

Seeking Justice:



A MICA TOWN HALL SERIES



Discussion Guide

THE POWER OF THE PROSECUTOR

Seeking Justice: A MICAH Town Hall Series
Part II - "The Power of the Prosecutor"
July 29, 2021

Discussion Guide

During

Individual Questions. As you listen, take note:

What shocks you?

What gives you hope?

What next steps do you hear?

After

Discussion Questions:

(Note: These are tough questions with which we all must wrestle. While there are no right or wrong answers, these are questions that can not afford to be ignored.)

1. What did you note from the Town Hall that you want to share?
2. What did you learn about the prosecutor's (District Attorney's) discretion?
 - a. How does it affect mass incarceration, plea bargaining, cash bail, youth transfers to adult court, Criminal Responsibility (being charged for being present at a crime), etc?
3. What did you hear about how the prosecutor's discretion affects policing?
 - a. How could our District Attorney influence more than just policing?
4. How does criminal justice reform complement public safety?
 - a. What specific types of reform stood out to you from what the panelists discussed (e.g. conviction integrity units, diversion) ?

5. What trends stood out about how a prosecutor's discretion affects historically excluded people and people of color?
 - a. How do you see these trends affecting Memphis and Shelby County?

6. In what ways did this Town Hall determine how you will engage with the 2022 election in which both the Juvenile Court Judge and District Attorney general elections will be held?
 - a. What do you want to know before that election?
 - b. What do you think other voters need to know before that election?

7. Who else needs to hear about the power of the prosecutor in Shelby County?
 - a. How can you reach them?
 - b. How can you continue the conversation within your organization?

8. What else do you want to hear about in the MICAH Town Hall series on youth justice? *Please send your thoughts/questions to MICAH Recorder, Gail Murray, gmsmurray@gmail.com.

If you'd like to learn more about justice issues in Shelby County courts or how to get involved in the work, please register for the *Seeking Justice* campaign at bit.ly/micahseekingjustice!

Access the recording and discussion guide of the previous Seeking Justice Town Hall: No More Discarded Youth here: <https://www.micahmemphis.org/seekingjustice>

Or by these links:

Recorded Town Hall: <https://youtu.be/aymAy18KsV4>

Discussion Guide: <https://www.micahmemphis.org/townhallresources>

Appendices

Appendix I: District Attorney Quick Reference

- Tennessee has 31 districts; each with their own District Attorney.
- District Attorneys serve an 8-year term
- There are more than 2,400 elected prosecutors in America. The overwhelming majority of them run unopposed, making them immune to changing public sentiment and changing understandings of what works best to improve safety and reduce crime.
- Even as crime rates have significantly decreased, prosecutors have increased the rate at which they charge people with felonies -*John F. Pfaff, "The Micro and Macro Causes of Prison Growth," Georgia State University Law Review 28 (Summer 2012): 34*
- Nationwide, 95% of people who are arrested plead out.
- A District Attorney's decision making, also called their discretion, influences bail & sentencing.
 - District Attorneys alone have the power to:¹
 1. Charge people with crimes that carry long mandatory minimum sentences.
 2. Determine whether someone gets access to drug treatment or is prosecuted and potentially sent to jail.
 3. Determine whether a young person is kept in the juvenile justice system or prosecuted in the adult system where they are much more likely to be hurt and to re-offend.
 4. Decide whether to charge someone with a mandatory minimum, a felony, or a misdemeanor.
 5. Influence the extent of racial disparity in sentencing because they decide who gets prosecuted and how.
 6. Influence whether a police officer is charged in a case of misconduct.
 7. Seek the death penalty.
- Incarceration statistics:
 - 3.7:1 Black:white ratio in Tennessee prisons - *The Sentencing Project*
 - 9.19% of Tennesseans are disenfranchised by felony - *The Sentencing Project*

- 21.65% of African American Tennesseans are disenfranchised - *The Sentencing Project*
- Since 1980, the number of women in jail in Tennessee has increased 1,431% - *The Vera Institute*
- On any given day in Tennessee, approximately 58,000 Tennessee residents are locked up in jails, detention centers and prison and another 74,000 are on probation and parole - *Prison Policy Initiative*
- From 1983 to 2015, the total number of people incarcerated in Tennessee has increased by 242% - *The Vera Institute*

¹ ACLU Roadblocks to Reform, 2016

To learn more, watch this two-minute ACLU video “Guess Who’s the Most Powerful Person in the Justice System”: <https://www.youtube.com/watch?v=NkYcn8TZEUc>

Watch this ACLU produced video to educate about a DA race in New Orleans:

<https://www.youtube.com/watch?v=k5jeoY4QB58>

and visit California ACLU’s Meet Your DA campaign: <https://meetourda.org>

Appendix II: Panelists & Contributors



Panelist

Angela J. Davis is a Distinguished Professor of Law at the American University Washington College of Law where she teaches Criminal Law, Criminal Procedure, and Criminal Defense: Theory and Practice. She has served on the adjunct faculty at George Washington, Georgetown, and Harvard Law Schools. Professor Davis is the author of *Arbitrary Justice: The Power of the American Prosecutor* (Oxford University Press, 2007),



Panelist

Jamila Hodge is the Director of the Reshaping Prosecution initiative at the Vera Institute of Justice. She joined Vera in April 2018, after serving for 12 years as an Assistant United States Attorney in Washington, DC. During her tenure at the U.S. Attorney's Office, Jami handled both local and federal investigations, trials, and appellate matters. Jami also served in detail assignments as a senior advisor in the Department of Justice Office of Legal Policy, and as an Advisor for Criminal Justice and Drug Policy in the White House Office of the Vice President during the Obama administration.



Moderator

Damon Keith Griffin--named after one of the longest serving and first African American federal judges, Judge Damon Keith--is a former State and Federal Prosecutor for over 12 years collectively. He prosecuted violent crime cases in Shelby County and white collar fraud in the Western District of TN. He is an experienced trial lawyer and advocate for criminal justice reform.

Video Creator

Kim Bledsoe Lloyd has been producing content since the 90s. In 2014, she began editing, then later, directing and shooting for regional documentaries, music videos and social justice non-profits. Her motto: find the heart in the matter.

www.bmrprod.com

Video Contributors

Carnita McKeithen earned her Juris Doctorate in 2006 from the University of Tennessee. She has represented the children of Shelby County as a Public Defender since 2016. Ms. McKeithen is a member of the Central Juvenile Defender Center Advisory Council, which is one of the nine Regional Centers of the National Juvenile Defender Center, "NJDC." She is also a certified Juvenile Training Immersion Program "JTIP" trainer through NJDC.

Ashlee Sellars is the Restorative Justice Diversion Team Leader for the Raphah Institute. As a restorative practitioner, Ashlee supports families as they courageously face harms they have experienced and acknowledge how these harms manifest in their lives. Ashlee comes to this space from her experiences as a youth who caused great harm and the impact a conversation with those whose lives were forever changed had on her. Ashlee is a member of The National

Council for Incarcerated and Formerly Incarcerated Women and Girls, The Incarcerated Children's Advocacy Network, and FreeHearts. Ashlee believes that everyone affected by harm should be at the table having discussions to create change. She is trained in ACEs, Trauma Informed Care, Harm and Community Conferencing Circles, How to Have Conversations with Survivors, and Victim Impact. Ashlee holds an Associate's Liberal Arts Degree from Lipscomb University LIFE program.
<https://www.juvenilefilm.com/stories/ashlee>

Rachel Haaga knew she wanted to be a part of the nonprofit world from an early age. After graduating from the University of Memphis, she embarked on a journey to the other side of the world and came back to the Bluff City with a mission: to eradicate human trafficking. Her time in Cambodia working with Youth With A Mission gave Rachel the knowledge and determination to confront the evil that exists right here in Tennessee. In 2013, she co-founded Restore Corps to raise awareness, fight for systemic changes and empower survivors. Under Rachel's leadership as Executive Director, Restore Corps is now designated as the official Single Point of Contact Agency for West Tennessee, runs two safe houses in Memphis, and has written or lobbied for the legislative changes that make Tennessee number one in the nation for anti-trafficking laws.

Planning Contributor

Brandon Tucker serves as Policy Director for the American Civil Liberties Union of Tennessee, leading the organization's policy advocacy work. Before joining the ACLU-TN team, Brandon worked as a state advocacy strategist with the national ACLU, focusing on policing and capital punishment. Previously, Tucker served as political coordinator for the United Food & Commercial Workers International Union in Washington, D.C., managing issues, organizing and electoral campaigns in multiple states, and lobbying on behalf of members' interests. Tucker has also held political and field leadership roles for numerous political campaigns. He is a graduate of Fisk University.

Appendix III: Prosecution Information & Statistics for Youth

In 2017, Shelby County transferred **92** youth to adult court. In that same year, Davidson County transferred **4**.

In 2017, Shelby County cases made up nearly half of all youth cases transferred to adult court in the State of Tennessee.

-Tennessee Council of Juvenile and Family Court Judges, Administrative Office of the Courts

... Black children are treated significantly worse than White children even after accounting for the other social and legal factors.

...

The disparity in transfer rates for Black children is especially problematic because the consequences of transferring a juvenile to the adult court are significant. Transfer removes the child from the rehabilitative juvenile system and subjects the child to the adult criminal system.

- Investigation of the Shelby County Juvenile Court, United States Department of Justice, Findings Report, 4/26/2012

In the past three years Shelby County has transferred seven times as many juveniles to the adult courts as Davidson County, 260 from Shelby County compared to 37 for Davidson County, where Nashville is located.

...

Black youth facing the same charges and with a similar criminal history as white youth were four times as likely to be brought to the court by law enforcement, twice as likely to be detained, twice as likely to have petitions filed by the court and less likely to be diverted from the court. Black youth received different and more onerous treatment at every step.

—Bill Powell, "Shelby County's juvenile justice system limits our youth, our community," *Daily Memphian*, 1/15/2020

The combination of prosecutorial gamesmanship and the prosecutor's refusal to provide discovery (in contrast to all other Tennessee Counties), is a toxic combination for African-American youth.

—Final Report of Sue Simkins, Due Process Monitor of the Juvenile Court of Memphis-Shelby County, December 2018

“What we need to do in our part of the system, particularly in the deep end of the system, is not victimize them and further traumatize them. They’re going to become our neighbors. They’re going to live in our communities. Are we placing the youth in the right environment?”

- Fairborz Pakseresht, director of the Oregon Youth Authority (the state’s juvenile justice agency)

According to Pakseresht, statistics showed that for youths moved from the juvenile system to the adult Division of Corrections in Oregon because of behavior, recidivism increased by 136% among those youth.

The findings in this (CDC) report indicate that transfer policies have generally resulted in increased arrest for subsequent crimes, including violent crime, among juveniles who were transferred compared with those retained in the juvenile justice system. To the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good.

- United States Center for Disease Control, “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services”

Thus, the extant research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism.

- United States Department of Justice Office of Justice Programs, *Juvenile Justice Bulletin*, June 2010

Appendix IV: Continuing Education

Davis, Angela J. *Arbitrary Justice: The Power of the American Prosecutor*. Oxford University Press, 2007.

Bazelon, Emily. *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*. New York: Random House, 2019.

[Library copy here](#)

Rogers, David. *Roadblocks to Reform: District Attorneys, Elections, and the Criminal Justice Status Quo*. American Civil Liberties Union of Oregon, 2016.

[Roadblocks_to_Reform_Report_ACLUOR.pdf \(aclu-or.org\)](#)

Vera Institute of Justice. *Voter Tools: Questions for Candidates for New Orleans District Attorney*. Vera Institute of Justice, 2020.

[voter-tools-new-orleans-district-attorney.pdf \(vera.org\)](#)

Final Report from Sandra Simkins, Due Process Monitor for Shelby County Juvenile Court, December 2018:

<https://www.scribd.com/document/395400277/Final-report-from-a-Department-of-Ju-justice-monitor-on-Shelby-County-Juvenile-Court>

A report from Sandra Simkins, Due Process Monitor for Shelby County Juvenile Court, 2017: <https://www.justice.gov/crt/case-document/file/974636/download>

State of Tennessee, 2014 [State of Tennessee Annual Juvenile Court Statistical Report](#)

Yusuf, Omer. "Shelby County Juvenile Court Changes Defense Procedure After DOJ Report." *The Daily Memphian*. January 8, 2019.

<https://dailymemphian.com/section/metrocriminal-justice/article/2301/Shelby-County-Juvenile-Court-changes-defense-procedure-after-DOJ-report>.

Macaraeg, Sarah. "Final DOJ report: 'Blatantly unfair' practices persist at Shelby County juvenile court." *The Commercial Appeal*. December 10, 2018.

<https://www.commercialappeal.com/story/news/2018/12/10/shelby-county-juvenile-court-federal-oversight-doj-report/2266028002/>.

Crime and Justice Institute Reports: <https://www.cj institute.org/resources/publications/>.

Memphis Public Library, Informed Voter page:

<https://www.memphislibrary.org/informed-voter/meet-the-candidates-2020-11-03/>.

The Sentencing Project: <https://www.sentencingproject.org/issues/juvenile-justice/>

Investigation of the Shelby County Juvenile Court by the United States Department of Justice, Findings Report, April 2012:

https://www.justice.gov/sites/default/files/crt/legacy/2012/04/26/shelbycountyjuv_findingsrpt_4-26-12.pdf

Memphis Interfaith Coalition for Action and Hope: <https://www.micahmemphis.org/>

Appendix V: Justice Quotes

What happens when public prosecutors, the most powerful officials in the criminal justice system, seek convictions instead of justice?

-Angela J. Davis

Here's the thing: prosecutors also hold the key to change. They can protect against convicting the innocent. They can guard against racial bias. They can curtail mass incarceration.

-Emily Bazelon, *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*

Justice, justice you shall pursue.

-Deuteronomy 16:20

O you who believe, stand firm for justice even against your own selves.

-The Qur'an, Surat An-Nisa 4:135

People say, what is the sense of our small effort? They cannot see that we must lay one brick at a time, take one step at a time. A pebble cast into a pond causes ripples that spread in all directions.

-Dorothy Day

We must not allow this generation to produce record numbers for the juvenile justice, runaway, homeless youth, or foster care systems.

-The Honorable Ruben Hinojosa, Former U.S. Representative

Rehabilitate instead of incarcerate.

-Bert McCoy, Author and Educator

Each of us is more than the worst thing we've ever done.

-Attorney Bryan Stevenson, Equal Justice Initiative, author of *Just Mercy*

We've allowed our most vulnerable children to be thrown away, to be traumatized and to be locked up in these jails and prisons, and we've got to change this narrative that some children aren't children.

-Attorney Bryan Stevenson, Equal Justice Initiative, author of *Just Mercy*

I think it's important for us as a society to remember that the youth within juvenile justice systems are, most of the time, youths who simply haven't had the right mentors and supporters around them– because of circumstances beyond their control.

-Q'orianka Kilcher, Actress and Activist

Appendix VI: Acknowledgements

Memphis Interfaith Coalition for Action and Hope (MICAH) would like to extend a special thank you to all of our panelists and contributors for sharing their time and insights.

