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Jimmy Gurule panel discussions at The Role of the Judiciary in Handling Counterterrorism Cases within a Rule of Law Framework Conference in Washington, D.C., November 14-15, 2013

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Criminal Justice Sector and Rule of Law Working Group

Role of the Judiciary in Handling Counterterrorism Cases within a RoL Framework

14-15 November 2013
Washington D.C

Draft Annotated Agenda

Thursday, 14 November

0830-0900 **Registration and Coffee**

0900-0915 **Opening Remarks**

0915-1030 **Session 1: Special Challenges in Judicial Independence in High Profile Terrorism and National Security Cases:**

Issue: Maintaining judicial independence under the intense scrutiny created by these cases-

- Role of neutral + dispassionate arbiter
- Protecting society/people
- Independence from intra-governmental influences/forces
- The court and media

*This session will feature 3 **judges** with 45 minutes of presentation time and 30 minutes left for discussion. The issue here is not just achieving a fair process but ensuring the perception of one. Each of the presenters should identify one issue of relevance from those outlined and offer guidance, perspective and relevant good practices. While the time limit is not set in stone, we would like to leave some time for substantive discussion and input. **A 3 judge panel composed of Judge Wallace, one from a civil law country (TBD) and one from Africa (Kenya?)***

1030-1045 **Coffee Break**

1045-1200

Session 2: Managing a Courtroom while protecting the trial rights of the accused

Sample issues:

- *defendant disrupting the courtroom*
- *using the process to make political statements*
- *concerns about breaks for religious practices*
- *proper clothing and hair*
- *verbal aggression/threats toward judge and courthouse staff*
- *Self-representation.*

Anticipating and addressing issues that prevent an orderly adjudication of cases. A panel of 2 Judges, one from a Common law system and one from a Civil Law system, along with a defense attorney will be asked questions on these and other similar scenarios. The panel members will outline the issues for concern from the perspective of a judge and the defense and based on what the good practices are to address them. Judge Brinkema, if available, would be our choice for this panel.

1200-1230

Session 3: Enhanced court security measures-Supporting a secure environment while protecting the trial rights of the accused

A speaker from the USMS to discuss security precautions that are generally available and what evaluation/assessment process is followed. Interface with Judiciary and balance of open (Edward Templeman) U.S. Courts as part of the presentation)

1230-1315

Session 4: Victim/Witness/Juror Protection Measures: Handling requests to protect victim/witnesses testifying in a courtroom while ensuring the fair trial rights of an accused

There is no proposed panel for this session; it is meant to be an interactive session, with the audience participation facilitated/orchestrated by Judge Duncan. A prosecutor (Al Hamdani) outline issues of concern for the government and the type of measures that he/she would request and the manner in which that would be done. That would be followed by a defense attorney addressing the way in which a defense attorney would respond to the requests made. Role play + tabulations to see whether the audience agrees and disagrees.

1315-1430 Lunch

1430-1630 **Session 5: Handling Classified and/or Intelligence Derived Evidence-**

This session will have a prosecutor (AUSA Gregg Maisel) outline the issues that the government has to address when classified information is involved in a case. A defense (FPD) attorney and 2 Judges (one from Common Law system and one from Civil Law system) will be a part of this panel. A moderator (Judge Laughrey) will outline the pertinent issues from the perspective of a judge for response by the panelists and the good practices developed to address it. The moderator will also try to open up the floor for input from the audience on specific issues that they have dealt with and the good practices that have been developed to in their respective systems.

- *Classified Information Protection Act*
- *Classified information security officers or equivalent*
- *Handling and Storing Classified Information*
- *Sharing Classified Information with Defense Attorneys and/or Criminal Defendants*
- *Protective Orders*
- *Withholding Discovery*
- *Ex Parte Presentations*
- *Limited Presentation at Trial*
- *Use of a summary or substitute information at trial*
- *Access to other requested classified information*

1630-1645 Coffee Break

1615-1730 **Session 6: Handling, Assessing and Ruling on Witness and Evidentiary Issues- International Cooperation in Terrorism Cases:**

Sample issues include:

- *Access to witnesses held in foreign prisons*
- *Access to key witnesses outside the jurisdiction*
- *Evidence that may be located abroad*
- *Witness deposition*

This session will feature a panel of 4 judges from a mix of regions to discuss how these issues are addressed in their respective courts. The issues and best practices may be identified and discussion developed via a moderator (Professor Gurule)

1800-2000 **Reception**

Friday, 15 November

0900-1030 **Session 7: Developing a Court System to Try Special Cases
Timely and Efficiently Within the Rule of Law**

A. Case Management Related to Terrorism Cases

B. Judge Stuart Waldrip- Bulgaria Case Study

*This session will address the issues of case management that judges encounter in terrorism cases. The key theme is developing an efficient, effective system while protecting the rights of an accused to a full, fair and speedy trial. **This session to be developed by Judge Laughrey***

1030-1045 Coffee Break

1045-1245 **Session 8: Case Hypothetical**

We need to identify the moderator and develop a terrorism case scenario that is circulated in advance. Dean Elizabeth Parker and Professor Gurule.

1245-1415 Lunch

14:15-1515 **Session 9: International Frameworks Relevant to
Terrorism (CTED or UNODC)**

1500-1530 Coffee Break

1530-1630 **Session 10: Wrap up discussion and next steps:**

This hour will be spent outlining the issues identified over the course of the two days and the best ways + good practices that have been identified to address the gaps. This discussion will also identify priority issues that might be the basis of a follow up workshop.

- *Compendium of cases + Good practices document*