JUDICIAL BEHAVIOR IN ARRAIGNMENTS:
AN EXPLORATION IN SYNTHESIZING WEBERIAN
AND JURISPRUDENCE THEORY WITH LEGAL PRACTICE:
THE ROLE OF SIZE IN JUDICIAL PERFORMANCE

By

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Abstract of Dissertation Presented to the Graduate School of the University of Florida in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy

JUDICIAL BEHAVIOR IN ARRAIGNMENTS: AN EXPLORATION IN SYNTHESIZING WEBERIAN AND JURISPRUDENCE THEORY WITH LEGAL PRACTICE: THE ROLE OF SIZE IN JUDICIAL PERFORMANCE

By

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A comparative analysis combining qualitative In-Depth Interviews and Quantitative Observational Checksheets as well as Judicial Surveys was taken across 6 districts, focusing on Judicial Performance at the County Court level. The data taken from all sources shows that there are differences in performance for the more creative side of judging in that the greater the amount of size specialization, the less creative input (Case-by-Case Thinking exhibited by the judge; whereas the greater the mechanical performance exhibited by the judge. These findings provide support for the exploratory model created for determining what kind of affect size specialization has upon judicial performance.
CHAPTER 1
INTRODUCTION

This dissertation grows from a dual career—teaching and researching sociology of law and working as a litigator engaged in prosecution and defense practice. One of the intriguing intellectual questions in sociology of law is how the form and function of law both affect and are affected by society. A striking and relevant feature of legal practice is the way law alters reality through its formalization and rationalization of conflicts and lives. There are structural and social psychological themes in both the theory of law and society and the practice of law that are not well understood and rarely systematically studied. From the practice of law, something about size seems to matter in the operation of courts. This dissertation will explore dimensions of this structural variable. It will try to separate the size features of higher caseloads from other ways that size matters.

This dissertation seeks to locate a systematic way to learn more about how large, abstract notions of law, and the sociology of law, play out in the more mundane practice of law. The focus is on size and its relationship to rational-legal organization and indicators of judicial performance. The bridge is then made to the legal and law practice abutment. This foundation reflects jurisprudential notions and the realities of day-to-day legal practice. To anchor the project, the research setting used county arraignment hearings in 6 different district courts in Florida. Observations were made to learn about relationships between various features of rationalization and judicial performance during these routine proceedings—proceedings that occur for every criminal defendant. Special attention was paid to features of mechanistic and formalized judicial performance that emphasize efficiency and standardization. If this
style dominates, the resulting rituals may alienate judges (“limit the internal actor”) and re-institutionalize conflicts by de-contextualizing the social circumstances. To make matters “justiciable”, the norms and values of society will be re-stated in legal terms (Bohannon 1973) and some societal inputs will be stressed and others downplayed (Chambliss and Seidman 1971). The style of judicial decision making in the face of growing bureaucratization continues to draw scholarly attention as well as concern from the general public (Rubin 648-659; Nardulli 96). Robotic decision making and a lack of focus on quality are serious issues at hand. In Quality of Courts and Judiciary, Albers comments on the potential effects on quality; “Too much orientation towards efficient court proceedings, may lead to a decrease of judicial quality (‘justice hurried is justice buried’)” (Albers 3). Emphasis on quantity over quality and not ensuring that justice is done on a case-by-case basis plagues the Courts of the Criminal Justice System. This focus on speedily processing the material rather than assuring a quality result is a widely expressed concern (Rubin 648-659). Recent research suggests that such is a statement that carries a sentiment shared by many in the general public. Current scholarly research showcases these concerns; “Higher formalism is associated with less fairness and impartiality, less honesty, less consistency, and less confidence in the legal system” (Djankov, La Porta, Lopez-de-Silane, and Shleifer 506). In some ways this orientation defies conventional wisdom, which posits that a lack of formal rules contributes to discriminatory, arbitrary, or unfair processing. Indeed, the “rule of law” is built on formal procedural rules (Whitford).

One particular rule of law, Florida Rule of Criminal Procedure 3.111, offers a strategic way to examine any tension between mechanistic formalized judicial
performance and a more complete quality-driven individualized approach. Although criminal defendants have the right to an attorney at their initial appearance (Rothgery v. Gillespie County 554 U.S. 191 (2008)) which occurs within 48 hours of the arrest in Florida, very few take advantage of this opportunity—they have been arrested for relatively minor offenses and appear pro se (i.e., are representing themselves). Most criminal defendants are also indigent, but they appear at the arraignments without counsel. In Florida, the judge is required to inquire about a defendant’s waiver of counsel. Fla. R. Crim. P. 3.111 is the formal procedural rule that controls this process. 3.111 (d)(2). is a rule that requires, in part, that for a defendant to properly proceed at any crucial stage of a proceeding without an attorney, the judge must understand that defendant has gone through a prescribed process of offering counsel and that process of “offering counsel has been completed and a thorough inquiry has been made into both the defendant's comprehension of that offer and the defendant’s capacity to make a knowing and intelligent waiver. Before determining whether the waiver has been done knowingly and intelligently, the court shall advise the defendant of the disadvantages and dangers of self-representation.” State v. Young, 626 So. 2d 655; (Fla. 1993). The Fla. Supreme Court has determined that such a process must be a Faretta hearing (Faretta is the US Supreme Court Case that originally prescribed the standard upon which 3.111 is based) inquiring into:

1. The Defendant’s understanding of the nature and complexity of the case and
2. Whether he/she understands the dangers of representing oneself (Faretta v California 422 U.S. 806 (1974), State v. Young, 626 So. 2d 655; (Fla. 1993).

The Florida Appellate Courts have interpreted this to mean that there are no magic words that can determine whether a defendant has knowingly and intelligently waived
his/her rights; rather, a full and careful rapport between inquirer (usually the judge) and defendant must be made. (See id.) Both the Rule 3.111 and the Federal/State case-law explain the rule as one requiring performance that cannot be standardized. This rule is without a clear cut explanation of the degree of development and the performance for which can only be approved on a case-by-case basis, or within the context of the proceeding. *Jones v State* 584 So. 2d 120 (Fla. 4th DCA) 1991; *Brown v State*, 830 So. 2d 203, (Fla 5th DCA) 2002; *Wilson v. State* 947 So. 2d 1225 (Fla. 1st DCA) 2007. Fla. R. Crim. P. 3.111 is black letter law that is rare in that it is supposed to militate against a mechanized, formalistic approach or standardization. One of the ultimate contributions of this dissertation will be to explore how well the rule fares in the rational-legal organization of modern courts. The route to this end, however, was not direct; it involved an iterative process where experience tempered academic literature, and in turn led to direct observations and reformulation of a conceptual model. Research instruments were brought back to the field to gather systematic information from courthouse observations and the judges within those courthouses.

This dissertation researches the influences on judicial behavior and focuses on the tension between the highly standardized and less standardized in our courts. To date there is no empirical evidence addressing the effect of rational-legal structure on judicial performance. A challenge that this dissertation faced was translating the abstract core concepts of rational-legal organization into real-world settings where they can be observed. The goal of this author is to unite the Weber/Neo-Weberian literature and the Jurisprudence/Law and Society literature to determine a basis by which structural
influence on the behavior in the courtroom may be empirically researched. In the process, this project is designed to:

- conduct pilot observations of six different state courts and determine if there are ways in which judicial performance fails to follow professional rules,
- search for any structural influences on judicial performance,
- search for any of the structural influences proposed in Weber’s theory on rationality, including bigness, within the courtroom,
- search for any other influences hindering judicial performance evident in the courtroom,
- determine how such influences may be measured,
- measure these influences, and
- determine effects of Size Specialization by the de-contextualizing of judges).

The first step in the research was to review the Weberian (Weber, Gerth and Turner), neo-Weberian (Jermier), sociology of law (Jervitch), jurisprudential (Borchers) and empirical literature (Borchers) to determine how it connected the courtroom experience of the researcher. That literature review is presented in Chapter 2. With that knowledge, the researcher went into the field to make pilot observations of arraignments in six courthouses. The purpose was to see which factors derived from experience and the literature emerged as dominant or important in practice. This pilot observation is presented in Chapter 3. Those observations were used to construct a conceptual model or framework about how structure, including rational-legal features, might relate to judicial performance. That theorizing and the propositions and tentative hypotheses derived from it are presented in Chapter 4. The conceptual framework includes information about empirical indicators that will aid in the design and methodology. Chapter 5 will discuss the 3-part methodology. One component of the
methodology was a performance observational checklist (direct observations) that could be taken back to the courtrooms to measure various aspects of mechanical/quantitative indicators versus creative/Case-by-Case Thinking behaviors. Another part of the methodology is a survey distributed to the same circuits as are performance tested. The final part of Chapter 5 discusses the In-Depth Interviews of courtroom personnel regarding the effects of Size Specialization. The results and analysis for the statistical analyses of the Observational Checklists and Judicial Surveys along with the themes extracted from the In-Depth Interviews are put forth in Chapter 6. The discussion and final chapter is in Chapter 7.
CHAPTER 2
REVIEW OF LITERATURE AS SEEN THROUGH THE EYES OF A PRACTITIONER

The purpose of Chapter 2 is to review relevant academic literature through the eyes of a practitioner. Therefore, it begins with some basic information about the observer and the vantage he brings to the literature review.

Lessons from the Practice of Law

The observer is an attorney trained as a litigator in criminal and civil court. During an eleven-year tenure as a member of the Florida Bar, this observer spent roughly four years as a prosecutor for the State of Florida and practiced criminal defense intermittently for the remainder of his tenure, mixing it with practice in commercial litigation. The observer has extensive litigation experience in county and circuit court (criminal and civil), having tried over 35 trials in state county court, criminal court, and administrative courts and argued hundreds of motions in these settings. This author has also crafted and made arguments in district courts of appeal in Florida. From that experience one overarching factor, “bigness,” emerges that helps the observer make sense of different practices in different courtrooms.

The observer practiced in smaller and larger jurisdictions. The practice of law was different in bigger jurisdictions. Two features of “bigness” seemed to matter. First, there was the importance of sheer numbers, or the volume of cases. It is unclear whether it is the large number of cases in an absolute sense or the number of cases relative to the workforce that is important, but something different occurs in larger jurisdictions. Indeed, inasmuch as size has long been theorized to relate to the division of labor (Durkheim 1898 trans.1984), which is also a defining characteristic of bureaucracy, its role in rational-legal organization warrants further scrutiny. Weber’s
seminal work on bureaucracy (1954) can be used as a springboard to develop this theme.

Second, was the importance of consistency, which seemed to bear a relationship to size that was not intuitive. Larger jurisdictions, where the opportunity for variation was greater, seemed to produce more consistent and standardized practice. With greater numbers comes the greater need for efficiency and standard, formalized procedure. Formalized process with an emphasis on consistency and efficiency lies at the core of Weberian notions of bureaucracy.

**Notions of Bureaucracy**

A bureaucracy grows as the people or the number of problems it serves grows. It will often expand physically in response to this but will also grow more intricate, diversified, and thereby more specialized (Glendon; Black). In the past, when bureaucracy was small, judges did not specialize or divide their labor; but as the population increases, judges become more diversified, each one handling the same type of case, whether circuit or county (Eisenstein and Jacob). This increases the number of procedural exchanges that have to be accomplished before a general principle is achieved. It also minimizes the kinds of tasks that each must perform. In the same frame of mind as Taylor’s “scientific management” (Taylor) or Ford’s assembly line (Linhart), each judge becomes assigned to performing the same individual and more monotonous task. The primary, collective goals for each person completing his/her task grow more distant as the tasks become more specialized and small. As a result, the persons assigned to carrying out these tasks grow more removed from the concept of the "overall product" (justice in the case of courts) and become concerned mainly with following the procedures assigned to their individual task. Merton’s concern
was with the ritualism of the bureaucratic personality (Social Forces 560-568). A judge's tendencies to "cut qualitative corners" during arraignments and doing only enough to fulfill the requirements of the statute is an example of this mentality (Mileski).

Performing a comparative analysis that looks at judicial behavior in the face of smaller to greater numbers, where the bigness contribution is less and where it is more, will give clearer indication of the effects of intra-courtroom bigness.

A more complete review of Weber is presented below that will allow a better development of a theory that can inform the research. Before conducting that review, other lessons derived from the observer’s practice that help formulate this dissertation are reviewed. They include justifications for focusing on county courts, criminal cases, and judges.

County Court As An Environment for Observing and Recording Qualitative Judicial Behavior

In many counties such basics as a defendant's awareness of his/her constitutional rights and protections are seen and treated as nothing more than obstacles to efficiency.¹ This phenomenon is particularly visible in county courts.² Such an overemphasis on efficiency seems to be especially apparent in the early stages of a proceeding. Observations of first appearances, arraignments, and plea bargaining in county court reveal how efficiency is overemphasized to the detriment of the defendant and the general principles of the court as well as its overarching goal of justice.

¹ Social Loafing on the Bench: The Case of Calendars and Caseloads 12 JUST. SYS. J. 177-195 (1987)
² A Time magazine article on the municipal justice courts was entitled Sausage Factories Time Magazine, April 1974.
In Florida, county court has jurisdiction over civil matters $15,000 or less and misdemeanors (less serious criminal offenses such as simple battery and first time DUls which usually can be punished by no more than one year in jail). The sentence county courts serves is more lenient when compared to circuit courts (where more serious civil and criminal cases are tried). County courts should therefore display a more relaxed atmosphere, and should therefore be more likely to possess a less formal quality. In the experience of this observer as an attorney having tried cases in both circuit and county court, the county court is generally a place that is more humanistic and less formal. Because of this more humanistic approach, when compared to circuit court, there is a greater likelihood of detectable variance in qualitative performance by judges. Also, within considering organization of the courts chosen, county court is much more similar in its design, than the circuit court. For these reasons, county courts, as compared to circuit court, may be the greatest example of Size Specialization and should be used as the population for this study. County Court is an environment replete with recordable qualitative judicial behavior.

Criminal Court As Providing More Variable Control

Criminal court has greater similarity in design and application in both intra and inter courthouses than the civil court, allowing for greater variable control in research design. Its consistency in the types of laws, rules, and subject matter are much more consistent from district to district than the myriad possibilities existing in both county and circuit civil court. There are formalized and more perfunctory types of hearings within the criminal court that allow for greater consistency of action and easier observation in a comparative setting. In other words, criminal courts have arraignments and initial appearances dealing with (especially in county criminal) relatively the same or
significant crimes making up the subject matter. This similarity increases when you enter the county court, given the aforementioned reason that county criminal only deals with misdemeanors. This consistency will explain why observations will be easier to interpret. It is important to mention here that these decisions were based upon the anecdotal experiences and literature based knowledge of this researcher and provided a starting point. From this point, pilot observations could be utilized to provide contradictory or supporting evidence to reveal the convoluting powers of this research’s design. The pilot observations were designed to explicate and determine if there was any indication of these consistencies.

**County Criminal Judges as a Strong Source of Qualitative Problem Solving Behavior**

There are several reasons for focusing on judges. Judges “control” the courtroom; they preside over the law and the case. In Weberian terms, they have the rational-legal authority. Rather than being advocates for one side or the other, they are the neutral “referee” between the adversaries in the criminal case. One way to assess judicial performance is to see how they utilize that authority.

To be sure, Rule 3.111 presents a bit of a paradox (and hence provides a research opportunity). On the one hand, it is the formal rule to be used during arraignments (and so reflects rational-legal organization); but on the other hand it calls for individualized case-by-case application of broad principles that are not precisely laid out in the law. Judges cannot readily go to the law and find a specific statute to apply to any given case. In other words, contrary to rational-legal organization, in this arraignment matter, law is not a closed system of logic that permits deducing outcomes from a logical analysis of black letter law.
County criminal judges, similarly, are regularly encouraged to follow process and administrate a courtroom in order to be efficient. However, they are also required to work qualitative features into their work responsibilities. County Criminal Court Judges are afforded a perch from which to look beyond the boundaries provided by formal rationalization and cubicles created by specialization in order to assure the effectuation of justice. Their role is to merge the organic facts of humanity with the consistent expectations of the substantive law/rules of procedure to ensure justice. They are afforded the amalgamation of terms such as reasonableness and foreseeability in order to make a fit of these quantitative and qualitative requirements. Such terms are inherently reasonable as are the ways in which current social expectations are to influence decision making. They are reminded constantly of the human quality in which they make decisions. Likewise, if judges’ professional behavior is affected by structural influence, then most likely, all actors within the courtroom bureaucracy are as well. This begs the question as to whether such judges, who are caught between these rules and judicial behavior, would suffer the limits on the internal actor caused by formal-legal rationality and more specifically, size specialization?

The conflict of trying to provide justice for individuals while also working within a rational legal organization focused on efficiency, consistency, and standardization provides grounds for looking at some of the potential dysfunctional consequences of bureaucracy that Weber and others suggest. As discussed below, there is research explaining that rule-controlled, menial tasks and high numbers create a great deal of ritualism, and ultimately alienation in the bureaucracy’s internal actor. Because judges preside over the courtroom and are at the top of the authority hierarchy in the
courtroom, they may confront the challenge of alienation in a different way. From the experiences of this author, the other officers of the court (paralegal, clerk, bailiff, court reporter, etc.) do not display this alienation in such a recordable way. Because most of these aforementioned officers are occupied mostly, if not entirely, by menial quantitative tasks and performance, variances in qualitative versus quantitative performances are presumably greater for judges than for clerks, bailiffs, court reporters, etc.

Arraignment Formality Provides for Variable Control

It is important to determine what courtroom settings make the most sense to observe. Arraignments, with their high attention to process and administration are an ideal choice. In the arraignment setting, the court has a routine but essential gatekeeping procedure. All criminal cases that move toward adjudication must proceed through arraignment—so all cases that have not been “nollied” (i.e., not pursued under the nolle prosequii doctrine that gives prosecutors wide discretion over which cases they take to court). Although under Rothgery v. Gillespie County (2008) it is a “critical stage” of the criminal justice processing (and hence the right to representation by counsel applies), it is not a highly adversarial proceeding where the “action” is dominated by the adversaries. Little in the way of evidence is introduced; the arguments that are presented to the judge may be requests for hearings or the introduction of extenuating circumstances or mitigating relevant to sentencing. The role of the judge is front and center; her or his performance can be directly observed or assessed without as many extraneous or complicating factors entering into the proceeding—unlike a trial, or a suppression hearing. This provides an opportunity to examine the consistency of behavior across judges and courthouses. From the theorizing derived from Weber, one might expect judges to operate mechanically and robotically. For example, their
compliance with Florida Rule of Criminal Procedure 3.111 (which calls on them to make an independent assessment of defendant’s waiver of counsel and whether it is knowing and voluntary) would be expected to be delivered with an emphasis on efficient and quick administration.

This backdrop identifies the vantage point of the researcher and the strategic features of the research site and the role of judges, and the academic and theoretical underpinnings for the dissertation must be considered in greater detail. That review will help focus the research and formulate the appropriate questions.

Theoretical Underpinnings—From Weber Forward

Weber argued that the division of labor would increase to accommodate diversity in goals and population increases of those serviced by the institution. In other words, the division of labor occurs not only for the type of task but also per number (the amount that may be serviced). This division of labor is apparent in our federal and state courts.

The caseload of the court has been at colossal proportions since the 1980's. The war on drugs and the unceasing creation of new criminal statutes have increased the court's workload tremendously (Glendon). Legal Sociologist Mary Ann Glendon has commented on one example of this expansion in the federal judiciary:

The evolution of the judiciary from an elite judging corps into a layered bureaucracy was complete in less than two decades. Between 1961 and 1980, the number of federal trial judges, after remaining stable (relative to the US population) from 1900 to 1961, expanded from 227 to 483, and by 1993 was approaching 600, while the total number of federal judges was 846 (authorized). The growth in the staff of the federal courts was even more dramatic—from 6,887 employees in 1970 to 14,261 in 1981 and 22,399 in 1991. Ironically, the expansion of court staffs to deal with the growing workload turned judges into supervisors, saddling them with distracting new duties. Even with more judges, staff attorneys, and clerks, the courts have not been able to keep up. (Glendon)
Whether a similar result can be detected within the state judiciary and more specifically county criminal courts in Florida, is a focus of this research project.

Although there is a common belief that bureaucracy developed gradually, incidentally and solely in response to an exploding population, some such as Max Weber\textsuperscript{3} and those modern theorists who agree with him\textsuperscript{4}, do not completely follow this contention. Weber believed that although the multiplying population plays a role in increasing the networking and expansion of a bureaucracy, the Western tendency to rationalize (bureaucratize) was cut into the minds of people by "charismatic" breakthroughs of tradition (The Protestant Ethic and the Spirit of Capitalism). Such a breakthrough occurred with the ideas associated with the Reformation and its effects on people's religious interests. Weber theorized that the ideas embodied within the Reformation (Id. 111), predestination and the Protestant work ethic (Id. 105-196, 109, 224) led people to value the use of rational, formal, efficient, and methodical ways to attain individual and social goals (Id. 117).

Weber found that these concepts helped develop the law to become a highly formal and prescribed bureaucracy relying heavily upon process to diminish irrationality as much as possible. Such an approach is particularly evident in the criminal courts (Economy and Society an Outline of Interpretive Sociology)\textsuperscript{5}. Rules of procedure

\textsuperscript{3} This author feels that it is important to mention of Max Weber because much of his theoretical framework concerning the bureaucracy is used in this paper.

\textsuperscript{4} George Ritzer's modern interpretations of Max Weber's theories of rationality have been used in this paper as the guide to demonstrate the overbureaucratization of the court. George Ritzer, The Mcdonaldization of Society, (1996).

\textsuperscript{5} Max Weber noted this saying "judicial formalism enables the legal system to operate like a technically rational machine, greatly (increasing) the possibility of (individuals) predicting the legal consequences of their actions. Procedure becomes a specified type of contest, bound to fixed and inviolable rules of the game."
(federal and state) are clearly laid out so that substantive goals can be achieved (criminal statutes and the common law) and the general principles of society (constitution) may be upheld. This system is believed by Western thinking to be the best means to an end. Weber believed that it has merit but also professed that if faced with high numbers (and then overemphasized to compensate), it can lead to strong conflicts between substantive goals and the formal procedure used to achieve them (Id. 111). Such a situation is evident in the courts of the United States. Max Weber explained that societal institutions such as businesses, schools, and courthouses transform into bureaucracies that become increasingly formalized and specialized over time to accommodate increasing numbers within the population. Rules control every aspect of professional behavior. Over time these rules may modify but continue to increase, in turn, controlling more of the institution’s internal actors’ behavior. Weber claimed that as a result, behavior within modicums of the same institutions should be consistent. Weber theorized that the circumstance could progress to the point that a judge could be replaced by a machine that would produce the same results each time the same facts were input into the system (DiMaggio and Powell 147-160).

The forces of bureaucratization have encouraged expanding and further dividing the labor of the bureaucracy of the court in order to compensate (Ritzer). Weber clearly commented on the process of function specialization. However this should be taken one step further into a division between function and size. The expansion occurs both in terms of the numbers of specializations (function specialization) and the numbers of specialists (size specialization). An overemphasis on bureaucratic expansion has led to other problems such as judicial neglect. Judges, because they are often responsible for
administrating the courtroom machine, are thought to often have less time for the substantive aspects of their job. This can mean delegating such important tasks to their staff. One popular judge (who also clerked for William Brennan) notes, "Today, a judge-written opinion, at any level of the American judiciary is rare" (Posner). Thus the court has grown so intricate and compartmentalized that the substantive reasons for each bureaucratic procedure can become lost in trying to fulfill its bureaucratic requirement.

To paraphrase Weber in more modern terminology developed by the neo-Weberians, the modern bureaucracy’s tendency is to increase formal rules, or rationality. As a result of this increase in rationality, specialization in both function and size would create the dehumanization of the internal actors to the bureaucracy (Ritzer). According to Weber, this dehumanization would appear in a variety of ways. The most pertinent of these are two different ways: ritualism and alienation.

In ritualism, internal actors focus upon means rather than the ends; those means were created to effectuate within the particular institution. Ritualism results in a behavioral consistency across cases (even if they are different) and a monotony of practice (Dubin 147-164).

In alienation there is a loss of the values upon which the system was created, an inability to perceive the systematic goals, adapt, or derive creative ways in which to effectuate the main goals of the system (Blauner). It is this relinquishing of human control to formal controls (whether software or hardware) that results in a kind of robotic repetitive response to the task (Sarfraz 45-60). That repetitive response that is part of alienation conjoins with the problem of ritualism.
With their myriad rules that guide behavior within their control, courts, according to Weber, present strong examples of formal rationality. (Rosanas and Vellila 83-96). This is due to the formal expectations and rules (many of them procedural) of courtrooms. Those parties who work directly within the law (i.e. clerks, bailiffs, court reporters, lawyers, and judges) are all controlled by a plethora of rule sets. Although Weber never commented on American courts, he did comment on the instrumental and formal rationality utilized in common law systems and the Western legal thinking (Calhoun). For example, Florida state courtrooms are guided by rule sets such as Civil Rules of Procedure, Criminal Rules of Procedure, Family Law Rules, each district’s Local Rules of Court, Rules of Appellate Procedure, and many more. As Weber predicted, the courtroom should be a strong example of consistency, specialization, and formal rationality (The Theory of Social and Economic Organization).

Because of the plethora of rule sets, we should expect consistency across judges both within and across different jurisdictions. If Weber and his modern proponents are correct, an increase in formal rationality and specialization should be correlated with indicators of alienation and ritualism among judges.

**Dual Process Theory to Account for Psychological Impacts of Bureaucratization**

Weber himself did not develop a theory about how dehumanization and social psychological effects like ritualism and alienation would operate in the psychological mechanism. To get a better idea of how social psychological processes may interact, we turn to dual process theory (Groves and Thompson 419-450). Dual process theory is premised on two important processes: habituation and sensitization—both of which seem relevant to courtroom experiences like those that occur at arraignments. The
theory focuses on both habituation and sensitization and states the two are independent constructs that take place on their own and combine to produce a response.

Habituation is essentially a decrease in responding due to repeated presentation of a stimulus. It is directly correlated with frequency. The more something is presented, the quicker we develop an unconscious mechanism for the reception of and processing of the stimulus: the faster the internal actor becomes “used to it” and unconsciously acts/reacts regarding that stimulus. Habituation can also be generalized. If we get used to something, we will group items that are similar to it under the same category and not respond. Also, we can dis-habituate to a stimulus. The presentation of a new stimulus, something different, will cause us to respond once again to the stimulus we had previously habituated to. Also, once we have previously habituated to a stimulus, even if we dis-habituate, it will take less time to re-habituate. This essentially shows how habituation is an integral part of learning (Groves and Thompson 419-450).

Sensitization is transitory and not habituated; more intensive stimuli will yield a greater response. The theory treats dis-habituation as sensitization. The behavior we see is the product of these two individual concepts. These two processes take place in different parts of our neuronal system and are therefore not mutually exclusive. Research also shows that dis-habituation is not a permanent disruption to habituation; rather that it is temporary and transient (Groves and Thompson 420).

There has also been research done to understand the extent and the applicability of habituation. Findings show that habituation is present in operant conditioning, not just classical conditioning (McSweeney, Hinson, and Cannon 256-270). This means that habituation can play a role in voluntary responses. Qualities of operant conditioning
make it possible for habituation to take place, and habituation helps explain things such as extinction and spontaneous recovery that are so essential to operant conditioning.

A great deal of research deals with assuring that a repeated stimulus is habituated and that this habituation can be recovered from the original (Groves and Lynch 237-244). Facial EMGs show that this is the case with adults who are exposed to taste stimuli (Greimel, Macht, Krumhuber, and Ellgring 261-269). The same results have been found with children who are exposed to the smell of cheeseburgers. They eventually habituated and then dis-habituated when presented with the smell of apple pie (Epstein, Saad, Handley, Roemmich, Hawk, and McSweeney 283-289). This research also found that behavior that is reinforced (meaning they were actually given the cheeseburger) undergoes an increase in responding before habituation occurs. These studies have helped develop the idea that habituation goes beyond simply preventing salivation; habituation affects the motivation to do things (in this case, the motivation to eat).

Finally, the decrease in the magnitude of response that has often been associated with habituation was found in a study to be the result of the magnitude of response; which becomes less and less affected by the stimulus (Blumenthal 85-104). Habituation doesn’t change the level of stimulus required for an initial response, rather it makes the reaction more independent of the stimulus. The latency of response was also studied in this research. The study found that habituation (decrease in the magnitude of responding) and sensitization (a decrease in the latency period) can occur at the same time because, like the dual process theory states, they are independent constructs and are not mutually exclusive.
Dual Process Theory and Sensitization of Judicial Practice

This observer’s experience is that there is the opportunity for a great deal of habituation in the judicial practice of law. Habituation is logically related to the issue of “bigness”. The greater the amount of data processed (criminal defendants to be arraigned), the more consistent the stimuli will become thereby increasing the likelihood that the information received will not be as salient in the mind (of the internal actor or judge), and therefore will not demand creative or even conscious responses (Groves and Thompson 419-450). Likewise, the greater the function specialization the greater the level of consistency in stimuli received, thereby increasing the likelihood of habituation by the internal actor. It is assumed by this author that habituation (caused by function habituation) also causes alienation by the internal actor as well. However, this is not necessarily the case for size specialization. Size Specialization does not necessarily increase the likelihood of consistency in raw material to be processed (criminal defendants) and therefore has no conceivable effect on habituation beyond the sheer number of data to be processed (defendants arraigned). This is especially true in a courthouse (such as the ones in this study) where the defendants are assigned to their county criminal judge in a balanced routine that is determined solely by who the next judge is in the order of assignment. It is theorized that Size Specialization will have an effect on ritualism and alienation, despite the proposed lack of the mediating effects of habituation. Pilot observations should shed light on this possibility.

The experience of county criminal judges is quite often the routine case—so routine that they present, in dual process theory terms, low-level stimuli. Arraignments are a routine, pretrial matter of comparatively lesser importance than other judicial procedures for criminal cases and present a cavalcade of low-stimuli cases, one right
after the other. Indeed, size may aggravate the effect. The assembly line of cases is more likely to yield habituation than sensitization. As a formal rule, Fla. R. Crim. P. 3.111 is designed to blunt this habituation and calls for case-by-case sensitization. In Weberian terms, if ritualism and alienation occur in the bureaucratic system, the goals of Rule 3.111 will be subverted—its application will be ritualistic and the judges themselves alienated from the substantive goals of the rule. Observations of different courtrooms of different sizes will give a better indication of these potentially important processes. Performing a comparative analysis that looks at judicial behavior in the face of smaller to greater numbers, where the level contribution is less and where it is more, will give a clearer indication of the likelihood of habituation and sensitization and the effect of Dual-Process theory that is seen as an extension of some of Weber’s seminal concerns.

Relating Dual Process Theory to Weber’s notion of alienation and ritualism, and more practically, the formal rationality of the courtroom, this author conceives of the possibility that low level stimuli introduced by each defendant become standardized; this results in an increase in the likelihood that each defendant’s case is increasingly generalized and therefore habituated. The formalized and mechanized mold forces each case together until all cases are viewed as very similar. The formal rules identify permissible inputs and filter out other contextualizing social circumstances as irrelevant for courtroom purposes, and therefore irrational. Formal rationality, in the face of bigness and size specialization, yields the repetition that furthers habituation. Likewise, once habituated, low stimulus exposure increases the mechanical application of legal rules.
Observation of different courtrooms of different sizes will give a better indication of these potentially important processes. Performing a comparative analysis that looks at judicial behavior in the face of smaller to greater numbers, where the level contribution is less and where it is more, will give a clearer indication of the likelihood of habituation and sensitization and the effect of Dual-Process theory that is seen as an extension of some of Weber’s seminal concerns. Additional points from Weber’s account inform this research, and raise additional questions to be explored. The formal rationality of law identifies permissible inputs and keeps out other factors in decision-making. In fact, other factors are stigmatized as being “extra-legal” and therefore irrational or at least irrelevant for good law. That makes it more likely for low-level stimuli of the routine cases to be repeated ritualistically. Judicial performance becomes standardized and habituated. The formalistic, mechanistic mold force-fits everything together so all cases are seen similarly. Is it formal rationality in the face of “bigness” that yields the repetition that eventually produces habituation? Once the routine is habituated, is everything seen as low stimulus exposure which then increases the mechanical application of rules? Does the application of rules become an “iron cage,” another manifestation of the inflexible formal rational thinking?

**Relating Weber to the Neo-Weberian and Jurisprudential Authors-Substantive vs Procedural Goals**

There are other threads from Weber’s account that inform this research. As discussed above, Weber explained that two of the effects of bureaucracy on the internal actors are ritualism and alienation. Ritualism appears when an actor within a bureaucracy focuses more upon the process developed to achieve a substantive end rather than the substantive end itself. The internal actor, or the judge in this instance,
that undergoes the effects of ritualism will focus on this process even to the point of sacrificing achievement of the substantive goal. Similarly, alienation is the loss of connection to, and sense of powerlessness regarding the substantive goal. The remainder of the internal actor’s cognizance is utilized for procedure\textsuperscript{6}. Both of these result in an inability to see and perform tasks required to effectuate the substantive goal (Blauner).

Other sociologists followed Weber’s lead. For instance Robert K. Merton is known for, among many other accomplishments, his work describing ritualism as over-conformity. Although used by Merton to explain a reaction to the strain created by an individual’s inability to attain the values society has preordained, this ritualism was similar to Weber’s in that it suggested over-conformity and a slowing of creative processes within the individual actor i.e. the internal actor. The ritualistic individual rejects cultural goals while accepting institutionalized means. Merton suggests that these people give up the goals that they previously thought they could accomplish, and simply follow the rules; their behavior becomes separated from the goals and purposes of their work for the larger organization (Social Forces 560-568). Thus, the conformity to the institutional norms becomes its own end; it is a form of goal displacement. Merton attributes the ritualistic adaptation to the lower and middle classes of American society, for these classes emphasize strict conformity to rules. Ritualism could be attributed to the plight of a bureaucratic system, as an individual is too focused on the institutional norms while rejecting the true goal of the task (Diamond 672). Merton suggested that

\textsuperscript{6} The term “internal actor” indicates that person that works within the constraints of the organization. In this instance, it would be anyone that works within the confines of the judicial system
such could be due to the lack of advancement possibilities and rigid control of delegated tasks to individuals in this system (The Anomie Tradition).

This same problem, the bureaucratized internal actor’s inability to see and perform tasks required to effectuate a substantive goal, has been described not only by Weber and the organizational sociologists that followed, but has also been described in the jurisprudence and law-and-society circles, wherein it has been linked directly to American courts. Within this literature, its causes have been described as “limiting the internal actor”, and “decontextualizing social circumstances” (described below).

Although these terms are not synonymous with the concerns raised by Weber (above), they signify a similar problem with the preoccupation to perform procedurally rather than to perform substantively. Various discords between substance and procedure have been discussed as stemming from an overemphasis on a particular characteristic of the bureaucratic court. This next section investigates why the internal actors of the court overemphasize these procedures when they do not produce the results for which they were designed.

The bureaucratic nature of the court actually limits finding a solution to the problems it creates. As discussed earlier, Americans come from a background of thinking that parallels the basic notions of modernity. In other words bureaucracy is the answer to their need to have a rational, impersonal, and diversified method to achieve goals. However, also inherent in such a system is the demise of human elements, such as free choice and morality (Economy and Society an Outline of Interpretive Sociology). The rules that a bureaucracy defines become the only accepted ways of achieving its substantive goals. As only part of a whole, a person working within such a system has
her/his individual responsibility and personal accountability minimized. Also external thought, or the ability to solve problems outside the "mode of thinking" (approved procedure) of the bureaucracy, is removed (Litowitz). Thus the bureaucratic nature of the court results not only in a formal restraint on finding creative solutions for problems, but also in an unknowing acquiescence to this by its officers. The inability to think externally leads to or accompanies other problems as well. These effects are limiting the internal actor and decontextualizing social circumstances. They are described by the ways in which they contribute to the court's inability to attain its substantive goals.

Limiting the Internal Actor: its Definition, Explanation, and Similarities to Weberian Literature

The bureaucratic nature of the court encourages people to think only within the confines of its procedure. Weber’s explanation for this has been translated into ritualism and alienation (Economy and Society an Outline of Interpretive Sociology 531). According to David Ashley et al. (1990), Weber's pessimistic thinking on the fate of the individual in modern society is rooted in his belief that modern societies have replaced substantive rationality and substantive meaning (founded on orientation toward things of ultimate significance) with a form of rationality that is highly formal and devoid of any significance other than instrumental effectiveness in the service of goals that can no longer be questioned. We have become technically rational, but we have also lost sight of the ultimate ends of action. Weber believed that this loss of innocence was irreversible (Ashley and Orenstein).

Weber vividly explains that with "mechanical" bureaucracy now triumphant, the remnants of man's spiritual motivation to succeed are "irretrievably fading," so that which remains "prowls about in our lives like the ghost of dead religious beliefs" (From
Max Weber: Essays in Sociology 182). In the end, Weber writes, all we are left with are, "Specialists without spirit, sensualists without heart" (From Max Weber: Essays in Sociology 115). All the while, "this nullity imagines that it has attained a level of civilization never before achieved" (The Protestant Ethic and the Spirit of Capitalism 115).

Rational methods for achieving goals are most often the best way to solve a problem. However, this type of method comes with certain drawbacks as well. One of these is the formal "depersonalization" of its participants (Economy and Society an Outline of Interpretive Sociology 600). The most obvious example of this is the immense amount of rules and policy that govern the participants within the court; from the judge to the clerk, all these actors follow strong explanations for how they must perform. A less obvious example is the common view of legal professionalism that permeates the court. Each officer of the court is praised when they follow the formal rules of the court. For example, judges' performances are praised highly when they comply with the formal procedure of the court and use clear law as support for their decisions. However, when their opinions are not clearly supported by preexisting law and appear to be the result of their personal opinions (perhaps a post hoc rationalization), the result is disapproval and ridicule, maybe even admonishment, for such practices. It is obvious how this can encourage people to think only within the confines of the rational-legal rule system. There are, however, more ways in which such limits on thinking is promoted.

Once informal depersonalization and indirect pressures encourage officers of the court to adopt this internal thinking, the ability to think externally (or beyond the
constraints of preordained methods) becomes very difficult (Litowitz). A lack of Case-by-Case Thinking is problematic for several reasons\(^7\). First, it allows officers of the court to "assume the legitimacy of the existing legal framework without... critique" (Litowitz 136). Secondly it prevents a sociological analysis of the various participants that enter the court (Sociological Justice). The interaction of these upon the internal actor ultimately prevents judges from possessing the flexibility needed to make counter-procedural decisions parallel to the general principles of the court. Examples of problems that stem from a lack of Case-by-Case Thinking are good illustrations of how deep (and possibly damaging) acceptance of the rules without critique are found in the justifications behind neutral partisanship. Neutral partisans believe that the court requires each lawyer to represent every client, guilty or not, to the fullest of their abilities, employing every means within the letter of the law (Herold). This is quite often not the case.\(^8\) This causes, in the words of Herold, "the general public (to) view(s) these duties of defense counsel with understandable suspicion and probable contempt" (Herold). Judges who support neutral partisanship maintain that truth and overall justice are found in the conflict of two such lawyers. Therefore, countless defendants are not served their appropriate sanction at the hands of "legal tricks of the trade" possessed by knowledgeable counsel (Grady). Such blind faith in the procedure of the adversary

\(^7\) This paper does not assume that officers of the court are either completely internal or external thinkers. It takes a puristic approach in order to better define the troubles associated with such thinking.

\(^8\) An experienced public defender explains "What is our job as a criminal lawyer in most instances? Number one is... no kidding, we know the man's done it, or we feel he's done it, he may deny it, but the question is: Can they prove it? The next thing is: Can we mitigate it? Of course you can always find something good to say about the guy-to mitigate it. Those are the two things that are important, and that's what you do" Lynn Mather, *The Outsider in the Courtroom: An Alternative Role For the Defense*, in The Potential For Reform of Criminal Justice, (Jacob Herbert ed) 278 (1974).
system prevents the realization that the general principles of the court (like justice) are not met.

In the case of arraignment, the court has a routine but essential gate keeping procedure. All criminal cases that move toward adjudication must proceed through arraignment—so all cases that have not been nol prossed are captured by examining this particular proceeding. Although it is a “critical stage” of the criminal justice processing (and hence the right to representation by counsel applies), it is not a highly adversarial proceeding in which the hearing is dominated by the adversaries. Generally, little evidence is introduced; the arguments that are presented to the judge can be requests for hearings or the introduction of extenuating circumstances or mitigating relevance to sentencing. The role of the judge is front and center; her or his performance can be directly observed or assessed without as many extraneous or complicating factors entering into the proceeding—unlike a trial, or a suppression hearing. This provides an opportunity to focus upon the particular behaviors of the court; wherein indicators of qualitative or quantitative performance may exist. An explanation of these indicators may be drawn by examining the consistency of these behaviors across judges and courthouses. From the theories derived from Weber, one might expect judges to operate mechanically and robotically. For example, one would expect their compliance with Fla. R. Crim. P 3.111 (which calls on them to make an independent assessment of a defendant’s waiver of counsel and whether it is knowing and voluntary) to be wooden with an emphasis on efficient and quick administration.

Decontextualizing Social Circumstances

An avoidable problem that stems from a lack of Case-by-Case Thinking in the court is a lack of understanding of the sociological structural data that has affected the
defendant (Litowitz 136). The laws of substance and procedure, for the most part\(^9\) do not mention social structure and also speak specifically about equality of treatment for all people\(^{10}\). Our laws treat defendants “in a social vacuum” (Sociological Justice). Therefore, the internal actor places an assumption of equality on every defendant that appears in the court. This assumption is as incorrect as it is problematic. Before they enter the court for sentencing, defendants are never considered equals within the eyes of the court. "More blacks than whites are poor, unemployed, and uneducated, and fewer blacks than whites own their own home, live in a two-parent family, or enjoy social resources of any kind. Blacks therefore suffer legal disadvantages... inhabiting the bottom of society” (Sociological Justice 61). For example, capital punishment is most likely to occur when a black person kills a white person and is least likely to occur when a white person kills a black person. "Therefore blacks who victimize blacks receive harsher treatment than whites who victimize blacks, and blacks who victimize whites receive harsher treatment than whites who victimize whites." (Id.). A strong example of this decontextualizing occurs in McCleskey v. Kemp, 481 U.S. 279 (1987). McClesky is a United States Supreme Court case, in which the death penalty sentence of McCleskey for armed robbery and murder was upheld. The Court said the "racially disproportionate impact” in the Georgia death penalty indicated by a comprehensive scientific study was not enough to overturn the guilty verdict without showing a purpose that is racially discriminatory with regards to the relevant facts regarding the Defendant. Outside of color, defendants are even discriminated against through such basic

\(^9\) Few rules do, and then only modestly, like the rule that exempts the adult woman who has sex with an underage woman from statutory rape.

\(^{10}\) ie. equal protection, the 15th Amendment, the 19th Amendment etc.
characteristics as speech (*Sociological Justice* 18)\(^{11}\). This information is just a drop of the tremendous amount of sociological data that refutes the assumption of equality. However, because strict internal thinking does not allow the consideration of such external sources, it never enters the determination of justice. Strict internal thinkers do not recognize such sociological problems within the realm of the court, and so the problem cannot be self-corrected (Schauer 509-548).

Both (1) blind acceptance of legal procedure and (2) a failure to legally recognize the sociological factors of a case, constrain the officers of the courtroom to the bureaucratic procedure. They will follow this procedure even to the point that of denying the overall goal of justice. A perfect example of such a choice is seen in Litowitz’s explanation of a recent decision made by the highest court in the court:

Carnival Cruise Lines, Inc. v. Shute\(^{12}\), a lawsuit arising from the injury of Ms. Shute while taking a Carnival Cruise Vacation. A resident of Washington State, Ms. Shute purchased her ticket in Washington and brought suit in Washington. Carnival claimed that the suit could only be brought in the state of Florida because the cruise ticket contained a small-print forum selection clause that required all lawsuits against the company to be brought in Florida. After a series of rulings and appeals, the Court upheld the forum selection clause as a binding contract between the parties, despite acknowledging that nobody reads or negotiates such provisions\(^{13}\). The Court recognized that the "law depicts the process of contract formation in a way that is wildly inconsistent with the way most people experience contracts."\(^{14}\) However it was procedurally constrained from making a decision that could deliver justice. Also, the sociological data that it took into account that the "general principles of contract law are ideological distortions"\(^{15}\) when compared to the real life expectations of a

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\(^{11}\) Recent experiments dictate that the success of litigants "increases if they testify in a style characteristic of high status people. To a judge or jury they seem more competent and trustworthy".

\(^{12}\) 499 U.S. 585, (1991)


\(^{14}\) Id.

\(^{15}\) Id. at 149
true contract must have influenced the Court—however, not enough to alter its internal thinking. Thus, the general principles for which the court is designed, was defeated by the very procedure used to attain such goals.\footnote{This discussion is not to suggest that the court does not have the ability to allow Case-by-Case Thinking to enter into the mix when decision making. Such examples of this are (1) the court’s support of ADR decisions—Daniel McGillis, Community Dispute Resolution Programs and Public Policy. National Institute of Justice, U.S. Department of Justice (1986). (2) The wide discretion of a trial judge in setting terms of probation i.e. alcohol and drug rehabilitation programs, abstainment from alcohol, domestic violence clinics, etc. (3) The Supreme Court’s willingness to consider sociological statistical data in some cases like Brown v. Board of Education, 347 U.S. 483, (1954) and Litowitz, Perspectives on Law, at 144}

Despite this review and strong assertions of the structures effect on neither the internal actor, Weber, nor the more contemporary literature have provided ways in which these concepts could be indicated and measured. The court, rich in formal rationality, was a perfect hunting ground for indicators of these concepts. The pilot observation was designed to search to perform this goal.

Additionally, it was important to observe the behavior in the courtroom to look for indicators that would show other effects on the behavior of judges aside from the aforementioned. One immediate concern in this arena is docket size. Judges with greater dockets may have their behavior affected by the sheer number or overwhelming quality of the persons to be processed for that particular hearing. Therefore, with the pilot observations, docket number was taken into account in order to determine whether there was any relationship between district and docket size.

Based upon the theoretical literature, Pilot observations were developed to better determine any structural influences. As discussed above, the courthouses were chosen based upon size in order to better assess the effects of the bigness problem, psychological effects of habituation, the Weberian structural effects, and the structural effects as defined in the jurisprudential literature.
The researcher went out into the field with the following issues in mind:

1. Was there a large amount of variation within and between courthouses and how did it relate to size?

2. What were the consistencies of the courtroom?

3. Were there any failures in Judicial Performance?

4. Were there any indicators of:
   a) The Bigness Problem (i.e., numbers)?
   b) Effects of Dual Process Theory (i.e., abundance of low level stimuli or abundance of high level stimuli)?
   c) The Weberian Structural Effects (i.e., ritualism and alienation)?
   d) The Jurisprudential Structural Effects (i.e., limiting the internal actor and decontextualizing social circumstances)?

5. Could these indicators be measured? If so, how?

6. Were there any effects of these indicators upon judicial performance?
CHAPTER 3
THE PILOT OBSERVATIONS

At the outset, note that decisions about how to approach pilot observations were based upon the anecdotal and literature-based experiences of this researcher; these experiences provided a starting from which pilot observations could be utilized to confirm or disconfirm his educated “hunches”. The results would guide the details of the eventual research design. The purpose of the pilot observations research was to explore the arraignments of courts of the 100 different judges in this study within the context of Weber’s notion of rationality, jurisprudential theory, and the effects of Dual Process Theory and overall bigness. The focus of the observations was to explore how to measure concepts from these frameworks. Likewise, it was important to determine from these observations whether there were factors outside of Weber’s theory (such as cultural, political, or ethnicity) that may be operating and may be affecting judicial performance.

The research regarding the effects of rationality on the performance of an employee within a bureaucracy suggests that there are certain disadvantages on the employee (the internal actor); these include ritualism, alienation, limiting the internal actor and decontextualizing social circumstances. Because of the abstract nature of these concepts as well as the lack of empirical studies focusing on them, there has never been a framework offered to provide guidance for measurement. It is unclear whether any of these are present in the courtroom, and if they are, how they can be measured. The first phase of the study consists of direct pilot observations of the courtrooms and is designed to determine the answer to these two queries. The observations themselves are used to help design an overarching conceptual framework
to advance the project. The best way to begin our analysis is through observing several different courthouses through comparative analysis. A comparative analysis will give a better indication regarding the importance of Size Specialization in understanding decision-making and performance. Similarly, the comparative analysis gave a clearer indication of the effect of the adjustments internal actors (the judges) once affected by Size Specialization. Habituation will be taken into account as we look at its effects on the judges in attempt to see if it plays a role in the performance of the judges.

**Comparative Analysis for Courthouses Chosen Based Upon Size**

Multiple courthouses were chosen to determine the consistency between courtrooms across the various courthouses. Within a county, an effort was made to see how consistent judges in the same courthouse were. Courthouses were chosen based upon their accessibility and size in order to create a clear indicator of lesser to greater service size. Six courthouses were chosen for observation from small-to-moderate towns to cities to an international metropolis. They ranged in size from five county criminal judges to 40 county criminal judges per courthouse. The table in Appendix A, Table A-1, explains that the six courthouses in terms of area population and defendant population. The table shows that for a five year period (2005 thru 2009), there was a wide variation in the number of cases handled across the chosen districts. From the six districts the range was from Alachua County (least) to Dade County (most) and the order of misdemeanor cases handled was consistent for the five years. For example, for 2009, Alachua County had 7,692 misdemeanor defendants and 6.14% of the total from the six while Dade County 47,387 at 37.81% of the six. Over the five-year period, Alachua was responsible for 5.54% of the total number of county criminal defendants and Dade was responsible for nearly seven times that at 38.82%. Each district’s
number of county misdemeanor charges was roughly proportionate with its population. Appendix A, Table A-5, shows that the range of populations for the six districts varied greatly but was moderately comparable to its county court judge count. For example, in 2009 the population of Alachua County was estimated at 256,232 while Dade measured at 2,472,344. From 2005 to 2010, Alachua (least) accounted for 4.28% (5 judges) of the population for the six districts while Dade accounted for 42.45% (43 judges).

Within a six month timeframe between August 2009 and February 2010, this observer attended four different county court arraignments in each of the three smaller districts and seven different county court arraignments in the three larger districts, visiting each of the respective judge’s arraignment twice. This made for a total of 24 observational visits for the smaller courthouses and 42 visits in the larger courthouses. Each docket was divided into a morning docket and an afternoon docket. This observer attempted to ensure that each judge observed was observed both in a morning and afternoon session of their respective arraignments. Also each judge was observed for the entirety of each arraignment. Generally arraignments began at 8:30 AM and 1 PM within most courthouses and this observer attended each from beginning to end.

Conversation with Courthouse Administration Regarding County Criminal Structure

Ten to fifteen minute conversations were conducted with a member of the courthouse administration who was qualified to answer pertinent questions for each of the six respective courthouses in order to determine the structure, administration, and the divisions of each corresponding court system. It was necessary to determine the size of the county criminal docket in order to determine the effect numbers had on the judges. Also, it was important to determine the organizational structure of each
courthouse to see if there were any apparent structural influences on the county
criminal judges or differences in each county criminal staff that might affect the judges
who were to be observed. Additionally, administration members were asked for their
opinions of the county court versus the circuit court and whether or not they believed
one to be more efficient than the other within each district. Finally, it was important to
determine how each county criminal division structured its overall docket; whether by
hearing type or division of matters according to the trial week. Although each
courthouse divided its circuit court differently, the county criminal docket was generally
divided in the same manner in each courthouse. Judges who performed criminal
functions also performed civil functions, but their civil functions were less demanding
and not as time consuming as their criminal functions. From the conversations, it was
determined that county court was organized with much less function specialization than
circuit court and in a very similar fashion in each of the observed six courthouses.
County court is organized into county criminal and county civil. County civil is divided
into an additional small claims court ($5,000 and less) and other civil claims of $5,001 to
$15,000. In all observed districts, the county judges shared responsibilities with circuit
judges when presiding over first appearances and drug courts. This was consistent
within each courthouse. However, circuit judges did not share county responsibilities
beyond first appearances and drug courts. Therefore, after first appearances, county
criminal judges only covered cases assigned to their county docket- from arraignment to
sentencing and all hearings (if any) in between. Cases were assigned to each judge
based upon underlying charges and the information filed by the State Attorney’s Office.
When the State Attorney’s Office filed any information invoking the jurisdiction strictly in
the hands of the county court, the judges assigned to county criminal would hear that case from that point until finish. Such cases were assigned to county criminal judges based upon even rotation with no consideration given as to type of case.

Findings

Since county court deals with misdemeanor cases, many defendants appeared pursuant to a summons or order to appear and were not in custody at the time of their arraignments. Variations in procedures across courthouses were minimal as every defendant who was not detained simply walked through the metal detector at the front entrance of the courthouse and went to the courtroom where they were noticed to arrive. The defendants would then sit and await the initiation of proceedings.

The variability of procedures in each courtroom was surprisingly few. No matter the courtroom, defendants would arrive and await the initiation of the proceedings. Courtrooms varied without noticeable trend on whether they would start at the noticed time—never early, sometimes late.

There were slight variations as to the members of the courtroom workgroup but no noticeable trend concerning each courthouse or district. Interviews with courtroom administration explained that the courtroom workgroup’s make-up was determined in large part by the individual agencies working in the courtroom.

Each arraignment courtroom varied in how the proceedings began. Some judges entered and began with a general explanation to the defendants as to the purpose of the hearing, the process of the proceeding, and the defendants’ rights. Some courtrooms started with a video of the judge (not the judge presiding) that explained these things. In some courtrooms, before the judge would enter, the bailiff would give a version of this explanation. In other courtrooms, the prosecutor gave this explanation.
In only a few courtrooms, the judge simply began without any previous explanation. There was no distinguishable trend regarding what courtroom or courthouse would have which approach to opening, other than the noticeable fact that in every courtroom, incarcerated defendants would appear by two-way video or were ushered into the courtroom wearing chains. Beyond this, there was not a distinguishable difference in the way detained defendants were treated by the judges in comparison to those defendants not already in jail. Once the proceedings began, the consistencies between courtrooms and courthouses became more obvious. Types of cases were similar throughout and attempts to determine significant differences in the types of crime for which defendants were present proved negative. While there was difference in the groupings (by type) of cases that a particular arraignment handled (this, generally, was a result of a police operation or focus), no trends appeared across the courthouses or within any particular county courtroom. From smaller to larger districts, the make-up of the criminal defenses heard in the arraignments was relatively consistent. For traffic arraignments the most common offenses were Driving Under the Influence and Driving While License Suspended. In each district, non-traffic arraignments were dominated by routine charges as well: Battery, Possession of Marijuana less than 20 grams, and some form of geographic crime, such as: Trespass, Loitering and Prowling, Disorderly Conduct, Disorderly Intoxication. However, given the information disseminated to the public and the speed with which the process occurred, it proved to be difficult to get an exact count of all the charges; the courtroom workgroup had the documentation and the public exchange did not refer to everything. However, from what was presented, there was no apparent difference in the types of cases routinely handled during arraignments across
the courthouses or courtrooms. To repeat, rough statistics were kept, and these revealed no significant variation either inter- or intra- courthouse.

**Individual Defendant Arraignment Process**

In every courtroom, each defendant was addressed by name as each arraignment began. In every courtroom, the defendants were apprised of their charge and asked how they pled. The defendant would enter a plea of not guilty, guilty, or no contest. Immediately after, the judge would launch into some type of explanation regarding gaining an attorney and then further regarding the public defender if the defendant explained that they could not afford a private attorney. If the defendant pled guilty or no contest, the judge would sentence him or her, sometimes ensuring a knowing and intelligent waiver of counsel pursuant to the requirements of Fla R. Crim. P. 3.111. If defendants pled not guilty, their cases were set for another hearing. This is discussed further below.

In some courtrooms, the defendants were provided a copy of the charging affidavit, or information. This appeared to only be performed in the larger districts. Also observed was the fact that in the larger courtrooms, less time was spent ensuring that the defendant understood the nature of the charge. It appeared as though the judge spent less time with the defendants. It also appeared that by giving the defendants a copy of the charging affidavit in the larger districts, the judges thought they had performed their role. The paper supplanted the need to speak with the defendant further about their charge. This was noted for further exploration in the future phases of the research.

Defendants were typically called alphabetically with a break, presumably by the clerk or the arresting office. This researcher investigated the break in pattern with
clerks when possible and was told that the docket was created by the arresting office or by separate clerks and then compiled into a master list. It was never suggested that the break in pattern was to aid efficiency. These breaks in the order of calling defendants were inter-courthouse consistent, and included the largest and the smallest district. Therefore, no clear trend could be established regarding the effect of size.

When it was a defendant’s turn to be arraigned, the clerk called up the defendant to the front center of the courtroom. Each defendant was asked how he or she would like to plea: guilty, no contest, or not guilty. For unrepresented defendants pleading guilty, defendants were asked if they were going to obtain counsel; if they expressed interest, the judges promptly offered the public defender or referenced the public defender in some fashion. Each defendant that pled not guilty had his or her case set for a pre-trial conference and was handed a notice to appear for the next court date before exiting the courtroom.

In the larger districts, judges would spend less time and appeared overall more formal in their language and tone than the smaller districts. For defendants wishing to plead guilty or no contest, whether represented or not, every courtroom used plea forms. Plea forms sometimes were introduced in the initial explanation mentioned above and defendants were always asked by the judge if they had read, understood, and signed the plea form, without regard to whether the defendant was represented. There appeared to be less delay between defendants and processes in the larger districts as compared to the smaller ones. Additionally, judges appeared quicker to launch into already prepared soliloquies or colloquies with each defendant. Judges appeared to take fewer recesses. Many times defendants who were representing
themselves (pro se) and those who were pleading guilty or no contest were less likely to be explained their Florida Rule of Criminal Procedure 3.111 rights. This seemed to occur more often in the larger districts.

**Arraignment Docket Size and a Suggestion for Further Research**

The number of persons handled by each courthouse varied greatly. Appendix A-3 and Table A-5 depict the population of the corresponding county and the annual number of persons handled by the county criminal division of each courthouse. When the docket size and arraignment headcounts were measured from the respective clerk’s daily docket of each observed arraignment, however, it appeared that the rate of arraignments per judge, or the arraignment volume of each county judge (the number of defendants), was comparable not only from courtroom to courtroom within each particular courthouse but also from courtroom to courtroom across different courthouses. The consistency was striking to the observer and would warrant further investigation in the second phase of this research.

**Formal Rationality.** All courthouses subscribed to the Florida Rules of Criminal Procedure, Florida Statutes and Supreme Court Rules. Although each courthouse contained its own local rules of court, there were no observable differences from courthouse to courthouse or from courtroom to courtroom regarding the application of such rules. Therefore the rules that were applied were uniform as each courthouse was a Florida courthouse applying the Rules of Criminal Procedure and applicable Florida statutes and case law.

**Overall Findings that Suggest Further Research**

The pilot observations revealed several things that were pertinent to further investigation. Despite different locations and cultures, courts applied very similar
methods in the way their arraignments were administered. There was an introduction
that explained to the defendants the upcoming process of the arraignment and trial
process; defendants were then called upon in similar fashions with the opportunity to
plead how they like, an opportunity to speak with a public defender and attorney and
sentencing always followed on the same day. All the courts observed followed the
basic Fla. Rules of Criminal Procedure and applicable statutes.

The larger the number of judges (which corresponds to the size of the counties
and caseload), the more robotic their demeanor and the more formal their performance.
This was noticed in context with explaining the information, offering the public defender,
or making the 3.111 inquiry to pro se defendants. It appeared that as the courthouses
grew larger, the performance of the judge became more focused upon mechanical
performance rather than creative performance of individualized attention.

1 Rule 3.111- Rule 3.111 (d)(2) of the Fla. R. Crim. Pro. is a rule that requires in part that for a defendant
to properly proceed at any crucial stage of a proceeding, the Judge must know that someone has gone
through a prescribed process of offering counsel and that process of “offering counsel has been completed
and a thorough inquiry has been made into both the accused’s comprehension of that offer and the
accused’s capacity to make a knowing and intelligent waiver. Before determining whether the waiver has
been done knowingly and intelligently, the court shall advise the defendant of the disadvantages and
dangers of self-representation.” The Fla. Supreme Court has determined that such a process must be a
Faretta hearing (Faretta is the US Supreme Court Case that originally prescribed the standard upon which
3.111 is based) inquiring into:
   1) The Defendant’s understanding of the nature and complexity of the case
   2) Whether they understand the dangers of representing oneself

Faretta v California 422 U.S. 806 (1974), State v. Young, 626 So. 2d 655; (Fla. 1993)
The Florida Appellate Courts have applied this as a situation where there are no magic words that can be
resolved with a simple recitation but where full careful rapport between inquirer (usually the judge) and
Defendant must be made. Both the Rule and the Federal/State case-law explain it as a quality based
rule, the performance for which can only be approved on a case-by-case basis, or within the context of
the proceeding. Jones v State 584 So. 2d 120 (Fla. 4th DCA) 1991; Brown v State, 830 So. 2d 203, (Fla

2 A note about Mechanical versus Non-Mechanical and Case-by-Case Thinking.
Whether performance is mechanical or creative is determined by the standards that control it. Mechanical
standards are clearly defined and can be measured and supported only by positivistic epistemology. They
can be reduced to numbers or a check-list. Mechanical performance stands clearly defined without
comparison to context (Mann, 1981.) Creative standards are not clearly defined and cannot be reduced to
numbers or a check-list. Performance is measured only through contextual consideration (King et al.,
Signs of limiting the internal actor were as follows:

- There appeared to be a higher degree of creatively restrained judges in the larger districts.
- There was very little sign of decontextualizing social circumstances given the nature of arraignment proceedings and no apparent examples of bias.
- There was an increase in formality of treatment in the largest two districts in comparison to the courthouses.

A failure to follow the qualitative features on courtroom decorum appeared to increase as the number of judges grew. Also surprising was the observation that the judges, in all courthouses, appeared to be arraigning the same approximate number of defendants, at least per hearing. However, the creative, more human aspects of their job appeared to be important or accentuated the larger the courthouse. Rule 3.111-

Rule 3.111 (d)(2) of the Fla. R. Crim. Pro. is a rule that directs judicial conduct, but in a creative, quality driven manner. The Rule requires, in part, that for a defendant to properly proceed at any crucial stage of a proceeding, the Judge must ensure that a defendant has endured a prescribed process of offering counsel and that process of “offering counsel has been completed and a thorough inquiry has been made into both the accused 's comprehension of that offer and the accused 's capacity to make a knowing and intelligent waiver(.); (B) before determining whether the waiver has been done knowingly and intelligently, the court shall advise the defendant of the disadvantages and dangers of self-representation.”  

Faretta v California 422 U.S. 806,

As discussed in Phase 2, mechanical performance in this study was measured by whether or not the court started on time, the number of cases handled, etc. Creative performance was measured by observation of whether the judge followed Rule 3.111 of the Florida Rules of Criminal Procedure that required more than a mechanical approach and how the judges followed these particular standards. The length and quality of rapport between defendant and judge was observed and the survey simultaneously controlled for extraneous variables as well as measured judicial perception of the effects on specialization in the courtroom.
The Fla. Supreme Court has determined that such a process must be a “Faretta hearing” (Faretta is the US Supreme Court Case that originally prescribed the standard upon which 3.111 is based) inquiring into:

1) The Defendant’s understanding of the nature and complexity of the case
2) Whether they understand the dangers of representing oneself

The Florida Appellate Courts have applied this to mean that there are no specific words that can be used, but instead, a full and careful rapport between inquirer (usually the judge) and defendant must be made. Both the Rule and the Federal/State case-law explain it as a qualitative rule, the performance for which can only be approved on a case-by-case basis, or within the context of the proceeding. Jones v State 584 So. 2d 120 (Fla. 4th DCA) 1991; Brown v State, 830 So. 2d 203, (Fla 5th DCA) 2002; Wilson v. State 947 So. 2d 1225 (Fla. 1st DCA) 2007.

With this in mind, it appeared as though the larger the courthouse, the less attention to Rule 3.111. This occurred despite the formal rationality pressuring toward consistency from district to district. Also, the labor among the judges was divided by number (size specialization) rather than type (function specialization). Because of the formal rationality closely prescribing the modus operandi for any County Criminal Judge conducting an arraignment in Florida, the judge’s function has been largely predetermined without much room for variation. Function or type of labor has not been divided by district. Also, the task set of each County Criminal Judges was very similar across districts as each courthouse chosen divided its labor the same between county and circuit levels. Despite the same inter-courthouse division of labor for function, the
division of labor for county-level jurisdiction varied across from courthouse to courthouse with size.

The size specialization varied across districts. For example, Alachua County and Dade County judges all have the same three arenas in which to perform: County Criminal, County Civil, and Small Claims. Those areas were divided up for large counties like Dade. Alachua and Dade County judges’ performances are controlled by the same sources. These are Florida Rules of Criminal Procedure, Florida Rules of Civil Procedure and Small Claims Rules; their function specialization is the same. However, Alachua has 5 County judges whereas Dade has 43. There is much more size specialization in Dade. Thus, there are many more barriers between judges present, physically, socially, and formally in Dade than in Alachua. The function specialization is equitable but the Size Specialization is vast. From the Pilot Observations, there appears to be strong structural influences on the judges’ behavior and how they effectuate their tasks. Further research must be undertaken to better explore this relationship between size specialization and judicial performance.

To better understand Size Specialization as a contrast to task specialization, take, for example, a unit having the goal of making piggybanks that are all painted black and yellow. Under task specialization, the sub-goals of applying the black paint and of applying the yellow paint are split between different members so that a smaller group of members will apply black paint to all the piggybanks and a different smaller group of members will apply yellow paint to all the piggy banks. So the task specialization also introduces a size dimension. Under “pure” size specialization, all of the members will paint the piggybanks black and yellow. The question posed by this research is whether
the size of these groups, who are all doing the same function, will make a difference on how their jobs are performed. The thesis is that differences in the size of groups affect how the actors conduct their work, presumably because they think of it in a different way. This research uses judicial performance in county court arraignments as the setting to explore some of these implications.
CHAPTER 4
A DERIVED CONCEPTUAL MODEL

A Conceptual Model

Based upon the recording taken from the pilot observations, a hypothetical conceptual model was developed to use as a skeletal framework to guide further research. The model begins with a structural variable, size specialization, and moves from that to occupational adjustments made by judges that will affect their thought processes. Consistent with Weber and the reviewed literature, those ways of thinking should affect behavior, or the performance indicators in the model. The model is attached as Appendix B.

Linking Concepts to Form Hypotheses and Locating Empirical Indicators

This model was based upon a series of hypothesized relationships constructed as possible explanations for the observations given the theoretical review of Weber, the neo-Weberians, and the jurisprudential and sociology of law literature.

The overall model described here is based upon Weber’s theories of specialization and bureaucratization. The step-by-step delineation below, however, is based upon Weber, the Neo-Weberian research, and the discussion work in jurisprudence. The explication of the model provides further insight into the process by which specialization leads to an increase in quantitative performance as well as a decrease in qualitative performance. The design of the project accounts for the effects of habituation as separate and distinct from the structural influence on, and agency of the judges.

The explication proceeds in several ways. First, a basic relationship or proposition identified in the model is presented. That is followed by a basic rationale for that proposition. Then ways to operationalize the basic concepts are reviewed, followed by
discussion of ways to combine multiple indicators into single variables for analysis (e.g.,
through scaling strategies) and analysis strategies. In other words, this section seeks to
mesh theory with important elements of methodology.

Proposition 1: Size Specialization (and not Task Specialization) Will be Related to
Performance Indicators of Case-by-Case Thinking of Judges

This basic proposition lays out the key independent variable, size specialization
(number of judges in a jurisdiction) and performance indicators of Case-by-Case
Thinking. In Chapter 3, recall that those performance indicators deal with how those
mechanistic and robotic judges perform their jobs. One important window into that
world is presented by Rule 3.111, which calls on judges to delve deeper and make
case-by-case inquiries of pro se defendants during arraignments.

The effect of bureaucracy (and task specialization) in the workplace is something
that has been explored by many researchers and continues to attract attention. The
growing bureaucratization of organizations has worked as a catalyst as well as a
continual driving force for much investigation. Max Weber, sociologist and political
economist, dove deeply into this area. Weber believed that it was difficult, if not
impossible, to maintain a value-oriented standpoint while simultaneously undergoing
increasing rationalization (Murphy 687). Weber further postulated that individual
decision-making abilities, in a bureaucracy, are bound to what he called the “iron-cage”
of rationality (Murphy 691). Weber emphasizes the rationality of the “ideal type of
bureaucracy”. However, he cautioned that bureaucracy cannot realistically exist without
significant shortcomings (Economy and Society an Outline of Interpretive Sociology
218, 229). Essentially, the specialization engrained in a bureaucracy creates a rigidity
that is not welcoming to change. Specialization is ideal when dealing with scenarios
that are all the same, with little to no variability. This rigidity causes inefficiency when presented with a case that doesn’t fit the mold and since, according to Weber, “Rational calculation…reduces every worker to a cog in this [bureaucratic] machine…” there isn’t much that a worker can do to adjust to the “unusual” case (Economy and Society an Outline of Interpretive Sociology LIX). Weber further claims that bureaucracies’ main theme is control. They seek to increase control through formalization (Economy and Society an Outline of Interpretive Sociology 222).

“Bigness” has several implications for specialization. First, “bigness” requires more people, more specialists. The number of bureaucrats increases with size. Second, “bigness” encourages formalization and procedures to handle the volume of cases efficiently. In bureaucratic fashion, it pressures toward more rules. Formalization may pressure toward more rules but it also requires conformity to procedural rules, making it less likely for individualized justice—the kind of justice that is more substantive and requires thinking beyond the rigid rule framework.

The essence of a bureaucracy has always been the improvement of mechanical efficiency; to produce more and to do so quicker. More creative aspects focus on thinking outside that box and values adaptive qualities; as described in Rogers’, Roux’s and Biggs’ (2000) “Challenges for catchment management agencies: Lessons from bureaucracies, business and resource management” when talking about learning organizations and their ability to adapt to a constantly changing environment creatively and efficiently (contrasted to bureaucracies) (502-512). Also in Findlow (2008), qualitative aspects are described by how well (for facilitating knowledge and informing) the lectures were planned (313-329). Mechanical (quantitative) aspects, on the other
hand, focus on control. The literature extensively describes bureaucracies, whose main goal is quantitative efficiency, as based on control in order to reduce uncertainty (Gajduschek 700-723). The value of quantitative value is not found in innovation or adaptability; rather, it is found in uniformity, speed, quantity, and the ability to quantify results. A decrease in Case-by-Case Thinking leads to a decrease in qualitative standards while simultaneously increasing quantitative standards. Less Case-by-Case Thinking leads to individuals not thinking outside the box, not handling changing environments (as described by Rogers, Roux, Biggs), and not providing the best education for students as possible (Findlow). However, a decrease in Case-by-Case Thinking creates robotic-like responses and stronger adherence to standards that thus simultaneously increase performance of quantitative standards.

Proposition 2. Size Specialization (number of judges) leads to various adjustments by a bureaucracy's internal actors (judges)

The theory discussed above as well as the ultimate findings from the pilot observations clearly show that there are three possible dimensions to the adjustments incumbents make to bureaucracy. These three dimensions can serve as intermediate variables in that they affect one another and Case-by-Case Thinking, but they also serve to mediate the effects of Size Specialization on Case-by-Case Thinking. In other words, they are dependent variables as affected by the Size Specialization. Payne & Mansfield (1973) found that “Increased bureaucratization with large size, however is likely to lead to climates…more concerned with rules and following rules” (518).

For other hypotheses discussed below, the dimensions become both dependent and independent variables to explore their inter-relatedness that give rise to a series of sub-propositions. (Later they become independent variables for explaining Case-by-
Case Thinking.) These intermediary variables and the basic relationships are presented in what seems to be an order of occurrence, but that order may be subject to change as the research unfolds. Explication will be provided for the following three dimensions that flow from Size Specialization and more defined boundaries/more procedural rules:

- More awareness of procedural rules and bureaucratic systematic controls (Boundary/Rule Awareness) which may relate to
- An increase in Expectations of Consistency of self and others (routinization and repetitiveness) which may relate to
- A lack of sense of Autonomy (Lack of Autonomy).

**More Defined Boundaries/More Procedural Rules Result Intuitively from Size Specialization**

An increase in rules within an organization can be instituted to serve multiple functions or can result from multiple things. Barclay (1991) concluded that “specialization is related positively to another control mechanism, the increased formalization of rules and procedures” (146). Specialization is defined by James and Jones (1976) as the “division of labor according to functional specialties and tasks” (Barclay). The relationship between size specialization and more defined boundaries/rules has been explored further, Barclay, after citing the definition put forth by James and Jones (1976) of specialization, states that “Specialization may be designed to remove sources of disagreement by stipulating what should be done and by whom, or it may accentuate differences among departments and delineate group boundaries (Child 1973). Such delineation leads to monopolistic claims over spheres of work (Corwin 1969) and departments forming their own objectives, values and norms, and information sources” (Barclay).
More Awareness of Procedural Rules and Bureaucratic Systematic Controls

Within organizations the relationship between more clearly set standards and systematic control has been explored by many. Gajduschek (2003) essentially explains that clearer outlining of rules and expectations allows everyone to become aware of what is expected of them, “If standards of procedures and outputs are clearly defined and the very essence of the organization is to adhere strictly to these standards, any kind of divergence from these standards is relatively easy to detect, sanction if necessary, and ensure that the organization returns to the expected track” (718-719).

When arguing that bureaucracies carry with them the lowest level of uncertainty (when compared to other types of organizations), Gajduschek also states that “Regulations contain detailed descriptions of how to process cases, what the necessary procedural elements are, which relevant inputs are to be processed, how to obtain those inputs, and how to combine them to create an output-in the typical administrative context, how to combine data to reach a legitimate decision. Thus, anyone who knows the regulations—which embrace jurisdiction-can predict with great precision both the outcome and the procedures of a bureaucratic organization” (Gajduschek 716).

Furthermore, Smith (1971), while warning Catchment Management Agencies against the downfalls of bureaucracies states that “Rules and regulations governing recipient behavior are so elaborate and so custodial as to control nearly every important aspect of a person's daily life. “The human consequences of this kind of situation are not to be taken lightly,” (661).
An Increase in Consistency of Expectation of Self and Others (Routinization and Repetition)

Organizations are constantly striving for more control. The relationship between systematic controls and the effect this has on consistency is a prevalent theme throughout organizational literature. Spender & Kessler (1995) stated that “Thompson (1967, p. 159) wrote that: ‘Uncertainty appears as the fundamental problem for complex organizations, and coping with uncertainty, as the essence of the administrative process’” (35). Further analyzing the importance of increased consistency to an organizational administration, Mintzberg (1987) claims that “Strategy is not about adaptability in behavior but about regularity in behavior, not about discontinuity but about consistency.” Organizations have strategies to reduce uncertainty, to block out the unexpected, and as shown here, to set direction, to focus effort, define the organization. “Strategy is a force that resists change, not encourages it” (29). Rogers, Roux, & Biggs (2000) also comment on the causal relationship between systematic controls and consistency (i.e. variance reduction) by stating that “Institutional bureaucracies themselves are an exercise in variance reduction through regulation and control” (506).

A Lack of Sense of Autonomy as a Result of Rule Following

Creating consistency, as shown throughout the literature, is often the essence of a bureaucratic organization. The relationship between the consistency of expectations of behaviors and the effect this has on sense of autonomy and rule following is the focus of the next sub-proposition in the model (Tables 6-1 to 6-6) Sosik, Potosky, & Jung (2002) state that “Senior management often creates organizational norms or standards by defining and articulating leadership and performance expectations to lower level
managers (Bass, 1998; Schein, 1992; Yammarino, 1994)” (217). Furthermore they continue to state that “Empirical evidence supporting this theory is ascertainable (Lord & Maher, 1990) and (Sosik, Potosky, 8c Jung). Self-fulfilling prophecies or Pygmalion effects in management (Eden, 1990) suggests that setting and communicating high performance expectations determine individuals' subsequent behavior, because people often attempt to validate the perceived expectations of significant others (e.g., superiors). Meeting such expectations is partly a function of self-regulation of behavior to organizational expectations (Tsui & Ashford, 1994)” (Sosik, Potosky, and Jung 217).

The mechanisms that are used to achieve maximum control are further explored by Miles, Snow, Meyer, & Coleman (1978), who reach the conclusion that

how to achieve strict control of the organization in order to ensure efficiency - is solved through a combination of structural and process mechanisms that can be generally described as 'mechanistic' (8). These mechanisms include a top-management group heavily dominated by production and cost-control specialists, little or no scanning of the environment for new areas of opportunity, intensive planning oriented toward cost and other efficiency issues, functional structures characterized by extensive division of labor, centralized control, communications through formal hierarchical channels, and so on. (551)

Additionally Sosik, Potosky, & Jung (2002) pronounce that “When managers detect discrepancies between their own and constituents’ standards, they attempt to reduce the discrepancies, and the reduction influences subsequent behavior and standard setting (Tsui & Ashford, 1994)” (215). Although each of these dimensions may affect or act back on the other ones, to explicate the respective ways in which they can be structured, they are reviewed in order.
Proposition 3. Size Specialization Will Operate Directly on the Performance Indicators of Case-by-Case Thinking But Its Effect Will Be Partially Mediated by the Judicial Adjustments

The indicators of size specialization, judicial adjustments and Case-by-Case Thinking have already been reviewed and their scaling discussed. This proposition calls for a multivariate analysis where the three Performance indicators of Case-by-Case Thinking are first regressed on size specialization alone and then regressed on size specialization and the indicators of adjustment to see how much of the effect is mediated by the adjustment variables.

Dual Process Theory Indicators—Controls or Constants

Before the pilot study, dual process theory was used to help make sense of how routines and mechanical operations may develop in judges. Recall that dual process theory emphasized both similarity of stimuli and habituation. The pilot, however, suggested that some factors emphasized in the theory could be constant in the courtrooms. This had several consequences for the research. First, the dual process line of reasoning was not incorporated into the conceptual model presented earlier. Second, rather than disregarding the dual process implications entirely, some of these implications were explored further in the observational survey of judges. If dual process factors are constants, they add context to the data and will help to understand the findings. If they are variables, they can be incorporated into multivariate analyses. Both of similarity of stimuli and habituation will be reviewed before introducing empirical indicators for this study.

Increase in Similarity of Stimuli

This section focuses on the effects that specialization has on organizational outcomes through the dual process theory. It deals with how specialization leads to
habituation through the intervening factor of an increase in similarity of stimuli. The literature has often treated specialization as nearly synonymous with an increase in similarity of stimuli; “Previous research has indicated that having more specialized duties – i.e. less varied content- tends to reduce the degree to which a person derives direct satisfaction from the performance of his work” (Indik 8). The pilot observations indicated that many of the stimuli in the arraignment hearings were similar—so similar that the hearings became routine to a large degree across all courtrooms and courthouses.

Habituation

The relationship between similarity of stimuli and habituation has appeared in the literature across various fields of studies. Some literature defines habituation by alluding to this relationship; “Habituation is the decrement of response to repeatedly presented stimuli” (Wright, Fischer, Whalen, McInerney, Shin, and Rauch 379). Results from a functional MRI have supported the relationship: “Repeated presentations of emotional facial expressions were used to assess habituation in the human brain using fMRI. Significant fMRI signal decrement was present in the left dorsolateral prefrontal and premotor cortex, and right amygdala” (Id.). This relationship has been explored in a wide range of phenomenon. For example, “If a crayfish tail is tapped repeatedly, the animal produces single abdominal flexions and escapes from the first few stimuli; soon this all-or-none response ceases to appear, and the crayfish may appear to ignore the stimulus” (Zucker 635). Also, Rauterberg (1994) reports that “Monotony emerges from the feeling of doing always the same things… Monotony is a consequence of standardization of the work process” (122).
CHAPTER 5
METHODS

The impetus behind this research grew out of the practice of law. Features of the structure and organization of courts seemed to affect judicial behavior and practices. At an abstract level, the literature on bureaucracy, especially that advanced by Weber, contained constructs that applied to this observation. Such literature suggested that structure is linked to patterns of thought, which then affect performance. After an initial review of the theoretical literature to arrive at a preliminary conceptual framework (Chapters 1 and 2), the first step in exploring these ideas occurred through pilot observations (discussed in Chapter 3). From those initial ideas and observations, an exploratory research strategy emerged. The basic working hypothesis was that Size Specialization related to different ways of thinking about the judicial function (more mechanistic approaches to the law versus more quality driven creative case-by-case approaches) as indicated by different performance patterns. The first component of that strategy deals with design. However, in order to better set the tone for why we set the design of this study the way we did, we must re-visit an explanation of the structural variable we are evaluating in this study: Size Specialization.

Specialization

As discussed, Specialization, in the literature, has been reviewed as a distinct characteristic of bureaucracy without further division. Specialization can be however, further divided. There is task specialization and size specialization. Task specialization is the process where the division of labor is divided intra agency based up the types of goals the internal actor and therefore the type of actions one will have while taking part in the activities of the agency. Size Specialization does not divide labor by task goal
type. The goal type remains the same across the division. Rather the number of goals is reduced according to the specialty line. For example if an agency of two persons has the goal of making 100 black and yellow piggy banks:

Under task specialization, the sub goals, 1) applying the black paint and 2) applying the yellow paint will be split between the two members so that one member will apply black paint to all 100 piggy banks and the other member will apply yellow paint to all 100 piggy banks. Under size specialization, one member will paint the piggy banks black and yellow and the other member will paint the piggy banks black and yellow. Both have the same goals and tasks to perform, but each will handle less than the 100, presumably an equal distribution of work (50 for one and 50) for the other. The difference between these two could possibly mean different effects on the internal actors within the group.

This dissertation only attempts to measure the effects of Size Specialization and does not work with Task Specialization. The Task Specialization has been controlled for by design. Each circuit was chosen because the county judges have the same responsibilities and goal tasks. Each judge in each district does the same type of work. They work as county criminal judges. Although the checklists only measure each judge’s performance in one particular hearing (arraignments), each judge works the entirety of the process. In other words the judges see the different parts of the county criminal case, not just arraignment, pre-trials, etc. In addition, each judge is measured in the arraignment, not during any other task. While conducting the Pilot observations, other districts were reviewed but were forsaken for this study because of the variance of task specialization. Also learned from the pilot observations were tallies on the types of
crimes that each of the districts looked at and these were roughly comparable. Please review the Tables at the end of the Analysis Chapter (Ch. 6) for further information.

The model relating the structural component of Size Specialization to the agency of the judges and their combined effect on performance was tested relationship by relationship. To accomplish this each relationship in the model was statistically tested in order to determine whether there was indeed a relationship in a step by step basis. The statistical data was compiled from the Likert scale responses on the surveys (ordinal) and the yes/no performance indicators on the checklists (nominal). Therefore, scales were created regarding the survey information and indexes were created regarding the checklist data covering quantitative and qualitative performance indicators.

**Design and Research Sites**

The first feature of the design eliminates and controls for other potentially competing explanations that could affect the conceptual framework. The research involves courthouses in six counties that vary in the size of their judiciary, thereby creating Size Specialization (Chapter 3). The six courthouses and corresponding number of judges in those counties (located next to the counties in parentheses) were: Alachua (5); Lee (8); Volusia (10); Duval (17); Orange (17); and Dade (43). The focus of the data is on misdemeanor arraignments and those county judges who are assigned to the criminal bench. County judges only deal with misdemeanors so the seriousness of the offense is controlled by the design. Arraignments are required procedures that are done in the beginning stages of misdemeanor prosecutions, and they are hearings in which the county judge plays the dominant role. Of all the stages in misdemeanor prosecutions, arraignments are the least affected by legal formalities, adversarial
exchanges, juries, or a series of other factors that could present competing explanations for patterns that emerge. Because the cases involve only misdemeanors, judges have considerable discretion about how to proceed; discretion that may be more constrained by more serious charges. The pilot and background research (Chapter 3) established that the judicial functions across these courthouses was not differentiated (no type specialization). In other words, the judicial role and function in arraignments was the same in each of the six circuits regardless of the number of judges. Importantly, although the overall caseloads were much greater in the larger circuits, the workload per judge did not vary across the six circuits. The design, therefore, isolates the structural feature of Size Specialization from other organizational aspects of the judiciary along with the differentiation of their jobs and workloads. The design focuses on a routine and required judicial proceeding, the arraignment, that is less affected by other features of criminal processing than any other stage of prosecution. Arguably, it is a window on as “pure” of a judicial function in criminal cases as one can find.

The design that emerged to explore how Size Specialization related to judicial performance was multi-faceted. It involved direct observations of arraignments at selected courthouses in six judicial circuits; circuits that varied in size with some having few judges and others having many judges. Type specialization was controlled for in this study by the study design. Each district was chosen for this study based upon the notion that each district has the same requirements for its judges. Specifically, each judge that was surveyed and subjected to the checklists was required to perform the same type of districts. Also, each judge was graded performing the same task of taking guilty or no contest pleas from pro se defendants. Finally each judge performed this
task relatively the same number of times, between 7-8 with 3 and 12 as the range.
Observational Checklists were used to record the behaviors of judges to capture some of the indicators of performance thought to be linked to patterns of Case-by-Case Thinking that could vary depending on the size of the judiciary. One set of those behavioral indicators concerned some quantitative performance features of the judicial role at arraignments). Another set of indicators focused on how Rule 3.111 was implemented. Recall Rule 3.111 deals with judicial inquiry regarding the legal representation of defendants when they have waived counsel. This specific rule provided a strategic research site in that it explicitly asked judges to make qualitative case-by-case inquiries of defendants—in other words it called for judges to go beyond the kind of mechanical, mechanistic bureaucratic application of the law. These checklists allow for statistical analyses of the propositions advanced in Chapter 4.

These direct observations were augmented through structured Judicial Surveys obtained from the judges in the districts. The mostly closed-ended questions posed were designed to detail various dimensions of legal thought and performance. The survey responses also allow for statistical analyses.

To supplement the statistical/numerical features of the research, In-Depth Interviews were conducted with important players in those courthouses. A small number of judges, lawyers, and court reporters whom routinely worked at arraignments in these courthouses were interviewed using a semi-structured format. The questions used during the semi-structured interview were generated from the basic framework being explored in this research. The interviewees could respond in their own words to these questions. Their responses could be used to search for patterns or themes to see
how closely these qualitative responses matched the results produced from statistical analyses of the structured judicial surveys and observational checklists.

The advantage of this three-pronged instrument design is one of triangulation. Different research methodologies are used to see if patterns that emerge from each instrument will eventually converge. Since this is exploratory research, convergence will indicate whether or not the theoretical development is pointed in the right direction, or whether it should be refined in the future. The disadvantage of this method is the degree of complication three methodological approaches adds. The three-pronged instrument design makes it more difficult to keep the admittedly abstract theoretical constructs sorted out as they are woven through different methodological adjustments of each of the three approaches. To manage the complexity, the presentation will try to consistently refer to each of the design components in terms of observational checklists, judicial surveys, and In-Depth Interviews respectively. The presentation will also try to consistently refer to the theoretical constructs. The basic independent variable will be Size Specialization or the size of the judiciary in each district. The basic dependent variable will be three performance indicators of the abstract construct of Case-by-Case Thinking. Case-by-Case Thinking is the extent to which judges break away from mechanistic, bureaucratic ways of thinking and use more qualitative, case-by-case decision-making, referred to as 3.111 performance. The three performance indicators of this abstraction (detailed below) to be used in the statistical analyses of the observational checklists and the judicial surveys are: 1) numerical observational checklist measures of arraignment behavior (like starting on time) referred to as Mechanistic Performance (Checklist); 2) numerical judicial survey measures (like
questions regarding how important administration is as compared to justice) referred to as Mechanistic Performance (Survey); and 3) observational checklist measures of implementing Rule 3.111 in arraignments referred to as Rule 3.111 Performance (Checklist). Any themes that emerge in the In-Depth Interviews will be assessed to see how well they tie into these indicators of Case-by-Case Thinking.

Samples and Units of Analysis

Given the three-pronged strategy, data were obtained from three different samples and involve varying units of analysis. The Observational Checklists were conducted in 2011 on a sample of 420 arraignments in the courthouses. Because it was county court, the arraignments dealt only with misdemeanor cases. The arraignment was the unit of analysis. The selection of arraignments was made so that each judge was observed during arraignments no less than five times. At this time, there were a total of 100 judges working the criminal docket in these counties. The number of arraignments and the number of judges observed in comparison to the number of judges working the criminal bench (presented in parentheses) in each courthouse were: Alachua 26 (3 out of 5 judges); Lee 36 (5 out of 8 judges); Volusia 42 (6 out of 10 judges); Duval 61 (8 out of 17 judges); Orange 70 (10 out of 17 judges); and Dade 185 (37 out of 43 judges). It is important to note that all county judges, not just those who worked the criminal docket, were used to calculate the county’s size of the judiciary (size specialization) for subsequent analyses. So the corresponding county’s number of judges was assigned as a variable to each of the checklists done in its courts.

The Judicial Surveys were obtained from the judges in the criminal docket from each of the six county courts who worked arraignments. These surveys went out to each of the 100 judges—so the entire population was approached. Fifty-five completed
the survey (55% response rate). The unit of analysis is the individual judge. A variable indicating the total number of judges in each judge’s corresponding county was inserted into each of their respective data files.

The In-Depth Interviews were conducted with three kinds of officials who routinely work county court arraignments: judges, lawyers, and court reporters. Qualitative research methods were used. At least one judge and one lawyer from each county and at least four court reporters from each county were interviewed. The total numbers of In-Depth Interviews were: 11 judges, 11 lawyers, and 29 court reporters. The individual official was the unit of analysis and county and the size of its judiciary was recorded and attached to each interview.

**Measurements and Instruments**

The primary independent variable for statistical analyses in this exploratory research is size specialization—measured by the size of the county judiciary. The numbers were obtained from official data for each of the six counties and are: 5 in Alachua; 8 in Lee; 10 in Volusia; 17 in Duval; 17 in Orange; and 43 in Dade. The other variables used in the statistical analyses were derived from the Observational Checklists and the Judicial Surveys.

**Observational Checklists**

The Observational Checklists were the source of data for constructing two of the performance indicators of Case-by-Case Thinking—the outcome construct of interest developed in the conceptual framework (Chapter 4). The checklists used for this prong of data collection are reproduced in Appendix C. Eleven research assistants were trained by the author. The members of the observation team were trained to observe the judges in order to determine five essential things:
The required versus actual start time of the arraignment

The docket size of the arraignment

Whether the judge offered the public defender to pro se defendants pleading guilty or no contest

Whether the judge made a proper inquiry into all defendants’ waiver of counsel if they pled guilty or no contest.

The length of time of the arraignment

Before making any observations, they were instructed concerning the relevant courtroom procedure and arraignments, including the legal requirements placed upon a judge by Florida Statutes; Florida Rules of Criminal Procedure, and applicable case law.

At least one observer went to the 420 arraignments. The author was present for the first ones. Each member’s recordings were checked by the author to ensure 80% consistency/reliability with this author in reporting before being sent out alone, or with another assistant.

1 Observational Checklist Training and Reliability Checks In preparation for data collection with Observational Checklists, the 11 research assistants that assisted on completing the Observational Checklists were trained in three different seminars teaching them exactly what to look for when conducting the observations in arraignment. Each was instructed regarding Rule 3.111 of Fla. Criminal Rules of Procedure as well as the accompanying relevant caselaw portraying the requirements of the judges. It was important that they understood, in a similar fashion, exactly what the caselaw requires regarding Rule 3.111 of Fla. R. Crim. Pro. (2011). They were also instructed on what to look for regarding the Mechanical Performance of the judges including start time, the offering of the public defender, whether the defendants were offered an affidavit of indigency to gain a public defender and delivering a copy of the information to the defendant. They were instructed on where to sit in the arraignment to gain the best vantage point. They were retrained and quizzed individually to ensure their knowledge was consistent and accurate. Once engaged in completing observational checklists, 9 of the 11 conducted practice checklists in Alachua County whereupon 2 would go at a time to each arraignment. They were instructed to not sit near each other and to not travel together nor discuss the checklists or the events of each observed arraignment. Their results were then checked. The research assistants then tallied each arraignment day and returned the results to me where they were checked with the research assistant that observed with them. Once each of these reached 75% accuracy with one another, the project administrator attended the arraignments and performed the grading as well, following the above mentioned protocol. To continue with conducting Observational Checklists, all research assistants had to reach 80% accuracy with the project administrator. If unable to reach this rate of consistency in recording, research assistants were dropped from this portion of the data collection. Three research assistants ceased observational checklist performance and continued on the project in other capacities. This training period, including all observational checklist consistency matters took 4 to 5 weeks to complete.
Each trained observer traveled to the courthouses and recorded the performance of the judge at the sampled arraignment. The judges were not made aware of the presence of an observer in the arraignment courtroom. Observers were trained how to keep their presence and the presence of the checklist undetected by the judge or any staff in the courtroom to minimize the chance that their presence, or that of the checklist may affect the arraignments. Checklists were labeled only by courthouse and a special identification code corresponding to the judge to ensure the confidentiality of the data.

Each judge was observed at no fewer than five separate arraignments. The data from the observations for each arraignment were stored in Excel®. Once all checklist results relating to a particular judge were compiled, checklist data were stored in a protective cabinet to ensure confidentiality.

These checklist observations were used to construct two important indicators of Case-by-Case Thinking: Mechanistic Performance (Checklist) and Rule 3.111 Performance (Checklist). Ten items designed to indicate Mechanistic Performance (Checklist) were included on the checklist. They were nominal yes/no performance indicators. Six of the ten items were measurements of whether judges followed procedures laid out in the plea form. A plea form is a form that all pro se defendants (those who represent themselves) review and sign in order to assure that the defendant understands their rights and that most of these rights are going to be waived once they enter their plea of no contest or guilty. Those six items all reflect information contained on the plea form and a judge in the plea colloquy review these sheets carefully and review them with the defendants who are pleading guilty or no contest. Therefore the likelihood that a judge will review one form is roughly the same as the likelihood of him...
reviewing any other plea form. All six counties in the study utilized plea forms for pleas of guilty or no contest in arraignment. For these six items, there was no variation; this is perhaps because a judge who is going to review a part of the plea form will continue on to review the rest. As a result of seeing no variance across the 420 checklists for these six items, they were dropped from consideration. However, there was variation across the remaining four items: starting on time, mentioning the public defender, determining indigence, and tendering a copy of the information during the arraignment were compiled into a counted scale. A count index [Mechanistic Performance (Checklist)] was created from these four items by counting the number of “yes” observations, resulting in a variable that ranged from 0 through 4 with four denoting a more mechanistic approach to formal procedure. A reliability analysis of these four items produced a Cronbach’s alpha of 0.74. The index items are presented in Appendix D. Higher scores on the index indicate more mechanistic performance.

Eleven items tapping Rule 3.111 Performance (Checklist) were contained on the checklists. They were also nominal yes/no performance indicators. All of the checkpoints were derived from whether the Judges properly followed the requirements of Rule 3.111 Fla. R. Crim Pro. This rule requires all judges to establish a qualitative rapport with pro se defendants every time they appear before the court for a significant hearing Faretta v California 422 U.S. 806, 808 (1974). More specifically, this rule requires that judges follow the protocol set forth by the case law and not establish a preset, or mechanistic process for inquiring about two different factors with these pro se defendants. The first inquiry deals with how well defendants understand the rights they are giving up by proceeding pro se; the second focuses on whether defendants are
competent enough to represent themselves. See Id. The case-by-case performance from the judges called for by Rule 3.111 was observed. A count of the “yes” observations across the 11 items was used to construct an index. A reliability analysis was performed on those 11 items. Four of them did not scale well and they were discarded. The remaining eight items of the index [called Rule 3.111 Performance (Checklist)] yielded a Cronbach’s alpha of .93. The index items are presented in Appendix D. Higher scores on this scale mean more case-by-case analysis (i.e., less mechanistic performance).

**Judicial Surveys**

The third indicator of Case-by-Case Thinking among judges in this research is Mechanistic Performance (Survey) and is drawn from the Judicial Surveys. The Judicial Surveys were also used to gather data relevant to ways in which judges adjusted to doing their work, adjustments that may mediate the effects of size differentiation on judicial performance. Those adjustments addressed aspects of Expectation of Consistency, Boundary/Rule Awareness, and Lack of Autonomy. Care was taken to word survey questions to avoid response sets. For instance, when multiple items were used to tap a construct, reverse wording was used and then those responses were recoded before analyses so they would be scored in the same direction.

All county criminal judges across the six counties (n=100) were approached and asked to complete a Judicial Survey. The Judicial Survey was delivered twice, so that those who had not completed it and returned it had a second opportunity to do so. Fifty five of the 100 judges returned completed Judicial Surveys (55% response rate).

The Judicial Survey, along with the informed consent and self-mailer, was distributed to each county judge assigned to a criminal docket in their respective
jurisdiction. Those to whom the author had access were approached either in their courtroom or their chambers/offices and asked to complete a Judicial Survey. If they agreed, they were given a self-administered Judicial Survey, using a mail-back procedure. The remaining judges were contacted through their respective judicial assistants. A copy of the Judicial Survey was left with the assistants to be delivered to the judges with the mail-back procedure. The judges were assured of the confidentiality of the research and asked to complete the Judicial Survey without their names or any other identifying information not requested. They were asked to complete this as soon as possible and to use the self-mailer to mail it back. The self-mailer had no identifying information for the participating judge. Each anonymous survey was marked with a code identifying it as corresponding to a particular county. This code was used only as an administrative identifier. Reminders were sent to the judges. The survey responses were recorded and kept in a computer file; the information was password protected and all originals were kept in a locked file cabinet.

The survey contained 12 items that may have tapped Mechanistic Performance (Survey). These items were comprised entirely of questions with five-point Likert scale response formats. The items measured the judges’ perceptions about their own performance in the courtroom. Once collected and compiled, the measurement direction of each of the items created to measure mechanistic performance were compared to one another to ensure that their directions were congruent. A reliability analysis was performed; four of the items did not contribute to a reliable scale. They were eliminated. The eight remaining items yielded a Cronbach’s Alpha of .877. All eight of the questions ask the judges about the level of importance they place upon
efficiency in general and how strongly they felt being efficient was to courtroom success. The items are presented in Appendix D. The scale was coded so that higher scores meant more mechanistic performance.

The Judicial Survey also included questions pertaining to how judges adjust to the demands of their jobs. The conceptual framework (Chapter 4) identified three themes that were derived from the literature and theory. They were: Expectation of Consistency, Boundary/Rule Awareness, and Lack of Autonomy. The conceptual framework and propositions call for an exploration about how inter-related they are and how much they may mediate the effects of size differentiation on the performance indicators of Case-by-Case Thinking among judges.

The adjustment items in the Judicial Surveys were comprised entirely of five-point Likert scale response formats. The Expectation of Consistency scale was constructed from four items asking about each judge’s perceptions of how consistent his/her own rulings and behaviors are and about the consistency of judicial behavior across judges. The actual items are presented in Appendix D. After checking to be sure the coding of the four items was in the same direction, a reliability analysis was performed. The four items produced a scale that had a Cronbach’s alpha of .707. The scale was coded so that higher values represented more expectation of consistency.

The Boundary/Rule Awareness scale was constructed from eight items that were included in the Judicial Survey. These measured how the judges perceived their own performance in the courtroom and their distinct roles as opposed to every other member of courtroom personnel. Once collected and compiled, the measurement direction of each of the eight items created to measure rule and boundary awareness were
compared to one another to ensure that their direction was congruent. Then a reliability analysis was performed. Two of the eight items did not scale well; the remaining six yielded a Cronbach’s Alpha of .677, a bit lower than expected but still a measure that showed consistency. All six of the questions ask the judges about their feelings regarding their awareness of the rules and boundaries between the other judges/personnel in the courtroom and themselves. The actual items are presented in Appendix D. The scale was coded so that higher values represented greater awareness.

The final adjustment variable constructed from items on the Judicial Survey was the Lack of Autonomy. There were five items on the survey that measured this, again via a five-point Likert scale response format. These items measured how the judges perceived their own performance in the courtroom and how free they felt to be creative in their sentencing. After the responses were coded so that they went in the same direction, a reliability analysis was performed on the five items. The coding took the direction of a lack of autonomy (higher values indicated less autonomy). The five items scaled but not as highly as desired; the Cronbach’s Alpha was .684.

**Judicial Surveys Validate Control for Habituation by Design**

As discussed, there is a common tendency of humans to habituate low level stimuli with which they come in contact in a repeated fashion (Groves and Thompson). The magnitude of response becomes less and less affected (dependent) by the stimulus. (Pilz) They do not respond as sharply to the same stimulus if the repeated stimulus is not high in intensity but high in frequency habituation will be increasing not decreasing. (Groves and Thompson).
The pilot observations showed consistently that arraignments contain a large amount of low level stimuli. This is due to the fact that each defendant represents a new set of similar stimuli and very little novelty experienced by the judge. It was a concern that some of the actions of the judges could be a result of habituation. The pilot observations showed that during the arraignment, Judges would seem less focused in the later part of the arraignment or less attention would be paid to detail. Thus it was surmised, the possibility that judges were indeed habituating some of the responses as those in larger arraignments appeared to habituate more than others. Although this study was not designed to look at the effect of habituation apart from the structural and agency influences discussed in the exploratory model, it was a primary concern to control these influences.

In the study, the effect of habituation is controlled by design. Each district was chosen from the districts in Florida to ensure similar design (organization) at the county court level but also the size of arraignment. Although some of the districts had more defendants and therefore a greater workload than other districts, these were compensated for by an increase in the number of county court judges. Each judge’s workload was roughly equivalent in size. All arraignment means were in the 70-80 person range and did not follow any discernible pattern with regard to the number of persons and district size.

To triangulate the variance in habituation and to analyze the above mentioned data gleaned from the checklists and pilot observations, four questions that were indicators of habituation were asked of respondents in the survey portion of the research. These responses were checked for reliability analysis and whether they
measured a single factor. All four items were found to measure on a single factor. The scaled items delivered a Cronbach’s alpha of .870. The results from this scale showed no variance and no significant variance between districts regarding habituation. In a bivariate analysis between habituation and district, no significant results were found (p-value of .853 and Rsquare of .001) and although there was some clear indication of habituation within each district, the amounts of were not significantly variant across districts.

**Statistical Analysis Strategy**

The statistical strategy proceeded through both bivariate and multivariate analyses. Basic OLS regression was used to examine the bivariate relationships between and among the variables of theoretical interest: Size Specialization, the judicial performance indicators of Mechanistic Performance (Checklist), Rule 3.111 Performance (Checklist), and Mechanistic Performance (Survey) as well as the judicial adjustment scales of Expectations of Consistency, Boundary/Rule Awareness, and Lack of Autonomy (which serve as intervening and perhaps as mediating variables). OLS regression is also used in a series of multiple regression analysis examining each of the three judicial performance indicators. In these series, the bivariate analysis between the judicial performance indicator and Size Specialization is followed by a multiple regression analysis (using simultaneous entry of variables) where that judicial performance variable is regressed on Size Specialization, Expectations of Consistency, Boundary/Rule Awareness, and Lack of Autonomy. From this two-step process the standardized regression coefficients for Size Specialization can be compared to see how much of its impact was mediated by the judicial adjustment scales. The increment in explained variance between the bivariate model and the multivariate model will also
give an indication of how much additional value the judicial adjustments have in understanding the respective performance variables (that are theoretically linked to Case-by-Case Thinking by judges).

Size Specialization and the indexes constructed to measure Mechanistic Performance (Checklist) and Rule 3.111 Performance (Checklist) are measured at the interval level. The Mechanistic Performance (Survey) and respective judicial adjustment scales are ordinal in nature with enough ordinal categories so that their use should be robust with OLS techniques. Un-standardized coefficients, standard errors, and standardized (beta) coefficients are reported along with measures of explained variance (R square) and levels of significance. An alpha of .05 was used as the cut-off for significance tests.

The thrust of this research is exploratory. The aim is to assess the viability of a conceptual scheme that seeks to explain how rational-legal actors (judges) in a rational legal system, like courtrooms, operate. More specifically, it proposes that a structural variable (differences in the size of the judiciary) will affect judicial performance (which in the tradition of Weber occurs because of its relationship to different patterns of thinking). One complication is that different data are collected in different ways from methods that have different levels of analysis (and different numbers of cases). The central independent variable is size specialization, measured by the size of the county judiciary in six counties. Measures obtained from Observational Checklists of arraignments in those counties (n=420) and Judicial Surveys (n=55) have to be joined with the size variable to conduct the analysis. In some ways, the checklist and survey data are nested in the six counties, but not enough counties exist to support hierarchical linear
modeling. To accomplish the exploration for the hypothesized relationships, some data adjustments had to be made. When the unit of analysis is the arraignments observed (n=420), the number of judges in that arraignment’s county is inserted as a data entry into that line of data for that arraignment. When the unit of analysis is the judge who took part in the Judicial Surveys (n=55), the line of data for the judge is augmented by a variable that reflects the number of judges in her/his county. Adjustments like these get complicated in the multivariate analyses. For the dependent variable derived from the Judicial Surveys [Mechanistic Performance (Survey)], there are 55 judges (cases) so the Size variable is entered judge by judge and reflects the size of the judiciary for whichever of the six counties the judge serves. For dependent variables derived from the Observational Checklists [Mechanical Performance (Checklist) and Rule 3.111 Performance (Checklist), there are 420 arraignment cases. But those analyses also require an entry for Size (based on six counties) and for the judicial adjustment variables (derived from the 55 Judicial Surveys). So each of the 420 lines of data, one per each arraignment, contains a data field indicating the number of judges in the county where that arraignment was held. In addition, the average for the judges in each respective county on the respective judicial adjustment variables derived from the Judicial Surveys was inserted into the data line for each of the 420 arraignments.

Preliminary analyses were conducted to see how inter-related the performance indicators of Case-by-Case Thinking were. The two performance indicators from the checklists [Mechanistic Performance (Checklist) and Rule 3.111 Performance (Checklist) were related (r=-.286; p < .001). The direction of the relationship indicates, as expected, the measure of more mechanistic performance is inversely related to the
less mechanistic case-by-case implantation of Rule 3.111. The Mechanistic Performance from the Observational Checklist is positively related to the Mechanistic Performance from the Judicial Surveys ($r=.570; p<.001$), as expected. [Note the average for the judges in each county on the Judicial Survey measure had to be imputed so that all 420 arraignments had an entry for the survey’s measure of Mechanistic Performance.] The relationship between the Mechanistic Performance (Survey) that was based on the average for the judges in that county and the Rule 3.111 Performance (Checklist) was negatively related. The inverse relationship ($r=-.427; p<.001$) was expected. Although the performance indicators are inter-related, they are used independently in the analyses for several reasons. First, they were measured from different methodologies (observations versus surveys) that had different units of analysis. Second, the specific nature of Rule 3.111 makes it conceptually quite different from other measures, especially the more abstract referents used for Mechanistic Performance in the Judicial Surveys$^2$. Third, this is exploratory research so it may have been premature to combine indicators before they were analyzed separately.

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$^2$ As it was important to ensure all judges had understanding and knowledge regarding Fla. Rule Crim. Pro. 3.111, general questions regarding Rule 3.111 were asked of the judges in the surveys as well as the interviews. Surveys delivered a response rate that showed no significant difference in knowledge inter courthouse. Similarly, every Judge interviewed was able to speak about the importance of Florida Rule of Crim. Pro. 3.111. They expressed understanding about the importance of the Rule (directly linked to the Right to Counsel and Fair Trial as expressed in the Federal Constitution and relevant national/Florida caselaw) and the situations in which it must be followed. More specifically, when a defendant is coming before the bench for an important hearing without representation, the surveyed and interviewees showed that Rule 3.111 Fla. R. Crim. Pro. must be followed through inquiring into the defendant’s understanding of the waiver and the defendants competence to represent themselves. There was a great level of consistency among judges interviewed regarding 3.111 and they all responded in a similar fashion when asked if they followed such. Similarly most attorneys were aware of Rule 3.111 and court reporters, all save two were unaware of the Rule. These attorneys offered brief anecdotes regarding the rule but none mentioned its use or misuse in the courtroom beyond the explanation of standard procedures in arraignment and whether or not the judge in a particular circuit, or more likely, whether a particular circuit applied the rule properly, whether it be arraignment or motion hearings, trials, etc. Court reporters could not comment on the utilization and application of Rule 3.111 beyond having heard it mentioned.
The Need for Anonymity and Resultant Need for Combining Survey and Checklist with Averages

When the surveys were distributed, anonymity had to be guaranteed to garner as much validity as possible. Likewise, IRB approval for the performance checklist project hedged upon not recording the names of those judges whose performance could be reported. The sole unifier for the data collected from both projects was district. However, between 50 to 80 percent of the judges in each of the six districts used in this comparative analysis were surveyed. Likewise this same figure exists for the judges rated per checklist. This is important to note because for those variables that were measured using both instruments, or those relationships that utilized data from both survey and checklist, the survey indicator means of each district were placed into the data matrix of the checklist. This provided measurement on every relationship detailed in the proposed model. Interview instruments and the themes derived were used to provide further comment on these relationships.

The model relating the structural component of Size Specialization to the agency of the judges and their combined effect on performance was tested relationship by relationship. To accomplish this each relationship in the model was statistically tested in order to determine whether there was indeed a relationship in a step-by-step basis. The statistical data was compiled from the Likert scale responses on the surveys (ordinal) and the yes/no performance indicators on the checklists (nominal). Therefore, scales were created regarding the survey information and indexes were created regarding the checklist data covering quantitative and qualitative performance indicators.
In-Depth Interviews

To see whether statistically produced findings would coincide with more qualitative information, In-Depth Interviews were conducted with three kinds of officials who routinely work county court arraignments: judges, lawyers, and court reporters. The author conducted face-to-face interviews with 11 judges and phone interviews with 11 lawyers and 29 court reporters. Qualitative research methods were used and interviews were conducted with at least one judge and one regular lawyer from each county and at least four court reporters from each county (although they could actually be serving in several of the counties studied). In this sense, the use of courtroom reporters as interviewees was doubly beneficial due to their movement around counties. Because most court reporters do not practice in a single county, they are able to provide more of a comparative perspective because they have worked in counties of ranging sizes. The court reporter interviews were arranged by the researcher's assistants, who called courtroom reporting services found in the Yellow Pages. After explaining their position as a research assistant, they asked if there were any court reporters in the office that would be willing to help in responding to a ten minute confidential phone interview given by the author. If they agreed, the assistants scheduled a future time for the interview and then emailed the reporter the assent form, which detailed the confidentiality of their answers. The time between original contact and actual interview ranged between several hours minimum and a week maximum.

The court reporter interviews were all conducted by the author. All interviews followed the same list of questioning. The open-ended questions were created from the checklist and survey questions in an effort to include some of the mechanistic and creative performance indicators as well as adjustment themes; they included some of
the indicators from the Observational Checklist, Judicial Surveys. The interview schedule is included in Appendix D. As questions were asked and answered, the researcher took direct quotes as well as summaries of the conversation in general. Interviews ranged in time from ten to thirty minutes depending on how questions were answered by the interviewees.

The interviews were used to provide a basis to explain and complement the statistical analysis of data procured by the Observational Checklists and Judicial Surveys. The subjects of the interviews were all experienced court reporters; thus they had valuable insight into the courtroom workgroups in multiple counties. All interviews were conducted within a span of four weeks, and no follow-ups occurred.

The same procedures for arranging interviews employed with the court reporters were used with judges and lawyers. The same interview questions and phone techniques were used for the lawyers as occurred with the court reporters. Only slight changes were made for the interviews of the judges. The interview schedule for judges changed language to second person so that the judges could be addressed as “you.” Because the interviews with judges were conducted in face-to-face instead of over the phone, they tended to be more conversational.

Once the interviews were complete, I rested from the data for about a week. I then began reviewing the material looking for themes, patterns, and relationships that were emerging across the data. I looked for similarities and differences among the different sets of data (intra and inter circuit as well as between the three job types interviewed) to see what the different groupings were reporting.
Once I began to gain a sense of the same, I held an analytic meeting with my top two research assistants and engaged them in a discussion of the data that was careful not to suggest what I perceived to be the emerging patterns. I looked for the “outlying” data or contradictions and looked for explanations of why they did not fit the patterns. No major contradictions inter judge but intra circuit were found by myself or the research assistants, although we looked for exceptions, contradictions, and surprises around the themes derived from the data. There were a couple statements that I was puzzled by when I was reviewing the data in how it fit the rest of what was reported on the same interview.

Once I was sure that my personal theme extraction was complete, I developed a relatively short summary of the results that was complete enough to contain the data that you are puzzled by. Before drawing conclusion about this, I sent the summary out to several research assistants and asked them if they could identify what usually or generally is seen in the data. I asked them to list these. I asked them to look for contradictions in the data and encouraged them to discuss anything that did not fit. I asked them to review and search for surprises in the data. Finally I asked if there were any remaining puzzles in the data and why. Their answers clarified to me that neither of these contradictions or puzzlers were to be used but that one theme I had derived from the In-Depth interview was too contradictory to be used. It was not used although it supported the model.

Once this was complete I wrote a summary of what I learned. I summarized the key themes that emerged across the set of interview transcripts. When available, I included quotations that illustrated the themes. With the summaries prepared, I looked
across them for a main conclusion and the relationships between the main themes and the final conclusion to the rest of the project (the quantitative data derived from the Observational Checklist and the Judicial Surveys). I then synthesized these In-Depth Interview findings with those sources in the Discussion Chapter.
CHAPTER 6  
ANALYSIS AND RESULTS

This chapter presents the results. It starts with those from the analyses of the Judicial Surveys, Observational Checklists and In-Depth Interviews. The results from the Observational Checklists and Judicial Surveys analyses will be organized around the four propositions listed in Chapter 4. The results and analysis used shall be described for Propositions 1-4. Once this is done, the results from the In-Depth Interviews will be presented and organized according to the major and recurring themes extracted from the responses of the court reporters, lawyers and judges who were interviewed.

**Proposition 1: Size specialization (and not type specialization) will be related to performance indicators of Case-by-Case Thinking of judges**

In terms of the operationalization, the first proposition posits that size specialization will be related to the three indicators of Case-by-Case Thinking of judges: Rule 3.111 Performance (Checklist), Mechanistic Performance (Checklist), and Mechanistic Performance (Survey).

The three performance scales are analyzed in relation to the size specialization indicator, number of judges per district. The bivariate results are portrayed in Table 6-1.

In the first model of bivariate linear regression, the independent variable is size specialization and the dependent variable is Rule 3.111 Performance (Checklist). The results are presented in the first row of Table 6-1. The N is 420 as the unit of analysis is arraignments. The proportion of variance (R-square) in the dependent variable (Rule 3.111 Performance) can be explained by the independent variable (size specialization) and is .235. The Beta is -.487. The un-standardized coefficient for size specialization (-.105) is statistically significant because its p-value of 0.000 is less than .05. For every
unit increase in size specialization, a .105 unit decrease in Rule 3.111 Performance occurred. This result is consistent with the hypothesized relationship.

In the second model of simple linear regression, the independent variable is Size Specialization as measured by judge number and by district; the dependent variable is Mechanistic Performance (Checklist). The results are shown in Row 2, Table 6-1. The N is 420 because the unit of analysis is arraignments. The R-Square value equals .418, so the size of the county judiciary explains over 40% of the variance in this performance indicator. The un-standardized coefficient for Mechanistic Performance (Checklist) is .048, and is statistically significant because its p-value of 0.000 is less than .05. For every unit increase in Size Specialization, we saw a .048 unit increase in the Mechanistic Performance (Checklist) score. The Beta is .647. The results are consistent with that hypothesized in the first proposition.

In the third model of simple linear regression, the independent variable is Size Specialization; the dependent variable is Mechanistic Performance (Survey). The results are shown in Row 3, Table 6-1. The N equals 55 as the unit of analysis is the judge. This R-square value equals .555; the size of the judiciary explains over 55% of the variation in this survey measure of performance. The Beta is .745. Since the un-standardized coefficient for Mechanistic Performance is .028, for every unit increase in Size Specialization, a .028 unit increase in Mechanistic Performance (Survey) is predicted. The coefficient is statistically significant because its p-value of 0.000 is less than .05. This result is also consistent with the relationship hypothesized in Proposition 1.
Proposition 2: Size Specialization (number of judges) leads to various adjustments by a bureaucracy’s internal actors (judges)

In terms of operations, the second proposition suggests that Size Specialization leads to various adjustments by a bureaucracy’s internal actors (judges). The three adjustment scales are: Expectation of Consistency, Boundary/Rule Awareness, and Lack of Autonomy (all of which were measured through the Judicial Surveys). The research of this proposition searches further to determine what effects the respective adjustments have on each other. Sub-propositions expect the three adjustments to be inter-related and specify that. Table 6-2 presents results from six bivariate regression analyses; the first three regress the respective adjustment scales on Size Specialization as the independent variable, the last three change the adjustment scales as independent and dependent variables. In all six bivariate models, the data are from the judicial surveys, so the 55 judges serve as the unit of analysis.

In the first equation, the independent variable is Size Specialization and the dependent variable is Expectation of Consistency for one’s self and others. Please review Row 1, Table 6-2. The N is 55. This R-square value equals .477; the size of the county judiciary explains nearly 48% of the variance in this scale. The Beta is .690. The un-standardized coefficient for Expectation of Consistency is .028. Every unit increase in the number of judges corresponds with a .028 unit increase in the Expectation of Consistency scale. The relationship is statistically significant because its p-value of 0.000 is less than .05. The relationship is consistent with Proposition 2.

In the second equation, the independent variable is Size Specialization and the dependent variable is Boundary/Rule Awareness. The results are shown in Row 2, Table 6-2. The N equals 55 (the number of judges returning the survey). This R-square
value equals .287; about 29% of the variation in the Boundary/Rule Awareness scale is accounted for by the size of the judiciary in the counties. The Beta is .536. The coefficient for Boundary/Rule Awareness is .014, so for every unit increase in Size Specialization there is a .014 unit increase in the Boundary/Rule Awareness. The relationship is statistically significant because its p-value of 0.000 is less than .05 and is consistent with Proposition 2.

In the third equation, the independent variable is Size Specialization and the dependent variable is the Lack of Autonomy scale. The results are shown in Row 3, of Table 6-2. The N is 55. This R-square value equals .201, so Size Specialization only explains about 20% of the variance in this adjustment scale. The Beta is .464. The un-standardized coefficient for Lack of Autonomy is .017. For every unit increase in the number of judges, .017 unit increase occurs in scale value on Lack of Autonomy. The relationship is statistically significant because its p-value of 0.000 is less than .05, and it is consistent with Proposition 2.

The sub-propositions in Proposition 2 deal with the inter-relationship between the respective adjustment scales. Because the focus is on inter-relationships between the respective adjustment scales, assigning scales into the role of independent and dependent variable is arbitrary. Since the analysis is a bivariate one, the beta coefficient is the same as the zero-order correlation.

Proposition 2a expects a relationship between Expectation of Consistency and Boundary/Rule Awareness. For the first inter-relationship, the independent variable is the Lack of Autonomy scale and the dependent variable is Expectation of Consistency scale. The results are shown in Row 4, Table 6-2. The N is 55. The Beta is .472. The
The un-standardized coefficient for Expectation of Consistency is .533. The relationship is statistically significant because its p-value of 0.000 is less than .05, and it is consistent with the sub-proposition.

The sub-proposition 2b focuses the judicial adjustment scales of Lack of Autonomy (independent variable) and Boundary/Rule Awareness (dependent variable). It expects an increase in Lack of Autonomy to relate to more awareness and systematic controls.

The results are presented in Row 5 of Table 6-2. The N of cases is again 55. The R-square value is .083, so relatively little variation is shared. The Beta is .288, a weak to moderate relationship. The un-standardized coefficient is .200. The relationship is statistically significant, and it is consistent with the sub-proposition.

The final inter-relationship examined is that between the Expectations of Consistency scale (independent variable) and the Boundary/Rule Awareness scale. Proposition 2c posits that an increase in expectation of consistency for one’s self and others may lead to an increase in awareness of bureaucratic boundaries, rules and systematic controls. The bivariate results are presented in Row 6 of Table 6-2. The N is 55. This R-square value equals .266. The Beta is .515. The un-standardized coefficient is .317. The relationship is statistically significant because its p-value of 0.000 is less than .05; it is consistent with the sub-proposition.

**Proposition 3: Adjustments by role occupants (judges) to Size Specialization will affect the performance indicators of Case-by-Case Thinking**

In terms of the operationalization, the third proposition suggests that each of the three adjustments to Size Specialization examined in Proposition 2 and sub-propositions 2a, 2b, and 2c will affect the performance indicators of Rule 3.111
Performance (Checklist), Mechanistic Performance (Checklist) and Mechanistic Performance (Survey). The expected direction of the Rule 3.111 scale is different from that for the two Mechanistic Performance scales. The Results are discussed in Table 6-3 and are organized into three subsets by the performance measure serving as the dependent variable.

In the first subset the dependent variable is the Mechanistic Performance (Survey). This variable is first regressed on the Lack of Autonomy adjustment scale. Since both measures are taken from the Judicial Surveys, the number of cases is 55 (for each judge responding). The results are shown in Row 1, Table 6-3. The R-square value equals .245, so Lack of Autonomy explains about 25% of the variance in the survey performance measure. The Beta is equal to .495. The un-standardized coefficient for Mechanistic Performance (Surveys) is .517, so for every unit increase in the Lack of Autonomy scale, a .517 unit increase occurs in the Mechanistic Performance scale derived from the Judicial Surveys. The relationship is statistically significant and in the direction predicted by the proposition. The more judges perceive that they lack autonomy the more they report Mechanistic Performances.

In the second equation, Mechanistic Performance (Survey) is regressed on the Boundary/Rule Awareness scale. The results are presented in Row 2, Table 6-3. The N of cases is again 55. The R-square value equals .312, so the awareness scale accounts for about 30% of the variation in Mechanistic Performance (Survey). The Beta is equal to .559. The un-standardized coefficient is .841, so for every unit increase in the Boundary/Rule Awareness scale, a .841 unit increase occurs in the scale of Mechanistic Performance obtained from the Judicial Surveys. The relationship is statistically
significant, and it is consistent with the proposition. A greater awareness of bureaucratic boundaries and rules relates to more Mechanistic Performance.

In the third equation, Mechanistic Performance (Survey) is regressed on the adjustment scale measuring Expectation of Consistency. The results are shown in Row 3, Table 6-3. The N is 55. This R-square value equals .559. The Beta is equal to .747. The un-standardized coefficient for the mechanistic scale is .692. For every unit increase in adjustment scale of Expectation of Consistency, there is a .692 unit increase in the scale value of Mechanistic Performance (Survey). The relationship is statistically significant. The relationship is consistent with Proposition 3; the more judges expect consistency in themselves and across judges, the more mechanistic their performance.

The second subset of analyses that addresses Proposition 3 focuses on performance indicators taken from the checklists. The Mechanistic Performance (Checklist) scale is the dependent variable and is regressed on the adjustment scales. The unit of analysis for these runs is the 420 arraignments, so the county-by-county averages for the respective adjustments scales (measured from the 55 judicial surveys) are used as data lines in the 420 cases.

In the initial model in this subset, the Mechanistic Performance (Checklist) scale is regressed on the Lack of Autonomy adjustment scale. The results are shown in Row 4 of Table 6-3. The N is 420. The R-square value equals .232, so about 23% of the variance in the checklist the Lack of Autonomy scale accounts for measure of Mechanistic Performance. The Beta is equal to .482. The un-standardized coefficient is 4.146. So for every unit increase in scale value of Lack of Autonomy, there is a 4.146 unit increase in the Mechanistic Performance as measured by the checklists. The
relationship is statistically significant. The direction is predicted by the proposition; the more judges perceive they lack autonomy, the more mechanistic their performance.

The next equation in this subset regresses the Mechanistic Performance (Checklist) scale on the adjustment scale measuring Boundary/Rule Awareness. The results are shown in Row 5 of Table 6-3. The N is 420. The R-square value equals .414, so over 40% of the variation in the checklist the level of awareness of bureaucratic boundaries and rule constraints explains measure of Mechanistic Performance. The Beta is equal to .643. The un-standardized coefficient is .2.889. For every unit increase in the adjustment scale measuring awareness of bureaucratic and rule controls, a 2.889 unit increase occurs in the Mechanistic Performance (Checklist) scale. The relationship is statistically significant, and it is consistent with Proposition 3. The more judges have an awareness of boundaries and rule constraints, the more mechanistic their performance as measured by the checklists.

The last equation in this subset regresses the Mechanistic Performance (Checklist) scale on the adjustment scale measuring Expectation of Consistency. The results are shown in Row 6 of Table 6-3. The N is 420. This R-square value equals .392; almost 40% of the variation in the Mechanistic Performance (Checklist) scale is accounted for by this judicial adjustment. The Beta is equal to .626. The un-standardized coefficient for Mechanistic Performance scale drawn from the checklists is 1.321. For every unit increase in scale measuring Expectation of Consistency, there is a 1.321 unit increase in scale value for Mechanistic Performance (Checklist). The relationship is statistically significant. The results are consistent with the expectations.
laid out in Proposition 3; as judges expect more consistency of themselves and other judges, they report their performance to be more mechanistic.

The final subset of the model addressing Proposition 3 uses the Rule 3.111 Performance (Checklist) index as the dependent variable. Since this is drawn from the observational checklists taken at the arraignments, the number of cases is 420. Also, the expected direction of relationships of adjustments with this variable is different from that of those involving either of the Mechanistic Performance scales (survey or checklist).

The initial run in this subset regresses the Rule 3.111 Performance (Checklist) index on the adjustment scale measuring the Lack of Autonomy. The results are shown in Row 7 of Table 6-3. The N is based on the 420 arraignments that were observed. The R-square value equals .072, so only the Lack of Autonomy scale explains a little bit of the variation in Rule 3.111 performance. The Beta is equal to -.268, showing the inverse relationship that is expected. The un-standardized coefficient is -6.748. For every unit increase in scale value of Lack of Autonomy, there is a 6.748 unit decrease in the index value of Rule 3.111 Performance (Checklist). The relationship is statistically significant. It is in the direction expected; in counties where judges perceive they lack autonomy there is less case-by-case consideration given to pro se defendants as is required by Rule 3.111 and its case law.

In the next equation in this subset, Rule 3.111 Performance (Checklist) is regressed on the adjustment scale measuring Boundary/Rule Awareness. The results are shown in Row 8 of Table 6-3. The N of cases is 420. The R-Square value equals .218; about 22% of the variation in the Rule 3.111 performance is accounted for by the
scale that measures perceptions of bureaucratic boundaries and rule constraints (Boundary/Rule Awareness). The Beta is equal to -.467; the direction is again consistent with expectations. The un-standardized coefficient is -6.117; for every unit increase in the scale value of Boundary/Rule Awareness there is a 6.117 unit decrease in the value of the scale measuring Rule 3.111 Performance (Checklist). The relationship is statistically significant. It is consistent with Proposition 3; when judges perceive fewer bureaucratic boundaries and rule constraints they are more likely to engage in case-by-case inquiries regarding pro se defendants pursuant to Rule 3.111.

The final model run for this subset regresses Rule 3.111 Performance (Checklist) on the adjustment scale measuring Expectation of Consistency. The results are shown in Row 9, Table 6-3. The number of cases is 420. This R-square value equals .209; about 20% of the variation in the dependent variable is explained by the independent variable. The Beta is equal to -.457; once more it is in the direction expected. The un-standardized coefficient is -2.817; for every unit increase in adjustment scale measuring Expectation of Consistency for self and other judges, there is a 2.187 unit decrease in index value on Rule 3.111 Performance (Checklist). The relationship is statistically significant. It is consistent with Proposition 3; in counties were judges have a higher Expectation of Consistency they are observed to engage in less case-by-case inquiry with pro se defendants as called for by Rule 3.111.

**Proposition 4: Size Specialization will operate directly on the performance indicators of Case-by-Case Thinking but its effect will be partially mediated by judicial adjustments**

The fourth proposition suggests that Size Specialization will operate directly and through judicial adjustments to affect the performance indicators of Case-by-Case Thinking. The data regarding Size Specialization, adjustment scales (Lack of Autonomy,
Boundary/Rule Awareness, and Expectation of Consistency), and performance indicators of Case-by-Case Thinking [Mechanistic Performance (Survey), Mechanistic Performance (Checklist), and Rule 3.111 Performance (Checklist)] are the same as used above in analyzing Propositions 1 through 3. The proposition calls for a series of two models for all three performance indicators of Case-by-Case Thinking. In each, the first model specifies the bivariate relationship between Size Specialization and the respective judicial performance indicators: Mechanistic Performance (Survey), Mechanistic Performance (Checklist), and Rule 3.111 Performance (Checklist). Each of these performance measures serves as the dependent variable in one of the three series of analyses. The second model in each series specifies the multivariate relationships where the three adjustment scales are introduced with Size Specialization in multiple regression analyses of the respective performance indicators. By adding the adjustment scales to the multivariate analyses and evaluating the standard coefficient for Size Specialization, mediation can be assessed. In addition, the increment in $R^2$ can be examined to see how much additional variance is explained when adjustment scales are included. Results for each two-model analysis in this series are presented in Table 4a, 4b, 4c; one table for each of the Case-by-Case Thinking performance indicators.

In the first series, the primary independent variable is Size Specialization as measured by judge number by district. The dependent variable is the Mechanistic Performance (Survey) as measured by Judicial Surveys. The first model was the basic bivariate one. The results (already seen in Table 6-1) are presented in the first two columns of Table 4 under Model 1. The second model is the multivariate one.
Mechanistic Performance (Survey) is regressed on Size Specialization and the three adjustment scales (Lack of Autonomy, Boundary/Rule Awareness, and Expectation of Consistency) using simultaneous entry in this multiple regression run. The results from that multiple regression analysis are presented in the last five columns of Table 6-4 under Model 2. Because all of the measures for this series of analyses are drawn from the Judicial Surveys, the judge is the unit of analysis and the number of cases is 55.

The results for the bivariate analysis under Model 1 indicate an R-Square value of .555 and a Beta of .745. This shows a strong relationship between Size Specialization and the Mechanistic Performance (Survey) scale. The results from Model 2 show that the impact of Size Specialization was reduced when the three adjustment scales are introduced. The Beta reduces to .360 from .745. This is consistent with Proposition 4 in two ways; it shows that the adjustment variables mediate a large amount of the impact of Size Specialization even as Size Specialization retains an important direct effect on this performance variable. Another feature of the results is noteworthy. The explained variance increases from .555 in the bivariate Model 1 to .681 in the multivariate Model 2. In other words, the adjustment scales do more than merely mediate the impact of Size Specialization. The Beta coefficients indicate that the Expectation of Consistency scale is the important intervening variable. It’s the only adjustment variable that bears a significant relationship to the survey measure of Mechanistic Performance (p< .01) and its Beta is .374.

For the multivariate Model 2, the Durbin-Watson test, which checks for serial correlation, is 1.659. Since this number is within .5 of 2, it indicates limited serial correlation. The collinearity tolerances in the table are all greater than .2 and the VIF
range in this case is small and under 5.0 (1.350 to 2.183), which suggest that there are no multicollinearity concerns with the multivariate model.

In the second series of analyses addressing Proposition 4, the bivariate Model 1 examines the effect of Size Specialization on the Mechanistic Performance (Checklist) scale. The multivariate Model 2 looks at the same basic relationship between Size Specialization and the Mechanistic Performance (Checklist) measure by adding the adjustment scales (Lack of Autonomy, Boundary/Rule Awareness, and Expectation of Consistency) to the equation. The dependent variable for this series is drawn from the observational checklists taken at the arraignments, so the number of cases is 420. The results of the analyses are reported in Table 6-5. The first two columns of results deal with the bivariate Model 1; the last five columns present information for the multivariate analysis of Model 2.

The results for the bivariate analysis under Model 1 indicate an R-Square value of .418 and a Beta of .647. This shows a strong and significant relationship between Size Specialization and the Mechanistic Performance (Checklist) scale. The results from Model 2 show that the impact of Size Specialization is reduced, but not very much, when the three adjustment scales are introduced. The Beta reduces to .592 from .647. This is not inconsistent with Proposition 4 but it really does not show much in the way of mediation; almost all of the impact of Size Specialization on the checklist measure of Mechanistic Performance is direct. Two of the adjustment scales (Boundary/Rule Awareness and Expectation of Consistency) are significantly related to this dependent variable in Model 2. Their respective Betas are .654 (p<.001) and .374 (p<.01). Despite moderate to strong Beta coefficients, these adjustment scales add little in the
way of explained variance. The R-square goes from .418 in the bivariate Model 1 to only .435 in the multivariate Model 2. So despite statistical significance, there is not much additional explained variance. This series of analyses provides somewhat mixed support for Proposition 4, although it does reinforce the importance of the impact of Size Specialization on performance indicators of Case-by-Case Thinking. This is the second indicator that is predicted by Size Specialization.

For the multivariate Model 2, the Durbin-Watson test, which checks for serial correlation, is 1.582. Since this number is within .5 of 2, it indicates limited serial correlation. Three of the collinearity tolerances in the table are greater than .2; that for Size Specialization is not (.056). The VIF range in this case is large and two of them exceed 5.0 (17.888 for Size Specialization and 29.889 for Boundary/Rule Awareness). This suggests multicollinearity concerns, so the results need to be interpreted with caution. Recall that when the arraignments are the units of analysis, the averages of the adjustment scales for each county have to be inserted into the lines of data. The data have to be adjusted for size of the judiciary and that will be the same for all arraignments in each of the six counties.

In an effort to combat the multicollinearity, the five-variable model using all three of the adjustment scales simultaneously was broken down into a series of regression runs where the respective adjustments scales were entered one at a time with the Size Specialization to predict Mechanical Performance (Checklist). Although this reduced the indicators of multicollinearity, they remained too high.

Although multicollinearity does not prevent conclusions about the overall model, it does interfere with the ability to use the regression coefficients to compare how the
individual variables are operating within the model. In other words, the regression results from this arraignment analysis show that Size Specialization and the judicial adjustment scales predict Mechanistic Performance (Checklist), but they cannot be used to assess the extent to which the adjustment scales (Boundary/Rule Awareness, Expectation of Consistency, and Lack of Autonomy) mediated the impact of size on this judicial performance measure.

In the third and final series of analyses addressing Proposition 4, the bivariate Model 1 examines the effect of Size Specialization on the Rule 3.111 Performance (Checklist) scale. The multivariate Model 2 looks at the same basic relationship between Size Specialization and the Rule 3.111 Performance (Checklist) measure by adding the adjustment scales (Lack of Autonomy, Boundary/Rule Awareness, and Expectation of Consistency) to the equation. The dependent variable for this series is drawn from the observational checklists taken at the arraignments, so the number of cases is 420. The results of the analyses are reported in Table 6. The first two columns of results deal with the bivariate Model 1; the last five columns present information for the multivariate analysis of Model 2.

The results for the bivariate analysis under Model 1 indicate an R-Square value of .418 and a Beta of -.487, or a strong and significant inverse relationship between Size Specialization and the Rule 3.111 Performance (Checklist) index. The results from Model 2 show that the impact of Size Specialization is reduced somewhat when the three adjustment scales are introduced. The Beta reduces to -.372 from -.487. This is consistent with Proposition 4; Size Specialization is fairly strongly related to the kind of case-by-case consideration required by Rule 3.111; the relationship is an inverse one,
and adjustment scales mediate some of the impact. All three of the adjustment scales (Lack of Autonomy, Boundary/Rule Awareness and Expectation of Consistency) are significantly related to this dependent variable in Model 2. Their respective Betas are \(-.170 (p<.01)\), \(-.588 (p<.01)\) and \(.724 (p<.01)\). Note there is a change of direction for the Expectation of Consistency scale, something that is not expected. Despite moderate to strong Beta coefficients, these adjustment scales add little in the way of explained variance. The R-square goes from .235 in the bivariate Model 1 to only .259 in the multivariate Model 2.

Before drawing conclusions and inferences from the results of Table 6, it is important to consider whether the results may be affected by methodological problems. For the multivariate Model 2, the Durbin-Watson test, which checks for serial correlation, is .676. Since this number is not within .5 of 2, it indicates a potential problem with serial correlation. None of the collinearity tolerances in the table are greater than .2. However, the VIF range is large and three of the values exceed 5.0 (17.888 for Size Specialization, 29.889 for Boundary/Rule Awareness, and 29.171 for Expectation of Consistency). This suggests multicollinearity concerns. Consequently, for both reasons of serial correlation and multicollinearity the results need to be interpreted with caution. Recall that when the arraignments are the units of analysis, the averages of the adjustment scales for each county have to be inserted into the lines of data. The data have to be adjusted for size of the judiciary that and that will be the same for all arraignments in each of the six counties.

In an effort to combat the multicollinearity, the five-variable model using all three of the adjustment scales simultaneously was broken down into a series of regression runs.
where the respective adjustments scales were entered one at a time with the Size Specialization to predict Rule 3.111 Performance (Checklist). Although this reduced the indicators of multicollinearity, they remained too high.

Although multicollinearity does not prevent conclusions about the overall model, it does interfere with the ability to use the regression coefficients to compare how the individual variables are operating within the model. In other words, the regression results from this arraignment analysis show that Size Specialization and the judicial adjustment scales predict Rule 3.11 Performance (Checklist), but they cannot be used to assess the extent to which the adjustment scales (Boundary/Rule Awareness, Expectation of Consistency, and Lack of Autonomy) mediated the impact of size on this judicial performance measure.

**In-Depth Interview Results**

Judges, court reporters and defense attorneys (court personnel) were asked similar open-ended questions in hopes of gaining another vantage point from which to gain further insight as to the relationship between the size feature of court structure and judicial behavior. Court reporters and defense attorneys are the only members of the county courtroom workgroup to be able to consistently offer third party insight regarding more than one courthouse (given the nature of their employment). Judges from the relevant county courts were asked questions designed to invoke responses that would also offer additional insight regarding the proposed model. The author conducted all the interviews. Once completed, the author reviewed the interview notes for prevalent themes that emerged. The recurring themes are discussed below.

Larger county courts have more personnel, in the criminal and the civil arenas. The members of each of the regular professional occupations in the courtroom
workgroup (court reporter, clerk, defense attorney, prosecutor, etc.) have particular rules that guide their jobs; these may affect the other professionals in the workgroup. Within each profession there are rules that guide some of those personnel within that profession and not others. Recall from Chapter 3 that the basic organizational structure for the courts is quite basic, and it is very similar if not identical within the six county courts included in this research. Each county has a circuit court (which often extends to an adjacent county or counties) and a county court with jurisdiction only in that county; both the circuit and county courts are divided into criminal and civil courts. Each one of these divisions has certain personnel with them and each judge has a docket that is run in accord with the Florida Rules of Judicial Administration (2012). Additionally, the larger the county is, the greater the number of docket policy and rules that guide and divide the personnel within it will be. The larger the court size is, the greater the Size Specialization and barriers dividing them will be. However, while courts in larger counties have more judges, the courts themselves serve the same functions and the caseload per judge does not vary, at least in the six counties in the study. Therefore, the larger the county is, the greater the Size Specialization will be.

From the interview notes reviewed, several relevant themes emerged. From these themes, an overall conclusion was made: there is a difference in judicial approach to the tasks and personal relationships between the small and large districts visited. This was evident in almost every interview with the judges, the attorneys, and the court reporters. The disparity between judges of different sized circuits appeared to follow a pattern: the larger the county judiciary, the more likely that the interviewee (whether court reporter, attorney or judge) was likely to comment on the difference in judging
style. Judges in larger counties were reported to be more formal and mechanistic in their performance. This marked difference by size of the county judiciary was prevalent in the notes regarding judicial behavior and the ensuing opinions and expectations about judicial behavior that members of each of these different types of professionals offered. The review of the interview themes is presented in terms of the way they address or fit with some of the propositions presented both in Chapter 4 and in the statistical results reported earlier in this Chapter.

**Theme 1:** In the county courthouses containing greater Size Specialization of the judiciary, there is a greater sense of the boundaries and bureaucratic controls and requirements of the procedural and substantive rules consistent with what was referred to as Boundary/Rule Awareness in the statistical analyses.

Beginning the interview several questions/requests were asked of each judge and a derivative of these was asked of the court reporters and attorneys. They were asked (or told):

- Please describe your daily routine on the job- including the method of operation.
- How clearly defined are your daily tasks?
- What overlap do you see between your job tasks and that of others in the courtroom workgroup? Does anyone (from other areas of the courtroom workgroup like clerk, court reporter, etc.) do the job you do?

The presentation of the qualitative interview results begins with the judges and then moves to the lawyers and court reporters. Interviewees from all three professional groups recognize important difference by size of the courthouse. Some also recognize that the differences are not merely a function of caseloads.

There was a detectable difference in the opinions of judges, court reporters and lawyers regarding small jurisdictions and large jurisdictions. This suggests that the
larger the jurisdiction, the more likely it was that judges were aware of the rules governing their jobs but also that it was noticeable to others in the actions judges took.

Among the judge respondents interviewed in the three largest counties, there were always clear references to compliance with court administrative rules and procedures as being important features of the daily professional tasks. The interviewees explained that their routine was delineated by some type of bureaucratic control, whether it came down from the chief judge or whether it be issued as part of the court administration or was a traditional expectation established by the previous ways the job was carried out by previous judges or current ones with more tenure. However, in the smaller jurisdictions, the judges explained their personal responsibilities from a creative, problem-solving viewpoint in which operational rules were self-created. They did not admit to deviation from formal requirements but were more aware of their creative ability to administer the rules in a format with a little flexibility in interpretation. For example:

When asked, “How clearly defined are your daily tasks?”, one Miami judge (Dade County, largest) explained “Very defined…you don’t have to be a rocket scientist to do this. You need to be able to read and follow directions. If you can’t follow direction, success is going to be a lot harder to come by”. (Dade County (largest) Judge 1-

By way of contrast, when a judge in Volusia (small county) was asked the question, the judge explained that once cases were assigned into criminal or civil jurisdiction tasks are determined by each judge in the area they wish to focus. The focus was on the autonomy of the judge. “Our jobs are set by the rules and we must
apply them. However, they provide a lot of breathing room where we can decide for
ourselves how we wish to solve a problem”. (Volusia County (small) Judge 1-Page 2)

Still another judge, in one of the smaller counties, Lee, explained “we determine
solutions to problems.” “We solve problems for our job and that’s why it’s so great.”
(Judge Interview Lee County (smaller) 2-Page 1) Although the judges’ awareness of
the rules were a constant echo in every jurisdiction the feeling of the rules/expectations
pervaded into every aspect of the larger jurisdictions whereas the smaller jurisdictions
still left a little “breathing room” for “problem solving” independent of the expectations.
The picture painted from the consensus from the small jurisdictions (Lee, Volusia, and
Alachua counties) was that the Rules of Criminal Procedure were the expectations that
needed to be filled but that there was more than one way to achieve these goals.
These procedure rules did not encompass or control the entirety of their responsibilities.

At the end of a judge interview, after being asked whether there was a difference
in the way the court in the largest county they attended (Dade) and the smaller (Lee),
y they explained that they were overwhelmed by the difference one could face when
going from courtroom to courtroom. The judge was surprised by the fact that some
judges rumored to be procedure “sticklers” in some small districts were not half as
procedurally obsessed as judges in the larger districts. Then, after all materials had
been put away and the author was leaving his chambers where the interview had taken
place, the respondent spontaneously uttered:

The judges know that in [the larger courthouse] bigger courthouse, means
more judges which means more control that has to be exerted on and by
the judges to properly run the docket and the whole thing. (Judicial
Interview 2, Pg 3 Duval County larger)
When criminal attorneys were interviewed, they offered very similar accounts of the judges’ actions in small and large counties. They offered statements making it clear that there was a disparity in treatment from jurisdictions with less Size Specialization. There was a difference in the amount a judge indicated to them that they were aware not only of the rules within their respective jurisdictions but also the boundaries between the various occupational roles or positions within the courtroom. This difference was detectable when comparing the opinions of attorneys from the various jurisdictions as well. One attorney, who practices in both Southeast and Southwest Florida, explained:

The Judges in Miami [Dade, large county] are clear that they have to comply with the case law and sometimes it seems as though they robotically move through the docket looking for answers from the pre-set cases. It makes the process very predictable. But in Fort Myers [Lee, small county], you see this less. It’s a bit more like the Wild West where anything can happen. It’s not because the Fort Myers judges are less busy either. If anything it seems as though they are inundated and have less breathing space than or just as stacked with cases as in Miami, given the economic downturn. --(Attorney Interview Dade County (largest) 2-Page 1)

Several attorneys felt so strongly about the size difference that they explained during the interviews that when walking into a courtroom late in a smaller county, the expectation was that the judge would be more lenient if that attorney had called ahead or had not done anything to suggest that the attorney was not purposefully being disrespectful. Although a concession was made regarding taking the judge’s personality into account, the statement was clear that there was more flexibility with the process in the approach of the judges in the smaller courtrooms:

When asked: “Please describe if you have noticed any differences between the larger and smaller jurisdictions in which you have worked” one attorney described the larger districts and the smaller districts in which he had worked as clearly separate from one another in terms of judicial behavior” one attorney explained:
Larger circuits tend to be more formal and this is enforced by the judges. Some of it is personality but you're going to find a greater percent of uptight ones in the larger districts. They seem to be more punitive with late attorneys or attorneys not prepared. I think it might just be because they are busier. In the smaller districts though, things are more relaxed and flexible. The judges speak their mind but in a more relational conversational way. Again, some of it's the personality of the judge but it's definitely more uptight in the Orlando [larger] than it is in Volusia [smaller].

Attny Interview Alachua County (smallest) 3 page 1

Another stated:

Gainesville is so much more relaxed than the Jacksonville court. Yeah this probably has something to do with the judge too. The judges expect you to be prepared and know your citations, that type thing if you're an attorney—it's not like the Gainesville judges don't know what they're doing but you're gonna see more creativity in the courtroom in the way things are run I think.

Attny Interview Alachua County (smallest) 1 page 1

Defense attorneys that worked in the smaller districts seemed less rigid about the differences between the various professionals' jobs and were also more likely to admit to overlap in the performance of some persons' tasks. However, defense attorneys in the larger cities were more likely to say that there was no overlap in the functions of their job and every other member of court personnel.

One attorney, who focused strictly upon criminal defense explained:

the larger districts are the best because the judges play by the rules more. They come in and boom—they expect you to do the same and do your job. Everything runs like a well-oiled machine. It's not like the [smaller district] where sometimes it seems the judge doesn't know what's next. It's a little more loose and there's more of a hey, how you doin' component. Even though the judges don't know them. You'd think it wouldn't be like that. You'd think that the judges in the larger counties would be more friendlier because they see more of their constituents than the smaller districts. But friendly's not the right word to use. Many times I'm jumping from courtroom to courtroom and as long as a judge is flexible enough to let me appear in and out, that is enough to get things done. The problem is that a lot of the ones that allow late appearance and are flexible are also the ones that take more time. You're gonna see this more in the smaller courthouses. (Attorney Interview Volusia County smaller county 2 page 1)
Another attorney who operated out of Duval County (large) but practiced in smaller counties, too, observed:

The judges are definitely aware of the rules and our obligations as attorneys but you can definitely get more sympathy in the smaller districts. There are definitely some judges that are demanding in the smaller districts but, in terms of expectations of meeting and conforming to what the court expects, there is a higher degree of importance placed on this in the larger district. (Atty Interview, primarily Duval County large 2 county, also worked in smaller counties e.g., Volusia, Page 1).

Court reporters agreed with the contention that the larger courthouses were more bureaucratically controlled and that he judges were aware of these controls. Moreover, this reality was seen as being reflected in their dealings with the attorneys.

Court reporters who worked in the smaller districts (like lawyers working those counties) seemed less understanding of the difference between the various professionals’ jobs and were also more likely to admit to overlap in the performance of some persons’ tasks rather than others. However, court reporters in the larger cities were more likely to say that there was no overlap in the functions of their job and every other member of court personnel.

If I have something that I need to do before a hearing starts, the trial clerk for that judge will put my name on the docket and move it around and even explain to the Judge that I am going to be a little late cause I am covering another hearing. That is great and a huge help to me-you get a greater sense of team working that way too. (Court Reporter Interview 23, Page 3 Volusia mostly small but occasional large courthouse like Duval as well.)

Still further, another Court reporter, when asked about the difference between large and small jurisdictions simply stated that

Smaller is better because there is less of a wall up between myself and the other staff. It seems as though it’s that way for the judges too. I mean some of this has to do with how a judge is gonna come to a courtroom but the difference between Federal and Circuit is like the difference between Dade and Lee. It’s a thing where you know they are busy but honestly Lee is busy too-they’re just more willing to leave their assignment or their thing
they are on and help you with yours Court. (Court reporter Interview 29, Page 3 Fort Myers mostly with some a Collier and Dade).

The consensus among all three groups is that the larger the jurisdiction, the more likely judges were aware of the rules and boundaries governing their jobs and the others noticed how that awareness affected judicial performance.

**Theme 2: In the larger courthouses, the judges display a greater expectation of consistency from themselves and the other judges (similar to the Expectation of Consistency scale in the statistical analyses).**

Two series of the interview questions asked the judges, lawyers, and court reporters to consider and comment about expectations of consistency. The interview responses to the following lines of questions that shed light on this theme are again presented first from judges and then from lawyers and court reporters.

- How consistent do you think judges are with regard to how well they administer the docket or how they rule? Is this important? How are your daily tasks in the courtroom assigned? supervisor determined, policy, what? How clearly defined are these daily tasks? Does this vary from smaller to larger districts? and

- How important is the consistency of the staff that works in the courtroom with you? What overlap do you see between your job tasks and that of others in the courtroom workgroup? Does anyone (from other areas of the courtroom workgroup like clerk, court reporter, etc.) do the job you do?

The formality of the larger courtrooms, noticeable despite exception made for judge personality, is a strong indicator of the greater focus on consistency. Likewise the aforementioned, forceful application of the controlling rules within the larger districts is an indicator of a greater expectation of consistency from court personnel also. In the districts with greater Size Specialization, judges have a greater expectation of consistency of themselves and other judges. But they have detailed and fine-tuned expectations of the other courtroom personnel in the larger districts.
The interviews with judges made it clear that they display very little desire to supervise the actions of other judges, leaving that work to the Chief Judge, to court administration, or to appellate courts. However, the judges have clear expectations of other judges in their performance on the bench as well as in chambers. No judge voiced that they had an expectation that consistency would be supervised, whether in administering their courtroom or delivering judgment with regard to other judges. The feeling throughout all courthouses was that there was definitely a more live and let live orientation to their coexisting with their fellow judges. In other words, Judges quickly voiced an expectation of consistency in their own ruling and the ruling of other judges, but that no one else should supervise this. It was a type of “faith” that the other judges would behave according to the governing rules and no mention of the process’s supervisory authorities. However, where the disparity arose was in the topic of Expectations of Consistency. Judges in counties with greater Size Specialization displayed a higher expectation of consistency amongst themselves. This was something that was less emphasized by judges in the counties with less Size Specialization. For example, one Lee County (smaller) Judge explained:

I will always rule different. I am human and subject to human dynamics but you try, as a judge to keep the discrepancies down to a minimum. The good news is that there are less out there who feel that I’m not versus those who do. Also, there are less types of cases at a county court level and the considerations are less so the likelihood for difference is less. (Judge Interview Lee County smaller 1 Page 2)

Likewise an Alachua County (smallest) judge explained:

There is a decent chance that I could rule toward one particular side more than I might do on a different day. This may or may not be true with my fellow judges but it most likely is. However, there are safeguards against such situations such as mandatory minimums and plea bargaining standards that have been passed down. But in terms of the nuances of a case, these may not be picked up in the same way everyday. Everyone is
moody and that is the way things are. (Judge Interview Alachua County, smallest 1 Page 2)

However, a Judge presiding in Jacksonville explained:

I will rule the same every dy. I am ruling the same way I was ruling last week and will in the future. Consistency is important. The way I am ruling now is almost identical to how I was ruling ten years ago except for where the statutes have changed. I think this would be true for my fellow judges as well. (Judge Interview Duval County, large 2 Page 2)

A Dade County (largest county) Judge explained: “I can’t speak for other judges but I can tell you that I work very hard to rule the same in the same situations. I think consistency is very important and must be constant in the minds of the judge when developing strategies of ruling.” (Judge Interview Dade County, largest 2 Page 2)

The information received here was not perceived as conflicting (in that judges of all counties were all clear to distribute a value of consistency-only to varying degrees). However, there is clear indication that there are greater expectations of consistency among the judges in the larger districts. There is a higher degree of concreteness to the existence of and acceptance of the uncertainty of informal action within the larger districts. There is the understanding that judges will be expected to perform the same way every time they are faced with a similar scenario. However, a distinct difference exists between the smaller and larger courthouses; the expectations are more obvious in what the judges expected from their support staff. In other words, the above described “faith” that judges showed in discussing other judges was less apparent when discussing other personnel in the courtroom workgroup.

Further, review of the interviews with the smaller courtrooms show a clear value placed upon consistency within the mind of the judge when relating to the other personnel. However, the consistency described as needed was more of a general, “I-
need-someone-from-that-agency-to-be-there-type” rather than a specific one requiring consistency in the details of the personnel member’s actions. The distinction here is that there is less of a sense of controlling expectations with the smaller courthouse judges. One judge in Lee County (smaller) explains:

I need clerks that deliver the information. The way in which they do this may vary based upon their schedule or maybe there are different personnel. I am less concerned with consistency and more concerned with accuracy/dependability. (Judge Interview Lee County, smaller Page 2).

Still another describes the relationship between the personnel and the judge as an administrative leader:

I need to be able to count on my clerk and my assistants for sure. Their consistency is important but do I need them to act and the same day in and day out, no. I need them to do their job in order to effectively move the docket. (Judge Interview Volusia County, small, 2 Page 2)

The mentality was qualitatively different in courts with greater Size Specialization. In these counties, judges were much more likely to speak in absolutes when it came to the consistency of their staff, discussing the details of the personnel member’s job and how they needed that job done a certain way in order that they may achieve their own goals. Judges of the larger districts were describing the process like the inner workings of a clock or mechanism where the greatest piece is still dependent on the smallest piece. This was evident in one Dade County (largest) judge’s communication about his bailiff:

(I need) The bailiff needs to be acting the same way. Even the side that he approaches the bench is important because they will approach with the plea form while I am in my plea colloquy and my looking away from, or breaking contact with the defendant’s attorney will slow the process. I need to be able to review without a break in the action so the work product of every member must be the same. (Judge Interview Dade County, largest, 3 Page 2)
Another large county judge, from Duval County, made it clear that management of each detail is important for the survival of the criminal justice machine:

Definitely important that court personnel do those things that they were hired to do and the same each day so that I can maximize the time provided. Things go a little faster per case. This is important. Therefore, the business end of things is clear. The only way to act how we must is to be professional and perform exactly the way the procedures require. Without their compliance, I can’t count on them and then the whole process grinds down. (Judge Interview Duval County, large, 2 Page 2)

Many of the attorneys spoke about this expectation of consistency as well, directly linking it to a difference between the larger jurisdictions and the smaller ones. They saw the judges being more punitive and forceful with attorneys if they didn’t follow a certain format in the larger districts. Below is an example of one such attorney’s opinion as he traveled from Jacksonville (Duval County, large) to Gainesville (Alachua County, smallest):

They [judges] seem to be more punitive with late attorneys or attorneys not prepared. I think it might just be because they are busier. In the smaller districts though, things are more relaxed and flexible. The judges speak their mind but in a more relational conversational way. Again, some of it’s the personality of the judge but it’s definitely more uptight in the Orlando [Orange County, large] than it is in Volusia [County, small]. Attny Interview Alachua County, smallest, 3 page 1.

The formality of the larger courtrooms, noticeable despite exception made for judge personality, is a strong indicator of the greater focus on consistency. Likewise the aforementioned, forceful application of the controlling rules within the larger districts is an indicator of a greater expectation of consistency from court personnel also. In the districts with greater Size Specialization, judges have a greater expectation of consistency of themselves and other judges. But they have detailed and fine-tuned expectations of the other courtroom personnel in the larger districts.
The attorneys and court reporters offered less insight into the motives of judges but, given the nature of their jobs and the locations it takes them to, they offered more well-rounded commentary for a comparative analysis. The lawyers’ perspective is given first.

A Jacksonville [Duval County, large] attorney explains going to court versus court in another, smaller district:

Attorneys that come unprepared to Jacksonville in that they are unaware of the procedure are getting left behind. You can spot them from a mile away because they are the ones asking questions or just losing because the judge doesn’t respect their way of doing things. It may not be wrong - just different - but if it’s enough for the judge to notice, it can be a problem. The judge might not say anything but they’ll roll their eyes or look at staff or another attorney - and it’s gonna come out in the decision. In Jacksonville and probably larger districts, you gotta know the process. Smaller districts, it’s usually more laid back and if it’s not, you almost get more upset because you think, who do they think they are, this is just Clay County [small] or something. They don’t have a reason to expect these things from me. Some of it’s the way each individual judge does it but there’s a definite difference between the smaller and larger courthouses and what the judge expects. (Attorney Duval County, large, Interview 1, Pg 1)

One particular court reporter, who focused more of her work in Dade County (large) but also visited the smaller counties circling the area, gave well founded commentary on the inner workings of Dade versus a smaller courthouse:

Judges in Dade [largest] don’t necessarily crucify staff that make mistakes but it’s clear that they expect a greater level of attention to detail from their staff. Some of this is personality of the judge type stuff but when I go to Dade, I feel like I need to have my act together to a higher extent than if I go to one of the smaller districts. I think this is because the judges are stressed more and feel like the machine needs to be well-oiled and not have any mishaps. It’s not that they don’t expect for mishaps to occur, it’s that they react when they do.

(Court Reporter Interview 19, page 2 Some Dade (largest) but mostly Broward-a large district).

Another court reporter with experience in larger and smaller jurisdictions, stated:
There is nothing scarier than an upset judge. At least to me.” She went on to say: “It’s like somebody pushed them off a cliff when something doesn’t go right sometimes. It’s like you have to relax because it’s not a machine and it’s subject to miscues. (Court reporter Interview 21 Page 2, Mostly Broward County, large, with some Dade, largest).

From the interviews it appears that within the larger districts, there exists a culture of detailed requirements not deemed as prevalent or fundamental in the smaller districts. I interviews with the court reporters and attorneys gave greater indication of the cause of this increased need for consistency, suggesting that the larger courthouses were more formal and such formality was a result of a certain “air about the courthouse”-(Court reporter Interview 28, PQAGE 2 Mostly Orange, large and some Osceola, small)). Another Court Reporter who had covered smaller and large counties (like Hillsborough County, Orange County, and Dade during her 27 year tenure and offered excellent insight into the variance in Expectation of Consistency for those districts with greater Size Specialization. According to her, judges in Tampa appeared to require greater consistency from their staff than in the circuits with less Size Specialization.

Consistency is not what Judges want from you-what they want is different levels of control. It seems like the bigger the courthouse (the greater the Size Specialization) the more likely Judges are to be less focused or concerned about you but more expectant that you are going to do your job not only the same way but the way they want it. Overall, it seems that there needs to be greater understanding on the part of the bigger (surmised to mean judges in the jurisdictions with greater Size Specialization) that we can do this a couple different ways. At least you know what to expect when you get there. (Court reporter Interview 12, Page 2)
Theme 3: The size dimension was seen to relate to the degree of autonomy of judges in how they performed (consistent with the relationship between Size Specialization and Lack of Autonomy in the statistical analyses).

Two of the interview questions were especially important in drawing out comments that addressed this theme. Recall that the wording of the questions is modified slightly for the attorneys and court reporters.

Why might a judge believe that there is only one acceptable format for administering a courtroom?

How do you react if, when ruling, you feel as if you want to take a certain course of action but are unable or limited in doing so by written or unwritten guidelines? Is this a normal occurrence?

For the judge interviews, there were two judges that put the contrast between large and small courthouses in sharp relief by their direct answers to this question. A Dade County (largest) judge answered the first question very directly:

Because there is. The format detailed by the Rules of Procedure and the Rules of Judicial Conduct determine how the rules shall be followed. (Dade County, largest, Judge Interview 3 page 3)

By way of contrast, a Volusia County Judge (small), suggests a different approach:

There is more than one way to skin a cat. If a defendant is in need of special attention it is a judge’s job to ensure that that attention is given to ensure that the balance between state’s rights and private rights is maintained. (Judge Interview Volusia County, small, 2 page 3)

Still further, coming from the smallest county, the opinion of a Gainesville (Alachua County) Judge provides further evidence of this progression:

I don’t know. I am going to do what I need to do to make sure that the rights of the accused are protected and if that means spending more time doing so, I am going to do it. That may be different in other courtrooms here, but that’s how I do it. Judge Interview Gainesville 1 Page 3)
These responses show a clear increase in the attention to rules as a standout in the mind of the judge when thinking about courtroom performance in the larger district. They show that the larger district is more focused upon following the rules whereas the smaller district judge does not even appear to consider the rules at all when thinking about how to consider. The medium sized district (Volusia) judge subscribes to rules but the rules are much more broad and capable of greater attention. The sense of Lack of Autonomy is greater among the smaller districts. This is again typified in comparing the three judges from the same districts with a similar question:

Responses the second question further developed the theme. A Miami (Dade County, large) Judge explained:

I’m here to follow and promote the guidelines set forth by the rules. I can only ‘want’ to take that particular course of action. The rules have been set up because they are good and make the most sense so a justicious [sic] result occurs when the rules are put into action (Judge Interview Dade County, largest, 2 Page 3).

Whereas the judge from the smaller county, Volusia, explained:

The guidelines that must be followed ultimately are the guidelines established by the Constitution as delivered and interpreted by the Supreme Court. A justicious [sic]result comes when you ensure that these are followed. It’s a simple equation that it is repeated over and over again. (Judge Interview Volusia County, small, 1 Page 3)

A judge in an even smaller county, Lee, provided a clear perspective of how more autonomy and more creative, less mechanistic application of the rules should operate:

That is why I was elected: to deliver the most fair and sound verdict or decision. The rules provide flexibility so that a fair decision can be reached and the rules followed as well. The rule, many times is more of a penumbra, under which effective action can be taken. I know that when I have an issue that I can’t resolve because I am not granted the authority, I have leaned on the state or defense attorney to assist with such. Perhaps they can amend the charge in order that the best result occurs. I am not
their boss but I run the courtroom and that’s where they work so they take this under advisement. (Lee County, smaller, Judge Interview 1 Page 3)

Careful analysis of the judge interview results shows that there is a positive relationship between Size Specialization and Lack of Autonomy. While the interviews from people in larger districts showed clear indications of Lack of Autonomy as a primary way to deal with cases, within the smaller jurisdictions, it was clear that judges’ perceptions of autonomy was greater allowing them to be more creative with the application of the rules. In the smaller counties, judges indicated that they were concerned with the best way to deliver justice whereas those in the larger districts were more concerned with administering a courtroom and not breaking any of the rules in the process. When asked whether all aspects of the job were governed by the formal rules, those in the larger courthouses gave answers with a higher degree of certainty that they were. The judges in the smaller courthouses actually explained that such was not the case— that judges had autonomy to find the most just result. A just result was not the primary focus in the courthouses with more Size Specialization. In the courthouses with greater Size Specialization, turning cases pursuant to the rules and policies to gain a resolution was the primary focus. This difference was clear.

This size-related difference in perceptions about the degree of autonomy for creative, case-by-case consideration versus more mechanistic judicial performance also emerged in the interviews with the other professionals in the courthouse. For example, an attorney from one of the smaller counties (Lee) observed:

In the smaller districts, you’d think it’d be the area where the judges are less open minded but what you find is that they are more open-minded to new ways to solve problems. They are not as quick to scoff at new treatment facilities, new substitutes for incarceration, even mitigation for departing from mandatory minimums, and that type thing. The larger districts are the ones where the judges generally have less to say about solving problems
although don’t get me wrong judges have a harder gig but it seems more uptight and less willing to assist in the larger courtrooms. The judges aren’t as quick to come out of what they know. (Attorney Interview Lee County, smaller, 2 Page 3)

When asked what they thought about judge creativity in the courtroom, an attorney (from the large jurisdiction of Orange County) responded:

In the smaller districts, sometimes I get the feeling like the judge, one in particular, doesn’t know the law but thinks they can do whatever. The poor state [state attorneys]—it seems to bother them but they just go about what new-fangled untried thing that judge is doing. The people seem to be appreciative though. It’s not that the judge is easier ‘cause I’ve seen him lock ‘em up, it’s just that he is ready to try something different or fresh when he sentences someone. Attorney Interview Orange County, large, 2 Page 3).

Another attorney explained

I know that when I go to Lee its not going to be as hard a time for me as it is in Hillsborough because the judges there work with you. Their dockets are way backed up down there but they are serious about trying to smooth them out. In this way they are going to give the flexibility to get the case resolved. If I come up with a new way for a dispo on a particular case and the state is on board, we are in provided its not going to put the judge in the news. Attorney Interview Lee County was the small, but some large experience in Hillsborough, large, 1 Page 3).

Still another commented that —

its not that I don’t think County judges don’t know what they are doing, they do everywhere. Its just that some districts are going to give a little bit more of a push in the formality direction and be less willing to bend when that’s what true justice requires. You are going to get less of that in Dade then in Broward or some of the other smaller jurisdictions (Attorney Interview Dade County, largest, 1 but also appearing in the smaller surrounding counties, Page 3).

This perspective was shared somewhat by court reporters. Many either acknowledged that in the courthouses with greater Size Specialization there was a more prevalent lack of autonomy. They explained that courthouses must have greater Lack of Autonomy. A court reporter who experienced both large and small jurisdictions explains:
I am much more likely to run into a type of mentality at a larger courthouse where you have to wait in line to get a question answered by the clerk if you are looking for where your particular hearing is located—or you are unable to reach the judicial assistant. It seems as though, you are more likely to find people just going through the motions in Jacksonville [Duval County, large] then you are in Hendry County [small] or somewhere similar. It’s totally true. Seems crazy—and you don’t see it in every person who come across in the larger districts and I’m sure the smaller ones have it too, but it just seems as though the larger ones have more of them—people that are pushing ‘till the whistle goes off.(Court reporter Interview 17 Page 4-Duval, large)

Still another court reporter described the necessity to rule follow and the affect it has on sense of autonomy when she described trips down to Dade (largest) from her neighboring home in Fort Lauderdale (Broward, large) wherein she also worked as a court reporter: “when I go down there I better know what I’m doing and follow what they want us to do and the way its cut out for us to do. “It’s as though they [the rules] are thinking for us” .”(Court reporter Interview, 3 Page 4-Duval, large)

Another court reporter’s depiction demonstrated this theme of a lack of autonomy. She recalled the judicial rules of conduct being quoted by a judge when that judge was discussing a discovery violation of one party before the other and unnecessary Motions to Compel Discovery and resultant Motions for Sanctions.

I mean this judge could quote the rules. He knew them forward and backward and quizzed the attorney he was picking on about them-and that was just the local rules. I used to have the transcript and I would read it to my friends sometimes and we would just laugh. (Court reporter Interview , 13 Page 4-Duval, larger)

When asked directly if the judges were more aware of the rules (of procedure) in smaller districts, her reply was in the negative.

**Conclusion**

These three themes emerged from the interviews. The first of these is that there was greater awareness of bureaucratic boundaries and the rules (Florida Rules of Civil
Procedure, Rules of Judicial Administration, Statutes, Policy, etc.) within the larger courthouses. It is consistent with the proposition that Size Specialization relates to greater awareness of the rules and resulting barriers between the persons within the courthouse and affects the performance of the judges. The interview findings were consistent with the results of the statistical analyses. The second of these themes is that within the larger courthouses, there were greater expectations of consistency in how judges and the others should perform their roles. This theme was also congruent with the findings obtained from the statistical analyses. The third theme is that there was a greater sense of autonomy and creativity on the part of judges within the smaller districts. This theme was consistent with the statistical results that found a relationship between greater Size Specialization and a Lack of Autonomy on the part of judges.
Table 6-1. A Series of Bivariate Analyses Regressing 3 Performance Indicators on Size Specialization to Address Proposition 1

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Independent Variable(s)</th>
<th>B</th>
<th>Standardized Beta</th>
<th>R Square</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.111 Performance (Checklists)</td>
<td>Size Specialization (Judge Number by District)</td>
<td>-.105*</td>
<td>-.487</td>
<td>.235</td>
<td>420</td>
</tr>
<tr>
<td>Mechanistic Performance (Checklists)</td>
<td>Size Specialization</td>
<td>.048*</td>
<td>.647</td>
<td>.418</td>
<td>420</td>
</tr>
<tr>
<td>Mechanistic Performance (Survey)</td>
<td>Size Specialization</td>
<td>.028*</td>
<td>.745</td>
<td>.555</td>
<td>55</td>
</tr>
</tbody>
</table>

1 Proposition 1. Size Specialization (and not differentiated functions) will be related to Case-by-Case Thinking of judges, which in turn should affect their performance (i.e., the extent to which they engage in 3.111 substantive versus Mechanistic procedural performance)

* p-value < .001

** p-value < .01

*** p-value < .05
Table 6-2. A Series of Bivariate Analyses Regressing 3 Judicial Adjustment Scales on Size Specialization as well as Regressing 3 Judicial Adjustment Scales on Each Other to Address Proposition 2

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Independent Variable</th>
<th>B</th>
<th>Standardized Beta</th>
<th>R Square</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expectation of Consistency</td>
<td>Size Specialization</td>
<td>.028*</td>
<td>.690</td>
<td>.477</td>
<td>55</td>
</tr>
<tr>
<td>Awareness of Bureaucratic Rules and Systematic Controls</td>
<td>Size Specialization</td>
<td>.014*</td>
<td>.536</td>
<td>.287</td>
<td>55</td>
</tr>
<tr>
<td>Lack of Autonomy</td>
<td>Size Specialization</td>
<td>.017*</td>
<td>.464</td>
<td>.201</td>
<td>55</td>
</tr>
<tr>
<td>Expectation of Consistency</td>
<td>Lack of Autonomy</td>
<td>.533*</td>
<td>.472</td>
<td>.233</td>
<td>55</td>
</tr>
<tr>
<td>Boundary/Rule Awareness</td>
<td>Lack of Autonomy</td>
<td>.200***</td>
<td>.288</td>
<td>.083</td>
<td>55</td>
</tr>
<tr>
<td>Boundary/Rule Awareness</td>
<td>Expectation of Consistency</td>
<td>.317*</td>
<td>.515</td>
<td>.266</td>
<td>55</td>
</tr>
</tbody>
</table>

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2 Proposition 2. Size Specialization (number of judges) leads to various adjustments by a bureaucracy's internal actors (judges)

* p-value < .001
** p-value < .01
*** p-value < .05
### Table 6-3. A Series of Bivariate Analyses Regressing 3 Performance Indicators on 3 Judicial Adjustment Scales to Address Proposition 3

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Independent Variable</th>
<th>B</th>
<th>Standardized Beta</th>
<th>R Square</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mechanistic Performance (Surveys)</td>
<td>Lack of Autonomy</td>
<td>.517*</td>
<td>.495</td>
<td>.245</td>
<td>55</td>
</tr>
<tr>
<td>Mechanistic Performance (Surveys)</td>
<td>Boundary/Rule Awareness</td>
<td>.841*</td>
<td>.559</td>
<td>.312</td>
<td>55</td>
</tr>
<tr>
<td>Mechanistic Performance (Surveys)</td>
<td>Expectation of Consistency</td>
<td>.692*</td>
<td>.747</td>
<td>.559</td>
<td>55</td>
</tr>
<tr>
<td>Mechanistic Performance (Checklists)</td>
<td>Lack of Autonomy</td>
<td>4.146*</td>
<td>.482</td>
<td>.232</td>
<td>420</td>
</tr>
<tr>
<td>Mechanistic Performance (Checklists)</td>
<td>Boundary/Rule Awareness</td>
<td>2.889*</td>
<td>.643</td>
<td>.414</td>
<td>420</td>
</tr>
<tr>
<td>Mechanistic Performance (Checklists)</td>
<td>Expectation of Consistency</td>
<td>1.321*</td>
<td>.626</td>
<td>.392</td>
<td>420</td>
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<tr>
<td>3.111 Performance</td>
<td>Lack of Autonomy</td>
<td>-6.748*</td>
<td>-.268</td>
<td>.072</td>
<td>420</td>
</tr>
<tr>
<td>3.111 Performance</td>
<td>Boundary/Rule Awareness</td>
<td>-6.117*</td>
<td>-.467</td>
<td>.218</td>
<td>420</td>
</tr>
<tr>
<td>3.111 Performance</td>
<td>Expectation of Consistency</td>
<td>-2.817*</td>
<td>-.457</td>
<td>.209</td>
<td>420</td>
</tr>
</tbody>
</table>

3 Proposition 3: Adjustments by role occupants (judges) to the size feature of specialization will decrease Case-by-Case Thinking.

* p-value < .001

** p-value < .01

*** p-value < .05
Table 6-4. Two models of Analyses: One Regressing Size Specialization on Mechanistic Performance and then Multivariate Analysis regressing 3 Performance Indicators on Size Specialization and 3 Judicial Adjustment Scales to Address Proposition 4\(^4\) (a) Dependent Variable: Mechanistic Performance (Judicial Surveys)

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Standardized Beta</td>
</tr>
<tr>
<td>Size Specialization</td>
<td>.028*</td>
<td>.745</td>
</tr>
<tr>
<td>Lack of Autonomy</td>
<td>.116</td>
<td>.097</td>
</tr>
<tr>
<td>Boundary/Rule Awareness</td>
<td>.212</td>
<td>.147</td>
</tr>
<tr>
<td>Expectation of Consistency</td>
<td>.346**</td>
<td>.108</td>
</tr>
</tbody>
</table>

R Square = .555                                               R Square = .681

Durbin-Watson = 1.659

\(^4\) Proposition 4. Size Specialization will operate directly on Case-by-Case Thinking but its effect will be partially mediated by the judicial adjustments.

* p-value < .001

** p-value < .01
Table 6-5. Same Progression of Independent Variables Used in Table 6-4 on Dependent Variable: Mechanistic Performance (Observational Checklists)\(^5\)

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>B</th>
<th>Standardized Beta</th>
<th>N</th>
<th>B</th>
<th>Standardized Error</th>
<th>Standardized Beta</th>
<th>Collinearity Tolerance</th>
<th>VIF</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Size Specialization</td>
<td>.048</td>
<td>.647</td>
<td>42</td>
<td>.044 *</td>
<td>.012</td>
<td>.592</td>
<td>.056</td>
<td>17.888</td>
<td>4</td>
</tr>
<tr>
<td>Lack of Autonomy</td>
<td></td>
<td></td>
<td>42</td>
<td>.129</td>
<td>.462</td>
<td>.015</td>
<td>.473</td>
<td>2.115</td>
<td>20</td>
</tr>
<tr>
<td>Boundary/Rule Awareness</td>
<td></td>
<td></td>
<td>42</td>
<td>2.935 *</td>
<td>.905</td>
<td>.654</td>
<td>.033</td>
<td>29.889</td>
<td>4</td>
</tr>
<tr>
<td>Expectation of Consistency</td>
<td></td>
<td></td>
<td>42</td>
<td>1.266 **</td>
<td>-.108</td>
<td>.374</td>
<td>.467</td>
<td>2.139</td>
<td>20</td>
</tr>
<tr>
<td>R Square = .418</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durbin-Watson = 1.582</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^5\) * p-value < .001

** p-value < .01

*** p-value < .05
Table 6-6. Same Progression of Independent Variables Used in Table 6-4 on Dependent Variable: 3.111 Performance

<table>
<thead>
<tr>
<th>Independent Variables</th>
<th>Model 1</th>
<th>Model 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>B</td>
<td>Standardized Beta</td>
</tr>
<tr>
<td>Size Specialization</td>
<td>-</td>
<td>-.487*</td>
</tr>
<tr>
<td>Lack of Autonomy</td>
<td>.105*</td>
<td>.166*</td>
</tr>
<tr>
<td>Boundary/Rule Awareness</td>
<td>7.310**</td>
<td>3.027</td>
</tr>
<tr>
<td>Expectation of Consistency</td>
<td>4.462**</td>
<td>1.629</td>
</tr>
<tr>
<td>R Square = .235</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\[^6\] * p-value < .001

** p-value < .01

*** p-value < .05
CHAPTER 7
DISCUSSION AND CONCLUSIONS

This dissertation sought to locate a systematic way to learn more about how abstract notions of law, developed in jurisprudence and the sociology of organizations, play out in the practice of law. The effort was exploratory as the project set out to determine how to make sense of judicial behavior from a theoretical vantage point. The design was to take those theoretical notions into the field to design a study that could shed light on how well they held up empirically. To this end this dissertation project:

Conducted pilot observations to locate six county courts that provided strategic study sites

Found extant literature and theory that provided tentative explanations for the working hypothesis that something about size makes a difference in the practice of law—a working hypothesis that emanated from the author’s experience in the courtroom.

- Conducted pilot observations to locate six county courts that provided strategic study sites.
- Used the pilot observations to search for additional structural influences on judicial performance which needed to be taken into account.
- Used those pilot observations to design research that could focus on size specialization, while exerting controls that precluded interference from other potential factors.
- Used those pilot observations to identify ways in which judicial perceptions and performance could be measured.
- Triangulated a methodology that relied on observational checklists taken at county court arraignments, judicial surveys of county court judges, and in-depth interviews of regular players in those courtrooms: judges, lawyers, and court reporters.
- Collected and analyzed the data
- Presented the results and demonstrated the convergences in findings across the observational, survey, and interview methodologies.
This final chapter serves three purposes. It provides a summary of the statistical and in-depth interview findings, arranged around the respective propositions that structured this dissertation. It then engages in a discussion of those results and their implications. Then before its final words, it considers the limitations of the research and directions for future research to develop the implications of this exploratory effort.

**Summary of Findings**

The first proposition lays out the basic relationship to be examined. Size Specialization will be related to Case-by-Case Thinking as indicated by three judicial performance measures (Mechanistic Performance (Survey), Mechanistic Performance (Checklist), and Rule 3.1111 Performance (Checklist) and the size of the judiciary in the respective counties related to each of the three performance measures. The bivariate relationships were moderate to strong (\(-.487\) to \(.745\)). Size of the judiciary was inversely related to case-by-case inquiries in regard to Rule 3.1111 (hypothesized). Size Specialization was positively related to the bureaucratic, mechanistic performance features of the arraignments as observed on the checklists (hypothesized). It was also positively related to the survey responses about bureaucratic, mechanistic aspects of the judicial role (hypothesized). The results suggest that size matters. Recall that the design eliminated differences in functions (type specialization) for arraignments and controlled for the individual workloads of the judges.

The second proposition begins to explore how the structural variable of Size Specialization might operate through judicial adjustments to affect performance. It looks at the relationships between Size Specialization of the judiciary and the three scales tapping judicial adjustments obtained from surveys with the judges: their views on the Expectation of Consistency for themselves and others in their work performance, their
awareness of the bureaucratic rules and systematic controls (Boundary/Rule Awareness), and their perception of their autonomy (Lack of Autonomy). The bivariate results show that Size Specialization is consistently related to these three adjustments with standardized regression coefficients ranges from .464 to .690; the relationships are in the directions posited. Size Specialization relates to higher expectations of consistency, to more awareness of bureaucratic boundaries and rules, and to less autonomy. The analysis also confirmed that the scales measuring the three judicial adjustments were somewhat inter-related.

The third proposition suggests that adjustments (Expectation of Consistency, Boundary/Rule Awareness, and Lack of Autonomy) to the size feature of specialization will affect the performance indicators of Case-by-Case Thinking. It posits that each of the three adjustments to Size Specialization will affect the performance indicators of Rule 3.1111 Performance (Checklist), Mechanistic Performance (Checklist) and Mechanistic Performance (Survey). That is what was found. The more judges expect consistency in themselves and across judges, the more mechanistic their performance. A greater awareness of bureaucratic boundaries and rules relates to more mechanistic performance. The more judges perceive that they lack of autonomy, the more they report mechanistic performances.

The fourth proposition suggests that Size Specialization will operate directly and through judicial adjustments to affect the performance indicators of Case-by-Case Thinking. The analyses show that Size Specialization continues to relate to the three performance indicators of Case-by-Case Thinking even when the adjustment scales are added to the multiple regressions. It appears that there is some mediation (some of the
impact of Size Specialization operates through the judicial adjustments), but that judicial adjustments usually affect some of the performance indicators over and beyond their role as intervening variables.

The themes that emerged from the In-Depth Interviews of judges, attorneys, and court reporters in the six counties aligned with important results from the statistical analyses of the surveys and observational checklists. Size of the county judiciary is recognized by members of the courtroom workgroup to relate to judicial adjustments and styles for doing judge-work. Interviewees reported that judges in larger courthouses had a greater awareness of bureaucratic boundaries and the rules and conducted their courtrooms accordingly. They commented that there were greater expectations of consistency in how judges and the others should perform their roles in the large counties. In contrast, they perceived a greater sense of autonomy and problem –solving creativity on the part of judges within the smaller counties.

A Discussion

Specialization, in the literature, has been reviewed as a distinct characteristic of bureaucracy without further division such as this. As specialization within an organization increases, those within the organization will become more controlled by the formal requirements of the organization (Ritzer). Similarly, the jurisprudential literature explains that the more specialized a court system is, the less the judge is going to be able to focus on a particular defendant. The result of this will be the judge’s quickness to decontextualize the social circumstances surrounding the case by bounding their rationality to a set of descriptors about each case (Litowitz). Each case will be typified and classified with a pre-set outcome determined strictly by quantitative, mechanistic objectives (Litowitz). Case-by-Case Thinking will diminish. Note, however, that the take
on specialization is not very refined and does not distinguish between task specialization and size specialization.

This research provides evidence that more care may need to be taken when discussing specialization. It may have more than one dimension. There is task specialization (function specialization) and Size Specialization (From Max Weber: Essays in Sociology). Task specialization is the process where the division of labor is divided within a functional unit based upon the defined goals for the actors in that unit and the corresponding types of actions those actors perform. Size Specialization does not divide labor by the type of task goal. The goal type and task remains the same across the division, but the number of actors is reduced. Size and task specialization, however, are usually hard to separate. Take, for example, a unit having the goal of making piggybanks that are all painted black and yellow. Under task specialization, the sub-goals of applying the black paint and of applying the yellow paint are split between different members so that a smaller group of members will apply black paint to all the piggybanks and a different smaller group of members will apply yellow paint to all the piggy banks. So the task specialization also introduces a size dimension. Under “pure” size specialization, all the members will paint the piggybanks black and yellow. The question posed by this research is whether the size of these groups who are all doing the same function will make a difference on how their job is performed. The thesis is that differences in the size of groups affect how the actors conduct their work, presumably because they think of the work in a different way. This research uses judicial performance in county court arraignments as the setting to explore some of these implications.
The difference between task and Size Specialization in the judicial role is captured well by contrasting two of the judges' comments from their In-Depth Interviews. The first shows the problem that occurs with task specialization. This kind of critique of specialization is more familiar.

I have been a judge for really long time so I have seen what works and what doesn’t. … Too much specialization can be a problem in terms of doing your job. The goal is to resolve the case and to gain a fair and equitable result. This can only be done when you cut through the specialization. Many times a courthouse will put judges on a week-long rotation presiding over nothing but arraignments. That’s fine but then they are not the judge the entire time. … The key is getting the judge that’s going to have to deal with the substantive issue at trial on top of the substantive issues now [prettrial]. This way a much more judicial result can be met faster. What messes things up is judicial inaction because the goal becomes getting through it rather than solving it fairly. Whether it’s a smaller district or a larger district, if it’s set up this way, it’s going to be too cumbersome. (Duval County (large) Judge Interview 1, page 3.)

Excerpts from another judge in the same jurisdiction succinctly show why Size Specialization may matter even when judges are performing the same tasks.

“…[P]ersonal long-term attention is important to getting the total out of the system—you can over-organize it by getting too many people involved.” (Duval County (large) Judge Interview 2, page 2.) “The judges know that [being] in the larger courthouse means more judges which means more control that has to be exerted on and by the judges to properly run the docket and the whole thing.” (Duval County (large) Judge Interview 2, page 3.)

This dissertation only focuses on the effects of Size Specialization on judicial performance. The research selected counties so the number of county judges would vary from small to large. The research does not work with Task Specialization. After the pilot, it could be determined that Task Specialization would be controlled for by design. Through the pilot observations, some counties were eliminated from the study
because of variation in task specialization. Each county that was included was chosen because the county judges have the same responsibilities and goal tasks. Each county judge in the selected counties does the same type of work—there is no task specialization. To further control for the potential of different task specialization, the observational checklists were taken for only one particular hearing, misdemeanor arraignments (although each judge works the entirety of the misdemeanor process).

The focus on arraignments also offered a strategic research opportunity that goes to the heart of the problem addressed in this dissertation. The outcome of interest is the extent to which judicial performance becomes bureaucratic and mechanistic instead of dealing with justice issues in a case-by-case manner. Rule 3.1111 specifically addresses the need for case-by-case performance at arraignments when defendants wish to proceed without legal representation. It provides the opportunity for judges to conduct the kind of case-by-case analysis that counters bureaucratic processing and affords a window for looking at how mechanistic judges are when dealing with this rule.

The pilot study and preliminary analysis of the counties could be used so that the selection of counties controlled for two other important features that could obscure the focus on size specialization: type of offenses before the court and the workload of the judges. Recall from Chapter 3 that tallies were made of the types of crimes that these courts handled to be sure that the selected courts dealt with the same kinds of cases. Also recall that the larger counties had higher workloads but once the number of cases was divided by the number of judges the caseload per judge was very similar across the counties. Therefore, any differences in performance indicators that occur across
counties cannot be attributed to differences in the types of offenses or the individual caseload of the judges.

This latter feature is important. The “common sense” explanation for observed differences in performance by the size of the judiciary would be that the workloads in large counties are higher, forcing the judges to alter their behavior to clear their dockets. Because of the design control over caseload, that explanation does not apply to these findings. It was not the size of the caseload but the greater Size Specialization of the judiciaries themselves that related to more mechanistic performance of their role.

If Size Specialization matters, but it does not matter because of differences in caseloads, then something else is going on. From a Weberian perspective, the key to understanding patterned behavior that takes others into account (social action) is institutionalized ways of thinking. The literature has been clear that specialization has an effect on the actors within organizations through social psychological processes.

Increases in specialization create an atmosphere dominated by rules and boundaries clearly delineating those behaviors, which are approved, and those, which are not, and the organizational members become aware of the increased formal controls (Payne and Mansfield 515-526). The specialization and accompanying formalization demands more awareness of the rules and boundaries (Gajduschek 700-723). “Increased bureaucratization with large size is likely to lead to climates… more concerned with rules and following the rules” (Payne and Mansfield 518). This increase in rules and formalization is apparent to everyone in the organization and it establishes expectations of consistency, for themselves and from the people they work with (Thompson). Indeed, administration often seeks to increase consistency as one of its
goals (Mintzberg 25-32). This can hinder creativity and problem solving (Thompson). There is less substantive achievement in a creative context (Djankov, La Porta, Lopez-de-Silanes, and Shleifer).

The jurisprudential literature makes similar arguments. An increase in Size Specialization of legal organizations will result in an increased awareness in the formalities and boundaries between divisions (Posner). In law, inconsistency across judges is seen as problematic in that it belies the rule of law. The “rule of law” is built on consistently following formal procedural rules (Whitford 723-742). It meets with calls for more rule formation and enforcement (Litowitz). The boundaries created by specialization become rules themselves, which judges must then perform (Henderson, Thomas, and Kerwin 449-469). Specialization results in greater rule following on the part of the judiciary (Litowitz). The rules constrain performance and inhibit problem solving (Mintzberg 25-32; Litowitz).

It is this kind of literature that prompted the research to explore how the performance indicators may reflect the extent to which judges employ Case-by-Case Thinking rather than bureaucratic, mechanistic approaches to their tasks. It consciously explored the perceptions of judges about their work and how they do it. Three scales emerged from the Judicial Surveys that were conducted; and it explored how these scales would relate to size specialization. One scale was formed from perceptions about judicial autonomy or the lack thereof (Lack of Autonomy). A second was formed from perceptions about the extent of awareness of bureaucratic constraints and boundaries and rule inflexibility (Boundary/Rule Awareness). The third reflected perceptions about the expectation for consistency, both in terms of how each individual
judge operated from case to case and in terms of how other judges and courtroom actors performed from case to case (Expectation of Consistency). These perceptual scales related to one another, and, more importantly, they were related to Size Specialization of the judiciary and to performance indicators. Judges in larger counties were more likely to perceive less autonomy, more bureaucratic boundary and rule constraints, and a greater desire for consistency. In courthouses where judges perceived less autonomy, more bureaucratic boundary and rule constraints, and a greater desire for consistency, there was more mechanistic performance (as indicated by judicial surveys and observational checklists, including observations of judicial performance in regard to Rule 3.1111.

These perceptions seemed to mediate some, but not anything close all, of the impact of Size Specialization on performance and exerted independent effects that added to the explained variance of the performance indicators. Themes that emerged from the In-Depth Interviews of judges, lawyers, and court reporters confirmed the role that these kinds of perceptions play in courthouses and link them to the Size Specialization of the judiciaries. The tentative conclusion from this exploratory research is: size matters. Size Specialization matters for judicial performance. It matters for reasons other than higher caseloads or different functional arrangements. It matters in part because judges in different-sized courthouses perceive things differently—there are patterned ways of seeing their jobs. Moreover, the patterned ways judges see things also affect their performances.

The findings of this research are easily interpreted as further support for the proposition that as Size Specialization increases, organizational actors focus upon
means rather than the ends those means were created to effectuate. (The Protestant Ethic and the Spirit of Capitalism) In that sense there is a kind of substitution of goals that lead to a kind of bureaucratic ritualism (Social Theory and Social Structure).

Mechanistic quantitatively oriented performance is driven by the means. It pursues consistency across cases (even if they are different) and results in a monotony of practice (Dubin 147-164). Formal rules decrease inconsistency and place in the participants’ minds expectations for consistency among others who share their positions and across positional boundaries to those with other roles in the organization (Thompson). Many times, organizations value consistency and seek to increase consistency as an organizational objective (Mintzberg 25-32). Likewise, the jurisprudential research and explanation regarding the judicial staff suggests that inconsistency is a shameful woe of the judiciary; which is not prided and wishfully diminished through additional rule formation and application (Litowitz). Consistency always increases.

Organizational actors with bureaucratic, mechanistic thinking operate almost completely within the controls of the formal requirements of the organization (Payne and Mansfield 515-526). Jurisprudential literature similarly describes the increase in size will result in a mode of thinking that perceives utility in the formalities and the boundaries between roles and groups (Posner).

The most valuable information to be gleaned from this model is the increase in mechanistic performance by judges as the Size Specialization grows. Within this data set, there is a strong relationship between Size Specialization and mechanistic performance no matter how it was measured. There was some evidence that the
effects of this Size Specialization were partially mediated by the adjustment variables, especially expectations of consistency. The other way to state the basic proposition is that as Size Specialization increases, the use of Case-by-Case Thinking decreases. The inclusion of observations about the implementation of Rule 3.1111 in arraignments translates directly into this framing of the thesis. With size, there is a loss of the values upon which the system was created and less ability to perceive ways to adapt or be creative to meet the higher level or main goals of the organization (Blauner). Size Specialization contributes to the relinquishment of human control to formal rules that results in a kind of robotic repetitive response to the task (Sarfaraz 45-60). It leads to the repetitive ritualistic response that is part of the depersonalization and alienation that are linked to bureaucratic or rational-legal organization (Weber 1958; Slater 1976).

**Research Strengths, Limitations and Future Directions.** In some ways, the consistent pattern of results from the triangulated methodology may be the greatest strength of this effort. Of course, it helps that the pattern was consistent with the theoretical musings that set up the research. The hunch that size matters and matters in ways other than through increased work not only fit with the literature but was borne out empirically both through statistical analyses and via In-Depth Interviews of courtroom regulars. In their own words, these insiders could articulate that Size Specialization affects how judges see their jobs and how they perform their duties.

The triangulated methodology is also a strong feature of this dissertation. Given the exploratory nature of the venture, the pattern could more easily be dismissed if only one methodology had been employed. The convergence of findings across methods strengthens the final product.
In addition, the pilot observations resulted in a stronger design. Those initial forays into the courtrooms identified counties with different sized judiciaries, types of court (county courts), and features of judge work (the arraignments) where the variables of interest could be explored and competing variables could be controlled by design. The design was enhanced because Rule 3.1111 provided a unique opportunity to explore the theoretical constructs of interest. Strategic design decisions facilitated the interpretation of the results.

The value of the pilot observations warrants a closer look. The pilot assisted the research in that six courthouses were discovered within Florida that varied greatly in Size Specialization and followed the same bureaucratic model. In other words, the judges’ duties were all organized the same way, so the judges would perform the same duties. Therefore, the effects of task specialization could be minimized by design. Focusing on county court arraignments further enhanced the control over task specialization. The focus on county court arraignments was advantageous in that they only deal with misdemeanors, which allowed for some control over the seriousness of the offenses committed by the defendants who were being arraigned. In addition, not only were the charges limited to misdemeanors, data collected before the research moved into the field confirmed that even the types of misdemeanors were similar across these counties. The exclusive focus on misdemeanor cases also increased the likelihood that defendants would want to waive counsel and appear pro se so they could plea out at the arraignment. This meant that performance in regard to Rule 3.1111 consistently played a role in judicial performance. Because of its directive to avoid bureaucratic processing, Rule 3.1111 provided a unique opportunity to examine
mechanistic versus case-by-case approaches to judge-work. Finally, the pilot observations helped identify six courthouses wherein the judge’s individual workloads for arraignments were consistent and the same within courthouse as across courthouses. In this way the effects of “the rush factor” could be minimized and any effects of size on performance would not be due to differential caseloads of judges. In other words, a person with a finite time to accomplish 50 cases of the same task may behave differently from a person facing 150 cases of that same task within an equal amount of time. In addition the effects of habituation were controlled. However, (as a failsafe) to ensure that the effects of habituation were controlled by design, questions on the survey were used to measure the effects of the habituation. Although there were effects of habituation, there was little variance across districts and no revealed significant relationship between courthouse size and amount of habituation.

Any strengths of the dissertation must, of course, be assessed in relation to its limitations. One of the complications and limiting factors in interpreting the results were problems of multicollinearity in the multivariate analyses of the observations of the 420 arraignments. Although multicollinearity does not prevent conclusions about the overall models, it does interfere with the ability to use the regression coefficients to compare how the individual variables are operating within the model. In other words, the regression results from the arraignment analyses show that Size Specialization and the judicial adjustment scales predict judicial performance indicators, those analyses could not be used to assess the extent to which the adjustment scales (Boundary/Rule Awareness, Expectation of Consistency, and Lack of Autonomy) mediated the impact of size on judicial performance. Note, however, that the analyses of the data derived from
the 55 judicial surveys did not suffer from a multicollinearity problem. Those results showed that the effect of Size Specialization was mediated in important ways by the adjustment scales. Moreover, the In-Depth Interviews also produced evidence that Size Specialization relates to performance through judicial perceptions that gel with the adjustment scales. One of the causes of multicollinearity is a low N. The combination of the low in addition to the confidence intervals necessary when comparing averages could be creating the multicollinearity (Lauridsen and Jesus 317-333). Given the exploratory nature of this project, it may be premature to dismiss the pattern of results because some of them were affected by multicollinearity.

While the design had features that advanced this exploration into the effect of Size Specialization on judicial performance, it was also limited by the fact that it focused on only six counties. The small number counsels caution in making too much of the results; they may not be stable (the addition of just a couple more counties may have altered them) and they do not provide a strong basis for generalization to other jurisdictions. Readers are reminded that the primary purpose of the effort was modest; it was to explore the theoretical synthesis that was done to make sense of the author’s experiences in the courtroom and to see whether those theoretical notions had empirical support. Future research should address this limitation. More jurisdictions need to be examined to see if these results hold.

The limiting consequences of small numbers of cases also extend to the fact that only 55 judicial surveys were returned. A better response rate from a larger sample of judges would be better. Future research needs to survey more judges. This small number of judicial surveys from these county judges also complicated the multivariate
analyses of the observational checklists for the 420 arraignments in their counties. In
the multivariate analyses, the averages for the judges surveyed in any county were
imputed to the data lines for that respective county’s checklist observations of
arraignments sampled for that county. They may have been a source of the
multicollinearity and left the regression coefficients hard to interpret. Nevertheless, the
pattern consistently emerged across all analyses (bivariate and multivarariate ones not
affected by multicollinearity) and that was supported by the In-Depth Interviews.
Therefore, the conclusions remain tentative as they should for exploratory research, but
should not be dismissed without further research that can increase the number of cases
and reduce problems of multicollinearity.

In the future the sample size should be sufficiently large so that the actual
distribution of the estimators can be approximated (Kenney and Keeping 252-285).
Also, the greater the sample is, the greater the likelihood of providing normalcy to the
error terms and achieving a successful simple linear or multiple regressions will be. In
this manner, the linear regression model will serve more purpose than simply comparing
the means or variance of the selected independent variable and the dependent variable.
In other words, there will be greater internal validity in the study and the R-square and
standardized coefficients will have greater accuracy. This will reduce the likelihood of
multicollinearity.

This exploration was organized around a small slice of the judicial role: county
court arraignments (all misdemeanor cases). It did so, in part, because of the
advantageous opportunity provided by Rule 3.1111 to examine the extent to which
mechanistic performance occurs even in a judicial function where the formal rules
directs judges away from that kind of approach and toward case-by-case analysis. But
the focus of this exploration was narrow. Future research needs to expand into other
aspects of the judicial function and beyond county courts to include district/circuit courts.
It also needs to expand beyond the criminal courts and into the civil side of the court
docket. It could also extend to administrative judges and hearing officers and appellate
judges.

Several leading questions will serve to illustrate directions that research could go.
Would patterns similar to what was found in this research be found for competency
hearings or suppression hearings or bail hearings? (These are situations that should
militate toward case-by-case inquiries rather than mechanistic and bureaucratic
performance.) How does Size Specialization relate to sentencing? Would it be routine
and mechanical in large jurisdictions and more situated and individuated in small
jurisdictions? Is it different for county court from district/circuit court? Would the size-
related patterns extend to whether jury instructions were formalistically given verbatim
from the standard forms or explained and tailored to the case at hand? Would the
relationship be the same for civil cases as it is for criminal cases?

There is another way in which this line of research could be expanded. The focus
of this exploration was on judges, but the In-Depth Interviews confirmed that other
players in the courtroom workgroup were aware of the impact of Size Specialization on
judicial performance. To what extent are the other regular professionals in the
workgroup affected by size specialization? Research could focus on prosecutors and
defense lawyers and civil litigators as well as criminal attorneys. It could extend to
bailiffs and reporters and maybe clerks. They, too, work in an organized context, albeit
a loosely coupled organization. To what extent do bureaucratic features operate in that
organizational structure to affect the performance across its occupational roles in ways
that are related to size specialization? Is the effect more or less prominent in such a
loosely coupled organizational structure as a courtroom workgroup compared with more
tightly organized justice agencies like law enforcement or correctional agencies?

Finally, the theoretical work is far from done and the fit of that theorizing with
methods needs to be pursued in future research. The measures themselves can be
developed further. For example, Rule 3.1111 is so unique to county court arraignments
that it can’t be used in other contexts. More and better performance indicators need to
be developed. Also consider the operationalizations of the adjustment scales. Take, for
illustration, the Boundary/Rule Awareness scale. The questions that scaled were
questions that dealt more with awareness of boundaries rather than rule set awareness.
Future research may wish to use boundary awareness as a starting point and develop
questions that relate to rule better. This will provide greater internal validity and
reliability to the research.

The Final Word

The tension between bureaucratic, mechanistic and creative case-by-case
performance is ubiquitous in modern judge work. There is no question that finding the
balance between both is essential to judging. A parallel may be drawn between the
notion of determinations at law and determinations of equity. In the former the judge is
supposed to act as a mechanism in which the truth (determination of fact) is rolled out
raw and fed on a cookie sheet into the mind of the judge wherein the judge uses her
expertise to determine the correct cookie cutter (legal format) to apply and return a
standardized product (judgment) emerges to be consumed by the public. The latter is
an application of the facts to the ever-changing standards and notions of decency and justice and returned by the judge. Somewhere in the synthesis between proper applications of both of these formats lies the perfect judge. However, proper balance relies upon natural competition in a closed dialectic between these two theses. External influence, whether it be media, politic, or other is criticized to the point of giving strong cause to such extreme actions as juror sequestration, gag orders and internal affair investigations into the campaigns of judicial elections. One example of such is provided by the In-Depth Interviews, wherein one judge explained that judges may not have friends on Facebook as such is damaging to their impartiality, the most valuable of components when deciding between competing forces (Volusia-Interview 1). Any extra-legal input into this closed dialectic is viewed as intruder and will instigate the greatest of anti-viral campaigns. Therefore a silent “worm” that undermines judicial balance, such as structural influence like that of Size Specialization, may be even more dangerous in that it alerts no one of the damage it causes. If there is policy relevance to this research, it is that it may have identified a subtle but potentially pervasive influence on how justice is meted out.

At the end of it all, the dissertation research demonstrated how abstract notions of law and the sociology of law play out in the more mundane practice of law. Those abstract notions harp that structural variables are important. In this study, Size Specialization affected judicial performance indicators. A fairly clean look into this relationship could be gotten because county court arraignments in these counties controlled for many other factors and afforded opportunities assess the degree of mechanistic performance in contradistinction to creative, case-by-case problem solving.
on the part of judges. The research took advantage of Rule 3.111, the formal
procedural rule designed to give substance to the fundamental constitutional right of the
accused to be represented by counsel. And in some ways, that feature helps draw the
implications of the research into sharp relief and give this research a policy thrust that
legal practitioners may want to consider. To be sure, the pattern of relationships
between Size Specialization and judicial performance emerged using other measures
and data collection techniques. Yet its import may be dismissed when dealing with
mundane features. The justice and legal representation implications contained within
Rule 3.111 underscores how the potentially insidious influence of Size Specialization
can hit home. Within the context of judicial performance at an arraignment, judges are
called on by Rule 3.111 to be creative and to utilize case-specific inquiries to fulfill the
requirements of justice. Yet, size mattered. The rule was implemented differently in the
small counties than in the large counties. The judges in the small counties were more
likely to make the kind of non-bureaucratic case-by-case inquiries embodied in the rule
than were their counterparts in the large counties. The justice concerns underlying the
rule were met better in the small counties. That difference in performance did not stem
from differential caseloads. If this pattern is confirmed in research of other features of
law work and across jurisdictions, to what extent is a rule of law model compromised by
a seemingly simple structural feature like size? Before dismissing the question,
remember that the courtroom regulars who were interviewed for this dissertation
volunteered similar concerns and placed them in their own words.

The Judges in Miami [Dade, largest county] are clear that they have to
comply with the case law and sometimes it seems as though they
robotically move through the docket looking for answers from the pre-set
cases. It makes the process very predictable. But in Fort Myers (Lee,
smaller county), you see this less... It’s not because the Fort Myers judges are less busy either. If anything it seems as though they are inundated and have less breathing space than or just as stacked with cases as in Miami. [Attorney Interview, Dade County, largest] 2-page 1.
APPENDIX A

DATA

Table A-1. Number of defendants filed (misdemeanors): summary reporting system

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange</td>
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<td>18,585</td>
<td>19,481</td>
<td>19,209</td>
<td>19,495</td>
</tr>
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<td>6,440</td>
<td>6,378</td>
<td>7,141</td>
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<td>7,692</td>
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<tr>
<td>Duval</td>
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<td>20,267</td>
<td>23,591</td>
<td>25,251</td>
<td>22,327</td>
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<tr>
<td>Dade</td>
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<td>50,163</td>
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</tr>
<tr>
<td>Volusia</td>
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<td>21,002</td>
<td>20,266</td>
<td>19,724</td>
<td>18,455</td>
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<tr>
<td>Lee</td>
<td>9,369</td>
<td>11,087</td>
<td>12,070</td>
<td>11,573</td>
<td>9,975</td>
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<td>TOTAL</td>
<td>119,992</td>
<td>129,831</td>
<td>140,624</td>
<td>134,254</td>
<td>125,331</td>
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</table>

Figure A-1. Number of defendants filed (misdemeanors): summary reporting system

1 http://trialstats.flcourts.org/
Table A.2. Percentage of defendants filed (misdemeanors): summary reporting system²

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
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<th>2008</th>
<th>2009</th>
<th>Average</th>
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<td>Alachua</td>
<td>5.37%</td>
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</tr>
<tr>
<td>Duval</td>
<td>16.25%</td>
<td>15.61%</td>
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<td>17.81%</td>
<td>17.05%</td>
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<td>Dade</td>
<td>37.16%</td>
<td>40.45%</td>
<td>41.30%</td>
<td>37.36%</td>
<td>37.81%</td>
<td>38.82%</td>
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<td>Volusia</td>
<td>16.67%</td>
<td>16.18%</td>
<td>14.41%</td>
<td>14.69%</td>
<td>14.73%</td>
<td>1.34%</td>
</tr>
<tr>
<td>Lee</td>
<td>7.81%</td>
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<td>8.58%</td>
<td>8.62%</td>
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<tr>
<td>TOTAL</td>
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<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Figure A.2. Percentage of defendants filed (misdemeanors): summary reporting system

² [http://trialstats.flcourts.org/]
Table A-3. Florida office of the state courts administration county criminal filings for the year (July-June)$^3$

<table>
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<td>Dade</td>
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<td>TOTAL</td>
<td>322,653</td>
<td>340,273</td>
<td>350,069</td>
<td>321,153</td>
<td>292,924</td>
</tr>
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</table>

Figure A-3. Florida office of the state courts administration county criminal filings for the year (July-June)

Table A-4  Florida office of the state courts administration county criminal filings for the year (July-June) percentages

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<tbody>
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<td>Orange</td>
<td>13.12%</td>
<td>12.65%</td>
<td>13.24%</td>
<td>13.89%</td>
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<td>Alachua</td>
<td>4.60%</td>
<td>4.02%</td>
<td>4.35%</td>
<td>4.61%</td>
<td>4.90%</td>
<td>4.49%</td>
</tr>
<tr>
<td>Duval</td>
<td>23.35%</td>
<td>22.53%</td>
<td>20.95%</td>
<td>18.29%</td>
<td>16.15%</td>
<td>20.26%</td>
</tr>
<tr>
<td>Dade</td>
<td>38.86%</td>
<td>40.07%</td>
<td>41.55%</td>
<td>44.15%</td>
<td>44.99%</td>
<td>41.92%</td>
</tr>
<tr>
<td>Volusia</td>
<td>11.57%</td>
<td>11.13%</td>
<td>10.56%</td>
<td>11.16%</td>
<td>11.53%</td>
<td>11.19%</td>
</tr>
<tr>
<td>Lee</td>
<td>8.50%</td>
<td>9.59%</td>
<td>9.35%</td>
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<td>8.12%</td>
<td>8.69%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Figure A-4

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Figure A-4  Florida office of the state courts administration county criminal filings for the year (July-June) percentages
Table A-5. Adjusted 2009 population estimates for Florida’s counties and municipalities (as of April 1 each year) used in fy 2010-2011 state revenue sharing calculations\(^5\)

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange</td>
<td>1,043,437</td>
<td>1,079,524</td>
<td>1,105,603</td>
<td>1,114,979</td>
<td>1,108,882</td>
<td>1,145,956</td>
</tr>
<tr>
<td>Alachua</td>
<td>240,764</td>
<td>243,779</td>
<td>247,561</td>
<td>252,388</td>
<td>256,232</td>
<td>247,336</td>
</tr>
<tr>
<td>Duval</td>
<td>861,150</td>
<td>879,235</td>
<td>897,597</td>
<td>904,971</td>
<td>900,518</td>
<td>864,263</td>
</tr>
<tr>
<td>Dade</td>
<td>2,422,075</td>
<td>2,437,022</td>
<td>2,462,292</td>
<td>2,477,289</td>
<td>2,472,344</td>
<td>2,496,435</td>
</tr>
<tr>
<td>Volusia</td>
<td>496,649</td>
<td>503,844</td>
<td>508,014</td>
<td>510,750</td>
<td>507,105</td>
<td>494,593</td>
</tr>
<tr>
<td>Lee</td>
<td>549,442</td>
<td>585,608</td>
<td>615,741</td>
<td>623,725</td>
<td>615,124</td>
<td>618,754</td>
</tr>
<tr>
<td>TOTAL</td>
<td>5,613,517</td>
<td>5,729,012</td>
<td>5,836,808</td>
<td>5,884,102</td>
<td>5,860,205</td>
<td>5,867,337</td>
</tr>
</tbody>
</table>

Figure A-5. Adjusted 2009 population estimates for Florida’s counties and municipalities (as of April 1 each year) used in fy 2010-2011 state revenue sharing calculations

\(^5\) [http://edr.state.fl.us/Content/local-government/data/data-a-to-z/m-r.cfm](http://edr.state.fl.us/Content/local-government/data/data-a-to-z/m-r.cfm)
Table A-6. Adjusted 2009 population percentages for Florida’s counties and municipalities (as of April 1 each year) used in fy 2010-2011 state revenue sharing calculations\(^6\)

<table>
<thead>
<tr>
<th></th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010*</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange</td>
<td>18.59%</td>
<td>18.84%</td>
<td>18.94%</td>
<td>18.95%</td>
<td>18.92%</td>
<td>19.53%</td>
<td>18.96%</td>
</tr>
<tr>
<td>Alachua</td>
<td>4.29%</td>
<td>4.26%</td>
<td>4.24%</td>
<td>4.29%</td>
<td>4.37%</td>
<td>4.22%</td>
<td>4.28%</td>
</tr>
<tr>
<td>Duval</td>
<td>15.34%</td>
<td>15.35%</td>
<td>15.38%</td>
<td>15.38%</td>
<td>15.37%</td>
<td>14.73%</td>
<td>15.26%</td>
</tr>
<tr>
<td>Dade</td>
<td>43.15%</td>
<td>42.54%</td>
<td>42.19%</td>
<td>42.10%</td>
<td>42.19%</td>
<td>42.55%</td>
<td>42.45%</td>
</tr>
<tr>
<td>Volusia</td>
<td>8.85%</td>
<td>8.79%</td>
<td>8.70%</td>
<td>8.68%</td>
<td>8.65%</td>
<td>8.43%</td>
<td>8.68%</td>
</tr>
<tr>
<td>Lee</td>
<td>9.79%</td>
<td>10.22%</td>
<td>10.55%</td>
<td>10.60%</td>
<td>10.50%</td>
<td>10.55%</td>
<td>10.37%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Figure A-6. Adjusted 2009 population percentages for Florida’s counties and municipalities (as of April 1 each year) used in fy 2010-2011 state revenue sharing calculations

\(^6\) http://edr.state.fl.us/Content/local-government/data/data-a-to-z/m-r.cfm
APPENDIX B
SIZE SPECIALIZATION MODEL

Increase in Mechanical Performance and Decrease in 3.111 Fla. R. Crim. Pro. (2012) to Indicate Case-by-Case Thinking
APPENDIX C
OBSERVATION INSTRUMENT

Date
Courtroom
Courtroom Code___________
Hearing start time___________

Def Start Time_________End time__________

Docket number________

Pro Se:
Defendant given a copy of the Information. ________Yes __________No

Race__________
Gender__________

The Judge inquired into Defendant's:

Age
______Yes ______No

Understand right to trial
______Yes ______No

Mental condition (drugs/alcohol)
______Yes ______No

Education
______Yes ______No

Knowingly and intelligently enter the plea
______Yes ______No

###Legal Experience (history)
______Yes ______No

###Professional (Sophisticated) Experience
______Yes ______No

###Defendant’s understanding of the nature of the case
______Yes ______No

###Defendant’s understanding of the complexity of the case
______Yes ______No

###Defendant’s ability to represent self
______Yes ______No
Other Factors Inquired
About: ____________________________________________________________
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________
_______________________________________________________________________

Mention of Public Defender
____Yes _______No

Test for Public Defender
____Yes _______No

### Defendant’s competency to make the decision to represent himself.
____None _______One Sentence _______More than One Sentence

### Defendant was made aware of the dangers and disadvantages of self-representation
____None _______One Sentence _______More than One Sentence

Thorough inquiry into Defendants comprehension of 6th Amendment waiver offer and his
capacity to make that choice intelligently and understandingly has been made.
____Yes _______No

Defendant waived counsel intelligently and understandingly
____Yes _______No
APPENDIX D
CHECKLISTS

Mechanistic Performance (Checklist)

This scale was derived from observations made from a checklist taken to county court misdemeanor arraignments. Observers noted whether the judge prescribed to the following items through checking yes or no on the checklist:

1. Did the Judge mention a public defender every time for pro se defendants?
2. Did the Judge offer to appoint a public defender for pro se defendants?
3. Did the Judge start on time?
4. Did the Judge give a copy of the information?

The mean for this scale is 2.8095. The standard deviation is 1.12761 and the variance is 1.272. The range of this scale is 4.00. The number of cases observed was 420, and the Cronbach’s Alpha is .74.

Mechanistic Performance (Survey)

This scale was derived from observations made from a survey taken by county court judges. Based on a Likert scale, judges rated the following indicators on a gauge of 1 to 5, with 5 being the strongest agreement.

1. There is one acceptable format for running a courtroom.
2. Court administration requires more rules.
3. I want to take different action, but I’m limited by guidelines.
4. Rules and regulations guide all aspects of my job.
5. Fair decisions limit my ability to effectuate justice.
6. Fair decisions are sometimes limited by time.
7. Administration takes precedence over justice.
8. Other judges are efficient.

The mean for this scale is 4.2820. The standard deviation is .57959 and the variance is .336. The range of this scale is 2.00. The n (number of surveys returned) was 55, and the Cronbach’s Alpha is .877.
Rule 3.111 Performance (Checklist)

This scale was derived from observations made from a checklist taken to county court misdemeanor arraignments. Observers noted whether the judge inquired about the following items through checking yes or no on the checklist:

1. Legal experience
2. Understanding nature of case
3. Understanding complexity of case
4. Ability to represent self
5. Competence to represent self in 1 sentence
6. Competence to represent self in more than 1 sentence
7. Understanding of dangers of self-representation in 1 sentence
8. Understanding of dangers of self-representation in more than 1 sentence

The mean for this scale is 7.9097. The standard deviation is 3.29228 and the variance is 10.839. The range of this scale is 9.80. The number of cases observed was 420, and the Cronbach’s Alpha is .93.

Lack of Autonomy

This scale was derived from observations made from a survey taken by county court judges. Based on a Likert scale, judges rated the following indicators on a gauge of 1 to 5, with 5 being the strongest agreement.

1. Local rules should determine my course of conduct.
2. All judges should have the Federal Rules of criminal procedure memorized.
3. When I find a discrepancy in the rules, I always make a correction.
4. Judicial economy can be found in following the judicial guidelines.

The mean for this scale is 4.6682. The standard deviation is .38506 and the variance is .148. The minimum of this scale is 1.50. The N (number of surveys returned) was 55, and the Cronbach's Alpha is .684.
Expectation of Consistency

This scale was derived from observations made from a survey taken by county court judges. Based on a Likert scale, judges rated the following indicators on a gauge of 1 to 5, with 5 being the strongest agreement.

1. All judges should have the Local Rules of Court memorized.
2. There is little variability in my day-to-day actions.
3. Identical facts should evoke the same ruling from me.
4. Identical facts should evoke the same ruling from my fellow county judges.

The mean for this scale is 4.4545. The standard deviation is .62645 and the variance is .392. The range is 2.00. The number of surveys returned was 55, and the Cronbach’s Alpha is .707.

Boundary/Rule Awareness

This scale was derived from observations made from a survey taken by county court judges. Based on a Likert scale, judges rated the following indicators on a gauge of 1 to 5, with 5 being the strongest agreement.

1. My job tasks are clearly defined.
2. There is little overlap between mine and other courtroom personnel responsibilities.
3. No other person in the courtroom performs my duties.
4. Few rules govern me when I perform my job.
5. I am clear about system expectations.
6. When I am unsure of administration decisions, I look to guidelines.

The mean for this scale is 4.5455. The standard deviation is .55505 and the variance is .308. The range is 2.20. The number of surveys returned was 55, and the Cronbach’s Alpha is .677.
APPENDIX E
ADDITIONAL INFORMATION RE: DERIVATION OF OPERATIONS FOR PROPOSITIONS

Indicators of Size Specialization

The number of judges per courthouse will indicate the degree of size specialization. The greater the number of judges, the greater the degree of size specialization

b. Indicators for Case-by-Case thinking.

These indicators deal with the effects of the adjustment variables. They measure the degree to which a desire to take a different course of action is restricted thus limiting creativity, innovation, and Case-by-Case Thinking. This is further supported by Findlow (2008, p. 321-22) “But being thus accountable to a priori standards, especially ones in which salability [sic] is paramount, carries particular difficulty for academic innovation.” Our model suggests that this phenomenon will also be present among judges.

Indicators of qualitative and quantitative performance

Qualitative and quantitative indicators of judicial performance were obtained from survey questions/statements and from a checklist used in direct observation of the enforcement of Rule 3.111 by judges. Four survey items and three direct observational measures taken from the Checklist are used.

Survey Item 1: I place a great deal of focus on efficient court proceedings.
Agreement with this statement indicates an increase in mechanical behavior rather than creative ones—something that would be consistent with Case-by-Case Thinking in that external rules limit the internal action of judges in court proceedings. The operationalization is derived from the literature, specifically “Too much orientation
towards efficient court proceedings, may lead to a decrease of judicial quality ("justice hurried is justice buried")." (Albers, p.3)

**Survey Item 2: I feel that making a fair and just decision is limited by established guidelines.**

This indicator is also supported by the reviewed literature. This measure taps the tension between a decrease in Case-by-Case Thinking (limitation/restriction by established guidelines) and quality (making fair and just decisions). Agreement with this statement indicates a de-emphasis of qualitative decision-making because judges are being driven mechanically by the bureaucratic rules.

**Survey Item 3: I feel that making a fair and just decision is limited by time-constraints.**

This indicator reflects the time pressure (purported to be aggravated by size) that judges feel and how that may interact with their decision-making. Agreement with this statement indicates that fair and just decisions (quality) are compromised because of the bureaucratic emphasis on time management. This indicator is also strongly supported by the literature above.

**Survey Item 4: I feel as though administrative matters take precedent over ensuring justice.**

This indicator juxtaposes administrative matters against quality (ensuring justice). This tests whether the judges feel as though a focus on administrative matters is occurring at the expense of quality decisions. The concern here is similar to that studied by Findlow, 2008 in academic organizations: “The still evidently pervasive view of academic quality appeared discordant with those that inform policy decisions such as the funding of innovation. Rhetoric extolling the virtue of thinking outside the box is
undermined by quality evaluation criteria that evoke structural conformity or government agendas” (Findlow 2008, 322.)

**Checklist Indicator 1: Time for Handling Cases**

This indicator is taken from the Checklist on Rule 3.111 enforcement by judges. It records the amount of time it takes to handle a case and is calculated by subtracting begin time from end time-begin (recorded in minutes and seconds). This indicator deals with the speed aspect of quantity. Though maybe not taking the time to built a “good” repertoire with the defendants, according to our hypothesis, the judges will be able to get through each defendant fairly quickly (often at the expense of quality.)

**Checklist Indicator 2: Starting on Time**

The Checklist recorded whether each session began on time or late (as determined by the time set on the docket). Starting on time is a measure of bureaucratic efficiency and shows a quantitative emphasis.

**Checklist Indicator 3: Number of Guilty Pleas.**

This final indicator identifies another quantifiable aspect of courtroom efficiency. The more cases that can be handled through guilty pleas so early in the process, the more efficiently the court can run according to bureaucratic thinking.

**d. A note concerning scaling**

The multiple indicators of Case-by-Case Thinking and performance (as described above) will be examined for scaling. Reliability analysis and Cronbach’s Alpha will be used to determine which items scale and which items shall not be utilized. Where appropriate, factor analysis will be used in order to help identify how multiple indicators should be combined. The reliability analysis and factor analysis will be used for all multiple indicators on the conceptual model.
e. A note on analysis:

The respective bivariate relationship between size (number of judges in district) and both external/internal thinking and judicial performance (measured by quantitative and qualitative indicators of performance) will be examined first. The independent variable will be number of judges and the dependent variables will be Case-by-Case thinking as indicated by three performance indicators: Mechanical Performance (Checklist), Mechanical Performance (Judicial Surveys) and 3.111 Performance (Checklist). Multivariate analyses will also be performed in several stages. First, Case-by-Case thinking will be regressed on Size Specialization while controlling for other variables. Then judicial performance will be regressed on both Size Specialization and the Case-by-Case Analysis thinking measures.

PROP 3

Three sub-propositions are considered using the defined boundaries/rules of Size Specialization as the starting point to show how it can be measured (the measurement prospects of the other variables are developed later). The sub-propositions are stated as correlational rather than causal.

**Additional Indicators of defined boundaries. Indicators for defined boundaries can be obtained from two survey questions with which judges may agree or disagree.**

**My job tasks are clearly defined.**

This indicator was selected based on the evidence from the literature above. As cited above in Barclay (1991, p. 146) clear delineation of job tasks can result from specialization. This delineation can commonly manifest itself through rules and regulations. This is further pursued by Blackburn (1982, p. 59) when he states that “Weber (1947) provided one of the earlier multidimensional descriptions of structure,
proposing an "ideal" bureaucratic organization designed around such principles as a clearly defined hierarchy, specified rules and norms, and written and recorded administrative procedures."

There is little overlap between my job tasks and that of others in the courtroom (No other member of the courtroom does what I do.)

This indicator was also selected based on the evidence from the literature above. Additional support for this indicator is found in Bozeman & Rainey (1998, p. 167), “Increasing specialization, according to Thompson, leads to the routinization, impersonality, fixed jurisdictions, and other core elements of Weberian bureaucracy.”

Indicators of awareness of procedural rules and bureaucratic control.

Indicators awareness of procedural rules and bureaucratic control can be obtained from three survey questions/statements with which judges agree or disagree.

The court system determines my actions.

This indicator was created based on the evidence from the literature above. Rules and regulations determine the actions of those within the organization; the following of these rules and regulations shows awareness of systematic controls. This indicator is further supported by Rogers, Roux, & Biggs (2000, p. 506), they claim that “Too often bureaucracies adopt as their main purpose regulation and control to eliminate extreme behavior and promote conformity to a specific set of standards.”

I am never confused about what is expected of me in the courtroom.

This indicator was also created based on the evidence from the literature above. Rules and regulations as well as the awareness of these rules lead to the reduction of uncertainty. Individuals know what behavior is expected of them (see Gajduschek.)
If I am unsure about any administrative matters, it is easy to find answers to my questions in established guidelines.

The evidence above strongly supports this indicator. As stated by both Gajduschek (2003) and Smith (1971), rules and regulations within an organization clearly delineate the who, the what, and the when. Awareness of controls increases as rules and regulations become more ever-present, and being able to quickly find answers to all administrative questions is an indicator of this.

2a More awareness of systematic controls will relate to an increase in consistency of expectation of self and others (routinization and repetitiveness).

2b More awareness of systematic controls will relate to an increase in rule following (as opposed to self-control/autonomy).

2c More defined boundaries/more procedural rules will relate to an increase in consistency of expectation of self and others (routinization and repetitiveness).

2d) More defined boundaries/more procedural rules will relate a lack of autonomy? vs. rule following.

The remaining sub-proposition focuses on a relationship between consistency of expectations for self and others (routinization and repetitiveness) and Lack of Autonomy (as opposed to self-control/autonomy). This proposition can be used to present the operationalization of the remaining adjustment dimensions.

2f. An increase in consistency of expectation of self and others (routinization and repetitiveness) which may lead to a Lack of Autonomy (as opposed to self-control/autonomy).

**Indicators of consistency of expectations.** Indicators of consistency of expectations were obtained in the form of four survey questions/statements with which judges were to agree or disagree.
All the county judges should know the rules of court.
This item was created based on the evidence from the literature above. In this indicator we can clearly see a greater expectation of awareness of systematic controls in the statement that “All the circuit judges should know the rules of court.” All judges being aware of rules and systematic controls directly increases consistency within an organization.

On a day to day basis there is little variability in my behavior and the behavior of the other judges.
This item was also created based on the evidence from the literature above. Testing variability directly produces insight into consistency.

When faced with identical fact patterns on separate cases, I am sure that I would rule the same.
The evidence above formed the basis of this indicator. Rogers, Roux, & Biggs’s (2000, p. 506) statement that “Institutional bureaucracies themselves are an exercise in variance reduction through regulation and control.” is in direct support of this indicator.

If faced with an identical fact pattern, another county judge would rule the same if confronted with an identical issue.
This item also directly tests increases in consistency. It tests variability beyond the individual level. While the previous indicator seeks to discover individual variance this indicator is directed towards consistency of expectation in others’ behavior.

A note concerning scaling
The multiple indicators of the respective adjustment dimensions described above will be examined for scaling. Reliability analysis and Cronbach’s Alpha will be used to determine which items scale and which items shall not be utilized. Factor analysis will be used in order to triangulate and determine how best to tap the respective dimensions
(or whether they are separate from one another). This may alter how they should be combined, or new dimensions may emerge statistically. Since these may be interrelated, factor analyses will employ oblique rotation as well as orthogonal rotation to determine how to use these dimensions in the statistical analyses.

**A note on analysis**

The main second proposition posits a relationship between size and the various dimensions of adjustment by judges. Bivariate relationships between size (number of judges in district) and each of those dimensions can be explored. The independent variable will be number of judges and the main dependent variables will be the respective adjustment dimensions. The sub-hypotheses for this second proposition will examine the inter-relationships among the various dimensions. It will be a correlational analysis.

**Proposition 3. Adjustments by role occupants (judges) to the Size Specialization will affect the performance indicators of Case-by-Case Thinking.** Sub-hypotheses specify the various ways in which the dimensions may affect Case-by-Case Thinking

3a. More awareness of rules and systematic control will lead to a decrease in Case-by-Case Thinking

3c. More consistency of expectation of self and others will lead to a decrease in Case-by-Case thinking

3d. A Lack of Autonomy will lead to a decrease in Case-by-Case Thinking.

The indicators for the adjustment dimensions and Case-by-Case Thinking have been developed above. The same is true about issues of scaling and factor analysis. The analyses to examine the relationships proposed in 3a through 3d can proceed along both bivariate and multivariate paths. Multivariate analysis can be used to
determine the effects of the respective adjustment dimensions on Case-by-Case
Thinking.

DUAL PROCESS THEORY

From the pilot observations, it appears that the judges have consistently
habituated. To confirm this, indicators are placed on the Checklist and in the judicial
survey. Inasmuch as there are multiple indicators of habituation on the survey, scaling
techniques will be used to see how they can be combined should they show sufficient
variability.

Habituation indicators from the survey. Indicators for this relationship were
obtained in the form of four survey questions/statements and one behavioral checklist
item.

I have become accustomed to the cases I see.

This indicator measures the degree of habituation that judges are subject by
measuring their degree of familiarity with the cases they see. This indicator is strongly
supported by the literature above.

I overlook the minor differences in the cases I see because I have grown
accustomed to the type of cases I handle.

This indicator is also supported by the above literature. This indicator attempts to
measure the degree of habituation occurring (according to the judges’ perceptions) due
to growing accustomed to seeing the same cases repeatedly. This habituation is
manifested in ignoring the minor differences. This manifestation of habituation is
strongly supported by the above citations when they allude to a decrement in
responding as a response to habituation. This is further exemplified in “The initial
response to a novel stimulus involves a rapid shift of attention (i.e. the orienting
response), but after repeated presentations without meaningful consequences, responses will wane" (Wright, Fischer, Whalen, McInerney, Shin, and Rauch 2000, 379.) More support for the decrease responding when habituation is occurring is found in Scott’s article (1966); this article attributes different things to explaining activation levels in the brain. It states that once an individual has been habituated to a stimulus “activity in the cortex may still be observed but it becomes relatively restricted to the area serving the sensory modality through which the stimulus.” (1966, p. 9.) In essence, activity levels in the brain decrease (become restricted) when one has habituated to a stimulus.

Lack of novelty in the courtroom creates monotony in my actions.

This indicator deals with the similarity of stimuli and its effects. It is further supported by Scott (1996,p. 5) while quoting Vernon (1924); “Vernon (1924), for example, observed employees in a number of jobs in which the cycle of repetition was less than a minute and found that workers frequently took short breaks beyond those authorized, changed posture, and reported feelings of monotony and boredom. More recently, a number of writers (e.g., Strauss and Sayles, 1960; Walker and Guest, 1952) have noted the difficulties of maintaining performance in assembly-line tasks and the widespread dissatisfaction of those engaged in mass production work.” The literature above also specifically deals with monotony in relation to the above stated hypothesis.

My actions in the courtroom have become a routine.

This indicator directly measures the amount of habituation that is present in the courtroom actions of the judges (once again, according to their perception.) It attempts to measure the degree to which the similar cases (similarity of stimuli) has led to habituation.
There was also an indicator of habituation on the Checklist.

The number of defendants recorded on the docket. A larger number of docketed cases presents more low level stimuli to the judges, which contributes to the process of habituation.

Based upon this structural model created from the previous literature and pilot observations, the next phase (two parts) of this study was created in order to look for indicators that supported or contradicted the structural conceptual model.
LIST OF REFERENCES


Grady, B. *Lawyer Uses Bag of Tricks to Do Job*, New Orleans Times-Picayune, July 8, 1990


Rule: 1-2838, Final Rulemaking Published at 51 DCR 6399 (June 25, 2004); as Amended by Final Rulemaking Published at 51 DCR 8595 (September 3, 2004); as Amended by Final Rulemaking Published at 51 DCR 8606 (September 3, 2004); as Amended by Emergency and Proposed Rulemaking Published at 52 DCR 3838 (April 15, 2005) [EXPIRED]; as Amended by Final Rulemaking Published at 52 DCR 5675 (June 17, 2005); as Amended by Notice of Final Rulemaking Published at 57 DCR 12541, 12572 (December 31, 2010) (2010). Print.


BIOGRAPHICAL SKETCH

Sven Smith graduated from University of Florida in the fall of 2012. He is a visiting professor at Stetson University and trial/litigation attorney of more than 13 years. He is of counsel to the Law Firm of Holtz, Mahshie, and DeCosta and assists them in commercial litigation practice.