

IN THE SUPREME COURT OF OHIO

State of Ohio

Appellant

On Appeal from the Ashland County
Court of Appeals, Fifth Appellate District

v.

Brian K. Siler

Appellee

Case No. 2006-0185

Appellate No. 02COA-028

**MERIT BRIEF OF AMICUS CURIAE AMERICAN PROSECUTORS RESEARCH
INSTITUTE IN SUPPORT OF PLAINTIFF APPELLANT, THE STATE OF OHIO**

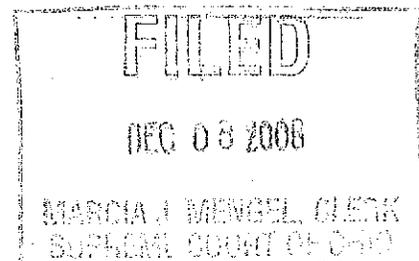
Ramona Rogers (0031149) (COUNSEL OF RECORD)
Prosecuting Attorney
Ashland County
307 Orange Tree Square
Ashland, Ohio 44805
(419) 289-8857
Fax No. (419) 281-3865
COUNSEL FOR APPELLANT, STATE OF OHIO

David H. Bodiker (0016590)
Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215
(614) 466-5394
Fax No. (614) 752-5167

Jill E. Stone (0023823) (COUNSEL OF RECORD)
Assistant Public Defender

Craig Jaquith (0052997)
Assistant Public Defender
COUNSEL FOR APPELLEE, BRIAN SILER

Alice Anna Phillips (MI Attorney License #P51251)
Senior Attorney/Pro Hac Vice
American Prosecutors Research Institute
National Center for Prosecution of Child Abuse
99 Canal Center Plaza, Suite 510
Alexandria, VA 22314
703-549-9222



Victor Vieth (MN Attorney License #0183805)
Director of APRI Child Abuse Programs
American Prosecutors Research Institute
National Child Protection Training Center
Winona State University
227 Maxwell Hall
Winona, MN 55987-5838
507-457-2890
ATTORNEYS FOR AMICUS CURIAE

TABLE OF CONTENTS

TABLE OF AUTHORITIESiii

INTEREST OF AMICUS CURIAE 1

STATEMENT OF THE CASE3

STATEMENT OF FACTS3

ISSUE PRESENTED3

ARGUMENT3

 I. THE COURT OF APPEALS ERRED IN HOLDING THAT STATEMENTS MADE BY A THREE-YEAR-OLD CHILD TO A DETECTIVE WERE TESTIMONIAL AND, THEREFORE, INADMISSIBLE UNDER *CRAWFORD V. WASHINGTON*, 514 U.S. 364 (2004).....3

 A. The *Crawford* decision applies to “witnesses” providing solemn declarations or statements made under oath and does not extend to include statements of young children3

 B. A three-year-old child cannot reasonably expect or anticipate that statements he made to a detective would later be used prosecutorially and, therefore, this Honorable Court should adopt a “reasonable child” standard when evaluating child statements pursuant to *Crawford*9

 1. Ohio Legal Standards applied to children13

 C. Child development research studies demonstrate that young children do not understand judicial players and processes and, therefore, supports the adoption of a “reasonable child” standard15

CONCLUSION27

APPENDICES AND INDEX A-1

1. Saywitz, Karen, *Children's Conceptions of the Legal System: Court is a Place to Play Basketball*, Perspectives on Children's Testimony, 131-157 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989). A-2
2. Saywitz, Karen, C. Jaenicke & L. Camparo, *Children's Knowledge of Legal Terminology*, 14 L. & Hum. Behav. 523 (1990) A-30
3. Warren-Leubecker, Amye, Carol S. Tate, Ivora D. Hinton and Nicky Ozbek, *What Do Children Know about the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research*, Perspectives on Children's Testimony 158-183 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989) A-43
4. Flin, Rhona H., Yvonne Stevenson, Graham M. Davies, *Children's Knowledge of Court Proceedings*, 80 British Journal of Psychology 285-297 (1989) A-70
5. Michelle Aldridge, Kathryn Timmins, Joanne Wood, *Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?* 6 Child Abuse Rev. 141-146 (1997) A-83
6. Berti, Anna Emilia & Elisa Ugolini, *Developing Knowledge of the Judicial System: A Domain-Specific Approach*, The Journal of Genetic Psychology 159(2), pp. 221-236 (1998) A-90

TABLE OF AUTHORITIES

I. SIXTH AMENDMENT CONFRONTATION CLAUSE CASES

<i>Brooks v. State</i> , 132 S.W.3d 702 (Tex. App. 2004)	4
<i>Colorado v. Vigil</i> , 127 P.3d 916 (Colo. 2006)	9, 12, 13
<i>Commonwealth v. DeOliveira</i> , 849 N.E.2d 218 (Mass. 2006)	9
<i>Crawford v. Washington</i> , 541 U.S. 36 (2004)	1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 17, 20, 26, 27
<i>Davis v. Washington</i> , 126 S. Ct. 2266; 165 L. Ed. 2d 224 (2006)	6, 7, 8, 10, 14
<i>Hammon v. Indiana</i> , 126 S. Ct. 2266; 165 L. Ed. 2d 224 (2006)	6, 7, 8, 10, 14
<i>Howard v. State</i> , 2006 Ind. LEXIS 792 (Ind 2006).....	4
<i>In re A. J. A.</i> , 2006 Minn. App. Unpub. LEXIS 988 (Minn. Ct. App. 2006)	9
<i>In re D.L.</i> , 2005 Ohio 2320 (Ohio Ct. App. 2005)	9
<i>Lagunas v. State</i> , 187 S.W.3d 503 (Tex. App. 2005)	9, 10, 11
<i>Liggins v. Graves</i> , 2004 U.S. Dist. LEXIS 4889, 2004 WL 729111 (S.D. Iowa 2004)	4
<i>McDonald v. State</i> , 2006 Tex. App. LEXIS 7416 (Tex. App. 2006)	9
<i>Miller v. Fleming</i> , 2006 U. S. Dist. LEXIS 17284 (W.D. Wash. 2006)	10
<i>Ohio v. Roberts</i> , 448 U.S. 56 (1980).....	4
<i>People v. Brown</i> , 2005 Ill. App. LEXIS 1254 (Ill. App. Ct. 1 st Dist. 2005).....	4, 5
<i>People v. Howell</i> , 358 Ill. App. 3d 512, 831 N.E.2d 681 (Ill. Ct. App. 2005)	4
<i>People v. Lee</i> , 124 Cal. App. 4th 483 (Cal App 2d Dist 2004).....	5
<i>People v. Ochoa</i> , 18 Cal. Rptr. 3d 365 (Cal. App. 4 th Dist. 2004).....	4
<i>People v. Patterson</i> , 808 N.E.2d 1159 (Ill. App. Ct. 2004).....	4
<i>People v. Sharp</i> , No. 04CA0619, 2005 Colo. App. LEXIS 1761 (Colo. Ct. App. 2005)	9
<i>People v. Woods</i> , 779 N.Y.S.2d 494 (2004).....	5

<i>Primeaux v. State</i> , 88 P.2d 893 (Okla. Crim. App. 2004).....	4
<i>Richardson v. Newland</i> , 342 F. Supp. 2d 900 (E.D. Cal. 2004).....	5
<i>State v. Ash</i> , 611 SE2d 855 (NC Ct App 2005).....	4
<i>State v. Blount</i> , No. COA05-134, 2005 N.C. App. LEXIS 2606 (N.C. Ct. App. 2005)	9
<i>State v. Bobadilla</i> , 709 N.W.2d 243 (Minn. 2006)	7, 8, 9
<i>State v. Brigman</i> , 629 S.E.2d 307 (N.C. Ct. App. 2006)	9
<i>State v. Copley</i> , 2006 Ohio 2737 (Ohio Ct. App. 2006)	9
<i>State v. Cutlip</i> , 2004 Ohio 2120 (2004).....	4
<i>State v. Dezee</i> , 2005 Wash. App. LEXIS 104 (Wash Ct App 2005)	10
<i>State v. Johnson</i> , 2006 Ohio 5195 (Ohio Ct. App. 2006)	9
<i>State v. Mack</i> , 101 P.3d 349 (Or. 2004)	12
<i>State v. Muttart</i> , 2006 Ohio 2506 (Ohio Ct. App. 2006)	9
<i>State v. Pullen</i> , 594 S.E.2d 248 (N.C. Ct. App. 2004).....	4
<i>State v. Scacchetti</i> , 711 N.W.2d 508 (Minn. 2006).....	11, 12
<i>State v. Skakel</i> , 276 Conn. 633 (2006).....	4
<i>State v. Snowden</i> , 867 A.2d 314 (Md. 2005)	12
<i>State v. Young</i> , 87 P. 3d 308 (Kan. 2004).....	4
<i>United States v. Avants</i> , 367 F.3d 433 (5 th Cir. Mass. 2004).....	4
<i>United States v. Coulter</i> , 62 M.J. 520 (N-M.C.C.A. 2005)	10
<i>United States v. Cuong Gia Le</i> , 316 F. Supp. 2d 330 (E.D. Va. 2004).....	4
<i>United States v. Lore</i> , 430 F.3d 190 (3 rd Cir. N.J. 2005).....	4
<i>United States v. Sherry</i> , 107 Fed. Appx. 253 (2d Cir NY 2004).....	5

II. REASONABLE CHILD CASES

Colorado v. Vigil, 127 P.3d 916 (Colo. 2006)9, 12, 13

Commonwealth v. DeOliveira, 849 N.E.2d 218 (Mass. 2006)9

In re A. J. A., 2006 Minn. App. Unpub. LEXIS 988 (Minn. Ct. App. 2006)9

In re D.L., 2005 Ohio 2320 (Ohio Ct. App. 2005)9

Lagunas v. State, 187 S.W.3d 503 (Tex. App. 2005)9, 10, 11

McDonald v. State, 2006 Tex. App. LEXIS 7416 (Tex. App. 2006)9

Miller v. Fleming, 2006 U. S. Dist. LEXIS 17284 (W.D. Wash. 2006)10

People v. Sharp, No. 04CA0619, 2005 Colo. App. LEXIS 1761
(Colo. Ct. App. 2005)9

State v. Blount, No. COA05-134, 2005 N.C. App. LEXIS 2606
(N.C. Ct. App. 2005)9

State v. Bobadilla, 709 N.W.2d 243 (Minn. 2006)7, 8, 9

State v. Brigman, 629 S.E.2d 307 (N.C. Ct. App. 2006)9

State v. Copley, 2006 Ohio 2737 (Ohio Ct. App. 2006)9

State v. Dezee, 2005 Wash. App. LEXIS 104 (Wash Ct App 2005)10

State v. Johnson, 2006 Ohio 5195 (Ohio Ct. App. 2006)9

State v. Muttart, 2006 Ohio 2506 (Ohio Ct. App. 2006)9

United States v. Coulter, 62 M.J. 520 (N-M.C.C.A. 2005)10

III. OHIO STATUTES

ORC Ann. 2317.0113

IV. OHIO CHILD NEGLIGENCE CASES

Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Grambo 103 Ohio St. 471, 134 N.E.
648 (1921)14

Cleveland Rolling-Mill Co. v. Corrigan 46 Ohio St. 283, 20 N.E. 466 (1889)14

Sorriento v. Ohio Dep't of Transp., 61 Ohio Misc. 2d 251 (1988)14

V. CHILD DEVELOPMENT STUDIES

- Ann Ahlquist & Bob Ryan (1993). *Interviewing Children Reliably and Credibly: Investigative Interview Workbook*. Minneapolis, MN: CornerHouse Interagency Child Abuse Evaluation and Training Center2
- Aldridge, Michelle, Kathryn Timmins, Joanne Wood, *Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?* 6 Child Abuse Rev. 141-146 (1997).....24
- Berti, Anna Emilia, & Elisa Ugolini, *Developing Knowledge of the Judicial System: A Domain-Specific Approach*, The Journal of Genetic Psychology 159(2), 221-236 (1998)24-25
- Flin, Rhona H., Yvonne Stevenson, Graham M. Davies, *Children's Knowledge of Court Proceedings*, 80 British Journal of Psychology 285-297 (1989).....23-24
- Friedman, Richard D., *Children as Victims and Witnesses in the Criminal Trial Process: The Conundrum of Children, Confrontation, and Hearsay*, 65 Law & Contemp. Prob. 243, 250 (2002).....6
- Saywitz, Karen, *Children's Conceptions of the Legal System: Court is a Place to Play Basketball*, Perspectives on Children's Testimony, 131-157 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).....15-20
- Saywitz, Karen, Carol Jaenicke & Lorinda Camparo, *Children's Knowledge of Legal Terminology*, 14 L. & Hum. Behav. 523 (1990).....20-21
- Symposium, *Child Abuse: Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 23 Pacific Law Journal 3 (1996).....15
- Warren-Leubecker, Amye, Carol S. Tate, Ivora D. Hinton and Nicky Ozbek, *What Do Children Know about the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research*, Perspectives on Children's Testimony 158-183 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).....22-23

INTEREST OF AMICUS CURIAE

As amicus curiae, the American Prosecutors Research Institute is uniquely situated to provide this court with specialized expertise on the area of child development in the context of statements made by young children during interviews.

Amicus curiae has a public interest in supporting the State's position that the decision by the Court of Appeals of Ohio should be reversed and the statements of the three-year-old child to Detective Martin should be allowed into evidence due to the child's youthful age.

Due to the inherent challenge of cases involving child victims and witnesses, and the current legal uncertainty both in Ohio and nationally, regarding the specific characteristics of testimonial statements pursuant to *Crawford v. Washington*, 514 U.S. 36 (2004), this brief of amicus curiae is desirable in its capacity to shed light on the cognitive and perceptive capabilities of children involved in statements made by children similar to the child in the instant case.

The American Prosecutors Research Institute (APRI) is the research and development affiliate of the National District Attorneys Association. APRI is a federally-funded non-profit organization that operates the National Child Protection Training Center (NCPTC) on the campus of Winona State University (WSU) in Winona, Minnesota and the National Center for Prosecution of Child Abuse (NCPCA) in Alexandria, Virginia. The mission of NCPCA and NCPTC is to help our nation's child protection professionals to overcome the obstacles that prevent us from protecting most abused children. Through three primary activities, NCPCA/NCPTC promote better education of future mandated reporters and enhance the effectiveness of those currently working in the field, NCPTC serves as an advisor to WSU as the University faculty work to develop a curriculum geared toward more complete training for child protection professionals at the undergraduate level. APRI currently receives funding

through the Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice to provide training, technical assistance, and publications to current child protection professionals around the nation. In 2005, NCPA/NCPTC handled approximately 5,000 requests for information and technical assistance relating to the identification and reporting of, as well as, response to child abuse and neglect allegations, with approximately another 50,000 downloads of information from our website. Also in 2005, NCPA/NCPTC trained over 36,000 child protection professionals in the myriad issues of child development and legal responses to the abuse and neglect of children.

In partnership with CornerHouse, an Interagency Child Abuse Evaluation & Training Center in Minneapolis, NCPA/NCPTC provides forensic interview training called *Finding Words* to child protection professionals nationwide. As of this writing, NCPA/NCPTC has established or is establishing the *Finding Words* forensic interview training course in seventeen states. The guiding principle of the *Finding Words* forensic interview training and all NCPA/NCPTC child abuse program actions is the "Child First" doctrine.¹ In all situations and contexts, NCPA/NCPTC strives to put the needs of each individual child before those of any other player. For these reasons, APRI, NCPA and NCPTC are able to provide relevant information and research concerning the core legal issue raised in this matter.

¹ The Child First Doctrine: is "The child is our first priority. Not the needs of the family. Not the child's 'story.' Not the evidence. Not the needs of the courts. Not the needs of the police, child protection, attorneys, etc. **The child is our first priority.**" Ann Ahlquist & Bob Ryan (1993). *Interviewing Children Reliably and Credibly: Investigative Interview Workbook*. Minneapolis, MN: CornerHouse Interagency Child Abuse Evaluation and Training Center.

STATEMENT OF THE CASE

American Prosecutors Research Institute adopts and incorporates by reference the Statement of the Case as set forth in Appellant State of Ohio's Brief.

STATEMENT OF FACTS

American Prosecutors Research Institute adopts and incorporates by reference the Statement of Facts as set forth in Appellant State of Ohio's Brief.

ISSUE PRESENTED

Whether the Court of Appeals of Ohio erred when ruling that statements made by a three-year-old child were "testimonial statements" within the meaning of *Crawford v. Washington*, 541 U.S. 36 (2004) and, therefore, inadmissible at trial.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN HOLDING THAT STATEMENTS MADE BY A THREE-YEAR-OLD CHILD TO A DETECTIVE WERE TESTIMONIAL AND, THEREFORE, INADMISSIBLE UNDER *CRAWFORD V. WASHINGTON*, 514 U.S. 364 (2004).

A. The *Crawford* decision applies to "witnesses" providing solemn declarations or statements made under oath and does not extend to include statements of young children.

The United States Supreme Court announced a new rule in *Crawford v. Washington*, 541 U.S. 36 (2004), holding that out-of-court testimonial statements of non-testifying witnesses violate the Sixth Amendment's confrontation clause and, therefore, are no longer admissible in court. Testimonial statements of non-testifying witnesses will only be admissible in court if the witness previously was subject to confrontation for purposes of the Sixth Amendment. In rendering this decision, the Court overturned the prior reliability

analysis set forth in *Ohio v. Roberts*, 448 U.S. 56, 66, 100 S. Ct. 2531, 2539, 65 L. Ed. 2d 597 (1980), holding that the only true test of reliability of out-of-court statements is confrontation. However, the *Crawford* Court failed to provide a definition of what constitutes a testimonial statement. Nonetheless, the Court did say that testimonial statements apply “at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations.” *Crawford*, 541 U.S. at 68. In looking to the foundation of the Sixth Amendment, the *Crawford* Court focused on witnesses who “bear testimony against the accused” and found that “[t]estimony,” in turn, is typically “[a] solemn declaration or affirmation made for the purpose of establishing or proving some fact.” *Crawford*, 541 U.S. at 51. Thus, the question becomes: what statements are deemed testimonial or non-testimonial according to *Crawford*?

In struggling to define “testimonial,” courts subsequent to *Crawford* have included testimony from a preliminary hearing (see, *State v. Skakel*, 276 Conn. 633 (2006); *State v. Young*, 87 P.3d 308 (Kan. 2004); *Primeaux v. State*, 88 P.2d 893 (Okla. Crim. App. 2004); *People v. Ochoa*, 121 Cal. App. 4th 1551; 18 Cal. Rptr. 3d 365 (Cal. App. 4th Dist. 2004)); testimony before a grand jury (see, *United States v. Lore*, 430 F.3d 190 (3rd Cir. N.J. 2005); *People v. Howell*, 358 Ill. App. 3d 512, 831 N.E.2d 681 (Ill. Ct. App. 2005) ; *People v. Patterson*, 808 N.E.2d 1159 (Ill. App. Ct. 2004)); testimony at a deposition (see, *State v. Ash*, 611 SE2d 855 (NC Ct App 2005); *Liggins v. Graves*, 2004 U.S. Dist. LEXIS 4889 (S.D. Iowa 2004); *Howard v. State*, 2006 Ind. LEXIS 792 (Ind. 2006)); testimony at a former trial (see, *United States v. Avants*, 367 F.3d 433 (5th Cir. Mass. 2004)); confessions to police (see, *People v. Brown*, 2005 Ill. App. LEXIS 1254 (Ill. App. Ct. 1st Dist. 2005); *State v. Pullen*, 594 S.E.2d 248 (N.C. Ct. App. 2004) ; *State v. Cutlip*, 2004 Ohio 2120; *Brooks v. State*, 132 S.W.3d 702 (Tex. App. 2004); *United States v. Cuong Gia Le*, 316 F. Supp. 2d 330 (E.D. Va.

2004)); plea allocutions of co-defendants (see, *People v. Woods*, 779 N.Y.S.2d 494 (2004); *United States v. Sherry*, 107 Fed. Appx. 253; 2004 US App LEXIS 17239 (2d Cir NY 2004)); and statements made in response to police interrogations (see, *People v. Brown*, 2005 Ill. App. LEXIS 1254 (Ill. App. Ct. 1st Dist. 2005); *People v. Lee*, 124 Cal. App. 4th 483 (Cal App 2d Dist 2004); *Richardson v. Newland*, 342 F. Supp. 2d 900 (ED Cal 2004)). Thus, the focus on what is deemed testimonial relates to “in court testimony or its functional equivalent.”

Crawford, 541 U.S. at 51.

The *Crawford* Court discussed three formulations that help determine the testimonial nature of a statement, the third being salient in this case, to wit:

- (1) *ex parte* in-court testimony or its functional equivalent — that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially;
- (2) extrajudicial statements . . . contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions;
- (3) statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Crawford, 541 U.S. at 51-52.

The *Crawford* Court focused not only on whether the government was involved in producing the statements, but also on whether the declarant could reasonably expect that the statement would later be used prosecutorially. This analysis goes to the core of whether an individual is deemed a “witness” for purposes of the Confrontation Clause. Under the minimal guidance provided by the *Crawford* Court, statements made by a young child to a detective, even if initiated at the request of the government, cannot be deemed testimonial if the child cannot reasonably comprehend that the statements may be later used in court and is

not acting in the capacity of a “witness”. As one commentator notes, young children making a statement to the authorities may not understand that sexual abuse is wrong or that a perpetrator is subject to punishment as a result. Richard D. Friedman, *Children as Victims and Witnesses in the Criminal Trial Process: The Conundrum of Children, Confrontation, and Hearsay*, 65 Law & Contemp. Prob. 243, 250 (2002). If so, “it seems dubious to say that the children acting in these cases were acting as witnesses.” *Id.*

In June of 2006, the United States Supreme Court re-addressed the *Crawford* testimonial rule in *Davis v. Washington* and *Hammon v. Indiana*, 126 S. Ct. 2266; 165 L. Ed. 2d 224 (2006). In these consolidated domestic violence cases, the court provided a limited definition of “testimonial.” The Court held:

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.

Id. at 126 S. Ct. at 2273-4; 165 L. Ed. 2d at 237.

However, it is important to understand that the *Davis* and *Hammon* “primary purpose” rule does not overrule or work in place of the *Crawford* testimonial rule. First, the Court stated that the “primary purpose” rule should apply to those two cases and “those similar to these cases”. *Id.* at 126 S. Ct. at 2278; 165 L. Ed. 2d at 242 (footnote 5). Second, the “primary purpose” rule was limited to law enforcement interrogations and objectively at all the circumstances when a statement is obtained. *Id.* at 126 S. Ct. at 2274; 165 L. Ed. 2d at 237 (footnote 1).

The Court clarified the definition of a testimonial statement, in the limited context of the *Davis* and *Hammon* factual scenarios, to better determine when an individual is or is not a “witness” for purposes of the Confrontation Clause.

A critical portion of this holding, and the portion central to resolution of the two cases now before us, is the phrase “testimonial statements.” Only statements of this sort cause the declarant to be a “witness” within the meaning of the *Confrontation Clause*. See *id.*, at 51, 124 S. Ct. 1354, 158 L. Ed. 2d 177. It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the *Confrontation Clause*.

Id. at 126 S. Ct. at 2273; 165 L. Ed. 2d at 236-37.

Thus, the “primary purpose” rule, in its limited capacity, is not applicable to this case for the reason that a three-year-old child cannot be deemed a “witness” for purposes of the Confrontation Clause due to youthfulness of age and no cognitive awareness that a statement could be used in court. In making this determination, Amicus Curiae provides the following cases and child development research to demonstrate that an objective declarant in the child’s position would not reasonably expect his statements to the detective to be later used in court. Thus, reverting to the original *Crawford* testimonial rule is what is required in this matter.

Directly on point is the decision from earlier this year from the Minnesota Supreme Court in *Minnesota v. Bobadilla*, 709 N.W. 2d 243 (Minn. 2006). The Court overturned the decision from the Minnesota Court of Appeals and ruled that a non-testifying three-and-one-half-year-old child victim’s videotaped forensic interview statements to a child protection worker and a police detective were non-testimonial and could be admitted at trial in lieu of the child’s testimony. The *Crawford* ruling post-dated the trial court’s decision to admit the child’s videotaped forensic interview and, therefore, the trial court did not make factual findings as to whether the child victim in the case understood that statements made during the

forensic interview could later be used in court. Nonetheless, in over turning the decision of the Minnesota Court of Appeals and reinstating the trial court's decision to allow the statements of the child to be heard in court, the Minnesota Supreme Court acknowledged "[a]s amicus American Prosecutors Research Institute makes clear, children of T.B.'s age are simply unable to understand the legal system and the consequences of statements made during the legal process." *Id.* at 255-56. Viewing statements from whether an objective declarant is a "witness" and could reasonably believe that his/her statements would later be used in court goes to the heart of *Crawford*, *Davis* and *Hammon* and was succinctly addressed in *Bobadilla*.

The Minnesota Court of Appeals failed to address the relevant factors announced in the *Crawford* decision and, instead, focused solely on the intent of the interviewers, as have many courts throughout the country. The Minnesota Supreme Court corrected this and analyzed what an objective declarant would also understand. This is the proper analysis under *Crawford*, *Davis* and *Hammon* which requires objectively viewing the entire circumstances surrounding the statement. And those circumstances would require looking at the belief of the declarant.

This Honorable Court should now hold that statements made by the three-year-old child in speaking with a detective do not fall within the framework of "testimonial" statements since the child was not acting as a witness and, therefore, the Court of Appeals' decision to preclude his testimony was error. In reaching this conclusion, this Court should adopt a "reasonable child" standard with respect to the ability of children to reasonably understand that statements they make after an abusive or traumatic incident will later be used in a criminal trial.

B. A three-year-old child cannot reasonably expect or anticipate that statements he made to a detective would later be used prosecutorially and, therefore, this Honorable Court should adopt a “reasonable child” standard when evaluating child statements pursuant to Crawford.

Appellate courts across the country are beginning to address *Crawford* issues involving young declarants from a perspective appropriate for a child’s cognitive ability. Currently, seven states and the Military Criminal Court of Appeals have rendered decisions in favor of children based on what children objectively and reasonably understand regarding their statements. In support, see these cases where a child’s statement was held to be non-testimonial under a *Crawford* analysis: **Colorado:** *Colorado v. Vigil*, 127 P.3d 916 (Colo. 2006) (seven-year-old’s statements to a doctor), *People v. Sharp*, No. 04CA0619, 2005 Colo. App. LEXIS 1761 (Colo. Ct. App. 2005) (five-year-old’s statements to a forensic interviewer); **Massachusetts:** *Commonwealth v. DeOliveira*, 849 N.E.2d 218 (Mass. 2006) (six-year-old’s statements to a doctor); **Minnesota:** *State v. Bobadilla*, 709 N.W.2d 243 (Minn. 2006) (three-year-old’s statements to a CPS worker at a forensic interview), *In re A.J.A.*, 2006 Minn. App. Unpub. LEXIS 988 (Minn. Ct. App. 2006) (five-year-old’s statements to nurse); **North Carolina:** *State v. Brigman*, 629 S.E.2d 307 (N.C. Ct. App. 2006) (a child not quite three years old cannot understand that statements made to a doctor may later be used in court), *State v. Blount*, No. COA05-134, 2005 N.C. App. LEXIS 2606 (N.C. Ct. App. 2005) (three-year-old’s statements to a social worker); **Ohio:** *State v. Johnson*, 2006 Ohio 5195 (Ohio Ct. App. 2006) (nine-year-old’s statements to medical staff), *State v. Copley*, 2006 Ohio 2737 (Ohio Ct. App. 2006) (three-year-old’s statements to his mother), *State v. Muttart*, 2006 Ohio 2506 (Ohio Ct. App. 2006) (five- and six-year-old children’s statements to a medical professional), *In re D.L.*, 2005 Ohio 2320 (Ohio Ct. App. 2005) (three-year-old’s statements made during a medical exam); **Texas:** *McDonald v. State*, 2006 Tex. App. LEXIS 7416 (Tex. App. 2006)

(two-year-old's statements to a nurse), *Lagunas v. State*, 187 S.W.3d 503 (Tex. App. 2005) (four-year-old's statement to a police officer); **Washington:** *Miller v. Fleming*, 2006 U. S. Dist. LEXIS 17284 (W.D. Wash. 2006) (seven-year-old's statements to a doctor), *State v. Dezee*, 2005 Wash. App. LEXIS 104 (Wash Ct App 2005) (nine-year-old's statements to mother); and the **Military Court of Criminal Appeals:** *United States v. Coulter*, 62 M.J. 520 (N-M.C.C.A. 2005) (two-year-old's statements to mother).

The case of *Lagunas* is instructive in this case since the child in that case was of similar age to the child in this case (age four) and involved statements given to law enforcement. The defendant in *Lagunas* was convicted of aggravated battery and kidnapping of the victim while her children were asleep in the house. The victim was able to escape the defendant and run to a neighbor's house for help. When police officers arrived, they went to the home of the victim to check on her children. One officer woke the four-year-old child and asked her if she was alright. The child responded that her mother was dead and that "a bad man had killed her and took her away." *Lagunas*, 187 S.W. 3d at 508. At trial, the child was unable to testify due to her age; however, the court allowed her statements into evidence as excited utterances. Although this opinion was issued prior to *Davis* and *Hammon*, the Texas Court of Appeals provided a well-reasoned opinion and found that a child of that age would not understand that statements made to a detective might later be used in court.

We begin with the age and sophistication of D.M. D.M. was four years old at the time of her statement to Officer Sullivan. Courts around the nation have struggled with the application of *Crawford* to child witnesses, particularly how courts should apply the concept of "under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial," *see Crawford*, 541 U.S. at 52, or whether the proper test should be objective or subjective in nature. We need not decide now whether, as a general rule, statements by children are inherently non-testimonial or whether D.M.'s age alone renders her statements non-testimonial. We decide only that D.M.'s age and her emotional state are factors strongly suggesting that her statements to Officer Sullivan were non-testimonial. Considering the context, D.M.'s statements amounted to a small child's expressions of fear arising from her mother's absence.

R.J. was the victim in this case, and not a mere observer. Given R.J.'s age at the time Edinburgh assessed her, it is not clear that R.J. knew or understood the purpose of the statements she made to Edinburgh. We do know, however, that R.J. made the statements in response to questions asked during Edinburgh's medical assessments and that the statements were made at a hospital and in a doctor's office. R.J.'s mother initiated R.J.'s medical assessment when she brought R.J. to the hospital and requested that R.J. be examined. And, like the declarants in *Wright*, R.J. was emotionally distraught when discussing the alleged abuse with Edinburgh.

Scacchetti, 711 N.W.2d at 516.

Many courts addressing child interviews and statements of child victims and witnesses subsequent to the *Crawford* decision have failed to address the objective reasonable child factor in relation to whether an objective person would reasonably expect statements made to be used later prosecutorially.

The Colorado Supreme Court recently adopted a "reasonable child standard" in *Colorado v. Vigil*, 127 P.3d 916 (Colo. 2006) in relation to *Crawford*. This case involved statements made by a seven-year-old child abuse victim to a doctor. "As the doctor testified at trial, his purpose in questioning the child was to determine whether the child would "say something that could help [the medical personnel] understand what the potential injuries were." *Vigil*, at 923. The child's responses helped the doctor develop his opinion regarding whether a sexual assault had occurred and how best to treat the child. Thus, rather than being an agent of the police, the doctor's job involved identifying and treating sexual abuse. The fact that the doctor was a member of a child protection team does not, in and of itself, make him a government official absent a more direct and controlling police presence, such as the presence demonstrated in *State v. Mack*, 101 P.3d 349 (Or. 2004), and *State v. Snowden*, 867 A.2d 314 (Md. 2005).

The Colorado Supreme Court further held that the "objective witness" language in *Crawford* refers to an objectively reasonable person in the declarant's position. "Applying this

test to the instant case, we determine that an objectively reasonable person in the declarant's position would not have believed that his statements to the doctor would be available for use at a later trial." *Vigil*, at 924.

Rather, an objective seven-year-old child would reasonably be interested in feeling better and would intend his statements to describe the source of his pain and his symptoms. In addition, an objectively reasonable seven-year-old child would expect that a doctor would use his statements to make him feel better and to formulate a medical diagnosis. He would not foresee the statements being used in a later trial. Thus, from the perspective of an objective witness in the child's position, it would be reasonable to assume that this examination was only for the purpose of medical diagnosis, and not related to the criminal prosecution. No police officer was present at the time of the examination, nor was the examination conducted at the police department. The child, the doctor, and the child's mother were present in the examination room.

Vigil, at 926.

1. Ohio Legal Standards applied to children

Ohio has implemented statutory guidelines for children under the age of ten and who may be required to testify in court. ORC Ann. 2317.01 provides:

All persons are competent witnesses except those of unsound mind and children under ten years of age who appear incapable of receiving just impressions of the facts and transactions respecting which they are examined, or of relating them truly.

In a hearing in an abuse, neglect, or dependency case, any examination made by the court to determine whether a child is a competent witness shall be conducted by the court in an office or room other than a courtroom or hearing room, shall be conducted in the presence of only those individuals considered necessary by the court for the conduct of the examination or the well-being of the child, and shall be conducted with a court reporter present. The court may allow the prosecutor, guardian ad litem, or attorney for any party to submit questions for use by the court in determining whether the child is a competent witness.

Thus, Ohio has recognized that children under the age of ten may have cognitive difficulties in understanding a courtroom oath and special examination of the child must be done to determine whether the child is capable of being a witness.

In *Sorriento v. Ohio Dep't of Transp.*, 61 Ohio Misc. 2d 251 (1988), this court held that “in Ohio, children who are between the ages of seven and fourteen years are presumptively incapable of negligence. However, that presumption is rebutted where the evidence indicates that the child did not exercise such care as children of like age, education, experience, and prudence are accustomed to exercise under the same or similar circumstances.” *Sorriento*, at 257. This Court also stated, “Children are not chargeable with the same care as persons of mature years. Although children are required to exercise ordinary care to avoid the injuries of which they complain, such care, as applied to them, is that degree of care which children of the same age, education, experience, of ordinary care and prudence, are accustomed to exercise under similar circumstances.” *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Grambo* (1921), 103 Ohio St. 471, 134 N.E. 648, paragraph one of the syllabus. See, also, *Cleveland Rolling-Mill Co. v. Corrigan* (1889), 46 Ohio St. 283, 20 N.E. 466.” *Sorriento*, at 256.

Although the above case addresses the contributory negligence and liability of a child, the reasoning is important as it acknowledges that children should not be held to adult standards. Instead, children should be assessed from an objective standard based on their age, intelligence, and experience of like children. Thus, a “reasonable person” standard is not an adult standard; instead, it should take into account the abilities of children by acknowledging that infancy is a “legal disability” requiring a different standard of assessment.

Ohio has recognized that, in some circumstances, children should not be held to adult standards and has statutory requirements that must be met before any child under the age of ten can be deemed a witness in court. Since *Crawford, Davis* and *Hammon* address only out-of-court statements made by “witnesses” in the context of the Confrontation Clause, this court should acknowledge that a three-year-old child is not cognitively able to be a witness.

Moreover, when assessing whether an objective child could reasonably understand that statements made during an interview could later be used prosecutorially or in court, a “reasonable child” standard should be applied consistent with child development research.

C. Child development research studies demonstrate that young children do not understand judicial players and processes and, therefore, supports the adoption of a “reasonable child” standard.

Research has shown that young children do not understand what court is and, therefore, are unable to understand that statements made, even to a police officer, could be used in that forum.

Testifying is anxiety-producing for most adult witnesses. Adults, however, are sufficiently knowledgeable about the legal system to place their testimony in context. Adults understand-at least in general terms-what happens in court and what is expected of them. This knowledge helps adults manage the stress of testifying. By contrast, many children have little idea of what to expect in court. Some young children believe that they will go to jail if they give the ‘wrong answer,’ or that the defendant will yell at them.

Symposium, *Child Abuse: Psychological Research on Children as Witnesses: Practical Implications for Forensic Interviews and Courtroom Testimony*, 23 Pacific Law Journal 3 (1996).

Below are six of the leading studies evaluating what children understand about court and when they understand certain court-related concepts.

1989 Saywitz Study: “Children’s Conceptions of the Legal System”

Dr. Karen Saywitz published a study in 1989 that focused on developmental differences in children’s understanding of the legal system and what contributes to that understanding. Karen Saywitz, *Children’s Conceptions of the Legal System: Court is a Place to Play Basketball*, Perspectives on Children’s Testimony, 131-157 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).² Forty-eight children (ages four to fourteen) were divided into age

² To view the entire study, see *infra* Appendix 1.

groups.³ Half of the children were actively involved in court cases. The study focused on eight court-related concepts: “court,” “jury,” “judge,” “witness,” “lawyer,” “bailiff,” “court clerk,” and “court reporter.” All the children were asked questions and shown illustrations of these eight concepts and asked to tell what they knew about the concept. The terms “bailiff,” “court clerk” and “court reporter” were removed from the final results as the children in all age groups did not understand those concepts. Surprisingly, children with more actual court experience demonstrated less accurate and less complete knowledge than children with no court experience. The researchers surmised this could be for two reasons. First, children who were involved in court cases may have emotional difficulties that interfere with cognitive abilities because they were from dysfunctional families; and second, actual court experience for children may be confusing and chaotic, thus making accurate knowledge of the system more difficult. The chart below demonstrates the percentage of children in each age group that showed accurate understanding of each of the eight concepts:

Concept	Age Group 4-7 Years	Age Group 8-11 Years	Age Group 12-14 Years
Court	0.06% accurate	74% accurate	100% accurate
Jury	0% accurate	21% accurate	73% accurate
Judge	0.06% accurate	93% accurate	91% accurate
Witness	0.11% accurate	86% accurate	100% accurate
Lawyer	0% accurate	93% accurate	100% accurate
Bailiff	0.06% accurate	0% accurate	0.09% accurate
Court Clerk	0% accurate	0% accurate	0.18% accurate
Court Reporter	0% accurate	50% accurate	64% accurate

Children that are the age of the child in this matter have little to no understanding of the court system’s players much less the actual processes contemplated at the time of an interview.

³ Group One (18 children age four to seven), Group Two (19 children age eight to eleven) and Group Three (11 children age twelve to fourteen). The children were also divided into High-Legal-Experience Group (if they were actively involved in a court case by being a victim of abuse or being involved in a custody dispute) or Low-Legal-Experience Group who had not been involved in a court case.

Therefore, under the formulation set forth in *Crawford*, a child of this age could not reasonably expect that statements made to a child protection worker could later be used prosecutorially. Children between the ages of eight and eleven begin to have a more accurate understanding of the court system and the primary people involved (jury, judge, witness and lawyer), yet are still confused by details and duties.

Additional concepts were tested in this study that further demonstrate when children understand court-related concepts. First, all children were asked: "What makes a jury/judge believe a witness?" The children in the older age group were able to identify factors used by judges and juries to determine credibility of witnesses, whereas the four to seven-year-old group assumed witnesses always tell the truth and are believed. Whether the children were in the experienced or non-experienced court group did not affect this result. Second, all children were asked: "How do they [judge/jury] decide who wins the case in court?" The majority of eight to fourteen-year-olds were inaccurate in their overall understanding. They generally believed that judge and jury decision-making are dependent on each other. Some children in this age group believed that the judge and jury discuss the case together and that the judge can change the jury's verdict. Only three children (in the twelve to fourteen age group) understood that the judge and jury were independent from each other. Third, all children were asked the following questions: "What happens when people tell the truth in court? What happens when people tell a lie in court? Why is it important that people tell the truth in court?" Here, awareness was significantly different across age groups, but not across levels of court experience. A majority of the four to seven-year-olds could not demonstrate any awareness of the court processes of gathering and determining the truth of evidence. Many of these children believed that the court's goal was to "punish the criminal or give the child to one of his parents," rather than understanding the actual goals of collecting, presenting, and

evaluating evidence. Further, these children held the naïve view that evidence would magically present itself and be automatically believed. This study demonstrates that the child in this matter could not reasonably understand or expect that his statements might later be used in a court proceeding.

Overall, this study demonstrated the following for each age group:

(1) Four to Seven-Year-Olds: As a result of their egocentric view of the world, this group of children understood some features of the legal system, but not any definable features. For instance, some children understood that a judge is there to talk and listen, but did not understand that a judge is in charge of the courtroom or determines a sentence. This group was unable to meet the criteria of accuracy for any of the concepts listed above. These children could describe court-related personnel as sitting, talking, and helping but could not say how these people perform their roles nor differentiate between these varied roles. For example, the children interchanged the roles of court, police, and prison and were confused as to whether judges remain judges when they go home at night. This group also understood that witnesses had to tell the truth, but only thought that witnesses did so to avoid being punished. Additionally, these children believed that all evidence was necessarily true. The children had blind faith that witnesses tell the truth and, if witnesses themselves, would be surprised by a confrontational cross-examination or repeated interviews which are not consistent with that blind faith. These children further believed that the court process ultimately led to jail and the children could only describe court from the point of view of someone who was in trouble.

When applying the results of this study to the child in the present case, this court can objectively determine that the child did not have the cognitive development to know that his statements could be used in court.

(2) Eight to Eleven-Year-Olds: Children of this group were able to view court as a place to work out disagreements, but still struggled with defining features between juries and judges. However, these children were better able to understand that judges determine guilt or innocence and decide punishment. They also viewed court similar to church (“You have to be quiet and serious”), and that lawyers help people, are on your side (which shows some understanding of the adversarial process), and stand up for you in court (which shows representational awareness). This group of children showed increased understanding of the differing roles of court-related people, the court process and its function. These children were less likely to confuse the roles of the court and the police. Under the age of ten, children do not understand what a jury does and they still confuse the word with similar sounding words. Between ages eight and eleven, the children studied did not understand that impartial people sit as jurors and instead believed that victims, witnesses, and defendant’s friends are on the jury. This group did not understand that the jury decides the outcome of the case.

(3) Twelve to Fourteen-Year-Olds: This group was able to understand the court process and place it in context with the overall government. At this age, these children became aware of the function of juries, but are still confused about the role of the jury in making decisions. Some children believe that the judge and jury work together to make a decision. This demonstrates that children do not understand the need to communicate to the jury rather than the judge. The children in this group could understand factors that would be considered when determining credibility (such as facial expressions, reputation, personality, comparison with corroborating evidence, etc.).

Based on this study, the child in this matter should not be held to an adult level of cognition that developmentally he is unable to attain. Thus, adopting a “reasonable child”

standard in accordance with the research is appropriate when addressing the formulations set forth in *Crawford*.

1990 Saywitz Study: "Children's Knowledge of Legal Terminology"

Dr. Saywitz conducted another study, published in 1990, that analyzed whether age and grade-related patterns would be found when testing children on commonly used court terms. Karen Saywitz, Carol Jaenicke & Lorinda Camparo, *Children's Knowledge of Legal Terminology*, 14 L. & Hum. Behav. 523 (1990).⁴ Sixty children were grouped according to school grades, given a list of 35 legal terms and asked to tell everything they knew about each word. The study showed that some legal terms had significant grade-related trends. Some terms, which were accurately defined by the sixth graders, were largely inaccurate for the kindergartners, such as: "oath," "deny," "lawyer," "date," "sworn," "case," "jury," "witness," "judge," "attorney," "testify," and "evidence." On the other hand, some legal terms did not have grade-related trends because children in all three groups equally understood or misunderstood the term. Terms that were easy for all groups of children to describe accurately were: "lie," "police," "remember," "truth," "promise," and "seated." Terms that were difficult for all groups of children to describe accurately were: "charges," "defendant," "minor," "motion," "competence," "petition," "allegation," "hearing," and "strike."

The study also considered if the age of the children contributed to whether an unfamiliar word was mistaken for a similar sounding word (i.e., jury was mistaken for jewelry) or whether a word had another meaning outside the court system (i.e., "motion is like waving your arms"). These two types of errors were found to be grade-related insofar as the sixth graders made significantly fewer of these errors than the third graders or kindergartners. For example, 19 of 20 kindergartners and 18 of 20 third graders erred with the word

⁴ To view the complete study, see *infra* Appendix 2.

“hearing,” whereas only 7 of 20 sixth graders made the same error. This demonstrated that the older children were able to understand that familiar words may have a different meaning in the court system.

This study demonstrated that “a majority of legal terms tested were not accurately defined until the age of 10.” *Id.* at 531. Of interest is that younger children admitted lack of knowledge or unfamiliarity with a legal term more frequently than older children. Thus, older children may answer a question concerning a court term, yet not understand the term or the question. On the other hand, younger children may think that they understand the meaning of the term and may testify accordingly, when in fact they have a different meaning in their mind than the adult does. The study found that younger children (under eight years of age):

fail to realize that they have insufficient information to correctly interpret the world. At times, they fail to identify and monitor their own limitations as communicators. The younger children’s resistance to the prompt, “Could it mean anything else in a court of law?” suggests that they had limited metacognitive ability to foresee that a term would mean something else in a different, potentially unfamiliar, context. Moreover, it may be difficult for them to shift from one context to another or to continue to generate alternate solutions.

Id. at 532. However, by third grade, children may be able to fit familiar terms into a different context, such as a court setting.

This particular study demonstrates that even if a child within the age-frame of this study is informed *during* an interview that their statements may be used in a court proceeding, this does not necessarily mean that the child understands what court is or what the purpose of court is. On the other hand, if such information is *not* provided to a child during an interview, it is not fair to expect the child intuitively to understand the function of court or that the interview may be used in a criminal prosecution. In this case, the child was not informed that his statements might later be used in court, and no court-related subjects were discussed.

1989 Warren-Leubecker Study: "What Do Children Know about the Legal System and When Do They Know It?"

A study conducted in Australia, published in 1989, researched the developmental trends in children's perceptions of the legal system, court-related personnel, reasons for going to court, and how decisions are made. Amye Warren-Leubecker, Carol S. Tate, Ivora D. Hinton and Nicky Ozbek, *What Do Children Know about the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research*, Perspectives on Children's Testimony 158-183 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).⁵ The study involved 563 children ranging in ages two years and nine months to fourteen years in age. The children were asked 23 questions, six of which are included below:

1. **Do you know what a courtroom is?** 18% of three-year-olds, 40% of six-year-olds, 85% of seven-year-olds, and up to 100% of thirteen-year-olds answered "yes."
2. **Who is in charge of the courtroom?** 82% of the three-year-olds indicated they did not know and the remaining 18% answering incorrectly (i.e., a doctor). Answering the Judge was in charge of a courtroom were 15% of four-year-olds, 25% of five-year-olds, 56% of six-year-olds, 73% of seven-year-olds, and 92% of eight-year-olds.
3. **Who else is in the courtroom (besides the judge)?** The chart below demonstrates the percentage of correct answers according to age.

Age in years/Percentage Correct

	3	4	5	6	7	8	9	10	11	12	13
Jury	0	0	3	4	8	13	19	28	38	38	40
Lawyer	0	0	3	0	8	15	31	44	36	40	20
Witness	0	11	3	0	0	28	23	20	16	19	30
Police	0	11	10	26	15	36	26	17	23	34	30
Defendant	0	7	0	0	8	15	19	28	27	21	20
Plaintiff	0	0	0	0	4	8	10	15	19	17	20
Audience	9	0	0	4	4	3	2	4	7	2	20
Bailiff	0	0	0	4	4	0	4	6	9	15	0
Court Clerk/Reporter	0	0	0	0	0	3	3	14	15	9	0

⁵ To view the entire study, see *infra* Appendix 3.

4. **What does a lawyer do?** Children under the age of seven did not know what a lawyer does. When children reached age ten they began to distinguish between attorneys who prosecute or defend others.

5. **What is the jury and what do they do?** A large number of children mistook the word jury for jewelry and were unable to answer this question. In general, it was not until age ten that a significant number of children could understand that a jury is involved in decision-making. However, at age twelve, 30% of these children still did not understand the role of a jury in court.

6. **Why do people go to court?** A significant number of younger children did not know or were not able to provide a reason as shown by these percentages: 91% of three-year-olds; 75% of four-year-olds; 62% of five-year-olds; 43% of six-year-olds; 27% of seven-year-olds; 15% of eight-year-olds; and not until age thirteen were all children able to provide an answer.

Of interest with this particular study is that it includes children of the same age as the child victim in the present case. The results above clearly demonstrate that a majority of children age ten and younger do not understand court-related terms, the players involved in court proceedings, the purpose of court proceedings, nor the most basic level of the purpose of court. Again, this study is consistent with the abovementioned prior studies in showing that until approximately the age of ten years old children do not understand the court process objectively and consequently cannot understand that their out-of-court statements may be used in court.

1989 Flin Study: "Children's Knowledge of Court Proceedings"

A study from the United Kingdom, published in 1989, replicated the findings in the studies above. Rhona H. Flin, Yvonne Stevenson, Graham M. Davies, *Children's Knowledge of Court Proceedings*, 80 *British Journal of Psychology* 285-297 (1989).⁶ Ninety children ages six, eight and ten were studied in this project. Twenty legal terms, as well as questions regarding court procedures were asked to the children. Consistent with other studies, the ten-year-old children understood more legal terms than the younger children. Only four terms

⁶ To view the entire study, see *infra* Appendix 4.

("policeman," "rule," "promise," and "truth") did not show a significant difference in accuracy between the age groups. However, terms like "going to court," "evidence," "jury," "lawyer," "prosecute," "trial," and "witness" were clearly not understood by the six and eight-year-old children and only nominally by the ten-year-olds. When asked what kind of people go to court, children ages six and eight did not know or believed that only bad people went to court. However by age ten, these children understood that all types of people could be involved in court proceedings.

1997 Aldridge Study: "Children's Understanding of Legal Terminology"

A study of British children ages five to ten, published in 1997, focused on child witnesses' understanding of the legal system. Michelle Aldridge, Kathryn Timmins, Joanne Wood, *Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?* 6 Child Abuse Rev. 141-146 (1997).⁷ This study found that children do not begin to understand what a witness is or what a judge is/does until age ten; none of the children in the study had ever heard the word "prosecution," except for one child who said "prosecution's when you die. You get hanged or something awful like that." In defining what court is, the children studied had the following answers: one five-year-old stated "a court is a sort of jail;" one seven-year-old said that witnesses "whip people when they are naughty;" another seven-year-old said "the police think that witnesses have done something naughty;" and one seven-year-old described a judge as "someone who gets money, like at a pet show."

1998 Berti Study: "Developing Knowledge of the Judicial System"

Similar results as the Saywitz (1989), Warren-Leubecker (1989), and Flin (1989) studies were found in an Italian study from 1998. Anna Emilia Berti & Elisa Ugolini,

⁷ To view the entire study, see *infra* Appendix 5.

Developing Knowledge of the Judicial System: A Domain-Specific Approach, The Journal of Genetic Psychology 159(2), pp. 221-236 (1998).⁸ One hundred students from Verona, Italy participated in this study. Of particular interest were the student responses to the question about what court is: 75% of first graders (mean age 6.7) did not know; 45% of third graders (mean age 8.6) did not know; 15% of fifth graders (mean age 10.7) did not know; and 5% of eighth graders (mean age 13.8) did not know. In response to describing a public prosecutor, all first and third graders either did not know or had never heard of a prosecutor and only 1 of 20 fifth graders and 4 of 20 eighth graders accurately described a prosecutor. The younger children similarly had difficulty understanding or describing a judge, witness, lawyer, or jury. Of interest in this study is that none of the first and third graders understood that a judge must study law to be a judge, whereas 18% of fifth graders and 94% of eighth graders understood this concept. Therefore, young child witnesses or victims may not understand the role of a judge when testifying.

Overall, results of these six research studies are similar; each indicates that children under the age ten and under do not comprehend legal terms, the nature or process of court proceedings, nor the individuals involved in court proceedings. As such, how could a three-year-old child conclude that his statements made during an interview would later be introduced in a court proceeding? He could not.

When determining whether a young child under the age of ten understands that statements made during any interview may subsequently be used in court, these studies demonstrate that an objective person (i.e., adult) standard cannot be applied to young children, especially children as young as the child in this matter. Instead, the above research amply

⁸ To view the entire study, see *infra* Appendix 6.

supports the creation of a “reasonable child” standard in determining whether out-of-court statements by children are testimonial in light of the *Crawford* decision.

In this particular case, the three-year-old child could not cognitively or developmentally understand that statements made to a detective would be used in court in lieu of his live testimony. Although the interviewer was a governmental agent, this Honorable Court must also take the next step, as required by *Crawford*, and address whether an objective person in the declarant’s position as a child reasonably understood that the statements made to the interviewer would later be used prosecutorially? In this case, and with children age ten and under, the answer is clearly no. This factor cannot be satisfied since children of this tender age cannot cognitively or developmentally understand legal concepts or terminology.

The studies above demonstrate that children at this developmental infancy have not obtained any understanding of the legal system. Moreover, according to the Saywitz studies, the shift from a child's understanding of characteristic features (i.e. a judge is an older person in a black robe) to defining features (i.e. a judge is the person in charge of procedures and enforcing the rules of the court) occurs at varying points in time for different legal concepts. There is not a set age at which every child will understand the defining features of a single concept, nor is there a set age at which one child will understand the defining features of all concepts. As a result, the formulation in *Crawford* that an objective declarant must reasonably expect his statement to be used prosecutorially in order for it to be deemed testimonial fails in this particular matter. Accordingly, the statements of the child to Detective Martin should be non-testimonial under *Crawford* and the Court of Appeals should be reversed.

CONCLUSION

The American Prosecutors Research Institute respectfully requests this Honorable Court to rule that the statements of the three-year-old child to Detective Martin are non-testimonial pursuant to *Crawford v. Washington* and overturn the decision of the Court of Appeals.

Dated: December 1, 2006

Respectfully submitted,

American Prosecutors Research Institute

By:



Alice Anna Phillips

MI Attorney License #P51251

Senior Attorney/Pro Hac Vice

American Prosecutors Research Institute

National Center for Prosecution of Child Abuse

National Child Protection Training Center

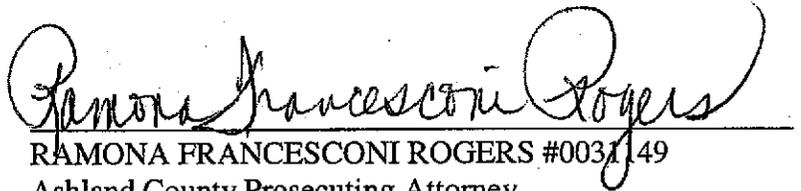
99 Canal Center Plaza, Suite 510

Alexandria, VA 22314

703-518-4385

CERTIFICATE OF SERVICE

I certify that a copy of this Merit Brief of Amicus Curiae American Prosecutors Research Institute in Support of Plaintiff Appellant, The State of Ohio was sent by ordinary U.S. mail to counsel for Appellee, Jill Stone and Craig Jaquith, State Public Defenders, 8 East Long Street, 11th Floor, Columbus, Ohio 43215, on this 8th day of December, 2006.


RAMONA FRANCESCONI ROGERS #0031149
Ashland County Prosecuting Attorney
COUNSEL FOR APPELLANT

INDEX TO APPENDICES

1. Saywitz, Karen, *Children's Conceptions of the Legal System: Court is a Place to Play Basketball*, Perspectives on Children's Testimony, 131-157 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).....A-2
2. Saywitz, Karen, Carol Jaenicke & Lorinda Camparo, *Children's Knowledge of Legal Terminology*, 14 L. & Hum. Behav. 523 (1990).....A-30
3. Warren-Leubecker, Amy, Carol S. Tate, Ivora D. Hinton and Nicky Ozbek, *What Do Children Know about the Legal System and When Do They Know It? First Steps Down a Less Traveled Path in Child Witness Research*, Perspectives on Children's Testimony 158-183 (S.J. Ceci, D.F. Ross & M.P. Toglia eds., 1989).....A-43
4. Flin, Rhona H., Yvonne Stevenson, Graham M. Davies, *Children's Knowledge of Court Proceedings*, 80 British Journal of Psychology 285-297 (1989).....A-70
5. Michelle Aldridge, Kathryn Timmins, Joanne Wood, *Children's Understanding of Legal Terminology: Judges Get Money at Pet Shows, Don't They?* 6 Child Abuse Rev. 141-146 (1997).....A-83
6. Berti, Anna Emilia & Elisa Ugolini, *Developing Knowledge of the Judicial System: A Domain-Specific Approach*, The Journal of Genetic Psychology 159(2), pp. 221-236 (1998).....A-90

7 Children's Conceptions of the Legal System: "Court Is a Place to Play Basketball"

KAREN J. SAYWITZ

Children are participating in legal investigations and litigation more frequently than ever before. They become involved with the legal system as victims of abuse, neglect, or kidnapping; as witnesses to burglary or to a parent's murder; or as the foci of custody disputes and civil injury cases. When children come in contact with the legal system, they often become involuntary participants in a complex web of repeated contacts with strangers, in unknown situations, governed by a set of unfamiliar rules that are admittedly difficult even for adult witnesses to comprehend.

Very little is known about children's perceptions of the system. Authors from both the legal and mental health fields have called for research on this issue (Macaulay, 1987; Melton & Thompson, 1987). A better understanding of the development of children's conceptualization of the legal system is needed to understand fully the factors that affect children's behavior in the courtroom. Such information would be valuable to judges, jurors, attorneys, and policymakers who must assess children's competence to testify and credibility as witnesses. In addition, such research findings would clarify our understanding of children's subjective experience of participation. This information is critical to the efforts of parents, mental health professionals, and children's advocates who work to ensure that children are not revictimized, this time by the court system that is supposed to protect them.

A negligible amount is known about the way in which children's legal knowledge contributes to the effectiveness of their testimony or their credibility in the eyes of the jury. However, there is reason to believe that it does. The literature on discourse processes suggests that the effectiveness

This study was supported in part by a grant from the Harbor-UCLA Collegium to Karen Saywitz and a grant from the Hasbro Children's Foundation to the Kids in the Court System Project at the Children's Institute International. The author expresses appreciation to Kee MacFarlane, Toni Johnson, and Patricia Leuhns for their collaboration. The author also wishes to thank Lorinda Camparo, Peter Mundy, and Richard Romanoff for their efforts and suggestions.

of communicative acts, such as testimony, rest on the interaction between the unspoken expectations, attitudes, and knowledge of both the listener (e.g., juror) and the speaker (e.g., witness). The literature on perspective-taking and referential communication skills suggests that children's ability to infer what others think, feel, or intend does influence the effectiveness of their communications (Dickson, 1981).

When children's understandings of the people and procedures in court are not well developed, it is likely to effect their performance on the stand. For example, children who believe the judge is the sole decision maker in a case, ~~may try vigorously to communicate their view to the judge, but fail~~ even to make eye contact with the jurors who are seen as mere spectators. If we hope to converge on a comprehensive understanding of the factors that affect a child's credibility as a witness, much more must be known about children's perceptions of the people, places, and procedures that constitute our legal system.

There is growing national concern regarding the potential for revictimization by a legal system that is insensitive to children's needs and limitations. Consider the following vignette. A frightened young child sat in the back of the courtroom anxiously awaiting the judge's decision. Will she be allowed to go home, sent to a stranger's house, or sent to a children's hall? She listened intently while a decision was made about where she would be placed for the next six months as the civil and criminal cases unfold. The hearing was over and she was still bewildered. She started to cry. She asked her caseworker where she was going to live. The caseworker responded with a puzzled look "Didn't you listen to what the judge said? He said the minor will live with her grandmother."

The child responded, "I heard him say the minor was gonna live with grandma, but where am I gonna live?" Children's misunderstandings of legal proceedings are all too common. What effect might their misconceptions have on their experience of the process? Had the judge recognized that many children under ten think of minors as people who dig coal (Saywitz & Jaenicke, 1987), this child's fear and anxiety about her future could have been reduced.

Recent research suggests that while some child witnesses perceive the process of investigation and litigation as helpful, others report that it was a harmful experience (Tedesco & Schnell, 1987). At the very least, testifying can be a distressing and confusing experience for witnesses of any age. When children face equally unfamiliar and frightening medical procedures, their anxiety is reduced by preparation techniques that involve desensitization and anticipatory coping strategies based on increased knowledge of what will happen to them (Jay, 1984). It follows that sensitive and age-appropriate preparation of child witnesses before court appearance could alleviate much of their confusion, fear, and anxiety, as well. Yet, to develop age-appropriate preparation procedures, one must consider what knowledge, prior experience, expectations, and fears children of different age groups bring to the situation.

The study of children's perceptions is important to understand fully the factors that effect children's competence and credibility as witnesses and the potential for preventing revictimization by the system. This chapter focuses on children's conceptions of the legal system at different age levels and the sources from which they acquire such knowledge. The first section reviews existing literature on children's knowledge of social institutions, including the legal system. The second section describes a study, based in part on the findings of past studies, designed to compare the perceptions of different aged children with varying amounts of experience in the legal system.

Review of the Literature

Children's Knowledge of Social Institutions

In the past, there have been studies of children's conceptions of content areas related to the judicial system, such as children's understanding of political systems (Greenstein, 1965) and laws (Adelson, Green, & O'Neil, 1969). However, the primary focus of this research was on adolescence, not early childhood. During the 1970s, there were many studies of young children's moral reasoning (Kohlberg & Gilligan, 1975), political socialization (Tapp & Kohlberg, 1971), and some interest in young children's conceptions of social institutions from a Piagetian framework (Furth, Baur, & Smith, 1976). More recently, several trends have contributed to an increased interest in young children's understanding of sociolegal institutions:

1. An inability of subsequent research to validate Piaget's structures-of-the-whole notion across different domains of development (Fischer, 1983; Saltzstein; 1983).
2. Theoretical advances in the domain of social-cognitive development, moving away from "hard-stage" theories toward models of gradual, context-sensitive transformations (Damon, 1977; Snyder & Feldman, 1984; Turiel, 1978).
3. Efforts of the child advocacy and children's rights movements.
4. Increased public awareness of legal cases concerning child abuse, as well as genuine increases in the number of cases reported for legal investigation resulting from new statutes mandating reports from various professional groups.
5. A growing awareness of the powerful influences of television on social-cognitive development.¹

¹In particular, the 1986-87 American television season involved an explosion of series related to the legal system during after school hours, including *Divorce Court*, *People's Court*, *Superior Court*, and *The Judge* to list the daytime schedule alone.

All of these trends have contributed to renewed interest in the general study of young children's conceptions of sociolegal systems.

Among the researchers who have studied factors closely related to children's conceptions of the judicial system are Tapp and Levine (1974). They postulated a stagelike model of legal reasoning that was an adaptation of Kohlberg's model of moral reasoning. They reported significant age-related differences similar to those found by Piaget (1960). According to Tapp and Levine, the preconventional level, common in five- to eight-year-olds, involves a "sanction-oriented deference stance," in which legal reasoning is based on the fear of being punished by an authority figure. The conventional level, emerging in ten- to fourteen-year-olds, is a "law and order conformity posture," focusing on the maintenance of law by means of obedience. The postconventional level, the highest stage, is "a law-creating, principled perspective," involving conceptions of the legislative process and universal ethics. Tapp and Levine concluded that the cross-cultural literature supports the notion of a universal age-related sequence of the development of ideas related to law and justice, despite cultural differences (Gallantin & Adelson, 1971; Hess & Tapp, 1969; Minturn & Tapp, 1970). They concluded that the conventional (law and order) level is the modal level in most societies.

Melton (1980) modified Tapp and Levine's model in a study of first, third, fifth, and seventh graders' concepts of rights. He found that both developmental factors (reflected in school grade) and socioeconomic status (SES, reflecting the opportunity to exercise one's rights) affect children's conceptions of their rights. Most children had some idea of the nature of rights by third grade, regardless of SES level. Older children viewed rights as based on a criteria of fairness and self-determination. Younger children possessed a more egocentric view; rights were based on the whim of an authority figure who decides what children are allowed to do.

Melton also found a significant interaction between SES and school grade, suggesting that cognitive-maturational advances are necessary, but not sufficient, for a mature view of rights. Higher SES (reflecting opportunity and experience in exercising one's rights) was associated with a higher level of understanding rights for older, but not for younger, children. Consistent with the age-related findings of Kohlberg and Gilligan (1975) and Tapp and Levine (1974), Melton (1980) found that the vast majority of his oldest subjects (seventh graders) did not reach the highest level of reasoning.

Children's Conceptions of the Legal System

Recently, a few descriptive studies of children's understanding of legal concepts have emerged. In a study of children's conceptions of the French penal system, Pierre-Puysegur (1985) reported significant age-related effects on legal knowledge in six- to ten-year-old French children but few

effects of SES on knowledge. Although she did not test this hypothesis, Pierre-Puysegur speculated that the effects of SES were attenuated by the equal access to television of all groups.

From her results, Pierre-Puysegur postulated a developmental model of conceptualizing the French penal system. At the initial phase, children believed that an offense could go unpunished or that the accused could be arrested, condemned, and punished by the police. In a second phase, children began to understand that arrest leads to an intermediary stage where a judge, rather than the police, makes a decision about guilt and punishment. Yet, there was still no sense of the possibility of an appeal process. In the final phase, children came to understand that the judgment was made through the process of a trial, with attorneys, witnesses, and laws playing apart, rather than at the whim of the judge. Finally, the possibility of an appeal process was conceptualized.

Flin, Stevenson, and Davies (1987) interviewed six-, eight-, and ten-year-olds to examine developmental trends in the ability to describe and define legal concepts. Overall, the children adequately comprehended concepts of police, court, breaking the law, criminals, and being guilty or not guilty. Knowledge of witnesses and judges appeared to be acquired later. The authors reported that children of all ages were unfamiliar with the role of sheriff, lawyer, jury, what it means to be prosecuted, what a trial involves, and what is evidence and why it is needed in court.

Flin et al. (1987) also asked children how they felt about going to court. Only two children (both six years old) felt positive about going to court as a witness or victim. Most children felt it was a place for bad people, although by age ten some realized that anyone may be called to court, not only criminals. All of the children felt it was important to tell the truth in court. They thought it was important because they feared punishment, not because they viewed the trial as a fact-finding, truth-seeking process.

Saywitz and Jaenicke (1987) studied grade-related trends in kindergartners, third-graders', and sixth graders' understanding of thirty-five legal terms selected from transcripts of actual court proceedings when child witnesses were present. Some of the terms showed significant grade-related trends (*fact, witness, case, truth, date, lawyer, denied, hearing, attorney, identify, oath, parties, evidence, objection, jury, swear, and testify*). Other terms were too difficult, no matter what the child's age, since their legally relevant definitions were understood by virtually none of the children (*allegation, petition, minor, motion, competent, hearsay, strike, charges, and defendant*). Still other terms were relatively easy and understood by all the children (*judge, lie, police, remember, and promise*).

The younger children in this study frequently assumed that an unfamiliar word, such as jury, was in fact a similar sounding familiar word, such as jewelry. The authors hypothesized that child witnesses may frequently be operating under the false impression that they understand a term that they have, in fact, misconstrued.

Another frequent error showing grade-related trends involved younger children assuming that the adult was referring not to the legally relevant definition but to an alternative definition:

- "Court is a place to play basketball"
- "Charges are what you do with your credit card"
- "Hearing is what you do with your ears"
- "Date is what you do with a boyfriend"
- "Case is what you carry papers in"
- "Minor is someone who digs coal"
- "Parties are for getting presents"
- "Swear is like cursing"
- "Strike is when you hit somebody"

When asked if these words could mean anything else in the context of court, the children answered no.

Warren-Leubecker, Tate, Hinton, and Ozbek investigated the legal knowledge of the largest sample of children to date, 563 children from three to fourteen years of age. Their results are described in this volume. Overall, the results of all of these studies do not differ greatly, considering the different age groups, methodologies, and scoring systems used by different investigators. Young children repeatedly demonstrated limited knowledge of the people, places, and procedures that make up our legal system. Very young children did not simply demonstrate a paucity of knowledge, but also misunderstandings and inaccuracies. None of these studies, however, involved actual witnesses with first-hand experience in the legal system. The role of experience in the development of legal knowledge remains unexplored.

Sources of Knowledge about the Legal System

The study that follows explores not only age-related trends in knowledge of the legal system, but also factors that affect the development of legal knowledge, such as first-hand experience as a witness in the legal system and television viewing of court-related dramas.

The Role of Experience

In a series of studies of juveniles' competence to waive their rights, Grisso (1981) assessed the abilities of 600 juvenile court wards to understand the Miranda warnings and their implications. He found that juveniles' understanding of their rights were not related to the amount of prior experience with the courts or police nor to race or SES. The majority of juveniles fourteen years of age and under did not grasp the meaning of the warnings sufficiently to understand their implications.

In the field of cognitive science, researchers have investigated the effect of experience as it is reflected in the memory skills of adults and children who are experts or novices in certain areas (e.g., chess) (Chi, 1978; Chi and Ceci, 1987; Chi and Koeske, 1983; Gobbo and Chi, 1986). Subjects with expert knowledge were found to be superior to novice subjects in their ability to employ and access their knowledge, possibly because it is more cohesive and integrated. To the extent that this is also the case in the development of legal knowledge, children with significantly more legal experience should have a more cohesive, well-integrated conceptualization of the legal system based on more experience with the system. However, Grisso (1981) did not find this to be the case with juvenile court wards. Melton (1980) did find a relation among understanding of one's rights, SES, and age, the latter two variables reflecting opportunity and experience with exercising one's rights. Pierre-Puysegur (1985) failed to find effects of SES on legal knowledge, but postulated that the availability of television attenuated the effects of SES. It is not yet clear what role direct and indirect experience play in the acquisition of knowledge about the legal system.

The Role of Television

Gerbner, Gross, Signorielli, Morgan, and Jackson-Beeck (1979) have studied extensively the role of television in children's developing views of social reality. Their work suggests that crime and law enforcement play a key role in television's portrayal of social order and that the television version differs from reality in many respects. In a comprehensive series of studies, Gerbner et al. (1979) found that among children from seven years to adolescence, heavy viewers perceived social reality differently from light viewers, even when other factors (e.g., sex, age, ethnicity, vocabulary, and the child's own report of victimization) were held constant. For example, heavy-viewing adolescents saw the world as more violent and were more likely to overestimate the number of people who commit serious crimes than light viewers.

Although exposure to television programs about the legal system is likely to influence children's knowledge base, it is not clear whether it will lead to more accurate knowledge. Macaulay (1987) has stated that, as a source of information about the legal system, television misrepresents reality. Macaulay believes that viewers who rely on television are "badly misled" about the roles of professionals in the legal system. For example, he points out that lawyers are portrayed atypically, in Perry Mason style. "Mason doesn't get his client acquitted by showing that the prosecutor failed to carry the burden of proof. Instead, he proves his client's innocence by exposing the real killer" (1987, p. 198). The role of television and experience in children's conceptualizations of the legal system require further study.

Concept Acquisition

How do children develop conceptions of the legal system? Perhaps, it is not unlike the development of other concepts. Investigators have demonstrated support for the use of weighted features (attributes) to define a given concept (Clark, 1973; Hampton, 1979; Rips, Shoben, & Smith, 1973; Rosch & Mervis, 1983). Thus, a concept is represented mentally by a set of features or attributes that are variously weighted on the degree to which they enable individuals to make accurate decisions about that concept. ~~Some of the features are weighted more heavily (defining features), and~~ some are weighted less heavily (characteristic features). For example, the concept *judge* is defined by a list of attributes, some of which are defining features (in charge of the courtroom, decides the sentence) and some of which are characteristic features (wears a robe, bangs a gavel). The terms "defining" and "characteristic" are used loosely and may best be understood as representing the ends of a continuum of definition (McCloskey & Glucksberg, 1978).

Keil and Batterman (1984) found evidence for a developmental shift from a phase where children make judgments about concepts based on many characteristic features to a phase where defining features are most prevalent. Applying this data to the topic at hand, young children may not be aware of defining features (e.g., the jury is part of the decision-making process) but may have knowledge of characteristic features (e.g., jurors watch the trial). Gradually, children come to use defining features in evaluating a concept. Keil and Batterman (1984) suggest that the characteristic-to-defining shift occurs at different points in development for different concepts, depending on the domain of knowledge.

A Study of Children's Conceptions of the Legal System

The goal of the present study was to describe developmental differences in children's conceptualizations of the legal system and to begin to identify factors that contribute to the acquisition of legal knowledge and competence. Based on the studies just reviewed, a group of researchers (present investigator included) designed an experiment to examine developmental differences in conceptualizing the judicial system among children with varied amounts of direct legal experience and varied television-viewing habits. The data presented are observations from semistructured interviews with forty-eight children from four to fourteen years of age divided into three age groups. Half of them were actively involved in legal cases as victim-witnesses and half were not.

While age and first-hand experience were expected to be associated with accuracy and completeness of knowledge about the legal system based on many of the research findings reviewed earlier, it is important to recall that

Grisso (1981) did not find a relation between experience and knowledge of Miranda warnings and Pierre-Puysegur (1985) did not find a relation between socioeconomic status and knowledge of the French penal system. Based on current views of cognitive development, it also seemed reasonable to expect an interaction between age and experience such that inherent cognitive limitations could attenuate the effects of experience with younger children. Although television has been found to influence children's knowledge of their social world (Gerbner et al., 1979), Macaulay (1987) and others have pointed out that although television could be educational, it also could provide children with a distorted view of the legal process. Thus, the following study is designed to investigate associations between legal knowledge, maturational factors—reflected in age groupings, and direct and indirect experiential factors—reflected in witness status and watching television programs about the legal system.

Method

Subjects

Forty-eight children from Los Angeles County, ranging in age from four to fourteen years, participated. Twenty-four had been actively involved in legal cases as witnesses for at least three months (high-legal-experience group). These children had been referred to the "Kids in the Court System" project for an educational/supportive intervention program to assist them and their parents with the legal process. The children were interviewed at intake before they participated in the intervention program. Another twenty-four children who had not been involved in a legal case were recruited through local schools and scout troops (low-legal-experience group). Each of these children was matched to one of the high-experience subjects on the basis of age (within one year).

Subjects within each experience group were divided into three age groups: four-to-seven year olds ($M = 5.6$ years), eight-to-eleven year olds ($M = 9.9$ years), and twelve-to-fourteen year olds ($M = 13.0$ years). There were sixteen boys and thirty-two girls in the sample. Preliminary analyses showed no effects of sex. Both of the experience groups contained at least 25 percent children from low-income and 50 percent from middle-income families. Subjects were excluded if they showed any signs of a psychotic process, delayed language development, or mental retardation or were enrolled in special education.

All of the subjects were interviewed about their past legal experience. Responses were rated on a seven-point scale (7 = testifying in open court; 1 = no legal experience), allowing for the characterization of the legal experiences of "normal" children. The distribution of the low-experience group past legal experience was as follows: 63 percent received their legal knowledge solely from TV, parents, peers and school, while 21 percent had

visited a court either with a parent (e.g., traffic violation) or on a school field trip. For the more experienced group (all of whom were witnesses), 58 percent had been interviewed by attorneys and police and had appeared in the courtroom during the proceedings, although they did not testify. Thirty-three percent had testified, but only one child had testified publicly in open court. Thus, amount of exposure to the courtroom varied within both groups. All of the experienced children were victims of abuse and one-third were simultaneously involved in custody disputes that arose subsequent to the allegations of abuse.

Instrumentation

In choosing the particular concepts to be investigated, this investigator visited courtrooms during proceedings and selected concepts that were associated with visually salient attributes of the court that could be represented pictorially as prompts. Thus, the interview focused on eight concepts related to the court itself and the people involved in the judicial process:

<i>court</i>	<i>jury</i>	<i>judge</i>	<i>witness</i>
<i>lawyer</i>	<i>baliff</i>	<i>court clerk</i>	<i>court reporter</i>

Children were told that the interviewer was interested in what they thought about court. They were asked the same set of questions about these eight judicial concepts and provided with illustrations of each concept. In general, the questions elicited the concept's meaning, appearance, function, why we have the concept in court, what would happen if we did not have the concept, and the child's source of information (direct experience, television, through another person). Some concepts were followed with additional questions (e.g., Question 11, following). For example, these were the questions asked about the term *jury*:

1. "Do you know what a JURY is?"
2. "What is a JURY?"
3. "What does a JURY look like? (picture introduced after this prompt)"
4. "Who is in a JURY? How does somebody get to be in a JURY?"
5. "What is the job of the JURY in court?"
6. "Why do we have JURY in court?"
7. "What would happen if we didn't have a JURY in court?"
8. "Have you ever seen a JURY in person? Tell me about it."
9. "Have you ever seen a JURY on TV? Tell me about it."
10. "Did you ever know anybody that was on a JURY?" Tell me about it."
11. "What makes a person in the JURY believe a witness?" (Subjects understanding of *witness* was assessed prior to this question.)

After the eight concepts were discussed, questions about additional concepts were introduced to assess children's understanding of the following:

- a. Witness credibility: "What makes a judge (or jury) believe a witness?"
- b. The decision-making process: "How do they decide who wins in court?"
- c. The fact-finding, truth-seeking process: "What happens when people tell the truth in court? What happens when people tell a lie in court? Why is it important that people tell the truth in court?"
- d. The differentiation between subsystems, such as, police, penal and judicial systems: "What does a policeman have to do with court?"

Procedure

Children were interviewed individually for approximately 45 to 60 minutes by a licensed social worker or a psychology graduate student, each of whom was trained in the clinical interview method. They followed up the children's leads to uncover the reasoning behind in their answers. The individualized, semistructured interview led to questions that were not completely standardized across all subjects. This method was employed to reveal subtleties in conceptualization that would have been lost with the restraints imposed by a forced-choice method or structured interview.

Scoring the Data

When children's discussions of the concept demonstrated comprehension of defining features, they were considered to possess accurate concept knowledge. Importance of features was determined by a task modeled after one developed for adults by McNamara and Sternberg (1983) and for children by Schwanenflugel, Guth, and Bjorklund (1986).² The children's correct responses to the interview were separated into a comprehensive list of features for each concept. A feature had to be mentioned by at least two of the subjects to be included in the list.

These features were then presented in random order to twenty-five college students in a physics class at California State University, Dominguez Hills, who rated each feature on a three-point scale describing how important the feature was to accurate understanding of the concept (1 = not very important, 2 = important, 3 = very important). They were instructed to leave a feature blank if they felt it was not related to the concept. Features were referred to as defining if endorsed as very important by two-thirds or more of the adults. The rest were considered to be characteristic.

Concepts were scored in two ways. First, a completeness score for each

²These studies have shown that children's ratings of feature importance do not necessarily coincide with adult ratings. However, for our purposes we used adult ratings of feature importance to determine whether children had mastered an understanding of a concept, because in the legal environment it is the adult definition that sets the standard, which is expected to be understood by all. However, we also took the child's viewpoint into consideration by asking adults to rate only features that were generated previously by the children.

concept reflected the number of true features (both defining and characteristic) mentioned about that concept. In devising a total completion score, features were summed across five concepts. Only five of the concepts were used because subjects proved to be unfamiliar with the minor courtroom personnel of bailiff, court clerk, and court reporter. Thus, total completion score reflects the sum of features about the five major concepts.

Accuracy scores were also computed for each concept, using the following four-point qualitative scale:

0 = I don't know, irrelevant, in accurate response

~~1 = Characteristic response~~

2 = At least one defining feature

3 = The concept was defined uniquely; More than one defining feature.

Both 2 and 3 on this scale were considered an accurate response. An example at each level for the concept of *jury* may serve to clarify the accuracy scoring system:

0 = "The stuff you wear on your neck and finger like a ring" (i.e., jewelry).

1 = "People who sit there and watch, I don't know why they are there."

2 = "They listen to the case and then make a decision about it."

3 = "When there are both a jury and a judge in the case, the jury listens to the case, they discuss it with each other and then give a verdict about the guilt or innocence of the accused and the judge gives the sentence."

These scores were summed for each child across concepts to yield a total accuracy score.

Results

Interrater Reliability

There were two graduate student coders who were blind to subjects' age, sex, legal experience, and the hypotheses of the study. They coded twenty-eight randomly selected children's protocols. Mean percentage agreement for completion scores was 85 percent and for the accuracy scores was 90 percent. Disagreements were resolved through discussion.

Age Group and Experience Level

The means and standard deviations of total accuracy and total completeness scores by age group and experience level are presented in Table 7.1.³

³Relative to the means, the standard deviations of the accuracy and completion scores were quite large. This indicates that there was considerable variability on these scores. The breadth of variability in the children's responses reduced the power of the analyses. Nevertheless, a number of significant findings were obtained. Possible explanations for the differences in children's scores include variability in attention span or measurement imprecision.

TABLE 7.1 Means, standard deviations, and ranges for total accuracy and total completeness scores by age group and experience group.

	Age					
	4-to-7 years N = 18		8-to-11 years N = 19		12-to-14 years N = 11	
	Experience		Experience		Experience	
	Low n = 10	High n = 8	Low n = 9	High n = 10	Low n = 5	High n = 6
Total Accuracy Score	0.40 ^a (0.69) [0-2]	0.125 (0.35) [0-1]	4.11 (0.93) [0-6]	2.51 (2.50) [0-6]	6.00 (1.41) [5-8]	5.17 (0.98) [4-6]
Total Completion Score	3.4 (4.20) [0-10]	3.25 (3.41) [0-9]	23.75 (5.99) [15-31]	17.70 (13.12) [3-36]	38.20 (2.77) [34-41]	25.67 (7.00) [15-31]

^aMean (SD) [Range].

These scores were treated as interval data and subjected to two-way analyses of variance (age group \times experience level). Hypotheses concerning age effects on accuracy and completeness were confirmed ($F(2, 42) = 46.08$, $p < .0001$; $F(2, 42) = 53.02$, $p < .0001$, respectively). Older subjects demonstrated more accurate and more complete knowledge. Multiple comparisons using the Bonferroni Method ($p < .01$) resulted in significant differences among all comparisons.

Group effects of experience on total accuracy and total completeness scores were also significant ($F(1, 42) = 4.13$, $p < .049$; $F(1, 42) = 7.60$, $p < .009$, respectively). As can be seen in Table 7.1, and contrary to expectation, children with more experience demonstrated less accurate and less complete knowledge than children with less experience. Age group by experience level interactions were not significant.

The effects of experience are difficult to interpret. The results lend themselves to two possible interpretations. First, children with more experience, who are witnesses in abuse cases, may also come from more dysfunctional families, possessing emotional difficulties that interfere with their cognitive abilities. This raises a methodological issue with regard to the prospect of measuring legal experience independent of emotional or cognitive abilities in children. Second, actual court experience may, in fact, be chaotic and confusing, making acquisition of knowledge about the legal system a more arduous task. As a result of the difficulty in interpreting experience effects, these effects were excluded from the remainder of the analyses.

Data for each individual legal concept are presented in Table 7.2. Age effects on completeness and accuracy of all five major concepts were highly significant. Age effects on accurate conceptions of two of the minor courtroom personnel did not reach significance.

TABLE 7.2 Means, standard deviations, significant age effects for the judicial concepts.^a

Concept	Age			Age Effects
	4-to-7 years N = 18	8-to-11 years N = 19	12-to-14 years N = 11	
<i>Age Effects on Accuracy Scores (Scale = 0-3)</i>				
Court	0.61 (0.77) [0-3] ^b	2.26 (0.99) [1-3]	2.82 (0.40) [2-3]	$H = 26.38$ $df = 2$, $p < .001$
Jury	0.0	0.79 (0.91) [0-3]	1.91 (1.30) [0-3]	$H = 19.81$ $df = 2$, $p < .001$
Judge	0.56 (0.61) [0-2]	1.77 (0.94) [0-3]	2.36 (0.67) [1-3]	$H = 23.11$ $df = 2$, $p < .001$
Witness	0.33 (0.68) [0-2]	1.74 (1.14) [0-3]	2.46 (0.52) [2-3]	$H = 23.24$ $df = 2$, $p < .001$
Lawyer	0.12 (0.32) [0-1]	1.58 (1.07) [0-3]	2.55 (0.52) [2-3]	$H = 29.32$ $df = 2$, $p < .001$
Bailiff	0.11 (0.47) [0-2]	0.05 (0.22) [0-1]	0.36 (0.67) [0-2]	$H = 4.10$ $df = 2$, $p < .13$
Court clerk	0.0	0.05 (0.22) [0-1]	0.36 (0.81) [0-2]	$H = 4.00$ $df = 2$, $p < .14$
Court reporter	0.0	0.68 (1.05) [0-3]	1.45 (1.21) [0-3]	$H = 14.11$ $df = 2$, $p < .001$
<i>Age Effects on Completion scores</i>				
Court	1.39 (1.85) [0-6]	8.42 (4.42) [0-16]	10.27 (2.49) [5-15]	$F(2,45) = 32.95$, $p < .001$
Jury	0.0	1.79 (2.14) [0-6]	4.46 (3.23) [0-9]	$F(2,45) = 16.24$, $p < .001$
Judge	1.06 (1.39) [0-4]	4.28 (2.13) [0-8]	6.55 (1.63) [4-10]	$F(2,45) = 35.29$, $p < .001$
Witness	0.78 (1.59) [0-5]	3.21 (2.20) [0-6]	5.18 (1.47) [3-7]	$F(2,45) = 20.60$, $p < .001$
Lawyer	0.11 (0.32) [0-1]	2.95 (2.36) [0-8]	4.91 (2.07) [2-8]	$F(2,45) = 26.12$, $p < .001$

^aIndividual accuracy scores were treated as ordinal data using nonparametric tests, Kruskal-Wallis (H). Completion scores were treated as interval data using analyses of variance.

^bMean (SD) [range].

TABLE 7.3 Percentage of subjects with accurate responses, by age.

Age group (years)	N	Percentages (%)							
		Court	Jury	Judge	Witness	Lawyer	Bailiff	Court Clerk	Court Reporter
4-7	18	0.06	0	0.06	0.11	0	0.06	0	0
8-11	19	74	21	93	86	93	0	0	50
12-14	11	100	73	91	100	100	0.09	0.18	64
Total	48								

The percentage of subjects showing accurate concepts at each age level are presented in Table 7.3. Across the concepts, it appeared that the concept of *jury* consolidated at a later age than the other concepts. The difference was most pronounced in the eight- to eleven-year-olds. That is, many children in this age range had an adequate understanding of *court*, *judge*, *witness*, and *lawyer*, but few appeared to have mastered the concept of *jury*. This assumption was tested with pairwise chi-square analyses. The results indicated that significantly more children between the age of eight and eleven years ($N=19$) presented evidence of understanding defining features of *court* than *jury* ($\chi^2=17.96, p<.001$), *judge* than *jury* ($\chi^2=15.03, p<.001$), *witness* than *jury* ($\chi^2=12.06, p<.001$), and *lawyer* than *jury* ($\chi^2=17.96, p<.001$). Mean completion scores by age displayed in Table 7.2 also supported the notion that *jury* is a later-developing concept, than *judge*, *witness*, *lawyer*, and *court*.

Mean completion scores indicated that, although the very young children did not demonstrate knowledge of the defining features of *court*, *judge*, *lawyer*, and *witness* (criteria for accuracy), they were providing correct information about these legal concepts in the form of characteristic features.

The Role of Watching Court-Related Television Programs

It was also hypothesized that, in addition to age and direct experience, frequency of watching court-related television programs would contribute to development of legal knowledge. Children were asked what programs they watch that have courts in them and how frequently they watch each program. Responses were rated on a three-point scale:

0 = Doesn't watch shows with courts in them or has only seen TV court once.

1 = Watches only one or two of these shows once in a while.

2 = Watches any of these shows every time it is on or watches two or more of these shows regularly.

There was a significant positive correlation between scores on watching court-related television shows and accuracy ($r = .70, p < .01$) and completion ($r = .72, p < .01$). Furthermore, the television-watching score was also significantly correlated with age ($r = .69, p < .01$). This raised the issue of whether the effects of age on accuracy and completion were confounded with the effects of television watching. Therefore, partial correlations were computed to assess the association between age and accuracy or completion while holding variance associated with television-watching habits constant.

The correlation between age and accuracy fell (from $r = .86, p < .01$ to $r = .44, p < .01$) when the effects of television-watching scores were held constant and the correlation between age and completion fell (from $r = .85, p < .01$ to $r = .41, p < .01$) when the effects of television-watching scores were held constant. These partial correlations indicate that the correlations between age and accuracy as well as age and completion are sharply reduced by controlling for variance associated with television watching, but nevertheless remained significant. These two aspects of the data suggest that both television watching of court-related series and age are important and partially independent correlates of accuracy and completion of understanding the judicial system in children.

Conversely, the correlation between television-watching scores and accuracy fell (from $r = .70, p < .01$ to $r = .29, p < .05$) when the effects of age were held constant, as did the correlation between television-watching scores and completeness (from $r = .72, p < .01$ to $r = .34, p < .02$). Thus, in this particular sample, age was the more powerful variable, although there seemed to be a reliable television effect independent of age that is worthy of further investigation.

Additional Concepts

Each child's entire protocol was scored for four additional conceptualizations, rated on a four-point scale (0 to 3). Means, standard deviations, and significant age effects for three of them appear in Table 7.4. (Interrater reliabilities ranged from 72 to 98 percent for these four variables.)

First, responses to two questions were scored for understanding of witness credibility ("What makes a jury (or judge) believe a witness?"). Responses to the jury and judge questions were combined for analysis. The number of times children mentioned the following were summed:

- a. Witness factors ("If he always tells the truth; If he doesn't stutter or look guilty.")
- b. Judge/jury factors ("They are smart; They concentrate; They just trust the witness.")
- c. Evidence factors ("If what they say is believable; If other people said the same thing, too.")

TABLE 7.4 Mean, standard deviations, and significant age effects for additional concepts.

	Age Groups			Age effects
	4-7 years	8-11 years	12-14 years	
Witness credibility ^a	0.06 ^d (.25) [0-1]	0.77 (0.75) [0-2]	1.60 (0.51) [1-2]	$F(2,37) = 22.14$, $p < .0001$
Awareness of decision-making process ^b	0.0	1.00 (0.74) [0-2]	2.00 (0.94) [0-3]	$H = 26.45$ (df = 2) $p < .0001$
Awareness of truth-seeking process ^c	1.15 (0.35) [0-1]	1.86 (0.63) [1-3]	1.85 (0.47) [1-3]	$H = 14.25$ (df = 2) $p < .001$

^aScores were number of factors mentioned and were treated as interval data using analyses of variance.

^{b,c}Scores treated as ordinal data (scale = 0-3), using nonparametric tests, Kruskal-Wallis (H).

^dMean (SD) [range].

As can be seen in Table 7.4, a two-way ANOVA (age group \times experience level) revealed a significant effect of age group. The data show a linear effect with comparable increments between group means. The effect of experience and the age by experience interaction were not significant. The data indicate that, although older children began to consider factors that a judge or jury could use in determining the credibility of a witness, children in the youngest age group did not. Many four- to seven-year-olds simply assumed that witnesses tell the truth and they are believed.

Second, the entire protocol was scored for understanding of the decision-making process used to reach a verdict and the child's ability to distinguish between the role of the judge and the role of the jury in that process⁴ ("How do they decide who wins the case in court?"). Again, the effect of age group was significant, but not that of experience level. The data revealed a linear effect with equal increments between group means. The majority of eight- to fourteen-year-olds believed that the judge's and jury's decisions are dependent on each other in some significant manner, but their understanding was inaccurate. For example, children suggested that the judge and jury go into a room and discuss the case together, and that

⁴This variable was scored on the following four-point scale: 0 = I don't know, irrelevant or idiosyncratic response; 1 = judge alone decides the case; 2 = judge and jury's decision are dependent on each other in some way; 3 = judge and jury's decisions are independent.

the judge can change the jury's verdict if he doesn't like it. Only three children (all in the twelve- to fourteen-year-old range) understood that the judge and jury make relatively independent decisions, even though the judge's determination of a sentence depends on the jury's verdict.

Third, protocols were scored for understanding the fact-finding, truth-seeking process.⁵ This type of awareness showed a significant effect of age group, but not of experience group. As can be seen in Table 7.4, means show a nonlinear effect, with children from eight to fourteen years of age performing comparably. The majority of four- to seven-year-olds demonstrated no awareness that a goal of the court process is to gather evidence and determine whether or not it is truth. Their responses indicated that the goal was to accomplish an act (e.g., punish the criminal or give the child to one of his parents), but they did not understand that evidence must be collected, presented, and evaluated. Instead, they had a naive view, assuming that the evidence almost magically presented itself and was, of course, true and believed.

Fourth, protocols were scored for the child's ability to distinguish among the police, penal, and judicial systems, a finding suggested by the work of Pierre-Puysegur (1985). One-third of the four- to seven-year-olds in this study demonstrated evidence of this type of confusion. Some thought that the policeman decided if someone did something wrong and could be put in prison for life with no appeal. Some thought that court was just a room you pass through on your way to jail. Most of the remaining four- to seven-year-olds simply said they did not know. None of the eight- to fourteen-year-olds evidenced this misperception.

Discussion

These data affirm that children of different ages and varying amounts of experience bring different expectations to the courtroom. The findings are generally consistent with the age-related trends reported by Piaget (1960), Tapp and Levine (1974), Melton (1980), Pierre-Puysegur (1985), and Warren-Leubecker et al. (this volume). As Grisso (1981) found, direct experience with the legal system did not lead to enhanced knowledge of the system. Consistent with the findings of Gerbner et al. (1979), heavy watching of court-specific television programs did appear to influence children's conceptions of the legal system. The findings support Keil and Batterman's (1984) notion of a characteristic-to-defining shift in concept acquisition. The fact that the age of the shift for *jury* differed significantly from that of

⁵This variable was scored on the following four-point scale: 0 = I don't know, irrelevant, idiosyncratic response; 1 = no evidence of awareness of truth-seeking process; 2 = evidence of awareness of truth-seeking process; 3 = aware that truth may be independent of what the judge/jury decide.

the other legal concepts supports their hypothesis that shifts occur at varying points in time for different concepts rather than a hard-stage model.

Age-Related Trends in Conceptualizing the Legal System

The importance of maturational processes in the development of legal knowledge was strongly supported by the observations presented. A description of the developmental progression follows.

Four- to Seven-Year-Olds

For the most part, children in this age group reasoned on the basis of what they saw and their own egocentric view of the world. They understood observable characteristics of the legal system, but not the defining features. As a result, the four- and five-year-olds were unable to meet the criteria of accuracy on any of the five major concepts. This may have been a result of the verbal nature of the interview. Overall, four- to seven-year-olds described how legal personnel behaved in global terms, such as talking, sitting, and helping. There was little differentiation among the roles of different personnel. The children knew many visually salient aspects of the system existed but treated them as rituals and could not explain their purpose further. For example, "The judge is there to talk and listen, nothing else, he sits in a high desk and bangs a hammer, I don't know why." They did not know that the judge is in charge of the courtroom or determines the sentence—features rated as defining by the adults.

The lack of differentiation within and between people and their social roles was pervasive. For example, they were confused about whether judges continue to be judges when they go home at night. One-third of the four- to seven-year-olds confused the roles of the police, prison, and court process. Some said, "Court is a room you pass through on your way to jail." Others said, "The policeman decides if somebody did it or not and whether they should go to jail for the rest of their life." Pierre-Puysegur (1985) reported a similar misunderstanding. The children tended to generalize from personal experience across social systems, reasoning about court personnel on the basis of their own experiences at home and school where infractions are responded to by a single parent or teacher who makes the arrest, judges, and sets the punishment, so to speak.

To their credit, the four- to seven-year-olds demonstrated a sense of a social institution that is "out there" beyond home and school. This is contrary to the Piagetian notion that very young children have little direct experience with intangible social systems, and thus are severely limited in their ability to develop mental representations of social institutions. Children growing up in the age of television are regularly exposed to social systems beyond the family and school.

150 Karen J. Baywitz

Four- to seven-year-olds' responses revealed conceptualizations consistent with the early phases described by Piaget (1960) and Tapp and Levine (1974) in which a fear of punishment by authority figures underlies reasoning processes. For example, they knew witnesses had to tell the truth, but thought it was because they would be punished if they did not. They did not understand that evidence had to be presented and evaluated. They naively believed that all evidence presented is true. Although legal personnel were viewed as benign and helpful, the court process was seen as treacherous and potentially leading to jail. They described court from the point of view of someone who has done something wrong. Even one nine-year-old who was aware of the alternative roles one might have in the court process feared that "if the witness gives the wrong answer, he'll go to jail." One can speculate that this level of reasoning feeds into children's fears about going to court. They may begin to think they did something wrong and as a result of the court process they themselves will somehow end up in jail.

Eight- to Eleven-Year-Olds

By the age of eight to nine years, typically third grade, accurate concepts of court and the roles of judges, witnesses, and attorneys began to emerge. For example, court was seen as a place you go to work out disagreements. Melton (1980) found that by third grade children also had a concept of rights. However, for the concept of jury, the shift from knowledge based on characteristic to defining features began to emerge substantially later, within the ten- to eleven-year-old level. Pierre-Puysegur (1985) found the same age-related pattern for the concepts of judge versus jury in a different culture.

Not surprisingly, the vast majority of children in our sample were completely unfamiliar with the roles of the bailiff and court clerk. The court reporter was frequently assumed to be a reporter from the news media, even when a picture was shown of her typing court.

Although the younger children could not say what court reminded them of, many eight- to eleven-year-olds responded, "Church, because you have to be quiet and its serious." In this age group, lawyers were seen in a positive light as someone who is there to help. These children demonstrated an emergent understanding of the adversarial nature of the process ("The lawyer is on your side.") and the representational aspect of the lawyer-client relationship ("He stands up for you in court."). The eight- to eleven-year-olds viewed witnesses as people who answer a lot of questions, tell the truth, and help the judge and lawyer by telling what happened. Gradually, the judge's role in determining guilt or innocence and in deciding the punishment were realized within this age group.

Generally, children in the eight- to eleven-year-old group showed substantial increases in differentiating between people, social roles, processes,

and functions. For example, they no longer confused the judiciary with the role of the police. They were aware that the court is a fact-finding process that seeks to uncover the truth but did not understand that sometimes the truth (reality) differs from the judge's or jury's decision about what happened because the evidence on which they based their decision was flawed. The "law and order mentality" described by Tapp and Levine (1974) was evident in responses of children at this phase, although this was not tested.

Twelve- to Fourteen-Year-Olds

Only this oldest age group demonstrated a sense of societal role for the legal system beyond the one-to-one relationships of the individuals they described, for example, discussing the court as a subsystem of an overriding government. They began to become aware of the function of the jury. Five children understood that although the process seeks to uncover the truth, this is not necessarily always the case. They understood that decisions may, in fact, be based on inaccurate information, and that winning the case is not always synonymous with finding truth. The oldest age group appeared to demonstrate reasoning commensurate with the conventional level described by Tapp & Levine (1974) and Melton (1980), although this hypothesis was not tested. None of the subjects described the "law-creating, principled perspective" characteristic of the highest level of reasoning in Tapp and Levine's (1974) model.

Credibility in the Eyes of the Jury

Credibility is a function of the interaction among the listeners (jurors), the speakers (witnesses), and the context (courtroom) in which the testimony occurs. A thorough understanding of children's credibility requires not only comprehension of jurors' perceptions of children but also children's perceptions of juries. In this sample, the concept of jury appeared to develop in three phases. Children under ten years of age did not know what jury meant. Responses showed auditory discrimination errors confusing the word jury with jewelry.

A second phase was reflected by the eight- to eleven-year-olds' perceptions that jurors are indistinguishable from other spectators ("They sit there and watch, I don't know why."). Most of these children did not realize that the jury was an impartial group, but thought that victims, witnesses, and defendants ask their friends to come be on the jury. For the most part, these children said that the judge was the only one who decides the case and were unaware of the jury's role in determining the verdict.

An indication of a third phase is that a few eleven-year-olds and the children in the twelve- to fourteen-year-old group understood that the jury had a role in deciding the verdict. However, most of these children were extremely confused about the nature of the jury's role in the decision-making process. They still believed that it is the judge's opinion that

counts. Some children believed that the judge could change the verdict if he did not agree with the jury. Several children even suggested that the judge and jury go off during recess into a room together to discuss the case.

Only the three oldest children understood that the judge and jury make an independent decision. Even older children's reasoning about why we have juries in court was limited. For example, "The jury is there to second the judge's opinion," "so the judge does not have to stay up all night thinking about it," or "so the judge does not get blamed for the decisions." These data support the notion that some children who testify may be unaware of the need to convey their message not only to the judge but also to the jury. In this way, their credibility may be affected by their level of knowledge of the concept of jury.

Children's understanding of witness credibility was assessed by asking "What makes a judge (or jury) believe a witness?" The four- to seven-year-olds' responses reflected the bias that judges want to believe witnesses indiscriminately because "judges think witnesses are nice," "they are just trying to help," "judges feel sorry for witnesses," or simply because "witnesses always tell the truth." Their responses could be characterized more as blind faith ("They hope that the witness is telling the truth," "They like the witness and want to believe him.") or an omniscient view of the judge ("He's so smart he can tell if they are telling the truth or not."). Not only were they unaware of the adversarial nature of the system, but there was no doubt that as witnesses they would be quite surprised by the disbelief confronting them in cross-examinations and repeated interviews.

Eight- to eleven-year-olds began to understand that judges and jurors evaluate a witness' credibility and could consider a limited number of realistic factors. However, it was the twelve- to fourteen-year-olds who distinguished themselves by discussing a wide range of factors that jurors could take into consideration, including whether the witness hesitates, the witness's facial expressions, witness's personality and reputation for telling the truth in the past, the believability of the evidence, the amount of corroborating evidence, and factors associated with the jurors' interactions with each other.

Sources of Knowledge about the Legal System

The Role of First-Hand Experience

As in Grisso's (1981) report, these findings call into question the assumption that experience in the legal system helps children develop a more accurate, complete, and cohesive understanding of the system in which they are participating. Contrary to expectations, the child witnesses demonstrated significantly less accurate and less complete knowledge of the legal system than age-mates without legal experience. A subjective reading of their re-

sponses indicated that they were more confused. One can only speculate as to why.

As previously mentioned, the more experienced children were not only more experienced in court, but also victims of abuse and at high risk for emotional difficulties that could interfere with their ability to absorb legal knowledge from the experience or to perform on the interview task. Although children with overt signs of delay and psychopathology were excluded, an objective measure of psychopathology was not employed, and ~~the victim-witnesses probably came from more dysfunctional families.~~ It is also possible that variables such as SES or verbal ability accounted for this phenomenon. To evaluate the role of experience, researchers will need to choose comparison groups that are matched to the victim-witness group on variables such as psychopathology, SES, verbal fluency, or other cognitive skills. For example, a group of depressed or conduct-disordered children may be more appropriate than normal controls.

On the other hand, it is also probable that the development of legal knowledge depends on the context in which the information is learned. Therefore, since the inexperienced subjects gained their knowledge primarily from television or school and parent involvement, they may have been presented with a view that is in actuality an oversimplification of the legal process, but simple enough for them to extract the main points. Children who participate in the legal system as a victim-witness experience numerous delays and continuances, a variety of meetings (depositions, preliminary hearings, placement decisions, trials), as well as the retelling of their story over and over again in diverse situations. To these children the legal system may appear to be a far more confusing and chaotic concept to master. It may be far more difficult to extract a consistent schema or frame for conceptualization from these experiences than from a lesson plan presented at an age-appropriate level or from a half-hour situation comedy. Court may be a confusing place regardless of the level of emotional disturbance in the sample.

Both interpretations lead to a similar conclusion. Child witnesses have a limited and at times faulty understanding of the system in which they are participating. Often, they do not accurately understand what is happening around them. They require age-appropriate preparation regarding the people, places, and procedures of the legal system.

Anecdotally, when asked "What does the judge's robe remind you of?" the inexperienced children tended to give neutral answers such as "a priest" or "somebody graduating." However, the experienced children's responses took on a morbid and frightening connotation, such as, "a priest at a funeral," "a witch," and "Dracula." Additional study of the relation between the emotions and cognitions of child witnesses may shed further light on the role of experience in acquiring legal knowledge. It is possible such research will reveal that some current practices are actually detrimental.

The Role of Television Viewing in Conceptualizing the Legal System

In this sample, there was a reliable effect of watching court-related television programs on accuracy and completeness of knowledge about legal system that merits replication. Heavy viewers of television programs about court demonstrated more accurate and complete legal knowledge, despite Macaulay's speculations regarding the extent to which television misleads the public about the legal system. Further investigation is needed to determine whether television also perpetuates or creates common childhood misperceptions regarding the legal system.

Implications for Future Research

These data suggest the child witnesses possess misunderstandings and limited knowledge of the legal system. Future research is needed to determine how this affects their performance, credibility, and subjective experience of the process.

Thus far studies have relied primarily on verbal interviews or written questionnaires, which may underestimate children's true conceptual knowledge. Children are likely to know more about a concept than they can express in verbal statements. Additional knowledge can be inferred from the way children use a word or make judgments about a concept. Therefore, one goal of future research would be to replicate the results of these initial descriptive studies with true/false verification, picture sorting, and/or response to vignettes or video tape methodologies.

The fact that child witnesses in this sample demonstrated less accurate and less complete knowledge of the legal system than age mates strongly supports the need to allocate resources to develop techniques to prepare children for participation in legal proceedings. Further research is needed to understand the relative contributions of innate maturational limitations on legal competence and the degree to which experience through education, television, or participating as a witness can modify the development of legal knowledge. Empirical findings are necessary to determine whether interventions to enhance children's legal competence can be effective in maximizing the accuracy of the children's accounts, minimizing distortion, and reducing stress. Studies of pediatric psychology certainly suggest that children's stress can be reduced by increasing their knowledge of what will happen to them in the system, including anticipatory coping strategies and desensitizing visits to the unfamiliar surroundings of the courtroom (Jay, 1984).

One such program of research could build on the available descriptive data to develop an assessment tool that would evaluate children's knowledge, past experiences, attitudes, and feelings regarding the legal system.

This tool could be used to identify gaps in a child witness' legal knowledge, as well as his or her misperceptions and fears about testifying. An educational-therapeutic intervention program could be developed to remediate the identified gaps in knowledge, correct the misperceptions, and reduce identified fears to whatever degree possible.

From example, consider the following line of reasoning. Young children typically interact with safe adults whom they know well and can trust. They may be frightened by unfamiliar places and strangers. Anxiety associated with strangers, and strange situations in the courtroom can interfere with their ability to perform at their highest level of cognitive and verbal ability when testifying. Admittedly, the experience of testifying is stressful even for adult victims. In addition to their anxiety, the extent to which young children's thinking is bound by their immediate surroundings has profound implications for their performance on the stand. Initially, they are likely to spend a great deal of mental energy taking in and adapting to the new and distracting environment in which questioning will take place. They are not likely to be listening carefully to the questions at hand.

An intervention program that increases children's knowledge of what will happen to them in the system and familiarizes children with the surroundings, rules, and roles of the various strangers can reduce their anxiety and stress, increasing the potential for accurate reporting. Research is needed to determine what kinds of interventions can be developed that allow children to perform optimally on the stand; how children might be inoculated in this way against the stress of testifying; and how accuracy and completeness could increase as a result of such interventions without generating increased distortions.

At present, one can only speculate as to whether children's paucity of knowledge and misunderstandings are due to a lack familiarity with the content, emotional factors, or to some inherent cognitive maturational constraint that will limit the effect of any educational attempt to alter the acquisition of legal concepts. The study of children's conceptions of the legal system is critical to fully understanding the factors that affect children's competence and credibility as witnesses and the potential for protecting children from undue stress through preparation. Understanding the interplay between children's knowledge of and performance in the legal system will be a rich and rewarding area for future research endeavors.

References

- Adelson, J., Green, B., & O'Neil, R. (1969). Growth of the idea of law in adolescence. *Developmental Psychology, 1*, 327-332.
- Chi, M. (1978). Knowledge structures and memory development. In R. Siegler, ed. *Children's thinking: What develops?* Hillsdale NJ: Erlbaum, 73-96.
- Chi, M., & Ceci, S. (1987). Content knowledge and the reorganization of memory. *Advances in Child Development and Behavior, 20*, 1-37.

- Chi, M., & Koeske, R. (1983). Network representation of a child's dinosaur knowledge. *Developmental Psychology*, *19*(1), 29-39.
- Clark, E. (1973). What's in a word? On the child's acquisition of semantics in his first language. In T. Moore, ed. *Cognitive development and the acquisition of language*. New York: Academic Press, 65-110.
- Damon, W. (1977). *The social world of the child*. San Francisco: Jossey-Bass.
- Dickson, P.W., ed. (1981). *Children's Oral Communication Skills*. New York: Academic Press.
- Fischer, K. (1983). Illuminating the processes of moral development. *Monographs of the Society for Research on Child Development*, *48*(1-2).
- Flin, R., Stevenson, Y., & Davies, G. (1987). Children's knowledge of the Law. Submitted for publication.
- Furth, H., Baur, M., & Smith, J. (1976). Children's conception of social institutions: A Piagetian framework. *Human Development*, *19*, 351-374.
- Gallantin, J. & Adelson, J. (1971). Legal guarantees of individual freedom: A cross-national study of the development of political thought. *Journal of Social Issues*, *27*(2), 93.
- Gerbner, G., Gross, L., Signorielli, N., Morgan, M., & Jackson-Beeck, M. (1979). The demonstration of power: Violence profile No. 10. *Journal of Communication*, *48*, 177-196.
- Gobbo, C., & Chi, M. (1986). How knowledge is structured and used by expert and novice children. *Cognitive Development*, *1*(3), 221-238.
- Greenstein, F. (1965). *Children and politics*. New Haven: Yale University Press.
- Grisso, T. (1981). *Juveniles' waiver of rights*. New York: Plenum Press.
- Hampton, J. (1979). Polymorphous concepts in semantic memory. *Journal of Verbal Learning and Verbal Behavior*, *18*, 237-254.
- Hess, R., & Tapp, J. (1969). *Authority, rules, and aggression: A cross national study of socialization into complicity systems* (Part I). (Project No. 2947), Washington, DC: U.S. Office of Education.
- Jay, S. (1984). Pain in children: An overview of psychological assessment and intervention. In A. Zener, D. Bendell & C. Walker, eds. *Health psychology treatment and research issues*. New York: Plenum Press, 167-196.
- Keil, F., & Batterman, N. (1984). A characteristic-to-defining shift in the development of word meaning. *Journal of Verbal Learning and Verbal Behavior*, *27*, 221-236.
- Kohlberg, L., & Gilligan, C. (1975). The adolescent as philosopher: The discovery of the self in a postconventional world. In P. Mussen, J. Conger, & J. Kagan, eds. *Basic and contemporary issues in developmental psychology*. New York: Harper & Row, 18-33.
- Macaulay, S. (1987). Images of law in everyday life: The lessons of school, entertainment, and spectator sports. *Law and Society Review*, *21*(2), 185-218.
- McCloskey, M., & Glucksberg, S. (1978). Natural categories: Well defined or fuzzy sets? *Memory and Cognition*, *6*, 462-472.
- McNamara, T., & Sternberg, R. (1983). Mental models of word meaning. *Journal of Verbal Learning and Verbal Behavior*, *22*, 449-474.
- Melton, G. (1980). Children's concepts of their rights. *Journal of Clinical Child Psychology*, *9*(3), 186-190.
- Melton, G., & Thompson, R. (1987). Getting out of a rut: Detours to less traveled paths in child-witness research. In S. Ceci, M. Toglia, & D. Ross, eds. *Children's eyewitness memory*. New York: Springer-Verlag.

- Minturn, L., & Tapp, J. (1970). *Authority, rules, and aggression: A cross-national study of children's judgments of the justice of aggressive confrontations*. (Part II). (Project No. 2974), Washington, DC: U.S. Office of Education.
- Piaget, J. (1960). *The moral judgement of the child*. New York: The Free Press.
- Pierre-Puysegur, M. (1985, July). The representations of the penal system among children from six to ten years. Presented at the 8th biennial meetings of the International Society for the Study of Behavioral Development, Tours, France.
- Rips, L., Shoben, E., & Smith, E. (1973). Semantic distance and the verification of semantic relations. *Journal of Verbal Learning and Verbal Behavior*, 12, 1-20.
- Rosch, E., & Mervis, C. (1983). Fuzzy set theory and class inclusion relations in semantic categories. *Journal of Verbal Learning and Verbal Behavior*, 22, 509-525.
- Saltzstein, H. (1983). Critical issues in Kohlberg's theory of moral reasoning. *Monographs of the Society for Research on Child Development*, 48(1-2), 108-119.
- Saywitz, K., & Jaenicke, C. (1987, April). *Children's understanding of legal terminology: Preliminary findings*. Presented at the annual meeting of the Society for Research on Child Development, Baltimore, Md.
- Schwanenflugel, P., Guth, M., & Bjorklund, D. (1986). A developmental trend in the understanding of concept attribute importance. *Child Development*, 57(2), 421-430.
- Snyder, S., & Fledman, D. (1984). Phases of transition in cognitive development: Evidence from the domain of spatial representation. *Child Development*, 55, 981-989.
- Tapp, J., & Kohlberg, L. (1971). Developing senses of law and legal justice. *Journal of Social Issues*, 27(2), 65-91.
- Tapp, J., & Levine, F. (1974). Legal socialization: Strategies for an ethical legality. *Stanford Law Review*, 27, 1-72.
- Tedesco, J., & Schnell, S. (1987). Children's reactions to sex abuse investigation and litigation. *Child Abuse and Neglect*, 11, 267-272.
- Turiel, E. (1978). Social regulations and domains of social concepts. In W. Damon, ed. *Social cognition: New directions for child development*. San Francisco: Jossey-Bass, Inc., 45-74.
- Warren-Leubecker, A., Tate, C., Hinton I., & Ozbek, N. (In this volume). What do children know about the legal system and when do they know it?

S.J. Ceci D.F. Ross M.P. Toggia
Editors

Perspectives on Children's Testimony



Springer-Verlag
New York Berlin Heidelberg
London Paris Tokyo

Children's Knowledge of Legal Terminology

Karen Saywitz, Carol Jaenicke, and Lorinda Camparo*

The present study examined age-related patterns in communicative abilities relevant to providing testimony, specifically, knowledge of legal terms commonly used with children in court. Subjects were 60 public school students comprising 3 groups of 20 each in kindergarten, third, and sixth grades. Grade-related patterns emerged in children's knowledge of legal terms and in their misunderstanding of terms. Results suggest that age-appropriate word choice in the examination of child witnesses may be an important factor in eliciting accurate testimony. Potential mediators of the relation between age and accurate knowledge of legal terminology (i.e., verbal skills, television viewing of court-related programs, direct experience with the legal system) also were explored. Implications for future research, court preparation, and training of legal professionals in age-appropriate examination of children are discussed.

Children are perceived as unreliable or incompetent witnesses because they often appear contradictory, inconsistent, or confused when testifying in court. In fact, adults are often incompetent questioners of children because they have limited knowledge of developmental differences in language comprehension. Adults not only ask questions that are developmentally inappropriate, but they also misinterpret children's responses. For example, in court a child asked "to identify" an assailant failed to do so. Her failure damaged her credibility and surprised the adults. Previously, they had asked her "to point" to the person who hurt her and she had performed the task readily.

* This study was funded in part by an award to Karen Saywitz from the Harbor-UCLA Collegium. The authors wish to thank the Torrance Unified School District, Mrs. Diana Bowlby, and Dr. Peter Mundy for their invaluable assistance. Requests for reprints should be sent to Karen Saywitz, Ph.D., Child & Adolescent Psychiatry D-6, Harbor-UCLA Medical Center, 1000 West Carson Street, Torrance, California 90509.

Despite such anecdotal observations, there have been few attempts to analyze empirically the relation between the development of communication skills and the task of testifying. The goal of the present study is to isolate one component of the linguistic complexity confronting children who testify and to demonstrate the need for normative data that could be used to educate legal practitioners. The present study investigates age-related patterns in children's ability to communicate their understanding of commonly used legal terms.

In the past, studies have focused on barriers to effective testimony by child witnesses (e.g., Ceci, Toglia, & Ross, 1987; Goodman, 1984; Melton & Thompson, 1987). Researchers have concentrated on children's memory (e.g., Goodman & Hegelson, 1986; Loftus, 1979; Yarmey, 1984); suggestibility (e.g., Loftus & Davies, 1984; Zaragoza, 1987); truthfulness (e.g., Clarke-Stewart, Thompson, & Lepore, 1989; Tate & Leubecker, 1989); and jurors' perceptions of children's credibility (Ceci, Ross, & Toglia, 1989).

Other than a pilot version of the present study, no studies examining children's knowledge of legal terms commonly used in American courtrooms are reported in the literature (Saywitz & Jaenicke, 1987). However, two studies, one from France and one from Scotland, have included measures of children's knowledge of legal terms. Pierre-Puysegur (1985) asked school-aged children to define 15 legal terms used in the French penal system. She found that some terms were understood by nearly all the children (*prison, police*), some by very few (*summons, damages*), and most terms revealed age-related trends (*jury, judge, lawyer*).

Flin, Stevenson, and Davies (1987) reported similar findings in their study of school-aged children's understanding of 20 terms used in Scottish criminal court proceedings. These authors asked children if they recognized the terms and then asked them to define those terms rated as familiar. Results indicated that recognition was greater than descriptive ability and therefore not always a valid predictor of accuracy. Flin et al. described a few misconceptions held by some children, though the authors did not analyze these data. Because other societies have different systems and vocabularies, these studies highlight the need for similar investigations relevant to the American justice system.

In two studies of children's general knowledge of the American legal system, procedures included in-depth interviewing of children about their perceptions of the legal process (e.g., reasons for going to court, witness credibility) (Saywitz, 1989; Warren-Leubecker, Tate, Hinton, & Ozbek, 1989). In keeping with Pierre-Puysegur (1985) and Flin et al. (1987), findings from both of these studies indicated that there were age-related differences in children's understanding of legal constructs. Extending Flin et al.'s identification of errors, these studies reported age-related patterns of errors for several concepts. Warren-Leubecker et al. suggested that as children develop a more mature view of the legal system, they move from lack of knowledge to incorrect perceptions before mastering correct understanding.

In addition to the investigation of age-related patterns, the present study extends earlier work by scrutinizing more fully children's misunderstanding of legal terms. Since the task of defining terms gives an incomplete picture of chil-

dren's legal knowledge and courtroom communication skills, a study of their errors provides insight into children's comprehension. A fuller understanding of their misconceptions may aid development of age-appropriate preparation procedures for testimony. Although not an original goal of this study, the availability of data from France and Scotland allows a comparison of findings across countries.

Finally, the present study explores factors that might influence individual children's understanding of legal terms, including nonlegal verbal skills, previous direct experience with the legal system, and frequency of watching court-related programs on television. Individual differences among child witnesses have not been well addressed in previous research, yet may interact with developmental differences to influence children's performance on the stand. Understanding what factors mediate accurate knowledge of legal terms may help in preparing children for courtroom examination.

METHOD

Subjects

Sixty public school students comprised three groups as follows: Kindergartners (K) ($n = 20$; mean age = 5 years, 10 months); third graders ($n = 20$; mean age = 8 years, 8 months); and sixth graders ($n = 20$; mean age = 11 years, 11 months). The children were predominately from middle class homes in the Los Angeles area and were 62% Caucasian, 23% Asian, 10% Hispanic, and 5% Black. Males ($n = 29$) and females ($n = 31$) were equally represented among the three groups.

All children were within the normal range on verbal skills, as assessed by standard scores on the Peabody Picture Vocabulary Test—Revised (PPVT-R), a measure highly correlated with verbal intelligence and expressive vocabulary skills. Preliminary analyses demonstrated that the groups did not significantly differ from each other in gender, ethnicity, socioeconomic status, or standard scores on the PPVT-R. In addition, the groups did not significantly differ on previous experience with the legal system, as measured by parents' reports on a 3-point scale (1 = *no prior experience*; 2 = *family member works in legal system or has visited court*; 3 = *active involvement as a party in a legal case*). Children's legal experiences included being present in court for a traffic ticket, car accident, remarriage, or personal injury case.

Stimuli

Transcripts of actual legal proceedings involving child witnesses were reviewed to establish a list of 35 legal terms. The legal terms selected were used frequently in direct examination of children and in courtroom proceedings in the presence of children. The legal terms were assigned randomly to two lists in consideration of the children's limited attention span. One word was repeated to make the lists equal in length. Three filler words (*cup*, *crayon*, and *telephone*)

020 SATWITZ ET AL.
were included periodically in each list to check on the children's attention to the task and to assure the children of some success with the task. Analyses revealed that these words were accurately defined by all the children, indicating adequate attention to the entire task. Each list took approximately 15 min to administer.

Thirty college students rated each term on a 3-point scale of difficulty (1 = *not at all difficult*; 2 = *difficult*; 3 = *very difficult*). From these data, mean difficulty ratings were calculated for each legal term. Within each word list, all terms were ordered for presentation from least to most difficult, according to mean difficulty ratings. Sentences using each legal term in a legal context were also constructed (e.g., "She will *identify* the person who stole her purse."). Each term was presented alone first and then in the sentence context.

Procedure

All children were tested individually. The PPVT-R was administered. Next, the children were asked whether or not they had ever been to court and whether or not they watched any television programs about courts. Their court-related television viewing was scored on a 3-point scale (1 = *does not watch court-related television programs*; 2 = *watches once in a while*; 3 = *watches regularly*). Finally, the children were presented individually with the lists in a counterbalanced order on separate days.

The children were told that the words were about court and instructed to pretend to tell everything they knew about each word to a spaceman from another planet who had never heard the words before (Schwanenflugel, Guth, & Bjorklund, 1986). The children were given practice items and an opportunity to ask clarifying questions about the task before being presented with the counterbalanced stimulus lists. To ensure that the children would give the fullest possible response to the best of their ability, the interviewers were trained to prompt the children beyond their initial response for additional information about each term (e.g., "Tell me more" or "Is there anything else it could mean?").

Scoring of Data

Definitions were scored on a 5-point scale of accuracy: 0 = *don't know*; 1 = *incorrect definition*; 2 = *alternate nonlegal definition* (e.g., "A hearing is something you do with your ears," "Jury is that stuff ladies wear around their necks and fingers."); 3 = *accurate descriptive characteristics*; 4 = *defining features*. To increase reliability, the scores of 0, 1, and 2 were collapsed into 0 = *incorrect*, and the scores of 3 and 4 were collapsed into 1 = *accurate*, for all of the analyses except the error analyses for which case scores of 0, 1, and 2 were analyzed separately.

The accuracy of children's definitions was scored with reference to *Black's Law Dictionary*, and *Webster's New Collegiate Dictionary* as well as the guidelines in the vocabulary subtest of the Wechsler Intelligence Scale for Children—Revised. This resulted in a relatively strict system in comparison to previous studies (Saywitz, 1989; Warren-Leubecker et al., 1989).

Two raters, blind to the subjects' groups, rated 24 protocols. Four male and four female protocols were chosen randomly from each grade to be rated. Overall, there was 99% interrater agreement on the collapsed scale.

RESULTS

The data were analyzed to address three issues. First, grade-related trends in children's ability to define legal terms were examined. Second, errors in children's knowledge of legal terminology were addressed. Last, potential mediators of the relation between grade and accurate knowledge of legal terminology were explored.

Grade-Related Differences in Accurate Knowledge of Legal Terms

A major focus of this study was to describe grade-related patterns in children's ability to define legal terms as actually encountered by child witnesses in American court proceedings. To examine this issue, a one-way ANOVA, with number of terms accurately defined as the dependent variable and grade level as the independent variable, was computed. There was a significant grade-related effect: $F(2,57) = 114.77, p < .0001$. The mean number of terms accurately defined by sixth graders ($M = 25; SD = 4.4$) was significantly greater than the mean number defined by third graders ($M = 15; SD = 4.6$) and kindergartners ($M = 6; SD = 2.5$). Post hoc comparisons (Neuman Keul's test, $p = .01$) demonstrated that all groups significantly differed from each other.

The grade-related effect for each term also was examined. Owing to the lack of variance at some grade levels (i.e., ceiling or floor effects) on some terms, grade effects for all terms were analyzed with chi-square tests. Upon analysis, terms generally divided into two types: (1) terms with significant grade-related trends at $p < .01$ (see Table 1) and (2) terms where no grade effects were obtained (see Table 2). These terms appeared to be either easy and understood by over 80% of the children or difficult and understood by no more than 25% of the children. However, chi-square analyses of this latter group of terms are suspect because one fifth of fitted cells were sparse (frequency < 5).

Error Analyses

Simply not knowing what a legal term meant was not the sole source of error in children's responses to the task (see Table 3). Even though kindergartners, third, and sixth graders admitted not knowing a term 42%, 17%, and 5% of the time, respectively, two other types of errors emerged. These were of concern because of the potential for interference with children's testimony and credibility. We characterized these as *auditory discrimination errors* and *homonym errors*.

Auditory discrimination errors were those in which children mistook the unfamiliar legal term for a similar sounding familiar word. For example, children mistook jury for jewelry ("Jury is like the stuff ladies wear on their fingers and

Table 1. Number of Children with Accurate Definitions of Terms with Grade-Related Effects

Legal terms	Grade ^a		
	K	3	6
Difference	10	16	18 ^b
Duty	4	16	18 ^c
Evidence	1	11	19 ^c
Testify	1	11	13 ^c
Identify	1	12	17 ^c
Objection	1	8	19 ^c
Attorney	1	5	14 ^c
Judge	6	18	20 ^c
Facts	1	13	20 ^c
Witness	0	11	20 ^c
Jury	0	4	16 ^c
Approach the bench	0	9	16 ^c
Case	0	12	16 ^c
Sworn	0	9	17 ^c
Date	2	17	20 ^c
Lawyer	1	14	20 ^c
Deny	0	3	16 ^c
Oath	1	0	16 ^c

^a $n = 20$ for each grade.

^b $p < .01$.

^c $p < .0001$.

ears and around their neck.") or journey ("a trip"). Even when the word was repeated, the children were asked if the word could mean anything else in a court of law, and the word was presented in a sentence placing it in the courtroom context, children remained steadfast in their definitions.

Homonym errors were those in which children assumed that a familiar non-legal definition (e.g., "Charges are something you do with a credit card," "A motion is like waving your arms," "A date is something you do with a boyfriend.") was the only definition even though the terms were presented in sentences with a courtroom context. When asked, these children denied that the term could mean anything else in a court of law.

A one-way ANOVA computed for total number of auditory discrimination and homonym errors, with grade as the independent variable, showed that these types of errors are grade related, $F(2,57) = 9.95, p < .0001$. Post hoc comparisons (Tukey, $p = .01$) suggest sixth graders ($M = 3.5; SD = 1.8$) made significantly fewer of these errors than third graders ($M = 5.2; SD = 1.5$) or kindergartners ($M = 5.5; SD = 1.4$), who did not differ significantly from each other. Table 4 presents the frequency with which these errors occurred at each grade.

The remainder of the children's errors (coded as 1 in the uncollapsed coding system) involved inaccurate responses further coded to determine whether they were confusions within or outside of the forensic context. Common examples included defining *jury* as a *lawyer* or *judge*, *allegations* as *evidence*, or *defendant* as *defense attorney*. These were in comparison to responses that were clearly

Table 2. Number of Children with Accurate Definitions of Relatively Easy and Difficult Terms

Legal terms	Grade ^a		
	K	3	6
<i>Easy terms</i>			
Lie	16	19	20
Police	17	20	20
Remember	15	19	20
Truth	11	18	20
Promise	16	17	20
Seated	17	18	20
<i>Difficult terms</i>			
Charges	0	4	9
Defendant	0	2	11
Minor	0	2	9
Motion	0	0	2
Competence	0	0	1
Petition	0	1	0
Allegation	0	1	4
Hearing	0	0	13
Strike	3	3	9

^a $n = 20$ for each grade.

outside of the forensic context and far more idiosyncratic, as, for example, "Testify is to go into the army," "Evidence is where God lives," "A lawyer is a chief," "Denied is when the sun goes down." Confusions within the legal context tended to increase with age: Kindergartners, third, and sixth graders showed 16%, 47%, and 52%, respectively, of these errors to be confusions within the forensic context. In turn, responses that were clearly outside of the forensic context tended to decrease with age: Kindergartners, third, and sixth graders showed 65%, 17%, and 14%, respectively, of these responses to be outside the forensic context.

Mediators of the Relation between Grade and Accurate Knowledge of Legal Terminology

It was hypothesized that several factors other than grade might contribute to children's knowledge of legal terminology. Correlational analyses were performed

Table 3. Percent of Responses by Error Type and Grade

Type	Grade ^a		
	K	3	6
Don't know	42%	17%	5%
Auditory discrimination errors			
Homonym errors	15%	14%	9%
Remaining errors	18%	20%	12%

^a $n = 20$ per grade. There were 700 responses (35 terms defined by 20 subjects) per grade.

Table 4. Number of Subjects Providing Homonym and Auditory Discrimination Errors by Term

Legal terms	Grade ^a			Total
	K	J	6	
Parties	20	19	11	50
Hearing	19	18	7	44
Motion	5	16	16	37
Strike	11	9	9	29
Case	14	10	3	27
Charges	8	9	4	21
Approach the bench	4	7	3	14
Minor	2	6	6	14
Date	12	0	0	12
Petition	1	2	7	10
Jury	3	4	0	7
Duty	3	2	1	6
Sworn	2	1	1	4
Objection	1	1	0	2
Defendant	1	0	0	1
Facts	1	0	0	1
Competence	1	0	0	1
Attorney	1	0	0	1
Oath	0	0	1	1
Hearsay	1	0	0	1
Evidence	1	0	0	1

^a $n = 20$ for each group.

with four additional variables: age, nonlegal vocabulary (raw scores on the PPVT-R), direct experience with the legal system (3-point scale), and frequency of watching television programs about the legal system (3-point scale) to compare their degree of association with accuracy. Where analyses involved ratio and ordinal scales, both parametric (r) and nonparametric correlation coefficients (ρ) were computed.

The number of legal terms accurately defined was correlated highly with age ($\rho = .83$; $r = .89$, $p < .0001$), frequency of watching court-related television programs ($\rho = .52$; $r = .54$, $p < .0001$), and raw scores on the PPVT-R ($r = .85$, $p < .0001$), but not with previous direct experience with the legal system ($\rho = .15$; $r = .10$).¹

It was also the case that age and frequency of watching court-related television programs were correlated with each other ($\rho = .62$; $r = .63$),² as was age and

¹ Comparisons between size of correlation coefficients are mitigated by the differences in amount of variance between continuous variables (age, nonlegal vocabulary) and discrete variables (direct court experience and court-related television). Owing to these scaling effects, analyses may have underestimated the role of direct experience or experience gained through the watching of court-related television.

² Whereas only 5% of kindergartners had ever seen a program about court, 90% of third and 95% of sixth graders watched more than one court-related program, and 68% of sixth graders watched several such programs regularly.

PPVT-R scores ($r = .85$). Therefore, partial correlations were used to determine if age, watching court-related television programs, and nonlegal vocabulary held independent paths of association with accuracy. In these analyses, the ordinal scales were regarded as dummy variables in Pearson correlation analyses in order to obtain an estimate of partial correlation effects (Cohen & Cohen, 1983). When the variance associated with watching court-related television programs was partialled out of the relation between accuracy and age, the coefficient fell only slightly, remaining significant ($r = .83$). When the variance associated with age was partialled out of the relation between accuracy and frequency of watching court-related television, the coefficient fell dramatically ($r = -.03$). Thus, in this sample, age appeared to be the stronger correlate. It was not simply the case that older children watched more court-related television and this accounted for their more accurate knowledge of legal terms. Maturation variables associated with age accounted for more of the variance than experience with television alone. If age does reflect amount of information known about the legal system, it is information drawn from many sources, not only television. While these analyses may have underestimated the role of experience, it is unlikely that this occurred to the extent that experience would have been a stronger predictor than age in this sample.

When the effects of age were held constant, the correlation between nonlegal vocabulary and legal accuracy fell to $r = .41$, but remained significant. When the effects of nonlegal vocabulary were held constant, the correlation between age and legal accuracy fell to $r = .58$, but remained significant. Although nonlegal vocabulary and age were highly correlated, both appear to contribute to knowledge of legal terms as assessed by this expressive vocabulary task. As might be expected, general vocabulary skills account for some, but not all, of the relation between age and knowledge of legal terms on this task.

DISCUSSION

Children's ability to define legal terms encountered in American court proceedings appears to develop gradually with age. The present findings indicate that age-appropriate word choice in the examination of child witnesses may be an important factor in eliciting accurate testimony. Normative data should be gathered on age-related patterns of understanding and using legal terms commonly encountered by child witnesses.

The current findings are similar to those reported by Flin et al. (1987) and Pierre-Puysegur (1985), despite differences in methods, instruments, and cultures. All three studies demonstrated that many terms show age-related trends, that certain terms are understood by nearly all the children, and that certain terms are understood by few children in the age ranges studied. In each study, a majority of legal terms tested were not accurately defined until the age of 10. When the same term was tested in all three studies, similar age-related patterns emerged.

A second goal was to scrutinize more fully the relation between age and types of errors made when defining legal terms. It is speculated that misconceptions adversely influence jurors' perceptions of credibility and judges' perceptions of

competence. Younger children tended to admit lack of knowledge or unfamiliarity with a term more frequently than older children who tried to respond even when they did not know the correct answer. This could be due to greater achievement orientation, motivation, test-taking experience, or experience with the task of defining words among older children. The age-related patterns of errors that emerged indeed suggest that children move from lack of understanding to misperceptions before finally reaching accurate understanding.

Inaccurate responses by children revealed a predictable pattern of errors. Younger children (under 8 years of age) more frequently gave responses termed auditory discrimination errors (e.g., "Jury is a trip" for *journey*; "Jury is that stuff ladies wear on their fingers and around their neck" for *jewelry*) and homonym errors (e.g., "A minor is someone who digs coal," "A case is something to carry papers," "Parties are places for getting presents," "Strike is to hit somebody.").

These errors could be explained by the fact that young children fail to realize that they have insufficient information to correctly interpret the world (Flavell; Speer, Green, & August, 1981; Markman, 1979). At times, they fail to identify and monitor their own limitations as communicators. The younger children's resistance to the prompt, "Could it mean anything else in a court of law?" suggests that they had limited metacognitive ability to foresee that a term could mean something else in a different, potentially unfamiliar, context. Moreover, it may be difficult for them to shift from one context to another or to continue to generate alternate solutions (Acredolo & Horobin, 1987). The fact that the children were questioned outside the legal context also may have contributed to younger children's inability to recognize the potential for a second solution and consequently their premature closure, despite frequent reminders that the terms were about courts of law.

Other evidence for this rationale comes from further examination of the data. When sixth and third graders gave auditory discrimination or homonym errors as an initial response, they responded to the prompt with a second solution 46% and 31% of the time, respectively. In contrast, kindergartners did so only 3% of the time. By third grade, many children may have recognized that the familiar meaning did not fit the context. They were aware the term could mean something else in the forensic context and their guesses reflected this view. Given that many legal terms are also common nonlegal terms with which children are familiar (e.g., *hearing*, *parties*), it is likely that their strategy was to assume they had sufficient information to make an interpretation based on familiar expectations (Robinson & Robinson, 1982). A more effective strategy would be to recognize the mismatch between the familiar meaning and the legal context and request clarification or try to make sense of the term from their knowledge of the legal system. This was the strategy employed by older children many of whom used the prompts as an opportunity to stand back and search for (or create) another meaning.

For example, when older children erred they tended to try to make sense of the word within their knowledge of the legal system (e.g., defining *judge* or *lawyer* for *jury*, and *evidence* for *allegations* or *charges*). By contrast, younger children's attempts to respond were more idiosyncratic and outside the legal context (e.g., "Evidence is the place where God lives") and sometimes reflected the meaning of

a familiar part of the word ("Testify is like taking a test." "Identify is like a dentist. "). This could be due to their more limited knowledge base. While groups did not differ on direct experience with the legal system, few children had much experience, and older children did watch more court-related television.

Young children's tendency to make auditory discrimination and homonym errors are of concern because they demonstrate that children think they understand the meaning of what is being said to them and may testify accordingly when, in fact, they have a different meaning in mind than the adults. This is consistent with the findings of Flin et al. (1987), who found that recognition is not always a valid predictor of accuracy. Given these results, legal professionals and others must be very clear about the type of task requested of a child witness. It may not be sufficient to ask a child if she recognizes a legal term. When asked, Do you know what an allegation is? a young child is likely to answer yes, but may be thinking about alligators. Children must be requested to tell further what a term means in their own words. Only in this way will questioners know if a child's response will be accurate, erroneous, or misunderstood within the forensic context.

Finally, the present study began to explore potential mediators of children's knowledge of legal terms. Findings suggest several avenues for future research. In this sample, knowledge of legal terms appeared to be influenced more by age than the experiential factors assessed here. However, scaling effects may have underestimated the role of experience. Also, legal experience was defined very broadly and children possessed little legal experience. There is a need for further investigation of the type of legal experience to which children are exposed, as it is unclear which experiences, if any, facilitate a child's ability to testify. While the findings suggest the need to study limits on preparation of child witnesses, the experiential factors studied here provided opportunities for incidental, not deliberate, learning of legal terms and may not predict children's ability to learn from age-appropriate educational programs.

Television viewing revealed no significant relation to accuracy when the effects of age were held constant. This finding was contrary to a significant (but small) correlation found in a previous study (Saywitz, 1989). One possible reason for the inconsistency may be differences in the characteristics of the two samples. In the present study, subjects are fairly representative of public school students in the geographic area sampled. In Saywitz (1989), half the subjects were child witnesses with at least 3 months experience as active participants in the legal system. The motivation of these children to watch and to attach importance to information gleaned from court-related television programs may have been significantly different from that of the present sample. Also, Saywitz (1989) included older children (up to 16 years of age), who watch more court-related television, and more children from families where alternate activities may be less available (low-income, emotional disturbance), although these notions were not tested. Clarification of the role of television requires further investigation.

It is important to note that the task used here, ability to define legal terms, is only one measure of communication skills relevant to the task of testifying. Moreover, this task may underestimate children's underlying knowledge. If tested

using a courtroom context or with terms embedded in stories about court and with an additional measure of receptive legal vocabulary, young children may demonstrate higher levels of knowledge than are seen here.

Because the generalizability of findings from a small homogeneous sample such as the present one is limited, the value of these data is found in the questions raised for future research. First, normative data on age-related patterns in knowledge of legal terms should be gathered. Researchers should develop measures that improve the ability to place terms in context and assess children's comprehension of legal terms directly. For example, children's predictions of what will happen next after watching segments of videotapes of courtroom scenarios may elicit a more complete picture of their knowledge:

In addition to knowledge of some basic legal terminology, a task analysis of testifying reveals a myriad of developing skills likely to be important contributors to judges' and juries' perceptions of the child witness. For instance, the length and complexity of grammatical constructions typically used in questioning witnesses may require an advanced level of language acquisition and metacognitive skills such as comprehension monitoring for effective communication in the forensic context. In examining one facet of the task, our goal was to sensitize professionals to the need for rigorous research in this area. Additional data are needed to support modifications of the manner in which children are questioned and the way their responses are interpreted in the forensic context. Moreover, possible age by task interactions in the communication skills necessary to competently participate as a witness should be explored.

Empirical data regarding the efficacy of preparing children for court could be helpful on a practical level. Popular preparation techniques, such as reviewing questions and answers or touring the courtroom, may decrease anxiety of child witnesses, but may not facilitate their ability to give verbal testimony, leaving it riddled with inconsistencies. The efficacy of teaching children unfamiliar legal terms remains to be explored. There are few empirical studies of developmental and individual differences in the efficacy of preparation techniques. The development of new, empirically tested preparation techniques that go beyond anxiety reduction and desensitization is warranted. Currently, one of the present authors is testing preparation techniques to enhance memory, comprehension monitoring, and resistance to leading questions.

With the limitations of the present findings in mind, we invite readers to consider the practical implications of (a) developing and testing new preparation techniques, (b) training attorneys to rephrase questions so that they are age-appropriate, and (c) educating judges to monitor verbal examination of children to be certain that it is age-appropriate. Reference to future research results can assist in all of these endeavors, leading jointly to more accurate and effective testimony by children to facilitate the fact-finding process and the course of justice.

REFERENCES

- Acredolo, C., & Horobin, K. (1987). Development of relational reasoning and avoidance of premature closure. *Developmental Psychology, 23*(1), 13-21.

- Ceci, S. J., Toglia, M. P., & Ross, D. F. (Eds.) (1987). *Children's eyewitness memory*. New York: Springer-Verlag.
- Ceci, S. J., Ross, D. F., & Toglia, M. P. (Eds.) (1989). *Perspectives on children's testimony*. New York: Springer-Verlag.
- Clarke-Stewart, A., Thompson, W., & Lepore, S. J. (1989). Manipulating children's interpretations through interrogation. In G. S. Goodman (Chair), *Do children provide accurate eyewitness reports? Research and social policy implications* invited Symposium conducted at the biennial meeting of the Society for Research in Child Development, Kansas City.
- Cohen, J., & Cohen, P. (1983). *Applied multiple regression/correlation analysis for the behavioral sciences* (2nd ed.) (pp. 183-198). Hillsdale, NJ: Lawrence Erlbaum.
- Flavell, J. H., Speer, J. R., Green, F. L., & August, D. L. (1981). *Monographs of the Society for Research in Child Development*, 46(5 Serial No. 192).
- Flin, R., Stevenson, Y., & Davies, G. (1987). Children's legal knowledge. Manuscript in preparation.
- Goodman, G. (Ed.) (1984). The child-witness (Special issue). *Journal of Social Issues*, 40(2), 1-176.
- Goodman, G., & Hegelson, V. (1986). Child sexual assault: Children's memory and the law. In J. Bulkley (Ed.), *Papers from a national policy conference on legal reforms in child sexual abuse cases* (pp. 41-60). A report of the American Bar Association.
- Loftus, E. F. (1979). *Eyewitness testimony*. Cambridge, MA: Harvard University Press.
- Loftus, E. F., & Davies, G. M. (1984). Distortions in the memory of children. *Journal of Social Issues*, 40(2), 51-67.
- Markman, E. M. (1979). Realizing that you don't understand: Elementary school children's awareness of inconsistencies. *Child Development*, 50, 643-655.
- Melton, G., & Thompson, R. (1987). Getting out of a rut: Detours to less traveled paths in child-witness research. In S. Ceci, M. Toglia, & D. Ross (Eds.), *Children's eyewitness memory* (pp. 209-229). New York: Springer-Verlag.
- Pierre-Puysegur, M. (1985, July). The representations of the penal system among children from six to ten years. Presented at the 8th biennial meetings of the International Society for the Study of Behavioral Development, Tours, France.
- Robinson, E. J., & Robinson, W. P. (1982). Knowing when you don't know enough: Children's judgments about ambiguous information. *Cognition*, 12, 267-280.
- Saywitz, K. J. (1989). Children's conceptions of the legal system: Children's conceptions of the legal system: "Court is a place to play basketball." In S. J. Ceci, D. F. Ross, & M. P. Toglia (Eds.), *Perspectives on children's testimony* (pp. 131-157). New York: Springer-Verlag.
- Saywitz, K. J., & Jaenicke, C. (1987, April). Children's understanding of legal terms: A preliminary report of grade-related trends. Paper presented at the Biennial meeting of the Society for Research on Child Development, Baltimore, MD.
- Schwanenflugel, P., Guth, M., & Bjorklund, D. (1986). A developmental trend in the understanding of concept attribute importance. *Child Development*, 57(2), 421-430.
- Tate, C. S., & Warren-Leubecker, A. (1989). The effects of adults coaching on children's willingness to provide false reports. In L. Rosenkoetter (Chair), *Moral Development II*. A paper session conducted at the biennial meeting of the Society for Research in Child Development, Kansas City.
- Warren-Leubecker, A., Tate, C., Hinton, I., & Ozbek, N. (1989). What do children know about the legal system and when do they know it? In S. J. Ceci, D. F. Ross, & M. P. Toglia (Eds.), *Perspectives on children's testimony* (pp. 131-137). New York: Springer-Verlag.
- Yarmey, A. D. (1984). Age as a factor in eyewitness memory. In G. L. Wells & E. F. Loftus (Eds.), *Eyewitness testimony*. New York: Cambridge University Press.
- Zaragoza, M. S. (1987). Memory, suggestibility, and eyewitness testimony in children and adults. In S. J. Ceci, M. P. Toglia, & D. F. Ross (Eds.), *Children's eyewitness memory* (pp. 53-78). New York: Springer-Verlag.

What Do Children Know about the Legal System and When Do They Know It? * First Steps Down a Less Traveled Path in Child Witness Research

AMYE WARREN-LEUBECKER, CAROL S. TATE,
IVORA D. HINTON, and I. NICKY OZBEK

The likelihood that an American child will participate in the legal system in some fashion has increased exponentially in recent years. From 1955 to 1975, juvenile crime rose in the United States by 1600 percent (Footlick, 1977). During those same years, more than half of all crimes were committed by juveniles (Uniform Crime Reports for the United States, 1975). Divorce increased 700 percent between 1900 and 1977, to the point that half of the children born in the 1970s have spent at least part of their childhood in a one-parent home (Keniston, 1977). Reports of child physical abuse increased 142 percent between 1976 and 1983, and an estimated 71,961 American children were reported to be sexually abused in 1983 (American Association for Protecting Children, 1985). These statistics serve to highlight the fact that American children are more likely than ever to be confronted with the legal system; either as witnesses in abuse or custody cases, defendants in juvenile crime cases, or perhaps even plaintiffs in actions against their own parents or guardians (Westman, 1979).

The Context of Courtroom Testimony: Task Demands

Although a great deal of current research on children as witnesses focuses on memory skills or suggestibility, much less is known about the context in which the child witness is asked to recall information (namely, the legal

* Adapted from "What did the President know and when did he know it?" Our apologies to Howard Baker, Senate Watergate Investigation Committee, 1974.

The authors would like to thank the many students, teachers, parents, and children who made these studies possible. In addition, we wish to thank Sarah Byrd for inspiring the idea, and Glyndora Munday, Carolyn Boyd, and Ernest Tubbs for their many and varied contributions to this project. These studies were supported in part by a University of Chattanooga Foundation Instructional Excellence Grant to the first and fourth authors.

system and possibly the courtroom itself) and how it may affect their testimony as well as their emotional health. As Melton and Thompson (1987) point out, task demands and age by task interactions are possibly more important than age effects per se in eyewitness testimony research. For example, young children may perform as well as adults on simpler tasks (e.g., recognition as opposed to recall) or in familiar settings (e.g., home versus the laboratory), but do poorly in comparison to older children or adults in unfamiliar tasks requiring complex reasoning (Ceci, Ross, & Toglia, 1987). Any memory task, even a supposedly "pure" or "isolated" laboratory task, includes a plethora of linguistic, cognitive, social, and emotional demands. Different tasks place differing social and cognitive processing "loads" on children who may or may not have less total information processing resources than adults (Evans & Carr, 1984). As yet, we know very little about the unique set of demands imposed by the legal system, and even less about how children of various ages interpret and respond to those demands (e.g., Goodman, 1984). Thus, to accurately predict children's credibility and competency within the legal system, and to best adapt the court system to child participants, we should understand what children know, feel, and think about the legal system itself (Melton & Thompson, 1987).

Several psychologists and legal professionals have provided anecdotal support for the notion that children lack knowledge of legal procedures and terminology, which hinders their participation in the system (e.g., Goodman, 1984; Saywitz, this volume). For example, Goodman (1984) reports that one boy falsely accused of arson believed that this job was to convince the judge that the fire did not occur, not that he did not start it. Considering the overwhelming evidence that the fire *did* occur, the boy's testimony totally lacked credibility and he was convicted. Whitcomb, Shapiro, and Stellwagen (1985) gathered such anecdotes more systematically by surveying attorneys and professionals involved with child witnesses. The results of their report suggest that children may fear many aspects of the legal system because of lack of knowledge or experience with it. They may be scared of confronting the suspected abuser, overwhelmed by the size and other physical attributes of the courtroom, afraid of the audience, the judge, and the jury. Children may be particularly frightened of the defense attorney and cross-examination, as they have little understanding of legal actors' roles and duties. Moreover, since they do not understand these numerous and varied legal roles, they may be afraid or uncertain as to why they must tell their story over and over again to different strangers. They may see the judge as a big man in a black robe with the power to punish, yet not understand that they will not be the objects of such punishment.

Given this bleak picture painted by professionals who deal with child witnesses, it is not surprising that participation in the legal system in general and courtroom testimony in particular are assumed to be traumatizing to young children. Indeed, this assumption has resulted in a variety of tech-

niques designed to improve or prevent open court testimony altogether (Whitcomb et al., 1985). Not only does the assumption on which such techniques are based remain untested, it is also unknown whether the techniques now used to avoid such trauma actually have the desired effects. It is possible that children are less traumatized than we suppose; or they may even feel empowered by the courtroom testimony experience. Unfortunately, at this point we lack even *unsystematic* data on most of these issues (Melton & Thompson, 1987).

The Development of Moral and Legal Reasoning

Considering the dearth of research on children's legal knowledge and attitudes, we have been forced to look elsewhere for information that might bear on the issue. The best sources to date have been the literature on political socialization and moral development, although these are only indirectly relevant to our present concerns. The seminal works of Piaget (1932/1965) and Kohlberg (1963) have been most influential in this area.

In both theories, very young children are considered to be premoral because they lack internal standards or concern for rules, and abide by them only as a result of external enforcement or to satisfy their own needs. Once an awareness of rules is attained, children may view them as unalterable, believing that all violations will be punished (even if no one is around to see the violation, i.e., immanent justice). Children may also judge rule violations primarily by the consequences of the action (e.g., amount of damage) rather than by the intentions of the person who committed the violation (although there is some argument on this point; see Nelson, 1980). Along this line, the punishments that children this age would mete out seem to have no relation to the rule violation (e.g., eating a cookie without permission and breaking your sister's arm would both deserve a jail sentence). Finally, older children and adolescents realize that social rules are indeed changeable and can be violated for good reasons. They also begin to favor "reciprocal punishments," which "fit the crime."

The possible connection of legal reasoning to moral reasoning, and the process of legal socialization was a topic of great interest in many subsequent investigations (e.g., Hogan & Mills, 1976; Tapp & Kohlberg, 1971). For example, several researchers asked grade-school children and adolescents questions such as "What are laws?," "Are laws fair, and why or why not?," "Are there times when it is right to break a rule?," "Should laws be permanent or changeable?," and the like (e.g., Adelson, Green, & O'Neil, 1969; Hess & Torney, 1967; Tapp & Kohlberg, 1971; Torney, 1971). Not surprisingly, older children were more likely to view laws as changeable, and not necessarily fair. Their legal reasoning was more abstract and less conformist or based on external authority (Tapp & Kohlberg, 1971).

What, if anything, do these studies suggest about a child's competency to participate in the legal system? Clearly, a child who does not appreciate rules or consider intentions or the nature of the "crime" in deciding a punishment would make a poor judge or lawmaker. The results may have implications for their understanding of a judge's role, although the child's decision may be quite different from those they think a true judge might impose. But would this hinder their involvement as a witness-victim? Unfortunately, these results have limited applicability to the child witness in a courtroom setting for several reasons. First, the moral dilemmas and the questions typically posed are extremely abstract. Not only are younger children automatically excluded when such abstract reasoning is called for, but research indicates that subjects of any age reason at lower levels about more practical, everyday, or concrete moral dilemmas that could have negative consequences for themselves (Leming, 1978). Second, the primary if not exclusive emphasis has been placed on the development of children's reasoning about the legal system rather than on their development of knowledge about it. Certainly these two achievements are linked, but the direction and strength of such a relation is unknown. One might assume that children must reach a certain level of moral reasoning before they could acquire relevant conceptual knowledge about the legal system. For example, a child who does not differentiate between accidental and intentional actions would not understand our legal concept of differentiating punishment based on intent. Conversely, perhaps a child must have some knowledge of the concept to successfully reason about it (e.g., knowing what a law *is* is essential to deciding whether it is fair). Thus, the link between these two domains of achievement is unclear, and inferring knowledge from reasoning becomes dangerous, particularly in application.

The Development of Legal Knowledge

Fortunately, some researchers have more directly assessed legal knowledge, although such studies are scarce and have largely involved adolescents. For example, Grisso (1981) found that adolescents are unlikely to fully understand the role and obligations of their attorneys, and possibly as a result, hold largely negative attitudes toward them. Grisso and Lovinguth (1982) suggested that knowledge of younger children's concepts of attorneys is virtually nonexistent.

Recently, however, three studies concerning legal knowledge in younger children have emerged. Flin, Stevenson-Robb, and Davies (1987) investigated forty-five lower socioeconomic status, Scottish six-, eight-, and ten-year-olds' familiarity with and ability to describe some commonly used legal terms, as well as their understandings of the terms and feelings about various aspects of court. Their responses in the first three knowledge

segments of the interview were scored for accuracy (a 0 score reflecting complete lack of knowledge or a wrong answer, a 1 score a poor but correct answer, and a 2 score a more detailed correct answer), and compared with responses of ten adults. As expected, across age groups, subjects performed best on vocabulary, slightly worse in descriptions, and worse yet in understanding of legal concepts. Developmental trends were noted for all three segments, in that ten-year-olds achieved a level of 62 percent of adult performance, eight-year-olds only 41 percent, and six-year-olds 30 percent. Overall, children were slightly more knowledgeable about police, criminals, and description of a court, and more familiar with breaking the law, with rules, criminals, and being guilty or not guilty than about judges or witnesses. They were even less knowledgeable about what it means to go to court, what one means by the law, the role of the lawyer and the jury, the concept of prosecution, evidence and why it is needed, and the concept of an oath. In the segment of the interview regarding feelings about court, most young children believed only bad people went to court, and felt very negatively about court because of fear of not being believed, not being able to understand or answer questions correctly, having to speak in front of a large audience, and fear of retribution by the accused. Interestingly, although the children reported the greatest fear of court, they also were more likely to think they would be treated kindly there.

Saywitz and her colleagues (Saywitz & Jaenicke, 1987; Saywitz, this volume) have also investigated children's understanding of legal terms and their ability to describe them. Saywitz & Jaenicke (1987) compared eighteen kindergartners, twenty third-grade, and twenty sixth-grade children on their abilities to define thirty-five terms commonly used in court proceedings. The terms *judge*, *lie*, *police*, *remember*, and *promise*, among others, were accurately defined by all age groups, whereas the terms *allegation*, *petition*, *minor*, *motion*, *competent*, *hearsay*, and *defendant* were not well understood by even the oldest children. Significant age differences were observed for the terms *witness*, *lawyer*, *attorney*, *oath*, *swear*, *evidence*, *jury*, and *testify*. Saywitz (this volume) reports further data indicating that young children (ages four to eight in her study) are limited in comparison with older children and adults in their understandings of even the most basic legal concepts. Using a scoring system similar to that of Flin, et al. (described earlier, a continuum of inaccurate to accurate answers), Saywitz finds that by age eight, many children have an adequate understanding of court, judge, witness, and lawyer, but few have mastered the concept of jury or seem aware of minor court personnel such as bailiffs and court reporters.

Although these studies represent a much needed advance in an area in which little or no information exists, they share at least two characteristics that limit their practical applicability at present. First, the small number of children interviewed reduces the probability that the sample is representative of the population. Second, only a small number of age groups and

ranges have been used. Of course, these are problems common to all preliminary studies which are easily resolved through subsequent research. Another possibly more problematic aspect of these studies, however, concerns the coding system used and the assumptions behind it. Both Flin et al., and Saywitz and her colleagues conceive of children's legal knowledge as developing in a continuous fashion, from less accurate to more accurate, or toward incorporating more and more defining features of legal concepts. This approach is advantageous in many respects. First and rather obviously, such an ordinal scale allows the use of a wider array of statistical techniques, ~~because the variables may be considered continuous rather than discrete.~~ Second, and more important, recent theoretical approaches to cognitive development are moving farther away from stage theories and focusing more on quantitative differences in information-processing capacity or strategies (e.g., Flavell, 1985; Pascual-Leone, 1970) or the gradual acquisition of domain-specific knowledge (e.g., Chi, 1983), as qualitative changes in development past infancy become more difficult to demonstrate (e.g., Flavell, 1982).

In contrast, our recent work (Tate, Hinton, Boyd, Tubbs, & Warren-Leubecker, 1987; Warren-Leubecker, Tate, & Munday, 1986) has led us to take a different and somewhat Piagetian approach, not in looking for possible stages, but in focusing on children's errors rather than correct answers in our attempts to characterize the development of legal knowledge. Combining lack of an answer ("I don't know") with incorrect and seemingly irrelevant answers is potentially misleading, as it is possible that there are regressions of sorts, and changes from one type of misperception to another, in addition to changes from less well-formed to accurate perceptions as development proceeds. Saywitz & Jaenicke (1987) noted in their study of legal vocabulary acquisition that several children provided alternative (nonlegal) definitions for many of the terms, suggesting that children may think they understand a term, but their definition is qualitatively different from adults'. Such misperceptions are potentially more damaging than lack of knowledge to a child's ability to testify or participate meaningfully in the legal system.

The Present Studies

The present series of studies was designed to investigate developmental trends in children's perceptions of several aspects of the legal system, including the courtroom itself, significant courtroom personnel (e.g., judge, jury, lawyer), reasons for going to court and the types of people who go there, and how decisions are made. In addition to factual legal knowledge, we also were interested in social/cognitive perceptions such as how to tell if someone is lying, and if it is ever acceptable not to tell the truth.

Study 1

Method

Subjects

Participants in study 1 were 563 children from the Chattanooga, Tennessee, area who were obtained through public and private schools, church groups, clubs, day care centers and private families. The children ranged in age from two years, nine months to fourteen years. Forty-eight percent of the overall sample was male. The sample was largely, though not exclusively, white and middle-class. All the children participated voluntarily. Because of the large number of subjects and our desire not to pool subjects across broad age groups arbitrarily, the children were divided into discrete age groups by years (i.e., 4;0 to 4;11, 5;0 to 5;11 and so on), with the exception of children aged 2;9 to 3;11 and children 13;0 to 14;0 who were grouped together. A complete breakdown of the number of subjects by age group is provided in Table 8.1. For the second part of our study, three subgroups were randomly selected from the appropriate age groups in the total sample: 21 subjects (11 girls, 10 boys) became the "young" group (ages 3 years; 1 month to 6;6, mean = 5;3, $SD = 10.9$ months), 25 children (15 girls, 10 boys) made up the "middle" group (ages 7;6 to 9;5, $M = 8;8$, $SD = 6.7$ months), and another 25 (13 girls, 12 boys) were in the "older" group (ages 11;1 to 12;10, $M = 11;9$, $SD = 7.4$ months).

Procedure

All children were administered a questionnaire containing at least twenty-three common questions, although some children received two additional questions (see Table 8.1). A random subgroup of children (from which the seventy-one described previously were randomly selected) was also read a

TABLE 8.1 Number of subjects by age group.

Age in Years	Total Number of Subjects	Number for Last Two Questions
3	11	2
4	28	4
5	39	18
6	23	13
7	26	16
8	39	29
9	124	69
10	100	73
11	116	87
12	47	30
13	10	9

legal concept story with questions, which essentially concretized some of the information we had requested previously. These questions and the story are presented, verbatim, in the results section.

Children under the age of eight were individually interviewed, whereas children eight years old and over were tested either individually or in groups. If group tested, children read the questions silently and wrote their own answers, to avoid the possibility of peer influence. Each child was informed that participation was voluntary and confidential. To minimize irrelevant responses, the children were also told that "some of the questions are hard, if you don't know the answer it's okay to say you don't know." The children were given as much time as they needed to complete the questions.

After all data collection was completed, fifteen of the twenty-three questions were selected for analysis on the basis of distinctiveness (redundant questions were discarded). Each is identified in the results section; the responses to each question were then categorized. To qualify as a separate category, the response had to be mentioned by at least 10 of the 557 children. All categories were determined post hoc and are explained in detail in the results section. Ten percent of the protocols were independently scored by two of the experimenters. Intercoder reliability was calculated as percentage agreement over all categories and averaged 97 percent for the total sample. Perfect intercoder consistency was achieved on half of the questions, and 94 percent agreement or greater was obtained for all but one of the remaining questions (disagreements on this question are fully addressed in the results section following). The frequency of responding in each category at each age was tallied, and then converted to percentages of the total number of children within each age group.

Results and Discussion

For the questions, "Do you know what a courtroom is?" and "Have you ever seen a courtroom on TV?" the number of affirmative answers was calculated for each age group. Only 18 percent of the three-year-olds said yes to question 1, but this number steadily increased with age (approximately 40 percent at age six, 85 percent at age seven, and over 90 percent for all age groups past nine years) up to 100 percent affirmative by age 13. Interestingly, the pattern of answers was different for question 2. Only 9 percent of the three-year-olds and 46 percent of the four-year-olds responded that they had seen a courtroom on TV. This is lower than the number who said they did know what a courtroom was, for both these age groups. At age five, more children said that they had seen a courtroom on TV (64 percent) than had answered that they knew what one was (36 percent). The same pattern, though not as marked, was observed for the six-, seven-, and eight-year-olds as well. By age nine, approximately equal numbers (90 percent) of the children reported knowing what a courtroom was

and that they had seen one on TV. The one-way chi-square analyses for both questions revealed significant ($p < .001$) age differences [$\chi^2(10, N = 553, 506) = 125.76$ and 112.93 , for questions 1 and 2, respectively]. Thus, it appears that the majority of children past age seven years know about courtrooms, at least through the medium of television. Younger children, however, appeared to be confused, reporting either not seeing a courtroom on TV, yet knowing what it was (we could speculate on how they might have acquired such information, but doubt that they actually knew what a courtroom was considering their answers to subsequent questions), or not knowing what a courtroom was yet having seen it on TV. This merely serves to highlight the problem with a verbal survey such as this. The younger children may have much more knowledge than they are capable of demonstrating verbally, in the absence of visual recognition aids.

For the question "Who is in charge of a courtroom?" we divided the responses into three categories, *I don't know/No answer*, *A Judge*, and *Other/Wrong & Unrelated*. Fully 82 percent of the 3-year-olds did not know, the remaining 18 percent answered incorrectly (e.g., a doctor). Fifteen percent of the four-year-olds answered *A judge*, for the five-, six-, seven-, and eight-year-olds, the percentage of like answers were 25, 56, 73, and 92, respectively. Age eight was also the point at which wrong answers dropped tremendously (in fact, to 0). An average of 20 percent of all the younger children answered incorrectly (e.g., a teacher, a manager, "The guy who owns it," and "The court man"). One five-year-old obviously influenced by TV stated "Judge Wapner!" The two-way chi-square was significant [$\chi^2(20, N = 563) = 666.9, p < .001$].

We then asked "What does the judge look like and wear?" After reviewing the protocols, we devised a list of commonly mentioned features. For the three most often mentioned characteristics (wearing black, being male, wearing a robe), separate one-way chi-square analyses were conducted, and all were significant at $p < .01$. Ninety-one percent of the three-year-olds did not know anything about a judge (hardly surprising, given their answers to the previous question). By age four, children began mentioning that a judge "dresses in black" (for ages four, five, six, seven, and eight, for example, the percentages were 21, 31, 43, 50, and 69, respectively). They did not, however, necessarily mention that it was a black robe (although we gave credit for long dress, cape, cloak, "graduation costume," and even blanket), with several children suggesting that a judge wears a suit or "tocseto" (tuxedo). Several children across age groups mentioned white or gray hair or a wig and, accordingly, suggested that judges were "old" (one indicated that a judge has to have experience as a lawyer first, and thus will be older on average). Other children mentioned wearing glasses, being bald, and being big. Older children occasionally indicated that it does not really matter what a judge looks like; its the ability that counts. Finally, a few older children (over eight years) mentioned person-

TABLE 8.2 "Who else is in the courtroom (besides the judge)?" Percent subjects answering by category.

Category	Age, in years										
	3	4	5	6	7	8	9	10	11	12	13
Jury	0	0	3	4	8	13	19	28	38	38	40
Lawyer	0	0	3	0	8	15	31	44	36	40	20
Witness	0	11	3	0	0	28	23	20	16	19	30
Police	0	11	10	26	15	36	26	17	23	34	30
Defendant	0	7	0	0	8	15	19	28	27	21	20
Plaintiff	0	0	0	0	4	8	10	15	19	17	20
Audience	9	0	0	4	4	3	2	4	7	2	20
Bailiff	0	0	0	4	4	0	4	6	9	15	0
Court clerk or reporter	0	0	0	0	0	3	3	14	15	9	0

ality characteristics, with equal numbers suggesting that judges are nice, mean, and wise.

When asked "Who else is in a courtroom," the children gave a variety of answers, so we again devised a list reflecting this variety and calculated the percentage of children at each age who mentioned the personnel on the list. These figures are displayed in Table 8.2. Because any one child's response might include more than one category, separate one-way chi-squares were conducted for categories with no 0 cells, or using only age groups who mentioned the particular legal actor. With the exception of bailiff and court reporter, these analyses were all significant at $p > .01$. In general, children under the age of seven did not mention any court personnel except for "police." The frequency with which children mentioned the jury, lawyers, witnesses, and "criminals" or defendants became nonnegligible at age eight. Plaintiffs were increasingly mentioned after age ten. Minor court personnel (bailiff, court clerk, and court reporter) did not appear at all until age six, and never reached high levels (only 15 percent ever mentioned the court reporter). Older children were more likely to mention important court figures such as attorneys and juries, but it is important to note that only 40 percent of even the oldest group mentioned a jury, and the highest rate of mentioning attorneys was 44 percent, in the ten-year-old group. It should also be noted that our interpretation of their responses was fairly liberal. For example, we considered the following to be descriptions of a witness: "a man who sits in a chair and tells who hit him or killed him" (age five); "people who sit beside the judge" (age eight). Other interesting responses included "the people in the cages" (jury?); "the sewers" (sue-ers?); "the servant," and "a judges helper" (bailiff, court clerk?); "person who tapes the words down"; and last, "the contestants and coaches."

The majority of the children also had only vague impressions about

TABLE 8.3 "What does a lawyer do?" Percent subjects answering by category.

Category	Age, in years										
	3	4	5	6	7	8	9	10	11	12	13
Don't know	82	57	72	57	54	28	25	9	7	9	10
Wrong/unrelated	18	21	15	17	15	21	10	8	4	4	0
Talks/preaches	0	11	8	13	0	0	3	5	8	6	0
Helps	0	11	5	4	15	13	22	16	9	15	10
Asks questions	0	0	0	4	8	13	9	5	6	4	10
Defends	0	0	0	4	0	5	17	33	32	43	50
Wins case/sticks up for client	0	0	0	0	8	21	14	24	32	19	20

"What do lawyers do?" We divided the children's answers into the following categories: *Don't know/no answer*; *Wrong/unrelated*; *Helps people*; *Talks or presents the story*; *Defends people*; *Asks questions*; and a final broad category including these types of responses, *Prosecutes and defends*; *Stricks up for one side*; *Tries to wins the case for his client* (see Table 8.3). Reliability for this question was only 82 percent because of a problem differentiating between *Defends*, which implied the presence of only the defense attorney, and the last broad category, *wins the case for his client*, which was interpreted as involving either a plaintiff or a defendant. Disagreements were resolved through discussion. We still believe the distinction is a viable one, in that so many television shows mainly depict defense attorneys and many children seem to believe that lawyers are only for "getting people off." They appear to have little understanding that the other person attempting to prove responsibility or guilt is also a lawyer. At this point, however, the distinction between the two categories is more blurry than it appears.

The children under age seven years simply had no idea of what a lawyer does and another 15 to 20 percent had incorrect notions such as "loans money," "writes down everybody who's bad," and "makes sure nobody gets in a fight" or "decides who's guilty," indicating they have attorneys confused with the bailiff or jury. (They also mentioned "plays golf," "lies," and "sits around," although these impressions may be realistic.) Again the influence of TV was evidenced by one five-year-old who said, "they just get together and talk together because I watch *L.A. Law* with my dad." Not until age ten do the children who say an attorney prosecutes or defends outnumber those who do not know or answer incorrectly. The chi-square analysis of age by response type proved to be significant [$\chi^2(60, N=563) = 697.25, p < .001$].

The next question was "What is the jury and what do they do?" Initially, we divided the responses into five categories, including *Don't know*; *Wrong/Unrelated*; *Talks to or helps the judge* (in a nonspecific way); *Listens to the case* (but only listening, not deciding); and *Makes a decision/Renders*

TABLE 8.4 "What is the jury and what do they do?" Percent of subjects answering by category.

Category	Age, in years										
	3	4	5	6	7	8	9	10	11	12	13
Don't know	91	68	67	65	65	49	47	33	19	30	0
"Jewelery"	9	21	23	13	0	3	0	0	0	0	0
Other wrong/unrelated	0	7	10	9	23	15	10	6	9	9	10
Talk to/help judge	0	4	0	4	0	3	3	1	4	2	0
Listen	0	0	0	0	8	10	19	15	13	6	40
Decide	0	0	0	9	4	20	21	45	55	53	50

a verdict. After closer examination, we found that a large number of young children mistook the word jury for "jewelery" ("Like if you're going to the dance you put some on," or "It sparkles on your finger"), even though they had already answered eight questions about the courtroom, including one designed to elicit the concept of jury. Thus, we added a separate category for this error. The results of this coding are shown in Table 8.4. In general, it was not until age ten that a significant number of children mentioned the jury's role in decision making. Even at age twelve, 30 percent of the children said they did not know what a jury does [$\chi^2(30, N = 563) = 686.3, p < .001$].

When asked "Why do people go to court?" the children most frequently gave the very vague but accurate answer "To settle arguments or solve problems." The only other categories of responses were *Don't know or Unrelated answer*; *Major crimes* (e.g., murder, larceny; only approximately 4 percent of all children's answers fell into this category); and *Other* (divorce, to sue someone, for a traffic violation; an average of 10 percent of all responses were of this type). Ninety-one percent of the three-year-olds could not provide any reasons, whereas the remaining 9 percent said to solve problems. For the four-, five-, six-, seven-, eight-, nine-, ten-, eleven-, twelve-, and thirteen-year-olds the percentages of *Don't know* responses were 75, 62, 43, 27, 23, 15, 8, 9, 13, and 0, respectively. Because these categories were not mutually exclusive (a single child could mention solving problems, murder, and divorce), separate one-way chi-square analyses were conducted on the two major response types. For the analysis of *Don't know* answers, $\chi^2(9, N = 553) = 218.6, p < .001$, and for *Solves problems*, $\chi^2(10, N = 563) = 123.1, p < .001$.

One of the most revealing questions to us was also the most simplistic. We asked, "Is court a good place or a bad place?" There may be a recency effect (bad was the word last mentioned), thus it is not terribly surprising that a large number of children responded "Bad" (e.g., 82 percent of the three-year-olds, 38 percent of all five- and seven-year-olds, 35 percent of the six-year-olds). However, Flin et al. (1987) also reported that children

view court very negatively, perhaps because of their idea that only bad people go to court. In general, older children were more likely to say that court was "Neither good nor bad" or "Both good and bad" (approximately 22 percent age nine to twelve years old). Two anomalous age groups were quite optimistic; 80 percent of the thirteen-year-olds and 64 percent of the eight-year-olds thought court to be primarily good. The two-way chi-square, age by response type (don't know, good, bad, and both) was significant [$\chi^2(30, N = 563) = 470.0, p < .001$].

"Who sends people to jail?" was the next question we investigated. The possible response categories were *Judge*, *Police*, *Don't know*, and *Other*. Example of *Other* answers for the younger children were, "jail people," "God," and interestingly, "Their girlfriends, or their kids or moms." *Other* responses for older children were, "FBI," and "the jury." The majority of children eight and younger mentioned police, while 50 percent or more of the children nine and older mentioned both the police and the judge (both of which are accurate at different points in the legal system). Because one answer could contain multiple categories, one-way chi-square analyses were conducted. Both responses analyzed were significant ($p < .001$); for the response "Judge" $\chi^2(8, N = 552) = 66.4$, and for "Police", $\chi^2(10, N = 563) = 44.5$.

To begin with the social/cognition questions, we asked the children, "How can you tell or how can a judge or jury tell if someone is lying?" We divided the responses into eight categories as follows: (1) *Don't know*, (2) *By the consequences* (if they're lying they'll be in jail), (3) *Omniscient* (the judge just knows!), (4) *Nonverbal cues*, (5) *Verbal cues* (inconsistencies within story, stuttering), (6) *Lie detector*, (7) *By other evidence or testimony*, and (8) *You can't ever really tell, you have to guess*. A single child could potentially answer with more than one of these categories, so the percentages do not total 100. Ninety-one percent of the three-year-olds could not answer, but this figure steadily decreased with age (54 percent at age four, 48 percent at age six, 41 percent at age eight, 23 percent at age ten, 19 percent at age twelve). The chi-square analysis for this category revealed a significant age effect [$\chi^2(10, N = 563) = 102.7, p < .001$]. Children age ten and younger were the only ones to use the *consequences* category, and even they did so infrequently (9 percent or less). However, they often seemed to feel that people (themselves, parents, judges, and juries) are omniscient (25 percent at age four, 10 percent at age five, 9 percent at six, then dropping to 3 percent at age eleven). The number of children mentioning nonverbal cues showed a significant linear progression with age ($\chi^2 = 86.69, p < .001$), increasing from 4 percent at age four to 50 percent at age thirteen (the figures for ages five to twelve years are 5, 9, 15, 21, 20, 28, 27, and 34 percent, respectively). Some of the nonverbal cues mentioned were quite amusing ("your eyes roam around in your head," "the area around your mouth turns blue"), whereas others were quite sophisticated ("you hesitate because it takes time to think of a lie"). Ver-

bal cues were less frequently mentioned overall, but showed a similar age trend [$\chi^2(9, N = 552) = 53.19, p < .001$], increasing from 7 percent at age four to 34 percent at age twelve (and back down to 30 percent at age thirteen). A few children (six- to eleven-year-olds) mentioned the use of a lie detector (although most did not know a technical or even approximate name, e.g., "the lie machine," "a Poligrary," and from a six-year-old, "they have ways to find out. Like those things you put on your heart to make you tell the truth. They're like brain helmets except you put them on your heart . . ."). Many more suggested that you could compare testimony with other testimony or physical evidence. This response increased with age, from 4 and 5 percent at ages four and five, to 25 and 28 percent at ages eleven and twelve [$\chi^2(9, N = 552) = 41.17, p < .001$]. Finally, a few (10 percent and less) of the older children (nine to thirteen years) said that there is simply no foolproof way to discern lying; you had to make your best guess.

In a primitive attempt to determine whether children can distinguish between accidental and intentional wrongdoing, we asked two questions, "What would happen to you if you did something bad by accident?" and "What would happen to you if you did something bad on purpose?" we then looked for differences between the answers to these questions, so the codes were *No answer at all*, *Same answer to both*, *Lesser punishment for accidents*, and *Greater punishment for accidents*. Most of the children who answered suggested a lesser punishment for accidents. A one-way chi-square for this category revealed a significant age difference as well [$\chi^2(11, N = 563) = 79.07, p < .001$], in that this response became more frequent with increasing age (18, 32, 46, 61, 46, 51, 59, 56, 63, 57, 60 percent at ages three to thirteen, respectively).

Finally, some of the children (see Table 8.1) were asked more personal questions about their own proclivity to tell the truth under stressful conditions, that is "If someone you knew broke the law (did something wrong), what would you do?" and "If your mother or father did something bad and would be sent to jail if you told the judge they did it, would you still tell the truth?" These were forced-choice responses, with "Tell the truth no matter what," "Not say anything," and "Lie to keep that person out of trouble" as the alternatives to the first question. For this question, the majority of children suggested they would still tell the truth (except for the four-year-olds; ~~only 27 percent responded in this fashion~~). When the question involved their own parents, children still insisted they would tell the truth (ranging from 33 percent at age three, 45 percent at age twelve, to 100 percent at ages four and six). There were no real age trends for either of these questions, except for the tendency of the older children to "hedge" on the second question ("I'm not sure what I would do. Maybe I would tell the truth."), which accounted for approximately 10 percent of the answers for ages eight to thirteen).

As stated previously, the responses of seventy-one children to additional questions surrounding a legal story were also analyzed. The story was

based on Goodman's (1984) anecdote that a boy who was falsely accused of arson tried to convince the judge that the fire did not occur. It read as follows:

Joshua was standing next to the elementary school waiting for his mother to pick him up. A group of three older boys ran past him, and one of the boys ran into Joshua and dropped something. Joshua picked the thing up, and noticed it was a cigarette lighter. Suddenly, Joshua smelled smoke, and saw that the school was on fire. Joshua's mother had told him never to play with matches or cigarette lighters, so he was afraid of getting in trouble. A fireman saw Joshua standing there, and ran over to ask him if he knew who started the fire. When he got to Joshua, he saw that Joshua was holding a lighter in his hand. Joshua was scared and surprised when the fireman accused him of starting the fire. Joshua was questioned by the police, and had to go to court with his parents.

Following the story, the children were asked four questions. The first was "Why would the fireman, policeman and judge think Joshua started the fire?" Responses to this question were either "I don't know," "Because of the lighter," and "Other" (only two children's answers fit here, one younger who said "He did it," and one older who said "They had the evidence"). Eighty-six percent of the younger (ages 3 to 6;6), 96 percent of the middle (ages 7;6 to 9;5), and 92 percent of the older group (ages 11;1 to 12;10) realized that the lighter was the reason for suspicion. The chi-square analysis of these data was nonsignificant.

The next question was "How can Joshua show them he didn't start the fire?". Nineteen percent of the five-year-olds and 8 percent of the eight-year-olds did not know the answer. Many children suggested that Joshua should "just tell the truth, that he didn't do it" (52, 28, and 24 percent of the younger, middle, and older groups). The majority of the older groups (56 percent of the middle and 64 percent older) and 29 percent of the younger children suggested that Joshua could get the other boys or other people to testify, or produce some evidence (perhaps pictures, fingerprints) to exonerate him. Last, some of the older children indicated that there was no way for Joshua to prove his case, as there was too much evidence against him (middle = 8 percent, older = 12 percent). Analysis revealed a significant age difference in the frequencies of these responses [$\chi^2(6, N=71) = 58.2, p < .001$].

When asked "Do you think the judge or jury would believe Joshua?," 62 percent, 48 percent, and 64 percent of the five-, eight-, and eleven-year-olds said yes. Approximately a third of the younger (33 percent) and middle children (32 percent) and 20 percent of the older children said no, whereas a few answered with "maybe" (0, 12, and 8 percent, respectively). Finally, 5, 8, and 4 percent of the five-, eight-, and eleven-year-olds did not know. The chi-square analysis reflected a significant age difference [$\chi^2(6, N=71) = 19.8, p < .003$].

Finally, the children were asked "Do you think the judge or jury would

believe a grown-up if the same thing had happened to them?" The pattern of answers was slightly different from that of the previous question. Younger children apparently saw adults as more believable (71 percent said yes), whereas the middle group was split (48 percent yes, 40 percent no, 8 percent maybe, and 4 percent I don't know). The older group seemed to see adults as somewhat less credible, with 44 percent answering yes, 52 percent no, and 4 percent maybe [$\chi^2(6, N = 71) = 30.7, p < .001$].

Discussion

In comparing our findings on children's knowledge of various legal personnel with those of Saywitz (this volume; Saywitz & Jaenicke, 1987) and Flin et al. (1987), we saw several commonalities. In general, we all found that children develop the concept of *Judge* before that of *Lawyer*, which is in turn developed prior to that of *Jury*. It is not surprising that *Judge* is the earliest achieved legal concept, given the fact that the judge is the most authoritative figure, may stand out from all other courtroom personnel because of his/her unusual dress, and is most often depicted on television. Similarly, Greenstein (1965) found that in developing ideas of our political system, children first understand the role of the president, whereas all other government personnel or branches were seen as "helpers." The children in our study were largely unaware of other courtroom personnel such as the court reporter and clerk, although many mentioned a "guard" or "policeman" (possibly the bailiff), and referred to "the judge's assistants and helpers" (in fact, several saw the jury as the "judge's helpers," a phenomenon also noted by Saywitz).

The fact that most children over five years of age *did* assign lesser punishments to accidental than purposeful wrongdoings suggests that Piaget (1932/1965) may have underestimated children's abilities to discriminate between these two, and their abilities to use information regarding intent. Our wording of the question may have helped, as Shultz (1980) reports that even three-year-olds use the terms "on purpose," "didn't mean to," and "not on purpose" appropriately in naturalistic settings. Perhaps these children have developed this distinction as a result of their own parents' differential punishments and explanations of such (Flavell, 1985). In any case, school-age children may understand our legal system's differential treatment of accidental and intentional actions better than we have previously supposed, which serves to highlight the danger in inferring children's legal knowledge from moral reasoning, rather than directly assessing the knowledge itself (Shultz, 1980).

Although the tendency to define lying by its consequences was uncommon, it illustrates nicely the early "objective reality" and "obedience orientation" stages of moral reasoning identified by Piaget and Kohlberg, wherein children have no internalized standards but rely on observable physical consequences for their judgments. This tendency was further

reflected by the children's opinions about what happens in the courtroom and even the very nature of the court itself. "If bad people go to court, then court must be a punishment. If I have to go to court, and court is a punishment, then I must have done something wrong." In fact, the children's answers to the questions on assigning punishment for accidental and intentional wrongdoing highlighted their assumption that court is a bad place or a punishment. Many children suggested that one would "have to go to court" if they had accidentally committed a violation, but would "go to jail" if they had done the same thing "on purpose." These responses also lead us to wonder what children understand of the concept "innocent until proven guilty." They seemed to believe that intentional violations result directly in jail sentences (no trial needed), whereas accidental violations would need to be sorted out in court. The fact that many young children reported that "police send you to jail" (and only older children saw this as the judge's responsibility) may also indicate that young children do not differentiate between the police, prison, and court process (see also Saywitz, this volume) Last, this point is underscored by children's understanding of a lawyer's role. A large proportion of the children seemed to think that lawyers are only for the defense of "criminals" (after all, only bad people go to court, and lawyers are only there to help these people stay out of jail). In fact, many children used the term "lawyer" exclusively for defense functions, and "attorney" for prosecution, so that several children when asked "Who is in a courtroom" listed both lawyers and attorneys.

This tendency to define actions by their consequences, combined with a form of cognitive egocentrism may have detrimental effects on children's testimony. Egocentrism was evidenced by the younger children's belief that adults are omniscient (adults just instinctively *know* not only what is true, but everything else that happens). In the legal knowledge story, a majority of children felt that all that Joshua needed to do to prove he did not start the fire was merely tell them he did not, and since it was the truth, he would automatically be believed. Children may have the egocentric view that if *they* know what happened, then all adults (or at least authority figures) know what happened too (e.g., Warren-Leubecker & Bohannon, 1983). In court, this could be a problem if children believe they are merely providing corroboration of what is already known, not realizing the implications of their testimony. Such beliefs may partially account for the child's well-known proclivity to provide only sketchy free recall accounts of events (e.g., Saywitz, 1987). An inability to *understand* the listener's role or perspective (e.g., not understanding the roles of attorneys, judges, and jury, as illustrated here) would necessarily translate into an inability to *take* the listener's perspective, in turn leading to deficits in forming or modifying messages (free recall accounts) accordingly (e.g., Warren-Leubecker & Bohannon, 1985). To complicate matters further, children are well described as limited information processors (Evans & Carr, 1984). Recalling information, setting that information in an appropriate form for a particu-

lar listener, and attending to the social/pragmatic cues all require cognitive capacity. Thus, even if children know the information desired by the court, have the capacity to relate this information appropriately to different listeners, and know the relevant social roles played by the legal actor, they may not be able to do all of them simultaneously. Thus children's behavior as witnesses may convey the impression of inaccuracy independent of the maturity of the component skills or even the validity of the child's story.

The older children were less likely to credit adults in general, and courtroom authority figures in particular, with omniscience or even special decision-making abilities. This was repeatedly reflected in their answers to various questions. For example, only older children questioned the judge or jury's abilities to discern lying. Also, 51 percent of the children knew that providing evidence of some kind (e.g., finding the older boys who actually did it) was one way for Joshua to prove he did not start the fire, but only the older children (and a very few of them) understood that there is no foolproof way to determine truth in the absence of physical evidence. Moreover, whereas the tendency to feel that Joshua would not be believed did not change substantially over age (33 percent for the youngest, and 20 percent for the oldest age group), the oldest children were much more likely to say that an adult under similar circumstances would not be believed (24 percent for the youngest compared to 52 percent for the oldest). When asked if they would still tell the truth (in court) if their parents would get in trouble as a result, the older children were less likely to respond affirmatively. These results may be indications of the higher levels of moral reasoning, which allow questioning of rules/laws (e.g., Kohlberg, 1963; Tapp & Kohlberg, 1971). The implications of these results for older children's testimony are unclear. Older children may be less suggestible because they have more confidence in their own memorial skills and they may question authority figures who might "lead" them into changing their stories (see Ceci et al., 1987). Older children have a greater understanding of the implications of their testimony and the roles of the attorneys, judge, and jury, factors that may enable them to provide more complete, "audience-adapted," and convincing accounts. However, this greater understanding may also induce greater fear and mistrust, thus perhaps young children's "ignorance is bliss." Whether the understanding that laws are changeable and questionable and violations occasionally acceptable is necessary for successfully witness performance is an important question for future child witness research.

Overall, the results of this study essentially replicate those of Saywitz (this volume) and Flin et al. (1987) using a much larger sample. For some of the legal concepts we assessed, fairly straightforward age trends were observed, in which older children simply possessed more knowledge than younger children or their knowledge included more detail or a greater number of basic features. Younger children suggested that lawyers "help" and "talk for" their clients (present the case), and older children often

added the features of "asking questions" and "defending." On the other hand, some legal concepts appear to develop through several stages of misperceptions. For example, while three- to six-year-olds confused the term "jury" with "jewelry," several older children believed that the jury is another name for a judge or lawyer, or that the jury's role is to listen to testimony and take notes, which they then give to the judge. Thus, children do not always develop legal concepts in a logically ordered fashion, in that they may move from lack of knowledge to incorrect perceptions (for several years) and finally to accurate representations. Interestingly, many of the oldest children in our study had not achieved this level of accurate representations. Thus, we decided to focus on older children, to determine if and how legal concepts further develop in adolescence.

Study 2

Method

Subjects

Subjects for phase 1 of this study were 264 public school students (134 males, 130 females) ranging from nine to eighteen years of age. Most were eighth graders, between thirteen and fifteen years old (194 out of 264). We focused on three particular age groups for further analysis, the 14 children between 9;10 and 11;9, another 53 subjects ages 13;0 to 13;10, and the oldest 39 subjects ages 15;0 to 18;0. There were 62 subjects (25 males, 26 females, and 11 who did not identify their gender) obtained from schools and church groups for phase 2, ranging in age from fourteen years and 0 months to eighteen years and 3 months. Both samples were largely, though not exclusively, white and middle class.

Procedure

The first phase of the study used a multiple-choice test format questionnaire containing thirty questions about the legal system. Many of the distractor alternatives were developed from the answers previously given by the younger children in study 1. The questionnaire was group administered, with answers written on a separate sheet. For phase 2, we used an open-ended questionnaire similar to that from study 1. The questions from both questionnaires were selected for analysis using the same criteria used in study 1; these are discussed fully in the results section. For the open-ended questions, we developed a coding scheme similar to that derived for study 1. Again, 10 percent of the protocols were independently coded, and intercoder consistency was 98 percent.

Results and Discussion

The first question analyzed from the multiple-choice data was "Have you ever seen a courtroom?" and the answers included *on television, in a courthouse, in a newspaper, all of the above, and none of the above*. Only 9 percent of the overall sample reported that they seen the courtroom in the courthouse, but an additional 43 percent answered with *all of the above*, indicating that they had seen a courtroom in person as well as from other sources. Focusing on the three age subgroups, more of the older children (56 percent) than younger children (14 percent) answered with *all of the above*, whereas more of the younger (36 percent) than older (13 percent) children answered that they had only seen a courtroom in a courthouse. This surprising pattern perhaps suggests some confusion over the question, as it is actually more likely that younger children have seen a courtroom from other sources than in person.

Several of the subsequent questions concerned courtroom personnel. In response to the open-ended question "Who else is in a courtroom," jury was mentioned by 66 percent, lawyers 58 percent, court reporter 40 percent, defendant 39 percent, baliff 35 percent, plaintiff 32 percent, audience 26 percent, witness 18 percent, court clerk 5 percent, and paralegal by 5 percent. Overall, 91 percent of the multiple-choice subjects indicated that they understood the role of the lawyer and were not distracted by alternatives such as "makes the laws" or "carries out the laws" (both common responses in study 1). Unlike in study 1, the majority of the open-ended responses were that lawyers either defend (47 percent) or defend and prosecute, or simply try to "win the case" (37 percent). Only 6 percent said they did not know what attorneys do. Sixty percent of the multiple-choice subjects also understood the concept of a public defender (although only 21 percent of the youngest subjects answered correctly, and most respondents simply suggested that "he defends the public"). In contrast, 77 percent of this sample fully understood the requirements for and of being a judge. Many of the younger subjects were distracted by the alternatives suggesting that judges were appointed by the sherriff (43 percent) or the governor (21 percent).

When asked, "What is the jury?," 75 percent of the subjects chose the correct alternative (14 percent of the youngest group, 81 percent of the middle, and 69 percent of the oldest). Of the subjects asked this same question in open-ended form, an overwhelming majority (82 percent) mentioned their decision-making capacity while only 10 percent indicated they did not know. The open-ended question "Who makes the final decision of guilt or innocence in court?" was answered with *the judge* by 68 percent of the respondents, while 18 percent said *jury*, and 13 percent said *jury or judge*. Of course the correct answer to this question depends on whether or not it is a jury trial; nevertheless, the low percentage of *jury* responses was remarkable.

To assess some of the more technical aspects of legal procedure, we asked "What is perjury?" and "What does it mean to take the fifth?" Only 60 percent of the subjects selected "lying under oath" as the answer to the first question. Many thought that perjury was what the jury decides or recommends. Twenty-eight percent of the respondents to open-ended questions said they did not know what perjury was, 52 percent answered correctly, and 20 percent were incorrect; the majority of these latter said that perjury is the term for the jury reviewing a case, or what happens "before the case goes to the jury," or even a replacement jury in case the "first jury couldn't make it." In reference to "taking the fifth," 67 percent ~~of the subjects correctly chose the witness does not answer so he won't get into trouble or be incriminated~~ as the appropriate answer, but 20 percent thought that taking the fifth means you don't have to answer after you have been asked a question five times. In fact, this alternative was chosen 57 percent of the time by the ten-year-olds. Two final open-ended questions were "What is the difference between first and second degree murder?" and "What is the difference between murder and manslaughter?" For the first question, only 23 percent correctly indicated the difference was premeditation, while 37 percent were incorrect (the most common misperception was that second degree murder was worse in some way), and a full 40 percent did not know. Concerning the distinction between murder and manslaughter, 44 percent knew the difference is based on the intent, 27 percent had no idea, and 29 percent held incorrect notions (e.g., manslaughter is with a knife, manslaughter is more cruel and inhumane, involving torture or decapitation and vivisection).

The next several questions were more concerned with personal opinions. When given the statement "Court trials are fair and impartial," 15 percent strongly agreed, 65 percent agreed, 16 percent disagreed, and 4 percent strongly disagreed. Presented with the statement "Everyone is equal under the law (that is, everyone is treated the same in court)," 18 percent indicated they strongly agreed, 50 percent agreed, 25 percent disagreed, and 8 percent strongly disagreed. When asked, "If someone you knew broke the law, what would you do," the majority of the subjects indicated they would be honest and "tell the truth no matter what" (66 percent), 29 percent would not say anything, 2 percent admitted they would lie to keep the person out of trouble and 3 percent would take the blame themselves if accused. Finally, the question was asked, "If your ~~mother or father did something illegal and would be sent to jail if you testified and told the truth, you would:~~" tell the truth (21 percent), not say anything (28%), lie (21%), undecided (30%). Thirty-four percent of the responses to the open-ended questions of this same type were negative (I would not tell the truth). Some of the subjects felt they needed to supply additional comments to tell us they would lie for one parent, but not the other, or other clarifying information such as, "I'd manipulate the words to her defense"; "I wouldn't tell the truth if I could help it"; "I would lie no

matter what would happen to me"; "I would not testify against my friends or family"; "I wouldn't show up, and get contempt of court"; "I really can't answer that question because I love my family and I think that most of the time judges are wrong. . . how do they know if a person is lying or not and they may send an innocent person to prison or set a guilty person free"; "after taking an oath in the name of God you are sworn to tell the truth no matter what"; "yes, (I would tell the truth) because [my parents] are no different from ordinary people"; and "I plead the fifth."

In sum, the responses of the adolescents in study 2 provided stronger support for the idea that higher levels of moral reasoning and legal knowledge may coexist with increased mistrust and questioning of the authority of the legal system. Again, how this may affect their ability to participate in the legal system or testify in court is unknown. Although these adolescents appeared to possess accurate conceptions of most basic legal terms and functions (e.g., judge, jury, lawyer), their conceptions were still fairly nebulous, and their knowledge of more technical legal concepts and terms (e.g., perjury, manslaughter) was lacking.

General Discussion

The results of our studies suggest that most young children know very little about courtroom personnel and procedures. Moreover, both younger and older children expressed negative attitudes about court, apparently for different reasons. The younger children may have blind faith in the legal process and the adults involved in it, but see court as primarily a bad place where bad people are punished. Older children, on the other hand, may view court negatively as a result of their understanding that the judicial process is fallible.

Why do young children know so little about the legal system? One argument might be a maturational limit on their ability to process such information. For example, perhaps a certain level of moral reasoning is required for understanding certain legal concepts. But the question could be rephrased to reflect an environmental/learning point of view. Why do children know anything about the legal system at all, considering their limited exposure to it? It is hardly the topic of many parent-child conversations. However, as we discussed previously, children may gain an understanding of laws from rules at home and of the legal system in general from parental discipline and their justifications or explanations of punishments. School-age children have the additional opportunity of learning about justice through classroom rule and discipline systems (Macauley, 1987). They may even begin a formal curriculum concerning government, with the judicial system as a part (in fact, 40 percent of our older sample reported that they had actually visited a courtroom, most likely on school field trips).

Unfortunately, Macaulay (1987) noted that the few textbooks that include discussions of law provide only a simplified, formal picture of courts, trials, lawyers, and police. Theoretical or ideal descriptions of the legal systems are presented as if they are descriptions of how the systems actually operate in practice. This same criticism can be applied to depictions of the legal system on television, another likely source of legal knowledge for children.

As Saywitz (this volume) notes, six or seven daytime shows are exclusively about court. Soap operas frequently feature trials (particularly murder trials, complete with all necessary courtroom personnel), and prime time television is heavily populated with police, detective, and court shows (e.g., in the 1986 season, *Matlock*, *L.A. Law*, *Hill Street Blues*, and *Night Court*). Macaulay (1987) argues that if television was children's sole source of legal knowledge, they would be badly misled, in that "entertainment programs misrepresent the nature and amount of crime . . . , the roles of actors in the legal system . . . and present important issues of civil liberties in distorted ways" (pp. 197-198). Moreover, punishment on television often comes from environmental circumstances (retribution delivered on the spot), bypassing the legal system. Even when the normal legal process is followed and court trials are presented, most TV court cases are resolved in "Perry Mason" fashion, wherein the "real" culprit breaks down under cross-examination and confesses. The job of a jury is certainly made easier under those circumstances. The daytime court shows rarely portray juries or lawyers (e.g., *People's Court*), which may help to explain why children seem to understand the concept of judge long before lawyer or jury. In fact, one child responded to the question "What does a lawyer do?" with "It (TV) didn't show it to me."

Considering that children know little about the legal system, and that what they learn from school and television may be misleading or incomplete, the assumption that child witnesses are largely unprepared for testifying is probably correct. In fact, Grisso and Lovinguth (1982) and Saywitz (this volume) suggest that even direct experience with the legal system may not enhance legal knowledge. Saywitz (this volume) argues further that television and school lesson depictions of court, though probably overly simplistic, may result in more coherent representations of legal knowledge than direct legal experience, which may present more complex information (various proceedings, more legal actors) but in a more confusing context (fraught with delays, continuances, and the like). How, then, can children be prepared to participate in legal processes? Emerging courtroom preparations are based on the assumption that children's credibility and competence to testify in court is neither more or less problematic than an adults' would be under similar circumstances, if potential knowledge gaps are addressed through pretrial education.

Berliner and Barbieri (1984) outlined what they believe are essential elements that should be included in preparing the child for court: familiar-

ity with the physical setting and roles of participants, knowledge of legal procedures such as cross-examination, and the importance of telling the truth in the legal process. In one county in our state (Tennessee), a formal "court school" has been established (Davidson County Department of Human Services). This court school spans seven sessions (Third Annual Symposium on Child Abuse, 1987), which introduce the children to the technical names of the jobs of the court personnel, and allow the children to role-play a mock court scene involving a robbery. Each child is allowed to experience the roles of judge, witness, and either the prosecuting or defending attorney. Subsequent sessions include meeting the district attorney and emphasizing the child's job of telling the truth, answering the questions they understand, and "taking care of themselves." Throughout the course of these sessions, as the roles of the different participants are introduced, it is explained that this person is either on your (the child's) team or the accused's team; that it is the child's responsibility to tell the truth; the judge's or jury's responsibility to decide who is telling the truth, and that their decision is the best they can make, though not always correct; and that it is the judge's responsibility to set the punishment. Since a further assumption of pretrial education is that it will reduce the amount of trauma experienced, the child is also told it is their responsibility to "take care" of themselves so they won't be upset.

Added benefits to such programs may include group support from being in "class" with other children in similar circumstances. Parents can also share their experiences while their children are in the school. The investigating team has a first-hand opportunity to observe the child's reactions and abilities to communicate in a mock courtroom setting, thus allowing time for additional preparation or for the decision that it would be in the child's best interest to avoid testifying entirely.

In spite of the face validity of such court preparation programs, we are still left with many unanswered questions. Since court school is optional, how do the children who participate differ, if at all, from those who do not? How much do these children know before they attend the court school and are they able to retain what they learn? Children attend these classes in groups, which may include a wide age span. Do the older children help the younger ones, as some staff members suggest, or would it be best for all children to attend class with children from their own cohort group (who may share the same misperceptions)? Do the children who graduate from these programs actually experience less trauma? Do they make more credible witnesses than children who do not receive such preparation? Finally, do they absorb more information than would a comparison group of nonabused children (or any children not currently involved in the legal system) because of its relevance to their impending participation in court, or are they so emotionally torn that much of the information is lost? These questions should provide an abundance of topics for future research.

References

- Adelson, J., Green, B., & O'Neil, R. (1969). Growth of the idea of law in adolescence. *Developmental Psychology, 1*, 327-332.
- American Association for Protecting Children, Inc. (1983). *Highlights of Official Child Neglect and Abuse Reporting 1983*. Denver, CO: The American Humane Association.
- Berliner, L., & Barbieri, M.K. (1984). The testimony of the child victim of sexual assault. *Journal of Social Issues, 40*(2), 9-31.
- Ceci, S.J., Ross, D.F., & Toglia, M.P. (1987). Age differences in suggestibility of children's memory: Psycho-legal implications. *Journal of Experimental Psychology: General, 116*, 38-49.
- Chi, M.T.H. (Ed.). (1983). *Trends in memory development research*. Basel, Switzerland: Karger.
- Chi, M.T.H., & Glaser, R. (1980). The measurement of expertise: Analysis of the development of knowledge and skill as a basis for assessing achievement. In E.L. Baker and E.S. Quellmalz, eds. *Educational testing and evaluation: Design, analysis and policy*. Beverly Hills, CA: Sage Publications.
- Evans, M., & Carr, T. (1984). The ontogeny of description. In L. Feagans, C. Garvey, & R. Golinkoff, eds. *The origins and growth of communication*. Norwood, NJ: Ablex, 297-316.
- Flavell, J.H. (1982). Structures, stages and sequences in cognitive development. In W.A. Collins, ed. *Minnesota symposia on child psychology* (Vol. 15). Hillsdale, NJ: Lawrence Erlbaum Associates.
- Flavell, J.H. (1985). *Cognitive development*, 2nd ed. Englewood Cliffs, NJ: Prentice-Hall.
- Flin, R., Stevenson-Robb, Y., & Davies, G. (1987, May). Children's knowledge of the law. Paper presented at the British Psychological Society Development Section Conference, Exeter, England.
- Footlick, J.K. (1977). Children and the law. In T.J. Cottle, Ed. *Readings in adolescent psychology: Contemporary perspectives*. New York: Harper & Row, 279-281.
- Goodman, G. (1984). The child witness: Conclusions and future. *Journal of Social Issues, 40*(2), 157-176.
- Greenstein, F. (1965). *Children and politics*. New Haven: Yale University Press.
- Grisso, T. (1981). *Juveniles' waiver of rights: Legal and psychological competence*. New York: Plenum Press.
- Grisso, T., & Loringuth, T. (1982). Lawyers and child clients: A call for research. In J.S. Henning, ed. *The rights of children: Legal and psychological perspectives*. Springfield, IL: Charles C Thomas, 215-232.
- Hess, R.D., & Torney, J.V. (1967). *The development of political attitudes in children*. Chicago: Aldine.
- Hogan, R., & Mills, C. (1976). Legal socialization. *Human Development, 19*, 261-276.
- Keniston, K. (1977). *All our children: The American family under pressure*. New York: Harcourt Brace Jovanovich.
- Kohlberg, L. (1963). The development of children's orientations toward a moral order: I. Sequence in the development of moral thought. *Vita Humana, 6*, 11-33.
- Leming, J. (1978). Intrapersonal variation in stage of moral reasoning among adolescents as a function of situational context. *Journal of Youth and Adolescence, 7*, 405-416.

- Macaulay, S. (1987). Images of law in everyday life: The lessons of school, entertainment, and spectator sports. *Law and Society Review*, 21, 185-218.
- Melton, G.B. & Thompson, R.A. (1987). Getting out of a rut: Detours to less traveled paths in child-witness research. In S.J. Ceci, M.J. Toggia & D.F. Ross, eds. *Children's eyewitness memory*. New York: Springer-Verlag, 36-52.
- Nelson, S.A. (1980). Factors influencing young children's use of motives and outcomes as moral criteria. *Child Development*, 51, 823-829.
- Pascual-Leone, J. (1970). A mathematical model for the transition rule in Piaget's development stages. *Acta Psychologica*, 32, 301-345.
- Piaget, J. (1965). *The moral judgement of the child*. New York: Free Press. (Original work published 1932).
- Saywitz, K.J. (In this volume). Children's Conceptions of the legal system: "Court is a place to play basketball."
- Saywitz, K.J. (1987). Children's testimony: Age-related patterns of memory errors. In S.J. Ceci, M.J. Toggia, & D.F. Ross, eds. *Children's eyewitness memory*. New York: Springer-Verlag, 36-52.
- Saywitz, K.J., & Jaenicke, C. (1987, April). Children's understanding of legal terms: A preliminary report of grade-related trends. Paper presented at the Biennial meeting of the Society for Research on Child Development, Baltimore, MD.
- Shultz, T.R. (1980). Development of the concept of intention. In W.A. Collins, ed. *Minnesota symposia on child psychology* (Vol. 13). Hillsdale, NJ: Lawrence Erlbaum Associates.
- Tapp, J.L., & Kohlberg, L. (1971). Developing senses of law and legal justice. *Journal of Social Issues*, 27, 65-91.
- Tate, C.S., Hinton, I., Boyd, C., Tubbs, E., & Warren-Leubecker, A. (1987, March). Children's moral development and knowledge of the legal process. Paper presented at the Southeastern Psychological Convention, Atlanta, GA. Third Annual Symposium on Child Abuse (1987, February), Huntsville, AL.
- Torney, J.V. (1971). Socialization of attitudes toward the legal system. *Journal of Social Issues*, 27, 137-154.
- Uniform Crime Reports for the United States, 1975 (1980). Washington, DC: U.S. Government Printing Office.
- Warren-Leubecker, A., & Bohannon, J.N. (1983). The effects of verbal feedback and listener type on the speech of preschool children. *Journal of Experimental Child Psychology*, 35, 540-548.
- Warren-Leubecker, A. & Bohannon, J.N. (1985). Language in society: Variation and adaptation. In J.B. Gleason, ed. *The development of language*. Columbus, OH: Charles E. Merrill, 331-367.
- Warren-Leubecker, A., Tate, C., & Munday, G. (1986, November). "Jury is something you wear around your neck." Children's knowledge of the judicial process. Paper presented at the Tennessee Psychological Association Convention, Nashville, TN.
- Westman, J.C. (1979). *Child advocacy: New professional roles for helping families*. New York: The Free Press.
- Whitcomb, D., Shapiro, E.R., & Stellwagen, L.D., Esq. (1985). *When the victim is a child: Issues for judges and prosecutors*. Washington, DC: National Institute of Justice.

S.J. Ceci D.F. Ross M.P. Toglia
Editors

Perspectives on Children's Testimony



Springer-Verlag
New York Berlin Heidelberg
London Paris Tokyo

Children's knowledge of court proceedings

Rhona H. Flin*

Balmer School, Queen's Gordon Institute of Technology, Hilton Place, Aberdeen, AB9 1TF, UK

Yvonne Stevenson†

Aberdeen University

Graham M. Davies‡

North Park Road, Inverurie

This paper describes a study of children's legal vocabulary and their knowledge of criminal court procedures. Subjects (aged six, eight, 10 years and adults) were also asked about their feelings regarding a hypothetical court appearance as a witness. All children and adults performed well on a vocabulary recognition section with descriptions and concepts proving more difficult. Observed developmental trends in both legal vocabulary and conceptual application of criminal law rules. As previous work from Australia and America supports the contention that children younger than 10 years are not well informed about the legal system. Results indicated clear deficits in knowledge of, as well as frequent misconceptions regarding legal personnel and procedures.

Children can find themselves in the witness box in a criminal prosecution for a variety of reasons. They may have watched a road accident, a theft or a domestic assault. Alternatively, they may have been the victim of physical or sexual abuse or of some other criminal offence. There appear to be no published statistics which record the numbers of children who are cited as witnesses in criminal trials, but relevant indicators such as sexual abuse surveys (see Heilbrunn, 1987) suggest that children are being involved in criminal investigations and subsequent legal proceedings in increasing numbers. The role of child witnesses in criminal prosecutions and the appropriateness of the legal procedures for gathering and testing their evidence have become a matter of intense public concern and professional debate. In England the recent Criminal Justice Bill deals with the evidential rules pertaining to child witnesses such as corroboration, and video-linked evidence (see Spencer, 1988) and in Scotland the Scottish Law Commission (1988) is currently studying responses to their discussion paper on the subject of children's evidence.

Consideration of children's ability to participate in criminal proceedings raises a host of problems relating to the reliability and credibility of their evidence and to their emotional response to a criminal investigation and trial. Research to date has

* Requests for reprints.

tended to concentrate on children's competence to act as witnesses (see Elin, Davies & Stevenson, 1987; Hedderman, 1987, for recent reviews) rather than on their perception of and reaction to court procedures. Many experts (e.g. Parker, 1982) believe that a court appearance is stressful for children but there is scant empirical evidence to support or refute this frequent assertion. The only recent study to measure the impact of giving evidence (Goodman & Jones, 1988) has suggested that child victims of sexual assault do find their involvement in the legal proceedings to be stressful and that there may also be long-term effects resulting from this experience.

If appearing as a child witness in court is indeed traumatic, we need to know what exactly causes anxiety and what impact this has on children and on the quality of their evidence. One probable source of stress for children, which certainly contributes to pre-trial anxiety for witnesses, is their lack of understanding of the trial proceedings and the role they are expected to fulfil as a witness (Elin, Davies & Tarrant, 1988; Whitcomb, Shapiro & Stollwagen, 1985). Wilg, an American 'Guardian Ad Litem' states 'We knew from listening to kids that they didn't understand what the court process was all about, or how it related to their family. Nor did they know who all the players were. They were very much non-participants in a process that was designed to make decisions about their lives' (quoted in Meyers, 1982, p. 15). A related problem is that during the trial itself children may be subjected to language that they do not understand. Cavanagh (1959), in studying child defendants in English Juvenile Courts, reported: 'Many children do not know the meaning of words such as "charge", "summons", "prosecution" and "defence", which are everyday language of a court of law, even after they have been to court more than once' (p. 200). Similarly, Stevens & Berliner (1980) argue: 'Children in the legal system are regularly subjected to legal jargon and terminology that even their parents do not comprehend' (p. 254).

It is now generally advocated that in order to minimize unnecessary stress and to maximize a child witness's performance, that children should be carefully prepared for a court appearance (RSSPCC, 1988; Whitcomb *et al.*, 1985). Children need to know what will take place in the courtroom, who will be involved and exactly what is expected of them. This preparation removes part of the 'fear of the unknown' which not only children but many adults experience prior to a court appearance as a witness (Shapland, Willmore & Duff, 1985). In North America a wealth of support materials is published to explain trial procedures to children (see Elin & Tarrant, 1989, for further details) but in Britain no such resources are available. Research interviews with child witnesses in Scottish courts (Elin *et al.*, 1988) have indicated that an explanatory leaflet would be very helpful, not only for child witnesses, but also for their parents. When the parents fully understand the various investigative and judicial procedures they can be invaluable in building a case (Stevens & Berliner, 1980). Studies of adults' legal knowledge (e.g. Banks, Malloney & Wallock, 1975) reveal, contrary to the assumption made by the law, that there is a widespread ignorance on the part of the public about legal matters (Partridge & Hawkins, 1979, p. 5).

In order to design an effective explanatory leaflet for child witnesses, it is first necessary to establish both their basic legal vocabulary and their knowledge of court

procedures. The only relevant literature on children's understanding of the law is concerned with moral development (e.g. Tapp & Kohlberg, 1971) or legal socialization (Dryine, 1979; Schaft, 1982). None of these studies, however, actually details levels of relevant vocabulary or knowledge of formal legal procedures. Some research has been undertaken to measure the legal vocabulary of adolescents. For example, Grisso (1986) assessed American juvenile defendants' comprehension of the 'Miranda' vocabulary (rights to silence and legal counsel), warnings and Demetrou & Charlides (1986) examined adolescents' understanding of procedural justice. There do not, however, appear to be any British reports of young children's legal knowledge although relevant experiments have recently been undertaken in Australia (Reben, 1985) and in the United States (Saywitz & Jaenicke, 1987; Warren-Leubacker, Fine, Hinton & Ozbek, 1988).

Reben's (1985) principal interest was the 'oath test' used by courts in Victoria to determine the competence of child witnesses. The underlying assumption in using such tests to assess intellectual ability is that the quality of the child's answers will indicate both their moral and intellectual competence to act as a witness. (Similar procedures are used in Britain, see *Finn *et al.*, 1987*.) She examined children's (5-10 years) and adults' understanding of the three primary constructs of the oath, namely God, truth, promises and what implications are involved in taking an oath. Her results showed that some understanding of 'God' and 'promises' were demonstrated from age five years and of 'truth' from age seven years. Until nine years of age, children's reasons for being truthful in court concerned fear of punishment, only older children adopted a less egocentric view and mentioned the implications of lying in court for other parties. The majority of five-year-olds and half of the seven-year-old group did not have sufficient knowledge of the courts to answer questions regarding the implications of the oath. She also compared children's knowledge of the oath concepts with their performance on a memory task and found that while an increasingly sophisticated understanding of the oath is related to the age and basic intellectual/cognitive capacity of a witness, it is not directly related to a witness's memory accuracy (p. 123). (A similar result has subsequently been reported by Goodman, Aman & Hirschman, 1987.) It was concluded that the oath test of similar assessments do not seem to be valid indicators of witness competence. Such findings serve to increase concern about the present competency ruling in England which effectively excludes the evidence of children younger than eight years who cannot explain terms such as 'duty' or 'truth' (see Spencer, 1988).

Comparable results have been reported for American subjects by Saywitz & Jaenicke (1987) who were interested in children's comprehension of courtroom language. A study of children from five to 11 years revealed a clear age difference in favour of the older subjects. Some words were easy for children to define (e.g. judge, lie, police, promise), other terms showed significant age differences (e.g. witness, attorney, lawyer, oath) and the remaining words were uniformly difficult (e.g. allegation, competent, hearsay). Their findings were essentially replicated by Warren-Leubacker *et al.* (1988) who tested 563 subjects ranging in age from two to 14 years and found clear age trends. They suggested that most young children know very little about legal personnel and court procedures, and argued that 'some legal concepts appear to develop through several stages of misperceptions' (p. 24). In a second

experiment, adolescents were found to possess an accurate knowledge of most basic legal terms (e.g. judge, jury, lawyer) although understanding of more technical terms (e.g. perjury, manslaughter) was lacking. When asked about their feelings, all age groups expressed negative attitudes about court, the younger children believing that court is a bad place for bad people and the older children appreciating that the judicial process is not infallible. They conclude, 'considering that children know so little about the legal system, and that what they learn from school or television may be misleading or incomplete, the assumption that child witnesses are largely unprepared for testifying is probably correct' (p. 31).

Despite the American and Australian research, it was not possible to determine to what extent their findings would generalize to British children. With the long-term aim of producing a leaflet to prepare child witnesses for their day in court, a small-scale study was conducted to examine children's knowledge of Scottish legal terms and to assess their feelings regarding the prospect of being a child witness in court. Three age groups of children were tested from two schools in different areas of the same city. It was predicted that children from different social backgrounds might have different knowledge of or attitudes to the legal system, and that age differences in vocabulary would be observed.

Method

Subjects

A total of 90 children and 15 adults were recruited as subjects. The children were pupils at two primary schools in Aberdeen. School A was situated in an urban area of predominantly council housing (similar to ACORN classification Group E) and School B was situated in a suburban area of private housing (similar to ACORN classification Group D). This factor has been labelled social background. From each school 45 subjects were selected, 15 from each of three age levels, six, eight and 10 years. Subjects were chosen to represent a cross-section of ability from each class and were selected with the help of the classroom teachers. There were approximately equal numbers of males and females in each group, giving a total of 45 males and 45 females. Thus in total there were six groups of children, two groups at age levels six, eight and 10 years. In addition, 15 adults were recruited, five chosen from a departmental subject panel and 10 were interviewed during a street survey. (Adult subjects with professional experience of the legal system, e.g. police officer, lawyer, were excluded.) There were seven men (mean age 59 years) and eight women (mean age 54 years) in the adult sample. As this adult group was included only to provide a general comparison, and their results were not entered into the main analysis, no attempt was made to match them to the children on social background.

Each subject was asked to give details of (a) previous contact with the legal process (none, visited court, witness), (b) background knowledge (e.g. parent a police officer or lawyer), (c) TV experiences of legal proceedings (none, fair, considerable). These were unverified self-report ratings and were not included in the data analysis. In the adult group six subjects had been to court as an observer or juror and two subjects had been witnesses. For School B (private housing) none of the children had been to court or been a witness. For School A (council housing), two of the six-year-olds had been to court, one as a witness, the other as a witness in a criminal case, and in the eight-year-old group, one child had been a witness in a civil case and one had visited a court.

* ACORN: A Classification of Residential Neighbourhoods, C.A.C.I. Market Analysis Unit, Guide 1985. This classification has been employed for descriptive purposes. It involves the necessity of asking for parental occupation in order to determine 'social class'.

Materials

A specially devised *legal knowledge* questionnaire was administered individually to all subjects. The questions measured familiarity and knowledge of 20 legal terms which are listed in Table 2. The choice of terms was based on (a) a pilot study involving 10 six-year-olds and 10 10-year-olds and (b) observations of pre-cognition interviews with child witnesses conducted by prosecutors (in all of pre-cognition officers). The final vocabulary included the principal words and phrases that child witnesses would be likely to encounter during their involvement in criminal proceedings from the initial police interview to the final courtroom examinations. Two key concepts, law and oath, were further probed by the use of synonyms such as rule, promise and truth, etc. to cover the eventuality that a child might possess the concepts of law and of oath without having heard those specific words before. Relevant legal terms considered to be generally unfamiliar to children were not included (e.g. citation, pre-cognition, advocate, not proven).

A scoring key was devised from various sources - from a glossary of Scots legal terms (Beaton 1982), a dictionary (*The Concise Oxford Dictionary of Current English*, sixth edition (Clarendon Press, 1976)) and *The Wechsler Intelligence Scale for Children Manual, British Supplement* (Saville, 1973).

The questionnaire consisted of four sections. Section 1 was a set of three questions which measured recognition of 20 items of legal vocabulary and required children to rate their familiarity with each item on the following basis, and points were awarded as indicated:

- Never heard the word or expression before - 0 points
- Word is familiar - but uncertain as to meaning - 1 point
- Word is familiar - and some definition of word is possible - 2 points

Section 2 required the child to give a *description* of those words/terms which they had rated as familiar; this is the principal measure of the child's legal vocabulary. Again responses were scored using the key on a scale from 0-2 points:

- Incorrect description (or no description provided at all) - 0 points
- Poor or inadequate (but correct) description - 1 point
- Better or more adequate description - 2 points

Section 3 required the child to provide their *own definition* of the terms rated as familiar - probed by the use of questions in the form: 'Why do we have a rule? What do lawyers do?' The same coding criterion as used for Section 2 was applied.

Section 4 consisted of six questions designed to explore the child's attitude about a court appearance. All subjects were asked these questions irrespective of previous responses. The questions were as follows:

- (1) What do you think a courtroom looks like?
- (2) What kind of people do you think go to court?
- (3) How would you feel if you had to go to court (a) as a witness, (b) as a victim? (These terms were explained to subjects if necessary.)
- (4) Do you think you would be treated kindly in court?
- (5) Do you think you would be treated the same as a grown-up in court?
- (6) How important is it to tell the truth in court - and why?

No formal scoring scheme was devised for this section which was included to collect essentially qualitative data for future research.

Procedure

One female interviewer tested all subjects. Children were taken individually from their class to a quiet room and were told that they would be asked a series of questions for a survey. The questionnaire was

A pre-cognition is a preliminary interview conducted by the prosecutor prior to the trial.
 Prosecutor files are the public prosecutors in Scotland.

administered in a single session and responses were written into a prepared sheet by the experimenter. Adult responses were collected by telephone or by street interviews.

Results

Each of the first three sections of the questionnaire (recognition, description, concept) was scored separately using the scoring key described above. Percentage scores for Sections 1-3 are shown in Table 1.

Table 1. Percentage correct scores for legal knowledge questionnaire (Sections 1-3) (figures in parentheses show children's scores as a percentage of the adult scores)

Age	School	Recognition*	Description*	Concept*
6	A	27	13 (20)	7 (10)
	B	40	18 (24)	11 (16)
8	A	54	25 (33)	12 (18)
	B	72	34 (45)	25 (37)
10	A	78	40 (53)	20 (28)
	B	87	51 (68)	42 (62)
Adult		98	75	88

* Recognition - reported familiarity with a term.

* Description - ability to give the meaning of a term.

* Concept - ability to demonstrate conceptual understanding.

For all age groups recognition scores were higher than descriptive ability. The result indicates that reported familiarity is not always a valid predictor of appropriate knowledge when assessing vocabulary. Scores for the children were entered into a separate ANOVA for each Section (1-3) of the questionnaire. The adult scores were not included. For the purpose of assessing legal vocabulary, Section 2 (which measures the child's ability to describe each term) is the most important and these results are presented below. The pattern of results for Sections 1 and 3, assessing recognition and concepts, were found to be very similar but are less relevant and have not therefore been reported in detail.

Descriptions and concepts

Analysis of variance for the description section revealed a main effect for age of subject ($F = 14.3$, $d.f. = 2, 84$, $P < 0.01$). There appears to be a clear developmental trend in children's performance; 10-year-olds had a superior knowledge of legal terms to both eight- and six-year-olds, the eight-year-olds performed better than the six-year-olds (all comparisons, Newman-Keuls test, $P < 0.01$). A main effect was also found for social background ($F = 126.7$, $d.f. = 1, 84$, $P < 0.01$); children from School A (council housing) performed at a lower level than children from School B (private housing). There was no significant interaction between age of child and social background.

The principal aim of this study was, however, not to measure rather predictable developmental differences in children's vocabulary but to identify which legal terms would be part of a child's conceptual repertoire at these age levels. Table 2 shows the total scores for each age group, based on analysis of responses to the questions in Section 2 (e.g. What does a lawyer do?). As there was no Age \times school interaction, the children's scores have been averaged across the two schools.

Table 2. Item analysis for descriptive ability. Scores represent total points obtained for each group (maximum 30 points). Children's scores have been averaged across the two schools.

Term	Age				p <
	6	8	10	Adult	
Police man	16	17	20	27	n.s.
Court	3	13	21	22	0.01
Going to court	0	7	13	20	0.01
A law	4	9	13	23	0.01
Break the law	0	9	18	24	0.01
Rule	10	15	18	22	0.05
Judge	4	13	16	22	0.01
Sherrif	0	1	0	13	0.01
Lawyer	0	5	11	21	0.01
Crimina	5	12	22	27	0.01
Jury	1	1	11	28	0.01
Prosecutor/fiscal	0	0	0	13	0.01
Prosecute	0	6	11	21	0.01
Trial	1	5	12	22	0.01
Guilty	7	14	18	22	0.05
Witness	1	8	15	18	0.01
Evidence	1	2	13	19	0.01
Oath	2	1	12	22	0.01
Promise	18	22	20	26	n.s.
Truth(is)	21	27	25	25	n.s.

Age differences in performance for each of the 20 terms were assessed by a series of chi square analyses. These results are also shown in Table 2. Only four of the terms (police man, rule, promise, truth) showed no significant developmental differences in accuracy, being reasonably well understood by all age groups. The majority of the remaining terms were known by the adults and older children but not the younger groups. Some terms were clearly not understood at all by the younger children (e.g. going to court, evidence, jury, lawyer, prosecute, trial, witness) while other terms showed a general level of ignorance across all age levels (e.g. sherrif, procurator fiscal). The roles of the various legal professionals were frequently misunderstood and many children were not clear about what a lawyer or a judge was or the nature of their occupations. The meaning of 'jury' or its purpose was not understood at all by the six- and eight-year olds and only by a few of the 10-year olds. One of the

* A sherrif is a judge in the Scottish Sherrif Courts.

10-year-olds said of a jury, 'They ask the criminal questions, then he gives up, and they sit down.' Another consistent misapprehension was that if a person was to be prosecuted this meant that the individual would be 'hung', 'killed' or 'jailed'. One eight-year-old, in response to 'What happens to you if you are prosecuted?' replied 'You get put in prison, pay fines and when you come out of jail, you don't get a job usually, unless you sell drugs.'

Given the basic nature of many of the terms, it is not surprising that adults were fairly knowledgeable. However, only a small sample was tested and it is now planned to conduct a larger-scale study to assess adult comprehension of the legal terms they would be likely to encounter in court as a witness or a juror.

Feelings

Responses from the final section were subjected to a qualitative analysis to identify common responses and recurrent themes. A separate age breakdown is only given where clear developmental differences were observed. There were no clear differences attributable to social background.

(1) *What do you think a courtroom looks like?*

When asked to describe a courtroom, the six-year-olds tended to say that they didn't know or that it was 'a big room, with lots of chairs and lots of people'. Several children mentioned the judge and a number said that there would be policemen present. Some of the youngest group were aware of the unusual costumes worn, one referred to 'a man with a wig', another said 'silly clothes - big cloaks, silly hats'.

By eight years of age, the descriptions were more detailed, there appeared to be some understanding that the room had a special layout, with 'boxes' for the accused, the witnesses and the jury and a high desk for the judge. In the eight-year-old group there were still, however, a number of 'big room with lots of chairs' type answers. The 10-year-old group's descriptions were generally accurate and detailed and were not dissimilar to those of the adult group.

(2) *What kind of people do you think go to court?*

Children (six and eight years) either did not know or believed that mainly 'bad people' went to court. One six-year-old said 'There would be bad people in it and they would work with a ball and chain round their legs'. By age 10 years, some subjects appreciated that any kind of person might be involved in legal proceedings, as did the adult group.

(3) *How would you feel if you had to go to court: (a) as a witness (b) as a victim?*

Children consistently expressed emotions such as 'worried', 'nervous', 'scared', 'frightened'. An eight-year-old said 'You would feel guilty, because you shouldn't be involved in the trouble'. Almost all children said that they would feel these emotions more intensely if they were a victim. In the 10-year-old group, three of the subjects thought that they would be 'happy in a way' or 'glad' to be in court as a

victim witness because the perpetrator would be punished. This sentiment was echoed by one of the adults who thought they would be less nervous as a victim being keen to see justice done.

The reasons children gave for feeling nervous, scared or frightened were 'fear of not being believed' and (often as a consequence) 'fear of being sent to jail'. These were very common justifications. Other reasons were: (a) not being able to understand or answer the questions correctly; (b) not knowing what to do; (c) fear of being on their own and of not knowing anyone in the court; (d) having to speak up in front of a large adult audience and; (e) fear of seeing the accused or of retribution from the accused. Statements such as 'they might believe you were a bad person and you could go to prison' (10 years) or 'I would be scared because people might think I did it' (eight years) or 'I'd be unhappy, I've never been before and I don't know what it's about' (eight years) were fairly typical. One child (eight years) said that they would be frightened because of the strange clothes and the only child (eight years) who had been a witness in a criminal trial said that she did not like it because 'they had horrible hair'.

Adults also expressed negative emotions at the possibility of being a witness but generally in terms of feeling nervous rather than fearful. They appeared to be more concerned with their conduct or performance as a witness, and with the necessity of having to recount unpleasant events. They also referred to the unfamiliarity of the surroundings and lack of knowledge of the proceedings as reasons for nervousness.

(4) *Do you think that you would be treated kindly in court?*

For this question there did appear to be an age difference, as shown in Table 3.

Table 3. Responses (in percentages) to the question, 'Do you think you would be treated kindly in court?'

Age	Response		
	Yes	No	Don't know/It depends
6	87	3	10
8	60	30	10
10	27	33	40
Adult	53	0	47

Despite the fact that children were most afraid of going to court, the youngest group thought that they would be treated kindly. This belief decreased with age, the 10 year olds thought that it would depend on the circumstances or said that they were not sure. One of the adults said that she would expect to be treated 'in a cool fashion', and another said that she would be afraid of hostile or aggressive cross-examination. Similarly children who thought that they would not be treated kindly said, for example, 'they would say come on, think, think, think' (eight years), 'they would be sharp with you if you take a long time to speak' (10 years), and 'people try and force the answers out of you' (10 years).

(5) *Do you think you would be treated the same as a grown up in court?*

The relative percentages showed that, irrespective of age, twice as many subjects (60 per cent) thought that they would be treated differently from adults. The most popular response was that 'they would be nicer or kinder to children' but other answers included, 'they would speak slowly and quietly', 'they would ask fewer (or less difficult) questions'. A 10-year-old said that she would expect to be treated differently 'because we are younger, and we might cry'. Another 10-year-old said it was because 'we don't know so much'. One child (eight years) said 'They can believe children but not adults', whereas in contrast, a 10-year-old thought that 'they don't trust children, and would mostly believe and speak to adults'. Not all children thought that differently equated with nicer. An eight-year-old said 'Children forget easily, if you did and said so, they would be annoyed with you'. The child (eight years) who had been examined as a witness said that 'they were talking slow and quiet so I couldn't hear'.

(6) *How important is it to tell the truth in court—and why?*

With the exception of two six-year-olds (one did not know and the other did not complete the final section) all subjects were aware that it was very important to tell the truth in court. At ages six and eight years the justification for honesty was that if you lied you would be jailed or punished. (This may just be a general reason for honesty as some of the younger children did not fully understand what a court was.) The overwhelming majority of children believed that you would be sent to prison as a consequence of lying in court. Only three eight-year-olds mentioned the importance of honesty for judging the guilt of the accused. By age 10 years most subjects gave this type of adult response saying that truth was important because of the risks of convicting the innocent or releasing the guilty. Several 10-year-olds thought that truth was necessary because 'the police have to work hard to find out the truth' or 'to help the judge decide'.

Discussion

The results of this pilot study have highlighted clear deficits in children's knowledge of the law as well as popular misconceptions regarding legal procedures in criminal trials. The observed developmental trend in both legal vocabulary and conceptual appreciation of criminal law replicates previous work from other countries (Eben, 1985; Saywitz & Janicke, 1987; Warren, Leubecker *et al.*, 1988) and supports the contention that children younger than 10 years are not well informed about our legal system.

Children who attended school in a economically advantaged area performed better than children from a poorer socio-economic background, although developmental differences remained consistent. Responses given by these two groups of subjects for the 'feelings about court' section did not show any systematic variation. As no measure was taken of general vocabulary levels, it was not possible to determine whether the overall difference in performance was attributable to vocabulary size or

to some other factor such as parental knowledge of the legal system. Banks *et al.* (1975), in their study of public attitudes to crime, found that adults from the higher socio-economic groups were better informed about court procedures. This advantage may be related to the fact that, in their sample, 70 per cent of the top socio-economic groups had been to court compared with about 40 per cent of the other socio-economic groups.

The principal aim of the study was to identify baseline vocabulary levels of legal terminology and the results indicate that many legal words a child witness would encounter during the trial would require some explanation. The only terms which were reasonably well known even by six year olds were policeman, rule, promise and truth. In contrast, the roles of the various legal professionals were rarely described correctly. The unexpected notion expressed by one child that lawyers 'give money to the poor' was also found in Warren Leubecker *et al.*'s (1988) study where some of their younger subjects thought that a lawyer not only 'lends money' but also 'plays golf', 'lies' or 'sits around' (p. 14). More serious misconceptions about the role of lawyers and judges or court procedures may create difficulties for child defendants (see Cashmore & Bussey, 1989; Grisso & Loring, 1982) as well as for child witnesses and probably explain to some degree children's reported fears about the prospect of attending court as a witness. However, it must be emphasized that the children in the present study were not witnesses and were only hypothesizing about their feelings. Their negative emotions about attending court seemed to be related to the idea that courts were for bad people (a belief also reported by Reben, 1985 and Warren Leubecker *et al.*, 1988) and that they might not be believed and consequently be sent to jail. There appeared to be an underlying misapprehension that the witness was actually on trial as well as or instead of the accused.

Other reasons children in the present study gave for anticipating feelings of anxiety do accord with the factors that have been commonly cited as causes of stress for child witnesses (see Whitcomb *et al.*, 1985). These included not understanding what would happen, not knowing what to do, fear of being on their own in court, having to speak to an adult audience and fear of seeing the accused. Children also said that they would worry about their ability to understand and to answer the questions posed. To some extent, this finding reinforces concern that children may have difficulty dealing with the language or the form of questioning used in court (see Brennan & Brennan, 1988, for an excellent description of the unsuitable language used to cross-examine child witnesses).

Although very few children knew the meaning of the word 'oath', they did understand the concepts of promising and of truth telling; with children's answers to the question 'How important is it to tell the truth in court and why?' there seems little doubt that children appreciate the importance of honesty in the witness box. The younger age groups (six and eight years) believed almost unanimously that lying in court would be punished by imprisonment. Reben (1985) reported exactly the same result for Australian children. This finding raises the question of whether, in fact, young children would possibly be less likely than adults to lie in court, for fear of the consequences. Spencer has commented 'the only people nowadays who are likely to believe in the oath in its proper sense are young children and mental patients, and it is they alone who are forbidden to take it' (*Guardian*, 17.9.84). Moreover, asking

children (or adults) to explain the meaning of truth or God probably reveals very little about their propensity to tell the truth (Melton, 1981).

There seems little doubt that children below the age of 10 years do not clearly understand the terminology or procedures of the legal system. Our results from this small study emphasize the need to prepare child witnesses for a visit to court and to explain the legal terms they may hear. The question of whether children should be taught more about the legal system in schools is obviously a matter for educational debate. Despite the small sample of adults interviewed in this study, there are indications that many "older" witnesses might also appreciate an information leaflet. Those who work regularly in criminal courts such as lawyers, court officials and police officers may sometimes fail to appreciate how unfamiliar and intimidating our courts of law can appear to innocent witnesses and jurors. A booklet for Scottish child witnesses is currently in preparation and will hopefully be available later this year.

Acknowledgements

This research was supported by a grant from the Scottish Home and Health Department. The views expressed in this article are those of the authors and do not necessarily represent the policy of the funding body.

References

- Banks, C., Malloney, E. & Willbol, H. (1975). Public attitudes to witnesses in the penal system. *British Journal of Criminology*, 15, 228-240.
- Beaton, J. A. (1982). *Scottish Law Terms and Expressions*. Edinburgh: W. Green.
- Breanan, M. & Bishop, R. E. (1988). Strong language - child victims under cross-examination. Riverina Literacy Centre, Wagga Wagga, New South Wales, Australia.
- Cashmore, J. & Halsey, K. (1989). Topics of duty: solicitors in children's court criminal matters. The perceptions of children and their collectors. (Manuscript submitted for publication).
- Cavanagh, W. E. (1959). *The Child and the Court*. London: Collins.
- Dunne, A. & Chandler, L. (1986). The adolescent's construction of procedural justice: a function of age, formal thought and sex. *International Journal of Psychology*, 21, 333-358.
- Farrington, D. P. & Hawkins, K. (1979). Psychological research on behaviour in legal contexts. In D. Farrington, K. Hawkins & S. Lloyd-Bostock (Eds), *Psychology, Law and Legal Process*. London: Macmillan.
- Ferber, D. J. (1985). Age of witness, competency, cognitive correlates. Honours thesis, Monash University, Australia.
- Flin, R. H., Davies, G. M. & Stanton, A. B. (1987). Children as witnesses: Psychological aspects of the English and Scottish systems. *Medicine and Law*, 6, 275-291.
- Flin, R. H., Davies, G. M. & Stanton, A. B. (1988). *The Child Witness*. Final Report to the Scottish Home and Health Department, Criminological Research Branch.
- Flin, R. H. & Stanton, A. B. (1989). Preparing child witnesses for court: A review of resource materials. *Social Work Today* (in press).
- Goodman, G., Aman, C. & Hirschman, J. (1987). Child sexual and physical abuse. In S. Ged, M. Magill & D. Ross (Eds), *Children's Experiences: Memory*. New York: Springer-Verlag.
- Goodman, G. S. & Jones, D. P. (1988). The emotional effects of criminal court testimony on child sexual assault victims: A preliminary report. In G. Davies & J. Drinkwater (Eds), *The Child Witness: Do the Courts Abuse Children?* Leicester: The British Psychological Society.
- Grisso, T. (1986). *Evaluating Competence*. New York: Plenum.
- Grisso, T. & Lovingsuth, T. (1982). Lawyers and child clients: A call for research. In J. S. Fleming (Ed.), *The Rights of Children: Legal and Psychological Perspectives*. Springfield, IL: Thomas.
- Hedderman, C. (1987). *Children in Evidence: The Need for Corroboration*. Home Office Research and Planning Unit, Paper 4. London: Home Office.

Children's Understanding of Legal Terminology:

Judges Get Money at Pet Shows, Don't They?

When children enter the courtroom they have two challenges in connection with language: (i) to follow all the legal terminology and court procedure and (ii) to give an accurate account of their story. Obviously the child's story is the focus of attention and it is easy to overlook the possibility that she does not understand the legal terminology used. Indeed, the legal framework may be so bewildering to her that she becomes totally confused and unable to give accurate evidence about the events specific to the case. We must therefore be clear about children's understanding of legal terminology and the study here adds to our existing knowledge.

Others before us (as summarized in Table 1) have recognized the need to establish the basic legal vocabulary of child witnesses and their knowledge of court procedures and, as the table illustrates, previous studies have shown that some words are acquired earlier than others, with the more specialized legal vocabulary seeming to be acquired later.

Our study supports these findings to a large extent but also highlights the fact that language acquisition is not an all-or-nothing procedure but, rather, a protracted process. Thus, at any given time, children may have a partial understanding of any word. This partial understanding may not be detected in spontaneous interviewing and yet could have dire effects on the interview outcome.

Our data are taken from two sources: (i) a language game with presumed non-abused children and (ii) transcripts of police-child video interviews in cases of suspected child abuse.

*Correspondence to: Dr M. Aldridge, School of English and Linguistics, University of Wales, Bangor, Gwynedd, North Wales LL57 2DG

Brief Communication

Michelle Aldridge*
Kathryn Timmins
Joanne Wood

School of English and Linguistics,
University of Wales, Bangor.

*'Partial
understanding
may not be
detected in
spontaneous
interviewing'*

Table 1.

Researchers	Children's age	Easy words	Difficult words
Saywitz & Jaenicke (1987)	5-11 yr	Judge, lie, police, promise	Witness, attorney, lawyer, oath, allegation, competent, hearsay
Warren-Leubecker <i>et al.</i> (1988)	Findings similar to those of Saywitz & Jaenicke		
Flin <i>et al.</i> (1989)	6-10 yr	Policeman, rule, promise, truth	Evidence, jury, lawyer, witness

Table 2. Words needing a definition

Burglary, arrest, police officer, criminal, law, judge, guilty, crime, court, police constable, witness, innocent, accused, social worker, jury, custody, magistrate, probation, prosecution, porcation*

* Nonsense word used as a control.

The hero of our language game was 'Fred', a doll dressed in Spanish national costume. We explained to the children in our study that Fred's English was poor and that he needed help in understanding a letter he had received from an English friend. Each child and Fred read this letter and every time Fred halted at a word (listed in Table 2), the female researcher asked the child to define it for Fred.

The aim was to elicit definitions of legal terminology. Thirty-two monolingual English-speaking children participated who were from four age groups. None had any known language impairment or learning difficulty.

Table 3 shows the terms acquired by each age group.

Table 3. Terms acquired by each age group (based on 50% or more of children in each group being able to provide some correct description)

Age			
5	7	8	10
Burglary	Burglary	Burglary	Burglary
Police officer	Police officer	Police officer	Police officer
Criminal	Criminal	Criminal	Criminal
	Arrest	Arrest	Arrest
	Judge	Judge	Judge
		Guilty	Guilty
		Crime	Crime
		Court	Court
		Law	Law
			Innocent
			Social worker
			Police constable
			Witness
			Jury
			Accused
Total 3	5	9	15

Note: In each age group, no child was more than 2 months older than her year.

It should be noted that less than 50% of the children in each age group were able to provide some correct description for the terms 'custody', 'magistrate' and 'probation', that no child could define 'prosecution' and only one child tried to define 'porcation.' The low response for this control item appears to show that children do not randomly guess at definitions of words they do not know.

From a quantitative perspective, the results shown in Table 3 indicate that ability to define legal terminology increases with age. For example, when asked, 'Do you know what a witness is?', children are 10 years of age before they can give a reply such as, 'It's a person who was there at the scene of the crime'. The 5-year-olds replied 'No', while the 7-year-olds tended to give an inaccurate response.

Similarly, in reply to the question, 'Do you know, what a judge is', only the 10-year-olds responded with a functional description such as: 'A judge judges people when they go to court'. The 5-year-olds replied 'No', and the age groups in between gave an inaccurate or imprecise reply.

From a qualitative perspective, our findings were also similar to Flin, Stephenson and Davies (1989) in that the items which were most problematic for the children were those of the more specialized legal terminology. In general, we might suggest that words first acquired, i.e. 'burglary', 'criminal' and, 'police officer', are typically used outside the courtroom, while later acquired words, i.e. 'accused', 'jury', 'witness', together with those that even less than 50% of the 10-year-olds were able to describe, i.e. 'custody', 'magistrate' and 'probation', occur more frequently inside the courtroom.

Further support for this argument is our finding that 'prosecution' was problematic for all age groups. Indeed, with the exception of one child who gave the wrong definition, they all said that they had never heard of the word.

The above findings add weight to the suggestion that the courtroom is a foreign arena (Bray, 1989, p. 54) to young children and that words used there must be fully explained before a child's court appearance if we are to expect the child to be sufficiently orientated to give of her best.

If a child completely fails to understand something in court then this is likely to be noticed quickly and, although the jury may make judgements about the child's competence to testify, such failure is unlikely to skew the interview further. More dangerous is the situation where the child (and lawyers and jury) think that the child is understanding but where she actually has a wrong or partial understanding of the words being used. Such misunderstandings may go unnoticed and the

*'No child
could define
"prosecution"'*

'The child's ability to testify may be severely hampered by misinterpretation'

'A court is a sort of jail'

'When you're arrested, a policeman will come along and put you in chains'

interview may continue, but the child's ability to testify may be severely hampered by fear or through misinterpretation.

We have examples of this in our data from the language game and videos. Imagine, for example, how frightening it could be when a child is asked to go to court if she thinks, as did one of our five-year-olds, that:

'A court is a sort of jail'

Or how frightening it could be when her own side, the prosecution, is called to give its account when she thinks, as did one of the 10-year-olds in our language game, that:

'Prosecution's when you die. You get hanged or something awful like that'

Or how bewildering it might be for a child who hears: 'Call the next witness' if, like one of our children (aged 7), she believes witnesses:

'Whip people when they are naughty'

Or like another of them (aged 7), who thinks that:

'The police think that witnesses have done something naughty'

Similarly, won't a child be confused to realize that a judge is in charge of the court and will be responsible for summarizing the story if, like one of our subjects (age 7) she considers the judge to be:

'Someone who gets money, like at a pet show'

And, won't a child be frightened by the judge's summing up if she thinks, like one of our subjects (aged 8), that judges:

'Judge people, I think it's when you go to jail and you have to tell the judge what you've done'

Furthermore, a child may not want the suspect arrested if she believes, like one of our 8-year-olds, that:

'When you're arrested, a policeman will come along and put you in chains'

From our video data, we have further evidence of the potential dangers of misunderstandings. Consider the following exchange:

Boy aged 5 (C); policewoman interviewer (I)

'C: Who broke that? (a toy)

I: I don't know, perhaps some other children who have been here.

C: Broke it! Did you arrest them?

I: Oh no! I don't arrest children!

(a little later)

I: I see, is there anybody else that's naughty?

C: Sometimes I am.

I: OK, what sort of thing do you do that's naughty?

C: Don't arrest me!

I: I won't arrest you! I only arrest people who have done something very wrong and I don't think you've done anything wrong.

C: You arrest grown-ups don't you?

A similar example follows:

Girl (aged 5) (C); policewoman interviewer (I)

I: Do you know what a police lady does?

C: Yeah

I: What does she do?

C: She gets people in prison?

Clearly, the only understanding these children have about the police is that they arrest people and lock them away! Imagine then how frightening it must be for such a child who reports her experiences of sexual abuse to be told that a policewoman wants to speak to her! It is hardly surprising that some children won't speak in an interview situation when we know they have a story to tell.

Another example where communication will rapidly break down is where the child thinks she has understood the conversation but has actually misheard the word or missegmented it. We have such examples in our language game data. For example, in reply to the question: 'Can you please tell me what jury means?', several children heard 'jury' as 'jewellery' and gave the following responses:

'Things that you put on' (aged 5)

'You wear it' (aged 7)

'It's very pretty' (aged 8)

'Things you wear on your fingers' (aged 8)

Similarly, when asked the question: 'Can you please tell me what arrest means?', a 5-year-old child replied:

'It means you're lying down.'

While whimsical responses in a language game may cause a smile, such misinterpretation would soon cause language breakdown in an interview situation and make the child seem an unreliable witness.

'The child has actually misheard the word or missegmented it'

'Such misinterpretation would make the child seem an unreliable witness'

***'Misunderstanding
and/or mishearing
are potentially
more dangerous'***

From this discussion, it is clear that interviewers must take nothing for granted. The acquisition of legal terminology is a protracted process and professionals must be wary of using technical terminology with very young children. Indeed, even 10-year-olds are struggling with some of the more specific vocabulary. It is not the case that children simply either do or do not know a word. Situations of misunderstanding and/or mishearing are potentially more dangerous in the interview situation than cases of no understanding, and thus before professionals focus on the child's story, all terminology must be checked to determine whether both parties have a common understanding of the words employed.

References

- Bray, M. (1989). Communicating with children: communicating with the court. In S. Ceci and M. Toglia (Eds), *Focus on Child Abuse: Medical, Legal and Social Work Perspectives*. Hawksmere.
- Flin, R., Stephenson, Y. and Davies, G. (1989). Children's knowledge of court proceedings. *British Journal of Psychology*, **80**, 285-297.
- Saywitz, K. and Jaenicke, C. (1987). Children's understanding of legal terms: a preliminary report of grade-related trends. Paper presented at the Biennial Meeting of the Society for Research on Child Development, Baltimore, MD.
- Warren-Leubecker, A., Tate, C., Hinton, I. and Ozbek, N. (1988). What do children know about the legal system and when do they know it? In S. Ceci, D. Ross and M. Toglia (Eds), *Perspectives on Children's Testimony*. New York: Springer-Verlag, pp. 131-157.

Copyright of Child Abuse Review is the property of John Wiley & Sons Inc. & BASPCAN British Assoc. for the Study & Prevention of Child Abuse & Neglect and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.

Developing Knowledge of the Judicial System: A Domain-Specific Approach

ANNA EMILIA BERTI
ELISA UGOLINI
University of Padova, Italy

ABSTRACT. Italian students' understanding of the relation between Italy's judicial system and state and law was examined. The participants were in 1st, 3rd, 5th, and 8th grades and university. They were asked about judges and other figures involved in court proceedings, about who makes laws, and about how a person can learn the laws. First graders demonstrated poor knowledge regarding judges and attributed the job of deciding on penalties to the police. Third graders described judges as people working on their own who decide according to their wisdom. From fifth grade on, students depicted judges as public servants paid by the state, but only eighth graders stated that judges study and apply the law. Knowledge of other figures involved in court proceedings, such as lawyers, witnesses, and the jury, improved with increasing age. Only university students knew about the public prosecutor. The knowledge that laws are made by state organs appeared to precede the notion that the state pays the judge; the knowledge that laws are collected in books preceded awareness that to become a judge or lawyer, one must study law.

IN THE LAST FEW YEARS, the view that knowledge is organized in distinct conceptual structures has progressively supplanted the Piagetian domain-general view, spurring investigations of the development of different conceptual domains, such as physics, biology, and psychology (see Carey, 1985; Gardner, 1991; Hirschfeld & Gelman, 1994). Although knowledge of the political world has been listed among the few naive theories making up adults' knowledge store (see Carey, 1985; Wellman, 1990), the research on knowledge about civics has been all but neglected by developmental and educational psychologists, perhaps as a consequence of the implicit assumption that this topic does not interest children. Nevertheless, some studies have shown that a political conceptual domain, hinging on the concept of state, is present around the age of 11 to 12 years (Berti, 1994; Berti & Benesso, 1998) and is rooted in earlier learning.

This study was supported by a grant from the Italian MPI (Fondi 60%).

Address correspondence to Anna Emilia Berti, Dipartimento di Psicologia dello Sviluppo e della Socializzazione, via Venezia 8, 35131, Padova, Italy; e-mail: aeberti@psico.unipd.it.

Preschoolers appear to construe societal phenomena (including both economic and political roles and processes) in terms of a naive psychology. They do not know anything about social institutions and believe that people carry out the activities characterizing various roles (such as teacher, bus driver, shop keeper, police, soldier) because they want to (Berti & Bombi, 1988; Furth, 1980; Taffandini & Valentini, 1995). At about 6 to 7 years of age, children develop ideas about institutional roles (Emler, Ohana, & Moscovici, 1987) as well as awareness that not only goods but also services must be paid for (Berti & Bombi, 1988). A naive economics therefore emerges, although children construe employees as people working on their own, paid by the individuals who benefit personally from their work (e.g., teachers are paid by their pupils' parents). Not before 8 or 9 years of age do most children possess the idea of the employee and an employer who gives orders and pays. At that age, however, a domain of political knowledge is still absent, because children do not yet distinguish between public services and private firms, and they either do not know about political authorities or represent them merely as rich people.

A naive understanding of civics appears around 11 years of age, when children begin (a) to be aware of the existence of central authorities who form the top of a command hierarchy (Connell, 1971); (b) to possess the notion of nation-state—that is, a territory ruled by central political authorities who establish the law for all the inhabitants (Berti, 1994); and (c) to know that armed forces and police are public servants paid from tax revenues (Berti & Benesso, 1998), whereas other activities are carried out for private employers who get the money from the goods or services produced by their firms (Berti & Bombi, 1988).

One could hypothesize that children construe and organize information about specific political institutions in different ways, depending on whether they possess the concept of nation-state. Our aim in the present study was to test this hypothesis with respect to the judicial system and the role of the judge. The literature on this topic is scarce and, to a great extent, extraneous to the domain-specific approach. Some atheoretical studies conducted in the United States (Saywitz & Jaenicke, 1987), Australia (Warren-Leubecker, Tate, Hinton, & Ozbek, 1988), and Great Britain (Flin, Stevenson, & Davies, 1989) have examined children's comprehension of legal vocabulary, from preschool years up to 14 years of age. Those studies yielded more or less the same results. At the age of 5 years, U.S. and Australian children knew judge, lie, police, and promise, whereas only at about 8 years old did British children know what the judge does. Witness, attorney, lawyer, and oath were known even later. Children younger than 10 showed poor knowledge of judicial procedures in all these studies.

In other studies, the development of judicial knowledge has been interpreted in Piagetian terms. Moore, Lare, and Wagner (1985) conducted a longitudinal investigation of political knowledge in which they examined children's concepts of judges. They attempted to identify developmental sequences parallel to Piagetian stages. Nearly all of the 8- to 9-year-old children described in general terms

what happens in a court, relating it to judge, jury, or trial, and attributing the task of deciding guilt or innocence to the judge. On the whole, the children turned out to be more knowledgeable about this topic than they were about other institutions, such as parties, government, and parliament. Demetriou and Charitides (1986) compared adolescents' performances on some Piagetian tasks with their conceptions of various aspects of the judicial organization and of court proceedings. Finding poor knowledge of these items, Demetriou and Charitides concluded that being at the formal operational stage is not enough to understand judicial themes and that a "post-formal" kind of thought is needed.

In contrast to the Piagetian approach (which suggests that understanding the judicial system is constrained by domain-general logical abilities), the domain-specific approach leads the researcher to look for relations between such understanding and the awareness of other political notions. To our knowledge, the only study that followed this approach highlighted some parallels between the development of the concept of the judge and the concept of state in Italian students from first, third, and fifth grades and university (Berti, Mancaruso, & Zanon, 1997). At first grade, when naive politics and the idea of employee have not yet been acquired, many children did not know the role of the judge and believed that police decide how much time a thief spends in jail. Those who knew about judges thought that their job was to establish guilt and punishment, as requested by victims of a crime. No child mentioned law, either to be studied before becoming a judge or to be considered by a judge while making a decision. Furthermore, no child said that judges are paid by the state. Some believed that they worked for nothing; others believed that they were paid by the police, the accused, or the plaintiffs. Hence, for the first graders, the judge did not appear as a member of any organization. At third grade, more children knew about judges, but their representations did not differ from the first graders'. At fifth grade—that is, at an age when most children possess the notion of state—the students described judges as public servants, paid by the state; however, only at eighth grade did the students mention legal studies and basing decisions on the law.

Although Berti, Mancaruso, and Zanon's (1997) study showed that the developmental path of knowledge about the judicial system parallels development of knowledge of the state, they did not directly compare understanding of the two topics within the same group of children. Thus, it was not possible to specify whether there are systematic relations between pairs of concepts belonging to each, such as concurrence and asynchrony (see Flavell, Miller, & Miller, 1993), or if such concepts develop at roughly the same age only on average, while not being correlated within individuals. Our main purpose in this study was to identify more precise patterns of relations between the concepts of law and state on one hand; and understanding of the role of the judge, on the other hand. We therefore interviewed the children on both topics.

First, we tried to determine if those children who assigned the task of making laws to the parliament or other central authorities were also those who

described the judge as a public servant. Three different hypotheses could be put forward about this point: (a) The ideas that judges are paid by the state and that the state or its organs make the law co-occur because both involve knowledge of the concept of state. (b) The two ideas, although appearing within the same age level, are not associated, because children learn about who makes the laws and who pays judges independently. (c) Knowledge that laws are made by the state precedes knowledge that judges are paid by the state, because there are many more opportunities to be taught the first than the second, which is more likely to develop through inference. As the notions of state and law in Italy are explicitly provided for in the elementary school syllabus and are usually taught in the fifth grade, we expected that the third hypothesis would be supported.

Our second purpose in the present study was to test Berti, Mancaruso, and Zanon's (1997) hypothesis that asynchrony between the notion that judges are public servants (found from fifth grade) and the recognition that judges study and apply the law (found from eighth grade) could be attributable to the fact, documented by one study on the concept of law (Berti, Guarnaccia, & Lattuada, 1997), that many Italian fifth graders do not know that laws are collected in books. Without this knowledge, students could hardly conceive that laws can be studied and consulted. To test this hypothesis, we examined children's ideas on how a foreigner coming to Italy could learn its laws.

Our third purpose was to assess children's knowledge about the public prosecutor. In Berti, Mancaruso, and Zanon's (1997) study, only university students appeared familiar with this role. Younger children did not mention this figure or his or her tasks when they listed the participants in a court case, or when they described the position and duties of Giovanni Falcone—a public prosecutor who was very famous in Italy for his investigations into the Mafia and whose murder, 10 months before the beginning of the study, deeply moved the Italian people. However, no explicit question about the public prosecutor was asked in that study, so it is possible that the children knew something about the role but did not spontaneously say what they knew. In the present study, we assessed knowledge of the public prosecutor in two ways: (a) with indirect questions, by asking children about Antonio Di Pietro, a former public prosecutor very famous for his participation in the investigation known as "clean hands"; and (b) with direct questions.

Method

Participants

The participants were 100 students from a middle-class area in Verona, a city in northern Italy. There were 10 boys and 10 girls from first ($M = 6.7$ years), third ($M = 8.6$ years), fifth ($M = 10.7$ years), and eighth ($M = 13.8$ years) grades and university ($M = 20$ years). Interviews were collected during March and April 1995.

Procedure

We conducted semistructured interviews with each participant in a quiet room. For the first, third, and fifth graders, the interviewer first presented herself to the students by saying that she was going to write a book for children of their age, to explain some things about the world of grown-ups. To be sure that the book would be both interesting and clear, she was trying to get an idea of what children thought and already knew about those topics, by asking them some questions. For the eighth graders and university students, the researcher simply asked if they would participate in a study on the knowledge of judicial systems at different age levels. The interviews, lasting an average of 25 min, were integrally taperecorded and transcribed.

Structure of the Interview

The questions were asked in the same order for all participants. First, they were asked if they had ever heard of Antonio Di Pietro. If they had not, the interviewer went on to the next question. If they said they had heard of him, they were asked what his job was and what his tasks were. The purpose of the next point was to assess knowledge of the judiciary and public prosecutor in the most unconstrained and open way. The researcher told a short story about a passer-by finding the body of a person who had been stabbed; she then asked the student what the passer-by should do. If the student mentioned police intervention in the answer, the researcher then asked what the police would do and what would happen when an alleged culprit was found.

The next group of questions addressed court proceedings. Participants were asked what a court case is, what function it has, and what figures participate in it. If judge, public prosecutor, lawyer, witness, or jury were not mentioned, the interviewer asked if the participant had ever heard of them. The tasks, payment, and employment of each figure spontaneously mentioned or recognized were assessed last. Then three questions about the law were asked: what the law is, how a foreign person coming to Italy could learn its laws, and how a law originates.

Independent of grade level, the number of fixed questions asked could range from a minimum of 9 to a maximum of 27 (when participants said they had not heard of Antonio Di Pietro and did not know about courts, legal figures, and the law, we could not ask other questions about those points). Additional questions were asked whenever it was necessary to clarify participants' answers.

Coding

Answers to each question were coded in category systems that were developed based on the existing literature and a preliminary analysis of the data. One person (the second author, who also participated in the collection and analysis of

the data) coded all the transcripts. A second person, blind to the research purposes, coded three transcripts per school level, to calculate reliability and accuracy of coding. There was 97% agreement.

Results

A preliminary analysis of the data revealed no gender differences. This variable was therefore not considered further. Saturated loglinear analyses were carried out to test significant interactions between school levels and answer categories and to identify the cells with significant standardized parameter estimates. The overall significance level (α) was set at .05, and the Bonferroni adjustment was applied. (In Tables 1–3, frequencies corresponding to significant parameter estimates appear in boldface type.)

What was Di Pietro's job? Only 14 of the participants who had heard of Antonio Di Pietro used the term *public prosecutor*, whereas the most frequently used ($n = 47$) terms were *judge* and *magistrate*, accompanied by a variety of descriptions of his tasks (see Table 1). Most first and third graders had never heard of Antonio Di Pietro, or they said that they did not know what his job was. From fifth grade on, all participants described his activity. Most fifth graders described him as a lawyer or judge, either by using those terms literally or by assigning him the task of defending an accused or deciding whether a person was innocent or guilty. Only from eighth grade on was his role as investigator and public prosecutor known.

Poor knowledge of the duties of a magistrate (in charge of directing an investigation) was also revealed by the children in their continuations of the story of the person who finds a body. In all, only 5 children (all from fifth grade on) introduced a judge or a magistrate in the search for the culprit. The others, at most, introduced the judge after an alleged culprit was found and assigned him or her

TABLE 1
Functions Assigned to Antonio Di Pietro, by School Level

Category	School level				
	1st	3rd	5th	8th	University
Never heard of him	17	8	0	0	0
Don't know, politician	3	6	5	2	0
Judging	0	6	11	6	0
Charging and/or investigating	0	0	4	12	20

Note. $\chi^2(12, N = 100) = 103.78, p < .001$. For all levels, $n = 20$. Boldface type indicates significant parameter estimates.

the task of deciding on a sentence (see Table 2). Hardly any first graders mentioned the judge. Younger children's poor knowledge about court proceedings was also confirmed by their answers to the explicit question about this topic. Ninety-five percent of the first graders, 50% of the third graders, and 25% of the fifth graders had never heard the phrase *court proceedings* (in Italian, "processo"); however, at the eighth-grade and university levels, all participants had heard of it, $\chi^2(4, N = 100) = 53, p < .001$. Only the first graders presented significant parameter estimates. Of the 66 students who knew about court proceedings, the great majority ($n = 57$) said that was where guilt was determined. The others ($n = 9$) said court proceedings were for deciding on a penalty. Nobody talked of decisions about civil matters. The answers about what a court is showed a similar trend, with percentages of "don't know" of 75% at first grade, 45% at third grade, 15% at fifth grade, 5% at eighth grade, and 10% at university, $\chi^2(4, N = 100) = 31.4, p < .001$. Again, significant parameter estimates were found for the first graders only.

The judge and other figures who participate in court proceedings. The participants who knew something about the various figures involved in court proceedings were compared with those who (a) had never heard of them; (b) did not know their tasks although they knew the label; (c) gave incorrect descriptions, confusing their tasks with those of other figures or mentioning only visible action, without any understanding of their purposes. Examples of incorrect descriptions are as follows: The judge was assigned the single task of hitting a table with a hammer when people were noisy; the lawyer was depicted as a judge or a helper; the witness was confused with the audience or the lawyers; the jury was confused with the audience or was attributed imprecise tasks, such as to make hypotheses or try to find out something. (Knowledge of the figures who participate in court proceedings is reported in Table 3.)

We performed a series of saturated loglinear analyses, one for each figure,

TABLE 2
What Happens When a Murder Victim Is Found, by School Level

Answer	School level				
	1st	3rd	5th	8th	University
The corpse is buried.	10	2	0	0	0
Police investigate and decide about the penalty.	8	9	4	1	0
The alleged culprit is tried.	2	9	16	19	20

Note. $\chi^2(8, N = 100) = 56, p < .0001$. For all levels, $n = 20$. Boldface type indicates significant parameter estimates.

TABLE 3
 Knowledge of the Figures Involved in Court Proceedings, by School Level

Figure/answer	School level					Total	χ^2 (4, <i>N</i> = 100)
	1st	3rd	5th	8th	University		
Judge							15.9**
Never heard of a judge	1	0	0	0	0	1	
Don't know/incorrect answer	11	7	4	3	2	27	
Correct description	8	13	16	17	18	72	
Lawyer							63.7***
Never heard of a lawyer	6	0	0	0	0	6	
Don't know/incorrect answer	14	15	6	0	0	35	
Correct description	0	5	14	20	20	59	
Witness							53.2***
Never heard of a witness	4	2	0	0	0	6	
Don't know/incorrect answer	13	4	1	0	0	18	
Correct description	3	14	19	20	20	76	
Public prosecutor							62.4***
Never heard of a public prosecutor	17	16	8	0	0	41	
Don't know/incorrect answer	3	4	11	16	7	41	
Correct description	0	0	1	4	13	18	
Jury							39.6***
Never heard of a jury	10	9	1	0	0	20	
Don't know/incorrect answer	9	7	11	2	5	34	
Correct description	1	4	8	18	15	46	

Note. For all levels, *n* = 20. Boldface type indicates significant parameter estimates.
 p* < .003. *p* < .001.

on the numbers of participants at each school level who knew and did not know of that figure. The category "correct description" was therefore contrasted with the other two categories merged together. The data in Table 3 highlight the finding that knowledge about the fundamental court figures is acquired at different ages. The judge was already known by several first-grade children, the greatest increase in knowledge occurred at third grade, and no further significant progress was found thereafter. Knowledge about witnesses also revealed the greatest increase between first and third grades, although very few children knew of them at first grade. Lawyer and jury showed a different pattern: First graders had no knowledge of them, and the number of knowledgeable students gradually increased with increasing school level. Finally, the public prosecutor turned out to be unknown before the university level.

Among the 72 participants who correctly described the functions of the judge, the great majority (77%) assigned to him or her the function of deciding if somebody was guilty or innocent. The other tasks that were mentioned by those participants were to make decisions generically (12%) or to decide on a penalty (12%). Also, among those 72 participants, the judge was said to be paid by the state by 0% of the first graders, 8% of the third graders, 69% of the fifth graders, 82% of the eighth graders, and 100% of the university students. Log-linear analysis revealed the significance of the association between type of answer and school level, $\chi^2(4, N = 72) = 41.7, p < .0001$, and parameter estimates showed that actual frequencies differed significantly from those expected at first and third grades and at the university level, thus suggesting a developmental progression consisting of three steps.

The percentages of participants who stated that one must study law to become a judge were as follows: 0% at first and third grades, 18% at fifth grade, 94% at eighth grade, and 90% at the university level, $\chi^2(4, N = 72) = 53.2, p < .0001$. Significant parameter estimates were associated with the score of the eighth graders and the university students, a finding that suggests that the main shift occurs between fifth and eighth grades. The other children said they did not know how one becomes a judge, or they said that it is necessary to study language or arithmetic.

Only 14 participants (6 from eighth grade and 8 from the university) said that lawyers are paid by the state. Among the 59 participants who described lawyers correctly (assigning the function of defense), the following percentages also mentioned studying law as a requisite for employment: 0% at third grade, 50% at fifth grade, 85% at eighth grade, and 90% at the university level, $\chi^2(3, N = 59) = 15.8, p < .002$. The other children gave answers similar to those described earlier for the judge. Only at third grade did the parameter estimate turn out to be significant, a finding that suggests that the main change occurs between third and fifth grades. The public prosecutor, who was known by only some participants at eighth grade and university level, was unanimously attributed with the study of law and payment by the state.

Who makes laws and how are they made known? With the exception of 6 first graders and 2 third graders, all participants knew the term *law* and defined it as a rule or something that must be obeyed. Differences emerged about who makes laws and how they are made known. First and third graders either admitted not knowing who makes laws or mentioned various local authorities, such as the mayor, the head of the town, the police, and the judge (see Table 4). The majority of the fifth graders spoke about central authorities, such as president, government, ministry, lawmakers, and the state, thus showing that they knew the concept of state, even if they did not yet know about legislative organs. Only from eighth grade on did most participants mention Parliament. The great majority of children from first to fifth grades also appeared unaware of how a foreigner could learn the laws of Italy, or they believed that one only had to ask somebody (see Table 4). In contrast, nearly all of the eighth graders and university students mentioned written texts: constitution, civil codes, and penal codes. A few children from third and fifth grades spoke about "books where all the laws are written."

Relations between knowledge of the judge and knowledge of state and law. To check whether the participants who attributed the function of making laws to central authorities were the same as those who described the judge as being paid by the state, we cross-tabulated the two types of answers. The great majority of the participants turned out to have answered the two different questions similarly: 39% did not mention the state or its organs while answering both questions, and 44% mentioned them in both questions. Only 2% of the participants said that a judge is paid by the state but did not mention central authorities when talking about laws; 15% showed the opposite pattern. This difference turned out to be significant (McNemar test), $\chi^2(1, N = 17) = 9.8, p < .01$, suggesting that knowledge about a state's legislative function precedes knowledge of the judge as a public servant.

Similarly, we cross-tabulated responses about how one can get to know the laws with responses about what one has to do to become a judge or lawyer, to see whether the notion that laws are collected in books precedes the notion that lawyers and judges have studied them. Again, the majority of the participants gave similar answers: 38% knew about both the existence of legal texts and the legal studies of the judge, and 49% did not know about either. The percentage of participants who knew about legal texts but did not know that the judge has to study laws was significantly higher than the percentage of participants showing the opposite pattern: 10% vs. 3%, respectively (McNemar test), $\chi^2(1, N = 13) = 4.5, p < .05$. A similar trend appeared in the answers about the lawyer: 18% of the participants did not know that lawyers study laws, but they knew about legal texts; 3% gave the opposite answers, $\chi^2(1, N = 15) = 9.3, p < .01$. Knowledge of written laws appears, therefore, to precede knowledge that candidate lawyers and judges study them.

TABLE 4
Knowledge of the Law, Who Makes It, and How a Foreigner Can Get to Know the Laws of Italy, by School Level

Category	School level					χ^2
	1st	3rd	5th	8th	University	
Knowledge of the law						14.4*
Doesn't know what laws are	6	2	0	0	0	
Laws are rules	14	18	0	20	20	
Who makes laws						67.9***
Doesn't know who makes laws	6	7	1	1	0	
Police, judge, or mayor	7	6	5	5	0	
State, president, government	1	4	12	12	4	
Parliament	0	1	2	2	16	
How laws can be known						61.0***
Don't know	10	4	5	2	0	
To know laws, you have to ask somebody	4	9	10	0	0	
Laws are written	0	5	5	18	20	

Note. Children who did not know what laws are were not asked about who makes laws and how laws are known. The total number of first and third graders who answered these questions was therefore 14 and 18, respectively. For all levels, $n = 20$.
 * $p < .01$. *** $p < .001$.

Discussion

The findings of this study confirm the expectation that Italian children's conceptions about the judicial system and its functions develop through a sequence that parallels the construction of a political conceptual domain. This parallelism is attributable to a real connection between notions concerning the judicial system and notions concerning the state and law, rather than merely to their appearance at more or less the same age levels. Knowledge about the state co-occurred with, or preceded, the notion of the judge as a public servant; knowledge about the collection of laws in books co-occurred with or preceded the idea that one has to study law in order to become a judge or lawyer. These data suggest that understanding of judicial organization is constrained by knowledge of other aspects of the political system.

Many of the first-grade children did not know the functions of the judge. At most, they said that in a case of murder, the police intervene to find and condemn the culprit. However, when asked explicitly about the judge, nearly half attributed to him or her the task of deciding about guilt or punishment; the other figures involved in court proceedings were almost totally unknown. The discrepancies between answers given at different points of the interview could be attributable to the fact that children have opportunities to see judges on television and hear about them and thus can tell something about them before being able to conceive of them in different contexts. The first-grade children did not link judges with any institutions, because the study of law was not regarded as a requisite to becoming a judge. Those children also did not know who pays the judges. By third grade, a larger number of children knew about judges and witnesses, but their descriptions of payment and employment of judges were not different from those of first graders.

The greatest shift in knowledge of the judicial system was found at fifth grade, when most of the children appeared to know about judges and other figures, with the exception of the public prosecutor. They described a judge as a public servant paid by the state, although they did not yet know that in order to have that position, one must first study law. Nor was the study of law mentioned for lawyers, about whom nearly all knew. Fifth graders therefore demonstrated a more precise knowledge of the figures involved in court proceedings and the embedding of the judicial system in the state system, although their knowledge was not yet related to laws. Eighth graders characterized both judges and lawyers as needing to study law, and they had a more precise knowledge of the function of the jury. Only university students knew about the public prosecutor.

The agreement between these data and those found in previous Italian studies (Berti, Mancaruso, & Zanon, 1997) suggests that the majority of Italian children follow this sequence. Further research is needed to investigate whether, and with what qualifications, children from different countries develop in the same sequence. However, because the literature on political understanding shows a

similar pattern in children from Italy (Berti & Benesso, 1998), the United States (Moore, Lare, & Wagner, 1985), Great Britain (Stevens, 1982), and Australia (Connell, 1971), we expected to find similar trends in those children's understanding of judicial system.

The widespread lack of knowledge about the public prosecutor found in this study confirms the results of Berti, Mancaruso, and Zanon (1997) and suggests that the finding follows a general trend, at least for Italian children. Because of the specificity of this point and the peculiarity of this figure in the Italian judicial system, we are not able to propose any hypothesis about the possible cross-national generalizability of these data.

This result is striking when viewed in the context of the extraordinary notoriety that public prosecutors have acquired in Italy in the last few years as a consequence of the "clean hands" investigation and, even before it, with the Mafia. However, seeing certain figures on television or hearing about their activities is not sufficient for understanding their roles. In fact, many of the children in the present study erroneously said that Di Pietro's task was to judge. Understanding a function in relation to a certain individual does not imply understanding of a role within the judicial organization. Even among university students, the great majority of whom described the tasks of Di Pietro correctly, many were not able to describe the role of public prosecutor.

The reasons for the poor knowledge about the public prosecutor can only be hypothesized. As we have seen, at about 8 years of age, children have developed a skeletal schema comprising the police, who investigate, and judges, who decide about guilt and penalties. Other roles, each characterized by a specific function, are subsequently added to the schema. Public prosecutors do not easily fit into this script, because they perform functions that children have already assigned to different figures—for example, investigating (police) and accusing (lawyers). Furthermore, in Italy, such figures belong to the same category as judges and are labeled in the same way. Children are therefore more likely to misinterpret episodic information about individual public prosecutors rather than provoke a revision of the scheme. For the child to understand the notion of a role comprising functions of both investigator and accuser, explicit and systematic information about the judicial organization is needed. This type of information is usually obtained by studying civic education at school or by asking somebody more knowledgeable, or it is sometimes (though seldom) found in newspapers and magazines.

The findings of this study suggest that the development of judicial knowledge is affected by two different kinds of factors: (a) the acquisition of increasing information about the figures involved in court proceedings, and (b) the interpretation of this information in the light of a wider societal conception and the embedding of knowledge of the judicial system into knowledge of the state.

The influence of conceptions about the state on the interpretation of information about the judicial system is shown by the answers to the questions about the origin of laws. In the present study, as well as in others (Berti, 1994), it was

precisely from fifth grade on that the idea of the state was expressed by a substantial proportion of children. In addition, children attributing payment of the judge to the state were, to a large extent, the same who attributed the making of the laws to the state or its organs. Furthermore, the notion that judges and lawyers study law was shown to follow the notion that laws are collected in books.

The action of domain-specific constraints on the sequence of judicial knowledge is also suggested by the pattern of similarities and differences between the answers of children and young people participating in the present study and those found in other studies carried out in Italy and other countries. On the one hand, compared with other Italian studies (Berti, Mancaruso, & Zanon, 1997), in this study we found that third and fifth graders had less knowledge about lawyers and juries—that is, those topics that are more affected by the availability of specific information. Instead, no difference was found concerning payment of the judge by the state and the juridical studies of judges and lawyers—that is, knowledge that is likely to have been inferred from the concept of the state rather than being directly received from outside. The lesser variability of this knowledge in Italian children is likely to be a consequence of a rather uniform acquisition of the concepts of nation-state and law, caused by the national character of Italian school organization. Although Italian children have already heard about different types of states (such as Greek city-state and Roman Empire) at third grade (when they start studying ancient history), only at fifth grade is the concept of state explicitly explained in the context of social studies.

There is, on the other hand, an interesting difference between Italian and U.S. children's conceptions of how judges are paid; in one study, at the age of 5–6 years, U.S. children knew that judges are paid by the government (Moore, Lare, & Wagner, 1985). This difference is likely to mirror different opportunities to know about specific political institutions. The U.S. children at 8–9 years of age assigned the function of making laws to central organs such as the president and government, whereas the Italian children of the same age level at most assigned this function to the mayor or "head of the town" not only in this study but also in a previous one (Berti, Guarnaccia, & Lattuada, 1997). Moore, Lare, and Wagner (1985) did not say when the U.S. children they interviewed started receiving information about the president and federal government. In Italy, civic information about the state and its organs is usually taught at fifth grade.

In summary, the developing sequence of conception of the judicial system appears to be constrained by domain-specific knowledge rather than by the domain-general abilities underlying Piagetian stages, as is maintained by some researchers of the development of judicial concepts (Demetriou & Charitides, 1988), political concepts (Connell, 1971; Moore, Lare, & Wagner, 1985; Stevens, 1982), and the concept of law (Adelson, Green, & O'Neil, 1969; Tapp & Kohlberg, 1977). The domain-specific view suggests that this sequence could radically change if more information about the judicial system and the wider political and juridical systems in which it is embedded are available from earlier

grades. We believe that instruction on the concepts of state and law, also comprising some units on the judicial system, should prevent or supersede the erroneous conceptions identified in this study and in the existing literature.

The tenet of the domain specificity of the constraints to understanding the judicial system means that it is not necessary to wait for the emergence of age-dependent general abilities to implement such a curriculum. The choice of grade at which to carry out this experiment should therefore have a pragmatic basis. Thus, in Italy, this experimentation could first be tried at third grade, where the study of history starts. It has been documented that hearing about the concept of the state without having previously been taught about it provokes several misunderstandings (Berti, 1994). A curriculum based on the concept of state, implemented before starting history studies, could therefore be very useful to third graders. On the other hand, younger children's poor knowledge of prominent political events, highlighted in this study by questions about Antonio Di Pietro and in other studies by questions about Giovanni Falcone (Berti, Mancaruso, & Zanon, 1997), the union of Germany, the Gulf War, and the war between Serbia and Croatia (Berti, 1994), suggests that at lower grades, children's interest in the world of grown-ups is very limited and that they should not be bored with topics that could be presented at higher grades.

REFERENCES

- Adelson, J., Green, B., & O'Neil, R. (1969). Growth of the idea of law in adolescence. *Developmental Psychology, 1*, 327-332.
- Berti, A. E. (1994). Children's understanding of the concept of the state. In M. Carretero & J. F. Voss (Eds.), *Cognitive and instructional processes in history and the social studies*. Hillsdale, NJ: Erlbaum.
- Berti, A. E., & Benesso, C. (1998). The concept of nation-state in Italian elementary school children: Spontaneous concepts and effects of teaching. *Genetic, Social, and General Psychology Monographs, 124*(2), 185-209.
- Berti, A. E., & Bombi, A. S. (1988). *The child's construction of economics*. Cambridge, UK: Cambridge University Press.
- Berti, A. E., Guarnaccia, V., & Lattuada, R. (1997). *Lo sviluppo della nozione di norma giuridica* [The development of the concept of law]. *Scuola e Città, 48*(11-12).
- Berti, A. E., Mancaruso, A., & Zanon, A. (1997). *Lo sviluppo della conoscenza del sistema giudiziario* [The development of the knowledge of the judicial system]. Manuscript submitted for publication.
- Carey, S. (1985). *Conceptual change in childhood*. Cambridge, MA: MIT Press.
- Connell, R. W. (1971). *The child's construction of politics*. Carlton, Victoria, Australia: Melbourne University Press.
- Demetriou, A., & Charitides, L. (1986). The adolescent's construction of procedural justice as a function of age, formal thought and sex. *International Journal of Psychology, 21*, 333-353.
- Emler, N., Ohana, J., & Moscovici, S. (1987). Children's beliefs about institutional roles: A cross-national study of representations of the teacher's role. *British Journal of Psychology of Education, 57*, 26-37.
- Flavell, J. H., Miller, P., & Miller, S. A. (1993). *Cognitive development* (3rd ed.). Engle-

- wood Cliffs, NJ: Prentice Hall.
- Flin, R. H., Stevenson, Y., & Davies, G. M. (1989). Children's knowledge of court proceedings. *British Journal of Psychology*, 80, 285-297.
- Furth, H. G. (1980). *The world of grown-ups*. New York: Elsevier.
- Gardner, H. (1991). *The unschooled mind: How children think and how schools should teach*. New York: Basic Books.
- Hirschfeld, L. A., & Gelman, S. (1994). Toward a topography of mind: An introduction to domain specificity. In L. A. Hirschfeld & S. A. Gelman (Eds.), *Mapping the mind*. Cambridge, UK: Cambridge University Press.
- Moore, S. W., Larc, J., & Wagner, K. A. (1985). *The child's political world. A longitudinal perspective*. New York: Praeger.
- Saywitz, K. J., & Inenicke, C. (1987, April). *Children's understanding of legal terms: A preliminary report of age-related trend*. Paper presented to the conference of the Society for Research in Child Development, Baltimore.
- Stevens, O. (1982). *Children talking politics*. Oxford, UK: Robertson.
- Tallandini, M. A., & Valentini, P. (1995). *La scuola è una grande casa* [The school is a big house]. Milan, Italy: Raffaello Cortina.
- Tapp, J. L., & Kohlberg, L. (1977). Developing sense of law and legal justice. In J. L. Tapp & F. J. Levine (Eds.), *Law, justice, and the individual in society*. New York: Holt, Rinehart & Winston.
- Warren-Leubecker, A., Tate, C., Hinton, I., & Ozbek, N. (1988). What do children know about the legal system and when do they know it? In S. J. Ceci, D. F. Russ, & M. P. Toglia (Eds.), *New directions in child witness research*. New York: Springer-Verlag.
- Wellman, H. M. (1990). *The child's theory of mind*. Cambridge, MA: Bradford Books/MIT Press.

Received September 5, 1997