



ORIENTATION FOR UNITED STATES JUDGES

GOING ABROAD

Committee on International Judicial Relations

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INTRODUCTION

Foreign interest in American judicial institutions is widespread. You may have already been asked to travel to a foreign country to assist in some aspect of its judicial system or you may be interested in doing so. The International Judicial Relations Committee of the Judicial Conference is the principal coordinating entity for these activities within the federal judiciary. The Committee has prepared this pamphlet in order to help inform you about foreign judicial systems and to offer advice on what you should do before you go to a foreign country and what you should expect once you get there. Although directed primarily at those going to a foreign country, the suggestions in this pamphlet can also help judges and court personnel who are asked to brief foreign delegations visiting the United States.

The Committee believes there is much to be gained when United States judges and court personnel work with foreign counterparts, either by hosting them in this country or by providing technical assistance in foreign countries. Such contact serves three important goals:

- It helps foreign judicial and legal officials understand aspects of U.S. legal institutions that they may wish to adapt to their circumstances at home, becoming alert to problems they will want to avoid;
- It helps us learn from reform efforts in other countries things that may benefit our own system; and
- It broadens knowledge among and between legal and judicial systems as countries increasingly interact with each other legally, socially, politically, and economically.

The Committee stresses that the primary obligation of the United States Judiciary is to its own courts and litigants, to managing our caseloads and administering our courts. Still, judges have found that with careful management of their time, they can accept occasional invitations to assist other countries while continuing to honor their primary obligations at home.

GETTING INVOLVED IN FOREIGN JUDICIAL ASSISTANCE

How Requests for Such Assistance Come About

You may be asked by an agency of the United States government, an international organization, a private organization, or a foreign government, to provide some kind of assistance. The assistance can take many forms—speaking at a conference; meeting with small groups of judges, lawyers, academics, or other government officials; providing direct technical assistance such as training judges how to function under a new procedure or helping develop and implement a new court organization; or some combination of these things. Once you are in a foreign country, your

hosts may seek to use your expertise a number of different ways, more than you may have expected they would.

Those seeking assistance may have obtained your name through several possible sources, including word-of-mouth. Some organizations contact members of the International Judicial Relations Committee or staff of the Administrative Office or Federal Judicial Center for suggestions. All three of these entities have access to a data bank the Center maintains of judges and federal court officials who have expressed interest in such service. If you would like to be included in the data bank, you should contact the Interjudicial Affairs Office at the Federal Judicial Center. The International Judicial Relations Committee is constantly informing government contractors of the existence of the database so that they may access judges with special skills or interests in particular areas to participate in their programs. Committee members are fairly knowledgeable about most rule of law activities taking place in the international arena and make an effort to match federal judges with these projects. You should also feel free to let members of the Committee know of your interest in rule of law work.

Several public and private organizations, domestic and international, have become involved in law reform projects around the world. United States agencies, such as the United States Agency for International Development (USAID) and international lending organizations, such as the World Bank, provide funds for such projects. These organizations may provide funds directly to organizations in the foreign countries or to United States contractors or non-profit organizations that either have or establish offices in those countries. (The non-profits are often referred to as NGOs, or "non-governmental organizations".) The persons managing those projects often turn to United States judicial personnel for assistance. The State Department's Bureau of Education and Cultural Affairs and Office of International Programs (formerly in the United States Information Agency, known as USIS or the United States Information Service, abroad) asks United States judges and others to make short-term visits to foreign countries, usually to speak about aspects of the American legal system. Foreign governments, directly or through in-country organizations, may also contact United States judges seeking their assistance.

Both the government agencies and the private organizations that they fund tend to be staffed by development specialists with degrees in the social sciences or management, many of whom have spent time working abroad in American foreign aid projects. Lawyers are occasionally on staff, but of course, active judges are not and few if any retired judges serve full-time. Some former court officials, however, may be more extensively involved in these organizations.

Funding and Other Arrangements

If you are approached to assist on a rule of law project, you should keep in mind a few basic ethical rules. First, private organizations submitting bids for grants or contracts for foreign projects may ask to list you as a consultant or as part of the project team. If your schedule will allow you to participate, you may certainly indicate that you will assist the organization if it wins the contract. To beef up its application, however, the organization may wish to assert that you are exclusively available to that organization (in other words, "Only if you select us, will Judge Smith be available

to work on the project.") That would definitely be inappropriate. Thus you should make it clear, on the record, that you are available to assist any legitimate organization that can use your skills, subject to your other commitments. To enter an exclusive arrangement to assist one legitimate organization but not others—or to allow an organization to imply such an arrangement—could lend or appear to lend the prestige of the third branch in a competition for funds.

Second, be certain that any funds you accept fall within the applicable codes of conduct and statutes governing outside income. You may receive payment or reimbursement for your travel, lodging, meals, and incidental expenses. But compensation for your services is not permitted.

Finally, the Judicial Conference's travel regulations for United States judges require you to report official, non-case related travel you undertake to the appropriate chief judge. This requirement is one more reminder that you should only undertake foreign judicial assistance projects if you can do so without neglecting your primary obligations.

WHAT KINDS OF HELP FOREIGN JUDICIARIES MAY BE SEEKING

A core question—one that often does not get the close attention it deserves—is precisely what should American judges be giving to these projects. This question requires considerable reflection.

The Rule of Law Concept

The "rule of law" concept goes back to the 1960s, when it was known as "law and administration." It later took on such names as "administration of justice," then "law and development," and since the early 90s "rule of law." The aim has always been to help other societies establish dependable legal institutions and legal codes. But the approach has varied over the years. In the 1960s, the conventional thinking was that training foreign lawyers to think like American lawyers might be productive. Hence, going into foreign law schools and experimenting with such American concepts as the case method of teaching, was tried. In time, however, Americans arrived at the view that they might not hold the key to wisdom in every instance and that they might not always know well the cultures with which they were dealing. The focus therefore shifted considerably. Currently the thinking is that it is important to include the host country in the decision-making process as well as in formulating any plans for reform and development. Americans should be available to offer their own experience as an example—but not a "model" (unless the host country chooses it to be)—for possible ideas and formulation. Indeed, there is an important perspective to bear in mind. With the exception of a few African countries and India, the legal systems of most developing nations are based on the civil law traditions of France, Germany, Spain or Portugal. These countries are active in their own rule of law programs and have a number of ideas as to how the developing nations might improve their legal systems. Their models may have equal or greater applicability to the situation of a given country than the United States model.

Avoiding Pitfalls

A United States judge becoming involved in a rule of law project should give careful thought to what he or she is getting into—especially if you are being asked to do something more than give lectures or participate in a conference. Even in those instances, but especially in the case of a sustained effort to modernize a judicial system or institute a new process or procedures, it is important to understand precisely what the project is asking of the judge. Will the judge be asked to speak about American legal institutions in general? Are there specific areas—such as commercial law, ADR, bankruptcy law, criminal procedure—that the judge will be asked about? Within these areas, are there sub-areas that are of particular interest? Will the judge be involved in developing the project? Enlisting host country support? Implementing it?

The judge, in other words, may be wading into a fairly amorphous project and needs to be careful as where to step. But help is available. One can get a good idea of how judges have functioned in rule of law projects in the past by consulting trip reports of those who have been involved. These reports will give some idea of how different judges in different settings have performed and what experience they have brought to bear on the projects. Many of these reports are available to federal judges through the Administrative Office of the United States Courts. These reports may be obtained by contacting the Article III Judges Division at the Administrative Office.

WHAT YOU SHOULD KNOW BEFORE YOU GO AND WHAT YOU SHOULD EXPECT ONCE YOU GET THERE

Usually you will be asked to participate in a foreign assistance project because of your experience and what you know about the United States judicial and legal systems. However, you may also find that your hosts want to know things about this country with which you are less familiar. You may also find that concepts with which you are comfortable do not always provide a common basis for discussion with foreign judges and lawyers and court personnel. This section of the pamphlet contains some suggestions about how to prepare for your visit.

Basic Facts about the U.S. System

Suppose you are asked to go to a country to lecture on bankruptcy law to aid the implementation of a new commercial code but find once you get there that what your hosts really want to do is wrest the financing of the judicial system from the ministry of justice. What your host may in fact want to know, then, is how the operating budgets of courts are determined in the United States.

While you cannot anticipate every question—and can always promise to send back information when you return—you may wish to brush up on the following topics and source materials:

- the structure of the federal and state courts, number of judgeships, administrative support systems
- relative caseloads of federal courts, state courts, dispositive stages
- budgeting for the federal courts and operating statistics
- court governance and case management
- selection and discipline of state and federal judges
- *Constitution of the United States*
- *Getting Started as a Federal Judge* (1997)
- *Code of Conduct for Judges*

The Federal Judicial Center and the Administrative Office can provide you simple charts in some basic languages (*e.g.*, in Spanish and Russian) about aspects of the U.S. judicial system which you may wish to make into transparencies for overhead projection or insert into power point presentations (if you know equipment for either will be available where you are going).

Different Terms and Concepts

Even if you speak the language of your host country, you ought to be aware that some legal terms, literally translated, will not convey precisely what you wish to convey because of different legal concepts and orientations in other countries. For example:

- U.S. judges use the term "court" to refer both to individual judges who prepare for and supervise trials and also groups of judges who hear appeals regarding legal errors. In other countries, "court" may describe only the highest judicial body (the "supreme court of justice"), while "tribunal" refers to other judicial bodies. But in some countries, the reverse is true. "Court" is a single judge trial court, "tribunal" is a collective appellate body.
- "Trial" and "appellate" courts can mean different things in countries that do not have "trials" and in which the appellate function is not error correction. "First-instance" tribunals may consider evidence and decide the case and one or more "second-instance tribunals" may essentially replicate the process.
- Our notion of a "trial" may be unknown to your hosts. Judges in many countries do not receive evidence in a concentrated trial. In those countries, judges receive evidence only by written submissions, not through oral proceedings, and do so over

an extended period of time. The judge then writes an opinion. Juries are most likely non-existent.

- In the United States, "sentence" describes a punishment. But in many other countries, it more or less describes what we mean by a judicial "opinion."

It is not necessarily the end of the matter for a trial judge to be described in the language of the host country as a "first instance tribunal." Use of explanatory phrases may sometimes be preferable, *e.g.*, "I'm a trial judge. In the United States, that means I preside over oral hearings at which lawyers present evidence, and I also try to be sure that cases come to trial promptly; that is, we hold a hearing or try to resolve the case some other way."

Information about the Host Country

If you are part of an extended rule of law project, detailed information about the host country and its legal system will be essential to enable you to fully appreciate the situation. On the other hand, you may only be in the country for a brief period to participate in a conference or give a few lectures. Regardless of the purpose of your visit, you will undoubtedly find it helpful to learn what you can about the country in general, not only for your own personal enrichment but also to guide you in your work and to provide the background for a meaningful trip report that will assist others in the United States who may make similar visits later on.

Where to begin? The suggestions that follow are based on the collective experience of a number of judges and court officials who have worked on foreign judicial reform projects in the recent past.

About the Country in General

There are many printed guides to countries of the world, such as almanacs, which briefly recap the politics, history, economy, religion and culture of the country. Encyclopedias are another good source, although with regard to current conditions they are always somewhat behind the times. A great deal of more up-to-date information can be downloaded from the Internet.

Knowing about a country means not just knowing about its current situation. One really should have a deeper idea of its history and culture. History is often easier to get a handle on through an encyclopedia if not a separate history book. Culture can be somewhat more elusive, although there are often books that are helpful in this regard. Professor Joseph Page's book, *The Brazilians*, for example, is a good window on cultural aspects of that country. Hedrick Smith's book, *The Russians*, is a helpful entree to that region of the world. Even good travelogues can be informative in this regard.

About its Legal System

Obtaining basic documentation on the legal system of the country you will be visiting is important.

But first it seems appropriate to say a few words about the differences between legal systems in general.

Civil law and common law systems—Everyone knows that the two great legal systems of the world have been the common law and civil law systems, although the old Soviet model had some unique features. While American judges are obviously conversant with common law institutions, their familiarity with civil law institutions is apt to be far less extensive. Indeed, most American law schools have been deficient in exposing law students to comparative law systems.

We suggest that the newcomer to a rule of law project familiarize him or herself with general materials on the civil law system. *A Primer on the Civil-Law System (1995)*, developed by Jim Apple and Bob Deyling of the Federal Judicial Center and Administrative Office, is a helpful publication available from the Center. There are also a number of more complete books and articles available. Professor Rene David's book, *Legal Systems of the World*, is useful, although somewhat dated. Law review articles on the difference between common law and civil law systems are informative.

Of course, knowing something about the civil law system is not the same as knowing about the system in any particular country that belongs to the family of "civil law" countries. In similar fashion, a judge from Mexico, essentially a civil law system, would be ill-advised if she assumed that, because she learned how state and federal courts operate in Texas, she had also learned about how they operate in Canada, India, or Great Britain. In short, there can be significant variations within the two systems, especially since countries with civil law systems in recent years have adopted hybrid procedures that combine both civil and common law traditions.

The specific system in your host country—Try to learn what system is in place in the host country and what tradition it derives from. If the country falls within the civil law tradition, does French experience predominate or the German? What has been the legal history of the country? Was there a previous communist or colonial administration? What sort of law and court administration existed then? What has been the history of the justice system since then?

Bear in mind that there may have been multiple changes in recent years even in a recently liberated country. After the break-up of the Soviet Union, for example, certain countries—particularly in Africa—flirted with communism or Marxism, then scrapped instituting based on those systems. Legal structures built in the early days of revolution have now been supplanted or are in the process of being supplanted by more democratic institutions.

Obtaining information on these topics can sometimes be difficult. However, articles pertaining to law reform experiences, especially in the larger emerging countries (*e.g.*, Russia, China,

and some Latin American states) can often be found in law reviews. The Internet should also be consulted in this regard. Dr. Fred Quinn's book *Democracy at Dawn* gives some idea of transformation of the judiciaries of the Newly Independent States of the former Soviet Union, and some former U.S.S.R. satellites, such as the Baltic countries.

In addition, trip reports prepared by judges and others who have traveled to these countries in connection with rule of law projects contain information descriptive of the legal system. These may be obtained, as indicated previously, through the Administrative Office.

Finally, if you know the names of judges or other court officials who have visited these countries, you should definitely try to talk to them. This is an invaluable source of information about the system you will be getting involved in.

Basic documents—The next step is to look at the basic documents of the legal system of the country of your interest.

Start with a copy of the constitution of the country and read the sections dealing with the judiciary, as well as human rights and civil rights. Most nations' constitutions are available through various law links and may be downloaded from the Internet. Oceana Publications has a book entitled *Constitutions of the World*, which includes copies of foreign constitutions in English. This is usually up-to-date. The Law Library of the Library of Congress has a Website on the Internet which can get one into the legal materials of a country, although frequently these materials are only available in the language of the country. Still, law review articles have been written about various aspects of specific foreign legal systems and may be consulted for further reference.

In addition to constitutional provisions, there are usually statutory (often called "ordinary") laws dealing with judicial organization and judges. Copies of these laws should also be obtained. Here your best source is likely to be the manager of the project you are participating in.

More Particular Questions

Regardless of the purpose of your trip, you should be sensitive to other aspects of a country's legal and judicial system, some of which you can only explore through informed conversations once you are in the country. The following is a check-list of items about which you may want to inquire.

Structure and jurisdiction of courts

What is the overall structure of the host country's court system?

Is the system a federal system (as in the U.S.) or a unitary system (typical of most of the world)?

Is the judicial system an independent branch of government or part of the Ministry of Justice? Does the judicial system determine the judicial budget to request from the legislature or does the Ministry of Justice? Who administers the judicial budget?

Is the supreme court the administrative head of the judicial branch or is that the function of a judicial council?

If there is a judicial council, who are its members and how are they selected? Is there tension between the supreme court and the judicial council?

What types of courts are there and how do their judges function?

In federations, do states or provinces have their own courts?

As between courts of first and second instance, are higher court decisions binding upon lower courts in later analogous cases, *i.e.*, does the principle of stare decisis apply? Do higher courts or any courts have discretionary jurisdiction?

Do some courts have general and other courts specialized jurisdiction?

Is the supreme court a constitutional court or does it have more general jurisdiction?

Are there other second-instance courts?

Are there specialized courts, *e.g.*, for small claims, labor, electoral, commercial, military matters?

How are trial courts of general jurisdiction organized? Does each first instance judge have his or her own clerical staff or does a clerical staff serve all the judges in a courthouse or geographic region?

Judges

Independence—Are judges ever in physical danger by reason of their decisions? Do government officials have access to judges so as to influence their decisions?

Status—Is the judicial office a prestigious one? Are judges perceived as independent? Lazy? Corrupt?

Is judging a full-time or part-time job occupation? What else do judges do—teach? practice law?

Demography—What percent of judges are men and women? What is the average age of the judges?

Selection, training, and discipline

Selection process—Is it by appointment, competitive examination, based on educational or vocational requirements?

Judicial career—Is judging a career that one can opt to participate in? Do judges move from one court level to another by examination, political selection, performance ratings? Do they rotate geographically? Is nepotism a factor?

Training—Are there judicial schools? How do they operate? Is training voluntary or mandatory?

Discipline and ethics—Is there a code of judicial ethics and/or statutory regulation of judicial behavior? Who disciplines the judges? Who can file complaints? What sort of complaints are filed? Is the current system working?

Compensation—How much do judges earn both in direct payment and other benefits—*e.g.*, housing or automobiles? Is a judge's income taxed? How does it compare with that of other government officials and private attorneys?

Assistance—Do judges have law clerks, research aids, secretaries?

Productivity—How many cases do judges typically open and close each month? Each year? How quickly do they act with respect to their cases? Are judges required to file periodic reports of their case activity? With whom? How often? What happens if a judge is running behind?

Physical facilities

What types of buildings do courts use? How old are they? How well maintained? What type of equipment do the courts use—typewriters, computers, file cabinets?

Are legal source materials available—constitutions, codes, statutes, case decisions (often called "jurisprudence")? Legal treatises? Law review articles? To what extent are such materials available to the judges? To the bar? To the public?

Procedure—Codes of procedure in many countries are usually available only in the language of the country and may be difficult to comprehend. However, a search of United States law reviews sometimes can be helpful. Then, too, the trip reports referred to earlier, those prepared by visiting judges and court officials, will often contain a general description of the procedure in civil and criminal cases. It is always informative to ask a host country judge or

lawyer or clerk to explain the paper flow and show the forms that typically are used to process the average civil or criminal case.

Trial or first instance proceedings

How long does it take for a typical civil and criminal case to flow through the system? Do codes or laws specify deadlines for the completion of different phases of the proceedings? Are they generally honored? Ignored? Is there a perception that money payments can sometimes influence how quickly judges act?

Do all cases go the full route to termination or do they "settle"? What percent settle? At what point in the process?

Are there extrajudicial procedures for settling disputes, *e.g.*, arbitration, mediation? Are they in fact being used? Successfully?

Are interlocutory appeals allowed? To what extent do they slow down the judicial process?

Preliminary steps

How are cases assigned to judges—by lottery, subject matter, at the discretion of clerk? Is there judge-shopping? Can clerks sometimes be bribed to assign a case to a particular judge?

Are extraordinary pretrial remedies available? Is there a counterpart to attachment before judgment? Preliminary injunctive relief?

How is a case filed and process served? What information must the initial petition contain and what must the answer contain? Is a counterclaim possible?

Does the judge review the pleadings to see whether they are in proper form? Is the review *sua sponte*?

What sort of discovery, if any, is permitted of the opposing party's case? Must documents be produced? Interrogatories answered? Is there any provision for pre-trial depositions? Site visits?

What role do experts play in court cases? Are they appointed by the court or retained by the parties?

Is there a counterpart to a motion to dismiss or to summary judgment?

Hearing—In many judicial systems, decisions are based on pleadings and documents alone, without oral testimony. If there is some form of oral hearing:

Who presides? Do lay jurors ever assist the judge? How many? In what way do they assist? Fact-finding only?

Do witnesses testify? Who questions them? Who is competent as witnesses? The parties? Relatives?

Do witnesses testify under oath? Are there penalties for false statements? Are they effective?

How, if at all, are court proceedings recorded?

Decision and judgment

How soon after the proofs are concluded does the judge make his/her decision?

Does the judge write a formal opinion (*e.g.*, setting forth allegations, theories of the case, applicable law, decision, reasons)? Does the law require a judge to do this? Can judges rely on brief decisions or on form decisions?

Is an appeal bond required in the case of a money judgment?

How are judgments executed upon once obtained? Is a separate proceeding for execution needed? What is done about the uncooperative defendant or one who conceals assets?

Criminal proceedings

Is pre-trial detention a problem?

Is there any counterpart to habeas corpus?

Who investigates criminal charges—the judge or the prosecutor?

What are the different phases of the criminal process?

Is there a presumption of innocence?

What other guarantees exist—due process in general, right to bail, right to notice of charges, right to counsel, right to be free from unreasonable searches and seizures, trial by jury, right against self-incrimination?

May a defendant plead guilty rather than take the proceeding to termination? Is there any sort of plea-bargaining? What percentage of defendants plead guilty? At what point in the process?

Are hearings open to the public? Is there a right to cross examination?

Further proceedings (post-trial motions and appeals)

What opportunity is there to ask the first instance judge to reconsider his/her decision?

What opportunities are there for appeal? How many levels? What sort of record goes upon on appeal? What is the typical time and cost of the appeals?

What are jail conditions like? What are the typical sentences for various types of crime?

Is there a counterpart to probation or parole? Are there personnel available to administer such programs?

Reporting decisions—To what extent are judicial decisions published and accessible? Is there a daily or periodical legal publication? Is there anything comparable to the case reporter system? Are cases available on computer?

Docketing and file management

Who are the different personnel in the clerk's office? How are they compensated?

What is the interaction between the judge and clerical personnel?

How are clerks selected? What are their qualifications? Is nepotism a factor?

How are clerks trained?

What are the fees for filing cases and for other court actions? How are they paid? Are they taxed to the losing party? Are attorneys' fees assessed against the losing party?

Is there a perception that money payments can influence how quickly or slowly clerks process cases?

How does the clerk docket cases, file them, monitor them, retrieve them? What role does automation play in tracking cases through the system?

What data are available about cases filed and disposed, and the time periods? Are these data publicly available? What other sort of court statistics are available?

What sort of notarial system is in place? What costs and delays are delays involved in notarial services?

Legal profession

What role does the legal profession play in the host country? How are lawyers perceived by the public?

To what extent are lawyers/or their fees believed to facilitate/impede the flow of cases?

Is there a Public Ministry charged with protecting the public interest in the courts?

To what degree are legal services available to those who cannot afford them? in civil cases? in criminal cases? on appeal?

If there are public defenders, are they part of the judicial branch of government? How are they selected, trained, compensated?

What is the general view about the adequacy of legal aid services?

Previous or current reform efforts

To what degree have any of the various items mentioned above already been the object of judicial reform efforts in the host country? Which are objects of remedial efforts currently?

Have these efforts for change originated with the judicial branch, the executive branch, or the legislative or outside the government? Are the branches at odds over the need for reform? What has been the role of the bar and non-governmental organizations in urging change? Does these various component groups have a forum where they can discuss their goals for reform?

Impulses for Change and Rivalries Within the Country

The answers to these last few questions are particularly important. Depending on the nature of the visit, the United States judge may find it necessary to develop a more than superficial grasp of the politics of judicial and legal reform in the host country. If the trip is in support of a major rule of law project, the judge, before departing, should have had discussions with the project people who are on the ground in that country. Obviously what these individuals have to say about the situation will be important by way of orientation. But be prepared. Their comments may not always be complimentary of the host country and therefor obvious discretion about what is said is important.

Typically, government contractors and/or the American agency (such as USAID) have already established contact with certain host country judges and/or attorneys in whom they have confidence to speak frankly about the country's legal system and law reform initiatives. These

individuals are also a good source of information, though again discretion in discussing the problems of a system is well-advised.

Without meaning to criticize, it is also important to bear in mind that in developing countries there are often different individuals with different agendas about the path for the law reform process in the country. Being recognized as the link with an American or international funding agency can give the "local" contact prestige and power. That person may sometimes wish to dispense his or her largesse in ways not always consistent with the overall welfare of the project.

Indeed, it is useful to remember that frequently there may be several donor organizations in the same country in competition for the favor of the country's judicial and legal elites. Law reform is ultimately a branch of foreign policy and United States institutions are not the only players. The Germans, French, Danes, Spanish, and Portuguese—and others as well—are all active to varying degrees in various parts of the world dispensing their own funds and picking their own local contacts in the field. The result is that there are not only other players in the field; they are frequently in competition with one another and guarded about letting other donor organizations know what they are doing. In some instances, from the host country's standpoint, it may seem advantageous to court as many donors as possible in order to augment the development pot. This can make for untidy situations. At a recent American Bar Association conference, an Assistant General Counsel from the World Bank told of a country in the former Soviet Bloc which had eight different reports developed by eight different consultants proposing reform of a particular aspect of its law. All the reports were still on the shelf. None had ever been acted upon.

One may need to steer a careful course in the midst of these rivalries. In fact, urging the contractors to contact other donor organizations is often an important role that a judge can play. Unlike the contractors, the judge is not involved in a profit-seeking venture and is apt to feel less proprietary about the work in progress.

In sum, it is never out of place to be cautious about asking fundamental questions at every step of the process. What is taking place in the area of judicial reform? Who is doing what? Are the players working together? At cross-purposes? Some of the answers the judge hears may be vague and fuzzy, but the questions continue to be worth asking.

Talking to host country judges, lawyers and court officials is indispensable. Start out as far as possible at the top of the judicial structure with the Chief Justice of the country and other justices. Talking to the Minister of Justice or his or her assistants is also important because frequently the judiciary is not independent of the executive in terms of budgeting and other controls. Speaking to other judges on the various host country courts is likewise important. But it is important to bear in mind that justices and judges of the various courts are not always of the same mind on a matter; indeed they frequently may be in sharp opposition to one another. Try to understand who takes what position and why, as well as to estimate up who is apt to have the greater influence. This may not always be the Chief Justice (who may be a political appointee) but could be a senior justice respected for his scholarship and experience.

Listening carefully, even to the man in the street, is a key component of involvement in any rule of law project.

What are the local people interested in?

Is there consensus of opinion with regard to what reforms are needed?

Who are the current leaders in the law reform movement?

Who are the potential leaders?

Do these leaders really have power to affect change?

Who has staying power?

The answer to this last question is important because someone in power today may well be gone at sometime in the future, perhaps the near future. Efforts to cultivate that person to effect reform will have come to naught.

REPORTING ON THE TRIP

Virtually all projects in which judges are asked to participate will require some sort of report from the judge. There is no standard form. The nature and length of these reports will vary, but there are certain topics that are almost always covered. (Again, copies of reports prepared by judges who have visited various countries are available through the Administrative Office.) Among the topics a judge may be asked to report on are: (a) the nature of services provided by the judge, (b) a discussion of the legal system of the host country, (c) its judicial organization, (d) persons the judge met with, (e) identification of key players, and (f) criticism of the project.

Again we observe that some contractors in rule of law projects may have a proprietary attitude and as a consequence may be disinclined to share their reports widely. However, anyone who participates in a project is entitled to have a copy of the report that he or she has helped prepare. You are well within your rights to insist on a copy.

Remember always to be discreet. Remarks about the host country which are candid and unflattering may need to be redacted if persons outside the project are to consult the report.

The International Judicial Relations Committee and the Administrative Office would be pleased to receive a copy of any trip report that any member of the judiciary might prepare. These reports will not be made available to the public, but only to judges and other court personnel upon personal request to the Administrative Office.

Finally, don't forget any administrative reports you may be required to file about non-case related travel, financial disclosure, additional income, or gifts you may have received.

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