



RACE IN THE FEDERAL CRIMINAL COURT: STRATEGIES IN PURSUIT OF JUSTICE

ADMINISTRATIVE OFFICE OF THE U.S. COURTS DEFENDER SERVICES OFFICE TRAINING DIVISION

WASHINGTON UNIVERSITY SCHOOL OF LAW
1 BROOKINGS DRIVE
ST. LOUIS, MISSOURI
April 19-21, 2018

DRAFT AGENDA (rev. 2/12/2018)

Thursday, April 19, 2018

7:30 – 8:30 a.m. Registration and Continental Breakfast

8:30 – 8:50 a.m. Welcoming Remarks

Lee Lawless, Federal Public Defender, Office of the Federal Public Defender, St. Louis, MO

The Honorable Shirley Mensah, Magistrate Judge, United States District Court for the Eastern District of Missouri, St. Louis, MO

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

8:50 – 9:50 a.m. Opening Plenary

David A. Singleton, Esq., Executive Director, Ohio Justice & Policy Center, Cincinnati, OH

Tyra Patterson, Dayton, OH

9:50 – 10:50 a.m. Obstacles to Justice: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat

Jessica MacFarlane, Senior Research Associate, 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 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.

10:50 – 11:05 a.m. Break

11:05 a.m. –

12:05 p.m. 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, MO

What happened in Ferguson, Missouri in 2014 was not solely the result of one incident on one particular day, although the killing of yet another unarmed Black man had a lot to do with the subsequent events there. Michael Brown’s death ripped the worn, frayed and very tattered bandage off of a long festering wound. That event, coupled with failed social, political and municipal systems, created a “perfect storm” that disrupted the lives of Black and poor citizens in that community and created a firestorm of national protests. Using housing, education, employment, and the criminal justice system as examples, Washington University Law Professor Kimberly Norwood will describe how the confluence of these systems kept and keep minority communities trapped in failed social structures, destroying families and communities, keeping people cycling through the criminal justice system. Professor Norwood, author of “Ferguson’s Fault Lines: The Race Quake That Rocked a Nation,” also serves on the monitoring team for the *U.S. v. Ferguson* consent decree. Her comments will not only discuss Ferguson but will also connect the national dots, discussing how the necessary ingredients of injustice are reaching a boiling point in city after city after city. This pressure cooker will ultimately erupt again unless we start exploring more complete ways to address social injustice. The presentation will provide information that can help to tell the stories of clients from similar communities.

12:05 – 1:35 p.m. Lunch

1:35 – 2:35 p.m. Creating a Culturally Competent Team

Moderator: Tanya Greene, Director of Training and Resource Counsel, Capital Resource Counsel Project, Brooklyn, NY
Dennis Candelaria, Assistant Federal Defender, District of New Mexico, Las Cruces, NM
Barbara Creel, Professor of Law and Director, Southwest Indian Law Clinic, University of New Mexico, Albuquerque, NM
Carlos Williams, Executive Director, Southern District of Alabama Federal Defenders, Inc., Mobile, AL

This panel discussion will explore what "cultural competence" on criminal defense teams looks like, and the challenges teams face in achieving and maintaining it throughout their representation of a client.

2:35 – 2:45 p.m. Break

2:45 – 4:00 p.m. Effective Communication with Clients from Different Backgrounds

Moderator: Lori James-Townes, President & CEO, Expand Now, Baltimore, MD
Eddie Ellis, Jr., Founder/CEO, One by 1, Inc., Olney, MD
Keeda J. Haynes, Assistant Public Defender, Office of the Metropolitan Public Defender, Nashville, TN
Teresa Hodge, Founder, Mission: Launch, Inc., Washington, D.C.

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 p.m. Break

4:10 – 5:40 p.m. 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 p.m. Adjourn for the Day

Friday, April 20, 2018

7:30 – 8:30 a.m. Registration and Continental Breakfast

8:30 – 10:00 a.m. Judicial Perspectives on Race in the Criminal Justice System
Moderator: Lori A. Green, Chief, Defender Services Office Training Division, Washington, DC
The Honorable Mark Bennett, District Court Judge, United States District Court for the Northern District of Iowa, Sioux City, IA
The Honorable Willie J. Epps, Jr., Magistrate Judge, United States District Court for the Western District of Missouri, Jefferson City, MO
The Honorable Ketanji Brown Jackson, District Court Judge, United States District Court for the District of Columbia, Washington, DC
The Honorable Martha Vazquez, District Court Judge, United States Court for the District of New Mexico, Albuquerque, NM

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 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 a.m. Break

10:15 – 11:15 a.m. Sentencing Reform: A Tool for Achieving Equity
Marc Mauer, Executive Director, The Sentencing Project, Inc., Washington, DC

While overt racial discrimination in the justice system has diminished in recent decades, "race neutral" policies and practices play a substantial role in contributing to incarceration disparities. Criminal defense practitioners can address these problems through engagement in sentencing reform and working with practitioners to examine the sources of biased decisionmaking.

11:15 – 11:30 p.m. Break

11:30 a.m. –

12:30 p.m. Bail Reform

Frank Draper, Attorney Advisor, Defender Services Office Training Division, Washington DC

Genesis Draper, Assistant Public Defender, Harris County Public Defender's Office, Houston, TX

Alexander Shalom, Senior Supervising Attorney, New Jersey American Civil Liberties Union, Newark, NJ

There is a strong correlation between bail, risk assessments, and race. While at first glance the process may appear benign, the ramifications are far-reaching. This session will discuss some of the pitfalls of risk assessments and how bail impacts a client's case from beginning to end.

12:30 – 2:00 p.m. Lunch

2:00 – 3:00 p.m. Repeat Breakout Sessions

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

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

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.

(2) The Death of Voluntary Consent

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

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 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.

(3) Childhood Trauma in Urban Settings

Leslie Jones, Esq., Policy & Advocacy Director, Montgomery County Public Defender, Norristown, PA

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 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.

(4) Federal Habeas Corpus Statute 25 USC § 1303 and the Non-Indian

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

Fighting for justice in federal court requires us to work across culture and gain knowledge of our clients, their communities and applicable laws. Federal habeas corpus statute 25 U.S.C. 1303, applies to both Native Americans and non-Natives alike, but is little known or studied.

There are 48 federal judicial districts with Indian Country. Regardless of whether you practice in a district with Indian Country jurisdiction, you may represent a Native American charged with a crime of general jurisdiction and knowledge of this habeas corpus statute is critical. If

you have experience in 2254 or 2255 your knowledge in complex litigation and problem solving can add to this discussion of 1303, where the AEDPA does not apply! Whether you represent Native Americans or non-Indians in federal court, this federal habeas review is critical to trial, sentencing and post-conviction review and you are encouraged to join for an invigorating and discussion of the great writ.

3:00 – 3:15 p.m. Break

3:15 – 4:15 p.m. Repeat Breakout Sessions

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

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

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.

(2) The Death of Voluntary Consent

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

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 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.

(3) Childhood Trauma in Urban Settings

Leslie Jones, Esq., Policy & Advocacy Director, Montgomery County Public Defender, Norristown, PA

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 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.

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

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

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 Bryant and the aftershocks of it will be discussed, as well as what the landscape looks like in a post-Bryant world.

4:15 – 4:30 p.m. Break

4:30 – 5:45 p.m. Searching and Candid Voir Dire

Kyana Givens, Assistant Federal Defender, Western District of Washington, Seattle, WA

Aaron Nelson, Esq., Nelson Defense Group, Hudson, WI

This session will focus on innovative ways to ignite rich discussion about unconscious bias during voir dire. These skills will be illustrated

through a voir dire case study that is transforming jury education and voir dire discussions on race.

5:45 p.m. Adjourn for Day

Saturday, April 21, 2018

7:30 – 8:30 a.m. Continental Breakfast

8:30 – 9:30 a.m. Race and Immigration: Analyzing the Double Penalty for Noncitizen Defendants

Ubong Akpan, Attorney Advisor, Defender Services Office, Training Division, Washington, DC

Why is immigration relevant on the topic of race and criminal defense? When criminal laws have a disparate impact on certain communities of color, we cannot ignore race and the discriminatory motivations behind such laws. Similar to the racial disparity between the penalties for crack and cocaine, illegal reentry and other immigration offenses have a direct impact on immigrant communities of color. Criminal convictions and subsequent deportations have future detrimental effects on the clients, their families and communities. This session will examine the myths behind the discriminatory laws affecting immigrants and the penalty of deportation and how to use this information in the defense of immigrant clients—from plea negotiations to sentencing mitigation.

9:30 – 9:45 a.m. Break

9:45 – 10:45 a.m. Getting Your Expert on the Stand: Finding and Funding Experts

Craig Albee, Executive Director, Federal Defender Services of Wisconsin, Inc., Milwaukee, WI

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

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.

10:45 – 11:00 a.m. Break

11:00 a.m. –

12:00 p.m. Closing Plenary

*Anthony Ricco, Esq., Federal Death Penalty Resource Counsel Project,
New York, NY*

12:00 p.m.

Closing Remarks/Adjournment

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