THE UNIVERSITY OF MANITOBA

LEGALLY SPEAKING: THE POTENTIAL FOR A "PLAIN ENGLISH" MOVEMENT IN THE WINNIPEG JUVENILE COURT

by

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ABSTRACT

This thesis examines the potential for a "Plain English" movement in the Winnipeg juvenile court in the Province of Manitoba, Canada. The writer perceives that there is a failure of communication between the juvenile and the court which has resulted from the use of legal language or legalese. The degree of understanding of the language used in juvenile court proceedings, from the juvenile's perspective, needs to be assessed.

The juvenile's understanding of the legal process is evaluated through the administration of an interview schedule. In addition to interviewing juveniles, probation officers, defense counsel and juvenile court judges are also interviewed to determine their role in the explanation process of the legal language to which the juvenile is exposed and subjected. Thus this study has four parts.

Five hypotheses are set forth. Specifically, a juvenile's understanding of legal language is dependent on his/her contact with (1) probation services, (2) defense counsel, and (3) the judge's explanation of the language, process and procedure of the court. In addition, (4) time spent in custody is believed to affect understanding. Finally, (5) a juvenile's sense of justice (fairness) is thought to be affected by his/her understanding of legal language.

In general, the data support the hypotheses. It is concluded that there is indeed the potential for a "Plain English" movement in the Winnipeg juvenile court. Certain recommendations are made which are believed to contribute to the juvenile's understanding of legal language.

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Finally, I wish to thank those juveniles who agreed to be interviewed. They taught me to understand a great deal about what they think and feel. I hope this thesis will help their understanding.

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For Judge Ronald J.W. Morlock
whose wise counsel and commitment
to my life and my lifeswork will inspire me always

CHAPTER 1

AN INTRODUCTION AND OVERVIEW

Introduction

It is the purpose of this thesis to examine the potential for a "Plain English" movement within the Winnipeg juvenile court in the Province of Manitoba, Canada. The impetus for such an investigation comes not only from academic commentaries on the use and misuse of language in the spheres of social, political, economic and legal life but also from a growing concern over these issues among the general public as well.

Use and misuse of language is not a new topic of social inquiry which has come to the fore in the 1970's and 1980's. As early as the 1930's harsh criticisms of language use in the public forum were expressed. H.L. Mencken, author of The American Language (first published in 1936) voiced concern over such matters as "euphemisms and jargon in politics, bureaucracy and the professions" (op. cit. in Danet, 1980: 450). Similarly, as other authors acknowledge, George Orwell (1957: 153) commented that political language "consists largely of euphemism, question-begging and sheer cloudy vagueness".

The dawn of World War II and proliferation of propaganda reopened the debate on language. Hayakawa published the book Language in Action which he admits was "a response to the dangers of propaganda especially as exemplified in Adolf Hitler's success in persuading millions to share his maniacal and destructive views"

(ibid, 1964 Preface).

During the 1950's and 1960's the use and misuse of language was not a topic of widespread public debate. It was in the 1970's however, that the subject seemed to gain its greatest strength and popularity. Its saliency was largely a response to the controversy over Watergate. For the American public, this affair became a matter of determining the meaning of certain government acts as conveyed through the use of specific words and sentences. During the period of the Watergate hearings held before the Senate Investigation Committee, a number of top government officials were seen to manipulate language in such a way as to provide excuses and justifications to exculpate them from that scandal. Such behavior not only created widespread public frustration and confusion but stimulated a large number of articles in newspapers and magazines condemning the apparent misuse of language by government officials as well as academic debate and criticism of language use in the public forum in learned journals and books.

In response to the overwhelming concern raised by the American public over the use and misuse of language at the bureaucratic level, former President Jimmy Carter issued an executive order "requiring 'clear and simple English' as a means of improving government regulations". This was a significant first step in the long process of language-use reform - a process which when combined with the creation of the Document Design Centre in Washington, D.C. has come to be termed the "Plain English Movement".

The upper echelons of government bureaucracy have not been

the only institutions to be affected by President Carter's executive order. The spirit of the Plain English Movement has influenced such economic institutions as banks and insurance companies. According to one author "state and federal government agencies have held and are holding conferences on language reform, hiring consultants and producing revised versions of legal and bureaucratic documents" (Danet, 1980: 451). There has been the proliferation of "simplified" insurance policies and bank loans to provide two substantive examples of the impact in this sector. In the broader perspective, Brenda Danet (1980: 487) cites authority which suggests that as of 1980 "22 American states had laws specifying standards for the readibility of insurance policies and other types of consumer contracts, 8 had bills pending and 10 had regulations or directives relating to this issue".

Another area which has indirectly, to date, felt the effects of this trend towards a more 'clear and simple English' has been the law and its constitutive elements. It is not surprising since most individuals who work within the legal profession as well as those external to it regard the law "as a profession of words" (Mellinkoff, 1963: vii). As California attorney David Mellinkoff (ibid, 1963: 24, 27) points out, "the language of the law has a tendency to be wordy, unclear, pompous and dull. It is full of long sentences, awkward constructions and fuzzy words. The result is often nothing less than a failure of communication".

In addressing the issue of "language and the law" Professor Brenda Danet, a key proponent of the emerging social science field

of the same name, suggests that traditionally law and language have been studied in isolation from one another. With the growing interest in "law and language" as a separate area of investigation one sees "social scientists, lawyers and linguists attempting to hurdle interdisciplinary barriers in order to study how language relates to the function of law in society" (Danet, 1980: 447, emphasis added).

The need to examine law and language together as a single area of research is summed up in the following words expressed by William Probert at the conference, "Developments in Law and Social Science Research" held in the early 1970's. He commented that,

> there needs to be greater concern in the law of all places, with language behavior, not just language, but language behavior... I am concerned not with written language but with 'law talk'. (op. cit. in Danet, 1980: 448)

Basically two concerns to date have emerged from the Plain English Movement. In particular, the primary focus has been an emphasis on the language of written documents and materials ranging from insurance policies and contracts to abortion consent forms. The Movement's more peripheral and indirect concern has been language in the communication process - "talk", an area which according to Probert is of utmost importance and demands the full attention of researchers who concentrate their efforts in the emerging area of "law and language". The task which presents itself to interested researchers is one that extends well beyond the original goals and ambitions of the Plain English Movement. Probert's concern draws attention to the need for investigators to

not only address themselves to the stable and structured language represented by the written word, but the ever-changing and spontaneous language observed in talk in different social milieu.

This thesis takes as its point of departure the Plain English Movement's concern with talk and not with the written language of statutes. Specifically the focus of this thesis is upon talk, including language used to explain the legal process, criminal code provisions, case law and dispositions, as it occurs in the pre-trial hearings held in the juvenile court. This represents an attempt to combine law and language as components of the "talk process" as it occurs within the courtroom setting, an area which until recently social scientists have had only a peripheral involvment. There is no doubt that the lack of investigation into law and language does not stem from a lack of interest but rather from the relative newness of the subject matter. As Danet (1980: 463) points out "legal language as a social problem has only become a major issue in the last five years". Furthermore Atkinson and Drew (1979: 5) who are concerned with the organization of "court-room conversation" provide keen insight into this issue:

> ...in so far as this multi-disciplinary convergence is a recent phenomenon the products of which are only just becoming available, it is hardly surprising that the organisation of verbal exchanges in courts has yet to be subjected to much in the way of detailed scrutiny.

The Basis of The Study

This study attempts to elaborate how the goals and philosophy of the Plain English Movement might be extended and expanded to

the hearings and trials in the juvenile court setting. This thesis is based on the premise that "Canada's juvenile courts are essentially criminal courts calibrated to the age of its clients and carrying with them the ingredients of a 'fair' hearing through recognized and practiced procedures of due process, but, at the same time bearing the burden and disadvantages attached to criminal-court type procedure" (Stewart, 1978: 158). The juvenile court in seeking to provide a standard structured legal proceeding which combines and ensures the critical elements of "fairness", "justice" and "impartiality" is faced with a fundamental dilemma. The juvenile court and its key actors, judges, prosecutors, lawyers, probation officers and child care workers are bound to act not only within the legal parameters of the governing legislation, the Juvenile Delinquents Act (JDA), (R.S.C. 1970, Chap. J-3, 1929) but also to act in the spirit of the law as well. To elaborate how legal personnel act in the spirit of the juvenile legislation, two sections of the JDA, Section 3(2) and Section 38, may be cited. First, Section 38, of the Act which deals with how the legislation may be construed:

> Section 38. This Act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, one needing aid, encouragement, help and assistance. R.S., c. 160, s. 38.

Secondly, Section 3(2) states:

> Section 3(2). Where a child is adjudged to have committed a delinquency he shall be dealt with, not as an offender but as one in a condition of delinquency and therefore requiring help and guidance and proper supervision. R.S., c. 160, s. 3.

A careful reading of the two cited passages reveals both implicit and explicit assumptions. For example, Section 3(2) refers to a "condition of delinquency". The use of the word "condition" in the context of the phrase "condition of delinquency" seems to be used in almost a colloquial sense implying either illness or ailment. This medical connotation seems to suggest the need to "treat" the juvenile in a less severe manner than an adult offender who has possibly committed the same criminal act. The Section furthermore makes use of the words "help", "guidance" and "proper supervision". To achieve these ends, that is to provide guidance, help and supervision one would anticipate a certain informality in the juvenile court proceedings evidenced by a lack of legal technicality and an open rapport between the delinquent and his/her family and the court. An informal hearing would seem to be most conducive to appreciate the nature of the juvenile delinquent condition and provide informed opinion as to how this condition might best be alleviated. Informality in juvenile court proceedings proves not to be the case however. Rather one finds the highly formalized legal proceeding that is characteristic of adult criminal hearings. As Emerson (1969: 174) suggests, the juvenile court "maintains a formal and solemn atmosphere in its proceedings".

In preserving the due process procedure, the juvenile court

not only maintains a highly formalized method of dealing with juveniles, i.e. of determining their guilt or innocence, but promotes and encourages an environment whereby lawyers become the key actors. Despite Judge R. Stubbs' astute remark that "...the juvenile court is a special kind of court and needs a special kind of lawyer" (op. cit. in Bala and Clarke, 1981: 206) with the presence of lawyers one discovers a situation which might be described as "legal acrobatics". Legal language becomes the dominant mode of communication. While such discourse can be argued by its defenders to be more precise than "ordinary" language by "promoting the efficiency and reinforcing the cohesiveness of the legal profession" (Danet, 1980: 467) and perhaps furthering due process for the juvenile and protecting his/her interests as key court actor's behavior is regulated by this speech; more skeptical individuals argue that the use of legal language can lead to nothing but disaster (Mellinkoff, 1963: 295) in terms of effectively communicating to the accused the ideas and meanings inherent in legal proceedings. As Matza writes,

> The little that he hears and understands in court is enough to maintain and refuel the delinquent's sense of injustice. Because of the structure of the court, its mysteries and its rhetoric, the accused cannot see the actual consistency implicit in the emergent amalgam that guides disposition. (Matza, 1964: 133)

To recapitulate two polar positions, one supports and one criticizes the nature of legal language and its effectiveness in the courtroom. The more central issue to be addressed is one that considers whether or not legal language is in fact understood by

the accused juvenile or whether for the most part legal language remains incomprehensible to the juvenile. To dramatize this issue a passage from Atkinson and Drew (1979: 11) shows how some adult individuals feel about such specialized legal language and their understanding of their hearings:

> Generally speaking defendents are described as being variously bullied, thwarted, misunderstood, coerced, oppressed, manipulated, etc., all of which can be readily contrasted adversely with alternative claims about the propriety of legal procedures and the idea of justice.

If most adults voice this sentiment then consider the plight of the accused juvenile.

The employment of legal language, then, is said by some to accomplish high levels of specificity and precision in legal proceedings. Legal language from the legal proponents' perspective is said to contribute to the general and overall efficiency of the legal process. For example, many lawyers would argue adamantly that "to change the language of the law is to make it less precise because lawyers and judges know what the words mean; these words have stood the test of time. To change the language is to create new legal issues, to sacrifice the comforts of precedent" (Danet, 1980: 541; cf. Mellinkoff, 1963: 290). From the accused's perspective legal language contributes to a general lack of understanding as to what has been said and what has actually transpired (Atkinson and Drew, 1979: 11; Ericson and Baranek, 1982: 93). These problems are seen to be particularly serious for the juvenile offender who despite his/her alleged criminal behavior remains a juvenile who lacks familiarity and a thorough understanding with

legal terminology as a result of limited schooling. As the representative of D.A.R.E. in the CBC television documentary (January 3, 1982) "Sharp and Terrible Eyes" commented, "there can be no justice without understanding". If this is accepted as true then the need to assess the degree of understanding of the language of juvenile court proceedings from the juvenile's perspective becomes a critical consideration and a primary research problem. What the juvenile understands about his/her hearing is the central issue in this thesis. To elaborate, some key questions to be considered are, Does the juvenile understand the charges? Does s/he understand what it means to make a plea? Does s/he even understand the difference between guilty and not guilty? Does s/he understand the reason for an adjournment, the nature of the disposition or for the termination of the proceedings - a stay of proceedings, the withdrawal of a charge, adjournment sine die, final dispositions? If the juvenile's understanding of the formal legal process proves to be less than adequate (i.e. the juvenile doesn't understand why he is in court, what he is charged with, what the seriousness of the offence is, what the possible dispositions might be) then two related issues must be investigated. Specifically, "How best can the goals of the due process procedure be secured while at the same time ensuring that the juvenile is able to 'understand' the nature of the proceedings within the court setting?". The outcome of the hearing(s) will ultimately affect the juvenile in one way or another. Likewise, if one of the key functions of the law is to educate (Nader, 1973) and the juvenile

does not understand the language used in the proceedings, then can his/her court experience be a learning one? Will it deter the juvenile or instruct him/her?

An investigation of the juvenile's understanding of the language used in juvenile court proceedings is particularly important as the Juvenile Delinquents Act (JDA) is about to be replaced by new legislation known as the Young Offenders Act (YOA). The YOA unlike the JDA, places its emphasis on the juvenile's legal rights including the right to the due process of law. It also stresses the juvenile's right to participate in decisions and his/her responsibilities. The critical question is whether or not this orientation is realistic if it is found that the juvenile does not recognize his/her rights as being protected?

One is unable to find many examples of efforts on the part of lawyers (Ericson and Baranek, 1982: 83), or members of the judiciary to make legal proceedings more understandable to the accused juvenile. More often than not the individual is left in a state of confusion and bewilderment as to what has occurred in court. Attempts to make more sense of legal proceedings seem only to be those made in court by individual judges, lawyers or other key legal actors rather than by any widespread or institutional reform in this direction outside the courtroom. This is particularly significant in the context of the current changes which are presently occurring within the Winnipeg juvenile court. Specifically one sees a strong movement towards a more formalized legal procedure. One obvious effect of this has been the increase of

defense counsel in the courtroom. They have seized the role of case manager from probation officers. Whereas probation officers have traditionally provided the juvenile with an explanation, either partial or complete, of the legal proceedings, one is faced with the question of whether or not defense lawyers will now provide this explanation? If they do not, will the use of legal rhetoric without explanation become a means by which these key legal actors are able to assert their dominance over probation officers, vocal parents, social workers and juveniles? As two authors comment,

> The courtroom, too, has its exotic jargon. Its subject is the defendant, who cannot understand what it says of him. All too often the defendant is left to make of it what he can. No effort is made to bring him in, even on the court's terms. It is taken for granted that he cannot and moreover does not want to understand. He is universally seen as the recipient of whatever is judged to be appropriate for him. (Bankowski and Mungham, 1976: 89)

One can suggest, based on the preceding passage, that the more the obfuscation of language, the greater the manipulative power of law as a control structure. To elaborate, the juvenile, probation officer, parent or social worker who is unable to understand the language used in court is forced to rely on key legal actors to determine the nature of the proceedings and the outcome of the case. Denied of an explanation as to what has occurred in court that day they become <u>completely</u> dependent on the members of the legal profession to resolve the case. Their input is negligible. The court's pedagogical function is negated.

The study of the potential for a "Plain English" movement in

the Winnipeg juvenile court system is thus really the study of the current use of language in courtrooms and how this use might be changed and/or modified to ensure a more thorough understanding of the process for the juvenile involved. It is also an investigation of what is done outside of the courtroom by key legal actors to explain the process and the procedure of the court to the juvenile. This inquiry does not advocate deprofessionalization or deformalization of process. As Danet (1980: 489) has commented "reform of legal English is not a rejection of legality but an attempt to make it more accessible to the lay person. The linguistic reformers are not claiming that we should do away with legal forms but only that we should make them better". Furthermore, Bala and Clarke (1981: 187) warn of the dangers of simplifying legal language too much. They cite the case of Smith v. Queen from which the following verbal exchange is excerpted.

> Judge: There's an information here sonny, that on or about the 7th of June, a long time ago, unlawfully and indecently assault Helen Balaba (sic). What about that, is that correct or not? What did you do?
>
> Gerald: We took her pants down and let her go. (op. cit. in Bala and Clakre, 1981: 186)

This case was brought before the Supreme Court of Canada which "held that this was inadequate. The charge should have been explained to him in language he could comprehend, with an explanation of the gravity of the offence" (Bala and Clarke, 1981: 187).

The "due process" model and the "plea bargain" model, characteristic of the juvenile justice system, are recognized as accomplishing and fulfilling the aims and goals of criminal process

while at the same time attempting to safeguard the rights of the accused juvenile. As Hackler (1978: 208) points out however, "relatively little research has been done to see whether the person processed by the criminal justice system really understands what is happening". In substantiating this claim that there is a genuine need for such an assessment he cites an example of a young Indian who had been institutionalized in the Northwest Territories. He comments that "after being released the juvenile told his friends that everyone treated him very nicely and he was well fed and housed. However he complained that no one had paid him yet!". This thesis, in short, takes such a blatant example of the failure of communication through legal language to be indicative of the need to examine in detail the juvenile's understanding of the juvenile court proceeding and subsequently to provide ways and to advocate means to alleviate such serious forms of misunderstanding.

An additional concern is raised in this thesis with respect to the issue of fairness of current court proceedings. Will the reform of legal language contribute to an increase in the "fairness" of the procedure of determining guilt or innocence? In addressing this topic some might query as to whether or not the accused will benefit at all by virtue of a new comprehensibility of the language in juvenile hearings. To respond to this it might best be said that certain individuals will benefit but that the disadvantaged will only be marginally affected. A juvenile's rights may be protected however fairness will not necessarily mean that the juvenile also understands that he has been handled in an

objectively fair manner.

Some writers, Procacci (1979) in particular, would most likely strongly advocate against the reform of legal language employed in juvenile court hearings arguing that in other areas of law, in contracts specifically, the obscurity of meaning created by legal English has actually benefitted litigants more often than it has hindered their success before the courts. Procacci would seem to suggest that if the obscurity and vagueness of legal language enables individuals to be more successful with their cases because the court will rule in favor of the accused where reasonable doubt is created, then legal language as it currently exists should be perpetuated and not subjected to scrutiny, analysis or reform. Such a position will be disputed theoretically in the course of this thesis and an attempt will be made to establish why the perpetuation of legal language for the purposes Procacci suggests should not be the primary motivating factor in evaluating the need for the reform of legal English.

This thesis falls within the boundaries of one substantive area within the discipline known as the sociology of law. Some of the major research trends and theoretical developments of the area will be briefly highlighted in order to situate this study and its objectives.

The Broader Framework: The Theory and Research Trends of The Sociology of Law

The study of law as an area of social inquiry is not new. Specifically as Timascheff (1937: 224) points out "since olden

times, law has been the object of a science called 'jurisprudence' ... which has developed into a network of numerous special sciences called 'civil law', 'criminal law', 'constitutional law' and so forth". Jurisprudence recognizes law as a force which imposes its rules and norms upon the will of the individual persons. These rules and norms become the central focus of studies in jurisprudence.

The view of law which jurisprudence assumes is an important one and yet a seemingly narrow one. While much of the classical work generated out of this orientation features some of the most famous names and writings, the research does not in any way attempt to bridge the gap between law and society. As the world becomes increasingly complex the law has expanded into all areas of human activity. As Edwin Schur (1968: 4) points out,

> ...when one realizes that <u>any</u> aspect of social relations can be brought within the legal system (that is, made subject to legal ruling) simply by an individual initiating a suit in court to establish the rights and duties involved in the situation in question, one sees quite clearly that the boundaries of law are, in at least one sense, coterminous with those of the full range of social interaction.

The recognition of the link between law and social relations represents the most significant premise in combining the areas of law and sociology into a single sub-discipline. Insofar as sociology can best be described as "the intellectual discipline concerned with developing systematic, realiable knowledge about social relationships" (Hoult, 1969: 308) it is hardly surprising that law has become an area of investigation. The sociology of law can be

described as the study of society and some aspects of human behavior. Schur (1968: 4) states that "it is the analysis and understanding of the legal system as such, rather than the mere recognition of legal aspects in selected areas of social life, that is the primary concern of the sociology of law". Clearly this comment places the current study well within the parameters of the sociology of law.

Perhaps the most important issues to dominate the sociology of law have been first the desire to find the meaning of law and second the matter of developing appropriate theoretical perspectives in the study of law. The search for the meaning of law has generated various positions within the sub-discipline. Despite the different views on this issue the overwhelming conclusion has been that the meaning of law is ultimately "ideologically-based". In terms of theoretical perspectives the normative and interpretive paradigms have come to dominate much of the research. These two paradigms have generated a wide variety of research interests and investigation. An examination of the publications in this area reveals a preponderance of theoretical writing. Whatever applied research there is, is less developed than theoretical contributions.

The lack of empirically-based research in the area of the sociology of law is recognized by such authors as Reasons and Rich (1978: v) who in the preface of their reader state that praxis (Practice as distinguished from theory) is an all too often neglected aspect of this research area. In expanding this viewpoint,

Grace and Wilkinson (op. cit. in Reasons and Rich, 1978: 441) suggest that in fact a type of sociology of law unlike that which we have known to date is being called for. Specifically,

> The sociology of law being called for is seen to have the potential of being relevant. We should know how the courts operate, in order to reform, criticize or lubricate the mechanisms. We ought to know the effects of laws in order to advise the law-makers and we ought to study the operations of the law so that we can articulate demands for higher levels of law. (ibid, 1978: 441)

Recalling that the purpose of this thesis is to examine the potential for a "Plain English" movement with the Winnipeg juvenile court system by assessing the degree of understanding that the accused juvenile has of the legal process which s/he experiences, this research would seem to fulfill the goals of the "new" sociology of law as Grace and Wilkinson envision it. I am approaching this study with an informed understanding of the juvenile court.[1] Without such an intimate knowledge of the proceedings of the juvenile court the investigator is in no position to offer criticism or advocate reforms as they are seen to be necessary.

It is the intention of this thesis to combine the elements described in Grace and Atkinson's (op. cit. in Reasons and Rich, 1978: 441) passage in an attempt to contribute to a sort of sociology of law which has remained unrealized to researchers in the area until recently. Likewise, it is my intention to contribute to the emerging area of "law and language" in the way that William Probert has called for by examining the juvenile's understanding of the language used in the juvenile court proceedings. My

approach clearly seeks to extend the existing socio-legal literature in the area. As Ericson and Baranek (1982: 5,29) comment research to date "has focused overwhelming on the perspectives and actions of criminal control agents and includes very little on the perspective of the accused. There has been little effort...to take the perspective of the accused as a focus of inquiry in studying the criminal process up to the point of sentencing and yet the accused is in a unique position because he is the only actor who experiences the process from beginning to end". What the juvenile does and does not understand about the language used in the juvenile court will enable me to assess the potential for a "Plain English" movement in the Winnipeg juvenile court.

Conclusion

This chapter set forth the aims and goals of this thesis within a defined theoretical framework. The prime motivating factor in the research was what I perceived to be a failure of communication between the juvenile and the court which has resulted from the use of legal language. The need to assess the degree of understanding of the language of juvenile court proceedings from the juvenile's perspective constitutes the primary research problem. The juvenile's understanding of the legal process was assessed through the administration of an interview schedule composed of questions designed to measure various dimensions of the juvenile's understanding of the court proceedings. If the juvenile's understanding is minimal then the question arises, namely, how best can the goals of due process be served while at the same time ensuring

that the juvenile (whose future will ultimately be affected in one way or another by the outcome of the process) can 'understand' the nature of the occurrences within the court setting? Probation officers, defense counsel and juvenile court judges were interviewed as well to find out not only how this question could best be answered but also to determine their role in the explanation process of legal language to which the juvenile is exposed and subjected.

The next chapter will discuss the methodology of the research. Specific discussion will be devoted to a description of the instruments that were used.

FOOTNOTES

[1] From April 1981 to February 1982 I was employed by the Solicitor-General of Canada as a courtroom observer (Winnipeg site) for the "National Study On The Functioning Of The Juvenile Court".

CHAPTER 2

METHODOLOGY

Introduction

The juvenile's understanding of the legal process which characterizes the juvenile justice system has to date remained a relatively unexplored area of research. Few studies, Snyder (1971) and Wheeler (1968) excluded, have attempted to extend the theoretical discussion by the actual testing of relevant hypotheses. Most research in this area of inquiry Matza (1964), Langley (1978) and in part Snyder (1971) and Wheeler (1968) have assumed the "verstehen" approach advocated by Weber. On a philisophical level this work is best described as phenomenologically-based delinquency analysis. The problem was to develop an appropriate research design for this study which would be less exploratory and more confirmatory. Acknowledging the difficulty of creating an appropriate research design in this area Langley's (1978) research noted that no attempt was made to test any specific hypotheses concerning youth's expectations and perceptions of first court appearances. To illustrate this point they write, "based upon the absence of published data and a general idea of what might be important to youths in their initial exposure to juvenile court because of conflict with the law, the design of this study was developed around semi-structured questions" (Langley, 1978: 40).

Hypotheses

This study, unlike those cited above, attempted to test some specific hypotheses. Its methodology was molded to suit the research problem at hand and did not model or follow completely any previous or current research design. The approach of Langley (1978) and Ericson and Baranek (1982) was also drawn from at times.

Inasmuch as this investigation examined the potential for a "Plain English" movement within the Winnipeg juvenile court, the primary research problem was to assess the juvenile's understanding of the legal language employed in juvenile court proceedings. I suggested that three factors which when combined formed the independent variable termed "type of key legal actor" directly affected the juvenile's understanding of legal language: (1) the amount of contact that the juvenile has had with probation services; (2) whether or not the juvenile has legal counsel[1] prior to or during the formal legal procedure; (3) whether or not the judge has explained any part of the process and procedure to the juvenile is viewed as an important element. Formulating these three parts of the independent variable into a relational form with the dependent variable, juvenile's understanding, the following hypotheses were generated:

#1 H_1: A juvenile's understanding of legal language is dependent on contact with probation services.

H_0: A juvenile's understanding of legal language is not effected by contact with probation services.

#2 H_1: A juvenile's understanding of legal language is dependent on contact with legal counsel

prior to his/her first courtroom hearing.

H_0: A juvenile's understanding of legal language is not effected by contact with legal counsel prior to his/her first courtroom hearing.

#3 H_1: A juvenile's understanding of legal language is dependent on the judge's explanation of the process and procedure to the juvenile.

H_0: A juvenile's understanding of legal language is not effected by the judge's explanation of the process and procedure to the juvenile.

A fourth and fifth related hypotheses are suggested.

#4 H_1: A juvenile's understanding of legal language is dependent on the amount of time the juvenile has spent in custody.

H_0: A juvenile's understanding of legal language is not effected by the amount of time the juvenile has spent in custory.

#5 H_1: A juvenile's sense of justice is dependent on his/her understanding of legal language.

H_0: A juvenile's sense of justice is not effected by his/her understanding of legal language.

In connection with the five hypotheses two assumptions were also suggested which, although were not testable in the context of this research, were nonetheless viewed as related concerns. First, if the juvenile's understanding of the legal language used in his/her hearing was limited then perhaps the court hearing would have little or no impact on the juvenile's future behavior. Second, if the juvenile's understanding of the legal language used was limited then perhaps the courtroom hearing would have less educative value for the juvenile then it might otherwise have.

Focused Interviews

This research was conducted in the Provincial Judges Court, Family Division in the city of Winnipeg during the time span of

April to June 1982. Although this time period denotes the actual period of data collection the nine months, April 1981 to February 1982, were spent conducting observational research of the courtroom procedure.[2] It was as a result of this observational period that the research problem emerged and the focus of this study was clarified. It was the original ambition of the researcher to procure transcripts of juvenile court proceedings to aid in the process of pinpointing actual examples of the use of legal language by either the prosecutor, defense lawyer, the judge or other key legal actors such as probation officers and child care workers. It was hoped that such examples might illustrate or point to difficulties the juvenile encounters in attempting to understand or comprehend the meaning of the language employed in the courtroom hearing. Extracts from the transcripts would then have been reproduced into an interview schedule to be administered to the juvenile. This would have afforded the juvenile the opportunity to furnish the interviewer with his interpretation of specific passages. Likewise questions would have been asked about "legal language" at a more general level. Assessment of the accuracy of responses would have afforded the researcher the opportunity to analyze whether or not legal language is problematic for the juvenile concerned. If it was found to be problematic then the implications of such findings would have been addressed. This methodology however proved to be impossible to pursue by virtue of two limitations. First and foremost, it is not possible for any member of the public, including researchers, to procure the transcripts

generated from any juvenile court hearings whether it be a bail hearing, pretrial, trial, transfer hearing or disposition hearing. Second, during the observational period of April 1981 to February 1982 the Supreme Court of Canada in C.B. -and- Her Majesty The Queen and Between C.B. -and- His Honour Judge E. Kimelman Senior Judge of The Provincial Judges' Court (Family Division) -and- The Honourable The Attorney General of The Province of Manitoba ruled that all juvenile court hearings are private and in camera. Extrapolating from the decision rendered by the high court the conclusion reached was that now more than ever attempts to gain access to juvenile court transcripts would be barred.[3]

The limitations placed on the research by the nature of the juvenile justice system led to a redefined approach to the research problem. In lieu of the proposed usage of transcripts the primary methodology became that of focused interviews.

The focused interview was selected over other types of interviews because of its nature and distinguishing characteristics. As Merton, Fiske and Kendall (1956) point out there are four specific features which separate it from other interviews.

> First of all, the persons interviewed are known to have been involved in a particular situation ... Secondly, the hypotethically signigicant elements, patterns, processes and total structure of this situation have been provisionally analyzed by the social scientist. Through this content or situational analysis, he has arrived at a set of hypothesis concerning the consequences of determinate aspects of the situation for those involved in it. On the basis of this analysis, he takes the third step of developing an interview guide setting forth the major areas of inquiry and the hypotheses which provide criteria of relevance for the data to be obtained

> in the interview. Fourth and finally, the interview is focused on the subjective experiences of persons exposed to the pre-analyzed situation in an effort to ascertain their definition of the situation. (Merton, Fiske, and Kendall, 1956: 3)

This type of interview demands that the interviewer focus upon a particular experience and its effects. In this case the language used in the courtroom hearing and the subsequent effect of the procedure was the central concern. Topics for discussion in the interview were known in advance. As one source commented, "the more detailed the investigator's knowledge of the situation in which the person being interviewed has participated, and the more specific the investigator's hypotheses, the more precisely can the investigator outline in advance the questions to be covered in the interview" (Selltiz, Wrightsman and Cook, 1976: 320). In regard to the type of questions which were included in the interview guide it was decided to make use of two of the three kinds which Merton, Fiske and Kendall (1956) suggest can be used most effectively. Specifically, both unstructured and semi-structured questions were employed. The unstructured question was viewed as an opportunity for the interviewee to refer to "any aspect of the stimulus situation or to report any of a range of responses" (Merton, Fiske and Kendall, 1956: 15). Both the stimulus and responses are free. This type of question was used predominatly at the beginning of the interview and then at intermittent points throughout. The rest of the interview was composed of semi-structured questions which focused the interviewee's attention upon a particular aspect of the stimulus situation but allowed him/

her to respond freely.

The real advantage of this methodology stemmed from the fact that the interviewer had the option of exploring the reasons and motives of the respondents when this was necessary. Clearly it is my opinion that the focused interview provided the best means to explore the proposed hypotheses.

Research Setting

The juvenile justice system like its adult counterpart is characterized by elaborate proceedings. Without delineating all the elements of the process, since this is the topic of the next chapter, I will only describe those aspects of the proceedings which were central to the methodology.

The research was concerned with the pretrial court in the Winnipeg juvenile justice system. The pretrial court was selected for study on the basis of set criteria. Initially it was found that the pretrial court usually held every Friday at Building 30 of the Fort Osborne Barracks[4] represented at minimum the juvenile's second experience in the courtroom. This assumption was based on a familiarity with the functioning of the juvenile court. Most but not all juveniles who come to pretrial have been to first appearance court. The first hearing is when the juvenile is or may be arraigned (i.e. the judge reads the charge, either verbatim or through paraphrasing, which has been laid against the juvenile) and asked for a plea as to guilt or innocence. Other matters which may be addressed at this point in the juvenile's hearing

include asking the juvenile whether or not s/he desires legal counsel or has already consulted an attorney in regard to the charge(s) presently before the court. If s/he is denying the charge then the hearing may be adjourned to the pretrial court as intermediary step between the first appearance court and trial. This was an important criteria for the selection of the pretrial court as the site of interest. To elaborate, one could safely assume that the juvenile who is found in the pretrial court has had at least some experience inside the courtroom. Thus any questions posed regarding his/her understanding of legal language used in the proceedings and the nature of the process will be based upon more than just a single contact. One can suggest that the earlier along the juvenile is in the process the more limited his/her understanding is likely to be. It might bias the data in favor of limited understanding if juveniles who had only been to first appearance court were sampled.

One can safely assume that the juveniles in pretrial had already entered a plea, specifically a denial to the charge against them. This is an important consideration insofar as it confirms that the juvenile has been exposed to at least some legal language prior to the hearing. A related issue is that the juvenile has appeared before at least one other judge who may or may not have read the charge verbatim. If it was read verbatim then the judge may have inquired of the juvenile if s/he understands the charge before the court and if there was confusion then the judge may have explained the charge to the juvenile in a more comprehensible

manner. Likewise in asking for a plea as to guilt or innocence the judge may have questioned the juvenile whether or not s/he understands the difference between guilty and not guilty. These concerns were particularly important in regard to hypothesis #3 as set forth at the beginning of this chapter.

Juveniles in pretrial have not only had the opportunity to appear before at least one judge but likewise there has been more opportunity for contact with probation services and legal counsel. Note that one of the most common reasons for adjournment at the first appearance court level is to obtain legal counsel or at least consult legal counsel. This is significant. It is the position of the author that juveniles who progress through the system are more likely to have had the opportunity to decipher the legal process with the aid of lawyers and/or probation officers than their "uninitiated" counterparts who are disposed of in first appearance court. A longer period of time in the legal setting may allow the individual to become more familiar with the behavior and language which prevails.

The pretrial court might also be termed "a court for sorting out". It represents a point of departure to other avenues of the system. To elaborate one finds that most juveniles who come to pretrial court hearings are asked whether or not they are still denying the charge(s). If a plea is changed to one of "admit" then a number of possible events may occur. The hearing may move immediately to disposition or as is more often the case there will be an adjournment. The reasons for adjournment can range from

requiring the presence of a particular individual whose comments are essential to the hearing to the need for a pre-disposition report[5] to be prepared and submitted to the court to aid the judge in the decision-making process. The hearing would then be adjourned to the disposition court for finalization. More often then not however, the denial to the charge will remain unchanged with the prosecution indicating that they are prepared to proceed to trial if this is the case. Before adjourning the hearing for trial certain issues can be clarified if applicable. For example, if the juvenile is adamant about the denial of the charge and the prosecutor is in some doubt the Crown may request that the judge explain such relevant legal issues as "party to an offence"[6] or "acting as a lookout"[7] to the juvenile, particularly if there is no lawyer present. An important point to be noted here is that if there is no legal counsel involved in the case most judges will advise the juvenile of his right to a lawyer and in many cases suggest that s/he at least consult one given the nature of the charges. With these matters clarified a trial date will be set if necessary. If the juvenile indicates that s/he will not be seeking legal counsel the judge may explain some aspects of the trial process. For example, the judge may advise the juvenile that s/he can bring any witnesses that will testify on their behalf. A "trial slip"[8] is then prepared for the juvenile and both the juvenile and his/her parent/guardian are asked to sign it. Each are given a copy. The Crown keeps another copy and the other is placed on the legal file.

One final option for what might occur in the pretrial hearing

is a "stay of proceedings". This means that the juvenile would be informed that the charge(s) against him/her has been dropped. The Crown is not prepared to proceed to trial.

From the preceding discussion one sees that both the judge and the Crown prosecutor can and often do play an active role in the pretrial hearing. Part of their respective roles can be described as explanatory. Inasmuch as the explanatory role of the judge and the prosecutor is more pronounced at this stage of the proceedings pretrial hearings are an important focal point in this research. The legal status of a juvenile's charge is significantly altered at this stage (no matter which route it takes) and should generate the need for an explanation.

The possibilities for what might occur in pretrial court then was the primary criterion in its selection. A second major criterion was the caseload of the court. During the nine-month observational period hundreds of hearings, including a large number held in pretrial court, were observed. The average time per hearing ranged from three to five minutes. Insofar as the literature which supports the use of legal language suggests that such use contributes to and promotes the efficiency of the system, then a primary motivating factor in focusing on this component of the greater juvenile justice system stemmed from the argument that the expediency with which cases are handled may have meant that legal language was used more frequently here than in other courts to facilitate the process.

Juvenile Interviews

The population of juveniles for this study was defined as those individuals either male or female between the ages of 14 and 17 years who came before the pretrial court charged with either Break and Enter (with intent; and theft), Theft (either over $200.00 or less than $200.00), or Mischief, or any combination thereof during the data collection period. A juvenile may have had other offences such as Liquor Control Act (LCA) or Highway Traffic Act (HTA) violations or other criminal code offences along with those above. As long as they had at least one of the selected offences that was a sufficient condition for inclusion.

The age range, 14 to 17 years, had been determined in accordance with the provincial guidelines for legal age in mind. Specifically it is common practice that any time that a juvenile under the age of 14 years appeared in the Manitoba juvenile court the question of the child's "competency" was at issue. To be competent is, according to one law dictionary, to be adjudged to be "capable of doing a certain thing; capacity to understand, and act reasonably" (Gifis, 1975: 38). Recognizing that Section 19(1) of the JDA sets forth that if the judge is satisfied as to the child's competency to testify in a hearing then the hearing can proceed this matter is often times still problematic.

Given the ambiguity surrounding the matter of competency of children under 14 years of age it was decided that these juveniles be excluded from the sample. The decision was predicated on the assumption that for the most part juvenile offenders lack

familiarity and a thorough understanding of much of the legal process just by virtue of limited schooling. Thus the inclusion of juveniles under the age of 14 years in the sample whose competency was problematic to the court at the best of times would only serve to complicate the investigation. The inclusion of this group in the sample might have served to distort the results of the study in favor of the argument that legal language employed in the juvenile court is in fact incomprehensible to the juvenile. To elaborate, a juvenile under 14 years may understand less about legal language just by virtue of chronological age. For this reason, juveniles under 14 years were excluded.

Age 17 was chosen as the upper limit in the age range established because it represents the maximum age for any individual, male or female, to fall within the jurisdiction of the juvenile court in the province of Manitoba. It is important to note that in some provinces the courts only have jurisdiction over juveniles who are 16 years of age and under. Thus, this jurisdiction defines who is or who is not "a juvenile".

No guidelines were set prescribing the sex composition of the sample. Any individual whether male or female who appeared during the data collection period and met all criteria was included. As expected the sample was predominantly male given the published statistics regarding the sex of juveniles before the courts in the city of Winnipeg. No differentiation of the understanding of the legal language used in the juvenile court process according to sex was hypothesized however.

Break and Enter, Theft and Mischief were chosen as the charges of interest on the basis of the statistics generated by Statistics Canada, Canadian Centre For Justice Statistics, Juvenile Services Program, 1980. According to this source of information Theft accounted for 26% (approx.) of the total delinquencies in Winnipeg for that year with Break and Enter constituting 19% and Mischief making up 8%. The remaining 47% consisted of delinquencies such as possess stolen goods, take car, auto offence (under the criminal code), forgery and fraud, violent crimes, narcotic offences, provincial traffic, liquor and school offences as well as municipal by-law violations and a residual category termed "other offences". Although provincial liquor offences constituted a higher percentage of the total number of delinquencies than those of mischief it was decided not to select these charges for inclusion because they were offences which contravened a provincial statute as opposed to a section of the Criminal Code.

An important third standard to be satisfied before a juvenile was included in the sample was to determine whether or not s/he had entered a plea on the charge of interest. The entering of a plea is viewed as significant because it will inform the researcher of two fundamental matters. First, it established that the juvenile has had at least one courtroom experience before the pre-trial hearing. This is important because it ensured that if any lack of understanding of the legal language used in the hearing was found the researcher could be assured that this was not merely a function of the fact that it was the juvenile's first courtroom

hearing. Second, it ensured that the juvenile had had some exposure to the legal language employed in juvenile court hearings.

The only way to determine whether or not a juvenile had entered a plea was to consult the informations of the relevant charges to this study. The legal information stated whether or not a plea had been entered formally or whether it had been indicated. These data were obtained in advance of the juvenile interview.

Age of the juvenile, type of offence and whether or not the juvenile had entered a plea were three significant control variables in this phase. There were however other control variables which were important for the purposes of this phase of the study and consequently should be addressed at this point. These were: 1) the juvenile's prior record, 2) whether or not the juvenile had ever been in custody on this charge(s), 3) whether or not s/he had legal counsel or had any contact with a lawyer relating to the charge[9], 4) the amount of contact the juvenile had had with probation services, and 5) the particular judge presiding over the pretrial court.[10]

The juvenile's prior record was viewed as a critical factor in exploring the juvenile's understanding of the legal language used in the pretrial hearing. If the juvenile had a prior record which consisted of criminal code charges and/or provincial statute violations then s/he had had prior court experience. This fact may account for an increased understanding of legal language on the part of the juvenile. One important exception to this comment should be made. Some juveniles who appear before the court have

been dealt with before on a non-judicial basis. This means that although the juvenile had been arrested s/he had been diverted from the formal court process. A charge was never laid. The juvenile would have had no contact with the courtroom setting. In assessing the influence of prior record on the juvenile's understanding it was necessary to distinguish between the two types of prior contact mentioned above.

Custody, like prior record was identified as an important factor in testing the research hypotheses. Many authors, Matza (1964) and Letkemann (1973) to suggest two, have commented that juveniles who perhaps have had repeated contact with the court system are more likely to become familiar with the functioning of the court in general. These juveniles are afforded the opportunity to talk to others with more experience and more "folk knowledge". For this reason, the issue of custody needed to be explored in this research. The other dimension relating to the custody matter was the topic of pre-court release. Some juveniles may have been arrested by the police and brought to the Manitoba Youth Centre[11] where they are detained for only a short period of time.[12] These individuals did not spend enough time in custody to acquire any substantial information from other detained juveniles. They were not considered to be in custody for this research.

Interview Procedure

The original sample size for this study was to have been 100 juveniles who fulfilled the criteria described in this chapter.

The actual sample size was 60 juveniles.[13] A small sample does not appear to be an unusual situation in research such as this. In the Langley et. al. (1978) study the total sample size was only 50 juveniles. Granted the researchers note that their original methodology had to be compromised because of lack of funding however one person involved in that study told me that this kind of research - interviewing juveniles after their court hearings - is at the best of times very demanding. He stated that it is very difficult for one person to meet with the juvenile before court to find out whether or not they are willing to participate and for the same person to subsequently conduct the interview.[14] This individual felt that this reason was just as important as the funding problems in accounting for the small sample size. The work of Snyder (1971) also illustrates that small samples are not uncommon in this area of research.

Those youths included in this study were selected using the following procedure. Contact was made with the Clerk of Court Office regarding juveniles who had upcoming pretrial hearings. A list of names, court appearance dates and charges before the court was generated. I consulted juvenile's legal files from which I obtained information concerning their age, charges before the court and whether or not s/he had entered a plea to these charges.[15] The information which I gained from examining juveniles' files was cross checked by asking the juvenile questions concerning age, charges before the court and pleas during the course of the interview that I had with him/her. (See Tables I, II, III).

The four other control variables considered important in this study were addressed. Information concerning a juvenile's prior record and whether or not s/he had ever been in custody on this charge was obtained from the legal files. Whether or not a juvenile had had contact with a probation officer and/or a defense counsel concerning the current charges was determined through the interview itself. Which judge was sitting in the pretrial was discovered by asking the assigned prosecutor (See Tables IV - X inclusive).

Before the pretrial court the juvenile was approached and given an oral as well as written description of the study (See Appendix I).[16] It was essential that the researcher not be viewed as an employee of the court but rather as a graduate sociology student. Little difficulty was encountered in this regard. Juveniles were generally receptive to the idea of being interviewed.[17] This procedure of making contact with the juvenile, explaining the nature of the research and determining whether or not the juvenile was willing to participate was essentially a "pre-hearing interview" (Langley et. al., 1978: 47).

Next the juvenile was called into the courtroom for his/her hearing. Often times the lawyer and/or probation officer took the time period immediately following the courtroom hearing to discuss what transpired in court. This was possibly the only time that a lawyer would meet his/her client prior to the next court date. The post-hearing contact was conceptualized as part of the pretrial phrase which was not in fact over until the lawyer and/or probation

TABLE I
AGE OF JUVENILES

When is your birthday? What year were you born?

Age of Juvenile	%	Frequency
14 years	10.0	6
15 years	20.0	12
16 years	21.7	13
17 years	20.0	12
18 years*	28.3	17
Total	100.0	60

*Juveniles who fall into the category of 18 years were 17 at the time of the alleged delinquency.

TABLE II
CHARGES BEFORE THE COURT

In this interview I want to ask you about the court case which is going on right now in which you are charged with _____ and for which you have appeared in juvenile court before. Is this information correct?

Charges Before Court	%	Frequency
Theft Under	36.7	22
Theft Over	--	--
Break & Enter (Theft/Intent)	38.3	28
Willful damage*	--	--
Break, Enter & Theft and Theft	16.7	10
Theft, Damage and B,E & T	5.0	3
Theft and Wilful Damage	1.7	1
Damage and Theft	1.7	1
Total	100.0	60

*Mischief is used interchangeably with Damage

TABLE III
PLEAS ENTERED

How did you plea on the charge(s) of _____?

Plea To Charge	%	Frequency
Guilty to all charges	10.0	6
Guilty to some / not guilty others	23.3	14
Not guilty all charges	66.7	40
No plea	--	--
Don't remember	--	--
Total	100.0	60

TABLE IV
PRIOR RECORD

Is this the first time that you have ever been before the juvenile court? (i.e. have any charges in the past brought you to court?)

Prior Record	%	Frequency
Yes, I've been to court before	43.3	26
No, I've never been to court	55.0	33
Don't remember	1.7	1
Total	100.0	60

TABLE V
TIME IN CUSTODY

Were you held in custody on the current charges?

Held in Custody	%	Frequency
Yes, I was detained	33.3	20
No, I wasn't detained	61.7	37
Don't remember	5.0	3
Total	100.0	60

TABLE VI
TALK TO A LAWYER

Did you talk to a lawyer of any sort before your first court appearance on this charge(s)?

Talk to a Lawyer	%	Frequency
Yes, I talked to one	55.0	33
No, I didn't talk to one	41.7	25
Don't know/Don't remember	3.3	2
Total	100.0	60

TABLE VII
HAVE LEGAL COUNSEL

Have you had a lawyer with you in the courtroom at any of your courtroom hearings?

Have a Lawyer	%	Frequency
Yes, I have	58.3	35
No, I haven't	40.0	24
Don't know	1.7	1
Total	100.0	60

TABLE VIII
TALK TO SOCIAL SERVICES

Who did you meet with from social services before you appeared in court for the first time on this charge(s)?

Who did you meet with	%	Frequency
Probation officer	26.7	16
C.A.S.	3.3	2
Probation and C.A.S.	18.3	11
P.O. & Social worker	8.3	5
Not applicable	43.3	26
Total	100.0	60

TABLE IX
WHO DID YOU TALK WITH THE MOST FROM SOCIAL SERVICES

Who did you talk with the most from social services?

Who did you talk with	%	Frequency
Probation officer	13.3	8
C.A.S.	8.3	5
Social worker	5.0	3
Not applicable	73.3	44
Total	100.0	60

TABLE X
JUDGE SITTING*

Judge sitting	%	Frequency
Judge #1	25.0	15
Judge #2	11.7	7
Judge #3	8.3	5
Judge #4	8.3	5
Judge #5	38.3	23
Judge #6	8.3	5
Total	100.0	60

*Information concerning the judge sitting in pretrial court was gained by talking to the Crown prosecutor functioning in the pretrial court. The juvenile had no way of knowing who the particular judge was so asking a question would not have yielded any meaningful results.

officer at least had an opportunity to have such a discussion. Once a probation officer and/or lawyer had had an occasion to discuss the hearing with the juvenile the pretrial was defined as being at an end. Only after the occasion for such a meeting had passed did the interview begin.

The interviews ranged between 15-20 minutes in length. They were focused in nature and contained both unstructured and semi-structured questions (See Appendix II). The interviews were conducted in lawyer-client interview rooms. They were not tape-recorded. When the juvenile seemed to have difficulty grasping the questions read to him/her they were reformulated in such a way that it made them more comprehensible. Most juveniles were quick to grasp the meaning of the questions and answers were rarely confused or disjointed.

Since these interviews were conducted following the courtroom experience certain structural problems were encountered. First, when a parent/guardian or social worker accompanied the juvenile to court, it became difficult to speak to the juvenile away from these persons. In the case of a juvenile's parent(s) I found that they were very willing to interject into the discussion between the juvenile and myself. This finding is consistent with the findings of Langley et. al.(1978). When a juvenile's worker from a group home or the Children's Aid Society was present I found that juveniles looked to this person for help in answering the questions posed. I felt that juveniles tried to answer questions in a way that they believed would please this individual (Baron & Byrne,

1977). One might say that the effects of the acquiescent response set were at play. Second, when a juvenile's lawyer and/or probation officer was present to talk to the juvenile after the courtroom hearing this posed an additional problem in trying to get the juvenile away from these people to conduct the interview.

Any responses given to questions put forth by the juveniles were accepted at face value. Overall juvenile's initial and immediate responses were recorded.

Probation Officers' Interviews

The Winnipeg Probation Services for juveniles is divided into six area districts. Each district is assigned its caseload on the basis of those juveniles who come into conflict with the law and reside, temporarily or permanently, with the probation district's boundaries. Each of the six probation districts employ a number of probation officers. Some offices have seven probation officers while others have as many as eleven. When all districts are combined juvenile probation officers in the city of Winnipeg total well over fifty. Given the time frame of this research interviewing all persons proved to be an insurmountable task for a single researcher. Insofar as each district has what is known as a "Senior Probation Officer"[18] along with "Intake Workers"[19] it was more viable to interview these persons. This group of people was judged to be a reliable source of information for this research.

The senior probation officer serves not only as an administrative organizer and coordinator of his/her respective district

but often times as a spokesperson on certain issues within the system. This spokesperson role is particularly advantageous to the current study as the responses given to the questions posed reflect at least in part, the sentiments of other probation officers and not merely one individual person. Likewise senior probation officers have all had extensive experience within the juvenile court system which is an important consideration. On these grounds seven[20] senior probation officers of the juvenile division of probation were interviewed as opposed to all the probation officers in the system.

Intake workers were selected for interviewing on the basis of the role they play in the formal processing of juveniles through the system. These probation officers make the first contact with the majority of juveniles so one would expect that this person's role is to a large extent an explanatory one. Likewise the fact that the intake worker is the most likely probation officer to make the first courtroom appearance with the juvenile confirms the centrality of their position in this research. A point to be noted here is that some of the six area districts had more than one intake worker while others just had one. All intake workers were interviewed regardless of whether or not they came from the same district as another included in the sample. The total sample size of intake workers was eight.[21] This made for a total of 15 probation officers who were interviewed in the course of this research.

Each senior probation officer and intake worker was contacted on an individual basis and appointments were arranged for the

interviews. These interviews, like those of the juvenile's were focused, characterized by unstructured and semi-structured questions (See Appendix III). Interviews took between 30 minutes to one hour to complete. These interviews were all tape-recorded.[22] The main objectives in carrying out these interviews were to find out: 1) if probation officers perceived legal language as being a barrier to the juvenile's understanding of the courtroom hearing; 2) what they perceived their role as being in the explanation process both before and after court; 3) how they accomplished this goal; 4) if they regarded legal language as an obstacle to the juvenile's understanding, and 5) did they foresee any possibilities for changing the current situation. These were the main issues explored in the interviews.

Defense Counsel Interviews

A good deal of commentary has been generated about the role of the lawyer in the juvenile court. These remarks in the main come from individuals external to the profession. Perhaps the lack of opinion expressed by lawyers in this area stems from their own widespread disagreement over their role in the juvenile court setting. Some lawyers would argue that

> their role should be different at each stage of the proceedings. At the adjudicative stage, when the question of guilt or innocence is being resolved, a strict adversarial stance may be called for with full reliance upon all technical defences. If a finding of delinquency is made, however, the lawyer may be prepared to take a less adversarial role and relax the technical rules..." (Bala & Clarke, 1981: 207)

Other lawyers are less clear about their role. Some argue that their role is to a great extent shaped by the expectations which probation officers, social workers and the judge have of them (Bala & Clarke, 1981: 206). In spite of the widespread viewpoints as to the role of lawyers in the juvenile court there is at least some degree of consensus about the functions of defense counsel in the juvenile court. To illustrate, two authors write that lawyers agree that they should

> ...ensure that the parents and the child understand (emphasis mine) what happens in court and that their views are at least expressed to the court ... ensure that all relevant facts and law are brought to the judge's attention, and that statutory procedures are followed ... ensure that the basic elements of procedural fairness are met, and that the opinions of various witnesses are properly tested through cross-examination and that the judge is not swayed by unreasoned views" (Bala & Clarke, 1981: 207)

Inasmuch as legal counsel for juveniles support the view that they should make sure the juvenile understands what happens in court, it was decided that lawyers should be interviewed.

There are basically three types of lawyers who are active in the Winnipeg juvenile court. They are duty counsel, retained counsel and legal aid clinic representatives. A duty counsel is present in the courtroom where detention matters are addressed during all proceedings to provide unrepresented juveniles with legal advice and assistance. Most times the duty counsel has not spoken to the juvenile before the court hearing. S/he is a member and employee of the Legal Aid Society of Manitoba. Duty counsel may change on a daily basis. Often times one person will fulfill

this capacity for a number of days or weeks.

Retained counsel can be described as an individual lawyer usually in private practice who has been hired by the juvenile and his parents to represent them before the court. Counsel is paid for by the juvenile and his parents. One qualification noted earlier is that a lawyer can be retained on a legal aid certificate which means that the juvenile has made application for legal aid and his application has been approved. The difference here is that the costs of having a lawyer are being taken care of through the legal aid system. Generally speaking, the lawyer, parents/guardian and the juvenile have all met before the juvenile has his first court appearance.

A legal aid clinic representative is any lawyer who is an employee of the Legal Aid Society of Manitoba. Likewise s/he is a member of that Society.

Lawyers interviewed were drawn from each of the three categories of legal counsel delineated. Five lawyers from each of the three groups were asked to participate in the study. Lawyers included in the sample all had sizeable case loads within the juvenile court.

The total sample size of defense counsel was fifteen in order to make it equivalent to the sample size of probation officers. Each lawyer was contacted on an individual basis to determine his/her willingness to participate in the study. A personal contact immediately following court was viewed as a more viable approach to securing interviews than a telephone contact which would have

resulted in many unanswered messages. No one refused to be interviewed but appointments were more difficult to arrange with lawyers than probation officers.[23] These interviews were also focused in nature (See Appendix IV).

Interviews took between 30 minutes to one hour to complete. Nine of the total fifteen interviews were tape-recorded. The other six lawyers had to be interviewed in places not conducive to tape-recording.[24] Responses given in those interviews which were not tape-recorded were recorded in writing as close to verbatim as possible.

The key issues discussed in these interviews were: 1) Do lawyers feel that legal language is an obstacle to the juvenile's understanding of the court hearing; 2) What do they perceive their role to be in the explanation of court procedure; 3) Do they explain procedural matters if their client asks; and 4) After court do they always explain what occurred. In addition more general questions about the use of legal language in the juvenile court were posed.

Judges' Interviews

The bench of the Family Division of the Provincial Judges Court is composed of sixteen judges. Ten of these are full-time while the other six are part-time. Each of these judges sits in the various courtrooms in which juvenile matters are heard. Judges rotate from one court to the next and there is no specific pattern to where a judge will be sitting on any given day. A judge's

presence in a given court is merely a product of scheduling.

The role of the judge in the juvenile court process can in no way be underestimated. First and foremost, it must be emphasized that the judge is to be viewed as an "impartial arbiter" (Bala & Clarke, 1981: 20). It is his/her responsibility to listen to both sides of the argument and to reach a decision based on all relevant facts and law of the case. The judge must never enter into the argument for either side as such a step means that his credibility as an impartial arbiter is undermined. How can a person who plays an active role in questioning and fact finding render an unbiased decision? Secondly, the judge is a key figure in the explanation process of the procedure which characterizes the courtroom hearing. The judge, in essence, sets the tone and pace of the court. S/he may assume a strict legalistic approach or a less legalistic approach in conducting the affairs of the court. A judge may choose to provide the juvenile with explanations of the charges, the nature of the proceedings, and the disposition. S/he may inquire whether or not the juvenile in fact understands what has transpired at a particular hearing or what has been said by the key legal actors. If there is confusion the judge may attempt to explain it to the juvenile using different words and examples. It should not be assumed however that <u>all</u> judges adopt this stance in dealing with juvenile offenders. As one study noted "it takes time, and a deep understanding, to get through to these youngsters. Many judges have that 'extra something' at the precise correct moment" (Anderson, Thomas and Sorenson, 1969: 8). The judge's role

as translator in the juvenile court process as outlined here was seen as the most important facet of his/her role for this study.

Of the total sixteen judges who compose the bench only six judges were asked to participate. Given the small amount of court time which the part-time judges sit in the juvenile court for a given month it was decided that this group should be excluded from the outset. Of the ten remaining, one was immediately excluded because of an involvement in this research project. To interview this particular judge might necessarily bias the results. Of the remaining nine full-time judges only six were asked to participate. They were selected for inclusion on the basis of their various demeanors and role patterns (Smith and Blumberg, 1967: 103). This study wanted to ensure a coverage of these identifiable "styles" of court conduct.

Each of the six judges was successfully contacted on an individual basis and appointments were arranged for interviews.[25] These interviews were also focused and generally took between twenty-five and forty minutes. There was only one exception to this. This interview took an hour and a half (See Appendix V). All interviews were tape-recorded. The main objectives in carrying out these interviews were focused on the following issues: 1) Do judges perceive legal language as being a barrier to the juvenile's understanding of the courtroom hearing; 2) What do they perceive their role as being in explaining the court procedure; 3) How do they accomplish this; and 4) If legal language is viewed as an obstacle to the juvenile's understanding do they foresee any

possibilities for changing the current situation. Finally more general questions about the use of legal language in the juvenile court were posed.

Analyzing The Data

The data collected from the juvenile, probation officer, defense lawyer and judges' interviews were analyzed using the Statistical Package for the Social Sciences (SPSS). It is important to note that the data generated from the probation officers, defense lawyers and judges interviews were analyzed, but for the most part were used qualitatively (Glaser and Strauss, 1967). Given that each of the four groups of individuals were interviewed using a schedule of unstructured and semi-structured questions all coding was done after the data collection period had been completed. All verbatim responses for each question were pooled together and from this more general categories of responses were generated. In making use of this inductive process careful attention was directed towards the theoretical requirements of the more general concepts which were being measured in the course of this study. The two important criteria of mutual exclusiveness of categories and the classification of all possible responses dominated the coding procedure.

All instruments were pre-tested. The juvenile instrument was pre-tested on twelve separate occasions. The success of the pre-test allowed me to include the results in the actual sample. The probation instrument was pre-tested twice. As noted earlier one

of the pre-tests was part of the actual fifteen probation interviews conducted. The defense instrument was not pre-tested per se because of its strong similarity to the probation instrument. The judge's instrument was pre-tested once. That interview was not included as one of the final six.

Creation of the coding frame allowed for the inclusion of all responses from the interviews within the data matrix. All coding was subjected to both the process of editing and reliability checking.

An important point to be noted is that some matching was done during the course of analysis. Specifically, I matched: 1) those groups of juveniles who had legal counsel with those who did not; 2) juveniles who had had no contact with probation services and those who had had contact; and 3) those juveniles who had spent time in custody and those who had never been in custody on the current charges. In addition to matching specific groups of juveniles this technique was utilized to pair certain elements of the juvenile interviews with the interviews of probation officers and defense counsel. This yielded important results with regards to juvenile's comments about how probation officers and defense counsel describe their own activities and roles in the explanation process.

The results of the key actor interviews will be presented in Chapter 4. The frequency runs will be presented. The results of the juvenile interviews will be presented in Chapter 5. The main method of presentation will be tabular.

Conclusion

Dr. Eileen Younghusband commenting on the apparent problems of juvenile delinquency stated that "one of the most important groups of all will remain silent...yet they are the consumers of the service, the people at the receiving end, whose views as to the function and fairness of the courts are at least of some interest" (op. cit. in Scott, 1959: 210). Acknowledging the importance and the need for research which focuses on the juvenile's opinion of the court Dr. Younghusband's remark is well-taken in the context of this chapter. It has been my ambition here to set forth the methodology used to investigate the juvenile's understanding of the courtroom process. To summarize, the research was divided into four parts - juvenile, probation officers, defense lawyers and judges. Each group was interviewed. Sample size for juveniles was 60. Fifteen probation officers, fifteen lawyers and six judges were interviewed. Most individuals involved were interviewed on a one-to-one basis. The one exception occurred with some juveniles. All interviews were focused in nature and characterized by unstructured and semi-structured questions.

Each group's responses to the prescribed questions are expected to illuminate various viewpoints on the same topic. While the position of probation officers, defense lawyers and judges are seen as essential to the research at hand it must be emphasized that the main focus of the study is the juvenile's understanding of the courtroom process; thus the need to interview sixty juveniles and only thirty probation officers and lawyers combined and

six judges.

It is hoped through this investigation the juvenile's understanding of the legal language used in the proceedings against him/her will in part fulfill Professor Younghusband's desire that the juvenile's comments be noted. As a consumer of the legal process it seems imperative that the juvenile's understanding of it be explored.

The next chapter will describe the procedure of the juvenile justice system in Winnipeg. The discussion will illuminate the process about which the juvenile was questioned.

FOOTNOTES

[1]Legal counsel can include a lawyer consulted through the "Lawyer Referral" service of Manitoba, a duty counsel, a legal aid clinic representative or a retained lawyer. Retained counsel includes a lawyer hired privately or one whose services are being paid for by legal aid. Specifically, this lawyer has been retained on a legal aid certificate.

[2]supra, chapter 1, n. 1

[3]No person is to be present in the courtroom during juvenile hearings who is not directly concerned with the proceedings. The proceedings are private and their contents are in no way to be reproduced as to reveal the identity of the juvenile.

[4]Building 30 of the Fort Osborne Barracks, Winnipeg, houses a number of courtrooms some of which are used for juvenile court hearings. In addition the offices of the family court judges and the juvenile court records are located in this building.

[5]A pre-disposition report is a report prepared by a probation officer which includes a social history and social evaluation of the juvenile. This report generally makes recommendations for disposition to the court.

[6]"Party to an offence" is defined by Section 21(1)a,b,c and Section 21(2) of the Criminal Code of Canada.

[7]"Acting as a lookout" in the legal sense means to stand guard while others commit a specific offence. An example is when two persons break into a store while a third stays outside the store and watches for anyone who may pass by. Some members of the legal profession argue that "acting as a lookout" falls under "party to an offence".

[8]Trial slip is a slip of paper which is signed by both the juvenile and the parent/guardian stating the time, date and location of the trial.

[9]The type of legal counsel that the juvenile had during the courtroom hearing will be accounted for in the course of analysis. Whether or not a juvenile has a duty counsel, a retained lawyer or legal aid clinic representative acting on his behalf may in some way affect the understanding the juvenile has of the legal language used in the courtroom (Ericson and Baranek, 1982: 86).

[10]It is the observation of the researcher that each of the sixteen judges who together constitute the bench of the Family Division of the Provincial Judges Court has a particular demeanor and approach in conducting the courtroom. On this basis it would seem

imperative to consider which particular judge is sitting in the pretrial court. There is no pattern as to which judge will be sitting in the pretrial courtroom on any given Friday. A "judges' schedule" is prepared by the Senior Judge at the beginning of each month. For a judge to be in any particular courtroom is merely a product of scheduling.

[11]Manitoba Youth Centre is a closed detention facility for juveniles.

[12]A juvenile may be detained for only a short period of time before s/he is pre-court released to a reliable person or agency after appearing before a magistrate who grants bail: s/he will be required to return on a particular day for their court hearing. The date for the courtroom appearance is known before the juvenile leaves the Manitoba Youth Centre.

[13]Although the actual sample size is only sixty juveniles it did have the potential to become one hundred and thirty if all the juveniles approached had agreed to participate in the study. The main reasons for refusal were that they were just not interested (20), they were unable to stay after court (16) or they claimed that the weather was too nice to be inside to engage in an interview(22). Other problems encountered during the data collection period were the complete loss of all interviews of one pretrial Friday because of a misconception which lawyers had about the study I was doing. They were concerned that I was discussing charges with their clients who might in turn make comments that could be damaging to the case. I prepared a statement on my research and distributed it to all lawyers. The problem was clarified, but twelve refusals were given that day. Other problems in data collection included the cancellation of two afternoon pretrials, a judge's conference which meant the loss of another complete day, and a statutory holiday. The average number of interviews obtained on any given Friday was five.

[14]Personal communication with Ronald Parkinson (Probation Officer, Winnipeg).

[15]Special thanks to Judge E. Kimelman for granting me permission to consult the legal files.

[16]It was only possible to approach "suitable" juveniles by working from a list of names which the sheriff's officer generates as juveniles arrive for court.

[17]supra, n.13

[18]A senior probation officer is appointed to his/her position by a body of persons external to the unit of probation officers which s/he oversees. The position itself is regarded as being higher up in the probation hierarchy than that of a regular probation officer.

[19]An intake worker is a probation officer who generally makes the first contact with the juvenile who has been detained in custody. Usually this person makes the first court appearance with the juvenile.

[20]The original aim was to interview six senior probation officers and nine intake workers. During the data collection period I was unable to see one of the intake workers who continually asked me to call back in two weeks or longer. Given the time constraints I substituted this interview with the last pre-test interview I had done of the probation instrument. This person is currently an acting senior probation officer which accounts for the total number of seven senior probation officers and the eight intake workers in the sample. No problems arranging the other interviews were encountered.

[21]supra, n. 20

[22]In only one instance was there any evidence that the subject was intimidated about being recorded.

[23]Some appointments were made as far as two weeks in advance. On three different occasions problems arose with scheduled interviews. In one instance a secretary who had made the original appointment advised the lawyer that the rest of the day was clear of appointments. When I arrived at 4:00 p.m. the lawyer was no longer there and a second appointment had to be arranged. In another situation where the appointment had been made directly with the interviewee, he failed to appear. This person said that they had not diarized our meeting and so agreed to appear before a judge to make a motion on behalf of a colleague. Finally, when I arrived at one interview the lawyer explained that he had a conflicting appointment which he could not adjust. This interview was split into two parts, the second half completed on the following day over lunch hour.

[24]Three out of the six were conducted in restaurants, two in the cafeteria at the courthouse and one other in an office which did not belong to the person being interviewed.

[25]One interview had to be rescheduled. When I arrived at the appointment the judge had people in the office who stayed for one hour. When they left the judge had to go to court. This interview was successfully conducted the next day.

CHAPTER 3

STRUCTURE AND CONTEXT OF THE RESEARCH

Introduction

The Winnipeg juvenile court system is characterized by elaborate proceedings which have developed over the last 73 years. Thus far the discussion has focused almost exclusively on the nature and function of the pretrial court - the central research site in this study. Occasional comments about the first appearance court have been made to clarify certain elements of the legal process at play in the particular court of interest. To deal with only the pretrial court in a purely descriptive manner would seem to isolate much of the research. Not only is the pretrial court but a single element in a larger system, it is a court which makes use of highly specific vocabulary in its day to day functioning. A thorough description and discussion of the broader system and an attempt to illustrate the nature of the language used in the first appearance and pretrial courts is viewed as necessary to provide a context for this study.[1]

A juvenile who comes into contact with the law is drawn into a complex system of process and procedure. To effectively delineate the parameters which define the system and the language which characterizes some parts of it, it is my intent to verbally track a juvenile from initial contact with the police through to final disposition while at the same time drawing attention to the more theoretical issues at play in the process. To accomplish this task

I will first discuss the historical dimensions of the Juvenile Delinquents Act and then provide a sketch of the Winnipeg Juvenile Court from its inception in 1909 to the present time highlighting key developments in its growth and functioning.

Historical Dimensions of The Juvenile Delinquents Act

The special rules which govern dealing with young offenders have deep historical roots. The background of the legislation which currently governs juveniles (the Juvenile Delinquents Act) reveals that as early as 1857, pre-Confederation times, an act entitled, "An Act For The Speedy Trial and Punishment of Juvenile Offenders" addresses the issue of the special treatment of young offenders. Some thirty-five years later in 1892 "An Act Respecting The Criminal Law" was passed in the Canadian Parliament which addressed among other things the issue of juvenile culpability and responsibility before the law. Specifically the Act set forth that

> "no person shall be convicted of an offence by reason of any act or omission of such person when under the age of seven years; and no person shall be convicted of an offence by reason of an act or omission of such person when of the age of seven, but under the age of fourteen years unless he was competent to know the nature and consequences of his conduct and to appreciate that it is wrong" (op. cit. in Stewart, 1978: 160).

In 1894 "An Act Respecting The Arrest, Trial and Imprisonment of Youthful Offenders" attempted to deal with the conflict of the judicial and criminal Welfare function of the court.

These various acts laid the foundation for the Juvenile Delinquents Act (1908), the act which sets forth the legal parameters

governing young persons. With revisions completed in 1929 the Act has remained unchanged. The initial thinking which led to the creation of nationwide legislation dealing with juvenile delinquency has remained unaltered. As one author has commented,

> The Juvenile Delinquents Act is legislation in the language and spirit of the first half of the century - the so-called century of the child. It didn't spring into existence overnight. It was but a national expression of the rise of a specialized kind of justice designed for children in a number of widely dispersed areas in the world. The emphasis was on prevention and protection, and it was felt that the only way to deal with crime was to improve the environment surrounding children. (Stewart, 1978: 163)

An Historical Sketch of The Winnipeg Juvenile Court

The Juvenile Delinquents Act came into effect in the City of Winnipeg in 1909. It was not extended to the entire province until 1925. The legislation as a whole created a separate jurisdiction for young offenders. In bringing the Act into full effect juvenile hearings were held to deal with alleged delinquencies. Until May 11, 1949 (Stubbs, 1972: 333-357) the juvenile court existed as a court unto itself as it was not until that year that the Manitoba Legislature established the Family Court in Winnipeg.

In the early years a judge presided over fairly informal hearings in the Winnipeg court. Only those who had a specific interest in the case were allowed in the court. Individuals from the Children's Aid Society and similar societies were always present. These representatives were, in the words of the child savers movement, "friends in court" (Platt, 1969: 32). The press was not

permitted to attend.

The proceedings of this early juvenile court can best be likened to a discussion between concerned parties. With everyone's position made clear, the judge was ultimately left to determine what action should be taken that would be in the "best interest of the child". Dispositions ranged from a harsh talking to and a warning to improve behavior to sending the child to an agency such as the Children's Aid where s/he would spend a few days.

This informal meeting of juvenile, judge and concerned others has continued to dominate the juvenile court system. Specifically, the city of Winnipeg had predominantly what are termed "probation dockets" until as late as October 1981. Basically this system involved a number of courts functioning throughout the city in which a judge of the Provincial Judges Court, Family Division would sit and hear juvenile matters ranging from liquor and highway traffic act violations to offences contrary to the Criminal Code of Canada. The juvenile would appear before the judge with either his/her parent/guardian or a representative from the Children's Aid Society or a group home worker from where s/he resided. Many of the juveniles had retained legal counsel through the Legal Aid Society of Manitoba. The other key actor in these proceedings was the juvenile's probation officer. The probation officer functioned in essentially two capacities. First, s/he fulfilled the role of the Crown prosecutor insofar as s/he furnished the judge with the facts of the incident (generally this involved reading the police report to the judge) and any information concerning prior record. In

addition to their role as a prosecutor the probation officer served the court in his/her more traditional capacity providing information about the juvenile's background and current life situation. The probation officer frequently made recommendations concerning disposition. These recommendations were either verbal or contained in a written pre-disposition report.[2]

Children's Aid workers or group home staff were asked by the judge on many occasions to make recommendations regarding the disposition which should be given. In addition these workers were often requested to enlighten the judge about the juvenile's progress in a particular setting. If the juvenile had counsel then representation was made to the judge on his/her behalf.

This rather informal court procedure described above was characterized by an equally informal language. The judge was apt to not only explain the charge before the court to the juvenile but to engage in dialogue with him/her. The juvenile was on many occasions afforded the opportunity to participate in the proceedings in a manner other than just answering to the charge.[3]

The juvenile offender had little exposure in the "probation docket courts" to very "legal" vocabulary other than the occasional exchange between judge and defense counsel. The lack of legal vocabulary used in the courtroom can be attributed to the absence of a prosecutor and often times a defense counsel.

It would be misleading to suggest that all juvenile offenders were only exposed to this type of court. If a juvenile denied a charge in the "probation docket court" then the matter was referred

to what was known as the "Crown docket". The "Crown docket" referred to a court wherein a provincial prosecutor was always present to deal with cases in which the juvenile had either denied the charge or where the matter was of a serious nature. This court convened every Monday and Wednesday. A juvenile referred to the Crown docket necessarily became exposed to more legal language. The usual exchange of words in this particular court came between judge, prosecutor and defense counsel, if present. In addition to the "Crown docket", pretrial, trials and transfer hearings were characterized by the use of highly specific legal vocabulary.

In October of 1981 a major change occurred within the Winnipeg juvenile justice system. Specifically, a provincial prosecutor was placed in every court within the juvenile system. The court became more centrally organized with all hearings being held at the Fort Osborne Barracks and the Manitoba Youth Centre. One exception to this statement is that Highway Traffic matters are still heard in one of the former district courts.

The presence of a prosecutor marked a significant turning point. In particular it denoted the departure from a more social-welfare model and a move toward a more legalistic model in the juvenile court. Equally important to know is that the time period preceding this change in the structure evidenced an apparent increase in the number of defense counsel representing juveniles. The upshot of this combination of events was that not only had the juvenile court shifted towards a more formal legalistic model in its functioning but likewise it had moved in the direction of a

more formal language. What had previously been a simple exchange of "ordinary" words between concerned parties was now becoming an exchange best understood by members of the legal profession. The courtroom is now dominated by an exotic jargon.

The Current Winnipeg Juvenile Justice System

Police Contact

A child who commits a criminal code offence or violates a provincial statute such as the Liquor Control Act or the Highway Traffic Act has his/her first contact with the juvenile justice system when s/he is apprehended by either the Winnipeg police department of the R.C.M.P. A juvenile may be picked up for questioning.

If after questioning the police feel that the juvenile should not be drawn further into the web of the formal system s/he will be released and no record of contact with the police exists. This action constitutes a diversion from the system and is often called "street diversion".

Not all cases are diverted from the system in the manner outlined above. In many instances the police opt for the juvenile to be processed through the court system. The police deal with these cases in three ways. In the first instance there is a non-judicial option of Police Voluntary Class. If a child is involved with a less serious offence and s/he admits to it and the parent is willing to attend the voluntary class the police may divert a juvenile using this option. Second, in serious matters the police lay an

information and complaint immediately and detain the juvenile in the Manitoba Youth Centre. Third, juveniles who have not been involved in serious offences are usually sent home. The police report will be sent to Intake Screening which will make a decision regarding how the case should be dealt with - judicially or non-judicially. A preliminary assessment of this sort is carried out by Probation Services. There are a set of standards which guide the diversion process. Probation's assessment will then be reviewed by the Provincial Crown Attorney. A decision to manage the case non-judicially means that no information and complaint will be laid. A judicial option means that an information and complaint will be laid.

In discussing juveniles who are charged by the police two important points should be clarified. If a child is under the age of seven years and commits an offence "he has an absolute defence and is not charged. If there are serious problems with a child of this age, the child may be dealt with under provincial child protection legislation" (Bala & Clarke, 1981: 188). Second, the maximum age for a person to fall within the jurisdiction of the juvenile court is 17 years of age. The setting of this age limit is a provincial matter.

Once a charge has been laid several issues become important. The juvenile may be released to his/her parents and told when s/he is to appear in court. Juveniles who have committed serious offences and are perceived as potential threats to themselves or the community will be escorted and subsequently detained at the Manitoba

Youth Centre (MYC), a closed detention facility. Likewise juveniles who have what is termed as an "unsuitable home environment" may be detained.

Pre-Court Release

A juvenile detained at MYC can be "pre-court" released as outlined in The Corrections Act. This in essence means that the juvenile will be released by a probation officer or will appear before a magistrate who has the power to either grant or deny bail. To reach a decision about releasing the juvenile from custody basically three issues must be addressed. First and foremost, the magistrate must consider the seriousness of the offence. Second, the juvenile's prior record is an important consideration. Finally, the magistrate must have some knowledge of the home situation into which the juvenile could be released. If the magistrate determines that the offence is not of such a serious nature as to warrant detention, that the juvenile's prior record is either non-existent or minimal and that the home situation is satisfactory then the juvenile will be released.

> A child should be detained pending hearing only if it is necessary to ensure his attendance, if his detention is necessary in the public interest, or for the protection of the public, having regard to all circumstances including any substantial likelihood that he will commit a further criminal offence if released. (Bala & Clarke, 1981: 183)

Before leaving MYC the juvenile will be told on what day to return to court. The time and location of his/her hearing will be clarified before release.

In those cases where juveniles are not pre-court released but detained in custody the law requires that the juvenile appear before a provincial court judge within twenty-four hours or after a weekend on the first working day.

First Appearance Court

The first appearance court, like all Winnipeg juvenile courts, has certain distinguishing characteristics which should be noted. The presiding judge is a provincial court judge of the family division. As of this date there are sixteen such judges active in the City of Winnipeg. Ten of these are full-time while the other six are part-time. Of the total sixteen there are two women, one of whom is full-time. Each court has a Provincial Crown prosecutor present at all proceedings. On Monday mornings Narcotics Control Act violations are heard in the Manitoba Youth Centre along with other first appearance court matters. A Federal Crown prosecutor is present to address these cases.

All juvenile court proceedings of this court and others are recorded by a court reporter for purposes of later transcription. A court clerk is responsible for the legal files of the day. S/he prepares the informations for the judge's endorsation. In addition s/he notes all adjournment dates and the outcome of each hearing on his/her copy of the court docket. A court clerk is present only at the court with the detention docket.

Two persons unique to the first appearance court are the MYC court attendant and the duty counsel. The MYC court attendant is

responsible for bringing detained juveniles into the courtroom from the detention facility. S/he updates remand warrants for those juveniles who are to remain in custody. In addition s/he will ensure that all appropriate endorsements have been made if the juvenile is to be released.

The duty counsel performs the function of giving the court information about many of the detained juveniles who appear before it. This may aid the judge in rendering a decision about what to do with a child in the interim. Likewise if the presiding judge feels that a particular juvenile should take to a lawyer or make application for legal aid then the duty counsel can take care of this. The only other person likely to be present during the court hearing is a sheriff.

Not all juveniles who appear in the first appearance court are necessarily in custody. Many of the juveniles whose names appear on this particular court docket are ones who were released from the police station following questioning while others have been pre-court released. Whatever their status in regard to custody the same procedure is likely to ensue at the first appearance court: the juvenile will be arraigned, asked for a plea as to his/her guilt or innocence and more often than not the hearing will be adjourned to some other court. Occasionally a case will be disposed of at this point. Since this is a rare occurrence it should not be taken to be the rule but it is more the exception.

Another issue which may or may not arise at the first appearance court is the matter of transfer. The Crown prosecutor may

inform the court that they will be seeking a transfer to the adult court in this particular case.

One additional comment to the preceding remarks about the procedure of the first appearance court is necessary. If the juvenile is in custody at the time of the hearing then more often than not a bail application (judicial interim release) will be made on the juvenile's behalf by either his/her probation officer or defense counsel. All such applications will either succeed or fail on the basis of two set criteria. They are:

#1 Is the accused likely to appear for his/her hearing?
#2 Is the accused likely to be reinvolved if released?

It is important to note that these two criteria are those of the Bail Reform Act (c.c. 457). Although these questions are used as the guide for granting or denying release the Bail Reform Act (c.c. 457) does not apply in the juvenile court in Manitoba. This was determined in the case of R. v. O.B. (1979). It does apply however in Ontario and British Columbia.

If bail is to be denied the onus falls on the Crown to satisfy the court that the criteria for release cannot be met. To elaborate, the accused is not likely to appear for his/her hearing and secondly, the accused is likely to be reinvolved if released. In addition some instances arise where a bond or surety is required before bail is granted.

A bail application can be made at any stage of a proceeding. It is not something unique to the first appearance court. For example a juvenile can be detained following arrest and then be granted bail on the undertaking that s/he appear on his/her next

court date. If the juvenile is found delinquent at this next hearing then s/he may be detained in custody again. Likewise, the Crown prosecutor can ask the court to revoke bail or have the conditions of bail varied at any time that s/he deems it necessary. Finally, a juvenile who is not granted bail at his/her first court appearance may apply for bail at any subsequent hearings.

If a judge decides that a bail application should be granted s/he generally likes to see in the courtroom the individual to whom the juvenile is to be released. As part of the bail, conditions of release will be set forth at this time. These conditions may include: making a weekly appearance to the probation officer, keeping a curfew, attending school on a regular basis and/or attending the Remand Attendance Centre.

If a bail application is denied then the probation officer or defence counsel may make a subsequent application for a temporary absence (TA). This leave may be for school attendance, work, or a doctor's appointment and may be escorted or unescorted.

Case Example

Te effectively elaborate the procedure sketched out above and the language which characterizes it, let me describe a typical hearing at this stage in the juvenile court process. The juvenile who appears before a judge in the first appearance court will most likely find himself/herself being confronted with an information which alleges a particular offence. It is sometimes the situation that a juvenile will appear before the first appearance court to

discover that the charge is being withdrawn[4], dismissed[5] or has been stayed[6]. Sometimes a charge will be adjourned sine die[7] without a guilty plea having been entered. The prosecutor and/or the judge will most likely use these exact legal words in telling the juvenile the current status of his/her case. Generally speaking the presiding judge will tell the juvenile that this means that "his/her case is over, its finished" and that will be the extent of explanation. The impact of any one of these is the same. The juvenile is left without a formal record or disposition.

Before reading the information to the juvenile many of the judges will inquire of two issues. First, "Has the juvenile's parent/guardian received a written notice stating what charges their child is facing?" According to Section 10 of the Juvenile Delinquents Act this notice is required to give the judge jurisdiction in the proceedings. If no notice has been served it is often the case that the hearing will be set down for a few minutes and the sheriff's officer will serve the parent/guardian in the waiting area. If no parent/guardian is present the hearing is generally adjourned because of lack of service of this notice.

The second issue which is often raised by the judge is whether or not the juvenile has legal counsel. Some members of the judiciary will remind juveniles of their legal right to a lawyer - a right which many persons feel is too often neglected or overlooked. (Social Planning Committee of Winnipeg, 1976; Stapleton & Teitelbaum, 1972). If a juvenile reports that he is unable to afford a lawyer the judge will generally encourage the juvenile to make a

legal aid application. With these two matters out of the way the judge will proceed to read out the charges against the juvenile. The reading will either be verbatim or a paraphrasing of the information. If the reading is verbatim the juvenile is likely to hear the following,

> "This information alleges that on or about 21 December 1981 you, _____, did unlawfully steal a bicycle from 303 Portage Avenue, the property of _____, and therein did commit a delinquency contrary to Section 294(b) of the Criminal Code of Canada".

If, on the other hand, the judge paraphrases the information, the juvenile may hear something like

> "I have an information here that says you stole a bicycle".

The one exception to be noted here is that if legal counsel is involved, s/he may "waive the reading of the charge" meaning that they (the juvenile and counsel) are familiar with the charge and do not require that it be read. Counsel will use the phrase "waive the reading of the charge" to express their position to the court. The reading of the information or "waive the reading of the charge" constitutes an arraignment.

Sometimes a judge will ask whether or not the juvenile in fact understands the charge and engage in an explanation thereof if there is confusion. Usually a plea as to guilt or innocence is entered. The judge may ask for a plea in any number of ways. S/he may ask whether the charge is true or false, does the juvenile admit or deny, is s/he delinquent or not delinquent, is s/he guilty or not guilty. The way the question is formulated will

depend on the individual judge.

The admission or denial is normally "indicated" which suggests that although a plea has been taken to the charge(s) by the judge sitting s/he is not seized of the case: any other member of the bench who may be sitting at the juvenile's next hearing can deal with the matter.

All pleas are customarily entered at this stage. Only three reasons would preclude this from happening. First, no parent/guardian has received written notice of the charges before the court. Second, the juvenile fails to appear for his/her hearing and is not represented by legal counsel who is present to indicate a plea. Finally if the juvenile has legal representation but the lawyer has not as of the hearing date received particulars about the charges then counsel and his/her client may not be prepared to enter a plea.

The entering of a guilty plea may in some cases lead to an immediate disposition such as a fine, an order of restitution or a community work order to suggest a few. A charge might also be adjourned sine die after a plea has been entered. As is most often the case the hearing will be adjourned. If a guilty plea has been entered the case is generally adjourned to the disposition court - a court held to deal only with dispositions. A pre-disposition report may be ordered at this juncture in anticipation of the disposition court date.

If a not guilty plea has been entered the case will generally move to the pretrial court. Before leaving the first appearance

court the juvenile and his parent/guardian, if present, may be requested to sign an "appearance slip" which specifies the date, time and place of the next hearing.

Pretrial Court

Considerable discussion in Chapter 2 has been devoted to the nature and function of the pretrial court. To avoid repetitiveness here I will only reiterate the key points.

The pretrial court might also be termed "a court for sorting out". If a juvenile has entered a plea at an earlier hearing the Crown prosecutor will generally ask to have that plea confirmed. The judge may either read the information to the juvenile in the same manner as previously described or s/he may simply inquire of the juvenile whether or not they are still denying the particular charge(s). If a lawyer is active in the case s/he may waive the reading of the charge and enter a plea of not delinquent. Likewise defense counsel may advise the court that a plea(s) has already been entered. It is important to note that many pleas are changed to admit or delinquent at this hearing. Frequently delinquent pleas are entered as the result of plea bargaining. As one author writing about this topic in the adult criminal system has commented,

> Plea bargaining is based on the premise that a defendant will exchange the uncertainties and costs of going to trial and the possibility of a lengthy sentence for the certainty of a fixed outcome which guarantees a less severe sanction than would have been imposed if he had been convicted after trial. In return, the argument continues, the state saves the time and the

> expense of having to mount a trial. (Feeley, 1979: 185)

The same sentiments expressed in this passage dominate the plea bargaining process in the juvenile court. Defense counsel will agree to plead guilty to certain charges in exchange for a stay of proceedings by the Crown on certain other charges. While these negotiations serve to either reduce the number of charges before the court, they do not involve discussions about lessening the disposition to be rendered. Plea bargaining pervades much of the juvenile justice system and often occurs right up until the moment before a trial is about to begin. If is not uncommon for an agreement to be reached just before trial proceedings are scheduled to commence.

Successful plea negotiations may mean that the outstanding matters can be finalized at the pretrial stage. Many times a defense counsel, the prosecutor, the probation officer and the juvenile will be prepared to move to disposition. Four dispositions might be a fine, an order of restitution, a period of probation, or a contribution to charity. If any of the parties are not in a position to go to disposition the case will be adjourned to the disposition court. A pre-disposition report may be requested.

If a juvenile continues to deny a charge(s) after some discussion about the charge(s) at this hearing and the Crown feels that they have sufficient evidence with which to proceed to trial then a trial date will be set. A juvenile and his/her parent/guardian will be asked to sign a "trial slip" which states the date, time and place of the hearing. In addition this slip describes the

procedure to be followed if the juvenile wants to have witnesses subpoenaed to give testimony at his/her trial. The juvenile and his/her parent both receive copies of the signed trial slip.

As was the case with the first appearance court the Crown prosecutor may at pretrial indicate that they will be seeking a transfer in this case. Defense counsel, if involved, will be advised of this move and a date for a transfer hearing may be set at this time.

Juvenile Trials

The juvenile trial, like an adult criminal trial, is a procedure to determine the guilt or innocence of the juvenile. The trial itself generally has an average length of one to three hours, however there are trials which last only a few minutes whereas others may extend over a period of several days.

The most important point to be noted in any discussion of juvenile trials is that they are to be private as set forth by Section 12 of the Juvenile Delinquents Act. Equally important is that these trials are to be held separate from adult criminal trials and that according to Section 17 of the JDA these proceedings "may be as informal as the circumstances will permit, consistent with a due regard for a proper administration of justice".

The procedure of juvenile trials remains the same from case to case. The judge begins the trial by establishing whether or not s/he has jurisdiction over the case. Jurisdiction can be established on a number of grounds. For example, date of birth/age or

notice to parents. Next the judge will read the charge to the juvenile and ask him for his plea. A not guilty plea puts the procedure in motion. To summarize the trial begins

> with the Crown presenting its case, followed by the accused and then arguments...The onus is on the Crown to prove each and every element of its case beyond a reasonable doubt, and to prove beyond a reasonable doubt that any defense which might be raised is without legal merit (Bala & Clarke, 1981: 187).

In order to prove their case the defense and/or Crown attorney may call witnesses to give evidence. When a witness is called to the stand the judge either administers an oath to that person or affirms him/her. To swear in a witness the judge generally asks,

> "Do you (witness) swear that the evidence you are about to give shall be the truth, the whole truth and nothing but the truth so help you God?"

If the judge affirms the witness s/he will ask that person to say the following:

> "I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth and nothing but the truth" (Canada Evidence Act Section 14(1)).

One procedure which can take place at a juvenile trial is a voir dire (a trial within a trial). It is a procedure to determine the voluntariness of a statement given to the police by the juvenile. Often times a juvenile makes a statement to the police regarding the incident in question. If the juvenile makes a statement s/he is to be cautioned as to the implications of such an act. This statement is to be made in the absence of duress and promise of any sort. It is preferred that any confession be made in the presence of the juvenile's parent and/or his/her lawyer.

The voir dire procedure is a highly elaborate one governed by strict rules of evidence. Both the prosecutor and defense counsel engage in verbal battle to convince the judge of the voluntariness of involuntariness of the statement. The exchange involves the use of highly technical vocabulary and can last for any length of time. It is largely a debate between legal actors. The juvenile sits for the most part as a silent observer. S/he may be called to give testimony about the voluntariness of the statement. The judge will make a decision about whether or not the juvenile's statement was voluntary. The trial will then continue. The Crown prosecutor and defense counsel will present the rest of their cases.

It is important to note that at the conclusion of the Crown's case the defense can make a "motion to dismiss" which means that the Crown has not presented enough evidence to allow the judge to make a finding of delinquency. If this motion is successful the case will be dismissed. If unsuccessful the trial will continue.

A juvenile is entitled not only to all the defenses which an adult is afforded but to the defense of "physical and mental capacity (C.C. 147) and doli incapax (C.C. 12,13)" (Bala & Clarke, 1981: 188). Doli incapax[8] is used very rarely.

The case having been presented for both the Crown and the defense as well as arguments and summations having been concluded the judge is left to reach a decision regarding the case. A judge may adjudicate the case immediately making a finding of either delinquent or not delinquent or s/he may reserve judgment on the case

according to C.C. 574(4). An adjudication of not delinquent means that the juvenile is acquitted. Conversely, an adjudication of delinquent suggests that the juvenile is guilty and the court is left to find an appropriate disposition. To make this decision a pre-disposition report is usually ordered. The judge may seek the opinion of certain experts regarding disposition. The case will be adjourned until such time as the report is available and any other relevant information has been obtained. The judge who has heard the trial is seized of the case and will therefore dispose of it.

Transfer Hearings

A transfer hearing is the most serious component of the juvenile justice system. It represents the point at which the court is forced to ask whether or not it can effectively deal with the juvenile any longer. Commenting on transfer hearings Bala & Clarke (1981: 203) write,

> The transfer hearing is something of a legal anomaly and a special set of rules has evolved to govern the proceeding. The application for a transfer must be made by the Crown Attorney, or by the judge, or even theoretically, by the accused juvenile. If the judge considers that a transfer may be appropriate, he should be very careful not to take a biased view of the hearing. There must be an opportunity for a full and fair hearing with the right to call witnesses; like a disposition hearing, it may be possible to file reports instead of having witnesses testify, but the authors of the reports should be available for cross-examination.

A judge makes a decision to transfer a juvenile on the basis

of specific criteria. These include:

#1 A consideration that a transfer to adult court will benefit the juvenile by affording him access to many procedural safeguards unavailable to him/her in juvenile court.
#2 The need to protect society.
#3 The juvenile must be fourteen years of age or older.
#4 The seriousness of the offence.
   a) The offence must be indictable.
   b) The offence must be such as to warrant that exceptional or extreme measures be taken - violent, aggressive.
#5 Sophistication and maturity of the juvenile.
#6 Child's background.
#7 The juvenile's prior record should indicate previous convictions or a trend towards more serious offences.
#8 Facilities available to treat juvenile.
#9 Crime against the person or property.
#10 Prospect for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available to the juvenile court. (R. v S.R.P., 1978)

It is important to note that if a judge rules in favor of transfer it is the charge which is transferred and not the child. A decision not to transfer means that the case must be disposed of within the juvenile justice system.

Disposition Court

For those juveniles who have been through the various parts of the juvenile justice system the final point of contact is usually the disposition court. To arrive at this court a delinquent plea must have been entered at some stage of the proceedings or there must have been a finding of delinquency.

The disposition court as its title suggests deals only with dispositions. It functions every Friday for this sole purpose.

Generally written materials such as the pre-disposition reports prepared by probation services play an important role in this court. These reports are completed and submitted before the court date. Most judges prefer this approach as it affords them the opportunity to peruse the report before court. There are other judges however who do not want to see them until the day of the hearing. Such an approach means that court time must be used to read these reports, which contributed to delay.

In finalizing juveniles' cases the judge draws from a fixed range of possible dispositions. These include suspending final disposition, an absolute discharge, adjourn sine die, a fine, a contribution of money to charity, a restitution order, a community work order, a period of probation, a period of progress, a foster/group home placement or a committal to a training school. Any one or combination of the above may be given as a disposition. The juvenile will be required to meet the conditions of the disposition whatever they may be. If s/he successfully does what is required of him/her then this will be the end of the matter. A failure to do so will mean a return to court.

Conclusion

A reading of this chapter can leave the reader with the impression that a young person who enters the juvenile justice system follows a clear and concise route which leads ultimately to his/her exit out of the system. Granted, the process is well-defined. What the reader may be misled into believing is that there is a

certain expediency which characterizes the system. Such is not the case. The juvenile justice system like its adult counterpart is characterized by both false starts and delays. Often the juvenile does not appear for his first hearing which postpones the beginning of the case. In addition, many adjournments may be requested. Some of the reasons for adjournments can include requiring the presence of a particular person (eg. a parent, a probation officer), the need to obtain or at least consult legal counsel, the need for particulars regarding the outstanding charges or time to prepare the necessary reports (eg. a pre-disposition report, a psychiatric/psychological report) for disposition. The high incidence of adjournments coupled with the structural constraints of the juvenile justice system itself can combine to make the time elapsed between first appearance and final disposition a period of several weeks of even several months. The juvenile court is, as Emerson (1969) noted, very formal. Thus many of the court processes such as doli incapax, voir dire, transfer hearings, adjournment sine die and period of progress are difficult for most juveniles to understand.

FOOTNOTES

[1]Much of the structure and content of this chapter has been gained through a number of personal communications from October 1981 - March 1982 with Judge R.J.W. Morlock of the Provincial Judges Court, Family Division. In acknowledging Judge Morlock as an invaluable source of information, I alone take responsibility for what is written.

[2]Pre-disposition report is a written document prepared by a probation officer which contains a social history of the juvenile. In addition it generally contains information about the circumstances of the offence, prior record and recommendations regarding disposition.

[3]Often times during the five months preceding Oct. 1981 when I was employed by the Solicitor-General of Canada as a courtroom observer for the "National Study On the Functioning of The Juvenile Court" I observed a judge and juvenile discussing what had happened in terms of the offence, how the juvenile had been doing in the community, why a certain disposition had been given and what was expected in terms of his/her behavior in the future.

[4]To withdraw a charge means that the Crown is not proceeding with the case. They are withdrawing the information.

[5]Dismissal is like a cancellation. This occurs after a "not guilty" plea when the Crown tells the judge that no evidence will be called. May also occur before a plea if the Crown has no evidence.

[6]Stay of proceedings means that the Crown does not have sufficient evidence to proceed with the case. The charge is dropped.

[7]To adjourn sine die is to adjourn a case without a date, without a time on which it will be brought up again.

[8]Doli incapax is the incapacity to form the intention to do wrong.

CHAPTER 4

RESULTS OF KEY ACTOR INTERVIEWS

Introduction

This chapter will present the results obtained from the focused interviews conducted with probation services, defense counsel and judges. The key actor interviews are descriptive and were carried out to sensitize this study to the Winnipeg juvenile court as well as to obtain the perceptions of these groups regarding juveniles' understanding of legal language. Any discussion of what key legal actors think about what juveniles understand or what they should understand about legal language must be placed in the context of the system as it functions presently and with a regard to the changes currently underway. Structural considerations and constraints are fundamental to any comments made.

The discussion will be organized thematically, for this approach seems to illuminate most clearly the intricacies of the views established within each key actor group. Inasmuch as the research is predominantly qualitative "the analyst seeks to provide an explicit rendering of the structure, order and pattern found among a set of participants" (Lofland, 1971: 7). To accomplish this task the results obtained from various frequency runs will be used to illustrate specific points raised.

Basic Premises of Plain English Movement

As Chapter 3 demonstrated there are many examples of legal

language in the Winnipeg juvenile court. This observation constitutes the fundamental premise upon which this thesis is based. To examine the potential for a Plain English movement in the Winnipeg juvenile court it is necessary to outline the basic premises of the movement itself.

The Plain English movement stems from three basic arguments. First and foremost, the movement suggests that for every complex word, legal or otherwise, there is a "plain" or "simple" word that might be substituted to make it more understandable to the lay person. The language of contracts, criminal law, insurance law, government regulations and mortgages can effectively be changed into a plain and simple language. Second, complexity in language has grown out of the interests of certain groups within society. For example, professions such as law and medicine make use of specialized vocabularies which they assert promote efficiency in their work, an efficiency which is known only to those within these groups. Third, "specialized vocabularies can be a way of perpetuating group or professional power" (Probert, 1972: 84). To elaborate, when a professional group makes recommendations using words which do not occur in everyday language the untrained person is not able to "decipher" what is being said and thus is inclined to accept it without challenge. People tend to believe that recommendations made using complex words and phrases must be in their best interest. Thus these groups exert and maintain professional power over the general public and their clients.

As pointed out in Chapter 1 the Plain English movement in the

United States has been mainly concerned with the language of written documents and materials ranging from insurance policies and contracts to abortion consent forms. The Movement's more peripherial and indirect concern has been language in the communication process - "talk". These three premises and the two concerns of the Plain English movement are central to the discussion of the views expressed by each key actor group about the legal language used in the Winnipeg juvenile court.

The Juvenile's Ability To Understand

The governing legislation, the Juvenile Delinquents Act, suggests that the proceedings of the juvenile court can be informal, as long as there is due regard for procedural fairness and the elements of due process. This position coupled with the implicit and explicit assumptions of Section 38 of the Juvenile Delinquents Act has afforded the court the opportunity to function informally at times. One effect of this has been that there has been the potential for a simple language to be used in legal proceedings. As pointed out in Chapter 3, the "probation docket" courts allowed for the juvenile to participate in the process. Juveniles were often afforded the opportunity to speak to the judge and explain their circumstances and concerns in a direct manner. The chance to participate in the courtroom hearing meant that a juvenile had a greater chance to discover the meaning of legal language as it had been used in that particular setting. The move towards a more "legalistic" model of court functioning has changed

this situation completely. Under the new system, the juvenile is swept into a milieu characterized by legal vocabulary which for the most part is probably completely foreign to him/her. The presence of lawyers, prosecutors and judges has resulted in an increased use of legal vocabulary. The juvenile who appears before the court tends to become what Erving Goffman has called "a non-person" (op. cit. Bankowski and Mungham, 1976: 88).

The move towards a more legalistic model with the juvenile court raises some critical concerns. One author captured this sentiment quite well when he stated, "The future is clear: law and due process are here to stay in the juvenile court; prosecution and defense counsel have become permanent members of the court's cast of characters; rehabilitation efforts will be pursued within a legal context" (Rubin, 1976: 137). Inasmuch as the legal context may be a desirable one in which to function it could be argued that it makes the Plain English movement even more important in the juvenile court than it is in the adult criminal court. For example, under the YOA, to be proclaimed in the spring of 1983, juveniles are to be held more responsible for their actions and the "protection of society" is to be a key consideration in all dispositions. The key question to be raised is, "Will the proposed legislation take into consideration the juvenile's ability to understand the language and the procedure of the court?" The proposal does state that juveniles should be given an opportunity to participate as fully as possible in the proceedings against them. As one author commented in an unpublished report evaluating the

proposed Young Offenders Act,

> There are, however, more specific procedural guarantees and requirements provided for in the new Act which are also based on the assumption that young persons should participate in proceedings against them. These refer to allowing young persons access to their Youth Court records (including pre-disposition reports and the reported results of medical examinations and psychological and psychiatric assessments), allowing young persons access to review procedures, and requiring that young persons sign declarations stating that the contents of any probation order have been explained to and understood by the young person" (emphasis mine).

This attempt to change the role of the juvenile from a silent observer to an "active" participant presupposes that the juvenile has the ability to understand not only the procedure of the court but also the language of the court.

Key Actors' Views of Juveniles' Understanding

The literature states that the juvenile's ability to understand legal language is a problem. The primary issue in a study such as this is whether or not the individuals (judges, lawyers and probation officers) who ultimately shape the juvenile justice system believe that legal language in fact affects a juvenile's understanding of the courtroom process. When I questioned these different groups about this issue the general sentiment was that "yes, legal language does affect the juvenile's understanding of the courtroom hearing". Fifty percent of the judges responded positively. Both probation officers and defense counsel agreed with this assessment. As one lawyer succinctly put it, "I just really believe

that they (juveniles) are at sea the whole time". This view would suggest to me that some effort on the part of key legal actors would be made to explain certain legal terms and phrases if contact were made with a juvenile. Three hypotheses in this study assume that there is contact between the juvenile and legal actors. The key question then is "Whose role is it to explain legal terms and phrases as well as court process to the juvenile?".

Roles and Functions Of Each Key Actor Group

The probation service functions to provide support and assistance to juveniles who have become involved with the law. The duties and functions with the service range from administrative duties to intake work and the later supervision of juveniles placed on probation. To elaborate, of the fifteen probation officers interviewed, seven stated that they had administrative duties, one had to develop new programs, eight do intake, three do later supervision, two are duty probation officers, one does community investigation, one does non-judicials and two do inter-agency work. As these figures indicate many probation officers have dual or multi-functions within the system. In accomplishing these tasks most probation officers (86.7%) feel that they are helpful to juveniles in dealing with court process. The two major ways in which they perceive themselves as being helpful is in providing the juvenile with an explanation of the process and procedure and fulfilling a supportive role.

The role and function of defense counsel in juvenile court is

an area which is somewhat more controversial and divided than the role of probation officers. As noted in Chapter 2 there is widespread disagreement within the legal profession itself about the role of counsel in the juvenile court (Bala and Clarke, 1981: 207).

Interviews conducted with fifteen Winnipeg defense counsel produced a number of different responses to the question of role. Lawyers predominantly saw their role as being "adversarial". Specifically, 73.3% stated outright that they felt "adversarial". Somewhat synonymous with this was the response "child's advocate" (53.3%). In terms of function, there seemed to be three main answers. First, lawyers felt that they should "ensure that both the parent and the juvenile understand what happened in court" (46.7%). Second, "ensure that all relevant facts and law are brought to the judge's attention" (40%) and finally "ensure that the child's views are expressed to the court" (46.7%). This finding is consistent with the comments made by Bala and Clarke (1981) about what lawyers in the juvenile court perceive their functions to be. All lawyers interviewed (100%) felt that they were helpful to the juvenile. They believe they are able to help them deal with the process, speak for them in court and in general provide support. What is important to note is that defense counsel, unlike probation officers, mention the processing of the charge and protecting client's interests ahead of any translator type of role.

The judge occupies a position different from either defense counsel or a probation officer. His/her contact with juveniles is limited to <u>within</u> the courtroom. In his/her profession, a

provincial court judge hears matters under the Juvenile Delinquents Act, the Family Maintenance Act and the Child Welfare Act. Only the senior judge performs administrative duties. Some of the judges (50%) do related committee work. For the most part however the role and function of the judge is determined by the profession itself.

Given the various roles and functions of the three key actor groups it is important to assess the type and context of the transactions between these persons and juveniles. To accomplish this it is helpful to look at the various phases of the court process.

Pre-First Court Hearings

A. Initial Contact

The probation service comes into contact with juveniles in eight potential ways. These include: (a) when they get a referral (a charge had been laid by the police and the matter is to be handled judicially, (b) at the time of arrest (meet the juvenile once he has been detained at the Manitoba Youth Centre), (c) when the judge requests a pre-disposition report, (d) a reconsideration is laid, (e) the juvenile and parent call the probation service seeking information about court process and procedure, (f) at the time of the first court appearance, (g) after first court appearance, or alternatively (h) after a plea has been entered by the juvenile to the charge before the court.

The variation in initial contact pattern can be attributed to a number of factors. The most important reason is that the timing

of their initial contact is determined by the structure of the juvenile justice system itself. As noted in Chapter 3, a major change occurred in the Winnipeg juvenile court in October of 1981 when a provincial prosecutor was placed in each court. The move away from a court system in which the probation officer assumed a quasi-prosecutorial role meant that the role of the probation officer has had to be redefined. Prior to this change the probation service met each individual that was to appear in the court prior to their first court appearance. This afforded the juvenile and his/her parent/guardian the opportunity to discuss the charge, the nature of the proceedings, juvenile's background and prior record. Probation contacted the juvenile. The change in the system left probation without a mandate to contact the juvenile prior to the first court hearing. The rationale was that if a juvenile had not appeared before a judge, had not entered a plea, or was not currently on probation, then the service should not be involved at all. Without a finding of delinquency the juvenile is still considered to be innocent. Given that the juvenile might never be found delinquent no inquiry should be made concerning issues such as background, prior record and particularly nothing concerning the nature of the pending charge. Thus the reason for the different points of initial contact.

Defense counsel, unlike probation services, have a clear mandate for being involved with the juvenile from the moment that s/he is drawn into the legal system. It is not surprising that the greatest amount of initial contact occurs when the juvenile is held

in detention (75%) or when the juvenile and/or parent call the lawyer themselves requesting that s/he become involved in the case (75%). A lawyer can also become involved when the legal aid certificate is awarded to them (46.7%), after first court (33.3%), at the time of first court (13.3%) and through referrals from the Children's Aid Society (6.7%) after meeting kids at group homes (6.7%).

Once contact has been made between the juvenile and probation officer and/or the juvenile and defense counsel, a first meeting is likely to occur. The first meeting of juvenile and probation officer and/or juvenile and defense counsel is devoted to many topics. The majority of probation officers (86.7%) say that the one topic discussed more frequently than any other is court procedure, that is, what is most likely to occur inside the courtroom. Other topics include, nature of the charge (66.7%), prior record (60%), potential dispositions (60%), background information (46.7%), a juvenile's right to legal counsel (40%), pleas (26.7%) and finally, the juvenile's version of what happened (13.3%).

A lawyer-client interview seems to focus on rather different issues. The most common matter discussed is background information (75%). Other issues raised during this encounter include, how the case is likely to proceed (66.7%), prior record (60%), information for bail (60%), potential dispositions (60%), the juvenile's version of the story (33.3%), police contact (13.3%), the meaning of particulars (13.3%), detention (13.3%), pleas (13.3%), the lawyer's approach in court (6.7%), court dates (6.7%), and finally, what the

juvenile would be facing if s/he were before the adult court (6.7%). Clearly there are differences between a probation-juvenile and defense counsel-juvenile interview. To elaborate I suggest that two main themes dominate probation-juvenile interviews. One is "implications of the charge" and related to that "explanation of the procedure". They discuss what is likely to occur inside the courtroom which involves explaining to the juvenile who will be in the courtroom, what the various actors are likely to say and what will be the outcome - an adjournment, a disposition and so on. The second theme "implications of the charge" is revealed by the emphasis on topics such as "nature of the charge", "prior record" and "potential dispositions". If a juvenile's charge is serious in nature then the disposition may be severe. Likewise if the juvenile has a prior record this will influence the outcome. What disposition a juvenile receives has implications for the juvenile's future. For example, if s/he is fined then the juvenile is left with a formal record. In summary probation-juvenile interviews seem to be concerned with the juvenile's understanding of the court procedure and what effect court will have on the juvenile. Implicit in understanding court procedure is an understanding of legal language. I would argue that this emphasis reflects probation's supportive role to the juvenile as s/he goes through the process.

A lawyer-client interview seems to emphasize the "strategy" of the case more than anything else. I would argue that the main topics of discussion, background of the juvenile, how the case is

likely to proceed, prior record, information for bail and potential dispositions all relate to this theme. For example, if the juvenile has a good family, no prior record, has a place to go to if released this will affect the approach the lawyer will take in court. S/he may argue that the juvenile should be released. Likewise at the time of disposition defense might argue in favor of leniency based on this information. The lawyer points these things out to the juvenile who will then have some grasp of "how the case is likely to proceed". I would suggest that the emphasis on strategy is a product of the "adversarial" or "child advocate" role they see themselves as playing in the juvenile court.

The issue of court procedure, or how the case is likely to proceed seems to be a major concern raised between juvenile and probation officer and juvenile and defense counsel. The question of "Are juveniles normally interested in the proceedings of the court?" revealed an interesting response. Both defense counsel and probation officers responded that juveniles were interested in the proceedings of the court. In each of the two groups, 46.7% thought this was the case. Probation officers felt that the main reason that juveniles were interested was "fear of the unknown". Court represents a new and unusual experience for them. Defense lawyers suggest that the key reason for a juvenile's interest is his/her desire to know what is going on. Corroborating the position of probation, counsel maintain that a lack of interest stems from an overwhelming concern with disposition. Lawyers and probation officers said they would provide an explanation if the juvenile was

interested. A point which could be made here is that perhaps the concern of these two actor groups with explaining court procedure is client-initiated as opposed to actor-initiated. Thus if a probation officer or a defense counsel believe that a juvenile is not interested at all in the proceedings of the court then it may be that these actors will be less likely to explain this to juveniles. This has significant implications for any assessment of what a juvenile does and does not understand. Whatever their motivation, probation officers explained twelve different aspects of procedure, while defense counsel tended to describe only 10 elements (See Tables XI, XII).

First Court Hearing

On the day of the juvenile's first court hearing s/he will appear in front of the judge accompanied by either a probation officer, a lawyer or both. Probation officers maintain that they will generally always appear at the first hearing. They do not attend for two reasons. First, there is a duty probation officer system[1] and secondly the matter has not yet been referred to the probation district office. One point well worth noting here is that some probation officers (20%) suggest that their presence is less important once defense counsel is involved in the proceedings.

Lawyers also stated that they would generally appear on the day of a juvenile's first court hearing unless one of the following factors were involved: the attorney had never met the juvenile before (6.7%), there was a conflict of appointments (33.3%), the

TABLE XI

DESCRIBE PROCEDURE
PROBATION OFFICERS

Would you please describe what you would normally tell a juvenile about court procedure?

Describe procedure*	Frequency
Proceedings are confidential	12
Judge is likely to read the charge	8
May have to enter pleas	8
The role of key actors	8
Physical surroundings of courtroom	6
Courtroom actors	6
Role of probation officer	5
Judge may ask you questions	4
Expected behavior of juvenile	3
Everything is ultimately the judge's decision	2
May have to speak to judge	2
If you deny/admit a certain process follows	2

*Multiple responses permitted
Number of interviewees = 15

TABLE XII

DESCRIBE PROCEDURE
DEFENSE COUNSEL

Would you please describe what you would normally tell a juvenile about court procedure?

Describe procedure*	Frequency
Role of Crown prosecutor	11
Role of judge	10
Role of probation officer	6
What each key actor will likely say	5
Meaning and order of different court hearings	3
Answer to charge	3
Adjournments	3
Potential dispositions	3
Parent must be present at court	2
May have to enter pleas	2

*Multiple responses permitted
Number of interviewees = 15

juvenile was not in custody on these charges (6.7%), the juvenile hadn't contacted the lawyer yet (13.3%), or there was going to be an adjournment (20%). Although each of these five responses was put forth as a reason for not attending the first appearance court with the juvenile, one can see that the number of persons who give any one of these reasons is very small. The only major reason would appear to be a conflict of appointments.

Once inside the courtroom the juvenile is confronted with the charge which has been laid against him/her. Most probation officers (60%) felt that juveniles knew what they were charged with before they went to court for the first time. Lawyers (53.3%) shared this view. According to these two groups a juvenile's main source of information concerning the charge was the police. Defense counsel said that an equally large number learned what they were charged with from the notice and summons which they received. Probation did not express a similar view.

Before arraigning a juvenile most judges (66.7%) interviewed stated that they would directly ask the juvenile if s/he knew why they were there. One of the judges said that s/he would be inclined to do this but in a less direct manner. In this regard, all of the judges in the sample said that they were likely to advise the juvenile of his/her right to counsel if s/he did not have a lawyer or indicated to the court that s/he had not yet spoken to one. Two judges said that they would always do this while the remainder stated that they would sometimes do this. I found these statements to be consistent with my observations of each judge in

the courtroom.

The reading of the information to the juvenile can either be verbatim or a paraphrased version. Only one judge stated that s/he would always paraphrase the information. Three of the other judges (50%) said that they might do this sometimes. In conjunction with this, most judges (66.7%) told me that they would not explain the elements of an information and complaint to a juvenile and yet they (83.3%) also felt that most juveniles don't understand what they are charged with when the information is read to them. Further, both defense counsel and probation officers stated that juveniles do not understand the charge at the moment the judge reads the information to them.

Although there seems to be some discrepancy in the views expressed by the judges in regard to the preceding issue these same individuals (83.3%) state that they will generally ask the juvenile whether or not s/he understands the charge. The judges said that they would not do this if the juvenile had legal counsel or s/he responded immediately to the charge which had been read.

Once the information has been read the judge will ask the juvenile whether s/he is guilty or not guilty (33.3%), whether s/he admits or denies (33.3%), did s/he do it or not do it (16.6%) or whether the charge is true or false (16.6%). If a lwayer is involved in the case and tells the judge that they (juvenile and the lawyer) are entering a plea then of course the judge will not ask for a plea from the juvenile. One sees that in general judges do not ask juveniles how they plead to the charge(s) but rather ask

them some version of this question. This is particularly important since both probation officers (46.7%) and defense counsel (53.3%) maintain that juveniles do not understand what is being asked for if a judge asks them "How do you plead?". They do, according to the key actor groups, understand if the judge asks, "Are you guilty or not guilty?", "Did you do it or not?", "Is it true or false?".

An important question raised with each group of actors was "Do you think that it is the judge's role and responsibility to explain the charge, what it means to make a plea, the difference between guilty and not guilty, for example, to the juvenile?". Judges themselves felt that indeed this was their role in part but that defense counsel should assume part of the responsibility if they are involved in the case. They did not mention that probation should assume any of this responsibility. Defense counsel themselves expressed a mixed viewpoint regarding this question. One lawyer felt this should be the judge's role completely. The majority (86.7%) saw it as part of the judge's role. This is an interesting position to take since the court time allotted for each case makes the judge the least free to explain these things to the juvenile. Likewise, these interviews revealed that juveniles are not likely to ask the judge for clarification concerning any issue. Judges said 0-20% of all juveniles who appeared before them would ask any questions when given the opportunity.

Probation service (66.7%), on the other hand, felt that indeed this was part of the judge's role and responsibility. They see themselves, defense counsel and the prosecutor as being

important in this regard. This position is significantly different from that taken by defense counsel and judges who would give the responsibility of explaining the charge, what it means to make a plea, the difference between guilty and not guilty only to themselves. I would argue that this attitude relates to the point made earlier in this chapter about "how specialized vocabularies can be a way of perpetuating group or professional power" (Probert, 1972: 84). Lawyers and judges may feel that they should do all of the explaining in order to perserve and protect their interests in the juvenile court. To have probation officers share in the explaining of these things may create the potential for probation to eventually fulfill this role completely. Probation officers on the other hand, seem to want to maximize the numbers of sources that the juvenile has to have these things explained to him/her. The underlying sentiment seems to be a desire on the part of probation to increase the juvenile's understanding. This could be facilitated by maximizing the juvenile's sources of information.

Although it would seem that other key actors would hold the judge ultimately responsible for whether or not the highly technical vocabulary of the information and plea is explained and understood by the juvenile it would be misleading to leave the discussion of the internal workings of the court at that. As pointed out at the beginning of the chapter, legal language is viewed by defense counsel as being necessary for the effective functioning of the juvenile court. An important consideration then is whether or not lawyers who are active in the juvenile court system <u>explain</u>

the legal vocabulary they use in the courtroom to their child clients? Most probation officers (40%) told me that it had not been their experience that lawyers explained legal vocabulary. Five (33.3%) others responded that lawyers appeared to explain. The other probation officers said that they were unable to reply to this question. Judges had an equally difficult time answering this question. Only two judges (33.3%) interviewed said that it had been their experience that lawyers active in the juvenile court system did explain the legal vocabulary they use in court to their child clients. One said that "no" this was not the case. The majority (50%) didn't really know. This indecision can be attributed to the position that the judge occupies in the court structure. S/he is unable to observe directly the activities of different lawyers. Seven of the defense lawyers interviewed said that it was their practice to explain the legal vocabulary which they use in court to juveniles while the majority (53.3%) said they did not do this. All three groups did agree that it was important for lawyers to explain to juveniles the legal vocabulary used in court.

At the end of the court hearing most judges (83%) said that they would sometimes explain to the juvenile what had occurred in court that day. The remaining judge said that s/he would never do this. The reasons for not explaining varied. Two (33.3%) stated that this was the role of counsel, others maintained that a few kids know the system so well there was no need to explain while some said that this was not a trial or disposition. Almost all of the judges (66.7%) said that they do ask juveniles whether or not

they understand what has occurred in court that day. The explanation provided is predominantly at the initiation of the judge (83.3%).

Judges told me that one of the main reasons for not explaining to the juvenile what had occurred in court that day was that this was the role of defense counsel. In an independent question I asked judges directly whether or not they would explain if the juvenile had legal counsel. Three (50%) of the judges said that they would only explain sometimes if counsel were involved. Two reasons were given for this action. First, these judges wanted the juvenile to understand the disposition completely if one was given. Secondly, they felt that it might get the message across to the juvenile more clearly and consequently the juvenile might take it more seriously.

Given that part of the role of a probation officer is explanatory I questioned judges about whether or not they would explain to the juvenile what had occurred in court if the juvenile's probation officer was present. All responded that indeed they would. First, they felt that it was not the probation officer's role to have to explain court. Second, they shouldn't rely on them to explain legal matters. Third, it was part of the judge's role. Fourth, probation officers have a different perspective and finally, when a disposition was given they should not be explaining that to a juvenile. One point that might be raised here is that although it is questionable whether probation could not or should not be explaining what has happened in court perhaps what judges and

lawyers may not realize is that the explanation isn't as complicated as they think it is.

After Court

The period which follows court can conceivably be viewed as an opportunity for lawyer-client, probation officer-client to spend a few moments discussing what has occurred in court that day. It can best be likened to a "de-briefing" session. However, certain structural factors often prevent this from happening. For example, a probation officer or a defense lawyer may have cases which come up in court one after another. This makes it impossible for the actor to leave the court to discuss the juvenile's case with him/her.

An explanation of what has occurred in court that day is not necessarily given to each and every juvenile processed through the court on any particular day. Probation officers (93.3%) and defense lawyers (93.3%) said that they would provide an explanation which was always at their initiation. Both lawyers and probation officers informed me that less than 50% of all juveniles they deal with would ever ask questions about court once the initial explanation had been provided.

One very revealing aspect of the probation and defense counsel interviews was their respective responses to the question of whether or not they would explain if the other was present. Probation officers (66.7%) stated that yes they would explain even if the juvenile had legal counsel. The main reasons given were: the

lawyer doesn't always explain adequately (33.3%), they provide different information to the juvenile (20%), the explanation that counsel provides is too complex (13.3%) and finally, they want to make sure that the juvenile understands (6.7%). All lawyers interviewed said they would provide an explanation of what had happened in court even if the probation officer was present. Reasons given: probation officers explain from a different perspective (33.3%), it's the role of defense counsel (13.3%), I want to scare the kid into believing that this is for real (6.7%) or the juvenile and probation officer have a hostile relationship (6.7%). In some instances, a juvenile will very often get the benefit of two accounts. Other juveniles however may end up with no explanation. I would suggest that the fact that probation officers and defense counsel explain to the juvenile in spite of one another's presence indicates an uncertainty as to role and function. Perhaps this uncertainty has grown out of the changes which have occurred in the Winnipeg juvenile court. It would seem to indicate a certain degree of role conflict or at least role tension.

Court Follow-Up

Given that very few matters are disposed of in the first appearance court the issue of follow-up becomes an important one. I asked both probation officers and defense counsel whether or not they ever followed up a court hearing by writing a letter to the juvenile and/or his/her parent/guardian explaining what took place in court. Some lawyers (33.3%) said that they would always do this

while the remainder (66.7%) said they would only do this sometimes. Only one probation officer (6.7%) stated that s/he would always write a letter while eight (53.3%) others do this sometimes. For lawyers the most common reason for forwarding a letter was either to remind the juvenile of the next court date or explain the nature of the disposition given. Probation officers shared defense counsel's position saying that a letter was important if a disposition was given. They emphasized that it was particularly important when a period of probation was given as a disposition. They feel that the conditions of the probation order need to be thoroughly explained to the juvenile.

If a hearing is adjourned to another court all lawyers said that they would be in touch with a juvenile either by telephone (100%), letter (66.7%) or personal meeting (46.7%). Probation officers (86.7%) were likely to have telephone contact with the juvenile.

Is Legal Language Necessary?

The question of whether or not legal language is necessary for the functioning of the Winnipeg juvenile court is the most critical question in assessing the potential for a Plain English movement within this court. The inquiry produced a variety of responses. Probation officers as a group seemed to feel that legal language was not necessary. They maintain that the court can not only function as effectively with less legal vocabulary but that if less were employed the courtroom experience might be more meaningful for

the juvenile. It might have greater impact on him/her.

Not surprisingly, defense lawyers fall in favor of the use of legal language arguing that legal language not only serves a very specific purpose but that it also facilitates the process. Judges for the same reasons advanced by defense counsel, seem to see the need for legal language in juvenile court.

The issue of whether or not legal language is necessary was most clearly revealed by the question "What in your mind are the most important legal terms or legal phrases that a juvenile has to understand in coming to court?". Whatever their view as to the necessity of legal language within the juvenile court, each actor group isolated legal terms and phrases which they felt were important for the child appearing before the juvenile court to understand. A point to be noted is that each interviewee was provided with a list of legal terms and phrases[2] which had been prepared in advance of the interview. Although the compendium of terms was intended to be as extensive as possible other terms were raised which did not appear on the original list. Most of the responses were prompted. (See Tables XII, XIV, XV).

An examination of the tables reveals that probation officers isolated different legal terms and phrases than defense counsel and judges. Probation officers mentioned things like adjourn sine die, the charge, the plea, pretrial and transfer whereas both judges and defense counsel emphasized disposition as being most important. I would argue that probation's position reflects their emphasis on the court process and the implications that getting involved has

TABLE XIII

MOST IMPORTANT LEGAL TERMS OR PHRASES
PROBATION OFFICERS

What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase*	Frequency
Adjourn sine die	13
Not guilty/Guilty	10
Information and complaint	9
Pretrial court	9
Transfer application	9
Contrary to Section__ of Criminal Code of Canada	8
Fine	8
Restitution	8
Plea	8
Waive reading of charge	8
Conditional discharge	8
Stay of proceedings	8
Committal	8
Probation	8
To be seized of a case	8
Trial	8
Get particulars	8
Allegation	7
Bail application	7
Right to legal counsel	7
Suspend final disposition	7
Withdraw charges	7
Indicated plea	7
Remand	7
Pre-disposition report	6
Not delinquent/Delinquent	6
Reconsideration	6
Period of progress	6
Disposition court	6
Cross-examination	6
To take an oath	6
Ascertain jurisdiction	5
Subpoena	5
Witness	5
Keep the peace and be of good behavior	5
Finding of delinquency	5

*Multiple responses permitted
Number of interviewees = 15

TABLE XIV

MOST IMPORTANT LEGAL TERMS OR LEGAL PHRASES
DEFENSE COUNSEL

What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase*	Frequency
Delinquent/Not delinquent*Guilty/Not guilty	8
Disposition in general	8
Plea	6
Adjourn sine die	6
Transfer application	5
Pre-disposition report	5
Particulars	5
Release	5
Forensic	4
Probation	4
Committal	4
Words in an information	4
Remand/Adjourn	4
Voir dire	4
Placement	4
Restitution	4
Stay of proceedings	4
Release	3
Progress report	2
Trial	2
Plea bargaining	2
Leave application	2
Finding of delinquency	2
Reconsideration	1
Pretrial	1
Party to an offence	1
Curfew	1
Legal vs. moral guilt	1
Failure to appear	1
Children's Aid	1
Juvenile record	1

*Multiple responses permitted
Number of interviewees = 15

TABLE XV

MOST IMPORTANT LEGAL TERMS OR LEGAL PHRASES
JUDGES

What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase*	Frenquency
Disposition	2
Charge	1
Entering a plea	1
Guilty/Not guilty	1
Curfew	1
Know why they are there?	1
Have you seen a lawyer?	1
Record	1
Particulars	1
Stay of proceedings	1
None	1

*Multiple responses permitted
Number of interviewees = 6

for the juvenile. For example, a juvenile has to understand the charge and what it means to give a plea before s/he goes to court. Likewise if the juvenile's case proceeds to pretrial or transfer then the juvenile's position will change. As noted previously his/her legal status will be altered. Finally, to have a charge adjourned sine die means that the juvenile has received a break. Probation probably view this as important because if the juvenile does not understand that s/he has received a break then this can have serious implications for reinvolvement. To elaborate when I asked why they selected these terms as important most (80%) probation officers said they were important because "they affect the juvenile". Some (26.7%) said they were "the basics of the system" and the remainder (26.7%) said they were "used frequently". One point to be made here is that probation officers view many legal terms as being important. For example, for every term or phrase at least 33.3% of all probation officers interviewed saw it as being important. They do not just isolate the disposition terms. This is significant because it suggests that although this group feel that legal terms and phrases should not be used in juvenile court they believe that if they are used then juveniles should understand them. They are concerned with the juvenile's comprehension.

Both judges and defense counsel mention disposition as the most important legal terms which a juvenile has to understand. I would argue that this ties in directly with their respective roles. Defense counsel in this study view themselves as "adversarial" or

as the "child's advocate" which accounts for the importance they attach to disposition. Disposition is what the lawyer ultimately works toward. Thus when a disposition is given they want the juvenile to understand and appreciate what it actually means to receive it. Likewise judges act as decision-makers who order dispositions in each and every case. It is my position that judges, like defense counsel view disposition as important for the juvenile to understand because if s/he does not then they may not realize that they have been given a break on a particular charge. Juveniles must also understand the seriousness of the disposition and what implications it has for their future. Clearly this interpretation of the positions of defense counsel and judges was borne out by the answer to the question "Why are these particular terms so important?". Defense counsel said that these were the "basics of the system" (73.3%) and that "these terms affect the juvenile" (60%). Two defense counsel (13.3%) stated that these terms were important because they "personified the power of the state" - a point implicit in my observation that lawyers want juveniles to understand and appreciate what a given disposition means. Judges shared the sentiments of defense counsel. The majority (66.7%) stated that "these terms affect them" was the most important reason for their selection.

One interesting finding which is well-worth noting is that one judge stated that there were no legal terms or legal phrases which a juvenile has to understand. This individual said that it was not the juvenile's responsibility to understand but rather for counsel to take care of this.

After asking each interviewee what terms or phrases were so important and why, each was asked which of these same legal terms and phrases they saw as being less important and why. Most respondents used the initial compendium of terms as a guide to answering this question. (See Tables XVI, XVII, XVIII).

The general trend in the responses given to this question by probation officers and defense counsel was that technical terms or Latin terms were least important for the juvenile to understand. The main reason given by probation officers for why these legal terms are less significant than others was that "these are highly technical terms" (26.7%). I suggest that they take this position because they believe that these terms are for the most part meaningless to juveniles.

Defense counsel (40%), like probation, argue that the named terms are technical and so are not of direct concern to the juvenile. I would argue that this position assumes that perhaps only legal actors have to understand these particular terms.

Unlike the other two key actor groups, judges (33.3%) stated that no legal terms or phrases were less important than any others. This position does not make a great deal of sense. If they view all legal terms and phrases as important for the juvenile to understand then the preceding question concerning most important legal terms and phrases should have generated higher frequencies for each term than they did. Perhaps judges were unwilling to isolate any words or terms as less important because they feel that there is a need for legal language in the juvenile court.

TABLE XVI

LEAST IMPORTANT LEGAL TERMS OR LEGAL PHRASES
PROBATION OFFICERS

What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase*	Frequency
Technical terms	6
Disposition	4
Subpoena	3
None are less important	2
Latin Terms	2
Guilty/Not guilty	2
Finding of delinquency	2
Ascertain jurisdiction	2
Reconsideration	1
Trial	1
Keep the peace and be of good behavior	1
Plea	1
Waive reading of the charge	1
Pre-disposition report	1

*Multiple responses permitted
Number of interviewees = 15

TABLE XVII

LEAST IMPORTANT LEGAL TERMS OR LEGAL PHRASES
DEFENSE COUNSEL

What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase*	Frenquency
None	4
Indicated plea	4
Particulars	3
Information	3
Contrary to Section__ of the Criminal Code	2
Remand	2
Intent/specific intent	1
Committal	1
Transfer	1
Notice	1
Motion	1
One more remand pre-emptory	1
Delinquent	1
Jurisdiction	1
Latin Terms	1
Onus	1
Fine	1
Prohibita	1

*Multiple responses permitted
Number of interviewees = 15

TABLE XVIII

LEAST IMPORTANT LEGAL TERMS OR LEGAL PHRASES
JUDGES

What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

Name of Term/Phrase	Frequency
No response	2
None	2
Don't know	1

Number of interviewees = 6

Each of the three key actor groups interviewed in this study shared the view that legal language does affect the juvenile's understanding of the courtroom hearing. Acknowledging the impact that the use of this language has on the juvenile who appears before the court, three related questions become important. First, "Do key legal actors feel that the courtroom experience would have greater impact if less legal vocabulary were used?". Second, "Do they feel that simplifying legal language would make the courtroom experience more meaningful for the juvenile?". Third, "If legal language were simplified would the courtroom experience have more of a teaching function?".

Almost all (93.3%) of the probation officers interviewed maintain that the courtroom experience would have greater impact if less legal vocabulary was used. This position ties in well with the earlier comments made by this group about the undesirability of having legal language used in the juvenile court. For the probation officer, juvenile court should be more of an "informal court" with greater emphasis placed on "the best interests of the child". Implicit in their conception of an informal court is the use of language which the juvenile can understand. To ensure that the juvenile understands would be to act in the "best interests of the child".

Defense counsel were divided on this issue. The majority (53.3%) felt that court would have greater impact if less legal vocabulary were used however they place their greatest emphasis on due process which can be accomplished with legal language and

without the juvenile's comprehension. One point which should be made is that fourteen (93.3%) of the lawyers interviewed also told me that it was their position that a lawyer's responsibility was discharged only if s/he had protected the juvenile's rights and the juvenile had understood what had happened in court but at the same time they admitted not always explaining.

Only half of the judges (50%) in this study said that the impact of court would be greater if less legal vocabulary were used, while three other judges felt that "very little legal vocabulary was being used now so impact could probably not be increased". This view is not surprising given the conflicting position judges express when describing their feelings about the functioning of the juvenile court. Their view of court requires competent case processing by legal actors. From this perspective legal language is an asset.

The second question posed, "Would simplifying legal language make the courtroom experience more meaningful for the juvenile?" gained a variety of responses. Probation officers (93.3%) felt that definitely meaningfulness would increase if language were simplified. The majority of attornies (60%) shared this optimism. Judges (33.3%) were less convinced.

In conjunction with the question of meaningfulness I asked interviewees "If legal language were simplified would the courtroom experience have more of a teaching function?". Not surprisingly, probation officers (86.7%) said that it would. I suggest that this very positive response can be linked to their "treatment"

approach to dealing with juveniles. Judges (66.7%) and lawyers (46.7%) responded affirmatively to this question as well.

The simplification of legal language would seem to produce a number of positive results. The critical issue is the feasibility of simplifying legal language into plain and simple English. The criteria used in the assessment of its feasibility are equally important.

Seven (46.7%) of the probation officers interviewed thought that simplifying legal language was a feasible proposition. Their reasons included: anything is possible, the court is for the people, all legal words can be replaced with simpler more easily understood words and the most experienced counsel active in the juvenile court always use simple English. The reasons for why such a plan was not seen to be feasible were some legal terms are essential to the functioning of the court, there is a tradition involved and finally, it would be too time consuming to change everything into Plain English. It is interesting to note that the reasons for why it is not feasible support fully that body of literature which argues against the reform of legal English (Danet, 1980: 541; cf. Mellinkoff, 1963: 290, Aiken, 1960).

Somewhat surprising was the response of juvenile court lawyers to the question of feasibility. Most (80%) lawyers felt that such a change <u>was</u> feasible. Their reasons are of particular interest. They suggested first of all that many lawyers active in the juvenile justice system already do this. My courtroom observations do not corrobrate this. Second, they feel that there are plain words

for complex legal terms. Third, juvenile court can be informal which implies that a simpler language might be used just as effectively as legalese. Fourth, legal language is really only for the convenience of the judiciary, the prosecution and defense. Finally, they thought that if other areas of law (contract, insurance, etc.) are doing this effectively then there is no reason why criminal law cannot do the same.

It is important to note that the fourth reason given above lies in complete contradiction to much of the literature regarding lawyers views about changing legal language. Specifically, Danet notes in her article, "Language in the Legal Process" that many lawyers would argue adamently that "to change the language of the law is to make it less precise because lawyers and judges know what the words mean; these words have stood the test of time. To change the language is to create new legal issues, to sacrifice the comforts of precedent" (Danet, 1980: 541; cf. Mellinkoff, 1963: 290). Other literature which presents an opposing view is the work of Jonathan Caplan, "Lawyers and Litigants: A Cult Reviewed" (1977) and Zenon Bankowski and Geoff Mungham, "A Power Elite: The Legal Profession in Process" (1976).

Judges were divided on the issue of feasibility. Only two (33.3%) felt that is was feasible and they provided two reasons. First they believe that "there isn't that much being used now so any changes wouldn't be major ones". Second "other areas of law (contract, insurance, etc.) are already engaged in this process". The judges (33.3%) who were opposed said that it was not feasible

because "it detracts from the essence of the process - the language as prescribed by the Criminal Code itself", "we are dealing with very specific issues", "we are already dealing with the language of the criminal law which is very straight forward" and "one can't substitute simple words for some of the legal ones". The position reflected in these responses falls in line with that taken by supporters for the continued use of legal language (Danet, 1980: 541).

The final question raised in the discussion of language change was "What changes would you (each key actor group) propose to simplify legal language?". The answers given appear in Tables XIX, XX, XXI.

An interesting difference emerges out of these three tables. Specifically, one finds that defense counsel and judges place greater emphasis on increasing explanation of terms used while probation officers feel that the most appropriate changes are translating everything into Plain English and working with the judges so that they will speak Plain English. I suggest that the position taken by judges and defense counsel reveals a satisfaction with the structure of the system and the desire to work within the system to achieve any changes in the use of language in the court. Increased explanation of language used can be accommodated within the existing structure. Probation on the other hand advocate more sweeping changes at the structural level. The desire to translate all language used in the court into Plain English suggests a general dissatisfaction with the current use of language. Likewise

TABLE XIX

CHANGES TO SIMPLIFY LEGAL LANGUAGE
PROBATION OFFICERS

What changes would you propose to simplify legal language?

Proposed change*	Frequency
Translate all terms into plain English	8
Work with judges	6
Convince legal actors of need for plain English	3
Place onus on court to explain	2
Send explanatory pamphlet with summons/notice	2
Increase probation involvement	1
Do away with Latin terms completely	1
Develop rules for vocabulary used in juvenile court	1

*Multiple responses permitted
Number of interviewees = 15

TABLE XX

CHANGES TO SIMPLIFY LEGAL LANGUAGE
DEFENSE COUNSEL

What changes would you propose to simplify legal language?

Proposed Change*	Frequency
Explain all legal words	5
Standardize explanation of terms	2
No response	1
Make it mandatory to use plain terms	1
Have one person to explain legal terms and legal procedures	1
Make key actors responsible for explanation	1

*Multiple responses permitted
Number of interviewees = 15

TABLE XXI

CHANGES TO SIMPLIFY LEGAL LANGUAGE
JUDGES

What changes would you propose to simplify legal language?

Proposed Change	Frequency
Explain in plain English	1
Make it incumbent on judge to explain	1

Number of interviewees = 6

the desire to work with the judges of the juvenile court so that they will speak Plain English indicates the desire for reform on a much broader scale. I would suggest that the apparent differences on this particular issue might be a reflection of probation's ambiguous role within the changed Winnipeg juvenile court. Likewise it might indicate an opposition to a more legalistically-oriented court.

Conclusion

This chapter has attempted to present the results obtained from the focused interviews conducted with probation officers, defense counsel and judges of the Winnipeg juvenile court. The discussion began by outlining the basic premises of the Plain English movement. In conjunction with this both the Juvenile Delinquents Act and the Young Offenders Act were addressed in an attempt to situate what followed in the chapter. The literature suggests that understanding legal language is problematic for most, particularly juveniles, so the question of whether or not key actors share this view was addressed. The roles and functions of each key actor group in the explanation process were then addressed. The activities of these individuals at various stages prior to the pretrial court were examined. The discussion then returned to the broader issue of legal language. Specifically, the necessity of legal language and language change.

The next chapter will present the results of the juvenile interviews.

FOOTNOTES

[1] A duty probation system is a relatively new system in the Winnipeg juvenile court. On each day of the week at the Manitoba Youth Centre one of the probation districts has the majority of their matters heard. This does not mean that matters from other districts are not dealt with. If for example, it was a day when the South-West district was bringing its cases to court then one member of that district would act as duty probation officer meaning that they would be inside the court at all times. Often times the duty probation officer will take care of matters for other probation officers from their district office as well as other districts. This contributes to the more efficient use of the probation officer's time. Less time is wasted waiting for cases to come up in court. Likewise the judge can give instructions to any number of probation officers through the duty probation officer.

[2] The idea of preparing a compendium of legal terms and legal phrases came from a suggestion given to me during an interview in which I was pre-testing one of the key actors instruments. The interviewee suggested that all key actors I would interview would be very familiar with the language of the court. This familiarity s/he speculated might make it difficult for the respondant to isolate terms and/or phrases into the categories of most important/least important. Defense counsel and probation officers commented that having this list to prompt them did aid them in answering the two questions of concern.

CHAPTER 5

RESULTS OF JUVENILE INTERVIEWS

Introduction

The main phase of this research was the interviewing of juveniles, aged 14-17 years, who came before the pretrial court charged with either Break and Enter (with intent; and theft), Theft (either over $200.00 or under $200.00), or Mischief or any combination thereof during the data collection period of April-June 1982. These same juveniles were required to have entered a plea to at least one of the charges of interest. In this chapter I will discuss the results of these interviews and address each of the five hypotheses put forth to be tested. I will attempt to show whether or not support was generated for the hypotheses.

Understanding Legal Language

The assessment of a juvenile's understanding of legal language must be linked to whether or not the juvenile himself/herself thinks s/he understands that language. The question "Did any people in the courtroom use words which you did not understand?" would seem to reveal the most in this regard. To this question 80% of all juveniles I interviewed said that "yes, people in the courtroom did use words which I did not understand". Only 20% stated the opposite. As somewhat of a follow-up to this question, I asked those juveniles who said they did not understand to identify the people in the courtroom who used these words. A variety of responses were

given. Some (28.3%) said the prosecutor, others (10%) named the judge while a few (3.3%) said defense counsel. Other juveniles named groups of key actors. For example, several (23%) said the judge, prosecutor and the defense whereas others (15%) identified the prosecutor and the judge as the source of their lack of understanding.

The most important question which arises out of this information is whether or not the juvenile wants to understand. Some might argue that even though words might not be understood a juvenile's lack of understanding may not make a difference to him/her. In this particular sample the majority of juveniles (82%) said that it was important. Only one juvenile said that it was not.

The juvenile's desire to understand the language of the court points directly to the issue of what sources of information does s/he have to explain the words and phrases which are confusing and bewildering. I asked juveniles whether or not anyone explained any of the words used in the court to them. To this 30% replied affirmatively while 47% answered negatively. The individual who was said to have explained the most was the judge. It is interesting to note that when juveniles told me that the judge had explained more things to them than any other actor, they were inclined to note that they were a little surprised by this, but also very pleased. This finding corroborates the work of Eloise Snyder (1971: 185) who made the following comment,

> Moreover, the judge is seen by the children as one of the few people who take the time to ask the child how he feels about what is said about him. The overt concern, although part of the

> judicial role is met with sincere surprise by most children, who perceive themselves to have been rejected by others along the path to the juvenile court hearing.

Echoing the sentiments expressed in the preceding passage Peter D. Scott in his study on the juvenile's point of view regarding juvenile courts also found that his respondents shared this view of the judge. One child, describing what had occurred in court that day, stated, "The judge explained everything, the judge tries his best to help, gives you chances sometimes" (Scott, 1959: 205).

The juvenile's ability to understand is clearly related to the persons which s/he has contact with. The first three hypotheses in this study address that very issue.

Hypothesis #1

The first hypothesis states that a juvenile's understanding of legal language is dependent on contact with probation services. To examine this relationship I cross-tabulated the binary variables (yes/no), "Did anyone in the courtroom use words which you did not understand?" with the variable "Have you had a probation officer present with you in the courtroom at any of your hearings concerning your current charge(s)?". This question implies that there has been contact with a probation officer. I selected the question which allowed the juvenile to assess himself/herself whether or not s/he understood the legal language as the dependent variable because I felt that it represented the most accurate measure of understanding produced by the interview. The juvenile's own subjective interpretation of whether or not s/he does not

understand is more revealing than setting arbitrary cutting points to determine understanding and not understanding.

One point to be noted here is that the dependent variable is based on a question formulated in the negative which might cause some confusion. Thus, a juvenile who understood the words used in court would respond saying "no". A juvenile who did not understand would respond saying "yes". Given this confusion I reversed the categories of the dependent variable labelled "juveniles' understanding" so that when one reads the table the category "yes" does in fact mean that the juvenile understands. The category "no" means s/he does not understand. This guide to interpreting the categories of the dependent variable applies to all tables presented in this chapter.

The bivariate cross-tabulation produced the following table:

TABLE XXII

JUVENILES' UNDERSTANDING AND PROBATION CONTACT

Juveniles' Understanding		Probation Contact: Yes	No	Row Total
	Yes	26%	8%	17%
	No	74%	92%	83%
	Column Total	31	26	57

3 cases of "don't know" or "not applicable" were excluded from the table.

Both variables are nominal variables. Their presentation in a 2 x 2 table allowed me to use Yule's Q to determine the measure of association between these two variables. Q produced a value of .61 which indicates a moderate positive correlation between the two

variables. To elaborate Q = .61 denotes that among pairs where there was no difference between understanding and probation contact, the proportion with which the "understanding" position went with "yes probation contact" was .61 greater than the proportion with which "no understanding" went with "probation contact". Thus youths who had contact with a probation officer were more likely to understand the language of court proceedings than were youth who did not have a probation officer with them in court.

Certain control variables were hypothesized to affect the proposed relationship. The first was age. To examine the influence of age, juveniles were divided into two groups - young and older. The young group included all those 14, 15, 16 years of age. The older was composed of 17 and 18 year olds. This applies to all hypotheses.

TABLE XXIII

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND AGE

PARTIAL TABLE 1

YOUNGER JUVENILES

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	17%	0%	9%
No	83%	100%	91%
Column Total	12	17	29

PARTIAL TABLE 2

OLDER JUVENILES

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	32%	22%	27%
No	68%	78%	73%
Column Total	19	9	28

TABLE XXIV

STANDARDIZED TABLE FOR AGE

Juveniles' Understanding	Probation Contact: Yes	Probation Contact: No
Yes	24.3%	10.8%
No	75.7%	89.2%
Column Total	100.0%	100.0%

The presence of a zero in the first partial table makes it impossible to compare the values of Q so the percentages must be examined. [Note: whenever a zero appears in one of the partials, Q will not be computed.] In the first partial table (younger juveniles) as one shifts from probation contact to no probation contact there is a decrease of 17% in the percent understanding. In the second partial table (older juveniles) there is a decrease of 10% in percent understanding. In the original table as one shifts from probation contact to no contact there is a shift from 26% understanding to 8% understanding. This means there is a decrease of 18% in percent understanding. In the standardized table (eliminating the influence of age) the corresponding decrease is 13.5%. Age does not substantially influence the original relationship. In other words, whether a juvenile was younger or older understanding of legal language still decreases as one moves from probation contact to no probation contact.

Prior record (formal) was introduced as a control variable because it was believed that this would affect a juvenile's understanding. To examine the influence of formal prior record juveniles

were divided into groups - those who have a prior record and those who do not have a prior record. This applies for all hypotheses.

TABLE XXV

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND PRIOR RECORD

PARTIAL TABLE 1

PRIOR RECORD (FORMAL)

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	32%	33%	33%
No	68%	67%	67%
Column Total	25	6	31

PARTIAL TABLE 2

NO PRIOR RECORD (FORMAL)

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	6	20	26

TABLE XXVI

STANDARDIZED TABLE FOR FORMAL PRIOR RECORD

Juveniles' Understanding	Probation Contact: Yes	No
Yes	17.4%	35.4%
No	82.6%	64.6%
Total	100.0%	100.0%

In the first partial (prior record) there is a small increase of 1% in understanding as one shifts from probation contact to no probation contact. The second partial (no prior record) shows that there is no percent change in understanding as one makes this same shift. In the original table when we shift from probation contact to no probation contact there is a shift from 26% understanding to 8% understanding. In the standardized table (eliminating the influence of formal prior record) there is an 18% increase in percent

understanding. It can be concluded that the control variable prior record (formal) changes the direction of the association between understanding and probation contact. When the effects of this variable are eliminated the proportion with which the "no understanding" position goes with "probation contact" will be greater than the proportion with which "understanding" goes with probation contact. The prior record (formal) variable does have an effect. Thus, if a juvenile has a prior record (formal) s/he is likely to understand even if s/he does not have contact with probation services.

The third control, prior record (non-judicial), was believed to influence the original association. Juveniles were divided into two groups - those who had had a non-judicial and those who had not. This applies for all hypotheses.

TABLE XXVII

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND PRIOR RECORD (NON-JUDICIAL)

PARTIAL TABLE 1

NON-JUDICIAL CONTROL

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	5	6	11

PARTIAL TABLE 2

NO NON-JUDICIAL CONTROL

Juveniles' Understanding	Prob. Contact: Yes	No	Row Total
Yes	31%	10%	20.5%
No	69%	90%	79.5%
Column Total	26	20	46

The standardized table was not computed because the amount of association in the partial tables is substantially different (Anderson and Zelditch, 1975: 194).

Among juveniles who had been involved previously on a non-judicial basis there was no percentage change in understanding when moving from probation contact to no probation contact. The percentage change was zero in this instance. The second partial shows a 21% decrease in understanding when moving from probation contact to no probation contact. If a juvenile has a non-judicial prior record then there is no difference in understanding as one shifts from probation contact to no probation contact. If a juvenile does not have a non-judicial prior record there is a decrease in percent understanding as one shifts from probation contact to no probation contact. Non-judicial prior record does have an effect.

The control variable, times before the court on current charges was considered important because a juvenile who has appeared before the court on previous occasions has had more opportunities to begin to understand some of the legal language than a juvenile who has had only limited contact. To look at the influence of this variable juveniles were split into two groups - juveniles who had only appeared once or twice on the current charges and juveniles who had appeared more than two times. This applies for all hypotheses.

TABLE XXVIII

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND TIMES BEFORE COURT

PARTIAL TABLE 1

TIMES BEFORE COURT (LESS THAN TWO)

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	28.5%	0%	14.25%
No	71.5%	100%	85.75%
Column Total	21	22	43

PARTIAL TABLE 2

TIMES BEFORE COURT (GREATER THAN TWO)

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	20%	50%	35%
No	80%	50%	65%
Column Total	10	4	14

Once again the standardized table was not computed because substantial differences in the amount of association were observed in the partials.

Examining partial table 1 there is a 28.5% decrease in percent understanding in moving from probation contact to no probation contact. In partial table 2 there is 30% increase in understanding when making the same shift. Thus, if a juvenile has appeared before the court more than two times s/he is likely to understand even if s/he does not have contact with probation services. The variable does have an effect.

Juveniles included in the sample had to have been charged with Theft (over $200.00, under $200.00), Break and Enter (and theft or with intent) or Willful damage or any combination of these. These offences all fall under the Criminal Code. Juveniles were generally always charged with other offences, provincial statute violations (LCA and HTA) or others not named above from the Criminal Code. The selected charges of Theft and Break and Enter, as pointed out

in Chapter 2, are the ones which most juveniles are charged with. Given this, it was thought that there might be a difference in understanding between juveniles who were just charged with the selected offences and juveniles who had the selected offences and others. This applies for the other four hypotheses.

TABLE XXIX

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND TYPE OF CHARGE

PARTIAL TABLE 1

SELECTED OFFENCES ONLY

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	47%	7%	27%
No	53%	93%	73%
Column Total	17	15	32

PARTIAL TABLE 2

SELECTED OFFENCES & OTHER OFFENCES

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	0%	9%	5%
No	100%	91%	95%
Column Total	14	11	25

Once again the standardized table was not produced because of the differences in the amount of association observed in the two partial tables.

Looking at the table for selected offences there is a 40% decrease in percent understanding when shifting from probation contact to no probation contact. When I controlled for selected and other offences there was a 9% increase in percent. Juveniles who are charged with selected offences and other offences are likely to understand even if they do not have contact with probation services whereas juveniles who were charged with only the selected offences were less likely to understand if they had not had contact with probation services. Type of charge does have an effect.

Another criteria for a juvenile's inclusion in the sample was whether or not a juvenile had entered a plea to the charge(s) before the court. Some juveniles entered not guilty pleas to all charges while others pleaded guilty to some, not guilty to others. How the juvenile pleads will affect the way his/her case will proceed. A charge that a juvenile pleads guilty to may be disposed of before the others. A juvenile may understand more about legal language if this is the case. Thus the need to control for this. This applies for all hypotheses in this research.

TABLE XXX
JUVENILES' UNDERSTANDING, PROBATION CONTACT AND PLEA TO CHARGE

PARTIAL TABLE 1

NOT GUILTY PLEAS

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	17%	9%	12.5%
No	83%	92%	87.5%
Column Total	18	13	31

PARTIAL TABLE 2

GUILTY & NOT GUILTY PLEAS

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	39%	8%	23.5%
No	61%	92%	76.5%
Column Total	13	13	26

The partial tables showed substantial differences so the standardized table was not computed.

Under the condition of not guilty pleas to all charges percent understanding decreases 9% between probation contact and no probation contact. Where both guilty and not guilty pleas were entered the corresponding percentage decrease was 21%. No zeroes were present in the 2 x 2 tables so Q can be used to examine the influence of the control variable. Among juveniles who had entered only not guilty pleas the understanding association was .41 (Q) and

it was .77 (Q) among juveniles who entered both guilty and not guilty pleas. This variable has an effect. Those juveniles who had contact with probation services were more likely to understand legal language if they had entered both guilty and not guilty pleas than juveniles who had entered only not guilty pleas.

The final control variable was judge sitting. Each judge is known to have a particular approach when explaining certain legal matters to juveniles. Six different judges presided during the course of the study. To determine whether or not this variable affects the original relationship two groups were created. Group 1 was made up of those judges known as #1, #2, #3. Group 2 consisted of judges #4, #5, #6. Judges were divided into these two groups according to the number of juveniles who appeared before them. Of the sixty juveniles in the sample, twenty-seven appeared before judges 1, 2, 3. The other thirty-three appeared before judges 4, 5, 6. Given the almost equal split in the number of juveniles appearing before each group the two categories were created. This again applies for all five hypotheses.

TABLE XXXI

JUVENILES' UNDERSTANDING, PROBATION CONTACT AND JUDGE SITTING

PARTIAL TABLE 1

GROUP 1

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	15%	7%	11%
No	85%	93%	89%
Column Total	13	13	26

PARTIAL TABLE 2

GROUP 2

Juveniles' Understanding	Probation Contact: Yes	No	Row Total
Yes	33%	7%	20%
No	67%	93%	80%
Column Total	18	13	31

The observed differences in the amount of association in the two tables does not necessitate the calculation of the standardized table.

Group 1 shows that percent understanding decreases 8% when shifting from probation contact to no probation contact. Group 2 reveals a percent decrease in understanding of 26%. The decrease is much greater than that found in group 1. The lack of zeroes in either of the 2 x 2 tables allows for the use of Q. Among juveniles who had been exposed to group 1 the association between understanding and probation contact was .37 (Q). For juveniles exposed to group 2 the understanding and probation association was .71 (Q). Thus those juveniles who had contact with probation services were more likely to understand legal language if they had appeared before the second group of judges than those juveniles who appeared before group 1 of judges. This control affects the primary relationship.

Discussion of Hypotheses #1

The moderate positive relationship between juvenile's understanding and contact with probation services generates support for my original position in this regard. Contact with probation services does seem to affect whether or not a juvenile understands the language used in the courtroom. I suggest that this relationship can be accounted for in two ways. First of all, the majority (53%) of the juveniles I interviewed stated that they had met a probation officer prior to their first court hearing. Twenty-seven

percent said they had met with only a probation officer while the remainder said they had met with either a probation officer and a social worker or a probation officer and a Children's Aid worker. The fact that many juveniles seem to have contact with probation officers suggests that the juvenile has potentially had the opportunity to discuss matters relating to court with this person. To substantiate this claim I draw attention to the comments made in Chapter 4 concerning what a juvenile and probation officer are likely to discuss during a first meeting. Probation officers interviewed said that at this time matters such as the nature of the charge(s), pleas, the juvenile's version of the charge, court procedure, background information, prior record, the juvenile's right to counsel and potential dispositions are likely to be discussed. The most important topic among these in terms of explaining the support generated for this hypothesis is court procedure. Probation officers said that they explain as many elements of the legal proceeding as they can to the juveniles they meet with. This includes describing to the juvenile who will be in court, the role of each actor and most importantly what each of these persons is likely to say. This suggests that they do make an effort to explain the legal terms and phrases which might be used in court. Some of the probation officers I interviewed stated that given the opportunity to meet with the juvenile before court they would go over with him/her the actual information and complaint which would be read to the juvenile in court. An attempt would be made to explain the elements of it. In addition, some probation officers said

they would explain to the juvenile what kinds of questions the judge would be likely to ask when they appeared in court. For example, they might explain that the judge will ask the juvenile whether s/he is guilty or not guilty or whether the allegation is true or false. One probation officer told me that s/he would tell the juvenile the exact words the judge would be using when asking for a plea if it was known which judge would be presiding.

A second consideration for the positive relationship between juveniles' understanding and contact with probation services might be found in the fact that the probation officers I interviewed strongly believe that the juvenile's understanding of the courtroom hearing is affected by the use of legal language. Given that this is their view I suggest that they would be more inclined to make a conscious effort to explain legal language than individuals who do not share this viewpoint. Thus the reason for the observed relationship.

Six control variables were found to have an effect on the relationship between juvenile's understanding and probation contact. These were prior record (formal), type of plea, judge sitting, prior record (non-judicial), times before the court and type of charge.

It is not surprising that prior record influences this relationship. Specifically, if a juvenile has a formal prior record then s/he has, by definition, been before the court in the past. It is most likely that the juvenile will have spoken to a probation officer concerning his/her past charges. It is also possible that the juvenile has been placed on probation as a disposition in

the previous case. If this is true then the juvenile will have had several opportunities to meet and talk with a probation officer. The juvenile with a prior record then will have had the benefit of having many legal terms and phrases explained to him/her by several key actors. This will influence understanding.

Type of plea probably affects this relationship because it influences when a juvenile will make contact with a probation officer. To elaborate, if a juvenile enters a guilty plea to a particular charge and the judge is unwilling to dispose of it the matter will be set aside. Probation now has a mandate to be involved in the case. If the juvenile enters a not guilty plea then there is no mandate for them to be involved in the case. If probation is not involved then the juvenile has less opportunity to have matter explained to him/her.

Which judge is sitting in a particular court probably affects the relationship because it influences what a juvenile may or may not understand about legal language. For example, if one judge insists on the use of very legal language inside the courtroom and the probation officer has not had an opportunity to explain or is not capable of explaining the meaning of particular legal terms and phrases then the juvenile will not likely understand the legal language even if s/he has had contact with probation. Conversely, if the judge explains the language and process of the court to the juvenile and the probation officer also explains these things then the juvenile's understanding will most likely increase.

The control times before court had an effect on the

original relationship. As hypothesized, if a juvenile appears before the court on several occasions s/he has necessarily been exposed to more legal language than the juvenile who has only appeared once or twice. Given that the juvenile who appears over and over again has been exposed to legal language then s/he will also have had more opportunity to decipher the meaning of various words and phrases.

Type of charge probably affects this relationship because it influences the type of language which the juvenile will be exposed to. Criminal Code offences all have the same wording however provincial statute violations are worded differently. Thus juveniles who are charged with the selected offences and other offences will have had the opportunity to be exposed to more legal language then juveniles charged with only the selected offences. This may mean they understand more of the legal language.

Finally, prior record (non-judicial) had an effect on the original relationship. The result produced suggests that for juveniles who had a non-judicial prior record there was no difference in understanding when shifting from probation contact to no probation contact. This is consistent with the nature of a non-judicial contact. If a juvenile is processed non-judicially then s/he will never appear inside the courtroom. The only legal language s/he is likely to hear is that used by a police officer. This may account for the obtained result.

Hypothesis #2

The second hypothesis states that a juvenile's understanding of legal language is dependent on contact with legal counsel prior to his/her first courtroom hearing. The independent variable in this relationship was "Did you talk to a lawyer of any sort before your first court appearance on these charge(s)?". The dependent variable was again the juvenile's own subjective interpretation of whether or not s/he understood the legal language. The bivariate cross-tabulation produced the following table:

TABLE XXXII

JUVENILES' UNDERSTANDING AND DEFENSE CONTACT

Juveniles' Understanding	Defense Contact: Yes	Defense Contact: No	Row Total
Yes	36%	0%	18%
No	64%	100%	82%
Column Total	33	25	58

2 cases of "don't know" or "not applicable" were excluded from the table.

The presence of a zero in one of the cells makes it impossible to use Yule's Q to describe and adequately summarize the association between these two variables. Comparing percentages the table reveals that when there is a shift from defense counsel contact to no defense counsel contact there is also a shift from 36% understanding to 0% understanding. In other words there is a decrease in percent understanding. This means that juveniles who have had contact with a lawyer are more likely to understand legal language

than juveniles who have not. There is a positive relationship between understanding and defense counsel contact.

As in the case of hypothesis #1 the control variables, age, prior record (formal, prior record (non-judicial), judge sitting, the number of times the juvenile appeared before the court on the current charges, type of charge and plea to the charge were introduced to determine whether or not they affect the original relationship in any way.

TABLE XXXIII

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND AGE

PARTIAL TABLE 1

YOUNGER JUVENILES

Juveniles' Understanding	Defense Counsel Contact: Yes	No	Row Total
Yes	27%	0%	13.5%
No	73%	100%	86.5%
Column Total	15	15	29

PARTIAL TABLE 2

OLDER JUVENILES

Juveniles' Understanding	Defense Counsel Contact: Yes	No	Row Total
Yes	34%	0%	17%
No	66%	100%	83%
Column Total	23	6	29

TABLE XXXIV

STANDARDIZED TABLE FOR AGE

Juveniles' Understanding	Defense Counsel Contact: Yes	No
Yes	20.5%	0%
No	69.5%	100%
Column Total	100%	100%

For the group termed younger juveniles, when shifting from probation contact to no probation contact, the percent decrease in understanding is 27%. The corresponding decrease for older juveniles is 34%. In the original table shifting from defense counsel

contact to no defense counsel contact there is a shift from 36% understanding to 0% understanding. A decrease then of 36%. In the standardized table (eliminating the influence of age) the corresponding decrease is 30.5%. Age does not affect the original relationship.

TABLE XXXV

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND PRIOR RECORD (FORMAL)

PARTIAL TABLE 1

PRIOR RECORD (FORMAL)

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	4	21	25

PARTIAL TABLE 2

NO PRIOR RECORD (FORMAL)

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	41%	0%	20.5%
No	59%	100%	79.5%
Column Total	29	4	33

The standardized table was not calculated because of the differences in the measures of association in the two partial tables. For partial table 1 there is no difference in percent understanding as one shifts from defense contact to no defense contact. In partial table 2 there is a 41% decrease when making the same shift. Thus if a juvenile has a prior record (formal) then contact with defense counsel contact does not affect understanding. The control has an effect.

TABLE XXXVI

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND PRIOR RECORD (NON-JUDICIAL)

PARTIAL TABLE 1

NON-JUDICIAL CONTROL

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	33%	0%	16.5%
No	67%	100%	83.5%
Column Total	6	11	17

PARTIAL TABLE 2

NO NON-JUDICIAL CONTROL

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	39%	0%	19.5%
No	61%	100%	80.5%
Column Total	26	15	41

TABLE XXXVII

STANDARDIZED TABLE FOR PRIOR RECORD (NON-JUDICIAL)

Juveniles' Understanding	Defense Contact: Yes	No
Yes	37%	0%
No	63%	100%
Column Total	100%	100%

The standardized table (eliminating the influence of non-judicial prior record) shows a 37% decrease in understanding when moving from defense counsel contact to no defense counsel contact. Comparing this to the original table I observe that the decrease is only slightly greater under these conditions. Whether or not a juvenile has a prior record (non-judicial) does not affect the juvenile's understanding if s/he has contact with defense counsel.

TABLE XXXVIII

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND TIMES BEFORE COURT

PARTIAL TABLE 1

TIMES BEFORE COURT (LESS THAN TWO)

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	67%	0%	33.5%
No	33%	100%	66.5%
Column Total	6	5	11

PARTIAL TABLE 2

TIMES BEFORE COURT (MORE THAN TWO)

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	30%	0%	15%
No	70%	100%	85%
Column Total	27	20	47

Once again the standardized table was not calculated because of the substantial differences in the amount of association observed in the two partial tables. In partial table 1 there is a 67% decrease in percent understanding when shifting from defense contact to no defense contact. In partial table 2 the corresponding decrease is 30%. Thus, if a juvenile has appeared before the court more than two times there is less decrease in his/her understanding when shifting defense counsel contact than there is if s/he has appeared less than two times. This variable has an effect.

TABLE XXXIX

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND TYPE OF CHARGE

PARTIAL TABLE 1

SELECTED OFFENCES ONLY

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	7%	0%	3%
No	93%	100%	97%
Column Total	16	10	26

PARTIAL TABLE 2

SELECTED OFFENCES & OTHER OFFENCES

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	48%	0%	24%
No	52%	100%	76%
Column Total	23	9	32

The standardized table was not produced because of the differences in the measures of association in the two tables. Partial table 1 shows that there is a 6% decrease in percent understanding when shifting from defense contact to no defense contact. The corresponding decrease in partial table 2 is 48%. This means that a juvenile who is charged with only selected offences will show less decrease in understanding when shifting from defense contact to no defense contact than a juvenile who is charged with selected offences and other offences.

TABLE XL

JUVENILES' UNDERSTANDING, DEFENSE CONTACT, AND PLEA TO CHARGE

PARTIAL TABLE 1

NOT GUILTY PLEAS

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	29%	0%	14.5%
No	71%	100%	85.5%
Column Total	21	12	33

PARTIAL TABLE 2

GUILTY & NOT GUILTY PLEAS

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	40%	0%	20%
No	60%	100%	80%
Column Total	15	12	27

Observing the differences in the measures of association in the two partial tables the standardized table was not generated. Shifting from defense contact to no defense contact in partial table 1 there is a 29% decrease in percent understanding. The corresponding decrease in partial table 2 is 40%. This control has an effect. In other words, a juvenile who has entered both guilty and not guilty pleas shows a greater decrease in percent understanding when shifting from defense contact to no defense contact than the juvenile who has entered only not guilty pleas.

TABLE XLI

JUVENILES' UNDERSTANDING, DEFENSE CONTACT AND JUDGE SITTING

PARTIAL TABLE 1

GROUP 1

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	28%	0%	14%
No	72%	100%	86%
Column Total	25	6	31

PARTIAL TABLE 2

GROUP 2

Juveniles' Understanding	Defense Contact: Yes	No	Row Total
Yes	42%	0%	21%
No	58%	100%	79%
Column Total	12	15	27

The differences in the measures of association in the two partial tables did not necessitate that the standardized be produced. Juveniles who appeared before group 1 of judges showed that there was a 28% decrease in percent understanding when shifting from defense contact to no defense contact. Juveniles who appeared before group 2 of judges showed a corresponding decrease of 40% when making the same shift. The effect of thie variable is that a juvenile who appears before group 1 of the judges is likely to understand more even if s/he does not have contact with a lawyer than a juvenile who appears before group 2.

Discussion of Hypothesis #2

The second hypothesis of this thesis was supported. Certain factors may help to explain this situation. First of all, most of the lawyers (93%) I interviewed in this study said that they were inclined to explain what had occurred in court on a particular day to the juvenile. In conjunction with this many (47%) felt that it was important to explain the vocabulary which they use in court to

their child clients. Given that many lawyers expressed this view I would suggest that this in part accounts for why support was generated for this hypothesis.

A second source of explanation can be found by considering what lawyers tell juveniles about court. They describe that parents must be present, the role of the Crown, the judge and the probation officer, the meaning and order of different hearings, potential dispositions, that the juvenile will have to answer to the charge, adjournments, entering pleas and what each key actor will likely say. Given that 33% of the lawyers interviewed said that they would tell the juvenile what each key actor was likely to say I probed to find out whether or not they explained specific words and phrases. Lawyers said "no, they just described in general terms". I suggest that this type of explanation is helpful to the juvenile in formulating his/her expectations about what is likely to occur inside the courtroom. This may account for a juvenile's understanding of legal language when s/he has contact with a defense counsel.

Five control variables affected this relationship. These were prior record (formal), type of charge, times before court, type of plea and judge sitting. Prior record most likely influences this relationship because it implies that the juvenile has been involved with the courts in the past. If s/he has been involved then s/he has had the opportunity to learn the meaning of specific words and phrases. Likewise s/he has probably had the benefit of having many of these terms explained to him/her by the key legal actors.

Further prior involvement may indicate that the juvenile has had legal counsel in the past. If this is true then the juvenile will probably have had some legal language explained to him/her before. If the juvenile has a second contact his/her understanding may be even greater.

Type of charge also affected the original relationship. It is my position that the type of offence which the juvenile is charged with will affect the approach that the lawyer takes to the case. For example, if a juvenile has committed a serious offence the lawyer will most likely advise him/her of the potential dispositions and the implications that ensue. If the lawyer explains more when there is a serious charge then the juvenile's understanding will be affected under these conditions.

If a juvenile has appeared before the court more than two times then s/he has had more exposure to legal language. Likewise s/he has had more opportunity to have this language explained to him/her by defense counsel. This may account for the influence of this variable on the original relationship.

Type of plea most likely influences this relationship because it will determine how the case will proceed. The lawyer may be more inclined to explain the proceedings if the juvenile has entered a not guilty plea as opposed to a guilty plea. If the lawyer explains more then the juvenile's understanding will be affected.

Finally, which judge is sitting probably affects the relationship because it will determine the kind of explanation that the juvenile is given concerning the meaning of different legal words,

processes, and procedures.

Hypothesis #3

The third hypothesis states that a juvenile's understanding of legal language is dependent on the judge's explanation of the language, process and procedure to the juvenile. This hypothesis was tested by cross-tabulating the juvenile's understanding of legal language (as before) and the question "Who explained the most to you?". This question was chosen as the independent variable since the initial frequency runs suggested that juveniles interviewed felt that the judge explained more to them than any other single actor.

TABLE XLII

JUVENILES' UNDERSTANDING AND JUDGE'S EXPLANATION OF LANGUAGE, PROCESS AND PROCEDURE

Juveniles' Understanding		Judge Explained Language, Process & Procedure: Yes	No	Row Total
	Yes	27%	14%	21%
	No	73%	86%	79%
	Column Total	11	14	25

35 cases of "no response", "don't know" and "not applicable" were excluded from the table.

The 2 x 2 presentation of the initial relationship allowed me to use Yule's Q as the measure of association between the two nominal variables. Q produced a value of .39 which indicates a moderate positive correlation. One can say that the proportion with which "understanding" went with "judge's explanation of language

process and procedure" was .39 greater than the proportion with "no understanding" went with "judge's explanation of language, process and procedure". Considering the percentages the decrease in understanding as one shifts from judge explained to other actor explained is 13%. Thus juveniles who had a judge explain the language, process and procedure of the court were more likely to understand than juveniles who had another actor explain.

TABLE XLIII

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION...AND AGE

PARTIAL TABLE 1

YOUNGER JUVENILES

Juveniles' Understanding	Judge Explained: Yes	Judge Explained: No	Row Total
Yes	25%	67%	43%
No	75%	33%	57%
Column Total	4	3	7

PARTIAL TABLE 2

OLDER JUVENILES

Juveniles' Understanding	Judge Explained: Yes	Judge Explained: No	Row Total
Yes	14%	9%	12%
No	86%	91%	88%
Column Total	7	11	18

For partial table 1, the value associated with Q = -.62 which is a moderate negative association. For partial table 2, the value associated with Q = .25. Considering the percentages there is 42% increase in percent understanding when shifting from judge's explanation to the explanation of another actor in partial table 1. The second partial table shows a 5% decrease in percent understanding when making the same shift. Given that Q takes on different values under each condition the control variable can be said to have an effect on the primary relationship. The value of Q for the first partial table suggests that the proportion with which "no understanding" went with "judge's explanation" was greater than the

proportion with which "understanding" went with "judge's explanation". The opposite was true among older juveniles. Age has an effect.

TABLE XLIV

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND PRIOR RECORD (FORMAL)

PARTIAL TABLE 1

PRIOR RECORD (FORMAL)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	6	5	11

PARTIAL TABLE 2

NO PRIOR RECORD (FORMAL)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	60%	22%	41%
No	40%	78%	59%
Column Total	5	9	14

The differences in the measures of association in the two partial tables makes it unnecessary to produce the standardized table. Juveniles who had a prior record (formal) showed no percent change in terms of understanding when shifting from judge's explanation to other actor's explanation. Juveniles with no formal prior record showed a 38% decrease in understanding when making the same shift. Thus, if a juvenile has a formal prior record whether the judge explains the language, process and procedure is not likely to affect his/her understanding.

TABLE XLV

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND PRIOR RECORD (NON-JUDICIAL)

PARTIAL TABLE 1

PRIOR RECORD (NON-JUDICIAL)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	4	3	7

PARTIAL TABLE 2

NO PRIOR RECORD (NON-JUDICIAL)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	43%	18%	28%
No	47%	82%	72%
Column Total	7	11	18

In the first partial table there is no percent decrease in understanding when shifting from judge's explanation to other actors' explanation. In the second partial the corresponding shift results in a 25% decrease in percent understanding. Thus if a juvenile has a non-judicial prior record then whether the judge explains to him/her is not likely to affect understanding.

TABLE XLVI

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND TIMES BEFORE COURT

PARTIAL TABLE 1

TIMES BEFORE COURT (LESS THAN TWO)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	10	8	18

PARTIAL TABLE 2

TIMES BEFORE COURT (MORE THAN TWO)

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	100%	50%	75%
No	0%	50%	25%
Column Total	3	4	7

The differences in the measures of association in the two partial tables makes the standardized table unnecessary. Once

again for juveniles who have appeared in court less than two times there is no percent change in understanding when shifting from judge's explanation to other actor's. In the second partial there is 50% decrease in percent understanding when making the same shift. Juveniles who have appeared less than two times were not affected by the judge's explanation. Their understanding was the same.

TABLE XLVII

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND CHARGES BEFORE COURT

PARTIAL TABLE 1

SELECTED CHARGES

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	29%	20%	25%
No	71%	80%	75%
Column Total	7	5	12

PARTIAL TABLE 2

SELECTED CHARGES AND OTHER CHARGES

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	13%	20%	16.5%
No	87%	80%	83.5%
Column Total	8	5	13

In partial table 1, Q = .23. In partial table 2, Q = -.27. The corresponding percentages show that there was a 9% decrease in understanding when shifting from judge's explanation to other actor's explanation in the first partial table. The second partial table showed a 7% increase in understanding when making the same shift. The two values associated with Q indicate that type of charge does have an effect. The direction of the relationship is altered in one instance. For juveniles who had only selected charges the ability to predict "understanding" given information concerning "whether or not the judge had explained" was .23 greater

than the ability to predict "no understanding" given information concerning "whether or not the judge had explained" was .27 greater than the ability to predict "understanding" given the same information.

TABLE XLVIII

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND PLEA TO CHARGE

PARTIAL TABLE 1

NOT GUILTY PLEAS ONLY

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	20%	11%	14%
No	80%	89%	86%
Column Total	5	9	15

PARTIAL TABLE 2

NOT GUILTY AND GUILTY PLEAS

Juveniles' Understanding	Judge's Explanation: Yes	No	Row Total
Yes	33%	20%	27%
No	67%	80%	73%
Column Total	6	5	11

In partial table 1, Q = .33. In partial table 2, Q = .33. The percentages show that there is approximately the same decrease in percent understanding when shifting from judge's explanation to other actor's explanation. In partial table 1 the decrease is 9%. In partial table 2 the decrease is 11%. The fact that the values of Q and percentage differences are equal means that the control variable, plea to charge, does not have an effect on the original relationship.

TABLE XLIX

JUVENILES' UNDERSTANDING, JUDGE'S EXPLANATION AND JUDGE SITTING

PARTIAL TABLE 1

GROUP 1

Juveniles' Understanding	Judge Explained: Yes	Judge Explained: No	Row Total
Yes	50%	9%	30%
No	50%	91%	70%
Column Total	4	11	15

PARTIAL TABLE 2

GROUP 2

Juveniles' Understanding	Judge Explained: Yes	Judge Explained: No	Row Total
Yes	14%	33%	24%
No	86%	67%	76%
Column Total	7	3	10

Partial table 1 produces Q = .81. In partial table 2, Q = -.5. The percentages show that there is a 41% decrease in percent understanding in the first partial table when shifting from judge's explanation to other actor explanation. In the second partial there is a 19% increase in percent understanding when making the same move. The different values asscciated with Q indicate that judge sitting does make a difference. For juveniles who were exposed to group 1 of judges the ability to predict "understanding" given information concerning "whether or not the judge had explained" was .81 greater than the ability to predict "no understanding" given this same information. For the juveniles exposed to group 2 the ability to predict "no understanding" given information concerning "whether or not the judge had explained" was .5 greater than the ability to predict "understanding" given the same information. Introducing this control shows that it does have an effect on the original relationship. Under the conditions of partial table 2 the direction of the association between the two variables was altered.

Discussion of Hypothesis #3

The third hypothesis, a juvenile's understanding of legal language is dependent on the judge's explanation of the language, process and procedure of the court to the juvenile, gained support through analysis. This result is not surprising given that the juveniles I interviewed felt that the judge was the one who explained the most to them. A juvenile who appears before the court is most likely overwhelmed by the language and process in which s/he finds himself/herself. Becker captured this sentiment quite well in the following passage,

> We are uncomfortable in strange groups and subcultures largely because we cannot frame the appropriate verbal context for sustaining the action of the ceremonial. We do not hear cues familiar to us, nor can we easily give those that make for smooth transitions in conversation...Some subgroups have their own exotic jargon, and when we venture into one of them and hear words like 'Rorschach response' and 'tachistoscope' we feel quite like foreigners: left on our own goal line with no team members in sight and unable to understand the game in which they are so warmly engaged. (op. cit. Bankowski & Mungham, 1976: 88).

If the judge, in the course of the proceedings, stops and asks the juvenile whether or not s/he understands what has been said and then proceeds to explain the legal language used the juvenile will no doubt understand more about the proceedings.

The interviews conducted with judges revealed that most judges (83%) said that they would sometimes explain to the juvenile what had occurred in court that day. Likewise the majority (67%) said that they do ask juveniles whether or not they understand what has

occurred in court that day. This may account for the support generated for the third hypothesis.

Six controls affected the original relationship. These included age, formal prior record, non-judicial prior record, times before the court, type of charge and which judge was sitting in a particular court. The fact that age affects the relationship suggests to me that it is possible that a juvenile's understanding of legal language may be a product of maturation more than a result of the judge's explanation of the language, process and procedure of the court. The older the juvenile the more opportunity s/he has had to have been before the court and to have acquired some familiarity with the language. Likewise older juveniles have most likely had the opportunity to talk to other juveniles who may be familiar with legal language. These factors alone may account for some of their understanding. What is surprising is that among younger juveniles percent understanding increased when shifting from judge's explanation to other actor's explanation. Perhaps younger juveniles are less likely to understand the judge's explanation because of the manner in which it is given. They may be intimidated and afraid to ask the judge for clarification. When another actor, a lawyer or a probation officer, explains to the juvenile then s/he may gain more from this explanation.

Once again formal prior record affects the relationship. A juvenile with a formal prior record has appeared before a judge in the past. This juvenile has most likely had the benefit of an explanation of language, process and procedure from the presiding

judge. This will probably affect the original relationship.

Prior record (non-judicial) also affects the relationship. A juvenile who has had a non-judicial contact has been exposed to the police and probation services who most likely make use of legal language. This may explain why they understand when this variable is controlled for.

Times before court produced an interesting result. For juveniles who had appeared less than two times there was no decrease in percent understanding when shifting from judge's explanation to other actor's explanation. Juveniles who had appeared more than two times showed a decrease in percent understanding when making the same shift. This finding contradicts the hypothesized effect of this variable. I suggest that some other factor must be influencing this relationship.

Type of charge also affects the original relationship. It was suggested that what the juvenile is charged with will affect the kind of language that s/he is exposed to.

Finally, judge sitting produced an effect. This is not surprising. As pointed out in Chapter 2 each judge of the juvenile court has a particular demeanor and attitude. This is relected in the way s/he runs his/her courtroom. If a juvenile's understanding of legal language is dependent on the judge's explanation of the language, process and procedure of the court to the juvenile then the particular judge sitting will have an effect. If the judge sitting is not inclined to explain then the juvenile may not understand the legal language used. If, on the other hand the

judge does explain, the juvenile may understand.

Hypothesis #4

The fourth hypothesis states that a juvenile's understanding of legal language is dependent on the amount of time the juvenile has spent in custody. Cross-tabulation was done between the juvenile's own perception of whether or not s/he understood words used in the courtroom hearing and the question in which I asked juveniles whether or not they had spent time in custody on their current charges.

TABLE L

JUVENILES' UNDERSTANDING AND TIME IN CUSTODY

Juveniles' Understanding		Detained: Yes	Detained: No	Row Total
	Yes	39%	0%	20%
	No	61%	100%	80%
	Column Total	31	26	57

3 cases of "no response" were excluded from the table.

The presence of a zero in one of the cells makes it impossible to use Yule's Q as a measure of association. Comparing percentages there is a shift from 39 percent understanding to 0 percent understanding when shifting from detained to not detained. There is a positive relationship between understanding legal language and being detained.

TABLE LI

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND AGE

PARTIAL TABLE 1

YOUNGER JUVENILES

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	14%	0%	7%
No	86%	100%	93%
Column Total	7	5	12

PARTIAL TABLE 2

OLDER JUVENILES

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	35%	0%	18%
No	65%	100%	82%
Column Total	31	14	45

Examining the two partial tables there is a decrease in understanding in each instance. A standardized table is not necessary. In partial table 1 the decrease is 14% whereas in partial table 2 the decrease is 35%. Age has an effect.

TABLE LII

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND PRIOR RECORD (FORMAL)

PARTIAL TABLE 1

PRIOR RECORD

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	43%	0%	22%
No	57%	100%	79%
Column Total	28	5	33

PARTIAL TABLE 2

NO PRIOR RECORD

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	0%	0%	0%
No	100%	100%	100%
Column Total	18	16	24

Once again the percent differences in the two partial tables show that the control variable formal prior record does have an effect. For juveniles with a formal prior record there is a 43% in percent understanding when shifting from detained to not detained. For juveniles with no formal prior record there was no

TABLE LIII

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND PRIOR RECORD (NON-JUDICIAL)

PARTIAL TABLE 1

NON-JUDICIAL CONTROL

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	33%	0%	17%
No	67%	100%	83%
Column Total	12	9	17

PARTIAL TABLE 2

NO NON-JUDICIAL CONTROL

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	38%	0%	19%
No	62%	100%	81%
Column Total	21	19	40

TABLE LIV

STANDARDIZED TABLE FOR PRIOR RECORD (NON-JUDICIAL)

Juveniles' Understanding	Detained: Yes	Detained: No
Yes	37%	0%
No	63%	100%
Column Total	100%	100%

Prior record (non-judicial) does not appear to affect the original relationship between detention and understanding. When the influence of this variable is eliminated there is a 37% decrease in percent understanding as one shifts from detained to not detained. In the original table the corresponding decrease is 39%. Given the similarity I would conclude that prior record (non-judicial) does not have an effect.

TABLE LV

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND TIMES BEFORE COURT

PARTIAL TABLE 1

TIMES BEFORE COURT (LESS THAN TWO)

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	40%	0%	20%
No	60%	100%	80%
Column Total	10	2	12

PARTIAL TABLE 2

TIMES BEFORE COURT (MORE THAN TWO)

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	26%	0%	13%
No	74%	100%	87%
Column Total	10	14	45

TABLE LVI

STANDARDIZED TABLE FOR TIMES BEFORE COURT

Juveniles' Understanding	Detained: Yes	Detained: No
Yes	29%	0%
No	71%	100%
Column Total	100%	100%

In the standardized table (eliminating the influence of times before the court) there is a 29% decrease in understanding when shifting from detained to not detained. The corresponding shift in the original table was 39%. Based on this information I would conclude that this variable does not have an effect.

TABLE LVII

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND TYPE OF CHARGE

PARTIAL TABLE 1

SELECTED CHARGES ONLY

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	38%	0%	19%
No	62%	100%	81%
Column Total	16	2	18

PARTIAL TABLE 2

SELECTED & OTHER CHARGES

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	25%	0%	13%
No	75%	100%	87%
Column Total	24	15	39

TABLE LVIII

STANDARDIZED TABLE FOR TYPE OF CHARGE

Juvenile's Understanding	Detained: Yes	Detained: No
Yes	29%	0%
No	71%	100%
Column Total	100%	100%

Controlling for type of charge the percent decrease in understanding when shifting from detained to not detained was 29%, the same amount of decrease produced by controlling for times before the court. As was the case in that situation, I conclude that type of charge does not have an effect.

TABLE LIX

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND TYPE OF PLEA

PARTIAL TABLE 1

NOT GUILTY PLEAS ONLY

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	52%	0%	26%
No	48%	100%	74%
Column Total	21	13	34

PARTIAL TABLE 2

GUILTY & NOT GUILTY PLEAS

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	8%	0%	4%
No	92%	100%	96%
Column Total	13	10	23

The amount of association in each of the partial tables is substantially different to conclude that type of plea has an influence on the original relationship. To elaborate, in the first partial table there is a 52% decrease in percent understanding when shifting from detained to not detained. The corresponding decrease in partial table 2 is 8%.

TABLE LX

JUVENILES' UNDERSTANDING, TIME IN CUSTODY AND JUDGE SITTING

PARTIAL TABLE 1

GROUP 1

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	35%	0%	18%
No	65%	100%	82%
Column Total	20	9	29

PARTIAL TABLE 2

GROUP 2

Juveniles' Understanding	Detained: Yes	Detained: No	Row Total
Yes	31%	0%	16%
No	69%	100%	84%
Column Total	16	12	28

TABLE LXI

STANDARDIZED TABLE FOR JUDGE SITTING

Juveniles' Understanding		Detained	
		Yes	No
	Yes	33%	0%
	No	67%	100%
	Column Total	100%	100%

The introduction of a control variable into the original relationship does not have an effect. In the standardized table the decrease in percent understanding is 33%. Given that the percent decrease is close to the percent decrease in the original relationship I would conclude that the primary relationship is independent of which judge is sitting in a particular court.

Discussion of Hypothesis #4

The proposed relationship between juvenile's understanding of legal language and time in custody is reflected by that body of literature which suggests that juveniles who have had repeated contact with the courts or spent time in custody are more likely to be familiar with the functioning of the court than their uninitiated counterparts. The chance to talk to other juveniles who are also in custody gives the individual the opportunity to become more familiar with the system. S/he gains what is termed "folk knowledge".

The views described above, those of Letkemann (1973) and Matza (1964) were confirmed by my research. I suggest that the

reason for this finding lies in the fact that in the process of becoming more familiar with court procedure through contact with other juveniles, juveniles held in custody also become acquainted with legal language. The juvenile is able to learn the meaning of particular terms and phrases.

The control variables age, prior record (formal) and type of plea all had an effect on the original relationship. Age has an important effect. It was observed that there was a greater decrease in percent understanding among older juveniles when shifting from detained to not detained than among younger juveniles. I would argue that if a juvenile is older and has never been in custody then his/her understanding of legal language will undoubtedly be less than an older juvenile who has been in custody. The same applies for younger juveniles.

Formal prior record, as before, implies that the juvenile has had previous court experience. This means that the juvenile may understand more legal language than juveniles who have never been involved.

Finally type of plea will determine the way the case will proceed. This will affect the amount and type of legal language which the juvenile will be exposed to.

What Do Juveniles Understand About Legal Language?

The foregoing discussion informs the reader about the relationships between contact with certain key legal actors, time spent in custody and the juvenile's understanding of legal language. What

is not clear is what legal terms or phrases juveniles who appear in the pretrial court understand. The juvenile interviews which I conducted had a major section in which interviewees were asked to describe in their own words the meaning of particular legal terms and phrases (See Appendix II). Each word or group of words was presented contextually. The responses given are presented below. (Tables LXII - LXXXII). The actual meaning of each term or phrase accompanies the appropriate table.

TABLE LXII
NOTICE TO APPEAR

A letter sent by the Clerk of Courts Office informing the family of the charge(s) against the juvenile and the time and date of the court hearing.

Meaning Given	%	Frequency
Tells you to go to court	23.3	14
Summons	16.7	10
Letter police send to family	23.3	14
Don't know	36.7	22
Total	100.0	60

TABLE LXIII
INFORMATION

A form prepared by the police which states the alleged offence and the Section of the Criminal Code of Canada which has been violated.

Meaning Given	%	Frequency
Police report	5.0	3
Police charges	50.0	30
Paper judge reads from	8.3	5
Letter	3.3	2
Don't Know	33.3	20
Total	100.0	60

TABLE LXIV
UNLAWFULLY BREAK AND ENTER

To enter a place without the permission of the owner.

Meaning Given	%	Frequency
Not supposed to be in there	26.7	9
Went in without permission	35.0	21
Something illegal	8.3	5
Don't Know	30.0	18
Total	100.0	60

TABLE LXV
COMMIT A DELINQUENCY

To violate a section of the Criminal Code or a provincial statute when under the age of 18 years.

Meaning Given	%	Frequency
Do a crime	15.0	9
Commit a crime when you're a kid	11.7	7
Something illegal	13.3	8
Go against something	1.7	1
Don't Know	58.3	35
Total	100.0	60

TABLE LXVI
CONTRARY TO SECTION 306(1) OF THE CRIMINAL CODE OF CANADA

To break and enter a place with the intent to commit an indictable offence.

Meaning Given	%	Frequency
Judge's book	13.3	8
Against law of Canada	31.7	19
Break and Enter	1.7	1
Code instead of charge	5.0	3
Don't Know	40.3	29
Total	100.0	60

TABLE LXVII
WAIVE THE READING OF THE CHARGE

Phrase used by counsel to inform the judge that they (lawyer and client) are aware of the charges, the judge need not read the information.

Meaning Given	%	Frequency
Going ahead	3.3	2

Table LXVII (Cont'd)

Lawyer and you know charges	3.3	2
Tell him charges	3.3	2
Don't Know	90.0	54
Total	100.0	60

TABLE LXVIII
HOW DO YOU PLEAD

Do you admit or deny the charge before the court?

Meaning Given	%	Frequency
Guilty or not	33.3	20
Do it or not	30.0	18
True what police say	18.3	11
Don't Know	16.7	10
Total	100.0	60

TABLE LXIX
A PLEA OF NOT DELINQUENT

To deny the charge before the court

Meaning Given	%	Frequency
Didn't do it	13.3	8
Not guilty	33.3	20
Lawyer says you didn't do it	1.7	1
Deny	1.7	1
Don't Know	50.0	30
Total	100.0	60

TABLE LXX
NOT GUILTY YOUR HONOR

To answer the judge saying you're innocent

Meaning Given	%	Frequency
Didn't do it	46.7	28
Innocent	45.0	27
Not delinquent	1.7	1
Don't Know	6.7	4
Total	100.0	60

TABLE LXXI
INDICATED PLEA

The lawyer is entering a plea. The judge marks it as indicated so that he will not be seized of the case.

Meaning Given	%	Frequency
No response	1.7	1
Stay with plea or change	1.7	1
Is juvenile sure	5.0	3
Tell judge what happened	1.7	1
Your plea	3.3	2
Don't Know	86.7	52
Total	100.0	60

TABLE LXXII
PRETRIAL COURT

A court to discuss charges. Will case proceed to trial or be disposed of without a trial.

Meaning Given	%	Frequency
Go to court set trial date	5.0	3
Special court	13.3	8
Supposed to be a hearing but not	3.3	2
Come to see if enough evidence	8.3	5
Ask about your charge	30.0	18
Decide what to do with case	8.3	5
Don't Know	31.7	19
Total	100.0	60

TABLE LXXIII
ADJOURN

To set the case aside. Put it over.

Meaning Given	%	Frequency
Put is aside	11.7	7
Delayed	1.7	1
Remand	38.3	23
Plan for another court	16.7	10
Talk about it again	20.0	12
Don't Know	11.7	7
Total	100.0	60

TABLE LXXIV
APPEARANCE SLIP

A paper the juvenile and his parent might sign saying that they will appear on the next court date. Time and place are specified.

Meaning Given	%	Frequency
Means you were there	8.3	5
Paper you sign for coming to court	10.0	6
Says he'll be there	5.0	3
Tells you when to come	30.0	18
No response	3.3	2
Don't Know	43.3	26
Total	100.0	60

TABLE LXXV
STILL PLEADING "NOT GUILTY"

Are you still denying the charge?

Meaning Given	%	Frequency
Stick to plea	58.3	35
Want to change	31.7	19
Stay the same	5.0	3
Don't Know	5.0	3
Total	100.0	60

TABLE LXXVI
DROP CERTAIN CHARGES

The prosecution will not be proceeding with the charge.

Meaning Given	%	Frequency
Charges not laid	5.0	3
Don't want to give him a fine	3.3	2
Not going through with all charges	16.7	10
Charges not there anymore	11.7	7
Prosecutor doesn't want to talk	1.7	1
Don't Know	61.7	37
Total	100.0	60

TABLE LXXVII
PARTY TO THE OFFENCE

A person who may not have been directly involved in committing the offence. He may have had knowledge of it and acted as a lookout.

Meaning Given	%	Frequency
Might be involved	20.0	12
Somebody else with him	11.7	7
Know something about crime	28.3	17
Just there	8.3	5
Lookout	1.7	1
Standing six	15.0	9
Don't Know	15.0	9
Total	100.0	60

TABLE LXXVIII
PROCEED TO TRIAL

The prosecution is indicating that they are prepared to go to trial to prove their case.

Meaning Given	%	Frequency
No response	1.7	1
Will hear your case, make decision	11.7	7
Go to trial	3.3	2
Going ahead	23.3	14
Ready to start case	28.3	17
Special court to find out truth	10.0	6
Have to have more hearings	1.7	1
Don't Know	20.0	12
Total	100.0	60

TABLE LXXIX
TRIAL SLIP

A paper that the juvenile and his parent/guardian sign stating the time, date and location of the trial. There are instructions on how to subpoena witnesses.

Meaning Given	%	Frequency
Means you'll be there	11.7	7
Proof I'll come	3.3	2
Tells you when to come back	23.3	14
Tells you about trial	28.3	17
Paper you sign at a trial	10.0	6
No response	3.3	2
Don't Know	20.0	12
Total	100.0	60

TABLE LXXX
SUBPOENA

Paper served on a person to ensure their presence at a court hearing. Their attendance is mandatory.

Meaning Given	%	Frequency
No response	3.3	2
Tells you when to appear	8.3	5
Summons	28.3	17
Paper which brings people to court	13.3	8
Have to come as witness	6.7	4
Don't Know	40.0	24
Total	100.0	60

TABLE LXXXI
TRIAL

A court hearing where the evidence of both the defense and the prosecution is brought before the court. Witnesses may be called. At the conclusion of evidence the judge reaches a decision as to whether or not the juvenile is delinquent.

Meaning Given	%	Frequency
No response	1.7	1
Bring witnesses, the judge listens	8.3	5
Prove your case	41.7	25
Find out if guilty	11.7	7
Find out disposition	10.0	6
Special hearing	1.7	1
Everyone tells story, judge decides	18.3	11
Don't Know	6.7	4
Total	100.0	60

TABLE LXXXII
WITNESS

A person who testifies at a trial. Gives evidence as to what happened.

Meaning Given	%	Frequency
Knows about your case	20.0	12
Someone who was with you	11.7	7
Someone who knows you didn't do it	6.7	4
Someone who proves you didn't do it	1.7	1
Your friend	13.3	8
Someone there & can explain	23.3	14
Someone who tells the truth	16.7	10
Don't Know	6.7	4
Total	100.0	60

One phrase which was not given in the case example was that of plea bargaining. A separate question was asked about plea bargaining. I asked juveniles whether or not they had ever heard of the phrase "plea bargaining". A small number (8%) said "yes" while the majority (70%) said "no". I then asked the persons who had said they either knew what it meant or just weren't quite sure to describe it in their own words. Only two people (3%) responded saying that it referred to the situation where you talked to another lawyer and made a deal.

An examination of the responses given to define or describe each term reveals that juveniles understand more of the terms and phrases related to procedural elements than the terms which might affect them directly. Words and phrases which they do understand are: notice to appear, information, plea, not guilty, pretrial, adjourn, not changing your plea, party to an offence, proceed to trial, trial slip and subpoena. Words they do not understand are: to unlawfully break and enter, to commit a delinquency, contrary to Section __ of the Criminal Code of Canada, to waive the reading of the charge, indicated plea, appearance slip, drop charges, witness and plea bargaining. This is not surprising given that key actors tend to focus on procedural issues when they explain the elements of court to juveniles. Likewise when I asked the three key actor groups which legal terms or phrases were most important for the juvenile to understand they all isolated various procedural issues. Perhaps this emphasis is an attempt on the part of these persons to ensure that their client(s) act appropriately in court.

I would argue that the impact of not understanding some of these terms and phrases could be significant in its consequences.

A juvenile's inability to understand the exact legal meaning of breaking and entering should not be considered as serious. The majority or at least 50% of the juveniles interviewed appreciated that to break and enter was to do something that was wrong. The recognition of this fact would seem to be sufficient.

A phrase which juveniles do not seem to understand is "to commit a delinquency". I consider this phrase to be very important for the child who comes before the court. According to the governing legislation all violations of sections of the Criminal Code and contraventions of provincial statutes by a child are to be considered delinquencies. A juvenile who stands before the judge in anticipation of having to answer to a charge may not recognize that when the judge reads the information to him/her and it states "and therein did commit a delinquency" they are referring to his/her wrongdoing. Without recognizing that to commit a delinquency refers to the criminal act the juvenile may be left thinking that his actual activities were never discussed. In relation to this there seems to be a split between those that understand what it means to be "contrary to a section of the Criminal Code of Canada". I would maintain that their not understanding this is not a serious matter. This phrase is highly technical. Both lawyers and probation officers interviewed suggest that the more technical terms are less important to understand. One contradiction which arises here is that probation officers 8/15 (53.3%) said "contrary to

to Section __ of the Criminal Code of Canada" was an important legal term.

Continuing with terms which appear not to be understood, the terms waive reading of the charge, indicated plea and a plea of not delinquent have serious implications if not clarified. When a lawyer waives the reading of the charge this marks a significant act. If the juvenile does not recognize what the lawyer is indicating to the court, he may continue to return to many hearings waiting to hear the charge. His/her not hearing it may lead the juvenile to think that it is no longer an issue. In this same vein if the juvenile does not realize what an indicated plea is, s/he may believe that they have actually never given a plea to the charge. An example of this comes from a conversation which I heard between a juvenile at the pretrial court and his lawyer in which they were discussing what would be taking place in court that day. The boy wanted to know when they would be entering pleas. The lawyer, seeming surprised, replied, "We did that weeks ago". In talking to this lawyer afterwards he said that the juvenile had not understood that indicating a plea was a way of giving a plea. Equally important in this regard is the matter of lawyers entering the plea by saying "We're indicating a plea of not delinquent". If the juvenile doesn't recognize this as meaning innocent or a denial of the charge then he may not realize the proceedings which follow and the rationale for why s/he must continually come back to court.

Phrases like "appearance slip" are important because the juvenile who signs such a piece of paper is making a commitment to

attend court on a given day. His non-attendance might have repre-cussions for him.

Juveniles tend to see a witness as more of a friend than anything else. S/he must recognize the importance that a witness has in any proceeding which will ultimately determine his guilt or innocence. If the juvenile perceives the witness as a friend then s/he may be disappointed if the testimony given detracts from his/her case.

Of all the terms not understood by juveniles the two which have the most serious implications are "to drop charges" and "plea bargaining". In each instance the impact is the same, the final disposition of a case will be affected. If a juvenile does not understand that these two actions can result in less serious consequences than s/he may not appreciate it when it happens. The juvenile may not know that s/he is actually getting a break.

It is clear from the presentation of juveniles' understanding of specific legal terms and legal phrases that they do not understand a great deal about the language used in the court. The key question then is whether or not a juvenile's sense of justice (fairness) is affected by his/her understanding of legal language. This question constitutes the fifth and last hypothesis in this study.

Hypothesis #5

The fifth hypothesis states that a juvenile's sense of justice (fairness) is affected by his/her understanding of legal

language. A juvenile's sense of justice (fairness) of court handling of charges and his/her understanding of legal language were cross-tabulated. The dependent variable was based on the question "Do you think your courtroom hearings have been fair?".

TABLE LXXXIII

SENSE OF JUSTICE (FAIRNESS)
AND JUVENILES' UNDERSTANDING

		Juvenile Understanding		
		Yes	No	Row Total
Sense of Justice	Yes	100%	94%	97%
	No	0%	6%	3%
	Total	7	33	40

20 cases of "no response" and don't know" were excluded from the table.

The presence of a zero in one of the cells makes it impossible to use Yule's Q as a measure of association. Comparing percentages there is a shift from 100% sense of justice to 94% sense of justice when shifting from understanding to no understanding. There is a weak positive relationship between sense of justice and a juvenile's understanding of legal language.

Discussion of Hypothesis #5

A weak positive relationship between juvenile's understanding and a sense of justice, where justice is defined as fairness was found to exist. To elaborate, the decrease in percent sense of justice (fairness) when moving from understanding to no understanding was only 6%. The finding however, does support the view expressed in the CBC documentary "Sharp and Terrible Eyes"

(January 3, 1982) that there can be no justice if there is no understanding. Only those juveniles who said they understood legal language through that court was fair.

No control variables were introduced into this relationship because of the lack of variance observed in the variable, sense of justice (fairness). Virtually all juveniles interviewed thought court was fair. To introduce control variables would not produce any meaningful results.

What Impact Can Juvenile Court Have?

The presentation of the juvenile's grasp of certain legal terms and phrases suggests that for the most part their understanding of legal language itself is minimal. They comprehend those words which describe elements of process. They fail to understand terms which are internal to the process. What impact can juvenile court have if there is little understanding of the language? I would argue that the educative function of the court is reduced when understanding is low. This fact is best revealed by the statistic that only 12% of juveniles interviewed spontaneously suggested that the purpose of court was to teach them a lesson (cf. Langley et. al., 1978: 48). Only one child mentioned that the purpose of his/her courtroom hearing had been to make sure that s/he was not in trouble again. Most viewed it as a form of punishment, a way to get out of detention or get a fast disposition. On this basis I would argue that understanding should be increased so as to determine whether or not court could have a greater impact on the

juvenile. A lack of impact has serious implications for matters such as recidivism. If the juvenile does not understand what s/he has done and what the court has done in an attempt to "correct" the situation, then that same individual might be more likely to become reinvolved than one who understands more about what actually happened.

Conclusion

This chapter has presented the results of the interviews conducted with sixty juveniles at the pretrial stage in the Winnipeg juvenile court. The results of various cross-tabulations generated to test the five hypotheses proposed in this study were reproduced. Discussion followed the presentation of data and an attempt was made in each instance to account for the relationship between the primary variables. The effect of specific control variables on these associations was then addressed.

A series of tables were given showing juveniles' definitions of particular legal terms and legal phrases. Some comments were then made about the implications of juveniles' not understanding certain words.

Finally, a short section was devoted to a consideration of what impact juvenile court could have on the child if s/he did not understand what had been said. Throughout the chapter an attempt was made to bring together the literature which either supported or contradicted the results which I obtained.

The final chapter of the thesis will be a discussion and

summary. Implications of the findings and directions for future research, including methodological suggestions, will be presented.

CHAPTER 6

SUMMARY AND CONCLUSIONS

The juvenile's understanding of the legal language used in the Winnipeg juvenile court appears to be minimal. The majority of the juveniles (80%) I interviewed said that they did not understand the language of the court. This finding is consistent with the original premise upon which this thesis was based. The research showed, as hypothesized, that there was a relationship between a juvenile's understanding of legal language and his/her contact with probation officers and defense counsel. In addition there was a relationship between their understanding and the judge's explanation of the language, process and procedure of the court. This was also predicted. Certain control variables affected each of these relationships. The discussion of the three hypotheses and the influence of the various control variables on them was given in Chapter 5.

Like hypotheses #1, #2, and #3 the fourth hypothesis concerning the relationship between understanding and time in custody was supported. A juvenile's prior record, age and type of plea all proved to have an effect on the association.

The fifth hypothesis, a juvenile's sense of justice (fairness) is affected by his/her understanding of legal language showed a weak positive relationship. A juvenile's sense of justice (fairness) decreases as one moves from understanding to no understanding.

No control variables were introduced.

The support generated for the first three hypotheses informs me that a juvenile's understanding can be affected by contact with key legal actors. An examination of what in fact juveniles understand shows that they understand very few legal terms and phrases. This leads me to question what in fact will substantially change the situation so that they do understand the meaning of particular words and phrases. It is my position based on this study that a juvenile will not understand legal language unless there is an increase in his/her participation in the proceedings of the court. To deny the juvenile the opportunity to participate in the proceedings of the court is to deny him/her the opportunity to develop his/her own interpretation of the reality in which s/he finds himself/herself. The foreignness of the language itself may lead the juvenile to believe that s/he is not capable of understanding. This coupled with his/her lack or participation can lead to nothing but a continued lack of understanding. This only serves to reinforce what Ericson and Baranek (1982) refer to as the accused's "dependent status".

The need for "bilateral communication" within the courtroom as opposed to a "unilateral" one suggests a reorganization of the style of language used. To include a juvenile in the proceedings but to maintain a formal language will not change the current situation. The nature of the language used in court must be conducive to a juvenile's participation. If the court moves towards the use

of a less formal language and simultaneously includes the juvenile in the process then I suspect that understanding will increase.

An important question to be asked here is whether this change will occur under the Young Offenders Act. As pointed out in Chapter 4, the YOA states that juveniles should be given an opportunity to participate as fully as possible in the proceedings against them. Although this legislation advocates "bilateral communication" it also represents a move towards a more legalistically-oriented court. Perhaps formal language will persist.

I put forth that clearly there is a potential for a "Plain English" movement in the Winnipeg juvenile court. This belief stems from two sources. First, the results of the juvenile interviews show that most juveniles do not understand the language of the court. To understand, however, was important to them. Second, the key actors interviewed agree that legal language affects the juvenile's understanding of the court hearing. They believe that simplifying legal language is a feasible proposition. This alone lends support to the idea of a "Plain English" movement in the juvenile court.

I suggest that certain structural changes may encourage a more effective communication between the juvenile and the court. First, I see a need for a more active probation officer within the juvenile court. The role of the probation officer must be clarified. The current functioning of the court does not allow a probation officer to become involved with a juvenile unless s/he has entered a guilty plea, the judge requests a pre-disposition report or when

the juvenile is on probation at the time of the current offence. There is no mandate for a probation officer to be involved with a juvenile before his/her first court hearing. As Chapter 4 pointed out the role of the probation officer is largely an explanatory one. If this role cannot be fulfilled this has serious implications for whether or not a juvenile is likely to understand what happens to him/her in court. I would argue based on the results of hypothesis #1 in this study that increased probation contact will increase a juvenile's understanding. There is a need for the clarification of the current role of the probation officer in the proceedings of the court.

Second, I would encourage an ombudsman to become one of permanent key actors in the juvenile court. This person could act as an interpretor of the language and proceedings of the court for the juvenile. If the juvenile and/or his/her parent(s) were unclear as to what had occurred in court then this person could be approached for explanation and clarification.

Third, I suggest that an information booklet which describes the basic procedures of the court should be created. A compendium of terms which the juvenile is likely to hear would allow the juvenile and/or his/her parent(s) to become more familiar with the language of the court prior to the first hearing. This information booklet could accompany the summons and notice which is issued by the Clerk of Courts Office.

Finally, I put forth that smaller dockets would encourage greater understanding for the juvenile. If a judge has fewer

matters to deal with then s/he will have more time to explain the language, process and procedure of the court to the juvenile. Given that this study revealed that there is a relationship between juvenile's understanding and the judge's explanation of the language, process and procedure of the court, I would argue that this structural change would most likely promote juvenile's understanding.

Implications of Findings

The findings of this study have implications for both theory and research. To begin, if one agrees that a lack of understanding of legal language has serious consequences for the concerned juvenile then one must necessarily look for ways to resolve this situation. In the preceding section I suggested that one way might be to encourage a "Plain English" movement in the Winnipeg juvenile court. In suggesting this I would caution against arbitrary simplification of all terms and legal phrases. Any specialized language develops out of a particular need or for a particular purpose. It is the case that a highly technical term may often denote or describe something which otherwise could only be expressed through paragraphs and paragraphs of simpler terms. As one author has commented, "much of thinking behind the Plain English movement is naive both about the complexities of language and about the extent to which linguistic reform can change socio-legal realities" (Danet, 1980: 490). As one interviewee commented to me, "to change the language of the criminal law (of which juvenile law is a part)

one must begin by examining the legislation in which it is grounded. The legislation ultimately shapes the form that 'talk' in the courtroom will take". To simplify language, according to this assessment, is to simplify the language of the legislation out of which it develops.

Other concerns which must be addressed include "What are the dangers of oversimplifying legal language?" and secondly, "If plain language is introduced into the juvenile court then how will its use be ensured?". Ray J. Aiken (1960) in a rejoinder to an article on simplifying legal language commented that the one issue which should not be overlooked in a discussion of this nature is that "the lawyer, in the vast majority of his work, addresses himself simultaneously to the layman who is the client or juror, and to the profession" (p. 359). Further he writes that "technicality is an inescapable component of technique; and to cry for simplication in a technical field is much like criticizing daVinci because his paintings so little resemble those of Al Capp or Grandma Moses" (p. 362). Clearly these two issues are important to the discussion of changing language.

The second question posed points to the issue of enforcing a program of plain and simple English in a court system where there is little monitoring of behavior of key actors. This comment is particularly directed to the judges of the court who ultimately set the pace and style in any proceeding. It is not the case that one judge sits in on the other's court which means that if one judge did not agree with the use of plain and simple language in

the court then there may be no way of enforcing its use. Without a mechanism with which to determine whether simple language is being used there can be no way to effect long term change.

A final issue is "What will be lost if legal language is simplified?". I raise this point in acknowledging that the "formal language of the law creates the boundaries of formal symbolic control in court" (Carlen, 1974: 102). If the juvenile appears in a courtroom where the judge, lawyer and prosecutor all speak in everyday language then s/he may be less inclined to take the proceedings seriously. This comment should not be taken as a reason for not simplifying legal language but rather as a point which must be considered when advocating and promoting change in legal language.

Directions For Future Research

The findings of this study coupled with the implications which have just been discussed point to the potential for future research in this area. At the outset, I point to the methodological difficulties encountered in the course of this work. The greatest difficulty is the researcher's ability to assess understanding of legal language. The selection of a question which indicated to me whether or not the juvenile himself/herself felt that they understood seemed to be the best measure of overall understanding. One must acknowledge that a person may say s/he understands or does not understand when in fact the opposite is true. As Pat Baranek (co-author of The Ordering of Justice) pointed out in a letter

regarding this study, "my experience has been that even when an accused has stated that (s)he has understood a particular legal point or procedure and may even have been able to supply me with a legal definition or description of such point or procedure, (s)he has not fully grasped the meaning or the implications for his or her case" (personal communication, 1982). This is an important point and I suggest that any further research in this area should develop a series of measures concerning "understanding" in light of these difficulties.

Second, to conduct this study again I would tape record all interviews with juveniles. Although most juveniles tended to answer the questions in one sentence or less, a verbatim transcript would have enabled me to better document their responses. An examination of a complete transcript might have enabled me to more fully assess the degree of understanding the juvenile does or does not have.

Third, any research in this area should be done over a period of several months. The juvenile should be interviewed not once but several times throughout the entire court process. For example, one could interview the juvenile at the time of his/her first court hearing, then interview again at the pretrial stage followed by one final interview after a disposition had been given. This method would enable one to discover whether time spent in the process has an effect on understanding of legal language.

Fourth, although the interviews conducted with key legal actors provided the researcher with information about particular

issues and concerns, the information gained only dealt with generalities and could not be tied to particular cases. One approach for a future study would be to interview the probation officers, lawyers and judges who are involved with the juvenile in the sample. This would allow one to compare the key actors' accounts of what happened with the juvenile's. The perceptions of each would be informative.

The conclusion reached in this study is that there is indeed the potential for a "Plain English" movement in the Winnipeg juvenile court. Juveniles do not understand the legal language used in the court. I have suggested that one way to increase understanding is to allow the juvenile to participate in the proceedings of the court. Given this opportunity it is my position that the juvenile will be able to determine for himself/herself what particular words and phrases mean in the context in which they are spoken. Recognizing that one of the goals of the Young Offenders Act is to increase the juvenile's participation in the courtroom proceedings, it is my view that a follow-up study after the legislation has been enacted could test this proposition. The results gained may provide further insight into how a juvenile can better understand the language of the proceedings in which his future is decided.

APPENDICES

APPENDIX I

DESCRIPTION FOR JUVENILE PARTICIPATION

TO WHOM IT MAY CONCERN

I am currently conducting a study of juvenile's understanding of the language used in the juvenile court. As part of the study I am asking a number of juveniles, like yourself, who appear at pretrial court if they will agree to be interviewed. I am anxious to find out your views on the language used in the courtroom. In addition to talking to you I will also be speaking to some probation officers, defense counsel and judges to find out whether or not they are explaining the language used in court to you.

Your participation is voluntary. All results will be strictly confidential. Your cooperation would be greatly appreciated.

Trudie F. Smith-Gadacz

APPENDIX II

JUVENILE INTERVIEW

I. BACKGROUND

Interviewer check off the following question at the outset.

1.1 SEX: ____MALE ____FEMALE

BEGIN INTERVIEW HERE

I'd like to begin by asking you some questions about your self. Please try to do your best to answer all the questions. If you do not understand or are not sure about a particular question just tell me.

1.2 When is your birthday?

___DAY ___MONTH

What year were you born? ___YEAR

1.3 Are you currently going to school?

___YES Go to 1.4

___NO Go to 1.6

1.4 What grade are you in?

_____ Go to 1.7

1.5 How do you find school?

_____

1.6 What is the highest grade that you have PASSED in school?

____GRADE

____No school grade completed Go to 1.8

1.7 Are you a "full-time" student or a "part-time" student?

_____ Full-time

_____ Part-time

1.8 Do you currently work at any job or business?

____YES

____NO Go to 1.10

1.9 Do you work full-time or part-time at that job? (Full-time =30 hrs. per week, part-time=less than 30 hrs. per week).

____ Full-time

Go to 2.1

____ Part-time

1.10 When did you last work?

_____

If juvenile has never worked go to 2.1

1.11 Did you work full-time or part-time at that job? (Full-time =30 hrs. per week, part-time=less than 30 hrs. per week).

____ Full-time

____ Part-time

II. SCREENING

2.1 In this interview I want to ask you about the court case which is going on right now in which you are charged with:

(SELECTED CHARGE(S)): _____

_____

(OTHER CHARGES IF ANY): _____

_____

and for which you have appeared in juvenile court before.

Is this information correct?

____ YES Go to 2.3

____ NO

____ Don't know

2.2 What do you remember being charged with?

_____

2.3 It is only the charge(s) _____ in your court case that we are going to talk about.

III. POLICE CONTACT

3.1 Where were you when you first came into contact with the police?

___ Never in contact with the police — Go to 4.1
___ In courtroom
___ At subject's residence
___ On the street
___ At school — Go to 3.2
___ At work
___ Other (Eg. at scene of crime)
___ Don't remember
___ At the police station

3.2 Did someone tell you you were under arrest?

____ YES

____ NO

____ Don't remember

3.3 Were you told <u>why</u> you were under arrest?

____ YES

____ NO

____ Don't remember

____ N/A

3.4 Did a police officer question you about the offence before you appeared in court?

____ YES

____ NO

____ Don't remember

3.5 Before the police began asking you questions about the offence did someone <u>tell</u> you that you could talk to a lawyer first?

____ YES

____ NO

____ Don't remember

3.6 Did you talk to a lawyer before talking to the police?

____ YES

____ NO

____ Don't remember

3.7 Were you held in custody on the current charge(s)?

____ YES

____ NO

Go to 3.12

____ Don't remember

3.8 How long were you detained for?

____ PRE-COURT RELEASE

____ MORE THAN ONE DAY, LESS THAN A WEEK

____ MORE THAN ONE WEEK, LESS THAN A MONTH

____ OTHER

3.9 Were you told <u>why</u> you were detained?

_____

3.10 Do you think it was right for you to be detained?

____ YES

____ NO

____ Don't know/No Response Go to 3.12

3.11 Why do you say that?

_____

3.12 Would you tell me, please, who you were living with at the time the offence took place?

___ Parents
___ Mother Only
___ Father Only
___ Foster Parent(s)/Guardian

___ Living Independently
___ In Group Home
___ Other (Specify) _____

3.13 Did you discuss your offence with these people?

____ YES

____ NO

____ Don't remember

IV. PRE - FIRST APPEARANCE

4.1 Before you appeared in court for the first time on this charge(s) did you talk with anyone from social services? (Social worker, probation officer, etc.)

____ YES

____ NO

____ DON'T KNOW Go to 4.9

____ DON'T REMEMBER

4.2 Who did you meet with?

_____

___ Probation Officer
___ C.A.S. Worker
___ Social Worker (Other than C.A.S.)
___ Other (Specify) _____

NOTE: If subject mentions person's name in response to the above probe to determine role. Eg., "What is _____'s job?"

If more than one person mentioned above ask 4.3 otherwise go to 4.4.

4.3 Who did you talk with the MOST?

___ Probation Officer
___ C.A.S. Worker
___ Social Worker (Other than C.A.S.
___ Other (Specify) _____

4.4 Did you know _____ (Person in 4.2 or 4.3) before you were charged with _____ (Selected Charge(s))?

____ YES

____ NO

Go to 4.6

____ DON'T REMEMBER

4.5 How did you get to know him/her?

_____

4.6 How many meetings did you have with him/her before your first court appearance on this charge(s)?

_____

4.7 What did you talk to this person about?

_____

4.8 Did this person explain to you what would occur inside the courtroom? i.e. did they talk to you about the proceedings - the way things are done in court, before you went into court for the first hearing?

____ YES

____ NO

Go to 4.11

____ Don't know/Don't remember

4.10 How did you get in contact with this lawyer?

_____

(If juvenile says he applied for legal aid ask him/her who took his/her application).

_____

4.11 Did you or your parents ever get a notice, i.e. a letter (or piece of paper) saying that you had to appear in court on a certain day?

____ YES

__ Self Only
__ Parent Only
__ Both

Go to 4.12

____ NO

Go to Section V (5.1)

____ Don't know/Don't remember

4.12 Did you read what was written on the notice (piece of paper)?

____ YES

_____ NO

Go to Section V (5.1)

_____ Don't remember

4.13 Did you ask anyone what was written in the notice?

_____ YES

_____ NO

Go to 4.15

_____ Don't remember

4.14 Who did you ask?

___ Parent/Guardian
___ Lawyer
___ Adult Friend
___ Juvenile Friend
___ Police
___ Other (Specify) _____

Now I am going to read a sentence to you. If is the sort of sentence a juvenile would see on a notice or a letter telling him/her to appear in the juvenile court. I would like you to say what the sentence means, i.e. to tell me in your own words what you think it means.

4.15 "You have the right to be represented by counsel."

A. If any one of the following occur verbatim "right", "represented", "counsel", ASK, "what does ..... mean?"

B. When identity of whom one may be represented by is stated merely as "someone", ASK, "Who can you be represented by?" OR "Who do you mean?"

C. When no mention is made of who one can be represented by (e.g. "You can't get help"), ASK, "Can you tell me a little bit more about that?"

V. COURTROOM HEARINGS

5.1 Now I would like to ask you how many times you have been before the judge on the current charge(s) of _____ (Selected Charge(s)).

_____ Enter Number Here

Probe to ensure that subject doesn't change his/her mind. Note change if there is one.

_____

5.2 Is this the first time that you have ever been before the juvenile court? (i.e. have any charges in the past brought you to court?)

____ YES Go to 5.3

____ NO

Go to 5.5

____ Don't remember

5.3 Have you ever been arrested before but not brought to court?

____ YES Go to 5.4

____ NO

Go to 5.8

____ Don't remember

5.4 What happened to you if you weren't brought to court?

_____

Go to 5.8

5.5 When were you before the juvenile court?

_____

5.6 What were you charged with?

_____

5.7 What was the outcome?

___ FINE

___ RESTITUTION

___ COMMUNITY WORK ORDER

___ PERIOD OF PROBATION

___ CONDITIONAL DISCHARGE

___ ADJOURN SINE DIE

___ STAY OF PROCEEDINGS

___ TRANSFERRED TO ADULT COURT

___ CASE DISMISSED

5.8 Have you had a probation officer with you in the courtroom at your hearings concerning your current charges?

____ YES Go to 5.9

____ NO

Go to 5.11

____ Don't remember

5.9 Do you think it was helpful to have your probation officer at your hearing(s)?

____ YES

____ NO

____ Don't know

5.10 Why do you say that?

_____

5.11 Have you had a lawyer with you in the courtroom at any of your court hearings?

____ YES Go to 5.15

____ NO Go to 5.12

____ Don't know

5.12 Why did you not have a lawyer at your hearing?

_____

5.13 Do you think you should have had a lawyer at your hearings?

____ YES Go to 5.14

____ NO Go to 5.17

____ Don't know

5.14 Why do you think you should have had a lawyer at your hearing?

_____

Go to 5.17

5.15 Do you feel that your lawyer really understands your case?

_____

5.16 Why do you say that?

_____

5.17 Before you went into the courtroom (for the first time) on this case did you know that you were charged with _____ (Charges)?

____ YES Go to 5.18

____ NO Go to 5.19

____ Don't remember

Go to 5.19

____ Wasn't sure

5.18 How did you find out that you were charged with _____ before going to court?

_____

___ Police told subject
___ Parent told subject
___ Lawyer told subject
___ Detention staff told subject
___ P.O. told subject
___ From notice/summons received
___ Other (Specify) _____
___ Don't remember

5.19 Were the charges against you read out at any of your hearings?

____ YES

____ NO

____ Don't remember

____ Don't know

5.20 Did anyone in court ask you if you understood what you were charged with/accused of?

____ YES Go to 5.21

____ NO

Go to 5.22

____ Don't remember

5.21 Who asked you that?

___ Judge

___ Subject's Lawyer

___ Other (Specify) _____

5.22 Did anyone explain the charge to you?

____ YES Go to 5.23

____ NO

Go to 5.24

____ Don't remember

5.23 Who?

_____

5.24 Did the judge ask you if you were guilty or not guilty?

____ YES Go to 5.25

____ NO

Go to 5.26

____ D/R, D/K, N/R

5.25 Did the judge explain the difference between guilty and not guilty?

_____

5.26 Did the judge ask if you did what you were accused of doing - that is what the police said you did?

____ YES

____ NO

____ D/R, D/K, N/R

5.27 Did anyone discuss with you what it means to give a plea?

_____

5.28 How did you plea on the charge(s) of _____?

___ Guilty
___ Not guilty
___ No plea
___ Don't remember

5.29 Did the judge accept the plea?

____ YES

____ NO

____ Don't remember

5.30 Had anyone said to you before you made your plea of (guilty/ not guilty) that that was how you should plea on the charge(s)?

____ YES Go to 5.31

____ NO

Go to 5.32

____ Don't remember

5.31 Who gave you that advice?

___ Parent/Guardian
___ Lawyer
___ Police
___ Adult Friend
___ Juvenile Friend
___ Social Worker
___ Probation Officer
___ Other (Specify) _____
___ Other (Specify) _____
___ Don't remember

5.32 Have you ever heard the phrase "plea bargaining"?

_____ YES Go to 5.33

_____ NO
Go to 5.35

_____ Don't remember/Don't know

5.33 Do you know what it means?

_____ YES Go to 5.34

_____ NO
Go to 5.35

_____ Don't remember/Don't know

5.34 Could you describe in your own words what you think it means?

_____

5.35 Did your lawyer make any deals in regard to your charges?

_____ YES Go to 5.36

_____ NO
Go to 5.37

_____ D/R, D/K, N/R

5.36 What was the deal that was made?

_____

5.37 Did you change your plea today?

_____ YES

_____ NO

_____ Don't remember/Don't know

5.38 Did anyone question you while you were in the courtroom for your hearings?

____ YES Go to 5.39

____ NO

Go to 5.40

____ Don't remember

5.39 Who?

___ Prosecutor
___ Lawyer
___ Judge
___ Others (Specify) _____
___ Don't remember

5.40 Were you given a chance to say something to the judge about your court case at any one of your hearings?

____ YES Go to 5.41

____ NO

Go to 5.42

____ Don't remember

5.41 What did you say?

_____

5.42 Did any people in the courtroom use words which you did not understand?

____ YES Go to 5.43

____ NO

Go to 5.46

____ Don't remember

5.43 Who?

_____

5.44 Did <u>anyone</u> <u>explain</u> any of these words to you?

____ YES

____ NO

____ Don't remember

5.45 Who explained the most to you?

___ Parents/Guardian
___ Lawyer
___ Social Worker
___ Probation Officer
___ Police Officer
___ Prosecutor
___ Victim
___ Judge
___ Other (Specify) _____
___ Don't remember

5.46 Is it important to you that you understand what happened to you in your courtroom hearings?

____ YES

____ NO

____ Don't know

5.47 What to you has been the purpose of your courtroom experience?

_____

5.48 Would you say that your court hearings have been fair?

____ YES Go to 5.49

____ NO
Go to 5.50

____ Don't know

5.49 Why have these hearings been fair?

_____
Go to 5.51

5.50 Why have these hearings been unfair?

_____
Go to 5.51

5.51 What did the judge decide to do with your case today?

_____

VI. CASE EXAMPLE

Now I am going to read you some statements which you may or may not have heard in your courtroom hearings. I will ask you what certain things mean, i.e. I will ask you to tell me as best you can in your own words what you think they mean.

6.1 The police gave a juvenile a notice to appear in Juvenile Court. What is a notice to appear?

6.2 A boy named Mark went to the Juvenile Court where the judge said, "I have an information here which I will read to you". What is an information?

The judge read an information to a juvenile appearing in court which said, "This information alleges that on or about September 28, 1981 you, Mark Smith, did unlawfully Break and Enter a dwelling house the property of Faye Bell and therein did commit a delinquency contrary to Section 306(1) of the Criminal Code of Canada".

6.3 What does unlawfully break and enter mean?

6.4 What does it mean to commit a delinquency?

6.5 What does contrary to Section 306(1) of the Criminal Code of Canada mean?

6.6 A juvenile who had stolen a football from Baldy Northcott appeared in court with a lawyer. When the judge said that he had an information before him the juvenile's lawyer said they waive the reading of the charge(s). What does it mean to waive the reading of the charge(s)?

6.7 In one case after the judge read the information he said to the juvenile, "How do you plea on the charge of breaking and entering?" What did the judge mean?

6.8 The juvenile court judge asked a juvenile "How do you plea on the charge of robbery?" The juvenile's lawyer said that they were entering a plea of not delinquent. What did the lawyer mean when he said their plea was not delinquent?

6.9 When the judge asked a juvenile for his plea the boy answered the judge by saying "not guilty your Honor". What did the boy mean?

6.10 Once the judge heard the juvenile's plea he asked whether this was an indicated plea. What is an indicated plea?

6.11 The prosecutor said, "This case should be adjourned to the pretrial court on April 2, 1982". What is the pretrail court?

6.12 The judge said that the case was adjourned until April 2, 1982. What does it mean to adjourn the case?

6.13 Before leaving the courtroom the juvenile was asked to sign an appearance slip. What is an appearance slip?

6.14 On April 2, 1982 a juvenile appeared at pretrial court. The judge asked if he was still pleading "not guilty". What did the judge mean?

6.15 The prosecutor said that the juvenile's lawyer and he had agreed to drop certain charges. What did the prosecutor mean?

6.16 The judge explained that the juvenile might be a "party to the offence". What did the judge mean?

6.17 The prosecutor said that they were prepared to proceed to trial. What did the prosecutor mean?

6.18 The prosecutor asked the juvenile to sign a "trial slip". What is a "trial slip"?

6.19 The trial slip says that the witness can be subpoenaed. What is a subpoena?

6.20 After signing the trial slip the judge said to the juvenile that his trial would be held on December 21, 1982 at 9:30 in Courtroom A. What is a trial?

6.21 The judge said the juvenile could bring any witnesses he had to his trial. What is a witness?

_____

THANK YOU FOR YOUR CO-OPERATION!

VII. CONCLUSION

7.1 Was anyone else present during the interview?

____ YES (Specify) _____ Go to 7.2

____ NO Go to 7.3

7.2 Did this person(s) try to interject in the interview in any way?

____ YES (Specify) _____

____ NO

7.3 Describe the circumstances of the interview including where it occured, the atmosphere of the interview situation (i.e. friendly or hostile) and any unusual circumstances.

_____

APPENDIX III

PROBATION OFFICERS' INTERVIEW

I. BACKGROUND

Interviewer check off the following question at the outset.

1.1 SEX: ____MALE ____FEMALE

BEGIN INTERVIEW HERE

I would like to begin by asking you some questions about your background. Please try to answer all questions to the best of your ability.

1.2 How long have you worked in the juvenile division of probation services?

_____

__ Less than one year
__ One to two years
__ Two to four years
__ More than four years

1.3 Have you always been involved with social services of some sort?

__ Yes Go to 1.4
__ No Go to 1.5

1.4 What did your past work in social services involve?

_____

1.5 What is your current title or position?

_____

1.6 Would you briefly describe your current duties and functions within probation services?

_____

1.7 What is the highest level of education you have attained?

__ High school diploma
__ Community college, CEGEP
__ Some University
__ Some Post-Graduate Studies
__ Other Education or Training

II. JUVENILE CONTACT

I would like to ask you a series of questions concerning your contact with juveniles.

2.1 When will you typically make your initial contacts with juveniles?

PROBE:
__ At time of arrest
__ What percent of contact occurs at the time of arrest? ___%
__ Through parents
__ Juvenile contact

2.2 Will this first contact usually occur prior to the first court appearance?

__ Yes — Go to 2.3
__ No — Go to 2.19
__ Not always — Go to 2.3

What percentage will be prior to the first court appearance?
_____%

2.3 If the first contact occurs prior to the first court appearance what in general terms will be discussed at this meeting?

PROBE:
__ The nature of the charge/what they are charged with
__ Prior record
__ Potential dispositions
__ How the case is likely to proceed

2.4 Do you find, in general, that most juveniles know what they are charged with before they go to court?

__ Yes — Go to 2.5
__ No
__ Don't know — Go to 2.6

2.5 How do they find out what they are charged with?

__ Police told subject
__ Parent told subject
__ Lawyer told subject
__ Detention staff told subject
__ P.O. told subject
__ From notice/summons received
__ Other (Specify) _____
__ Don't know

% for each category or rank order them.

2.6 What, if any, are the most common questions a juvenile will ask during your first meeting?

PROBE: __ How serious is the charge?
__ Should I plead guilty or not guilty?
__ If I plead guilty will it be over sooner?
__ What will likely happen to me?

2.7 What in your mind is the juvenile's biggest concern about going to court?

PROBE: __ Getting a record
__ Being found guilty
__ Disposition
__ Having their friends find out they were in court
__ Having their parents find out they were in court
__ Having to spend so much time going through the process

2.8 How often do you explain to the juvenile what is likely to occur inside the courtroom? i.e. Will you talk to the juvenile about the proceedings of the court?

PROBE: __ Always
__ Almost always Go to 2.9
__ Sometimes
__ Never Go to 2.13

2.9 How much detail do you provide the juvenile with?

2.10 Under what conditions do you explain the proceedings of the court to the juvenile?

PROBE: __ When juvenile and/or his/her parents want to know
__ If the charge is serious
__ If I feel they will be in for a long drawn out court case
__ If a serious disposition could be rendered

2.11 Under what conditions would you <u>not</u> explain the proceedings of the court to the juvenile?

PROBE: __ When juvenile and/or his/her parents don't want to know

__ If the charge isn't serious
__ If the juvenile and/or the parent/guardian have had prior contact with any court of law
__ If the disposition will be lenient

2.12 Would you please describe what you would normally tell a juvenile about court procedure?

2.13 Are juveniles normally interested in finding out about the proceedings of the court?

__ Yes Go to 2.14
__ No
__ Not always Go to 2.15

2.14 In general why do you think a juvenile would be interested in finding out about court procedure?

2.15 In general why do you think a juvenile would not be interested in finding out about court procedure?

PROBE: __ Already familiar with court proceedings as a result of prior contact
__ Just anxious to have the matter finalized
__ Juvenile thinks he knows what is about to occur

2.16 How many times are you likely to meet a juvenile or have telephone contact with him/her before his/her first court appearance?

2.17 Would you say that this number of contacts is the average over all cases you handle or is it likely to be different for each individual case?

__Yes, this is the average Go to 3.1
__No, it isn't the average Go to 2.18

2.18 Why will the number of contacts vary from case to case?

2.19 If you do not make contact with a juvenile prior to his/her first court appearance when will this first contact most likely occur?

PROBE: __ At the time of the first hearing
__ At juvenile's first court appearance
__ Between first hearing and pretrial
__ At pretrial
__ Between pretrial and trial
__ Trial

III. FIRST COURT HEARING

3.1 On the day of the juvenile's first court hearing are you likely to appear in the courtroom with him/her?

__ Yes Go to 3.3
__ No Go to 3.2

3.2 Why are you not likely to appear in the courtroom with him/her?

PROBE: __ Have not had adequate time to prepare the case
__ Haven't been advised of the details of the case
__ Heavy caseload
__ No contact has been made with juvenile and/or parents

3.3 Would you say that it is helpful for the juvenile to have you present at their courtroom hearing?

__ Yes
__ No

3.4 Why do you say that?

3.5 If the juvenile has a lawyer representing him/her in court do you think your presence is as important as it would be if s/he did not have legal counsel?

__ Yes
__ No
__ Don't know

3.6 Why do you say that?

PROBE: __ Juvenile needs someone to explain the court procedure to him/her
__ It is supportive
__ Our role is different

3.7 Often times at a first hearing a charge will be read out to the juvenile. Do you think that most juveniles understand what they are charged with?

__ Yes Go to 3.9
__ No Go to 3.8
__ Don't know

3.8 What is it that juveniles are most confused by?

_____

PROBE: __ The formality of the information
__ The way the judge reads the information

3.9 If a judge asks a juvenile how s/he wishes to plead to the charge before the court do you think s/he understands what is being asked for?

__ Yes
__ No
__ Don't know

3.10 Why do you say that?

_____

PROBE: __ I have spoken to the juvenile about it before court
__ Juvenile knows that in court they will have to admit or deny

3.11 Do most juveniles understand the difference between pleading guilty and not guilty?

__ Yes
__ No
__ Don't know

3.12 Do you think that juveniles understand plea bargaining?

__ Yes
__ No
__ Don't know

3.13 Do you think that it is the judge's role and responsibility to explain the charge, what it means to make a plea, the difference between guilty and not guilty, for example, to the juvenile?

__ Yes, completely Go to 4.1
__ Yes, partly Go to 3.14
__ No Go to 3.14
__ Don't know

3.14 Whose role is it?

_____

PROBE: __ Legal counsel
__ Probation Services
__ Prosecutor

3.15 Who else should assume this explanatory role?

_____

PROBE: __ Legal counsel
__ Probation Services
__ Prosecutor

IV. LEGAL LANGUAGE

Often times if a lawyer is involved in a juvenile case more technical legal vocabulary is used in the course of the proceedings. I would now like to ask you a series of questions concerning this matter.

4.1 Do you think that juveniles who have legal counsel understand in any way the vocabulary which their lawyer's use in their courtroom hearings?

__ Yes Go to 4.2
__ No Go to 4.3
__ Don't know

4.2 What, if anything, do you think they understand?

_____

PROBE: __ Guilty/Not guilty
__ Waive reading of the charge
__ Talking about their social history
__ Adjournments
__ Entering a plea
__ Prior record
__ To get particulars

4.3 What don't they understand?

_____

PROBE: __ Guilty/Not guilty
__ Waive reading of the charge
__ Talking about their social history
__ Adjournments
__ Case Law
__ Entering a plea
__ Prior record
__ To get particulars

4.4 In your experience has it been the case that lawyers who are active in the juvenile court system explain the legal

vocabulary which they use in the courtroom to their child clients?

__ Yes
__ No
__ Don't know

4.5 Do you think it is important that lawyers explain to juveniles the legal terms which they use in the courtroom hearings?

__ Yes
__ No
__ Don't know

4.6 Why do you say that?

_____

4.7 Do you think it is necessary for juveniles to understand the legal language which lawyers, prosecutors and judges employ in the course of juvenile court proceedings in order for the courtroom experience to be a meaningful experience for the juvenile?

__ Yes
__ No

4.8 Why do you say that?

_____

PROBE: __ It is part of their right to due process
__ It is necessary for "rehabilitation"
__ It emphasizes the educative function of the court
__ It is necessary for them to experience a sense of fairness

4.9 What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

_____

PROBE: __ Information
__ Not guilty/guilty
__ To get particulars
__ Pre-Disposition Report
__ Contrary to Section __ of the Criminal Code of Canada
__ Adjourn sine die
__ Fine
__ Restitution
__ Delinquent/Non-delinquent
__ Finding of delinquency
__ Remand
__ Plea

__ Indicated plea
__ Waive reading of the charge
__ Conditional discharge
__ Stay of proceedings
__ Committal

4.10 What is so significant about these particular terms?

4.11 What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

PROBE: __ Information
__ Not guilty/Guilty
__ To get particulars
__ Pre-Disposition Report
__ Contrary to Section __ of the Criminal Code of Canada
__ Adjourn sine die
__ Period of probation
__ Fine
__ Restitution
__ Delinquent/Non-delinquent
__ Finding of delinquency
__ Remand
__ Plea
__ Indicated plea
__ Waive reading of the charge
__ Conditional discharge
__ Stay of proceedings
__ Committal

4.12 What is less significant about these terms as opposed to any others?

4.13 In general would you say that the use of legal language affects the juveniles understanding of the courtroom hearing?

4.14 Do you feel that the courtroom experience would have greater impact if less legal vocabulary were used?

4.15 Do you think that simplifying legal language would make the courtroom experience more meaningful for the juvenile?

__ Yes Go to 4.16

__ No
__ Don't know Go to 4.17

PROBE: Would the courtroom experience have more of a teaching function?

4.16 What changes would you propose to simplify legal language?

4.17 Do you feel that simplifying legal language is a feasible proposition?

__ Yes Go to 4.18
__ No Go to 4.19
__ Don't know

4.18 Why do you feel that simplifying legal language is a feasible proposition?

4.19 Why do you feel that simplifying legal language is not a feasible proposition?

V. POST - COURT HEARING

5.1 After a court hearing do you explain to the juvenile what has occured in the court that day?

__ Yes, always
__ Yes, sometimes Go to 5.2
__ No Go to 5.3

5.2 Is the explanation you provide juvenile initiated or at your initiation?

5.3 What proportion of the juveniles you deal with would ask you questions about the courtroom hearing?

_10% _20% _30% _40% _50% _60% _70% _80% _90% _100%

5.4 What would be the reason for not explaining the courtroom hearing to the juvenile?

5.5 If the juvenile has legal counsel will you still explain what happened in court to the juvenile?

__ Yes, always
__ Yes, sometimes — Go to 5.6
__ No — Go to 5.7

5.6 Why would you explain what happened in court to the juvenile if s/he has legal counsel?

_____

Go to 5.8

5.7 Why would you not explain what happened in court to the juvenile if s/he has legal counsel?

_____

5.8 Do you ever follow-up a court hearing by writing a letter to the juvenile and/or his parent/guardian explaining what took place in court?

__ Yes, always
__ Yes, sometimes — Go to 5.9
__ No — Go to 5.10

5.9 Under what circumstances if any, would such a letter be forwarded?

_____

5.10 If a hearing is adjourned will you be in touch with the juvenile before the next hearing?

__ Yes, always
__ Yes, sometimes — Go to 5.11
__ No — Go to 5.12

5.11 What will be the nature of this contact?

_____

5.12 If a juvenile has a number of hearings are you likely to attend all of them?

__ Yes
__ No — Go to 5.13

5.13 Under what circumstances will you not attend a particular hearing?

_____

5.14 If this should occur are you likely to make other arrangements i.e. send a colleague with instructions on how to act?

_____

5.15 If you personally will not be attending court are you likely to advise the juvenile that you will be unable to attend?

_____

__ Yes, always
__ Yes, sometimes
__ No

VI. CONCLUSION

6.1 Was anyone else present during the interview?

__ Yes (Specify) _____

_____

__ No

6.2 Describe the circumstances of the interview including where it occured, the atmosphere of the interview situation (friendly or hostile) and any unusual circumstances.

_____

** THANK-YOU FOR YOUR CO-OPERATION.

APPENDIX IV

DEFENSE COUNSEL INTERVIEW

I. BACKGROUND

Interviewer check off the following question at the outset.

1.1 SEX: ____MALE ____FEMALE

BEGIN INTERVIEW HERE

I would like to begin by asking you some questions about your background.

1.2 How long have you been practising as a defence counsel?

__ Less than one year
__ One to two years
__ Two to four years
__ More than four years

1.3 What type(s) of law do you practise?

__ Criminal
__ Corporate
__ Family
__ Juvenile

If more than one, Go to 1.4

1.4 In which one of the named types of law that you practise does the greatest part of your caseload fall into?

1.5 In your opinion what percentage of all your legal work is made up of juvenile cases?

_10% _20% _30% _40% _50% _60% _70% _80% _90% _100%

II. JUVENILE CONTACT

I would like to ask you a series of questions concerning your contact with juveniles.

2.1 When do you typically make contact with juveniles?

PROBE: __ At the time of arrest
__ What percent of contact occurs at the time of arrest?

_____

__ Through parents
__ Juvenile contact
__ Legal Aid
__ How many come through Legal Aid?

_____

2.2 Who in your mind is your client?

_____

__Parent/Guardian
__ Juvenile

2.3 Will this first contact usually occur prior to the first court appearance?

__ Yes — Go to 2.4
__ No — Go to 2.19
__ Not always — Go to 2.4

2.4 If the first contact occurs prior to the first court appearance what in general terms will be discussed at this meeting?

_____

PROBE: __ The nature of the charge/What they are charged with
__ Prior record
__ Potential dispositions
__ How you will be proceeding with the case

2.5 Do you find, in general, that most juveniles know what they are charged with before they go to court?

__ Yes — Go to 2.6
__ No — Go to 2.7
__ Don't know — Go to 2.7

2.6 How do they find out what they are charged with?

_____

__ Police told subject
__ Parent told subject
__ Lawyer told subject
__ Detention staff told subject
__ P.O. told subject
__ From notice/summons received
__ Other (Specify) _____
__ Don't know

2.7 What, if any, are the most common questions a juvenile will ask during your first meeting?

PROBE: __ How serious is the charge?
__ Should I plead guilty or not guilty?
__ If I plead guilty will it be over sooner?
__ What will likely happen to me?

2.8 What in your mind is the juvenile's biggest concern about going to court?

PROBE: __ Getting a record
__ Being found guilty
__ Disposition
__ Having their friends find out they were in court
__ Having their parents find out they were in court
__ Having to spend so much time going through the process

2.9 How often do you explain to the juvenile what is likely to occur inside the courtroom? i.e. will you talk to the juvenile about the proceedings of the court?

__ Always
__ Almost always Go to 2.10
__ Sometimes
__ Never Go to 2.11

2.10 Under what conditions do you explain the proceedings of the court to the juvenile?

PROBE: __ When juvenile and/or his/her parents want to know
__ If the charge is serious
__ If I feel they will be in for a long drawn out court case
__ If the juvenile and/or parent/guardian have had absolutely no contact with any court of law
__ If a serious disposition could be rendered

2.11 Under what conditions do you not explain the proceedings of the court to the juvenile?

PROBE: __ When juvenile and/or his/her parents don't want to know
__ If the charge isn't serious
__ If the juvenile and/or the parent/guardian have had prior contact with any court of law
__ If the disposition will be lenient

2.12 Would you please describe what you would normally tell a juvenile about court procedure?

2.13 Are juveniles normally interested in finding out about the proceedings of the court?

__ Yes Go to 2.14
__ No
__ Not always Go to 2.15

2.14 In general why do you think a juvenile would be interested in finding out about court procedure?

2.15 In general why do you think a juvenile would not be interested in finding out about court procedure?

PROBE: __ Already familiar with court proceedings as a result of prior contact
__ Just anxious to have the matter finalized
__ Juvenile thinks he knows what is about to occur

2.16 How many times are you likely to meet a juvenile or have telephone contact with him/her before his/her first court hearing?

2.17 Would you say that this number of contacts is the average over all cases you handle or is it likely to be different for each individual case?

__ Yes, this is the average Go to 3.1
__ No, it isn't the average Go to 2.18

2.18 Why will the number of contacts vary from case to case?

2.19 If you do not make contact with a juvenile prior to his/her first court appearance when will this first contact most likely occur?

__ At the time of the first hearing
__ At juveniles first court appearance
__ Between first hearing and pretrial
__ At pretrial
__ Between pretrial and trial
__ Trial

III. FIRST COURT HEARING

3.1 On the day of the juvenile's first court hearing are you likely to appear in the courtroom with him/her?

__ Yes Go to 3.3
__ No Go to 3.2

3.2 Why are you not likely to appear in the courtroom with him/her?

PROBE: __ Have not had adequate time to prepare case
__ Haven't been advised of the details of case
__ Have contacted the Crown re "the case"
__ Asking for remand
__ Heavy caseload
__ No contact has been made with juvenile and/or parents

3.3 Would you say that it is helpful for the juvenile to have you present at their courtroom hearing?

__ Yes
__ No

3.4 Why do you say that?

PROBE: __ Able to protect the juvenile's rights
__ Ensures that the elements of due process are preserved
__ I can decipher the process to the juvenile and/or parent

3.5 What, in your opinion, do you perceive your role to be in the juvenile court proceedings?

PROBE: __ Adversarial to adjudication stage
__ Less adversarial after finding of delinquency

3.6 What, in your opinion, do you perceive your function to be in the juvenile court proceedings?

PROBE: __ "Ensuring the parent and child understand what happens in court"
__ "Ensuring the views of the parent and child are at least expressed to the court"
__ "Ensure that all relevant facts and law are brought to the judge's attention and that statutory

procedures are followed"
__ "Ensure that the basic elements of procedural fairness are met"

3.7 What, to you, is the most difficult aspect of representing juveniles?

PROBE: __ Coming to terms with "whether or not the child is in fact expressing his wishes"
__ Dealing with a child's capacity to instruct counsel
__ Coming to terms with "whether or not the child is competent to make decisions" regarding his case

3.8 Often times at a first hearing a charge will be read out to the juvenile. Do you think that most juveniles understand what they are charged with?

__ Yes Go to 3.10
__ No Go to 3.9
__ Don't know

3.9 What is it that juveniles are most confused by?

PROBE: __ The formality of the information
__ The way the judge reads the information

3.10 If a judge asks a juvenile how s/he wishes to plead to the charge before the court do you think that s/he understands what is being asked for?

__ Yes
__ No
__ Don't know

3.11 Why do you say that?

PROBE: __ I have spoken to the juvenile about it before court
__ Juvenile knows that in court they will have to admit or deny

3.12 Do most juveniles understand the difference between pleading guilty and not guilty?

__ Yes
__ No
__ Don't know

3.13 Do you think that juveniles understand plea bargaining?

__ Yes
__ No
__ Don't know

3.14 Does plea bargaining create problems for you in dealing with juveniles?

__ Yes Go to 3.15
__ No Go to 3.16
__ Don't know

3.15 What problems does plea bargaining create?

PROBE: __ Juveniles don't want to plead guilty to certain charges
__ Juvenile doesn't perceive it as advantageous since it doesn't necessarily mean a more lenient disposition
__ Juvenile doesn't perceive the deal as equitable

3.16 Do you think it is the judge's role and responsibility to explain the charge, what it means to make a plea, the difference between guilty or not guilty, for example, to the juvenile?

__ Yes, completely Go to 4.1
__ Yes, partly Go to 3.18
__ No Go to 3.17

3.17 Whose role is it?

__ Legal counsel __ Probation Services __ Prosecutor

3.18 Who else should assume this explanatory role?

__ Legal counsel __ Probation Services __ Prosecutor

IV. LEGAL LANGUAGE

Often times if a lawyer is involved in a juvenile case more technical vocabulary is used in the course of the proceedings. I would now like to ask you a series of questions concerning this matter.

4.1 Do you think that the juveniles you represent understand in any way the vocabulary which you use in presenting their cases to the court?

__ Yes Go to 4.2

__ No Go to 4.3
__ Don't know

4.2 What, if anything, do you think they understand?

PROBE: __ Guilty/Not guilty
__ Waive reading of the charge
__ Talking about their social history
__ Adjournments
__ Entering a plea
__ Prior record
__ To get particulars

4.3 What don't they understand?

PROBE: __ Guilty/Not guilty
__ Waive reading of the charge
__ Talking about their social history
__ Adjournments
__ Case Law
__ Entering a plea
__ Prior record
__ To get particulars

4.4 Is it your practise as a defence lawyer in the juvenile justice system to explain the legal vocabulary you use in the courtroom to your child client?

4.5 Do you think that it is important for the defense lawyers of juveniles to explain the legal terms which they use in the courtroom hearings?

__ Yes
__ No
__ Don't know

PROBE: Is a lawyer's responsibility discharged if s/he has protected the juvenile's rights or does the juvenile also have to understand?

4.6 Do you think it is necessary for juveniles to understand the legal language which lawyers, prosecutors and judges employ in the course of the juvenile court proceedings in order for the courtroom experience to have an impact on the juvenile?

__ Yes
__ No

4.7 Why do you say that?

PROBE:
__ It is part of their right to due process
__ It is necessary for "rehabilitation"
__ It emphasizes the educative function of the court
__ It is necessary for them to experience a sense of fairness

4.8 What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

PROBE:
__ Information
__ Not guilty/guilty
__ To get particulars
__ Pre-Disposition Report
__ Contrary to Section __ of the Criminal Code of Canada
__ Adjourn sine die
__ Period of probation
__ Fine
__ Restitution
__ Delinquent/Non-delinquent
__ Finding of delinquency
__ Remand
__ Plea
__ Indicated plea
__ Waive reading of the charge
__ Conditional Discharge
__ Stay of proceedings
__ Committal

4.9 What is so significant about these particular terms?

4.10 What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

PROBE:
__ Information
__ Not guilty/guilty
__ To get particulars
__ Pre-Disposition Report
__ Adjourn sine die
__ Period of probation
__ Fine
__ Restitution
__ Delinquent/Non-delinquent
__ Finding of delinquency
__ Remand
__ Plea
__ Indicated plea
__ Waive reading of the charge
__ Conditional Discharge
__ Stay of proceedings
__ Committal

4.11 What is less significant about these terms as opposed to any others?

4.12 In general would you say that the use of legal language affects the juvenile's understanding of the courtroom hearing?

4.13 Do you feel that the courtroom experience would have greater impact if less legal vocabulary were used?

4.14 Do you think that simplifying legal language would make the courtroom experience have greater impact on the juvenile?

If yes Go to 4.15 If no Go to 4.16

PROBE: Would the courtroom experience have more of a teaching function?

4.15 What changes would you propose to simplify legal language?

4.16 Do you feel that simplifying legal language is a feasible proposition?

__ Yes Go to 4.17
__ No Go to 4.18
__ Don't know

4.17 Why do you feel that simplifying legal language is a feasible proposition?

4.18 Why do you feel that simplifying legal language is not a feasible proposition?

V. POST-COURT HEARING

5.1 After a court hearing do you explain to the juvenile what has occured in court that day?

__ Yes, always
__ Yes, sometimes Go to 5.2
__ No Go to 5.7

5.2 Is the explanation you provide client initiated or at your initiation?

5.3 What proportion of the juveniles you deal with would ask you questions about the courtroom hearing?

_10% _20% _30% _40% _50% _60% _70% _80% _90% _100%

5.4 What would be the reason for not explaining the courtroom hearing to the juvenile?

5.5 If the juvenile's probation officer is present will you still explain what happened in court to the juvenile?

__ Yes, always
__ Yes, sometimes — Go to 5.2
__ No — Go to 5.3

5.6 Why would you explain what happened in court to the juvenile if his/her probation officer is present?

Go to 5.8

5.7 Why would you not explain what happened in court to the juvenile if his/her probation officer is present?

5.8 Do you ever follow-up a court hearing by writing a letter to the juvenile and/or his/her parent/guardian explaining what took place in court?

__ Yes, always
__ Yes, sometimes — Go to 5.9
__ No — Go to 5.10

5.9 Under what circumstances, if any, would such a letter be forwarded?

5.10 If a hearing is adjourned will you be in touch with the juvenile before the next hearing?

__ Yes, always
__ Yes, sometimes — Go to 5.11
__ No — Go to 5.12

5.11 What will be the nature of this contact?

5.12 If a juvenile has a number of hearings are you likely to attend all of them?

__ Yes
__ No Go to 5.13

5.13 Under what circumstances will you not attend a particular hearing?

5.14 If this should occur are you likely to make other arrangements i.e. send a colleague with instructions on how to act or will you be in touch with the Crown?

5.15 If you personally will not be attending court are you likely to advise your juvenile client that you will be unable to attend?

__ Yes, always
__ Yes, sometimes
__ No

VI. CONCLUSION

6.1 Was anyone else present during the interview?

__ Yes (Specify) _____
__ No

6.2 Describe the circumstances of the interview including where it occured, the atmosphere of the interview situation (friendly or hostile) and any unusual circumstances.

THANK-YOU FOR YOUR CO-OPERATION

APPENDIX V

JUDGES' INTERVIEW

I. BACKGROUND

Interviewer check off the following question at the outset.

1.1 SEX: _____ MALE _____ FEMALE

BEGIN INTERVIEW HERE

I would like to begin by asking you some questions about your background.

1.2 How long have you been a member of the bench of the family court?

__ Less than one year
__ One to two years
__ Two to four years
__ More than four years

1.3 Prior to being called to the bench what did your past legal work concentrate most heavily on?

__ Family
__ Corporate
__ Criminal
__ Civil
__ Juvenile

1.4 What percentage of your caseload as a defense lawyer was made up of juvenile work?

_10% _20% _30% _40% _50% _60% _70% _80% _90% _100%

1.5 Would you briefly describe your current duties and functions in the family court?

_____

1.6 What is the highest level of education you have attained?

_____

II. FIRST COURT HEARING

2.1 At the time of the juvenile's first court hearing are you likely to ask him/her if they know why there are there?

_____

__ Yes
__ No

2.2 On the day of the juvenile's first court hearing are you likely to advise the juvenile of his/her right to legal counsel?

__ Yes
__ No

PROBE: __ Always
__ Sometimes

2.3 Often times at a first hearing a charge will be read out to the juvenile. Do you think that most juveniles understand what they are charged with at the moment that you read the information to them?

__ Yes
__ No
__ Don't know

2.4 What is it that juveniles are most confused by?

PROBE: __ The formality of the information
__ The way the judge reads the information

2.5 Do you explain to the juvenile the elements of an information and complaint?

__ Yes
__ No

PROBE: __ Do you simplify it through paraphrasing or do you read it verbatim?

2.6 Do you ask the juvenile whether or not he/she understands the charge?

__ Yes, always
__ Yes, sometimes Go to 2.7
__ No Go to 2.8

2.7 Under what circumstances will you ask the juvenile whether or not he understands the charge?

2.8 Under what circumstances will you not ask the juvenile whether or not he understands the charge?

2.9 When you ask a juvenile how s/he wishes to plead to the charge before the court do you think s/he understands what is being asked for?

__ Yes
__ No

2.10 Why do you say that?

_____

2.11 In your mind do most juveniles understand the difference between pleading guilty and not guilty?

__ Yes
__ No
__ Don't know

2.12 When asking a juvenile for a plea do you ask the juvenile whether or not he's guilty, or is it true or false, does he admit or deny, did he do it or not?

__ Guilty/Not guilty
__ Admit/Deny
__ Do it/Not do it
__ True/False

2.13 Do you think juveniles understand plea bargaining?

__ Yes
__ No
__ Don't know

2.14 Do you think that it is the judge's role and responsibility to explain the charge, what it means to make a plea, the difference between guilty and not guilty, for example, to the juvenile?

__ Yes, completely
__ Yes, partly Go to 2.16
__ No Go to 2.15
__ Don't know

2.15 Whose role is it?

_____

__ Legal counsel
__ Probation services
__ Prosecutor

2.16 Who else should assume this explanatory role?

_____

__ Legal counsel __ Probation services __ Prosecutor

III. LEGAL LANGUAGE

3.1 Do you think that juveniles understand in any way the vocabulary which judges, lawyers and prosecutors use in courtroom hearings?

__ Yes
__ No
__ Don't know

3.2 What, if anything, do you think they understand?

_____

3.3 What don't they understand?

_____

3.4 In your experience has it been the case that lawyers who are active in the juvenile justice system explain the legal vocabulary which they use in the courtroom to their child clients?

__ Yes
__ No
__ Don't know

3.5 Do you think it is important that lawyers explain to juveniles the legal terms which they use in the courtroom hearings?

__ Yes
__ No
__ Don't know

3.6 Why do you say that?

_____

3.7 Do you think it is necessary for juveniles to understand the legal language which some lawyers, prosecutors and judges employ in the course of juvenile court proceedings in order for the courtroom experience to be a meaningful one for the juvenile?

__ Yes
__ No
__ Don't know

3.8 Why do you say that?

_____

PROBE: __ It is part of their right to due process
__ It is necessary for "rehabilitation"
__ It emphasizes the educative function of the court
__ It is necessary for them to experience a sense of fairness

3.9 What in your mind are the most important legal terms or legal phrases which a juvenile has to understand?

3.10 What is so significant about these particular terms?

3.11 What in your mind are the least important legal terms or legal phrases which a juvenile has to understand?

3.12 What is less significant about these terms as opposed to any others?

3.13 In general would you say that the use of legal language affects the juvenile's understanding of the courtroom hearing?

__ Yes
__ No
__ Don't know

3.14 Do you feel that the courtroom experience would have greater impact if less legal vocabulary were used?

3.15 Do you think that simplifying legal language would make the courtroom experience more meaningful for the juvenile?

__ Yes
__ No
__ Don't know

PROBE: Would the courtroom hearing have more of a teaching function?

3.16 What changes would you propose to simplify legal language?

3.17 Do you feel that simplifying legal language is a feasible proposition?

__ Yes Go to 3.18
__ No Go to 3.19
__ Don't know

3.18 Why do you feel that simplifying legal language is a feasible proposition?

3.19 Why do you feel that simplifying legal language is not a feasible proposition?

IV. CONCLUSION OF COURT

4.1 At the end of a court hearing do you explain to the juvenile what has occured in court that day?

4.2 What would be the reason for not explaining the courtroom hearing to the juvenile?

4.3 Do you ask the juvenile whether or not he understands what has occured in court that day?

4.4 Is the explanation you provide juvenile initiated or at your initiation?

4.5 What proportion of the juveniles you deal with would ask you questions about the courtroom hearing when afforded the opportunity?

_10% _20% _30% _40% _50% _60% _70% _80% _90% _100%

4.6 If the juvenile has legal counsel will you still explain what happened in court to the juvenile?

__ Yes, always
__ Yes, sometimes — Go to 4.7
__ No — Go to 4.8

4.7 Why would you explain what happened in court to the juvenile if s/he has legal counsel?

4.8 Why would you not explain what happened in court to the juvenile if s/he has legal counsel?

4.9 If the juvenile has his/her probation officer present in the courtroom will you still explain what happened in court to the juvenile?

__ Yes, always
__ Yes, sometimes Go to 4.10
__ No Go to 4.11

4.10 Why would you explain what happened in court to the juvenile if s/he has a probation officer present?

_____

4.11 Why would you not explain what happened in court to the juvenile if s/he has a probation officer present?

_____

V. CONCLUSION

5.1 Was anyone else present during the interview?

__ Yes (Specify) _____
__ No

5.2 Describe the circumstances of the interview including where it occured, the atmosphere of the interview situation (friendly or hostile) and any unusual circumstances.

_____

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