

CRITICAL CLINICAL FRAMES: CENTERING ADOLESCENCE, RACE, TRAUMA, AND GENDER IN PRACTICE- BASED PEDAGOGY

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ABSTRACT

Notwithstanding the claims to neutrality of the law and the systems and stakeholders who enforce it, social science research and the lived experience of our primarily Black youth clients reinforce how assumptions and biases – conscious and unconscious – undermine such claims. These assumptions and biases too often become the frames through which our clients and their behavior are perceived, flattening their narratives to fit more neatly into the box of “delinquent” and reinforcing existing systems of power, control, marginalization, and oppression. As a result, our job as youth defenders in the Georgetown Law Juvenile Justice Clinic is often to shift the frame through which we and others view our clients and to develop a counternarrative that advances our clients’ expressed interests.

To that end, over the last ten years, we have developed a pedagogical approach designed to prepare our students as nascent attorneys to engage more strategically in the work of frames analysis, critical reflection, and narrative reconstruction. The approach centers around the use of “pedagogical frames” or explicit schemata through which students intentionally and critically examine and interpret everything they encounter in furtherance of their clients’ expressed interests. While professors can identify different pedagogical frames best suited to their course and client work, the Georgetown Law Juvenile

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Justice Clinic uses adolescence; race; trauma; and sexual orientation, gender identity, and gender expression (SOGIE) as its principal frames. This essay will explain in further detail what we mean by “pedagogical frame,” how we selected our principal frames, and how we apply them in our course and client work. Ultimately, as this essay explains, this pedagogical approach seeks to translate the essence of critical legal theory into critical legal praxis and to integrate such praxis into the clinical model.

INTRODUCTION

The work of social justice is the work of narrative reconstruction, building new stories around facts that are often disregarded, invisibilized, and taken for granted as acceptable and unremarkable features of social life.

– Kimberlé Crenshaw¹

Meet “Kayla.”² Kayla was a seventeen-year-old, Black girl who lived with her mother in a pre-dominantly Black neighborhood in the District of Columbia. She was a sophomore at a DC public high school. She enjoyed school, attended almost daily, and earned primarily Bs and Cs. Kayla had an Individualized Education Plan (IEP) for emotional disturbance. Kayla was on the dance team and liked spending the night at her friends’ homes and hanging out with her first serious boyfriend, DeAngelo.

DeAngelo was a charismatic seventeen-year-old who liked the attention he received from the girls at his school. Recently, Kayla had been hearing rumors from her friends that DeAngelo was “talking to” another female classmate. Upset at the rumors, Kayla confronted DeAngelo about it at school during the lunch period. When he denied that he was cheating on Kayla with another girl, Kayla grabbed his cellphone out of his hand and scrolled through his text messages while making her way down the hallway.

A school resource officer (SRO) stationed at the school observed the interaction between Kayla and DeAngelo and stepped in front of Kayla as she was walking down the hallway. This SRO had observed prior arguments between Kayla and DeAngelo and did not want them to continue “disturbing” the school environment. When Kayla tried to

¹ African American Policy Forum, “Under the Blacklight: Narrating the Nightmare and (Re)Imagining the Possible,” YOUTUBE (May 20, 2020), <https://www.youtube.com/watch?v=E0ppfjbESV4>.

² For confidentiality and pedagogical reasons, “Kayla” is a composite of the experiences of a number of clients. She is primarily based on the experiences of our clients “Sharice” and “Shanna” profiled in Chapters 6 and 7, respectively, of KRISTIN N. HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* (2021) [hereinafter *THE RAGE OF INNOCENCE*].

walk by the officer, he grabbed Kayla's arm and asked her to come with him. Kayla pulled away and began to run away from the officer. After a brief chase, the officer caught up to Kayla and performed a "takedown maneuver." As he tried to place her in handcuffs, Kayla continued to struggle and made it difficult for him to handcuff her. The officer placed Kayla under arrest for robbery-snatch and resisting arrest. The prosecutor filed a petition with those same counts the following day. She was also suspended from school for this incident.

Despite this being Kayla's first arrest and the fact that De-Angelo's phone was immediately returned to him undamaged, the prosecutors charged Kayla in delinquency court. During our initial interview of Kayla, we learned from Kayla that her father passed away when she was four years old. Kayla did not remember much about her father or his passing. She told us that her mother struggled with depression and substance abuse issues after his death. Kayla also shared with us that she had been living in a series of group and foster homes for youth in the child welfare system for the last few weeks after being removed from her home due to allegations of physical abuse. Due to "outbursts" at and abscondences from her child welfare placements, Kayla's social worker asked that the delinquency court detain Kayla in this new matter. Kayla told us that she wanted to go home to live with her mother, notwithstanding the allegations of physical abuse.

Unfortunately, Kayla's case, while a composite of two clients, represents many of the all-too-common lived experiences of young people who become entangled in the juvenile legal system and the common manner in which they are perceived by a variety of system stakeholders. Indeed, for far too many of our clients, "delinquency" is the dominant frame through which they and their behavior are viewed. The result is that our clients' rich and complex lives are too often flattened by a focus on the event that brought them before the court, casting suspicion on and attributing malintent to all of the client's past and future behaviors. For example, when viewed through the frame of delinquency, it is easy to reduce Kayla's narrative to that of an angry, Black girl; a woman scorned; an oppositional and defiant teen; a child who never learned to do right; or a girl who is acting too grown for her own good. In effect, one page of one chapter in the story of Kayla's life becomes the title of her book in the eyes of those around her – "disregard[ing], invisibiliz[ing], or tak[ing] for granted"³ the varied nuanced layers of Kayla's story in furtherance of their own aims. Our job as youth defenders is to shift the frame through which we, others, and the law and systems view our clients and to develop a

³ See African American Policy Forum, *supra* note 1.

narrative that advances the expressed interests of our clients.⁴ And our job as clinicians is to equip our students as burgeoning attorneys to engage strategically in that work of critical analysis, deeper understanding, and narrative reconstruction.

This essay lays out a pedagogical approach that we have been developing and refining in the Georgetown Law Juvenile Justice Clinic over the last ten years to enhance our ability to better accomplish this dual aim of more effectively representing our clients and better equipping our students to further the work of social justice. Part I of this essay introduces our Pedagogy of Frames. This section explains the concept of “pedagogical frames,” the primary frames we have selected for the Juvenile Justice Clinic, and why we selected these particular frames for our work. Part II of this essay summarizes how we apply this Pedagogy of Frames at the Georgetown Juvenile Justice Clinic. While this paper explains the concept of pedagogical frames from the perspective of a youth defense clinic, the approach can be applied to most, if not all, clinics. Indeed, we believe the frames approach can be incorporated into a wide swath of doctrinal and other experiential courses endeavoring to equip students with the skills necessary to effectively represent their clients and make this a more just world.

I. THE PEDAGOGY OF FRAMES DEFINED

Advancing justice for our primarily Black youth clients – both at the individual and systemic levels – has been the animating motivation for developing our pedagogy of frames. At the heart of this pursuit is an effort to unmask and combat the various ways that supposedly neutral laws and systems are used against our clients to reify an unjust status quo and to perpetuate the marginalization and oppression of historically disadvantaged groups. While grounded generally in critical

⁴ See NAT'L JUV. DEF. ST'DS R. 1.2 (2012) (“Counsel’s primary and fundamental responsibility is to advocate for the client’s expressed interests”), <https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>; see also MODEL RULES OF PROF'L CONDUCT R. 1.2 (2023) (a lawyer shall abide by a client’s decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued”); MODEL RULES OF PROF'L CONDUCT R. 1.14 (2023) (“When a client’s capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client”); MODEL RULES OF PROF'L CONDUCT R. 1.14, Comment 1 (2023) (“Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”)

legal theory, our endeavor, given our status as client-centered advocates and clinicians, is practical. As a result, our pedagogy of frames can be considered a framework for translating critical legal theory into critical legal praxis and for integrating such praxis into the clinical model.⁵

A. *The Elements of a Pedagogical Frame*

Broadly speaking, framing theory and frames analysis is a multidisciplinary approach to understanding how people make sense of the world around them. Erving Goffman, the father of frame analysis, begins his examination of how individuals come to understand the world with the assumption that “when individuals attend to any current situation, they face the question: ‘What is it that is going on here?’”⁶ In other words, individuals seek to find the “definition of a situation,” even if they are not consciously or intentionally constructing such a definition themselves but rather adopting a definition socially created for them.⁷ Goffman argues that the definition an individual adopts for a specific situation⁸ depends on a host of layered issues, including, but not limited to, focus,⁹ perspective,¹⁰ a simplification bias,¹¹ time orientation,¹² and natural and social norms.¹³ To Goffman, a “frame” then is the sum of the “principles of organization” or the “schemata of interpretation” that an individual applies to a given situation to “render[] what would otherwise be a meaningless aspect of the scene into something meaningful.”¹⁴ And “frame analysis” is the process of examining how this “organization of experience” takes place.¹⁵

Building upon the work of Goffman and others, communication theory defines a “frame” as a “central organizing idea for making sense of relevant events and suggesting what is at issue.”¹⁶ Frames

⁵ See e.g., Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 AM. U. J. GENDER SOC. POL’Y & L. 161, 171-84 (2005) [hereinafter *Integrating Critical Theory and Clinical Education*].

⁶ ERVING GOFFMAN, *FRAME ANALYSIS: AN ESSAY ON THE ORGANIZATION OF EXPERIENCE*, 8 (1974).

⁷ *Id.* at 1-2.

⁸ *Id.* at 10 (defining a “strip” as “any arbitrary slide or cut from the stream of ongoing activity, including here sequences of happenings, real or fictive, as seen from the perspective of those subjectively involved in sustaining an interest in them.”).

⁹ *Id.* at 8.

¹⁰ *Id.* at 8-9.

¹¹ *Id.*

¹² *Id.* at 9.

¹³ *Id.* at 22.

¹⁴ *Id.* at 21.

¹⁵ *Id.* at 11.

¹⁶ Jim A. Kuypers, *Framing Analysis from a Rhetorical Perspective*, in *DOING NEWS FRAMING ANALYSIS: EMPIRICAL AND THEORETICAL PERSPECTIVES* (eds. Paul D’Angelo &

draw their power by “filtering our perception of the world” by increasing or reducing the saliency of information in a manner that gives the information particular meaning.¹⁷ Communication theory explores the manner in which individuals not only use frames to understand their world, but also employ frames to attempt to persuade others to make sense of the world in a particular way.

In his essay “Framing Analysis from a Rhetorical Perspective,” Jim A. Kuypers describes framing from the perspective of the “framer” as “the process whereby communicators act – consciously or not – to construct a particular point of view that encourages the facts of a given situation to be viewed in a particular manner, with some facts made more noticeable than others.”¹⁸ This process “act[s] to define problems, diagnose causes, make moral judgments, and suggest remedies.”¹⁹ As a result, Kuypers describes the action of framing – when done intentionally – as a rhetorical process²⁰ as it involves “[t]he strategic use of communication, oral or written, to achieve specifiable goals.”²¹ As such, framing in the rhetorical sense is a device used to persuade others to agree “with the communicator that a certain value, action, or policy is better than another.”²² Thus, frames are used by individuals both as a way of personally understanding the world and as a way to construct the world for those around them.²³

Using framing theory and frame analysis as the foundation of our “pedagogy of frames,” we define a “pedagogical frame” as an explicit schema through which students are encouraged to intentionally and critically examine and interpret everything they encounter in furtherance of their representation of their clients’ expressed interests. Our definition of a pedagogical frame has five key elements.

First, the foundation of the pedagogical frame is the schema. The schema is the central idea, theory, construct, or theme through which information is filtered and organized.²⁴ We split possible schema into

Jim A. Kuypers), 300 (2010).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 301.

²⁰ *Id.* at 300.

²¹ *Id.* at 288 (requires intentional selection of language and knowledge of goals prior to choosing language).

²² *Id.*

²³ A number of studies have shown that the manner in which a proposed solution is framed can have a significant impact on the level of support for the proposed solution. See Edward A. Zelinsky, *Do Tax Expenditures Create Framing Effects – Volunteer Firefighters, Property Tax Exemptions, and the Paradox of Tax Expenditure Analysis*, 24 VA. TAX REV. 797, 807-11, 821-25 (2004) (providing various examples of the impact of framing on the adoption of particular proposals).

²⁴ Goffman, *supra* note 6, at 21 (“Primary frameworks vary in degree of organization. Some are neatly presentable as a system of entities, postulates, and rules; others – indeed,

two broad categories – experiential and structural. We define experiential schema as those organized around a body of research, theory, or construct that relates to the “structure of experience individuals have at any moment of their social lives.”²⁵ Examples of experiential frames include race, life stages, gender, trauma, disability, and socio-economic status. We define structural schema as those organized around more abstract themes that are related to “the structure of social life” and, thus, can cut across experiential frames.²⁶ Examples of structural frames include essentialism, epistemology, anti-subordination, and agency.²⁷

Second, pedagogical frames are explicit. Based on a professor’s experience representing clients and their learning goals for the course, the professor selects and names specific schema or schemata that 1) will aid their students in their client representation and 2) will add layers of learning to explore throughout the coursework.²⁸ This naming of the pedagogical frames should take place both on a practical and metacognitive level. On a practical level, naming schema makes the implicit, explicit, and the invisible, visible.²⁹ As discussed *supra*, individuals often use frames either implicitly or subconsciously to

most others – appear to have no apparent articulated shape, providing only a degree of understanding, an approach, a perspective. Whatever the degree of organization, however, each primary framework allows its user to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences defined in its terms.”)

²⁵ Goffman, *supra* note 6, at 13.

²⁶ *See id.*; *see also id.* at 22 (“Social frameworks . . . provide background understanding for events that incorporate the will, aim, and controlling effort of an intelligence, a live agency, the chief one being the human being. Such an agency is anything but implacable; it can be coaxed, flattered, affronted, and threatened.”).

²⁷ *See* Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLIN. L. REV. 203, 215 (2019) (“normative narrative construction is guided by critical theories. By ‘critical theories,’ in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses, such as anti-subordination, agency, equality, and justice.”); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 177-84 (discussing the use of critical theory to explore “differences and their impact on lawyering,” “a systemic critique of the various legal and governmental institutions with which the clients and students will interact throughout the year,” and “the role of power, privilege, and agency within the context of differences and the systemic critiques.”).

²⁸ *See* Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 101, 117 (“We also reinforce the importance of “naming” our activities and techniques for students so that they are clearly identified for later use. Naming involves giving students frameworks within which they can fit the teachers’ questions. For many students, a failure to “name” may result in the student knowing how to do a specific task but not how to translate the lesson to other similar tasks. Naming also serves to create a shared vocabulary for the teachers and students to use during the clinic and for the student to use as he or she develops into a professional.”) (citations omitted).

²⁹ Grose & Johnson, *supra* note 27, at 217 (“We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients.”); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 163.

make meaning of information. Thus, the process of naming the selected schemata models intentionality both in understanding and persuasion. On a metacognitive level, students should come to understand frame analysis itself so they may learn how to identify, analyze, and select frames themselves as well as deconstruct, shift, or reinforce the frames selected by others. Indeed, in an ideal world, students should be able to critique the specific pedagogical frames chosen by the professors themselves. Thus, the purpose of the pedagogical frame is not merely to encourage students to view the casework and material through a particular filter chosen by the professor, but to equip students with the transferable skill of frame analysis generally.

Third, because information is clarified through a schema and because frame analysis is a skill, a pedagogical frame is fundamentally a tool. It is a tool for narrative construction, deeper understanding, meaning making, and persuasion.³⁰ Importantly, the use of the tool is not the end, but rather a means to achieve the end of the expressed interests of the client.³¹ Consequently, selected schema must be used strategically. Doing so, requires students, among other things, to understand their client's expressed interests and think ahead about the potential impact and efficacy of applying a particular schema to a situation.³² In other words, while students might use a pedagogical frame to seek a better personal understanding of a particular client or case, they may not necessarily deploy the use of such frame for the purposes of persuasion in that case. Thus, at its core, a pedagogical frame is an intentional, client-centered tool.³³

Fourth, pedagogical frames employ a critical approach.³⁴ Pedagogical frames are critical as they encourage students to engage in "the systematic process of illuminating and evaluating products of

³⁰ See Grose & Johnson, *supra* note 27, at 206 ("Narrative construction requires identifying and working with (or around) embedded norms, and persuasive narratives depend on filtering information through a normative lens. But the theory of narrative construction does not direct the narrative constructor as to what norms to include or through which lens to filter information.").

³¹ Kuypers, *supra* note 16, at 297 ("Perspectives are to help a critic, not direct the criticism. . .").

³² See *id.* at 288 ("Persons who are interested in influencing how their messages are received will plan ahead; they think ahead to the potential impact of their words).

³³ See Grose & Johnson, *supra* note 27, at 208 ("Narrative theory leads to an understanding that lawyers with their clients are constructors of narratives, and, as such, need to make intentional choices about that construction.").

³⁴ See *id.* at 215 ("normative narrative construction is guided by critical theories. By 'critical theories,' in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses, such as anti-subordination, agency, equality, and justice.").

human activity”³⁵ with the goal of “promot[ing] greater appreciation and understanding.”³⁶ This critical process requires students to evaluate and adopt various perspectives that serve as a “frame of reference” for the student in their evaluation of the case.³⁷ And while the various pedagogical frames may aid the student with their analysis, it is ultimately the student who is directing the process.³⁸ Students examine the frames through which other stakeholders view the client and the case while also selecting their own frames to apply to their evaluation.³⁹ When strategic, students also attempt to persuade other stakeholders to adopt and apply a particular frame selected by the student in the same manner in which the student is applying it.⁴⁰ In inviting their audience to agree with the student’s interpretation of the client or case, the student must justify the selection of the frame of reference and provide evidence in support of why their analysis is valid.⁴¹ Essentially, students must build an argument convincing the audience that their critical perspective is one the audience should espouse as well.⁴²

Fifth, pedagogical frames are pervasive as students are encouraged to apply them to everything they encounter in clinic – the law, the facts, root causes, solutions, relationships, values, and our cli-

³⁵ Kuypers, *supra* note 16, at 290 (citing Andrews, Leff, Terrill (1998) at 6).

³⁶ *See id.* at 290; *see also* Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 171 (“With the assistance of critical theory, clinical students strengthen the lawyer-client relationship by developing greater empathy and a stronger sense of client-centeredness; improve their creative lawyering due to a better understanding of context and case theory; and further their lawyering for social justice.”).

³⁷ Kuypers, *supra* note 16, at 296-97 (“Simply put, a critical perspective serves as a frame of reference for the critic; it guides the apprehension of an interaction with the rhetorical act being analyzed. Different perspectives allow critics to see different aspects of the rhetorical act. . . . When a perspective is adopted, it allows critics to see an artifact differently than if no perspective was adopted. In a sense, the critic is allowed to see the world in a particular way.”); *see also see id.* at 293 (“the best criticism allows for flexible application of a perspective, allowing for personal insight and interests to guide the criticism.”).

³⁸ *See id.* at 297 (“The best criticism does not use perspectives as formulas. Although they do suggest a particular way of viewing the world, it is the critic who directs the criticism.”).

³⁹ Students will also appraise the reasons why other stakeholders have selected – consciously or unconsciously – specific frames. *See* Goffman, *supra* note 6, at 8 (“Different interests will . . . generate different motivational relevancies.”).

⁴⁰ Kuypers, *supra* note 16, at 290 (citing Andrews, Leff, Terrill (1998) at 6) (“[C]riticism presents and supports one possible interpretation and judgment. This interpretation, in turn, may become the basis for other interpretations and judgments.”); *see also id.* at 293 (“The best critics simply do not make a judgment without supplying good reasons for others to agree with them.”).

⁴¹ *See id.* at 292. (“In short, critics must invite their audiences to agree with them. This is accomplished through stating their case and then providing evidence for the audience to accept or reject.”).

⁴² *See id.* at 292-96.

ent's experiences.⁴³ Pedagogical frames then help students develop “new ways of seeing law, lawyers, and communities in action”⁴⁴ and “braid the strands of narrative, critical reflection, and critical theory.”⁴⁵ In this way, the use of pedagogical frames itself becomes a meta-frame – a methodology for confronting the false claims of neutrality, certainty, and replicability of the law and the systems and people that enforce it. As a result, pedagogical frames are as much a practice – a mode of moving in the world – as they are a tool that provide a structure for engaging in critical legal praxis.⁴⁶

In sum, a pedagogical frame is an explicit, intentional, critical tool designed to equip students with the ability to 1) develop a deeper appreciation and understanding of their casework and coursework; 2) more effectively advocate on behalf of their client's expressed interest; and 3) sharpen their skills as an attorney.

B. *Pedagogical Frames for a Youth Defense Clinic*

Founded in 1973 by Judith Areen and Wallace Mlyniec, the Georgetown Law Juvenile Justice Clinic (JJC) was one of the first law school clinics specializing in children's issues to launch in the United States and remains the longest continuously running.⁴⁷ Founded six years after the landmark Supreme Court decision extending the right to counsel and procedural due process to children charged in juvenile court, the JJC sought to fulfill the mandate of the *Gault* decision, expand the legal rights of children, and protect children from maltreatment by their parents or the government. In its early years, the clinic handled all types of cases involving children – delinquency, education, and child welfare among others – and helped formulate policy at the local and federal levels. Today, the Georgetown Law Juvenile Justice Clinic zealously and holistically represents youth charged in delinquency court in the District of Columbia.⁴⁸

⁴³ See *id.* at 301 (“When highlighting some aspect of reality over other aspects, frames act to define problems, diagnose causes, make moral judgments, and suggest remedies.”); Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 *Hastings L.J.* 717, 718 (1992) (highlighting “rule skepticism” and “fact skepticism” as examples of overlapping concerns between clinical legal education and critical legal studies).

⁴⁴ Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 *CLIN. L. REV.* 5, 15-16 (2016).

⁴⁵ Grose & Johnson, *supra* note 27, at 205.

⁴⁶ See *id.* at 204-05.

⁴⁷ *About Our Clinic*, GEORGETOWN LAW, <https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/juvenile-justice-clinic/about-our-clinic-5/> (last visited Aug. 16, 2023).

⁴⁸ In 2015, the Juvenile Justice Clinic launched the Georgetown Juvenile Justice Initiative (GJJI) in order to increase Georgetown's commitment and capacity to tackle the most pressing issues facing the juvenile legal system, including the over-criminalization of youth,

Our clients in the clinic are almost exclusively Black youth between the ages of 12 and 21 from historically under-resourced families and neighborhoods in the District of Columbia. Indeed, Black youth typically comprise between 90% and 95% of annual youth arrests in DC,⁴⁹ and approximately 70% of DC youth arrested reside in the three poorest (and easternmost) wards of the city.⁵⁰ Additionally, the vast majority of our clients have experienced some level of trauma prior to becoming system-involved.⁵¹ Given the demographics and common experiences of our clients, we have adopted four primary pedagogical frames for our clinic: 1) Adolescence; 2) Race; 3) Trauma; and 4) Sexual Orientation, Gender Identity, and Gender Expression (“SOGIE”).⁵² In developing the schema for each of these four frames, we looked to social science, critical legal theory,⁵³ and our clients’ lived experience for inspiration. Below we will discuss not only how we construct the schema for each frame but also provide concrete ex-

the racial and economic disparities that exist within the system, and the inadequate legal representation far too many youth receive. The Juvenile Justice Initiative operates national, regional, and local initiatives, including serving as the host of the Mid-Atlantic Gault Center. The mission of the Georgetown Juvenile Justice Initiative is to advocate for a smaller, better, and more just juvenile legal system in the District of Columbia, the Mid-Atlantic region, and across the country.

⁴⁹ See e.g. Criminal Justice Coordinating Council, DISTRICT OF COLUMBIA FY18 DISPROPORTIONATE MINORITY CONTACT PLAN 1-2, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/dc-fy18-dmc-plan_508.pdf (last visited Aug. 16, 2023) (reporting that Black youth made up 93% of arrests in FY18 and that “so few White youths have penetrated the District’s juvenile justice system, that we cannot calculate Relative Rate Indices for any point of contact beyond the referral to juvenile court”). In contrast, Black youth only make up two-thirds of the adolescent population in DC. Puzzanchera, C., Sladky, A. and Kang, W. (2021). “Easy Access to Juvenile Populations: 1990-2020,” <https://www.ojjdp.gov/ojstatbb/ezapop/> (last visited Aug. 16, 2023).

⁵⁰ Biannual Reports on Juvenile Arrests, Metropolitan Police Department, <https://mpdc.dc.gov/node/208852> (analysis on file with author).

⁵¹ For example, a study of a sample of DC youth with delinquency-system-involvement found that approximately 12% had experienced homelessness; 50% of the youth had reported cases of neglect; 23% had reported cases of abuse; nearly 15% had been removed from their homes prior to delinquency-system-involvement; nearly 25% received TANF; and nearly 75% had received Medicaid for over one year. CRIMINAL JUSTICE COORDINATING COUNCIL, A STUDY OF FACTORS THAT AFFECT THE LIKELIHOOD OF JUVENILE JUSTICE SYSTEM INVOLVEMENT 11 (2022), <https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20-%20A%20Study%20of%20Factors%20that%20Affect%20the%20Likelihood%20of%20Juvenile%20Justice%20System%20Involvement%20%28October%202022%29.pdf>.

⁵² These are not the only frames that we discuss throughout the year. For instance, disability and poverty come up often in our clinic work as well. However, these four pedagogical frames are the ones that we intentionally name and center in our teaching and representation. See Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 174 (discussing antisubordination and essentialism as frames).

⁵³ *Id.* at 162 (“Feminist legal theory, critical race theory, and poverty law theory serve as useful frameworks to enable students to deconstruct assumptions they, persons within institutions, and broader society make about the students’ clients and their lives.”).

amples of how we might apply the frame in an individual case using Kayla's case as an example.

1. *Adolescence*

The scientific research regarding adolescent development provides the foundation upon which we constructed our pedagogical frame of adolescence.⁵⁴ Specifically, there are three key interrelated concepts from the research that comprise the schema for the frame: 1) normative adolescent development; 2) neurological immaturity; and 2) psychosocial immaturity.

“Normative adolescent development” refers to a set of common milestones and characteristics that describe the typical pattern of development for the period of adolescence.⁵⁵ Given the existence of this norm across adolescents as a group, the law and practice can and should treat all youth as a discrete class separate from adults and must accommodate these common developmental characteristics when applied.⁵⁶ Neurological and psychosocial immaturity are examples of normative features of adolescence that the law and practice should accommodate.⁵⁷

The concept of neurological immaturity recognizes that the brain of an individual is not fully developed until approximately the individual's mid-twenties. Indeed, the period of adolescence is marked by rapid and important changes in terms of brain composition and structure. For instance, during adolescence, the brain is rewiring itself through the processes of pruning and myelination in order to become more efficient and more effective at responding to the individual's lived environment. Additionally, the various regions of the brain continue to develop, with the region responsible for executive functioning being the last region to fully develop.⁵⁸ As a result, youths' brains are particularly malleable and, thus, have a greater capacity for change and growth than adults. In that context, a delinquent act most often reflects transitory behavior not the character of the individual who committed the act.

The concept of psychosocial immaturity recognizes that while youth reach a similar cognitive maturity to adults at around age 16,

⁵⁴ See generally Eduardo R. Ferrer, *A New Juvenile Jurisprudence: How Adolescent Development Research and Relentless Defense Advocacy Revolutionized Criminal Law and Jurisprudence*, in *RIGHTS, RACE, & REFORM: 50 YEARS OF CHILD ADVOCACY IN THE JUVENILE JUSTICE SYSTEM* (Henning, Cohen, & Martus, eds., 2018) [Hereinafter *A New Juvenile Jurisprudence*].

⁵⁵ See *id.* at 55-66.

⁵⁶ See *id.*

⁵⁷ See *id.*

⁵⁸ See *id.* at 58-60.

youth do not develop the same psychosocial maturity as adults until they are around age 25. This lack of psychosocial maturity manifests as youth being more impulsive, more focused on short-term rewards, less averse to risk, and more susceptible to the influence of peers, among other things.⁵⁹ Given this underdeveloped psychosocial capacity, youth have diminished decision-making capacity relative to adults, especially when under stress,⁶⁰ and, as a result, are less culpable. Moreover, once a youth's brain is fully developed and they reach the same psychosocial maturity as adults, the vast majority of adolescents – including those charged with violent crimes – naturally desist engaging in delinquent behavior.⁶¹ This again reinforces that delinquent behavior, by and large, is a normative feature of adolescence and not indicative of who the individual will grow to be in adulthood.

The frame of adolescence thus lends itself easily to being used for mitigation. Because youth as a class are less culpable and more malleable, adolescence is both a time of great opportunity and great peril. Positive interventions during adolescence promote healthy development and desistance whereas negative interventions can do significant harm and increase recidivism.⁶² Thus, the manner in which judges,

⁵⁹ Laurence Steinberg, Dustin Alpert, Elizabeth Cauffman, Marie Banich, Sandra Graham, & Jennifer Woolard, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 *DEV. PSYCHOL.* 1764 (2008); Laurence Steinberg, Elizabeth Cauffman, Jennifer Woolard, Sandra Graham, & Marie Banich, *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip, Flop"*, 64 *AM. PSYCHOLOGIST* 583, 587 (2009).

⁶⁰ B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22 *CURRENT DIRECTIONS PSYCHOL. SCI.* 82, 82–87 (2013) (finding that cognitive capacity of a teenager is undermined by stress); Bernd Figner et al., *Affective and Deliberative Processes in Risky Choice: Age Differences in Risk Taking in the Columbia Card Task*, 35 *J. OF EXPERIMENTAL PSYCHOL.* 709, 728 (2009) (finding that adolescents in emotional situations were more likely than children and adults to take risks).

⁶¹ See Edward P. Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders 1* (Office of Juvenile Justice & Delinquency Prevention (March 2011), https://www.pathwaysstudy.pitt.edu/documents/OJJDP%20Fact%20Sheet_Pathways.pdf) (finding that “approximately 91.5 percent of youth in the study reported decreased or limited illegal activity during the first 3 years following their court involvement.”).

⁶² See *id.* at 2 (finding that “Longer stays in juvenile institutions do not reduce recidivism, and some youth who had the lowest offending levels reported committing more crimes after being incarcerated.”); MARK W. LIPSEY ET AL., *CTR. FOR JUVENILE JUSTICE REFORM, IMPROVING THE EFFECTIVENESS OF JUVENILE JUSTICE PROGRAMS: A NEW PERSPECTIVE ON EVIDENCE-BASED PRACTICE* 23-25 (2010), (finding that “programs with a therapeutic philosophy were notably more effective than those with a control philosophy”), https://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf; RICHARD MENDEL, *THE SENTENCING PROJECT, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE* 12-19 (March 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/> (discussing the harms and counterproductive outcomes resulting

prosecutors, and probation officers respond to “delinquent” behavior can undermine not only the young person’s individual development but also public safety. For example, in Kayla’s case, there is likely little to no *factual* dispute – she took the phone from her boyfriend and struggled when the officer tried to handcuff her. As a result, from the perspective of many of the system’s stakeholders, the primary question of the case is what to do with Kayla, and, more specifically, whether to detain and/or commit Kayla. As non-defense stakeholders seek to answer those questions, we advocate for stakeholders to view Kayla’s behavior through the above-described frame of adolescence. Specifically, to the extent delinquency court intervention is even appropriate in Kayla’s case, it should be the lightest touch possible given the nature of the offense, Kayla’s lack of prior contacts with the delinquency court system, and her low risk of recidivism. Thus, any requests for detention or commitment should be denied as harmful and counterproductive and any interventions by the juvenile legal system should be minimal.

While adolescence is an effective frame to deploy for purposes of mitigation, it is critical to consider how the frame may be used in all other aspects of the case, including litigation. Specifically, in order to push back on the criminalization of normative adolescence itself, we consider how we might use the frame of adolescence to challenge the legal interpretation of Kayla’s undisputed behavior. For instance, robbery in the District of Columbia requires proof that the individual “took the property and carried it away without right to do so and with the specific intent to steal it.”⁶³ The instruction defines “specific intent to steal” as the intent “to deprive [name of complainant] of his/her property and to take it for his/her own use.”⁶⁴ On its face, Kayla’s undisputed behavior appears to meet the criteria – she took DeAngelo’s phone against his will so that she could view his text conversations. However, when viewed through the frame of adolescence, Kayla’s intent reflects the hallmarks of adolescence – impulsive, dominated by emotion, focused on immediate gratification – not a desire to cause harm, realize unearned gain, or break the law. Kayla was in love with DeAngelo. She was not breaking up with DeAngelo when she took his phone; to the contrary, Kayla just wanted to make sure DeAngelo was not cheating on her. Ultimately, but for the immediate intervention by the SRO, Kayla very likely would have given De-

from youth incarceration.)

⁶³ Comment, Criminal Jury Instructions for the District of Columbia, No. 4.300 (LEXIS 2022) (comment to the Criminal Jury Instruction for “Robbery”).

⁶⁴ Criminal Jury Instructions for the District of Columbia, No. 4.300 (LEXIS 2022) (the Criminal Jury Instruction for “Robbery”).

Angelo his phone back (or else risk damaging a relationship she wanted to continue). Thus, when her intent is understood through the frame of adolescence, it fails to meet the legal elements of robbery.

Additionally, the frame of adolescence can also be used to build a defense theory to the resisting arrest charge. Given the overall context of the situation,⁶⁵ one could argue that the SRO used more force than “reasonably necessary” when he tackled Kayla to the ground instead of following her, enlisting the assistance of other school staff, or otherwise attempting to deescalate the situation before using such violent force.⁶⁶ Because the officer used excessive force, then Kayla is entitled to use an amount of force “reasonably necessary for protection.”⁶⁷ Here, utilizing the frame of adolescence, we would argue that Kayla not only used no more force than a reasonable person would use in a similar situation, but that she certainly used no more force than a “reasonable child” would use after being tackled from behind by an officer in a similar situation.⁶⁸

2. Race

Social science research and the lived experiences of our clients provide the foundation upon which we constructed our pedagogical frame of race.⁶⁹ Specifically, there are two broad key interrelated concepts that comprise the schema for the frame: 1) implicit racial bias; and 2) policing as trauma.

Implicit racial bias is unfortunately a factor that can influence the decision making of all juvenile legal system stakeholders, including defense counsel.⁷⁰ Indeed, this bias can be thought of as the result of

⁶⁵ For instance, the officer knew Kayla; the situation occurred in school between two youth who were in a romantic relationship; and the officer had additional resources for finding and discussing the situation with Kayla.

⁶⁶ Criminal Jury Instructions for the District of Columbia, No. 4.116 (LEXIS 2022) (the Criminal Jury Instruction for “Resisting Arrest or Preventing Arrest or Detention of Another”).

⁶⁷ See *id.*

⁶⁸ See generally Marsha L. Levick & Elizabeth-Ann Tierney, THE UNITED STATES SUPREME COURT ADOPTS A REASONABLE JUVENILE STANDARD IN *J.D.B. v. NORTH CAROLINA* FOR PURPOSES OF THE MIRANDA CUSTODY ANALYSIS: CAN A MORE REASONED JUSTICE SYSTEM FOR JUVENILES BE FAR BEHIND?, 47 HARV. C.R.-C.L. L. REV. 501 (2012) (explaining the concept of the reasonable child standard).

⁶⁹ See generally Henning, THE RAGE OF INNOCENCE, *supra* note 2; Kristin N. Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 AM. U. L. REV. 1513 (2018) [hereinafter *The Reasonable Black Child*].

⁷⁰ See Kristin N. Henning, *Race, Paternalism, and the Right to Counsel*, 54 AM. CRIM. L. REV. 649, 653–57 (2017) (summarizing studies showing evidence of implicit racial bias in the juvenile legal system); see also Henning, *The Reasonable Black Child*, *supra* note 69 at 1544 (“These types of cognitive biases are not limited to rogue officers who abuse their power or intentionally target racial minorities with discriminatory motives. People of all races have implicit racial biases that may negatively affect their behavior, even those who

subconsciously interpreting information through a negative frame of race.⁷¹ The research shows that implicit racial bias can have particularly devastating effects on Black youth. For instance, Black youth are often perceived as significantly older and, thus, both more culpable and less deserving of the protections of adolescence than White youth of the same age.⁷² Black youth are also perceived to be more aggressive and more dangerous, and, therefore, as more of a threat than White youth.⁷³ Left unchecked, implicit racial bias leads to the increased surveillance, arrest, prosecution, detention, commitment, and transfer to adult court of Black youth. As a result, it is critical that defenders intentionally name implicit racial bias subconsciously influencing the decisions making of juvenile legal system stakeholders and advocate for stakeholders to correct and overcome them.⁷⁴

“Policing as trauma” refers to the significant traumatic toll that over-policing has on Black youth.⁷⁵ Numerous research studies have confirmed the negative impact that Black youths’ direct experience

ardently reject racism and discrimination and have positive relationships with people of other races. Even black Americans have some implicit racial bias in associating blackness with crime.”).

⁷¹ Henning, *The Reasonable Black Child*, *supra* note 69, at 1543 (“Implicit bias is so subtle that we are generally not aware of it and may act on it reflexively without realizing it. Implicit racial bias evolves from our repeated exposure to cultural stereotypes in society and is activated by environmental stimuli, including cultural stereotypes, that cause us to associate crime and race, particularly crime and blackness. Once stereotypes and biases are subconsciously triggered, they may evoke negative judgments and behaviors that are involuntary and unplanned.”).

⁷² See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526, 527-32 (2014); Henning, *The Reasonable Black Child*, *supra* note 69 at 1538-60 (summarizing the research); REBECCA EPSTEIN, JAMILA J. BLAKE & THALIA GONZÁLEZ, GEORGETOWN CTR. ON POVERTY & INEQUALITY, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’CHILDHOOD (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf> [hereinafter *Girlhood Interrupted*].

⁷³ L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035, 2046-48 (2011); Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 WEST. VA. L. REV. 307, 310-11 (2010); Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat*, 14 PSYCHOL. SCI. 640, 640 (2003); Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. PERSONALITY & SOC. PSYCHOL. 1006, 1009 (2007); Joshua Correll et al., *The Police Officer’s Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1317 (2002); *see also* Henning, *The Reasonable Black Child*, *supra* note 69 at 1538-60 (summarizing the research).

⁷⁴ John F. Irwin & Daniel L. Real, *Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity*, 42 MCGEORGE L. REV. 1, 8-9 (2010); Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1529-30, 1529 n. 207 (2005); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME. L. REV. 1195, 1196-97 (2009); *see also* Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, at 1572.

⁷⁵ *See* Henning, *THE RAGE OF INNOCENCE*, *supra* note 2, at 210-29.

with police and exposure to police violence in the media have on their physical and mental health.⁷⁶ For instance, Black youth who have been stopped by the police report heightened stress, anxiety, anger, fear, a lack of safety, depression, insomnia, sweating, difficulty breathing, nausea, shame, and other symptoms of physical and psychological distress.⁷⁷ In all, the chronic toxic stress that Black youth experience from invasive, aggressive, and sometimes violent policing can reduce their life expectancy and puts them at greater risk for a host of negative health outcomes as adults.⁷⁸ Moreover, Black youth do not need to experience discriminatory policing or police violence directly to be impacted and harmed by it.⁷⁹ Additionally, over-policing does not just impact the health and mental health of Black youth, but also shapes their behavior. Black youth come to fear law enforcement and seek to avoid them at all costs.⁸⁰ Black youth have no choice but to learn various strategies for avoiding or surviving an encounter with police⁸¹ – strategies which are often ineffective or counterproductive because “Black teenagers always ‘look’ guilty no matter what they do. And they know it.”⁸²

This frame of race helps students better understand how the world too often negatively perceives Black children and how Black children too often negatively experience the world. This understand-

⁷⁶ See Henning, *THE RAGE OF INNOCENCE*, *supra* note 2, at 210-17, 226-29.

⁷⁷ Dylan B. Jackson et al., *Police Stops and Sleep Behaviors Among At-Risk Youth*, J. Nat. Sleep Foundation (2020); Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 PNAS, 8261 (2019); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESCENT HEALTH 627 (2019); Thema Bryant-Davis et al., *The Trauma Lens of Police Violence against Racial and Ethnic Minorities*, 73(4) J. Soc. Iss. 852-871 (2017); Abigail A. Sewell et al., *Living Under Surveillance: Gender, Psychological Distress, and Stop-Question-and-Frisk Policing in New York City*, 159 Soc. Sci. Med. 1-13 (2016); Abigail A. Sewell & Kevin Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. Urb. Health 42-67 (2016); Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104(12) Am. J. Pub. Health 2321-2327 (2014).

⁷⁸ Devin English, Sharon F. Lambert, Brendesha M Tynes, Lisa Bowleg, Maria Cecilia Zea & Lionel C. Howard, *Daily Multidimensional Racial Discrimination Among Black U.S. American Adolescents*, 66 J. APPLIED DEVELOPMENTAL PSYCH. 1, 16 (2020); Sirry Alang, Donna McApline, Ellen McCreedy & Rachel Hardeman, *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662-665 (2017).

⁷⁹ *Id.* at 15; Brendesha M. Tynes, Henry A. Willis, Ashley M. Stewart & Matthew W. Hamilton, *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color*, 65 J. ADOLESCENT HEALTH 371, 371-73 (2019).

⁸⁰ Henning, *The Reasonable Black Child*, *supra* note 69, at 1554-55; Henning, *THE RAGE OF INNOCENCE*, *supra* note 2, at 211, 215.

⁸¹ Henning, *THE RAGE OF INNOCENCE*, *supra* note 2, at 211.

⁸² Henning, *THE RAGE OF INNOCENCE*, *supra* note 2, at 163-66 (discussing stereotype threat), 215.

ing is critical in our student attorneys' pursuit of their clients' goals. Let's look at Kayla's case again. If Kayla was a white student in a predominantly white school, would she have been arrested? Not likely. Delinquency generally, as we discussed above, is a normative feature of adolescence. But it is not just the behavior that matters, but the state's discovery of and response to youth behavior that makes something fall under the jurisdiction of the delinquency court.⁸³ And, in the case of Kayla, it is likely that implicit bias shaped that response in a number of ways. For instance, the school resource officer determined that Kayla's conduct was a criminal offense – not merely typical adolescent behavior or a violation of the school's code of conduct. The officer justified his decision to arrest Kayla by claiming that he had “no choice” but to arrest her given her past outbursts and disagreements with DeAngelo.⁸⁴ Both the officer's perception of her behavior and his perceived lack of options short of arrest reflected many facets of the officer's and the system's implicit bias against Black youth, including perceiving Kayla as more culpable, more threatening, and less deserving of support.⁸⁵ And while pointing out the bias would not change the fact that she was arrested, naming the bias and getting system stakeholders to understand how bias influenced the case may help get the case dismissed or resolved in a creative manner short of adjudication.⁸⁶

In addition to better understanding why the officer responded to Kayla in the manner in which he did, the frame of race is also key to understanding why Kayla's response of running from the school resource officer and “resisting” arrest was objectively reasonable and did not reflect a consciousness of guilt or desire to evade consequences.⁸⁷ Indeed, Kayla's response to the school resources officer grabbing her arm was that of a “reasonable Black child” who unfortunately is quite conditioned to be afraid of the police and to avoid interaction with them at all costs.⁸⁸ The reasonableness of Kayla's response coupled with the officer's lack of reason to believe that

⁸³ See Eduardo R. Ferrer, *Razing and Rebuilding Delinquency Courts: De/Reconstructing Delinquency* (work in progress) (manuscript on file with the author) (discussing the legal construct of delinquency as based not only on the definition of the behavior, but also the detection of the behavior and the discretion to respond to the behavior using the apparatus of the juvenile legal system).

⁸⁴ HENNING, *THE RAGE OF INNOCENCE*, *supra* note 2, at 122-23.

⁸⁵ *Id.* at 122-46.

⁸⁶ See *id.* at 122-23 (in the case upon which Kayla's is based, the government eventually agreed to dismiss the case).

⁸⁷ See Henning, *The Reasonable Black Child*, *supra* note 69, at 1554-55 (“A black youth's flight from the police is just as likely to reflect a personal desire to avoid contact with a corrupt system as it is to be consciousness of guilt.”).

⁸⁸ See *id.*

Kayla was a threat to others or to flee school grounds and knowledge that he could easily find Kayla at a later point supports a finding that the tackling of Kayla constituted excessive force. As such, when viewing this case through the frame of race, we shift the narrative from the purported reasonableness of the officer's behavior to the reasonableness of Kayla's behavior.

3. Trauma

The scientific and social science research regarding the impact of childhood chronic toxic stress on development provides the foundation upon which we constructed our pedagogical frame of trauma and resilience.⁸⁹ Specifically, there are three key interrelated concepts from the research that comprise the schema for the frame: 1) the high prevalence of childhood chronic toxic stress among youth in the delinquency system; 2) the impact of chronic toxic stress on childhood development; and 3) the impact of chronic toxic stress on childhood behavior.

Unfortunately, the experience of chronic toxic stress during childhood is the norm rather than the exception for youth who become involved in the delinquency system.⁹⁰ Studies investigating the prevalence of trauma among justice system-involved youth have found that over ninety percent of youth in the juvenile legal system report having experienced at least one traumatic experience during their childhood – a rate far higher than the average population.⁹¹ For example, one study of system-involved youth in Florida found that “juvenile offenders [were] 13 times less likely to report zero ACEs (2.8% compared to 36%) and four times more likely to report four or more ACEs (50% compared to 13%) than [a] population of mostly college-educated adults.”⁹² Thus, given the high prevalence of complex trauma in the population of system-involved youth, our clients cannot be fully understood without also understanding the potential impact of chronic toxic stress on their development.

⁸⁹ See generally Eduardo R. Ferrer, *Transformation through Accommodation: Reforming Juvenile Justice By Recognizing and Responding to Trauma*, 53 AM. CRIM. L. REV. 549 (2016) [hereinafter *Transformation through Accommodation*]. Toxic stress is defined as the “strong and prolonged activation of the body’s stress management systems in the absence of the buffering protection of adult support.” HARVARD UNIV., CTR. ON THE DEVELOPING CHILD, *THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT: CLOSING THE GAP BETWEEN WHAT WE KNOW AND WHAT WE DO* 10 (2007), http://developingchild.harvard.edu/wp-content/uploads/2015/05/Science_Early_Childhood_Development.pdf [hereinafter *THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT*].

⁹⁰ See Ferrer, *Transformation through Accommodation*, *supra* note 89, at 574-76.

⁹¹ See *id.*

⁹² See Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, OJJDP J. JUV. JUST. 2, 10 (2014).

Chronic toxic stress during childhood can be especially impactful because it occurs during a period where development is particularly sensitive to experience and environment.⁹³ As a result, it should come as no surprise that toxic stress has significant negative effects on the developing brain and body.⁹⁴ Research over the last fifteen years has identified observable physiological damage to the developing brain as a result of childhood toxic stress.⁹⁵ Examples of such damage include decreased volume in regions of the brain responsible for executive functioning, self-regulation, memory storage, memory retrieval, coordination of motor skills, and the regulation of cortisol as well as over-activity in the region of the brain that interprets and responds to social cues.⁹⁶ Additionally, toxic stress can disrupt the healthy development of the body's stress response system.⁹⁷ Specifically, when a developing child experiences persistent toxic stress, the youth's body will recalibrate its stress response system to adapt to the distressing environment.⁹⁸ While wholly rational from an evolutionary standpoint, this adaptation can lead to impulsive and non-prosocial behaviors that can undermine a young person's success in the long-term.⁹⁹

Indeed, the experience of chronic toxic stress during childhood can further diminish the normative decision-making capacity of adolescents. First, chronic toxic stress can cause youth to become hypervigilant.¹⁰⁰ This state of perpetual fear means that a young person perceives the world to be unsafe, and thus, becomes preoccupied with scanning the environment for threats.¹⁰¹ While this hypervigilance is an adaptive response that promotes survival, hypervigilance also impairs a youth's already-diminished ability to delay gratification and prioritize the long-term over the short-term.¹⁰² Second, chronic toxic stress during childhood may condition a youth to experience hyperarousal.¹⁰³ Thus, in addition to being more sensitive to environmental cues, children experiencing hyperarousal are less adept at appropriately interpreting and responding to those cues.¹⁰⁴ As a result,

⁹³ See Ferrer, *Transformation through Accommodation*, *supra* note 89, at 569.

⁹⁴ See THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT, *supra* note 89, at 2 (“Toxic stress in early childhood is associated with persistent effects on the nervous system and stress hormone systems that can damage developing brain architecture and lead to lifelong problems in learning, behavior, and both physical and mental health.”).

⁹⁵ See Ferrer, *Transformation through Accommodation*, *supra* note 89, at 569-70.

⁹⁶ See *id.*

⁹⁷ See *id.* at 570-71.

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ See *id.* at 571.

¹⁰¹ See *id.*

¹⁰² See *id.*

¹⁰³ See *id.* at 571-72.

¹⁰⁴ See *id.*

they may misinterpret a neutral or safe situation as threatening and mis-respond accordingly.¹⁰⁵ Third, chronic toxic stress during childhood can also hinder the development of executive function, negatively impacting “learning, social interaction, self-regulation, and impulse control.”¹⁰⁶ Given that executive functioning does not typically fully develop until an individual’s mid-20’s, youth who have experienced childhood trauma may struggle even more than the average adolescent to control their impulses and emotions.¹⁰⁷

Like the frame of adolescence, the frame of trauma is often used in advocacy regarding mitigation and court intervention. Fundamentally, trauma-responsive care itself is grounded in a shift in framing, from asking the question “what is wrong with the youth?” to asking “what has happened to the youth?”¹⁰⁸ This shift in frame helps with mitigation because it helps break down the victim/offender dichotomy and locates the root cause of the young person’s behavior in the trauma they have experienced rather than their character. This shift in frame also provides a roadmap for effective intervention. Specifically, given the experience of trauma, effective intervention must prioritize healing and building resilience and avoid doing further harm.¹⁰⁹

Again, it is critical to understand how the frame of trauma can also apply to reframing all aspects of the case. For instance, while the frame of adolescence focuses on normative adolescence and thus youth as a class, the frame of trauma focuses on the likely or actual impact of chronic stress on the individual client. Thus, while the frame of adolescence can be used to reframe objective standards like the reasonable person to reflect youthfulness, the frame of trauma can provide a more robust understanding of the individual client’s subjective perspective when evaluating culpability. For instance, applying the frame of trauma to Kayla’s case helps the factfinder better understand why Kayla reasonably ran from the officer in the first instance and resisted arrest once she was tackled. Prior to the described incident with the school resource officer, Kayla had experienced significant trauma during her childhood. Her father passed away when she was still very young, and she grew up with a mother who experienced depression, abused illegal substances, and allegedly physically abused Kayla.¹¹⁰ Given these adverse childhood experiences, Kayla is more likely to experience both hypervigilance and hyperarousal, and her in-

¹⁰⁵ *See id.*

¹⁰⁶ *See id.* at 572-73.

¹⁰⁷ *See id.*

¹⁰⁸ *See id.* at 588-89.

¹⁰⁹ *See id.* at 590-92.

¹¹⁰ While not a diagnostic tool, depending on the frequency of abuse, Kayla would score at least a 4 on the Adverse Childhood Experiences Scale. *See id.* at Appendix 1.

dividual behavior must be interpreted through this lens. As such, when the school resource officer grabbed her arm unexpectedly, his actions triggered Kayla's more sensitive fight-or-flight response, reasonably causing her to fear and flee him. Similarly, when the school resource officer tackled Kayla, she was reasonably put in fear of imminent danger of bodily harm and did what she could to prevent the school resource officer from harming her. Thus, both her flight and her fight were reasonable autonomic responses, demonstrating both that she lacked the criminal intent to resist and was legally justified in doing so.

Additionally, the frame of trauma can help stakeholders better understand and respond to the non-criminal behavior of youth who are before the court. For instance, given Kayla's alleged outbursts at and absences from her foster placements, Kayla is likely perceived as noncompliant at best and outright defiant at worst by her social worker (and perhaps other system stakeholders). However, the research teaches us that healing from trauma requires the feelings of safety and control.¹¹¹ As a result, when a trauma-responsive lens is applied to Kayla's case, her behavior is better understood as communicating that she did not feel safe in her placements, needed something she could control, or both. This shift in frame from viewing her behavior as a reflection of character to a form of communication is critical to responding effectively to the behavior. The juvenile legal system is quick to respond to perceived noncompliance or defiance using coercive interventions like outplacement, electronic monitoring, curfews, and other liberty restrictions – interventions that are likely to make a youth like Kayla feel even less safe or in control.¹¹² Instead, a trauma-responsive intervention would seek to both empower Kayla and help her address the root and immediate causes of why she feels unsafe.

Finally, it is critical to emphasize that, while Kayla's trauma history helps to better understand her, it does not define her or predict her future. Indeed, highlighting Kayla's strengths, including her resilience, is necessary to construct a robust, complete narrative. Here, we might point out that, despite the trauma she has endured, Kayla is very engaged in school. She attends regularly, gets good grades, and is actively involved in extracurricular activities. Moreover, at seventeen,

¹¹¹ Alicia Summers, PhD, *Why Trauma-Informed Courts Are Important*, JUVENILE JUSTICE INFORMATION EXCHANGE (Oct. 3, 2016), <https://jjie.org/2016/10/03/why-trauma-informed-courts-are-important/> (describing three common conditions for healing and resilience: 1) safety; 2) self-determination; and 3) positive social connection).

¹¹² See Ferrer, *Transformation through Accommodation*, *supra* note 90, at 590-92; see also Lipsey, *supra* note 62, at 23-25; Mendel, *supra* note 62.

this is the first time she has been arrested. With additional interviews, we could further develop the details of Kayla's resilience – how she has cared for her mother through her depression and substance abuse, the effort she makes to keep her grades up, her commitment to dance, and the strong community she has around her. Thus, the frame of trauma provides a tool for contextualizing and understanding Kayla's alleged misbehavior while also highlighting the strength of her character and resolve.

4. *Sexual Orientation, Gender Identity, and Gender Expression*

Social science research and the lived experiences of our clients also provide the foundation upon which we constructed our pedagogical frame of sexual orientation, gender identity, and gender expression (SOGIE).¹¹³ The construction of the schema of SOGIE begins with a clear understanding of the distinct aspects of human gender and sexual identity and then explores the individual and systemic biases and drivers that impact cis-girls, LGBTQ+ youth, and cis-boys. This frame helps us reemphasize the importance of combating bias and individualizing our representation of system-involved youth.

First and foremost, the schema is grounded in the recognition and affirmation of the various dimensions of identity as it relates to gender – assigned sex, gender identity, gender expression, and sexual orientation.¹¹⁴ It also recognizes that each dimension of identity is a spectrum, not a simple binary.¹¹⁵ For instance, assigned sex is the sex designated at birth, typically based on the child's visible genitalia.¹¹⁶ While typically designated as either male or female, some intersex individuals are born with either sex chromosomes or reproductive systems that do not fall into the male/female binary.¹¹⁷ Gender identity is an individual's internal identification along the spectrum of male/female identity.¹¹⁸ While most individuals' identities align with their assigned sex (i.e., cisgender), the gender identity of transgender

¹¹³ See generally YASMIN VAFA, EDUARDO FERRER, MAHEEN KALEEM, CHERICE HOPKINS & EMILY FELDHAKE, RIGHTS4GIRLS & THE GEORGETOWN JUVENILE JUSTICE INITIATIVE, *BEYOND THE WALLS: A LOOK AT GIRLS IN DC'S JUVENILE JUSTICE SYSTEM* (2018), <https://rights4girls.org/wp-content/uploads/r4g/2018/03/BeyondTheWalls-Final.pdf> [hereinafter *Beyond the Walls*]; Shannan Wilber, *Lesbian, Gay, Bisexual, and Transgender Youth in the Juvenile Justice System* (Annie E. Casey Foundation, 2015), https://www.nclrights.org/wp-content/uploads/2015/09/AECF_LGBTinJJS_FINAL2.pdf; Nancy E. Dowd, *Boys, Masculinities and Juvenile Justice*, 8 J. KOREAN L. 115 (2008).

¹¹⁴ Wilber, *supra* note 113, at 6-7.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

individuals is distinct from their assigned sex.¹¹⁹ Gender expression is the manner in which an individual chooses to present their gender to others, typically through the use of clothing, hairstyle, or mannerisms.¹²⁰ Gender nonconforming individuals present their gender in a manner that differs from the manner in which their assigned gender would present pursuant to cultural norms.¹²¹ Sexual orientation reflects the gender to which an individual is attracted emotionally, sexually, or romantically.¹²² Sexual orientation falls on a spectrum, with individuals being attracted to men or women or identifying as bisexual, pansexual, or asexual.¹²³

Understanding these various dimensions of gender and sexuality is critical to understanding and framing the unique “drivers, experiences, and needs” facing cis-girls and LGBTQ+ youth in the delinquency system,¹²⁴ especially given that the system has developed over time into one that primarily focuses its attention on the behavior of cis-boys.¹²⁵ For instance, the primary drivers of system-involvement vary significantly by gender. Specifically, since the founding of the juvenile court, “the offenses that have led to girls’ justice-involvement have been inextricably linked to girls’ engagement in behaviors that violated social norms about gender, race, and femininity.”¹²⁶ While boys more often come to the attention of the juvenile court as a result of behavior that allegedly poses a threat to public safety, girls more often are swept into the delinquency system to “protect” them from promiscuity, victimization, or unlady-like behavior.¹²⁷ Similarly, though perhaps for less paternalistic reasons, LGBTQ+ youth are often driven into the system – directly and indirectly – as a result of their non-conformance to traditional societal and cultural norms around gender and sexual orientation.¹²⁸ Indeed, cis-girls and LGBTQ

¹¹⁹ *Id.* In addition to identifying as male or female, transgender individuals may also identify as bi-gendered, two-spirit, or third gender. *Id.*

¹²⁰ *Id.* An individual can choose to present themselves as masculine, feminine, or androgynous. *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Vafa, *supra* note 113, at 2; Wilber, *supra* note 113, at 14-35.

¹²⁵ See Dowd, *supra* note 113, at 117 (“My hypothesis is that the juvenile justice system is one that we have constructed as a gender-specific system to manage, control and respond to boys. It reflects and operates upon assumptions about masculinities, and reflects masculine norms.”); 124 (“The juvenile justice system should be understood as a system that focuses on and deals with the behavior of boys.”).

¹²⁶ Vafa, *supra* note 113, at 2.

¹²⁷ *Id.*

¹²⁸ *Id.* at 6-9; Bianca D. M. Wilson, Sid P. Jordan, Ilan H. Meyer, Andrew Flores, Lara Stemple, & Jody Herman, *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. YOUTH & ADOL. 1547, at 1548-50 (2017), <https://pubmed.ncbi.nlm.nih.gov/31111111/>.

youth often experience similar pathways into system involvement – pathways associated with or resulting from higher levels of complex trauma, particularly sexual victimization; unmet behavioral health needs; housing instability; school pushout; and child welfare system involvement.¹²⁹ The impact of such pathways is that cis-girls and LGBTQ+ youth – both of whom are sexual minorities in the delinquency system – are disproportionately criminalized and detained for status offenses;¹³⁰ experience longer length of stays in detention;¹³¹ and endure higher rates of victimization inside detention facilities, inequitable treatment, re-traumatization, and neglect of medical and behavioral health needs.¹³² In sum, the research emphasizes the manner in which the non-conformity and victimization of cis-girls and LGBTQ+ youth is criminalized, making students more attuned to the unique needs and obstacles cis-girls and LGBTQ+ youth face and equipping students with a roadmap for issue-spotting and challenging the biases at the root of such criminalization.

Importantly, while cis-boys make up the sexual/gender majority in the delinquency system, system-involved cis-boys also face challenges – albeit different ones – associated with gender conformity, especially as it relates to the social construct of masculinity.¹³³ As

nih.gov/28093665/.

¹²⁹ Vafa, *supra* note 113, at 6-9; Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128.

¹³⁰ Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 4 (2017) (“Girls (11%) were far more likely to be in custody for status offenses (e.g., running away, truancy) when compared to boys (4%), as well as for technical violations (24% vs. 16%).”), 6 (“Studies with juvenile justice practitioners document widespread misperceptions and negative attitudes toward sexual minority youth that produce and enable inequitable treatment, neglect of health and medical issues, excessive use of force, sexual and physical victimization, and unwillingness to offer protection”); Angela Irvine, “We’ve had three of them”: *Addressing the invisibility of lesbian, gay, bisexual, and trans-gender youth in the juvenile justice system*, 19 COLUM. J. OF GENDER & L. 675 (2010) (finding the LGBT youth are twice as likely as other youth to be detained for a status offense); BEYOND THE WALLS, *supra* note 113, at 7-8.

¹³¹ Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 11 (“Sexual minority youth were disproportionately represented in juvenile detention, more likely to have been in custody for more than a year, and were more likely to report being sexually assaulted by other youth compared to straight youth.”); BEYOND THE WALLS, *supra* note 113, at 10-11.

¹³² Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 6-7 (“Studies with juvenile justice practitioners document widespread misperceptions and negative attitudes toward sexual minority youth that produce and enable inequitable treatment, neglect of health and medical issues, excessive use of force, sexual and physical victimization, and unwillingness to offer protection”) (citations omitted); BEYOND THE WALLS, *supra* note 113, at 10-11; *see also* Wilber, *supra* note 113, at 12-13.

¹³³ *See* Dowd, *supra* note 113, at 131.

The juvenile justice system is a good example of these patterns. We have generally not focused on gender at all, rendering gender invisible. When we do focus on gen-

Professor Nancy Dowd observes:

The punishment or rehabilitation of boys, moreover, is not with the goal of making them better or different men with a different sense of masculinity. Rather, the system reinforces traditional notions of masculinity rather than challenging them, at the very time when those traditional notions are the focus of adolescent masculinities and contribute to the actions of boys.¹³⁴

Specifically, the juvenile legal system reinforces “traditional notions of masculinity”¹³⁵ by asserting its dominance over the boy-child,¹³⁶ modeling violence,¹³⁷ and dismissing or punishing non-conformance to the masculine ideal.¹³⁸ First, as “[boys] mature, they are taught to suppress emotion and empathy” and project strength.¹³⁹ However, in our experience, system-involved boys are often perceived as defiant or obstinate when they do not share openly with a judge, probation officer, or therapist. Additionally, when boys do express themselves, they tend to externalize their feelings.¹⁴⁰ For example, a boy’s expression of

der, we focus on girls and exclude boys, because we think we can only focus on one rather than both. It is a system that presumptively is about boys, but we do not talk about gender or masculinity. The examination of the system as gendered on behalf of girls has not led to an examination on behalf of boys.

Id.

¹³⁴ Dowd, *supra* note 113, at 133.

¹³⁵ See Dowd, *supra* note 113, at 128 (“The two most common defining statements of masculinity are imperative commands: do not be like a woman and do not be gay. Thus, masculinity has negativity at its core, not an affirmative sense of identity.”).

¹³⁶ See *id.* (“Men, although power-ful, feel power-less. The hierarchical relationship among masculinities explains this, as well as the demand of masculinity that it constantly be proved. Masculinity is “the Big Impossible,” that which is never assured or completely achieved, but always to be demonstrated.”).

¹³⁷ See MENDEL, *supra* note 62, at 16-19 (finding that “a comprehensive national review in 2015 revealed that systemic or recurring maltreatment or abuse had been clearly documented in the state-funded youth correctional facilities of 29 states and the District of Columbia since 2000, and in 43 states and the District of Columbia and Puerto Rico since 1970”) (citing Richard Mendel, *MALTREATMENT OF YOUTH IN US JUVENILE CORRECTIONS FACILITIES* (Annie E. Casey Foundation, (2015)); see also Dowd, *supra* note 113, at 130 (“Finally, violence is a core attribute of masculinity, for both men and boys, and in the adolescent period the most traditional concept of masculinity, including violence, is strongly reinforced.”).

¹³⁸ At a systemic level, this often manifests through the reinforcement of patriarchal hierarchies. See *supra* notes 124-132 and accompany text (discussing the increased victimization and disparate treatment of cis-girls and LGBTQ+ youth by the delinquency system); Dowd, *supra* note 113 at 115 (“Boys of color are particularly dangerous, as are gay boys and lower class boys. So the hierarchy of masculinities is evident in those who come into the system and how they are treated.”).

¹³⁹ Dowd, *supra* note 113, at 129.

¹⁴⁰ See Tara M. Chaplin & Amelia Aldao, *Gender Difference in Emotion Expression in Children: A Meta-Analytic Review*, 139 *PSYCH. BULLETIN* 735, 754 (2013) (finding “evidence for significant but very small gender-role-consistent gender differences overall, with . . . boys expressing more externalizing emotions such as anger than girls”).

depression may manifest itself as physical aggression.¹⁴¹ Unfortunately, the system often interprets such a visible expression of emotion as evidence that the boy is a threat rather than understanding that the aggression is a symptom of the invisible, unexpressed grief. Thus, unless a boy expresses himself exactly in the way expected by the court, he is punished.¹⁴² And too often, the boy is punished with violence – increased surveillance, handcuffs, shackles, physical force, prison bars, or solitary confinement.¹⁴³ Moreover, when a boy's trauma is raised as context to explain the behavior, his lived experience is often only cursorily considered or dismissed altogether. As a shelter house worker once expressed after being informed of a 14-year-old client's history of trauma: "The boy just needs to just suck it up and be a man." Thus, understanding the role that masculinity plays in shaping the juvenile legal system's interpretation of and response to the behavior of our male clients prepares students to reframe such interpretations and responses and push back against the perpetuation of toxic masculinity and patriarchal hierarchies.

Let's examine Kayla's case again now through the frame of SOGIE. If Kayla and DeAngelo's roles were reversed, would the school resource officer have intervened? Would the prosecutor have charged DeAngelo in the case? Given the roles that masculinity and paternalism play in shaping the system's response to adolescent behavior, the response might have been very different. First, given "the dominance of men in the gender order,"¹⁴⁴ it is possible that the school resource officer would not even perceive DeAngelo's behavior to be troubling, let alone criminal.¹⁴⁵ Rather the school resource of-

¹⁴¹ See Christine Blain-Arcaro & Tracy Vaillancourt, *Longitudinal Associations between Depression and Aggression in Children and Adolescents*, 45 J. ABNORM. CHILD PSYCHOL. 959, 967 (2017) (finding "a positive and significant association between physical and relational aggression, and between both forms of aggression and depression symptoms" and "that boys engage in physical aggression more than girls") (citations omitted); see also A.M. Möller Leimkühler & J. Heller, N.-C. Paulus, *Subjective Well-being and 'Male Depression' in Male Adolescents*, 98 J. AFFECTIVE DISORDERS 65, 66 (2007) (discussing research finding that "'male' symptoms like irritability, aggressiveness and antisocial behavior were more strongly intercorrelated in depressed males than in depressed females.").

¹⁴² Dowd, *supra* note 113, at 114-15 ("The harsh punishment characteristic of the current system reflects the view of boys as dangerous and inherently violent.").

¹⁴³ See MENDEL, *supra* note 62, at 16-19 (discussing the high rates of maltreatment and abuse that youth experience in juvenile facilities); see also Dowd, *supra* note 113, at 115 ("Moreover, the justification of harsh punishment as necessary in order to control boys silently sanctions the worst offenses within confinement, most notably prison rape, leaving them unchallenged and permitted as part of punishment.").

¹⁴⁴ See Dowd, *supra* note 113, at 115.

¹⁴⁵ See Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J. L. MED. & ETHICS 776, 781 (2022) ("Intersectionality, a tenet of CRT and DisCrit, helps to explain why Black girls experience higher levels of

ficer may have perceived DeAngelo's behavior as justified given the allegations of cheating. Second, because the situation did not pose any threat to public safety, it is quite possible that the school resource officer would not view DeAngelo's behavior as requiring system involvement as a means to protect others. In contrast, while Kayla also did not pose a threat to public safety, given her gender, it is more likely that the school resource officer and prosecutor perceived system involvement as not only necessary to protect her from herself but a vehicle to ensure behavior change. Thus, applying the frame of SOGIE helps students understand that the decision to arrest and charge Kayla represents not only the criminalization of adolescence but also the criminalization of gender.

5. *Intersectionality & Overlapping Pedagogical Frames*

In addition to adolescence, race, trauma, and SOGIE, we also emphasize the intersectionality of these schema and its centrality to the individualization of representation.¹⁴⁶ In other words, as Goffman pointed out, the most complete or precise narrative often requires the application of multiple overlapping frames.¹⁴⁷ For example, in Kayla's case, it is not just that she is an adolescent, or that she is Black, or that she is a cis-girl who has experienced trauma. Kayla's experience is best understood at the intersection of these identities and experiences – through the overlapping frames of being a Black teenaged cis-girl with a history of trauma.

Social science research and lived experience of our clients again help guide our construction and concretization of intersectionality. While racial hierarchies impact all Black youth and gender hierarchies impact all girls, research highlights the particular impact of the combination of racial and gender bias on Black girls specifically.¹⁴⁸ For instance, mirroring similar research by Dr. Goff regarding Black boys, the Georgetown Law Center on Poverty and Inequality found that, compared to white girls of the same age, adults perceive that: Black girls need less nurturing, protection, support, and comfort; that Black

arrest and restraint than both White children and Black boys. . .”) (*citing* Thalia González *et al.*, *A Health Justice Response to School Discipline and Policing*, 71 AM. U. L. REV. 1927, 1942 (2022) (finding that Black girls with disabilities have the higher rates of school exclusion and referral to law enforcement of any student population)).

¹⁴⁶ Katy Steinmetz, *She Coined the Term 'Intersectionality' Over 30 years Ago. Here's What It Means to Her Today*, TIME (Feb. 20, 2020), <https://time.com/5786710/kimberle-crenshaw-intersectionality/> (defining intersectionality as “a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other.”).

¹⁴⁷ See Goffman, *supra* note 6, at 25-26.

¹⁴⁸ See generally Epstein, *supra* note 72 (finding that “adults view Black girls as less innocent and more adult-like than their white peers, especially in the age range of 5-14”).

girls are more independent; and that Black girls are more knowledgeable about adult topics, including sex.¹⁴⁹ Combining these findings with the disproportionate rates of school exclusion and referral to the justice system that Black girls experience, the authors hypothesize that the adultification of Black girls results in greater use of force and harsher punishment in both school and juvenile legal system settings.¹⁵⁰

Given this research, layering together the frames of adolescence, race, trauma, and SOGIE strengthens the argument for dismissal of Kayla's case. Kayla's behaviors merely reflected those of typical teenage angst and impulsivity, not criminal behavior. However, because of her race and gender, the school resource officer failed to see her as a child and instead criminalized her behavior. As a result, the arrest and subsequent prosecution are grounded in bias and will do little to further public safety. Additionally, given the trauma she has already experienced and the fact that she is less likely to be seen as in need of protection and support, it is likely that the system will cause further harm to Kayla. Therefore, when combined, the frames together make a compelling case for dismissal.

Importantly, pedagogical frames are not necessarily to be used to tell the entire, most-nuanced narrative of a client in every case, but rather to construct the narrative most likely to advance the client's expressed interests. In other words, students should not be combining all four frames in every case. Rather, in each case, students should strategically consider how each frame in isolation might advance a client's identified goals while also considering the frames in combination and collectively. As a result, while our four pedagogical frames provide a common framework for examining cases, the flexibility and intentionality with respect to how frames are used promotes the individualization of representation in every case.

C. Our Rationale for these Particular Pedagogical Frames for a Youth Defense Clinic

Why did we choose these particular four frames for our youth defense clinic? Three main reasons: prevalence, power, and principle.

First, the age, race, trauma history, and SOGIE of our clients individually and collectively influence every single one of our cases in our clinic. While the degree of influence varies from case to case, we have consistently seen these frames impact our cases and clients in two primary ways. First, even when stakeholders explicitly acknowl-

¹⁴⁹ See *id.* at 1, 7-8.

¹⁵⁰ See *id.* at 1, 9-12.

edge these frames, they often minimize and reduce them to one of many ancillary factors to consider at the mitigation stage of the proceedings of the case. In other words, facts like age and trauma history are seen merely as information to be considered for determining jurisdiction or the disposition of the case, not for determining or understanding issues like culpability or compliance. Second, when stakeholders unconsciously rely on these frames, the frames often lead to or reinforce implicit bias. For example, implicit racial bias often results in our Black clients – both boys and girls – being perceived as older, more dangerous, more culpable, and less deserving of support. Additionally, fundamental attribution bias often results in our youth clients' delinquent behavior being perceived as indicative of their character rather than a normative feature of the transitory stage of adolescence that they will outgrow. Thus, given the prevalence with which we encounter these four frames in our cases and the manner in which they can negatively impact our clients if not identified and addressed, we have to consider these frames in every case in our work.

Second, while we discuss above the manner in which these frames can negatively impact our case, given the research regarding adolescence, race, trauma, and SOGIE, these four frames can be powerful tools to advance our clients' expressed interests when used strategically and intentionally by defense counsel. This is particularly true when we as defense counsel can recast adolescence, race, trauma history, and SOGIE not merely as one factor of many to be considered, but as the frames through which all other factors should be considered. For example, adopting a trauma-responsive frame in a case shifts the focus of the case from the youth's behavior to what happened to the youth prior to engaging in such behavior. This reframe helps stakeholders better evaluate intent and reasonableness of conduct, appropriateness of court intervention, disposition, and other critical decisions in the case. Additionally, when used intentionally and strategically, the frames of adolescence, race, and SOGIE can be used to directly confront, combat, and reverse the various unconscious biases that too often negatively impact our clients.

Third, we chose these four frames because they not only provide additional tools to improve our advocacy, but because they reflect our values as professors and as a clinic – youth justice, racial justice, reparative justice, and gender justice. First, kids should be treated as kids, supported and instructed through mistakes, not scapegoated or thrown away because of systemic forces they played no role in creating. Second, race matters. We must normalize conversations about the manner in which historical and modern systemic racism drive children of color into the juvenile legal system, and we must equip students to

engage intentionally in the work of undoing those systems of oppression.¹⁵¹ Third, we must seek justice in ways that help individuals – both perpetrator and victim – to meaningfully heal from the harm they have experienced. This includes not just repairing harm at the individual interpersonal level, but also acknowledging and repairing the harm caused by biased and indifferent systems. And, finally, we must strive to ensure that no one is punished or discriminated against as a result of how they were born, who they love, or how they identify. Thus, the four frames we selected provide not only a methodology for equipping students with a transferable skill, but also a platform for students to explore the type of lawyers and people they want to be when they set out into the world to practice law.

II. THE PEDAGOGY OF FRAMES APPLIED

As Professor Johnson notes and describes in *Integrating Critical Theory and Clinical Education*, there are a variety of ways that Critical Theory can be integrated into clinical pedagogy.¹⁵² The Pedagogy of Critical Clinical Frames defined above forms the foundation for our approach for turning Critical Theory into Critical Praxis. Having defined a pedagogical frame and explained how we have chosen and constructed specific frames for the Juvenile Justice Clinic above, we now turn to how we apply the pedagogy of frames in our clinic.

A. Course design

The Juvenile Justice Clinic encourages students to consider and apply our four frames – 1) adolescence; 2) race; 3) trauma; and 4) SOGIE – throughout every aspect of their client representation and coursework. The intentional and explicit utilization of these critical frames encourages students to deconstruct the law’s claim to neutrality, to understand the manner in which carceral systems disproportionately negatively impact youth of color, and to construct counternarratives that advance our clients’ expressed interests. Students are also encouraged to explore how these frames apply to their relationships with the client and system stakeholders, their lawyering skills, and their own personal and professional identity formation. Thus, given their pervasive nature,¹⁵³ our four pedagogical frames

¹⁵¹ Alfieri, *supra* note 44, at 18 (“New rebellious ways of speaking about civil rights and poverty law require new visions of low-income communities of color burdened by stigmatizing identity narratives expressed in the form of ‘race talk.’”).

¹⁵² Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 172-84 (explaining the various ways that one could and that Professor Johnson has integrated Critical Theory into her two clinics).

¹⁵³ See *supra* notes 38-41 and accompanying text; see also Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 174 (describing her decision “to teach

form a key pillar around which our course is designed.¹⁵⁴

The centrality of the pedagogical frames to our course design is communicated to students explicitly in three ways through our syllabus. First, the syllabus contains an introduction to the four frames along with the course description and learning goals. Both the course description and the learning goals mention the importance of strategically applying the four frames throughout all aspects of representing their clients. Second, the syllabus explicitly names classes that will be devoted to constructing the schema of a particular frame. This raises the salience of the frames and communicates the goals for those particular classes to the students. Third, the syllabus communicates the specific order in which we have chosen to explore each of the four frames. As a result, as will be discussed in more detail below, the syllabus itself guides students to make connections between the theory of the frames and practical application of the frames.

B. Seminars & Readings

The four frames are woven into the fabric of the clinic through three different types of seminar classes that reflect the “prepare, do, reflect” essence of clinical education. First and foremost, there are substantive seminar classes specifically devoted to constructing the various frames and preparing students to use them. These substantive seminars begin during orientation with separate seminars devoted to exploring difference and introducing the research relating to normative adolescent development and implicit racial bias. This introduction to the frames of adolescence and race take place prior to a seminar class on case theory so that students can immediately engage with how the frames can impact all aspects of litigation. Throughout the year, we revisit the frames with additional seminar classes devoted to each of these frames that are intentionally juxtaposed with seminars covering “black letter” law. For instance, we pair a seminar covering Fifth Amendment doctrine with a seminar exploring the ways the law should accommodate adolescence and explore the idea of an objective “reasonable child” standard.¹⁵⁵ Additionally, we pair a seminar covering Fourth Amendment doctrine with a seminar diving deeper into implicit racial bias, policing as trauma, and an objective “reasonable Black child” standard.¹⁵⁶ We also use a seminar on trauma and resilience to highlight ways to use and litigate the subjec-

critical theory pervasively across the curriculum, as opposed to isolated classes”).

¹⁵⁴ The learning goals for our clinic include 1) role assumption; 2) case planning; 3) lawyering skills; and 4) reflection.

¹⁵⁵ See *supra* notes 54-68 and accompanying text.

¹⁵⁶ See *supra* notes 69-87 and accompanying text.

tive experiences of our clients to advance their expressed interests and a seminar on SOGIE to reemphasize the role of defense counsel, individualized representation, and the minimization of our own biases.

In preparation for these substantive seminars on frames, students are assigned readings relating to the relevant frame. Readings include law review articles, social science research, literature reviews, policy reports, and annotated bibliographies that we have created for students summarizing research studies on various topics.¹⁵⁷ Indeed, many of the sources cited in Part I, *supra*, are the readings that we assign to students as we help them explore and construct the various frames. For instance, prior to orientation, students are assigned a chapter from the National Research Council report on *Reforming Juvenile Justice: A Developmental Approach* that succinctly explains key research related to the biological and social aspects of normative adolescent development, including the impact of racial discrimination on development.¹⁵⁸ Students are also assigned *Race, Paternalism, and the Right to Counsel*¹⁵⁹ as well as *The Reasonable Juvenile Standard in JDB*¹⁶⁰ in order to introduce how race and adolescence intersect with our representation of youth.

The big picture goals of these substantive seminars on the frames are three-fold. First, these substantive seminars provide students with the information necessary to begin constructing the frames we encourage students to use in our clinic. The seminars and arc of the course are designed and ordered such that the frames become more layered and robust as students acquire more information and gain first-hand experience representing clients. Second, the substantive seminars provide an opportunity to explore how the frames can be used as a tool for challenging the supposed neutrality of the law, systems, and stakeholders and for building strategic counternarratives. As a result, the substantive seminars introduce not only the theory behind the construction of the frame but also examples of how to practically apply the frame in client representation. Third, these seminars seed the ground for discussions of race and SOGIE as well as normative and divergent development. Our hope is to establish a clinic culture that normalizes discussions of these topics in our clinic as well as the use of our frames as a tool to advance client's interests.

In addition to substantive seminars, we also use simulation-based

¹⁵⁷ Defenders can sign up to receive access to these annotated bibliographies as well as additional resources related to the four frames at www.defendracialjustice.org.

¹⁵⁸ See generally National Research Council, *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* (2013).

¹⁵⁹ Kristin N. Henning, *Race, Paternalism, and the Right to Counsel*, *supra* note 70.

¹⁶⁰ Levick & Tierney, *supra* note 68.

seminars to practice and reinforce using frames and frame analysis in the context of client representation. Students are often assigned mock exercises that they must complete for class. The exercises vary from writing a disposition argument to drafting a cross examination to drafting and delivering a suppression argument. The exercises are designed to integrate the substantive law and trial skills students have learned to that point while providing students with an opportunity to incorporate the frames of adolescence and race, and their intersection in the form of the reasonable Black child, into their argument. During the second semester, students also argue an oral motion based on a hypothetical designed to encourage students to practice incorporating implicit bias, policing as trauma, and adolescent development into their arguments.

Seminars incorporating traditional case rounds and other forms of group-based reflection provide a third format for incorporating our frames into our course and client work. Case rounds, in particular, provide an effective, structured, class-wide format in which to explore the assumptions and biases that may be at work in a live case.¹⁶¹ As a result, we have found case rounds to be a ripe opportunity to engage collectively in frame analysis (i.e., what frames are being used by whom and how in the case) and further explore the four frames specific to our clinic.¹⁶²

C. Supervision

Supervision provides another opportunity for students to engage in frames analysis and practice the application of our pedagogical frames in their advocacy. As students develop their case theory and interact with other system stakeholders, students often engage in frame analysis either subconsciously or consciously but incompletely. In supervision, we then guide students to a more explicit, intentional, and extensive analysis of the frames that others have adopted as well as the potential frames and counternarratives that the student has identified as useful to advancing their client's expressed interests.¹⁶³

¹⁶¹ Susan Bryant & Elliot Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education*, 14 CLIN. L. REV. 195, n. 35 ("This kind of learning ultimately enables students to see how culture and experience shape their world-views and influence lawyering choices. Good clinical judgment requires a capacity to identify how one's assumptions influence priorities and define what 'makes sense' in the situation and to step away from those assumptions and challenge them.") (citations omitted); 214-15 ("[P]eer conversations often trigger reflection" which "involves surfacing tacit norms or assumptions that underlie a judgment made to take a case in a particular direction.").

¹⁶² See *id.* at 209 ("They begin to identify which contexts matter in problem definition and how they shape solutions.").

¹⁶³ See Mlyniec, *supra* note 28, at 114 ("Clinical teachers are always 'directing' a student in an exploration that leads to new knowledge or a solution to a problem.").

This guidance can take a number of forms, from a more directive conversation with the student to a roleplay or moot paired with immediate reflection and debrief.¹⁶⁴

During supervision, we also engage in critical reflection,¹⁶⁵ unpacking the various assumptions that students make, including, but not limited to, assumptions about our clients and how the law is or should be applied.¹⁶⁶ In examining these assumptions, we make clear that defense attorneys are not immune to the same biases or deficits-based thinking present in other stakeholders. Defenders may even be more susceptible to unintentionally adopting, assuming, or reinforcing the same negative frames applied by other system stakeholders.¹⁶⁷ As a result, it is imperative that youth defenders engage in the work of frames analysis and narrative reconstruction to ensure that we understand, appreciate, and center our clients as well as zealously and effectively advance their expressed interests.¹⁶⁸

Students are also asked to critically reflect during supervision upon systemic issues they have encountered in their cases and relate them back to the research and theory they have learned from the four frames. For instance, using Kayla's case as an example, we would encourage students to not only examine why the school resource officer responded to Kayla the way that he did, but also why the school resource officer was present at Kayla's school in the first place. We might further discuss the proliferation of videos online in which police officers are caught physically disciplining youth in schools and the fact

¹⁶⁴ See *id.*

¹⁶⁵ Grose & Johnson, *supra* note 27, at 204.

¹⁶⁶ See *id.* at 206. Frame analysis and “parallel universes” thinking complement each other well as tools for confronting our own assumptions and biases. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 70 – 71 (2001) (describing “‘parallel universes’ thinking” as “a method for exploring alternative explanation for clients’ behaviors. . . [that] invites students to look for multiple interpretations, especially at times when the student is judging the client negatively.”).

¹⁶⁷ See L. Song Richardson & Phillip Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE. L. J. 100, 105 (2013) (“There is ample reason for concern that [implicit biases] will affect public defenders’ judgments because IBs thrive in situations where individuals make decisions quickly with imperfect information and when they are cognitively depleted, anxious, or distracted); see generally MAHZARIN R.R. BANAJI & ANTHONY G. GREENWALD, *BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE* (2016) (discussing blind spot bias).

¹⁶⁸ Grose & Johnson, *supra* note 27, at 217 (“We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients.”); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 163. Importantly, we as defense counsel must also be careful not to use frames to further pathologize or contribute to flattening or stereotyping of experience. Rather counsel should use frames to help us individualize all aspects of our representation, including, but not limited to, our relationship with our clients, our advocacy on behalf of our clients, how we counsel our clients, and the outcomes we pursue on their behalf.

that police brutality and state violence is not an abstract concept for our clients, but a part of their everyday life. Thus, critical reflection in supervision provides students with the opportunity to not only reflect on how frames analysis applies in their individual case, but also how frames analysis may impact the overall context in which their individual case is situated.

D. Client Representation

Finally, students utilize the four frames in their representation. In doing so, students deconstruct and attempt to replace the numerous false narratives spun about our clients.¹⁶⁹ Students do this by identifying the dominant frames through which other stakeholders view our clients and their cases and seeking to shift those frames in favor of ones that advance our clients' expressed interests. This process of deconstruction and reconstruction is one that engages them directly in the work of combating the system's disproportionate impact on youth of color in the District of Columbia. As a result, in the Juvenile Justice Clinic, our students are not merely studying the law's claim to neutrality and the law's differential effects on subordinated groups, but are actively immersed on a daily basis in trying to deconstruct such claims and stem the impact of the racial disparities and other injustices we see present in our juvenile legal system.

Integrating our clinic's pedagogical frames into their client representation begins immediately upon picking up a client. Upon appointment, students will conduct an initial interview with the client. During this interview, students will begin to learn about the client's history, life, and goals and begin to co-create with the client the narrative and strategy for the case. In developing this narrative and strategy, students are expected to consider not only our four pedagogical frames, but also the frames that other stakeholders may be consciously or subconsciously applying to the case. Within hours of being appointed to a new client, students also will have to make a release argument at the client's initial hearing. Students are expected to explore whether the research relating to normative adolescent development, trauma, and the harms of detention or the data relating to racial disparities in detention in the District of Columbia are compelling arguments to weave into their arguments before the court to counter the narratives being told about our client. This often marks the first time in a case

¹⁶⁹ Jay M. Feinman, *The Failure of Legal Education and the Promise of Critical Legal Studies*, 6 *CARDOZO L. REV.* 739, 758 (1985) ("The Critical example is a powerful element of the Critical transformation. It provides, either imaginatively or actually, a concrete situation which demonstrates the falseness and oppressiveness of existing relations as well as the Critical possibilities of transformation.").

that students apply one or more frames in advocacy. After the initial hearing, students must complete a case planning memorandum detailing their theory of the case, theory of disposition, and strategic plan for achieving client's interests. Again, students are asked to intentionally consider how our four pedagogical frames will impact all aspects of their client's case. This memorandum – and the frames analysis included therein – is an iterative document that should be updated and adjusted as circumstances change or the student learns new information throughout the course of the representation. This continual process of deconstructing false or incomplete narratives and reconstructing counternarratives that advance our client's expressed interests is the heart of transforming the theory of critical clinical frames into practice.

CONCLUSION

Biases¹⁷⁰ and deficit-based approaches too often unduly shape the narrative that system stakeholders create about the young people we represent in the Juvenile Justice Clinic. Our client's strengths – the assistance they provide to their families; their sense of humor; their artistic ability, academic achievement, or athletic prowess; or the effort they are making to improve in multiple domains of their life – are too often marginalized, minimized, or erased. Moreover, our clients' immaturity, race, gender, and life experiences are too often weaponized against them. Unless intentional care is taken to shape a more accurate narrative of our client's lives, their intent, motivations, and behavior are negatively interpreted through our own biases.¹⁷¹ Pedagogical frames guide students in this work of counternarrative by helping students better relate to, understand, co-create, and tell the complex story of our clients in an effort to advance their expressed interests in the face of a system that too often seeks to paint them as one-dimensional. As such, the pedagogy of frames equips students with a transferable skill that helps them be better advocates and achieve a more just world.

¹⁷⁰ Examples of other biases we encounter often include implicit racial bias, paternalism, fundamental attribution error, and adultification bias.

¹⁷¹ Goffman, *supra* note 6, at 22 (“Motive and intent are involved, and their imputation helps select which of the various social frameworks of understanding is to be applied.”)