Compromised Justice: A Study on the Role of Quasi-Judicial Officers in Georgia's State-Level Courts

A Dissertation submitted
to the Graduate School
Valdosta State University

in partial fulfillment of requirements
for the degree of

DOCTOR OF PUBLIC ADMINISTRATION

in Public Administration

in the Department of Political Science
of the College of Arts and Sciences

July 2016

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ABSTRACT

This study examines the behavioral and perception differences of judges and quasi-judicial officers to discern if these individuals provide equitable and fair treatment to each citizen who appears in a courtroom. From the eight hypotheses, differences in the use and satisfaction of reference materials, as well as the perceived level of autonomy and discretion in completing daily activities help to reveal any differences that might exist. The lower-level state court judges and quasi-judicial officers' responses to a nine-question Qualtrics survey examines the positions and the legal training of both samples. Understanding these aspects can help the lower-level state judiciary system ultimately reduce both human and fiscal costs. Reductions in costs are important given the continually constrained budgets these entities face. It is critical to ensure that administering second-rate justice does not become the norm for the judicial system. This study examines only a small portion of the potential research in this area. From this study, a better understanding of the roles and responsibilities of judges and quasi-judicial officers is attainable.

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Chapter I

INTRODUCTION

All branches of government play a role in shaping the laws of the United States (U.S). The legislature is charged with the creation of laws; the executive and its agencies are charged with the administration and execution of laws. The judiciary[1] is charged with the "correct application of the law[s] to particular legal disputes" (Tyler 2007, 26). The approach of each branch toward the law is varied and distinct. In looking at the ethos of the judiciary, one can see that, in general, it works toward the common goal of equity and fairness for all who come before it, and the goal of each judicial actor is to interpret the law both uniformly and equitably. While it is often referred to as the least powerful of the branches of government, the court's power should not be discounted, as it is derived, in part, from this approach to the application of the law. This power can potentially be difficult to measure, since equity, fairness, and interpretation are ambiguous elements; the meaning of each can vary according to the context and individual use by legal practitioners and researchers. To minimize any potential ambiguity of these elements for this project, some of the more readily apparent constraints that undermine the decision-making processes of the judiciary require additional examination.

[1] This research project will focus solely on constitutionally created courts.

Constraints on the power of the judiciary[2] include its unidirectional nature, variability in the background and qualifications[3] of judicial actors, and variation in types of adjudicative paradigms in the system. The unidirectional nature of the courts stems from their ability to act generally on those issues brought before them. Unlike the legislative branch, which can enact legislation immediately in response to current events, the courts cannot proactively make changes to the law. The court's catalyst for enacting change is the adjudication of the cases over which it presides.[4] Despite this particular constraint, courts can have significant influence on politics and policy. Political science journals are replete with the scholarship of authors such as Lee Epstein (1995; 1998), Jack Knight (1998; 2005), and Jeffrey Segal and Harold Spaeth (2002) regarding theories on how these types of influences persist in our modern judicial system.

The second constraint on judicial power is the variability in the background and qualifications of various judicial actors. In reviewing the system as a whole, there are defined hierarchies and standard operating procedures. However, examining individual parts, especially within the lower level state courts, the significant amount of flexibility

[2] For the purposes of this project, the referenced constraints are mainly associated with the lower courts and not with the U.S. Supreme Court. However, this does not imply that the constraints do not or cannot apply to the U.S. Supreme Court.

[3] Variability in the judicial qualifications of decision makers can also have an immediate influence on the interpretation of the law. Qualifications include, but are not limited to, type of degree(s) held, length of experience in the judicial arena, type of judicial experience (federal, state, or lower state level) and general familiar judicial ties. While laws are construed as "concrete" and are to be obeyed by the populace, in the legal arena, laws are open to interpretation by those individuals who serve in a decision-making capacity. Just as equity and fairness are potentially abstract concepts, so too is legal interpretation. Legal interpretation can vary based on a myriad of factors including individual objectivity and demographics.

[4] The court was specifically designed only to rule on cases in which an individual is affected by the law. Article III of the U.S. Constitution outlines the structure and general duties of this branch. Subsequent chief justices continued to refine the specificities of the article, including John Jay and John Marshall. Two significant examples of these refinements are the refusal of Jay to render an opinion and advice to President Washington and Treasury Secretary Hamilton, and Marshall's decision in *Marbury* v. *Madison* (United States Department of State, 2004 and Annenberg Classroom at http://www.annenbergclassroom.org/).

and variability in operations becomes more readily apparent. This lack of standardization in the lower level state courts is an inherent systematic flaw, but is a possible explanation how backgrounds and qualifications of judicial actors can continually influence operations.

While this project touches on elements that may be similar to administrative law,[5] it is focused on illustrating the degree to which the bureaucracy within this particular governmental branch influences the judicial decision-making process in lower level state courts. In the same way that agency bureaucrats can influence the application or implementation of a piece of legislation, similar actors in the judiciary can have a comparable influence on the application of laws to cases. While some scholars may assume that one bureaucratic position is no different than any other, recent scholarship has shown that this assumption is inaccurate. This project posits the existence of significant and inherent similarities between an agency street-level bureaucrat and a judicial one. Given the potential ramifications, understanding the roles of and differences among the numerous judicial officials is pivotal to advancing an understanding of decision making by this branch.

[5] Administrative law is administered by governmental agencies, not by the judicial branch. Statutes authorize an agency's legal ability or standing, which is generally called a quasi-judicial agency. The 1946 Administrative Procedures Act afforded agencies the ability to act in this capacity. This act "brought coherence and judicial character to formerly haphazard procedures" (Stemple, n.d., Lecture 1). Quasi-judicial agencies exist at both the federal and state governmental levels. Although an agency has the ability to act in a legal capacity, it does not have the same enforcement powers as the judiciary. According to US Legal.com (n.d.), the word "quasi-judicial," when used in the context of administrative law, refers to administrative agency actions, such as ascertaining relevant facts, holding hearings, weighing evidence, drawing conclusions based on case-related facts, and exercising judiciary discretion. The use of the term "quasi-judicial" in relation to administrative law and this project is purely coincidental and does not imply the existence of parallels, or that parallels can or should be drawn between these two distinct fields.

The variation in and number of adjudicative positions within the lower level state courts clearly shows presence of the third constraint. While many judicial actors can have an effect on the outcome of a case, there is limited research in the fields of both political science and public administration that specifically addresses the prevalence and impact of the decision making of secondary court players, such as quasi-judicial officers, in state judiciary systems. However, as more citizens use the court system to settle disputes, and judicial budgets continue to be constrained and/or reduced, many of the activities previously performed exclusively by legally trained judges are now often delegated to these secondary court players–the quasi-judicial officers. Whether a full judge or a judicial designee is present–perhaps a quasi-judicial officer[6] who may be trained in the law–is becoming increasingly crucial in resolving cases, as more plaintiffs and defendants are choosing to represent themselves in legal disputes (Tyler 2007).

Factors such as the shift in the sample demographics in the state of Georgia and the continued lack of adequate resources awarded to the judiciary help to illustrate the importance of legally trained judicial actors in decision-making processes. The sample demographic attribute may seem insignificant; however, it represents an important piece of the overall judicial dilemma that this research addresses. Understanding these demographic factors helps to illustrate both the importance of ensuring that quasi-judicial

[6] I do not dispute the necessity of judges delegating certain activities that aid in rendering an expeditious decision or verdict to another person due to increased caseloads and time constraints. However, the research for this project does posit the necessity of the designee having legal procedure training, which is not necessarily the norm throughout the lower-level state court system. For an expanded definition of quasi-judicial officer, refer to Appendix J, which delineates the modern practices of the courts and includes my comments on this type of position.

officers are trained legal experts and the potential systematic repercussions that may occur by allowing untrained legal representatives to render binding decisions.

According to USA.com,[7] the sample of Georgia grew approximately 18% from 2000 to 2010, a rate higher than the national average.[8] Unfortunately, the income growth rate for this time period was also much lower in Georgia than the national average. Engler (1999) contends that this economic reality is the primary reason for the increase in unrepresented litigants. Being unable to afford any form of legal representation places these individuals at a disadvantage in the courtroom, because they are generally not legally knowledgeable about court policies and procedures. They are very dependent on the knowledge and skill of the judge or quasi-judicial officer.

Likewise, according to CLRsearch.com,[9] as of 2010, only around 30% of the state's sample had completed high school and 23% had earned a bachelor's degree. This data further supports the need for professional judges and/or legally trained quasi-judicial officers in judicial decision-making roles throughout the state of Georgia. The potential influence of judicial decisions rendered by untrained individuals is tremendous.[10] Determining whether this type of decision-making authority should reside solely with

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[7] USA.com is a local guide to cities, towns, and neighborhoods in the United States: http://www.usa.com/about-us.php (accessed October 13, 2013).

[8] This study focuses only on the courts within the state of Georgia. However, the study could be expanded in the future to include other states, allowing for a comparison between the internal and external systems of multiple lower level state courts.

[9] CLR search.com provides demographic information and statistics for real estate professionals and home buyers/investors: http://www.clrsearch.com/ (accessed October 13, 2013).

[10] It could be argued that the use of "tremendous" is an exaggeration, as the losing party can proceed to the court of appeals or, in some instances, request a de novo trial. In appealing to this next level, the facts of the case are reviewed to identify any errors that may have been made by the lower court (i.e., the presiding judge on the case) (United States Department of State 2004). However, if the aforementioned statistics are accurate, there is sufficient evidence to assume that most parties to a legal dispute would not be able to afford to proceed to the next judicial level in an attempt to have a decision reversed. Additionally, the ability to request a de novo trial presumes that the unrepresented litigant is aware of this option and how to file such a request with the court.

legally trained judges or be delegated to quasi-judicial officers, or both, is paramount to maintaining the integrity of this institution. Although it would seem unlikely that untrained officials are rendering judicial decisions,[11] increased workloads and constrained budgets provide sufficient evidence to support an investigation.

Statement of the Problem

For this project, I propose that the increased use of quasi-judicial officers stems from the existence of the aforementioned issues described in this chapter. Of these issues, the increase in caseloads at the state level over the last several decades warrants examination. In fact, Langton and Cohen (2007, 1) assert that caseload increases of "approximately 45% in limited jurisdiction courts and 43% in general jurisdiction courts" have occurred. This notable increase in the use of the judicial system has brought about an increase in staffing needs of the courts at both the judgeship and the administrative support levels. However, in reality the overall number of judicial actors has not increased dramatically with this rise in caseloads.[12] In the "Outline of the U.S. Legal System," the Department of State affirms "courts suffer from a lack of resources" (U.S. Department of State 2004, 49).

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[11] A 2008 report by the Georgia Supreme Court Committee on Legal Education extensively reviewed the education attained at American Bar Association (ABA)-accredited/non-accredited colleges and universities, and bar examination requirements in the state of Georgia. The committee found no evidence to suggest the need to revise any of the requirements for becoming an attorney. It was concerned with ensuring that the public was represented by competent legal practitioners. However, the committee only examined the processes for preparing an individual to enter a legal environment. It did not examine the standards and practices of the public- or private-sector environments in which these individuals would be working. No other studies conducted by this group addressing academic qualifications of other judicial actors were available.

[12] There are now mechanisms and software (CorTools) that help to demonstrate a need for increasing fiscal and human resources within a court system. The number and types of cases adjudicated in lower state courts is reported to the Administrative Office of the Courts (AOC) twice a year. This information is analyzed and used to understand trends and patterns in each court's workload. This information can be used to help request additional judges and personnel be hired. However, hiring additional personnel presumes there are monies available to fund the positions.

In order to maintain their dockets, courts today often delegate to other individuals those responsibilities traditionally performed by a legally trained judge. The legal training and level of legal expertise of the individuals in these delegated positions can vary significantly, though there are typically minimum qualifications for the positions. The deficiencies of the individuals in these quasi-judicial positions often result in the courts holding "informal proceedings and the processing of cases on a mass basis," rather than formal case-by-case adjudication (U. S. Department of State 2004, 49). Although many states within the union are now requiring judges to possess, at minimum, a law degree and regularly take legal continuing education courses, not all of the court levels within the state systems have fully transitioned to this new norm (Langton and Cohen 2007, 1). Statutes governing many of the positions that allow for the use of quasi-judicial officers do not mandate the attainment of certain minimum educational qualifications for these individuals; however, examining the judicial system from a historical perspective reveals many reasons for the continuation of this problematic situation.

According to Provine (1986), the legal system in the U. S. was developed primarily by self-taught individuals and by those who were considered pillars of the community, but who lacked any formal legal training. As there were no law schools in the early U. S., those who desired formal legal education typically had to attend universities in England, which were very expensive. The number of lawyers increased after the Revolutionary War, but the apprentice method continued to be the most popular technique for learning the profession. The first independent U.S. law schools were established around 1817 (U.S. Department of State 2004).

Throughout the nineteenth century in America, individuals formally trained in the law were often distrusted and generally avoided. Provine (1986) describes how a person who was to appear in court would typically solicit the representation of a friend rather than an individual who was formally trained in the law. During this period, individuals often trusted friends, even those not thoroughly versed in the law and court proceedings, rather than lawyers. Fortunately for many, as Mansfield (1999) points out, laws at this time were not complex and were intentionally designed to be understood by a lay person. In addition, circuit judges who traveled throughout a region could only try cases during specific times of the month or year given the amount of time necessary to travel from place to place. This factor forced many individuals to resolve disputes without the use of the courts.

It was not until the late twentieth century that states began to require lawyers to have a law degree and/or to pass the state bar exam[13] (Silberman, Prescot, and Clark 1979). According to the U.S. Department of State, judges in upper state-level courts (i.e., those courts above the trial court level) are now required by various statutes to possess a law degree (U.S. Department of State 2004). However, the qualifications for judges within the lower courts in each state can vary.

In accommodating the exponential growth in caseloads amid continual budget shortfalls, various state-level courts have begun to rely more heavily on the use of quasi-judicial officers. The definition of a quasi-judicial officer (as used in this project) is broad

[13] The state bar examination is the licensure test administrated by each state to ensure one is potentially capable of practicing law. By passing the bar examination in a state, an individual can legally practice law in the particular state. If an individual has not passed the bar examination in a particular state, such a person is barred from legally practicing law in it unless otherwise sanctioned to do so by a particular court within the state.

and includes, but is not limited to, a variety of positions throughout the legal system, such as special masters, judicial adjuncts, magistrates,[14] and hearing officers.[15] These individuals can be employed by a single court or can work concurrently for multiple lower level courts throughout a region. The work assignments can also vary; the quasi-judicial officer may work on a case-by-case basis, through a judicial appointment, or as a court employee, such as a lay judge. These positions differ from state-level judgeships, which are typically elected or appointed positions in which the legally trained justice serves for a specified period of time. While differences in the roles and responsibilities of the legally trained judge versus the non-legally trained judge exist, it is important to note that the decisions made by individuals in each of these positions are ultimately binding on the litigants.

In addition to judges, numerous individuals are needed to carry out the daily administrative operations of the courts. These employees typically work in various court divisions as well as in state-level judicial administrative organizations, such as the Administrative Office of the Courts (AOC). The court clerks and court administrators' duties typically include "making court room arrangements, keeping records of case

[14] The magistrate judge is sometimes referred to as a lay judge. This type of judge typically does not have formal legal training and primarily works in the magistrate and probate courts. These individuals possess the same type of decision-making authority as a legally trained judge in any of the other types of state court judgeship positions. The decisions of the lay judge are binding on the parties, but either party does have the ability to request a de novo (case reassignment) to a legally trained judge court before the proceedings commence. However, this ability presumes the individual is aware of this option and/or is aware of the educational qualifications of the presiding judge.

[15] In this paper, I endeavor to examine the perils and pitfalls of using quasi-judicial officers in a broad context in the state legal system. The focus is primarily on judicial actors within the judiciary rather than those individuals who are agency administrative law actors. These elements are intertwined and cannot be readily or neatly separated into two distinct, nonoverlapping segments. However, focusing on some of the specific judicial positions, such as the special master, law clerk, or lay judges, will help to encapsulate the degree to which all of the decisions of those in quasi-judicial positions can influence the overall system. I use the aforementioned terms and descriptions interchangeably throughout the paper, but all fall under the category of "quasi-judicial officer."

proceedings, preparing order and judgments resulting from court actions, collecting court fines and distributing judicial monies" (U.S. Department of State 2004, 54). However, it is important to note that even these types of administrative positions can involve contact with litigants through requests for legal information and assistance. Typically, these administrators do not have significant decision-making discretion, because tasks and responsibilities are outlined in prescribed job descriptions. However, since these individuals can work directly with judges and some of the various quasi-judicial officers, it would be remiss to omit them in the overall quasi-judicial officer category. For the purposes of this study, court clerks and upper level court administrators are also categorized as quasi-judicial officers.[16]

Quasi-judicial officers are not limited to a specific type of court; they work in both general and limited jurisdiction courts, such as probate, trial, and criminal courts. They may or may not have a law degree, depending on the position. While I posit individuals in these positions do not typically have a legal degree, it is important to note that exceptions exist. Possible explanations for the existence of these exceptions include the individual was in the position and then earned a legal degree; the individual works in a quasi-judicial position due to personal preferences; the individual is attempting to obtain a broader degree of legal experience and expertise and is using this position as a stepping stone to other positions; or the court may have decided to hire only legally trained individuals as the State of Georgia Supreme Court recommended eliminating

[16] There are questions on the survey that explore if and how much decision-making authority a judge and a quasi-judicial officer possess. Those participants who indicated that they did not possess any judicial decision-making authority were excluded from the data analysis; however, the data analysis section denotes all data that was excluded from the statistical analysis process.

(when possible) non-legally degreed personnel from these types of positions. A primary question concerns how these types of positions should be categorized within the overall judicial hierarchy: a judge, a manager, an assistant, or a street-level bureaucrat.

As the quasi-judicial officer is an administrative, non-elected judiciary position, it would be relevant to examine the position through the lens of a street-level bureaucrat as discussed in Lipsky's (2010) seminal work *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. In his groundbreaking study, Lipsky focused in part on the influence of positions, such as police officers, not just within the judicial system, but also within society in general. The aspects that differentiate the street-level bureaucrat from a manager, administrator, or front-line worker are the level of discretion possessed and the potential to satisfy personal rather than organizational goals and objectives (Lipsky 2010). For example, while managers often enjoy a significant amount of discretion in decision-making, their ultimate goal is the advancement of the organization. At the same time, an administrator typically has little, if any, discretion in decision-making responsibilities.

To illustrate how discretion would manifest in a street-level bureaucrat position, Lipsky (2010) describes how a police officer, when confronted with someone who has committed a minor infraction, can elect to give a ticket, a warning, or a verbal reprimand; it is within the officer's discretion to determine the best course of action. By replicating the precepts of this work exclusively in the context of the legal arena, the degree to which the quasi-judicial officer can be categorized as a street-level bureaucrat can be ascertained. The influence of these quasi-judicial officer's decisions at both the individual

case level and the broader legal contextual level over time can have more significance than is currently recognized in the literature.

Study Objectives

This project looks at state court-level positions currently occupied by individuals who do not have a law degree and/or who have not passed the state bar exam.[17] The study of law at the master's level provides the opportunity to acquire legal knowledge in a way that does not compare to continuing education courses or a bachelor's degree in pre-law. It is not just possessing a law degree that makes a behavioral or cognitive difference; it is also the experiences that come with pursuing and attaining the degree. Thus, the overall goal of this project is to determine the extent to which individuals are currently practicing law without a license[18] and the possible immediate and long-term effects on the legal system. This study helps to highlight both intentional and unintentional influence of decision making via the practice of law by quasi-judicial officers. It identifies the potential effects these practices have not only on the legal system, but also on citizens and society in general. I theorize that judicial adjuncts play a much larger role in legal decision-making processes and in cases' subsequent outcomes than is currently

[17] It is not presumed that individuals will behave either more or less appropriately based on having a law degree. However, attending an institution of higher learning and subsequently obtaining a professional master's degree does create conscious (via knowledge) and subconscious (general outlook) change that is unattainable via other courses of action. These presumptions on the benefits of an advanced degree are not based on prevailing education theories; they are based on my personal experiences in 23 years in higher education. During this time, I have had the opportunity to observe how an advanced degree can transform an individual in a myriad of ways (i.e., attainment of knowledge and maturity). I have worked with individuals who have only a high-school education, a baccalaureate education, a master's level education, and a doctoral level education and have noted that there are readily apparent differences in individuals (mental capacity, general outlook, and conceptual framework) who have attained each of these successively higher levels of education.

[18] According to the ABA, every state has a statute that addresses the practice of law without a license. In most states, it is a felony to practice without a license. http://www.americanbar.org/groups/professional_responsibility/committees_commissions/commission_on_multijurisditional_practice/mjp_uplrules.html (accessed October 13, 2013).

documented in the scholarly literature or at the respective state level judicial systems via opinions or judgments. Additionally, I posit that quasi-judicial officers currently serve in the capacity of judge in many rural state court jurisdictions of the state.

The results from a survey sent to judges and to quasi-judicial officials in lower court levels in the state of Georgia help to identify the decision-making roles of these positions. Responses from both judges and quasi-judicial officers also show the differences and similarities between the two samples' perspectives. Approximately 3,000 surveys disseminated to judges and quasi-judicial officials throughout the state provide data for the statistical analysis. Because growth in the use of the courts will continue and greater authority will most likely continue to be bestowed on these positions, a greater understanding of the overall influence of these positions will help to identify the current and possible future effects on state laws. This greater understanding will also help determine whether every citizen is truly getting his or her day in court, or if something that could be described as second-rate justice is becoming the norm.

Research Questions

The questions for this study are:

Research Question 1:	Do quasi-judicial officers have less access to reference materials than judges and do they display less satisfaction than judges with the reference materials that are available to them?
Research Question 2:	Do quasi-judicial officers perceive themselves as possessing the same amount of control as judges in determining how their daily activities are completed?
Research Question 3:	Is possession of the J.D. related to access to reference materials and to perceptions of control for either judges or quasi-judicial officers?

Summary

Historically, the background of sitting judges in the U.S. has varied immensely, and included well-regarded community members, such as city council members or mayors; well-read "lawyers" without a formal legal education, such as magistrates and court administrators; and formally trained/educated attorneys who have passed a state bar exam. The lack of uniformity in judicial credentials for each type of state court (i.e., probate, magistrate, trial, and juvenile) has left the law open to differing interpretations. For example, an individual with legal training may render a decision based on facts of the case, the law, and the spirit of the law. However, an individual without legal training may only apply the law to charges outlined in the case. These varied interpretations can have profound effects on a litigant, which can range from incarceration to fines. Additionally, court policies and procedures lack uniformity in different regions within a single state due to variability in legal training and the resulting interpretations of those in the decision-making roles. To illustrate this dynamic, there are 159 counties in the state of Georgia, and each jurisdiction has its own county-level judicial systems and processes; these courts' responsibilities vary from municipal to probate to juvenile cases. There are state and ABA legal standards of conduct that govern policies and procedures; however, this does not mean that every county operates in exactly the same manner. Variability in individual legal expertise and experience can create a tenuous situation, since judicial decisions can have both immediate and long-term effects on the law via precedent and case participants, as well as on society in general. Ensuring the binding decisions are made by those with advanced legal training rather than those without is important to system-wide well-being. While training does not necessarily result in attaining infinite

wisdom on a particular subject, it potentially enables one to render more balanced decisions. For example, in the legal arena, training can aid in rendering decisions based on both the letter and the spirit of the law.

As reliance on the judiciary for dispute resolution has increased, the reliance on quasi-judicial officers in this arena has also increased. The legal training, experience, and expertise of the individuals in these particular roles can vary tremendously among jurisdictions. Investigating, quantifying, and understanding the overall influence of these roles on the law is important, because non-judicial officers are potentially making decisions that can have both immediate and long-term political and social consequences. Thus, I endeavored to determine the prevalence of and reliance on quasi-judicial officers within the state judiciary system.

Chapter 2 provides an examination of the relevant literature on judicial and street-level bureaucracy. The literature suggests that individuals without legal training are less likely to understand precedent and courtroom procedures. The use of untrained legal professionals is a historically accepted practice. The literature review tracks the historical underpinnings of the judiciary, analyzes studies conducted in the areas of judicial and street-level bureaucracy, and analyzes how the roles of judges and quasi-judicial officers affect the lower level state courts.

Chapter 3 reviews the methodology and survey instrument used for the project. This chapter explains how the research conducted discerns if legal practitioners in litigant decision-making roles should possess a law degree. It explains why investigating this query is important and which of the survey questions were used to answer each research question. Only a small aspect of the project's overall research query regarding whether

individuals with judicial decision-making roles should possess a legal degree is examined. Future scholars can further advance this area of study.

Chapter 4 presents the data analysis from the surveys received from judges and quasi-judicial officials. The analysis for the respective research questions looks at the responses from two of the survey questions. Data is examined from three different perspectives: all respondents, respondents with a J.D., and respondents without a J.D. Chapter 5 provides the final data analysis, draws potential conclusions from the research conducted in this study, and reveals how it helps to advance this particular field of study.

Chapter II

LITERATURE REVIEW

In this literature review, several distinct areas of both the judicial and street-level bureaucracy scholarships are examined in an effort to distinguish and define the currently ambiguous roles and responsibilities of quasi-judicial officers. The chapter is divided into several sections, beginning with a broad historical examination of the greater judiciary system, followed by a review of some of the internal and external bureaucracies that have continued to persist in the judiciary, and concluding with summaries of several prevailing traits and characteristics of judge and quasi-judicial officer positions. The historical retrospective identifies some of the reasons for the continued use of outmoded practices and policies, especially in regards to quasi-judicial officer positions. The internal and external bureaucracies illustrate how the organizational structures do not subjugate the functions of the judicial actors. One such judicial actor is the lay judge. Lay judges are typically judges who do not have a law degree and have not passed a state bar exam; these types of positions are commonly found in magistrate and probate courts. The examination of the literature identifies additional aspects of these areas that require further quantitative examination. It is within these confines that this study can begin to explore fully the quasi-judicial officer in the state lower level judiciary systems.

In the study of American government, the role of the bureaucracy is sometimes marginalized; however, it is this branch that must implement or take corrective measures when the judiciary submits a ruling. It is important to evaluate the roles and responsibilities of both the internal and external bureaucracies related to the judiciary. The internal bureaucracies refer to those officials within the various courts that comprise the administrative support structure. External bureaucracies refer to officials in organizations who work outside the confines of the brick and mortar courthouses (i.e., private consultants or law firms). For example, police departments are external bureaucracies working to uphold the law and judicial mandates, but they work outside the daily operations of a courthouse. An evaluation of these bureaucracies is critical, since a court's overall legitimacy stems, in part, from public trust (Tyler 2007). This factor, along with the inability of the judiciary to enforce its rulings without assistance from the other government branches, is critical to understanding some of the long-standing judiciary practices.

It is from this interconnectedness that enforcement mechanisms ensue when litigants refuse to follow case rulings. However, it is important to understand how legitimacy is maintained when the bureaucracy's role seemingly transcends the judiciary roles. For example, since administrative divisions such as the police fall under the jurisdiction of the executive branch, intergovernmental support is critical. The degree of forethought regarding the ways these acts or measures are implemented varies in the literature (Derthick 2005; DiIulio 1987; McCann 1994; Melnick 1994). Scholars suggest that a lack of forethought at the implementation stage results in the external bureaucracy determining the best courses of action. This discretion affords that particular bureaucracy

a tremendous amount of power, and there are generally no feedback loops in the legal system to identify subsequent problems or faults, except when a lawsuit is brought back before a court. This same type of scenario occurs when members of the judiciary must rule on a case via its internal bureaucratic structure. The legislator's intent may be examined through the legislative record, or the judge may act based on personal beliefs about the meaning of an act when it was drafted.

This project examines the internal bureaucracy of the judiciary. It asserts that the quasi-judicial official[19] and the street-level bureaucrat[20] are similar types of internal bureaucratic positions. Given the multitude of judicial players, it is easy to understand how the ordinary citizen might focus mainly on the street-level bureaucrats, such as court clerks or quasi-judicial officials, when representing himself/herself at a court appearance.[21] It is also understandable how an ordinary citizen or unrepresented litigant would misunderstand the inherent differences and distinctions between these various quasi-judicial officer positions and judges. This explanation lends further support to the need for trained personnel such as those previously described. As Riccucci (2005) notes, the aforementioned positions have a key role within the judiciary, since it is at the "street level where policy delivery may be most critical, because the actions of front-line

[19] For the purposes of this study, local-level judges and quasi-judicial officials are not considered upper-level bureaucrats. Maynard-Moody, Musheno, and Palumbo (1990) state that a judge's job "lacks the direct and on-going contact characteristic of street level work. Judges are more likely to work closely with attorneys and pre-sentence investigators as key intermediaries and in the courtroom judges act as administrators" (840). I contend that, although interactions with the public are generally not with the same offenders/defendants, such as those experienced by probation officers or teachers, the interactions are similar to those experienced by police officers.

[20] The degree and extent to which an agency official or street-level bureaucrat implements policies can vary dramatically among and within agencies.

[21] The Council of Magistrate Court Judges, Rules Committee prepared the "Guidelines and Instructions for Clerks Who Assist Pro Se Litigants in Georgia's Magistrate Courts" (2007) to assist court clerks and staff to avoid mistakenly rendering legal advice.

workers have substantial and sometimes unexpected consequences for the actual direction and outcome of public policies" (Riccucci 2005, 243).

Many citizens view the various court players as neutral decision makers whose personal agendas and opinions are irrelevant or nonexistent when acting on behalf of the courts (Tyler 2007). Characterizing governmental actors as neutral is a bit misleading, because personal characteristics and bias consciously and/or unconsciously affect individual actions and reactions (Frederickson 1997; Rosenberg 1991; Segal and Spaeth 2002). For example, legislators often write bills that are purposely long, ambiguous, and confusing in order to get a bill signed into law; they are not always acting as neutral parties looking out for the best interests of the constituents, the state, or the nation. The result of this type of situation is that agency administrators are left to determine how to interpret and implement the laws "correctly."[22] Within the confines of the judiciary, the court players can more readily and directly assert personal agendas, beliefs, and/or morals when interpreting the law.

In regards to the aforementioned behaviors, Engler (1999) notes they are best illustrated by examining how customer service practices in the courts often differ between represented and unrepresented litigants. Variation in the degree of customer service based on characterization assessments of a litigant precludes the idea of justice for all. Unrepresented litigants do not have legal knowledge, and expect the court to perform the role of legal counsel. The literature on judicial behavior is full of theories on how judges arrive at decisions (Rosenberg 1991; Segal and Spaeth 2002). Individuals

[22] "Correctly" is (for the purposes of this project) defined as how the legislator actually intended for the legislation to be implemented within an agency.

often model personal behavioral patterns (whether consciously or unconsciously) on what is perceived as acceptable organizational behavior (as determined by the individual's knowledge base). Acknowledging and understanding the potential for quasi-judicial officials to model behavioral patterns of judges is a salient element to the overall puzzle. However, modeling a behavior without an understanding of its potential ramifications is risky, as a litigant's constitutional rights may be accidentally violated given that case facts can vary. Although the focus of this project is in understanding the roles and behavior of the quasi-judicial officer and the effects of other decision-making abilities within the state judiciary branch, it is important to acknowledge the potential effects of some of the overall behaviors of judges.

The Judiciary: Past, Present, and Future

It is often said, to understand where you are going, you must understand where you have been. Examining the quasi-judicial official and the legally trained judge in their historical context will enable a better understanding of how many of these various adjudicative processes and positions have persisted for centuries. This review will also help to bring some of the underlying faults of the legal system to light. Looking at two interrelated positions in the judiciary, the quasi-judicial officer and the judge, underscores the tenuous and very delicate balance of the many processes that work to ensure justice for all. The articles reviewed here refer to numerous types of quasi-judicial officer titles. In an effort to maintain the integrity of the article, the titles of the respective positions in the original articles are used.

Judges

It is important to note at the onset that this paper does not imply or suggest that possessing a law degree immediately transforms someone into a proficient, legal-minded practitioner. However, Mansfield (1999) argues that law degrees are not just professional credentials and that pundits are incorrect in their presumption that "success in law school is merely a measure of conformity to standards set by an in-group of professionals, so that academic success reflects political or social conformity (and white male values) rather than a student's ability to grasp and analyze legal issues" (Mansfield 1999, 157). As a law professor at Drake University Law School, Mansfield found that a marginal grade in a course did not point to inherent philosophical differences between herself and a student, but suggested the student did not grasp the concepts of the course. This sentiment underscores the importance of advanced academic training in the law. If an individual is still deficient in an important subject after a semester or more of coursework, how can one presume a 2- to 3-week continuing education course can provide adequate knowledge/training to render legal decisions and opinions? Mansfield's argument that "only training as lawyers can ensure these judges can perform their tasks completely" is well founded (Mansfield 1999, 158).

Obtaining a law degree is only the first step in learning and understanding the nuances of the law, the court, and the overall legal system. It is not sufficient to have practiced in a courtroom for a few years to become a fully proficient practitioner of the law. Fieman and Elewski (1997), in "Do Non-Lawyers Justices Dispense Justice?", remarked that obtaining "a law degree is no guarantee that a judge will be knowledgeable or impartial. Yet … experiences, as well as empirical data, indicate that lay justices are

prone to ignoring the law and may be biased toward authority figures, such as police, prosecutors, and property owners" (Fieman and Elewski 1997, 20). Thus, it is important to distinguish two types of judges: legally trained and lay. The lay judge may not initially be thought of as a quasi-judicial official; however, the inherent differences in these positions are documented in the literature. A typical example of the potential problems that can arise with the use of a lay justice is cited by Fieman and Elewski, where in a small New York town, a lay judge "chided a tenant's attorney for muddling the proceedings with references to United States Supreme Court decision which, she maintained, did not apply in her 'small claims court'" (Fieman and Elewski 1997, 20). In New York, the town and village judges are not required to have a law degree, but need only take a legal course of study approved by the state legislature. The course is similar to continuing education courses that are available to the public for personal enrichment.

It is also important to note that with training and experience, other outcomes, such as the judicial socialization process, can occur. The U.S. Department of State (2004) references two types of judicial socialization: freshman socialization and occupational socialization. Freshman socialization is the "short term learning and adjustment to the new role" and occupational socialization is "on-the-job training over a period of years" (U.S. Department of State 2004, 150). The document further asserts that although a lawyer may be thoroughly trained, jurists face situations in which experience or familiarity is needed if the case is to be handled efficiently and effectively. Provine (1981) discovered that it is due to these types of situations that trained lawyers have advocated to eliminate lay judge positions from the legal profession. Although reform

efforts for the various judicial positions/qualifications have waxed and waned over the years, measures have yet to be taken to eliminate lay judge positions completely.

Provine (1981) asserts that while distinctions between lay and legally trained lawyers exist, lay positions have yet to be eliminated because they fulfill a role for which legally trained professionals are over qualified. This factor explains the tolerance for maintaining lay judicial positions. In addition, both lay people and individuals who have only learned about the legal system on the job do not interact extensively with formally educated legal professionals. Finally, the expense of replacing these lay judge positions with formally trained individuals could prove prohibitive for local and state governments (Provine 1981). Mansfield (1999) concurs and advocates for maintaining the status quo. Arguments for the elimination of lay judges include that they may unwittingly infringe on the rights of the accused due to lack of formal training in adjudicating cases. However, arguments for maintaining less qualified individuals in these positions include that the courts in which these individuals serve only involve minor infractions/violations that are typically resolved by the payment of a fine (Mansfield 1999). While both arguments may have their merits, the position taken generally depends on whether one works for the defense or the prosecution.

While there are some scholars, such as Vermeule (2007), who extol the virtues of the diverse bodies of knowledge that a lay judge may bring to the judicial table, it does not seem that proficiency in or knowledge of an unrelated field would assist someone in rendering an appropriate legal decision. This notion might have been the case centuries ago; however, the complexities of our modern society and the laws by which we abide warrant expertise in the law. Moving to a system in which all judges are legally trained

professionals is not founded in a conspiracy or an attempt to create an enormous, like-minded "club" of professionals; it is merely a way to ensure that the statutory rights of those who come before the court are preserved. To that end, several Supreme Court cases have ruled on the extent and type of cases that lay judges can adjudicate. Some of the more recent relevant decisions include the 1976 case of *North* v. *Russell* (427 U.S. 328) and the 1972 case of *Argersinger* v. *Hamlin* (407 U.S. 25).

In 1976, the Supreme Court granted review of the case of *North* v. *Russell* (427 U.S. 328). The defense for North alleged that the Kentucky lay judge who presided over the case initially was "apparently ignorant of proper criminal procedure and even of permissible penalties in such cases" (Provine 1981, 31). While the question of the inherent differences between lay and legally trained justices was not specifically addressed in the opinions, "Justices Stewart and Marshall, dissenting, took up this question and concluded that a lay judge cannot fully appreciate legal arguments so that 'in a trial before such a judge, the constitutional right to the assistance of counsel becomes a hollow mockery' (1976: 338)" (Provine 1981, 31). Mansfield (1999) takes this argument further asserting, "complying with evidentiary and procedural rules is difficult even for those persons who have attended law school. This fact is illustrated [best when looking at] the number of continuing legal education and mock trial opportunities available each year on these subjects" (Mansfield 1999, 149). Judge Richard Posner further supports this argument in his commentary regarding the use of special masters. As a judge for the 7th Circuit United States Court of Appeals, Posner indicated that while the use of individuals at the federal judiciary levels was increasing, their presiding over cases was a violation of Article III of the Constitution. His argument stems from the fact that

adjudication is a judicial function where the individual "who performs that function is [acting as] a judge exercising the judicial power of the United States with the tenure of guarantees of Article III" (Posner 1988-1989, 2217).

Although a lay judge could be empowered by the judicial system to render decisions/opinions on cases (whether simple or complex), it is important to consider the various state "unauthorized practice of law" statutes. According to Rotenberg (2012), the unauthorized practice of law statutes evolved out of the necessity to protect individuals from ineffectual legal counsel; however, it is important to ask what safeguards are in place for protection against ineffectual "counsel" within the system itself (i.e., quasi-judicial officials).

Clearly, one cannot assume that judicial actors, including some types of judges, are knowledgeable about the basic court procedures and/or specific guarantees of individual constitutional rights. One of the inherent problems with the unauthorized practice of law statutes is the ambiguity of and variations in definitions within them. It would appear the ABA regulations, as well as most states, have an unauthorized practice of law statute, but to whom and when the statute is applicable vary (Provine 1981). With this type of ambiguity, it is unclear what mechanism prevents claims of unauthorized practice of law by individuals employed by a local or state court. Typically, when claims of "ineffectual counsel" are charged, it is incumbent upon the individual litigant making the charge to substantiate the claim, which can be extremely difficult and expensive. When waging similar claims against a judge, the individual is required to appeal the decision to successively higher courts, which can result in significant costs in time and money. While Rotenberg's (2012) article was focused on the delivery of legal services by

Internet legal providers (e.g., LegalZoom) and the potential ramifications of delivery of legal services by untrained professionals, the arguments have a degree of applicability to the practice of law by quasi-judicial officers.

Conversely, Engler (1999) argues for granting exceptions to the unauthorized practice of law statute for unlicensed and/or untrained judicial actors, such as clerks and mediators. His justification stems from the belief that the rights of pro se litigants equal those of litigants represented by legal counsel. While the idea of equal rights for everyone is certainly important, this should not preclude the relaxing of such an important statute. The number of pro se litigants is steadily increasing, and these individuals are often unaware of the various legal systems and processes. Engler posits that the increase is due to litigants' inability to afford legal counsel. Judicial actors must walk an extremely fine line in providing legal advice to these individuals, since doing so violates the aforementioned statute and may violate the premise of informed consent for the litigant. While most states' unauthorized practice of law statutes may be ambiguous, each strictly prohibits untrained or non-bar admitted judicial actors from providing legal advice. Many states, such as Georgia, are electing to publish informational guidelines to help quasi-judicial officers better to determine the types of conversations considered acceptable with pro se litigants (Administrative Office of the Courts 2014).

Engler (1999) notes a distinction between the rendering of "advice" and imparting "information," which could be used as a loophole to violate the unauthorized practice of law statutes (if necessary) when talking with litigants. However, when confronted with someone who is scared and confused, it is difficult not to become a legal advisor when pressed to do so. It is also conceivable that such a loophole would apply to a situation

where legal action arose because of erroneous information received from a quasi-judicial official. Even the most well-written guidelines cannot replace legal training and expertise. As Engler indicates, by not discussing all of the legal options available, the pro se litigants may unknowingly forfeit other potential legal rights, such as filing a motion to dismiss. It is also conceivable that although someone has worked at a courthouse for many years, that person could be unaware of all conceivable legal options available to a litigant. A truly informed decision cannot be rendered if one does not know all of the possible options available.

Another difference noted in the literature is the degree to which the lay and legally trained judge positions are comfortable with interpreting the law and ensuring procedural fairness. Provine's (1986) and Silberman's (1979) research supports the contention that lay judges are rigid and formal in their interpretations, while formally trained judges are potentially more comfortable in their interpretations of both the letter and the spirit of the law. It is from these interpretations that Provine and Silberman assess whether these two judge positions are potentially more or less sympathetic to defendants (Provine 1986; Silberman 1979). It is not readily apparent if the sympathetic versus unsympathetic behaviors are, in reality, interconnected. It would appear other mitigating factors might account for these outcomes: case complexity, comfort level in adjudicating, and understanding of the minutiae in the processing and interpretation of the law. Judges Burke and Leben (2007) in "Procedural Fairness: A Key Ingredient in Public Satisfaction," assert that the level of satisfaction with a case's outcome is directly tied to the perceived level of equal and fair treatment used in rendering the final decision. They cite the "key elements of procedural fairness [such as] voice, neutrality, respectful

treatment and engendering trust in authorities" as mechanisms to "alleviate much of the public dissatisfaction with the judicial branch" (4). The crux of their argument is that if the case participants view themselves as treated fairly, the outcome is not as important. If their theory is correct, the application of the law is less important than how court players act and interact with participants. This argument seems slightly counter-intuitive, as litigants should have some basic understanding of procedural rights and fairness. Although this basic understanding may have been derived from media sources, such as television shows like *Cops* or *Law and Order*, an idea of fairness would extend beyond mere pleasant interactions.

In reviewing the potential for due process violations, scholar C.B.S. (1975) outlines numerous ways that a lay judge can potentially infringe on a defendant's constitutional rights. It is no longer reasonable to presume that the complexities of a legal case can be understood and adjudicated based solely on logical presumptions. A compelling argument in the article says that the Constitution does not provide for judicial qualifications. For example, at the Supreme Court level, the president and Congress must discern the competency of a judge. If valid, it could be further argued, "the right to determine the qualification for state court judges belongs to the states under the Tenth Amendment" (C.B.S. 1975, 1473). However, his examples make a compelling argument for the use of legally trained justices. One of the more salient arguments is the notion that lay judges may not be able to follow legal arguments without the appropriate legal background.

In illustrating this concept, Alschuler (1984) shows how inadequate legal knowledge can be problematic for both the police and the judge issuing the warrant.

Failure to understand the mandates of unreasonable search and seizure and relevant precedent, such as in *United States* v. *Leon* (468 U.S. 897), can effectively allow criminals to avoid prosecution. It is the job of the defense and prosecution to present compelling arguments and evidence in an effort to sway the judge and/or jury to their respective points of view. As the complexity of cases increases, individual logic can no longer be the sole basis for rendering decisions. Inability to understand a legal argument renders the right to legal counsel moot. Alschuler (1984) supports this argument by citing the opinion in *Argersinger* v. *Hamlin* (407 U.S. 25), in which "no criminal defendant charged with either a felony or a misdemeanor could be incarcerated without being afforded the right to counsel" (C.B.S. 1975, 1457; Alschuler 1984). The argument asserts that right to legal counsel becomes moot if the judge presiding over the case does not have the ability to understand the proceedings and arguments.

C.B.S. (1975) asserts that the inability to comprehend the complexities of a case could potentially cause bias and unfairness in influencing the judge's final decision. C.B.S. suggests that it is likely that the judge would consult the prosecution or a police officer when there are aspects of a case that one does not understand. Rather than the judge basing the decision on the facts of the case and the law, the opinions of others are introduced and apt to become part of the ultimate decision. Additionally, the judge must ensure adherence to the rules, policies, and procedures of state and federal courts. This role becomes increasingly important in ensuring there is no violation of an individual's constitutional rights, especially when litigants elect to represent themselves.

Judges do consult and learn from one another, especially from those who have been on the bench for a while. This type of behavior is not as potentially detrimental as

the aforementioned scenario. The two scenarios differ considerably because the judge is consulting judge colleagues (presumably neutral third parties) rather than seeking counsel from a potentially biased third party (the arresting police officer and prosecution, who might want a conviction). Unfortunately, those judges who do not have the luxury of conferring with more experienced judges are more likely to make errors (U.S. Department of State 2004, 151).

It is also important to note that although conventional wisdom dictates that precedent flows from the Supreme Court down through the various lower court levels, this unidirectional flow is not always the case. Corley (2008) and Calvin, Collins, and Corley (2009) uncovered the inherent flaws in this perception, suggesting that Supreme Court majority opinions are not written in a vacuum. Using plagiarism software, Calvin, Collins, and Corley discovered evidence to support the theory that Supreme Court Justices occasionally incorporate aspects of lower courts' opinions into their own. This evidence suggests that lower courts, to a small degree, can affect decisions rendered at successively higher levels via their own decisions and opinions. This research further supports the need for educated and experienced judicial actors and supports the assumption that the court levels are interconnected, not isolated and separate entities.

Ryan and Guterman (1977) point out that due process violations, although unintentional, may occur because the lay justice must rely more strongly on the prosecution for advice, which, when coupled with the fact that defendants are representing themselves in court, creates a potentially disastrous legal situation. A 1977 survey by Ryan and Guterman of lawyers and non-lawyer judges throughout New York provided some of the first empirical evidence of the background and outlook of these two

samples. Two provocative elements of the findings are the differences in the perceptions of these samples regarding police officers and their attitudes toward indigent defendants. The non-lawyer judges felt police officers were better witnesses and investigators and relied on them more extensively during the course of the trial. While attitudes toward race and gender were similar, the two samples differed on their outlook toward the poor. The authors' research indicated that lawyer judges had greater sympathy for the poor, as being unemployed was not a matter of choice (Ryan and Guterman 1977, 277). They are quick to assert that the information should only be used to denote a difference in perception and outlook, and not to assume any moral turpitude for either sample. However, this divergence of an individual's perception and outlook could subconsciously affect the outcome/decision for a poor litigant.

While the pros and cons of using lay justices seem clear at face value, McDonald sums up the controversy and shows the potential consequences in using any non-legally trained individual in an adjudicative position: "Law being one of the great – and one of the complex – professions, justice should not be dispensed by amateurs or part-time judges any more than surgery should be practiced by butchers or grocers" (quoted in Provine 1981, 36).

Quasi-Judicial Officers

"Quasi-judicial officer" is a broad term that can refer to a number of judicial actors at the state court levels; this definition does not apply to higher-level state or federal courts. Quasi-judicial officers are typically individuals who, despite being in a decision-making capacity, have not earned a law degree or passed a state bar exam. The section on judges in this chapter discussed how untrained and inexperienced judges can

infringe on individual constitutional rights and liberties and are ultimately street-level bureaucrats. This section looks at how the quasi-judicial officer can create havoc in the judicial system. In an effort to understand the inherent problems in using quasi-judicial officers, this section reviews the literature on some of the specific players, such as magistrates, special masters, and law clerks. While there are other actors, such as administrative law judges, who can fall into the quasi-judicial officer category, the majority of the literature reviewed focuses primarily on the aforementioned positions. To date, the literature is narrow in scope in its examination of the specific players and does not include broader, system-wide examinations. Looking at the players in a broader context enables the reader to see the depth to which all of these positions are potentially detrimental to all levels of the judicial system.[23]

According to DeGraw (1991), special masters have served in courts since the colonial period. These individuals acted as "judicial administrative assistants by selling property to settle judgments, holding evidentiary hearings, calculating damages and auditing accounts" (DeGraw 1991, 800-01). Today, their powers are more limited in scope. Some of the more common uses of a special master are in institutional reform litigation and for non-legal trial expertise. DeGraw specifically examines the perils and pitfalls of using special masters at the district court level in institutional and traditional reform efforts. While the focus is on the district court level, the consequences of error for individuals in these positions can potentially reach other types of courts. Conversely,

[23] Although specific positions may be discussed, they are used to build evidence that the overall collective, and not individual or specific positions, can cause problems in judicial decision-making capabilities. The specific position titles are referred to when reviewing the specific articles in an effort to maintain the original intent/integrity of the respective authors.

Jokela and Herr (2005) extol the use of special masters and assert that the position is an underutilized tool. Their research examines the position at both the federal and state levels, but they seem to assume that special masters need to possess the same degree of legal training at each of these levels. However, this is not necessarily the case, since there is no difference in the potential depth and breadth of legal training of special masters at the state level. States can have different statutes that define the qualifications and roles. This critical element seems deemphasized within much of the literature.

Galloway's (1931) review of magistrate courts in New York and Chicago speaks of the depravity and illegal conduct that existed there during that time. Although written over 80 years ago, the article may provide a useful perspective on the current state of affairs. A significant number of the magistrates in these cities at the turn of the century did not have a legal background, much less a law degree. While some men were honest and attempted to do the best job possible, there were many more who were corrupt and in the "back pockets" of political bosses. These corrupt individuals' actions permeated the system over time and made the entire judicial institution suspect of criminal activity.

In 1957, the Supreme Court set precedent in determining the appropriate use of a special master in the case of *LaBuy* v. *Howes Leather Co*. (352 U.S. 249). The District Court Justice LaBuy referred two cases for adjudication by a special master. The Court of Appeals issued a writ of mandamus; however, upon the district court judge's refusal, the Supreme Court granted *certiorari* for the case. The Supreme Court ruled, "congested dockets, complex cases, and the potential duration of trials were not the kinds of exceptional circumstances that warrant the appointment of a special master" (DeGraw 1991, 808).

Some of the inherent problems DeGraw (1991) discussed in appointing a special master include the usurping of judicial control, inadequate continual appointment review processes, inadequate standard of review on special master cases, potential conflicts of interest, and potential to violate the standard of due process. While Federal Rule 53 and relevant case law provide standards of conduct for the special master at the federal levels, knowing when and how superiors (whoever those persons may be for the respective jurisdictions) are to apply these standards consistently can be difficult across any and all of the respective judicial levels. Knowing and applying the nuances of these standards typically comes from years of experience at a higher judiciary level, such as at a district court. DeGraw provides his readers with a potential alternative to the current practices and for resolving the ambiguity of Rule 53. His adaptation of the rule provides clear objectives and standards of practice that would, if enacted, reduce the number of issues that currently exist with the use of special masters in today's legal system.

The Bureaucracy Inside and Outside the Judiciary

There are many ways to view the bureaucracy inside and outside of an organization. For example, it can be viewed as a collective, in which the organization's policies and procedures are deemed bureaucratic, or it can be viewed at an individual level, in which an individual does not deviate from the organizational rules and regulations, no matter how inappropriate or inapplicable they might be to a particular situation. Within the organization lies a bureaucratic structure that exists between the various judicial actors. Via a narrative, Fiss (1983) is able to show how social structure can facilitate the misuse of public power. This misuse of power can manifest "through the fragmentation and compartmentalization of tasks [whereby the] bureaucracy insulates

those acting within it from critical education experiences," and as the "bureaucracy tends to diffuse responsibility" (Fiss 1983, 1453). From these points, Fiss is able to show how these factors can potentially become complex problems within the judiciary. In the next section, there is a review of these internal bureaucratic mechanisms and their effects on the judiciary.

Fiss (1983) suggests, "bureaucratization tends to corrode the individualistic processes that are the source of judicial legitimacy" (1443). In an interesting twist, he grounds his statements in the assumption that "judicial power is process" (Fiss 1983, 1443). The process to which he refers is listening to oral arguments, engaging the facts of the case, rendering a decision, and preparing an opinion. It is important to remember that when "signing his name to a judgment or opinion, the judge assures the parties that he has thoroughly participated in the process and assumes individual responsibility for the decision" (Fiss 1983, 1443). However, when responsibilities are delegated to a quasi-judicial officer, this bond between the judge and the various litigating parties is marginalized. While the article's primary focus is on the federal levels, his premises are applicable at the state and superior court levels. He discusses three types of bureaucratic hierarchical relationships: judge-judge, judge-staff, and judge-sub judge. These categories help us to visualize the internal bureaucratic elements within the judiciary. As the name suggests, the judge-judge category is the interaction between judges at differing hierarchical levels. He notes that this is the weakest of the bureaucratic relationships, as there is no real reward or punishment mechanism between or within the respective levels (e.g., federal, appellate, state).

The two categories most relevant to this research are judge-staff and judge-sub judge. With the judge-staff category, Fiss (1983) indicates that the majority of the positions, such as bailiffs and secretaries, do not have a direct effect on judicial decision-making processes. However, positions such as law clerks can have a significant influence on the outcome of a case. Law clerks are subdivided into "elbow" clerks and staff attorneys. Elbow clerks work more directly with judges than the staff attorneys. However, both write bench memoranda, conduct research for cases, and draft opinions. It is from this delegation of power and authority that Fiss' theorized bond between the judge and the parties is marginalized. While judges have the ability to review the documents prepared by these individuals, time constraints and ever increasing docket calendars generally enable them to conduct only cursory edits and reviews of the prepared items.

The third category of judge–sub judge refers to the relationships between the judge and courthouse personnel, such as magistrates[24] or special masters (i.e., quasi-judicial officials). Fiss (1983) differentiates these judicial actors, noting that "sub judges are formally and publicly entrusted with some measure of decisional power and yet are distinguished from judges because of special restrictions on their power" (1446). Fiss

[24] The instances where magistrates report to another judge (as in a supervisory capacity) can vary significantly. Magistrates can work in a judicial setting in which they report to another judge, or they can preside over their own courts. The decisions of these particular judges are binding and can only be reversed on appeal. Since most litigants do not have the time or financial resources to pursue an appeal to successively higher courts, it is important that this initial decision be grounded in legal precedent and case law. There is no secondary check of these quasi-judicial decisions. When a judge uses a law clerk or some other quasi-judicial officer to assist in various judicial tasks, such as research or writing a brief, it is the responsibility of the judge to ensure the information is appropriate and accurate. However, if time constraints prohibit a thorough review of the information, the judge may elect merely to sign his/her name to the document. In both scenarios, the judges (both those legally trained and those non-legally trained) are responsible for the decisions rendered, and the decisions can only be reversed on appeal.

asserts that the bureaucratization proliferates as the size of the judiciary increases. As the public turns more to the judiciary for dispute resolution, the number of judicial actors must also increase to accommodate the increase in workload.

In 1980, Lipsky examined the roles and responsibilities of the governmental agency front-line bureaucrats/public administrators in *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. According to Lipsky (2010), street-level bureaucrats are "public service workers who interact directly with citizens in the course of their jobs and who have substantial discretion in the execution of their work" (3). Within the judiciary, this type of situation can be especially tenuous, as individuals untrained or minimally experienced in the law can potentially wield a tremendous amount of unchecked power. Within the judiciary, viewing the lay justice and the quasi-judicial officers as street-level bureaucrats is apt, as each can potentially promote agendas and preferences via the work each elects to process, which can be in contrast with the ultimate objectives of the manager (Lipsky 2010). Lipsky stresses that managers are results oriented, which means these individuals are concerned with all of the proper administrative steps and procedures that should be followed from start to finish. In contrast, the street-level bureaucrat has no problem looking the other way or bending the rules in order to accomplish a believed appropriate result. Some individuals may assert that the route taken is immaterial as long as the desired result is achieved. Looking closely at the roles and responsibilities of the quasi-judicial official at the state levels can show how Lipsky's distinctions in this regard are appropriate and applicable to all of the aforementioned judicial positions.

The quasi-judicial officer does work within a hierarchical structure, bound by rules and procedures as dictated by the law. The laws used to defend a certain position can vary and potentially differ dramatically from the viewpoint of the reviewing judge. However, if the memorandum is well grounded in legal principles and the arguments are sound, the judge's opinion may subsequently convert to this alternative position. This opinion may change the case's outcome from what it would have been had the judge written the memorandum. This argument supports Lipsky's (2010) theory that street-level bureaucrats are free from higher-level managerial influence. Some would argue that judges would not appoint or work with a quasi-judicial officer whose philosophy and outlooks differed their own or if they did not trust the individual. However, these factors do not necessarily preclude a quasi-judicial officer from expressing a point of view via a bench memorandum or other resolution recommendations.

Judicial Street-Level Bureaucrats and Discretion

In the current government system, only the legislative branch is constitutionally empowered to create, modify, and enact laws.[25] However, scholarship has brought to light the degree to which the bureaucracy, too, creates policy. Lipsky (2010) asserts that street-level bureaucrats' policy-making abilities stem from not only their level of discretion, but also their level of autonomy from the organization. Policy making and discretion are so closely aligned that they could conceivably be analyzed together or separately, but I review them independently for this project.

[25] Courts may also create law through common-law rulings and statutory interpretation. The President also in effect creates law through executive orders and selective enforcement of statutes.

Historically, judges have been generalists[26] and often have not possessed the specific technical expertise required in some cases. While today many state courts divide their caseloads into specific courts, such as trial, criminal, or juvenile courts, this does not necessarily make judges de facto experts and does not preclude a case from being technically complex.[27] Traditionally regarded as a neutral third party, special masters have helped the courts to interpret complex data presented at trial by both counsels. The current literature acknowledges the various roles and uses of quasi-judicial officers in today's legal system, but there is limited consensus on the level of discretion these positions actually possess.

Discretion is attained from a delegation of authority, which effectively transfers power and freedom to act from one person to another; however, "the delegating person loses some control" in this transfer (Hupe and Hill 2007, 281). With Lipsky's work in the 1980s, the level of discretion in these types of positions became more readily apparent than previously believed. In his groundbreaking study, Lipsky (2010) found that higher level bureaucrats could affect changes to policy, and ultimately the law, given their potential level of discretion within the organization. Hupe and Hill (2007) contend that it is via delegation and discretion that the street-level bureaucrat is imbued with "power [that] leave[s] him free to make a choice among possible courses of action and inaction" (Hupe and Hill 2007, 281). In the judicial arena, when judges delegate tasks, such as reviewing a case and preparing bench memoranda, the quasi-judicial officer now has the

[26] This statement excludes specialized courts, such as bankruptcy or tax courts.
[27] An example of a technically complex case is the Environmental Protection Agency's suit against numerous private corporations over the levels of pollutants they were emitting into the atmosphere and the ground.

ability to include or exclude (either intentionally or unintentionally) specific case law and precedent within the text. These "actors may be faced with situations in which rules are ambiguous or even contradictory," but they are "forced to make choices: choices about how to deal with a specific rule – in general and in specific situations – but also between rules" (Hupe and Hill, 2007, 281). In 1931, Galloway noted in his review of magistrate court reform measures that when discretion is wrongly applied, it can potentially result in criminals being exonerated, or worse, innocent defendants being wrongly prosecuted. Although Galloway penned the article over 80 years ago, these sentiments are very relevant to today's jurisprudence. The judge reviews the text at face value and subsequently renders a decision. While one could argue that the judge has the requisite knowledge and skill set, as well as the ability to request more information or to edit the prepared memorandum, it is unlikely that such actions would occur given time constraints. This state of affairs can generally be attributed to the unfortunate fact that "courts operate in a great hurry, often in the midst of great confusion" (Galloway 1931, 8).

Sowa and Selden join with Lipsky's (2010) argument that the power inherent within discretion is not "dangerous per se;" rather, it is the "unrepresentative power that constitutes the greatest threat" (Sowa and Selden 2003, 700). While negative aspects of discretion certainly abound, Sowa and Selden (2003) contend that discretion can positively influence the public via active representation. Active representation means that governmental agency staff mirror the demographic composition of the public they serve (Sowa and Selden 2003, 700). The level of discretion of each administrator within and among the various agencies typically differs, not only due to outlook and/or training of

the administrator, but also due to the environment of the agency itself. It is from these individual and environmental cues that the level of discretion utilized in daily operations emanates. While removing the elements of discretion in a position may seem a logical solution, complications in redefining job roles and responsibilities can result when the attempts to expand or eliminate it occur (Lipsky 1980). Therefore, individuals must "balance the application of rules with their perceptions of citizens or clients to ultimately make decisions about their [individual] work behaviors" (Riccucci 2005, 243). Hupe and Hill (2007) also echo these sentiments, as they too believe a lack of uniformity exists, as organizations can differ geographically, demographically, and overall within the general organizational structure. Additional explanation of street level bureaucrats and discretion is in Appendix J: Key Term Definitions.

Bovens and Zouridis (2002) suggest mechanizing the respective systems can control street-level bureaucrat's discretion. Using what they refer to as information and communication technology (ICT), these new system-level bureaucracies are effectively replacing the street-level bureaucrat in the quest for consistent, efficient, and effective implementation of policies. Essentially, in this type of environment technology (i.e., hardware and software) replaces an organization's human resources. The ability to insert human discretion into processes becomes obsolete as software renders decisions based upon the information entered in the organization's computer system.

The ultimate goals in developing and implementing ICT systems is to ensure citizens are not denied access to services due to the whims and the desires of a bureaucratic agent. However, as their example of the allocation of education grants in the Netherlands indicates, transitioning wholly to such a system can have detrimental effects

both on the system and on the consumers. The example they provide posits, "dissatisfaction among students was rampant, and complaints were numerous. The employees were also dissatisfied. The drastic automation measures had left them with the virtual equivalent of a conveyor-belt job, making their work considerably less interesting" (Bovens and Zouridis 2002, 178). Automation certainly has a place within a system; however, replacing the analytical decision-making capacity of a person with a machine can potentially cause the overall system to be less productive.

While there is no denying the need for automation and transparency, shifting large portions of the bureaucracy from a street level to a system level conjures up fictional rogue system level bureaucracies, such as in movies like *Terminator* and *Judge Dredd.* As Bovens and Zouridis (2002) note, it is important to consider who will ultimately be responsible for watching and reviewing the actions of those individuals who are system-level players. However, in the judicial setting, the complexities of the law and, potentially, of an individual's particular case, preclude the effective and efficient implementation of a one-size-fits-all legal guide.

As technology advances, the need for face-to-face interactions in some governmental agencies decreases. Although many scholars assert direct interaction is the hallmark of the street-level bureaucrats, one must wonder at what point street-level bureaucrats cease to exist if interpersonal interactions are eliminated. According to Keiser (2010), interpersonal communications do not wholly define the role of the street-level bureaucrat. His assertion stems from looking at the eligibility decision making of the street-level bureaucrats in the Social Security Disability Program. Keiser asserts that the use of discretion is determined more by a street-level bureaucrat's innate characteristics

than by agency processes and regulations. Sowa and Selden (2003) suggest that the individual uses environmental cues within the organization to formulate acceptable behavioral norms. It is from the individual's background, experience, and the environmental cues that each person develops acceptable behaviors and levels of discretion. Keiser (2010) concurs with Brodkin's (2008) research that it is often the individual, rather than the institution, who defines the organizational policies and processes. Although justices are apt to select those quasi-judicial officers whose outlook and philosophy mirror their own, this does not prevent free expression or preclude any underlying individual bias of the appointee from affecting the decision-making process.

Using inductive reasoning, scholars have drawn conclusions regarding the use of individual, personal values and preferences; however, as Keiser (2010) points out, large-scale random data sampling for such measures has not been feasible. Conducting research using a large, random sample for personal values and preferences is difficult because these attributes are shaped by a myriad of factors, including background, level of education, work environment, and personal associations (e.g., friends and relatives). In narrowing the scope of all of the potential individual values to one that is testable, Keiser selected three variables: political ideology, adherence to a bureaucratic goal or mission, and client assessment. With these variables as the initial foray into this type of research, there were flaws in the data set.

The political ideology was measured on a continuum; the individual indicated preferences on a scale in which one (1) denoted "very liberal" to seven (7) denoting "very conservative." Keiser states, "these identifications do not necessarily translate into coherent and consistent attitudes" (Keiser 2010, 249). The difficulty of use of the second

measure in the study–adherence to bureaucratic goal or mission–is the inability of the variable to discern at face value the organizational mission to which the individual is adhering, which can create confusion for all parties involved in the decision-making processes. For the third variable, client assessment, the measurement issue stems from how the street-level bureaucrat views and subsequently classifies the client.

Engler (1999) noted how this type of bias could be problematic in the judiciary. The bureaucrat's perception of the client, whether real or perceived, ultimately determines the allocation of services and benefits to the client. Although the results account for a small portion of the variation in decision-making, it is still early to draw definitive conclusions. These results seem to influence how effective managers behave in selecting and hiring street-level bureaucrats, including hiring like-minded individuals.

Much of the literature speaks to the use of special masters in administrative assistant capacities: helping to clarify information in complex cases, conducting field visits to ensure organizations are complying with court-mandated orders, and focusing on roles and responsibilities at various levels, such as at the federal and the state courts. Ichter (2011) extols the virtues of special masters, which he sees as an underutilized resource. He notes how special masters can help courts become more efficient, as they can review trial documents and perform other time-consuming activities for a judge. This increase in efficiency results in savings for litigants as well for as the court. In positively portraying special masters, Ichter seems to presume that the special master has a legal education and experience that rivals that of a sitting judge. While retired justices and law professors have served in this capacity, it is presumptuous to assume every active special master possesses this type of background and experience. Other articles suggest that

quasi-judicial officers are also imbued with discretion and authority that rival a sitting judge. Examining this scholarship in conjunction with the street-level bureaucracy model can paint a more detailed picture of this aspect of the judicial decision-making process.

According to Farrell's (1994) article "Special Masters," the authority for the appointment of special masters at the federal level is derived from Civil Procedure 53 and at the state level from constitutional statutes. Aycock and Black (2008, 54) indicate, "Georgia case law characterizes the special master's decision as judicial, or at least quasi-judicial. Thus the special master is a judicial officer within the contemplation of the immunity doctrine." They acknowledge this finding in the case of *Johnson* v. *Fulton County* (103 Ga. App. 873, 121 S.E. 2d 54 [1961]) as their supporting case law reference. In the "Management of Expert Evidence" (Federal Judicial Center n.d.), Schwarzer and Cecil (n.d., 64) note, "courts have laid down strict limitations to preclude special masters from performing judicial functions, such as deciding substantive motions or making other dispositive rulings." They cite the case of *United States* v. *MicroSoft Corp*. (147 F. 3rd 935, 956, D.C. Cir. [1998]) as a reference for this claim. However, later in the text, when referring to potential conflicts of interest, they assert that special masters are held to the same conflict of interest standards in the code of conduct for U.S. judges, "particularly when they are performing duties that are functionally equivalent to those performed by a judge" (Schwarzer and Cecil n.d., 66). From these passages and cases, it is clear how distinctions in the role and responsibilities of quasi-judicial officers differ not only among various states, but also at various court levels within the overall judicial system. These conflicting accounts provide evidence that can serve either to support or to refute a claim that a non-judge can potentially preside over a case. There is enough support from this

literature to suggest the necessity for further inquiry into the degree to which the quasi-judicial officers are able to render binding judicial decisions.

In *Cops, Teachers, Counselors: Stories from the Front Lines of Public Service*, authors Maynard-Moody and Musheno (2003), through interview narratives, detail the varying level of discretion that street-level bureaucrats, such as social workers and police officers, truly have in the field. Whether used to help or harm a citizen, the amount of power these individuals can wield is substantial. As Riccucci (2005) notes in her review of this book, it would appear that moral judgment plays as significant a role in the judicial decision-making process as do the position's rules and regulations. Looking at the merits of each situation, rather than looking at each situation as an abstraction in which a set of standards are applied, can potentially cause the law to be interpreted in a variety of ways based on the facts in the case. Allowing non-judicial members of the court to interject their personal assessments or moral interpretations into the interpretation of the law at this lower-court level can potentially alter the intent of the law, not only at this level, but also at successively higher levels. Given that a non-judicial member of the court may work within multiple jurisdictions (i.e., different counties throughout a state), it is important to understand how case law throughout a state might also be subsequently altered. If the plaintiff's or the defendant's perceived worth is the determining factor in a case rather than the law, the legal system may soon be referred to as "justice and fairness for none" (Maynard-Moody and Musheno 2003; Riccucci 2005).

Maynard-Moody, Musheno, and Palumbo (1990) provide an example of how discretion affects social policy implementation by looking at the practices of community corrections programs. Through this example, they are able to show how the discretion

possessed by street-level bureaucrats had a direct effect on the public. They looked at corrections program policies of Oregon and Colorado, since the programs were similar in nature, but differed significantly in how they were actually implemented (Maynard-Moody, Musheno, and Palumbo 1990). They conducted surveys with officials in both states, asking in part about the level of discretion and influence various actors had in regard to policy-related issues.

Their findings suggested that street-level bureaucrats had a greater influence on policies and the implementation process in Colorado, where a private, nonprofit organization was responsible for its community corrections services. While the street-level bureaucrat did influence policies in Oregon, this influence was not as strong at the implementation stage as it was in Colorado. The Oregon system was a traditional, county-run governmental system that received additional compensation via grants from the state for each criminal who was not transferred to the state prison system. The researchers assert that the differences in the levels of discretion at the implementation phase directly influenced the overall success, both programmatically and with the services the public received (Maynard-Moody, Musheno, and Palumbo 1990). In the end, the findings of the study supported Lipsky's (2010) initial assertions regarding street-level bureaucrats.

With all of this in mind, the potential level of discretion and power one individual might possess, with the full weight of the legal system for support, is a potentially frightening reality. Aycock and Black (2008) in "Special Masters Bias in Eminent Domain Cases," strike at the heart of some of the fundamental problems with the use of special masters by examining eminent domain cases in Georgia. In this article, the writers

assert that the special masters tend to favor the condemner (i.e., the state) for fear of not receiving appointments in the future, and as a result, their assessments are typically inaccurate, as they are lower than the normal valuations conducted by appraisers. Recourse for overturning these types of decisions is limited, as one must prove that an error in assessment has actually occurred; however, if proven, only the rules governing judicial misconduct are instituted. From this perspective, the notion of "fighting city hall" takes on a completely new meaning. Additionally, the case must be concluded before any further reviewing actions of bias or misconduct. This rather time-consuming and expensive process is not feasible for ordinary citizens, who most likely lost their residence due to the state's "takings clause." The authors also note that special masters may serve multiple jurisdictions, so it can be difficult physically to locate the special master if a problem should occur.

Judicial Street-Level Bureaucrats and Accountability

While scholars may be able to define accountability, actually being able to account for and measure it in terms of the street-level bureaucrat is quite another thing. Brodkin (2008) asserts that traditional measures of accountability are inadequate to capture the formal and informal policies and procedures that street-level bureaucrats use in their daily activities. She notes that even new public management (NPM) and "pay for performance" accountability measures have significant limitations. The NPM systems "specify what organizations are to produce without detailing how they are to do it" (Brodkin 2008, 323). One of the inherent problems with this type of system is that it sacrifices quality for quantity. In theory, the system is supposed to bring accountability and discretion more closely in alignment; however, in reality, it covers up the systematic

flaws, preventing such measures from occurring. Brodkin underscores the importance of these flaws: "performance measures organized around pro forma categories of activities cannot reveal whether the 'right' people were placed in neither the 'right' programs nor what they received as 'training' or 'education' when they got there" (Brodkin 2008, 324). However, it is important to note that utilizing applied research techniques enables a researcher to conduct more specific data gathering than would be possible through traditional survey data-collection techniques and interviews. Understanding the behavior and motivations of individuals is certainly helpful in understanding why and how processes occur; however, the degree to which this data can be generalized across a large sample is unclear. Understanding the context in which rates of applications approved or services denied within an organization is as important as knowing the motivations and behaviors that drive these outcomes, which helps individuals to become more accountable. Brodkin asserts that quotas placed upon these street-level bureaucrats are potentially detrimental to the system.

Lipsky (2010) defines accountability as the individual's responsiveness to the organization and the ensuing patterns of behavior. In this definition, he asserts, "someone is always accountable to someone" (Lipsky 2010, 160). In his model, accountability is a bi-directional flow from manager to street-level bureaucrat and vice versa.[28] Regarding patterns of behavior, he asserts that it is not enough for extension of the effort; the behavior must change as well. Lipsky asserts that street-level bureaucrats are exempt (to a degree) from being accessible, due to the lack of control mechanisms typically in place

[28] While accountability to the citizens of the state as well as the state itself can be asserted, the focus of this research is on immediate accountability to another individual within the organization, whether it is a supervisor or a colleague.

within an organization. While his definition is logical, it is also very constrained and inflexible. Hupe and Hill (2007) speak of another type of accountability: accountability to one's peers. This concept is a bit more powerful, as individuals want to maintain acceptability within their professional and social groups. This element holds the most validity in defining the role of street-level bureaucracy accountability.

Although street-level bureaucrats may have an accountability mechanism, they are not always easily and readily accessible to the public. To have a decision overturned, a plaintiff must appeal to the next judicial level, such as the appeals court. Appeals can take considerable time and financial resources, neither of which is often available to the average litigant.

In preparing a comparative analysis, data on the various state level judges is difficult to obtain, since availability of information varies significantly from state to state. Some states have centralized organized databases; however, some are decentralized to such a degree that even to obtain a small snapshot of the judicial composition is difficult. These limitations place courts at a disadvantage in determining when and how to utilize this resource, how to anticipate compensation, and how to produce an accurate assessment of judicial workload and responsibility (Flango and Ostrom 1996; McFarland 2004). McFarland (2004), in *The Role of Quasi-Judicial Officers in Today's Changing Courts*, touches on a number of these topics. Reexamining some of the data she previously gathered, she can begin to bring the picture of the quasi-judicial officer into focus. Interestingly, there are 14 states[29] that do not utilize quasi-judicial officers in their

[29] McFarland also noted that, in addition to the 14 states, the District of Columbia and Puerto Rico do not utilize quasi-judicial officers.

court system (McFarland 2004, 18). With 72% of the states utilizing these types of positions, one must consider at what point the influence of these positions and their decisions will reach the various district court levels.

Another layer of complexity that McFarland (2004) examines is the level of education possessed by these individuals. While the public might presume that all judges and individuals involved in decision-making processes possess a law degree, it was only around 2004 when many states began requiring judges to have a law degree and to have passed their state's bar exam. According to Langton and Cohen (2007), the period from 1987 to 2004 saw a 52% increase in the level of education of judges who were practicing in the limited jurisdiction courts. Of the states McFarland polled, approximately 71% did not require quasi-judicial officers to have legal training. While these individuals may be practicing predominately in limited jurisdiction courts, it is no less disheartening to know that individuals without a basic legal education can still exert significant influence in this environment. This is particularly troublesome, as the states and the legal communities have actively lobbied to require judges to have a law degree at minimum before presiding over cases.[30] Some agency positions have mechanisms that allow for on-the-job training; the legal community, however, is not one of these fields. The potential for violating a litigant's constitutional rights is too great to allow for on-the-job training.

Summary

A quasi-judicial officer can also be categorized as a street-level bureaucrat, similar to the lower level judges that Lipsky (1980) notes in his original study. While the

[30] This study is concerned only with the operations of the state of Georgia; however, it is important to understand the overall structure and use of quasi-judicial officers throughout the United States.

activities of quasi-judicial officers are typically conducted under the auspices of a sitting judge, these individuals can still possess a significant amount of discretion and autonomy in conducting their daily activities.

Allowing the positions to continue asserting this level of authority due to the sentiment "because that's the way that we've always done it" is an outmoded construct. The literature supports this assertion. Public administration scholarship posits that forward thinking requires individuals inside and outside of an organization to look at all elements of that entity to ensure that its policies and procedures are not just effective and efficient, but also appropriate.

There is a general presumption that lower level courts have little room for discretion and that the law is applied as written to each case that comes before the court. The literature has shown that this assumption is erroneous. The surveys disseminated to both the judges and quasi-judicial officers were designed to discern the levels of discretion that each of these samples potentially utilizes when recommending decisions. Understanding the degree of decision-making variability shows how often justice is and is not dispensed equally. If litigants are not all equal before the law, then the bias potentially affecting outcomes requires examination.

Statistics have shown that individuals are turning in greater numbers to the courts for dispute resolution, and this trend is unlikely to slow in the near future. Amid continual budget cuts and reductions in judgeships and administrative support positions, current sitting judges must devise ways to keep court calendars current and to ensure

dispensation of justice in a timely manner.[31] Understanding the best use of the judges' and quasi-judicial officers' talents and skills is central to avoiding violation of the statutory rights and due process of litigants. From the front lines, it is difficult to observe the degree to which these processes gradually become normal; these conditions gain greater acceptability as time passes. However, by stepping back, one can see the depth and breadth of the issue and determine any needed corrective measures.

[31] Within the state of Georgia, the guarantee of the right to a speedy trial can be misunderstood. The time frame for setting a trial date can vary by the individual county; only in criminal cases is there a legally mandated applicable time frame for prosecuting a case.

Chapter III

METHODOLOGY

The structure of the judiciary has only minimally changed since its inception, but in today's judiciary, there are more individuals possessing law degrees and involved in litigant decision-making roles. This change is significant, as the literature review denotes. Most of the United States' early legal practitioners learned via apprenticeships and never attained a formal legal education (Provine 1986). Society has grown and evolved since this early period in U.S. history, making earning an advanced legal education an important presumed qualification for protecting a litigant's constitutional rights. While there has been an increase in the number of individuals within the legal community with law degrees, there are still numerous decision makers without a formal legal education directly affecting litigants. These positions exist primarily throughout the lower level state judiciary system and generally do not require a legal degree as a job qualification. In many instances, these types of positions possess as much authority and decision-making capability as their learned counterparts' positions. It is from this dichotomy a potential predicament in the legal arena emerges: do litigants receive comparable outcomes if the legal training of judicial decision makers differ?

The first step in determining whether this predicament exists is to understand some of the behavioral characteristics exhibited by each of the aforementioned samples.

From the literature review, two distinctive samples of legal practitioners emerge: (1) individuals who possess legal degrees, such as judges, and (2) those without legal training (i.e., quasi-judicial officers) such as mediators, special masters, or magistrates. The literature review in Chapter 2 discussed the importance of these categorical distinctions, their relevance to the lower level judiciary system, and the need to acknowledge their potential influence within the system.

Going to a courthouse can be a daunting experience, as most users do not understand the roles of the various judicial employees, much less the differing educational qualifications that may exist among them. One may presume that every professional in a courthouse has legal training and knowledge of the law, but this assumption is not necessarily accurate. The prevailing literature shows that such presumptions are indeed inaccurate because both judges and quasi-judicial officers can render decisions. It is important to note at the onset that I do not presume that a law degree transforms one into a competent legal practitioner. Possessing a law degree is one factor that may contribute to legal practitioner behavior. As Mansfield (1999) notes, if a student passes a law course, it does not necessarily mean such a student has fully comprehended the course materials. However, understanding the behavioral similarities and differences between these samples based on legal training may provide insight into their respective decision-making processes.

Examining concepts outlined in the literature review and the decision-making behaviors of individuals within the aforementioned categories can help us to discern whether litigants are receiving comparable outcomes. If litigants do not receive comparable outcomes, this could indicate a potential systematic flaw that could lead to

violation of constitutional rights. If there are no discernible differences in the decision-making approaches of either sample, then support could exist for reorganizing the lower level judiciary system. Reorganization efforts could include the consolidation and elimination of positions. These efforts could result not only in fiscal savings, but also in dispensing justice at a faster pace. Before proposing any systematic changes to the judiciary, a significant amount of research is required.

This study initiates the examination of this judicial area by looking at two specific facets of inquiry regarding behavioral differences between judges and quasi-judicial officers: (1) how each sample answers questions regarding the law, and (2) the authority each sample possesses to determine how daily activities are completed. By answering these questions, the study may lend support to the hypothesis of no statistically significant association between the behavioral decision making approaches of the lower level state court quasi-judicial officers and judges. Each analysis also examines legal training to discern any effects it may have on each sample's decision-making behaviors. Future researchers may conduct further inquiry that expounds on other aspects in this particular judicial area. This chapter describes the basis for the study's research questions, the study participants, the survey instrument, and data collection.

To answer this study's aforementioned behavioral decision-making queries for judges and quasi-judicial officers, three research questions were devised. The hypotheses for each research question are also outlined below.

Research Questions and Hypotheses

Research Question 1: Do quasi-judicial officers have less access to reference materials than judges and do they display less satisfaction

than judges with the reference materials that are available to them?

$H1_0$: There is no noticeable difference between quasi-judicial officers' and judges' access to reference materials.

$H1_a$: There is a noticeable difference between quasi-judicial officers' and judges' access to reference materials.

$H2_0$: There is no noticeable difference in the level of satisfaction with the reference materials consulted by quasi-judicial officers and judges.

$H2_a$: There is a noticeable difference in the level of satisfaction with the reference materials consulted by quasi-judicial officers and judges.

Research Question 2: Do quasi-judicial officers perceive themselves as possessing the same amount of control as judges in determining how their daily activities are completed?

$H3_0$: There is no noticeable difference between the perceived levels of autonomy in the positions for quasi-judicial officers and judges.

$H3_a$: There is a noticeable difference between the perceived levels of autonomy in the positions for quasi-judicial officers and judges.

$H4_0$: There is no noticeable difference between the perceived daily tasks that are performed in the respective positions of quasi-judicial officers and judges.

$H4_a$: There is a noticeable difference between the perceived daily tasks that are performed in the respective positions of quasi-judicial officers and judges.

Research Question 3: Is possession of the J.D. related to access to reference materials and to perceptions of control for either judges or quasi-judicial officers?

$H5_0$: There is no noticeable difference in access to reference materials between judges with a J.D. and judges without a J.D.

$H5_a$: There is a noticeable difference in access to reference materials between judges with a J.D. and judges without a J.D.

$H6_0$: There is no noticeable difference in access to reference materials between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

$H6_a$: There is a noticeable difference in access to reference materials between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

$H7_0$: There is no noticeable difference in perceptions of control between judges with a J.D. and judges without a J.D.

$H7_a$: There is a noticeable difference in perceptions of control between judges with a J.D. and judges without a J.D.

$H8_0$: There is no noticeable difference in perceptions of control between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

$H8_a$: There is a noticeable difference in perceptions of control between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

Research Question 1

Asking how judges and quasi-judicial officers answer legal questions is important to the study because it provides the first step to discerning the degree to which these samples are comfortable with interpreting the law and ensuring procedural fairness. An individual who is unsure and unable to locate the appropriate potential resolution could interpret a law incorrectly or violate judicial procedures. Both of these scenarios could potentially violate an individual's constitutional rights. Understanding how each sample reacts when confronted with a legal question that may require judicial insight, knowledge, or interpretation can reveal potential similarities in problem-solving and behavioral patterns for them. Data that reveal similar behavioral patterns for individuals whose academic backgrounds differ suggests the existence of other factors exerting influence on the decision-making processes. The question is specifically designed to explore how and what type of resources are utilized when judicial questions arise, and it

can aid in determining whether each sample engages in policymaking or policy enforcing.

For this study, access to reference materials is related to a decision maker's method for obtaining answers to legal questions. This relationship is believed to exist based on the presumption that if a judicial actor does not have access to appropriate/sufficient research resources, the answer to the legal query could be deficient. For example, if a judge relies mainly on books, one could assume that such a judge may not have access to the latest court rulings, considering the time that it takes to publish a book. Given the advancements in technology and the assumption that these samples would consult online legal resources, it was determined that asking respondents about the reference materials they utilized would be better than presuming they relied on a particular resource. The operationalization of the variables "answering questions" and "accessing reference materials" occurred during the analysis of the two survey questions. Although other variables could have been selected to answer this question, these two survey questions were selected as the best to discern if statistically significant data was present.

In Research Question 1, the data should exhibit a frequent reliance on the use of specific reference materials by each sample when legal questions arise. Any differences will help to delineate the existence of any potential differences in access. Some of the relevant legal questions of practitioners include seeking guidance on appropriate sentencing for repeat offenders, determining if any relevant new case law exists when issuing rulings, determining if there is an increase in certain offenses, and determining if there are changes to proper criminal procedures. Reference material answer choices (as

outlined in the survey instrument) were "consulting Internet resources," "referring to books," "referring to journals," "consulting with other judges," or "contacting external judicial organizations." Appendix B provides additional information on each survey question.

If the data indicates the existence of similarities, then formalizing or altering the decision-making positions within the judicial hierarchical structure may be necessary. For example, a person in an upper level administrative position who behaves similarly to someone in a judge position may need to be reclassified to reflect his/her true judge-like duties and responsibilities. The variables to test this hypothesis were derived from the survey sent to judges and quasi-judicial officers in local courts in the state of Georgia. Information in Appendix H and Appendix B provides additional details on the variables used throughout this project. To discern statistical significance, the responses for the variables about "reference materials" use, "adequate reference materials" availability, and approach of "legal questions," were tabulated and compared for each sample using crosstab analysis.

The frequency and percentage counts for these variables show differences in the responses for the respective samples. These variables are presumed interrelated, since individuals who have a legal question will typically utilize a particular resource to obtain answers or solutions. Additionally, a series of crosstabs compare the above relationships by examining legal education. These crosstabs aid in supporting the hypothesis of no difference in Research Question 1, as the frequency of the responses for each sample shows convergences and divergences in each sample's behaviors. Understanding the types of resources utilized to answer legal questions by the respective samples

underscores potential behavioral patterns and helps to discern whether the literature on this topic is still relevant. Appendix H is a chart of the variables and the respective survey questions from which they are derived; the chart outlines the relationships between the questions and the variables.

The literature review suggests that non-legally trained individuals (i.e., quasi-judicial officers) are likely to revert to attaining information using the Internet, journals, or books, rather than revealing the existence of a lack of knowledge to colleagues (Fiss 1983; Brodkin 2008). Understanding the relationship posited in this research question adds to understanding of how non-legally trained individuals potentially overcome knowledge deficiencies. The findings may suggest a need to ensure that anyone in a judicial decision-making position has a law degree. This type of change would potentially necessitate structural changes within the state judiciary system. The findings from this research question may provide support for the conclusions drawn by scholars such as Fieman and Elewski (1997), Silberman et al. (1979), and Hupe and Hill (2007) in the literature focusing on judicial behavior and skills. Some of the conclusions drawn by these scholars include the necessity that individuals should possess a modicum of legal knowledge to be proficient in a decision-making capacity and the conscious and/or unconscious ability to include or exclude any relevant case law.

Research Question 2

The literature (Galloway 1931; Hupe and Hill 2007; Lipsky 1980; Maynard-Moody and Musheno 2003; Sowa and Selden 2003) suggests that the greater the latitude an individual has the more likely an individual will engage in policy formulation rather than policy enforcement. With policy formulation, the individual creates and/or modifies

policies based on a situation, whereas policy enforcement presumes the policy is implemented as written, regardless of the situation, following proper administration procedures. Policy formulation relies on the beliefs and philosophies of the individual, which could cause varying interpretations, rather than continuity and consistency. This type of scenario also potentially affords the individual a level of unchecked power. Understanding the perceived amount of discretion an individual has in determining daily activities is the first step in determining whether behaviors potentially align more with policy formulation or with policy enforcement.

For the purposes of this dissertation, authority and discretion refer to decision-making power in determining how an individual completes daily work assignments. The relationship between these variables presumes that an individual perceives a personally high level of discretion, does not repeat the same tasks daily, and may have the ability to engage in policy formulation. The aim of this study is to discern the presence or absence of these variables. A list of daily activities the respective samples have in common was not developed for this project, nor was it discussed in the literature. Future research can develop job description matrices for the respective samples to discern any overlapping duties and responsibilities. From these matrices, formal definitions of the frequency and counts of repeated daily activities can reveal greater degrees of autonomy possessed. The only intent of the question in this study is to determine the authority the respondents presume their respective positions afford them in the completion of their daily work assignments. For example, a position that had complete autonomy would better enable a judicial actor to engage in policy-making formulation, whereas a position that had little discretion would potentially not afford the same latitude to its holder.

In Research Question 2, the data were expected to exhibit the existence of a relationship between job responsibilities and type of position (i.e., judge vs. quasi-judicial officer) held. It was anticipated that the frequency and counts for both positions would reveal a degree of authority possessed by each position in determining daily activities and discretion in execution of them. This factor is important, as similarities may suggest there are no inherent differences between these positions, and they should be classified the same. Mafuru (2011) notes that a lack of resources is a hallmark of some positions and the individuals in them develop coping mechanisms whereby they "seek to simplify their responsibilities by imposing their own subjective orientation when implementing" policies and procedures (30). To support the hypothesis of no difference for this question, the responses of each sample for the variables concerning autonomous "rule authority" and "repeat" tasks were compared and contrasted using crosstab analysis. The expectation of a relationship between these variables stems from the belief that an organization will determine the means for task completion for jobs that do not require decision-making discretion.

To test this assumption, respondents were asked how often they completed the same types of daily tasks. For example, it is presumed that a clerk processing forms each day would presumably process them in the same way each day. Whereas a judge would have the discretion issue different rulings although cases may be similar. The clerk may have some modicum of discretion as he/she can determine when and how many forms are processed. However, rather than assuming the occurrence of these situation, it is tested. From this question, it is possible to discern if the individual who performs the same tasks daily possesses a minimal amount of decision-making authority. Additionally, I used a

series of crosstabs to compare the relationships between the aforementioned variables and any legal degrees held by participants. The frequency and percentages obtained from the data analysis showed any potential alignments and divergences in each sample's decision-making abilities and approaches.

Research Question 3

Research Question 3 seeks to discern if the possession of the J.D. affects access to reference materials and to perceptions of control for either judges or quasi-judicial officers. The hypothesis for this research question use the data from the survey questions outlined in research questions 1 and 2. This research question seeks to discern statistical significance within the respective samples based on the legal training possessed. For example, judges with and without a legal training and quasi-judicial officers with and without legal training. Please refer to Appendix B for additional information on each survey question.

Testing these variables helped to evaluate the literature, which asserts that personal and organizational values can affect decision-making behaviors (Engler 1999; Rosenberg 2008). If no statistically significant association exists, it is plausible to presume that personal rather than institutional goals are being satisfied. This specific literature is based on the perception that decisions result from a myriad of factors that affect the respective decision maker. These factors can include education, socioeconomic status, family background, and/or general belief system. The outcomes for this research question are also relevant to safeguarding against ineffectual counsel, judicial duties and practices, and job performance (Alschuler 1984; Fieman and Elewski 1997; Posner 1988-1989; Provine 1981; U.S. Department of State 2004).

Study Participants

The participants for this project are judges and quasi-judicial officers in lower level state courts in Georgia. The participants did not have to meet any type of pre- or post-qualification characteristics and/or requirements, beyond their professional positions, in order to participate. The judge pool is composed of current sitting judges; their contact details were purchased from a directory available from the AOC of Georgia website.[32] The sample may be subject to a certain degree of bias, as submission of the survey is voluntary. The quasi-judicial officer pool is composed of local-level law clerks, mediators, and magistrate positions. Their contact details were also purchased from the AOC of Georgia website. This data set may also be subject to a certain degree of bias, as participation is voluntary. It is also important to note there may potentially be individuals within the local-level judiciary who work with a significant degree of job-related discretion, but who do not have one of the aforementioned quasi-judicial officer job titles.

The respondents self-identified their position type (i.e., positions such as judge, special master, or mediator), type of court employed (criminal, probate, magistrate, etc.), and level of education via survey questions. Once the participant submitted the survey, no additional tasks or requirements were requested of that individual. Information on other characteristics such as age, gender, race, and income were not collected for either sample, since they were not germane to the study. The same email requesting participation in the

[32] The Administrative Office of the Courts is a division of the Judicial Council of Georgia. According to the division's website it "provides subject-matter expertise on policy, court innovation, legislation, and court administration to all classes of courts … [and it] … also furnishes a full range of information technology, budget, and financial services to the Judicial branch" (Administrative Office of the Courts 2014). It was determined that this organization would be able to provide the most appropriate and comprehensive list of state-level judges and quasi-judicial officers.

project was sent to all potential participants at the same time via Qualtrics. Additional information on the data integrity and response rate for this study is discussed in the next section of this chapter.

Survey Instrument and Quantitative Analysis

Since not every individual possesses the same computer competency level, choosing an electronic survey could have decreased the survey sample size. The electronic survey format was selected instead of a paper format, or instead of allowing individuals to select their preferred format (paper or electronic), to limit mailing costs and to control the number of times an individual might participate in the survey. All questions were multiple choice, and respondents were not allowed to submit an incomplete survey. The survey for this project was grounded in analogous prior research studies, such as the empirical study on non-attorney justices conducted by Silberman, Prescot, and Clark in 1979 and Maynard and Moody's 2003 study of public-sector street-level bureaucrats.

The nine-question, Qualtrics-based survey developed specifically for this project took approximately 10 minutes for each participant to complete. This minimized fatigue and non-completion/non-submission of the survey. However, individuals had approximately 30 minutes to complete the survey before it timed out. The survey had to be completed in one session. If the session was closed, the participant needed to begin the survey again. The information submitted on the survey was anonymous, and could not be traced to a particular respondent or IP address. All data was confidential and used only for research purposes. There were no benefits, advantages, or known potential risks associated in completing the survey; participation was strictly voluntary. There was no formal or informal participant debriefing at the conclusion of the research project;

however, the dissertation will be accessible at www.ElizabethTaylorDPA.com after the final dissertation defense. This information was also outlined in the participation request email sent to each potential participant. Each participant was given the opportunity to opt out of the study and all future communications by responding to any of the received emails. Electronic completion of the questionnaire helped to minimize data-entry errors that otherwise might occur in the transcription process. Given that the typical response rate on survey completion/submission is approximately 10%-15%, an adequate response to the 1,600 surveys emailed to the judges and quasi-judicial officers was anticipated, which ensured overall data integrity.

Each sample was sent the same survey, which was in a multiple-choice format with six possible answer choices (A-F). Six possible answer choices is not standard, but not having a natural middle choice forces respondents to make a more accurate selection based on the options available, rather than simply selecting the middle (neutral) option. The first three questions asked participants to indicate current job position/title, degrees(s) earned, and type of cases most likely heard. The remaining questions addressed the hypothesis of no difference in the behavioral decision-making approaches described in the research questions. No identifying participant information was captured or returned after the individual submitted the survey.

Data Collection and Analysis

Data was collected via a Qualtrics Internet-based survey (see Appendix A) submitted to a pool of judges and quasi-judicial officers. Since the judge pool was 1,078, a confidence level of 95% and a confidence interval of 4 necessitated the submission of approximately 386 valid surveys. A pool of 537 quasi-judicial officials also necessitated

that approximately 297 valid surveys be submitted to obtain a 95% confidence level and a confidence interval of 4. Acceptable response rates can vary based on the type of survey utilized; however, obtaining a response rate over 20% for this survey ensures a 95% confidence level with a 5% margin of error.

All communications with potential participants were conducted via email in an effort to minimize expenses. An email (see Appendix A) with a link to the anonymous Qualtrics survey and requested completion date was sent to each potential participant. The prospective participants were requested to participate via this email letter. The letter explained the project and encouraged the individual to view the online doctoral portfolio if the potential participant would like more information about the researcher and/or the project. It was hoped that prospective participants, who might initially hesitate to participate in the survey, would have their anxieties lessened once they viewed the academic scholarship. The project's Institutional Review Board (IRB) information was also housed on the website so that participants could see that the project had been properly approved by Valdosta State University's IRB. This email was sent to participants using the email address ehtaylor@valdosta.edu. The email sent to each potential participant was not personalized and it contained an electronic signature closing. While it is preferable to personalize the email, I decided that only participant email addresses would be uploaded to Qualtrics in an effort to mask the identities of potential participants further. Hopefully, this additional security measure encouraged individuals to participate and to answer the survey honestly.

A reminder email (see Appendix D) was sent to both samples approximately two weeks after the initial participation letter email. Because the survey was submitted

anonymously, there was no way to identify whether a particular individual had completed the survey; therefore, this reminder email was sent to all participants.

Once the participant completed the survey, an auto-generated email (see Appendix C) thanking the individual for participating was sent. This email was sent using the email address ehtaylor@valdosta.edu. The email address was not personalized to each participant; instead, a form email was automatically generated once the survey was submitted. This thank-you email communication was considered an important gesture of appreciation for the individual completing the survey.

Appendix H outlines the individual survey variables and the questions from which they were derived. The ordering of the nominal variables did not affect data analysis, because there was no natural order to them. For example, the variable "use of reference materials" was measured by coding six different types of reference materials an individual might employ if legal questions arose. The variables and data analysis were used to discern the existence of the posited relationships in each research question. In order to develop the statistical inferences, SPSS statistical software was used to code and analyze the survey data. The data analysis presented an overall summary of respondent's characteristics (i.e., the variables "position," "degree possessed," and "case likely heard"). The frequency and related percentages of the responses for the variables examined in each research question were calculated for the entire sample: those with a J.D. and those without a J.D. Cross tabulation, chi-square, gamma, and difference of mean tests were used to test statistical significance. The project's variables are nominal or ordinal. These measures help to ensure that the data does not erroneously indicate the existence of a relationship. In Chapter 4, there is a detailed discussion of independent and

dependent variables and the various two-by-two and multivariate crosstabs used in the data analysis.

Summary

This project is the first step in determining the behavioral decision-making similarities and differences between judges and quasi-judicial officers. The research questions posit the existence of similarities/differences in the decision-making processes for lower level state judges and quasi-judicial officers.

The statistical examination began by analyzing the distribution of each variable. These initial tests helped to create a profile for each variable and ultimately one for each of the respective samples. To determine statistical significance, crosstabs, counts, chi-square, gamma, and t tests were conducted.

The study only examined two specific aspects related to judicial behavioral decision making, but other items that warrant examination in future studies include elements such as adherence to bureaucratic goals/mission, accountability, use of technology, and personal values/preferences. Once further data from these other research aspects is collected and analyzed, other important aspects such as the value of "unauthorized practice of law" statutes or determining if systematic changes to the judiciary are necessary could be considered. The data for this project was attained from surveys submitted by judges and quasi-judicial officials in the state of Georgia. It is purported that the data from these surveys may show that quasi-judicial officials and judges engage in similar judicial decision-making behaviors. The literature discussed in Chapter 2 suggests that non-legally trained individuals are allowed to continue in various decision-making roles for two main reasons: (1) the courts in which they typically preside

(i.e., traffic and probate courts) do not present the likelihood for major constitutional infringements, and (2) the chances of continual interaction with trained members of the legal community are infrequent. While the use of these types of positions in the judiciary in earlier U.S. history may have not been overly problematic for the system or for those who used it, both the judiciary and society in general were not as complex and multifaceted.

Chapter IV

DATA RESULTS AND ANALYSIS

In this study, I posit similarities in the decision-making perceptions of quasi-judicial officers and judges. The two facets of inquiry used to analyze this theory are: (1) how each sample answers questions regarding the law and (2) the authority each sample possesses to determine how daily activities are completed. Other questions can be analyzed to determine the existence of perception similarities among these samples, but these questions were selected based on several of the more prominent conclusions drawn in the literature.

The Valdosta State University IRB examined the project and the Protocol Exemption Report is in Appendix I. A nine-question, multiple-choice survey was sent to individuals listed in the 2014-2015 Georgia Courts Directory produced by the Georgia AOC. The AOC is the administrative body of the Judicial Council of Georgia. The Judicial Council is an authoritative source to obtain this information, since it is the policy-making body of the state judiciary and chaired by the Chief Justice of the Supreme Court of Georgia. The directory was purchased as a PDF document, containing the contact details of the judges, clerks, and upper level administrators in the state judiciary. The original assessment of a potential participant pool (1,300 judges and 1,300 quasi-judicial officers) was based on the number of individuals working in the state

judiciary as indicated in Appendix E. The total potential participant pool for both samples in the AOC directory was actually 1,611. There was no explanation available on the AOC website regarding the discrepancy in the potential participant pools. An AOC data collection representative attributed the differences between the two resources to the *Diagram of the State of Georgia Court System* being outdated. The information in the PDF document was converted to Excel so that the data could easily be uploaded into Qualtrics. Although the directory contained the complete contact details (address, phone, email) for most of the individuals listed in the directory, only the email address was kept in the Excel file and subsequently uploaded to Qualtrics. All of the other contact details were deleted to maintain participant anonymity. Entries in the Excel file were deleted for individuals who did not have an email address listed in the directory and those individuals listed in the directory under multiple categories. The respective samples were not differentiated in Qualtrics; all of the email addresses were uploaded simultaneously and the same participation request email (see Appendix A) was sent to participants. After sending that email, numerous participants responded to the researcher and/or the faculty advisor requesting confirmation of the validity of the survey and the project.

A follow-up email sent to all participants by the faculty advisor verified that the survey was a doctoral research project. The researcher also sent responses to the participants who sent individual emails. Although the faculty advisor sent a follow-up email, it was determined that a response should be sent to those participants who emailed the researcher directly. Generally, these emails were requests for verification of the authenticity of the project, thank you/acknowledgement notes, or help requests because the participant was having problems opening the survey link. A reminder-to-participate

email was sent at 7- and 14-day intervals after the initial email; the same email was sent at both intervals (see Appendix D). An automatically generated thank-you email was sent after the participant submitted a survey (see Appendix C). The survey was open to the participants for 24 calendar days.

Of the 1,611 participant emails sent, Qualtrics reported that one email was undeliverable, 113 emails bounced, 63 individuals opted out, 716 individuals were unresponsive (did not open the survey), 387 surveys were started but were not submitted, and 331 surveys were submitted. Table 1 summarizes the participation and email outcomes for the survey. The acceptable response rates can vary based on the type of survey utilized. However, the 20.55% response rate for this survey ensures a 95% confidence level with a 5% margin of error.

Table 1. Participation Outcomes

Type	Frequency
Total emails sent	1611
Failed emails	1
Bounced emails	113
Participants opted out	63
Surveys started but not submitted	387
Unresponsive participants	716
Surveys completed and submitted	331

A minimal amount of data cleanup was necessary, as the responses were multiple-choice and automatically coded in Qualtrics. The open-ended text choice in several of the questions required re-categorization of some responses into similar pre-existing responses before tabulation. For example, Survey Question 2 allowed participants to write in the type of degree earned if their education qualifications did not fit into one of the

predefined variable categories. Unfortunately, some individuals indicated the degree in the text field although the degree was a multiple-choice option. If the individual indicated a bachelor's degree in the text field, that response was added to the preexisting bachelor degree category. Utilizing this process prevents duplicate data categories and counts.

The remainder of this chapter reviews (1) the quasi-judicial officer and judge data profiles, and (2) the survey data for each hypothesis. The survey data examination discerns statistically significant associations among the variables to support the respective research theories. For Research Questions 1 and 2, the statistical significance tests analyze three categories of respondents: all judge and quasi-judicial officer respondents, judge and quasi-judicial officer respondents with a J.D., and judge and quasi-judicial officer respondents without a J.D. Analysis from each perspective helps determine if legal training affects these sample's perceptions. Research question three analyzes the data presented in research questions one and two from the perspective of discerning the effect of legal training within the respective samples.

Quasi-Judicial Officer and Judge Profiles

Of the 331individuals who participated in the survey, 175 were categorized as judges[33] and 128 were categorized as quasi-judicial officers. Table 2 shows the percentage of responses for variables for each sample. The individuals who comprise the quasi-judicial category indicated that their positions were magistrates, court clerks, or upper-level administrators.

[33] The 331 respondents were initially composed of the following categories: judge (166), quasi-judicial officer (103), and other (62). Some of the individuals in the "other" category listed a position in one of the preexisting categories and were reclassified into the appropriate category to produce 175 judges and 128 quasi-judicial officers.

Table 2. Quasi-Judicial Officer and Judge Profile Comparison

Response	Judge N = 175	Quasi-Judicial Officer N = 128
Lots of discretion	39%	41%
Very frequently repeats tasks daily	78%	63%
Access to books as a reference	94%	84%
Very frequently reference materials adequate	67%	65%
Consults books for legal questions	85%	59%
Very frequency consults reference materials	59%	51%

Note: Shows percentage of the total sample indicating listed response.

Table 2 shows the percentages of the respective sample's responses. The variables with the greatest percentage differences between the judges and quasi-judicial officers were (1) very frequently repeating tasks daily (78% vs. 63%), (2) access to books as a reference (94% vs. 84%), (3) consulting books for legal questions (85% vs. 59%), and (4) very frequently consulting reference materials (59% vs. 51%).

The literature of the U.S. Department of State (2004) and C.B.S. (1975) suggested that judges were more prone to consult other judges regarding questions about the law. The data profile percentages suggest that judge respondents may rely more on books (85%) than do quasi-judicial officers (59%). Both samples indicate similar perceptions regarding discretion (39% judge and 41% quasi-judicial officer) used to determine completion of daily activities, which was discussed by Lipsky (1980) and Fiss (1983). The minimal percentage disparity of each sample's responses necessitates further investigation to determine if the similarities are statistically significant. Based on the literature review and several elements revealed in the data profiles, there is enough evidence to support continuation of the study.

Research Question 1

Research Question 1: Do quasi-judicial officers have less access to reference materials than judges and do they display less satisfaction than judges with the reference materials that are available to them?

This research question addresses the existing scholarship concerning how comfortable these samples are answering legal questions using reference materials. Two survey questions examine this query. If a quasi-judicial officer uses different types of reference materials to answer questions about the law than a judge, then the following survey questions should reveal statistically significant differences: (1) "what types of reference materials do you have access to?" (Survey Question 8), and (2) "to what extent are the reference materials adequate?" (Survey Question 7). The literature did not extensively address reference material usage by either sample or use within the general legal system.

The hypotheses evaluation is from three perspectives: (1) judges compared to quasi-judicial officer respondents, (2) judges with a J.D compared to quasi-judicial officers with a J.D., and (3) judges without a J.D. compared to quasi-judicial officers without a J.D. Analyzing data from these perspectives can test the assumption that legal education affects the sample's perceptions. The literature (Provine 1986; Silberman 1979; Vermeule 2007) suggests that not having a J.D. can potentially affect the type of legal decisions an individual renders. To determine statistical significance, the analysis of each perspective for each hypothesis will (1) compare the percentages of the responses for judges and quasi-judicial officers, and (2) examine the chi-square, gamma, and t test results.

Hypothesis 1: Legal Questions (Survey Question 8 Analysis)

This section analyzes data from Survey Question 8, which asked respondents:

- What do you do if you have questions about the law?

$H1_0$: There is no noticeable difference between quasi-judicial officers' and judges' use of reference materials.

$H1_a$: There is a noticeable difference between quasi-judicial officers' and judges' use of reference materials.

Respondents were instructed to select all applicable answer choices. Given the assertions of scholars such as Fieman and Elewski (1997) and C.B.S. (1975) that untrained individuals will likely consult other sources when questions regarding the law arise, it was anticipated that quasi-judicial officers and judges who did not possess a law degree would select variables such as (G) "contact external judicial organizations," (B) "consult other Internet resources," and/or (A) "consult online legal resources" (i.e., resources such as Lexis and Westlaw). For legally trained judges, anticipated responses were (E) "consult with judges," (F) "consult with peers," and/or (A) "consult on-line legal resources" (i.e., resources such as Lexis and Westlaw). The judge sample predictions draw primarily on the U.S. Department of State (2004) study, which suggests that there is a judicial freshman and occupational socialization process to which legally trained individuals are exposed as part of the educational process.

Data for All Respondents.

In examining the data for all respondents, the percentage results do not readily align with the research in the literature, because judges most frequently indicate using books (85%) and consulting with other judges (81%) to answer legal questions, whereas quasi-judicial officers most often indicate consulting judges (86%) and peers (65%). The

literature suggested judges are less likely to utilize books and quasi-judicial officers are unlikely to confer with judges or peers, so knowledge deficiencies are undiscovered. The percentages are only the first perception patterns analyzed. There is a statistically significant differences using a t test between these groups and their (1) use of the legal resources (such as Lexis and Westlaw), (2) use of other on-line resources, (3) use of books, and (4) consultations with peers to answer legal questions (see Table 3). Put more simply, judges are significantly more likely to use Lexis and Westlaw and other online resources as well as books to answer legal questions, while quasi-judicial officers are more likely to consult peers. Statistically significant differences do not emerge for "refer to journals," "consult with judges" and "consult external organizations." The findings of these statistical tests indicate the existence of differences that go beyond what one could expect to see by random chance.

Table 3. Questions about the Law: Responses for Judges and Quasi-Judicial Officers

What do you do if you have questions about the law?	Judge N = 175	Quasi-Judicial Officer N = 128	t test
On-line legal resources	141 (80.6%)	82 (64.1%)	3.170 **
Other on-line resources	68 (38.9%)	36 (28.1%)	1.974 *
Refer to books	149 (85.1%)	76 (59.4%)	5.028 **
Refer to journals	50 (28.6%)	32 (25%)	.694
Consult with judges	142 (81.1%)	111 (86.7%)	-1.319
Consult with peers	91 (52.0%)	84 (65.6%)	-2.405 *
Consult external organizations	36 (20.6%)	31 (24.2%)	-.747

* $p < .05$
** $p < .01$

The statistically significant results do not support the null hypothesis because quasi-judicial officers are likely to use different resources than judges when seeking legal answers. The literature (C.B.S. 1975; Fieman and Elewski 1997; Provine 1981) generally

posits individuals are unlikely to reveal their lack of legal knowledge and will not consult a third party to obtain answers; however, it does not address reasons for the selection of particular resources. It is plausible to presume that judges are more likely to utilize online legal resources, since they presumably have had training on how to access necessary court cases. An individual with legal training might easily discern the similarities and differences between cases when reviewing information online. However, an individual without legal training may not be familiar with reading court documents and may not be as proficient at obtaining answers from that type of resource. The non-legally trained individual may find that turning to a peer produces the necessary information more easily. Future testing may enable researchers to determine if a particular third-party application is utilized because of position held, type of education, ease of use, general accessibility, and type of organizational relationship (formal versus informal). The data for the variables "consult with judges" and "consult with peers" could potentially misrepresent the judge sample responses. After sending the survey to participants, it was discovered judges could potentially view these particular answer choices (variables) interchangeably and select only one or both of them.

Data for Respondents with a J.D.

The next perspective analyzed for this hypothesis examines data for respondents who have a J.D. The literature (Mansfield 1999; Posner 1988-1989; Provine 1981) suggests having a law degree is one of the first steps to understanding the law, the courts, and the overall judicial system. Since individuals in this sample all have J.D. degrees, I anticipated similar responses. This presumption is based on participants having a similar legal educational background because most law schools are ABA-accredited. It is

presumed ABA accredited institutions have standard curriculum and instructor qualifications. The data are expected to indicate respondents with a J.D. primarily consult judges, peers, and/or online legal resources when legal questions arise.

The survey responses with the highest percentages for judges are "refer to books" (83.90%), "consult on-line legal resources" (83.20%), and "consult with judges" (79.41%). The survey responses for quasi-judicial officers with the highest percentages are "refer to books" (82.61%), "consult with judges" (73.91%), and "consult on-line legal resources" (73.91%) (see Table 4). The t test did not indicate any statistically significant differences between judges and quasi-judicial officers in Table 4.

Table 4. Questions about the Law: Responses for Judges and Quasi-Judicial Officers Based on Comparing Legal Education

What do you do if you have questions about the law?	Judge w/JD N = 137	Quasi-Judicial Officer w/JD N = 23	t test
On-line legal resources	114 (83.20%)	17 (73.91%)	.940
Other on-line resources	53 (38.77%)	5 (21.74%)	1.741
Refer to books	115 (83.90%)	19 (82.61%)	.154
Refer to journals	39 (28.68%)	7 (30.437%)	-.187
Consult with judges	108 (79.41%)	17 (73.91%)	.492
Consult with peers	69 (50.74%)	11 (47.837%)	.221
Consult external organizations	30 (21.89%)	3 (13.047%)	1.106

* $p < .05$
** $p < .01$

Results for this perspective differ from those obtained for the entire sample, since the aforementioned differences in the variables "utilizing online legal resources" and "books" are not significant. Quasi-judicial officers who have J.D. degrees act more like judges than the entire sample of quasi-judicial officers, which supports the null

hypothesis ($H1_0$). This hypothesis states there is no noticeable difference between quasi-judicial officers' and judges' use of reference materials. This behavior indicates that training may influence how the respective samples do their jobs, which suggests differences are due to factors other than the demands of the job itself. The literature did not address factors beyond education that might exert influences on decision-making processes.

In comparing the data in Tables 3 and 4, percentage changes are noted for the variable "consult with peers." In evaluating the Table 3 data, it appears that quasi-judicial officers engage the help of peers more than judges do. However, in analyzing data for those individuals with J.D. degrees there is no real difference in the data. The literature does not address this outcome. Possible explanations for this outcome could include that the quasi-judicial officer with a J.D. has greater ability to obtain answers from other sources and therefore does not need to ask for as much help as does the quasi-judicial officer without a J.D. The latter possibility may be the most apt explanation, because a greater percentage of quasi-judicial officers with J.D. degrees indicate consulting online legal resources and books when questions about the law arise than indicated in the entire sample. A review of Table 4 reveals no real difference in "consultation of peers".

Data for Respondents without a J.D.

The third perspective for this hypothesis examines data for respondents who do not have a J.D. As in the previous analysis, it was anticipated that respondents would exhibit similar perceptions due to having a similar lack of training. The literature suggests that individuals without formal legal training will most likely refer to books or on-line resources to obtain answers to legal queries.

The top three survey responses for judges without J.D. degrees are "consult judges" (89.47%) and "refer to books" (89.47%), and "consult on-line legal resources" (71.05%). These results align with the percentages analyzed for judges with J.D. degrees, which potentially indicates that training is not a factor in the selection of reference materials. The top three survey responses for quasi-judicial officers without J.D. degrees are "consult with judges" (89.52%), "consult with peers" (69.52%), and "consult on-line legal resources" (61.90%). These results differ from those examined for quasi-judicial officers with J.D. degrees; those with J.D. degrees are more likely to refer to books, whereas those without J.D. degrees instead indicated a reliance on consulting with judges and peers. The differences indicate the potential effects of training on the selection of particular resources (see Table 5).

Table 5. Questions about the Law: Responses for Judges and Quasi-Judicial Officers Without a J.D.

What do you do if you have questions about the law?	Judge w/o JD N = 38	Quasi-Judicial Officer w/o JD N = 105	t test
On-line legal resources	27 (71.05%)	65 (61.90%)	1.034
Other on-line resources	15 (39.47%)	31 (29.52%)	1.082
Refer to books	34 (89.47%)	57 (54.29%)	5.011**
Refer to journals	11 (28.94%)	25 (23.81%)	.601
Consult with judges	34 (89.47%)	94 (89.52%)	-.009
Consult with peers	22 (57.89%)	73 (69.52%)	-1.252
Consult external organizations	6 (15.79%)	28 (26.67%)	-1.470

** $p < .01$

The null hypothesis ($H1_0$) states there is no noticeable difference between quasi-judicial officers' and judges' use of reference materials. The differences shown in the data when the t test was conducted suggest judges without J.D. degrees exhibit a greater

reliance on books to obtain answers to legal queries than quasi-judicial officers without J.D. degrees do. This finding may support the assumption that defendants could potentially receive different judgments based on whether the judicial decision maker (judge versus quasi-judicial officer) had a J.D. or not. This is the only resource used differently. Based on all the findings in Table 5, the null hypothesis ($H1_0$) cannot be rejected as there are no statistically significant differences between the two groups for the other resources examined in Table 5. While further research is warranted, these initial findings suggest that requiring quasi-judicial officers to have J.D. degrees might influence how they perform their duties.

Hypothesis 2: Adequacy of Resource Materials (Survey Question 7 Analysis)

The second survey question for Research Question 1 focuses on the adequacy of the reference materials available to respondents. For the purposes of this study, respondents presumably had access to the particular reference materials if it was indicated as sources utilized to address legal questions. The raw data for the survey questions is in Appendix L. The question asked respondents to indicate:

- To what extent are the above indicated resources adequate?

$H2_0$: There is no noticeable difference in the level of satisfaction with the reference materials that are consulted by quasi-judicial officers and judges.

$H2_a$: There is a noticeable difference in the level of satisfaction with the reference materials that are consulted by quasi-judicial officers and judges.

There were six choices for respondents to select from; however, only one answer could be chosen. It was anticipated both samples would indicate that the resources utilized are either (B) “very frequently” or (C) “occasionally” adequate. This particular

survey question was selected because general assumptions regarding the adequacy of judicial resources could produce erroneous results for a study if a resource might be used, but in reality be inadequate. Inadequate resources might be used because better ones are unavailable, or are more difficult to use. Additionally, resources might be inadequate because organizations cannot afford to implement upgrades or to purchase multiple legal resource subscriptions, such as Lexis or Westlaw. While both of these sites provide legal information and data, there are unique elements of each that provide valuable information to legal practitioners. Research indicates many private-sector organizations are attempting to reduce these types of costs; therefore, a public-sector entity such as a local state court with limited resources is unlikely to have multiple types of online resources available (Mafuru 2011).

Data for All Respondents.

The first perspective examined for this hypothesis is data for the adequacy of resources for all respondents. The greatest percentage of both of the groups indicated that resources are "very frequently" adequate. There are no statistically significant associations using either the chi-square or gamma between the variables "position held" and "adequacy of the resource materials" when the entire sample is examined (see Table 6). In the section that discussed Research Question 1, Hypothesis 1, it was discovered judges and quasi-judicial officers used different reference materials to answer legal questions. This finding seems most likely due to the different roles their different positions filled. Although the respective groups are looking in different places to obtain answers to questions, each one indicates that resources are "very frequently" adequate. The literature does not specifically address satisfaction levels for resource material. It is

important to understand why judges and quasi-judicial officers may assert that resources are adequate given different sources are more heavily utilized by the two samples. It is possible that the two groups (with one having more J.D.s than the other does) are not as aware of other respective resources, or it may be a factor related to job function not requiring the same resources. The null hypothesis is rejected for Hypothesis 1.

Table 6. Extent Resources Are Adequate: Responses for Judges and Quasi-Judicial Officers

To what extent are the above indicated resources adequate?	Judges N = 175	Quasi-Judicial Officers N = 128
Always	52 (29.7%)	37 (28.9%)
Very frequently	117 (66.9%)	84 (65.6%)
Occasionally	5 (2.9%)	7 (5.5%)
Rarely	1 (.6%)	0 (0%)
Very rarely	0 (0%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-Square = 2.038 (p = .565)

Gamma = .046 (p = .695)

Data for Respondents with a J.D.

The second perspective for this hypothesis examines the adequacy of resource materials for respondents who have a J.D. The top two survey responses for judge respondents were “very frequently” (67.2%), and “always” (29.2%). In comparing the total sample to this one, they are essentially equivalent for “very frequently” (66.9% versus 67.2%) in the percentages of the responses for this sample. For quasi-judicial officers, the top survey responses are “very frequently” (73.91%), and “always” (26.1%). There is a slightly larger percentage difference for the “very frequently” variable for the

total and trained samples (65.6% versus 73.9%) (see Table 7). The chi-square and gamma did not indicate a statistically significant association between the respective variables in Table 7.

Table 7. Extent Resources Are Adequate: Responses for Judges and Quasi-Judicial Officers with a J.D.

To what extent are the above indicated resources adequate?	Judges w/JD N = 137	Quasi-Judicial Officers w/JD N = 23
Always	40 (29.2%)	6 (26.1%)
Very frequently	92 (67.2%)	17 (73.9%)
Occasionally	5 (3.60%)	0 (0%)
Rarely	0 (0%)	0 (0%)
Very rarely	0 (0%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-square = 1.038 (p = .595)
Gamma = .010 (p = .966)

In the analysis of which types of resources are consulted when legal questions arise for individuals with a J.D., there were no statistically significant results. Although the respective groups in the entire sample use different resources, the percentages indicate that each group viewed the adequacy of resources used similarly. Accordingly, the results were not statically significant. In a future study, it would be appropriate to discern if these resources are satisfactory because they are unnecessary to fulfill job requirements or if other desired resources are simply unavailable. Understanding the resource needs of and ensuring satisfaction levels of specific samples (i.e., J.D. vs. non-J.D.) can ensure monies are not spent on reference materials a sample is unlikely to utilize fully, especially if they obtain information from similar resources. The results of

the analysis were not statistically significant, so no further conclusions regarding the data can be drawn. A reasonable assumption for this data outcome is that respondents are able to obtain the answers needed when questions arise rather than having to carry out extensive searches for answers.

Data for Respondents without a J.D.

The third perspective for this hypothesis examined the adequacy of resources responses for participants without a J.D. It was anticipated respondents would indicate that resources are either "very frequently" or "occasionally" adequate. The top two survey responses to this question for judges were "very frequently" (65.8%) and "always" (31.6%). The top two survey responses for quasi-judicial officers were "very frequently" (63.8%) and "always" (29.5%) (see Table 8). The chi-square and gamma did not indicate a statistically significant association between the position held and the belief that resources are adequate. The results were not statistically significant.

Table 8. Extent Resources Are Adequate: Responses for Judges and Quasi-Judicial Officers Without a J.D.

To what extent are the above indicated resources adequate?	Judges w/o JD N = 38	Quasi-Judicial Officers w/o JD N = 105
Always	12 (31.6%)	31 (29.5%)
Very frequently	25 (65.8%)	67 (63.8%)
Occasionally	0 (0%)	7 (6.7%)
Rarely	1 (2.6%)	0 (0%)
Very rarely	0 (0%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-square = 5.363 (p = .148)
Gamma = .094 (p = .609)

Data Comparing Legal Education by Respondents.

In comparing the percentage of responses for those judges with a J.D. to those without legal training, an increase in the variable "always" (29.2% versus 31.6%) was observed in addition to a decrease in the response for "very frequently" (67.27% versus 65.87%) for the respective groups. The chi-square and gamma results did not indicate a relationship in Table 9 given these very minor changes. Therefore, the null hypothesis cannot be rejected.

Table 9. Extent Resources Are Adequate: Responses for Judges Comparing Legal Education

To what extent are the above indicated resources adequate?	Judges w/ JD N = 137	Judges w/o JD N = 38
Always	40 (29.2%)	12 (31.67%)
Very frequently	92 (67.2%)	25 (65.87%)
Occasionally	5 (3.6%)	0 (0%)
Rarely	0 (0%)	1 (2.67%)
Very rarely	0 (0%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-square = 5.057 (p = .168)
Gamma = .063 (p = .738)

In comparing the percentage of responses for the quasi-judicial officers with a J.D. to those without legal training, each group indicated the resources utilized were "very frequently" (73.9% and 63.8%) adequate. This result indicates that the influence of training does not necessarily directly affect the percentages of these samples in regards to

the adequacy of resources used. The chi-square and gamma results did not indicate statistical significance, so no further conclusions can be drawn (see Table 10).

Table 10. Extent Resources Are Adequate: Responses for Quasi-Judicial Officers Comparing Legal Education

To what extent are the above indicated resources adequate?	Quasi-Judicial Officers w/ JD N = 23	Quasi-Judicial Officers w/o JD N = 105
Always	6 (26.1%)	31 (29.5%)
Very frequently	17 (73.9%)	67 (63.8%)
Occasionally	0 (0%)	7 (6.7%)
Rarely	0 (0%)	0 (0%)
Very rarely	0 (0%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-square = 1.904 (p = .386)
Gamma = .033 (p = .881)

Research Question 2

Research Question 2: Do quasi-judicial officers perceive themselves as possessing the same amount of control as judges in determining how their daily activities are completed?

Positions with moderate to high levels of discretion typically afford individuals latitude in determining how and when daily tasks are completed. The literature (DeGraw 1991; Lipsky 1980; Provine 1981) suggests that a lack of oversight (i.e., lots of discretion) allows individuals potentially to act on personal goals rather than on institutional ones. For example, within the judiciary during sentencing a judge has the ability to impose the maximum penalty, a moderate penalty, or no penalty at all on a defendant. It is often within the judge's purview to determine the best course of action for each case heard (Galloway 1931; Lipsky 2010; Sowa and Selden 2003). The survey questions to analyze this research question are (1) "how much authorization do you have

in establishing rules and procedures about how your work is to be done?" (Survey Question 4), and (2) "to what extent do you perform the same tasks daily?" (Survey Question 5).

It was anticipated judge responses to these particular questions would indicate a high level of discretion, whereas the quasi-judicial officer responses would show a lack of it. It was presumed quasi-judicial officers would follow a prescribed set of policies and regulations when completing work assignments. A significant amount of discretion could potentially indicate quasi-judicial officers perceive similar amounts of decision-making latitude to judges.

Hypothesis 3: Authorization Establishing Rules and Procedures (Survey Question 4 Analysis)

Understanding the authority a respondent has to establish rules and procedures regarding daily tasks provides insight into (1) the individual's roles/responsibilities, (2) whether there is an opportunity for an individual potentially to implement personal rather than organization goals, and (3) the organization's environment (regimented or informal). A finding of greater than expected discretion for quasi-judicial officers will point to the need for future research to determine why and how such factors are present in lower level state courts. The question regarding discretion/rule authority asked respondents:

- How much authority do you have in establishing rules and procedures about how your work is to be done?

$H3_0$: There is no noticeable difference between the perceived levels of autonomy in the positions held by quasi-judicial officers and judges.

$H3_a$: There is a noticeable difference between the perceived levels of autonomy in the positions held by quasi-judicial officers and judges.

Respondents were asked to select the most appropriate answer from the five possible responses. The anticipated results of the judge sample were (A) "complete autonomy" or (B) "lots of discretion." The quasi-judicial officer sample's anticipated responses were (D) "little discretion," (E) "I must follow inflexible and required guidelines," or (C) "some discretion."

Data for All Respondents.

The first analysis of the rule and procedure establishment question examined all judge and quasi-judicial officer responses. To discern the amount of discretion that positions offer, the variable "ability to establish rules and procedures about how work is done" was analyzed. The data was examined using chi-square and gamma but no statistically significant association emerged using any of these tests (see Table 11). Based on these results, there is no evidence that either of the positions possesses more ability than the other to establish rules and procedures about how work is done. The null hypothesis cannot be rejected, as there is no difference in the amount of discretion possessed.

Table 11. Establishing Rules and Procedures About How Work is Done: Judges and Quasi-Judicial Officers

How much authority do you have in establishing rules and procedures about how your work is to be done?	Judge N = 175	Quasi-Judicial Officer N = 128
Complete autonomy	27 (15.4%)	16 (12.5%)
Lots of discretion	68 (38.9%)	53 (41.4%)
Some discretion	62 (35.4%)	35 (27.3%)
Little discretion	10 (5.7%)	10 (7.8%)
I must follow inflexible rules and required guidelines	8 (4.6%)	14 (10.9%)

Chi-square = 6.696 (p = .153)
Gamma = .084 (p = .350)

Data for Respondents with a J.D.

The second perspective for this hypothesis examined the data for respondents who have a J.D. It was anticipated the judges and quasi-judicial officers would have similar responses because of similar training. The top three survey responses for judges were "lots of discretion" (43.8%), "some discretion" (32.1%), and "complete autonomy" (16.8%). The top three survey responses for quasi-judicial officers were "some discretion" (43.5%), "lots of discretion" (21.77%), and the same percentage for each of the variables "complete autonomy" and "little discretion" (17.4%) (see Table 12). The chi-square and gamma did not indicate statistically significant differences in the behavior of the two groups. Because of the lack of statistical significance, this comparison provides insufficient evidence to reject the null hypothesis.

Table 12. Establishing Rules and Procedures About How Work is Done: Responses by Judges and Quasi-Judicial Officers with a J.D.

How much authority do you have in establishing rules and procedures about how your work is to be done?	Judge w/JD N = 137	Quasi-Judicial Officer w/JD N = 23
Complete autonomy	23 (16.8%)	4 (17.4%)
Lots of discretion	60 (43.8%)	5 (21.7%)
Some discretion	44 (32.1%)	10 (43.5%)
Little discretion	10 (7.3%)	4 (17.4%)
I must follow inflexible rules and required guidelines	0 (0%)	0 (0%)

Chi-square = 5.408 (p = .144)
Gamma = .275 (p = .144)

The literature did not specifically address discretion and differences in legal training, although it did discuss the judicial socialization process experienced in the

pursuit of a legal education. It is difficult to draw a direct correlation from the socialization process and the perception of the amount of discretion an individual possesses without further data analysis; however, it is reasonable to assert the socialization process may empower an individual and increase the perceived amount of discretion in a job.

Data for Respondents without a J.D.

The third perspective for this hypothesis examines data for respondents without a J.D. It was anticipated the data would support the supposition that these samples have differing amounts of discretion. The top three survey responses for judges for this question were "some discretion" (47.4%), "inflexible rules and required guidelines" (21.1%), and "lots of discretion" (21.1%). The percentages for "lots of discretion" changed significantly when compared to those in the judge sample with legal training (43.8% versus 21.1%). These responses were unexpected, since judges are not typically thought of as following rigid rules and required guidelines.

The top three survey responses for quasi-judicial officers without a J.D. were "lots of discretion" (45.7%), "some discretion" (23.8%), and "must follow inflexible rules and required guidelines" (13.3%). In comparison, quasi-judicial officers with a J.D. indicated predominately "some discretion" (43.5%) in positions, but those without a J.D. indicated "lots of discretion" (45.7%). These results do not support the presumptions in the literature. The types of courts over which a judge without a J.D. might preside include traffic and probate courts.

Table 13. Establishing Rules and Procedures About How Work is Done: Responses for Judges and Quasi-Judicial Officers without a J.D.

How much authority do you have in establishing rules and procedures about how your work is to be done?	Judge w/o JD N = 38	Quasi-Judicial Officer w/o JD N = 105
Complete autonomy	4 (10.5%)	12 (11.4%)
Lots of discretion	8 (21.1%)	48 (45.7%)
Some discretion	18 (47.4%)	25 (23.8%)
Little discretion	0 (0%)	6 (5.7%)
I must follow inflexible rules and required guidelines	8 (21.1%)	14 (13.3%)

Chi-square = 12.756 (p = .013)
Gamma = .271 (p = .051)

The chi-square was statistically significant, which means that the two groups believe they do not have different amounts of authority to establish procedures. Gamma indicated a modest relationship in Table 13. Quasi-judicial officers indicated "lots of discretion" as the most common response, whereas the judges indicated "some discretion" as the most common response. Based on the statistical tests, the null hypothesis is rejected. The groups indicate some degree of perception of flexibility within their job, regardless of training. The modest difference indicates judges without a J.D. feel they have less discretion than quasi-judicial officers without a J.D. This is a curious result, given that judges with a J.D. and quasi-judicial officers with a J.D. do have rather similar views of their autonomy. It would seem that not possessing a J.D. causes the two groups to view their autonomy differently. The data in the next set of tables may provide an answer.

Hypothesis 4: Perform Same Tasks Daily (Survey Question 5 Analysis)

The next hypothesis for Research Question 2 (Hypothesis 4) examines the authority the samples possess regarding task performance. This question is potentially an appropriate assessment of daily activities because individuals who perform the same daily tasks may have less opportunity to deviate from assignments, since work is repetitious. The assumptions for this question are based on the literature of Sowa and Seldon (2003), Galloway (1931), and Maynard-Moody and Mushero (2003) regarding the latitude in positions and policy formulation. Individuals whose positions are not constrained to performing the same or similar tasks daily may potentially have the ability to determine which items are performed and therefore a greater opportunity potentially to interject personal rather than organizational goals. The question asked respondents:

- To what extent do you perform the same tasks daily?

$H4_0$: There is no noticeable difference between the daily tasks that are performed in the respective positions of quasi-judicial officers and judges.

$H4_a$: There is a noticeable difference between the daily tasks that are performed in the respective positions of quasi-judicial officers and judges.

The participants could select one of six possible responses. The anticipated judge responses were (B) "very frequently" or (C) "occasionally." It was presumed judges are not as likely to perform the same types of tasks daily. The anticipated responses for quasi-judicial officers were (A) "always" or (B) "very frequently." It was presumed respondents in quasi-judicial officer positions perform the same types of general tasks every day. For example, even if the individual were on the bench, such an individual would not be presiding over the same cases every day, although the cases might all be

traffic-related offenses. However, it is important to note that a respondent could have potentially misinterpreted the original intent of the question. It is possible that judges interpreted the question as performing the same tasks such as hearing cases on a daily basis, rather than hearing the same type of cases. This factor could potentially skew the results for this question, as each group is potentially interpreting and answering the question differently; however, the results are still presented.

Data for All Respondents.

The first perspective for this hypothesis examines data for all respondents based on position held. Ascertaining how often an individual performs the same tasks daily was determined as the best measure of whether a position potentially provides for discretion. It was anticipated the positions that perform repetitive tasks daily might not afford an individual a tremendous amount of decision-making discretion. In the all respondents category, there were no statistically significant association between the variables position held and frequency of performing the same tasks daily (see Table 14).

Table 14. Frequency of Performing the Same Tasks Daily: Responses for Judges and Quasi-Judicial Officers

To what extent do you perform the same tasks daily?	Judges N = 175	Quasi-Judicial Officers N = 128
Always	10 (5.7%)	15 (11.7%)
Very frequently	136 (77.7%)	80 (62.57%)
Occasionally	22 (12.6%)	22 (17.2%)
Rarely	4 (2.3%)	6 (4.7%)
Very rarely	3 (1.7%)	3 (2.3%)
Never	0 (0%)	2 (1.6%)

Chi-square = 10.890 (p = .054)
Gamma = .085 (p = .465)

In Table 14, the two groups have roughly similar views of themselves as performing daily tasks with the same frequency. The highest percentage of respondents indicated the same tasks are performed "very frequently" (77.7% of judges and 62.57% of quasi-judicial officers) each day. It is important to note that these results may present a false conclusion because each sample indicates that the same tasks are performed very frequently; however, the jobs performed may be drastically different. While the results have minor validity in understanding each group, it would be unwise to draw definitive conclusions without further substantive evidence. It should be noted that the greatest percentage of respondents indicated that tasks are performed "very frequently" rather than "always" or "occasionally." The response "very frequently" does not preclude the possibility of interjecting personal rather than organizational goals when the responses to the prior question regarding the establishment of rules and procedures indicated that these positions possess "lots of discretion." Chi-square and gamma are not statistically significant; therefore, the null hypothesis is not rejected. There were some differences noted for the variable "very frequently", but it was not enough for a statistically significant relationship in Table 14. Why this might be the case is explored in the data presented in Tables 15-17.

Data for Respondents with a J.D.

The second perspective for Hypothesis 4 examined data for respondents who have a J.D. It was presumed that a J.D. degree would not have an effect on how frequently an individual performs the same job-related tasks daily; however, an advanced degree may have an effect on the type of job and the type of responsibilities associated with it. For example, a court could employ two upper-level administrative positions, but the

individual who has a J.D. degree may have greater responsibility than the individual may in the other position because of education. Future researchers could potentially test this inconsistency in job responsibilities. The survey used for this project did not collect enough detailed information on job responsibilities to test this hypothesis.

Without this information, the differences in responsibilities for similar jobs that may be due to education level are not perceptible. The top two survey responses regarding the frequency with which the same tasks are performed daily for judges with a J.D. are "very frequently" (80.3%) and "occasionally" (9.5%). The largest percentage of the total sample of judges also indicated the same tasks are performed daily "very frequently." The top survey responses for quasi-judicial officers with a J.D. for this question were "very frequently" (78.3%) (see Table 15). The chi-square and gamma were not statistically significant. The null hypothesis cannot be rejected, which means it cannot be said that judges with a J.D. behave differently from quasi-judicial officers with a J.D.

Table 15. Frequency of Performing the Same Tasks Daily: Responses for Judges and Quasi-Judicial Officers with a J.D.

To what extent do you perform the same tasks daily?	Judges w/JD N = 137	Quasi-Judicial Officers w/JD N = 23
Always	7 (5.1%)	0 (0%)
Very frequently	110 (80.3%)	18 (78.3%)
Occasionally	13 (9.5%)	2 (8.7%)
Rarely	4 (2.9%)	1 (4.3%)
Very rarely	3 (2.27%)	1 (4.3%)
Never	0 (0%)	1 (4.3%)

Chi-square = 7.650 (p = .177)
Gamma = .337 (p = .196)

Data for Respondents without J.D.

The third perspective for this hypothesis examined data for respondents without a J.D. As with the analysis of Hypothesis 3 for this research question, a lack of training should not have a bearing on the frequency with which daily tasks are performed. The top two survey responses to this question for judges were "very frequently" (68.4%), and "occasionally" (23.7%). These responses were consistent with those given by judges who had a J.D. The top two survey responses to this question for quasi-judicial officers without a J.D. were "very frequently" (59%) and "occasionally" (19%). The responses for trained and untrained quasi-judicial samples each indicated a significant percentage "very frequently" performing the same tasks daily (see Tables 15-16). Overall, as anticipated, the rankings of these responses did not change based on the attainment of a legal education. The chi-square results did not meet the minimum expected value and the gamma (.006) did not indicate statistical significance. As with the results for Table 15, one cannot reject the null hypothesis for Table 16. One cannot say that judges without a J.D. behave differently than quasi-judicial officers without a J.D. These results seem to indicate there are no meaningful differences in behaviors observed in Table 16.

Table 16. Frequency of Performing the Same Tasks Daily: Responses for Judges and Quasi-Judicial Officers without a J.D.

To what extent do you perform the same tasks daily?	Judges w/o JD N = 38	Quasi-Judicial Officer w/o JD N = 105
Always	3 (7.9%)	15 (14.3%)
Very frequently	26 (68.4%)	62 (59%)
Occasionally	9 (23.7%)	20 (19.0%)
Rarely	0 (0%)	5 (4.8%)
Very rarely	0 (0%)	2 (1.9%)
Never	0 (0%)	1 (1.0%)

Chi-square = 4.495 (p = .481)
Gamma = .006 (p = .970)

There were no significant differences in Tables 14, 15, and 16. There were some differences noted for the variable "very frequently" in Table 14, but the response patterns are very similar between judges and quasi-judicial officers. The next section explores the effect that education has on these particular behaviors.

Research Question 3

Research Question 3: Is possession of the J.D. related to access to reference materials and to perceptions of control for either judges or quasi-judicial officers?

The analysis in this section is designed to determine if legal training affects the decision-making behavior of the individuals within the respective samples differently. For example, do judges with J.D. degrees differ in their decision-making behaviors from judges without J.D. degrees?

Hypothesis 5: Judicial Access to Reference Materials

Hypothesis 5 seeks to determine if a statistically significant association exists for the use of reference materials by judges due to the presence of legal training.

$H5_0$: There is no noticeable difference in access to reference materials between judges with a J.D. and judges without a J.D.

$H5_a$: There is a noticeable difference in access to reference materials between judges with a J.D. and judges without a J.D.

The t test did not indicate any statistically significant differences (see Table 17**)**. For this sample, it cannot be concluded that legal education has an effect on the resources used by judges.

Table 17. Questions about the Law: Responses for Judges Based on Comparing Legal Education

What do you do if you have questions about the law?	Judge w/JD N = 137	Judge w/o JD N = 38	t test
On-line legal resources	114 (83.2%)	27 (71.1%)	1.498
Other on-line resources	53 (38.7%)	15 (39.5%)	-.087
Refer to books	115 (83.9%)	34 (89.5%)	-.930
Refer to journals	39 (28.5%)	11 (28.9%)	-.057
Consult with judges	108 (78.8%)	34 (89.5%)	-1.733
Consult with peers	69 (50.4%)	22 (57.9%)	-.820
Consult external organizations	30 (21.9%)	6 (15.8%)	.877

* $p < .05$

** $p < .01$

Hypothesis 6: Quasi-Judicial Officer Access to Reference Materials

Hypothesis 6 seeks to discern a statistically significant association for the use of reference materials by quasi-judicial officers based on legal training.

$H6_0$: There is no noticeable difference in access to reference materials between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

$H6_a$: There is a noticeable difference in access to reference materials between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

The t test results for the quasi-judicial officer sample indicated a statistically significant difference for “refer to books”, but there was not a statistical significance for any of the other resources (see Table 18), which suggests legal education has an effect on whether the sample refers to books when legal questions arise.

Table 18. Questions about the Law: Responses for Quasi-Judicial Officers Based on Comparing Legal Education

What do you do if you have questions about the law?	Quasi-Judicial Officer w/JD N = 23	Quasi-Judicial Officer w/o JD N = 105	t test
On-line legal resources	17 (73.9%)	65 (61.9%)	1.143
Other on-line resources	5 (21.7%)	31 (29.5%)	-.789
Refer to books	19 (82.6%)	57 (54.3%)	2.999**
Refer to journals	7 (30.4%)	25 (23.8%)	.621
Consult with judges	17 (73.9%)	94 (89.5%)	-1.588
Consult with peers	11 (47.8%)	73 (69.5%)	-1.876
Consult external organizations	3 (13%)	28 (26.7%)	-1.624

** $p < .01$

In reviewing the data from hypothesis 5 and 6, it appears the results differ from those outlined in the literature. Judges were significantly more likely to use online resources and books to answer legal questions than quasi-judicial officers were; however, the differences observed diminished in education level comparisons. In comparing education levels for judges and quasi-judicial officers, not all of the differences previously observed disappear, which could suggest position has an effect. The conclusion derives from the significant differences found in four of the seven resource categories in Table 3. The differences largely vanished in subsequent comparisons of the judges to the quasi-judicial officers by education level, expect for the variable "refer to books." The differences are also absent in comparisons of the respective samples for judges by education. Further research in this area can aid in understanding how serving in different legal roles specifically influences decision-making processes beyond the selection of reference materials.

Hypothesis 7: Judge Perceptions of Control

Hypothesis 7 seeks to discern a statistically significant association in the perceptions of control in determining whether the same tasks are completed daily and the amount of discretion/rule authority possessed by judges based on legal training.

$H7_0$: There is no noticeable difference in perceptions of control between judges with a J.D. and judges without a J.D.

$H7_a$: There is a noticeable difference in perceptions of control between judges with a J.D. and judges without a J.D.

In reviewing judges with a J.D. and those without a change is noted: a greater percentage of judges with a J.D. report possessing "lots of discretion" (43.8%), whereas judges without a J.D. report possessing only "some discretion" (47.4%) and "inflexible rules and required guidelines" (21%) (see Table 19). The data indicates education has an effect on judge's perceptions on the amount of authority in determining how work is completed. A higher percentage of judges without a J.D. report only some discretion (47.4%), whereas judges with a J.D. indicate lots of discretion (43.8%). These findings suggest education affects judicial perceptions of the amount of authority possessed to establish rules and procedures about how work is done. The chi-square and gamma are statistically significant for Table 19.

Table 19. Establishing Rules and Procedures About How Work is Done: Responses for Judges Comparing Legal Education

How much authority do you have in establishing rules and procedures about how your work is to be done?	Judge w/J.D. N = 137	Judge w/o J.D. N = 38
Complete autonomy	23 (16.8%)	4 (10.5%)
Lots of discretion	60 (43.8%)	8 (21.1%)
Some discretion	44 (32.1%)	18 (47.4%)
Little discretion	10 (7.3%)	0 (0%)
I must follow inflexible rules and required guidelines	0 (0%)	8 (21.1%)

Chi-square = 38.285 (p = .000)
Gamma = .444 (p = .002)

The next analysis examined the data for judges with and without a J.D. to discern any differences in how frequently the groups perform the same tasks daily. Although differences in the data are noted, the chi-square and gamma did not indicate statistical significance for either sample (see Table 20). This means one cannot say that judges with a J.D. behave differently than judges without a J.D. in relation to performing the same tasks daily. Whatever causes the different behavior seen in Table 20 is likely not entirely due to different training, at least among judges.

Table 20. Frequency of Performing the Same Tasks Daily: Responses for Judges Based on Legal Education

To what extent do you perform the same tasks daily?	Judges w/JD N = 137	Judges w/o JD N = 38
Always	7 (5.1%)	3 (7.9%)
Very frequently	110 (80.3%)	26 (68.4%)
Occasionally	13 (9.5%)	9 (23.7%)
Rarely	4 (2.9%)	0 (0%)
Very rarely	3 (2.2%)	0 (0%)
Never	0 (0%)	0 (0%)

Chi-square = 7.653 (p = .105)
Gamma = -.119 (p = .554)

Hypothesis 8: Quasi-Judicial Officer Perceptions of Control

Hypothesis 8 seeks to discern a statistically significant association in the perceptions of control in determining whether the same tasks are performed daily and the amount of discretion/rule authority positions possess for quasi-judicial officers based on legal training.

$H8_0$: There is no noticeable difference in perceptions of control between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

$H8_a$: There is a noticeable difference in perceptions of control between quasi-judicial officers with a J.D. and quasi-judicial officers without a J.D.

In reviewing quasi-judicial officers with a J.D. and those without, a change is noted: quasi-judicial officers with J.D.s indicated "some discretion" (43%) as their most common response, whereas those without a J.D. reported "lots of discretion" (46%) in establishing rules and procedures regarding how work is completed. This information suggests that quasi-judicial officers with more education perceive they have less autonomy. The statistically significant results for the chi-square support this conclusion (see Table 21). Overall, the results point to an unexpected outcome, as judges without a J.D. seemingly perceive themselves as having less discretion than quasi-judicial officers without a J.D., although there is no difference between the results from the analysis of all judges and quasi-judicial officers. When comparing Tables 19 and 21 judges with a J.D. perceive themselves as most autonomous followed by quasi-judicial officers without a J.D. Is this point of view a function of the jobs they are given, or is it just a perception caused by a combination of their roles or training? Does this difference cause them to dispense justice differently? These types of questions warrant further study.

Table 21. Establishing Rules and Procedures About How Work is Done: Responses for Quasi-Judicial Officers Comparing Legal Education

How much authority do you have in establishing rules and procedures about how your work is to be done?	Quasi-Judicial Officer w/J.D. N = 23	Quasi-Judicial Officer w/o J.D. N = 105
Complete autonomy	4 (17.4%)	12 (11.4%)
Lots of discretion	5 (21.7%)	48 (45.7%)
Some discretion	10 (43.5%)	25 (23.8%)
Little discretion	4 (17.4%)	6 (5.7%)
I must follow inflexible rules and required guidelines	0 (0%)	14 (13.3%)

Chi-square = 12.185 (p = .016)
Gamma = .079 (p = .633)

In the second analysis for this hypothesis, the quasi-judicial officers with and without a J.D the association was not close to being statistically significant (see Table 22). It is important to note the sample size for quasi-judicial officers with a J.D. is rather small with only 23 respondents. Although the overall crosstabulation for Table 22 is not significant, there is approximately a 20% difference in the sample's responses for the variable "very frequently."

Table 22. Frequency of Performing the Same Tasks Daily: Responses for Quasi-Judicial Officers Based on Legal Education

To what extent do you perform the same tasks daily?	Quasi-Judicial Officer w/JD N = 23	Quasi-Judicial Officer w/o JD N = 105
Always	0 (0%)	15 (14.3%)
Very frequently	18 (78.3%)	62 (59%)
Occasionally	2 (8.7%)	20 (19%)
Rarely	1 (4.3%)	5 (4.8%)
Very rarely	1 (4.3%)	2 (1.9%)
Never	1 (4.3%)	1 (1%)

Chi-square = 7.456 (p = .189)
Gamma = .162 (p = .399)

Conclusion

This project is the first step in examining the role and responsibilities of quasi-judicial officers within the state judiciary. From this examination, researchers can determine if litigants obtain the same types of decisions depending on whether 1) a judge or quasi-judicial officer is hearing the case and 2) the legal training of the decision-maker. While this research examines only a small portion of this overall query, it provides invaluable information that furthers the existing dated scholarship. The importance for this research also stems from the fact that there was no existing parallel or similarly related research examining this particular area in local level judiciary in the U.S. Based on this research, it seems there is a certain effect on judicial decision-making; however, it is important to note that the effect was not always necessarily due to legal training.

As previously noted, the quasi-judicial officer sample does sometimes exhibit the behavior patterns of judges within this sample. Each sample, when examining legal

training independently, utilizes similar reference materials perceived as adequate when questions about the law arise. The aim of the analysis was to determine whether the 1) positions provided any discretion in how tasks are completed and if there is a certain level of routine within the positions and 2) the effects of legal training. The research indicates a certain amount of discretion influenced by legal training exists within the positions. These findings suggest that there is potential for usurping institutional goals with personal ones. Although each sample could have interpreted the next question regarding the performance of daily tasks differently than originally intended, kernels of invaluable knowledge from the responses are present.

At the onset of the study, I anticipated quasi-judicial officers would play a more significant role in judicial decision making than currently documented in the literature. This type of situation could produce dire consequences because these individuals are acting as decision makers and are potentially untrained in legal principles, but are rendering legally binding decisions. Litigants may be unaware of the decision maker's legal deficiencies or unable to appeal the decision rendered due to time or financial constraints. The data provided sufficient evidence to warrant further research. In Research Question 1, two survey questions determined quasi-judicial officers' approach to answering questions regarding the law differently than judges. The respondents were asked (1) how they reacted to questions about the law, and (2) the extent to which resources are adequate. The analysis is also based on the type of respondent (i.e., judge vs. quasi-judicial officer) and whether the individual possessed legal training.

Research Question 2 sought to determine if quasi-judicial officers have the same authority as judges in determining daily activities. The two questions addressed (1)

establishing rules and procedures about how work is done, and (2) how frequently the same tasks are performed daily. These two questions were selected as the best indicators in this study to determine the amounts of authority possessed by the positions. Most of the crosstabulations and t tests in this study did not reveal statistically significant differences but some differences did emerge. Some of the important findings for this study included the differences in Table 3 for four out of the seven resources; "refer to books" was significant in Table 5; "refer to books" had a significant difference in Table 18; views of autonomy when comparing judges without a J.D. to quasi-judicial officers without a J.D. were significant in Table 13; and views of autonomy when comparing judges with a J.D. to judges without a J.D were significant in Table 19. Interestingly, the differences in Table 3 largely go away when controlling for level of education. Research Question 3 sought to determine whether legal training effected the decision making behavior of the individuals within the respective samples differently.

Chapter V

DISCUSSION

The judiciary ensures legal disputes are resolved according to prevailing laws. Individuals charged with judicial decision-making responsibilities work toward the common goals of equity and fairness for everyone who appears in a court of law. One method of discerning whether the system is satisfying these goals is to review both the roles and behaviors, and the legal training of judicial decision makers. While the number of law school graduates continues to increase, many decision makers without formal legal training still render binding legal decisions. The literature (Provine 1985, Silberman 1979 and Vermeule 2007) suggests not having a J.D. potentially affects the legal decision-making process. The judicial decision makers examined for this study were (1) individuals with legal training, such as judges, and (2) individuals without legal training (i.e., quasi-judicial officers), such as mediators, special masters, or magistrates. Assuming judicial decision makers have appropriate legal training and are versed in the law is ill advised. Examining these samples is one of the best initial ways to ascertain the accuracy of the literature and the viability of future research. The outcomes of this study can help guide future research to help determine factors, such as (1) if a law degree is necessary, (2) whether these types of positions should all be classified as judges or as

quasi-judicial officers, and (3) whether behavioral similarities (if any) are based on learned behavior obtained from within the legal system.

Overview

As one of the first studies in the field in the last three decades, this research draws from a broad timeline of prior research: Provine in 1981 to Maynard and Moody in 2003. While there are numerous facets to potentially examine in this area, research in this study was limited to local-level courts in Georgia. Results may not generalize to regional or national levels but will provide data to reveal the viability of future research. Quasi-judicial officers have attained increased judicial decision making authority in part due to congested court calendars and dwindling budgets. However, as the number of pro se litigants increases, it is paramount that those rendering judicial decisions are well versed in the law and legal precedent. The potential to infringe on an individual's legal rights can easily become a reality when the judicial decision maker and pro se litigant have no knowledge of court policies and procedures. This chapter recaps the salient aspects of the study, data results, and posits implications for the state-level judiciary system.

The objective of the study was to discern (1) how judges and quasi-judicial officers answer questions regarding the law, and (2) the authority each sample possesses to determine how daily activities are completed. Since the data was readily available, the study also examined the effects of legal training on each area. The overall importance of these objectives is to ensure that the interpretation of legal precedent conforms to both the letter and spirit of the law. Numerous factors influence legal interpretation: legal training, position autonomy, and individual objectivity. The study had three research questions and eight hypotheses; hypotheses 1 and 2 examined access to and level of satisfaction with

reference materials, hypothesis 3 examined level of autonomy in the respective positions, hypothesis 4 examined the frequency of performing daily tasks, hypothesis 5 examined the access to reference materials based on a comparison of legal training within the judge sample, hypothesis 6 examined the access to reference materials based on a comparison of legal training within the quasi-judicial officer sample, hypothesis 7 examined the perceptions of control based on comparing legal training within the judge sample, and hypothesis 8 examined the perceptions of control based on comparing legal training within the quasi-judicial officer sample. Analysis of other research questions using this data is possible. The data analysis was comprised of percentages of the responses and the statistical significance tests chi-square and gamma or t test.

Findings

Overall, the data yielded results that did not always coincide with the predominant theories in the literature. Research Question 1 asked, "Do quasi-judicial officers have less access to reference materials than judges, and do they display less satisfaction than judges with the reference materials that are available to them?" For Hypothesis 1, the data indicated differences in the ways the groups use reference materials. The overall data (Table 3) indicated significant differences for four out of the seven variables. In the subsequent comparisons based on judges and legal training (Tables 4-5), the differences diminished considerably and fewer variables produced statistically significant results, except for the variable "refer to books" in Table 5 (judges without J.D. compared to quasi-judicial officers without a J.D). The decreasing statistically significant results could indicate differences are a result of the position, rather than legal training. Based on the results one cannot yet assume citizens receive different legal decisions based on

whether a judge or quasi-judicial officer presides over the case. The survey questions did not address aspects such as the use of particular resources when legal questions arise. The findings suggest a need for further research to obtain a more in-depth understanding of how and why the samples rely on reference materials differently.

Hypothesis 2 is the examination of the level of satisfaction with the resources used. It was determined that the question was relevant to this study since individuals may use a particular resource because it is the only one available and not due to personal preferences. Even though the literature suggested having multiple types of resources available has decreased due to dwindling budgets, the overall data of this study indicated respondents felt resources were satisfactory (Table 6). The subsequent tests (Tables 7-10) did not indicate any statistically significant associations – meaning that the level of satisfaction cannot be said to vary among the studied samples. Based on the tests it is indeterminate if legal training affected satisfaction levels and whether citizens receive different treatment based on the level of satisfaction with reference materials used. Although the initial findings were positive, further research should elicit a more in-depth understanding of how and why satisfaction transpires and what methods can maintain it.

The next two hypotheses (3 and 4) concern Research Question 2, which asked, "Do quasi-judicial officers perceive themselves as possessing the same amount of control as judges in determining how their daily activities are completed?" Specifically, the third hypothesis examined the level of autonomy judges and quasi-judicial officers felt they possessed. If similarities in the responses of each sample exist, it would indicate quasi-judicial officers may engage in the same judicial decision-making behavior. The data obtained from this question can further the understanding of the levels of autonomy,

which reveals whether an individual acts on institutional or personal goals. These presumptions regarding autonomy emanates from the works of Lipsky (1980). In comparing managers to non-managers, he asserted the potential of all non-managers to look the other way or to bend rules in order to accomplish their perception of the appropriate result. The bending of rules can potentially result in de facto policy-making. This presumption is derived from the notion that the greater the level of autonomy in a position, the greater the potential for personal goals to usurp institutional ones. The tests for this hypothesis did not produce statistically significant associations (Tables 11 and 12); however, statistically significant association emerged in Tables 13. The chi-square results in Table 13 indicated judges without a J.D. felt they have less discretion than quasi-judicial officers without a J.D. The statistically significant findings in Table 21 also indicated a difference in establishing rules and procedures about how work is completed in the comparison of quasi-judicial officers with legal training to those without it. Judges with a J.D. perceive the highest level of autonomy followed closely by quasi-judicial officers without a J.D., then quasi-judicial officers with a J.D., and judges with a J.D. perceive the least autonomy. These results possibly indicate that the least trained individuals feel the most freedom or at the very least have positions that provide greater freedom. The reasons for these results are uncertain but indicate a need for further research.

Hypothesis (4) examined the authority each sample possessed regarding task performance. It was presumed this hypothesis would illuminate the degree an individual is involved in decision-making authority and discretion. An individual with a high level of discretion who does not repeat the same tasks daily could have the ability to engage in

policy formulation. As with Hypothesis 3, this one also highlighted the potential for enacting personal rather than institutional goals. This question supports Lipsky's research outlined in Hypothesis 3. There were no statistically significant associations for Hypothesis 4 (Table 14-16). Further research in this area is warranted to discern if other elements might produce statistically significant associations.

Hypothesis 5 and 6 examined differences in access to reference materials for judges (Table 17), but there was a statistically significant difference for "refer to books" for quasi-judicial officers (Table 18). Hypothesis 7 and 8 examined differences in perceptions of control between judges and quasi-judicial officers. The results in Hypothesis 7 (Table 19) yielded statistically significant results for judges with a J.D. compared to judges without. There were some differences in Table 20 (frequency of performing the same tasks) but they were not statistically significant. The results for Hypothesis 8 (Table 21) indicated statistically significant results using chi-square for the perceptions of control for quasi-judicial officers based on legal training. The results in Table 22, which examined how frequently quasi-judicial officers performed the same tasks daily, did produce a statistically significant association.

This study sought to discern if the respective samples behave differently and what effect (if any) legal training might exert. Although findings do not allow definitive conclusions to be draw, they are important as there was enough evidence to indicate individuals without legal training were having a direct influence on litigants. At this time, there are no viable conclusions to explain this anomaly. Future research in this area is definitely necessary to obtain a more complete understanding of the factors that affect the decision-making processes in the judiciary. Additionally, it could identify whether the

nature of the judiciary has changed over time because the majority of the literature is over twenty years old and needs updating. For example, with individuals who indicated a reliance on online legal resources (i.e., Lexis and Westlaw), it would be important to know what elements of these sites are being used as well as the individual's level of computer competence. Are those individuals who indicated a reliance on books relying on this particular medium because their computer skills are inadequate?

Implications for the State Judiciary System

Examining judicial decision-making authority provides insight into the level of discretion positions enjoy. Future research can help researchers understand the degree of decision-making variability that occurs among judges and quasi-judicial officers to determine how often justice is and is not dispensed equally. At the onset of the research, it was believed most judicial administrative positions were filled by "bean counters" without discretion, which led me to postulate judge and quasi-judicial officer samples would not have the same levels of discretion embedded in their respective positions. A judge has leeway in determining sentencing for a defendant; whereas, quasi-judicial officer positions do not presumably have these same liberties. Definitive conclusions regarding these differences are unavailable; the results point to the need for further in-depth research. If individuals are performing the same duties as judges, it is important to ensure these individuals abide by the same legal standards. While there are cases that have alluded to potential conflicts, the roles and responsibilities of quasi-judicial officers differ not only among various court levels but also with the overall judicial system. The finding is important given the variation in and number of adjudicative positions within the lower-level state court. Research in this area is of particular importance given the

limited existing research in the fields of political science and public administration addressing the prevalence and influence of decision-making secondary court personnel.

Without order, chaos will most certainly prevail. Order in today's society typically evolves from the law. If administering second-rate justice becomes the norm, the authority of the judiciary will diminish and perhaps push back the centuries-old norms and precedents established by our legal system. Rendering a decision requires an individual to consider the facts of the case and to know both the law and the spirit of the law. It is not sufficient that an individual have only courtroom experience since such an individual may be deficient in the nuances of the law, the court, or the overall legal system. A 1995 Utah Supreme Court decision maintained that "judicial power was a 'core judicial function' and was specifically invested in the courts and implicitly in full judges" (McFarland 2004, 20). An analogy in the opinion states; "a legislator cannot give away his power to vote to another person, so a judge cannot grant his power to decree decisions to anyone else" (McFarland 2004, 20). The research did not denote other references to this type of research being conducted in the U.S. Researchers must ask if delegating judicial authority to quasi-judicial officers, whether it is intentional or unintentional, is legal, ethical, and/or constitutional, rather than accepting it as a new norm. Legal scholars have a responsibility to investigate how and when delegation of judicial power occurs.

This study is unique and important because it brings renewed awareness in and original current research to this field of study. Additionally, it points to the possibility that litigants may receive different decisions based on the judicial decision maker's legal training. Investigating, quantifying and understanding the overall influence of the roles

on the law is important because quasi-judicial officers are potentially making decisions that can have immediate and long-term political and social consequences. The only feedback loops within the judiciary occur when plaintiffs bring cases back to court. Bringing a case back to court can take considerable time and money, which most litigants do not possess. Even with an erroneous decision, taking the case to the successive judicial levels may not be a viable option. Given these factors, it is important to ensure lower level court systems are providing standard and equitable decisions throughout a state. The initial findings from this research indicate a need for further investigation. Researchers must ask if delegating judicial authority to quasi-judicial officers, whether intentional or unintentional is legal, ethical and/or constitutional, rather than accepting it as a new norm. These questions will certainly help bring any potential problems to the forefront.

Conclusion

Although this research examined only a small segment of the query, Do quasi-judicial officers engage in judicial decision making behaviors?, in general, the research did yield sufficient evidence to support further research. The future research could help unify the types of decisions delegated to other judicial personnel. Having standardized, decision-making best practices would ensure that the public throughout a state receives the same types of judgments. It could also extend outside the confines of the courtroom by examining the acceptance rates of probation officer recommendations by judges.

Generally, the public does not know how to navigate court procedures, policies, and legal precedent. Although there are laws requiring practitioners (i.e., lawyers) to have a legal degree, there are still instances where courts have not yet completely made this

transition. Competent judicial decision makers are vital. This project was the first step in determining if similarities in decision-making behaviors and perceptions exist between judges and quasi-judicial officers. Overtime policies and processes can erode, and lower standards become acceptable. It is often difficult to see these changes occurring from the front lines. Studies, such as this one, give researchers the ability to view the depth and breadth of the issues affecting the judiciary and determine if corrective measures to the system are necessary. Further research will better equip the legal community to understand the immediate and long-term effects of these types of behaviors.

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APPENDIX A:

Survey Sent to Judges and Quasi-Judicial Officers

Appendix A: Survey Sent to Judges and Quasi-Judicial Officers

Hello and thank you for taking the time to participate in this survey for my doctoral dissertation in Public Administration at Valdosta State University. The faculty advisor for my research is Dr. James Strickler, Professor of Political Science, Valdosta State University (229-253-2919 or vjstrickler@valdosta.edu). You are welcome to contact him should you have concerns regarding this research project. You were selected to participate in this study given your position in Georgia's judicial system.

There are nine (9) questions, which should take approximately ten (10) minutes to complete; however, you are welcome to take longer should you need extra time. The survey must be completed in one sitting. If the survey is closed, any responses you have completed will not be saved, and you will need to restart. The information submitted on this survey is anonymous and cannot be traced to a particular respondent or IP address. All data from this project are confidential and will be used for research purposes only. The IRB documentation is available at www.ElizabethTaylorDPA.com, should you wish to review it. To the best of my knowledge, there are no benefits, advantages, or potential risks associated with completing this survey or participating in this research project. Your participation is completely voluntary. There will not be a formal or informal debriefing at the conclusion of the research project, but you are welcome to review the research at www.ElizabethTaylorDPA.com once it is posted.

I greatly appreciate your time in completing this survey and for helping me with my doctoral research. By starting the survey below you are affirming and consenting to participate in this survey and certifying that you are over 18 years of age.

The questions ask about your current position within the judiciary and some of the roles and responsibilities related to it. Please select only one answer per question unless otherwise indicated specifically by a question.

1. Please indicate the best description of your current position in the state judicial system.
   A. Judge
   B. Special master
   C. Magistrate
   D. Mediator/arbiter
   E. Court clerk or upper level administrator
   F. Other (please indicate the name of your position in the space provided):

2. What type of college degree(s) have you earned? (Please indicate all degree that you have earned.)
   A. Bachelor's (B.A., B.B.A., B.S., etc.)
   B. Master's (M.A., M.S., M.B.A., etc.)
   C. Doctorate (Ph.D., D.P.A, Ed.D. etc.)
   D. Juris Doctorate (J.D.)
   E. Not applicable, I do not have a degree

F. Other (please indicate the type of degree possessed in the space provided):

3. What type of court do you primarily work in? (check all that apply)

   A. Civil
   B. Criminal
   C. Probate
   D. Traffic
   E. Magistrate
   F. Other (please indicate the type of court in space provided):

4. How much authority do you have in establishing rules and procedures about how your work is to be done?
   A. Complete autonomy
   B. Lots of discretion
   C. Some discretion
   D. Little discretion
   E. I must follow inflexible and required guidelines

5. To what extent do you perform the same tasks daily?
   A. Always
   B. Very frequently
   C. Occasionally
   D. Rarely
   E. Very rarely
   F. Never

6. What types of reference materials do you have access to? (check all that apply)
   A. Online legal resources (i.e., sources such as Lexis or Westlaw)
   B. Other Internet resources
   C. Books
   D. Journals
   E. Colleagues
   F. External judicial organizations (please indicate the name of the organization in space provided):

7. To what extent are the above indicated resources adequate?
   A. Always
   B. Very frequently
   C. Occasionally
   D. Rarely
   E. Very rarely
   F. Never

8. What do you do if you have questions about the law? (check all that apply)
   A. Consult online legal resources (i.e. resources such as Lexis and Westlaw)

B. Consult other Internet resources
C. Refer to books
D. Refer to journals
E. Consult with judges
F. Consult with peers
G. Contact external judicial organizations (please indicate the name of the organization in the space provided):

9. How often do you consult reference materials to do your job?
A. Always
B. Very frequently
C. Occasionally
D. Rarely
E. Very rarely
F. Never

APPENDIX B:

Survey

Appendix B: Survey

The information below identifies (A) an explanation of the question and (B) application of information to the research questions. The survey was sent to judges and quasi-judicial officers listed in the 2014-15 Administrative Office of the Courts directory.

1. How much authority do you have in establishing rules and procedures about how your work is to be done?

    A. The question is designed to assess decision-making authority; discerns whether the rules and procedures the individual potentially establishes are defined narrowly or ambiguously.

    B. Discerns whether there is authority in creating rules and procedures in a position.

2. To what extent do you perform the same tasks from day to day?

    A. The question is designed to measure the frequency of similar activities performed; if the same rote activities are completed daily, the need for an advanced degree is potentially unnecessary, as the individual becomes knowledgeable and experienced by performing the same task repeatedly.

    B. Discerns the frequency of the same tasks performed daily. The responses to this question enable the researcher to determine if there is a need for the authority to discern how and when tasks are performed.

3. What types of reference materials do you have access to (e.g., books, Internet, other judges)?

    A. The question is designed to determine the availability and types of reference materials the individual has available.

    B. Discerns the types of reference materials available. For example, if an individual has time to research an issue, rather than rendering an immediate judgment, this could affect the final outcome.

4. To what extent are the resources you have to work with adequate?

    A. The question is designed to determine if the individual believes that resources are adequate.

    B. Resources should be available and adequate if we are to consider them effective and efficient tools.

5. What do you do if you have questions about the law?

    A. The question is designed to determine if the individual issues a ruling though he/she may have a question about the law or if he/she uses any other resources that might be available.

    B. This question helps to explain how the respondent behaves regarding questions about the law. It is not enough that reference materials be available and adequate, but they must also be used.

APPENDIX C:

Thank You Letter Email (Follow up to Submission of Survey)

Appendix C: Thank You Letter Email (Follow up to Submission of Survey)

[Date]

Hello,

Thank you for taking the time to complete this survey for my dissertation research. Additional information on my dissertation will be posted on my doctoral portfolio website (www.ElizabethTaylorDPA.com) as soon as it is approved by my committee.

Warm Regards,
Elizabeth

Elizabeth Taylor
DPA candidate
Valdosta State University
ehtaylor@valdosta.edu

APPENDIX D:

Follow-up Email Regarding Participation

Appendix D: Follow-up Email Regarding Participation

Date

Hello:

I hope you have had an opportunity to complete the survey for my dissertation for my Doctorate in Public Administration at Valdosta State University. If you have completed the survey, I want to express my sincerest gratitude for your participation.

If you have not yet had an opportunity, there is still time to participate. The survey is available by clicking on the link below. Once you start the survey, you will need to complete it in one session. We realize your time is valuable, so it should only take approximately 10 minutes to complete the survey. We ask you complete the survey at your earliest convenience, but no later than May 28, 2015.

Thank you in advance for your time and helping me with my dissertation research. You are welcome to visit my doctoral program portfolio website (www.ElizabethTaylorDPA.com) for updates on this project. Thank you and I appreciate your support.

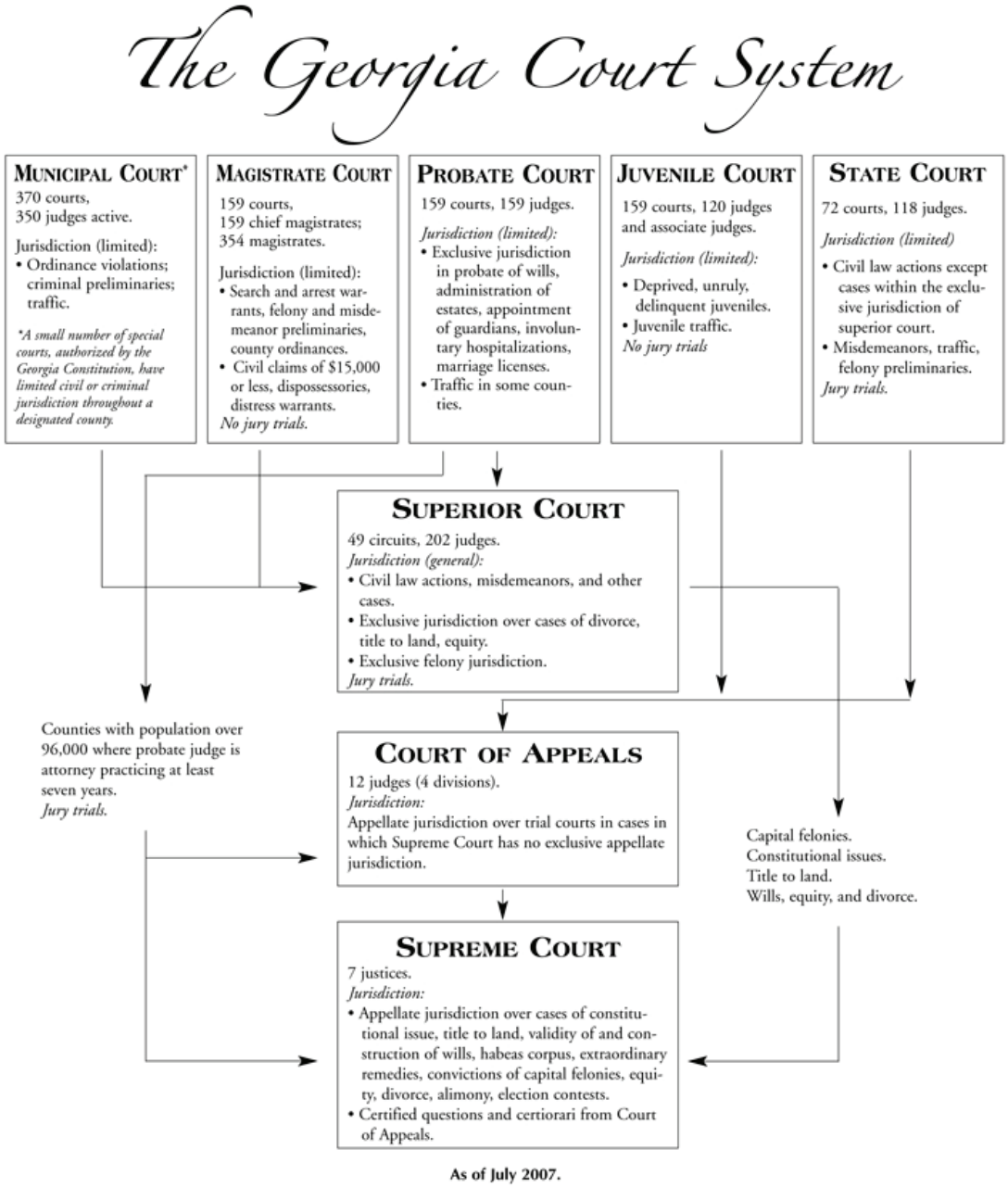
Warm Regards,
Elizabeth

Elizabeth Taylor
DPA candidate
Valdosta State University
ehtaylor@valdosta.edu

APPENDIX E:

Diagram of the State of Georgia Court System

Appendix E: Diagram of the State of Georgia Court System



Source: Judicial Branch of Georgia, Self Help Resources website.
http://www.georgiacourts.org/aoc/selfhelp/court_diagram.html (accessed August 26, 2013).

APPENDIX F:

Description of Each State of Georgia Trial Court

Appendix F: Description of Each State of Georgia Trial Court

The following descriptions of the roles and responsibilities of each of the trial courts in the state of Georgia was taken verbatim from the Georgia Court Guide to Statistical Reporting, which was published by the Judicial Council of Georgia and the Administrative Office of the Courts.

- Superior Court: The 159 superior courts are general jurisdiction trial courts exercising both civil and criminal jurisdiction. Superior court judges hear all felony cases, domestic relations cases, equity cases, and other civil matters. Superior courts have jurisdiction to hear appeals from lower courts as provided by the Georgia Constitution, including appeals of judgments from the probate and magistrate courts that are handled as *de novo* appeals. The superior courts are organized into 49 judicial circuits made up of one or more counties. Judicial circuits and new superior court judgeships are established by act of the General Assembly. Superior court judges are constitutional officers who are elected to four-year terms in circuit-wide nonpartisan elections. Senior superior court judges may hear cases as assigned in any circuit. For reporting in the Georgia framework, superior court caseload is divided into three major categories: criminal, domestic relations, and general civil.

- State Court: The 70 state courts are county-based courts that exercise limited jurisdiction. State court judges have criminal jurisdiction over misdemeanor offenses, felony preliminary hearings, traffic violations, and application and issuance of search and arrest warrants. Civil matters not reserved exclusively to the superior courts are also adjudicated in state courts. Appeals of judgments from the magistrate courts may be sent to the state court and handled as a *de novo* appeal. The General Assembly creates state courts by local legislation establishing the number of judges and their status as full-time or part-time. State court judges are elected to four-year terms in countywide, nonpartisan elections. For reporting in the Georgia framework, state court caseload is divided into two major categories: civil and criminal.

- Juvenile Court: Jurisdiction of the juvenile courts extends to delinquent and unruly children under 17 years of age and deprived and neglected children under 18 years of age. Juvenile court judges have jurisdiction over minors who commit traffic violations, request consent to marry, or enlist in the armed forces. Juvenile courts have concurrent jurisdiction with superior courts in child custody and child support cases and in proceedings to terminate parental rights. Certain serious violent felonies committed by juveniles may be tried in superior court. Juvenile court judges are appointed by the superior court judges of the circuit to four-year terms. For reporting in the Georgia framework, juvenile court caseload is divided into six major categories: delinquent, deprived, special proceedings, termination of parental rights, traffic, and unruly.

- Probate Court: County probate courts exercise exclusive, original jurisdiction in the probate of wills, administration of estates, appointment of guardians, and involuntary hospitalization of incapacitated adults and other individuals. Probate court judges are constitutional officers who are elected to four-year terms. All probate court judges administer oaths of office and issue marriage licenses. In some counties probate judges may hold habeas corpus hearings or preside over criminal preliminary hearings. Unless a jury trial is requested, a probate court judge may also hear certain misdemeanors, traffic cases, and violations of state game and fish laws in counties where there is no state court. In counties with a sample of 90,000 or greater, the probate judge must be an attorney meeting the qualifications of a superior court judge. In those counties, jurisdiction is expanded or enhanced to include the right to a jury trial, with appeals directly to the Court of Appeals or Supreme Court. When authorized by local statute, probate judges serve as election supervisors and make appointments to certain local public offices. For reporting in the Georgia framework, probate court caseload is divided into three major categories: civil, license applications, and criminal.

- Magistrate Court: Magistrate court jurisdiction includes: civil claims of $15,000 or less; certain minor criminal offenses; distress warrants and dispossessory writs; county ordinance violations; deposit account fraud; preliminary hearings; and summonses, arrest, and search warrants. A chief magistrate, who may be assisted by one or more magistrates, presides over each of Georgia's 159 magistrate courts. Most chief magistrates are elected in partisan, countywide elections to four-year terms. In some counties, the chief magistrate is appointed by the superior court judges. Terms for other magistrate judges run concurrently with that of the chief magistrate. For reporting in the Georgia framework, magistrate court caseload is divided into four major categories: warrants, hearings, criminal, and civil.

- Municipal Court: Georgia's municipal courts hear traffic and ordinance violation cases in over 300 towns and cities. Municipal court judges hear municipal ordinance violations, issue criminal warrants, conduct preliminary hearings, and sometimes have concurrent jurisdiction over shoplifting cases and cases involving possession of one ounce or less of marijuana. For reporting in the Georgia framework, municipal court caseload is divided into six major categories: traffic, ordinances, serious traffic, drugs/marijuana, misdemeanors, and felony bindovers.

APPENDIX G:

Law Degrees and Curriculum

Appendix G: Law Degrees and Curriculum

There are many undergraduate, graduate and certificate legal degree programs offered throughout the world. The list below focuses only on those degree programs typically offered at institutions in the United States. These degree programs generally allow students to specialize in particular areas, such as healthcare, criminal, environmental, entertainment, civil rights, and education.

- Juris Doctor (J.D.)

  Juris Doctor is awarded to an individual upon the successful completion of law school. It is required in all states except California (which includes an option called law office study) to gain Admission to the Bar. Gaining admission to the bar means obtaining a license to practice law in a particular state or in federal court. Until the 1930s and 1940s, many states did not require a person to have a law school degree in order to obtain a license to practice law. Most lawyers qualified for a license by working as an apprentice for an established attorney for a specified period. By the 1950s most states required a law school degree. State legislatures established this requirement to raise the standards of practicing attorneys and to restrict the number of attorneys. The degree offered by most Colleges and Universities was called a master of laws (L.L.M.) degree. In the 1960s, as colleges and universities increased the requirements for a law degree, the J.D. replaced the L.L.M. as the primary degree awarded by law schools.

  The specific requirements for a J.D. vary from school to school. Generally, the requirements include completing a minimum number of class hours each academic period, and taking certain mandatory courses such as contracts, Torts, Civil Procedure, and Criminal Law in the first year of law school. All states require that students pass a course on Professional Responsibility before receiving a J.D. degree.

  - The text taken verbatim from the Legal Dictionary website. http://legal-dictionary.thefreedictionary.com/Juris+doctorate (accessed July 2, 2014).

- Master of Laws (LL.M.)

  The LLM is an advanced academic degree in law (as opposed to a professional degree in law, such as the Juris Doctor, or JD). Because the LLM is a graduate degree, one must first obtain a degree in law as a prerequisite for the LLM. The Juris Doctor is the basic law degree necessary to practice law in the US. No previous law degree is required for a JD. US-educated applicants must have a JD degree before applying to an LLM program. Internationally educated applicants do not have to have a JD before applying to an LLM program, but must have a first degree in law from their country of origin. The LLM curriculum varies depending on the program. Many programs provide a broad curriculum in American law, international law, and comparative law. Others provide more specialized courses in subfields such as taxation, intellectual property, human rights law, or international environmental law. Some programs incorporate

required courses; some do not. Typically, the LLM is a one-year course of full-time study or two years of part-time study. It can range from 22 to 28 or more credit hours. Earning the LLM degree does not qualify international lawyers to sit for the bar exam in every state or to practice law in every state. Most states in fact have very strict limitations on non-US lawyers' eligibility to take their bar exam.

- The text was taken verbatim from the Law School Admissions Council website. http://www.lsac.org/ (accessed July 2, 2014).

- Executive Juris Doctor (E.J.D.)

  Executive J.D. law programs are designed to teach working professionals about legal issues and procedures and potentially advance their careers by expanding their legal knowledge. This type of degree program may be appropriate for people from many different fields, such as education, business, healthcare or real estate. Additionally, these part-time executive J.D. programs offer flexible scheduling or online classes to accommodate full-time work schedules. Executive J.D. law degree programs aren't designed to qualify you to sit for your state's bar exam but to provide you with a legal education. You can usually complete an executive J.D. program in 3-4 years. Some executive J.D. programs can be completed entirely online, although you may be required to go to an approved testing site to take exams. You need at least a bachelor's degree to be considered for admission into an executive J.D. program. Some admissions committees may prefer that you have professional experience or that your job has a legal application. Coursework in an executive J.D. program provides training in advanced legal theory and applications.

  - The text taken verbatim from Degree Dictionary.org. http://degreedirectory.org/articles/What_is_an_Executive_Juris_Doctorate_JD_Law_Degree.html (accessed July 2, 2014).

- Doctor of Juridical Science (S.J.D.)

  After graduating with a Juris Doctor a person is eligible for practicing law in the particular state where they pass their bar examination. A person may then go on to specialize in a specific area of the law and study for a Master of Laws degree. For those individuals that prefer to work in academia or in other types of work that has an emphasis in legal scholarship, the Doctor of Laws is the next step. A Doctor of Laws degree is the highest level of law degree that is offered in the United States. The Doctor of Laws degree falls into four general categories including a Doctor of Juridical Science, Doctor of Jurisprudence, Doctor of Philosophy, and a Doctor of Comparative Law. The American Bar Associate states that there are around 20 law schools in the United States that currently offer doctor of laws degrees. The majority of the programs is exclusive and limit enrollment to only one or possibly two exceptional and extraordinary candidates each year. While the number of doctoral programs is limited, the requirements for application and degree requirements vary greatly. Almost all of the programs will require that an individual complete a master of laws program or a comparative

program such as a Master in Comparative Law, Juris Master, or a Master of Jurisprudence.

- The text was taken verbatim from Legal Career Path. http://legalcareerpath.com/doctor-of-laws-j-s-d-s-j-d/ (accessed July 2, 2014).

APPENDIX H:

Variable Definitions

Appendix H: Variable Definitions

Variable Name	Description	Measure	Values for Categorical Variables
Position	Title of current position	Nominal	1 = Judge 2 = Special Master 3 = Magistrate 4 = Mediator/Arbiter 5 = Court Clerk or Upper Level Administrator 6 = Other
Degree	College degree earned	Nominal	1 = Bachelor 2 = Masters 3 = Doctorate 4 = J.D. 5 = Not Applicable (do not have a degree) 6 = Other
Rule Authority	Authority in establishing rules	Ordinal	A.= Always B. = Very Frequently C. = Occasionally D. = Rarely E. = Very Rarely F. = Never
Repeat	Frequency of tasks repeating	Ordinal	A.= Always B. = Very Frequently C. = Occasionally D. = Rarely E. = Very Rarely F. = Never

Docket Type	Cases heard in court	Nominal	1 = Civil 2 = Criminal 3 = Probate 4 = Traffic 5 = Magistrate 6 = Other
Reference Materials	Access to reference materials	Nominal	1 = Internet Resources 2 = Books 3 = Journals 4 = Colleagues 5 = External Judicial Organizations 6 = Other
Adequate Reference Materials	Are reference materials adequate	Ordinal	A.= Always B. = Very Frequently C. = Occasionally D. = Rarely E. = Very Rarely F. = Never
Legal Questions	How are questions about the law addressed	Nominal	1 = Consult Internet Resource 2 = Refer to Books 3 = Refer to Journals 4 = Consult with Other Judges 5 = Contact External Judicial Resources 6 = Other

APPENDIX I:

Institutional Review Board Approval Documentation

Appendix I: Institutional Review Board Approval Documentation

Institutional Review Board (IRB)
for the Protection of Human Research Participants

PROTOCOL EXEMPTION REPORT

PROTOCOL NUMBER: IRB-03220-2015 **INVESTIGATOR:** Elizabeth Taylor

PROJECT TITLE: Compromised Justice: The Role of Quasi-Judicial Officers in Georgia's State Level Courts

INSTITUTIONAL REVIEW BOARD DETERMINATION:

This research protocol is **exempt** from Institutional Review Board oversight under Exemption Category(ies) 2 & 3. You may begin your study immediately. If the nature of the research project changes such that exemption criteria may no longer apply, please consult with the IRB Administrator (irb@valdosta.edu) before continuing your research.

ADDITIONAL COMMENTS/SUGGESTIONS:

Although not a requirement for exemption, the following suggestions are offered by the IRB Administrator to enhance the protection of participants and/or strengthen the research proposal:

NONE

☐ If this box is checked, please submit any documents you revise to the IRB Administrator at irb@valdosta.edu to ensure an updated record of your exemption.

Elizabeth W. Olphie 5/18/15
Elizabeth W. Olphie, IRB Administrator Date

Thank you for submitting an IRB application.
Please direct questions to irb@valdosta.edu or 229-259-5045.

Revised: 12.13.12

APPENDIX J:

Key Term Definitions

Appendix J: Key Term Definitions

The definitions below provide a general reference point for the reader. Additional information on these topics, which further explains these concepts, is presented in the text.

Quasi-Judicial Officers: There are a myriad of positions within the state-level judiciary system that comprise this category, including: magistrates,[34] special masters,[35] lay justices, administrative law judges (a.k.a. hearing officers), and some higher level court administrators. For the purposes of this study, a quasi-judicial officer is a person in a judicial decision making role who is not professionally[36] trained in the law and/or who has not passed the state bar exam (Provine 1986; Silberman, Prescot, and Clark 1979).

Street-Level Bureaucrats: This term was coined by Michael Lipsky in his 1980 touchstone book *Street-Level Bureaucracy: Dilemmas of the Individual in Public Service*. The term describes individuals employed in some facet of the bureaucracy who possess a significant level of discretion and autonomy, and who typically have a personal agenda.

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[34] Magistrate positions are found at both the federal and state judicial levels. At the federal level, these positions are appointed by the respective federal district court judges for a specified time period. The roles and responsibilities of the federal magistrates are outlined in the Federal Magistrates Act of 1968 (82 Statute 1107). At the federal level, a magistrate must be a member of the bar; however, this is not a requirement at all of the individual state levels.

[35] Special masters are particularly interesting positions within the judiciary that are specifically provided for by Rule 46 of the Georgia Uniform Superior Court Rules and Rule 53 of the Federal Rules of Civil Procedures. Typically, retired judges, law professors, and magistrates serve in the capacity of special masters at the federal and state court levels (Federal Judicial Center n.d.; Schwarzer and Cecil n.d.). Job descriptions for a special master can also vary significantly at both the state and federal levels; some are in a purely advisory capacity and others have authority and power that can rival that of a sitting justice. At the federal level, special masters can have far-reaching case duties, such as mediation, evidentiary evaluation, fact finding, and investigation, and they can act as advisors. While the special master can provide speed and efficiency, a delay may arise if the judge must review numerous reports prepared by this individual (Farrell 1994). For the purposes of this project, the state definition, whereby the special master performs judicial duties, is used.

[36] "Professionally trained" refers to obtaining advanced, formal legal training at an accredited institution of higher learning (i.e., college or university). Although there are many advanced legal degrees (J.D., LL.M., LL.D., S.J.D.) in the United States, this project refers to them as a whole as advanced formal legal training. Appendix G provides a brief description of advanced legal degrees and the curricula typically studied.

Some of the types of positions Lipsky specifically reviewed in his study were police officers, teachers, and social workers. While there certainly is a formal organizational hierarchy–as well as rules, regulations, and procedures that are inherent in each the aforementioned positions–it is important to understand that there is a high level of discretion and autonomy that each position enjoys in individual, daily activities. Subsequent scholars have shown that Lipsky's work can be generalized to positions in other bureaucratic arenas. This research study explores the degree to which quasi-judicial officers in the legal system should also be classified as street level bureaucrats and, as such, should have limited and supervised judicial decision-making roles and/or responsibilities.

State Court System: The state court system is composed of various levels of the judiciary, such as trial (municipal, magistrate, probate, or juvenile), superior, appeals, and state supreme courts. Each of these divisions operates and functions independently of one another, since they are located in different counties, and each typically has its own administrative support staff due to these geographic limitations. Appendix E provides a diagram of the respective court levels in the state of Georgia. It is important to note that state court structures can vary by state; some are elaborate, while others are streamlined.

Interpretation of the Law: Although it is assumed that justices follow "the letter of the law"[37] in adjudicating cases, laws are often subject to individual interpretation. Interpretation is a distinctly gray area, as one can also posit that mitigating circumstances, experience, or the "spirit of the law"[38] is being followed rather than solely the letter of

[37] "Letter of the law" refers to the actual words that compose the text of the law/statute.
[38] "Spirit of the law" refers to the intent of those who initially created the law. An example that underscores the difference might be jaywalking across a street in which there are no motorists, when an individual is

the law. While differences between the interpretations certainly exist, judges are tasked by virtue of their position, in part, with balancing both in their respective case decisions. Understanding the appropriate time to use these potentially competing theories is generally attained through education in the law and experience. It should be noted that interpretation of the law is bound by the principle of *stare decisis*, which refers to precedent. When ruling on a case, judges generally "consider themselves bound by how other courts of equal or superior rank have previously interpreted a law" (U.S. Department of State 2004, 13). However, this does not prevent differing interpretations[39] of a law.

Discretion: Just as interpretation of the law cannot easily be defined, the same type of dilemma exists for individual-level discretion within the judiciary. Discretion in the realm of legal interpretation represents, to a degree, the balancing of both the letter and the spirit of the law in the adjudication of cases. An individual with a specific agenda could eventually move the law toward a specific direction using the spirit of the law as a justification of the decision rendered. It should be noted that movement of the law in a specific direction is not instantaneous and can take time to fully materialize, and that movement of the law is typically more apt to occur at higher level judicial positions, such as state supreme courts or courts of appeal. Someone untrained in the law may not understand all of the potential ramifications and minutiae of balancing and understanding

given a ticket by a police officer (Gordon and Garcia 2011). The pedestrian did not violate the spirit of the law, as there was no threat of danger, but did violate the letter of the law, which prohibits jaywalking at all times.

[39] For the purposes of this paper, interpretation of the law refers to how one reads a law and any subsequent related case law and applies it to the case over which one is presiding. Given that the specific facts in cases generally differ from one another, it is often true that judicial decision makers will use these differences to justify differing interpretations and applications of the same law to different cases.

these types of underlying judicial concepts. It is vital to understand when the use of discretion is and is not appropriate to ensure legal precedents are not set or violated, and that an individual's rights and due process are not violated.

Political and Policy Influences: As the judiciary is charged with interpretation of the law, every legal decision can potentially have a political and/or policy influence. Examples of topics of more influential court decisions include equality (race and gender), criminal due process, and abortion (Rosenberg 1991; U.S. Department of State 2004). There is a political science sub-field dedicated to examining the various political and policy influences emanating from the judiciary. This study does not delve specifically into that literature, but it is important to recognize these potential ramifications.

Survey: Detailed information about the survey used for this project is available in Table 2, in Chapter 3: Methodology.

APPENDIX K:

Survey Data for All Questions

Appendix K: Survey Data for all questions

1. Please indicate the best description of your current position in the state judicial system.
   Judge: 173 (52.3%)
   Special master: 0 (0%)
   Magistrate: 44 (13.3%)
   Mediator/arbiter: 0 (0%)
   Court clerk or upper level administrator: 84 (25.4%)
   Other: 30 (9.1%)

2. What type of college degree(s) have you earned (please indicate all degree that you have earned)?
   Bachelor's (B.A., B.B.A., B.S., etc.): 155 (46.8%)
   Master's (M.A., M.S., M.B.A., etc.): 52 (15.7%)
   Doctorate (Ph.D., D.P.A, Ed.D. etc.): 5 (1.5%)
   Juris Doctorate (J.D.): 186 (56.2%)
   Not applicable, I do not have a degree 43 (13%)
   Other: 33 (10%)

3. What type of court do you primarily work in (check all that apply)?
   Civil: 11 (3.3%)
   Criminal: 78 (23.6%)
   Probate: 37 (11.2%)
   Traffic: 23 (6.9%)
   Magistrate: 69 (20.8%)
   Other (please indicate the type of court in space provided): 113 (34.1%)

4. How much authority do you have in establishing rules and procedures about how your work is to be done?
   Complete autonomy: 49 (14.8%)
   Lots of discretion: 138 (41.7%)
   Some discretion: 102 (30.8%)
   Little discretion: 20 (6%)
   I must follow inflexible and required guidelines: 22 (6.6%)

5. To what extent do you perform the same tasks daily?
   Always: 28 (8.5%)
   Very frequently: 239 (72.2%)
   Occasionally: 46 (13.9%)
   Rarely: 10 (3%)
   Very rarely: 6 (1.8%)
   Never: 2 (0.6%)

6. What types of reference materials do you have access to (check all that apply)?
    Online legal resources (i.e., sources such as Lexis or Westlaw): 299 (90.3%)
    Other Internet resources: 208 (62.8%)
    Books: 299 (90.3%)
    Journals: 182 (55%)
    Colleagues: 293 (88.5%)
    External judicial organizations (please indicate the name of the organization in space provided): 111 (33.5%)

7. To what extent are the above indicated resources adequate?
    Always: 102 (30.8%)
    Very frequently: 215 (65%)
    Occasionally: 13 (3.9%)
    Rarely: 1 (0.3%)
    Very rarely: 0 (0%)
    Never: 0 (0%)

8. What do you do if you have questions about the law? (check all that apply)
    Consult online legal resources (i.e., resources such as Lexis and Westlaw): 249 (75.2%)
    Consult other Internet resources: 117 (35.3%)
    Refer to books: 249 (75.2%)
    Refer to journals: 93 (28.1%)
    Consult with judges: 261 (78.9%)
    Consult with peers: 198 (59.8%)
    Contact external judicial organizations (please indicate the name of the organization in the space provided): 77 (23.3%)

9. How often do you consult reference materials to do your job?
    Always: 20 (6%)
    Very frequently: 187 (56.5%)
    Occasionally: 119 (36%)
    Rarely: 4 (1.2%)
    Very rarely: 1 (0.3%)
    Never: 0 (0%)