

The Role of Duty Solicitors in Children's Court
Criminal Matters: The Perceptions of Children and Duty Solicitors

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Running Head: THE ROLE OF DUTY SOLICITORS

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Abstract

Children appearing at Children's Court on criminal matters and school-children not involved in court proceedings were asked about their understanding and perceptions of the role and functions of legal representation in Children's Court hearings. Duty solicitors who work in Children's Court were also asked about their own role and to predict children's responses to questions about the duty solicitor's role in court.

Not surprisingly, children had a less positive view of the duty solicitor's role than duty solicitors themselves. One of the main problems was that duty solicitors seem to be identified with the "system". Most children, however, were satisfied with their duty solicitor and there was a strong relationship between children's satisfaction with their duty solicitor and their perceived chance to "have their say", on the one hand, and their perception of the fairness of the court process and outcome, on the other. This finding is in line with procedural justice findings that the opportunity to be heard, either personally or via legal representation, is associated with the perceived fairness or satisfaction with a decision.

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The involvement of lawyers in juvenile court proceedings has become more common over the last 15 to 20 years in Britain (Morris, 1983), the United States (Clarke & Koch, 1980) and Australia (Lucas, 1980) as a result of growing disillusionment with the social welfare approach to juvenile justice and increasing recognition of the need to protect children's rights. The impact of their involvement has been varied and it appears that legal representation is no guarantee of a "better" or more lenient outcome for the child. Anderson (1978) and Horowitz (1977) reported that children with legal counsel received more lenient outcomes than children without legal counsel. Lemert (1970) and Platt, Schechter, and Tiffany (1968) found that children with legal representation were more likely than those who were unrepresented to have their cases dismissed, but they were also more likely to be committed. One explanation for these varied findings lies in the differences, in terms of seriousness of offence, prior record and family background, between the children who were legally represented and those who were not. These significant differences were not even considered in several studies (Anderson, 1978; Duffee & Slegal, 1971). In the only study which included random assignment of children to groups in order to minimise these differences and test the effect of legal representation, Stapleton and Teitelbaum (1972) found that the effect of counsel was a function of the type of court and the procedures adopted in those courts. In the more informal court which operated according to social welfare principles, legal

representation had little effect on the disposition but in the more formal court where lawyers were able to adopt the traditional adversarial role, legal representation resulted in more favourable outcomes. These findings were confirmed by Clarke and Koch (1980), and Parker, Casburn, and Turnbull (1981) and Anderson (1978) also reported different results between traditional and less formal hearings. It appears then that the role of the lawyer and the lawyer's impact on the outcome depends on the ideological framework of the court.

In the preceding studies, the main measure used to assess the impact of the lawyer was the leniency or severity of the outcome. A more appropriate measure, however, may be the perception of those children who are subject to the court's jurisdiction. It is generally assumed that the credibility of the court in the eyes of children who are subject to its jurisdiction is affected by children's views about the performance of the lawyers who represent them there (Lucas, 1980; Walker, 1971). Lucas (1980), in fact, suggests that "the manner in which the advocate conducts the case for the child will have a considerable bearing on the child's thinking, his sense of justice, his future conduct and openness to change his behaviour" (p. 72). There is, however, little empirical evidence that there is a relationship between children's satisfaction with the court hearing and their satisfaction with their legal representation. On the other hand, there is some evidence that children's satisfaction with the outcome is related to their perceived ability to have their "say" (Cashmore & Bussey, 1987). However, given children's reluctance and their limited ability to articulate their case in formal court hearings (Lucas, 1980; Morris & Giller, 1977), their

ability to "have their say" may depend on the availability of appropriate legal representation. One aim of this paper is therefore to examine the relationship between children's satisfaction with the court hearing, their satisfaction with their legal representation, and their perceived ability to "have a say" in the proceedings.

How satisfied are children with what the lawyer does, and what do they expect of the lawyer? The limited research in the area suggests that children involved in juvenile court matters generally have a poor appreciation of the function of lawyers (Catton & Erickson, 1975; Walker, 1971). Catton and Erickson (1975) reported that some children were either unaware that the duty counsel was their lawyer or that he/she was there to assist them. Similarly, Walker (1971) found that children were confused about the lawyer's role and power, with some children thinking that it was the lawyer who "sent them away".

One factor which might be expected to affect children's perceptions of their lawyer is the lawyer's own perception of his/her role and their perception of what children understand and what children (and other participants in court) expect of them (Dootjes, Erickson, & Fox, 1972). Lawrence (1983) reported that lawyers overestimated children's understanding of their legal rights. He suggested that lawyers may, in fact, be responsible for children's poor level of understanding because they assume greater knowledge and take little time to explain children's rights to them. Dootjes et al. (1972) found that lawyers' predictions of children's expectations of their lawyer depended on whether the lawyer was acting as duty counsel or private counsel. Lawyers believed that children had little expectation of

duty counsel but expected private counsel to act more clearly in the traditional role of advocate. The second aim of this study then is to examine how lawyers perceive their own role, how accurate they are about children's expectations of them and how much agreement there is between lawyers and the children they represent in their perceptions of the lawyer's role.

METHOD

Participants

There were three different groups involved in this study: children at court, school-children matched on age and sex with first-timers at court, and duty solicitors who represent children at court.

Children at court. The sample consisted of 60 children appearing before two specialist children's courts in Sydney, Australia on criminal matters. The sample consisted of two groups. The first comprised 40 children appearing for the first time (first-timers), interviewed before and after their hearing; 10 of them pleaded not guilty. (An additional 26 children appearing for the first time were interviewed only before their hearing because they failed to appear for an adjourned hearing or for the post-hearing.) The second group consisted of 20 children who had previously appeared at Children's Court on at least two occasions (repeat offenders); they had been to Children's Court an average of 7 times prior to their current hearing; 5 of them pleaded guilty. They were interviewed before their hearing only.

Five of the 40 first-timers (12.5%) and two of the repeat offenders (10%) were girls. The age range was 11 to 17 years (average 15.3 years) for first-timers and 12 to 17 years (average

15.5 years) for repeat offenders.

The majority of children (70.0%) were appearing in court in relation to stealing charges, the most common being break, enter, and steal (23.3%). The other charges included assault (8.3%), driving (3.3%) and drug offences (3.3%), and offences against good order including fare evasion (15.0%). The sample was fairly representative of the total population of children appearing in Children's Court on offence type and sex (Bureau of Crime Statistics and Research, 1986). However, a greater proportion of children under 16 were deliberately included because we expected more problems of understanding of what happens in court to emerge in this age group.

The majority of children at court (56/66, 87.5% of first-timers and 100% of repeat offenders) were represented by duty solicitors provided free of charge by the Legal Aid Commission. The other first-timers were represented by solicitors from community legal centres (3) or by private solicitors organised by their families (2). Four children were not represented because duty solicitors are not made available for children pleading guilty to fare evasion and trespassing offences against the State Rail Authority; one 17 year-old represented himself on a not guilty plea for a railway matter.

School-children. Forty school-children whose parents provided written consent participated in the study. They were matched on age and sex with the 40 first-timers and were drawn equally from two suburban high-schools in Sydney whose catchment areas included the suburbs with the highest proportion of first-timers. Their age range was 12 to 17 years (average 15.5 years) and five were girls.

Duty solicitors. This sample consisted of two sub-samples of private solicitors who worked as duty solicitors on a rostered basis in Children's Courts. One sample of six female and six male duty solicitors was interviewed, and another larger sample of 25 duty solicitors completed a mail questionnaire. All solicitors who were approached for interview agreed to do so, and 83.3% of solicitors sent questionnaires returned them.

Materials

Children at court. The pre- and post-hearing interviews focussed on the role of the duty solicitor and children's satisfaction with the duty solicitor. The questions consisted of rating scales and open-ended questions for each area. The specific questions are given in the Results section.

School-children. The questionnaire consisted of a vignette followed by questions similar to those asked in the pre-hearing interview with defendants, except that the questions referred to the protagonist of the vignette (John/Jane). The vignette related a story about a person of the same age and sex as the child (Jane/John) who was involved in an alleged offence (shop-lifting or joy-riding) and the subsequent Children's Court hearing. A wooden scale model of the courtroom (40cm x 50cm x 15cm) with courtroom furniture and figures to represent court personnel was used to make the court situation more concrete for school-children who were not present at court.

Duty solicitors. The duty solicitors' interview and questionnaire included questions on the role and duties of the duty solicitor or lawyer, the role of the Children's Court and the special aspects of representing children. The same rating scale as used with both children at court and with school-

children was included (see Table 2); duty solicitors were asked to rate the items twice, first for themselves, and then as they thought children would.

Procedure

Children at court. Children appearing at court were interviewed individually in the waiting area at court before their court appearance and again after their hearing within a week or so of their final appearance, generally at the child's home. The interviews which took on average about 25 minutes were tape-recorded with the consent of the child and later transcribed. The interviewer also observed the hearing and recorded the main content of the conversation between the participants, the duration and the outcome of the hearing, and the seating arrangement of those present in court on a diagram of the courtroom. The full details of the procedure are given in Cashmore and Bussey (1987).

School-children. Children were interviewed individually at school by one of the interviewers who conducted the interviews with children at court. The interview took on average 20 minutes. All interviews were tape-recorded and later transcribed.

Duty solicitors. Letters explaining the research project and asking solicitors if they were willing to participate in the project were sent to solicitors who are on the rosters for duty solicitors at two children's courts in metropolitan Sydney. Twelve solicitors randomly selected from the list were interviewed individually and questionnaires were sent by mail to a further 30 solicitors.

RESULTS

The results are presented in three separate sections. The first section deals with the responses of children and duty solicitors to two open-ended questions and to a rating scale concerned with the role of the duty solicitor in Children's Court. The second section deals with the responses of children at court to six open-ended questions and several rating scales concerned with children's satisfaction with the duty solicitor. The third section deals with the responses of children and duty solicitors to a rating scale concerned with the factors believed to affect the magistrate's decision, including the participation of both the child and the duty solicitor.

Multivariate analysis of variance is used to compare (a) the ratings of first-timers, repeat offenders, and school-children, and (b) the ratings of children at court (first-timers and repeat offenders) with those of duty solicitors. Multiple regression analysis is used to test the relationship among the various measures of satisfaction with the duty solicitor, court outcome and court processes.

Role of the duty solicitor

The majority of first-timers (80.8%) and repeat offenders (95.0%) knew before they arrived at court that some form of legal aid would be available. The source of that knowledge for first-timers was fairly evenly divided between friends and relatives, and the police. Most (85.7% of first-timers and 93.3% of repeat offenders) also realised that the duty solicitor would be in court with them.

Open-ended questions

Why do children have duty a solicitor? What is the role of a duty solicitor? / What does the duty solicitor do in court?

Children's responses. The majority of children at court who were asked prior to their hearing whether they wanted to have a duty solicitor said "yes". Five first-timers (12.5%), all of whom had a duty solicitor did not believe they needed a duty solicitor, saying that a duty solicitor "can't really do much" because they had "done the wrong thing" and they would acknowledge that in court.

The frequency with which aspects of the duty solicitor's role were referred to in children's responses to these two questions is shown in Table 1. The main difference among the three groups of children is between children at court and school-children. School-children were more likely than children at court to refer to the duty solicitor's advocacy role in protecting the interests of the child -- defending them or "sticking up for them" -- whereas children at court gave more general responses about the duty solicitor "helping" them or "talking for them" in court. First-timers and school-children were more likely than repeat offenders to refer to the role of the duty solicitor in explaining the court procedure and the likely outcome to the child. Not surprisingly, the most common response by first-timers reflected their concern with the outcome -- "trying to get us off" or getting a lighter sentence. The main change from the pre- to post-hearing interview for first-timers was an increase in the proportion (from 8.6% to 28.6%) who referred to the duty solicitor talking about their home or school/work background and making out a good case for them. A negative view of the duty

solicitor's role was articulated by a small number of children at court (10.9%) who perceived them as substitutes for "proper lawyers" for people like themselves who cannot afford "real ones".

Duty solicitors predicting children's responses. When duty solicitors were asked what they thought children expected them to do, most (66.7%) referred to children expecting "miracles" or getting the least punishment for them. Three commented on children's sense of resignation or lack of knowledge about their role and three said they did not know what children expect of them. The majority (91.7%) believed that most children did not have an accurate view of the duty solicitor's role. The reasons given for this inaccuracy were the lack of time that duty solicitors had before court to explain their role to children and the Perry Mason image of lawyers portrayed in television programs.

The most common response by duty solicitors to an additional question about the difficulties involved in representing children related to problems getting instructions. The problems concerned the inarticulate and passive reaction of children, parental interference, and children's lack of awareness about the nature of the charges against them. The difficulty of establishing rapport with children in the limited time available was mentioned by several duty solicitors who recognised that children need to have confidence in the duty solicitor before they will talk to them freely.

Duty solicitor's own views. Duty solicitors were asked (a) what they thought the role of the Children's Court was, and (b) how they viewed their own role. Five of the 12 solicitors

interviewed (41.7%) described the court's role solely in terms of its welfare or rehabilitative role, five also included the functions of punishment and the protection of society, and two mentioned only criminal justice considerations (e.g. the determination of guilt and sentencing).

Responses to the question about the role of the duty solicitor were coded according to the three-way classification by Dootjes et al. (1972) into the legalistic, amicus curiae and social work (parens patriae) orientations. All except one duty solicitor referred to the legalistic functions of ensuring due process and putting the most favourable case possible to the court, but seven duty solicitors also emphasised their role as either an interpreter or intermediary between the court and the child (amicus curiae) or as a counsellor to help the child with her/his problems (guardian or parens patriae). Two specifically stated that social work was not part of their work.

What did you talk about with the duty solicitor?/ What kinds of things do you have to tell the duty solicitor so he/she can do the best thing for you?

Children's responses. The majority of children at court (65.5%) spent five to ten minutes with the duty solicitor before their hearing; a small proportion who were privately represented or who pleaded not guilty spent an hour to two hours with their legal represent-ative. The main topic of discussion reported by children was "what happened, what I'm here for" (76.7%). The next most frequent response concerned family and school/work background information (16.7%). Other topics included their plea (13.3%), any previous offences (10.0%) and the likely outcome (6.7%). When asked what information the duty solicitor should be

told, again the most common response was "what (really) happened" (around 70% for all groups). There was, however, a qualitative difference between the children at court and those at school in that school-children referred more often to the need to tell the duty solicitor "everything"; in the words of one, "Just everything he can think of ... even things he mightn't think are important, the lawyer might see how they could be used in his favour."

Duty solicitors' responses. Duty solicitors were also asked what information they need from children. Not surprisingly, all mentioned the facts surrounding the alleged offence but there were differences between duty solicitors in their reported approach for eliciting this information. Some stressed the need to use appropriate language by asking the child what happened whereas others indicated that they ask the child whether they "did" the alleged offence, how they want to plead and what the child wants them to say to the magistrate. Three-quarters of the duty solicitors referred to the need for information on the child's home and school background for mitigation in sentencing in contrast with the relatively few children who mentioned this information. Several duty solicitors indicated that they usually did not have sufficient time to ask for all the background information they would like and so had to rely on reports prepared by departmental officers. Just over half of the duty solicitors said they preferred to interview children without their parents being present because they believe that children speak more freely when they are alone.

Rating scale for the duties of the duty solicitor

The mean ratings for various aspects of the duty solicitor's role given by children at court are shown in Table 2, together with the overall ratings given by duty solicitors both for themselves and as they thought children would respond.

Children's responsesComparison of first-timers' pre- and post-hearing ratings.

Repeated measures multivariate analysis of variance yielded no significant differences between first-timers' ratings before and after their hearing, although the reduction in ratings for item 3, "work on the side of the police" ($p = .035$) and item 8, "to help you" ($p = .0198$) for the post-hearing ratings bordered on significance. When satisfaction with the duty solicitor (low, high) was used as a between-groups factor in this analysis, the interaction effect was significant for item 1, "try to get you off or get the least punishment for you" ($F_{1,31} = 9.98$, $p = .0035$), and nearly significant for item 8, "help you" ($F_{1,31} = 5.98$, $p = .0204$). The ratings on these items increased from the pre-hearing to the post-hearing interview for children who were highly satisfied with their duty solicitor but decreased for those who were not.

Comparison of first-timers', repeat offenders' and school-children's ratings.

Between-groups multivariate analysis of variance with planned contrasts revealed that there were no significant differences between first-timers and repeat offenders, nor between repeat offenders and school-children. First-timers, however, rated item 3, "works on the side of the police" ($F_{(1, 91)} = 12.05$, $p = .0008$) and item 9, "make the court work quicker and better" ($F_{(1, 91)} = 13.63$, $p = .0004$)

higher than did school-children. When a comparison was made between those who admitted guilt and those who pleaded not guilty, the multivariate F was significant ($F(11, 43) = 2.60, p = .0125$), but only two items showed near-significant results (item 5, "tell the magistrate about your problems", $p = .0174$, and item 10, "work on the magistrate's side", $p = .0254$); those who made admissions of guilt rated these items higher than those who pleaded not guilty.

Comparison of ratings by children at court and duty solicitors

Separate MANOVAs were carried out to test the difference between the ratings given by children and duty solicitors (for themselves) (duty solicitor-child agreement), between the two sets of ratings given by duty solicitors (perceived agreement), and between the duty solicitors' predicted ratings for children and the actual ratings given by children (accuracy of perception by duty solicitors).

Actual agreement between duty solicitors and children.

Between-groups MANOVA was used to test the difference between duty solicitors' own ratings and the pre-hearing ratings given by all children (including both repeat offenders and first-timers, and "guilty" and not guilty pleas) who were legally represented. The overall result was significant ($F(11, 93) = 9.45, p = .0000$) and six of the 11 items were univariately significant. These were item 1, "explain what happens in court" ($F(1, 103) = 15.41, p = .0002$), item 2, "tell the child's side of the story in court" ($F = 28.46, p = .0000$), item 3, "work on the side of the police" ($F = 45.07, p = .0000$), item 5, "tell the magistrate about the child's problems" ($F = 24.35, p = .0000$), item 7, "make sure the child is punished" ($F = 19.20, p = .0000$), and item 11, "make

sure you get a fair go" ($F = 11.86$, $p = .0008$). Children rated all these items, except the two more negative items 3 and 5 ("work on the side of the police" and "make sure the child is punished"), significantly lower than did duty solicitors.

Perceived agreement between duty solicitors' own ratings and their predictions for children. Repeated measures MANOVA showed a significant difference between the two sets of ratings given by duty solicitors ($F(12, 23) = 3.39$, $p = .0058$). Again, five items were univariately significant ($p < .0005$): item 1, "explain what happens in court" ($F(1, 34) = 12.28$, $p = .0013$); item 3, "work on the side of the police" ($F = 9.40$, $p = .0042$); item 5, "tell the magistrate about the child's problems" ($F = 10.62$, $p = .0025$); item 9, "make the court work quicker and better" ($F = 12.47$, $p = .0012$); and item 11, "make sure you get a fair go" ($F = 8.42$, $p = .0005$). Once again, item 3, "work on the side of the police" was the exception; the other four items were rated more highly by duty solicitors when giving their own ratings than when responding as they thought children would.

Duty solicitors' accuracy of perception of children's ratings. The overall multivariate F for the between-groups analysis was significant ($F(11, 95) = 6.98$, $p = .0000$), and three items were univariately significant: item 2, "tell the child's side of the story in court" ($F(1, 102) = 9.85$, $p = .0022$), item 3, "works on the side of the police" ($F = 18.44$, $p = .0000$), and item 9, "makes the court work quicker and better" ($F = 31.30$, $p = .0000$). Children rated items 3 and 9 higher, and item 2 lower than duty solicitors thought they would. A further five items (items 4, 5, 6, 7, and 10) also showed a significant trend ($p < .05$); children rated items 6, 7, and 10 higher than

duty solicitors thought they would.

Satisfaction with the duty solicitor

Open-ended questions

Children at court were asked a number of open-ended questions which dealt with their perceptions of and satisfaction with the duty solicitor. Comparable questions for school-children and duty solicitors were appropriate for only a couple of these questions; where appropriate, their responses are compared with those of children at court.

Is/was the duty solicitor on your side?

Children's responses. This question was asked in both the pre- and post-hearing interviews. There was little or no difference between first-timers, repeat offenders, and school-children, nor between first-timers' pre- and post-hearing responses. Neither was there any difference associated with plea. The majority of children in all groups (from 77% to 90%) said that the duty solicitor was on their side. The others said either that the duty solicitor was "neutral" (5-11%), not on their side (3%) or that they did not know (4%).

Duty solicitors predicting children's responses. When duty solicitors were asked whether they thought children believed that the duty solicitor was on their side, all gave a positive response, variously qualified in terms of the experience and intelligence of the child and the skill of the duty solicitor in communicating their role to the child.

Was it useful talking with the duty solicitor? Why?

Around two-thirds of the children at court said both before and after their hearing that their talk with the duty solicitor was useful (Table 3). There was little difference between first-

timers' pre-and post-hearing responses or between first-timers and repeat offenders, except that first-timers were more likely to commit themselves to a definite negative response rather than to say they did "not know" like repeat offenders. The main reason (71.8%) children gave for saying the talk was useful was that they believed that the duty solicitor needed to know what happened in order to talk for them in court. Another but less common response (38.5%) was that the children had learnt what was likely to happen in court and were able to ask what the duty solicitor thought might happen to them. All the children who gave definite negative responses were first-timers who admitted their guilt. Before the hearing, they indicated that there was little the duty solicitor could do for them and several said they would prefer to speak for themselves. After the hearing they said that the duty solicitor had not said anything and that he/she had not "really been there for them".

Was it better that your solicitor spoke for you or would you rather have done it yourself?

After their hearing, all except two first-timers (94.3%) said that they preferred that the duty solicitor spoke for them in court. Their main reasons, like the reasons given for not wanting to say anything in court (see Cashmore & Bussey, 1987), were that they did not know what to say and that they were embarrassed or scared.

Did the duty solicitor say what you wanted him/her to say?

Just over a third of first-timers (36.4%), when asked after their hearing, said that the duty solicitor did not say what they wanted. Their comments included complaints that the solicitor had raised matters (such as their family background and details of

offences by other family members) that they considered irrelevant or had not mentioned details that the child believed were relevant. Other complaints were that the solicitor had acted without their agreement in recommending counselling or by not entering a not guilty plea for some charges.

Do you think that the duty solicitor knows what is best for you?

Just over 60% (62.8%) of first-timers believed that the duty solicitor knew what was best for them. For repeat offenders, the response differed according to plea; although the numbers are small, those who admitted guilt were less likely to trust the duty solicitor's judgment than those who pleaded not guilty (40% vs 100%). The reasons for saying that the duty solicitor did not know best fell into two categories: first, that "he really only knows what will happen it's really up to the judge", and second, "he doesn't know me, he might want you to go inside".

Would you tell the duty solicitor anything you didn't want the police or people in court to know?

Children's responses. Just over half of the children at court said before their hearing that they would not tell their duty solicitor anything that they did not want the people in court or the police to know. Children who pleaded not guilty were more willing to trust their duty solicitor with such information than those who admitted guilt (64.3% vs 31.7%, $\chi^2 = 4.62$, $p < .05$). Only three children, two of whom were repeat offenders, believed that they could instruct the duty solicitor not to pass information on. Children's reasons for saying "yes" were that they trusted the solicitor, that the solicitor has to know, and that they could tell them not to pass such information on. Not surprisingly, the reasons for saying "no" were that they did not

feel they could trust the solicitor, with some adding that the solicitor was part of a "club", which, for example, involved having morning tea with the magistrate.

When asked after their hearing whether there was anything they wouldn't tell the duty solicitor in the same situation, only four first-timers (11.4%) said "yes". They referred to other offences that they had not been charged with, and lying.

Duty solicitors predicting children's responses. Duty solicitors were also asked whether children understand the concept of privileged information. Only one duty solicitor said that she thought children would expect that anything they told the duty solicitor would not be passed on. Two said that the issue had not arisen. All other duty solicitors expressed the view that children, and many adults, did not understand the concept of privilege attaching to communications between lawyers and their clients.

Rating scales for level of satisfaction with the duty solicitor

Post-hearing responses to two rating scales concerned with children's satisfaction with their duty solicitor indicated that the majority of children were either fairly or very satisfied with the way the duty solicitor had treated them (78.1%) and with what they had said or done for them in court (79.8%). The mean ratings for these seven-point scales were 4.97 and 4.92, respectively. There was a trend ($t = 1.89$, $p = .068$) for children who pleaded not guilty to be more satisfied with their duty solicitor's performance in court ($M = 5.55$) than those who admitted guilt ($M = 4.77$).

The correlations among ratings for the fairness of the outcome and the court process, satisfaction with the duty

solicitor's performance and children's perception as to whether they had the chance to say all they wanted to say are shown in Table 3. A series of multiple regression analyses was performed with perceived fairness of the outcome, fairness of the court process and fairness of their treatment at court as the dependent variables. Separate analyses were conducted for all first-timers and for first-timers who admitted guilt. The reduced models are shown in Table 4. Satisfaction with the duty solicitor either alone (court treatment) or together with perceived chance to have a "say" were significant predictors in all models. The proportion of explained variance (R^2) varied from 44.3% to 86.3%, indicating a strong relationship between children's satisfaction with their duty solicitor and their perceived chance to "have their say", on the one hand, and their perception of the fairness of the court process and outcome, and with the way they were treated at court, on the other. The rating for whether the outcome was better or worse than expected did not add significantly to any of the models, and partial correlations between satisfaction with the duty solicitor and the three dependent variables in the models after taking account of this rating (Table 3) indicate that the significant relationships shown in the models were independent of this rating.

Summary

On the basis of the rating scale and the proportion of children giving positive responses to the open-ended questions, about three-quarters of the children at court were satisfied with the way their solicitor acted and treated them. About 50% of first-timers, however, made at least one negative comment about duty solicitors, during the pre- or post-hearing interview. These

comments included references to duty solicitors as being unnecessary, not "real lawyers", and involved with the police and the magistrate. A small number of children (6, 10%) made more than three negative comments about duty solicitors, with a maximum of ten comments from one boy. On the other hand, there were positive comments about duty solicitors but they were less frequent than negative comments.

DISCUSSION

Most children expected the duty solicitor to play the traditional role of advocate, speaking for them in court and "sticking up for them". Most also believed that the lawyer was "on their side" and preferred the lawyer to speak for them rather than speak themselves. Some children at court, however, did not appreciate the need for legal representation, believing that a finding of guilt was a foregone conclusion (Walker, 1971). Others did not view duty solicitors as "proper lawyers" who would represent their interests.

Court experience had little effect on children's perceptions of the role of the duty solicitor, except that not surprisingly, first-timers who were satisfied with the performance of their duty solicitor were more likely than dissatisfied first-timers to say that the duty solicitor's role involved "helping" them and "trying to get them off". In addition, first-timers had a somewhat more negative view of the duty solicitor's role than school-children; they were more likely than school-children to believe that the duty solicitor "works on the side of the police" and is there to expedite the hearing. School-children, on the other hand, clearly expected the lawyer to play the traditional role of advocate. The differences between children at court and

school-children probably reflect the prior experience of children at court with the police and their emotional involvement and anxiety about the outcome of their hearing.

How do children's views compare with those of the duty solicitors themselves? The lawyers also defined their role mainly in terms of the traditional advocacy functions of ensuring due process and presenting the most favourable case to the court, although about half also mentioned their role as interpreters or counsellors for children. The main difference between children and duty solicitors was that children, not surprisingly, had a more jaundiced view of the duty solicitor's role than duty solicitors themselves; they saw the duty solicitor as more on the side of the police, implicated in their punishment and representing the child's interests less than did duty solicitors.

In addition to the actual differences between duty solicitors and children, there were also perceived differences between duty solicitors' own views of their role and their perceptions of what children expect of them. For example, duty solicitors believed that children saw them as representing the child's interests less and working on the side of the police more than they saw themselves as doing. Duty solicitors also believed that children had inaccurate views of the duty solicitor's role in court, expecting the duty solicitor to effect "miracles" in court by "getting them off" with little or no punishment.

How accurate were duty solicitors' perceptions of children's views of them? Children were certainly concerned about the outcome, hoping "to get the least punishment possible" (Cashmore & Bussey, 1987) and they did see the duty solicitor's function as "getting them off" but this was not their only expectation of the

duty solicitor. They also expected the duty solicitor to put their side of the case and to "make sure they got a fair go" in court. On the other hand, children also perceived the duty solicitor as working "on the side of the police", as predicted by duty solicitors, but to an even greater extent than predicted.

Given these differences between the views of children and duty solicitors, how satisfied were children with their duty solicitor and the way they performed in court? Most children were satisfied with their duty solicitor. They said that their talk with the duty solicitor had been useful, that the duty solicitor had said what they had wanted, and that they were satisfied that the duty solicitor had treated them fairly.

Children were, however, less willing to indicate that the duty solicitor knew what was best for them and that the duty solicitor could be trusted with confidential information. The fact that children to some extent also viewed duty solicitors as "working on the side of the police" indicates that duty solicitors are identified with the "system". This view was expressed very clearly by some children who referred to duty solicitors as not being "proper lawyers" and by those who commented on the time duty solicitors spent talking with the police and socialising at "morning tea". To some extent, this view is probably a result of children's anxiety and lack of knowledge about the way the court system operates. But it also reflects the "tendency towards 'clubbing' amongst lawyers and magistrates, based upon shared outlooks, experiences, interests" and adult status (Carlen, 1976; Hogg, 1984, p. 6). As Morris (1983) points out, there is a danger of lawyers being "incorporated" into the "system" rather than challenging it, a

danger which may be facilitated by the loose and informal nature of juvenile court hearings.

The view that duty solicitors are "not proper lawyers" is also reflected in Walker's (1971) finding that privately represented youths were more satisfied with their legal representation than youths represented by public defenders. It probably also reflects the duty solicitors' limited time for consultation with clients and possibly also the lawyers' perceptions of their own role. As indicated earlier, Dootjes et al. (1972), found that lawyers' views of what children expected depended on whether the lawyer was acting as private or duty counsel.

Overall, however, despite the criticisms against duty solicitors, the majority of children interviewed after their hearing were satisfied with the way the duty solicitor treated them and with what the duty solicitor did and said in court. Parker et al. (1981) and Catton and Erickson (1975) reported similar findings, and Catton and Erickson (1975) and Morris (1983) suggested that children's satisfaction with their lawyer probably reflected their satisfaction with an outcome that was better than expected. That explanation does not account for the findings in the present study. The high correlation between children's satisfaction with their duty solicitor and their satisfaction with both the way they were treated at court and with court procedures was independent of whether the outcome was better or worse than their expectations. Furthermore, children's satisfaction with their duty solicitor and their perceived ability to "have their say" strongly predicted their satisfaction with the outcome.

A more likely explanation for children's high level of satisfaction with their duty solicitor and its association with the perceived fairness of the court procedures may lie in children's expectations of their own and the duty solicitor's participation in the hearing and their influence upon the magistrate's decision. Children preferred their duty solicitor to speak for them but first-timers, in particular, also expected, prior to their hearing, to have some influence upon the magistrate's decision by saying they were sorry for the offence and promising not to do it again (Cashmore & Bussey, 1987). After their hearing, their own perceived influence upon the decision was significantly less than expected beforehand but the perceived influence of the duty solicitor's performance (and of the offence-related criteria) remained the same (Cashmore & Bussey, 1987). Most children thought that the outcome was fair so they may have attributed the fairness of the outcome and the perceived fairness of the procedures to the involvement of the duty solicitor. It seems then that children perceive the duty solicitor as their means of "having their say", and in line with procedural justice findings (Earley & Lind, 1987; Tyler, 1987), their satisfaction with having been heard, either personally or via their legal representative, is strongly associated with the perceived fairness of the court process and of the outcome.

Because children's satisfaction with their legal representation does appear to be closely related to their perceptions of the fairness of the court procedures and of the court's treatment of them, lawyers' understanding of the children they deal with is particularly important. The lawyer's familiarity with court procedures and their admitted difficulties

In getting instructions from children makes it very easy for them to overestimate their client's level of understanding. One of the most serious complaints by some children in this study was that their lawyer did not say what they wanted them to, indicating a poor level of communication between the lawyer and the child. There are also indications from the present study that lawyers are not very accurate in their perceptions of children's views about the lawyer's role.

REFERENCES

- Anderson, R. (1978). Representation in the juvenile court. London: Routledge & Kegan Paul.
- Carlen, P. (1976). Magistrates' justice. London: Martin Robertson.
- Cashmore, J., & Bussey, K. (1987). Children's perceptions of outcomes and decision-making in Children's Courts' criminal cases. Manuscript submitted for publication.
- Catton, K. & Erickson, P. (1975). The juvenile's perception of the role of defence counsel: A pilot study. Working paper of the Centre of Criminology, University of Toronto.
- Clarke, S.H., & Koch, G.G. (1980). Juvenile court: Therapy or crime control, and do lawyers make a difference? Law and Society Review, 14, 263-308.
- Dillon, H. (1985). Kids, courts & cops: Problems kids face in the legal system. NCOSS Issues Paper, No. 4.
- Dootjes, I., Erickson, P., & Fox, R.G. (1972). Defence counsel in juvenile court: A variety of roles. Canadian Journal of Criminology and Corrections, 14, 132-149.
- Duffee, D., & Slegal, L. (1971). The organisation man: Legal counsel in the juvenile court. Criminal Law Bulletin, 7, 544.
- Earley, P.C., & Lind, E.A. (1987). Procedural justice and participation in task selection: The role of control in mediating justice judgments. Journal of Personality and Social Psychology, 52, 1148-1160.
- Horowitz, D.L. (1977). The courts and social policy. Washington, D.C. The Brookings Institution.
- Lawrence, R.A. (1983-84). The role of legal counsel in juvenile's understanding of their rights. Juvenile and Family Court Journal, 34, 49-58.
- Lemert, E. (1970). Social action and legal change. Chicago: Aldine Publishing Company.
- Lucas, B. (1980). Advocacy in Children's Courts. Criminal Law Journal, 4, 63-77.
- Morris, A. (1983). Legal representation and justice. In A. Morris, & H. Giller (Eds.), Providing Criminal Justice for Children (pp. 125-140). London: Edward Arnold. 198-205.
- Morris, A., & Giller, H. (1977). The juvenile court -- the client's perspective. Criminal Law Review, 26, 198-205.

- Parker, H., Casburn, M., & Turnbull, D. (1981). Receiving juvenile justice: Adolescents and state care and control. Oxford: Basil Blackwell.
- Platt, A., Schechter, H., & Tiffany, P. (1968). In defense of youth: A case study of the public defender in juvenile court. Indiana Law Journal, 43, 619-645.
- Stapleton, W.V. & Teitelbaum, L.E. (1972). In defense of youth. New York: Russell Sage.
- Tyler, T.R. (1987). Conditions leading to value-expressive effects in judgments of procedural justice: A test of four models. Journal of Personality and Social Psychology, 52, 333-344.
- Walker, S.G. (1970). The lawyer-child relationship: A statistical analysis. Duquesne Law Review, 9, 627-650.

Table 1

Children's Responses to Two Questions about the Role of the Duty Solicitor

a. Why do they give children a duty solicitor?

	Repeat offenders		First-timers		School-children	
	n	%	n	%	n	%
To protect their interests, 'stick up for them'	4	20.0	6	17.1	13	32.5
To talk for them	4	20.0	5	14.3	12	30.0
To "get them off"	3	15.0	8	22.9	4	10.0
To explain, advise	1	5.0	7	20.0	9	22.5
To help	5	25.0	6	17.1	1	2.5
Can't afford 'real' ones	2	10.0	4	11.4	-	-
Don't know	1	5.0	1	2.9	1	2.5
Total responses	20		37		40	
No. of respondents	20		35		40	

b. What does/did the duty solicitor do (in court)?

	Repeat offenders		First-timers				School-children	
	n	%	Pre n	%	Post n	%	n	%
Talks to the judge, tells what happened	9	45.0	15	42.9	14	40.0	9	22.5
Gives background information makes a good case	3	15.0	3	8.6	10	28.6	8	20.0
Gets you off	3	15.0	3	8.6	-	-	3	7.5
Protects, 'sticks up for you'	2	10.0	8	22.9	6	17.1	18	45.0
Help	3	15.0	1	2.9	2	5.7	1	2.5
Nothing	1	5.0	1	2.9	4	11.4	-	-
Don't know	-		4	11.4	1	2.9	1	2.5
Total responses	21		35		37		41	
No. of respondents	20		35		35		40	

Table 2

Mean ratings for aspects of solicitor's role given by children and by duty solicitors for themselves and as predicted for children

	<u>Children</u>		<u>DS Self</u>		<u>DS Child</u>	
	<u>M</u>	s.d.	<u>M</u>	s.d.	<u>M</u>	s.d.
1. Explain to you what ** happens in court	2.76	0.95	3.46	0.77	2.86	0.98
2. Tell your side of the* story in court	3.17	0.89	3.90	0.29	3.64	0.60
3. Work on the side of *** the police	2.14	0.99	1.03	0.16	1.36	0.62
4. Try to get you off or* get the least punishment for you	3.27	0.91	3.58	0.64	3.68	0.67
5. Tell the magistrate/judge about your problems ***	2.65	1.05	3.55	0.55	3.06	0.83
6. Help your parents	2.28	1.24	2.05	0.69	1.82	0.80
7. Make sure you get punished	1.70	0.88	1.08	1.31	1.35	0.60
8. Help you	3.51	0.67	3.69	0.69	3.31	0.81
9. Make the court work quicker and better***	2.78	1.00	2.54	1.00	1.71	0.99
10. Work on the magistrate/ judge's side	2.08	0.87	1.78	0.92	1.68	0.84
11. Make sure you get a fair go**	3.46	0.77	3.89	0.51	3.49	0.79

* These items showed significant univariate differences ($p < .01$) between duty solicitors' and children's ratings.

** These items showed significant univariate differences ($p < .01$) between duty solicitors' ratings for themselves and as they thought children would rate them.

*** These items showed significant univariate differences ($p < .01$) between duty solicitors' predicted ratings for children and children's actual ratings.

Table 3

Correlations among ratings of fairness and satisfaction with various aspects of court

	Outcome	Satisfaction with D.S.	Fairness D.S.	Chance	Fairness Court Treatment	Fairness Court Procedures
Satisfaction with duty solicitor	0.428					
Fairness of treatment by duty solicitor	0.408	0.543				
Chance to say what want	0.492	0.506	0.366			
Fairness of treatment at court	0.441	0.785	0.544	0.498		
Fairness of court procedures	0.364	0.569	0.412	0.298	0.516	
Outcome relative to expectations	0.351	0.324	0.529	0.239	0.444	0.324

Partial correlations (after taking acct of)

:	Court treatment. Satisfaction with duty solicitor after taking account of satisfaction with after taking account of outcome better/worse	.735 (Orig .785) .756
:	Satisfaction with court procedures. Satisfaction with duty solicitor after taking account of outcome better/worse	.518 (Orig .569)

Table 4

Reduced models to predict fairness of outcome, fairness of court procedures and fairness of treatment at court for (a) first-timers (n=40) and (b) first-timers who admitted guilt only (n=30)

	R ²	F	B	t
Fairness of outcome:				
a. All cases	.44	10.33***		
Treatment by D.S.			.415	2.72**
Chance to have say			.366	2.39*
b. Guilty "pleas" only	.86 ¹	47.13*** ¹	.631	5.98***
Treatment by D.S.			.406	3.85*
Chance to have say				
Fairness of court procedures:				
a. Satisfaction with D.S.	.49 ²	12.41*** ¹	.408	3.65**
Chance to have say			.163	1.06
b. Satisfaction with D.S.	.62 ³	14.61 ³	.717	4.78***
Chance to have say			-.096	-0.60
Fairness of treatment at court:				
a. Satisfaction with D.S.	.78 ⁴	103.70*** ⁴	.957	2.49**
b. Satisfaction with D.S.	.80 ⁵	82.10*** ⁵	.959	9.06***

* p < .05

** p < .01

*** p < .001

^{1, 2, 3, 4, 5} d.f. = 2,15; 2,26; 2,18; 1,29; 1,20 respectively due to missing data and exclusion of one outlier.