

**Administrative Office of the U. S. Courts  
Defender Service Office Training Division  
Race in the Federal Criminal Court: Strategies in Pursuit of Justice**

**Marriott Inner Harbor  
Baltimore, Maryland  
April 6-8, 2017  
DRAFT AGENDA**

**Thursday, April 6, 2017**

**7:30 – 8:30 am      Registration and Continental Breakfast**

**8:30 – 8:45 am      Welcoming Remarks**

*Lori A. Green, Chief, Defender Services Office Training Division,  
Washington, DC*

*James Wyda, Federal Public Defender, District of Maryland, Baltimore,  
Maryland*

*Teresa Whalen, CJA Panel Representative, District of Maryland, Silver  
Spring, Maryland*

**8:45 – 9:45 am      “Litigating” Inside and Outside of the Courtroom: Lessons from  
*Buck v. Davis***

*Christina Swarns, Litigation Director, NAACP Legal Defense Fund, New  
York, New York*

Effective advocacy often requires more than just writing an excellent brief, or presenting a powerful argument. The decision makers in our cases are influenced by not only what happens inside the courtroom, but also what happens in the community, the media, the legislature and at the dinner table. Christina Swarns will explain how the defense team for Duane Buck, a death sentenced prisoner in Texas, used all of these advocacy vehicles – and more – to effectively and strategically advantage their client.

**9:45 – 10:00 am      Break**

**10:00 – 11:00 am Prosecuting Ethnically: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat**

*Rachel D. Godsil, Professor of Law, Seton Hall University Law School, Newark, New Jersey*

Judges, prosecutors, and defense attorneys all seek justice and fairness. Yet racially disproportionate outcomes in our criminal justice system raise questions about whether the system achieves the goals of each group. This paradox is deeply troubling and confounding to all who pride themselves on their egalitarian ethos. The “mind sciences” are useful both to understand the paradox and to alter the dynamics that often lead to different outcomes for minorities in the criminal justice system – despite good intentions on all sides. This session explores the concept of implicit bias and how it plays out in different areas within the criminal justice system.

**11:05 am-12:05pm Ferguson: Everywhere U.S.A. – A Case Study in America’s Cities and the Criminal Justice System**

*Kimberly Jade Norwood, Professor of Law and African & African American Studies, Washington University Law, St. Louis, Missouri*

**12:05 – 1:30 pm Lunch**

**1:30 - 2:30 pm Cultural Competency and Confronting Barriers to Creating a Culturally Competent Team**

*Moderator: Dennis Candelaria, Assistant Federal Defender, District of New Mexico, Las Cruces, New Mexico*

*Barbara Creel, Professor of Law and Director, Southwest Indian Law Clinic, University of New Mexico, Albuquerque, New Mexico*

*Carlos Williams, Executive Director, Southern District of Alabama Federal Defenders, Inc., Mobile, Alabama*

This presentation explores what it means to be “culturally competent” and challenges assumptions and ignorance about race and other cultures. The discussion will center on what may cause attorneys to inadvertently disregard important racial and cultural factors that can assist in the defense of their clients.

**2:30 - 2:45 pm**      **Break**

**2:45 - 4:00 pm**      **Effective Communication with Clients from Different Backgrounds**  
*Lori James-Townes, Director of Social Work, Leadership & Program Development, Office of the Public Defender, Baltimore, Maryland*

Every federal criminal defense practitioner will work with clients who come from different socio-economic and racial backgrounds from them. As developing a trusting and productive client relationship is critical to providing successful client-centered representation, effective communication between client and defense team is a crucial building block. This session will provide nuts and bolts tools to help develop healthy and beneficial client relationships, with an eye on the differences that challenge many of us, and also delve into how these dynamics impact both the client and the case.

**4:00 - 4:10 pm**      **Break**

**4:10 - 5:40 pm**      **Strategies for Effective Client Communication (Breakout Sessions)**

This session will reinforce the information learned in the Effective Communication plenary. The participants will further delve into specific client issues in a small, non-judgmental group environment where real life scenarios can be openly discussed.

**5:40 pm**      **Adjourn for the Day**

**Friday, April 7, 2017**

**7:30 - 8:30 am**      **Registration and Continental Breakfast**

**8:30 - 10:00 am**      **Judicial Perspectives on Race in the Criminal Justice System**  
*Moderator: Lori A. Green, Chief, Defender Services Office Training Division, Washington, DC*  
*The Honorable Andre Davis, Senior Circuit Judge, Fourth Circuit Court of Appeals, Baltimore, Maryland*  
*The Honorable L. Felipe Restrepo, Circuit Judge, United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania*

*The Honorable Donna Ryu, Magistrate Judge, United States District Court for the Northern District of California, Oakland, California*

*The Honorable Paula Xinis, District Court Judge, United States Court for the District of Maryland, Baltimore, Maryland*

Judges are aware that the promise of equal justice may depend on our willingness to confront issues of race. This judge's panel offers us the opportunity to hear directly from the bench. The panel will explain how they view the challenges facing our criminal justice system and how they strive to ensure that those appearing in their court are treated fairly in those areas within the court's control.

**10:00 - 10:15 am Break**

**10:15 - 11:15 am Attacking Bias through Motions Practice: Revealing and Litigating Unfair Targeting of People of Color in Federal Court**

*TBD*

People of color are often the targets of unfair law enforcement and prosecution practices. This presentation addresses how to investigate and litigate the lawfulness and constitutionality of those practices, including bringing motions for selective enforcement and selective prosecution.

**11:15-11:25 am Break**

**11:25am-12:25pm Black Lives Matter: Eliminating Racial Inequity Throughout the Criminal Justice System**

*Nazgol Ghandnoosh, Ph.D., Research Analyst, The Sentencing Project, Washington, DC*

This session will discuss initiatives in more than 20 states that are designed to address the criminal justice system's high rate of contact with people of color. In the wake of the tragedies in Ferguson and other cities, excessive police contact has been identified as a major cause of the disproportionate rate of fatal police encounters for African Americans and Latinos. Policing is just one of many stages of the justice

system in which people of color are disadvantaged relative to whites. Ghandoosh will identify four key features of the criminal justice system that produce racially unequal outcomes, beyond the conditions of socioeconomic inequality that contribute to higher rates of some crimes in marginalized communities, and will showcase initiatives to abate these sources of inequity in adult and juvenile justice systems around the country.

**12:35 – 2:00 pm    Lunch**

**2:00 – 3:00 pm    Breakout Sessions**

**(1)    Childhood Trauma in Urban Settings**

*Richard G. Dudley, Jr., M.D., New York, New York*

In this session there will be a discussion of how repeated exposure to violent trauma during childhood impacts the growth and development of children; how the risk of such exposure to violent, traumatic situations is increased in urban settings; and how the availability of or the absence of the type of parental protection, nurture and support that might mitigate the impact of such exposure is an additional determinant of outcome. The impact of such resultant developmental difficulties on an individual's ability to function, even as an adult, will also be discussed, as well as the importance of recognizing and understanding such impaired functioning when representing an individual facing criminal charges. In addition, the use of mental health experts to help obtain this understanding, and the various ways that consultation with a mental health expert might be helpful to a defense team, the ultimate decision-maker, and the client will be discussed.

**(2)    Voluntary Consent is Dead**

*Melody Brannon, Federal Defender, Kansas Federal Public Defender, Topeka, Kansas*

*Juval O. Scott, Attorney Advisor, Defender Services Office Training Division, Washington, D.C.*

Often times the government resorts to the convenient but-your-client-said-yes excuse to save an otherwise illegal search. Given changes in

technology, the media has unprecedented access to documented instances of sometimes aggressive police practices, and then the general public has unfettered exposure these recordings. We must now question whether officer-initiated contacts are ever consensual in this environment. This session will discuss framing Fourth Amendment challenges through a new lens in hopes of gaining true justice for the client.

**(3) Conviction and Deportation: Analyzing the Double Penalty for Noncitizen Defendants**

*TBD*

This presentation will examine the collateral consequences facing noncitizen defendants for federal criminal offenses in two particular areas. First, the program will examine the manner in which drug-related criminal convictions impact immigration status. Second, the presentation will also address prosecutions under 8 U.S.C. §§ 1325 and 1326, which punish illegal entry and re-entry respectively. The presentation will provide a quick informational overview, including statistical data and policy considerations behind these offenses, as well as practical tips to defend against or otherwise ameliorate the negative consequences stemming from drug and 1325/1326 convictions.

**(4) Supervised Release and Alternatives to Incarceration in Tribal Communities**

*Barbara Creel, Professor of Law and Director, Southwest Indian Law Clinic, University of New Mexico, Albuquerque, New Mexico*

**3:00 - 3:15 pm**      **BREAK**

**3:15 - 4:15 pm**      **Repeat Breakout Sessions**

**(1) Childhood Trauma in Urban Settings**

*Richard G. Dudley, Jr., M.D., New York, New York*

In this session there will be a discussion of how repeated exposure to violent trauma during childhood impacts the growth and development of children; how the risk of such exposure to violent, traumatic

situations is increased in urban settings; and how the availability of or the absence of the type of parental protection, nurture and support that might mitigate the impact of such exposure is an additional determinant of outcome. The impact of such resultant developmental difficulties on an individual's ability to function, even as an adult, will also be discussed, as well as the importance of recognizing and understanding such impaired functioning when representing an individual facing criminal charges. In addition, the use of mental health experts to help obtain this understanding, and the various ways that consultation with a mental health expert might be helpful to a defense team, the ultimate decision-maker, and the client will be discussed.

**(2) Voluntary Consent is Dead**

*Melody Brannon, Federal Defender, Kansas Federal Public Defender, Topeka, Kansas*

*Juval O. Scott, Attorney Advisor, Defender Services Office Training Division, Washington, D.C.*

Often times the government resorts to the convenient but-your-client-said-yes excuse to save an otherwise illegal search. Given changes in technology, the media has unprecedented access to documented instances of sometimes aggressive police practices, and then the general public has unfettered exposure these recordings. We must now question whether officer-initiated contacts are ever consensual in this environment. This session will discuss framing Fourth Amendment challenges through a new lens in hopes of gaining true justice for the client.

**(3) Conviction and Deportation: Analyzing the Double Penalty for Noncitizen Defendants**

*TBD*

This presentation will examine the collateral consequences facing noncitizen defendants for federal criminal offenses in two particular areas. First, the program will examine the manner in which drug-related criminal convictions impact immigration status. Second, the presentation will also address prosecutions under 8 U.S.C. §§ 1325 and 1326, which punish illegal entry and re-entry respectively. The

presentation will provide a quick informational overview, including statistical data and policy considerations behind these offenses, as well as practical tips to defend against or otherwise ameliorate the negative consequences stemming from drug and 1325/1326 convictions.

**(4) America's Failed Hegemon: Reservations and its Jurisprudence in the 21st Century**

*Vann Arvanetes, Assistant Federal Defender, District of Montana, Great Falls, Montana*

This session will begin with a primer about the government paradigm with reservations, with an emphasis on the Indian Civil Rights Act of 1968. Then it will address changes in Tribal and Federal law, focusing on jurisdictional changes in last five years, and how they are intertwined with the other. The recent Supreme Court case *Bryant* and the aftershocks of it will be discussed, as well as what the landscape looks like in a post-*Bryant* world.

**4:20 – 5:20 pm Sentencing Reform: Another Tool for Achieving Equity**

*TBD*

Recent criminal justice reform developments could impact communities of color. This session details those discussions and highlights the valuable contributions that criminal defense practitioners have made.

**Saturday, April 8, 2017**

**7:30 – 8:30 am Registration and Continental Breakfast**

**8:30 - 9:30 am Getting Your Expert on the Stand: Finding and Funding Experts**

*Mark Cedrone, Esq., Cedrone & Mancano, LLC, Philadelphia, Pennsylvania*  
*Tanya Greene, Director of Training and Resource Counsel, Capital Resource Counsel Project, Brooklyn, New York*

Experts can help courts and juries understand the importance of race in various areas that impact clients' life experiences both prior to and within the context of the criminal justice system. This presentation will

focus on how to recognize the need for such experts and how to obtain funding for their services.

**9:35 - 10:35 am      Addressing Issues of Race with the Jury Panel**

*The Honorable Richard A. Jones, United States District Court, Western District of Washington, Seattle, Washington*  
*Anthony Ricco, Esq, New York, New York*

Prosecutors continue to deliberately exclude people of color from juries. Rather than a jury of their peers, clients are being judged by jurors who may have no ability to understand and/or empathize with their experiences. This panel discussion will address how to successfully raise, present, and preserve for review *Batson* challenges, the importance of having a pool with jurors of color to select from, addressing implicit bias during voir dire, and ensuring that the client's humanity does not get lost during the process.

**10:35 - 10:50 am      Break**

**10:50 - 11:50 am      Closing Plenary**  
*TBD*

**11:50am - 12:00 pm      Closing Remarks**  
*Lori A. Green, Chief, Defender Services Office Training Division, Washington, DC*