Chapter 8. LEGAL REPRESENTATION AND SPONSORSHIP

This chapter is concerned with the use of legal representation by defendants and the accompaniment of defendants by parents and others to court and the sponsorship provided by these. It has been demonstrated earlier that the central feature of the court case is the construction of the moral character of the juvenile. The outcome of the case depends not just on what the juvenile has done (the offence) but also on what sort of person the court thinks the defendant is. In this regard the defendant usually requires assistance to present a favourable picture of his character to the court - what Emerson (1969) has called a pitch. (See also Matza, 1964) Moreover the absence of such support may be construed by the court as an indication of the defendant's bad moral character; a defendant without sponsors is obviously a defendant without worth. Emerson (1969 : 137-138) argues that probation officers attempt to neutralize all sources of support for the defendant in cases where they want to totally discredit his character. The lack of sponsorship presented an image of consensus as to the nature of the juvenile's moral character. Sponsorship in Children's Courts can be provided in the first instance by the juveniles' parents, but also by welfare staff, lawyers, employers, teachers, ministers of religion and so forth. (Wiseman (1970) reports similar roles in drunk courts). In the case of employers, teachers, ministers and other community notables their sponsorship may be in the form of written references rather than a personal appearance in court.

In the past, welfare staff have been much more significant than legal representatives in performing the functions of sponsoring defendants. Lawyers have only recently begun to regularly represent defendants in Children's Courts in Australia, Britain and the United States. This situation arose from a number of factors including;

(a) the 'welfare' philosophy of the courts, with the related assumption that lawyers were not necessary,

(b) the unfamiliarity of lawyers with Children's Courts and legislation and the low priority they gave to such work,

(c) the confusion between the roles of legal representative and welfare staff,

(d) the low use made of legal representatives by defendants and their lack of access to lawyers.

Rapid change has occurred in recent years with regard to these factors due to a number of inter-related reasons. For example, it has been shown that despite the claims that the courts make decisions in 'the best interests of the child', defendants' legal rights were frequently not protected. In the United States greater attention has been given to juveniles' legal rights since the Gault decision in 1967. This has led to the greater use of lawyers in court. The development of legal aid systems in Britain and Australia have improved juveniles access to lawyers (Anderson, 1978; Parker, et. al., 1980). The priority given to Children's Court work by lawyers has also changed in the light of the above developments. There are still indications that many lawyers are wanting in their understanding of child welfare laws and the customary operations of particular Children's Courts.

A major problem with legal representation in Children's Courts is the conflict and confusion between the roles

of welfare staff and lawyers. This confusion arises from the courts because of the dual orientation to welfare and punishment. Because of this duality the role of welfare staff is ambiguous and sometimes conflicting. This situation also varies from court to court within the one system, from one case to another and at various stages in the career of one juvenile (Anderson, 1978). At times welfare staff represent defendants in the sense that they act as his sponsor. At other times the welfare officer may play a neutral role in the proceedings, while on other occasions he will act in a prosecutional role. If both welfare staff and lawyers are sponsoring a defendant, they may present very similar information to the court. It was shown above that they collect very similar information from the defendants and that both pleas of mitigation and social enquiry reports, being essentially constructions of moral character, require the same sorts of social background information. Information sharing frequently occurs, usually in the form of lawyers using or making reference to social enquiry reports in their pleas of mitigation. The confusion of roles is further complicated by the fact that welfare officers are not accountable to the defendant or to the public in general for their actions in court. Their reports are typically not available to the defendant or his family. They may contain unsubstantiated information, moral judgements, pseudo scientific assertions and hearsay evidence, yet they are not open to review and cross examination. They may, however, be crucial in the decision the court reaches. Anderson (1978 : 56) argues that:

> This lack of clarity in the position of the social worker inhibits representation in any legal sense or it obscures it in the mass of unchecked professional judgements.

(For a cogent discussion of the problems of legal representation in Children's Courts see Anderson, 1978.)

During the period of study a Legal Aid Commission duty counsel scheme was in operation in the Perth and Midland Courts. Defendants who wished to have legal representation in Fremantle or Kalgoorlie had to approach the Commission directly or arrange legal aid or private representation through a solicitor. The Aboriginal Legal Service had solicitors and/or field officers on duty at the courts at Perth, Midland and Fremantle. In Kalgoorlie, defendants usually had to contact the office, though officers of the Service generally maintained contact with the police to check on the appearance of Aboriginal children in court. However, unless it was a particularly unusual or difficult case, they normally left it to the 'Welfare' to 'represent' the juvenile.

LEGAL REPRESENTATION

In this context, however, the final decision as to the use of legal representation was the defendants and/or their parents. This decision rested on their assessment; of the offence and its likely consequences, of their need for assistance in court in the context of what is thought to be the appropriate use of legal representation. Prior to examining the actual use of legal representation in court, the expectations the defendants had about the use of lawyers will be discussed.

Anticipated Use of Legal Representation

The juveniles were questioned about the expectations they had prior to going to court about the use of legal representation and the reasons for their planned use or non use of representation. The following hypothesis was examined.

> That expectations about the use of legal representation would not vary with the defendants' sex, ethnicity, age, work status, class, family status, housing type, place of residence, case type, the type and number of charges or their assessment of the seriousness of the offence

and their previous record.

Table 8.1 below shows the anticipated used of legal representation by respondents in both the defended and the general samples. It is clear from this table that in the general sample the majority of the defendants were not anticipating obtaining legal representation while the opposite was true of the defended sample. Seventy nine (72.5%) of those in the general sample and only eight (32%) of the defended sample indicated that they did not anticipate using a lawyer. This relationship was significant statistically. As we shall see below this relationship in a large part results from the defendants' notions about the appropriate use of legal representation and this is, in part, determined by their anticipated plea.

TABLE 8.1

EXPECTATIONS OF OBTAINING LEGAL REPRESENTATION

	SAMPLE								
	GENERAL			DEFENDED			Total		
EXPECTATIONS OF LEGAL REP.	Absolute Freq.	Relt. %	Adjust. %	Absolute Freq.	Relt. %	Adjust. %	Absolute Freq.	Relt. %	Adjust. %
YES	30	25.0	27.5	17	63.0	68.0	47	32.4	35.1
NO	79	65.0	72.5	8	29.6	32.0	87	60.0	64.9
NOT SURE	5	4.2	-	2	7.4	-	7	3.4	-
NO DATA	6	4.2	-	0	-	-	6	4.2	-
TOTAL	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

(Chi square = 12.90746, with one degree of freedom. Significance = .0003
Excluding missing cases)

The expected use of legal representation did not vary with the defendants' sex, age, work status or previous court record. There were also significant differences in expectations in terms of their family type, place of residence or type of housing. Nor were there any significant variations in relation to the type and number of offences the youths were charged with nor with their assessments of the seriousness of the offence. Among defendants whose parents were employed, expectations about engaging a solicitor did not vary with parental occupation.

Defendant's ethnicity was a significant factor. Nearly half (46.2%) of the Aboriginal youths expected to have legal representation at their court case. In contrast only 21.2% of the non-aboriginal juveniles anticipated that they would engage a solicitor (Table 8.2).

TABLE 8.2

EXPECTATIONS OF OBTAINING LEGAL REPRESENTATION BY ETHNICITY

GENERAL SAMPLE

	COUNT / ROW PCT / COL PCT / TOT PCT	ETHNICITY: ABORIGINAL	ETHNICITY: NON ABORIGINAL	ROW TOTAL
EXPECTATIONS OF LEGAL REP.	YES	13	17	30
		43.3	56.7	27.8
		46.4	21.2	
		12.0	15.7	
	NO	15	63	78
		19.2	80.8	72.2
		53.6	78.7	
		13.9	58.3	
	COLUMN TOTAL	28	80	108
		25.9	74.1	100.0

CHI SQUARE = 5.35920, with one degree of freedom. Significance = .0206.
RAW CHI SQUARE = 6.55418, with one degree of freedom. Significance = .0105.

NUMBER OF MISSING OBSERVATIONS = 12.

Though there were no signficant differences as to expectations of the use of lawyers between juveniles in different classes, in the group whose parent(s) were employed, there were significant differences between the employed and unemployed groups. (Chi square = 4.60035, with one degree of freedom. Significance = .0320). While 44.1% of children of unemployed parents expected to be represented, compared with only 20.7% of those whose parents were employed. The majority of the parents of Aboriginal defendants were unemployed. This would in part explain the trend towards the anticipated use of legal representation by juveniles from families of the unemployed. Though it may be that non-Aboriginal families were aware of and planning to use Legal Aid and that they felt assured of assistance because of their employment situation

The Aboriginal Legal Service was well known by Aboriginal defendants and their families and many of them knew that the service would be available at the court. Those who had a previous appearance in relation to their current charge had typically already had contact with the Service, either at court or had attended at the Service's offices in the time between their previous and current appearance.

The hypothesis about the expected use of legal representation is supported apart from the relationship between expectations and ethnicity and parental work force status. As the rationales offered by the defendants for their expectations of use or non-use of legal representation were essentially the same as those given by them for their actual use of representation they will be discussed together below.

Use of Legal Representation

As with their anticipated use of legal representation the respondents were questioned about their actual use of solicitors and their reasons for their use or non-use. One of the research concerns was to see if the defendants anticipated plans of actions (e.g. legal representation and plea) changed when they got to court and why change had occurred. In particular we were concerned with the advice or information defendants might receive from both official and unofficial sources.

The following hypothesis was developed to examine the use of legal representation;

> That the use of legal representation would not vary with the defendants' sex, age, ethnicity, work status, parents' workforce status, class, family type, place of residence, case type, type and number of charges, record or assessment of offence seriousness.

Table 8.3 shows the use of legal representation by defendants. Seven defendants were not sure if they were represented or not and data was not collected for seven respondents. Of the rest, only 47 (35.3%) reported that they had legal representation. There was a significant relationship between the case type and representation. With those in the defended sample generally having representation while those in the general sample did not. As will be shown below, this difference relates to the perceptions the defendants have as to the appropriate use of legal representation. It has been shown above (Chapter 7) that there was some confusion among juveniles as to the identity of solicitors and welfare officers. This may explain why seven of the defendants were unsure about representation.

TABLE 8.3

USE OF LEGAL REPRESENTATION BY DEFENDANTS

	SAMPLE								
REPRESENTATION	GENERAL			DEFENDED			TOTAL		
		%	%		%	%		%	%
YES	34	28.3	30.6	13	48.1	59.1	47	32.0	35.3
NO	77	64.2	69.4	9	33.3	40.9	86	58.5	64.7
NOT SURE	7	5.8	-	-	0.0	-	7	4.8	-
NO DATA	2	1.7	-	5	18.5	-	7	4.8	-
TOTAL	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

As with the defendants' anticipation about legal representation, actual legal representation in the general sample varied significantly with the ethnicity of the defendants. A greater proportion of Aboriginal than non-Aboriginal defendants was represented in court. This reflects the fact that Aboriginal youths and their families have greater knowledge of the Aboriginal Legal Service and more

readily accept the need for legal representation than non-Aboriginal defendants have of the Legal Aid Commission's duty counsel scheme. All Aboriginal defendants at Court are generally approached by an Aboriginal Legal Service solicitor or field officer. At the Perth Court particularly, especially on busy mornings, it was sometimes not possible for the duty counsel to approach all of the other defendants. The room used by the duty counsel at the Perth Court was not readily visible from the waiting room and although notices were placed in various parts of the court building, some defendants were not aware that the service was in operation. This situation was improved with the introduction of a welfare assistant ('court welfare officer') for the duty counsel, although this in itself, added to the confusion experienced by defendants. Because of the smaller number of cases involved, the duty council was usually able to approach all defendants at Midland. However, as noted above a duty counsel scheme was not operating at Fremantle and this also contributed to the lower number of non-Aboriginal defendants who were represented.

TABLE 8.4

LEGAL REPRESENTATION BY ETHNICITY

	COUNT ROW PCT COL PCT TOT PCT	ETHNICITY ABORIGINAL	 NON ABORIGINAL	 ROW TOTAL
REPRESENT-ATION	YES	20 58.8 66.7 18.2	14 41.2 17.5 12.7	34 30.9
	NO	10 13.2 33.3 9.1	66 86.8 82.5 60.0	76 69.1
	COLUMN TOTAL	30 27.3	80 72.7	110 100.0

CORRECTED CHI SQUARE = 22.44884 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0000
RAW CHI SQUARE = 24.69750 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0000

NUMBER OF MISSING OBSERVATIONS = 10.

There was also a significant relationship between parental work force status and the use of legal representation, proportionally more of the defendants from families where the parent(s) were unemployed were represented than those from families where the parent(s) were employed (Chi square = 17.43299, with one degree of freedom, Significance = .0000). As argued above in relation to the anticipated use of representation, this probably reflects the high proportion of Aborigines being represented. There was no significance between representation and the defendants' sex, age, work status, record, parental occupation, type of housing, place of residence or their assessment of the seriousness of the offence. The hypothesis is therefore supported for those variables but not for the type of case, (defended/non defended), ethnicity and parental work force status.

Type of Representation

Two main types of representation were used by defendants. Only a few defendants were represented by privately engaged solicitors. The majority of the remainder were represented by either the Aboriginal Legal Service or the Legal Aid Commission. In the general sample nine youths were uncertain of the source of their legal representative. Twenty per cent (20%) of the juveniles were represented by a solicitor from the Department for Community Welfare. These youths were either wards of the State or under the control of the Department. The Aboriginal Legal Service represented 48% of the defendants. Representation in metropolitan Courts was sometimes provided by Aboriginal Legal Service field officers who generally go through the same procedures as a solicitor in presenting pleas of mitigation and so on. Observation suggests that this was usually the equal of and in some cases, better than, the work done by solicitors. During most of the study period one female officer was employed by the Service in the Metropolitan courts. This officer

had a good working knowledge of the Child Welfare Act and Children's Court procedures. Some of the solicitors employed by the Aboriginal Legal Service were not nearly as familiar with Children's Court, and on occasions observed to seek advice from the field officers. As well as doing court work, the field officers would assist solicitors with the preliminary information collected from defendants and interviewing. They were also observed negotiating information sharing and so on with welfare and prosecutorial and court staff. Duty counsels represented the remaining 28% of defendants in the general sample.

In the defended sample the situation was reversed with the Legal Aid Commission providing solicitors for 63.6% of those represented and the Aboriginal Legal Service representing 27.4%. Two defendants were represented by a private solicitor and one by Department for Community Welfare solicitors. The Aboriginal Legal Service was the main service providing legal representation for defendants in the total sample. This confirms the high usage of legal representation by Aboriginals compared with non-Aboriginal defendants.

Changes in Anticipated Use of Legal Representation

It can be seen when Tables 8.1 and 8.3 are compared that the overall level of representation is equivalent to what the defendants had anticipated (35.1% and 35.3% respectively). The percentages of usage in the defended sample were somewhat lower than anticipated. This is mainly accounted for by the non-completion of this section of the interview by 5 defendants, all of whom had anticipated being represented in court - observations confirmed that they were. Of those fully completing the interview sample only 3 youths in the defended sample reported a change between their expectation and actual use of legal representation. One defendant had approached the Legal Aid Commission for a solicitor, but was refused because

the case was not serious enough. Mistakenly believing that a duty counsel would be available at the court to represent him, he found himself without any legal representation. Two others made the same mistake, but fortunately for them they were able to obtain assistance from the duty counsel at court who represented them and arranged an adjournment for them so that they would have time to engage another solicitor.

Although the proportions of those expecting and those reporting use of legal representation in the general sample are roughly the same, in 24 cases the reported usage did not match the initial expectations of the defendants. Twelve defendants who had thought that they would not be represented reported that they were and similarly twelve who had anticipated that they would be represented were not. Some of this change may have resulted from the confusion between Welfare and Legal staff reported above. Some defendants who wanted legal representation reported that they saw a solicitor at court but were not actually represented in court. In two cases, it was obvious from the youths' accounts that the person they saw was not a solicitor, but a welfare officer. Other incidences were observed in the Perth court where cases proceeded in the absence of a solicitor because he/she was detained in the other court room. (In such circumstances the case was usually 'stood down' until the solicitor was free).

Six defendants who were not expecting to use a solicitor and did, said that the reason for doing so was the fact that they were approached by either the duty counsel service, or the Aboriginal Legal Service and persuaded that it would be a good idea to have a solicitor with them in court. Others reported that they were persuaded and/or coerced by parents, welfare officers or others to use a

solicitor (see below).

Rationales for the Use of Legal Representation

The defendants in both the general and defended samples gave a number of reasons why they wanted legal representation. These reasons can be classified in four basic categories. These relate broadly to decisions based on advice given by significant others on the one hand and on a conclusion by the defendant that he needed advice, guidance, or as the Americans sometimes put it, 'a mouth piece', on the other. The four categories of rationales were:

(a) That their parents had advised or had organized the legal representation.

(b) That the court, duty counsels, welfare officers, after care officers had advised on a previous (related) appearance or prior to their first appearance that they seek legal assistance.

(c) The defendants decided that they would require help in court or legal advice. This was often phrased by the defendants in terms of "I need some help" or 'I knew I wouldn't be able to handle it myself', or in terms of contesting the case.

(d) They wanted someone to 'speak up' for them in court, someone to put their side of the story.

The plea entered by the defendant was a central factor in the type of rationale given by the respondents for their use of solicitors. Those defending their cases more frequently gave their reasons as being that they needed help - to contest the case, provide advice or guidance, or to 'speak up' for them - than those pleading guilty (66.7% and 35.3% respectively). The centrality of plea to the use of legal representation can be seen when the rationales for non-use are discussed.

Roughly equal proportions of both samples said that their parents had either advised and/or organized their use of legal representation. Twelve percent of the general sample gave official advice as their reason for getting a solicitor.

Case 345

"Yes, I did obtain legal representation because the court told us to."

(None of the defended sample gave this type of rationale for their actual use of solicitors, though three had originally given such responses as their reasons for anticipated use. Two of these did not complete this section of the interview and the other said that his parents actually organized the solicitor). As pointed out above, while discussing differences between anticipated and actual use, six of the general sample said that they used the legal services because they were approached prior to going into court. Two defendants gave other reasons.

Rationale for Non-Use of Legal Representation

One basis type of rationale was provided by defendants to account for their non-use of a solicitor. That is, they thought that they 'didn't need one'. The use of a lawyer was considered to be inappropriate in a range of circumstances. "Don't need' type responses were given by defendants in 61.1% of all cases. However, there were significant differences between the general and defended samples. In the general sample 65.2% of the juveniles said that they didn't need a solicitor. In the defended sample only 37.5% gave this type of rationale whereas 62.5% gave other reasons for the non-use of legal representation.

The centrality of the plea entered or to be entered and guilt to this rationality about the appropriate use of

lawyers can be seen from the various reasons the respondents have for why they didn't use a solicitor. In the general sample, almost half (47%) of those saying that a lawyer was not needed, stated that it was because they were pleading guilty;

Case 383

"No I didn't have a lawyer. I was pleading guilty to stealing, therefore I didn't need a lawyer."

Other indicated that because they were incriminated (confessions, evidence, etc.) they would be found guilty and thus they did not require a lawyer;

Case 100

"No, because I already admitted to it /i.e. confessed/."

Or it was suggested that in the circumstances (plea, incrimination, operational orientation of the court) that the outcome would be the same regardless of a solicitor:

Case 371

"There was no point, the outcome would be the same."

If the charge was considered trivial and not of a serious nature then a lawyer was also not needed:

Case 38

"No it wasn't a big charge, it was an everyday charge. I didn't get a solicitor."

A range of other reasons were also given by defendants for not using lawyers. In the general sample four of the 16 youths giving other reasons indicated that they had used a solicitor on a previous occasion and had not been satisfied with the service they had received. As one defendant put it;

Case 32

"It's a waste of time. He didn't do any good last time."

One defendant said that he could not afford a solicitor and another that he didn't have time to organise one. One juvenile claimed that while he was in police custody, from where he went directly to court in the morning, he had asked to be allowed to contact a solicitor to arrange representation and the police would not permit him to do so. Three youths responded that they had not thought of having legal representation and one said that he had not known that one could get a solicitor to represent one:

Case 129

'I didn't even know that you could get one!.

The remaining five defendants gave other reasons.

In the defended sample, five youths gave 'other' responses. Two indicated that the Legal Aid Commission had refused their applications. One said that he did not have the time to organize for representation and another that he could not afford to pay for it. The remaining youth replied that having representation would be a waste of time. This defendant was changing his plea to guilty.

The rationales given by the respondents for their use or non-use of legal representation, did not vary significantly with their sex, ethnicity, age, work status, record, parental work force status, or occupation, type of housing, family type, place of residence, or type and number of charges.

Summary

Thirty five per cent of the total sample had anticipated that they would use legal representation and 35% reported that they actually used legal representation. Both expectations and actual use vary significantly with case type and ethnicity. Respondents who were contesting their cases both expected to and actually used solicitors to a greater extent than those not defending their cases. This

difference was statistically significant. Aboriginal defendants were also much more likely to anticipate and use legal representation than non-Aboriginal juveniles. The high expectation of and use (66.7%) of legal representation by Aboriginal youths reflected the greater awareness they and their families had of the availability of legal representation (through the Aboriginal Legal Service), as well as the relative success of A.L.S. efforts to contact all Aboriginal defendants at court.

The significance of case type as an influencing factor reflected the views youths had of the appropriateness of legal representation. For example, youths not contesting cases thought that lawyers services are not needed because they were pleading guilty, or that they were already incriminated and would receive the same disposition with or without legal representation. They also felt that lawyers made things difficult by having cases remanded thus undercutting their own desire to 'get it over with'. (See below for further discussion). Problems of access, finance, time and so on were also given as reasons for not getting a lawyer. Others were influenced by previous disappointments with the performances of solicitors.

On the other hand, youths trying to contest their case invariably regarded the services of a solicitor as necessary. Others thought that they needed someone to help them through the proceedings and to put their side of the story ('to speak up for me'). Advice from unofficial (usually parents) and official sources (magistrates, duty counsel, welfare staff) was also referred to as a reason for getting legal representation. Parental advice (and/or coercion) sometimes overrode the defendants' original decisions that they 'didn't need' solicitors. Unfortunately this study and analysis were not detailed enough to explain why and what circumstances some and not other defendants

who are not contesting their cases decide that they require legal assistance. This problem is particularly interesting since there was no direct relationship between the defendants' assessment of the seriousness of the offence and use of legal representation though triviality was given as one reason for deciding that a lawyer was not needed. The A.L.S. represented nearly half of those with legal representation and the majority of the rest were represented by the duty counsel scheme.

PARENTS AND OTHER SPONSORS

The presence of parents and of guardians of a child is required by Section 25(2) of the Child Welfare Act, though the court may proceed without them, if it considers this expedient. Parents and others in loco parentis, frequently attend court with the defendant and probably would do so regardless of legal requirements. They often fulfil the role of a sponsor for the defendant and are involved with the establishment of the good character of the defendant. They also have other roles in that they can act as coachers for the defendant, teaching him the basic requirements of how to present himself in court. However, this coaching may go no further than what may be described as a choreography of 'good manners'. Some sponsors moreover, are sometimes hesitant in their support of the defendant because they accept the official interpretation of the defendant's wrong-doing and their need for punishment. They may, however, wish to mitigate the degree of punishment and its effect on the child.

In some extreme cases, accompanying adults may even come to court to denounce the defendant. The object of their actions seems to be to ensure that the defendant's bad and uncontrollable character is established so that the

child will be punished, or removed, or both (Emerson, 1969). These issues will be discussed in more detail below. First, however, it will be shown who were accompanied to court and who were not. The absence of an appropriate sponsor from court may be another way of indicating that the youth has a bad moral character.

The majority of defendants in both samples were accompanied to court (see Table 8.5). For those for whom we have information (95% of the sample) only 17.8% of the general sample and none of the defended sample were unaccompanied. Those who were unaccompanied tended to be those defendants who were under the control of the Department and/or committed to the care of the Department prior to their appearance in court. This relationship is evident in Table 8.6. This relationship is also examplified by the relationship between the number of court appearances of the defendant and accompaniment. Those with a large number of appearances were less likely to be accompanied to court than those with only one appearance. (These two variables, number of appearances and status are, of course, highly inter-related). Accompaniment did not vary with the defendant's class or family type or type of housing, place of residence or type of case.

TABLE 8.5

ACCOMPANIMENT OF DEFENDANTS TO COURT

	SAMPLE								
	GENERAL			DEFENDED			TOTAL		
ACCOMPANIED	ABSOLUTE FREQ.	RELT. %	ADJUST. %	ABSOLUTE FREQ.	RELT. %	ADJUST. %	ABSOLUTE FREQ.	RELT. %	ADJUST. %
YES	97	80.2	82.2	22	81.5	100.0	119	80.9	85.0
NO	21	17.5	17.8	0	0.0	0.0	21	14.3	15.0
NO DATA	2	1.7	-	5	18.5	-	7	4.8	-
TOTAL	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

CORRECTED CHI SQUARE = 3.31611 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0686
RAW CHI SQUARE = 4.60618 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0319

NUMBER OF MISSING OBSERVATIONS = 7.

TABLE 8.6

ACCOMPANIMENT TO COURT BY STATUS

ACCOMPANIMENT	COUNT / ROW PCT / COL PCT / TOT PCT	STATUS 1st OFFENDER	INTER-MEDIATE	P.U.C.	ROW TOTAL
	YES	48	20	25	93
		51.6	21.5	26.9	82.3
		100.0	95.2	56.8	
		42.5	17.7	22.2	
	NO	0	1	19	20
		0	5.0	95.0	17.7
		0	4.8	43.2	
			.9	16.8	
	COLUMN TOTAL	48	21	44	113
		42.5	18.6	38.9	100.0

RAW CHI SQUARE = 32.35048, WITH 2 DEGREES OF FREEDOM, SIGNIFICANCE = .0000
NUMBER OF MISSING OBSERVATIONS = 7

The burden of accompanying defendants to court fell mainly to mothers (general sample 45.8%, defended sample 45.5%). Fathers were accompanying defendants in 15% of all cases (general 17.7%, defended 4.5%) and both parents accompanied defendants in 16 cases (13.6%). In the general sample friends accompanied the defendant in 15.6% of the cases. In some cases a small group sometimes including parent(s), siblings, friends and so on accompanied the defendant to court. In the defended sample this group of supporters usually included witnesses. Not all of these people were normally permitted into the court room with the defendant.

Those who were not accompanied were asked to explain why. Four of the defendants said that their parents lived too far away from court to be able to attend. Another five said that their parents were unable to get to court for a range of other reasons such as work and illness. Five

of the defendants said that they didn't live at home and they had no contact with their parents whatsoever. One said he wasn't sure why his parents didn't attend court and four gave other reasons (e.g. 'Mum hates coming to court, it always upsets her'). We can see from the above that the vast majority of defendants reported that they were accompanied to court by one or both of their parents (74.6%) or by some other person.

Summary and Discussion

Though the majority (85%) of defendants were accompanied to court by parents or others, only 35% were legally represented. The principle responsibility for accompanying defendants to court lay with their mothers (45.7%) (both parents accompanied in 13.6% and fathers in 12.7% of cases). Those least likely to be accompanied were defendants who had extensive records and who, generally, were already under the control of the Department for Community Welfare. In these cases the relationships between the juveniles and their parents tended to be strained. In three cases, parents did not even know that their sons had been to court. It is not possible to determine whether these relationships have been attenuated because of the behaviour of the youths (offending, uncontrollability and general behaviour at home) because they were in the control of the Department or a combination of these.

Defendants in contested cases, Aborigines and those with unemployed parents, were more likely to be represented than other defendants. These trends reflect the defendants' notions about the appropriate use of legal representation and the outreach programme operated by the Aboriginal Legal Service. The relationship between parental unemployment and use of legal representation, reflects to a large degree the high use of legal representation by Aborigines.

Aboriginal defendants were also more likely to have anticipated the use of legal services prior to going to court than non-Aboriginal youths. On the whole, they tended to have a greater awareness of the operations of A.L.S. than non-Aborigines had of the duty counsel scheme. They also had greater expectations that the Service would be available at the court and that they would be approached by its representatives. ("Yes, I'll be getting a solicitor, the Legal Service people will be at the court"). The use of legal representation was generally taken for granted by Aboriginal defendants (in some cases almost as if it were beyond their control).

In the general sample 20% of defendants changed their minds about engaging a solicitor. These changes took place in both directions. That is, some defendants initially expected not to use a solicitor and finally opted for legal representation and vice versa. There were 12 defendants in each of these categories. Youths who changed their minds in favour of obtaining a solicitor's services gave as their main reason the fact that they had been approached in court by either the A.L.S. or duty counsel scheme (half of the defendants were in this category). Other reasons included parental and official advice. Changes in anticipated plea, misunderstandings about the services were given as reasons for not engaging representation when this had been an anticipated course of action. Three of the defendants in the defended sample changed between anticipated and actual use of legal representation.

The plea to be entered by the defendant was a central consideration in decisions relating to the appropriateness of the use or non-use of legal representation. One needed a lawyer, according to the respondents, if one was

pleading not guilty and contesting the case. In this situation a lawyer was required for advice, to handle the case in court, to present one's side of the story. In cases where the charge(s) was not being contested, youths also referred to the need for assistance in handling the case, for advice, or the need for someone to 'speak up' for them as their rationale for use of solicitors, though the latter was a more important issue in relation to guilty pleas. Respondents also referred to advice from official (Magistrates, duty counsels, welfare officers and aftercare officers) and unofficial sources (especially parents), as the basis for their decisions to seek legal representation. In some cases defendants reported that they had little choice in the matter and that their parents had arranged everything.

The other side of the coin was seen in decisions that made youths not to seek legal representation. Such individuals considered representation as unnecessary in that in pleading guilty a person accepted guilt and all that goes with it. This was more marked in the case of trivial offences where the prime consideration was 'to get it over with', a consideration also present in more serious cases. Thus some respondents clearly believed that having a solicitor would only lead to a remand which would merely delay what they considered to be the inevitable outcome of the case. A small percentage of defendants indicated that they did not expect or use legal representation because they could not afford it, did not have time to organize it or were unaware of its availability. One defendant, who was in custody prior to court, complained that the police would not permit him to contact a solicitor.

The pattern of the use of legal representation reported here is roughly equivalent to that described in other adult and juvenile court studies. Only small proportions of the samples studied by Lipsitt (1968), Langley et. al. (1978), Snyder (1971) and Morris and Giller (1977) were

represented. Anderson (1978) reported that representation varied with the orientation of the two courts he studied (one had a strong welfare orientation, the other was more judicially oriented). Representation was low in the 'welfare court' (40%) and higher (50%) in the judicially oriented court. Bottoms and McClean (1976) reported that 59% of defendants observed in their study were unrepresented for all and 14% for some of their appearances. However, more than half (55%) of those whose cases proceed to higher courts are legally represented, as are those who plead not guilty in either magistrates or higher courts. Dell (1971) found that 69% of those dealt with by lower courts in her study were not represented. Similar patterns were reported by Mileski (1972), Ute (1974) and Brickey and Miller (1975).

The general pattern then, is for the majority of those dealt with by lower courts to be unrepresented. However, with the spread of legal aid services and increased access to these services, the percentages of defendants who are represented would seem to be increasing (Lottoms and McClean, 1976). Despite the expansion of legal aid services and particularly the duty counsel scheme in Western Australia, however, there would still seem to be serious anomalies and problems with access to legal representation. While those who are pleading guilty seem to be assured of representation if they want it, non-Aboriginal defendants wishing to contest their case are not. Although only one defendant gave a refusal by the Legal Aid Commission as the reason for why he was not represented, a number of other defendants indicated that they had difficulty in obtaining legal representation from the Commission.

In the observational sample 14 (28.6%) defendants were not represented in court. While three of these cases were adjourned or remanded for a hearing, eleven cases

were heard and in all but three cases a disposition handed down by the bench. One case was remanded for a pre-sentence report, the other two were withdrawn by the prosecution. Of the other nine cases, eight involved pleas of not guilty. These youths and their parents were faced with the problem of trying to defend themselves in an unfamiliar court of law against experienced prosecutors. The charges against them ranged from aggravated assault on a police officer to being unlawfully on premises. The fact that one of these youths was among four defendants acquitted * should not be taken to minimise the difficulties and traumas experienced by these youths and their parents. Eight of these defendants were interviewed and they all thought that they required the assistance of a lawyer.

The rationality the defendants used to decide on the appropriateness of legal representation was similar to that reported by Anderson (1978) and Lipsitt (1968). They both noted that the majority of defendants in their samples felt that 'they didn't need a lawyer'. Neither author, however, discussed the defendants' decision making in any detail. Decision making was discussed in some detail by Bottoms and McClean (1978) for adult defendants. Unrepresented defendants in their study gave the following reasons for not having a lawyer: 48% said that there was no point or that it was not worthwhile having a solicitor; 21% reported that they could not afford one; 10% said that they had no time to arrange one; 12% said that the offence was too trivial to require a lawyer and the remaining 7% reported that they wanted to get it over with and were pleading guilty. Looked at differently, 67% of the defendants are reporting then that there was no point in having a solicitor for a range of reasons, including the fact that they were pleading guilty or the offence was too trivial. The similarity in these patterns can be

* In the observational sample

seen more clearly when the reasons for engaging a solicitor are examined. They (1978: 149-150, see Table 6.7) suggested that there are two themes in the rationales for having legal assistance:

(1) 'The lawyer's role is clearly seen as that of a spokesman, an articulate voice in a strange environment'.

(2) Because of his procedural expertise - "the lawyer is seen as acting as a reasoning agent, guiding the defendant through the bewildering strange territory".

Both of these themes are evident in the rationality of youths in this study. They suggest that there was a sizeable proportion of defendants who would never contemplate using a lawyer. They conclude in regard to the defendants' rationales for legal representation (1978:150):

> Specifically legal expertise, it will be noticed, is not perceived as particularly important by defendants, especially those in lower courts. This accurately reflects the realities of court life, for the daily round of cases in the magistrates courts is remarkedly free from legal interest.

The rationalities of the juveniles in this study on which decisions to use or not use legal representation would seem to be grounded both in the problematics of getting through a case and in general community attitudes and expectations about court and lawyers.

The actual court experience does change some defendants' attitudes about solicitors and their relevance. Anderson (1978) reported that many of his respondents said they would engage a solicitor for a future appearance. Bottoms and McClean (1978 : 163) found that 37.5% of their sample thought that solicitors would have resulted in a lighter sentence. In the present study of the 31 juveniles who

said that they would approach the experience differently if they had to go through it again, 40% said that they would have a lawyer next time. However, as four defendants suggested that they did not anticipate using a solicitor for the appearance observed in this study, because of a disappointment with previous solicitors, it would seem that experience can also have the opposite effect on defendants.

It was suggested above that as the central element of the non-contested case (and contested case once guilt has been established) is the establishment of the defendant's moral character. In this situation the defendant may need the assistance of 'sponsors' to present his character favourably to the court. The absence of legal representatives in most cases has two consequences. In the first instance, it places the onus of sponsorship on the defendants' parents. The majority of parents are as passive as defendants in court and participate minimally in the proceedings and then usually only when called on to do so by the bench (see below Chapter 10). Consequently the absence of legal representation and the passive role played by parents, result in greater weight being given to the social enquiry reports and other representations made by welfare staff. As Anderson (1978 : 52) reported;

> To the extent to which defendants have a position of their own, it is negotiated through the social worker.

The problem here is that the position of the welfare officer in court is ambiguous and often contradictory. It is often ambiguous to the court, to the defendants and their parents and to the officers themselves. Anderson (1978) argues that this confusion and ambiguity arises from the fundamental conflict between the welfare and judicial orientations inherent in the court. The orientation of officers varies from case to case, court to court and with the career pattern of the defendants and their response to 'treatment'. All of this makes the issue of

presenting the defendants' 'story' problematic. The actual work of solicitors and welfare officers may also be very similar in regard to the construction of the juveniles' moral character.

It needs to be pointed out, however, that neither the presence of parents or a lawyer will necessarily mean that his moral character will be presented in a positive light. Parents may denounce their children as being of bad character or they may collude with welfare staff to present such an image (Emerson, 1969). Lawyers may only go through the motions of representing a defendant and the case may be 'all sewn up' before the defendant gets into court (Carlen, 1976).

Conclusions

The low level of legal representation of defendants in court in this study reflects general trends found in other studies of adult and juvenile defendants. Defendants in lower courts and children's courts are typically not represented. However, apart from the study by Bottoms and McClean (1976), the rationality used by defendants to decide on the use or non-use of representation is generally not discussed or only discussed in passing. The evidence from this study and that of Bottoms and McClean, is that a central element of defendants' reasoning is the plea they will enter. Contested cases require solicitors according to defendants. It is therefore essential that services be available for defendants contesting their cases, so that they are not faced with the task of defending themselves.

The marked difference between the use of solicitors by Aboriginal and non-Aboriginal defendants is a result of the programme by the Aboriginal Legal Service to ensure that Aboriginal defendants are represented. That there was no significant differences between these two groups

in the rationales given for their decisions about representation would seem to indicate that the pattern of use of representation by non-Aboriginal defendants could be changed by a more effective duty counsel scheme and an increased awareness of the service by defendants and their families. This, however, would need to be done in conjunction with a clearer definition of the role of welfare staff in court and some co-ordination between the roles of legal representative and court officer. In doing so, however, two important considerations need to be taken into account. The first is that care needs to be taken to ensure that legal representation does not unduly impede the defendants' desire to 'get it over with', and secondly, that defence tactics used by solicitors do not work against the defendants' acceptance of guilt, which as we will see in the next chapter is central to their decision about plea.

The majority of defendants are accompanied to court by one or both of their parents. However, the defendants who probably most need support, those with intensive records, are the ones least likely to be accompanied. This means that welfare officers are more significant in presenting a construction of their moral character to the court than in the case of other defendants. They are, however, the defendants in whom officers and the Department as a whole have a vested interest. In the light of the ambiguity of the role(s) of welfare staff in court, the chances of an independnent version of the defendants' story being put to the court are slim, unless the defendant has independent representation or, is himself, exceptionally articulate and knowledgeable about court proceedings.

Chapter 9. PLEA

The defendants' plea is the single most important act in the court process from the point of view of the defendants, the court and the prosecutor. It has symbolic, strategic and administrative significance for all parties. Symbolically it is a public admission or denial of guilt. In the everyday operations of the court it is also accepted as an actual statement of guilt. Consequently a defendant who contests his guilt may be penalized for wasting the court's time when found guilty, as most are. (Carlen, 1976; Baldwin and McConville, 1977). It will be demonstrated in this chapter that for most defendants in this study this is also an actual statement of their acceptance and rejection of guilt, and is so especially in contested cases.

The plea sets the whole strategic orientation of the case for both the defence and prosecution. In the first instance, it will largely determine whether the defendant will be able to 'get it over with'. It affects, as we have seen in Chapter 8, whether the defendant will require a lawyer or not. It also determines what sort of personal involvement is required from him in the case. For the prosecution the plea determines what resources have to be committed to the case. Not guilty pleas cause administrative problems for the court and require scheduling for hearing dates and the allocation of manpower and facilities. As a number of authors have shown, if significantly more defendants exercised their legal right to plead not guilty, the criminal justice system would collapse administratively (Bottoms and McClean, 1976; Baldwin and McConville, 1977). Carlen (1976) suggests that because of these reasons a not guilty plea is treated as organizationally deviant in magistrates' courts. This often makes it difficult for a defendant to proceed with a not guilty plea. Both Ute (1974) and Brickey and Miller (1975) have documented how judges in U.S. traffic

courts use a series of strategies for pressuring defendants into guilty pleas. Pleas in this situation are negotiated. One of the central levers was manipulating the principle of 'getting it over with'. The judges made it clear that a not guilty plea would be very inconvenient (See also Carlen, 1976 and Mileski, 1971). Brickey and Miller (1975) also show how judges impress upon defendants that they would have little chance in being found not guilty at one's trial. Though these processes were not found in this study, at least not emanating from the bench, other types of in-court plea negotiation were found. Formal plea negotiation, between the defendant and the prosecution, is an integral part of the American judicial system. It has been commonly agreed that it has not been a part of the British and Australian systems, however recent research has contended that it exists, albeit more covertly (see Baldwin and McConville, 1977 for a discussion.)

As with decisions about representation what occurs prior to the case, especially at the police station, has a significant effect on what courses of action the defendant pursues. (This has been shown above and in this chapter it will be demonstrated how defendant's decisions about plea are influenced by the pre-court experience.) Intervening factors, advice from parents, friends, lawyers and others, may influence the defendants' decision. And, as we shall see, the defendant may not be able to enter the plea he decides upon because of the actions of the magistrate.

Defendants' anticipated pleas will be examined first and this will be followed by a discussion of their actual pleas and of the reasons for any changes that occurred between the course of action they had anticipated and how they actually pleaded. This discussion will be followed with an examination of the rationales underlying their pleas. It will be shown that the acceptance of guilt is the central element in their accounts of the reasons underlying their plea, as it was in the case of confessions and the use of legal representation. Other issues relating to incrimination

and the prospects of being found not guilty are also important. Decisions, however, are constrained by the desire to 'get it over with'. For most defendants the decision about plea is simple, for others it involves a lot of anguish and this is particularly so in the case of a not guilty plea. Defendants have to weigh the consequences of their actions. The patterns of pleading reported here are similar to those found in other studies, not only do most defendants plead guilty, few of those who contest their cases are acquitted.

The following hypotheses on plea were examined:

> That anticipated plea and actual plea would not be significantly affected by the juveniles' sex, age, ethnicity, work status, record, class, type of housing, family type, place of residence, case type or type of offence.
>
> That plea would not be significantly affected by the defendants' confessions and statements to the police or by their acceptance of guilt.

Anticipated Plea

The juveniles were questioned about their anticipation prior to court in regard to plea and why they had chosen certain courses of action. As the rationales for anticipated plea and actual plea were very similar, they will be discussed together below:

Table 9.1 below shows the anticipated plea of the defendants in both the general and defended samples. Data are missing for nine respondents. Two juveniles in both samples were unsure about their anticipated plea and information was not obtained from five respondents in the general sample. It can be seen from Table 9.1 that a vast majority of those in the general sample (88.5%) anticipated pleading guilty. Only seven (6.2%) defendants anticipated pleading not guilty. A further two expected to make a mixed plea, that

is plead guilty to some and not guilty to other charges. Four, (3.5%) juveniles indicated that they would not be in fact required to plead at the court, these were all remand cases.

TABLE 9.1

EXPECTED PLEA

S A M P L E

EXPECTED PLEA	GENERAL			DEFENDED			TOTAL		
	ABSOLUTE FREQ.	RELT. FREQ. %	ADJ. FREQ. %	ABSOLUTE FREQ.	RELT. FREQ. %	ADJ. FREQ. %	ABSOLUTE FREQ.	RELT. FREQ. %	ADJ. FREQ. %
GUILTY	100	83.3	88.5	8	29.6	32.0	108	73.5	78.3
NOT GUILTY	7	5.8	6.2	16	59.3	64.0	23	15.7	16.7
MIXED PLEA*	2	1.7	1.8	1	3.7	4.0	3	2.0	2.2
NO PLEA REQUIRED**	4	3.3	3.5	0	0.0	0.0	4	2.7	2.8
NOT SURE	2	1.7	-	2	7.4	-	4	2.7	-
NO DATA	5	4.2	-	0	0.0	-	5	3.4	-
TOTAL	120	100.0	100.0	27	100.0	100.0	47	100.0	100.0

* Defendants pleading guilty to some and not guilty to other charges.

** Defendants on remand or adjourned cases who would not be required to plead.

Excluding 'No Plea Required' and recoding 'Mixed Plea' as Not Guilty, Chi square = 42.67239. with 1 degree of freedom. Significance = .0000.

(See Table 9.3 for actual plea).

Because of the small number of juveniles in the general sample who had anticipated a plea of not guilty or a mixed plea (nine defendants (8%)) no statistical analysis was conducted on the relationship between the anticipated plea and the defendants' background variables. However an analysis was conducted on the relationship between expected plea and the youths' assessments of offence seriousness to see if any trends were present. Though the cell numbers are too small in the 'not guilty' category to be statistically reliable, they do seem to indicate that there was no relationship between the juveniles' decisions about plea and evaluations of seriousness.

TABLE 9.2

EXPECTED PLEA BY RESPONDENTS ASSESSMENT OF THE SERIOUSNESS OF THE OFFENCE

	COUNT / ROW PCT / COL PCT / TOT PCT	SERIOUS	NOT SERIOUS	ROW TOTAL
EXPECTED PLEA	GUILTY	40	34	74
		54.1	45.9	92.5
		88.9	97.1	
		50.0	42.5	
	NOT GUILTY	5	1	6
		83.3	16.7	7.5
		11.1	2.9	
		6.3	1.2	
	COLUMN TOTAL	45	35	80*
		56.3	43.8	100.0

CHI SQUARE = 1.334, WITH 1 DEGREE OF FREEDOM, SIGNIFICANCE = .2431

*EXCLUDING 'No Plea Required' = 4; Seriousness ('other') = 22

Mixed Pleas Recoded as Not Guilty pleas.

Similar relationships were found between anticipated plea and their assessments of the seriousness rating by the court, police, Community Welfare and their parents. That is, the juveniles' anticipated pleas were not significantly related to their assessments of how their parents and these agencies evaluated the seriousness of the offence(s).

In the defended sample two of the defendants, prior to going to to court, were unsure of how they would plead. One juvenile anticipated a mixed plea. Of the remainder, 16 (59.3%) planned to plead not guilty and 8 (29.6%) guilty. On adjusted frequencies then 64% had anticipated a not guilty plea and 32% guilty pleas. The relationship between anticipated plea and case

highly significant (P ∠ .0000, Table 9.1). Two
e of interest from these distributions : one, the
percentage of guilty pleas that were anticipated
neral sample; the other, the significant proportion
lants whose cases had been scheduled for a hearing
ipated a change of plea. All of the latter had
y pleaded not guilty. Their original pleas were
t of a complex interplay of factors including:
ice, the strategic use of a not guilty plea to
remand, and the rejection of guilt. Strategic
y pleas were at times used by (a) a solicitor or
sel or (b) the defendants themselves; to obtain

> Case 345 - (Youth charged with S. & R. of $4,000 indicated that he had pleaded not guilty on his first appearance because:
>
> "... the lawyer told me to do that .... He said I had better get a proper one /lawyer/ as he would probably mess it up as it was too serious. He said to plead not guilty so that it would be remanded and more time would be available to get a proper lawyer".
>
> Case 340 - (Youth charged with Unlawful Use of a Motor Vehicle)
>
> "Didn't fully understand the charge. She /the magistrate/ got very impatient with me. I got impatient with her. She wouldn't let me have it remanded for legal advice so I pleaded not guilty..."

f a remand for legal advice varied between courts,
es and legal representatives. The Aboriginal Legal

Service invariably asked for a remand if there was any doubt with regard to plea. Other legal representatives, at times, seemed to have used a not guilty plea for the same reason. These and other complex factors affect what cases came to be on the contested list. As we shall see below the defendants have a number of difficult choices to make in relation to maintaining a not guilty plea and they are influenced by advice from various sources. Some defendants are totally overawed by the process and go along with the advice. The following two girls were unsure as to how they would plead. Their initial plea of not guilty to a charge of trespassing on railway property has been advised by the A.L.S.

Case 330

'The same as the other girls, I suppose, I don't know. I think I will plead guilty.'

Case 331

'Last time I had to plead not guilty. I don't know how I'll plead tomorrow. The A.L.S. lady will tell us then.'

Summary

In the general sample most of the defendants planned to plead guilty. In the defended sample two-thirds anticipated a plea of not guilty, most of the remainder expected to change their plea to guilty. Anticipated pleas were in the majority of cases consistent with the defendants' acceptance of guilt. However, pleas were sometimes influenced by parents and lawyers. The principle of 'getting it over with' underlies the defendants orientation to court and pleading and is an important constraining factor.

Defendants' Pleas

The youths were asked about the plea they had entered in court and their rationale for pleading in a particular way. In this section their pleas will be examined and these will be compared with their anticipated course of action.

The pleas entered by the juveniles at their court appearances were very similar to those they had anticipated. (Tables 9.3 and Table 9.1). One youth was not sure of how he had pleaded, and data was not available for eight other defendants. Of the remainder of the juveniles slightly more than three-fourths (76.1%) of the total interview sample pleaded guilty, twenty-two (15.9%) pleaded not guilty and one juvenile entered a mixed plea. Ten (7.3%) defendants reported that they had not pleaded. In these cases either a plea had not been required because it had been taken on a previous appearance and the case had been remanded for a pre-sentence or other report, or the case was remanded for legal advice without a plea being required. The differences between the defended and the general sample were significant (Chi square = 52,3052, with one degree of freedom, Significance = .0000, see Table 9.3).

TABLE 9.3

DEFENDANTS' PLEA

S A M P L E

PLEA	GENERAL			DEFENDED			TOTAL		
	ABSO-LUTE FREQ.	RELT. %	ADJUST. (%)	ABSO-LUTE FREQ.	RELT. %	ADJUST. (%)	ABSO-LUTE FREQ.	RELT. %	ADJUST. (%)
GUILTY	100	83.3	85.5	5	18.5	(23.8)	105	71.4	(76.1)
NOT GUILTY	7	5.8	6.0	15	55.6	(71.4)	22	15.0	(15.9)
MIXED	1	.8	0.9	0	0.0	(0.0)	1	6.7	(0.7)
NOT TAKEN, ETC.	9	7.5	7.6	1	3.7	(4.8)	10	6.8	(7.3)
NOT SURE	1	.8	-	0	0.0	-	1	0.7	-
NO DATA	2	1.7	-	6	22.2	-	8	5.5	-
TOTAL	120	100.0	100.0	27	100.0	(100.0)	147	100.0	(100.0)

(Chi square = 52.3052, with one degree of freedom, Significance = .0000. Mixed pleas recorded as not guilty and 'no pleas taken' excluded from analysis).

The reverse trend was evident in the defended sample with 11 of the 12 defendants reporting that they did not make a confession to the police and were pleading not guilty. When both samples were examined together the relationship between plea and confessions was significant (Chi square = 65.5440, with 1 degree of freedom, Significance = .0000). There were no trends of significance in either sample between plea and statements. However, when the total interview sample is considered the relationship was significant (Chi square = 7.4561, with 1 degree of freedom, Significance = .001). Overall 31.6% of those who did not make statements pleaded not guilty, whereas only 11.1% of the juveniles who made statements pleaded in a similar fashion. It was suggested above (Chapter 2) that the police tended not to take statements in cases relating to offences of good order but that these were also the type of case where juveniles were more likely to deny guilt and therefore plead not guilty. The relationship between the acceptance of guilt and plea will be examined below.

Changes in Anticipated Plea

Though overall there was little change in the proportion of each sample pleading in a particular way, there was quite a considerable amount of change among defendants. These changes occurred in both directions (i.e. from not guilty to guilty, from guilty to not guilty), though the type of change was also influenced by the fact that some defendants were not required to plead. In the defended sample six (28.7%) defendants changed their plea from that which they had anticipated. Two reported that they were expecting to plead not guilty and after consultation with lawyers and others decided to change their plea to guilty. Another two had expected to plead guilty on the other hand, and changed their plea to not guilty for the same reasons. One defendant was expecting to plead not guilty and in fact was not asked to enter a plea and the case was remanded, and another changed his plea for an anticipated mixed plea to the full not guilty plea.

In the general sample 13 (10.8%) reported that there had

been a change between their anticipated course of action and the plea they entered. In five cases where juveniles had planned to plead guilty, no plea was taken in court and their cases were remanded. This also happened to one youth who had planned a not guilty plea. Two of those anticipating not guilty pleas actually pleaded guilty. One juvenile not expecting to plead entered a plea of guilty, while another changed his plea from a mixed one to not guilty to all charges. Three defendants planned and entered guilty pleas only to have their pleas rejected by the magistrate (see below p.253).

Summary

Of the total interview sample (76%) pleaded guilty (85.5% general and 23.8% defended sample). The actual pleas entered were proportionately very similar to what the defendants had anticipated. However, there was a considerable amount of change within the defended sample where 26.7% of the youths changed their plea from what they had expected. This change was in both directions (from guilty to not guilty and vice versa). In the general sample 10.8% changed their plea from what they had expected. Much of this change was caused by cases being remanded with pleas being taken, although, some change was caused by the rejection of guilty pleas by magistrates.

The actual numbers in the not guilty category were too small to allow statistical analysis of the relationships between the background variables and plea. An examination was made of the relationships between confessions and statements to the police and plea. The relationship between confessions and plea was significant for both samples, as was the relationship between the making of statements to the police and plea for the total sample. Those who had not made statements were more likely to plead not guilty. (However, as indicated in Chapter 4 above this would seem to arise from the relationship between the type of offence and the youths' acceptance of guilt.)

Pleading : Rationality and Contingency

Respondents were asked to elaborate on their reasons for their anticipated and actual pleas. As the sorts of reasons were very similar they will be discussed here as a single phenomenon. Four main types of rationales were provided by the defendants for their anticipated plea. These were:

(a) the acceptance or rejection of guilt
(b) incrimination
(c) a desire to 'save trouble'
(d) advice from other parties (e.g. lawyers).

The relationships between these rationales and plea type are shown in Table 9.5 below. The relationships presented here are ideal types. The actual situation may in fact be more complex than that shown in the matrix below.

Contingencies

It was indicated above, in the discussion of anticipated pleas, that there were a number of contingencies which could affect the plea entered by a defendant. These contingencies can be both internal and external to the court process. The contingencies can also be both interactive and strategic. For example, the defendant may accept guilt but plan to enter a plea of not guilty for strategic reasons (e.g. to obtain a remand) and this decision may be the result of legal or other advice (as in Case 345, quoted above). On the other hand, the juvenile may not accept guilt but plan to plead guilty in order to 'get it over with' ('to save trouble'). He, however, may only find this plan thwarted by parents or others who coerce him to plead not guilty.

Case 360 - (Youth 17 years charged with carrying an offensive weapon in his car (a tow chain); denied guilt).

Q. 'How did you think you would plead?'

A. "Guilty (Probe: Why?) I wanted to plead guilty to get it over with and get a little fine. Dad told me to plead not guilty and went and arranged for a solicitor".

Case 335 - (Youth 16 charged with B.E. & S; accepted guilt).

"I wanted to plead guilty to get it over with but the lady wouldn't let me".

Although advice, strategic considerations and even parental coercion can make the defendants' choices of action complex, for the majority of defendants (especially when they accept guilt) there is a direct and over-riding relationship between one (or all) of the above rationales and plea. When guilt is not accepted, or when there is doubt in the defendant's mind, the situation can be more complex. The principle of 'getting it over with', while not always explicit, underlies the orientation of the vast majority of defendants. It is a constraining factor and as such makes difficult any decision to plead. Not only is it a principle which guides the defendant, it is one which can also be referred to and/or manipulated by others who are in contact with the defendant prior to going to court; parents, friends, lawyers, welfare officers, police officer and so forth:

*(Policewoman to mother of defendant in the court waiting room. Mother was very distressed and in tears).

"You know if he pleads not guilty you have to come back /~to court~/ and go through the whole thing again".

*(Defendant's sister's boyfriend to interviewer)

"I told him /~defendant~/ to plead guilty and get it over with. You can't win against the police I told him. He would have got off with a light fine."

The only thing that a defendant can be sure about if he pleads not guilty is that the case will be remanded (adjourned) and he will not be able to get it over with. The defendant cannot be sure of the outcome of the case, though there is a general belief that 'you can't win' (see Chapter 4). The consequences of losing a contested action may also be worse than pleading guilty. There is also the expenditure of time, money and reputation and good will (of parents, teachers, employers, for example). All of this has to be weighed against a guilty plea and the possibility of a disposition that will not be severe. These factors can be seen operating in the following examples.

* Case 293 - (Youth 17 charged with received).

  "Guilty" (Why?) "No good pleading not guilty, you get remanded all the time and they find you guilty in the end".

* Case 340 - (Youth 16 charged with a friend with Unlawful Use, denied guilt as he had been given permission to drive the car by the 'owner', only to find on his return that his mate had disappeared, realised that the car was 'hot' and was apprehended while dumping it in a street).

  'Guilty, because I know I'm guilty in a way. We shouldn't have tried to dump the car, we should have called the cops. But I'm not guilty in some ways. The guy told us it was his car. I was suspicious, I didn't think he could afford a car like that. I asked him and he said he had saved the money to buy it after working in Carnarvon for six months. We we took it for a drive. It sounds like a story. So it's up to the court to do whatever he thinks has to be done. I want to get it over with. If I plead not guilty I'll have to pay for the witnesses if I'm found guilty and there is a good chance that I will be.

> I've already told the police that I've changed my plea to guilty and they said that they won't call witnesses. If I plead not guilty now they'll get it remanded and they'll probably get it remanded a few times. I could be up for $100 for witnesses and court costs. I don't actually have to pay the witnesses I have to pay the court. It will also mean I'll lose more time off work. When you tell your boss you have to go to court again it's hard to explain it's for the same thing. All he thinks about is that you're going to court again".

These are some of the external contingencies that may affect the defendants' decisions about plea. There are also in-court contingencies that the defendant has to face.

These in-court contingencies arise in a number of ways and may be a result of conflict between the defendant and/or his solicitor and the magistrate. This conflict may arise over courses of action to be followed or from the defendant attempting to assert himself in court. The plea may become a strategy in this conflict. In other circumstances the pleading may also be negotiative in nature. The bench may attempt to influence the defendants' pleas in order to further its own ends or to impose the 'correct' definition on the situation and/or to control the defendant. In these situations the process of entering a plea may be negotiative in nature (see below p.253).

Moreover for most of the defendants in this study, pleading was a relatively straightforward affair. For others it was somewhat more complex, with the magistrate using his (interactional) power to determine the type of plea that would stand. I refer to this process as negotiative pleading. A second process was also observed and this I have labelled non-standard pleading. In this situation the defendant is not required to submit a plea in the usual formal manner.

1. Negotiative Pleading

Pleas are negotiated in both directions, that is, a guilty or not guilty plea can be the outcome of the negotiations. However, somewhat different patterns tend to occur. Negotiations resulting in guilty pleas often arise when the defendant questions some aspect of the charge and/or is confused about his legal culpability in an offence. The following example shows both of these phenomena:

Case 201 - (The defendant, boy 14, charged with B.E. & S. questions his culpability in relation to items stolen by others in the group involved in the breaking and entering).

Magistrate: Reads the charge and asks the defendant to plead:

"How do you plead; guilty or not guilty?"

Defendant: "I didn't take the liquor. The others must have taken it. I didn't".

Magistrate: "You broke into the house with them didn't you?"

Defendant: "No, I only went into the garage".

Magistrate: (Sounding angry) "You were with them when they broke into the house weren't you?"

Defendant: "Yes".

Magistrate: "You were there when they took it weren't you?"

Defendant: "Yes".

Magistrate: "Then you're as guilty as they".

No plea was taken from the defendant and the case proceeded as if he had pleaded guilty.

On other occasions the magistrate may be more explanatory and guiding.

Case 4 - (Youth 15, charged with a series of B.E. & S. in company).

The magistrate reads the charges and asks the defendant to plead on each one in turn. On the reading of the second charge the youth says:

"I took the money box. I didn't take the pen or the bracelet".

Magistrate: 'Your mate was the other boy charged with the same offence?'

Defendant: 'Yes'.

Magistrate: 'If you were on the premise when the offence was committed then you are part of it and you are as guilty as he is'.

Defendant: 'Yes sir'.

Magistrate: 'Do you plead guilty then?'

Defendant: 'Yes sir'.

The magistrate may also get other parties, especially welfare officers and solicitors to assist the defendant in understanding the implications of his participation in the offence.

Case 425 - (Boy 14 charged with wilful damage and two offences of stealing. The boys had taken copper and other metals from a building which was being demolished. The wilful damage occurred when two of his companions broke a motor to get some parts. He claimed that he had not taken part in the wilful damage or taken the parts).

Magistrate reads the charges and asks for a plea.

Defendant: 'I didn't break the motor and take the kick-plates'.

Magistrate attempts to explain the boy's culpability but the defendant still insists that he didn't break the motor or take the parts. The magistrate then asks the D.C.W. court officer to take the boy outside and explain. The case is 'stood down'. When recalled the magistrate reads the charges.

Magistrate: 'Do you understand the charges now? You were there when the others took it?'

Defendant: 'Yes'.

Magistrate: 'Do you plead guilty?'

Defendant: 'Yes'

In these cases the defendants are persuaded to plead guilty and his co-operation provides for the smooth running of the court and the acceptance of only 'real' not guilty pleas. This, however, does not mean that all of the defendants come to accept the court's definition of culpability or that they really understand it, even if they do claim to in court. In the last case above, for example, the court officer when reporting on the boy commenced by saying:

"James now understands fully what the charges involve".

This defendant, however, indicated clearly during his interview that he did not accept respondibility for the damage or culpability for the taking of the 'kick-plates'.

It would be unfair to suggest that Magistrates are solely concerned with obtaining guilty pleas, they may also be concerned that the plea is accurately related to the defendants' claims of guilt. If there is any indication that the defendant is possibly not guilty or is not in agreement with the charges or the 'facts' of the case, or that he is pleading solely to "get it over with", the magistrate may reject a plea of guilty from the accused or advise the accused to

enter a plea of not guilty. In the observational sample five (18%) of the not guilty pleas were negotiated in this manner. Parker, et. al (1980) argue that this procedure may be used to safeguard the smooth operations of the court and to avoid a situation which may cause trouble in the future. A couple of examples illustrate this type of negotiation.

Case 51 - (Youth 15, charged with S. & R. of a spanner ($2) from a supermarket. The defendant was in custody).

Magistrate reads the charge and the defendant pleaded guilty. The case proceeds and the magistrate asks the defendant for an explanation of why he offended.

Defendant: 'I didn't take the spanner, I was with someone who took it ...X said that I should plead guilty because I was with him'.

Magistrate: 'But were you participating?'

Defendant: 'No'.

Magistrate: 'I can't accept a plea of guilty ...'

Cases 151 and 152 - (Two youths, both 17, charged with malicious damage. They broke a window while throwing stones).

The Magistrate reads the charge and both the youths pleaded guilty. While the prosecuting sergeant is reading the 'facts' one of the boys interjects "We didn't know that we'd broken the window till the next day".

Magistrate (to the Prosecutor): 'They say that it was an accident, they didn't know they had broken the window till the next day. Malicious intent means something is done with malice, it comes from the Latin word meaning bad intent. They are not guilty if they did not know they did it. ... I cannot accept a plea of guilty'.

The rejection of a guilty plea is not necessarily acceptable from the defendants' point of view as it militates against the goal of 'getting it over with'. For example, in Case 51 above the defendant said that he had pleaded guilty because "I wanted to get it over and done with". He thought that it was unfair that the case had been remanded for "so long" (one and a half months).

2. Non-standard Pleas

A non-standard plea refers to the situations where the defendant is not required to plea in the usual manner (e.g. 'how do you plead, guilty or not guilty?') but the magistrate may ask the juvenile to state whether they committed the offence ('did you do it?') or whether or not they were involved in the offence, situation or group activity (e.g. 'were you in the car John?'). Non-standard pleas occur for two basic reasons. The first is by omission or accident where the magistrate may just neglect for some reason to ask for a plea in the standard form. Secondly, and this is a more important factor, it occurs when the magistrate believes that the defendant will not understand the standard form of pleading. This generally occurred with three types of defendants:

(a) defendant is young and/or immature (e.g. 13 years old or younger);

(b) those thought to be retarded or abnormal in some way;

(c) where the defendant is thought because of ethnic or social background not to have the communicative competence to understand and enter a plea in the standard form (e.g. Aboriginal children from remote communities, migrant children with limited English).

One example will suffice to illustrate this sort of plea.

Case 200 - (Boy 13, charged with assault on class-mate. Accompanied by father).

The magistrate opens the case in the usual manner by asking for an identification of the defendant and a verification of age.

Magistrate: "Is your name John Smith?"

Defendant: "Yes".

Magistrate: "What's your date of birth John?'

Defendant: "I don't know".

Magistrate (laughing slightly in disbelief): "Everybody knows their date of birth!"

Father (stands and addresses the magistrate): "He's not very good with figures. He has been attending a special school. This is the first year that he has gone to the local school ..."

The father's statement provided the magistrate with an explanation of why the defendant was unable to answer a question about an issue which 'everybody knows'. The defendant was thus ascribed to a status of not being like everybody. The magistrate then, rather than asking the defendant to plead guilty or not guilty, asked the youth to tell him what had happened (without reading the charge).

This process of non-standard pleading is usually allowed to pass and is accepted as if it were a standard plea. (See Carlen, 1976 for a discussion of the reverse process, i.e. where adult defendants attempt to enter a non-standard plea (e.g. "Yes, I did it") and this is rejected by the bench. On other occasions a non-standard plea, however, may be problematic. In the above case, for instance, where the magistrate allowed the defendant to tell him what happened, the Prosecutor interjected during the youth's account to inform the bench that the youth's 'statement was not the same as the facts as he had them'. The proceedings were then realigned to follow the more usual pattern. In other situations the defence side may find

such a plea problematical. For example, in one case a 12 year old boy was charged, with a group, of unlawful use of a motor vehicle (not part of the sample). The magistrate asked the boy, 'Jim were you in the car?' The boy replied yes and the magistrate recorded a plea of guilty. The A.L.S. field officer representing the defendant had then to inform the bench (with considerable difficulty) that the boy would be pleading not guilty as he did not know the car was 'stolen'.

Though the numbers involved in non-standard pleas were small (among the general cases, 20 (5.2% of 387) in the observational sample, and 4 (3.3%) of the interview sample), I have referred to them and negotiative pleas to highlight the point that plea cannot necessarily be taken as a simple and unproblematical event. Various in-court interactional processes, as well as defendants' decisions may be involved in the determination of a plea. It was indicated above that a negotiative plea, especially the rejection of a guilty plea, may be contrary to the defendants' strategies. Defendants may also find a non-standard plea confusing in their attempt to understand the court proceedings.

> Case 371 - (Youth 16, charged with making a false statement).
>
> "He didn't ask me to plead. He asked me was it true or not. I hesitated for a moment and he put it in different words. I said that I had done it".

No examples of plea bargaining or negotiation were observed or reported by respondents in this study. However, there were some indications that in some instances negotiations over charges had occurred.

The Rationality of Pleading

The above contingencies were discussed to show that the context of the defendants' decision-making about plea may be very complex and that these contingencies (both internal and external to the court appearance) may prevent a defendant following the course of action he himself chooses. The relationships in Table 9.4 may therefore be more complex than that shown, although for the majority of youths their decisions about plea were relatively straight-forward.

TABLE 9.4

RATIONALES FOR PLEA

PLEA	RATIONALE				
	ACCEPTANCE OF GUILT YES NO	INCRIMIN-ATED	SAVE TROUBLE	ADVISED	OTHER
GUILTY	YES NO	YES	YES	YES	YES
NOT GUILTY	NO YES	NO	NO	YES	YES

We saw in the examination of the defendants' rationales for confessing that accounts of their acceptance/rejection of guilt were of primary importance. The same principle was in operation in relation to the rationality for pleading. Rationales relating to the acceptance/rejection of guilt were the dominant ones used by youths to account for their pleas. In the general sample 45.4% of the defendants gave acceptance of guilt as their rationale for a guilty plea. Frequently their responses were simple and uncomplicated:

Case 10 - "Guilty, seen that I know I'd done it".

Case 425 - "Guilty, I took the stuff".

Five of the seven defendants who pleaded not guilty gave the rejection of guilt as their reason ("I didn't do it"). In the defended sample, rejection of guilt was again the principle factor that defendants said accounted for their actions. Twelve (77.3%) replied that they were not guilty of the offence(s). Of the remaining five respondents pleading not guilty, two said that they had been advised by a lawyer, two were advised or coerced by parents and one had other reasons. Of those who entered a guilty plea, one gave acceptance of guilt, two incrimination, two 'saving trouble' and three other reasons for their decision. The rejection of guilt was a more important principle for accounting for plea than its acceptance. While two in ten defendants gave acceptance of guilt as their rationale for a guilty plea, nearly eight in ten gave their rejection of guilt as the rationale for a not guilty plea. However, the majority of defendants indicated that they were pleading consistently with their perceptions of guilt. That is, few of those pleading guilty rejected guilt and none who pleaded not guilty indicated that they accepted that they were guilty.

The second major rationale for a guilty plea was that of incrimination (27.8%). The defendants said that they had been incriminated during the police investigation. Twelve of these defendants said they had been caught in the act or they had been found in possession of stolen material. Others indicated that they had confessed to the police and made a statement.

Case 3 - 'Guilty, because I had admitted everything in the statement'.

Fourteen (14.4%) defendants indicated that the reason they were pleading guilty was "to save trouble". This attempt to save trouble ranged from the belief that if you <u>are</u> guilty you <u>have to</u> plead guilty, otherwise you're telling lies and will get into more trouble with the court, to the desire 'get it over with'.

The belief that pleading involved telling the truth and of 'saving trouble' is illustrated by the following examples:

Case 299 - "Guilty (Why?) I have to tell the truth".

Case 182 - "Guilty (Why?) Because if I don't I'll get into more trouble".

Case 167 - (Boy charged with number of B. E. & S. offences in company).

"Guilty. I wasn't going to plead not guilty because the other blokes would have dobbed me in and I would have got into trouble".

Four defendants gave the desire to 'get it over with' as the specific reason for their planned plea of guilty. The following two defendants rejected guilt yet they pleaded :

Case 284 - "Guilty, to get it over and done with".

Case 298 - "Guilty, they're hassling me about it and I wanted to get it over with".

Twelve (12.4%) defendants gave other reasons or a combination of reasons for their plea. For example, one girl indicated that she was pleading guilty because she didn't want to get her friends into trouble. Others indicated a mixture of acceptance of guilt and incrimination.

Case 110 - (Girl 17; Possession of Marihuana)

"Guilty, because I was only up on a possession charge and I was in possession. What's the use of pleading not guilty when it's already proven".

Case 167

'Because I did them. I was too scared to plead not guilty. It probably would have been remanded and I'd have had to go back again'.

Case 238

> 'I was bashed up by the coppers. They had the statement. If you say not guilty you've made a false statement, you have to say yes /~plead guilty_7.'

Summary

In this section it has been shown how the defendants' decisions about plea are constrained and influenced by a number of factors internal and external to the court. As children they are influenced and controlled by parents. Their actions are also constrained by what occurred during the police investigation (confessions, statements and incrimination). They may also be constrained and influenced by what occurs in court (e.g. the magistrate rejecting a plea of not guilty).

An important constraint of defendants is the desire to 'get it over with'. Not getting it over with involves expenditure of time, money, reputation and good will. Decisions to plead not guilty also involve an assessment of the prospects of being acquitted and there is a general belief that 'you can't win'. Saving trouble also means not getting into trouble with the court and to plead not guilty when you are guilty is believed by some to be telling lies. These are primarily constraining factors on the defendants. The principle determining factor according to their accounts is the acceptance or rejection of guilt. It was suggested that most defendants indicated that they pleaded consistently with their perceptions of guilt. This suggestion will now be examined in more detail in the following section.

The Acceptance of Guilt

Respondents were not questioned directly on the issue of their acceptance or rejection of guilt. (Hapgood, on the other hand, did include such items in his questionnaire). In this study

the concept of the acceptance of guilt was inferred from their accounts of their rationality for decision-making in relation to confessions, pleas and as we shall see below evaluation of the fairness of the court's decision in their case. A measurement of the respondents acceptance of guilt was developed from the compilation of data from the defendants' responses to questions about plea and confessions and on the accuracy of police evidence as well as observational data on their behaviour in court in relation to plea and their questioning of details of the charge(s) or aspects of the evidence.[1] Table 9.5 below shows the distribution of the juveniles' acceptance of guilt as measured by this operation. This is categorized in three; first a full acceptance of guilt; second a rejection of guilt by the defendant, and third, partial acceptance of guilt by the defendant. This latter category is often characterized by mixed pleas. It can be seen from Table 9.5 that on an adjusted frequency, 67.7% of the defendants accept guilt fully, 20% reject guilt and the remaining 12.3% partially accept guilt for all or some of the offences for which they have been charged. Looked at in another way, nearly one-third (32.3%) of the defendants either fully or partially reject guilt.

TABLE 9.5

ACCEPTANCE OF GUILT

ACCEPTANCE	ABSOLUTE FREQ.	RELATIVE FREQ. %	ADJUSTED FREQ. %
FULL	88	59.9	67.7
PARTIAL	16	10.9	12.3
NONE	26	17.7	20.0
NO DATA	17*	11.6	Missing
TOTAL	147	100.0	100.0

VALID CASES 130 MISSING CASES 17

* Includes defendants who did not enter a plea and those for whom no data on confessions are available.

There was a strong relationship between the type of case and acceptance of guilt. Only four (20%) defendants in the contested sample fully accepted guilt. These four defendants, in fact, changed their plea from not guilty to guilty at their hearing. Of the remaining 80%, guilt was fully rejected by 65% and partially accepted by 15% of the defendants. In the general sample, on the other hand, 77.8% fully accepted guilt. Twelve defendants fully rejected guilt and twelve partially accepted guilt (Table 9.6).

TABLE 9.6

ACCEPTANCE OF GUILT BY CASE TYPE

	COUNT / ROW PCT / COL PCT / TOT PCT	CASE TYPE: GENERAL	CASE TYPE: DEFENDED	ROW TOTAL
ACCEPTANCE OF GUILT	FULL	84 95.5 77.8 65.6	4 4.5 20.0 3.1	88 68.8
	NONE	12 48.0 11.1 9.4	13 52.0 65.0 10.2	25 19.5
	PARTIAL	12 80.0 11.1 9.4	3 20.0 15.0 2.3	15
	COLUMN TOTAL	108 84.4	20 15.6	128 100.0

RAW CHI SQUARE = 33.50238 WITH 2 DEGREES OF FREEDOM, SIGNIFICANCE = .000

The acceptance of guilt varied significantly with the ethnicity and age of the defendant. Aborigines more frequently accepted guilt than non-Aborigines (x^2 = 9.15844, df = 2, Significance = .0103). Younger defendants (13-15 years) were also more likely to accept than were older defendants (16-18).

(Chi-squared = 6.97319, with 2 degrees of freedom). Significance = .0306). Similar relationships were found between confessing to the police and ethnicity and age. Both of the above categories of defendants were more inclined than others to confess fully to the offence(s). (See Chapter 4.) Sex and 'work status' on the other hand are not significantly related to the acceptance of guilt. There was however a trend towards the rejection of guilt by unemployed youths and again this reflects the pattern we have seen previously in confessing. Acceptance of guilt was also significantly affected by the total number of appearances the defendants have had in court. Those with 1-4 appearances, (this is the middle range number of appearances) tended to reject guilt either fully or partially, whereas first offenders and those with a high number of appearances seem to accept guilt. Again, as with total number of appearances, both first offenders and those who were 'under control' tended to accept guilt more readily than those with intermediate status. Both these results however may reflect a relationship with the type of offence the person had been charged with. There were no significant relationships between the defendants' type of house, class, family status, nor place of residence (Perth/Kalgoorlie) and the acceptance of guilt.

Though the relationship between the type of offence and acceptance of guilt was not statistically significant there was a trend towards a rejection of guilt by those charged with offences against 'good order' and person, while those charged with offences against property tended to accept guilt. Nearly half (46.4%) of juveniles charged with offences against 'good order' and person rejected guilt either fully or in part compared with only 29% of those charged with property offence. A similar relationship was found between confessing and type of offence. It was shown above (Chapter 4) that this results from the interactive nature of the offence. The lack of a statistical relationship here may be a result of the imprecise nature of the measurement of the acceptance of guilt used in the study. There was a strong trend for those who assessed their offence as being serious

to reject guilt. Thus, as shown in Table 9.7, 35 (62.5%) of those assessing their offence as serious accepted guilt compared to 37.5% who rejected guilt. On the other hand, of those who assessed their offence as being not serious, 84% accepted guilt and 15% rejected guilt.

TABLE 9.7

RESPONDENTS' ASSESSMENT OF OFFENCE SERIOUSNESS

	COUNT / ROW PCT / COL PCT / TOT PCT	SERIOUSNESS: SERIOUS	NOT SERIOUS	ROW TOTAL
ACCEPTANCE OF GUILT	YES	35	32	67
		52.2	47.8	71.3
		62.5	84.2	
		37.2	34.0	
	NO	21	6	27*
		77.8	22.2	28.7
		37.5	15.8	
		22.3	6.4	
	COLUMN TOTAL	56	38	94
		59.6	40.4	100.0

CORRECTED CHI SQUARE = 4.20546 WITH 1 DEGREE OF FREEDOM, SIGNIFICANCE = .0403

RAW CHI SQUARE = 5.21197 WITH 1 DEGREE OF FREEDOM, SIGNIFICANCE = .0224

NUMBER OF MISSING OBSERVATIONS = 16

* Those partially rejecting guilt categorized with those fully rejecting guilt.

To summarize, two-thirds of the defendants fully accepted guilt, while the other third either partially accepted it or fully rejected it. Acceptance of guilt was significantly related to the type of case (defended/non-contested), the ethnicity and

age of the defendants, as well as his record (number of appearances in court and status). There was also a trend for those charged with offences against 'good order' and 'person' to reject guilt and it was significantly related to the defendant's assessment of seriousness.

In both the general and defended samples there was a significant relationship between plea and the acceptance of guilt (however, the cell sizes are too small in the defended sample to permit reliable interpretation). Table 9.8 below shows the relationship between the acceptance of guilt and plea for the total interview sample. This shows clearly the strong relationship between the juveniles' acceptance and rejection of guilt and the plea they entered.

TABLE 9.8

PLEA BY ACCEPTANCE OF GUILT

	ACCEPTANCE OF GUILT*		
PLEA**	YES	NO	TOTAL
GUILTY	87 (98.9)	18 (45.0)	105 (82.0)
NOT GUILTY	1 (1.1)	22 (55.0)	23 (18.0)
TOTAL	88 (100.0)	40 (100.0)	128 (100.0)

Chi Square = 54.1286, with 1 degree of freedom, Significance = .0000

* Partial rejection of guilt combined with full rejection

** Mixed pleas combined with not guilty pleas.

Number of Missing Observations = 19.

The vast majority (98.9%) of those accepting guilt pleaded guilty. There was also a strong trend among those rejecting guilt to plead not guilty. There were, however, inconsistent pleaders - those pleading guilty while rejecting guilt, or not guilty while accepting it. These inconsistencies can partly be explained by the fact that a partial rejection of guilt was recorded as a full rejection and mixed pleas were recorded as not guilty pleas. However, it is noticeable that apart from one juvenile all of the inconsistent pleaders are pleading guilty. These juveniles

comprise 45% of those rejecting guilt wholly or in part and 17% of guilty pleaders. This trend is consistent with the rationales given by the youths for the decisions about plea. These data also lend support to the interpretation of the rationality reported above. That is, that there is a strong relationship between the acceptance of guilt and plea and that there are constraints on those rejecting guilt which makes pleading not guilty difficult for defendants to carry through.

Summary and Discussion

In this chapter the defendants' anticipated and actual pleas were examined and changes between anticipated and actual behaviour discussed. Some of the constraining and determining factors influencing the juveniles' decision-making in regard to plea and the rationales they used to account for their decisions were also discussed.

In the general sample, 88.5% of the youths had anticipated that they would plead guilty, 6.2% not guilty and the remainder mixed pleas or did not enter a plea. In the defended sample, on the other hand, 32% reported that they had planned to plead guilty, 64% not guilty and 4% guilty to some and not guilty to other charges. The actual pleas entered were roughly proportional to what the defendants had anticipated. (Defended sample: guilty, 23.8%; not guilty, 71.4%; no plea, 4.8%. General sample: 85.5% guilty; 6.0% not guilty and other 8.5%). There was considerable (28.7%) change in the defended sample between anticipated and actual plea. This change occurred in both directions (from anticipated not guilty to guilty plea and vice versa). Those changes were the result of a range of factors such as - legal or unofficial advice, the reassessment of the value of a particular plea, the strategic use of plea to obtain a remand and so forth. In the general sample, 10.8% of the youths reported that they changed their anticipated plea. The major reason in these cases, however, was that pleas were not taken and the cases remanded. Some change, however, occurred because of in-court negotiations with the magistrate and with legal advice.

The proportion of respondents in the not guilty category was too small to allow for an examination of plea in terms of the defendants' backgrounds (sex, age, ethnicity, etc.) Expected plea and plea were, however controlled for by the defendants' assessments of offence seriousness and the assessments they imputed to their parents, the court, police and D.C.W. No significant trends were found, however. Plea was also controlled by the making of confessions and statements to the police. There was a significant relationship between confessions and plea for the total sample and this remained significant when controlled for by case type (though the cell sizes were small). While there was a significant relationship between statements and plea, this ceased to be significant when controlled for by case type. It was suggested that this reflected the fact that there was a range of situations in which the police did not take statements.

Some of the contingencies influencing plea decision-making were also examined. It was suggested that the acceptance or rejection of guilt was a major determining factor in decisions about plea. This was evident in defendants' rationales about plea and confessions. To test this a measurement was developed of the juveniles' acceptance of guilt. These categories were distinguished (a) full acceptance (67.7%); (b) partial acceptance (12.3%) and (c) rejection of guilt (20.0%). A sizeable proportion (32.3%) of defendants either fully or partially rejected guilt for the offence(s) they were charged with. The acceptance of guilt was strongly associated with plea. There were, however, a number of inconsistent pleaders. That is, defendants who pleaded contrary to how they themselves saw their guilt. With one exception, all were pleading guilty despite maintaining their total or partial innocence.

Pleading was also influenced by a number of constraining factors. The principle factor here was the desire to 'get it over with'. It was suggested that not only was this a principle underlying the defendants' orientation to court, but that it was also a

lever used by others (e.g. friends, family and police) to persuade the defendant to plead guilty. Other constraining factors included:

(a) parental advice and coercion (which may operate against the principle of getting it over with);

(b) legal advice;

(c) assessing the probabilities of being acquitted in a situation where it is widely believed (with considerable statistical support) that 'you can't win';

(d) weighing the cost of time, money, reputation and good-will, against the anticipated disposition one will receive when one pleads guilty;

(e) evaluating the available options opened as a result of one's interrogation by the police with the resultant confessions and statements.

The defendant may also face problems entering the plea he wishes in court because of decisions by the magistrate. It was shown that two issues were observed by researchers and reported by defendants in this study. The first was negotiative pleas. This is, where the magistrate either rejects the defendants plea of guilty or where he cuts the defendants' arguments short about details of the charge and imposes a plea of guilty. Non-standard pleas were also examined, in these cases the defendant is not required to enter a plea in the usual fashion and is asked if he 'did it'. This happens when it is assumed that the defendant will not be able to understand the usual form of pleading.

Four main rationales were given by the defendants for pleading. These were:

(a) the acceptance of guilt;
(b) incrimination,
(c) saving trouble, and
(d) advice.

The acceptance or denial of guilt, this being of greater importance in the case of those pleading not guilty. These rationales were basically the same as those offered by the defendants for confessing or not confessing to the offence(s) to the police. For quite a few defendants the end was a foregone conclusion from the moment of their apprehension.

The pattern of pleading found in this study was similar to those reported in both juvenile and adult studies. The majority of defendants plead guilty. (Bottoms and McClean, 1976; Mileski, 1971; Dell, 1971; Priestley et. al, 1977; Anderson, 1978; Hapgood, 1979). While many studies refer to the generally high percentage of guilty pleas and allude to some of the issues influencing plea (Mileski, 1971:534, footnote 6: "What is work, time, and money to the court is also work, time and money for the defendant") few studies have examined the defendants' reasoning to plea. This is particularly so in regard to juvenile defendants. The research that has been conducted has tended to focus on formal plea bargaining situations (Baldwin and McConville, 1977; Blumberg, 1969; Casper, 1972) and not on the more typical situation of unrepresented defendants making decisions in relation to plea.

Bottoms and McClean (1976) questioned their respondents on the reasons for their decisions to plead in a particular way. Of those who pleaded guilty, 41% said that it was because they were guilty. Fifty-eight per cent of the respondents indicated that they were incriminated in some way (confessed 11%, caught red-handed, 22%; the police had a good case, 25%). The remainder gave the following reasons - 10% said that they 'wanted to get

it over quietly without fuss'; 7% cited lawyers advice and 5% thought that they would have received a lighter sentence. They also found that the majority of those pleading not guilty rejected guilt. They noted (1976:130):

> Why did you plead not guilty?, almost comes into the category of silly questions - but not quite. Almost all replied, as expected, that they had not committed the offence, either not having done anything or not in a criminal way, or that there were excusing circumstances. Only three of the 83 defendants interviewed gave other answers; these were obviously 'strategic' not guilty pleas in which the defendant regarded himself as guilty but was looking for a possible loophole.

The rejection of guilt was therefore the dominant rationale for not guilty pleas among defendants in the Bottoms and McClean study as it was with the juveniles in this study. The acceptance of guilt was also the major single rationale in both studies for a guilty plea (52.4% of defendants in this study and 41% in the Bottoms and McClean study). Hapgood, (1979) found that 61.9% of his respondents accepted guilt, though the percentage was somewhat lower (57.5%) when only indictable offences were considered. This is very equivalent to the 68.8% fully accepting guilt in this study. Some of Hapgood's findings in regard to the relationships between the acceptance of guilt and background variables were also similar to what was found in this study. For example, in his sample younger juveniles were more inclined than older juveniles to accept guilt. Those charged with assault or wilful damage offences were less likely than those charged with other offences to accept guilt. A similar trend was found here in the case of assault and 'good order' charges. However his findings in regard to the relationship between offence seriousness and the acceptance of guilt were the reverse of what was found in this study. In his study, those on more serious charges were most likely to accept guilt. The differences between

the findings may be a result of the different measures of offence seriousness used. Hapgood was concerned only with the value of property offences as a measure of seriousness, while the defendants' own assessments were used in this study.

What is also of interest in relation to the acceptance of guilt, though this was not examined in this study, is the acceptance of responsibility for their actions by the juveniles. That is, they do not blame others for their actions. Hapgood found that 78% of his sample fully accept responsibility. Baum and Wheller (1968) reported that 83% of the juveniles in their sample also fully accepted responsibility for their actions.

It was suggested that some of the defendants were inconsistent pleaders. That is, defendants who plead contrary to their own acceptance of guilt. This was evident in both the juveniles rationales for plea and the relationship between acceptance of guilt and plea. In all but one case, the defendants either fully or partially rejected guilt and pleaded guilty. One of the problems defendants face in terms of accepting guilt is that they are frequently unaware of the details of what they have been charged with until they get to court. While they may broadly accept guilt for the offence, they may not accept all of the accusations contained in the police facts which they only hear after they have pleaded. On rarer occasions the defendants did not know what they had been charged with until the charge was read in court.

These findings are generally consistent with findings of other studies. Inconsistent pleaders generally plead guilty, few strategically use not guilty pleas (Bottoms and McClean, 1976; Dell, 1971; Baldwin and McConville, 1977). It was suggested that this situation has its roots in the constraints defendants experience in pleading not guilty. The principle of 'getting it over with' is fundamental. There is also the general belief that 'you can't win', as well as problems with time, money, reputation and good will. It is extremely difficult for a defendant to plead

not guilty. The only strategic use of not guilty pleas in this study were those used to obtain a remand.

The types of court processes described by Ute, (1974), Brickey and Miller (1975) and Mileski (1971) to obtain a guilty plea were not found in this study. Nevertheless various interactional patterns in court obviously influenced the direction and nature of defendants' pleas. Pleas, therefore cannot be taken as unproblematic, simple affairs in court. All pleas are potentially negotiative in nature.

Chapter 10. STANDING UP THERE AND PLEADING: DEFENDANTS' ACCOUNTS OF COURTROOM INTERACTION

"The Boys' part in the drama is usually a small one; often it is a non-speaking part, seldom is it eloquent." So noted Parker (1976:218) about the participation in court of a group of working class youths he was studying. The same observation could be made of the majority of juveniles in this study. Moreover, as the title of this Chapter indicates they typically portrayed themselves as being passive in court. They were frequently overawed by the experience and suffer from 'stage fright' (Lyman and Scott, 1970) and were mystified by the proceedings. Although this is so, it is not fruitful to over-emphasise the position of the juvenile defendant as that of a 'dummy player' (Carlen, 1976). To do so may prevent an exploration of the role defendants may play in the court and related proceedings, thus promoting a view of defendants as uninteresting and unimportant to the outcome of the case.

The focus of this Chapter is on the youths' accounts of the court proceedings. However, as a court case involves a complex pattern of interaction between the various participants, it is beyond the scope of this Chapter to describe and analyse in detail the interactions of all the participants. The structure of a typical case is described first. This is followed by a discussion of the youths' descriptions of the magistrates' actions during the case. As this discussion presents a static rather than a dynamic or interactional view of court proceedings, the defendants' view of magistrate's involvement in the case is presented as a catalogue of activities. This is followed by an examination of their accounts of their own participation and feelings while in court. The Chapter is completed with a discussion of their views on the meaning and

consequences of various dispositions and the reasons they thought the court handed down these dispositions.

Structure of a typical case

As Emerson (1969) and others have suggested, a court case essentially involves the determination of the moral character of the person charged with an offence. The question then is not just what has this person done and is he guilty, but what sort of person is he? This is an interactive process examining the interrelationship between the offence and its typicalness for the youth, the motives of the youth, his background and present circumstances and his possible future. These phenomena are not given but are constructed through the presentation of oral and documentary evidence by various parties involved in the case.

The participants are engaged in what has been referred to as an 'information game' (Carlen, 1975). That is, the participants seek to conceal and uncover certain kinds of knowledge. The knowledge at issue here is about the character of the defendant and his actions. This process takes place within various types of 'awareness contexts' (Glaser and Strauss, 1964). Defendants generally have limited understanding of court processes, the roles of various participants and their routines of action and this is especially so for the novice defendant (see Chapters 6 and 11). Defendants' contacts with the court are characteristically fleeting relationships (Davis, 1959). Essentially, he and his parents have to learn the rules of the 'information game' as they go. Time is limited moreover, the average length of non-contested cases was 10.3 minutes. 'Court regulars' (e.g. magistrates, prosecutors) have not only more information about the defendant and his actions, but also have well tried routines for uncovering information and interpreting the significance of the information obtained about the defendant's moral character. Thus, prosecutors and welfare

officers are in positions of power and influence in comparison with the defendant and his parents or other lay sponsors. Only a solicitor (or an unusually competent parent or juvenile) can 'play the game' in the same manner as the prosecution or welfare staff (Williamson, 1980; Carlen, 1975). Juveniles and their parents are usually hampered not only by lack of knowledge but also by 'stage fright'. Lyman and Scott (1970) suggest that people are likely to experience 'stage fright' in social situations where their identity or moral character is in question. The court is clearly one such situation.[1]

Contested and non-contested cases are very different in their structure and process. When the defendant is not contesting his guilt, the facts of the case are presented by the prosecution and usually (though not always) unquestioned or debated by the defendant. In a defended case the actuality of what happened and whether the defendant is guilty are under consideration and both sides have theoretically the opportunity of questioning the evidence and the various parties involved.

Non-contested Case

A typical non-contested case starts with the identification of the defendant and the reading of the charge. The defendant is then asked to plead by the magistrate. If a plea of guilty is entered the prosecution then reads the 'facts' of the case which includes; an account of the offence and the defendant's participation in it and frequently, also an account of his apprehension, interrogation and confession, all of which may allude to his moral character. The 'facts' can also include strategies to prevent the development of mitigation by the defendant. For example, in cases where drink was a factor a typical strategy was to suggest that: "While the defendant had been drinking he was not deemed to be drunk". Or they may emphasise the seriousness of the offence or the defendant's association with older youths or adults. The latter may be

used to indicate that the offence was not typically juvenile in nature.

After the facts are read the magistrate may then ask the defendant for a statement, sometimes within the form of 'what have you to say for yourself?' Alternatively he/she may ask the defendant to elaborate on some of the details of the offence or ask for an explanation of his motives (i.e. 'why did you do it?'). These processes may also be presented as part of a lecture or homily by the magistrate to the defendant. The magistrate may also consult the defendants' record and/or an informative report from the Departmental officers. At times he may request a verbal statement from the Community Welfare court officer or the officer may volunteer a statement. (In Kalgoorlie the court officer usually presents a verbal report to the magistrate about the defendant and a written report is submitted and filed at a later date.) The magistrate may at this stage also question the defendant and his or her parents. He may ask the parents about the defendant's home background and his general behaviour. If the defendant has a lawyer, the magistrate may not directly question the defendant, but ask questions through his lawyer. However, this varies and the magistrate, depending on his orientation or particular issues in the case, may sometimes by-pass the lawyer and go straight to the defendant or his parents for specific information.

The magistrate may then give the defendant a homily or lecture either before or after he sentences him/her. The homily usually takes place when the defendant is being dismissed or receiving some non-severe sentence. As King (1978) has shown this is used primarily to warn the defendant about subsequent actions and to let him know that while he may be getting off lightly on this occasion, the possibilities of more severe action are always imminent if he reoffends. In many cases the magistrate ends the

case with what we have called a 'deterrent tactic'. That is, a direct warning to the defendant that if he or she appears in court again the court will not be as lenient. All of this is to heighten in the defendant's mind the seriousness of the situation and the possibility of severe action as a result of his offences. It adds to the drama of the situation. (See King, 1978; Carlen, 1976; Emerson, 1969 and Garfinkel, 1972 for a discussion).

Contested Cases

The fundamental difference between defended and non-defended cases is that the guilt of the defendant has to be established and this frequently involves the establishment of what happened. The 'facts' of the case then are in question. The prosecution presents their witnesses' evidence in chief and this evidence is open to cross-examination by the defence. The defence then present their evidence. However, once the guilt of the defendant has been established (as it usually is) then the procedures are similar to what has been described for non-contested cases. That is, the magistrate may ask for pleas in mitigation from the defence counsel, he may question the defendant and his family, he frequently gives the defendant some sort of lecture about his behaviour.

Defendants' Descriptions of the Magistrates' Actions

The youths were asked to describe what the magistrate and the other major participants did during their case. Whereas most could describe in some detail the interaction between the magistrate and themselves, they did not generally provide any detailed information about the actions of the prosecutor, member, and court officer. This resulted from the situation where the attention of the youths during the case was on the magistrate, rather than on the other participants, and the inability of many defendants to identify the D.C.W. court officer and their general perceptions of prosecutors and welfare staff playing a neutral role in court (see below Chapters 11 and 12).

Table 10.1 below summarises the defendants' descriptions of the magistrates' actions. It can be seen that in the

general sample the key action described was the fact that the magistrate had sentenced the defendant. Here 34.8% of the respondents (percentage of cases) mentioned the fact of sentencing. This was followed by the mention of lectures to them by the magistrate by 33% of the youths and the magistrates' request for a plea which was mentioned by 30.4% of defendants. The attempts by the magistrate to obtain some indication of the defendant's motivation for committing the offence and the magistrate's discussions about the case with welfare and prosecution officials was also referred to by 19.1% of the defendants respectively. Also referred to, in rank order were; the reading of the charges, the conferring with the member (usually in regard to the sentence), the examination of the records and the magistrate's request from the defendant for details about the offence and his part in it and the magistrate's request for a statement from the defendant ('what have you got to say for yourself?')

A number of juveniles (4.4%) also made separate mention of being 'recommitted' by the magistrate. Committal refers to the taking of a child into the care of the Department for Community Welfare. Prior to the Child Welfare Act being amended in 1977 juveniles were committed to the care of the Department for offending. Since then, however, a distinction has been drawn between offenders and non-offenders. Offenders are now 'placed under the control of the Department' (PUC) rather than committed to its care. This mention by youths of recommittal is worth referring to as it indicates that some youths at least do not understand the new procedures. However, if such references to recommittal are considered as references to the sentencing of the youth, it further highlights the importance of the sentence in the youths' minds. Other issues such as the fact that the magistrate was in control of the hearing ('he ran things', 'he was the one in charge') were also mentioned by youths. As was the issue that, as they saw it, the magistrate had given them 'another chance.'

TABLE 10.1

ACTIONS OF MAGISTRATE AT HEARING*

MAGISTRATES ACTIONS	GENERAL SAMPLE			DEFENDED SAMPLE			ALL CASES			MAGISTRATES ACTIONS
	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	
REQUESTED PLEA	35	12,2	30.4	4	9.5	20.0	39	11.9	28.9	REQUESTED PLEA
EXAMINED RECORD	16	5.6	13.9	4	9.5	20.0	20	6.1	14.8	EXAMINED RECORD
READ CHARGES	19	6.6	16.5	1	2.4	5.0	20	6.1	14.8	READ CHARGES
REQUESTED BIOGRAPH-ICAL INFORMATION	5	1.7	4.3	0	0.0	0.0	5	1.5	8.7	REQUESTED BIOGRAPH-ICAL INFORMATION
REQUESTED A STATEMENT	15	5.2	13.0	0	0.0	0.0	15	4.6	11.1	REQUESTED A STATEMENT
REQUESTED DETAILS OF OFFENCE(S)	16	5.6	13.9	2	4.8	10.0	18	5.5	13.3	REQUESTED DETAILS OF OFFENCE(S)
ENQUIRED RE MOTIVES	22	7.7	19.1	1	2.4	5.0	23	7.0	17.0	ENQUIRED RE MOTIVES
LECTURED ME	38	13.2	33.0	0	0.0	0.0	38	11.6	28.1	LECTURED ME
SENTENCED ME	40	13.9	34.8	3	7.1	15.0	43	13.1	31.9	SENTENCED ME
RECOMMITTED ME	6	2.1	5.2	0	0.0	0.0	6	1.8	4.4	RECOMMITTED ME
GAVE ME A CHANCE	3	1.0	2.6	0	0.0	0.0	3	.9	2.2	GAVE ME A CHANCE
CONFERRED WITH MEMBER	18	6.3	15.7	3	7.1	15.0	21	6.4	15.6	CONFERRED WITH MEMBER
CONFERRED WITH OTHER OFFICIAL	22	7.7	19.1	3	7.1	15.0	25	7.6	18.5	CONFERRED WITH OTHER OFFICIAL
CONDUCTED THE HEARING	2	.7	1.7	10	23.8	50.0	12	3.6	8.9	CONDUCTED THE HEARING
DID OTHER THINGS	30	10.5	26.1	11	26.2	55.0	41	12.5	30.4	DID OTHER THINGS
TOTAL RESPONSES	287	100.0	249.6	42	100.0	210.0	329	100.0	248.6	

* SPSS multi-response programme

NUMBER OF MISSING CASES

GENERAL	=	5
DEFENDED	=	7
ALL	=	12

NUMBER OF VALID CASES

GENERAL	=	115
DEFENDED	=	20
ALL	=	135

These responses were examined in relation to the defendants' characteristics (sex, age, work status, ethnicity), class, type of residence and so forth. There was little overall variation between the characteristics of the defendant or his background and the types of responses given. However, some variations were found. Females, for example, were more frequently referred to being lectured to by the magistrate than males. On the other hand, they were less likely to refer to being sentenced or being asked for their motives. This reflects both differences between male and female treatment in the court and the fact that girls tended to have records which were not as bad as boys. Those with bad records reported that they were lectured less frequently and more likely to be sentenced quickly and removed from court than those with good records. Their cases, however, were frequently lengthened by the number of charges that had to be read. Aboriginal defendants were also less likely to refer to being asked to plead and more likely to report being sentenced and to having the records read than non-Aboriginal defendants. This partly reflects their use of legal representatives. In these sorts of situations where the defendant had a legal representative, the magistrate frequently requested the plea through the legal representative and not directly from the defendant.

Defended Cases

The defendants in the defended sample emphasised the magistrate's running of the hearing and his control over other participants as well as the interactions of different participants to him or her. They also referred to the pleading process (20%), examination of their records (20%) followed by the magistrate's conferring with them and other officials, sentencing (15%) and the seeking of details about the offence (10%) and the defendant's part in it.

Defendant's Actions

The defendants were asked "What did you do while you were in court?' Three basic types of responses were obtained from the defendants and these varied between general and defended cases. Table 10.2 lists these. In general cases the defendants indicated that they either 'stood there and pleaded', 'stood there' or took a more active part in the proceedings. The 'other' categories includes such things as giving explanations, arguing with the magistrate, questioning the charge, asking for a second chance, and so on. As can be seen from Table 10.2, more than a third (36.7%) of the defendants indicated that they merely 'stood there', another 36.7% indicated that they did 'other' things in court as well as standing there and pleading, and 26.6% indicated that they merely 'stood up there and pleaded'. What is evident from nearly two-thirds (63.3%) of these responses is the defendants' indication of their passivity in court.

TABLE 10.2

DEFENDANTS' ACCOUNTS OF THEIR ACTIONS IN COURT

ACTION	SAMPLE								
	GENERAL			DEFENDED			TOTAL		
	ABSOLUTE FREQ.	RELAT. FREQ. %	ADJUST FREQ. %	ABSOLUTE FREQ.	RELAT. FREQ. %	ADJUST. FREQ. %		%	%
Stood there	40	33.3	36.7	3	11.1	16.7	43	29.3	33.9
Stood there and Pleaded	29	24.2	26.6	3	11.1	16.7	32	21.8	25.2
'Other'	40	33.3	36.7	12	44.4	66.7	52	35.4	40.9
No Data	11	9.2	-	9	33.3	-	20	13.6	-
Total	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

Defendants' accounts of their actions in court in the general sample did not vary significantly with their characteristics or backgrounds. They were, however, significant differences between the general and defended samples. In the defended sample two-thirds of the defendants referred to their active participation in court and this usually referred to such factors as their giving of evidence, consultations with their defence counsels or in a number of cases conducting their own defence. Six youths (33.4%) referred to both just 'standing there' or 'standing there and pleading'. These were situations where the case was not proceeded with and the defendant was merely required to enter a plea, or in cases where the defendant changed his plea to guilty and the case was proceeded with like a non-contested case.

The passivity of the defendants was emphasised by responses such as the following:

Case 222 - "I stood there. I didn't have anything to say."

Case 196 - "I just stood there."

Case 275 - "I just told them of the guilty plea, that's all."

This sort of response also highlighted the defendants' situation in relation to the other participants in the court. The defendant generally was the only one standing. In non-contested cases the defendant usually stood for all of the proceedings, unless they were extremely long, in which case the magistrate might permit the youth to sit. (In contrast, they were usually seated for most of a contested hearing.) The fact that they were standing highlighted his status as the wrong-doer. They are socially removed from the others in the court. Standing was also a symbol of their unequal status. It also facilitates the focusing of attention on them. Defendants are frequently subjected to unrelenting stares by the magistrate and

others while in court. A number of youths in fact, categorised the role of the lady member such as:

* "She's just there to look you up and down and to make you feel cheap."

The staring of other participants was also frequently referred to. Such behaviour highlights, in the minds of the youths, their powerlessness in the proceedings. And, this reinforces their passivity.

Defence Strategies

However, a number of defendants indicated that they did more than just stand there and plead. Youths indicated that they attempt to either give explanations to their behaviour, offer excuses, justifications, or "bluff their way through". These were attempts to obtain leniency from the court by giving a range of responses which they hoped would help. Some indicated that they participated in the proceedings by questioning the police evidence, indicating that what the police have said is not altogether true or questioning details of the charge (see Chapter 9). Strategic interaction can occur both verbally and non-verbally. Defendants may present themselves through their demeanour so as to emphasize their remorsefulness. or their proper respect in front of the court. In both these cases they may have received coaching from others; parents, welfare officers and legal counsel, and sometimes from friends. For example, in regard to the proper demeanour in front of the court the following youth reported:

* Case 94 - "The welfare officer told me not to smile, to look remorseful, so I sat there [sic] big brown eyes."

Other strategies can also be followed:

* Case 134 - "I tried to look as girlish and terrified as possible /probe: why?/ to get the court's sympathy. I got some advice from the pros /professionals/. /What do you mean by that?/ From my friends who had been to court before."

Here the defendant indicated that her approach, like the previous youth, was to present a certain image of innocence and remorse to the court so as to gain the court's sympathy and leniency. Generally, presenting the right demeanour to the court was important. Among other things, it gives the bench the impression that the youth is remorseful.

As well as interactional styles various verbal strategies were employed by the youths in attempts to influence the course of the case. Emerson (1969), following the work of Lyman and Scott (1972) suggests that there are a number of defence strategies which defendants (and their sponsors) can adopt.

Here, however, it is important to note that the participation of most youths in the proceedings was reactive rather than proactive. By reactive it is meant that the youths react to questions from the bench rather than contribute to the proceedings on their own volition. Typically they were reacting to questions about their motivation or their participation in the offence, or to demands for statements ('what have you to say for yourself?') or for some details. Many youths successfully minimise participation by responding with replies such as 'Nothing (to say) sir' or 'No'.

The strategies identified by Emerson are:

1. claims of innocence;

2. justifications
   (a) principled justifications;
   (b) situational justifications;
3. excuses.

All of these strategies were observed in use in this study. However, other strategies were also observed. These were discussed by Emerson but not integrated into his schema. These are:

1. promise of remedial action;
2. 'apologia';
3. naturalistic or delinquent accounts.

Claims of innocence usually result in not guilty pleas. If the youth wished to plead guilty in order to 'get it over with' however, he typically would not claim innocence. Principled justifications refers to situations where the accused 'depicts the act as an attempt to realise some absolute or moral value that has precedence over the value violated by the act' (Emerson, 1969:149). There was only one case where this type of defence strategy was employed. A 17 year old youth had been involved in a protest with a group of unemployed people at a Commonwealth Employment Office. He was charged with being 'on a premises without lawful excuse'. He said that he had pleaded not guilty because of the 'political implications', 'it was the principle of the thing, others have to be informed of their rights'. 'though we contravened the written law, this is not what that law was meant to cover.'[2]

Situational justifications involve an attempt by the defendant to 'reverse or dilute the imputation of wrongdoing by showing that the act was proper, or at least permissable, given the contingencies of this actual situation' (Emerson, 1969:150, italics original). This type of justification was frequent. Typically it was used by youths charged

with offences against persons and 'good order'. Frequently these were of the 'he hit me first' type.

Excuses, according to Emerson (1969:153) are attempts to deny responsibility for the act in such a way that it mitigates the seriousness of the wrongdoing. The types of excuses observed were legion. The following examples suffice to illustrate these:

* Case 74
'We were walking home to Midland from Belmont. We were very tired. We saw the car and decided to take it to get home. We were going to take it back later.'

* Case 90 (Youth 16, charged with B. E. & S.)
"I didn't want to do it. It's just that the door was open."

* Case 124 (Youth charged with S. & R.)
"I just got a steady job. I had a few beers."

* Case 154 (Youth 17, charged with wilful damage)
"It was a mistake. I lost my temper."

Promises, to officials and the court, by parents to see that steps are taken to ensure the youth will not reoffend ('remedial action') have been observed by Cicourel (1976), Emerson (1969) and in this study. However, promises to take remedial action by the youths themselves were also observed:

* Case 41 (Youth charged with B. E. & S., had already been in Riverbank)
'If you give me a chance, I'll try to keep out of trouble. I want to go to school. I'm on unemployment benefits but I can get a job. ... If you give me a fine I won't get into trouble again.'

Case 228 (Youth 17, charged with wilful damage of property at home, mother said that she won't have him back home unless the court gives him more than probation this time - 'he'll laugh at probation.')

'I have arranged a job as a labourer with a side show. I will be travelling around the country with the people who own the show. I'll be out of trouble then.'

'Apologia' refers to situations where the accused 'defensively brings him(self) into appropriate alignment with the basic values of his society' (Ditton, 1977). The youth admits his guilt and affirms the correctness of the values which he has broken. He may try to reduce his responsibility with references to stupidity, mistakes or the bad influences of others:

Case 21
"There is nothing that I can say. I'm guilty."

* Case 12 (Girl 17, first offender charged with S. & R. (shoplifting), friend and co-offender had been in court about ten minutes before her)

Magistrate: 'What's your explanation for this offence?'

Defendant: 'I don't have one, that would be acceptable to the court. But the girls at school told me how easy it was to shoplift and get away with it. But they didn't tell me about getting caught.'

* Case 31 (Youth 16, charged with S. & R.)
"It was stupid, I'm sorry."

Naturalistic or delinquent explanations are not really defenses as such. The youth admits to the offence and provides an explanation for the offence in which no attempt

is made to justify or excuse the offence in such a way as to reaffirm societal values. Explanations such as, 'I took the stuff because I wanted to sell it for the money'. fall into this category. This type of explanation is not as common as excuses, justifications and apologia.[3]

These strategies are derived from the 'grammar of motives' available in society. These are sets of statements (verbalizations) which provide reasons, justifications and explanations, for people's actions both for oneself and others. For example, a motive such as jealousy, may make a murder explainable.(For a discussion, see Taylor, 1979; Mills, 1971; Blum and McHugh, 1971 and Hartung, 1969). Youths learn this grammar in the course of everyday life and from cues picked from the court process, from friends and officials. The problem is learning the appropriate ones to use when they are called for by the magistrate's questions as to why the offence was committed:[4]

* Case 118 (Youth 16, charged with 6 counts of S. & R.)

Magistrate:	'Why did you commit these offences?'
Defendant:	'I was a bit stupid.'
Magistrate:	'It was more than stupid. Six cases of dishonesty can't be passed off as stupid. You stole other people's property. It's not only stupid, it's dishonest .....'
Defendant:	'I was bored, I had a few beers.'

On other occasions the magistrate may 'offer' the defendant an explanation for his actions. This was observed to have occurred particularly where drink was involved. In most instances, the youths passively accepted the explanation/ motive offered by the magistrate. Some youths indicated that they were aware that it's to their advantage to accept the magistrate's line:

* Case 182 (This defendant was charged with wilfully damaging a telephone box after breaking the window)

"She asked me why I had done it, and if I regretted doing it, which I did. She asked me what I had done to my hand. I said I had cut the tendon but I hadn't cut it right through. She said I would be suffering for a couple of months, which I wasn't."

In other situations, however, youths for various reasons did not agree with the magistrate's interpretations:

* Case 41 (Youth 17, charged with S. & R. of an empty keg and other items from a pub)

Magistrate: 'You were under the influence of alcohol at the time ...'

Defendant: 'I had a breathalyzer test /when stopped by police/ and I wasn't.'

Magistrate: 'It probably still affected your judgement' /examining the SER/ 'You're a good worker. ..... it was a silly thing to do ... you were probably showing off to the girls .... you're fined $10.'

Youths may also attempt to influence the court's outcome by presenting the magistrate with positive information about themselves rather than about offence per se. This information is designed to show that he, the defendant, has the characteristics of a 'good young citizen' rather than a 'tough' or 'real little crim'.[5] This information is essentially the same as that contained in lawyers' pleas of mitigation or welfare staff's (both verbal and written) 'pitches' in support of the youth. Thus the juvenile attempts to portray an image that he is active in work or school, rather than idle, (or if unemployed then actively seeking work); ambitious, with plans for his

future rather than hopeless; having good social relationships rather than being a renegade. As with statements of motive, or explanations about the offence or offending he may be coached by others as to the appropriate tactics. As one ex-bench clerk reported:

> "You frequently hear welfare officers telling kids to tell the magistrate that they are going for a job interview. A favourite one is that they are going for an apprenticeship interview."

Magistrates are, however, fully aware of these informational tactics:

* Magistrate: 'Are you working?'
  Defendant: 'No sir, but I am going for an apprenticeship interview this afternoon.'
  Magistrate: 'It's funny how apprenticeship interviews always come up on court day.'

Like the drunks described by Spradley (1970 and 1972) the youths have to decide (in the context of their lack of understanding of court process and appropriate tactics and their fear) whether it is more politic to remain passive or to provide the court with information:

* "I just stood there (probe: Did you say anything?) I didn't want to say anything. Even if I did I wouldn't know what to say."

Moreover, unlike lawyers, welfare staff and to a lesser extent parents, juveniles are to a large degree dependant upon being asked by the bench to supply information. Otherwise they may find themselves ruled out of time, out of place and out of order (Carlen, 1976). Some youths [6]

are aware of the appropriate tactics but are not given the opportunity to use them as the following respondent indicated:

> * Case 220 - "They didn't give me a change to say anything, but usually you tell them that you'll keep out of trouble in the future, and that you had just got a job or that you would be getting one. /Probe: Does that help?/ Yes, the magistrate usually believes you and gives you a chance. Wouldn't have helped this time though it would have helped last time if they had given me a chance to say something."

In the majority of cases the juveniles remain passive and rely on their parents, welfare officers and if represented, lawyers or field officers to present a 'pitch' for them. As has been demonstrated above (Chapter 8) however, the majority of youths were unrepresented. Many parents hesitated to participate even when called upon by the bench. Welfare officers have thus a crucial role in presenting the court with information about the youth. However, as noted above (Chapter 8) the welfare or after-care officer may vary his role between that of a sponsor and that of a denouncer of the youth.

Sponsors may attempt to develop an image of the youth's moral character as 'normal'. They attempt to show that the offence is 'out of character' and not part of a pattern and that the youth is not a little 'tough'. The offence is presented as not being atypical for juveniles and an attempt is made to mitigate the youth's part in it, through similar excuses, justifications and 'apologia' as used by the youths themselves. Lawyers and welfare officers develop repertoires of 'pleas in mitigation'. These are structured to suit the defendant, the offence, the bench,

other information provided (e.g., the prosecution case, welfare report) and the foreseeable outcomes of the case. They are constructed upon the information collected from the defendant prior to court. (See Chapter 7 for a discussion). Such factors as the following were emphasized:

'A good home background'
'Remedial action (e.g., getting a job)'
'Bad company or lead by older youths or adults'
'A monetary relapse into offending'

Parents tended not to be as articulate or eloquent as lawyers or welfare officers but nevertheless provided similar information.

* 'He's a good boy at home. We never have any trouble with him. We can't understand this, he has never done anything like this before.'

A minority (15%) of parents denounced their children (as in the case of the mother of the defendant in Case 228 above) and asked the court for a severe disposition. Frequently they requested that the court have the youth locked away. They invariably emphasized that the youth is 'uncontrollable' and they have exhausted all avenues of redirecting him.'

Defendants' Feelings in Court

Most defendants reported being scared or nervous in court. Scared both in relation to just 'standing up there' and in relation to what's going to happen to them. Table 10.3 shows this. The defendants were asked how they felt in court. Two defendants said they were not sure how they felt. Data was not obtained from five youths in the general sample. Sixty-nine (61.1%) defendants indicated that they were either scared or nervous or very scared or very nervous. In contrast, 38.9% who indicated that either they felt 'normal' or 'nothing' in court.

Table 10.3

Defendants Feelings in Court

	SAMPLE						
	GENERAL			DEFENDED			
	ABSOLUTE FREQ.	RELATIVE FREQ.	ADJUSTED FREQ.	ABSOLUTE FREQ.	RELATIVE FREQ.	ADJUSTED FREQ.	TOTAL
Normal	8	6.7	7.1	2	7.4	9.5	10
Scared/Nervous	19	15.8	16.8	4	14.8	19.0	23
V. Scared/Nervous	50	41.7	44.2	9	33.3	42.9	59
Nothing	8	6.7	7.1	0	0.0	0.0	8
Other	28	23.3	24.8	6	22.2	28.6	34
Not Sure	2	1.7	MISSING	1	3.7	MISSING	3
No Data	5	4.2	MISSING	5	18.5	MISSING	10
Total	120	100.0	100.0	27	100.0	100.0	147

Youths in the defended sample indicated the same sort of feelings. Thirteen (61.9%) said that they were scared or very scared and 8 (38.1%) indicated that they felt 'normal' or 'other'. There were no significant differences between case types. Those who indicated that they felt 'nothing' in court tended to be more cynical about the court proceedings than those who said that they were scared or even felt normal.

In the general sample the defendants' reported feelings were controlled for their background characteristics. (The variable was dichotomized scared/normal). There were no significant relationships between their reported feelings and sex, age, ethnicity, type of housing, class or place of residence. There was a marginally significant relationship between status and defendants' feelings. Those who had a P.U.C. status reported that they were scared less frequently than those of other statuses (Table 10.4). There was a similar trend with regard to the number of previous appearances the youths had but this was not significant (Chi square =

2.09932, with two degress of freedom. Significance = .3501). There was also a marginally significant relationship between family type and reported feelings. Youths from single parent families reported not being scared or nervous in court as frequently as those from two parent families. This relationship may reflect an interaction with status, youths from single parent families tending to have slightly higher statuses. On the other hand these youths may not feel as nervous because of some characteristic associated with children from single parent families. (e.g. such as being more independent or more familiar with the problems of speaking for themselves). Neither of the above relationships were very significant, however.

Table 10.4

Reported Feelings by Status

	COUNT / ROW PCT / COL PCT / TOT PCT	STATUS 1st OFFENDER	INTER-MEDIATE	P.U.C.	ROW TOTAL
DEFENDANTS FEELINGS	NORMAL	18 42.9 39.1 16.7	3 7.1 15.0 2.8	21 50.0 50.0 19.4	42 38.9
	SCARED/NERVOUS	28 42.4 60.9 25.9	17 25.8 85.0 15.7	21 31.8 50.0 19.4	66 61.1
	COLUMN TOTAL	46 42.6	20 18.5	42 38.9	108 100.0

RAW CHI SQUARE = 6.98554 WITH 2 DEGRESS OF FREEDOM. SIGNIFICANCE = .0304
NUMBER OF MISSING OBSERVATIONS = 12

Table 10.5

Reported Feelings by Family Type

	COUNT / ROW PCT / COL PCT / TOT PCT	FAMILY TYPE: SINGLE PARENT	FAMILY TYPE: TWO PARENT	ROW TOTAL
DEFENDANTS FEELINGS	NORMAL	18 50.0 54.5 19.6	18 50.0 30.5 19.6	36 39.1
	SCARED/NERVOUS	15 26.8 45.5 16.3	41 73.2 69.5 44.6	56 60.9
	COLUMN TOTAL	33 35.9	59 64.1	92 100.0

CORRECTED CHI SQUARE = 4.17404 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0411
NUMBER OF MISSING OBSERVATIONS = 21

There would seem to be two issues associated with emotional states while in court. One is the issue of familiarity with the court and of being overawed by one's very presence in court, the fact of 'standing up there', being looked at, being asked questions, being the object concerned. The other is the concern the defendants expressed in relation to what might happen to them - the outcome. (A third of the defendants reported the worst part about court was the sentence or waiting in anticipation for the sentence). These two issues interact. Obviously a defendant who has not had experience in court is probably more frightened by both the standing up in court and the anticipation of the outcome. Whereas those who are familiar with court

proceedings, while they may not be all that scared of having to go to court, are still frightened, in the majority of cases, about what's going to happen to them. This was aptly put by one of the defendants interviewed in the pilot study, when she said:

> "There isn't much to it really, I don't think. When I first heard of all these kids going to court, I thought wow, what a big thing this is, but it's really nothing. /Well, what do you mean, it's really nothing?/ It depends, it's important what they do to you, that they fix up what you've done, but standing in the courtroom listening to him I thought it would be a big thing but it's nothing /slight laugh/. It, ah, I thought it would be a hard job going to court but I found out it's really nothing."

Reasons for Dispositions and Meaning of Dispositions

The interview sought to elicit the juveniles' assessments of the outcome of the case. The defendants were asked to indicate what the outcome of the case was, what the outcome meant to them, and why they thought they had got this particular disposition. Defendants gave somewhat different titles to the dispositions than the official one (see Chapter 11). This was particularly so in cases where defendants were placed under the control of the Department. Table 10.6 below lists the consequences for various dispositions received by the 120 defendants in the general sample. Particular attention was paid to those receiving P.U.C.'s, probation, fines, community service orders and good behaviour bonds. Those who were remanded generally just indicated that they had at some stage returned to court and that the case was not completed. Dismissals tended to say that they had been 'let off' or 'given a second chance' and many made references to the untarnished nature of their records.

TABLE 10.6

CONSEQUENCES OF DISPOSITIONS AS SEEN BY THE DEFENDANTS

RESPONSE	PROBATION			P.U.C.			FINE			COMMUNITY SERVICE ORDER			GOOD BEHAVIOUR BOND			TOTAL		
	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES
DON'T KNOW YET	1	3.2	5.6	2	2.9	3.8	1	6.3	9.1	1	4.2	5.3	1	14.3	20.0	7	5.1	7.0
KEEP OUT OF TROUBLE	8	25.8	44.4	13	18.6	25.0	1	6.3	9.1	2	8.3	10.5	4	57.1	80.0	20	14.7	20.0
RECORD AFF-ECTED	1	3.2	5.6	4	5.7	7.7	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	4	2.9	4.0
DO TIME	0	0.0	0.0	6	8.6	11.5	2	12.5	18.2	0	0.0	0.0	0	0.0	0.0	11	8.1	11.0
DO WORK	1	3.2	5.6	1	1.4	1.9	0	0.0	0.0	9	37.5	47.4	0	0.0	0.0	11	8.1	11.0
PAY FINE	0	0.0	0.0	0	0.0	0.0	9	56.3	81.8	1	4.2	5.3	0	0.0	0.0	11	8.1	11.0
PAY REST-ITUTION	2	6.5	11.1	3	4.3	5.8	1	6.3	9.1	0	0.0	0.0	0	0.0	0.0	4	2.9	4.0
VISIT OFFICER	9	29.0	50.0	11	15.7	21.2	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	11	8.1	11.0
LOSE FREEDOM	3	9.7	16.7	3	4.3	5.8	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	4	2.9	4.0
LOSE LEISURE TIME	1	3.2	5.6	1	1.4	1.9	0	0.0	0.0	2	8.3	10.5	0	0.0	0.0	3	2.2	3.0
LOST JOB	1	3.2	5.6	3	4.3	5.8	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	3	2.2	3.0
HAPPY	0	0.0	0.0	3	4.3	5.8	0	0.0	0.0	3	12.5	15.8	0	0.0	0.0	7	5.1	7.0
OTHER	4	12.9	22.2	20	28.6	38.5	2	12.5	18.2	6	25.0	31.6	2	28.6	40.0	40	29.4	40.0
TOTAL RESPONSES	31	100.0	172.2	70	100.0	134.6	16	100.0	145.5	24	100.0	126.3	7	100.0	140.0	136	100.0	126.0

As can be seen from the table, the issue most frequently mentioned by the respondent was the fact that they now had to 'keep out of trouble'. This was referred to by 20 per cent of all the cases. In particular this was mentioned by those who were placed on probation (8 defendants) or placed under control of the Department (13 defendants), and 4 of the 5 defendants receiving bonds. However, it will also be noticed that 7 of the defendents indicated that they 'didn't know as yet'. That is, at the time of interview they didn't know what the actual disposition meant. This was relatively evenly distributed across the various categories of dispositions. Four defendants mentioned the fact that their disposition now affected their record, all these youths had been placed under control. Some of the defendants referred to the fact that they now had to 'do time' in an institution. Interestingly this was mentioned by 6 defendants receiving P.U.C. dispositions and 2 of those receiving fines. In the latter case, those who received fines had decided not to pay or could not pay the fine and felt they were going to 'do time' instead.

The need to work was referred to primarily by those receiving C.S.O's but also those receiving joint C.S.O. and other dispositions. Those receiving fines mainly indicated that they had to pay a fine and/or restitution. That visits to officers were required was mentioned by 11 of the defendants and again mainly those receiving P.U.C. dispositions. The loss of freedom and the loss of leisure were referred to by those on C.S.O.'s and those being placed under control and probation. A number of defendants also referred to the fact that they had lost their job or were likely to lose their job through their court appearance. Seven youths mentioned that what the sentence meant was that they were 'happy'. In these cases they were esssentially happy that they had not received some other disposition. This was mentioned by three of the defendants receiving P.U.C. dispositions but

who were not institutionalised and 3 receiving C.S.O. There was a reasonably strong relationship between the type of dispositions and what the defendants saw as their consequences. However, there was an interrelated effect across dispositions particularly between those issues of 'keeping out of trouble', visiting officers and the loss of freedom by leisure.

Defendants were also asked why they thought they received these dispositions (Table 10.7). It would seem from this table the main reason mentioned was the state of their records. Eighteen (22%) of the respondents indicated the reason they had received the disposition was because they had a 'good record.' The effects of parental support was mentioned in five cases. More importantly, defendants were aware that their disposition was dependent on the recommendation of a welfare officer (12 cases). Seven youths indicated that 'the offence was of a serious' nature and that this was why they received the disposition. Five defendants (6%) indicated to the court that they were prepared to take some remedial action to improve their behaviour and this they said affected the outcome. Four referred to the fact that they felt that the court, in fact, had 'no alternative' but to give them the disposition which they had received. Three youths mentioned the fact that their lawyer had helped them get the disposition which they thought was lenient.

A number of other defendants mentioned such things as the fact that they were able to convince the court through a lawyer or welfare officer that they were 'led by others' into offending. Two referred to the fact they had a job and this has helped them get the disposition they received. 'Good explanations' and good references were mentioned by two defendants respectively. As well as this, two defendants indicated that the magistrate had given them a chance and that this is why they had received

TABLE 10.7

FACTORS INFLUENCING THE COURTS DECISION

RESPONSE	PROBATION			P.U.C.			FINE			C.S.O.			GOOD BEHAVIOUR BOND			TOTAL		
	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES	COUNT	PCT OF RESP-ONSES	PCT OF CASES
BAD RECORD	2	13.3	16.7	12	19.7	27.3	0	0.0	0.0	2	8.0	14.3	0	0.0	0.0	16	13.6	19.5
GOOD RECORD	1	6.7	8.3	9	14.8	20.5	0	0.0	0.0	2	8.0	14.3	3	50.0	75.0	18	15.3	22.0
PARENT SUPPORT	1	6.7	8.3	2	3.3	4.5	0	0.0	0.0	3	12.0	21.4	0	0.0	0.0	5	4.2	6.1
LAWYER	0	0.0	0.0	1	1.6	2.3	2	18.2	25.0	0	0.0	0.0	0	0.0	0.0	3	2.5	3.7
W.O.S. RECOM-MENDATION*	5	33.3	41.7	7	11.5	15.9	2	18.2	25.0	2	8.0	14.3	1	16.7	25.0	12	10.2	14.6
GOOD CHARACTER	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	2	8.0	14.3	0	0.0	0.0	2	1.7	2.4
GOOD FUTURE	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	1	4.0	7.1	0	0.0	0.0	1	.8	1.2
HAVE A JOB	0	0.0	0.0	1	1.6	2.3	1	9.1	12.5	0	0.0	0.0	0	0.0	0.0	2	1.7	2.4
OFFENCE SERIOUS	0	0.0	0.0	4	6.6	9.7	1	9.1	12.5	1	4.0	7.1	1	16.7	25.0	7	5.9	8.5
GOOD REFERENCES	0	0.0	0.0	0	0.0	0.0	1	9.1	12.5	0	0.0	0.0	0	0.0	0.0	1	.8	1.2
GOOD EXPLANATION	0	0.0	0.0	1	1.6	2.3	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	1	.8	1.2
LED BY OTHERS	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	2	8.0	14.3	0	0.0	0.0	2	1.7	2.4
NO ALTERNATIVE	1	6.7	8.3	3	4.9	6.6	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	4	3.4	4.9
REMEDIAL ACTION	0	0.0	0.0	4	6.6	9.1	0	0.0	0.0	1	4.0	7.1	0	0.0	0.0	5	4.2	6.1
A CHANCE	0	0.0	0.0	0	0.0	0.0	0	0.0	0.0	2	8.0	14.3	0	0.0	0.0	2	1.7	2.4
OTHER	5	33.3	41.7	17	27.9	38.6	4	36.4	50.0	7	28.0	50.0	1	16.7	25.0	37	31.4	45.1
TOTAL RESPONSES	15	100.0	125.0	61	100.0	138.6	11	100.0	137.5	25	100.0	178.6	6	100.0	150.0	118	100.0	143.9

82 VALID CASES
38 MISSING CASES

*W.O. = Welfare Officer/Social Worker/After Care Officer

the disposition. A wide range of other responses were given by 45% of the defendants. However many of the defendants gave more than one response so that while some, for example, said 'I have received a disposition because of my welfare officer's recommendation' they may have also added that the magistrate had given them 'a chance' or that he was bored by the proceedings and was 'half asleep' and 'too lazy to reach his own decision' and had therefore agreed with the welfare officer's recommendation.

Again, those receiving P.U.C. orders tended to refer to the fact that their record was bad and this is why they had received the sentence. This was also mentioned, however, by those receiving probation and C.S.O.'s. In contrast, the same dispositions were also related to the fact of having a good record by a number of defendants. Some mentioned, for example, that they had received the P.U.C. because their record was good. By this they were referring to the fact that they had been once again placed under control but not sent to an institution. This was particularly so in Kalgoorlie where support from parents, and welfare officers was mentioned by those who received P.U.C.'s, community service orders and bonds. The welfare officers' recommendations were referred to by youths who received P.U.C.'s, probation, fines and C.S.O.'s. Remedial action was the reason for the disposition referred to by defendants who had been placed under control and received C.S.O.'s. Of the defendants indicating that the magistrate had no alternative in the disposition he gave, three of these were in the P.U.C. category and one was placed on probation.

We can see from this that the defendants interpretation of why they received various dispositions was complex and that various reasons can be offered for the same dispositions. Some, however, were aware of the importance of community welfare officers, in particular those 'placed under control' and those in Kalgoorlie. (See Chapter 11).

Summary and Conclusions

In this chapter the youths' accounts of the court room process was discussed. The chapter opened with a discussion of the structure of a typical case. This was followed by an examination of youths' descriptions of the magistrate's actions during the case. The reports of youths focussed on such issues as the magistrate sentencing them, lecturing to them, reading charges and other procedural matters. Also mentioned were his attempts to seek the motivation for their actions and his conferring with others about them and the disposition they should receive.

The juveniles were asked to report on their own actions during the case. The majority of those in the general sample portrayed themselves as being passive during the proceedings ('stood up there'). It was suggested that the fact that defendants have to stand highlights their powerlessness and consequently their passivity. Their passivity was also influenced by their fear and their lack of knowledge of appropriate courses of action. The passivity of juveniles in court and their attemps to minimise their responses (e.g., 'No, sir') has been noted by other researchers (Fears, 1977; Emerson, 1969).

However, not all of the juveniles were totally passive. A third of the general sample and two-thirds of the defended sample reported that they participated more actively in their case. In the contested cases this frequently involved giving evidence and in a number of cases attempting, with the help of parents, to conduct a defense. In non-contested cases, questioning the magistrate about aspects of the charge(s) or of the police 'facts', providing information as to motivation and giving explanations were reported by the youths. A number of defence strategies relating to accounts of motivation and general explanations were discussed and illustrated from court proceedings. These strategies were similar to those

described by Emerson (1969), however, his schema was expanded.

It was suggested that juveniles learn such strategies through experience and from the coaching of others. The learning of such strategies has been observed by other researchers. Anderson (1978:49) concluded:

> Because each court develops a certain consistency within itself as a part of the set of negotiated standards worked out between its participants, the defendant is, with experience, able in some way to predict some of the elements which might indicate normal character, but they are random and make no real sense taken together. They do, however, form the basis of defensive statements made in court.

These strategies, it was suggested, are similar in terms of their elements and resulting images they help construct to those used by lawyers and others in their construction of the defendants moral character. An important element was the youth's current activities, either schooling or employment. Idleness was viewed by officials as the 'devil's playground'. The use of the 'job strategy' has been reported in other studies:

> To some extent the increased awareness of how the prosecution process works has helped the regulars take a small amount of evasive action. For instance it is wise when appearing before a magistrate to have just got a job, since the bench is usually aware of the employment difficulties of adolescents and feels some guilt about the situation, it brings some possibility of mercy.
> (Parker, 1976:223)

Three points need to be stressed about defensive strategies used by the youths. The first is that they were used in the context of the ongoing interaction of the case and as shown above, partly determined by the magistrate's questioning and his/her acceptance of the juveniles responses. Secondly, they do not guarantee that the youth will be saved. In fact, as the youth in Case 220 above indicated, by the time such strategies are learned it may be too late to save the juvenile from incarceration. Parker (1976:223) described the process among his subjects:

> "For regulars to court, however, there was a definite de-mystification and decoding over years Two and Three. This increased awareness did not mean much in terms of power or freedom for the seriality however. If anything the regulars such as Fo..er, Tank, Tuck, Colly, Jimbo and Arno, realised how predictable their conviction was once they had been apprehended and the prosecution begun. A more sophisticated appreciation of verdict became part of the conversation culture. One's fate would be predicted with some accuracy.

Thirdly, such strategies are grounded in the wider societal methods for establishing moral character. However, they are modified to take into account:

1. The setting is a court of law and the offending of the person is under consideration;
2. The offender is a juvenile.

With other methods for establishing moral character they share common elements such as employment, family relationships, age, sex, ethnicity, demeanour, appearance, speech and so on; in fact, all of those issues which provide images of social status. Also involved, however, are attributions of responsibility, prognosis (e.g., for further offending, getting well, surviving a physical trauma) and organisational criteria such as a relevance to

programmes, eligibility for treatment. (See Sudnow, 1967; Roth, 1973; Zimmerman, 1969 and McKinley, 1975 for examples of constructions of moral worth in other settings).

In courts of law such issues as the nature of the offence and the defendant's record become important attributes. Consequently similar types of information are collected by welfare staff and solicitors (Chapter 7). Pleas of mitigation and defense strategies in various courts are broadly similar (compare Williamson, 1980 and Shapland, 1979). Spradley (1970) for example, notes that there are a number of themes tramps use in drunk courts when making defensive statements:

> talk about family ties;
> indicate they have a job;
> tell of extenuating circumstances;
> offer to leave town;
> request the alcoholism treatment centre.

These themes are not too dissimilar to those heard in children's court, from welfare staff, lawyers, parents and the juveniles themselves.

Because they are grounded in the broader social methods for establishing social worth such defense strategies are essentially class and ethnically biased (Cohen and Kluegel, 1978). Spradley (1970:184) sums up the situation neatly:

> This practice means essentially that a man with the <u>most resources</u> is rewarded. Unto whom much is given, little shall be required (Italics original).

The fact that the defendants are juveniles adds another dimension. As Bittner (1976) and others have suggested youths are viewed by societal members as being a

particularly dangerous category of people. This is because they are thought not to be fully socialised with a sense of responsibility. They are thus thought not to be in full control of their actions and require therefore to be controlled. The construction of moral character in this context frequently includes references to the controllability of the youth.

The majority of defendants reported that they were scared/ nervous in court. This runs contrary to many of the popular and even professional assumptions as to how juveniles feel in court. It is frequently argued that a court appearance is 'like water off a duck's back' for most youths. As a collorally of this it is often argued that harsher treatment in the system is required. These results would seem to indicate otherwise. Similar findings were reported by Snyder (1971), Lipsitt (1968) and Langley et al. (1978). There was a significant relationship between the defendants' statuses and their reported feelings. It was suggested that there were two aspects to the fear experienced. The first related to the fact of being overawed by having to appear in court at all. The second related to the fear of the uncertainty with regard to the disposition they might receive. Experienced defendants were likely to overcome the first aspect of fear, though not necessarily the second.

The analysis concluded with an examination of the youths' assessments of the reasons they received their dispositions and the meaning of these dispositions for them. Record criteria were mentioned by over a third of all cases as the main reason for the outcome. However, the role of the welfare officer was also mentioned, as was support from parents and lawyers and the seriousness of the offence. It was also indicated that for many of the defendants the big issue now was 'keeping out of trouble' and that this cut across a range of dispositions from being 'placed under control' to 'bonds'. Other pragmatic interpretations were given to the range of dispositions.

None of the youths gave responses which included welfare connotations. They paid their fine and did their time. They did not refer to themselves as being helped or rehabilitated. Such responses were in keeping with the logic on which they based their predictions of the dispositions they would receive (Chapter 6). As will be shown below (Chapter 12) these are at the heart of their assessments of the fairness of their treatment by the court.

Chapter 11. DEFENDANTS' UNDERSTANDING AND KNOWLEDGE OF COURT PROCEEDINGS

In the Introduction, it was mentioned that it is almost accepted axiomatically, in sociology and criminology, that defendants typically do not understand court processes. Indeed, if a defendant shows knowledge of court processes, it is taken as a sign of a spoiled identity - a criminal career. Defendants, unlike court regulars (magistrates, prosecution, lawyers, for example) it is suggested, are generally not able to rehearse their appearance, except through previous appearances and this necessitates a 'record'. They must learn as they go, 'play it by ear'. They are thus disadvantaged in comparison to court regulars. If they receive coaching from more experienced persons this may be based on incomplete or inaccurate knowledge. Defendants have to perform in a situation which is not only anxiety provocating, but one where magistrates and others may deliberately or unconsciously attempt to heighten the defendant's anxiety to achieve their own ends.

The issue to be considered here is, how much do defendants comprehend? A number of authors have examined these issues as part of their study of juvenile perspectives on the court. Scott (1959) : 223) asked his sample to describe who participated in the case. He concluded; "there seems to be considerable confusion in the boys' minds as to the identity of the different officials". He also noted that while they were unable to identify the official participants 'several' of his respondents referred to various people in the court who were writing. Some of the juveniles thought that they were all newspaper-men. Howells and Brooks (1966) reported that only 34% of the juveniles in

their study could correctly identify the chairman of the hearing, 24% were incorrect in their responses and 13% replied that they were unsure. The remainder of the juveniles gave responses of varying correctness. They also found that only a few of the juveniles were able to state correctly what the disposition they received from the court was. Petersen (1978) in his study of the children's panel found that few of the children could identify the occupations of the panel members (police officer and welfare officer) despite being told at the opening of the hearing. Only two of the children were able to correctly identify both of the panel members. Hapgood (1979) questioned his respondents about the job title of both the clerk of courts and the magistrate and on the employment and remuneration of the magistrates. Only 19.5% could identify the clerk correctly, 10.5% gave incorrect answers and 70.0% gave don't know responses. The magistrates were better known and just under half (48.5%) correctly identified them, 28% were incorrect and the remainder said that they were unsure. Only 29.0% of the respondents could correctly describe the employment status and only 18.5% the remuneration of the magistrates. Hapgood found no significant differences in ability to identify personnel between persons of different backgrounds.

La Kind et. al. (1977) interviewed a wide sample of juveniles and adults about their knowledge of police and court procedures. They concluded that:

> "Knowledge of court procedures seemed to be particularly high among the general population, with an overall percentage of 70.02 percent correct answers. Given the difficulty of some of the questions, these percentages were encouragingly high".

Unfortunately they did not report on what questions they asked their subjects except to say that there were 28 forced-choice questions on procedures presented in the context of a brief scenario. No significant differences were found for race or previous arrest experience of the subjects. There were, however, slight differences between males and females with the former somewhat better informed and according to age with those over 18 giving more correct information than those under 18 years of age. Similar findings were reported by Rafky and Sealey (1975) with regard to race and previous arrest experience for juveniles' knowledge of the law (KOL). From these results it would seem that juvenile defendants are generally unable to identify the personnel in court. On the other hand, the KOL studies show that juveniles and adults have a good knowledge of court procedures. Differences in knowledge do not vary with the subjects' characteristics. However, as noted above, a problem with KOL studies is that the subjects have not necessarily experienced what they are questioned about and are responding to what they regard as the ideal. What is ideally correct may not match reality. It is one thing to be able to give a 'correct' response, it is another to be able to behave 'correctly' (appropriately) in a court or police situation (e.g. an interrogation) which may not conform to the ideal and which may in fact be deliberately structured so as not to conform (see Ute 1974 and Bickey and Miller 1975 on pleading in traffic courts for example). Studies of defendants and their ability to identify court personnel also have a number of problems. In the first place, apart from Petersen's (1978) study, none of these analyses obtained an independent record of who was participating in the case. Nor did they take into account the focus of the defendants' attention during the hearing or their defendants' emotional states. They also seem to have

assumed that an inability to identify the official participants is equivalent to an inability to understand the proceedings. These factors are obviously related, though the relationship is not necessarily a direct one. The focus of the defendant and his concerns need also to be accounted for.

In this study an independent record was obtained of those participating in the case so that defendants' accounts could be checked. Two separate measures of the defendants' understanding of court organization and proceedings have been employed - the defendants' assessments of their own understandings of court proceedings and our assessment of their understanding based on their answers to a number of items relating to their court appearance. For example, the defendants were asked about the relationship between the Department for Community Welfare and the court and were asked to specify what sort of relationship existed. Secondly, the defendants were scored on their ability to identify personnel in court and their roles. Thirdly, they were scored on their ability to identify the disposition that they received in court.

The correct identification of court personnel is complicated by the fact that while many of the juveniles can specify the roles of various participants, they are frequently unable to name the position correctly. For example, the magistrate is invariably referred to as 'the judge'. The prosecutor is often called the policeman (or cop) who reads out 'the statement' (or 'what you've done'), and so on. For the purposes of this analysis those who could describe the role of various participants, though they might not correctly name them, were given a positive score. The following working hypothesis was developed:

That the defendants' understanding of court

proceedings, their identification of court personnel, of the relationship between the court and the Department for Community Welfare and of the disposition they received from the court will not vary with the characteristics of the defendants, their family status, social class, type of housing, record, place of residence, case type, their emotional state while in court or the presence of legal representatives.

Understanding: The Defendants' Assessment

The defendants were asked "How much of what went on in court did you understand?" Table 11.1 shows their responses. Most defendants in both samples indicated that they understood either all or most of what went on. In the general sample data was not collected for 11 (9.2%) defendants and one youth indicated that he was not sure how much he understood. Of the remainder, 44 (40.7%) indicated that they understood all and 26 (24.1%) suggested that they understood most of what went on. That is, 64.8% suggested or claimed that they understood either all or most of the court proceedings. Seventeen defendants said that they only understood some of the proceedings, five reported that they understood only the sentence and thirteen defendants claimed that they understood nothing of what went on. Thus approximately a third of the defendants reported that they understood little or nothing of the court proceedings.

TABLE 11.1

DEFENDANTS' ASSESSMENT OF THEIR UNDERSTANDING OF THE COURT PROCEEDINGS

SAMPLE

UNDER-STANDING	GENERAL FREQ.	GENERAL RELT. %	GENERAL ADJUST. %	DEFENDED FREQ.	DEFENDED RELT. %	DEFENDED ADJUST. %	TOTAL FREQ.	TOTAL RELT. %	TOTAL ADJUST. %
ALL OF IT	44	36.7	40.7	7	25.9	41.2	51	34.7	40.8
MOST OF IT	26	21.7	24.1	5	18.5	29.2	31	21.1	24.8
ONLY SOME OF IT	17	14.2	15.7	4	14.8	23.5	21	14.3	16.8
NOTHING	13	10.8	12.0	1	3.7	5.9	14	9.5	11.2
ONLY SENTENCE	5	4.2	4.6	0	0.0	0.0	5	3.4	4.0
OTHER	3	2.5	2.8	0	0.0	0.0	3	2.0	2.4
NOT SURE	1	.8	-	1	3.7	-	2	1.4	-
NO DATA	11	9.2	-	9	33.3	-	20	13.6	-
TOTALS	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

The apparent level of understanding was controlled by the defendants' sex, age, ethnicity, work status, class, family status, type of housing, record, place of residence, case type and reported emotional state. For the purposes of this analysis the level of understanding of the defendants was dichotomized. The categories 'all of it' and 'most of it' were combined, as were the categories of 'nothing', 'only some', 'only the sentence' and 'other'. There were no significant relationships between any of the above variables and the reported level of understanding. However, sixteen to eighteen year olds indicated that they understood more than younger defendants, (74% and 56.9% respectively). Defendants from single parent families also tended to claim more complete understanding (70%) than juveniles from two parent families (51%). Female

defendants, on the other hand, reported a lower level of understanding than males (52.4% and 67.8% respectively). Both general maturity and experience seem to have produced these trends. Males and defendants from single parent families tended to have more court experience than females or those from two parent families. We would expect, if levels of experience were equal, that older defendants would show a greater understanding of court proceedings than less mature defendants. Younger defendants in this sample, however, tended to have more extensive records and therefore more experience. This may therefore account for the overall lack of significance of the relationship between age and claimed understanding.

As with the KOL study of La Kind et. al. (1977) the reported level of understanding did not vary significantly with the previous experience of the juveniles, either in terms of the number of previous court appearances they had or their status. Table 11.2 shows that those with no previous recorded court appearances claim a similar, indeed slightly higher, level of understanding than those with previous experience. A similar trend was found in relation to status. However, many of those who claimed that they understood all or most of the proceedings said that it was because; "I've been to court before, I know what they are talking about".

TABLE 11.2

UNDERSTANDING BY NUMBER OF PREVIOUS COURT APPEARANCES

	COUNT / ROW PCT / COL PCT / TOT PCT	0	2 or more	ROW TOTAL
UNDER-STANDING	ALL OF IT	22	48	70
		31.4	68.6	64.8
		66.7	64.0	
		20.4	44.4	
	SOME OF IT	11	27	38
		28.9	71.1	35.2
		33.3	36.0	
		10.1	25.0	
	COLUMN TOTAL	33	75	108
		30.6	69.4	100.0

CORRECTED CHI SQUARE = .00236 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .9612

RAW CHI SQUARE = .07146 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .7892

NUMBER OF MISSING OBSERVATIONS = 12

The relationship between the defendants' emotional state and level of understanding was also significant. It would be expected that those who were tense or frightened would be less likely to comprehend the proceedings. However, roughly equal proportions of those who claimed to be scared or nervous and those who claimed not to be responded that they understood all or most of the proceedings. (63.1% and 65% respectively; chi square = 0, with one degree of freedom. Significance = 1.0000). There was also no significance in the relationship between the level of understanding and the use of legal representation. Those with solicitors did not report any better understanding than those without. In the defended sample, 70.6% claimed that they understood all or most of the proceedings. The level of understanding reported was, as in the general sample, not significantly

affected by the defendants' feelings while in court. Somewhat more of the defended sample reported that they understood most of the proceedings than the general sample. The differences however were not significant.

Reasons for Lack of Understanding

The respondents were asked to indicate why they had difficulty in understanding the court proceedings. More than half of the total sample (54.9%) said that the speech used in court was the reason they couldn't understand. The other defendants gave other reasons ranging from not being interested in the proceedings (one defendant) to being too scared to attend to what was happening. Four defendants said that they were unable to hear what was going on.

In regard to the problems of understanding the speech used in court the juveniles referred to forms of speech which linguists have termed as elaborate and restricted codes. A restricted code is context specific and its meaning is grounded in the commonly shared understanding of people who use it; "/it/ is particularistic with reference to its meaning inasmuch as it summarized 'local means and ends". An elaborate code, on the other hand, is more universal with reference to its meaning and less predictable in its syntax and lexicon than a restricted code. (For a discussion of these concepts see Bernstein, 1971). The use of restricted and elaborate codes reflect age, class, and in the case of Aboriginal and some other defendants dialectical differences. Their use also is strongly influenced by social situations. Members of a family, for example, may use a restricted code when talking to each other, much of the conversation may be based on a tacit understanding of the situation and past events. Working class people may use restricted codes while addressing higher status people out of deference or

uncertainty (Cazden, 1976). Certain rituals or ceremonies may be conducted in a restricted code (e.g. the opening of a court case). Respondents referred to two sorts of problems with elaborate codes. Firstly, they referred to the speech used to them by others and their difficulties in understanding it.

Case 400

'I understood very little. I couldn't understand his /magistrate/ speech. He used large words beyond my understanding.'

Case 334

"I didn't understand when the prosecutor was asking me questions because of the way he asked me, because of the language he used."

Secondly, defendants mentioned that though they understood what was said to them they did not understand what the official participants said to each other:

Case 32

"When he was talking to me I could understand him but when he was talking to the lady /member/ and sergeant I couldn't."

Case 391

"I didn't understand what they were arguing about."

Defendants also made reference to their inability to understand restricted codes (legal jargon, reference to legal codes and so on) in operation during the case

Case 263

'I just didn't really understand the judge. (Probe). I can't remember, but I didn't understand all of what he was saying, it was the jargon rather than the content."

Case 2

'Only a little bit (Probe) Cause he /magistrate/ was talking about Section 6 /sic/ and that and he was talking too fast.'

Some juveniles also remarked about the problem of being able to attend the proceedings because of fear or because they were unable to hear what was going on (though problems with acoustics do not seem to be as great in these courts as has been reported in Adult Courts (Corlen, 1976)). These problems of attention and acoustics are illustrated in the following accounts.

Case 388

'A bit of it, not all, I only understood what the magistrate said, I was in a day dream /because of fear/.'

Case 183

"The only thing I understood was the lady who kept ordering me around. I could hardly ever hear the judge. I understood what the police said."

Identification of Personnel

Defendants were asked to identify who else was in court and what were their jobs. The responses given by the defendants were then cross-checked with the observations the researchers made in court. Essentially there were four possibilities to this cross-checking:

(1) The defendant could identify someone who was there.

(2) He could fail to identify personnel who were present.

(3) He could mistakenly identify someone as being there while they were not.

(4) He could make no reference to absent personnel.

Defendants were scored in the following manner; if the researcher had recorded a person being present in court and the defendant correctly identified the presence of that person and was able to identify their role, he was scored positively; if he failed to identify that person he was scored negatively. Similarly, if he identified someone who was not there he was scored negatively, and if he did not identify someone in their absence he was scored neutrally (i.e. 0). Defendants were scored to permit statistical analysis of their responses.

One of the problems with this type of scoring is that the defendants gave a range of titles to the various personnel in court. In the case of the magistrate, for example, he/she was referred to by 74% of the respondents as a judge, 15% referred to him/her as a magistrate, 2.6% referred to him/her as a J.P. and the remaining 1.8% referred to him/her by some other title. The position of Member in the court is difficult for many of the defendants to comprehend. Defendants often identify the Member by referring to her as a 'lady magistrate' or 'judge' or as a woman 'magistrate' or 'judge'. This was done by 26% of the defendants. Another 9% referred to her role as a J.P., 16% referred to her as an adviser to the magistrate or the magistrate's secretary, and the remaining 49% referred to her by a wide range of other titles. Prosecutors were generally referred to as 'the police sergeant who reads out the statement'. Only 11% of the defendants actually referred to him by his title "prosecutor". The police court orderly was referred to by a number of things including 'the policeman who calls you in', 'the old guy at the door', 'the guard' and so on. Only 2 (1.8%) defendants actually called him an orderly. The court bench clerk again was only correctly identified by two of the defendants and she or he were often referred to by such titles as 'typist', 'the secretary', 'the cards woman' (this was because of the fact that the bench clerk hands the defendant a card on

which the amount of a fine is indicated). There were a couple of other participants we found in some of the courts. In Perth a tape recorder operator was sometimes employed to specifically record the court proceedings, however, this person was not present in all of the cases and this job was sometimes done by the bench clerk. (On other occasions the typist/recorder often acted as the bench clerk). This position was not found in Fremantle, Midland or Kalgoorlie. In the courts in Perth, the Community Welfare court officer is assisted by an assistant court officer who keeps the Department's records; he notes dispositions, arranges papers, court reports and so forth. The assistant court officer, in Perth and Fremantle Courts, was also positioned towards the back of the court. Because the defendants' attention was focused towards the bench, it was often difficult for them to notice this participant and to be able to develop some understanding of his role. An assistant court officer was not employed in Kalgoorlie. For these reasons, data on the identification of the recorder operator and the assistant court officer are not included in the following analysis.

Table 11.3 below shows the percentages, on adjusted frequencies, of those who showed a positive identification of the; magistrate, member, prosecutor, court officer, bench clerk and court orderly. It can be seen from this table that the vast majority of defendants positively identified the magistrate. He was followed in frequency of identification by the prosecutor, by the member (when he or she was present) the bench clerk and the court orderly. The person least identified in court was the Community Welfare court officer. The court officer, however, was more readily identified in Kalgoorlie than in Perth. This results from the fact that the court in Kalgoorlie is smaller, there were less numerous cases,

and the court officer himself frequently interviewed the defendant prior to going into court. On other occasions the defendants' own welfare officers often performed the role of court officer, so that the defendant was aware that that person was there as a representative from the Department for Community Welfare. This was not so in the metropolitan area as has been discussed above in Chapter 7.

TABLE 11.3

I D E N T I F I C A T I O N

PERSONNEL	POSITIVELY IDENTIFYING		INCORRECTLY IDENTIFYING		TOTAL[1]	
MAGISTRATE	108	(94.7%)	6	(5.3%)	114	(100.0)
MEMBER	56	(65.9%)	29	(34.1%)	85	(100.0)[2]
PROSECUTOR	91	(79.8%)	23	(20.2%)	114	(100.0)
COURT OFFICER	38	(40.9%)	55	(59.1%)	93	(100.0)[3]
BENCH CLERK	64	(56.6%)	49	(43.4%)	113	(100.0)
COURT POLICE ORDERLY	62	(56.4%)	48	(43.6%)	110	(100.0)[4]

1. Adjusted frequencies, data not collected for 6 respondents.
2. Members did not participate in 29 cases.
3. Court officers did not participate in 21 cases. These were mainly remand cases in Perth No. 1 Court.
4. Court orderlies were absent from 4 cases.

The typical personnel involved in a defended action were a magistrate (less frequently sitting with a Member), a prosecutor, bench clerk and police orderly. All defendants identified the magistrate, the majority member and prosecutor. More than half identified the court orderly and the bench clerk.

Table 11.4 shows the distribution of the scores for the various defendants in relation to identification of court personnel. The defendants were scored 2 for the positive identification of the magistrate, member, prosecutor and court officer, 1 for the positive identification of court clerk and orderly, and - 2 for failing to identify the magistrate, member, prosecutor and court officer, and - 1 for the other two personnel. In instances where any of these participants were not in court and not incorrectly identified, the defendants were given a score of zero.

TABLE 11.4

IDENTIFICATION OF COURT PERSONNEL SCORE

SCORE	ABSOLUTE FREQ.	RELATIVE FREQ. (PCT)	ADJUSTED FREQ. (PCT)
- 10	1	.8	1.2
- 9	1	.8	1.2
- 6	1	.8	1.2
- 4	4	3.3	4.9
- 2	8	6.7	9.9
0	9	7.5	11.1
2	11	9.2	13.6
4	14	11.7	17.3
6	15	12.5	18.5
8	6	5.0	7.4
10	11	9.2	13.6
NOT APPLICABLE	39	32.5	MISSING
TOTAL	120	100.0	100.0

MEAN 3.321 MODE 6.000 MEDIAN 3.893
VALID CASES 81 MISSING CASES 39

In the general sample defendants' scores ranged from -10 to +10. The model score was 6 and the median 3.893. The model score was +10 and the median 9.2 in the defended

sample. In the general sample 24 defendants (29.6%) scored 0 or less, 25 (30.9%) scored between 0 and 4 and the remaining (39.5%) of the defendants scored 6 or more.

Scores in the general sample were analysed in relation to the defendants' characteristics, record, family status, class, type of housing, place of residence and case type. Such scores were recoded into three categories; negative scores (-10 to 0), intermediate (0 to 4), and high (6 to 10). There were no significant relationships between these scores and sex, ethnicity, age, or work status. The relationship between the defendants' score and their court records were also not significant. Those with some experience tended to score higher than those with no previous experience, but these trends were not statistically significant or consistent.

Defendants with no previous appearance were more likely to have a negative score (44%) than those with previous appearances. However, defendants with 1-4 appearances tended to score higher than those with 5 or more appearances (Table 11.5)

TABLE 11.5

IDENTIFICATION SCORE BY
NUMBER OF PREVIOUS APPEARANCES

	COUNT / ROW PCT / COL PCT / TOT PCT	NO. OF PREVIOUS APPEARANCES 0	1-4	5 or more	ROW TOTAL
IDENTIFICATION SCORE	LOW (0- -10)	11	7	6	24
		45.8	29.2	25.0	29.6
		44.0	28.0	28.6	
		13.6	5.6	7.4	
	INTERMEDIATE (0-4)	8	10	7	25
		32.8	40.0	28.0	30.9
		32.0	28.6	33.3	
		9.9	12.3	8.6	
	HIGH (6-10)	6	18	8	32
		18.8	56.8	25.8	39.5
		24.8	51.4	38.1	
		7.4	22.2	9.9	
	COLUMN Total	25	35	21	81
		30.9	43.2	25.9	100.0

RAW CHI SQUARE = 5.74869 WITH 4 DEGREES OF FREEDOM. SIGNIFICANCE = .2187

NUMBER OF MISSING OBSERVATIONS = 39

There were no significant relationships between the defendants' class, type of housing or family status and the ability to identify court participants. However, defendants in contested cases and in the Kalgoorlie sample more readily defined the court participants than other defendants. This resulted from (a) there were often less participants, (b) that it was more intimate and certainly in the case of contested actions, the fact that the case lasted much longer than the average

time in court experienced by defendants in the general sample. The relationship between place of residence and defendants' score was significant, though case type was not. The defendants' scores were also not significantly affected by their reported emotional state while in court. They were also not improved by the defendant having legal representation.

Community Welfare and the Court

Defendants were asked whether they thought there was a relationship between the Department for Community Welfare and the Children's Court. The results of this are shown in Table 11.6. In the general sample, 13 of the defendants could not provide answers and 27 (22.5%) indicated that they were not sure if there was a relationship between the Department and the Court. Twenty said that there was not a relationship and 60 (75%) said that there was a relationship. In the defended sample, 13 defendants said that there was a relationship and one defendant said that there was not, three of the defendants said they were not sure and data were not collected for 10. The majority of the defendants (58.9%) replied that there was a relationship between the Department for Community Welfare and the Court.

TABLE 11.6

DEFENDANTS' KNOWLEDGE OF RELATIONSHIP BETWEEN THE COURT AND DEPARTMENT FOR COMMUNITY WELFARE

RELATIONSHIP IDENTIFIED	SAMPLE: GENERAL ABSOL. FREQ.	GENERAL RELT. %	GENERAL ADJUST. %	DEFENDED ABSOL. FREQ.	DEFENDED RELT. %	DEFENDED ADJUST. %	ABSOL. FREQ.	RELT. %	ADJUST %
YES	60	50.0	56.1	13	48.1	76.5	73	49.7	58.9
NO	20	16.7	18.7	1	3.7	5.9	21	14.3	16.9
NOT SURE	27	22.5	25.2	3	11.1	17.6	30	20.4	24.2
NO DATA	13	10.8	-	10	37.0	-	23	15.6	-
TOTAL	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

Knowledge of a relationship between the Children's Court and the Department did not vary significantly with the defendant's characteristics (sex, age, ethnicity and work status), his record, social class, family status, type of housing, place of residence or case type.

Table 11.7 below lists the perceived relationships between the Court and the Department. Three main types of relationships were identified. The first was that welfare officers and social workers from the Department make recommendations to the court as to the disposition the defendant should receive.

Secondly, the juveniles identified the relationship as being one in which the Department controlled certain dispositions, e.g. supervision, probation, 'under control'. Thirdly, other respondents suggested that there was an organizational or legislative relationship between the Court and the Department. (It's the same organization'. 'The Welfare run the Court'. 'When they dismiss you they do it under Section 26 of the Child Welfare Act, the court operates on that Act') Interestingly, none of the defendants gave a combination of these responses, though the relationship between the court and the Department involves all of them. The control of dispositions was the main relationship mentioned (41.2%). The organizational/legislature connection was the next most frequently referred to (31.4%) This was followed by the Department's role in making recommendations (23.5%). Two juveniles said that some other relationship existed and 14 were unsure of the type of relationship though they thought that one existed. There were no significant relationships between the defendants' sex, age, ethnicity, work status, record, class, family status, type of housing, place of residence, or type of case and the type of relationship identified.

TABLE 11.7

DEFENDANTS' PERSPECTIVES OF THE TYPE OF RELATIONSHIP BETWEEN THE CHILDREN'S COURT AND THE DEPARTMENT FOR COMMUNITY WELFARE

TYPE OF RELATIONSHIP	SAMPLE: GENERAL ABSOL. FREQ.	GENERAL RELT. %	GENERAL ADJUST. %	DEFENDED ABSOL. FREQ.	DEFENDED RELT. %	DEFENDED ADJUST. %	TOTAL ABSOL. FREQ.	TOTAL RELT. %	TOTAL ADJUST. %
W.O.'s make recommendations	11	9.2	27.5	1	3.7	9.1	12	8.2	23.5
DCW Control Dispositions	15	12.5	37.5	6	22.2	54.5	21	14.3	41.2
Organizational Legislative	12	10.0	30.0	4	14.8	36.4	16	10.9	31.4
Other	2	1.7	5.0	0	0.0	-	2	1.3	3.9
Not Sure	12	10.0	-	2	7.4	-	14	9.5	-
No Data	8	6.7	-	0	0.0	-	8	5.4	-
Not Applicable	60	50.0	-	14	51.9	-	74	50.3	-
TOTAL	120	100.0	100.0	27	100.0	100.0	147	100.0	100.0

* Welfare Officer

A Knowledge of Disposition

As well as the above indicators of the defendants' understanding, the official disposition the defendant received was compared with the disposition that the defendant indicated he received. If the defendants correctly identified their disposition, they were scored positively, and if they failed to identify the correct disposition they were scored negatively. For example, if a defendant was placed under control and institutionalized and he indicated that he was 'sent to a home' or 'sent to Longmore' etc. without recognizing the fact that he had been 'placed under control' which was the official disposition, he was scored negatively. Table 11.8 shows the defendants'

scores in this regard. As can be seen, slightly more than half of the defendants scored positively. That is 78 (53.1%) of defendants positively identified their disposition. There was no significant relationship between the type of case and the ability to recognise their disposition. Roughly equal proportions of the general and defended samples positively identified the disposition. The relationships between the defendants' sex, age, ethnicity, work status, record, family status, class, type of housing, and place of residence and knowledge of disposition were also not significant.

TABLE 11.8

IDENTIFICATION OF DISPOSITION

IDENTIFICATION OF DISPOSITION	ABSOLUTE FREQ.	RELAT. %	ADJUST. %
INCORRECT	69	46.9	46.9
CORRECT	78	53.1	53.1
TOTAL	147	100.0	100.0

The relationship between their ability to identify their sentence and their reported feelings while in court was also not significant nor was the fact that they had or had not legal representation. However, many would have had post-court discussions with welfare staff in relation to disposition which might have affected the influence of emotional state on disposition identification.

Summary and Discussion

Roughly two-thirds of the juveniles in both the general and defended samples claimed that they understood all or most of the court proceedings. The remainder reported that they understood little or nothing of the proceedings (i.e. 'only some of it', 'only the sentence', 'nothing'). There were trends that defendants with more experience claimed

more understanding than those with no previous experience. Males reported better understanding than females, as did older in contrast to young defendants. These trends were not significant, however. Importantly, there was no direct relationship between previous experience and understanding. Though a number of juveniles reporting understanding gave the reason for this as 'I've been before I knew what they were talking about'.

The major reason given by the juveniles for not being able to understand the proceedings was that they were unable to understand the forms of speech used in court. Some respondents referred to difficulties in understanding the speech used to address them by Magistrates and Prosecutors and other participants. Others indicated that they were unable to understand the speech used between various personnel though they were able to understand what was said directly to them. Other respondents complained more specifically about the use of legal jargon and codes, which made, at least, some of the proceedings incomprehensible to them. These problems seem to arise from the use of elaborate and restricted speech codes by court personnel. Difficulties with comprehension are also a consequence of age, class, and dialectical differences in language and speech competence.

Fears (1978) has analysed the communication between juveniles, parents and court personnel in a number of English courts. She suggests that the juveniles' ability to understand is contingent upon the sorts of speech code used. Her analysis shows that though the proceedings start in a restricted code (the identification and charging of the juvenile, the pleading process, etc.) the official participants seem to use more of an elaborate code which the juveniles have difficulty in understanding. Not only do the magistrates and other officials dominate the proceedings verbally, but their

speech is also much more complex than that of the defendants and their parents. The typical contribution of juveniles is 'yes (sir)' or 'no (sir)'. Fears (1978:144) concludes that;

> It seems likely that the combination of emotional stress and complex language reduces the child's ability to absorb what is said.

This study generally supports Fear's conclusions. (See also Carlen, 1976). It was shown above that the defendants' reported emotional states were not significantly related to their reported level of understanding or their scores with regard to the identification of court personnel or the disposition they received for court. This does not, however, mean that there is no relationship. As suggested above in relation to disposition, the relationship may be hidden by the fact that many defendants receive information about dispositions following their appearance from welfare staff. Court and welfare staff in all the courts remarked how defendants frequently left court in a daze and have to ask 'what happened'. This situation was observed in a number of cases by research personnel. More generally, Anderson (1978:45) argues that:

> The assimilation of such an experience necessarily takes place outside the court, and the understanding of it takes place against a background of ideas about the law and those associated with it developed in a social context among friends and family.

This sort of process may distort the relationship between the 'stage fright' experienced by most defendants in court and their understanding. Though the relationship is undoubtedly complex.

Most of the defendants (94.7% general and 100% defended sample) identified the magistrate. Over two-thirds identified the member and prosecutor and over half the bench clerk and the police orderly. Only 41% of the

defendants were able to identify the Community Welfare Court Officer. This was especially a problem in the Perth Courts. In the Kalgoorlie Court, on the other hand, because of the more personal and intimate relationships between officers and juveniles, welfare staff were readily identified and their role was understandable to their clients. The court officer was not just 'a guy sitting at the front writing stuff down' to the defendants in Kalgoorlie.

On the identification-of-court-personnel scale, 29.6% scored less than 0, 30.9% intermediate (0-4) and 39.5% high (6-10). The relationship between the score and the defendants' characteristics were not significant. Neither were the relationships between the number of previous appearances and the defendants' status and identification score. However, there was a trend for those with no previous appearance to score somewhat lower than those with experience. Half of the defendants thought there was a relationship between the Children's Court and the Department for Community Welfare. Twenty one (14.3%) thought that there was no relationship and thirty (20.4%) were not sure. Three types of relationships were delineated by the respondents;

(a) welfare staff make recommendations to the court,

(b) the Department controls dispositions (probation etc.)

(c) an organizational/legislative relationship.

None of the juveniles suggested that the relationship was of two or all of these types which would be closer to the reality of the situation. Their views were therefore limited and partial. Though this undoubtedly reflects the ambiguity of the Department's role. Neither the identification of a relationship or the type of relationship identified was significantly related to the defendants'

sex, ethnicity, work status, age, family status, class, type of housing, or place of residence, case type and more importantly, record.

Just over half (53.1%) of the sample were able to correctly identify the disposition they received from court. This was not significantly related to the defendants' records (number of previous appearances or status) nor their sex, ethnicity, age, work status, class, type of housing, place of residence, case type or the defendants' emotional status while in court. However, as was shown in the preceding chapter, the defendants did seem to have a fairly adequate understanding of the meaning and consequences of various dispositions. In court, both magistrates and members were observed to incorrectly name dispositions while sentencing defendants and/or discussing possible dispositions with welfare staff. It is, therefore, not too surprising that some defendants are unable to correctly identify the disposition they received. The ability to correctly identify the official name of a disposition may therefore not be a good indicator of the defendants' understanding of court procedures and outcome.

Though roughly two-thirds of the juveniles claimed to comprehend all or most of the proceedings and were aware of a relationship between the Department for Community Welfare and the court (though their views of the relationship were limited and partial), they generally scored poorly on the court personnel identification scale. A third of the respondents failed to identify the member and prosecutor, and slightly less than half were unable to identify the bench clerk and court orderlies. More significantly only 41% of the juveniles were able to identify the court officer. These data indicate that though the respondents generally claim to understand the

...na are of the structure
...t and more particularly,
...wh - ambiguous, role of the
...We fare in the operation of

...se(to arise, at least in part, from
...en ants' attention while in court.
...ov- that the defendants' main concern
...e utcome of the case - 'what will I
...above (Chapter 9) he is also concerned
...ec sion is reached, but the initial crucial
... disposition. The defendants on the whole
...g: trate as the key person in this decision
...cte.tion is focused on him. This opinion is
...li ed and maintained by their expectations of
...d by the organizational and symbolic dominance
...ac strate in court. The magistrate is also the
...th whom the defendant has most direct interaction
...i court. The roles of the other participants
...ot attended to in the same manner as that of the
... rate. Of the other major participants - member,
...osecutor and court officer - the role of the prosecutor
... che clearest. He, at least, can be clearly identified
...y his uniform.

For some juveniles, it seemed clear that a comprehension of the outcome and its rationale were considered to be a sufficient understanding of the experience:

Case 322

"Most of it (Probe) They kind of explained why they were fining me."

Case 106

'All I need to understand is the sentence.'

A number of defendants, on the other hand, indicated that they did not consider an understanding of 'only the sentence' as adequate. Despite this it would seem that the dimensions of what defendants feel they need to understand is delineated by their central focus on the outcome of the case and consequently their attention to and perception of court personnel is related to this and attention focused on the magistrate. This research was not able to examine what the defendants considered to be relevant to their understanding of the case. Because of the effects of these factors, their level of comprehension may be somewhat lower than they have indicated here.

These data show that there was no direct relationship between understanding and the defendants' past experience (as measured by the number of previous appearances and status). The defendants' reported level of understanding, identification of personnel, scale score, knowledge of court/Community Welfare relationship or ability to identify correctly their disposition did not vary significantly with either measure of record, although there was some tendency for those with more experience to have a better understanding than those without. The defendant's overall level of knowledge was, moreover, not significantly affected by the defendants' characteristics (sex, age, ethnicity or work status), the characteristics of his family, class, type of housing, place of residence or case type. It is possible that the measures used here were not adequate to explain levels of understanding. Nevertheless, variations in understanding do seem to be the result of a complex relationship between experience, age, maturity, socio-linguistic competence and general knowledge. There were also no significant relationships between the defendants' reported level of understanding, their identification of personnel

scale scores, and their knowledge of relationships between the Court and Community Welfare. There was a slight trend for those who reported their level of understanding as how to score low on the personnel identification scale. This probably reflects the post-court inputs of friends and family which enable defendants to assimilate what has taken place. The lack of significant relationships between experience, age, and race and understanding are similar to the results from the KOL studies by La Kind, et. al. (1977) and Rafky and Sealey (1975). Hapgood (1979) unfortunately did not examine defendants' ability to identify key court personnel in terms of their records, although he did report that they did not vary significantly with age, class or type of housing.

The higher levels of positive identification of key court personnel in this study compared with the results obtained by Scott (1957), Howells and Brooks (1966) and Hapgood (1979), result partly from the fact that the criterion for positive identification was the role of the personnel and nomenclature. This study also differed from others in that an independent record of who was present in court was obtained and compared with the respondents' statements.

The hypothesis relating to defendants' understanding is fully supported. The various dimensions of comprehension were not affected by the defendants' sex, age, ethnicity, work status, record, family status, class, type of housing, place of residence, or case type. There was also no significant relationships between the various dimensions of understanding examined. Another factor that needs to be considered are the differences between the defendants' understanding of court processes after court and their understanding during court. It was shown above (Chapter 6) that defendants' expectations of court were

based on their previous experience and that novice defendants frequently had expectations of proceedings based on images of superior courts they gained from television. What actually happens then does not match their expectations. Unlike the situation in adult courts, where defendants may be able to view preceding cases and gain some understanding, however minimal, of the proceedings (Brickey and Miller, 1975 ; Ute, 1974), juveniles are unable to do this, as the court is closed to the public, and thus have to learn as they go. A number of respondents mentioned the problem of playing it by ear when questioned about understanding.

Case

"I understood most of it (Probe) They talked about the panel. They asked me if I'd been in front of the panel. I said no, because I didn't know what it was."

Case

"Most of I'd say. Mrs. X /ĀLS/ sort of explained what would happen and the rest I guessed."

Conclusions

Various authors (Blumberg, 1969; Carlen, 1976; Priestley, et. al 1978; Hapgood, 1979) have argued that defendants are disadvantaged in the judicial system because of their lack of understanding of court processes. More specifically, Fears (1978:133) has suggested that the lack of comprehension has a number of important consequences in that:

(1) "There is a legal principle that justice must be done, and it is therefore important that the child and his parents fully understand the formal aspects of the hearing."

(2) "The acts governing the juvenile courts require the courts to reach its decision 'having due regard to the best interests of the child', and in this context it is considered desirable that the court gain some understanding of the child's view of his situation."

(3) "Magistrates have expressed the view that they see the court room appearance as being partly an educational experience, where they try to show the child the social and moral, as well as legal consequences of his actions."

She argues that the type of communication which takes place in court is not conducive to the defendant gaining an understanding of court proceedings. Because of this, the above 'goals' are unlikely to be realized. It is worth reiterating that the magistrates are not only interested in the 'education' of the defendant, but also in lecturing to, cajoling and threatening the defendant. This process frequently involves the use of bluff and false information. This may be effective with some defendants, but it may hinder defendants from gaining an understanding of court proceedings. It may in fact further mystify the proceedings and alienate the juveniles from the judicial system (La Kind, et. al; 1977). Mystification may, in fact, result from an appearance without attempts by the court to bluff defendants, given the way in which they presently operate.

Overall, only 40% of the defendants score well on the personnel identification scale. Though the vast majority of defendants identify the magistrate, a fifth fail to identify the prosecutor and a third the member. More importantly, they generally fail, particularly in the metropolitan courts, to identify the Department for Community Welfare court officer. They, thus fail to

recognise the relationship between these officers and the welfare staff who interview them and the presentation of Informative Reports to court. (I have pointed out above, that there is some confusion as to the identity of the welfare staff interviewing defendants. This inability to identify the court officer is coupled by a lack of any understanding of many of the defendants and a limited understanding of its role(s) by half of the sample. This situation is serious, given

(a) the ambiguity as to the role(s) of welfare staff in court;

(b) the non-accountability of staff to the defendant and the public in general; and despite this,

(c) the fact that court officers can, and frequently do, play an important role in court proceedings and their outcomes (see above Chapter 6 for discussion).

It is then essential that the position of staff in court be clarified and that mechanisms be developed to adequately inform the defendant and his family of this, and that officers be accountable in court to the defendant, to the court and ultimately to the public for their submissions.

A lack of comprehension of court proceedings by approximately a third of the sample and the reports that a principle factor causing this was the type of speech used by the magistrates and other official participants, raise serious questions as to the effectiveness of the court in fulfilling its goals. As La Kind, et. al. (1977:336) have argued with regard to American Children's Courts:

> "Through its reliance on informal and potentially unreliable channels of communication, our system of juvenile justice does not work; an obligation

> to educate courts, schools, the media, and direct service personnel must present the theory and operation of the system in a way that will facilitate comprehension by those most directly affected, the kids."

Western Australian Courts and the Department for Community Welfare have the same obligations. This study has shown that these obligations are not being fulfilled for a large proportion of defendants.

Chapter 12

EVALUATIONS OF FAIRNESS AND ATTITUDES TOWARDS LAW ENFORCEMENT AGENTS

INTRODUCTION

It is commonplace in sociology and criminology while discussing issues of juvenile justice and treatment to use the term the sense of injustice. This term was used by Matza in his study of the drift of juveniles into delinquency and is crucial to his argument. Matza contends that the application of a system of 'individualised justice' gives rise to inconsistencies and therefore the feelings of injustice. He, for example, refers to the juvenile justice system as one of 'rampant discretions'.[1] This sense of injustice has as its consequence the drift of juveniles into delinquency. He argues that; "The moral bond of the law is loosened whenever a sense of injustice prevails" (1964 : 102). This occurs because of the fact that the legal order is based not simply on a system of coercion but also on a belief in the legitimacy of the system.

> The maintenance of law depends partly on its legitimacy. Among the basic elements of legitimate order is the belief on the part of subjects that some semblance of justice prevails (1964 :102).

When a sense of injustice prevails the system loses its legitimacy.

Matza also contends that as well as a sense of injustice a cynical attitude to the court and law enforcement agencies develops if juveniles experience unjust treatment. Juveniles evaluate the justice of their treatment in terms of its fairness. Matza suggests that fairness appears to be a short hand method of describing the feeling involved in the sense of justice. He suggests the fundamental issues of fairness are:

(a) cognizance;
(b) consistency;
(c) competence;
(d) commensurability, and
(e) comparison.

To illustrate these elements he suggests the following is a method used by people to assess whether they have been fairly treated or not.

> It is only fair that some steps be taken to ascertain whether I am really the wrong-doer (cognizance). That I be treated according to others of my status (consistency). That you who pass judgment on me sustain the right to do so (competence). That there is a relationship between the magnitude of what I have done and what you propose to do to me (commensurability). That the differences between the treatment of my status and others be reasonable and tenable (comparison).
> (1964:106)

There are, however, two basic problems with Matza's argument. Firstly, there is a lack of data or observations to support his arguments; secondly, his discussion is to some extent based on a false comparison between adult and juvenile courts. That is, it is often assumed that juvenile courts are based on systems of individualised justice with their underlying philosophy of rehabilitation and that adult courts are based on an adversary system and operate along due process lines. Lower courts, in particular, are often similar in operation to juvenile courts (Carlen, 1976; Wiseman, 1970) and they are supposedly based on a system of individualized justice and oriented to rehabilitation. However, the actual relationship between philosophy and everyday operations is open to question (Hagan et. al., 1979). [2.]

Few studies, however, have attempted to examine the issues raised by Matza. Many, on the other hand, refer to the issues of the sense of injustice to support their arguments,

for either the elimination or changing juvenile court systems as they now stand. Only one major study has been conducted to examine the issues of fairness and justice (Hapgood, 1979). Hapgood attempted to operationalise Matza's notion of fairness. He developed eight operational dimensions. These dimensions were:-

(1) acceptance of guilt;
(2) accuracy (from the defendant's point of view) of evidence;
(3) freedom of plea;
(4) proper establishment of guilt;
(5) commensurability;
(6) comparability;
(7) suitability to personal needs;
(8) the defendant's acceptance of the legitimacy of the court.

The major dimensions were commensurability and comparability. Other authors have referred to issues of the fairness of treatment by the court, as part of their studies of various aspects of juveniles perspectives or reactions to the juvenile court system (Scott, 1959 ; Baum and Wheller, 1968; Snyder, 1971; Lipsitt, 1968, for example).

Giordano (1976) has examined the development of cynical attitudes towards the court and law enforcement agencies - the police and probation service - to test the other part of Matza's argument. A wide range of other research has been conducted on attitudes towards law enforcement agencies and agents (Waldo and Hall, 1970; Winfree and Griffiths 1972; Cotton, 1974; Munn and Renner, 1978; Rafky and Sealey, 1975 and La Kind et al., 1977). However, little of this work has been conducted specifically with juvenile defendants.

Casper (1978 (b)) reported on the evaluation of the fairness of sentencing by adult defendants from three cities in the U.S.A. Casper examined defendants' notions of fairness in relation to:

(a) just deserts - sense that the events befalling a person are somehow appropriate;

(b) equality of treatment;

(c) adequate procedures - the way in which decisions are made or outcomes occur.

The notion of just deserts is equivalent to Matza's notion of commensurability. Equality of treatment covers the issues of comparability and consistency and adequacy of procedures in part that of competence. He (1978 (a)) also examined their attitudes to the judges, prosecutors and defence attorneys involved in their case.

In the present study we attempted to measure the defendants' evaluations of the fairness of their treatment by the court and their attitudes towards agents of the criminal justice system (e.g. magistrates, police) and opinions about the functions of the Children's Court. Their evaluations of fairness will be discussed first. This will be followed by an examination of their opinions about the functions of the court and their attitudes towards magistrates and police. The total sample will be discussed as a unit in this chapter.

Evaluation of Fairness

The youths were asked two questions specifically relating to the fairness of their treatment: "Do you think you should have gone to court?" and "Do you think the Court's decision was fair?" In each case the respondents were probed for reasons underlying their answers. Two hypotheses were established to assist with the analysis of the data. The first was:-

> That the acceptance of guilt, acceptance of referral to court, and assessment of fairness, would not be affected by the defendants' sex, age, work status, ethnicity, class, type of housing, family type, record, type of offence, type of case or place of residence.

It has been shown that the acceptance of guilt by the juveniles was of central importance in their accounts of the reasons for their actions in relation to the police and the court (e.g. confessing, pleading). It may then affect their evaluation of fairness. As well as the acceptance of guilt, the acceptance of referral to court may also be related to their evaluation of fairness. For these reasons the second hypothesis was examined. This hypothesis stated:-

> That the assessment of fairness would not be affected by the acceptance of referral to court, the acceptance of guilt, perceptions of the functions of court or the disposition received in court or the defendants' assessment of the seriousness of the offence.

Acceptance of Referral to Court

The defendants' assessments of whether they should have been referred to court or not are shown in Table 12.1. Data were not collected from 20 youths and four said that they were not sure about referral to court. Of the 123 defendants who gave definite responses, 81 (65.9%) said that they accepted that they should have been referred to court.

TABLE 12.1

ACCEPTANCE OF REFERRAL TO COURT

ACCEPTANCE OF REFERRAL	ABSOLUTE FREQ.	RELATIVE FREQ. (PCT)	ADJUSTED FREQ. (PCT)
Yes	81	55.1	65.9
No	42	28.6	34.1
Not sure	4	2.7	Missing
No Data	20	13.6	Missing
TOTAL:	147	100.0	100.0
VALID CASES	123	MISSING CASES	24

As with the acceptance of guilt, there was a significant relationship between the type of case and acceptance of referral to court. As is shown in Table 12.2, those in the defended sample were much more likely to reject referral to court than those in the general sample (64.7%) compared with 29.3%). Acceptance of referral to court by the defendant also varied significantly with the type of charge brought against the defendant and to a lesser extent, with the defendants' assessment of the seriousness of the offence. While 82% of those charged with property offences accepted having to go to court only 26% of those charged with offences against 'good order' and the person did (Table 12.3).

TABLE 12.2

ACCEPTANCE OF REFERRAL TO COURT BY CASE TYPE

	COUNT / ROW PCT / COL PCT	CASE TYPE: GENERAL	CASE TYPE: DEFENDED	ROW TOTAL
ACCEPTANCE OF REFERRAL	YES	70	6	76
		92.1	7.9	65.5
		70.7	35.3	
		60.3	5.2	
	NO	29	11	40
		72.5	27.5	34.5
		29.3	64.7	
		25.0	9.5	
	COLUMN TOTAL	99	17	116
		85.3	14.7	100.0

CORRECTED CHI SQUARE = 6.56243 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0104

RAW CHI SQUARE = 8.05365 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0045

NUMBER OF MISSING OBSERVATIONS = 31

TABLE 12.3

ACCEPTANCE OF REFERRAL TO COURT BY TYPE OF OFFENCE

Acceptance of Referral	TYPE OF OFFENCE: Property	%	Good Order/ Person	%	Total	%
YES	100	82.0	6	26.1	106	73.1
NO	22	18.0	17	73.9	39	26.9
TOTAL	122	100.0	23	100.0	145	100.0

CHI SQUARE = 30.7328 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0000

The relationship between the acceptance of referral to court and the assessment of the seriousness of the alleged offence was in the opposite direction to the relationship between the acceptance of guilt and the defendants' assessment of seriousness. Whereas those who thought that the offence was serious tended to reject guilt, they tended to accept referral to court. Thirty eight (73.7%) of those evaluating it as serious accepted court intervention, while only 18 (47.4%) of those claiming the offence was not serious did so. (Table 12.4).

TABLE 12.4

ACCEPTANCE OF REFERRAL TO COURT BY ASSESSMENT OF OFFENCE SERIOUSNESS

	COUNT ROW PCT COL PCT TOT PCT	SERIOUS	NOT SERIOUS	ROW TOTAL
ACCEPTANCE OF REFERRAL TO COURT	YES	38	18	56
		67.9	32.1	62.2
		73.1	47.4	
		42.2	20.0	
	NO	14	20	34
		41.2	58.8	37.8
		26.9	52.6	
		15.6	22.2	
	COLUMN TOTAL	52	38	90
		57.8	42.2	100.0

CORRECTED CHI SQUARE = 5.12803 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0235
RAW CHI SQUARE = 6.17328 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0130

NUMBER OF MISSING OBSERVATIONS = 57

The number of offences the juvenile was charged with also significantly related to the acceptance of having to go to court. Defendants with one charge were much less likely to accept the need for court appearance than those charged with two or more offences. Only 53.8% of those with one charge accepted the legitimacy of going to court, while 89.7% and 88.9% of those charged with

2 to 5 offences and with 6 or more offences respectively did accept the legitimacy of a referral (Table 12.5).

TABLE 12.5
ACCEPTANCE OF REFERRAL TO COURT BY THE NUMBER OF CHARGES

	COUNT ROW PCT COL PCT TOT PCT	NUMBER OF CHARGES 1	2-5	6 or more	ROW TOTAL
ACCEPTANCE OF REFERRAL	YES	42	26	8	76
		55.3	34.2	10.5	65.5
		53.8	89.7	88.9	
		36.2	22.4	6.0	
	NO	36	3	1	40
		90.0	7.5	2.5	34.5
		46.2	10.3	11.1	
		31.0	2.6	.9	
	COLUMN TOTAL	78	29	9	116
		67.2	25.0	7.8	100.0

RAW CHI SQUARE = 14.35780 WITH 2 DEGREES OF FREEDOM. SIGNIFICANCE = .0008
NUMBER OF MISSING OBSERVATIONS = 31

Of the defendants' characteristics, ethnicity was the only variable that was significantly related to acceptance of referral to court (see Table 12.6). The vast majority of Aborigines (93.3%) responded that they accepted going to court, only 57.6% of the non-Aboriginal defendants accepted referral. This pattern is similar to their acceptance of guilt and confessing to the police.

TABLE 12.6

ACCEPTANCE OF REFERRAL TO COURT
BY ETHNICITY

	COUNT / ROW PCT / COL PCT / TOT PCT	ETHNICITY: ABORIGINAL	ETHNICITY: NON-ABORIGINAL	ROW TOTAL
ACCEPTANCE OF REFERRAL	YES	28	53	81
		34.6	65.4	66.4
		93.3	57.6	
		23.0	43.4	
	NO	2	39	41
		4.9	95.1	33.6
		6.7	42.4	
		1.6	32.0	
	COLUMN TOTAL	30	92	122
		24.6	75.4	100.0

CORRECTED CHI SQUARE = 11.38847 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0007
RAW CHI SQUARE = 12.94004 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0003

NUMBER OF MISSING OBSERVATIONS = 25

Defendants' social class, family type and type of housing were not significantly related to acceptance of court proceedings; nor interestingly, were their statuses or number of previous court appearances. However, defendants from Kalgoorlie tended to reject referral to court more frequently than those in Perth. Over half (57.9%) of the Kalgoorlie sample said that they should not have been sent to court. Slightly more than three quarters (77.5%) of the defendants in Perth accepted referral to court. The reason for this difference is not altogether clear.

To summarise nearly two-thirds (65.9%) of the defendants said that they should have gone to court. The acceptance of referral varied significantly with the type of case the defendant was listed in, the type and number of

offences, the defendants' assessments of seriousness, the defendants' ethnicity and place of residence.

Fairness

Defendants were asked to evaluate the fairness of the court's decision. ("Do you think the Court's decision was fair?") and they were asked to give their reasons for their assessment. Table 12.7 shows the distribution of responses. Seven juveniles said they were not sure and data was not collected for ten. One defendant gave a reply which was incomprehensible. Of the remaining defendants, 92 said that they were treated fairly and 37 indicated that they thought they had been treated unfairly. On adjusted frequencies 70.8% of the defendants thought they had been treated fairly and 28.5% felt that they had been treated unfairly.

TABLE 12.7

DEFENDANTS' ASSESSMENT OF THE FAIRNESS OF THE COURT'S DECISION

FAIRNESS	ABSOLUTE FREQ.	RELATIVE FREQ. %	ADJUSTED FREQ. %
FAIR	92	62.6	70.8
UNFAIR	37	25.2	28.5
OTHER	1	.7	.8
NOT SURE	7	4.8	MISSING
NO DATA	10	6.8	MISSING
TOTAL	147	100.0	100.0

There were no significant relationships between the defendants' sex, ethnicity, age or work status and the assessment of fairness. There were also no significant relationships between the defendants' social class or the type of housing and the evaluation of fairness. There was, however, a marginally significant relationship between family status and the defendants' assessments. (Chi square = 4.02879, 1 degree of freedom Significance = .0447). More defendants in single parent families indicated that they were treated fairly than defendants from two parent families. This relationship, however, may be spurious. The relationships between the type of offence, the number of charges and the city samples and evaluations were also not significant. Neither was the relationship between case type and fairness. However, there was a clear trend by those in the defended sample towards the assessment of their treatment by the court as being unfair.
In the general sample three-quarters (77%) thought that the court's decision was fair whereas just over half of the defended sample (52.6%) felt the same way.

TABLE 12.8

ASSESSMENT OF FAIRNESS BY
ASSESSMENT OF SERIOUSNESS

	COUNT ROW PCT COL PCT TOT PCT	OFFENCE SERIOUSNESS SERIOUS	NOT SERIOUS	ROW TOTAL
FAIRNESS	YES	47	22	69
		68.1	31.9	72.6
		81.0	59.5	
		49.5	23.2	
	NO	11	15	26
		42.3	57.7	27.4
		19.0	40.5	
		11.6	15.8	
	COLUMN TOTAL	58 61.1	37 38.9	95 100.0

CORRECTED CHI SQUARE = 4.26004 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0390
RAW CHI SQUARE = 5.28973 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0215

NUMBER OF MISSING OBSERVATIONS = 52

Acceptance of Guilt, of Referral to Court and Fairness

The relationships between the defendants' acceptance of guilt and of referral to court and their evaluations of the fairness of their treatment were examined to determine if the relationships were significant.

Acceptance of referral to court was affected by the defendants' acceptance of guilt. Although the relationship was not highly significant (see Table 12.9) those who either fully or partially rejected guilt tended to reject the legitimacy of court intervention.

TABLE 12.9

ACCEPTANCE OF REFERRAL TO COURT
BY ACCEPTANCE OF GUILT

	COUNT ROW PCT COL PCT TOT PCT	ACCEPTANCE OF GUILT YES	 NO	ROW TOTAL
ACCEPTANCE OF REFERRAL TO COURT	YES	50	14	64
		78.1	21.9	66.7
		73.5	50.0	
		52.1	14.6	
	NO	18	14	32
		56.3	43.8	33.3
		26.5	50.0	
		18.8	14.6	
	COLUMN TOTAL	68	28	96
		70.8	29.2	100.0

CORRECTED CHI SQUARE = 3.93908 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0472
RAW CHI SQUARE = 4.94118 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0262

NUMBER OF MISSING OBSERVATIONS = 51

TABLE 12.10

ASSESSMENT OF FAIRNESS BY
ACCEPTANCE OF REFERRAL TO COURT

	COUNT / ROW PCT / COL PCT / TOT PCT	ACCEPTANCE OF REFERRAL TO COURT: YES	NO	ROW TOTAL
FAIRNESS	YES	59	22	81
		72.8	27.2	75.0
		80.8	62.9	
		54.6	20.4	
	NO	14	13	27
		51.9	48.1	25.0
		19.2	37.1	
		13.0	12.0	
	COLUMN TOTAL	73	35	108
		67.6	32.4	100.0

CORRECTED CHI SQUARE = 3.17025 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0750

RAW CHI SQUARE = 4.07202 WITH 1 DEGREE OF FREEDOM. SIGNIFICANCE = .0436

NUMBER OF MISSING OBSERVATIONS = 39

TABLE 12.11

ASSESSMENT OF FAIRNESS BY

ACCEPTANCE OF GUILT

	COUNT / ROW PCT / COL PCT / TOT PCT	ACCEPTANCE OF GUILT: YES	NO	ROW TOTAL
FAIRNESS	YES	65	22	87
		74.7	25.3	73.1
		80.2	57.9	
		54.6	18.5	
	NO	16	16	32
		50.0	50.0	26.9
		19.8	42.1	
		13.4	13.4	
	COLUMN TOTAL	81	38	119
		68.1	31.9	100.0

CORRECTED CHI SQUARE = 5.48554 WITH 1 DEGREE OF FREEDOM. SIGNIF.= .0192

RAW CHI SQUARE = 6.57334 WITH 1 DEGREE OF FREEDOM. SIGNIF.= .0104

NUMBER OF MISSING OBSERVATIONS = 28.

The Rationality of Assessing Fairness

The defendants gave a wide range of reasons for their assessment of fairness of their hearings. These reasons are outlined in Table 12.12 below. Some of the respondents accounted for their evaluation with reference to only one rationale, other provided two or more reasons in their accounts. The first rationale was a reference to the acceptance of guilt. ('It was fair, cause I was guilty'). However, this rationale was more central to an evaluation that the outcome was unfair. ('It was unfair because I wasn't guilty'). The importance of this comes from the fact that only two defendants were acquitted. It also arises from the fact that the acceptance of guilt is central to the defendants' orientations to court, (e.g. pleading). This rationale is equivalent to Matza's notion of cognizance.

The State of one's record was another dimension; reference was made to both 'bad' and 'good' records (consistency). If the defendants thought the outcome was consistent with their record it was evaluated as fair. Commensurability was also used by the defendants to assess fairness. This element was referred to in terms of the seriousness of the offence.

Case 53

'Yes it was fair, cause it was only a minor offence.'

Case 121

'No, the fine was a bit heavy for what I done.'

Defendants also made comparisons with what co-defendants or friends or acquaintances received from the court.

Case 248

'No, it's not fair, because the other girl got let off.'

Case 335

'Two years probation is a long time. A mate got busted untold times and he only got one year's probation.'

The principle of comparability can also be seen to work in the other direction and be advantageous to the defendant.

TABLE 12.12

RATIONALES FOR THE
ASSESSMENT OF FAIRNESS

EVALUATION OF FAIRNESS	RATIONALE								
	ACCEPTANCE OF GUILT	RECORD		COMPARISON WITH OTHERS	OFFENCE SERIOUSNESS		ADEQUACY OF PROCEDURES		FAIR ENOUGH
		BAD	GOOD		SERIOUS	NOT SERIOUS	COURT PROCEDURES	INCONVENIENCE	
FAIR	YES	YES	NO	YES	YES	NO	YES	NO	YES
UNFAIR	NO	NO	YES	NO	NO	YES	NO	YES	NO

Case 311

'I got a criminal record and he /co-defendant/ hasn't. It wouldn't have looked fair if we hadn't got the same charge /sic, sentence/. It wouldn't have been fair to give him a community service /order/ and not me. I suppose the judge thought that he had better give us the same thing.'

Adequacy of procedure was also referred to by the defendants. There were two issues here. The first related to the adequacy of the court procedures themselves. This type of rationale involved what Matza has referred to as competence, ("That you who pass judgement on me sustain the right to do so") as well as elements of cognizance (that the appropriate steps are taken to ascertain guilt). This principle was mentioned especially by those who were contesting their cases, where one issue was that the defendants thought was the lack of even-handedness.

Case 326

'The magistrate believed the detective and not me.'

Case 323

'I don't reckon he /the magistrate/ took both sides into it. He listened to the cops and not to what I've said. I know I am not guilty. They said I was so the system can't be too good, if you can find someone guilty when they're not.'

The other issue here was inconvenience, especially in relation to defending a case. Defendants felt that the whole thing "should have been got over with" on their first appearance and the inconvenience of having to go to court a number of times avoided.

The last dimension in Table 12.12 has no equivalent in Matza's schemes and could be referred to as the 'fair enough' principle. That is the respondents conclude that given their record, the seriousness of the offence and so that the court's disposition is 'fair enought'. This principle is in operation in the following statements;

Case 167

'I've been in trouble before, it could have been harder.'

Case 187

'It was fair. They could have sent me to Nyandi.'

Other defendants mentioned leniency in the same way; it was fair because they had been given a chance or that the court was lenient with them, given the circumstances

of their offence, record, and so on ('It was about as lenient as I could get'). Combination of the above elements were given by various defendants in their rationales, though most used only one.

I do not wish to give the impression that the respondents' judgements as to whether the outcome was fair or unfair were consistently simple and straight forward. For some defendants, at least, the decision is complex and this is certainly indicated by the 'fair enough' principle.

Case 363

'It was sort of fair and sort of not. The police didn't have the story right and we didn't have the story right either. But the police were more wrong than we were. But he /the magistrate/ said that he had made his mind up ages ago /before the conclusion of the case/.'

The defendant here is suggesting that though neither party had the 'facts' right (and therefore the outcome was sort of fair) it was unfair because adequate procedures were not followed. The magistrate did not take due account of the defence evidence. An interview with the magistrate confirmed the defendant's opinion. The magistrate had, in fact, assumed that the defendant was guilty. He had operated on the assumption that if the juvenile had been prosecuted then he must have been guilty. ('Those officers are nice young men they would not have arrested the defendant if he had not done something', he said). The use of the 'fair enough' principle calls the defendant's attention to not only what happened but also to what could have been the outcome of the appearance. Given that the defendant's worst expectations were not realised then the decision was considered to be 'fair enough.'

Case 54

'It was fair, cause it wasn't really a serious offence. It was more than fair actually, nothing happened. I was expecting to get probation and lose my job.'

The complexity that is frequently involved in the defendants' assessments can be seen in the following case. The 13 year old boy denied guilt for the charge of wilful damage and contested the case. He was found guilty and the charge was dismissed under Section 26 of the Child Welfare Act (first offenders) and placed on 6 months supervision.

Case 334

*"/It was fair/ because they could have sentenced me harder. But they could have let me off because I wasn't really guilty.'

The rationales used by the defendants to evaluate their treatment by the court are consistent with the pattern described by Matza (apart from the 'fair enough' principle). This would indicate that the defendants operate on a traffic/just-deserts model and not a welfare type model when they are assessing fairness/justice.

Though these data are of course not sufficient in themselves to show this beyond doubt they are clear indications that the defendants are concerned with the issues of guilty, comparability, commensurability and adequate procedures. Few defendants, in fact, used what could be referred to as 'welfare' principles in the evaluation of fairness. A couple of the respondents made mention of such factors as 'help' and 'sorting themselves out'.

Case 46

* 'It will help me keep out of trouble, it will make me more aware of myself and what I'm doing.'

Case 35

* 'It was fair, because it's the magistrate's job to know what is best for the community and I did wrong and I shall be sentenced till I sort myself out'.

The emphasis on a tariff type model is also indicated by the fact that few of the youths saw the court as having a welfare function, the majority saw it as having a function(s) not too dissimilar from adult courts (see below).

Summary

Those rejecting guilt for the offences they were charged with tended to reject the legitimacy of their referral to court. The relationship between the acceptance of referral to court and the evaluation of the fairness of their treatment was not significant, though there was a trend for those who rejected referral to think that the courts decision was unfair. The relationship between the acceptance of guilt and assessment of fairness was significant. This significance was reflected in the rationales the respondents gave for their evaluations of fairness. These rationales included:

(a) acceptance of guilt;
(b) state of previous record;
(c) comparison with other sentences;
(d) the seriousness of the offence; and
(e) adequacy of procedure.

Evaluations were, however, complicated by the application of the 'fair enough' principle. Here defendants' weighed the disposition they received against the possible alternatives given the circumstances of their appearance.

Perceptions of the Functions of the Court

The juveniles' perceptions of the functions of the court were elicited. ("What do you think the court's job is?") The issue here is, do defendants' in Children's Courts perceive the court as having a rehabilitative/treatment function or do they see it as having other function(s)? Following the pilot study it was hypothesized that the juvenile would:

> view the court as having punitive/retributive function rather than a welfare function.

Their responses were coded into four categories of functions:

(a) welfare function ("helping kids", "keeping kids out of trouble")
(b) punitive function ("punishing kids", "sending kids to homes")
(c) both welfare and punitive ("helping kids and punishing them for what they've done")
(d) 'other' (including such issues as the administration of justice, general law and order role and so forth).

Thirteen defendants weren't sure what the court's function was, and data was not collected from 24 (16.3%) defendants. Of the remainder, 29 (26.4%) thought that it had a welfare function, 42 (38.2%) indicated that it had a punitive function and 9 (8.2%) thought that it was both welfare and punitive in orientation. The remaining 27.3% gave responses which were coded as 'other' (Table 12.13).

TABLE 12.13

PERCEIVED FUNCTION OF THE CHILDREN' COURT

PERCEIVED FUNCTION	ABSOLUTE FREQ.	RELATIVE FREQ. %	ADJUSTED FREQ. %
Welfare	29	19.7	26.4
Punitive/Retributive	42	28.6	38.2
Both	9	6.1	8.2
Other	30	20.4	27.3
Not Sure	13	8.8	-
No Data	24	16.3	-
TOTAL	147	100.0	100.0

VALID CASES 110 MISSING CASES 37

It can be seen from Table 12.13 that the majority (73.6%) of the defendants see the function of the court as one of punishing wrong-doers, the administration of justice and the maintenance of law and order and so on and only a quarter (26.4%) of them thought that its concern was with the 'welfare' of the defendants.

To determine whether the youths' perceptions of the courts' function varied with their backgrounds the following hypothesis was examined:

> That the juveniles' perceptions of the court's function would not vary significantly with their sex, age, ethnicity, work status, record, class, family type, type of housing, place of residence or case type.

Apart from the two indicators of the youths' records (the number of previous appearances and status) their perceptions of the courts' function did not vary significantly with their backgrounds.[3] Both the relationships between the number of previous appearances and status and perceived functions showed similar patterns for those with no or only

limited previous contact with the court. Those with no previous appearance were more inclined than others to see the court as having a punitive function (55.6%) (see Table 12.14). Similarly youths in the 'first offender' category were also most likely to view the court as having a punitive function (60.6%) (Table 12.15).

Roughly equal proportions of youths with one to four and five or more previous appearances thought that the court has a welfare function (37.5% and 39.3% respectively). However those with five or more previous appearances were least likely to see the court as having a punitive function. Nevertheless the majority of youths in both categories (6 in 10) said that the courts function was other than a welfare one. (Table 12.14) Youths who were already under the control (PUC) of the Department were equally divided on what they thought the courts function was. Respondents with intermediate status were most likely (47.8%) to view the court as having a welfare function. However, as with the relationship between the number of previous appearances and perceived function the majority of youths thought that the court had other than a welfare function (intermediate status 52.2%, PUC status 66.6%).

TABLE 12.14

PERCEIVED FUNCTION OF THE COURT

BY

NUMBER OF PREVIOUS APPEARANCES

COURT'S FUNCTION	COUNT / ROW PCT / COL PCT / TOT PCT	NUMBER OF PREVIOUS APPEARANCES 0	1-4	5 OR MORE	ROW TOTAL
	WELFARE	3	15	11	29
		10.3	51.7	37.9	28.7
		9.1	37.5	39.3	
		3.0	24.9	10.9	
	PUNITIVE/ RETRIBUTIVE	20	15	7	42
		47.6	35.7	16.7	41.6
		60.6	37.5	25.0	
		19.8	14.9	6.9	
	OTHER	10	10	10	30
		33.3	33.3	33.3	29.7
		30.3	25.0	35.7	
		9.9	9.9	9.9	
	COLUMN TOTAL	33	40	28	101*
		32.7	39.6	27.7	100.0

RAW CHI SQUARE = 13.19885 WITH 4 DEGRESS OF FREEDOM
SIGNIFICANCE = .0165
NUMBER OF MISSING OBSERVATIONS = 46
* COURTS FUNCTION = 'BOTH' EXCLUDED (N = 9)

TABLE 12.15

PERCEIVED FUNCTION OF THE COURT
BY STATUS

	COUNT / ROW PCT / COL PCT / TOT PCT	STATUS: FIRST OFFENDER	INTER-MEDIATE	P.U.C.	ROW TOTAL
COURT'S FUNCTION	WELFARE	7	11	10	28
		25.0	39.3	35.7	28.6
		15.6	47.8	33.3	
		7.1	11.2	10.2	
	PUNITIVE/ RETRIBUTIVE	25	6	10	41
		61.0	14.6	24.4	41.8
		55.6	26.1	33.3	
		25.5	6.1	10.2	
	OTHER	13	8	10	29
		44.8	20.7	34.5	29.6
		28.9	26.1	33.3	
		13.3	6.1	10.2	
	COLUMN TOTAL	45	23	30	98*
		45.9	23.5	30.6	100.0

RAW CHI SQUARE = 11.87698 WITH 4 DEGREES OF FREEDOM. SIGNIFICANCE = .0397

NUMBER OF MISSING OBSERVATIONS = 49 *COURTS FUNCTION = 'BOTH' EXCLUDED (N = 9)

These trends would indicate that the juveniles change their perceptions of the court's function(s) in relation to the amount and type of contact they have with it. Those with intermediate status (including probation and supervisionary statuses) were most inclined to view the court as having a welfare function. This probably reflects the fact that probation and supervisionary orders are frequently given by magistrates amid claims that they are being given as an aid to the defendant and not to be viewed by them as a punishment. These defendants are either picking up the rhetoric of the system's participants and/or actually experiencing such orders as helpful. One problem here, however is that these dispositions, especially probation, may be handed down for totally

different reasons and accompanied with totally different lectures by the same magistrate on the same day. On the other hand, the magistrate can inform the defendant and/or his parents that the order is to be considered not as a punishment but as a source of help. On the other, he or she may warn the youth about the consequences of not fulfilling the conditions of the order and of the consequences of further offending, as well as informing him that he is lucky the court has seen fit to treat him leniently on this occasion.

It is interesting to note that those with what is supposedly the most intense contact with the Department and the Court - those under the control of DCW - are less likely than those with intermediate statuses to suggest that the court has a welfare function.

Summary

Approximately two-thirds (65.5%) of the youths saw the court as having a function(s) other than a welfare one. Of the remainder, 8.2% thought that it had both a welfare and a punishing role and the other 26.4% that it had a purely welfare function. The perceived function of the court varied with the previous experience of defendants and not with any of the other background variables. Those with little or no experience thought the court had a punitive/retributive role. Youths with intermediate status, and moderate experience were most inclined to view the court as having a welfare function.

Opinions of Court Personnel

Defendants were asked about their opinions of court personnel and how they thought that their case had been handled by these individuals. The specific concern here was with the defendants' opinions of the magistrate and his or her handling of the case. The magistrate was considered by 83% of defendants to be the most important person in the court. Of these defendants 71% said that his/her importance lay in the fact that he/she was the one who made the decisions and handed down the sentences. In

contrast, six youths thought that their lawyer was the most important individual in the court, seven said that it was their welfare or aftercare officer and five juveniles replied that it was they themselves who were of greatest importance.

TABLE 12.16

DEFENDANTS' OPINIONS OF THE MAGISTRATE

OPINION OF MAGISTRATE	ABSOLUTE FREQ.	RELATIVE FREQ.	ADJUSTED FREQ.
POSITIVE	71	48.3	73.2
NEGATIVE	11	7.5	11.3
OTHER (MIXED, NEUTRAL)	15	10.2	15.5
NOT SURE	14	9.5	-
NOT APPLICABLE[4]	13	8.8	-
NO DATA	23	15.6	-
TOTAL	147	100.0	100.0

VALID CASES 97 MISSING CASES 50

Table 12.16 above shows the youths' opinions of the magistrate. On adjust frequency percentages 73.2% had positive opinions of him/her ('he was good'; 'he was alright'; 'I liked her'), 11.3% had negative opinions ('he was cold and disinterested'; 'I didn't like her'; 'he was absolutely useless, he didn't know what he was doing') and 15.5% had other or mixed opinions ('he got a bit nasty at the end'). To examine these results in more detail the following hypothesis was examined.

> That the defendants' opinions of the magistrate would not vary with their sex, age, ethnicity, work status, record, class, type of family, type of housing, place of residence and case type.

The opinions held by the youths of the magistrates who handled their case did not vary significantly with any of the background variables. To test whether case related factors were influencing defendants' opinions,

they were cross-tabulated with the dispositions they received and their evaluations of the fairness of their treatment by the court. Defendants' opinions were not significantly related to the actual disposition they received. They were, however, strongly influenced by their assessments of the fairness of the court hearing (Table 12.17).

TABLE 12.17

DEFENDANTS' OPINIONS OF THE MAGISTRATE

BY

EVALUATIONS OF THE FAIRNESS OF THEIR HEARING

OPINION OF MAGISTRATE	COUNT / ROW PCT / COL PCT / TOT PCT	FAIRNESS YES	FAIRNESS NO	ROW TOTAL
	POSITIVE	43	11	54
		79.6	20.4	68.4
		74.1	52.4	
		54.4	13.9	
	NEGATIVE	2	9	11
		18.2	81.8	13.9
		3.4	42.9	
		2.5	11.4	
	OTHER	13	1	14
		92.9	7.1	17.7
		22.4	4.8	
		16.5	1.3	
	COLUMN TOTAL	58	21	79
		73.4	26.6	100.0

RAW CHI SQUARE = 20.97513 WITH 2 DEGREES OF FREEDOM. SIGNIFICANCE = .0000

NUMBER OF MISSING OBSERVATIONS = 68

Only 5% of those who thought their treatment by the Court was fair had negative opinions of the magistrate whereas 46.7% of the youths who evaluated their treatment as unfair had. The non-significance of the relationship between sentence and opinions reflects the fact that the sentence by itself did not significantly influence the juveniles evaluations of fairness.

Most of the juveniles had positive or neutral feelings about the other key participants in their case (prosecutor, welfare officer and lawyer). Seventy-two percent of the juveniles thought that the prosecutor had handled the case in a neutral fashion ('he just read out what I'd done'). This reflects the fact that 59% indicated that they considered that the police evidence was correct or basically correct and only 18.2% thought that there were major inaccuracies in it. Eleven percent of the youths said that the prosecution was 'out to get them' and another 6% said that they had made the offence sound more serious than it actually was. However, 6% said that the prosecutor had actually helped their case in court. Defendants who had contested their cases, generally had more complaints about the prosecutor and his handling of the case and of police witnesses.

Of the defendants who recognized the role of the D.C.W. Court Officer (41% of sample) 73.3% thought the officer had helped their case. ('He spoke up for me'. 'He recommended that I go home'). In contrast, 13.3% said that the officer had made their situation worse and/or had made recommendations which they felt were unfair and a further 7% reported that they thought that the officers did not care about their case. Eighty percent of the youths who had legal representation were satisfied with the services they had received. In the general sample this was often described in such terms as:

'Yea he was good, he spoke up for me.'

'Good, she stopped the cops trying to put other charges on me.'

'Really good, he put my side of the story and got me off /dismissed Section 26_7.'

Defendants in the defended sample were generally satisfied with their lawyer regardless of the outcome.

> 'My solicitor was trying to get my story across to the Magistrate. He was alright, he tried his best.'
>
> 'He tried his best but we couldn't win, the police evidence was too strong.'
>
> 'He was good, we won.'

The remaining 20% had either negative or cynical opinions about their solicitors. A few said that if they had to go to court again they would try and get a better lawyer. The others reported that it was useless having a lawyer at all.

SUMMARY

Most defendants (73.2%) had positive opinions of the Magistrate in their case. Only 11.3% had negative opinions and 15.5% had mixed, neutral or other opinions. Defendants' opinions did not vary with their backgrounds but did with their evaluation of the fairness of their treatment by the court. Most youths had positive or negative attitudes towards the other key personnel - prosecutors, welfare staff and lawyers - involved in their cases.

Youths' Opinions of the Police

The youths were asked about their general opinions of the police. Their responses are listed in Table 12.18.

TABLE 12.18

DEFENDANTS' OPINIONS OF THE POLICE

	Absolute Freq.	Relative Freq. %	Adjusted Freq. %
Positive	22	15.0	17.6
Neutral	23	15.6	18.4
Negative/Cynical	57	38.1	44.8
Other	23	15.6	18.4
Not sure	2	1.4	-
No Data	20	13.6	-
TOTAL:	147	100.0	100.0

The category positive includes such responses as 'the police are o.k.'; 'they're only doing their job' and so on. Categorized as neutral and responses like 'there are some good ones and some bad ones'. Some youths indicated for example that though they had bad experiences with the police on this occasion they knew of other police whom they considered were good and who they thought would have treated them differently. The category negative/cynical includes opinions ranging from 'I hate them' to cynical responses such as 'they are only good at catching kids they never catch the real crims'. In the other category are coded responses of a mixed nature ('police are necessary but I hate the detectives') responses including two or more opinions and a number of unrelated responses. Two youths were not sure of their opinions and data was not collected from 20 respondents.

On adjusted frequency percentages, 44.8% had negative or cynical opinions of the police, 18.4% had 'other' opinions, 18.4% had neutral and 17.6% had positive opinions of the police. To facilitate the examination of these data the following hypothesis was examined:

> Defendants' opinions of the police would not vary with their sex, age, ethnicity, work status, record, class, type of family, type of housing, place of residence and case type.

Apart from ethnicity, number of previous appearances and status, opinion of the police did not vary with the defendants' backgrounds. Aboriginal youths were more negative in their opinions of the police than non-Aboriginal juveniles (Table 12.19). Although both groups had roughly the same level of neutral opinions significantly few Aboriginal youths held positive opinions.

TABLE 12.19

DEFENDANTS' OPINIONS OF THE POLICE
BY ETHNICITY

OPINION OF POLICE	COUNT / ROW PCT / COL PCT / TOT PCT	ETHNICITY: ABORIGINAL	ETHNICITY: NON-ABORIGINAL	ROW TOTAL
	POSITIVE	1	21	22
		4.5	95.5	21.8
		3.8	28.0	
		1.0	20.8	
	NEUTRAL	6	16	22
		27.3	72.7	21.8
		23.1	21.3	
		5.9	15.8	
	NEGATIVE/ CYNICAL	19	38	57
		33.3	66.7	56.4
		73.1	50.7	
		18.8	37.6	
	COLUMN TOTAL	26	75	101*
		25.7	74.3	100.0

RAW CHI SQUARE = 6.91618 WITH 2 DEGREES OF FREEDOM. SIGNIFICANCE = .0315
* RESPONSES CODED AS 'OTHER' EXCLUDED.

NUMBER OF MISSING OBSERVATIONS = 46

Youths with a large number of court appearances and with high status had significantly more negative opinions of the police than others. This indicates that those with the most contact with the police have the most negative opinions of them. Table 12.20 shows the relationship between opinions and previous court appearances. While those with no, medium and high number of previous appearances hold similar proportions of positive opinions of the police, youths with no previous appearance have significantly more neutral opinions than the other two categories. It can also be seen that the proportion of each group holding negative

cynical opinions increases significantly with the number of court appearances (32%, 59.6%, 70% for those with no, medium, and high number of appearances). A similar pattern was found for the relationship between status and youths' opinions of the police.

TABLE 12.20

DEFENDANTS' OPINIONS OF THE POLICE
BY NUMBER OF PREVIOUS COURT APPEARANCES

OPINION OF POLICE	COUNT / ROW PCT / COL PCT / TOT PCT	NUMBER OF PREVIOUS COURT APPEARANCES 0	1-4	5 OR MORE	ROW TOTAL
POSITIVE		5	11	6	22
		22.7	50.0	27.3	21.6
		20.0	23.4	20.0	
		4.9	10.8	5.9	
NEUTRAL		12	8	3	23
		52.2	34.8	13.0	22.5
		48.0	17.0	10.0	
		11.8	7.8	2.9	
NEGATIVE/ CYNICAL		8	28	21	57
		14.0	49.1	36.8	55.9
		32.0	59.6	70.0	
		7.8	27.5	20.6	
COLUMN TOTAL		25	47	30	102*
		24.5	46.1	29.4	100.0

RAW CHI SQUARE = 13.78607 WITH 4 DEGREES OF FREEDOM. SIGNIFICANCE = .0080
*RESPONSES CODED AS 'OTHER' EXCLUDED.

NUMBER OF MISSING OBSERVATIONS = 45

Summary

Only 17.6% of the defendants held positive opinions of the police and a further 18.4% had neutral opinions ('some good ones and some bad ones'). Fifty-seven defendants (44.8%) held negative or cyncial opinions and the opinions of the remaining 18.4% were categorized as 'other'. Defendants' opinions vary significantly with their ethnicity and records but not with any of the other background variables. Aboriginal youths and those with more previous court appearances and higher statuses held more negative or cynical opinions of the police than other youths.

Summary and Discussion

In this chapter the defendants' evaluations of the justice of their treatment by the court was examined. Fairness was taken as an indicator of justice. Also examined were their opinions of the function(s) of the court, their attitudes to the main participants in their case and their general opinions of the police. The problem of evaluating fairness was approached by the examination of the issues of 'the acceptance of guilt', the 'acceptance of referral to court' and 'assessment of the fairness' of treatment.

As shown in Chapter 9 two-thirds of the youths accepted guilt for the offence they had been charged with. Two-thirds of the defendants also accepted referral to court. Acceptance of court referral was significantly related to ethnicity, the type and number of offences and with the case type. As with acceptance of guilt Aboriginal defendants were more ready to accept referral to court than non-Aborigines. Those charged with offences against 'good order' and person were less likely to accept the use of court proceedings as were those charged with only one offence. Hapgood found a similar relationship between the number of offences and acceptance of referral. Two-thirds of those charged with indictable offences in his sample accepted referral; however the overall rate of acceptance was lower than that found here (56.0% of all offences).

In this study there was also a trend for those who assessed their offence as serious to accept referral, while those

who thought that it was not serious tended to reject referral. Hapgood did not find any variation in acceptance with regard to the seriousness of offence. It was shown above that the acceptance of referral to court was significantly related to the defendants' acceptance of guilt. Those who did not accept guilt were more inclined to reject referral. The overall acceptance of referral would seem to arise, at least in part, from the belief by some defendants that the court is the appropriate venue to sort out the issues once one has been charged, rightly or wrongly, by the police. Thus there is a strong, but incomplete relationship between the acceptance of guilt and of the intervention by the court.

Seventy per cent of the defendants thought that the court's decision was fair. The only statistically significant relationship was with the defendants assessment of seriousness, with those assessing their offence as non-serious tending to evaluate their treatment as unfair. There was a strong trend for those in defended cases to claim that they were unfairly treated. The difference between the assessment of fairness and the other two variables arises, it was suggested, from the way in which defendants evaluate their treatment. They refer to such issues as acceptance of guilt, status comparability, commensurability and adequancy of procedure while making their evaluations. The importance of guilt was highlighted by the significant relationship between acceptance of guilt and fairness. The acceptance of referral to court and fairness were not significantly related, though there was a reasonably strong trend for those rejecting referral to assess their treatment as unfair. The lack of significance in this relationship seems to have its basis in the use of the 'fair enough' principle. 'I don't accept being sent to court but given that I was the outcome is 'fair enough' considering; my record, the offence, what I could have got'. Contrary to the often stated claim that guilt is not, or should not be, a central issue in juvenile justice, these data indicate that the 'acceptance of guilt', is a principle component in the evaluation of justice (see

also Hapgood, 1979). This and other studies would seem then to confirm the model of justice evaluation outlined by Matza (1964). However, what of his contention that the system is one of 'rampant discretions' giving rise to a 'sense of injustice'. We have seen that nearly 75% of the defendants think they were treated fairly. These figures are roughly equivalent to those found by other research on juveniles. For example, Scott (1959) found that 66% of his sample thought that they were fairly treated. Baum and Wheller (1968) in a study of new inmates in a juvenile institution reported that more than two-thirds (68%) of the youths thought they had been treated fairly or somewhat fairly treated by the court. Snyder (1971) also reported that 39 out of 43 respondents considered the hearing fair. Petersen (1978) in a study of children facing the juvenile panel in the D.C.W. Perth divisional area reported that 53% of his sample reported that the panel hearing was either fair or good. As with the other studies mentioned above, Hapgood found that almost two-thirds of the defendants felt that they had been fairly treated by the court. In relation to the comparability of sentence 64.5% of the sample thought their sentence was comparatively fair. However, only 42% of the sample felt that the disposition was commensurate with the offence they had committed. The others felt that it was either too heavy (36%) or too light (22%).

Hapgood suggests that the relationship between these dimensions is very complex and that his findings indicate that defendants operate on a tariff model when deciding on the fairness or unfairness of the treatment by the court. Similar conclusions have been reached by other researchers including Morris and Giller (1977). According to the tariff model, in contrast to the underlying principles of 'individualized justice', defendants operate on a principle of a direct relationship between the offence they have committed and the disposition. They do not base their assessments of fairness on a supposed relationship between their diagnosed personal problems and the court's disposition of their case. In fact most defendants (65.5%) see the court as having an orientation rather than a 'welfare one'. Few defendants provided 'welfare' rationales in their evaluation of fairness. The youths' perceptions of the court's function varied with their previous experience and not with any of the

other background variables. Those with little or no experience saw the court as having a punitive/retributive role. Defendants with intermediate status and moderate experience were most inclined to view the court as having a welfare function. Despite this, however, the basis for evaluating fairness was the same as other defendants in almost all cases.

Morris and Giller (1977) reported that most of their respondents saw the court (English) as having a punitive orientation. Scott (1959) and Voelcker (1961) reported similar findings. Langley et al (1978) found that his sample of first offenders had a range of perceptions of court functions. In the pre-court interview 43% thought the main purpose of their hearing was to deter further offending. In the post-court interview the proportion holding this view fell to 33%. In the same interview 11% thought it was to administer justice; 11% to help them (the defendant), 13% to teach them a lesson, and only 4% to punish them. Such differences may arise from such factors as the orientation of the court to welfare issues, differences in court processes, differences in the treatment of individuals by the court and the type and degree of contact defendants have had with the court. (See Anderson, 1978; Parker et al 1980, Williamson, 1980).

Part of the reason so many defendants feel fairly treated by the court, is that the court, despite the rhetoric to the contrary, does operate on a tariff model. Certain types of offences, in certain situations (e.g. account is taken of status, and so on) do receive similar dispositions. The typically observed disposition for being drunk and disorderly was $10.00. Hapgood (1979) similarly concluded that the high levels of acceptance of the court decisions as fair (especially in relation to comparability) indicated that the court was operating on a tariff model. Hagan et al (1979) argues that in adult courts this situation is the result of the need for organizational efficiency in the court system.

The relationship they suggest between the principles of individualized justice and court outcome is largely ceremonial. That is, the courts go through the motions of individualizing justice, accepting probation officers' reports and so on. For efficiency, however, they follow the recommendations of the prosecutors and these are generally along tariff lines. The relationship is undoubtedly more complex in Children's Courts but individualized justice does have its ceremonial aspects. There is, however, greater change of anomalies in sentencing in Children's Courts because of the dominance of the rhetoric of rehabilitation and the mandate to operate in terms of substantive rationality. There is, nonetheless, the ongoing conflict inherent in the court, between its welfare and legal roles. The inter-relationship between its legal function and the needs of organization efficiency will inevitably give rise to some type of tariff model. So too will the assessments of fairness by the court regulars themselves.

The magistrate was seen as the most important person in the court by 83% of defendants. The magistrate's power in relation to decision-making and sentencing was the main reason for this assessment. The majority of defendants (73.5%) had positive opinions of the magistrate, 15.5% had mixed, neutral or other opinions and only 11.3% held negative opinions of him/her. Defendants' opinions did not vary with any of the background variables or with the disposition of youths received, however, they were strongly influenced by their evaluations of the fairness of their treatment. Most youths had either positive or neutral opinions of prosecutors, court welfare officers and lawyers in cases where these participated and were recognized by the youths.

Data from other research is conflicting on these issues. Maher and Stein (1968) reported that the youths in their study saw judges in Children's Courts negatively, as impersonal and disinterested. Snyder (1971) on the other hand, found that the majority of her sample had positive attitudes towards the judges in their cases. Giordano (1976) also reported that youths had positive opinions of judges and probation officers in their cases but negative

attitudes towards the police. Lipsitt (1968) found 45% of his sample thought that the Judge was 'on their side during the case.' There were significant differences between first offenders and recidivists in regard to attitudes. (See Casper, 1976(a) and Arcuri, 1976, on adult defendants).

Giordano points to an important issue which needs to be considered that is the need to distinguish between attitudes towards the system and attitudes towards the individuals working in it. She suggests (1976:106):

> It seems to be the case that while these youths do in fact regard probation and the court ineffective as agencies, they nevertheless feel rather positive about the individuals whom they have come to know within the agencies.

Youths may feel cynical about the law enforcement agencies, and increasingly so with contact, but yet have positive attitudes towards their agents' participants. This may explain some of the differences between attitudinal studies of delinquents and non-delinquents and studies of defendants in this regard. Attitudinal studies tend to show youths having negative attitudes towards the court and its personnel and that this increases with the amount of contact. (See La Kind et al (1977) and Rafky and Sealey (1975) for example.

Defendants, though being generally positive towards the Magistrate and other participants in court were very negative in their opinions about the police. Only 17.6% held positive opinions of them; 18.4% had neutral and 18.4% 'other' (mixed etc.) opinions. The remaining 44.8% of defendants had negative/cynical opinions of the police. Opinions varied significantly with the defendant's record and ethnicity. Aboriginals and defendants with a large number of previous court appearance and P.U.C. status were more likely than others to have negative/cynical opinions of the police.

These findings are consistent with those from overseas research. Youths from ethnic backgrounds tend to have more negative attitudes towards the police (Waldo and Hall, 1970;

Winfree and Griffiths, 1972; Cotton, 1974; Rafky and Sealey, 1975; and La Kind et al 1977). These studies have also found that those with the greatest number of contacts with the police and the criminal justice system have the most negative attitude towards the police. In fact, attitudes towards the police tend to be more negative than towards other parts of the justice system (Waldo and Hall, 1970). However, as both the studies by Waldo and Hall and Cotton (1974) have shown the negative attitudes are not towards the legitimacy of the police but towards the type of people that the respondents experience.

Frequently the attitudes are a result of reciprocal suspicion which develops between groups and the police (Baldwin, 1974). This leads to conflict fraught interaction between youths and police (Piliavin and Briar, 1964; Black, 1970 and Smith, 1977). This in turn frequently has as its consequence pro-active intervention by the police. (See Lundman, 1980, for a review. Other aspects of police work such as interrogations may lead to the development of negative attitudes by youths. (See Chapter 4 above).

CONCLUSIONS

Defendants on the whole feel fairly treated by the court, though a sizeable proportion assess their treatment as unfair. This result has its foundation in the fact that the defendants on the whole accept guilt and the legitimacy of court intervention and that they use a tariff type model to evaluate fairness. When guilt and referral to court are not accepted and the dispostion does not conform to a tariff model then the defendants are inclined to evaluate it as unfair. Most also have positive or neutral attitudes towards the Magistrate and other participants in the case. Their attitudes to the police in general are significantly more negative, however. There are two questions to be answered. Firstly, what do these results mean for Matza's thesis on the sense of injustice? Secondly, what do they mean for the operations of the Children's Court? Both of these issues are interrelated.

Do these results suggest that Matza's thesis about the development of a sense of injustice is invalid? Certainly

the dynamics of evaluating the fairness of treatment described by Matza was found to be used by youths in this study. Hapgood's (1979) data would also seem to lend support to the thesis that this is how youths and adults evaluate justice. Our assessment of the validity of the rest of Matza's thesis depends, of course, on what level of satisfaction one takes as acceptable. Is having a quarter to a third of the defendants feeling that they were unfairly treated acceptable? Attention needs also to be given to the fact that the 'fair enough' principle is in operation. Nearly a third of the fairly treated defendants referred to it either directly or in combination with other components of fairness. We must conclude that there is a sizeable number of defendants who feel unfairly treated. The development of a sense of injustice by more juveniles is probably prevented by the fact that despite the rhetoric, the court operates on an informal tariff model. However, the part of Matza's thesis dealing with the development of cynicism towards the court would seem to require more research.

Before we congratulate ourselves that most defendants seem to consider that they are fairly treated by the criminal (both adult and juvenile) justice system, Hapgood argues that the sense of injsutice experienced by a quarter to a third of defendants needs to be considered a serious problem. The fact that juveniles do not accept the welfare ideals of the court needs also to be considered. In regard to this the issue of the acceptance of guilt is crucial. It has frequently been agreed by those supporting a rehabilitationist model of juvenile justice, that the issue of guilt is not a serious problem, as the majority of juvenile defendants accept guilt for their offences. The Kilbrandon Committee in Scotland argued that there was 'no dispute as to the facts alleged' in 95% of the cases in Children's Courts (Hapgood, 1979). Reliance on 'due process' of criminal law is therefore not considered to be necessary. Thus, it is argued that the court can readily focus on the offence as symptomatic of a problem and on the rehabilitation of the offender. This argument is in line with that often expressed by members of the judiciary, prosecutors and even defence lawyers, that if the defendant appears in court he must be guilty (Sudnow, 1973; Priestly, et. al. 1977). This

study has shown that the acceptance of guilt is central to the juveniles' orientation to and evaluation of his contact with the juvenile judicial system. Rather than not being an issue, it is a matter which requires more attention. The reaction of juveniles to programmes and sanctions imposed by the court will largely depend upon their evaluations of the fairness of their treatment and this in turn is basically dependent on their acceptance of guilt.

CHAPTER 13 CONCLUSIONS AND IMPLICATIONS

This study was exploratory in nature and sought to describe and account for the perspectives of juvenile defendants on the Children's Court system in Western Australia. The study was not only concerned with the youths' reports of their experiences but with the rationality or logic-in-action underlying their actions, assessments and feelings. Although the focus of the study was on the youths' court appearances attention was given to their experiences from the moment of their apprehension by the authorities to the conclusion of their court cases. An "observational" sample of 472 youths was selected from cases as they were being processed through the Courts at Perth, Fremantle, Midland and Kalgoorlie; (of these 436 or 92.4% were actually observed in court). From this sample, 151 youths were interviewed and 147 of these interviews form the basis of the analysis in this report.

As the study was exploratory it did not seek to test a set of hypotheses. A number of working hypotheses were developed to explore the data during and after its collection. These hypotheses examined the data in regard to the juveniles' characteristics (sex, age, ethnicity and work status); their social backgrounds (class, family type, type of housing, place of residence); court records (number of previous appearances and status), the type of offence they were charged with and the type of case they were listed in . Of particular concern in the study, as was reflected in the sampling procedure, was an exploration for differences in perspectives in relation to defendants' sex, age, ethnicity, place of residence and case type. Data was also examined with regard to hypotheses developed from the youths' reported actions, feelings and assessments (e.g., reported feelings while in Court, assessment of the seriousness of offences, youths' opinions of the police).

Qualitative data was also presented and analysed. Particular attention was given to the interactional features of the juveniles' pre-court and in-court experiences. The

analysis was conducted within the perspective of the court as a people processing organisation which is concerned not just with the juveniles' offences but also with their moral characters.

There were, with the exception of ethnicity, court records, and case type, no over all statistical differences in perspectives with regard to background variables. Aboriginal youths were more likely than non-Aborigines to confess to the offences they were accused of, accept guilt, accept referral to court and assess their treatment by the court as fair. These differences cannot be readily explained at present. It might be that Aboriginal youths are more compliant than others or that they tended to give what they thought were more "socially acceptable" responses during the interview or that less compliant Aborigines did not take part in the study, or a combination of all of these factors. Interestingly, however, the reasons Aboriginal respondents gave for their actions and evaluations did not differ significantly from those of other youths.

As with other minority groups, Aborigines were significantly more negative in their attitudes towards the police than were non-Aborigines. However, their attitudes towards officials in their case (e.g., magistrates, court welfare officer) were not significantly different from those of other respondents. That is, they tended to have positive opinions about the magistrate and other officials in their case. This finding along with their ready acceptance of the legitimacy of court intervention would suggest that their negative attitudes relate not to the legitimacy of the police force per se but rather to their perceptions of the officers they have contact with in their day to day activities.

Aboriginal youths also reported somewhat different experiences and treatment from non-Aboriginal youths at various stages of their passage through the judicial system. This was especially so in regard to pre-court processes. Aborigines tended to spend longer in police custody than non-Aboriginal youths and they had less access to bail than others. This, however, did not seem to be the result of deliberate

discrimination on the part of the police. Rather these conditions would seem to be the result of the interplay of factors relating to both the methods and circumstances of police operations and conditions in the Aboriginal community (e.g., difficulties in locating parents at home; the lack of telephones making contact more difficult; parental attitudes). Nevertheless, problems relating to length of time spent in custody and access to bail need serious consideration.

Somewhat different patterns of pre-court and in-court interactions were reported by Aboriginal and non-Aboriginal defendants. This seems to have been mainly the result of the greater use of legal representation by Aborigines. Consequently, issues discussed in pre-court interviews with them by welfare and after-care officers excluded topics considered to be the province of solicitors (e.g., plea), and much of the interaction with the bench was reported to have been conducted by their legal representatives.

Although, significantly more Aboriginal than non-Aboriginal youths were represented, the rationales for the use (and non-use) of legal representation of the two groups were not significantly different. The greater use of legal representation by Aborigines did not seem to be so much the result of differences in attitudes but rather would seem to be the result of the continuous 'outreach' policy adopted by the Aboriginal Legal Service. Their services were more widely known by Aboriginal youths and parents than the duty counsel scheme operated by the Legal Aid Commission were among non-Aborigines.

Differences in perspective and reported experiences were also found with differences in the youths previous court records as measured by the number of previous appearances and status. Juveniles' expectation of court procedures and dispositions varied significantly with their records. Those with previous experience had more realistic expectations of court and potential outcomes. There was, however, no direct statistically significant relationship between the youths' records and their reported and objectively measured level of

understanding of court proceedings. There were, nevertheless, indications from the juveniles' responses of a general relationship between previous records and understanding. The lack of a direct statistical relationship may have been partly the result of the methods used to measure juveniles' understanding and partly the result of the research not attempting to obtain information about court received by the juveniles subsequent to their appearance.

Juveniles' reported feelings while in court varied significantly with their records. Those with more experience were less frightened by the experience. Youths also reported differential treatment in the system because of their records, as would be expected. For example, youths with serious records (PUC status, large number of previous appearances) reported spending longer periods in police custody and having less access to bail than those with less serious records. Their reported interactions with welfare staff prior to court (e.g., topics discussed during interviews) and with the bench during their case (e.g., magistrates' lectures to them) were also somewhat different than the experiences reported by youths with less serious records. As in other studies, youths with extensive delinquent careers had more negative attitudes to the police than others. However, as with Aboriginal youths, they generally did not question the legitimacy of the police or the court. Their attitudes seemed to be related to the police officers they encountered.

Differences in perspective also varied with the type of case the youth was in. These included differences in expectations of court procedures, in plea, the use of legal representation, and personal involvement in the court appearance. These differences were essentially the result of organisational variations between contested and non-contested cases and differences in the orientation and committment (e.g., the denial of guilt) and consequent strategies of youths who decided to contest their case compared to those who plead guilty (e.g., the consideration that legal representation is necessary in a contested case).

Apart from these variables, none of the other background variables had any over all influence on the youths' perspectives. Though youths in Kalgoorlie differed significantly from those in the Metropolitan area with regard to their evaluations of their treatment by the police, and their acceptance of referral to court, there were no other significant differences in their approaches to their appearances in court and their evaluations of those experiences. Despite the above-mentioned trends in regard to ethnicity, record and type of case, there was also a significant degree of commonality in the perspectives of youths with regard to these particular background variables.

It could be argued that a strictly statistically representative sample would have highlighted a greater degree of variation in the youths' perspectives. However, given the close fit between the observational and interview samples that does not seem probable. The over all lack of variation among the juveniles' perspectives would seem to be the result of the interplay of a number of factors common to them as defendants which they, in part, share with other members of society.

Among these factors are general community knowledge and expectations of court. It was suggested that people generally have little direct knowledge of court and this was certainly the case with novice defendants in this study. Nevertheless, juveniles and others do have images of what they think court and its personnel are like, and the process of justice is and should be like. Casper (1978(a): 85) for example, suggests that adult defendants share with other members of society images of judges as relatively neutral and benign figures. Though these images are sensitive to direct experience they are not greatly changed by it. The findings of other research reviewed in Chapter 12 lend support to Casper's conclusions. Similarly, this and other research indicates that there is a general acceptance of the legitimacy of the criminal justice system, and law enforcement agencies (though not necessarily of law enforcement agents per se).

There are a number of commonly shared themes influencing the perspectives of the defendants in this and other studies.

Like other unpleasant experiences a primary orientation of defendants is towards 'getting it over with'. The desire to terminate contact with the Court as quickly as possible has its origin not only in the defendants' psychological needs to extricate themselves from a stressful situation, but also in the fact that an appearance(s) in Court means incurring social and financial costs. As shown in Chapters 9 and 12 the acceptance or denial of guilt for the alleged offences is central to defendants' perspectives on the Court and the courses of action they adopt (e.g., plea). However, as demonstrated in Chapter 9 defendants' decisions on what courses to follow are influenced by the desire to 'get it over with' and other constraints imposed by parents, lawyers, police and others. (Similar trends have been reported by Casper, 1978(a); Bottoms and McClean, 1976; Baldwin and McConville, 1977). A major consequence of this is the existence of inconsistent pleaders. There is also a commonly shared, though more variable, opinion that legal representatives are largely unnecessary in Childrens' and other Courts. This opinion is strongly influenced by the goal of 'getting it over with' and the consequences of accepting guilt.

A second set of factors influencing the youths' perspectives is the organisation of the criminal justice system itself. For example, Bottoms and McClean (1976) note that despite the rhetoric about the adversary nature of the legal system most defendants do not 'struggle' (i.e., contest their cases), but remain, on the surface at least, passive and accepting of their treatment. They suggest that the structure and operations of the legal system contributes to this situation and by intention other aspects of defendants' perspectives and behaviour. They conclude that the following factors are important in this regard:

1. the police control over the pre-trial processes which enables them to powerfully influence the remainder of the criminal justice system,

2. the concern of Court personnel with its organisational efficiency and the maintenance of trouble-free operations,

3. the built-in incentives and disincenti es which influence and constrain defendants towards certain courses of action (e.g., the practice of handing down more severe sentences when found guilty after a not guilty plea than if the defendant had pleaded guilty).

The routinisation of cases by the Courts also influences defendants' perspectives by exposing them to relatively similar experiences. Defendants share these experiences with others in the form of stories, jokes, advice and coaching. The interaction of defendants background knowledge and expectations and the structure and routine practices of the criminal justice system produce the perspectives and patterns of rationality described in this report. Their actions and the rationales on which they are based, are not indicative of an irrational self-centered and strange group of people. On the contrary, they are essentially rational actions grounded in the concrete experiences of their arrest, prosecution and court appearances(s). There are situations where they are typically frightened, bewildered and isolated. The majority of them have to learn as they go along, to survive as best they can. Their actions are guided and constrained by the decisions and actions of the police, welfare staff, magistrates and others in their routine processing of juveniles through the law enforcement and justice systems. It was suggested above, for example, that such parties may attempt to manipulate the defendants' desires to 'get it over with' to suit their own ends.

Defendants' evaluations of their experiences are not the simplistic judgements of people who have an unrealistic view of their circumstances and who merely want to blame others for their predicaments, rather they are complex and similar to the judgements other members of the community would make. As Casper (1978 (b): 240) has concluded with regard to adult defendants:

> Despite our desire to believe that criminal defendants form an outlaw culture radically different from that of law-abiding citizenry, the defendants interviewed were much like the rest of us. They are not always clear in their judgements; prejudice and self-interest colour their views; and many find the world quite bewildering. Yet they are sensitive to what happens to them; they do not simply blame others for their own misfortunes and they employ criteria not dissimilar to those that the rest of us would use.

This study of juvenile defendants supports Casper's conclusions.

Implications for Policy and Practice

The findings of this research have a number of serious implications for the Court, the Department for Community Welfare, the Police Department and other agencies involved with the Children's Court. In particular they present a challenge to the Court and the Department for Community Welfare with regards to their present modes of operation and philosophy. As an exploratory study the concern was to discover and to gain insight into how youths view the Court processes they experience and the criminal justice system which, in part, structures those experiences rather than establishing true population values. This research has for the first time provided systematic data on the processing of juveniles through the Children's Court and on their perspectives on the Court in Western Australia. The triangulation of methods and data sources has provided data with a high degree of internal consistency.

There are two ways of looking at the research findings. On the one hand, the research reports on the experiences of a sizeable sample of youths. Taking this sample on its own the research findings are disturbing in relation to justice or the effective operations of the Children's Court. The findings that a sizeable minority of youths felt that they had been unfairly treated by the Court, or had difficulty in

understanding the Court proceedings and that the majority of the youths held views of the function of the Court which differed significantly from the official line, should in themselves be of concern to the Court and the Department for Community Welfare.

Though the interview sample is not strictly parametric, the indications are that it is in many ways typical of the youths who go to Court. Thus while it may not be possible to estimate the exact percentage of the population not able to correctly identify various personnel in Court or who hold certain attitudes towards the magistrates, the indications are that given the present structure of the Court and related agencies, that the perspectives of the interview sample correspond reasonably closely to those of the Court population in general. This conclusion is supported by the general consistency between the findings of this and other comparable studies.

In the following discussion issues relating to apprehension, processing and interrogation will first be discussed. This will be followed by a discussion of the issues having implications for the operations of the Children's Court and finally, implications for the philosophy and policy of the Children's Court and the Department for Community Welfare will be outlined.

This research indicates that arrest rather than summons is the chief avenue of prosecution of juveniles. This goes against the spirit of the Child Welfare Act (1947 - 1977) which calls for action to be taken against children by way of notice to appear in Court. As a consequence of the use of arrest a large number of youths are spending excessive amounts of time in police custody, and are spending time in D.C.W. Centres because of problems in obtaining persons to bail them.

More importantly, it seems to be common practice for the police to interview youths about offences without their parents or other independent adults being present. This practice has serious consequences, as a large proportion of youths are unaware of their rights in regard to interviews by police and

because of the structure of interrogations, those who are aware of their rights are unable to insist upon them being respected. From the reports of the juveniles interviewed the characteristics of the interrogations they experienced are similar to those described by research as being used on adult offenders. While there may be differences in the degree of the intensity of the interrogation process, it is still by nature coercive and juveniles are not as capable as adults in withstanding the pressures created.

Whereas it must be stressed that the experiences of a large number of the youths during apprehension, processing and interrogation were good, characterised as matter of fact affairs, one in five youths complained of assaults or threat at various stages. Some of these complaints were minor, others involved more serious accusations of assaults and threats. Noteworthy was the fact that 15.8% of the defendants claimed to have signed statements or records of interview under duress. Probably more important than the actual complaints themselves were the indications that many youths expected and even accepted such practices as normal events in apprehension, processing and interrogation. Youths, however, were also aware that their own behaviour was in some cases in part responsible for the quality of their treatment. These findings indicate that changes are required in the police handling of juvenile offenders.

The study's findings with regard to the level of understanding youths have of court have serious implications for both the Children's Court and the Department for Community Welfare. As in other studies, it was found that defendants had limited knowledge and understanding of the court and its organisation and a sizeable proportion had problems understanding the proceedings. This situation is a result of both the low level of exposure of the community to courts in general and in the routine organisation of court work.

Court is a situation, as noted, where people have to learn as they go. They have to 'play it by ear', as Priestly et al (1977) have suggested, frequently learning the rules by breaking

them. However, most defendants suffer from stage fright which makes their attempts to successfully manage their appearance difficult. In addition to learning as they go they may receive coaching from others or have their appearance choreographed in whole or part by a legal representative or others in the Court.

Novice defendants in this study had two main sources of information on which their expectations of court were built. The first was the mass media, in particular television dramas, The other was friends and relatives who may or may not have been to court themselves. Official sources of information such as the police or Department for Community Welfare were less frequently used. Official sources were of greater importance once the youths got to court. As a result of this lack of knowledge and of other factors such as anxiety and the state of confusion which characterises pre-court activities, especially at the Perth Court, three in ten youths were unable to positively identify personnel with whom they had contact. In the majority of cases these would seem to have been welfare staff interviewing youths with the aim of preparing an Informative Report for the Court.

Once in Court the juveniles had problems understanding the proceedings and in identifying key personnel. According to their own assessments 35% of the youths were only able to understand some of the proceedings. The main reason for this lack of understanding was, according to the youths, the complexity of the language used. Juveniles reported that they had difficulty in comprehending the speech used by magistrates and others to address them and the discussions between various personnel.

Whereas 95% of the youths were able to identify the magistrate, only 41% were aware of the identity of the Department for Community Welfare court officer. This was especially a problem in the Metropolitan Courts and in particular in the Court at Perth. In contrast the less important functionaries of bench clerk and police court orderly were identified by 57% and 56% of the youths respectively. It was suggested that

the court officer occupies an important position in the court, for it is through the court officer that the Court receives much of its information about the youths' characters. Moreover, it is often through the court officer that anything approaching the youths' side of the story is put to the Court. This situation arises from the typical passivity of defendants and parents and the absence in the majority of cases of legal representatives. However, it was shown that the actual role the court officer plays can vary from that of a supporter to a denouncer of the defendant and that this varies with the youth and the circumstances of the case.

Because of this it was suggested that the officer's role in court was ambiguous. This ambiguity was further heightened by the lack of understanding among the juveniles of the relationship between the Children's Court and the Department for Community Welfare. Four in ten of the youths were unsure if there was a relationship or thought that there was no connection between the Court and the Department for Community Welfare. Three types of relationships between the Court and Department were mentioned by the remainder. These were that the Departmental officers control Court dispositions (e.g., probation) and that there is a legislative relationship between the organisations and that the Departmental officer makes recommendations to the Court. None of the youths referred to all three factors which would have more fully documented the relationship.

The expressed concern of the Children's Court and the Department for Community Welfare to be concerned with the 'best interests of the child' and the legal principle that justice be seen to be done necessitates that both the Court and the Department improve its communication with defendants. It is essential that the role of the Department's court officer be clarified and that procedures be developed to adequately inform defendants and parents of this role and those of any other officers they may have contact with in relation to a court appearance. The accountability of officers to the court and the defendant should be specified and their reports subject to the same rules as other evidence.

Communication in court is also hampered by the youths' and parents' stage fright. Contrary to conventional wisdom, the majority of youths are afraid of court. If through experience they are no longer scared about having 'to stand up there', they are still concerned and worried about the outcome of their case. Their fear, lack of understanding and isolated position in Court all combine to create and maintain their passivity. Many youths concluded that it is better not to say anything than to say the wrong thing. Others attempted to use various defense strategies. These, however, were frequently used in response to questions and probes from the bench and as was shown their success was in part contingent upon the willingness of the bench to accept them without further questioning. It may not be a bad thing, as one magistrate said, that 'the Court has a certain awe about it' or even that defendants are afraid. However, if the court is concerned to learn the youths' side of the story, it will continue not to do so under present conditions which prevail in Court. A simplification and a relaxation of some of the more formal aspects of proceedings may provide a better forum in which defendants can participate. It is important, however, not to sacrifice defendants' legal rights and protection for informality.

In the context of fear and uncertainty the general orientation of the youths in this study to Court was one of 'getting it over with'. This orientation was given support by the widespread belief that 'you can't beat the cops'. For many their interrogation and charging by the police was not the end of the beginning of the prosecution process but the beginning of the end of the process. Their orientation to Court is also strongly influenced by their acceptance or denial of guilt for the offence they were charged with. Youths referred to the acceptance of guilt as a rationale underlying various actions from their confessing to the police to their evaluations of the fairness of their treatment.

It is central to the direction of their pleas. Nevertheless, given the youths desire to 'get it over with' and the general belief that they will be convicted anyway, some youths

plead inconsistently. Some youths were also unaware until they appeared in Court the precise nature of the charges against them. Because of the centrality of the youths' perceptions of guilt, magistrates need to take more steps to ensure that defendants know and fully understand the charges against them, that they are in agreement with the police 'facts' and that their guilty pleas are consistent. Bottoms and McClean (1976: 234) have made the following recommendation regarding inconsistent pleading among adult defendants:

> 'A way of ... discouraging false guilty pleas would be a rule of practice requiring the court to ensure that it obtains the defendant's own story of the incident and that the story is consistent with the plea. Such a rule would not eliminate the possibility of spurious pleas, but it would be a useful check. It might also serve to identify the cases of unrepresented defendants who plead guilty, not realising that a legal defence might be open to them.

A number of magistrates observed in the study did at times follow such a procedure, however it was not a routine or well developed practice. What was referred to as a negotiative not guilty plea was sometimes the result of such enquiries by magistrates. The Court, however, needs to take care that by rejecting a guilty plea from youths that such youths are not thus penalised unduly by long delays and by the social and financial costs that invariably result from a not guilty plea. Conversely, care must be taken in dealing with youths who do not understand the legal culpability of their participation in offences (e.g., youths who do not consider themselves guilty because a co-offender actually took and kept some of the stolen items). The use of 'non-standard pleas' as described in this report may facilitate the smooth running of the Court by 'tooling-out' the troublesome defendant but they do not necessarily give him a better understanding of his legal culpability or a feeling that justice has been done. These situations highlight the need for youths to have legal advice.

Although legal representation for both Aboriginal and non-Aboriginal youths is now readily available at the

Metropolitan Courts and there is relatively easy access to ALS and Legal Aid Commission schemes in Kalgoorlie, most youths, especially non-Aboriginal youths, felt that legal representation was not necessary. As pointed out above, this situation could probably be changed through an effective 'outreach' programme by the Legal Aid Commission. While legal advice may be required in many cases, it is not altogether clear that actual representation in Court is necessary for all defendants. As shown above there is frequently an overlap and duplication of the actual roles in Court of the legal representative and the D.C.W. court officer. Pleas in mitigation and Informative Reports are frequently very similar, sometimes with details of the latter incorporated in the former. There needs to be a rationalisation of the roles performed by both. A clarification of the court officers role is essential to this end.

An anomaly would seem to exist with the availability of legal representation for non-Aboriginal youths pleading not guilty. Legal advice and representation was available through the Legal Aid Commission's duty counsel scheme for those pleading guilty. In contrast a number of youths wishing to contest their cases were forced to try and defend themselves in Court. Needless to say, they and their parents found this a difficult and fruitless task. Given the high proportion of youths who do not understand the proceedings and who are generally unaware of their legal rights, legal aid should continue to be available to youths not contesting their cases. However, because of the importance to the youths' perspectives of their acceptance of guilt, it would seem to be more crucial that youths wishing to contest their cases have access to legal representation. Some of the logistical problems in supplying solicitors for such cases could possibly be solved through the abovementioned rationalisation of the roles of solicitor and welfare officer in non-defended cases. Another possible solution would be for the Legal Aid Commission to employ paraprofessionals in guilty plea cases in the same way as the Aboriginal Legal Service does now.

Of greater importance than the consequences of the juveniles' perspectives for the operation of the court was

their consequences for the underlying philosophy of the court and the Department for Community Welfare. It was suggested that there is a contradiction between the welfare and legal aspects of the court's role. Despite this the welfare/ rehabilitative philosophy is still a central concern of both the court and the Department. This philosophy is not shared by the majority of the youths. Two thirds of the respondents saw the court as having a function other than a welfare one. As they saw it, the court's function was to punish them for their wrong doing, to control them, to administer justice and so on. A further 8% thought that its function was one of both welfare and retribution.

Despite a quarter of the youths responding that the court had a welfare function, their thinking with regard to the meaning of and logic behind the dispositions they received was punitive/ retributive in essence. Defendants operated basically on a tariff model. When questioned about the reasons they expected to receive certain dispositions, youths referred basically to tariff criteria of the state of their records and the nature and seriousness of the offence. Similarly, when questioned about why they thought the court had handed down the dispositions 50% referred to these tariff criteria. They were not, however, unaware that the tariff was mitigated by means of those factors which influenced the construction of their moral characters (e.g., their work situation, parental support, welfare officers recommendations).

Their views of the meaning and consequences of dispositions were extremely instrumental. They saw themselves as having to 'do time','pay fines', 'lose their freedom', 'do work' and 'visit welfare officers'. Youths, apart from a few, did not refer to themselves as helped or rehabilitated. Their evaluation of the fairness of their treatment by the court were given basically in terms of a tariff model. The principal element of this was their own acceptance or rejection of guilt for the offences they were charged with. This was followed by such commensurability with the offence, comparability with what others received, consistency with their status, and the

adequacy of procedures. That these evaluations were often complicated by the use of the 'fair enough' principle does not lessen the importance of tariff criteria. Again, few youths thought the court's decision was fair because they thought that they were being helped or rehabilitated.

In Britain and particularly in Scotland the Children's Court have moved closer to a welfare model of operation (Hapgood 1980; Anderson, 1978; Thorpe et al, 1980). In the United States of America, on the other hand, numerous courts have moved away from a welfare model as it was found that children's fundamental legal rights were not being protected (Lemert, 1978). One of the rationales underlying the recent moves in Britain has been that guilt is not an issue in most Children's Court cases. Concern, it is thus argued, need not be given to what the Americans refer to as 'due process' of law. It is thought that as guilt is not an issue that the court can readily focus on the offence as being symptomatic of some underlying problem and on the rehabilitation of the offender.

This study has shown that contrary to such views guilt is central to the youths orientation to the court. These findings, along with those of Hapgood (1979) would suggest that rather than moving away from the concerns of justice the Children's Court should be more concerned with these issues. A sizeable minority (29%) of defendants feel unfairly treated by the Court at present. Any move away from the issues of justice can only exacerbate this situation, especially as the majority of youths do not share the rehabilitative philosophy of the court and the Department for Community Welfare. In fact, given this situation, it is arguable that if the Court and the Department are to deal effectively with offending youths, they should abandon this philosophy.

Not only is the rehabilitative model not in line with the way defendants view the system, but it has been coming under increasing criticism from a number of sources. Criticisms have been of three main types. First, as noted in the Introduction, the theoretical adequacy of the model in explaining and predicting crime and delinquency has been increasingly questioned

The second criticism is its effectiveness in combatting crime and rehabilitating offenders. Third, there has been 'debasement' of the rehabilitation ideal, practices have frequently been as inhuman and unjust as the ones they have replaced (see Bottomley, 1979 and Bean, 1976 for a discussion). In this regard Thorpe et al (1980) have shown that the 1969 English 'Children and Young Persons Act', despite the rhetoric of greater concern with the "welfare" of children appearing before the Court, has led to a substantial increase in the number of children receiving custodial sentences. They conclude (1980:48) that this increase of custodial sentences has been the result of confusion between the welfare and legal aspects of the courts role:

> What seems to be involved here is a confusion of welfare and justice considerations .... They are placed in CHEs not because they are more delinquent than the rest but because they have more 'welfare problems'. Thus definitions made on the basis of one set of criteria can have a profound and surely unintended effect on subsequent decisions based on quite different criteria. Consideration of a child's needs or problems is reinterpreted by the juvenile court as an indication of his criminality.

They also suggest that a consequence of this confusion is the creation of an institutional career for the children. It gives them a status vis a vis the court which typically means more severe custodial dispositions for subsequent offending (1980:48):

> The problem is that the care order is also an element in a sentencing tariff. It is not simply a welfare measure which gives the social worker useful powers (no irony intended); it is the last, most extreme sentence to the court within the local authority child care system. Beyond are only the frankly penal measures of detention centre and borstal when they re-offend.

There is often a disguising of the true state of affairs with rhetoric and sanitised labels. For example, here in Western Australia we now have institutions which are called

facilities or centres, cells which are called cabins, absconders who are called runaways. The use of this rhetoric can be clearly seen in the following comment by a senior staff member of a maximum security institution:

> "It's not a gaol, it's a treatment centre. We only have bars on the windows to keep the boys in. If we could replace them with unbreakable glass we would take them down."

This definition of reality is not generally shared by youths. Their perspective was poignantly put by an inmate of the same institution, when he said during an interview: "They keep telling me I'm not in jail but there are f.... bars on the windows."

It is not within the scope of this report to review in detail the criticisms of the rehabilitative model or the alternatives being debated in Australia and overseas. However, some comment is called for on alternative courses of action as indicated by the findings of this research. The principal alternative is the 'just deserts' or 'justice model'. This model had its foundation in the critique of the inequities of individualised treatment and the failure of the prison system (Bottomley, 1979). Although there was almost total rejection of the rehabilitative model there has been less unanimity as to what should replace it. There was a general concern with the exercise of discretion in the criminal justice system and the need for greater accountability. The desire was to ensure just procedures and to develop a programme of justice-as-fairness (Bottomley, 1979: 138).

The first major definitive statement as to the character of such a model was made by von Hirsch and his colleagues (1976) who argued that their main principle was that of 'commensurate deserts'. They were concerned with the equity and fairness of the disposition. Commensurability, they suggested, should be determined by considering the seriousness of the offence. This involves a consideration of two elements: the actual harm done; and the extent of the offender's culpability. (von Hirsch, 1976: 69-71). The critical issue is the offender's

actions and not predicted future action.

The von Hirsch formulations have been criticised on a number of basics. One criticism relates to the way the supporting arguments have been handled in the report (Bottomley, 1976: 139). Another is the problem of defining harm. As Cohen (1979: 37) asks, "harms to whose interests?" This criticism relates to the broader problems of social justice and the problems of culpability and harm in relation to the inequalities in society (Cohen, 1979: 37-41). Bottomley (1979: 149) suggests in this regard:

> One of the limitations of the justice model has been its focus on the individual offender and his just deserts to the exclusion of considerations of punishment and justice in a broader social context. Individual rehabilitation is in danger of being replaced by a purely individualistic version of retribution (1979: 153).

He argues that the major objective of punishment should be the "requalification of offenders as members of the community, against whose legal norms they have offended." The offender is held accountable for his actions, at the same time the punishment acts to temporarily exclude him from his social situation and symbolically denounces the breach of norms (for a discussion, see Bottomely, 1979: 139-153).

The arguments of the proponents of a justice model of penology are very much in keeping with the perspectives of youths on their offending and on the judicial system. Specifically, the importance to youths (and adults!) of the acceptance of guilt and of responsibility for their actions was shown to be central to their orientation to court and the assessment of their treatment. Whereas a just deserts model promotes such accountability, a rehabilitative model, because of its concern with underlying pathologies, frequently promotes the use of guilt-neutralising statements (Hartung, 1969; Cohen, 1979; Thorpe et al, 1980). Whereas traditional pleas of mitigation may also to some extent promote guilt-neutralisations through the use of 'justifications', 'excuses' and so on

(see Chapter 10), the rhetoric of rehabilitation and individualised treatment has increased this tendency (Williamson, 1980). The Court should be concerned with promoting what Thorpe et al (1980: 174) refer to as "a humanly intelligible debate, conducted within a procedural framework derived from civil law, about such matters as the degree of culpability, the amount of damage done and the appropriate penalty..." This does not imply, however, that mitigation and the defendant's background are not of concern but that rather they need to be considered within a more meaningful assessment of the defendant's culpability and the damage he has done.

To this end, various authors (Bottomley, 1979; Cohen, 1979; Duckworth, 1980; Bankowski and Mungham, 1980; and Thorpe et al; 1980) call for a re-organisation of both adult and juvenile courts to deal with criminal offences along the same lines as civil cases. They argue that much of criminal procedure confuses the issues involved (see also Matza, 1964). As Thorpe et al (1980: 170) argue:

> It is rather that of its very nature any criminal justice system renders the events it deals with unintelligible - to the offender, to the victim, and the public as a whole. It achieves this by removing the offence from its local human context and by turning a real offence against a real individual into an abstract offence against the state. Both the victim and the offender lose their actual human identity, the one coming to stand for all respectable society, the other for all that threatens it.

The reintroduction of the victim to the proceedings ensures that the offender is confronted with the consequences of his actions. Bottomley, 1979: 155, however contends that more than just an appreciation of the importance of the relationship between the victim and the offender is required. What is needed he says is "a recognition of the tripartite relationship between the criminal, the victim and society, with general measures aimed at the satisfaction of the community as a whole."

A vital question still to be answered is what form punishment should take. A just deserts model does <u>not</u> imply a

"hard line" approach to offenders emphasising custodial punishments. This is not only because of a concern with justice but also because of a realisation that traditional custodial methods have failed as much as rehabilitation. As Tomasic (1979: 1) has argued:

> The failure of imprisonment has been one of the most noticeable features of the current crisis in criminal justice systems in advanced industrial or post-industrial societies such as Australia, Britain, Canada and the United States. One justification often advanced in favour of the use of imprisonment has been shown to be misconceived. At best, prisons are able to provide a form of crude retribution to those unfortunate to be apprehended. At worst, prisons are brutalising, cannot be shown to rehabilitate or to deter offenders and are detrimental to the re-entry of offenders into society.

He goes on to argue that the reliance on prisons, especially maximum security ones, are a drain on the resources available in the criminal justice system. This is not to say that imprisonment is never appropriate. Bottomley (1979: 153) suggests that it would be an appropriate means of social disqualification (punishment) for the minority of most serious offenders. (The problem remains as to how these are to be assessed). However, as the principal concern is the requalification or re-entry of offenders into the community, constructive alternatives to a custodial model have to be developed (Bottomley, 1979; Tomasic, 1979; Duckworth, 1980).

The search for alternatives has seen a renewed interest in the concepts of <u>restitution</u> and <u>reparation</u> (Bottomley, 1979; Duckworth, 1980). One force behind this renewed interest has been the concern to compensate the victims of crime. In a broader sense the aim is also to restore the balance between the offender and society.

Such measures should be designed to integrate the delinquent and not to alienate him, as criminal prosecution does in the symbolic sense and incarceration in a literal and physical sense, for alienation is, of course, in the end the worst possible way to develop commitment to the conventional

moral order (Thorpe et al, 1980: 179).

There are problems with developing purely monetary based restitutional schemes for youth as many are without independent incomes. (See Duckworth, 1980 for a discussion of problems with adult schemes). However, it is possible to extend such programmes as Community Service and Probation Orders to more specifically include restitutional and reparational aims. Such developments would be in keeping with the youths' perceptions of tariff and justice. They would also help to make more explicit the basis on which the Court reaches its decisons.[1]

The defendant and his actions are supposedly the raison d'etre for intervention by the criminal justice system. It is therefore essential that the views of the defendant be considered. Ultimately it is on these perspectives that the effectiveness of the criminal justice system rests. A system whose philosophy and operations are at odds with the population it is dealing with or contradictory cannot hope to adequately combat crime and restore the balance between offender, victim and society. It faces the problem of the sense of injustice increasing among offenders and non-offenders alike. This report has documented, from the defendants' point of view, serious shortcomings in the operations of the Children's Court, the Department for Community Welfare and the Police. These problems can be overcome with organisational and operational changes.

Of greater importance is the lack of acceptance by youths of the rehabilitative model. It is of vital importance that the Court and the Department for Community Welfare take cognizance of these differences and act on them. This is particularly important in view of the current debates in Western Australia about the philosophy and operations of the juvenile justice system. These differences will not be resolved by the mere tinkering with parts of the system. They call for the resolution of the conflict within the Children's Court system between its welfare and its legal roles and the development of new and alternative goals and programmes.

RECOMMENDATIONS

It is recommended that:

1. THE CHILDREN'S COURT SYSTEM IN WESTERN AUSTRALIA BE BASED ON A JUSTICE/JUST-DESERTS MODEL OF JUSTICE.

2. THE DISPOSITIONS HANDED DOWN BY THE COURT BE BASED ON THE CONCEPTS OF RESTITUTION AND REPARATION WITH A RECOGNITION OF THE TRIPARTITE RESPONSIBILITIES BETWEEN THE JUVENILE, THE VICTIM AND SOCIETY. TO THIS END THE PROBATIONAL AND COMMUNITY SERVICE SCHEMES BE REVISED AND EXTENDED AND OTHER CONSTRUCTIVE RESTITUTIONAL SCHEMES BE DEVELOPED.

3. THE ROLE OF COMMUNITY WELFARE OFFICERS IN COURT BE CLARIFIED.

4. THERE BE A RATIONALIZATION OF THE ROLES OF COMMUNITY WELFARE OFFICERS AND LEGAL REPRESENTATIVES IN NON-CONTESTED CASES.

5. LEGAL ADVICE BE AVAILABLE TO ALL YOUTHS APPEARING IN COURT.

6. LEGAL REPRESENTATION BE AVAILABLE TO ALL YOUTHS CONTESTING THE CHARGES AGAINST THEM.

7. ALL YOUTHS SHOULD BE FULLY INFORMED OF THE CHARGES AGAINST THEM PRIOR TO GOING TO COURT AND THAT MAGISTRATES NOT PROCEED WITH CASES UNTIL THEY ARE SURE THAT THE DEFENDANT FULLY UNDERSTANDS THE CHARGES.

8. MAGISTRATES ENSURE THAT DEFENDANTS ARE PLEADING CONSISTENTLY WITH THEIR OWN PERCEPTIONS OF THEIR GUILT AND NOT PURELY "TO GET IT OVER WITH".

9. THE COURT ENSURE THAT DEFENDANTS PLEADING NOT GUILTY ARE NOT UNDULY PENALIZED BY LONG DELAYS IN HAVING THEIR CASE HEARD.

10. COURT PROCEEDINGS BE LESS FORMAL IN ORDER TO ENCOURAGE THE PARTICIPATION OF JUVENILES AND THEIR PARENTS IN AND UNDERSTANDING OF THE CASE. THIS, HOWEVER, NEEDS TO BE DONE IN SUCH A WAY SO THAT LEGAL RIGHTS OF THE DEFENDANT ARE NOT JEOPARDISED.

11. THE VERBAL COMMUNICATION IN COURT BY MAGISTRATES, PROSECUTORS AND SO ON BE MODIFIED TO ENSURE THAT ALL DEFENDANTS FULLY COMPREHEND THE PROCEEDINGS.

12. THE COURT ENSURE THAT ALL DEFENDANTS AND THEIR PARENTS FULLY UNDERSTAND THE DISPOSITION OF THE CASES.

13. A COURT WELFARE SERVICE BE ESTABLISHED IN THE METROPOLITAN AREA AND BASED AT THE PERTH COURT TO PROVIDE INFORMATION AND ADVICE TO DEFENDANTS APPEARING IN COURTS IN THE METROPOLITAN AREA.

14. MULTI-LINGUAL INFORMATION LEAFLETS AND VISUAL DISPLAYS BE PREPARED EXPLAINING ALL ASPECTS OF THE PROSECUTION PROCESS AND THE DEFENDANTS RIGHTS AND OBLIGATIONS. THIS INFORMATION BE AVAILABLE FROM AND ON DISPLAY IN ALL CHILDREN'S COURTS, COMMUNITY WELFARE OFFICES AND POLICE STATIONS.

15. ALL OFFICERS OF THE DEPARTMENT FOR COMMUNITY WELFARE WHO HAVE CONTACT WITH DEFENDANTS AND/OR THEIR PARENTS BEFORE, DURING OR AFTER COURT ENSURE THAT THEIR IDENTITY AND THE PURPOSE OF THEIR CONTACT WITH THE DEFENDANT ARE FULLY UNDERSTOOD BY HIM/HER AND HIS/HER PARENTS.

16. THE PROSECUTION OF JUVENILES BE INITIATED BY WAY OF SUMMONS RATHER THAN ARREST. JUVENILES SHOULD NOT BE TAKEN INTO POLICE CUSTODY EXCEPT FOR SERIOUS OFFENCES.

17. THE PROCESSING AND CHARGING OF JUVENILES IN CUSTODY BE STREAM-LINED SO AS TO AVOID JUVENILES HAVING TO SPEND LENGTHY PERIODS IN CUSTODY.

18. BAIL PROCEDURES BE REVIEWED TO ENSURE THAT BAIL IS READILY AVAILABLE TO ALL JUVENILES.

19. WHEN A CHILD IS TAKEN INTO CUSTODY HIS PARENTS OR GUARDIANS SHOULD BE IMMEDIATELY NOTIFIED. IF THEY ARE NOT AVAILABLE ANOTHER RESPONSIBLE ADULT BE CONTACTED TO ACT AS A 'FRIEND' TO THE ACCUSED DURING PROCESSING AND QUESTIONING.

20. NO QUESTIONING OF JUVENILES BY THE POLICE TAKE PLACE WITHOUT THE PRESENCE OF A PARENT, GUARDIAN OR 'FRIEND'.

21. STATEMENTS OR RECORDS OF INTERVIEW OBTAINED FROM A JUVENILE NOT ACCOMPANIED BY A PARENT, GUARDIAN OR 'FRIEND' NOT BE ADMISSABLE AS EVIDENCE IN COURT.

FOOTNOTES

CHAPTER 1.

1. This type of approach does not necessarily imply the use of 'medical model'. Other models such as 'social pathology' or 'disorganisation' are often involved. See Pemberton and Locke (1975) for a discussion.

2. See Rubington and Weinberg (1973), Taylor, Walton and Young (1973) and Downes and Rock (1979) for a review of such issues.

3. For a cogent critique of the rehabilitationist model see Bean (1976)

4. The history and underlying philosophy of Children's Courts has not been reviewed here. For a general discussion see Platt (1977), see also Lemert (1970) for an examination of developments in the U.S.A., Priestley, et al (1977) and Thorpe et al (1980) for a review of the situation in England and Wales, and Edwards, Hiller and Hancock (1980) for a discussion of some Australian material.

5. Throughout his report the term 'welfare staff' is used to refer to social workers, family welfare officers and after-care officers of the Department for Community Welfare and is used synonymously with them.

6. For a fuller discussion of rationality, see Garfinkel, 1967, Chapter 7.

CHAPTER 2.

1. One part of the study was, however, directed towards replication. In the interview data was sought on youths' feelings of stigma. This section was modelled on the study by Foster et al (1972). Data from this part of the study will be reported separately.

2. Youths were probed on 'motives' at various points in the interview. The strategy was to elicit data on their responses to the probes of others (e.g. police, welfare staff, magistrates) that may have been directed at them at various points during their passage through the criminal justice system (e.g. during interrogation, at the hearing). The strategy was not successful and the quality of the data elicited varied greatly. This data is not reported here. A discussion of data from court observations will be found in Chapter 10.

3. Separate letters were sent to defendants and their parents explaining the study and requesting an interview. In the case of the main sample, from which post-court interviews were required, it was indicated that the case had been observed in court. The youths were asked to complete a form and return it to the researchers in a stamped addressed envelope which was provided. It was

CHAPTER 2. (CONTD.)

indicated in the letter that if this form was not returned, a researcher would call on the youth to arrange an interview. (See Appendix 1)

4. It was also originally hoped to follow up a small sample of juveniles, in order to examine the effects of the court and changes in perspectives over a three month period. Due to lack of time this plan had to be abandoned.

5. See Chapter 9 and 10 for example.

6. As such interviewers were given flexibility to modify the ordering and wording of questions to suit the respondents' level of competence, allow for the flow of their accounts of their experiences. No formal strategy was followed with Aboriginal as opposed to non-Aboriginal youths. Interviewers had to modify their approach to suit particular situations. There was, as could be expected, a wide variation in the competence of the youths to complete the interview. There was a greater degree of variation within than between the Aboriginal and non-Aboriginal samples.

7. Because of problems with the computerization of this data, on friendship networks and leisure activities, it had to be excluded from this analysis. Interviews were pretested with 16 youths in Longmore Remand Centre.

8. It was originally intended to include 12 year old children in the sample. However, pilot study and interview pretests indicated that there may have been comprehension problems among 12 year olds. Consequently the cut-off age was changed to 13. In cases where youths were also changed with traffic or other offences, these offences were recorded but excluded from analysis.

9. A Children's Court may be constituted by a Special Children's Court Magistrate, a Special Magistrate and a 'member of the court', or by two members. Magistrates and members are appointed by the Minister for Community Welfare. In country areas local Magistrates perform the role of Children's Court Magistrate, whereas in the Metropolitan area they are especially appointed for the task. Not all of the Metropolitan Magistrates have legal qualifications. In rural areas members are usually local Justices of the Peace.

The Department for Community Welfare administers the Courts at Perth, Midland and Fremantle. The court staff are housed at the Perth Court. As well as housing court staff, a number of police prosecutors, D.C.W. Court Officers and staff co-ordinating the Community Service Order Scheme are also located at the Perth Court. Children's Courts in rural areas are

administered by the Crown Law Department.

There are two court rooms at the Perth Court. Courtroom No. 1 is where contested and remand cases are heard. The 'general list', i.e. first appearances and guilty pleas are usually dealt with in Courtroom No. 2. It is here that most of the cases in the Metropolitan area are heard. However, on particularly busy days, if the Magistrate in Court No. 1 completes his list early, the court staff frequently 'split the (general) list' and transfer some of the cases to Court No. 1 from Court No. 2. This practice sometimes made it difficult to cover all the court proceedings.

Throughout this report the term 'Magistrate' is used to refer to the person presiding over the case, though in some of the cases referred to, two members actually heard the case.

10. A couple of cases were observed in the Court at Kambalda for comparison with Kalgoorlie. These were not included in the study.

11. Because of the low response rate (see below for a discussion), it was decided to continue interviewing non-Aboriginal males to ensure an adequate sample size.

12. For the purposes of pre-and post-court interviews the schedule was split. The first interview covered the defendants' experience before court, and background data was collected. The second interview examined the issues from the youths' pre-court activities at court to his post-court evaluations.

13. The data from these interviews is not presented and analysed in this report because it was not always possible to match parental and youths' interviews. That is, we were not able in all cases selected to interview both the defendant and one or both of his parents.

14. This estimate is based on travel allowance claims made by the researcher and research assistants.

15. Comparisons between respondents and non-respondents in terms of family income were made on the basis of 1976 Census data on income distribution in Post Code areas.

16. This type of questioning of the veracity of data from defendants is found even among those who conduct research in the area. Arcuri (1976) for example, questions the veracity of his respondents' complaints about the police. However, he seems to accept their evaluations of and comments on defence counsels, judges and others without question.

CHAPTER 2. (CONTD.)

17. S.P.S.S. - Statistical Package for the Social Sciences.

18. "Welstat" definitions are Australian Bureau of Statistics definitions for the compilation of Australia wide statistics on welfare and child care issues. See Appendix 4 for a list of offences in the various categories.

CHAPTER 4.

1. The problem of intent (mens rea), is more complex than is implied by Buckner here. (See Bean 1976).

2. The control of the situation and of the speech process are, of course, dialectically related. They are discussed separately here to highlight the importance of the control of speech.

3. See the Australian Law Reform Commission's report on Criminal Investigations (1975) for a full discussion of this argument and a review of the literature. Essentially they contend that the argument is erroneous and that in fact special protection is required for, among others, juveniles, Aborigines and migrants.

CHAPTER 6.

1. Scales of offence seriousness have been developed (e.g. See Rossi et al, 1974). However, various authors have suggested that the measurement of seriousness is more problematic than such scales would indicate and that there is not a great deal of consensus within communities about offence seriousness, or the value of particular laws and their enforcement. (See the review of KOL research by Kutchinsky (1979), for example). The applicability of scales developed overseas to local research is questionable. Rather than attempting to develop a scale applicable to local conditions as other authors have done (see Hampton, 1975, for example) it was decided to ask the respondents to assess seriousness.

   The youths were asked to assess the seriousness of the 'trouble' rather than 'offence' or 'charge' as this was found during the pre-testing of the schedules to be the most suitable. It provided a better follow-on from the first question in which the juveniles were asked to describe the 'trouble' they got into. The trouble they describe was the offence(s) they were charged with.

2. A similar scale was used by Sarri and Hasenfeld (1976) in their study of the assessment of offence seriousness by Children's Court judges and officials.

CHAPTER 6. (CONTD.)

3. There may have been a problem with retrospectivity with these questions as the youths may not have thought about these issues at the time and their assessments may have been influenced by their court experience and contact with officials.

4. It has frequently been argued that delinquents and their families have different values from the members of society. Matza (1964) and others have argued that value systems are complex and that dominant and what he calls 'subterranean value systems' operate side by side and that these systems are inter-related in complex ways.

CHAPTER 9.

1. The acceptance of guilt was measured as follows. A guilty plea was taken as full acceptance unless any of the following occurred.

   (a) the youth pleaded guilty only 'to get it over with';

   (b) the youth reported that the police 'facts' were 'totally wrong'.

   In these cases a full denial of guilt was recorded. If, on the other hand, the defendant pleaded guilty and he had questioned some aspects of the charge while in court, acceptance was recorded as partial. If the youth reported that details of the police 'facts' were wrong though he admitted the offence, acceptance was recorded as partial.

   In cases of not guilty pleas and the youth reported that he pleaded because he was advised to do so by parents, solicitors or others and he confessed to the offence by his own admission voluntarily, acceptance was coded as full.

CHAPTER 10.

1. Studies of adult defendants have shown that they too are typically overawed and mystified by the experience in court. (Carlen, 1975; 1976; Bottoms and McLean, 1976). Many of the parents of defendants in this study remained passive, even when called upon by the Bench to participate. In defended actions, especially procedural rules may be relaxed for defendants without counsel. However, some magistrates commented that although they did this, they felt that they had to be careful in case the defendant or his parents actually knew more than they let on and thus gained an advantage over the

prosecution. Generally, juveniles would seem to be given greater leeway than adult defendants when it comes to breaches of procedural rules. (See footnote 6 below).

2. The Magistrate was aware of the potential political nature of the case and implored the youth a number of times to keep politics out of the proceedings.

3. One problem with this type of categorization of 'accounts' or motivational verbalizations is that they are analytically difficult to distinguish. What is given by the defendant as an excuse may be heard by the magistrate as a justifaction. See Taylor, 1979 for a discussion.

4. Motivational rhetoric or verbalizations can serve several functions. Ditton (1977:164:172) identifies two. He suggests that they can function as a prior denial of responsibility and serve to 'inoculate' or neutralize the future consequences of wrong doing. In this sense they constitute a rhetoric of 'self-adjustment'. Alternatively they can act, he says, as a denial after the event as a rhetoric of 'self-reconciliation'. (Cf. Matza, 1964, Chapter 3). He argues, however, "before-and-afterness is an existenial rather than a temporal issue. Importantly, the adjustment rhetoric may, in fact, be formulated or conceptualized by the actor after an act takes place, but is seen by him as being causally antecedent. (Ditton, 1977:164 italics original). Importantly Blum and McHugh (1971) suggest that motive constructs are used not only when people are asked to account for untoward behaviour as Lyman and Scott (1972) suggest, but as an ongoing part of interpreting and acting in the world. (See Taylor, 1979; for a review of recent literature).

   A fuller discussion of motivational accounts will be given in a subsequent report on defendants' 'in-court behaviour'.

5. The terms 'little tough' and 'little crim' are used frequently by D.C.W. court and field staff and by Magistrates to label the moral characters of youths they consider to be 'hard core' offenders or those who commit 'adult-like' offences. However, the label may also be imposed because of the defendants' demeanour or perceived lack of remorsefulness. These terms are equivalent to what Emerson (1969:91) refers to as a 'criminal' moral character. (See p. above).

CHAPTER 10. (CONTD.)

6. In adult courts an 'awkward' or troublesome defendant may find himself quickly ruled out of order, etc. He may also find himself not only situationally sanctioned, but also sanctioned by way of a more severe sentence or fine than he may have otherwise got (Mileski, 1971; Carlen, 1976). Juvenile defendants seem generally to be allowed much more leeway in their courtroom behaviour and to be subjected to situational rather than dispositional sanctions (Emerson 1969, Chapter 7; see also Williamson, 1980).

CHAPTER 12.

1. Williamson (1980) suggests that because English Children's Courts are still essentially criminal Courts, there has never been the same concern with juveniles' legal rights as there has been in the U.S.A. where courts are civil rather than criminal. Nor, he continues, "Has the court often been charged with excercising 'rampant' discretion" in the same way as in the U.S.A. Although there is some validity in this assertion other research both in Britain and Australia indicate that use of welfare principles in Children's Courts has led to discretionary justice and inconsistencies. (See Thorpe, et al (1980) for a review of the situation in England and Wales and Edwards Hiller and Hancock (1980) for a discussion of juvenile law in Victoria).

2. For a general review of Matza's work, see Taylor et al 1973.

3. There was, however, a strong trend among youths in defended actions to respond that the court's function was to 'administer justice' and so on, this related to their concern with the court establishing their guilt or innocence (defended sample 53.3% 'other'; general sample 25.6%; Chi square = 5.31104, with 2 degrees of freedom, Significance = .0703).

4. Due to an omission in the interview schedule youths who did not indicate that the Magistrate was the most important participant in the proceedings were not in all cases questioned separately on their attitudes to him/her.

CHAPTER 13

1. The issues involved in the development of a justice model are complex and this discussion has done no more than touch on some of them. The reader who is interested in the current debate is advised to go directly to the literature cited. Thorpe et al (1980) argues that the development of a justice model is in itself not sufficient and that the development of preventative and diversionary programmes are essential in order not only to prevent delinquency, but also to stop children being brought into the system. This of course, adds another dimension to the debate. (See Schur, 1973).

BIBLIOGRAPHY

Anderson, R., 1978 — Representation in the Juvenile Court. Routledge and Kegan Paul, London.

Arcuri, A.F. 1976 — "Lawyers, Judges, and Plea Bargaining: Some new data on inmates views". International J. of Criminology and Penology. Vol. 4: 176-189.

Baldwin, J. and McConville, M. 1977 — Negotiated Justice: Pressures to Plead Guilty. Martin Robertson, London.

Baldwin, R., 1974 — "Reciprocal Suspicion, One Side: the policeman's perceptions of minorities" in R.L. Ackers and E. Sagarin (eds.) Crime Prevention and Social Control. Praeger, New York.

Ball, J.C., 1967 — "The Reliability and Validity of Interview Data obtained from 59 Narcotic Drug Addicts". American J. of Sociology, Vol 72, No. 3: 650-654

Bankowski, Z., and Mungham, G. 1981 — "Lay people and Law people and the Administration of the Lower Courts". International J. of the Sociology of Law, Vol. 9, No. 1: 85-100.

Basso, K.H., 1972 — "To Give up on Words: Silence in Western Apache Culture" in P.P. Giglioli (ed.) Language and Social Contact. Penguin, Harmondsworth.

Baum, M. and Wheller, S., 1968 — "Becoming an Inmate" in S. Wheller (ed.) Controlling Delinquents. John Wiley and Sons, New York.

Bauman, R. and Sherzek, 1974 — Explorations in the Ethnography of Speaking. Cambridge University Press, London.

Bean, P., 1976 — Rehabilitation and Deviance Routledge and Kegan Paul, London.

Bernstein, B., 1973 — Class, Codes and Control. Vol. 1 Paladin, London.

Bernstein, I.N., Kick, E., Linay, G.T. and Schulz, B., 1977. — "Charge Reduction: An intermediary stage in the process of labelling criminal defendants". Social Forces, vol. 56, No. 2: 368-84

Bittner, E., 1973 — "Police on Skid Row: A Study of Peace Keeping" in G. Salaman and K. Thompson (eds.) People and Organizations. The Open University Press, London.

Bittner, E., 1976 — "Policing Juveniles: The social context of common practice" in M.K. Rosenheim (ed.) Pursuing Justice for the Child. University of Chicago Press, Chicago.

Black, D.J., 1971 — "The Social Organization of Arrest". Stanford Law Review, vol. 22, (June) 1087-1111.

Black, D.J. and Reiss, A.J., 1972 — "Police Control of Juveniles" in R.H. Scott and J.D. Douglas (eds.) Theoretical Perspectives on Deviance.

Blum, A.F. and McHugh, P. 1971 — "The Social Ascription of Motives". American Sociological Review. Vol. 36, No. 1 : 98-109.

Blumberg, A.S., 1969 — "The Practice of Law as Confidence Game" in V. Aubert (ed.) Sociology of Law. Penguin, Harmondsworth.

Bottoms, A.L. and McClean, J.D., 1976 — Defendants in the Criminal Process. Routledge and Kegan Paul, London.

Brickey, S.L. and Miller, D.E., 1975 — "Bureaucratic Due Process: An Ethnography of a Traffic Court" Social Problems, vol. 22, No. 5: 688-697.

Broom, L. and Lancaster Jones, F., 1976 — Opportunity and Attainment in Australia. Australian University Press, Canberra.

Buckner, H.T. 1970 — "Transformation of Reality in the Legal Process". Social Research, vol. 37, No. 2: 88-101.

Cain, M., 1971 — "On the Beat: Interactions and Relations in Rural and Urban Police Forces" in S. Cohen (ed.) Images of Deviance Penguin, Harmondsworth.

Carlen, P., 1975 — "Magistrates' Courts: A game theoristic analysis". Sociological Review, vol. 23, No.2: 347-79

Carlen, P., 1976(a) — Magistrates Justice. Martin Robertson, London.

Carlen, P. 1976(b) — "Introduction" in P. Carlen (ed.) The Sociology of Law, Sociological Review Monograph 23.

Casper, J.D., 1972 — American Criminal Justice: The Defendants' Perspective, Prentice Hall, Englewood Cliffs.

Casper, J.D., 1978(a) — Criminal Courts: The Defendants' Perspective, National Institute of Law Enforcement and Criminal Justice. Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D:C.

Casper, J.D. 1978(b) — "Having their day in Court: Defendant evaluations of the fairness of their treatment". Law and Society Review, vol. 12, No. 3: 237-251

Cazden, C.G., 1976 — "The Situation: A neglected source of social class differences in language use" in J.B. Pride and J. Holmes (eds.). Sociolinguistics.

Cicourel, A.V., 1972 — "Delinquency and the attribution of responsibility" in R.A. Scott and J.D. Douglas (eds.) Theoretical Perspectives on Deviance, Basic Books Inc. New York.

Cicourel, A.V., 1964 — Method and Measurement in Sociology. The Free Press, New York.

Cicourel, A.V. 1973 — Cognitive Sociology: Language and Meaning in Social Interaction, Penguin Education, Harmondsworth.

Cicourel, A.V., 1976 — The Social Organization of Juvenile Justice, 2nd ed. Heinemann: London.

Chambliss, W.J. and Mankoff, M. 1976 — Whose Law, What Order? John Wiley and Sons Inc., New York.

Cloyd, J.W., 1977 — "The Processing of Misdemeanour Drinking Drivers: The Bureaucratization of the Arrest, Prosecution, and Plea Bargaining Situations". Social Forces, vol. 56, No. 2: 385-407.

Cohen, S., 1979 — "Guilt Justice and Tolerance: Some Old Concepts for a New Criminology" in D. Downes and P. Rock (eds.) Deviant Interpretations, Martin Robertson, London.

Cohen, L.E. and Kluegel, R.L., 1978 — "Determinants of Juvenile Court Dispositions: Ascriptive and achieved factors in two metropolitan courts". American Sociological Review, vol. 43 (April): 162-176.

Cohen, S. and Young, J. 1973 — The Manufacture of News: Deviance, Social Problems and the Media, Constable, London.

Cotton, W.L., 1974 — "Perceptions of Policy: Law Enforcement Practices in New York, Puerto Rican Ghetto, El Barrio" in R.L. Ackers and E. Sagarin (eds.) Crime Prevention and Social Control Praeger. New York.

Creekmore, M., 1976 — "Case Processing: Intake, Adjudication, and Disposition" in R. Sarri and Y. Hasenfeld (eds.) Brought to Justice.

Davis, F., 1959 — "The Cab Driver and his Fare" American Journal of Sociology, vol. 65 No. 2: 158-165

De Fleur, L.B., 1975 — "Biasing influences on drug arrest records: Implications for deviance research: American Sociological Review, vol. 40: 88-103

Dell, S., 1971 — Silent in Court, Bell, London.

Denzin, N., 1970 — The Research Act in Sociology Butterworths, London.

Department for Community Welfare, 1980 — Juvenile Delinquency in Western Australia, Perth.

Dingwall, R., 1977 — "Atrocity Stories and Professional Relationships". Sociology of Work and Occupations, vol. 4, No.4: 371-396

Ditton, J., 1977 — Part-time Crime: An Ethnography of Fiddling and Pilferage. MacMillan, London.

Downes, D. and Rock, P., 1979 — Deviant Interpretation, Martin Robertson, London.

Driver, E.D., 1968 — "Confessions and the Social Psychology of Coercion:. Harvard Law Review, vol. 82, No. 1: 42-61.

Duckworth, A.M.E., 1980 — "Restitution, an analysis of the victim - offender relationship towards a working model in Australia". Australian and N.Z. J. of Criminology Vol. 13: 227-240.

Edwards Hiller, A. and Hancock, L., 1980 — "Juvenile Delinquency Legislation and the Processing of Juveniles in Victoria", in R. Tomasic (ed.) Legislation and Society in Australia. The Law Foundation of New South Wales and George, Allen and Unwin, Sydney.

Eggleston, E., 1976 — Fear, Favour or Affection. Australian National University, Press, Canberra.

Emerson, R.M., 1969 — Judging Delinquents: Context and Process in Juvenile Court. Aldine Publishing Co., Chicago.

Emerson, R.M. and Messinger, S.L., 1977 — "The Micro-Politics of Trouble" Social Problems, vol. 25, No. 2 (Dec) : 121-134.

Fears, D., 1977 — "Communication in English Juvenile Courts" Sociological Review, vol. 25, No. 1 : 131-145.

Ferguson, L.R., 1978 — "The Competence and Freedom of Children to Make Choices regarding Participation in Research: A Statement". J. of Social Issues, vol. 34, No. 2: 114-121.

Figueira-McDonough, J. 1979 — "Processing of Juvenile Delinquents in Two Cities: A cross - national comparison" J. of Research in Crime and Delinquency, vol. 16 No. 1, (Jan) : 114-142.

Filstead, W.J. 1972 — "General Theoretical Framework: An Introduction" in W.J. Filstead (ed.) An Introduction to Deviance: Readings in the Process of Making Deviants. Markham, Rand McNally, Chicago.

Fishman, C., 1976 — "The Paradoxical Effects of Labelling" International J. of Criminology and Penology, vol. 4, No. 1: 1-7.

Frazier, C.E., 1979 — "Appearance, Demeanor, and Backstage Negotiations: Basis of discretion in a first appearance court" International J. of the Sociology of Law, vol. 7 No. 2 : 197-207.

Foster, J.D., Dinitz, S. and Reckless, W.C. 1972 — "Perceptions of Stigma following Public Intervention for Delinquency Behaviour", Social Problems, vol. 20, No. 2: 202-209.

Garfinkel, H. 1973 — "Conditions of Successful Degration Ceremonies" in W.J. Filstead (ed.) An Introduction to Deviance, Markham, Rand McNally, Chicago.

Garret, M. and Short, J.F. 1975 — "Social Class and Delinquency: Predicitions and outcomes of police-juvenile encounters." Social Problems, vol.22 No. 3 : 368-383.

Gibbons, D.C. and Johns, J.F., 1971 — "Some Critical Notes on Current Definitions of Deviance." Pacific Sociological Review (Jan), vol. 14, No. 1: 20-37.

Giordano, P.G., 1976 — "The Sense of Injustice: An analysis of juveniles reactions to the justice system." Criminology, vol. 14, No. 1: 93-112.

Glaser, B.G., 1964 — "The Constant Comparative Method of Qualitative Analysis." Social Problems, vol. 12, No. 4: 436-445.

Glaser, B.G. and Strauss, A.L., 1964 — "Awareness Contexts and Social Interaction". American Sociological Review, vol. 29, No.5 .: 669-679.

Glaser, B.G. and Strauss, A.L., 1967 — The Discovery of Grounded Theory The Aldine Publishing Co., Chicago.

Grisso, J.T. and Pomicter, C., 1977 — "Interrogation of Juveniles: An emperical study of procedures, safeguards, and rights waiver." Law and Human Behaviour, vol. 1, No. 4: 321-342.

Gusfield, J.R., 1973 — "Moral Passage: The symbolic process in public designations of deviance" in W.J. Filstead (ed.) An Introduction to Deviance: Readings in the Process of Making Deviants.

Hagan, J., Hewitt, J.D. and Alwin, D.F. 1979 — "Ceremonial Justice: Crime and punishment in a loosely complex system" Social Forces, vol. 58, No. 2: 506-527.

Hampton, R.E., 1975 — Sentencing In a Children's Court and Labelling Theory. Research Series No. 5. Research Section, Department of Justice Wellington.

Hampton, R.E., 1977 — "Sex and Sentencing in a Children's Court", Australia & N.Z. J. of Sociology, vol. 13, No. 2: 140-142.

Hapgood, M, 1979 — Issues in Juvenile Justice: Some Perceptions of Juveniles and Parents. Unpublished Ph.D. Thesis, Nottingham University.

Hardiker, P. and Webb, D., 1979 — "Explaining Deviant Behaviour: The Social Context of 'Action' and 'Infraction' Accounts in the Probation Service." Sociology, vol.13, No.1 : 1-117.

Hartung, F.E., 1969 — "A Vocabulary of Motives for Law Violations", in D.R. Cressey and D.A. Ward (eds.) Delinquency, Crime and Social Process. Harper & Row, New York.

Hasenfeld, Y., 1974 — "People Processing Organizations" American Sociological Review, vol. 42, No. 3: 541-567.

Hasenfeld, Y., 1976(a) — "Youth in the Juvenile Court: Input and Output Patterns." in R Sarri and Y. Hasenfeld (eds.) Brought to Justice?: Juvenile, the Courts and the Law. Ann Arbor The University of Michigan.

Hasenfeld, Y., 1976(c) — "The Juvenile Court and its Environment" in R. Sarri and Y. Hasenfeld (eds.) Brought to Justice? Juveniles the Courts, and the Law. Ann Arbor, Michigan.

Hayes-Bautista, D.E., 1979 — "Coaches, Arbitrators, and Access Medical Care: J. of Health and Social Behaviour, vol. 20, (March) : 52-60.

Haystead, J., 1971 — "Social Structure, Awareness Context and Process of Choice" Sociological Review, vol. 19, No.1 : 79-94.

Haug, M. and Sussman, M.B., — "Professional Autonomy and the Revolt of the Client". Social Problems, vol. 17, No.2 : 153-61.

Hepworth, M. and Turner, B.S., 1974. — "Confessions to Murder: Critical Notes on the Sociology of Motivation" British J. Law and Society, vol. 1, No. 1: 31-49.

Hewitt, J.P. and Stockes, R., 1975 — "Disclaimers" American Sociological Review, vol. 40, No.1 (Feb) : 1-11.

Hindess, B., 1973 — The use of Official Statistics in Sociology. MacMillan, London.

Holden, F., 1978 — "The Court Experience: Prisoners views" Probation Journal, vol. 25, No.2 : 45-60.

Horwitz, A. and Wasserman, M., 1980 — "Formal Rationality, Substantive Justice, & Discrimination: A study of a juvenile court". Law and Human Behaviour, vol. 4, Nos. 1/2 : 103-115.

Hosticka, C.J., 1979 — "We don't care about what happened, we only care about what is going to happen: Lawyer - client negotiations of reality". Social Problems, vol. 26, No. 5 (June) : 559-610.

House of Representatives Standing Committee on Aboriginal Affairs, 1980 — Aboriginal Legal Aid, Australian Government Publishing Service, Canberra.

Howells, J.R. and Brooks, R., 1966. — "The Impact of the Juvenile Court on the Delinquent Youth". Approved Schools Gazette.

Jette, P.R. and Montanino, F., 1978 — "Face-to-Face Interaction in the Criminal Justice System: Differential leverage interaction strategies" Criminology, vol. 16, No.1, (May):67-86

Johnson, J.M., 1977 — "Behind the rational appearances: fusion of thinking & feeling in sociological research: in J.D. Douglas and J.M. Johnson (eds.) Existential Sociology, Cambridge University Press, Cambridge.

Kaplan, A., 1964 — The Conduct of Inquiry: Methodology for Behavioural Science. Intertext books, Aylesbury, Bucks.

King, M., 1978 — "Mad Dances and Magistrates" New Society, vol, 45, No. 32:564-66

Kidston, W. et al. 1976 — "Report of the Committee on the Future Development of the Juvenile Judical System in Western Australia," Prepared by the Department for Community Welfare, Western Australia.

Kitsuse, J.I., 1970 — "People Processing Institutions": Editorial Preface". American Behavioural Scientist, vol. 14. No. 2: 163-165.

Kitsuse, J.I., 1972 — "Deviance, Deviant Behaviour, and Deviants: Some Conceptual Problems" in Filstead, W.J. (ed.) An Introduction to Deviance.

Kraus, J., 1977 — "Causes of Delinquency as Perceived by Juveniles" International J. of Offender Therapy and Comparative Criminology, vol. 21, No.1 : 1-117.

Kutchinsky, B., 1979 — "Law, Crime and Legal Attitudes: New Advances in Scandinavian Research on Knowledge and Opinion of Law" in S.H. Mednick and S.G. Sheham (eds.) New Paths in Criminology Lexington Books, Lexington.

La Kind, E.D., Sussman, D.W. and Gross, R. 1977 — "Knowledge of Police and Court Procedures and Respect for the Law: Asurvey" J. of Criminal Justice, vol. 5 No. 4, :329-338.

Langley, M., Thomas, B.J. and Parkinson, R., 1978 — "Youths' Expectations and Perceptions of their Initial Juvenile Court Appearances". Canadian J. of Criminology, vol. 20, No. 1 (Jan): 43-53.

Law Reform Commisssion — Criminal Investigation, Report No. 2 Australian Government Publishing Service, Canberra.

Leiken, L.S., 1970 — "Police Interrogationin Colorado: The Implementation of Miranda" Denver Law Journal, vol. 47, No. 1: 1-53.

Lemert, E., 1970 — Social Action and Legal Change Aldine Publishing Co., Chicago.

Leyshone, H., 1975 — "Discrimination in Juvenile Courts" Legal Service Bulletin, vol. 1, No. 9: 219-221.

Liazos, A., 1972 — "The Poverty of the Sociology of Deviance: Nuts, sluts, and perverts" Social Problem, vol. 20, No. 1: 103-120.

Liberman, K., 1978 — "Problems of Communication in Western Desert Courtrooms" Legal Service Bulletin, vol. 3, No. 3: 94-96.

Light, I.H., 1969 — "The Social Construction of Uncertainty" Berkeley J. of Sociology, vol. 14: 189-99.

Lipetz, M.J., 1980 — "Routine and Deviations: The strength of the courtroom workgroup in a misdemeanor court" Int. J. of the Sociology of Law, vol. 8, No. 1 : 47-60.

Lipsitt, P.D., 1968 — "The Juvenile Offender's Perceptions" Crime and Delinquency, vol. 14, No. 1: 49-62.

Lundman, R.J., 1980 — "Police Misconduct" in R.J. Lundman (ed.) Police Behaviour: A Sociological Perspective, Oxford University Press, Oxford.

Lundman, R.J., Sykes, R.E., Clark, J.P., 1980 — "Police Control of Juveniles: A Replication" in R.J. Lundman (ed.) Police Behaviour: A Sociological Perspective, Oxford University Press, Oxford.

Lyman, S.M., and Scott, M., 1970 — "Stage Fright and the Problem of Identity" in Sociological of the Absurd, Appleton - Century - Crofts, New York.

Lyman, S.M., and Scott, M., 1972 — "Accounts" in W.J. Filstead (ed.) An Introduction to Deviance Markham, Rand McNally, Chicago.

Mahar, B., 1966 — "The Delinquents Perceptions of the Law and the Community" in S. Wheeler (ed.) Controlling Delinquents John Wiley and Sons, New York.

Mather, L.M., 1979 — Plea Bargaining or Trial? Lexington Books, Lexington.

Matza, D., 1964 — Delinquency and Drift John Wiley and Sons, New York.

McBarret, D.J., 1976 — 'Pre-trial Procedures and the Construction of Conviction' in P. Carlen (ed.) The Sociology of Law Social Review Monograph, No. 23.

McCleary, R., 1975 — "How Structural Variables Constrain The Parole Officer's Use of Discretioning Powers" Social Problems vol. 23, No. 2· 209-25.

McCleary, R., 1977 — "How Parole Officers Use Records" Social Problems, vol. 24, No. 5: 576-589.

McCleary, R., 1978 — "On Becoming a Client", J. Social Issues, vol. 34, No. 4: 57-75.

McDonough, J., 1976 — "Structural and Staff Characteristics of Juvenile Courts" in R. Sarri and Y. Hasenfeld (eds.) Brought to Justice.

Macintyre, S., 1978 — "Some notes on Record taking and making in an Antenatal Clinic" Sociological Review, vol.26, No.3:595-611

McKinlay, J.B., 1975 — 'Clients and Organizations' in J.B. McKinlay (ed.) Processing People: Cases in Organizational Behaviour Halt, Rinehart and Winston, London.

Miller, D. and Schwartz, M., 1966 — "Country Lunacy Commission Hearings: Observation of commitment to a state mental hospital, Social Problems vol. 14, No. 1: 26-35.

Mileski, M., 1971 — "Courtroom Encounters: An Observation Study of a Law Court" Law and Society Review, Vol.5: 473-539.

Mills, C.W., 1971 — "Situated Actions and Vocabularies of Motive" in B.R. Cosin et. al. (eds.) School and Society, Routledge and Kegan Paul, London.

Morris, A., and Giller, H. 1977 — "The Juvenile Court - The Clients' Perspective, Criminal Law Review April (185-244): 198-205.

Morris, P. and Beverley, F., 1972 — "Myths and Expectations: Anticipation of the Parole Experience" Anglo-American Law Review vol. 1, No. 2: 153-159.

Morris, P. and Beverley, F., 1975 — On Licence: A Study of Parole, John Wiley and Son, London.

Munn, J.R. and Renner, K.E., 1978 — "Perceptions of Police Work by the Police and by the Public", Criminal Justice and Behaviour, vol. 5, No. 2: 165-179.

Myers, M.A. and Hagan, J. 1979 — Private and Public Trouble: Prosecutors and the allocation of court resources. Social Problems vol. 26, No. 4, April: 439-451.

Parker, D., 1977 — "Social Control Agents as Generators of Crime" in R.M. Berndt (ed.) Aborigines and Change in the '70 Australian Institute of Aboriginal Studies, Canberra.

Parker, H., 1974 — View From the Boys, David and Charles, Newton Abbot.

Parker, H., 1976 — "The Authority Conspiracy" in P. Wiles (ed.) The Sociology of Crime and Delinquency in Britain. Martin Robertson, London.

Parker, H., Casburn, M. and Turnbull, D. 1980 — "The Production of Punitive Juvenile Justice" British J. Criminology, vol. 20, No. 3: 236-260.

Phillips, D.L. 1973 — "Sociologists and Their Knowledge: Some Critical Remarks on a Profession" in E. Freidson (ed.) The Professions and Their Prospects. Sage Publications, Beverley Hills.

Pearson, R., 1976 — "Women defendants in Magistrates Courts" British J. of Law and Society vol. 3, No. 2: 265-273.

Pemberton, A.G. and Locke, R.G., 1975 — "Knowledge, order, and power in social work and social welfare" in H. Throssell (ed.) Social Work: Radical Essays, University of Queensland Press, St. Lucia.

Petersen, A.R., 1978 — Juvenile Perceptions of, and Behaviour During Their Children's (Suspended Proceedings) Panel Hearings within the Perth Division of the Department for Community Welfare, B.A. dissertation Social Science. WAIT.

Piliavin, I. and Briar, S. 1976 — "Police Encounters with Juveniles" in R. Giallombardo (ed.) Juvenile Delinquency John Wiley & Sons Inc., New York.

Platt, A.M., 1977 — The Child Savers: The Invention of Delinquency, The University of Chicago Press, Chicago.

Plummer, K., 1973 — "Awareness of homosexuality" in R. Bailey and J. Young (eds.) Contemporary Social Problems in Britain, Saxon House - Lexington Books, Lexington.

Priestly, P., Fears, D., and Fuller, R., 1977 — Justice for Juveniles. Routledge and Kegan Paul, London.

Rakey, D.M., Sealey, R.W., 1975 — "The Adolescent and the Law: A Survey" Crime and Delinquency, vol. 21, No. 2 : 131-137.

Reiss, A.J. and Black D.J., 1967 — "Interrogation and the Criminal Process" Annals, vol. 374 : 45-57.

Rock, P., 1973 — Deviant Behaviour, Hutchinson University Library, London.

Rosen, L. and Carl, A., 1974 — "The Decision to Refer to Juvenile Court for a Judicial Hearing" in M. Reidel and J.P. Thornberry (eds.) Crime and Delinquency: Dimensions of Deviance, Praeger Publishers, New York.

Rosengren, W.R., and Lifton, M., 1970 — Organizations and Clients: Essays in the Sociology of Service, Charles E. Merrill, Columbers.

Rossi, P., Waite, E., Bose, C.E. and Berk, R.E., 1974 — "The Seriousness of Crimes: Normative structure and individual differences". American Sociological Review, vol. 39 No. 2 : 224-237.

Roth, J., 1973 — "Some Contingencies of the Moral Evaluation and Control of Clientele: The case of the hospital emergency service" in D.E. Benson (ed.) Readings in Deviant Behaviour M.S.S. Information Corporation, New York.

Rubington, E., and Weinberg, M.S., 1973 — Deviance: The Interactionist Perspective (Second Edition) MacMillan, New York.

Ruzek, S.K., 1973 — "Making Social Work Accountable" in E. Freidson (ed.) The Professions and their Prospects. Sage Publications, Beverley Hills.

Sacks, H., 1974 — "Notes on Police Assessment of Moral Character" in W.B. Sanders (ed.) The Sociologist as Detective, Praeger Books, New York.

Sanders, W.B. 1974 — "Pumps and Pauses: Stratigic use of conversational structure in interrogation: in W.B. Sanders (ed.) The Sociologist as Detective, Praeger Publishers, New York.

Sargarin, E., 1973 — "The Research Setting and the Right not to be Researched". Social Problems vol. 21, No. 1 : 52-64.

Sarri, R. and Hasenfeld (eds.) 1976 — Brought to Justice?: The Juvenile, The Courts and The Law. The University of Michigan Press, Ann Arbor.

Samson-Fisher, R., 1978 — "Aborigines in Crime Statistics and Interaction between Poverty and Detectors: Aust. & N.Z. J. of Criminology, vol. 11, No. 2: 71-80.

Schatzman, L and Strauss, A.L., 1973 — Field Research: Strategies for a Natural Sociology. Prentice - Hall, Englewood Cliffs.

Scheff, T.J., 1973 — "Typicifications in Rehabilitation Agencies" in E. Rubington and M.S. Weinberg (eds.) Deviance: The Interactionist Perspective, Collier MacMillan, London.

Schur , E. 1973 — Radical Non-Intervention: Rethinking the Delinquency Problem. Prentice-Hall, Englewood Cliffs.

Schultz, A., 1971 — "The Stranger: An essay in social psychology". in B. Cosin et al (eds.) School and Society, Routledge and Kegan Paul, London.

Sellitiz, C., Jahoda, M., Deutsch, M. and Cook, S.W., 1965. — Research Methods in Social Relations Methuen, London.

Schwartz, B., 1978 — "The social Ecology of Time Barriers" Social Forces, vol. 56, No. 4: 1203-1220.

Scott, P.D., 1959 — "Juvenile Courts: the juvenile's point of view" British J. Delinquency 9 (Jan): 200-210.

Seymour, J. et al 1979 — Juvenile Justice: before and after the onset of delinquency. Australian Discussion Paper Topic 2. Sixth U.N. Congress on the Prevention of Crime and the Treatment of Offenders. Australian Government Publishing Service, Canberra.

Shapland, J., 1979 — "The Construction of a Mitigation" in D.P. Farrington, et al (eds.) Psychology, Law, and Legal Processes. McMillan, London.

Smith, G., 1977 — "Kids, Cops and Conflict" in P.R. Wilson, (ed.) Delinquency in Australia. Cheshire, Sydney.

Snyder, E.C., 1971 — "The Impact of the Juvenile Court Hearing on the child". Crime and Delinquency vol. 17, No. 2: 180-90.

Spradley, J.P., 1970 — You Owe Yourself a Drunk, Collier MacMillan, London.

Spradley, J.P., 1972 — "Beating the drunk charge" in J.P. Spradley ed. Culture and Cognition, Chandler, San Francisco.

Spradley, J.P., 1979 — The Ethnographic Interview, Holt, Rinehard and Winston, New York.

Stacey, M., 1976 — "The Health Service Consumer: A Sociological Misconception" in M. Stacey (ed.) The Sociology of the National Health Service, Sociological Review Monograph No.22.

Strauss, A., 1970 — "Discovering New Theory from Previous Theory" in T. Shibutari (ed.) Human Nature and Collective Behaviour, Prentice Hall Inc. Englewood Cliffs, New Jersey.

Sudnow, D., 1967 — Passing On, Prentice Hall, Englewood Cliffs, New Jersey.

Sudnow, D., 1973 — "Normal Crimes: Sociological features of the penal code in a public defender officer" in G. Salaman and K. Thompson (eds.) People and Organizations, The Open University Press, London.

Taylor, I., Walton P., and Young, J., 1973 — The New Criminology, Routledge and Kegan Paul, London.

Taylor, I., Walton P., and Young, J. (eds.) 1975 — Critical Criminology, Routledge and Kegan Paul, London.

Taylor, L., 1979 — "Vocabularies, Rhetorics and Grammar: Problems in the Sociology of Motivation" in D. Downes and P. Rock (eds.) Deviant Interpretations, Martin Robertson, London.

Thorpe, D.H., Smith, D., Green, C.J. and Paley, J.H. 1980 — Out of Care: The Community Support of Juvenile Offenders. George Allen and Unwin, London.

Tomasic R., 1978 — Lawyers and the Community. The Law Foundation of New South Wales and George Allen and Unwin, Sydney.

Tomasic, R., and Dobinson, I., 1979 — The Failure of Imprisonment. George Allen and Unwin, Sydney.

Ute, G., 1974 — "One, Two, Three, Red Light: Judical Review in a Traffic Court" in J. Jacobs (ed.) Deviance : Field Studies and Self-Disclosures. National Press Books, Pato Alto.

Von Hirsch, 1976 — Doing Justice: The Choice of Punishment, Hill and Wang, New York.

Voekeler, P.M.W., 1960 — "Juvenile Courts: The parents' point of view" British J. Criminology 1 (May): 154-66.

Waldo, G.P., and Hall, N.E., 1970 — "Delinquency Potential and Attitudes toward the Criminal Justice System" Social Forces, vol.49, No. 2: 291-298

Warren, C.A.B. and Johnson, J.M., 1972 — "A Critique of Labelling Theory from the Phenomenological Perspective" in R.A. Scott and J.D. Douglas (eds.) Theoretical Perspectives on Deviance, Basic Books, London.

Walter, J.A., 1978 — "Talking About Trouble" British J. Criminology, vol. 18, No. 4: 365-80.

West, P., 1979 — "An Investigation into the Social Construction and Consequences of the Label Epilepsy" Sociological Review, vol. 27, No. 4: 719-741.

Westley, W.A., 1953 — "Violence and the Police: American J. of Sociology, vol. 59, No. 1: 34-41.

Wiley, M.G. and Hudik, T.L., 1980 — "Police-Citizen Encounters: A field test of exchange theory" in R.J. Lundman (ed.) Police Behaviour: A Sociological Perspective, Oxford University Press, Oxford.

Williamson, H., 1980 — "Defence and Mitigation in the Juvenile Court: The role of the solicitor in Juvenile Justice:, in Z. Bankowski and G. Mungham (eds.) Essays in the Sociology of Law, Routledge and Kegan Paul, London.

Winfree, L.T. Jnr. and Griffiths, C.T., 1977 — "Adolescent Attitudes towards the Police" in T.N. Ferdinand, (ed.) Juvenile Delinquency, Sage, Beverley Hills.

Witt, J.W., 1973 — "Non-Coercive Interrogation and the Administration of Criminal Justice: The impact of miranda on police effectuality" J. of Criminal Law and Criminology, vol. 64, No. 3: 320-332.

Zimmerman, D.H., 1969 — "Tasks and Troubles: The Practical Bases of Work Activities in a Public Assistance Agency" in D.A. Hansen (ed.) Explorations in Sociology and Counselling, Houghton Mifflin.

APPENDIX 1

LETTERS TO YOUTHS AND PARENTS

Legal Section
Department for Community Welfare
81 St. George's Tce.
PERTH 6000 W.A.

Dear

The legal section of the Department for Community Welfare is currently undertaking a study of youths' views on the Children's Court in the Perth metropolitan area. This study is concerned with their opinions about court processes and their views on how the Children's Court affects their lives.

Court records show that you will be appearing in Court in the near future. We would be very interested in discussing your experience with you. Your participation is very important: only you can tell about your own experience with the court. Your comments will be added to those of others and will help us to make recommendations about how the court should operate. We would appreciate it if you would take a little time to talk to us about your court experience.

Anything you say to us would be treated in the strictest confidence and you would not be identified in our report. We would like to stress that we are not connected with the Children's Court, nor with the Department's Welfare Officers, nor institutions. Our only task in the Department is this research work so anything you say to us will not affect in any way your position with the Court or with Community Welfare.

A research assistant or myself will call on you next week to arrange an interview. If you do not wish to be interviewed, please fill in the enclosed form and return it in the stamped addressed envelope provided.

If you have any queries you can contact me on 321 0244, extension 5329.

Yours sincerely

Eddie McDonald

(Eddie McDonald)
RESEARCH OFFICER
LEGAL SECTION

Enc.

Legal Section
Department for Community Welfare
81 St. George's Tce.
PERTH 6000 W.A.

Dear

The legal section of the Department for Community Welfare is currently undertaking a study of the views of youths on the Children's Court in the Perth metropolitan area. This study is concerned with youths' opinions about the Children's Court processes and their views on how the court affects their lives.

Court records show that will be appearing in Court in the near future. We would be very interested in discussing it with him/her. His/her participation is important: only can tell about his/her own experience with the court. comments will be added to those of others and will help us make recommendations about how the court should operate. We would appreciate it if he/she could take a little time to talk to us about his/her court experience.

Anything said to us would be treated in the strictest confidence and no one would be identified in our report. I would like to stress that we have no connection with the Children's Court or with the Department's field staff or institutions, so anything says will not affect his/her position with either the Court or Community Welfare in any way.

A research assistant or myself will call next week to arrange an interview.

If you have any queries, please contact me on 321 0244, extension 5329.

Yours sincerely

Em McDonald.

(Eddie McDonald)
RESEARCH OFFICER
LEGAL SECTION

Legal Section
Department for Community Welfare
81 St. George's Tce.
PERTH 6000 W.A.

Dear

The legal section of the Department for Community Welfare is currently undertaking a study of youths' views on the Children's Court in the Perth metropolitan area. This study is concerned with their opinions about court processes and their views on how the Children's Court affects their lives.

A researcher was present in court when your case was heard. We would be very interested in discussing your experience with you. Your participation is very important: only you can tell about your own experience with the court. Your comments will be added to those of others and will help us to make recommendations about how the court should operate. We would appreciate it if you would take a little time to talk to us about your court experience.

Anything you say to us would be treated in the strictest confidence and you would not be identified in our report. We would like to stress that we are not connected with the Children's Court, nor with the Department's Welfare Officers, nor institutions. Our only task in the Department is this research work so anything you say to us will not affect in any way your position with the Court or with Community Welfare.

A research assistant or myself will call on you next week to arrange an interview. If you do not wish to be interviewed, please fill in the enclosed form and return it in the stamped addressed envelope provided.

If you have any queries you can contact me on 321 0244, extension 5329.

Yours sincerely

Eddie McDonald

(Eddie McDonald)
RESEARCH OFFICER
LEGAL SECTION

Enc.

Legal Section
Department for Community Welfare
81 St. George's Tce.
PERTH 6000 W.A.

Dear

The legal section of the Department for Community Welfare is currently undertaking a study of the views of youths on the Children's Court in the Perth metropolitan area. This study is concerned with youths' opinions about the Children's Court processes and their views on how the court affects their lives.

A research officer was present in court when case was heard and we would be very interested in discussing it with him/her. His/her participation is important: only can tell about his/her own experience with the court. comments will be added to those of others and will help us make recommendations about how the court should operate. We would appreciate it if he/she could take a little time to talk to us about his/her court experience.

Anything said to us would be treated in the strictest confidence and no one would be identified in our report. I would like to stress that we have no connection with the Children's Court or with the Department's field staff or institutions, so anything says will not affect his/her position with either the Court or Community Welfare in any way.

A research assistant or myself will call next week to arrange an interview.

If you have any queries, please contact me on 321 0244, extension 5329.

Yours sincerely

Eddie McDonald

(Eddie McDonald)
RESEARCH OFFICER
LEGAL SECTION

APPENDIX 2

COURT OBSERVATIONAL DATA

CHECK LIST

COURT OBSERVATIONAL DATA

EM	COLUMN	CODE
1	1-3	(Id. No.) _____
2	4-6	(Case No.) _____
3	7	((Card No.) 0 - N) 1
4	8	(Data Base) (1) Interview (2) Court Observation, (3) Records
5	9	(Sample) (0) Not known, General (2), Sub-Sample (3), Defended (4)
6	10	(Court) _____
7	11-16	(DateApp.) Year Month Day _____
8	17	(Case Type) (0) Not known (2) General List, (3) Remand, (4) Both, (5) Defended (6) Other and Defended (7) Other
9	18	(Sex) (0) Not known Male (1), Female (2)
10	19	(Ethnicit) (0) Not known Aboriginal (1), Non-Aboriginal (2)
11	20-25	(DOB) Year Month Day _____

ITEM	COLUMN	CODE
320	26-27	(AGE) _____
32.	28	(OBSERVER) (0) ; (1) Not observed
322	29	(PREVOBS) (0) Not known Yes (2) No (3) (4) Selected but not Obs
32	30	(NOPVOBS) (0) Not known (8) N.A. (9) No Data (1) (2) (3) (4) 5 or more (5)
32	31	(TYPEPREC) (0) (8) (9) General (2) Remand (3) Both (4) Defended (5)
325	32	(CUSTODY2) (0) (8) (9) Yes (2) No (3)
32	33-35	(CASEMINS) _____
32	36-39	(OBSCHAR) 1st Charge No. on Court List
328	40-41	(NOCHA1) _____
32	42-43	(CODECHA1) _____
33	44-45	(NOCHA2) _____
33	46-47	(CODECHA2) _____
332	48-49	(NOCHA3) _____
33	50-51	(CODECHA3) _____
33	52-53	(NOCHA4) _____
33	54-55	(CODECHA4) _____

IT	COLUMN	CODE
33	56	(OBSACCOM) (0) (8) (9) Yes (2) No (3)
33	57	(OBSACWHO) (0) (8) (9) Two or more of following (1) Father (2) Mother (3) Both Parents (4) Sibling (5) Friend (6) Other (7)
33	58	(OBSREP) (0) (8) (9) Yes (2) No (3)
33	59	(WHOOBSA) (0) (8) (9) LACC (1) ALSC (2) ALSFO (3) DC (4) DCWC (5) PrivateC (6) Other (7)
34	60	(OBSPLEA) (0) (8) (9) Guilty to All (2) Not Guilty to All (3) Mixed Plea (4) No Plea Taken (5) Non-Standard Guilty Plea (6) Guilty in Absentia (7)
34	61	(NEGOPLEA) (0) (8) (9) Yes (2) No (3)
342	62-63	(TYPENEGO) (00) (80) (90) Magistrate rejects G. Plea (2_0) Other Magnego with Def (21) Other Magnego with Parents (22) Def Counsel Neg Withdrawal of Charge (30) Def Qs Details of Charge (40) Def Counsel. Nego Case Heard Childrens Court (50) Def Labelled Abnormal (60)
43	64	(MAGNAME)

ITEM	COLUMN	CODE
344	65	(MEMBER) (0) (8) (9) YES 2 NO 3
45	66	(TYPEPROS) (0) (9) Police (2) WAGR (3) Commonwealth (4) WA (5) Other (7)
46	67	(COOBS) (0) (8) (9) Yes (2) No (3)
47	68	(ACOOBS) (0) (8) (9) Yes (2) No (3)
48	69	(RECOROBS) (0) (8) (9) Yes (2) No (3)
49	70	(BENCLOBS) (0) (8) (9) Yes (2) No (3)
50	71	(ORDOBS) (0) (8) (9) Yes (2) No (3)
51	72	(WOSWOBS) (0) (8) (9) Yes (2) No (3)
52	73	(AFCOOBS) (0) (8) (9) Yes (2) No (3)
53	74	(OTHSOBS) (0) (8) (9) Yes (2) No (3)
54	75	(CODEFOBS) (0) (8) (9) Yes (2) No (3)
55	76	(NOCODEFS) (0) (8) (9) 1 (1) 2 (2) 3 (3) 4 (4) 5 (5) 6 (6) 7 or more (7)

TF	COLUMN	CODE
56	77	(DCWRPORT) (0) (8) (9) Yes (2) No (3)
57	78-79	(OBSSENT) (00) (80) (90) Sect. 26 (20) Sect. 26 Sup (21) Probation (22) Commit (3) PUC (31) Repuc (32) Recomm (33) Fine (4) Bond (41) Jail (42) CSO (50) Dis.Sect 34B-CSO (51) Ref to Panel (52) Dis.Sect 34B (53) Remand-Adj(60) Assessment (61) Remand DCW Report (62) Ref. Adult Court Sent. (63) Ref. Adult Court Trial (64) ASD (65) Acquittal (7@) Withdrawal (71) Other (72) Two or more of above (77)
58	80	(CUSTODY 3) (0) (8) (9) Yes (2) No (3)
		Card No. 2
59	26-27	(OBSFINE$) (00) (80) (90) $10 (20) $10-24 (21) $25-49 (22) $50-74 (23) $75-99 (24) $100-124 (25) $125-149 (26) $150-174 (27) $175-199 (28) $200-244 (29) $225-249 (30) $250 or more (31)
60	28-29	(PROLENG) (00) (80) (90) 6 months (20) 6 months (21) 12 months (22) 18 months (23) 24 months (24) 30 months (26) 36 months (27) 42 months (28) 48+ months (29) Other (70)

ITEM	COLUMN	CODE
36	30	(PUCLENG) (0) (8) (9) Till 14 years (2) 15 (3) 16 (4) 17 (5) 18 (6) Other (7)
36	31	(RECMINST) (0) (8) (9) Longmore Remand (1) Longmore Ass (2) Mt. Lawley (3) Nyandi (4) Riverbank (5) Hillston (6) Other (7)
36	32	(INCALENG) (0) (8) (9) Nil (2) <6 months (3) 6 months (4) Other (7)
36	33	(CSOHOURS) (0) (8) (9) (1) 10 (2) 11-20 (3) 21-30 (4) 31-40 (5) 41-50 (6) 51-60 (7) 61
36	34	(BAILAPP) (0) (8) (9) (1) Def.Req.Bail (2) Defc.Req.Bail (3) C.O. Ref.Bail (4) Mag.Ref.Bail (5) P.Sgt.Ref.Bail (6) AFCO/WO Ref.Bail (7) Other Ref.Bail
36	35-36	(OPPRAT) (00) (80) (90) (10) No objection (20) Def. custody by Mag. (No other explanation) (21) M. - Offence serious nature (30) P.SGT.Req.Refusal (no explan) (31) P.Sgt. - Off.serious (32) Welfare/Life in danger (33) Def.Bad character/adults involved (34) Failed to appear previously (40) C.O. req. refusal (No explan) (41) W.O./AFCO Req.Ref.Bail Programme (Etc.) (42) DCW - Welfare in Danger.

TE	COLUMN	CODE
68	37-38	(Defbast) (00) (80) (90) (10) No strategy (20) Simple request (21) Req. Bail To attend work/school (22) Request that surety be dropped (30) CO/AFCO req. bail (7) Other
69	39	(MSDECBA) (0) (8) (9) (2) Yes (3) No
70	40-41	(COURT$) (0) (1) (8) (9) (2) LT. $50 (21) $50-99 (2) $100-149 (23) $250-199 (24) $200-249 (25) $250-299 (26) $300-349 (27) $350-399 (28) $400-449 (29) $450-499 (30) $500-599 (31) $600-699 (32) $700-799 (33) $800-899 (34) $900-999 (35) $1,000-1,999 (36) $2,000 - OR MORE
71	42	(COURTSUR) (0) (8) (9) (2) Yes (3) No
72	43-44	(RATNOOBS) (00) (80) (90) (00) Not known (80) Not applicable (90) No Data (20) Refusal Form (21) F/F Refusal (22) Phone Refusal (23) Case Remanded (30) No address record (31) Address unlocat (32) Country address (33) Incorrect address (40) No response (50) Broke appointment (60) No appearance (70) Other (72) OBS/Interviewer Error

APPENDIX 3

INTERVIEW SCHEDULE

YOUTHS' PERSPECTIVES ON THE CHILDREN'S COURT PROCESS

SCHEDULE 05

SECTION I Pre-Court Experience and Expectations — Coding

(I want you to think back before you went to court when I ask you these questions)

A. The Offence

1. Can you tell me about the trouble you got into?

No answer 0.

_____

_____

_____

_____

_____

2. How serious did you yourself think this trouble was? (probe for why?) No answer 0.

_____

_____

3. How serious did you then think the following people would consider it? Would they have thought it was 1. "very serious," 2. "serious," 3. "somewhat of a problem," 4. a "minor problem" or, 5. "no problem", 6. don't know.

	1	2	3	4	5	6
(a) your parents						
(b) the police						
(c) your friends						
(d) the Court						
(e) Your teachers						
(f) Community Welfare Officers						

4(a) Was this the first time you had to go to Court for this particular trouble?

No answer 0.
Not sure 1.
Yes 2→ Go to Q.4(e)
No. 3→ Go to Q.4(b)

Coding

4(b) When and how many times did you have to go to court for this particular offence?

Date _____ _____

_____ _____

_____ _____

4(c) What happened each of those times you went to court? (Probe for why?) No answer 0. Not sure 1.

_____

_____

_____

4(d) How do you feel about having to go to court this number of times?

_____

_____

4(e) Have you ever been to Children's Panel or Court before for any other offence? (Probe) No answer 0.

_____

_____

B. Contact with Police

5. Were you arrested or were you summonsed?
No answer 0.
Not sure 1.
Arrested 2.—→Go to Q.6
Summonsed 3.—→Go to Q.8

6. (If arrested)

Can you tell me what happened after you were arrested? (probe for: where respondent was taken, for how long; what happened while in custody? If in a group, were all of the group arrested, what happened to the others?)

(a) Where taken after arrest?

No answer 0
1
2
3
4
5
6

Direct to D.C.W. Institution 7
Other - specify ( ) 8

_____

_____

_____

_____

_____

_____

(b) How long in police custody?

No answer 0
Not sure 1
Less than 1 hour 2
1 - 2 hours 3
3 - 4 hours 4
4 - 5 hours 5
5 or more hours 6

(c) Were you in a group? What happened to the others?
No answer 0. Not sure 1.

_____

_____

_____

7. (If arrested)

Did you get bail from the police?
No answer 0
Not sure 1
Yes 2 → Who went bail for you?

_____

→ How much bail was required?

$ _____

No 3 → Why? _____

_____

(If not arrested)

8(a) Did the police or anyone else question you about the offence?

No answer 0
Not sure 1
Yes 2 → Police 1
→ Other - specify _____ 2
No 3

8(b) What happened during questioning?
(Probe: Where did questioning take place, who else was there? If in a group, were all questioned together or separately?)

_____

_____

_____

_____

_____

(c) What did they charge you with?

No answer 0
Not sure 1
Offence 2 _____

_____

_____

(d) Did you admit to the offence? (Why?)

No answer 0
Not sure 1
Yes 2) Why? _____
No 3)

_____

_____

(e) Did you make a statement? (Why?)

No answer 0
Not sure 1
Yes 2) Why? _____
No 3)

_____

_____

9. Did the police let your parents know about the offence (and arrest)?
(Probe for who, when, where and subsequent contact between police and parents).

_____

_____

_____

10. Did the police tell anything about Children's Court and what was likely to happen to you?
(Probe for what information, from whom, when)

No answer 0
Not sure 1
Yes 2
No 3

_____

_____

_____

11. Generally how did the police treat you?

No answer 0

_____

_____

_____

C. Contact with Department for Community Welfare

12. (If arrested and not already indicated)
were you taken to a Community Welfare institution?

No answer 0
Not sure 1
Yes 2 →
- Longmore Remand 1 → Go to Q.13
- Longmore Assessment 2)
- Mt. Lawley Reception Home 3)
- Nyandi 4)
- Riverbank 5)
- Hillston 6)
- 7) → Go to Q.14
- Other (specify) _____

No 3 → Go to Q.17

13. (If taken to Longmore Remand)
Did you get out on bail? If so, who bailed you?
How much was the bail?

No answer 0
Not sure 1
Yes 2 →
- Father 1 $ _____
- Mother 2
- Other relative 3
- 2 or more of above 4
- Friend 5
- Other (specify) 6

_____

No. Why? 3 _____

_____

14. How long were you there?

_____

_____

15. When you were in the institution did you talk to any of the staff about court and what was likely to happen to you? (Probe for who was spoken to, when, where, what was said)

No answer	0
Not sure	1
Yes	2
No	3

_____

_____

_____

_____

16. Did you talk to any of the other kids about court and what was likely to happen to you? (Probe)

No answer	0
Not sure	1
Yes	2
No	3

_____

_____

_____

17. Have you had any contact with welfare officers or after-care officers (i.e. outside institutions) about having to go to court?
(Probe: what contact, why, where, when, with whom, is respondent already "under the welfare", why?)

No answer	0		
Not sure	1		
Yes	2 →	Aftercare officer	1 → Institution _____
No	3		
	→	S.W. F.W.O.	2 → Division _____

- D.C.W. Status

Probation	3
Supervision	4
Under Control	5
Care	6
C.S.O.	7
Other (specify) _____	8

SCHEDULE _____ Coding

18. Did the welfare officer/aftercare officer give you any information about court or what was likely to happen to you? (Probe)

No answer	0
Not sure	1
Yes	2
No	3

19(a) Before you went to court was there any information you wanted to find out about the court? (What?)

_____

(b) Who did you ask about this? _____

_____

D. Expectations of Court and Outcome

I want you to think back to before you went to court when I ask you these questions and tell me how you felt then.

20. Before you went to court what did you think it would be like?
(Probe for expectations of setting, personnel, and court procedures) No answer 0.

_____

_____

_____

21. How did you think you would plead? (Why?)
No answer 0.

_____

_____

22. Were you going to get a solicitor (lawyer)/A.L.S. to represent you? (Why?)
No answer 0.

_____

_____

23. What did you think the court would do to you? (Why?)
No answer 0.

_____

_____

SCHEDULE _____ Coding

24. Besides the people you have already mentioned, did you discuss going to court with anyone else?
(Probe: who, where, when, why and what was said)
(Defended cases: Probe contact with solicitor)

No answer	0
Not sure	1
Yes	2
No	3

_____

_____

_____

Additional Notes _____

_____

_____

_____

_____

_____

_____

SCHEDULE _____ Coding

SECTION 2 Court Experience

E. Pre-Trial Activities

25 (a) Were you in custody when you went to court?
No answer 0, Not sure 1, Yes 2, No 3.

(b) Did anybody go to Court with you?
(If in custody, did anyone come to attend your case?)

No answer 0
Not sure 1
Yes 2 ——→ Go to Q. 25 (c)
No 3 ——→ Go to Q. 26

(c) If yes to 25(b), who was with you?
(If in custody, did you speak to them before you went into the court room?)

_____

_____

_____

26. How come you went to court by yourself?
(If in custody, how come nobody came to your trial?)
No answer 0.

_____

_____

27 (a) Before you went into the court room did you or anybody with you, talk to anyone (officials) about your case (trial)?

No answer 0
Not sure 1 ——→ Go to Q.35
Yes 2 ┬ Who saw them
 ├ Self 1
 ├ Parent or Adult 2
 └ Other (specify)
 _____ 3 ——→ Go to Q.27(b)
No 3

(b) Who was seen and why? (Probe for status of person contact, who initiated contact, reason for contact, outcome of contact, e.g. plea negotiation)

No answer 0, Not sure 1.

_____

_____

_____

28. Did this person speak to anyone else for you? (Probe: who, why, outcome)

No answer	0
Not sure	1
Yes	2
No	3

29. Did you talk to any other kids or adults about your case (trial) before you went into the court room? (Probe for who, why, and what was said).

No answer	0
Not sure	1 ⟶ Go to Q. 30
Yes	2 ⟶ Go to Q. 31
No	3 ⟶ Go to Q. 30

30. (If no or not sure to Q. 29)
What did you do before you went into the court room?
No answer 0.

31. How did you feel when you first arrived at the court?
No answer 0.

32. How long did you have to wait before you were called into the court room?

No answer	0
Not sure	1
Lessthan ½ hour	2
½ - 1 hour	3
1 - 1½ hours	4
1½ - to 2 hours	5
more than 2 hours	6

SCHEDULE_____ Coding

F. Court Room Experience

33. When you were in the court who else was there and what were their jobs? (Probe)
No answer o. Not sure 1. (cf. Case summary)

_____

_____

_____

_____

_____

34 Did you have a solicitor (lawyer) or ALS officer to represent you? (Why?)

No answer	0	Duty Counsel	1
Not sure	1	Private Counsel	2
Yes	2	ALS field officer	3
No	3	Other (specify)	4

_____

_____

_____

35. Was your case dealt with then or was it remanded? (if remanded, why?)

No answer	0	_____
Not sure	1	_____
Proceeded	2	_____
Remanded	3	_____
Other (specify) _____	4	_____

36. How did you plead (Why?)

No answer	0
Not sure	1
Guilty	2
Not guilty	3

_____

_____

37. What did the Magistrate (Judge) do during the case?
No answer 0, Not sure 1.

_____

_____

38. What did the other people there do? (Probe)
No answer 0. Not sure 1.

39. How did what the police say compare with what you told them?
No answer 0. Not sure 1.

40(a) How did you feel when you were in the court room?
No answer 0

(b) What did you do while you were in the court room?

41. How long did your case last?
No answer 0.

42. How much of what went on did you understand? (Why?)
No answer 0.

42(a). What sentence did you get. (What was the outcome of the Case?)
No answer 0. Not sure 1.

(b) Were you in custody or were you free at the end of the trial?
No answer 0, Not sure 1, Custody 2, free 3, on bail 4.

44 (a) What does the sentence (outcome) mean? (Probe: What does he/she think he/she will have to do, what effect will it have on him/her?)

_____

_____

_____

(b) Why do you think you got _____? (Outcome)
No answer 0. Not sure 1.

_____

_____

_____

G. Assessment

45. Do you think the court's decision was fair? (Why?)
No answer 0, Not sure 1, Yes 2, No 3.

_____

_____

_____

46. What do your parents think of the Court's decision?

_____

_____

47. Who do you think was the most important person in the court? (Why?)
No answer 0, Not sure 1.

_____

_____

48. What do you think of him/her? (Why?)
No answer 0, Not sure 1.

_____

_____

49. What was the worst part of going to court? (Why?)
No answer 0, Not sure 1.

_____

_____

50. How do you think the police handled your case in court? (Why?)

No answer 0, Not sure 1.

_____

_____

51. How do you think the solicitor/welfare handled your case in court? (Why?)

No answer 0, Not sure 1.

_____

_____

52. If you had to go back to court for the same offence again, would you do anything differently? (Why?)

No answer 0, Not sure 1.

_____

_____

53. If you had to describe the Children's Court to a friend who had to go there what would you tell them?

No answer 0, Not sure 1.

_____

_____

_____

H. Perception on Court and Social Control Agencies

54. What do you think the Children's Court does? (What is the Court's job?)

No answer 0.

_____

_____

55. Who decides who goes to court?

No answer 0.

_____

_____

56. Do you think you should have gone to Court?

No answer 0.

_____

_____

57. Are there kids who should go to court but who don't get sent there? (Probe)
No answer 0.

58. Do you think that there is a connection between Community Welfare and the Children's Court?
No answer 0.

59. What's your opinion of the police?
No answer 0.

60. Have you changed your mind about any of these things since you have been to court? _____

61. Do you think the police will hold it against you because you got into trouble? (Probe)

No answer	0
Not sure	1
Yes	2
No	3

62 (If going to school)
Do you think it will create any problems for you at school? (Probe)

No answer	0
Not sure	1
Yes	2
No	3

63. Do you think future employers will hold it against you because you've been to court?

No answer	0
Not sure	1
Yes	2
No	3

J. Socio-Demographic

I would like to finish off now by asking you a few questions about yourself.

64. Sex - Male 1 Female 2

65. When were you born D.O.B. _____

66 Do you go to school or do you work?

No answer	0
School	1 → Q.67
Work	2 → Q.68
Unemployed	3 → Q.69
Other (specify)	4 → Q.70

67 (a) What school do you go to? _____

(b) What grade are you in? _____

68. (If working)
(a) What's your occupation? _____

(b) How long have you had this job? _____

69. (If unemployed)
(a) What was your last job? _____

(b) When did you lose it? _____

70. Where do you usually live?

(a) Address _____

_____

(b) Whose house (flat) is this?

No answer	0	Foster Home (Organ.)	7
Parents	1	Foster Home (Private)	8
Relative	2	Lodgings	9
Self	3	Other (specify)	
Friends	4	_____	10
Institution	5		
Hostel	6		

71. If private house or flat, is this house/flat owned, being bought, or is it rented?

No answer	0			
Not sure	1			
Owned	2			
Buying	3			
Rented	4	——>From whom?	S.H.C.	5
			Private	6

72(a) What is your father's occupation?

_____

(b) If unemployed, what was his last job?

_____

73. Where were you born?

Country _____

If Australian, are you Aboriginal?

No answer	0
Yes	1
No	2

74. Could you give me the first names of your five closest friends and the street they live in and if any of them have been to Children's Court.

	Name	Address	Court	Yes/No
1.				
2.				
3.				
4.				
5.				

75. How do you usually spend your spare time?

No answer 0.

_____

_____

_____

APPENDIX 4

DEPARTMENT FOR COMMUNITY WELFARE

COURT RECORDS

4.1 Court's Records Data Check List

NAME _____

DCW SERIAL NO. _____

ITEM	CODE	COLUMN
Id. No.		1-3
Ca e No.		4-6
Card No.		7
Da a Base		8
Sample		9
Court		10
Da e Appearance		11-16
Case Type		17
Se		18
Et nicity		19
D.O.B.		20-25
Wa i Previously	Not Known 0, Yes 2, No3	26
Date 1st Appearance	(Year) ____ (Mth) _____ (Day) ____	27-32
Co rt	Not Known 0, Perth 1, Mid. 2, Freo 3, Other 4	33
No Charge 1		34-37
Nc Charge 2		38-41
Nc Charge 3		42-45
Other Charges	Not Known 0, Yes 2, No 3	46
Ou come 2		47-48
Date Last Appearance	(Year) ____ (Mth) _____ (Day) ____	49-54
Co rt	Not Known 0, Perth 1, Mid. 2, Freo 3, Other 4	55

ITEM	CODE	COLUMN
o harge 4		56-59
o harge 5		60-63
o Charge 6		64-67
th r Charges	Not Known 0, Yes 2, No. 3	68
ut come 3		69-70
otal No. Appearances		71-72

REPEAT ITEMS ID. NO. - D.O.B.

ITEM	CODE	COLUMN
pp. 1st P.U.C.		26-27
" Rec Institn		28-29
" " Time		30-31
" " Gaol		32-33
pp ications	Not Known 0. Yes 2. No. 3	34
ode Aboriginal	Not Known 0, Yes 2, No. 3	35
o. Offs 1		36-37
o. Offs 2		38-39
o. Offs 3		40-41
o. Offs 4		42-43
o. Offs 5		44-45
o. Offs 6		46-47
o. Dis. S26		48-49
o. Dis. S26 Sup		50-57
o. Probatn		52-53
o. Committal		54-55
o. P.U.C.		56-57
o. Re-Committal		58-59
o. Fines		60-61
o. Bond		62-63
o. Gaol		64-65
o. C.S.O.		66-67
in . Bond, etc. fter P.U.C.	Not Known 0, Yes 2, No. 3	68

SURNAME	OTHER NAMES	FILE NUMBER	PARENTS NAMES	NO

ADDRESS	SERIAL NUMBER	DATE OF BIRTH	SEX	ABORIGINAL OR NON ABOR.
		18.1.64	M	NA

COURT	DATE	CHARGE OR APPLICATION	ARREST OR SUMMONS	COURT DECISION
KAMBALDA 114	20.11.78	1 x UUMV 1 x Unlaw poss of goods	Arr	G.B.Bon 12 months x $100
KAMBALDA	27.3.80	1 x Disorderly Conduct 1 x No MDL	Arr	Fined $50 Costs $1 Fined $100 Costs $1
KALGOORLIE	10.10.80	1 x Consumed liquor		Fined $10 Costs $1.50
KAMBALDA	2.2.81	1 x Insulting Wods		Fined $40 Costs $1.50
KAMBALDA	2.2.81	1 x Disorderly by using Insul: words		Fined $40.00 Costs $1.50
KAMBALDA	23.2.81	1 x Street Drinking 1 x Resist Arrest		Fined $100 Costs $1.50 Fined $200 Costs $1.50

465.

4.2.1.

SURNAME | OTHER NAMES | DATE OF BIRTH 26.2.65 | PARENTS' NAMES

COURT	DATE	CHARGE OR APPLICATION	COURT DECISION
[illegible]	4.2.77	2 x Assuming control of a boat	Dis. Sect 34B Courts x2
MIDLAND	24.8.78	1 x Wilful Damage	Dis Sect. 26 6 mths Supervision Costs $1
MIDLAND	22.3.79	1 x UDMV 8 x UUMV	PUC DCW 'Till 16 years
MIDLAND	1.10.79	6 x B E & S 6 x B E with I 1 x Attempted B & E 4 x B & E Dwelling 1 x S & R 1 x UDMV 4 x UUMV	PUC DCW 2 years No Costs
MIDLAND	15.11.79	2 x No MDL 2 x UDMV 1 x B E & S	PUC DCW 'Till 18 years No Costs
~~MIDLAND~~	1-11-79	1 x Int. with parts of m/v	Dism. Sect 26.
PERTH	2.4.80	1 x UDMV 1 x No MDL	PUC DCW 'Till 18 years REC Return to RIVERBANK
MIDLAND	1.5.80	1 xInterf. with MV Parts	PUC DCW Till 18 years Return to Riverbank'
PERTH	18.6.80	2 x UUMV 1 x S & R	PUC DCW Till 18 years PUC DCW Till 18 years
MIDLAND	20.11.80	5 x B.E. & S 8 x UUMV	PUC DCW Till 18 years
MIDLAND	4.12.80	2 x B.E. & S	PUC DCW Till 18 years
perth	23.2.81	1 x UDMV 1 x No MDL	PUC DCW Till18 years Rec Riverbank
MIDLAND	12.3.81	1 x BE&S	PUC DCW until 18 yrs return to Riverbank 26.2.83
MIDLAND	28.5.81	4 x UDMV 4 x No MDL 1 x Reckless Driving 1 x Failed to stop	PUC DCW Till 18 years

4.2.2.

466.

SURNAME	OTHER NAMES		FILE NUMBER	PARENTS' NAMES/ADDRESS	SHEET No.
ADDRESS		SERIAL NUMBER	DATE OF BIRTH 8.5.64		SEX M
			VERIFIED PAGE No.		RACE NA
					RELIGION

COURT	DATE	CHARGE OR APPLICATION	ARREST OR SUMMONS	COURT DECISION	COMMITTAL EXPIRY DATE
PERTH	19.5.80	1 x Unlaw Used MV		Fined $200 12 months to pay Costs $1	
PERTH	7.7.80	2 x S & R		Dis Sect 34 1(c) Rest $20 Costs $2	
PERTH	2.10.80	1 x S & R 1 x B.E. WITH I		Fined $25 Rest $1.60 Costs $1 Fined $50 Costs $1	
PERTH	22.12.80	2 x No MDL 1 x False Name & Address 1 x Speeding		Fined $40 Costs $3 Total Amount Fined $30 MDL 3 mths Costs $1.50 Fined $50 Costs $1.50	
MIDLAND	12.2.81	1 x No MDL		Fined $150 MDL 9 mths Costs $1.50	
PERTH	22.4.81	1 x S & R		Dis Sect 34 (1)(C)	
PERTH	2.4.81	1 x No MDL		Fined $50 Costs $1.50	
PERTH	9.7.81	1 x Speeding 1 x No MDL 1 x False Name & Address		Fined $50 Costs $1.50 Fined $50 Costs $1.50 Fined $50 Costs $1.50 MDL 3 mths (conc)	

4.3

Offence Categories

OFFENCE AGAINST PROPERTY

00 Stealing and receiving
01 Breaking, entering and stealing
02 Breaking and entering with intent to commit a crime
03 Unlawfully on premises
04 Unlawful use of a motor vehicle
05 Interfering with the mechanism of a vehicle
06 Unlawful possession of property
07 False pretences
08 Wilful Damage
09 Receiving stolen property
10 Arson
11 Forgery
12 Removing a boat

OFFENCE AGAINST PERSON

25 Wilful murder and murder
26 Manslaughter
27 Assault
28 Indecent dealing and assault
29 Unlawful carnal knowledge
30 Attempted carnal knowledge
31 Carnal knowledge against the order of nature
32 Contributing to the neglect of a child
33 Robbery with violence
34 Rape
35 Incest
36 Unlawful wounding
37 Disposition of dead body
38 Deprivation of liberty

OFFENCE AGAINST GOOD ORDER

55 Disorderly conduct
56 False name and address
57 Idle and disorderly
58 Liquor offences
59 Betting offences
60 Railway offences

OFFENCE AGAINST GOOD ORDER (cont'd)

64 Loitering
65 Wilful exposure
66 Resisting arrest
72 Carrying a dangerous weapon
73 Firearms offences
74 Stowaway
75 Prostitution
76 Breaking Bond
77 Cruelty to Animals Act
78 Obscene language
79 Postal offences
80 Procure abortion
81 Littering
82 Conspiracy

MISBEHAVIOUR

85 Uncontrollable
86 Neglect (generally uncontrollable)
87 Neglect (parental neglect)
88 Destitute
89 Neglect (involving sexual misconduct)
90 Truancy and Education Act
91 Breaking terms of probation
92 Ministerial committal section 47a
93 Ministerial committal section 47b
94 Ministerial committal section 47c
95 Battered Baby Syndrome
96 Summary relief court committal

OFFENCE AGAINST TRAFFIC

54 Unlawfully driving motor vehicle
67 Driving under suspension
68 No motor dirver's licence
70 Random traffic charges
71 Drunk driving

OFFENCE AGAINST DRUGS

69 Drug Charges
97 Neglect (involving drug offenders)