



## **Flipping the Narrative: A Unifying Framework for Juvenile Court-based Forensic Social Work Practice**

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*Professional social workers are trained in multiple competencies and occupy various positions within the forensic landscape. Social workers are unified by a code of ethics that emphasizes social justice and the protection and empowerment of marginalized populations. The social worker's professional approach, which understands the interplay of the individual and their environment, supports needed transformational reforms in the justice system. Social work leadership in youth justice policy and practice is vital. The lifelong negative impacts of court involvement for young people are well documented and contribute to persistent societal inequities. Pre-disposition court practices can either mitigate or further harm court-involved youth. "Flipping the Narrative" is a culturally relevant practice framework for evaluating and designing youth court practices that recognize the intersectionality of the identities and experiences of court-involved youth. The proposed framework incorporates practical applications of Critical Theory, specifically Critical Race Theory, the Theory of African American Offending, and Queer Theory. It incorporates relevant practice approaches such as Social Justice Youth Development and Narrative Therapy to analyze current youth court practices, propose areas for further evaluation and innovation, and recommend practice enhancements for defense-based forensic social workers. The urgency for innovation in one New England state is illustrated through a case study.*

**Keywords:** Juvenile Court, Critical Theory, Forensic Social Work

## INTRODUCTION

Today, professionally trained social workers can be found throughout forensic settings, both in direct practice and as administrators. Aside from traditional social work roles, like Court clinician and defense-based caseworker, social workers are increasingly taking on leadership, policy, and research roles. For example, Vincent Schiraldi, an NYU-trained masters-level social worker, served as the head of youth corrections in Washington, D.C., and as the Commissioner of Probation for New York City. The confluence of social work practice and criminal justice supervision practices has been recognized, debated, and refined for training purposes since the mid-20th Century (Dale and Trilin, 2009). This article calls for an approach to youth justice forensic social work that aligns community-based leadership and direct practice in a framework that centers the tenets of critical social work theory and promotes resilience and healing for youth facing delinquency charges.

*Flipping the Narrative* is a practice framework for evaluating and designing youth court practices that recognize the intersectionality of the identities and experiences of court-involved youth. *Flipping the Narrative* integrates principles of modern critical theories to promote positive self-identity and protective factors among defense clients and mitigate harmful court practices. Following a case example that provides the basis for reflection, this article concludes with recommendations for practice, research, and policy development.

## BACKGROUND

A child faces arrest every 45 seconds in the United States (Dawson, 2022). Youth involved with the court system tend to face difficult life circumstances. Often, those circumstances have contributed to the child's court involvement; other times, their difficult circumstances may have stemmed from it. Court-involved youth tend to deal with greater instability in their homes than their non-court-involved peers (Coalition for Juvenile Justice, 2022). Collateral consequences to court involvement are myriad for young people: they are less likely to graduate high school; they have lifelong barriers preventing access to employment, professional licensing, subsidized housing, military service, and college entrance; their immigration status may be at risk; they are more likely than others to fall behind in societal norms of behavioral, emotional, and social growth and function (Kinscherff et al., 2019; Models for Change, 2013; Burrell & Stacy, 2011). Courtroom practice reform alone could help mitigate the lasting harm caused by a young person's criminal justice system involvement and reduce unintended but life-destroying consequences.

American justice reformers developed juvenile courts explicitly to focus on the rehabilitative needs of youth. The Massachusetts Supreme Judicial Court defines the juvenile court as "primarily rehabilitative, cognizant of the inherent differences between juvenile and adult offenders and geared toward 'the correction and redemption to society of delinquent children.'" (Commonwealth v. Magnus M., 2012). The lengthy list of adverse outcomes demonstrates the failure of current practices to fulfill this reintegrative intent.

Understanding both the vehicle for and the damage caused by this discrepancy requires an interrogation of racist legacies and hegemonic power and how they interact with the identities of young people facing court-mandated supervision and control. The burden of the American juvenile justice system falls unevenly on American children. Of the 73.6 million persons under the age of 18 in the United States, 59% are White; 73% of youth detained by law enforcement in the United States are racial minorities; and while Black youth make up 13% of the U.S. juvenile population they represent 35% of youth adjudicated in court (Capizzi & Stucki, 2018). Traumatic experiences are commonplace among this population. Up to 90% of court-involved youth are survivors of serious trauma (Khadaroo, 2015). Disability is another aggravating factor in our punishment systems, as young people with mental illnesses comprise 65-70% of detained youth (Sajac et al., 2013).

Disproportionate minority representation in American youth justice systems is a byproduct of centuries of colonialism, the displacement and destruction of indigenous communities, violent conflict, and

socio-political-economic oppression (Gabriel et al., 2021). Adultism and the "othering" of youth of color rob them of autonomy, even of voice. As with race, dominant norms have consistently pathologized poverty and disability as deviant and in need of "management" (Ingham, 2018).

Court practices such as shackling a youth's wrists and ankles in court, pre-trial detention, the imposition of bail, court-mandated services, and pre-trial electronic monitoring all have the potential to perpetuate harm, isolation, depression, and anger. Efforts to address the systemic oppression of marginalized young people have paradoxically given rise to further trauma. For example, although pre-trial Electronic Monitoring (via a GPS-enabled ankle bracelet) decreases pre-trial detention, it has created a new crisis by heightening hopelessness, isolation, and familial strain (Arnett, 2018).

The actual impact of courtroom practices is difficult to evaluate because of limited data collection and, by extension, data transparency. Some harmful practices are limited by legislative order but are still used without oversight mechanisms. For example, in February 2010, the Massachusetts Chief Judge amended the Procedure Manual for the Trial Courts of Massachusetts to include "a presumption that restraints will be removed from juveniles while appearing in the courtroom," allowing for exceptions in the case of necessity to maintain safety and order in the courtroom (Edgerton, 2010). In practice, shackling is still the default in many courtrooms; the practice has no mechanism for oversight outside of independent watchdog groups (NJDC, 2016; ). Without direct insight into the mindset of judges who continue to allow teens to be shackled in the courtroom, a logical inference is that control, not support, is a dominant value in some juvenile courts. Arnett (2018) identifies this practice as one of many that signal a shift towards the "adultification" of youth-serving courts.

Without the ability to shine a light on individual court practices, advocates cannot focus their work. There continues to be no aggregate data available on pre-trial release conditions set by Massachusetts youth courts (JJPAD, 2021). Without oversight or accountability, guidelines and laws limiting harmful practices have little impact in many courtrooms where individual judges are the arbiters of courtroom practice (Neitz, 2011).

National opinion favors youth-centered practice. In 2015, the National Council of Juvenile and Family Court Judges (NCJFC) issued a resolution regarding trauma-informed court practices. NCJFC now recognizes courts' responsibility for "ensuring that environments, practices, and policies are designed to reduce unnecessary stress and potential stress reactions in those who have been trauma exposed" (Capizzi & Stucki, 2018). To carry out this mission, courts must employ a culturally and developmentally relevant framework for decision-making and intervention mandates.

## **Building Power and Resilience**

Current Critical Theories demand analysis of how power and subjugation impact the well-being of young people and how public institutions, like youth-serving courts, perpetuate harm. Likewise, when applied to youth development and desistance frameworks, Critical Theories provide an avenue for innovations in practice that promote positive self-identity, cultural and personal empowerment, and prosocial collectivist behaviors. Unnever and Gabbidon's (2011) Theory of African-American Offending (TAAO) posits that criminal behavior among Black adolescents is directly related to the degree to which they experience racial discrimination and racist stereotypes. Internalization of racialized negative stereotypes and experiences of racial injustice correlate with depression, substance abuse, displays of anger, and low self-control (Unnever, 2014, pp. 116-117). Scott and Seal (2018) extrapolate TAAO to suggest that a positive racial identity militates against anger-born offending among Black males; they provide evidence that reinforcing and promoting positive cultural-relevant bonds can protect against the impacts of widespread discrimination and injustice.

Desistance Theories provide a theoretical basis for the "how and the why" of behavior change toward prosocial community engagement among people who repeatedly offend. Sociological research

identifies four themes related to young adult desistance from crime: seeking and maintaining supportive relationships, working toward future goals, engaging in structured activities, and finding sanctuary from harmful environments (Amemiya et al., 2017). In his 2020 doctoral dissertation, Maurice Vann interrogates identity formation as a pathway to desistance from crime among Baltimore's returning citizens (formerly incarcerated community members) in the aftermath of Freddie Gray's high-profile murder by police and the subsequent community uprising. Vann's (2020) research suggests that the in-custody police murder of Mr. Gray clarified to returning citizens their experiences of racial injustice. The subsequent uprising spurred returning citizens to reconceptualize their self-narratives toward those of community citizens, mentors, and healers.

The Positive Youth Development (PYD) approach and the Social Justice Youth Development approach promote strengths-based frameworks for working with "at-risk" youth. Both methods center on youth's strengths and empower youth to change unjust systems - often the systems of their oppression (Wagaman, 2016). Social Justice Youth Development calls for practice that critically analyzes power, centralizes individual identity and intersectionality, promotes systems change, builds toward collective action, and celebrates youth culture (Ginwright & James, 2002).

In practice, institutional interventions that embrace SJYD and PYD promote unconditional positive regard and manifest a commitment to holistic support by employing "no reject, no eject" policies. For example, New York City Probation launched the Arches Transformative Mentoring Program in 2012 as part of an effort to reduce racial inequities and build a culturally responsive continuum of care for NYC justice-involved youth (Lynch et al., 2018). The Cognitive Behavioral Therapy-based group mentoring program is unique in its employment of "Credible Messengers," neighborhood residents with relevant criminal justice experiences, as group leaders and mentors to the youth in the programs. Arches' theory of change posits that Credible Messengers, unconditional positive regard, and authentic relationships are the best facilitators for growth and change (The Mentoring Center, 2022). A 2018 impact evaluation study found that program participants reported strong relationships with adult mentors and appreciated the relevance of their mentors' life experiences (Lynch et al., 48). The Arches program works to reduce re-convictions among program participants significantly (Lynch et al., 2018, p. 41).

Central to the following proposed framework is the empowerment of personal narratives. On a macro-level, Critical Race Theory promotes a counter-narrative about crime in poor, urban communities of color that centers the context on a restriction of opportunity due to under-resourcing and institutional racism rather than population group characteristics (Blessett & Gaynor, 2021). When practiced at the individual level, creating a counter-narrative empowers agency by recognizing the destabilizing impact of oppressive power structures. The personal narrative turns to survival and resilience instead of deviance and punishment. In pre-trial/pre-disposition court practice, the defendant's history impacts decision-making about diverting a case from court processing and influences decisions about pre-disposition detention and release conditions. The defendant's story plays into periodic progress hearings and ongoing negotiations between the defense and prosecution toward case resolution. Current practice allows little to no input from the subject youth and does not incorporate the impact of systemic oppression. Racial, gender, and sexuality bias is pervasive at every level of decision-making in law enforcement, even in the creation of tools implemented to mitigate personal bias (Rubino et al., 2021; Eaglin, 2021). The proposed framework calls for critically reviewing purportedly dispassionate decision-making and risk assessment tools.

The "desistance narrative" has long been the basis for creating social and psychological theories about how people distance themselves from offending. Vann (2020) identifies several trends in the research about the formation of desistance narratives: the narrative as a vehicle for redefining past behaviors and associations, as means of accepting responsibility for impact, as an opportunity to reposition one's understanding of self-in-systems, and the narrative as a window into the pain and isolation of "making good."

When practiced with pre-dispositional young defendants, narrative therapies offer an opportunity for individual and systemic change. Briefly, Narrative Therapy focuses on distancing the "self" from the "problem"; it challenges the individual to reject totalizing "thin" retellings of their lives that intertwine the problem with the self in favor of "thick" accounts that are detailed and reflective personal histories that contextualize experience (Morgan, 2000). In the book *Queering Your Therapy Practice* (Tilsen, 2021), the critical practice of narrative therapy is defined as the therapist's ability to think about the "discourses of heteronormativity and cisnormativity (among others) while using words that reflect [the client's] experiences" (Tilsen, 2021, p. 61).

The client is the most valuable resource for their liberation. Tilsen (2021) explicitly discusses the authority of the individual (not the professional) in the critical practice of narrative therapy and understands the role of the therapist as a facilitator of rich, inquiring, "experience-near" conversations that center the meanings and understandings held within the client's stories. The client's therapeutic narrative process is a new experience, not a professional re-framing of disclosed beliefs and feelings (Tilsen, 2021). Forensic social workers can employ this practice to empower court-involved youth trapped in a disempowering system. The client's self-narrative positions their strength and resilience in the middle of the decision-making matrix.

### **A PRACTICE FRAMEWORK: *FLIPPING THE NARRATIVE***

*Flipping the Narrative* is a culturally and developmentally relevant framework that reimagines oppressive court practices. *Flipping the Narrative* is based on desistance research, critical theories, critical narrative therapies, Positive and Social Justice Youth Development approaches, and the innovative programming underway in several American cities.

*Flipping the Narrative* incorporates critical theory, including intersectionality and counternarrative practices, to (1) create safety and opportunity for youth within our Court systems; (2) recognize the totality of the lived experiences of court-involved youth, including accepting racism as a contributor to both offending behavior and the law-enforcement response; and (3) center strengths-based, identity-affirming, court interventions and mandated services. At each level of court processing, this framework can support the juvenile court's original intent and present mandate (Feld, 2019).

*Flipping the Narrative* framework envisions that:

- courtrooms are safe and trauma-informed
- client advocacy incorporates the voice of the subject youth
- court-mandated interventions promote positive self-identity and support positive youth development
- standardized risk assessment instruments and decision-making tools are responsive to the intersectional identities and experiences of court-involved youth, and young people are shielded from unintended negative consequences of court involvement.

### **Case Study**

Michael is an 18-year-old Black teen who lives in a medium-sized city on the East Coast. He lives with his older sister and her two small children in a low-income housing development on the outskirts of his city. He is a talented musician and basketball player. Intelligent and reflective, Michael nonetheless reports general feelings of depression.

Michael and his sister, older by three years, were adopted by maternal relatives when he was a baby. Their biological parents struggled with addiction which made them unable to care for the children. He relates that "my mother tried to kill me when I was still in her belly" but describes his adoptive parents as loving, supportive, and strict. He played sports with his father and reports that his mother kept his academics in line.

When he was thirteen, Michael's parents both succumbed to chronic illnesses, leaving him orphaned. Although he has been in the legal custody of a maternal cousin, he has lived primarily with his now 21-year-old sister. Prior to his arrest, he attended an elite public high school and maintained near-perfect attendance.

Michael currently faces charges in Juvenile Court stemming from an arrest that occurred when he was fifteen. The night of Michael's arrest, the arresting officers injured him to the extent that the juvenile detention center staff called local Child Protective Services to report child abuse. After the arrest and a night in detention, authorities shackled Michael at the ankles and wrists for transport to his arraignment in the Juvenile Court. The judge detained him on a \$250 bail for four weeks. In jail, lacking bail money, Michael struggled to keep up with his schoolwork despite weekly visits from his school counselor. He reports, "The jail school was just way behind where we were at in my school."

On release, the court mandated that Michael return to the home of his legal guardian. He struggled emotionally and begged to be allowed to live with his sister, a request that the judge granted on the condition that Michael wear a GPS ankle monitor and remain on home confinement, permitted only to leave for school.

When schools closed due to the COVID-19 pandemic, the GPS mandate kept Michael in his sister's home 24 hours a day. He experienced both physical and emotional pain related to electronic monitoring. He struggled with depression and thoughts of suicide, and he was hospitalized twice for suicidal ideations. The local Crisis Team admitted Michael to a Children's Crisis Mental Health Respite for four weeks. His mood and outlook improved while at the respite center, and he left with antidepressant medication.

When schools reopened, he returned for a short time. Michael describes a conversation with his school principal, "Hey, you can't be here with an open case," the principal told him in the hallway. He continues, "I told him that I'd been at school with an open case for months, and he just told me I had to transfer out and that the ankle bracelet was a distraction. I was mad and sad at that point, so I just went with it."

Michael's electronic monitoring and home confinement lasted over a year. Michael maintained his innocence, and nearly two and a half years after his arrest, his charges were dismissed.

### **Application of *Flipping the Narrative* to Michael's Case**

Michael's case underscores the need for an overhaul of juvenile court practice. *Flipping the Narrative* offers a holistic framework. A focus on court practices that impacted Michael's well-being highlights racialized systemic violence suffered by young court clients. Specifically, the risk assessment used to make a detention determination did not factor in the risk to Michael. The relatively low cash bail assigned to Michael meant poverty was the driver for the punishment. The mandate for home confinement did not include an appropriate home study. The indeterminate length of electronic monitoring sparked hopelessness and led to disconnection from school. Michael suffered further because of the policy deficit that allows public schools to expel students based upon pre-dispositional court involvement. The absence of defense guidelines that elevate the client's narrative at every court encounter prevents real-time critical reflection on harmful court practices.

A courtroom redesigned with the application of *Flipping the Narrative* would recognize Michael's humanity and the experiences that led him to that courtroom. His trauma would contextualize his risk assessment. Being poor or an orphan would not result in detention. The court would regularly monitor his home confinement to ensure his emotional well-being. His defense attorney would give Michael's voice and experience a central role at each court update. He would receive culturally appropriate therapeutic or mentoring support to process and contextualize his situation. He would be educated and empowered to share his story with the adults in power.

If Michael's voice were elevated in court, adverse consequences to his education would not be an unforeseen byproduct of court involvement. Michael would understand and use his resources. He could seek justice from his police abusers. With these elements in place, Michael becomes a resilient survivor, righteous in his innocence, and empowered with the resources to achieve his goals.

## CONCLUSION

Applying *Flipping the Narrative* (FTN) includes reforming micro-, mezzo- and macro-court practices. Creating safe and trauma-informed courtrooms will require all personnel to become trained in trauma-informed care and youth development. The critical framework calls for limits on courtroom practices that limit agency and youth voice. This requires a focus on specific court procedures that compound trauma for children, such as using mechanical restraints in courtrooms and language that alienates youth involvement. *Flipping the Narrative* requires the analysis of these practices through the lens of critical theory and empowerment practice.

Client advocacy, the central duty of the defense counsel, needs to center on the experiences, needs, and voices of young clients. Youth defense practice guidelines should make the client-attorney partnership explicit and ensure a holistic defense team. Currently, defense-based forensic social work is often an ancillary service rather than a central strategy for effective defense (Naessens & Raeymaeckers, 2020). The forensic social worker can engage the client in therapeutic and empowering casework that promotes a narrative of resilience and strength. The knowledge garnered in the social worker-client relationship can be utilized in legal advocacy and promote procedural justice.

The application of *Flipping the Narrative* promotes critical research-informed court-mandated interventions and sanctions. Programs that facilitate positive cultural identity, like those that employ Credible Messengers, should be part of the continuum of mandated services. Programs narrowly designed for social control, like electronic monitoring and home confinement, should be limited and further examined for unintended social and emotional impact. Similarly, decision-making tools, like Risk Assessment Instruments, must be continually evaluated for unintentional bias and inequitable impacts on marginalized youth.

*Flipping the Narrative* necessitates a broad understanding of how court involvement impacts youth. For example, porous information-sharing compacts between the court and educational systems can derail youth engagement in school and affect life trajectories. Ambiguous laws about the confidentiality of juvenile court proceedings can impact youths' access to professional licensing and professional or educational advancements and influence future court considerations.

Defining, innovating, and amending youth court practice must be continuously iterative and informed by current research and the lived experiences of the youth who are processed in juvenile court. *Flipping the Narrative* offers a critical framework for evaluating and designing youth court practices that mitigate trauma, minimize unintended collateral consequences, and promote positive youth development.

## NOTE

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