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City and Town Courts: Mapping Their Dimensions

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Limited jurisdiction courts in which the judges need not be legally trained have long been a feature of the American judicial system. All states have limited jurisdiction courts, and more than forty allow some form of nonlawyer judge. Typically, these courts deal with misdemeanors, traffic offenses, or minor civil cases; more rarely they specialize in probate, juvenile, or domestic matters. Until recently, no one paid much attention to limited jurisdiction courts, but in the last fifteen years there have been several studies of these courts and their judges. This literature includes national surveys on courts of limited jurisdiction, general surveys about nonlawyer judges, and studies of differences between lawyer and nonlawyer judges serving on the same courts.

The picture that emerges from this literature is one primarily of criminal courts that exist because they are money-makers for their communities or...

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** Associate Professor of Criminal Justice, Indiana University. B.A., 1968, Creighton University; M.A., 1970, Ph.D., 1978, University of Michigan. Our study was supported by a grant from the Indiana Supreme Court. The points of view and opinions are ours and do not necessarily represent those of the Indiana Supreme Court. We are especially grateful to Roberta Herzberg, Michael Maxfield, and Roy Fleming for their helpful comments on earlier drafts. Dorothy Provine assisted us in developing our questionnaire.

1. Descended from medieval times through the English office of the justice of the peace, such courts were established in the American colonies and taken westward with the frontier. See J. Dawson, A History of Lay Judges (1960); D. Provine, Judging Credentials (1986); L. Silberman, Non-Attorney Justice in the United States: An Empirical Study (1979); J. Wunder, Inferior Courts, Superior Justice: A History of the Justice of the Peace on the Northwest Frontier, 1853-1889 (1979).

2. American Judicature Society, Courts of Limited Jurisdiction: A National Survey (1977); see also D. Provine, supra note 1, at 85. States that require all judges to be lawyers are California, Hawaii, Illinois, Kentucky, Maine, and Massachusetts.


5. L. Silberman, supra note 1.

cheap sources of political patronage. Because the judges need not be legally trained, they are perceived as too dependent on police and prosecutor. Moreover, the judges are believed to be especially susceptible to local economic, social, and political pressure and to personal prejudice, resulting in questionable decisions. Although Doris Marie Provine's study of city and village court judges in New York debunks the myth of differences between lawyer and nonlawyer judges on these matters, her study does less to challenge the picture of the courts themselves. Thus, these part-time judicial institutions clash with notions of professionalism and of procedural due process.

This Article evaluates the accuracy of the conventional picture by focusing on the actual work of these courts. Understanding what these courts do, who the judges are, and why the courts exist is important. As local institutions of justice, these courts provide a context in which to consider general issues of community and the role of local government in a democracy. Community should be valued in democracies because, the argument goes, it is here that full citizenship is acquired and lived. These courts constitute most people's only direct experience with the judicial branch. Thus, lessons regarding justice and the nature of citizen participation in the legal process will be learned in this context.

Communities and, by inference, local governmental institutions also are presumed to be most responsive to citizen preferences. Yet their very responsiveness raises the potential for abuse and the specter of majority tyranny. Critiques and defenses of these limited jurisdiction courts illustrate this tension. Defenders praise the courts for offering accessible, inexpensive, and timely justice in tune with local values. Critics fear that the power of the court will be used in favor of those with personal ties to judges and

7. See, e.g., AMERICAN JUDICATURE SOCIETY, supra note 2, at 3; D. PROVINE, supra note 1, at xii-xiv, 42-58, 91-93; L. SILBERMAN, supra note 1, at 8-16, 164-72. See also Ryan & Guterman, supra note 6; Vanlandingham, The Decline of the Justice of the Peace, 12 U. KAN. L. REV. 389 (1964).

8. This theme has a long history. See Long, The Citizenships: Local, State, and National, 23 URB. AFF. Q. 4 (1987). For a recent example of someone developing this view, see J. MANSBRIDGE, BEYOND ADVERSARY DEMOCRACY (1980). See also G. CLARK, JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY (1985) (the idea of community is important in both liberal and leftist thinking).

9. AMERICAN JUDICATURE SOCIETY, supra note 2, at 8; Campbell, Foreword: Indiana Justice of the Peace Courts—Problems and Alternatives for Reform, 8 IND. L. REV. 1, 1-2 (1974). The fact that most judicial proceedings consist of traffic offenses, minor criminal offenses, and small civil disputes explains why these courts constitute a person's only judicial experience. See also Yankelovich, Skelly & White, Inc., Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders, in THE PUBLIC IMAGE OF COURTS 4, 6 (1978) reprinted from STATE COURTS: A BLUEPRINT FOR THE FUTURE (T. Fetter ed. 1978) (self-reported knowledge of courts is highest for local courts, lower for state courts, and lowest for the federal courts, the latter being the furthest removed from day-to-day life).

against those without political influence, such as community outsiders (especially in traffic cases) or disadvantaged groups within the community.  

These fears have fueled attempts to abolish these courts or, short of that, to limit their potential harm by confining the courts’ jurisdiction to the most minor of matters or by requiring judges to be lawyers on the presumption that legal training enables one to resist improper pressure.

Finally, these courts represent an area of local responsibility and control within the shrinking domain of local autonomy. Since World War II, power has shifted from local to higher levels of government. Centralization has occurred with respect to courts as well. Yet local, limited jurisdiction courts have endured and even remain common. That these courts have done so, despite social, economic, and technical change and in the face of considerable hostility, attests to their importance to their communities. Local autonomy implies the ability of a community to define itself by its choices, and the choices a community makes within this sphere tell us something about how the community defines itself.

The picture of these courts presented in the literature is fairly consistent, but it has been drawn without much direct evidence on how these courts operate. Moreover, it assumes homogeneity across time and place that may be unwarranted. We consider one such court—Indiana’s city and town courts—to map the dimensions of variation and to explore the nature of localism illustrated by these courts. The site of our research, Indiana, illustrates several recurring themes in discussions of limited jurisdiction courts. The state legislature planned to abolish the city and town courts in


13. See G. Clark, supra note 8, at 6 (the meaning of local autonomy) and R. Dahl, supra note 10, at 16-30.

14. Local governments are increasingly fiscally dependent on state and federal levels of government. With this dependence has come regulation and a loss of political independence. Stephens, State Centralization and the Erosion of Local Autonomy, 36 J. Pol. 44 (1974), finds an increased centralization of power even in so brief a period as the 1960s. Despite various “New Federalisms,” the trend apparently continues. See D. Berman, State and Local Politics 40 (5th ed. 1987); N. Henry, Governing at the Grassroots: State and Local Politics 262 (1984).

1975 and again in 1979. Today, however, Indiana's cities and towns have authority to create or abolish city and town courts for themselves. In 1988, seventy-three communities opted for such a court, but the majority of Indiana's cities and towns did not. Judges for these courts need not be lawyers and, in 1988, more than half were not.

Part I discusses the jurisdiction of Indiana's city and town courts as well as the survey design. Part II details the findings, providing general descriptive information on the personnel, caseloads, and finances of the courts. We discover a great diversity among courts including their caseloads, who appears in court, and the money they make or lose. We show that the general critique is accurate only in part and then only for a small percentage of these courts. Part III explores the implications of these findings in more general political terms.

I. Background

A. Indiana Courts

Before 1970, Indiana courts of limited jurisdiction included justice of the peace courts as well as city and town courts. The former courts were created by the state constitution, but an amendment in 1970 eliminated that provision while restructuring the judiciary more generally. A 1975 statute abolished the justice of the peace courts effective January 1, 1976. The state legislature then adopted a system of county courts, touted as a modern system of limited jurisdiction courts, with jurisdiction over small civil claims, minor criminal cases as well as infractions, and ordinance violations. As

17. In our survey, 58% of the judges were nonlawyers. For more descriptive data, see infra Part II.A.2.
18. IND. CONST. art. 7, § 14 (1851, repealed 1984).
19. H.R.J. Res. 12, 96th Gen. Assembly, 1975 Ind. Acts 1846. The constitutional amendment removed the protection for justice of the peace courts and also changed the selection process for court of appeals judges and supreme court justices from partisan elections to selection by the governor from a list compiled by the Judicial Nominating Commission. How the courts of limited jurisdiction should be restructured was the subject of intense legislative debate for the next decade.
21. IND. CODE § 33-10.5-3-1 (1988). Originally, the civil jurisdiction of the county courts was limited to $3000 in controversy. Today the limit is $10,000. In addition to misdemeanors, infractions, and ordinance violations, county courts can hear Class D felonies, punishable by a maximum four-year prison sentence. Id. § 35-50-2-7 (Supp. 1990). Judges are required to be lawyers as well as United States citizens. Id. § 3-8-1-18 (1988). As originally contemplated, a nonlawyer could also qualify by passing "a special examination administered by the supreme court." Act of Feb. 26, 1976, Pub. L. No. 132, § 30, 1976 Ind. Acts 629, 648. But the state supreme court, sua sponte, struck down that portion of the statute allowing for qualification by examination. In re Judicial Interpretation of 1975 Senate Enrolled Act No. 441, 332 N.E.2d 97 (Ind. 1975).

Although the original legislation provided for most counties to have a county court (county courts served 62 of the 92 counties), today there are 39 judges serving 40 counties. In some counties, there is not enough litigation to support a separate court, and in others the caseloads support an additional court of general, not limited, jurisdiction.
CITY AND TOWN COURTS

part of this reform, city and town courts were also to be abolished, but this move proved too controversial. A legislative compromise extended the life of city and town courts until January 1, 1980. Before their elimination, however, the legislature enacted the current statute, granting cities and towns the authority to create or abolish city and town courts for themselves.

Currently, any second- or third-class city or town can establish a city or town court. At the time of the survey (fall 1988), there were seventy-three such courts. Like courts in other states, Indiana's city and town courts have jurisdiction over all violations of city and town ordinances, misdemeanors, and infractions. City, but not town, courts also have concurrent jurisdiction with other state courts in civil cases where the amount in controversy does not exceed, in most courts, $500. These courts are not courts of record; appeals are to the circuit or superior courts and are tried de novo. Judges are elected for four-year terms in the general municipal election, running under party labels as do all county-level judges in Indiana. The only eligibility requirement concerns residency—the judge must be a registered voter in the county to run for office and a resident of the city or town during the term in office.

Finally, we add a note about Indiana's criminal statutes. In Indiana, crimes are defined as felonies or misdemeanors. Misdemeanors are defined as crimes for which a convicted person might be imprisoned for a fixed


23. IND. CODE § 33-10.1-1-3 (1988). Indiana cities and towns differ with respect to governmental structure and size. A city must have at least 2000 residents. Id. § 36-4-1-4 (1988). A first-class city has a population of at least 250,000. A second-class city has a population between 249,999 and 35,000. A city with a population of less than 35,000 is a third-class city. Towns are defined as "[o]ther municipalities of any population." Id. § 36-4-1-1(a) (1988). Indianapolis, as Indiana's only first-class city, has a separate system of limited jurisdiction courts which are not included in this study. Id. §§ 33-6-1-1, 33-11.6-1-3 (1988).


25. Id. § 33-10.1-2-3.1 (1988). The subject matter is also limited so that the ordinary city court does not have jurisdiction in actions for slander, libel, mortgage foreclosures, probate matters, guardians, or actions in equity. Id.

City courts in counties with at least three second-class cities, such as Lake County, have jurisdiction in civil cases where the amount in controversy does not exceed $3000. Id. § 33-10.1-2-4 (Supp. 1990). City courts in third-class cities which are not the county seat have civil jurisdiction where the amount in controversy does not exceed $1000. Id. § 33-10.1-2-5 (1988).

26. Id. § 33-10.1-5-7 (Supp. 1990) (the Carmel city court is the only exception).

27. Id. § 33-10.1-5-9 (1988). Subsection (a) clearly provides de novo procedures for an appeal from a city court judgment. Subsection (b) is a parallel provision for town courts, but it does not include the de novo language.

28. IND. CONST. art. 6, § 6 (residency); IND. CODE § 3-8-1-1.5 (1988) (voter registration).

Although the elected judge need not be, and often is not, a practicing attorney, the statute requires a pro tem. judge of a city or town court to be a practicing attorney. Id. § 33-10.1-2-1(b) (1988).

term of not more than a year and fined up to $5000. Typical misdemeanors handled by Indiana city and town courts are driving while intoxicated and driving while license is suspended. Excluded from the definition of crimes, infractions are violations of a statute for which a person might be fined but not imprisoned. Indiana created this new category of petty violations in 1977 when it substantially revised and modernized its criminal code. Probably the most common infraction handled by these city and town courts is speeding.

There are several consequences that flow from Indiana’s infractions designation. First, because infractions are not considered crimes, the procedural protections granted by constitutions or state statutes do not apply. Second, the burden of proof is a mere preponderance-of-the-evidence test typical of civil cases rather than the more stringent beyond-a-reasonable-doubt criminal standard. On a more practical level, the money generated by fines for infraction violations goes into the state’s general fund and not the common school fund, as Indiana’s constitution requires of “all fines assessed for breaches of the penal laws of the State.”

As the name implies, ordinance violations are violations of the laws of a local governmental unit (city, town, or county). In Indiana, local units may not prescribe a penalty of more than $2500 or a penalty of imprisonment for ordinance violations. Furthermore, local units do not have “[t]he power to prescribe a penalty for conduct constituting a crime or infraction.”

B. Data

In the fall of 1988, we mailed a questionnaire, asking about workloads, hours of operation, budgets, relations with the community, training needs and resources, and judge’s background, to all city and town court judges in the state. Sixty-five of the seventy-three judges (89%) responded.

30. Id. § 35-50-3-2 (1988) (Class A misdemeanor); Id. § 35-50-3-3 (1988) (for a Class B misdemeanor, up to 180 days and $1000 fine); Id. § 35-50-3-4 (1988) (for a Class C misdemeanor, up to sixty days and a $500 fine).


33. See, e.g., Ind. Code § 9-4-7-9 (1988) (rights of misdemeanants in traffic cases).

34. Id. § 34-4-32-1(d) (Supp. 1990).

35. Id. § 34-4-32-4(i) (1989).

36. Ind. Const. art. 8, § 2.


38. When possible, we adopted Professor Provine’s wording in her survey of town and village judges in New York state. D. Provine, supra note 1, at 191-97. We pretested the questionnaire with a local state court judge and with the president of the Indiana City and Town Court Judges’ Association. Prior to receiving the mailed questionnaire, each judge received letters from the Chief Justice of the Indiana Supreme Court and the president of the City and Town Court Judges’ Association urging cooperation.
Information about caseloads and court and community finances came from public records. We interviewed sixteen judges and observed both lawyer and nonlawyer judges from a variety of courts and communities, including urban, rural, and suburban settings; courts located in and outside the county seat; and courts in counties with only one and with more than one city or town court.

II. INDIANA'S CITY AND TOWN COURTS

A. General Description

1. Courts

Of the seventy-three city and town courts in Indiana, fifty are city courts and twenty-three are town courts. As Table 1 shows, both the courts and their communities are diverse. Forty-one of Indiana’s ninety-two counties have at least one city or town court. The courts are found in both the smallest towns and in the most urbanized areas of the state. The mean population of communities with city and town courts is 13,968, but populations range from 458 to 151,953. One-third of the courts are located in county seats. Thus, the courts are neither exclusively small town phenomena nor solely conveniences for citizens located far from state courts.39

Together these courts heard 205,100 cases in 1988 which account for about 14% of all cases filed in the state.40 Although the average number of filings per court is 3006, filings range from under 100 to over 15,000 cases per year.

This caseload is primarily criminal.41 The courts do little civil work (5%, on average, for city courts), but the percent varies from 0% in many city courts to 90% in one. Judges report that about 68% of all criminal cases filed are infractions, 22% misdemeanors, and 10% local ordinance violations. Traffic offenses constitute the bulk of the work. Other than traffic-

39. The communities with courts differ among themselves and, as far as we can tell, do not differ in any obvious, systematic way from cities and towns that do not have them. See infra Part II.B.
40. 1 DIVISION OF STATE COURT ADMINISTRATION, INDIANA JUDICIAL REPORT 49 (1988) [hereinafter INDIANA JUDICIAL REPORT].
41. We define criminal to include misdemeanors, infractions, and ordinance violations. Felonies, of course, are excluded because they are beyond the jurisdiction of these courts. We include infractions and ordinance violations despite the fact that they are statutorily defined as civil cases. See Carson v. State, 459 N.E.2d 734 (Ind. Ct. App. 1983) (infractions); Viccaro v. City of Fort Wayne, 449 N.E.2d 1161 (Ind. Ct. App. 1983) (ordinances). We want to distinguish them from disputes between private parties that constitute the usual meaning of civil matters; moreover, infractions are treated as criminal cases in other states. See, e.g., OHIO REV. CODE ANN. §§ 2901.02, 4511.99 (Anderson 1987); TENN. CODE ANN. § 55-8-152(b) (1988).
TABLE 1
Descriptive Statistics on Selected Variables for City and Town Courts

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>St. Dev.</th>
<th>Minimum</th>
<th>Maximum</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filings*</td>
<td>3005.8</td>
<td>$3290.8</td>
<td>6.0</td>
<td>15220</td>
<td>64</td>
</tr>
<tr>
<td>Civilb</td>
<td>5.0%</td>
<td>13.4</td>
<td>0.0</td>
<td>90.0</td>
<td>63</td>
</tr>
<tr>
<td>Criminal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>22.6%</td>
<td>22.5</td>
<td>0.0</td>
<td>90.0</td>
<td>63</td>
</tr>
<tr>
<td>Infractions</td>
<td>67.2%</td>
<td>28.1</td>
<td>2.0</td>
<td>100.0</td>
<td>63</td>
</tr>
<tr>
<td>Ordinance Violations</td>
<td>7.4%</td>
<td>14.6</td>
<td>0.0</td>
<td>90.0</td>
<td>64</td>
</tr>
<tr>
<td>Population</td>
<td>13969</td>
<td>24079</td>
<td>458</td>
<td>151953</td>
<td>65</td>
</tr>
<tr>
<td>Hours/week</td>
<td>9.6</td>
<td>10.0</td>
<td>1.0</td>
<td>40.0</td>
<td>64</td>
</tr>
<tr>
<td>Filings per capita</td>
<td>0.7</td>
<td>1.1</td>
<td>0.01</td>
<td>5.3</td>
<td>64</td>
</tr>
<tr>
<td>Total Revenue</td>
<td>$156513</td>
<td>$145580</td>
<td>$234</td>
<td>$689409</td>
<td></td>
</tr>
</tbody>
</table>

* Only city courts have civil jurisdiction. See note a, above.

related offenses, the judges report alcohol-related offenses, conversion, disorderly conduct, and battery as common cases.

The courts also differ with respect to hours of operation, budgets, and facilities. Typically, these are part-time courts, in session an average of nine or ten hours a week. About 20% are in session less than two hours a week, and another 7% are virtually full time, in operation thirty or more hours a week. Unlike general jurisdiction courts, evening sessions are common. All but one of the judges hold court in a public building, although we observed considerable differences in the formality, comfort, and attractiveness of the quarters communities provide.

In 1988, Indiana’s city and town courts generated an average annual revenue of $157,531, with a range of $234 to $689,409. Court expenditures varied similarly from $500 to almost $350,000 per year, with a mean of about $43,000. Personnel costs, including the judges’ salaries, make up the largest component of court budgets. Indeed, for many courts, the only...
budgeted item is the judge's salary. The average judge's salary was $9,865
with a range of $500 to $40,000 for the year. Despite this variation in
dollars spent, most judges were satisfied with the financial support their
courts received.

2. Judges

The judges who served on these courts had varied backgrounds, education,
experience on the bench, and political and social ties. The overwhelming
majority were men; nine were women. The youngest judge was twenty-six
and the oldest seventy-four, with a mean age of forty-nine. Mean length of
service was seven years. Judges tended to be long-term residents of their
communities (on average 33 years), and over half reported that their parents
had lived in the community as well. Although most were active in civic,
charitable, fraternal, and social organizations, a substantial minority (28%)
reported no organizational memberships. Many judges are isolated even in
their courtrooms, working alone, while others are fully integrated into the
local legal community.

About two-fifths (42%) of the judges were lawyers. Given the argument
that nonlawyers hold office where no lawyers are available, we were some-
what surprised to find only a mild correlation between the size of the place
and whether the judge is trained as a lawyer (r = .18), and no relationship
between a court's being located in the county seat and having a lawyer
judge (r = .02). Nor does there appear to be any trend toward or away from
electing legally trained judges; about 30% of the newest judges were lawyers,
and about 25% of those on the bench ten years or more were lawyers.

In addition to lawyers, the most common occupations were teacher and
former law enforcement officer. One-fifth (21%) of all judges currently
have no additional occupation. Mean education for the nonlawyer judges
was two years of college, and over a quarter of these (27%) had some
training beyond the baccalaureate. All but one were high school graduates.

Almost half the judges (49%) identify as Republicans, 41% as Democrats,
and 10% as independents. Although the judges are certainly more active
politically than ordinary citizens—10% held some other public office before
becoming judge—they seem less so than one might expect given the percep-
tion of the judgeships as patronage plums. This impression was reinforced
by subsequent interviews. We found the following: differences in party
control of the judgeship and city government, judges who retained the clerk
of a previous judge of another party, lifelong Democrats who ran as

44. Four judges were not paid annual salaries; one was paid $16.00 per court session, and
three were paid a mean of $4.63 per case filed.
45. See infra text accompanying notes 50-53.
Republicans, and even a judge who was unsure of his opponent's party affiliation.

B. Types of Caseloads

Is there a pattern to the diversity of caseloads? The interviews suggested that several quite different entities share the label "city and town court." Moreover, these differences seemed to be associated with the particular mix of misdemeanors, infractions, ordinance violations, and civil cases the courts heard. Since we did not know, ex ante, how many different patterns existed or the exact nature of the patterns, we used cluster analysis to group the courts according to the mix of cases they hear.\(^\text{46}\) We analyzed judges' responses to questions regarding the proportion of civil versus criminal cases on the court's docket and, among the criminal cases, the proportions of misdemeanors, infractions, and ordinance violations. From the results of the cluster analysis, we identified five clusters of courts with distinctive caseloads.\(^\text{47}\)

Table 2 shows the characteristics of caseloads of the courts in each of the five clusters and the labels we assigned to them. The clusters are: (1) general traffic courts, (2) misdemeanor courts, (3) infractions courts, (4) ordinance courts, and (5) civil courts.

As can be seen from Table 2, the two large and three small clusters hear quite different mixes of cases. Most distinctive is the single court in the civil cluster, which has an almost entirely civil docket.\(^\text{48}\) While the mean percentage of civil work for all city courts is only about 5%, 90% of this court's docket is civil.

The ordinance cluster has only two members. Ordinance violations, which on average account for about 7% of city and town court dockets, make up nearly half (48%) of the criminal caseload in these courts. The remainder of their criminal caseload is fairly evenly divided between misdemeanors (20%) and infractions (33%). These courts hear about 8% civil cases.

Courts in the infractions cluster specialize in relatively minor traffic offenses. On average, 93% of their cases are infractions. They do almost

\(^{46}\) Cluster analysis uses scores on a number of variables (in our analysis, the proportions of various case types) to identify groups. Each court is first defined as a separate cluster. At each successive stage, the nearest two clusters, as defined by their scores on the variables of interest, are combined. For a general discussion of cluster analysis, see H. Romesburg, Cluster Analysis for Researchers (1984).

Our measure of distance was the sum of the squared differences across all the caseload variables. We defined the distance between clusters as the average distance of all pairs of cases in which one member of the pair is from each of the clusters.

\(^{47}\) The five-cluster solution produced the smallest number of relatively homogeneous (and therefore interpretable) groups.

\(^{48}\) Only if all the courts are grouped in a single cluster will this court be joined with any other court.
TABLE 2
Mean Percentages of Case Types within Clusters

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Cluster Number and Label</th>
<th>1 General</th>
<th>2 Misdemeanor</th>
<th>3 Infraction</th>
<th>4 Ordinance</th>
<th>5 Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Mean</td>
<td>Mean</td>
<td>Mean</td>
<td>Mean</td>
<td>Mean</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(s.d.)</td>
<td>(s.d.)</td>
<td>(s.d.)</td>
<td>(s.d.)</td>
<td>(s.d.)</td>
</tr>
<tr>
<td>CIVIL</td>
<td></td>
<td>3%</td>
<td>8%</td>
<td>1%</td>
<td>8%</td>
<td>90%</td>
</tr>
<tr>
<td>(6)</td>
<td></td>
<td>(18)</td>
<td>(3)</td>
<td>(11)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>CRIMINAL Misdemeanors</td>
<td></td>
<td>97%</td>
<td>92%</td>
<td>99%</td>
<td>92%</td>
<td>10%</td>
</tr>
<tr>
<td>(11)</td>
<td></td>
<td>(12)</td>
<td>(4)</td>
<td>(7)</td>
<td>(0)</td>
<td></td>
</tr>
<tr>
<td>Infractions</td>
<td></td>
<td>64%</td>
<td>13%</td>
<td>93%</td>
<td>33%</td>
<td>10%</td>
</tr>
<tr>
<td>(11)</td>
<td></td>
<td>(6)</td>
<td>(4)</td>
<td>(11)</td>
<td>0</td>
<td></td>
</tr>
<tr>
<td>Ordinance Violations</td>
<td></td>
<td>6%</td>
<td>9%</td>
<td>2%</td>
<td>48%</td>
<td>90%</td>
</tr>
<tr>
<td>(5)</td>
<td></td>
<td>(12)</td>
<td>(2)</td>
<td>(4)</td>
<td>(0)</td>
<td></td>
</tr>
</tbody>
</table>

Number of Courts in Cluster
29 5 22 2 1

* Percent of total caseload.
* Percent of criminal caseload.

no civil work. The infractions cluster has twenty-two courts and is the second largest.

Courts in the misdemeanor cluster hear high proportions of misdemeanors (78% of the criminal caseload, on average) and low proportions of infractions (13%) and ordinance violations (9%). The mean percentage of civil cases is 8%, but the cluster is heterogeneous in this regard. This is the largest of the small clusters (five courts).

With twenty-nine courts, the general traffic cluster is the largest. Infractions (64%) are the most common criminal case heard in these courts, but unlike the courts in the infractions cluster, these courts hear a substantial proportion (31%) of misdemeanors. Yet the nature of the misdemeanors they hear makes them unlike the courts in the misdemeanor cluster. The questionnaires asked judges to name their most common criminal case. Of the twenty-five charges mentioned first by judges from courts in this cluster, 64% are traffic-related. In contrast, no judge from the misdemeanor cluster mentioned a traffic-related charge as his or her most common criminal case. These courts hear few ordinance violations (6%) and even fewer civil cases (2%). Thus, these courts are essentially traffic courts, which hear a mixture of both more and less serious traffic cases.

There are other differences among the clusters. Table 3 presents descriptive statistics on several dimensions of size and court finance. As can be seen from Table 3, infractions courts tend to be small courts in small places.
Thirteen (64%) are town courts, and the mean population of their communities is under 5000. In 1988, the mean number of cases filed was only 1790, and the courts averaged only 8.4 hours in session per week, though the variation within the cluster on these variables is large. Case filings in these courts are large relative to community size. While courts in other clusters average under 0.4 filings per capita, infractions courts average 1.3 filings for every resident. These courts also produce more revenue for their communities. At $19,903, their mean "net revenue"—that is, the local share of total revenue less total expenditures—is higher than for any other cluster.49

Courts in the infractions cluster also are distinguished by the isolation of their judges. The courts, grouped according to the frequency with which prosecutors, public defenders, and law enforcement personnel appear in

| TABLE 3 |
| Mean and Standard Deviations of Court Characteristics by Caseload Cluster Membership |

<table>
<thead>
<tr>
<th>Cluster</th>
<th>1 General</th>
<th>2 Misdemeanor</th>
<th>3 Infraction</th>
<th>4 Ordinance</th>
<th>5 Civil</th>
</tr>
</thead>
<tbody>
<tr>
<td>Variance</td>
<td>Filings</td>
<td>Hours per week</td>
<td>Population (thousands)</td>
<td>Filings per hour</td>
<td>Filings per capita</td>
</tr>
<tr>
<td>Mean (s.d.)</td>
<td>Mean (s.d.)</td>
<td>Mean (s.d.)</td>
<td>Mean (s.d.)</td>
<td>Mean (s.d.)</td>
<td>Mean (s.d.)</td>
</tr>
<tr>
<td>Filings</td>
<td>4106 (3987)</td>
<td>3584 (4203)</td>
<td>2126 (2152)</td>
<td>2154 (564)</td>
<td>895 (0)</td>
</tr>
<tr>
<td>Hours per week</td>
<td>9.6 (7.7)</td>
<td>11.6 (13.3)</td>
<td>8.4 (10.6)</td>
<td>17.0 (1.4)</td>
<td>15.0 (0.0)</td>
</tr>
<tr>
<td>Population (thousands)</td>
<td>22.05 (33.34)</td>
<td>19.04 (13.19)</td>
<td>4.67 (5.48)</td>
<td>17.36 (1.28)</td>
<td>12.99 (0.0)</td>
</tr>
<tr>
<td>Filings per hour</td>
<td>479.54 (349.5)</td>
<td>406.89 (387.5)</td>
<td>417.5 (453.0)</td>
<td>128.53 (48.9)</td>
<td>59.67 (0.0)</td>
</tr>
<tr>
<td>Filings per capita</td>
<td>0.40 (0.45)</td>
<td>0.23 (0.23)</td>
<td>1.3 (1.73)</td>
<td>0.12 (0.21)</td>
<td>0.069 (0.0)</td>
</tr>
<tr>
<td>Total revenue (thousands)</td>
<td>198.4 (171.2)</td>
<td>120.9 (64.3)</td>
<td>129.7 (118.4)</td>
<td>145.1 (78.6)</td>
<td>20.61 (0.0)</td>
</tr>
<tr>
<td>Profit</td>
<td>$4211 (47815)</td>
<td>-$62222 (130110)</td>
<td>$19903 (45875)</td>
<td>$16132 (28340)</td>
<td>-$32147 (0.0)</td>
</tr>
<tr>
<td>Revenue per filing</td>
<td>$0.63 (0.66)</td>
<td>-$13.55 (17.52)</td>
<td>$7.86 (30.02)</td>
<td>$19.80 (11.59)</td>
<td>$43.00 (0.0)</td>
</tr>
<tr>
<td>Revenue/City Budget</td>
<td>0.018 (0.03)</td>
<td>0.006 (0.03)</td>
<td>0.074 (0.09)</td>
<td>0.003 (0.01)</td>
<td>0.01 (0.0)</td>
</tr>
<tr>
<td>Expenditures per filing</td>
<td>$14.3 (15.6)</td>
<td>$38.9 (26.5)</td>
<td>$12.6 (18.0)</td>
<td>$19.8 (5.6)</td>
<td>$43.0 (0.0)</td>
</tr>
<tr>
<td>N=29</td>
<td>N=5</td>
<td>N=22</td>
<td>N=2</td>
<td>N=1</td>
<td></td>
</tr>
</tbody>
</table>

* Net revenue = local share of total revenue-total expenditures.

49. We discuss the financial aspects of Indiana's city and town courts in Part II.C.
their courtrooms,\textsuperscript{50} fell roughly into thirds on these dimensions: one group (n = 16) sees the full complement of legal and law enforcement professionals on a daily or weekly basis; a second (n = 20) sees the prosecutor and law enforcement officers but not the city attorney or the public defender;\textsuperscript{51} and a third (n = 17) sees none of these persons on a daily or weekly basis. Ten of the infractions judges fall into this last category. The reason for their isolation probably lies in the nature of their caseloads. Because infractions are not crimes in Indiana, neither prosecutor nor public defender is required; even law enforcement officers appear infrequently.

The judges of infractions courts also have few informal contacts with the legal community. A cluster analysis based on responses to questionnaire items concerning the frequency with which the judges see other judges, prosecutors, city attorneys, and public defenders outside their courts also produced three groups. The majority of judges (thirty of the fifty-three for whom complete information on these variables was available) see no other legal professionals regularly. Another large group (n = 17) sees not only other legal professionals but other judges as well. The remaining six judges regularly see lawyers but not other judges.\textsuperscript{52} Judges from the infractions cluster are particularly unlikely to see other judges.\textsuperscript{53}

In contrast to the infractions cluster, communities in the general traffic cluster are larger and more likely to be cities (83%). The courts in the general traffic cluster handle a much larger volume of business. Although these courts typically produce revenue, it averages only one-fifth that of infractions courts ($4211 compared to $19,903). Again, in contrast to the judges from the infractions cluster, judges in the general traffic cluster are not isolated. Half regularly see all potential participants in their courtrooms, and over 90% see at least the prosecutors and law enforcement officers daily or weekly. These judges also are much more likely to see the prosecutor, city attorney, public defender, and other judges outside their courtrooms.

Courts in the misdemeanor cluster tend also to be large-volume courts located in larger communities. With mean filings of 3584, they are second only to those in the general traffic cluster in numbers of filings. Unlike

\textsuperscript{50} To identify groups of courts, we used cluster analysis of questionnaire responses on the frequency with which various participants are present.

\textsuperscript{51} The absence of a public defender in court does not say anything about the frequency with which privately retained lawyers are present.

\textsuperscript{52} In a logit estimation of an equation with this three-category grouping as the dependent variable, being a lawyer significantly increases the probability that a judge will see other legal professionals outside the court setting, and being a judge from an infractions court significantly decreases the probability that a judge will see other judges.

\textsuperscript{53} Although there is considerable overlap between infractions courts and the "being alone in court" cluster, there is little relationship between the other caseload clusters and our "who is in court" clusters described here. Again, the court's physical setting probably affects who the judges see outside the court as well.
courts in the two clusters just described, courts in the misdemeanor cluster tend to cost their communities money rather than produce revenue for them. While the judges are not isolated in their courtrooms, they are unlikely to see the prosecutor, public defender, city attorney, or other judges outside their courtrooms.

The two courts in the ordinance cluster are similar to each other and different from other courts in that they are low-volume courts in session numerous hours a week. Courts in this cluster are heterogeneous with respect to revenue; they are to be found both among the costliest courts and the most profitable courts. The single civil court spends more per filing ($43) than any other court.

To provide a context for the caseload variation in city and town courts, we examined the county courts' caseloads as the most comparable jurisdictions in the state court system. On average, county courts hear considerably more civil cases (25%) than do city courts. Across the state, misdemeanors, infractions, and ordinance violations account for about 24%, 70%, and 5%, respectively, of the criminal filings in county courts. Though these figures represent somewhat more misdemeanors and fewer ordinance violations than are heard by city and town courts, overall, the distributions are quite similar. But there is county-level variation: most courts hear mainly infractions, some almost all civil cases, and a few even hear mostly ordinance violations.

We also compared county court caseloads in counties with city and town courts and those without any city and town courts. County court caseloads in counties with city and town courts are, if anything, more varied. Moreover, there is no simple relationship between what the county courts hear and whether the county has city or town courts within its boundaries. In some counties, the city and town courts of a county and the county courts hear similar distributions of cases. In others, each seems to specialize; for example, in several counties, city and town courts specialize in infractions while the county courts hear misdemeanors and civil cases. But there is no single division of labor. In one county with several city and town courts with large general traffic caseloads, the county court hears civil cases and ordinance violations. Yet, in another, where city and town courts hear

54. The idea to make this comparison comes from Baar, supra note 15. These comparison data are new civil, small claims, misdemeanor, infraction, and ordinance violation filings reported for county courts and the "county court function" of circuit and superior courts in 1988. INDIANA JUDICIAL REPORT, supra note 40, at 49. This jurisdiction is the most comparable to that of city and town courts, although county court jurisdiction includes Class D felonies and has a higher civil limit. In the text, our reference here to county courts includes circuit and superior courts exercising their "county court function." See supra note 21.

55. See infra text accompanying note 72 through the end of Part II.D. (the dearth of civil cases in city courts).
relatively high proportions of misdemeanors and civil cases, the county court hears more infractions than average. Such county variation reinforces the notion that having jurisdiction does not mean that it will be used fully or used in the same way in different places.\textsuperscript{56}

In the face of such variation in caseloads, the urge to offer explanations and predictions is inevitable but risky. A well-specified model explaining caseload patterns would require data on these courts over time as well as a broader sample including communities which never established courts and those which had but then abolished them.\textsuperscript{57} So far the focus of the study has been on the discovery and mapping of variation in city and town courts. We presently lack the necessary data to test causal relationships. Nevertheless, we can offer some evidence on where one should (and should not) look for explanation.

The mix of cases a court hears should depend on jurisdictional constraints, environmental factors, and the interests and abilities of the judge.\textsuperscript{58} For communities that currently have city or town courts, the data contains some measures of these judicial and environmental variables. Thus, to test this expectation we predicted caseload cluster membership from specific variables reflecting these general influences.\textsuperscript{59} Several measures of the court's environment are: (1) whether the court is located in a city or a town, (2) whether the city or town is in a metropolitan area, (3) whether, if a town, it is located near a major highway, (4) the city's or town's population, and (5) the net revenue per filing. Variables reflecting characteristics of the judge are whether the judge is a lawyer and a measure of the judge's

\textsuperscript{56} See Daniels, \textit{Ladders and Bushes: The Problem of Caseloads and Studying Court Activities Over Time}, 1984 Am. B. Found. Res. J. 751 (caseload development over time is in response to localized rather than broad general influences).

\textsuperscript{57} We see that phase as the next step in our continued study of limited jurisdiction courts.

\textsuperscript{58} Numerous scholars have sought explanations for the size and nature of courts' caseloads in environmental influences. For a small sample of quite different approaches to the use of environmental explanations, see J. Eisenstein, R. Flemming & P. Nardulli, \textit{The Contours of Justice: Communities and Their Courts} (1988); Daniels, \textit{Civil Litigation in Illinois Trial Courts: An Exploration of Urban-Rural Differences}, 4 Law & Pol'y Q. 190 (1982); Moody & Marvell, \textit{Appellate and Trial Court Caseload Growth: A Pooled Time-Series-Cross-Section Analysis}, 3 J. Quantitative Criminology 143 (1987). See also J. Jacoby, \textit{The American Prosecutor} (1980) (the effects of environment on the prosecutorial function).

\textsuperscript{59} We do this by specifying and estimating a qualitative response (logit) model. The outcomes are scored 0 = general traffic, 1 = misdemeanor, 2 = infractions, and 3 = ordinances, so that the general traffic cluster becomes the comparison category. We excluded the civil cluster from the analysis because it contains only one case. For a general treatment of qualitative response models, see G. Maddala, \textit{Limited-Dependent and Qualitative Variables in Econometrics} (1983).
energy. Jurisdictional differences are reflected in whether the court is in a city or town.

We find that the ability to predict cluster membership from these variables is limited. We start with what does not predict the nature of a court’s caseload: whether the judge is a lawyer. Previous research has shown little difference between lawyers and nonlawyers in the operation of courts or the outcome of cases, although an assumed difference remains a persistent stereotype. Our results indicate that having a lawyer judge does not affect what kinds of cases are brought to a court either.

Nor do these variables predict whether a court will be specialized in infractions or hear a more general mix of traffic cases. None of the estimated effects for the variables (town, highway town, metropolitan area, population, revenue per filing, lawyer judges, or judge’s energy) reach conventional levels of significance. Whether the court is located in a city or a town, however, comes close. If this latter effect is real, town courts are more likely to be in the infractions cluster. We surmise that the effect is real and that it has to do with the potential of these courts to generate revenue. But there are, of course, courts in the infractions cluster that do not produce revenue and courts in other clusters that produce revenue.

These variables do better predicting membership in the misdemeanor and ordinance clusters. Courts in communities adjacent to big cities are more likely to be in the misdemeanor cluster or the ordinance cluster; that is, to have caseloads dominated by nontraffic misdemeanor offenses or to hear unusually high proportions of city ordinance violations. It is proximity to an urban center that is important; the size of the city or town itself has no effect. The measure of judges’ energy also distinguishes among caseload patterns but not as expected. Higher scores on the energy measure make it less likely that a court hears misdemeanor or ordinance caseloads as opposed to general traffic caseloads. But these effects are not as noteworthy as the relationships that do not appear, namely that neither legal training nor profitability determines the nature of the caseload these courts hear.

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60. Some judges talked with pride about the growth of the caseload during their tenure and innovations they had introduced. For other judges, the court was clearly a sideline; growth was seen as a burden. These judges were generally uninterested in expanding the courts into new areas.

The “energy” measure combines information on occupation and age. It gives highest scores to judges with no additional occupation and higher scores to judges in general business and blue collar occupations than to those in law or teaching. Judges under age sixty-two receive lower scores than those over on the grounds that a judge’s primary occupation demands more attention at an earlier stage in the life cycle.

61. See sources cited supra note 6.

62. The estimated coefficient is 2.3, with a standard error of 1.2, at a significance level of .06.

63. For further information about revenues, see infra Part II.C.
Because these courts are conventionally viewed as existing to make money, whether and how much revenue they actually produce is important. We asked judges to indicate whether they believed their communities saw the courts as making money, breaking even, or costing money. About half said their communities believe their court makes money for the community, yet 20% said the community thinks the court costs money. Whatever the perception, public financial data show that most courts at least break even.

Local communities derive revenues from their courts through state-dictated court costs (fines for infractions or misdemeanor convictions, on the other hand).

**FIGURE 1**

Histogram of City Court and Town Court Net Revenue: 1988

<table>
<thead>
<tr>
<th>Net Revenue Interval</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>$-300,000 to $-50,000</td>
<td>3</td>
<td>5%</td>
</tr>
<tr>
<td>$-50,000 to $-35,000</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>$-35,000 to $-20,000</td>
<td>4</td>
<td>6%</td>
</tr>
<tr>
<td>$-20,000 to $-10,000</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>$-10,000 to $0</td>
<td>14</td>
<td>22%</td>
</tr>
<tr>
<td>$0 to $10,000</td>
<td>7</td>
<td>11%</td>
</tr>
<tr>
<td>$10,000 to $25,000</td>
<td>5</td>
<td>8%</td>
</tr>
<tr>
<td>$25,000 to $40,000</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>$40,000 to $50,000</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>$50,000 to $70,000</td>
<td>1</td>
<td>2%</td>
</tr>
<tr>
<td>$70,000 to $100,000</td>
<td>2</td>
<td>3%</td>
</tr>
</tbody>
</table>

Net revenue is defined as the local share of revenues generated in 1988 minus total court expenditures in 1988.

Net revenues of two of the courts in this interval are between -$100,000 and -$200,000; the third court's net revenues are $296,270.

Twenty-one of the courts in this interval have net revenues between $5,000 and $55,000.

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hand, go to the state). Mean net revenue for these courts is $4898. As can be seen from Figure 1, net revenues for 40% of the courts are between -$5000 and +$10,000, but the overall range is considerable. Some courts brought in nearly $100,000 in 1988, while others cost their communities as much as $292,670. The twenty-five courts in the modal category are quite diverse. The populations of their communities vary from under 1000 to over 40,000. With mean filings of 1558, they are smaller than average (3006), but they range from less than 100 to more than 12,000 cases in 1988. Their mean expenditures per filing range is $19.36.

Nine courts cost their communities more than $5000. Three of these have negative net revenues in excess of $100,000—greater than any court’s revenues on the positive side. These three courts are all located in metropolitan areas. Their caseloads are large (12,386 cases, on average) and contain larger shares of civil (28%) and misdemeanor work (47%) than other courts. Although they produce substantial local revenue, they also spend a great deal with a mean total expenditure in 1988 of about $300,000.

On the other side of the continuum, thirty courts produce net revenues in excess of $10,000. Since it is difficult to determine the relative value of these sums in the absence of information about city and town finances more generally, we use the city’s or town’s approved budget appropriations as a norm against which to judge the significance of court revenues. From this perspective, court revenues (positive or negative) are, on the average, about 3% of the total city or town budget. But the distribution is very skewed, with court revenue accounting for under 3% in most communities and for as much as 31% in others.

The net revenues of twelve of these thirty courts make up 5% or more of their communities’ budgets. This group is of special interest because

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66. We use the local share of court-generated revenue minus total court expenditure to define “net revenue.” Local revenues are the city’s or town’s share of court costs. Court revenues come from the local share of court costs in criminal and civil cases and from fines for ordinance violations.

67. In order to develop a standard measure of city and town budgets, we took the sum of the approved budget appropriations for general, parks, police pension, and fire pension funds for each governmental unit. We then calculated net revenue or costs (local revenue minus court expenditure) as a fraction of the approved budget appropriations.

68. We chose 5% of the city budget, because 5% of the city or town budget would be a noticeable contribution which, we assume, if removed from city or town revenues, would be missed. It also conformed to a natural break in the data; while the mean percentage of net revenue as a fraction of city budget is 15% for courts above the 5% line, it is only 1% for those below.
these courts embody the most common stereotype of city and town courts—that is, that they are money-makers. Indeed, their mean contribution to city or town budgets is 15%. As one might expect, these courts are located in small communities with small city or town budgets. Their mean population is 2279, and the largest has a population of only 4500. Nine of the twelve are in towns. For net revenues of the size produced by these courts to be significant, the local budget must also be small. The average budget for these twelve communities is about $300,000 and ranges from $78,000 to $615,000.

Although the communities are small, the courts' caseloads are large. Per capita filings are ten times those of other courts (2.2 as compared to .23). These courts also spend less than other courts, with a mean expenditure per filing of $8 as compared with $20 for other courts. Most are infractions courts. Eight of the twelve courts fall in the infractions cluster; another three are in the general traffic cluster, and one is in the misdemeanor cluster.69

The stereotype that judges in such courts will be nonlawyers also holds true in this group of twelve courts. Only one of the twelve is a lawyer.70 What distinguishes this subgroup of twelve, however, is their meager city or town budget. There are sixteen additional courts that produce as much revenue (more than $10,000) but do so in a city or town with a substantial budget. Of these sixteen courts, nine (56%) have lawyer judges.

With a mean tenure of nine years on the bench, these twelve judges have served slightly longer than other judges. They also score higher on our "energy" measure. Judges in this group of courts are likely to be isolated, but they are no more so than judges in other small infractions courts. Thus it is the type of caseload, not whether the town depends on the court for a substantial portion of its revenue, that affects who will be present in court.

With these "large revenue-small budget courts" we come closest to the stereotype of city and town courts. What is interesting, however, is not that there is a grain of truth in the stereotype but that it is only a grain. To the extent that the stereotype fits, it fits only twelve of the seventy-three courts.

D. Civil Work

One aspect of these courts that fits the conventional picture, yet is puzzling, is their lack of civil work. The state intended city courts to hear

69. These courts do little civil work, but, for the most part, this is because 75% of the courts are town courts, which have no civil jurisdiction.

70. Other than being much less likely to be lawyers and more likely to be retired, however, their occupational distribution resembles that of other judges. Five have no occupation other than judge. Four are in white collar business occupations, and one holds a teaching position and one a blue collar job. Of the five with no other current occupation, two are former law enforcement officers, one a former teacher, and two previously held blue collar jobs.
civil cases. In fact, the legislature went out of its way in distinguishing among city courts, setting different jurisdiction limits. Thus, the obvious question is why most courts do not hear civil cases. Whether they do so is not related to whether the judge is a lawyer, to the city population, to the availability of a small claims court, or to location in a county seat.

When asked why the court did not hear civil cases, judges typically responded that their court was not set up to handle civil cases. The judges maintained civil work requires additional paper work and support staff (for example, "we'd have to hire another bailiff to deliver our summons" or "the sheriff won't serve papers for the court"). Yet courts that do hear civil cases find means of overcoming such problems even within limited budgets.

The judges also stated that small claims courts are set up specifically to handle the same kind of civil cases. This latter response, which implies that city courts are inappropriate and unnecessary to hear such disputes, is curious given the oft-stated justification for city courts as a convenience (even if redundant) for local citizens.

Thus, we looked elsewhere for explanations about the lack of interest in civil cases. Although court costs for civil cases and infractions are about the same, civil cases may consume more resources because it takes longer to hear civil cases or involves more paper work for the court system. If, as the critics charge, city courts are interested only in making money, civil work may be less attractive than criminal because it is less profitable.

Alternatively, lawyer judges may hesitate to do civil work because they face a conflict of interest. Currently, lawyer judges do not practice criminal law. If their courts began to hear civil cases, the lawyer judges may worry that they would have to give up handling civil cases as well, making it impossible to both practice law and be a city court judge. Yet, the civil jurisdiction of city courts is quite limited, not only in terms of dollar amount but also in terms of subject matter. Within the range of excluded subject matter, it may be possible to carve a part-time law practice. Even though a part-time practice may be possible, it may not be easy to identify cases fitting within its bounds in advance or to allow enough flexibility for the practice to be feasible financially. Whatever the merit to the lawyer judges' concerns about civil cases, none of this explains why nonlawyer judges do not hear civil cases.

An explanation for the failure of more nonlawyer judges to hear civil cases may be that they think civil cases are too hard. The applicable law in criminal cases for city and town courts, in fact, is not very complicated.

72. Interview 15. Interview notes are on file with the authors in Bloomington, Indiana.
73. Id.
Finding facts or dispensing sanctions may be difficult, and the laws are numerous (if not overwhelming), but what the criminal law says is not very difficult. In contrast, the law in civil cases is complicated, or at a minimum unpredictable and wide-ranging. Indeed, for lawyers and nonlawyers alike, identifying real winners and losers, many of whom may be friends, in civil cases may be harder not only in a cognitive sense but also interpersonally.

Whether courts hear civil cases suggests not only how these courts define themselves but also how others see them. We have no data on why litigants chose not to file civil cases in city courts, but there may be several explanations. The very limited dollar amount in controversy ($500 in most city courts) may be a significant deterrent. The availability of small claims courts, with lower court costs and fewer procedural hurdles, may be another, or it may be that custom suggests the city court would be hostile to civil actions.

E. Summary

What is most striking about the work these courts do is its noticeable diversity. Some courts do no civil work, while other courts almost entirely hear civil cases. There are courts that handle traffic cases, whereas others do not. Certain courts produce large revenues that will be meaningful to their respective city or town. Yet other courts have no staffs or serve an outreach function by being located in a nonpopulous community away from the county seat. The nature of the courts can differ within counties as well as across the state. Identifying and understanding this diversity is important not only for its own sake, but also because it allows us to explore the nature of localism illustrated by these courts.

III. IMPLICATIONS

At the outset, we argued for the relevance to city and town courts of three themes in writing on community and democracy: local institutions as schools of citizenship, tensions over local responsiveness, and the loss of local autonomy. While the observation that, as political institutions, courts reflect "the dominant assumptions, attitudes, and political choices of the community" applies to all courts, it does so with special force to the locally created and financed courts we have studied here. The responsiveness

75. We have found that others have trouble accepting that these courts do not fit the conventional picture or even fit neatly into two or three main types. Sometimes an observer thinks our data must be wrong, but more commonly, comments suggest a simple failure to recognize the picture we draw. The persistence of the view in the face of contrary facts, however, is interesting on its own.

of these courts to their communities is revealed in the variety we observed.

The statutorily defined jurisdictional space is only partially occupied, and it is occupied differently by different courts. To be sure, the analysis of caseloads reveals a strong tendency for these courts to be traffic courts. But just as not all communities elect to have a city or town court, not all those that have courts elect to emphasize traffic cases. Some, for example, emphasize the enforcement of ordinance violations and misdemeanors. Yet even a caseload composed almost entirely of traffic cases can serve interests beyond the enforcement of speeding laws or the generation of revenue.77

When judges talk about why their courts are important to their communities, they often speak in terms of local sensitivity. Their use of the term implies direct knowledge of local problems and people, either as individuals or as groups ("teenagers in the Spring"78 or "loiterers on the courthouse square,"79 for example). Moreover, local sensitivity means that local problems are taken seriously. A common theme in the study of courts is that court officials, as opposed to litigants, perceive much of the business that comes to the courts as unworthy of the courts' attention. By defining this business as "junk" or "kids' stuff," courts trivialize the problems of ordinary citizens.80 The limited jurisdiction and local nature of these courts allow them to attend to what general jurisdiction courts might regard as trivial or routine. One judge, when asked why his community had established a court, said, "[B]ecause we couldn't get anyone to enforce our ordinances."81 Another judge contrasted the experience of appearing in his court on a traffic matter with that of appearing in the nearby metropolitan court by saying that in the latter, "[Y]ou did not know that you violated the law."82 Teen drinking, old refrigerators left in front yards, neighborhood disputes, and other problems can be addressed with the level of seriousness the local community deems appropriate.

The flip side of local sensitivity is bias. Noting the greater homogeneity and intimacy of relations in small communities, some authors are especially

77. Traffic laws might be used for social control of teenage drinking or of problems generated by proximity to recreational areas, for example.
78. Interview 19.
79. Interview 15.
81. Interview 3. Baar, supra note 15, at 25 argues that as the work of major trial courts has become more routinized and therefore more like that of limited jurisdiction courts the reasons for maintaining separate structures are disappearing. Yet it seems likely that the work done in the city and town courts we study here will continue to look trivial when viewed against the backdrop of the more serious caseloads of state courts.
82. Interview 4.
suspicious of how judicial power is exercised in small places.83 Because we do not analyze case outcomes, our data do not speak directly to the issue of impartiality in decision making. Nonetheless, the interviews presented judges who accept, in principle, a standard of impartiality. No doubt the principle is easier to uphold than the practice. Yet judges were sensitive to the special problems created by their local ties to their communities. Some judges talked about impartiality as something one has to learn84 and reported feeling discomfort the first few times they ruled against friends or acquaintances. Other judges pointed to previous experiences, as law enforcement officers, for example, that prepared them to ignore personal feelings.85

Provine has argued that, as a culture, we have accepted and internalized the legal model.86 But it is worth noting that this distanced, neutral model of judging has itself come into question.87 City and town court judges can claim a special sensitivity to local problems and local values that may bring their decision making closer to a model of empathic judging.

What we can conclude about law and justice lessons actually learned from these courts is limited, because we did not study citizens' perceptions. We do have some observations of court proceedings. In visits to these courts, we observed dignified, courteous interactions. Given the full dockets of some sessions, defendants were informed of their rights with surprising care. Lawyer judges seemed confident of their ability to inform defendants adequately. Several nonlawyer judges expressed concern about "doing it right." One nonlawyer judge, dissatisfied with the clarity of the standard appraisal of rights, explained how she had modified it to use language more likely to be understood. Several judges revealed they purposely scheduled particular cases late in a session so that defendants could learn from observing a range of cases and dispositions.

For some judges, wearing a robe was important in establishing the authority of the court. For others, not wearing a robe conveyed identification with the community. One judge, who reported that he did not wear a robe but "always wore a tie" when he held court, emphasized the congruence between his own background and that of the majority of townspeople, when

83. See, e.g., Wood, supra note 11, at 63 ("The smaller the town, the more justice is a matter of personal opinion in the community itself, rarely formalized, rarely examined, rarely permanently established, depending on the sentiment of the moment."). J. Mansbridge, supra note 8, at 283-87, quotes several authors on the existence of and reasons for homogeneity of opinion in small towns but is much more sanguine about this homogeneity than are the others.

84. Indeed, many reported that impartiality was one of the hardest parts of doing their job.

85. Sensitivity can also be used to distinguish between a system of judges and an administrative bureaucracy, which, in this context, can be claimed by outsiders as well as locals. For example, one judge noted the problems caused for Illinois residents by differences between Indiana and Illinois traffic laws and reporting requirements.

86. D. Provine, supra note 1, at 168-81.

he said, "We're dirt farmers. My father was a dirt farmer, and that's what we are here." 88

The most important lessons of these courts, however, may have as much to do with community empowerment as with the court's setting or procedure. With the loss of community power, 89 the existence of the court may mean a great deal to community identity—much more than the money it generates. Although outsiders may believe that city and town courts are powerful because judgeships are important in local politics, what may be important is the idea of decision making at the local level.

Professor Long argues that "[t]o the extent the city has lost function to higher levels of government, the city, as a local territorial community, loses its power to produce a normative structure." 90 The local functions of courts seem especially relevant here. For many communities, as one judge put it, the court is "essential for good government." 91 A community can use the court to help define the kind of community it is.

This self-definition may involve, as it did for one town, the use of ordinance violations to impose middle class standards of property maintenance on "[p]eople who don't know how to live." 92 Or the court may be a way of setting the community apart from other communities or the surrounding county. For one community, the court and its building formed the only city center for a patchwork of residential additions strung out along a major commuting route. Another judge saw his court as serving a growing, business-oriented, progressive community in contrast to the backwater county in which it was located. Whatever the original reasons for establishing a court, once established, the court may become important for its role in reinforcing community identity. One may not approve of the choices—for example, the choice to finance town government by processing traffic infractions rather than by taxation—but political independence is the exercise of choice.

Because these courts are embedded in local political culture, future inquiry should expand the perspectives from which we view these courts to include local governmental political elites and ordinary citizens. The examination should include communities that once had courts but no longer do and

88. Interview 19.
89. The loss of community power we noted at the outset has probably been especially acute for small cities and towns. E. LADD, IDEOLOGY IN AMERICA 82-84 (1969), argues that towns are much less socially and economically independent than they once were because of changes in transportation, communication, and a more nationalized economy. But the loss is not so far in the past that there are not those who remember this independence and regret its passing. See also Engel, The Oven Bird's Song: Insiders, Outsiders, and the Personal Injuries in an American Community, 18 LAW & Soc'y REV. 551, 573-74 (1984) for a similar point.
90. Long, supra note 8, at 12.
91. Interview 15.
92. Id.
those communities that have never had courts. Yet the most important implication is that debates about the existence of these courts, or even their reform, are political decisions involving competing values. They are not simple, nor should they be made on narrow grounds.