



Courageously Raising Race in JD and Crossover Cases: The Power of the GAL's Voice in Court

Lindsey Sandoval & Nicole Duncan

ROADMAP

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Data

Why this is a Racial
Justice Issue?

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Building Rapport

Culturally competent interviewing &
checking our own unconscious bias

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4

Tangible Ways to Courageously Do This

"Stop making
everything
about race"

- someone benefiting from racism

@Americahatesus

Credit:
@Americahatesus





01 DATA

Why this is a Racial Justice Issue?

- National Statistics:

- Although **Black youth** comprised only approximately **16% of youth ages 10–17** in the United States in 2018, they accounted for:
 - **35%** of all juvenile arrests,
 - **40%** of detained youth,
 - **39%** of the youth formally processed by the juvenile court,
 - **37%** of the youth adjudicated, and
 - **51%** (or more) of youth judicially petitioned for waiver to criminal court for person offenses.



The Color of Juvenile Transfer; Social Justice Brief by The National Association of Social Workers (2015); OJJDP “Delinquency cases Waived to Juvenile Court(2021)

Offense profile of waived cases:

Most serious offense	White	Black	Hispanic
2018			
Person	45%	61%	63%
Property	30	26	18
Drugs	15	5	15
Public order	10	8	4
Total	100%	100%	100%
2005			
Person	33%	58%	55%
Property	43	19	26
Drugs	14	15	11
Public order	10	8	8
Total	100%	100%	100%

Note: Detail may not total 100% because of rounding. Offense profiles are not presented for American Indian and Asian youth because counts were too small to calculate meaningful percentages.

- In 2018, person offense cases accounted for the largest proportion of judicially waived cases for all racial groups.
- The proportion of person cases waived was largest for Hispanic youth compared with all other race groups in 2018.



This fact sheet is based on the OJJDP-sponsored report "[Juvenile Court Statistics 2018](#)" and was developed with support from the National Institute of Justice

Delinquency case rates for Black youth (53.9 per Black youth in the U.S. population) was still nearly triple the rate for:

- White youth (18.3)
- Hispanic youth (17.6), and
- American Indian youth (21.5),
- and was almost 12 times the rate for Asian youth (4.6)

Despite overall juvenile crime trending down, the proportion of delinquency cases involving Black, Hispanic/Latinx, and American Indian youth increased between 2005 and 2019.

In 2019, White youth were less likely to have their cases handled formally (48%) as compared to

- Black youth (60%),
- Hispanic/Latinx youth (52%),
- American Indian youth (56%), or
- Asian youth (52%).

(Hockenberry &
Puzzanchera, 2021)



Transfer & Direct File

Black youth are approximately 14% of the total youth population, but **47.3% of the youth who are transferred to adult court by juvenile court judges** “who believe the youth cannot benefit from the services of their court,” write the report’s authors.

Black youth are **53.1% of youth transferred for person offenses** despite the fact that black and white youth make up an equal percentage of youth charged with person offenses, **40.1% and 40.5%** respectively, in 2015.



“The Color of Juvenile Transfer” by the National Association of Social Workers (2017) & The Campaign for Youth Justice (2018)

“When we love children, we acknowledge by our every action that they are not property, that they have rights—that we respect and uphold their rights.”

—bell hooks



Cultivating Trust with Youth & Families

- Cultural awareness
- Recognize that your client and their family may identify you as part of the “system.”
- Be aware of your privilege and reflect on your biases. (We all have them)
 - **How do your values, norms, and beliefs about your own identity influence your behavior?**
- Build Rapport with your client
 - **Visit Regularly & Communicate**
 - **Let your client see you advocating for them**
 - **Think outside the box when building rapport and getting clients to open up and trust**
- Continue to learn about different cultures and perspectives of clients of color.
- Be familiar with the historical distrust the criminal justice system for youth and families of color.
- Recognize the impact race and racial trauma has on your client & their family.

Acknowledging the Historical Trauma Within the Child Welfare System & Criminal Justice System

- Structural Racism & Racial Disparities of Children & Families of Color within the Child Welfare System
 - In 2021 Black Children Represented 14% of the Total Child Population but 22% of Children in Foster Care. Latino Children Represent 26% of Kids Nationwide and 22% of all Kids in Foster Care.
- Intergenerational Trauma for Indigenous Children & Families
 - Prior to 1978 (ICWA) 80% of Native American Families living on Reservations lost a child to the Foster Care System.
 - More than 25% of all Native Children were Removed from their Families, with 85% Receiving Placements Outside of their Tribe.



- Racial Disparities in the Youth Justice System
 - 32% of Black & Latino Youth are more likely to be incarcerated, 32% of their cases result in institutional placements
 - Prosecutors are more likely to label crimes committed by black youth as “aggravated,” while equivalent crimes committed by white youth may be presented as “Mistakes.”

[Disproportionate representation of Native Americans in foster care across United States - Potawatomi.org](https://www.potawatomi.org/black-children-continue-to-be-disproportionately-represented-in-foster-care)
[Black Children Continue to Be Disproportionately Represented in Foster Care - The Annie E. Casey Foundation \(aecf.org\)](https://www.aecf.org/black-children-continue-to-be-disproportionately-represented-in-foster-care)

[Racial and Ethnic Disparities in the Youth Justice System | CJJ \(jujustice.org\)](https://www.jujustice.org/racial-and-ethnic-disparities-in-the-youth-justice-system)

3

STORYTELLING & SOCIAL SCIENCE



HOW HAVE YOU DONE IT?

QUICK-WRITE
& Throw ideas
into the chat



ADOLESCENT IDENTITY DEVELOPMENT

CRIMINALIZING NORMAL ADOLESCENT BEHAVIOR IN COMMUNITIES OF COLOR: THE ROLE OF PROSECUTORS IN JUVENILE JUSTICE REFORM

Kristin Henning†

San Jose State University
SJSU ScholarWorks

Dissertations

Master's Theses and Graduate Research

Spring 2017

The African American/Black Racial Tapestry: Black Adolescents'
Private, Independent School Experiences and Racial Identity
Development

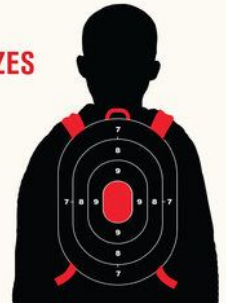
SPEAKING OUT:
LATINO YOUTH ON
DISCRIMINATION IN THE UNITED STATES



THE RAGE OF INNOCENCE

—
**HOW
AMERICA
CRIMINALIZES
BLACK
YOUTH**

—
**KRISTIN
HENNING**



NCLR
NATIONAL COUNCIL OF LA RAZA

ADOLSCENT IDENTITY DEVELOPMENT

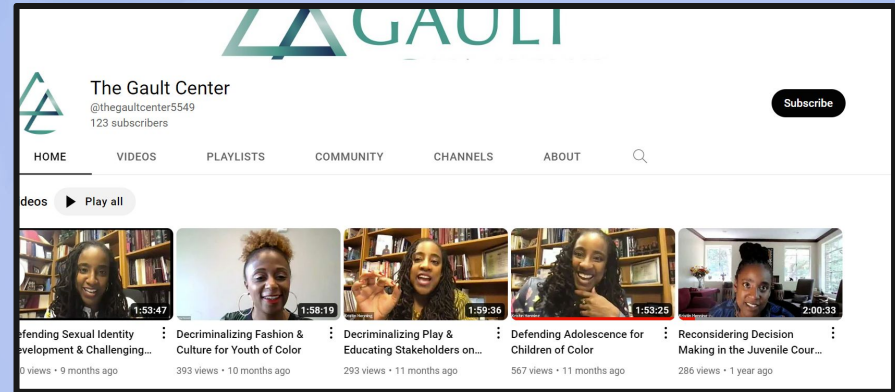
Youtube Channel: The Gault Center

The Erasure of Childhood Development aka who gets the right to be a child?

Dig deeper:

two “violent felonies” (e.g., robbery and assault with a dangerous weapon) may have engaged in little more than playing catch with a teacher’s hat or throwing pebbles at a classmate.

Focus on *Their* Identity, not what society says.
(Injury example) “I felt hopeless.”
(adoption ex: “unseen even by family”)



Race Based Traumatic Stress (RBTS)

What is Race-Based Trauma?

The unique psychological and emotional distress that Black, Indigenous, LATINX, and People of Color (BIPOC) suffer due to racism and discrimination.

BIPOC youth are at higher risk of experiencing and re experiencing traumatic, stressful events, which may compound or mirror systems of posttraumatic stress disorder (PTSD).



Racial trauma can affect individuals and entire communities

WHERE DOES RACIAL TRAUMA COME FROM?

Racial trauma can come directly from interacting with other people **or** it can be experienced

- Vicariously, when you see others facing racism
- Intergenerationally, when racial trauma from previous generations impacts you

EXAMPLES OF RACIAL TRAUMA

- Experiencing or seeing hate crimes
- Experiencing racial bias (for example, harsher discipline in school based on race)
- Experiencing or witnessing police violence
- Feeling psychological stress due to the experiences of previous generations (for example, slavery, forced removal from tribal lands, seeking asylum from political violence)

Race-Based Traumatic Stress

The threat to emotional, physical, and psychological safety due to racial discrimination (overt) and racial microaggressions (covert).

“I’m not a racist. I have several Black friends.”

“As a woman, I know what you go through as a racial minority.”

“When I look at you, I don’t see color.”

“There is only one race, the human race.”

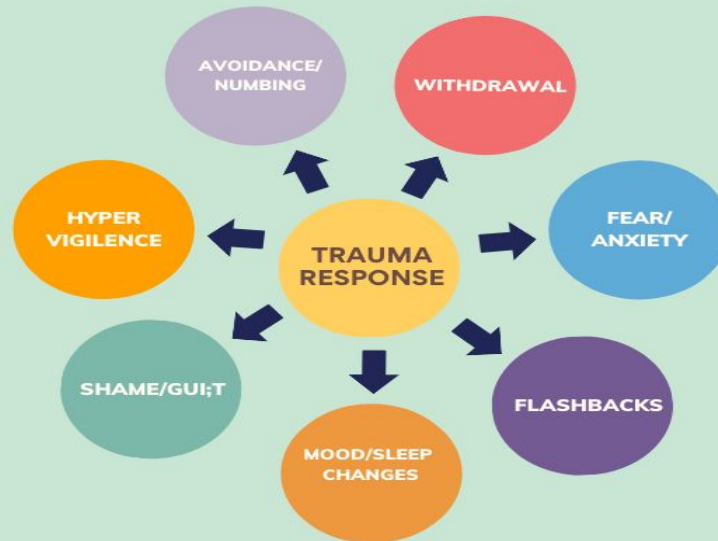
“People of color are generally not as intelligent as Whites.”

“A White man or woman clutching their purse or checking their wallet as a Black or Latino approaches or passes.”

Pressure to Assimilate!

“A store owner following a customer of color around the store.”

“A White person waits to ride the next elevator when a person of color is on it.”



Mitigating

Race Based Trauma Factors (Intragenerational & Current)

- Racism/Structural Racism your client and their family have experienced
- Poverty
- Gentrification
- Homelessness
- School disruption, Education (Dropping out)
- Family Separation
- Generational Incarceration
- Lack of access to resources (Culturally appropriate)
- Substance use
- Mental health (Shame & stigma surrounding mental health in black and brown communities)
- Internalized racism- identifying with negative self beliefs and stigma resulting from the chronic societal devaluation
- Gangs
- Neighborhood violence & Exposure to violence
- Language barriers
- Migration Trauma



MIGRATION TRAUMA/DEPORTATION TRAUMA

- Children who lose a parent to sudden, forced deportation experience anxiety, anger, aggression, withdrawal, a heightened sense of fear, eating and sleeping disturbances, isolation, trauma, depression and shame.
- Children also experience housing instability, academic withdrawal and family dissolution. Older children often need to take on jobs to help support the family, and there's overall decreased likelihood of participating in churches, schools, health clinics, cultural activities, and social services, and more reluctant to report crime to the police .
- Ten percent of U.S. families with children have at least one family member who lacks citizenship.

American Journal of Community Psychology published by Wiley
Periodicals, Inc. on behalf of Society for Community Research and
Action 2018.

MIGRATION TRAUMA/DEPORTATION TRAUMA

This fear was connected to shame and secrecy; children were ashamed to be or to have family members who were immigrants due to social stigma and fear of deportation. These outcomes, widespread for the children interviewed regardless of contact with the Department of Homeland Security or deportation processes, **were “devastating for children’s identity and sense of self,” as well as their overall well-being** (Dreby, 2012, p. 841)



Statement on the Effects of Deportation and Forced Separation on Immigrants, their Families, and Communities

The Defense Based Social Worker's Role

Advocacy

Client Advocacy
Family Advocacy
Improved Conditions of
Confinement
Policy Reform
Building Relationships &
Increasing Collaboration with
Key Players in the Juvenile
Justice System

Mitigation

Interpreting Reports &
Evaluations
Record Review
Gathering Mitigation
Family & Collateral Interviews
Research

Assessment

Individualized
Services/Placement/
Housing/Mental Health etc...
Assess the need for Specific
Evaluations
Assessment for Mental Health,
Competency, Cognitive &
Developmental Concerns,
FASD etc..

Holistic Lense

Telling our Client's Story
Identifying Barriers &
underlying needs
Humanizing our client
Strengths Based Perspective
Providing support

Reports

Trauma Timelines
Biopsychosocial Reports
Oral Reports
Mitigation Presentation
Record Assessments
Identification of Trauma
Factors
Recommendations for
Treatment & Services
Safety Planning
Sentencing Reports
Pre-Plea Mitigation Reports

Agent of the Attorney

Part of Defense Team
Practice under Attorney Client
Privilege

Collaboration

Client Support

Consistent Visitation & Support
Help with advocacy in
confinement

Mitigation

Reports
Trauma Timelines
Sentencing Statements
Records
Social History
DYS Meetings
DHS Meetings
IEP Meetings

Build Relationships with Professionals

School Staff
Probation
DA
DYS
Treatment

Storytelling in the Mitigation Report

Childhood: Ages 10-14 (2009 to 2013)

██████████ was bullied in school. He reports the children would call him the "N" word and make fun of his hair. ██████████ is half black and half Mexican and struggles with his identity and where to belong. ██████████ said his grandmother never accepted that he was half black and would cut his hair because she was ashamed. It crushed him that his grandmother would say, "I'm raising you, so I'm not raising you like an N-Word." ██████████ explained that his identity was challenging. He was not entirely accepted by his Mexican side or his black side. To this day, he's still trying to "figure out" where he belongs. He wants to learn about his dad and his side of the family and not feel like, "I have to choose between blacks and Mexicans because this impacted my self-esteem." ██████████ became angry and resentful. He began acting out and fighting with students, "a switch went off, and I became angry and started beating up my bullies." ██████████ was not provided with the support he needed, and his behavioral issues in school were overlooked.

Poverty

Lupe reports he and his brother, Manuel, began working at age 6 to earn money for food. They would go to the sawmill and collect wood to sell. Lupe explained that it is common for small children to work in Mexico to help their families. He and his brother collected wood and scrap metal every morning. At age six he began elementary school and worked in the afternoon. "It is estimated that in Mexico seven in ten children ages 5 to 17 years old perform some form of work, including domestic work for their homes. Most of the boy's work in activities related to agriculture; while for girls it is more common to carry out domestic work, engage in service and trade, or become self-employed. In Mexico, as in many other countries, child labor has become a livelihood. When family income is not enough to sustain the entire family, children must work and, in many cases, they have to drop out of school."²



Figure 1 Lupe parents, wife, daughter, and his family

(Year: 2008)

Lupe dropped out of Elementary School at age 12 to work full-time and help his family financially. Lupe's father, Jesus, stated he was a good kid that enjoyed school and was extremely focused. He explained that education in Mexico is not free, and his son worked the sawmill at a young age so he could pay for his schooling. "Child labor harms economic development; it creates poverty traps that facilitate intergenerational reproduction of poverty;

when there is a need to work, it is less likely that the child will study; thus, the child's ability to have a better income in adulthood decreases. It is also a development issue because it reduces school attendance and threatens the health and nutrition of children and education is a key factor in economic and social development."³

Lupe's parents were desperate and decided to borrow money so his father could come to the United States and work. Lupe describes his father, Jesus, as an honest hard-working man that would have never done anything illegal. His wife and children were starving, and he wanted to provide a better life for his family. Crossing the border was difficult and dangerous to do. Jesus attempted several times and on one occasion he was kidnapped and held for ransom for 400,000 pesos (USD 18,400). Lupe explained that it was common for people to die while attempting to cross the border into the United States. Mexicans often use coyotes (people that help smuggle immigrants across the border for money), and sometimes the coyote ends up robbing and holding immigrants for ransom.

██████████ biological mother, ██████████, was born in Villa Ahumada Chihuahua. ██████████ has three brothers, ██████████. Her biological mother was young and married a man twice her age. Her biological father was possessive and physically abused her mother. ██████████ told this writer her family was torn apart after her father became drunk and killed a man out of jealousy. ██████████ and her siblings were sent to live with their maternal great-grandparents in San Buenaventura, Mexico. They were poor, and ██████████ stopped attending school at age twelve to work and help provide for the family. Her mother moved to San Buenaventura two years later to live with them. ██████████ said her childhood was difficult because her father murdered a man, and they didn't have the income to survive. They struggled in poverty, and her mother worked long hours at a warehouse to provide for her children.

All through ██████████ childhood, she was sexually abused. A family friend sexually abused her for many years and her biological older brother, ██████████, is five years older than ██████████ and the abuse went on for many years. ██████████ also sexually abused her brother, ██████████. ██████████ explained ██████████ has struggled with drugs since the age of fifteen. She believes her great-grandparents knew about the abuse and said they were older and "ignorant in many ways." ██████████ lived with her great grandparents and cared for them until they passed away in 2000 and 2002.



Figure 4 Image from <https://www.wbur.org/npr/635263880/photos-what-its-like-on-both-sides-of-the-u-s-mexico-border-s-busiest-crossing>

Maria walked all night for two days, carrying Jesus in her arms. They did not have food or water, and she described how difficult it was for the children to endure the journey at their young ages. Maria cried when telling this story. She said it was dangerous and difficult because she had to carry Jesus, and at one point, her arms gave out, and she could not hold him anymore. After walking through the night, Maria and the children went to a resting spot. She said a man tried to assault her in front of the children sexually. Maria was terrified for their safety and hugged her children through the night.

Maria explained she felt like giving up, exhausted, dehydrated, and scared. After two days of walking, they arrived close enough to see the Ranch where they would take the final journey to enter the United States. Her arms and legs were tired, and the children visibly struggled from lack of food, water, sleep, and heat exhaustion. Maria said she saw the light in the distance and feared it was a border agent. They tried to run, but her daughter was injured by a thorn that cut through her shoe. Maria gave up all hope and was ready to surrender if caught.



Figure 6 Image from <https://www.kold.com/2020/10/30/az-border-patrol-agents-find-migrants-stuffed-truck-bed/>

It took everything she had, but Maria and the children made it to the Ranch, where they piled into a truck filled with between ten and fifteen other people. It was challenging to breathe. They didn't have food, access to a toilet, or water for the eight-hour drive. They had to stay completely still and be silent. Maria said she couldn't imagine how difficult that must have been for three-year-old Jesus. When Jesus cried, migrants would yell at him to shut up. It's difficult to comprehend any child experiencing what Jesus and his siblings endured, especially at two years old.



Figure 5 Image from <https://www.wbur.org/npr/635263880/photos-what-its-like-on-both-sides-of-the-u-s-mexico-border-s-busiest-crossing>

The Implications of Migration Trauma



While crossing the border and entering the United States illegally, children are forced to deal with a wide range of stressors. Psychological trauma, such as border trauma, can leave children vulnerable to depression, anxiety, posttraumatic stress disorder, and cognitive issues. Additionally, countless immigrant children face trauma, such as racism, discrimination, and social isolation, that often has the potential to follow them throughout their lives.⁹ Although these children need psychological help, they are often discouraged from seeking guidance by parents or a legal system ill-equipped to handle immigration-related trauma.¹⁰ Mental illnesses can have dire impacts on immigrant children and their families. Children impacted by immigration trauma express fear, symptoms of depression, symptoms of anxiety, and inhibited psychological adjustment.¹¹

The Implications of migration trauma on a child can have a long-term detrimental effect on their mental health.¹² As a result, the trauma can impact their lives well into adulthood.¹³ Frequently, children fail to receive guidance for mental health problems. This lack of support during the immigrants' childhoods can worsen their symptoms, leading to social, psychological, and emotional conflicts in adulthood.¹⁴ While immigrants may choose to migrate to countries such as America to escape poverty and war-torn countries and seek a haven, they encounter many obstacles during migration.¹⁵ Alongside the issues that come with acculturation, immigrant children confront various stressors, including, but not limited to, language barriers, family separation, and social isolation.¹⁶

SYSTEMS BASED TRAUMA



SCHOOL & SPECIAL EDUCATION

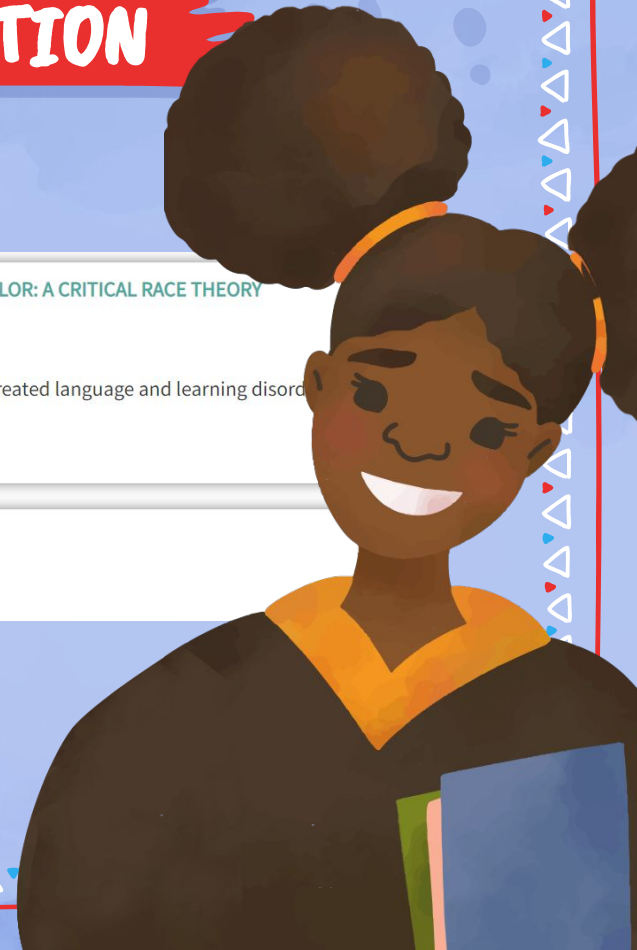
THE CONFLUENCE OF LANGUAGE AND LEARNING DISORDERS AND THE SCHOOL-TO-PRISON PIPELINE AMONG MINORITY STUDENTS OF COLOR: A CRITICAL RACE THEORY

By: Shameka Stanford, Ph.D., CCC-SLP/L and Bahiyyah Muhammad

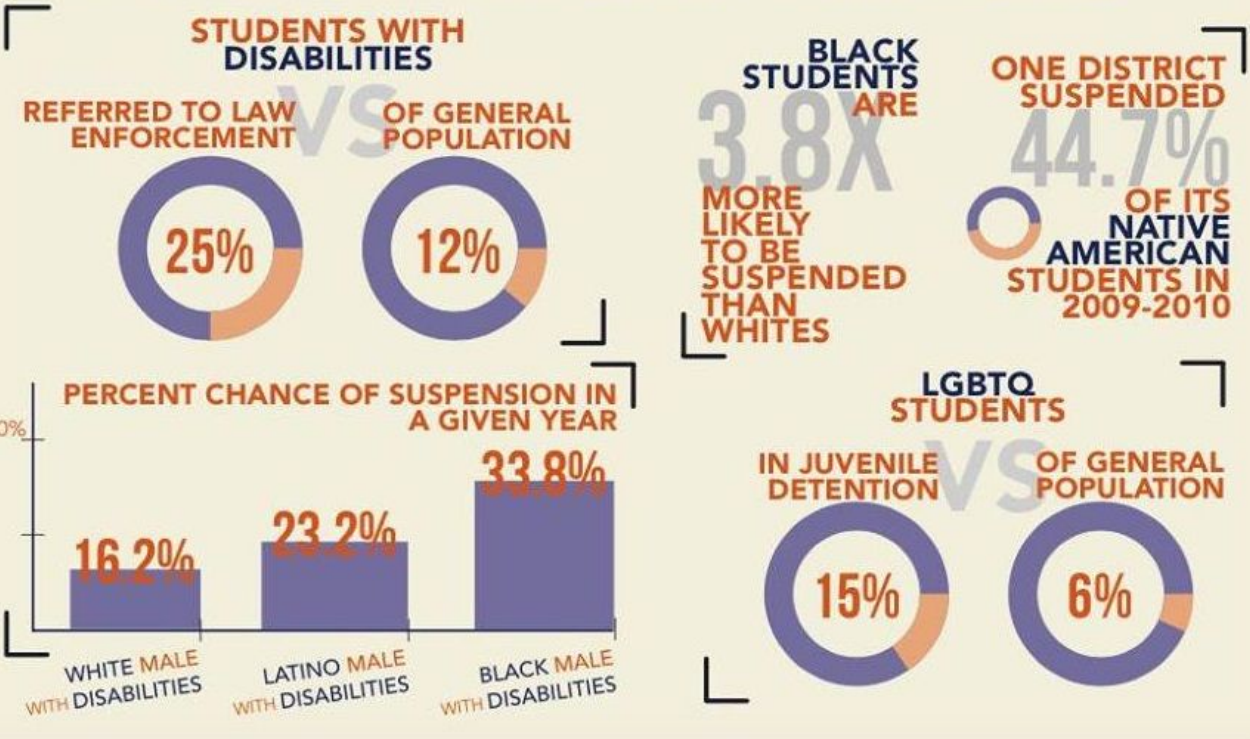
Quote: “As a result, students in special education—especially those who are African American and living with an undiagnosed and untreated language and learning disorder—have a higher school drop-out rate and enter society with significantly higher incarceration rates than their peers of other races.”

When They See Us Highlights The Wrongful Conviction of Black Youth with Language and Learning Disorders

By: Shameka Stanford, Ph.D., CCC-SLP/L



THE PIPELINE: WHAT COMMUNITIES ARE MOST AFFECTED?



ADULTIFICATION



Adultification is a form of dehumanization, robbing black children of the very essence of what makes childhood distinct from all other developmental periods: innocence. Adultification contributes to a false narrative that black youths' transgressions are intentional and malicious, instead of the result of immature decision making — a key characteristic of childhood."

Girlhood Interrupted: The Erasure of Black Girls' Childhood (2017)

<https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2017/08/girlhood-interrupted.pdf>

This groundbreaking study provides data for the first time revealing that adults surveyed view Black girls as less innocent and more adult-like than white girls of the same age, especially between 5–14 years old (p. 2).

COMMUNITY, COMMUNITY, COMMUNITY!

- Think outside the courtroom
- Let families help you with the mitigation
 - Photos; old drawings, certificates, poems, etc.
 - Letters and support emails
 - Mentors, coaches, teachers—they can all testify and support
 - Pack the courtroom!
- Credible Messengers for support and testimony



4

Tangible Ways to Courageously Do This

When we speak, we are afraid our words will not be heard nor welcomed, but when we are silent we are still afraid, so it is better to speak.

—Audre Lorde



4

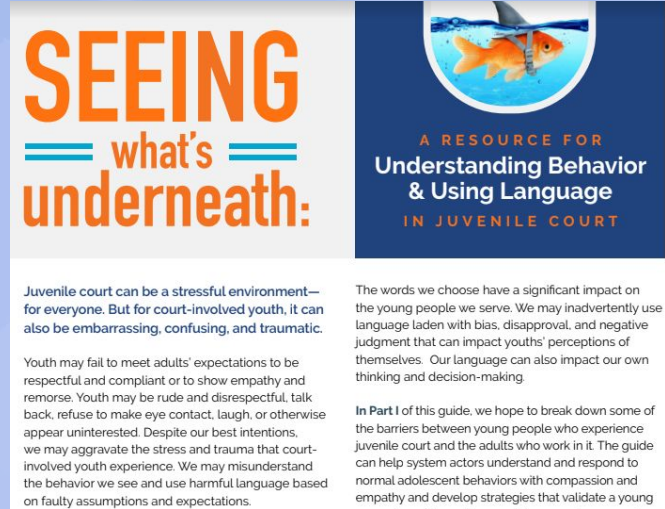
Tangible Ways to Courageously Do This



OKAY BUT HOW? Formula

- CITE
- QUOTE COURT/DA/Party/Staffings
- JUST DO IT: “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.” We still need to respond to normal adolescent behavior with compassion and empathy that validate a young person’s anxiety and trauma versus adding to it.” Please remember that we are all to look at their best interest as well as the community’s, but to constantly shame someone for something they factually did not do and use this language is harmful and damaging.

A note re: victims & community safety



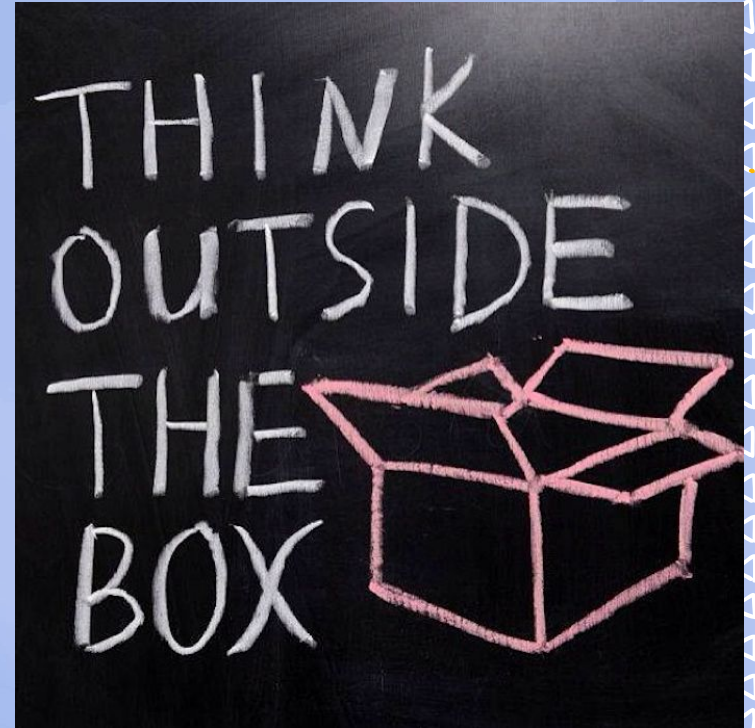
OKAY BUT HOW?

- ASK THE KIDS!
- What do *YOU* want? How are you feeling? Can you talk to anyone and would you want to?
- How would you feel about a Black/Latinx therapist or mentor?
- In Court: “We would ask that the Court contract w/FLY or at the very least find a therapist my client can identify. She’s asking for a Black therapist.
- Adulthood notes



OKAY BUT HOW?

- Think outside the box on solutions
- Family, mentor, social worker speak at bond hearing/any hearing
- Use articles/research and share with evaluator or social worker to tie into their reports or hearings
- Follow up interviews once more rapport is built or mitigation theories are more established



OKAY BUT HOW?

Racial Justice Toolkit



www.defendracialjustice.org

Write down
something in the
chat or on a
notepad
something you're
going to try next
week!



**MOTION TO DISMISS FOR UNLAWFUL ARREST THAT EASILY COULD
HAVE TURNED INTO THE MURDER OF YET ANOTHER INNOCENT BLACK
CHILD**

Thanks!



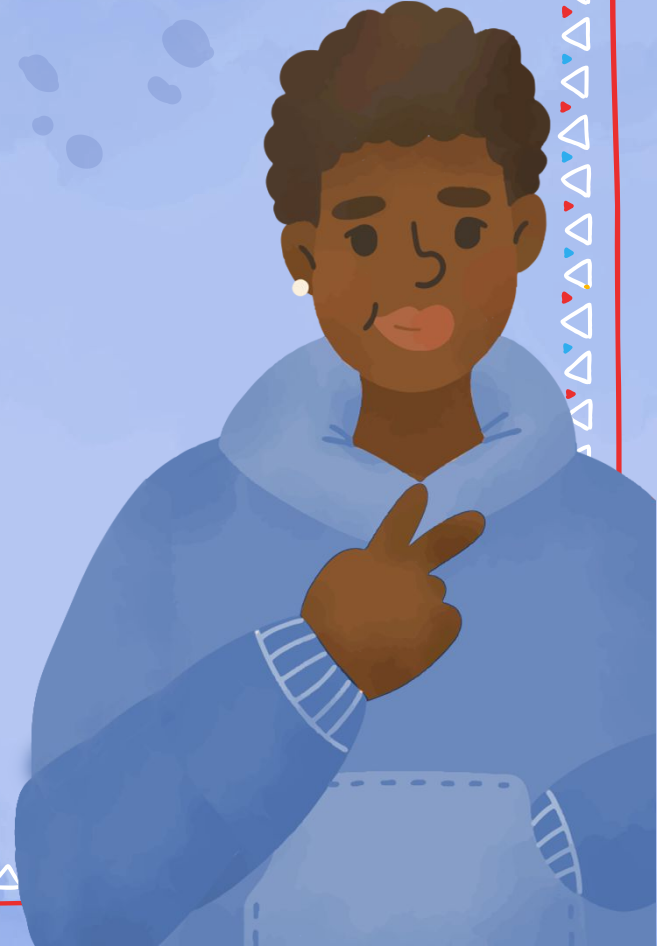
duncanyouthlaw@outlook.com




lindsey.a.sandoval@gmail.com

Thanks!

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Helpful Articles

[Kids in Prison: Getting Tried as An Adult Depends on Skin Color | WNYC News | WNYC](#)

[Racial Adultification and the American Criminal Justice System \(bridgew.edu\)](#)

[Teaching About Colorism – Educators 4 Social Change \(educators4sc.org\)](#)

[Racial Disparities in Mental Health and Criminal Justice | NAMI: National Alliance on Mental Illness](#)

[Stop Treating Black Kids Like Criminals - Economic Opportunity Institute Economic Opportunity Institute](#)

[The Criminal Justice System Discriminates Against Children of Color | Teen Vogue](#)

[Youth of color overrepresented in the justice system | Kids Imprisoned \(news21.com\)](#)

[Treating All Kids as Kids | Brennan Center for Justice](#)

[This Month, Act to End the Adultification of Youth - Childless Defense Fund \(childrensdefense.org\)](#)

[Black boys viewed as older, less innocent than Whites, research finds \(apa.org\)](#)

[Trauma: Community of Color Exposure to the Criminal Justice System as an Adverse Childhood Experience \(uc.edu\)](#)

[‘They saw me as calculating, not a child’: how adultification leads to black children being treated as criminals | Children | The Guardian](#)

[Children in Adult Prison \(ejj.org\)](#)

[ED617199.pdf](#)

[How to confront bias in the criminal justice system \(americanbar.org\)](#)

[New Book Shows Criminal Justice System Bias Against Minority Youth - OU College of Professional and Continuing Studies](#)

[Systemic and Structural Racism: Definitions, Examples, Health Damages, And Approaches To Dismantling | Health Affairs](#)

[Adultification Adversely Affects Black Children, but Parents Can Take Steps to Prevent It](#)

[How The Adultification Bias Contributes To Black Trauma \(forbes.com\)](#)

[Adultifying BIPOC Children for Punishment - Community Alliance \(fresnoalliance.com\)](#)

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