The Role of Parents and *Parens Patriae*:
Developing Views of Legitimacy and Justice in Juvenile Delinquency Court

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Liana J. Pennington

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ABSTRACT OF DISSERTATION

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Abstract

The juvenile delinquency court aims to modify children’s behavior, but little is known about how parents’ experiences in the juvenile justice system may be affecting the court’s efforts. Whether parents believe the court system is fair and effective and how they discuss the court’s legitimacy with their child could have important implications for the juvenile justice system. There exists widespread distrust of courts and the justice system in poor and minority communities (Rottman and Hansen 2001). Since children from disadvantaged communities are disproportionately represented in the juvenile justice system (Feld 1999), it is critical to understand how these views of the court develop and under which circumstances parents’ perceptions of the court’s legitimacy increase or decrease. Parents are one of children’s primary socializing agents and how parents perceive issues of law and justice may strongly influence their children’s moral and political beliefs (Henning 2006).

This study takes an in-depth look at the experiences of thirty families in two urban juvenile delinquency courts in the Northeast United States. This project extends prior work in procedural justice and legal consciousness by taking a longitudinal and multi-perspectival approach to the development of legal perceptions, values, and ideas. Much of the previous research in these areas has been cross-sectional and retrospective; this study combines observations with interviews with multiple members of the same family at different times during the court process. This multi-faceted approach allows for the study of how views of law and justice evolve during a legal process and how perceptions of the court system are shared within
families. This study includes eighty-six semi-structured interviews of parents and youth and 108 observations of court hearings and attorney meetings with the family.

Most parents enter the court process seeking to engage with the justice system, viewing their role as parents to be their child’s advocate and to ensure that legal authorities act fairly. Often, parents and youth want to challenge the police version of the criminal incident and to broaden who is held accountable in the courtroom. When they find they cannot participate meaningfully in the court process, many parents and youth become more passive and disengaged. Their passivity resembles deference to legal authorities because these parents and youth are no longer speaking out against the state’s version of the case. When parents fail to find influence inside the court system, they often seek it extralegally through conversations within the family. These families create an intermediate space outside the formal court process where parents transmit their views and socialize their child. These conversations are primarily negative, revolving around parents’ growing distrust of the court process. This research finds that notions of justice are interactive and intersubjective, with parents filtering the meaning of court experiences for their court-involved child.
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Chapter 1

Experiencing the Juvenile Delinquency Court –

The Meaningful Involvement of Parents in the Legal Process

Juvenile delinquency courts aim to change a child’s behavior, but little attention has been given to whether parents experience the justice process as fair and legitimate. Understanding parents’ experiences may lead to valuable insights about the efficacy of the delinquency system and its effects on how individuals view legal authorities. Parents whose children are involved with the courts must cede some of their authority and direct control of their children to the state in order for the juvenile justice system to act as the functional equivalent of the parent under the *parens patriae* doctrine.\(^1\) This can place parents in a difficult position, particularly if they personally question the legitimacy of the legal system and its ability to be just. Focusing on the experiences of parents, this research examines how parents and youth interact with the juvenile justice system, including whether their views of the court’s legitimacy change during the legal process, their opportunities to participate in the framing of the case, and how they discuss issues of law and justice at home away from legal authorities.

Parents are embedded in the juvenile justice process, experiencing the court system along with their court-involved child. Parents are usually required to attend all court hearings relating to their child’s case, although they have a limited role in most juvenile delinquency proceedings (Davies and Davidson 2001). For unlike the health care and education contexts, parents in delinquency court find themselves with limited decision-making power and few opportunities to voice their opinion in the juvenile justice process. However, parents likely play an important

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\(^1\) The term *parens patriae* established the state’s responsibility for dependent children and affirmed its ability to take children away from their natural parents if the circumstances demanded it (Grossberg 2002).
role in shaping their child’s law-related views and attitudes. Parents who hold a positive view of the juvenile court may reinforce the court’s efforts through conversations and other interactions with their children. Conversely, if parents feel shut out of the justice process, they may share their frustrations with their court-involved child. Socio-legal research demonstrates that people create meaning for themselves through their interactions with the law and their experiences with legal institutions (Ewick and Silbey 1998; Merry 1990). Prior work emphasizes the need for more research on the origins of perceptions of legitimacy and how family relationships affect children’s acquisition of values relating to law and justice (Piquero et al. 2005; Fagan and Tyler 2005). Participants may leave the court process perceiving the juvenile justice system to be illegitimate, not believing that the legal process can be responsive to their needs.

Understanding how parents and youth in disadvantaged communities experience the juvenile court process is particularly important because poor and minority youth are disproportionately represented in the juvenile justice system (Feld 1999). Research documents widespread distrust of and lack of confidence in the courts and the criminal justice system (Rottman and Hansen 2001). Members of racial minority groups and the poor are considerably more likely to perceive the criminal system as unjust (Rottman and Hansen 2001; Hagan and Albonetti 1982). Blacks may have even higher levels of distrust of the courts and the criminal justice system than of the police (Tyler and Fagan 2008). Given these negative views, it is not surprising that members of racial minority groups are generally less accepting of legal decisions and less satisfied with their treatment by court authorities than whites (Tyler and Huo 2002). More research is needed to understand how negative perceptions of the criminal court system develop and the effects of these attitudes on law-related behavior, especially if practices and
policies in the juvenile court are contributing to these high levels of distrust. Social institutions find more acceptance when they operate in ways that are consistent with a community’s internal values (Tyler and Fagan 2008). Police and courts may have difficulty managing problems of social order because their success is ultimately linked to the norms and attitudes of individuals in the community (Tyler and Fagan 2008; Meares and Kahan 1998). This study explores how a selection of families in two urban communities experiences the juvenile delinquency court process, examining how perceptions of the legal system’s legitimacy evolve throughout the case and the role that family interaction plays in developing and maintaining views of law and justice.

Understanding Parents’ Limited Role – The Implications of History

The history of the juvenile court provides some insight into parents’ limited role in the process and the absence of opportunities for meaningful participation by either parents or youth. This history has been divided into three time periods, each with differing characteristics and objectives (Scott and Grisso 1998; Scott 2000). During the founding era, beginning in 1899 with the creation of first juvenile court, parents were viewed as the cause of their child’s delinquency and the source of moral deprivation. Judges replaced parental authority for youth, who were seen as dependents needing guidance. The second era began with the United States Supreme Court decision Kent v. United States (1966) and is referred to as the due process revolution in juvenile justice. Starting with Kent, the focus turned away from the families’ failings to children’s due process rights. This change viewed the child quite apart from the family unit. The modern era began in the 1970s, focusing on the social threat of juvenile crime and more punitive sentences. More recently, a number of states have started to move away from the
retributive measures popular in the 1980s and 1990s (Aos, Miller, and Drake 2006; Mendel 2010).

*The Early Years of the Juvenile Court System - The Criminalization of Parents and the Passivity of Children*

In 1899 when the first juvenile court opened in Chicago, the primary source of a child’s delinquent conduct was believed to be his or her parents. Progressive reformers accused parents of failing to meet their children’s physical, emotional, and moral needs. They believed that parents of court-involved youth were incapable of socializing their children properly (Scott 2000; Scott and Grisso 1998; Testa and Furstenberg 2002). Parental neglect was identified as the primary cause of delinquency. Reformers demonstrated sympathy for poor children, but displayed little regard for their parents’ suffering. Poor children were considered innocent victims of their parents’ flaws, while adult poverty was viewed as weakness (Schlossman 1977; Grossberg 2002). Reflecting these views, early juvenile courts did not separate abused or neglected children from those charged with criminal acts. The act establishing the first juvenile court was titled “An Act for the Treatment and Control of Dependent, Neglected, and Delinquent Children,” making no distinction between neglect and delinquency (Tanenhaus 2002). Judges in the early juvenile courts were influenced not only by parents’ socio-economic circumstances, but also by their ethnic background and immigration status. Historian Steven Schlossman writes, “In practice the juvenile court functioned as a public arena where the dependent status of children was verified and reinforced and where the incapacities of lower-class immigrant parents were, in a sense, certified” (Schlossman 1977: 57-58).
Reformers believed that the state needed to take over parental duties in order to save the child in cases of abuse, neglect, or delinquency. Under the doctrine of *parens patriae*, the juvenile court had the right as well as the responsibility to substitute judicial control for the natural parents when the court deemed the parents to be inadequate. A core assumption of the early juvenile courts was that parents of court-involved children, who were in the main poor and immigrant parents, needed government assistance to provide appropriate guidance for their child (Platt 1977; Feld 1999). The architects of the juvenile court used the language of parenthood to describe the judicial role, calling the judge a “wise and merciful father” (Mack 1925: 109) acting “in the spirit of a wise parent toward an erring child” (Waters 1926: 11). The court’s founders believed that children were not criminally responsible for their actions because they lacked the ability to reason and make moral judgments (Scott 2002). However, children were also believed to lack the ability to speak for themselves or to share relevant information in the court process.

All children were not treated equally in the early juvenile courts; black children experienced the new system much differently than white children. Juvenile courts were organized by white progressive leaders who focused on the rehabilitative needs of white youth (Ward 2012). From the beginning, black and white children were segregated into different courts. While white youth accused of delinquent acts were treated more leniently in juvenile courts than under the previous system, black youth were not (Platt 1977; Ward 2012). Geoff K. Ward (2012) argues that the juvenile justice system “was organized to reproduce a white democracy” (p. 3), with black children disproportionately given harsher penalties, such as corporal punishment, long periods of detention, and commitment to adult prison, than white children. Within the new juvenile court system black youth were “rendered unsalvageable and
For white youth, their positive socialization was a central objective of the juvenile court. Under the *parens patriae* doctrine, juvenile court judges were the “common guardian of the community”; they were to act against the moral corruption cultivated within the family (*Ex parte Crouse*, 4 Wharton 9 (Pa., 1838)).

Juvenile court sessions often involved judges lecturing and chastising both parents and youth, instructing them in how to live their lives properly (Dohrn 2002). As one historian stated, “The sponsors of the juvenile court infantilized the adult poor while attempting to civilize them” (Schlossman 1997: 191-92). It is not surprising that the progressive reformers did not create a defined role for parents in the juvenile court process since they viewed parental flaws as the source of juvenile delinquency. In the typical case, a judge would disregard the parents’ version of the facts of the case. Rarely would a judge solicit a parent’s opinion regarding the needs of their child. Judges might ignore parents entirely during the course of the legal process, even if the parents had relevant information to share with the court (Schlossman 1977). Parents who tried to assert themselves in the court process risked negative consequences for the child, especially if the parents had a low social status. Youth similarly had trouble finding opportunities to communicate their points of view to the judge. Unlike the compassionate communication between children and judges that the proponents of juvenile courts had envisioned, interactions between judges and the families before them have been characterized as “generally hostile and always superficial” (Schlossman 1977: 167).

As is true today, some parents in the era of the early juvenile courts turned to the judicial system for help in controlling their children and for access to otherwise unavailable services. Many immigrant parents sought the court’s assistance in controlling their Americanized children,
particularly their daughters, expecting judges to support and reinforce their authority within the home (Odem 1995). To their dismay, however, they were often excluded from the court process. In her research on court-involved girls in the Progressive Era, Mary Odem found that although parents originally sought out the court to help them discipline their daughters, in the end “parental needs took a backseat to state interests” (Chavez-Garcia 2009: xxvi, characterizing Odem’s work). The early juvenile courts reinforced the disenfranchisement of disadvantaged parents and children as judges substituted their own judgment under the *parens patriae* doctrine.

The Due Process Era - Increasing the Defense Attorney’s Role Through New Rights for Children

The founding of the juvenile court was one step in a long process of reordering the relationships between families and the state. During the 1960s and 1970s, the United States Supreme Court drastically altered how the juvenile court operated. In a series of key decisions, the Court reallocated power between the judge and the defense attorney, holding that youth accused of committing a crime have many of the same due process rights as adult defendants. The new focus on procedural protections increased the role for attorneys in the juvenile delinquency process, perhaps at the expense of participation opportunities for youth and parents.

In 1966, the United States Supreme Court began to voice concerns that the informality of juvenile courts sometimes led to unfair outcomes for youth. In *Kent v. United States* (1966), the Court began to provide clear guidelines concerning youth accused of committing a crime. Kent was a sixteen-year-old juvenile charged with robbery and sexual assault while on probation for previous offenses. In the lower court his delinquency case was transferred to the adult court without a hearing being held, even though the local statute required a “full investigation” before
any such transfer (D.C. Code § 11-914 (1961)). Kent contested the transfer on appeal, arguing that the trial court failed to fully investigate the facts because his parents were not allowed to participate meaningfully in the court process. He argued that his parents would have provided the court with important information regarding his mental health. In deciding in favor of Kent, the Court held that the parents patriae doctrine is “not an invitation to procedural arbitrariness” (p. 555). The Court found that Kent’s original hearing was defective because the informal procedures used prevented the defense attorney from accessing and challenging Kent’s health records during the proceedings. The Supreme Court rested its decision on the defense attorney’s exclusion in the case, not on his parents’ inability to participate. While the early juvenile courts focused on the family, viewing parents as the source of a child’s delinquency, the due process rights afforded by the Kent decision focused on defense attorneys and procedural matters. In neither era was the role of parents positive or inclusive.

The most important case of the Due Process era was the Supreme Court’s decision in In re Gault (1967). Gault was a fifteen-year-old boy accused of making a lewd telephone call to a neighbor. The juvenile court proceedings in his case were short and informal, with Gault making a number of inculpatory statements with no defense attorney present. The woman who allegedly received the lewd call never testified or appeared in court. The trial judge sentenced Gault to an industrial school for the period of his minority, up to six years in detention, even though an adult facing a similar charge would have faced a maximum penalty of a fifty dollar fine and two months imprisonment. On appeal, the Supreme Court was disturbed by the long sentence that Gault received after perfunctory proceedings in juvenile court. The Court noted that if Gault had been eighteen years old when he was arrested, he would have been accorded significantly greater
procedural protections while facing lesser penalties. This concern led the Court to decide that juveniles are entitled to many of the same procedural safeguards under the constitution as adult defendants in criminal cases. “Under our Constitution, the condition of being a boy does not justify a kangaroo court” (p. 28). The Gault Court held that juveniles have the right to receive timely notice of the charges against them, the right to confront witnesses, the right against self-incrimination, the right to appellate review, and the right to defense counsel. The Court believed that with these constitutional protections in place, juvenile courts would start to engage in more accurate fact-finding procedures. “It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing versions and conflicting data” (Gault: 21).

In Gault, the Supreme Court was also concerned that the informality and lack of procedural protections in the juvenile court process led youth to hold more negative views of the legal process. Underlying the move to enhanced formality was the belief that the court process itself can be an education about the fairness and the legitimacy of the justice system. Quoting from a National Crime Commission Report, the Court stated that informal procedures may “engender in the child a sense of injustice provoked by seemingly all-powerful and challengeless exercise of authority” (Gault: 26, n. 37). The Gault Court recognized the long-lasting social implications of youth perceiving themselves as victims of an unjust court process. When participants perceive the legal process as arbitrary, the justice system suffers. The Court believed that denying a juvenile a meaningful opportunity to participate in the process and to challenge the state’s authority can damage their trust in the legal system.
With its focus on the due process protections of juvenile defendants, the *Gault* case did not clarify the role of parents in juvenile delinquency proceedings. The Court seemed to be of two minds concerning the parents’ role, perhaps even intending that due process rights belonged to some extent to both the child and his or her parent. The Court stated that both the child and his parents or guardian must be notified in writing of the specific charges of delinquency and that notice must be given sufficiently early to permit appropriate preparation. When questioned at oral argument as to why notice is necessary to both parent and child, Gault’s attorney stated there is a familial relationship that goes beyond a property right and that parents are in a position to help their child. However, even as the *Gault* Court demonstrated some concern for the parents’ potential role in delinquency cases, the Court’s focus was on due process for children. The *Gault* Court fails to distinguish among types of participation in the juvenile justice process, focusing on guaranteeing attorneys’ participation on behalf of juvenile clients without addressing the participation of parents.

**The Experiences of Parents and Youth in Today’s Juvenile Justice System**

In the current era, the juvenile delinquency court is often characterized as increasingly punitive. In many ways, the main objective of today’s juvenile justice system is to reduce the social threat of adolescent crime, not to rehabilitate the child (Scott and Grisso 1998; Singer 1996). A perceived increase in juvenile crime in the 1990s sparked national concern. In response, nearly every state enacted new juvenile justice laws increasing penalties (Feld 1999; DiFonzo 2002). Many states amended the purpose clauses of their juvenile justice statutes so that punishment or accountability became the primary objective in place of rehabilitation and the
welfare of the child (Coalition for Juvenile Justice 1998; Hemmens, Fritsch, and Caeti 1999). States introduced new punitive measures making it easier to transfer cases from juvenile to adult courts and increased penalties for offenses (Coalition for Juvenile Justice 1998). More recently, a number of states, including Missouri, Texas, and Washington, have started to recognize the rising costs of more punitive measures. New analyses focusing on the expense of detention as well as its low success rate in preventing recidivism have led these states to a renewed focus on community-based treatment and diversion programs (Aos, Miller, and Drake 2006; Mendel 2010; Texas Juvenile Justice Department 2012).

The commitment to treating youth differently from adults and the use of informal processes in juvenile court remains important in the legal process. In *McKeiver v. Pennsylvania* (1971), the Supreme Court held that juveniles have no right to a jury trial unlike defendants in adult criminal court. Although youth had previously had several other constitutional protections extended to them, the Court remained committed to the “idealistic prospect of an intimate, informal protective proceeding” in juvenile courts (p. 545). Even when juveniles are prosecuted for serious crimes, judges can find it difficult to overlook defendants’ youthfulness and to utilize purely retributive measures in the courtroom (Kupchik 2006). Judges continue to treat youth differently, viewing their home life and social background as relevant in sentencing decisions. In its recent decision in *Miller v. Alabama* (2012), the Supreme Court held that juveniles convicted of homicide cannot be subjected to mandatory life sentences without the possibility of parole, given the “hallmark features” of youth which include immaturity and the failure to appreciate risk (p. 15, slip opinion). When sentencing juveniles, judges must be allowed to “take[e] into account the family and home environment that surrounds them” (*Miller* 2012: 15, slip opinion).
Many states continue to include moral education objectives in their juvenile codes even as they emphasize juvenile defendants’ accountability to the public. For example, Maryland states that the juvenile justice system shall balance the objectives of ensuring public safety, making the victim whole, and providing “competency and character development to assist children in becoming responsible and productive members of society” (Md. Code Ann., Cts. & Jud. Proc. § 3-8A-02 (2010)).

However, this does not mean that judges hear about the juvenile’s home life and background directly from parents themselves. The due process protections of Gault did not directly affect parents’ role in the juvenile courtroom. Parents have little opportunity to participate directly in the process in most juvenile delinquency courts, although the research in this area is limited. While a few jurisdictions do allow parents to participate at different stages of the juvenile justice process, this is not true of most delinquency courts. A national survey recommends that juvenile court judges more actively encourage parents’ direct involvement in their children’s cases and make parental participation an explicit part of juvenile codes (Davies and Davidson 2001). This survey finds that judges rarely directly question parents. They instead rely on information provided by the probation officer or defense attorney. Davies and Davidson note that judges’ methods to promote parental participation do not seem “unusually innovative or unique” and that parents need additional opportunities to engage with the court system in positive ways (p. 43).

Although helpful given the limited research on parental participation in juvenile cases, the Davies and Davidson survey has a number of limitations. A purposive sample method was used in their survey design. The researchers specifically targeted juvenile courts that utilize new
methods to enhance parental participation. Although the judges surveyed report that they promote parental participation in seventy-nine percent of juvenile cases, this high percentage does not likely reflect the actual level of active and positive parental involvement in most delinquency courtrooms. This figure includes all cases in juvenile court, including status offenses such as truancy. Participating judges report they are less likely to encourage parental participation in delinquency cases than in other juvenile cases. Most importantly, the term “parental participation” as used in this survey does not distinguish between voluntary parental participation and activities not likely to encourage parents’ positive involvement with the court. Activities such as ordering parents to appear in court, having parents sign probation contracts, and informing parents that they could be subject to sanctions are counted as parental participation.

Juvenile justice policies often take a negative view of parental participation, focusing on holding parents accountable for their child’s misbehavior, similar to the early days of the juvenile court. In most states, a parent can be held in contempt of court for not appearing in court in his or her child’s case (Davies and Davidson 2001). Parents can be required to pay the costs of their child’s treatment, restitution, fines, or attorneys’ fees (Henning 2006), forcing parental participation without voice. Protesting an order for payment is sometimes the only opportunity parents have to take a specific and active role in the delinquency court process. In many states, a judge can order parents to undergo counseling, treatment, or parent education classes as part of their child’s delinquency case, even though they themselves have not been accused of criminal activity (Brank, Kucera, and Hays 2005). These measures which target parents for punishment have been criticized as not furthering the child’s rehabilitation because
they create resentment within the family (Brank, Kucera, and Hays 2005; Geis and Binder 1991). Some states may alienate parents by treating the parent as an arm of the government. In a number of states, parents are obligated to monitor their child to assist the juvenile probation officer and the court in ensuring that the child complies with the court’s disposition. For example, in Alabama parents are required to assist the juvenile court in implementing all orders regarding the juvenile ( Ala. Code § 12-15-218 (2010)), and in Vermont, parents must sign and verify a written statement that they agree to facilitate and support the child’s compliance with the rules of probation (Vt. Stat. Ann. tit. 33, § 5263 (2010)). In these states parents must assist legal authorities regardless of whether they agree with the sentencing conditions and believe that the court’s course of action is in the best interest of their child.

A few states provide limited opportunities for parents to participate in the juvenile court process in positive ways. In Colorado and Utah, a parent has the right to decide who is present in the courtroom during his or her child’s case (Colo. Rev. Stat. §19-1-106 (2010); Utah Code Ann. § 78A-6-114 (2010)). In Minnesota, a parent has a right to participate in all proceedings, including being entitled to be heard, to present evidence, and to cross-examine witnesses (Minn. Stat. Ann. § 260B.163 (2009)). In New Mexico and West Virginia, a parent can demand a jury trial for his or her child (N.M. Stat. Ann. § 32A-2-16 (2010); W. Va. Code § 49-5-6 (2010)). Other states demonstrate a willingness to engage parents in the juvenile justice process in the preambles to their state juvenile codes. Kentucky aims “to provide judicial procedures in which rights and interests of all parties including parents are recognized” (Ky. Rev. Stat. Ann. § 600.010 (2010)), and North Carolina states that the court has the objective “to provide uniform procedures that protect the constitutional rights of parents” (N.C. Gen. Stat. § 7B-1500 (2010)).
West Virginia aims to involve parents in the planning and delivery of programs and services, recognizing “the fundamental rights of children and parents” (W. Va. Code § 49-1-1 (2010)). Despite the juvenile court’s early reluctance to engage parents in any meaningful way, a number of states now make including parents in the juvenile process a legislative objective.

**Social Science Research on Parents’ Experiences**

Little social science research has examined how parents actually experience the juvenile delinquency court process (Sanborn 1995). One scholar who interviewed juvenile court personnel in urban, suburban, and rural courts concerning parents’ behavior finds that parents both “assisted and resisted” the court system in a number of ways (Sanborn 1995: 14). Parents in the urban court are described by court personnel as less cooperative, less honest with the court, and less forthcoming with information concerning their child than parents in the other courts. Overall, the few studies examining parents’ perceptions of the juvenile justice system have produced inconsistent results. One study suggests that when parents do not trust the juvenile system, this distrust arises from a fear that the court would be unfairly punitive and not address the juvenile’s treatment needs (Rose et al. 2004). Rose et al. reports preliminary findings from a quantitative instrument that assesses parent practices relating to their child’s involvement with the court. One of the scaled items is whether parents believe that the justice system is working for or against their child, finding that parents who distrust the juvenile system are more likely to perceive it as failing to meet their child’s needs. In contrast, an older British study based on parent interviews concludes that parents’ dissatisfaction with the juvenile court stems from their inability to reconcile the dual nature of the juvenile justice system as both rehabilitative and
punitive (Voelcker 1960). Interestingly, Voelcker finds that parents are more likely to support a punitive approach to juvenile justice because they regard their children as normal and “therefore responsive to normal forms of social control: namely, retributive punishment for wrongdoing” (p. 166). Voelcker concludes that when juvenile courts emphasize rehabilitation, parents are alienated because the legal system is labeling their children as abnormal. None of this research examines questions of the perceived legitimacy of the juvenile justice system and the relationship between the parents’ role in the process and positive socialization toward the law.

Research on parents in the juvenile justice process has largely focused on the possible conflicts between parents, defense attorneys, and juvenile clients, not on understanding the courtroom process from the parents’ perspective. It is generally accepted within the legal community that the defense attorney represents the child and not the family (Shephard 1996; Henning 2006). Unlike decisions regarding a child’s health care and education, parents involved in juvenile delinquency court find themselves with limited decision-making power and few opportunities to voice their opinion in the juvenile justice process. It is the juvenile’s right to make constitutional decisions relating to his or her case, such as whether to have a trial or to testify in his or her defense. This can lead to tension between parents and defense attorneys in the court process (Henning 2006; Farber 2004). Parents may not fully understand the importance of attorney/client confidentiality or agree that their child should have autonomous constitutional rights (Henning 2006; Farber 2004). In addition, some parents may have potential personal and legal conflicts of interest with their court-involved child (Henning 2006; Farber 2004). Parents may be the alleged victims in the delinquency case, appearing in court both as the child’s supporter and adversary (Farber 2004; Henning 2006). Research has not examined the extent to
which parents agree with the legal process or whether their perceptions of the justice system’s legitimacy affect their behavior in the juvenile delinquency court.

Parents are in a unique position to help juveniles process the meaning of their experiences in the juvenile justice system. Parents can play a central role in their child’s socialization, including creating and maintaining perceptions of the law and the justice system (Patterson and Dishion 1985; Gottfredson and Hirschi 1990). The family’s primary role in processing social experiences is well established, with the belief systems of one family member often influencing other members (Church II et al. 2009). Children acquire their law-related attitudes through close interaction with their immediate social groups, particularly their family members and peers (Akers 1985; Sutherland and Cressey 1966). However, despite the important role parents play in the socialization process, there is little research on parents’ experiences in the court process and parents’ possible effects on their child’s perceptions of the law and justice system. In many ways, the juvenile justice system depends on parents’ assent and cooperation to accomplish its goals. Research finds that juvenile court intervention is more successful when the entire family works to support the court’s treatment efforts (Leone, Quinn, and Osher 2002; Henning 2006). Juvenile court officials often rely on parents to monitor and encourage their child’s compliance with court orders such as curfews, school attendance, and meeting the conditions of probation. Most court-involved youth are charged with minor and non-violent offenses, continuing to live with their families during the court process (Snyder 1998).

In the juvenile delinquency court, a child’s behavior is often viewed as intertwined with his or her family relationships. Parents may enter the juvenile court believing that legal authorities, including judges, prosecutors, police, and even defense attorneys, blame them for
their child’s misconduct (Henning 2006). Parents can feel compelled to portray their parenting skills in a positive light, leading them to act defensively in court and to depict their child as disobedient and acting contrary to their wishes (Kupchik 2006). Some research has found that parents take on an adult solidarity perspective, looking for the support of the official justice system to help them bring their wayward children into line (Schaffner 1997). Other research has found that single mothers in disadvantaged urban communities seek assistance when their children fail to respect their parenting authority, but they look for help within kinship networks and not through the courts or police (Anderson 1999). Little is known about parents’ initial expectations of the juvenile court process and whether their experiences in the process, including their limited opportunities to participate, lead them to modify their stance over time.

*Parents and Youth Finding Influence in the Delinquency Courtroom Post-Gault*

The modern era has enhanced the role of the defense attorney and has professionalized the juvenile delinquency courtroom. Since *Gault*, youth accused of a crime have a constitutional right to legal representation, although when in the process the right to counsel attaches still varies among the states. The *Gault* Court believed that the use of defense attorneys and more formal processes would help to ensure that the state carries its burden in juvenile delinquency cases. Although heralded as an important step forward for court-involved youth, *Gault*’s increased reliance on lawyers may have had a number of unintended consequences. Numerous studies find that represented juveniles fare worse than juveniles who appear in court without a lawyer, even after controlling for level of offense and past delinquent activity (Clarke and Koch 1980; Feld 1989; Feld and Shaefer 2010). The reasons for this phenomenon are debated. One hypothesis is
that these disparate outcomes relate to the judge not hearing directly from the juvenile and the
depersonalization of the juvenile courtroom (Bazemore 2006). This research examines whether
parents and youth have difficulty finding a place for themselves in the contemporary juvenile
court and the possible effects of their limited participation on the juvenile court process.

The attorney/client relationship is complex, particularly in juvenile cases. Most of the
literature on juveniles’ participation in the delinquency process has focused on their cognitive
ability to meaningfully participate in the proceeding and to assist the defense attorney. Youth
may not sufficiently understand what is going on in the system to effectively participate
(Schmidt, Reppucci, and Woolard 2003; Grisso 1981, 2000). Previous research consistently
demonstrates that juveniles have more difficulty understanding the concept of rights and other
issues of law than adults. Generally, children under the age of fifteen demonstrate a significantly
poorer understanding of legal concepts than older youth or adults (Grisso 1997, 2000). These
youth have an incomplete conception of their constitutional rights, such as the right against self-
incrimination and the right to a fair trial, and they do not fully understand the role these rights
play in the adversarial process (Grisso 1997). Studies also show that even older youth cannot
consistently participate in the legal process in the same way as adults because their cognitive
abilities and belief systems are in flux, especially in stressful situations (Schmidt, Reppucci, and
Woolard 2003). Race and socio-economic circumstances may also impact how well children
understand their rights and the legal process, with black, Hispanic, and poor youth demonstrating
a weaker comprehension of legal information (Grisso 2000). In addition, children from
disadvantaged backgrounds are less likely to exercise much control in other parts of their lives.
These youth find it particularly difficult to understand they have decision-making ability and influence in their court case (Grisso 1981).

Even when youth are cognitively capable of participating in discussions with their defense attorney, it is not clear how often meaningful communication between attorneys and youth occurs. The attorney/client relationship can be affected by unconscious racial bias when defense attorneys do not share the same cultural or racial background of their clients (Jacobs 1997). A national evaluation of juvenile defender representation finds that defense attorneys need to improve their interpersonal skills and cross-cultural sensitivity in order to better relate to their juvenile clients (Puritz et al. 2002). A focus on building a trusting attorney/client relationship is particularly important with black and Hispanic youth as these groups are significantly less likely to view talking honestly with an attorney as helpful to them (Schmidt, Reppucci, and Woolard 2003).

Defense attorneys may also have poor communication with the parents of their juvenile clients. Evaluations of state juvenile justice systems during the past two decades suggest that some defense attorneys view parents as interfering with the attorney/client relationship. Defense attorneys become irritated with parents, commonly complaining that parents are angry that defense attorneys represent the child and not the family (Beck, Puritz, and Sterling 2009). Defense attorneys can seem disdainful of parents, calling them a major obstacle to effective representation because they constantly demand to be kept informed (Grindall 2003). Defense attorneys may also be dismissive of parents’ interest in their child’s case, believing that they are better judges of what is in the child’s best interest than the parents (Texas Fair Defense Report 2000).
Defense attorneys can exercise tremendous control over clients and their families, often unwittingly substituting their own judgment for what the client and his or her family members want to see happen with the case (Alfieri 1987; Appell 2008). While during the earlier court era the judge acted as the wise parent on behalf of the child, in many ways the defense attorney now takes on the parental role. The court process has become increasingly lawyer-driven (Sampsell-Jones 2009; Zelnick 2003). Given their social status as professionals with knowledge of and access to the legal system, defense attorneys have significant power in the case as compared to youth and parents. Through their status as repeat players within the court system, attorneys are insiders in the legal process and are usually established members of the court community (Galanter 1974). Defense attorneys decide how to present their client’s situation to judges, prosecutors, and probation officers. Although the work in this area is largely theoretical, it is believed that attorneys’ representation of their client’s circumstances is often skewed and biased (Natapoff 2005). In juvenile court, defense attorneys have been criticized for substituting their judgment in place of the parents because of class and cultural differences (Appell 2008; Guggenheim 2006).

The absence of opportunities for meaningful participation by parents and juveniles, either directly in the courtroom or indirectly through defense attorneys, has likely disproportionately affected disadvantaged youth. Youth who are poor or are members of a racial minority group generally experience more formal processing in juvenile courts and receive harsher sentences, particularly in urban courts (Feld 1999; Krisberg and Austin 1993). Cultural misunderstandings and racial stereotyping by legal professionals, whether intended or unintended, is believed to be at least partly responsible for the disproportionately harsh sentencing of black and Hispanic
children (Villarruel et al. n.d.; Krisberg and Austin 1993). Judges and defense attorneys are overwhelmingly white, a reality that contributes to the high level of distrust of courts among blacks and Hispanics (American Bar Association 2003). Some judges view minority youth as less controllable and as having more limited family support if they are returned to their community (Krisberg and Austin 1993).

Increasing the opportunities for defendants and their family members to participate in the courtroom may lessen these harms. Legal research in this area has focused on the use of lay people’s narratives in the legal process. These narratives are stories that challenge typical assumptions and propose counter-hegemonic ways to understand legal conflicts and discourse (Schepple 1989). This line of legal scholarship argues that hearing stories from individuals who have direct experience with a phenomenon helps decision makers because these perspectives have often been ignored in the legal process (Abrams 1991; Schepple 1989). It is believed that first-person narratives can help combat misunderstandings and correct prejudices and prejudices that legal authorities may hold concerning members of disadvantaged groups (Fajer 1994; Abrams 1991; Schepple 1989). In the juvenile justice context, scholars suggest positive, voluntary parental participation in the court process could play the important role of helping to uncover the cultural biases that can infiltrate the juvenile courtroom (Henning 2006). Most of the work in this area has been theoretical, centering on how narratives may encourage empathy for and understanding of disadvantaged defendants. Empirical research is needed that focuses on whether participants want to challenge how a legal conflict is framed by legal authorities with a different social background in the juvenile courtroom.
Inclusive Courtrooms and Improving Courts’ Legitimacy

Developing ways to improve courts’ legitimacy through community engagement is arguably vital to courts’ ability to maintain order while furthering the growth and success of community members. Creating inclusive courtroom environments that welcome participation by youth and their parents could have important community-level effects. Governing institutions such as courts have more success when they find ways to operate that are consistent with a community’s internal values (Meares and Kahan 1998). Police and courts in urban areas may continue to have difficulty controlling criminal activity because legal authorities’ success is ultimately linked to the attitudes of individuals living in that community (Tyler and Fagan 2008; Meares and Kahan 1998). Research that more fully explains how participants experience the justice system may help to counter some of the legal cynicism and negative views of the law that currently pervade many disadvantaged communities (Sampson and Bartusch 1998).

Juvenile defendants and their family members likely consider themselves relative outsiders in the legal process, even though they are the ones most directly affected by court proceedings. Research on court communities compares defendants and their families to “tourists” when it comes to the court process (Eisenstein, Flemming, and Nardulli 1988: 35). Unlike courthouse regulars like defense attorneys, prosecutors, and judges, defendants do not share “a perspective, a grapevine, the memory of important past events, a special vocabulary, and patterns of nonverbal communication” (Eisenstein, Flemming, and Nardulli 1988: 35). Although they significantly affect how the court process operates, defendants and their families are not typically considered part of the court community. Courts have been criticized for a lack of transparency and for being controlled by professional insiders (Bibas 2006). They have also
been accused of promoting the “silencing of criminal defendants” through inaccessible court practices that deny disadvantaged individuals the chance to be heard (Thomas 2007: 2668).

Most of this commentary has addressed the adult criminal justice system, but its message may be equally relevant to juvenile courts. Juvenile delinquency courts have been described as “non-responsive, inaccessible, and distanced from the problems of the general community” (Waint 2002: 16). More research on the role of parents and the effects of their and their child’s sense of exclusion from the court process is needed, including developing a better understanding of the possible effects of feelings of exclusion on perceived legitimacy.

**Conclusion**

This research focuses on an important group of participants embedded in the juvenile justice process: parents of court-involved youth. Parents’ experiences in the juvenile delinquency court may have important effects on their views of the court process and on how they discuss issues of law and justice with their child. The chapters that follow examine the experiences of these parents in two urban juvenile delinquency courts, noting particularly their struggle to find influence within the court process. At the end of the court process, many parents give up this effort, leaving the process disengaged and viewing the court system as less legitimate.

Chapter 2 provides a theoretical basis for examining how parents and youth experience the juvenile delinquency court, exploring the intersection between research in procedural justice and legal consciousness. The prevailing way to determine how individuals experience the criminal and juvenile justice systems is the procedural justice framework, using retrospective,
large-scale surveys to measure perceptions of the police and of the court system. Yet this method may not fully capture how juvenile court experiences affect parents’ perceptions of the court process and parents’ behavior within the ongoing legal case. Qualitative research in the areas of legal consciousness and legal mobilization, which has focused mainly on the civil justice system, may bring new insights to understanding juvenile’s experiences and those of their parents. Chapter 3 gives a detailed explanation of the research methods used in this study. This qualitative study is both longitudinal and multi-perspectival, including interviews with parents and youth in the same family at different points in the court process.

Chapter 4 examines the operation of the two juvenile courts in this research to provide context for the subsequent chapters, giving particular attention to the roles of legal actors and non-legal actors in the court process. This chapter also looks at the extent to which these two contemporary juvenile courts succeed in creating a fact-finding process that is adversarial while keeping some remnant of a rehabilitative focus.

Using case studies of two families, Chapter 5 examines how parents’ views of law and justice evolve during the juvenile court process and how these changes affect their behavior within the ongoing court case. Notions of justice are not stable; they often change in reaction to experiences during the court process. This chapter examines how parents’ experiences with defense attorneys and judges lead them to develop more negative views of the justice system. Eventually, parents disengage from the court proceedings and become more passive, no longer trying to understand or participate in the legal process.

Chapter 6 examines how, when, and why parents attempt to voice their concerns in the juvenile delinquency process. Parents enter the legal process wanting to engage with the court,
viewing their role as parents to be their child’s advocate and to ensure the process treats their child fairly. This study complicates the account of voice found in procedural justice research. The parents in this study want voice mainly to challenge the police version of the criminal incident and to broaden who is held accountable in the courtroom. The framework of legal mobilization is used to better understand how parents want to utilize the legal system to invoke their views of justice.

Chapter 7 examines how parents act extralegally in the court case, invoking their views of justice with their child outside the formal legal process. Parents help their child to interpret the court experience, often discussing the justice system in negative terms and even obstructing the justice process. Parents and youth often create an intermediate space where parents transmit their attitudes and socialize their views within the family. By examining how court experiences are filtered through the family, this chapter finds their notions of justice are interactive and intersubjective. The court process can be improved by encouraging parents to participate as co-producers of justice in their child’s case. The concluding chapter, Chapter 8, examines the methodological, theoretical, and policy implications of these findings.
Chapter 2

**Frameworks for Understanding Views of Law and Justice**

**and Their Intersection with Meaningful Participation**

This chapter provides the theoretical basis for researching how parents and youth experience the juvenile justice process, focusing on how individuals experience legal institutions and understand and think about legal authorities and the justice process. This research examines the theoretical gap between procedural justice research which has primarily focused on the criminal justice system and legal consciousness theory which has focused mainly on the civil courts. Both traditions value voice and participation, but they have quite different approaches to the concepts of inclusion and meaningful involvement. Most of the research in both of these traditions has focused on adult populations rather than experiences in the juvenile delinquency court. How parents and youth experience the justice process, how they engage with the legal system, and how they discuss concepts of law and justice within the family are not well understood.

**Studies of Procedural Justice and Legitimacy**

For the most part, previous work on how individuals experience the law in the criminal context has focused on whether they perceive legal authorities and institutions such as police and courts as legitimate. Procedural justice research finds that individuals view legal authorities and institutions to be legitimate when they believe they are treated fairly in the process, regardless of the outcome (Tyler 1990; Tyler and Huo 2002). Having voice in the process and being treated
with dignity emerge as particularly key factors in whether a legal process is perceived as fair (Tyler 1990, 2001; Lind and Tyler 1998; MacCoun 2005). To examine whether individuals judge the courts to be legitimate, procedural justice researchers seek to measure a number of law-related attitudes. These include the courts’ ability to protect individuals’ basic rights, whether people convicted of crimes are actually innocent, whether judges are honest, and whether court decisions are almost always fair (Tyler and Huo 2002; Piquero et al. 2005). Results from procedural justice surveys are robust, surviving controls for individual socio-economic circumstances, gender, or racial background (Tyler 1990; Tyler and Huo 2002).

Procedural justice research is largely quantitative, using large-scale surveys to identify factors influencing perceptions of the legal system’s legitimacy (MacCoun 2005; Tyler 1990; Tyler and Huo 2002). For example, in the seminal work Why People Obey the Law (1990), Tom R. Tyler uses a panel design to interview a random sample of 1,575 Chicago residents by phone at two different time periods. His survey focuses on respondents’ recent experiences with the police or the court system and their general views of legal authorities and legal institutions. A little more than half of the initial participants were re-interviewed one year later concerning any contact they had with legal authorities within the past year. The majority of questions in both sets of interviews involved rating law-related experiences on a five-point Likert scale. For example, when asked whether they were satisfied with how well the Chicago police solve problems, answer choices ranged from very satisfied (1) to very dissatisfied (5). Although there was some opportunity for participants to provide brief narratives, the vast majority of the survey asked participants to answer within pre-set guidelines.
A central tenet of procedural justice theory is that personal experiences with the law are instrumental in teaching people about the nature of legal authority. Interactions with legal institutions shape law-related behavior (Tyler 2003; Sunshine and Tyler 2003; Bradford, Jackson, and Stanko 2009). Most procedural justice research has focused on individuals’ interactions with police officers, finding that individuals who view the police as legitimate are more likely to follow rules and obey the law (Tyler 1990; Paternoster et al. 1997; Tyler and Huo 2002). Research has also found that if a person perceives the police as legitimate, he or she is more likely to cooperate with the police and empower them to use their discretion (Sunshine and Tyler 2003; Reisig 2007; Murphy, Hinds, and Fleming 2008). Similar behavioral effects have been found with the criminal courts, although much less research has been conducted in this area. When defendants perceive the court process as legitimate, they are more likely to accept legal decisions and they have lower levels of offending (Thibaut and Walker 1975; Lind and Tyler 1988).

Although legitimacy theory has a number of variations, the most prevalent framing of legitimacy is in terms of an individual’s perceived obligation to obey or defer to the judgment of legal authorities regardless of personal outcome (Tyler 1990, 2003; Sunshine and Tyler 2003; Piquero et al. 2005; Murphy, Tyler, and Curtis 2009). Tyler (1990) states that legitimacy is measured most directly “as the perceived obligation to comply with the directives of an authority, irrespective of the personal gains or losses associated with doing so” (p. 27). Tyler measures individuals’ perceived obligation to obey legal authorities through an index that includes questions such as “People should obey the law even if it goes against what they think is right”; “I always try to follow the law, even if I think it is wrong”; and “If a person is doing
something, and a police officer tells them to stop, they should stop even if they feel that what they are doing is legal” (1990: 187). Other definitions of legitimacy focus on measuring individuals’ trust and confidence in legal institutions (Tyler and Huo 2002; Franke, Bierie, and MacKenzie 2010), although this is often in conjunction with obedience and deference to legal authority (Tyler 2006, 2007).

Part of the appeal of legitimacy and procedural justice theory is its underlying belief that there is a foundation of shared ideas about what is fair and just. The perceived obligation to defer to legal authorities is derived from the principle that the “law expresses moral and social norms that are widely held by both dominant and subordinate social groups” (Tyler and Fagan 2008: 234-35). Building on these shared values, such as the importance of fair treatment and the opportunity to be heard, is crucial to the perceived value of increasing individuals’ trust and confidence in legal authorities and whether they believe the law is legitimate. Police and courts can more easily exercise state power when their actions are viewed as appropriate and in line with the values and norms of the community (Meares and Kahan 1998; Tyler and Fagan 2008). Yet, justifying procedural justice theory on the basis of presumed shared values can be problematic if no general consensus actually exists concerning what constitutes just treatment.

Recent socio-legal research has renewed criticisms of the procedural justice approach for not fully accounting for differences among individuals (Berry, Hoffman, and Nielsen 2012). Individuals may share similar values relating to fairness at a general level, but qualitative research finds great disagreement over what is fair in contextualized situations (Silbey 2005; Berrey, Hoffman, and Nielsen 2012).
Prior research in procedural justice and legitimacy has tacitly assumed that trust in the police and trust in the courts work through similar processes, failing to distinguish between views of the two institutions (Tyler and Huo 2002; Tyler 2003). More recent work on the effects of trust involving jurors in felony cases finds that trust in police and trust in courts can affect decision making differently (Farrell, Pennington, and Cronin 2012). Jurors with high levels of trust in the police are more likely to favor the prosecution before deliberations, but jurors with high levels of trust in their local courts are more likely to favor the defense. These legitimacy effects are not universal in this study of jurors’ decision making. Trust is found to be a stronger predictor for black jurors, suggesting that black jurors are more likely to look to the courts to remedy police misconduct.

Procedural justice and legitimacy theory’s narrow focus on obedience and deference in the face of legal authority has also faced criticism. Anthony Bottoms and Justice Tankebe (2012) argue that legitimacy theorists can no longer avoid normative concerns. Bottoms and Tankebe assert that legitimacy scholars have not sufficiently explained why legal compliance should be the central focus of study. They suggest that the more fundamental question should be “whether a power-holder is justified in claiming the right to hold power over other citizens” (p. 124-125, emphasis in original). This broader focus transforms the study of legitimacy from narrow questions of deference and compliance to larger questions of power and the meaning of justice. In their theoretical discussion, Bottoms and Tankebe assert that legitimacy must be viewed as “always dialogic and relational” in character (p. 129), focusing on the interaction between those who have power and those who do not. A more dialogic approach to legitimacy
theory could bring to the surface possible disagreements about when police behavior should be challenged and the role of criminal and juvenile delinquency courts within a community.

This study contributes a qualitative and contextual analysis of participants’ experiences in the justice system, taking a processual look at the juvenile delinquency court. Procedural justice research relies primarily on large numbers of individuals from the general population rather than studying the experiences of individual defendants within the justice process. The survey method used in procedural justice and legitimacy research has been criticized for not accurately capturing the lived experiences of individuals in the legal process (Merry 1990; Berrey, Hoffman, and Nielsen 2012). Survey research can overlook the central role of power and inequality in how people experience the court process, a central theme in qualitative socio-legal work (Ewick and Silbey 1998; Silbey 2005). This research takes a more in-depth approach to examine whether current legitimacy frameworks adequately capture these participants’ experiences. While much of the research in this area has been cross-sectional and retrospective, the longitudinal approach of this study has the ability to capture and explain change, conceiving of legitimacy perceptions as part of an emergent process rather than a stable state of thinking or acting.

Procedural justice researchers have themselves called for qualitative studies of the justice process, including projects involving observation methods (MacCoun 2005) and research that focuses on the social interaction between individuals and legal institutions (Franke, Bierie, and MacKenzie 2010). Most procedural justice research relies on participants’ self-reports of past behavior rather than observing their interactions with legal actors (Sunshine and Tyler 2003; Tyler 1990, 2001; Tyler and Huo 2002). While acknowledging the importance of
understanding social interactions between individuals and legal authorities, procedural justice research has not included observations of these exchanges as they occur, a research protocol that has been called “daunting” (Tyler and Fagan 2008: 244). This study integrates both observations and in-depth interviews to more effectively examine how parents and youth participate in and react to their interactions with legal authorities throughout the juvenile delinquency process.

The Framework of Legal Consciousness

A second framework for examining the experiences of parents and children in the juvenile court is through the qualitative theory of legal consciousness. Legal consciousness research has also examined how people interact with and understand the law, but most research has not focused on the criminal or juvenile justice systems. Legal consciousness has been defined as “the notions of justice, rights, and power carried in the minds and applied in the everyday lives of individuals” (Nielsen 2004: 6) and “the cognitive activity through which legal understandings, expectations, aspirations, strategies, and choices are developed” (McCann 2006: xii). The concept of legal consciousness is not purely ideational. Research in this area seeks to extend beyond simple accounts of what different groups of people think and do concerning the law, focusing instead on the complex interaction between individual attitudes and social structure (Ewick and Silbey 1998; Merry 1990; Engel and Munger 2003). Effective inquiry in this area examines how shared cultural meaning and societal constraints contour the many forms of law, shaping the choices, expectations, and ranges of meaning that appear available. Culture influences individuals’ actions by creating a “toolkit” of habits, behaviors, skills, and norms from which individuals draw to shape their behavior in a given situation (Swidler 1986). In contrast to
procedural justice research’s underlying belief that the law reflects universal moral principles (Tyler and Fagan 2008), qualitative researchers find that “fairness is never immutable, universal, or transcendent” (Berrey, Hoffman, and Nielsen 2012: 7).

Through the use of intensive interviews, legal consciousness researchers find that individuals’ thoughts, understandings, and behaviors regarding the law do not remain constant and that people often hold complex and seemingly contrary views about the law and legal institutions at any point in time (Ewick and Silbey 1998). Qualitative methods have been able to illuminate and cull out perceptions of law that the individuals holding them may not ever recognize and that survey research can overlook. Illustrating the complex nature of this type of inquiry, in their book *The Common Place of Law: Stories From Everyday Life* (1998) Patricia Ewick and Susan Silbey identify four dimensions from which individuals’ understandings, thoughts, and behaviors concerning the law can be understood: normativity, constraint, capacity, and time and space. Their concept of “normativity” describes how individuals believe legal authorities and others should act and the moral authority of the law. Legitimacy studies most closely approximate this dimension, although perhaps they use a more one-dimensional approach. “Constraint” focuses on individuals’ perceptions that the law’s structure can limit the legal and social outcomes that are possible, often through legal rules and case precedents. “Capacity” describes the potential power of the law to effect change, notwithstanding its constraints. Lastly, the dimension “time and space” examines how many individuals can continue to idealize the law even as they find the reality of law’s day to day operation disappointing. Using these four dimensions as methodological tools, Ewick and Silbey explain
how individuals can simultaneously submit to the law as a powerful institution, use the law for their own purposes, and actively resist the law.

Although most legal consciousness work has been cross-sectional and retrospective, some legal consciousness studies have followed individual litigants during the court process to examine their fluid perceptions and understandings of the law in the civil context. In her book *Getting Justice and Getting Even – Legal Consciousness Among Working-Class Americans* (1990), Sally Engle Merry explores why individuals, primarily working-class white women, seek out the legal system in attempting to resolve their personal problems. Examining a variety of cases involving neighbor disputes, domestic violence between spouses, and disobedient children, Merry’s focus is the “consciousness of law” that draws people to the courts and how their beliefs concerning the legal system change as a result of their court experiences (p. ix). Through interviews and observations of litigants as the dispute process unfolds, Merry is able to explore how understandings and perceptions of the law develop and change through experiences with the legal system. This differs from survey research, which Merry says “flattens” the way people understand the law (p. 5). In their work on divorce litigation, Austin Sarat and William Felstiner (1995) show how individuals develop new understandings of the law and construct legal ideology as they process through their divorce case. Sarat and Felstiner write that the divorce process is “both the end of a marriage and the beginning of an education in law,” illustrating the potentially transformative and educative nature of legal experiences (p. 3). Individuals enter the legal process expecting neutrality, fairness, and a formal commitment to rules. Instead, they find an informal process where local relationships and judicial discretion dominate.
Legal consciousness studies also examine how individuals’ understandings of the law and their law-related behavior help to constitute and give meaning to the legal process itself (Ewick and Silbey 1998; Silbey 2005). Individuals are viewed as active participants in creating the legal process, despite their status as lay people outside of the courtroom workgroup. This constitutive aspect is central to this approach, viewing legal consciousness as part of “a reciprocal process in which the meanings given by individuals to their world become patterned, stabilized, and objectified” (Silbey 2005: 333). Social interaction is a crucial component in creating and maintaining legal culture and views of law and justice according to legal consciousness research, a concept that is not measured in procedural justice work. By examining both individual attitudes and social structure, legal consciousness studies examine attitudes, value systems, and lived experiences, while situating individuals within their social world (Sarat 1990; Ewick and Silbey 1998; McCann 2006). It is this simultaneous focus on both individual agency and societal constraints that leads to the understanding the constitutive process of law - the view of law as “a process of ongoing mutual causation” (Ewick and Silbey 1998: 38). Individuals are not merely the law’s passive recipients – people’s experiences and understandings of the legal process and their behaviors within the legal system help to create what the law means to them and the impact the law has on their lives.

Legal consciousness operates at both the individual level and as a construct shared among social groups. Members of a social group may share seemingly similar legal understandings, views of the law, and legal experiences, yet individuals within the group may still differ in how they interpret law’s meaning and how they respond to law in their everyday lives. In his study of welfare recipients, Austin Sarat (1990) suggests that the legal consciousness of the welfare poor
is considerably different than that of other social groups because of the law’s constant presence in their lives. Sarat describes the welfare poor as possessing both a “consciousness of power and domination, in which the keynote is enclosure and dependency” and a “consciousness of resistance, in which welfare recipients assert themselves and demand recognition of their personal identities and their human needs” (p. 344). At the same time, however, Sarat finds significant differences at the individual level in how members of the welfare poor understand, view, and utilize the law and legal resources. Sarat suggests that the legal consciousness of individuals on welfare may be “as internally divided and plural as it is different from the legal consciousness of other social groups” (p. 348).

Much of legal consciousness research has focused on the experiences of relatively powerless people, demonstrating that stories of law are often stories of power (Ewick and Silbey 2003). To examine how power works in the legal system and affects the lives of individuals, researchers in this area explore how narratives concerning acts of resistance can become part of a culture of meaning within a social group. Relatively powerless people yield to the legal system while they simultaneously continue to guard their own interests and identities (Ewick and Silbey 2003). Defining an act of resistance as a “conscious attempt to shift the dynamics or openly challenge the givenness of situational power relations” (p. 1331), Ewick and Silbey state that through the re-telling of these stories of resistance, the narrators demonstrate a recognition of social structure and a conceptualization of power. When these narratives of resistance are shared, their meaning is extended, both temporally and socially, beyond the discrete experience of the particular individual. These narratives of resistance are of particular interest to legal consciousness researchers because when these stories are shared they become part of a stream of
cultural understanding about how social and legal constructs work to distribute power and disadvantage.

The concept of a resistant consciousness of law may be particularly relevant in the context of criminal and juvenile delinquency courts. Defendants and their family members may disagree with police action and may view the courts as one way in which they can challenge police behavior. Members of racial minority groups experience police action and the criminal justice system differently than whites. They are more likely to be affected by racial profiling by the police (Harris 1999; Weitzer and Tuch 2006), disproportionate enforcement of drug laws (Tonry 1996, 2007; Meares 1997), and police brutality (Sigelman et al. 1997; Terrill and Reisig 2003). State coercion is also present in the civil courts, through exacting time and costs and by insisting on conformity to the legal process. Yet the criminal and juvenile justice processes are uniquely stigmatizing and represent the potential loss of liberty. In addition, unlike most cases in the civil court system, in criminal and juvenile delinquency cases defendants face state actors as the opposing party. For these reasons, individuals may enter the criminal and juvenile justice process with different definitions and expectations of voice and justice than they do when they enter the civil court process.

This research explores how parents’ participation in the juvenile delinquency court may shape their individual and shared understandings of the law and how they view their place in the justice process. Procedural justice studies have advanced our general understanding of how people assess their experiences with legal actors and institutions, but this research has not fully captured how individuals’ perceptions may evolve during court experiences or how social interaction shapes these assessments. The framework of legal consciousness helps to explain
how individuals’ understandings of the law are formed through their social standing, ideological struggles, and cultural norms, but these issues have not been fully examined in the criminal or juvenile justice context. Much of legal consciousness research has relied on respondents’ subjective interpretations of their own legal experiences (McCann 2006), while this project incorporates observations of participants’ actual interactions with legal institutions.

**Voice, Meaningful Participation, and Legal Mobilization in a Court Process**

Both quantitative and qualitative studies of how individuals view the justice process emphasize the concept of participation and voice. Providing meaningful opportunities for participation may bring about positive effects in the legal process. Participation can foster a sense of ownership of the outcome in a case and a sense of responsibility to the legal system (Bazemore 2006). Parents and youth who view themselves as collaborators in the justice process may be more likely to buy in to the legal system and to support the court’s sentencing recommendations. Many policymakers now view engaging citizens as an important part of both sustaining and legitimizing criminal justice policy (Moore 1997; Bazemore 2006).

*Developing a More Complex Understanding of Voice and Participation*

Voice plays a key role in how individuals view the justice process in procedural justice research, but we know little about what participants want to say and why voice is important. Large-scale surveys can inquire about opportunities for voice, but they cannot examine how the context of the dispute helps to frame voice or whether the meaning of voice changes as a case proceeds. For example, in Tyler and Huo (2002), individuals were asked for agree-disagree
responses to three statements: “I was able to say what was on my mind”; “I was able to make my views known”; and “The court did not give people an opportunity to tell their side of the story” (p. 194). These statements were combined to create an index of “participation, process control, or voice” (p. 194). Answers to general questions about opportunities for voice do not address the issue of what participants would say if they could be heard and what purpose they see their voice as serving. More research is needed to examine how and why individuals want to voice their concerns within particular legal processes and the constraints they face in seeking opportunities for participation.

The discussion of voice in the procedural justice literature has often focused on the concept of “false consciousness,” the concern that apparently fair procedures will distract individuals from unjust outcomes (Cohen 1985; MacCoun 2005). The false consciousness issue asks whether having the opportunity for voice diverts attention from distributive fairness and other concerns. For example, a person may feel that a legal process is legitimate if he or she perceives the procedures used as fair, even if underlying disparities in resources are not addressed. In-depth research that explores the content of what individuals would like to say in the legal process may show that procedure and substance often are not separate. If what individuals care about is not being able to speak on issues relating to power and fairness, such as police misconduct, then the issues of procedure and substance may actually be closely intertwined. A close examination of the content of voice might change the way the concept of false consciousness is understood, blurring the distinction between procedural and distributive justice.
One critique of procedural justice research is that in a justice process voice can occur in different forms, some more meaningful than others. Lucie E. White (1990) characterizes having an opportunity to be heard, the typical characterization of voice in procedural justice and legitimacy literature, as only one component of meaningful participation in the legal process. White argues that because social and cultural norms and economic realities can constrain what individuals are able to say in a legal process, an opportunity to be heard in itself is not sufficient. Access to the legal process and the opportunity to be heard can be purely formal, rather than substantively meaningful. White sets out two very different ways of conceptualizing participation. In the current system, procedures often operate as an instrument of government. Their goal is to efficiently arrive at outcomes that the majority will view as legitimate. In contrast, White advocates for a “humanist vision” that values the perspective of disadvantaged groups, which can be left out of a more instrumental framework (p. 3). Consistent with this humanist vision, procedures must go beyond ensuring equality of access and participation to also embrace the viewpoints of individuals who are often not heard by the justice system.

Research in the sociology of deviance views voice primarily in the narrow context of providing excuses in an effort to protect one’s identity. Individuals provide excuses and justifications for deviant conduct because they need to drive a narrative wedge between what they are accused of doing and how they view themselves as people (Scott and Lyman 1968). Defendants, particularly juveniles, need to rationalize their criminal behavior in order to protect themselves from blame and to maintain a positive self-image (Sykes and Matza 1957). Some research using a procedural justice framework also views voice as a tool used for achieving more lenient sentences and avoiding accountability (Wells 2008). Yet this line of thinking may not
fully describe the social context in which voice is used, depicting a too narrow framework of 
guilt and accountability. Part of protecting people’s identity may be to voice concerns they have 
concerning how the criminal justice system operates and their depiction by legal authorities such 
as the police. Individuals in the criminal justice system can simultaneously take responsibility 
for their actions and believe that the justice system is unfair. A broader conception of voice 
might challenge current practices in the criminal justice system in a way that both protects 
individual identity and promotes personal accountability.

*Legal Mobilization – Invoking Views of Legality*

Within the legal consciousness framework, the concepts of voice and participation are 
most often found in research on legal mobilization. The study of legal mobilization is central to 
understanding legal consciousness (McCann 2006). Individuals’ willingness and ability to 
mobilize the law to serve their own purposes is a central part of law’s importance in people’s 
everyday lives (McCann 2006). The study of legal mobilization considers when, how, and why 
individuals “invoke legality,” examining when people turn to the law and the resources of the 
state to address a problem (Marshall and Barclay 2003: 618). Whether and how people invoke 
legality in various circumstances relates to their legal consciousness— the choices, rights, 
understandings that they see as possible for themselves within a legal framework (Marshall and 
Barclay 2003; Ewick and Silbey 1998; Nielsen 2004). Early studies of legal mobilization 
focused on why a dispute enters the court process and which types of disagreements become 
legal cases (Black 1973). Studies of mobilization do not end their analysis with cases entering 
the legal system. In their classic 1981 article, Felstiner, Abel, and Sarat characterize the dispute
process as complex and unstable. Individuals involved in disputes define and redefine their views of the conflict “in response to the communications, behavior, and expectations of a range of people, including opponents, agents, authority figures, companions, and intimates” (p. 638). Disputes evolve through individuals’ interactions with others within the legal process, with both sides of the dispute, plaintiffs and defendants, involved in determining the character of the dispute and the relevance of issues (Felstiner, Abel, and Sarat 1981).

Courts can also affect individuals beyond those involved in a particular case, a phenomenon called indirect or radiating effects (Galanter 1983; Engel and Munger 2003). Parties involved in a case leave the courthouse and communicate their experiences to others. In this way what occurs in courtrooms can have a widespread impact on society. As Marc Galanter (1983) states, “Courts produce not only decisions, but messages” (p. 126). These indirect effects can be educative, helping the courts function as agents of social control. Court decisions can become part of one’s identity and personal narrative even if an individual has never looked to the court for assistance (Engel and Munger 2003).

Legal mobilization research in the school context has taken the concept of legal mobilization beyond the formal context of courts and introduces the invocation of concepts not typically viewed as “law.” Using a series of hypotheticals and retrospective self-report surveys, Morrill et al. (2010) finds that students who experience a right violation at school choose among a number of actions, few of which are based in the formal legal process. Introducing a new model of mobilization described as a “multidimensional process” (p. 654), Morrill et al. defines legal mobilization as relating to “the social processes through which individuals define problems as potential rights violations and decide to take action within and/or outside the legal system to
seek redress for those violations” (p. 654). Much of the legal mobilization research has centered on the invocation of rights, a law or rule based concept. This could be considered a surprising direction for legal mobilization research as both legal mobilization and legal consciousness research have the objective of decentering the law (Marshall and Barclay 2003; McCann 2006).

Similar to most legal consciousness research, legal mobilization has not focused on the unique experiences in the criminal and juvenile delinquency courts. The non-voluntary nature of criminal and delinquency cases may present an opportunity to observe a wider range of mobilization-related conduct. More recent legal mobilization work has not focused on defendants, either civil or criminal. Although the early legal mobilization research focused on the influence and effects of civil plaintiffs and civil defendants (Felstiner, Abel, and Sarat 1981), recent research examines only the experiences of those who perceived themselves as plaintiffs or would-be plaintiffs if they decided to take legal action. Even the few studies that include criminal courts limit their discussion of mobilization to circumstances in which citizens file criminal complaints (Yngvesson 1989; Black 1973). The criminal and juvenile delinquency courts involve a distinct group that has not chosen to enter the legal process, with the exception of parents who initiate the court case involving their child. Yet defendants and their family members may still seek participation in the court system and be motivated to use the legal process to further their views of what constitutes just treatment. More research is needed that examines whether and how participants embedded in a court process invoke concepts of law and justice in their status of defendants, bringing legal mobilization back to the study of formal institutions.
Legal mobilization can have a distinctly political dimension. When individuals bring a legal action or invoke principles of law, they are seeking to utilize the power of the state (Felstiner, Abel, and Sarat 1981; Zemens 1983; Lawrence 1991). Disadvantaged individuals often look to the courts to provide recognition of their rights and to redress wrongs they have suffered (Felstiner, Abel, and Sarat 1981). As stated by Donald Black (1973), if citizens lack the ability to go to the courts “a legal control system lies out of touch with the human problems it is designed to oversee. Mobilization is the link between the law and the people served or controlled by the law” (p. 126). Filing a court case is only one way citizens can attempt to affect the social order. Individuals likely seek to invoke concepts of legality and justice in both the civil and criminal contexts. In line with the current expansion of the legal mobilization concept, more research is needed that explores ways how individuals seek to keep the legal system in touch with human problems even when they find themselves involuntarily within the justice process as defendants or their family members.

Views of the Juvenile Delinquency Court and the Socializing Effects of Legal Experiences

This research applies concepts from both the procedural justice and the legal consciousness and legal mobilization literature to examine how parents and children together construct legal meaning from their experiences in the juvenile justice system. To date, research has not focused on how parents’ views may affect the operation of the juvenile justice system and the child’s views of legal authorities and institutions. A cross-sectional study finds that youth who perceive the police and the courts as unjust are more likely to be delinquent, hypothesizing that family members likely play an important role in how a child views the police
and court system (Fagan and Tyler 2005). Other work recommends that future research focus on understanding how beliefs about the law’s legitimacy and legal cynicism originate and how communications between parents and children may affect the legal socialization of youth (Piquero et al. 2005). As these recent studies suggest, additional research is needed to better understand how youth and parents process their experiences in the juvenile court and how family interaction affects how juveniles develop belief systems and values concerning the law and the criminal justice process.

Little is known about the sharing of views of legitimacy and justice within families or how court experiences affect how parents and children think about and understand the law. Socio-legal research demonstrates that individuals discuss their law-related experiences with others (Stalans and Kinsey 1996; Cohn and White 1990) and create meaning for themselves through their interactions with the law and their experiences in legal institutions (Silbey 2005; Tyler 2007). Understandings and views of the law and legal authorities also develop through interactions within existing social networks, such as families (Ewick and Silbey 1998). Legal consciousness research suggests that future work should examine how legal institutions interact with other social structures, such as families, since law’s meaning is often formed through communications within existing social networks (Silbey 2005).

Experiencing the justice process as a defendant or a family member likely has an important socializing effect. Meaningful participation in a legal process is thought to bring about active transformation and civic education for both adults and youth (Thomas 2007; Tapp and Levine 1974). Research on legal socialization refers to “the development of values, attitudes, and behaviors toward law” (Tapp and Levine 1974: 4). Pioneer scholars June Louin Tapp and
Felice J. Levine (1974) focus on the cognitive development of legal reasoning, but also view legal socialization as “a two-pronged, reciprocal process aimed at developing systems of law (and their agents) as well as those individuals within them” (p. 31-32). Participating in legal experiences, such as court hearings and attorney meetings, can be a catalyst for an individual to progress to a more complex level of legal socialization. Socialization experiences are often described in this literature as positive, for example, describing legal socialization as “the acquisition of a society’s values and norms by its members” and the “the fundamental link between the individual and social and political life” (Cohn and White 1990: 10).

Research suggests that providing opportunities for meaningful participation in the legal process may be even more critical for youth in the juvenile delinquency process than for adults. Tapp and Levine found that as children age, their understanding of the law evolves from viewing laws as simple rules established by authority figures to conceptualizing law as a series of complex social agreements. It is believed that court-involved youth in particular can learn important lessons regarding rights, justice and citizenship through their treatment in the court process (Grisso and Schwartz 2000; Bazemore 2006). Grisso and Schwartz (2000) write, “Respect for the legal process and for society’s rules is not likely to be engendered in a youth who is shuffled through the courts as a mere object about whom persons in authority make decisions” (p. 70-71). Emphasizing the importance of promoting trust in the legal process, Grisso and Schwartz advocate that courts take additional steps to ensure that juveniles understand the process and have opportunities to participate meaningfully.

Little empirical research has examined how experiences with the juvenile justice system affect how children and youth develop understandings and beliefs concerning the law, legal
authorities, and legal institutions (Fagan and Tyler 2005; Piquero et al. 2005). A study of delinquent youth found little developmental change in how youth perceive the legitimacy of the justice system over time (Piquero et al. 2005). Piquero et al. conducted four waves of interviews at six month intervals with youth that had been previously adjudicated of a serious crime in either juvenile or adult court. Since the first baseline interview was conducted after the youth’s case in court was adjudicated, this study was unable to capture how experiences in the court process influence how youth think about and understand the law. A study comparing the court experiences of youth remaining in juvenile court with youth transferred to adult court finds that youth in the juvenile system are more likely to characterize both the court process and their case outcome as fair and legitimate (Lanza-Kaduce et al. 2002; Bishop and Frazier 2000). Young offenders processed in the juvenile court are more likely to view their court experiences positively, characterizing the juvenile court judge as caring and interested in their problems, in contrast to youth in adult court who viewed the court process negatively and as purely punitive. Bishop and Frazier (2000) suggest that higher rates of recidivism among youth transferred to adult court may due in part to these youth perceiving the adult criminal court as illegitimate and unjust.

Conclusion

Our current understanding of individuals’ experiences with legal authorities and their perceptions of the legitimacy of the legal system comes from two main sources, neither of which has focused on the experiences of parents in the juvenile justice system. This study brings
together the frameworks of procedural justice and legal consciousness to examine how parents and youth interact with legal authorities in the juvenile delinquency court.

This research examines how insights from the legal consciousness and legal mobilization literature can contribute to the procedural justice framework. By using an in-depth qualitative approach rather than the large-scale surveys of prior procedural justice research, this study captures how individuals’ perceptions evolve during their court experiences. Qualitative methods can better account for differences in relative power in the legal system, a focus of legal consciousness research (Merry 1990; Ewick and Silbey 1998) that is largely neglected in procedural justice work. This research also expands the procedural justice literature by examining the role that social interaction plays in developing and maintaining views of law and justice. This study also contributes to legal consciousness and legal mobilization research by considering how experiences in the justice system can affect the values, opinions, understandings, and behavior of people embedded in the legal process as defendants and their family members.

Both procedural justice and legal consciousness research have relied primarily on the respondents’ subjective interpretations of their legal experiences, while this project incorporates observations of participants’ actual interactions with legal institutions. In addition, the longitudinal nature of this study allows for the ability to capture and explain change, conceiving of legitimacy views as an emergent and interactive process rather than a stable state of thinking or acting. Through in-depth interviews with and observations of family members as they experience the legal process, this research more fully examines the complex nature of legitimacy.
and justice, investigating how law’s meaning is created and shaped through court experiences and family interactions.

This research also conceptualizes participants’ engagement with the court process as dynamic, examining how voice interacts with views of the police and the courts in the context of particular court cases. Research in procedural justice establishes that having voice is a key factor in determining whether participants view the court system as fair, but little is known about how participants want to use voice and why voice is important. Examining the content of voice can deepen our understanding of how the court process is experienced. Legal mobilization research also addresses the issue of participation, but this work has not looked at how defendants and their family members may seek to invoke notions of law and justice from within the court process. In the criminal and juvenile justice processes where police collect evidence and use the state’s power to bring an individual before the court, it is likely that participants want to use voice to challenge police action.

Finally, this research examines insights from procedural justice and legal consciousness in the context of family members’ experiences of the legal process as a unit. Little is known about how perceptions of legitimacy and justice are shared within families. Legal socialization research demonstrates that both adults and youth learn about the law through legal experiences and interaction with others, but research has not fully explored the influence of social and institutional forces. By focusing on parents’ perceptions of the juvenile court’s legitimacy, this research examines how parents participate in the legal socialization process, both inside and outside of the court, and how legality is forged out of an interactive process between court experiences and shared cultural understandings and struggles within the family.
Chapter 3

Research Methods

This research provides an in-depth look at the experiences of thirty families in two urban juvenile delinquency courts. It is both multi-perspectival and longitudinal, including data from eighty-six semi-structured interviews of youth and their parents as they process through the juvenile justice process. With many families, this research includes interviews with multiple members of the same family at different stages of the court process in an effort to gain a deeper understanding of how the justice process is experienced. The interviews are combined with 108 observations of court hearings and attorney meetings with the family as well as numerous informal contacts with youth, parents, and defense attorneys. Data collection primarily took place during a sixteen-month period, from October 2010 to February 2012.

Research Questions

The central questions this research addresses concern how parents’ experiences in the juvenile delinquency court shape their views of the justice system and how parents discuss issues of law and justice with their court-involved child. The following research questions structured the investigation:

1) How do parents’ experiences in the juvenile delinquency court affect their perceptions of the court’s legitimacy and its ability to be just?

In this project, I examine how parents of juvenile defendants perceive the police, the court system, and the justice process. I also consider which types of experiences shape parents’
perceptions of the police and the courts and whether these perceptions appear to change during the legal process. Through this qualitative approach, I am able to examine how the role of parents in juvenile delinquency court affects their perceptions of the justice system’s legitimacy and their views of legal authorities such as the judge, the defense attorney, the prosecutor, and police officers.

2) When, how, and why do parents try to participate in the juvenile justice process?

   An important theme in this research is the parents’ ability to participate meaningfully in their child’s court case. I examine how parents initiate discussions with their child’s attorney and try to speak directly with the judge. I also explore why parents want to participate and what they hope to accomplish through their participation. This question emerged during the research process and was not part of the original set of central research questions.

3) How do perceptions of the juvenile court’s legitimacy and ability to be just influence the law-related behavior of parents in the juvenile justice system?

   This project explores how parents’ perceptions, understandings, and expectations of the juvenile court affect their behavior in the courtroom, in interactions with the defense attorney, and in conversations with their child. This question relates to the constitutive aspect of legal experiences, examining how court participants can affect legal processes as well as how legal processes affect court participants. This research examines whether the behavior of parents changes during the court process and whether any behavioral changes relate to changing views of the court system and its ability to be just.

4) How are perceptions of the juvenile court’s legitimacy and its ability to be just shared through family communications?
I also examine how families process through the juvenile delinquency court as a unit and discuss issues of law and justice within the family. I examine how parents discuss their experiences with the juvenile justice system with their child and how parents shape their child’s understanding of the justice process. I also consider the effects of parents’ inability to participate in the formal court process on how parents discuss issues of law and justice within the family.

An In-depth Qualitative Approach

This research uses qualitative methods to gain an in-depth understanding of how the juvenile justice process helps to shape views of the legal system and how notions of law and justice may be shared within families. Although quantitative research on procedural justice has advanced our general understanding of how individuals assess their experiences with legal actors and institutions, it has not fully captured the experiences of parents and youth in the juvenile justice process. In contrast to the narrow snapshots of individual judgments and attitudes in the procedural justice research, qualitative methods can more closely examine how participants experience the juvenile justice system, how their views of law and justice may evolve during the court process, and how they share their views within the family. Quantitative studies assume that people understand complicated concepts such as legitimacy and justice in similar ways and that their understandings can be accurately conveyed through answers to survey questions. Legal consciousness researchers have criticized the survey method for failing to adequately capture how individuals actually experience the law and legal institutions (Silbey 2005; Ewick and Silbey 1998, Merry 1990). Unlike survey methods, intensive interviewing techniques can draw
out complex perceptions of the law that may not be fully understood by the participants experiencing the legal process.

Qualitative research is particularly helpful when the goal is understanding the process of change, the active role people play in shaping their own identities and understandings, and “interrelationships among conditions, meaning, and action” (Strauss and Corbin 1990: 25). By following parents and juveniles as they experience the legal process and engage in multiple contacts with legal authorities, a fuller picture of how parents understand concepts of law and justice and transmit legal values within the family can emerge. Qualitative methods are particularly well-suited to studying the complex nature of family relationships, where there are often both individual and group-level experiences (Daly 1992).

A qualitative approach was possible in this research because of the unusual degree of access granted for this project. In-depth research of this kind was possible because a state-funded juvenile defender organization agreed to facilitate my research. This organization gave me permission to shadow defense attorneys and to recruit their juvenile clients and their clients’ family members for this project. Few researchers have been able to interview litigants, whether in civil or criminal cases, while their cases are still active in the legal process (Sarat and Felstiner 1995). Given the special confidentiality protections afforded juvenile defendants, this type of access to the juvenile delinquency process has been particularly rare (Chavez-Garcia 2009). The protocol used in this research was approved by the Northeastern University Institutional Review Board.²

² The Institutional Review Board at Northeastern University originally granted approval on May 13, 2010. Approval for modifications was granted on November 18, 2010, February 8, 2011, and October 14, 2011. A copy of these documents is available from the author upon request.
Sample Selection

The thirty families who participated in this research were recruited from two courts, Court 1 and Court 2, both of which serve urban areas in the northeastern United States. Nineteen families were recruited from Court 1. Court 1 is located in a medium-sized city in an area known for violence and drug activity. This neighborhood is predominantly black, although a number of Hispanic families and white families also live in the area. One judge typically sits in the juvenile courtroom in Court 1, a black man who is stern but tries to establish a rapport with the juveniles before him. Eleven families were recruited from Court 2. Court 2 is also in an urban area, but in a smaller city just outside the larger city where Court 1 is located. Court 2 serves a geographic area that includes the smaller city, a number of nearby suburbs, and a predominantly Hispanic neighborhood of the larger city. The neighborhood adjoining Court 2 has a large concentration of Hispanic immigrants. Unlike Court 1 where most of the parents and youth waiting in the hallway are black, the families waiting in the hallways of Court 2 are nearly evenly divided between white and Hispanic. Court 2 has a number of judges who sit regularly, including a black female judge, a white female judge, and a white male judge. Chapter 4 provides additional context for each court.

Court 1 and Court 2 were chosen for this study because the defense attorneys employed by the juvenile defender organization facilitating this research practice in these two courts. The juvenile defender agency primarily serves poor and minority youth who are disproportionately represented in the juvenile justice system (Feld 1999). This population tends to be less satisfied with its treatment by the justice system and less willing to accept legal decisions (Tyler and Huo 2002). Prior research has noted that one of the most effective strategies for reducing crime in
high-risk juvenile populations may be to improve how disadvantaged youth view the criminal justice system (Sherman et al. 1997; Tyler 2003). This research includes thirty families because I reached a point of saturation after eighteen months of fieldwork. At that time, I was learning little that was new from subsequent interviews and I believed that I had a clear understanding of how most parents and youth experience the justice process in these two courts. It will be valuable for future research to compare the experiences of these families with those of parents and youth in other locations, but this research focuses on urban areas where the majority of juvenile court activity occurs.

In these two courts I recruited families whose child had recently been charged with a new delinquent act and had been appointed a defense attorney working for the defender organization facilitating this research. These attorneys were appointed to new juvenile cases through a process called “Duty Day.” When an attorney was scheduled for a Duty Day, he or she was appointed to all new cases in which the juvenile defendant had been declared indigent and there was no ethical conflict prohibiting the attorney from providing representation. In most instances, the attorney was appointed when the juvenile’s case was at the arraignment stage.³ To begin the research, I attended a number of Duty Days with attorneys from the defender agency to identify potential study participants and to conduct the first courtroom observations. As the research progressed, I also recruited families at a later stage in their court case in order to speak with a greater number of families. I was able to follow the families’ scheduled court hearings by communicating with the defense attorney and by having access to the agency’s online calendar.

³ The arraignment is the formal reading of the charges of delinquency which the juvenile faces and the juvenile pleads “delinquent” or “not delinquent.” The judge usually decides the issue of bail at this first hearing.
Once the court notified a defense attorney that he or she had been assigned a new case, the attorney introduced me to the family as a researcher interested in how they experience the juvenile court process. Defense attorneys were asked to introduce me to all families who had a juvenile being arraigned that day on a new case so long as the juvenile defendant was not detained and the parent did not need an interpreter. As the study progressed, attorneys also introduced me to clients and families who had ongoing cases and to parents of detained juveniles. For the majority of participants, I first introduced myself in the courthouse while the family was waiting for the case to be called. I explained my study, asked if the parent or the youth had any questions, and with their consent, engaged them in a short courthouse interview. If the juvenile was not detained, both the parent and child participated in this initial interview in most cases. After the courthouse interview I discussed the possibility of participating in more in-depth home interviews with the juvenile and his or her family members.

Although initially I did not plan to conduct interviews at the courthouse, I found that interviewing parents and youth while they were waiting for their case to be called greatly improved my ability to recruit participants. The initial courthouse interview allowed me to begin to develop a rapport with the families early in the process, making it easier to initiate a conversation with parents and youth. Rather than my immediately requesting home interviews, we had a short conversation about how the parents and juvenile felt about their court experiences. Most participants wanted to share their opinions about the court system, particularly parents who felt they were often left out of the juvenile justice process. The courthouse interviews also allowed parents who worked full-time or who had other obligations to
participate in the study without finding extra time in their schedules. My institutional review board application was modified to allow these courthouse interviews.

Four families declined to participate in the research after I reviewed the study with them at the courthouse. One of these families nonetheless allowed me to observe attorney-client meetings with the family, saying they wanted to assist me with my research. Three other families were interested in participating in home interviews and gave me their contact information, but I was unable to reach them to set up a time. With one of these families, I was able to observe attorney-client meetings and have a number of informal contacts with them within the courthouse. The families who declined to participate and those I was unable to follow up with were diverse in race, court location, and the charges faced by the juvenile. I could not determine any significant differences between these families and the families who participated in the research.

Potential participants were screened for a number of exclusion criteria. This study includes youth between the ages of thirteen and sixteen at the start of the new delinquency case because research has demonstrated that children younger than thirteen have a less developed conception of rights and the legal process (Grisso 2000). When it appeared that the juvenile’s competency may be an issue in the case, I did not interview the juvenile but continued my contact with other family members. Gender was not an exclusion criterion for either juvenile or adult participants. Most of the juveniles were male and the majority of parents and parental figures were female. In the final phase of recruitment I attempted to recruit additional female juveniles and their families. This research includes six female juveniles and twenty-four male juveniles. Similarly, ethnicity or race was not an exclusion criterion for either juvenile or adult
participants, but most participants were black reflecting the demography of these two communities, particularly Court 1. Spanish-speaking families were sought for inclusion in the sample in the final months of the project, but due to time constraints, only one family in the sample was interviewed through an interpreter. This study includes eighteen black families, seven white families, and five Hispanic families.

In addition, since all of the families in this study had children represented by appointed counsel and not private attorneys, the families in this research are of lower socio-economic status. Studying the experiences of poorer families in juvenile court is important, because poor families are disproportionately represented in the juvenile justice system (Feld 1999). In addition, families with a lower socio-economic status may be more likely to believe that they are being treated unfairly by the court system and may view the justice system as illegitimate (Rottman and Hansen 2001). Future research should also include families who can afford to retain private counsel because these families may have different experiences than families who use court-appointed counsel.

Using a Multi-Perspectival and Longitudinal Approach

This project uses a multi-perspectival approach to gain a deeper understanding of the justice process. Multiple members of each family were interviewed in an attempt to examine how family members interact concerning their experiences with the justice system. Recent socio-legal research has advocated for a multi-perspectival approach, emphasizing the value of examining how multiple people involved in the same court case can have different perspectives
of justice (Berrey, Hoffman, and Nielsen 2012). This research presents multi-perspectival data from eighteen families.

My original research design involved interviewing two or three members of each family, including the juvenile and at least one parent, at multiple points during the juvenile court process. This research defines “parent” as the adult or adults acting as the juvenile’s guardian, whether the person is a biological or adoptive parent, a grandparent, or another concerned adult. As the research progressed, I found that it was not possible to interview both the juvenile and the parent in all families. Part of the difficulty was that the research protocol did not allow interviews with detained youth. In addition, some youth had competency issues and could not be interviewed. For fifteen of my families, I have interviews with two family members, in most cases the mother and the juvenile. For three families, interviews include three members of the same family. For example, in one case where a juvenile lived with both his mother and his grandmother, I interviewed the juvenile, the mother, and the grandmother. In another case, the juvenile was detained, but I was able to interview both his mother and his grandmother who lived with him as well as his non-custodial father. With some families, I had informal communications with additional family members as we waited in the courthouse for the case to be called. All family members were made aware of my role as a researcher and detailed observation notes were taken on family interactions that I observed while in the courthouse.

This project also takes a longitudinal approach in order to examine how court experiences affect participants’ views of law and justice. I interviewed and observed parents and children at multiple points throughout the justice process to explore how their understandings of the law and their perceptions of the court’s legitimacy develop and evolve. Most research in both procedural
justice and legal consciousness work has been retrospective. This research presents longitudinal
data with eighteen families. I define longitudinal data as having more than one home interview
or courthouse interview at a minimum of two different time periods. I had substantial contact at
two or more different time periods with three families and substantial contact at three or more
different time periods with fifteen additional families. The length of my involvement with the
families providing longitudinal data varied widely, ranging from one month to over one year
when the juvenile was re-arrested multiple times. The length of my contact varied for a number
of reasons, most often because the juvenile accepted an early plea agreement or I started my
contact with the family at a later stage of the court process.

**Human Subjects Review**

Special precautions were taken because this study involved minors and the research
occurred while their legal case was ongoing. For courthouse interviews, I gave each potential
participant a copy of an unsigned consent form which laid out the purpose of the research and the
potential risks of participation. Before beginning courthouse interviews, I read this consent form
to parents and youth, emphasizing that their participation was voluntary and that they could stop
the interview at any time. For home interviews, I had separate consent forms for parents, parents
consenting on behalf of their child, and non-custodial family members. If I interviewed the
juvenile as well as the parent, I first met with the parent to obtain consent for his or her own
participation and then requested consent for the child to participate in the study as well. I then
met with the juvenile to obtain his or her separate assent to participate. These consent and assent
forms also emphasized the voluntary nature of the interviews and the participants’ ability to stop
the interview at any point. The consent and assent forms included separate consent for the interviews and the observations. Permission was sought to tape home interviews, but interviews proceeded even if they could not be taped. Courthouse interviews were not audiotaped.

All consent and assent forms were approved by both the Executive Director and General Counsel at the juvenile defender organization and by the Institutional Review Board at Northeastern University. The consent and assent forms included specific prophylactic warnings stating that my questions for the research project were not designed to obtain information about the facts of the underlying case. A similar warning was given at the beginning of each interview. Participants were reminded that the focus of the study is their perceptions of the juvenile justice system and discussions parents and children have within the family concerning justice, fairness, and criminal law in general. Legal risks were also minimized by reminding participants at the start of each interview that what they told me for the purposes of this study did not take the place of conversations with their attorney and that I would not repeat what they told me in the context of the interviews to the defense attorney in the case. My human subjects approval also granted me permission to observe additional juvenile hearings with individuals not associated with the juvenile defender agency facilitating my research.

Interviews with Parents and Juveniles

This research includes eighty-six interviews with fifty-five subjects. Additional parents and youth participated in many informal communications inside the courthouse. Some families participated in multiple home interviews, courthouse interviews, and informal communications. Other families wished to limit their participation to courthouse interviews while waiting for the
child’s case to be called. A small number of families preferred talking informally with me inside the courthouse rather than answering interview questions. During the research process, I took a flexible approach to how many family members participated in the study and the number of interviews I was able to conduct.

Home Interviews

My initial research design called for interviews with parents and youth at three different stages of the legal proceeding, but this proved infeasible for all families. Often, cases were resolved when a status hearing or other court hearing was scheduled. I completed initial home interviews with twenty-three respondents in fifteen families. I completed a second home interview with twelve respondents and a third interview with seven respondents. Four juveniles participated in home interviews for a total of nine home interviews with juveniles. Home interviews with adult family members include interviews with mothers, fathers, grandmothers, custodial aunts, and one adult sibling. Home interviews ranged from twenty minutes in length to over two hours, with the majority of home interviews lasting for one hour. Twenty-nine of the forty-two home interviews were audiotaped.

During home interviews, each family member was interviewed separately. The majority of these more in-depth interviews took place at the family’s home, although a few participants requested that we meet at their workplace, a park, or other public area. Participants were compensated for each home interview with a gift card to a local retail or grocery store valued at twenty dollars. This amount was determined to be appropriate and non-coercive through conversations with the University’s Director of Research Integrity and representatives from the
juvenile defender organization. After each home interview, I typed my field notes discussing the
general circumstances of the interview and any pertinent themes discussed. All audio-taped
interviews were professionally transcribed. I also noted areas for follow-up in a subsequent
interview with the same individual and themes I wanted to inquire about in interviews with other
participants.

Courthouse Interviews

Courthouse interviews were conducted in the hallways of the courthouse while family
members were waiting for the child’s case to be called. I started conducting courthouse
interviews to build rapport with families before asking them to participate in a longer home
interview. I found that courthouse interviews were very helpful to the research because they
allowed the participants to react to circumstances as they were happening. I found that most
participants were as candid inside the courthouse as they were during home interviews. The
initial courthouse interview was often conducted with the juvenile and the parent at the same
time. This allowed me to observe family members reacting to each other’s answers to my
questions. Participants and I found relatively quiet places in the hallway where we could sit
down together to talk. With families who did not wish to participate in home interviews, I also
tried to interview parents and juveniles separately while they were in the courthouse at
subsequent hearings. Participants were not compensated for courthouse interviews.

Given the unpredictable nature of court scheduling, courthouse interviews could end
abruptly when the case was called. When this happened, I was sometimes able to finish the
interview on the same day after the court hearing. At other times, however, participants
preferred to complete the interview at the next court date. The waiting areas in the courthouses were often noisy and did not allow the same level of privacy as the home interviews. Despite these limitations, I was able to complete lengthy, in-depth courthouse interviews with forty participants in twenty-six families. Many families participated in both courthouse interviews and home interviews. Courthouse interviews ranged from fifteen to forty-five minutes, with most courthouse interviews lasting for approximately twenty-five minutes. Any contact with a family member that lasted less than approximately fifteen minutes was counted as an informal contact and not as a courthouse interview.

Generally, home interviews and courthouse interviews did not differ in content. I asked participants similar questions in both types of interviews, but the home interviews often produced more in-depth data probably because of the familiar and private setting, the length of time available, and the ability to audiotape. I asked youth and family members to participate in home interviews in addition to courthouse interviews whenever possible. However, many courthouse interviews produced rich data, particularly when I was able to interview participants multiple times. Courthouse interviews also allowed parents and youth to discuss the court process as it was happening. These interviewed also allowed quick check-ins with family members in between home interviews.

Informal Communications Inside the Courthouse

I also had numerous informal communications with participants inside the courthouse in addition to the more formal home and courthouse interviews. Multiple informal conversations with most of the families in this research were the norm. Families appeared in court as many as
eight times in a single case. In some cases, the juvenile was arrested on new charges while the
first case was still pending. In such circumstances I also followed the new case. As the research
progressed, I tended to shift more to informal conversations with participants after the second
courthouse interview because more formal questions began to seem repetitive. The informal
conversations pertained to experiences in the courtroom at prior court dates, as well as
participants’ views of the justice system and discussions they had within the family relating to
law and justice.

After reviewing the informed consent form for courthouse interviews, members of three
families preferred to talk informally rather than be interviewed. These conversations tended to
be brief and to focus on one theme that most concerned them, such as not being able to speak
directly to the judge. In some families, one parent would be interested in a formal interview but
the juvenile or a second family member preferred to speak with me informally. A detailed table
of the types of interviews and contacts that formed the basis of the data for each family is
included in Appendix A.

*Focus of Interviews*

All interviews consisted of open-ended questions regarding the experiences of parents
and youth in the juvenile delinquency court. General themes included participants’ views of the
police and of the courts, their opinions about their role in the process and their level of
participation, and how they discuss the police, the court process, and issues of law and justice
within the family. The format for all interviews was semi-structured, allowing me to react to the
content of each interview while also probing for these particular themes.
The focus of the initial courthouse interview and the home interviews conducted shortly after arraignment was on family members’ perceptions of the legitimacy of the juvenile court and their views of the legal system at an early stage of the court process. Questions for parents probed their views of police and the court legitimacy and their initial expectations of how the juvenile court process would operate. The interviews explored concepts from the legal consciousness literature such as how participants view the moral authority of the law, the role of power and inequality in the legal process, and the law’s power to bring about meaningful change in their lives. Relevant concepts from the procedural justice literature were also examined, such as whether parents view the legal process as neutral, whether they feel they were treated with respect by police and court officials in the past, and whether they believe that they were given the opportunity to participate meaningfully in prior legal proceedings. Similar questions were posed to the juveniles. The juveniles were also asked whether their parents believe the juvenile justice process is legitimate and fair and how they talk with their parents about the legal system. The instrument used for the initial courthouse interviews is included in Appendix B and the instrument used for the initial home interviews with parents is included in Appendix C.

Questions in subsequent interviews were tailored to each family, depending on the nature of the case and the content of the initial interviews, but all followed the same general themes. Generally, the second interview would occur when there had been significant developments in the case and a reasonable amount of time had passed since the first interview, usually a period of three months. This often coincided with the prosecutor making a plea offer or after a contested court hearing. The second interview further explored themes from the first interview and examined how the participants process and understand the events observed in the court
proceedings and attorney meetings to date. In the second interview questions for parents focused on whether their experiences with the juvenile court shape their current thinking about the law and whether they share their perceptions of the court and views of the law with their children. Questions for juveniles focused on any conversations they have had with their parents about the juvenile justice system, whether they believe that their parents view the court as legitimate and just, and whether their parents’ beliefs influence how they act in court or how they work with their attorney. As the research progressed, I found these themes were most effectively addressed by talking about participants’ experiences at the most recent court hearing.

My original research plan included a third set of formal interviews with each family to occur a few weeks after the final hearing in the case. I found that a third home interview was not always feasible or necessary for the research. A third home interview was conducted with only four families. Most of the juveniles’ cases were resolved with plea agreements that were arranged before the final court appearance. In these cases, I was able to have in-depth conversations with participants in the courthouse on the day the case was resolved. After the plea, I would speak with participants briefly in the courthouse to ask final questions and to thank them for their participation. In this final stage, themes of earlier interviews were further explored. I asked participants about their views of the legal process in order to understand how their experiences with the court process may have influenced how they view the police and the courts, including whether the court process met their initial expectations. As with the two previous interviews, juveniles were asked about their parents’ perceptions of the court process and their views of the law as well as any communications about law and justice between them and their parents. Juveniles were also asked whether their perceptions of the court’s legitimacy
have changed because of their court experiences and why they think these changes may have occurred.

Observations of Court Proceedings and Attorney Meetings

An important component of this study was conducting observations of court proceedings and meetings the attorney had with the family. Combining these observations with the interviews was an integral part of this research. This study aims to shed light on participants’ interpretations of their courtroom experiences. In order to fully understand how participants’ views of legitimacy and the court’s ability to be just may evolve during their court involvement, it was important to observe the events that could be effecting these changes. By attending hearings and meetings, I also created additional opportunities to interact with these families and to develop rapport.

In many cases, the first observation occurred during the arraignment proceeding when the delinquency attorney was appointed to the case through random assignment. The attorney would meet the juvenile and his or her family at this time. The arraignment is also when the judge first interacts with the family and when the roles of parents and youth in the court process begin to be defined. The number of court hearings and attorney meetings I observed varied depending on the legal issues in the case, ranging from one to ten court dates. Besides the arraignment hearing, courtroom observations included motions hearings, status hearings, violation hearings, changes of plea, and trials.

I conducted 108 court observations for this project. Seventy-one observations were conducted in Court 1 and thirty-five observations were conducted in Court 2. An additional two
observations took place in a different downtown court when a juvenile already participating in the research was arrested on new charges. This count of court observations is by day, meaning that one court observation often involved two families scheduled for court on the same day. The majority of courtroom observations lasted at least two hours, with the longest observation lasting six hours. Court observations focused on the thirty families participating in the study, but also included observations of hearings involving juveniles with no association with the defender agency facilitating this research. During court observations, I took narrative field notes using thick description of the conversations, behaviors, and events that I observed. My observations focused on participants’ actions and reactions inside the courtroom, whether the judge spoke directly to the parent or juvenile, and whether the defense attorney, probation officer, or other legal official discussed the juvenile’s home life in the courtroom. I also recorded attempts by parents and juveniles to try to engage either the judge or the defense attorney during the legal process. All field notes were typed and entered into NVivo9, a qualitative analysis software program, to be coded and analyzed.

During these court observations, I also observed meetings between the defense attorney and the juvenile’s family. Of the 108 court observations, approximately ninety included meetings of family members with the defense attorney in the courthouse. Typically, I would arrive early on the morning when a family was scheduled to appear in court. I would speak with the family in the hallway of the courthouse as they waited for their case to be called, while also observing any interactions the family had with the attorney. Although my research protocol allowed me to observe meetings between the defense attorney and the family at the family’s home, this occurred only once. With the vast majority of families, the defense attorney did not
schedule meetings with the juvenile and family members outside of the courthouse. There were two meetings families had with the defense attorney that I did not attend for logistical reasons. At the request of the juvenile defender organization, I limited my observations to meetings where the attorney met with the juvenile with family members present because under state law the attorney-client privilege does not apply in those situations. This restriction did not disrupt the research because the study’s primary focus is the interactions between legal authorities and parents in the justice process and how their legal experiences affect parents’ discussions of law and justice with their child.

Data Analysis

All data from the interviews, observations, and informal communications were analyzed using a modified grounded theory method. Grounded theory is an inductive approach to understanding a process or phenomenon (Strauss and Corbin 1990). Theory is discovered and developed through systematic data collection and analysis as relevant patterns and ideas begin to emerge from the data (Strauss and Corbin 1990). The grounded theory method is particularly useful when some of the important concepts related to a particular process or phenomenon are not fully understood or when the relationships among the concepts are conceptually underdeveloped (Strauss 1987). In this project, I used a modified grounded theory approach. Although some potentially applicable concepts have been identified in both legal consciousness research in the civil context and quantitative studies on procedural justice, it is unclear whether these concepts apply in the same way to parents and youth in the juvenile justice process or how views of law and justice may be developed through family interaction.
All data from the interview transcripts and field notes were coded and organized using the thematic coding process described by Strauss and Corbin (1990). The computer program NVivo was used to facilitate the analysis and organization of data. Data were first coded line by line using open codes. During the open coding process, I focused on finding initial themes and patterns in the data. These codes allowed me to break down the data into more manageable pieces. With open coding, I tried to capture the ideas and processes that emerged from the data. For example, the code “outsider to the process” described the alienation and bewilderment many parents expressed during the court process. The code “breaks down parenting” captures the frustration experienced when parents believed the court process was working against their interests within the home.

My next step was to create a narrative for each family that integrated all of that family’s court observations, courthouse interviews, home interviews, and informal communications. These family narratives helped synthesize the information I had collected, particularly for families with multi-perspectival data, longitudinal data, or both. These family narratives focused on exploring ideas, processes, or themes across different time periods, among different members of the same family, and between observation and interview data. To create these family narratives, I first reviewed all of the data for each family. I then analyzed and organized each family’s data into three broad sections relating to my main research questions. Building on the coding structure I began to develop during the open coding process, these sections include the following: Changing Views of Justice, Participation and Mobilization, and Family-Level Communications.
Organizing the data by family narratives promoted more in-depth analysis. As I reviewed and organized the data for each narrative, I began to use axial coding. Axial coding involves examining the connections and hierarchies among codes and further organizing ideas and themes (Neuman 2004). The first set of axial codes were developed in a preliminary way around the main sections of the family narratives, focusing on the relationships among the three themes of participation, views of justice, and family communications. For example, I developed the code “invoking claims of justice” to describe how parents seek to mobilize their ideas of what a fair process would look like. Later, I explored how these acts of mobilization relate to participants’ views of the justice system in the code “wanting to use courts to challenge the police” and how parents discuss issues of justice within the family in the code “transmitting legal ideas through the family.” These themes were further explored in a number of analytic memos I developed on these axial codes.

I wrote a series of analytic memos while analyzing the data. In qualitative research, analytic memos are used to define codes and to explore concepts that surface through the analytic process (Strauss 1987). In the memos relating to the initial open codes, I described the codes and how they related to the data, explaining how codes differed from and related to other codes. These memos helped me to further refine my coding at the early stages of data collection and helped me to identify themes to explore further in my fieldwork. As I wrote the family narratives and developed axial codes, I wrote additional analytic memos focused on emerging themes across families and time periods. In these memos, I explored how concepts from both the legal consciousness and procedural justice literatures related to the data. Applicable concepts from legal consciousness research include the role of power and inequality in the legal process,
how individuals perceive differences between law in its ideal form and its everyday reality, and the belief in the power of law to effect social change and to make a real difference in the lives of participants. From the procedural justice literature, I explored whether participants view court decisions as fair, whether legal authorities are seen as making honest and just decisions, and whether legal institutions are perceived as acting in the child’s best interest.

Three interrelated main themes emerged from the analytic process that formed the basis of the substantive chapters that follow. As I developed the family narratives and analytic memos, these themes seemed central to understanding how these families experience the juvenile delinquency court. First, parents develop more negative views and begin to disengage from the formal legal process when they cannot participate as they would choose, leaving the process more passive than when they entered. Second, many parents want to participate in the court process to challenge the framing of the criminal incident by the police and to better present the juvenile’s circumstances. Third, when parents cannot participate meaningfully in the court process they often find ways to influence their child outside the formal legal process. I categorized the analytic memos and axial codes under these three main themes and used these categories to write each substantive chapter.

A number of measures were used to authenticate the findings of this research. Triangulation, where several methods complement each other and to provide a check against alternative explanations, is a critical part of this study’s design. With triangulation, concepts and theory developed from the data are provisionally tested with new cases so that new data can be used to confirm, disprove, or modify emerging themes (Strauss and Corbin 1990). The multi-perspectival and longitudinal approach of this project created multiple ways to triangulate the
data. Throughout the process, but particularly in developing the family narratives, I compared interviews with the same person over different time periods and interviews with different people within the same family, looking for differences in perspective and characterization of the same incident. I also compared data from interviews with observation data involving the same family.

To further enhance validity, negative cases were sought out in order to reexamine and test provisional theories. Negative cases are cases that do not appear to fit the patterns and themes emerging from the data. Analyzing these negative cases can add depth to the analysis by driving the researcher to understand why this variation occurs (Strauss and Corbin 1990; Douglas 1985). While developing axial codes and writing the analytical memos, I conducted an active search for families that did not fit the themes and processes I was developing. I tried to understand the differences between these negative cases and cases that fit within the themes. Explaining these negative cases often added new depth to my understanding of families’ experiences. For example, I found that a number of families wanted the judge to know that a second suspect involved in the criminal incident had not been arrested. My initial analysis focused on these parents wanting to minimize their child’s misconduct while making sure that all responsible parties were held accountable. However, there were two families who wanted to challenge why the police did not include others in their report, even though they did not want the police to arrest these other individuals. These two negative cases led me to re-assess my initial analysis, concluding that what was most important to these families was that they had no opportunity to challenge the thinness of the police account. Exploring negative cases also helped me to understand why parents who initiated the court contact by calling the police on their child also
developed negative views of the court process. As I analyzed the data, I continually looked for negative cases and tried to integrate them into my analysis.

**Limitations of Study**

This in-depth qualitative study examined the experiences of thirty families involved with two courts and a single juvenile defender organization with a youth development mission. The experiences of these parents and youth may be different than the experiences of families whose child is appointed a defense attorney who does not share this mission. Although perhaps limiting the study’s generalizability, the organization’s mission made in-depth research of this kind possible since participants had to be willing to answer questions openly and honestly and to allow me to enter into their lives and probe their experiences. Another possible limitation is that parents and youth may be reluctant to reveal their opinions of the defense attorney during an ongoing legal case, although this did not seem to prevent many participants from being critical of the defense attorney.

As with most in-depth qualitative research, the personal characteristics of the interviewer may have a substantial effect on the data collected as well as the data interpretation (Groves et al. 2004). As an educated white woman, my background and life experiences differed from those of the parents and youth participating in this research. Many of the study participants were members of racial minority groups living in disadvantaged areas. My personal characteristics likely affected what participants were willing to share of their experiences in the juvenile justice system. Although this research did not focus on race, race was an important theme throughout the research and in many of the interviews. Prior work finds that a researcher’s race can affect
participants’ responses, particularly when the topic of discussion is race or racial attitudes (Davis 1997). Many participants in this research openly criticized the racial bias they perceived in the juvenile justice system. However, participants may have responded differently to a researcher who shared their racial background.

To address concerns of interviewer bias to the best of my ability, I took the time to treat all participants with care and respect. I developed close and friendly professional relationships with most participants. When I entered the courthouse, parents would wave me over and ask me about my child. Participants often asked when we could schedule the next home interview. A number of parents hugged me when they saw me in the courthouse or after our interviews. Some youth asked me for my cell phone number. Even after developing this level of rapport with many families, it is an important limitation of this research that parents and youth may have given me different information than what they would tell someone who was from their own community. I may have been able to mitigate some of these effects through the research design. Prior research has found that multiple interviews can help to break down racial and class barriers as interviewees overcome some of their initial distrust of the researcher (Seidman 1991). By having multiple contacts with many families, I was able to follow up on earlier conversations and observations to probe for underlying meaning. Overall, I believe that parents and youth were quite open with me, although youth tended to be less forthcoming in interviews. Many parents expressed surprise that they had so much to share with me about the process and told me how much they enjoyed being able to discuss their court experiences.

The experiences of the families I interviewed may not be generalizable to courts in other geographic areas, a common problem in qualitative juvenile justice research given the great
variation in juvenile policy and practice (Feld 1991). The experiences of these families may not even be generalizable to other families in these two juvenile courts. This research is limited to families declared indigent by the court. In addition, this research does not include interviews of juveniles in custody, although I interview the family members of detained juveniles and juveniles who were released but whose case was still open. Families with different characteristics may not experience the court process in the same way. Although limiting its generalizability, this study’s focus on a small number of families increases its ability to accurately and reliably understand how these particular families experienced the juvenile court system.

This study is limited to understanding participants’ perceptions and communications about the juvenile court’s legitimacy at a very stressful time in their lives. This research explores their views in the moment as the court process is occurring, but future research should examine how long the effects of these experiences with the court process may last. Parents and youth may feel very differently about the justice process given some distance. Despite these limitations, the objective of this study is to generate new theory that examines how participants’ experiences in the juvenile justice process affect their views of law and justice and how understandings of the justice system develop within the family.
Chapter 4

The Contemporary Juvenile Delinquency Court – Its Actors and Processes

This chapter examines how the juvenile delinquency court operates in two jurisdictions in the modern era, including a description of the role of each actor in the courtroom and the timeline of the legal process. Using data from interviews and observations, this chapter sets up the following three chapters which focus on this study’s research questions concerning the experiences of parents and youth in the juvenile court process.

The contemporary juvenile court has the dual objective of addressing negative youth behavior while also protecting juveniles’ constitutional rights. The early juvenile courts focused on rehabilitating youth, allowing judges to determine what they believed best for the child. Under the parens patriae doctrine, children had the right to be adequately taken care of, if not by their parents then by the courts. “The basic right of a juvenile is not to liberty, but to custody” (Shears 1962: 720). By introducing due process protections for youth accused of committing crimes, the Supreme Court in In re Gault (1967) re-ordered the relationships between judges, defense attorneys, juveniles, and parents. In Gault, the Supreme Court required that juvenile court judges make determinations of fact using standards that resemble the process used in adult criminal courts. Youth were afforded many of the same constitutional rights as adults, including the right to counsel, the right to confront witnesses, and the right against self-incrimination. Underlying these changes was the Court’s concern that youth were being punished without adequate fact-finding in the legal process, a problem the Court believed would be rectified by making the process more adversarial. “It is these instruments of due process which enhance the
possibility that truth will emerge from the confrontation of opposing versions and conflicting data” (p. 21).

At the same time, the *Gault* Court did not completely reject the use of more rehabilitative approaches for juveniles than adults, holding that “nothing will require that the conception of the kindly juvenile judge be replaced by its opposite” (p. 27). The Court has since reaffirmed its belief that juvenile offenders should be treated differently than adult defendants, holding that juveniles are not constitutionally entitled to a jury trial (*McKeiver v. Pennsylvania* 1971) and that mandatory life imprisonment without the possible of parole is unconstitutional for juvenile offenders (*Miller v. Alabama* 2012). The balance between providing adversarial processes while simultaneously retaining a treatment focus has proven difficult (Kupchik 2006; Krisberg and Austin 1993). The contemporary juvenile court has been criticized as being “virtually indistinguishable” from adult criminal courts (Feld 1984: 142).

This chapter provides an overview of the juvenile delinquency court’s operation using observations and interviews from two contemporary juvenile courts. First, I provide background on the two courthouses observed in this research, placing the courthouses in the context of their local communities. I also include a detailed description of the physical layout of the juvenile courtroom. Next, I examine how the different actors in the courtroom, both legal and non-legal, interact in the setting of the contemporary juvenile court. In the final section I detail how juvenile delinquency cases in these two courts process through the justice system, focusing on continuances and delay.
The Courthouses

This research examines the experiences of parents and youth in two courthouses in urban areas in the Northeast United States. Court 1 is a two-story courthouse located in an area which has experienced a high level of violence and drug activity, including a number of highly publicized incidents of homicide. The neighborhood surrounding the courthouse has faced significant change. The houses near the courthouse are stately, but many have fallen into decline. The majority of the neighborhood’s residents are black, although the area is fairly diverse with some long-time residents who are white, middle-class, and Irish. Court 1 is always very busy. Usually there is a long security line to enter the building. Nearly all of the people waiting in line are black. Court personnel, such as clerks, probation officers, and attorneys, are waved through the line to use a separate door to the right. Most, although not all, court personnel are white. Inside, many individuals wait in the hallway for their cases to be heard. Arguments break out frequently in Court 1. For example, one morning a young woman approaches an older woman sitting on a bench on the second floor and starts yelling loudly. She comes within a few inches of the older woman’s face, screaming, “Now he is out and he is going to go where she lives.” A police officer quickly comes up behind her and brings the angry woman to another room. Although it can be chaotic, Court 1 also has a deep sense of community. Many parents and youth have friends and family who are also in the courthouse, either facing charges or supporting other individuals from the community. In the hallway, there is a constant flurry of handshakes and hugs. One judge, Judge Russell,\textsuperscript{4} sits in the juvenile courtroom most days. Judge Russell strives to build personal relationships with many of the juveniles before him, often calling youth up to the bench for private talks.

\textsuperscript{4} All names used in this research are pseudonyms.
Court 2 is located in the downtown area of a different small city which has a large Hispanic immigrant population. Most signs on nearby restaurants and retail offices are in both Spanish and English. Unlike Court 1, there is usually no line of people waiting to go through security to enter the building. The courthouse is bright and has many windows. The juvenile courtroom is on the second floor. Upstairs there is a row of benches on one side of the wall where parents and youth can sit while they wait for their cases to be called. The individuals waiting in the hallways are racially diverse. Most courthouse personnel are white. In general, the courthouse is more orderly than Court 1. Even with many families waiting, there is a loud buzz of conversation rather than the shouting common in the hallway of Court 1. Few families seem to know each other and people generally keep to themselves. Three to four judges sit in Court 2 on a regular basis. These judges often hear cases in other courthouses first and come to Court 2 once those sessions are finished. As a result, even though parents, youth, and attorneys are required to check-in by nine o’clock, cases are rarely heard before ten. There is a paper sign taped in front of the judge’s bench in the front center of the courtroom. The sign says in typed, all capital letters, “THIS SESSION BEGINS AT 9:00 A.M. AND ENDS AT 4 P.M. PLEASE BE PROMPT.” Parents and youth regularly complain that cases never start on time and defense attorneys say they know not to rush to this particular court.

In both courthouses, defense attorneys meet with juveniles and parents in the crowded hallways. In most cases, defense attorneys meet with the juvenile and his or her family members for the first time just before the arraignment hearing. After receiving the charging documents and police reports from the court clerk, the defense attorney searches for the defendant and family members in the hallway, often shouting out the juvenile’s name. When youth are kept in
custody after their arrest, the defense attorney meets with the juvenile separately in a detention area off the courtroom. There is one private room in Court 2 for defense attorneys to meet with juveniles and parents, although this room is often occupied. There is no similar room in Court 1. In both courts, most meetings with the defense attorney throughout the case are held while either sitting on benches or standing in the hallway.

Inside the courtroom, juveniles are separated from their family members. Defense attorneys stand with their juvenile clients at a podium facing the judge. The prosecutor stands at a podium at the other side of the room. Behind them are two long tables where the attorneys and the juvenile sit during contested hearings, a rare occurrence in both courts. Probation officers sit at a table to the left of the judge on the prosecutor’s side of the courtroom. When no witness is testifying, a probation officer also sits next to the judge in the witness box, handing paperwork to the judge as each case is called. Parents and other family members must sit behind a swinging gate in the gallery, an area consisting of several rows of benches at the back of the room. The defense attorney, prosecutor, and juvenile speak to the judge with their backs to the gallery. Juveniles and their family members wait in the hallway until they are called into the courtroom and leave when their case is finished. Defense attorneys and police officers who are waiting for other juvenile cases to be called are allowed to sit in the gallery throughout the court session, although generally juvenile hearings are confidential.

**Legal and Non-Legal Actors in the Juvenile Delinquency Court**

Through its granting the right to court-appointed counsel to indigent juvenile defendants, the *Gault* case drastically altered the relationships between legal and non-legal actors in the
juvenile courtroom. This section examines how defense attorneys, prosecutors, judges, and probation officers interact with each other and with juvenile defendants and their parents during the delinquency process.

*Defense Attorneys*

Defense attorneys now take a central role in the juvenile justice process. Defense attorneys have an ethical duty to provide their juvenile clients with a zealous defense (Shephard 1996; Model Rules of Professional Conduct Rule 1.14 2010). Most juvenile justice professionals agree that the defense attorney represents the expressed interests of his or her juvenile client, regardless of the child’s best interests or what the parent wants to see happen in the case (Shephard 1996; Henning 2006). Some juvenile agencies, such as the organization that helped facilitate this research, also strive to take a youth development approach when defending youth. A youth development approach focuses on providing juveniles with assistance to ensure their healthy development as they transition to adulthood, rather than limiting their focus to the legal issues in the case (Moore, Lippman, and Brown 2004; Moore and Zaff 2002). As will be discussed in future chapters, at times this approach may conflict with the defense attorney’s duty to provide zealous advocacy in an adversarial system.

In these two juvenile courts, defense attorneys overwhelmingly speak on behalf of and in place of juveniles and their parents. In the majority of hearings, the judge hears from the prosecutor and the defense attorney and not from the lay people in the courtroom. Defense attorneys speak in place of juveniles even when they offer that the juvenile has something to say to the judge. For example, a defense attorney in Court 1 tells the judge that her client is doing
very well in detention and that she has a number of social services in place to support her if she were released. At one point the defense attorney says to the judge, “I think you may want to hear it from her.” The youth begins to speak, but the defense attorney talks over the juvenile to continue her argument. The judge releases the youth, the outcome the defense attorney is looking for, but does not hear from the juvenile herself. In the vast majority of cases, the defense attorney also speaks for the parent in the courtroom. In one case, the defense attorney indicates to the judge that the mother of a twelve-year-old juvenile defendant is present. The defense attorney says, “The mother is prepared to explain to the court how well he has done.” As the attorney continues, the juvenile’s mother tries to get the attorney’s attention from the gallery. She says to the defense attorney, “I just want …” The attorney interrupts, saying to her, “No, please. It’s not going to help,” making a cutting off gesture with her hand. Subsequent chapters will examine the effects that defense attorneys’ actions can have on lay people’s opportunities for participation and their views of the justice system.

Sometimes defense attorneys must make difficult decisions between enforcing the juvenile’s due process rights and securing a more lenient disposition in the case. Not calling attention to constitutional violations in the process can leave more room for treatment-based sentences. For example, Oscar, a black juvenile in Court 2, faces a number of serious charges involving assault and attempted murder involving his mother Nicole. After meeting with Nicole, the prosecutor offers a plea agreement that would involve dismissing all charges with the condition that Oscar undergoes a substance abuse evaluation. With such a lenient plea offer, the defense attorney assumes that Nicole characterized the fight between her and her son as mutual and said that she did not want to testify. This would be consistent with Nicole’s earlier
conversations with the defense attorney. The prosecutor never shares Nicole’s statements with the defense, although the failure to provide the defense attorney with any exculpatory information would be considered a serious violation of the juvenile’s due process rights. The defense attorney wants to confront the prosecutor about this omission, but he chooses to do nothing because he is concerned that any confrontation will jeopardize the offer to dismiss the charges. As repeat players in the system, defense attorneys build subtle understandings with other legal actors, such as judges, probation officers, and prosecutors (Galanter 1974). The juvenile court’s focus on counseling and rehabilitation can conflict with the defense attorney’s traditional duties in an adversarial process. Defense attorneys must decide how to best perform in their role as advocate: to protect their client’s constitutional rights or to preserve relationships that may lead to better treatment outcomes for their juvenile client.

*Juveniles*

The juvenile defendants in these two courts have been charged with a range of offenses, including attempted murder, domestic assault, armed robbery, arson, possession of a weapon, and driving without a valid license. They are between the ages of thirteen and sixteen at the time of their arrest. Many youth remain in custody while pre-trial. In Court 2, detained juveniles are usually brought into the courtroom still in shackles. Most juveniles stay silent during their court hearings, whispering to their defense attorney if they are asked a question. When youth turn around to look at their family members in the courtroom, court officers instruct them to face forward toward the judge. During the rare times when a judge asks them something directly, most youth answer softly using a low voice. Many seem confused when asked to speak to the
judge, having trouble answering even simple questions. One juvenile answers “yes” when the judge asks if he is here with his grandmother, even though it is his custodial aunt who has brought him to court. Some youth describe not feeling like they are part of what happens in the courtroom. Crystal, a white juvenile in Court 2 facing motor vehicle charges, describes how she rarely pays attention in court:

In the courtroom I’m kinda just like zoned. Like there’s kinda like a little bubble over my head. I just don’t really pay attention. I’m just kinda like . . . stars in my head [laughs].

Most juveniles in this research do not appear to have a clear understanding of the legal issues in their case. Youth often have difficulty explaining what happened in a court hearing or even recalling which charges they face. In one case, the defense attorney asks her client, a black juvenile in Court 1 named Trevor, to explain to her what he thinks happened in the motion to dismiss hearing they had a few minutes ago. Trevor faces charges of unarmed robbery and criminal threatening in two separate but related incidents. Trevor says he understands what happened in court, but when pressed by the attorney, it is clear that he mistakenly believes the motion hearing concerned the threatening charge and not the robbery charge. Lisa, Trevor’s mother, says later that her son “doesn’t have a clue” what goes on in court, adding all he knows “is to be back on a different date.” Jessica, a Hispanic juvenile in Court 2 charged with committing an act of arson at her school, is offered a plea that could involve a suspended sentence of detention. After reviewing the agreement in detail with her defense attorney, Jessica decides to accept the plea offer. The defense attorney asks if she has any final questions before they go before the judge. Jessica replies, “A suspended sentence, what’s that?”
As part of the due process protections guaranteed by *Gault*, the juvenile has the authority to make important case-related decisions, such as whether to go forward to trial or whether to testify in his or her own defense. Yet juveniles in these two courts have difficulty understanding the concept of exercising rights, in line with previous research (Grisso 1997, 2000; Schmidt, Reppucci, and Woolard 2003). When deciding whether to accept a plea offer, Rochelle, a black juvenile charged with assault and unarmed robbery in Court 1, says that she understands her rights in the case. But when asked to explain, she says, “all my rights, I don’t know.” Melvin, a black juvenile in Court 1 charged with domestic assault, destruction of property, and resisting arrest, also cannot remember what his defense attorney told him about his rights: “Yeah, she talked me about them, but I forgot what she said.” When asked who makes the important decisions in his case, Melvin responds, “The lawyer. The lawyer and the prosecutor and the judge.” Youth often defer to the defense attorney or to their parent when making case-related decisions. In one case, the defense attorney reports that she told Tyrese, a black juvenile facing trespassing and drug charges, that “he can’t take anything short of dismissal with these cases. That he can’t plead just to get it over with.” The juvenile, described as shy by the defense attorney, says “okay” in response.

*Parents*

Parents’ role in the juvenile delinquency court is not well-defined. Unlike other aspects of their child’s life, parents do not have the authority to make decisions in the delinquency case involving their child. In juvenile court, the defense attorney represents the juvenile and not the family as a whole, having no obligation to speak on behalf of a parent or to make sure the parent
understands the court process. Many parents find it difficult to hear what is happening from their seats in the gallery. Nicole, a black mother in Court 2 with her son Oscar, says that in the gallery “You only hear bits and pieces. They don’t talk loud enough. I rely on the lawyer to hear.” In the courtroom, parents have difficulty finding ways to insert themselves into the conversation between the lawyers and the judge. Since defense attorneys speak to the judge with their back to parents, parents rely on the judge and court officers to notify the defense attorney that they are trying to get his or her attention.

The interests of parents and defense attorneys are not always aligned. The defense attorney’s role as the juvenile’s advocate can lead to difficult relationships with parents. In one case, a defense attorney represents a youth with mental health problems. The defense attorney needs access to the juvenile’s medical records, but her mother refuses to sign the necessary release. The mother says to the defense attorney, “It’s not your business.” The defense attorney decides to seek a court order for the records, saying that it will sever any relationship the attorney has with the family. Some defense attorneys feel they need to speak negatively of parents to advocate for their clients. During a case in Court 2, a defense attorney argues that the judge should not issue an arrest warrant when a juvenile fails to appear in court. The defense attorney tells the judge, “It’s the parent’s responsibility for not bringing the child here.” This defense attorney blames the juvenile’s absence on her mother, creating a potential conflict between the parent and child. At a later hearing, this mother asks the judge to remove the defense attorney from the case.

Many parents have difficulty accepting that their child has decision making authority, citing the juvenile’s youthfulness. Tracy is a black mother in Court 1 with her son
Lawrence who faces charges of arson and armed robbery. Tracy says, “Some decisions children should not have to make on their own. Some key parts, elements, are missing at times.” Parents are often very active in the decision of whether the juvenile should accept a plea offer. In a case of Court 2, the defense attorney explains to Jonathan, a white juvenile facing separate charges of domestic assault and destruction of school property, that he needs to decide between accepting a plea agreement, having a jury trial, and having a bench trial in front of a judge. His mother Francine says loudly to her son, “You don’t want a bench trial.” Many parents actively dissuade their child from taking their case to trial, often citing the number of additional court dates a trial requires.

Some parents enter the justice system looking for help with their child. Many of these parents share an “adult solidarity perspective” with legal authorities, believing that their child is out of control and requires intervention (Schaffner 1997: 430-31). Tracy, a black mother in Court 1, says that she wants her son Lawrence “to get the help that he needs.” She adds, “I hope that [the court] will give some recommendations for him, put some services in place for him.”

Even parents who believe that their child’s charges should be dismissed can still want to access programs that are only offered through the court. Lisa, a black mother in Court 1, wants her son Trevor’s charges of criminal threatening and unarmed robbery dismissed. She says, “I want to see them drop it, because he didn’t do it. If I thought he did it, I’d let him plead it out.” However, Lisa still believes that Trevor’s court involvement can help him find services that she thinks he needs. She says, “I’ve been trying to find a way to work the court system. He’s my baby.” When the judge sets Trevor up with a diversion worker, Lisa says:

Now he’ll have some positive things to do. That’s what I’ve
been talking about, resources. I knew I would run into somebody one day that will point me in the right direction. . . . The Lord works in mysterious ways.”

Even believing that her son is innocent of all charges, Lisa still views the court as enabling her to gain access to resources for her child that are otherwise unattainable. The subsequent chapters further explore parents’ experiences in the court system, focusing on the juvenile delinquency process from their perspective.

Prosecutors

The prosecutor is responsible to serve the interests of the public by proving each charge of delinquency beyond a reasonable doubt. In both Court 1 and Court 2, prosecutors are assigned to juvenile court as part of a rotation, staying for only a few months at a time. In many cases in this research, a single prosecutor does not see the case to completion. Prosecutors who appear in juvenile court tend to be younger attorneys. Their time in the juvenile courtroom is often viewed as a stepping stone to more serious cases involving adult defendants. In both courts, the prosecutor enters the courtroom in the morning carrying a large stack of files. The prosecutor leaves these files at the prosecutor’s table, standing at a podium near the judge while court is in session. In contrast to the individualized treatment emphasized by early court reformers, prosecutors do not have direct contact with the juveniles they prosecute, speaking instead to the defense attorney assigned to the case. Prosecutors have contact with parents only if the parent is an alleged victim. In most circumstances, the prosecutor and defense attorney
talk briefly in the courtroom about that day’s hearing while the juvenile and his or her parents wait in the hallway.

The court relies on the prosecutor’s representation of the facts during most court sessions. Prosecutors first read from the police reports at the arraignment to establish there is probable cause to go forward with the charge. They also rely on facts presented in the police report to ask for bail. Only rarely does the defense attorney comment on the facts at early hearings in the case. When defense attorneys present facts, they are careful to note that they are not trying to have a mini-trial at an early stage of the proceedings. Contested hearings and trials are infrequent in these two courts. When they do occur, prosecutors spend little time preparing witnesses, often talking to police officers and lay witnesses for a few minutes before calling them to the stand. Most cases end in plea agreements or dismissals, often leaving the prosecutor’s version as the only account of the incident that is presented in the courtroom.

Many prosecutors in these two juvenile courts appear to seek the most punitive sentence possible. Like in adult criminal courts, prosecutors use the threat of increased penalties after trial to encourage juveniles to accept a plea offer. In cases involving serious charges, prosecutors threaten to indict the juvenile as a youthful offender, a status in which the youth could be detained until the age of twenty-one, if the plea offer is not accepted. Prosecutors face pressure from their supervisors to negotiate strict sentences. One prosecutor who became known for his relatively lenient negotiating is rotated out of the juvenile court earlier than planned. One defense attorney tells me this prosecutor was transferred because he was “too nice to defense attorneys.” His replacement does not honor the earlier prosecutor’s negotiated agreements.
Sometimes both the defense attorney and the judge become frustrated with a prosecutor’s perceived inflexibility. In the state where the research takes place, the state supreme court has held that the prosecutor decides whether to arraign a juvenile, not the judge. A judge can decide that there is not probable cause for a case to go forward only after a youth has been arraigned on a charge. In a case in Court 1, the prosecutor refuses to not arraign a juvenile on a drug charge even after the judge says he plans to dismiss the case for lack of probable cause. The juvenile is charged with intent to distribute marijuana. The judge agrees with the defense attorney that there is insufficient evidence of distribution. Glaring at the prosecutor, the judge says angrily that he finds it “offensive to arraign a child just to be dismissed” and that having this on his record “will close doors on that child’s life.” The prosecutor goes forward with the arraignment and the judge dismisses the case a few minutes later. It is difficult in these cases to understand the prosecutor’s actions if the goal in juvenile court is still reformation.

In addition to making charging decisions, the prosecutor has tremendous authority to direct how long cases remain in the court system. In a charge of aiding and abetting a robbery, the judge denies the defense attorney’s motion to dismiss. The judge holds there is probable cause to go forward, the low standard of proof that applies to this kind of motion. But the judge adds, “I don’t see how anyone, on these sets of facts, can convict him.” The defense attorney remarks to the juvenile and his mother that she does not understand why the prosecutor would still proceed after the judge tells them they cannot prove the case at trial. The defense attorney adds, “It’s not about justice then.”
Probation Officers

Probation officers sit at a table near the wall on the prosecutor’s side of the courtroom. In the jurisdiction where this research takes place, juvenile probation officers are part of the judicial branch. The probation officer collects information on behalf of the judge, first meeting with parents when they arrive in court for the arraignment hearing. At the first hearing, the probation officer has the parent fill out paperwork to determine whether the juvenile is eligible for court-appointed counsel and asks background questions such as the juvenile’s school attendance and his behavior at home. At subsequent hearings, the probation officer’s role consists mainly of enforcing court orders. Probation officers monitor juveniles while they are out on bail and on probation, often relying on parents to help them with this monitoring. They ask parents to provide them with information relating to possible violations, particularly whether the youth is obeying curfew and rules at home. Many parents are reluctant to report problems to the probation officer because they are concerned that their child will face a violation. In one case, the mother tells the probation officer that her son is not coming home on time but that she did not want a bail violation filed. When the probation officer goes forward on a violation anyway, the defense attorney remarks, “Parents think they control things more than they do.”

Probation officers are also tasked with providing services for youth in need, although defense attorneys and parents complain that most probation officers in both courts focus on enforcement. Defense attorneys remark that probation officers are preoccupied with finding violations and less concerned with helping youth. One defense attorney says, “Sometimes I wonder, why can’t probation just problem-solve with me?” Parents frequently say that probation officers rarely take the time to get to know youth personally. Lisa, a black mother in Court 1,
complains, “[Probation officers] don’t follow up, it’s like they don’t really care. They’re not involved. They didn’t do home visits, not once.” Marla, a black mother in Court 1, agrees. She says:

It’s like they’re scared to go to people’s houses and scared to interact with the kids. They just stay behind a desk, the probation officer. You call them or you come in there. You know? They don’t come out, they don’t anything with the kids.

Marla describes asking her son’s probation officer for help finding him a program and receiving little assistance: “[They] throw numbers at you, throw a flyer at you.” A common theme from parents in both courts was that having the “right PO” can have a tremendous impact in the case. Judy, a white custodial aunt in Court 2, describes her nephew’s probation officer as “very willing to help.” Generally, parents in Court 2 had more favorable impressions of probation officers than parents in Court 1.

When probation officers focus on rehabilitation, their actions can conflict with due process protections and procedural formality. In one case the probation officer and defense attorney agree that the juvenile’s case will be dismissed at the next hearing if the youth continues to do well on probation. At the next court date, the probation officer agrees that the juvenile is doing well, but he wants the case continued one more time before dismissal. The probation officer says, “The only reason is to keep his feet to the fire.” The probation officer tells the judge that the juvenile “is making great, great progress,” adding “probation would emphatically request” that he remain under supervision until the end of the school year. The defense attorney asks for dismissal over the probation officer’s objection, arguing the juvenile has fulfilled his
part of the agreement. The judge dismisses the case, saying, “He’s done what I asked.” Less than three months later, the same juvenile is arrested on a new firearms charge and is sentenced to a minimum of six months in detention.

**Judges**

In these two contemporary juvenile courts, the judge often has a less substantive role than the prosecutor and the defense attorney. Juvenile court judges’ courtroom behavior varies dramatically by individual. In Court 1, the court in the high violence area, a single judge, Judge Russell, sits in the juvenile courtroom most days. Judge Russell is a black man who regularly refers to his tough urban upbringing as “a project kid.” He sometimes brings juveniles up to the bench for personal conversations. After meeting with one juvenile at the bench, Judge Russell shakes his hand. The defense attorney in the case remarks, “Now that you have shook his hand, he’s going to remember that.” Judge Russell replies, looking at the youth, “That handshake means everything to me.” Judge Russell demonstrates an understanding of many of the difficulties youth face in the surrounding community. For example, when a youth program moves to a different neighborhood, Judge Russell asks juveniles if this is still a safe place for him or her, recognizing the turf wars between gangs in that area. Judge Russell is well-known throughout the community. Marla, a black mother who has had four sons process through Court 1, says that youth “give him a lot of respect, that man.”

Court 2 operates differently, with three to four judges sitting on the bench on a regular basis. Although the clerk tries to schedule cases so they are always heard by the same judge, it is not always possible. Judges in Court 2 therefore have less of an opportunity to develop
relationships with juveniles and their family members. Parents complain they never know who
will be in the courtroom. One mother expresses disappointment when the judge that usually
hears her son’s case will not be there that day, saying, “I love Judge Smith. I don’t know about
another judge.” Judges in Court 2 generally have less direct contact with youth than Judge
Russell in Court 1, preferring to question the defense attorney about the juvenile’s progress.
When judges speak with youth directly, juveniles value this type of contact. Jessica, a Hispanic
juvenile in Court 2, describes her interactions with Judge Fitzpatrick, a white male judge, as very
positive.

At the other court dates the judge would talk to me, would have
conversations with me. That surprised me. We had a conversation
outside the court case, like what I liked to do after school, had a
different type of conversation with me.

Judges have personal contact with parents much less frequently than youth in both courts.
Some judges acknowledge that parents are in the courtroom, usually referring to the parent by
title rather than name. For example, one defense attorney introduces his client’s mother by name
to the judge. The judge responds by calling her “mother” and not using her name, saying “Good
morning mother. Thank you for being here.” Parents who try to initiate contact with the judge
are usually instructed to speak with their child’s defense attorney. During a hearing to determine
whether a juvenile should be detained for a probation violation, the mother sobs and loudly asks,
“Can I say something?” The judge detains the girl, telling the mother, “Talk to your lawyer, no,
not to me.” When family members have any direct contact with a judge, they attach great
importance to this interaction. One black grandmother in Court 1 described the moment when
the judge looked at her and thanked her for coming, saying, “It felt so good when he said that. It was very considerate. I never knew a judge to say that. … It meant a lot to me.”

Sometimes judges obstruct the defense attorneys’ ability to fulfill the fact-finding mission held to be crucial in *Gault*. Judges can value the efficient processing of cases over encouraging effective defendant/attorney relationships. Often judges do not allow defense attorneys to finish talking with juveniles and family members before calling them into the courtroom. For example, a juvenile is scheduled to be arraigned on a new charge of possessing a firearm in Court 1. Judge Russell asks the clerk to call the case. The defense attorney enters the courtroom and asks the judge for additional time to speak with the juvenile’s mother before the hearing. Judge Russell says the case will be heard anyway and instructs the defense attorney to bring the mother in immediately. During the arraignment, the defense attorney tries to gather additional information from the mother, coming over to the gallery to ask questions about their address and ability to raise bail money. In another case, the same judge calls the case when the defense attorney is still meeting with the juvenile’s family members. Judge Russell tells the clerk to page the defense attorney, saying angrily, “She’s going to have me wait rather than have them wait?” Defense attorneys are not allowed time to build their case effectively when these types of interactions conflict with the court’s ability to be efficient and to process through cases.

Judges strive to command respect in the courtroom through formalistic adherence to court procedures. Although Judge Russell understands other difficulties facing disadvantaged families, he regularly becomes angry when juveniles and parents are late to court. Being able to arrive to court on time becomes a proxy for how much respect the juvenile and parent are according to the court process. When a juvenile and three of her family members arrive at 9:50
when all juvenile cases are scheduled to begin at 9:00, Judge Russell refuses to hear a plea agreement. He tells the family, “You came to my court much too late.” The defense attorney characterizes the judge as “just punishing them for being late” and that he “wanted to teach them a lesson.” At the next court date the judge accepts the agreement when the family arrives on time. Even in Court 2 where hearings normally begin near ten o’clock, youth and parents are expected to arrive one hour earlier. In a case where the judge takes the bench just before ten o’clock and the case is heard at 10:45, the probation officer complains to the judge that the juvenile “didn’t find it important to get here on time.” The judge instructs the defense attorney to speak with her client about not arriving late to court. In contrast to the aspiration of early juvenile court reformers that judges become fatherly figures to youth in trouble, now the judge’s foremost concern often appears to be maintaining the order and dignity of the courtroom.

Many juvenile court hearings focus on administrative matters such as paying legal counsel fees. In the jurisdiction where this research takes place, individuals using a court-appointed attorney must pay a fee to the court. Some judges frequently threaten to remove defense counsel from the case when this fee has not been paid. In one case, Judge Russell asks the mother of a juvenile to stand up and says, “Ma’am, you are going to have to hire your own attorney.” When the defense attorney objects, the judge responds, “They have a right to an attorney if they follow the rules. She has chosen not to.” In many cases, the discussion concerning whether the legal counsel has been paid is the only direct interaction a parent has with the judge.
The Juvenile Court Process

The juvenile delinquency process in these two courts mirrors the adult criminal court in many ways. The juvenile is arraigned after he or she is arrested. At the arraignment hearing, the judge determines whether to hold the youth in detention until trial or to release him or her on bail. Unlike adult cases, the juvenile court judge may ask if the parent is willing to take the child home at the bail hearing if it is a domestic-related offense. A judge is more likely to hear from a parent or family member at arraignment than at other times during the case, although in most cases parents do not speak. At the arraignment, the defense attorney receives a copy of the charging document and the police reports and schedules the next court date. Subsequent court hearings are held fairly regularly, usually one every month, until the case is resolved. Many parents new to the juvenile justice system remark they did not expect that the juvenile process would be so like the adult system. For example, Karen, a white mother in Court 1, says “that what surprises her most about the juvenile court is “how similar it is to the adult process.”

In most cases, the prosecutor and defense attorney wait until the discovery process is complete to begin plea negotiations. The discovery process can take many months. At the second or third court date, the prosecutor and defense attorney file an agreement with the court specifying the additional discovery that the prosecutor will provide. This usually includes witness statements, restitution amounts, and copies of any 911 calls in the case. In most cases, three to four court dates are necessary before the discovery process is complete. Sometimes the discovery process takes even longer, taking eight months and seven court dates in one case involving charges of unarmed robbery and criminal threatening. In court dates involving discovery exchanges, typically the prosecutor hands the defense attorney a packet of information
shortly before the case is called or during the hearing itself. Usually the defense attorney does not have the opportunity to examine the material in detail beforehand. At the hearing, the attorneys inform the judge which materials have been provided and which discovery is still outstanding. The judge may take a few minutes to inquire about the juvenile’s behavior while out on bail before scheduling the next hearing. Parents and juveniles frequently complain that cases drag on for months for no discernible reason. In a case in Court 1, two mothers of co-defendants who are cousins sit in the front row. When the defense attorney and prosecutor start to schedule another court date because of discovery-related issues, one mother says, “What? Another date?” The second mother remarks angrily, “Jesus,” while the first mother covers her face with her hands and sighs loudly.

In many ways, these juvenile courtrooms are not set up to efficiently move the legal process along. For the case to progress, defense attorneys and prosecutors need to talk about which pieces of discovery are missing and whether they can come to a plea agreement. Defense attorneys complain that they find it very difficult to speak with the prosecutor about discovery requests and other issues both in and outside of the courthouse. Calling it “impossible” to talk with prosecutors in the courtroom, defense attorneys note that judges rarely take breaks and become upset when defense attorneys approach prosecutors while court is in session. Many judges refuse to “second call” cases when a case is not ready, instead insisting that the case be continued to another day. Defense attorneys also complain that not much is accomplished outside of court because prosecutors rarely return their phone calls. Cases are often continued more than once for the same reason when the prosecutor repeatedly fails to turn over a piece of discovery. Judges also voice their frustration with how slowly cases are resolved, but they say
there is little they can do if prosecutors fail to hand over discovery in a timely way. One judge describes his hands as being tied, saying that the state supreme court has held it “would be draconian” to dismiss a case because of discovery violations.

Although most continuances are discovery-related, defense attorneys also extend the length of the court process when they file constitutional motions to contest the state’s evidence. In one case, the defense attorney’s motion to suppress keeps the case open for eleven months. Rochelle is a black juvenile charged with assault and unarmed robbery in Court 1. Her defense attorney challenges the police officer’s stop of her on a subway train by filing a motion to suppress evidence. After Judge Russell denies the motion in Court 1, the defense attorney appeals the issue to the state supreme court. Rochelle’s mother Adele does not understand why the case is open for so long, blaming the judge for the delay:

It doesn’t make sense for it to go on and on. . . . I don’t understand why the judge keeps postponing it. Doesn’t make no sense . . . she’s been to Court 1 six times already, five or six times already and he still made another damn court date.

The tactics used by defense attorneys to advocate for their clients and to protect their due process rights are not always appreciated by others in the court process. The following chapters explore parents’ experiences relating to this issue in more depth.

Attending multiple court dates over a long span of time greatly disrupts the lives of many juveniles and their parents. Although judges sometimes excuse their presence in court, juveniles and their parents are required to attend most court sessions. Youth and their family members
express frustration that they often wait until late morning for a hearing that lasts for only a few minutes. Crystal, a white juvenile in Court 2, says:

I keep going to court dates for them to tell me, “Come back next month and next month.” It’s just stupid. . . . Every time I go, I wait there for like three hours, and then when I go in it’s like a two minute thing and then they tell me to come back next month on a different date. It’s weird.

Parents complain they must miss multiple days of work to attend their child’s court hearings. Lisa, a black mother in Court 1, describes the stress of almost losing her job because of frequent court dates and the process of explaining to her son why she could not always be in court.

Unfortunately, it’s your job or it’s court. Some kids might feel like, “You know what? My mother don’t come to court, all she’s worried about is going to work.” They don’t understand the full attention, you know, of keeping your job.

Frequent court dates can lead to increased tensions within the family, an outcome often at odds with addressing juvenile’s delinquent behavior.

The waiting process can negatively affect youth in other ways. The juvenile cannot be at school while going to court. Juveniles describe attending many court dates as stressful because they miss school and always need to make up assignments. Lisa, the mother above, complains that her son Trevor has to miss a whole day of school every time a court hearing is scheduled. Trevor takes public transportation to his school across the city. When he waits most of the morning for his case to be called, the school day is almost over by the time he can get to school.
Lisa says the waiting and continuances have had a negative effect on her son, complaining that the court process has “made him more angrier than he was. Just sitting there, we go in for two minutes and we’re done. Knowing nothing is going to happen.” The adversarial process can become counterproductive to the juvenile court’s mission of effectively addressing negative behavior when the fact-finding process is conducted so inefficiently.

Although parents and youth resent the multiple continuances, many defense attorneys believe that having many court dates can be beneficial to the legal case. One defense attorney refers to the practice of continuing cases as conducting a process of “shadow probation.” Some defense attorneys try to keep a case open as long as possible when they believe the juvenile will succeed in the community before trial. Continuing the case when the juvenile is doing well can lead to a better final case outcome. Given enough time, defense attorneys believe that prosecutors and judges will begin to see the youth’s delinquent behavior as an aberration and that the juvenile’s life is on track. Yet juveniles and parents are not always aware of the defense attorney’s practice of shadow probation. Oscar, a black juvenile who is charged with domestic assault, is in Court 2 with his mother Nicole. On their third day in court, the defense attorney asks that the case be continued because the prosecutor has not turned over the tape of the 911 call. Nicole throws up her hands, saying angrily that this has been “another waste of a day” and that she could have been out looking for work. Apart from the family, the defense attorney explains that the 911 tape is actually not needed to develop the relevant facts for trial. Instead, the defense attorney sees continuing the case as “a way to create delay so that everything calms down” within the family. Multiple continuances are viewed as an effective legal strategy.
The shadow probation approach is problematic when analyzed through the adversarial standpoint advocated by *Gault*. Not all juveniles are eventually found delinquent. When juveniles are found not delinquent, shadow probation serves to punish them for conduct for which they are never found responsible. For example, Weston is a black juvenile in Court 1 facing one charge of possessing a firearm, a charge that involves mandatory time in detention if convicted. At their fifth court hearing in three months, the defense attorney asks for a continuance so that a firearm expert can review the police report. The judge reluctantly allows the request. After the hearing, the defense attorney tells Weston and his mother Diane that the judge believes he is stalling, but that the case is operating at two levels. The defense attorney says, “[Obtaining the firearm expert] is what is happening with the case on the surface. What’s happening underneath the surface is that I’m keeping you out and on track.” Yet while the case is open in court, Weston’s bail conditions involve him being on house arrest and abiding by a strict curfew for eleven months. He is eventually found not delinquent of the gun possession charge nearly one year after he is first arraigned. Prior research has documented how the process of being under court supervision while waiting for trial can be considered a form of punishment (Feeley 1979). The process in these two juvenile courts appears to be somewhat more intentional than the processes uncovered in the adult criminal court. Numerous court appearances over a span of time can be part of the defense attorney’s plan for a more lenient outcome, although juveniles and their parents often do not experience multiple continuances as leniency. The focus on pre-trial rehabilitative measures can mask the fact that juveniles are experiencing restricted liberty while presumed innocent. The drawn-out discovery process in these two courts has moved the bulk of punishment to the pre-trial phase.
Conclusion

This chapter sets the stage for examining issues relating to how parents and youth experience the juvenile justice process and whether they perceive the juvenile court to be fair and legitimate. In many ways, these two contemporary juvenile delinquency courts do not provide the adversarial process protections envisioned by the Supreme Court in *In re Gault*. While *Gault* emphasized the importance of adequate fact-finding, in this research the judge rarely hears a full version of the facts from both sides. In both of these courts the prosecutor presents the facts to the judge with little challenge from the defense attorney. In their role as advocates, defense attorneys are careful not to reveal too much of their theory of the case early in the process. When defense attorneys present the juvenile’s version of events to the prosecutor during plea negotiations, their actions are not witnessed by juveniles, parents, or judges.

The emphasis on the mechanics of the discovery process often obstructs the rehabilitative prospects of the juvenile court. Most hearings concern the exchange of documents relevant to case facts, but there is little to no discussion concerning the content of the documents or the actual facts relating to the dispute. The emphasis on having a more formal process leads to less emphasis on what happened and the child’s needs. Opponents of granting defense attorneys in juveniles cases during the due process era worried that defense attorneys would bring formality that “would defeat the therapeutic aims of the court” (*In re Gault* 1967: n. 65, quoting a National Crime Commission Report). More research is needed that addresses the validity of this concern in the context of the contemporary juvenile court. The subsequent chapters will examine how
parents experience the juvenile court process, their attempts to participate meaningfully, and how they discuss issues of law and justice in the family.
Chapter 5

Changing Views of Law and Justice in the Juvenile Delinquency Court –

A Process of Delegitimization and Disengagement

This chapter examines how parents’ views of the juvenile court’s legitimacy and its ability to be just evolve as they progress through the juvenile delinquency court. Most parents in this research enter the court process wanting to engage with legal authorities on behalf of their child, but they leave the court process perceiving the courts as less legitimate. Through detailed case studies of the experiences of two families, this chapter contributes a qualitative and contextual analysis of how legitimacy frameworks operate, taking a processual look at the juvenile delinquency court experience. Prior research in procedural justice and legitimacy has been primarily cross-sectional and retrospective, surveying the general population to learn about past interactions with legal authorities (Tyler 1990; Sunshine and Tyler 2003; MacCoun 2005). In this study, legitimacy is conceptualized as an emergent and interactive process that is contingent on the context of the case and the relationships among participants. Through its longitudinal approach, this research has the ability to capture and explain how experiences within the court process affect participants’ views of the court’s legitimacy over time during an ongoing legal case. This research extends prior work by finding that views of whether a legal interaction is fair affect participants’ behavior while they are still inside the legal process. The qualitative and longitudinal approach used in this research allows a different perspective than the traditional legitimacy framework, challenging its emphasis on deference and obedience to legal authorities. This research supports the notion that increasing participants’ levels of engagement with the
court should be an important legitimacy objective, particularly for parents in juvenile delinquency cases.

This chapter focuses on the experiences of parents in two families to illustrate how views of the justice process evolve as parents interact with legal authorities. Kit is a black mother whose son Melvin is initially charged with destruction of property, domestic assault, and resisting arrest in Court 1. Kit describes herself as an expert on the court process, having experienced the delinquency court with her eldest son and with other members of her immediate family. Judy is a white woman who is the custodial guardian of her nephew Richard. Richard is charged with larceny of a motor vehicle and driving without a license in Court 2. This is the first time either Judy or Richard has been in a courtroom. This chapter follows these two families through three time periods. The first section examines Kit and Judy’s expectations and initial views as they enter the court process. The next section looks at how their views of the court, the police, and the defense attorney start to evolve as they attend multiple court hearings and interact with different legal authorities. The third section examines Kit and Judy’s views and behaviors at the final stages of their child’s case, focusing particularly on how members of both families become passive and disengaged by the end of the legal process.

Initial Views of the Courts

This section examines parents’ expectations of the court process at the first court hearing, the arraignment. Most parents participating in this research enter the legal system wanting to engage with the process, believing they will have an important role in their child’s case because
of their status as parents. First, I provide background information on the two families to set the scene and provide context for the discussion.

**Kit**

Kit is a thirty-six year old black mother in Court 1 with her fifteen-year old son Melvin. At the beginning of the case, Kit, Melvin, and Kit’s nine-year old daughter live in a neighborhood with a high level of drug activity and violence. Kit’s step-daughter, Melvin’s pregnant eighteen-year old half-sister Lashondra, also lives with them for periods of time before she moves out after she and Kit have an argument. Kit’s older son is now in an adult jail because of a juvenile court drug conviction. Melvin is a quiet and soft-spoken tenth-grader. At the beginning of the case, Kit reports that he receives Bs in school and has good attendance, although his school attendance worsens as the case progresses. He is active in a local weightlifting program. Melvin has been arrested twice before, but both times the cases were dismissed with community service without going before a judge.

A few months after Melvin’s arrest, Kit moves to a different area closer to the courthouse for safety reasons. Some gang-affiliated friends of Kit’s older son had been to her apartment looking for Melvin. There had also been a multiple homicide with a child victim on her street one year before. Kit sees her new neighborhood as an improvement, although she still fears for Melvin’s safety. Kit completed the eleventh grade and is not employed. She describes herself as very outgoing. She grew up close to the area surrounding Court 1. Kit says she had a rough childhood, describing her father as addicted to heroin and calling her mother a “crackhead.” She says that, despite her addiction, her mother worked hard to take care of her ten children. Kit says
that she has had Melvin’s father arrested for abuse and that he needed to attend domestic violence counseling. Kit herself has criminal convictions for assaulting a police officer and an ex-boyfriend.

Before their move, Kit and Melvin lived down the street from Melvin’s grandmother Mary, Kit’s former mother-in-law. Melvin spends time at Mary’s house nearly every day, even after the move to the new neighborhood. Mary lives with a number of her other grandchildren and Melvin’s father. Mary is a sixty-two year old woman, originally from Georgia, who completed two years of college. She is not working and receives social security benefits. Mary has difficulty with her vision and at times needs help walking in and out of the courthouse, but she attends nearly every one of Melvin’s court hearings. Melvin describes himself as having a very close relationship with his “Nana,” but Mary and Kit have a complex and often rocky relationship. In some ways they are very close and at one point they even shared an apartment, but they disagree about how to raise Melvin and often compete for his attention. Kit complains that Mary coddles Melvin while Mary says that Kit always puts her nine-year-old daughter first.

Melvin is originally charged with destruction of property, domestic assault, and resisting arrest. According to the police reports, the police respond to a neighbor’s call reporting a disturbance. When the officer arrives, Kit tells him that she and Melvin had argued inside the apartment. Melvin became angry and picked up a Rubik cube and held it up as if he were going to hurt her. Kit told Melvin to leave and he refused. Kit tells the police that she then grabbed Melvin and tried to force him out the door and they struggled in the hallway. Melvin broke free and punched a wall, leaving two holes. Kit says that while he was outside Melvin picked up a brick and threw it through her car windshield. The officer runs after Melvin and calls for back-
up. Multiple units respond. The officer reports that Melvin did not get on the ground when he was ordered to do so by the police, which is the basis of the resisting arrest charge. One and one-half months after his initial arrest, Melvin is arrested on a burglary charge which is heard in a different courthouse. Three months after his first case is dismissed in Court 1, Melvin is re-arrested on three separate domestic charges, one involving Kit and the other two involving Melvin’s girlfriend. All of Melvin’s charges involving Kit are heard in Court 1, the courthouse located in an area known for violence and drug activity. Kit knows many people in Court 1, saying, “I recognize everybody in that courthouse.”

At the first court date Kit says that she is in court to ask for help controlling Melvin’s behavior. She believes that the court can give her more support at home, saying, “I need some help. . . . I’m a parent with an absent father.” Kit looks to the court to help her access services like counseling for Melvin. She tells her son: “You know, my job is to make sure you get what you need to, this is why I turned to the system.” Kit was upset when Melvin’s two earlier cases were dismissed without him seeing a judge. She believes he should have faced harsher consequences. She says, “He should’ve been spoken to by the judge. An adult male role model should’ve spoken to who he hangs out with.” Kit says that she often discusses the importance of staying out of trouble with Melvin, but she needs to be reinforced by a judge. “He should've been told, not just from me, because I talk about it all the time.” Kit believes that the court experience, in particular speaking with Judge Russell, can help guide Melvin.

Kit enters the court process with more positive views of the courts than of the police. Kit is initially very invested in the court system, believing that the courts have an important role in the community.
The courts are there for you … their purpose is just to make sure the community understands there’s rules. There’s laws.

And that’s what they’re really here for. The law. Obey the law. Making sure everybody’s obeying the law. It’s good …

That’s what judges are there for. When you break the law, they make the decisions, not the police, not the DA, not the lawyer. They do.

Kit views judicial authority as different from and more significant than other kinds of legal authority in the justice system. Kit’s faith in the court process at the beginning of Melvin’s case is somewhat surprising, given the negative way she describes her prior juvenile court experiences when her older son faced drug charges. She recounts the probation officer in Melvin’s brother’s case as “doing nothing” to help him or her family. Kit describes how she hated attending his court sessions but saw it as part of her duty as a parent.

I’m like the humiliation is crazy, the embarrassment is more crazy, and that boy did all that to me already, he humiliated me, he embarrassed me, but I kept going, you know what I'm saying,

I kept going as a parent.

But Kit admits that she stopped going to her older son’s court hearings once he turned eighteen, saying, “I don’t even deal with that court process.” Kit’s initial faith in the court process in Melvin’s case does not seem to square with her negative prior experiences with her older son. However, she still believes in the court’s ability to be fair and to provide help for Melvin despite the juvenile court’s prior failings. Kit’s faith in the courts is resilient, bouncing back over time
when she sees few other options available to her family. Many individuals continue to idealize the law, even when they find the reality of how the legal process actually operates to be disappointing (Ewick and Silbey 1998).

Kit’s views of the police are more neutral than those of other parents in Court 1. Most parents in Court 1 complain of police harassment in the community, saying that local police officers are harsh, disrespectful, and belittling. In contrast, Kit begins the court process believing that only some police officers are untrustworthy.

Every police officer is not crooked, every police officer is not ugly, you understand? Just because one spoils the apple, which is true, that one apple spoils the bunch, it happens like that. But understand, it's diverse, you know what I'm saying, just like us on the outside. . . . I been in situations where the police have told the truth, the whole truth, and nothing but the truth. But then I've been in situations where the other parties are lying, you know what I'm saying? So to know that life is up and down, it's up and down, you know what I'm saying? Ain't nobody promise tomorrow, especially when they telling a lie. So to know that some cops, you know what I'm saying, can be telling the truth, and some cannot be, you know what I'm saying?

Like most youth interviewed in both Courts 1 and 2, Melvin has more negative views of the police than of the courts. He does not have an opinion of the court process, saying, “I only been to one, so I don’t know.” Most of Melvin’s friends have had cases in Court 1, but they do not
talk about the courts so he does not know if his friends think the court system is fair. In contrast, Melvin and his friends talk often about how the police treat youth in their neighborhood. When asked if he thinks police treat people fairly, he replies, “No, not around here.” Melvin complains that the police harass him and his friends in their neighborhood, saying, “When they see us, they’ll just stop and start asking us questions for no reason, just because we walking down the street.” His sister Lashondra agrees, describing local police as “arrogant, ignorant, disrespectful, has no feelings to society.” Kit attributes Melvin’s negative views of the police to peer influence, saying that he did not always feel that way about the police.

    Melvin always wanted to be a police officer. All his stuff was cop stuff, all his stuff was flying, airplanes, so he never been like that always. But he's like that now because of just, I'm gonna say, the crowd that he hangs with, you know what I'm saying? The crowd he hangs with is basically making him be like that, because he's never been disruptive, he's never been disrespectful. That is my respected child, you know what I'm saying?

By ascribing her son’s negative views of the police to his friends, Kit indicates that mistrust of the police is not a value that she purposely teaches to her children.

    At the beginning of the case, Kit sees herself as an insider in the court process, saying, “I know the legal system very well.” She views herself as being an influential person in the courthouse. “Court 1 knows Ms. Kit, okay,” she says laughing and pointing to herself, “from the probation officers, to the DA, they know unless they're new – the new DAs might not know me,
but I know all the old ones.” Kit says that Melvin does not need a defense lawyer because of her own legal knowledge and understanding of the justice system. She says:

    I can be my son’s lawyer (laughs) – I could be his lawyer –
    he could be his own lawyer. If they knew what I knew, he
    could be his own lawyer, um-hum.

Kit views herself as having an important role in the juvenile process to provide guidance and support to her son. She intends to speak at the arraignment, “to let the judge know that I’m very outspoken, that I’m here.” Kit says that she likes Judge Russell and that he is good with parents who are willing to participate. She plans to ask him to order counseling for Melvin. “I will be trying to talk with the judge. I want to ask the judge for some kind of help. . . . I’m here in front of the judge pleading to him for a program to help my son.” Kit also expects that she will be able to discuss with the judge what happened on the day the police were called and the extent of the problems she is having with Melvin at home.

_Judy_

Judy is a white woman in Court 2 with her nephew Richard. Judy has been Richard’s legal guardian since his mother, Judy’s sister, died one year ago. Judy and her mother have taken care of Richard since he was an infant. Judy describes her deceased sister as “not being equipped” to take care of children because of a drug problem. Judy and her mother have houses next door to each other in a quiet neighborhood of mostly single family homes in a small city about five miles from Court 1. Richard has two half-sisters and three half-brothers who have all lived with Judy or her mother most of their lives. Judy is divorced and in her fifties. She is a
high school graduate and has completed some college. She works as a medical assistant, although she now takes only occasional shifts because she watches two of her grandchildren most weekdays. Judy attends each of Richard’s court hearings. She tries to find childcare when Richard is scheduled for court, bringing her infant grandson to court when necessary. Before this case, Judy had only been to a courthouse to file guardianship papers.

Richard is fifteen years old and in the ninth grade. He earns mostly As and Bs in school and volunteers with middle school children. He has been diagnosed with ADHD. Judy says that Richard does not give her a lot of trouble, saying, “He generally likes to do good.” She describes him as a little immature, but never mean or malicious. Richard is good-natured, often making jokes with his aunt and the defense attorney when waiting in court. Richard’s father Leon attends three court dates. Leon has not been very active in Richard’s life, but Judy hopes that they may start to develop a closer relationship. She says that the juvenile court has helped bring Richard and Leon together, saying the process has “got his father involved in his life for the first time in years.”

Richard is arrested and charged with larceny of a motor vehicle and operating a motor vehicle without a license. On the day before his arrest, Richard had slept at his friend Jon’s house where Jon’s cousin was also staying. According to the police reports, the next day Richard found the keys to Jon’s cousin’s car inside the house. Richard is accused of stealing the cousin’s car and getting into a one-car accident which demolishes the vehicle. Richard is charged with larceny, meaning that he intended to permanently deprive the owner of the car, instead of the less serious crime of unauthorized use. The police report mentions a passenger in the car when Richard is arrested but does not give a name. Judy describes being “totally
surprised” when she learns of her nephew’s arrest, saying, “I didn’t think he would ever do something like that.” Richard’s case is heard in Court 2, the courthouse located in a smaller city with a large Hispanic immigrant population. The courthouse is located about three miles from where Richard and Judy live.

Unlike Kit, Judy does not see herself as an insider at the beginning of the court process. Judy describes being very confused when she and Richard arrive at court for the arraignment. She tells me that did not know where to go or who to speak with inside the courthouse or what would happen at the hearing. Judy did not want to speak with the judge directly at the arraignment.

There was nothing I wanted to tell the judge. I didn’t think I would be talking to the judge directly. . . . The lawyer explained that it was just to get a new hearing date. There was nothing I wanted to tell the judge.

In this way, Judy is different from most parents in both Court 1 and Court 2. Most parents enter the court process expecting to speak with the judge. Instead, Judy believes that she will be able to have voice with the defense attorney if she disagrees with what happens in the court process. She tells me, “I think I have rights to state my opinion on things that have happened to the lawyer.” Judy views parents’ most important role as explaining the court process to their child. She says that without parents present, “It would be chaos for kids.” Parents need to explain what is happening, according to Judy, because “children are not that savvy in everyday life. They don’t have the full picture. . . . They don’t know what they should be doing and what’s good for them.”
Judy holds positive views of all legal authorities at the beginning of the case, although she admits to not knowing much about the court system. When asked if the courts act fairly, she replies, “I think so. I don’t have that much experience to say either way.” She enjoys watching legal dramas on television, but she does not expect real life to be the same. Unlike many parents in this research, Judy begins the court process with positive views of the police. She says she has always had respect for police officers. She asked the police officers who arrested Richard for their help when she picked him up at the police station. Judy says, “I remember talking to the police, saying ‘Make sure you scare the crap out of him.’” Describing her time at the police station, Judy often uses the term “we” to refer to herself and the police officers, such as “We told him that this was a serious charge.” She says that youth tend to have more negative views of the police, but she does not have any problems with the police in her neighborhood.

The bad thing about this generation is that they don’t have the same relationship with street officers. Police were more present in the neighborhood. You used to know the cops. I think that it’s because of funding. You believed cops would be a friend, someone you could talk to. Now kids have such a negative attitude about the police. Now they know one or two officers out of the bunch maybe. The only time they see the police is when they are arresting them for something.

Judy believes Richard’s views of the police to be more negative than they are. Richard says he has not really had much contact with police officers before, but he thinks they treat people fairly. He says he does not have any negative feelings about the police. Like Judy, Richard does not
know what to expect in the court process because he has never been to court before. He tells me that some of his friends have been to court but “we don’t really talk about the laws and rules.”

Judy begins the court process believing the court can teach Richard that he must take responsibility for his actions. She describes overlapping roles for the court and the parent in a child’s socialization, saying that “raising him to be a good citizen is the ultimate goal” and that both the parents and the judge want to “have a child grow up to be a responsible adult.” Even though Judy believes that the parent and the court reinforce each other, she sees the family as having a different role in the child’s life. She says, “The court not the family per se, they have no emotional ties with the offender.” Judy views the court involvement as an educative tool, but recognizes that courthouse education can only go so far:

I talk to him about what he did. I say, “What if god forbid you had hit somebody? You would have to live with that for the rest of your life no matter what they do in the courthouse.”

He doesn’t say much when I talk to him like that.

Judy does not know how Richard views the justice system, but she wants him to see that his court involvement could have a negative impact on his life. “It’s hard to tell because I’m not him. I don’t think he views it with the same seriousness. Young people just see themselves as young people.”

**Being Open to Engaging with the Courts and Legal Authorities**

Parents in this research generally enter the court process with more positive views of the courts than of the police. Kit begins the process trusting the courts, seeking the court’s help in
addressing her son’s behavior. Some other parents with previous court experience are more skeptical of the court’s ability to provide assistance, but they still generally have more trust in the courts than in other legal authorities. Kit’s views of the police are more neutral than other parents in Court 1, many of whom have very negative views of police officers. These parents claim that police officers in their community profile, harass, and mistreat them. Parents with little court experience, like Judy, enter the court process as a blank slate, having thought less about their views of the courts than their views of the police. These parents expect that the courts will be fair to them and their child. While prior research finds widespread distrust and lack of confidence in the courts and the justice system in poor and minority communities (Rottman and Hansen 2001; Tyler and Fagan 2008), many parents in this research are still open to engaging with the courts at the beginning of the legal process. The remaining sections of this chapter focus on how these parents’ initial views change when they interact with legal authorities in the court process. Chapter 6 examines in more detail why parents, even those with negative views of the justice system, still seek out opportunities to engage with the court.

Mid-Process Views - Interacting with Legal Authorities

This section examines how parents’ views of the courts and legal authorities evolve as they process through the juvenile delinquency court, focusing on Kit and Judy’s interactions with legal authorities between the initial arraignment and the final resolution of their child’s cases. Procedural justice surveys tend to interview respondents from the general population up to one year after a legal interaction is concluded, asking questions that could relate to a number of different kinds of interactions. If the respondents have had multiple interactions with police
officers or court officials, they are asked to base their answers on the experience that they believe was most important in shaping their views of the legal system (Tyler 1990). But the court process is often long and complex and court participants can have multiple interactions with various legal actors during throughout the process. Much of the legal consciousness work has also been retrospective, relying on participant accounts of the legal process long after the process is over. This research examines Kit and Judy’s interactions with legal authorities and how their perceptions of the justice process change as they experience the system. Kit and Melvin attend seven hearings over six months in Court 1 relating to his initial arrest. Richard and Judy attend five court dates in Court 2 over a period of five months.

Kit

Kit enters the courthouse on the day of Melvin’s arraignment expecting to speak with the judge about ordering counseling for Melvin as a condition of bail. Before the court hearing, Kit, Mary, and Melvin meet Anne, the public defender appointed to the case. They sit together in the courthouse hallway before the case is called. Anne is a white woman in her late twenties who has been practicing law for less than five years. Kit tells Anne about problems she is having with Melvin at home and that he is still dealing with her husband’s death, Melvin’s step-father, two years earlier. She stresses to Anne that she wants the judge to order that Melvin be evaluated and begin counseling.

Soon after Kit and Melvin meet with Anne the case is called into the courtroom. The arraignment is heard by Judge Russell. The prosecutor reads the state’s version of what happened from the police report and requests $200 bail. Judge Russell asks if the juvenile fought
with the officers. The prosecutor refers to the police report and says that she has that he refused to get down. Judge Russell sets bail at one dollar, saying to Kit, “If you want him you can get him.” Setting a one dollar bail is largely symbolic, giving the parent the option to either pay the small sum or leave the child in detention. Anne discusses counseling with the judge, saying that Melvin can be evaluated by a social worker at her agency to see if counseling would be appropriate and that a direct order is not necessary. Kit does not speak. Judge Russell agrees to an evaluation first before counseling is ordered. He asks Kit about Melvin’s curfew. Kit replies that it is 9:30, which sounds late to the judge. Standing up, Kit explains that it is 9:30 because Melvin is usually with his grandmother and that one of his older brothers takes him back and forth. The judge says, “Since I’m letting him leave with you I’ll let you set the curfew.” After the hearing, Kit is very upset that she was not able to speak with Judge Russell about ordering counseling as a condition of bail. Speaking with me apart from the family, Anne says that she knew the mother wanted her to ask for a court order of counseling, but that as his lawyer, “I’m not going to do that when I hardly know the kid.” Kit participates in the courtroom, but not on the issue of counseling that she sees as most important for Melvin. Instead, the judge and the defense attorney set the agenda and frame the issues that are available for discussion in the courtroom.

Kit complains that the defense attorney stepped in and interfered at the hearing. Mary, Melvin’s grandmother, asks, “Then why did you hire her?” Kit replies angrily, “I didn’t. She doesn’t work for me.” Kit believes that if she spoke with the judge directly, without Anne’s involvement, the outcome of the hearing would have been different. She says:

Yeah, there’s a lot I wanted to tell the judge, but I guess
because, I mean that's Melvin’s lawyer, so the lawyer is
gonna listen to him before she listened to me. She's gonna
get whatever she can out of me and use it against me – I seen
it. But it didn’t work like that – like she didn’t say what I
wanted her to say, and that was a bigger problem, because
Judge Russell would've listened, and Judge Russell would
have listened to me if I got a chance to stand up.

Kit resents having to rely on information filtered through the defense attorney to the court.

Kit’s views of Anne fluctuate throughout the case. She begins the court process not
trusting Anne because she is a court-appointed attorney. At her home two days after the
arraignment, Kit says:

I don't care what anybody say – don’t no public defender
defend you to the best of their knowledge, you understand?
No. All lawyers are liars. . . . If you're not giving them a
dollar, they’re not gonna defend you like they should.

Kit warms up to Anne between the arraignment and the next court date one month later. Kit is
happy that Anne is trying to get Melvin into an after-school program and that he is doing well at
home. She tells me that she has spoken with Anne over the phone many times since the first
court hearing, including the previous night. She says that Anne acts differently than most
defense attorneys and that she is working “on both our behalfs,” meaning for both her and
Melvin. Kit still sees herself as having an important role to play in the court process, even
though she understands that Anne is Melvin’s attorney.
But to know that she listens, that’s all that matters to me. Cause she listens to him and she listens to me. At the end of the day, I feel like she listens to me. She knows where I’m coming from as a parent. I mean, as a lawyer you’re supposed to defend him, but as a parent I’m the leader. I’m the supporter right now. He’s in my house so he’s got to respect my rules and nobody else’s.

When Anne offers to help Melvin with a school disciplinary hearing, Kit says, “I just want my cases with volunteer lawyers. I like you all. Legal Aid is the bomb.”

At the second court date one month later, the prosecutor offers Melvin pre-trial probation with the conditions of obeying house rules, obeying the curfew set by Kit, and attending school. Under this agreement, the case would be dismissed in six months with no finding of guilt if Melvin complies with the agreement, but the case would be reinstated if he has trouble with the conditions or if he is re-arrested on a new charge. Kit and Melvin are both happy with the agreement, but the case is back on the trial docket two weeks later when Melvin is arrested for burglary. According to the police report, Melvin and two friends entered a house intending to steal items inside. They flee without taking anything. At about the same time, Kit begins to have more conflict with Melvin at home. She threatens to revoke his bail and send him back to detention if he continues to disrespect her. Kit says that when Judge Russell issued a dollar bail at the arraignment he intended to reinforce her power in the family.

It's your choice, when he gets a dollar bail, any parent knows that it's your decision right now, because the next time it ain't
gonna be . . . When he did that, he gave Melvin a chance, and he also gave me a decision if I want to take him out if I want to leave him in. . . . As a parent, only thing I can say to my son is, “The next time you mess up, if there's a next time, keep your toothbrush in your back pocket, because that's sixty days you're gonna do.

Kit believes that the time Melvin spent in jail before she posted bail after his initial arrest scared him and that he wants to avoid being in the same predicament as his brother who is doing adult time. She says she plans to continue to use the dollar bail as “leverage” in her relationship with Melvin.

The whole thing is respect level – I know what the judge told me – do you know what the judge told you? … I know when I go get my dollar, they coming to get you. So that's what he needs to keep in his head. Like I got leverage right now. And I’m not using it to my ability, but I’m gonna use it.

Yet Melvin does not view the dollar bail as a transfer of the power to detain him from the court to his mother. He says he was not concerned that he would be left in detention after the arraignment hearing. He says, “No, because it was only a dollar – and I know somebody there had a dollar,” not understanding that under the judge’s order his mother had to post the bail. Six months after the arraignment, Kit revokes Melvin’s bail because of disrespectful texts and for not coming home on time. She goes to the courthouse with Melvin and asks for her dollar back, leaving Melvin in detention overnight. She changes her mind and bails him out the next day at
Mary’s insistence. Parents who initially seek support services may resort to harsher tactics, like detention, when they believe there are no other options. Kit originally wanted Melvin in counseling, but she ends up revoking his bail when she needs more support to deal with his behavior. With the dollar bail, Kit feels that the judge is reinforcing her parenting, but not in the way she would have chosen or in a way that proves particularly effective.

Kit believes that Melvin’s legal rights in the court process are getting in the way of pressuring him to change his behavior at home. She believes that it is more important that he learn to act properly than it is to protect his constitutional rights in the legal process:

He does have rights. He knows his rights. . . . He knows that that’s his lawyer and whatever he says is confidential.

If he wants to share with me or if his lawyer wants to share with me, she can. But I don’t see his . . . I don’t see him having any rights as long as I got to go to court. As long as I got to go to court I don’t see him having any rights. The only rights he need is to do right. You know what I’m saying?

Like at fifteen, in court, no. He doesn’t have any rights. His rights is just to do right.

Although Kit believes that Melvin is using his legal rights to gain an advantage in the court process, Melvin actually does not understand what his legal rights are. He says, “I can’t make any decisions so it really doesn’t matter what I think.” He does not see either himself or his mother as having any power in the court process.
Kit begins to blame Melvin’s relationship with his defense attorney for his disrespectful behavior towards her at home. Melvin starts calling Anne on his own after his burglary arrest. Kit thinks positively of Anne so long as she respects Kit’s position of authority within the home, but she begins to resent her when Melvin starts to initiate contact with Anne independently of his mother. Kit says that Melvin began to act up again when he started calling Anne. Kit does not separate her distrust of the defense attorney’s relationship with her son from her perceptions of the court process more generally. She now says that she does not think that the court process is going to help her. When asked when she began to see the court more negatively, Kit says angrily:

Probably when Melvin started acting up and calling them on his own. Calling his lawyer on his own. Someone must have been telling him to call. “Call your lawyer, let them know what’s going on, let them know what’s going on. Long as she knows, she’ll understand.”

Mary reports that Kit complains constantly that Anne never agrees with what she says. Kit becomes wary of the defense attorney having too much influence with her child. This is a common complain among parents in both courts. The juvenile’s right to have confidential conversations and to act on his or her own with the defense attorney often leads to parents resenting the court system.

Parents experience the justice process through the lens of their on-going family dynamics. Kit reacts angrily and defensively to Melvin’s ability to have influence in the court process through his defense attorney despite Kit’s objections. Melvin’s ability to speak privately
with his attorney and to have an independent voice in the court process leads Kit to develop more negative views of the court system. Kit’s perceptions of the legal process stem from her interactions with both legal and non-legal actors. This level of complexity can be missed by survey research, which only inquires about a respondent’s interactions with individual legal actors and not the larger social context in which these interactions occur. Kit’s views of the court’s legitimacy are interrelational, developing out of exchanges with both the defense attorney and her son.

Melvin’s grandmother Mary also becomes disillusioned with the court process. She thinks that Melvin should have a greater opportunity to talk with the judge about his relationship with his mother. Mary wants Judge Russell to have a more complete picture of what happened between Melvin and Kit the day of his arrest. She is not satisfied with the juvenile court, believing that the court should focus less on proper legal procedures and more on the juvenile’s behavior and the facts of what happened. After three court dates, Mary views the court process more negatively, believing that the judge is not interested in learning about each individual child.

I think they should pay more attention to what makes one juvenile child do what they do. They always wanting to lock them down and put them somewhere and punish them for something that they don’t even know what they’re punishing for. The child should be more open to express themselves in juvenile court and say what’s wrong. . . . Let them express themselves and not say, “You were caught for this, you were doing this. Dah, dah, dah.” Listen to their opinion in why
they did it.

Mary wants Judge Russell to consider her view that Kit is at least partly responsible for the commotion within their household. Mary believes that the court would provide a more effective learning experience for Melvin if he could speak more in the courtroom and explain the full context of what happened between him and Kit. Melvin confirms that he does not think that he is learning anything from going to court. Although at first he says that he learned to change his behavior, he soon corrects himself. “I learned not to get in trouble again, like try to stay out of trouble, and nothing. [Pauses] I don’t think I learned nothing – it’s still the same, it was just another day.”

Judy

The arraignment hearing is Judy and Richard’s first time in a courtroom. They arrive with Richard’s father Leon at eight-thirty in the morning when the courthouse opens. Judy describes waiting for the attorney and not knowing where to go inside the courthouse.

We waited upstairs for about a half-hour. I guess it seemed like a long time. No lawyer came up and talked with us. There was a mix-up where they thought he was going to have a private lawyer. I think it was because there was someone else with a similar name, I don’t know. We stopped people coming out of the courtroom. We didn’t know if we should be in the courtroom itself or in the hallway- didn’t know what to do. I was concerned about that.
The case is assigned to Anne, the defense attorney representing Melvin in Court 1. Anne works for a public defender agency representing indigent youth in multiple courts in the area. She introduces herself to Richard, Judy, and Leon in the hallway outside the courtroom, speaking with them for about fifteen minutes about what will happen at the court hearing. Judy says, “It didn’t seem that long, but it didn’t seem rushed.” At the beginning of the case, Judy believes that Anne will fairly represent Richard, saying that she will put on a “strong case for him, or seems to think she can anyway.” The judge, Judge Smith, takes the bench a little after ten o’clock. She presides over most of the hearings in Richard’s case. Judge Smith is an older black woman who often refers to being a grandmother. The case is called into the courtroom soon after Judge Smith arrives. The prosecutor reads from the police report, telling the judge that Richard made statements to the police about taking the car, that he was sorry, and that he wanted to see how it felt to drive. The prosecutor does not mention that there was a passenger in the car with Richard when he was arrested. Anne does not question the content of the police reports, but adds that Richard’s aunt says he earns As and Bs in school and that he volunteers with middle-school kids. Judge Smith sets “no driving” as a condition of bail and schedules a new court date in one month.

Throughout the court process, Judy is concerned that Richard does not fully understand what is happening in his case. She feels she needs to make sure that Richard understands the process because Anne does not know that he takes medication for ADHD. “When I think about his disability, I know he needs to concentrate so I re-instill everything for him. I talk about ABCD and how we ended up here.” Judy does not share his ADHD diagnosis with Anne until two weeks before trial because Richard does not want others to know about his condition.
Richard does not like Judy questioning his ability to understand the proceedings. At the second court date, Anne sits down with Judy and Richard at the courthouse to explain a possible plea offer of pre-trial probation in the case. Anne asks Richard if her explanations made sense, looking to Judy for confirmation. Judy tells Anne, “I don’t think he understands everything.” Richard angrily questions his aunt, “You don’t think I understand anything?” Judy clarifies that she had said that she is concerned that he did not understand *everything*, not *anything*, but Richard is still upset. However, much later in the court process, Richard is still confused about basic legal concepts central to his case. Three months later, Anne reviews the police report again with Judy and Richard, asking Richard if he has any questions. Richard asks, “What does larceny mean?” He still does not understand the charge he is facing in court. Anne explains the charge and Richard replies, “So this is going to be most likely what I’m charged with?” Richard’s situation is not unique. Youth in the juvenile justice process often lack a full understanding of the legal proceedings. Generally, younger teenagers and youth with learning issues demonstrate a significantly poorer understanding of legal concepts than older youth or adults (Grisso 1997, 2000). This often leaves parents and defense attorneys to fill gaps in the child’s understanding.

Judy is troubled that Richard’s friend Jon is not mentioned by name in the police report. She suspects Jon is not arrested because he is the car owner’s cousin, saying, “That’s because she is a relative, that’s not fair.” At the second court date, Judy is adamant that Anne become aware of facts concerning Jon that are not in the police report. During a meeting in the courthouse hallway with Richard and Anne, Judy asks Richard, “Didn’t he give you the keys to the car?” Anne reacts with surprise, saying she did not know that. She looks through the police report
again to confirm that Jon’s name is not there. Anne says that how Richard came to be in possession of the car keys could be very relevant to his state of mind and whether he intended to permanently deprive the car owner of the vehicle. Away from Judy and Richard, Anne thinks it is suspicious that the police report does not mention Jon. Now that she knows that the passenger is the car owner’s cousin, Anne says that “it seems like the police went out of their way not to include that.”

Judy’s initial positive views of the legal process start to change when she sees Anne do little with the information about Jon’s involvement. Judy feels that her hands are tied in the case:

They don’t ask me too many questions. I’ve said to the lawyer a million times, “He did something stupid, but I feel that having the other person walk away scott free doesn’t sit right with me.”

Judy wants the judge to hear the full context of what happened. Parents like Judy enter the court process believing that the judge will hear the facts of the case from both the prosecution and the defense. As the case proceeds, they learn that in most cases the judge hears only the police version unless the case goes to trial. Parents and youth listen as the prosecutor reads from the police report at the arraignment and at other hearings throughout the case. They become upset when the defense attorney explains to them they should wait until trial to challenge what the judge has heard. Parents want the defense attorney to present their side of what happened at the early stages of the case. Although Judy is reluctant to speak negatively about police officers and other legal authorities, she begins to question how the police have framed what happened the day of the incident. At the second court date, Judy says, “Everyone has been really helpful under the
circumstances.” However, at the same time she describes the omission of Jon’s presence by the prosecutor and the police officers as “troublesome;” adding, “The only thing that is unfair is the DA’s version of events.” Four months into the court proceedings, Judy becomes even more frustrated with the legal process when Anne still has no information about Jon.

I asked [Anne] if she got the evidence she was looking for regarding the other person and she said no. Then why are we still going to court? There’s still a big piece of the puzzle missing. It’s not like that where a person is hijacking a car, he was given the keys to the car.

Judy’s views of the police also become more negative because of the court proceedings. Retreating from her initial alliance with the police officers who arrest Richard, Judy begins to distrust the police when she learns what the officers have left out of their reports. At the police station, she had asked where the other boy was and the officer told her there was no one else there. Four months after Richard’s arrest, Judy believes that the police officers are not being honest and are purposely overcharging her nephew. Emphasizing the distinction between Richard’s larceny charge and the lesser charge of unauthorized use of a motor vehicle, Judy says:

No doubt in my mind that the police understand that it’s not a stolen vehicle, more like a joyride. I think that’s understood, but that’s not what’s being projected here. That surprises me.

Judy becomes increasingly suspicious of the police, saying that because of her experiences in this case she plans to act more cautiously with police officers in the future. “If anything ever
happened again I would make sure everything was fully stated. … I would have been a little bit more proactive about what went into the report.”

Judy questions the integrity of the court process when only limited facts are presented by the state. She believes that the judge cannot understand her nephew’s actions without hearing all of the facts, saying that otherwise they “don’t have the full him.” In her view, understanding that Richard’s friend Jon took the car keys is crucial to understanding that Richard would not have acted that way alone. “How can you have a fair trial without the full facts? The way it looks on paper is not like it is in reality, it’s not accurate.” Judy’s initial expectations of justice, which involved a full airing of the issues by both sides and a challenge to the state’s case, are not met. Conflicts are usually more complex than what is portrayed in the courtroom, involving a multi-layered social interaction. Whether participants view the court system as fair often depends on which frame is presented to the judge.

Both Judy and Richard become increasingly frustrated with the number of times they are required to go to court before the case is resolved. Judy complains that if she were still working she would have lost her job because of the number of court dates. Two months after Richard’s arrest, the case is continued again because the prosecutor has still not turned over necessary evidence. Richard grumbles, “This is the third time we came here and they still haven’t given you the information.” At the following court date, Judy asks Anne what would happen at the hearing. Anne responds that the prosecutor still owes them restitution information, photos of the car, and the dispatch recordings. Judy says in an exasperated tone, “It’s not going to resolve today? . . . I can’t understand how they can have a case against someone when you are missing A, B, C parts.” Judy begins to view the number of court hearings as contradicting the lesson that
she wants Richard to learn from the court process. She says, “I hope that he thinks about the law in a more responsible way. But this waiting process...” The case becomes less about the alleged incident and more about the prosecutor not having her act together. Richard says that he is surprised that the state does not have all the facts. He says, “They should dismiss it. I’ve been going to court for four months and they still don’t have all the information.”

As the case moves through the court system, Judy stops trying to bolster the court’s legitimacy in her conversations with Richard. Judy initially sees her role as a parent in the court process is “to support the law and to help the child be a productive and good citizen. To help the child and support the court.” When she understands that Richard’s friend Jon is not part of the courtroom discussion, she starts to see the more valuable lesson for Richard is being able to avoid peer pressure because he will be the only one the court holds responsible.

I’ve said it to him the same way. More than once I’ve repeated this. I said, “So where’s your friends? Right? Bye bye. You’re left holding the bag. Your friend got away with the whole entire thing- scott free.

Judy says that the court process has taught Richard that you cannot trust your friends, people are not always honest, and that courts cannot always weed out the truth of what happened. Judy says, “Even if the facts aren’t accurate, you can still get into a lot of trouble. It means that the good doesn’t always prevail.”
Questioning the Legitimacy of Legal Authorities to Properly Socialize Their Child

Both Kit and Judy develop more negative views of legal authorities when they feel powerless to help frame the court’s views of their child and their child’s needs. A frequent theme in this research is that parents want to give the judge a more complete understanding of the circumstances regarding the incident. This additional context is either omitted by the police report or not brought out by the defense attorney. Many parents resent the fact that legal authorities do not look beyond the state version of events to understand what really happened. They believe that the judge should hear the full circumstances of the relationships that led to the conflict. Similar to qualitative research emphasizing the relational nature of the legal process (Sarat and Felstiner 1995), parents and youth want the court to better understand the complex realities of their lives. Not understanding the underlying relationships involved in the criminal incident can limit the juvenile court’s ability to effectively address juveniles’ problematic behavior. Historically a central objective of the juvenile court has been to re-socialize youth into the accepted norms of society (Kupchik 2006). As discussed in Chapter 1, many jurisdictions still embrace this goal by including “moral education” objectives in their state juvenile codes. Interestingly, these goals seem to be exactly in line with what these two mothers want from their child’s time in court. They find these goals to be unobtainable when only a thin version of what happened is presented in the court process.

Kit and Judy’s views of the court’s legitimacy are intertwined with what they believe their child is taking from his court involvement. Kit wants the court to be stricter with Melvin, believing that the juvenile court process can influence his behavior only if he is given structure and support. Kit also believes that the court needs to listen to her rather than the defense
attorney. She is frustrated when she is not able to engage the judge on the issues she sees as most important to addressing Melvin’s behavior, such as ordering that he undergo counseling. When Melvin begins to contact his defense attorney without her involvement, Kit feels that the legal process is undermining her authority in the family. She believes that instead of teaching Melvin to take responsibility for his conduct at home, the court process is empowering him to disrespect her. Judy is also concerned with the lessons that Richard may be learning from his court involvement. Her frustration is compounded by her inability to present a more complete picture of what happened to the court. Despite Judy repeatedly asking the defense attorney to present information about Jon’s involvement, this does not happen. Richard continues to be viewed as taking the car by himself for no apparent reason. Judy believes that without a fuller account of what happened, the judge cannot understand Richard’s actual behavior and his socialization needs. She worries that Richard is learning that the law does not make everyone accountable for his actions. Both Kit and Judy expect that the court would adopt a greater socializing role with respect to their child. Instead, to them the court seems to be most concerned with moving cases through the system.

Resolving the Case – Views at the End of the Court Process

This section examines how Kit and Judy view the court system at the final stage of the process when their child’s case is resolved. Kit and Judy begin to disengage from the court proceedings, no longer caring what happens in the legal process. Their disengagement changes their behavior within the court case, making them more passive with legal authorities.
Kit

Although Kit initially sought the juvenile court’s help, five months after Melvin’s initial arrest she gives up on the process. Kit stops trying to speak with Anne about what she wants from the case, continuing to feel that Anne is working against her.

The lawyers are for the kids, that’s what they’re there for. They’re there to listen to me, but they’re there to really listen to the kids. And I seen that, so the moment I seen that it was like, psh. It wasn’t happening. You can’t fight a child against a lawyer. Either she listens to what you say or he listens to what you say. . . . But it wasn’t working out like that, so I just left it alone. Before I went to court, I don’t even think I spoke to Anne before I went to court . . . cause it got to the point where nobody’s listening.

At the fifth court date, Kit no longer seeks counseling or probation like she did at the beginning of the case. Kit tells Anne adamantly, “I’m not trying to get probation out of this case, not at all.” When Anne asks what she wants to see happen, Kit replies, “I thought it was over and done with. I want this case dismissed like it should have from the beginning.” Regarding Anne’s involvement, Kit says:

Yeah, she just shoved it. She didn’t even try to look at why he was locked up or what was going on. She didn’t do none of that. But it’s all good because I don’t want him caught up anyway in the juvenile system. So I just feel like it’s just over,
that’s one case. Now let’s get rid of this case. Let him start
11th grade.

At the end of the case, Kit refuses to cooperate with legal authorities. When Anne explains that the prosecutor needs family members to testify to prove their case at trial, Kit replies, “That’s not going to happen.” Kit says that she will not testify and that other members of the family will also not testify. “Ain’t nobody coming. The witnesses are all brothers and sisters.” On the day of trial, the judge appoints a separate defense attorney to speak with Kit about the dangers of incriminating herself if she testifies in her son’s case. The judge sees this as necessary because of information Anne shared with the prosecutor about Kit’s reported behavior at home. While Kit is speaking with her attorney, Anne tells Melvin and Mary that the reason Kit now has a lawyer is that the incident between Kit and Melvin seems more mutual than what was portrayed in the police report. Mary says, “I don’t want him to get hung. By the end of the day someone will get hung. Him or her.” She adds laughing, “The whole family pleads the Fifth. The Fifth, Fifth, Fifth.” Kit comes back where Mary, Melvin, and other family members are standing in a circle. Knowing that the state will dismiss Melvin’s case without her testimony, Kit says loudly with a big smile, “I plead the Fifth!” She gives Mary a high-five and they laugh.

This research finds that how participants view their treatment by legal authorities can affect their behavior while the court case is still ongoing. Kit disengages from the process, first becoming more passive with the defense attorney and eventually refusing to cooperate with the

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5 The Fifth Amendment to the U.S. Constitution protects witnesses from being forced to incriminate themselves. If there is a question concerning whether a witness may incriminate him or herself if forced to testify, the judge typically appoints a defense attorney to speak with the witness to determine whether he or she has a legitimate Fifth Amendment issue. If a witness is determined to have a legitimate Fifth Amendment issue, the prosecutor usually decides to either grant immunity or to not call the witness.
prosecution. Procedural justice research consistently finds that views of legal authorities shape behavior (Sunshine and Tyler 2003; Piquero et al. 2005; Tyler and Huo 2002), but this line of research restricts itself to examining behavioral effects once the legal interaction is over. Procedural justice research does not examine how changing perceptions can affect behavior within the legal encounter itself.

After the state dismisses Melvin’s domestic cases because they cannot go forward without Kit’s testimony, Kit wants the burglary charges dismissed also. She says that she no longer thinks the juvenile justice system can help Melvin.

I just want him out the juvenile system. Cause it’s not worth it. They see nothing. Cause if they seen something, they would have did something the first time. So I look at it as my problem. Let me deal with it.

At the beginning of the court process, Kit cared about how Melvin and his sister Lashondra view legal authorities, wanting them to realize that only some were untrustworthy. By the end of the case, Kit’s views are much more negative. When asked if there is anything about the criminal justice system that she wants her children to know, she says:

Yeah. Lawyers are liars and cops are too. But cops are more full of shit. And judges are crooked. Like, I want them to know just because it’s the legal system don’t mean it ain’t criminal. You understand? Everybody’s crooked. I don’t care what you say. Everybody’s crooked. And if they ain’t crooked, they next to somebody that’s crooked that makes
them crooked. I just try and let them know that the legal system can work on your behalf if you pay them to work for you. Everything costs. That’s where I’m at. I’m like everything costs. Ain’t nothing gonna come free.

Kit enters the delinquency process wanting the court to help her find services for her son. At the beginning of the court process she perceived judges as being above corruption, unlike police officers and lawyers. By the end of the case, she no longer has this view. Kit leaves the process with more negative views of legal authorities that she intends to share with her children.

Judy

Like Kit, Judy also becomes more passive as the case progresses. She begins to detach from the court process when she realizes that her efforts to present a different factual context to the judge will not be successful. When the case has been open for five months with no new evidence about Richard’s friend Jon being disclosed, Judy stops pushing for the full facts to come out in the courtroom. She now says, “I am hoping they will do whatever it is they need to do to end the case. It’s dragged on and on.” When Richard decides to accept a plea, Judy says:

We just decided to do it. And I think again, taking to the fact that it was just so long. That the case just went on and on and on and on and on. And by the time we were at that point, it was like, “Just plea and forget about it and get this done because it’s not going anywhere.” Nothing was being resolved. The things that we wanted to have brought out
wasn’t being brought out. … I think it was extremely long and frustrating so that at the end, you’re just like, ‘Okay, let’s get this over with. We’re done.’ You know?

By the end of the process, Judy no longer cares what happens with Richard’s case, realizing that Jon’s involvement would not be part of the courtroom discussion. In most juvenile cases, the case pleads out or the charges are dismissed, with participants left feeling that the police version of the incident is the only one voiced in the courtroom.

Richard enters into a plea agreement five months after he was first arraigned. The prosecutor agrees to reduce the charge of larceny of a motor vehicle to unauthorized use. He is also required to plead to driving without a valid license. Judy’s frustration with the court process is evident in her final interactions with the defense attorney. Richard has to agree to pay the car owner $450 in restitution as part of the plea agreement. In discussing the plea offer, Anne says to Richard, “It’s up to you. Do you want to talk about it with your aunt?” Judy responds, “I’m going to be paying it. I’ve had it up to here.” She complains that the car owner is just “out to make a few bucks,” saying that because she owns a house she is the one who has to pay. Richard accepts the plea agreement and agrees to pay the restitution. After Anne fills out the plea agreement paperwork, she has Richard sign the form. Handing the form to Judy, Anne says, “You have to sign it as well.” Judy says sarcastically to Anne, “Oh, do I?” There is no mention of Jon’s involvement in taking the car during the plea negotiations. Judy feels that the outcome of the case would be fair if the facts of the incident were as stated in the police report.

It’s fair for what they are . . . what it shows. What it’s proposed on paper. Yeah, that’s fair. Is it actually the whole facts? No,
because the other part of it wasn’t put into the charges. So what they proposed, he took the car, he did this, he did that.

Yeah, so it looks like it’s fair for what he did. Not putting into the fact that he was not the only person in this whole case.

Judy leaves the court process with more negative views of the justice system once she is unable to provide additional context in the court process, either directly or through the defense attorney.

_Becoming More Disengaged and Passive Participants_

Even though Kit and Judy have very different court experiences, both leave the court process more passive and disengaged than when they entered. Although Kit enters the process wanting to engage with the court and expecting to speak with the judge, by the end of the case she has completely given up on the court process. In the beginning, Judy provides the defense attorney with new information concerning the case and urges her to challenge the police reports. By the end of the process, Judy just wants Richard to accept a plea in order to end the case, accepting the fact that his story would not be told. Many parents and youth who are engaged at the beginning of the court process stop asking the defense lawyer questions and no longer pay attention in court as the case proceeds. Their disengagement is often subtle and can escape the notice of legal authorities. Many parents and youth no longer see value in what is going on in the legal process, but in their silence they can appear to be in agreement with what is happening in the court.
Conclusion

These findings expand prior work by examining the effects of changing legitimacy perceptions on behavior during an on-going legal process. Procedural justice research typically focuses on the behavioral effects of legitimacy perceptions well after the legal interaction is over. This study shows participants’ changing views of the court system affecting their behavior during the legal interaction itself. We can better understand the potential effects of these behavioral changes on the legal process by looking to research in legal consciousness. The legal consciousness framework views law as “a process of ongoing mutual causation” (Ewick and Silbey 1998: 38). Individuals do not passively receive the law. Instead, they help to constitute the law through their patterned beliefs, understandings, and behaviors within the legal process (Ewick and Silbey 1998; Silbey 2005). Longitudinal studies allow a closer look at the constitutive process in action, demonstrating how participants affect the operation of the court process. In these case studies, parents and youth help to create the legal process even while they disengage from the court system. When participants become more passive while the case is ongoing, they no longer seek to have the issues that are important to them presented to the judge. Issues such as incomplete police reports and police harassment in the community are left out of the courtroom discussion. In this way, participants’ disengagement allows the juvenile court to ignore problems that continue to plague the juvenile justice system, such as disproportionately high arrest rates and harsh sentencing patterns of poor and minority youth. Future research on the behavioral effects of legitimacy perceptions should include a constitutive aspect to better identify the full range of policy issues related to perceptions of the justice system.
This research complicates legitimacy theory’s focus on deference and obedience to legal authorities. Although there are a number of variations on legitimacy theory, the most prevalent framing of legitimacy focuses on an individual’s perceived obligation to obey or defer to the judgment of legal authorities regardless of personal outcome (Tyler 1990, 2003; Sunshine and Tyler 2003; Piquero et al. 2005; Murphy, Tyler, and Curtis 2009). In this study, parents and youth who leave the process more passive and disengaged may be more likely to defer to legal authorities, but only because they are no longer actively contesting state action. To achieve the voluntary “buy-in” to the legal process which is considered central to legitimacy theory (Tyler 2003: 286), participants need to actively rather than passively accept decisions made by legal authorities. Although prior work in this area expresses the concern that policy makers cannot simply encourage deference to legal authorities (Tyler 2003), additional research is needed that focuses on more proactive alternatives. This research suggests that not only must legitimacy theory more carefully distinguish between deference and disengagement, but that meaningful engagement with the legal process should be an important objective in legitimacy research. Rather than capitalizing on participants’ initial desire to engage with the legal process, these two juvenile delinquency courts fail to involve parents and youth in ways that value their input.
Chapter 6

**Meaningful Participation in Juvenile Delinquency Court – Opportunities for Voice and Conflict Framing**

This research finds that parents embedded in the juvenile delinquency court expect to have influence in the legal process, as they do in nearly every aspect of their child’s life. As demonstrated in Chapter 5 with Kit and Judy’s experiences, these parents enter the court process ready to engage, often believing they will be able to challenge the police version of the incident involving their child either directly to the judge or indirectly through the defense attorney. Instead, most of these parents and their children experience the court process as outsiders. They come to feel that they cannot meaningfully participate and they fail to take advantage of the few opportunities for voice they may have in the court process. This chapter offers a new way to conceptualize what these court participants hope to achieve through their participation, adding a legal mobilization framework to add content and depth to the notion of voice found in procedural justice research. Unlike work in procedural justice, the legal mobilization literature includes an element of “relevant power” to help explain why individuals often fail to take advantage of opportunities for voice in the court process.

The framework most often used to theorize voice and participation in the criminal justice system comes from procedural justice and legitimacy research. Procedural justice research treats voice as one factor affecting how court participants experience the legal process, but it does not address the unique experiences of parents in the juvenile delinquency court, particularly parents from disadvantaged urban communities with high levels of contact with the police. Procedural
justice research establishes that having voice is a key factor in determining whether participants view the court system as fair (Tyler 1990, 2001; Lind and Tyler 1998), but little is known about how court participants, such as parents and youth, want to use voice and why voice is important. Large-scale survey research cannot examine the content of participants’ attempts to use voice in the context of individual cases. Procedural justice research does not examine how an individual’s perceived opportunity for voice and need for voice in the justice process are contextual, influenced by the circumstances of the criminal incident, the individual’s personal situation, and his or her perceptions of police behavior.

A legal mobilization framework can draw out the key issue of relative power in the justice process which is currently missing from the procedural justice framework. Qualitative work in legal mobilization examines how individuals invoke issues of law and justice to address disputes in the civil law context, but has not focused on the criminal or juvenile justice systems. Recent work in legal mobilization has moved away from how groups collectively mobilize around issues of social justice to define legal mobilization as “the social processes through which individuals define problems as potential rights violations and decide to take action within and/or outside the legal system to seek redress for those violations” (Morrill et al. 2010: 654). This research uses a similar definition of legal mobilization, but expands its concept of potential rights violations to include how parents and youth invoke (or choose not to invoke) their views of what they believe would be fair in the process. Participants in this research rarely use a rights-based framework when describing their experiences and frustrations with the court process. Instead, they use a justice-based framework, focusing on how their experiences in the courtroom do not live up to their expectations of a fair and just process. The concept of legal mobilization can
help to explain why many parents enter the court process expecting to engage, but end up failing to initiate contact with the judge even when their views are not being voiced by the defense attorney. Examining what parents would share in the court process if given the opportunity can deepen our understanding of how the court process is experienced by these families. Chapter 5 examines the cases of Kit and Judy in detail; this chapter uses a larger group of participants to look at parents’ need for voice and how voice intersects with their views of police and courts.

Parents Want to Engage but Have Difficulty Finding Influence in the Court Process

We don’t get to say anything when we come in. We just get another court date. Even if I want to talk and raise my hand, the lawyers say no, no, no and to sit down.

Marla, black mother in Court 1

Parents like Marla want to engage with the legal process. They believe they will have an important role in their child’s delinquency case because of their status as parents. However, for reasons examined in Chapter 4, parents find that their role in the delinquency court is limited. Parents often believe they are not allowed to speak inside the courtroom, even though no rule precludes their participation. Tina, a single white mother whose daughter Crystal faces motor vehicle charges in Court 2, says, “I’m responsible to shelter her, feed her, clothe her, raise her, water her, and watch her grow. Why don’t I have say when I’m in a courtroom? Why am I sitting in the back?” According to Tina, “parents are an afterthought.” Rosa, a Hispanic mother in Court 2 whose son Roberto is charged with two armed robberies, questions why parents are required to attend the court hearings involving their child: “They don’t allow the parents to talk.
They don’t allow the person who they’re accusing to say anything to defend themselves. So why the parents are there?”

Many parents perceive themselves as outsiders, complaining that they have difficulty finding ways to participate in the courtroom discussion. Nicole, a black mother in Court 2 with her son Oscar, contrasts her experience in juvenile delinquency court with her previous divorce case, describing her legal experience with the divorce as “totally different.” She says, “There your say so has a big difference on the outcome of the situation. Here, you wait for the lawyer, and that’s it. They don’t let you know what’s going to happen.” Parents and other family members become upset when they feel that what they want to say has been left out of the court process. During a case in Court 1, the judge and the attorneys step into the hall for a private meeting while the juvenile’s family stays in the courtroom. The juvenile’s adult sister shouts, “Wait a minute!” as the attorneys shut the door, remarking to the family member next to her, “So why did we come in here?” The sister angrily asks the clerk, “Does the family, guardian, nobody get to go back there?” The clerk responds, “They are talking about legal issues usually and what to do with the case. Then they come back out and put it on the record.” Wiping away tears, the sister says, “But what about the guardian of the person or whoever’s there to represent the family?”

Parents are more active in the courtroom when an interpreter is assigned to the case. Interpreters interrupt the conversation between the defense attorney and judge on the parent’s behalf. For example, in one case a Spanish-language interpreter begins to speak loudly from the gallery as the judge, prosecutor, and defense attorney schedule the next hearing. Acting as the mouthpiece of the parent, the interpreter says, “I will be out of the country December 21st to
January 19th.” The hearing is scheduled around those days, in contrast to most cases where hearings are scheduled without parental input. In this way, the interpreter makes the courtroom more accessible to the parent. Interpreters also help parents process what is happening in the court room, answering questions regarding the role of different individuals in the courtroom and what to expect at the hearing. Occasionally, an interpreter will request that she and the parent be allowed to stand between the defense attorney and prosecutor instead of in the gallery so the interpreter can hear more clearly. When this happens, judges tend to focus more on these parents, asking the attorneys to slow down so that the parent can understand. The usual courtroom practices that lead to parents being kept outside the legal process are turned on their head.

In many cases, parents are prevented from speaking to the judge directly, even on issues relating to their child’s behavior at home. During a hearing in Court 1, a defense attorney told the judge that family therapy would benefit the juvenile and his mother. The mother tries to interject two times, saying, “Can I say something?” After the second time, the judge says to the mother, “Ma’am, please be quiet.” In another case in Court 1, a mother stands and angrily says, “I didn’t even get to speak and tell you something,” as she is led out of the courtroom. Parents and other family members rely on the defense attorney to explain what happened inside the courtroom after the hearing is over. At the end of one hearing, a grandmother is heard remarking, “That’s it?” The judge says to her, “You can talk to the lawyer and she’ll explain things to you.”

Although defense attorneys have no obligation to voice the concerns of parents, they can be the primary avenue for parents to express their views and provide information to the court.
Yet defense attorneys are ethically required to represent the child’s expressed interests and not the interests of parents (Shephard 1996). Tina, a white mother in Court 2, says that while she thinks her child’s attorney is nice, “Once we get into the courtroom, the attorney will say what he thinks is best,” no matter what she tells him. Even when parents and youth are on the same page, parents can resent being required to speak through the defense attorney. Monica, a Hispanic mother in Court 1 whose son Tommy is charged with attempted armed robbery, says:

For us, it would make us feel better if [we] could express ourselves.

Not just tell another person and that person tells the judge. You want to speak for yourself, too.

Parents like Monica see direct participation in the courtroom as different than and preferable to having their voice filtered through the defense attorney.

Some parents complain that the defense attorney cannot accurately portray their family’s situation to the court. Marla is a black mother in Court 1 with her son Anthony who is charged with disorderly conduct and stealing a bicycle. She has had four sons process through the delinquency system. Marla becomes exasperated when the defense attorney and the probation officer go back and forth about the child’s home life, angrily saying that the judge should “just ask us, we’re sitting right here.” She believes that judges should hear from the parents themselves.

The defense attorneys take notes, but they don’t write down the whole thing. They twist it into their own words. They don’t know the child. They don’t know the parents. They explain the best they could, but it don’t come out right.
A number of youth also believe that an important part of their story is lost when they have to speak through their defense attorney, although generally this was a greater concern for parents. Tina’s daughter Crystal wants to be allowed to talk in the courtroom because otherwise “it’s kind of like other people tell your story for you.” She describes “being shushed” by the defense attorney when she tries to respond to the prosecutor reading the police report to the judge at arraignment.

Most parents seek influence and voice in the juvenile delinquency court in some way, even if they generally distrust legal authorities. Nearly all the respondents, both parents and youth, say they would like to speak with the judge directly if given the opportunity, including those with negative views of both the police and the courts. This research is more optimistic than previous research on legal cynicism which suggests that individuals in disadvantaged communities do not seek opportunities to engage with the official legal process (Sampson and Bartusch 1998; Kirk and Matsuda 2011). These parents and youth with negative views of the legal system can still view themselves as potential actors in the court process. As the next section shows, parents’ willingness to engage with the court system is based at least in part on their role as parents wanting to protect their child.

The Content of Meaningful Participation – Seeking to Mobilize Views of Justice in the Court Process

Most parents want to engage in the court process in some way, but the significance they attach to their ability or inability to participate depends in large part on how the state frames the criminal incident and the juvenile’s circumstances. When parents believe that the prosecutor
provides the judge with a fair account of their child and what happened, they are less upset with
their lack of participation. Adele, a black mother whose daughter Rochelle is charged in Court 1
with unarmed robbery and assault, says that she does not need to speak in the court process
because she and her daughter agree they will not contest the charges. Adele is one of the few
parents who does not seek to participate in the court process, either directly to the judge or
indirectly through the defense attorney. Regarding her lack of participation, she says, “I don’t
mind. What are they going to listen to me for?” Adele agrees with the police account and does
not feel that she would be able to add anything to the process. Similarly, Jean, a white mother in
Court 2, is not interested in speaking with the judge after her son Cameron is stopped by the
police for underage drinking and a knife is found in his pocket. Jean says, “No, I don’t know
that I could or what I would even say … that he’s a good kid that makes the wrong decisions, but
I don’t know that they’d want to hear that.” Many parents say they would tell the judge that their
son or daughter “is not a bad kid” if asked, but parents who want to challenge the police version
of the underlying conflict seek participation with greater intensity.

Many parents say that their primary role in the juvenile delinquency court process is to be
an advocate for their child. They want voice in the court process to ensure that the justice system
works fairly. Nicole, a black mother in Court 2, says she is in court as her son’s advocate
because “children don’t know what their rights are most of the time. It is up to the parents to
help the child navigate through that process.” Nicole assumes that the juvenile justice system
will not protect her child, despite the constitutional rights guaranteed to youth in the juvenile
courts. Most parents view themselves as having an important role: protecting their child as he or
she moves through the legal system. Karen, a white mother in Court 1 whose son James is
arrested on larceny of a motor vehicle and trespassing charges, also says that she is in court with her son “to advocate for him.” She adds, “I try to be as aware as possible. To see what is best for him, that nothing is missed and that he is being treated fairly.” To be successful in their role as advocates, parents believe they need opportunities to voice their concerns and to have influence in the court process. Delmar, a black father in Court 1 whose son Dion is detained on assault with a dangerous weapon and resisting arrest charges, says this about his role as a parent in juvenile court:

To protect my son, but I don’t know if I can. They don’t even let you speak. They don’t give you any chance. The probation says things that are not true.

For Delmar, not participating in the process means that he cannot protect his son against what he sees as unfair accusations.

Parents’ voice in their role as their child’s advocate has a critical edge, displaying an element of distrust of the justice system. Parents see their participation as necessary in order to ensure that the court system treats their child fairly. This attitude is particularly prevalent in Court 1, the court located in an area with high levels of police activity. Monica, a Hispanic mother in Court 1, describes her role as a parent as serving as a check on the system: “To make sure that they say and that they do everything correct with my son” and that “things are the way it has to be.” Darius, a black father in Court 1 whose son Dante faces a number of gun-related charges including armed assault with intent to murder, says that parents need to be present in juvenile court because “without a parent there, the individual could be taken advantage of.” Kit, the black mother in Court 1 who is discussed in Chapter 5, says that without parents “they’d
hang our kids.” In procedural justice research, voice means having an opportunity to be heard, but for many of these parents voice can represent something more. In the role of advocate, the opportunity for voice means being able to challenge how the justice system operates.

A number of parents and youth want to contextualize the incident for the judge even after the case is resolved, believing that the police version does not fully convey the truth of what happened. Veronica, a black juvenile facing charges of disturbing a school assembly in Court 2, still wants to speak to the judge about what happened after all of the charges have been dismissed. Veronica says:

In the police report, I don’t know whose eye it was through, whose experience it was, but it was not mine or the girl in question … The police did not get things right, made it seem much worse than it was, when it was only five minutes of excitement … There were a couple of times when I felt that the judge wasn’t understanding, and I wanted to speak up.

Veronica’s father Walter echoes his daughter, adding that the “police do not understand.” Being able to include their voices in the official record of what happened remains important to both Veronica and Walter, even after the case is resolved in Veronica’s favor. Jerome is a black grandfather in Court 1, whose grandson Dante pleads guilty to a firearms charge. After the plea, Jerome asks the defense attorney when the police will find the third youth involved in the incident. Jerome becomes upset when the defense attorney replies that she doubts the police are still looking for this suspect now that Dante’s case is over. Participants like Jerome, Veronica, and Walter believe that the content of what they want to say matters because judges should know
all of the facts concerning what happened, including the juvenile’s version. It is important to
them that a comprehensive account is shared in the court process, even if it would not change the
outcome in their case. Prior research finds that individuals in the legal process value being able
to participate in “the co-elaboration or co-construction of a conjoint story” (Cobb 1993: 250).
For parents and youth in juvenile court, their version must also become part of the courtroom
discourse for the court process to be perceived as legitimate.

Parents and youth have difficulty finding ways to insert their version of the incident into the
courtroom narrative. Even parents who initiate the police contact can have difficulty
challenging the police framing of the conflict. Nicole, a black mother in Court 2, calls the police
because of her son Oscar’s behavior at home. As the case proceeds, Nicole becomes upset
because neither she nor her son is able to challenge what is in the police reports during the court
process. Nicole says angrily, “It’s not like we have any input.” Nicole questions the ability of
the police to present a full and accurate account of what happened to the judge. She complains
that the police overstated the incident. Referring to the police report, she says:

Originally it was just getting it wrong. Some of the paragraphs
in the police report were not even said. Maybe they just wanted
to make it more dramatic or something … They just put what
they want to put in the police reports, it’s not all the truth.

Nicole resents the court’s reliance on the police reports and being unable to help frame her
relationship with her son and the context of the incident. Oscar also disagrees with the
prosecutor’s presentation of what happened, saying, “A lot of things they say are really not true.”
Neither Nicole nor Oscar believes that the police accurately captured their family dynamic. By
being unable to challenge how their family relationship is framed in the courtroom, both mother and son feel that their family’s social reality is being called into question.

Many parents and youth look to the court to provide a layer of protection against what they view as unlawful police action. The conceptualization of voice in procedural justice research does not adequately capture the importance these families place on having influence in the court process to challenge police behavior. Procedural justice and legitimacy research examine interactions with the courts and with the police separately (Tyler and Huo 2002; Tyler 2003), but with parents in the juvenile court process the court’s legitimacy is bound up with the court’s willingness to challenge the legitimacy of the police. In this research, many parents and youth want to engage with the courts as a check on the police, viewing the courts and police as distinct institutions. Roberto, a Hispanic juvenile in Court 2, says that he needs to speak with the judge directly because “cops will do anything to prove their case.” Similarly, Crystal, a white juvenile in Court 2, has a more positive view of the courts than of the police:

I hate the police … I don’t like cops. The courts, I don’t mind.

Cause the cops, you don’t have a lawyer right there to be like,

‘No, you can’t do this to the person.’ In court you have

someone trying to stick up for you. Cops, they just pin you

up against the damn cruiser, handcuff you so tight.

Even though both Crystal and her mother Tina distrust the police, Tina complaining that the police can be “actually kind of brutal,” they still participate actively with the defense attorney and wish to speak directly to the judge during most of the court process.
Many parents seek participation in the court process to redistribute power from the police to citizens. Police coercion and other types of state power are often experienced differently in disadvantaged communities than in those with greater advantages (Harris 1999; Weitzer and Tuch 2006). Families in poor urban communities who have a complex relationship with the police may be particularly concerned with their ability to challenge police action in the court process. In this research, police officers are viewed as often acting outside of the law, especially by respondents in Court 1, which is located in an area with high levels of violence and drug activity. Tracy, a black mother in Court 1 whose son Lawrence is charged with arson and armed robbery, admits that in her neighborhood police officers have a difficult job, but she still calls the police “assholes”:

They see a young African-American walking around, the first thing they want to do is pull him over. It happened just last night to my oldest son. He went to the store and the police backed up to see where he went when he was coming home.

Tracy says that the police act outside the law about half of the time, “fifty percent cause they’re crooks.” Brenda, another mother living in the Court 1 area, describes the police in her neighborhood as brutal. She says that her son “has seen a lot of friends being beat down and disrespected.” She describes the police officers in her neighborhood, mostly white men, as “disrespectful and belittling.” Brenda says that the police treat adults harshly as well as youth. “Parents talked to like they’re shit, like they’re nothing … It’s like back in the slavery days.”

Recent socio-legal research has renewed criticisms of the procedural justice approach for not fully accounting for differences among court participants (Berrey, Hoffman, and Nielsen 2012).
Using civil law cases, Berrey et al. find that what individuals consider fair in the legal process is relational, depending on their prior interactions with the opposing party and their perceived power within the court process. Frameworks of participation and voice in the criminal and juvenile justice processes should take account of participants’ prior interactions with the police and the perceived power of police officers in their neighborhood, particularly in communities with a strong police presence.

For many parents and youth, participation is not meaningful unless they are able to challenge what qualifies as acceptable behavior by the police and the range of police power. Unlike the procedural justice approach, the framework of legal mobilization helps to capture the power dynamic and the struggles disadvantaged people may face in trying to wield influence in the legal system. Most procedural justice research controls for ethnicity, education, and income (Sunshine and Tyler 2003; Tyler 1990), but the concept of power is not central to the analysis. The legal mobilization framework better captures the sense of powerlessness experienced by the families in this research, although some reframing of the legal mobilization concept is necessary within the criminal and juvenile justice processes. Legal mobilization research typically examines when and why individuals invoke law or rules during a dispute (Marshall and Barclay 2003; Portillo 2011). Although the parents and youth in this research find themselves in the court process involuntarily, they still invoke concepts of justice and fairness in stating how they believe the legal process can and should operate. For many participants, a court process is only fair if the judge hears both sides of a case. When participants seek to challenge the police framing of the underlying incident, they are trying to mobilize their views of how the court process should work in order to rebalance power. For example, Tina, a white mother in Court 2,
is upset because she believes that if she and her daughter cannot use the courts to contest police action, the power of the police is unrestricted.

The thing that bothers me most about the case is that the police got this call … but they technically weren’t even there to see my child in the car. To see actually what happened, whatever. And yet they charged her with all of these like charges. Like driving to endanger. Like, okay. Let’s just say like if she was driving, if they’re not there then how are they to know? … So I mean, anyone can walk into any police station and just say, “This happened, this happened, this happened.’ And then someone gets charged with those crimes. That to me is freakish.

Tina believes that the court system is not operating properly because the police decide who to charge with a crime as well as control the version of the story that is told in the courtroom. Participants like Tina want to use the courts to voice their views of fairness in the process. Parents may want to hold the police accountable for reporting the full circumstances of the incident, even as these parents acknowledge their child’s wrongdoing. They believe the court process should involve a kind of reciprocal accountability, where the police as well as youth are held accountable in the courtroom. In this way, parents believe they should be active participants who help to define the parameters of justice in the legal system.

Parents can resent defense attorneys who do not challenge the police on the issues in the case they experience as most unjust, not understanding the procedural rules that prevent attorneys from making these challenges. Diane, a black mother in Court 1 whose son Weston is
charged with possession of a gun, believes that her son is a victim of racial profiling. Weston is stopped while riding in a car with three other young black men in a violence-plagued neighborhood near the courthouse. A gun is found in a backpack in the car after a search. Diane wants to use the court process to challenge the initial stop by the police. She says, “They stop a car with four black males in it. We know why he stopped them.” She views racial profiling as an ongoing problem in her neighborhood, saying, “I think that a lot of people get targeted.” At the bail hearing, when the prosecutor reads from the police report stating that the car was stopped for making a dangerous left-hand turn, Diane looks upset and shakes her head vigorously.

Although Diane is most troubled by the initial stop of the car, the defense attorney does not think he can successfully challenge that claim under the law. Instead, the defense attorney challenges the search of the backpack, losing the motion to suppress after a long hearing. Diane resents being unable to decide which parts of the case to challenge in the courtroom. She says, “It’s not my decision, it’s their decision … the judge, the lawyers, all of them.” Diane resigns herself to being unable to use voice to challenge the police on the issue that she views as most unfair.

Sometimes parents successfully influence the defense attorney’s presentation of the case, even at early hearings when the facts of the incident are typically presented only through police reports. Although Diane is unsuccessful in framing the police stop of her son Weston, she is able to convince the defense attorney to present more context to the judge in a second case involving Weston. Diane wants to challenge how the police frame the incident and the behavior of officers and teachers when Weston is charged with assault after a fight in his school cafeteria. She says, “Of course the police report makes him look like a monster.” She wants to know why the police did not step in earlier:
Why didn’t someone stop the melee? Where were the teachers?

Where were the police then? Like he would just get up from the lunch table and hit her for no reason. It just makes no sense.

This time Diane convinces the defense attorney to present a different version of the case to the judge at arraignment, saying, “She attacked him, but of course that's not in the police report.”

The defense attorney has more discretion in presenting facts at a bail hearing than with a motion to suppress. In the courtroom, the defense attorney characterizes the police report “as a snapshot in time,” asking the judge to consider additional context relevant to the incident. The attorney explains there was “actually a certain level of mutuality” in the fight. In this instance, the parent is able to mobilize her views of justice through the defense attorney early in the court process, affecting how the defense attorney presents the case and enabling the judge to hear a framing of the incident that goes beyond the police version.

Some parents seek voice to provide the judge with a more complete understanding of the circumstances in the case, wanting the judge to consider long-simmering conflicts that have been omitted from the police account. Maritza, a Hispanic mother in Court 2 whose daughter Jessica is charged with setting a fire at her school, urges the defense attorney to tell the judge that her daughter had been relentlessly bullied by two boys at school for months. She says that the judge needs to know that these two boys were also involved with setting the fire, contrary to the police report which states that Jessica acted alone. Although both Maritza and Jessica feel that the fact that the two boys are not charged is a “big issue,” the defense attorney decides not to introduce the issue of bullying. Maritza resents that the full story does not come out in court:

I felt like they were only focusing on one person when there
were more people responsible. They were focused on what happened, the damage, the money spent on repairing the damage. But not focusing on the suffering of the child who was there. They don’t try to find out why this happened.

Maritza is not upset that Jessica is punished for her role in the incident, saying that she believes her daughter will benefit from probation and counseling. Instead, she resents that the judge does not look beyond the police version of the event to understand what really happened. For Maritza, the inability to challenge the police version becomes an issue of fairness not of rationalizing her child’s behavior or reducing accountability.

Parents like Maritza believe that judges should hear the full circumstances of the incident as well as learn about the relationships that led to the conflict. Individuals in the justice system can simultaneously take responsibility for their actions and believe that the justice system is unfair. Parents want the court to reaffirm that they have an identity beyond that recorded in police reports. Yet defense attorneys often choose to not present all of the background information to the court that families would like them to share. Attorneys must take multi-layered and complex relationships from the social world and shape them to the fixed form of a legal framework (Sarat and Felstiner 1995; White 1990). As repeat courtroom players (Galanter 1974), defense attorneys have experience in how to frame the facts into a narrative that the judge is more likely to consider. The use of different legal discourses in the courtroom can have important effects on case outcomes. Prior research finds that individuals who are able to frame disputes in terms of legal rules find more success in the court process than those who define problems using relational accounts (Conley and O’Barr 1990).
Parents and youth enter the court process wanting to challenge the police version of events, but preventing parents and youth from speaking about the facts of the case is often the right legal decision. Defense attorneys work to convince parents and youth to not speak in court, advising them that the prosecutor can use any statements they make against them. When defense attorneys limit the participation of clients and family members in the court process, they are usually engaged in good lawyering. Similarly, when judges allow limited parental participation in bail hearings and not on other matters, they may be acting to protect the juvenile by stopping the parent from sharing facts of the case. Although the participants perceive themselves as being treated unfairly when they cannot participate, limiting their voice may lead to better legal outcomes. Prior research looking at civil courts has also found that good legal practice often conflicts with lay people’s expectations for voice in the court process (Sarat and Felstiner 1995). However, when examining the perceived ability of a legal process to be just, what participants consider fair treatment may depend on their personal goals. While one objective is to obtain the best possible legal outcome, some participants may place even more value on their or their child’s ability to feel they are respected participants in the legal system.

Relative Power and Constraints on Voice Within the System

Even as most of the parents in this research seek engagement with the court process, they struggle to find ways to participate meaningfully. The concept of voice in procedural justice research does not consider the difficulties court participants can face in deciding whether and how to speak within the legal system. Parents can both strongly disagree with the framing of the incident in the courtroom and believe they are unable to voice their concerns. Using the
framework of legal consciousness, this section examines how parents’ ability to participate can be constrained by their own perceptions of their relative authority and power in the legal system.

Many parents have difficulty viewing themselves as legal actors, even when they strongly disagree with the version of the case presented to the court. Parents sometimes wait for the judge to ask them questions, which the judge rarely does. Delmar, a black father in Court 1, says that he needs to participate in the process because the “the probation officer says things that are not true.” But Delmar waits for the judge to initiate an interaction, saying, “I hope he has questions for me. Sometimes the judge just looks at you.” The judge does not ask Delmar any questions and he does not question the probation officer’s account. Many parents assume they are not allowed to speak to the judge directly, even though no rule prohibits parents from speaking inside the courtroom and parents can sometimes participate if they initiate contact with the judge. For example, Darius, a black father in Court 1, describes himself and other family members as feeling “helpless” throughout the court process. When asked if he or anyone in his family has said anything in the courtroom, he replies, “No, I mean you can’t talk directly to the judge.” The courtroom can be a bewildering place for defendants and their families, operating through a complex set of rules not easily accessible to outsiders (Galanter 1974; Feeley 1979). In many ways, criminal and juvenile delinquency courts are structured to minimize the participation and voice of the accused. Court proceedings have been characterized as “degradation ceremonies” where the lower position and outsider status of defendants are reinforced (Garfinkel 1956: 424).

Many parents believe they have no alternatives if the defense attorney does not give the judge a full account of the incident. Rosa, a Hispanic mother in Court 2, believes that she cannot
speak to the judge directly when the defense attorney does not voice her concerns about the police report. She is not satisfied with her son Roberto’s representation, saying:

Attorneys just read police reports, they don’t go behind it.

It’s not their fault, that’s the way the police write the report.

They don’t investigate, don’t find witnesses.

Rosa complains that the defense attorney has not looked for a potential alibi witness or acquired school attendance logs to see if her son was actually in school during one of the incidents. She wants both the defense attorney and the judge to be more critical of the information in the police report, but she does not believe she can be more active in the process beyond trying to convince the defense attorney to do more. Rosa has not spoken in the courtroom. She says that the reason for her silence is “because [the judge] never ask me. If he ask me, then I would.” Rosa adds, “I would like to talk to the judge, but they don’t allow people.” Rosa does not see a way for parents to affect how the court operates. She says, “I don’t make the law. So that’s the way they do it. There’s nothing we can do.” Juveniles can also feel there is nothing they can do to present their side of the story in the courtroom. Oscar, a black juvenile in Court 2, disagrees with the prosecutor’s framing of the incident with his mother. Although he says, “A lot of things they say are really not true,” Oscar does not see himself as able to speak in the courtroom. When asked if there is anything he would say to the judge, Oscar answers, “Not really, they don't really let me talk or anything.”

Parents find it difficult to exert any influence in the legal process since many lack a clear understanding of what is going on in the case. Delmar, a black father in Court 2, says that he wants to protect his son in the courtroom by “telling them the truth of what happened,” but he is
confused about the legal process. He says, “I don’t know anything about the court or what’s going on with the court.” Delmar does not know the charges against his son and says he has not spoken with the defense attorney. He says nothing to the judge in the courtroom. Procedural justice research does not fully consider the extent to which court participants fail to voice their concerns because of their limited understanding of the legal process. In contrast, legal consciousness research emphasizes that individuals’ understanding and knowledge of the legal process can “profoundly shape their legal engagement” (Berrey, Hoffman, and Nielsen 2012: 7).

Some parents intend to speak in court and to pose questions to the judge, but they wait until after the court hearing and ask the attorney to clarify what happened in the courtroom. Monica, a Hispanic mother in Court 1, says “of course” she would speak up in the process if she did not understand or agree with what was said during a court hearing. Yet there are times when Monica appears not to understand what is happening in court. After one hearing she asks the defense attorney in the hallway, “What did they say? What changed?” When parents like Monica rely on the defense attorney to explain court proceedings after leaving the hearing, it is too late for them to participate in the court process.

A certain level of legal understanding is a prerequisite for meaningful participation. Some parents in this research who view themselves as able participants are actually dependent on the defense attorney to understand what is going on in the court process. While socio-legal research repeatedly demonstrates that many lay people have a very little limited understanding of the law and the legal process (Galanter 1974; Sarat and Felstiner 1995; Conley and O’Barr 1990; Merry 1990), procedural justice research does not reflect this reality.
To some extent, the institutional practices of the juvenile court help to shape parents’ limited understanding of the process. Participants, both parents and juveniles, often complain they do not know what to expect in the courtroom. Nicole, a black mother in Court 2, says that her main complaint about the court process was that she did not know what was happening.

It’s not like you really know what’s going on. What’s the purpose of being here? … I don’t know what this hearing is about. They don’t keep you well informed.

Nicole feels that neither the defense attorney nor the court officials sufficiently include her in the process. Not knowing what may happen can make the process overwhelming for parents. Diane, a black mother in Court 1, says “It’s all overwhelming. I don’t know what’s going to happen … It’s just ridiculous how many times you need to come here not knowing what will happen.” By treating parents as outsiders, legal authorities encourage parents’ passivity in the court process. In this way, legal institutions like the juvenile delinquency court help to establish the “ideological parameters within which participants understand and play the game” (Berry, Hoffman, and Nielsen 2012: 8). Marla, a black mother in Court 1, complains that she not only does not understand what is happening in her son’s case, but the defense attorney does not give her the chance to be an active participant.

No, I don’t understand. They need to break it down, explain why they do the things they do and the decisions they make.

But you don’t get to question it, lawyers don’t have time to explain it.
Some parents perceive defense attorneys as unavailable and their behavior as not subject to parental challenge.

Parents’ lack of participation in the legal process helps to frame the reality that takes shape in the courtroom. Parents who wait for judges to solicit their input do not participate in the court process and fail to share with the court their more complex framing of the incident and the juvenile’s circumstances. Judges rarely hear the challenges to police power that parents want to raise in the courtroom. The usual operation of the delinquency court, centered on the police version of events, is reinforced when these parental challenges are not offered. This research builds on previous work in legal consciousness on the hegemonic properties of the law by finding similar forces at work in the juvenile justice system. In these two juvenile courts, the law’s institutional practices “reinforce particular ideologies through the power of its own legitimacy and its ongoing affirmation of the taken-for-granted social reality” (Calavita 2001: 90). Parents’ passivity and failure to connect with the legal environment help to constitute and recreate the one-sided nature of the juvenile court experience.

Conclusion

This chapter brings together the concepts of voice from procedural justice research and the invocation of legality from legal mobilization research. Although voice is central to procedural justice theory, the content of what participants would like to say and its potential effects on the justice process have not been fully examined. Procedural justice research demonstrates that when individuals have an opportunity for voice they are more satisfied with the legal process, but it does not examine how the meaning and importance that participants
attach to voice depend on the context of each individual case. In cases involving a factual
dispute, participants want to utilize voice to challenge the framing of the case and the extent of
police power. Participants’ views of the police and their views of the court intersect in
interesting ways, particularly in conjunction with voice. Many parents are looking for a version
of reciprocal accountability. They believe that police officers should be held accountable for
their actions as well as the juvenile. Prior legitimacy scholarship finds that trust in the police and
trust in the courts operate through separate but similar processes (Tyler 2003), but this research
examines the intersection between trust in the two institutions. Many parents and youth look to
the courts for protection when they feel wronged by the police, even when their presence in the
court process is not voluntary.

This research supports a more encompassing version of procedural justice and legitimacy
theory that creates space for divergent views in the court system. Part of the appeal of
procedural justice theory is the underlying belief that there exists a foundation of shared ideas
about what is fair and just. The perceived obligation to defer to legal authorities comes from the
principle that the “law expresses moral and social norms that are widely held by both dominant
and subordinate social groups” (Tyler and Fagan 2008: 234-35). Similar to other criticisms of
procedural justice (Berrey, Hoffman, and Nielsen 2012; Silbey 2005), this study questions the
existence of broad shared values that underlie a universal understanding of fairness. What may
appear to be shared values in a large-scale survey may operate differently in practice. By
assuming that individuals agree on the objectives of the justice system, procedural justice theory
fails to appreciate the critical edge underlying many participants’ experiences in the criminal
justice system. Often, parents and youth do not simply want voice and dignified treatment; they
also want to challenge the reach of police power. Perhaps genuinely shared values are impossible without opportunities to challenge how the current justice system operates.

In wanting to challenge the police version of the case, parents and youth seek to invoke their own views of justice in the court process. Recent research on legal mobilization has focused on the invocation of rights in non-legal situations (Morrill et al. 2010), but this research suggests that a different approach may be more relevant in studying legal mobilization in the criminal and juvenile justice systems. This research brings the study of legal mobilization back into the formal legal setting, finding that participants continue to invoke the law, even when they find themselves in the court process involuntarily as juvenile defendants and parents of a court-involved child. While previous research finds that individuals in disadvantaged communities rarely seek to engage with the official legal process (Sampson and Bartusch 1998; Kirk and Matsuda 2011), here parents demonstrate a belief in the court system’s ability to address social harm. This research expands theories of the invocation of law to include the invocation of justice claims and challenges of police power, both of which are in line with the traditional focus of legal mobilization and legal consciousness on de-centering the law (Marshall and Barclay 2003; McCann 2006).

Participants’ experiences in the delinquency process cannot be effectively analyzed unless their perceptions of relative authority and power are considered. Parents and youth can strongly disagree with how the court operates but not believe they are able to voice their concerns. Procedural justice theory does not adequately account for the constraints participants face in the justice process, both institutional and self-imposed. Many parents believe that their participation is wholly controlled by the judge and the defense attorney. They do not recognize
the few opportunities for voice they may have in the legal process. For parents to mobilize their ideas of justice effectively and to challenge police action, they must first see themselves as having a parental role that continues to be important in the legal environment. Most parents have difficulty seeing themselves as legal actors, even as they believe they have an important role in the legal process. To mobilize their view of justice in the juvenile courtroom, parents must see themselves as capable of having legal ideas. Currently, these parents are unable to fulfill their role as a parent in the juvenile court as they define it - as their child’s advocate tasked with ensuring that the justice system acts fairly.

Parents enter the juvenile justice process wanting to positively engage with the court, viewing the court as having the power to re-order the relationship between the police and their community. Yet these parents find that their participation in the legal process is at the discretion of the judge and the defense attorney. Often, defense attorneys and judges are actually acting in the juvenile’s best interest by preventing juveniles and parents from discussing the facts of the case early in the court process. Similar to the findings of previous work examining the interaction between attorneys and litigants in divorce cases (Sarat and Felstiner 1995), increasing participants’ voice in the courtroom could jeopardize a good legal outcome for the juvenile.

However, participants can make important contributions that positively affect the juvenile court’s operation, even if encouraging participants’ voice conflicts with zealous legal advocacy. Parents’ absence in helping to frame the facts in the case affects the legal process, both in case of their individual child and perhaps cumulatively over time. It may be even more important to understand the cumulative effects of participants’ action and inaction in the criminal and juvenile context than in the civil court process. Donald Black (1973) writes that “without mobilization of
the law, a legal control system lies out of touch with the human problems it is designed to oversee. Mobilization is the link between the law and the people served or controlled by the law” (p. 126). Here, the link between the delinquency court and the families it regulates has been at least partly severed. Inaccurate portrayals by the police and cultural misunderstandings by legal authorities can lead to more severe penalties, an effect disproportionately suffered by poor and minority youth. Explicitly encouraging parental participation may enable the legal system to hold police accountable for the content of police reports and help to sensitize judges to the complex realities facing parents and children in disadvantaged communities. Chapter 7 examines how parents try to mobilize their views and have influence outside the formal legal process in extralegal conversations with their children.
Chapter 7

Filtering Court Experiences through the Family –

Extralegal Behavior, Legitimacy, and Intermediate Space

This chapter examines the ways in which many parents seek influence extralegally by invoking their views of justice with their child outside of the court system. In the juvenile delinquency court, parents and youth experience the process as a family unit. Although parents become more passive in the formal court process, this research finds that many parents remain active outside the legal process, sharing views of their court experiences and the legitimacy of the justice system when they are apart from legal authorities. Parents help their children interpret their court experiences, frequently discussing the justice system in negative terms and even obstructing the justice process. Through these actions, parents and youth can create an intermediate space where parents transmit their attitudes and socialize their views within the family. This intermediate space often centers on distrust of the formal legal system. This chapter brings together work on legal mobilization, legal consciousness, and procedural justice to examine how families process through the juvenile delinquency court together. While recent research has located extralegal conduct as happening in place of a formal legal process (Morrill et al. 2010), here, parents’ extralegal behavior occurs outside the formal legal process during an ongoing legal case. These parents invoke views of law and justice within the family in response to their frustrations with the formal process.

This chapter also examines the ways in which one individual’s experiences in a legal process can affect the law-related views of others. This is in contrast to procedural justice
research, which limits itself to how experiences with legal authorities influence a person’s own perceptions. In addition, this research also extends legal consciousness work by looking more closely at social interactions during a legal process. The legal consciousness literature emphasizes the interaction between individual agency and social structure (Ewick and Silbey 1998; Silbey 2005; McCann 2006), but has not fully explained the intermediate space through which attitudes, understandings, and ideas concerning the law are actually dispersed. This chapter examines the processes through which legal culture is acquired and considers how family communications contribute to perceptions of the justice system’s legitimacy. Communications between parents and youth who are involved in the juvenile court are an important source of this intermediate space since parents are generally viewed as having an important role in their child’s socialization (Patterson and Dishion 1985; Gottfredson and Hirschi 1990). This research looks at how court experiences help to shape this socialization process. Prior research has examined parents’ influence on their child’s beliefs in areas such as political values (Dalton 1980; Jennings and Niemi 1968) and religious beliefs (Acock and Bengston 1978). This research extends the legal consciousness framework to explore the effects of parents’ court experiences on their discussions of the justice system with their child and how parents may help to create family-level views of the court process.

**Experiencing the Juvenile Delinquency Process at the Family Level**

Parents and youth experience the court process as a family unit. Many participants view the juvenile court as operating at the family level rather than at the level of the individual juvenile defendant. Rosa, a Hispanic mother in Court 2, says that the juvenile court process is
stressful for the entire family: “It’s not only the kid or whatever it is they’re charging for – it’s all around the family.” Parents discuss the juvenile court experience in family-level terms. For example, Brenda, a black mother in Court 1, agrees with the plea offer that her son Randolph accepts in a gun possession case involving mandatory detention. Comparing the plea to the prospect of a trial, she says, “It’s better. Better for him, better deal for me.” Brenda has mobility issues which make it difficult for her to visit her son at the pre-trial detention facility. Many juveniles also view the court as operating at the family level, affecting both them and their parents. When asked about his treatment in the court process, Richard, the white juvenile in Court 2 from Chapter 5, answers in terms of the collective experiences he shares with his custodial aunt Judy. Richard says, “There ain’t no harsh rules. I think we’ve been ok.”

Perceptions that the court process operates at the family level can be reinforced by legal officials. Judges in both courts instruct parents to “talk to your lawyer,” even though the defense attorney represents the juvenile and not the family. At times judges explicitly note the effects of the court process on a juvenile’s family members. In the case of Dante, a black juvenile in Court 1 whose mother, father, grandmother, and grandfather attend most court hearings, Judge Russell says:

I need to let you know that I have been watching your grandmother crying this whole time. . . . You need to know that your actions affect your family and your community.

The judge is helping the juvenile consider the family-level effects of his actions.

Many parents and youth report that experiencing the court process together strengthens their family relationship. A surprising number of families say that they have grown closer because of the court process, particularly when the charges are not domestic. Many youth
appreciate that their parent stands by them when they are in trouble. Crystal, a white juvenile in Court 2, says that being arrested and going to court “most definitely” changed her relationship with her mother.

It definitely has because me and my mom got close because we started talking about more serious things involved in my life. Then she clearly figured out about other things I was doing, so she knew. There’s nothing to hide. Before that we used to argue. Nowadays just didn’t have time to argue and she was the only one who was there for me. All of my friends, they all just like bailed. So she was the only one there for me. So it like definitely strengthened like the mother/daughter relationship thing.

Crystal’s mother Tina agrees that the process brought the two of them closer. Other parents note similar changes within their family dynamic. Monica, a Hispanic mother in Court 1 with her son Tommy, says, “I think we are more close. He sees that he got into this problem and it’s Mom that is there for him, not the boys he was with.” Monica says that their relationship “changed for the better. He talks to me more, he’s with me all the time.” Experiencing the court process together can open up new ways for parents and youth to communicate. Jessica, a Hispanic juvenile in Court 2, describes not telling her mother before her arrest that she had been bullied at school for months. When asked about her relationship with her mother now, she says,

I think [the court process] did help. I had to talk about what had happened before. I think it’s better now than it was way
Before. Before I wouldn’t tell her when I had problems with people in school. I couldn’t trust her, now I can tell her anything.

In this research, a number of families believe the court experience brings them closer together even as they also develop more negative views of the justice system. The juvenile court process may be strengthening family relationships at a cost to the court’s legitimacy.

This finding challenges prior research which concludes that the juvenile justice system brings out tensions within the family (Henning 2006; Harvell, Rodas, and Hendey 2004). Here, the delinquency process increases tensions with some families, but these are primarily families who enter the court process because of existing domestic problems. For example, Kit and Melvin in Chapter 5 enter the court process because of problems in the home. The court process appears to heighten the conflict between them, particularly when Kit feels that her position of authority in the family is threatened by the defense attorney. In a case in Court 2, Francine, a white woman whose son Jonathan is arrested for domestic assault, says that her son mocks her by saying, “My lawyer’s going to stick up for me and not go against me.” Francine asks angrily, “So where does that put me?” When the parent views the defense attorney as siding with the child, the process can both increase tension within the home and lead parents to develop more negative views of the court system. Yet with some families in which parents initiated the delinquency charges, the parents report that the court process has brought them closer. Ronald is a black father in Court 1 who called the police because of his son Terrell’s behavior at home. Ronald says that the juvenile court has “in certain aspects helped strengthen” his relationship
with his son. Terrell’s mother Cynthia agrees, saying that their relationship has improved and Terrell’s “true character is coming out.”

Most research on how individuals interact with legal institutions limits its examination of perceptions, understandings, and views to the individual-level. Procedural justice surveys, for example, ask about the individual respondent’s perceptions of the justice process (Tyler 1990; Tyler and Huo 2002). Likewise, while legal consciousness research places more emphasis on social interaction (Ewick and Silbey 1998; Engel and Munger 2003), research in this area does not focus on how individuals may experience the legal process in groups, interacting and affecting each other’s perceptions as they process a legal experience. The next two sections examine how parents and juveniles experience the juvenile delinquency process as a family unit and how many parents attempt to influence their child’s views of the justice system.

Mobilizing Justice Outside the Formal Process – Extralegal Behavior Within the Family

Many parents share their views of the court process with their court-involved child outside the courtroom, although much of this communication is done indirectly. A number of parents and youth report having many conversations about the justice process within the family. Marla, a black mother in Court 1 whose four sons have all been in the juvenile delinquency system, says she often discusses the police and the justice system at home with her children: “It is one of our main communications.” Rochelle, a black juvenile in Court 1, says that she and her mother Adele talk about the juvenile court a lot, having “girl talk” after every court date. When her mother does not attend court on the day that Rochelle needs to decide whether to accept a plea offer, Rochelle continues her case so that she can discuss her options with her mother. Tina,
a white mother in Court 2, also reports discussing the court case with her daughter, Crystal:

“During the times going to court, coming from court. A lot.”

Parents also communicate their views about the court in subtle ways in their role as their child’s advocate. Parents can influence their child by helping them to understand what is happening in court. Parents often take on an educative role in the legal process, in part because they are concerned that the defense attorney may not explain what is happening in a way their child can understand. Darius, a black father in Court 1, says that he interprets much of what is said in court for his son Dante.

He didn’t understand all the fancy words and the back-and-forth between the DA and the lawyer. But I explained it to him – I tried to break it down to him to the lowest component so to speak.

Darius, who believes that parents cannot speak directly to judges, sees himself as having an important role outside of the formal legal process. Youth say they generally find their parents’ explanations helpful, often looking to their parents rather than to the defense attorney to understand the court process. When asked about his mother’s role, Oscar, a black juvenile in Court 2, responds, “She’s here to guide me. She guided me to the toilet when I was a baby, so she will guide me in the courtroom.” In these ways, parents who feel powerless inside the courtroom or in their interactions with the defense attorney still find influence outside the formal court process.

Parents’ conversations with their child are not always neutral. Several parents do not trust the court system to adequately protect their child without their involvement. Oscar’s
mother Nicole says that she needs to be in court with her son “to help him understand what’s going on. To interpret for him what the lawyer says.” She adds that when children do not understand the court process “they can get railroaded into situations.” Some parents encourage their child to question the defense attorney’s actions. Lisa, a black mother in Court 1, says that she explains many legal issues to her son Trevor and his friends who have open court cases. She describes explaining legal motions to them, saying:

They’re like, “What is motions?” I have to tell them . . .
they don’t understand. They’re like, “Motion, I don’t know. They put it on for motions for the next week. I don’t know.” That’s all they know. But they had no clue what motions meant. And that they can also write their own motions if they feel they’re not being treated fairly or they feel their lawyer isn’t really trying to help them. They’re more out to, you know, plead them out, get the case out and just be done with them, move on to the next one. That doesn’t help the juvenile. That they’re just, it just shows really that they feel like nobody cares.

Lisa encourages her son and his friends to take an active role in their cases and warns them not to automatically trust what their defense attorneys tell them.

When parents educate youth about the dangers of the legal process and invoke their own views of what should happen with the case they are engaging in a form of legal mobilization. As discussed in Chapter 6, this research uses an expanded version of Morrill et al.’s (2010)
definition of legal mobilization: the process through which individuals define problems as violations of law or justice and decide to act to redress these violations. This chapter focuses on how parents act to redress these violations, finding that when parents cannot find influence in the court process they still look to find influence within their family. Mobilizing views of law and justice is not limited to the formal legal process. In this research, many parents engage in what Morrill et al. (2010) frames as “extralegal” mobilization (p. 656). Extralegal mobilization occurs outside of formal law. Morrill et al. conceives of legal mobilization as a “multidimensional” concept which can include behaviors outside of the formal legal system that are motivated by a legal purpose, such as directly confronting someone, approaching the media, or talking with family members (p. 656). In the juvenile delinquency context, the extralegal mobilization of law can also involve the diffusion of views concerning the legitimacy of the law and the justice system.

Parents who believe that either they or their child is not being treated fairly by the justice system appear more likely to act outside the legal process and to discuss their negative views with their child. For example, Crystal, a white juvenile in Court 2, says she and her mother Tina spend a lot of time discussing Crystal’s court case. Crystal says, “Yeah. We like talk. Like when we know it’s unfair and stuff like that.” Throughout the case, Tina is upset because she feels she does not have a voice in the process. Crystal describes her mother discussing her frustrations with the court system:

She just tells me, “You’ve got to kind of listen to what they say.” Or, “You can’t really disagree with them, cause you really have no say.” She just tells me what, she tells me how
to like, what to do. Cause sometimes I’ll just be stubborn and get rude. So she like tells me what to do step by step. She helps me a lot.

Tina helps her daughter to conform to the system and to be more passive with legal authorities even as she communicates her negative views. Parents like Tina who have strong negative views of the court process often share these views within the family while the case is ongoing. This type of mobilization has a different purpose than that identified in previous legal mobilization research, which focused on dispute resolution. For parents in the juvenile justice system, extralegal mobilization is also directed against legal authorities, rather than just occurring outside the formal process. For these families, legal mobilization occurs on two continuums - within or outside of formal law and working with or against legal authorities.

Some parents who distrust the court system do not limit their extralegal behavior to discussions with their child. Parents who disagree with what is happening in the court case sometimes try to restrict the defense attorney’s access to their child. They may fail to give messages from the defense attorney to their child. The attorney representing Crystal in Court 2 describes her mother Tina as “being antagonistic” to him over the phone. He doubts that Tina gave her daughter the message when Crystal does not return his call. Parents may obstruct the defense attorney if they resent the attorney/client relationship. Kit, one of the mothers in Chapter 5, refuses to give her son Melvin the phone when his defense attorney calls Melvin at the middle of the case. Lisa, a black mother in Court 1, undermines the legal process when her son Trevor’s attorney repeatedly schedules office meetings with her and Trevor which they fail to attend. Away from the defense attorney, Lisa says that she will not go to a meeting until the defense
attorney has received all of the police reports and other discovery in the case. She says, “What’s the point of meeting with the attorney if you don’t even have all the information yet?”

Eventually, Trevor attends a meeting with the defense attorney without his mother.

When parents believe they have been treated fairly in the juvenile process, they are less likely to share negative views of the court with their child. Angela is a mother in Court 1 who describes herself as a biracial woman with a black son. Her son Damien is charged with indecent assault and battery. Angela enters the court process not expecting Damien to be treated fairly.

I didn’t think it would be fair. You kidding me? You just hear the worst and the worst. Most of it is generated through racism, not getting a fair trial. I have that concept, it’s totally different with a white man and a black man. They’re treated differently.

Yet Angela does not want her negative views of the courts to influence Damien or her other children. She says, "I wouldn’t want to voice my opinion about that in front of them." Angela describes herself as very comfortable with Damien’s attorney, saying that she feels that she and Damien were both listened to and included throughout the court process. She believes they have been treated fairly and she does not share her initial negative views of the court system with her son. Angela says that if her son had had a different attorney, the court process “would play out differently, I would be more active.”

The court process has a different effect on Karen, a white woman in Court 1, and how she discusses the court experience with her son James. At the beginning of the case, Karen emphasizes that she and her husband Dan are trying to raise their children with positive views of the police and the justice system, in contrast to the negative views of her family and neighbors.
She says, “We specifically try to raise our children with a more open-minded view because of our background.” Describing growing up in the neighborhood surrounding the courthouse, she says, “Lots of our family’s kids were getting in trouble. The question would always be, why did the cops have to catch them, rather than what did their kids do wrong.” As the court case proceeds, Karen becomes increasingly upset that the defense attorney never challenges the police version of the incident. She begins to discuss her negative views of the legal process with James while he is in custody. “I told him that I don’t agree with how things are going.” Karen says that in the past she has always told James to take responsibility for his actions, adding, “This is the first time I’ve told him absolutely not.” How parents act extralegally can depend on how they perceive their level of influence in the formal legal system. Parents like Angela and Karen choose whether to share their views of the justice system with their child depending on their experiences in the court process. When parents perceive the court process as fair, they may see less need to try to influence their child’s views, even if they personally do not trust the justice system.

Even parents with negative views of the court process generally first try to use the formal legal process to achieve their objectives, resorting to extralegal behavior only when they are unsuccessful. Tina, a white mother in Court 1, looks to the court to help protect her daughter Crystal when she is threatened by a witness in the case. Crystal is charged in Court 1 with taking the car of her friend’s father without permission. Three months after Crystal’s arrest, Tina complains to the defense attorney that the car owner’s daughter Maureen is harassing Crystal, threatening to “gouge her eyes out.” Tina wants the defense attorney to tell the judge about these
threats. Instead, the defense attorney advises Crystal to “try to ignore her.” The attorney tells Crystal that if she sees Maureen she needs to walk away. Tina tells her daughter:

I kind of feel that she’s trying to provoke you to make her case better … She’s a grown woman. I think why can’t the courts note that in their case that she’s a grown woman. What am I going to do? Wait until she attacks my kid? And then I fight her too and then we both get arrested?

Tina wants the judge to intervene, saying, “The courts are not trying to help.” She adds, “I want the court aware that this woman is saying things. That’s what I want [the defense attorney] to do. I’m blown away that he won’t do that.” After the defense attorney walks away, Tina says that the attorney is nice, but he does not understand Crystal’s situation.

My daughter can’t turn her back to her. . . . He says to just avoid it - the streets aren’t like that. You’d never turn your back to a situation where someone is off their rocker. You can’t just avoid it, can be bad for the case, but I don’t really care. . . . The bottom line is, if you do anything to my child, I’m going to protect her.

Tina tells Crystal, “If she hits you, you open up on her. That’s her ass. I’m never going to tell you not to protect yourself.” Tina tries to use the formal system first, despite her negative views of the court. It is only when Tina is unsuccessful within the court system that she voices her own negative views extralegally with her child.

Parents who have difficulty finding influence within the court process often try to have influence within the family apart from legal authorities. A number of parents become more
active in working with their child outside the court process even as they become more passive and deferential within the formal legal system. These extralegal behaviors are often invisible to legal authorities. Although legal mobilization has been conceptualized as a continuum of activity occurring both inside and outside of formal law, prior research has focused on individuals acting extralegally in place of using formal law (Morrill et al. 2010). This research suggests extralegal behavior occurring against legal authorities within an ongoing legal process is a fertile and important area to examine. The parents in this study do not reject the formal legal process entirely. Many first try to participate in the formal legal system once they find themselves involuntarily embedded in a legal process. This finding is somewhat different than prior work on the use of civil law to resolve disputes. Prior research finds that very few individuals seek to mobilize the formal legal process (Morrill et al. 2010; Felstiner, Abel, and Sarat 1981) and that disadvantaged individuals with little relative power are even less likely to turn to formal law (Bumiller 1987; Engel and Munger 2003). Here, many individuals first seek to use formal law to mobilize their views of fairness in the case, only acting outside the system when they find themselves to be outsiders to the court process.

Developing Negative Intermediate Space – Socializing Distrust within the Family

Parents discuss their views of the court’s legitimacy through their extralegal communications with their child, particularly when they view the court process as unfair. Prior work on how individuals view and understand the legal process has not fully acknowledged its interactive nature. Procedural justice research examines the interactions between individuals and legal authorities, but does not consider how others may influence an individual’s perceptions of
the justice system. Legal consciousness research is based on the complex interaction between individual attitudes and social structure, but it has not fully examined the intermediate space through which cultural ideas are actually dispersed. Prior research has looked at the complex process through which the law interacts with the social order of the workplace (Albiston 2005), but more work is needed in order to understand how views of the law develop in family networks and how the practices of legal institutions interact with social networks more generally. This research adopts the term “intermediate space” to describe the space between individual attitudes and social structure through which cultural ideas are transmitted. The concept of intermediate space is used in prior research on the legitimacy of global legal institutions to refer to the area between formal law and indigenous or local law (Liu 2006; Merry 1992). This research extends the concept of intermediate space to the socialization that occurs within family networks.

As parents and youth process through the delinquency court as a family unit, parents help to create the meaning of what the legal process represents for their child. Many parents believe that their child perceives the court process similarly to them. Monica, a Hispanic mother in Court 1 whose son Tommy is detained on two armed robbery charges, says that they talk about their court experiences while he is in custody. She adds:

He thinks the same way I do. That it’s not fair in everything.

He wants to say something in court, he’s exactly like me. . . .

He said I wish to talk in there and say something about the case and he cannot do that.

Some parents directly attempt to transmit their law-related values to their child. Rosa, a Hispanic mother in Court 2, says that she makes a point of discussing her distrust of the police
with her son Roberto, telling him, “It’s not right what they’re doing to you.” Rosa believes that Roberto also views the juvenile court as unfair, saying “He thinks the same way I do.” Roberto echoes his mother’s negative views of both the police and the courts. These findings extend legal consciousness research by considering how notions of law and justice can be intersubjective, not merely subjective. As these parents and youth process through the juvenile court system as a family unit, many parents transmit and reinforce their ideas of the legal system’s legitimacy with their child, developing family-level views of their shared court experiences.

These family-level views of the court system do not develop in isolation from the parents’ court experiences. Parents’ frustration with their inability to participate meaningfully in the court process influences what their child perceives to be fair or unfair in the case. Judy, the aunt in Chapter 5, says that she discusses the court process often with her nephew Richard. At the beginning of the case, Judy hopes that her positive views will influence Richard’s thinking about the justice system. Yet what she ends up sharing with Richard is her disappointment when the judge does not hear evidence about Richard’s friend’s involvement in the incident. At the beginning of the case, Richard says that he does not care that his friend is not arrested, unlike his aunt. However, five months later Richard begins to share his aunt’s views. By the end of the case, Richard says that he is not being treated fairly in court because “they should have had my friend with me.” This research finds that perceptions of justice are created collaboratively by the parent and child in reaction to their court experiences. Parents like Judy help to interpret the legal process for their child, often referring to their inability to challenge the state’s case. The views of court-involved youth begin to mirror the views of their parents as they process through
the juvenile justice system. Parents interact with their child throughout the process and have a hand in creating their child’s understandings, views, and behaviors concerning the law.

Parents also help to develop and reinforce their child’s negative views of the legal process when parents demonstrate a willingness to disobey the law in front of their child when they disagree with the process. Family-level views are often built on parents’ distrust of legal authorities. In the case of Crystal, a white juvenile in Court 2, the defense attorney meets with her and her mother Tina to discuss what a jury trial would look like in Crystal’s case. Crystal faces a number of motor vehicle charges, including driving a car without the permission of the owner. The attorney explains that to effectively defend against some of the charges Crystal would need to testify under oath about what happened. The attorney warns that this means that the prosecutor could cross-examine Crystal on issues such as whether her friend’s father gave her permission to drive his car. Tina jumps into the conversation, saying excitedly, “My answer would be, ‘I don’t know. [The friend] brought down the keys, I thought I had permission,” even though the evidence in the case clearly does not support this claim. Crystal follows her mother’s lead, saying to the attorney, “Yeah, I don’t know, I thought he had permission.” By demonstrating that she would be willing to lie on the stand, Tina leads by example with her daughter. She transmits a view of disrespect towards the court process and a belief that the law should not be obeyed.

Some parents, particularly black fathers with sons in Court 1, discuss the unfairness of the justice system through the lens of racial prejudice and community violence. Ronald, a black man in Court 1, says that he talks with his son about how the justice system is experienced differently by blacks and whites.
We can talk about the unfairness of the law. For example, the Rodney King incident. Blacks and whites saw that differently. Whites can say that they see it as a horrible thing, but blacks can identify with the physicality of being beaten.

Parents’ discussions of the court system and the legal process occur in the context of their experiences with legal authorities in their community. Michael, a black father in Court 1 whose son Jamal is originally in court for armed robbery, has very negative views of the court process. When Jamal is rearrested for gun possession, Michael does not view the court system as being able to treat his son fairly. Michael says, “The system is not fair and it will never be fair. You can’t get any justice in this court.” Referring to Jamal’s new arrest, Michael says that “with everything going on out there, I don’t blame him for being here.” In Michael’s view, the level of violence in the community justifies possessing a gun, even if the law does not share this view. In line with previous research finding that members of racial minority groups experience the law differently from whites (Ewick and Silbey 1998; Nielsen 2004), black fathers often want their sons to understand that the justice system may not be fair to them. Understandings of justice are part of a relational process involving asymmetries of power and struggles against prejudice and poverty. Through their extralegal communications, these fathers help create what the law represents for their child, delineating whether justice should be expected within the legal system and whether legal authorities can be trusted.

Parents’ distrust of the justice system can help to shape their discussions of the important decisions their child must make in the legal process. Dante is a black juvenile in Court 1 who is
charged with a number of serious offenses involving a firearm, including armed assault with intent to murder. His mother Suzanne urges him to take a plea in the case because she doubts a young black man from a violent neighborhood could receive a fair trial by a jury. She says:

We do not want the system to get a hold of my baby and take him to trial and do all this because you just don’t know the outcome … You don’t know what’s in the eyes of the jury, you don’t know, even though we don’t have this much evidence. . . . They’re gonna think well these young kids today are something else. They just killing up each other left and right. . . . I just feel like by him going to trial, even though he’s innocent, you never know what those twelve jurors are gonna think, you know, “He’s young, let’s make an example” – that’s the way I feel – they want to set an example to try to stop the violence. And I don’t want my son to be used as an example.

Suzanne describes discussing her son’s options with him, saying she urged him to accept the plea offer.

He didn’t wanna take the plea, he wanted to go to court. But I talked to him. “Dante – you don’t know how the outcome is gonna be.” So he said, “Mom, I didn’t do it, I really don’t wanna take that.” I said to him, “I know that you didn’t do anything, I believe you. But you do not want these people to take your life and put it in their hands.”
Dante follows his mother’s recommendation, accepting a plea that requires at least six more months in detention. Suzanne’s mother Gladys says that she understands her grandson’s decision. Gladys says, “He’s innocent, but he don’t know what they will do. The chance he would take, lots of black kids out there with guns.” Gladys fears that a jury would blame her grandson for community-level violence and disorder, even if he is not responsible. Both Gladys and Suzanne want to take the decision out of the jury’s hands in order to have some control over Dante’s future. Dante and his family members come to a decision that is deeply influenced by their distrust of the jury process and their perceived lack of power within the justice system.

**Building Positive Collaborative Space Between Parents and Legal Authorities**

By more actively engaging parents as collaborators in the legal process, courts can encourage parents to be co-producers of justice in their child’s case. The term “co-producers of justice” refers to members of the public who engage in the justice process in ways that sustain and increase the system’s legitimacy (Moore 1997: 4). In this research, many parents seek opportunities for meaningful interactions with legal authorities, looking to engage with the justice process and to mobilize their views of fairness. Engaging parents is one unrecognized opportunity for building effective parent/court collaboration. Courts can work with parents to create positive and collaborative intermediate spaces that help build positive views of legal authorities.

Building positive and collaborative environments within the court process does not fit easily within the workspace of defense attorneys. Defense attorneys have an ethical duty to zealously represent their clients, a duty that may stand in opposition to promoting positive
views of the legal process. Similar to prior research with divorce attorneys and their clients (Sarat and Felstiner 1989), defense attorneys in juvenile delinquency court often have a hand in fostering perceptions that the legal process is unjust. For example, in the case of Weston, a black juvenile in Court 1 with his mother Diane, the prosecutor tells the judge that she is sick and requests that the trial be continued for a second time. Weston’s defense attorney objects, but Judge Russell says that he will not make the prosecutor go forward when she is feeling ill, granting the continuance. In the courthouse hallway, the defense attorney complains to Weston and Diane, saying, “I think the prosecutor is full of shit. . . . My guess is that really she wanted more time, so she said that she had a fever.” Diane agrees, saying, “Yeah, I see that she comes to work in 200 dollar heels. If she’s so sick, then she couldn’t have come to work today. That’s what normal people would do.” The defense attorney encourages Diane’s belief that legal authorities sometimes lie in the courtroom and that the truth does not always come out in the legal process. Defense attorneys may also foster the impression that the court process is arbitrary. In Weston’s case, the defense attorney points out that he will do what he can to ensure they will have a favorable judge on the day of trial. The attorney says to Weston and Diane:

Notice how I said to the judge, “Are you going to be there on [naming particular court date]?” I don’t want to do this in front of anyone but Judge Russell. If it’s not him, then we go to a jury.

Defense attorneys instruct clients and family members not to disclose information to other legal authorities, insinuating that they cannot always trust them. For example, Jessica, a Hispanic juvenile in Court 2 with her mother Maritza, is warned to not talk with her probation officer
about a previous incident at another school. Often, defense attorneys themselves do not see the court as legitimate, contributing to the negative views of legal authorities held by juveniles and their family members.

Yet parents have a different role in the court process than defense attorneys. They have to take a long-term view of their child’s social development. Even parents who distrust the justice system want their child to learn a positive lesson from the court experience. For example, Rosa, a Hispanic mother in Court 2 with very negative views of the police and the courts, still says, “If he did what they say he did, he should be punished so he can learn.” Some parents, particularly parents of sons in Court 1, hope the court process can be an effective wake-up call to their child about the reality of growing up in a violence-plagued community. Brenda, a black mother in Court 1 who describes police treatment of individuals in her community as “like back in the slavery days,” says she thinks that her son is taking a positive message from his court experience. She says, “I think the court system does teach him a lesson about how to become a man,” and that being in court “teaches him to grow up faster.” Ronald, a black father in Court 1, says that his son Terrell has learned an important lesson from the court process and that it “shocked him into reality.” Before initiating a charge of domestic assault, Ronald was worried about his son’s behavior at home and in the community. He says, “[Terrell] had an attitude that could cause him to get shot.” Ronald adds, “He needs to see the road where he is going. It is different for a young black child going through the system.” Ronald believes he can use the court process to educate his son. He has long-term goals in mind, far beyond the circumstances of this particular case. These families want their child to learn important life lessons from the juvenile court, viewing the legal process as a potentially positive socializing experience.
Some parents continue to see the court as a site of potential collaboration even when the court process disappoints them. Even parents with negative views of the court process seek opportunities to work with legal authorities to bring about positive changes in their child’s behavior. Lisa, a black mother in Court 1 who distrusts the court process, says, “They need to talk with the parent about how to best help the child. It’s not so cut and dry.” She adds, “I think if there was more parental involvement [in court], the better off the juvenile will be.” Marla, a black mother in Court 1 who also has negative views of the process, agrees. She believes that juvenile dispositions need to be developed with both parental and judicial input. Discussing who can make the best decisions about a child’s case, Marla says:

Well, between the judge and the parent. You know, not all the parent because then we wouldn’t need a judge. So between the judge and the parent. You know? Because the parent knows the child. She knows if he’s going to do certain things again. . . . Give us the rights to tell our kids what we’re going to do with them. Let us punish them. But I guess they’re saying that we can’t control our kids so they have to do it. That’s what, that’s how I understand it. But their punishment just makes them angry. That’s the bottom line. It just makes the kids, the boys especially, angry. And make them do bad, worse things. Or don’t care.

Marla believes that a parent can add value to the court process because of his or her close relationship with the child, but she acknowledges that judicial authority is also necessary. Many
parents believe they can be important partners in the juvenile justice process, helping the court to more effectively socialize their child. Both Lisa and Marla believe that increasing parental input would produce better outcomes for children in court.

Parents also contend that their involvement can help the court to become more responsive to the community. Their concern with the exclusion of parental input extends beyond their individual cases, particularly in Court 1. Monica, a Hispanic mother in Court 1, believes that increasing parental involvement in the case would help legal authorities to contextualize the incident and the problems the child faces. She is frustrated that the judge only hears from the lawyers and the police officers, and not from parents in the community. She says:

They need to hear more from people, to listen to them. They don’t let the people talk. They only listen to what the prosecutor says or the lawyer says. They don’t let people say what they need to say.

Monica feels that the police and other legal authorities “don’t do what they have to do. They need to be more on the street. If they have more people on the street [they] would know what was going on.” Monica would like to see “more talking” in the courtroom. She says, “That’s the only thing that I don’t like. If they learned more about us, we would learn more about them or understand better.” Darius, a black father in Court 1, agrees that the courts should be more responsive to community needs:

It’s a whole lot more they can do, instead of just dealing with people through shuffling around papers in their lives, they can get a little more involved . . . adding on to the community for
the better, coming out and speaking to people.

Darius complains that instead, “It’s almost like dealing in cattle, because the doors are revolving, all day, five days a week.” Like many parents in this research, Darius believes that courts should work to better the community and to right social wrongs rather than simply processing cases. Parents in Court 1, like Monica and Darius, want to challenge current court practice, demonstrating a collective interest in how the court ignores the views of parents in their community. They want to collaborate with the court to build partnerships in a way that fits their children’s needs and the needs of other parents in their situation.

The two juvenile courts in which this study is based are not building effective partnerships with most parents. While many parents engage in negative discussions with their child about the court process, others fail to see any important role they can play in developing their child’s views of legal authorities. Some parents in both courts let their child decide whether to discuss their court experiences. For example, Jean, a white mother in Court 1, says that she does not know how her son Cameron views legal authorities and has not discussed the court process with him. Describing Cameron as “not a chatty person,” Jean says, “I don’t know how he sees the police. Or even like the court. We haven’t had a bad experience.” In an interview without his mother present, Cameron expresses very negative views of legal authorities. Not all parents feel that discussing their child’s perceptions of the justice system is necessary or helpful, even when there are lessons they would like their child to learn from the court experience.

Although Darius, a black father in Court 1, says that he wants his son Dante to learn “to give a little more respect for the law,” he does not challenge his son’s negative views. “You know, he sees TV and he understands and he grew up in the community – he’s seen a lot of things I’m
pretty sure. And he has his own opinion, once again – he has his own opinion.” Parents like Darius do not believe that trying to affect their child’s views of the justice system is part of their parental role. Some parents who choose not to discuss the court process with their child also want the system to be more collaborative. Lisa, a black mother in Court 1 who wants the juvenile court to solicit parental input, does not discuss the juvenile court process with her son Trevor. When asked if she and Trevor spend time talking about his case and his experiences in court, she says, “He would rather not.” She knows Trevor has negative views of the justice system, saying, “Oh, he doesn’t like it all. He’s just seen too many horror stories.” Some parents who seek a more active role in the legal system do not see the current court process as sufficiently connected to their family to warrant discussion. Parents who experience the court process as outsiders may see no reason to speak positively about the court process or to challenge their child’s negative views. However, if these parents were included in a more collaborative environment and considered themselves co-producers of justice, they might become more active in the court process and speak about the justice system more positively within the family.

The intermediate space that develops through these families’ court experiences is primarily negative. Views of the law and the justice system are being created collaboratively within the family, but these family-level views focus on the barriers families face in the court process and their inability to participate. These family-level views develop in reaction to the court process, but not in collaboration with it. In many cases, defense attorneys unwittingly encourage parents’ negative views. Still, many of these parents hope to create a positive and collaborative intermediate space within the court process where their participation could be
appreciated and valued. Juvenile courts have the power to open up new areas of reciprocal influence by seeking the active participation of parents.

Conclusion

Parents with little influence inside the legal process often find ways to mobilize their beliefs outside the formal court process by discussing the court experience extralegally with their child. Many parents find themselves treated like outsiders in the court environment, but they remain insiders with relative power within their families. This research expands the conceptualization of relative power used in socio-legal research. Relative power is usually examined along a continuum of social advantage or disadvantage (Morrill et al. 2010; Portillo 2011; Felstiner, Abel, and Sarat 1981), but it may actually have many different dimensions. In this study, relative power refers to social advantage or disadvantage, but it also relates to an individual’s role or position in a particular social environment. Even parents who are quite disadvantaged in a socio-economic sense may wield significant power within their family environment. For individuals who have little relative power in other social situations, holding on to their authority within the family can be particularly important. Parents who cannot participate meaningfully in the court process may become passive inside the court system, but they often are not passive in their home environment where they can have the most influence. Extending the concept of relative power to include power held in other social systems can support a more complex understanding of how law interacts with other social institutions.

The juvenile delinquency court interacts with the social institution of the family to create a unique set of dynamics. Youth do not just attend court sessions with their parents; they often
experience law *through* family members. The relationship between parents and children is an important place to closely observe the intermediate space between social structure and individual agency where cultural ideas are dispersed. Parents help to create what the law represents for their children, including whether they situate themselves as influential actors inside or outside of the official process. In this research, views of the court’s legitimacy are often created collaboratively through juveniles’ social interaction with parents and other family members. Most parents discuss the court process with their child to some extent, helping to shape the child’s law-related understandings, beliefs, and behaviors. These parents and youth develop family-level views of the justice system as they process through the juvenile court as a family unit. This finding extends prior research by highlighting the role of institutional practices in shaping views of the legal system. The juvenile court facilitates the creation of a negative intermediate space through practices and policies that exclude parents from meaningful influence in the legal process. In these two courts, experiencing the court process together as a family often creates, reinforces, and intensifies negative views of the law and legal authorities.

By reaching out to parents as potential collaborators, juvenile delinquency courts can try to develop a more positive intermediate space that builds bridges between parents and legal authorities. More research is needed, but prior work suggests that how parents respond to their child’s delinquent behavior strongly influences whether a child continues to engage in anti-social activity (Snyder and Stoolmiller 2002). Finding ways for court personnel to collaborate with parents during the court process could help youth to develop more positive views of the legal process. Experiences with the police and court authorities during adolescence are particularly formative (Hagan, Shedd, and Payne 2005). Adolescence is the time for developing attitudes
about the legitimacy of law and its capacity for justice (Hagan, Shedd, and Payne 2005; Tapp and Levine 1974). Increasing the level of trust youth have in legal authorities has been called one the most effective long-term strategies for preventing crime, particularly with youth considered high-risk (Sherman et al. 1997). Engaging parents in a meaningful way in the juvenile justice process may build positive views of the law within the family as well as also potentially diminishing future delinquent behavior.
Chapter 8

Conclusion

This research takes an in-depth look at the experiences of thirty families in two urban juvenile delinquency courts in the Northeast United States, focusing on how parents experience the justice process. The study examines parents’ views of the juvenile delinquency court process, their interactions with legal authorities, and how these interactions affect their behavior in the formal legal case as well as outside the court process in communications within the family. Prior research has not examined how parents and youth experience the juvenile justice system longitudinally. Likewise, methods used in prior work have not captured the development of legitimacy perceptions as interactive and as occurring both inside and outside of the formal court environment. This study extends procedural justice theory, the leading framework used to understand whether individuals experience the criminal and juvenile justice processes as fair and just. Qualitative methods help to illuminate the complex nature of legal interactions and bring to the surface new ideas about the sources of negative views of the law and disengagement from the system. Trust in the court process is at historic lows, particularly in disadvantaged urban communities where a disproportionate number of juvenile prosecutions take place (Rottman and Hansen 2001; Tyler and Fagan 2008; Feld 1999). It is crucial that we understand how these negative views of legal authorities and legal institutions develop, particularly if institutional policies and practices themselves are undermining legitimacy.

This concluding chapter synthesizes the findings of this research, examining its methodological, theoretical, and policy implications, as well as its limitations. I begin with a
summary of findings, focusing on integrating insights from the legal consciousness and legal mobilization literature to expand the procedural justice framework. Next, I discuss two important insights in more detail: how individuals’ trust in the courts differs from their trust in the police and the necessity of encouraging constructive challenges to legal authorities in order to maintain a strong justice system. Finally, I examine how these findings concerning parents’ experiences in juvenile delinquency court fit into current juvenile justice policy and debate.

**Integrating Insights from Legal Consciousness into Procedural Justice Theory**

Integrating insights from legal consciousness research into procedural justice theory helps us to better understand how parents experience the juvenile delinquency court. Procedural justice theory is the leading framework for understanding how individuals assess their experiences with legal authorities and institutions with respect to criminal courts. This line of research has been strongly influential in criminal justice research and policy (MacCoun 2005; Tyler 2007; Franke, Bierie, and MacKenzie 2010). Yet procedural justice work has been criticized for relying on “a strikingly narrow conception of fairness” (Berrey, Hoffman, and Nielsen 2012: 3). Research in legal consciousness and legal mobilization, on the other hand, has provided more contextualized accounts of individuals’ experiences of the legal system. These qualitative studies find that power, inequality, and resistance are central to understanding how people interact with legal authorities and legal institutions (Merry 1990; Ewick and Silbey 1998; Calavita 2001), concepts not emphasized in procedural justice research. Legal consciousness and legal mobilization research find that individuals’ understanding and knowledge of the legal process greatly affect their participation and shape the range of opportunities they view as
available to them in the legal process (McCann 2006; Berrey, Hoffman, and Nielsen 2012). This research has largely limited its focus to experiences in the civil law context. The present research extends procedural justice theory by providing a qualitative study of parents’ experiences in the juvenile delinquency court that utilizes insights from legal consciousness and legal mobilization research.

As evidenced in Chapter 4, these two juvenile delinquency courts struggle to provide juveniles with an adversarial process that also treats accused youth differently than adult defendants. As discussed in more detail in a later section, the fact-finding objectives extolled by the Supreme Court in In re Gault (1967) have not come to fruition in these two jurisdictions. Judges rarely hear more than a brief description of facts from the prosecutor reading from the police report. Defense attorneys take a central role in the contemporary juvenile court, speaking on behalf of youth and parents, but they often do not voice the concerns of juveniles and their family members concerning the facts of the case and the juvenile’s circumstances.

The parents in this study experience a process of delegitimization and disengagement as they process through the juvenile delinquency court. Using two case studies, Chapter 5 details the evolution of parents’ views of the justice process as they interact with legal authorities during an ongoing case. Parents enter the court system wanting to engage with the court, believing they will have an important role in the legal process because of their status as parents. As parents interact with defense attorneys, judges, and other legal authorities, however, they become increasingly frustrated by their inability to participate meaningfully. As the process continues, parents increasingly feel like outsiders rather than participants with important and valuable perspectives to share pertaining to their child. This research captures the complexities in how
participants actually experience the legal process that would not be captured by the large-scale survey approach taken by procedural justice work. Procedural justice surveys question respondents in the general population long after their interactions with legal authorities are over and ask questions that could relate to a number of different kinds of interactions. Yet the legal process is often long and complex. Court participants have multiple interactions with various legal authorities such as police officers, judges, probation officers, and defense attorneys as the process unfolds. By using a longitudinal method that follows parents and youth through the court process, this research demonstrates that views of justice and legitimacy develop through an emergent process that involves a complex interaction of experiences and relationships.

The large-survey approach of procedural justice research finds that individuals are more likely to defer to and obey legal authorities when they believe they have been treated fairly in a legal interaction (Tyler 1990, 2003; Sunshine and Tyler 2003; Piquero et al. 2005; Murphy, Tyler, and Curtis 2009). These quantitative surveys measure individuals’ perceived obligation to obey legal authorities through an index that includes questions such as “People should obey the law even if it goes against what they think is right” and “I always try to follow the law, even if I think it is wrong” (Tyler 1990: 187). This emphasis on obedience and deference may actually mask the end result of participants’ dissatisfaction with the court system, which is passivity and disengagement. Not only do the parents and youth in this study view the court as less legitimate as the case proceeds, they also disengage from the court process and become more passive in their dealings with legal authorities. They ask fewer questions of the defense attorney, stop urging the attorney to question the state’s version of the case, and pay less attention to the court process. Outwardly, these participants may seem to believe that the court is legitimate because
they are no longer challenging the process or asking to express their concerns to the judge. In contrast to the large-scale survey approach of procedural justice and legitimacy research, more in-depth qualitative methods can illuminate and draw out perceptions of law and courts that individuals themselves may not recognize and that survey research can easily overlook. Survey questions would be unlikely to capture the extent of parental disengagement found in this study. In this research, many respondents did not acknowledge their passivity, commenting they did not believe that their behavior within the process had changed. Only by combining observations and interviews over time do these changes become apparent.

Parents’ passivity and disengagement often leads them to modify their behavior while the legal case is still ongoing, affecting how the court process operates. Parents who enter the court process wanting and expecting to participate start to disengage during the course of the proceedings, no longer questioning the defense attorney’s decisions or seeking to have their child’s version of the underlying events heard in court. Procedural justice research restricts itself to examining behavioral changes after the legal interaction is over. Here, changes in their perceptions of legal authorities affect parents’ behavior within the case. By utilizing a legal consciousness framework, we can better understand the potential effects of these behavioral changes. Legal consciousness focuses on how individuals’ understandings of the law and their behavior in the process help to give meaning to the legal process itself, viewing the law as “a process of ongoing mutual causation” (Ewick and Silbey 1998: 38). Longitudinal studies of participants in the juvenile court allow a closer look at this process in action. Although the constitutive nature of the law is central to legal consciousness research, prior work has been
criticized for not examining these processes in a way that connects theory with actual lived experiences (Mezey 2001).

By following parents and youth as they experience the justice system, this research is able to provide a more detailed account of how these constitutive processes actually work. As a result of parents’ disengagement, certain issues are never raised in the courtroom. Parents’ disengagement affects how the facts of the case and the circumstances of the individual child are framed in the courtroom. Over time, parents’ collective and cumulative disengagement can affect the character and nature of the court process. In this research, the court does not confront many allegations of police misbehavior or prosecutorial overcharging because these challenges are not made to the judge. Even if the criminal incident does not involve allegations of police misconduct, the court loses out on hearing participants’ stories when they no longer seek opportunities for participation and voice. Parents can provide the court information that places their child and his or her delinquent behavior in the context of family and community values. Judges sitting in juvenile court in the United States are overwhelmingly white, well-educated, and wealthy (American Bar Association 2003), although a number of judges in these two courts are black. If parents were encouraged to participate, they could help to uncover cultural biases that can infiltrate many juvenile courtrooms. Over time, increased parental involvement could lead to judges issuing less restrictive juvenile sentences, helping to reduce the over-criminalization and disproportionate incarceration of members of racial minority groups.

Chapter 6 extends procedural justice research to examine the meaning and significance of opportunities for voice. Procedural justice research establishes that having voice is a key factor in whether participants view the court system as fair (Tyler 1990; MacCoun 2005), but little is
known about how participants want to use voice or why voice is important. Examining the content of voice deepens our understanding of how the court process is experienced. Many parents in this research want voice in the court process to challenge the framing of the incident by the police. On a broader level, they hope to contest the extent of police power in their communities, a complexity not addressed in procedural justice research. Parents also want to see their authority within the home reinforced by the legal process. However, parents have difficulty finding influence or any power in the court system. They often do not fully understand what happens in the courtroom. In many ways their participation is discouraged by judges and defense attorneys. Many parents believe that their participation is wholly controlled by the defense attorney and the judge and they fail to recognize the few opportunities they have for voice. Parents simultaneously resent having to rely on defense attorneys to communicate their views to the judge and have difficulty seeing themselves as legal actors.

This research incorporates an analysis of relative power from legal consciousness and legal mobilization research that is missing from procedural justice work. Qualitative socio-legal research has a long tradition of chronicling the struggles and oppression of disadvantaged people in the legal system. Individuals turn to the court process not only to resolve their immediate disputes, but because they believe that the court has the potential to justify their claims and to reframe the social order (Merry 1990; Sarat and Felstiner 1995). Yet prior work in legal mobilization focuses mainly on dispute resolution in the civil arena. A surprising finding here is that these individuals who find themselves in the legal system involuntarily, either as defendants or as a defendant’s family member, still view the court process as holding the potential for social change. This research extends prior work, which finds that very few individuals seek to mobilize
the formal legal process, particularly individuals who are poor or members of racial minority
groups (Bumiller 1987; Engel and Munger 2003; Galanter 1983; Morrill et al. 2010). Many of
the parents in this study, as well as a number of youth, seek a kind of reciprocal accountability
from the courts where both youth and police officers would be held responsible for their
behavior. These participants want to use the court process to invoke their views of how the
justice system should operate. Often, they are attempting to redistribute some measure of power
between community members and the police.

Parents who are denied meaningful participation in the formal court process often seek to
influence their court-involved child outside the court process. Chapter 7 examines this extralegal
aspect of voice. Procedural justice research only addresses opportunities for voice within the
formal justice system, missing how opportunities to express views outside the formal system
may also affect perceptions of legitimacy. Parents who become frustrated with the juvenile court
discuss their negative views in extralegal conversations within the family. These parents actively
influence their child in their home environment, even when they have little voice in the formal
court process. Parents help their child to interpret what is happening in court, to engage in
discussions of the court system (which are often negative), and to find subtle ways to obstruct the
legal process. While prior research places extralegal conduct as happening away from and in
place of the formal legal process, here extralegal mobilization occurs during an ongoing legal
case. Extralegal mobilization itself is not static. Parents may try to instill their views of the
court as legitimate at the beginning of the process and then may change both their own views and
their message to their child by the end of the case. In addition, while previous legal mobilization
research examines individuals trying to activate the legal system in order to work with legal authorities, these parents work against legal authorities from within the legal process.

These parents and youth experience the justice process as a family unit, often creating an intermediate space within the family where parents transmit their attitudes and socialize their views. While procedural justice research largely conceptualizes and measures perceptions of legitimacy as an individual phenomenon, this research finds that views of the justice system are interactive and intersubjective. Understandings of the law and its ability to be just develop not only through the individual’s interactions with legal authorities emphasized in prior research, but also through interactions with non-legal actors, such as family members. Parents help to create the meaning their child takes from the court process. Since these family-level views often stem from parents’ frustration with their inability to participate in the formal court process, this intermediate space is mainly a forum for discussing distrust of the formal legal system.

There are limitations to this research, some of which are shared by all intensive qualitative research. This study includes only a small number of subjects. The thirty families are involved in two urban juvenile courts in the same state. These families’ experiences may not be generalizable to different courts in other geographic areas, a common problem in qualitative juvenile justice research given the great variation in juvenile policy and practice (Feld 1991). This research is also limited to families declared indigent by the court and to juveniles represented by a defense attorney employed by an organization with a youth development mission. The study does not include interviews with juveniles while they are detained. Families with different characteristics may not experience the court process in the same way. Although
limiting its generalizability, this study’s focus on a small number of families increases its ability to accurately and reliably understand how these families experience the juvenile court system.

Another possible limitation is that to obtain informed consent for the study, participants were made aware of the study’s purpose. This information could influence the participants’ statements. However, these reactive effects are likely minimal as the research design allows me to probe for underlying meaning by interviewing participants at different time points. In addition, combining multiple methods of intensive interviewing with direct observations allows for triangulation of the results and provides a more detailed and balanced portrayal of how the juvenile delinquency court is experienced by these families. While these limitations may be present, the objective of the study is to generate new theory that examines parents’ ability to influence the juvenile court process and the law-related attitudes of their children. The next three sections examine themes that cross over the findings of the substantive chapters.

Trust in Courts Operates Differently Than Trust in Police

In this research, individuals’ trust in the court system operates much differently than their trust in the police. Most procedural justice work focuses on interactions with the police, tacitly assuming that trust in police and trust in courts work through separate yet similar processes (Tyler 2003; Tyler and Huo 2002). Tyler (2003) finds that the same behavioral model applies to individuals’ evaluations of both the police and the courts. Individuals are believed to value similar things, such as having an opportunity to be heard and being treated with dignity, in their interactions with all legal authorities regardless of whether they are interacting with police officers or judges. However, for these parents in juvenile delinquency court, views of the police
and the courts involve intersecting processes. Many parents look to the courts when they feel wronged by the police, even though their presence in the court process is not voluntary. The persistence of their positive views of the court depends to a large extent on courts holding police officers accountable for their actions. Parents who cannot use voice in the court process to contest police action, either directly or through the defense attorney, lose faith in both the courts and the police.

Procedural justice and legitimacy theory fail to note the critical edge underlying many participants’ experiences with the court system when it gives similar treatment to individuals’ trust in the courts and their trust in the police. This research finds that trust in the courts and trust in the police are often directly at odds with each other. Many of the parents in this study enter the legal process viewing the juvenile court as a potential site for social change. Often, parents and youth do not simply want voice and dignified treatment by judges; they also want to challenge the reach of police power and to have their unique insights regarding their child recognized in the courtroom. At the beginning of the case, they believe that they can be active agents in the legal process. They want to speak up and have their version of events be heard, potentially changing how the legal system operates.

These parents’ faith in the court’s ability to address social harm and to act as a catalyst for change may appear to be surprisingly optimistic. Prior research suggests that individuals in disadvantaged communities do not seek opportunities to engage with the official legal process (Sampson and Bartusch 1998; Kirk and Matsuda 2011). In this research, even parents with negative past experiences with the juvenile court re-enter the court process with optimistic views. They begin their new court involvement viewing the juvenile court as a potential site for social
change. They believe that this time the judge would listen to their views; they are still hopeful that this court experience would somehow be different. Previous work also demonstrates individuals can demonstrate unwavering support and faith in the law, even in the face of discriminatory treatment (Ewick and Silbey 1998; Conley and O’Barr 1990; Lazarus-Black and Hirsch 1994). There may be different reasons behind these present findings. Prior work often focuses on the phenomenon of hegemony, where individuals’ unequal treatment under the law is not always visible. Their positive views of the law persist because inequality can become patterned and “naturalized,” going unnoticed in individual interactions (Silbey 2005: 330). In contrast, the parents in this research often recognize their unfair treatment in the court process, complaining how the system does not take their views into account. Parents’ pervading trust of courts seems to override their specific negative experiences in the courtroom because of their strong suspicion, distrust, and anger concerning the police. Many parents continue to have faith in the court system despite their disappointing personal experiences because the courts appear to be the only option available to them to challenge police misconduct.

This study reinforces a recent criticism of procedural justice research which questions the existence of the broad shared values relating to justice and fairness assumed by the procedural justice approach (Berry, Hoffman, and Nielsen 2012). The perceived obligation to defer to legal authorities which is central to procedural justice theory is derived from the principle that the “law expresses moral and social norms that are widely held by both dominant and subordinate social groups” (Tyler and Fagan 2008: 234-35). Yet even when individuals share similar values relating to fairness at a general level, there can be significant disagreement about what is fair in a particular context (Silbey 2005; Berrey, Hoffman, and Nielsen 2012). The current research
furthers this criticism, finding that procedural justice research does not adequately consider community-level relationships with law enforcement. These relationships can affect participants’ objectives concerning the police in the court process. Prior research finds that members of racial minority groups and the poor experience state action differently and are more likely to suffer mistreatment at the hands of the police than whites and the well-off (Harris 1999; Weitzer and Tuch 2006; Sigelman et al. 1997; Terrill and Reisig 2003). In addition, members of disadvantaged groups like blacks and Hispanics may be more likely to value the use of rights discourse to protect themselves from the dominant group (Crenshaw 1988).

What is surprising here is that very few parents invoke the language of rights when discussing their court experiences. Instead, they use terms indicating a concern with justice and fairness. In this research, black mothers and fathers in Court 1 seem particularly driven in their desire to use the court process to monitor law enforcement and to provide a check on police action in their community. Even though parents in this research employ a justice-based rather than a rights-based discourse, this finding is in line with recent work involving jurors in criminal cases which suggests that black jurors are more likely than white jurors to look to the courts to protect the due process rights of defendants (Farrell, Pennington, and Cronin 2012). More work is needed to examine whether members of racial minority groups are more likely than whites to look to the courts to police state actors in settings other than juvenile delinquency courts.
Questioning the Objectives of Legitimacy Theory – Maintaining Legitimacy or Legitimating Injustice?

This research complicates procedural justice and legitimacy theory’s focus on deference and obedience to legal authorities. This research suggests that procedural justice frameworks do not sufficiently note criticisms of the justice system. The concept of voice occupies a peculiar position in procedural justice and legitimacy theory. In this framework, having voice makes an individual more likely to perceive the justice process positively, making it more likely that he or she will defer to legal authorities. Thus, increased voice in the legal process leads to more deference. Yet a focus on empowering police and deferring to legal authorities needs to allow for the possibility that the police can overstep their constitutional boundaries. Much of procedural justice research measures the extent to which individuals continue to defer to the police, even when they think that what the police are asking them to do is morally wrong or even illegal. For example, one survey question in the seminal work *Why People Obey the Law* (Tyler 1990) measures agreement with the following statement: “If a person is doing something, and a police officer tells them to stop, they should stop even if they feel that what they are doing is legal” (p. 187). Following a police officer’s directives without question is seen as indicating a belief in the legitimacy of legal authorities. An important objective of procedural justice is to empower police officers to use their discretion (Sunshine and Tyler 2003), but expanding police discretion is directly at odds with what parents in this research believe is most essential to improve the justice system. These parents believe that greater judicial oversight of police officers is needed, the opposite of encouraging increased police discretion. For these court participants, increasing challenges to police behavior in court would enhance their positive views
of the justice system. A framework that seeks to understand how experiences with legal authorities affect how all individuals view and develop trust in legal institutions must consider that legal authorities do not always act fairly.

The legal consciousness and legal mobilization traditions have been more wary of the potential legitimization function of the legal system. These bodies of research examine the extent to which legal institutions are places of entrenched power that sustain social inequality (Sarat 1990; Ewick and Silbey 1998; Marshall and Barclay 2003). When individuals are able to challenge how legal institutions operate, they can destabilize the existing structure to make way for change (Silbey 2005; Fleury-Steiner and Nielsen 2006). Recognizing parents’ concerns with the police could potentially lead to a stronger justice system that better addresses community problems. As Donald Black (1973) writes, without the mobilization of the law or the ability to express conflict, the court system “lies out of touch with the human problems it is designed to oversee” (p. 126). Criminal courts are not typically viewed as playing a role in ferreting out police misconduct, but in an adversarial system the expectation is that the judge will hear from both the prosecution and the defense (Rosett 1967; McConville 1998). This research adds to the growing body of work on the unintended consequences of a justice system that relies heavily on plea bargaining. Most criminal cases are resolved by plea agreement and no full hearing to determine what happened ever occurs (Sourcebook 2010). The court’s role as fact-finder is severely diluted in these cases. As a result, the courts may be growing increasingly out of touch with problems endemic to the criminal justice system, such as police misconduct. This research suggests that more attention is needed to the interaction between voice and engagement in the criminal justice process as these relate to legitimacy. To achieve increased trust of and
satisfaction with legal authorities, courts may need to incorporate a degree of constructive challenge and to tolerate a level of de-stabilization of the current system.

Understanding the challenges to state action that participants would voice if allowed to in court adds depth to the recent call for legitimacy theory to incorporate notions of power and interaction (Bottoms and Tankebe 2012). Bottoms and Tankebe assert that legitimacy must be viewed as “always dialogic and relational” in character (p. 129), focusing on the interactions between those who have power and those who do not. Arguing that legitimacy scholars have not sufficiently explained why legal compliance should be their central focus, Bottoms and Tankebe suggest that the more fundamental question is “whether a power-holder is justified in claiming the right to hold power over other citizens” (p. 124-125, emphasis in original). In contrast to what they characterize as studies of “audience legitimacy” (p. 132), they suggest that future research should ask what motivates the actions of power-holders in the justice process with the goal of better understanding “the moral rightness” of their authority (p. 259). While this research supports Bottoms and Tankebe’s suggestion that a more dialogic understanding between legal authorities and court participants is needed, the findings here suggest a different direction for future research. We do not fully understand the goals and objectives of those with little relative power in the justice process, like parents in the juvenile delinquency court. More research is needed to show us how to meaningfully engage participants in the court process, with a particular focus on the involvement of socially disadvantaged individuals. Finding ways to genuinely bring court participants into the dialogue would seem to have more transformative potential than a focus on power-holders, whose views the legal system largely already represents. This research suggests that legal authorities should encourage parents to become co-producers of
justice in their child’s case. Examining what parents can bring to a dialogue transforms the study of legitimacy from narrow questions of deference and compliance to larger questions of power, justice, and the role of criminal and juvenile delinquency courts within a community.

This research questions the role that these two juvenile courts currently play in encouraging participants’ passivity and disengagement in the legal process. Previous research finds that working-class and poor parents are less likely to encourage their child to advocate for him or herself in governmental systems such as schools than wealthier parents (Lareau 2011). This research uncovers how legal authorities and institutions may be encouraging parents’ passivity in disadvantaged areas. In this study, both the court and the defense attorney play pivotal roles in reinforcing parents’ courtroom disengagement. Throughout the legal process, parents are discouraged from acting as agents of change in the court system, even in the face of possible police misconduct. Court policies and practices that encourage passivity and deference by restricting participants’ opportunities to actively engage may be short-sighted if a key goal is to reinforce courts’ legitimacy. Legal authorities and institutions need to be aware of and held accountable for all of the consequences of their actions, including practices that encourage negative extralegal behavior by court participants.

This research supports a more complex way to conceptualize legitimacy and justice, looking beyond obedience and deference to an approach that encompasses challenges to state action. Active engagement in a legal process, rather than the passive deference that comes from resignation, should be an important component in theorizing legitimacy. Individuals who have given up the courtroom fight may be more cynical in addition to being more deferential. These parents may defer to legal authorities at the end of the court process, but only because they are
no longer actively participating. A theory of legitimacy that encompasses both deference and shared norms needs to acknowledge constructive challenges to the legal system if it seeks to explain the experiences of all participants. Genuinely shared social norms must be built on active dialogue and critique, not passive deference. The absence of opportunities to challenge the current justice system’s operation may be a major barrier to forming these shared values. Parents may not be satisfied with voice and dignified treatment in the court process. They want to challenge the reach of police power and they want their unique insights regarding the child to be recognized by the court. Legitimacy theory can help explain how individuals experience the justice process by validating different views and encouraging challenges to the current system. Not only will this provide a more complete portrayal of the justice process, but it can also create new avenues for increasing the legitimacy of legal institutions through positive engagement with the court system. The next section builds on this central theme of increasing the legitimacy of the justice system by turning to the historical mission of the juvenile courts.

Socialization in the Juvenile Delinquency Court - Informal versus Formal Social Control

For the juvenile delinquency court to address children’s behavioral problems effectively and be a positive socialization force for delinquent youth, the court must resolve its ambiguous relationship with parents. The juvenile court requires parents to be present at all hearings involving their child, but it does not give them a clear role in the proceedings. The juvenile justice system has always involved a conflict between the power of parents and the power of the state in supervising children. Typically, parents must cede some of their authority and direct control of their child to the state, with the juvenile justice system acting as the functional
equivalent of a parent under the *parens patriae* doctrine. Yet this research demonstrates that parents resist relinquishing their authority in the home to legal actors. They expect to actively participate in the court system in their parental role. Parents’ inability to speak in any meaningful way during the court process recalls the early days of the juvenile court, when parents were blamed for their child’s misbehavior. In the two courts studied in this research, denunciations of parents are more subtle than outright, but many parents report feeling ostracized and disrespected by the court. They experience the court process as outsiders with no defined role. Parents are believed to play a crucial role in the socialization of their child (Patterson and Dishion 1985; Gottfredson and Hirschi 1990; Snyder and Stoolmiller 2002), but their viewpoints are often not voiced by the defense attorney or heard by the judge. Parental participation is sought after in other contexts. For example, schools view the positive engagement of parents as a key objective that can greatly benefit children’s development (Rutherford, Anderson, and Billig 1995; No Child Left Behind Act of 2001). Ironically, parents are already present in the juvenile court and often eager to engage with legal authorities, but they have difficulty finding ways to participate meaningfully in the legal process.

The continuing tension between two contradictory aims of the juvenile court may help to explain the court’s difficulty in integrating parents. The delinquency court is designed as a locus of social control, where legal authorities take on a role in rearing children. However, it is also a place of legal rules and due process, where protecting children’s rights is a top priority (Feld 1999; Scott 2002). Despite this tension, the evidence that parents and youth leave the juvenile delinquency court with decreased trust in the justice system is significant. If the juvenile delinquency court is primarily a system for socializing troubled youth, giving parents an
increased role in the court process may help to forestall the negative extralegal communications with their children this research uncovers. If the juvenile justice system is instead a system of legal rules and due process, it needs to account for the decreased legitimacy that results from this formal process. Both views of the juvenile justice process encourage more meaningful involvement of parents to create and maintain positive views of the system.

This research supports a reconsideration of the efficacy of the due process revolution, particularly the objectives underlying the Gault decision. One underlying concern of the Gault Court was that youth not leave the court process with more negative views of the justice system than when they first entered. The Supreme Court tried to address this issue by providing youth with constitutional protections, including a right to court-appointed defense counsel. Assuming that an increased role for defense attorneys would enhance trust in the legal system, due process reformers failed to consider that defense attorneys may contribute to negative views of the court process. Although defense attorneys are part of the courtroom workgroup, in many ways they work in opposition to the state (Flemming, Nardulli, and Eisenstein 1992). Defense attorneys have a duty to act as their clients’ zealous advocates in an adversarial process. Often, they view their job as navigating an unfair system to obtain the best outcome for their client. Many defense attorneys observed in this research consider sharing their views on how the criminal justice system operates to be an important part of their role as advocates. These attorneys do not believe that the criminal justice system is fair and legitimate and they often communicate their negative perceptions of judges, prosecutors, and police officers to their clients and their clients’ families. As with prior research involving civil attorneys and their adult clients in divorce cases (Sarat and
Although parents, youth, and defense attorneys may share a distrust of the justice system, many parents and youth resent the defense attorney’s involvement in the case to some extent. *Gault* adopted the view that providing youth with defense attorneys would strengthen juvenile defendants’ voice and, possibly, the voice of their family members. Yet as this research shows, parents and youth want more voice in the court process, either to be able to participate directly with the judge or to have the defense attorney more fully represent their views to the court. Defense attorneys may be reluctant to challenge the court’s operation, even if urged to do so by a client or parent. Parents and youth often want the defense attorney to challenge the police reports that are presented at the beginning of the case, but most defense attorneys are more cautious, advising their juvenile clients and their family members that it is best to wait until trial. In many cases, not presenting the defense version of what happened early in the case is the right legal action. But if the juvenile pleads guilty or the charges are dismissed, parents and youth are left feeling that the police version of the incident is the only one voiced in the courtroom. As a result, good legal outcomes may be at odds with increasing participant voice and developing trust in the courts. Attorneys exercise tremendous control over their clients (Alfieri 1988; Abel 1985). Although parents and youth accede to the defense attorneys’ suggestions in most cases, the price of this is that they leave the court process with more negative views of the court’s legitimacy and its ability to be fair. Defense attorneys’ role in the juvenile court has been criticized elsewhere, with research demonstrating that represented youth can fare worse in terms of outcomes than unrepresented youth (Clarke and Koch 1980; Feld 1989; Feld and Shaefer...
This research adds the additional point that defense attorneys may be a barrier to the socialization of positive views of the justice system because of their interactions with youth and their parents.

**Policy Recommendations and Areas for Future Research**

To increase the perceived legitimacy of the juvenile court process, juvenile justice professionals must recognize and capitalize on the influence parents exercise over their children. In this research, the court’s legitimacy is created, maintained, and undermined by family networks outside the formal court process. These findings are in line with previous work suggesting that formal control systems like the police and the courts should work in tandem with informal control systems to boost their legitimacy and effectiveness (Kornhauser 1978; Silver and Miller 2004; Hagan, Merkens, and Boehnke 1995). Yet in this research, parents and legal authorities end up working at cross-purposes. More emphasis is needed, in both research and policy, on using informal social control networks such as family relationships in genuine ways to increase the legitimacy of legal authorities. To reverse the declining levels of trust and confidence in legal authorities in poor and minority communities, courts need to provide more opportunities for parents’ positive engagement. By soliciting parents’ views in the courtroom, courts can involve parents as co-producers of justice in their child’s case. Juvenile delinquency courts should seize the opportunity to engage parents in urban communities, whose levels of distrust in the justice system are very high. Building positive and collaborative relationships with these parents seems, from this research, to be entirely plausible.
This research suggests several avenues for future research on individuals’ views of the juvenile and criminal justice systems. The qualitative and longitudinal approach of this study leads to new insights on parents’ experiences in the juvenile delinquency court process. Similar work is needed on juvenile delinquency courts in other geographic areas, as well as on other parts of the criminal justice system. Additional qualitative and longitudinal research will indicate whether the findings here are unique to these parents, or whether parents in other areas and individuals experiencing the adult criminal court process share similar experiences.

Although qualitative work can provide a deeper understanding of the justice process, this research also has implications for improving the quantitative, noncontextual approach of large-scale procedural justice surveys. Research should focus on the experiences of those directly involved in the court process as defendants or family members. Most procedural justice and legitimacy research examines the attitudes of the general population, not of individuals with extensive contact with the criminal justice system (Tyler 1990; Tyler 2003; Piquero et al. 2005). Surveys should try to capture the details important to the context of the case, including examining the facts of the criminal incident and the defendant’s apprehension, as a way to measure and take account of individuals’ perceived relative power within the justice system. Researchers can better capture this context by asking more detailed questions regarding the type of charge, the circumstances regarding the arrest, and whether the respondent feels the account of the incident in the police report is accurate. This is difficult in the current framework because procedural justice research tends to focus on only one interaction, even when a person has had multiple interactions with legal authorities. For example, Tyler (1990) asks respondents who have had multiple interactions with legal authorities to answer questions according to “the
experience you had with the police or courts during the past year that was most important to you in shaping your views about the legal system” (p. 192, emphasis in original). This approach may work for interviews aimed at the general population, but it misses the complexity of the criminal process where individuals routinely have dealings with both the police and the courts. Designing surveys that can focus on multiple interactions with legal authorities allows for the examination of how the police and the court system interact with each other. Given the influence of procedural justice and legitimacy research in the design of criminal justice policy (MacCoun 2005; Tyler 2007), using a more contextualized approach that better captures the lived experiences of defendants and their families can lead to more effective proposals to increase legitimacy.
References


Statutes and Cases


Ex parte Crouse, 4 Wharton 9 (Pa., 1838).

In re Gault, 387 U.S. 1 (1967).


### APPENDIX A

**Table of Contacts with Participating Families**

**Court 1**

<table>
<thead>
<tr>
<th>Names of family members</th>
<th>Level of contact&lt;sup&gt;6&lt;/sup&gt;</th>
<th>Had contact with juvenile</th>
<th>Courthouse Interviews (number)&lt;sup&gt;7&lt;/sup&gt;</th>
<th>Informal contacts courthouse</th>
<th>Home interview with mother or custodial parent (number)</th>
<th>Home interview with other parent or parental figure (number)</th>
<th>Home interview with juvenile (number)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kit (mother)</td>
<td>Extensive</td>
<td>X</td>
<td>X (2)</td>
<td>X</td>
<td>X (3)</td>
<td>X (3, grandmother)</td>
<td>X (3)</td>
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<tr>
<td>Mary (grandmother)</td>
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<tr>
<td>Melvin (juvenile)</td>
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<tr>
<td>Lisa (mother)</td>
<td>Extensive</td>
<td></td>
<td>X (2)</td>
<td>X</td>
<td>X (3)</td>
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<tr>
<td>Trevor (juvenile)</td>
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<tr>
<td>Tracy (mother)</td>
<td>Extensive</td>
<td></td>
<td>X (2)</td>
<td>X</td>
<td>X (3)</td>
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<tr>
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<tr>
<td>Suzanne (mother)</td>
<td>Extensive</td>
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<td>X (1)</td>
<td>X</td>
<td>X (1)</td>
<td>X (1, father, grandmother)</td>
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<tr>
<td>Darius (father)</td>
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<tr>
<td>Gladys (grandmother)</td>
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<td>Dante (juvenile)</td>
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<tr>
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<td>Extensive</td>
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<td>X (1)</td>
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<td>X (2)</td>
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<td>J.R. (father)</td>
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<td>Anthony (juvenile)</td>
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<tr>
<td>Monica (mother)</td>
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<td>X</td>
<td>X</td>
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<tr>
<td>Tommy (juvenile)</td>
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<tr>
<td>Karen (mother)</td>
<td>Extensive</td>
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<td>X (3)</td>
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<td>Dan (father)</td>
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<tr>
<td>James (juvenile)</td>
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<tr>
<td>Cynthia (mother)</td>
<td>Standard</td>
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<td></td>
<td>X (1)</td>
<td>X (1, father)</td>
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<tr>
<td>Ronald (father)</td>
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<tr>
<td>Terrell (juvenile)</td>
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<tr>
<td>Adele (mother)</td>
<td>Standard</td>
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<td>X (1)</td>
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<td>X</td>
<td>X (1)</td>
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<tr>
<td>Rochelle (juvenile)</td>
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<tr>
<td>Angela (mother)</td>
<td>Standard</td>
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<td>X (1)</td>
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<tr>
<td>Damien (juvenile)</td>
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<tr>
<td>Denise (custodial aunt)</td>
<td>Standard</td>
<td></td>
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<td>X (1)</td>
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<tr>
<td>Roderick (juvenile)</td>
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</table>

<sup>6</sup> **Extensive** - Families where there were one or more home interviews as well as multiple informal courthouse contacts and families where there were three or more courthouse interviews with multiple informal courthouse contacts. **Standard** - Families where there was at least one home interview and either one or no courthouse interviews or informal contacts and families where there was one courthouse interview and some informal courthouse contact. **Minimal** - Families with one courthouse interview and no other informal courthouse contact and families with only informal courthouse contact.

<sup>7</sup> Courthouse interviews involving more than one family member at the same time were counted as one interview.
<table>
<thead>
<tr>
<th>Name</th>
<th>Level of contact</th>
<th>Had contact with juvenile</th>
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<th>Informal contacts in the courthouse</th>
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APPENDIX B

Instrument for Initial Courthouse Interview

Instrument used as a guide when interviewing parents and youth during an initial interview at the courthouse after obtaining consent/assent.

1. **Expectations of hearing**
   - What do you think will happen in court today?

2. **In the courtroom, who do you think will talk to the judge?**
   - What will be discussed?

3. **Have you spoken to the judge in previous hearings?**
   - Was there anything that you wanted to say?

4. **Has anything surprised you in juvenile court?**

5. **Have you been to juvenile court before?**

6. **What do you see as the goals of the juvenile court?**

7. **Should adults be treated differently than juveniles?**

8. **As a parent, what do you see as your role in the juvenile court process?**

9. **Is there anything you want to happen in court?**
10. What kinds of issues do you think are important to talk about with your child?

11. How have you talked about juvenile court with your child?

12. Have you talked with others about juvenile court?

13. Do you think that the police treat people fairly? Equally?

14. Do the courts treat everyone fairly? Equally?
   a. What would be unfair treatment?

15. Do you think that the basic rights of people are well protected in the courts?

16. What rights does your child have in this case?

17. Do you have any rights as a parent?

18. Have you ever felt blamed by anyone during the process?

19. Do you feel that your voice is heard in the juvenile court process?

20. Are there things that you would want to say?

21. Do you think the legal system has the power to change people’s lives?

22. Do you feel like you understand what happens and why in juvenile court?
23. *Do you have any questions for me?*

Demographics

24. Age

25. Neighborhood

26. Race/ethnicity

27. Employment

28. Last grade attended

29. People living in household

30. Household income *[using income brackets]*
APPENDIX C

Instrument for Initial Home Interview - Parents

Thank you so much for meeting with me. I really appreciate you taking time out of your day to talk about your experiences in juvenile court. This study is about how parents and youth perceive the juvenile court system and discuss topics of law and justice. Before we begin, I need to review with you a consent form that explains this research study in detail. I’ll also answer any questions that you might have. If after learning more you would still like to participate, then I’ll ask you to sign the form and we can begin.

Review consent forms. Continue if sign and agree to participate.

Remember that I won’t tell your [husband/wife/other family member] or your child what we talk about here. This research is also anonymous, meaning that if I write about this interview I will change your name. If I ask a question that you don’t feel comfortable answering, just tell me that you’d rather move on and that’s fine.

I also want to remind you that this study is only about how court experiences affect how parents and children think about and understand the law and how parents and children talk about law and justice. This research is not about the facts in your child’s case and you should not discuss with me facts specific to your child’s legal case.

The purpose of this study is to learn from your experiences. I am interested in what you can tell me about your thoughts, feelings, and ideas. What you tell me can’t be wrong, because I am interested in what you are thinking and feeling.

With this interview, I’d like to start with talking a little bit about parenting and your relationship with your son/daughter. Then I will move to your perceptions of the court hearing last week. Then the last part will be about your expectations for the rest of the court process. I expect that this interview will take about an hour.

Background information on parent/child relationship

- Can you tell me a little bit about your relationship with your son/daughter?
  
  o Would you describe your relationship as close?
  
  o Do you have many conflicts?
  
  o Would you say you are pretty strict as a parent?

- Tell me a little bit about your family.
  
  o Do you have other children? How many?
  
  o Is [child in juvenile court] your oldest child?
  
  o Does anyone else live with you and your children?
- How would you describe yourself as a parent?
- What have been some of the joys of being a parent?
- What have been some of the challenges of being a parent?
- Do you think that you have similar challenges as other parents in your neighborhood?
- Is your relationship with [this child] different than your relationship with your other children?
- Has your relationship with [this child] changed since s/he’s become a teenager?

Perceptions of the arraignment
I’m interested in your perceptions of the court hearing last week.
- From your point of view, can you describe what happened at the arraignment?
  - Who came with you to the arraignment?
  - Did you have to wait long before you went into the courtroom?
- What were you thinking when the judge asked for your input [or ask about something else that happened during the hearing]?
- Was there anything else that you wanted to say?
  - If yes, why didn’t you say it?
- What were you feeling during the arraignment hearing?
- Can you tell me more about why you were feeling [how said he or she was feeling]?
- Have you ever been in a position where you felt that way before?
- Did anyone talk with you about what to expect at the court hearing?
- Did you talk with child about what he or she should expect at the court hearing?
- Did you talk with your child’s lawyer before court?
  - What did you talk about?
  - Did you find the conversation useful?
- Were all of your questions answered?

- Did you talk with the prosecutor at all when you were at court?

- Did you talk with anyone from probation?

- What were your expectations of the court process coming into the arraignment?

- Did what happened meet your expectations?

**Discussions of law and justice with child**

- After court on [day of arraignment], what did you do?

- Did you talk with your child about what happened?

- How would you describe this conversation?
  - What did you talk about?
  - Who brought up the topic?
  - How long did the conversation last?

- [If didn’t have any discussions], was there anything you wanted to talk to son/daughter about, but didn’t?

**Discussion about arraignment with person other than parent**

- Have you talked with anyone else about what happened at court?
  - If yes, who did you talk to?
  - What did you tell them?

**Previous discussions with child about the law and justice system**

- Have you talked about the law or criminal justice system with your child before this experience?
  - [If yes] What have you talked about?
  - What would prompt those conversations [why do you think these conversations came about]?
As a parent, are there topics that you think are important to talk about with your child?

- Why do you think these topics are important?
- How often do you talk to your child about this?

Have any of your son’s/daughter’s friends been involved in court?

Did you talk about this with your son/daughter?

Parents’ perceptions of law and justice

- Have you had experiences with courts before?
- What was your most recent experience?
- Was this your most significant experience in court? If not, what was your most significant experience?
- Do you see your role in those cases similar or different than your role here?
  - By role, what I mean is, do you think that something different was expected of you in those cases than as a parent in juvenile court?
  - Did you feel that you had a different responsibility that you have had in past court experiences?
  - Do you feel that you were treated differently in prior court cases?

- Have you been in juvenile court before with your son/daughter?
- Have you been in juvenile court with any of your other children?

- Have you had experiences with the police before?
- What was your most recent experience?
- Was this your most significant experience with the police? If not, what was your most significant experience?
- Do you see the courts and the police as different?

- Have you had other experiences that you think were important to how you think about the law now?
- Do you think the legal system has the power to change people’s lives?

Expectations of the juvenile court process
Now I would like to move on to what you expect will happen during the rest of your child’s case.
- Now that arraignment is over, do you think what should happen in your child’s case actually will happen in your child’s case?
  - [If no] Why do you think what you think should happen will not happen?
  - Is there any specific experience that led you to think that?

- Do you think that the judge will treat your child fairly?
  - Do you think that the judge will really look at who your child is when making decisions in the case
  - Do you think the juvenile court judge has your child’s best interest in mind?
  - Generally do you think that the criminal justice system treats people fairly?
  - What does “fairly” mean to you?
  - Generally do people receive the punishment that they should?

- Should adult defendants be treated differently than juveniles?
  - Why or why not?

- Do you think that your child’s attorney will put on a strong case for your child’s defense?

- Do you think that your child’s attorney understands your child?
  - Do you think your child’s attorney has your child’s best interest in mind?
  - Do you think that you and your child’s attorney would agree on what’s best for your child?

Child’s expectations of the process
- Do you think that your child thinks that the criminal justice system treats people fairly?
- Do you think your child thinks that people receive appropriate punishment?
- Does your child know how you feel about the criminal justice system?
- How do you think a child develops perceptions of the criminal justice system? [prompts: through tv? participating in conversations with friends or family?]

**Role of juvenile court**
- How do you think being in the juvenile court will affect your child?
- Do you think that your child has a problem that needs to be addressed?
- [If yes] Do you think that the juvenile court is able to help solve this problem?
- As a parent, what do you see as your role in the juvenile court process?
- Does your role in juvenile court feel different than experiences you’ve had as a parent in other places, such as with your child’s doctor or with your child’s school?
- Assuming there are decisions to be made in your child’s case, who gets to make those decisions?
- How do you feel about that?
- Has your child’s attorney talked to you about your role in the juvenile court process?

**Closing Questions**
- Are there other stories or issues that you can tell me about that would shed light on the things we are discussing?
- Are there questions that I haven’t asked that you think would be important for me to ask you or other parents?
- Do you have any questions for me?

**Demographic questions**
I would like to end this interview with a few questions about you.
- How long have you lived in this neighborhood?
- What is your age?
- Are you working right now? If not, where did you last work?
- Are you married?
- What was your last grade completed in school?
- How would you describe your race/ethnicity
• Which of the following would best describe your household income? [include income brackets]

Thank you very much for sitting down and talking with me. Talking with you has been very helpful.

For this research, I would like to meet with both parents and children a total of three times during the juvenile court process. Would it be all right with you if we meet again for another interview in a few months? I would like to time the next interview to be one to two weeks before your son/daughter’s trial date. As part of this research, I will also try to attend as many court hearings as I can and try to be present at the [name of juvenile defender organization] office when your child’s attorney meets with you and other members of your family.

Here is my business card. Please call me with any questions. I look forward to seeing you at the next court hearing.