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Reformation of Justice of the Peace Courts:
Case Studies in New York State and the Province of Ontario, Canada

A Dissertation submitted in partial satisfaction
of the requirements for the degree of

Doctor of Philosophy

in

Sociology

by

Cory Robert Lepage

June 2011

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ABSTRACT OF THE DISSERTATION

Reformation of Justice of the Peace Courts:
Case Studies in New York State and the Province of Ontario, Canada

by

Cory Robert Lepage

Doctor of Philosophy, Graduate Program in Sociology
University of California, Riverside, June 2011
Dr. Austin T. Turk, Chairperson

Quasi-judicial officers play a large role in court administration and adjudication in the legal systems of both the United States and Canada. While there is a large amount of variation in their titles, (such as magistrate, commissioner, referee, or justice of the peace), quasi or lay judges are widely used in many of the United States and in the Canadian provinces. They generally have a very small and limited scope of authority inclusive of mostly small civil and in some jurisdictions criminal matters, and they customarily operate in rural areas with small populations. While there exists widespread use of these quasi-judicial officers, there exist as well problems with the use of a quasi-judiciary. Policy and legal debates have centered on the use of lay judges with little or no legal training, the selection process of these judges, and the lack of resources tied to limited local funding for these judges. Some suggestions for alleviating the dilemmas associated with quasi-judicial officers
involve increasing educational requirements and the resources of the quasi-judges, and additionally choosing these quasi-judges through a merit selection process.

Little empirical research on previous reform efforts for quasi-judicial officers exists among numerous legal opinions that generally either argue for the need of and continued use of these officers or for the abolition of quasi-judicial systems all together. This lack of research makes it difficult to assess the utility of the role that these officers play as well as to determine what types of reform efforts, if any, are needed. This is an empirically grounded examination of recently enacted reform efforts concerning increasing the legitimacy of the power and authority of quasi-judges in the state of New York, and the Canadian province of Ontario. Documentary and interview data are being used to assess the impact of reforms already implemented in these two locations. The policy implications of this work influences the continued use of these quasi-judicial officers who save time and money in an increasingly complex legal system by hearing many of the small civil and criminal cases that would clog the courts of general jurisdiction in their absence.
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Chapter 1: Introduction

This study is an examination of the justice of the peace courts in the State of New York, and the Canadian Province of Ontario. Justice of the peace courts are in operation in almost all of the states in the United States, as well as all of the Canadian Provinces. These courts are the lowest courts of limited jurisdiction in the various court structures. Although their authority and jurisdiction varies between different locations, mostly the justices can hear small civil and criminal cases; most often misdemeanor cases that are the most frequent in the court systems. The justices adjudicate over these small cases, thus preventing these numerous routine matters from inundating the higher court tiers. The justices in these courts, also known as magistrates or commissioners, quite often are not required to have any legal training or education, and most often do not; generally a high school degree is sufficient for qualification as a justice of the peace.

This study documents the history of the justice of the peace courts and describes the historical and contemporary social issues surrounding the justices of the peace and their courts. Citing a twenty-five year absence of empirical work and aperture in the knowledge of these courts, this study furthers the understanding by analyzing the courts and the justices in the specific locations in Canada and the United States. Justification for these locations is outlined with documentation of recent legislative reform measures enacted in both locations. Care is taken to acknowledge the similarities and differences of the justices and the courts between both sites, and employs surveys and interviews to highlight changes in the contemporary court structures and processes compared to their historical antecedents.
Chapter two discusses the history of the justice of the peace courts in the United States and Canada, and reviews the literature on justice of the peace courts in general. The literature review reveals the major conceptual problem and issues that have surrounded the courts since the inception of the United States, and documents available historical literature on the Canadian history of the justice of the peace courts. This chapter also lays out the theoretical framework guiding the methodology of the project, and justifies the use of this theoretical framework through an illustration of the evolution of law in the Western United States and Canada. This illustration provides the rationale and basis for use of this theoretical model in the current study.

Chapter three is the methodology section of the project. This chapter begins by using the guidance of previous work in the literature review chapter coupled with the theoretical paradigm described in that chapter to formulate the basic research questions for this study. Once those research questions have been concretely defined and operationalized, the justification for the appropriate methodology is discussed. Next, the discussion focuses on the creation of the survey instrument going from general concepts and narrowing down to the specific survey questions. The design of the survey instrument as well as the sampling methodology is described in preparation for the discussion on the interview instrument and it’s construction using the specific questions, guided by the literature, to develop more general dimensional questions in developing the interview schedule. The interview techniques are also described in this chapter.

Chapter four presents the results of the survey data in the study. General demographics of the justices’ surveys are put forth both in text and in tabular format. Next
this chapter displays the quantitative results for all dimensions of the different arrays of questions in the surveys as well as the results for each of the questions within those arrays. Descriptive statistics are used to interpret the survey results and a comparison is given and interpreted of the results of this survey with prior survey work done on the justice of the peace courts in New York State and Ontario, Canada. A more sophisticated analysis is performed in order to identify why certain groups of justices may have specific views on a number of the questions within the surveys. This chapter, then, gives a cross-sectional analysis of the current state of the justice of the peace courts and attempts to compare that analysis with prior work.

Chapter five discusses the cumulative findings from the interviews with a sample of the justices. While the previous chapter presented the survey results, they only tell part of the story of the perceptions of the justices that is more fully complimented in this chapter. Interviews with the justices provided a richer and deeper understanding of not only the historical and current issues that were brought to light by the review of the literature, but also provided more detailed nuances of those issues than could have been discovered by the surveys alone. These nuances are explored and the findings discussed and provide a more complete understanding of how the justices and their courts have evolved and what the justices’ recommend for the future of their courts.

Chapter six summarizes the entire study and it’s findings in a more succinct and abridged manner. This chapter attempts to concisely answer each of the research questions developed in the methodology chapter. It also discusses further questions that have arisen
from this work, the limitations of the current study, and provides suggestions for further work in the arena of justice of the peace courts for future considerations.
Chapter 2: Review of the Literature

Many people have an idealized notion of the justice system in the United States. It is generally believed that the processing of a court case, from the small traffic citation to the large murder trial, is heard in a court with a judge that presides over the prosecution, the defense, and the litigants; every person has their day in court, and justice is dispensed by an authority figure that is an expert on the laws of the case and is an impartial and neutral party. Those who study the legal system, or those who generally have been involved as either a plaintiff or a defendant in a case, know that this idealized perception of perfection in the justice system is just that; it is a mystic perception that is false. One of the unknown perceptions is the widespread use of justice of the peace courts that is frequent in many local jurisdictions. In most of these courts, the justices are not attorneys and may not have experience or knowledge of the law of the specific cases before them. There has been considerable discussion, especially from media exposés, about the utility and legitimacy of these courts as well as the types of justice these courts dispense. Many have argued for the abolition of these courts altogether, while others have proposed changes in these courts in terms of local and state funding and legal requirements for the justices. While there have been demands for change, that are largely fueled by glaring examples of miscarriages of justice and blatant cases of discrimination, there has until now been little change in the structure or the authority that is granted to these courts. In light of the anecdotal examples of abuse of authority by the courts, the justice of the peace courts seem to have an
institutionalized legitimacy by the citizenry that has worked to maintain their existence
despite concerns about their ability to fairly and legally adjudicate cases before them.

Review of the Literature

Although justice of the peace courts have an extensive history coupled with a history
of reforms movements in both the United States and Canada, many people are not aware that
justice of the peace courts exist or know what they do. Usually referred to as justices of the
peace, in some jurisdictions they are alternatively known as town or village justices,
magistrates, referees or commissioners. Justice of the peace courts are widespread
throughout the United States and Canada, existing in all of the Canadian provinces and many
states in the United States. However, while there are numerous legal opinions relating to
justice of the peace courts in various law journals, empirical literature on justice of the peace
courts is sparse (Alfini, 1981). Most justice of the peace courts are limited jurisdiction
courts, and as such hear small civil cases, while some courts may hear some small criminal
matters and may have authority to issue warrants. In some cases their scope is limited to
family matters or civil matters, usually though they have much more jurisdictional latitude
with wide variation in their scope.

One of the problems noted in the research on these courts is the fact that most justices
of the peace are not attorneys, and do not have any formal legal training. While some
contend that since the justices are not lawyers they are not in a position to know the legal
prescripts and rules of evidence in civil and/or criminal matters (Silberman, 1980), and as
such the dispensation of justice by non-lawyered justices tends to vary compared with
decisions in similar cases that are adjudicated by lawyered judges (Mansfield, 1999). However, other researchers who have examined the outcomes of these lay judge courts find that non-lawyered justices tend to focus more on the legal requirements of a case than do lawyered judges who tend to take into account the totality of circumstances of a case before them (Provine, 1981) resulting in justice that tends to be similar between lawyered and non-lawyered judges.

**History**

In 2006, The New York Times ran an exposé over a series of articles that looked at justice of the peace courts in upstate New York. This exposé gave glaring examples of miscarriages of justice from these courts that renewed an earlier outcry to either revamp these courts or to even abolish them altogether (Glaberson, 2006). Ironically the basis of the arguments against these courts was very similar to the rationale in the creation of the courts earlier in American history. Their inception was the result of the struggle between an independent judiciary system and the desire for accountability of democratically elected officials (White, 1976). First in colonial times, and later in frontier times, when people started a westward migration, this struggle resulted in arguments for and against a non-lawyer judiciary. Some believed that a non-lawyer judiciary would keep the courts closer to the people and more accountable, while others argued that judges who were not lawyers threatened the independence and the integrity of the judicial system. As more people moved into an untamed West, the proponents for a non-lawyer judiciary won out. Judges with jurisdictions in western territories, but who were seated in the eastern United States, created a
government that was removed from the issues of the people. People in these territories tended to distrust the judges, and relied on the local justices of the peace (Hall, 1981; Sheldon, 1987). Justices of the peace, and justice of the peace courts were close and readily available and were used most often as adjudicators in the developing West (Wunder, 1979). This advocacy for a judicial system that was comprised of non-lawyer judges shifted as the economic and social history of America shifted as well. As the population in America increased, the number of laws for social control increased with the population.

Consequently, as the number of laws and the complexity of the legal system increased, proponents again argued for a judiciary that was composed of lawyers. Again, it was alleged that lawyers and not laymen adjudicators were needed in order to understand the legal system, as lawyers were the ones who could effectively dispense justice in the myriad of new legislation; non-lawyer judges were not skilled enough nor did they have the proper legal training to be able to understand the rules and ramifications of a complex legal system (Sheldon, 1988). There was too much to lose with judges that were not lawyers, especially with the increasing number of cases that were involving larger sums of money. The legal institution was also at this time becoming more and more attractive to lawyers as it became more professionalized. This attraction by attorneys to the judiciary is one of the main reasons for the shift to a judiciary of lawyers, since judges were in a good position to make or at the very least influence public policy by their decisions (Horwitz, 1977; Nelson, 1975).

Others believe that it was not so much the attraction and professionalism of the judiciary that prompted the change towards lawyered judges, but was attributed to the belief that a system of lawyered judges ensured the separation of powers mandated by the constitution.
Maintenance of this separation of powers could only be done with a professional judiciary that used lawyers as judges (Provine, 1986). Still others contend that it was not a one or the other dichotomy that was the catalyst for a lawyered judiciary, but was a combination of both the attraction to the judiciary by lawyers and the maintenance of the separation of powers in an age of formalism in the law. The idea of formalism under the law was that the institution should be scientific and objective with laws (Horowitz, 1977). Perhaps it was the combination of all three arguments and the increasing desire for a professionalized legal system that was the biggest push in the change from non-lawyered to lawyered judges in the judiciary (Sheldon, 1988). Judges who were not lawyers were viewed as unable to understand the laws in this time of increasing legal complexity, and consequently were unable to apply the laws that they didn’t understand in cases they presided over. Professionalism ultimately won out and the legal system moved toward an institution of lawyered judges.

Contemporary analysis of requisite justice of the peace courts is juxtaposed with arguments rooted in American history. In earlier times, these courts were perceived to be a fairer avenue for litigants since justices of the peace were geographically closer to the people. However, as the judicial system moved toward a more professional manner away from the justice of the peace courts, the non-lawyer judge courts have remained in various state and provincial court structures and have seen a new call for their use. Many now advocate the utility of justice of the peace courts with an overburdened justice system. Justice of the peace courts are inexpensive to maintain and to staff, and they hear cases that are comparatively small in the entire justice system and somewhat insignificant for the higher
courts to deal with. While this fuels the lower status perception of the courts and the justices, their utility is in their function. In an already overburdened court system, the eradication of the justice of the peace courts would only serve to exacerbate an overburdened system and could limit the options for redress for people with small claims or cases (Provine, 1981). For this reason, the institutionalization of justice of the peace courts ensures that little will change. The justice system needs these courts, and this need will ensure their survival. In light of this, some argue that reform efforts should focus on environmental changes within the justice of the peace courts, not for the elimination of the courts. The courts have utility and the focus should be addressing the problems in the courts such as funding, resources and training in the courts.

**Research on Justice of the Peace Courts the in United States**

In recent years there has been a volume of legal opinions on justice of the peace courts in the United States, though there exists a small amount of empirical research on justice of the peace courts in either the United States or Canada. Existing research focuses on narrow issues surrounding the legal stature and the variation of cases that are adjudicated by these courts.

Justice of the peace courts have limited jurisdiction, meaning that they are limited in the scope of cases that they can hear. Primarily they are small civil cases involving small amounts of money. In some locales, these courts are limited to specialized cases, while in other jurisdictions these courts can hear preliminary felony hearings or even issue warrants (McFarland, 2004). Because the local authorities dictate the jurisdiction of these courts, the
titles of these lay judges is as diverse as their jurisdictional scope. Many researchers refer to the justices of these courts as quasi-judicial officers; officers that do similar functions in the courts as full fledged judges, but that in many instances have little or no legal training nor a formal legal educational training (Provine, 1981).

Due to the quasi-judicial nature of these courts, and due to their prevalence in most state court structures, it is surprising to find the relative lack of research that has been carried out on these courts. Research that has been done tends to look at specific issues regarding the legal nature and the varying degrees or types of justice that is dispensed by these courts (Doob, 1991; Provine, 1986). One of the biggest concerns regarding justice of the peace courts is the legal decisions that justices of the peace make; the question of whether non-lawyer justices would adjudicate the same as a lawyer justice (Provine, 1981). Many argue that since lawyer justices have more education and better training in law and in rules of procedure and evidence, they have a better understanding of the complexities in the cases that come before them, and more fairly and accurately apply the laws and dispense equitable justice. Non-lawyer judges do not have this specific legal training, and therefore the non-lawyer judges will have to rely on extra-legal circumstances in making their judgments, thus dispensing justice that is biased towards either the defense, the prosecution or the plaintiff and more importantly inconsistent across jurisdictions or even across different cases with similar offenders appearing before an individual justice. A similar question comes directly from the issue of parity of justice between lawyer and non-lawyer judges. What is the effect of these decisions on due process rights of defendants (Fieman, 1997)? If a non-lawyer judge does not know or understand the legal aspects in a case that appears before him or her, then
the theory is that these non-lawyer judges will consequently not have an understanding of due process rights of the defendants. Thus, it is argued that defendants appearing before non-lawyer judges are more likely to have their due process rights violated. Because of this perception of due process violations, other studies have examined defendants appeal rights and the processes when a defendant appeals the ruling of a non-lawyer judge (Hicks, 1996).

Research on justice of the peace courts in the United States (Provine, 1986) as a justice of the peace, an attorney, and political science professor, Provine examined these courts and found that there is not a significant difference in the types of justice being dispensed by the justice of the peace courts. (Provine, 1991). The bigger issue is the environmental factors surrounding justice of the peace courts. Typically these courts are severely under-funded, due to the fact that they are funded through local town or county coffers that have limited funds. As a result of the lack of funding for the courts and training for the justices, the courts are staffed by justices who are sometimes reluctant to take the position because the pay can be very small compared with the time commitment required for the job. There also tends to be a negative view of the justices by some of the people in the local jurisdictions, and more importantly from lawyers and lawyer judges (Provine, 1981). The justice of the peace courts in the United States seem to be the ugly step-child of the rest of the state courts structure.

Also examined (Provine, 1986) were the issues of professionalism, framed in the hypothesis that non-lawyer justices that do not have formal legal training tend to rely on extra-legal circumstances to make biased decisions towards either the prosecution or defense. The belief was that the rulings from non-lawyer justices would create violations of due
process rights that would later be appealed, ultimately putting more burdens on appellate courts. However, it was found again that there were not any significant differences in terms of bias or due process violations by either lawyer or non-lawyer justices (Provine, 1981).

Many researchers have examined the justice of the peace courts (Alfini, 1981; Lamber, 1992; McFarland, 2004; Mansfield, 1999; Silberman, 1979; Silberman, 1980; Swain, 1996; Tobin, 1999;), and some states such as Iowa (Green, 1975), Kansas (Wetmore, 1960), Louisiana (American Judicature Society, 1972), Montana (Mason, 1967), New York (Kress, 1976), Tennessee (Howard, 1934), with justice of the peace courts have commissioned studies aimed at discovering problems associated with justice of the peace courts that would offer recommendations for change improving the efficiency and perceptions of the courts, and to eradicate any sources of judicial bias that may have been a result of the use of non-attorney justices (McFarland, 2004). Typically studies found that it is not the issue of having a local justice of the peace with a formal legal education, but the bigger contention is the environmental factors that surround the justices and their courts. Commonly the courts are not held in a dedicated location nor do they keep recordings of court hearings and outcomes (Ostrom, 1993). The consensus appears that while justice of the peace courts serve the vital function of hearing small cases that would overburden the upper levels of the state court systems, it is their lack of resources that continues to be an issue.

Research on Justice of the Peace Courts in Canada

While there have been scant studies on justice of the peace courts in the United States, research on the justice of the peace courts in Canada yields marginally better results.
One study conducted at the University of Toronto’s Centre for Criminology found the same environmental, and educational issues affecting the Canadian justice of the peace courts as in the United States (Doob, 1991).

In looking at the role the justices play in the structure of the court system, being a justice of the peace can be a double edged sword due to the nature that they are accountable to many different groups in a local setting. While ideally the role of a justice of the peace is a buffer between the criminal justice system and the public, the role can be problematic when relatives or associates who are members of the public appear before them (Doob, 1991), however, the role in the same context is a matter of convenience and cost. Not unlike the role they perform in the United States, justices have a value in rural areas where there is a much smaller need and demand for their services than in urban areas. These lay judges are generally paid less than their legally trained counterparts and in addition required to carry out their roles outside of the working hours of the court system (Doob, 1991).

Professionalism of the Canadian justices of the peace is another issue that is similar to justices of the peace in the United States. Some argue that their low status comes from the fact that they are quasi-legal officials due to their lack of legal training. Some justices report that their low status stems from pressures inside of the criminal justice system (e.g. police) more than from pressures from the citizenry (Doob, 1991). As a result of legal commissions from the Ministry of the Attorney General during the mid 1970’s, Canada has implemented legal changes in the screening process and more training for justices of the peace so as to elevate their status in the eyes of the legal profession and the public (Ontario Law Reform Commission, 1973). Training for the justices relates directly to their perceptions of
professionalism in that “training is a way in which status can be given or taken away” (Doob, 1991). As in the United States, there have been recent court challenges on appeal over the use of non-lawyer justices on the grounds that non-lawyer justices are not competent enough to preside over provincial offices. However, the courts in Canada and the United States have found that there is sufficient selection and training processes, and the justices of the peace are competent to hear and preside over cases (Doob, 1991). Compared to their counterparts in the United States, it appears that justices of the peace in Canada face many of the same general issues regarding training and professionalism as well as the question of the future of these courts.

Another more recent study that advocates for more empirical work on Justice of the Peace Courts in Ontario is a study done by the National Center for the State Courts, (Kleiman, 2008), that examined the workload of the justices. This study found that due to the advances in technology and the speed at which information is accessed and transmitted that the workload of the justices in Ontario has increased dramatically in recent years. The authors argues that with the advent of recent legislative changes to reform the courts, specifically the Justice of the Peace Act in 2005, (Justice, 2005), the workload of the justices would continue to increase and recommended that their workloads be examined annually.

Given the small amount of empirical work, and the lack of timeliness of evidence on justice of the peace courts, a new approach is needed. Following is a theoretically based methodological approach for a current examination that is timely and uses illustrations of a cross cultural comparison in the evolution of civil law in the United States and Canada to suggest how models of recent changes in justice of the peace courts in both countries may
again influence and inform reform approaches. With a theoretical grounding in conflict theory we can see the power dynamics in both locations, which is the vehicle behind the socio-legal change.

Theoretical Perspective

Conflict analysis is one method to understand the legitimation and sources of social control that exist in the justice of the peace courts in the United States and Canada. One of the manners in which societies regulate order and social control is through their legal systems, whether they are generally accepted standards of behavior as in primitive societies, or explicit laws stating what is and what is not acceptable behavior as in modern advanced societies. Many who advance theories of law use varying contexts, from addressing why laws exist and how they are created, or ideas on how and when laws evolve, as well as predictions on the amounts of law in relation to varying social conditions have examined this legal method of social control.

Two examples in the history of the United States and Canada illustrate theory of law within a conflict perspective by looking at, 1) the history of riparian law in the western United States and Canada, and 2) the structure and legitimacy of justice of the peace courts in the Canadian province of Ontario and in New York State. These two examples highlight the advent and evolution of laws from a historical perspective; the genesis of both was the need for social control at the same time period in American and Canadian history.
Conflict theory stems from Max Weber (Weber, 1918) in the view of the actions and motivations for actions by the people and groups in society. Social issues of conflict and coercion are an inherent part of society. This perspective emphasizes how the power dimensions in forming laws are important in terms of which groups are able to enact legislation, resulting in power shifts that result from legal behavior. So we should see the power dimensions in terms of which groups are successful in pushing for either lawyer or non-lawyer judges, and which groups can maintain the status quo by working to either abolish or keep the justice of the peace courts through the use economic power, political power, ideological and diversionary power. The legal system is essentially a weapon of social control (Turk, 1976). Using a conflict perspective we can see the power differentials in outcomes where either the courts overcome their challenges, or they cease to exist. Who are the agents of change, and how are they effective in mobilizing to improve the courts or discontinue them? While there have been unsuccessful challenges to do away with justice of the peace, it is still questionable whether the courts will survive the current call for their abolition or change in structure.

Conflict Perspective

The conflict perspective on law differs from other legal perspectives in the view of the actions and motivations for actions by the people and groups in society. While a functionalist perspective assumes some degree of stability and harmony, the resulting amounts of legislation are in place to maintain order and stability in society. Conflict theorists alternatively purport that a functionalist perspective ignores the social issues of conflict and coercion that are part of society and that this ignorance and focus on stability
only serves to justify and maintain the status quo in social groups (Trevino, 1996). Consequently the conflict perspective focuses on those issues of conflict and coercion and gives a more accurate picture of the social forces that result in the formation and evolution of laws, and spotlights the power dimensions in terms of which groups are able to enact legislation and the resulting power shifts and maintenance that results from legal behavior.

One of the founders of the conflict perspective, Ralf Dahrendorf, critiqued the functionalist perspective for this ignorance of the interdependence of the different social institutions that legitimates the status quo of society in the functionalist perspective when he coined the phrase “the conservatism of complacency” (Dahrendorf, 1958). He instead proposed a conflict model of society that included four essential propositions: 1) that all societies are at all times subjected to social change, 2) that as all societies are always subjected to change, they are also always subjected to social conflict, 3) that all aspects and parts of society contribute to this change, and 4) that because of this subjection to change and conflict by all elements of society, all societies rely on the constraint of some members of the society by some of the other members of society (Trevino, 1996). Although some argue that the conflict perspective is a phoenix of the Marxian perspective on class struggles in society, current conflict theorists support the idea that instead of the narrow focus on class oppression in the Marxian tradition, the conflict perspective is different in that it focuses more on the broad general adversarial issues of the different groups in society. Specifically focusing on these issues, Turk focuses on the power dimensions in these clashes by examining who is able to effectively maintain and exert dominance via the legal system, and the motivations for those power struggles of those dominant groups (Turk, 1969, 1976).
Turk’s Conflict Theory

Turk argues in his conflict model perspective that a theoretical perspective on the law needs to account for both the good and the bad aspects of law when accounting for conflict and change in a diverse society. Although this idea is similar to the original proposition put forth by Dahrendorf, it is more encompassing in its comparison of the functionalist and conflict perspective. An examination of the two perspectives finds that they are in opposition to each other in assumptions about the means by which social order is achieved. In the functionalist perspective, it assumes that social order is achieved via consensus from the members of society and legal behavior is viewed through the benefits that power gives to its members. In the conflict perspective, if social order is achieved through a model of conflict between groups in an effort to maintain and improve their efforts for dominance, then the legal system is built upon whatever actions are deemed as legal by those groups in an effort to maintain their advantage in society (Turk, 1969).

In his seminal work on legal theory, Law as a Weapon in Social Conflict, Turk effectively argues that law is power in that it is viewed as a weapon that can be controlled and mobilized (Trevino, 1996). Turk puts forth five different types of power that are represented by law: police power, economic power, political power, ideological power, and diversionary power.

Police power is used when a group has the mean of direct physical violence. It is illustrated when a country has support of an authorizing body in allowing the country to
prompt direct military action against another country. Essentially a group has access and the ability to maintain dominance or to resolve conflict through the use of the means of direct physical force or a policing unit.

Economic power is garnered through the control of means of production. A group is able to effectively control the means of production and the allocation of resources to other groups by enacting legislation that governs who is able to produce and more evidently who is able to have access to that production and is able to benefit from the production and resources. A group can organize politically through legislation to define what is legal or illegal to produce or consume or change the costs of access to resources for some groups such as housing, transportation or work.

Political power is control over the decision making process in local, state, and federal governments. Groups that are able to organize politically can exert pressures on legislatures to ensure ordinances or laws are passed that favor those groups, again an example of groups in an adversarial process that are seeking to better their chances over the hindrances of opportunities for other groups.

Ideological power refers to the power to advocate definitions of values and norms in a society. With a diverse society the dominant group may not accept the actions or rituals of some groups, and as such the other groups seeking to put forth their dominant ideologies can marginalize those values or actions.

Diversionary power is the power of groups to shift attentions of other groups to the law rather than to other issues, which may be viewed as a threat to dominant groups. If a social issue that is viewed as a threat to those in power gains attention of the other groups in
society, then through diversionary power those in authority would seek to redirect attention to another issue that is not a threat. An example would be to try to divert the groups towards conflict with each other in an effort to divert attention from the conflict towards the authorities or those in power.

These five types of power define a legal system that essentially is a weapon of control and organization by a dominant group in order to advance their own ideas and desires at the expense of the other groups in society (Trevino, 1996). Although the more disadvantaged may fight back with some legal power, generally the result is social conflict in that the law is not always a remedy to a social conflict, but instead many times may itself create or perpetuate the conflict. Turk’s conflict legal theory “deal[s] with conflict management as a problematic outcome instead of a defining characteristic of law as a social and cultural phenomenon” (Turk, 1976). While the functionalist perspective, assumes that laws are in place to alleviate social conflict, Turk believes that the laws themselves are the weapons used by those in power, the dominant groups, as a means of maintaining their own interests and power, and as a way for them to advance their own interests as is more likely the result of conflicts between different subgroups in society rather than an agreement of all the groups in society together. Law is also a weapon used as far as they have recourse by non-dominant groups.

Understanding these two different theoretical foundations of law gives more insight when exploring different cases where laws have evolved in response to social discord. During the historical development of the West in the United States and Canada, conflicts developed over riparian water rights in the two countries and in the manner in which each
country and the groups in each country used laws in an effort to establish who had rights to water. Also during this time, these conflicts were sometimes heard in local courts by justices of the peace rather than in large bureaucratic state and federal courts with legally trained judges. The development, critiques, and advocations of these justice of the peace courts were evident during the social development of the two countries. In their current state, some argue that there no longer exists a need for these justice of the peace courts and further argue that they discriminate in their rulings and in terms of who has access to the courts, while others argue that they serve a vital function to the larger state and provincial court systems and that further resources need to be appropriated to these courts in order to regain what some see as lost legitimacy.

Conflict Theory and the Evolution of Law

*Riparian Rights in the Western United States*

The evolution and development of water right laws in western United States and Canada is an interesting example of different groups trying to exert their economic and political influence in order to establish and maintain access to an economic resource. Although Canadian civil law typically has been heavily influenced by English common law much more than American civil law, in the case of water right laws the Canadian laws are much more similar to the American water right laws that seemed to be influenced more by economic climate and geographical needs than by legal traditions.
In the early history of the development of the western United States, riparian rights generally followed the model of English common law. Rights to the use of water were restricted to those that owned property next to the water itself. A person had the right to use the water, and that right was only subject to those that owned property upstream from the water. Additionally, those who owned property upstream from other property owners had a right to water that was subject to the condition that they could not significantly reduce the quality of the water or the quantity of the downstream flow of water for other users (Percy, 1992). Although this system worked in times of minimal settlement or in times with an abundance of water, the riparian doctrine had three distinct flaws: 1) the system impeded development of land that was further and further away from the water source as there were no rights to irrigation, 2) the landowner closest to the source of the water could not use the water intensively as his right to the use of the water restricted him from significantly impeding the downstream flow of the water, and 3) in times of water shortage, the system was not able to establish priorities for the allocation of water; all the landowners had the same claim to the water.

As more settlers moved to the western United States, the realization of the flaws in the riparian system of water rights were recognized and eventually were replaced with a doctrine of the principle of the first person who put the water to productive use. This system primarily came from early Mormon settlers that had with them a system of water titles. This principle of rights by whoever was the first to put the water to productive use led to a change from a doctrine of riparian rights to a doctrine of prior appropriation. While the Mormon settlers with their system of water titles were the start of the change, the most significant
impetus for the change was the Gold Rush in 1848 and 1849. The gold minors who came to the western United States started to adopt the principles of staking water claims in order to acquire the rights to mine the land. This required that the miner post the land and record an intention to divert a specified quantity of water, thus putting the water to beneficial use. Rules and regulations were adopted in order to specifically date when the water was claimed under the doctrine of prior appropriation. This doctrine was exclusively used and eventually became codified into California law. Water rights were determined not by who owned the land, but who first put the water to a beneficial use. The quantity of water used that was restricted under the riparian system was not limited by the rights of the downstream users, but only by the amount required for the purposes of the appropriator put forth in the water claim, so that in times of water shortage, allocation of water was determined by seniority water claims (Percy, 1992).

This riparian system of water rights was eventually abolished with the advent of the Gold Rush through acts of judicial legislation. This highlights one of the main differences in the evolvement of water right laws between the United States and Canada. While it was judicial decision making in the United States that was the vehicle of legal changes, in Canada changes to water right laws were done through the legislative process. Some believe the difference in the vehicle for the changes was due to the differing views of the role of the courts in the two countries. The United States courts were viewed as being judiciously active and not as passive as the Canadian courts under the English common law system (Percy, 1992).
Riparian Rights in British Columbia

Differing from the doctrine changes of water right laws in the United States via bold judicial legislations, changes in the water right doctrines in Canada were achieved through a series of legislative enactments. Similarly to the United States though, change to the Canadian system of riparian rights came about during the Gold Rush era. The change started in 1858 when the government started curtailing riparian rights due to increased settlement from the gold miners and their advocacy for water use. The governor of British Columbia wanted to avoid the legal disorder that he envisioned with the increased desire for water use, and as such early regulation of gold mining had an important effect on water laws. The changes to the laws were shaped by both the responses of the jurisdictions as well as the practices of those who had participated in the process of change (Percy, 1992). As gold miners came to British Columbia from California, they brought with them their legal traditions that had been codified into California law. The Gold Fields Act was passed that allowed the miners some minor water privileges. The act allowed any person to register a ditch or a water privilege with the water commissioner. In a dispute over a water privilege, the relevant water commissioner who relied on a seniority system of whoever had registered the privilege first resolved the disagreement. Those rights were granted for a period of five years. This registration system was flawed in that someone could have a right to water even if they didn’t own the land. Riparian owners did not have exclusive rights to the water on their land unless they had first recorded water right with the water commissioner (Percy, 1992). Codification later changed this flaw so that landowners did enjoy water rights on their land without registering that right with the commissioner. Further legislative acts effectively
eroded the riparian system of water rights on a gradual basis, until it was finally codified that water rights were vested within the Crown and that the Crown had the right to the use of all the water in any watercourse in the province with the authority to allocate those water rights (Percy, 1992).

This change in water right laws in British Columbia was similar to the doctrine of water right laws in the western United States. Legislation effectively determined the priorities among water right claims. The water rights were detailed in statutory schemes, the cornerstone of which was the declaration that the right to use all water was vested with the Crown (Percy, 1992). It changed from a system of prior allocation rather than prior appropriation. In a system of prior appropriation a person had to put the water to a beneficial use in order to be granted a water right, but a system of prior allocation meant that an individual only had to make an application for a water right without detailing a use. Water rights were generally granted without term limits, and disputes between holders of right to waters were decided by the principle of priority of the date in which the water right was recorded (Percy, 1992).

Riparian Rights on the Canadian Prairies

Although in British Columbia and in the western United States changes to the riparian policies were started due to the water needs of the miners from the Gold Rush, in the Canadian Prairies changes to the riparian system was due primarily to irrigation needs rather than mining. The Canadian Prairies example is a good illustration of people organizing politically in order to enact legislation that benefits their needs. The prairies were seeing
increased settlement with the completion of the Canadian Pacific Railway. As more people settled on the prairies, the issue of water rights was initially served well by the riparian system. As in the United States, the flaw in the system was exposed in Canada during a lengthy drought where the need for water for irrigation came into conflict with the riparian system of water use authority. Early settlers had claimed land that was close to water and fenced off their land, essentially depriving others from access to and use of water during a drought.

The impetus for change in the water right system came from Mormon settlers into Alberta who brought with them their system of water rights through allocation. Mormon elder Charles Card was an advocate of a new model of water rights in Alberta that would guarantee water for irrigation. Card was also a supporter and ally with William Pearce, who was a superintendent of the Mines for the Department of the Interior. Pearce became a strong supporter of water rights for irrigation and advocated new legislation (Percy, 1992). Pearce worked with J.S. Dennis, the chief inspector of Surveys for the Department of the Interior. Dennis went to the United States and examined the irrigation systems and the irrigation laws in northwestern United States. Upon returning to Canada, Dennis sponsored legislation that became the Northwest Irrigation Act of 1894, which restricted the water rights under the riparian system. Passed with political pressure, the act gave Crown the right to the use of all surface water, and the right to allocation of the water rights and use (Percy, 1992). This new system of principle of prior appropriation was essentially the same system used in the states that Dennis had visited earlier. “Manitoba, Saskatchewan and Alberta were governed by law where water rights were vested in the Crown and the Crown allocated those
water rights by way of license on a first come, first served basis. Conflicts in water use were
decided according to a priority that was determined by the date upon which the application
for a license was first submitted” (Percy, 1992). Although arrived at through different
means, both British Columbia and the western Canadian provinces eventually adopted the
same doctrine of principles of water rights used in the United States.

The examination of water rights is an important illustration and use of legal theory
that encompasses all the social aspects in the situation. The functionalist perspective would
assume that water right laws came about to resolve social conflicts and that the amounts of
legislation varied in relation to the differences in social distance of the people. A more
inclusive perspective, Turk’s conflict theory, is better grounded empirically to explain the
changes to the riparian rights. The new legislation did not resolve the conflicts with water
rights, but instead gave advantages to those groups who were trying to maintain their access
to water resources in times of scarcity.

Justice of the Peace Courts in New York and Ontario

The irony is that even though legal evolution in the United States and Canada has not
always been so similar, especially when focusing on the westward migration in both
countries, the issues facing justice of the peace courts tend to be very similar. Empirical
work and court reports and commissions in both countries tend to suggest the need for more
funding to improve the court environments and to increase to some degree the educational
requirements of justices while stopping short of requiring that justices of the peace have a formal legal education.

Examination of the justice of the peace courts is another example of agents of change who influence the evolution of law. Justice of the peace courts vary and change in their jurisdictional scope. Every twenty years or so there has been a push by the people to abolish the justice of the peace courts, However, opposition has never been politically organized enough to succeed. Those who favor these courts have enough political, economic and diversionary power to ensure the courts’ existence. They are able to either pass legislation to increase training for justices or to argue the courts are needed to keep the smaller cases they hear from clogging the state court systems.

Issues concerning justice of the peace courts

Justice of the peace courts are widespread throughout most of the United States. There are approximately 9,000 quasi-judicial officials in various courts throughout the country with almost half being designated as justices of the peace (National Center for State Courts, 2007). The courts themselves can be found in the state court structure of almost all states. Only fourteen states do not use quasi-judicial officials in local justice of the peace courts (McFarland, 2004; National Center for State Courts, 2007). Although arguably most people are unaware of the presence or authority of the justice of the peace courts and the justices themselves, these justices of the peace comprise the majority of the quasi-judicial personnel employed in the justice system today.
Prior research and legal opinions have examined the justice of the peace courts in New York and Ontario as well as other states and provinces, and have noted particular challenges that the courts face for their future existence (Mansfield, 1999; McFarland, 2004; Provine, 1981, 1986). Briefly noted are the three current issues regarding justice of the peace courts:

Should justices be lawyers or not? Currently, most of the justices of the peace in the United States and Canada are not lawyers or even required to have any post high school education. Many contend that justices of the peace do not need to be lawyers due to their close relationship with community members in rural areas. Most are in small towns where most residents know one another, and therefore the justices do not need a law degree to mediate small disputes among community members. Additionally, research has shown little disparity in adjudication between lawyer and non-lawyer justices (Provine, 1986). However, historically there have been challenges to the non-lawyered status of the justices of the peace, particularly from lawyers and the American Bar Association (Curriden, 1994). These proponents argue that the professional requirement for the justices of the peace not only make them more familiar with the legal nature of cases that appear before them but also results in an elevated stature of the justices within the court systems (Fieman, 1997).

Another issue facing the justice of the peace courts is the environment in which these courts exist (Silberman, 1979). Although the issue of professionalism of the justices tends to be more polar, environmental changes in the justice courts is more uniform. It is not the legalistic nature of the justices but the environments in which the justices’ work that is important, such as training and dedicated structures where a professional courtroom can be
housed. Problematic is the fact that most of these courts are funded by local town and governmental taxes, and generally not allotted funding under the state court structures, so many towns are simply not able to afford increased salaries or courthouse locations. This makes the justice of the peace courts appear unprofessional and with a lower status compared to superior and federal courts, as they generally do not have a dedicated location in which to hear cases. This lack of courtroom space creates a negative perception of the courts in both the judicial system and the communities, which in turn makes it more difficult for the local jurisdictions to find people to fill the office of justice of the peace.

Lastly, there exists the issue of legitimacy of the justice courts system. Some say that it is not the courts or the justices that need to be abolished, but again that it is the environmental factors such as access to resources and training. If the argument made by researchers of justice of the peace courts that they are indeed institutionalized into various state court structures, then one next logical step would be to examine how and where they derive their legitimacy? If there are so many problems with these courts, then why would people want to keep them and how would people put faith in these courts? One of the rare empirical studies (Lewis, 1978) examined justice of the peace courts in Travis County, TX in the mid 1970’s.

Using Max Weber’s ideas on legitimacy provides a useful approach in examining justice of the peace courts. Weber states that legitimate social order happens when the citizenry view the rules and laws of social control as authoritative in the expectation that people will obey the rules. Within the rules of social control there are laws, and the legal system made real by those who serve as enforcement officials of the community. People comply with the laws because to some degree they have a belief in them, and in the legal
system as fair. The people enforcing the laws threaten psychological and/or physical coercion to ensure that everybody will obey the law, thus validating social control. The difference between the legal institution and other social institutions is that within the legal institution, people are socialized to comply with the rules of society not by continual coercion, but eventually by the belief that the laws are legitimate, conditioned by the routine application of the laws with reinforces the validity of the legal institution itself. In sum, a legal system’s legitimacy is stable as long as it supports the existing social arrangements. However the problem is that legal orders do not account for all of the demands of the citizenry due to conflicting social and economic demands (Weber, 1918). Like beauty, justice lies in the eyes of the beholder. What one person may see as justice another may view as an injustice; this is the fundamental problem with the notion of legitimacy for the legal system.

As the judicial system moved toward professionalism in an environment of increasing legal complexity, justice of the peace courts were a part of the past used in mediating the dilemma between legal justice and people’s idea of justice. Their legitimacy derives from being truly the people’s courts, in that they can achieve substantive justice in an arena of increasing formal complexity and elusive legal justice. Using Weber’s theoretical framework, Lewis (1978) examined justice of the peace courts to see how the justices balanced substantive and legal justice; what is fair and what is legal. He found that justices try to satisfy both parties in a dispute and to avoid appeals of their decisions by unhappy litigants. The justices conduct their hearings and trials with legal decorum while at the same time use discretion to let parties have their day in court. The justices are essentially
sustaining the court’s legitimacy in the eyes of their constituents. If the justices’ decisions were perceived as legitimate, they believed that appeals and dissatisfaction with their courts are unlikely. The justices’ manners ranged from very formal adjudication to less formal types of mediation. Procedures were often formal yet rules of evidence were loosely enforced (Lewis, 1978). Lewis’ study does indicate that Weber’s theoretical framework is useful in explaining the existence and persistence of justice of the peace courts.

Media exposés have emphasized the problems in terms of legal training and disparity of justice with these courts. If these problems were widespread and routine, the legitimacy and thus the existence of the courts would be in jeopardy. Yet, especially in rural America it seems that these courts serve a dual purpose. They benefit the higher court systems in that they deal with minor cases that would cripple the higher courts if they had to deal with those cases, and they give the people in these small communities a sense of substantive justice that they probably would not find in the formal legal structure of the higher state courts.

Conflict Theory and Justice of the Peace Courts

Certainly there are issues in regard to due process rights of defendants as well as equity of justice in the continued use of non-lawyer justices in justice of the peace courts. Some people may be denied their right to attorney, different defendants with similar offenses receive different sentences by the justices, and some have pointed out that although not significant, there can be a bias on the part of the justices favoring the prosecution and the police. However, many researchers have concluded that eradication of the justice of the peace courts would affect not only the perception of justice by local litigants, but also could
effectively cripple the higher courts in the various states and provinces. It seems that if elimination of the justice of the peace courts is not likely, change must occur somehow in an effort to fix the problems associated with the courts. If improvements don’t occur in the system, future investigations will expose continued patterns of discrepancies and miscarriages of justice. Theoretically this could lead to the collapse of the justice of the peace court systems by a loss of legitimacy from the citizenry, which would result in decreased use and support of these courts. People won’t legitimate social institutions that they do not have faith in or believe work for the social good.

Some contend that one of the best ways to improve not only the dispensing of justice by these courts, but also the negative perception of the justices in these courts by attorneys and other judges, is to focus on the resources, or lack thereof, of the courts (Lewis, 1978; Provine, 1986). It is noteworthy that these researchers also recommend improving the environment of the justice of the peace courts, and do not support replacing the justices with lawyers. It is not the legalistic nature of the justice courts, but instead the environments of the courts that is important. Recall Provine’s study found that there were no significant differences in the types of decisions made by non-lawyer justices compared to lawyer justices. In fact when she examined specific differences between the two, most of the differences were attributed to mediatory behavior by the justice to ensure that both parties received a fair judgment. In small towns where most residents know each other these justices do not necessarily need a law degree to be able to mediate small disputes between community members. Although these researchers do not advocate replacing justices with attorneys, they do acknowledge that there has to be increased legal training for the justices.
In the New York Times report, the lack of basic evidentiary rules and rules of court procedures of the justices was clear. Many justices did not know the legal rules or requirements, and if they needed to find the information it was generally unavailable to them. Many states that do not require justices of the peace to be lawyers still require basic training in legal requirements and procedures, and most jurisdictions have legal sources of information available to the justices in these courts (National Center for State Courts, 2007). New York State may do well to implement basic methods of training for the justices and provide them with legal information when questions arise.

Legal training and information for the justices is one of the recommendations to improve the environments surrounding justice of the peace courts. Other suggestions have included increased funding for both the justices’ salaries as well as for dedicated formal structures in which a professional courtroom environment can be housed (Provine, 1986). This lack of funding is again twofold. Primarily it impacts the types of courtroom procedures that can take place. Some justice of the peace courts are held in schoolhouses, in barns, at the justice’s primary residence, or wherever the justice can find a place for the litigants to meet. This mobile courtroom creates a high probability and likelihood of violation of due process rights. How can defendants show up in court if they do not know where it is? How can legally required paperwork get filed without a proper address? Not having a dedicated building or at the least an office for the justices to hold court may be in part a cause of the disparity of justice and not an effect of the justice of the peace court structure. Secondly, the lack of funding fuels the negative perception of the justices held by attorneys and lawyer justices in the higher state courts. Lack of funding makes the justice of the peace courts look
unprofessional, and indeed they are. Thus there is a negative perception from the professionals in the judicial system and others in the local communities, which in turn makes it more difficult to find people to fill the justice of the peace positions.

Justice of the peace courts were lauded historically for their close links with members of the community, and are essential in contemporary times for the service they provide for the higher state courts. This may be one of the unique aspects of these courts: their rural appeal. Many state and provincial courts across the country are moving in the direction of specialized courts. There are drug courts that handle the specific issues of those with substance abuse, mental health courts that deal with the unique criminal justice issues of citizens with mental illnesses. There are domestic violence courts for victims of spousal abuse, and teen courts where the teens work together to dispense justice under the direction of a judge. There is a move in some rural areas toward restitutive courts where the community is involved with returning the offender back into the good graces of the community. There is a movement to recognize that generalized “cookie cutter” systems of justice are failing and there is a need for more specialized justice systems: restitutive policies or specialized courts. The uniqueness of justice of the peace courts is that they have the ability to work very well in rural areas; they probably would not be as effective in urban centers. Part of what makes justice of the peace courts work is the closeness with members of the community, and as such we should not advocate using justice of the peace courts for places where that component is missing such as city centers (Provine, 1986).
The Current Social Setting in New York and Ontario

The last study of the justices of the peace in New York State was done in the mid 1980’s. Since then, perhaps as a result of the exposé in The New York Times, the chief administrative judge of New York State in 2007 commissioned an action plan for the justice of the peace courts that resulted in a five-point implementation plan to improve the efficiency and quality of the approximately 1,300 justice of the peace courts in New York State by “changing the structure and oversight of local justice courts, providing needed support and guidance to help meet the challenge of modernizing our three hundred year old town and village court system” (New York State Unified Court System, 2007, p. 1). The state appointed supervising justices for the local town and village justices. This was something that historically had never been done. The supervisory justices roles included both oversight, but more importantly served as an information resource for the individual justices and a hierarchical structure mechanism for the various courts. The state also allocated $10 million dollars to improve the court operations. These monies were earmarked for systems for recording both court proceedings and for accounting for the millions of dollars in fines that the local town and village courts generate annually. In some courts computer systems were obtained and/or updated, while in other courts these monies went towards the acquisition and training for the justices on the use of voice recordings for court proceedings. The state reported that all proceedings in all town and village courts were to be recorded. The state also used this money to create a call center that could be used for the justices when questions of rules of evidence or court procedures were encountered (New York State Unified Court System, 2007). Although these steps were an important beginning for structural
improvements in the justice courts, this may be too small of a beginning given the volume of justice courts that exist in New York considering the vast improvements needed in the physical structures of some courts, expensive computer systems and the training required for the local justices. While $10 million in state allocations for the justice courts may sound like a large initial investment to correct problems described by the media, it only amounts to about $7,500 per court; that figure is considering the 1,300 various courts all were to receive the same amount of the initial allocation. Although the investment by the state sounds admirable, more needs to be done in New York.

Additionally in 2005, in Ontario, the Chief Justice implemented the Justices of the Peace Act that enhanced educational qualifications for the justices. The act increased the pay for the justices and mandated that the position of a justice of the peace was a full time primary vocation for the person appointed to the position. One of the more important elements of the act was to centralize the justices into existing courthouses within the seven districts in Ontario rather than have the justices perform their duties in remote rural settings (Ontario Court of Justice, 2005). This centralization of the justices whose primary role is to resolve small conflicts at the local level may be counterintuitive given they are now farther away from the citizens in the rural areas of the Province. However, when the Justice of the Peace Act is examined more closely, it appears that the logic of the centralization of the justices may be understood by the changes made to the role of the Justice of the Peace in Ontario. The Act elevated the educational qualifications of a Justice of the Peace to requiring a four-year secondary education of any new justices, and required that the job of the Justice of the Peace to be a full time professional position that was referred to as a paralegal position.
The justices’ functions were changed from rural arbitrators with great degrees of autonomy to supervised professional positions within the courthouse hierarchy. The justices kept some of their criminal authority, such as issuing warrants and setting bail and retained some of their civil authority and ruling on small monetary civil cases, while their workload increased to include screening of documents and cases for the lawyer judges in the courthouses (Ontario Court of Justice, 2006). After the implementation of the Act, a study was done that examined the new workload of the justices in Ontario which concluded that their workload had increased dramatically since the Act, and predicted that given the increasing number of small criminal and civil cases being filed that the justices’ workload would continue to increase and recommended that the workloads should be monitored continuously (Kleiman, 2008). Since the implementation of these laws, there have not been any studies examining the justices in each or both of the jurisdictions to examine the efficacy of the proposed and implemented changes.

What is not currently known is whether these courts have changed based on prior research recommendations, or if the recommended changes have happened cross culturally or not. Nor has there been any examination into why two groups of justices that were very similar in function and role are now seemingly vastly different; an examination of the power structures that facilitated change in one location, Ontario, but not in the other, New York State. Since the justice of the peace courts in the United States and Canada have faced similar challenges, it is imperative to know if the court environments have improved within the context of the somewhat different legal systems in both countries.
The social environment that these courts exist in must be considered. Currently, there are vast technological improvements in the social environment in both locations that may have resulted in improvements in the efficiency of the justice of the peace courts outside of any governmental or legislative intervention. Especially relevant are the almost universal access to information via the world wide web, the speed at which information can be transmitted, and increased social knowledge resulting from these technological advances.

With all the issues the justice of the peace courts are facing, given the lack of empirical research, more work is needed. The last empirical study of justice of the peace courts in the United States was conducted in the late 1980’s (Provine, 1986) and the last empirical study of Ontario justice of the peace courts was completed in the early 1990’s (Doob, 1991). Although there is research on justice of the peace courts in both the United States and in Canada, to date there has been no study comparing these courts. New York State and the Ontario province in Canada provide ideal settings to see if legalistic and environmental changes have occurred in the respective justice of the peace courts with response to recent legislative acts in both jurisdictions to improve the professional and environmental aspects of these courts (Ontario Court of Justice, 2005, Ontario Court of Justice, 2006; State of New York Unified Court System, 2006). Since these courts are institutionalized and to a high degree socially supported, the research agenda is to see if prior recommended changes from research have been implemented, if they have received more funding from one government versus another, and if the numbers of justices who are and are not lawyers has changed given the ongoing argument about the professionalism of justice of the peace courts. Policy implications of this research extend to both countries. If the
legislative acts that were enacted resulted in improvements in the justice of the peace courts in New York State and the province of Ontario, then those two jurisdictions could serve as models for the other states and provinces that have justice of the peace courts facing the same issues and challenges.

Purpose of the Research

While there exist many different theoretical frameworks through which to look at the legal system, it is important for social scientists to be able to test and empirically validate or negate those theories. The conflict perspective assumes that society is an arena for social conflict (Trevino, 1996), and is more general in the social context in considering the formation of laws. Turk (1976) argues that both the positive and the negative aspects of the law need to be considered, and rather that laws being the resolution of a social conflict, one must consider the power dimensions in the motivation for law formation that may further extend or increase the conflict.

The examples of riparian water right laws and the justice of the peace courts in Canada and the United States demonstrate the utility of conflict analysis. Weberian conflict theory explains the changes of law regarding riparian rights by identifying who had the power to change the laws and through which dimensions of power, both legal and economic. The theory also has explanatory power in analyzing the justice of the peace courts. There have been arguments that these courts are discriminatory, ill suited to mete out justice, and should be eradicated. Applying conflict theory, we are able to see how via political and diversionary power the dominant groups that want to keep the justice of the peace courts are successful. Moreover, this approach is also helpful in suggesting which
location may be more successful in implementing change for the justice of the peace courts based on varying definitions of success.

In the face of a push toward more specialized systems of justice, it seems that justice of the peace courts are poised to return to their place of status in the states’ court structures. What the New York Times series “Broken Bench” shows is that the courts cannot continue to work the way that they are; changes need to be made. However, what the media exposé missed was the examination of the justice of the peace courts in other jurisdictions that seem to work very well. Research has shown us that what happened in upstate New York may be an exception and not the norm. We know how justice of the peace courts came into existence, and why that existence has been socially accepted and legitimated, and we know how the state and provincial court structures depend on the justice of the peace courts. What we need to know about is the “other New Yorks” in terms of where the justice of the peace courts need to provide legal training and support as well as financial support to make sure there are not any more examples of what happened in New York. Theoretically if we don’t fix the broken benches, then the loss of legitimation of the courts by the people will all but do away with this social mechanism of control. The state and provincial courts need the justice of the peace courts, and we as citizens need to recognize and fix the problems with the justice of the peace courts before social distrust destroys them. Understanding and documenting these current reform efforts in New York and Ontario is the first step for reform of justice of the peace courts throughout the United States and Canada.
References


Chapter 3: Methodology

Introduction

This project is an examination of justice of the peace courts in New York State and the Canadian Province of Ontario. The purpose of the project is to ascertain if legislative actions at the two locations have resulted in improvements in the court processes, environments and resource allocations. Previous studies have documented issues in each of these three dimensions of the courts before the legislative actions, but to date no research has been conducted inquiring about the effects of those legal acts on the stated court dimensions. What is not currently known is if these conceptual issues have been addressed by the recent legislative acts that were drafted to improve the justice of the peace courts, and if the recommended changes have been implemented in the American and Canadian justice of the peace courts. Since the justice of the peace courts in the United States and Canada historically have faced similar challenges, it is imperative to know if the court environments have improved within the context of the somewhat different legal systems in the two countries.

There are four research questions to be answered by this project. First, how many of the justices have a formal legal education that would qualify them as a lawyer? Second, since the reform efforts put forth by the respective legislative acts in the two jurisdictions, have the justice of the peace courts received increases in funding for the court staff, physical buildings, legal training or access to legal resources? Third, since the passage of the respective legislative acts, what types of cases are heard by the justice of the peace courts, have the caseloads changed significantly, and what is the case process? Finally, has there
been a change in the perception of the justices by others in the legal community, and has there been a change in the perception of the justices by the justices themselves as a result of efforts for increased professionalism?

Research Design

The design of this research project is a mixed method approach using both quantitative and qualitative data to examine the justice of the peace courts in two locations. Two methods were used for collecting data: surveys and interviews. Quantitative data was collected from survey data from a sample of justices of the peace in both New York State and the province of Ontario, Canada. Qualitative data was collected from interviews with a sub-sample of the justices who responded to the surveys in New York State and the Canadian province of Ontario.

Quantitative

The survey instrument employed was primarily derived from the instruments used in two prior studies that obtained responses from justices in New York State (Provine, 1986) and Ontario (Doob, 1991). While these two studies looked at the justices in each of the jurisdictions separately, the survey instruments used included many of the same dimensions, probably because the justice of the peace courts in both locations were facing many of the same issues. Although the prior work had examined justice of the peace courts in New York and Ontario, the survey constructed in the current project was designed to obtain comparable data from the justices in the same two locations after the legislative reforms enacted
subsequent to earlier studies (Creswell, 2009). The data collected from the surveys of the justices helped to answer the first three research questions.

In 2007, the Chief administrative Judge of New York State commissioned an action plan for the justice of the peace courts that resulted in a five-point implementation plan to improve the efficiency and quality of the approximately 1,300 justice of the peace courts in New York State. In 2005, in Ontario the Chief Justice implemented the Justices of the Peace Act that enhanced educational qualifications for the justices as well as the efficiency and environment of the courts. Since the implementation of both of these acts, there has not been any study of the justices or their courts in either of the jurisdictions that examines the efficacy of the proposed and implemented changes.

While customary in applied social research, the social environment that these courts exist in was considered. Currently, there are vast technological improvements in the social environments in both locations that may have resulted in improvements in the efficiency of the justice of the peace courts outside of any governmental or legislative intervention: the almost universal access to information via the world wide web, the speed at which information can be transmitted, and increased social knowledge resulting from these technological advances. Because of these advancements in technology, and the changes in the social environment in the last twenty-five years, modifications of the original survey instruments were necessary to reflect the changes in the social environment (Fowler, 2009). While updating of the survey instruments was necessary for this project, the American and Canadian instruments were merged into a single survey instrument, preserving the same dimensions and scales used in the two previous studies.
Following specific recommendations on the design and use of mail surveys, (Dillman, 2007) a custom survey booklet was created. This booklet included a front cover with graphics and title of the project as well as the name of the principal investigator of the research. The inside cover of the booklet contained the consent statement to participate in the study and the contact information of the principal investigator and the Internal Review Board of the university authorizing the research project. The survey booklet was printed on legal size (8 ½ X 14”) paper, assembled, folded and stapled. The booklet was mailed to the survey sample along with a cover letter outlining the research and asking for the respondent’s participation, and a self addressed stamped envelope for the participant to return the survey to the researcher.

The survey consisted of forty-two questions focused on a number of issues surrounding the role of the justices of the peace and their courts. The first set of questions queried the justices’ opinions of a range of topics including recent legislative efforts to improve the courts, their thoughts about their jobs as justices of the peace, their thoughts on the amount of training that was provided to them for their job, the existence of and appropriateness of the settings in which they held their courts, and their thoughts on how they and others in the community perceived their role as justices of the peace. The responses to these questions were recorded on a Likert scale from one to five; a score of one was a response that strongly disagreed with the statement, a score of two was disagree, three was agree, four was strongly agree, and a score of five meant the respondent was undecided. Other questions in the survey asked the justices their opinions about legal requirements for justices of the peace, and demographic information. The demographic questions included
number of other justices within their jurisdictions, caseload amounts, and types of cases heard, types of duties involved in their day to day operations and number of hours worked in an average week, acquaintance of criminal and civil defendants appearing before them, salary range, and educational level as well as age and marital status of the defendant. The demographic data were collected in order to compare the demographic characteristics of the current sample with the demographic characteristics of prior samples of justices to examine changes in age, marital status and educational levels of the justices of the peace over time.

On the last page of the survey booklet was an explanation of the importance of the justices’ opinions on the topics included in the survey, and asked if the justices agreed to be contacted for a telephone interview. If the responding justices indicated that consented to be contacted, a timeline chart was provided with days of the week and times of the day for the justices to indicate when they would prefer to be contacted, with space for a contact phone number. Space was provided for any open-ended comments regarding anything the justices wanted to state that had not been asked in the survey.

The sample for surveying the justices of the peace in New York State was taken from the population of 1,260 justice of the peace courts. Information regarding the numbers of the justice of the peace courts, the names of the justices, and the court addresses was accessed from the State of New York Courts website (www.nycourts.gov). A database was created listing the name and address of each of the justices and the justice courts. In addition, the database included the names of the approximately 2,200 justices of the peace in New York State, as some locations had more than one justice of the peace for the jurisdiction.
A simple random sample of the justices of the peace based on the population size of the town or village location was deemed appropriate. Prior research shows these courts exist almost exclusively in rural areas of the states that use these types of limited jurisdiction courts, therefore using a sampling method with that stratified the county populations would not be effective in showing the true population variance of the towns and villages where these courts are located. Using information from the United States Census bureau, populations from the 2000 census of each of the towns and villages with justice of the peace courts were included in the database. The populations of the towns and villages with justice of the peace courts in New York State ranged from a low of 38 to a high of 116,510. One sampling method would be to divide the population range into equal sizes, such as two or four, and to over-sample in the sub-samples with lower frequencies and under-sample in the sub-samples with higher frequencies. Using this method for this population would have resulted in four equal stratas each with a population range of 29,127 people. However, the first stratum of population size from 0 to 29,127 included 96.5% of all the courts in the population with a frequency in each of the other strata that was too small for sampling. Considering the sample size issues within each stratas with the use of a stratified method against the convenience of using a simple random sample, a simple random sample of 10% of the population was selected to be included in the survey sample.

A database was also created for the justices of the peace in the Canadian Province of Ontario. This database included the names of the justices of the peace in Ontario as well as the number of courts, the regions of the courts, and their locations. This information was obtained from the Ministry of the Attorney General for Ontario’s website.
Additional information in the database included population figures obtained from a 2008 report on the workload of the justices of the peace in Ontario that was conducted by the National Center for the State Courts (Kleiman, 2008). In Ontario Province the court of justice divides the province’s courts into seven regions; Central East, Central West, East, North East, North West, Toronto, and West. There are a number of courthouse locations within each of the municipalities in each region, and the justices of the peace are located within those courthouse locations. There are 378 justices of the peace in 86 locations throughout the province, and as in the New York sample, the populations and the population densities (measured as the population in the region divided by the square kilometers of the region) of the regions varied greatly; the Central East region had 56 justices of the peace with a population of 1,953,928 and a population density of 76 persons per square kilometer, the Central West region had 61 justices of the peace with a population of 2,539,187 and a population density of 238, the East region had 37 justices with a population of 1,543,162 and a density of 44, the North East region had 28 justices with a population of 553,158 and a density of 2, the North West region had 19 justices, with a population of 233,285 and a density of 1, the Toronto region had 89 justices with a population of 2,841,494 and a density of 3,939, and the West region had 44 justices with a population of 2,105,832 and a density of 64. While a simple random sampling methodology was appropriate for the New York population, because of the small number of justices of the peace and the small number of courthouse locations in Ontario, the same methodology would not yield a sample large enough for analysis. However, due to the variation in population size by region, a stratified sample by region would result in a sample size large enough for analysis that encompasses
the population variation in the justice of the peace courts in the same way as in the New York sample. But given the small population parameter of the justices of the peace in Ontario compared to the large population of justices of the peace in New York, combined with concerns regarding response rate in having a large enough response sample from which to conduct an analysis (Dillman, 2007), the entire population of Ontario Justices of the Peace was sampled. The surveys were sent to the justices of the peace in New York and Ontario in August of 2010.

Surveys were sent to 613 justices of the peace in the state of New York, and to 386 justices of the peace in Ontario. As stated in the previous chapter, the New York sample that was surveyed represented a stratified sample of approximately twenty nine percent of the population parameter of presiding justices of the peace in New York State as of July 2010, and the Ontario sample represented the entire population of full time presiding justices of the peace in Ontario as of July 2010. The decision regarding the size of both the New York and the Ontario samples was guided by estimates of a sampling frame that took into consideration normal response rates (Dillman, 2007) in an effort to gain a response large enough to conduct quantitative analysis. All surveys were mailed with a cover sheet introducing the study with the contact information for the principal investigator requesting the justices’ support and response, the survey booklet, and a stamped addressed return envelope. In an effort to increase survey response rates, recommendations included multiple follow ups to justices who had not responded, including reminder notices and replacement surveys after the initial mailing, ranging from two weeks to more than a month (Dillman, 2007). However, due to the limited funding for the study that hindered additional printing of reminder cards and
additional surveys as well as the required postage for the follow ups, the decision was made to oversample the population to gather as many responses as possible from a one time mailing. This decision was met with mixed results. Although the New York state sampling effort did yield enough survey responses for analysis from an initial mailing, unforeseen circumstances with the Ontario sample hindered the survey response rates from not only the initial sample, but would not have realistically yielded any better results from additional follow up mailings.

The New York survey sampling methodology resulted in 102 usable responses to the survey. As stated, the inside cover of the survey booklet outlined the consent to participate in research statement which included a clause that stated if the justice did not want to participate in the survey they could either do nothing, or return the non-completed survey in the stamped return envelope. A number of surveys, twenty one, were returned empty, and some surveys, twenty two, were returned as either undeliverable due to incorrect address or that the named justice no longer resided at that location. It seems then, that while correcting the addresses on the undeliverable surveys, and employing the use of recommended follow up techniques and strategies may have worked in increasing the sample size of the New York sample, this was unfeasible due to fiscal constraints and the fact that the usable sample size was large enough for analysis.

Qualitative

In order to answer the last research question, interviews of a sub-sample of justices who responded to the surveys in both locations were conducted. The interview data collected
explored issues of perception of the justices by others in the legal community and by the justices of how they felt others viewed them. The interview data also served to let the justices’ voices be heard regarding the legal nature of cases before them as well as the effects of reform efforts from recent legislations that was intended to improve the justice of the peace courts. Finally, the interview data served as a complement to the survey data in answering the first three research questions. While the surveys generated data on very specific dimensional aspects of the courts, the interview data not only provided details on the courts that the surveys did not cover but also enriched and further illustrated the findings from the cross sectional survey research.

Initially the interview instrument was created using the same dimensions that were used in the construction of the survey instrument. However, for the interview instrument the questions were formatted into open-ended questions and probes that explored those dimensions. Although the survey instrument guided the creation of the interview schedule, the instrument was also guided by comments and hand written notes received in the original survey instruments. After initial construction of the interview instrument, a grounded theoretical approach was used to address unexpected issues discovered in the qualitative data analysis (Chamarz, 2004). However, the comments in the surveys were enough to capture the general themes brought forth in the interviews. Specifically, the interview instrument asked questions about what prompted the justice of the peace to consider taking on this role, aspects of the job that the justice may like or dislike, and any differences between the perceptions of what the job entailed and what duties the job actually encompassed. Questions were also asked about the changes the justices have seen in their caseload, in terms
of quantity of cases and the diversity of the types of cases heard, and their likes or dislikes regarding their caseloads and the diversity of cases. The interview asked questions regarding the justices’ perceptions of the role that they exercise in the community and how they felt others in the community felt about the position of the justice of the peace. The justices were also asked their opinions regarding recent legislative improvements towards their courts and their thoughts on the usefulness and utility of those improvement efforts, their access to and amount of legal training and their access to and improvements in their physical courthouse locations. Lastly, the justices were asked if there were any additional issues that the interview instrument may have missed that they would like to discuss.

A dataset of respondents indicating their consent to be interviewed, along with the day of the week and time of the day in which they requested contact for an interview was created after receipt of the surveys. The interviews were conducted during the early part of 2011.
References


Chapter 4: Survey Findings

Introduction

The beginning section of this chapter outlines the quantitative survey findings from the justices of the peace in New York State and Ontario, Canada. The chapter starts with the preliminary findings by describing the demographic characteristics of the justices of the peace. Also described are the sample size of the two jurisdictions and issues encountered with the sampling methodology that resulted in a low sample size in New York State, and a sample in Ontario, Canada that was so small that it did not lend itself to any quantitative analysis other than purely descriptive findings. This small sample size was the result of interference by provincial officials in the Ontario Province. This interference, while negatively impacting sample size for this study, provides lessons in methodological considerations in governmental support for future studies regarding Canadian Justices of the Peace. Described here are the quantitative results of the two samples and cautions in the statistical interpretations from those samples.

The sampling methodology used for the justices of the peace in Ontario differed slightly from that used for the New York sample in that the entire population of full time presiding justices of the peace in Ontario were sent the surveys. The results, due to outside circumstances, were vastly different. Within two weeks of the mailing of the Canadian surveys, a letter was received from the office of the Chief Justice of the Peace in Ontario who acts in a supervisory role over the Justices of the Peace in the Province of Ontario. The letter stated that any survey research conducted on the justices of the peace in Ontario must
have first secured the permission of the Chief Justice of the Peace. The rationale stated for securing this permission prior to conducting survey research was an effort to keep the justices of the peace from being inundated with survey research requests. Additionally, the letter went on to state that if permission were granted to conduct the research, the Office of the Chief Justice of the Peace would additionally have to approve the survey instrument, and that dissemination of the survey instrument to the justices of the peace would have to be done via the Office of the Chief Justice of the Peace. Since this research study did not either gain the permission or the approval of the survey instrument, the Chief Justice of the Peace stated she was in no position to support this research project, and all of the justices of the peace in the Province of Ontario were directed that they were under no obligation to participate in the study, complete the survey, or return the surveys to the researcher. Thus, without gaining the permission or approval of the Chief Justice of the Peace, any further reminder or mailings to increase the response rate would have been useless. Regardless of the Chief Justice of the Peace’s directive, a small number, six, surveys were completed and returned, and two justices of the peace emailed the researcher indicating they would like to participate in the telephonic interview portion of the research study. Their interviews and comments are put forth in the next chapter covering the qualitative findings. The findings here, although certainly not representative, are a descriptive glimpse into the justices of the peace in Ontario, Canada. The small sample size does not lend itself to any meaningful quantitative analysis other than a description of six justices that may or may not reflect the larger population or findings from prior studies on the justices of the peace in Ontario (Doob, 1991). More meaning may be extrapolated from their interviews in terms of future research.
efforts of Canadian justices of the peace, and strategies used to secure permission to conduct future studies of that population.

Demographics

Table 1 outlines the results of the responses to the demographic questions in the survey instrument. Although the table includes the six responses from the Ontario sample, it should again be emphasized that the results are neither comparable to results from prior studies nor are they representative.

Table 1: Demographic characteristics of survey respondents

<table>
<thead>
<tr>
<th></th>
<th>New York (n=98)</th>
<th></th>
<th>Ontario (n=6)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>f</td>
<td>%</td>
<td>f</td>
<td>%</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average Age</td>
<td>M=61.71</td>
<td>SD=8.2</td>
<td>M=61.5</td>
<td>SD=6.4</td>
</tr>
<tr>
<td>Gender</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>87</td>
<td>89</td>
<td>4</td>
<td>67</td>
</tr>
<tr>
<td>Female</td>
<td>11</td>
<td>11</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>Marital Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>84</td>
<td>88</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>Unmarried</td>
<td>11</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Veteran Status</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Veteran</td>
<td>31</td>
<td>36</td>
<td>5</td>
<td>83</td>
</tr>
<tr>
<td>Non-veteran</td>
<td>56</td>
<td>64</td>
<td>1</td>
<td>17</td>
</tr>
</tbody>
</table>
The table shows that most, 87 percent, of the justices in New York are males, and that four of the six justices in Ontario are males. Most of the justices, 88 percent in New York and 100 percent in Ontario are married, and about one third, 36 percent, of the justices in New York are veterans, while five of the six responding justices in Ontario had served in the armed forces. Generally then, the justices in both jurisdictions tend to be older married men.

The results of the current study’s New York state sample are comparable to prior studies of justices in New York (Provine, 1986) and in Ontario (Doob, 1991) both of which had much larger sample sizes. The results of the prior studies’ demographic findings are important in that, at least demographically, they indicate high reliability between the samples at different time periods, given the much smaller sample size of the current study (Frankfort-Nachmias, 2000; Knoke, 2002). This indication of reliability is important for comparisons of other dimensions in the survey and serves to partially justify the decision not to send follow up surveys and reminders in an effort to increase sample size.

The following summarizes the quantitative findings from the surveys of the justices of the peace that answer the first three research questions; first, how many justices of the peace have a formal legal education and has there been a change in the number of justices of the peace with a formal legal education since the last studies in New York State (Provine, 1986) and in Ontario, Canada (Doob, 1991), second has there been change to what is described in the literature as the “environments” of the courts. Specifically this refers to the existence of physical court locations, the degree of access that the justices have to legal training and access to legal resources. Prior work has called for improvements to the environmental aspects of the justice of the peace courts, (Doob, 1991; Mansfield, 1999;
which was also a cornerstone of the reform efforts of the legislative acts in both locations. This section of the survey questionnaire asked the justices about the existence of a courthouse in which to do their work and hold court, and the amounts of and quality of any legal training and access to legal resources that they may have. Thirdly, this section describes the justices’ responses to survey questions regarding their caseloads and types of cases they hear, and lastly, this summary describes the respondents’ views when asked questions about the perceptions of themselves, others in the criminal justice system, and their courts in general.

Tables 2, 3 and 4 show the findings from the surveys on the dimensions of educational level and perceptions on the differences of justices depending on their level of education. It is important to note what the educational requirements of a justices of the peace are in New York and in Ontario before and after the recent legislative acts to improve these courts. In New York, both before legislative reforms, and currently one only has to have a high school education to qualify for election to the position of justice of the peace. While this was true of justices of the peace in Ontario before the implementation of the Justice of the Peace Act in 2006, currently to be appointed as a justice of the peace in the Province of Ontario one must have a four-year college education. However, this educational requirement only applies to appointments since the act and does not hold justices of the peace appointed before the act to the same threshold.

Table 2 shows that about one quarter, 24%, of the justices in the New York sample have a formal legal education, about one fifth (19%) have some graduate level educational training, and that only 9% of the respondents level of education stops at the high school level.
This is an interesting finding when compared to Provine’s work on justices of the peace in New York in 1986. Fewer justices today have a formal legal education, 24% compared to 26% in 1986, but the level of education among the justices of the peace in New York is increasing. In 1986, 58% of the respondents only had a high school education compared to 9% today, 29% of the respondents had some college training compared to 48% in 2010, and more respondents who did not have a formal legal education did have some graduate training, 20% in 2010 compared to 13% in 1986. So while the actual percentage of legally trained, or lawyered justices has decreased slightly over time, the educational level of those non-lawyered justices has increased. In general terms, table 2 also shows that among the Ontario Justices of the Peace, all had more than a high school education, with half (3 of the 6) halving more than four years of college education; however, due to the sample size of the Ontario sample, comparisons between New York and comparisons to previous work on Ontario Justices of the Peace are not appropriate.

Table 2: Educational Levels of Justices

<table>
<thead>
<tr>
<th>Educational Level</th>
<th>New York (n=99)</th>
<th>Ontario (n=6)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>f</td>
<td>%</td>
</tr>
<tr>
<td>High school</td>
<td>9</td>
<td>9.1</td>
</tr>
<tr>
<td>Some college</td>
<td>21</td>
<td>21.2</td>
</tr>
<tr>
<td>Associate degree</td>
<td>16</td>
<td>16.2</td>
</tr>
<tr>
<td>Bachelor degree</td>
<td>10</td>
<td>10.1</td>
</tr>
<tr>
<td>More than 4 years of college</td>
<td>19</td>
<td>19.2</td>
</tr>
<tr>
<td>Law school graduate</td>
<td>24</td>
<td>24.2</td>
</tr>
</tbody>
</table>
Another important dimension on the question of educational level is the perception in differences in the ability to adjudicate cases dependent on whether a justice of the peace has a formal legal education or not. Are attorney justices better than non-attorney justices? Table 3 shows the results of the question that asked respondents in the New York sample if there was a difference between attorney and non-attorney justices.

Table 3: Perceptions regarding attorney and non-attorney justices

<table>
<thead>
<tr>
<th>Significant differences?</th>
<th>2010</th>
<th>1986*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Lawyers % (n=24)</td>
<td>Non-Lawyers % (n=75)</td>
</tr>
<tr>
<td>No</td>
<td>32</td>
<td>86</td>
</tr>
<tr>
<td>Yes</td>
<td>68</td>
<td>14</td>
</tr>
</tbody>
</table>

* (Provine, 1986)

The results show that over time the perceptions of whether or not there are significant differences between attorney and non-attorney justices has changed dependent on if the respondent themselves are an attorney or not. In 1986, among the lawyered respondents, 82% said that there were significant differences between attorney and non-attorney justices while only 61% of the non-lawyered respondents agreed with that perception. It seems that the perception of significant differences between lawyered respondents on the differences has fallen dramatically. As compared to the 82% in 1986, in 2010, only about 2/3, 68% of the attorney respondents still felt there were significant differences between attorney and non-attorney justices. While the attitudinal perceptions about whether a non-attorney justice bears significant differences than a justice that is an attorney seems to be changing over time, probably one of the more common sense findings is that level of education among
respondents is still a significant predictor of those differences. Table 4 shows the results of the comparison of the New York sample on whether educational level of respondents predicts perceptions of differences between lawyer and non-lawyer justices.

Table 4: Significant differences by educational level of respondent

<table>
<thead>
<tr>
<th>Educational Level of Respondent</th>
<th>High School</th>
<th>Some College</th>
<th>Associate Degree</th>
<th>Bachelor Degree</th>
<th>More than 4 years</th>
<th>Law School Grad</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Significant Differences Yes f</td>
<td>1</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>15</td>
<td>68</td>
</tr>
<tr>
<td></td>
<td>11</td>
<td>24</td>
<td>13</td>
<td>10</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No f</td>
<td>8</td>
<td>16</td>
<td>9</td>
<td>18</td>
<td>7</td>
<td>7</td>
<td>32</td>
</tr>
<tr>
<td>Total f</td>
<td>9</td>
<td>21</td>
<td>15</td>
<td>10</td>
<td>19</td>
<td>22</td>
<td>100</td>
</tr>
</tbody>
</table>

* (2010), $X^2=26.34$, p=.05, Cramer’s V=.528

This table shows that level of education is a significant predictor of whether the respondent perceives there to be differences between attorney and non-attorney justices. As level of education increases so does the perception of differences between the two categories of justices. Those respondents to the survey that have a law degree are more likely to think that there are differences between the two categories of justices than are those respondents who have lower educational levels or those that do not have law degrees. This level of education is a significant predictor at the .05 error level, and is a moderate predictor at .528, the significance of the actual finding may not be that significant in real terms. Common sense logic would predict that those individuals who have put forth the time and effort required to achieved a high level of education, for instance a law degree, would tend to
perceive there are differences between individuals who have that educational credential and those that do not.

*Training for the Justices*

Another dimension of the questions in the survey asked the justices about their feelings regarding the amounts of and the quality of the training that is provided for them. Justices in both Ontario and New York are provided with basic amounts of remedial training prior to taking office, although the amount of and topics covered during the basic training varies by location. Additionally, justices in both locations are mandated to complete varying amounts of yearly training that is given on various topics, including courtroom procedures, evidentiary proceedings, criminal and civil law, as well as bookkeeping and recording procedures for both the court proceedings and the financial recording and reporting of fines collected (Ontario Court of Justice, 2006; New York State Unified Court System, 2007).

Initially the justices in New York go through a two-week training process upon election to the Town or Village Justice position. This initial training is mandatory for new justices and must be completed after the November elections and before taking office in January. The justices must complete and pass an examination at the culmination of the two-week training process. The examination, however, is according to some, vague and not a rigorous legal or procedural examination. If the justices fail the examination, they are allowed to retake the exam as many times as needed to pass the examination. Examples of some of the types of questions on the examination include true/false questions centered on concepts such as asking if a justice should be an upstanding citizen with good moral character (Glaberson, 2006). Once a justice is seated in their position, the yearly training in
New York tends to be more focused on specific issues that the justices must deal with on a daily basis (State of New York Unified Court System, 2006).

The justices in Ontario have similar training requirements, but the scope and focus of their jobs have changed since the implementation of the Justice of the Peace Act (Ontario Court of Justice, 2006). Before the implementation of the Act, the justices of the peace in Ontario were located in various remote rural locations throughout the Province; they truly were the rural people’s courts. Since the implementation of the Justice of the Peace Act, however, the justices have been centralized into seven distinct regional geographic locations. The role of the justice of the peace in Ontario has changed in that the justices no longer “hold court”, but perform most of the same functions in terms of hearing small cases, setting bail amount, issuing warrants. The biggest role change is that they now handle the small day-to-day procedural functions, much in the same way they did before in their rural courts, but now work in conjunction with a full time lawyered judge in a dedicated courthouse structure.

This also may lead to differences between the New York justices and the Ontario justices in terms of comparisons with access to legal resources and training. However, due to the small sample size of the Ontario justices, those actual differences between legal training and access to legal training are beyond the scope of this study. The legal training requirements for the Ontario justices of the peace include completion of a two-week orientation workshop, completion of another one-week workshop that is coordinated by a senior justice of the peace whose topics include rules of evidence, search warrants, judicial bails, and trial procedures, completion of a mentoring program, and observation and evaluation by a Regional Senior Justice of the Peace that officially recommends to the Associate Chief Justice that the justice
of the peace has the ability to discharge their duties (General, 2006). What is described in this section then, are the findings regarding the opinions of the quantity and quality of training, from the perspective of the New York justices sampled.

Environmental change

In terms of answering the second general research question surrounding environmental change since the implementation of reform efforts in New York, this section of the survey asked specific questions regarding training provided when first becoming a justice and the ongoing required training, the status of the courtroom workareas and any security provided, and caseload amounts, types of cases and any ancilliary or support staff that they may have. Table 5 shows the results of the questions surrounding the training, table 6 describes the results of the physical locations in which the justices perform their duties, table 7 displays the specific caseload dimensions, and table 8 shows the affiliated caseload responses reported by the justices in New York.

In terms of the training that is initially provided to the justices as well as the ongoing training they receive, it seems then that the justices as a whole are pretty satisfied with both the quality and the quantity of their training. Almost three quarters of the justices, 73%, stated that they thought the initial training that the justices receive before taking their jobs was adequate to fulfill the position of justice of the peace, and additionally the vast majority, 81%, of the justices agreed that the ongoing yearly training they receive is adequate. This includes the yearly training on criminal and trial procedures as well as evidentiary rules. The justices also expressed similar levels of
satisfaction regarding the quality and the amount of the training provided to them; 87% expressed that they are satisfied with the quality, and 84% stated they are satisfied with the quantity.

Table 5: Training provided for the justices

<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Undecided</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adequate initial training f</td>
<td>4</td>
<td>21</td>
<td>1</td>
<td>42</td>
<td>28</td>
<td>96</td>
</tr>
<tr>
<td>Adequate initial training %</td>
<td>4</td>
<td>22</td>
<td>1</td>
<td>44</td>
<td>29</td>
<td>100</td>
</tr>
<tr>
<td>Adequate ongoing training f</td>
<td>4</td>
<td>12</td>
<td>2</td>
<td>50</td>
<td>29</td>
<td>97</td>
</tr>
<tr>
<td>Adequate ongoing training %</td>
<td>4</td>
<td>12</td>
<td>2</td>
<td>52</td>
<td>30</td>
<td>100</td>
</tr>
<tr>
<td>Appropriate topics f</td>
<td>1</td>
<td>11</td>
<td>2</td>
<td>51</td>
<td>32</td>
<td>97</td>
</tr>
<tr>
<td>Appropriate topics %</td>
<td>1</td>
<td>11</td>
<td>2</td>
<td>53</td>
<td>33</td>
<td>100</td>
</tr>
<tr>
<td>Adequate justice input f</td>
<td>6</td>
<td>17</td>
<td>6</td>
<td>43</td>
<td>25</td>
<td>97</td>
</tr>
<tr>
<td>Adequate justice input %</td>
<td>6</td>
<td>18</td>
<td>6</td>
<td>44</td>
<td>26</td>
<td>100</td>
</tr>
<tr>
<td>Satisfied with quality f</td>
<td>3</td>
<td>8</td>
<td>2</td>
<td>54</td>
<td>30</td>
<td>97</td>
</tr>
<tr>
<td>Satisfied with quality %</td>
<td>3</td>
<td>8</td>
<td>2</td>
<td>56</td>
<td>31</td>
<td>100</td>
</tr>
<tr>
<td>Satisfied with quantity f</td>
<td>2</td>
<td>11</td>
<td>2</td>
<td>54</td>
<td>28</td>
<td>97</td>
</tr>
<tr>
<td>Satisfied with quantity %</td>
<td>2</td>
<td>11</td>
<td>2</td>
<td>56</td>
<td>29</td>
<td>100</td>
</tr>
<tr>
<td>Helpful to have formal legal education f</td>
<td>27</td>
<td>36</td>
<td>7</td>
<td>25</td>
<td>1</td>
<td>96</td>
</tr>
<tr>
<td>Helpful to have formal legal education %</td>
<td>28</td>
<td>36</td>
<td>7</td>
<td>26</td>
<td>1</td>
<td>100</td>
</tr>
</tbody>
</table>

And almost three quarters, (70%), agreed that there is sufficient input from the justices into the training that they believe should be provided. Similar to the results from the previous section of the findings that showed fewer justices, lawyered or not, believe that there are significant differences between attorney and non-attorney justices than previous research,
when questioned about whether it would be beneficial or not for a justice to have a formal legal education, only about one quarter, (27%), responded that they believed a legal education would be helpful in fulfilling the duties of a justice of the peace.

Table 6 shows the responses when the justices were asked about where they perform the bulk of their duties and about the security provided at those locations.

<table>
<thead>
<tr>
<th>Table 6: Location and security of workplace</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where do you perform most of your duties?</td>
</tr>
<tr>
<td>( (n=105) )</td>
</tr>
<tr>
<td>Courthouse</td>
</tr>
<tr>
<td>Police Station</td>
</tr>
<tr>
<td>Jail or Detention Center</td>
</tr>
<tr>
<td>Separate Office</td>
</tr>
<tr>
<td>Other</td>
</tr>
<tr>
<td>Adequate Facilities? (n=99)</td>
</tr>
<tr>
<td>Strongly Agree</td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Strongly Disagree</td>
</tr>
<tr>
<td>Adequate Security? (n=99)</td>
</tr>
<tr>
<td>Strongly Agree</td>
</tr>
<tr>
<td>Agree</td>
</tr>
<tr>
<td>Disagree</td>
</tr>
<tr>
<td>Strongly Disagree</td>
</tr>
<tr>
<td>Undecided</td>
</tr>
</tbody>
</table>

This shows a very interesting finding. The question about location asked the justices to report percentage estimates on where they performed most of their duties. Recent media exposés reported on the glaring judicial misconduct that happens in the justice courts
specifically because the justices do not or are not able to hold court in a specific courthouse location, and rather hold court in a barn, firehouse or their own house (Glaberson, 2006, 2010). These media reports do not seem to be accurate. In fact, the vast majority of the justices, 88%, reported that they perform 90% or more of their duties, inclusive of holding court, in a courthouse. The remaining places that a justice might perform their duties included a police station or detention center, or a separate office. Listed, qualitatively under the other category for places to perform duties, the main responses included at home making calls or filing paperwork, or performing weddings at various locations. It seems then, that the perception portrayed and glorified in the media that these rural justice courts are held in semi-secretive locations at the whim of the justice, is not supported in that the vast majority of the work, that is judicial is done in a courthouse. Given that most of the work the justices do is in a dedicated physical structure, when asked about the appropriateness and security of the facilities, the justices pointed out that these are areas of improvement. Not even one quarter, 22%, of the justices agreed that the facilities they were provided in which to perform their duties was appropriate, and additionally, over half, 54%, stated they did not agree that the security in those locations was appropriate. Although there appears to be some disagreement between the courthouse location as being the appropriate place in which to do their work, perhaps that disaccord is due to definitional rather that physical structural issues. It could be that a rural courthouse is not the same as what the media and most people would tend to think of as a proper courthouse. It could be that a rural courthouse consists of a room in a local grange hall or memorial building, or is a designated space within another public
building. Those definitional issues will be addressed more definitively in the qualitative findings from the interviews with the justices.

Concerning access to legal resources, documentary data illustrate the recent advances in the justices’ access in recent years since the implementation of the most recent reform efforts. Since the implementation of the Action Plan in 2006, the State of New York has invested $10 million to improve and modernize its justice court system. Part of this funding was allocated towards the modernization of the nearly 1,300 town and village courts accounting, recording and computer systems. Through this modernization, and through the advent of ever-changing technology, the justices in New York have more access to resources, and specifically legal resources, to aid in the daily operations of the courts. Most of the justice courts now have computer systems with a majority of them having access to the world wide web in which to access the state court website (http://www.nycourts.gov/courts/townandvillage/links.shtml) (Special Commission on the Future of the New York State Courts, 2008). This site provides a plethora of legal and procedural information for the justices and for the general public as well. The justices themselves have formed a statewide association termed the Magistrates Association that has membership dues, annual meeting and bylaws, elections of officers, and an official website where the justices can access information regarding procedural, accounting and legal issues, http://nysmagassoc.homestead.com. In the event that a justice and/or their court still has not been modernized with a computer system or internet access, there now exists a call center for the justices to telephone with legal questions or procedural issues (Special Commission on the Future of the New York State Courts, 2008). All justice courts now are assisted by the
state comptrollers office in the recording of fees and fines (Hevesi, 2006), and all justices and justice courts now have recording equipment are and are required to record all proceedings. So although the issue of legal access was not a specific series of questions asked of the justices in the survey, documentary data shows an increase in the access to legal resources since the last empirical work that was done.

An advent that also comes with and has been studied with the advances in information technologies is the increase in court filings and increased caseloads in criminal and specifically civil courts in recent years. This increase is expected in justice of the peace courts as well (Kleiman, 2008). As such, one set of questions asked of the justices in the survey focused on caseload numbers and the types of cases that the justices in New York are currently being faced with as well as their familiarity with defendants that appear before them in civil and criminal cases. Also within this dimension of caseload statistics, questions were also included regarding the number of justices in each jurisdiction, the amount of time spent performing their duties and of that time the degree to which their responsibilities were judicial or administrative, and how much help they had in terms of support or ancillary staff. Table 7 displays the results of the responses to caseload questions, and Table 8 shows responses to affiliated caseload questions.

The average caseload of the justices in this study was between 750-999 cases per year. This variable was categorized from 1-7 with 1 being less than 100 cases, 2 being between 100-249 cases, 3 being between 250-499 cases, 4 being between 500-749 cases, 5 being between 750-999 cases, 6 being over 1,000 cases and 7 being don’t know. A comparison of current caseloads to prior work on justice of the peace courts in New York
was done to ascertain increases or decreases in justices’ caseloads. Some have speculated that increased caseloads would result by the advances in information technology (Kleiman, 2008); it was found to have mixed results depending on the category or dichotomy of the justices examined. Although coded slightly differently, Provine’s work on justice of the peace courts in New York done in 1986 showed an average caseload of 706 cases per year (n=1143, SD=1054) for non-lawyer justices compared with an average caseload of 3087 cases per year (n=264, SD=16650) for lawyer justices. When the current sample of justices was dichotomized by lawyer or non-lawyer justices, it was found that non-lawyer justices have an average caseload of between 500-749 cases per year, (see previous coding scheme), mean of 4.93, standard deviation of 5.7, and lawyer justices have an average case load of between 750-999 cases, mean of 5.21, standard deviation of 1.5. So while the average caseload of non-lawyer judges doesn’t seem to have changed significantly since 1986, the caseload of attorney justices seems to have fallen quite significantly, from over 3,000 per year to a little under 1,000 per year in spite of the advances in technology and information transmission. This may be related to the previous finding that there are fewer attorney justices now than there were in 1986 in New York. In light of this finding, it is interesting to compare the caseload diversity of this sample with that of the state of New York’s estimates for all the of the approximately 2,300 justice courts. The state comptrollers office statistics shows a huge variation in the caseload of the justice courts, ranging from a minimum of 5 cases a year to a maximum of over 18,000 per year (diNapoli, 2010) collecting over $210 million in fines and fees in 2010. Certainly the issue of significant dollar amounts collected
for these local jurisdictions has increased, while it doesn’t appear that there has been a
dramatic increase in the caseload of these rural courts.

Table 7: Caseload statistics

<table>
<thead>
<tr>
<th></th>
<th>f</th>
<th>%</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual caseload</td>
<td></td>
<td></td>
<td>750-999 (n=100)</td>
<td>4.9</td>
</tr>
<tr>
<td>Only justice in</td>
<td>20</td>
<td>20.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>jurisdiction (n=100)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>77</td>
<td>79.4</td>
<td>1.79</td>
<td>.407</td>
</tr>
<tr>
<td>% Case types</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motor vehicle</td>
<td></td>
<td></td>
<td>64.6</td>
<td>17.4</td>
</tr>
<tr>
<td>Civil and</td>
<td></td>
<td></td>
<td>9.8</td>
<td>10.9</td>
</tr>
<tr>
<td>small claims</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td></td>
<td></td>
<td>24.9</td>
<td>12.4</td>
</tr>
<tr>
<td>Type of work (n=100)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Less half judicial</td>
<td>12</td>
<td>12.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Half judicial</td>
<td>8</td>
<td>8.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More half judicial</td>
<td>13</td>
<td>13.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Most judicial</td>
<td>54</td>
<td>56.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>All judicial</td>
<td>9</td>
<td>9.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Assistance (n=100)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td>7</td>
<td>7.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 part time</td>
<td>40</td>
<td>41.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 full time</td>
<td>22</td>
<td>22.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt;1 full time</td>
<td>27</td>
<td>27.0</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In examining the types of cases that are heard by the justices within their respective
caseloads, it’s interesting to see that the majority of the cases heard are motor vehicle cases,
65%, followed by small criminal cases, 25%. Historically, the argument against having
justice of the peace courts (Mansfield, 1999), and more specifically against the use of non-
lawyer justice courts in New York (Glaberson, 2006, 2010) was that non-attorney justices lack the specific and detailed knowledge of the law and legal procedures from which to adjudicate criminal cases within the prescripts of constitutional due process requirements. However, the majority of the cases heard by the justices are motor vehicle violations, and due to the limited jurisdiction of these courts, they are small motor vehicle violations, which is corroborated by independent government officials (The Fund for Modern Courts, 2008; diNapoli, 2010; NCSC, 2007). Justice of the peace courts in New York are the courts closest to the people that they serve, but the data show that the majority of the cases they hear, motor vehicle cases, involve defendants who are from out of town. Generally they are visiting people in those towns or villages or are passing through to another location, and as such it is much easier to pay a small fine to a town or village justice than have to return and reappear at a court hearing. So it would seem that the argument that a town or village justice should have a formal legal education in order to perform their duties is neither upheld by the opinions of the justices now or in prior studies, nor by the data that show the types of cases heard by these justices. Although nearly 70% of the justices indicated that more than half or all of their work is judicial when compared to administrative, it seems that a complex understanding of legal theory is not required to adjudicate small time and small town matters where almost one half (48%) of the courts have one part time assistant if any at all.

Given the finding that these really are small town and village people’s courts where a justice who has a basic knowledge of legal rules of order and proceedings does well in adjudicating small civil and criminal cases, then the next step would be to consider how closely the justices are affiliated with those that appear before them at hearings, and the cost
that is associated with these courts. The argument for the continuation of these courts is that they are cheap to staff and facilitate given that local coffers fund these courts, and their efficiency is paramount in time of fiscal restraint by small town tax bases used to support them. Table 8 shows the results of the survey questions surrounding costs to maintain the courts and how closely the justices are affiliated with those in a small town who might be appearing before them that could have conflict of interest consequences that might violate due process rights of defendants and civil plaintiffs.

In regards to potential conflicts of interests stemming from affiliation with community members that appear before the justices, it could well be that it is an unavoidable phenomenon given that most of these courts are in rural areas of the state with fairly small population sizes; the probability that a justice knows a litigant or defendant appearing before the justice is very high. However, accepting that the affiliation is probably unavoidable, the survey data show that the affiliation is not large. The table shows that whether it is a criminal defendant, or a civil plaintiff or defendant, the justice is affiliated or knows a community member appearing before them about twenty percent of the time, 19% in each of the categories. This low number of affiliation with members appearing before a justice may be smaller than actually inferred by media accounts (Glaberson, 2006). This low level of affiliation together with the showing that most of the community residents, (72%), occasionally or rarely seek the justices’ legal consultation may well work to the justices’ advantage in light of media accounts in that they may serve to be relatively unbiased adjudicators in small towns that probably cannot afford outside neutral judges for small town matters.
Table 8: Affiliated caseload statistics

<table>
<thead>
<tr>
<th>Affiliation with defendants (%)</th>
<th>f</th>
<th>%</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal (n=89)</td>
<td></td>
<td></td>
<td>18.9</td>
<td>24.9</td>
</tr>
<tr>
<td>Civil plaintiffs (n=83)</td>
<td></td>
<td></td>
<td>18.5</td>
<td>22.9</td>
</tr>
<tr>
<td>Civil defendants (n=84)</td>
<td></td>
<td></td>
<td>19.0</td>
<td>24.6</td>
</tr>
<tr>
<td>Legal consultation (n=97)</td>
<td></td>
<td></td>
<td>3.0</td>
<td>.95</td>
</tr>
<tr>
<td>Very often</td>
<td>7</td>
<td>7.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Often</td>
<td>15</td>
<td>15.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Occasionally</td>
<td>45</td>
<td>46.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rarely</td>
<td>25</td>
<td>25.8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Never</td>
<td>5</td>
<td>5.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avg. hours per week</td>
<td></td>
<td></td>
<td>10-19 hours (n=100)</td>
<td></td>
</tr>
<tr>
<td>Salary (n=97)</td>
<td></td>
<td></td>
<td>1.15</td>
<td>.417</td>
</tr>
<tr>
<td>Less than $25,000</td>
<td>84</td>
<td>86.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$25-49,999</td>
<td>11</td>
<td>11.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$50,74,999</td>
<td>2</td>
<td>2.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary consummate (n=98)</td>
<td></td>
<td></td>
<td>3.03</td>
<td>1.01</td>
</tr>
<tr>
<td>Strongly agree</td>
<td>35</td>
<td>35.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agree</td>
<td>23</td>
<td>23.5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disagree</td>
<td>32</td>
<td>32.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Strongly disagree</td>
<td>4</td>
<td>4.1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In regards to the salary of the justices and the costs of the courts that the towns and villages must bear, it also seems that this is an advantage to the justice of the peace courts in rural New York. The fact that justice of the peace courts are a financially prudent alternative to formal lawyer judge courts for rural areas has historically been a consistent advantage.
(Gazell, 1975; Mansfield, 1999; Silberman, 1980; Stott, 1977). It appears then that the justice of the peace courts in New York are still a fiscally responsible institution. The vast majority of the justices, 87%, are paid up to $25,000 a year for their duties in resolving local disputes. The category for the salary indication in the survey is designated as a range of $0-24,999 per year. Although the majority of respondents indicated that their salary falls within this range, the category itself can be misleading as a number of justices indicated that their salary is as low as $2,500 per year. While it would be interesting, and may be investigated in further studies, to discern the actual salary amounts for each of the justices, the fact that individual salaries are sensitive topics in both surveys and interviews, coupled with the fact that the highest ($25,000) salary is cheaper than most state court structures similar to New York’s justice courts (Hevesi, 2006), on its’ face this salary category indicates that even at the high end of the category these courts are cheaper to staff than formal lawyer judge court structures. When the justices were asked their opinions regarding their salary, more than half, 59%, agreed that the salary was appropriate for the amount of work that they put in, between 10-19 hours per week. This may seem non-logical given the importance of the work that is done by the justices. They can resolve civil disputes involving thousands of dollars and have to authority to deprive citizens of their personal liberty via jail; these are very impressive responsibilities for which the compensation is roughly $24 per hour for their time. However, many of the survey respondents indicated either in the side margins of the survey, or in the comments section at the end of the survey, that they do not do this job for the money. Many indicated that it is an honor to serve their town or village and they see their work as a service to the community and are happy and eager to do the job for the salary
allotted, or for even less if required; the money is not the issue, but instead is the service to
the community that is more important. This justice of the peace courts structure in use in
rural New York seems to provide a much needed service to the community in dispute
resolution that is honorable, relatively inexpensive to staff and maintain, and that has a
relatively low incidence or threat of conflict of interest between the justices and the
community members.

*Justices’ Perceptions About Their Role*

While it seems then that the justice of the peace courts are a viable alternative that has
been historically institutionalized in the state of New York (Tilney, 2010), an important
aspect of any empirical work examining the utility and importance of these courts is the
thoughts and opinions of the justices regarding what their role is and how others in the
community view the role of justice of the peace. In the survey there were four series of
questions that asked the justices about their views about recent reforms and what future
efforts to help modernize or improve the justice courts should entail, how they viewed the
importance and the utility of the role of a justice in their community, and how they felt that
other community members and other professionals in the criminal justice system viewed the
justices’ role in the community and in the justice system in general. Table 9 displays the
justices’ views on recent reform efforts in the State of New York, and table 10 outlines the
areas of improvement that future reform legislations should include. Data showing the
perceptions that the justices have of their own roles is shown in table 11, and finally table 12
highlights how the justices feel the community and criminal justice professionals view them.
Table 9: Justices’ views on recent reform efforts

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>( f )</td>
<td>( % )</td>
<td>( f )</td>
<td>( % )</td>
</tr>
<tr>
<td>“Home Rule” taken into account (n=94)</td>
<td>22</td>
<td>23.4</td>
<td>36</td>
<td>38.3</td>
</tr>
<tr>
<td>Courts have been improved (n=96)</td>
<td>32</td>
<td>33.3</td>
<td>49</td>
<td>51</td>
</tr>
<tr>
<td>Courts work well now (n=93)</td>
<td>59</td>
<td>63.4</td>
<td>30</td>
<td>32.3</td>
</tr>
<tr>
<td>People are happy with courts now (n=94)</td>
<td>53</td>
<td>56.4</td>
<td>36</td>
<td>38.3</td>
</tr>
<tr>
<td>Improvements should come from the local level (n=96)</td>
<td>17</td>
<td>17.7</td>
<td>23</td>
<td>24.0</td>
</tr>
</tbody>
</table>

Interesting are the findings regarding the justices’ opinions on recent reform efforts enacted in the State of New York. One of the concepts regarding reform efforts in general, and specifically the Justice of the Peace Act, the concept of “home rule” as expressed in the literature and reiterated by the surveyed justices. Essentially, the concept of “home rule” maintains that it is the local governments, especially in rural areas of the state, that are in the best position to decide how to govern their local communities, and civic leaders in these rural small town locations take issue with directives coming from the state government in directing how they should govern. When asked if they thought that the recent reform efforts for the justice courts took this concept of “home rule” into account, slightly over half, 58%, either agreed or strongly agreed. However, given that only about half of the justices felt that the concept of “home rule” was accounted for in the reform efforts, the vast majority of the justices, 84%, felt that these recent reform efforts actually improved the courts. This
indicates a general satisfaction with the current state of the courts even if recent reform efforts did not completely embrace the “home rule” concept. This indication of satisfaction with the courts was verified when the justices were asked about the utility of the courts in resolving local disputes. Almost all of the justices, 95%, agreed or strongly agreed that the courts work well to settle local disputes, and again almost all, 95%, of the justices agreed or strongly agreed that they believe that the residents in the community are happy with the current state of the justice courts.

While many of the justices indicated that reform efforts have improved the courts and most believe that the general public is happy with the use of these courts to solve local disputes, a significant number indicated that the recent reform efforts did not take into account the concept of “home rule” in making reform decisions. Table ten summarizes the justices opinions then on areas for future improvements. Asking these types of questions directly solicits reform recommendations that account for “home rule”; the justices can influence future reform ideas that stem directly from those that are using the courts, the justices and the citizens.

This question about the justices’ ideas on areas for future improvements in the courts used categories derived from prior work on justices and justice of the peace courts (Doob, 1991; Mansfield, 1999; Provine, 1986; Silberman, 1980).

A good number of the responses indicated a need for increased funding for the courts. More specifically, almost half, 48%, of the justices indicated the need for increased justice salaries, for court buildings, 50%, and for support staff, 72%. One of the reform efforts in the State of New York was a $10 million investment in upgrading the justice courts computer and
accounting systems. While it appears that this might have been a good beginning, $10 million only translates into approximately $4,500 for each of the 2200 justices, assuming that the money was divided equally. And since there is a large variation in the caseload of the different courts, one can surmise that there would be variation in the amounts of monies received from the state to the various courts, and that the various courts would have a large variation in their computer and accounting needs. Clearly, as indicated by the justices’ survey responses, more money has to be allocated for these courts.

Table 10: Areas for future improvements

<table>
<thead>
<tr>
<th>Future reform improvements should focus on: (n=96)</th>
<th>f</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Funding for justice salaries</td>
<td>46</td>
<td>48</td>
</tr>
<tr>
<td>Funding for court buildings</td>
<td>48</td>
<td>50</td>
</tr>
<tr>
<td>Funding for support staff</td>
<td>69</td>
<td>72</td>
</tr>
<tr>
<td>Training on legal procedure</td>
<td>51</td>
<td>53</td>
</tr>
<tr>
<td>Training on rules of evidence</td>
<td>31</td>
<td>32</td>
</tr>
<tr>
<td>Legal degree requirement</td>
<td>9</td>
<td>.09</td>
</tr>
<tr>
<td>Supervising justices</td>
<td>6</td>
<td>.06</td>
</tr>
<tr>
<td>No improvements needed</td>
<td>6</td>
<td>.06</td>
</tr>
</tbody>
</table>

Another interesting finding comes from the number of justices responding that they would like increased training on different subject matters such as legal procedures, 53%, and
rules of evidence, 32%. Although it was previously found that the justices were generally satisfied with the amount of and quality of their training, there are areas of improved training and knowledge desired. This finding is tempered by the fact that very few justices thought a formal legal education was needed, .09%, and flies in the face of insinuations from media accounts that try to illustrate the justices as old men set in their ways who are resistant to learning new legal concepts (Glaberson, 2006, 2010). It appears then that although most of the justices do not see a formal legal education as a requirement for the job, they do see a value and a need for continued education in the arenas pertaining to their jobs.

An even more interesting battery of questions asked the justice about the utility of their role; whether their job is unique when compared to other criminal justice professionals. Table eleven shows the findings from these questions.

Other research (Provine, 1986) and discussions (Provine, 2010) have indicated that when asked about the importance and utility of their jobs, the justices as a whole are very proud of the work that they do and are fiercely protective of their roles as local adjudicators. These survey findings support those earlier findings and statements. Most of the justices, 86%, indicated that their job was unique and needed in that they performed a function and service that could not be performed by any other judicial officials, and many 68%, went on to indicate that their jobs could not be completed by any other criminal justice professionals. This clearly indicates support for the utility and the use of justices in solving local disputes. Previous legal opinions, derived generally from anecdotal encounters with a local justice (Lamber, 1991; Mansfield, 1999) indicated that the most effective role that a local justice without a formal legal education could serve would be as a buffer between the police and the
citizens to ensure that the police did not encroach on the civil liberties of the community members.

Table 11: Justices’ perceptions of their roles

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Could not be performed by other judicial officers (n=97)</td>
<td>53.6%</td>
<td>32.0%</td>
<td>12.4%</td>
<td>1.0%</td>
</tr>
<tr>
<td></td>
<td>(52)</td>
<td>(31)</td>
<td>(12)</td>
<td>(1)</td>
</tr>
<tr>
<td>A buffer between police and citizens (n=97)</td>
<td>21.6%</td>
<td>28.9%</td>
<td>29.9%</td>
<td>10.3%</td>
</tr>
<tr>
<td></td>
<td>(21)</td>
<td>(28)</td>
<td>(29)</td>
<td>(10)</td>
</tr>
<tr>
<td>Represent community interests better than other CJ personnel (n=97)</td>
<td>27.4%</td>
<td>41.1%</td>
<td>21.1%</td>
<td>2.1%</td>
</tr>
<tr>
<td></td>
<td>(26)</td>
<td>(39)</td>
<td>(20)</td>
<td>(2)</td>
</tr>
<tr>
<td>Public does not understand justice’s role (n=98)</td>
<td>37.8%</td>
<td>49.0%</td>
<td>9.2%</td>
<td>3.1%</td>
</tr>
<tr>
<td></td>
<td>(37)</td>
<td>(48)</td>
<td>(9)</td>
<td>(3)</td>
</tr>
<tr>
<td>Lay justices best way to protect civil liberties (n=97)</td>
<td>11.3%</td>
<td>22.7%</td>
<td>36.1%</td>
<td>16.5%</td>
</tr>
<tr>
<td></td>
<td>(11)</td>
<td>(22)</td>
<td>(35)</td>
<td>(16)</td>
</tr>
</tbody>
</table>

This study did not support those opinions in that only about half of the justices surveyed, 51%, indicated that their position as a justices was to serve as a buffer between the police and the citizens, and only about one third, 34%, indicated that lay justices are the best judicial officers to protect the civil liberties of the citizens. In fact, the majority of the justices, 87%, said that the local citizens do not understand the role of a justice in terms of what they do and
the significance of the service they provide to the community. This last question is important as it segues into the importance of the last series of questions in the survey. Table 12 shows the results of the responses to the questions regarding public and professional support for the justices of the peace. If in fact most of the public really does not understand what justices do or why they are so important, it is interesting to see if the justices feel that they are supported by those who do not understand their positions or the utility of their presence.

Table 12: How justices think others view them

<table>
<thead>
<tr>
<th></th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Police view you same as judge (n=98)</td>
<td>58.2% (57)</td>
<td>37.8% (37)</td>
<td>2.0% (2)</td>
<td>1.0% (1)</td>
</tr>
<tr>
<td>Police give respect (n=99)</td>
<td>52.5% (52)</td>
<td>43.4% (43)</td>
<td>2.0% (2)</td>
<td>0% (0)</td>
</tr>
<tr>
<td>Court judges give respect (n=96)</td>
<td>29.2% (28)</td>
<td>50.0% (48)</td>
<td>11.5% (11)</td>
<td>1.0% (1)</td>
</tr>
<tr>
<td>General public gives respect (n=99)</td>
<td>35.4% (35)</td>
<td>57.6% (57)</td>
<td>3.0% (3)</td>
<td>0% (0)</td>
</tr>
<tr>
<td>Viewed as a professional by CJ personnel (n=99)</td>
<td>27.3% (27)</td>
<td>47.5% (47)</td>
<td>18.2% (18)</td>
<td>0% (0)</td>
</tr>
<tr>
<td>Viewed as judicial officer by the police (n=99)</td>
<td>39.4% (39)</td>
<td>57.6% (57)</td>
<td>2.0% (2)</td>
<td>0% (0)</td>
</tr>
</tbody>
</table>

It appears then that even though the justices feel as though their jobs and the usefulness of their positions are generally not known or misunderstood, and the indication from the media that the general public would rather do away with the justices (Glaberson, 2006), there does seem to be considerable support for the justices from the general public and
from the criminal justice professionals with whom they work. Given the degree of legitimization and the lengthy history and institutionalization of the justice courts in New York State, the justices’ perceptions on perceived support, both publicly and professionally, is probably an accurate portrayal. Most justices, 96%, agreed or strongly agreed that they are provided the same levels of respect by the local police as other justice officials within the criminal justice system; by being viewed as any other judicial officer, 97%. Many of them, 79%, indicated that they are given appropriate levels of respect and support from other court judges, and most indicated, 93%, that they are given respect and are supported by the general public. In sum, although many of the justices indicated that the public, and probably to some degree others in the criminal justice system, do not understand what the justices do or understand the significance of the role the justices play in the local community, the justices by and large feel that they have the support and respect of the citizens and criminal justice professionals that they work with and serve.

As previously indicated, the last page of the survey booklet provided room for open-ended comments on concepts or issues not previously asked about in the survey. The rationale for this open-ended forum was two-fold. First it provided an area for thoughts or questions the respondents might have had outside of the original questions, and it was suggested that providing an area for such comments might increase response rates (Dillman, 2007) in that respondents would feel as their answers were really being taken seriously. If justices could explain some of their responses, or provide written questions regarding the concepts in the questionnaire, that they would be more likely to take the time to complete and return the survey. Secondly, this area was provided to get a baseline on conceptual issues in
building an interview instrument for the telephonic interview to be conducted after the surveys.

The findings from the qualitative interviews are discussed in the next chapter. The general conceptual themes from the comments in the surveys are as follows: first, many justices provided follow-up comments regarding the amount that they are paid. Many said that they don’t do it [be a justice] for the money, but instead do it as a service to their community and that it is something they are honored to do. Secondly, many justices indicated that these justice courts are truly “the courts closest to the people” and/or are “the people’s courts”. Additionally many indicated that the usefulness of the courts was evidenced by their 200-year history in rural areas of New York State. Thirdly, many justices wrote that the recent reform efforts have greatly improved these courts; specific areas were the resources provided to them, their training, and the physical improvements within the courts. One justice wrote that these recent reform efforts were “the biggest change to the court in my 35 years as a justice”. Lastly, a good number of justices wrote about how their jobs as justices are very politically dependent on the local town boards for the funding provided for the courts. This political interaction was described as a double-edged sword, though, in that the town boards generally do not know what the justices do, but that the justices are seen as revenue generators for the towns and villages from fines received. So that while they are in an elected position accountable to the citizenry, there is also a very political component to the position that is tied to the fiscal component. These general themes are discussed more in-depth with the results from the qualitative interviews with the justices.
References


Chapter 5: Interview Findings

*Interviews with the justices*

Following the collection and analysis of the survey data from the justices, an interview schedule was constructed. The interview instrument focused on dimensions surrounding issues already reported in previous studies (Doob, 1991; Provine, 1986; Silberman, 1980), current legal opinions that chronicled recent encounters with justices (Mansfield, 1999) and media reports about justice of the peace courts (Glaberson, 2006, 2010). The interview schedule was also influenced by the comments of the justices’ received in the current study. Ultimately, open-ended questions were constructed around the following dimensions: the motivation for an individual to seek the office of a justice of the peace, current caseloads of the justices and any changes since reform legislation, the role or utility of a justice in the community, perceptions of the effectiveness of recent reform legislations, amounts of and access to legal resources or training, and the physical environment in which the justices held court. General questions about these dimensions were developed as well as a number of probing questions within each of the dimensions. The interview schedule is displayed in the appendix of the study.

Recalling the survey instrument, justices were afforded the opportunity to consent to an interview, and were provided with a timetable in which to select the most desirable time to be contacted. A sample of forty-four justices consented to an interview, and all interviews were digitally recorded. The interviews were conducted during the early spring throughout roughly a four-week period, as scheduling a time to interview the justices provided a challenge. When initially contacted, some justices indicated that that specific time was a
good time for them to talk, but many justices asked to be contacted at a later time during the
day or during the week. As such, a complex schedule of interview times developed. Most
interviews lasted between fifteen to thirty minutes, depending on the length of responses
from the justices; the shortest interview was eight minutes and the longest interview was
forty-three minutes in length. The researcher guided the interviews with the questions and
probes from the interview schedule with the vast majority of the content of the interviews
consisting of statements by the justices. The recordings were then transcribed into text using
transcription software that converted digital recordings into written text that was edited and
cleaned by the researcher. The written interview data were reviewed numerous times using
the grounded theory approach (Chamarz, 2004) to find meanings, both direct and indirect,
from the data. The qualitative data provided a rich and in-depth understanding of the
meaning and role of a justice of the peace as well as their thoughts on reform efforts and
perceptions on their roles and utility within the community. These interviews complemented
the survey results through a greater understanding of the justices and changes in their courts
since recent reform efforts, and provided a platform from which to guide further research on
this topic. Following are the justices’ voices from the interviews.

Motivations/Reasons for becoming a justice

While there were a number of reasons why an individual in a community might be
motivated to seek the office of justice of the peace, or specifically in New York State, a town
or village justice, many of the justices talked about a community service component in their
motivations. Many of the justices were older individuals who were retired, and as such had
the time to put effort into the office of justice, but there were also a number of justices that held full time employment outside of the office and still spoke of the need to give back to their community. Along the same vein of community service, many talked about the honor that went with the position of town or village justice. There was a sense of honor that the community members would deem the individual appropriate to bestow upon them powers associated with a justice; the powers to arbitrate matters among community members, fine defendants, and ultimately the power to incarcerate individuals in the community. Most often this sense of honor was discussed from justices that had been elected multiple times, in that their sense of honor bestowed from the community was solidified again and again after being re-elected every four years; a few of the justices had served continuously for twenty-five to over thirty years.

While many of the justices stated that giving back to the community or community service was the overriding motivation to seeking election to office of justice of the peace, some of the justices also expressed concern that younger individuals in the community did not share their sense of community service, and that this lack of feeling of community service would ultimately impact the availability of qualified candidates in the future. These justices indicated that their length of service as a justice was in part a product of that community apathy; they were staying on as a justice in the town or village because they didn’t think there would be anyone else in the community that would want the office or that would be qualified to be a justice. Ironically, this perception of a lack of willingness or ability was also the motivation some other justices spoke about when they first became a justice. When asked what brought them to the role of a justice of the peace in their community, some
indicated that some in the community, town board officials or prominent citizens, had approached them asking them to run for office. This was usually because the current justice was retiring or because there was nobody currently in the position, which would have been a violation of most town charters that required each town or village to have at least one justice (Tilney, 2010). So while it seems that the vast majority of the justices felt an intrinsic desire to run for election of a justice in order to give back or provide service to their communities, some other justices reluctantly ran for office due to a sense of obligation to their community.

These feelings of a sense obligation from a justice may help explain reports in prior literature of justice of the peace (Alfini, 1981; Silberman, 1979) in that in many rural communities it may be very difficult to find someone to fill the office of justice of the peace. Although sense of obligation could be an explanation as to why there might be difficulty in finding someone in the community to fill the office of justice of the peace, another possible explanation could be echoed by the sentiments of one of the particular justices interviewed. The justice spoke of how the original motivation for becoming a justice was a sense of community service, but that how doing the job itself could change a personal desire to give back to the community and could very well discourage others from running for office:

“I ran for town justice because several people in our town came to me and asked me to please help. I did this to give back to the community that I have lied in all my life. Now, two times in one year, I have and still am under investigation by the judicial code of misconduct for things I have done on the bench. It makes me mad! It wasn’t because I’m a dishonest person, or was it a lack of training. I am very discouraged and I will not seek office again. It’s a shame because I really liked this job.”

These comments from the interviews give a better illustration of the nuances of being a rural justice than would have been provided from survey data alone. The overwhelming
number of justices indicated their rationale for becoming a justice was the sense of community service. Given that the vast number of justices are happy and willing to serve as a justice in their community, a minority of justices gave explanations to why in some communities it can be difficult or impossible to find an individual who is willing to put forth the time and effort to fill the position, perhaps due to obligation or to challenges to their authority while in office.

Changes in caseloads since reform efforts

Questions regarding the size of and changes to the caseloads of the justices were asked for a couple of different reasons. Primarily this question was considered to compare the current study’s data to data on caseload sizes in other work (Doob, 1991; Provine, 1986). Another justification for the inquiry into caseload size is the current social setting in New York and Ontario compared with the historical social settings twenty to twenty-five years prior. Recent examination of the caseloads of Ontario justices since reform legislation in Canada (Kleiman, 2008) suggests that caseloads of justices has increased dramatically and predicts that the size of the caseloads will continue to increase and should be examined annually or every-other year at a minimum. While previous discussion has focused on the differences in the current social settings in Ontario compared to New York due to said reform acts, the differences in current social settings may also translate into a rationale for the differences in caseloads between the justices in both locations. The justices in New York State have not seen the increase in caseload size that their counterparts in Ontario have experienced. While some justice reported that there is a large difference in the caseload size
of the justices in New York dependent on geographic population density and on whether the justice is an attorney or not, recent reform efforts in New York do not seem to have had an impact that has increased the relative size of the caseloads of the justices.

Most of the justices interviews stated that they have not seen an increase, or a decrease for that matter, in their caseloads since recent reform legislation in New York. As was discovered in the survey results, most justices reported that the vast majority of cases that they hear are motor vehicle cases rather than criminal or civil cases. One justice, in a rural area of New York, reported that there were “very few criminal matters in our town, in fact I think we’ve only had one murder in the last twenty years or so.” While most justices indicated that motor vehicle cases represent the majority of their caseloads, the justices also stated that the increase in their work has not been the number of cases that they hear, but instead the ever-increasing administrative paperwork for each case that is required by the state. According to many of the justices interviewed, an increasing amount of their time is spent completing, documenting, filing, and transmitting paperwork to the state. Some of the justices who had served for protracted periods of time stated that the amount of documentation and paperwork required now is at the worst level that they have seen in their careers as justices, and a few indicated the bureaucratic requirements could well be a reason that someone would not want to seek the office of justice in the town or village.

The survey data indicated that the justices in New York have not endured the caseload explosion that was experienced by the justices in Ontario (Kleiman, 2008) following legislative reform efforts in the respective state and Province. However, upon further examination in the interviews with the justices, one of the possible hidden effects of
the reform efforts in New York may have been discovered. Although the justices in New York have similar relative amounts of the number of cases they hear annually now compared to twenty-five years ago, and administrative duties and requirements for each of those cases has increased, relegating more of the justices’ judicial time to administrative duties, and possibly impacting the appeal of the community service concept of the position for future justices.

*Justices’ role in their communities*

In asking the justices what they perceive to be the role of the justice in their local communities, it quickly became very apparent from almost all of the interviews how important they view their roles, and the pride they have in serving as justices of the peace. This finding was predicted from personally talking with a previous justice who has studied justices (Provine, 1986), and by talking with a current justice who recently completed a study on the qualities that make a good justice in New York State (O'Hare, 2009) who advised that justices are very proud of the work that they do and hold their offices in very high regard.

Most of the justices interviewed indicated that primarily they see their role as an arbitrator or a problem solver in their local communities. They talked about how many times a minor issue between two parties would come before their court, and how it was not the legal nuances of the case that were the main concern to the justices, but instead to see that both parties got a fair “deal” and that all parties left the court happy with the resolution. Most of the rural justices indicated that finding a resolution that everyone thought was fair generally was not difficult, and that common sense and mediation were important parts of the
job. Partially because, “at the end of the day we’re all neighbors in the same community. The two parties more than likely know each other and in a lot of cases, we all live close to or next to each other, so we all have to get along.” This sentiment of fairness and happiness between both members of the community, and also among the community and the justice was echoed by many of the justices in many of the interviews.

While many of the justices talked about fairness and mediation in their role as justices, a few of the justices expressed the fierceness and protectiveness about their jobs that were previously discussed.

“I think the role of a justice is hugely important, especially in a rural area. It’s important because you have to remember that these are the courts closest to the people, and these courts are what provide the people in this community with access to real justice. I know there have been people that have wanted to do away with the justice courts, but that would be disastrous for the local citizens. Anyway, they [the state legislatures] would never do away with them. They’re too much of a cash cow for the state mostly, and they recognize that. They’re not going to do away with something that generates so much money for the state.”

It seems then that for some the usefulness of the role of the justice in terms of access to justice for the citizens is paramount. Other justices stated the same thoughts more generally, and sometimes more indirectly, but the general theme was the importance of the justices’ role to the local townspeople. On a macro scale though, it appears the role of the local town and village justices also plays a fiduciary role in the budgets of the towns and the state. This was documented in the state reports from recent years (Hevesi, 2006) showing that the town and village courts generate tens of millions of dollars annually. Although the vast majority of this money goes to the states, a portion of this money generated from fines
and surcharges is kept in the local town and village coffers. So that financially it appears that there is a role for these justices beyond fairness and due process for the local citizens.

**Recent improvements in the courts**

The interviews showed one of the biggest areas of disagreement amongst the justices; their views on recent legislative changes improving their courts. As discussed, in New York millions of dollars were allocated to improve the town and village justice courts as well as requirements for reporting fines and fees, documentation, and recording of all hearings. Outside of the courts call centers to advise the local justice on procedural and legal elements were either established or enhanced. In light of these efforts, some have argued that reform efforts have not gone far enough or have stalled altogether in providing improvements to the courts (Glaberson, 2010). While a minority of the justices interviewed agreed that there has not been a noticeable change in the justice courts, the majority of those interviewed described, in detail, numerous improvements in the courts, with one justice saying, “there have been more improvements in the courts in the last five years than there have been in my thirty years on the bench.” A closer examination of the disagreement on this issue between the justices shows a difference in perception of improvements depending on the population density of the courts. Those justices in areas with larger populations tended to see fewer improvements in their courts than those justices in the rural areas of the state. This may be a logical finding in that the courts in the denser geographical areas may have already had physical and technological capabilities that the rural courts never had, and that the courts in areas with larger populations, according to previous work (Provine, 1986) and the survey
data show, were more likely to have justices that were lawyers. Areas with higher populations tend to have more and increasingly complex legal rules (Black, 1976), which would explain the tendency towards more legal professionals as justices, and had higher caseloads that generated more financial resources for the courts (Hevesi, 2006). As such, the resources allocated for the reform of the courts would have been more likely to benefit the small rural courts, than the courts with higher populations, resulting in those rural justices experiencing more changes in improvements than those in areas of higher populations.

The justices in the rural areas talked about the many improvements to their courts that have been brought about by recent reform legislation. The biggest improvements were in the areas of court safety, training for the justices, access to information, and improvements in computer and recording equipment. Perhaps not ironically, these specific areas for improvements were the ones highlighted by previous research and legal opinions (Mansfield, 1999; Provine, 1986) and were the areas targeted by the recent legislations for improvements.

Justices spoke of a number of safety improvements for their rural courts that included the most basic items for security. One justice reported that the courts were finally provided with a security wand, similar to those used by airport security, to screen people coming into the court that might be carrying knives or other harmful things. Other security measures reported included blinds for the windows of the room that courts was being held in. These blinds were important to ensure people’s privacy in terms of who were the witnesses and who was testifying in cases that might have particular sensitivities. Other justices stated that they were provided with metal detectors and other security measures that justices in courts in larger jurisdictions may have taken for granted.
Many of the rural justices talked about the grant funding that the state had provided to purchase and/or update computer systems; many of the computer systems that existed, if at all, in these smaller courts were antiquated or non-functional at all. One justice stated that it was not so much the computers as the expensive software that the court was able to purchase with the grant funding. Some spoke of the grant funding going for basic furniture such as a desk or chairs, or even a filing cabinet. Many others verified earlier state reports (York, 2006) that indeed all of the rural courts had been provided with recording devices for all hearings as well as training on how to use the devices. Most of the justices expressed satisfaction with the funding provided for the physical and technological improvements in the courts with one justice saying, “we have been able to modernize the courts more in the last two years than we have been able to in the last ten to fifteen years.” It appears that for the vast majority of the rural court justices interviewed, the millions of dollars in funding allocated by the state for physical improvements has had an impact.

Another area of general agreement among the rural justices interviewed was the increased access to training and legal information provided to them by the state. Many talked about the mandated two-days of training that each justice in the state is required to complete annually. The interviews verified an interesting finding in the survey data; many of the justices voluntarily receive more training than the mandated minimum. The justices stated that the state offers more training sessions on more topics now than in the recent past, and many talked about taking, and enjoying, those training sessions. One justice even talked about how several of the local town justices meet every other Saturday morning at a local coffee shop, and have various speakers come in and speak to the group, mentioning state
troopers, public defenders, fire wardens, and other public officials. The justice stated that
during these weekend meetings they are updated on new laws and new procedures, and that
the meetings are generally well attended by the local justices.

Other justices spoke of the legal resource call-in center that is provided by the state as
improvements to access for legal information. The call center is open twenty-four hours a
day and is staffed by attorneys. Justices are free to call in at anytime with legal questions or
concerns. The justices generally talked about the immediate response they usually get from
the call center, with one justice stating that if an answer to a question were not immediate a
response would usually follow the same day. Again these training topics and sessions and
the legal call center were talked about numerous times with justices in rural areas, but were
never mentioned by the justices in larger population areas who happened to be attorneys.

Another area of improvement that has been cited in the literature is the need to have a
dedicated structure for the justices to hold court in (Mansfield, 1999; Silberman, 1980). This
issue of the need for a dedicated physical structure in which to hold court was also magnified
and sensationalized in media reports (Glaberson, 2006) insinuating that most of the rural
justice courts are held in garages, fire stations, justices’ homes, or any other random location
within the town where a justice could put up a folding table and chair and declare the
location a court. While the survey findings show that most justices do have a physical
dedicated structure to hold court, and that most of those structures are commonly referred to
as courthouses, there are some rural courts that are held in various town structures other than
a courthouse. The justices interviewed whose courts were held in various town buildings
though, were cognizant of the fact that ideally there should be a courthouse but explained that
it was not practical. In many of these small rural towns and villages, the amount of cases and
the amount of money generated by the fines and fees of these courts did not warrant a
dedicated structure for the small town or village population:

“I know we use the Town Hall for court and I think that is good. That’s just
the way a small town is. I know the towns next to us have their own court
building, but they have more people and we don’t, we just can’t afford it, and
that’s ok, we don’t need it. It would be nice to have your own court but in the
real world you just can’t. You have to function in reality with what the town
really has.”

This quote exemplifies the idea that many of the justices put forth: the local people in
the towns and villages know what works best for them. If they have to hold court once a
week in a town hall instead of a building that is specific to a courthouse, then that is what
they do. Perhaps in the future with more dollars for funding the state could improve the
professionalism of these rural courts that are held in various town and village buildings, but
until then, from the perspective of the justices they seem to be making do with what they
have.

Legal educational requirement of the justices

The arguments for having a requirement of a formal legal education of the justices is
one that is not new; it goes back well through the history and the literature on justices of the
peace. Requirements have changed over time, and the historical justifications have been
discussed. However, over time there remains one cause for the requirement that is the same
now as it was in the frontier times of U.S. and Canadian history. The interviews show, as do
the survey data, the divisions between the justices who believe a justice should be a lawyer
and those justices who do not feel it is a necessary requirement. As was the case with
perceptions on improvements to the courts, discussion on whether a justice should have a
formal legal education also depends on who is asked. Many of the justices interviewed who
are in fact attorneys stated that a formal legal education should be a requirement for all
justices. However, not all lawyered justices agreed that a legal education should be a
requirement, and in fact one lawyered justice flat out disagreed and stated that a formal legal
education is not needed for rural justices.

The crux of the argument remains that as legal cases become more complex, justices
need to have a formal legal education to understand the case complexity in order to
adjudicate fairly and within the parameters of due process for defendants. However, many
did not agree with this argument. In fact, the survey data show, and interviews verify that
fewer numbers of justices agree with the formal legal requirement that had in previous works
(Doob, 1991; Provine, 1986; Silberman, 1979). Perhaps this change, at least in New York, is
resulting from the increased access to legal resources, (ie. legal call centers), or perhaps it is
due to the fact that most cases heard by justices, specifically rural justices, are not complex
cases, nor are they civil or criminal cases. The majority of cases heard are motor vehicle
violations which consist mainly of speeding and driving under the influence cases.

A lawyered justice in a large court outside of New York City raised a particularly
interesting point in this argument. Although the comments of this justice clearly show the
influence of the complexity of cases argument, the point is brought forth regarding nuances
within that argument:

“I think justices should be an attorney in larger areas because of the complexity of
cases. Probably in rural areas it’s not so important as I can’t imagine their cases get
much more complex than who shot your cow, but it depends on the complexity of the cases. I guess what I mean by that is that it depends on the litigants in the case, I mean the sophistication level of the plaintiff and dependent that appear before the justices.”

This interview illustrates that there may be more to the original complexity of the case argument than ascertained in the surveys. Perhaps then it is not so much the type of case that comes before the justice that may warrant a legal education, but instead the sophistication of the litigants in the case. The rationale might be that one of the litigants in the case could hire a legally shrewd attorney whose astuteness in the law may supersede the justice’s legal knowledge and potentially bias the case.

As an outlier on the other side of the argument, a lawyered justice in a rural area had a completely different opinion on the question of whether a justice should be required to have a formal legal education or not. This justice stated that the complexity of the cases coming before justices in rural areas did not rise to the level where a lawyered justice was required. The justice reiterated the overwhelming sentiment from the non-lawyer justices that most, if not all, cases were minor motor vehicle violations or small civil matters between neighbors or between other members of the community. This justice went on to say that having a legal formal education as a requirement of justices in rural areas could essentially do away with most of the justices in New York. Since most rural towns and village probably did not have lawyers residing in those towns or villages anyway, requiring that the mandate to have at least one or two justices in a town or village, compounded with a legal education would mean that nobody would be eligible for the office anyway. This justice believed that a
requirement of a formal legal education was unnecessary and would probably never be required due to the lack of lawyers in the rural areas of New York.

Aside from those two specific interviews, the vast majority of those justices interviewed disagreed that a justice needs to have a formal legal education to be an effective or good justice. Most stated that common sense and/or good character was a quality that was paramount to having a legal education. This message of a justice having common sense seemed to resonate directly or indirectly with the justices and the stories of those in the criminal justice system that they dealt with constantly. One particular justice stood out with his eloquence on the legal requirement issue and how being a lawyered justice could be a detriment:

“To some degree but it is more common sense, in dealing with community members. That’s really more important than having a legal background. A lot of decisions I make are more of common sense in what is good for individual rather than every nuance of every individual in every case in order to do thing this way or that way. It’s what is best for the community and the person. I’ll tell you why, when I first became a judge in 1995 a local state trooper asked me if I was an attorney, and I said no I’m not, I used to be an engineer before I retired. He said that that was good since I wasn’t a lawyer as I’d probably be a hell of a good justice.”

The comments by this justice were again, retold by most of the other justices interviewed. Given the nature of the types of and complexity of the cases that rural justices preside over, and given that the majority of the justices in New York are in rural areas, it seems that most agree that a legal requirement is not needed, but rather common sense is needed to settle the small town disputes. Where historically there were more lawyered justices who felt the legal requirement was needed than are now, even among those lawyered justices who feel a legal education should be required acknowledge that may not always be the case. The interviews,
especially among the lawyer justices, indicate there may be more to this legal argument for the requirement than previously reported or thought.
References


Chapter 6: Summary

This research project was conducted to renew the spotlight on an often un-noticed or unknown structure of the court systems in the United States and Canada: the justice of the peace courts. Since mid-1980’s (Provine, 1986) and early 1990’s (Doob, 1991), there has been scant empirical work done on these courts that exist in almost all of the United States and in each Province in Canada. Given that these courts operate at the lowest levels in the state and Provincial courts structures, and account for the overwhelming number of small civil and criminal cases (NCSC, 2007), it is interesting and perplexing to find such little empirical work.

This project could have simply aimed to describe the social setting of the justice of the peace courts in any of the numerous and varied jurisdictions. However, a more pressing impetus to this project was a New York Times newspaper exposé (Glaberson, 2006) that exposed glaring miscarriages of justice in the justice of the peace courts in upstate New York. In preparing for this project, through the newspaper accounts and the literature on the subject, it was discovered that the justice of the peace courts in New York and Ontario were, at the time, very similar in structure, role of the justices, and processes. It was decided that a comparison of the two locations would be an ideal study. Both locations had been studied empirically, Provine in New York, and Doob in Ontario, providing baseline data for comparison. Additionally, both locations, since the New York Times, piece had been the subject of legislative reformation acts meant to update the courts and the roles of the justices. Using questions put forth by these previous studies and the literature, these two jurisdictions provided the ideal settings for measuring changes to the courts post reformation efforts; the
project aimed to find out if the reform efforts had any effect on the court structures and processes, and if so the degrees or amounts of change.

The justices in both locations were surveyed and interviewed (to the extent that they could have been) using instruments with questions on four main research questions: 1) how many of the justices had a formal legal education, 2) did the justice of the peace courts receive increased funding, legal training or legal resources as a result of the reformation efforts, 3) did the justices’ caseloads and types of cases they heard change significantly as a result of the reform efforts, 4) has there been a change in the perception of the role and utility of the justices from their perspective, and from the perspective of others towards them; particularly perceptions of the justices from the community members and from the professionals in the criminal justice system. While the first three research questions were interesting in terms of comparisons from one historical point to another in comparing effectiveness of an experiment, or in this case reform legislation, it was the last research question that had the potential of adding the most to criminological and sociological knowledge in the field. Rarely, if ever, has there been empirical work that specifically asked the justices their viewpoints and perspectives on this litany of topics. The justices’ viewpoints is vitally important, though, if we are to understand the functioning and the improvement or reform needs of these courts; in order to know what the courts need, we need to start by asking those that work in them on a daily basis. Thus, this study aimed to fill the gap in knowledge that has existed over the last twenty-five years, and perhaps the last two hundred years since the inception of these courts in the history of the United States.
As discussed, the *New York Times* piece on the justice of the peace courts in New York State was one of the catalysts of the inception of this project. However, as a methodologically and scientifically sound research proposal, this project did not have goals to either validate or refute the claims of widespread miscarriages of justice and corruption that were asserted and insinuated by the newspaper’s exposé. The goals of this project were to examine the social setting of the justice courts in both jurisdictions in an effort to measure changes in the courts, and to understand, more clearly than was evident in the scant literature, the justices’ perspectives on their roles and the degree of support from the community and criminal justice professionals with whom the justices were engrossed. The findings of this examination of the justices of the peace, however, clearly do not support the allegations made by *The New York Times* or the exposé reporter. It appears, prima facie, that the article took anecdotal experiences of a minority of cases throughout the long history of the justice of the peace courts in an effort to substantiate sensationalized claims of widespread abuse and corruption by the justices.

The justices surveyed and interviewed are a hard-working and proud group of individuals who embody community service and honor in their roles as town and village justices and arbitrators. The numbers of justices who have a formal legal education seems to have decreased slightly since the prior work in New York State (Provine, 1986), but the educational level of the justices has increased dramatically since the mid-1980’s, with many justices stating that a formal legal education is not required, and if in-depth legal specifics of a case are unknown to a justice, s/he has legal resources and counsel available for assistance.
and guidance. It seems then that the question of a need for a legal education for the justices may be moot, even from the perspective of justices who are in fact attorneys.

There were millions of dollars spent to enhance and update the courts in terms of technological equipment, furniture, and security measures. While this money, it appears, was not distributed evenly across the various 1,300 courts in New York State, it does look as if the courts that needed improvements have at least seen marginal enhancements. The courts in jurisdictions with larger populations may not have needed the amounts of improvements (technological and security) as much as the courts in the rural areas. The larger population courts have higher caseloads and are more likely to have a justice with a formal legal education, which together has the effect that larger population courts tend to generate more revenue from fines and fees for both the state and their courts (Hevesi, 2006). Thus the courts with the most need for technological and security improvements, the most rural courts, have seen vast improvements from the initial $10 million dollars spent. These courts, as reported by the justices, have computer systems, recording devices for all court hearings, assistance with legal questions and reporting of fines and fees, and improved security measures. While perhaps not all of the courts have had all of their needs met, the initial financial investment has made inroads in filling the needs of the courts.

The recent reform efforts for the justice of the peace courts do not appear to have significantly affected the caseloads or the types of the cases that the justices hear. Further consideration of this finding makes logical sense. The justices, as the lowest level adjudicators in the courts systems, can only hear cases brought to them either criminal, usually by the police or district attorney, or civil actions brought by citizens within their local
towns or villages. The reform efforts were not directed to either increase or decrease the numbers or types of cases that the justices heard; that is determined by extraneous factors outside the legislative reforms in New York, but not in Ontario, Canada. The Canadian justices of the peace have seen a significant increase in their caseloads (Kleiman, 2008), but this was not due to improvement efforts, instead it was due to a legislative change in the role of the justices in Canada. The Canadian justices now perform many more roles and duties as para legal professionals for higher level judges in addition to their normal roles as justices of the peace than their counterparts in New York State perform (Ontario Government, 1990). The Canadian justices’ breadth of work was vastly expanded as they became full time judicial professionals. The same did not happen to the justices in New York State. As such the caseloads of the New York State justices appear to be inline with the caseloads of that of the same justices in the mid-1980’s (Provine, 1986). The justices, in New York, hear a variety of small civil and criminal matters, but the vast majority of the cases heard by the justices are motor vehicle cases that consist of small infractions to cases of driving under the influence. Given the millions of dollars generated in fines and fees each year by the justices, it is logical that the majority of their cases are those that would have large fees, fines, and surcharges associated with them.

The perceptions of and by the justices seems to be where there is the largest disconnect with the assertions in the New York Times piece. The justices report extremely large amounts of community and professional support for their positions; most believe that the community supports them and believe that the justice of the peace courts function very well as they currently exist. They report that their roles as justices are vital to the
community, and most are proud and are honored to perform this incredibly underpaid position as a way to give back to their communities. Many justices, including justices who are attorneys, stated that common sense was a more important criterion for a local justice than a law degree, and see their role as very important in maintaining a harmonious community where everyone is given a fair deal. The justices are provided with yearly mandatory training sessions, and many of the justices seek out additional training throughout the year. Many justices reported a need for increased training and increased funding as avenues for further improvements in their courts, but none of the justices indicated a need for further reform legislation or the abolishment of the justice of the peace courts as a way to provide fairer access to justice for the local community.

Limitations of the research

While this project fulfilled an immense gap in the knowledge of justice of the peace courts, it is not without its limitations. There are two major limitations with the study, neither of which affects the general findings of the surveys or the interviews; rather both limitations deal with methodological considerations in the research design and implementation. One limitation is the absence of survey or interview data from the Canadian justices of the peace. To a large part, however, this limitation was beyond the control of the researcher. As was noted, when the surveys were mailed to the Canadian justices of the peace, the Chief Justice in Ontario intervened and essentially directed all of the justices that they need not complete or return the survey. Again this was because prior permission to conduct research, approval of the research instruments, and dissemination of the surveys
were not done through the Office of the Chief Justice as is required. This policy was not previously in effect or announced, so the need for administrative approval could not have been anticipated. Although there is a relatively small amount of survey responses from the Canadian justices of the peace, that is certainly not representative of all justices in Ontario, the social setting and the changes in the social setting are documented and described in the study. Given that those setting provide a lens from which to see the changes in the justice courts, the lack of survey and interview responses does not focus that lens or give us a clear picture of the changes.

The second limitation of the research is the small response rate and sample size of the New York State justices. As happens in many applied research projects, this project was severely limited by financial and time constraints. The lack of financial backing meant that follow-ups to the survey could not be conducted which would have increased the response rate. The response rate of the surveys had a direct effect on the number of interviews to be conducted as those responding to the survey were the only members in the population of New York justices who could consent for an interview. Another indirect effect on the number of interview responses was the way the interviews were conducted, telephonically. Some of the justices indicated that they would only consent to face-to-face interviews and were not comfortable being interviewed over the phone. While face-to-face interviews were originally planned for in the design, the financial constrictions meant that an alternative interview method had to be employed.
Areas for further research

This study has been the first in many years to examine the justice of the peace courts, and has been the first project to cross-culturally examine these courts in both the United States and Canadian contexts. It has answered questions regarding changes in these courts since recent legislative acts designed to improve the courts, and has provided a challenge to assumptions made in media accounts. This project has also and importantly provided further areas for research in this area, and different means by which to examine the justice of the peace courts.

Foremost, further work needs to be done to more clearly examine the justice of the peace courts in Canada in order to draw more definitive conclusions regarding the effects of the reform efforts in both locations. While it appears that political organization of the New York justices, and perhaps the lack of that organization by the Canadian justices, may have been paramount in the justices maintaining control and authority over their courts, further examination is needed to validate that theory. Further work on the Canadian justices must include the approval and assistance of the Provincial government in Ontario; without that permission and assistance, as was evidenced here, study of the Canadian justices is nearly impossible. Further work would do well to gain the permission of the Provincial government at the onset of study formulation in order to facilitate and encourage the justices in Ontario to have their voices heard.

More work is also needed on the New York State justices, as well as other justices in other states. Further study should secure the financing and time necessary to conduct multiple survey follow-ups, as directed, in order to increase response rate and sample size.
More importantly, the funding and time allotment would allow researchers to go into the field in New York, or other states, to conduct face-to-face interviews with the justices, criminal justice professionals, and community members. This time spent in the field would also facilitate a historical examination of the records in the courts from which a more complete and accurate story of the justices could be told.
References


Appendicies:

Appendix 1: Survey Instrument

This section asks about your thoughts concerning recent efforts to improve the Justice of the Peace Courts. (Please indicate how strongly you agree with each statement below by circling the appropriate number.)

<table>
<thead>
<tr>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Undecided</th>
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<tbody>
<tr>
<td>1. Recent measures to improve justice courts take into account the concept of “Home Rule” that is a cornerstone of justice courts.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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<tr>
<td>2. Justice courts are now improved as a result of reform efforts.</td>
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<td>3. As they are now, justice courts currently work very well at resolving local disputes.</td>
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<td>2</td>
<td>3</td>
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<td>5</td>
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<tr>
<td>4. The people in my community are happy with the justice courts as they are now.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
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<tr>
<td>5. Resolutions for justice court improvements should come from the local and not state level.</td>
<td>1</td>
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<td>3</td>
<td>4</td>
<td>5</td>
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6. In your opinion, as a Justice of the Peace, where do you think the focus on justice court improvement efforts should be focused: (circle all that may apply)
   - Increased funding for justice salaries..........................1
   - Increased funding for court buildings..........................2
   - Increased funding for support staff............................3
   - Increased training on legal procedure...........................4
   - Increased training of rules of evidence..........................5
   - Educational legal degree requirement............................6
   - Supervising justices..................................................7
   - No improvements needed............................................8
   - Other______________________________
This section asks about your thoughts about your job as a justice of the peace. (Please indicate how strongly you agree with each statement below by circling the appropriate number.)

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<tr>
<td>6.</td>
<td><strong>Justices of the Peace serve important roles in our justice system that could not be performed as well by other judicial officers.</strong></td>
<td>1</td>
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<tr>
<td>7.</td>
<td><strong>One of the important roles of the Justice of the Peace is to serve as a buffer between the police and the ordinary citizen.</strong></td>
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<td>8.</td>
<td><strong>Justices of the Peace can represent community interests more adequately than can judges or other representatives of the criminal justice system.</strong></td>
<td>1</td>
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<td>9.</td>
<td><strong>The general public for the most part does not understand the responsibilities and powers of the Justice of the Peace.</strong></td>
<td>1</td>
<td>2</td>
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<td>10.</td>
<td><strong>A system of “lay” Justices of the Peace is the best way to ensure that the police do not encroach inappropriately on the liberties of individual citizens.</strong></td>
<td>1</td>
<td>2</td>
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<td>4</td>
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</table>
This section asks about training provided for justices of the peace. (Please indicate how strongly you agree with each statement below by circling the appropriate number.)

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<tr>
<th></th>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Undecided</th>
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<tbody>
<tr>
<td>11.</td>
<td>The training you personally received when you first became a Justice of the Peace was adequate for you, given your own background and knowledge of the requirements of the job.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
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</tr>
<tr>
<td>12.</td>
<td>The present ongoing training program for Justices of the Peace in your jurisdiction is adequate.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>13.</td>
<td>The topics on which you receive ongoing training are appropriate for you.</td>
<td>1</td>
<td>2</td>
<td>3</td>
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<td>5</td>
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<tr>
<td>14.</td>
<td>The amount of input from Justices of the Peace into the training program in your jurisdiction is appropriate.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>15.</td>
<td>Overall, you are satisfied with the amount of training you receive as a Justice of the Peace.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>16.</td>
<td>Overall, you are satisfied with the quality of training you receive as a Justice of the Peace.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
This section asks your thoughts regarding how others view your role as a justice of the peace. (Please indicate how strongly you agree with each statement below by circling the appropriate number.)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Strongly Disagree</th>
<th>Disagree</th>
<th>Agree</th>
<th>Strongly Agree</th>
<th>Undecided</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.</td>
<td>The police officers appearing before you show you the same kind of respect that they would show to a state court judge doing the same task as you.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>18.</td>
<td>Justices of the Peace are given appropriate levels of respect by the police.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>19.</td>
<td>Justices of the Peace are given appropriate levels of respect by court judges.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>20.</td>
<td>Justices of the Peace are given appropriate levels of respect by the general public.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>21.</td>
<td>Justices of the Peace are considered to be “professionals” (in the same sense that judges or lawyers or police officers are seen as professionals) by those working in the criminal justice system.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>22.</td>
<td>Justices of the Peace are viewed by the police as “judicial officers” in the same sense that judges are judicial officers.</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>
24. Some judges at this level in the judicial system are attorneys. Do you believe there are significant differences in adjudication decisions between attorney and non-attorney judges?

Yes………………………………………………………………..1
No. .............................................................................2
Please explain:_______________________

25. Do you think that it would be helpful for Justices of the Peace to have some formal training in law before they were appointed as Justices of the Peace?

Strongly Agree………………………………………………….1
Agree………………………………………………………..2
Disagree……………………………………………………..3
Strongly Disagree……………………………………….4
Undecided……………………………………………………5

26. Where do you perform your work as a Justice of the Peace? (Please give a percentage for each location where you carry out your duties as a justice). Please take a moment to ensure your answers sum to 100%.

My home…………………………………………………….  _____%
Court House…………………………………………………  _____%
Police Station………………………………………………  _____%
Jail/detention center…………………………………………  _____%
A separate office away from the court………………………….  _____%
Other (please specify)__________________________________

27. Do you think that you are provided with appropriate facilities in which to carry out your work?

Strongly Agree………………………………………………….1
Agree………………………………………………………..2
Disagree……………………………………………………..3
Strongly Disagree……………………………………….4
Undecided……………………………………………………5

28. Do you think that you are provided with adequate physical security in your job as a justice?

Strongly Agree………………………………………………….1
Agree………………………………………………………..2
Disagree……………………………………………………..3
Strongly Disagree……………………………………….4
Undecided……………………………………………………5
29. Are you the only justice in your jurisdiction?
Yes……………………………………………………………………………….1
No…………………………………………………………………………………2

If no, do the decisions of law enforcement officers partly determine which justice gets which cases?
Yes……………………………………………………………………………….1
No…………………………………………………………………………………2

30. Approximately what is your annual caseload?
Less than 100 cases………………………………………………………………1
100-249 cases…………………………………………………………………2
250-499 cases…………………………………………………………………3
500-749 cases…………………………………………………………………4
750-999 cases…………………………………………………………………5
Over 1,000 cases………………………………………………………………6
Don’t know……………………………………………………………………7

31. Please estimate what percentage of your caseload falls into each category?
Motor vehicle…………………………………………………………………….%
Civil and small claims………………………………………………………….%
Criminal………………………………………………………………………….%
Other…………………………………………………………………………….%

32. About how many hours a week do you work as a justice?
Less than 10 hours………………………………………………………………1
10-19 hours……………………………………………………………………2
20-29 hours……………………………………………………………………3
30-39 hours……………………………………………………………………4
40 hours…………………………………………………………………………5
Over 40 hours……………………………………………………………………6
Don’t know……………………………………………………………………7

33. Do you have assistance, such as a court clerk, for routine court work?
No support staff………………………………………………………………1
One part-time assistant………………………………………………………2
One full-time assistant or the equivalent in part time help………………3
More than one full-time assistant…………………………………………4
Volunteer staff…………………………………………………………………5
Don’t know……………………………………………………………………6
34. Overall, how much of your work as a Justice of the Peace would you consider to be administrative and how much would you consider to be judicial?

None is judicial…………………………………………………………1
Almost none is judicial…………………………………………………2
Less than half is judicial………………………………………………3
About half is judicial…………………………………………………..4
More than half is judicial……………………………………………5
Most is judicial…………………………………………………………6
All is judicial……………………………………………………………7
Don’t know……………………………………………………………8

35. Did you ever hold public office before becoming a justice?

No……………………………………………………………1
Yes……………………………………………………………2

If yes, what office(s)? ______________________________

36. What percentage of the criminal defendants that appear before you are you acquainted with?

Criminal defendants……___%  
                  Civil plaintiffs……___%  
                  Civil defendants……___%

37. How often do members of your community try to consult you informally about legal matters other than pending cases?

Very often………………………………………1
Quite often……………………………………2
Occasionally………………………………3
Rarely………………………………………4
Never………………………………………5

38. What is your annual judicial salary?

$0 – 24,999……………………………………………………………1
$25,000 – 49,999……………………………………………………2
$50,000 – 74,999……………………………………………………3
$75,000 – 99,999……………………………………………………4
Over $100,000……………………………………………………5
Don’t know…………………………………………………………6
39. Do you agree that the amount of money you receive for your work as a Justice of the Peace is appropriate when compared to what others receive for their work in the justice system?

- Strongly Agree………………………………………………1
- Agree…………………………………………………………..2
- Disagree……………………………………………………..3
- Strongly Disagree…………………………………………..4
- Undecided……………………………………………………5

40. Are you: (circle all that apply)

- Male…………………………………………………………..1
- Female……………………………………………………….2
- Married…………………………………………………………1
- Unmarried………………………………………………………2
- A veteran………………………………………………………1
- Non-Veteran…………………………………………………..2

41. Your age? _____ years

42. What is the level of education that you have?

- Less than high school………………………………………1
- High school (grade 12)……………………………………..2
- Some college………………………………………………3
- Associate degree (2 years of college)……………………...4
- Bachelor degree (4 years of college)……………………..5
- More than 4 years of college……………………………..6
- Law school graduate…………………………………….7
- Don’t know………………………………………………...8
Currently, many other justice of the peace courts across the country are facing similar issues and challenges that your courts have recently confronted. Your thoughts and view on recent and future changes regarding the justice of the peace courts is very important to me and to this study, and more significantly to the many other justices in other locations.

I would welcome the opportunity to conduct a confidential interview with you in order to better understand these issues.

If you would like to be contacted for a confidential interview over the phone, please indicate the day of the week, and the time of day, and a phone number that would be best for me to contact you.

Monday, Tuesday, Wednesday, Thursday, Friday

Early morning, morning, afternoon, late afternoon
Appendix 2: Interview Instrument

**What brought you to this role**

In talking about why you decided to serve as a justice:

1. Tell me what attracted you to this job?

2. What are some recent types of cases you’ve heard that affirm why you decided to serve as a justice?
   
   a. PROBE: What kinds of cases do you prefer?

   b. PROBE: Are there any cases that you wish you didn’t have to handle?

   c. PROBE: What was the reaction from the people in the community?

   d. PROBE: What about law enforcement?
Changes in your caseload

Talking about your caseload and changes in your caseload:

3. Tell me about the current volume of criminal and civil cases that you hear?
   a. PROBE: What are some cases that demonstrate why the number of cases is an issue
   b. PROBE: What are some changes in the types of cases that come before you?
   c. PROBE: What effect has recent reform efforts had on the number of cases in your caseload?
      i. PROBE: What can you tell me about any increases in the amount of paperwork generally required different types of cases?
      ii. PROBE: How much do you think your caseload has changed recently?
      iii. PROBE: How does that effect how much time you can spend on a case?
**The justices’ role in the community**

Talking about the importance of the role of the justice in your community:

4. What are some recent types of cases you’ve heard that describe the importance of that role?

   a. **PROBE:** How do you feel people in the community think about the role and work as a justice of the peace?

      i. **PROBE:** How much do you think the people know about your role as a justice?

   b. **PROBE:** What are your thoughts on the town and village courts being described as courts closest to the people?

      i. **PROBE:** How do you think this designation connects with the concept of “home rule”?

      ii. **PROBE:** What do you think about any political dilemmas that might arise with the courts being close to the people but accountable to town or village boards?

   c. **PROBE:** How do you feel law enforcement officials think about the role and work as a justice of the peace?

   d. **PROBE:** How important do you think it is that a justice is familiar with the community members who may appear in the justice’s court?

   e. **PROBE:** How do you think the amount of money you get paid as a justice compares to the role you serve or play?

      i. **PROBE:** What do you think about serving as a justice as a way of giving back or service to the community compared to the amount of pay you receive.
Recent improvement efforts for the courts

Talking about the recent improvement efforts for the village and town justice courts:

5. What has been an issue recently regarding the town and village justice courts:
   a. PROBE: What are some examples of suggestions to change the courts?
      i. PROBE: What are your thoughts on the recent Action Plan to modernize the courts?
      ii. PROBE: What are your thoughts on ideas to consolidate some town and village justice courts?
   b. PROBE: What was the community’s response?
   c. PROBE: What has and what hasn’t really changed?
      i. PROBE: Was there increased funding for these changes?
   d. PROBE: How much do you see a difference in town and village justice courts between urban and rural areas?

6. What are some recent examples or cases that you think may have been helped or hurt by changes to the courts?
   a. PROBE: What improvements do you think would have helped?
   b. PROBE: What would you recommend to improve justice courts, what would you suggest?
   c. PROBE: What do you think has been the result of recent legislative reform efforts have improved the justice courts?
**Justices’ amount and access to legal training**

Talking about your own access to legal training:

7. What kind of training do you think one needs to be a justice?
   a. PROBE: What are your thoughts on life experiences compared with legal training?
   b. PROBE: What about prior service to the community compared with legal training?

8. What are some recent cases where the amount of legal training you were provided with was an issue? Perhaps where you had the legal training you needed or perhaps where you needed more?
   a. PROBE: How do you think the amount of legal training that you were provided with affected that case?
   b. PROBE: What would have been the result if you had more or less training?
   c. PROBE: How much do you think a lack of training affects a town or village justice coming under investigation for misconduct on the bench?
   d. PROBE: What other topics that could be covered in the training would you like to see for new justices?

9. How important do you think it is that a justice has a formal legal education?
   a. PROBE: How much of a difference does a formal legal education make in the job that a justice does?
The justices’ courthouse or physical environment

Talking about the physical location where you hear your cases:

10. Tell me about the physical location where you hear your cases? Can you think of any recent cases or examples where this location was an issue?

   a. PROBE: What are some changes that have happened with regards to your location that you hear cases?

   b. PROBE: What do you think about the adequacy of the location?

   c. PROBE: What would you like to see changed about the location?

   d. PROBE: Tell me about the security at the location? Do you have any, what types?

   e. PROBE: What would you like to see changed about the security you have?
**Other issues that we missed**

In talking about parts of being a justice that I haven’t mentioned:

11. What are some other issues that you think I should be aware of regarding the town and village justices?

   a. PROBE: What advice could you give to town and villages in other locations that might want to improve their justice courts?