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Confronting Childhood: Courts and the Contradictions of Juvenile Justice

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Confronting Childhood: Courts and the Contradictions of Juvenile Justice

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Abstract

For decades, the juvenile court has struggled to contain two contradictory, but necessary theories of justice. This project employs an in-depth, single case study of an urban juvenile court to demonstrate that contradictory juvenile justice models constrain court actors, while also giving them discretion. Individuals within the juvenile system hold ultimate responsibility for incorporating the rehabilitative juvenile model and the traditional criminal model into their roles and practices. Court actors structure interactions and goals based on attitudes regarding juvenile identity, self-identity, and blame in order to reconcile institutional ambiguities and produce fair and just results.

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Chapter One: Introduction

In the long life of a legal institution, the juvenile justice system is in the throes of a tumultuous adolescence. Like the people it was designed to protect, the juvenile court is fairly young. Pressured by demands of the past and pulled into the 21st century with new ideas and concerns, the court struggles to find its place in the family of American institutions. The juvenile court was born in Chicago, in 1899. By 2008, its purpose, rationale, and practice have changed considerably. The court's critics cite its lack of due process, lack of oversight and appeals, and the failure of juvenile rehabilitation centers to help children or to deter crime.¹ Juvenile law scholar Barry Feld calls the modern juvenile justice system, "an institution in search of a rationale."²

Some elements of the juvenile court, however, remain constant. The juvenile court has always existed to serve children. While this might seem obvious, this fact bears repeating because due to its focus on children, the juvenile court constantly faces the challenge of treating people who are neither full citizens nor non-citizens, who may be regarded like adults, but are also fundamentally unlike adults. Juvenile are capable of committing almost every crime for which adults have been incarcerated, yet young people are not capable of understanding their crimes in the same way as an adult.³ Since its creation, the juvenile court has claimed to protect and rehabilitate young people who have strayed from the path of law-abiding behavior. On the other hand, society demands justice for the victims of juvenile crime and requires protection from the most dangerous

¹ Critics of the juvenile court include diverse scholars who emphasize due-process reform: e.g. Feld (2000), Chen (2007), Messner (2006); de-criminalizing juvenile court: e.g. More and Wakeling (1997), Langley (2005); the effectiveness of treatment: Caldwell et. all. (2006), Geary (2005); and the conflicting nature of juvenile and defendant: McCulloch (2007), Rossiter (2006), Erlich (2003), Moore (2001), Beschle (1999).

²Feld (2000). p. 774.

³ See e.g. Scott, Reppucci and Woolard (1995), Maroney (2006), Perrone et. all. (2004).

young people. The juvenile court, thus, must punish crimes, but not create criminals. It must protect both victims and perpetrators. It must force young people to comply with laws over which they have no control and whose fundamental meaning is often misunderstood.

The juvenile court's creators designed an institution that treated children very differently than adults were treated in the criminal courts. Progressive Era reformers accepted the difficult task of creating an entirely new institution, with a philosophy that had not been seen in Anglo-American jurisprudence.⁴ While this new institution called itself a "court" and in some ways resembled other courts of its time, some of the differences were so substantial that the early juvenile court could justifiably be termed a social service agency as much as a legal institution. Over time, however, the court's original protective philosophy came under attack from many angles. Cumulatively, these attacks have forced juvenile courts to adopt a model of justice that adopts important elements of the criminal justice model, particularly those of procedural formality and consequentialism.⁵ Both punitive and rehabilitative models of justice influence the juvenile court's rationale. The court treats young people as a distinct group with special needs, but it also addresses issues like public safety and justice for victims of juvenile crime.

I approach the paradox of the child and the criminal with the research question: How can individuals within the court resolve institutional ambiguity for individual cases? Clearly, juvenile cases do pass through the justice system; mechanisms within the court for addressing the difficult questions of youth and law confront this challenge daily.

⁴ For early history on the juvenile court see e.g.: Getis (2000), Novkov (2000), Shaw (1930).

⁵ For juvenile court typology see e.g. Aday (1986).

Children leave juvenile court and proceed to lead law-abiding lives, juvenile court is one of the most widely copied American institutions around the world, and the system “remains one of the most important social inventions of the modern period.”⁶ Somehow, the juvenile court exists in a state of relative success and a state of conflict simultaneously. Conflicts between different models of justice have failed to destroy this evolving institution, but neither does the court seem to resolve the formal tension of its mission. As a point of departure, this thesis assumes that the juvenile court confronts, manages, or even reconciles institutional conflicts in its daily operations.

Contrary to the notion that juvenile courts maintain the traditional rationale of protection and rehabilitation, some contemporary scholars view the juvenile court as moving closer to the criminal model.⁷ Many scholars frame this as an either-or proposition: either the court remains purely “juvenile” in the traditional sense or it has changed to become a “criminal” model. According to these scholars, the two situations cannot exist simultaneously. Some scholars reconcile this difficulty by arguing that the system takes on different models of justice in different phases of the court.⁸ Instead, this thesis begins its inquiry into court practices by contending that both juvenile and criminal justice models must exist simultaneously within the juvenile court. Individual court actors adapt their roles and behaviors within the inherent conflict between these two models. Each court actor balances different modes of thought with each case in order to provide justice to the juvenile and to the victim and also to provide what they believe will be the most effective mechanism to return a delinquent to law-abiding behavior. Formal law, with its reliance on strict divisions between concepts like child and adult, or guilty and

⁶ Coalition for Juvenile Justice. (1998) p. 10.

⁷ See e.g. Feld (2000).

⁸ See e.g. Kupchik (2006).

not guilty, lacks the capacity to capture the nuance of the unique juvenile situation. Court actors, therefore, work within the constraints of law to produce just results. They are, not coincidentally, given a great deal of discretion since the formal structure in which they function fails to adequately adapt to the needs of the juvenile and the community. Within the paradox of juvenile justice comes its freedom to adapt.

The Research

This research was conducted in the delinquency court in the juvenile justice center of Ingalls County, Minnesota. While many of the court actors that participated in my research also work in child protection, family court, truancy, juvenile drug court, and related areas, this study focuses solely on the question of juvenile delinquency, which include all criminal offenses that have not been diverted to other agencies or courts. The data come from observations of court proceedings, meetings between court actors and interviews with members of the juvenile court community (judges, prosecutors, public defenders, and mental health professionals). I collected observational data during approximately six visits, a total of sixteen hours, to the court over the course of four months, during which I observed competency hearings, initial calendars, petty calendars, dispositions, informal conversations in judge's chambers, plea agreements, and meetings between court actors. During observation, I sat in the row of seats behind the opposing parties' tables or on the dais next to the law clerk. I was not able to record court proceedings, nor obtain transcripts of the proceedings because, unlike adult cases, which are a matter of public record, juvenile cases are sealed.

This study employs a sociolegal ethnographic technique employed by many in the field of law and society who study how individuals influence legal processes.⁹ The single case study provides an opportunity to obtain image of the people whose opinions, attitudes, beliefs, ideologies, and actions impact young people most directly. Observation and interview are crucial tools for understanding the power dynamics of a single juvenile court and its actors, and for revealing the essential dilemma that faces the juvenile court today. The question of how the court constructs responsibility in the absence of clear institutional guidelines can only be truly understood at a local, personal level.

This thesis analyzes the court workgroup as an entity comprised of individual experiences and attitudes, which is greater than each individual alone, rather than viewing all juvenile actors as identical parts of a machine or the reverse, as autonomous and unrestricted individuals. This study constructs a portrait of the range (if not the frequency) of attitudes and reported behaviors in the juvenile court using the organizational method and literature as a foundation.¹⁰ I, however, do not attempt to provide a generalization about how juvenile court actors address issues of justice in all courts across the country, rather I attempt to show how some court actors might confront these questions. The name “Ingalls County” does not appear on any map of Minnesota because it is a pseudonym for a real Minnesota county, whose identity is protected in order to secure the confidentiality of the individuals who work within the juvenile court and who provided the data used in this study.

⁹ See Chapter Two for discussion of the literature regarding sociolegal method.

¹⁰ Chapter Two provides a broader examination of this body of literature.

In order to get a rich, deep picture of my single case study, I incorporate in-depth interviews with on-site observation. During the interview portion of my research I conducted twelve one-on-one interviews with three judges, four prosecutors, two mental health workers, and three public defenders. These individuals ranged in age, experience, gender, and race, in such a way that provided a diverse range of perspectives. Among the court actors who agreed to give interviews, some had worked in the Ingalls County court since the 1970s, while others had been there only a few years. There were an equal number of male and female interview subjects and a variety of racial backgrounds between the court actors. All subjects were professionals, with either law degrees or medical degrees and every subject worked for the county or for the public defender's office.

The interviews were semi-structured, consisting of several foundational questions and building upon the responses given by particular court actors. The interviews lasted between 45 and 90 minutes and were recorded and transcribed for traditional qualitative analysis. These interviews were private and confidential, however, many contacts came from recommendations from other members of the court community, many of whom were also subjects of my research. Due to the small size of the community, the close proximity of court actor's offices to each other, and the generally social nature of the juvenile court community, my presence and work was discussed between many members of the juvenile court community.

Ingalls County, an urban Minnesota jurisdiction, is home to a population displaying diverse ethnicities and incomes. Juvenile courts vary from state to state and county to county, so while it is impossible to prove that Ingalls County Juvenile Court

represents the “normal” juvenile court, Ingalls County is not extreme or unique in any particular way.¹¹ Informal comparisons with other juvenile court settings, including a neighboring county with a substantially different demographic profile, suggest no reason to believe that Ingalls County strays too far from the typical processes of juvenile courts. Based upon the most recent data available, Ingalls County Juvenile Justice Center receives nearly 2,500 delinquency cases per year, a number that falls within the mid-range of Minnesota counties, whose caseloads range from 751 to 4,436 cases per year. Of the Ingalls County cases, just over a third (34.9%) were charged with felonies, another 13.7 % were gross misdemeanors, and nearly all of the remainder (51.5%) were petty misdemeanors. Sliced another way, the frequency of each offense type echoes the state level almost exactly. Demographically, the ages of Ingalls County juvenile defendants is similar to the state average: 80.4% of Ingalls County juveniles are fourteen years old or older, while none are younger than ten. Where Ingalls County differs notably from the state average is in its racial diversity. Approximately 40% of juvenile court petitions were filed for Black juveniles and 11% for Asian juveniles, compared to the statewide rates of 18.2% and 3.5% respectively. While race may not be as prominent in other parts of the state, Ingalls County made the racial component more accessible to study—as will be explored in subsequent chapters—and thus enhances the overall desirability of this county as a case study. Aside from racial diversity, however, little appears to distinguish the juvenile court in Ingalls County from the institutions that operate across Minnesota. The individuals working in Ingalls County address the same types of crimes, the same

¹¹ Feeley (1979) provides the best articulation of the value of a single court study.

level of severity, and the same age and gender breakdown as their colleagues across the state.¹²

The Argument and Organization of Chapters

The strategies that court actors employ and the attitudes that they take toward juvenile justice make up the content of this study. I examine how the court actor constructs a the identity of a juvenile within the context of juvenile court and how the court actor manipulates the juvenile court process with that construction of the juvenile in mind. I argue that court actors make choices that promote rehabilitation, due process, or punishment in different contexts with the court. The court actor chooses where to assign blame, how to define his or her own role within the system, and how to justify the process to the juvenile and to other members of the court community. Court actors use certain language and make certain arguments that support a multi-faceted justice. While different professional roles, such as prosecutor or public defender, influence the ways in which an individual can respond to the challenges of juvenile justice, each individual, regardless of role, incorporates some mechanism for reconciliation between punishment, due process, and rehabilitation.

My analysis of juvenile court actors reveals a new dimension to juvenile justice. I move beyond arguments about which model of justice dominates juvenile court processes, and I describe a process that is richer than the legal framework in which it resides. This study reveals the individual interactions that take place every day within the court. These interactions are the crucial location for many of the decisions that are made

¹² Research and Evaluation Court Services Committee (2005).

about the court's purpose and philosophy. While these decisions often have pragmatic elements (such as the recognition that there are insufficient resources for every child to get every service they could possibly require), they also have deeper implications for the juvenile court.

When reconciling due process, punishment, and rehabilitation in juvenile justice, court actors take two crucial steps. The first step is to identify that strange creature that is the adolescent. Juvenile court actors need to know who they are bringing through the legal system in order to create an approach that works for that creature. The juvenile, who is neither completely responsible nor free and, in a sense, is not entirely a fully developed person, provides a challenge for the court actor. Court actors' assumptions about the young person determine how they create a system that is effective and that justifies itself to the population that it was designed to treat. There is not complete freedom in the choices that court actors can make regarding juvenile justice. They function in the context of a legal institution; they are not parents, social workers, teachers, or therapists and so they are constrained by their reliance on the action-consequence model that court employ. As such, while court actors blame many elements within and outside of the young person's control, they must structure their justification of the consequences around the idea of personal responsibility.

In Chapter Two, I explore the historical trends that influenced the juvenile court's complex institutional development and set the scene for the individual case that I study. I follow philosophic trends in the court, from the Progressive Era philosophy of rehabilitation to the 1990s punishment philosophy, rather than following the juvenile court's history decade by decade. I also comment upon the particularities of Minnesota's

historical development. I then present the research that provides a foundation for this study, both in its methodological contributions as well as in its substantive contributions to the study of juvenile courts. Then, in Chapter Three, I situate my study within the legal and institutional framework of the Minnesota juvenile court. I explain the legal mechanisms that constrain court actors by providing parameters under which to dispense justice. Chapter Four addresses the first critical question in this thesis: how do court actors construct the juvenile? Chapter Five builds upon the court's construction of the juvenile, examining how court actors construct a process to fully include the juvenile in the justice process. I conclude by showing how the ways in which court actors behave within legal parameters suggests that the individual court actor holds much of the responsibility for navigating a path to justice through the conflicting philosophies present in the juvenile court.

Chapter Two: Studying the Juvenile Court in Historical and Methodological Perspectives

This chapter explores the history of the juvenile court as an institution and the scholarship that informs our current understanding of the court. I begin by examining juvenile justice in America by describing the fundamental philosophical, political, and legal developments in the juvenile court over the last century. In the second section, the Minnesota juvenile court's historical development sets the foundation for a modern study of juvenile courts in Minnesota. Finally, I examine research that employs different frameworks, which I will use to better understand the juvenile court. This chapter situates my method in academic and historical context to provide a greater appreciation for my approach and conclusions. Additionally, this chapter provides a backdrop for the challenges of juvenile justice faced daily by the subjects of this study.

The Juvenile Court's History

On July 1, 1899, the first juvenile court opened its doors in Chicago, Illinois. By the middle of the 20th century, every state in America provided a juvenile court based upon the Chicago model. The ideal of the original juvenile court was that the child should be treated as a subject of protection, rather than punishment. By the 21st century, the American model of juvenile justice has spread across the world: "Of all the legal institutions in Anglo-American history, the juvenile court has achieved the widest acceptance among the diverse legal systems of the industrial democracies."¹³ The juvenile court is a relatively recent addition to the family of American legal institutions

¹³ Zimring (2000), p. 2479.

and, unlike many other American institutions of government, it is not a legacy of European law. The American juvenile court has evolved significantly, despite its relative youth.

This chapter addresses three key ideas that provide the conflicting models of justice in the contemporary juvenile court. The first philosophy is that of the Progressive reformers who created a rehabilitative and protective juvenile court. The second philosophy is that of due process. Advocates for due process argued that the juvenile court, as a legal institution, should be held to the same legal and constitutional standard to which criminal court would be held. Finally, this chapter demonstrates how the punitive, public safety philosophy incorporated itself into the juvenile court's rationale. This chapter explores each philosophy through an historical lens, focusing on its significance and purpose with regards to the juvenile court. Then, it examines the case of Minnesota and shows the impact of national trends on this state, as well as how it differs from the broader historical trajectory of juvenile justice in America.

Progressive Ideals

Precursors to modern juvenile courts began in the late 1800s in New York, Massachusetts, and Pennsylvania. The Houses of Refuge, as these places were called, were "more concerned with protecting young people than punishing them for their wrong doings."¹⁴ This theory incorporated new ideas about environment and free-will. Reformers believed that poor living conditions in the immigrant slums of cities like Boston and New York led children to commit crimes. Children needed state protection from the lack of moral direction, education, and sanitation in these neighborhoods. These

¹⁴ Clarke (2005), p. 664.

early reforms inspired later Progressive reformers to challenge the common law treatment of children who committed crimes. At common law, criminal culpability began at age seven. Thus, under this system, the court punished children and adults with equal severity. The courts sentenced children to harsh punishments for their crimes, including execution.¹⁵ Progressive activists first initiated a separate model of juvenile justice in response to the deplorable treatment of child criminals under this 19th century common law system.

The progressive conception of childhood as a separate and vulnerable developmental stage was the driving force of the first separate juvenile courts. Children, reformers argued, were not simply small adults, but should be a protected group with special rights. According to the Progressives, the state had a special relationship to children that did not exist between the state and free, rational adults.¹⁶ Progressives thought that courts should not punish children but rather, should teach children how to be productive and law-abiding citizens. Over fifty years later, Justice Fortas would describe the founders of the juvenile justice movement as “Profoundly convinced that society’s duty to the child could not be confined by the concept of justice alone. They believed that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘what is he, how has he become what he is, and what is to be done in his interest...’”¹⁷ In a time when children were merely small adults, the first American juvenile court challenged the very nature of juvenile criminal responsibility.

The University of Chicago’s budding schools of sociology and psychology provided many of the scholars who campaigned for the first juvenile court in Chicago.

¹⁵ Feld (2000). p. 3.

¹⁶ *Ibid.* p.2.

¹⁷ *In re Gault*. 387 U.S. 1 (1967).

These academics and activists set up homes in lower-class neighborhoods for middle class volunteers to live alongside poorer immigrant families, believing that the city itself, and specifically the environment surrounding the juvenile delinquent, was the source of the child's misbehavior. They studied the neighborhoods, their geography, demography, and general atmosphere. Scholarly findings provided strong evidence in the campaign to introduce a new court for troubled youth.¹⁸

Some scholars question the motives of the juvenile court's founders, contending that the new court was designed to indoctrinate immigrant children with the ideals of the American middle class, such as the Protestant work-ethic, temperance, obedience, and social conformity. In this view, the juvenile court, in essence, served to replace the child's parents with a more "American" institution. This contention is not entirely antithetical to the rosier picture of Progressive reformers as the child's only defense against brutal criminal punishments. The juvenile court served both protective and educational purposes, both of which defended children by teaching them middle-class morality. Indeed, many court actors of the early period appear to have been deeply concerned with the way that poor, immigrant families raised their children. Many reformers considered poor parenting the primary indicator of juvenile delinquency. This concern was also a motivating factor in early 20th century child labor laws.¹⁹ Progressives seized upon protective child policies, in labor and criminal law, as a tool to replace family education with state education, which was more in line with Progressive values. This was necessary, reformers argued, because, "not all parents were sufficiently

¹⁸ See e.g. Getis (2000).

¹⁹ See e.g. Novkov (2000).

inculcated with ... ‘American’ values.²⁰” The juvenile court thus served an educational function, which complemented the new, compulsory public education. Typical Progressives believed that “Children, particularly the offspring of immigrants, desperately needed education in order to prepare themselves for citizenship...public education was... seen as a means of translating American values and beliefs to children.”²¹

At the turn of the 19th century, many Americans began to reconsider the meaning of childhood. The change in norms about childhood paralleled changes in the family, education, employment, and the role of the state; all of which to varying degrees, related to the early juvenile court. At the broadest level, the Progressive Era started the federal and state governments on the road to protective policies and away from the *laissez-faire* policies that dominated post-Civil War policy. Supporters of *parens patriae* argued that the state had an active duty to the child to protect and defend him from corruption, abuse, and neglect. The state was required to assume a parental role in the absence of competent biological parents. This attitude had a distinctly moralistic purpose; many Progressives saw the court as an opportunity to protect poor children from the temptations of sinful life.²²

The juvenile court model reflected these Progressive values. The court was not constrained by sentencing guidelines, procedural formality, or even constitutional due process protections. The court was non-adversarial in the sense that there was no defense attorney to argue the merits of guilt or innocence, but rather a judge who determined outcomes based on his perception of the child’s best interest. Early juvenile courts were

²⁰ *Ibid.* p. 379.

²¹ *Ibid.* p. 381.

²² See e.g. Getis (2000).

characterized by informal, personal interactions between judge and child wherein the judge would question the child to get an understanding of his disposition and history before deciding what reform was needed.

Due Process Reform

The juvenile court maintained its identity as an essentially protective institution even after the Progressive Era ended. While new youthful defendants passed through the system, the model of personalized justice did not change. Personalized justice, however, had serious negative implications. In some cases, the juvenile court became a seat of local despotism. This change came gradually because without oversight or due process restrictions to limit juvenile court judges, there was no recourse to question the judge's decisions. Over time, some judges, with unlimited control over their defendants, began to abuse that power in the name of child protection. The juvenile court judge could, and did, use his discretionary powers to incarcerate young delinquents for long stretches without allowing the child to access an attorney, be heard by a jury, or even face his accuser. Reform schools, especially during times of economic hardship, were little better than prisons. The exercise of unrestrained power within the juvenile court went largely uncontested while the nation's focus was elsewhere.²³

A young man named Gerald Gault ultimately pulled the juvenile court out of stagnation. The State of Arizona held Gerald Gault, a boy of fifteen, in a reform school until his majority for making prank telephone calls. Gault was not allowed to speak with an attorney about his rights during his arrest or court appearances. He did not have the legal right to confront or call witnesses, gave a questionable confession, and the police

²³ Some of the best early analysis of this critical case comes from Lefstein et. all (1969).

did not give his parents any warning of his arrest.²⁴ These protections, the state argued, were not necessary because the reform school did not constitute punishment, but rather the rehabilitation that the boy required. Gault's experience was typical of the early 20th century juvenile court. The judge in his case did not provide the basic constitutional rights that would have been afforded an adult in Gerald's place. The major difference with Gault was that he profited from an era of criminal rights reform on the national stage by bringing his case to the U.S. Supreme Court. In doing so, Gault catapulted the juvenile court into a new era.

The most effective attack against the traditional model of juvenile court started in the 1960s and 1970s in conjunction with other cases that gave children more constitutional rights, such as *Tinker v. Des Moines*.²⁵ In addition to writing the majority opinion in *Tinker*, Justice Fortas also wrote an opinion that had the potential to dramatically change the juvenile court. The Supreme Court's 1967 decision *In re Gault* extended to juvenile offenders the constitutional rights to counsel, against self-incrimination, and the right to call and cross-examine witnesses. In his opinion, Justice Fortas wrote, "Juvenile Court has demonstrated... that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principles and procedure."²⁶

In re Gault exposed serious flaws in the execution of justice in the juvenile court model. A child could be sentenced to years of confinement in supposedly "rehabilitative" facilities for relatively minor crimes without any constitutional protections. These problems led the Supreme Court to apply certain constitutional protections to minors,

²⁴ *In re Gault*. 387 U.S. 1 (1967).

²⁵ *Tinker v. Des Moines Independent Community School District*. 393 U.S. 503 (1969).

²⁶ *In re Gault*. 387 U.S. 1 (1967).

including the right to a public defender. One major difference, which remained, was that minors were not granted the right to a jury trial.

Gault ameliorated some of the injustices of the juvenile system, but it did so by moving juvenile court procedure and standards of evidence closer to the adult model, which revealed serious new consequences. In a fundamental change for an institution created to treat each child differently, these practices limited the personal attention and flexibility of juvenile court judges in each case. Further, by incorporating attorneys into the process, it made the juvenile court more adversarial, increasing the likelihood that the crux of the case was proving the child's guilt, rather than exploring the external factors that led to the crime. The move toward standardization included, in some states, mandatory jurisdictional transfer to adult court and other measures that serve to treat older, more violent juvenile offenders like adults. These statutory changes were frequently unrelated to the child's interests, but rather are justified by concerns about public safety.

Punishment and Public Safety Fears

Today, many states have modified their juvenile system to include blended sentencing models where minors who begin in juvenile court can move to adult court for trial or sentencing based on age, seriousness of the crime, violence, and repeat offenses. Blended sentencing is designed "To balance the rehabilitative goals of the juvenile system with the increased demand for public protection and youth accountability."²⁷ The mixed adult and juvenile system is only possible because the juvenile court has modified its progressive values to meet contemporary demands. The law subjects minors to

²⁷ Clarke (2005), p. 682.

punitive consequences such as incarceration, which run counter to the initial philosophy of the juvenile court, because the court includes public safety concerns in juvenile cases. As early as the 1970s, some states started instituting mandatory jurisdictional transfer laws. Since then, the majority of states have adopted some form of jurisdictional transfer policy.²⁸

The juvenile court did not follow a straight path from protection to retribution, but until the late 1990s, the country as a whole moved in the punishment direction. Increase in juvenile crime rates that began in the 1980s and leapt to public attention with the high-profile school shooting cases of the 1990s sparked public demand for punitive reforms.²⁹ The change in institutional purpose is best exemplified by changing legislative intent laws, which explicitly state that the juvenile court also has a responsibility, balancing its original social work mission, to protect the general public from violent and dangerous juvenile offenders.

Policy-makers and the general public dramatically shifted their views regarding juvenile offenders during the 1960s and increasing in intensity since the 1980s. Public opinion demands stricter standardization within the court and more punitive consequences for juvenile crime.³⁰ At the same time, recent research in child psychology has shown that adolescents are not cognitively prepared to assume the same responsibility for criminal action as are adults.³¹ Policy-makers and child psychologists do not always construct the same understanding of juvenile responsibility because of their different goals and standards of evidence. As a result, the community of policy-makers and the

²⁸ The following chapter provides detailed descriptions of jurisdictional transfer and blended sentencing, particularly in Minnesota.

²⁹ For 1990s punitive reform see e.g. Van Vleet (1999), Erlich (2003).

³⁰ See Feld (1993), Beschle (1999).

³¹ See e.g. Clarke (2005), Geary (2005), Maroney (2006), Scott (1995).

community of child psychologists face extreme disagreement about some legal questions in the juvenile court, such as the role of incarceration.³²

Individual discretion within juvenile court led to more variation among the state's juvenile courts than exist between their criminal courts. National historical trends only show part of the picture because this study concerns specifically the Minnesota juvenile court. Unique qualities of Minnesota play an equal, if not more important role, in the character of the current juvenile court than does the national narrative. I compare the national and statewide juvenile court history to understand the broad and local influences on the court today.

Minnesota's Juvenile Court

Minnesota adopted the juvenile court as a statewide institution soon after Illinois created the first juvenile court in 1899. Like many states during the Progressive Era, the Minnesota juvenile court of 1905 espoused protective, reform ideals.³³ The purpose and procedural flexibility of the early Minnesota juvenile court also mimicked the Chicago court. Unlike some juvenile courts of the era, the Minnesota juvenile court dealt with juvenile victims of neglect, as well as delinquent offenders, demonstrating its highly protective nature. Thus, the juvenile court took on both the role of teaching wayward children right from wrong and of protecting neglected children from further abuse. Before *Gault*, Minnesota courts determined that mandatory reform school for juvenile delinquents did not constitute imprisonment. Reform school was a tool through which the

³² These legal arguments reflect broad national trends and can vary substantially between states.

³³ Walling (2000). p. 896.

state assumed the role of parent.³⁴ According to one scholar, “Minnesota was clearly one of the most progressive states, certainly on the vanguard of the reform trends of the early 1900s.³⁵” In contrast to its progressive reform ethic, Minnesota juvenile courts were also capable of fostering troubling abuses of power. Therefore, “Despite these high ideals and lofty goals, the questions of due process and the right of the State and the courts to intervene in the lives of children and families continued to be raised in the court system.”³⁶

The Minnesota higher court examined the juvenile court system with particular care during the 1960s. The Supreme Court in Minnesota responded to national and local pressure to provide standards for juvenile court by creating a set of non-binding guidelines for the state. Several rural Minnesota counties chose to adopt the Rules for Procedure for Juvenile Court Proceedings in Minnesota Probate-Juvenile Courts, while the two most populous counties, Hennepin and Ramsey, chose not to adopt the standards. For nearly twenty years, the result of reform in Minnesota was greater procedural disparities among counties. Since then, the juvenile court has increased in formality. In 1983, the Minnesota Supreme Court set forth uniform rules of procedure for the entire state. Courts across the state were required to comply with issues of time, punishment, guaranteed rights, and record keeping. The state responded to gang violence and heightened violent juvenile crime in the mid 1990’s by changing its laws regarding transfer to adult court, stressing the importance of public safety. The juvenile court, which is divided by the same districts as criminal court, remains a multi-purpose

³⁴ *Ibid.*, p. 897.

³⁵ *Ibid.*, p. 900.

³⁶ *Ibid.*, p. 900.

institution.³⁷ The following chapter explores 21st century Minnesota juvenile court procedures and actors in greater depth.

The succeeding section positions this thesis' research, conducted in a single Minnesota juvenile court, in a greater field of scholarship. This review of scholarship draws from a range of social science disciplines and methodological approaches. Its goal is to frame the essential philosophies about the purpose of juvenile justice and then examine the methods for studying the court, which provide inspiration for this study of a Minnesota juvenile court.

Frameworks for Studying the Juvenile Court

An exercise in social engineering since its creation, the juvenile court and the young people who pass through its doors provide rich sources of data for scholars from a wide variety of disciplines. Psychologists, sociologists, legal scholars and political scientists have engaged in rich debate and produced a deep literature at many levels including organizational and individual behavior and policy design.³⁸ This thesis draws on two veins of research in order to understand juvenile court organization and court actors' interactions in general. Substantively, this review of scholarship explores lessons to be taken from literature concerning the juvenile court, which employs widely differing methods and approaches. Particular emphasis is placed upon literature, which uses a qualitative sociolegal method. Exploring this literature demonstrates how the goals of this thesis complement existing research and provide new insights into the treatment of juveniles in the legal system.

³⁷ *Ibid.*, p. 900.

³⁸ For child psychology research see e.g. Dictaldo and Everett (2008), Caldwell et. all. (2006), Young et. all. (2006), Geary (2005), Perrone et. all. (2004).

Despite the wealth of discussion given to juvenile courts, what remains is the study of juvenile court actors as a workgroup that creates a juvenile-specific approach to justice within the constraints of the juvenile justice system. Those who study court actors' actions after the child has been transferred to adult court, and those who study how policy-makers ought to structure the court, do not address how court actors might be orchestrating such changes before any commands from higher courts or from policy-makers even reach the individual child. Additionally, these scholars fail to recognize the unique power that court actors wield in light of the complex model of justice in which they practice law.

Straddling the distinction between the substance and method of prior research, two approaches to the study of juvenile courts, grounded in the dominant ambitions of their respective disciplines, have come to control the field. The first method, employed primarily by legal scholars, focuses on the court as an institution, its procedures, limitations, organization, outcomes, and goals. The second method, employed by sociologists and organizational political scientists, uses qualitative analysis to explain the relationships between people within the system and how their beliefs and actions serve to shape the institution. These differences in method reflect the identities and purposes of the researchers. Legal scholars writing for law reviews most frequently use the first method, which gives priority to the institution, its capacity and outcomes.³⁹ Proscriptive questions of juvenile court purpose and direction drive these studies. Sociologists and other social scientists are primarily motivated to explain how individuals in the court

³⁹ See e.g. scholars who emphasize due-process reform: e.g. Feld (2000), Chen (2007), Messner (2006); decriminalizing juvenile court: e.g. More and Wakeling (1997), Langley (2005); the effectiveness of treatment: Caldwell et. al. (2006), Geary (2005); and the conflicting nature of juvenile and defendant: McCulloch (2007), Rossiter (2006), Erlich (2003), Moore (2001), Beschle (1999).

community shape its procedures and meaning. They use an interview and observation-based qualitative method to explore construction of meaning and the exchange of power.⁴⁰

Legal Scholars, Law Reviews and the Legal Institution

Legal scholars of the juvenile court tend to argue for institutional change abhorring the inconsistent hybrid that exists today. These scholars frame the issues of debate around a series of dichotomies: rehabilitation or punishment, offender or offense-based justice, child or adult?⁴¹ Legal scholars focus their normative debate on whether the court ought to move toward a more offender-based model (like the traditional juvenile court) or a more offense-based model (like the current adult criminal court). The offender-based model reflects the idea that children ought to be treated with particular attention to their unique cognitive development. The offense-based model, on the other hand, entails punishment based entirely on the severity of the crime and may better fit recent trends in punitive and adversarial justice suggested by some policy-makers.

To be sure, juvenile crime is not the same as it was one hundred years ago in Chicago, nor have juvenile courts remained static institutions. The legal debate regarding the direction of the juvenile court as an institution, however, misses the crucial location where conflict between different models occurs. Rather than arguing that the juvenile court ought to move toward a more criminal model or that it ought to return to its roots as a protective institution, legal scholarship would be broadened by the idea that both models have their place in juvenile justice. Instead of debating the institutional

⁴¹ See e.g. Feld (1993), Davis (1987), Tanenhaus (2004), Zimring (1982), (2000).

philosophy, legal scholars need to begin examining how individuals within the court balance models of justice.

In the polarized debate that has emerged, one group of legal scholars argue that the essence of juvenile court is harmful to children, taking the argument for a single criminal court from the due process ideals of Justice Fortas. One of the foremost legal scholars in juvenile justice – and one of the most controversial – Barry Feld’s vocal critique of the traditional juvenile justice model attacks both its implementation and its conceptual base. Why do juveniles require substantially different courts, procedures, and personnel than do adults? Feld concludes that the Progressive reformers misunderstood the purpose of legal institutions: “The original juvenile court was conceived of as a social service agency in a judicial setting, a fusion of social welfare and social control. But providing for child welfare is ultimately a societal responsibility rather than a judicial one.”⁴² What does this suggestion mean for juvenile justice? Feld argues for the elimination of juvenile court because the lack of due process and clearly legal rationale makes judicial discretion too broad. Thus, the court fails to provide the child with the necessary due process protections to safeguard against tyrannical decisions on the part of the judge. Following Feld, some scholars contend that the critical difference between a juvenile and an adult offender takes place during the sentencing phase of court proceedings and that so long as the judge is able to punish children and adults differently,⁴³ then the same tenets of due process and criminal law ought to be followed in all cases.

⁴² Feld (1993). p. 280.

⁴³ Feld does not argue that children and adults should be kept in the same facilities, nor does he think that sentencing should be of the same length for children and adults.

Many scholars disagree.⁴⁴ Rather than moving closer to an adult model, some critics maintain that the proper response is to make the juvenile court into an even more distinct institution with stronger distinctions between child and adolescent offenders. It does not require legal expertise to see that a ten-year-old and a sixteen-year-old have different understandings of right and wrong, are at different stages in their emotional and cognitive development, and might not be responsible in the same way for their actions. Many voices in the legal community advocate multi-court systems; while their conceptions of juvenile court vary, the basic premise is the same: that all minors do not have the same needs and levels of understating and responsibility. These scholars argue that the dramatic differences in cognitive and emotional ability among minors necessitate a broader spectrum of responses than one court can provide.

Two important distinctions animate the differences of opinion between the two camps of scholars. The first concept regards the essential role of the court. One approach frames the court as an assignor of blame and guilt; the other casts the juvenile court as the protector of children in need. The other important distinction lies in the emphasis that is placed upon the child's agency and level of culpability. This scholarship defines the basic parameters of the debate regarding juvenile court philosophies, but misses the reality that these models are both necessary in juvenile court. They provide insight into the debate over institutional purpose and rationale, but this is however, only the first step in the process of discovering how relationships within the court influence its norms and procedures.

⁴⁴ See e.g. Erlich (2003), Coupet (2000), Coalition for Juvenile Justice (1998).

Court Organization and Legal Roles

The juvenile court is a rich place to enquire about people and their interactions because the high level of discretion and lack of oversight allow uniqueness that would be impossible in more formal courts. For this reason, the scholarship examining court actors, which sets forth the fundamental purpose of qualitative methodology in sociolegal research, is an ideal foundation for studying the juvenile court. Scholars who use this method in political science and sociology do so in order to reveal substantively different information about the legal system than do historical, comparative, or quantitative legal scholars. Political Scientists broke significant ground in the 1970s and 1980s by adapting organizational models and organizational sociology toward the study of court systems. While these studies are still read and taught today, their theories have not been applied within juvenile courts. The juvenile court setting is fundamentally different than other court scenarios. Additionally, social science tools for understanding how court actors affect "justice" have advanced. This study, therefore, fills a significant gap in our understanding of courts in America: the juvenile justice system as constructed through the micro-level dynamics of its workgroup participants.

The sociolegal method deepens the understanding of relationships between individuals and demonstrates how these individuals impact court processes. As one scholar notes, an important aim of sociolegal research is to understand, "...the exercise of power and construction of meaning in ... [legal] interaction."⁴⁵ Social scientists commonly begin this type of research by disaggregating the court as an organization to find systems of actors. In organizational research, each actor within the court plays an integral role in creating the court's identity in terms of power relations, procedures, and

⁴⁵ Sarat, Felstiner (1995). p. vii.

language. Thus, the court provides more than merely a physical location for the implementation of decisions made by autonomous actors (such as judges). Instead, the courthouses group activity, where “Most persons...perform specialized functions, and their activity fits into a broader pattern and is constrained by it.”⁴⁶ This research also interprets meaning with the court. Scholars who study court actors in an interpretive light examine the “generation and reproducing of structures of meaning”⁴⁷ rather than how a certain decision causes a certain outcome. Meaning reflects how people justify or explain their choices and behavior. This method frames court actors as producers of meaning, who do not simply apply strict legal principles, but who also infuse their own beliefs, values and experiences into the legal process.

Organizational and interpretive legal scholarship shows a picture of court decision-making that is quite different from the traditional understanding. Individuals with unique roles and perspectives create a communal understanding of the law and of the role of law. Individuals with unique roles and perspectives create a communal understanding of the law and of the role of law. Rather than the clash of conflicting rules, different people with varying levels of power and with divergent understandings of the law struggle for dominance. The subject of research differentiates an organizational study of the juvenile court and a legal study of the court as an institution; exemplified by scholars like Feld. One enquires about people, while the other examines rules and processes.

The constant presence in this method is the level of observation and in-depth interviewing, which scholars require. These scholars examine areas of personal choice,

⁴⁶ Eisenstein, Jacob (1977). p. 10.

⁴⁷ Sarat, Felstiner (1995). p. 10.

power, language, and relationships rather than asking questions of size or frequency. This thesis adopts the same thorough interview technique to compile data for this study. The following literature models interview and observation techniques, which provided guidance and inspiration for this thesis.

Formative scholars of the 1970s believed that understanding the court as a set of rules failed to explain “...decisions... made as a consequence of an uncharted, complex, and interdependent set of relationships.”⁴⁸ Malcolm Feeley became one of the foremost scholars in court organizational literature, demonstrating the key areas of sociolegal inquiry, which include location, actors, procedures, interactions, and outcomes. Also responding to the confusion regarding court relationships, *Felony Justice* represents another formative text in the sociolegal field. Its authors, James Eisenstein and Herbert Jacob, argue that “What judges, prosecutors, defense counsel, and others do depends heavily on how they interact with each other. None works alone. Rather they are interconnected through an intricate system of countervailing powers.”⁴⁹ These scholars demonstrated the importance of the personal and interactive nature of the court using an organizational model. This method encompasses the court as a whole, showing how different individuals can persuade, compromise, and influence decisions beyond those over which they have strict statutory control.

Eisenstein and Jacob provide the term courtroom workgroup to define the scope of individuals within the court organization. They limit participants of the organization to those actors who have a role in a specific courtroom. This model may work for larger courts and for adult criminal court; however, in juvenile court the workgroup can be

⁴⁸ Feeley (1979), p. xvi.

⁴⁹ Eisenstein, Jacob (1977), p. vi.

considerably more complex. In the juvenile court many professionals, from psychologists to probation officers, participate in the interpretation of a child's case, but do not always appear in the courtroom. Scholars of juvenile court better understand the nature of juvenile court interactions with a more inclusive view of the members of a court organization.

Many researchers have followed Feeley's approach to examine different court scenarios since the 1970s. A notable recent case focuses on the creation of drug courts in California. Burns and Peyrot show how "...judges and defendants interact to construct the defendant..."⁵⁰ using court observation and individual interviews. They argue that this method of research takes into account "...the organizationally and institutionally specific competencies and features that comprise the dynamics under investigation."⁵¹ This study provides a model of judge and defendant interaction where, like in the juvenile court, the goals are not merely punitive and the judge has considerable discretion in deciding the path of the individual defendant.

Social scientists also use interpretive legal scholarship, which focuses on how meaning is constructed in the law and how meaning is negotiated based upon the power within the legal organization, to understand court dynamics. Interpretive scholars contrast their research with scholarship that treats law and lawyers as tools to achieve goals that are outside of the law. In other words, "Law is understood entirely in terms of the material results that it produces, or in terms of the distributional consequences of

⁵⁰ Burns, Peyrot (2003). p. 416.

⁵¹ *Ibid.* p. 420.

legality.⁵²” Instead, interpretive legal scholarship seeks to understand the social effect of the legal structure itself.

Scholars have not yet fully examined the complex relationship between court actors and children despite the method for understanding the court as an organization on a broad level. Scholars do not fully understand how these relationships translate into decisions regarding the responsibility (and culpability) of juveniles. In the strongest recent research, Aaron Kupchik began to remedy this apparent lack of information regarding the juvenile system by studying juveniles in adult court. Kupchik uses qualitative and quantitative comparative methodologies, unlike some of the earlier, purely qualitative scholars. Kupchik argues that judges use a traditional construction of childhood in the punishment phase of criminal court. In other words, even in adult court, the court actors treat a minor as a child when dealing with sentencing, but not during the trial and other court proceedings focused on finding the facts of the case. Kupchik, however, uses a comparative methodology, studying the treatment of juveniles in juvenile court versus adult court and to show this contrast, his model relies more heavily on statistical and quantitative data. This shows the frequency of various outcomes for juveniles in the adult system, but provides less information about the way that court actors besides the judge influence these outcomes.⁵³ Significantly, Kupchik’s study was based upon juvenile cases after the juvenile had been transferred to adult criminal court by external mandate. He is concerned with juveniles that have already been placed in adult criminal court due to externally imposed constraints (i.e. statutory thresholds of jurisdictional transfer). This thesis employs a similar qualitative methodology and body

⁵² Sarat, Felstiner (1995). p. 10.

⁵³ Kupchik (2006). p. 25.

of literature, but is concerned more with how court actors negotiate the path of a juvenile case within the juvenile court due to their understanding of childhood.

This thesis provides a unique perspective on broad legal questions through the words of local court actors. Legal professionals can explain the philosophy and organization of the juvenile court in a way that is impossible at the higher court level because they are deeply involved with the juvenile court process. This thesis seeks to demonstrate how court actors interpret the direction of the court by asking about interactions between legal professionals and juveniles. The individual interactions between judge, attorney, and child affect the court proceedings that follow.

Chapter Three: Paths through the Minnesota Juvenile Court

In light of the scholarship on courts in general, examined in the last chapter, I now turn to the process and law in Minnesota, which provides the framework in which Ingalls County operates. This chapter follows the procedure and court actors unique to Minnesota juvenile courts. Understanding the path that a juvenile takes through the court system provides vital insight into the original data examined in the following chapters. Unique procedural guidelines provide opportunities for court actors to make choices involving the juvenile. It is primarily these choices which drive the study of juvenile court actors.

Like children's "choose your own adventure" stories, the path through the juvenile court has many beginnings, decision-points, and endings. Each decision made by the child or by a court actor leads the case in a different direction. Case outcomes rely on a variety of factors and branch out like roots moving deeper into the system. Children in the court system encounter judges, probation officers, prosecutors, defense attorneys, psychologists, and the myriad support staff who move cases through courtroom, detention center, and through probation for years after the offense was committed. Prosecutors make difficult choices every day about whether to keep juvenile offenders in juvenile court, certify them to adult court, or balance the two with extended jurisdiction juvenile. Most juveniles called to the delinquency courtrooms of the juvenile justice center only come once, plead to a petty offense and return to their lives. Other young people come to know the court system better than most adults ever do.

The child makes some of the choices that affect the path taken through the court, while other choices reside in the discretion of professionals. Due partly to the individualized nature of juvenile court, there are more options for the trajectory of a juvenile case than for an adult committing the same offense. The discretionary nature of the court, however, is not always evident since many cases follow routine paths through the court. The difference, however, exists in the court's ability to impose consequences not determined by sentencing guidelines (as they are in adult court) and in the many possibilities for parties to resolve the case in ways that reflect the juvenile's specific needs. The purpose of this chapter is to explore the many possible alternatives for a young person in a Minnesota juvenile court. The chapter relies on observation supported by Minnesota statute and the Minnesota Supreme Court's rules of procedure to construct an image of the juvenile court and the people who work within it.

Juvenile Court Statute and Procedure

There are many branches of juvenile court: drug court, truancy, runaway, child protection, custody, adoption, and child support, which are not included in this chapter. This study examines the unique delinquency component of juvenile court, which reveals the contradictory modes of justice present in juvenile court. Juvenile delinquency court is guided by rules and statute, like any other court, but the individuality and judicial discretion are revealed in the variety of choices available at each step in the process. These choices produce outcomes that are, at least ideally, designed to restore the juvenile to law-abiding behavior. Minnesota delinquency statute emphasizes the unique purpose of juvenile justice. Minnesota lawmakers claimed that their intent with the act setting

forth the rules of juvenile court, “Is to promote the public safety and reduce juvenile delinquency by...prohibiting certain behavior and by developing individual responsibility for lawful behavior.”⁵⁴ Consequences are designed to limit the burden upon the child, including that fines “shall not impose an undue financial hardship on the child.”⁵⁵ The juvenile statute also allows for child development in ways that adult criminal law does not address, such as the right of the court to expunge juvenile records at any time.⁵⁶

Paths through the Court

Arriving on the delinquency floor of the juvenile law center a young person first encounters the sheriff’s deputy guarding the door to chambers. The youth turns a corner and sees a large waiting area, its broad windows looking out over the city. At the end of the hall are offices, where people in suits rush in and out. It is a bright, open space, but the inner offices hide the heart of the court from young eyes. The juvenile sits down in the lobby and waits his turn in front of the judge. The first step in the juvenile justice process is the same for all young offenders. The police give him a petition naming his offenses, which is the juvenile equivalent of a charge. At this point, the officer decides if the juvenile should be released to his parents or detained in the juvenile detention center pending trial. The timeline for in custody cases is much stricter than for out of custody cases, where the juvenile might be called to appear weeks later.

If a juvenile is detained, the public defender introduces herself to her new client in the detention center the morning after the arrest. The public defender carries the petition and sometimes a partial history of the juvenile’s prior record with her into the detention

⁵⁴ Minnesota Statute 2007. 260B.001.

⁵⁵ Minnesota Statute 2007. 269B.198. Subd 1.

⁵⁶ Minnesota Statute 2007. 269B.198. Subd 5.

center. The style of discussion varies between attorneys, but the purpose is uniform. Universal issues include: Does the child want to plead guilty or go to trial? Is he competent to stand trial? Is his story glaringly different from the police report? That morning at the hearing for juveniles who have been detained, the juvenile either pleads the case or the attorney will call for a Rule 20, which examines the child's competence to stand trial. An out of custody juvenile will go through a similar process, but will be called to court by a notice to appear and will meet the defense attorney in the waiting room at the courthouse on the day of the initial appearance. This means a longer timeline between the offense and the initial appearance. If a juvenile pleads not guilty at the initial appearance, then the case will be set on the calendar for trial. A guilty plea requires more examination. The judge must determine that the child is pleading with full knowledge of his rights and without coercion. Then, the public defender questions the child in order to provide a record of the events to which the child is pleading guilty.⁵⁷ After all parties are satisfied that there has been a sufficient record of events, the judge either determines the disposition or sets the case on for disposition at a later date. Disposition is the juvenile equivalent of a sentence. The disposition, however, is not restricted by the sentencing guidelines of criminal court and many elements of disposition are services provided to the juvenile delinquent, rather than punishment like incarceration.

Behind the closed office doors at the end of hall, attorneys have been preparing busily for the morning's cases for several hours before the morning calendar begins. The charging attorney reviews all petitions written by the police and determines with which offense each juvenile will be charged. The attorney reviews the case for legal sufficiency; the quality and constitutionality of the evidence determine the range of options open to a

⁵⁷ Minnesota Rules of Juvenile Procedure 2005. Rule 8.04.

prosecutor at this stage. Beyond deciding if a confession was constitutional or a search was done with probable cause, the attorney will also review the child's record. Some first-time low-level cases are selected for diversion from the courts to send to a community-based agency for resolution, such counseling or anger management classes. A diverted case never gets filed in the court.⁵⁸ Often, defense attorneys, county attorneys and probation officers will meet in the morning to discuss options for various juvenile offenders. If her client has chosen to plead guilty, the defense attorney may meet with the charging attorney before the initial appearance to negotiate a deal for her client. Each part of the court has its own branch office in the juvenile center in close proximity to each other and to the courtrooms. Throughout the day, there is constant interaction and discussion between members of the different offices. It is a small community where personal interaction plays a strong role in the everyday working of the court.

While much of the court's work goes on in the back offices, the child's experience is often limited to that which takes place inside the courtroom. There are two courtrooms, which follow the same general layout as many criminal courtrooms, with opposing council tables facing an elevated bench where the judge, clerk, and court reporter sit. The largest different between the juvenile courtroom and the basic design of a criminal courtroom is that there is no jury box and no gallery. Once the juvenile enters the court one of several things can happen. First, the judge will ask for appearances, to which each person sitting at counsel table states his or her name and job title. Sitting at the prosecutor's table is most likely a county attorney and a probation officer. At the defense table is the defense attorney, who is most likely a public defender since all juveniles have the right to a public defender regardless of their parents' income, the

⁵⁸ Minnesota Statute 2007. 388.24.

juvenile and commonly a parent. Juveniles have a legal right to have a parent or guardian present at counsel table during any proceeding in the court. Members of the public are barred from juvenile cases, but the court may allow people with direct interest in the case, court workers, and the victim to be present at any hearings.⁵⁹

Next, the judge determines whether the juvenile has a sufficient understanding of his rights to proceed, in part by asking if the juvenile has read, understood and signed his statement of rights. The statement of rights essentially outlines constitutional rights of the accused. In a petty case, the judge will speak directly to the juvenile, while in a misdemeanor or felony case she will talk to the defense attorney. After the statement of rights is read and signed, the juvenile must enter a plea. One Ingalls County judge says to each juvenile, “You have a choice to make at this point, you can either deny the charges and then the state would have to prove that you did it beyond a reasonable doubt or you can plead guilty. I’m not going to force you one way or another, but you have to make a choice.”

A “not guilty” plea sets the matter on for trial. A “guilty” plea begins another round of questioning to ensure that the child has not been coerced and that he understands that he is waving his right to a trial and his right against self-incrimination. Either the judge or the defense attorney asks the juvenile a series of questions to prove that the child is pleading to events that actually took place. Disposition occurs once the judge and prosecutor are satisfied that the offense has been adequately described for the record. Disposition, or sentencing as it is called in criminal court, determines what the juvenile will do once guilt is established. Probation provides a report, either oral or written, outlining what they think the disposition should include. To encourage fairness and

⁵⁹ Minnesota Statute 2007. 260.163.

relative uniformity among dispositions, probation makes recommendations in committee. These committees try to treat similar juveniles in similar manners, arguing that a single probation officer is more likely to deviate from dispositional norms. In more serious cases, disposition is scheduled for a later date so that probation and the victim advocate can examine the damages of the case, the child's family history, and any medical and mental health issues that might impact the disposition.⁶⁰ The judge determines disposition in less serious cases on the day of the initial hearing, provided that the young person pleads guilty. The probation officer gives recommendations and the defense attorney and county attorney argue the merits of these recommendations. Defense attorneys attempt to mitigate probation's recommendation and lessen the burden on their clients, while the county attorney has already met with probation and agreed to their terms.

Disposition for minor offenses often involves community service and restitution. The court has discretion in this area, but the statutory guidelines for disposition include: supervision by probation, out-of-home placement, payment of fines up to \$1,000, mental and physical health care, and mandatory school enrollment.⁶¹ Victim crimes can include a no-contact order, which is uniquely complicated for juveniles since many offenders and victims go to the same school, ride the bus together, or are in the same after school program. Repeat offenders, however, rarely get simple community service. Out-of-home placements range from group homes to long-term out-of-state facilities. The Ingalls County juvenile center has a short-stay detention center, where juvenile delinquents can take classes taught by teachers in the local school district and do work service for up to one month.

⁶⁰ Minnesota Rules of Juvenile Procedure 2005. Rule 15.03.

⁶¹ Minnesota Statute 2007. 260B. 198.

Treatment and rehabilitation remain essential elements of the juvenile court's tools to combat delinquency. Due process attacks on the court, however, have limited the scope of the what the court can do in the name of rehabilitation. Chemical dependency and mental health issues plague juvenile offenders. The court offers services like drug rehabilitation, anger management, family and personal counseling, and referrals to more intensive programs for cases of extreme mental illness. For first-time petty offenders, these services are frequently offered, but not required. Seriously troubled children are often required to take advantage of the programming provided by the court.⁶² The court has a mandated "least restrictive" policy, meaning that the disposition will include the program that invades the least onto the home and personal life of the juvenile. A first-time violent offender will be placed in a local detention facility, rather than sent to a long-term out of state facility unless there is such a pressing public safety concern that the child must be removed from the community. In Ingalls County's practice, a child who commits the same offense would likely be sent for one week to a facility the first time and two weeks the second time.

Once disposition is decided, the judge sets the case on for a non-appearance review. This means that if the juvenile does not violate probation, then their case will be reviewed several months later, but the child will not have to appear at that time. The juvenile leaves the courtroom either to return to custody or, in out of custody cases, to meet with a probation officer. The probation officer explains the terms of probation, including where accepted community service sites are, how to contact a probation officer, and what happens if probation is violated.

⁶² Information on specific county services provided by members of the court.

Juvenile trials are similar in many ways to adult trials; the absence of a jury is a striking exception. Prosecutors and defense attorneys give opening statements, call witnesses, cross-examine the opposing witnesses, and give closing arguments. The tone can be somewhat less formal (in some cases opening and closing statements are waived), but the process is essentially the same. Another substantial difference is the parent. Parents are allowed to stay with the child for all proceedings, but witnesses are not supposed to be in court prior to testifying. Parents who are also witnesses present a problem for the court and are often allowed to stay in the court for the entire trial and then testify, which would never be allowed in adult court.

Ideologically, disposition is not supposed to be punishment, but rather protection and rehabilitation. There are, however, some collateral consequences of juvenile dispositions that can remain with a juvenile into his adult life. Sentencing guidelines in adult court are based in part upon a point system, which gives longer prison stays to repeat offenders who have points accrued from earlier crimes. Two juvenile felonies committed after age fourteen equal one point in adult sentencing. No juvenile with a felony drug conviction is eligible for federal financial aid. Children who are found guilty of high-level sex offenses are required to register as a sex-offender for ten years, keeping them from jobs, military training, and any work involving children.⁶³

While every child has the right to an attorney, petty offenders have no right to counsel at public expense.⁶⁴ Petty calendars, therefore, are significantly different from appearances for more serious offenses. When a young person appears for a petty offense, the county attorney will meet with him before the court appearance to explain the process

⁶³ All information regarding collateral consequences comes from information obtained in observation at the court.

⁶⁴ Minnesota Statute 2007. 260B.235. Subd. 3.

and the child's rights. No law requires prosecutors to do this, but many judges request it for reasons of fairness and efficiency. A petty offender represents himself in court, often with parental assistance. The juvenile can call and question witness and give testimony in a trial, but without the guidance of an attorney. A child who commits a petty offense is adjudicated a "petty offender" rather than a "delinquent," which means that there are less strict consequences permitted by the law.⁶⁵

Beyond Juvenile Court

Some juveniles are too young, mentally ill, or cognitively disabled to go through the court process. A defense attorney, judge, or even a prosecutor can call for a competency evaluation to see if a juvenile offender, regardless of the severity of the offense, has the ability to aid in his own defense. A juvenile cannot, "enter a plea, be tried, or receive a disposition for any offense when the child lacks sufficient ability to: (A) consult with a reasonable degree of rational understanding with the child's counsel; or (B) understand the proceedings or participate in the defense due to mental illness or mental deficiency."⁶⁶ If there is a question of competency, the child is sent to the county mental health center for evaluation. There, a mental health professional tests the child in a variety of ways to determine if he understands what is happening sufficiently to stand trial. Most of the time, both sides in a juvenile case accept the findings of the county mental health professional. Contested competency hearings are rare, but occasionally two mental health professionals will provide different opinions on a child and then a trial is held to determine if the child is competent.

⁶⁵ Minnesota Statute 2007. 260B.235. Subd 1.

⁶⁶ Minnesota Rules of Juvenile Procedure 2005. Rule 20.01.

While certain juveniles are too immature to stand trial at all, the law dictates that others are too dangerous to remain in the juvenile system. In Minnesota, there are two options for a prosecutor who considers a juvenile unfit for simple juvenile court. Statutory guidelines provide the criteria for these alternatives, but, unlike some states, the prosecutor has discretion in asking for them and the judge has complete control over whether a juvenile will remain in juvenile court or not. In Minnesota, a person under the age of eighteen who commits an offense automatically lands in juvenile court. In some states, presumptive certification automatically places young people into adult court for their initial appearance. The intermediate option between juvenile and adult court is called extended jurisdiction juvenile (EJJ). EJJ gives older juveniles a chance to stay in the juvenile system until age 21 with a held adult sentence, which will be imposed if the juvenile violates probation in any way between the offense and his 21st birthday.⁶⁷

Certification is the most severe option available to judges in juvenile court. A juvenile who is certified to adult court will be treated in all ways as an adult. The criteria for certification are the seriousness of the offense in terms of community protection, the level of culpability of the child, the child's prior delinquency record, the child's programming history and willingness to participate in programming in the past, the adequacy of the punishment and programming available in the juvenile justice system, and the consequences available for the child in juvenile court.⁶⁸ Prosecutors have considerable discretion in deciding when to ask for certification. The law demands,

⁶⁷ Minnesota Statute 2007. 260B.130.

⁶⁸ Minnesota Statute 2007. 260B.125. Subd. 4.

however, that for certain offenses, such as the use of firearms by older adolescents, prosecutors always request certification.⁶⁹

From Rules to Roles

Children will not all experience the court in the same way. Judges have different personalities and principles, as do the other court professionals. There are, however, some constant elements, often dictated by statute and rules of procedure, which a young alleged offender can expect to see when entering a Minnesota juvenile court. These elements tend to limit the ways in which the court can impose itself upon the child's life and the life of the child's family. Maximum fines and standards for out-of-home placement occur much more frequently in juvenile court than any minimum requirements related to severity of offense.

The following chapters examine how juvenile court actors function within this set of parameters. The professionals are neither entirely unconstrained nor machines programmed by the institution. Statute alone does not reconcile the conflicting models of justice that exist in the juvenile court. Human interactions, beliefs and behaviors that drive the court are not evident in statutes and rules of procedure. Court actors use the legal framework described in this chapter, but also find discretion in its inability to address all the conflicts of juvenile justice. The rest of this thesis captures the juvenile court inside the statutes, which is constrained and limited by its rules, but which is much richer than the world of legal texts.

⁶⁹ Minnesota Statute 2007. 260B.125. Subd. 3.

Chapter Four: Constructing the Child

What makes a child different from an adult? What makes a delinquent child different from a non-delinquent? What separates one-time and repeat offenders? Who and what make children break the law? Juvenile court actors face these questions each time they interact with the young people brought into court for breaking the law. While some questions have empirically testable possibilities, actors within the court rarely have hard data available to them when they make decisions regarding a particular juvenile's path through the court system. Court actors must substitute unavailable statistical evidence with experience and assumptions about the young people with whom they interact on a daily basis. Not every court actor shares the same set of assumptions or experiences. Furthermore, even if every individual within the court subscribed to identical definitions of their young defendants, there is no guarantee that these definitions would be factually grounded. This ambiguity's primary consequence is that the court lacks a static operational definition of the very thing without which the entire system would vanish: the child. Legal definitions, which define juveniles as individuals under eighteen for example, provide only moderately concrete parameters. In the juvenile court's operational life, the working definition of juveniles developed by court actors determines crucial issues within the court, such as proposed strategies for rehabilitation.

This chapter explores the young person that emerges in light of the legal and philosophical challenges presented in the earlier chapters. How court actors view adolescents – the subject of their careers – influences how they construct an approach to juvenile justice that incorporates the adolescent's experiences, identity, and understanding. The working definitions of the child and the juvenile delinquent, created

by court actors, influence two essential elements of the legal process: the way in which court actors perceive themselves and the way in which they assign blame. In the former, the identity given to the juvenile determines the extent to which that juvenile ought to be blamed for his or her offenses. Blame, in this sense, does not always follow the same path as criminal culpability, so a child could be blamed for an action for which they are not legally held accountable. More problematic, the child can be held legally accountable for an action, but for whom some court actors do not assign blame. In the latter, the court actor's self-perception is deeply intertwined with how court actors define the juvenile. The court actor's role and desired outcomes depend in part upon the kind of relationships that the court actor constructs between herself and juveniles; relationships, which rely on the court actor's assumptions and generalizations.

This chapter addresses the major elements of juvenile identity construction within the juvenile court. This chapter first explores the personal identity that court actors ascribe to juveniles in the court. Like a census compiled from personal experience, this identity includes the race, economic status, family situation, and education. The juvenile identity also includes more fluid categories like involvement in school activities, influence from older siblings, and exposure to video games and computers. Naturally, court actors do not posit that that every child in the juvenile court fits the same demographic mold. Nevertheless, court actors make certain assumptions about overall trends in demography, as well as ascribing certain connotations to demographic information. This chapter also examines a unique aspect of juvenile court, which is the family. Considerations of the family's role within the court system, and its culpability in the juvenile's situation, are interwoven into the child's identity. The second half of the

chapter places the child within the specific context of juvenile court. In this setting, the court actor's self-regard confronts her assumptions about the juvenile. This chapter examines how court actors and juvenile interactions manifest themselves through the court actor's definition of juvenile responsibility. Finally, this chapter explores the paradox provided in the "un-savable" child. This juvenile demonstrates the constraints provided by legal parameters and institutional rationale that do not match the court actor's perceived reality of juvenile identity and of their own identities.

Dumb or Dangerous? Portraits of the Juvenile Delinquent

Not every child becomes a juvenile delinquent, nor do juvenile delinquents represent a random sample of the Ingalls County juvenile population. Rather, certain characteristics thread through many children who end up in the legal system. This study explores the assumptions and generalizations that court actors make about the identity of a juvenile delinquent, based upon experience rather than exact data. The juvenile identity includes strict categories like race, gender, and income, but it also includes more fluid categories like educational involvement.⁷⁰ Taken together, the ways that court actors describe the kinds of juvenile they are likely to see in court demonstrates the assumptions and generalizations that court actors make about delinquents. Court actors tend to gather large amounts of data about the young person's life, but ultimately determine if the juvenile falls into one of two categories, which are based more on the offense than on the offender. Juvenile court actors tend to group children and their behavior into the categories – dumb and dangerous – each of which comes with a set of assumptions. Court

⁷⁰ For the most accurate data on children as victims and offenders on a national level see *Juvenile Offenders and Victims: 2007 National Report*.

actors, however, collect data about the juvenile that calls into question these categories and assumptions. Information about life experiences and personal identity enrich the juvenile's portrait as seen by adults in the juvenile system. While the court never uses a purely offense-based vision (as they might in criminal court), court actors sometimes attempt to condense the young person's identity into categories that emphasize the incident, rather than the juvenile's whole life.

Court actors do not always use the terms "dumb" and "dangerous," but they tend to approach certain kinds of behavior with fear and concern, or with a certain level of tolerance often mixed with condescension. While dumb and dangerous adolescent behavior may seem overlapping, there is a tendency in juvenile court to view some juvenile crime as a by-product of normal adolescent development (i.e. "stupid kid stuff") and others as symptomatic of deeper social and behavioral issues (i.e. "dangerous criminal activity."). This distinction appears in examples, such as, "Even on a robbery I want to know what's going on – he wants to buy a new Nintendo or he's addicted to meth?" While these categories seem to relate to the offense rather than the child, this distinction blurs in application. The child who acts in a certain way does so because he was raised a certain way or because of some element of his personality. Court actors linked identity with offense-type, as one judge noted:

One particular child, you could probably take away their cell phone and tell them they can't play football this season and that child will never do anything ever again. And another child doesn't know about cell phones...only how to steal them...and couldn't afford the equipment for football, so why go out for football?...and is more worried about how he's going to get his next meal and you say to that person, "I'm gonna take away your cell phone" and you're going to be laughed at, I mean that's ridiculous.

Court actors in these cases looked to the offense and the child's identity to form an opinion about whether the young person constitutes a danger or is simply being a stupid kid. The offense and why it was committed take precedent over other elements, such as the child's race or educational experiences.

Those court actors who define most juvenile delinquent behavior in terms of dangerous activity alluded to nostalgia for a safer, more innocent time in their childhoods, which allowed them to frame today's children as victims of societal corruption. This nostalgia appears limited to prosecutors, however, and judges and public defenders seemed skeptical of such analysis. A county attorney said, "Video games make kids not understand what their violence does and the hand-eye coordination makes them better shots." Another county attorney commented, "The kid who says, 'I'm gonna come back with my AR-15 and shoot up this school tomorrow!' Twenty years ago I think we said, 'Come on, you got detention.' Now, 'Does he have access to an AR-15? Oh my gosh he does!' How seriously do we take this?" The same attorney later noted that changes in violence crime in juveniles were due in part to the fact that:

You can turn on TV and hear swearing and violence and guns that they wouldn't have seen fifteen years ago. 15 years ago we'd have been watching *Three's Company*. Now they've got these video games, which are sensational and phenomenal with violence. I mean how many kids had cell phones when I was in high school? Maybe one. Now it's just out there and the MySpace and all of the other stuff they have access to as well as the drugs and guns and other things, which are more prominent.

Another attorney echoed this belief, by saying that:

There's stuff happening now that I couldn't have even imagined when I was a juvenile. Kids have access to so much more these days. When I was a juvenile I don't remember kids doing serious offenses. I had two boys who called a pizza delivery person with the purpose of not only robbing him, so they could go to some dance, but taking his pizza because they were hungry. They even ordered wings! I never would have thought that.

These court actors allude to the young person's identity in these comments, but focus on their shock at the kinds of offenses being committed. Their nostalgia for an earlier, safer time ignores the identity differences between the court actors and the juvenile delinquent and instead emphasizes the differences in behavior.

Other court actors argued that much of the behavior they see in juvenile court is simply kids being kids. Normal adolescent development, according to some, facilitates delinquent behavior.⁷¹ A public defender stated, "Kids fight. Boys are really aggressive and they fight." Another attorney commented, "A lot of them are plagued with the same things; the alcohol addictions and the drug addictions and that makes them do things that they maybe wouldn't normally do." Judges brought their beliefs about dumb kid behavior to the juvenile's attention in court. One judge said to a young delinquent who had just plead guilty to theft, "Do not do this again, especially not in your sister's store for crying out loud." While the angry adolescent who fights in school because he doesn't have a stable home and the juvenile who shoplifts from his sister's store might appear to have little in common, court actors often put them together into a group of young people who are acting out as a symptom of growing up. This behavior might be stupid, but it is not dangerous in the way that serious escalating crimes are dangerous.

The distinction between stupid kid stuff and dangerous criminal activity, however, becomes nuanced by the other information gathered by court actors. For example, individuals involved in juvenile justice across the state of Minnesota and Ingalls County, currently debate the role of race in juvenile arrest, detention, and disposition.⁷² The

⁷¹ See Chapter 2 for discussion of recent child development literature.

⁷² The Juvenile Detention Alternative Initiative (JDAI) is a current program designed to alleviate problems of racial disparity in juvenile detention.

child's personal background factors into many decisions that juvenile court actors make in Ingalls County, from charging to disposition. Court actors tend to throw a broad net when constructing a juvenile; they want to know as much about the child as they can. As one county attorney noted, referencing 5th degree Assault, which is a common offense among young men, "History is a big thing for me. I read a statute like Assault 5 and realize that's not so black and white, every case is so unique." A judge reiterated the idea that many factors go into the portrait of a juvenile delinquent. She stated, "I look at home life, support, mental health issues, and chemical dependency issues, what other treatment has been tried? What other consequence has been tried? The age. We look at everything in juvenile." Even public defenders, whose role is probably most similar to their counterpart in adult court, need to know the broad history of a youthful client. As one details:

I want to know how the kid is doing in school, like are they showing up, are they in special ed, are they having a lot of emotional-behavioral issues? Are they involved in extra-curricular activities? How they are at home? What kinds of social things they might be involved in? Also what type of family life have they grown in? Are we talking about a very chaotic, neglectful family that they have grown up in where they haven't had the opportunity to have the structure that they need growing up?

Juvenile court actors examine a wide variety of factors, which influence how they expect the young person to behave and what they expect might be an effective remedy. This deeper picture of who the child is can clash with a simpler notion of what they child does. In other words, court actors employ both offense and offender-based visions when trying to assess young people in the juvenile court.

The same court actor might employ a mixed offense and offender-based assessment of the child when trying to understand the juvenile's identity and why they

chose to commit a criminal offense. An important element, which calls into question the “dumb or dangerous” offense-based distinction, is the juvenile’s life outside of court. While this is rarely a consideration in adult court, it is of primary concern for juvenile court actors. This stems from the traditional juvenile justice thesis that society, education and family determine much of the child’s criminal tendencies.⁷³ A judge said, “These are kids who don’t have a family, who are in foster care, long-term foster care. Maybe they’re not even in foster care because they are angry enough that nobody will keep them and so they end up in delinquency.” A public defender commented that:

When we interview these kids everyone always asks, “are you involved in any activities in school?” It’s far and few that are involved in athletics or the drama club. They really need some place to belong, some reason for being there. A lot of people are down on sports, but that’s crazy, they should be emphasizing that all the time... The kids that are involved are not the kids that we see.

Similarly, a judge argued that humiliation in school causes children who lack educational support to act out. To which he added, “The kid who comes in for fighting, I can tell you why. They don’t know how to read or write.” Another judge commented, “Assault in school [often happens] by someone who feels they have been wronged or disrespected and that usually comes in because there have been some racial epithets thrown at them and they get mad and they end up assaulting.” In the most frank admission to the role of preconceived assumptions in the court process, a judge said:

Kids of color, whether they are boys or girls, probably have had more contacts with probation, probably have not had a strong family support, probably have not had a strong education mindset ingrained into them, are more likely to be coming before us. Whether it’s gangs or the schools they go to, it’s not cool to be a good student for a lot of these kids.

⁷³ For University of Chicago Progressive Era theory on the role of environment in juvenile crime see e.g. Getis (2000), Cottrell et. all. (1973).

Unlike the dumb or dangerous distinction, these arguments focus on the child's history, rather than on his behavior. From this point of view, what the child has done is less relevant to the court process than what the child has experienced.

While some court actors pointed to external forces that caused young people to act out, others showed how some problems in the juvenile court stem from disconnects between the juvenile's identity and the juvenile court's expectations. A public defender stated, "It's the middle-class model and most of my kids aren't middle class." When asked if juvenile understood all of their rights, a judge responded, "I mean, come on, these are juveniles...13 years old, parents who aren't very sophisticated, probably have very little experience with the law, may not have a lot of education, that kid may not have a whole lot of education." Some court actors pointed explicitly to the racial dimension of juvenile court work. As one public defender noted, "These young black kids are coming in and getting charged with aggravated robbery and simple robbery that are following them into adulthood and branding them as major criminals." In these situations, court actors argue that the court's perception of the juvenile determines the success of a case. They demonstrate how the juvenile's identity poses a problem within the juvenile court context. The tension exists not because the young person's experiences cause him to commit crimes, but because his identity is at odds with the court's perception of what he should be.⁷⁴

Every court actor does not put equal value on the same elements of juvenile identity. What is more, in the context of one case, the same court actor might consider age and education more heavily, while in another case race and family situation seem

⁷⁴ More information on recent trends in race and law include e.g. Hart (2005), Wriggins (2005), Herbert (2006), Massey (2006), Bell (2004).

most pertinent. Overall, however, the key elements in juvenile identity seem to include: education, family situation, age, and race. Juvenile identity is important for two reasons in the court setting. First, court actors make generalizations about the background and motivations of future juvenile delinquents based upon assumptions they have regarding what kinds of juveniles appear in the system. Additionally, individual juveniles may receive certain treatment based upon assumption the court actors make about “kids like them.”

These assumptions in turn influence how, and to whom, court actors assign blame. By distinguishing between “dumb” and “dangerous” young people, court actors point to society, family, and human nature as, if not perpetrators, at least co-conspirators, in juvenile delinquency. They also result in vastly different models of justice, some of which value the offense more than the offender and others, which emphasize the individual’s experiences more than the particular crime. Young people whose poor upbringing, lack of education, and adolescent nature compels them to commit stupid crimes might respond quite differently to community service or out-of-home placement, than a young person who commits dangerous crimes out of desperation, addiction, or perceived necessity. Court actors’ assumptions and experiences influence how these young identities get framed within the court. What appears relevant in the juvenile’s identity depends upon what court actor’s attitude toward the offense and the offender. It depends on the offense in so far as the court actors divides “dumb” and “dangerous” kids, but is complicated by the offender’s life experience (like afterschool programs, home life, and addiction) and personal characteristics (like class and race).

Court actors' visions of the juvenile delinquent also contribute to the court actor's self-perception. Court actor's roles depend largely upon how they perceive their relationship to the juvenile. The parameters of these relationships between adult and child depend in part upon how the juvenile is perceived by the adults in the juvenile justice system. Court actors might identify with juveniles through personal characteristics or life experiences. On the other hand, court actors might find very little in common with the young people they see every day. The nature of identification between court actors and juvenile will be addressed in more detail in the next chapter. After examining the different ways in which court actors view juveniles, however, it becomes apparent that court actors frame their relationships with juveniles as larger than the interactions required by law. In other words, personal interactions between juveniles and adults enrich the impersonal legal definitions of the court actor's duty to the juvenile and the court actor's formal role in the juvenile justice setting. Court actors construct themselves as protectors and assignors of blame depending upon their attitudes toward the young people that they serve. The process of constructing personal identity reveals itself through the child's identity, but also through the perceived nature of the child's family. The next section expands the range of court actors and juvenile interactions to include the juvenile's family, who further complicates this relationship.

Family, Identity, and Court Roles

The parent is a unique actor in juvenile court cases. While most court settings include judges and attorneys, parents influence juvenile court proceedings much more than they do adult court proceedings. Parents enter the juvenile system as enforcers,

advocates, witnesses, moral guides, and contributors to the crime. Formal court actors confront parental involvement with ambivalence. Parents are too often uninvolved in the child's case, yet some parents enable and even encourage their child's delinquent behavior. Court actors incorporate parental identity into their construction of blame and into the court actor's self-perceptions about roles and limitations. Parents, who are neither the defendant nor entirely separate from the defendant, provide a dilemma for court actors who function within a broader criminal justice system that constructs procedure and punishment around personal responsibility. Unless the parent has done something that falls under the category of neglect or child abuse, then they escape the juvenile court's jurisdiction, leaving the child to incur any consequences that the court prescribes.

How court actors shape the parent's role within the system constrains how the court actor shapes her own role. Since parents participate in many steps of the juvenile court process, but rarely participate in the same way, court actors must adapt to incorporate parental roles. Unlike probation officers, for example, on whom court actors can depend to act in certain professionally defined ways, parents are not compelled by law or profession to adopt any one particular role. Court actors can attempt to influence parental involvement, but they can also shape the court's response to parents based upon generalized categories into which they place specific kinds of parents. Court actors determine what the parent can do better than the system. They also make assumptions about what the parent should do, but which the court actually does. Finally, court actors describe how parents make the court more or less efficient, particularly with regards to the court actor's relationship with the juvenile.

Prosecutors, judges and probation officers often attempt to frame the adults in a child's life as the parent-enforcer. This primary defense against delinquency augments the state's protective and rehabilitative role by making parents into probation officers. In this vision, the court's philosophy and the parent's philosophy regarding morality and appropriate behavior align. Court actors provide support for parents who echo their sentiments, particularly when the parents are unable to fully enforce the values that they share with the court actors at home. One county attorney commented:

The message is reinforcing to the kid what I am hoping they [parents] already told them...I love reinforcing a message they have already given. I don't know your kid, but here is what I think is going on and to hear them, 'thank you, thank you for saying that.' ...And with petty offenders we're getting that kid the first time in. Hopefully they didn't have to come to court, but if they did, it's our chance to back up what mom and dad are telling them.

The message may come from an attorney, or more powerfully, it may be made explicit in the courtroom by the judge. One judge told every parent in his court, "I am going to make you into a probation officer. If he doesn't follow the rules, I need you to pick up the phone and call his other probation officer, okay?" Another judge shared a similar routine:

I try to support the parent. I make the parent be a probation officer...My speech is, "your parent, Mom or Dad, they get to tell you when you go to sleep, when you get up, what chores you do, when you leave the house, when you come home, who you go with, where you go. They need the phone numbers of all of your friends houses or you can't go there." And the kids are usually in shock and the parents are usually very pleased. And it returns some power to the parent.

A third judge, asked at what times is he most effective, argued:

When I have parents who are willing to step up...I say, 'look, because of what your son did, he has turned you into a probation officer. If he doesn't do what he is supposed to do, I want you to be calling his other probation officer.' When the kid knows that Mom and Dad will pick up that phone; that is when I am most effective.

Sometimes, however, parents fall too far on the retributive side of justice. On the extreme end of parental involvement are those cases where the parent wants the child to receive a punishment greater than the one suggested by probation officers. In Ingalls County, one distraught mother said to the public defender, "I am so angry. I know the theory of it all. I know that he is a teenager doing teenager stuff. He's not gonna respect me in my house. I want him to have better structure." Court actors commented on this sort of parent, as one judge put it, "The parents may say - No we want him thrown away, put him in Sing Sing until he's 18." Another judge attempted to help parents who felt incapable of dealing with a difficult child. He said, "I've locked kids up just to give the parents a break...I'm going to send him away for forty days and at least then you'll have some peace."

Parents can also advocate for their child in the court. Defense attorneys often point to this as their preferred role for parents, and a role that they see too infrequently. Even defense attorneys, however, see the challenge of this role because the public defender represents the child and not the parent. As one public defender said, "Sometimes that first meeting can be kind of a hostile meeting because the parents are there and the parents get pissed that they're not talking to you or you're not talking to them." Judges tend to provide time for the parent to speak on the child's behalf during a hearing, and children have a legal right to a parent or guardian with them during all court proceedings. This puts parents in the position of witness, defendant, and attorney. The parent assumes the role that a defendant in adult court would take in speaking on behalf of their child. Particularly in petty cases, where the child does not have a public defender, the parent's arguments mimic the response an attorney might give. Individuals outside of

the justice system most frequently come into contact with the system as a witness, and parents are often witnesses to their children's actions. The complex role of parents within the court, however, leads to situations for which criminal law does not prepare court actors. A county attorney expressed her frustration at this ambiguity by noting that:

In petty trials, I can't stand it when (because the kid is the one who is supposed to ask questions, they are representing themselves) but the parent will sit there and do kind of a puppet show to tell the kid all of the questions to ask. That drives me nuts. And sometimes then, at the end, the parent will go up and testify and if you are in the courtroom you are not supposed to testify.

The worst form of parental interaction in the court system, from the point of view of individuals within the court, is that of enablement or even collusion in their child's criminal action. Unfortunately, court actors often identify this type of involvement as the most common. Sometimes, the parent's contribution to the child's delinquency rests in their inaction or poor parenting. Many within the court expressed frustration that they could not compel parents to behave as the court actors believe parents should act. A mental health professional commented that, "One of the big frustrations is you have kids who come from a dysfunctional family, they wind up in the court system, you would really like to be able to have sanctions over the parents and you don't have it. You can't compel parents to go into family therapy or marital counseling or anything else." A judge suggested that the best court reform would be to give juvenile court judges the power to sanction parents for their children's behavior. He argued:

They brought these kids into this world; maybe they should be responsible doing the best by them. It should be criminal if they don't. I'm not talking about beating them, I'm not talking about neglecting them. I'm talking about emotional support and with their education and with family values, whatever your family values are... Give me jurisdiction over the parents, 'I'm gonna lock your ass up for thirty days if you aren't on top of your son if he comes home with something less than a C on his report card.' And you watch how many kids don't come home with bad report cards after that.

The roles described above belong to parents who are present in their child's life. Many court actors lamented the absence of parents, particularly fathers, in the court. Some point to the lack of positive role models as an influential factor in a child's proclivity for delinquent action. A public defender commented that, "If you come to hearings, especially detention hearings, there is about 40% who don't have a parent or guardian there so the only voice that they have is the public defender." A judge, who framed himself repeatedly as a father figure, noted, "Most of the kids don't come to court with a dad. There is no dad. There is no male authority figure, no male role model." A reoccurring theme amongst court actors was their belief that teaching right from wrong fell under the jurisdiction of the parent. Many noted, however, that modern parents seem to have abdicated this role. A judge said:

Even in traditional families where you do have the two parents, one parent is still probably working on the way home, or whatever they do, other activities. So the kids are going to learn [acceptable behavior] from their peers and if they don't have positive peers they are going to learn behavior that is going to lead them probably into our court. They're looking at parents... you've got a mother or a father who is on crack, they're probably not spending much time worrying about the child they had that they are supposed to be raising.

Many members of the court system framed their role in part as a replacement for incompetent parents. Men in the court system felt particularly compelled to provide 'fatherly' support for the juveniles whose fathers were absent. A county attorney also commented on the lack of parenting and the desire to provide parenting, but ultimately concluded that, "Some kids are there because they haven't been parented. You want to help them, you don't know how; we're not set up for that." Another county attorney stated her role in parenting most actively, "A lot of it is just basic parenting kinds of skills quite frankly. I think a lot of what we do is teach parents how to parent and parent kids

that can't be parented by their parents. Very simple." A more ambivalent answer came from a judge, who attempted to convey that she provided some parenting to juveniles without saying that parents were to blame for juvenile delinquency. "I think teenagers need the excuse not to act out," she said, "if they're not getting it at home – and I don't mean to blame parents, because I don't agree with that, although some people do, I don't – I am hoping to let them know that somebody is watching and somebody cares about their safety and their behavior."

The attitudes of court actors toward parental involvement show that the parent's involvement or lack of involvement constitutes a crucial element of the juvenile court experience even if parents do not hold formal legal roles within the court. Not every parent, however, serves the same role within the court. Some act as enforcers and advocates – mimicking most clearly the professional court actor's role. Other parents act as witnesses or contributors to the offense. These roles more closely resemble those that non-professionals might play in adult court. The mix of formal and in-formal roles within the juvenile court leads to ambiguities that other courts escape. Parents bridge the gap between child and adult, insider and outsider, sharing common elements with the child and the court actors. In response, court actors define their roles around those of the parent. The court's role in raising juveniles depends in part upon whether or not the court actor believes that parents are filling their roles.

In some cases parents also provide alternative sources of culpability. Non-responsible juveniles included those children whose upbringing did not equip them to handle questions of morality in a socially acceptable manner. A county attorney noted some children might say, "Well it's ok to fight, my mom and dad fight, I've seen my dad

do that, I only hit him once, my dad says it's ok to hit somebody once.” To which the attorney added, “He’s been raised wrong, so he’s not responsible.” Juvenile responsibility and parental responsibility do not always fall into clean, definable spheres. Court actors must contend with contributing factors from many camps when determining where they should assign blame. The following section explores how court actors deal with ambiguous responsibility in juvenile court.

The Child is Responsible for His Actions

Responsibility lies at the heart of the justice system. Proving guilt means proving responsibility; yet there are many levels of responsibility, some of which do not entail criminal culpability.⁷⁵ Children further complicate the question of responsibility because their developmental levels blur the line between causation, responsibility, and culpability. As demonstrated in the earlier section on juvenile identity, how the juvenile chooses to behave reveals his identity in different ways than demographic or personal characteristics might. How court actors treat the delinquent child depends in part upon the ways in which they see the child as having control over his or her actions. To better understand the nature of juvenile responsibility as seen in the court, each interviewee was asked, “When I say that this child is responsible for his or her actions, what does that mean to you?” Few responses, however, provided the same information about juvenile responsibility. This demonstrates one of the leading ambiguities within the juvenile justice system. Courts presume that adults, excluding the mentally ill, bear responsibility for crimes that they commit. Laws in juvenile court function under the same assumptions regarding children; only the mentally ill or the very young are exempt from consequences

⁷⁵ For a broader spectrum of literature on responsibility see e.g. French (1991).

related to their actions.⁷⁶ People within the juvenile court, however, regard the child with more nuance than one might find in the law. Responsibility does not mean the same thing for each child. Responsibility appears at several steps along the path from action to consequence. The court assigns responsibility from pragmatic reasons, such as in order to prevent the child from repeating the offense, and for philosophic reasons, such as the belief in personal choice. This section addresses three elements of juvenile responsibility with the court. The first element deals with personal choice, the second with the power of admitting guilt, and the third with the court's role in assigning responsibility.

Most interviewees distinguished juveniles with no capacity to tell right from wrong from other children. These young people who are so mentally ill or cognitively disabled that they cannot understand the concept of "good" and "bad" are removed from the juvenile court setting. Most young people, however, can tell right from wrong in some capacity according to juvenile court actors. Court actors provided varying interpretations of responsibility among those children who could tell right from wrong. One theme within the responses was choice. While at other points, court actors were willing to argue that juveniles do not employ full agency, when it came to direct participation in criminal action, some members of the community made no distinction between juveniles and adults. As one prosecutor said:

Really it boils down to: did they know right from wrong, can they distinguish right from wrong and did they enter the wrong path knowing it? At any point I can walk away from a fight and I remember being a fifth grader and being in fights that I probably should have walked away from and I was responsible for what I did.

A judge gave a similar analysis, but framed it in terms of societal expectations, as well as legal right and wrong:

⁷⁶ For information on the specific laws regarding juvenile culpability see chapter 2.

It means that the child understands the difference between right and wrong. The kid understands how they are supposed to function in our society. They know they're supposed to be in school versus being truant, they know they're not supposed to be using alcohol or drugs and remaining sober, they know they're not supposed to be having non-consensual sex.

Even in cases where documented disabilities or severe economic hardship play a role in determining the child's culpability, some viewed this more as a crutch than a legitimate excuse. One county attorney commented, "I am amazed what kids can pull themselves out of. Horrible circumstances are no excuse. I don't care how crappy your life is. You don't clunk an old lady on the head." A judge recounted the story of one of his juvenile cases to demonstrate his contention that most kids are responsible for what they do:

There was a thirteen year-old boy whose mom came into court and said, "He has emotional problems, he is developmentally delayed, while he knows the difference between right and wrong, he doesn't appreciate the ramifications." I said, "I disagree with your mom on that because you go off when you are in situations that you don't like and you don't get your way. You don't want to be in court this morning, but you know there are rules in this courtroom. You're following the rules here, but you don't want to be here. That tells me that you know the difference between right and wrong and you chose when to follow the rules. It may be more difficult at times to control how you're feeling. You can't control how you feel, but you can control what you do. It may be more difficult at times to control what you do, but you can." See, the kid is responsible.

Choosing to act in a way that one knows is wrong defines much of juvenile (and adult) responsibility. Some court actors did not attempt to nuance this belief any further, arguing that the child either is responsible or he is not responsible and, therefore, no longer in the hands of the juvenile court.

Ignoring the question whether or not the juvenile is legally responsible, some members of the court look to the value of a child admitting that he or she is responsible. Some contend that a guilty plea, even when there are mitigating factors, which make the child less responsible than an adult would be in that situation (i.e. peer pressure, threats

from older children or adults, limited cognitive ability etc.), gives the child ownership of the act and allows him or her to see the value of the court's consequences. These individuals viewed the child's answer to the question "Am I [the child] responsible?" as a crucial factor in the court process. A prosecutor noted, "That they are taking responsibility for it, that they are owning what they did, I would say that's a positive thing. My reaction to that is 'good!' that means they get it, that means, we've got a chance with them." On the other hand, a public defender saw this as problematic in a system where the best legal move might not be admitting responsibility, "If the child is pleading guilty and they did commit the crime, then they're owning up to it. It's fine that they are being responsible for their actions. However, I get very uptight when they enter pleas of not guilty and I hear 'oh they're not taking responsibility for their actions.'" The public defender emphasized that every juvenile has the right to plead not guilty and that in some cases that is the best legal choice even when the young person is guilty.

Court actors also framed responsibility not as something that the child has, but something that the court gives the child. In other words, responsibility depends less upon the offense or upon the elements leading up to the offense, but on whether or not the court provides consequences for the action. Asked, "What is your reaction to this child is responsible for his or her actions," a judge responded, "Every action has a consequence, whether it is positive or negative action. And my first reaction to that sentence is that the child has a consequence for their behavior; they are responsible for it." A public defender's first reaction to the question was to inquire, "The judge saying that or the prosecutor saying that or you saying that?" Another public defender noted, "It's usually the court or somebody saying he is responsible for what he does."

How does a child become responsible? Does it have to do with the child's developmental level at the moment of the offense, with how the child perceives the offense, or how the court assigns consequences? Court actors mark the moment of responsibility at different points along the path from offense to consequence. Still, most court actors contended that most of the time children have a choice to act in accordance with the law or not. Responsibility, however, does not always mean culpability in the eyes of the law, particularly for court actors who lack the power to determine whether or not a juvenile has committed a legally punishable offense. While determinations of responsibility do not translate directly to adjudication, court actors make choices influenced by their opinions regarding juvenile responsibility, such as whether the juvenile can and should be helped in the juvenile court. The next section explores the possibility that some juveniles cannot be helped by the juvenile court at all.

The “Un-Savable” Juvenile

Overall, members of the Ingalls County Juvenile Court expressed optimism about helping children overcome the struggles of childhood to become law-abiding adults. Most insisted that children adapt more easily than adults, are less set in their ways, and can thus benefit from the programs provided by the court. Actors from all sides of the system argue that most juveniles in the community will never need to go through the court system at all and they estimate that about 80% of young people act with law-abiding behavior after only one or two court interventions or with no intervention from the court. This number may or may not have statistical truth, but it demonstrates the perception of

actors within the court that children generally benefit from rehabilitation. A judge recounted the story of how such a percentage may have come about:

There is a county commissioner, now deceased... who used to say, talking about kids... 'There are 80% that you will never have a problem with, they'll go about their life, they'll graduate, they'll become somewhat productive, they may not be the most brilliant, but they are going to get through school and no other resources are going to be necessary. Out of the other 20%, there will be 10% that you see and you will make a difference. They won't come back. They will come in once or twice and then the school or the kid or the family, something clicks that the child gets it and you don't see them again. There are the other 10%, 5% you will see over and over and over again and they will be lucky to make it to 25 without being in prison or dead. The other 5% there is no hope for.'

This raises the question: what happens to the 10-20% that the system can't change? Are they given the wrong programming, through incompetence or insufficient resources? Undoubtedly, there are children who slip through the cracks of the system. The issue, however, is complicated by the notion that there are un-savable children. Exceptions to the optimistic, rehabilitative philosophy of juvenile court actors reveal the pragmatic layer of juvenile court philosophy and demonstrates most clearly the moments when the juvenile system appear in conflict with the people it serves, because the court's founding institutional rationale contends that all children can be saved. The current law, however, provides an escape for court actors who meet juveniles for whom they have no hope. The alternative for juveniles for whom court actors have given up hope of reform is certification to adult court. In criminal court, the un-savable adult could be permanently incarcerated or sent to a mental health facility to protect the community and the defendant from uncontrollable criminal behavior. In juvenile court, those options are unavailable; a young person can be sent to a juvenile facility for short stays, but they are released when they age out of the court's jurisdiction. Additionally, in traditional juvenile court

philosophy, there is no formal recognition that un-savable children exist. The court, in recent years has attempted to change this belief through programs like certification to adult court, but the fundamental principle that all children can be saved remains in the court.⁷⁷ As one prosecutor commented, "There is something optimistic or even naive about me that I like to see the hope. I like to see that for juveniles they still have a chance to change their life around." The existence of un-savable children goes against the core principles of the court, which provides a unique challenge for members of that court, if they do believe in their existence.

Some court actors aligned more or less with the juvenile court philosophy that courts cannot give up on children. On that end of the spectrum, one prosecutor said, "I think there are very few that I would give up on completely. And the ones I give up on completely, it's not that they're bad, it's that something is wrong...Thank God there are very few of them." On the other end of the spectrum, a mental health professional said:

I've seen a fair number that are not [savable]. They go to prison. I mean if you get people who have had a lot of juvenile interventions who are committing nasty crimes and they've got an escalating pattern. What else are you going to do? Up to a point you'd like to respect the rights of the juveniles, but after a while you also have to protect society. If you feel that people are going to continue to be a menace no matter how much intervention they've had in the past, that's the role.

A county attorney concurred with this assessment of un-savable delinquents, saying:

For the 90-plus percent of kids who really aren't going to re-offend or are not going to pose a threat to public safety, get them the service and do as much intervention possible so that we don't see them again. For the seven to ten percent who are frequent flyers, there is a small number who just simply need to be incarcerated because they are such a risk to public safety.

Judges faced probably the most difficult choice in determining if a child can be rescued through the juvenile court. Their attitudes influence whether the juvenile will

⁷⁷ For more on these specific mechanisms see chapter 2.

remain in juvenile court, whether he will be kept through extended jurisdiction juvenile, or if he will be certified to adult court. The range of responses from judges show that if these attitudes do affect whether the child goes to adult court, then which judge presides over a case will have deep ramifications for the juvenile. On one end of the spectrum, a judge said that, “There are some kids that are so anti-social that it’s like stories of people who have been raised by wild animals. You can’t get the wildness out of them. How are you going to make a difference?” This opinion shows the lack of faith that some judges have in the system to address the needs of its most troubled juveniles. Some court actors, however, have not lost faith in the basic principle that all children have the potential to change and be helped back to law-abiding behavior through juvenile court intervention. On this end, a judge framed un-savable juveniles in terms of possibility, “There are certainly plenty of kids that I can’t help right now. Hopefully as they go through things, as they experience consequences, as they make mistakes, they think about maybe something that I’ve said.”

Juvenile justice in Ingalls County in the 21st century shows how the idealism of the early juvenile court has transformed into a pragmatic, hybrid system. Court attitudes reflect this gap between juvenile justice philosophy and realism. Even the prosecutor who believed that all children could return to the path of law abiding behavior admitted that she might be naïve in believing that. Some children, it seems, threaten the community to such an extent that juvenile court cannot restrain them. Juvenile court actors seem to prefer that young people stay young people and remain within the jurisdiction of the juvenile system, yet court actors also admitted that some juveniles inhabit a realm beyond the reach of juvenile court services. Institutional changes, such as the addition of

certification and extended jurisdiction juvenile provide more flexibility for court actors, but they still confront the powerful appeal of the rehabilitative model when dealing with individual young people.

Conclusion

The juvenile court provides several significant instances of legal ambiguity, which lead to varied perceptions of role, identity, and blame. Individuals within the court construct the child and their own roles within a framework of experience, attitudes, and legal constraints. While the visions of juvenile vary, there are certain constants that reveal how court actors attempt to reconcile institutional philosophy with operational reality. Court actors support arguments about personal responsibility, which is a key element of criminal law, but also blame societal corruption for juvenile delinquency, echoing Progressive reform philosophy. They adapt formal court roles to fit the needs of a particular child and to co-exist with the informal roles filled by parents. They mix hope for the rehabilitation of every child with fear that some children are too dangerous to save.

These ambiguities help form court actor's perceptions of blame within and outside the legal context. Interacting within a legal framework, most court actors ascribe blame to juveniles, contending that they hold responsibility for the choices they make. Many court actors, however, also assign blame to parents and society. Blaming poor parenting or violent video games for a child's misbehavior may seem cliché. Within the legal context blame outside of the child's personal choices reveals the constant constraints put upon legal actors who have no control over the larger context of a child's

life. Legally, court actors may only remedy the effects of poor parenting by removing the child from his home. This response punishes the child more than parents and, in delinquency court, depends upon the seriousness of the offense and not upon whether or not court actors believe that the parent is in part to blame. Thus, court actors create a system, which emphasizes personal choice, but that also attempts to incorporate the parent more fully into the process in ways that the court actors can control.

Court actors create self-defined roles within the juvenile justice system, which are deeply influenced by the constraints of their power to hold non-juveniles accountable. They adopt a parental role, a teaching role, and a bridging role that do not come from the broader professional identity of judge, attorney, or officer of the court, but from their experiences within the specific context of juvenile justice. The parental role extends court actor's power to interact with the child in a way that many court actors view as pre-legal and necessary for the child's moral and social development. Their teaching and bridging roles supply the topic of the following chapter, wherein I examine how court actors construct the legal process in a way that appears understandable and just to the child.

Chapter Five: Guiding the Child to Justice

The young person's experience in criminal law provides ample opportunity for rehabilitative and punitive, offender and offense-based justice to collide. While many juvenile delinquency procedures mimic those of adult criminal court, court actors modify the process through language and identification with the juvenile in order to provide a juvenile-specific justification for the legal system. Court actors who work in juvenile court confront different problems than their counterparts in adult criminal court. Juvenile court actors attempt to explain the legal system and create identification because of their perception that juveniles do not comprehend the norms and purposes of criminal law.⁷⁸ While adult defendants may not fully understand these principles either, the legal system functions in part through shared understandings of certain concepts and terms, such as guilt, the judge, and the right to remain silent. This shared understanding lends legitimacy to the legal process, which becomes problematic in the juvenile context.⁷⁹ Children understand these ideas differently than adults because they do not possess the life experiences and cognitive functioning of the normal adult. Court actors become translators between the child and the foreign, adult legal world. The previous chapter suggests how juvenile court actors perceive young people. This chapter will explore how court actors envision the juvenile's experience in the justice system.

This chapter shows how, in Ingalls County, court actors attempt to create a sense of justice that young defendants can access by constructing juvenile-specific approaches within the formal legal process. Their approach, which incorporates the court actors'

⁷⁸ For an in-depth look at how adults frame legal understanding see e.g. Ewick and Sibley (1998).

⁷⁹ For an approach to legitimacy and why adults obey the law see e.g. Tyler (2006), Macaulay et. all. (1995).

vision of the young person (addressed in Chapter Four), balances the conflicting elements of juvenile justice. While formal statutory and procedural distinctions exist between juvenile and adult court, the juvenile-specific approaches detailed in this study go beyond the formal structure in order to address how the individual child understands law. Through competitive and collaborative relationships among court actors, various professionals assert their connection with the juvenile while the group maneuvers the juvenile toward a fair result. Individuals position themselves within the competing concepts of juvenile justice by deciding, for example, how to justify consequences to a young person. This position can conflict with other actors' positions, thus leading to competition for the juvenile's trust or attention. Meanwhile, the court group adopts a guiding role for a juvenile through legal processes, created and implemented by adults.

Ingalls County court actors incorporate juvenile-specific approaches into the formal legal structure in four significant steps. This chapter follows these four steps by which the court actors constructs the court based upon the juvenile's experience. First, the court actors recognize and confront the presumption in many legal procedures that all participants in the system, including the defendant, are peers. This step shows how court actors identify the specific challenges of working with defendants who have a different kind of relationship with authority. Second, the court actor attempts to translate the substantive law into terms that young people can understand. Strategies employed by court actors serve to determine the extent to which a child understands the situation; this either reveals the juvenile incompetence or bring the juveniles understanding in line with the court's meaning. Third, court actors confront the unique youth perspective because they want the juvenile to see – and accept – the system's justice. Fourth, Court actors

demonstrate their role as guide and translator through the justice system in part through their assertions of identification with the juvenile. Yet, intriguingly, identification can become a zero-sum game, where court actors compete for connections with the young people that they serve.

Children and Authority

At home, at school, on the bus, young people spend most of their lives listening to adults tell them what to do. Many learn from an early age to do what the “grown-up” says. This interaction might work relatively well with babysitters and teachers, but in juvenile court it is more problematic. For those adults in roles which require authority for the safety of the child and where the child’s best interest is (at least in theory) the sole motivator, knowing that the young person will obey and always tell the full truth can be crucial. In court, however, the child’s best interest is not always the sole concern. Legal processes build upon the assumption that interactions between legal professionals and defendants are interactions of peers in some important ways. In this case, “peers” means two citizens; people who, outside of the courtroom, have legal equality. In juvenile court this peer relationship does not exist and in its place is an adult-child relationship, whose particular power dynamic is not formally recognized in the law. Court actors contend that an adult’s perception of the legal system varies significantly from the child’s perception when it comes to their relationship to legal authority figures. Consequently, court actors attempt to reframe their own roles to negotiate the peer relationship implicit in the law.

The right against self-incrimination provides a striking example of how foundational legal principles have dramatically different meaning in juvenile court. The

right to remain silent poses a particular challenge for juvenile court because young people are often required to incriminate themselves at home, at school, and in other positions where adults control the situation. In most incidents that occur outside of the juvenile court, adults don't impose punishments with the constitutional rights of the accused in mind. As a mental health worker noted, "Kids are much more acquiescent, especially the younger ones. They have less of an understanding of their Miranda Rights, things like that. They are more likely to adhere to authority figures." A public defender commented on the frustration that she feels with regards to the application of Miranda Rights and juveniles:

They always confess. Kids are taught to talk to adults. 'Police are your friends, they're just trying to help you.' I think for the most part police are trying to help you, but if you are charged with a crime you have a little bit of a different relationship with that officer. From that standpoint they're not your friends no matter what they tell you. But kids are always told to do what grownups say and that's why they always talk.

Another public defender agreed, saying, "It's hard because kids are very concrete thinkers at this point, so it's hard for them to get abstract about the right to remain silent and that the authority figure won't hold it against them if they keep their mouth shut." Court actors, however, do not all have the same role with regards to juveniles. For some, young people are not clients or wards, but defendants to be prosecuted. While professional roles do not entirely determine the court actor's perception of juveniles, it does constrain their possible perceptions. A prosecutor noted, "Kids are just as smart as adults, they might be more impulsive, but when it comes to knowing their rights and what is a good deal they figure it out just as quickly. It's a myth that kids don't understand their rights." The child's unique experience with Miranda Rights reveals the ambiguity and contradiction of juvenile court. The written law and some court actors presume that

rights are more than a formality and that defendants possess a minimal understanding of what their rights mean. Juveniles experience rights differently because of their status in society as a ward, rather than a full citizen. Court actors define their roles in part around this different experience of rights, but must still function within a system that presumes that those rights are understood.

Complications occur even in non-adversarial child-adult interactions within the court setting. One public defender commented, “It’s hard because a lot of the kids want me to make the decisions for them, so I just pull back and say I can’t do it.” In this case, the public defender adopts the role of advocate, rather than guide, which is often difficult when her clients lack decision-making experience. Some court actors attempt to envision themselves through the eyes of the juvenile so as to anticipate the juvenile’s response to the court actor’s role. Sometimes, there are unintended elements that the juvenile perceives which are not conducive to the court actor’s purpose. One judge commented that in his role as an authority figure, “whether you’re a big judge or a little judge in terms of physical presence, when you’re sitting up on the bench with your black robe on with shoulder pads, you look pretty big anyway.” In a similar vein, a judge commented that it is difficult to connect with juveniles because, “There’s too much stuff going on with kids. I’m just this old guy in a black robe who is talking down at them.”

While in these cases, court actors may lament the inherent distance between adult and child, in other situations court actors benefit from the hierarchy within juvenile court. Sometimes, court actors want young people to feel at ease, but in other circumstances, they want the young person to fear the court. Public defenders do not express any interest in scaring young people, although they noted the power that adults can have over young

people. As one public defender noted, “You know as an adult that you can get a kid to do or say about anything. You don’t have to be very smart to figure that out or to do it. They are easily manipulatable.” Prosecutors, judges and even mental health workers, however commented on the value some fear and mystery in the court. A prosecutor noted, “Sometimes the fear of court is a good thing,” a judge adding that sometimes, “I’m hoping to scare them a little.” The court does not break into two camps, those who want to make the young person comfortable and those who want to scare him. Individuals who also take time to explain the process to young people also utilize fear when the situation calls for it. A mental health worker said that he distinguishes between cases where he explains the court process to a young client and those situations where, “sometimes a kid needs to be scared, then I’m not going to warn him.” He added, however that there are times when he feels that a judge might be too strict with a young person, to which the mental health worker will say, “He’s gonna act real mean, but really he’s nice,” in order to balance out the judge’s attitude. A judge distinguished the kind of threat that he would use with a young person that would not be appropriate or effective with an adult. He would use language like, “I’m gonna put my foot up your behind and snap it off if you don’t take care of business” with a juvenile. Court actors evoke fear in juveniles in order to keep them from coming back to court. They take advantage of the inequality between child and adult in order to protect and help the young person and also to circumvent future crimes.

In adult court, the power relationship between judge, attorney, and adult defendant is unequal, but each individual shares equal status under the law. Whatever the social status differences, adults share a relationship to each other quite different from the adult-

child relationship. Court actors respond to the contradiction between law and juvenile defendant by modifying their roles to address the criminal and the child. This requires new strategies for guiding the young person through an adult-dominated legal system, so that the young person may find justice, while the fundamental legal principles remain intact.

Explaining the Rules

Law is complicated. Most adult defendants do not understand the nuances of jurisprudence, statutes, and procedures, which is why trained and paid professionals navigate this complex field for their clients. Even without the assistance of an attorney, adult defendants are presumed to have a certain functional understanding of basic legal concepts like juries or guilt. Adults who are cognitively impaired to the point that they cannot comprehend these basic concepts tend to be found incompetent to stand trial. Legally, the same standard exists for juveniles. Young people have less developed abilities to think abstractly and determine what is in their best interests, they also lack the education and life experience that comes with age. Since it would be impossible for all young people to be found incompetent, court actors employ strategies to explain court to young people in terms that they will understand, strategies that allow the juvenile court to treat children as children while also treating them as delinquents. In doing so, court actors attempt to make law accessible to young people so that they can impose legally justifiable consequences.

People working with juveniles frequently simplify the legal system and employ tactics, which incorporate the juvenile's sphere of understanding into the complex legal

world of the court. Court actors translate legal terms and ideas because, as one judge commented, “A child will have no idea about my language. They may not understand the word ‘arraignment’ they may not know what ‘disposition’ means. They might think it’s some kind of medical term, who knows?” In order to combat the inherent confusion in a system where the defendants and the court speak different languages, some juvenile court actors reject the court’s jargon entirely when communicating with juveniles. A public defender says, “I try to break it down. So instead of constantly talking about cross-examination, I say we can ask the witnesses questions and instead of testimony, I will say someone will come in and talk about what happened.” A judge adds, “I say ‘do you understand me?’ I say that a lot. ‘Am I being clear? Is this clear to you? Do you understand me?’” A prosecutor argued that, “Usually a lot of it is getting them to explain it back to me, not in my words.” These strategies circumvent a complex legal language, but they also justify the rules written in that language so that they can employ them without seeming arbitrary to the child – who cannot understand why the rule is there if he cannot understand what it means.

In the courtroom, judges articulate important concepts to juvenile defendants, particularly in petty misdemeanor cases where the child does not have an attorney to explain the rules. In a small, Ingalls County courtroom, one judge repeated the word “choice” when ascertaining the juvenile’s plea, stating, “You have a choice to make at this point. You can either deny the charges and then the state would have to prove that you did it beyond a reasonable doubt or you can plead guilty. I’m not going to force you one way or another, but you have to make a choice.” Another judge used a similar technique saying, “You want to plead guilty today because you are guilty right? No one

forced you to plead guilty.” Another judge stressed the child’s freedom to act as he chose, saying, “You are able to do whatever you want in that regard, but I need to hear your choice.” Judges emphasized choice to juveniles so that the young person would better understand that he did not have to do what his parent or the judge told him to do, but what he freely chose to do based upon the offenses he had committed. This language gives the young person ownership in the process, but also places the responsibility upon the juvenile to make his own life choices.

By translating law into understandable language, court actors incorporate cultural referents that are not generated through the legal system. Sports and popular culture add meaning and context to a foreign system, but also add new layers of meaning over which lawmakers have little control. One prosecutor, to explain his relationship to the defendant states, “If we were playing football, I’d be offense and you’d be defense.” One public defender adds, “I ask them about *Judge Judy* or if they have ever seen *Law and Order*. There are so many of those shows that most of the time they have.” Another public defender echoes this strategy, saying, “If they haven’t been in court before I see if they have ever watched a trial on T.V.” She added a hint of doubt to this approach, however, saying, “I think I need new strategies, because I’m not sure mine are working.” Analogies and cultural references illuminate abstract law for young people who lack developed abilities to think abstractly. Concrete examples allow young people to apply their situations to situations that they understand and with which they feel comfortable, such as the rules of a football. It also allows provides them with an idea of what the court experience might be like, an experience many of them have never encountered before. On the other hand, the juvenile court process is less clearly linked to law as it is written, but

rather meaning that the child and court create. Rather than following lawmakers' choices about what language best expresses a legal concept, individual court actors make that choice for themselves. In doing so, the court actor retains some elements of the original statutory intent, but might lose other elements of the law's original meaning. For example, if a court actor uses *Judge Judy* as an example, then she includes the parts about the Television show that are the same as the juvenile court experience (the judge as arbiter of justice, the adversarial system, the rules of evidence), but also the elements that differ (the specific laws that are applied, the unique approach of a particular judge).

Explaining the rules to a juvenile is not always as simple as asking him if he has seen *Judge Judy*. What the juvenile knows and who teaches him can be strategic legal choices. One prosecutor abdicates the educational role, explaining, "It's the public defender's job to explain to him what's going on." Public defenders, however, may have good reason – as advocates – for their client to understand the system: children can be found incompetent to stand trial if their cognitive functioning prevents comprehension of the system. Sometimes, the court determines that a juvenile is not competent, but would be competent with some education about the justice system. One public defender put it plainly, "We're not going to educate him. We don't want him to be competent. Educate him so that the state can prosecute him? So, I leave that to somebody else. They wanted us to do that and I said we would never agree to that." The adversarial system in this case prevents the child's educational development. The court's first purpose is to provide a just outcome, not to teach young people about the law. In cases where the young person is strategically left in the dark, however, the court actor risks that the young person misunderstands why he is in court and what happens to him while he is there. Although it

might save the young person from legal consequences for his behavior, not explaining the process inhibits the likelihood that the young person will find the system anything but arbitrary.

Court actors choose strategies for incorporating the juvenile into the legal system: including elements of both rehabilitative and punitive justice. They tailor their language to fit the needs of the people they serve, which demonstrates the traditional juvenile court practice of child-specific language and discretion for individual court actors. Ingalls County court actors choose to protect the child and acknowledge the differences between child and adult by guiding the child through the legal process. Punitive elements of juvenile court appear as court actors reinforce punishment and adversarial justice; justifying this system to the juvenile by explaining the adversarial and consequence-based nature of law. In some cases, the child's understanding of the juvenile justice system becomes a legal strategy. The court actors power over language and communication techniques represents one of the places most open to discretion, where the individual control's the law's power.

Communicating Fairness

“That’s not fair!” is a complaint that many parents and teachers have heard. From a child’s point of view, adult decisions might seem arbitrary and, thus, unjust. By the time that the judge gives disposition in a delinquency case, there have been myriad opportunities for the young defendant to feel confused, excluded, or unfairly treated. The probation department’s programming for that young person may be considerably less effective if the juvenile does not understand why he is there and what this consequence

has to do with his past actions. Laws (both constitutional and juvenile court-specific) and internal standards within the county attorney's office and probation provide guidelines for how the court treats young people. To an outside, adult observer, these guidelines prevent dispositions from being entirely unjust and arbitrary. Yet, young people may not be able to comprehend the fairness that adults identify. For the juvenile to accept the justice in a particular outcome, court actors demonstrate that the child needs to understand why adults made certain decisions and to feel some control over the outcome. Court actors attempt to translate the kind of procedural fairness that adults can often comprehend into a kind of justice that young people understand.

The court actors in Ingalls County emphasized their commonly held view that juveniles comprehend justice when the court draws clear lines between action and consequence. A prosecutor noted, "The judge told him, 'how are you going to feel if you find out a little girl has been shot or a little boy playing in his neighborhood has been shot with one of the guns that you sold?'" This type of link, frequently made in hearings, between the young person's choice and bad things that could happen as a result begins to justify the court process to the juvenile by showing how the young person made choices that brought him into the court's control. In court, a judge said to a juvenile who had just plead guilty, "The fact is you could have left the fight and gone in the other direction." Another judge commented that she often asks, "What could you have done differently?" Court actors who argue for or impose consequences upon a young person seek to explain and justify those consequences to the young person. Court actors in the modern juvenile court justify consequentialism to young people in part in order to incorporate more

punishment-based arguments into the juvenile court model. Individuals take the first step in that process by helping the child understand why what he did was wrong.

Action and consequences apply to the consequences of a criminal act, but also to what happens in the court. As a prosecutor mentioned the court is most effective “if they really know we’re watching and paying attention and we will do what we say we do. We meet with them at the beginning and say ‘if this kind of behavior continues, that is what is going to happen and lo and behold it happens. Then we give credibility to the system.” By showing the young person how actions lead to consequences, court actors explain the basic concept of retributive justice to young people. Several judges make informal verbal contracts with young people to reinforce the link between the young person’s choices and the consequences that follow. One judge said, “If I give a kid a break the first time, I write on the file ‘do not come back.’ That tells me that I told that child, ‘this is your first time in court, I never want to see you again, you figure it out and if you come back do not ask for a break.’ So when I see that kid come in and they see me and go ‘oh shit’ they know that they had an understanding with me.” Another judge described a similar system:

I get them to make a promise that they do the things the have to do on probation and that they aren’t going to come back.... I write in the file ‘promises made’ and I tell them at the time, ‘look I’m writing down promises made, do you know what that means? It means you just made a promise to me and I am making a promise to you, if I see you in court again I’m going to lock you up. So when they come back I say, ‘We made a promise, I told you one of us was going to keep the promise. I hoped it was you. You didn’t keep your promise, so what’s the argument here?’

These promises allow court actors to frame punishment as the inevitable results of the child’s choices. They empower the child, but also bring to bear on them a retributive system that links action with punishment, rather than treatment.

Consequentialist arguments work best, some court actors argue, when young people understand the system. Comprehension leads to acceptance of the justice model that court actors propose. Fundamentally, one judge argued, “The consequence doesn’t work for somebody who doesn’t know what they did. And we know that when we are training young people, and animals...if they don’t know why you are upset with them, they don’t know how to change their behavior.” A prosecutor commented, “I always tell them I am not setting them up to fail. I want everything that they are ordered to do to be clearly articulated and ordered in court so that way the juvenile knows everything they need to do to stay out of prison. Because I don’t want to set them up to fail, I don’t want them to say ‘well I didn’t know about that’.” In one court session, a judge explained his rationale for sending a young defendant to an out of home placement, saying, “I don’t like doing it, you’re not going to like being there, hopefully it’s going to be a wake-up call.” As was explored in the previous section, the juvenile experiences many opportunities for confusion in the court. Court actors avoid seeming arbitrary by explaining every step of the legal process. Transparency, in the juvenile court, requires active participation of the part of court actors to include the young person in the system. Disposition provides the greatest opportunity to link actions and consequences and to detail the reasons why a young person must receive certain treatments and punishments.

Court actors report that not only giving full information, but also giving the young person the power to make choices helps him to “buy into” the system’s fairness. Even when the juvenile does not truly have a choice, court actors stressed the power of alternatives. One judge explained the value of the threat, “do you want to live at home or do you want to live elsewhere?” That the young person, “almost always want to live with

their parents. I say, ‘if you want to live at home then you have to follow the rules at home.’” On the other side, a public defender described reconciling his clients to court mandated consequences by showing the choice that the young person has between doing what the court recommends or facing worse consequences, “You have to approach the kid and say ‘you may not think this is the best way, but it’s certainly better than being locked up in here. I know you don’t want to go to this anger management group, I know you don’t want to go to this after school thing for getting your credits, but in the long run it’s probably a lot better.’” Alternatives make the court’s chosen consequences seem more reasonable. When the young person is made to see that the other options are worse than the one that the court recommends, then the consequence appears fairer. While these arguments justify a consequence-based model, they are also arguments about the child’s best interest. Court actors simultaneously show why the consequence is necessary as punishment and also why it is best for the child. Court actors incorporate the juvenile court’s treatment element into disposition’s punishment in order to balance both aspects of juvenile justice. The court simultaneously punishes and helps the child, because every consequence is simultaneously treatment and punishment.

The complex nature of juvenile consequences, which incorporate punishment and rehabilitation make it difficult to assess whether the young person actually experiences justice in the juvenile court. Court actors disagree about the effectiveness of their attempts to justify the juvenile justice system to young people. While one judge expressed hope and confidence that, “After I do a disposition, if the kid is honest, the kid isn’t going to walk out of here thinking that it was unfair. They may not like it, but they’ll understand where I’m coming from. They might think it was kind of harsh, but mostly I

think they'll say, well, that was fair." Immediately after the court's decision, many court actors argued that young people do not see their consequences as fair. A mental health worker spoke to a common frustration in the court that young people do not view consequences in the same way as an adult. He said, "If you're going to explain to a kid that it's really good for them to be send away from home for three months to work on their personality development, that's a significant chunk of time for them. Kids are going to want to go home. They don't want to sit there and deal with character issues. Adults may have a better grasp of that than kids." A prosecutor agreed, noting, "It's punishment when they have to do something they wouldn't have done otherwise." Court actors expressed more hope that retrospectively, young people, especially those whom the court helped reform, would see the justice in the system. One mental health worker thought that after some time had passed, "kids would say it's pretty fair." Justice, however, might not be something that all young people receive at the hands of the juvenile court. The same mental health worker added a troubling caveat to his generally hopeful attitude toward the juvenile court's fairness, saying, "African-American adults have said that the system was harsher for them than for white kids. When that many people have the same perception, I begin to think they are right." How court actors design justice for young people, thus, may not always be effective, even in the eyes of the designers of this justice.⁸⁰ Hope that the juvenile finds fairness, however, pervades the attitudes of court actors, particularly the judges, who ultimate bears responsibility for the outcome of a case.

⁸⁰ More information on recent trends in race and law include e.g. Hart (2005), Wriggins (2005), Herbert (2006), Massey (2006), Bell (2004).

The court's two competing models of justice determine how the court actor frames fairness for the juvenile. Consequences simultaneously represent punishment and treatment. As a prosecutor noted, "If you promise something or you threaten something, you follow through on that. You have to have both carrot and stick because if voluntary services worked for the population that we see, we wouldn't see them." Court actors use particular arguments and language with young people in order to demonstrate both ideas' fairness. While emphasizing consequences, court actors also argued that certain outcomes were in the child's best interest, or at least that they were better than the alternative. Along with explaining the rules, justifying the system also gives court actors latitude to describe justice in whatever terms they imagine will best connect with the child's understanding. Juvenile justice transforms into a new system, constrained by law also open to individual interpretation.

Identification

Many court actors affirm that they choose to work in the juvenile court and see in themselves a unique aptitude to work with children. Simultaneously, however, interviewed court actors noted deficiencies in other court members, describing what they perceived as an inability to identify with juveniles in the court. Identification is framed as a competition for the child's trust and respect, with court members' personal characteristics (age, race, temperament) as either assets or impediments. The individual defines the personal identity that she chooses to incorporate into her professional role in part in terms of perceived need within the court. If an African-American juvenile needed, for example, a strong African-American role model to keep him on the right path, then a

court actor might define his role as filling this need, as well as using his ability to fill this role as evidence of his superior ability to identify.

The distinction dominating the Ingalls County court actors' worldview is that some individuals work well with kids and others just don't "get" kids. An individual who self-identified as being "good with kids" argued that:

There are people who gravitate to work with juveniles and they're different than the ones who work with adults. Sometimes you get competency evaluations because you get lawyers coming down from the adult system who can't relate to juveniles. They can't form a relationship with them and develop the appropriate rapport so they say they kid can't assist with their own defense because they can't develop a relationship with me, but that's a two-way street... You get some who really don't know how to sit down and talk to kids, don't know that they function differently.

A public defender said, "I don't think prosecutors have enough training or understanding of corrections and what works with children." Another public defender simply stated, "I just feel like I relate well to kids." A mental health worker commented, "I establish a rapport, which is remarkably easy if you show them a little respect. I think I am just gifted at giving them respect because of my experience." Juvenile court actors form a group identity by asserting that most people who choose to be in juvenile court are there because of their personal connections to young people. This group, however, includes some individuals who were assigned to work in juvenile court and who fail, in the eyes of their colleagues, to develop a rapport with juveniles. The court group competes and collaborates in order to bring the juvenile into the system.

Race appeared as the shared identity most commonly when African-American court actors emphasized adult-juvenile interactions. These interactions defined by racial identification appear particularly significant in light of evidence that racial disparity continues in many juvenile court interactions. Justice, a concept that some court actors

suggested African-American young people struggle to access, can assume a different meaning when the arbiter of justice is also African-American. One judge employed strategies to justify consequences that spoke to a shared racial background, saying, “Sometimes with black juveniles I will say ‘you have a responsibility to all of us black folks. When you are out there doing that knuckleheaded stuff you reflect negatively on all of us.’ Somebody needs to be telling these folks that stuff. I get down with folks like that. Most of the judges around here can’t, but I can and I do.” The emphasis on race included ways in which racial minorities could help young people access justice, but also showed how racial differences between court actors and juveniles could result in a failure to act justly. As one public defender added, “It’s hard for judges to look at someone who doesn’t look like them and see them...I think judges are more willing to hold kids of color because their families don’t look like them. They don’t remind them of their sons and daughters and nephews, nieces. They look different.” By highlighting a connection that many court actors cannot access, such as the identification of African-American court actors to young African-American defendants, these court actors assert their superior capacity to help the juvenile through the system fairly and in a way that the young person understands.

Gender and age also function as points of identification between adults and juveniles, although these characteristics sometimes emphasize a court actor’s point of view than to a particular shared experience. While with race, the court actor speaks directly to a shared point of reference with the juvenile, other forms of identity generally gave court actors a different perspective on the juvenile’s experience even if they had little in common with the young person. While none of the court actors are children, a

public defender who noticed, “Some of the judges are kind of old and they’ve forgotten what it’s like to be a kid,” implying that other court actors are younger and remember adolescence more clearly. A prosecutor added, “I think that I can be really understanding to a teenage boy who sometimes does stupid things that maybe some of the females don’t understand. I remember being a teenage boy. I remember doing incredibly stupid things for no purpose, so I’d like to think that I bring that to the table.” These comments emphasize the court actor’s empathy for the juvenile. While not citing gender specifically, one judge pointed to her experiences as a mother and grandmother, saying, “I have a lot of children. I think that that helps in my decision-making process. I think the judge who has not had children in their life or been a primary caretaker or had difficulties have a harder time deciding.” This statement’s connection to gender follows from the feminine attributes of the primary caretaker role. In each case, the court actor argues that some other member of the court lacks certain qualities which make him or her able to relate to the juvenile and, thus, asserting a superior claim to the child’s trust.

How these points of identification influence the court actor’s behavior in a particular case is not always clear. While beyond the scope of this study, one hypothesis is that ability or failure to connect to a young person changes the severity of punishment that the court actor supports. Another possible correlation between identification and the juvenile’s experience is that young people may accept the law’s authority more readily if they feel a connection between themselves and those who enforce law. Finally, young people might be less likely to re-offend if they feel a personal connection to an adult who would be disappointed if the young person continued to act out. Discretion within the juvenile court, particularly in language, allows the court actors to behave in range of

ways toward the juvenile. The young person must choose whom to trust and if they are to trust the system at all. In order to make a meaningful connection with the juvenile, court actors assert elements of their personal character with which the juvenile can identify. This process reinforces the uniqueness of juvenile justice by drawing a line between individuals who can work with kids and those who cannot, but it also fosters competition between court actors. Many statements made by court actors regarding identification frame the court actor's ability to connect with the juvenile in terms of another court actor's failure to connect.

Conclusion

A young person could pass through juvenile delinquency court understanding the process enough to know when to plead guilty and when to contact probation, but never accessing the court's meaning, value, or purpose. Court actors attempt to move beyond law and procedure to make the court's meaning understandable to an audience that has very different life experiences and cognitive abilities than the average defendant population. Reflecting on the frustration of working with young people, one mental health worker said, "My job is to give wisdom to young folks at a time when they don't want it." The court's institutional constraints such as rules of procedure and dense legal language, often meaningless to young people, become opportunities for creativity and discretion when court actors attempt to include the juvenile defendant in the court process. Juvenile court actors use images and language that have resonance with young people, frame consequences in ways that they hope young people will accept, and compete for the juvenile's trust and attention through their personal identities. The

competition for trust demonstrates how the court has become an adversarial system, while maintaining some of the core principles of the rehabilitative model. Court actors frame some of their interactions as adversarial, but not in the strictly legal sense. Their weapons are not legal arguments, but rather they wield personal characteristics in the battle for a young person's trust.

The court group collaborates to create a juvenile-specific approach, but they also compete between individuals and roles. Public defenders and prosecutors, for example, have different attitudes toward making the young person nervous. While a prosecutor might argue that scaring the child keeps him out of trouble, the public defender claims such actions are manipulative. Individuals compete for the juvenile's attention and trust as well. They highlight certain identities with which the juvenile can identify, often contrasting personal ability to connect with a young person to another court member's failure to do so. Court actors, thus, change alliances and points of view toward other court members based upon what they perceive as the juvenile's need to understand the system and feel included in the process.

Individuals within the juvenile system must create "justice" for children – as seen by the children – which means finding ways to articulate a contradictory message of punishment and rehabilitation. While modifying the system to fit the child supports a traditional juvenile court philosophy, many court actors do so in order to justify consequentialist responses to juvenile crime. Explaining the rules both incorporates the young person into an adult world and modifies that world for the young person. Court actors function as mediators between the juvenile and the law, and the strategies that they employ change to fit a particular case's needs. Juvenile court actors have unique

opportunities because the population that they serve is fundamentally incompatible with some of the premises of criminal law. Young people experience law differently than do adults, but in many ways the law treats them the same. Although many important differences exist within the law between adult and juvenile court, the basic structure and language remains similar enough that young people struggle to access meaning in a system created by adults. The power relationship between children and adults is also sufficiently unique that certain dynamics exist between individuals in the juvenile court that are not formally articulated in the law. Court actors struggle to overcome the discrepancies between the system and the population to which it applies, but they also use this unique relationship to their advantage in certain circumstances, for example where the child needs to be scared so that he won't come back. Through language and identification individuals can adapt within the strict legal world and frame their roles based upon perceived necessity.

Chapter Six: Conclusion

Punishment, and rehabilitation have their place in every case that comes through the juvenile court. Many court actors express certainty that the basic principle of rehabilitation remains the guiding force in Ingalls County. This clarity of purpose surfaced in statements like, “We’re not the bad guys. We’re not there to just lock kids up, but to hopefully open doors to some services,” and, “What we do really is primarily designed to rehabilitate.” Even members of the juvenile court outside of the county attorney’s office agreed with this sentiment, like one public defender who said, “There is some kind of a social work aspect of juvenile court where they are actually trying to find the best resolution to help the kid.” A judge concluded that at disposition, “The whole room, even the prosecutor will be looking at what each child needs.” These same court actors, however, also noted elements in the court that go beyond rehabilitation, because, as one prosecutor said, “some of the kids in the juvenile justice system need significant consequences.” A public defender noted that these “significant consequences” sometimes, “outweigh any benefit these kids are getting.” A judge justified choices to certify juvenile to adult court by saying, “I think we do have to take violent crime seriously.” The tension noted by legal scholars at the broadest institutional level in juvenile courts also exists at the personal level in Ingalls County. Juvenile court actors in Ingalls County, however, do not have the luxury of critiquing the system without providing daily solutions. Court actors work directly with young people in a complex and often contradictory system. Within these parameters, court actors employ strategies that they hope will be effective in each case.

The Argument

This thesis begins by articulating a challenge faced by the 21st century American juvenile court; its rationale is unclear. I explore this problem by identifying three elements of juvenile justice that are necessary, but often contradictory – rehabilitation, due process, and punishment. I argue that these elements are both contradictory and necessary because juveniles as subjects of the law pose difficult questions since they are both protected wards and perpetrators of crime. From this contradictory model of justice, I argue that the point where the elements of each model are balanced is with the individual. Individuals within the court, thus, modify behaviors and attitudes to act as mediators between traditionally juvenile and traditionally criminal ideals and processes.

In Chapter Two, the thesis follows the development of these three juvenile justice philosophies through their historical periods. Each period provides a new perspective on juvenile crime, which address some of the deficiencies of earlier models, but also pose new problems for the juvenile court. The chapter then addresses how scholars in political science, law, and sociology have examined courts in the past. While legal scholars give insight into institutional rationale, they tend to miss the important scene of action in the juvenile court's philosophical development, which in fact lies in the individual, daily interactions of the court. Sociolegal approaches to studying courts provide tools for examining these individual, daily interactions. These scholars, however, have not produced a thorough examination of delinquency court using this approach.

In Chapter Three, the thesis moves from the broad historical narrative and framework for studying the court to the specific context in which this study was conducted. The history and legal framework of Minnesota provide the backdrop for my

research. Understanding the constraints placed upon court actors by their legal choices serves to contrast the approaches employed by court actors in the following chapters.

Chapter Four demonstrates how court actors balance elements of juvenile justice by approaching the young person with certain attitudes about identity and blame. These attitudes, as apply standards of personal responsibility to young people. While the court actors work within the framework that punishes only the direct perpetrator of an offense, court actors widen their definitions of blame and responsibility to include society and family. Personal punishment, however, also remains an important factor in the court, as court actors emphasize the juvenile's responsibility for his actions. Court actors construct a young person who is both a responsible criminal and a non-responsible child, often within the same juvenile. Without denying that young people can be dangerous, court actors attempt to explain this danger through the young person's identity, pointing to external forces that act upon the young person and make him act out. They balance these two visions by adopting the role of guide through the justice process so that the juvenile might be both responsible and treatable.

Building from this vision of the young person, Chapter Five explores how guiding the juvenile through the justice system requires that the court actor practice certain strategies to explain and justify the system. Court actors move from seeing the juvenile as both child and criminal to making a justice system that works for both a child and a criminal. This process requires justifying consequences in a way that young people understand. First, the court actor explains the rules of the game, thereby valuing due process as more than an ideal that has little meaning in a system where defendants cannot access the court's language and rationale. Then, court actors incorporate the punishment

element of juvenile justice into the young person's experience by justify in juvenile-specific terms the consequences of illegal behavior. While incorporating due process and punishment, however, the court actor remains faithful to the original juvenile court philosophy by modifying her behavior to fit a juvenile-specific model that provides hope for redemption within the court's consequences. This process is not always cooperative between all members of the court. Sometimes, court actors compete for the young person's trust. This competition further highlights the importance that court actors place upon ensuring that the young person understands and appreciates the juvenile justice system.

Implications

This thesis presents the beginning of a way to approach the juvenile court. The relationship between court actors and competing models of justice requires further attention and study. While the idea that court actors serve as mediators between these models of juvenile and criminal justice provides a promising starting point, that idea can be taken much further with greater resources and attention from the academic community. Legal scholars continue to study the institutional development of the court's rationale, which does little to illuminate the ways in which two contradictory, but necessary models of justice are balanced in the juvenile court. Additionally, scholars who possess the methodological tools to examine individual legal interactions have not yet turned their attention to the juvenile court. This study generates suggestions at both the theoretical and empirical levels, and this is a vital time to initiate research. The juvenile court is evolving and attention to the institution during the coming years could show

significant changes in the attitudes and approaches of its agents. While the core values of the court are unlikely to shift dramatically, the equilibrium between protection, punishment, and due process could change based upon societal perceptions, new thinking in child development, or new top-down legal environments beginning with the Supreme Court. Future scholars would do well to follow these shifts closely both at the national and the local level, as the way the law treats children has deep repercussions for the development of future citizens.

The single case study method employed in this study needs to be expanded across jurisdictions in a variety of states and in diverse communities. We can likely anticipate that this approach will reveal more breadth to the responses given by court actors, as well as deepening our confidence in the findings reported here. A multi-state study would be particularly revealing in the area of juvenile courts because the statutory framework, particular history, and cultural beliefs regarding juveniles can vary significantly from state to state. While qualitative research that relies on interviews and observation remain the best method for obtaining a rich picture of beliefs and behavior, that picture could only become richer and fuller with the addition of a survey of a random sample of court actors from around the state or country, showing the frequency of certain kinds of responses. Such tools aimed at the aggregate view could be instrumental in disentangling the influence of traits like gender, race, or professional role in court actors' attitudes.

On a theoretical level, this study shifts to site of conflict about the juvenile court's "rationale" from the institution to the individual. One important implication of my argument is that juvenile court actors hold more power than might be initially apparent. In the contradictions and unresolved tendencies of juvenile justice, it isn't procedural

discretion but a competition of social visions, constructing pathways to juvenile justice that must be found in practice because they do not exist within the formal text of the law. Thus, despite the pages of law review articles calling for institutional change in the juvenile court, individual actors remain the best agents for reconciliation between due process, punishment, and rehabilitation. Recognition on the part of all actors in the juvenile court's development, from legislators to law clerks, that how young people are seen and treated in the court helps define the effective meaning of the court's core philosophy.

Where does the juvenile court go from here? This study suggests several paths for further research. Focusing on outcomes, the juvenile court's success can be measured on two levels: first, do court actors employ strategies that balance models of justice in the way that they intend, and second, do juveniles return to law-abiding behavior? The purpose of my analysis has been to demonstrate why these questions require answers. The next step in this research should be to test the outcomes of various strategies employed by court actors. One exciting new area of research, whose implications fit well with the study presented here, is that of the Juvenile Detention Alternative Initiative, whose focus is on providing support for young people who cannot remain in the community that does not include detention. Many court actors in vanguard counties across the country approach this initiative in order to address questions of disparate racial impact, child development, and how best to rehabilitate dangerous juvenile offenders. This example, as well as many others, could demonstrate how court actors act under certain assumptions about the efficacy of their approaches and the less-explicit qualities

they contribute to the process. Whether or not they are correct in their assumptions – and faith – remains to be tested.

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Appendix A

CONSENT FORM

I am conducting a study of legal professionals who work with juvenile cases. I want to understand how juvenile responsibility is defined and constructed. You were selected as a possible participant because you currently work with juvenile cases. Please read this form and ask any questions you may have before agreeing to be in the study.

This study is being conducted by: Clare Ryan, Senior, Political Science Department, Macalester College 1600 Grand Avenue Saint Paul, MN 55105, cryan@macalester.edu. My faculty advisor for this project is Prof. Patrick Schmidt, Political Science Department, schmidtp@macalester.edu.

Procedures:

If you agree to be in this study, I would ask you to do the following things: Participate in one individual interview of approximately one hour. This interview will be conducted and tape-recorded by myself. I will also ask if you are willing to suggest names of other people in your field who might be interested in participating in this study.

Voluntary Nature of the Study:

Participation in this study is voluntary. Your decision whether or not to participate will not affect your current or future relations with Macalester College. If you decide to participate, you are free to not answer any question or withdraw at any time without affecting those relationships.

Risks and Benefits of being in the Study

The study has several risks. One risk may be that during the interview your privileged relationship with juveniles may be compromised. However, I will not enquire about any specific cases or ask for details about any client. Second, I will ask you to discuss decision-making procedures, approaches and work practices. This information could be used by third parties, including opponents of the status quo.

The benefits include that you will be helping to create a systematic understanding of your county's legal professionals' attitudes and behaviors regarding juvenile responsibility.

Confidentiality:

The records of this study will be kept private. I will not include any information that will

make it possible to identify a subject in any paper or presentation I make based on this research. Research records will be stored securely and only researchers will have access to the records.

I will keep one copy of the tape-recorded interview, unless asked otherwise by the interviewee, until I have made one transcription of the tape. Only myself and Professor Schmidt will have access to the transcripts. All use of quotations in written work will be limited and edited so as to prevent identification of individual identities. All recorded materials will be kept in a secure location and erased immediately after use. Transcriptions will not include names or affiliated employers, but will include the subject's job description.

In the event that you are able to recommend other interview subjects, I will ask to use your name as a reference. If you agree, those people whom you recommend to participate will know that you are affiliated with this study.

Contacts and Questions:

You may ask any questions you have now. If you have questions later, you are encouraged to contact me or my faculty advisor. If you have any questions or concerns regarding this study and would like to talk to someone other than the researcher(s), you are encouraged to contact the Macalester College Institutional Review Board at 1600 Grand Avenue, Saint Paul MN 55105 or by phone at 651-696-6153.

You will be given a copy of this information to keep for your records.

Statement of Consent:

I have read the above information. I have asked questions and have received answers. I consent to participate in the study.

Signature: _____ Date:

Signature of Investigator: _____ Date:

Appendix B

Dear _____:

My name is Clare Ryan and I am a senior at Macalester College. To complete my Political Science degree with Honors, I am beginning a yearlong project with the aim of creating a publishable piece of scholarship. The title of this project is “*Old Enough: Constructing Juvenile Responsibility in County Courts.*” I would like to understand how the legal community of this county defines juvenile responsibility in practice. In order to best realize this goal, I hope to interview members of this community who have a particular specialty in juvenile law, or who prosecute, defend, or judge juvenile cases.

I am asking for your help with my research. If you are willing, I would like to conduct an interview with you and others in your field. The interview would be one-on-one and would last no more than one hour. I am interested in the questions that you face about juvenile maturity and decision-making capacities while handling cases involving minors.

The identities of each participant will be kept entirely confidential. I will ask to record the interview, however, there will be no written record connecting your name to any comments that you make during the interview. Additionally, I will not ask any questions about specific cases and am not interested in details about any individual juveniles.

Attached you will find a copy of the Macalester College approved consent form with more details about the project and my resume to provide context for my interest in this field.

I eagerly await your response and I hope to speak with you further at your convenience.

Sincerely,
Clare Ryan