



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**

Thursday, April 19, 2018

7:30 – 8:30 a.m. Registration and Continental Breakfast
Trial Courtroom, Room 309

8:30 – 8:50 a.m. Welcoming Remarks – Bryan Cave Moot Courtroom, Room 310
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
Adam H. Rosenzweig, Professor of Law and Vice Dean for Academic Affairs, Washington University School of Law, St. Louis, MO
Juval O. Scott, Attorney Advisor, Defender Services Office, Training Division, Washington, DC

8:50 – 9:50 a.m. The Case for Hope in Challenging Times – Room 310
David A. Singleton, Esq., Executive Director, Ohio Justice & Policy Center, Cincinnati, OH
Tyra Patterson, Paralegal, Ohio Justice & Policy Center, Cincinnati, OH

There are times when a case seems hopeless, the fate of clients certain, and the fight for justice an exercise in futility. Tyra Patterson and her lawyer David Singleton lived this story. They will discuss why there is plenty of reason to hope, even while practicing in a system that disadvantages people of color and poor people accused of crimes.

9:50 – 10:50 a.m. Obstacles to Justice: Addressing Implicit Bias, Racial Anxiety, and Stereotype Threat – Room 310

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 – Room 309

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 – Room 310

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 (On Your Own)

1:35 – 2:35 p.m. Creating a Culturally Competent Team – Room 310

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 – Room 309

2:45 – 4:00 p.m. Effective Communication with Clients from Different Backgrounds – Room 310

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

Pamela Keye, 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 – Room 309

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
Trial Courtroom, Room 310

8:30 – 10:00 a.m. Judicial Perspectives on Race in the Criminal Justice System
Bryan Cave Moot Courtroom, Room 310

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 – Room 309

10:15 – 11:15 a.m. Bail Reform – Room 310

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.

11:15 – 11:30 p.m. Break – Room 309

11:30 a.m. –

12:30 p.m. Sentencing Reform: A Tool for Achieving Equity – Room 310

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.

12:30 – 2:00 p.m. Lunch (On Your Own)

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

(1) Guarding Miranda and Waivers Rancheros: Cultural Considerations in the Suppression of Confessions – Room 305

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 – Room 306**

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 – Room 404**

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) **Understanding Race and Racism in Indian Country to Better Serve All Clients – Room 403**

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

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.

3:00 – 3:15 p.m. Break – Room 309

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

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(4) America's Failed Hegemon: Reservations and its Jurisprudence in the 21st Century - Room 403

Evangelo "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 *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.

4:15 - 4:30 p.m. Break - Room 309

4:30 - 6:00 p.m. Searching and Candid Voir Dire - Room 310

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.

6:00 p.m. Adjourn for Day

Saturday, April 21, 2018

7:30 – 8:30 a.m. Registration and Continental Breakfast
Trial Courtroom, Room 309

8:30 – 9:30 a.m. Race and Immigration: Analyzing the Double Penalty for Noncitizen Defendants
Bryan Cave Moot Courtroom, Room 310
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 – Room 309

9:45 – 10:45 a.m. Getting Your Expert on the Stand: Finding and Funding Experts – Room 310
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 – Room 309

11:00 a.m. -

12:00 p.m. Focusing on Dehumanization and Infantilization: Applying Regulatory Takings and Dignity Takings Analyses to the Damage Caused by Criminal History - Room 310

Jamila Jefferson-Jones, Associate Professor of Law, University of Missouri-Kansas City School of Law, Kansas City, MO

Much has been written about the effects of the collateral consequences of conviction on both individuals with ex-offender status and on the communities from which they come and to which they return. Most current discussions of collateral consequences of criminal conviction, reentry barriers and discrimination against those with criminal records center on one of two notions: (1) the fairness (or the lack thereof) of continued, unforeseen, or disproportional punishment; or (2) the role of legislatures and the executive (in the guise of administrative agencies) usurping the sentencing function of the judiciary through the imposition of collateral consequences. This session instead takes the novel approach of examining the stigma of ex-offender status as a taking of reputational status property. Thus, the deleterious effects of criminal justice policies on individuals and communities can be viewed either as “regulatory takings” -- those instances in which the government has regulated the use of property in a manner so as to constitute a constructive taking or it – or as “dignity takings” – takings that “occurs when a state directly or indirectly destroys or confiscates property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization.”

12:00 p.m.

Closing Remarks/Adjournment - Room 310

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