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# Guidance for International Rule of Law Consultants and Advisors

PROFESSIONAL ARTICLE

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## ABSTRACT

In 1992, the author commenced a second career as a volunteer in the business of advising judicial and justice system leaders in rule-of-law matters on an international scale. At the time, he was employed with the judicial branch of the U. S. Government as a federal trial court administrator. It continued, with occasional full-time assignments, until 2022, a thirty-year odyssey that enabled him to serve on the ground with court, judicial, and justice systems in more than thirty foreign countries. This article summarizes that international experience and various lessons learned over those three decades. Current and future international rule of law advisors and consultants may find a summary of them informative and useful.


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## SECTION I: GETTING INTO THIS BUSINESS

This adventure was spawned when the Administrative Office of the U.S. Courts distributed a memorandum in 1991 to all Article III federal judges alerting them to the Department of State's (DOS) interest in recruiting candidates for brief overseas assignments. DOS was in search of judges willing to travel to the embryonic democracies of Central and Eastern Europe emerging from the political and institutional rubble left by the dramatic implosion of the Soviet Empire. Following nearly five decades of domination by overbearing and largely inept state bureaucracies, resolute peoples of these USSR satellites cast off the authoritarian noose of corrupted political and economic systems anchored in Marxist/Leninist socialism, peacefully in some, violently in others. These U.S. judicial emissaries would meet with groups of their institutional counterparts to discuss their pending transition to the effective rule of law.

My chief judge generously shared his memo with me. Reading it, I reasoned that court systems left in the wake of the revolutions would need assistance with modernizing their administrative frameworks, rewriting their procedural rules, and framing the political infrastructure for transitioning to modern court system governance, management, and administration. Although it was directed to judges, I completed the registration form attached to the memorandum, adding a cover letter arguing that the effort to support court system reforms and modernization required relevant expertise and expressing my willingness to travel to these aspiring democracies to offer guidance and assistance.

Several months later I flew to Washington DC to meet with Mark Ellis, Executive Director of the American Bar Association's nascent Central and East European Law Initiative (ABA-CEELI). He later called to inquire as to my availability to assess the Bulgarian court system. I subsequently flew from Salt Lake City via Chicago to Frankfurt and on to Sofia. Walking into the aging terminal late at night, I passed through a time warp. Fellow passengers busily completed tiny disembarkation forms with instructions in Russian and Bulgarian. I recalled enough from my college Russian studies to complete the form and moved into the line, intimidated by the passport control police in thick green woolen military uniforms, their expressions unfriendly and suspicious. Arriving at my government apparatchik hotel, I was reluctant to surrender my passport. My room was furnished with a square bed, 5x5 some ten inches off the floor. Because the bed was too small for my height, I slept diagonally, head in one corner and feet in the opposite one. At breakfast after a few hours' sleep, I asked for orange juice. "No juis," my surly old server muttered, "Nektar." He brought me a tin of apricot nectar. Like a sludge, it had the thickened consistency of puréed apricots. In 1993, Sofia had western-style hotels, but in those early days, ABA-CEELI's frugal travel allowances dictated one-star hotels for its advisors.

From 1944–1948, Bulgaria endured successive political transformations, coerced by the Red Army and the brutality of Joseph Stalin implementing his radical agrarian reform agenda. Following its neighbors, the small country had evolved into a severe model of a Marxist/Leninist peoples' socialist republic. By early 1990, following the revolution, the National Assembly disempowered the Bulgarian Communist Party (*Българска комунистическа партия*) and spawned a fledgling democratic government grappling with the transition. During my visit, the country was led by Zhelyu Zhelev, a prominent Bulgarian revolutionary, Marxist philosopher, and dissident whom the Party had expelled in 1965. After his expulsion, he endured six years of unemployed "parasitism" that he spent in virtual internal exile in his wife's village, subsisting by taking odd jobs on neighbors' farms.

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After Bulgaria, ABA-CEELI requested that I conduct similar assessments in former republics of then-disintegrating Socialist Federal Republic of Yugoslavia. In 1994, as the brutal war for independence with Serbia continued to rage, I spent three weeks assessing the Croatian judicial system, visiting courts in various cities. While in Osijek, my hotel room's interior walls were scarred with bullet holes. A few months earlier, the dean of the law school, my host during the visit, was driving to work when Serbian militia shot the rear bumper off his subcompact. This fearless man calmly stopped his car, stepped out, collected the bumper from the street, placed it in his trunk, then drove on to his office.

Over the next few years, I traveled to Macedonia, Romania, Hungary, Poland, Serbia, Slovakia, and Azerbaijan for assessment visits ranging from two to three weeks per country. Romania was an experience. After the long trip with several layovers from Salt Lake City, I arrived in Bucharest at midnight where a taxi took me to a hotel I later learned was controlled by the local mafia (*Mafia Românească*). Exhausted, I dropped onto the small, narrow bed maybe a foot above the floor as female screams began permeating an adjacent shared wall, followed by male bellowing. After twenty minutes, I pounded my fist against the wall. Following a short silence, I heard the door to the room next door open followed shortly by vigorous, angry pounding on the entry door to my room, punctuated by gruff male yelling.

In 2001, I traveled to Sveti Stefan as a member of a small Council of Europe team advising the Supreme Court of Montenegro on judicial independence. In 2003, the U.S. Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) asked me to lead an international team for the United Nations Interim Administration in Kosovo (UNMIK) to undertake a technical assessment of the judicial resource requirements essential to conduct the judicial business of the beleaguered, formerly autonomous province of the Yugoslav federation. The project required successive visits. We produced an analytical report of some 300 pages that was translated into several languages and earned us Kosovar presidential pins. Our team also trained local administrative staff how to implement case-weighting in the judicial system.

In 2003, ABA-CEELI extended its mission to the Islamic world, tasking me with assignments in Arab states whose legal and judicial systems were anchored to varying degrees in *Shari'ah* law. Some featured both Islamic and civil law courts working independently, their governments led by royal families in hereditary constitutional monarchies. I started in the Kingdom of Bahrain, an Arabian Gulf Island. In 2004, I journeyed to Amman to assess courts and justice in the Hashemite Kingdom of Jordan. Two years after the disastrous U.S. invasion of Saddam Hussein's Iraq, the United Kingdom's Department for International Development (DIFD) recruited me, an Iraqi law professor, and two U.S. state court judges, Robert Utter and Judith Chirlin, to conduct two-week seminars on judging in a democratic society for three groups of 50 senior Iraqi jurists at Prague's CEELI Institute. Of the numerous nationalities of judges I've trained over 30 years, the Iraqis were extraordinary students—attentive, curious, thoughtful, and highly educated. Most remarkable was their gracious willingness to learn from Americans whose politicians, under deceptive pretenses, ordered the U.S. military to undertake a sustained violent campaign of armed aggression with Western allies that terrorized the country, destroyed the lives of their relatives and friends, and devastated their homeland.

In September 2006, after nearly 30 years, I retired from the U.S. Judicial Branch and, two weeks later, moved to The Hague to serve for six months as interim Chief of Court

Management at the International Criminal Tribunal for the Former Yugoslavia (ICTY). My exposure to the role of international politics in the administration of a United Nations genocide tribunal was eye-opening. Finishing there in early 2007, I moved to Kyiv in Ukraine to join the Millennium Challenge Corporation Threshold Country Program as Deputy Chief of Party for 12 months.

In 2008, I was recruited and employed by the government of Abu Dhabi in the United Arab Emirates. Assigned to the Program Management Office of the Government Restructuring Committee, I spent a year managing the project to reform and modernize the emirate's commercial court system. It was an extraordinary challenge; circa 85 per cent of the commercial court judges in 2008 were expats under contract to the Emirate's judiciary from regional civil law jurisdictions including Jordan, Sudan, Lebanon, Egypt, Morocco, and Kuwait. Each jurisdiction had its own corpus of codified commercial law and procedure, interspersed to varying degrees with *Shari'ah* or Islamic law, in which its judges had been trained to adjudicate commercial disputes. One of our objectives was to ensure that the expat judges understood the developing substantive and procedural law of the relatively young emirate and that they did not export into their adjudication the law and procedure of their countries of origin. Our training curricula emphasized the core elements of commercial law and procedure and how to apply them in the context of evolving Emirati jurisprudence. To assist these expat judges to adopt modern case management practices, I recruited the Chief Judge of London's Commercial Court, a renowned bankruptcy professor from Texas, and National Center for State Courts experts, among others, to travel to Abu Dhabi and conduct case management and other training workshops.

In 2009, I served as the head of the Judicial Modernization Advisory Board and consultant to the King Faud University Planning Team working with the Saudi Arabian Ministry of Justice to develop a strategic plan for King Abdullah's multi-billion-dollar judicial modernization project. That same year, I traveled to Baghdad in the Republic of Iraq to consult with a committee of high-ranking Iraqi judges charged by Chief Justice and Judicial Council Chair Medhat al-Mahmoud with drafting a revised criminal procedure code. At the request of OPDAT that same year, I flew to Tbilisi to assess the readiness of the Georgian judiciary to implement criminal jury trials.

My work also landed me on the African continent, first in Rwanda where, over the course of four visits, I spoke at two International Conferences on Legal Reform and Law Revision and collaborated with the attorney general/justice minister to modernize the country's courts, craft a court system training plan, and draft new criminal procedure laws in the aftermath of the horrific genocide. During one visit, we had the extraordinary privilege of sitting in the grass in a village in rural Rwanda to observe outdoor judicial proceedings of one of the early Gacaca Courts in which village elders, serving as judges, and genocide survivors sit in judgment of their neighbors charged with heinous crimes against humanity. The cultural setting focused more on forgiveness and reconciliation than vengeance and retribution. Other African tours included judicial training of 40 Middle Eastern/Northern African (MENA) judges in Algiers at a week-long seminar sponsored by the Arab Council for Judicial and Legal Studies. In Tunisia, I led an international team sponsored by the International Legal Assistance Consortium (ILAC) and NCSC assessing the country's judicial and court systems and drafted a lengthy report.[1]

1 *Assessment of the Tunisian Court System* is accessible at: https://ilacnet.org/publications/assessment-of-the-tunisian-court-system/ Last accessed on 4 December 2023.

At the behest of the Department of Justice's OPDAT, I also traveled with a small team to Monrovia, capitol of the Republic of Liberia, to assess a justice system devastated by two brutal civil wars that undermined the institutional framework of government and prompted a return among indigenous tribes to barbaric forms of the medieval trial by ordeal. The U.S. Embassy advised that security concerns about traveling in territory under the control of rebel insurgents would limit our team's investigation to the capital city, Monrovia, a restriction I refused to accept because it would handicap the validity of our assessment. After negotiations, the United Nations agreed to transport us via its aging Ukrainian helicopters and bush planes piloted by Russians into cities and towns deep in the bush, and to provide International Police escorts on the ground.

In 2005, I served as a member of a three-person faculty invited to teach at a Supreme Court of China International Judicial Seminar. Held in Chengdu, we taught an audience of some 70 judges from all levels of Chinese courts, gathered from throughout the country, in topics related to judicial system transparency. Our Chinese hosts treated us with extraordinary graciousness and generosity during our week there. Other assignments took me to Southeast Asia. In 2010, the United Nations recruited me to conduct a three-month on-site assessment of court management at the Extraordinary Chambers in the Courts of Cambodia, the U.N. hybrid genocide tribunal located in a military facility outside of Phnom Penh. I traveled to and from the tribunal daily by bus through streets congested by a sea of vehicles and thousands of motorbikes that, for many, serve as the family vehicle.

The tribunal's judges comprised international jurists, vetted by the United Nations from a variety of countries, and domestic jurists drawn from Cambodia's judicial system. Myriad policy, procedural, and administrative concerns were decided by majority vote, and because the latter outnumbered the former, the Cambodian majority's preferences inevitably prevailed. To preclude social unrest, the Cambodian jurists at the behest of the Prime Minister avoided prosecuting myriad former mid-level Khmer Rouge operatives now in key government positions. National political interests frequently catapulted over international law mandates, hindering the tribunal's work. For that and other reasons, including costs, tribunal prosecutors targeted only the most senior Khmer Rouge officials charged with heinous violations of international criminal law and crimes against humanity. Summonses and subpoenas issued by the tribunal and directed at officials who (i) previously served in the genocidal regime, and (ii) had been targeted by tribunal investigators as criminal suspects and witnesses, were routinely ignored without consequence for want of enforcement and sanction protocols.

From 2010 to 2014, I traveled to Jakarta three to four times per year for the Indonesian Changes for Justice Project. My first year entailed assessing and improving the Public Prosecution Service's automated national case administration system. The remaining years I advised Indonesia's Supreme Court on restructuring the administrative bureaucracy responsible for managing the sprawling, far-flung framework of inferior courts whose challenging jurisdiction covers circa 6,000 inhabited islands that comprise the country's vast archipelago. I was able to visit some in *Kalimantan* with local project colleagues. I also had opportunity to work with the leadership of Indonesia's remarkably progressive Religious Courts (*Pengadilan Agama)* that cater primarily to Muslims but temper the traditional impact of Shari'ah law by empowering women to pursue adjudicative relief, such as divorce, independently and without male approval.

In 2017, the Wildlife Conservation Society and the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) requested that I travel to the Socialist Republic of Vietnam and Lao People's Democratic Republic to assess government corruption related to illegal cross-border wildlife trafficking, a thriving global black-market environmental genocide business whose estimated annual illicit cross-border transactions generate an estimated US$10–20 billion in illegal trade receipts. Wildlife trafficking comprises not only endangered exotic birds, reptiles, marine life, and mammals but a range of animal parts and bodily extracts widely reputed as supplements and aphrodisiacs to enhance sexual, mental, and physical prowess. They include rhino horns; tiger skins, bones, teeth, and claws; sun bear bile; and elephant tusks, to name only a few.

Illicit profits in international wildlife smuggling are exceeded only by those derived from global illegal drug and weapons/munitions trafficking. Recent research available online reported that during the five-month period ending in May 2020, researchers tallied 2,000-plus wild animals representing 94 species for sale on Facebook from illicit sellers in neighboring Myanmar alone. Since 2010, poachers are estimated to have slaughtered 18,000 elephants, 111,000 pangolins, and nearly 1,000 rhinoceri, an estimated 75% of which were sourced from African states. My investigation included frank interviews with senior government ministry and bureau officials involved in customs, immigration, prosecution, border patrol, trade policy and enforcement, wildlife management, and forest service. The challenges Vietnam's government confronts in addressing this illegal trafficking range from weak enforcement mechanisms to poor communication and cooperation between responsible government ministries and bureaus, from conviction rates that punish only a small percentage of those apprehended, to endemic corruption and bribery which various officials and agencies of the government condone and facilitate.

In 2018, I traveled to Ukraine again, this time to assess the governance, organizational, and operational elements of the restructured Supreme Court of Cassation. My findings included recommendations that the court commit far less time and energy to adjudicating appeals of routine civil and criminal cases of modest judicial value already scrutinized by the trial-level courts and reviewed by intermediate appellate courts. Instead, I advised the justices to allocate greater time and energy to crafting and finessing the jurisprudential foundations that underlie its final appellate jurisdiction, a critical element in strengthening the rule of law. In January 2019, I returned to Ukraine to assist with planning for inaugurating the new High Anti-Corruption Court (HACC). While in Kyiv, I developed curricula for education and training programs for newly appointed HACC judges and staff; assessed the proposed staffing plan; prepared new position descriptions for proposed specialized IT staff; and advised the new HACC Chief of Staff on administrative and operational matters.

This compilation is not exhaustive. There were other assignments, sometimes repeat visits to the same country, sometimes new countries, that filled my 30-year odyssey. I remain grateful for the numerous funding organizations, primarily governmental, that authorized and financed my global travels, in particular the Departments of State and Justice, the Government of Abu-Dhabi, and the United Nations. Others included the World Bank, KPMG, Deloitte, Booz Allen, Council of Europe, and DFID. I also extend my gratitude to officials at ABA-CEELI and the CEELI Institute for their confidence in dispatching me to diverse, challenging, and personally fulfilling assignments across myriad geographic regions and exotic cultures. I also acknowledge the patience and support of my long-suffering spouse who maintained the home front with our offspring during my frequent absences, some interminably lengthy, and tolerated my commitment of time when home to the drafting of countless assessment reports and recommendations.

## SECTION II: LESSONS I LEARNED WORTH CONVEYING

Reflecting on those years of international adventure, I have extracted the most valuable lessons I learned and offer them below as prospective guidance for aspiring international advisors and consultants in the rule of law. Selectively applied, they may serve to enhance the utility and the impact of their efforts.

### LESSON ONE: THOROUGH PREPARATION IS KEY TO PROJECT SUCCESS

Committing to a new project, I begin preparing as early as possible. I build a basic understanding of the framework of government and the relationships between its various powers. I read a history of the host country. I always examine the latest version of its constitution, paying particular attention to the articles dealing with the judiciary, courts, prosecution, judicial independence, and jurist selection and tenure. I also review the enabling legislation that establishes the authority and jurisdiction of the framework of courts. I check the relevant procedural and substantive civil and criminal codes available in English. The Internet provides extraordinary access to constitutions, codes, specific laws and regulations, judicial selection, country governance, government reports, NGO research, and more, often in English translations.

Careful preparation is mandatory. Savvy local officials typically can gauge your level of preparation and understanding within the first 15 minutes of your first meeting. My rule of thumb is that I will be taken only as seriously by my hosts as I have taken my preparation. Your status and title may be of value in achieving access, but host country officials are hard-working and frequently harried. They prefer working with outsiders who have carefully prepared and crafted intelligent and probing questions to quickly target areas and topics their projects were designed to address. They are more likely to cooperate with you if assured that you appreciate constraints on their availability, care about their country and culture, are not there to boast about your own system, and avoid critiquing their work without understanding the constraints under which they are obliged to operate.

I have accompanied some visiting U.S. judges in meetings who are very well prepared; I have accompanied others whose limited preparation quickly surfaces. As their host-country illiteracy is exposed, their credibility quickly disperses, and it rarely recovers. When I agreed to assess government collusion in illegal wildlife trafficking, I recognized that being perceived as credible by my Vietnamese Communist hosts would entail significant preparation to ensure I was in command of facts, figures, and knowledge of the criminal legal corpus governing wildlife administration. This would include familiarity with relevant agency roles in enforcement, monitoring, investigation, and prosecution. I spent 25 days preparing for the wildlife trafficking project, studying laws, court decisions, NGO reports, INTERPOL investigations, etc. Once on the ground, I asked U.S. embassy staff to set up meetings with senior officials of numerous government ministries and bureaus.

When I encounter difficulty finding key source materials I need to prepare for a particular assignment, I don't hesitate to contact embassy, USAID, or other officials on the ground in the host country in advance and request that they electronically transmit those materials.

## LESSON TWO: BE GRACIOUS AND RESPECTFUL IN INTERACTIONS WITH HOST STAFF AND EDUCATIONAL PROGRAM PARTICIPANTS

As a matter of protocol, it's best to avoid delivering lectures and exhibiting attitudes that may be perceived as patronizing, judgmental, remonstrative, or condescending. If you encounter grossly inefficient practices or procedures, be discrete in your criticisms and always avoid ridicule. Many systems have a longstanding tradition of tasking chief judges with exclusive responsibility for court administration, a function for which some are ill prepared or otherwise overworked; while in office, they may perpetuate archaic and inefficient practices and operations. Addressing them in a diplomatic and helpful manner without condemnation or censure is key. Suggesting alternatives that are relatively straightforward to implement and offer efficiency gains often sparks interest and commitment. Upon entering the public service reception area of a first-instance trial court in Sofia in 1993, I straightway noticed large softcore pornography posters of semi-nude women on the walls. I discretely brought up the matter in a private meeting with the chief judge who was unaware and surprised. On her own, she assured me she would address the issue. The following morning those walls were bare.

The same discretion applies to interactions with invitees in a seminar setting. Our small China seminar instructional team included a U.S. judge with broad experience in the Orient. During his final presentation for reasons I still fail to comprehend, he launched a fusillade of criticisms, reproaching the Chinese judges for ignoring human rights violations, complicity in persecuting the media, and stifling dissent by condoning government brutality. After ten minutes of these gratuitous reprovals, a prominent Chinese judge rose angrily from the audience and interrupted him. He accused the U.S. judge of ignorance of the onerous conditions under which the Chinese judiciary is expected to carry out its work. He cited examples of how western justice systems exploit and mistreat racial minorities, illegal migrants, and the disadvantaged poor, imprisoning them more frequently and for lengthier terms than wealthy litigants. He reproached our judge for hypocrisy and impropriety. His reprimand was embarrassing, humiliating, but, in my judgment, not unwarranted given the generosity, respect, and deference with which our Chinese hosts had treated us. I later privately apologized privately to the offended judge and asked him to convey my regrets to his colleagues.

## LESSON THREE: IF YOUR ACCESS TO SOURCES IS CONSTRAINED, SPEAK UP

Shortly after I agreed to join the Republic of Liberia assessment team, the U.S. Embassy mandated our investigation would be confined to the capital, Monrovia. Roving bands of violent militia and brutal guerillas made traveling in backcountry too dangerous. I objected that such constraints would impede our work and result in an inferior assessment, something with which I refused to be associated. Team members concurred, and the ambassador agreed to explore options. Two weeks later, the United Nations Mission in Liberia (UNMIL) offered to shuttle us to five cities, one coastal and four deep in the bush. We would board aging U.N. helicopters provided by Ukraine and piloted by Russian crews. Armed U.N. International Police would accompany us while on the ground; driving through one remote primitive village, we noticed Osama bin Laden t-shirts on sale.

Once in the backcountry, we toured bombed-out police stations and jails, inspected burned and pillaged courthouses, met juvenile jail detainees confined

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under frighteningly subhuman conditions, and discussed working conditions with beleaguered judges and administrators in courts without furniture, typewriters, file folders, fuel for court motor bikes, or paper. Court and prosecution field personnel had not been paid their meager salaries for two years, compelling them to survive on the fees they collected from local subsistence farmers and impoverished tribes. Even in the capital Monrovia, the destructive impact of the civil wars was significant. The Supreme Court's Palace of Justice had been ransacked, its copper wiring, bathroom sinks and toilets looted, leaving it without electrical power and running water, requiring the justices to climb multiple flights of stairs to their chambers on the top floor every morning. Staff would struggle to carry buckets of water from a nearby well into the structure and up those same stairs. We secured an official meeting with Charles Gyude Bryant, Chairman of the Transitional Government, in his lavish office who after our discussions, graciously invited us to his private residence later that afternoon for *hors-d'œuvres,* drinks and further discussion on the country's trials and tribulations. The U.S. Ambassador, whom we promptly notified, joined us.

In some countries I visited, court officials balked at requests for what they considered confidential information. My response was to courteously appeal their decision to the respective chief judges who, on most occasions, were persuaded and directed access be provided. Occasional requests to discuss the resolution of highly sensitive matters in confidence and to exclude them from our formal project report were always honored.

## LESSON FOUR: WHEN TRAVELING TO AN UNFAMILIAR CULTURE, INFORM YOURSELF

I always read a country history in advance to learn about the people, their religions, their government, their languages, and their political leadership. When dealing with skeptical or suspicious host officials, for example the holdover Communists administering Bulgaria's courts, I often divert discussions of substantive matters and first inquire about the host country's history, culture, religion, national heroes, etc., building rapport and trust before turning to project substance.

In Abu Dhabi, one of my senior team members was a very reserved Lebanese lawyer and former judge. Friendship overtures were quietly ignored. I knew most Lebanese were either Muslim or Christian, but that around 5% belonged to a unique faith known as the Druze, an Abrahamic monotheistic religion whose rich and inimitable theology has its sources in Gnosticism, Zoroastrianism, Buddhism, Hinduism, Pythagoreanism, and Christianity. When it occurred to me to inquire whether he had any Druze friends, he expressed pleasant surprise. Warming up to me, he explained that he was Druze and asked how I knew of the religion, having long assumed that Americans are predominantly Christians and uninterested in other religions. Among other unusual practices, he explained that it is impossible to convert to the Druze religion. The only avenue to membership is to be the offspring of an existing member. We became good friends and occasionally met for dinner after work and once at his home with his wife, a Lebanese judge, during my year in the emirate.

## LESSON FIVE: WHEN APPROPRIATE, SHARE RELEVANT PERSONAL INFORMATION

As noted earlier, a particularly challenging project was to deliver a rigorous two-week training curriculum in 2004 for several groups of 50 senior Iraqi judges at the CEELI Institute in Prague on the topic of judging in a democratic society. Each of the four

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instructors was assigned a group of 12–13 judges to shepherd throughout the two weeks. Roughly a year earlier, the U.S. military invaded the Republic of Iraq, and the misinformed and ruinous destruction of the Iraqi nation and population was still raging in 2004. During my first meeting with my small group, I sensed suspicion and mistrust, creating a very poor learning environment.

After lunch and consulting with my Iraqi interpreter who had lived in Prague for many years, I broke with protocol, confided my opposition to the U.S.-led invasion, and apologized to my group for the horrific suffering our military forces were inflicting on the Iraqi people and nation. I then asked each to express in turn how the invasion was adversely affecting them and their families. Each cited the loss of extended family and friends and the attendant anguish. When they finished, the mistrustful mood in our classroom had fundamentally changed. Over the next two weeks we became friends; several presented me their personal Islamic prayer beads, and a senior cassation court judge gave me a bound copy in Arabic of his Ph.D. dissertation. As word of our discussion circulated, judges in other groups asked to be reassigned to mine. Confiding my personal sentiments and regrets, and encouraging them to do the same, made all the difference. I remain in contact with one, a senior Iraqi Cassation Court (*Mah. kamat al-Tamyīz*) justice, now retired.

Consultants who discern commonalities between themselves and their hosts should consider sharing them as opportunities to deconstruct social and cultural barriers and to facilitate understanding. When discussing court operations, for example, I have learned that my hosts appreciate my exchanging accounts of how I dealt with unexpected or challenging situations and the mistakes I made; doing so often makes it easier for them to share their own court-related quandaries. Where there are significant discrepancies between relative levels of justice/court system resources and development between the consultant's and the host's countries, I avoid boasting or gloating. The preferred approach is to briefly summarize, then elaborate if the hosts express interest.

## LESSON SIX: EXTOL INSTITUTIONAL INDEPENDENCE BUT STRESS ENFORCEABLE ACCOUNTABILITY

In my earliest overseas projects, I engaged judges and justice ministry officials in discussions on judicial independence. Where the host country's governance framework delegated to the justice ministry responsibility for overseeing the operations and handling the administration of the judicial system, I raised questions about the myriad ways in which senior ministry bureaucrats sworn to execute the policies and priorities of the executive power of government could exert their political power to coerce or influence judicial decision-making. I would argue that the independence of judicial power was more likely to be preserved and uncorrupted in a government in which administration of the judicial power of government, including independent budget authority, was vested in the judiciary itself without second-guessing by justice ministry overseers. In Poland, a deputy minister of justice with a Ph.D. in political theory charged me with being a hopeless disciple of Baron de Montesquieu. In Hungary, the justice minister asked playfully whether he should leave the room during my discussion with the judicial council.

I have continued to argue the superiority of the separation of powers doctrine in which each power (i) administers itself and operates independently of the others but (ii) exercises limited jurisdiction and authority over the others in a manner that ensures a regimen of checks and balances against excesses, aberrations, and government overreach. However, having encountered in my consulting work judicial systems that have attained institutional independence but continue to struggle with internal judicial corruption, my position has evolved to advocate for institutional independence only when anchored with rigorous, built-in accountability, rigorous enforcement, and robust sanction mechanisms. The sacred mantle of judicial authority is a sufficient incentive for many jurists to resist the enticement of opting for corrupt practices. However, the duration of lengthy careers, comparatively modest salaries, the intrinsic frailty of human beings, the residual predisposition of political and judicial power to be corrupted, and the human inclination to deteriorate into groupthink call for establishing enforceable institutional disincentives anchored in an ambiance of accountability. Where institutions are expected to police themselves, inevitably there will be those, including judges, who will seek to thwart and undermine.

In a judicial setting, such disincentives serve to prejudice most judges against engaging in professional misbehavior, such as abuse of power and corruption. Almost all self-respecting judicial systems implement codes of conduct that specify desirable professional judicial behavior and interaction. Such codes generally fall into one of two categories: aspirational ethics codes and disciplinary conduct codes. Aspirational ethics codes encourage model behaviors that invoke the high standards, values, and virtues of the judicial profession, to which those covered by it are encouraged to aspire as a matter of personal motivation. Aspirational codes include no enforcement provisions or sanctions. Disciplinary conduct codes, by contrast, proscribe certain categories of behavior and interaction, and they include enforcement provisions with sanctions for their violation to ensure accountability. Some codes combine aspects of both.

When assessing judicial systems, my reviews typically include the codes that address judicial behavior. Many are aspirational in character and lack specific enforcement and accountability provisions. In those cases, my recommendation is that the host country's judicial council or equivalent consider reviewing the existing code and amending it to include (i) enforcement provisions that emphasize accountability, (ii) a process for reviewing allegations of violations that respects the rights of, and allows for the presentation of a defense by the accused, (iii) recurring judicial ethics and conduct training for all judges, and (iv) staged accountability sanctions that respond to the relative gravity of the violations.

Much of my international work has been in developing countries, sometimes in tandem with young and inexperienced consultants who assume that justice institutions in less prosperous developing states are characteristically backward and unsophisticated. My experience has been that even in the most highly developed countries, one can identify examples of institutional failure. In the U.S. Judicial Branch, the Code of Conduct for United States Judges[2] applies to all judicial officers of the lower federal trial and intermediate appellate courts and to administrative forums appointed under the authority of Articles I and III of the U.S. Constitution; it does not apply to supreme court jurists.[3] The code includes provisions for invoking reviews of

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2 The current version of the code (12 March 2019) is accessible at: https://www.uscourts.gov/sites/default/files/code_of_conduct_for_united_states_judges_effective_march_12_2019.pdf Accessed on 4 December 2023.

3 The Constitution of the United States is accessible at: https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm Accessed on 4 December 2023.

alleged code violations by circuit-based judicial councils and for imposing disciplinary action where it is deemed appropriate. It is a model code in many respects, and I have shared it with judicial leaders in myriad rule of law projects throughout the world.

Historically, the chief and associate justices of the U.S. Supreme Court have not been subject to a formal ethics or conduct code that applies only to them. They are subject, however, to the disqualification statute to which all federal judges are subject.[4] They also are subject to two federal statutes that apply to U.S. government officials, including justices and judges: the 1978 Ethics in Government Act – 5 U.S. Code § 13104 – Contents of reports requires annual reporting of specified categories of gifts;[5] **and** the 1989 Ethics Reform Act – 5 U.S. Code § 7353 – Gifts to Federal employees.[6]

Recent revelations of serious violations of intuitively obvious canons of judicial conduct by two current associate U.S. Supreme Court justices have raised concern nationally among professional bar and judges' associations, legal academic experts, and the public. One justice accepted a fully funded luxury fishing vacation in 2008, that included travel by a privately owned jet to Alaska and accommodation at an exclusive private lodge.[7] All expenses were financed by a wealthy businessman some of whose holdings were involved in litigation in multiple cases on the Supreme Court docket from which the angler justice failed to recuse himself.

The more egregious example involves a senior associate justice who, during his three decades of service on the Supreme Court, is known to date to have willingly accepted from wealthy billionaire acquaintances 38 gratuitous luxury vacations, VIP passes to sports events, related transportation on private jets and helicopters, a loan of nearly US$ 270,000 for the purchase of a luxury motor home, most if not all of which was apparently forgiven, and other gestures of largesse.[8] He recused himself from cases involving his son but no other Supreme Court cases, including those involving his wife who actively conspired with others to overturn the results of the 2020 U.S. presidential election.[9]

In 2000, prior to his decades-long sequence of accepting lavish gifting, he quietly complained to at least one member of the U.S. Congress about his official compensation, warning that if no meaningful increase were soon forthcoming, "one or more justices" were likely to resign from the court, triggering a flurry of concerned

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4 See 28 U.S. Code § 455 – Disqualification of Justice, Judge, or Magistrate Judge. Text accessible at https://www.law.cornell.edu/uscode/text/28/455 Accessed on 4 July 2024.

5 Text accessible at https://www.law.cornell.edu/uscode/text/5/13104 Accessed on 4 July 2024.

6 Text accessible at https://www.law.cornell.edu/uscode/text/5/7353#b Accessed on 4 July 2024.

7 See Kaplan, Joshua; Elliott, Justin; and Mierjeski, Alex. "Justice Samuel Alito Took Luxury Fishing Vacation With GOP Billionaire Who Later Had Cases Before the Court". *ProPublica Investigative Journalism in the Public Interest*, 20 June 2023. Accessible at https://www.propublica.org/article/samuel-alito-luxury-fishing-trip-paul-singer-scotus-supreme-court Accessed on 4 December 2023.

8 See Kaplan, Joshua; Elliott, Justin; and Mierjeski, Alex. "Clarence Thomas and the Billionaire". *ProPublica Investigative Journalism in the Public Interest*, 27 April 2023. Accessible at https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow Accessed on 4 December 2023.

9 See Blumenthal, Paul, "HuffPost: Clarence Thomas has Recused Himself from Cases Involving his Son — But Not His Wife", 29 March 2022. Article accessible at https://www.huffpost.com/entry/clarence-thomas-recuse-jan-6_n_6243372ee4b03516d4288d1a Accessed on 3 July 2024.

enquiries from various congressional officials and lobbyists. He also suggested that the existing prohibition on justices being paid for speeches be lifted.[10] Both initiatives failed to pass moral and political muster with U.S. Judicial Conference leaders.

The first associate justice noted above did not comply with mandatory disclosure requirements reporting the value of these sundry gifts until very recently, and then incompletely.[11] The second initially complied by reporting some early gifts but failed to disclose as required most of his subsequent paid luxury vacations and other significant financial gifts. Although both asserted ignorance of the mandatory reporting requirements and the impropriety of accepting such gifts, both had previously served as circuit judges on federal courts of appeals, one for 16 years and the other for 19 months. During their orientation to service on those intermediate appeals courts, both received written materials, routine formal briefings, and instruction on the Code of Conduct for United States Judges and their obligations under it. Neither of the justices expressed any regret. In both instances, these associate justices appear to have lost touch with their official status as civil servants and succumbed to the fiction that as Supreme Court appointees, their entitlements included admission to an exclusive patrician-underwritten, politically conservative aristocracy to which federal judiciary conduct constraints and ethical canons did not apply.

Accounts of these ethical lapses by jurists of the highest court of final appeal of the U.S. government researched by a reputable investigative organization, confirmed by others, and reported on social media spawned intense public outrage. They also generated demands that the Supreme Court adopt an enforceable disciplinary code of conduct for its justices similar to that governing all other federal judges appointed under Articles I and III of the U.S. Constitution and, for that matter, judges in numerous other countries, including supreme courts, courts of final cassation and constitutional courts. For years, the U.S. Supreme Court had balked at imposing a code of conduct for itself, but the recent combination of public indignation, dramatic loss of public confidence in the court's integrity and independence, and warnings from the U.S. Senate that it would impose a code finally prompted the chief justice to act. Finally, on 13 November 2023, almost under protest, the Supreme Court promulgated a code of conduct, the first in its 234-year history.[12]

Release of the long-anticipated code generated a new groundswell of critical reaction and disappointment from lower court federal judges, the practicing bar, law professors, and the public. Politically conservative advocacy groups, by contrast, praised the court. Across the board, however, most commenting legal and ethics experts criticized the

10 See Kaplan, Joshua; Elliott, Justin; Mierjeski, Alex; and Murphy, Brett. "A 'Delicate Matter': Clarence Thomas' Private Complaints About Money Sparked Fears He Would Resign. *ProPublica Investigative Journalism in the Public Interest*, 18 December 2023. Accessible at https://www.propublica.org/article/clarence-thomas-money-complaints-sparked-resignation-fears-scotus Accessed on 18 December 2023.

11 See VanSickle, Abbie, "Clarence Thomas, in Financial Disclosure, Acknowledges 2019 Trips Paid by Harlan Crow", *The New York Times*, 7 June 2024. Accessible at https://www.nytimes.com/2024/06/07/us/supreme-court-disclosures-gifts.html Accessed on 4 July 2024. See also, Weiss, Benjamin, "Justice Thomas failed to report additional private jet trips on financial disclosure docs, Senate Judiciary says", *Courthouse News Service*, 13 June 2024. Accessible at https://www.courthousenews.com/justice-thomas-failed-to-report-additional-private-jet-trips-on-financial-disclosure-docs-senate-judiciary-says/ Accessed on 24 June 2024.

12 See the text of the new Supreme Court Code of Conduct for Justices of the Supreme Court of the United States. Accessible at https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf Accessed on 5 December 2023.

code's weak aspirational format: (i) the glaring absence of accountability provisions, (ii) the loopholes that leave unaddressed the gross misconduct categories that triggered the stunning loss of public and professional respect and esteem for the court; (iii) the absence of any mandate for recurring ethics training for the justices although, astonishingly, it imposes mandatory Court-delivered training on judicial ethics principles on court support staff as if billionaires were contending for their attention by bestowing lavish vacations and gifts;[13] (iv) the gaping absence of any enforcement provisions or imposable sanctions for misconduct; and (v) the failure to specify what comprises conflicts of interest and the explicit conditions under which justices are obligated to recuse themselves from cases based on those conflicts. Some critics went further, dismissing the new code as a political document purposed to (i) deter the U.S. Senate from imposing its own code on the court, and (ii) to placate the adverse political firestorm of criticism that revelations of the gross violations and the justices' insolent responses had ignited.

Widespread concerns about the code's deficiencies prompted dismissive comments by the two justices who generated the initial controversies. More meaningful responses from the court did not emerge until ten months later when Associate Justice Elena Kagan, dean emerita of Harvard Law School, attended the Judicial Conference of the U.S. Ninth Circuit Court of Appeals in Sacramento as the designated circuit justice. Referencing the new code in her remarks to the conference on Thursday, 25 July 2024, she noted that:

> Rules usually have enforcement mechanisms attached to them, and this one, this set of rules does not. … However hard it is, we could and should try to figure out some mechanism for doing this. I have a lot of trust and faith in the chief justice. You know, if the chief justice appointed some sort of committee of, you know, highly respected judges with a great deal of experience, with a reputation for fairness, you know, that seems like a good solution to me.[14]

Justice Kagan went on to note that her comments reflected her opinion. Whether the chief justice will follow up remains unclear. Her suggestion that the appointment of a committee of experienced judges with a well-established record of fairness, presumably selected from among lower court Article III judges, was similar to enforcement mechanisms proposed by academics and prominent lawyers.[15]

Several weeks later, on 1 September, her colleague, Justice Ketanji Brown Jackson, in a nationally televised interview on the CBS Sunday Morning show, acknowledged that as a circuit judge on the D.C. Court of Appeals prior to her appointment to the Supreme Court, she was subject to the enforceable code of conduct that governs the conduct of all inferior Article III federal judges. "Is the Supreme Court any different,"

13 See page 13 under the Commentary annexed to the Code: "The Court provides mandatory training on judicial ethics principles to all Court employees."

14 Cole, Devan. CNN, 25 July 2024. Accessible at https://www.cnn.com/2024/07/25/politics/kagan-supreme-court-ethics-sacramento-conference/index.html#:~:text=Kagan%20on%20Thursday%20called%20criticism,code%20of%20conduct%20…%20against%20judges Accessed on 26 July 2024.

15 For a helpful summary, see Weiss, Debra Cassens, "Can the Supreme Court rely on an 'honor system' for ethics? These 3 proposals go further" *ABA Journal*, November 16, 2023. Accessible at https://www.abajournal.com/web/article/can-the-supreme-court-rely-on-an-honor-system-for-ethics-not-according-to-these-proposals Accessed on 26 July 2024.

she asked, then responded, "And I guess I have not seen a persuasive reason as to why the court is different than the other courts." When queried about an enforcement mechanism for the Supreme Court's ethics code, she responded "I am considering supporting it as a general matter. … From my perspective, I don't have any problem with an enforceable code."[16]

My experience prompts me to advise rule of law consultants to refrain from endorsing or recommending institutional independence where the underlying provisions do not include enforceable restrictions on judicial conduct and attendant sanctions on their violation. Personal accountability is a key element in keeping at bay myriad temptations to engage in improprieties that spawn judicial corruption, regardless of the institutional sophistication and prominence of a court or its individual jurists. In one notorious instance, the chief judge of a prominent U.S. federal court of appeals was reported to be obsessed with pornography, made no secret of it, and was accused of sexually and otherwise harassing professional court staff assigned to work with him.[17] I advise judicial governance officials as follows: Trust judges to do the right thing but incentivize compliance by (i) specifying high standards of honorable conduct, (ii) incorporating provisions that enforce behaviors and interactions that conform to those standards, (iii) detailing what accountability sanctions are triggered when formal procedures confirm that culpable violations of those standards have occurred, and (iv) following through.

## LESSON SEVEN: ENSURE THAT HOST COUNTRY OFFICIALS FULLY UNDERSTAND AND COMMIT TO IMPLEMENT RECOMMENDATIONS THAT ENTAIL RECURRING RESOURCE REQUIREMENTS

The enthusiasm with which many international rule of law consultants approach their assignments is an important catalyst for successful projects. In compiling their analyses, however, they occasionally recommend endeavors that encumber robust resource commitments that either exceed host country officials' fiscal capacity, fail to secure their buy-in, or conflict with already established priorities to which available resources have been committed. Perhaps the best examples relate to IT projects. Sophisticated court technology applications developed in the past four decades have transformed how progressive court systems manage their business, ranging from electronic case files and e-filing to automated civil and criminal case research databases, from virtual court proceedings to online dispute resolution.

Most international rule of law consultants are conversant to varying degrees with these applications and the efficiencies they offer. When assigned to projects in developing countries whose justice and court systems operate relying on more traditional paper-based records and case-processing models, their enthusiasm may prompt them to advocate transitioning to electronic systems to take advantage of the efficiencies they offer. Often, however, they are unfamiliar with the complex technical staging processes, attendant infrastructure investment, fiscal constraints of the host judiciary, and training requirements that successful transitions entail. They typically begin by persuading local officials of conversion benefits and proposing the designation of a

16 Interview summary accessible at https://www.cbsnews.com/news/ketanji-brown-jackson-supreme-court-ethics-code/ Accessed on 18 September 2024.

17 See summary accessible at https://en.wikipedia.org/wiki/Alex_Kozinski Accessed on 18 December 2023.

small number of pilot courts whose transition costs, including acquiring IT expertise, will be covered by the project funding budget. Such pilot court efforts often succeed, although they typically surpass their planned budgets.

Serious difficulties frequently emerge as the pilot court effort concludes and work commences on staged implementation throughout the entire court system, entailing much greater reliance on local expertise to modify and finesse the pilot court software, procure hardware, initiate contract services for internet access and wi-fi networks, determine whether existing power capacity in existing courthouses is sufficient to accommodate the hardware, orient and train judges and staff in multiple locations, and vet and hire qualified IT personnel to manage the systems. It is during this staged implementation period that such projects frequently stall and subsequently risk failing.

Court improvement projects often expire during the extended staged-implementation phase: funding is exhausted; users revolt for lack of adequate training and support; project staff depart for other assignments, and primary responsibility for managing implementation shifts fully to the host country's central court system administrative headquarters, often the justice ministry. Moreover, all projects must contend with host-country resistance and nay-sayers determined to ensure project failure. Because justice and court systems in developing countries are often significantly underfunded and because in-house IT expertise is often superficial, implementation efforts stall. As available resources are consumed, staged implementation efforts are postponed, system opponents flex their muscle, and court operations revert to traditional paper-based manual procedures and practices.

Successful implementation of IT projects in developing countries depends foremost on (i) negotiating long-term project support and funding commitments with host country central system administrators and the judicial council or its equivalent; (ii) placing sufficient competent IT professional staff positions both to direct the implementation effort and to provide ongoing system training, support, troubleshooting and maintenance;[18] (iii) ensuring projects are undertaken with time frames of sufficient duration to assure project support for several stages of the post-pilot-court implementation effort, (iv) keeping affected staff informed and addressing their concerns promptly even if they seem irrational, and (iv) setting in motion during the pilot court conversion stage a plan that provides for sequential handover of project control, funding, and management responsibilities from project staff to the local court/justice system. Doing so will help to ensure that as the project's scheduled expiration approaches, primary responsibility for the automation effort will have been successfully migrated to the host country.

## LESSON EIGHT: EXPAND AND GET TO KNOW YOUR ONSITE STAKEHOLDER NETWORK

As a novice advisor in the early 1990s, I confined my interviews largely to trial court judges and staff selected by my hosts. Concerned I wasn't getting the full picture, I began to request interviews in the broader stakeholder network: experienced prosecutors, justice ministry officials overseeing courts, defense counsel, bar association leaders, and private attorneys. When I met with defense counsel in Jordan,

18 Medium and large courts will require a minimum of at least one permanent and full-time IT administrator. Pairs of smaller geographically contiguous courts may be able to share one professional.

they confided that judges and prosecutors from Amman routinely rode together to court sessions in other cities for trips as long as four hours, lodged in the same hotel, shared meals, walked or rode together to the courthouse, etc. Relations with defense counsel, by contrast, were largely restricted to formal court proceedings, a strategic disadvantage and a serious problem I brought to the attention of the justice minister.

When conducting an assessment in Serbia, I met with members of the High Court Council (HCC) who complained about the National Assembly for habitually reducing the judiciary's annual budget requests. Curious, I arranged to meet with the leadership of the Assembly's Judicial Oversight Committee. In a cordial meeting, the chairman informed me that the HCC habitually submitted its requirements in writing and never requested face-to-face follow-up meetings to answer questions, discuss needs, or negotiate funding requirements. He indicated his committee would welcome such meetings to better inform its deliberations and better understand the judiciary's special needs. When I informed the HCC, its members were surprised. It had not occurred to them to request such meetings, and they committed to follow through during the upcoming budget cycle.

It has long been a cardinal rule of mine to include as many stakeholders as possible in my fact-finding. When I conducted a readiness assessment of the Georgian trial courts to implement criminal jury trials, I met with representatives from the:

- Central Election Commission of Georgia
- Georgia's court marshals
- TNT commercial mailing and courier service[19]
- Georgian Supreme Court
- High Council of Justice
- Georgian trial courts
- Georgian General Prosecutor's Office
- High School of Justice
- Legal Assistance Service and Criminal Defense Bar Association
- Georgian Young Lawyers Association
- Law school faculty conducting mock jury trials
- United Nations Development Program
- U.S. Embassy OPDAT and INL staff
- Local American Bar Association Rule of Law International leaders (ABA-ROLI)
- Ministry of Probation, Corrections and Legal Assistance (MPCLA)
- Norwegian Mission of Rule of Law Advisors to Georgia (NORLAG)
- German Foreign Service Development Agency (GTZ), and
- European Union representatives.

With each successive interview, I built on what I had learned in earlier meetings. When I finished the cycle, I was able to draft a relatively comprehensive report that identified what the Georgian judiciary had already undertaken to prepare for the transition to an effective criminal jury trial system and what further preparations were necessary to increase the likelihood of its success.

19 TNT has demonstrated that its mailing services are more efficient, achieve higher rates of successful, on-time delivery, are less expensive, and in general offer service that is markedly superior to that provided by the state-run postal service.

## LESSON NINE: DON'T BE DISCOURAGED IF YOUR HOSTS APPEAR UNRECEPTIVE

As I approach the end of a project, I often meet with my hosts in a final session to preview my findings. On rare occasions, they may evince little excitement or resolve, particularly in countries that may already have hosted several projects with significant time invested that achieved only modest results. There have, however, been instances in my work when, many months or even years later, I receive word that a proposal or recommendation I made was successfully implemented and had a major impact. My concluding interview during the Croatia assessment was with Cassation Court Chairman Milan Vuković, a distinguished and honored jurist who served earlier on the Constitutional Court, was a member of the League of Communists of Yugoslavia and the Constituent Assembly that drafted Croatia's 1990 Constitution.

As I concluded my briefing, I noted that numerous judges I interviewed had expressed a sense of professional isolation and craved more frequent interaction with their colleagues to exchange ideas and discuss issues relating to both the substantive and procedural aspects of civil, commercial, and criminal adjudication. I explained how state and federal judges in the U.S. convene regionally in circuit judicial conferences and have opportunity to attend continuing judicial education programs in which they mix with colleagues from other districts and circuits. Given Croatia's size, roughly one quarter the square kilometers of the U.K., he might consider organizing an annual judicial conference to which all Croatian judges would be invited for several days of instruction, discussions, small-group workshops, etc. Doing so would go far toward responding to the judges' needs for more collegial interaction. It also would help to unify and strengthen the Croatian judiciary as an institution.

He listened to me and nodded in agreement, but it was clear that he had something else on his mind. When I finished, he rose, went to a closet in his spacious chamber, retrieved a document box, then seated himself next to me. For the next 20 minutes, he explained the origins and status of Croatia's ongoing war for independence from the rump of the Yugoslav federation. The box in his lap was filled with explicit photos of Croatian soldiers and civilians who had been mutilated and killed by troops of the Yugoslav National Army and Serbian insurgent militias.[20] After this very sobering review of mass atrocity crimes, he concluded our meeting.

Several years later while at work in my U.S. court office, my assistant brought in my daily mail. Among the contents I found an official envelope from the Croatian Supreme Court. I was surprised and pleased that it contained a letter from Chief Justice Vuković in which he advised me that the Croatian judiciary had recently concluded its first national judicial conference. Nearly every judge in the country attended as did representatives from the ministry of justice, other ministries, and Croatia's national assembly. The agenda included ample time for judges to interact. The conference was favorably received by all attendees, and the Chief Justice planned to institute it as an annual event.

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20 Time constraints and courtesy protocol precluded my raising the atrocities committed by the *Ustaša* puppet government of Croatian fascist Ante Pavelić backed by Hitler's *Wehrmacht* in World War II (WW II). During the Yugoslav civil war, largely concurrent with WW II, tens of thousands of Croatian Serbs were rendered homeless, corralled into brutal concentration camps where they were tortured and murdered, deported into Serbia and from there to Nazi forced labor camps throughout German controlled territory, or forced to abandon their Serbian Orthodox Church and be baptized into the Roman Catholic Church's Croatian Archdiocese based in Zagreb. The primary civil war factions, Tito's Partisans and Mihailović's Yugoslav Army Chetniks, also engaged in atrocities but on a lesser scale in the context of war.

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## LESSON TEN: LEARN TO TAKE THE UNEXPECTED AND UNUSUAL IN STRIDE

Occasionally during travel to assignments in developing countries, I encountered unanticipated circumstances or conditions. On my way to Rwanda in July 2002, my itinerary called for me to fly from Salt Lake City to Atlanta, from Atlanta to Brussels with a five-hour early morning layover in a largely vacant airport, then another eight and on-half hours from Brussels to Kigali with a brief stop in Bujumbura, Burundi, an exhausting schedule. As the Sabina captain eased the aircraft into position for landing in Kigali in the early evening, I watched the setting sun burnish the lush Rwandan jungle with golden hues, relieved that the long trip was over. Just as the plane was ready to touch down, it suddenly lurched upward. The captain accelerated into a steep climb, then circled the airport at several thousand feet. Fifteen minutes later, he positioned the aircraft for the landing approach. Again, as the plane was about to touch down, we suddenly lurched upward again, this time circling in wide loops for 25 minutes in the fading light. On the third approach, the aircraft touched down and taxied to its parking space on the tarmac as the captain explained that, after clearing us to land, airport flight control had noticed a kine of cows crossing the runway. Chased away by ground personnel after the first incident, the cows had turned back onto the runway.

Several years later, I worked with the executive director (ED) of the CEELI Institute in Prague, and a small team to organize a training session for judges and legislators from Eastern European and Central Asian states at the CEELI Institute. By this time, the Institute had completed restoring Villa Grébovka, the Institute's Prague mansion and training center, to its prewar architectural splendor, but contractors had not yet added the guest rooms or kitchen. We arranged with New York University to lease lodging rooms for the participants in its nearby Machova Residence Hall, a non-alcoholic facility with suites and shared bathrooms designed to accommodate U.S. students enrolled in its Academic Center's summer programs.

On the third day of our seminar, several of the female judges housed at Machova complained to the ED that earlier that morning, the bathroom they shared was invaded by several local Czech-speaking women not among the seminar participants. The judges suspected they were sex workers who had spent the night with several male judges from one of the Central Asian "stans." The distraught ED convened our small faculty group to discuss how to handle this delicate issue. At our suggestion, he approached the three judges in private. Indignant, they confirmed that they had solicited female companionship and invited the consorts to spend the night in their NYU suite. The ED advised them that doing so was in violation both of CEELI Institute policy and NYU Prague housing regulations. He warned that if they did so again, they would be sent home and forfeit per diem. With several days left to go and unwilling to forfeit the overnight companionship of Prague's courtesans, they checked out of Machova and into a nearby hotel with the understanding that they would (i) bear all hotel lodging charges, and (ii) attend the remaining days of the seminar else forfeit their per diem.

This latter incident was the first and last of its sort I encountered in 30-years. In nearly all my professional encounters with foreign judicial and court officials, I found them with few exceptions to be honorable and committed women and men.

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The author has no competing interests to declare.

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