



Posted on: Monday, May 2, 2005

COMMENTARY

Emerging democracies get help from Isles

By Evelyn Lance

It is ironic that, at a time when our legal system is criticized by our own citizens and the independence of our judiciary is in jeopardy, emerging democracies elsewhere are struggling to free their judicial systems from executive control.

Many of these countries look to us as a model in their efforts to create societies governed by rule of law. They recognize that a strong, independent and professional judiciary, equal to the legislative and executive branches of government as provided for in our Constitution, is an essential element of a free, orderly and economically vital society.

Since the collapse of the Soviet Union in the late 1980s, the new governments in the former Soviet states in Eastern Europe, the Balkans and Central Asia have welcomed help in creating independent, ethical, competent and transparent legal systems. And to fill this need, the American Bar Association launched CEELI — the Central European and Eurasian Law Initiative in 1991. Its goal is to provide technical assistance, through volunteer lawyers and judges, to governments and non-governmental organizations to develop the legal infrastructure for government by rule of law, defined as a system of publicly known rules applied impartially by judges and prosecutors without external influence.

While the CEELI program started in the Soviet penumbra, it has expanded to Asia, Africa and, most recently, the Middle East. Along with other Hawai'i attorneys Madeleine Austin and Constance Hassel, I have had the privilege of serving in this great venture in places like Russia, Macedonia, Kazakhstan, Armenia and Azerbaijan. While the hundreds of lawyers and judges involved serve as volunteers, program expenses are supported by the U.S. Agency for International Development.

What our indigenous partners seek most of all is help in creating a framework to empower judges. In almost all of these countries, judiciaries were, and many still are, administered by a Ministry of Justice within the executive branch. These ministries control selection, promotion and discipline of judges, operational budgets, personnel, facilities and all aspects of court administration. Mechanisms need to be established to appoint judges on a merit basis and to educate and train the new judges, clerks and supporting staff.

A ubiquitous and high-priority request has been to help draft codes of judicial ethics based on American and international models, and the processes for their implementation. In the Balkan countries we were also asked to provide court administration experts to help draft laws for independent administrations within the court system with the responsibility to draft, defend and manage their budgets.

Equally important has been the need to establish independent bar associations with fair and honest bar examinations and lawyer discipline procedures, continuing education, and public-service projects.

Law Week

This is the second in a series of articles written for The Advertiser in collaboration with the state Judiciary and Hawai'i State Bar Association that will run this week in conjunction with Law Day and Juror Appreciation Week.

As law school education was generally limited to legal theory, practical courses and legal clinics are also a big hit. Business lawyers are eager for training in corporate structure, modern banking and insurance, and intellectual property law. CEELI volunteers have also been asked to help with the drafting of new corporate and other business laws, such as bankruptcy, privatization of property, public utilities and environmental law, as well as family and domestic-violence laws.

In the criminal law area, trafficking of drugs and people, money laundering and computer crime are huge new issues. While interest in jury trials is prevalent, the procedure has not had widespread application due to its cost. In the past few years, Russia has successfully initiated jury trials in a number of regions.

The American Bar Association has also recently started similar projects in the Middle East. An Arab Judicial Forum was held in Bahrain in 2003, attended by Supreme Court Justice Sandra Day O'Connor. One outcome of the forum was a 2004 conference for Arab Women Judges and Lawyers from 14 Middle Eastern and North African countries. The participants had not previously had the opportunity to share their experiences, and they are now forming a Regional Women's Legal Network. The ABA is also working on judicial independence in Bahrain and Morocco.

In March, the ABA facilitated two conferences with Iraqis — Kurds, Sunnis and Shiites — relating to the constitution-drafting process. Although the workshops took place in Jordan and were supported by the ABA, the programs were clearly theirs. They developed the agenda and chose the participants. While thirsty for information, they developed their own recommendations as well as action plans to stimulate public awareness and input. They recognized that, without wide input, the constitution would not be seen as legitimate. I came away not only impressed by their intelligence and commitment to a democratic future, but encouraged that a positive outcome is possible.

Other Hawai'i legal professionals have been involved in similar endeavors through the International Trial Lawyers Association and various Pacific bar associations. Dean Avi Soifer, former Dean Lawrence Foster and professors Ronald Brown and Alison Conner of the William S. Richardson School of Law are active in exchange programs with lawyers and judges in China, Japan and other areas of the Pacific. Judge Michael Town has worked in Latin America, and Judge Shackley Raffetto in the Balkans.

I feel privileged to have worked with many American and international colleagues in responding to the growing appetite for judicial and legal development. The commitment to professionalism and independence, particularly of the judges in these countries, has been thrilling. Implementation of access to justice is the true vocation of a lawyer. That is what I went to law school for.

Evelyn Lance is a retired judge who served with the First Circuit Family Court in Honolulu. She wrote this commentary for The Advertiser.