Thursday, February 6, 2020

7:30–8:30 a.m.  Registration and Continental Breakfast
International Ballroom, 16th Level Foyer

8:30–9:00 a.m.  Welcoming Remarks – International Ballroom, 16th Level
Claude Kelly, Federal Public Defender for the Eastern District of Louisiana, New Orleans, LA
Townsend Myers, CJA Panel Representative, Eastern District of Louisiana, New Orleans, LA
Akin Adepoju, Assistant Federal Defender & Visiting Attorney Advisor, Training Division, Defender Services Office, Washington, D.C.

9:00–10:15 a.m.  PLENARY: Looking Criminal: The Implicit Bias and Presumption of Dangerousness of Afrocentric Facial Features
International Ballroom, 16th Level
Hon. Mark W. Bennett (Ret. U.S. District Judge), Director, Institute for Justice Reform & Innovation, Drake University Law School, Des Moines, IA

Emerging research on race and sentencing has shown that people with more Afrocentric facial features are treated more harshly in the criminal justice system. Biases against those with strong Afrocentric facial features can and likely affects the bail process, plea bargaining negotiations, and myriad other discretionary decisions in the criminal justice system. This session will provide recommendations to help ameliorate this problem that permeates the American criminal justice system.

10:15–10:25 a.m.  Break – International Ballroom, 16th Level Foyer
10:25 a.m.–12:00 p.m. **PLENARY: Litigating the Racial Dimensions of the Federal Pretrial Detention Crisis**

*International Ballroom, 16th Level*

Alison Siegler, *Clinical Professor of Law, Director of the Federal Criminal Justice Clinic, University of Chicago School of Law, Chicago, IL*

Our federal pretrial detention system is in crisis, with detention rates soaring far higher than in states with draconian money-bail regimes and high violent felony rates. Given the racial disparities in the federal system and the resistance to releasing non-citizens, clients of color bear the brunt of the detention crisis. To combat this crisis, we must radically rethink our bond advocacy. This session will draw on the first court-watching initiative ever undertaken in federal court, which found that prosecutors and judges routinely detain our clients not authorized by the Bail Reform Act. This session will provide numerous action steps for fighting detention, beating the presumptions, filing written bond motions, and winning release.

12:00–1:30 p.m. **Lunch**

1:30–2:30 p.m. **PLENARY: Addressing Issues of Race with the Jury Panel**

*International Ballroom, 16th Level*

Eric Davis, *Trial Division Chief, Harris County Public Defender’s Office, Houston, TX*

Courageous defense teams are litigating innovative ways to ignite rich discussions about unconscious bias with the jury panel. This session will provide practical advocacy tips on creative ways to raise the issue of implicit bias during *voir dire* with the goal of bringing about long-standing change in both federal and state courts.

2:30–2:35 p.m. **Break – International Ballroom, 16th Level Foyer**

2:35–3:35 p.m. **PLENARY: Advocacy Strategies to Address Racially Disparate Impact of Risk Assessment Tools**

*International Ballroom, 16th Level*

Melissa Hamilton, J.D., Ph.D., *Senior Lecturer of Law & Criminal Justice at University of Surrey School of Law, London, United Kingdom*

The federal criminal justice system uses algorithmic risk assessment tools to classify individuals based on their risk of reoffending. The main tools are the Pretrial Risk Assessment (PTRA), the Post-Conviction Risk Assessment (PCRA), and the newly created PATTERN under the First Step Act. This presentation addresses how to evaluate the tools concerning their objectivity, accuracy, reliability, and fairness. We introduce potential strategies for practitioners to challenge algorithmic risk outcomes due to the various ethical and legal issues that plague these tools. Specific emphasis will be on how racial disparities become embedded in, and multiplied by, these assessment tools.
3:35–3:45 p.m. Break – International Ballroom, 16th Level Foyer

3:45–4:45 p.m. PLENARY: Cybersecurity Privacy and Its Impact on Communities of Color
International Ballroom, 16th Level
Christopher Soghoian, Ph.D., Senior Technologist and Privacy Technology Researcher, Washington, D.C.

Mass surveillance society subjects us all to its gaze, but not equally so. Privacy is not a luxury. It is a fundamental right under threat from both government and corporate surveillance, especially for historically marginalized people. This session will expose the disparate impact of surveillance on communities of color.

4:45–4:50 p.m. Break

4:50–5:50 p.m. PLENARY: Diversity, Power, Privilege & Leadership: Are We Progressing?
International Ballroom, 16th Level
Eddie Moore, Jr., Ph.D., Director, The Privilege Institute, Green Bay, WI

This interactive, informational, challenging and energetic session examines and explores issues of diversity, power, privilege, and leadership across America and challenges participants to examine their own biases, behaviors and belief systems. We all have an excellent opportunity to be positive role models, powerful decision makers, and effective agents of change, if we have the tools. We need more leaders for social justice and equity across America. Are we making progress? Do we have the skills to #MakeChangePossible?

5:50 p.m. Adjourn
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 presentation discusses how to raise, present, and preserve for review *Batson* challenges.

Every federal criminal defense practitioner will work with clients who come from different socio economic and racial backgrounds from them. Because 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 for developing healthy and beneficial client relationships, with an eye on the differences that challenge many of us, and how these dynamics impact both the client and the case.
11:15–12:15 p.m.  PLENARY: Obstacles to Justice: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat

International Ballroom, 16th Level
Rachel Godsil, Co-Founder and Co-Director, Perception Institute, New York, NY

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 the 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.

12:15–1:30 p.m.  Lunch

1:30–3:00 p.m.  PLENARY: “What’s Past is Prologue”: The Relevance of History in Contemporary Race and Criminal Justice Litigation

International Ballroom, 16th Level
Christina Swarns, President and Attorney-in-Charge of the Office of the Appellate Defender, Inc., New York, NY

William Faulkner once famously wrote: “the past is never dead, it’s not even in the past.” But when it comes to race, the United States Supreme Court has taken a decidedly different approach, concluding that “unless historical evidence is reasonably contemporaneous with the challenged decision, it has little probative value.” McCleskey v. Kemp, 481 U.S. 279, 298 n. 20 (1987). But is the Court right? Or does this country’s long history of racial segregation, discrimination and violence cast a shadow that continues to fall on today’s criminal justice structures, policies, and practices? This session will discuss the continuing significance of history in contemporary race and criminal justice litigation.

3:00–3:15 p.m.  Break – International Ballroom, 16th Level Foyer
3:15–4:15 p.m. Breakout Sessions

(1) Effective Use of Pretrial Motions in Raising Outrageous Government Conduct and Equal Protection
Crescent A, 16th Level
Kevin Tate, Senior Litigator, Office of the Federal Public Defender for the Western District of North Carolina, Charlotte, NC
(Repeats Today at 4:25p.m.)

This session discusses the use of discovery and investigation to obtain evidence to support challenges to indictments based on outrageous government conduct based on Equal Protection Claims.

(2) Litigating Race and Trauma
Crescent B, 16th Level
Luli Buxton, Mitigation Specialist, Office of the Federal Public Defender for the Eastern District of Wisconsin, Milwaukee, WI
Akin Adepoju, Assistant Federal Defender & Visiting Attorney Advisor, Training Division, Defender Services Office, Washington, D.C.
(Repeats Today at 4:25p.m.)

This session 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 situation 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.

(3) Ideas on Culturally Competent Sentencing Investigation
Nottaway A, 2nd Level
Tanya Greene, Capital Resource Counsel and Director of Training, Federal Capital Resource Counsel Project, Brooklyn, NY
(Repeats Today at 4:25p.m.)

This session will discuss the role of race and ethnicity in successful sentencing investigation and advocacy. The session will also address how the social history investigation of the case - the people and paper - can be most effectively and impactfully undertaken by incorporating race and ethnic awareness.
(4) Understanding Race and Racism in Indian Country to Better Serve All Clients

**Shadows, 2nd Level**

Barbara Creel, *Karelitz Professor of Evidence and Procedure and Director of the Southwest Indian Law Clinic, University of New Mexico School of Law, Indian Law Clinic, Albuquerque, NM*

*(Only time offered)*

What we can learn from Indian Law and representing Native American that can assist in representation of our other clients? This session explores the race-based laws applicable in Indian Country – the Major Crimes Act, General Crimes Act, Assimilated Crimes Act, Indian Civil Rights Act, Violence Against Women Act – to understand how they apply differently to different races and determine how we can better serve our Native American Indigenous clients and all historically oppressed peoples.

4:15–4:25 p.m. **Break – International Ballroom, 16th Floor Level**

4:25–5:25 p.m. **Breakout Sessions**

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

Shadows, 2nd Level

Barbara Creel, Karellitz Professor of Evidence and Procedure and Director of the Southwest Indian Law Clinic, University of New Mexico School of Law, Indian Law Clinic, Albuquerque, NM

(Only time offered)

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 the last five years, and how they are intertwined with one another. The recent Supreme Court case United States v. Bryant and the aftershocks of it will be discussed, as well as what the landscape looks like in a post-Bryant world.

5:25 p.m.  Adjourn
Saturday, February 8, 2020

7:30–8:30 a.m.  Continental Breakfast – International Ballroom, 16th Level Foyer

8:30–9:30 a.m.  PLENARY: Speaking Truth to Power: Practical Approaches for De-Biasing the Court

International Ballroom, 16th Level

Callie Steele, Senior Litigator, Office of the Federal Public Defender for the Central District of California, Los Angeles, CA

Tara I. Allen, Associate Professor of Law, Roger Williams University School of Law, Bristol, RI

To provide effective and impactful representation for our clients, defense attorneys must address racial injustice directly. This session will provide practical advocacy approaches to de-biasing the court at various stages of the case, including at bail, pretrial, and sentencing hearings.

9:30–9:45 a.m.  Break – International Ballroom, 16th Level Foyer

9:45–10:45 a.m.  PLENARY: A Defender's Race-Conscious Approach to Reduce Implicit Bias Through Narrative, Culture, and Individuation

International Ballroom, 16th Level

Walter Gonçalves, Assistant Federal Public Defender for the District of Arizona, Phoenix, AZ

The presentation will provide lawyers with strategies to reduce the negative impact of implicit bias on clients. Although the focus will be on crimes that mainly affect Latino defendants, the tactics and strategies described apply to any minority defendant (African American, Middle Eastern, Asian, Native American). The presentation will cover the impact of implicit bias on Latino criminal defendants that arise mainly from historic and contemporary media depictions of Latinos. Areas covered will include client interviewing and consulting, pre-trial motion practice, voir dire, jury instructions, use of experts, sentencing, and other trial and pre-trial subjects. The general theme is that implicit bias can be reduced through the use of narrative, culture, and individuation.

10:45–11:00 a.m.  Break – International Ballroom, 16th Level Foyer
PLENARY: What’s Race Got to Do with It? Litigating Fourth Amendment Issues – International Ballroom, 16th Level
Juval O. Scott, Federal Public Defender for the Western District of Virginia, Charlottesville, VA

Often times the government resorts to the convenient but-your-client-said-yes excuse to save another wise 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 to 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.

Closing Remarks – International Ballroom, 16th Level
Akin Adepoju, Assistant Federal Defender & Visiting Attorney Advisor, Training Division, Defender Services Office, Washington, D.C.