

Training Court Personnel Overseas

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Standing inside the Pokrovsky Monastery in Suzdal, Russia, in the middle of January and listening to a Russian tour guide explain the history of the Russian Orthodox monastery is a challenge. Suzdal is 230 kilometers east of Moscow and is near Vladimir, home of the czars. Part of you is intrigued to learn that the monastery, founded in 1364, is where the czars virtually imprisoned their wives once they got tired of them and/or had developed an interest in a future Mrs. Czar. Another part of you is concentrating on the frostbite increasingly nibbling at your toes.

But when the guide explains that to pay for the still-functioning monastery, it was converted into a hotel, you can't resist such a set-up. "Given its history as a refuge for unwanted wives," you ask the tour guide, "what is the name of the hotel? The 'un-Marriott'?"

Although the quip draws some chuckles from the Americans in your group, you quickly realize that it's not the kind of joke that translates well for the Russians.

The tour of the many ancient churches in Suzdal/Vladimir area was one of the perks of an American program to help the judicial systems in former communist nations ramp up fast. Many judges, court administrators and other key judicial experts from the U.S. are being sent overseas to provide training on how courts properly function in a democratic society and why this role is crucial.

And while the host nations are eager to have their American visitors see and learn of the points of interest they are rightly proud of, make no mistake, these are not judicial junkets. The bulk of the time spent is in classrooms where intense discussions with and training for those nation's judicial counterparts take place.

The programs are funded through the U.S. Agency for International Development and administered by such organizations as Chemonics International and DPK Consulting, among others. In the judicial area, the training runs the comprehensive gamut – from court administration techniques to case management to opinion writing, even to the elementary concept of an independent judiciary. After all, these newly emerging democracies are trying to achieve stability in 20 years that we have been fine-tuning for more than 200.

Just how basic and how critical an independent judiciary is in a democracy became shockingly clear to me in 1996 when I was part of an American Bar Association delegation to Sarajevo under the ABA's Central and Eastern European Law Initiative at the tail end of the Bosnian-Serb war to providing training and attend the installation of the new Constitutional Court of Bosnia-Herzegovina.

During one of the sessions, a judge under the former communist system of Tito literally asked the question: "You mean, after we hear the case, we do not call the party chairman to see who should win?"

Having grown up with the understanding and acceptance that our courts exist as a strong check and balance against concentrating too much power within any individual or government unit, it startled me that anyone, much less a judge, should even entertain the prospect of being influenced by anyone or anything outside of the law.

Yet, upon reflection, I began to see that if your entire frame of reference was from a strongly centralized dictatorship, the entire idea of an independent judiciary not only would be alien to your value system, but it would seem wrong.

Today, many jurists in these nations are still wrestling with that fundamental underpinning. I recently attended an address by Senior U.S. District Judge Lloyd D. George in Reno, Nevada, who has been one of America's leaders in helping to train foreign judges, both abroad and in their visits to the U.S. Taking questions after his remarks, he noted that he regularly is asked whether officials from the executive branch or legislators ever try to influence him in any given case. He said they are shocked, even skeptical, when he tells them that never has any member of any other branch of government attempt to talk to him about a case pending before him.

I can relate to that. In my trips to Russia, Macedonia, Argentina and other nations, I have often encountered quizzical looks and seeming disbelief from those who can't envision the kind of freedom we take for granted.

My specialty is helping courts focus on media relations and public outreach and helping journalists better understand how courts function to assist both in achieving the public's public trust and confidence.

As Britain's Chief Justice Gordon Lord Hewart observed in *Rex v. Sussex* (1923), "Justice should not only be done, but should manifestly and undoubtedly be seen to be done." And in this day that requires the media. So as courts in the former totalitarian states wrestle with how to achieve their independence and efficiency under a new structure, they simultaneously have to bring the public at large along to understand and embrace the changes and processes affecting them.

It is not always an easy requirement to accept, especially if one is a judge used to wielding power. In Macedonia earlier this year, in explaining the basics of a news release to publicize some positive newsworthy aspect of the courts work, I was only slightly amused when one judge based his entire news release on how the court was going to haul a newspaper into court to face what amounted to contempt-of-court charges for an article alleging judicial corruption in a recent case.

After the session, my co-teaching colleague there, Ron Keefover, the Judicial Education-Information officer for the state of Kansas, grinned and employed no small amount of understatement in musing, “I’m not sure he got the concept of cultivating a good relationship with the press.”

Fortunately, most of the judges and court administrators do get it – so much so that one of the full-time positions in many courts in Russia is a press secretary. Seemingly, courts in Russia have recognized the need for courts to engage the media through court information officers to a greater extent than courts in the U.S.

True, there is the Conference of Court Public Information Officers (CCPIO) comprised that includes the media liaisons in those courts that have included of those full-time professions in their budgets, but most of these are at the state level. Most individual jurisdictions have no established position to help the courts either respond to negative press when necessary or to affirmatively promote the newsworthy changes occurring in the courts. Some of the CCPIO members also help to train their designated counterparts under the USAID programs.

And, although Russian courts seem to have recognized this vital link more readily, those appointed to such positions are in desperate need of training. It’s not like

the old days there when the press was controlled. Just as the judiciary now wrestles with the adjustments necessary for an independent court system, journalists are flexing their newly freed muscles, often in strident and irresponsible ways. There is a huge learning curve for both.

Therein lies my particular challenge in dealing with the judiciaries in other lands. One constant for both the U.S. and other nations is that a free press, while vital for democracy to flourish, can be a pain in the neck for government and especially for the courts that are used to a relatively high degree of control over the process.

One of the threshold questions in teaching judges and court secretaries or administrators is not how to respond to adverse press coverage, but whether to respond at all. Sometimes a response only repeats and amplifies what originally was a minor issue.

Other times, however, the question is whether to have the presiding judge or the designated court public information officer (press secretary) take on the job. Again, the issue sometimes becomes a matter of ego and control. Yet, even the judges recognize that, depending on the type of press coverage involved, there can be benefits to using a buffer instead of having the judges themselves responding.

As American judges, court administrators, public information officers and other judicial experts lend their hands on any given subject matter, they are careful to avoid the temptation to “Americanize” the court systems in the nations to which they are called. The message essentially is: “Here’s how we do it, and it works for us. You, however, will need to create and adjust the system that will work in your nation, adopting those parts of our system you find beneficial and disregarding those segments you find unhelpful.”

So far, it is fair to say, the educational efforts of American leaders has been effective. The leaders of the former communist nations recognize that if they are to secure the outside investments and have their economies grow, a level playing field must be created for the business community to believe their disputes will be resolved in a fair and impartial process. Moreover, as the citizenry grows in its understanding of its rights and responsibilities under a democratic government, the people increasingly will look to the courts and the media to play their necessary roles in protecting and maintaining those rights.

All of which is not to say the progress will be ever onward and upward. Democracy is a slow and sometimes messy process. The temptation for a powerful executive to achieve efficiency unhampered by an independent judiciary often is great, as many in (and out of) Russia now fear in President Vladimir Putin's recent moves to exert increased control over the judiciary.

Nevertheless, the march toward establishing just and competent court systems throughout the world continues, and American judicial leaders are in the forefront.

--Gary A. Hengstler