

SEEKING JUSTICE:



THE INTERSECTION OF RACE, ADOLESCENCE, AND JUSTICE

Join MICAHA on the Road to Restorative Justice for Our Youth.



DISCUSSION GUIDE

Featuring
KRISTIN HENNING

Director - Juvenile Justice Clinic & Initiative at Georgetown Law

Seeking Justice: A MICAHA Town Hall Series
Part III - "The Intersection of Race, Adolescence, and Justice"
October 7, 2021

Discussion Guide

During

Individual Questions. As you listen, take note:

What shocks you?

What gives you hope?

What next steps do you hear?

Questions Posed by Our Speaker:

What are the most common sources of trauma for youth in the Memphis area?

Regarding the video Trauma as a Lived Experience:

In one word, how did the interaction make you feel?

How did it make you feel in your body? Where is your tension?

What words have you seen used in your city that are dehumanizing to youth?

After

Discussion Questions:

1. What did you note from the Town Hall that you want to share?
2. What have you learned about how racial bias affects our justice system?
 - a. What narratives have you heard in our community and from community leaders about young people of color?
3. How has your idea of trauma been affected by learning about ACEs (Adverse Childhood Experiences)?
 - a. What did you learn about how trauma affects the Memphis/Shelby County community?
 - b. Are there ways you have witnessed trauma, especially racial trauma, impacting our community? (please only share if you feel safe doing so in your group.)
4. What strategies did you learn for responding to behavior driven by trauma?
 - a. How can these strategies be applied in our justice system?
5. In your wildest imagination, what would a healing and flourishing Memphis/Shelby County be like?
6. 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!](http://bit.ly/micahseekingjustice)

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

Or by these links:

Recorded No More Discarded Youth Town Hall: <https://youtu.be/aymAy18KsV4>

No More Discarded Youth Discussion Guide: <https://www.micahmemphis.org/townhallresources>

Access the Youth Justice Action Council (YJAC) Research Report here:

https://docs.google.com/document/d/1C5BaoqM1aHYm6up4ar6q_Y1JA66vwLzpxZCZNOQMqpU/edit#heading=h.r4it6aoi9gcl

Access the Countywide Juvenile Justice Consortium (CJJC) Research Report here:

https://docs.google.com/document/d/1dPABcCMH5ekYN_XuxlsYfWG6Hb3ng-3/edit

Appendices

Appendix I: Our Featured Speakers



Kristin Henning is the Blume Professor of Law and Director of the Juvenile Justice Clinic & Initiative at Georgetown Law, where she and her law students represent youth accused of delinquency in Washington, DC. Professor Henning was previously the Lead Attorney for the Juvenile Unit of the D.C. Public Defender Service and is currently the Director of the Mid-Atlantic Juvenile Defender Center. Henning writes extensively about race, adolescence, and policing. Her new book, *The Rage of Innocence: How America Criminalizes Black Youth*, is forthcoming with Penguin Random House in 2021.

Appendix II: Juvenile Court Language Guide



Juvenile court can be a stressful environment—for everyone. But for court-involved youth, it can also be embarrassing, confusing, and traumatic.

Youth may fail to meet adults' expectations to be respectful and compliant or to show empathy and remorse. Youth may be rude and disrespectful, talk back, refuse to make eye contact, laugh, or otherwise appear uninterested. Despite our best intentions, we may aggravate the stress and trauma that court-involved youth experience. We may misunderstand the behavior we see and use harmful language based on faulty assumptions and expectations.

It is important for us to be mindful of the developmental capacities of young people. The behaviors we may perceive as disrespect, defiance, or lack of contrition are often manifestations of normal adolescent development or trauma. Because adolescence is a complex and rapidly changing period of growth, we must consider the developmental context of each youth and identify any layers of disability and trauma the young person may face.

We bring our own experiences and biases to every interaction, including those with youth. Those biases may cause us to perceive normal adolescent behavior and body language of Black, Latinx, and Indigenous youth as more dangerous, defiant, and disrespectful than that of white youth.

The words we choose have a significant impact on the young people we serve. We may inadvertently use language laden with bias, disapproval, and negative judgment that can impact youths' perceptions of themselves. Our language can also impact our own thinking and decision-making.

In Part I of this guide, we hope to break down some of the barriers between young people who experience juvenile court and the adults who work in it. The guide can help system actors understand and respond to normal adolescent behaviors with compassion and empathy and develop strategies that validate a young person's anxiety and trauma. We suggest some self-reflection questions to consider.

In Part II we offer guidance on the language used in juvenile court and encourage system actors to adopt language that affirms the dignity and value of all youth.

An incarcerated young person noted that, *"I'm a lot like that picture. I act all tough and mean, but I'm really just a scared fish. I wish when I was a kid, someone would have thought to look for the goldfish, instead of just seeing me as a shark."*

We hope you will use this guide to think through your own experiences and take a moment to look for the goldfish, instead of seeing the shark.



PART I: Responding to Normal Adolescent and Trauma-Related Behaviors in Court

"Everything we see hides another thing."
Rene Magritte

Below we offer examples of common behaviors that may be observed in juvenile court, reflect on possible causes, and offer responses. These are not answers, just sample frameworks for improving interactions with young people in juvenile court.

WHAT BEHAVIOR DO I SEE?	HOW DOES THAT MAKE ME FEEL?	WHAT MIGHT BE UNDERNEATH THE BEHAVIOR?	WHAT WILL I DO IN RESPONSE?
Negative body language (crossed arms, rolling eyes, refusal to stand/sit/make eye contact, etc.)	Disrespected	Youth may display what appears to be oppositional body language because of traumatic experiences or language deficiencies that make it difficult to appropriately express and articulate their thoughts or feelings. A youth's body language may also indicate feelings of stress, nervousness, unfairness, fear, or embarrassment, especially when the young person's peers, rivals, or family members are watching in the courtroom.	 <p>Be patient, listen well, have empathy, and de-escalate situations as they arise.</p> <p>Consider saying, "I know it's hard to be here in court, we all want to ensure..."</p> <p>Give second and third chances for youth struggling to act appropriately in court. For instance, when a young person has an outburst, rather than escalating the situation with threatened sanctions, give youth an opportunity to step outside with their attorney to calm their emotions, and re-call the case later.</p>
Defiance Mouthing off Talking back	Insulted	Youth do not always have the language skills to express how they feel and/or the skillset to express disagreement. They may find it difficult to appropriately express their emotions, especially in front of their peers and other people in the courtroom.	
Disruptive or distracting behavior Disassociation	Angry Frustrated	Studies show that trauma may affect a youth's ability to control impulses or perceive risks associated with their behaviors, meaning that they may be unable to meet adults' expectations for their behavior, rather than <i>unwilling</i> . Youth who have experienced trauma may have learned to use compliance or defiance as survival mechanisms. Punitive sanctions are unlikely to change trauma-related behaviors. Instead, treatment for underlying or ongoing trauma and supports that help youth control impulses and manage their anger may be more effective responses to disorderly conduct.	
Emotional outbursts Frustration	Irritated Frustrated	Youth are particularly sensitive to issues of fairness and respect and have yet to master tempering their emotions, controlling their impulses, and regulating their behavior, especially in the face of seemingly unfair outcomes. Youth care about procedural justice and expect to be treated with respect and impartiality and be given an opportunity to tell their side of the story and express their own views and opinions. If not given the opportunity to do so, they may express their frustration through emotional outbursts.	
Inability to show remorse Laughing Scoffing Sucking teeth	Hurt Disrespected	Youth who perceive the system as unfair, or who have diminished cognitive capacity, or who have experienced trauma, may struggle to convey contrition and remorse shortly after an arrest or adjudication. Other developmental features of adolescence, such as peer influence and teenage bravado, or simply immaturity, may further inhibit expressions of grief and remorse.	

PART II: The Power of Words

"Words are also actions."
Ralph Waldo Emerson

Below we offer alternative language and terms to consider. As a general matter, it is almost always best to use the young person's first name when referring or talking to them. Or, you may want to ask the young person how they would like to be addressed. We hope to encourage system actors to adopt language that supports positive identity development; that promotes fairness, equality, and justice; and that affirms the dignity and value of all youth.

LANGUAGE THAT DEMEANES YOUNG PEOPLE	LANGUAGE THAT AFFIRMS & HUMANIZES	CONSIDER USING LANGUAGE THAT
Aggressive	Assertive about opinions	 Recognizes normal adolescent behavior & trauma
Defiant Non-compliant	Struggling to manage some of our expectations	
Disrespectful Oppositional	Appears to be frustrated by what is being expected Appears to be having difficulty meeting certain expectations	
Incorrigible	Requires additional support and guidance	
Loud	Impassioned response	
Manipulative	Eager for a specific outcome Trying to figure things out	
Resistant	Struggling to connect	
Bodies ("move the bodies from the holding cell")	Please escort [youth's first name] to/from the courtroom	 Accurately and respectfully talks about a youth's identity and situation
Drug addict Abuser	Youth's first name (or preferred name) Youth in need of drug treatment	
Drug dealer	Youth's first name (or preferred name) Youth adjudicated for drug distribution	
Gang member	Youth's first name (or preferred name) Youth affiliated with a group	
Illegal immigrant Alien	Youth's first name (or preferred name) Undocumented youth Youth seeking citizenship	
Inmate	Youth's first name (or preferred name) Residents/youth/ young people in the facility	
The mother The father Family member	Mr./Mrs./Ms. with family/guardian's last name	
Thug	Youth's first name (or preferred name)	

LANGUAGE THAT DEMEANS YOUNG PEOPLE	LANGUAGE THAT AFFIRMS & HUMANIZES	CONSIDER USING LANGUAGE THAT
Delinquent	Youth's first name (or preferred name) Youth adjudicated of delinquency	 Does not reduce a youth to their criminal status; avoids labeling and permanently stigmatizing
Felon Convict	Youth's first name (or preferred name) Youth with a felony adjudication	
Offender	Youth's first name (or preferred name)	
Juvenile	Youth's first name (or preferred name) Youth	 Affirms the presumption of innocence
Perpetrator Perp	Minor Kids Young person Youth adjudicated delinquent	
Respondent	Children	
Dangerous neighborhoods High-risk neighborhoods	Communities experiencing high levels of [X]	 Defies stereotypes and respects youth individuality
Minorities	Identify the specific racial or ethnic group People of color	
Poor	Youth from low-income or underserved families	
Projects Section 8	Government-subsidized housing	

Other Resources & References

FAIR AND JUST PROSECUTION ET AL., 21 PRINCIPLES FOR THE 21ST CENTURY PROSECUTOR (2018).

ADVANCEMENT PROJECT & THE OPPORTUNITY AGENDA, THE SOCIAL JUSTICE PHRASE GUIDE (2015).

THE OPPORTUNITY AGENDA, CRIMINAL JUSTICE REFORM PHRASE GUIDE (2018).

LAURENCE STEINBERG, AGE OF OPPORTUNITY: LESSONS FROM THE NEW SCIENCE OF ADOLESCENCE (2014).

Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383 (2013).

THE FORTUNE SOCIETY REENTRY EDUCATION PROJECT, WORDS MATTER (2018).

Danielle Sered, *Remembering Eddie Ellis and the power of language*, VERA INST. OF JUST: THINK JUST. BLOG (Oct. 17, 2014), <https://www.vera.org/blog/remembering-eddie-ellis-and-the-power-of-language>.

Appendix III: Information & Statistics for Youth in the Justice System

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
-

In its 2020 State Ratings Report, Human Rights for Kids rated Tennessee as one of six states who were "The Worst Human Rights Offenders" based on the states' lack of protections for the rights of children involved in the justice system.

- Human Rights for Kids
-

Youth 15 and under represented approximately 51% of the juvenile arrests in the United States in 2019.

- from the Office of Juvenile Justice and Delinquency Prevention
-

Black youth were more than five times as likely to be detained or committed compared to similarly situated white youth according to data from the Department of Justice collected in October 2015.

- The Sentencing Project, 2017
-

“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 Centers for Disease Control and Prevention, “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”
-

Incarceration as a juvenile increases the probability of recidivism as an adult by between 22 and 26 percent.

- Ann Aizer and Joseph Doyle. "Juvenile Confinement, Human Capital, and Future Crime: Evidence from Randomly Assigned Judges," *The Quarterly Journal of Economics*, April 2015.
-

Confined youth are up to four times less likely to complete high school and 96% less likely to complete college.

- Shelley Schaefer and Gina Erickson, *The Impact of Juvenile Correctional Confinement on the Transition to Adulthood*, Washington, DC: National Institute of Justice, June 2016.
-

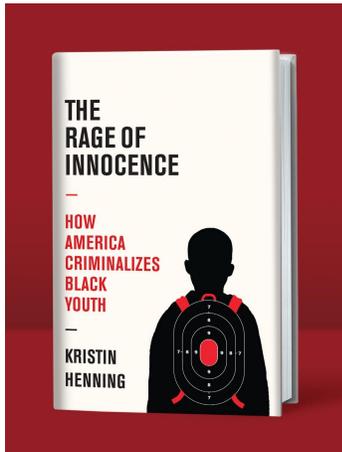
Forty-one percent of youths in placement are Black, even though Black Americans comprise only 15% of all youth across the United States.

- *Easy Access to Juvenile Populations: 1990-2019*, National Center for Juvenile Justice
-

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



Henning, Kristin. *The Rage of Innocence: How America Criminalizes Black Youth*. Penguin Random House, 2021.

<https://www.penguinrandomhouse.com/books/623467/the-rage-of-innocence-by-kristin-henning/>

Resources Used in the Presentation:

ACLU Report - Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students: <https://www.aclu.org/report/cops-and-no-counselors>

Pair of ACEs Tree:

https://publichealth.gwu.edu/sites/default/files/downloads/Redstone-Center/Resource%20Description_Pair%20of%20ACEs%20Tree.pdf

The Five Promises - America's Promise Alliance:

https://www.americaspromise.org/promises?qclid=CjwKCAjw7fuJBhBdEiwA2ILMYZWU2IcaSTPbFRV9QgkG88IOMdYcFaT-hn8a0XMpPCfA89hN3pQN2BoCVsMQAvD_BwE

Culotta, DiLeone, DiTomasso, Goff, and Jackson. *The Essence of Innocence: Consequences of Dehumanizing Black Children*. Interpersonal Relations and Group Processes, 2013.

<https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>

Blueprints Programs - Blueprints for Healthy Youth Development:

<https://www.blueprintsprograms.org/program-search/>

More Continuing Education:

Ablon, J. Stuart. *Changeable: How Collaborative Problem Solving Changes Lives at Home, at School, and at Work*. TarcherPerigee, 2018.

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

[Library copy here](#)

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

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-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](#)

Dries, Bill. "Juvenile Court reform issue returns to County Commission." *Daily Memphian*.

September 13, 2021.

<https://dailyMemphian.com/section/metro/article/24064/juvenile-court-reform-issue-back-to-county-commission>

Jones, Yolanda. "Juvenile court transfers decrease but concerning trends remain." *Daily Memphian*. August 31, 2021.

<https://dailyMemphian.com/section/metro/article/23691/juvenile-court-judge-dan-michael-josh-spickler-transfers>

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

Dr. J. Stuart Ablon's TEDx Talk - Rethinking Challenging Kids - Where There's a Skill There's a Way: <https://youtu.be/zuoPZkFclVs>

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

Appendix V: Justice Quotes

One out of every two surveyed adults reported at least one ACE (adverse childhood experience) during their childhood and 12 percent of adults had experienced four or more leading to trauma.

- The ACE Center Task Force of Shelby County

It is easier to build strong children than to repair broken men.

- Frederick Douglass.

There is no keener revelation of a society's soul than the way in which it treats its children.

- Nelson Mandela, Former President of South Africa

Justice, justice you shall pursue.

- Deuteronomy 16:20

I act all tough and mean, but I'm really just a scared fish. I wish when I was a kid, someone would have thought to look for the goldfish, instead of just seeing me as a shark.

- Incarcerated Young Person, *Seeing What's Underneath: A Resource for Understanding Behavior & Using Language in Juvenile Court*

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: Acknowledgement

Memphis Interfaith Coalition for Action and Hope (MICAH) would like to extend gratitude to all our planners and contributors for sharing their time and insights. Special thanks to Zahra Chowdhury; the youngest voting member of the Countywide Juvenile Justice Consortium (CJC) and inaugural member of the Youth Justice Action Council (YJAC)