Welcome to our second issue; this is an important one because with it, we begin to look like the established journal we want to become with regular issues appearing twice a year. (Continue Reading)

Joseph A. Cernik, Editor
jcernik@lindenwood.edu

The journal is focused on issues relevant to Missouri policy makers as well as the public interested with the complexities associated with policy making. The journal strives to present articles in a detached and analytical manner but written so they can be read by the educated adult reader.

Whistleblower Protection for Missouri Nonprofit Organizations
Patrick Walker

Judicial Selection in the State of Missouri: Continuing Controversies
Rebekkah Stuteville

One Development Project, Two Economic Tales: The St. Louis Cardinals’ Busch Stadium and Ballpark Village
Eric Click
Policy Perspective

Police Body Cameras in Missouri: Good or Bad Policy? An Academic Viewpoint Seen Through the Lens of a Former Law Enforcement Official

Pernell Witherspoon

Abstract  |  Full Article

© 2014 - Lindenwood University
Judicial Selection in the State of Missouri: Continuing Controversies

Rebekkah Stuteville

Introduction

Since its admission to the union in 1821, Missouri has been a microcosm of the national developments and debates that surround the issue of judicial selection. Missouri was the first state to use all three of the most common methods of judicial selection—political appointments, contested elections, and merit selection. Because of the state’s experience, the history of judicial selection and the controversies surrounding judicial selection in Missouri provide insight into broader national trends. This article explores the history of judicial selection and the controversies over the various selection methods in the state of Missouri, with an emphasis on the debate that has taken place in the state over the past decade. The article also explains why this issue is relevant to public policy in Missouri. Finally, it provides a snapshot of current opinions on the various judicial selection methods through a survey of community college students.

The History of Judicial Selection in Missouri

The progression of judicial selection in the state shows that Missouri has both followed and led national patterns at different points in history. During the state’s early history, it largely followed national trends. In 1940, however, Missouri became a leader in a pivotal national reform movement in judicial selection, which still has a pervasive influence on the selection methods used by states today.

In 1820, Missouri’s first constitution was adopted and it called for the governor to appoint judges with the advice and consent of the Senate. The state’s approach to selecting judges through appointment was congruent with the methods used by many other states in the post-Revolutionary period. It also followed the model of judicial appointment outlined in the U.S. Constitution which grants power to the executive to appoint Supreme Court justices with the advice and consent of the Senate. Shortly after Missouri began implementing its initial system of judicial selection, the practice of judicial appointments fell into disfavor. President Andrew Jackson “swept into office in 1828 on a tide of public support,” and Jacksonian Democracy took hold throughout the country. Larry C. Berkson explains that citizens began to resent the control that property owners had over the courts, and wanted to “end this privilege of the upper class” and “ensure the popular sovereignty.” As a result, many states shifted from a...
system of judicial appointments to judicial elections. In 1848 Missourians followed the lead of other states, and the constitution was amended to provide for judicial elections, including the election of judges on the Supreme Court.  

Judicial elections, both partisan and nonpartisan, continued to be a popular method of selecting judges for several years. Contested partisan elections were used to select most state judges by the latter part of the 19th century. Problems, however, soon began to emerge, and “the practice of electing judges, while representing a democratic ideal, often degraded into the selection of machine sponsored judicial ‘hacks.’” Missouri was no exception—judicial elections were captured by political machines in the state.

As Laura Denvir Stith and Jeremy Root recount, the Democratic political machine had a “stranglehold on the state’s politics” in the early 1900s. This “stranglehold” was largely the result of “party boss” Thomas Pendergast, who controlled the significant elections in Missouri. Judges were beholden to the party bosses, and judges often found themselves at risk of losing their jobs. The precarious nature of judgeships in Missouri in the early 20th century is demonstrated by the fact that between 1918 to 1941 there were only two times when a state Supreme Court judge was re-elected. 

Problems with partisan elections began to surface in Missouri in the 1920s and the 1930s, but the legal profession’s concern about the influence of politics on judicial election had been longstanding. Years earlier in 1906, Roscoe Pound’s speech to the American Bar Association titled “The Causes of Popular Dissatisfaction with the Administration of Justice” was a harbinger of the growing discontent with judicial elections. Pound argued that “putting courts into politics and compelling judges to become politicians, in many jurisdictions has almost destroyed the traditional respect for the Bench.”

By 1940 a majority of Missourians appeared to agree with Pound’s assessment regarding the danger of mixing partisan politics and judicial elections. Concerned citizens, lawyers, and civic leaders joined together to reform judicial selection in the Missouri. The reformers first attempted to create a “commission plan” for judicial selection through the legislative means, but when legislative attempts failed, reformers successfully placed the Missouri Nonpartisan Court Plan on the ballot through an initiative petition. In November 1940, voters adopted the Missouri Nonpartisan Court Plan with almost 55 percent of the vote. Missouri was the first state to adopt this plan

---

10. Daugherty, 318.
11. Ibid.
15. Wolff, 2; Blackmar explains that lawyers were originally divided on the Plan, but politicians were typically opposed since it cut off one avenue for them to do favors for their supporters. He also notes that the “strong anti-boss sentiment” that resulted from the conviction of Tom Pendergast and his “henchmen” helped the Plan gain support [Blackmar, 201].
16. Daugherty, 318; Wolff, 2.
17. Wolff, 2; Blackmar clarifies that the amendment was originally placed on the ballot in 1940, but took effect in 1942 [Blackmar, 200].
which is now utilized more than 30 other states.\footnote{18}{“Missouri Nonpartisan Court Plan,” 1, accessed May 30, 2014, http://www.courts.mo.gov/page.jsp?id=297.}

### Essential Features of the Missouri Nonpartisan Court Plan

The Nonpartisan Court Plan adopted in 1940 has been expanded and amended, but the key components have been essentially unchanged, in spite of the numerous attempts to repeal or modify the plan. The basic features of the plan today are explained in Article V of the Missouri Constitution, and include:

- **Nonpartisan Judicial Commissions**: Nonpartisan judicial commissions screen and nominate candidates for judicial vacancies.
  - The Appellate Judicial Commission oversees this process for the Supreme Court and Court of Appeals. The seven-member Appellate Judicial Commission includes a judge, three lawyers (one from each court of appeals district) who are elected by The Missouri Bar, and three citizens (one from each court of appeals district) who are appointed by the governor.
  - The circuit courts in Clay County, Green County, Jackson County, Platte County, and St. Louis County, and the city of St. Louis have their own circuit judicial commissions. The five member circuit judicial commissions are composed of a judge, two lawyers from the relevant circuit elected by The Missouri Bar, and two citizens from the circuit who are selected by the governor.\footnote{19}{All information under the “Nonpartisan Judicial Commissions” bullet point is derived from “Missouri Nonpartisan Court Plan,” 1-2, accessed May 30, 2014, http://www.courts.mo.gov/page.jsp?id=297.}

- **Judicial Vacancies**: When a judicial vacancy arises, the nonpartisan commission reviews applications and interviews applicants. The commission then submits three qualified candidates to the governor for consideration. The governor selects one of the candidates to fill the vacancy. If the governor does not nominate any of the nominees within 60 days after the list of nominees is submitted, the nonpartisan commission appoints one of the nominees to fill the vacancy.\footnote{20}{Ibid, 2.}

- **Retention Elections**: Once a judge has been in office for at least one year, the judge will be placed on the ballot for a retention election in the next general election. The judge must receive a majority of votes to be retained.\footnote{21}{Ibid.} Judges are not elected for life; the terms vary depending on the level of court; and all state judges must retire at 70 years old.\footnote{22}{Wolff, 2.}

The Missouri Nonpartisan Court Plan originally applied to the Supreme Court, the court of appeals; the circuit, criminal correction and probate courts of the city of St. Louis; and the circuit and probate courts of Jackson County.\footnote{23}{“Missouri Nonpartisan Court Plan,” 1, accessed May 30, 2014, http://www.courts.mo.gov/page.jsp?id=297.} It was later extended to judges in St. Louis, Clay, and Platte counties, and most recently Greene County.\footnote{24}{Ibid.} The plan is now used to select circuit and associate circuit judges in five counties and the urban areas of Kansas City and St. Louis as well as all appellate judges, including the judges on the Supreme Court.\footnote{25}{“Meet Your Missouri Judges,” 1, accessed April 12, 2014, http://www.courts.mo.gov/page.jsp?id=630.}

Although the Missouri Nonpartisan Court Plan does encompass much of the state, partisan judicial elections are still used to select trial judges in over 100 counties in Missouri.\footnote{26}{“Judicial Vacancies,” 1, accessed May 30, 2014, http://www.courts.mo.gov/page.jsp?id=603.} As explained by Michael Wolff, partisan elections seem “well-suited for the rural areas of Missouri, which are small enough so that campaigns are not especially expensive and the voters can get to know the judges and judicial candidates before they cast their votes.”\footnote{27}{Wolff, 1.}
Missouri has a dual system of judicial selection with different courts using different methods. The method depends largely upon the level of court and whether the jurisdiction is more rural or urban.

The Ideological Debate: Independence and Accountability

As with Missouri’s history of judicial selection, the ideological debates over merit systems and elections reflect broader national trends. The controversies regarding judicial selection methods center on the values of judicial independence and accountability.28

The notions of judicial independence and democratic accountability are grounded in the nation’s history. State constitutions and governing institutions do not necessarily mirror their federal counterparts, but the arguments made during the nation’s founding help explain the conceptual roots of the debate. The founders’ perspective on judicial independence in a system of “separated institutions sharing power”29 is detailed in the Federalist Papers. As Alexander Hamilton argued in Federalist No.78, judicial independence is needed to guard the Constitution and individual rights.30 Judicial independence, however, cannot be left unrestrained. As James Madison asserted in Federalist No. 51, “ambition must be made to counteract ambition.”31 This was to be realized by a system of checks and balances to ensure that no one branch of government accrued too much power, including the judiciary. During his journey through America in the 1830s Alexis de Tocqueville observed the complexity of the judiciary’s role when he explained that “courts help to correct the excesses of democracy and . . . manage to slow down and control the movements of the majority without ever being able to stop them altogether.”32

Inherent in the independence versus accountability debate is also a discussion of the proper role of judges. On one hand, judges may be viewed as “legal technician[s]” who are selected based upon their qualifications.33 If this characterization accurately reflects reality, then concerns about excessive judicial independence are minimized since judges are simply following precedent, and objectively applying the law. On the other hand, judges may also be perceived as having discretion which implies that they may take part in making the law.34 If this depiction more accurately describes reality, then concerns about the democratic legitimacy of judicial selection processes arise.35

The advantages and disadvantages of judicial appointments, merit systems and elections are articulated by legal scholars along competing lines of argument regarding independence and accountability, and the appropriate role of judges. Since Missouri uses both the merit system and partisan judicial elections, a few of the arguments made or explained by legal scholars for and against each approach are outlined in Tables 1 and 2.


34 Ware, 766-767.

35 Ibid., 766.
Table 1. Merit Systems: Arguments Regarding Advantages and Disadvantages

<table>
<thead>
<tr>
<th>Arguments Regarding Advantages</th>
<th>Arguments Regarding Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arguments regarding merit systems related to independence</td>
<td>Argument that merit systems do not actually provide independence</td>
</tr>
<tr>
<td>• Merit selection minimizes politics and promotes stability in the judicial selection process.</td>
<td>• Politics may still play a part in the commission and appointments.</td>
</tr>
<tr>
<td>• Merit selection is in line with the founders’ desire to “project judicial independence from the</td>
<td>Arguments that merit systems jeopardize accountability</td>
</tr>
<tr>
<td>whims and impulses of a majority.”</td>
<td>• The merit system gives lawyers and state bar associations a powerful role. Merit selection may not</td>
</tr>
<tr>
<td>• Merit selection emphasizes “professional qualifications,” and “pre-appointment merit</td>
<td>remove politics from judicial selection, but “may simply move the politics of judicial selection into</td>
</tr>
<tr>
<td>screening.” An emphasis on professional qualifications is in line with the characterization</td>
<td>closer alignment with the ideological preferences of the bar” which may differ from the ideological</td>
</tr>
<tr>
<td>of judges as technicians.</td>
<td>preferences of the public.</td>
</tr>
<tr>
<td>• Merit selection reduces the risk of capture by external groups.</td>
<td>• Interest groups influence judicial selection regardless of the method used, and attempts to</td>
</tr>
<tr>
<td></td>
<td>control the influence of special interests may actually advantage one group.</td>
</tr>
<tr>
<td>Argument regarding merit systems related to democratic legitimacy</td>
<td>• The process can be secretive.</td>
</tr>
<tr>
<td>• In Missouri, the Nonpartisan Court Plan has public support with nearly three-quarters of</td>
<td>• Judges are rarely voted out by the public through retention elections, and are not accountable.</td>
</tr>
<tr>
<td>Missourians supporting it, regardless of their political party affiliation.</td>
<td>A study of judicial retention trends from 1964-2006 in ten states reported that “in only 56 of the 6,306</td>
</tr>
<tr>
<td></td>
<td>judicial retention elections were judges not retained.”</td>
</tr>
<tr>
<td></td>
<td>Retention elections do not provide the purported accountability since little information is</td>
</tr>
<tr>
<td></td>
<td>provided to voters about the candidates; partisan affiliations, an important voter cue, are not</td>
</tr>
<tr>
<td></td>
<td>listed on the ballot; and voters may be risk averse since they do not know who will replace the</td>
</tr>
<tr>
<td></td>
<td>incumbent.”</td>
</tr>
</tbody>
</table>

36Stith and Root, 725.  
38Daugherty, 339.  
39Stith and Root, 713, 727.  
40Ibid, 749.  
41Daugherty, 339.  
44Daugherty, 339.  
45Ibid.  
47Fitzpatrick, 683-684.
### Table 2. Judicial Elections: Arguments Regarding Advantages and Disadvantages

<table>
<thead>
<tr>
<th>Arguments Regarding Advantages</th>
<th>Arguments Regarding Disadvantages</th>
</tr>
</thead>
</table>
| Arguments regarding elections related to accountability  
  - Elections are populist since elections put power “in the hands of the people.”[^48] | Argument that elections do not actually provide accountability  
  - Voters are uninformed about judicial candidates, and do not vote in judicial races. They also believe that judges who are elected are influenced by campaign contributions.[^50] The public may not have the “tools” needed to ensure that judges are applying the law fairly andcompetently.[^51] |
| Arguments regarding elections related to democratic legitimacy  
  - Elections are favored by the public, with 64 percent indicating that they favor direct elections.[^49] | Arguments that elections jeopardize independence  
  - Partisan elections “infuse politics into the law.”[^52]  
  - Judicial campaigns have become “high-stakes contests, bringing in large sums of money and attack-driven advertising campaigns.”[^53] The large sums of money in judicial elections give the appearance of bias, and bring into question the impartiality of judges.[^54]  
  - Judicial elections receive considerable attention from special interest groups that are seeking influence, and interest groups invest heavily in judicial elections.[^55]  
  - Campaigns may “blur the distinction between the job of a judge and the job of a legislator,” which may diminish public confidence in fairness and impartiality of the judiciary.[^56] The public may view judges as “politicians in robes.”[^57] |

[^48]: Ware, 753.  
[^50]: Charles G. Geyh, “Why Judicial Elections Stink,” (2003). Faculty Publications, Paper 338, 52, accessed June 6, 2014, [http://www.repository.law.indiana.edu/facpub/338](http://www.repository.law.indiana.edu/facpub/338). Geyh claims that there is an “Axiom of 80” with regard to judicial elections. Eighty percent represents the approximate percentage of: 1) the public that prefers to select judges through elections, 2) the electorate that does not vote in judicial elections, 3) the electorate that cannot identify judicial candidates, and 4) the public that believes that the decisions of judges who are elected are influenced by campaign contributions [Ibid.]  
[^51]: O’Connor and Jones, 23.  
[^52]: O’Connor, 486.  
[^53]: Jamieson and Hardy, 13.  
[^54]: O’Connor, 488.  
[^56]: Ibid., 582-583.  
[^57]: Jamieson and Hardy, 15.
Controversies in Missouri

Attempts to modify or eliminate the Nonpartisan Court Plan in Missouri reflect a number of these ideological differences as well as point to attempts at political maneuvering. Challenges to the Nonpartisan Court Plan have been numerous, and they began shortly after the plan was initially approved by voters. For example, an early challenge occurred in 1942 when the General Assembly placed the “Lauf Amendment” on the ballot to abolish the plan and reinstate partisan election of judges. The amendment was defeated. Opponents of the Nonpartisan Court Plan, however, have continued to press forward, using both legislative means and initiative petitions to repeal or modify the plan.

Legislately, there have been numerous attempts to repeal or modify the Nonpartisan Court Plan by members of the Missouri General Assembly over the past decade. The period from 2004-2012 was especially active with bills introduced to repeal or modify the Nonpartisan Court Plan in every year but 2006. The various legislative proposals from 2004-2014 include efforts to:

- Repeal the plan and move to a system of judicial elections (2004, 2012)
- Repeal the plan and move to a system of gubernatorial appointments with Senate confirmation or with Judicial Confirmation Commission approval (2007, 2008, 2012)
- Require appointments under the current plan to be made with the advice and consent of the Senate (2007)
- Require judges to receive more than a simple majority to be retained in judicial elections (2005)
- Repeal retention elections completely and give the General Assembly power to vote on judicial retention (2007)
- Allow the governor to veto the first list of nominees (2009, 2010)
- Change the composition of the Judicial Commission to include more non-attorneys than attorneys or to allow for other changes to the composition (2011, 2012)

Most of the legislative proposals died in committee, but one measure was placed on the ballot. In 2012 a measure was passed by the General Assembly to change the composition of the Appellate Judicial Commission to give the governor four appointees, instead of three; replace the chief justice with a retired nonvoting judge; and to change the staggered terms of the gubernatorial appointees to four-year terms during the governor’s term. The measure, Amendment 3, was defeated with only 24 percent of voters supporting the measure in November 2012.

In addition to sustaining legislative challenges, the plan has also withstood attempts to modify or repeal it over the past decade. Initiative petitions to either modify or repeal the Nonpartisan Court Plan were approved for circulation in Missouri in 2008, 2010, and 2014, but none received enough signatures to be placed before voters on the ballot.

The various proposals to change or repeal the Nonpartisan Court Plan in Missouri mirror many of the claims made more broadly by critics of merit systems. For example, the role afforded to lawyers has been challenged by attempts

---

58Blackmar, 202.
59Ibid.
60A 2012 measure submitted by Jim Lembke, SJR 41, actually called for almost all judges to be elected, but one at-large Supreme Court judge would be appointed by the governor with the consent of the Senate.
to change the composition of the Judicial Selection Commissions in Missouri; efforts have been made to reduce the alleged “elitism” of the plan by proposing Senate confirmation; and reformers have attempted to tinker with retention elections by requiring more than a simple majority vote. Supporters of the plan, however, have thwarted attempts to significantly alter or repeal it. Charles B. Blackmar’s observation in 2007 that the Missouri plan is “alive, well, and resilient” in the state of Missouri still appears relevant today.  

An additional overarching criticism of the plan is that politics cannot be removed from the commission and appointments. The history of judicial selection in Missouri lends some credence to this complaint. At least one observer of the system has claimed that it is “political without being partisan.” There is evidence, however, that the nonpartisan ideal of the plan has not always been reflected in the reality of implementing the plan.

The evolution of the Nonpartisan Court Plan in the state is well documented by Blackmar in his article “Missouri’s Nonpartisan Court Plan From 1942 to 2005.” Blackmar explains that many governors during the first forty years of the plan’s operation, with some noteworthy exceptions, appointed members of their own party as judges, which buttresses claims that the plan was not “truly nonpartisan.” Blackmar suggests that some commissions may have even stopped submitting names of candidates who were not from the governor’s party since they did not have a chance of appointment. Additionally, Blackmar provides accounts of the nonpartisan judicial commissions deferring to partisan influence and manipulation in the early 1950s and the 1980s. He explains that in 1953 Gov. Phil Donnelly and the Judicial Commission reached a stalemate over panels submitted which the governor believed “demonstrated inappropriate attention to both inter- and intra-party political influence.” Additional charges of political mischief in the judicial selection process arose thirty years later in the 1980s, and the controversies are reported by both Blackmar and Jay A. Daugherty from different perspectives. According to Daugherty, in 1982 there were three vacancies on the Supreme Court and “one sitting judge allegedly manipulated the merit plan to ‘hand-pick’ three new members of the court.” Only a few years later, in 1985, a panel was submitted to Gov. John Ashcroft which included “the governor’s thirty-three year old gubernatorial chief of staff, who had no judicial experience,” and the aid was appointed to the seat.

Attempts to infuse partisan influence into the selection process were not limited to the 20th century; they continued well into the 21st century. As reported by Lora Cohn, “controversy exploded” in the summer of 2007 when the nonpartisan judicial commission began considering the replacement of Supreme Court Judge Ronnie White. This was Gov. Matt Blunt’s first appointment to the Supreme Court and Blunt allegedly “demanded a conservative candidate.” The commission sent the top three candidates to Blunt for White’s replacement, but upon receiving the slate, the governor requested information on all thirty candidates; the commission refused to turn over this information. Blunt and the commission, headed by Chief Justice Laura Denvir Stith, were at an impasse.

65 Blackmar, 216.
67 Blackmar, 199-219.
68 Blackmar explains that there are some notable exceptions, such as the appointment of Walter Bennick by Forrest Smith, Governor Phil Donnelly’s appointment of two Republicans, Governor John Dalton’s appointment of a Republican, and Governor Hearnes’s appointment of a Republican [Ibid, 205-207.]
69 Ibid, 205, 208.
70 Ibid, 206.
71 Blackmar, 199-219; Daugherty 315-343.
72 Daugherty, 328; Blackmar takes exception to Daugherty’s claim that there was a scandal during the 1982 appointments [Blackmar, 209-210].
73 Daugherty, 328.
75 Lauck, House Commission in Missouri awaits scrutiny over next pick, 1.
76 Cohn, 7.
explains that “Blunt went into attack mode, threatening to sue for the materials and proposing that all three candidates had to answer a 110 question survey that covered even behavior in elementary school. He eventually selected the single Republican on the slate. . .”

Cases of political positioning have helped fuel arguments that the Missouri Plan “has not delivered on its promises,” which include being less political than other forms of selection. Proponents of the plan concede that merit selection has flaws, but it is still preferable to the alternative of elections.

The Implications of Judicial Selection for Policymaking in the State of Missouri

The method of judicial selection used by a state has clear implications for the distribution of power within a state among political institutions and interest groups. The method chosen can influence the power held by the governor, legislature, or organizations such as bar associations. One central question, however, is why should judicial selection be of concern to the citizens of the state of Missouri?

The issue of judicial selection is important beyond the legal community because state judges have the opportunity to influence policy and the lives of citizens. The degree to which judges influence policy and exercise discretion is debatable, but opportunities for influence exist. As Daugherty notes, “precedent is usually followed, and decisions are commonly reached objectively and dispassionately. However, at times, judges must act subjectively and more like legislators.”

Paul Brace, Melinda Gann Hall and Laura Langer contend that state supreme courts have “extraordinary discretion in rendering decisions” and they can have a significant impact on the lives of citizens. They argue that “as the courts of last resort, state supreme courts have the final authority on many issues that are critical to citizens’ daily lives and to the overall nature of state politics and policy.”

Moreover, the method used to select judges may affect judicial decision-making. Richard Caldarone, Brandice Canes-Wrone, and Tom S. Clark explain that “a wealth of scholarship suggests that institutions pertaining to judicial selection influence judges’ decisions.” They point to research which shows that elected judges are more likely to be attentive to public opinion, overturn statutes, and uphold decisions in favor of the death penalty.

The line from judicial selection to policymaking is attenuated, but it arguably exists. Research suggests that judicial selection is one factor that influences judicial decision making; and state judges potentially exercise discretion in decisions that are relevant to the citizens of Missouri.

77Ibid.
78Ibid.
80O’Connor and Jones, 24; Blackmar states that “the burden is on those who challenge the Plan to come up with a method which is both better and practicable” [Blackmar, 217].
81Daugherty, 317.
83Ibid.
The degree of judicial discretion is debatable, but the opportunity to exercise discretion indicates that factors which influence judicial decision making, such as judicial selection, should be of concern to citizens. Judicial selection is relevant to citizens since it is one factor that may influence state judges who have the opportunity to make decisions that can impact state policy and citizens’ lives. Judicial selection is not simply a matter for esoteric legal debates; it is a practical matter for citizens.

A Snapshot of Current Trends and Opinions in Missouri

In 2013 newspapers began reporting on a new “wave” of initiatives nationwide to change judicial selection processes. Opponents of merit systems claim that dissatisfaction is growing, and they cite recent efforts in Tennessee, Kansas, Arizona, Oklahoma, and Missouri as evidence of this dissatisfaction.

In light of the resurgence of interest in reforming judicial selection processes in 2013, a survey of Missouri community college students was conducted in June 2014 to obtain a snapshot of current knowledge and opinions on judicial selection by young adults in the state. The methodology and findings from the student questionnaires are discussed below.

This study also originally involved interviews with government officials, representatives of interest groups and citizen groups, and people who have publicly voiced either support or criticism of Missouri’s system of selecting judges in order to assess the core arguments for and against the Nonpartisan Court Plan. The methodology and the findings for the interviews with government officials and interest/citizen group representatives have not been reported due to the low response rate for the interviews. Most of the individuals contacted for interviews were either nonresponsive or indicated that they did not want to participate. Only one individual from a group in favor of the Nonpartisan Court Plan agreed to be interviewed, and this person was interviewed. However, the findings from this interview have not been reported since both sides of the issue cannot be presented and a balanced assessment of the arguments for and against the Nonpartisan Court Plan cannot be made.

Student Questionnaire

Methodology

The tool used for this study was a 19-question questionnaire. The questions were adapted from open-ended questions in “Road Maps: A ‘How-to’ Series to Help the Community, the Bench and the Bar Implement Change in the Justice System.” The questions were adapted and reprinted with permission from the American Bar Association. The response categories for each question were also derived partially, but not fully, from this source.

---

87 Tarr and Fitzpatrick, 1.
88 The survey questions on the questionnaire and discussed in the “Student Questionnaire” section of this article were adapted from “Road Maps: A ‘How-to’ Series to Help the Community, the Bench and the Bar Implement Change in the Justice System.” ©2008 by the American Bar Association. Adapted and reprinted with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in any electronic database or retrieval system without the express written consent of the American Bar Association. The response categories for each question were derived partially, but not fully, from this source: American Bar Association Coalition for Justice [Updated by the American Judicature Society and Malia Reddick], “Road Maps: A ‘How-to’ Series to Help the Community, the Bench and the Bar Implement Change in the Justice System. Judicial Selection: The Process of Choosing Judges,” accessed March 28, 2014, http://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/Justice/PublicDocuments/judicial_selection_roadmap.authcheckdam.pdf.
The response categories for each question were limited in most cases, but the participants had an opportunity to select “other” for six of the questions and “do not know” for nine of the questions. The questionnaire took approximately fifteen minutes for participants to complete. It asked participants questions in five areas: qualities of judges, knowledge and preferences regarding judicial selection, opinion on judicial elections, opinions on merit selection, and safeguards against bad judges.

Students at two-year institutions in the state of Missouri were targeted for the questionnaire to obtain a cross-section of the young adult population since community colleges attract both traditional and nontraditional students. The students were recruited to participate through their instructors who were contacted by the investigator. The investigator targeted nine classes throughout the state of Missouri, but only four instructors agreed to participate, and three classes ultimately participated since one course was cancelled. Consent forms, explaining the study and acknowledging risks, were completed by all participants. Questionnaires were completed by fifty-two students in Missouri. All of the students who participated are residents of the state of Missouri. At the time of the survey, 73 percent (thirty-eight) of the students were between the ages of 18-24, 19 percent (ten) were between 25-34, and 8 percent (four) were between 35-44. None of the students were over 44 years old.

**Findings**

The findings from the survey are broken down into the five substantive categories of the survey: Qualities of Judges, Judicial Selection Methods, Judicial Elections, and Merit Selection of Judges.

**Qualities of Judges.** In order to provide context for the survey results, all of the participants were asked if they had ever had any direct interaction with judges. Forty-two percent (twenty-two) of the students indicated that they have had direct interaction with a judge. Of the students who indicated that they have had direct interaction with a judge, an overwhelming 91 percent (twenty) indicated that their overall impression of the judge was positive.

Respondents were also asked about the personal qualities and objective criteria judges should possess. First, they were asked to select the two most important personal qualities they would like to see in a judge, and were given the option of selecting independence, intelligence, fairness, impartiality, or another quality of their choice. The respondents indicated that the most important personal quality is fairness (forty-four students marked this as one of the top two), with intelligence coming in second (thirty-three students marked this as one of the top two).

With regard to the specific objective criteria judicial candidates should possess, respondents were given the option of selecting age, years of practicing law, type of law practiced, community involvement, or other. They were again asked to pick the top two qualities. The number of years of practicing law was the most important objective criterion to the students (forty-four students marked this as one of the top two); the type of law practiced was a distant second (twenty-nine students marked this as one of the top two).

**Judicial Selection Methods.** Questions regarding both participant knowledge of judicial selection and participant preferences regarding selection methods were asked. Respondents were asked to identify how judges (Supreme Court, Appellate, Circuit, and Associate Circuit) are selected in the state, and were given the option of selecting elections; gubernatorial and/or legislative appointment; merit selection; or a combination of merit selection and other methods, depending on the level of court and/or location. Respondents were also given the option of selecting “do not know.” Forty-five percent (twenty-three) indicated that they do not know how judges are selected; 27 percent (fourteen) indicated that Missouri only uses elections; 24 percent (twelve) knew that Missouri uses a combination of merit selection and other methods, depending on the level of court and/or location; and 4 percent (two) indicated that Missouri only uses a system of gubernatorial and/or legislative appointments.

---

89Note that not all of the students answered all of the questions. Typically between forty-nine to fifty-two students answered a given question.
Respondents were then asked what they believe is the best method of selecting judges. Fifty percent (twenty-six) stated that a combination of methods is the best. Moreover, 53 percent (twenty-seven) responded that the method for selecting judges should be different at different levels of the court.  

**Judicial Elections.** Since circuit and associate circuit judges are elected in most counties in Missouri, respondents were asked their opinion about elections. Ninety percent (forty-seven) indicated that the election of judges is good for the justice system, while only 10 percent (five) indicated that they are bad.

In judicial elections, 10 percent (five) indicated that they believe the public is given enough information about candidates to make informed election decisions, 45 percent (twenty-three) said they are not, and 45 percent (twenty-three) did not know. Additionally, 53 percent (twenty-seven) responded that a candidate’s party affiliation (Democrat, Republican, etc.) should be known to voters. With regard to soliciting campaign funds, 55 percent (twenty-eight) stated that they should not be able to solicit campaign funds, 24 percent (twelve) said that they should, and 21 percent (eleven) stated that they “do not know.”

**Merit Selection of Judges.** As outlined previously, the state of Missouri also has more than 70 years of experience with merit selection of judges, thus the respondents were asked to weigh in on their opinion regarding some of the operational details of merit systems.

The participants were advised that in most merit selection systems, a nominating commission screens judicial candidates, and they were asked to indicate who should sit on such a commission. They were given the options of gubernatorial and/or legislative appointees, lawyers, judges, citizens who are not lawyers, and other. Respondents were asked to mark all categories that apply. The support for the groups listed was relatively equal. Judges were selected by thirty-five students, citizens who are not lawyers by thirty-three students, gubernatorial and/or legislative appointees by twenty-six students, and lawyers by twenty-five students. Three indicated “other.”

The respondents were also asked how members of the nominating commission should be selected. They were given the following categories: by elected officials, by lawyers, by judges, by voters, or other. Respondents were again asked to mark all that apply. The two categories selected most often were elected officials (thirty-one students marked) and voters (twenty-nine students marked). Judges were selected by twenty students and lawyers by fourteen students. Three students again indicated “other.”

Respondents were asked if there should be mandatory requirements for the composition of the nominating commission in merit selection systems. Seventy-six percent (thirty-nine) answered affirmatively. Those who answered in the affirmative were also asked what requirements should be taken into consideration regarding the composition of the nominating commission. They were given the options of the balance of lawyers and non-lawyers, party affiliation, ethnic diversity, gender diversity, geographic diversity, and other. The balance of lawyers and non-lawyers was selected most often (twenty-seven students marked), gender diversity came in a close second (twenty-five students marked), party affiliation third (twenty-three students marked), ethnic diversity fourth (twenty-two students marked), and geographic diversity fifth (nineteen students marked). Two students marked “other.”

**Other.** The final question asked respondents was if there are sufficient safeguards against bad judges in the state of Missouri. Seventy percent (thirty-four) stated that they do not know, 20 percent (ten) indicated that there are not, and 10 percent (five) responded that there are sufficient safeguards.

---

90 Students were able to mark “Do Not Know” in response to these questions.

91 Students were able to mark “Do Not Know” in response to this question.

92 Students were able to mark “Do Not Know” in response to this question.
Analysis
For consistency and simplicity, the analysis section is also broken down into the five substantive categories of the survey: Qualities of Judges, Judicial Selection Methods, Judicial Elections, and Merit Selection of Judges.

Qualities of Judges. The requirements to be a judge in the state of Missouri are somewhat minimal. Article V, Section 21 of the Missouri Constitution requires associate circuit judges to be at least 25 years old; and supreme court, court of appeals and circuit judges to be at least 30 years old. The judges must have also been citizens of the U.S. and qualified voters in the state for varying periods of time. Additionally, they must be licensed to practice law in Missouri. Based on the survey results, one of the few objective criteria listed in the Missouri Constitution, age, was of little importance to this group of respondents. However, a criterion which is related to age, the number of years of practicing law, was the most important objective criterion to the students. In other words, a specific age was not important, but experience practicing law was.

Judicial Selection Methods. The survey results indicate that 45 percent of respondents did not know how judges are selected in the state. Based on the complicated system that Missouri has in place, this finding is not surprising. The more encouraging news for the level of civic knowledge in the state is that 24 percent knew that Missouri uses a combination of merit selection and other methods, depending on the level of court and/or location. Additionally, although many of the respondents stated that they do not know the system used in Missouri, their opinions appear to support the present structure, which is a combination of merit selection and elections, depending on the level of court and/or location. When asked their opinion, half of the respondents stated that a combination of methods is the best, and more than half of the respondents stated that the method for selection judges should be different at different court levels.

Judicial Elections. As stated previously, since circuit and associate circuit judges are elected in most counties in Missouri, respondents were asked their opinion regarding elections. The respondents overwhelmingly believe that the election of judges is good for the justice system. It should be noted, however, that the question asked about elections in general and did not specify competitive or retention elections. Although 90 percent believed that elections are good for the justice system, many (45 percent) do not believe that the public is given enough information to make informed election decisions. Their perception that the public lacks sufficient information may be related to more than half of the respondents indicating a candidate’s party affiliation (Democrat, Republican, etc.) should be known to voters. In other words, in the absence of sufficient information, voters may need party affiliation as a cue. The respondents’ perceptions that elections are good for the justice system also appears to have the caveat that elections are good for the system if candidates are not allowed to solicit campaign funds since 55 percent of the respondents stated that judges should not be able to ask for campaign monies.

Merit Selection of Judges. The questionnaire did not ask the participants questions about their knowledge of the details of the Nonpartisan Court Plan, but the respondents’ opinions again demonstrated support for the current structure. Under the Nonpartisan Court Plan, the merit system is made up of gubernatorial appointees who are not members of the bar, lawyers and a judge. The respondents indicated that all these groups should be represented on the nominating commission, with judges, appointees, and citizens receiving more support than lawyers.

The respondents were also asked who should select the members of the nominating commission. This is one area in which the respondents’ opinions do not align with the current system. The plan calls for the governor to appoint three members, and the Missouri Bar to select three members. The respondents agreed that elected officials should play a part in selection; however, lawyers came in last among the possible choices of elected officials, judges, voters, and lawyers.

Finally, a solid majority of respondents agree that there should be mandatory requirements for the composition of the nominating commission. The Missouri Nonpartisan Court Plan presently takes into consideration the balance of
lawyers and non-lawyers as well as geographic diversity on the nominating commission. The respondents agreed that the balance of lawyers and non-lawyers should be taken into consideration, but indicated that gender diversity, party affiliation, and ethnic diversity are more important than geography when making decisions about the composition of the nominating body.

Limitations and Recommendations for Future Research

There were a number of limitations to this study which include a small sample size for both the student questionnaires and interviews. Generalizability to similar populations both within and outside of Missouri cannot be assumed for the student questionnaire because of the small number of respondents, and the interview findings cannot be reported due to the small sample. In order to increase participation, it is recommended that the student questionnaires be administered during the school year as opposed to the summer months since this may help increase participation by instructors and consequently students in the survey. Additionally, more individuals may agree to be interviewed regarding the Nonpartisan Court Plan during periods that the plan is a more salient issue for the legislature or voters.

There are also limitations with the design of the student questionnaire. The questions used for the questionnaire were adapted from open-ended questions, and there is a need for further refinement of the response categories for the survey. For example, it is recommended for future research that the questionnaire instrument be refined to clarify if the questions regarding elections pertain to competitive elections or retention elections since this was not clearly stated. Analysis of the results was also complicated since respondents were allowed to select more than one response for some of the questions. The questionnaire may need to be modified to allow respondents to select only one answer to each question.

Conclusion

The State of Missouri’s history of judicial selection and the ideological battles around the issue have reflected national trends since Missouri became a state in the early 1820s. The state’s experience with the plan has been uneventful at times, but has also been punctuated with periods of political turmoil. Challenges to the plan have continued to escalate over the past decade with renewed interest of reformers who seek to repeal and modify the plan. The survey results from a small sample of Missouri community college students show that almost a quarter of the students who participated are knowledgeable of the current system that is in place. Additionally, a majority of the students surveyed are supportive of a hybrid system of judicial selection which uses a combination of methods, and varies based on different court levels, which is similar to the system of judicial selection in the state. Although not generalizable, this pilot study provides insight into the knowledge and opinions of one group of community college students regarding judicial selection in Missouri.

Acknowledgment

The author is grateful for the support of the instructors and students who participated in this study.
Introduction

This article focuses primarily on the interrelated economic development project of the St. Louis Cardinals’ new Busch Stadium (2006) and Ballpark Village (2014). While the new Busch Stadium officially opened on April 10, 2006, and Ballpark Village officially opened on March 27, 2014, nearly eight years later, since the opening of Ballpark Village only included the completion of Phase 1, this interrelated development is actually ongoing and yet to reach fully planned and promised project completion. While originally proposed and envisioned as one simultaneous but layered project, the building and realization of the two entities eventually became two separate but interrelated projects, resulting in public financing of both. Through this evolution, the overall economic development project changed dramatically, including key actors, funding, design, and goals. This research examines both the individual and combined economic impact, both tangible and intangible, of the two entities, including in regard to sustainability.

Economics of Professional Sports

This section focuses on the big four major league sports: Major League Baseball (MLB), National Basketball Association (NBA), National Football League, and National Hockey League (NHL). Relative to the ongoing subsidization of these leagues, particularly stadiums/arenas, Raymond J. Keating, who serves as chief economist with the Small Business & Entrepreneurship Council (SBE Council), argues:

What is the most subsidized industry in all of America? Arguably, it is an industry dominated by small and mid-sized businesses. I would say that the Kings of the subsidies game are the four major league sports—the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and the National Hockey League (NHL)—along with minor league baseball and hockey. After all, what other industries—other than those actually operated by the government, like public schools—have the government subsidize almost all of the buildings in which they operate? Answer: None. It’s only pro sports.2

Regarding the stadium building boom that started in the 1980s, Adam M. Zaretsky, Economist at the Federal Reserve Bank of St. Louis, states:

Between 1987 and 1999, 55 stadiums and arenas were refurbished or built in the United States at a cost of more than $8.7 billion. This figure, however, includes only the direct costs involved in the construction or refurbishment of the facilities, not the indirect costs—such as money cities might spend on improving or adding to the infrastructure needed to support the facilities. Of the $8.7 billion in direct costs, about 57 percent—around $5 billion—was

financed with taxpayer money.³

Further, from 2000 to 2010, twenty-eight new stadiums were built for approximately $10 billion, with $5 billion coming from public funders. Thus, taxpayers covered nearly half the cost to either maintain or attract a team.⁴

While local or state officials, elected and non-elected, may often claim they are satisfying the demand for sports entertainment, their primary underlying argument is that these professional sports teams bring major league status to their communities. With this status, public officials argue teams bring positive local, state, regional, national and even possible global exposure, both in branding and marketing, which can translate to additional opportunities and revenue generation for local businesses. Thus, news jobs and business are attracted to the area.⁵ However, Eric Click contends, “Regarding this public investment and the economic benefits of professional sporting facilities, academic studies have found little, perhaps even a negative economic effect, with investment simply being reallocated, not generated.”⁶

Even though very little economic evidence exists that public stadium investments generate new revenue from either local or non-local residents, including relative to tourism, the opposing belief is often propagated by the misuse of the “Multiplier Effect.” Zaretsky articulates, “Of the three circumstances described that purportedly generate new revenues, the third—funds keep turning over locally, thereby ‘creating’ new spending—is probably the most spurious from an economist's viewpoint. Such a claim relies on what are called multipliers. Multipliers are factors that are used as a way of predicting the ‘total’ effect the creation of an additional job or the spending of an additional dollar will have on a community’s economy.”⁷ In 1976, economist Robert Lucas, who won the 1995 Nobel Prize in Economics, disproved the validity and applicability of the multiplier in macroeconomics, which is known as the “Lucas Critique.”⁸ In essence, these multipliers are one giant variable generally calculated through many smaller variables (inputs), which can result in skewed and unreliable predicted outcomes—especially based upon who is calculating them and what they are being used for.

Since high-paying jobs are isolated to primarily the players and management, who may or may not live in the area throughout the year, the jobs created by professional sports franchises are generally low-paying seasonal service sector jobs.⁹ Further, Sharp, Register and Grimes point out the occurrence of a “substitution effect,” stating, “Finally, when a new sports team arrives in town, a substitution effect will occur with respect to consumer spending. Local fans who purchase tickets, concessions, parking, and souvenirs will have less to spend on other forms of entertainment. Thus, fewer dollars are available for spending at businesses such as local restaurants, theaters, and bowling centers.”¹⁰

Despite the overall multi-billion dollar professional sports industry, including some teams valued at over $1 billion, individual teams, not leagues, are relatively small businesses. Average team revenue in millions is: $260.78 (NFL), $204.57 (MLB), $126.78 (NBA), and $97.63 (NHL). Note, this is only revenue, not net income (revenue minus expenses). Hence, these numbers are small in comparison to the billions of dollars generated by individual market leading firms throughout the nation in corporate America.¹¹

With public officials increasingly having a hard time justifying public stadium subsidies, the justification is moving beyond economics benefits (direct and tangible) to possible social benefits (indirect and intangible). Click contends, “Recently, since economic

---

⁵ Ibid.
⁷ Zaretsky, “Should cities pay for sports facilities?”
⁹ Sharp, Register, and Grimes, Economics of Social Issues, 257.
¹⁰ Ibid.
¹¹ Ibid., 246 and 257.
benefits have not been adequate to justify public financing of professional sports facilities, analysts have explored intangible benefits (benefits beyond economic) to justify public investment. Intangible benefits include non-user benefit, non-use value benefit, indirect benefit, public good benefit, public externality, public good externality, public consumption externality, social benefit, or social spillover benefit.”

Specific claims of possible intangible benefits include civic pride, reputation, and image, but placing a value on these benefits is daunting. As a result, Sharp, Register and Grimes state, “Because the primary benefits of a professional sports team to its local community are intangible and hard to measure (how much is civic pride worth?), the debate concerning the use of public funds to support professional sports is likely to continue. However, many economists argue that public investments in new factories and schools would generate greater and longer-term economic returns to the community than investments in new stadiums and arenas.”

Despite the complexity of measuring these intangibles, some scholars are using contingent valuation method (CVM) on professional sports teams/stadiums. Since standard market-based valuations do not apply, CVM attempts to monetarily quantify public goods and services through hypothetical market values that ask respondents willingness to pay (WTP) for a non-market good or service. Click states, “Further, even though CVM studies have found WTP for intangible benefits, total WTPs (intangible WTPs combined with tangible WTPs) have generally been far less than current public stadium subsidies.”

In order to further understand not only the public stadium subsidies debate but also the overarching professional sports subsidies debate, citizens and decision makers must also examine the unique structure of the four major league sports, particularly relative to their product and resource markets. While the leagues are comprised of contractually obligated teams, these member clubs are actually franchises that have “an exclusive right to product and market specific commercial goods and services within a specified geographic territory.” The leagues are controlled by owners that hire a commissioner (non-owner), whose primary task is to serve the best interest of the league in daily operations. The league rules governing the relationship between teams and players most directly affect member club operations and prosperity.

Professional sports operate in imperfect markets, which operate somewhere between competitive markets and monopolistic markets. First, in the imperfect product markets, “buyers and sellers engage in the exchange of final goods and services.” Teams cooperate through league rules to limit economic competition among member clubs. As a result, Sharp, Register and Grimes write, “Professional sports leagues are economic cartels. Through the leagues, teams formally agree to behave as if they were one firm—a shared monopoly. By forming cartels, sports clubs can increase the joint profits for all members of the league by restricting output and increasing price relative to a competitive market. By sharing the joint profits from the sale of their output, leagues can ensure the long-term survival of member teams.” Through cooperative joint marketing and revenue sharing, member team profits result from three primary revenue streams: ticket and concession sales, merchandising rights for team souvenirs and novelties, and radio and television broadcast rights. Second, in the imperfect resource markets, “buyers and sellers engage in the exchange of the factors of production.” As a result, Sharp, Register and Grimes comment:

---

13 Ibid.
14 Sharp, Register, and Grimes, Economics of Social Issues, 257.
18 Sharp, Register, and Grimes, Economics of Social Issues, 247.
19 Ibid.
20 Ibid., 248.
21 Ibid.
22 Ibid., 249.
23 Ibid., 270.
24 Ibid., 251.
25 Ibid., 248.
In the resource market, professional sports leagues enforce employment rules that grant member clubs exclusive rights to player contracts. When a club holds the exclusive rights to contract with an athlete, the club is a monopsony—the single buyer of labor in the market. A monopsony is able to employ workers at wages below what would be observed in a competitive market. In recent years, professional athletes have the right to free agency, which reduces the monopsony power of the clubs. In response to free agency, the average salaries in professional athletes have dramatically increased. The size of a professional athlete’s paycheck reflects the player’s contribution to his club’s revenue.

Since the 1970s, professional athletes have fought the monopolistic powers of the league cartels. In response to team owners, players formed labor unions that are “a formal organization of workers that bargains on behalf of its members over the terms and conditions of employment.” Labor disputes between the owners and players’ unions sometimes result in strikes (labor work stoppages) or lockouts (management work stoppages). The stoppages primarily revolve around disagreements with salary caps. By attempting to limit team spending, player compensation is also limited, especially during free agency. A free agent is “a player whose contract is no longer held exclusively by one professional sports club.”

The league cartels can continue to operate due to their unique exceptions, especially baseball, relative to antitrust laws. These laws are “legislation designed to promote market competition by outlawing and regulating anticompetitive business.” In 1922, the Supreme Court ruled in The Federal Baseball Club of Baltimore v. The National League of Professional Baseball Clubs that interstate commerce does not apply to MLB, resulting in antitrust exemption and precedence that continues to be upheld in legal challenges. While MLB’s blanket exemption is not applicable to other professional sports leagues, additional legal precedence continues to grant limited antitrust exemption to other leagues. For example, the Sports Broadcasting Act of 1961 permits the leagues to sell game broadcast rights in a “package deal” instead of teams competing against each other for broadcasting. Legal precedence implies that a team’s economic prosperity is dependent on the league’s economic prosperity. Further, recent debate involves the ability of leagues to control the number of teams, including expansion and contraction, and also location and relocation. Regarding this issue in MLB and its impact on stadium funding, Zimbalist comments:

Further, the commissioner’s office has not refrained from threatening host cities again and again that a team will be allowed to move (to a vacant, viable market) if it does not get funding for a new stadium. And the commissioner’s Blue Ribbon Panel recommended that MLB follow a more lenient relocation policy. More recently, of course, the commissioner’s office has added the threat of contraction.

Busch Stadium and Ballpark Village

In 2006, the St. Louis Cardinals’ new Busch Stadium (Busch III) opened in MLB, costing approximately $400 million. Public funding of 20-25% came from a combination of Missouri, St. Louis County, and St. Louis City governments through subsidies and/or incentives. Regarding Mark Lamping, then president of the Cardinals, and Bill DeWitt Jr., principal owner of the Cardinals, Tritto observes:

In a last-minute scramble, the owners changed their plans. They had completed the sale of $200.5 million in private bonds to finance the project. Now DeWitt Jr. decided to eliminate

---

26 Ibid., 270.
27 Sharp, Register, and Grimes, Economics of Social Issues, 264.
28 Ibid., 262-264.
29 Ibid., 263.
30 Ibid., 249.
31 Ibid., 212.
32 Ibid., 249.
33 Ibid., 255.
Bank One from the equation and bump the owner’s equity investment in the $387.5 million park from $43.5 million to $90 million. The county’s $45 million loan, $30.4 million in state tax credits and the $12.3 million from the Missouri Department of Transportation would fund the balance of the project. DeWitt’s understanding of the plan’s financial components and his relationships in the banking industry kept the deal together, Lamping and DeWitt III said.\(^{36}\)

Beyond the stadium, shortly after its completion and opening, per the Cardinal’s agreement with the city, Ballpark Village was originally scheduled and required to break ground on a two-part construction project with commercial development as the first phase and residential development as the second phase. Originally, the Cardinals would have paid penalties for missing Ballpark Village building deadlines.\(^{37}\) However, the Cardinals, along with co-developer Cordish Companies of Baltimore, have renegotiated Ballpark Village’s overall terms and structure on multiple occasions with the city and state, most recently agreeing to current terms in 2012. These terms finally produced the actual construction and eventual opening of Ballpark Village in 2014.\(^{38}\) Moreover, while the initial agreement did not have public subsidies for Ballpark Village, the newest agreement does, as Rivas asserts:

The project has received a generous amount of local and state subsidies. It received $17 million in bonds from the Missouri Downtown Economic Stimulus Authority (MoDESA). The city authorized a one-percent sales tax at Ballpark Village, which is expected to generate $14 million over 25 years. About $5.5 million of that sales revenue would go to the city and the rest to the developers. Ballpark Village also benefits from a St. Louis City TIF (tax increment financing), which also puts taxpayer money back into the project.\(^{39}\)

Further, while the bonds are secured by the Cardinals and Cordish, beyond the first phase, in additional possible phrases, if the developers hit project benchmarks on retail, office, residential and other offerings, state and local incentives could eventually hit $183.5 million.\(^{40}\)

Busch Stadium and Ballpark Village significant happenings include:

1.) In September 1994, the August Busch III regime hires Mark Lamping as team president who hires Walt Jocketty as general manager (GM) who hires Tony LaRussa as manager.\(^{41}\)

On March 21, 1996, the Gateway Group, Inc. purchases the Cardinals, which includes principal owner Bill DeWitt Jr. He has previous investments in the Baltimore Orioles, Cincinnati Reds, and Texas Rangers (the latter of which he was a co-owner with friend President George W. Bush). The $150 million team purchase includes the stadium (Busch II), adjacent parking garages, and land. The group eventually sells the parking garages and land parcels for $101 million for a $49 million net cost. Additionally, August Busch III includes in the purchase $8 million in stadium improvements, including eliminating artificial turf and returning to grass. In 2001, the estimated ownership group worth exceeded $4 billion.\(^{42}\)

2.) In 1997, the Cardinals, led by Mark Lamping, first pitch the idea of a new ballpark, stressing stadium

---


\(^{40}\) Bryant, “What’s Next for Ballpark Village?”


\(^{42}\) Ibid., 75-77.
maintenance and improvement costs and proposing a public-private partnership to finance.43

3.) In 2000, the Cardinals, with Mark Lamping, start to pursue public stadium funding in the state Legislature (Jefferson City, Missouri).44

4.) In May 2001, Fred Lindecke, retired political reporter for the St. Louis Post-Dispatch, and Jeannette Mott Oxford, grassroots coordinator and future state representative (D-St. Louis City), formed the Coalition Against Public Stadium Funding, encompassing members from all parties and backgrounds that were united by their opposition against “wasting tax revenue on subsidizing millionaires to build ball parks.” Throughout the summer, in St. Louis City, the coalition start circulating initiative petitions to get on the ballot an ordinance mandating a citywide vote for any public financing for a new ballpark or any professional sports facilities.45

5.) On June 19, 2001, the Cardinals sign a memorandum of understanding (MOU) with the St. Louis City, St. Louis County, and Missouri covering plans for the new Ballpark and Ballpark Village in the downtown.46 Gov. Bob Holden, recently-elected Mayor Francis Slay, County Executive Buzz Westfall, and the Cardinals announce the tentative $646 million redevelopment.47

6.) In early 2002, the Cardinals continue to pursue and lobby, including using lobbyists Tom McCarthy and Jon Bardgett, for public stadium funding through Mark Lamping in the state Legislature, but the Legislature (House) fails to vote on a $100 million stadium funding bill package known as the Sport Center Redevelopment Act (SCRA). House Minority Leader Catherine Hanaway (R) and Representative Jim Foley (D) co-sponsored the 41-page failed bill with Peter Kinder (R-Cape Girardeau) leading the charge.48

By late May 2002, the Cardinals and Mark Lamping start to seriously pursue other financing options in locations outside of downtown St. Louis. By mid-June, the Cardinals have fifteen financing proposals, narrowing them down to nine sites (cities) by late August. Illinois Gov. George Ryan proposes five possible Metro East area sites: East St. Louis (two locations), Madison, Dupo, and Fairmont City. By late September, the East St. Louis Riverfront site of the Casino Queen emerges as the Illinois location, with a full plan in place calling for the Cardinals to pay $103.9 million total and the state stadium authority to pay the remaining $266.9 million of the $370.8 million total cost.49

9.) In May 2002 the Coalition Against Public Stadium Funding submits petitions totaling 18,000 signatures to the St. Louis Election Board, with 14,000 found valid. The Coalition’s ordinance, Proposition S, qualifies for the November ballot voting.50

10.) On November 4, 2002, the Cardinals and the City of St. Louis sign a deal, including the finalization of two agreements. The agreements include penalties if the Cardinals sell the team or move after stadium completion, and also requirements to make available 486,000 tickets at $12 a ticket in year 2000 dollars, redevelop two nearby stadium blocks for a $60 million Ballpark Village, donate at least $100,000 for neighborhood ballpark building, and donate 100,000 tickets to both St. Louis City and County youth and charitable organizations.51 Further, by this point in the stadium funding process, nearly all articles regarding the stadium funding included a disclaimer, “Pulitzer Inc., which owns the Post-Dispatch, and Pulitzer’s chairman, Michael E. Pulitzer, are part-owners of the Cardinals. Their combined stake is slightly less than 4 percent.”52

43 Ibid., 77.
44 Ibid., 78.
48 Ibid., 80-88.
50 Fred Lindecke, “Coalition Against Public Funding for Stadiums. Coalition Chronology,” 1.
11.) On November 5, 2002, the Coalition Against Public Funding for Stadiums referendum passes (55 to 45 percent). The passage cannot affect the public financing passed the day before, but all future public professional sport facility assistance is affected.53
12.) In late 2002, the St. Louis Board of Aldermen rescinds the five percent amusement tax, clearing the way for redevelopment of land south of Busch Stadium. In November, the Missouri Developmental Finance Board (MDFB) approves $29.5 million in tax credits for relocation costs of utilities and roads. In December, the Missouri Highways and Transportation Commission approves $12.3 million for a highway ramp relocation for the new stadium.54
13.) In March 2003, the Coalition Against Public Funding for Stadiums begins work on an initiative petition in St. Louis County, proposing a charter amendment county-wide vote for any taxpayer-financed professional sports facility. The petition requires 25,000 voter signatures with signature distribution relative to the seven County Council districts.55
14.) By December 2003, the Cardinals had secured 10-year leases for corporate suites with annual income of $135,000-$180,000 for each. In late December, the Cardinals also complete the sale of $200.5 million in private bonds and utilize $90 million in owner’s equity investment to combine with St. Louis County’s $45 million loan, $30.4 million in Missouri tax credits, and the $12.3 million from the Missouri Department of Transportation to finally fully fund the Busch Stadium/Ballpark Village Project.56
15.) On January 17, 2004, the Cardinals break ground on the new stadium.57
16.) In August 2004, the Coalition Against Public Funding for Stadiums files a petition with 35,000 signatures to the St. Louis County Election Board. On August 18, 2004, the St. Louis County Election Board certifies 30,000 valid signatures, resulting in the charter amendment, Proposition A, going onto the upcoming November 2 ballot.58
17.) In November, Proposition A passes 72 to 28 percent, being approved by 366,000 voters. Further, on November 17, 2004, bondholders, particularly UMB Bank, file suit in St. Louis County Circuit Court against the Coalition Against Public Funding for Stadiums. Fred Lindecke and state Representative Jeannette Mott Oxford are defendants/appellants. St. Louis County serves as a defendant/respondent. The bondholders seek declaratory judgment that Proposition A cannot be retroactively applicable to the Cardinals ballpark bonds.59
18.) On March 3, 2005, the court finds in favor of the bondholders with the Coalition appealing to the Missouri Court of Appeals. St. Louis County has already paid out $2.3 million (2004) and $2.4 million (2005) in bond costs.60
19.) On June 2, 2005, the Cardinals announce Cordish as co-developer on Ballpark Village.61
20.) On January 17, 2006, the Missouri Court of Appeals again finds in favor of the bondholders and not the Coalition Against Public Funding for Stadiums.62
21.) On April 10, 2006, the new Busch Stadium, with the stadium naming rights sold to Anheuser-Busch for twenty years, has its grand opening ceremony on MLB’s opening day.63
22.) On May 3, 2006, the Missouri Supreme Court refuses to hear the Coalition’s case.64
23.) On October, 2006, Mayor Slay, and co-developers the Cardinals and Cordish announce initial Ballpark Village agreement.65
24.) On September 23, 2007, Mayor Slay announces Centene, Clayton, Missouri, Fortune 500 healthcare-

53 Lindecke, “Coalition Against Public Funding for Stadiums,” 1.
55 Lindecke, “Coalition Against Public Funding for Stadiums,” 2.
57 Ibid.
58 Lindecke, “Coalition Against Public Funding for Stadiums,” 2.
59 Ibid., 3.
60 Ibid.
61 The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”
62 Lindecke, “Coalition Against Public Funding for Stadiums,” 3.
63 The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”
64 Lindecke, “Coalition Against Public Funding for Stadiums,” 3.
65 The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”
based corporation, will build a new headquarters in Ballpark Village, anchoring the development.\textsuperscript{66}

25.) In October 2007, the Cardinals fire GM Walt Jocketty and replace him with the assistant GM, John Mozeliak.\textsuperscript{67}

26.) In March 2008, Cardinals President Mark Lamping resigns to become chief executive of the New Meadowlands Stadium Company, which is responsible for building the new NFL’s New York Giants and New York Jets stadium complex. The Cardinals replace him with Bill DeWitt III, son of Bill DeWitt Jr., who is the Cardinal’s chairman of the board and general partner.\textsuperscript{68}

27.) On May 26, 2008, Centene announces it will no longer anchor or build new headquarters in Ballpark Village, instead choosing to look at options elsewhere.\textsuperscript{69}

28.) In July 2008, the Cardinals finally agree to fill in the giant mud hole in the Ballpark Village site.\textsuperscript{70}

29.) In April 2009, the Cardinals transform Ballpark Village site into a softball field and parking lot, which is available to rent.\textsuperscript{71}

30.) In July 2009, the Cardinals host the 2009 MLB All-Star Game and Week.\textsuperscript{72}

31.) On September 18, 2012, after the Missouri Downtown Economic Stimulus Act (MODESA) and then the St. Louis Board of Aldermen gave approval on back-to-back days in July, the Missouri Development Finance Board (MDFB) approves the

Ballpark Village project, finalizing the $17 million in bonds.\textsuperscript{73}

32.) On December 19, 2012, the co-developers of the Cardinals and Cordish finalize their most recent agreement with St. Louis City.\textsuperscript{74}

33.) On February 8, 2013, the co-developers break ground on the first phase of Ballpark Village.\textsuperscript{75}

34.) On March 27, 2014, the first phase of Ballpark Village opens, which is a 120,000 square-foot structure containing nine marque venues. The first phase includes development of the site infrastructure for possible future construction of the entire 10-acre site.\textsuperscript{76}

In growth machine theory, elite actors unite in their common goal of growth, leveraging significant influence and power over land areas and non-elites.\textsuperscript{77}

Relative to the local growth coalition (LGC) components: public officials (strong: pro driver), media (moderately strong pro), corporations/businesses (weak pro), and Cardinals (strong pro: catalyst), Click concludes,

Regarding the push of the growth machine for public funding, public officials (driver) feared being blamed for the loss of an iconic institution in the Cardinals (catalyst), which they not only perceived as an anchor to a city and downtown that had significantly declined, both in population and business, but also the primary positive image/brand of St. Louis throughout the community, State, Country, and possibly even globally. Even if the Cardinals’ new stadium was within visual distance in East St. Louis (IL), public officials viewed the departure of the Cardinals as a terminal blow to what was left of the City, a historic city no longer viewed as a corporate headquarters capital or a tier one city, but a branch and tier two city. To public officials, if St. Louis even

\textsuperscript{66} Ibid.
\textsuperscript{71} Ibid.
\textsuperscript{72} Ibid.
\textsuperscript{74} The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”
\textsuperscript{75} Ibid.
\textsuperscript{76} Ibid.
had a chance of maintaining or creating positive momentum, much less recapturing its former glory, the Cardinals represented that last vestige of hope and promise. As a result, public officials and the overall growth machine did not see the need for a public vote or even a willingness to pay study, ignoring and working around two eventual and resulting public referenda that would suggest otherwise.\(^78\)

**Impact**

Relative to impact, particularly economic, the numbers available are generally either outdated projections or primarily unexplained or explained only by the Cardinals. With at least thirteen variations of a Ballpark Village proposed since the turn of the century,\(^79\) not including also the numerous proposed stadium variations, much of the impact data relies heavily on Ballpark Village inclusion. As a result, some information is increasingly unreliable and debatable as time passes and Ballpark Village changes dramatically. Note, while some data is for a standalone stadium, recall that Ballpark Village is an initial required part of the building of the stadium and public funding, so it is a package deal.

Fred Lindecke and Tom Sullivan contend the media simply did not report the entire stadium story. The Cardinals put up an estimated $420 million in initial private funding: bonds cost plus retirement and owner’s equity investment. However, the Cardinals also receive significant returns through an estimated $520 million in public subsidies: $350 million from St. Louis City’s five percent admission tax 30-year waiver, $20 million from St. Louis City’s 25-year property tax abatement, $108 million paid by St. Louis County to retire the $45 million in stadium bonds, and $42 million from Missouri tax credits and highway ramp construction. Further, the Cardinals also receive an additional estimated $150 million in new stadium selling sources: $100 million over 30 years on stadium naming rights, $40 million from the Ballpark Founders Program that charges season ticket holders $2,000-$7,500 for new stadium seats, and $10 million from old Busch Stadium memorabilia sales. Moreover, these amounts do not include increased Cardinal revenue from sources such as higher ticket prices, premium seats, luxury suites, concessions and advertising.\(^80\)

In 2002, the Missouri Department of Economic Development (MDED) produced economic impact studies through the Missouri Economic Research and Informational Center (MERIC) on proposed versions of the new Busch Stadium/Ballpark Village\(^81\) and new Busch Stadium\(^82\) at the time. While the studies make a number of assumptions and projections, follow-up post economic studies on the actual produced entities are seemingly not available. In particular, the studies rely significantly on three primary assumptions, MERIC concludes, “Annual ticket sales have averaged approximately 3 million over the past 20 years. More than 90% of all visitors to Busch Stadium reside outside the City. Almost 40% of all visitors to Busch Stadium reside outside the State of Missouri.”\(^83\) These studies and primary assumptions are often utilized in Cardinal economic figures.

In 2009, the current Cardinals President Bill DeWitt III states, “The provisions in the 2002 Redevelopment Agreement requiring the Cardinals to expend or cause to be expended $60 million of costs within the Ballpark Village area were conditioned upon the receipt of acceptable tax incremental financing in connection with such expenditures and the proposed project described in the agreement.”\(^84\) The five years before the Redevelopment Agreement were 1997-2001, which serve as a tax baseline for the old stadium versus the first three years of the new stadium (2006-"

---

78 Ib., 211.
82 Ibid., 1-10.
83 Ibid., 1.
Before dropping the admissions tax, the Cardinals were paying 12% to St. Louis City and Missouri, which was the highest team tax rate in MLB. Regarding St. Louis City revenue projections, DeWitt III writes, “City revenue projections were based on using the average tax flows received from the period 1997-2001. This figure was grown at a 3% rate until 2005. From 2005 to 2006, the city’s 5% admissions tax was dropped, but all other taxes were increased by 25%. For 2007 and beyond, a 3% growth rate resumes off of 2006 levels.” With the city amusement tax gone, in 2006, the Cardinals (team and its affiliates) paid $10.8 million in direct city taxes, over $3.8 million beyond the original projection ($1.8 million resulted from the post-season World Series championship run). With no playoffs in 2007 and 2008, the Cardinals exceeded tax revenue projections by $1.7 million ($8.9 million total) and $1.9 million (9.4 million total) respectively. Further, from 1997-2001, the Cardinals averaged $7.7 million in yearly taxes, but, from 2006-2008, the Cardinals averaged $9.7 million, which represents a 26% average increase.

Regarding Missouri revenue projections, DeWitt III adds, “State revenue projections were based on using the average tax flows received from the period 1997-2001. This figure was grown at 3% until 2005. From 2005 to 2006, the taxes were increased by 25% to reflect new ballpark revenue. For 2007 and beyond, a 3% growth rate resumes off of 2006 levels.” In 2006, the Cardinals paid the state $19.8 million in direct taxes ($3.2 million from postseason taxes). This figure exceeds the projection by $7.1 million. In 2007 and 2008, the Cardinals exceeded state tax revenue projections by $2.9 million ($16 million total) and $3.35 million (16.9 million total) respectively. Further, from 1997-2001, the Cardinals averaged $9 million in yearly taxes, but, from 2006-2008, the Cardinals averaged $17.6 million, which represents a 96% average increase.

Moreover, in regards to the public policy and financing of the new Busch Stadium, DeWitt III declares:

Looking back at the deal, the Cardinals, the city of St. Louis, and the State of Missouri can all point to the success of the partnership. The facility opened to great reviews, and the Cardinals continue to put a winning team on the field. The city and state each benefit from growing streams of tax revenue and the project has sparked new adjacent development. And Ballpark Village, which is now possible because the new stadium opens up to the old ballpark site and creates views into the game, will add significant new tax growth in the future and solidify downtown St. Louis as one of the great urban revitalization stories in the country.

Assuming similar underlying principles apply to the projected and actual tax results provided by the Cardinals through their website (Busch Stadium Financing Report Card), the Cardinals continue to generate significant additional tax revenue for both St. Louis and Missouri. While some of the numbers previously provided by DeWitt III above are slightly up or down in comparison to these provided numbers, they are very similar and likely only minor correctional adjustments were made. However, since the methodology on these numbers is not available, one is left to speculate. The Cardinals’ contend, “With eight years of actual results now in, it is clear that the tax revenue produced by the new ballpark to the City and State have exceeded expectations. The Cardinals and their affiliates have paid over $244 million in sales, income, real estate and other taxes to the City and State from 2006 to 2013.”

One, St. Louis City average direct taxes paid from 2006 to 2013 are $11,179,000 versus $7,700,000 from 1997-2001. Playoff year average taxes (2006, 2009, and 2011-2013) are $12,750,400 versus $9,645,333 in non-playoff year average taxes (2007-2008, and 2009). The two highest tax years are World Series years: 2011 ($14,256,000) and 2013 ($14,432,000). Two, Missouri

---

85 Ibid., 2.
87 Ibid., 5.
88 Ibid., 4-5.
89 Ibid., 8.
90 Ibid., 7-9.
91 DeWitt III, Financing the New Busch Stadium, 9.
average direct taxes paid from 2006 to 2013 are $18,439,000 versus $9,100,000 from 1997-2001. Playoff year average taxes are $20,422,800 versus $16,584,667 in non-playoff year average taxes. The two highest tax years are again 2011 and 2013 respectively: $22,156,000 and $22,795,000.93

According to the Cardinals, in the building of Busch Stadium, 84% of the construction firms used were from the St. Louis area.94 A representative of the Cardinals declares:

The Ballpark construction project was the most successful project of its size in St. Louis history with respect to the participation of minority and women-owned businesses. Eighty minority and women-owned firms received 130 contracts totaling $65 million. In addition the mentor-protégé program was a tremendous success with leaving the market stronger by helping small start-ups. Every prime contractor on the project was required to actively mentor at least once certified minority or women-owned firm. Twenty-two protégé firms received a total of $21 million in contracts, for an average of more than $800,000 per contract.95

 Minority and women-owned business participation exceeded Mayor Slay’s goal of both 25 percent minority-owned and five percent women-owned business participation.96 Further, relative to Ballpark Village, the Cardinals and Cordish write,

A priority commitment of the Ballpark Village development team has been to ensure an inclusive approach in all aspects of the construction and operation of the district. Ballpark Village developers have worked in partnership with the city, community leaders and others to ensure that the economic benefits of the project reach historically disadvantaged sectors of the community. The developers used a variety of proactive strategies to maximize minority participation and workforce diversity during the construction, as well as to achieve a diverse operational workforce reflective of the St. Louis region. The first phase of the project is projected to achieve 21.62% MBE, 7.78% WBE contractor participation and 31% minority workforce utilization for the core and shell construction.97

The Cardinals and Cordish have also asked each tenant to voluntarily meet the state’s Minority and Women Owned Enterprise (M/WBE) and workforce goals in their interior construction. Ballpark Village has worked with the St. Louis Agency on Training and Employment (SLATE) to create a permanent recruitment and training office to assist city residents, especially historically disadvantaged populations.98

Regarding Ballpark Village, the Cardinals write, “The construction of Ballpark Village, which began in February 2013, has been a welcome boost to our local economy. Over a thousand construction workers collaborated to build the first-phase of Ballpark Village, and close to a thousand permanent new jobs have been created with the new businesses operating within the district.”99

Note, in addition to being a co-developer, the Cardinals are utilizing some of the space for businesses, which also allows them to capture additional spending. Cardinals Nation is 34,000 square feet and four levels, featuring a two-story restaurant and bar, an 8,000 square foot Cardinals Hall of Fame and Museum, a Cardinals Authentics store and a 334-seat rooftop deck to watch the games all-inclusively.100 Further, Busch Stadium is also available for special event bookings.101 The Cardinals have recently even started hosting international soccer games.102

---

95 Ibid.
96 Ibid., 4.
97 The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”
98 Ibid.
99 Ibid.
100 Ibid.
102 “Busch to Host Man City, Chelsea Match in May,” St. Louis Cardinals, accessed October 21, 2014,
Before Ballpark Village, the 2009 All-Star game serves as an example of local economic user trends. Parker shares, “Those whose job it is to promote the city billed the five days of All-Star events as an overwhelming success, saying the estimates they used going in of 230,000 people spending $60 million appeared on target. But the businesses that boasted the biggest bumps in sales seemed to be those located near America’s Center or Busch Stadium, or on the route between the two. Otherwise, downtown businesses reported mixed results.”103 Now, the “Ballpark Village Effect” is occurring. A number of bars, especially older and sports or baseball seasonal, are reporting a decline in sales, including some loosing employees to Ballpark Village.

Even newer bars are having a hard time competing with Ballpark Village’s validated parking and massive marketing budget. One newer bar cites a 20-25 percent decline this year. With its non-game day and year around events, Ballpark Village is on pace to meet its projection of six million visitors this year. While Bill DeWitt III believes Ballpark Village is absorbing the majority of the game day crowd, he also believes Ballpark Village is increasing traffic in the area to other bars and restaurants. In response, many bars are attempting more innovative ideas or providing food and drink discounts, hoping this trend will start to wear off over time (honeymoon effect).104

From a marketing and branding standpoint, the Cardinals have a long and storied history, not only in St. Louis but also throughout baseball. Only the Yankees have won more World Series Titles. The Cardinals state, “The St. Louis Cardinals are one of the most storied franchises in all of baseball. Since they joined the National League in 1892, the Cardinals have won more than 9,500 games, 11 World Series Championships and 19 N.L. Pennants, 3 N.L. Eastern Division Titles, 8 N.L. Central Division Titles and 2 N.L. Wild Card Titles. Over 40 former Cardinals players and managers are enshrined in the National Baseball Hall of Fame.”105 “The Cardinal Way” is often referred to, even recently receiving a Sports Illustrated cover and themed issue. However, not everyone agrees with or likes the Cardinal Way. In this year’s not overly scientific Wall-Street Journal (WSJ) Hateability Index, relative to the ten playoff teams, the Cardinals ranked the most hateable. The team primarily achieved this ranking through recent success (winning), being called Cardinal Nation, and also being referred to as having the best fans in baseball.106 In response, Mayor Slay used this opportunity to write an open semi-humororous letter in WSJ informing everyone of why St. Louis is not simply “flyover country” or a “big deal in October” but for other highlighted reasons. In short, the Cardinals do garner publicity and exposure.107

The more the Cardinals win, the more likely they are to increase taxes paid and publicity, so spur both tangible and intangible economic benefits. Since the current ownership started in 1996, the Cardinals are winning a lot, translating into increased attendance before and after the new stadium. The last nine years (1997-2005) the old stadium attendance averaged 3,113,653 versus 3,367,058 new stadium attendance averaged for the first nine years (2006-2014). Further, the first four years (2006-2009) the new stadium attendance averaged 3,433,955 versus 3,313,540 the last five years (2010-2014). Overall, since 1996, the average yearly attendance is 3,209,532, with the team attendance reaching 3.5 million plus in 2005, 2007, and 2014.108 Moreover, relative to community impact,  


105 The Cordish Companies, “$100 Million First Phase of Ballpark Village Opens.”


108 “Year by Year Results,” St. Louis Cardinals, accessed October 21, 2014,
as previously disclosed, while some of the charitable work of the Cardinals is a contractual obligation, the Cardinals do substantial charitable work in the community, especially through Cardinal Care.  

According to Forbes, in 2005, before the new Busch, the Cardinals’ team value was $370 million (10th in MLB) with a 18% change increase and a -$3.9 million operating income. The current team value is $820 million (8th in MLB) with a 15% change increase and a $65.2 million operating income. With a $49 million net team cost in 1995, the team is now worth 16.7 times more.

Since the Cardinals only recently completed and opened Phase 1 of the initially promised Ballpark Village, economic impact, both tangible and intangible, is difficult to measure for the overall Busch Stadium/Ballpark Village Project. In essence, led by government entities, the impact of this project will need to be measured incrementally and sometimes separately, as this now decade-old project may be complete unless another phase(s) of Ballpark Village is built. Relative to taxes and Busch Stadium, the Cardinals have certainly met and exceeded tax projections, which should continue and possibly even grow if the Cardinals maintain winning baseball and/or keep capturing additional revenue both in the stadium and out. However, how Ballpark Village will affect forthcoming taxes paid by the Cardinals is unclear, as this future number(s) could be separate from the stadium. Since this is the first year of operation and the Cardinals are the co-developers and also operate a number of venues within Ballpark Village, the overall numbers Ballpark Village yields after this fiscal year and how these numbers are broken down is pertinent to analysis. Further, relative to economic analysis by the governments, how do current tax gains offset the public subsidies, including debt retirement and St. Louis County? Overall, current economic analysis of the Busch Stadium/Ballpark Village Project lacks depth and needs a more integrated approach to put both numbers provided and numbers not provided in context.

Final Remarks

Especially relative to recent regional unrest, St. Louis City needs to continue to be cognitive of how these kinds of economic development projects fit into larger ongoing economic and social issues, particularly education, crime, and the deeply related poverty and discrimination. The city faces unique challenges by continuing to be separated from St. Louis County and from the overall fragmented structure of government in St. Louis.

While the city is often known for beer and baseball, St. Louis needs to ensure that beer and baseball serve only as distraction from everyday problems instead of as an excuse not to deal with other pressing issues in the city and beyond. St. Louis City, St. Louis County, Missouri and other applicable governments, including in Illinois and possibly even federal, must work together to ensure not only positive economic impact but also positive social impact for all citizens, not just elites. While one project cannot be expected to be the solution, this overall holistic approach can start to bridge the gap and help to make St. Louis not only a gateway but also a sustainable destination.

http://stlouis.cardinals.mlb.com/stl/history/year_by_year_results.jsp
109 “Cardinals in the Community,” St. Louis Cardinals, accessed October 21, 2014,
113 Fred Lindecke and Tom Sullivan, “What the Public Paid for the Cardinal’s Stadium: The Media Never Told the Whole Story,” 23.
Editor’s note: Dr. Witherspoon spent sixteen years working in law enforcement, which included being a member of the force at St. Louis, Missouri Metropolitan, and Hazelwood police departments in Missouri, as well as at Roswell Police Department in Georgia. Working in various capacities, Dr. Witherspoon served as a patrol officer, undercover narcotic detective, and community/neighborhood officer, and completed his career at the rank of sergeant in Hazelwood.

The Ferguson Problem

Historically there have been, too often in my opinion, debates between practitioners and researchers about best methods to introduce new policy. Practitioners rely on their experiences, while academics resist anecdotal evidence to generalize to the larger population on appropriate strategies to effect change. It is my hope that in the aftermath of the Ferguson, Missouri, police shooting, both sides can genuinely come to an agreement on solutions to the relationships between the police and the African-American community. I am in the fortunate position to provide a perspective that draws from sixteen years as a law enforcement official who grew up in the predominantly African-American neighborhood of Walnut Park in the city of St. Louis and who currently resides in the city of Ferguson. My experiences can now be conjoined to what I consider extensive academic research conducted on the issues of race in the criminal justice system. I find that much of what I have analyzed over the years is certainly omnipresent in Ferguson, as many are grappling with what needs to be done to change the toxic climate between police and some African-American citizens.

On August 9, 2014, a Ferguson police officer shot and killed an unarmed subject, according to all accounts, during an altercation between the two. This incident initially seemed to spark outrage from citizens of various backgrounds. Consequently, the incident has gained national exposure, and now many police administrators are seeking ways to attenuate the damages caused by what some consider shoddy police work, as authorities disseminated little information the first few days of the shooting. With civil unrest nesting at a daily boiling point in Ferguson and perhaps other predominantly African-American neighborhoods throughout the US, changes to police behaviors, practices, policies and so forth are being examined and put into place. One such change in Ferguson is the use of body cameras to be worn by all sworn police personnel during the course of citizen contacts. In fact, departments across the US generally and in Missouri specifically are exploring body camera usage. The question becomes whether or not a new policy requiring officers to use body cameras is simply a knee-jerk reaction to the Ferguson incident or if it results from policymakers having examined the academic literature on the effectiveness of body cameras.

Ineffective Policies and Politics

At times politics can impede sound judgment, particularly after a well-publicized incident. Unfortunately, millions of dollars are sometimes spent on initiatives that don’t live up to expectations once carefully structured academic research has analyzed the effects of such enterprises.

For instance, Megan’s Law has been in place across the US since it was established in the 1990s as a result of the horrible rape and murder of seven-year-old
Megan Kanka by Jesse Timmendequas, who is a previously convicted sex offender. The law was an amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. Both laws drove mandates for states to set up notification and/or registration programs for those convicted of sex offenses. Although requirements for the laws vary between states, the general purpose for each is to decrease sexual offenses against children. While academic research shows that some sex offenders are likely to reoffend, there are still debates as to what extent sex offenders are different from other offenders. Nevertheless, policymakers put the law in place, which still exists regardless of research findings that indicate little evidence that Megan’s Law prevents sex offenders from recidivating.

Furthermore, society continues to spend millions of dollars toward the law’s operation. While the Kanka case is horrific and the law resulting from it may never change, practitioners, politicians, and citizens should begin to understand the importance of unbiased academic research to limit possible wasteful expenditures. One can speak to other initiatives, such as three strikes laws, that are still functioning after academic research has shown them to be ineffective. It is hopeful that policymakers will learn from previous results of politically driven programs in their attempts to implement plans for body cameras.

Research on the Effectiveness of Body Cameras

The way the body cameras work is that police officers may be required to wear the camera somewhere on their outer garments. Body cameras range from various types that clip onto uniforms, hats, or even eye wear. Officers will have to physically activate the camera to record contacts with citizens. From the standpoint of availability of video, the body camera appears to be an improvement from the dash camera, which only records activity typically within a frontal range of the hood of the police vehicle from the dashboard. Preliminary research suggests that when body cameras are used, citizen complaints for physical and excessive force by police are fewer. Similar to other sociological behavior, studies propose that police change their behavior when aware that they are being observed. Studies also argue that body cameras have cleared officers of wrongful accusations and serve as an objective witness during police/citizen encounters, which now provide some form of accountability. With that said, a private company donated body cameras to the Ferguson police, and some see this as a start to better police community relations. “While it’s too early to determine the effectiveness of body cameras in Ferguson, it is important for researchers to immediately start to assess the efficacy of the devices being used in Ferguson. We could find that if indeed the allegations of negative police attitudes towards African-American citizens in Ferguson are pervasive, body cameras might not do much to solve the problem.”

A Personal Perspective on Officer Attitudes

I do recall being required to make audio recordings of every contact with citizens while I was on the police force. I also remember there were many times that I sincerely forgot to turn on the recording device. Part of my forgetfulness was due to my inattention to department policy. Additionally, my resistance was related to the dislike of feeling monitored. My sentiments were not unique, as many officers expressed similar views. But I mostly felt no need to record activity, because I earnestly felt that I treated citizens with appropriate respect. I certainly can’t

---

4 Ibid.
generalize my actions to be consistent with other officers’ reactions to being required to record their contacts. However, my experiences led me to believe that there are a number of police who reject any notion of Big Brother looking over his/her shoulder. Once accepted into the police culture, I found it quite common to hear startling narratives from fellow officers with regard to treatment of citizens.

I am aware of much of the academic research that posits that implicit racism is a phenomenon that many citizens possess. Implicit racism is present when a parent or other influential person reinforces negative stereotypes on young people during their impressionable years. While some might be able to resist growing with such racially charged attitudes, these notions can be sometimes subconsciously triggered at the mere presence of a member of a protected group (particularly African-American) who has been historically discriminated against. This tripped attitude may carry over into discriminatory behaviors. Having knowledge that the state of Missouri is mostly rural and that many rural communities lack diversity, some Missouri residents may not have been exposed to other ethnic groups and only base their knowledge on media portrayals of behavior. Unfortunately, many Missourians might be likely to have biases toward African-Americans. So there is little irony behind reports that the city of St. Louis ranks among the top ten most segregated cities in the United States. But what types of individuals does law enforcement attract to join its ranks in Missouri?

In general, research suggests that there is no typical characteristic of the person attracted to police work, while others argue that those drawn to policing possess or develop a narcissistic personality. Although these studies lack congruence, there are also studies that indicate that the problem lies in the selection process. The self-selection hypothesis argues that all types of people might be interested in law enforcement, but only a certain type is selected to join the “brother and sisterhood” that creates the subculture that exists in policing. Is it time for Missouri policymakers to enlist the assistance of academic professionals to try to determine the type of individuals attracted to the profession across the state? Are the numerous allegations of racial profiling in Missouri fabricated or based on real instances associated with a large population of police officers having racist attitudes toward African-Americans?

**Bad Apples or Questionable Views**

While many academics are reluctant to make accusations without hard proof of racism within some Missouri police departments, it is also tragic to ignore the possibilities. Most research acknowledges the difficulty in providing valid studies that explain race as a motivating factor behind police behavior, because much of today’s racism is hidden. Unfortunately, I have experienced enough to believe that some accusations of discrimination by police are warranted. I also believe that, similar to the study by Marvin Wolfgang that indicates that chronic offenders make up a small percent of the population but commit most violent crime, a small group of racist police officers account for most of the racially biased behavior that amounts to serious allegations of police misconduct. Perhaps I am underestimating the presence of this type of officer in the state of Missouri, as some argue that certain demographics are more prone to racist behavior.

Depending on where you surf on the Web, it takes little effort to find an article that links conservatism to racism. Additionally, one can find articles that associate low IQ and education to racism. Many of

---


9 Ibid.

10 Ibid.
these articles can be found as part of political attacks against certain individuals and are rarely found in scientific research. There are also articles that refute these findings. Again, scientific research becomes very important when authors make scathing allegations that attack characteristics of particular racial and ethnic groups, political parties, and other organizations with members of a given background. For instance, some academic research shows that people without college education are no more likely to be racist than people with college education. With regard to conservatism, much of the research indicates that conservatives are less supportive of Affirmative Action policies and the beneficiaries who are generally assumed to be African-American. Many link negative feelings toward Affirmative Action to racism, whether direct or indirect. The purpose of this writing is not to contribute to any rhetoric that has a tendency to intentionally attack any group. However, having knowledge that scientific research finds it difficult to measure racism due to hidden factors, this writing will attempt to provoke thought in more hypothetical terms. What if racism is truly connected to conservatism and educational level? That is not to say that everyone within these groups are racist but perhaps are more likely to possess racially biased opinions. How does this affect Missouri law enforcement officials?

There is empirical evidence that indicates that college-educated police officers receive fewer excessive force complaints than less educated officers. While officers are more likely today to have some college tutelage, many still possess the minimum level of schooling, as most departments only require a high school diploma or its equivalency. Fortunately, the US Department of Education has produced state-by-state rankings on education, and Missouri ranked within the middle range. On the other hand, the American Legislative Exchange Council (ALEC), a political activist group, ranked Missouri forty-seven out of the fifty states and the District of Columbia on education. One must undoubtedly take caution in using ALEC’s findings as valid unbiased research; however, Missouri’s low ranking raises questions as to how ALEC conducted its measurements, which is beyond the scope of this writing. Nevertheless, it might be worthwhile to explore to what extent Missouri police departments hire less-educated officers. There are also studies that indicate that people from rural backgrounds are more likely to hold politically conservative attitudes. Although it is unlawful to recruit and hire individuals based on political affiliation, could it still be important to explore the extent that Missouri departments select employees who might coincidentally be more conservative? With Missouri consisting of considerably more rural than urban areas, it is fitting that Missouri was considered a red state during the last several presidential elections, which perhaps speaks to the potential likelihood that a larger percentage of police officers might hold conservative viewpoints compared to more liberal officers. Much of the scientific literature holds that liberal-minded people are more likely tolerant to diversity issues and less resistant to change. These questions do not necessarily signify that police, who may have more conservative viewpoints and potentially biased attitudes, translate their attitudes into discriminatory behavior. Although research continues to attempt to uncover racist behavior within the criminal justice system, it is now challenged with discovering to what extent alleged police bias affects the use of body cameras in Missouri.

### Police Resistance to Change

Even though research shows that civilian review boards improve citizen confidence in the complaint process, the St. Louis Metropolitan Police

---


Department’s Police Officers Association remains skeptical about allowing citizens to handle allegations of misconduct. According to an article written in the Los Angeles Times, Missouri state Sen. Jeff Roorda, business manager for the St. Louis Police Officers’ Association and vice president of the police union charity that provides support for Darren Wilson, the officer involved in the Ferguson incident, is incredulous about the use of the body cameras. While Roorda falls short in disclosing exactly where the police officers’ association stands on the body camera debate, he explains that cameras will be used to nitpick at minor infractions committed by rank-and-file officers. He even argues that putting the cameras into action before the association’s approval violates an official agreement.

There are certainly valid reasons to question the use of body cameras, as privacy issues on certain calls may be compromised. In fact, there are previous appellate court rulings that uphold complaints of various cases that exposed video of domestic violence incidents. There is also good argument against using body cameras during rape cases, as the sensitive nature of such cases warrants. But to what extent is Roorda’s argument based on real circumstances, and to what extent does he feel obligated to perpetuate traditional stances against reasonable change? One can never satisfy all, which probably warrants a utilitarian approach to this issue. At stake are privacy concerns and the potential decline of historically questionable police behavior that seems to be at the forefront of racially charged civil disobedience.

The community accountability theory proposes that minority representation in police departments helps break down barriers between minority citizens and white police. The street-level behavior of police has a high degree of discretion along with low visibility. Thus, police are more likely to get away with inappropriately using extra-legal factors to handle what they believe to be threatening situations.

However, when influential minorities are present in the community or police agency, white officers might be cognizant of the potential of being held accountable for their actions. The assumption is that white officers working in these locations are more sensitive to minority concerns and are likely sensitive to the perceptions other minority officers may have on the white officers’ actions. Perhaps the body camera serves as a good tool in the absence of influential minorities.

**A Stab at Anecdotal Evidence for Support**

For sixteen years I had the opportunity to observe police culture and training, both formal and informal. I have also had the opportunity to travel across the country and meet officers who corroborate my experiences through informal conversations. Most shockingly, in my experiences, most white officers, whom I have conversed with on the topic of race, acknowledge having parents and siblings with biased attitudes toward African-Americans. Most imply that they resist allowing their upbringing to influence their professional demeanor.

It is important that I qualify my experiences as part of my reality and remind readers that I am in no way suggesting that these are the experiences of all or even most former or current African-American police officers. But I will say that after conducting years of research, I am confident that implicit racism is more prevalent than many could imagine. I am also convinced that a small percentage of officers commit most of the egregious acts against minorities and a larger percent of police react based on triggers that activate biases learned throughout childhood. Thus, the use of body cameras can only be as effective as those who are required to use them AND adhere to protocol.

---


18 Ibid.

Conclusion

Taking a page from general deterrence theory, how might officers behave if they knew that misconduct will “certainly” be detected with the body camera, and if they knew that the punishment would be “swift” and “harsh?” While the small percentage of motivated rule violators under suspicion might find ways to circumvent body camera policies, similar to what is common with the police dash-cam recordings, the onus is on police administrators to devise plans that bring concepts of deterrence to life. The reality is that relationships grow into friendships within departments and police executives understandably find it difficult to penalize close friends.

Nevertheless, police leaders need to convince these same close friends to support top officials who are committed to change. But first, police executives must assess their own personal attitudes and biases and then the attitudes of rank-and-file officers. Once a sincere and genuine assessment has been completed, inquiries should be made. These inquiries should include the educational level of officers within a given department and to what extent officers grew up lacking exposure to diverse groups. Once these assessments are made, police executives might be better informed on approaches needed to encourage officers to adhere to body camera mandates.

After written policies on body camera usage are put in place, officers who violate such policies should suffer a significant financial loss for the first offense. That monetary fine should increase upon a second offense, and termination should be the consequence after a third offense, which implies a pattern of behavior. These harsh sanctions should only be used if the body camera policy violation hinders a complaint investigation. Of course one must take into account real issues regarding technological equipment malfunctions. Nevertheless, the consequences for violations might motivate officers to comply with the rules. There are also other real problems with implementing mandatory use of body cameras with cities that already struggle financially. However, while I think it is difficult to alter biases and perceptions learned from childhood, I do believe, as much of the limited research indicates, that the proper use of body cameras will change behavior to the extent that relations between police and African-Americans will be ameliorated.

---