



### E4 Defending the Terrorist: A Test of National and Personal Principles

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The goal of this presentation is to inform and sensitize forensic scientists and lawyers to the unique challenges of representing those accused of terrorist acts.

Everyday in the U.S., from small county courts to the highest courts in the land, men and women are charged with offenses against laws which make them hated by most Americans. Murderers, child molesters, rapists, drug dealers and corporate swindlers destroying the futures of thousands of families, all are reviled, but entitled to the fundamental protections of the Constitution and laws. Among other protections, the accused are afforded the fundamental rights to effective assistance of counsel, to confront their accusers and to call for evidence in their favor. Although these criminal defendants may stand accused of vile and reprehensible conduct, few people would object to the application of constitutional protections required by the nation's commitment to the fundamental principles of due process and equal protection of the laws.

But can conduct be so evil that people refuse to extend to the accused the protections of the Constitution to which they have sworn allegiance? Are acts of terrorism against the U.S. and its citizens so vile that adherence to fundamental principles of justice must be relaxed or denied?

To answer these questions, one must consider whether extension of fundamental due process protections is governed by commitment to those who stand accused or commitment to the Constitution itself. Are these defendants protected with the Constitution because they are entitled to the protection or are these protections extended because the Constitution is what the U.S. is about? Consideration must be given to whether the criminal justice system was designed or intended to deal with individuals who are essentially acting pursuant to a declaration of war on the U.S.

Since the tragedy of September 11, 2001, Americans from all walks of life are being compelled to face, in application and as contributors to public opinion, the depth and vitality of commitment to fundamental principles of due process and justice. Ordinary people are being confronted with these issues to an extent not seen since the founding of this nation. Constitutional principles consistent with national interest must be considered. Some critics fear that adherence to these constitutional principles will lead to death and the destruction of this nation. Does the need for security require not only a reduction in civil liberties, but also compromises in or even abolition of customary due process for those accused of terrorist activity?

For those who argue against compromising constitutional principles, advocacy for these principles can be equally unpopular around the water cooler or on CNN. But can this nation be truly persevered if principles are compromised? At issue is the long-term effect of confronting terrorism. In the drive to protect this nation and punish those who act against us, will a weakening commitment to constitutional principles effectively destroy the constitutional fabric of this nation, thereby granting victory to its enemies?

This presentation will address these unique issues and the potential personal and professional costs associated with this advocacy. Topics will include understanding the client, advocating his protection, cultural differences, language differences, personal safety, and securing the cooperation of expert witnesses.

David P. Baugh of Richmond, VA, had the opportunity and challenge of defending a member of al-Qaeda charged in New York with bombing the U.S. Embassy in Kenya. He was able to prevent the imposition of the death penalty for a Saudi man charged and convicted of bombing the U.S. Embassy and killing 214 people, 11 of them Americans, men and women, military and civilian. During the representation he was confronted with the professional and personal task of insuring the application of the principles of the Constitution in the defense of someone who opposes Americans.

**Constitution, Terrorism, Criminal Justice**