

COMPETENCY TO UNDERSTAND CHARTER CAUTIONS:
A PRELIMINARY INVESTIGATION

by

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Competency to Understand Charter Cautions: A Preliminary Investigation

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Abstract

Section 10 of the Canadian Charter of Rights and Freedoms (Charter) requires that warnings (or "Charter cautions") be given to individuals at the time of arrest or detention. The law requires that individuals must understand, and appreciate the consequences of waiving their Charter rights at the time of arrest. There is no existing empirical research investigating the extent to which people understand the Canadian Charter cautions. The Test of Charter Comprehension (TCC) was developed to address this question of competency. The TCC was administered to 213 undergraduate students, 20 people in the general population, and 61 offenders, in a first attempt to validate the measure, and to investigate hypothesized differences between the groups. The results indicate that nonoffenders scored significantly better than offenders. There was also a moderate correlation between TCC scores and estimates of intelligence (IQ), and significant differences between the groups on IQ. When matched on IQ, no significant differences were revealed between offender and nonoffender groups on TCC scores. Moreover, a substantial percentage of offenders in the sample did not understand at least one of the elements of the Charter cautions. This refutes the legal requirement that offenders understand their rights at the time of arrest. The findings were discussed and applied to the analysis of current practices of law enforcement personnel. Recommendations focus on directions for future research and suggestions for more effective means of communicating the Charter cautions to arrested individuals.

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Table of Contents

Approval	ii
Abstract	iii
Acknowledgements	iv
Table of Contents	v
List of Tables	ix
List of Figures	x
Introduction	1
History of the <u>Charter</u>	4
Section 10 of the <u>Charter</u>	6
Case Law Defining Rights at the Time of Arrest	7
Early Common Law	7
Procedural Requirements at the Time of Arrest	8
Post- <u>Charter</u> Case Law	9
Competency in the Criminal Justice System	17
Competency and Section 10 Rights	20
Empirical Research Examining Rights at the Time of Arrest	21
The Test of Charter Comprehension	24
Summary	25
Hypotheses	26
General Cognitive Abilities	26
Learning Effect	26

Legal Hypothesis	27
Study 1	27
Method	27
Participants	27
Materials	28
Procedure	28
Scoring	29
Data Analysis	30
Results	30
Discussion	32
Study 2	36
Method	36
Participants	36
Materials	37
Students	37
Offenders	37
Procedure	38
Data Analysis	38
Student Sample	38
Offender Sample	39
Dependent Measures and Demographic Variables	39
Results	39

Student Sample	39
Offender Sample	40
TCC Scores	41
Demographic Variables	45
IQ and Education	46
Prior Exposure to the Law	47
Subgroup Differences	52
Critical Items	53
Reliability and Validity of the TCC	58
Interrater Reliability	58
Construct Validation	59
Discussion	61
General Cognitive Abilities	61
Learning Effect	62
Legal Hypothesis	62
General Discussion	63
Competency to Understand <u>Charter</u> Cautions	64
The Role of Previous Exposure to the Legal System	66
The TCC and Competency to Understand <u>Charter</u> Cautions	69
Procedural Recommendations	72
Future Research	73
Conclusion	75

References	76
Appendix A	82
Appendix B	98
Appendix C	100
Appendix D	109
Appendix E	111

List of Tables

Table	Page
1. Means and Standard Deviations for Age, Education, IQ, and TCC Scores for Study 1	31
2. Correlations Between TCC Scores and IQ Estimates	33
3. Correlations Between TCC Scores and Education	34
4. Means and Standard Deviations for Age, Education, IQ, and TCC Scores for Study 2	42
5. Scores on TCC Items for All Groups	54
6. Scores on TCC Items for Offender Group	55
7. TCC-Part 1 Critical Items for Offender Group	56
8. TCC Subscores on Six Informational Components	57
9. Kappa Values for Agreement Between Raters	60

List of Figures

Figure		Page
1.	Scores on TCC Parts by Group	43
2.	TCC-Total Scores by Group	44
3.	TCC-Total Scores by IQ for Student Group	48
4.	TCC-Total Scores by IQ for General Population Group	49
5.	TCC-Total Scores by IQ for Offender Group	50
6.	TCC-Total Scores by IQ for All Groups	51

Introduction

On November 24, 1984, the body of Lavonne Cheryl Willems, a woman in her twenties, was found in a home in Matsqui, British Columbia. She had been house-sitting while the residents of the home were away on vacation. She died in that house of multiple stab wounds. Several months later, on March 31, 1985, the body of Beverly Mary-Anne Seto, a real estate salesperson in her thirties, was found in a new home in Matsqui where she was holding an open house. She also died of multiple stab wounds.

On August 1, 1985, after receiving a tip from an informer, the police arrested Ronald Evans, the older brother of Wesley Gareth Evans, for the murders of Miss Willems and Mrs. Seto. While investigating Ronald Evans, the police had obtained some wiretap evidence indicating that Wesley Evans may have been involved in selling a small amount of marijuana. Therefore, the police also arrested Wesley Evans, a 21-year-old man, on narcotics trafficking charges in the hopes of gaining information to implicate his brother in the murders.

After his arrest, Wesley Evans was interviewed by the police on three occasions within a 6-hour period. During the course of the first interview, he became the prime suspect in the two killings. By the end of the second interview, he had confessed to killing Mrs. Seto, and by the end of the third interview, he had confessed to killing Miss Willems. Wesley Evans wrote a two-paragraph confession in which he described the killings. Later, during an interview with the police general practitioner, Evans said that he had killed the two women because of his frustration with women in

general. He also said that he would kill again but that he had not yet chosen a victim.

Wesley Evans was tried before a judge and jury for these two counts of murder. On January 31, 1986, the jury delivered its verdict and found Evans guilty on both counts. Evans appealed his case to the British Columbia Court of Appeal on the grounds that his Section 10 rights of the Canadian Charter of Rights and Freedoms¹ had been infringed. Section 10 of the Charter outlines the fundamental rights of individuals who are arrested or detained. In a majority decision, the appeal was dismissed. In his concurring opinion, Southin, J., wrote that "Wesley Evans is a pathetic creature.... Society must be protected from those who are incapable of resisting the impulse to kill innocent strangers" (R. v. Evans, 1988, p. 568).

The appellant appealed to the Supreme Court of Canada and, on April 18, 1991, the Court held that the appeal should be allowed and ruled to set aside Evans' prior convictions of first degree murder (R. v. Evans, 1991). It was ruled that because Evans had not been properly informed of his right to retain and instruct counsel without delay at the time of arrest, his confessions were obtained unconstitutionally and admitting his statements as evidence would bring the administration of justice into disrepute, in violation of Section 24(2) of the Charter. Without the confession, there was essentially no case against Evans so he was acquitted of the charges.

This case is a classic demonstration of one of the dilemmas pervasive in the law. There is a continuous conflict between ensuring the rights of individuals and

¹Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B of the Canada Act, 1982 (U.K.), 1982, [hereinafter "Charter"].

protecting society as a whole. In R. v. Evans (1991), the rights of the individual clearly outweighed the protection of society, though the facts of the case indicate that it was questionable whether Evans actually committed the murders. At issue was Evans' understanding of the Charter cautions, and the Court found that, although informed according to common procedure, Evans did not adequately understand his rights at the time of arrest.

In Evans, there was substantial evidence to indicate that the accused was not likely competent to understand the Charter cautions. For example, in addition to his clear indication of a lack of understanding when the police asked him whether he understood his rights, he was assessed as having subnormal intelligence and a poor capacity for judgment. Evans' intelligence was assessed as being in the borderline mentally retarded range. In Evans (1991), the Supreme Court of Canada reported Evans' IQ as being between 60 and 80, which corresponds to a percentile range of .38 to 9 (i.e., between .38% and 9% of the population have IQ scores lower than Evans' score; Sattler, 1982). In Evans (1988), the British Columbia Court of Appeal reported a more narrow range for Evans' IQ. This court reported an IQ score between 70 and 80, which corresponds to a percentile range of 2 to 9 (i.e., between 2% and 9% of the population have IQ scores lower than Evans; Sattler, 1982).

In other cases, this question of competence may arise when the evidence is less clear. For example, people who are not proficient in English may have limited understanding of their rights even when clearly read (R. v. Lim, 1990). Similarly, adolescents may demonstrate a poor understanding of their rights (Grisso, 1980).

Individuals with mental disabilities (Thomas, 1989) or mental disorders may have a limited capacity to understand their rights if arrested. Others may not ask for clarification due to the emotional circumstances or distractions at the time of arrest. Some individuals may claim, as Evans did, that they did not fully understand their rights. Especially when circumstances are ambiguous, priority may well be given to protecting the rights of the individual. It is crucial, then, to find some means of resolving this dilemma so that the rights of individuals continue to be protected while allowing for justice to be served.

The purpose of this thesis is, broadly, to consider individual rights and the capacity to exert those rights. This will be considered by examining competence in the context of the criminal justice system. In particular, the issue of competency to understand Charter cautions will be examined in detail. Section 10 of the Charter will be explained and analyzed according to its related statutory and case law. In addition, empirical research addressing this competency issue will be explored. The Test of Charter Comprehension (TCC; Ogloff & Olley, 1992) will then be introduced as an empirical measure of competence to understand Charter cautions. A demonstration of this measure will be described and the findings will be discussed.

History of the Charter

In a free and democratic society, where liberty is a highly valued privilege, the preservation of individual rights is an enduring priority (Peck, 1987). While Evans illustrates a recent example of a case focusing on the protection of a particular constitutional right, the protection of individual rights in general has long been a

primary concern in Canadian history. This can be illustrated by examining the evolution of the Canadian constitution, and the individual freedoms and liberties associated with this code (Gall, 1990; Hogg, 1985).

The earliest form of a constitution in Canada was embodied in the British North America Act, 1867 (B.N.A. Act; renamed the Constitution Act, 1867 in 1982). The B.N.A. Act created the new Dominion of Canada, and instituted the rules of federalism, but did not provide for independence from the United Kingdom (Gall, 1990). In 1960, the Canadian Parliament passed a federal statute entitled the Canadian Bill of Rights (Ogloff, 1989). This provided guidelines by which all other statutes must conform in order to ensure that certain human rights were not violated. However, since the Bill of Rights was enacted as a statute of the federal government, it was not constitutionally entrenched. Therefore, it could be repealed at any time by a majority vote of the Canadian Parliament, and legislation that contravened the Bill of Rights could be passed by Parliament. Also, its effect was only on the federal government and did not extend to the provincial governments.

In 1982, after approximately a decade of constitutional negotiations between the provinces and the federal government, some important changes emerged in Canadian constitutional law. All Canadian provinces, except Quebec, reached an agreement and the result was the enactment of the Constitution Act, 1982² (Hogg, 1985). This provided Canada with a written constitution. The Canada Act, 1982 is a statute of the United Kingdom parliament and serves to terminate that Parliament's

²The Constitution Act, 1982 is Schedule B of the Canada Act, 1982 (U.K.), 1982.

authority over Canada. The Constitution Act, 1982 also incorporates the Constitution Act, 1867 and its amendments. Most significantly, the Constitution Act, 1982, entrenches a bill of rights into the Canadian constitution, namely the Canadian Charter of Rights and Freedoms.

Section 10 of the Charter

Section 10 of the Charter states that when individuals are arrested or detained, they have the right "(a) to be informed promptly of the reasons therefor, [and] (b) to retain and instruct counsel without delay and to be informed of that right" (Charter, 1982). While this was the focus in the Evans case, it is not the first time that the rights of individuals who are arrested have been considered. In effect, Section 10 of the Charter served to entrench existing rights as established in early case law (e.g., Boudreau v. The King, 1949; Gach v. The King, 1943; Ibrahim v. The King, 1914). In addition, this section of the Charter entrenched Section 2(c) of the Bill of Rights, which states that:

No law of Canada shall be construed or applied so as to ... (c) deprive a person who has been arrested or detained (i) of the right to be informed promptly of the reason for his arrest or detention, [or] (ii) of the right to retain and instruct counsel without delay. (Canadian Bill of Rights, 1970)

Though subject to judiciary interpretation, the Charter is considered the supreme law of Canada (Gall, 1990). However, as Section 10 illustrates it may also be considered as an entrenchment of some existing common law principles.

Case Law Defining Rights at the Time of Arrest

Early Common Law

Early English and Canadian criminal case law established standards for the admissibility of accuseds' statements (Boudreau v. The King, 1949; Gach v. The King, 1943; Ibrahim v. The King, 1914). In a decision delivered by Lord Sumner on behalf of the Privy Council, it was written that:

It has long established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shewn by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. (Ibrahim v. The King, 1914, p. 609)

Subsequent decisions of the Supreme Court of Canada followed this ruling, with some qualifications. In Gach v. The King (1943), it was indicated that any confessions made to a person of authority during questioning should be inadmissible unless a proper caution is provided by the police officers. In this case, the appellant had been convicted of unlawfully receiving 11 gasoline ration books worth \$5.50, and was sentenced to 3 months imprisonment. During questioning, the police officers told the appellant that it would be "better" for him to return the coupon books, and the appellant subsequently made incriminating comments. Therefore, it was found that his statements had been inspired by a "hope of advantage," and were not considered voluntary. Although the appellant was not yet in custody, it was ruled that under the

circumstances, he was "practically" in custody, and should have been warned prior to questioning. The appeal was accepted and the prior conviction was quashed as there was no evidence other than the appellant's statements to substantiate the charge. Most importantly, this decision ruled that statements were inadmissible when cautions were not provided prior to questioning. It also extended this requirement beyond arrests to include detention.

In contrast, Boudreau v. The King (1949) claimed that statements and confessions should not necessarily be inadmissible when there is no caution provided. The presence or absence of a caution is simply one additional factor to be considered in determining the ultimate question of the voluntariness of the statement or confession (Ratushny, 1979). The guideline, then, was that statements made by the accused were to be admitted as evidence only if it was shown that they were made voluntarily, without intimidation or persuasion. General procedural requirements developed gradually and were subsequently entrenched in the Charter.

Procedural Requirements at the Time of Arrest

In the United States, an important Supreme Court decision held that individuals have the right to avoid self-incrimination and to have legal counsel when they are arrested and questioned (Miranda v. Arizona, 1966; Grisso, 1986). If an individual decides to waive the right to remain silent and legal counsel, then anything that the individual says may be used in court as evidence. If the defendant indicates a desire to consult counsel at any point during questioning, then interrogation must cease and the defendant must be given the opportunity to exercise that right.

As Evans (1991) is an interpretation of the Charter, Miranda is an interpretation of the American Bill of Rights (United States Constitution, 1791). In this decision, the Court stated that it must be determined that the decision to waive one's rights at the time of arrest was made "voluntarily, knowingly, and intelligently" (Miranda v. Arizona, 1966, p. 444). The mere fact that a statement or confession is made does not constitute a valid waiver of the defendant's rights. Instead, the individual must demonstrate an understanding of the rights, and any decisions made about those rights must be made voluntarily, without coercion (Ogloff, Wallace, & Otto, 1991).

Miranda also resulted in very specific procedural guidelines that outline what are commonly known as the Miranda warnings. In the United States, these warnings must be given to individuals at the time of arrest. Specifically, the individual:

must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. (p. 479)

In Canada, the Charter requires that similar warnings be given to individuals at the time of arrest (Michalyshyn, 1986; Paciocco, 1987a, 1987b). These are called the Charter cautions, and these cautions instruct individuals of their rights as outlined in Section 10 of the Charter.

Post-Charter Case Law

The voluntariness criterion, as stated in Ibrahim v. The King (1914), indicates that a voluntary statement is one that is made without "fear of prejudice or hope of

advantage exercised or held out by a person in authority" (p. 609). Statements obtained using coercion, intimidation, or manipulation, are not made voluntarily (Rogers & Mitchell, 1991).

In addition to the voluntariness criteria, the Charter added a further requirement for the admissibility of statements made by the accused. At the time of arrest, the accused must be informed of the right to retain and instruct counsel without delay and must be given an adequate opportunity to exercise this right (Clarkson v. R., 1986; R. v. Therens, 1985). In Therens, the respondent lost control of his vehicle and hit a tree. The police officer demanded that the respondent provide a breath sample, so the respondent accompanied the police officer to the police station and complied. He was subsequently charged with driving a motor vehicle while having an excessive blood alcohol level. At trial, the respondent's counsel argued for exclusion of the blood alcohol level evidence because the respondent was not given the opportunity to consult counsel after being detained. The Court found that the police officers did not inform the accused of his rights nor provide the opportunity to exercise the rights. It was ruled that this "flagrant" violation of rights rendered the evidence inadmissible. The application was accepted and charges were dismissed.

The scope of the term "detention" was also discussed in the Therens decision. Le Dain, J. wrote that since the purpose of Section 10 is to protect the rights and liberties of individuals when arrested or detained, the scope of "detention" should be broad enough to include situations "when a police officer or other agent of the state assumes control over the movement of a person by a demand or direction which may

have significant legal consequences" (p. 642). Individuals may require the assistance of counsel to inform them of the risks associated with these consequences (Paciocco, 1987a).

The significant legal consequences in the Therens case were associated with the decision of whether or not to comply with the request to supply a breath sample. In Clarkson (1986), the significant legal consequences were related to self-incriminating statements. In this case, Clarkson was very intoxicated when she was charged with her husband's murder. She was given the Charter cautions according to common procedure and, although advised by a relative not to say anything until she consulted a lawyer, she agreed to the police questioning indicating that it was not necessary to consult a lawyer. During questioning, she was still drunk and very emotional, and made several self-incriminating statements. In the Court's decision, Wilson, J. focused on the aim of the Charter as promoting the principles of adjudicative fairness. She followed the reasoning of the Therens decision and concluded that Section 10(b) is a constitutional provision that is "clearly unconcerned with the probative value of any evidence obtained by the police" (Clarkson v. R., 1986, p. 394), but rather, is to ensure individuals of their legal rights when in situations with potentially significant legal consequences. Indeed, this strikes at the heart of the dilemma between ensuring individual rights and the administration of justice (Peck, 1987).

Most important, Wilson, J. stated that although the statements made by Clarkson likely met the voluntariness rule, Clarkson had not effectively waived her right to counsel. Because she was intoxicated, it was believed that she was unable to

appreciate the consequences of her decision to waive her rights. This case clearly outlined the additional standards for admitting statements made by the accused. That is, even when the statements are made voluntarily and proper warnings are provided, statements will only be admitted when it is established that the consequences of waiving the right to counsel are appreciated. This is, in effect, mental competence. In order to make a competent decision, one must understand and appreciate the consequences of that decision (Applebaum & Grisso, 1988; Kline, 1987).

R. v. Manninen (1987) imposed two correlative duties on police officers to be performed at the time of arrest. The detainee must be provided with a reasonable opportunity to exercise the right to counsel, and questioning must cease until the detainee has had a reasonable opportunity to exercise this right. In this case, the respondent was arrested on charges of armed robbery and use of a fire-arm while committing an indictable offence. At the time of arrest, he asserted his right to remain silent until he could consult a lawyer, but the arresting officers began their questioning regardless. A telephone was available on the premises, but the accused was not offered the use of it. Although the offence was serious and his statements seemed to clearly indicate that he was guilty, the Court believed that because of the seriousness of the violation, the admission of the accused's statements into evidence could not be justified. The Court affirmed the lower appellate court's ruling for a new trial.

In Brydges v. R. (1990), an additional duty was imposed for arresting officers. Brydges appealed to the Supreme Court of Canada from a judgement of the Alberta Court of Appeal, which allowed an appeal by the Crown from the accused's acquittal

on a murder charge. The appellant claimed that his right to counsel had been infringed because he was not informed of the availability of legal aid. He thought he could not get a lawyer because he could not afford one, and he mentioned this to one of the detectives. However, he was not given the opportunity to exercise this right. In his opinion, Lamer, J. stated that "the existence and availability of duty counsel and Legal Aid plans should be part of the standard s. 10(b) caution upon arrest or detention" (p. 347).

In Baig v. R. (1987), it was found that the correlative duties do not arise until the accused indicates a desire to exercise his right to counsel. Further, absent any circumstances indicating that the accused did not understand his or her right to counsel, the burden is on the accused to show that the right was denied. No such evidence was provided in this case and statements made were determined to be admissible.

When circumstances indicate that individuals likely did not understand their right to counsel at the time of arrest, the burden is on the Crown to provide evidence of understanding. In R. v. Lim (1990), the accused was arrested and questioned on two separate occasions about two car bombings. Lim's native language was Mandarin Chinese and he spoke very little English. He was advised of his right to counsel and the police officers made an attempt to explain the right in "plain" English. The police officers were aware that the accused was not proficient in English yet they were satisfied that he understood the charges and his rights. They did not ask for the assistance of a translator and the accused was questioned. He also signed a written

statement after both arrests. The accused claimed that he did not understand his rights or the written statements he signed, and said that he signed the statements out of fear. The Ontario Supreme Court held that the accused did not understand his rights and that the police should have taken further steps to ensure his understanding of his right to counsel. Doherty, J. stated that in usual circumstances, if the Charter cautions are read according to procedure, this constitutes properly advising the accused of the right to counsel. However, in some situations, more is required. It was stated that when the accused has difficulty with the English language, this represents special circumstances and the police have a further responsibility to communicate the rights of the accused in such a manner that a true understanding is gained. It was decided that the statements made by the accused would not be admitted into evidence in this case.

R. v. Evans (1991) is another example of a situation in which an individual's rights were found to be violated because he did not fully understand his rights at the time of arrest. The facts of the case indicate that Evans was informed of his rights by the police officer when he was arrested but when asked if he understood, Evans indicated he did not. Most importantly, the accused was a young man with mental retardation and the arresting officers were made aware of this by the principle investigating officer of Ronald and Wesley Evans. However, no attempt was made to provide Evans with a better understanding of his rights. It was not until after the questioning and immediately before writing a statement of confession that Evans was asked if he wanted to speak to a lawyer. He said that he did but was unable to reach a lawyer. The police went ahead with the written statement.

There was some dispute in the facts of the case (R. v. Evans, 1988) over a distorted recording of the first interview as to whether it contained information advising the accused of his right to counsel at that time. Regardless, as Hutcheon, J. wrote in the dissenting opinion of the lower appellate court, there was clearly no opportunity given to exercise the right to counsel even if it was repeated at that time. Finally, before writing the statement, Evans said in a conversation with an undercover police officer who was placed in the cell with him, that he wondered if he would be able to talk to a lawyer because he thought things would probably "go a little better" if he could.

The facts of the case indicate that Evans' Section 10(b) right to counsel was clearly violated. He was not properly informed of his right and was not given the opportunity to exercise the right. Moreover, this case represents a situation with special circumstances in which the arresting officers should have gone further than the common procedure of simply reading the Charter cautions. Evans was assessed as having an IQ between 60 and 80 which falls in the borderline retardation range. Also, he was assessed as functioning at an emotional level of a 14-year-old. The arresting officers were informed of Evans' mental deficiency and were advised to make sure that he understood the cautions. This alone should have prompted the police to explain further. Beyond this, however, was the clear indication by Evans that he did not understand his rights.

McLachlin, J. delivered the decision of the Court. Following Clarkson (1986), where it was held that "any voluntary waiver in order to be valid and effective must

be premised on a true appreciation of the consequences of giving up the right" (Clarkson v. R., 1986, p. 396), McLachlin, J. stated that Evans did not fully appreciate the consequences of signing a statement and thereby waiving his right to counsel. The evidence gathered as a result of breaching the right to counsel consisted of self-incriminating statements and a written confession, which were excluded pursuant to Section 24(2) of the Charter. Lacking any additional evidence indicating Evans's guilt, the Court ruled to acquit Evans of the two counts of first degree murder.

In Evans, the Court set down the standard for determining whether the accused's Section 10 rights were given in accordance with the Charter. The accused must understand the rights and appreciate the consequences of giving up those rights. As McLachlin, J. stated:

A person who does not understand his or her right cannot be expected to assert it. The purpose of s. 10(b) is to require the police to communicate the right to counsel to the detainee.... Where, as here, there is a positive indication that the accused does not understand his right to counsel, the police cannot rely on their mechanical recitation of the right to the accused; they must take steps to facilitate that understanding. (R. v. Evans, 1991, p. 305)

This standard was referred to in the dissenting opinion in a more recent case (R. v. Stringer, 1992). The appellant, appealing a conviction of attempted murder, was a man of borderline intelligence and was apparently suffering from mental illness at the time of arrest. He claimed that he was not properly informed of his rights at the time of arrest. The facts of the case indicate that the Charter cautions were properly

read but were not adequately explained. In the dissenting opinion, O'Neill, J. compared Stringer to Evans and claimed that his rights were not communicated to him in a manner that he could understand. However, based on several statements made by the accused in evidence indicating an understanding of his right to counsel, the majority opinion ruled that Stringer was of sufficient intelligence to understand the Charter cautions. The appeal from conviction was dismissed but the appeal from sentence was allowed.

Although the Supreme Court has been applauded for its attempts at ensuring that the principles outlined in the Charter are upheld in practice (Elman, 1990; Stuart, 1987), it has also been criticized for the lack of direction provided for law enforcement personnel (Hutchison & Marko, 1991). The legal requirements are clearly outlined in the case law, but the means of achieving these requirements are less clear.

Competency in the Criminal Justice System

While case law has ruled on the competency of individuals in various capacities, mental health professionals have also been concerned with the general competence of individuals in a variety of contexts, usually in terms of individuals' capacities to make decisions. Moreover, mental health professionals are often asked to assist the courts in assessing the capacities of defendants at various stages of the legal process (Grisso, 1981; Melton, Petrila, Poythress, & Slobogin, 1987; Roesch, Ogloff, & Golding, 1993).

Broadly defined, competency refers to the ability to "comprehend the nature of

the particular conduct in question and to understand its quality and its consequences" (Roth, Meisel, & Lidz, 1977, p. 279). In the legal context, an individual's competency may be evaluated when considering the validity of an individual's will (Spar & Garb, 1992), determining an individual's capacity to stand trial for an offence (Roesch & Golding, 1980; Roesch et al., 1993), or establishing whether individuals understand the Charter cautions (e.g., R. v. Evans, 1991; R. v. Lim, 1990). In medical or psychiatric contexts, the issue of competency may become important when individuals are making decisions such as accepting or refusing medical treatment (Applebaum & Grisso, 1988; Lo, 1990; Roth et al., 1977). Because of the importance of these situations and decisions, as well as their consequences, it is crucial to determine that the individuals involved are able to participate competently.

Although the general definition of competency can be applied to a variety of settings, the specific standards that determine competency vary considerably across contexts. In the context of the criminal justice system, competency refers to the ability to understand and participate in the legal process (Ogloff, Wallace, & Otto, 1991). In order to be declared competent, an individual must demonstrate an understanding of the legal proceedings as well as a capacity to participate in the process. Competency is considered more specifically at different levels of the criminal process, and an individual must be able to participate competently at each of these levels.

Legal standards exist that outline guidelines for determining whether an individual is to be considered competent. Ogloff and his colleagues review the legal

standards of competency at various phases of the criminal justice system in the United States. These include competency to waive Miranda rights and confess, competency to plead guilty, competency to stand trial, competency to waive counsel, competency to refuse an insanity defence, competency to be sentenced, and competency to be executed. Some areas have received more attention than others. For example, competency to stand trial, or fitness to stand trial as it is known in Canada, has generated much interest and research (e.g., Grisso 1986, 1992; Roesch & Golding, 1980; Roesch et al., 1993). Other areas, such as the competency to be executed, are equally important and interesting (at least in the United States), but do not occur as frequently and have not been as thoroughly researched.

In considering competency, it is suggested that it be regarded as a continuous and dynamic variable, rather than a dichotomous, or static, characteristic (Ogloff, Wallace, & Otto, 1991). Competency is perhaps most appropriately regarded as a variable on a continuum. Also, there may be different types of competency and different standards for determining competency for different decisions. An individual may be considered competent for one purpose but not for others (Hardisty, 1973). These issues are illustrated using an example of a defendant undergoing a competency to stand trial assessment (Ogloff, Wallace, & Otto, 1991). Suppose this individual is evaluated as having the capacity to understand the legal process, but is only considered competent to participate while medicated. If there exists only two extreme ratings of competency, namely competent or incompetent, this individual may be classified as incompetent. However, if competency is considered as a continuous variable, then this

individual could be declared reasonably competent with the qualification that the individual can only participate in the legal process while appropriately medicated.

Competency and Section 10 Rights

The competency to waive rights and confess at the time of arrest is perhaps the most critical competency issue in the criminal justice system. It is at this initial stage of the legal process that the individual is most likely to be unassisted by counsel. At later stages, when defendants face other competency issues such as competency to plead guilty or competency to stand trial, they are usually assisted by their lawyers. In fact, individuals must request permission from the judge in order to defend themselves. Also, the physical and emotional stresses of the environment at the time of arrest may cause defendants to feel threatened which, in turn, may increase the likelihood of waiving their rights, particularly if these rights are not clearly understood. Furthermore, since the decision to waive one's rights and confess can lead to a conviction and, potentially, very serious consequences, it is crucial that these decisions are made competently. In order for individuals to make these decisions competently, the rights must be clearly understood. A good understanding is a prerequisite to a meaningful choice or a competent decision (Ogloff, Wallace, & Otto, 1991; Rogers & Mitchell, 1991). Thus, it is necessary, but not sufficient, that individuals are informed of their rights. More importantly, it must be established that individuals understand and appreciate the consequences of waiving their rights.

There is no question whether warnings should be given to arrested persons. The procedural conduct of arresting officers must conform to the standard based in the

constitution. However, a number of other issues are raised in relation to this standard and the case law by which it has been interpreted. In particular, questions arise regarding the standard that must be met to ensure that arrested or detained individuals appreciate and truly understand their rights. When it appears that arrested individuals may not understand the Charter cautions, officers must take steps to ensure an understanding of the rights and an appreciation of the consequences of waiving the rights. This is particularly important when circumstances indicate that the accused's understanding of the rights at the time of arrest was questionable. Although the burden of proof is on the defendant to show that his or her rights were denied at the time of arrest (Baig v. R., 1987; Conway, 1985; Coughlan, 1990; R. v. Anderson, 1984), when circumstances indicate that the accused may not have understood the Charter cautions, the burden is on the Crown to provide evidence of the accused's understanding. However, there is no objective means of accomplishing this legal requirement. The introduction of a valid and reliable measure of Charter caution comprehension would be a useful first step in resolving many of these issues.

Empirical Research Examining Rights at the Time of Arrest

In the United States, three companion assessment instruments have been developed to measure the understanding of Miranda warnings (Grisso, 1980, 1981, 1986). These instruments were developed to measure the same construct but with different stimulus and response formats.

The Comprehension of Miranda Rights (CMR) is a measure used to assess an individual's general comprehension of Miranda warnings. It is administered

individually. Examinees are presented with four cards, each of which has one of the Miranda warnings printed on it. Examinees are then asked to explain what is printed on the card in their own words and the responses are scored according to a standardized scoring system.

The Comprehension of Miranda Rights, True or False (CMR-TF) consists of true-or-false items which attempt to assess the ability of individuals to recognize whether or not a given sentence has the same meaning as a Miranda warning statement. This instrument is also given individually and is administered both orally and in writing on cards. Each of the four Miranda warnings are presented with three corresponding statements. The examinee must indicate whether the corresponding statements are similar or different in meaning compared to the Miranda warning.

The Comprehension of Miranda Vocabulary (CMV) is a measure designed to assess the understanding of six critical words which appear in the Miranda warnings. Examinees are presented with each word on an individual card. The word is read, used in a sentence, and then repeated. Examinees are asked to provide, in their own words, a definition of the presented word.

(Research in the United States using these instruments suggests that many adults, and most juveniles, do not demonstrate a good understanding of the Miranda rights (Grisso, 1980, 1981; Wall & Furlong, 1985) (Grisso (1980, 1981) studied a juvenile sample, consisting of 431 juveniles admitted to a detention centre, or residing in residential schools, and an adult sample, consisting of 203 individuals on parole residing in halfway houses and 57 nonoffenders (past experience with the law was not

determined for this group).

It was found that adults outperformed juveniles on all measures, with juveniles under the age of 15 performing particularly poorly. Juveniles' scores were significantly related to age and IQ. In the adult sample, IQ was significantly related only to the CMR and CMV scores, and age was significantly related to CMV scores. No significant differences were found between offenders and nonoffenders, except on CMV scores, where nonoffenders outperformed offenders. These results suggest that prior exposure to the legal system does not improve the ability to understand the Miranda rights. However, this conclusion is tentative because there were no data collected from individuals in the nonoffender group regarding their past exposure to the legal system.

In the Canadian legal system, a long history of case law has considered individuals' competency at the time of arrest, and it has been determined that when individuals are arrested, they must understand and appreciate the consequences of waiving the rights described in the Charter cautions. Though this competency issue has continued to receive much attention in the legal system (R. v. Evans, 1991; R. v. Lim, 1990), it is surprising that there is no existing empirical research on this issue in Canada. Moreover, since mental health professionals can be expected to be called on to assist the courts in making decisions related to this issue (Stricker, 1985), it is clear that an empirical investigation into this issue in Canada is needed. First, it is necessary to operationalize the Charter cautions by translating them into assessment instruments similar to those developed for the Miranda warnings.

The Test of Charter Comprehension

Due to the lack of previous research on this topic in Canada, the TCC (Appendix A) was developed based on the measures developed and researched in the United States investigating the comprehension of Miranda warnings (Grisso, 1980, 1981). The TCC consists of three subtests designed to examine individuals' understanding of the Charter cautions.

Part 1 of the TCC includes five sentences that represent the Charter cautions. Each sentence is individually presented on a separate card. The sentence is read by the examiner and examinees are asked to explain the meaning of each statement in their own words. Responses are scored according to a standardized scoring system (see Appendix A).

Part 2 of the TCC presents each of the five sentences from Part 1 with four associated phrases. Examinees must indicate whether each of the associated phrases has the same or different meaning compared to the original statement. Responses are scored as either correct or incorrect.

Part 3 of the TCC is a vocabulary test consisting of ten words found in the Charter cautions. Each word is presented individually on a card. The word is read and used in a sentence. Examinees must explain the meaning of each word. Responses are scored according to a standardized scoring system (see Appendix A).

The TCC scores are likely affected by two factors. First, it is expected that performance on the TCC will be reflective of, and affected by, general cognitive abilities and knowledge. Second, it is expected that performance on the TCC will be

affected by the amount of previous contact with the legal system. That is, there is likely to be a rehearsal, or learning, effect such that individuals who have previously heard the Charter cautions explained will be more informed about these rights. It is a general perception that individuals who have been through the system are more familiar with the procedures. However, it is not clear whether a familiarity with the procedures represents a better understanding of the rights. An empirical investigation can provide some insight into these expectations.

Summary

There has long been a concern for the protection of the rights of individuals when they are arrested or detained. Statutory and case law have developed standards indicating that individuals must fully understand the Charter cautions at the time of arrest, and appreciate the consequences of waiving these rights. However, no objective measure has been available to assess this capacity.

The TCC is a measure which represents an operationalization of the Charter cautions, and can be used to assess competency to understand Charter cautions. In the present studies, the TCC was administered to offender and nonoffender samples in a first attempt to validate the measure, and to investigate hypothesized differences between the groups.

A valid measure of Charter comprehension will be valuable in assisting police and the courts, especially in cases where an individual's understanding is questionable (e.g., individuals who are not proficient in English, individuals with mental disabilities, individuals with mental disorders). The findings will also be useful for making

recommendations regarding the practices of law enforcement personnel and suggesting strategies for effectively communicating Charter cautions to arrested individuals.

Hypotheses

General Cognitive Abilities

It is believed that the TCC is representative of general cognitive abilities and knowledge. It was, therefore, expected that scores on the TCC would be correlated with estimates of IQ and level of education. Also, it is suggested that university students likely have a greater level of general knowledge and cognitive abilities than the general population who, in turn, likely have greater cognitive abilities and knowledge than offenders. Therefore, it was hypothesized that students would perform better on the TCC than both the general population and offenders, and the general population would perform better than offenders.

Learning Effect

The second component of the TCC is referred to as a learning component. It was expected that individuals with more prior exposure to the law would have a better understanding of their rights. While Grisso's (1980, 1981) findings do not support this hypothesis, they may be restricted to the United States, where procedural requirements at the time of arrest require little more than the recitation of the Miranda warnings. In Canada, however, the requirement is for individuals to understand the Charter cautions and appreciate the consequences of waiving their rights at the time of arrest, so increased exposure to this process should result in a learning effect. Therefore, it was hypothesized that individuals with greater prior exposure to the legal system would

demonstrate a better understanding of the cautions.

Legal Hypothesis

Individuals must be properly informed of the Charter cautions when arrested or detained, and must understand those rights. Thus, the law assumes that individuals who have been arrested and given their Charter cautions understand these rights. Based on this legal requirement, it would be expected that recently arrested offenders would perform better than nonoffenders on the TCC because of their recent exposure to a proper explanation of the rights. Also, offenders with a greater number of prior arrests should demonstrate the learning effect, compared to offenders with fewer prior arrests.

Study 1

Method

Participants

Participants included a group of 20 undergraduate students from Simon Fraser University in Burnaby, BC, and a group of 20 people from the general public, 9 recruited from a local Canada employment centre and 11 recruited from a local laundromat.

The mean age of the student group was 24.35 years (SD = 5.70) and the mean number of years of education was 15.90 (SD = 1.33). The mean age of the general population group was 32.00 years (SD = 8.07) and the mean number of years of education was 13.45 (SD = 2.46).

Materials

The TCC was administered to each participant. The language used in the instructions of the TCC was assessed as being at about grade level 4 on the Flesch-Kincaid Scale, indicating that it should be easy for most readers. The Flesch Reading Ease Score was 94 which represents a less than sixth grade level (see Grundner, 1978; Ogloff & Otto, 1991).

Participants were also asked to complete the Shipley Institute of Living Scale (SILS; Zachary, 1986) to obtain an estimate of IQ. The SILS consists of two subtests including a 40-item vocabulary test and a 20-item abstract thinking test. Although originally designed to assess organic brain syndrome in psychiatric patients, the SILS has been used in research as a brief estimate of general intellectual ability (Fowles & Tunick, 1986; Retzlaff, Slicner, & Gibertini, 1986; Weiss & Schell, 1991; Zachary, 1986; Zachary, Crumpton, & Spiegel, 1985). Research indicates that WAIS-R scores estimated from the SILS correlate highly with observed WAIS-R scores (ranging from $r = .74$, in Zachary et al., 1985, to $r = .85$, in Weiss & Schell, 1991).

Participants were also briefly interviewed to obtain information such as age, level of education, and prior exposure to the legal system (number of previous arrests).

Procedure

Participants were asked to read and sign an informed consent form (Appendix B) that explained the risks and benefits of participating in the study.

The TCC was administered to participants individually. The three subtests of the TCC were administered in random order, and took approximately 20-25 minutes to

complete. Participants were then asked to complete the SILS. This scale took approximately 10-15 minutes to complete.

Upon completion, participants were debriefed and thanked for their participation. Any concerns or questions regarding legal rights were addressed.

Scoring

The TCC was scored according to the standardized scoring system described in the TCC manual (see Appendix A). TCC-Total scores are made up of a maximum of 20 points contributed from Parts 1, 2, and 3, for a maximum total of 60.

Part 1 consists of 5 items, each with a maximum score of 2, for a maximum total of 10 points. This score is then doubled (to give it the same weighting as Parts 2 and 3) for a maximum total of 20 points.

Part 2 consists of 20 items which are each scored as either 1 for correct or 0 for incorrect, for a maximum total of 20 points.

Part 3 consists of 10 items, each with a maximum score of 2, for a maximum total of 20 points.

The TCC scoring system was developed based on Grisso's (1981) scoring system for the Miranda warnings assessment instruments. In addition, Study 1 was used to empirically develop the TCC scoring system. For Parts 1 and 3, which were scored more objectively than Part 2, all answers from Study 1 were analyzed to identify patterns of responses. The responses for most items fell in one of three categories: correct, partially correct or a reasonable synonym, and incorrect. These empirical results were used to further develop and refine the scoring criteria.

Data Analysis

T-tests were used to compare the student group and the general population group on the dependant variables, as well as age, education, and IQ. Correlations were calculated to investigate the relationship between the dependant measures and these variables. Also, t-tests were used to compare groups with prior exposure to the law and no prior exposure to the law. Correlations were calculated to investigate the relationship between the dependent measures and the amount of prior exposure to the law.

Results

Using t-tests, the student group and general population group were compared on a number of variables. These analyses revealed significant differences for age and education, indicating that the general population sample was older, $t(38) = -3.46$, $p < .001$, two-tailed, and less educated $t(29) = 3.92$, $p < .0001$, two-tailed, compared to the student sample.

Significant differences were also revealed for IQ. The student group IQ estimates were higher ($M = 104.40$, $SD = 7.49$), compared to the general population group IQ estimates ($M = 97.6$, $SD = 10.38$), $t(38) = 2.37$, $p < .05$, two-tailed.

Significant differences were revealed between groups for TCC-Part 3 scores. The student sample scored higher ($M = 13.15$), compared to the general population sample ($M = 11.45$), $t(38) = 2.45$, $p < .05$, two-tailed.

No significant differences were revealed for TCC-Part 1 scores, TCC-Part 2 scores, or TCC-Total scores. All means and standard deviations are reported in Table 1.

Table 1

Means and Standard Deviations for Age, Education, IQ, and TCC Scores for Study 1

	Student ($n = 20$)		General Population ($n = 20$)		t	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>		
Age	24.35	5.70	32.00	8.07	-3.46	**
Education	15.90	1.33	13.45	2.46	3.92	***
IQ	104.40	7.49	97.60	10.38	2.37	*
TCC-Part 1	11.60	3.53	11.00	3.81	.52	
TCC-Part 2	18.05	1.64	18.65	1.66	-1.15	
TCC-Part 3	13.15	2.18	11.45	2.21	2.45	*
TCC-Total	42.80	5.23	41.10	5.49	1.00	

* $p < .05$ ** $p < .001$ *** $p < .0001$

In order to investigate the association between performance on the TCC and IQ, Pearson product-moment correlations were calculated between TCC scores and IQ across both groups. There were no significant correlations between IQ and TCC-Part 1 ($r = .21$, $p = N.S.$), TCC-Part 2 ($r = .18$, $p = N.S.$), TCC-Part 3 ($r = .36$, $p = N.S.$), or TCC-Total ($r = .35$, $p = N.S.$).

In order to investigate the association between performance on the TCC and education, Pearson product-moment correlations were calculated between TCC scores and education across both groups. There were no significant correlations between education and TCC-Part 1 ($r = .25$, $p = N.S.$), TCC-Part 2 ($r = -.08$, $p = N.S.$), TCC-Part 3 ($r = .25$, $p = N.S.$), or TCC-Total ($r = .26$, $p = N.S.$).

Pearson product-moment correlations were also calculated between TCC scores and both education and IQ for the student and general population groups separately. There were no significant correlations. These results are reported in Tables 2 and 3.

In order to investigate the association between performance on the TCC and prior exposure to the law, the entire sample was regrouped into groups with prior exposure to the law (previously been arrested) and no prior exposure to the law. Using t-tests, these groups were compared on the dependent variables. No significant differences were revealed for TCC scores. Also within the group with prior exposure to the law, a Pearson product-moment correlation between TCC Scores and number of arrests revealed no significant correlations.

Discussion

The primary purpose of this study was to collect responses to assist in refining

Table 2

Correlations Between TCC Scores and IQ Estimates

	<u>Study 1</u>		<u>Study 2</u>		
	Students (<u>n</u> = 20)	General Population (<u>n</u> = 20)	Students (<u>n</u> = 28)	General Population (<u>n</u> = 20)	Offenders (<u>n</u> = 45)
TCC-Part 1	.25	.16	.24	.16	.18
TCC-Part 2	-.03	.49	-.05	.49	.44*
TCC-Part 3	.25	.27	.14	.27	.41*
TCC-Total	.26	.37	.21	.37	.52***

* $p < .01$, 1-tailed

*** $p < .001$, 1-tailed

Table 3

Correlations Between TCC Scores and Education

	<u>Study 1</u>		<u>Study 2</u>		
	Students (<u>n</u> = 20)	General Population (<u>n</u> = 20)	Students (<u>n</u> = 213)	General Population (<u>n</u> = 20)	Offenders (<u>n</u> = 61)
TCC-Part 1	.01	.39	-.06	.39	.18
TCC-Part 2	-.14	.12	-.10	.12	.04
TCC-Part 3	.01	.11	.07	.11	.20
TCC-Total	-.05	.35	-.02	.35	.21

the TCC scoring criteria. Also, the relationship between TCC scores and IQ, education, and previous contact with the law were investigated.

A moderate, but nonsignificant, relationship was revealed between TCC-Total scores and IQ for both groups. This relationship supports the hypothesis that performance on the TCC is associated with general cognitive abilities. However, only a small proportion (3% to 13%) of the variance in TCC scores could be explained by IQ estimates alone.

There was no relationship between TCC-Total scores and education for the student sample. However, there was a moderate, though nonsignificant, relationship between these variables for the general population sample. This provides weak support the hypothesis that performance on the TCC is associated with general knowledge.

No effects were revealed for prior exposure to the law as measured by number of previous arrests. This finding, however, is tentative, because there were only six individuals (2 students and 4 nonstudents) who had previously been arrested. To a minimal extent, this finding refutes the hypothesis that increased exposure to the law will be associated with higher performance on the TCC. However, this should be explored further. A larger sample of individuals from the general population may include a larger number of people who have previously been arrested, and the effect of this prior exposure could then be examined.

The student and general population groups were significantly different on age, education, and IQ variables. Therefore, it was not possible to combine the groups for

further analyses.

In order to investigate the hypothesized differences between groups of individuals who had not previously been arrested and those who had previously been arrested, a second study was conducted in which an additional sample of undergraduate students and a sample of recently arrested offenders were interviewed and administered the TCC.

Study 2

Method

Participants

Participants included 213 (including the 20 students from Study 1) undergraduate students from Simon Fraser University in Burnaby, BC, 20 individuals from the general public (from Study 1), and 61 male inmate volunteers from the Surrey Pretrial Services Centre (SPSC) in Surrey, BC. The SPSC is a short-term jail for males who have been arrested, and are awaiting their bail hearing, have had their bail denied, are serving a short sentence, or are awaiting transfer to another institution (Ogloff, Tien, Roesch, & Eaves, 1991).

The student group included 133 females and 80 males. The mean age of the student group was 21.33 years (SD = 5.21) and the mean number of years of education was 13.84 years (SD = 1.62). The mean age of the offender group was 27.80 years (SD = 8.25) and the mean number of years of education was 10.39 years (SD = 2.16).

Materials

Students.

The TCC was administered to each participant individually and the subtests were administered in random order. When time permitted, participants were asked to complete the SILS. Participants were also briefly interviewed to obtain information such as age, level of education, and prior exposure to the legal system.

Offenders.

As part of the routine admission procedure, inmates were interviewed and rated on the Brief Psychiatric Rating Scale (BPRS; Lukoff, Nuechterlein, & Ventura, 1986; Appendix C). The BPRS is a measure of psychiatric symptoms on 24 items (e.g., anxiety, depression, and bizarre behaviour). Scores range from 1 (not present) to 7 (extremely severe) for each item; total scores range from 24 to 168. Inmates were invited to participate as soon as possible after being admitted to SPSC, usually within a few days and often within one day. The mean number of days that the offenders had been in the SPSC was 7.73 days ($n = 51$, $SD = 18.01$). A few individuals had been in SPSC for longer periods (58 days, 62 days, and 75 days) which artificially elevates this mean. The median number of days that the offenders had been in the SPSC was 1 day ($n = 35$, 68.6%).

Participants were briefly interviewed to investigate their experience of being arrested and their recollection of how they responded to their Charter cautions.

The TCC was administered to each participant individually and the subtests were administered in random order. Participants were asked to complete the SILS to

obtain an estimate of IQ. Finally, participants were briefly interviewed again to obtain information such as age, level of education, and prior exposure to the legal system (number of previous arrests and number of previous times serving time).

Procedure

All incoming inmates at the SPSC are screened in order to assess their mental state and their need for mental health services during the period between arrest and trial (Ogloff, Tien, Roesch, & Eaves, 1991). Screening interviews and BPRS ratings were conducted by doctoral-level graduate students in clinical psychology who have been trained in the use of the screening instruments.

Participants were asked to read and sign an informed consent form (Appendix D) that explained the risks and benefits of participating in the study.

The TCC was then administered to participants individually by an independent interviewer who was blind to the results of the screening interview. The 3 subtests of the TCC were administered in random order. The TCC took approximately 20-25 minutes to complete. Participants were then asked to complete the SILS. This scale took approximately 10-15 minutes to complete.

Upon completion, participants were debriefed and thanked for their participation. Any concerns or questions regarding legal rights were addressed.

Data Analysis

Student Sample.

T-tests were used to compare the Study 1 student group with the Study 2 student sample on the dependant variables, as well as age, education, and IQ.

Offender Sample.

T-tests were used to investigate the representativeness of the offender group compared to offenders who were contacted but refused to participate in the study. Also, because the offender group consisted of only males, t-tests were used to investigate possible sex differences in the nonoffender sample to determine whether groups could be compared.

Dependent Measures and Demographic Variables.

Using a oneway analysis of variance (ANOVA), the student group and the offender group scores were compared on the dependent variables, as well as age, education, and IQ. Scheffé post hoc comparisons were made between groups to identify specific relationships. Correlations were calculated to investigate the relationship between TCC scores and both IQ and education.

T-tests were used to compare groups with prior exposure to the law and those with no prior exposure to the law. Correlations were calculated to investigate the relationship between TCC scores and the amount of prior exposure to the law.

Results

Student Sample

Using t-tests, the student group from Study 1 was compared to the student group from Study 2 on a number of variables to determine whether these two samples could be grouped together for further analyses. These analyses revealed significant differences for age and education. The Study 1 sample was older ($M = 24.35$, $SD = 5.70$) compared to the Study 2 sample ($M = 21.02$, $SD = 5.07$), $t(211) = 2.76$, $p < .01$,

two-tailed. The Study 1 sample was also more educated ($M = 15.9$ years, $SD = 1.33$) compared to the Study 2 sample ($M = 13.62$ years, $SD = 1.50$), $t(211) = 6.53$, $p < .0001$, two-tailed.

There were no significant differences between IQ, TCC-Part 1 scores, TCC-Part 2 scores, TCC-Part 3 scores, or TCC-Total scores.

Differences between groups on age and education variables are likely due to the fact that volunteers in Study 2 were typically first year undergraduate students, whereas Study 1 involved participants from upper years. Since these two groups did not differ significantly on the dependent measures or IQ, they were grouped together for subsequent analyses.

Offender Sample

Before considering the hypotheses, it was necessary to investigate the representativeness of the offender sample compared to the offenders who were contacted and refused to participate. Using t-tests, no significant differences were revealed for age, BPRS scores (to identify mentally disordered offenders), or severity of current offence. Based on this minimal information, it did not seem that the offender group was identifiably different compared to offenders who declined participation.

Possible sex differences were also considered because the offender group consisted of only males. Using t-tests, no significant differences were revealed for IQ, education, or TCC scores between males and females within the nonoffender groups. Therefore, it was decided that the offender group and the other groups were

comparable.

TCC Scores

All TCC score means and standard deviations are reported in Table 4 and illustrated in Figures 1 and 2.

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for TCC-Part 1 scores, $F(2,291) = 7.42$, $p < .001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean TCC-Part 1 score for the student group ($M = 12.51$, $SD = 3.07$) was significantly greater than the offender group ($M = 10.92$, $SD = 3.05$). The mean of the general population group ($M = 11.00$, $SD = 3.81$) fell between the student and offender groups and was not significantly different from either group.

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for TCC-Part 2 scores, $F(2,291) = 6.69$, $p < .001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean TCC-Part 2 score for the general population group ($M = 18.65$, $SD = 1.67$) and the student group ($M = 18.13$, $SD = 1.53$) were significantly greater than the offender group ($M = 17.36$, $SD = 2.05$).

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for TCC-Part 3 scores, $F(2,291) = 32.18$, $p < .0001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean TCC-Part 3 score for the student group ($M = 12.70$, $SD = 2.30$) was significantly greater than the offender group ($M = 9.98$, $SD = 2.60$). The mean of the general

Table 4

Means and Standard Deviations for Age, Education, IQ, and TCC Scores for Study 2

	Students (<u>n</u> = 213)		General Population (<u>n</u> = 20)		Offenders (<u>n</u> = 61)	
	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>	<u>M</u>	<u>SD</u>
Age	21.33 *	5.21	32.00 *	8.07	27.79 *	8.17
Education	13.84 *	1.62	13.45 †	2.46	10.39 *†	2.16
IQ	105.43 *	8.07	97.60 *	10.38	86.11 *	12.57
TCC-Part 1	12.51 *	3.07	11.00	3.81	10.92 *	3.05
TCC-Part 2	18.13 *	1.53	18.65 †	1.67	17.36 *†	2.05
TCC-Part 3	12.70 *	2.30	11.45	2.21	9.98 *	2.60
TCC-Total	43.34 *	5.06	41.10	5.49	38.26 *	5.49

*, † denote pairs of groups significantly different at $p < .05$.

Figure 1

Scores on TCC Parts by Group

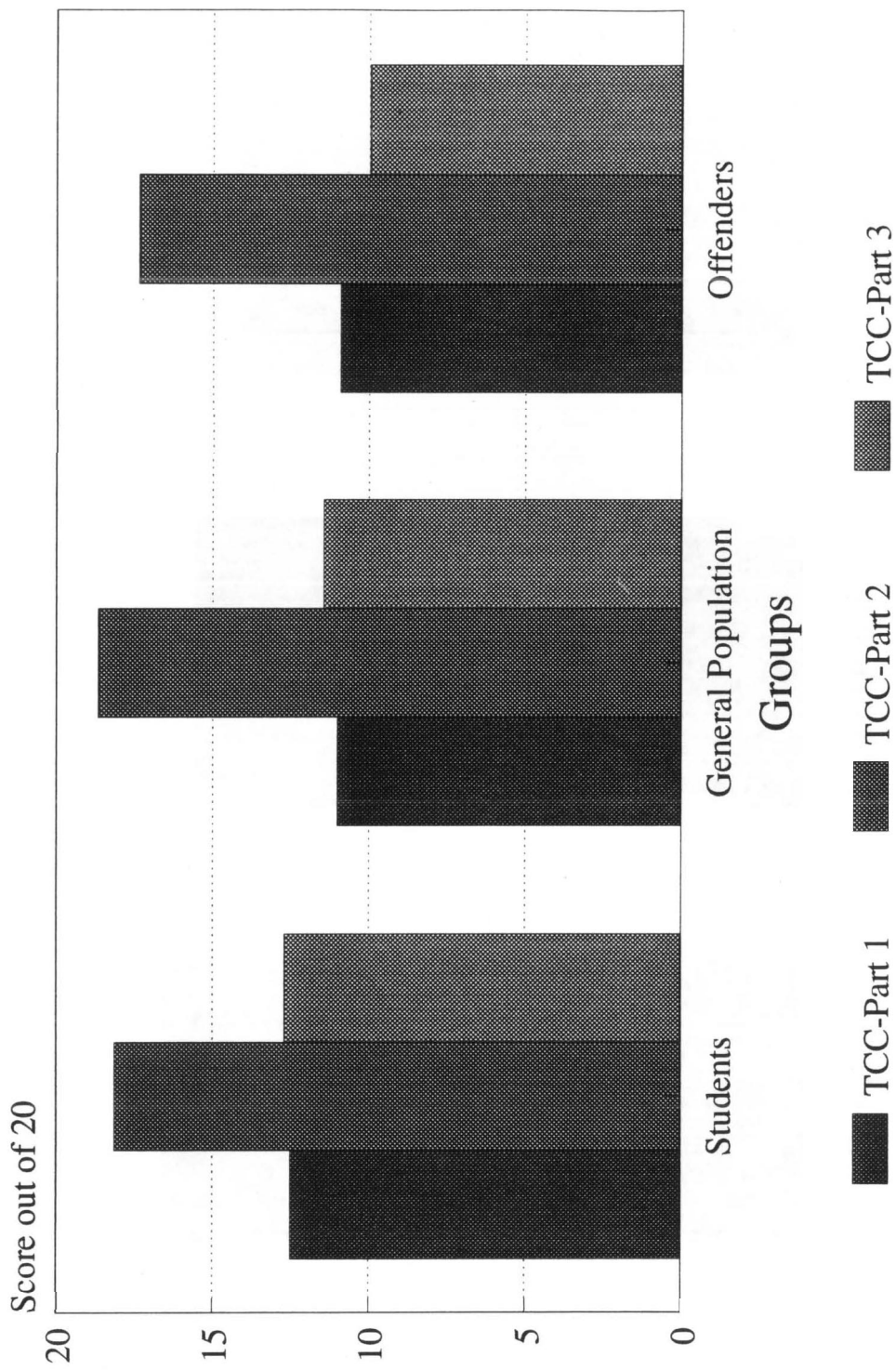
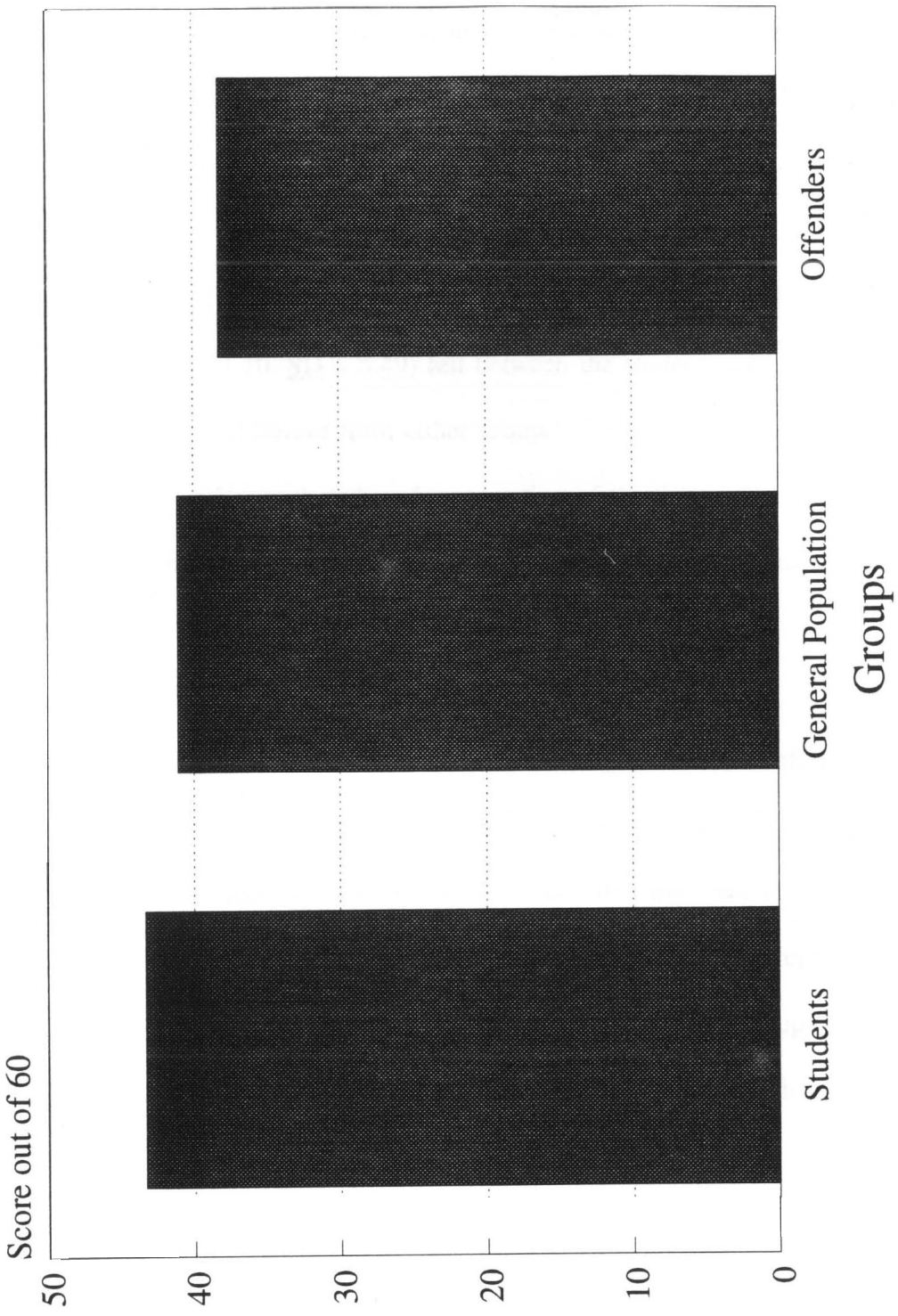


Figure 2
TCC-Total Scores by Group



population group ($M = 11.45$, $SD = 2.21$) fell between the student and offender groups and was not significantly different from either group.

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for TCC-Total scores, $F(2,291) = 23.22$, $p < .0001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean TCC-Total score for the student group ($M = 43.34$, $SD = 5.06$) was significantly greater than the offender group ($M = 38.26$, $SD = 5.49$). The mean of the general population group ($M = 41.10$, $SD = 5.49$) fell between the student and offender groups and was not significantly different from either group.

A one-way ANOVA with order of presentation of the three sections of the TCC (six possible orders) as the independent variable revealed no significant effects for any TCC scores.

Demographic Variables

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for Age, $F(2,291) = 46.91$, $p < .0001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean age for the general population group ($M = 32.00$, $SD = 8.07$) was significantly greater than the mean of the offender group ($M = 27.79$, $SD = 8.17$) and the student group ($M = 21.33$, $SD = 5.21$). Also, the mean age of the offender group was significantly greater than the student group.

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for Education, $F(2,291) = 86.04$, p

< .0001. Scheffé post hoc comparisons ($p < .05$) revealed that the mean number of years of education for the student group ($M = 13.84$, $SD = 1.62$) and the general population group ($M = 13.45$, $SD = 2.46$) were significantly greater than the mean of the offender group ($M = 10.39$, $SD = 2.16$).

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for IQ, $F(2,90) = 29.15$, $p < .0001$. Scheffé post hoc comparisons ($p < .05$) revealed that the mean IQ for the student group ($n = 28$, $M = 105.43$, $SD = 8.07$) was significantly greater than the general population group ($n = 20$, $M = 97.60$, $SD = 10.38$) and the offender group ($n = 45$, $M = 86.11$, $SD = 12.57$). Also, the mean IQ of the general population group was significantly greater than the offender group.

IQ and Education.

Pearson product-moment correlations were calculated between TCC scores and IQ across all groups ($n = 93$). There were significant correlations between IQ and TCC-Part 2 ($r = .40$, $p < .001$), TCC-Part 3 ($r = .53$, $p < .001$), and TCC-Total ($r = .52$, $p < .001$). There was no significant correlation between IQ and TCC-Part 1 ($r = .19$, $p = N.S.$).

Pearson product-moment correlations were calculated between TCC scores and education across all groups ($N = 294$). There were significant correlations between education and TCC-Part 1 ($r = .18$, $p < .001$), TCC-Part 3 ($r = .33$, $p < .001$), and TCC-Total ($r = .29$, $p < .001$). There was no significant correlation between education and TCC-Part 2 ($r = .09$, $p = N.S.$).

Pearson product-moment correlations were also calculated between TCC scores and both IQ and education for each group separately. In the offender group, there were significant correlations between IQ and TCC-Part 2 ($r = .44, p < .01$), TCC-Part 3 ($r = .41, p < .01$), and TCC-Total ($r = .52, p < .001$). There were no other significant correlations. These results are reported in Tables 2 and 3.

Scores on TCC-Total are plotted against IQ estimates for each group in Figures 3, 4, and 5, and for all groups in Figure 6. These figures illustrate differences in variance of scores between groups. The restricted range of scores within some groups may explain why significant correlations were found between IQ and TCC scores across all groups but not within some groups.

To further examine the relationship between IQ and TCC scores, offenders were matched with nonoffenders on IQ ($n = 14$ pairs), and a t-test on the TCC difference scores revealed no significant difference between groups. Also, an ANOVA with group (student, general population, or offender) as the independent variable, and IQ as a covariate, revealed no significant effects for TCC scores.

Prior Exposure to the Law

In order to investigate the relationship between performance on the TCC and prior exposure to the law, t-tests were used to compare groups with prior exposure to the law (previously been arrested) and no prior exposure to the law among nonoffenders (student and general population groups). A significant difference was revealed for TCC-Part 2 scores, $t(17) = -3.04, p < .01$, with individuals with prior exposure to the law scoring higher ($M = 18.92, SD = .86$) than individuals with no

Figure 3

TCC-Total Scores by IQ for Student Group

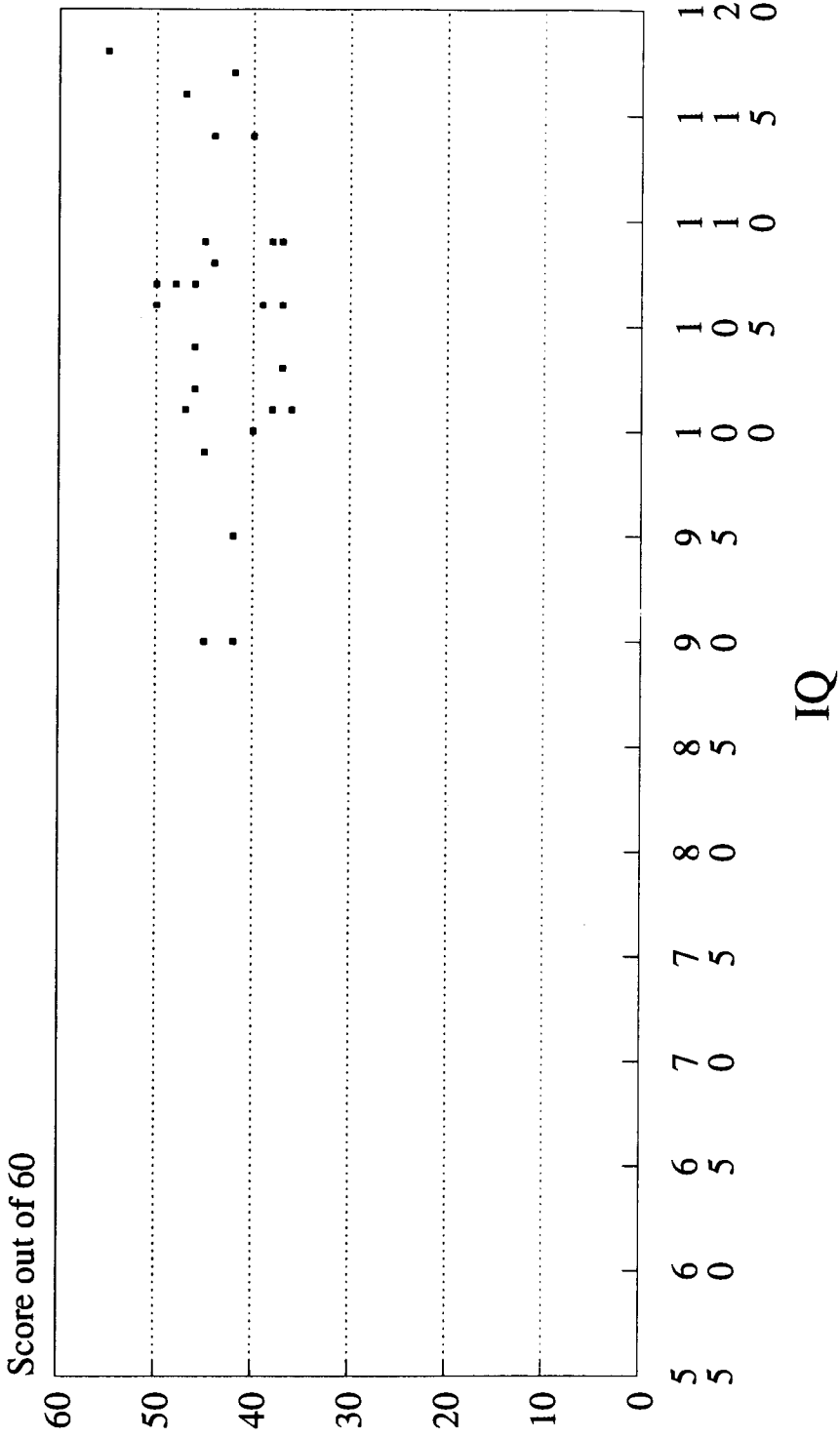
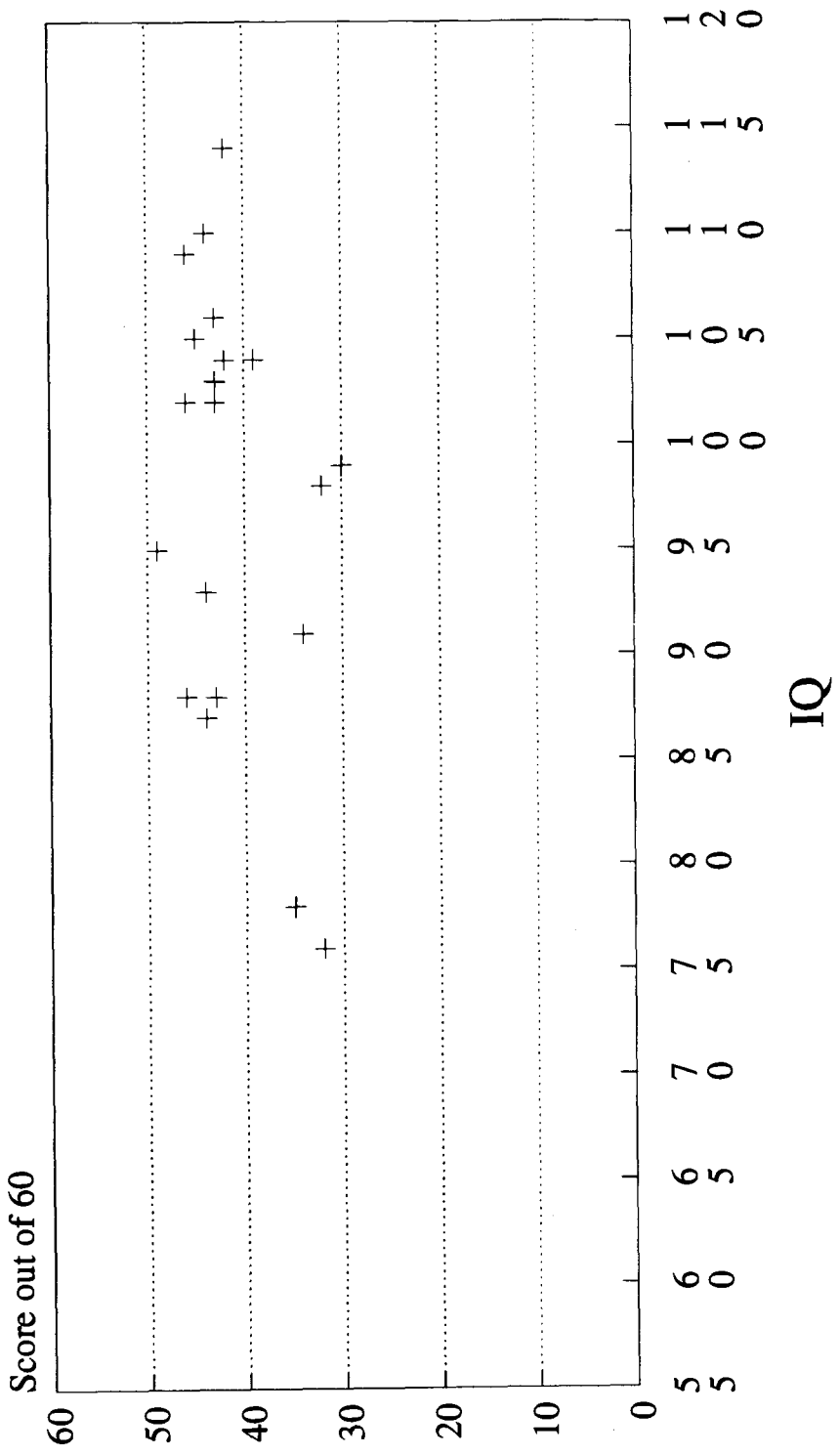


Figure 4

TCC-Total Scores by IQ for General Population Group



+ General Population

Figure 5

TCC-Total Scores by IQ for Offender Group

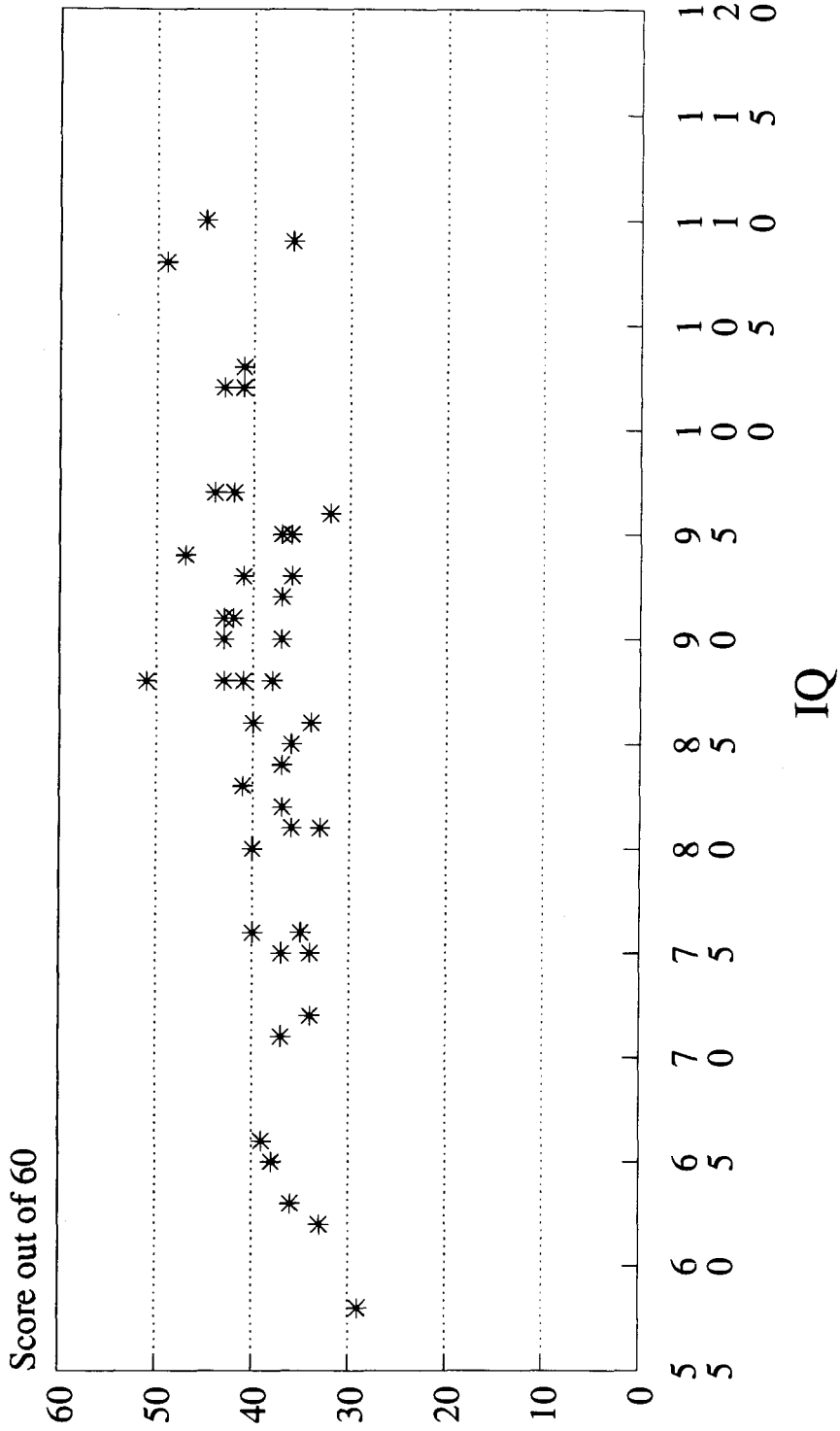
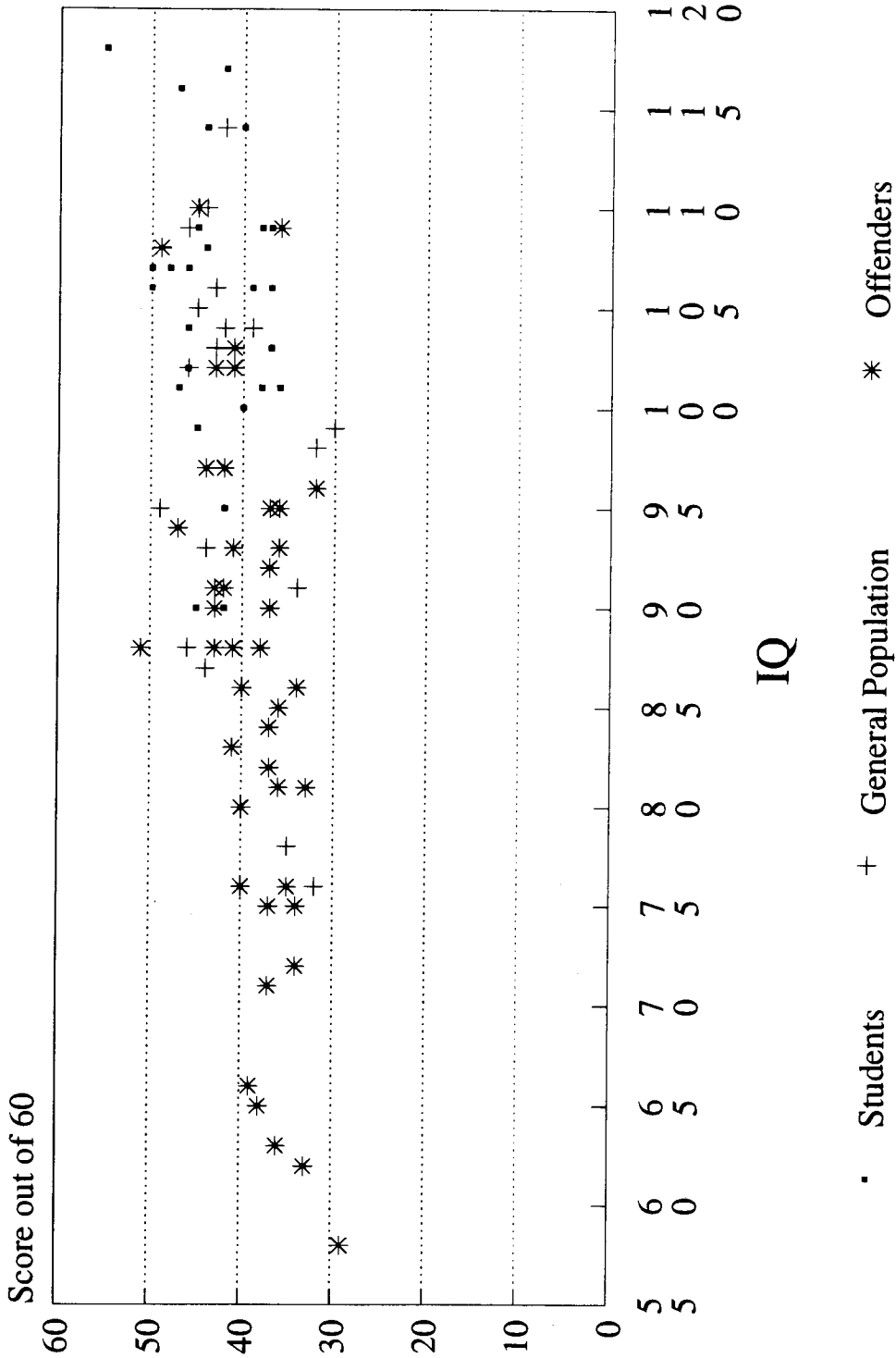


Figure 6

TCC-Total Scores by IQ for All Groups



prior exposure to the law ($\underline{M} = 18.13$, $\underline{SD} = 1.57$). No other differences were significant. These findings may be limited because only 13 out of 233 individuals had ever been arrested.

In order to investigate the relationship between performance on the TCC and prior exposure to the law within the offender group, Pearson product-moment correlations were calculated between TCC scores and number of arrests. There were no significant correlations. Though moderate and nonsignificant, it is interesting that TCC-Total and number of arrests were negatively correlated ($\underline{n} = 61$, $\underline{r} = -.26$, $\underline{p} = \text{N.S.}$).

Within the offender group, t-tests were used to compare groups of individuals who had previously served time and who had not previously served time. No significant differences were revealed.

Offenders were also asked if they remembered having their rights read to them at the time of arrest, and 34.4% stated that they did not.

Subgroup Differences

Across all participants, a subgroup of individuals with English as a second language (ESL) was identified ($\underline{n} = 35$). Using t-tests, significant differences were found on total TCC scores, $\underline{t}(53) = -2.92$, $\underline{p} < .01$, with the ESL group scoring significantly lower ($\underline{M} = 40.11$, $\underline{SD} = 4.14$) than the nonESL group ($\underline{M} = 42.41$, $\underline{SD} = 5.67$). Scores were not significantly different on TCC-Part 1. Significant differences were found on TCC-Part 2 scores, $\underline{t}(292) = -2.59$, $\underline{p} < .01$, with the ESL group scoring significantly lower ($\underline{M} = 17.31$, $\underline{SD} = 2.04$) than the nonESL group ($\underline{M} = 18.10$, $\underline{SD} =$

1.62). Significant differences were also found on TCC-Part 3 scores, $t(292) = -2.80$, $p < .01$, with the ESL group scoring significantly lower ($M = 10.91$, $SD = 2.44$) than the nonESL group ($M = 12.21$, $SD = 2.59$).

Critical Items

Table 5 illustrates scores on individual TCC items across all groups. Table 6 provides the TCC item scores for the offender sample. This information can be used to identify items that are particularly difficult to understand.

Table 7 illustrates the patterns of responses in the offender group on the TCC-Part 1 items. A score of 0 on one item was obtained by 32.8% of the individuals in the offender group. A score of 0 on 2, 3, or 4 items was obtained by 8.2% of the individuals.

Scores were also regrouped to represent five major information components contained in the Charter cautions. The items that weighed into each subscore are listed in Appendix E. Each item in Part 1 represents one major information component. For each of the five items in Part 1, the related items from Parts 2 and 3 were grouped together to form five subscores. Two vocabulary items were not included in any of the five major items. These items were duty (from "It is my duty to inform you that..") and arresting (from "I am arresting you for..."). These two items were grouped to form a sixth subscore.

The TCC subscores are reported in Table 8. These subscores are perhaps more meaningful than scores on the individual TCC parts because they indicate specific informational areas of weakness or strength. This information will have important

Table 5

Scores on TCC Items for All Groups

		0		1		2	
		#	%	#	%	#	%
Part 1	Item 1	9	3.1	123	41.8	162	55.1
	Item 2	15	5.1	141	48.0	138	46.9
	Item 3	27	9.2	234	79.6	33	11.2
	Item 4	63	21.4	181	61.6	50	17.0
	Item 5	39	13.3	180	61.2	75	25.5
Part 2	Item 1a	10	3.4	284	96.6		
	Item 1b	42	14.3	252	85.7		
	Item 1c	14	4.8	280	95.2		
	Item 1d	30	10.2	264	89.8		
	Item 2a	5	1.7	289	98.3		
	Item 2b	34	11.6	260	88.4		
	Item 2c	6	2.0	288	98.0		
	Item 2d	6	2.0	288	98.0		
	Item 3a	30	10.2	264	89.8		
	Item 3b	128	43.5	166	56.5		
	Item 3c	25	8.5	269	91.5		
	Item 3d	49	16.7	245	83.8		
	Item 4a	52	17.7	242	82.3		
	Item 4b	35	11.9	259	88.1		
	Item 4c	12	4.1	282	95.9		
	Item 4d	50	17.0	244	83.0		
	Item 5a	25	8.5	269	91.5		
	Item 5b	4	1.4	290	98.6		
	Item 5c	23	7.8	271	92.2		
	Item 5d	7	2.4	287	97.6		
Part 3	Item 1	52	17.7	227	77.2	15	5.1
	Item 2	64	21.8	109	37.1	121	41.2
	Item 3	13	4.4	150	51.0	131	44.6
	Item 4	46	15.6	142	48.3	106	36.1
	Item 5	17	5.8	159	54.1	118	40.1
	Item 6	28	9.5	196	66.7	70	23.8
	Item 7	8	2.7	251	85.4	35	11.9
	Item 8	14	4.8	168	57.1	112	38.1
	Item 9	11	3.7	198	67.3	85	28.9
	Item 10	8	2.7	214	72.8	72	24.5

Note. N = 294

Table 6

Scores on TCC for Offender Group

		0		1		2	
		#	%	#	%	#	%
Part 1	Item 1	5	8.2	38	62.3	18	29.5
	Item 2	3	4.9	29	47.5	29	47.5
	Item 3	3	4.9	55	90.2	3	4.9
	Item 4	14	23.0	44	72.1	3	4.9
	Item 5	10	16.4	41	67.2	10	16.4
Part 2	Item 1a	5	8.2	56	91.8		
	Item 1b	12	19.7	49	80.3		
	Item 1c	8	13.1	53	86.9		
	Item 1d	7	11.5	54	88.5		
	Item 2a	0	0	61	100.0		
	Item 2b	12	19.7	49	80.3		
	Item 2c	3	4.9	58	95.1		
	Item 2d	3	4.9	58	95.1		
	Item 3a	10	16.4	51	83.6		
	Item 3b	29	47.5	32	52.5		
	Item 3c	4	6.6	57	93.4		
	Item 3d	12	19.7	49	80.3		
	Item 4a	29	47.5	32	52.5		
	Item 4b	5	8.2	56	91.8		
	Item 4c	8	13.1	53	86.9		
	Item 4d	6	9.8	55	90.2		
	Item 5a	2	3.3	59	96.7		
	Item 5b	1	1.6	60	98.4		
	Item 5c	4	6.6	57	93.4		
	Item 5d	1	1.6	60	98.4		
Part 3	Item 1	13	21.3	45	73.8	3	4.9
	Item 2	27	44.3	14	23.0	20	32.8
	Item 3	6	9.8	34	55.7	21	34.4
	Item 4	29	47.5	22	36.1	10	16.4
	Item 5	8	13.1	35	57.4	18	29.5
	Item 6	14	23.0	37	60.7	10	16.4
	Item 7	2	3.3	52	85.2	7	11.5
	Item 8	4	6.6	43	70.5	14	23.0
	Item 9	6	9.8	47	77.0	8	13.1
	Item 10	7	11.5	50	82.0	4	6.6

Note. $n = 61$

Table 7

TCC-Part 1 Critical Items for Offender Group

	Offenders (<u>n</u> = 61)	
	#	%
0 on 1 item	20	32.8
0 on 2 items	2	3.3
0 on 3 items	1	1.6
0 on 4 items	2	3.3
0 on 5 items	0	0
1 on 1 item	2	3.3
1 on 2 items	9	14.8
1 on 3 items	20	32.8
1 on 4 items	18	29.5
1 on 5 items	11	18.0
2 on 1 item	19	31.1
2 on 2 items	15	24.6
2 on 3 items	4	6.6
2 on 4 items	1	1.6
2 on 5 items	0	0

Table 8

TCC Subscores on Six Informational Components

	Total Sample (N = 294)		Students (n = 213)		General Population (n = 20)		Offenders (n = 61)					
	M	SD	%	M	SD	%	M	SD	%			
Subscore 1 (Maximum 8)	6.40	1.21	80.0	6.68 *	1.01	83.5	6.50 †	1.15	81.3	5.38 *†	1.34	67.2
Subscore 2 (Maximum 8)	6.59	1.01	82.4	6.71 *	1.00	83.9	6.20	.77	77.5	6.30 *	1.04	78.7
Subscore 3 (Maximum 14)	8.84	1.84	63.2	9.09 *	1.79	65.0	8.75	1.62	62.5	8.00 *	1.85	57.1
Subscore 4 (Maximum 10)	7.00	1.39	70.0	7.24 *	1.32	72.4	7.05 †	1.23	70.5	6.15 *†	1.34	61.5
Subscore 5 (Maximum 10)	7.47	1.24	74.7	7.64 *	1.26	76.4	7.20	1.28	72.0	6.98 *	1.01	69.8
Subscore 6 (Maximum 4)	2.34	.63	58.6	2.40 *	.62	60.1	2.40	.50	60.0	2.11 *	.66	52.9

*, † denote pairs of groups significantly different at $p < .05$.

implications for identifying areas in the Charter cautions that are particularly difficult to understand.

A one-way ANOVA with group (student, general population, or offender) as the independent variable revealed significant effects for all six subscores. Scheffé post hoc comparisons ($p < .05$) revealed that the mean subscores for the student group were significantly greater than the offender group for all six subscores. In addition, the mean subscores for the general population group were significantly greater than the offender group for Subscores 1 and 4.

Reliability and Validity of the TCC

Although beyond the scope of this thesis, initial reliability analyses have revealed encouraging results.

Interrater Reliability.

A randomly selected sample of 83 TCC tests was selected from the entire sample. This sample was scored by two additional raters who were trained in the administration and scoring of the TCC. Intraclass correlation reliability coefficients (ICC) were calculated for TCC-Total (Bartko, 1976). Parts 1 and 3 of the TCC were also considered separately because these two parts were scored according to a more subjective scoring key compared to Part 2. The ICC for raters on TCC-Total scores was .89, indicating excellent agreement for overall scores. The ICC was .75 for TCC-Part 1 and .83 for TCC-Part 3.

Kappa values were calculated for individual test items (Bartko, 1976, 1991). Kappas ranged from .28 to .76, (\underline{M} = .58 for second rater and \underline{M} = .57 for third rater).

Values of Kappa greater than .70 are considered as excellent (Bartko, 1991). The Kappa values for both raters are listed in Table 9. It would be useful to examine the items with lower Kappa values more closely in order to clarify scoring criteria and establish greater consensus.

Construct Validation.

The TCC demonstrates good face validity as it includes the same statements that are in the actual Charter cautions. Part 1 includes the cautions almost in their entirety, and Parts 2 and 3 contain alternate forms of the same information.

Correlations among scores on the three parts of the TCC are moderate across all groups, ranging from .19 to .36. Also, the scores on each part correlate substantially with TCC-Total Scores. There were significant correlations between TCC-Total and TCC-Part 1 ($r = .80, p < .0001$), TCC-Part 2 ($r = .58, p < .0001$), and TCC-Part 3 ($r = .78, p < .0001$). These correlations indicate a commonality suggesting a relationship to a single construct.

Within the separate parts of the TCC, correlations among individual items tend to be low (e.g., $r = .01$ to $.28$ in TCC-Part 3), but somewhat higher with each total scores (e.g., $r = .16$ to $.36$ in TCC-Part 3). After more normative data is collected, further analyses will assist in identifying items that are not reliable and that should be eliminated from future versions of the TCC.

Significant, but moderate, correlations between TCC scores and IQ estimates suggest that there is an association between performance on the TCC and general cognitive abilities. However, since the correlations are only moderate, the TCC is not

Table 9

Kappa Values for Agreement Between Raters

<u>Item</u>	<u>Second Rater</u>	<u>Third Rater</u>
Part 1, Item 1	.70	.53
Part 1, Item 2	.73	.64
Part 1, Item 3	.68	.54
Part 1, Item 4	.38	.37
Part 1, Item 5	.55	.32
Part 3, Item 1	.56	.68
Part 3, Item 2	.76	.70
Part 3, Item 3	.28	.32
Part 3, Item 4	.71	.73
Part 3, Item 5	.50	.70
Part 3, Item 6	.47	.67
Part 3, Item 7	.70	.68
Part 3, Item 8	.40	.47
Part 3, Item 9	.56	.46
Part 3, Item 10	.72	.73

merely an alternate measure of intelligence. Instead, it is believed to be measuring something more specific to the content of the TCC, namely knowledge of Charter cautions.

Discussion

General Cognitive Abilities

For the discussion, only TCC-Total scores will be considered unless significant findings were uniquely revealed for subtest scores.

It was hypothesized that performance on the TCC would be related to education and estimates of IQ. This hypothesis was supported. Across all groups, a significant relationship was found between IQ and TCC score, as well as education and TCC score.

When considering groups separately, however, significant correlations were not found, except between IQ and TCC score within the offender group. This lack of relationship between variables within groups is likely due to a restricted range of IQ and education scores in some groups. For example, within the student group, all IQ scores fell in the average to above average range resulting in minimal variability. In the offender group, on the other hand, the variability of IQ scores was much greater, ranging from 58 (much below average) to 110 (high average). Larger samples with normally distributed IQ scores may assist in clarifying this relationship.

It was also suggested that IQ and education levels would be greater for the student group compared to the general population and offender groups, and that this may be associated with higher performance on the TCC for the student group. The

findings indicate higher levels of IQ and education in the student group, as well as higher TCC scores, providing general support for this hypothesis. However, the nature of the relationship between these variables is unclear due to the restricted range of the distributions of IQ and education levels within samples. Nevertheless, these findings lend support to the notion that the TCC is comprised of a general cognitive ability component, in addition to specific knowledge of legal rights.

Learning Effect

It also was hypothesized that individuals with more exposure to the law would have a better understanding of the Charter cautions due to a rehearsal, or learning, effect. This hypothesis was not supported. Among nonoffenders, no differences in TCC scores were revealed between individuals who had previously been arrested and those who had not. Among offenders, there was no significant correlation between number of previous arrests and TCC scores ($r = -.26$, $p = N.S.$). Another measure of exposure to the legal system within the offender group was whether individuals had previously served time. No differences in TCC scores were revealed between groups of offenders who had previously served time compared to those who had not.

On a variety of measures in both offender and nonoffender samples, no evidence was found to indicate that the experience of being arrested assisted in the understanding of Charter cautions.

Legal Hypothesis

The standard developed by case law requires police to communicate the Charter cautions to the accused at the time of arrest in a way that will ensure the

accused's understanding of the rights, and an appreciation of the consequences of waiving the rights (Evans, 1991). Therefore, it was expected that offenders would demonstrate a greater understanding on the TCC compared to nonoffenders. The findings did not support this expectation.

Moreover, when offenders were matched with nonoffenders on IQ, no significant difference was found between groups on TCC scores. Although matching does not fully equate groups on IQ, this finding refutes the differences that would be predicted by the legal hypothesis. This is further supported by the analysis revealing no differences between groups on TCC scores when the effect of IQ was controlled. If offenders were provided with a proper explanation of the Charter cautions at the time of arrest, it would be expected that offenders would outperform nonoffenders, regardless of differences in IQ. The findings were not consistent with this hypothesis, and although based partly on a limited group of matched pairs, the findings emphasize the lack of a learning effect that might be expected as a result of being arrested.

General Discussion

Taken together, these findings identify at least two issues which require further consideration. First, it was found that the understanding of Charter cautions was related to general intelligence, or cognitive abilities. This finding is particularly important for arrested individuals who have subnormal intelligence or limited cognitive abilities. Second, the understanding of Charter cautions does not seem related to experience with the legal system. This is disconcerting given that Canadian law has established that individuals must understand, and appreciate the consequences of

waiving, their rights at the time of arrest. A closer examination of current procedural requirements may suggest reasons for this finding.

Competency to Understand *Charter* Cautions

In the legal context, competency refers to the ability to understand and participate in the legal system (Ogloff, Wallace, & Otto, 1991). The findings of the present study indicate that many individuals demonstrate a poor understanding of a substantial portion of the Charter cautions, particularly among individuals with limited cognitive abilities. These results suggest that, for some individuals, competency at the time of arrest may be questionable.

A correlation emerged between TCC scores and both IQ and education. This relationship was expected because the nature of the TCC requires at least moderate verbal abilities. The content of the TCC was assessed as being at about grade level 7 on the Flesch-Kincaid Scale, indicating that it is at the "preferred level" for most readers. The Flesch Reading Ease Score was 70 which represents a 6-10th grade level (see Grundner, 1978; Ogloff & Otto, 1991). However, these tests may not accurately assess the readability of the Charter cautions since the tests rely on factors such as the number of syllables in words and the number of words in sentences, rather than the level of difficulty of words or the "awkward" structure of the sentences (Rogers & Mitchell, 1991). The verbal capacity required to understand this information when presented at the time of arrest may be greater than indicated by these measures. Moreover, the time of arrest presumably involves a situation that is more stressful and intimidating than the interview situation. Research has revealed that particularly

within the lower range of intelligence (average and below average), there is a negative correlation between intelligence and suggestibility (Gudjonsson, 1988, 1990, 1992).

(This suggests that individuals with limited cognitive abilities may be more susceptible to threatening situations, such as the time of arrest.)

It is expected that a combination of lower levels of understanding of the statements in the Charter cautions and higher levels of suggestibility will render intellectually impaired individuals particularly vulnerable at the time of arrest. If the implications of the cautions and not exercising these rights are not appreciated, consequences may be particularly detrimental for these individuals. Evans (1991) is a clear demonstration of this potential scenario.)

It is possible that other groups may not appreciate the Charter cautions due to a lack of understanding of the Charter caution statements. For example, people who are not proficient in English may not understand the language or terminology. In the present study, a subgroup of ESL individuals was identified ($n = 35$). Individuals in the ESL group obtained significantly lower TCC scores compared to the nonESL group. However, scores were not significantly different on TCC-Part 1, which requires individuals to explain the Charter cautions. These findings may underestimate differences between ESL and nonESL groups since 29 of the 35 ESL individuals were undergraduate students. Arguably, the ESL students are verbally proficient since they attend an English university and must demonstrate English proficiency prior to admittance. Further investigation into ESL groups seems necessary, particularly given the diverse populations in many Canadian centres.

Another population that may demonstrate a poor understanding and appreciation of the Charter cautions includes individuals with mental disorders or intellectual impairment. These groups may lack the necessary coping strategies for dealing with stressful situations. They may unknowingly waive their rights or may waive their rights without appreciating the consequences. In the present study, BPRS scores were available as a measure of psychiatric symptoms at the time of admission to SPSC. No significant correlations were revealed between BPRS scores and TCC scores. However, this sample did not include a very broad range of BPRS scores (minimum = 24, maximum = 43). Based on these scores, none of these individuals would be considered as mentally disordered. This issue could be addressed by future research comparing offenders identified as mentally disordered with nonmentally disordered offenders. Similar comparisons could be investigated among mentally disordered and nonmentally disordered individuals in the nonoffender population. In light of Evans (1991), the issue of competency to understand Charter cautions should also be explored among individuals with mental disabilities or intellectual impairments.

The Role of Previous Exposure to the Legal System

Essentially, the findings of the present study indicate that prior arrests are not associated with higher scores on the TCC. Again, this finding is tentative as there were only 13 out of 233 nonoffenders who had been previously arrested. This finding is more strongly supported by the absence of group differences between offenders and nonoffenders when the effect of IQ was controlled. Although legal standards exist

indicating that individuals must fully comprehend the Charter cautions when arrested, it seems that this standard is not being met in all cases. It is necessary to attempt to identify the reasons for this.

It is possible that individuals understood the cautions at the time of arrest but were unable to retain the knowledge until the time of the interview. This explanation seems unlikely, though, as most offenders were interviewed within one day of being admitted to the SPSC. If the cautions were properly understood, it would be expected that this information would be retained for longer than one day. Further, the consequences of the cautions were still critically important to these individuals because most had not yet been to court for their current charge. In these circumstances, if the cautions were properly understood, it would be expected that the information would be readily available.

Several individuals in the offender group claimed that they did not remember having the Charter cautions read to them at the time of arrest. It is possible that the cautions were not read, but because of the procedural standards that require arresting officers to read the cautions, it is more likely that the cautions were read. However, perhaps merely reciting and, at times, repeating or rephrasing, the cautions is not sufficient for all individuals to gain an adequate understanding (Ziskrout, 1982). This was demonstrated in the Evans case (1991). In a telephone call to his brother, Evans indicated that he watched television and that he knew about his rights. He proceeded to recite a jumbled version of the Miranda warnings typically heard on American television programs. Specifically, he stated the following:

I have the right to remain silent, if I give up the right to remain silent, anything I can and say will be used against me in a court of law. I have a right to speak with an attorney, or to have an attorney present during questioning. (R. v. Evans, 1991, p. 300)

Evans was able to recite something similar to what he had heard several times before but did not seem to understand the statements or their consequences.

It is also possible that the time of arrest is stressful and emotionally arousing, which may not be conducive to effective processing of information. The intensity of the situation may, in part, account for why the Charter cautions are not always adequately explained by arresting officers. More importantly, however, the stressful circumstances at the time of arrest may actually interfere with the accused's information processing and may prevent an adequate understanding of both the content and implications of the cautions.

Finally, the validity of the TCC must be considered when interpreting the findings. That is, it is important to consider exactly what is being measured by the TCC. It is possible that many offenders do not adequately understand their rights, and consequently do not assert their rights (i.e., instead, they may provide information that may be incriminating). On the other hand, it is generally believed that experienced offenders are more familiar with the procedures at the time of arrest and do not face such consequences. Therefore, it would be expected that these individuals would perform better on the TCC. Surprisingly, no correlation emerged between TCC scores and number of arrests. Perhaps individuals who are familiar with the procedures and

strategies at the time of arrest do not necessarily have a better understanding of their rights at the time of arrest. That is, ~~more experienced~~ offenders may know the essence of their rights without knowing the intricacies of the rights. Future research can use the TCC, and additional information about individuals' knowledge of procedures and strategies at the time of arrest, to address these issues.

The TCC and Competency to Understand *Charter* Cautions

Competency to waive Section 10 rights requires that individuals understand and appreciate the consequences of waiving their Charter rights at the time of arrest (R. v. Evans, 1991). Although, the TCC does not define competency to waive Section 10 rights, it measures one component of that competence, namely the understanding of Charter cautions. A good understanding of these rights is a necessary precondition for a true appreciation of the rights, as well as for making competent decisions about exercising those rights (Ogloff, Wallace, & Otto, 1991).

In TCC-Part 1, examinees are required to explain in their own words each of the Charter cautions. Each item is scored on a scale ranging from 0 to 2. A 2 indicates a good understanding of the phrase, a 1 indicates partial understanding, and a 0 indicates a lack of understanding or an incorrect response. Because specific knowledge of each caution is required, individuals' performance on each item is a particularly good indication of knowledge, or lack of knowledge, of the Charter cautions.

The patterns of responses in the offender group on the TCC-Part 1 items were illustrated in Tables 6 and 7. If individuals receive a score of 0 on any one response,

they are lacking an understanding of a major component of the cautions. More than one score of 0 would indicate a lack of understanding of a substantial amount of the information in the cautions. Based on this, it was found that 8.2% of the individuals in the offender group lacked a full understanding of their rights. This lack of understanding, and probable lack of appreciation of the rights, is disconcerting because it suggests that individuals who are already participating in the legal system may be doing so without being fully informed.

Based on the information in Table 7, it seems that a cutoff score of approximately 6-8 on TCC-Part 1 (or 12-16 as it would be scored) would be indicative of a sufficiently poor understanding to question the competency to understand Charter cautions. Although the other parts of the TCC differ in content compared to Part 1, similar analyses could be done for Parts 2 and 3 in order to establish other relevant cutoff scores.

By examining the low scores on TCC-Part 1, approximately 8% of the offenders were considered as not likely competent to understand Charter cautions. Though somewhat arbitrary, a similar percentile ranking could be used as a cutoff value for identifying other comparatively low scores. Accordingly, it was found that, across all groups, a TCC-Total score of 35 (out of a possible 60) represents a score at the 10th percentile. This suggests that for individuals scoring less than 35 on the TCC, competency to understand Charter cautions would be questioned. Among offenders, a TCC-Total score of 32 corresponds to the 10th percentile. This may be a more liberal estimate for establishing a cutoff, however, as the scores were generally

lower in the offender group. More normative data would be required before firm cutoffs can be established. It is necessary to gather more data from the general population, as well as from special groups such as individuals with mental disabilities or intellectual impairments, and people who are not proficient in English. Scores from these groups would be particularly helpful in identifying meaningful cutoff scores for competency to understand Charter cautions.

The informational component subscores reported in Table 8 are helpful in identifying which elements of the Charter cautions are more or less difficult to understand. For example, across all groups, the subscore representing the warning that anything said by the accused can be used in evidence indicated that this element was understood fairly well across all groups (82.5%), as well as among offenders (78.7%). More importantly, the subscore representing the right to retain and instruct counsel without delay indicated that this element was the most difficult to understand. Average scores on this subscore were 63.2%. In the offender sample, average scores were only 57.1%. This finding is extremely important because the right to a lawyer is perhaps the most critical element of the Charter cautions. A lawyer will instruct or remind individuals that they are not required to say anything, and this is likely to influence their decisions about participating in the legal process (Conway, 1985). If this part of the Charter cautions is also one of the more difficult elements to understand, then it is necessary to make it more understandable. This element could be simplified by changing the wording into more familiar terms, such as lawyer instead of counsel, or hire instead of retain.

Procedural Recommendations

At present, police officers are required to recite the Charter cautions to arrested individuals. They are also required to ensure that individuals understand these cautions, though there are apparently no explicit guidelines for how to do this. In the sample of offenders interviewed for the present study, a substantial proportion of these individuals demonstrated a poor understanding in at least one major area covered by the cautions. This suggests that the communication of the cautions is not always sufficient and a good understanding of the Charter cautions is not being achieved by many. Recommendations can be made that may lead to more effective means of ensuring that arrested individuals understand their rights.

The most effective change would likely be a re-wording of the cautions into more simplified and "plain" language. For example, many individuals in the sample were unfamiliar with the term "counsel." It was incorrectly defined as "a group of people that makes decisions," or "the jury." Across all groups, 52 (17.7%) responses defining "counsel" received scores of 0. These misunderstandings would likely be lessened by simply replacing "counsel" with a more familiar term such as "lawyer." In fact, for the term "lawyer," only 8 (2.7%) responses received a score of 0.

Pictures and audio or videotapes might be used as another format for helping individuals understand particular rights. For example, videotapes may outline the arrest procedure and emphasize the role of the accused, police officers, and legal aid lawyers. Specific parts of the Charter cautions could be presented and discussed in this format. Common misunderstandings could also be addressed.

When it is questionable whether arrested individuals are competent to understand and waive their rights at the time of arrest, the TCC can be used to gain an objective measure of their understanding. Although it is unrealistic to expect arresting officers to administer the TCC at the time of every arrest, the TCC may be particularly useful when special circumstances arise (e.g., individuals with mental disorders or mental disabilities). Arresting officers will no longer have to guess about the degree to which an accused understands his or her rights. Instead, they will be able to take an objective measure of understanding and can subsequently follow up with further clarification, or immediate referral to legal counsel, when necessary.

It is also possible for a shortened form of the TCC to be developed and used more routinely. This could essentially serve as a screening device to identify individuals requiring further explanations of their rights. Again, once identified, these individuals could be provided with additional explanations or immediate referral to a lawyer.

Future Research

The development and application of the TCC represents the first empirical study investigating the comprehension of Charter cautions in Canada. Given that standards have been established in Canadian statutory and case law stating that arrested individuals must understand and appreciate the Charter cautions, continued investigation into this issue is crucial. This initial study is particularly important because it has established an objective measure of Charter comprehension and provides direction for future research.

In particular, additional research using the TCC is required to establish this instrument as a valid and reliable measure of Charter comprehension. To accomplish this, it is necessary to gather data from more individuals in the general population in order to establish normative data. In addition, future research should include individuals who clearly lack an understanding of their rights, such as individuals with mental disabilities, or individuals who are not proficient in English. These findings will assist in identifying and clarifying standards for detecting individuals considered not competent to understand the Charter cautions.

Future studies could also be extended to legal authorities and legal professionals. For example, in establishing criteria for individuals who are competent or not competent to understand their rights, lawyers and judges could be consulted to ensure that TCC standards are in line with legal standards. Similarly, police officer ratings of competence could be compared to legal standards to ensure consensus. Presumably, high levels of agreement among these professionals would lead to fewer ambiguous cases ending up in litigation. Field research could also be conducted by accompanying police and questioning accuseds immediately upon arrest or detention. This would provide a good estimate of comprehension of the Charter cautions because interviewing would take place as soon as the cautions were communicated to the individual. Field research may also assist in gaining an understanding of the situational influences at the time of arrest that may interfere with the comprehension of the Charter cautions.

Conclusion

The rights of the accused at the time of arrest have long been a concern in the Canadian legal system (Ibrahim v. The King, 1914; Boudreau v. The King, 1949). This issue has received continued attention (R. v. Evans, 1991; R. v. Lim, 1990; R. v. Stringer, 1992) and recently, new standards have been established with respect to the Section 10 Charter rights. In particular, at the time of arrest, police officers must clearly communicate the Charter cautions to individuals in a manner that allows them to understand and appreciate their rights, as well as the consequences of waiving their rights.

The TCC was developed and introduced as an objective measure of the understanding of Section 10 Charter rights. With further development, it will be possible to use the TCC to identify arrested individuals who do not fully understand their rights. Once identified, steps can be taken to provide these individuals with more adequate explanations or direct access to a lawyer. The use of this measure will be a first step in ensuring the protection of the rights of individuals at the time of arrest, while maintaining the administration of justice.

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Appendix A

Test of Charter Comprehension Part 1

Administration

I will be showing you some cards with some sentences on them. When I show you one, I will read the sentence to you. Then I want you to tell me what it says in your own words. Do you understand what I want you to do?

If the examinee does not understand, repeat the instruction slowly or answer specific questions. When it seems that the examinee understands, the examiner presents the examinee a card on which a practice sentence has been typed, and says:

The first card is just for practice so you can get used to what I want you to do. Here is the card. It says, "I have volunteered to be in this study." Now tell me in your own words what is said in that sentence.

The primary reason for the use of a practice sentence is to "teach" the examinee to avoid verbatim use of words or phrases appearing in the stimulus sentences. Thus, if the examinee uses the words "volunteer" and/or "study" in his or her original response, the examiner should ask: "What do you mean by (volunteer) (study)?" The examiner proceeds to the next stimulus sentence after the examinee has expressed an understanding of the elements of this practice sentence. Present each of the following sentences in the above fashion. Each sentence is presented on a separate card, and an examinee's response to one statement (as well as any necessary inquiry) is completed before proceeding to the next sentence. Inquiries should be restricted to a standard statement, namely, "Tell me more about it."

The sentences are as follows:

1. You are not obliged to say anything unless you wish to do so.
2. Anything you do say may be given in evidence.
3. You have the right to retain and instruct Counsel without delay.
4. A legal aid duty lawyer can explain the legal aid plan to you without charge.
5. A legal aid duty lawyer is available to provide legal advice to you without charge.

Scoring

1. You are not obliged to say anything unless you wish to do so.

2 points

- A. A statement that one does not have to say anything to the police, but that one may speak freely if one wishes to do so. The right to not speak should be clearly implied if it is not specifically stated.
- B. A paraphrase regarding one's choice or implied choice of whether or not to talk, without explanation.

Examples: You don't have to say anything to the police but you can; they can't make you say anything; if you want to say something, you can. You have a choice on whether or not to say anything. You don't have to say anything unless you wish to do so.

1 point

- A. Choice or implied choice is present, but rationale for the right is erroneous, illogical, or inaccurate.
- B. The idea that it is better not to say anything under any circumstances.
- C. A statement of the right not to say anything without mention of the right to speak freely if one desires.

Examples: You don't have to answer the questions. You don't have to say anything if you don't want to. You can choose to make a response. I don't have to speak unless I feel I have to (does not indicate the desire to speak freely). I'm not required to speak unless I feel the need.

0 point

- A. Response indicating lack of understanding.
- B. The idea that you must remain silent.
- C. The idea that you have to talk, stated generally or under certain circumstances, or that if you do not talk, it will go against you either with police or in court.

2. Anything you do say may be given in evidence.

2 points

The idea that confession or any other provision of information can be repeated in court and can be used as evidence to convict the suspect. That is, what you say can be

brought up in court and may be incriminating.

Examples: Anything I say can be used in a legal proceeding, in a court of law; it may or may not be used against me depending on what I say; I can be questioned about it in a court of law. If you say something, it may be used against you in court.

1 point

- A. The idea that if you talk to the police or provide any information, it may be used in court, without indicating that it may be incriminating to the suspect.
- B. The idea that if you talk to the police or provide any information, it may be incriminating to the suspect, without indicating that it may be used in court or some other legal proceeding.
- C. A response which would qualify as a 2-point response, except that erroneous qualifiers have been added which spoil the response or indicate only partial understanding. Included here are responses referring to consequences in settings other than the court hearing.

Examples: Anything I say could be used against me. Whatever you do say can be presented in court. Whatever I say may be used as proof.

0 point

- A. Response indicating lack of understanding.
- B. Failure to indicate that anything you say either may be used in court or that it may be incriminating to the suspect.

Examples: You'd be held responsible for anything you say. Whatever I say will be supporting something.

3. You have the right to retain and instruct Counsel without delay.

2 points

The idea that one has a right to retain a lawyer immediately and to inform the lawyer of one's wishes.

Examples: I can have a lawyer and tell them what I want; I can do this right away. I'm allowed to get a lawyer immediately and give him my version of events and tell that person what it is I want to do.

1 point

- A. Responses in which the right to retain Counsel is clearly indicated but there is no mention of having the right to do so immediately.
- B. Responses in which the right to retain Counsel is clearly indicated but there is no mention of having the right to instruct counsel.

Examples: The police can't keep me from using the phone to talk to and direct a lawyer. I can get a lawyer immediately and talk to him. I can get legal help right away.

0 point

- A. Response indicating lack of understanding.
- B. Failure to explicitly mention the right to retain counsel (i.e. lawyer).
- C. Responses in which legal counsel is referred to in conjunction with a legal or court procedure other than questioning.
- D. Responses in which all elements may be correct, but someone other than a lawyer is specified.

Examples: It's my choice if I want someone to stand up for me right away. I could call a lawyer if I want.

4. A Legal Aid Duty Lawyer is available to explain the Legal Aid plan to you without charge.

2 points

Responses which include **all** of the following:

- A. Mention a legal aid duty lawyer and explain what it is.
- B. Indicate that this lawyer will explain the legal aid plan.
- C. State that this service will be provided for free.

Examples: A lawyer will be appointed to you to explain the legal aid plan at no expense. A person that works for the legal aid society can tell you about the legal aid plan without asking or requiring money of you.

1 point

Responses which mention or clearly imply the right to a legal aid duty lawyer without explanation; and either that this lawyer will explain the legal aid plan or that the service will be provided for free.

Examples: A lawyer is on hand to discuss implications about what's going on and what rights you have and what is offered in terms of legal aid. If you can't afford a lawyer, legal aid will supply a lawyer who will explain the system without being obligated to hire that lawyer.

0 points

- A. Responses indicating lack of understanding.
- B. Failure to mention or defining incorrectly a legal aid duty lawyer. A response will be considered spoiled by errors in defining a legal aid duty lawyer (e.g. student lawyer).

Examples: Somebody for free can give you advice and explain legal procedures. If I needed legal aid, there's a person who can explain legal aid plans to me.

5. A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.

2 points

Responses which include **all** of the following:

- A. Mention a legal aid duty lawyer and explain what it is.
- B. Indicate that this lawyer will provide legal advice. If the word advice is used, it should either be explained or used in context.
- C. State that this service will be provided for free.

Examples: The legal aid program provides a lawyer who will give legal counsel to an individual without requiring payment. You can get free assistance and help with your case from a lawyer that is appointed by the government.

1 point

Responses which mention or clearly imply the right to a legal aid duty lawyer without explanation; and either that this lawyer will provide legal advice or that this service will be provided for free.

Examples: A lawyer is available to give you advice at no cost to me. If you want, you can get a legal aid lawyer for free. You can retain an available lawyer who can give you advice about the law.

0 point

- A. Responses indicating lack of understanding.
- B. Failure to mention or defining incorrectly a legal aid duty lawyer. A response will be considered spoiled by errors in defining a legal aid duty lawyer (e.g. student lawyer).

Examples: You can talk to a professional freely and without charge. I can phone legal aid and speak with a lawyer-in-training about what rights I have in the legal system and they won't charge me.

Test of Charter Comprehension
Part 2

Administration

I am going to show you some sentences and after I read a sentence to you, I will show you four more statements. Each statement means either the same thing or not the same thing as the first sentence. I want you to tell me whether each statement is the same or different from the sentence on the card.

Here are two examples so that you know what to do.

Present the example sentence and say:

This sentence says, "I have volunteered to be in this study." Now look at this card.

Present the card bearing the first corresponding statement next to the initial sentence, and say:

"I have agreed to take this test and nobody forced me to do it." Now, does that card say the same thing or something different from the first sentence?

Then present the second example and say:

Here is the next card. "I have to take this test whether I want to or not." Is that the same as the first sentence or something different?

The first example statement should be identified as meaning generally the same thing as the initial sentence, whereas the second example statement should be identified as meaning something different. If the examinee makes an error on either of these examples, the correct responses should be indicated and explained to the examinee before continuing with the remaining sentences.

Once the examinee indicates an understanding of the procedure, the examiner places a card bearing the first sentence before the examinee and reads the sentence aloud. The examiner then proceeds through the four related statements in the manner shown in the examples. That is, each statement should be presented next to the corresponding sentence and read aloud. After the four statements, the examiner should remove the cards and proceed to the second sentence, and so on.

Once the examinee is familiar with the pattern, the examiner's question may be shortened to a simpler form (i.e. Are they the same or different?; Same or different?).

Examiners should be alert to examinees evaluating the sentences as "true" or "false." In such cases, the examinee should be reminded that the task is to indicate whether the sentences have the same meaning or different meanings, rather than whether the sentences are true or false.

The sentences are as follows:

1. You are not obliged to say anything unless you wish to do so.
 - a. It is not right to tell lies.
 - b. You should not say anything until the police ask you questions.
 - c. You do not have to answer any of the police officer's questions.
 - d. You do not have to say anything about what you did.

2. Anything you do say may be given in evidence.
 - a. Whatever you say might be used when you are in court.
 - b. If you won't talk to the police, then that will be used against you in court.
 - c. If you tell the police anything, it can be repeated in court.
 - d. As long as you are polite to the police, whatever you say will not be used against you in court.

3. You have the right to retain and instruct Counsel without delay.
 - a. After you have answered a few of the police officers' questions, they will let you call a lawyer.
 - b. You may contact somebody (e.g. a friend) to give you advice when you are arrested.
 - c. You can talk to a lawyer as soon as you are arrested.
 - d. You can get advice from a lawyer about answering the police officer's questions.

4. A Legal Aid Duty Lawyer can explain the Legal Aid plan to you without charge.
 - a. If you do not know about the Legal Aid plan, the police will explain it to you.
 - b. You can have a lawyer explain the Legal Aid plan to you for free.
 - c. If you have enough money, a lawyer will explain the Legal Aid plan to you.
 - d. Even if you do not have any money, you can talk to a lawyer about receiving free legal services.

5. A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.
 - a. Even if you do not have the money for a lawyer, one will be made available to you.
 - b. You cannot get a lawyer if you are poor.
 - c. A lawyer will provide you with free legal advice at the beginning, but you will have to pay for legal advice if your case goes to trial.

d. You can get free legal advice about your case from a Legal Aid Duty Lawyer.

Scoring

One point is given for each correct answer for a maximum score of 20.

Test of Charter Comprehension
Part 3

Administration

I am going to give you some cards which have words on them. As I give you a card, I will read the word and then I will use it in a sentence. Then I would like you to tell me in your own words what the word means.

The examiner then performs the procedure just described for the first word (Counsel) and asks:

"What does 'Counsel' mean?"

The examiner may inquire as needed when an examinee's original response is confusing because of double negatives, grammatical confusion, slang, or disorganization. Also, if the examinee provides only a synonym as a response, the examiner should inquire for further explanation. Inquiries should be restricted to a standard statement, namely, "Tell me more about it."

Present each of the following words consecutively in the above fashion. Each word is presented on a separate card, and an examinee's response to one statement (as well as any necessary inquiry) is completed before proceeding to the next word.

The words and corresponding sentences are as follows:

1. Counsel The judge asked **Counsel** a question.
2. retain She will **retain** an accountant to help her with her taxes.
3. instruct The judge will **instruct** the jury.
4. obliged The boy was **obliged** to say thank you when he received a gift.
5. evidence The **evidence** against the accused was overwhelming.
6. right You have the **right** to vote.
7. arresting The police officer was **arresting** the suspect.
8. legal advice She got **legal advice** to make a will.

9. duty It is a citizen's **duty** to vote.
10. lawyer The **lawyer** left the building.

Scoring

All items will be scored according to the following criteria:

- 2 points: An explanation similar to the given definition.
- 1 point: A partial definition or an accurate synonym.
- 0 point: Responses indicating lack of understanding; an incorrect definition; or an incorrect synonym.

1. Counsel

Definition: A lawyer; giving advice about legal matters and/or representing clients in court.

2 points

Responses should state or imply that Counsel is a lawyer, and include one or more duties performed by lawyers.

Examples: Lawyers; people who are involved in the law, who are there to help the defendants. The defense lawyer; the person representing the client, the person being arrested or charged.

1 point

Examples: Lawyer. The person helping someone in the court room.

0 point

Examples: A group of people that makes decisions. Someone that helps the defendant. Somebody that represents somebody else.

2. retain

Definition: To hire, or arrange in advance for the services of.

2 points

Examples: Hire. Hire or employ the services of. Hire by contract. Employ. Attain the services of. Obtain the help or services of.

1 point

Examples: Have the help of; keep. To keep on; to continue to utilize. Keep to; chosen someone and will keep them. To keep, to have. Get help from. Get; obtain. Get one.

Note: "Keep" is an acceptable 1-point response when qualified.

0 point

Examples: Keep. To keep; to keep record of. Keeps back. Maintain. To ask. Go in search or seek for. To hold.

3. instruct

Definition: To give facts or information to someone on a particular matter.

2 points

Examples: Explain to them; telling them what to do. Explain what to do; give directions. Give directions or procedures as to what to do in the situation. Tell them the procedures. To explain the procedures.

1 point

Examples: To explain. Give directions. Tell. To give a verbal order. Teach; tell them. Tell the jury what to do.

Note: 1-point responses include definitions that are specific to the sentence used to present the word during test administration (e.g. Tell the jury what to do.).

0 point

Examples: Give rules. To lead on a path, the correct path.

4. obliged

Definition: Required by law, duty, or a gratitude to do something.

2 points

Responses must clearly indicate why something (the behaviour) is required (i.e., a feeling, conscience).

Examples: Felt he had to. Obligated; he felt he had to. Obligated; felt compelled to. Feel a need to. Feel compelled. Kind of forced to; your conscience is telling you to.

Note: "Obligated" is not an acceptable 2-point answer unless a further and correct explanation is provided.

1 point

Examples: Expected. Had to. Necessary. The right thing to do. Forced. Something you're supposed to do. Required; something you should do.

0 point

Examples: Told; asked. Honoured. Felt freely to. An obligation; owed. Thankful.

5. evidence

Definition: Something legally presented before a court, as a statement of a witness, an object, etc., which bears on or establishes the point in question.

2 points

Examples: Information that was presented against the person pertaining to the case. The material which works in someone's favour in litigation to prove innocence or guilt. The information found about a person's guilt or innocence.

Note: Responses should mention or clearly imply the court as the context.

1 point

Examples: Something to support something. Something that is used to prove something. The information presented. Proof; the facts. Fact.

0 point

Examples: What was presented to whoever. Physical, verbal, not necessarily actual stuff.

6. right

Definition: That to which a person has a just claim; a power, privilege, etc. that belongs to a person by law, nature or tradition.

2 points

Examples: Like a privilege that you're entitled to. An act which no one can legally prevent you from doing. An inherent privilege. Something you're entitled to.

1 point

Examples: Allowed to. Opportunity. Privilege. A choice. What you're allowed to do.

0 point

Examples: An obligation. The okay. You are able to; something in your favour most of the time.

7. arresting

Definition: The action of stopping or checking; of seizing or apprehending by legal authority; charges being laid.

2 points

Responses including stopping or apprehending and charges being laid.

Examples: Laying a formal charge; apprehending; taking into custody. Taking him into custody; charged with something; you've done something wrong. Take into custody; charging him.

1 point

Examples: Taking someone into custody. Charging him with a felony or

crime. Detaining. To catch; put behind bars.

0 point

Examples: Holding; directing; to abide by the law.

8. legal advice

Definition: An opinion given by a lawyer as to what to do or how to handle a situation.

2 points

Responses must indicate that the information is provided by a lawyer or someone in the legal profession; and it must be stated or clearly implied that the information is on legal matters.

Examples: To obtain legal information; consult a lawyer for information. Hired, spoke to a lawyer regarding proper procedures. Recommendations or options from a lawyer on what to do in a situation involving the legal system. Information from a lawyer pertaining to law. A set of instructions or helpful advice from a legal party to serve the interests of an individual.

1 point

Examples: Advice from any source on legal matters. Someone instructing about your legal rights. Get an explanation from a lawyer. Lawyer's suggestions. Information given from a lawyer. Something explained to you by someone who knows the law.

0 point

Examples: Got somebody who knew about legal procedures. Professional help.

9. duty

Definition: Conduct based on moral or legal obligation, or a sense of what is right.

2 points

Responses must clearly indicate why something (the behaviour) is required

(i.e., obligation, responsibility).

Examples: Strong moral obligation. Responsibility, something we have to do. An obligation to fulfil a certain function. Obligation; something you should do.

1 point

Examples: Obligation. Expected to do. Job; something you have to do. Expectation; what is right to do. Something that a person should or ought to do.

0 point

Examples: Personal preference; one is not obligated to do something

10. lawyer

Definition: Someone who is empowered to act for and in the interest of another person in legal proceedings; someone especially trained in law and legal process.

2 points

Responses should mention professional training or background, and one or more duties performed by lawyers (e.g., giving legal advice, representing clients).

Examples: Somebody who is an expert on legal matters; can defend people and can be consulted for legal advice. Somebody with knowledge of law who either defends or prosecutes.

1 point

Examples: A person with knowledge of laws; had schooling in law. Someone that stands up for you in court. Someone with legal education and legal registration. Legal counsel.

0 point

Examples: A person that represents you with whatever you need. Somebody who can help you when you're in need.

Appendix B

CHARTER CAUTIONS STUDY

INVITATION TO PARTICIPATE: You are invited to participate in a study to learn about people's understanding of the warnings that the police read to them when they are arrested. The warnings are called "Charter Cautions."

PURPOSE OF THE STUDY: The study will help us learn more about the level of understanding of Charter Cautions for people who have been arrested.

EXPLANATION OF PROCEDURES: If you choose to participate in this study, you will meet with an interviewer who will read you Charter Cautions and ask you questions about them. You will also be given a brief test of verbal comprehension.

POTENTIAL RISKS AND DISCOMFORTS: There are no risks associated with participating.

POTENTIAL BENEFITS: There are no direct benefits to you from this research other than knowledge that you may help us learn more about people's understanding of their Charter Cautions.

CONFIDENTIALITY OF DATA: Any information that is obtained during the study will remain strictly confidential. You will not be writing your name or any other identifying information on the research material.

WITHDRAWAL FROM THE STUDY: Participation is voluntary. You are free to withdraw from the study at any time.

OFFER TO ANSWER QUESTIONS: If you have any questions, please feel free to ask the interviewers. If you have any questions later you may call the investigators listed on the next page. Thank you for your time and interest.

The university and those conducting this project subscribe to the ethical conduct of research and to the protection at all times of the interests, comfort, and safety of our subjects. This form and the information it contains are given to you for your own protection and full understanding of the procedures, risks, and benefits involved. Your signature on this form will signify that you have been informed of the procedures in the study, and that you have had an adequate opportunity to consider the information, and that you voluntarily agree to participate in the project. Please read the following paragraph, and if all of it is to your satisfaction, sign at the bottom of the page.

"I have volunteered to participate in a research project under the direction of Dr. J. Ogloff, a professor in the Psychology Department at Simon Fraser University. I have

been informed of the basic procedures of the study by the researchers, and by reading the first page of this informed consent form. I take part in this study with the understanding that I may withdraw my participation in the experiment at any time, and that I may register any complaint with the primary researcher or with the Chair of the Psychology Department, Dr. Roger Blackman. I am aware that my participation will involve the tasks described in the section entitled, "EXPLANATION OF PROCEDURES" on the first page of this form. I take part in this study with the assurance from the researchers that my responses will be completely anonymous and confidential (identified by number only). I understand that I may obtain a copy of the results of the study upon its completion from Dr. James Ogloff (291-5945)."

SIGNATURE OF PARTICIPANT _____ DATE _____

SIGNATURE OF WITNESS _____ DATE _____

INVESTIGATORS:

James R.P. Ogloff, J.D., Ph.D. 291-3093
Maureen Olley, B.A.(Hons.) 291-5945
Department of Psychology
Simon Fraser University
Burnaby B.C., V5A 1S6

Appendix C

Brief Psychiatric Rating Scale (Expanded - 1986)

Developed by David Lukoff, Keith H. Nuechtencin, and Joseph Ventura
Schizophrenia Bulletin, No. 4, 1986

The following guidelines are designed for use with an outpatient psychiatric population. The ratings for items 1-10 and 19-22 are based on the patient's answers to the interviewer's questions. The time frame for these items is the past 2 weeks. Items 11-18, 23, and 24 are based on the patient's behavior during the interview and the time frame covered is the interview period only. When psychotic symptoms (e.g., hallucinations and unusual thought content) have had a period of exacerbation lasting at least 1 day, the rating should reflect mainly the peak period. When the anchor point definitions contain an "or," the patient is assigned the *highest* rating that applies, e.g., if a patient has hallucinations persistently throughout the day (a rating of 7) but the hallucinations only interfere with functioning to a limited extent (a rating of 5), a rating of 7 is given. An additional guideline which is often helpful involved the distinction between pathological and nonpathological intensities of symptoms. Ratings of 2-3 indicate a nonpathological intensity of symptoms whereas ratings of 4-7 indicate a pathological intensity of that symptom.

Refer to the Schizophrenia Bulletin for a more detailed description of procedures for administration.

Rate items 1 - 10 on the basis of patient's self report

1. **Somatic concerns:** Degree of concern over present bodily health. Rate the degree to which physical health is perceived as a problem by the patient, whether complaints have realistic bases or not

2-3	Mild	Occasional complaint or expression of concern
4-5	Moderate	Frequent expression of concern or exaggerations of existing ills. Some preoccupation. Not delusional.
6-7	Severe	Preoccupied with physical complaints or somatic delusions

Have you been concerned about your physical health?
Have you had any physical illness or seen a medical doctor?

2. **Anxiety:** Reported apprehension, tension, fear, panic, or worry. Rate only patient's statements - not observed anxiety which is rated under tension.

2	Very Mild	Reports feeling worried more than usual or some discomfort due to worry
3	Mild	Worried frequently but can turn attention to other things
4	Moderate	Worried most of the time and cannot turn attention to other things easily but no impairment in functioning or occasional anxiety with automatic accompaniment but no impairment in functioning
5	Moderately severe	Frequent periods of anxiety with automatic accompaniment or some areas of functioning are disrupted by anxiety or constant worry
6	Severe	Anxiety with automatic accompaniment most of the time or many areas of functioning are disrupted by anxiety or constant worry
7	Extremely severe	Constantly anxious with automatic accompaniment or most areas of functioning are disrupted by anxiety or constant worry

Have you felt worried or anxious?
Do unpleasant thoughts constantly go round and round in your mind?
Did your heart beat fast (or sweating, trembling, choking)?
Has it interfered with your ability to perform your usual activities/work?

3. **Depression:** Include mood-sadness, unhappiness, anhedonia; and cognitions-preoccupation with depressing topics (can't switch attention to TV, conversations), hopelessness, loss of self-esteem (dissatisfied or disgusted with self). Do not include vegetative symptoms, e.g. motor retardation, early waking

2	Very mild	Reports feeling sad/unhappy/depressed more than usual
3	Mild	Same as 2, but can't snap out of it easily
4	Moderate	Frequent periods of feeling very sad, unhappy, moderately depressed, but able to function with extra effort
5	Moderately severe	Frequent periods of deep depression or some areas of functioning are disrupted by depression
6	Severe	Deeply depressed most of the time or many areas of functioning are disrupted by depression
7	Extremely severe	Constantly deeply depressed or most of the areas of functioning are disrupted by delusional thinking

Have you felt unhappy or depressed?

How much of the time?

Are you able to switch your attention to more pleasant topics when you want to?

Have your interest in work, hobbies, social or recreational activities changed?

Has it interfered with your ability to perform your usual activities/work?

4. **Guilt:** Overconcern or remorse for past behavior. Rate only patient's statements - do not infer guilt feelings from depression, anxiety, or neurotic defenses

2-3	Mild	Worries about having failed someone or at something. Wishes to have done things differently
4-5	Moderate	Preoccupied about having done wrong or injured others by doing or failing to do something
6-7	Severe	Delusional guilt or obviously unreasonable self-reproach

Have you been thinking about past problems?

Do you tend to blame yourself for things that have happened?

Have you done anything you're still ashamed of?

5. **Hostility:** Animosity, contempt, belligerence, threats, arguments, tantrums, property destruction, fights, and any other expression of hostile attitudes or actions. Do not infer hostility from neurotic defenses, anxiety, or somatic complaints. Do not include isolated appropriate anger

2	Very mild	Irritable, grumpy
3	Mild	Argumentative, sarcastic, or feels angry
4	Moderate	Overtly angry on several occasions or yelled at others
5	Moderately severe	Has threatened, slammed about or thrown things
6	Severe	Has assaulted others but with no harm likely, e.g., slapped, pushed, or destroyed property (knocked over furniture, broken windows)
7	Extremely severe	Has attacked others with definite possibility of harming them or with actual harm, e.g., assault with hammer or weapon

How have you been getting along with people (family, board-and-care residents, co-workers)?

Have you been irritable or grumpy lately?

Have you been involved in any arguments or fights?

6. **Suspiciousness:** Expressed or apparent belief that other persons have acted maliciously or with discriminatory intent. Include persecution by supernatural or other nonhuman agencies (e.g., the devil)

2-3 Mild Seems on guard. Unresponsive to "personal" questions. Describes incidents where other persons have harmed or wanted to harm him/her that sounds plausible. Patient feels as if others are laughing at or criticizing him/her in public

4-5 Moderate Says other persons are talking about him/her maliciously or says others intend to harm him/her. Beyond likelihood of plausibility but not delusional

6-7 Severe Delusional. Speaks of Mafia plots, the FBI, or others poisoning food

Do you ever feel uncomfortable as if people are watching you?

Is anyone trying to harm or interfere with you in any way?

Are you concerned about anybody's intentions towards you?

Have you felt that any people are out to get you?

7. **Unusual thought content:** Unusual, odd, strange, or bizarre thought content. Rate the degree of unusualness, not the degree of disorganization of speech. Delusions are patently absurd, clearly false, or bizarre ideas verbally expressed. Include thought insertion, withdrawal, and broadcasting. Include grandiose, somatic, and persecutory delusions even if rated elsewhere

2 Very mild Ideas of reference (people stare/laugh at him/her). Ideas of persecution (people mistreat him/her). Unusual beliefs in psychic powers, spirits, UFO's. Not strongly held. Some doubt

3 Mild Same as 2 with full conviction but not delusional

4 Moderate Delusion present but not strongly held-functioning not disrupted; or encapsulated delusion with full conviction-functioning not disrupted

5 Moderate severe Full delusion(s) present with some preoccupational or some areas of functioning disrupted by delusional thinking

6 Severe Full delusion(s) present with much preoccupation or many areas of functioning disrupted by delusional thinking

7 Extreme severe Full delusion(s) present with almost total preoccupation or most areas of functioning disrupted by delusional thinking

Have things or events had special meanings for you?

Did you see any references to yourself on TV or in the newspaper?

Do you have a special relationship with God?

How do you explain the things that have been happening (specify)?

Have you felt that you were under the control of another person or force?

8. **Grandiosity:** Exaggerated self-opinion, self-enhancing conviction of special abilities, powers, or identity as someone rich or famous. Rate only patient's statements about self, not demeanor

2 Very mild Feels great and denies obvious problems

3 Mild Exaggerated self-opinion beyond abilities and training

4 Moderate Inappropriate boastfulness, claims to be "brilliant", understands how every thing works

- | | | |
|---|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 | Moderate
severe | Claims to be great musician who will soon make recordings or will soon make patentable inventions-but not delusional |
| 6 | Severe | Delusional-claims to have special powers like ESP, to have millions of dollars, made movies, invented new machines, worked at jobs when it is known that he was never employed in these capacities |
| 7 | Extremely
severe | Delusional-claims to have been appointed by God to run the world, controls the future of the world, is Jesus Christ, or President of the U.S. |

Is there a special purpose or mission to your life?
Do you have any special powers or abilities?
Have you thought that you might be somebody rich or famous?

9. **Hallucinations:** Reports of perceptual experiences in the absence of external stimuli. When rating degree to which functioning is disrupted by hallucinations, do not include preoccupation with the content of the hallucinations. Consider only disruption due to the hallucinatory experience. Include thoughts aloud-gedankenlautwerten

- | | | |
|---|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Very mild | While resting or going to sleep, sees visions, hears voices, sounds, or whispers in absence of external stimulation, but no impairment in functioning |
| 3 | Mild | While in a clear state of consciousness, hears nonverbal auditory hallucinations (e.g., sounds or whispers) or sees illusions (e.g., faces in shadows) on no more than two occasions and with no impairment of functioning |
| 4 | Moderate | Occasional verbal, visual, olfactory, tactile, or gustatory hallucinations (1-3 times) but no impairment in functioning or frequent nonverbal hallucinations/visual illusions |
| 5 | Moderately
severe | Daily or some areas of functioning are disrupted by hallucinations |
| 6 | Severe | Several time a day or many areas of functioning are disrupted by hallucinations |
| 7 | Extremely
severe | Persistent throughout the day or most areas of functioning are disrupted by hallucinations |

Have you heard any sounds or people talking to you or about you when there has been nobody around?
Have you seen any visions or smelled any smells others don't seem to notice?
Have these experiences interfered with your ability to perform your usual activities/work?

10. **Disorientation:** Does not comprehend situations or communications. Confusion regarding person, place, or time

- | | | |
|-----|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Mild | Occasionally seems muddled, bewildered, or mildly confused |
| 4-5 | Moderate | Seems confused regarding person, place, or time. Has difficulty remembering facts - e.g., where born - or recognizing people. Mildly disoriented as to time or place |
| 6-7 | Severe | Grossly disoriented as to person, place, or time |

May I ask you one or two standard questions we ask everybody?
How old are you?
What is the date?
What is this place?

Rate Items 11 - 18 on the basis of observed behavior and speech

11. **Conceptual disorganization:** Degree to which speech is confused, disconnected, or disorganized. Rate tangentiality, circumstantiality, sudden shifts, incoherence, derailment, blocking, neologisms, and other speech disorders. Do not rate content of speech. Consider the first 15 minutes of the interview
- | | | |
|---|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Very mild | Peculiar use of words, rambling but speech is comprehensible |
| 3 | Mild | Speech a bit hard to understand or make sense of due to tangentiality, circumstantiality, or sudden topic shifts |
| 4 | Moderate | Speech difficult to understand due to tangentiality, circumstantiality, or topic shifts on many occasions or 1-2 instances of severe impairment, e.g., incoherence, derailment, neologism, blocking |
| 5 | Moderate severe | Speech difficult to understand due to circumstantiality, tangentiality, or topic shifts most of the time or 3-5 instances of severe impairments |
| 6 | Severe | Speech is incomprehensible due to severe impairments most of the time |
| 7 | Extremely severe | Speech is incomprehensible throughout interview |
12. **Excitement:** Heightened emotional tone, increased reactivity, impulsivity
- | | | |
|-----|----------|----------------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Mild | Increased emotionality. Seems keyed up, alert |
| 4-5 | Moderate | Reacts to most stimuli whether relevant or not with considerable intensity. Short attention span. Pressured speech |
| 6-7 | Severe | Marked overreaction to all stimuli with inappropriate intensity, restlessness, impulsiveness. Cannot settle down or stay on task |
13. **Motor Retardation:** Reduction in energy level evidenced in slowed movement and speech, reduced body tone, decreased number of spontaneous body movements. Rate on the basis of observed behavior of the patient only. Do not rate on the basis of patient's subjective impression of his/her own energy level. Rate regardless of medication effects
- | | | |
|-----|-------------------|--------------------------------------------------------------------------|
| 2-3 | Mild | Noticeably slowed or reduced movements or speech compared to most people |
| 4 | Moderate | Large reduction or slowness in movements or speech |
| 5 | Moderately severe | Seldom moves or speaks spontaneously or very mechanical stiff movements |
| 6 | Severe | Does not move or speak unless prodded or urged |
| 7 | Extremely severe | Frozen, catatonic |
14. **Blunted affect:** Restricted range in emotional expression of face, voice, and gestures. Marked indifference or flatness even when discussing distressing topics
- | | | |
|-----|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Mild | Some loss of normal emotional responsiveness |
| 4 | Moderate | Emotional expression very diminished, e.g., doesn't laugh, smile, or react with emotion to distressing topics except on 2 or 3 occasions during the interview |
| 5 | Moderately | Emotional expression extremely diminished, e.g., doesn't laugh, smile, or |

- | | | |
|---|------------------|-------------------------------------------------------------------------------------------|
| | severe | react with emotions to distressing topics except for a maximum of 1 time during interview |
| 6 | Severe | Mechanical in speech, gestures, and expression |
| 7 | Extremely severe | Frozen expression and flat speech. Shows no feeling |
15. **Tension:** Observable physical and motor manifestations of tension, nervousness, and agitation. Self-reported experiences of tension should be rated under the item anxiety
- | | | |
|-----|----------|-----------------------------------------------------------------|
| 2-3 | Mild | Seems tense. Tense posture, nervous mannerisms some of the time |
| 4-5 | Moderate | Seems anxious. Fearful expression, trembling, restless |
| 6-7 | Severe | Continually agitated, pacing, hand wringing |
16. **Mannerism and Posturing:** Unusual and bizarre, stylized movements, or acts, or any postures which are clearly uncomfortable or inappropriate. Exclude obvious manifestations of medication side effects
- | | | |
|-----|----------|-----------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Mild | Eccentric or odd mannerisms or activity that ordinary persons would have difficulty explaining, e.g., grimacing, picking |
| 4-5 | Moderate | Mannerisms or posturing maintained for 5 seconds or more that would make the patient stand out in a crowd as weird or crazy |
| 6-7 | Severe | Posturing, smearing, intense rocking, fetal positioning, strange rituals that dominate patient's attention and behavior |
17. **Uncooperativeness:** Resistance, unfriendliness, resentment, or lack of willingness to cooperate with the interview. Rate only uncooperative behavior observed during interview, not uncooperativeness with relatives
- | | | |
|-----|----------|--------------------------------------------------------------------------------------|
| 2-3 | Mild | Gripes or tries to avoid complying but goes ahead without argument |
| 4-5 | Moderate | Verbally resists, or negativistic but eventually complies. Some information withheld |
| 6-7 | Severe | Refuses to cooperate. Physically resistant |
18. **Emotional withdrawal:** Deficiency in patient's ability to relate emotionally during interview situation. Use your own feeling as to the presence of an "invisible barrier" between patient and interviewer
- | | | |
|-----|----------|------------------------------------------------------------------------------------------------------------------------------|
| 2-3 | Mild | Tends not to show emotional involvement with interviewer but responds when approached |
| 4-5 | Moderate | Emotional contact not present most of the interview. Responds only with minimal affect |
| 6-7 | Severe | Actively avoids emotional participation. Unresponsive or yes/no answers. May leave when spoken to or just not respond at all |
19. **Suicidality:** Expressed desire, intent, or actual actions to harm or kill self
- | | | |
|----|-----------|----------------------------------------------------------------------------------------------------|
| 2 | Very mild | Occasional feelings of being tired of living. No overt suicidal thoughts |
| 3 | Mild | Occasional suicidal thoughts without intent or specific plan. Or feels he would be better off dead |
| 4. | Moderate | Suicidal thoughts frequent, without intent or plan. |

- | | | |
|---|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 | Moderate
severe | Many fantasies of suicide by various methods. May seriously consider making specific attempt with specific time or worked out plan. Or impulsive suicide attempt using nonlethal method or in full view of potential saviors |
| 6 | Severe | Wants to kill self. Searches for appropriate means and time. Or potentially medically serious suicide attempt with patient knowledge of possible rescue |
| 7 | Extremely | Specific suicidal plan and intent (e.g., "as soon as _____, I will do it by doing X"). Or suicide attempt characterized by plan patient thought was lethal or attempt in secluded environment |

Have you felt that life wasn't worth living?
Have you thought about harming or killing yourself?
Do you have a specific plan?

20. **Self-neglect:** Hygiene, appearance, or eating behavior below usual expectations, below socially acceptable standards, or life threatening

- | | | |
|----|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Very mild | Hygiene/appearance somewhat below usual standards, e.g., shirt out of pants, buttons unbuttoned |
| 3 | Mild | Hygiene/appearance much below usual standards, e.g., clothing disheveled and stained, hair uncombed |
| 4. | Moderate | Hygiene/appearance below socially acceptable standards, e.g., large holes in clothing, bad breath, hair uncombed, oily, eating irregular and poor |
| 5 | Moderate
severe | Hygiene highly erratic and poor, e.g., extreme body odor, eating very irregular and poor, e.g., eating only potato chips |
| 6 | Severe | Hygiene and eating potentially life threatening, e.g., eats and/or bathes only when prompted |
| 7 | Extremely
severe | Hygiene and eating life threatening, e.g., does not eat or engage in hygiene |

How often do you take showers; change your clothes?
Has anyone (parent/staff) complained about your grooming or dress?
Do you eat regularly?

21. **Bizarre behavior:** Reports of behaviors that are odd, unusual, or psychologically criminal. Not limited to interview period. Exclude mannerisms and posturing, verbalizations with bizarre content

- | | | |
|----|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | Very mild | Slightly odd behavior, e.g., hoarding food in private, wears gloves indoors |
| 3 | Mild | Peculiar behavior, e.g., talking loudly in public, fails to make appropriate eye contact when talking with others |
| 4. | Moderate | Moderately Unusual, e.g., bizarre dress or makeup, "preaching" to strangers, fixated staring into space while in public, collecting garbage |
| 5 | Moderate
severe | Highly Unusual, e.g., wandering streets aimlessly, eating nonfoods, fixated staring in a socially disruptive way |
| 6 | Severe | Unusual petty crimes, e.g., directing traffic, public nudity, contacting authorities about imaginary crimes |
| 7 | Extremely
severe | Unusual serious crimes, e.g., setting fires, asocial theft, kidnapping committed in a bizarre fashion or for bizarre reasons |

Have you done anything that has attracted the attention of others?
 Have you done anything that could have gotten you into trouble with the police?
 Have you done anything that seemed unusual or disturbing to others

22. **Elevated mood:** A pervasive, sustained, and exaggerated feeling of well-being, cheerfulness, euphoria (implying a pathological mood), optimism that is out of proportion to the circumstances. Do not infer elation from increased activity or from grandiose statements alone

2	Very mild	Seems to be unusually happy, cheerful without much reason
3	Mild	Some unaccountable feelings of well-being
4.	Moderate	Reports excessive or unrealistic feelings of well-being, cheerfulness, confidence, or optimism <i>inappropriate to circumstances</i> , some of the time. May frequently joke, smile, be giddy, or overly enthusiastic or few instances of marked elevated mood with euphoria
5	Moderate severe	Reports excessive or unrealistic feelings of well-being, confidence or optimism <i>inappropriate to circumstances</i> much of the time. May describe feeling "on top of the world," "like everything is falling in place," or "better than ever before," or several instances of marked elevated mood with euphoria
6	Severe	Mood definitely elevated almost constantly throughout interview and inappropriate to content, or many instances of marked elevated mood with euphoria
7	Extremely severe	Seems almost intoxicated, laughing, joking, giggling, constantly euphoric, feeling invulnerable, all inappropriate to immediate circumstances

Have you been feeling cheerful and on top of the world without any reason?
 How long does that last?
 Have you felt so good or high that other people make comments to you about it?

23. **Motor hyperactivity:** Increase in energy level evidenced in more frequent movement and/or rapid speech. (Note: In making this rating consider the 25-minute period of most severe symptomatology)

2	Very mild	Some restlessness, difficulty sitting still, lively facial expression, or somewhat talkative
3	Mild	Occasionally very restless, definite increase in motor activity, lively gestures 1-3 brief instances of pressured speech
4.	Moderate	Very restless, fidgety, excessive facial expressions, or nonproductive and repetitious motor movements. Much pressured speech, up to one third of interview
5	Moderate severe	Frequently restless, fidgety. Many instances of excessive nonproductive and repetitious motor movements. On the move most of the time. Frequent pressured speech, difficult to interrupt. Rises on 1-2 occasions to pace
6	Severe	Excessive motor activity, restlessness, fidgety, loud tapping, noisy, etc., throughout most of the interview. Constant pressured speech with only few pauses. Speech can only be interrupted with effort. Rises on 3-4 occasions to pace
7	Extremely severe	Constant excessive motor activity throughout entire interview, e.g., constant pacing, constant pressured speech with no pauses, interviewee can only be interrupted briefly and only small amounts of relevant information can be obtained

24: **Distractibility:** Degree to which observed sequences of speech and actions are interrupted by minimal external stimuli. Include distractibility due to intrusions of visual or auditory hallucinations. Interviewee's attention may be drawn to noise in adjoining room, books on shelf, interviewer's clothing, etc. Do not include preoccupation due to delusions or other thoughts

2	Very mild	Generally can focus on interviewer's questions with only 1 distraction or inappropriate shift of attention of brief duration due to minimal external stimuli
3	Mild	Same as above but occurs 2 times
4.	Moderate	Responsive to irrelevant stimuli in the room or the environment much of the time
5	Moderate severe	Same as above, but now interferes with comprehensibility of speech
6	Severe	Extremely difficult to conduct interview or pursue a subject due to preoccupation with unimportant and irrelevant stimuli or almost totally incomprehensible because attention shifts rapidly between various irrelevant external stimuli and interviewer's questions
7	Extremely severe	Impossible to conduct interview due to preoccupation with unimportant and irrelevant external stimuli

Rating Scale*

Instructions: This form consists of 24 symptom constructs, each to be rated on a 7-point scale of severity ranging from "not present" to "extremely severe." If a specific symptom is not rated, leave a BLANK (Not assessed). Choose the number headed by the term that best describes the patient's present condition

Blank	Not Assessed
1	Not present
2	Very mild
3	Mild
4	Moderate
5	Moderately severe
6	Severe
7	Extremely severe

Appendix D

CHARTER CAUTIONS STUDY

INVITATION TO PARTICIPATE: You are invited to participate in a study to learn about people's understanding of the warnings that the police read to them when they are arrested. The warnings are called "Charter Cautions."

PURPOSE OF THE STUDY: The study will help us learn more about the level of understanding of Charter Cautions for people who have been arrested.

EXPLANATION OF PROCEDURES: If you choose to participate in this study, you will meet with an interviewer who will read you Charter Cautions and ask you questions about them. We will also need to examine your files here at the Surrey Pretrial Centre to learn about your offence and your mental state.

POTENTIAL RISKS AND DISCOMFORTS: There are no risks associated with participating. This research project is completely separate from the Surrey Pretrial Centre, and none of the information that we collect about you will be made available to any person at the pretrial centre, or anywhere else in the criminal justice system.

POTENTIAL BENEFITS: There are no direct benefits to you from this research other than the knowledge that you may help us learn more about people's understanding of their Charter Cautions. Your decision to participate in the study -- or not to participate in the study -- will have no affect on your stay at the Surrey Pretrial Centre.

CONFIDENTIALITY OF DATA: Any information that is obtained during the study will remain strictly confidential. You will not be writing your name or any other identifying information on the research material. None of the information that we collect about you will be made available to any person at the Surrey Pretrial Centre, or anywhere else in the criminal justice system.

WITHDRAWAL FROM THE STUDY: Participation is voluntary. Your decision whether or not to participate will not affect your current or future relationship with the Surrey Pretrial Centre or with any other branch of the criminal justice or mental health systems.

OFFER TO ANSWER QUESTIONS: If you have any questions, please feel free to ask the interviewers. If you have any questions later you may call the investigators listed on the next page. Thank you for your time and interest.

The university and those conducting this project subscribe to the ethical conduct of research and to the protection at all times of the interests, comfort, and safety of our

subjects. This form and the information it contains are given to you for your own protection and full understanding of the procedures, risks, and benefits involved. Your signature on this form will signify that you have been informed of the procedures in the study, and that you have had an adequate opportunity to consider the information, and that you voluntarily agree to participate in the project. Please read the following paragraph, and if all of it is to your satisfaction, sign at the bottom of the page.

"I have volunteered to participate in a research project under the direction of Dr. J. Ogloff, a professor in the Psychology Department at Simon Fraser University. I have been informed of the basic procedures of the study by the researchers, and by reading the first page of this informed consent form. I take part in this study with the understanding that I may withdraw my participation in the experiment at any time, and that I may register any complaint with the primary researcher or with the Chair of the Psychology Department, Dr. Roger Blackman. I am aware that my participation will involve the tasks described in the section entitled, "EXPLANATION OF PROCEDURES" on the first page of this form. I take part in this study with the assurance from the researchers that my responses will be completely anonymous and confidential (identified by number only). I understand that I may obtain a copy of the results of the study upon its completion from Dr. James Ogloff (291-5945)."

SIGNATURE OF PARTICIPANT _____ DATE _____

SIGNATURE OF WITNESS _____ DATE _____

INVESTIGATORS:

James R.P. Ogloff, J.D., Ph.D. 291-3093
Maureen Olley, B.A.(Hons.) 291-5945
Department of Psychology
Simon Fraser University
Burnaby B.C., V5A 1S6

Appendix E

Subscore 1

Part 1, Item 1	You are not obliged to say anything unless you wish to do so.
Part 2, Item 1a	It is not right to tell lies.
Part 2, Item 1b	You should not say anything until the police ask you questions.
Part 2, Item 1c	You do not have to answer any of the police officer's questions.
Part 2, Item 1d	You do not have to say anything about what you did.
Part 3, Item 4	obliged

Subscore 2

Part 1, Item 2	Anything you do say may be given in evidence.
Part 2, Item 2a	Whatever you say might be used when you are in court.
Part 2, Item 2b	If you won't talk to the police, then that will be used against you in court.
Part 2, Item 2c	If you tell the police anything, it can be repeated in court.
Part 2, Item 2d	As long as you are polite to the police, whatever you say will not be used against you in court.
Part 3, Item 5	evidence

Subscore 3

Part 1, Item 3	You have the right to retain and instruct Counsel without delay.
Part 2, Item 3a	After you have answered a few of the police officers' questions, they will let you call a lawyer.
Part 2, Item 3b	You may contact somebody (e.g. a friend) to give you advice when you are arrested.
Part 2, Item 3c	You can talk to a lawyer as soon as you are arrested.
Part 2, Item 3d	You can get advice from a lawyer about answering the police officer's questions.
Part 3, Item 1	Counsel
Part 3, Item 2	retain
Part 3, Item 3	instruct
Part 3, Item 6	right

Subscore 4

- Part 1, Item 4 A Legal Aid Duty Lawyer can explain the Legal Aid plan to you without charge.
- Part 2, Item 4a If you do not know about the Legal Aid plan, the police will explain it to you.
- Part 2, Item 4b You can have a lawyer explain the Legal Aid plan to you for free.
- Part 2, Item 4c If you have enough money, a lawyer will explain the Legal Aid plan to you.
- Part 2, Item 4d Even if you do not have any money, you can talk to a lawyer about receiving free legal services.
- Part 3, Item 8 legal advice
- Part 3, Item 10 lawyer

Subscore 5

- Part 1, Item 5 A Legal Aid Duty Lawyer is available to provide legal advice to you without charge.
- Part 2, Item 5a Even if you do not have the money for a lawyer, one will be made available to you.
- Part 2, Item 5b You cannot get a lawyer if you are poor.
- Part 2, Item 5c A lawyer will provide you with free legal advice at the beginning, but you will have to pay for legal advice if your case goes to trial.
- Part 2, Item 5d You can get free legal advice about your case from a Legal Aid Duty Lawyer.
- Part 3, Item 8 legal advice
- Part 3, Item 10 lawyer

Subscore 6

- Part 3, Item 7 arresting
- Part 3, Item 9 duty