salaried in law firm of 11 to 29 lawyers (2 responses since admission, 1
response upon judgeship); salaried in law firm of 30 or more lawyers (2 responses since admission, 1 response upon judgeship); salaried employee of corporation (2 responses in each category); and salaried employee of a government agency (35 responses since admission, 38 responses upon judgeship). These are collapsed into four categories: solo (38 responses since admission, 48 responses upon judgeship), partnership (33 responses since admission, 22 responses upon judgeship), law firm or corporation (12 responses since admission, 8 responses upon judgeship), and governmental (35 responses since admission, 38 responses upon judgeship). The number of jury trials tried as lead attorney is also queried with categories of none, one to three, four to ten, eleven to twenty, and more than twenty.

Further questions concern the main occupational background of the judges themselves. Weber’s merit-based conception of judges selected based upon their training and career paths is relevant here. What did they do, if anything, full-time before becoming an attorney? Did they have a full-time job, a part-time job, or were they a full-time student before they entered law school? Have they ever held an elective and/or an appointive public office? If so, was it in an elective or appointed city, county, state, or federal office? Original categories and response numbers to these latter questions were 1) elective city office (0 responses); 2) appointed city office (21 responses); 3) elected county office (5 responses); 4) appointed county office (17 responses); 5) elected state office (2 responses); 6) appointed state office (14 responses); 7) elective federal office (0 responses), 8) appointed federal office (1 response); 9) other (7 responses); and none (71 responses). These categories are ultimately condensed into three groups: elective (7 responses), appointive (60 responses), and none (71 responses).

The eighth and final category addresses the occupational and educational histories of the judges’ ancestors. Principal occupation of each parent is asked as an open-ended question
in the survey. This is ultimately put into five categories for the mother (homemaker, business, education, medical, and other) and five categories for the father (legal, education, medical, other white collar, and blue collar). How well were they educated? Are the judges first-generation college attendees or is a parental collegiate background a prerequisite for their children to attain a judgeship? Thus, nine levels of education are originally presented in the survey (along with original response numbers): 1) did not graduate from high school (14 responses for father, 8 responses for mother); 2) high school graduate (30 responses for father, 43 responses for mother); 3) general equivalency diploma (no responses for either parent); 4) technical school (4 responses for each parent); 5) attended some college (19 responses for father, 17 responses for mother); 6) 2 year college degree (4 responses for father, 12 responses for mother); 7) 4 year college degree (15 responses for father, 27 responses for mother); 8) attended some graduate or professional school (4 responses for father, 6 responses for mother); and 9) graduate or professional school degree (47 responses for father, 20 responses for mother). These categories are in turn condensed into less than college (48 responses for father, 55 responses for mother), some college but no degree (23 responses for father, 29 responses for mother), college graduate 19 responses for father, 33 responses for mother), and completion of a graduate or professional degree (47 responses for father, 20 responses for mother) for each parent.

**Data Analysis**

A commercial software package (SPSS) is used for the statistical analyses of this study. Initially, a descriptive analysis is performed for each of the three groups of judges. Inferential tests are then utilized to compare the groups. The statistical tests used in this study are chi-square, t-tests, and logistic regression. Chi-square is a general test which determines
whether a statistically significant relationship exists between two categorical variables. Independent-samples t-tests are used to determine whether there is a statistically significant difference between the mean scores of two groups. Logistic regression is used to test models to predict categorical outcomes with two categories.

For each of the remaining research questions and related hypotheses the Bonferroni adjustment is utilized. When many different comparisons are conducted on the same data making adjustments to the significance level of a statistical test is a common statistical practice (Mundfrom et al, 2006). This is done to protect against increased risks of Type I errors (rejecting the null hypothesis of no difference among the groups when it is actually true). The Bonferroni adjustment involves setting a more stringent alpha level (region of rejection) for each comparison to keep the alpha across all the tests at a reasonable level (Pallant, 2007). This is accomplished by dividing the alpha level (0.05) by the number of comparisons. Since there are 35 significance tests in each section, the p-value used to determine statistical significance is adjusted as follows: adjusted p-value = 0.05/35 = 0.0014. Although all of the statistical tests where p <= 0.05 are presented in this paper, only those less than 0.0014 should be declared significant for research purposes. Since the homogeneity of variance test was significant for some of the continuous measures, t-tests, used when two population variables are assumed to be unequal and therefore must be estimated separately, were used in place of ANOVAs.

Logistic regression analyses are also performed. Forward stepping and backward stepping are used. When stepping is used, one item is added or removed at a time. With forward stepwise regression the item with the strongest significant relation to the dependent variable is entered first. In the next step, the variable most significantly related among the
remaining items is entered. Stepping continues until no items are significantly associated with the dependent variable. Backward stepwise regression is the same, except that all of the items are entered first, and one by one, items are removed, beginning with the one that is least associated with the dependent variable. We normally expect the backward and forward stepping models to be identical. If they are not, further checking of the independent variables may be done. In all cases, the forward and backward stepwise models are identical. To avoid problems with listwise deletion of missing values, two approaches are used. For independent variables with large numbers of missing values, a “missing” category is created. Four variables have problems with missing cases in excess of ten in each of the three categories found to have any significant differences so an additional category of “missing” is added to their analyses. These include the principle focus of practice (23 missing cases), the practice type since admission to the bar (20 missing cases), the practice type upon attaining judgeship (22 missing cases), and law school class rank (12 missing cases).

Additionally, the initial logistic regressions are done in five groups in order to find the variables in each group that are significantly associated with the dependent variables. These five groups and their accompanying variables are localism, political party, demographics, religion and family background, and legal experience. After the logistic models are selected, all of the variables significantly associated with the outcome are entered into each model simultaneously. The independent variable with the strongest association in each group is then entered into a final model. Significant results and accompanying odds ratios are calculated. For localism, in-state birth, years in county, two or more generations in county, in-state undergraduate school, in-state law school, and years in state are entered. Concerning political party, the entries are Democrat, Republican, and “other.” For demographics, the average age,
average age at judgeship, time in judgeship, white, Spanish/Hispanic/Latino, and male are entered. Religion, father’s education, mother’s education, father’s occupation, mother’s occupation, generations in public office, and generations as judge are all entered for religion and family background. The final model utilizes the four most significant variables and includes religion, two or more generations in county, political party, and age.

Colorado is used as the reference outcome level. Survey items predictive of and differentiating between the characteristics of judgeship in a state are selected. The odds ratio, $\exp(\beta)$, (the odds of an event happening in one group divided by the odds of the event happening in the other group) are also presented.

However, the aforementioned variables are all ascriptive. Therefore, an additional regression is performed on legal experience variables involving prior time in the legal field, practice since admitted, practice at judgeship, focus of practice, whether the judge had prior service as a prosecutor, and the number of jury trials experienced as a lead attorney. Legal experience involving pre-law school occupation and prior offices held are also queried.

Finally, a review of the gender distribution of each state shows that of the 116 Kentucky judges, 42 are female (36.5 percent). Seventeen of the 69 returned Kentucky surveys were from female jurists, or 24.63 percent of the sample. The population of the Colorado judges was 110, composed of 35 females (31.8 percent). Fourteen of the 69 returned Colorado surveys were completed by female judges, or 20.28 percent of the sample. Hence, based upon these findings, the sample for this study disproportionately represents males so any conclusions must be tentative.
Summary

The methodology and research design that are used to obtain, and compare and contrast the background characteristics of the judges dependent upon their state and method of attaining their respective judgeships are described in this chapter. The participants and survey instruments used to collect this data are identified and a description of the data collection process as well as analysis is discussed.

The following Results chapter first presents descriptive statistics to describe demographic backgrounds, personal and social characteristics, and career and educational experiences of the judges based upon four categories: Kentucky elected judges, Kentucky appointed judges, all Colorado judges, and all Kentucky judges, It then employs inferential statistics and tests in order to compare and contrast the backgrounds of the judges in each of these categories in an effort to determine which, if any, background characteristics are significantly associated with differences between the respective groups of judges and ultimately which, if either, of Weber’s legal typologies is more indicative of a particular group.
CHAPTER FIVE

RESULTS

DESCRIPTIVE STATISTICS

Before any of the proffered hypotheses involving differences between specific categories of judges may be addressed, it is incumbent to initially describe in general terms the backgrounds of the judges in each state. This information provides the answer to the first research question: \textbf{Q1}. What are the demographic backgrounds, personal and social characteristics, and career and educational experiences of the judges of the respective state courts? It further provides information which is utilized in inferentially addressing the second and third research questions: \textbf{Q2}. Are those judges that are initially appointed by the Governor of Kentucky to fill an unexpired term similar to or different from those who initially achieved their position through election? and \textbf{Q3}. Are Colorado judges, who are all appointed by the governor under the “Missouri Plan,” similar to or different from all those in Kentucky? The data compiled from the answers to these questions may then be utilized to address the fourth research question: \textbf{Q4}. Are the characteristics of either of Max Weber’s legal typologies (traditional authority based on ascriptive characteristics or rational legal authority based on merit) more prevalent based upon judicial selection method?

The data obtained is divided into eight main categories: localism, political party affiliation, demographics, religion, family background, income upon attaining judgeship, prior legal experience, prior public office/ occupation prior to law school), which are, in turn, further delineated where appropriate in order to attain a more specific description of
Table 1  Colorado vs Kentucky Significance Results

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Colorado (%)</th>
<th>Kentucky (%)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASCRIPTIVE CHARACTERISTICS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LOCALISM</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In-state birth</td>
<td>32.4 (n = 68)</td>
<td>81.2 (n = 69)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td>Average time in state</td>
<td>34.3 yrs (n = 69)</td>
<td>44.9 yrs (n = 69)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td>Average time in county</td>
<td>23.0 yrs (n = 68)</td>
<td>33.4 yrs (n = 68)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td>Generations in county</td>
<td>(n = 69)</td>
<td>(n = 69)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td>One</td>
<td>84.1</td>
<td>27.5</td>
<td></td>
</tr>
<tr>
<td>Two or three</td>
<td>14.5</td>
<td>26.1</td>
<td></td>
</tr>
<tr>
<td>Four or more</td>
<td>1.4</td>
<td>46.4</td>
<td></td>
</tr>
<tr>
<td>In-state undergrad school</td>
<td>47.0 (n = 66)</td>
<td>89.7 (n = 68)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td>In-state law school</td>
<td>47.5 (n = 61)</td>
<td>92.6 (n = 68)</td>
<td>&lt;.0005***</td>
</tr>
<tr>
<td><strong>POLITICAL PARTY</strong></td>
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<td></td>
<td>&lt;.0005***</td>
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<tr>
<td>Democrat</td>
<td>34.3</td>
<td>70.1</td>
<td></td>
</tr>
<tr>
<td>Republican</td>
<td>40.3</td>
<td>26.9</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>25.4</td>
<td>3.0</td>
<td></td>
</tr>
<tr>
<td><strong>DEMOGRAPHICS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average age</td>
<td>54.7 yrs (n = 68)</td>
<td>50.1 yrs (n = 69)</td>
<td>.002**</td>
</tr>
<tr>
<td>Average age at judgeship</td>
<td>45.1 yrs (n = 68)</td>
<td>41.0 yrs (n = 67)</td>
<td>.003**</td>
</tr>
<tr>
<td>Time in judgeship</td>
<td>9.6 yrs (n = 69)</td>
<td>9.5 yrs (n = 68)</td>
<td>.946</td>
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<tr>
<td>White</td>
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<td>100 (n = 69)</td>
<td>.022*</td>
</tr>
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<td>Spanish/Hispanic/Latino</td>
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<td>3.0 (n = 66)</td>
<td>.034*</td>
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<td>Male</td>
<td>69.6 (n = 69)</td>
<td>65.2 (n = 69)</td>
<td>.039*</td>
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<td><strong>RELIGION</strong></td>
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<td></td>
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<tr>
<td>Baptist</td>
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<td>30.4</td>
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<tr>
<td>Methodist</td>
<td>11.8</td>
<td>17.4</td>
<td></td>
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<td>Catholic</td>
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<td>24.6</td>
<td></td>
</tr>
<tr>
<td>Other Protestant</td>
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<tr>
<td>None</td>
<td>36.8</td>
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Table 1  Colorado vs Kentucky Significance Results (continued)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Colorado (%)</th>
<th>Kentucky (%)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FAMILY BACKGROUND</strong></td>
<td></td>
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<tr>
<td>Father’s education</td>
<td>(n = 68)</td>
<td>(n = 69)</td>
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<tr>
<td>Less than college</td>
<td>38.2</td>
<td>31.9</td>
<td></td>
</tr>
<tr>
<td>Some college</td>
<td>14.7</td>
<td>18.8</td>
<td></td>
</tr>
<tr>
<td>College graduate</td>
<td>19.1</td>
<td>8.7</td>
<td></td>
</tr>
<tr>
<td>Grad/Professional degree</td>
<td>27.9</td>
<td>40.6</td>
<td></td>
</tr>
<tr>
<td>Mother’s education</td>
<td>(n = 68)</td>
<td>(n = 69)</td>
<td>.061</td>
</tr>
<tr>
<td>Less than college</td>
<td>41.2</td>
<td>39.1</td>
<td></td>
</tr>
<tr>
<td>Some college</td>
<td>16.2</td>
<td>26.0</td>
<td></td>
</tr>
<tr>
<td>College graduate</td>
<td>27.9</td>
<td>20.3</td>
<td></td>
</tr>
<tr>
<td>Grad/Professional degree</td>
<td>14.7</td>
<td>14.5</td>
<td></td>
</tr>
<tr>
<td>Father’s occupation</td>
<td>(n = 68)</td>
<td>(n = 69)</td>
<td>.057</td>
</tr>
<tr>
<td>Legal</td>
<td>10.3</td>
<td>23.2</td>
<td></td>
</tr>
<tr>
<td>White collar/Edu/Med</td>
<td>51.5</td>
<td>34.8</td>
<td></td>
</tr>
<tr>
<td>Blue collar</td>
<td>38.2</td>
<td>42.0</td>
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<tr>
<td>Mother’s occupation</td>
<td>(n = 67)</td>
<td>(n = 67)</td>
<td>.948</td>
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<tr>
<td>Homemaker</td>
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<tr>
<td>Business/Clerk/Edu/Med</td>
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<td>46.3</td>
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</tr>
<tr>
<td>Other</td>
<td>7.5</td>
<td>8.9</td>
<td></td>
</tr>
<tr>
<td>Generations in public office</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current</td>
<td>(n = 65)</td>
<td>(n = 68)</td>
<td>.052</td>
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<tr>
<td>None</td>
<td>89.2</td>
<td>76.5</td>
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<tr>
<td>One or more</td>
<td>10.8</td>
<td>23.5</td>
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<tr>
<td>Parents’</td>
<td>(n = 65)</td>
<td>(n = 68)</td>
<td>.361</td>
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<tr>
<td>None</td>
<td>81.5</td>
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<tr>
<td>One or more</td>
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<td>25.0</td>
<td></td>
</tr>
<tr>
<td>Grandparents’</td>
<td>(n = 63)</td>
<td>(n = 68)</td>
<td>.048*</td>
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<tr>
<td>None</td>
<td>87.3</td>
<td>73.5</td>
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<tr>
<td>One or more</td>
<td>12.7</td>
<td>26.5</td>
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</table>
### Table 1  Colorado vs Kentucky Significance Results (continued)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Colorado (%)</th>
<th>Kentucky (%)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Generations as judge</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current (n = 63)</td>
<td></td>
<td></td>
<td>.413</td>
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<tr>
<td>None</td>
<td>86.2</td>
<td>80.9</td>
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<tr>
<td>One or more</td>
<td>13.8</td>
<td>19.1</td>
<td></td>
</tr>
<tr>
<td>Parents’ (n = 64)</td>
<td></td>
<td></td>
<td>.361</td>
</tr>
<tr>
<td>None</td>
<td>96.9</td>
<td>88.2</td>
<td></td>
</tr>
<tr>
<td>One or more</td>
<td>3.1</td>
<td>11.8</td>
<td></td>
</tr>
<tr>
<td>Grandparents’ (n = 65)</td>
<td></td>
<td></td>
<td>.058</td>
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<tr>
<td>None</td>
<td>96.9</td>
<td>88.2</td>
<td></td>
</tr>
<tr>
<td>One or more</td>
<td>3.1</td>
<td>11.8</td>
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### ACHIEVEMENT CHARACTERISTICS

<table>
<thead>
<tr>
<th>AVG YEARLY INCOME</th>
<th>(n = 64)</th>
<th>(n = 67)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than $50,000</td>
<td>23.4</td>
<td>25.3</td>
<td>.459</td>
</tr>
<tr>
<td>$50,000 to $100,000</td>
<td>56.2</td>
<td>46.2</td>
<td></td>
</tr>
<tr>
<td>More than $100,000</td>
<td>20.3</td>
<td>28.3</td>
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</table>

### LEGAL EXPERIENCE

<table>
<thead>
<tr>
<th>Prior time in legal field</th>
<th>15.3 yrs (n = 69)</th>
<th>14.6 yrs (n = 69)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solo</td>
<td>29.0</td>
<td>26.1</td>
<td>.652</td>
</tr>
<tr>
<td>Government</td>
<td>29.0</td>
<td>21.7</td>
<td></td>
</tr>
<tr>
<td>Partnership</td>
<td>13.0</td>
<td>34.8</td>
<td></td>
</tr>
<tr>
<td>Law firm/Corp</td>
<td>5.8</td>
<td>11.6</td>
<td></td>
</tr>
<tr>
<td>Missing</td>
<td>23.2 (n = 16)</td>
<td>5.8 (n = 4)</td>
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</table>

<table>
<thead>
<tr>
<th>Practice at judgeship</th>
<th>(n = 69)</th>
<th>(n = 69)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solo</td>
<td>37.7</td>
<td>31.9</td>
<td></td>
</tr>
<tr>
<td>Government</td>
<td>27.5</td>
<td>27.5</td>
<td></td>
</tr>
<tr>
<td>Partnership</td>
<td>11.6</td>
<td>20.3</td>
<td>.003**</td>
</tr>
<tr>
<td>Law firm/Corp</td>
<td>5.8</td>
<td>5.8</td>
<td></td>
</tr>
<tr>
<td>Missing</td>
<td>17.4 (n = 12)</td>
<td>14.5 (n = 10)</td>
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</table>
Table 1  Colorado vs Kentucky Significance Results (continued)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Colorado (%)</th>
<th>Kentucky (%)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focus of practice</td>
<td>(n = 69)</td>
<td>(n = 69)</td>
<td>.066</td>
</tr>
<tr>
<td>Probate/Tax/Domestic</td>
<td>17.4</td>
<td>8.7</td>
<td></td>
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<tr>
<td>Negligence</td>
<td>1.4</td>
<td>13.0</td>
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<tr>
<td>Criminal</td>
<td>39.1</td>
<td>40.6</td>
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<tr>
<td>Other</td>
<td>23.2</td>
<td>23.2</td>
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<tr>
<td>Missing</td>
<td>18.8 (n = 13)</td>
<td>14.5 (n = 10)</td>
<td></td>
</tr>
<tr>
<td>Prior prosecutor</td>
<td>66.6 (n = 63)</td>
<td>62.3 (n = 69)</td>
<td>.602</td>
</tr>
<tr>
<td>Jury trials</td>
<td>(n = 63)</td>
<td>(n = 69)</td>
<td>.538</td>
</tr>
<tr>
<td>None to three</td>
<td>12.8</td>
<td>7.2</td>
<td></td>
</tr>
<tr>
<td>Four to ten</td>
<td>12.8</td>
<td>20.2</td>
<td></td>
</tr>
<tr>
<td>Ten to twenty</td>
<td>12.6</td>
<td>13.0</td>
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</tr>
<tr>
<td>More than twenty</td>
<td>61.9</td>
<td>59.4</td>
<td></td>
</tr>
<tr>
<td>Class rank</td>
<td>(n = 69)</td>
<td>(n = 69)</td>
<td>.239</td>
</tr>
<tr>
<td>Top third</td>
<td>29.0</td>
<td>39.1</td>
<td></td>
</tr>
<tr>
<td>Middle third</td>
<td>44.9</td>
<td>52.2</td>
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</tr>
<tr>
<td>Lower third</td>
<td>13.0</td>
<td>4.3</td>
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<tr>
<td>Missing</td>
<td>13.0 (n = 9)</td>
<td>4.3 (n = 3)</td>
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PRIOR PUBLIC OFFICE/PRE-LAW STATUS

<table>
<thead>
<tr>
<th>Prior public office</th>
<th>(n = 69)</th>
<th>(n = 69)</th>
<th>.146</th>
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<tbody>
<tr>
<td>Elected</td>
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<td>8.6</td>
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<tr>
<td>Appointed</td>
<td>46.3</td>
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<td>None</td>
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<td>50.7</td>
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</table>

<table>
<thead>
<tr>
<th>Pre-law status</th>
<th>(n = 62)</th>
<th>(n = 68)</th>
<th>.457</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full time student</td>
<td>58.0</td>
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</tr>
<tr>
<td>Full time employment</td>
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</tr>
<tr>
<td>Part time employment</td>
<td>6.5</td>
<td>10.3</td>
<td></td>
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</tbody>
</table>

*p < .05
**p < .01
***p < .001
the judges of both Colorado and Kentucky. The first five categories represent ascriptive characteristics and the remaining three are associated with meritorious or achieved characteristics and are addressed in Table 1.

As stated above, the backgrounds of the judges of each respective state are addressed in the first research question (Q1). Each state is initially discussed separately. This allows for a comprehensive view of each state (and results of the particular selection method) on a broad scale. This is important because as this research is the first accounting of the overall characteristics of the lower trial court judges in both Colorado and Kentucky (or from any other state lower trial court), the findings provide seminal background characteristics regarding the make-up of each court. Moreover, these initial findings are further utilized to inform the remaining research questions which involve comparisons between, and within, each respective state’s system. Further, the results also provide information which is used to determine which of Weber’s legal typologies is more represented. Hence, the background characteristics of the judges from each state are initially presented below.

Table 1 lists the data for Colorado and Kentucky jurists initially dependent on whether it is ascriptive or based on achievement (merit). These divisions are then further delineated into the eight previously discussed main categories with their respective components. While not listed in Table 1, ranges and medians are also provided in the following discussion.

**Characteristics of Colorado Judges**

Ascriptive characteristics of the Colorado judges include localism, political party affiliation, general demographics, religion, and family background. Localism, or historic ties a judge may have to their particular jurisdiction, was a main topic of this research and is shown
in Table 1. One third of the jurists reported being born in Colorado. The range in years for the length of time that the judges had lived in Colorado was between 8 and 66, with the average being 34 years and the median 33 years. As for length of residence in the particular county in which they serve, the range was between 2 and 54 years, while the mean and the median ages were both 23 years. Nearly 85 percent of the judges said they were the first generation of their family to live in their county, while only 7 percent indicated that they were the second generation to do so, and another 7 percent reported that they were the third generation to do so. Achieving a diploma from an in-state undergraduate institution as well as from an in-state law school are also characteristics that are considered in the determination of localism. The Colorado judges were consistent in their selection of schools as about 47 percent reported that they had graduated from an in-state undergraduate college or university while the same percentage said they had been granted a diploma from an in-state law school.

In regards to political party affiliation, 34 percent of the judges said they were affiliated with the Democratic Party, 40 percent indicated the Republican Party, and about one fourth chose the option of “other.”

As it relates to general demographics, and also noted in Table 1, the mean age of a Colorado County Court judge was 54.7 years, while the median age was 56.5 years. The youngest judge was 36 years old and the oldest was 70. The mean age at which a jurist initially attained their particular judgeship was 45 years, which also represented the median age. The range of ages at initial appointment was between 28 and 63 years. The average length of service on the bench was 9.6 years, while the median was 7 years. The time span for length of service stretched from 1 year to 36 years. Almost 93 percent of the judges considered themselves as white (13 percent of the total as Spanish, Hispanic, or Latino), while
the remaining seven percent listed themselves as white and American Indian. Nearly 7 out of
10 judges were male.

As to religion, only 3 percent of the County Court judges reported they were Baptist,
12 percent said they were Methodist, and about one in three of the jurists claimed some other
Protestant membership. Eighteen percent indicated that they were Catholic. Over one-third
said they were affiliated with some other Protestant religion. Moreover, over one-third chose
the option of “none” on the survey.

Family background, including parental education and occupation, and relatives (both
current generation and prior generations) who hold/ have held both public offices and/or
judgeships was also considered in Table 1. Thirty-eight percent reported their father as
achieving only a high school diploma, almost 20 percent indicated that their father had
graduated from a four year college or university, and another 28 percent of the judges said that
their father held a graduate or professional school degree. Almost 4 in 10 of the judges said
that the highest degree obtained by their mother was a high school diploma, while 28 percent
reported that their mother had graduated from a four year college of university and another 15
percent listed that a graduate or professional school degree had been attained by their mother.
Just over half said that their father had held a primarily white collar job, 38 percent indicated a
blue collar job, and 10 percent specifically reported employment in the legal field. About 46
percent of the jurists said that their mother had primarily been a homemaker and the same
percentage reported their mother to have been involved in a business, education, or medical
field.

The vast majority of the judges claimed to have no relatives holding public office
(other than a judgeship) in either their own generation (89 percent), in their parents’
generation (81 percent), or in their grandparent’s generation (87 percent). Similar answers were found concerning whether the judges had relatives holding a judgeship (86 percent, 97 percent, and 97 percent, respectively).

The remaining three categories are all based on achievement or merit. The average yearly income derived from the practice of law over the three year period immediately preceding appointment to the bench was solicited and is depicted in Table 1 as well. About one fourth of the judges reported averaging less than $50,000 over this period and almost 56 percent claimed that they earned between $50,000 and $100,000 per year. The remaining one fifth of the judges indicated that they had averaged more than $100,000 during this time. (It must also be noted that these figures have not been adjusted for inflation and associated changes in the “real worth” of money over a multiyear span of time.)

Prior legal experience was also considered and is depicted in Table 1. However, it must be noted that the position of Colorado County Court Judge does not require a law degree (nor any particular educational or occupational experience), and 8.7 percent of the survey respondents indicated that they had no legal background (not listed in Table 1). Notwithstanding this fact, the participants in the study reported an average of just over 15 years of practice in the field of law prior to attaining their current position, with the median years of experience also being 15 years. The range of prior years in the legal profession was also affected by those 8.7 percent as this resulted in a span from 0 to 37 years. Further, the type of legal practice in which the judges had been previously engaged was also queried.

About 29 percent indicated that their main form of practice since being admitted to the bar was as a solo practitioner and another 29 percent worked as some type of government attorney. Approximately 13 percent spent most of their career in some type of partnership.
Regarding the main type of practice at the time they were initially appointed to the bench, almost 38 percent were working as a sole practitioner, another 27 percent were working as a government attorney, and nearly 12 percent indicated that they were in a partnership at that time. (17.4 percent of the cases were listed as missing.)

Relating to the primary focus of their prior practice, about 17 percent reported probate/tax/domestic relations work, another 40 percent reported criminal defense work, and about one fourth chose various other foci. (18.8 percent of the cases were listed as missing.) Two thirds of all the responders reported being engaged in prosecutorial work at some time during their careers with a range from 1 to 28 years of service, a mean of 6.8 years and a median of 4 years. Most judges (62 percent) had more than 20 jury trials as lead attorney under their belt while almost 13 percent reported between 10 and 20 and another 13 percent indicated between 4 and 10. Finally, while about one third of the jurists classified themselves as being in the top one third of their law school class, over one half (52 percent) reported their class rank to be in the middle one third of the class (13 percent of the respondents failed to answer this question and were listed as missing.)

Regarding prior public office/occupation prior to law school, most of the Colorado judges (52 percent) indicated that they had no experience in holding a prior public office, although over 46 percent reported holding an appointive position at some time. Over 58 percent said they were engaged as a full time student immediately prior to their entry into law school while 36 percent had been employed full time.
Characteristics of All Kentucky Judges

Data relating to all of the Kentucky judges is also presented in Table 1. Initially the five ascriptive categories are discussed. The concept of localism as it applies to all Kentucky jurists is first reported, and eight in ten of the judges were born in Kentucky. The average length of time the judges reported living in Kentucky was almost 45 years, the median number of years was 46, and the range was between 8 and 76 years. The lengths for residence in their particular county were an average of 33 years, a median of 32 years and a time span of between 6 and 64 years. Over 46 percent indicated that their family had resided in their county for more than three generations, about one quarter reported being the first generation, and 26 percent said that they were second generation county residents. Finally, the vast majority of the judges reported that they had graduated from an in-state undergraduate institution (90 percent) and even more had graduated from a Kentucky law school (93 percent).

Table 1 indicates that seven of ten of the Kentucky judges were affiliated with the Democratic Party, while only one quarter indicated that they were affiliated with the Republican Party. Three percent claimed some other party.

Regarding demographics and also depicted in the same table, the youngest Kentucky District Court judge was 31 years of age while the oldest was 76. The mean age was 50.1 years and the median age was 40.8 years. The range of ages at which a judge initially took the bench was between 29 and 58 years. The average age at attainment was 41 years and the median age was 40.5 years. The judges reported that they had served in their particular judgeship from 0 years (recently attained) all the way to 52 years, with the mean number of years of service being 9.5 and the median 8 years. All of the judges listed themselves as white.
and 3 percent of those stated that they were Spanish, Hispanic, or Latino. Sixty five percent of
the judges were male.

Thirty percent of the judges reported Baptist as their religious affiliation, 17 percent
were Methodist, and about 22 percent were some other type of Protestant. Almost one in four
of the jurists subscribed to Catholicism and only four percent said that they were not affiliated
with any religion.

Family background factors are noted in the same table and indicate that almost one in
three of the judges said that their father had a less than college education, 18 percent reported
that their father had attended some college, less than 9 percent of their fathers had acquired a
college diploma as their highest educational achievement, and over four in ten indicated that a
graduate or professional degree had been attained by their father. About 40 percent of the
jurists said that their mother had less than a college education, while 26 percent reported that
their mother had attended some college, about one in five mothers had graduated from
college, and another 15 percent indicated that their mother had received a degree from a
graduate or professional school. Almost 35 percent of the judges said that their father was
employed as a white collar worker, 42 percent said their father had been a blue collar
employee, and almost one quarter of the total revealed that their father had been specifically
involved in the legal field. Homemaker was listed as the primary occupation of their mother
by 45 percent of the judges, while business, education, or medical accounted for another 46
percent.

Most judges said that they had no relatives holding public office in either their own
generation (76 percent), in their parents’ generation (75 percent), or in their grandparents’
generation (73 percent). About one in four indicated that one other person in each of these
generations had held a public office. When queried regarding relatives in each of these
generations that have held a judgeship, the judges indicated that about 80 percent had no
current generation relative so employed, and that about 9 in 10 had no relatives from either of
the other two generations who had ever served on the bench.

The three previously discussed achievement or merit-based categories were also
explored for all of the Kentucky jurists. When asked about their average yearly income
derived from the practice of law over the three year period immediately preceding their
judgeship, about one fourth said they earned less than $50,000 per year, about half reported an
income of between $50,000 and $100,000, and the remaining one fourth exceeded $100,000
per annum. (It must also be noted that these figures have not been adjusted for inflation and
associated changes in the “real worth” of money over a multiyear span of time.)

Prior legal experience of the Kentucky jurists is also reported in Table 1. The average
number of years that the judges reported as having practiced in the field of law prior to their
service on the bench was approximately 15. The median time was 13 years and the range
spread from 2 to 48 years. Approximately 26 percent of the judges said the main type of
practice in which they had engaged since being admitted to the bar was as a solo practitioner
and about 22 percent indicated that their main type of practice had been as a government
attorney. Almost 35 percent indicated they had been in a partnership arrangement. However,
when asked about their practice type upon appointment to the bench, the number of judges
who said they were in solo practice increased to 32 percent. Over 27 percent of the judges said
that they were employed as a government attorney at that time. Only about one jurist in five
reported being in a partnership. In regards to the main focus of their law practice before
becoming a judge, over 40 percent indicated that they had mainly been engaged in criminal
work. About 9 percent listed probate/tax/domestic relations and another 23 percent listed some other type of main practice. (14.5 percent of the cases were listed as missing.) Overall, over 6 out of 10 judges reported that they had served as a prosecutor some time in their careers with the average duration of 8 years, the median amount of time was 6 years, with a span of between one and 26 years. Nearly 60 percent of the jurists reported that they had served as lead counsel in more than 20 jury trials, another 13 percent claimed to have done so in 10 to 20 jury trials, while 20 percent had been so involved in four to ten trials. Finally, 41 percent of the judges reported that they had been in the top one third of the class, while the majority (54 percent) said their law school class rank was in the middle one third of their class.

Prior public office and pre-law school status of the judges are further shown in Table 1. About one half of the Kentucky judges held no prior public office. However, about 41 percent said they had been appointed to a position, while just less than 9 percent had been elected to an office. Over 6 in 10 of the jurists entered law school immediately after graduating from an undergraduate college or university and over one fourth held a full-time job prior to their admission into law school.

**INFERENTIAL STATISTICS**

In addition to descriptive statistics relating to the lower court judges of all of Colorado and all of Kentucky respectively, the latter can be further divided into two distinct groups dependent upon how they initially attained their position: either elected (54 percent) or appointed (46 percent) by the governor to fill an unexpired term of office. First, this allows for a breakdown of the eight categories (localism, political party affiliation, demographics, religion, income upon attaining judgeship, prior legal experience, prior public
office/occupation prior to law school, and family background) in an effort to compile this information pursuant to research question \( Q1 \). Second, this provides information requisite to address the remaining research question which utilizes inferential statistics and involves comparisons and contrasts of the subsets of Kentucky judges \( Q2 \). However, none of the differences were found to be statistically significant. Hence, the descriptive results for each of these groups of Kentucky District Court judges are reported in Appendix F and Table 3.

The third research question explores whether Colorado judges, who are all appointed by the governor under the “Missouri Plan,” are similar to or different from all those in Kentucky. To test this hypothesis a chi-square test for independence or t-tests were initially performed on each of the variables. Logistic regression analyses were also utilized. Significant results of \( p \leq 0.05 \) are reported but only those less than .0014 are actually significant due to the Bonferroni adjustment.

Table 1 also lists categorical variables with their respective significance levels. Of the eight main categories (localism, political party affiliation, demographics, religion, family background, income upon attaining judgeship, prior legal experience, and prior public office/occupation prior to law school), five show significant differences. As can be seen, the concept of localism is much more important for the Kentucky judges. First, over eight in ten of the Kentucky judges were born in-state in contrast with just over three in ten of the Colorado judges \( (p < 0.0005) \). Second, just over 25 percent of the Kentucky judges were the first generation to live in their county, as opposed to about 85 percent of the Colorado judges. Further, nearly one-half of the Kentucky judges were more than the third generation to live in their county, as opposed to a mere 1.4 percent of the Colorado judges \( (p < 0.0005) \). The variable of location of undergraduate education shows that almost 90 percent of the Kentucky
judges attended an in-state school, as opposed to just under one half of the Colorado judges (p < 0.0005). Continuing with educational backgrounds, again the Kentucky judges were nearly twice as likely to have attended in-state law schools (p < 0.0005). Hence, a more generationally entrenched local background, including in-state birth is more prevalent for the Kentucky jurists. Further, an in-state formal education, for both undergraduate as well as law school, is also a trait of the Kentucky judges. Thus, Weber’s ascriptive-based traditional authority is more likely to apply to Kentucky in the localism category.

Regarding party affiliation, Table 1 indicates that over two-thirds of the Kentucky judges were members of the Democratic Party, as opposed to about one-third of the Colorado judges. Only three percent of the Kentucky judges were affiliated with a party other than the Democratic or the Republican parties, while one-fourth of the Colorado judges claimed neither party (p < 0.0005). Without attempting to assess on whether membership in either of the two major parties is more meritorious, it might be argued that membership in neither evidences a less ascriptive background and once again the Kentucky judges are more representative of Weber’s traditional authority typology.

Demographically, both states exhibited an extremely high percentage of judges that were white as all of the Kentucky judges considered themselves as such, as did over 90 percent of the Colorado judges (p = 0.022). (Two of the four cells have expected values less than 5, so this result should be interpreted with caution.) Additionally, while only about 3 percent of the Kentucky judges were Spanish/Hispanic/Latino, 13 percent of the Colorado judges claimed such heritage (p = 0.034). Therefore, the homogenous Kentucky judges exhibit a more ascriptive background.
Concerning the category of religion, a wide difference between states was reported by the judges. Almost one-third of the Kentucky judges were Baptist, as opposed to just under 3 percent of the Colorado judges. Further, only about 6 percent of the Kentucky judges claimed to be affiliated with no religion, while that percentage was nearly six times as high for the Colorado judges (p < 0.0005). Using the same argument as with political party, if it assumed that no affiliation is less ascriptive, the Kentucky jurists are much more likely to exhibit religious ascriptive ties as opposed to those in Colorado.

As it relates to family background, over twice the percentage (26 percent as opposed to 12 percent) of the Kentucky judges had one or more relatives in their grandparents’ generation who held public office as compared with the Colorado judges (p = 0.048). This again points to the Kentucky jurists as possessing traits which are consistent with Weber’s ascriptive traditional authority typology.

As to prior legal experience, and more specifically practice type, Table 1 indicates that the Kentucky judges were nearly three times as likely (20 percent as opposed to 12 percent) to have mainly practiced in a partnership at the time they acquired their judgeship. (p = 0.003). (There were also 22 missing cases.) While a statistically significant difference, one hesitates to opine whether this finding leans more toward a traditional authority or a merit-based rational legal one (a missing category was also added to this calculation as there were 20 missing cases).

Continuous variables are also reported within Table 1. Harking back to localism, the length of residence was significantly longer for the Kentucky judges as they reported living in their county over 10 years longer, or 33.4 years, as compared to just 23 years for the Colorado judges, (p < 0.0005). This also holds true for length of time residing in their particular state as
the Kentucky judges indicated that they lived in their state also over 10 years longer, or 44.9 years, as compared to the Colorado judges who reported a length of 34.3 years (p < 0.0005). Demographically, the Colorado judges were older than their Kentucky counterparts in both current age as well as age when attaining their judgeship. The average age of the Colorado judges was 54.7 years, which was significantly higher than the Kentucky judges, whose average age was 50.1 years (p = 0.002). Further, the average age when attaining a judgeship was also higher in Colorado, 45.1 years, than in Kentucky where the average age was 41.0 years (p = 0.003).

Tables 2 A through 2F show the significant results of five logistic regressions with each set examining how well the variables in a particular type of ascriptive variable category predict whether the judge is from Colorado or Kentucky. The first four regressions involve localism, political party, demographics, and a category combining family background and religion (these fit better together than any of the other groupings). The fifth regression takes the strongest predictors from each of the first four equations and pits them against one another.

These results reveal that for localism (Table 2A), three variables were significantly associated with the respective state. These include having had family live in the county for two or more generations (p < 0.0005), attending an in-state law school (p = 0.002), and being born in-state (p = .006).

Further, odds ratios, the odds of an event happening in one group divided by the odds of the event happening in the other group, are also shown. Hence, the odds of having a judgeship in Kentucky compared to Colorado is increased by a factor of 8.5 for those whose family lived in their respective county for two or more generations as opposed to those who are first
Table 2A through Table 2H

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>B</th>
<th>SE</th>
<th>Wald Statistic</th>
<th>p value</th>
<th>Exp(B)</th>
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<tr>
<td><strong>Table 2A  Parameter Estimates for Localism (Colorado Omitted)</strong></td>
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<td>in county</td>
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82
Table 2A through Table 2H (continued)

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<td>solo</td>
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<td>0.783</td>
<td>0.13</td>
<td>0.718</td>
<td>1.327</td>
</tr>
<tr>
<td>partnership</td>
<td>-0.594</td>
<td>1.103</td>
<td>0.29</td>
<td>0.59</td>
<td>0.552</td>
</tr>
<tr>
<td>firm/corp</td>
<td>0.078</td>
<td>0.873</td>
<td>0.81</td>
<td>0.368</td>
<td>2.03</td>
</tr>
<tr>
<td>government</td>
<td>1.095</td>
<td>0.769</td>
<td>2.027</td>
<td>0.154</td>
<td>2.989</td>
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<tr>
<td>Jury trials</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1-3)</td>
<td>1.062</td>
<td>0.884</td>
<td>1.442</td>
<td>0.23</td>
<td>2.893</td>
</tr>
<tr>
<td>(4-10)</td>
<td>0.586</td>
<td>0.897</td>
<td>0.426</td>
<td>0.514</td>
<td>1.796</td>
</tr>
<tr>
<td>(10-20)</td>
<td>1.07</td>
<td>0.767</td>
<td>1.946</td>
<td>0.163</td>
<td>2.916</td>
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<tr>
<td>Focus of practice</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>probate/tax/domestic</td>
<td>2.919</td>
<td>1.351</td>
<td>4.666</td>
<td>0.031</td>
<td>18.52</td>
</tr>
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<td>negligence</td>
<td>0.474</td>
<td>0.777</td>
<td>0.372</td>
<td>0.542</td>
<td>1.606</td>
</tr>
<tr>
<td>criminal</td>
<td>0.515</td>
<td>0.732</td>
<td>0.496</td>
<td>0.481</td>
<td>1.674</td>
</tr>
<tr>
<td>other</td>
<td>1.03</td>
<td>0.828</td>
<td>1.546</td>
<td>0.214</td>
<td>2.8</td>
</tr>
<tr>
<td>Prior prosecutor---yes</td>
<td>-0.53</td>
<td>0.499</td>
<td>1.129</td>
<td>0.288</td>
<td>0.589</td>
</tr>
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<td>Class rank</td>
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<td></td>
<td></td>
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<tr>
<td>top third</td>
<td>-0.048</td>
<td>0.46</td>
<td>0.011</td>
<td>0.917</td>
<td>0.953</td>
</tr>
<tr>
<td>mid third</td>
<td>-0.979</td>
<td>0.845</td>
<td>1.342</td>
<td>0.247</td>
<td>0.376</td>
</tr>
<tr>
<td>bottom third</td>
<td>-0.663</td>
<td>0.996</td>
<td>0.443</td>
<td>0.506</td>
<td>0.515</td>
</tr>
<tr>
<td>Constant</td>
<td>0.472</td>
<td>0.707</td>
<td>0.444</td>
<td>0.505</td>
<td>1.603</td>
</tr>
</tbody>
</table>

Table 2G | Parameter Estimates for Prior Office and Occupation Prior to Law School (Colorado Omitted) | | | | |
| Occupation | | | | | |
| student | -0.408 | 0.397 | 1.057 | 0.304 | 0.665 |
| full time | 0.197 | 0.69 | 0.082 | 0.775 | 1.218 |
| part time | -2.064 | 1.098 | 3.534 | 0.06 | 0.127 |
Table 2A through Table 2H (continued)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>$B$</th>
<th>SE</th>
<th>Wald Statistic</th>
<th>p value</th>
<th>Exp(B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prior office</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>appointed</td>
<td>1.762</td>
<td>1.125</td>
<td>2.455</td>
<td>0.117</td>
<td>5.825</td>
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<td>elected</td>
<td>0.032</td>
<td>0.363</td>
<td>0.008</td>
<td>0.93</td>
<td>1.032</td>
</tr>
<tr>
<td>Constant</td>
<td>0.139</td>
<td>0.466</td>
<td>0.089</td>
<td>0.765</td>
<td>1.149</td>
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</table>

Table 2H  Parameter Estimates for All---Final (Colorado Omitted)

<table>
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<tr>
<th>More than one generation in county</th>
<th>2.824</th>
<th>0.588</th>
<th>23.062</th>
<th>&lt;0.0005</th>
<th>16.848</th>
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</thead>
<tbody>
<tr>
<td>Political party</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Republican</td>
<td>-1.922</td>
<td>0.653</td>
<td>8.664</td>
<td>0.003</td>
<td>0.146</td>
</tr>
<tr>
<td>Other</td>
<td>-2.882</td>
<td>0.972</td>
<td>8.786</td>
<td>0.003</td>
<td>0.056</td>
</tr>
<tr>
<td>Age</td>
<td>-0.088</td>
<td>0.034</td>
<td>6.817</td>
<td>0.009</td>
<td>0.016</td>
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<tr>
<td>Religion</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protestant</td>
<td>-0.087</td>
<td>0.734</td>
<td>0.014</td>
<td>0.905</td>
<td>0.916</td>
</tr>
<tr>
<td>Others</td>
<td>-1.844</td>
<td>0.876</td>
<td>4.434</td>
<td>0.035</td>
<td>0.158</td>
</tr>
<tr>
<td>Practice type since admission</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>solo</td>
<td>-0.219</td>
<td>0.783</td>
<td>0.078</td>
<td>0.779</td>
<td>0.803</td>
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<tr>
<td>partnership</td>
<td>0.015</td>
<td>1.38</td>
<td>0</td>
<td>0.991</td>
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<tr>
<td>firm/corp</td>
<td>-1.178</td>
<td>0.735</td>
<td>2.569</td>
<td>0.109</td>
<td>0.308</td>
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<tr>
<td>government</td>
<td>-1.143</td>
<td>0.883</td>
<td>1.676</td>
<td>0.196</td>
<td>0.319</td>
</tr>
<tr>
<td>Constant</td>
<td>4.115</td>
<td>1.789</td>
<td>5.294</td>
<td>0.021</td>
<td>61.252</td>
</tr>
</tbody>
</table>

generation county residents. Further, the odds of having a judgeship in Kentucky rather than Colorado is increased by a factor of 6.8 for those who attended an in-state law school rather than one out-of-state. Finally, the odds of having a judgeship in Kentucky instead of Colorado is increased by a factor of 3.9 for those born in-state as opposed to those born out-of-state.

Political party was also found to be significant ($p < 0.0005$) and is listed in Table 2B. More specifically, the odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.326 for Republicans as opposed to Democrats ($p = 0.005$), and the
odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.058 for Democrats as opposed to those who are members of “other” parties.

Regarding demographics, and depicted in Table 2C, only being Spanish/Hispanic/Latino (p = 0.025) and age (p = 0.001) were significant. The odds of having a judgeship in Kentucky compared to Colorado is increased by a factor of 6.31 for non-Spanish/Hispanic/Latino as opposed to those who have such background. Additionally, the odds of having a judgeship in Kentucky rather than Colorado is decreased by a factor of 0.933 for each increased year of age.

Family background and religion were assessed together and are shown in Table 2D. Having relatives who served as a judge (p = 0.018) and religion (p = .001) were significant. The tests reveal that the odds of having a judgeship in Kentucky as opposed to Colorado is increased by a factor of 2.4 for each additional relative who has been a judge. For religion, the odds of having a judgeship in Kentucky rather than Colorado is decreased by a factor of 0.096 for those with “other” religions as opposed to those who are Catholic. The comparison between Protestants and Catholics was not significant (p = 0.752).

The fifth and final logistic regression (Table 2E) involves the four strongest predictor variables from each of the prior four regressions: religion (Catholic, Protestant, other), relatives living in their county two or more generations, political party (Democrat, Republican, other), and age. For religion (p = .02), the odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.118 for those “other” religions as opposed to those who are Catholic (p = 0.011). The difference between Protestants and Catholics again was not significant (p = .825).
As for relatives who have lived in the county for two or more generations, \( p < 0.0005 \), the odds of having a judgeship in Kentucky compared to Colorado is increased by a factor of 18.2 for those whose family has lived in the county for two or more generations compared to those who are first generation county residents.

Relating to political party \( (p = .001) \), the odds of having a judgeship in Kentucky as opposed to Colorado is decreased by a factor of 0.145 for Republicans as opposed to Democrats \( (p = 0.0030) \), and the odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.073 for those in “other” parties as opposed to Democrats \( (p = 0.004) \).

Finally, regarding age \( (p = 0.008) \), the odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.924 for each additional year of age.

Because the aforementioned variables are all ascriptive, an additional regression is performed on the achievement variables involving legal experience. These involve prior time in the legal field, practice type since admitted to the bar, practice type upon attaining judgeship, focus of practice, prior service as a prosecutor, and number of jury trials. Table 2F shows that while practice type since admitted was significant \( (p = 0.03) \), none of the individual relationships is significant. Additionally, achievement variables involving occupation before law school and prior offices held are regressed. Table 2G indicates that none of these relationships is significant.

Table 2H shows the final overall regression. The results from taking the four most significant ascriptive variables as depicted in Table 2E are combined with the above referenced achievement variables. Since none of the individual relationships involving the achievement variables is significant, the final results as depicted in Table 2E are unchanged.
CHAPTER SIX

SUMMARY OF FINDINGS

This chapter restates the research agenda of this study and reviews the methods utilized. Further, the results are summarized and their implications discussed.

The purpose of this study is to investigate four research questions related to the social background characteristics of lower trial court judges in the states of Kentucky and Colorado. This is an important research for a number of reasons. Initially, this study is the first to explore and compile data on the social background characteristics of the judges of any state lower level trial courts. Second, this study also compares and contrasts these characteristics of Kentucky lower trial court judges dependent upon whether they were originally elected or appointed by the governor to fill an unexpired term. Third, this study further explores differences and similarities of jurists who attain the bench via a fully gubernatorial judge appointment system (the Missouri Plan used in Colorado) and those of a state which utilizes non-partisan elections to choose their judges (Kentucky). This research is then, in turn, useful for a number of reasons. The information may be used to not only attain accurate information regarding social characteristics of the groups of judges studied, but may further be used to inform a potential judicial candidate regarding a decision to attempt to achieve a judgeship and which, if any, particular characteristics are important. It further provides a basis to compare these characteristics with those of judges who may come to the bench in systems that employ alternate means of trial judge selection. Additionally, the data compiled in this study may also provide for comparisons with the other courts in Kentucky and Colorado. It may
provide a basis to further investigate the extent to which these background characteristics proportionately represent the citizenry of the respective states. This study also provides information that may be further utilized in predicting a particular judge’s future legal decisions. Finally, the fourth overall importance of this study allows for an assessment of whether either of Max Weber’s legal typologies (traditional authority based on ascriptive characteristics or rational legal authority based on merit) is more indicative of either judicial selection method.

A 35 question survey inquiring about these characteristics was mailed to all judges of the Kentucky District Court (n = 116) as well as to all the judges serving on the Colorado County Court (n = 110). The response rate for the Kentucky jurists was 59.5 percent (69 of 116) and 62.7 percent (69 of 110) for the judges from Colorado.

The data is divided into eight main categories including localism (historic ties which a judge may have to their particular jurisdiction), political party affiliation, demographics, religion, income upon attaining judgeship, prior legal experience, prior public office/occupation prior to law school, and family background.

The first research question inquires about these background characteristics of the judges of the respective state courts. This provides for a comprehensive view of the judges from each state and is believed to be the first research into the social backgrounds of judges from any lower trial court in the United States. Each set of jurists has been addressed separately and the findings respectively reported in the Results chapter. The remaining research questions all pertain to comparisons between the respective divisions.

The second research question addresses whether those judges that are initially appointed by the Governor of Kentucky to fill an unexpired term are similar to or different
from those who initially achieved their position through election. Almost all prior research on this comparison is focused upon state supreme courts and very few differences were detected in the backgrounds of the judges who initially came into office by these two methods. Further, only one study (DuBois, 1983) addressed a trial court (the California Superior Court from 1959 to 1977), albeit a major tribunal rather than the lower courts that are the subject of this study. These studies show that elected judges are more likely than mid-term appointees to have an in-state birth, to be white, to be non-Protestant, to have practiced law in the private sector, and to have prior judicial experience.

Of the Kentucky District Court judges, 54 percent reported being initially elected to the bench, and the other 46 percent attained their positions via mid-term appointment. However, of the eight main categories (localism, political party affiliation, demographics, religion, income upon attaining judgeship, prior legal experience, prior public office/occupation prior to law school, and family background), and their 35 related variables, not a single significant difference was detected. These results are discussed in Appendix F and presented in Table 3.

The third research question explores whether Colorado judges, who are all appointed by the governor under the “Missouri Plan,” are similar to or different from all those in Kentucky. This is to address the concept of comparing and contrasting a “Missouri Plan” jurisdiction with one that is “supposedly” an elective one and is presented in Table 1. Significant results indicate that localism is much more of a trait of the Kentucky jurists. They were over two and one-half times as likely to have been born in-state, about twice as likely to have attended an in-state undergraduate institution as well as an in-state law school, and
nearly one-half of them were more than the third generation to live in their county, as opposed to less than 2 percent for the Colorado judges.

Politically, Table 1 shows over two times as many of the Kentucky judges, as compared to those in Colorado were affiliated with the Democratic Party. However, the latter were much more likely to not be affiliated with either of the two major parties as nearly one-fourth of the Colorado judges claimed neither party compared to just 3 percent of the Kentucky judges.

In regards to demographics, all of the Kentucky judges reported being white (3 percent of which were Spanish/Hispanic/Latino) and over 92 percent of the Colorado judges said they were white (13 percent of which were Spanish/Hispanic/Latino).

Religion was found to also be significantly different between the two sets of judges. Table 1 indicates Kentucky jurists were more than ten times as likely to be Baptist, while over a third of the Colorado judges said they were neither Catholic nor Protestant as compared to just about 6 percent of those from Kentucky.

As to prior legal experience, and more specifically practice type at the time of acquiring the bench, the Kentucky judges were nearly two times as likely to have mainly practiced in a partnership than their Colorado counterparts.

Relating to family background, one-fourth of the Kentucky judges reported having one or more grandparents in public office. This was double the percentage of the Colorado jurists.

In regards to nominal variables, Table 1 also shows the Colorado judges were about four years older than their Kentucky counterparts and attained their judgeship at a later age. The Kentucky judges however, lived in their county and state about ten years longer than those judges from Colorado.
Logistic regression was also performed to assess the impact of a number of factors on the likelihood of a judge serving in Kentucky as compared to Colorado. Statistically significant results from the four categories including localism, political party, demographics, and a combined family background and religion category are presented in Table 2A through 2D. A fifth regression was then done using the strongest predictors from each of the previous four regressions and is depicted in Table 2E. Since all the above variables involve ascriptive traits, the achievement variables involving legal experience (Table 2F) and prior office/occupation prior to law school (Table 2G) were also regressed. Finally, an overall regression was undertaken using the most significant variables from Table 2E and the two achievement categories and is shown in Table 2H.

Table 2A shows the results for localism. Three findings were statistically significant. The odds ratios indicate that the likelihood of having a judgeship in Kentucky compared to Colorado is increased by a factor of 8.5 for those whose family lived in their respective county for two or more generations as opposed to first generation county residents. Attending an in-state law school (Exp(B) = 6.8) and being born in-state (Exp(B) = 3.9) were also more likely for the Kentucky jurists.

Political party results are shown in Table 2B. The data reveal the odds of having a judgeship in Kentucky compared to Colorado is decreased by a factor of 0.326 for Republicans as opposed to Democrats. Further, the odds are also decreased by a factor of 0.058 for Democrats as opposed to judges who belong to “other” parties.

Only two demographic variables were significant and are reported in Table 2C. The odds of having a Kentucky judgeship compared to one in Colorado are increased by a factor
of 6.31 for those with non-Spanish, Hispanic, or Latino backgrounds. Further, for each increased year of age the odds are decreased for the Kentucky judges by a factor of 0.933.

Family background and religion were assessed together and the results are shown in Table 2D. The tests show that the likelihood of having a Kentucky judgeship as opposed one in Colorado is increased by a factor of 2.4 for each additional relative who has been a judge. For religion, the odds for the Kentucky judges are decreased by a factor of 0.096 for those with “other” religions as opposed to those who are Catholic.

The fifth logistic regression involves the four strongest predictors from the previous regressions. The results are reported in Table 2E. These were religion, relatives residing in their county for two or more generations, political party, and age. For religion, the odds of having a Kentucky judgeship compared to one in Colorado is decreased by a factor of 0.118 for those “other” religions as opposed to those who are Catholic. As for relatives who have resided in their county for two or more generations, the likelihood of having a judgeship in Kentucky compared to Colorado is increased by a factor of 18.2. When political party is considered, the likelihood of having a judgeship in Kentucky is decreased by a factor of 0.145 for Republicans as opposed to Democrats and decreased by a factor of 0.073 for those in “other” parties as compared to Democrats. Finally, the odds of having a judgeship in Kentucky are decreased by a factor of .924 for each additional year of age.

However, all the above referenced regressions involve ascriptive traits. Hence an additional regression was performed on the achievement variables involving legal experience (Table 2F) as well as pre-law school occupation and prior offices held (Table 2G). None of these relationships was significant.
The final overall regression results are reported in Table 2H. The results from table 2E (results from the top four ascriptive variables) were combined with those involving the aforementioned achievement variables. However, since none of the relationships involving the achievement variables was significant, the final results in Table 2E are unchanged.

**Theoretical Framework**

The theoretical framework of this study is based upon the legal systems model promulgated by Max Weber. This prototype is focused upon societal influences that may come into play in the attainment of a judgeship. As such, Weber proffered three types of legitimate authority which may exist in a particular society and the legal system—traditional, charismatic, and rational-legal. Initially, Weber held that the concept of traditional authority, which is rooted in the notion that obedience is owed to others based upon custom and tradition, is dependent upon a generally ascriptive patrimonial model wherein family background and other non-merit based factors determine the judicial leaders. Second, Weber looked to an individual’s charismatic abilities to acquire and justify authority. Finally, and as Weber argued is a requisite of a complex society, the rational-legal model is dependent upon a highly trained legal staff of legal professionals where authority is achieved and justified on the actual merits of those in charge.

While the nature of this study does not explore charismatic factors, Weber’s two remaining models are addressed and may be compared and contrasted. Do those individuals who attain a state lower trial court judgeship by gubernatorial appointment (via the “Missouri Plan” utilized in Colorado or the “pseudo” plan used in Kentucky to fill unexpired vacancies) possess different social background characteristics than those who must reach the bench via
election? Is one model (traditional versus legal-rational) more prevalent than the other in either, or both, attainment systems?

Initially, and as addressed in the second research question, the two groups (based upon elected or appointed) of Kentucky judges were compared and contrasted. However, not a single one of thirty-five variables showed a significant difference between the groups. Hence, for Kentucky in its entirety, the different successful paths to the bench do not result in a District Court judiciary that is composed of individuals with any significant different background characteristics.

As it relates to the remaining research question (comparing Colorado to all of Kentucky in order to ascertain differences between a “Missouri Plan” state with one that is “supposedly” an elective one) a number of significant differences between the states were detected. The same variables are consistently represented in each of these comparisons. Concerning localism, an in-state birth, an in-state undergraduate education, a law degree from an in-state institution, and having greater than three generations living in a judge’s county were all found to be more likely characteristics for the Kentucky jurists. Politically, the Kentucky group was more likely to be comprised of Democrats while the Colorado judges were consistently more likely than those from Kentucky to be affiliated with neither the Democratic nor the Republican parties. Demographically, the comparison of the Colorado judges to the Kentucky judges showed the latter to more likely be white, while the former was a bit more apt to be white and Spanish, Hispanic, or Latino. In regards to age, the Colorado judges were about five years older than the Kentucky judges. The Colorado judges also attained the bench about four years later than their Kentucky counterparts. On the other hand, the Kentucky jurists had lived in their county and state approximately ten years longer than
those from Colorado. Kentucky judges were also significantly more likely to be Baptist, while those from Colorado were more apt to be neither Catholic nor any type of Protestant, or to choose “other.” When assessing prior legal experience, the lone significant difference was found in the comparison between Colorado and Kentucky judges wherein the latter were more likely to have been involved in a partnership rather than some other type of professional arrangement. Finally, as it relates to family background, the comparison between Colorado and Kentucky judges showed that Kentucky judges were more likely to have relatives in their grandparents’ generation serve in public office. The Kentucky elected judges were also more apt than those from Colorado to have a judge in their parents’ generation.

In sum, the results of this study show that localism, being affiliated with the Democratic party, being younger than their Colorado counterparts in both age as well age at attainment of their judgeship, being Baptist, and having prior generations of relatives who served in public office or as a judge are much more likely to be attributes of the judges from Kentucky. This buttresses the argument that the Kentucky judges, who again are all elected, are more likely to come under Weber’s traditional framework of authority, one based upon family background, religion, kinship, and local ties. In contrast, the above comparison shows the lower trial court jurists of neither state or accompanying judicial attainment method, more than that of the other, can be said to explicitly fall into Weber’s rational-legal framework, the one he considered to be based upon merit and to be staffed by well trained professionals.

Finally, the four predictions offered in the Overall Considerations section of the Literature Review may also be considered. In comparison to the other levels of courts reviewed, the average age at initially attaining the bench was predicted to be in the early fifties. The Kentucky District Court judges were found to average 41 years of age and the
Colorado County judges averaged 45 years of age when they first attained their judgeships. While not the same as predicted, this may be explained by the fact that many of the other (and higher) courts previously studied are comprised of individuals who started their service as a judge in a lower court and gained a number of years in experience before moving on to a higher court.

It was also predicted that the majority judges from both states would have degrees from both in-state undergraduate institutions as well as in-state law schools. However, this was only found to be supported by the Kentucky judges and the percentages are not even close (about 47 percent for Colorado as opposed to about 90 percent for Kentucky) for each level of education. Many studies, although not all, also believed the influence of the local bar on the nomination process used in Missouri Plan jurisdictions, would be indicated by a higher percentage of in-state legal educations for the Colorado judges. This was not found to be supported.

Regarding religion, it was predicted that the lower trial courts of each state would be composed of judges affiliated with lower status Protestant denominations (based upon the fact that for those state supreme court justices that were studied, most members had originally been lower trial court judges). This was found to be supported as 46 percent of the Colorado judges were either Baptist or Methodist as were one half of those from Kentucky.

It was further predicted that a “good number, although not the majority,” of the judges in both states would have a family history of an ancestor holding public office. This is somewhat supported in the finding of over one fourth of the Kentucky jurists having one or more persons in their grandparents’ generation holding a public office, as opposed to only one eighth of the Colorado judges.
Finally, while there were no significant differences found between the characteristics of the elected versus appointed Kentucky judges, it was predicted that the appointees would have gone to more elite law schools and that they would also be members of minority groups. The majority was also predicted to have initially reached the bench through appointment. However, the elected Kentucky jurists were more prevalent than their appointed counterparts by a margin of 37 elected to 32 appointed.

**Limitations and Strengths**

There are a number of limitations to this study. However, it is not believed that any result in a flaw which might be fatal to this research. The first limitation involves the response rates to the survey (59.5 percent for Kentucky and 62.7 percent for Colorado). While a response rate of 50 percent in a mail survey is adequate (Babbie, 1990), a higher rate may be desired. Missing data concerns have also been addressed. A number of respondents answered questions which sought a single response with a number of responses. Additionally, it was discovered from the survey results that some judges in small rural Colorado counties never attended law school nor practiced law prior to attaining their judgeships. This affected the data acquired from questions which inquired about these background characteristics.

This study also possesses a number of strengths. It is believed this is the seminal study of any lower trial court judges done in the United States. Additionally, this study not only denotes social background characteristics for Kentucky District Court judges overall along with those from the Colorado County Courts, it further addresses each of the two subsets of the Kentucky judges (elected and appointed). Moreover, this study goes further in its statistical comparisons between both the “within” differences of the two categories of
Kentucky judges (elected and appointed) as well as the “between” differences of the Missouri Plan and the traditional election method.

**Future Research**

One of the initial concerns for future research is to compare the findings from each respective state to that of the same type of social characteristics (excluding the prior law related questions) from the general population of each state. In other words, are Kentucky jurists similar to the general state population in attributes such as length of time in county and state, parental background, political party affiliation, activities of prior generations and religious affiliation? Further, this concept may be taken a step farther in then comparing a typical Kentucky resident with one from Colorado. Are the comparisons of and contrasts between the judges studied herein similar or different from those of the general populations of each state? This could then be further extended to see if, in fact, Missouri Plan states themselves are more similar in their judges or simply more similar in their overall populations. The same could be addressed in a comparison of election states.

Obviously, different social background characteristics might also be addressed, although those used in this study were taken from both previous studies of judges on other courts as well added by the researcher. However, as one of the main concerns of this study involves Max Weber’s legal typologies, other characteristics may be included which apply to either no theoretical underpinning or some other theory driven alternative. The study of the social backgrounds of jurists on courts other than those that are either federal in nature or of a state appellate jurisdiction is basically nonexistent. Further, little, if any, research has been done which directly assesses Weber’s theory as it relates to any judicial bodies in the United States.
Finally, a more comprehensive study involving all three of Weber’s legal typologies may be undertaken. Weber contended that any form of authority actually involves a combination of not only traditional and rational-legal concerns, but also that of charisma. Moreover, these forms of authority do not simply exist in parallel form, but there is tension among them. If this were to be eliminated however, Weber’s fear of the “iron cage” of a totally rationalized society might in fact materialize. Further research involving all of Weber’s typologies and how they individually, as well as collectively, relate to judicial selection methods is also ripe for study.
REFERENCES


Colorado Constitution, Article VI, Section 24.

Colorado Revised Statutes, Title 13, Section 6-203.

Kentucky Constitution, Section 118.
Kentucky Constitution, Section 122.
Kentucky Constitution, Section 152.
Kentucky Constitution, Judicial Article.
APPENDIX A1

KENTUCKY DISTRICT COURT JUDICIAL SURVEY

The following questions briefly address your current position:

1) How old were you when you attained your current judgeship? _____

2) How many years have you served in your current judgeship? _____

3) Were you initially elected or appointed to your present judgeship? (Please check one)
   
   Elected _____
   Appointed _____

The next several questions focus on your employment and educational background and experience:

4) How many years were you engaged in legal practice prior to attaining your current judgeship? _____

5) How would you characterize the principal focus of your practice of law for the 3 years immediately prior to attaining your present judgeship? (Please check only one)
   
   General Corporate and Business (corporations, bankruptcy, commercial, public utilities, anti-trust, labor relations principally for companies) _____
   Probate, Trust, Taxation _____
   Domestic Relations _____
   Negligence and/or Compensation Law, principally for plaintiff _____
   Negligence and/or Compensation Law, principally for defendant _____
   Negligence and/or Compensation Law, about equally for plaintiff and defendant _____
   Labor Law, principally for unions _____
   Real Property _____
   Municipal Law _____
   Administrative Law _____
   Criminal Law, as prosecution _____
   Criminal Law, for defendant _____
   Other (please specify) ____________________

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6) In which of the following kinds of law practice arrangement did you spend most of your time since being admitted to practice, and in which of these were you engaged upon attaining your current judgeship? (Please check only one in each column)

<table>
<thead>
<tr>
<th>Most Time Since Admitted</th>
<th>Engaged Upon Attaining Judgeship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solo Practice</td>
<td></td>
</tr>
<tr>
<td>Two Person Partnership</td>
<td></td>
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<tr>
<td>Partnership of 3-5 Lawyers</td>
<td></td>
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<tr>
<td>Partnership of 6-10 Lawyers</td>
<td></td>
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<tr>
<td>Partnership of 11-29 Lawyers</td>
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<tr>
<td>Partnership of 30 or More Lawyers</td>
<td></td>
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<tr>
<td>Salaried Employee of Law Firm of 1-5 Lawyers</td>
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<tr>
<td>Salaried Employee of Law Firm of 6-10 Lawyers</td>
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<tr>
<td>Salaried Employee of Law Firm of 11-29 Lawyers</td>
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<tr>
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<tr>
<td>Salaried Employee of Corporation</td>
<td></td>
</tr>
<tr>
<td>Salaried Employee of Government Agency</td>
<td></td>
</tr>
</tbody>
</table>

7) How many jury trials have you tried as a lead attorney? (Please check one)

<table>
<thead>
<tr>
<th>Number of Trials</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td></td>
</tr>
<tr>
<td>1 to 3</td>
<td></td>
</tr>
<tr>
<td>4 to 10</td>
<td></td>
</tr>
<tr>
<td>10 to 20</td>
<td></td>
</tr>
<tr>
<td>More than 20</td>
<td></td>
</tr>
</tbody>
</table>

8) Have you ever been employed as a prosecutor? (Please check one)

<table>
<thead>
<tr>
<th>Answer</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

9) If you answered “Yes” to the previous question, the total number of years so employed: _____
10) Have you ever held any of the following positions (other than your current judgeship)?
(Please check all that apply)

Elective City Office
Appointive City Office
Elective County Office
Appointive County Office
Elective State Office
Appointive State Office
Elective Federal Office
Appointive Federal Office
Other (please specify) ___________________________

11) What was your principal occupation immediately prior to entering law school?

I was a full-time student at this time ______
I was employed full-time. My occupation was (please specify) ______________________
I was employed part-time. My occupation was (please specify) ______________________

12) From what undergraduate school did you graduate? ____________________________

13) From what law school did you graduate? _______________________________

14) What was your class rank at time of law school graduation (Please check one):

   Top 1/3  _____
   Middle 1/3 _____
   Bottom 1/3 _____

15) What is/was the principal occupation of your father (if any; please be specific):

   ____________________________
16) What is the highest level of education attained by your father? (Please check one)

- Did Not Graduate High School
- High School Graduate
- General Equivalency Diploma
- Technical School
- Attended Some College
- 2 Year College Degree
- 4 Year College Degree
- Attended Some Graduate or Professional School
- Graduate or Professional School Degree

17) What is/was the principal occupation of your mother? (if any; please be specific):

_______________________

18) What is the highest level of education attained by your mother? (Please check one)

- Did Not Graduate High School
- High School Graduate
- General Equivalency Diploma
- Technical School
- Attended Some College
- 2 Year College Degree
- 4 Year College Degree
- Attended Some Graduate or Professional School
- Graduate or Professional School Degree

19) What is the total number of relatives and/or ancestors over the last 3 generations, including your own, who have ever held public office, other than a judgeship? (Please provide a numerical answer for each category)

- My generation (siblings, first cousins) ______
- My parent’s generation (parents, aunts, uncles) ______
- My grandparent’s generation (grandparents, great aunts, great uncles) ______

20) What is the total number of relatives and/or ancestors over the last 3 generations, including your own, who have ever held a judgeship? (Please provide a numerical answer for each category)

- My generation (siblings, first cousins) ______
- My parent’s generation (parents, aunts, uncles) ______
- My grandparent’s generation (grandparents, great aunts, great uncles) ______
21) What is the number of generations that your family has continuously lived in your current county of residence? (Please check one)

I am the first _____
2 generations _____
3 generations _____
More than 3 generations _____

22) Where was your place of birth? (Please list city, state, and country)
_____________________________________

23) How many years have you continuously lived in your county of residence? _____

24) How many years have you continuously lived in this state? _____

25) What is your current age? _____

26) What gender do you consider yourself to be? (Please check one)

Male _____
Female _____
Other _____

27) Do you consider yourself to be Spanish, Hispanic, or Latino? (Please check one)

Yes _____
No _____

28) What is your current religious affiliation? (Please check one)

Catholic _____
Jewish _____
Protestant:
   Baptist _____
   Congregationalist _____
   Episcopalian _____
   Lutheran _____
   Methodist _____
   Presbyterian _____
   Unitarian _____
   Other Protestant _____
   Other (please specify) _____________________
   None _____
29) What race(s) do you consider yourself to be?
   (Please check one or more races that you consider yourself to be)

   White
   Black or African American
   American Indian or Alaska Native
   Asian Indian
   Chinese
   Filipino
   Japanese
   Korean
   Vietnamese
   Other Asian
   Native Hawaiian
   Guamanian or Chamorro
   Samoan
   Other Pacific Islander
   Some Other Race

30) What is your political party affiliation? (Please check one)

   Democrat
   Republican
   Other (please specify)

31) What was your average yearly income related to the practice of law for the last 3 full years of employment prior to attaining your current judgeship? (Please check one)

   Less than $35,000/Year
   $35,001 to $50,000/Year
   $50,001 to $75,000/Year
   $75,001 to $100,000/Year
   $100,001 to 150,000/Year
   More than $150,000/Year
APPENDIX A2

COLORADO COUNTY COURT JUDICIAL SURVEY

The following questions briefly address your current position:

1) How old were you when you attained your current judgeship? _____

2) How many years have you served in your current judgeship? _____

The next several questions focus on your employment and educational background and experience:

3) How many years were you engaged in legal practice prior to attaining your current judgeship? _____

4) How would you characterize the principal focus of your practice of law for the 3 years immediately prior to attaining your present judgeship? (Please check only one)

   General Corporate and Business (corporations, bankruptcy, commercial, public utilities, anti-trust, labor relations principally for companies) _____
   Probate, Trust, Taxation _____
   Domestic Relations _____
   Negligence and/or Compensation Law, principally for plaintiff _____
   Negligence and/or Compensation Law, principally for defendant _____
   Negligence and/or Compensation Law, about equally for plaintiff and defendant _____
   Labor Law, principally for unions _____
   Real Property _____
   Municipal Law _____
   Administrative Law _____
   Criminal Law, as prosecution _____
   Criminal Law, for defendant _____
   Other (please specify) ____________________
5) In which of the following kinds of law practice arrangement did you spend most of your time since being admitted to practice, and in which of these were you engaged upon attaining your current judgeship?

(Please check only one in each column)

<table>
<thead>
<tr>
<th>Most Time Since Admitted</th>
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</tr>
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<tbody>
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<td>Solo Practice</td>
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<td>Two Person Partnership</td>
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</tbody>
</table>

6) How many jury trials have you tried as a lead attorney? (Please check one)

- None ______
- 1 to 3 ______
- 4 to 10 ______
- 10 to 20 ______
- More than 20 ______

7) Have you ever been employed as a prosecutor? (Please check one)

- Yes ______
- No ______

8) If you answered “Yes” to the previous question, the total number of years so employed: ______
9) Have you ever held any of the following positions (other than your current judgeship)?
(Please check all that apply)

Elective City Office
Appointive City Office
Elective County Office
Appointive County Office
Elective State Office
Appointive State Office
Elective Federal Office
Appointive Federal Office
Other (please specify) ___________________________

10) What was your principal occupation immediately prior to entering law school?

I was a full-time student at this time ______
I was employed full-time. My occupation was (please specify) ____________________
I was employed part-time. My occupation was (please specify) ____________________

11) From what undergraduate school did you graduate? __________________________

12) From what law school did you graduate? _______________________________

13) What was your class rank at time of law school graduation (Please check one):

Top 1/3 _____
Middle 1/3 _____
Bottom 1/3 _____

The next few questions inquire about the backgrounds of relatives and ancestors. Please answer them as best as you can determine:

14) What is/was the principal occupation of your father (if any; please be specific):
_______________________
15) What is the highest level of education attained by your father? (Please check one)

- Did Not Graduate High School
- High School Graduate
- General Equivalency Diploma
- Technical School
- Attended Some College
- 2 Year College Degree
- 4 Year College Degree
- Attended Some Graduate or Professional School
- Graduate or Professional School Degree

16) What is/was the principal occupation of your mother? (if any; please be specific):

_______________________

17) What is the highest level of education attained by your mother? (Please check one)

- Did Not Graduate High School
- High School Graduate
- General Equivalency Diploma
- Technical School
- Attended Some College
- 2 Year College Degree
- 4 Year College Degree
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18) What is the total number of relatives and/or ancestors over the last 3 generations, including your own, who have ever held public office, other than a judgeship? (Please provide a numerical answer for each category)

My generation (siblings, first cousins)  
My parent’s generation (parents, aunts, uncles)  
My grandparent’s generation (grandparents, great aunts, great uncles)

19) What is the total number of relatives and/or ancestors over the last 3 generations, including your own, who have ever held a judgeship? (Please provide a numerical answer for each category)

My generation (siblings, first cousins)  
My parent’s generation (parents, aunts, uncles)  
My grandparent’s generation (grandparents, great aunts, great uncles)
20) What is the number of generations that your family has continuously lived in your current county of residence? (Please check one)

I am the first _____
2 generations _____
3 generations _____
More than 3 generations _____

The final questions involve your own residency, demographics, and past income. Please remember that all information will remain anonymous and confidential.

21) Where was your place of birth? (Please list city, state, and country)
________________________________________

22) How many years have you continuously lived in your county of residence? _____

23) How many years have you continuously lived in this state? _____

24) What is your current age? _____

25) What gender do you consider yourself to be? (Please check one)

Male _____
Female _____
Other _____

26) Do you consider yourself to be Spanish, Hispanic, or Latino? (Please check one)

Yes _____
No _____

27) What is your current religious affiliation? (Please check one)

Catholic _____
Jewish _____
Protestant:
Baptist _____
Congregationalist _____
Episcopalian _____
Lutheran _____
Methodist _____
Presbyterian _____
Unitarian _____
Other Protestant _____
Other (please specify) ______________
None _____
28) What race(s) do you consider yourself to be?
(Please check one or more races that you consider yourself to be)

White
Black or African American
American Indian or Alaska Native
Asian Indian
Chinese
Filipino
Japanese
Korean
Vietnamese
Other Asian
Native Hawaiian
Guamanian or Chamorro
Samoan
Other Pacific Islander
Some Other Race

29) What is your political party affiliation? (Please check one)
Democrat
Republican
Other (please specify)

30) What was your average yearly income related to the practice of law for the last 3 full years of employment prior to attaining your current judgeship? (Please check one)
Less than $35,000/Year
$35,001 to $50,000/Year
$50,001 to $75,000/Year
$75,001 to $100,000/Year
$100,001 to 150,000/Year
More than $150,000/Year
APPENDIX B1

Your Honor:

As a Kentucky District Court judge you are being asked to complete and return the enclosed anonymous survey regarding background characteristics. This is an important survey for two reasons. First, while federal judges, state supreme court justices, and state appellate judges have all been previously studied, virtually nothing is known about the backgrounds of any state lower trial court judges. This is a novel study in that it addresses that question. Second, this study will also obtain information from Colorado County Court judges (the lower trial court in that state) in order to compare characteristics based upon selection method as Colorado follows the Missouri Plan of gubernatorial appointment and retention elections, while Kentucky judges acquire and maintain the bench via contested nonpartisan elections.

The survey consists of approximately 30 short questions and should take less than 10 minutes to complete. The answers are completely anonymous and there is no way to determine which answers belong to a particular respondent. It is requested that you return the completed survey in the self-addressed stamped envelope. It is further requested that upon returning the survey that you also separately return the postcard size enclosure as well. Receipt of these cards will indicate which judges have responded and enable a compilation of a list of those who have not, thereby eliminating any follow-up requests. No attempt will be made to pair survey responses with names on the completion cards.

Should you have any questions please do not hesitate to contact me. I realize the time constraints brought upon you by your unique position and the extremely high number of cases you must hear on a yearly basis (which is one of the reasons I want to pursue this research). My own legal background spans nearly three decades and I am a member of both the Kentucky Bar Association as well as the Colorado Bar Association and actively practiced law for over 25 years. Additionally, I currently am an assistant professor at Mesa State College in Grand Junction, Colorado.

Thank you for your time and consideration. I believe that this research is important and will further the knowledge base regarding those in your overall profession, especially that of those serving in District Court.

Sincerely,

Michael B. Delaney, J.D.
Assistant Professor
Mesa State College
409 Lowell Heiny Hall
1100 North Avenue
Grand Junction, Colorado 81501
970-248-1301
midelane@mesastate.edu
APPENDIX B2

Your Honor:

As a Colorado County Court judge you are being asked to complete and return the enclosed anonymous survey regarding background characteristics. This is an important survey for two reasons. First, while federal judges, state supreme court justices, and state appellate judges have all been previously studied, virtually nothing is known about the backgrounds of any state lower trial court judges. This is a novel study in that it addresses that question. Second, this study will also obtain information from Kentucky District Court judges (the lower trial court in that state) in order to compare characteristics based upon selection method as Colorado follows the Missouri Plan of gubernatorial appointment and retention elections, while Kentucky judges acquire and maintain the bench via contested nonpartisan elections.

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Sincerely,

Michael B. Delaney, J.D.
Assistant Professor
Mesa State College
409 Lowell Heiny Hall
1100 North Avenue
Grand Junction, Colorado 81501
970-248-1301
midelane@mesastate.edu
APPENDIX C

Adult Consent Form for Research
University of Cincinnati
Department: Sociology
Principal Investigator: Michael B. Delaney, J.D.
Faculty Advisor: Steve Carlton-Ford

Title of Study: Selection Method and Judicial Background Characteristics

You are being invited to voluntarily participate in the above-titled study. The purpose of this study is to compare social background characteristics of trial court judges based upon their method of selection to the bench. About 116 Kentucky District Court judges and 114 Colorado County Court judges will participate. You are eligible to participate because you hold one of those positions.

The person in charge of this research is Michael B. Delaney, J.D. He is currently an Assistant Professor at Mesa State College in Grand Junction, Colorado and is also enrolled as a doctoral student at the University of Cincinnati in the Department of Sociology.

If you agree to participate, you will complete a survey (of about 30 questions) which should take approximately 10 minutes. You may choose not to answer some or all of the questions. Your name will not appear on your completed survey and no identifying information is being collected as part of this survey. There are no known risks from your participation and no direct benefit from your participation. There is no cost to you except for your time and you will not be compensated monetarily or otherwise for participating.

Refusing to take part in this study will NOT cause any penalty or loss of benefits that you would otherwise have. You may start and then change your mind and stop at any time. Only the principal investigator will have access to the information that you provide and it will be kept in a locked cabinet in the investigator’s office for two years and then will be shredded. Agents from the University of Cincinnati may inspect study records for audit or quality assurance purposes.

If you have any questions or concerns about this research study, you should contact Michael B. Delaney at 970-248-1301 or Dr. Steve Carlton-Ford at 513-556-4716. The UC Institutional Review Board – Social and Behavioral Sciences (IRB-S) reviews all non-medical research projects that involve human participants to be sure the rights and welfare of participants are protected. If you have questions about your rights as a participant or complaints about the study, you may contact the Chairperson of the UC IRB-S at (513) 558-5784. Or, you may call the UC Research Compliance Hotline at (800) 889-1547, or write to the IRB-S, 300 University Hall, ML 0567, 51 Goodman Drive, Cincinnati, OH 45221-0567, or email the IRB office at irb@ucmail.uc.edu

Nothing in this consent form waives any legal rights you may have. This consent form also does not release the investigator, the institution, or its agents from liability or negligence.

By participating in this survey, you are giving consent for the investigator to use your information for research purposes.
APPENDIX D

Survey Completion

The Judicial Survey has been completed and returned in the separately provided envelope.

Judge

Michael B. Delaney
Mesa State College
1100 North Avenue
408 Lowell Hall, Mail
Grand Junction, CO 81501-3122

NO POSTAGE NECESSARY
POSTAGE PRE-PAID BY
RETURN ADDRESS

Michael B. Delaney
Mesa State College
1100 North Avenue
408 Lowell Hall
Grand Junction, CO 81501-3122
APPENDIX E1

Your Honor:

A few weeks ago a survey seeking your input as a Kentucky District Court judge was mailed to you. If you have already returned your completed survey (and separate postcard), please accept my sincere thanks. The postcard and your answers to the survey may have simply crossed in the mail.

If you have not completed and sent in the survey and card, or have misplaced either of them, a second copy of each has been enclosed with this mailing. Because this survey has been sent to a relatively small number of judges, it is extremely important that your answers be included if the overall results are to accurately reflect the backgrounds of what has been essentially a never studied part of our judiciary---the Kentucky District Court judges. Additionally, these backgrounds will also be compared with those of the Colorado County Court judges, who attain the bench via appointment under the Missouri Plan rather than contested elections. I hope to publish the results of this study and it also serves as part of the dissertation that I must complete in order to receive my Ph. D. at the University of Cincinnati.

Thank you for your time and consideration. I look forward to receiving your completed materials in the near future.

Sincerely,

Michael B. Delaney, J.D.
Assistant Professor
Mesa State College
409 Lowell Heiny Hall
1100 North Avenue
Grand Junction, Colorado 81501
970-248-1301
midelane@mesastate.edu
APPENDIX E2

Your Honor:

A few weeks ago a survey seeking your input as a Colorado County Court judge was mailed to you. If you have already returned your completed survey (and separate postcard), please accept my sincere thanks. The postcard and your answers to the survey may have simply crossed in the mail.

If you have not completed and sent in the survey and card, or have misplaced either of them, a second copy of each has been enclosed with this mailing. Because this survey has been sent to a relatively small number of judges, it is extremely important that your answers be included if the overall results are to accurately reflect the backgrounds of what has been essentially a never studied part of our judiciary---the Colorado County Court judges. Additionally, these backgrounds will also be compared with those of the Kentucky District Court judges, who attain the bench via contested elections rather than appointment under the Missouri Plan. I hope to publish the results of this study and it also serves as part of the dissertation that I must complete in order to receive my Ph. D. at the University of Cincinnati.

Thank you for your time and consideration. I look forward to receiving your completed materials in the near future.

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Mesa State College
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Grand Junction, Colorado 81501
970-248-1301
midelane@mesastate.edu
APPENDIX F

Comparing Kentucky Elected Judges with Kentucky Appointed Judges

The second research question addresses whether those judges that are initially appointed by the Governor of Kentucky to fill an unexpired term are similar to or different from those who initially achieved their position through election. Fifty-four percent of the Kentucky District Court judges reported that they had originally been elected to their posts while the remaining 46 percent said they had attained the bench via gubernatorial appointment to fill a vacancy. The related hypotheses are as follows:

\( H_{10} \). No background characteristic will significantly differentiate between Kentucky elected judges and Kentucky appointed judges.

\( H_{11} \). Background characteristics will not significantly differentiate between Kentucky elected judges and Kentucky appointed judges.

To test this hypothesis a chi-square test for independence (two-sided) or ANOVAs were initially performed on each of the 35 variables. Table 3 shows that none of the results in any of the eight main categories (localism, political party affiliation, demographics, religion, family background, income upon attaining judgeship, prior legal experience, and prior public office/occupation prior to law school), were significant. The first five categories represent ascriptive characteristics and the remaining three are associated with meritorious or achieved characteristics. While not listed in Table 3, ranges and medians are also provided in the following discussion.
Characteristics of Kentucky Elected Judges

Ascriptive characteristics are considered first. Pertaining to localism, Table 3 shows that 84 percent of the judges indicated they had been born in Kentucky. As for the length of time that the judges had lived in the state and their current county, the average was 44 and 32 years, respectively, and the median length of time was 45 and 32 years, respectively. The range of the number of years residing in the state was between 12 and 64 years while the range for the number of years residing in the current county was between 10 and 64 years. Four in ten of the judges also said that their family had lived in their county for over three generations, about one fourth reported themselves as the first generation to live in their county, and almost 33 percent said their family had been county residents for two or three generations. Eighty-six percent graduated from an in-state undergraduate college or university and 94 percent reported obtaining a diploma from a Kentucky law school.

Three fourths of the elected judges were affiliated with the Democratic Party, 22 percent with the Republican Party, and about 3 percent said they had some other party affiliation. This is reported in Table 3.

The mean and the median ages for Kentucky District Court judges who were initially elected to their position were 49.5 and 49 years, respectively, with a range of between 31 and 64 years. The average age at which a judge originally came to the bench was 40.8 years and the median age was 40 years, with the youngest being 29 and the oldest 58 years old. The mean number of years served on the District Court was 10.9, the median was 8, with a range between 0 (a recently elected jurist) and 52 years. Every one of the judges reported that they were white with 6 percent of them being of Spanish/Hispanic/Latino background. Sixty-three percent were male.
Table 3 also addresses religious affiliation. One fourth of the Kentucky elected judges said they were Baptist, 22 percent reported they were Methodist, and another 27 percent indicated that they were some other Protestant religion. Twenty-two percent of the jurists said they were Catholic. Less than 6 percent listed “none” as their religious affiliation.

As it relates to family background, almost 30 percent of the elected Kentucky judges claimed that their father did not finish high school or only graduated from high school, 19 percent said their father had attended some college, 13 percent expressed that their father had graduated college, and over one third of the elected District Court judges indicated that their father held a diploma from a graduate or professional school. Nearly 30 percent of the jurists indicated that their mother had less than a college education, and 27 percent reported that their mother had attended at least some college. Three in ten of the judges said that their mother had obtained a college degree. About 8 percent indicated that their mother had a graduate or professional degree. Pertaining to occupations, over 40 percent of the judges reported that their father was employed primarily as a white collar/educational/medical worker, one third listed their father in blue collar employment, and 27 percent of the total specifically indicated that their father was involved in the legal profession. Maternal occupations listed were homemaker (36 percent), business/educational/medical (53 percent), while the remaining 11 percent claimed some other occupation.

As to relatives in public office, 78 percent of the judges reported that they were they only office holder in their own generation and 22 percent said there was one or more other public office holder in their generation. Seventy-two percent indicated that there was no public office holder in their parents’ generation, while one quarter reported one or more such person. Seventy-eight percent of the jurists had no public office holder in their grandparents’
generation but 22 percent said that one or more such individual had held office. The judges also reported that no one else served as a judge in their own generation (81 percent), nor in their parents’ generation (86 percent), nor in the generation of their grandparents (92 percent).

The remaining three categories are all based upon achievement or merit. The average yearly income related to the practice of law for the three years immediately preceding their election to the bench is considered. The judges reported that they had earned an annual sum of less than $50,000 (28 percent) between $50,000 and $100,000 (51 percent), and more than $100,000 (20 percent). (It must be noted that these figures have not been adjusted for inflation and associated changes in the “real worth” of money over a multiyear span of time.)

Prior legal experience is also reported in Table 3. The average number of years in the legal profession prior to attaining their particular judgeship was 14. The median length of time so employed was 13 years, while the range was spread between 3 and 29 years. About 28 percent of the elected judges indicated that their main type of law practice since admission to the bar was as a solo practitioner and 30 percent had served as a government attorney. One fourth had been involved in a partnership, while the remaining 17 percent indicated they had worked for a law firm or corporation. Although 36 percent of the judges had been solo attorneys at the time, the main type of practice reported by the judges upon their election to the bench was also as a government attorney (39 percent), while 18 percent had been in a partnership, and 6 percent were employed by a law firm or corporation. Nine percent of the judges listed probate/tax/domestic relations work as the primary focus of their practice prior to reaching the bench, 6 percent said negligence, about one half listed work in the criminal field, and over one third listed some other focus. Over two thirds of the judges had previous service as a prosecutor with the average length of such employment being 8 years with a median
length of 6 years. The range of prior prosecutorial service was between 2 and 24 years. Over half (57 percent) of the jurists said they had served as lead counsel in a jury trial on more than 20 occasions. About 11 percent had so served in between 10 to 20 jury trials, while over 21 percent had done so in between 4 and 10 jury trials. Another 11 percent actually had never served as lead counsel. Forty-six percent of the jurists said they had graduated from law school in the top one third of their class, while 49 percent indicated that they had graduated in the middle one third.

Table 3 further notes prior public office and pre-law school status. Although 51 percent of the elected Kentucky District Court judges reported that they had held no prior public office, 8 percent indicted they had served in an elected position, and 43 percent had been in an appointed office. Almost two thirds indicted that they entered law school immediately upon graduation from an undergraduate institution, and about 28 percent of justices indicated that they had held a full-time job prior to their matriculation into law school while

**Characteristics of Kentucky Appointed Judges**

Data relating to the judges who were initially appointed to the Kentucky District Court is also presented in Table 4. Initially, the five ascriptive categories are addressed. Localism is considered first. An in-state birth was reported by 78 percent of the Kentucky appointed judges. The average length of residence in the state was 46 years, while the median length was 49 years and the range between 8 and 76 years. The mean for length of residence in their current county was 35 years, as was the median. The judges reported having lived in their particular county over a span of 6 to 64 years. Fifty-three percent of the jurists claimed to have had more than three generations of their family reside in their current county. Twenty-
eight percent said they were the first generation to do so and almost 19 percent reported that they were the second or third generation in the county. In-state education was also a strong finding as 94 percent of the judges indicated that they had graduated from a Kentucky undergraduate college or university and 93 percent reported a degree from an in-state law school.

Sixty-three percent of the judges were affiliated with the Democratic Party and one third indicated that they were affiliated with the Republican Party. A little over 3 percent said that they were members of another party.

Demographic information is also shown in Table 3. The mean age of an appointed Kentucky judge was 50.9 years with a median age of 51 years and a range between 33 to 76 years. The average when appointed was 40.8 years. The median age at appointment was 41 years. The youngest judge at appointment was 30 years old while the oldest was 54 years. The average number of years on the bench was 7.8 and the median was 7. The service time ranged from 1 year to 21 years. Table 4 also indicates that all of the judges listed themselves as white and none of them reported being Spanish/Hispanic/Latino. Sixty-five percent were male.

Table 3 also addresses religious affiliation. Thirty-eight percent of the appointed Kentucky District Court judges listed themselves as Baptist and another 13 percent indicated they were Methodist. Over 15 percent of the jurists claimed some other Protestant membership. Twenty-eight percent said they were Catholic, while 6 percent claimed to have no religious affiliation.

Regarding family background characteristics, Table 3 shows that 31 percent of the judges indicated that their father had less than a college education, and another 18 percent said that their father had attended some college. Only 3 percent said that the highest degree earned
by their father was a college diploma. However, a large percentage, 47 percent, of the judges reported that their father held either a graduate or professional school degree. About two in five of the judges said that their mother had less than a college education, although nearly one third did have mothers with such a degree. Only 3 percent had mothers who achieved a college diploma as their highest educational endeavor, while 6 percent indicated that their mother had a graduate or professional degree. For paternal occupation, 53 percent of the respondents listed a blue collar job, another 19 percent of the total specifically said that their father was in the legal profession, while 19 percent specifically indicated employment in white collar/educational/medical fields. Further, the majority of the jurists (55 percent) indicated that their mother had primarily been a homemaker. Business/educational/medical jobs served as the main occupation of the mothers of almost 40 percent of the judges and another 7 percent said that their mothers were involved in some other occupation.

The majority of the judges reported that they had no relatives who held public office in either their immediate generation (75 percent), in their parents’ generation (78 percent), or in their grandparents’ generation (69 percent). One fourth said that they did have one or more immediate relatives so employed in their own generation but only about 21 percent claimed to have had a relative in public office in their parents’ generation, while that increased to over 30 percent for relatives in their grandparents’ generation. Regarding relatives who had held judgeships, 81 percent of the judges indicated that they had no immediate relatives serving in that capacity, while 19 percent reported having one or more such relative. Ninety-one percent of the judges claimed to have no relative from their parents’ generation who had served as a judge. Only 9 percent said that they had one or more such relative. Finally, 85 percent of the
respondents reported that they had no relatives in their grandparents’ generation who had been on the bench, while 15 percent said that at least one such relative had been a judge. 

Achievement or merit based characteristics are further provided in Table 4. Regarding income, 22 percent claimed to have averaged less than $50,000 per year, another 41 percent reported an annual income of between $50,001 and $100,000, and almost one third said they made greater than $100,000 per year. (It must also be noted that these figures have not been adjusted for inflation and associated changes in the “real worth” of money over a multiyear span of time.) 

Previous legal experience is also depicted in Table 3. Prior to becoming a judge, the average number of years that each respondent had been in the legal profession was 15.6 and the median was 14. The range of time spent in the legal profession was between 2 and 48 years. Twenty-eight percent of the judges said that they had been mainly solo practitioners since being admitted to the bar. Only 14 percent reported that their main type of practice since admission was as a government attorney. Nearly four in ten of the jurists listed a partnership and about 20 percent had worked for a law firm or corporation. In regards to type of practice at the time of their appointment to the bench, almost four in ten judges had been engaged in solo practice, another one fourth had worked for the government, 20 percent had practiced in a partnership, and almost 20 percent had served as an attorney for a law firm or corporation. Criminal work (46 percent) was listed as the primary focus of practice at the time of appointment, and another one fourth of the jurists had primarily a negligence focused practice. Probate/tax/domestic relations was listed by about 8 percent of the respondents, while the remaining 20 percent claimed some other type of focus. Fifty-six percent of the judges reported that they had been engaged in prosecutorial work some time during their careers,
serving an average of 8 years, a median of 6 years, and ranging in service from 1 to 26 years. Nearly two thirds of the judges said they had served as lead attorney in more than 20 jury trials, 16 percent claimed being so engaged in between 10 and 20 jury trials, and 19 percent said they had done so in between 4 and 10 jury trials. All of the Kentucky appointed jurists had served as lead counsel in at least one jury trial. Finally, 36 percent of the judges reported that they had graduated in the top one third of their law school class, while 61 percent said they had been in the middle one third.

Prior public office and pre-law school status are also addressed. Although the majority (60 percent) of the jurists indicated that they had never previously held a public office, almost one third said that they had been appointed to one in the past. Only about 9 percent had previously held an elected position. Over 60 percent had been students upon their matriculation to law school and one fourth of the judges reported that they held a full-time job immediately preceding their admission to law school.
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Kentucky Elected (%)</th>
<th>Kentucky Appointed (%)</th>
<th>Significance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SCRIPTIVE CHARACTERISTICS</strong></td>
<td></td>
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<tr>
<td>LOCALISM</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>In-state birth</td>
<td>83.8 (n = 37)</td>
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<tr>
<td>Average time in state</td>
<td>43.6 (n = 37)</td>
<td>46.3 yrs (n = 32)</td>
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<tr>
<td>Average time in county</td>
<td>32.3 yrs (n = 36)</td>
<td>34.5 yrs (n = 32)</td>
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<tr>
<td>Generations in county</td>
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<tr>
<td>One</td>
<td>27.0</td>
<td>28.1</td>
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<td>Two or three</td>
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<td>Four or more</td>
<td>40.5</td>
<td>53.1</td>
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<tr>
<td>In-state undergrad school</td>
<td>86.1 (n = 36)</td>
<td>93.8 (n = 32)</td>
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<td>In-state law school</td>
<td>94.4 (n = 36)</td>
<td>92.6 (n = 32)</td>
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<td><strong>DEMOGRAPHICS</strong></td>
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<tr>
<td>Average age</td>
<td>49.5 yrs (n = 37)</td>
<td>50.9 yrs (n = 32)</td>
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<tr>
<td>Average age at judgeship</td>
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<td>40.8 yrs (n = 31)</td>
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<td>Time in judgeship</td>
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<td>7.8 yrs (n = 31)</td>
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<td>White</td>
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<td>100 (n = 32)</td>
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<td>Spanish/Hispanic/Latino</td>
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<td>0.0 (n = 30)</td>
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<td>Male</td>
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<td>65.2 (n = 32)</td>
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<tr>
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<tr>
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Table 3  Kentucky Elected vs Kentucky Appointed Significance Results: Ascriptive vs Achievement Characteristics (continued)

<table>
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<tr>
<th>Characteristic</th>
<th>Kentucky Elected (%)</th>
<th>Kentucky Appointed (%)</th>
<th>Significance</th>
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<tr>
<td><strong>FAMILY BACKGROUND</strong></td>
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<tr>
<td>Father’s education</td>
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<tr>
<td>Some college</td>
<td>18.9</td>
<td>18.7</td>
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<tr>
<td>College graduate</td>
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<td>3.1</td>
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<tr>
<td>Grad/Professional degree</td>
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<td>46.9</td>
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<tr>
<td>Mother’s education</td>
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<td>(n = 32)</td>
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<td>Some college</td>
<td>27.0</td>
<td>31.2</td>
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</tr>
<tr>
<td>College graduate</td>
<td>29.7</td>
<td>3.1</td>
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<tr>
<td>Grad/Professional degree</td>
<td>8.1</td>
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<td>Father’s occupation</td>
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<td>(n = 32)</td>
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<td>Generations in public office</td>
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<td>Parents’</td>
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<td>72.2</td>
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<tr>
<td>Characteristic</td>
<td>Kentucky Elected (%)</td>
<td>Kentucky Appointed (%)</td>
<td>Significance</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------------------</td>
<td>------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>Generations as judge</td>
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<td>Current</td>
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<td>(n = 32)</td>
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<td>Grandparents’</td>
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**ACHIEVEMENT CHARACTERISTICS**

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<th>AVG YEARLY INCOME</th>
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<tr>
<td>Less than $50,000</td>
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<td>21.9</td>
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<td>$50,000 to $100,000</td>
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<td>More than $100,000</td>
<td>20.0</td>
<td>32.5</td>
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</table>

**LEGAL EXPERIENCE**

| Prior time in legal field      | 13.8 yrs (n = 37)    | 15.6 yrs (n = 32)      | .364         |
| Practice since admitted        | (n = 36)             | (n = 29)               | .267         |
| Solo                           | 27.8                 | 27.6                   |              |
| Government                     | 30.6                 | 13.8                   |              |
| Partnership                    | 25.1                 | 37.9                   |              |
| Law firm/Corp                  | 16.7                 | 20.7                   |              |

<p>| Practice at judgeship          | (n = 33)             | (n = 26)               | 1.0          |
| Solo                           | 36.4                 | 38.5                   |              |
| Government                     | 39.4                 | 23.1                   |              |
| Partnership                    | 18.1                 | 19.3                   |              |
| Law firm/Corp                  | 6.1                  | 19.2                   |              |</p>
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Kentucky Elected (%)</th>
<th>Kentucky Appointed (%)</th>
<th>Significance</th>
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<tbody>
<tr>
<td>Focus of practice</td>
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<tr>
<td>Probate/Tax/Domestic</td>
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<td>Negligence</td>
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<td>Other</td>
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<td>Prior prosecutor</td>
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<td>Jury trials</td>
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<td>None to three</td>
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<td>Four to ten</td>
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<tr>
<td>Ten to twenty</td>
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<td>More than twenty</td>
<td>56.8</td>
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<tr>
<td>Class rank</td>
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<tr>
<td>Top third</td>
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<td>35.5</td>
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<tr>
<td>Middle third</td>
<td>48.6</td>
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<tr>
<td>Lower third</td>
<td>4.7</td>
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</table>

**PRIOR PUBLIC OFFICE/PRE-LAW STATUS**

| Prior public office                |                      |                        |              |
| Elected                            | 8.1                  | 9.4                    | .62          |
| Appointed                          | 43.2                 | 31.2                   |              |
| None                               | 51.0                 | 60.7                   |              |
| Pre-law status                     |                      |                        | .844         |
| Full time student                  | 63.9                 | 62.5                   |              |
| Full time employment               | 27.8                 | 25.0                   |              |
| Part time employment               | 8.3                  | 13.5                   |              |