

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

**Hilton Downtown  
Atlanta, Georgia  
September 8-10, 2016**

**Final Agenda**

**Thursday, September 8, 2016**

**7:30 – 8:30 am      Registration and Continental Breakfast  
Grand Ballroom West**

**8:30 – 8:45 am      Welcoming Remarks  
Grand Ballroom East**  
*Lori A. Green, Chief, Defender Services Office Training Division,  
Washington, DC  
Stephanie Kearns, Executive Director, Federal Defender Program,  
Inc., Atlanta, Georgia*

**8:45 – 10:00 am      Race in the Criminal Justice System: Indigent Defense as  
the New Civil Rights Struggle and Redefining Success  
as Counsel for the Indigent Accused  
Grand Ballroom East**

*Jonathan Rapping, Founder and President, Gideon's Promise,  
Atlanta, Georgia*

As we confront racial disparities in the criminal justice system, we should consider reform of the criminal justice system as a civil rights struggle deserving its own "movement". In doing so we should recognize that the task of advancing the cause of justice in indigent defense is seemingly a Sisyphean effort. But those who remain energized and idealistic, move the cause of

justice forward each day. While this country has yet to completely fulfill either Gideon's promise or that of equal treatment, we must remain steadfast in our belief that the system is ever-evolving and changing, even if incrementally, for the better. This session will remind the participant that while at times their voice may be the only one reminding the system of our most sacred ideals, they must dig deeper within themselves to even the playing field for the indigent accused.

**10:00 – 10:15 am Break**

**10:15 – 11:30 am Confronting and Understanding Implicit Bias**

**Grand Ballroom East**

*Jeffery Robinson, Deputy Legal Director and Director of the Center for Justice, American Civil Liberties Union, New York, New York*

How does implicit bias affect our perceptions and decision-making? This session explores the concept of implicit bias and how it plays out in different areas within the criminal justice system.

**11:45 – 1:15 pm Lunch**

**1:15 - 2:45 pm Historical Legacies of Racial Injustices**

**Grand Ballroom East**

*Moderator Jami Johnson, Assistant Federal Defender, District of Arizona, Phoenix, Arizona*

*Violeta Chapin, Associate Clinical Professor of Law, Colorado Law, Boulder, Colorado*

*George Chaney, Jr., Assistant Federal Public Defender, Southern District of Ohio, Columbus, Ohio*

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

This panel examines how a history of racial inequality and racially discriminatory public policy continues to impact

communities of color in their interactions with the criminal justice system today. The panel focuses in particular on case studies and narratives—some well-known and some less well known—drawn from various and diverse communities with a view to understanding the role that our clients’ particular community histories play in influencing their outcomes in the criminal process.

**2:45 - 3:00 pm      BREAK**

**3:00 - 4:30 pm      Cultural Competency and Confronting Barriers to Creating a Culturally Competent Team**

**Grand Ballroom East**

*Moderator Norma Aguilar, Supervisory Assistant Federal Defender, Southern District of California, San Diego, California*

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

*Lori James-Townes, Director of Social Work, Leadership & Program Development, Office of the Public Defender, Baltimore, Maryland*

*Rene Valladares, Federal Public Defender, District of Nevada, Las Vegas, Nevada*

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.

**4:30 - 4:40 pm      BREAK**

4:40 - 5:40 pm      **Breakout Session #1**

(1)      **What Makes An Indian?**

**206/207**

*Jami Johnson, Assistant Federal Defender, District of Arizona, Phoenix, Arizona*

The determination of a person's "Indian status" can have an enormous effect on the outcome of their case because it largely determines whether the crime can be charged tribally, federally, or locally. There is a lot of percolating chatter in the courts at the moment about the Indian status question with some judges starting to complain openly that it's an improper racial classification.

(2)      **Guarding Miranda and Waivers Rancheros: Cultural Considerations in the Suppression of Confessions**

**204**

*Francisco Morales, Assistant Federal Defender, Southern District of Texas, Corpus Christi, Texas*

So you say your client gave a full confession? But before getting there, your client understood his rights and waived those rights. Right? This lecture deals with various aspects of Miranda litigation, especially the influence of culture and language as it relates to intelligent and knowing waivers of Miranda rights and statements that are knowingly and intelligently given. For many, the time they are arrested is the first time that they have the benefit of hearing Miranda rights. Is it possible for someone to hear Miranda for the first time and still not understand it? We will delve into the different ways that language, education, culture, and machismo, among other things, play a role in the knowing and intelligent calculus as it relates to Miranda.

(3) **Race and the Fourth Amendment: Challenging Assumptions About Reasonableness**

**203**

*Juval Scott, Attorney-Advisor, Defender Services Office Training Division, Washington, DC*

Litigation over New York City's stop and frisk practices and the killing of unarmed minorities by police officers has placed a new focus on the reasonableness of law enforcement stops of minorities. This session will address how previous assumptions about their reasonableness may be challenged.

**Friday, September 9, 2016**

**7:30 - 8:30 am**      **Registration and Continental Breakfast**  
**Grand Ballroom West**

**8:30 - 10:00 am**      **Judicial Perspectives on Race in the Criminal Justice System**  
**Grand Ballroom East**

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

*The Honorable Bernice Bouie Donald, Circuit Judge, United States Court of Appeals for the Sixth Circuit, Memphis, Tennessee*

*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*

Judges are aware that the promise of equal justice may depend on our willingness to confront issues of race. This panel offers us the opportunity to hear directly from the bench. This panel of judges 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 - 11:30 am [Attacking Bias through Motions Practice: Revealing and Litigating Unfair Targeting of People of Color in Federal Court](#)**

**Grand Ballroom East**

*Alison Siegler, Clinical Professor of Law, University of Chicago School of Law, Chicago, Illinois*

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.

**11:35 - 12:35 pm Breakout Sessions**

**(1) [Childhood Trauma in Urban Settings](#)**

**206/207**

*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 on 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) **Talking About Race and Ethnicity at Sentencing**

**205**

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

Race and ethnicity are integral to our clients' identities and experiences. Yet, we are uncomfortable talking about race with the court. We sometimes act as if it is too sensitive for us to address. At times, we mistakenly treat it as if it is irrelevant. There are ways to talk about race at sentencing that educate the court and explain how it should be considered by the court in its decision making process. This presentation looks to the data and empirical evidence, to help craft legal challenges to disparate sentencing practices, and discusses how to present our clients' personal experiences to the court.

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

**204**

*Claudia Valenzuela, Attorney, National Immigrant Justice Center, Inc., Chicago, Illinois*

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) History and Overview of the Major Crimes Act**

**203**

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

The Major Crimes Act, passed in 1885, is the primary mechanism by which Indian crimes end up in federal court, where they often suffer disproportionately longer sentences because federal sentencing statutes, in particular for violent crimes, tend to be much harsher than similar state statutes. This session will explain the statute and its impact on the client.

**12:35 - 2:00 pm Lunch**

**2:00 - 3:00 pm Addressing Over Criminalization at Sentencing**

**Grand Ballroom East**

*Lucius Outlaw, Assistant Federal Defender, District of Maryland, Baltimore, Maryland*

School systems and the juvenile justice system often criminalize common less desirable youthful behavior of black and brown youth, which leads to involvement in the adult criminal justice system. This presentation looks at ways to explain to the sentencing court how the criminal histories for people of color do not accurately capture the social context in which they arise and why the court should consider facts that mitigate criminal history.

**3:00 - 3:15 pm BREAK**

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

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

**203**

*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**      **Collateral Consequences and the Perpetuation of Inequity:  
Crafting Sentencing Alternatives That Make a Difference**  
**Grand Ballroom East**  
*David A. Singleton, Esq., Executive Director, Ohio Justice & Policy  
Center, Cincinnati, Ohio*

Families and communities suffer when members are unable to contribute to their wellbeing as a result of incarceration. Unreasonably lengthy prison sentences exacerbate that situation. Those sentences seem to be more prevalent in minority communities and extend the unfortunate consequences that destroy the community's ability to improve the lives of its residents.

**Saturday, September 10, 2016**

**7:30 – 8:30 am**      **Registration and Continental Breakfast**  
**Grand Ballroom West**

**8:30 - 9:30 am**      **How to Find and Fund Experts to Present Racial  
Data/Information to the Court**  
**Grand Ballroom East**

*Alison Siegler, Clinical Professor of Law, University of Chicago  
School of Law, Chicago, IL*  
*James Smith, Esq., CPLS, P.A., Orlando, Florida*

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.

**9:40 - 10:40 am      Addressing Issues of Race with the Jury Panel**

**Grand Ballroom East**

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

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

*Anthony Ricco, Esq, New York, New York*

*Callie Glanton Steele, Senior Litigator, Central District of California, Los Angeles, California*

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.

**10:40 - 11:00 am      Break**

**11:00 - 12:00 pm      Who Are You Representing? Understanding How Indigent Defense Providers Not Only Speak for Individual Clients-- But Also for Families and Communities**

**Grand Ballroom East**

*Ilham Askia, Executive Director, Gideon's Promise, Atlanta, Georgia*

As entire populations are rendered voiceless in the criminal justice system there is a growing recognition that some lives don't matter. These lives are almost exclusively poor and disproportionately of color. Through storytelling, indigent defense providers have the ability to give voice to marginalized communities and humanize those who have been deemed expendable. We will consider how the power of storytelling

can help indigent defense providers effectively represent clients, how communications skills are necessary to overcome barriers and learn our client's stories, and the importance of including family and community members in developing an effective narrative.

**12:00 - 12:15 pm Closing Remarks**

**Grand Ballroom East**

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

**SUGGESTED READING**