DISCOURSES OF DELINQUENCY:

LANGUAGE AND POWER IN A CANADIAN JUVENILE COURT

by

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ABSTRACT

Based upon research carried out within the juvenile justice system of a middle-sized city in Southern Ontario, this discourse analysis project explores relations of power between young offenders and juridical agents charged with their punishment or reform. These relations of power are situated within a genealogy of "youth" and "young offenders," both of which are relatively recent figures in social discourse. Drawing together the resources of social theorists such as Pierre Bourdieu, Kenneth Burke, Michel Foucault, and Mikhail Bakhtin, the thesis focuses specifically upon the rhetorical strategies used by youth, lawyers, judges, and psychologists working within the juridical system to negotiate youth identities. Youth principally use a "rhetoric of deference" to appeal to while simultaneously distancing themselves from juridical agents. This strategy is often used in reaction to "status degradation ceremonies" aimed at reifying criminal identities and reiterated throughout a youth's encounter with the juvenile justice system.

Keywords: Discourse Analysis, Rhetoric, Young Offenders, Juvenile Delinquency, Youth, Crime, Prisons.

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TABLE OF CONTENTS

LIST OF FIGURES AND TABLES

Introduction

Boundaries of Hatred

In a 1998 article entitled "Imprisoning the American Poor," J.D. Wacquant argues that the United States is one of the first nations to make the "successful" shift from the early twentieth century welfare state to the late twentieth century prison state. The United States has found a new way to deal with its most disadvantaged: "a boom in the institutions that compensate for the failures of social protection (the safety net) by casting over the lower strata of society a police and criminal dragnet that gets harder and harder to escape. As the social state is deliberately allowed to wither, the police state flourishes: the direct and inevitable effect of impoverishing and weakening social protection." Money cut back from the U.S. social welfare budget is instead redirected toward its prisons and police forces, to the extent that the "Prison-Industrial Complex" has become a profitable business.[1] As a result, the prison population in the U.S. has tripled in the past fifteen years. In the 1960s, Wacquant notes, the U.S. prison population was shrinking at a rate of about 1% per year. By 1975, it had fallen to 380,000. However, this trend quickly reversed. By 1985, the prison population had increased to 740,000. It had surpassed 1.6 million by 1995. Currently, the U.S. prison population continues to increase at a rate of 8% per year.

With this gradual transformation of the welfare state into the contemporary North

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[1]Eric Schlosser's recent (December 1998) article in Atlantic Monthly outlines the extent to which many states, such as New York, have become economically dependent upon their prisons. Meanwhile, companies such as the Corrections Corporation of America struggle to acquire their share of the growing market of privately-owned prisons.

America prison state, our culture's attitude toward its internal outsiders has changed. In public discourse today, the criminal is increasingly vilified; imprisonment and punishment have become the criminal's "just deserts." John M. Sloop (1996), for example, in an exhaustive study of changing rhetoric of criminality in American mass culture journals and magazines, notes a marked shift from early representations of criminals as possible candidates for reform and reintegration to later representations of criminals as incorrigibly deviant and in need of punishment. In the discourse of criminality of the 1950s, he writes, "both male and female prisoners were infinitely redeemable and persistently drawn as having altruistic motives, as desiring a reunion with the culture previously shunned" (15). In other words, the rhetoric of the 1950s was primarily paternalistic and rehabilitative; prisoners were portrayed as wishing to accede to cultural values that were supposedly recognized by everyone. By the late 1970s and 1980s, however, fuelled both by increasing pessimism over the possibility of rehabilitation and by an emerging recognition of the existence of alternative cultural values among certain prisoners (especially among Afro-American prisoners), this optimistic philosophy of reintegration had been replaced by a retributive philosophy of "just deserts." Criminals were to be punished strictly for their criminal deeds, and rehabilitation was to be purely voluntary; "in the language of just deserts, the prescription for the treatment of the criminal lies in a balance: weight of crime must equal weight of punishment and rehabilitation must be of secondary importance, tied to the desires of the prisoner rather than the demands of the institution" (140). This new emphasis upon retribution, combined with the expansion of possible criminal acts due to the "war on drugs," has led to extended sentences and overcrowded American prisons,

necessitating the development of new forms of punishment such as home surveillance and boot camps. In its favour, the new rhetoric of just desserts has at least been accompanied by an increased emphasis upon prisoners' formal rights absent from earlier rehabilitative rhetorics. However, the chief effect of the just deserts philosophy has been the demonization of the American criminal, in particular the American black criminal, in both sensationalist media and the rhetoric of right-wing politicians.[2] Today, television programs such as "Cops" and "America's Most Wanted" represent the criminal as a debased, contemptuous, and uniformly lower-class creature.

As Foucault noted in Discipline and Punish, the prison institution has been accompanied, since its birth, by discourses criticizing its rehabilitative efficacy; "the critique of the prison and its methods appeared very early on . . . indeed, it was embodied in a number of formulations which -- figures apart, are today repeated almost unchanged" (265). Such discourses have always included complaints that prisons increase the crime rate, make possible the organization of criminal groups, and do more to promote delinquency than to enable the criminal's reformation and reintegration into society. However, in the later decades of the twentieth century, such critiques of the prison institution are being repeated with less and less conviction. The ideology of rehabilitation that once supported the institution of the prison is giving way to public indifference or

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[2]For a chilling representation of some of the effects of this new philosophy of retribution upon American inmates, see The Farm, a documentary film directed by Jonathan Stack and Liz Garbus, which tells the story of inmates serving life-sentences in Angola, a maximum-security prison in Louisiana. The prison was built on the site of a 19th century slave plantation and today houses a population of 80% black inmates, all of whom are engaged in agricultural labour in order to subsidize the costs of the prison.

animosity toward the criminal. For large portions of the public imagination, the justification for the criminal system has become one of public hygienics and revenge.

Although this increasing abjection of the criminal has had less impact upon Canadian policies and popular representations of criminality, it has nevertheless left its mark, particularly upon the object of this study, the Canadian Young Offender. In 1984, the older Juvenile Delinquents Act (JDA) was replaced by new criminal legislation, the Young Offenders Act (YOA). The older JDA largely corresponded to the American rehabilitative philosophy of punishment outlined by Sloop. Trials for youth under the JDA were informal, with little or no recognition of youths' formal rights. Youth could also be given indeterminate sentences under the JDA in supposedly purely educative but often brutally punitive "reform schools" if a judge ruled that such an action was "in the best interests" of a youth. In the 1960s and 1970s, the JDA came under increased attack from many youth rights advocates and lawyers for its excessive paternalism and neglect of youths' rights. These complaints were taken into account with the introduction of the YOA: sentences were limited to three years for young offenders, and youth were extended most of the formal rights of adults. All youth were granted the right to be represented by a defence lawyer, the right to appeal, and the right to a formal, adversarial trial.

While the JDA's serious deficiencies needed to be addressed with a change in legislation, the net result of the introduction of the YOA was actually a significant increase in the number of youth given custodial dispositions (Leschied and Jaffe 1987, Bala 1988), thus placing more youth than ever before under the aegis of the juvenile justice system. Today, according a recent report by the Canadian Standing Committee on Justice and

Legal Affairs (1997), "the rate of youth incarceration is twice that of the United States, and ten to fifteen times the rate per 1,000 youth population in many European countries, Australia and New Zealand" (18). Between 1990 and 1997, the number of youths sentenced to custody rose by 20%, despite the fact that the overall crime rate among youth has fallen at a rate of about 5% per year since 1992 (Carrigan 1998). The vast majority of these dispositions, the Standing Committee on Justice and Legal Affairs report notes, were short sentences of three months or less, in part explained by many Canadian judges' belief in the beneficial effect of "short sharp shocks" for youths apprehended for minor offences. Meanwhile, as in the United States, the "youth crime" problem recurs as a frequent theme in Canadian popular media, with conservative parties routinely making vacuous "get tough on youth crime" policies part of their election platforms, calling for the trial of more violent young offenders in adult courts and a reduction of the minimum and maximum ages of young offenders from twelve and eighteen to ten and sixteen.

What is the meaning of this demonization of delinquent youth in particular and of criminality in general? It could be argued that the broad shift from a "welfare" model of rehabilitative criminal law to a "justice" or "crime control" retributive model (Burrows et al. 1988) is merely a temporary symptom of an ongoing cycle of changing legal policies. According to Rusche and Kirchheimer's classic Marxist study of criminology (1939), such cycles of punishment accompany all long-term recessions in capitalist societies, whereas corresponding cycles of reintegration and rehabilitation accompany long-term periods of affluence. Today, this account of a more-or-less coherent synchronization of economic and legal cycles seems overly simplistic; nevertheless, there appears to be some truth to

Rusche and Kirchheimer's non-linear account of the history of criminal law.

However, perhaps this demonization is also exemplary of the West's antagonistic relationship with any internal dissenter to the political group. This relationship of antagonism has now been stripped of its previous euphemizing rhetoric of reintegration, so that only raw hatred of the criminal remains. Aristotle, in his treatise on rhetoric, describes this relation of raw hatred as follows:

> Now whereas anger arises from offences against oneself, hatred may arise even without that; we may hate people merely because of what we take to be their character. Anger is always concerned with individuals -- with a Callias or a Socrates -- whereas hatred is directed also against classes: we all hate any thief and any informer. Moreover, anger can be cured by time; but hatred cannot. The one aims at giving pain to its object, the other at doing him harm; the angry man wants his victims to feel; the hater does not mind whether they feel or not. All painful things are felt; but the greatest evils, injustice and folly, are the least felt, since their presence causes no pain. And anger is accompanied by pain, hatred is not; the angry man feels pain, but the hater does not. Much may happen to make the angry man pity those who offend him, but the hater under no circumstance wishes to pity a man whom he has once hated; for the one would have the offenders suffer for what they have done; the other would have them cease to exist. (On Rhetoric II, iv, §31)

The demonization of the criminal (here, the thief or the informer) would then be a species of what Aristotle describes as public hatred toward a group, as opposed to merely private anger toward an individual. Unlike private anger, the public hatred of the criminal is incurable by time and does not involve any desire to cause its victim pain. The desire to cause suffering must be purged from hatred; sadism would still constitute a relation to the enemy that could all too easily transform into pity. Rather, the hater must desire the nonexistence of the criminal; the hater would have the hated one bloodlessly eliminated from the *polis*. In its fully instantiated form, hatred becomes indifference -- the pure

presence of hatred, purged of any relation between persons and located beyond the disruptive effects of time. Hatred, if we follow Aristotle's logic, is an impossible non-relation with the criminal.[3]

Perhaps it is possible to read Foucault's Discipline and Punish in light of this disturbing Aristotelian distinction between anger and hatred. If we follow this reading, Foucault has written a genealogy of the hatred that is now overcoming the public relation to the criminal. According to Foucault, the birth of the modern prison coincided with the decline of more spectacular, public forms of punishment such as the "spectacle of the scaffold." The scaffold, Foucault argues, posed a threat to the modern state because it offered too great a potential for public "disturbances" around the site of punishment. "In these executions, which ought to show only the terrorizing power of the prince, there was a whole aspect of the carnival, in which rules were inverted, authority mocked and criminals transformed into heroes" (Foucault 1977:61). The scaffold, a vivid manifestation of the sovereign's anger toward his disobedient subjects, could all too easily evoke its audience's pity and lead to the symbolic reversal of social roles described by Bakhtin in Rabelais and His World. A different form of punishment was needed, one that could better guarantee the lasting animosity of the public toward the criminal without permitting any relationship between them. The modern state required institutions of absolute hatred.

Perhaps one of the reasons why the modern prison emerged and spread throughout

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[3]This brief gloss on Aristotle owes much to Jacques Derrida's very detailed reading of Carl Schmitt's The Concept of the Political in Derrida's Politics of Friendship.

Europe and America was as a response to this need. Throughout the nineteenth and early twentieth centuries, Foucault argues, increasingly elaborate precautions had to be made in order to hide executions from the public. In early twentieth-century France, for example, corporal punishment began for the first time to be carried out within the prison walls. The witnesses to this punishment had to be individuals with no direct relation to the accused, mere functionaries dedicated to carrying out the juridical task of punishment. Furthermore, "witnesses who described the scene could even be prosecuted, thereby ensuring that the execution should cease to be a spectacle and remain a strange secret between the law and those it condemns" (15). The prison could therefore create the illusion of absolute hatred, a just and bloodless reformation or elimination of the public enemy.

Nevertheless, Foucault also makes it clear that the modern juridical institution could never wholly eliminate physical violence. "The practice of public execution," he writes, "haunted our penal system for a long time and still haunts it today" (15). Despite the virtual elimination of more blatant forms of torture from the prison institution, the prison is still a site of bodily punishment, a site of sexual deprivation, confinement and discipline. The spectacle of the scaffold is also duplicated through media coverage of spectacular trials or through the vilification of criminals in television programs such as "Cops" and "America's Most Wanted." In other words, the practical administration and media representation of the law, although oriented toward the mobilization of public hatred toward the criminal, inevitably resolves into mere anger. Paradoxically, relations of public hatred can only be established through concrete evocations or representations of a

particular criminal. These representations inevitably provoke anger rather than hatred. The impossible hatred of which Aristotle writes is only approached on the basis of an experience of anger that threatens to degenerate into pity and possibly admiration for the criminal. The singular relation that is necessarily established with the particular criminal thus potentially disrupts vague public hatred/indifference toward criminals as a group.

Despite necessary explosions of anger among the populace, the prison state has succeeded, through fostering an illusion of absolute, clinical hatred, in pushing increasing numbers of its most dominated into the outer boundaries of the juridical system and the public imagination. However, this marginalization should not be mistaken for a mere exclusion of disobedient citizens from the prison state. Rather, the boundary of absolute hatred toward which the criminal is pushed is a site of exclusion/inclusion; the criminal is excluded from many of the rights of citizenship only to be placed more firmly under the aegis of the law. Here, it is tempting to read the exclusion/inclusion of the criminal according to the logic of the sovereign ban as explored by Giorgio Agamben in Homo Sacer (1998). According to Agamben, the sovereign ban includes certain juridical subjects through their very exclusion, at the internal/external boundary of citizenship. Speaking of the juridical status of both refugees and internees of concentration camps, Agamben writes:

> The paradoxical status of the camp must be considered. The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term "exception" (*ex-capare*), *taken outside*, included through its own exclusion. But what is first of all taken into the juridical order is the state of exception itself. (170)

Agamben makes the argument that despite important differences between international refugees and concentration camp internees, both groups are similar in juridical terms in that both have been stripped of their citizenship, so that only "bare life" remains; there is no legal guarantee of any member of either group's personhood. However, the juridical status of the prisoner must not be confused with that of the concentration camp internee or international refugee; the status of the prisoner in the modern state is infinitely more stable than that of either. The state of exception (a state of lawlessness in which human beings, stripped of their juridical status, are thoroughly exposed to the power of the state) is largely excluded from the prison, except perhaps at the moment of execution of the criminal serving a death sentence. Unlike refugees and camp internees, prisoners are still citizens, and as such are extended some legal protections in most modern states.

A second reason why the criminal cannot merely be considered excluded for his/her disobedience is that the boundary of the prison is also the site of the production of criminal identities. It has long been known that prisons do more to produce than to rehabilitate criminals. In Discipline and Punish, Foucault argues that this complaint against the prison dates back to the earliest discourse surrounding the birth of the prison itself. He goes so far as to argue that prisons actually serve to control criminality, not through rehabilitation, but rather through producing an easily identifiable and relatively limited number of delinquents whom the police can use to monitor illegal activities:

> The establishment of a delinquency that constitutes something like an enclosed illegality has in fact a number of advantages. To begin with, it is possible to supervise it (by locating individuals, infiltrating the group, organizing mutual informing): for the vague, swarming mass of a population practising occasional illegality, which is always likely to spread .

> . . . is substituted a relatively small and enclosed group of individuals on whom a constant surveillance may be kept (278).

Everything thus occurs as if the criminal were produced at the boundaries of the juridical order, as an object of absolute hatred, in order to contain criminality within a limited group. This containment has the added benefit of purging the state of potentially disruptive anger aroused by offences against private individuals. Mobile expressions of private anger are concentrated into absolute hatred toward criminals, maintaining the monopoly on legitimate violence constitutive of the sovereignty of the modern state.

Purpose and Scope

In an interview with Hubert Dreyfus and Paul Rabinow, Foucault once explained that he was not interested in "solutions" to the problems of power, discipline, and subjectification raised in his texts so much as the problems themselves. ". . .what I want to do is not the history of solutions . . . I would like to do the genealogy of problems, of *problématiques*. My point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper- and pessimistic activism" (Foucault 1997: 256). This thesis takes a similar attitude toward the discursive relations it attempts to uncover in which "young offenders" are enmeshed. Although I spoke earlier of the increase in custodial dispositions under the Young Offenders Act, this does not mean that I am in any way advocating a return to the paternalism of the Juvenile Delinquents Act. Both methods of dealing with youth are "dangerous," in the sense used

by Foucault in the quotation above, and the older law was undoubtedly much more dangerous than the present one. The purpose of this thesis is to help juridical agents and others understand the nature of this "danger" so that they can better help the youth who appear before them.

In order to approach the present "danger" of juvenile penal practice concretely and with the complexity it deserves, I attempt to study how Young Offenders are discursively produced within the Canadian juvenile justice system. I do this by combining the resources of social theorists such as Pierre Bourdieu, Kenneth Burke, and Michel Foucault with my own observations from the field. The focus of this text is upon juridical discourse and its contribution to the production of Young Offenders. As such, this thesis might best be described as a discourse analysis project. However, any reader familiar with much of the work carried out in an anglophone setting as discourse analysis might note that this project departs from many of the conventions of that discipline. This deviation from standard discourse analysis methodology was in part called for by the nature of the field work carried out for this project; due to the heterogeneity of the sources I worked with, I had to be flexible and resort to strategies of bricolage.[4] In part, however, many of the deviations in this work from more strictly linguistic discourse analysis projects also result from my own bias toward interpretive, as opposed to narrowly analytic approaches to the study of discourse and power. I have nevertheless used a traditional discourse analysis methodology when I found this approach to be useful in my approach to specific texts.

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[4]In this sense, this project is closer to the work of French Social Discourse theorists such as Marc Angenot than either Critical Discourse Analysis or contemporary Pragmatics.

This methodology has been drawn largely from M.A.K. Halliday's functional grammar, enriched by the specific articulations of this approach in the work of critical discourse analysts such as Gunther Kress, Robert Hodge, and Norman Fairclough.

The field work for this study was carried out over the summer and fall of 1998 at a division of the Ontario Court of Justice, with the permission of Judge Grant Campbell. In April 1998, I was given permission to observe and take notes upon all juvenile court proceedings taking place in London, Ontario, a middle sized Canadian city. I was eventually able to observe 56 hours of court proceedings, spread out over a period of three months. Most of these proceedings consisted of guilty pleas and routine sentencings,[5] in which the youth involved say very little or nothing at all; the defence lawyer typically takes full responsibility for presenting the youth's case. However, I was able to observe eight young offender trials and make detailed notes upon the testimony of 10 youth and 15 adult witnesses. I also carried out several interviews with lawyers, judges, and psychologists involved in the London youth court system, as well as lengthy interviews with young people, now over the age of eighteen, who had been sentenced as youths under the Young Offenders Act. In one case, I was able to compare a youth's own account of her experiences of the local juvenile justice system with some of the official documentation produced about her by probation officers and other court officials. In all cases, any names or information that could lead to the identification of any youth studied in this project have been altered in conformity with the protection of privacy measures of

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[5]In addition to the trial analyzed in chapter three, my field notes cover 106 sentencings, 93 guilty pleas, 8 trials, 5 disposition reviews, and 1 hearing to determine fitness to stand trial.

the Canadian Young Offenders Act.

Unfortunately, due to these same protection of privacy measures, I was not given permission to personally tape-record any courtroom proceedings, the usual procedure in the analysis of legal discourse. Due to budget restraints and the high cost of ordering official transcripts, I was only able to purchase a single transcript of the lengthy adult trial analysed in chapter three. For the remaining trials and all sentencings and pleas, I was forced to rely upon reconstructions based upon my field notes and memory. Hence, apart from the youth testimony in chapter three, all examples of courtroom discourse cited in this study are personal reconstructions that will rarely conform precisely to the discourse actually spoken during the court proceedings I observed. While the use of reconstructions may strike some readers as a methodologically careless way to carry out a discourse analysis project, I can only offer the assurance that this project falls into a well-established tradition of qualitative social science research in which the researcher's use of his or her own intuition is both a necessary and unavoidable part of data collection and interpretation. I would also add, with French sociologist Pierre Bourdieu, that demands for an over-rigorous scientificity sometimes conceal a naively positivist methodology that short-circuits the imaginative effort necessary to engage in a productive interpretation of one's field of study (see especially Bourdieu and Wacquant 1992: 218-260).

Overview and Organization

When I first began to write this thesis, I decided to organize my text around the following scene from my field notes, describing the courtroom in which I carried out most

of my research:

> As you enter the courtroom, you look down an aisle separating rows of crowded wooden benches toward the raised wooden dais from which the judge surveys the room, wearing a long black gown with a red sash. Below and in front of the judge, to her left and right respectively, the court clerk and reporter are seated. On the floor, level with the spectators, two tables are set up for the attorneys, whose robed backs are turned away from you. The crown attorney is standing behind the table to your left, the defence lawyer to your right beside his client, a young boy wearing running shoes and a suit. In the far left corner, on the back wall, a door opens upon a corridor leading to the judges' chambers. Opposite that door, in the far right corner against the side wall, another door exits the room, through which the prisoners are escorted. This door opens upon a wooden box separating those in custody from the spectators. A second youth is seated inside, wearing a Nike T-shirt. He is waiting for his turn to plead and looks bored. A glass wall extends above his head.

Two material and symbolic divisions are represented and reinforced in this scene, inscribed in the architecture of the courtroom. Both of these divisions play an important role in the production of a problematic and fragile relation of public hatred toward the young offender. First, a division is constructed between the criminal and society, represented by the wooden box and the unseen corridor that leads to the holding cells in the basement, intersecting neither with the spectators' nor the judges' entrances. Within the wooden custody box, the young offender is produced as a youth apart from other youths, a member of a delinquent subspecies of youth. The recidivist is safely contained inside this box, perhaps a last surviving remnant of a mode of representational punishment that, according to Foucault, was superseded by the modern prison (Foucault 1977: 104). This atavistic form of punishment, like the "spectacle of the scaffold," consists of making the offender visible to all through public acts of humiliation. On display behind the glass wall of the custody box, the recidivist can serve as both an outlet for the audience's anger or

pity and as a warning to the "good" adolescent who might still be "saved" by the judicial system; the glass wall simultaneously renders visible and yet excludes the young offender. In other words, the first boundary, as represented by the wall of glass, simultaneously enables and disables a boundary of hatred as it supposedly divides youth. In the case of youth, however, this boundary is even more problematic than it is for adults. Young offenders are not merely criminals but also adolescents, deserving of leniency and inclusion according to our culture's normative treatment of youth.

It is this first boundary, the *criminological boundary* between the "normal" adolescent and the "delinquent" youth, that is the theme of the first chapter of this thesis. This chapter examines how criminal youths came to be marginalized as "deviant" identities and what this marginalization might mean for the communities that exclude the delinquent. How, historically, did the juvenile delinquent or young offender emerge as a coherent figure in social discourse? What role did this emergence play in the more general historical construction of adolescence? Finally, should the construction of delinquent youth identities be interpreted as the construction of one of several boundaries of exclusion within North American society? Do young offenders, as simultaneous objects of public hatred toward criminals and public sympathy toward children, problematize or render unstable this gesture of exclusion? This chapter will thus begin with a genealogy of youth and delinquency before moving on to a broader account of the delinquent as an ambiguous "outsider."

A second boundary is also reinforced by the architecture of the courtroom as described above. This division is represented by the clear separation between the space

where the audience sits, the space allocated to young offenders who appear before the court, and the space where the juridical agents perform their duties. According to Erving Goffman, this partition is typical of the architecture of most sites where social rituals are carried out (Goffman 1959). Hence, the judge and the young offender in custody appear through different backstage entrances, each escorted by a court officer. It may be significant that the door through which the prisoners enter and exit is on the judge's *left-hand* side in most Canadian courtrooms. An entire symbolism, deeply rooted in Western juridical and religious traditions, can be read into the architecture of the court. The judge and the criminal enter the front area of the court, where the ritual action of the plea, sentencing, or trial takes place for the benefit of the offender himself as well as those in the audience area. As most discourse analysts studying legal discourse have noted (i.e., Adelswärd et al. 1983, Danet & Bogoch 1980, O'Barr 1982, Philips 1984, Stygall 1994, etc.), the barrier between the juridical agents and outsiders to the juridical field effectively separates those who are socially legitimated to speak relatively freely in the courtroom (within the confines of the "rules" of legal discourse) and those whose speech is heavily restricted. Fewer researchers have examined the ways in which this boundary is a fluid one that is often extended to permit witnesses from dominant positions in the social space greater liberties of speech than witnesses from dominated positions.

This second division, the *juridical boundary*, is the theme of the second chapter. This chapter engages with much of the literature in the field of discourse analysis and the law in order to describe the specific features of legal discourse that contribute to the production of this boundary. I try to ask how and in what ways youths' discourse is

elicited and restricted in a court of law through juridical agents' manipulation of the juridical boundary. This chapter also brings together notions of dominated agency and linguistic *habitus*[6] from theorists such as Pierre Bourdieu, Michel Foucault, Kenneth Burke and Mikhail Bakhtin to serve as a theoretical matrix for the specific readings in chapters three and four. Specifically, I attempt to isolate a rhetoric of deference employed by many youth witnesses that often results in a "powerless" style of testimony (O'Barr 1982) undoubtedly shared by most witnesses from dominated social positions. This rhetoric of deference often has negative effects upon the credibility of youth testimony, as reflected, for example, in an overuse of exophoric references (Halliday & Hasan 1976) that tends to produce an excessively fragmented style of testimony and difficulties in describing spatial contexts. This form of testimony is often produced in reaction to a common rhetorical tactic used by juridical agents -- a rhetoric of degradation used to "put youth in their place," to assign them to a lower position in the social hierarchy. This rhetoric operates according to the logic of what Harold Garfinkel calls the "status degradation ceremony" (Garfinkel 1956). Like all theoretical matrices produced during a

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[6]*Habitus* is a term used by Bourdieu to describe the set of largely unconscious dispositions that guide a social agent's activities, lifestyle choices, linguistic habits, and bodily hexis (knowledge that appears to have been acquired by the body -- an idea that Bourdieu borrows from Merleau-Ponty). These dispositions are for the most part acquired through early childhood acculturation, a process that is always marked by specific class, gender, or culture-based relationships to basic material needs. Gradually, these dispositions take the form of a set of classificatory schemes (usually expressed through sets of hierarchically-differentiated paired adjectives such as "male" versus "female", "refined" versus "vulgar", "white" versus "nonwhite", etc.) that generate social classifications as well as practices that are themselves classifiable by other social agents. Hence, the *habitus* is "a structured and structuring structure," (Bourdieu 1984: 171), which produces the unity of a given lifestyle, always defined in relation to all other possible lifestyles in a given social space.

research study, these guiding notions did not emerge from my research as a set of immediately verifiable tautological conclusions. Nor did they function as a preconstructed methodological framework that could be used mechanically to classify my observations as they unfolded in the field. Rather, these notions developed out of a dialogic confrontation between the observations recorded during the research project, my informants' personal accounts of their experiences within the youth court system, my own preconceptions of youth and youth crime, and current theoretical debates about discourse, subjectivity, and power.

The third and fourth chapters are both case studies intended to make concrete the theoretical concerns elaborated in the previous chapters. The third chapter is a detailed reading of the testimony of a young offender standing as a crown witness during an adult trial. The charge in this trial was placed by the youth against a guard at a London juvenile detention centre, who the youth claimed had physically assaulted him in his cell. I attempt to show how many of the features of the rhetoric of deference outlined in chapter two weaken the credibility of the witness and at times render his testimony almost incomprehensible to his interrogators. In fact, the trial rapidly degenerates into a status degradation ceremony that serves to reaffirm the values of the juridical system and punish the youth for lodging a complaint. At issue here is not whether or not the judge in this case eventually made the correct decision to discard the youth's testimony and acquit the guard. Rather, this chapter examines the impossibility of this youth ever having been able to convince any court of the perceived wrong he has suffered given the linguistic challenges he faces, the accusatorial nature of both the crown attorney's and the defence's

examination, and the effects of institutional barriers that often prevent young offenders from seeking redress from perceived abuses of authority committed against them in custody.

The fourth and final chapter is another close reading of a text, this time of a psychological report produced for a young offender by a local psychological counselling clinic at the request of a youth court judge. This report, I argue, is an example of a ritual of degradation carried on at a much more banal, everyday level than the trial testimony described in the previous chapter. In this case, the court-appointed psychologists who prepare the report chastise the youth and her parents for their departure from a normative, middle-class model of parenting. Much of this reading will be indebted to, but will also attempt to rethink, Aaron Cicourel's (1968) path-breaking study of the social construction of juvenile delinquency.

Finally, I should say a few words about the position of this project within the mass of academic literature about youth crime. This position could best be described as "marginal", not due to any supposed marginality of my own "subject-position" as researcher, but rather because of the inter-disciplinarity that is both the strength and the weakness of any discourse-analysis project. Inter-disciplinarity can be a weakness, since writing from the margins of several disciplines (sociology, anthropology, philosophy, and linguistics) upon a well-trodden and highly-institutionalized subject such as juvenile delinquency virtually guarantees that this project will be read by few who might make a contribution to changing law or courtroom practices. However, inter-disciplinarity can also be a strength, since approaching this subject without a direct stake in contemporary

struggles over the definitions of juvenile delinquency and juvenile law (except perhaps a stake in avoiding others' stakes -- in order to be viable, this project must self-consciously separate itself from the rest of the literature on youth crime) may permit me to raise difficult questions that are often ignored or suppressed by those who write from a more central, but less autonomous, position in the field of discourse about youth crime. At the very least, I hope to avoid some of the untheorized presuppositions that govern the sayable within the juridical field, even if, in very this effort, I unwittingly reproduce different presuppositions of my own.

Chapter One

The Criminological Boundary

In one of his more Nietzschean moments, Bourdieu remarks, "language poses a particularly dramatic problem for the sociologist: it is in effect an immense repository of naturalized preconstructions, and thus of preconstructions that are ignored as such and which can function as unconscious instruments of construction" (Bourdieu and Wacquant 1992). Any research project that takes as its object an exhaustively studied subject in sociology and education studies such as youth criminality risks reproducing within its discourse the very boundaries that it wishes to interrogate. This risk is particularly troublesome for this project given that trends in social science discourse about youth criminality often inform the discourse produced by lawyers, judges, and probation officers in the youth justice system. Hence, classifications and implicit premises used by social scientists studying juvenile delinquency can become part of the unconscious schemes juridical agents use to make decisions about young offenders. To make matters even more complicated, these unconscious schemes are then reflected in the court system's labelling of different forms of youth crime for official statistical purposes, a process described by Aaron Cicourel (1968) in his classic ethnomethodological study of the juvenile justice system in America. These statistics are then fed back into the discourse of social scientists who naively ignore the process by which the statistics were produced.

This project, like Cicourel's, can never hope to wholly escape from this feedback loop of official classifications; nevertheless, it must continually struggle to obtain a degree of self-reflexivity in order to contain the effects of this cycle. This project must avoid

reifying social categories such as "youth" or "juvenile delinquency," giving contingent social phenomena a more permanent basis in reality through what Bourdieu calls the "theory effect". The "theory effect" occurs when writers in the academic field actively produce through their discourse the social divisions they believe they are describing; Bourdieu gives the example of Marx's account of the proletariat, which, he claims, contributed to the performative production in the 19th century of the very class-consciousness Marx attempted to "objectively" describe (Bourdieu 1991: 133-134). Hence, academics writing about social groups, especially dominated social groups, need to take responsibility for the productive effects of their discourse. Such effects can be deliberately calculated to achieve certain political ends (although the effects will more often than not go astray); nevertheless, it should never be assumed that academic discourse will ever produce "innocent" accounts of social classifications.

It is therefore worth recalling the extent to which both "youth" and the "juvenile delinquent" or "young offender" are relatively recent social constructions. Age hierarchies, like gender hierarchies, are the product of a process of social hierarchization that appears all the more "natural" because the rigid distinctions it creates amongst a spectrum of individuals appear to be based upon self-evident biological differences. Undoubtedly, some sort of age hierarchy is universally present in all cultures, even as it always takes on different forms. Nevertheless, as Kenneth Burke has remarked about social hierarchies in general, "to say that hierarchy is inevitable is not to say that any particular hierarchy is inevitable; the crumbling of hierarchies is as true a fact about them as their formation" (Burke 1969b: 141). One of the strengths of socially relevant

academic discourse is that, despite its unavoidable complicity in such structures of hierarchy, it can also contribute to their crumbling.

Youth and the Juvenile Delinquent

Indeed, contemporary notions of adolescence and adolescent deviancy arose relatively recently in modern history; the word "adolescent," for example, was rarely used outside of scientific discourse before the beginning of this century (Tanner 1996: 19), a fact that has led many historians to argue that there was no formally marked division whatsoever between childhood and what we call adolescence in pre-Industrial Europe (Ariès 1962: 25). Rather, until the 18th century in all classes, and until the 20th century in the dominated classes, the term "youth" designated a very long transition period that did not always describe a specific age-category but rather a state of partial dependence upon one's family that usually ended with marriage (Gillis 1974: 2). "Youth" was thus more of a social category denoting a position of inferiority that could often extend from the ages of seven or eight to thirty. Furthermore, up until the nineteenth century youth from both the working and middle classes often spent much of this period working and living outside of their parental home, either as apprentices or servants (ibid: 9). Hence, youth began from an early age to take on many of the same responsibilities as adults; even in terms of criminal responsibility, pre-industrial youth were tried in the same courts as adults and generally received identical punishments in the same institutions. In Kingston, Ontario, for example, as late as 1846, 16 children were housed in the Kingston penitentiary along with 11 adult murderers and 10 rapists (Caputo and Bracken 1988: 124).

John Gillis' Youth and History (1974) outlines many of the factors that contributed to the emergence of adolescence as a social category. One of the main factors was the decline of the apprenticeship system in Europe. Many working-class youth began to work in the early factories instead, which made it virtually impossible for youth to leave the home at an early age as was previously the custom. Meanwhile, many rural families began to migrate to the industrial cities in search of work, especially in the nineteenth century. According to Gillis, youth from these families adapted rural "youth group" traditions to their new urban environments (ibid: 62). Hence, gangs of working-class youth began to emerge in many industrial cities. Most of these groups were used by youth for relatively benign socialization purposes such as courtship. However, these groups also engaged in various activities frowned upon by middle and upper-class observers of the time, such as gambling, street-vending, and the type of carnivalesque working-class leisure activities described by Stallybrass and White (1986). Mass youth unemployment resulting from anti-child labour legislation consolidated the existence of these youth groups and may have contributed to the criminalization of many gangs, as many youth were now forced to steal in order to survive. Hence, as Tanner notes, "what eventually became recognized as juvenile delinquency was originally property crime committed on city streets by young working-class males directed against upper-class adults" (Tanner 1996: 20). Meanwhile, a similar pattern emerged in Canada and the United States, due to similar sociological conditions and to the immigration of many British working-class children to Canadian and American cities between 1860 and 1920 (Bean and Melville 1989; Carrigan 1998: 82-83). The threat posed by these groups was in part met by the establishment in America of

"Houses of Refuge" and "Reform Schools," to be discussed below.

The contemporary notion of "adolescence" as a "natural" transition state between childhood and adulthood only began to acquire universal currency in the early twentieth century. Prior to this period, adolescence was the almost exclusive property of the middle and upper classes; partly as a result of changing strategies of biological and cultural reproduction, beginning in the 17th century, families in these classes began to keep children at home for longer periods of time (Ariès 1962: 26). At the same time, a series of institutions and discourses were gradually mobilized around the new age category and helped to demarcate the boundary between childhood and adolescence. For example, beginning in the 1850s, children's literature, previously oriented toward youth of both sexes ranging in age from children to young adults, began to be differentiated into age and sex-segregated genres (Gillis 1976: 104). Meanwhile, the emergence of cloistered, middle-class institutions such as the English public boarding school and the German Gymnasium ensured that youth experienced an extended period of immaturity, dependence, and perpetual surveillance (especially with regards to youth sexuality -- see Foucault 1978), generally explained as a necessary process of *Bildung* or self-realization. However, adolescence did not long remain an exclusive feature of middle and upper-class lifestyles. At the beginning of the twentieth century, "simultaneously in almost every western country, the concept of adolescence was democratized, offered to, or rather required of, all the teenaged" (ibid: 133). Secondary education was extended to all social classes, and with it, many of the extracurricular organizations previously devoted to middle-class boys such as the English Scouts and German Wandervogel. Undoubtedly,

despite the overt claims of middle and upper-class reformers, the extension of these institutions to the working-class effectively served to extend a new kind of social control to all youth, part of the spread of middle- and upper-class technologies of subjectification (Foucault 1978) throughout the social space. As one contemporary observer proudly remarked in 1904, "the bare-footed ragamuffin of popular imagination figures still as the frontispiece to well meaning philanthropic appeals, but is no longer a common object of the streets" (Urwick, cited in Gillis 1976: 170).

However, this extension of adolescence to the working-classes went hand-in-hand with the emergence of a new figure in social discourse (Angenot 1989) -- the "juvenile delinquent." According to Gillis, the same groups of middle-class reformers who acted to "naturalize" adolescence -- the clergy, doctors, educators, and philanthropic organizations -- also helped to reify delinquency as a danger threatening youth of all classes:

> This is not to say that [middle-class reformers] invented juvenile crime, for it had been a subject of concern throughout the nineteenth century. But the child criminals of Dickens' time had been more closely associated with a class than an age group. They had been spoken of as "little stunted men" whose misfortune it had been to miss the softening influence of a true childhood and adolescence. By the 1890s, however, delinquency was beginning to be seen not as an attribute of precocity but of immaturity. Adolescence itself was identified as a cause of delinquency and thus all children, regardless of class, were deemed vulnerable to deviance unless carefully protected. (ibid: 171).

In other words, delinquency existed prior to the 20th century in the form of crime by working-class youth. However, beginning in the 20th century, delinquency came to be understood, no longer as a product of social class and a response to material deprivation, but rather as a physiological and mental degeneration potentially affecting all youth. The

juvenile delinquent thus joined the ranks of a host of new social deviants who emerged in late 19th and early 20th century discourse to threaten normative definitions of "healthy" behaviour (see Foucault 1978); juvenile delinquency, like criminality in general (Foucault 1977), became an identity that could be explored through a host of discourses -- sociological, psychological, and medical -- aimed at codifying different types of delinquency and explaining their causes.

Juvenile law in almost all Western countries preceded and may have contributed to the development of this new definition of delinquency. As noted above, in the early 19th century, youth were not legally distinguished from adults in a court of law. They were generally given adult sentences and housed in adult prisons. This situation began to change in North America in the mid 19th century with the emergence of "Houses of Refuge" for young criminals in many U.S. states. These Houses of Refuge were the forerunners of the Reform Schools and Industrial Schools that spread throughout America and Canada later in the century. The first such institution was the New York City House of Refuge, established by local philanthropists in 1825. It formed the "blueprint" in North America for subsequent Houses of Refuge in other states.[1] This institution was supposed to combine the "best" features of a school and a factory, two of the most prominent disciplinary institutions of the age. The proposal for the creation of the New York House of Refuge describes its ideal appearance as follows: "Such an institution would, in time, exhibit scarcely any other than the character of a decent school and manufactory. It need not be invested with the insignia of a prison. It should be surrounded only with a high

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[1]Such institutions already existed in Europe.

fence, like many factories in the neighbourhood of cities, and carefully closed in front" (Bremner 1970: 679). The proposal further argued that the House of Refuge would operate according to a "point" system whereby youth would be rewarded for good behaviour with greater privileges and a possible shortening of their sentence (recalcitrant youth could be confined there until the age of 21). All hours of the day were to be filled with a regimented schedule of unpaid labour, schooling, and prayer. The institution was thus exemplary of the objectifying technologies of discipline described by Foucault in Discipline and Punish; it was an institution oriented toward the moulding of working-class bodies and souls.

The New York House of Refuge was supposed to be a purely educative institution that would supplement the "natural" parenting absent from the lives of delinquent youth. However, it was also intended to serve a more sinister function: that of preparing the way for a more general state intervention into lower-class families. The proposal for the New York House of Refuge reads as follows:

> A third class which it might be very proper to transplant to such an establishment, and to distribute through its better divisions, are boys (some of whom are of tender age) whose parents, either from vice or indolence, are careless of their minds or morals, and leave them exposed in rags and filth, to miserable and scanty fare, destitute of education, and liable to become the prey of criminal associates. Many of such parents would probably be willing to indenture their children to the managers of a House of Refuge; and far better would it be for these juvenile sufferers, that they should be thus rescued from impending ruin. The laws of this state, do not, as in Massachusetts and some other places, authorize magistrates to use compulsory measures with parents who thus grossly abuse their charge, and, at the same time, absolutely refuse to resign their children to the hands of the guardians of the poor; but it is surely presumable, that were suitable provision made for the economical support and instruction of such children, a law for this purpose might readily be obtained. (ibid: 679-680)

Later in the century, the Houses of Refuge's institutional successors, the Reform and Industrial Schools, were frequently used to confine lower-class youth accused of idleness or precocious sexual activity. Such youth could be removed from the streets or their homes at the whim of magistrates and imprisoned to indeterminate sentences, under the pretence that Reform Schools could not legally be classified as "punitive" institutions.

Anthony M. Platt (1969), in his Marxist critique of the "child-saving" movement in the U.S., notes that institutions like the Houses of Refuge and Reform Schools helped pave the way toward the development of the first U.S. juvenile courts. Already in 1874, Massachusetts had passed legislation providing for special trials for minors (Platt 1969: 9). Meanwhile, as early as 1883, reformers in Canada mirrored developments in the States by calling for a separate penal code for youth and separate institutions in order to separate delinquent youth from the corrupting influence of criminal adults (Sutherland 1976: 91). These American and Canadian reformers were largely upper-class philanthropists; as Platt notes, the first juvenile court in the United States was basically the creation of the white, upper-class wives and daughters of the leading industrialists of Chicago. These "child-savers," like the philanthropists responsible for the creation of the Houses of Refuge, were primarily concerned with increasing state control over lower-class youth; "although the child savers were responsible for minor reforms in jails and reformatories, they were most active and successful in extending governmental control over a whole range of youthful activities that had been previously ignored or dealt with informally" (99). Moved by a combination of revulsion and pity for the lower-classes, they successfully lobbied for changes giving courts unprecedented powers to intervene in lower-class families deemed

"inadequate" or "unnatural"; "the child savers set such high standards of family propriety that almost any parent could be accused of not fulfilling his 'proper function.' In effect, only lower-class families were evaluated as to their competence, whereas the propriety of middle-class families was exempt from investigation and recrimination" (135).[2]

Meanwhile, a separate law for youth, the Juvenile Delinquents Act, was passed in Canada in 1908. This act, similar to law passed in almost all Western countries at about this time (Gillis 1974: 174), gave the State unprecedented powers to interfere in the lives of all youth regarded as potentially delinquent, regardless of any crimes they may have committed. Hence, street children and youth from orphanages and broken homes were treated as "pre-delinquents" and could be sent to juvenile institutions for their own "protection" (Tanner 1996:22). Additionally, a vast range of youth activities once left to personal discretion, so-called status offences such as truancy, precocious sexuality, and gambling, were now criminalized, and youth were no longer afforded the protection of due process under juvenile law. This rapid criminalization of deviant youth followed a common trend in penal codes in the modern era, which, as Foucault noted, became interested in the criminal as a subject and in criminality as an identity, rather than in the mere fact of the crime per se. "Certainly the 'crimes' and 'offences' on which judgement is passed are juridical objects defined by the code, but judgement is also passed on the passions, instincts, anomalies, infirmities, maladjustments, effects of environment or heredity..." (Foucault 1977, 17).

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[2]An example of some of the ways in which this process of evaluating families based upon a normative model of the "healthy" family continues in the youth justice system today is described in chapter four.

As noted above, at almost the same time that special juridical institutions were created to better monitor lower-class youth, both adolescence and juvenile delinquency emerged as universal social phenomena. To put it too simplistically, before the twentieth century, two separate social categories existed: the upper-class adolescent and the lower-class delinquent. At the beginning of the twentieth century, these two categories merged in popular discourse (even if such a merger generally did not occur in terms of the types of youth actually imprisoned for youth crimes), so that delinquency, as the threatening and excluded exterior of "normal" youth behaviour, began to threaten all youth from within. The division between the "normal" and the "delinquent" youth thus needed to be produced and policed at all times. And thus we can say that delinquency itself needed to be produced, concentrated in certain "disposable" individuals in order to "save" the vast majority of youth. Indeed, as Aaron Cicourel (1968) has noted, delinquency is in many ways a product of the discourse of juridical agents themselves, who negotiate life-histories and identities for the youths brought before them based upon unconscious, social classificatory schemes and the practical necessities of the juridical field. As Cicourel convincingly demonstrates, youth from stable, middle-class homes are more often designated as "sick" and in need of therapy than lower-class youth, who are more often placed in custody (see chapter 4). It is true that Cicourel was writing about the California court system during a period in which youth justice was governed by a paternalistic juvenile law similar to the Juvenile Delinquents Act; nevertheless, as I hope to demonstrate in later chapters of this thesis, a similar classificatory process still occurs today through the combined efforts of probation officers, lawyers, judges, and often

parents of young offenders themselves, despite legislative changes in the Young Offenders Act intended to extend to all youth the "formal protections" of an adversarial mode of justice.[3]

Furthermore, one of the dangers of this classificatory process is that it is not usually imposed upon youth without their consent; rather, youth designated as "young offenders" by the juvenile court system contribute to the production of their own deviancy. If, as Bourdieu argues, power is always exerted with the complicity of the dominated through the effects of symbolic violence (Bourdieu & Wacquant 1992: 167), then courtroom discourse may be the site par excellence of this power and this complicity. Frequently, the arbitrary classifications of delinquency imposed upon youth are misrecognized and reproduced by youth themselves, who take on the labels to which they are assigned and live up to the diminished expectations that are made of them. When a judge remarks to a youth with an Attention Deficiency Disorder that "I'm not surprised, with your background, that you ended up here, and I expect this won't be the last of your problems," as one judge did during the course of this study, the youth is addressed by a powerful performative, socially mandated by the state, and backed by a potential threat of punishment. On its own, this performative may not change the way the youth views himself or herself. However, when this same performative is repeated throughout the youth's encounters with the juvenile justice system, the youth will probably begin to act

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[3]The extent to which the North American adversarial mode of justice is "fairer" to either defendants or victims than the inquisitorial mode of justice found in much of continental Europe is debatable. See Danet & Bogoch (1980) for an application of discourse analysis to this question.

according to normative definitions of ADD behaviour.[4]

Of course, as Judith Butler has repeatedly argued, any such reiterated performative can and must be subversively inhabited by its addressee: "it is precisely the expropriability of the dominant, 'authorized' discourse that constitutes one potential site of its subversive resignification" (Butler 1997: 157). In this situation, however, the youth socially classified as delinquent is in a situation where the distinction between resistance and docile capitulation is blurred. Bourdieu best describes the paradoxical effects of symbolic violence in Language and Symbolic Power;

> When the dominated pursuit of distinction leads dominated speakers to assert what distinguishes them -- that is, the very thing in the name of which they are dominated and constituted as vulgar -- according to a logic analogous to the kind which leads stigmatized groups to claim the stigma as the basis for their identity, should one talk of resistance? And when, conversely, they strive to shed that which marks them as vulgar, and to appropriate what would allow them to become assimilated, should one talk of submission? (Bourdieu 1990a: 94-95)

Similarly, youth who are addressed as delinquent by judicial discourse can only resist that discourse by adopting the stigmatized identity that is offered to them. The only other alternative is an appropriation of "normal" adolescent behaviour, equally a capitulation to the demands of the juvenile court. Obviously, this alternative is not an option for many youth caught in the court system.

Conclusion: The Disappearance of the Delinquent?

How are we to understand this boundary that emerged at the beginning of this

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[4]This performative is an example of the everyday "status degradation ceremonies" theorized in the next chapter.

century to separate the "normal" from the "delinquent" youth? As noted above, this boundary should not be understood as one that clearly demarcates a stable group of "delinquents," to be excluded from an equally stable group of "normal" youth, although many juridical agents who attempt to draw this boundary would no doubt prefer to make such a clear demarcation.[5] Rather, this boundary is one that crosses all youth identities, simultaneously enabling the existence of "youth" as a universal social category and destabilizing it from within. The boundary separating the "juvenile delinquent" from the "normal youth" is thus a paradoxical one, marking both the exclusion and inclusion of the criminal youth. The instability of this boundary is necessary, since the juvenile delinquent marks the point at which two social categories intersect. On the one hand, the juvenile delinquent is positioned within a general set of concepts about youth. This set of concepts posits youth as a universal category of individuals who must be separated from adults. Youth are largely dependent upon parents or society, according to this discourse of youth, and they require a degree of leniency and forgiveness. On the other hand, the delinquent youth can only inhabit this category of adolescence by simultaneously inhabiting a discourse of criminality that increasingly posits the criminal as a being who must be punished and excluded from society. These conflicting categorisations of delinquent youth are reflected in the declaration of principle of the Canadian Young Offenders Act, which some commentators see as a set of contradictory statements that offer little or no guidance for judges (see Leslie 1996). Hence, the declaration of principle simultaneously asserts

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[5]Such efforts are no doubt facilitated by the existence of a relatively recognizable group of "system-kids" who grow up as wards of the state within the child-welfare system and often graduate into the young offender system.

youth's responsibility for their criminal acts, youth's special needs due to their immaturity, youth's rights as full juridical subjects, society's right to be protected from youth crime, and parents' responsibility for the care of their children.

However, current trends may point to the eventual disappearance of this problematic subject, the juvenile delinquent, and indeed to the disappearance of adolescence as a meaningful juridical and social category. Since the Young Offenders Act was passed in 1984, it has undergone amendments that have had the effect of blurring the boundary between the legal status of youth and adults. In 1986, for example, amendments were made to permit the public disclosure of the identity of accused or convicted young offenders if such disclosure was deemed necessary to assist in making an arrest. In 1992, a further amendment was made to the maximum sentence for murder under the Act, which was lengthened from three to five years (three years custody, two years probation), and in the same year, the wording of the Act was changed to permit more youth to be transferred to adult court (Begin 1993). In 1997, the Standing Committee on Justice and Legal Affairs published a report recommending changes to the Young Offenders Act. These recommendations included lowering the minimum age for young offenders from 12 to 10 years for young persons alleged to have committed criminal offences causing death or serious harm; amending the Young Offender Act's provisions for transfer to adult court so that transfer can be invoked during rather than prior to sentencing; allowing the publication of the names of young offenders when this is in the best interests of the public; and providing for the admission as evidence of statements by young persons to "peace officers or persons in authority." In 1999, most of these recommendations were

implemented by the federal government, with the exception of the recommendation for lowering the minimum age. Meanwhile, conservative parties such as the Reform Party of Canada continue to press for this change.[6]

It is impossible to do more than speculate about the future of a social construct, and such speculations inevitably prove to be over-hasty. However, perhaps these changes to the Young Offender Act reflect a rigidification of the boundary separating criminal youth (who increasingly risk attaining the same legal status as criminal adults) from youth in general. Conceivably, such a rigidification could lead to a further destabilization of the general categorization of adolescence, perhaps to the collapse of adolescence altogether as a coherent social entity. Given the increased emphasis upon adolescents as autonomous legal subjects, capable of working (already many adolescents have more disposable income than most dominated adults), and beyond a certain age living and marrying outside of their parental home, "youth" may once again come to designate a more-or-less extended period of dependence upon one's family rather than a "natural" stage of life.

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[6]Most of these changes called for by rightist reformers of the juvenile justice system are opposed by most agents in the juridical field.

Chapter 2

The Juridical Boundary

> A speaker in a lawcourt, however, is different: his allotted time is slipping away and forcing him to hurry his speech. Nor can he talk about whatever strikes his fancy: he's got an adversary standing over him, wielding necessity in the form of a document stating what the issues of the case are, which is read out to ensure that the speaker confines himself to these issues (Plato, Thaetetus: 172d).

The constraints operating upon speakers in a court of law are, as this quotation from Plato suggests, probably as old as juridical institutions themselves. It is not necessary to engage in a detailed study of legal discourse in order to determine that courtroom proceedings are among the most asymmetrical discourse situations in our culture. Most of the normal "rules" of everyday conversation are broken or radically altered in legal discourse, usually to the benefit of lawyers, judges, and dominant witnesses (especially "expert" witnesses). To give some obvious examples of the differences between legal discourse and normal conversation, lawyers and judges almost exclusively dominate the turn-taking strategies and topic control of courtroom speech through the use of tightly-controlled question-answer sequences (for detailed studies of these and other features of spoken courtroom discourse, see for example Adelswärd et al. 1987; Atkinson & Drew 1979; Danet & Bogoch 1980; Drew 1992; O'Barr 1982; Philips 1984). The control that juridical agents wield over courtroom discourse is further tightened due to the fact that technical and sometimes obscure passages of written law are generally incorporated into the spoken discourse of examination and sentencing (see Stygall 1994). This chapter will explore some of these features of legal discourse as they pertain to the

interaction between juveniles, lawyers, and judges in juvenile court. These features contribute to the production of a second boundary, intersecting and reinforcing the criminological boundary discussed in chapter one. This second boundary is the juridical boundary, established between the agent in the juridical field who is socially mandated to speak with authority in the courtroom, and the outsider, whose speech is highly controlled if not silenced altogether.

Lexical Cohesion and Restricted Code

One important but infrequently discussed feature of legal discourse, which it undoubtedly shares with all "official" discourses used in public institutions, is that it is mercilessly cohesive. "Cohesion" is used here as a linguistic term most frequently associated with the work of Halliday & Hasan (1976); for them, it denotes those elements of a discourse that make it "cohere" into a unified text. For example, one of the most basic and important resources of cohesion in the English language is the endophoric reference. An endophoric reference is a linguistic device by which pronouns are used to create strictly semantic relationships between different parts of a text. For example, an endophoric reference is established between the sound of "a car" (the referent) and "it" (the reference) in the following text:

> CROWN: Q. Can you tell us what happened that was unusual that evening?
> WITNESS: A. I was in my room, waiting for my dad to come home, and I heard a car pull into my circle, so I looked outside...
> Q. Why did you look outside?
> A. Well, I thought it might be my dad's car.
>
> (Reconstructed from field notes)

All legal testimony must be clear and internally consistent, and thus all references must be

endophoric. "It" in this passage, for example, clearly refers to the sound made by "a car" ("my dad's car" is an example of lexical cohesion, a different cohesive device), which the witness has just described hearing in his previous sentence.

At first glance, this requirement of legal testimony seems completely natural; how would it be possible for individuals of different social groups to communicate without coherent use of pronouns and a common understanding of the same language? Cohesion seems to be a necessary precondition of any discourse that aims at comprehensibility. However, as Halliday & Hasan point out, many English speakers, especially dominated speakers employing what Bernstein (1971) calls "restricted code",[1] frequently do not use linguistic devices that produce immediate cohesion. Rather, these speakers' discourse is largely exophoric, referring to referents in the surrounding context, as in the following example:

> CROWN: Q. O.k., now, what street exactly were you walking on?
> WITNESS: A. I was between Winnipeg and Vancouver when he came over and started pushing me in front of cars...
> Q. You'll have to slow down. By "he" you mean the accused?
> A. Yeah.
>
> (Reconstructed from field notes)

"He" is a reference that clearly refers outside of the witness's text to the accused immediately facing the witness; it is a reference that is exophoric. The crown attorney, in

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[1]I hesitate to use this term, and mainly do so because of Halliday & Hasan's reliance upon Bernstein's theories. My own theorization of Bernstein is highly specialized and will be explained in detail shortly. For an account of some of the controversy surrounding Bernstein's early work see Halliday's introduction in Bernstein 1971b. Bernstein's work has been elaborated upon and largely surpassed by his successors in the field of sociolinguistics. For a recent text which touches upon many of Bernstein's concerns in a more sophisticated way, see Hymes 1996.

order to make the testimony clear for the official transcript, interrupts the youth at this point in order to make the reference explicit and endophoric by attaching to it a specific referent, "the accused".

If it is true, as Halliday & Hasan (1976) argue, that exophoric reference is a common feature of "restricted code", then many youth are at a disadvantage in a court of law. According to Bernstein, "restricted code" is a form of discourse frequently used by social groups such as "prison inmates, combat units of armed forces, criminal sub-cultures, the peer group of children and adolescents, and married couples of long-standing" (Bernstein 1971a: 77), all groups in which a shared cultural and usually physical context negates the need for a more explicit form of speech. As a result, Bernstein argues that individuals in these groups develop a structurally predictable form of speech suitable only for communication with those who share that common culture. This speech is marked by linguistic features such as a high use of exophoric references, always referring to the shared context and thus immediately understood, and by a focus upon concrete, descriptive and narrative, rather than analytical and abstract content of utterances. Furthermore, "restricted code" generally does not register a speaker's subjective intent through phrases such as "I think that..." or "it is my opinion that..."; this intent is taken for granted and is thus not explicitly stated. "Restricted code" thus tends towards impersonality and usually excludes "outsiders".

According to Bernstein, the use of "restricted code" "depends on the characteristics of a form of social relationship that can arise at any point in the social structure" (Bernstein 1971a: 78-79) and is therefore universal. Its use only becomes

problematic for those who are never exposed to "elaborated code", a form of speech that is better geared towards communication between individuals who do not share a common cultural context. "Elaborated code" differs from "restricted code" chiefly in that it is strictly representational. It does not rely on a shared social context among its speakers but rather operates according to the requirement (strictly speaking, impossible to fulfil) that what is meant by the speaker and what is heard by the listener should correspond precisely to what is said, regardless of the context in which it is spoken. In other words, what is said must be both literal and strictly cohesive. Norris Minick (1993), in an article on teacher's instructions to elementary school students, notes that this type of representational discourse is generally taught to children in school. An individual's ability to use elaborated code thus depends largely upon school performance. School performance, in turn, according to Bourdieu, can in part be traced back to class, gender, and/or race based dispositions to valorize academic achievement acquired at home during early childhood (Bourdieu and Passeron, 1977).[2]

The inability or unwillingness to switch from "restricted" to "elaborated code", Bernstein argues, is common among dominated racial and social groups. Once individuals from these groups are withdrawn from their shared social context and placed into a foreign context in which they are asked to communicate with agents from different positions in the social space, their systems of mutually recognizable references disintegrate. This situation is similar to that described by Bourdieu when dominated

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[2]For a well-known, complementary approach to this question, see Paul Willis's 1977 book, Learning to Labor.

individuals are asked to communicate in formal speech situations. As Bourdieu notes, because dominated individuals learn a form of language use relatively distant from that of the dominant class, they are condemned to "either silence or shocking outspokenness" (Bourdieu 1991: 138) when confronted with "official" discourse.

However, Bernstein's notion of "restricted code" cannot be employed in this study without being interrogated and reformulated in line with Bourdieu's theories of linguistic *habitus* and power, as explained in Language and Symbolic Power. One of the dangers of Bernstein's studies of "restricted code", apart from the fact that they ignore the semantic creativity of much slang speech, is that they tend to reproduce a social stigmatization of dominated speech without clearly questioning the social classifications used in order to differentiate between working-class "restricted code" and middle-class "elaborated code" in the first place. For example, Bernstein's initial experiment to determine the existence of "restricted code" involved placing separate groups of working-class and middle-class youth in different rooms and asking them to engage in a "relatively undirected discussion . . . on the topic of the abolition of capital punishment" (Bernstein 1971: 83). In other words, the working-class youth were asked to speak in an artificial, scholastic situation on a typically scholastic subject. Several studies have demonstrated that individuals perform tasks differently when they are asked to carry them out in a scholastic situation than when they are asked to carry them out in the "normal" contexts generally associated with those tasks (i.e., Säljö and Wyndhamn 1993). Given that, as Bourdieu has pointed out in numerous studies (i.e., Bourdieu and Passeron 1977), almost all education systems are geared toward the learning strategies engendered by a dominant *habitus* and tend to

exclude those of a dominated *habitus*, the lower-class youth in Bernstein's study were already at a disadvantage. In reality, many so-called confrontations between lower-class "restricted codes" and middle-class "elaborated codes" are actually confrontations between two sets of exclusionary discourses.

Hence, Bernstein's claim that only dominated social groups experience difficulties in switching from "restricted" to "elaborated" codes in inter-group situations ignores the fact that many professional groups themselves use a form of "restricted" code when communicating with other groups. For example, the obsessively cohesive requirements of "elaborated code" courtroom speech themselves mask a profoundly "restrictive" element of legal discourse that is often misrecognized as such by both outsiders and juridical agents because of the symbolic power invested in the juridical field. Like any "restricted code" users, lawyers and judges frequently incorporate highly formulaic utterances into their speech that are incomprehensible to many "outsiders". For example:

> JUDGE: I hereby sentence the accused to two one month terms of open custody on the 334(b) charges, to be served concurrently.
> ACCUSED: Uh... Excuse me... What does concurrent mean?
> JUDGE: It means you serve them at the same time.
>
> (Reconstructed from field notes)

This example demonstrates one of the areas in which the distinction between dominated "restricted code" and dominant "elaborated code" disintegrates. Use of technical legal terms in a court of law is often just as context-specific and exclusionary as any subcultural discourse. Indeed, in a court of law we have a perverse situation where an "elaborated code" may be used in "backstage" (Goffman 1959) discussions amongst juridical agents, while elements of a "restricted code" infiltrate the discourse juridical agents use to

communicate with other social groups in the public, "front area" of the courtroom ritual.

Because of these difficulties with Bernstein's theory, the opposition between "restricted" and "elaborated" code will be used in a very specialized way in this study. First, "Restricted code" will be understood, roughly in the same sense used by Bernstein, as a form of discourse produced by all individuals in habitual speech environments, but that only seems limiting and impoverished when dominated speakers employing this type of discourse are removed from these environments and placed in a hierarchically alien situation. In such situations, dominated speakers are forced to either appropriate the language of a dominant class or speak their own language using a rhetoric of deference necessitated by the fact that they are aware that all of their utterances have limited symbolic value in relation to the dominant speech. In this situation, the semantic creativity of dominated speech is stifled, and dominated individuals do indeed produce a semantically predictable discourse, marked by most of the features listed by Bernstein.

These features roughly correspond to a series of linguistic characteristics that William O'Barr (1982) refers to collectively as "powerless speech." William O'Barr borrows this term from Robin Lakoff's (1975) study of gender variations in everyday speech. In her study, Lakoff attributes the following features to feminine speech:

1. Hedges: *It's sort of hot in here; I'd kind of like to go; I guess . . .; It seems like . . .*; and so on.
2. (Super)polite forms: *I'd really appreciate it if . . .; Would you please open the door, if you don't mind?*; and so on.
3. Tag questions: *John is here, isn't he?* instead of *is John Here?*; and so on.
4. Speaking in italics: Intonational emphasis equivalent to underlining words in written language; emphatic *so* or *very*; and the like.

5. Empty adjectives: *Divine, charming, cute, sweet, adorable, lovely,* and others like them.
6. Hypercorrect grammar and pronunciation: Bookish grammar and more formal enunciation.
7. Lack of a sense of humor: Women said to be poor joke tellers and frequently to "miss the point" in jokes told by men.
8. Direct quotations: Use of direct quotations rather than paraphrases.
9. Special lexicon: In domains like colors where words like *magenta, chartreuse*, and so on are typically used by women.
10. Question intonation in declarative contexts: For example, in response to the question, *When will dinner be ready?*, an answer like *Around 6 o'clock?*, as though seeking approval and asking whether that time will be okay. (Cited in O'Barr 1982, 64).

However, while Lakoff argues that "powerless" speech is a mode of speech peculiar to women, O'Barr argues, based upon a study of dominated witness testimony, that most of the features isolated by Lakoff are common to all dominated speakers, regardless of gender. Furthermore, he concludes that many women of high social status, especially professionals and agents in the juridical field, actually use this form of speech much less frequently than dominated men.

O'Barr also notes several other distinctive features common to all dominated witness testimony that should be listed as additional characteristics of "restricted code." For example, dominated witnesses in a court of law tend to employ a "fragmented," rather than a "narrative" style of testimony. In other words, dominated witnesses generally respond briefly to questions and are interrupted by lawyers if their responses are too lengthy. Dominant witnesses, on the other hand, are more likely to respond at length to lawyers' questions, usually providing an internally coherent narrative.[3] In part, this pattern

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[3]The university professor's testimony quoted later in this chapter is a good example of an internally-coherent narrative produced by a dominant speaker.

of interruption of dominated witnesses as opposed to dominant witnesses can be attributed to dominated witnesses' failure to speak in a strictly representational and cohesive style. However, these interruptions must also be attributed to lawyers' unconscious determinations of witness credibility or conscious decisions to undermine this credibility.

Unsurprisingly, almost all of the youth witnesses whose testimony was observed during this study used some of the restricted code features that O'Barr would identity as characteristic of a "powerless" and "fragmented" style. First, almost no youth observed during my field work responded to questions with narrative fragments longer than two or three sentences. Second, youth tended to insert cautionary hedges into their testimony, responding for example with "I guess so" to "yes/no" questions. This is a pattern of youth speech that several lawyers interviewed in this study complained about:

> I would say that all of the youth that I work with, regardless of their background, have weak language skills. This is especially problematic in court, given that judges and lawyers tend to use a very precise form of legal language. Kids, on the other hand, are much more imprecise. For example, instead of answering "yes" or "no" to questions such as "Were you at your friend Jimmy's house on the night of the robbery?", they'll answer with something like "I guess so." This affects the impression they leave on the judge in a number of ways. First, it looks like the youth isn't conveying the information he's asked to convey. Second, it doesn't make the youth look intelligent or serious. Judges sometimes think the youth is just "goofing off." (Interview with defence lawyer)[4]

The use of hedges also gives the impression that the witness is either uncertain of his or her own utterances, or simply lying, as in the following example:

> CROWN: Q. Was he [the accused] your friend at the time?
> WITNESS: A. No, I just knew him. He's my friend now, I guess.

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[4]Many judges are undoubtedly more conscious that these kinds of problems exist than the lawyer here interviewed suggests.

Q. You guess? So you're not sure that he's your friend.
A. Well, he wasn't my friend, really, back then, but he is now.

(Reconstructed from field notes)

Many youth also used a special lexicon of slang, such as the witness's "shot to shot game" discussed later in this chapter, and many used question intonation in declarative contexts, again giving the impression of uncertainty.

Generally speaking, the use of this kind of restricted code in legal testimony acts to the disadvantage of dominated witnesses; both lay people and agents in the juridical field tend to be suspicious of their testimony. For example, in a follow-up study to his analysis of characteristics of dominated witness testimony, O'Barr (1982) took two testimonies, one delivered in a powerless and the other in a fragmented style, and rewrote them, eliminating all of the powerless features in one case and extending the length of all responses where possible in the other. He discovered that test subjects who heard recordings of actors reciting each testimony overwhelmingly rated the powerful and non-fragmented (narrative) testimonies higher in terms of credibility than subjects who heard the original powerless and fragmented testimonies. These results were roughly duplicated when the experiment was carried out using a select group of law students as test subjects.

In opposition to "restricted code, "elaborated code" will be understood in this study as a largely endophoric and representational discourse for the most part produced by dominant speakers. Frequently, dominant discourse is just as exclusionary and restricted as dominated discourse; the chief difference between the two discourses is that one is socially legitimated whereas the other is not. However, dominant discourse at times does approach a broader intelligibility than dominated discourse, in part due to its

representational features and in part due to its widespread dissemination through state institutions and the media. In such cases (which exclude highly specialized uses of "jargon" in certain fields such as the juridical field and many sub-fields of the academic field), dominant discourse can indeed be described as "elaborated." Elaborated code is never actually "universal"; however, certain uses of an elaborated code discourse do open the possibility of overcoming at least some particularistic differences. This potential universality is produced by what Bourdieu calls the "scholastic point of view" (Bourdieu 1990c), a point of view relatively distanced from the material necessities constraining dominated speakers. In part, it is this distance from material necessities that permits the kind of bracketing of context typical of representational speech. However, the absence of universal access, throughout the social field, to the material and cultural conditions that would permit all speakers to adequately appropriate a representational discourse, always limits the universal potential of the scholastic gaze. According to Bourdieu, although the scholastic gaze opens up the possibility of objectification, it also tends to ignore the material conditions of its own production (a distance from material necessities) and thus imposes its point of view upon social agents whose discourse is motivated by different material concerns. Hence, one of the "elaborated code" requirements of legal discourse, its insistence upon the cohesion of all testimony, often imposes an unrealistic restriction, which is never recognized as such, upon dominated speakers. Furthermore, the universal potential of the scholastic point of view in legal discourse is limited by the necessary

persistence of material necessities within the juridical field.[5] As Plato notes in the epigraph to this chapter, legal discourse has always been marked by time limitations; "a speaker in a lawcourt . . . is different: his allotted time is slipping away and forcing him to hurry his speech." Given that a relatively free use of time is, as Bourdieu points out, one of the most important material preconditions of the scholastic gaze, it is hardly surprising that the "elaborated code" of legal discourse is always infiltrated by elements of a "restricted code" unique to the juridical field.

This intermingling of "elaborated code" and disguised elements of a "restricted code" in juridical discourse serves two linked purposes in the control of courtroom speech. First, the linguistic peculiarities of courtroom discourse help reinforce the symbolic power of juridical agents and safeguard the boundaries of their institution. As a result, the language used by juridical agents is encountered by many youth and other "outsiders" as an alien speech, spoken by individuals whose interests and powers are radically different from their own. Bakhtin sums up this experience of encountering an alien speech as follows:

> Native word is one's "kith and kin"; we feel about it as we feel about our habitual attire or, even better, about the atmosphere in which we habitually live and breathe. It contains no mystery; it can become a mystery only in the mouth of others, provided they are hierarchically alien to us -- in the mouth of the chief, in the mouth of the priests. But in that case, it has

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[5]Of course, all forms of discourse, even the most banal or widely disseminated, are shaped by the material exigencies of the field in which they are produced. All discourses are comprised of sets of "speech genres" (Bakhtin 1986), relatively stable types of utterances that come to be accepted as meaningful within a given context. For an elaborate account of the ways in which these "speech genres" constitute autonomous, but linked, galaxies of practice throughout the social field, see Marc Angenot's theory of social discourse (Angenot 1989).

> already become a word of a different kind, externally changed and removed from the routine of life (taboo for usage in ordinary life, or an archaism of speech); that is, if it had not already been from the start a foreign word in the mouth of a conqueror-chief. (Bakhtin / Volosinov 1973: 75)

Many youth who are brought before juvenile court are torn from their habitual speech environments, placed in a hierarchical situation where the words they speak will seem out of place, and the words they hear will seem hierarchically foreign. This linguistic alienation will occur even in situations where lawyers and judges use "strategies of condescension" (Bourdieu 1991) to "relate to youth on their own terms," as occurs in the following example:

> CROWN: Q. I understand that something happened while you were in the cells in this building; is that right?
> WITNESS: A. Yes.
> Q. Can you tell us about that, please.
> A. I was in the cells and me and R. another guy in the cell, we were playing a shot game, punching, you know.
> Q. You were playing the what game?
> A. A shot -- like a punch for punch game kinda thing just to pass time because we were bored.
> Q. How do you play that game?
> A. You just hit each other in the arm and whoever gives up first gives up.
> THE COURT: And what do you call it, a shot to shot game?
> A. Yeah, shot, shot to shot.
> CROWN: Q. And the third inmate in your cell, was he playing that game too?
> A. I don't remember. I don't remember.
> Q. You don't remember? What happened while you were playing the shot to shot game?
>
> (Quoted from official transcript)

In this excerpt, taken from the trial analysed in more detail in chapter three, the youth introduces into his testimony an expression from the kind of "restricted code" frequently used by prison inmates. He explains to the crown attorney that he and his cell mates were playing a "shot game, punching you know." This explanation is immediately challenged by both the crown attorney and the judge, who demand an official, explicit definition of the

"shot game." Once the youth provides an ad hoc definition ("You just hit each other in the arm and whoever gives up first gives up"), the youth's billingsgate is provisionally incorporated into the discourse of both the judge and the lawyer. Notice, however, that it is the judge who first provides a stable term for the game ("And what do you call it, a shot to shot game?"), that is then taken up by the crown attorney ("What happened while you were playing the shot to shot game?"). This neologism on the judge's part replaces the term previously used by the youth to describe his game ("shot game"), a replacement acknowledged by the youth himself as he defers to the judge's consecrated linguistic power ("Yeah, shot, shot to shot.") The judge's and crown attorney's acceptance of the youth's billingsgate thus coincides with its stabilization and neutralization. The youth's speech in this example is appropriated by the judge and crown-attorney; his "shot game" is refashioned into a hierarchically alien word.

This example also helps us to understand a second, related function of legal discourse, its ability to limit what Bakhtin (1986) calls the "centrifugal" forces within common language, the popular forces within social discourse that threaten the monologism of the official word. The youth's "shot game" threatens to disrupt the "rules" of witness testimony, which require that all words foreign to the discourse used by juridical agents be explicitly defined. As such, the youth's slang needs to be neutralized, translated into the dominant language and given a stable meaning. Only then can it function within the tissue of cohesive linguistic devices that make up legal discourse. As Bourdieu remarks about the seeming naturalness of any dominant discourse,

> The *normalized* language is capable of functioning outside the constraints and without the assistance of the situation, and is suitable for transmitting and decoding by any sender and receiver, who may know nothing of one another. Hence it concurs with the demands of bureaucratic predictability and calculability, which presuppose universal functionaries and clients, having no other qualities than those assigned to them by the administrative definition of their condition. (Bourdieu 1991: 48)

Before being spoken in a court of law, the youth's "shot game" probably functioned as a loose referent referring to a broad array of contexts and activities. Once appropriated by the crown attorney and judge in this case, its function is radically altered; its shifting meanings are frozen into a rigid definition that can then be compared to the defence attorney's interpretation of the same "game" (the defence attorney for the juvenile detention guard in this case argues that the youth was actually assaulting his cell-mate).

As Foucault notes in "The Discourse on Language," "in every society the production of discourse is at once controlled, selected, organised and redistributed according to a certain number of procedures, whose role is to avert its powers and its dangers, to cope with chance events, to evade its ponderous, awesome materiality" (Foucault 1972: 216). To borrow a term from Foucault, we can say that legal discourse functions as a "discursive formation," a set of statements constituting a system of discursive "rules", which function to limit and direct the sayable within the juridical field. Indeed, as Gail Stygall points out in her study of American civil law trials, legal discourse conforms to all three of the general requirements of any discursive formation that Foucault outlines in "The Discourse on Language." First, legal discourse operates according to rules of exclusion of both speech and subjects; hence, legal discourse is governed by codified laws that exclude certain types of testimony (i.e., hearsay) and certain witnesses

(i.e., very young children and the certifiably insane). Second, legal discourse operates within a strict binary opposition between reason and unreason; "law and legal language are predicated in part on the reason-folly axis, Anglo-American law representing the 'light' of reason, in contrast to and excluding mad, frivolous, and unreasonable claims" (Stygall 1994: 32). Finally, legal discourse attempts to differentiate, without allowing for any possible ambiguity, between true and false statements; a court of law is both mandated and obliged to determine the "truth" or "falsity" of the events described during witness testimony. All of these "rules" allow juridical agents to maintain control over their own discourse and over the discourse of the "outsiders" who speak before them; without these "rules", courtroom speech would be both impossible and unthinkable.

However, at this point, Foucault's notion of "discursive formations" needs to be complicated. A potential problem with the application of this concept to legal discourse is that it does not fully account for the ways in which the so-called "rules" of legal discourse can be bent to accommodate witnesses from dominant positions in the social space; the "logic" of courtroom speech is much messier than Gail Stygall's use of Foucault's methodology would suggest.[6] Indeed, applying Bourdieu's notion of the "logic of

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[6]In The Archaeology of Knowledge, Foucault was primarily concerned with discursive formations within the human sciences; hence, this critique of the notion of "discursive formations" only extends to Stygall's appropriation of Foucault, rather than to Foucault himself. Obviously, Foucault himself refined his notions of discourse and power in texts after The Archaeology of Knowledge. Dreyfus and Rabinow, in their book on Foucault, have argued that in his early, archaeological texts, Foucault attributed an unwarranted priority to discursive practices over all other practices (such as the institutional practices described in Discipline and Punish); "rather than being the *element* or horizon within which the discursive practices take place, it seems that the nondiscursive practices are *elements* which discursive practices take up and transform. These external elements do not have productive powers of their own whereby they can contribute to the

practice",[7] we could say that the *rules* of legal discourse, its procedures for determining the sayable within the courtroom, should be re-interpreted as discursive *strategies* selectively employed by judges and lawyers according to the practical exigencies of a given situation. The following excerpt from the testimony of a university professor is an illustration of how a speaker from a dominant position in the social space can appropriate some of the discourse privileges normally only accorded to juridical agents:

> CROWN: Q. Can you describe for us the events that occurred on the evening in question?
>
> WITNESS: A. Well, I was with a colleague of mine. We left Huron College and were planning on eating a meal at the S. Restaurant. Well, we ordered the meal, and I left to go to the G. Variety down the street; I forget what I wanted there. I opened the door and walked into some sort of scuffle between what I assumed was the owner of the store -- ah, an elderly gentleman, and a youth. I can remember very clearly what I saw because it was such a strange scene, the youth hitting and yelling obscenities at the owner, and the owner trying to restrain him. I must admit, the scuffle looked a bit absurd to me at the time, this old man struggling with the boy, and I believe I suggested that the two should stop this and go home. They seemed to calm down a bit and moved outside, but then the scuffle started up again, and I think... ah, yes, I think the boy tried to kick the old man. Ah...he was quite nimble, though, and managed to dodge the blow. At that point, I'd had enough and went back to the restaurant to call the police.
>
> Q. Why did you try to tell them to go home?
>
> A. Well, I don't know, the whole thing was so absurd...
>
> Q. And was anything being said at all during this incident?
>
> A. Yes, some verbal comments. The owner was yelling that he was going to call the police, and I believe the boy said something to the effect that the owner was crazy. It was not a very good night, altogether, and I must admit, when I found out this

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introduction of new objects, concepts, and strategies, nor do they just perturb in a random way what is being said" (77). In his later "genealogical" work, beginning with Discipline and Punish, Foucault allowed for reciprocal relations between discursive and non-discursive practices.

[7]Bourdieu's theory of practice attempts to provide an account of social action that bypasses epistemological debates between subjectivist (i.e. phenomenological) and objectivist (i.e. structuralist) theories of practice. Essentially, Bourdieu argues for a "fuzzy logic" of practice that is never deterministic but is nevertheless structured. As he notes in The Logic of Practice, practices are defined by "the uncertainty and 'fuzziness' resulting from the fact that they have as their principle not a set of conscious, constant rules, but practical schemes, opaque to their possessors, varying according to the logic of the situation" (Bourdieu 1990b: 12)

morning what this was all about... the theft of a Jolly Rancher candy bar, what was it? ...I thought the whole thing and me being brought here was even more absurd.

COURT: Q. [laughter] If I can interrupt, I have a question too. Did you ever manage to finish your dinner?

A. It was cold.

(Reconstructed from field notes)

The most obvious feature of this excerpt is that the witness is allowed to speak at length, without interruption by the crown attorney; most witnesses, especially youth witnesses, are interrupted after several sentences. Another important feature is the joking relationship that is quickly established between the witness and the crown attorney and judge. Indeed, the witness is allowed to engage in behaviour that might lead witnesses with less linguistic capital to be charged with contempt of court; it is difficult to imagine a youth witness getting away with calling a trial "absurd". Perhaps because of a perceived homology between the witness's and the juridical agents' positions in the social space, the "rules" of legal discourse in this excerpt are bent in the witness's favour.

Rhetorics of Deference and Degradation

With the theoretical shift from discursive rules to strategies, it becomes necessary to outline some of the unconscious strategies used by youth and juridical agents to negotiate discourse positions in juvenile court sessions. This shift, however, may seem paradoxical to some readers. How can one speak of an "unconscious strategy"? Does not the use of a "strategy" imply conscious control over one's actions?

For Bourdieu, strategies are frequently unconscious insofar as they are generated by an agent's *habitus*. As a general rule, agents in the social field are always struggling against other agents to increase the relative value of their cultural and educational capital

and to defend that capital from easy appropriation by "outsiders." This antagonistic struggle encourages "strategies" of accumulation and distinction. At this point, Bourdieu's theory of practice seems to approach Rational Action Theory, which claims that agents always act rationally toward explicit social ends. Many sociologists have misread Bourdieu in this way. However, as Loïc Wacquant explains, Bourdieu's theory of practice differs from Rational Action Theory in its claim that these strategies are frequently either unconscious to agents or shielded from them through a kind of social "bad faith" that enables agents to appear "disinterested" or "neutral" in their pursuit of social prestige. Those who read Bourdieu as providing a contribution to Rational Action Theory "inject into the concept of strategy the ideas of intentionality and conscious aiming, thereby transposing action *congruent* with, and potentially *actuated by* certain "interests" into conduct rationally organized and deliberately directed toward certain clearly perceived goals" (Bourdieu and Wacquant 1992, italics in original). Hence, social strategies operate, as Bourdieu puts it, neither as rational conduct oriented towards explicit ends, nor as wholly unconscious structures rigidly determining action, but rather as a series of opaque "practical schemes" (Bourdieu 1990b: 12) actuated by the *habitus*. Bourdieu often uses a game analogy to explain this point. A professional soccer player does not rationally think about how she should strategically orient her foot in order to kick the ball into the net; this knowledge has become almost instinctual, integrated into her bodily *hexis* through lengthy and rigorous body training. The soccer player employs strategies, but she does not consciously articulate them. If she did so, her game would probably suffer as a result.

In order to understand the different, strictly discursive strategies employed by both youth and juridical agents in juvenile court, I would like to enrich Bourdieu's theory of practice by integrating it with Kenneth Burke's account of a rhetoric of courtship operating in all inter-class discursive encounters. After a general account of Burke's theory, I will attempt to isolate two typical rhetorical strategies used in juvenile court — first, a rhetoric of deference often used by youth to appeal to juridical agents by deferring to their greater discursive authority, and second, a rhetoric of degradation used by juridical agents to reify young offender identities. The second of these two strategies, the rhetoric of degradation, whether it "works" or not in inducing self-contempt in the youth toward whom it is directed, is generally a "safe" strategy for juridical agents. Youths' rhetoric of deference, on the other hand, is a dangerous strategy that often backfires upon youth; although a show of deference often works to the advantage of dominated individuals such as youth, it must be handled extremely skilfully in a court of law and can often lead to the discrediting of dominated witness testimony by making them appear uncertain rather than humble. Alternately, a rhetoric of deference can be highly successful is a youth is unconsciously or consciously not trying to "win" his or her case (in the case study in chapter three, for example, the youth witness begins to use strategies of deference to save face once it is apparent that his testimony has already been discredited). Throughout this account of youth rhetoric, it should be remembered that although youth discourse is specifically the object of this study, I cannot claim to have identified a rhetoric specific to youth. Like Lakoff's account of supposedly feminine "powerless speech," the identifying features of this rhetoric will probably be found in many formal speech

situations between agents separated by a vast hierarchical difference. Also, I cannot claim that this rhetoric of deference is used by youth in all interactions with adults. The rhetoric is probably absent from many (although not all) parent-youth interactions and other informal speech situations. However, this rhetoric does appear to be commonly used by youth in court and possibly other formal speech encounters.

Rhetoric, as defined by Kenneth Burke in A Rhetoric of Motives, is the necessarily persuasive component of any utterance or action. This persuasive function of all discourse always tends towards the *identification* of two dissimilar beings. In A Rhetoric of Motives, Burke elaborates this key concept as follows:

> A is not identical with his colleague, B. But insofar as their interests are joined, A is *identified* with B. Or he may *identify himself* with B even when their interests are not joined, if he assumes that they are, or is persuaded to believe so.
>
> Here are ambiguities of substance. In being identified with B, A is "substantially one" with a person other than himself. Yet at the same time he remains unique, an individual locus of motives. Thus he is both joined and separate, at once a distinct substance and consubstantial with another. (20-21)

Identification is thus the process whereby originally alienated individuals can attempt to cohere into relatively stable groups. In particular, Burke is concerned with the way in which individuals separated by socially defined hierarchical differences of age, class, race, or gender, can communicate and persuade each other across the cultural differences that divide them. Like the strategies that social agents employ to preserve their cultural capital in Bourdieu's theory of practice, processes of identification are not necessarily conscious, rational activities; "the rhetorical motive, through the resources of identification, can operate without conscious direction by any particular agent" (35).

If identification were the sole component of rhetoric, then all social encounters would tend toward agreement and reconciliation. However, according to Burke, to focus exclusively upon identificatory rhetoric, as has typically been the case in rhetorical studies, including Classical Rhetoric, is to ignore processes of *division* that he claims are equiprimordial with identification:

> In pure identification there would be no strife. Likewise, there would be no strife in absolute separateness, since opponents can join battle only through a mediatory ground that makes their communication possible, thus providing the first condition necessary for their interchange of blows. But put identification and division ambiguously together, so that you cannot know for certain just where one ends and the other begins, and you have the characteristic invitation to rhetoric. (Burke 1950: 25)

Processes of identification and division continuously unite and divide any social entity as different social groupings merge and dissolve according to the rhetorical exigencies of a given moment.

As Barbara Biesecker (1997) notes in her Derridean reading of Burke, this distinction between identification and division is not a dialectical one; rather, identification and division exist in a supplemental relationship; each contaminates the other. Biesecker discovers the possibility of this Derridean reading of A Rhetoric of Motives in a section of the text entitled "Pure Persuasion." Here, Burke radicalizes a proposition put forth early in the book that any act of identification that brings together individuals or groups always simultaneously produces division between them. "Pure persuasion" is this trace of division that any act of identification harbors within itself. It manifests itself as an internal, self-interference within identification, as the rhetorician frustrates his or her own rhetorical efforts in order to make rhetoric perpetual. Burke describes this process as follows:

> ...the indication of pure persuasion in any activity is in an element of "standoffishness," or perhaps better, self-interference, as judged by the tests of acquisition. Thus, while not essentially sacrificial, it looks sacrificial when matched against the acquisitive. Pure persuasion involves the saying of something, not for an extra-verbal advantage to be got by the saying, but because of a satisfaction intrinsic to the saying. It summons because it likes the feel of a summons. (269)

In other words, the self-interference of "pure persuasion" leads to the incompletion of identification; rhetoric always frustrates itself in order to revel in persuasion for its own sake. As such, rhetoric simultaneously binds together a social grouping and prevents that grouping's collapse into immanence or communion.[8]

How might Burke's theory of rhetoric be employed in a micro-level study of juvenile court discourse? First, I would like to point to a kinship that exists between Burke's descriptions of identification and division and Pierre Bourdieu's account of inter-class dynamics in texts such as Distinction and the essays collected in Language and Symbolic Power. For Bourdieu, the social space is largely defined by the perpetual struggles carried out between different agents within and between classes for the legitimation of their respective quantities and distributions of economic, cultural, and

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[8]Biesecker describes Burke's A Rhetoric of Motives as an "ontology of the social." Rather than a mere analysis of how societies cohere or split apart through the use of rhetoric, Burke would therefore be outlining the conditions of possibility for such cohesion and separation. Burke's text can therefore be read as prefiguring more recent ontological approaches to the question of community such as Jean-Luc Nancy's The Inoperative Community. Indeed, Burke's twin notions of identification/division could be compared to Nancy's key concept of "partage," simultaneously the sharing and the sharing out of being-in-common; "singular beings are themselves constituted by sharing, they are distributed and placed, or rather *spaced*, by the sharing that makes them *others*: other for one another, and other, infinitely other for the Subject of their fusion, which is engulfed in the sharing, in the ecstasy of the sharing: 'communicating' by not 'communing.'" (Nancy 1991: 25).

symbolic capital. For Bourdieu as for Burke, then, the social space is originally atomized into individuals who tend to cluster into recognizable groups based upon shared dispositions (what Burke would call common "properties" and Bourdieu would call symmetrical "habitus"). Bourdieu's descriptions of the kinds of strategies of distinction used by agents in these groups to legitimate their class dispositions frequently unfolds along lines similar to those traced by Burke's theory of rhetoric. For example, dominated class attitudes towards class tastes tend to involve mutually imbricated processes of identification and division that often produce a complicated, "split" consciousness among dominated agents. The dominated class, according to Bourdieu's study, generally assert their class tastes as "their own" and reject dominant class tastes with distrust and hostility. Hence, the most dominated are careful to divide their class dispositions from those legitimated as dominant, generally asserting only those values and tastes that are objectively accessible to them according to the logic of a "choice of the necessary." However, this very affirmation of dominated class tastes involves a simultaneous recognition of the superior value of dominant class tastes. Dominated agents, according to Bourdieu, do not have a coherent set of "counter-cultural" values and tastes that they can oppose to those values and tastes objectively valorized in the common market of tastes. Their class tastes are always defined in opposition to dominant tastes, but this opposition always includes a tacit recognition that dominated tastes are considered objectively inferior in the total social field.[9] Hence, dominated agents' assertions of

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[9]In Language and Symbolic Power, for example, Bourdieu argues that "popular culture" does not, strictly speaking, exist as an independent entity: "...the notion of 'popular speech', like all the sayings from the same family ('popular culture', 'popular

division from dominant class tastes involve a simultaneous identification with these tastes. For example, a common platitude recorded by Bourdieu in his study of working-class reactions to elite art was "that's fine for some, but not for the likes of us" (Bourdieu 1984: 379). The proletariat reaction to the products of the dominant class is thus one of self-exclusion from supposedly universal tastes.

Second, I would like to argue that the mutually-imbricated processes of identification and division described by Burke are at play in the rhetoric juridical agents use to influence youth as well as the rhetoric juveniles use to try to present themselves as "appropriately repentant young offenders" to the court. Specifically, I would like to pick up a concept used by Burke to describe rhetoric across extreme social differences -- what he calls a "rhetoric of courtship" -- which generally manifests itself through the exhibition of self-restraint or embarrassment. Such a rhetoric, according to Burke, is typically associated with persuasion between sexually differentiated beings. However, Burke argues that many of the features of this sexual rhetoric are common to all discourse between social beings separated by any significant hierarchy (such as that between adults and youth):

> By the "principle of courtship" in rhetoric we mean the use of suasive devices for the transcending of social estrangement. There is the "mystery" of courtship when "different kinds of beings" communicate with each other. Thus we look upon any embarrassment or self-imposed restraint as the sign of such "mystery." (208)

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art', 'popular religion', etc.), is defined only in relational terms, as the set of things which are excluded from the legitimate language by, among other things, the durable effect of inculcation and imposition together with the sanction implemented by the educational system" (90).

Burke's notions of identification, division, and the "rhetoric of courtship," combined with Bourdieu's descriptions of dominated habitus, should allow us to describe how communication takes place within a hierarchically divided social space. From the perspective of the dominant agents of this social space, Burke's rhetoric of courtship manifests itself in what Pierre Bourdieu describes in Language and Symbolic Power as "strategies of condescension." In order to clarify what he means by this concept, Bourdieu provides the following example:

> ...a French-language newspaper published in Béarn (a province of south-west France) wrote of the mayor of Pau who, in the course of a ceremony in the honour of a Béarnais poet, had addressed the assembled company in Béarnais: 'The audience was greatly moved by this thoughtful gesture'. (68)

Bourdieu questions why such a gesture, which would be inappropriate for a dominated Béarnais speaker in the same situation, would have a positive impact upon the mayor's audience. He argues that the mayor is shielded by his greater share of symbolic power, which allows him to appeal to his audience by safely transgressing the unwritten rule that only French should be spoken at official functions. Hence, "the strategy of condescension consists in deriving *profit* from the objective relation of power between the languages that confront one another in practice . . . in the very act of symbolically negating that relation, namely, the hierarchy of the languages and of those who speak them" (ibid). Through this kind of strategy, to use Burke's terminology, the dominant speaker *identifies* with his listeners by speaking their language. At the same time, this act of identification harbors within itself a simultaneous division between speaker and listeners; the act of identification can only succeed if both the audience and the mayor are aware of the

objective differences between them. Ironically, only the mayor in this situation is socially mandated to speak Béarnais at an official function; by doing so, he separates himself from his audience in the very act of appealing to them.

In courtroom discourse, such strategies of condescension are frequently used by juridical agents, particularly judges. In order to appeal to youths, particularly very young or first time offenders, judges frequently set aside the legal jargon they may have used in the course of sentencing proceedings in order to address youth directly in "plain English." These addresses are often marked by awkward efforts to replicate what the judges perceive to be "youth slang." For example, in the following excerpt, reconstructed from my field notes, a juvenile court judge attempts to appeal to a youth who was quoted by his probation officer in his pre-disposition report as saying that his current trouble with the court system was "all a joke" and that he would only receive "a slap on the wrist":

> JUDGE: Usually, when I get kids like you in here who take things lightly and don't think much of their offences, I like to give them a few days of secure custody to teach them that I mean business. This is not "a joke," and you will get much more than a "slap on the wrist" if you keep up with that kind of attitude.
>
> (Reconstructed from field notes)

At other times, judges will transgress the etiquette of juridical discourse more blatantly in order to appeal to youth and especially their parents by temporarily dispelling the seriousness of the judicial ritual. In the following reconstructed excerpt, a youth court judge makes light of a youth's concern about the federal drug charges that have been levied against him. The judge is particularly eager to make light of the charge given that the hashish oil in question was only discovered by the police during an arrest for a crime for which the youth had just been acquitted by the same judge:

FEDERAL ATTORNEY: ...when the accused was apprehended, the youth was found to be in possession of a vial containing approximately half a gram of hashish oil, street value estimated at $20.

JUDGE [in a sarcastic, sing-song voice]: [name of accused], you have been charged with possession of a banned substance under the Criminal Code of Canada. How do you plead?

[The accused whispers to his attorney, appearing distressed.]

DEFENCE: Your honour, my client disputes the federal attorney's estimate of the value of the oil.

JUDGE: Yes, well, the feds always seem to think that the stuff's worth more than the kids do. How do you plead?

ACCUSED: Guilty.

(Reconstructed from field notes)

For youth, however, the use of a rhetoric of courtship to appeal to juridical agents is much more complex. This complexity no doubt arises from the fact that youth often find it objectively impossible to replicate formal juridical discourse; hence, they cannot appeal to judges and lawyers through a simple mimicking of their language. Indeed, even if such an appropriation of legal language were possible, any successful attempt to do so on the part of a youth would probably be seen as a challenge to juridical authority. This leaves youth with two discursive strategies. First, youth can adopt a strategy that William Labov (1972) calls "hypercorrection." This strategy involves "the misapplication of imperfectly learned rules of grammar, incorrect use of grammar, and overly precise pronunciation" (O' Barr 1982). This speech pattern typically emerges when dominated speakers can recognize a dominant speech genre but lack the capacity to replicate it. Hypercorrection results when such speakers attempt to appropriate this language anyhow. They succeed only in reproducing some of the formal features of a dominant style and thus sound "unnatural" and "bookish." They are unable to reproduce the "natural" ease with which dominant speakers produce formal discourse; such an ease of use, which manifests itself in a largely unconscious knowledge of when to appropriately bend the rules of

formal discourse to suit particular situations, can only be achieved through a long-standing familiarity with formal language and situations. In other words, proficiency in the use of formal language tends to be associated with a dominant linguistic *habitus*.

Hypercorrect speech is probably more common among dominated adults than youth and was rarely used by the youth studied in this project. This is probably because most dominated youths' ability to replicate formal speech is inferior to that of dominated adults. As a result, they are more aware of the distance that separates their linguistic products from the linguistic product that would be rewarded within a formal speech situation. When youth do use a hypercorrect style in testimony, they sometimes do so out of a desire to antagonize their interrogators. Alternately, they sometimes use this strategy out of frustration with their own inability to satisfy examining or cross-examining lawyers with their responses. For example, in the following excerpt from the official transcript discussed in more detail in the next chapter, a youth witness attempts to incorporate fragments of legal discourse into his speech:

> CROWN: Q. I want you to think back to December 16th of 1996. I understand that you were in custody at that time; is that right?
>
> A. Yes, I was.
>
> Q. If I could just get you to keep your voice up nice and loud. And what's the reason that you were in custody at that time?
>
> A. I was an *escape custody from an open custody* -- like I was *on the run from an open custody facility.*
>
> Q. All right. So were you awaiting trial or serving a sentence or how you --
>
> A. I was *serving a sentence for the escape and the open custody.*
>
> (Cited from official transcript, italics added)

In this example, the youth witness attempts to define his legal status at the time of the events described in his testimony by borrowing and piecing together fragments of legal discourse he has undoubtedly heard uttered in previous sentencings. Hence, he describes

himself as "an escape custody from an open custody" and then clarifies this by adding that he was "serving a sentence for the escape and the open custody," reiterating the legal terminology without using it in its proper grammatical context.

More frequently, however, youth tend to adopt an evasive "rhetoric of deference" in order to simultaneously identify with and separate themselves from hostile figures of authority. First, such a rhetoric attempts to appeal to the figure of authority through an implicit recognition that the figure of authority's discourse is to be privileged over that of the youth's and that any effort to resist this discourse by offering a counter-discourse will likely end in failure. Hence, youth testimony tends to avoid extensive negation of lawyers' utterances, leading one lawyer to explain to me that "youth are poor liars." When their testimony is contested in cross-examination, many youth are thus reticent, even when they appear to be telling the truth. In the following reconstructed excerpt, for example, a youth is being cross-examined for the theft of an automobile for which he was later found innocent. The youth makes several ambiguous replies and inserts a potentially incriminating pause before one of his responses to the crown attorney:

> CROWN: Q. When you first saw the car, didn't you think it was stolen?
> WITNESS: A. I guess I didn't really think about it.
> Q. Didn't it look dumped?
> A. I guess so.
> Q. Did you talk about the car at all with Stu?
> A. No. We just talked about pushing it out of the way.
> Q. Did you steal the motor vehicle?
> A. [pause] No.
> Q. Did [name of second defence witness] steal it?
> A. No.
>
> (Reconstructed from field notes)

However, this type of rhetorical appeal to the authority of the adult implies a simultaneous recognition that the youth is probably incapable of producing the discourse

that the figure of authority wishes to hear. The user of this rhetoric thus wishes to appeal to or identify with the figure of authority through making a show of deference to him or her. This type of identification thus harbors within itself an element of division or pure persuasion; the use of this rhetoric simultaneously distances the youth from the figure of authority through a kind of passive resistance. Such rhetoric thus allows the youth to maintain a degree of freedom without either necessitating an aggressive struggle against a dominant speaker or risking offending him or her overtly. The rhetoric manifests itself in vague utterances that neither resist nor capitulate to the figure of authority. Such utterances effectively allow the figure of authority to make his or her own sense out of the youth's utterance. Meanwhile, the youth successfully denies the dominant speaker a coherent response. Hence the proliferation of "maybe"s and "I guess so"s in much youth testimony. Obviously, the use of this dual strategy of deference and evasion, while relatively successful in many encounters with figures of authority, generally fails youth when they attempt to import it into the courtroom; in the discourse expected of witnesses in the courtroom, hesitation and vacillation is hardly ever seen as anything other than an indication of insincerity or irreverence. However, this strategy can obviously also be said to "succeed" if the youth using a rhetoric of deference is actually attempting to be irreverent, particularly if some of his or her peers are present in the courtroom audience.[10]

Several examples of youths' use of a rhetoric of deference to put distance between

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[10]During the field work carried out for this study, I witnessed one male youth who appeared to be using this kind of strategy during his sentencing in order to impress a female offender who was handcuffed on the other side of the custody box. This was an interesting re-appropriation of the courtroom ritual for functionally different, although etymologically similar ("courtship") purposes.

themselves and their interlocutors in a court of law will be explored in the next chapter. I will limit myself here to offering a single example from the testimony analysed in that chapter:

> DEFENCE: Q. Now when you came back down that's when you started playing this punching game with your friends?
> WITNESS: A. Yeah.
> Q. And one of the persons you were punching was sitting curled up on the bed at the very back of the cell, wasn't he?
> A. He was sitting down, yeah.
> Q. He had his feet up on the bed?
> A. I don't recall.
> Q. And his arms up beside him?
> A. I'm not sure.
> Q. It could have been, you don't remember?
> A. Well he was sitting down, I know that.
> Q. All right. And you came up to him and hit him?
> A. Yes.
> Q. That's right?
> A. I was -- we were both hitting each other.
> Q. And the other guy was standing by the door during this time, wasn't he?
> A. I guess so.
> Q. Can't remember?
> A. I don't remember.
> Q. There's a little camera that looks into that cell, isn't there?
> A. I know.
> Q. So the little camera would show you coming up and hitting somebody, wouldn't it?
> A. Sure.
> Q. Somebody who's sitting on the bed with his arms up.
> A. Yes, maybe, whatever. I don't recall.
>
> (Cited from official transcript)

In this excerpt, the defence attorney is attempting to re-interpret the witness's account of the "shot to shot" game described previously in this chapter as an offence upon the witness's cell-mate. His strategy, as discussed in the next chapter, is to gradually insinuate that the "shot to shot" game was not a reciprocal activity. The witness's response to this strategy, as he begins to realize the lawyer's intent, is increasingly to retreat behind assertions that he can't remember the event; this enables him to avoid either agreeing with or entirely disputing the defence attorney. His final response ("Yes, maybe, whatever. I

don't recall.") is a typical example of deferential rhetoric; such a response simultaneously affirms the defence attorney's statement while non-confrontationally negating its importance or relevance to the case.

Juridical agents, of course, use their own rhetorical strategies to appeal to and distance themselves from the youth who appear before them. I have already discussed one of these strategies -- the use of strategies of condescension to appeal to youth by "speaking their own language"; another strategy frequently used by juridical agents is to verbally castigate youth through the use of a rhetoric of degradation. This type of degradational rhetoric is associated in most cultures with certain ritualistic discourse situations that Harold Garfinkel (1956) has called "status degradation ceremonies." Garfinkel defines a status degradation ceremony as "any communicative work between persons, whereby the public identity of an actor is transformed into something looked on as lower in the local scheme of social types" (420). Such ceremonies provide the affected actor with a total social identity based upon an interpretation of past events performed by that actor. In the sentencing of young offenders, for example, youths' previous criminal actions are interpreted, either as signifying that the youth is a chronic recidivist, or as demonstrating that the youth is a candidate for reform and reintegration. Once the youth is characterized as a chronic young offender, all of the youth's past and present actions will be interpreted in light of that characterization. As Garfinkel notes, this type of characterization is more than a mere substitution of identities; it involves a total reconfiguration of the actor's identity. "It is not that the old object has been overhauled; rather it is replaced by another. One declares, '*Now*, it was otherwise in the first place'"

(421).

In a court of law, the situation in our culture where ritual degradation typically takes place,[11] such ceremonies are typically effected through the use of specific ritualistic utterances. For example, delivering reasons for judgement, judges will make global assertion about a young offender's credibility as a witness, "in short, Mr. G. was not a credible witness" (cited from official transcript), or overall involvement in a criminal incident, "I find that G. was an aggressive, dangerous, abusive attacker" (ibid). At other times, this rhetoric is used more informally as an "added punishment" on top of an otherwise lenient sentence. In the following example, a rhetoric of degradation is used against both a young offender and his mother:

> Judge: So, after all of this, you're only paying a fine of fifty dollars for the theft of the candy bar.
>
> Mother of Witness [standing in audience]: If I may, your honour...
>
> Judge: Yes?
>
> Mother: I would just like to point out that in my opinion, I think my son shouldn't have to pay anything given the number of times we've been adjourned; I mean, it's been over a year that we've been coming here, and it's a big hassle for me for such a little thing.
>
> Judge: Well, what I find *disturbing* and what *disgusts* me about this case is that a fourteen year old boy should be *drunk* in the middle of the afternoon. I think that what this punishment should hopefully do is to make you reconsider the kind of control you should have over your son.
>
> Mother: I'm sorry.
>
> (Reconstructed from field notes)

This example demonstrates that status degradation ceremonies need not take on any particular, readily identifiable and reproducible linguistic form. Part of the power of status degradation ceremonies is that they can take on a multiplicity of different forms and can be

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[11]R. P. McDermott (1993) notes that these rituals are also common in schools. In her article, "The Acquisition of a Child by a Learning Disability," she looks at the systematic construction of children as learning disabled through the daily repetition of such ceremonies.

reiterated on a mundane level throughout the juridical field. "Authority," Bourdieu notes with regards to any speech act against linguists who attempt to locate the authority of speech acts within the structure of language itself, always "comes to language from outside" (Bourdieu 1991: 109). Status degradation ceremonies are effective, not because of any intrinsic power in the structure of their utterances, but rather because they are tied to the socially-recognized authority of the juvenile justice system. Hence, while it is possible to illustrate some of the typical forms these ceremonies take throughout the juvenile justice system, these forms will never exhaust the number of possible humiliation procedures.

Such a rhetoric, like all forms of rhetoric, involves mutually imbricated processes of identification and division. A rhetoric of degradation obviously distances the judge who utters it from the offender to whom it is directed by establishing the offender as an inferior social entity. However, judges also use this rhetoric to attempt to appeal to youth by evoking a sense of shame. This evocation is oriented toward inducing the youth to identify with the judge's ethical values. As Sartre famously observed in Being and Nothingness, shame constitutes our originary awareness of the existence of others; it discloses to us our existence as objects for another's gaze. Thus, even as shame establishes an unbridgeable abyss between myself and the other, it simultaneously forces a connection. To translate this into social terms, we might say that the shame of the dominated in a discourse situation calling for a dominant *habitus* involves the dominated's simultaneous recognition of the superior value attributed to dominant dispositions as well as the impossibility that the dominated will ever be able to acquire these dispositions.

Conclusion: Challenging the Boundaries

Both the criminological boundary examined in the previous chapter and the juridical boundary examined in this chapter are reiteratively produced in courtroom discourse. These linked processes of production draw strategic divisions between different agents in the courtroom -- between the young offender and the "normal" youth, between the juridical agent and the outsider, and between the dominant and the dominated witness. One of the purposes of this thesis is to interrogate all of these boundaries. This interrogation is not based upon the assumption that juridical institutions could avoid constructing social divisions; rather, such an interrogation attempts to open up the possibility of imagining how these divisions could be differently constructed, along different lines. The next chapter will clear the way for such an effort of re-imagination through a case study exploring how the rhetorical strategies described in the present chapter are used in a trial to reproduce both the criminological and the juridical boundary with the unknowing complicity of a youth witness. As we shall see, these strategies eventually cohere into a status degradation ceremony directed towards the youth; this ceremony silences an individual whom the juridical agents perceive to be a threat to the local juvenile justice system.

Chapter Three

Case Study One: Disciplining the Witness

> ...the more formal the market is, the more practically congruent with the norms of the legitimate language, the more it is dominated by the dominant, i.e., by the holders of the legitimate competence, authorized to speak with authority. (Bourdieu 1991, 69)

In the previous chapter, I described some of the challenges faced by almost all dominated speakers, including youth, in juridical situations calling for a dominant linguistic *habitus*. I also described some of the deferential strategies used by youth to negotiate an acceptable identity in a court of law as well as some of the strategies used by lawyers and judges to control the discourse of youth and shape youth identities. In this chapter, I will analyse a lengthy example of youth testimony in order to make clearer some of the abstract theoretical concerns discussed in the previous chapters. Specifically, I hope to show how a former young offender, subpoenaed to be a witness at an adult trial, is made to undergo a status degradation ceremony that punishes him for challenging the authority of the local juvenile justice system.

The following transcription was obtained from an ex-young offender's testimony at an adult trial in London, Ontario. The accused in this case was a guard responsible for youth in the holding cells of the London district courtroom. The complainant was the youth who testifies below, who charged the accused with assault after a violent altercation in the holding cells that resulted in several injuries to the complainant. This case is somewhat unusual since the complainant had already pled guilty to assault upon the accused based upon the same incident and had served a one-year secure custody

disposition before the trial began. For reasons that were not fully elucidated in the transcript, while the youth's plea and sentencing were dealt with right away, the guard's case took over a year to come to trial and was almost dismissed due to the crown attorney office's delay in processing the charge. In part, this delay may have been due to the fact that the crown attorney's office needed to bring in both a judge and prosecuting lawyer from another district so that the trial would not be biassed by their over-familiarity with the accused. However, the crown attorney's office may also have felt an aversion to taking up the case. As we shall see, this delay did not help the crown attorney's office better prepare for the trial; for example, the crown attorney in this case neglected to enquire into the literacy of her main witness. This neglect led to difficulties for the witness when he was unable to properly review his police statement before the trial and thus had problems remembering basic details about the conflict.

This transcript should be read in the context of an ongoing history of assaults and other civil rights violations committed against youth in custody or state care in Ontario. According to a recent (1998) government publication by the Office of Child and Family Service Advocacy (Voices from Within: Youth in Care Speak Out), which includes carefully collated excerpts from interviews with young offenders assaulted by youth care staff across Ontario, little is currently being done to address this problem. In part, the authors of this report argue that youth often do not complain to the Advocacy Office or other governmental bodies for fear of reprisals from staff at young offender or youth care facilities. However, many youth interviewed in the report also noted that their complaints were generally not listened to. As I hope to show in my reading of this adult trial

transcript, a series of systematic institutional and sociological boundaries make it impossible for many youth to successfully complain about perceived abuses in young offender facilities. Such youth are perceived as threats to the juvenile justice system, and juridical agents use various in-court defensive strategies to silence and humiliate them. The purpose of this reading, then, is not to come to a decision about the accused's innocence or guilt; I am neither competent nor authorized to comment upon the judge's final decision to acquit the guard based upon the evidence offered. Rather, the purpose of this reading is to show how the complainant in this case could never have successfully lodged a complaint against the accused, regardless of the specific content of his testimony.

The use of a court transcript in a discourse analysis project such as this one necessitates a brief discussion of some of the unstated conventions that govern the creation of verbatim records. Anne Graffam Walker (1986) notes that verbatim records are not, as their name implies, word-for-word transcriptions of what goes on in a court session. A truly verbatim record, such as the phonetic texts produced and analysed by most discourse analysts, would be incomprehensible and useless to most lawyers and judges. As a result, court reporters are forced to make strategic decisions about how to translate courtroom speech into writing. For example, they must decide how to represent concurrent speech and ungrammatical sentences. Significantly, one of the conventions almost universally employed by court reporters is to correct the grammar of lawyers, judges, and professional witnesses, while leaving the ungrammatical utterances of other

witnesses, especially dominated witnesses, intact.[1] The effect of this selective editing of court transcripts may be to lend an appearance of untrustworthiness to dominated witness testimony. The following testimony was transcribed by a court reporter, and so the convention of editing juridical agents' speech should be kept in mind when reading the selections excerpted below. Obviously, all names have been replaced by pseudonyms, and any information that could lead to the identification of any person involved in this case has been deleted. About half of the witness's testimony is excerpted below, periodically interrupted by comments explaining what is happening at the level of the semantic structure of the transcript. While it would be impossible carry out an exhaustive analysis of each sentence, I have tried to highlight some of the transcript's most important features. These excerpts and commentary should give the reader enough of a sense of the events of the trial and of the strategies used by both lawyers, the judge, and the youth.

Finally, I will offer a few words about the techniques used to read this text. While much of my reading will be interpretive, attempting to isolate some of the rhetorical strategies outlined in chapter two, I will also highlight some key grammatical features of the text by employing a functional grammar approach, using the terminology of M. A. K.

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[1]Walker cites the following passage from a once commonly used manual for court reporters in order to demonstrate that these kinds of choices are pervasive and frequently conscious: "No one will deny that such errors [false starts, bad grammar, and repetitions] on the part of lawyers should be corrected, and in the opinion of the writer it is entirely permissible that they be corrected in the testimony of well-educated or expert witnesses. [. . .] Another important thing to remember is that all judges and most if not all lawyers are men of education, and they will resent having attributed to them in stenographic reports ungrammatical and carelessly-phrased remarks. Witnesses often are illiterate, and as a rule they do not see the reports of their testimony. The average judge or lawyer is apt to consider a slightly edited report of his utterances a more faithful report than one which is photographically literal" (Budlong 1962, cited in Walker 1986).

Halliday's Introduction to Functional Grammar. Functional grammar, as Halliday uses the term, is quite simply a study of "how language is *used*" (xiii), rather than a study of the purely formal structure of language. Within this theoretical framework, language is always related to its context of use; language is never studied in isolation from concrete speech events. Roughly speaking, three different analyses of this type can be carried out upon each clause of a given sentence;[2] I will be selectively employing all three types of analysis throughout my reading of the transcript. First, a clause can be analysed with respect to its status as a message, as a quantum of information. With this type of analysis, most clauses can be divided into two constituent parts, a theme (the "given," already available information), and a rheme (the "new" information). For example:

Fig 3-1: Clause as Message

The vultures	had eaten their catch before sunrise.
Theme	Rheme

Second, a clause can be analysed with respect to its function as an exchange between a speaker and a listener. This type of analysis involves the division of clauses into components such as "mood" (the element of the sentence that indicates its inter-subjective status as offer, command, statement, or question, itself divided into subject and finite) and

[2]Hallliday also provides techniques for reading texts at levels below or above the level of the clause. Hence, a functional grammar approach to the study of language can be used to study both groups and phrases within the clause and cohesive links joining different clauses together (for a brief account of cohesion, see chapter two). In the interests of avoiding unnecessarily complex linguistic analyses of all parts of speech, these additional levels will be scarcely touched upon in this chapter.

"residue" (the remainder of the clause). For example:

Fig 3-2: Clause as Exchange

The vultures	had	eaten their catch before sunrise.
Subject	Finite	Residue
Mood	Mood	

Finally, a clause can be analysed with respect to its function as a representation of some process in human experience; this is the type of analysis that will most frequently be carried out in this reading. Such an analysis typically divides clauses into "process" (the action itself), "actor" (the active participant in the action), "goal" (the passive participant in the action), and "circumstance" (the circumstances in which the action is carried out). For example:

Fig 3-3: Clause as Representation

The vultures	had eaten	their catch	before sunrise.
Actor	Process: Material	Goal	Circumstance

This brief description of the three, most basic types of analysis that can be carried out within a functional grammar framework does no justice whatsoever to the subtlety and complexity of Halliday's method. Nevertheless, it should provide the reader with a rough idea of the linguistic terminology used in the following reading.

The Crown Attorney's Witness

After an initial decision by the judge to go ahead with the trial despite the crown

attorney office's delay in processing the charges against the accused, the trial begins with standard procedural wrangling between the crown attorney and defence attorney over the number of witnesses to be called, etc. The accused enters a plea of not guilty; the judge orders that all witnesses other than police officers and security officers be excluded from the courtroom; and the crown attorney calls her first witness to the stand. Immediately, that witness's identity as a former young offender is highlighted by the court clerk. Throughout the trial, this identity will be recalled by both the defence attorney and the judge as an integral factor in deciding upon the credibility of the youth's testimony:

THE COURT: Your first witness, please, Ms. Lee?
CROWN: Marvin G., please.
CLERK OF THE COURT: Is that witness in custody?
CROWN: He's not in custody, no.
THE COURT: I'm going to ask each witness a question first, all right, madam clerk. Hello there.
THE WITNESS: Hi.
THE COURT: Will you take an oath on the Bible or do you prefer some other form of oath?
A. I'll take the oath on the Bible.
MARVIN G.: SWORN

The examination begins with several requests for contextual information by the crown attorney. Most of these requests have been transformed through the use of various polite forms of modality (i.e., "how old are you?" is transformed into "Mr. G., will you tell us how old you are please.") These transformations are essential in establishing the discourse roles that will be played by both crown attorney and witness throughout the examination (the crown attorney asks questions that the witness answers); perhaps because this kind of asymmetrical distribution of discourse roles is uncommon in everyday speech, the crown attorney must begin at a level of politeness that would be expected of an interlocutor requesting personal information in a "normal" conversation. As we shall

soon see, the polite modality is quickly dropped, and the crown attorney begins to adopt a more explicitly interrogative role as the examination proceeds. The crown attorney also establishes her role as interrogator by asking questions intended to elicit brief, to the point responses. This is typically done through the use of statements followed by question tags (i.e., she asks "I understand that you were in custody at that time; is that right?" instead of "what were you doing on December 16th of 1996?"). Only later (starting at line 47, below) will she move into the type of open-ended questions that crown attorneys tend to ask dominant witnesses (i.e., "Can you tell us about that, please.") At this point, however, the witness's role in the interrogation has already been established, and he continues to respond with relatively brief statements. This initial use of directed questions thus contributes to the fragmentation of the witness's testimony that, as O'Barr (1982) notes, tends to diminish a witness's credibility in the eyes of juridical agents:

EXAMINATION IN-CHIEF BY CROWN

CROWN: Q. Mr. G., will you tell us how old you are please.

A. Nineteen

15 Q. I want you to think back to December 16th of 1996. I understand that you were in custody at that time; is that right?

A. Yes, I was.

The crown attorney now begins to ask questions that require more than monosyllabic responses or yes/no answers. These questions are still intended to elicit brief responses; nevertheless, the witness runs into difficulties. In a futile effort to assert his linguistic competence in a court of law, the witness attempts to incorporate fragments of juridical discourse into his speech. However, this discourse sounds strange and ungrammatical coming from the witness's mouth; for example, he refers to himself as "serving a sentence for the escape and the open custody." His efforts to produce the kind

of discourse he thinks is expected of him thus results in a strange creolization of juridical discourse.[3] This strategy also back-fires in that he ends up reifying his identity as a former young offender; he refers to himself at first as "an escape custody from an open custody," transforming a material process representing his activities at the time of the incident into a self-classificatory relational.

The witness is also experiencing memory problems (in part due to the lengthy gap between the incident and the trial) and problems being heard in the courtroom. At various points throughout the trial, the lawyers, judge, and court reporter must therefore interrupt his testimony by asking him to speak up, further fragmenting his testimony. Later, the witness explains that he has a cold and is having difficulty speaking loudly. In part, however, his quietness might be attributed to a feeling of unease in speaking in a discourse situation in which he is perceived by all other participants as a threat to the local juvenile justice system. This feeling of unease may express itself in the use of a rhetoric of deference (see chapter two); through his quietness, the witness may be engaged in an unconscious strategy of self-effacement:

CROWN: Q. If I could just get you to keep your voice up nice and loud. And what's the reason that you were in custody at that time?
A. I was an escape custody from an open custody -- like I was on the run from an open custody facility.
Q. All right. So were you awaiting trial or serving a sentence or how you --
A. I was serving a sentence for the escape and the open custody.
Q. And do you remember how long your sentence was?
A. I don't recall, no.
Q. And I understand at that time while you were in custody you were brought to this building for some reason; is that correct?

---

[3]Bourdieu has noted a similar "creolization" of dominant discourse in French university students' efforts to assimilate academic terms into their papers and exams (see especially Bourdieu et. al. 1994).

A. Yes.
Q. Why is it that you came to the courthouse?
A. I'm not too sure about that either. Lack of memory about that.
THE REPORTER: You'll have to speak up, please.
A. Lack of memory about that.
THE COURT: Lack of memory about that. Try to keep your voice up, okay, so everyone can hear you. Thank you.

The crown attorney and witness have now settled into their respective discourse roles. The crown attorney is thus able to drop the polite modality from her questions and imperatives, retaining only the occasional "please.":

CROWN: Q. And when you came to the courthouse, I take it, that you were in custody here in the courthouse cells; is that correct?
A. Yes.
Q. And how many other people were in your cell with you?
A. Two, I believe.
Q. Do you remember what their names were?
A. I can remember one of them right now, he's Richard M.
Q. Richard M?
A. Yes. And another guy's name I don't remember.

The crown attorney has also now established the context of the events in question (this context will later be reestablished and reinterpreted by the defence attorney) and is ready to begin eliciting a sequential narrative of how the incident itself unfolded. She begins by asking a general question that leaves the role of the witness in the event indeterminate; "something happened while you were in the cells . . . " The witness is specified neither as actor ("you did something . . . ") nor as goal ("something happened to you"). Instead, he is grammatically placed among the circumstances of the process described in the sentence, as is shown in figure 3-4:

Fig 3-4: Non-Participatory Representation of the Incident

<table>
<tr><td>I</td><td>understand</td><td>that</td><td>something</td><td>happened</td><td>while</td><td>you</td><td>were</td><td>in the cells...</td></tr>
<tr><td>Actor</td><td>Process: Mental</td><td></td><td></td><td></td><td></td><td>Actor</td><td>Process: Existential</td><td>Circumstance</td></tr>
<tr><td></td><td></td><td></td><td>Actor</td><td>Process: Material</td><td colspan="5">Circumstance</td></tr>
<tr><td></td><td></td><td colspan="7">Phenomenon: Fact</td></tr>
</table>

The witness is thus initially represented as a nonparticipant, merely playing the role of a third person observer. Specifications of the witness as either actor or goal should be noted throughout this transcript; in the end, much of the witness' testimony turns around the question of whether he was principally the actor in the assault ("the witness assaulted the guard") or goal ("the guard assaulted the witness"). Hence, all clauses describing actions committed by or upon the accused during the assault itself will be marked in bold as either "A" or "G" depending upon the role played by the witness:

CROWN: Q. I understand that something happened while you were in the cells in this building; is that right?
A. Yes.
Q. Can you tell us about that, please.

The crown attorney's opening question is followed by the youth's explanation of the "shot to shot" game already analysed in chapter two:

A. I was in the cells and me and Richard M. another guy in the cell, we were playing a shot game, punching, you know.
CROWN: Q. You were playing the what game?
A. A shot — like a punch for punch game kinda thing just to pass time because we were bored.
Q. How do you play that game?
A. You just hit each other in the arm and whoever gives us first gives up.
THE COURT: And what do you call it, a shot to shot game?
A. Yeah, shot, shot to shot.

CROWN: Q. And the third inmate in your cell, was he playing that game too?
A. I don't remember. I don't remember.
Q. You don't remember? What happened while you were playing the shot to
60 shot game?

The witness responds to this question by referring to himself exclusively as the goal of the actions carried out by the holding cell guard. He also does not construct himself as the theme of his own utterances; this function is fulfilled exclusively by the guard. The guard's initial construction as both actor and theme of the witness's utterances can be seen in the following example:

Fig 3-5: Representation of Accused as Theme and Actor

a) Thematic Analysis:

He	handcuffed me in the hallway.
Theme	Rheme

b) Representational Analysis:

He	handcuffed	me	in the hallway.
Actor	Process: Material	Goal	Circumstance

The crown attorney follows the witness's lead in attributing both functions to the guard. This attribution of roles is undoubtedly typical of discourse produced by and surrounding individuals who reside largely in institutions, in which the ideal inmate is one who passively abides by the institution's rules:

A. Well the officer came to the cell and escorted me out of the cell (G) and then they handcuffed me in the hallway (G) and put me back in the cell (G).
CROWN: Q. The officer who came to your cell and escorted you out (G), is that person in court today?
65 A. Yes.
Q. Could you point to that person for me, please.

THE COURT: Pointing to Robert Q. Gray who answered to this charge.
CROWN: Q. You said that he escorted you out of this cell (G) and then he did what?
A. He handcuffed me in the hallway (G).
Q. Handcuffed you in the front or the back (G)?
A. The back.
Q. And then what happened?

The crown attorney also begins to pick up on the witness's use of exophoric references (see chapter two); in line 62, the witness uses "they," when only one guard has so far been specified. When the witness does this again, the crown attorney tries to ask for clarification:

A. Then they put me back in my cell (G) and they asked for me to move out of the way (G) so the other cell — my cell partner, Richard M., to exit the cell.
CROWN: Q. Now you said that they asked you to move (G). Who is the "they" that you're referring to?
A. The officer in the courtroom.
THE COURT: Pointing to Mr. Gray.
CROWN: Q. And somebody else?
A. Pardon me?
Q. You said "they", was somebody else with him?
A. There was another guard there, but I don't recall his name.
Q. Okay. So what happened when they asked you to move (G) so they could get Mr. M. out?

So far in the testimony, the witness has referred to himself solely as the goal of actions carried out by the guard. In the next excerpt, the witness begins to refer to himself as actor in the incidents rather than as goal, as in the sentence "I refused." This shift is crucial, in that it will eventually enable the defence attorney to represent the witness as the initiator of the conflict between the witness and guard; this is the point in the witness' narrative in which he first steps outside of his institutionally acceptable role as passive object of penal practice. Perhaps taken aback by this shift in the witness's narrative, the crown attorney demands an explanation for the witness's actions ("why did you do that?"). This is only one of three questions during the crown attorney's examination that

begins with "why." One of the other three is a question requesting factual information (line 29 - "Why is it that you came to the courthouse?"). The last why-question, on line 109, is identical to the why-question on line 87 in that it is a request for explanation following a sudden shift to a representation of the witness as actor in the incident. Throughout the rest of the testimony, the crown attorney merely elicits facts, without considering motive. Note also that the witness once again uses an exophoric reference on line 92, which is immediately picked up by the attorney:

A. I refused (A).
CROWN: Q. Why did you do that (A)?
A. Because I didn't see no reason (A) for us to get removed from the cell (G).
Q. How did you refuse (A)?
A. I just didn't move (A) and I told 'em I wasn't moving (A).
Q. And then what happened?
A. He came in and he shoved me in the back onto the steel bed in the cell (G).
Q. Who did that?
A. Mr. Robert Gray.
Q. How did he shove you (G)?
A. With both hands to the chest area and he forced me down onto the bed (G).
Q. How did you land on the bed (G)?
A. On my back.
Q. Now when that happened were there any other inmates in the cell at the time?

Perhaps sensing that his testimony is not being well-received, the witness makes a few fumbling attempts at hyper-correction (i.e., "I believe so . . . "). Line 106 also marks the first point at which the witness is unable to reconstruct the precise sequence of events as they unfolded during the incident; he cannot say for certain whether his fellow cell-mates were removed before, during, or after the time he was shoved onto the bed in his cell. This problem grows as the witness continues his narrative. In part, this inability may be due to the time that has elapsed between the event and the present; also, most witnesses would have difficulty recounting the sequence of peripheral events in the midst of a

traumatic physical conflict. However, the witness may also have more general difficulties constructing the kind of abstract, representational narrative required in witness testimony (required, indeed, in almost all discursive encounters in our culture between hierarchically differentiated individuals within an institutional setting):

> A. I believe so, but they — the other guard exit them — those other two from the cell when they shoved me back (G). I believe so. I wasn't paying attention to what they were doing.
>
> CROWN: Q. Can you tell us whether they were escorted out (G) before or after
> 105 or during the time that you were shoved (G)?
>
> A. I'm not — I'm not too sure. I think afterwards.

In the next excerpt, the witness again begins to represent himself as actor rather than as goal in the events he is trying to describe. The crown attorney responds to this shift by again asking for an explanation; "why did you do that?" When the witness responds, "'Cause I was defending myself," the crown attorney takes up the witness's utterance and frames it as wholly relative to his point of view; hence, in line 111, she asks, "can you tell us why you think you were defending yourself?" This question transforms a physical process ("you were defending yourself") into a mental process ("you think you were defending yourself"). The question thus subtly insinuates that the witness may not be a reliable source of evidence, a tactic generally associated with cross-examination rather than examination of one's own witness. The witness responds by attempting to move back toward a representation of himself as goal of the guard's actions; in line 113, he attempts to clarify that his own participation in the assault was purely reactive:

> CROWN: Q. What happened then after you were pushed onto the bed (G)?
>
> A. I stood on the bed (A) and I kicked Mr. Gray in the chest area (A).
>
> Q. Why did you do that (A)?
>
> 110 A. 'Cause I was defending myself (A).
>
> Q. Can you tell us why you think you were defending yourself (A)?
>
> A. 'Cause he assaulted me (G). By shoving me down like that (G), it was a strong force to throw down and it just startled me (G) and I kicked him back (A). I reacted

to it (A).

Q. Okay. And how did you go about kicking him (A)?

A. I stood on the bench (A) and I put — front kicked him in the chest area (A).

Q. You what kind of kick did you say?

A. I front kick in the chest area (A).

This face-saving strategy[4] is followed by an increasing fragmentation of the witness's narrative (this fragmentation can most clearly be seen in table 3-1, below). The fragmentation begins when the judge interrupts the witness in order to ask him to repeat an unheard section of his testimony. The crown attorney then comes in with a request for clarification of another example of the witness's slang ("hogtied"):

CROWN: Q. And what happened to him when you did that?

A. And then another guard came in and they both threw me down on the bench (G) and then they threw me (G) — they hand — they threw me on the ground (G). My chin smashed off the steel toilet (G) —

THE COURT: Okay, now I'm missing this. This is important. So just try to keep your voice up so we don't have to keep asking you to repeat yourself, okay?

A. Okay.

THE COURT: The other guard came in and then what happened?

A. They both restrained me (G) and threw me onto the floor (G) and hand — well hogtied me behind my back (G).

THE COURT: Okay. So they threw you on the floor (G) and hogtied you behind your back (G).

A. Yeah, well they shackled me (G) and handcuffed me behind my back (G).

THE COURT: Were you not already in handcuffs?

A. Yeah, but my feet were not.

THE COURT: Thank you.

CROWN: Q. When you said that you were hogtied (G), what does that mean?

A. Like with both of my — up at the back behind me.

Q. Can you say that again, please?

A. My hands and my feet connected together.

Q. What was on your feet?

A. Shackles.

Q. And then are you saying there was something attaching your feet to your hands?

A. I believe so. I'm not quite sure; I don't remember.

Q. Now which of the guards put you in those restraints (G)?

---

[4]"Face-saving strategy" is a term borrowed from Goffman (1967). It refers to strategies on the part of all participants in a face-to-face encounter to preserve the facade they have constructed for the encounter through strategies of avoidance, compensation, deference, etc. Status degradation ceremonies are generally aimed at defusing these strategies, thereby denuding the victim of his or her facade.

145 A. I was on my stomach, I couldn't see 'em.

The crown attorney now perpetuates the breakdown of the witness's narrative by asking him to return to a previous event in the narrative sequence he is relating, only to jump back immediately thereafter to the point in the narrative where the witness had left off at line 145. So far, her questions, although narrowly constraining, had at least been sequential, allowing the witness to describe the incident as a coherent narrative. Her change of strategy appears to confuse the witness; he begins to contradict himself at this point. Behind this sequence of questions lies a series of assumptions on the part of the crown attorney about the nature of memory. Jumping back and forth between different points in the narrative involves, for example, the assumption that past events of a traumatic nature will be remembered as a linear sequence, parts of which can be isolated from the whole for immediate retrieval:[5]

CROWN: Q. Okay. Just go back for one second, when you kicked Mr. Gray in the chest (G), did you see physically what happened to him when you did that?
A. No, I never paid attention. He went up against the wall.
Q. So you said that you were on your stomach. Now where within the cell
150 were you on your stomach when you got shackled?
A. On the floor by the toilet.
Q. And then what happened?
A. That's when they shackled me (G) and then they got up and left me. They exit the cell.

Communication breaks down entirely when the witness, perhaps confused by this fragmentation of his narrative, appears to contradict his earlier assertion that he had been "hogtied" (note, however, that he had earlier qualified this assertion by pointing to his faulty memory). Attempting to stave off any suggestion that he may have lied under oath,

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[5]See Barsky (1994) for a description of how this assumption plays a significant role in the examination of torture narratives in Canadian refugee hearings.

he claims that he is "remembering things . . . as I go along," to which the judge responds incredulously, "you mean you're remembering things right now in the witness box?", again a question more generally associated with cross-examination. At this point, the witness's testimony has been hopelessly discredited; he has made a global assertion about the unreliability of his memory of the event. This unreliability could perhaps have been alleviated had the crown attorney's office attempted to discover if the witness was fully literate and could read his police statement prior to the trial. Note also the increasing involvement of the judge in the crown attorney's examination; the witness is being examined by two interrogators at this point, both of whom frequently interrupt his utterances:

THE COURT: They get up and left you...
A. They left the cell.
THE COURT: Okay. So you're now on your stomach.
A. Well I got up on my feet.
THE COURT: Are you still hogtied?
A. No, I wasn't hogtied. I was —
THE COURT: I missed something —
A. I know I just —
CROWN: Me too.
THE COURT: Go ahead.
CROWN: Q. What do you mean you weren't hogtied?
A. I was shackled and handcuffed (G) but I never — I stood up but I wasn't —
Q. At any point were you hogtied (G)?
A. No, I don't —
Q. Okay.
A. My mind's — I'm remembering things that — as I go along. That's what it is. I'm not lyin' —
Q. I'm sorry, I'm having a lot of trouble hearing you.
A. I'm just cold so. . .
THE COURT: He said "I'm remembering things as I go along. I'm not lying."
CROWN: Thank you.
A. Just —
THE COURT: You mean you're remembering things right now in the witness box?
A. Yeah, like —

These interruptions are followed by an effort to reconstruct the previous narrative,

clarifying the "hogtying" incident. Finally, the crown attorney elicits the conclusion to the narrative — the witness's final active participation in the altercation with the guard:

CROWN: Q. All right. So I just want to be clear, when the officers come into the cell and after you kicked Mr. Gray (A), what did they do to you (G)?
A. They both restrained me (G) and threw me on the ground (G) and handcuffed and well — shackled me afterwards (G).
Q. Okay.
A. And then they got up and left the cell.
Q. All right. And you said at that point you got up yourself (A)?
A. Huh-hmm.
Q. And then what did you do (A)?
A. I went — like I rushed towards 'em with my head down to hit him with my head (A) but I don't know what happened after that. I don't remember.
THE COURT: But what?
A. I don't remember what happened, if I hit him (A), if I hit anyone or not(A).
THE COURT: You rushed — you rushed towards him with your head (A).
A. With my head down like in a heat-butt.
THE COURT: All right. You were attempting to head-butt him(A).
A. Yeah, but I don't recall if I did or not.
THE COURT: You don't remember what happened?
A. No.
THE COURT: I don't mean to be taking over your examination in-chief.
CROWN: That's okay, Your Honour.
THE COURT: It's just that I'm not hearing him.
CROWN: Thank you. Q. How are you able to rush towards him (A)?
A. Well you got some — you can walk a little bit in 'em but you can't like run, you can just — it was just a couple steps.
Q. Now at that point were there any other inmates in your cell?
A. No.
Q. And how many court officer guards were there?
A. I don't recall. I seen maybe three of them.
Q. What happened after you rushed towards him?
A. They locked me in my cell (G) and they just left.
Q. And then what happened?
A. That was it, I think. That's all I remember that happening.

The witness's description of the incident appears to be complete. However, he has not yet described a specific event that turns out to be the sole basis for the crown attorney's argument against the accused. The crown attorney, aware that this crucial piece of testimony is missing, attempts to allow the witness to read his own police statement in order to jog his memory:

Q. Did anything else physical happen while you were in the cell?
A. No.
Q. Did you have an opportunity to read the statement you gave to the police before you came in today?
A. Yes, I did.
Q. Would you like a chance to read that and see if it helps you to refresh your memory?

The judge, however, opposes this tactic, arguing that the witness has not demonstrated that he is having difficulties remembering the incident. This is somewhat surprising given the witness's repeated assertions of "lack of memory about that" and recognition that "I'm remembering things as I go along.":

THE COURT: Well wait a minute now.
A. Okay.
THE COURT: You could have established some groundwork before that happens. You can't just launch into giving him his statement. Do you want to establish some groundwork first?
CROWN: I was just going to ask him if he wanted to refresh his memory from it, Your Honour.
THE COURT: Well he hasn't indicated to me that he's had any trouble remembering what happened. If he does that, and if there's some evidence that he's having difficulty remembering, then you've established some groundwork. But you just can't come up to a witness after you're questioning him and say: "Would you like to see your statement?"
CROWN: Alright, sir. I just was going to do it before I got into a 9(2) application. I think it's only fair —
THE COURT: Well you're a long way from a 9(2) application. So establish some groundwork, if you will, please.
CROWN: All right. Thank you, Your Honour. Could I just have a moment, please sir?
THE COURT: Yes.
CROWN: Q. Mr. G., can you tell us how your memory is of this event?

The witness, however, misunderstands the crown attorney's effort to allow him to read his statement. An admission at this point that his memory was faulty would have forced the witness to attempt to read his police statement (as he later does during cross-examination). This would have revealed his semi-illiteracy to the court, allowing the witness to save face with regards to the previous contradictions in his testimony (since he could not have actually properly read his police statement before the trial). However,

concerned that such an admission might further compromise his credibility, he attempts to cover over his memory gaps. The crown attorney's strategy does at least help jog the witness's memory about the most crucial element of his testimony (lines 246-248):

A. Fairly good. Fairly good. There is some things — like the small things I don't remember.
Q. I'm sorry, I didn't hear you.
A. There's small things.
THE COURT: There's small things.
A. Like people being seen. I don't remember seeing people you know I might see — I might remember seeing some of the people but not everybody. I remember that he did hit me as well (G). I forgot about that. I just remembered about that. Why — he rushed me back onto the bed (G). He hit me after I was handcuffed (G).

The crown attorney must now attempt to integrate this new information into the narrative as it has already been constructed. This proves difficult given that the flow of the witness's narrative has been irrevocably lost, and the witness has obvious difficulties ordering the events according to an objective sequence (later, it becomes clear that the witness's attempt to reinsert the punch into his narrative produces a contradiction with his police statement). The crown attorney must also clarify the witness's use, once again, of an exophoric reference (line 247):

CROWN: Q. Okay. Let's go onto that in a little bit more detail. First of all, who is the "he" that you're talking about?
A. Mr. Robert Gray. I don't recall exact time anymore when he hit me (G), but it was when I was on my back in the cell. Robert Gray and another officer was on top of me and that's when Robert Gray hit me (G), struck me twice in the left eye (G).
Q. Struck you with what?
A. His fist.
Q. And at the time you were situated where?
A. I was on my back handcuffed on the bed in the cell.
Q. On the bed did you say?
A. Yeah, in the cell.
Q. And was that before or after you had the shackles on your feet?
A. I'm not too sure if it was before or after. I think it was after. I'm not sure.[6]

---

[6]According to the narrative presented so far, this blow actually must have occurred before the witness was shackled, when he was pushed onto the bed after refusing to leave

Q. Are you able to tell us how you go onto the bed on your back?
A. Robert — Robert Gray shoved me back onto my back.
Q. And what were you doing (A) when he struck you twice in the eye (G)?
265 A. I don't recall. Nothing. I couldn't do nothin'. I was handcuffed behind my back. I don't recall doing anything.

The crown attorney's examination then concludes with several pages of questions regarding the nature and extent of the witness's injuries as a result of the incident; much of this text is repetitive and has thus been omitted here. It may, however, be helpful at this point to summarize the key events of the witness's narrative, as reconstructed by the prosecuting attorney. As we shall see, these events will be later reinterpreted by the defence attorney:

Table 3-1: The Crown Attorney's Narrative:

Event	Lines	Actor/ Goal	Description
1	48-60		Witness and cell-mate playing the "shot to shot" game in their cell.
2	61-73	G	Accused and another officer remove witness from cell and handcuff him in the hallway.
3	74-85	G	Officers move witness back into cell and ask him to stand aside so that his cell-mates can be removed.
4	86-91	A	Witness refuses.
5	92-100	G	Accused pushes witness back onto his cell-bed. Witness lands on his back and suffers scratches and bruises on his tail bone and hip.
6	246-266	G	Accused strikes witness twice in the left eye. Witness suffers a bruised and swollen eye.
7	101-106		Other cell-mates removed from cell.
8	107-118 146-147	A	Witness jumps onto bed and kicks accused in the chest area, knocking him against the wall of the cell.

---

the cell (see table 3-1). This sequence of events is made clearer in a later statement to the crown attorney that has been omitted here: "Q. So, after Mr. Gray punched you but before he left the cell, what else happened then? A. That's what happened where he threw me onto the ground and my chin got cut off the toilet."

Table 3-1 (continued):

Event	Lines	Actor/ Goal	Description
9	119-126	G	Officers throw witness onto floor. Witness's chin strikes steel toilet and is cut open.
10	127-145 149-153 182-183	G	Officers shackle witness's feet.
11	153-156 185		Officers attempt to leave cell.
12	158 186-209	A	Witness jumps to his feet and tries to head-butt accused.
13	210		Officers leave cell and lock door.

Cross-Examination:

The defence attorney's cross-examination of the witness is much longer than the crown attorney's examination, and much of it is repetitive. The length and repetitiveness of cross-examination is a deliberate strategy used by lawyers to catch witnesses in a contradiction or force them into an admission that they have lied. Nevertheless, large sections of the cross-examination will have to be omitted here. This analysis will focus on those parts of the cross-examination that exhibit typical strategies used by the defence attorney to call into question the already tenuous credibility of the witness, as well as key attempts to reinterpret the witness's narrative.

The cross-examination begins with a relatively uninteresting effort to construct a visual picture of the cell in which the incident took place. This has been omitted here. Instead, we begin with the defence attorney's questions regarding the lead-up to the incident itself; here, the defence attorney attempts to provide a context that is missing

from the crown attorney's examination. Unlike the crown attorney, the defence attorney uses sarcasm in order to put the witness on the defensive ("now let me help you a little bit with your memory") and tends to ask the witness "leading questions." These questions, standard features of all cross-examinations in Western adversarial trials, contain either obvious or hidden presuppositions that the witness must be able to discern in order to avoid giving an incriminating response. These questions generally invite simple yes/no answers, often through the use of statements followed by question tags ("And that review had gone badly, you'd been turned down, hadn't you?"). Cross-examining attorneys avoid the kind of open-ended questions asked by attorneys examining their own witnesses. Such open-ended questions would allow the witness to regain some degree of control over the direction of the cross-examination, enabling them to depart from the cross-examining attorney's representation of events. Instead, witnesses must go to elaborate lengths to avoid falling prey to the cross-examining attorney's strategy; often, either a simple yes or a simple no response will incriminate them. In order to avoid assenting to the cross-examining attorney's underlying presuppositions, the witness must therefore risk giving the appearance of dodging the questions. The lawyer's first question, in line 415, for example, provides factual background information that the witness must assent to, even though that question highlights contextual information that casts a negative light upon the witness's motives for resisting the accused. The witness is not allowed to offer any other contextual information that might contradict the defence attorney's attempt to portray the witness as upset and angry on the day of the incident. He is constrained to follow the defence attorney's lead. It is not until line 422 that the defence attorney comes to the

incriminating conclusion that follows from this context ("you were pretty upset about that"):

Q. Now let me help you a little bit with your memory. In fact that day, December 16th, you'd been in for a bail review -- I'm sorry, for a sentence review.
A. I guess so; I don't remember.
Q. And a gentleman by the name of Mr. Muldoon was your lawyer?
A. Yes.
Q. And that review had gone badly, you'd been turned down, hadn't you?
A. Yes.
Q. And you were pretty upset about that.

In line 423, the witness attempts to deflect this conclusion by providing additional contextual information that does not support it. However, the lawyer turns this strategy on its head by reformulating the witness's statement ("it hadn't gone the way you wanted"). This reformulated statement opens the way for the lawyer to repeat his original conclusion in line 427. Eventually, the witness is able to provide a conclusion that he is more satisfied with ("it just didn't bother me because I . . . wasn't hopin' for nothin'.") At this point, however, the damage has been done. The defence attorney has succeeded in insinuating a motivation for the witness's active involvement in the assault:

A. I was actually put over for another pre-sentence report or something like that.
Q. It hadn't gone the way you wanted.
A. No.
Q. You were upset about that.
A. Not really.
Q. Because you wanted to get out of custody that day.
A. Everybody wants to get out of custody.
Q. And that's what you were wanting to do.
A. Sure.
Q. It had been a bad day for starters.
A. Not really.
Q. No? Getting turned down made it a good day?
A. Not really, it just didn't bother me because I -- I knew that if I didn't get it then, I didn't get it -- I wasn't hopin' for nothin'.
Q. So it wasn't a bad day; it wasn't a good day, but your application for sentence review got turned down.
A. Something to try for.

The defence attorney now tries to reinterpret the witness's description of the "shot to shot" game from lines 48-60. According to the witness's own interpretation, this was a fairly harmless game that involved the mutual cooperation of the witness and his cell-mate. The defence attorney has little difficulty suggesting that the witness was actually assaulting the cell-mate. Once again, the interrogation proceeds via an incriminating representation of events by the defence attorney, followed by a partial refusal of that representation by the witness. Here, the defence attorney begins by constructing the witness as actor in the "shot to shot" game without yet naming his cell-mate as the goal of any action; "your friends" cannot be said to be the goal of the process represented in the following sentence; rather, it belongs among the action's circumstances:

Fig 3-6: Representation of Witness as Actor in "Shot to Shot" Game

you	started playing	this punching game	with your friends
Actor	Process: Material	Goal	Circumstances

In his next question (line 444), the defence attorney begins to insinuate that this game was an assault, now representing the cell-mate as goal of the witness's punch:

Fig 3-7: Representation of Cell-Mate as Goal of Witness's Actions

one of the persons	you	were punching	was sitting curled up on the bed
Goal	Actor	Process: Material	

The witness does not yet entirely realize the direction of the attorney's questions, but perhaps sensing that something is up, he begins to rely upon his faulty memory as a way of dodging the implications of the attorney's line of questioning. When the witness finally

realizes what the defence attorney is trying to do, he has already admitted to punching his cell-mate (line 454). He tries to change this admission in line 456 by clarifying that the punching was mutual. However, once again the defence attorney has tied his own representation of events to the witness's narrative. Furthermore, the suggestion that the witness was actually assaulting his cell-mate seems to follow in a cause and effect manner from the witness's supposed anger at having been turned down for a sentence review:

Q. Now when you came back down that's when you started playing this punching game with your friends (A)?
A. Yeah.
Q. And one of the persons you were punching was sitting curled up on the bed at the very back of the cell, wasn't he (A)?
A. He was sitting down, yeah.
Q. He had his feet up on the bed?
A. I don't recall.
Q. And his arms up beside him?
A. I'm not sure.
Q. It could have been, you don't remember?
A. Well he was sitting down, I know that.
Q. All right. And you came up to him and hit him (A)?
A. Yeah.
Q. That's right?
A. I was -- we were both hitting each other.
Q. And the other guy was standing by the door during this time, wasn't he?
A. I guess so.
Q. Can't remember?
A. I don't remember.
Q. There's a little camera that looks into that cell, isn't there?
A. I know.
Q. So the little camera would show you coming up and hitting somebody (A), wouldn't it?
A. Sure.
Q. Somebody who's sitting on the bed with his arms up.
A. Yes, maybe, whatever. I don't recall.

The remainder of the defence attorney's reinterpretation of the witness's narrative proceeds in a similar manner and will be omitted here. Throughout, the defence attorney attempts to portray the witness as an aggressive agent in the assault. He also attempts to cast doubt upon the witness's claim that the officer punched him while he was being

shackled, often using the witness's repeated complaint that he can't recall the entire incident against him. Effectively, the defence attorney attempts to portray the witness's claims of inadequate recall as a conscious and selective strategy used to cover over contradictions in his testimony. The attorney often does this through the use of sarcasm, to which the youth is unable to respond in kind, both because he lacks the linguistic resources to do so effectively, and because any such effort would seem inappropriate for a dominated speaker in a court of law. Perhaps this is one of the reasons why, according to O'Barr (1982), speakers of "powerless speech" seem to lack a sense of humour (as defined by the standards of dominant discourse):

Q. You got a super clear memory of that.
A. Yes, I do.
Q. Just vivid technicolour memory?
600 A. Yes, I do. I landed on my back when I came off the bench.
Q. And you told us your memory was kind of poor earlier. In fact, it's not poor at all, it's great.
A. There's some things I don't recall like seeing people there, certain people I don't remember seeing. I didn't say about the incident itself.

The defence attorney's complete reinterpretation of the incident is summarized in lines 923-969, below. Table 3-2 may also be helpful to the reader. Note that, unlike the crown attorney's questions, the defence attorney's questions follow a strict narrative sequence throughout:

Table 3-2: The Defence Attorney's Narrative

Event	Lines	Actor/ Goal	Description
1	441-467 924	A	Witness starts assaulting cell-mate. Officers observe assault via camera fixed on cell.
2	468-485 924-925	G	Accused takes witness out of cell to handcuff him.
3	486-494 925-926	A	Witness struggles against accused.
4	495-501 926-927	G	Accused moves witness back into cell and orders him to move aside so that his cell-mates can be removed.
5	502-521 927-929	A	Witness refuses.
6	522-536 930-937	G	Accused pushes witness back onto bed, then backs up to make sure the cell-mates leave.
7	537-541 946-948	A	Witness jumps to feet and kicks accused in chest area.
8	542-661 949-954	G	Other guard arrives. They throw accused back onto the bed to shackle him.
9	542-661 949-954	A	Witness struggles against them.
10	662 955		The guards attempt to back out of cell.
11	662-674 956-957	A	Witness head-butts accused. Accused takes the blow rather than slamming door in witness's face.
12	675-708 958-959	G	The guards pin the witness to the bed again.
13	959-960		The guards leave the cell.

The defence attorney's next strategy is to cast doubt upon the witness's central complaint that he had been struck in the eye by the accused while the accused was trying to restrain him. If the crown attorney had been able to prove that this had occurred, she may have been able to make a case that the accused had exerted unnecessary force in his effort to control the witness, contrary to Section 25 of the Criminal Code.[7] The defence

[7]Section 25 of the Criminal Code reads, "Every one who is required or authorized by law to do anything in the administration or enforcement of the law (b) as a peace

attorney begins to unravel this claim by establishing the groundwork for presenting the witness with his police statement in order to demonstrate a contradiction between the statement and the witness's testimony regarding the exact point at which the punch occurred. The witness plays into this strategy by continuing to affirm that he has indeed read his police statement before testifying -- he is undoubtedly afraid of the effects a disclosure of his semi-illiteracy might have upon his already tarnished character in the eyes of the judge:

Q. As to the details of when you were hit in relation to all this incident. Court's indulgence for a moment, please?
THE COURT: Yes.
DEFENCE: Q. So do you remember that night you gave a statement to police Constable Cates, the woman seated here?
A. Yes, I remember talking to an officer but I don't remember who it was.
Q. All right. At the Elgin/Middlesex Detention Centre.
A. Yes.
Q. And that was oh, about midnight?
A. There's no clock in there. I don't know what time it was.
Q. And she took the statement on a computer?
A. Yes.
Q. She had you read it?
A. I believe so, yes.
Q. And then at the end of that she had you sign her notebook showing that you'd read the statement and reviewed it?
A. Yes.
Q. When you gave that statement to the officer you were concerned to make sure you were accurate. Wouldn't want to mislead the police officer.
A. No.
Q. Your memory would have been fresh back then.
A. I think so, yeah.
Q. And you've had an opportunity today, you've told us earlier, to review that statement.
A. Yes.

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officer or public officer, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose." In his reasons for judgement, the judge notes that "this trial boiled down to that phrase 'as much force as is necessary for that purpose.'" The judge concludes that "even if Gray did punch G., that would have been, in my view, no more than reasonable force necessary in the circumstances."

It is obvious, however, that the defence attorney's purpose in presenting the witness with his police statement is also to further discredit the witness's ability to recall any of the events in question with any degree of accuracy. The witness's testimony becomes increasingly fatalistic at this point; he plays into the defence attorney's strategy by admitting that his "memory comes off and on all the time." He also for the first time expresses regret that he had ever been called as a witness in the first place ("I thought it was over so I forgot about it until they summonsed me to come to court . . . "). This fatalistic strategy should be interpreted as another example of the youth's use of deferential rhetoric. By admitting to the defence attorney's charge that his memory is faulty, yet claiming that his memory gaps arise from the fact that he is attempting to put the event behind him, he is simultaneously trying (unsuccessfully) to avoid conflict with the defence attorney and trying (again unsuccessfully) to save face by distancing himself from his already reified criminal identity. The attorney responds to this gesture of defeat by asking a series of questions intended to confuse the witness. His question in lines 753-754, for example, does not follow from the witness's statement in lines 751-752. This strategy is followed by another deferential admission of defeat by the witness in lines 755-757.

Q. And some of your memory is better today than it was back then you've told us.
A. Not really. Just things are coming up that --
THE COURT: Please try to keep your voice up. I'm sorry to have to keep telling you that.
A. I have a cold and I can't --
THE COURT: I know and it's not easy.
A. -- speak. I don't want to yell at you.
THE COURT: But I have to hear every word you say, okay?
A. I don't -- my memory comes off and on all the time. I had a -- I was in custody for a long time and I don't think about things like this. I thought it was over so I forgot about it until they summonsed me to come to court.

DEFENCE: Q. So some of your memory from today is bad and some of your memory from today is good.
A. Yes.
Q. And some of your memory from back then is bad and some of your memory from back then is good.
A. Back then everything was -- that I remember was good. I remember everything that happened.
Q. So what you remember today is more accurate than what you remember back then?
A. No, I didn't say that. I just -- things back then I remembered because it just happened. Now it's 18 months later -- almost two years later and it's, you know, I kind of forget about it because I thought it was over.

At this point, the trial has increasingly begun to incorporate elements of a status degradation ceremony. In this case, these elements serve to discipline the witness and affirm the legitimacy of the court's initial decision to charge him with assault. As R. P. McDermott (1993) notes in an article on rituals of degradation and learning disabilities, such rituals often serve to make visible to all individuals involved in the ritual the inability of the victim to perform certain, everyday tasks. Here, the ritual involves a simultaneous revelation of the witness's partial inability to read and total inability to sort out contradictions in his testimony:

Q. I want to show you, do you recognize this piece of paper?
A. Yes.
Q. That's a printout of the statement that you gave at the time?
A. Yes.
Q. And that's what you got to review today before you came up to testify?
A. Yes.
Q. And you've reviewed it very carefully because you want to be accurate today.
A. Yes.
Q. You would not have different versions of anything.
A. No.
Q. All right. Let's read this today. Start reading your statement from right there, those words.
A. "The second guard came in and grabbed me a hold --"
THE COURT: Come over here because I can't hear you. Go ahead.
A. "A second guard came --" where is it? Okay, I just lost it. Okay. "A second guard came in and grabbed me ahold of my -- on me and the guard --"
THE COURT: Why don't you read it to him, counsel and --
A. Yeah, I can't --
THE COURT: Yes. You just listen carefully to Mr. Smythe.

DEFENCE: Q. "A second guard came in and grabbed a hold on me. He restrained me and asked for some shackles. That's when both guards threw me to the ground and I smashed my chin on the steel toilet cutting it. They shackled me. As they were leaving, I rushed them with my head down and hit the guard who later punched me. Both guards rushed back into the cell and pushed me back hard on the bed. They both sat on me. The one guard held my face and punched me near my right eye."

A. Well because like he hit me before that. That's why I rushed towards him.

Q. He hit you before that.

A. Yes.

Q. He didn't hit you after you were shackled. So you got it wrong when you spoke to Officer Cates.

A. I didn't get it wrong.

THE COURT: I'm sorry?

A. I said I don't believe I got it wrong. That's what I believe I said.

DEFENCE: Q. She took it down wrong?

A. I don't know. Okay? It's been 18 months. I don't think I can remember everything. I told you, I remember getting hit. That's all. I got pictures to prove it and that's it. I thought it was over when you guys sentenced me. I forget about things like that.

After the attorney successfully insinuates that the witness only charged the accused in an effort to make the crown attorney's office drop the witness's own assault charge (omitted here), the degradation ceremony continues, this time with a series of revelations about the witness's past criminal offences. Once again, the witness responds to this strategy by using a rhetoric of deference; he attempts to distance himself from his criminal identity by claiming that "it's in the past." This strategy enables him to construct a present identity that is marginally freed from his past deeds. The defence attorney, however, refuses to allow the witness this distance, calling him back to the in-itself identity defined by his past actions. He makes a dramatic presentation of the witness's criminal record, forcing him to recognize his name on the front page. Even the judge seems to find this gesture excessive:

Q. Now you've got a lengthy record that has quite a few violent offences on it, don't you?

A. I don't recall; it's in the past.

Q. Is that one of the things you have a little memory trouble with?

A. I don't try to remember the bad things I do, just the good things.

Q. Huh-hmm. If we have a look together I've got one, two, three, four pages of record from you?

A. Yes.

Q. Do you want to have a look at it to make sure it's your name? Is that your

record, Mr. G.?
A. Yes.
THE COURT: I don't want to steal your thunder, but there's no jury here either. Do you want to just file that record as an exhibit?
DEFENCE: I'm content we can, sir.
THE COURT: Would you have any objection to that, Miss L.?
CROWN: No, Your Honour.
THE COURT: That will be Exhibit number four. I'm not just stopping you from going through it if you want to.
DEFENCE: It doesn't need it, sir. It can speak for itself.
THE COURT: Thank you.
EXHIBIT NUMBER FOUR: Criminal Record of Mr. G. Produced and marked.

After further revelations from the witness's criminal record, including a previous assault upon a police officer, the attorney concludes his cross-examination with a summary of his own reinterpretation of the incident. With this summary, we can best see the predominance of material processes in which the witness is an actor rather than a goal in the struggle against the accused. Note that the defence attorney attributes all of the witness's injuries to his efforts to struggle against the guards. Note also that some of the contradictions between the witness's original testimony and the defence's interpretation of the incident arise from the defence's euphemization of verbs describing material processes carried out by the guards:

Table 3-3: Euphemization of Material Processes During Cross-Examination

Witness's Testimony	Lines	Cross-examination	Lines
"He came in and he *shoved* me in the back onto the steel bed in the cell . . . . with both hands to the chest area and he *forced* me down onto the bed."	92-96	". . .they *take* you back to *move* you out of the way and *pin* you down . . . . Mr. Gray *takes* you down and *pulls* you against the wall."	930-935
"then another guard came in and they both *threw* me down on the bench and then they *threw* me — they *hand* — they *threw* me on the ground. My chin *smashed* off the steel toilet —"	120-122	". . .the other officer comes in and the two of them *take* you down and *pin* your face to the bed."	949-950

The witness, who is supposed to wait patiently until the defence attorney is finished before offering a rebuttal, instead attempts to interrupt the attorney repeatedly, eventually offering nothing more by way of explanation or refutation than the repetition of the word "no" at the end of each of the attorney's sentences. The witness now has nothing left to offer discursively other than his bald refusal of the defence's story:

DEFENCE: Q. Let me go through, just so you know where I'm coming from, a clear picture of the other version of this incident. It has you punching Richard M (A).
925 Officer Gray coming and taking you out into the hallway (G), putting the handcuffs behind you (G) and you won't cooperate (A); another officer has to take your hand down and put it behind your back (G). They then put you back in the cells (G) and tell M. to come out. You're blocking the door (A) and say: "No, he's not leaving." (A)
A. I wasn't really blocking the door, I was just standing in the cell.
930 Q. And they take you back (G) to move you out of the way (G) and pin you down (G).
A. No, they --
Q. Mr. Gray takes you down (G).
A. -- shoved me (G).
935 Q. And pulls you against the wall (G).
A. I don't recall 'em holding me. I remember --
Q. Tells M. to get out of the way.
THE COURT: Just a minute here, folks. I don't think he knows what you're doing and we can't have two people talking at one. I think, Mr. G., he wants you to stay

quiet. He's going to tell you a story and then at the end he wants you to respond. So you don't have to interrupt him as he's doing it, okay? He's giving you a scenario.

A. Yes.

THE COURT: You listen carefully. That's what you want to do, isn't it?

DEFENCE: Thank you, sir.

THE COURT: Go ahead.

DEFENCE: Q. He backs away from you and is watching M. go out and that's when you jump up and kick him in the chest (A).

A. No.

Q. That's when the other officer comes in and the two of them take you down (G) and pin your face to the bed (G) and you're still kicking (A) and struggling (A) and squirming (A).

A. No.

Q. And your left side is down on that bed.

A. No.

Q. They get M. and the other fellow out of the cell. They back up. Officer Gray is the last one to leave. He's at the door and that's when you head-butt (A). The two officers come back in again as you're right at the door. They couldn't slam it on your head. They come back in again and take you down (G) and pin you down again (G) and you're still kicking (A) and struggling (A) notwithstanding handcuffs and shackles. That's when they back out the last time and shut the gate, shut the door.

A. No.

Q. And there never was a punch at any time.

A. How did I get a black eye on my eye then?

Q. Maybe from struggling on the bed (A).

A. No.

Q. Fighting with the officers (A) when they're trying to pin you down (G).

A. No.

Q. And the same with the marks on your back and then having to pin you down (G) and hold you (G).

A. No. There's cameras in the cells. Where's the videotape form? Did you review them?

Q. I wish there were.

A. Maybe there should be. Sorry.

DEFENCE: Thank you.

THE COURT: Any re-examination?

CROWN: Thank you.

Concluding Ritual of Degradation

The examination of the testimony concludes with a strange series of questions from the judge that seem to serve little or no judicial purpose in determining the credibility of the witness's testimony. In many trials, the judge will ask several questions following the cross-examination in order to clear up any doubts or confusion resulting from the

previous testimony or cross-examination. Here, the judge takes this opportunity to ask a few genuinely clarifying questions:

> THE COURT: Mr. G., I just have a question or two and then you're free to go, okay? When this was over, what happened to you? Were you put somewhere else or?
> A. They kept me in the same cell but they just took me out when they took the group back to the detention centre.
> THE COURT: Okay. Is that when you saw the doctor?
> A. When I got back there I asked to talk -- well they put me in the segregation area and then the lieutenant came and talked to me and I told 'em what happened and everything. And that's when I told him that I'd like to press charges is --
> THE COURT: You told the doctor that or?
> A. I told the lieutenant that, I believe.
> THE COURT: Now that was the same day.
> A. Same night, yes.
> THE COURT: Did you know at that point that charges had been laid against you for assaulting?
> A. Yes.
> THE COURT: So you knew that.
> A. Yes.
> THE COURT: And then you said to a police officer that you wanted to lay charges.
> A. Yes.

These potentially legitimate questions, however, are only a preface to an outright humiliation of the witness. The judge begins by attempting to destroy the credibility of the witness's face-saving strategy of explaining that his memory is poor because he is trying to put the entire incident with the guard behind him. When the youth attempts to argue that he didn't want to come to court again because of his bad experiences in the building and gestures toward his current efforts to rehabilitate himself, the judge reminds the witness that he is currently still serving an intermittent sentence for a recent criminal offence. The judge thus strips the witness of his facade as a rehabilitated young offender, reminding him that he remains a criminal in the present and will probably continue to be one in the future ("when are you going to stop that and get on with your life and grow up and stop breaking the law?"). This kind of chastisement is a typical feature of sentencings, but is

usually absent from witness examination (unless the witness is deemed to be in contempt of court). Here, it serves no purpose other than as a status degradation ceremony that punishes the witness for his criminal past (despite the fact that he is not currently being sentenced for any crime) and for his perceived attack upon the reputation of the accused:

THE COURT: And then why do you say that you forgot about this and I think at one point you said: "I thought it was over. I forget about things like these."?

A. I do. I just -- because I had -- I was sent a memo, a couple page memo back a month or two ago saying that, bringing it up and it told me if I wanted to come to court and be a part of this sign it and send it back to whoever it was addressed to. And I just didn't bother because I didn't want to come back because I was busy doing other things.

THE COURT: Okay, so a month or two ago --

A. I don't recall exactly, but it was awhile ago.

THE COURT: And that's the first time that you knew that this thing had become alive again.

A. Yes.

THE COURT: And at that point you didn't want to proceed with it?

A. No, I just -- I didn't really think that -- they asked me to come to court and I -- if I wanted to sign and send it back and I just ripped it up and I threw it out. I didn't want nothin' to do with it.

THE COURT: Why didn't you want anything to do with it?

A. Because I didn't want to come back in the system. Like not in custody in the system, just not to the building. I'm trying to work, get my life straight -- I don't need --

THE COURT: What?

A. Trying to get my life and everything all straightened out. I don't want anymore distractions.

THE COURT: All right. Are you serving an intermittent sentence now?

A. Yes.

THE COURT: As we speak?

A. Yes.

THE COURT: On weekends?

A. Yes.

THE COURT: So you've got one conviction as an adult, right?

A. I have a couple, I believe.

THE COURT: When are you going to stop that and get on with your life and grow up and stop breaking the law?

A. I'm doing now. This charge I got an intermittent sentence for was just stupid and it was a mistake.

THE COURT: Because you're an adult now, right?

A. Yes.

THE COURT. Okay. Do either of you have any questions arising out of that?

CROWN: No, sir.

THE COURT: Now, you're free to go. You can remain if you wish or you can go; it's up to you, okay?

A. Okay.

THE COURT: Thank you.

A. Thank you.

Conclusion: A Hopeless Case

At the beginning of the trial, the crown attorney indicated that three days had been set aside for the trial and that she might be calling as many as eighteen potential witnesses. The trial actually took a single day, and the crown attorney only called five witnesses, including the first witness examined above. One of the other witnesses was the constable who photographed the first witness's injuries and took down his statement; her testimony was brief and only served as a legal guarantee of the legitimacy of the photographs as evidence. The other three witnesses were youths in the detention centre at the time of the incident, none of whom helped the crown attorney's case. One of them told the court that the first witness had threatened him after the incident, telling him and others to "remember our story, boys." At the end of the day, the crown attorney completed her case, requesting that the judge mail his judgement to her so that she could avoid making an extra trip from out-of-town. She promised that her submissions (her arguments to the judge concerning the case) would not take more than a minute to deliver. One does not get the impression that she had any doubt as to what the judge's decision would be.

The judge decided to make the crown attorney wait the extra day. Predictably, he acquitted the guard, finding him "not guilty of anything except doing a very difficult job." He further concluded that the first witness "threw the gauntlet down," initiating the conflict with the guards, and that he was "an aggressive, dangerous, abusive attacker," and "not a credible witness." Much of the judge's decision with regards to the unreliability of

the witness rested upon the contradictions and gaps in the witness's testimony; "It was only after the Crown attempted to show the witness his statement and after some prodding, that he said 'now I remember that the officer hit me twice in the face with his fist.' He was not sure when that happened, if it was before or after he was shackled. . ."

I have no intention of questioning the judge's decision in this case; given the evidence actually presented in court, he probably could have arrived at no other decision. What I wish to question are the barriers that were placed before this youth to prevent him from articulating anything approaching a coherent complaint. First, this transcript compels us to ask why such a lengthy period of time elapsed between the incident and trial, and why, given this time-lapse, the crown attorney did not go to greater lengths to ensure that her key witness could at least read and understand his own police statement. Second, in what ways did the crown attorney's interrogative strategy confuse the youth and prevent him from providing a credible narrative? Undoubtedly, this youth would have faced similar difficulties in any formal interrogative setting, and it is impossible to speculate about his ability to tell stories in a more familiar and informal environment. Nevertheless, the crown attorney's use of non-sequential questions intended to elicit brief, fragmented responses could not have improved her witness's coherency. Third, and most important, why did the judge in this case feel the need to verbally discipline the witness for lodging a complaint against a guard whom he believed had exerted excessive force upon him? While it is understandable that the defence attorney would use such a strategy as a legitimate rhetorical device in an adversarial trial, why did the judge, whose symbolic power is obviously much greater than that of either attorney, feel the need to participate in the

humiliation of the youth?

Perhaps these questions can only be answered by offering the suggestion that the witness's complaint in this case could never have been adequately dealt with in an adversarial court in which the accused, if found guilty of assault, would be charged with a serious criminal offence rather than some lesser reprimand. Obviously, no alternative tribunal for this kind of case exists in our culture, and it would be both rash and unhelpful to provide a model for one here. Any changes to the youth justice system need to be instituted by agents within that system and must evolve organically out of past practices, taking into account pragmatic exigencies that it would be impossible to study in detail here (I frankly lack both the competence and knowledge to do so). Nevertheless, this chapter should have at least offered some insight into the difficulties involved in providing a meaningful forum for hearing legitimate allegations of physical abuse and other human rights abuses within young offender facilities. Any future changes to the youth justice system should ideally take into account the questions of discursive inequality raised here.

Chapter 4

Case Study Two: A Psychological Assessment

In the previous chapter, I described a status degradation ceremony localized within a particular trial. However, as R. P. McDermott (1993) explains, status degradation ceremonies are rarely effective as isolated occurrences. In her study of children with learning disabilities, McDermott found that these ceremonies are repeated on a daily basis in the classroom. Such ceremonies single out youth who are socially defined as learning disabled, establishing academic situations in which learning disabled youth are expected to fail (by definition, the academic test differentiates between those who will pass and those who will not). Through the repetition of these ceremonies youth unable to perform on academic tests partially designed to exclude them are socially defined as learning disabled. Status degradation ceremonies, at least in the case of learning disabled children, are primarily effective as reiterative practices, performatively producing deviant identities through theatrical scenes that demonstrate the learning disabled child's "failure" to be a "normal" youth.

If status degradation ceremonies are indeed effective within the Canadian juvenile justice system, then they cannot merely be localized within sentencings and trials. Rather, they must pervade all levels of the juvenile justice system, finding expression in a multitude of mundane juridical practices that reiteratively produce both the criminological and the juridical boundary. Aaron Cicourel's 1968 ethnomethodological study of the judicial processing of juvenile delinquents in two California cities provides the clearest example of how pervasive such rituals of degradation are within the juvenile justice system. This

study, when it is not ignored altogether by criminologists writing about juvenile crime, is often assimilated into a broad category of criminological texts whose overall "theory" of delinquency has been called "labelling theory" by criminologists. Many criminologists are quick to dismiss labelling theory as failing to account for statistical variations in juvenile crime rates.[1] A typical reconstruction of this theory in a criminology textbook runs as follows:

> Labelling theory begins after the commission of the initial crime for which the person is caught. He or she may now be referred to or "labelled" as a criminal. Being so identified may lead to social ostracization, limiting the person's social opportunities to a similar group. It could contribute to changing the person's self-image to conform to the label. In this way, the characterization becomes a self-fulfilling prophecy that contributes to more deviant behaviour. Thus, labelling itself becomes a contributing factor to delinquent acts. (Carrigan 1998).

However, in Cicourel's case, his so-called "labelling theory" of delinquency does not purport to be a theory of delinquency at all. Rather, he describes his objectives as follows: "by focusing on those occasions where decisions are made by bureaucratically responsible officials in the system of juvenile law enforcement and justice, I tried to make visible how delinquent careers achieve recognition and action" (xi). In other words, Cicourel was interested in the ways in which a given set of activities is defined either as indicative or non-indicative of a delinquent identity by juridical agents based upon those agents' habitual classificatory schemes. These decisions, once made, affect the kind of treatment a youth receives within the juvenile justice system: a custodial disposition, probation, referral to alternative measures, or a simple caution and visit to parents by a police officer.

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[1]Travis Hirschi (1975), for example, concludes that "labelling theory appears to be off the mark on almost every aspect of delinquency it is asked to predict or explain" (198).

While it is possible to speculate that attribution of a criminal identity to an individual may affect criminal acts in some way in the long run, Cicourel makes no such causal claim.[2] Rather, he is chiefly concerned with the way in which almost identical criminal trajectories in terms of acts committed are characterized in vastly different ways by the juvenile justice system.

These characterizations occur, I would argue, through reiterated status degradation ceremonies in a manner similar to that described by R. P. McDermott in relation to learning disabled children. Youth are characterized as "essentially" delinquent based upon the acts they have committed. Through these characterizations, juridical agents erect a boundary of exclusion between the delinquent and the non-delinquent youth. The process of humiliation that occurs in the everyday degradation ceremony constitutes an inverted *rite of passage* whereby youth are transformed into young offenders. Bourdieu, discussing official rites of institution such as the granting of degrees in an academic institution, writes:

> To speak of rites of institution is to suggest that all rites tend to consecrate or legitimate an *arbitrary boundary*, by fostering a misrecognition of the arbitrary nature of the limit and encouraging a recognition of it as legitimate; or, what amounts to the same thing, they tend to involve a solemn transgression, i.e., one conducted in a lawful and extraordinary way, of the limits which constitute the social and mental order which rites are designed to safeguard at all costs . . . (Bourdieu 1991: 118)

The everyday rites of passage with which we are concerned in this chapter similarly

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[2]Indeed, it would be pointless for Cicourel to make such a claim given his insistence in his text upon the ways in which the production and interpretation of official juvenile crime statistics used to prove or disprove causal theories of youth criminality are themselves influenced by roughly the same unconscious classificatory schema that governs decisions made about the treatment of youth within the juvenile justice system.

involve an effacement of the arbitrary nature of the difference between the normal and delinquent youth. These rites construct the youth they address as *always having been* a young offender; hence such rites tend to involve repeated invocations of the young offender's past crimes and of the causal chain of events which seemed to have led up to those crimes. The emphasis upon the young offender's delinquent identity covers over the extent to which those same events could have been reinterpreted in a way that disrupts any easy attribution of this identity.

In this chapter, I will analyse one such example of ritualistic degradation as it occurs in a psychological assessment produced about a young offender by a London psychiatric and family-counselling institution affiliated with the local juvenile justice system. The speech genre or set of speech genres used to carry out this performative act of humiliation, the psychological report, is wholly different from the transcribed testimony described in chapter three. Each speech genre is governed by different conventions and usually performs different work in the rehabilitation or punishment of youth. Nevertheless, I hope to show how both the witness testimony described in the previous chapter and the psychological report described here function similarly within each youth's history of encounters with the juvenile court system. Both constitute efforts to silence or put down a youth who is considered to be a threat to the regulated operation and authority of the juvenile justice system.

Unlike Cicourel, I do not merely analyse the texts produced about the young offender but also look at both the young person and her family's response to this assessment as a means of determining the discrepancies between the assessment and the

youth and family's own self-interpretation. Further, I also look at some of the stylistic and grammatical features of the report that lend it an appearance of objectivity. As in chapter three, all names, dates, and identifying information in the document have been altered to protect the identity of all individuals involved in the assessment process. The document itself was released to me with the permission of both the youth (now legally an adult) and her family. I should also note that this chapter is not intended as a blanket condemnation of the institution responsible for the creation of this assessment, "London Family Health" (name changed to ensure confidentiality), just as this thesis as a whole is not intended as a blanket condemnation of the London juvenile justice system. While this particular assessment clearly involved a disastrous and insidious misreading of an individual life history, the institution's activities are many and often provide a beneficial alternative to custodial dispositions. This chapter should instead be read as a representative anecdote about how juridical agents operating throughout the juvenile justice system make decisions about youth based upon normative definitions of "delinquent" versus "normal" adolescents.

Context

The following document was produced as a result of a London juvenile court judge's referral of a 13-year-old young offender (here given the pseudonym "Sarah Vandermeer") to London Family Health, a clinic that generally provides front-end counselling and assessment services to the juvenile court. The young offender in this case is a young woman from an upper-middle class family; both of her parents hold professional

positions. Sarah had been involved in criminal activity of one sort or another for a period of several months prior to her referral, during the winter and spring of 1991 (dates altered to protect the identity of the youth). At the beginning of this period, she had begun to skip classes at an increasing rate and was periodically running away from her home on weekdays in order to avoid being forced to attend school. Her first charge was for the theft and attempted use of one of her parents' credit cards. At this point, she was released on bail with conditions that she attend school and reside at home with her parents. More charges followed when she did not fulfill either of these conditions and failed on one occasion to appear in court. Sarah then ran away from home for a period of about a month. During this period, she and several of her friends broke into her parents' home and stole $200.00 in cash, several bus tickets and a computer. When Sarah attempted to return home after committing this crime, her parents called the police, and she was placed in pre-sentence open custody for about a month and a half. In custody, she was able to complete her credits for grades seven and eight, allowing her to enroll in high school in the fall. Near the beginning of Sarah's stay in custody, she appeared before a youth court judge, who adjourned her case, ordering that a psychological assessment and a predisposition report[3] needed to be completed before he could decide what kind of

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[3]A predisposition report is a report prepared by a probation officer charged with monitoring a young offender's progress before and after sentencing. Frequently, more weight is given by judges to the recommendations of the psychological assessment than those of the predisposition report. As one lawyer interviewed noted: "Courts usually order an assessment for very specific reasons, and they have a lot of trust in London Family Health. And I'm not going to say that London Family Health is often wrong, but I think they sometimes have trouble separating just punishment from the need for rehabilitation. So they'll argue that a youth needs a really long custodial sentence for a minor crime, because they feel that that's the only way they can give them the treatment

sentence would be most appropriate for her. In part due to Sarah's academic success in custody, as recorded in a largely positive predisposition report, she was released at the time of her sentencing and given a probationary and community service disposition (in addition to a "time-served" custodial disposition).

One of the remarkable features of the following psychological report is the discrepancy between it and the predisposition report prepared at about the same time. The predisposition report describes Sarah as being "very articulate in expressing remorse and regret for her actions leading to the charges before the court." It praises her efforts to rehabilitate herself in custody and recommends a probationary disposition, in addition to a community service order and an order to participate in family counselling. As we shall see, the psychological assessment paints a quite different picture of Sarah's situation. In part, this different picture may be attributable to the way in which the assessment was carried out. Sarah's parents, in their letter of complaint to London Family Health (see appendix), describe this process as follows:

> Part of the confusion over this assessment may result from the fact that so many people participated in it. Our initial interview was with a social worker and a psychologist, neither of whom continued with the case. Ms. Lisa Wood barely got a word in edgewise. Ms. Erika Bowman asked a number of "when did you stop beating your wife?" -- type questions and appeared to have made up her mind about us and Sarah in advance. She gave the impression of having decided that we approved of Sarah's antisocial and age-inappropriate behaviour. She went on holidays and Ms. Stickland took over.

The assessment was carried out by three separate people, each of whom had already formed a preconception of Sarah's situation based upon the details of her case before they began to interview her. None of these interviewers could have had much of an

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they feel is appropriate."

understanding of Sarah as a person, or of the everyday details of her relationship with her parents. Rather, they based their interviews upon a preconstructed normative definition of Sarah as a typical young offender from a dysfunctional family. As Cicourel notes, such decisions are often made in the case of young offenders. They are made at an early stage in the juvenile justice system's encounter with a youth and passed on from agent to agent within the system as a ready-made classification to which the youth is expected to conform: "In each case the decision to arrest, or filing an application for petition, informal probation, court hearing, foster home placement, boys' ranch placement, or Youth Authority placement, revolves around various contingencies that are 'closed' by decisions to include juveniles in reified categories" (Cicourel 1968: 241). In this case, the youth in question was able to articulate a critical response to this process of reification, in part because of the steady and supportive involvement of Sarah's parents in her process of reform. Given the drastic suggestion for intervention offered by the writers of the report (that Sarah be taken from her family and placed in a foster home), it is easy to imagine the possible effects of such an assessment upon a less critically-attuned and socially well-positioned family and youth.

The Clinical Assessment

The assessment begins with two paragraphs of routine, bureaucratic information regarding the reasons for Sarah's referral and the sources of information used to compile the assessment. Note here the number of sources drawn upon by the authors of the report. Given the relative brevity of the interviews carried out with Sarah, and the

impossibility of attaining anything like a complex life-history or understanding of her personality from those interviews, the authors were forced to rely upon other documentation, largely piecing together their representation of Sarah from a variety of institutional sources. As a result, they drew from a wealth of ready-made classifications of Sarah from teachers, police officers, and custodial staff. Despite the extent to which the authors have apparently researched Sarah's case, they nevertheless make several factual errors throughout the report. For example, as Sarah's parents point out in their letter of complaint regarding this assessment, they misspell Sarah's step-father's last name (here renamed Terentio):

> REASONS FOR REFERRAL
>
> Your Honour referred Sarah to London Family Health on June 1, 1991, when she appeared in court charged with theft under a thousand dollars. Concern regarding Sarah's association with a negative peer group, increased involvement in criminal activities and difficulties in the family home prompted this referral.
>
> SOURCES OF INFORMATION
>
> During the course of this assessment clinic personnel interviewed Sarah and her parents, Elizabeth Greenway and Carlos Terenzio. Sarah completed a series of psychological tests and the results of these were discussed with Sarah by Dr. Martin Brown. We consulted with personnel from Paragon Resources Inc.; Molly Shorten, Carterville Youth Services; Stacey Coulter, London Children's Aid Society; and John Leiderman, Maple Family Support Services. Written reports were received from Patterson Public School, Manitoba Family and Social Services; and the London Police Department.

In the next section of the report, the authors move into the details of Sarah's case. Sarah appears to be somewhat of an enigma to the writers of the report; kids from "good homes" are not supposed to engage in the kinds of criminal activities that Sarah has committed. The authors also claim that Sarah "*presented* in interview as a pleasant and articulate young woman" (line 20), rather than as a "typical" young offender. Given that the primary function of the court-ordered psychological assessment is to provide some

sort of causal explanation for a youth's criminal involvement, the authors must actively search for "flaws" in Sarah's upbringing, constructing a narrative of inadequate parenting out of the details that are given to them in the interviews.

They establish this narrative by tacitly comparing Sarah's upbringing to an unstated model of "healthy" parenting from which Sarah's parents have apparently fallen short. Because this model is never explicitly stated, the authors generally refrain from direct condemnations of Elizabeth and Carlos. Instead, they invite the reader to construct a more negative interpretation of Sarah's home-life than the one actually given in the report, insinuating that a more direct critique of Elizabeth and Carlos has been left out of the report in the interest of tact and diplomacy. In the following excerpt, for example, the authors describe Elizabeth Greenway and Carlos Terentio's parenting as being "not overly restrictive" (26), avoiding a direct condemnation of their parenting as "lax." The authors continue to use this strategy in the next paragraph, where Elizabeth and Carlos's reaction to Sarah's criminal activities is described as follows:

> When her parents learned about her activities and attempted to instill some semblance of parental control in the home Sarah became increasingly non-compliant and rebellious. (33-35)

This sentence, like many of the sentences giving information about Sarah's parents throughout the report, represents Carlos and Elizabeth as essentially passive or reactive. What should be a representation of active intervention is grammatically transformed into a representation of inaction. Three grammatical choices help construct this representation. First, Sarah is represented as the principal actor in this sentence, while her parents' action is relegated to the circumstances in which Sarah's actions took place (these terms are

defined in chapter 3). Second, Sarah's parents' actions are carefully qualified. They are not *really* instilling parental control in their home; they are merely *attempting* to instill *some semblance* of this. Third, the sequence of clauses in this sentence establishes a curious temporal and causal relation between the events the sentence describes. This relation can be reconstructed as follows: Sarah begins to engage in inappropriate activities, sneaking out of her home at night to be with her older friends. Her parents then learn of her activities (invisible to them previously because of their supposedly lax parenting strategies). In reaction to this discovery, Sarah's parents try to exercise control, and in response to this belated gesture toward discipline, Sarah rebels. The authors of the report insinuate a clear sequence of events through the manipulation of the sentence's various past tense verbs. This sequence almost certainly did not correspond to the far messier and non-sequential inter-subjective relations between Sarah and her household, and it certainly contradicts Dr. Greenway and Mr. Terentio's own account of their parenting strategies in their letter of complaint:

> PRESENTING CIRCUMSTANCES AND BEHAVIOUR
>
> Sarah, age 13, presented in interview as a pleasant and articulate young woman. She was cooperative and open in expressing her thoughts and feelings with us.
>
> Although Sarah's behaviour has presented some concerns over the years, in the past year her association with an older peer group and involvement in anti-social activities has escalated to a worrisome level. While Sarah was growing up her parents placed few demands on her and were not overly restrictive. This did not present any concerns for them until the past year when Sarah began to spend an increasing amount of time outside of the home and involved in criminal activities.
>
> Sarah reported that for the past several years she has been associating with a much older peer group as she found peers her own age extremely immature and boring. She enjoyed the sense of belonging the older peer group provided and the excitement of sneaking out of the home at night to be with them. When her parents learned about her activities and attempted to instill some semblance of parental control in the home Sarah became increasingly non-compliant and rebellious. Sarah was adept at manipulating her parents

who in turn were inconsistent in their parenting and discipline.

One of the functions of this use of insinuation throughout the document may be to communicate to readers that the authors have a negative view of Sarah's upbringing without disrupting the report's facade of clinical objectivity by directly saying so. In part, this insinuation is disguised through the use of passive constructions in sentences offering a negative appraisal of Sarah's activities; such constructions allow the authors to avoid stating that they are the ones offering the negative assessment. For example, in the above excerpt, the authors write, "Sarah's behaviour *has presented some concerns* over the years . . . " (23). For whom has Sarah's behaviour presented some concerns? Several more sentences of this type occur in the following excerpt. For example: "Sarah's truant behaviour from school *has been an ongoing concern*" (44); "Sarah's dependence upon her older peer group to meet her emotional needs, in conjunction with her lack of street sophistication and lack of internal controls *is concerning*" (49-51).

A second way in which the authors subtly introduce a subjective evaluation of Sarah's activities is through the use of critical adjectives. For example, in the above excerpt, Sarah is engaged in "anti-social" activities (24). In the excerpt below, her behaviour and attitude are "negative" (38). One can find these two adjectives repeated throughout the report in relation to Sarah and her peer group. While I have no intention of naively celebrating Sarah's illegal activities as necessarily "oppositional" or "counter-hegemonic," I would like to highlight the oddity of the authors' choice of words as symptomatic of their approach to young offenders. Sarah's activities, whether they be criminal or not, are carried out by Sarah in conjunction with a group of peers, partly out of

a desire to "fit in" with that group. Nevertheless, all of these activities are characterized as "anti-social." This characterization discloses something about the authors' basic attitude toward criminal youth. The "negative," "anti-social" behaviour of these youths is only understood in strict binary opposition to the "positive," "pro-social" behaviour of "normal" youth. From the description offered here of Sarah's activities, however, this behaviour appears not to be "anti-social" at all, but rather social in a different, albeit potentially self-destructive way. Perhaps a step toward a broader understanding of juvenile criminal behaviour, and toward a more useful approach to helping young offenders within the context of a psychological assessment, is to recognize that crime is generally an eminently social activity. As such, it is driven by the same urge toward status and acceptance that marks more "benign" forms of sociality:

> Since the late fall of 1990 Sarah's negative behaviour and attitude has escalated to a distressing level. This coincides with Sarah's shift to a new peer group of which many were involved in various criminal activities. Sarah alternated from living with several friends, only to return home for a few days for food, clean clothing and money from her parents.
>
> Sarah's truant behaviour from school has been an ongoing concern as well as her drinking and drug use. Sarah has placed herself in a number of potentially dangerous situations and described several incidents of drinking and abusing drugs, then accepting a ride from an acquaintance to later wake up alone in a back alley after passing out. Sarah described that a number of her peers have been involved in several dangerous criminal activities but is adamant that she has never been an active participant. Sarah's dependence upon her older peer group to meet her emotional needs, in conjunction with her lack of street sophistication and lack of internal controls is concerning. As a result, one questions the extent of Sarah's involvement in the aforementioned criminal activities.
>
> From approximately May 3, 1991 to June 7, 1991 Sarah was involved in various criminal activities and it is our understanding that she was charged with several offences still before the Court. In early May 1991 Sarah reportedly stole several credit cards from her parent's home. She was later caught and charged when she and a friend attempted to use them. She was released on an undertaking but soon after she breached her undertaking when she ran from home. She also failed to return to court and was charged with failure to appear. She was apprehended and released on a second undertaking but once again ran from her parent's home. Sarah and several friends reportedly broke into her parent's home taking $200.00, several bus tickets and a computer. Sarah indicated that she had been drinking

and abusing drugs prior to the break-in.

This initial portion of the assessment, supposedly a neutral account of Sarah's involvement with the law, concludes with a description of Sarah's attitude toward her crimes. Strangely, only Sarah's previous attitude (one of "invincibility") is described; the changes in attitude Sarah describes in her own letter of complaint to London Family Health (see appendix) are not mentioned. Instead, the authors explain that Sarah "recognized that if she is going to remain out of further trouble she must make a significant change in her attitude and behaviour" (67-68). Sarah's attitude change is only a potential one; the authors do not seem to believe that it has already begun (despite the positive reports of her behaviour from the open custody facility where she was being held). Furthermore, the motivation for Sarah's attitude change is represented as purely selfish and calculating. Sarah merely wants to "remain out of further trouble," as if the possibility of imprisonment was the only restraint upon her criminal activities. Sarah's more important feelings of remorse at having hurt her family are ignored; the authors are perhaps unwilling to believe that Sarah is a self-willed and ethical being. For me, Sarah's own account of her motivation for changing in her letter of complaint is more convincing: "I mostly changed because my friends and family were getting hurt. I also did it because people started to doubt my ability. So I suppose you could say I proved them wrong."

65 Sarah described in interview that prior to her apprehension and placement in detention she had felt invincible, enjoyed living on the streets and saw no wrong in stealing from her family. She recognized that if she is going to remain out of further trouble she must make a significant change in her attitude and behaviour and sever all contact with her former peer group. She is hopeful that she can re-establish a relationship with her family and return home.

The next section of the report deals with Sarah's school performance before and during her involvement with the juvenile justice system. According to the logic of the

status degradation ceremony, all of Sarah's past, present, and projected future behaviour must become definable in terms of her current status as a young offender; because the status degradation ceremony enacts a complete reconstruction of its victim's identity, no element of Sarah's life can fall outside of a causal paradigm leading inevitably to and from her current problems with the law. Here, the writers of the report try to draw a link between Sarah's current problems and her educational history; Sarah's set back in Grade One and movement from school to school explain her precocity and desire to make older friends. Furthermore, the writers imply that Sarah's efforts in custody to condense grades seven and eight into one year so that she can go to high school early were motivated purely by a desire to be with her older friends (who are themselves causally linked to Sarah's delinquency, according to the authors' interpretation).[4] In other words, even as Sarah displays abilities that do not conform to the writers' normative interpretation of young offenders, the motivation behind her actions is inevitably tied back to her identity as a young offender. The report also downplays her academic success in custody; after a paragraph describing Sarah's truancy in Grade 7, the authors write,

> It is our understanding that Sarah has completed the Grade 8 course level while in detention. During the course of this assessment she was insistent that if she was not able to complete Grade 8 she would not return to Patterson Public School in the fall. (95-98)

A single, curt sentence describing Sarah's achievement is followed by a lengthier, potentially critical assessment of her continuing antipathy toward her previous school.

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[4]The writers also make a factual error when they claim that "the school officials would not consider and facilitate her request" (90-91). After consultation with Sarah's parents, the officials at Sarah's school agreed to her request.

Additionally, what should be a sentence representing a material process with Sarah as actor is transformed into a mental process carried out by the writers of the report ("it is our understanding that . . . ") This dismissive appraisal contrasts with the predisposition report's positive recognition of Sarah's accomplishment:

> Despite poor attendance and a decrease in effort toward her school work throughout the academic year, Sarah managed to regain the impetus to complete the course work required to allow her to graduate from elementary school one year early. Her efforts at the on-site school while in detention were significant, and she is now registered at Central Secondary School to begin grade nine in September.

Unlike the authors of the psychological report, the probation officer emphasizes Sarah's active agency; her earlier failures are relegated to the status of circumstances that she has overcome.

ADJUSTMENT AT SCHOOL

Sarah reportedly has attended three schools to date. The family initially resided in Winnipeg, Manitoba then moved to Tucson, Arizona for a two year period.[5] When they returned to Winnipeg Sarah was held back in Grade One. Ms. Greenway reported that school personnel were of the opinion that the academic standard of the Tucson school was not as progressive as the school in Winnipeg, hence her being held back a grade level.

Sarah reportedly experienced few academic or behaviour concerns in the school setting until the family moved from Winnipeg to London. Sarah was enroled in Grade 4 at Patterson Public School and according to Ms. Greenway, Sarah immediately gravitated toward the older students. Sarah described the students at Patterson as very "snobby and boring" and refused to have anything to do with them. When she met a female peer at school that was two years older than herself she spent much of her time with her new friend in the downtown area.

Sarah was registered in Grade 7 this past school year but truancy was an ongoing concern. Sarah requested that the school allow her to take both Grade 7 and Grade 8 level courses as she wished to graduate and attend High School with her older peers in the fall. Sarah was very incensed when the school personnel would not consider and facilitate her request. A school report dated June 21, 1991 noted that Sarah's Grade 7

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[5]As Sarah's parents point out in their letter of complaint, this is yet another factual error in the transcript. Sarah only spent 4 months in school in Tucson, Arizona.

course marks ranged from 43% to 66%.

95 During Sarah's stay in detention at Paragon Resources, Inc., she has participated in their school program. It is our understanding that Sarah has completed the Grade 8 course level while in detention. During the course of this assessment she was insistent that if she was not able to complete Grade 8 she would not return to Patterson Public School in the fall. She has plans on registering for Grade 9 at Central High School for September 1991.

In the next section of the transcript, the writers of the report attempt to assess Sarah's home-life and family history. As with their account of Sarah's education, all aspects of Sarah's past are interpreted in light of her current degraded status as a young offender. In the first excerpt from this section, the writers highlight Elizabeth Greenway's first, abusive relationship as an explanation for Sarah's current behaviour; according to this interpretation, Sarah would now be "acting out" conflicting feelings resulting from her sexual assault and the subsequent death of her father. Sarah can then be easily characterized as the typical victim of a dysfunctional family according to current psychological theories. Both Sarah and her mother dispute this simple interpretation (see appendix). As Sarah noted to me in an interview, she always felt that her childhood experiences had little to do with her criminal activity:

> Basically it [the explanation for the psychologists and social workers who prepared the report] was just the sexual abuse and the death of my father, when I was a child, that's basically what they told me. That was the whole reason why things happened, which made no sense to me, because all the things that happened to me as a child I dealt with when I was a kid. I mean, yes, you're never over something like that, but I know myself that that wasn't the reason I did the things that I did. It made me kind of laugh when they told me that. They didn't ask me, they just told me "This is what is going on in your life."

The writers of the report are so eager to construct a causal link between Sarah's sexual abuse and her criminal activities that they do not attempt to verify this interpretation with

either Sarah or her parents. They treat Sarah as a "typical case," disregarding any departure from this normative characterization as irrelevant. As Barsky (1994) notes in his study of Canadian refugee hearings, this type of failure to produce anything close to a holistic account of an individual's life is typical of many institutional encounters in which life narratives are elicited. Sarah eloquently summarizes this position when she admonishes the clinic in her letter, "you office workers should treat every case as an original instead of making up their minds before they hear the whole story."

FAMILY SITUATION

Sarah's parents, Elizabeth Greenway and Herman Vandermeer were married in 1966 and from that relationship there were four children; Joel (age 20), Mark (age 18), Sam (age 15), and Sarah (age 13). During the eleven year marriage Ms. Greenway was a victim of Mr. Vandermeer's violent alcoholic rages. As Mr. Vandermeer's drinking escalated and he began to direct his violent rages toward his sons, Ms. Greenway and the four children left the home in 1980. From 1980 to 1983 Mr. Vandermeer had sporadic contact with his children. All contact ended when Sarah, then age 5, disclosed to her mother that Mr. Vandermeer sexually assaulted her during an access visit. Sarah reportedly received counselling for the abuse. The children have not had contact with Mr. Vandermeer since 1982. Mr. Vandermeer died in 1985.

One of the common stereotypes of victims of abusive families is that, if female, they tend to seek out other abusive relationships, and if male, they tend to perpetuate this abuse in their own familial relationships. In the following excerpt, the writers of the report attempt to attribute such a pattern to Sarah's relationship with her brothers and perhaps by implication to Dr. Greenway's present marriage. For example, the authors describe Sarah as "a victim of her brother's verbal and physical abuse" (133) and claim that her mother did nothing to protect her. Both Sarah and her parents dispute this characterization of the interaction between the family's siblings. However, the report's account of Sarah's physical abuse is not surprising given that, as described by Sarah's parents in their letter,

the interview with the family consisted of "'when did you stop beating your wife?' -- type questions." If, as argued in chapter two, many youth employ an evasive rhetoric of deference in formal, interrogative settings, then such questions are bound to elicit precisely the response that the questioner wishes to hear:

> In approximately 1981 Ms. Greenway and Carlos Terenzio began a common-law relationship and married in 1983. Mr. Terenzio was employed in Winnipeg as a civil engineer and Ms. Greenway as a professor of pediatric medicine. Soon after their marriage, from 1983 to 1985 Mr. Terenzio lived and worked in the near-East. During the summer months Ms. Greenway and the children travelled to the near-East for summer holidays. While Mr. Terenzio was in the near-East, for a two year period Ms. Greenway and the children moved to Tucson, Arizona for Ms. Greenway's work. They returned to Winnipeg two years later.
>
> Since September 1988 the family have resided in London. Ms. Greenway recently finished a three year term as head of pediatric medicine at University Hospital. She will be returning to a research position at the University of Western Ontario in the fall. Due to the nature of Mr. Terenzio's work, he may return to Winnipeg to work for the remainder of the summer.
>
> Ms. Greenway was of the opinion that until recently Sarah shared a close relationship with all of her brothers. She stressed that they have always been very protective of her and when they learned she was sneaking out through her bedroom window at night they nailed the window shut. However, Sarah described in interview that for many years she was a victim of her brother's verbal and physical abuse. She was of the opinion that her mother must have been aware of the physical abuse but did nothing to protect her. Sarah stressed that she now only shares a close relationship with Mark. Joel and Sam have not had any contact with Sarah since she has been in detention.

In the final excerpt from this section on family history, the writers of the report complete their negative assessment of Sarah's home-life as a basis for their eventual recommendation that Sarah be placed in a foster home. In the first paragraph, they set conflicting interpretations of Dr. Greenway and Mr. Terentio's parenting styles against each other, privileging Sarah's interpretation of her parents as permissive and manipulable (her parents contest this characterization in their letter). The second paragraph is offered as a series of "proofs" of Sarah's ability to get away with anything. Note that no mention is made of any of the positive achievements of either Sarah or her parents; the writer's

causal narrative selectively highlights the negative aspects of Sarah's upbringing. Because the authors are only interested in Sarah as a "young offender," any information that might lead to a different representation of Sarah is disregarded. The section concludes with a negative prediction, based upon these past examples of supposed parental leniency, of Sarah's future behaviour at home. As Kenneth Burke might have argued, Sarah is here defined "in substance" as a young offender, according to the logic of the "paradoxes of substance" explored by Burke in A Grammar of Motives. For Burke, any act of definition (including social acts of definition such as the one described here), involves the attribution of an essential substance to a person or thing. This substance would then be an intrinsic property of the person or thing to which it is attached. However, such definitions inevitably evoke a paradox, in that they can only define a person or thing intrinsically by appealing to that thing's extrinsic context. In other words, one can only define what a person or thing *is* by attributing to it something that it *is not*. In this report, we can thus see how the writers are attempting to define Sarah "substantially" as a young offender through reference to her family history. As such, there is no possibility for change on the part of either Sarah or her parents. According to the logic of the status degradation ceremony, they are statically designated as incorrigible. This is surely an unhelpful attitude to take in a clinical assessment intended to facilitate Sarah's reform. However, this definition of Sarah as a young offender on the basis of her history inevitably opens the possibility of a counter-reading of Sarah as "substantially other" than a young offender on the same grounds. It is this counter-reading that Sarah's parents and Sarah herself attempt to make explicit in their letter of complaint, reading the report "against the grain" in order

to pinpoint the lacunae where the report's definition of Sarah falls apart. My own analysis of this report is largely a continuation of this counter-reading:

> Ms. Greenway acknowledges that the children were raised in an environment where they had few stringent rules to abide as she encouraged them at an early age to be independent and to make their own decisions. In response, Sarah described that her parents were very indulgent and permissive and she quickly learned how to manipulate them to get what she wanted.
>
> At the approximate age of 11 Sarah was permitted to smoke cigarettes in the home. In the past year she was also allowed to drink in the home. Ms. Greenway was of the opinion that she could not stop Sarah from smoking and drinking and preferred to have her in the home rather than her sneaking around behind her back. On December 31, 1990 Sarah informed her parents that she was having friends over and that they would be drinking. As the evening progressed approximately thirty uninvited guests arrived who later broke into her brother's room. Several items belonging to her brother were stolen and broken.
>
> Sarah's parents stressed that they would like to have Sarah return home; however, unless they are able to be consistent and diligent in their disciplining and parenting of Sarah, Sarah's return home will be unsuccessful.

The next, penultimate section of the report is rather strangely titled "Clinical Findings." Surprisingly little of this section actually describes the findings of the interviewers' psychological tests; most of this section instead continues the previous negative assessment of Sarah's home-life. Sarah's family is for the first time in the report openly condemned as "permissive," and the authors insinuate that the pattern of abuse experienced in Dr. Greenway's first marriage has persisted into the second. Hence, they note that Sarah "describes herself as never having been close to the stepfather. Perhaps largely because she anticipated that he would treat her as her biological father did" (172-173). It is unclear why this speculation is a "clinical finding." The writers of the report only begin to describe the results of their tests in the third paragraph. These results appear to be largely inconclusive. Sarah is reported as exhibiting a "moderately high level of denial which suggests that Sarah may be defensively trying to prevent herself from

becoming known to us" (178-179), an understandable strategy in an interview with apparently hostile, court-appointed psychologists. Furthermore, Sarah exhibits "a slightly elevated degree of depressive symptomatology" (180). Neither of these findings appear to be more than technical rewordings of colloquial observations that could be made by anyone in everyday experience. Their placement in a section of the text entitled "Clinical Findings," however, guarantees them symbolic efficacy and an appearance of scientific objectivity. Note also that in the last paragraph, the authors claim that Sarah appears to experience no guilt with regards to the theft from her parents. Again, this contradicts the predisposition report's account of Sarah's feelings: "Sarah is very articulate in expressing remorse and regret for her actions leading to the charges before the court." It is only possible to speculate as to how this contradiction emerged. Perhaps Sarah failed to play the role of "appropriately repentant young offender" on the day of her interview at London Family Health. Alternatively, perhaps her interviewers were so intent upon verifying their preconceptions of Sarah that they did not try to elicit this performance:

CLINICAL FINDINGS

Sarah presented herself as a very bright, cooperative, open young woman who has had experiences that one would not expect in a girl of her tender years. Sarah appears to have grown up extremely fast and has been allowed to be exposed to adult experiences inappropriately. Sarah harbours a hatred of her father, who she describes as having beat her and her brothers, as well as attempting to sexually abuse her. After the father's death, the brothers physically abused Sarah. After the attempted sexual abuse, Sarah has no recollection of ever having seen her father again. Her final contact with him was at his funeral.

Sarah gives the impression of having grown up in a permissive home in which there was little supervision. As a result of this Sarah has developed her own ways of coping with the world. She has also developed alliances with antisocial characters and she, herself, has developed antisocial behaviour, such as stealing money from her own home and fraud against her mother. These offences may reveal Sarah's underlying feelings about her parents. She describes herself as never having been close to the stepfather. Perhaps largely because

she anticipated that he would treat her as her biological father did. She also described little closeness to her brothers. She appears to have used her intelligence to develop a social circle and a way of life that provides her with some rewards. Her premature sexual activity is part of this style of relating to others in attempting to get her personal needs met.

Psychological testing reveals a moderately high level of denial which suggests that Sarah may be defensively trying to prevent herself from becoming known to us. In spite of this she complains of a slightly elevated degree of depressive symptomatology. On the other hand, Sarah describes herself as extremely calm and unruffled when confronted by unexpected occurrences. She tends to describe herself as an individual who is able to maintain her self control even while in a crisis. Testing suggests that Sarah may have difficulty being comfortable around people, but she denies this and indicates that she enjoys very much being with others. Testing suggests Sarah is well organized in her thinking and has no difficulty in distinguishing fantasy from reality. She has the ability to concentrate and to maintain sensible conversation. She indicates that she is even tempered and has no difficulty in controlling her impulses. These findings are generally in keeping with the observations made during the assessment. Sarah is a calm, bright young woman who expressed herself openly and maintained self-control at all times. She had no difficulty discussing sensitive topics such as her sexuality. She seems to feel no shame or discomfort with any of the activities that she has been involved in, which is in keeping with the level of anxiety that she expresses.

Sarah is a pleasant, bright young woman who has the capacity for a productive life. Her style however has been to become independent or even rebellious against the constraints of authority. She tends to do as she wishes. She does not appear to experience guilt about the antisocial behaviour that she has been involved in. These findings suggest the possibility of antisocial tendencies developing in Sarah. Significant and substantial consequences are needed in order to prevent her from developing these tendencies even further.

The report concludes with a summary of the conclusions drawn so far and a series of recommendations for Sarah's treatment. In the summative first paragraph of this section, the authors give their overall appraisal of Sarah's situation through the use, once again, of consecutive passive sentence constructions (i.e., "Her parents' inability in the past to provide consistency and follow-through in rules and discipline and appropriate supervision *is concerning*.") This choice of style has the effect of privileging the authors' interpretations of Sarah's home-life over those of Sarah or her family. Note, for example, that throughout this report, accounts of Sarah or her parents' view of their home-life have been prefaced by verbal process constructions such as "X described . . . " or "X indicated

that . . . ". Alternately, these views have been prefaced by mental process constructions such as "X was of the opinion that . . . " or "X believes . . . " In total, such verbal and mental process constructions occur in 27 sentences representing Sarah or her parents' views throughout the report. In contrast, only two sentences of this type are used to represent the views of the authors, on lines 55 and 95. Both of these sentences have the identical construction, "It is our understanding . . . ", and relate essentially factual events. Without exception, all of the authors' negative assessments of Sarah and her family are expressed through the use of passive constructions or other, even more subtle sentence constructions. The effect is to occlude the author's interpretations, representing them as objective facts in contrast to the subjective "opinions" of Sarah and her parents. This veneer of objectivity, largely an effect of the conventional set of speech genres (Bakhtin 1986) that constitute the psychological report in our culture,[6] obviously contributes to the symbolic power of the text:

SUMMARY AND RECOMMENDATIONS

205 Before the Court is a young thirteen year old whose behaviour has been out of control for a significant period of time. Her association with an older anti-social peer group, history of drug and alcohol abuse and involvement in potentially dangerous situations is alarming. Her parents' inability in the past to provide consistency and follow-through in rules and discipline and appropriate supervision is concerning. Although this is Sarah's first time
210 before the Court and she is adamant that she "has learned her lesson" and wants to return home, there is concern that without a significant intervention at this time, Sarah may revert back to her previous life-style.

The authors of the report now come to their chief recommendation for Sarah's rehabilitation -- placement outside of the home and community in a foster care facility.

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[6]Glen Stillar (1998: 151-178) offers a reading of a speech pathology report that highlights many of the same linguistic features as those I have attempted to discover here with relation to the psychological report.

This is a drastic recommendation for a youth who has committed relatively few actual crimes and who is not currently in danger of physical or emotional abuse at home. Her criminal record at this point consists of one charge of theft under $1000 and one charge of credit card fraud. The remainder of Sarah's charges are for her failures to abide by the conditions set during her release on bail, her failure to attend court, and her truancy from school. Once again, the authors represent their interpretation of Sarah's needs as an objective fact ("Sarah would greatly benefit from an out of home placement" -- line 214), while Sarah's parents' contradictory interpretation is represented as essentially subjective (" . . . they believe it would be too disruptive for Sarah to start high school in another city" -- line 226-227):

> Ideally, Sarah would greatly benefit from an out of home placement to stabilize her behaviour and provide her with structure, supervision, and ongoing consequencing of her behaviour. Placement with Maple Family Support Services in Parkhill which offers specialized foster care would be of importance as it would meet Sarah's aforementioned needs, as well as, an opportunity to receive counselling for past unresolved personal and family related issues. Potential clients are closely matched to a suitable foster home and agency social workers are in constant contact with the foster parents and client.
>
> During the course of this assessment contact was made with John Leiderman, Executive Director at Maple Services who reported that their agency would accept a referral for consideration. There is no waiting list at this time. However, Sarah is not amenable to any alternate placement outside of her home. Ms. Greenway and Mr. Terenzio are also resistant to Sarah's placement outside of the home as they believe it would be too disruptive for Sarah to start high school in another city. They also believe that Sarah has "learned her lesson" and will be more compliant upon her return home.

Given Sarah and her parents' refusal of the clinic's suggestion, the authors conclude their report with a parting, disciplinary admonishment to the family:

> Prior to Sarah's referral to the clinic, Ms. Greenway contacted Carterville Youth Services. According to Molly Shorten from Carterville, Sarah is presently on their waiting list for counselling and anticipates that it may take approximately three weeks before a worker is assigned. In light of Sarah and her parents' refusal at this time to consider out of home placement, it will be important that Ms. Greenway and Mr. Terenzio be active participants in Sarah's counselling.

A period of probation with frequent supervision will be important to monitor Sarah's behaviour in the community, her living arrangement, and follow-through in counselling.

We hope this assessment is helpful to your Honour in meeting this young woman's needs.

Respectfully submitted,

Margaret Dupont
B.A., S.S.W.

Martin Brown
Ph.D., C.Psych.

Conclusion: Today's "Child-Savers"

At issue in this report is a difference between models of parenting. Dr. Greenway and Mr. Terentio appear to have adopted a caring but "laissez-faire" style of parenting that emphasizes individual development. The authors of the report see this as a departure from an unstated model of "normal" parenting. Rather than trying to adapt a form of rehabilitative intervention to Sarah's household, the authors argue for her removal from the family. They make this argument through an attempted status degradation of both Sarah and her parents; despite Sarah's efforts in custody to alter her behaviour and despite the lack of involvement of Sarah's three older brothers with the criminal justice system, Sarah is defined "in substance" as a young offender and her family is defined "in substance" as dysfunctional. This strategy of characterizing youth and their families according to a normative definition of what constitutes a healthy, white, middle class household leaves little space for individual differences. The authors can only conceive of a single model for Sarah's rehabilitation -- one that places her in a normal family environment in which she will become a normal child. In this sense, the authors of this report are not very much different from the child-savers of the 19th century described in

chapter one. Recall that these 19th century philanthropists similarly called for intervention into lower-class families based upon a model of family propriety that was, as Anthony Platt puts it, so high "that almost any parent could be accused of not fulfilling his 'proper function'" (Platt 1969: 135). If this report is in any way indicative of the way psychological reports are carried out today, it appears that the same invisible and hopelessly idyllic (perhaps even unhealthy!) model of family propriety that was evoked by the child-savers in the 19th century is now being used selectively by agents in the youth justice system to account for delinquency among all youth, regardless of their social class.

However, the fact that Sarah comes from an upper-middle-class ("professional") family may also have lent a certain degree of urgency, even *ressentiment* to the authors' disciplining of Sarah and her parents. The authors of the report may especially have felt threatened by Sarah's mother, a successful and well-know pediatrician, whose cultural capital was obviously superior to their own. Dr. Greenway could successfully appropriate the authors' professional language and challenge their findings. In this sense, Sarah posed much more of a threat to the authors of this report than did the witness in the previous chapter to his interrogators. Perhaps this report should thus be read as a pre-emptive strike against Sarah and her parents, undermining their social authority through a status degradation ceremony that reduces Sarah to a typical young offender from an abusive family.

At least in this case, the authors' strategy had little effect other than to antagonize Sarah and her parents. Sarah remained at home. After taking some time off after her sixteenth birthday, she eventually completed highschool. She did have some further

involvement with the criminal justice system -- a series of breaches of her conditions of probation. However, she committed no offences that would be considered "criminal" for a youth not serving a probationary sentence. I would like to emphasize, however, that a report of this nature could have had a much more profound effect upon a different youth. Reports such as this one are invested with a vast amount of the symbolic power that Bourdieu (1991) claims is necessary for the functioning of any speech act. They are written by agents, socially recognized as "experts" in their field, working within institutions directly linked to the juridical system. They are written in a formal style that seems to indicate that they are "objective" accounts of a young person's problems. These reports thus have an immense influence upon both judges' and families' decisions about how to deal with young offenders. In this case, Sarah's parents were positioned in the social space in such a way that they could contest the symbolic power typically invested in such a report. A family with less economic and especially cultural capital would have had far greater difficulties disregarding the effects of this power.

Conclusion

This thesis may frustrate some readers who would like it to conclude with a program for change. I seem to have pointed out "dangers" in the day-to-day management of the juvenile justice system, moments when youth are not listened to, when youth are unnecessarily "put in their place" and humiliated, when a boundary is arbitrarily erected to mark an impossible distinction between the normal and the criminal youth. Yet I have offered no programmatic solutions. Instead, I hope that I have posed a rigorous challenge to agents in the juvenile justice system who may read this text: that they maintain an unceasing self-reflexive vigilance upon their practices. Many of the "problems" with the juvenile justice system are broad, cultural crises that the juvenile justice system can do nothing about. Other problems, however, do arise from juridical agents' failure to meet, or even recognize the necessity of the challenge of self-reflexivity. Instead, for lack of time or inclination, agents in the juvenile justice system tend to fall back upon rigidified bureaucratic procedures and habitual categorizations of youth. Their practices become invisible to them, fading into a background of daily exigencies.

This text should be useful to such agents in two linked ways. First, I have tried to defamiliarize juridical agents' habitual practices, making them visible once again. Barring a rigorous effort of "participant objectification" (Bourdieu 1988), such a defamiliarization is only possible from the outside, through the efforts of a disciplinary outsider awkwardly struggling to make sense out of an unfamiliar field. Second, I have tried to highlight the "dangers" of the current juvenile justice system. In terms of the daily administration of young offenders in Canada, I have focused specifically upon two of these dangers: youths'

use of a rhetoric of deference that is often mistaken for uncertainty or insolence, and juridical agents' use of status degradation ceremonies to consign young offenders to static criminal identities.

I have tried to show that because of these two dangers, criminal trials are generally not a good forum for hearing youth complaints against correctional facility staff. The stakes in these trials are too high. A correctional facility staff member can only be characterized as wholly innocent or guilty, and a finding of guilt would generally lead to both a criminal penalty and that staff member's dismissal. The burden of proof for a finding of guilt thus lies with the crown attorney and his or her ability to find a convincing victim. In this context, a young offender with a complaint can only appear as a dangerous threat to the justice system, to be put in his or her place so that valuable staff members can continue to do their job. A different forum is needed, one in which staff members can be punished with less devastating disciplinary measures and in which *both* young offenders and staff can be assigned the blame for a violent altercation. Additionally, a formal trial is too intimidating an environment for many dominated speakers to coherently make their cases. Such a speech situation often leads to youths' use of a rhetoric of deference that can make communication difficult or impossible. A more informal hearing, without the pomp and combativeness of an actual adversarial trial, may enable youth to produce more credible narratives.

I have also tried to show that psychological assessments sometimes become occasions for status degradation ceremonies that do little to help youth. It is unacceptable, in my view, for a report profoundly affecting a youth's future to be drawn

up based upon interviews by three separate psychologists and counselors, none of whom take the time to listen to the young person and understand his or her needs. If such a report is necessary to determine the needs of a youth, it must present a more holistic view of that youth's personality and upbringing. Obviously, such a holistic perspective takes time and better trained personnel, both of which are expensive resources. With the recent trend toward government cutbacks of front-end services within the justice system, such an expenditure of resources seems less and less likely.

If statistics charting the rise of custodial dispositions for young offenders in Canada over the past ten years are of any indication, increasing numbers of troubled youth are being turned over to the juvenile justice system; Canada appears to be following the American trend of using prisons as a means of punishment rather than rehabilitation. Juridical agents must now deal with more youth than ever before, and this increased volume in offenders, combined with decreasing budgets for front-end counseling and in-custody programs, means that juridical agents will be increasingly tempted to take "short-cuts." Their practices will become even less visible to them, and many of the dangers described in this thesis will be covered over and forgotten. In this situation, it becomes ever more crucial that juridical practices be remembered and rethought, despite the effort that this entails for already overworked professionals. If there is a "program" in this text, it is therefore the simple and perhaps naive suggestion that agents in the juridical field think about what they do.

Appendix to Chapter Four

Correspondence Concerning Sarah Vandermeer's Psychological Assessment

Letter from Sarah's Parents:

Mr. Jeremy Wiseman, Director
London Family Health Inc.

Dear Mr. Wiseman,

Your office prepared an assessment of our daughter, Sarah Vandermeer, under instruction from His Honour Judge Voros, presented to the court 23 July 1991. A report, which both we and our daughter found useful, was also presented by Probation Officer, Mr. Zachary Webster. On our most recent discussion with Sarah's present probation officer, Ms. Samantha Cushman, we (both parents and Sarah) expressed our distress at the report prepared by your clinic — which we did not see until after the court appearance in which Sarah was released on probation from all charges. We did not, therefore, have an opportunity to comment — although Ms. Margaret Dupont had assured us that we would have such an opportunity. We obtained the report only from the probation officer, with the approval of your office. He advised us that, since this obviously was a source of resentment for all of us, we should respond in writing.

In general, we found the report inaccurate or exaggerated in matters of fact, superficial in its understanding of the particular circumstances of this child and this family in favour of innuendo placing the most negative possible interpretation on all facts, and consistently failing to listen to what any of us said or to acknowledge the substantial change in Sarah's attitude during her six weeks in open custody (during which she graduated from elementary school, completing grades 7 and 8 in one year plus the summer, and registered for high school). Nor was there any acknowledgment of the very positive report from King St. Perhaps most disturbing, however, is the implication that Sarah is not an active force in her own life choices and that we as her parents are either incompetent or uncaring.

This is not what we believed to be the purpose of London Family Health. We cooperated in the assessment on the assumption that Sarah's welfare was the issue and that we wanted help in solving her problems within our family. We got an apparent assumption that all of us were passive and that Sarah's problems should be solved by removal from the family and the community. Let us proceed to some specifics:

MATTERS OF FACT:

Both of Sarah's parents gave the case workers their business cards. In spite of this, however, the report consistently spells Mr. Terentio's name "Terenzio."

Sarah started grade one in Tucson, Arizona. She went to school there for 4 months, not two years as repeated several times in the report. (How she could still be in grade one after two years in Tucson is beyond us!) The "progressiveness" of the two school systems was not the issue. The Tucson system simply did not teach children to read.

The report has Sarah not seeing her biological father after 1982 but sexually abused by him in 1983 on an access visit.

Dr. Greenway did not begin a "common law relationship" with Mr. Terentio in 1981. He courted her, in a

leisurely European manner, between 1981 and 1983 when they married. Both parties owned their own homes and maintained separate households.

Dr. Greenway and the children did not move to Tucson while Mr. Terentio was in the near East. The time Mr. Terentio spent in Canada during his work in the near East work, in addition to the 9 months the family spent there, is also ignored.

INNUENDO ABOUT FAMILY HISTORY:

"While Sarah was growing up her parents placed few demands on her and were not overly restrictive." Her older peer group and anti-social activities "did not present any concerns" for us until recently. In fact, we spent some considerable time explaining that many of Sarah's activities have always involved family, with only seven years between her and her oldest brother. Children of various ages have been involved in socializing, sports, movies, etc. Sarah has always known older children, therefore. Discipline and supervision have been low-key, not nonexistent. Children have been permitted to make their own decisions, with intervention only when they are bad or dangerous ones. Supervision has been background unless there were problems. And there have always been extensive and frequent conversations about behaviour, both specific and philosophical. Children have always had some chores and have been expected to behave civilly in the home. In any case, we were more restrictive than Sarah thought we were. Helpful advice might be for her to see our interventions more explicitly.

We were concerned about Sarah's antisocial activities and about her peer group, its age being as much a problem as its attitude. We, in fact, made various efforts to head off Sarah's rebellion before she got into legal trouble. Our active role in these matters has, we believe, meant that the system hit Sarah much harder than it has her peers. We found that necessary to get her attention and turn around her attitude and behaviour. Specifically: 1) we repeatedly discussed her problems with the school, 2) when the school reported truancy, we encouraged the truancy officer, Mr. Gerald Garland, to file charges much earlier than he would normally do, 3) when Sarah began to run away for several days at a time, we discussed our options with several police officers and with the police counselling services several times, 4) when Sarah went to Children's Aid because her friends thought group homes were a fine way to live, we talked with them and her in an effort to explain to her that she was not at risk and not comparable to most of her friends. We were told repeatedly that we cannot restrain the child or make her do anything. She is not required to live at home. Only when she did something illegal could any pressure be put on her. Sarah was not prepared at that time to listen to moral suasion, though we tried.

To say that we tried "to instill some semblance of parental control" doesn't do justice to our efforts. Sarah's manipulation and our inconsistency are also exaggerated. She is now clear that she knew what things were manipulable and what were not. In the period when she was rebelling, she certainly didn't acknowledge our efforts. To take her literally and ignore us seems perverse. It is true that we hassled her less about small things and tried for confrontations only about big ones.

When Sarah became involved with the law, we suddenly had some ability to act. 5) On the advice of Ms. Stacey Coulter from CAS, we got ourselves on the waiting list for counselling at Carterville (finally beginning this week). 6) We continued discussions with Ms. Coulter, agreeing that Sarah was better off at home and talking about how to keep her there. 7) We cooperated with your clinic in its assessment. 8) We cooperated with probation services. Mr. Webster was somewhat more sceptical about Sarah's turn-around than we were but in agreement that she had a right to be supported in trying to change.

In the legal phase of all this, we also took initiative. We refused to sign an undertaking for Sarah after she ignored two of them, leaving her for what turned out to be six weeks in open custody. This was a consequence of her action which we felt she had to face. We made it clear that we wanted her home but

that she would have to decide she wanted to be at home. We were right because the open custody dramatically changed her way of thinking.

The family history is also coloured by innuendo. The "relationship" which produced the four children was a marriage; why not say so. The drinking and violent rages did not occur "during the eleven year marriage." Dr. Vandermeer, the children's biological father, lost his university position well into the marriage and was unable to adjust psychologically. I removed the children from the home once in 1980. We never went back and forth after that decision was made. Again, there was some active decision-making here. We do not fit all the stereotypes of an abused family.

EXAGGERATION:

Sarah is presented as having a serious problem with drinking and drug abuse. There are certainly incidents of both, as she described to Ms. Dupont. However, she does not drink regularly or have a drinking problem. We are less able to assess the drugs. We agree she was placing herself at risk. That is why we were seeking intervention. We don't know either how much criminal activity Sarah has participated in. We do know that she feels strongly that she keeps her so-called friends from criminal activities (unrealistic though this may be). We do know that several of them think she is a "chicken."

Sarah was turning 12 when she first tried to smoke at home. We did not approve. However, older siblings and one parent smoke. It was impossible to police consistently. We did object consistently. Sarah was not "allowed to drink in the home" in the sense implied. All of the children are allowed a small taste of wine on special occasions. Older siblings and their friends have beer in the house and we attempted to keep Sarah away from their parties. Sarah was not given permission for her friends to drink New Years Eve 1990. The uninvited guests were virtually the only people who showed up and the damage was extensive. This was not what Sarah planned or we authorized. The report makes it sound like we thought this was fine.

The employment of both parents is discussed in a way that implies lack of availability for Sarah. Dr. Greenway indeed returns to a full-time research position after three years as Head of Pediatric Care at University Hospital. Mr. Terentio indeed spent twelve days in Winnipeg and will probably return for another twelve days in September. So what?

LISTENING TO THE CLIENT:

Sarah's report of "Her brother's [only one?] verbal and physical abuse" is taken literally, though these are not words she would use. Parents' comments are dismissed. Dr. Greenway was certainly aware that Sarah felt, as a small child, powerless against three older brothers. The two younger boys complained too. Dr. Greenway and Mr. Terentio intervened regularly in particular events and spent considerable time talking to the boys, especially the oldest, about treatment of women and other weaker persons. Sarah agrees that this has been blown out of proportion.

The present situation with Sarah's brothers is also misrepresented. Sarah is taken literally when she says that she is now only close to Mark. This statement was made at a time when she was in open custody and the other two refused to visit her. She has been closer in fact to Sam, closest to her in age, and the oldest. In any case, it varies. Surely an adult's long-term view of this should not be dismissed.

Sarah indeed appears to hate her father. Counselling for this seems a good idea and Sarah is now willing. However, he never beat her; she is repeating what her brothers say happened to them. The oldest took almost all of the actual physical abuse. Nor did her brothers physically abuse her. If she feels this way, it needs to be addressed but it is not accurate. Nor is it true that Sarah is not close to her stepfather. He is,

practically speaking, the only father she remembers. Strained relations during the last year do not change the lifetime pattern utterly. Her reported lack of closeness to her brothers is also a short-term response. She was hurt at their anger toward her and her behaviour. She now sees it all quite differently.

ATTITUDE OF LONDON FAMILY HEALTH PERSONNEL:

Part of the confusion over this assessment may result from the fact that so many people participated in it. Our initial interview was with a social worker and a psychologist, neither of whom continued with the case. Ms. Lisa Wood barely got a word in edgewise. Ms. Erika Bowman asked a number of "when did you stop beating your wife?" -- type questions and appeared to have made up her mind about us and Sarah in advance. She gave the impression of having decided that we approved of Sarah's antisocial and age-inappropriate behaviour. She went on holidays and Ms. Stickland took over. Our first interview with her was helpful. After she talked to Sarah, she appeared to panic about Sarah having placed herself at risk. Again, she didn't seem to feel that we shared her concern. We raised a number of questions about Sarah's reasons for her rebellion, concentrated largely in a six-month period, and asked to talk to the psychologist. Ms. Stickland basically told us that was not appropriate.

FREE WILL AND AGENCY:

Sarah does not fit a number of stereotypes about the young offender. She has two parents; her stepfather became part of her life before her third birthday. She has a solid family social and economic environment. Until very recently, she has done well in school. She has three older brothers who have not had the antisocial attitudes or legal difficulties which brought Sarah to the clinic. Under these circumstances, surely we could expect the clinic to cooperate with us rather than try to remove the child indefinitely from our home against our wishes. Sarah's antisocial behaviour has escalated in a relatively brief period. Her inappropriate behaviour patterns have not become a long-term way of life. This is a kid who can change if she wants to.

Sarah's free will is now being exercised. She has lost the attitude problem and wants us to help her. She no longer feels invincible and regrets her criminal and antisocial behaviour. She finds it hard to believe that she did the things she did. She settled into school work and is starting high school. She got high marks at King St. (The response from the clinic appears to be that her cooperativeness at King St. in turning herself around means that she needs to continue in close supervision. Sarah feels betrayed by this. She did what she was asked to do and expects to have a chance to prove that she has changed.)

Sarah has been home for a month now. She has done an impressive job of reestablishing relationships with the family. She reports never even considering that she couldn't come home. All three of her brothers acknowledge the dramatic change in her attitude and are trying to help her. The clinic recommends "significant intervention" — without realizing that there already has been significant intervention.

In sum, our interaction with your clinic has been the least helpful part of a process which is going well. We are certainly aware that there may be setbacks. But we would like to feel that agencies such as yours intend to be facilitative rather than negative.

Yours respectfully,

Elizabeth Greenway
Carlos Terentio

Cc: His Honour Judge A. W. Voros; Samantha Cushman, Probation Services

Letter from Sarah Vandermeer:

Dear Mr. Wiseman,

Your office prepared an assessment of me (Sarah Vandermeer) which was presented in Youth Court July 23, 91 under the instruction of his Honour Judge A. W. Voros.

My parents and I were assured to be presented with the report before the court was brought into session. This agreement was not followed through by your office.

This report was not seen by both my parents, Dr. Greenway and Mr. Terentio and I until well after I was released.

Personally I feel I have changed a great deal in the last 3 months. For a while I didn't think I could do it. I mostly changed because my friends and family were getting hurt. I also did it because people started to doubt my ability. So I suppose you could say I proved them wrong.

I found the report to be unhelpful in my success in turning around my life. It was inaccurate and blown way out of proportion on many counts. My parents letter speaks for me too.

In the future you office workers should treat every case as an original instead of making up their minds before they hear the whole story. When you listen to what people have to say and don't blow things our of proportion their jobs are made easier and more rewarding.

Sincerely,

Sarah Vandermeer

Letter from London Family Health:

Dear Dr. Greenway and Mr. Terentio;

Thank you for sharing your concerns with us regarding our assessment Report regarding your daughter, Sarah.

We attempt in our work with young people and their families to in as sensitive a manner as possible offer an increased understanding of young persons and their situation. We provide a formulation for the Court about that young person's situation and the potential for them to be at risk for further emotional difficulties and involvement in anti-social activities. From what we know about Sarah, the peers she has associated with and her lack of street sophistication, Sarah had placed herself at considerable risk for further difficulties. We needed to reflect that level of concern to the Court.

We are pleased that Sarah is doing well at home and in the community. We wish you and Sarah well and that Sarah's situation will continue to improve.

Once again, thank you for your letter sharing your concerns with us.

Sincerely,

Michael Grant, Ph. D., C. Psych.
Director Young Offender Services
Assistant Director London Family Health

Jody Shurbrook
B.A., S.S.W.

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