

### Thursday, November 21

- 11:00 a.m. – 5:30 p.m. Registration**
- 11:45 a.m. – 12:00 p.m. Welcome and Introductions**
- David I. Bruck  
Professor of Law and Director, Virginia Capital Case Clearinghouse, Washington & Lee School of Law
- 12:00 p.m. – 1:00 p.m. Legal Developments in Capital Punishment Law, 2018–2019**  
(60 mins. CLE)
- This session will highlight significant decisions over the past year in the United States Supreme Court, the Fourth Circuit, and the Supreme Court of Virginia that are relevant to capital defense. Pending Supreme Court cases and Virginia legislative developments also will be covered.
- Speakers:* David I. Bruck
- Bernadette M. Donovan  
Donovan & Engle, PLLC | Charlottesville, VA
- 1:00 p.m. – 2:15 p.m. Race-Based Trauma: Potential Implications for Mitigation**  
(75 mins. CLE)
- This session will introduce the concept of Race-Based Traumatic Stress (“RBTS”) as a phenomenon for consideration in the practice of mitigation. RBTS refers to the emotional reactions that individuals describe following experiences of racism and racial discrimination. The scholarship associated with RBTS will be reviewed including procedures for assessment of RBTS. Applications to the process of capital defense mitigation will be discussed.
- Speakers:* Alex Pieterse, Ph.D.  
Associate Professor  
Department of Educational and Counseling Psychology  
University at Albany, State University of New York
- Thomas D. Scheuermann, M.A., J.D.  
Instructor and Graduate Faculty  
Oregon State University
- 2:15 p.m. – 2:30 p.m. Break**

# 27<sup>th</sup> Annual Capital Defense Workshop

**2:30 p.m. – 3:30 p.m.**  
(60 mins. CLE)

## **Cultural Competence in Intellectual Disability and Mental Health Investigation**

Capital clients come from diverse cultures that are often different from those of their attorneys or evaluators. The ability to understand and behave effectively in culturally diverse situations is critical to capital defense representation. This session will cover how defense teams can ensure that their clients' intellectual disability and mental health investigations are conducted in a culturally competent manner.

*Speakers:* Daniel Goldman  
Capital Defender  
Northern Virginia Office of the Capital Defender | Arlington, VA

Susana Herrero  
Mitigation Specialist and Forensic Investigator | New Orleans, LA

Leo J. Shea, III, Ph.D.  
Neuropsychological Evaluation and Treatment Services, PC | New York, NY

**3:30 p.m. – 4:30 p.m.**  
(60 mins. CLE)

## **Working with Latinx Gang Members**

Susana Herrero is an attorney and mitigation specialist who was Co-Director of the El Salvador Capital Assistance project for eight years and has worked on behalf of numerous gang members charged with capital crimes. Alex Sanchez is the co-founder of Homies Unidos in Los Angeles, an organization that works to prevent violence and intervene with at-risk youth. Mr. Sanchez is also a former gang member who deploys his own experiences and expertise to understand and explain Latinx gang members. Together, they will share insights and tools for representing Latinx gang members who are facing the death penalty.

*Speakers:* Susana Herrero

Alex Sanchez  
Co-Founder, Homies Unidos Los Angeles | Los Angeles, California

**4:30 p.m. – 4:45 p.m.**

## **Break**

**4:45 p.m. – 5:45 p.m.**  
(60 mins. CLE)

## **Being a Client**

In 1985 Calvin Duncan was wrongfully convicted of murder and sentenced to life without any possibility of parole. While in prison at the Louisiana State Penitentiary at Angola, he served as inmate counsel handling the cases of hundreds of fellow inmates, including helping to secure a new trial for celebrated prison journalist Wilbert Rideau. Freed from prison in 2011, he has continued to work as a paralegal, while founding The First 72+, a transitional home and reentry program for people returning home from prison. He will share his experiences and insights from his many years of working on behalf of death-sentenced prisoners, and will offer tips on how lawyers can more effectively communicate with our clients.

# 27<sup>th</sup> Annual Capital Defense Workshop

---

*Speaker:* Calvin Duncan  
Founder, The First 72+  
Board Member, Rising Foundations | New Orleans, LA

## Friday, November 22

---

**7:30 a.m. – 3:00 p.m.**      **Registration**

**8:00 a.m. – 8:30 a.m.**      **Continental Breakfast**

**8:30 a.m. – 9:30 a.m.**      **Introduction to the Federal Death Penalty**  
(60 mins. CLE)  
Tony Ricco, a veteran New York capital defender and member of the Federal Death Penalty Resource Counsel Project, will provide an introduction to federal death penalty cases. In particular, he'll describe the process by which the US Attorney, the Department of Justice in Washington, and ultimately the US Attorney General decide whether to seek the death penalty in each federal case, and the special responsibilities of defense counsel in representing their clients during this critical stage of the proceedings.

*Speakers:* Anthony L. Ricco  
Adjunct Professor of Law, Fordham University School of Law  
Federal Death Penalty Resource Counsel | New York, NY

Gerald Zerkin  
Former Federal Death Penalty Resource Counsel | Richmond, VA

**9:30 a.m. – 10:30 a.m.**      **Psychological Testing for Lawyers**  
(60 mins. CLE)  
This session is an introduction to assessment, providing an overview of cognitive and functional assessment (AKA "testing"). It will focus on what the defense teams needs to do before having a client evaluated; different types of testing and assessment and what information they provide; how tests are normed and interpreted; and what the defense team needs to do in order to understand and make educated decisions about assessment and testing protocols. The purpose of testing is to determine the ways in which your client's development and life course deviated from the typical development and course.

*Speaker:* David Freedman, Ph.D.  
Consultant, Federal Death Penalty Resource Counsel Project  
Senior Research Consultant, International Academy of Law and Mental Health | New York, NY

**10:30 a.m. – 10:45 a.m.**      **Break**

# 27<sup>th</sup> Annual Capital Defense Workshop

**10:45 a.m. – 12:00 p.m.**  
(75 mins. CLE)

## **The Legal and Forensic Implications of *Lawlor***

Dr. Mark Cunningham has been the nation's leading researcher and expert witness on prison violence risk assessment of capital offenders—particularly in jurisdictions such as Texas and Virginia that place "future dangerousness" at the center of the capital sentencing calculus. After a twenty-year series of increasingly restrictive decisions by the Virginia courts, the Fourth Circuit's recent decision in *Lawlor v. Zook*, 909 F. 3d 614 (2018) has now reopened Virginia capital cases to evidence-based risk assessment, and thus to the contributions of experts such as Dr. Cunningham. This session will look at how defense counsel can use *Lawlor* to reintroduce scientific method into the dangerousness inquiry in Virginia capital cases, and provide an update on progress in this area since Virginia first began limiting evidence on in-prison dangerousness in 1999.

*Speakers:* David I. Bruck

Mark Cunningham, Ph.D.  
Clinical and Forensic Psychologist  
Fellow, American Psychological Association | Seattle, WA

**12:00 p.m. – 12:30 p.m.**

**Lunch** (included in registration)

**12:30 p.m. – 1:45 p.m.**  
(75 mins. CLE)

## **The Potential Mitigating and Aggravating Nature of Remorse and Your Client's Courtroom Demeanor**

During this session the panelists will address the use of remorse and demeanor as "evidence" in capital trials (where the perceived lack of emotion/remorse is often used by prosecutors against our clients) and will share ideas about ways to challenge such evidence. Prof. Bandes and Dr. Zhong will discuss why/how remorse matters to decision-makers, general problems with evaluating remorse from demeanor, and more specific issues affecting such assessments, including age, race, culture, gender, social class, cognitive functioning and mental health impairments.

*Speakers:* Susan A. Bandes  
Emeritus Centennial Distinguished Professor of Law  
DePaul College of Law | Chicago, IL

Rocksheng Zhong, M.D.  
Lecturer, Yale School of Medicine | New Haven

**1:45 p.m. – 2:45 p.m.**  
(60 mins. CLE)

## **The Disappearance of the Death Penalty**

Over the past several years in the Commonwealths of Virginia and Pennsylvania, there has been a dramatic downturn in the numbers of death sentences imposed in capital cases. This session will describe the extent of that downturn, note particular elements, and analyze how capital defense teams in Virginia and Pennsylvania have avoided imposition of new death sentences.

# 27<sup>th</sup> Annual Capital Defense Workshop

*Speakers:* Marc Bookman  
Co-Director, Atlantic Center for Capital Representation | Philadelphia, PA

Dawn Davison  
Senior Staff Attorney, Virginia Capital Representation Resource Center |  
Charlottesville, VA

Rob Lee  
Executive Director, Virginia Capital Representation Resource Center |  
Charlottesville, VA

**2:45 p.m. – 3:00 p.m.**

**Break**

**3:00 p.m. – 4:00 p.m.**

(60 mins. CLE/  
60 mins. Ethics)

**Ableism in Our Practice: Changing the Ways We Talk, Think About, and Work with Clients with Mental Disabilities**

The vast majority of people facing criminalization, including those with capital cases, are deaf or disabled, many in ways that affect their communication, understanding, or thought processes. Many people who have such disabilities do not have accurate diagnoses while entangled in the criminal legal system; whether they do or not, they are vulnerable to a form of structural discrimination called “ableism,” or disability oppression. Attorneys and legal professionals working with these clients (i.e., everyone at this conference) must understand how ableism manifests in the legal system, including in the attorney-client relationship; further, we all need practical strategies to recognize ableism in ourselves and others. To avoid ableism, it is our moral responsibility to honor and respect our clients’ agency and autonomy as much as we can – while also meeting our duty of zealous representation. This practice is not only morally advisable; it is part and parcel with our professional duties to counsel and consult, ensure fair treatment of our clients, avoid harming our clients, maintain a productive client-lawyer relationship, effectively communicate within that relationship, and treat our clients with attention and respect. In this session, we will provide an overview of ableism in the criminal legal system, and then, guided by the Virginia Rules of Professional Conduct, discuss actual and perceived conflicts we may encounter when working with clients with disabilities. As the Rules state in their Preamble, “Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.”

*Speakers:* Lydia X. Z. Brown  
Justice Catalyst Fellow  
Bazelon Center for Mental Health Law | Washington, DC

Meghan Shapiro  
Deputy Capital Defender  
Northern Virginia Office of the Capital Defender | Arlington, VA