

PANEL DISCUSSION: JUDGES TEACHING RULE OF LAW ABROAD*

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I. INTRODUCTION

BRYANT GARTH: Good morning. My name is Bryant Garth and I'm very happy to moderate this panel on judges teaching the rule of law abroad. I want to thank Jonathan Miller for inviting me and indeed for thinking up this panel, which I think is quite creative and unique. I also want to say, as former dean, I am very happy to be back at Southwestern and always feel comfortable in this wonderful place. The panel is about something unique, which is how you think about judges in relationship to judging. In particular, this panel is about the Central District's impact around the world, as missionaries of the rule of law.¹

Our panelists have very distinct experiences and we're going to hear only a little bit about them, even though each of them could

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1. See *Rule of Law Initiative: Our Origins & Principles*, AM. BAR ASS'N, http://www.americanbar.org/advocacy/rule_of_law/about/origin_principles.html (last visited Sept. 3, 2016); SHAWNA WILSON, FED. JUDICIAL CTR., U.S. RULE OF LAW ASSISTANCE: A GUIDE FOR JUDGES (2011), [http://www.fjc.gov/public/pdf.nsf/lookup/rullaw11.pdf/\\$file/rullaw11.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/rullaw11.pdf/$file/rullaw11.pdf).

probably speak all day on this topic. I want to hear their wisdom. I'm a researcher in this field and am very interested to hear their wisdom. We'll go ahead and start.

II. PANEL DISCUSSION

JUDGE BAIRD: Thank you. From roughly 1989 to 1999, there were only about two years that I wasn't involved in this sort of judging because that was the period that I was the U.S. Attorney. But for a full eight years I was able to partake in this experience.

Approximately two-thirds of all the programs that I dealt with were with groups of lawyers and at least one or more judges from the U.S.² We would provide numerous lectures and demonstrations. After getting into a particular country, we would put on these programs with the demonstration of an actual trial. It was all done in English since all of the participants spoke English. We would assign them in many cases as witnesses, which was a lot of fun for them and for us. We did that for approximately two-thirds of the programs that I was involved in. They culminated in what would be considered mock trials.

It was a mock trial wherein the participants would act as witnesses and judges. By the way, I should say, I am bilingual, so that helped me a lot in Latin American/Spanish-speaking countries. We were in Argentina, El Salvador, Egypt, India, Jordan, and East Jerusalem in Israel. Those were the areas in which we had set up these programs and mock trials. It was really interesting to see that the participants were very anxious to perform, if you will, but they would come in and really get into their parts. It was very exciting for everyone.

For approximately one-third of my experience, I was the only presenter. I would mainly lecture about the system, take questions, and lead discussions with the audience. The countries that I did that in were Bangladesh, Uruguay, and Argentina. The main question was, "what were we doing and why were we doing it?" The key problem that we were trying to assist these countries with was their delay in the resolution of cases.³

It was particularly serious in Bolivia, Bangladesh, and Egypt, which were the least-developed countries. Now you say, "well yes, that could be a problem," but the reality of this problem was that a

2. See, e.g., Jennifer Rasmussen, *A Short History of the American Bar Association Rule of Law Initiative's Technical Assistance Approach*, 31 *WIS. INT'L L.J.* 776, 776-78 (2013).

3. See U.S. DEP'T OF STATE, *COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1998*, Vol. II, 1861-64 (1999).

participant may be arrested and there was no such thing as bail available for the criminal defendant.⁴ This meant that the participant would stay in custody until his or her trial was heard and resolved, which was beyond the statute of limitations, and beyond the maximum sentence they could ever have gotten. It was a very serious problem and very difficult problem to resolve.

As I mentioned before, the least-developed countries, which were Egypt, Bangladesh, and Bolivia, were the hardest to deal with regarding bail, and even more difficult to determine whether they were capable of making any adjustments. The worst thing about it was that there were individuals just languishing in jail until courts got around to hearing their case. Eventually, upon concluding their hearings, the resulting sentences would be well beyond the maximum sentence he or she could have ever gotten. Although we were able to successfully convince a majority of international courts to adopt their own versions of a guilty plea,⁵ some of the parties (Bolivia, Bangladesh, and Egypt) turned down that concept.

Though their own version of the guilty plea didn't necessarily shorten the time served, it instead allowed them the opportunity to plead guilty, by which the defendants would be sentenced immediately, and released on time served. This was the one success that we had from this particular exercise. One of the disappointments that I've encountered, which I'm sure all the rest of us share, was the inability of most countries to adopt a bail system. They just didn't have this concept. Perhaps this was due to the fact that they were so underdeveloped, but that is only one of the possible reasons that it happened that way. This was the biggest disappointment that we had. We were hoping that we could change their minds and adopt the kinds of systems of bail that we have, but were unable to do so. Thank you.

BRYANT GARTH: Now, Southwestern's very own, Judge Ronald Lew.

JUDGE LEW: I think Judge Baird has covered a lot of areas that will be covered in other questions yet to come. My experience in the

4. See *id.* (stating that in Bangladesh lengthily pretrial detention is a problem and in some cases pretrial detention lasts several years); see also USAID, BOLIVIA STRATEGIC PLAN FY 1998-2000, at 9 (2002) ("Many who qualify for release from detention still remain there beyond legally prescribed times.").

5. See Leonard Cavise, *The Transition From The Inquisitorial To The Accusatorial System of Trial Procedure: Why Some Latin American Lawyers Hesitate*, 53 WAYNE L. REV. 785, 808 (2007).

rule of law began when I was a young man in the military. I first traveled overseas during the Vietnam War. Fortunately they needed an officer immediately in Okinawa, Japan. Then I went to Taiwan for seven months of temporary duty. I had my first exposure from my military travel, which later motivated me to return to those countries and to work with their courts of law.

My other worldwide travels began in 1978. In 1979 I went to China and thereafter continued to travel to countries throughout all of Asia. While I was traveling in those early years to China and Taiwan, I always contacted their court systems during my personal trips, and made myself available to speak to their courts or law schools. Through my early travels throughout China, unbeknownst to me, judges from the United States were hearing about my work in China and other countries. And so, Judge Michael Mihm, part of the Committee on International Judicial Relations for the Judicial Conference of the United States,⁶ a new committee at the time, contacted me and said, "You're doing such great work in China on your own, why don't you join our committee?" I had volunteered to join that committee when it was first created by the United States Courts, but they did not select me. But now that Judge Mihm had offered me this opportunity, I decided to accept. The Chief Justice called me and said, "Please come onto the committee, we have a vacancy," which was a wonderful opportunity.

Beginning in 2000, I worked on the Committee on International Judicial Relations for two consecutive three-year terms. The committee is basically the arm of the U.S. Courts that coordinates the rule of law work around the world. Judge Wallace and I chaired the Asia committee, and we orchestrated the work of the rule of law throughout Asia.

We broke it down so that we had committees for Russia, South America, and Africa. We divided the world up so that we could coordinate everyone's efforts. I think there were only thirteen judges on that committee at the time. We did the coordinating and some of the travels too. Throughout my years, I traveled to and worked with every country in the world, except for Australia. But I have worked with

6. James G. Apple, *Starting Down the Long Trail of Judicial Independence: The Experience in Russia, the Newly Independent States, and Central and Eastern Europe*, 8 *CIJL YEARBOOK* 173, 177-78 (2000); see also *International Judicial Relations*, FED. JUDICIAL CTR., <http://www2.fjc.gov/content/materials-international-exchanges-0> (last visited Sept. 1, 2016) (the Committee on International Judicial Relations' mission is to coordinate the federal judiciary's relationship with foreign judiciaries and with other organizations that are involved in international judicial relations, the expansion of the rule of law, and the administration of justice).

Australian judges throughout various programs in other countries as well. The contacts have been tremendous. It's been great.

When I first became involved in rule of law, I familiarized myself with other countries' infrastructure, judicial system, and legal system. It was a very easy presentation. As we delved into the work, we began considering procedural fairness, substantive laws, and various programs in the best interest of the countries requesting our assistance. We organized these programs to assist our efforts. We would involve judges from the United States and coordinate our efforts with other judges from around the world. Despite not being bilingual, I've been to almost every country or continent around the world, including China, South America, Central America, and Canada. It's been very fascinating to do real law work. That's my exposure.

BRYANT GARTH: Thank you. Now Judge O'Connell.

JUDGE REID O'CONNELL: My rule of law experience is relatively recent compared to the previous panelists. I was a state court judge before I took the federal bench, and I taught a lot too. I was asked by the State Department because I too speak Spanish fluently, and they wanted Spanish speakers to go to Mexico City. Many countries were transitioning from the inquisitorial system to an adversarial system.⁷ And what those countries wanted were judges to talk to their judges about the role that we serve in trial work. So I first went to Mexico City, and then I was asked to go to Macedonia to talk to the judges about their role as a judge and the concept of plea bargain and bail in criminal cases. I also have a background as a federal prosecutor so I knew a little bit about bail and trials.

Then, based upon that, a professor from my alma mater asked me to go to Uganda with him and a team of lawyers, and what we did there was very similar to Judge Baird's experience; we met with the judges, we had very frank discussions in private with their judges about power, the integrity of the system, about how we engender confidence in our system, and also their private fears as to change. I think they were more willing to talk to judges about these issues than lawyers. Then we did mock trials. Gosh it went from arraignment through

7. See, e.g., Miguel A. Méndez, *Shifting From the Inquisitorial to the Adversarial Model in Criminal Cases: Is a Hearsay Rule Indispensable?*, 5 FIU L. REV. 13 (2009) (stating that by spring of 2009, the Mexican legislative branches had approved a constitutional amendment that incorporates many features of the adversarial system into Mexican criminal trial practice); William Burnham & Jeffrey Kahn, *Russia's Criminal Procedure Code Five Years Out*, 33 REV. OF CENT. & E. EUR. L. 1, 3 (2008).

bench trial and sentencing. We wore their garb, so that it looked familiar to them.

One component that is very different from Judge Baird's experience is the Mexican judges from Mexico City came to the United States. The Macedonian judges came to the United States and observed both federal and state proceedings to get a sense of our civil and criminal proceedings. The Ugandan judges have been here twice. We are now working with Guatemala as a result of it. Zambia has made a request to partner with its team of lawyers and judges to talk to us about case management. They're involving their court staff as to how that's going to change the way they do business. We have an interaction: they've actually asked us to, for a week, agree to embed their folks with our folks, shoulder-to-shoulder, as to how we manage cases from a technology standpoint—which I love talking to them about—to a judicial standpoint. That has been my experience and what I have found is that we keep getting these requests to assist, and frankly I'm proud because I think our system, although not perfect, is exemplary and I'm proud to share it with everybody.

BRYANT GARTH: Thank you. And now Judge Carter.

JUDGE CARTER: In 1999, I got a call from a Judge Manuel Real and Linda (my judicial assistant) said, "Judge Real's on the phone." Now of course I started to genuflect and he couldn't see that. As I started to reach for the phone I was in a prostrate position talking to him. On the phone he said, "Hey Dave, I need you to go to Arkhangelsk." You have to understand I can't spell Arkhangelsk and I don't know where it is. His other demand (or request) was, "You need to be there in three weeks." I searched in Riverside County and San Bernardino County, but couldn't find a place by that name, and off I went.

I want to talk to you briefly about why I've entitled this "the rule of law" with multiple question marks after it. The rule of law depends on who you are, where you sit, or what you want to impose, or how you want to not impose, but instead modify it. Presently, I'm taking about ten trips a year and I prefer conflict zones. I prefer these areas because I have a firm belief that when the American military goes into a region, that which occurs is an implementation of the rule of law. But that implementation cannot continue without civilian trainers, the judiciary, and others inserting themselves quickly. There's a huge deference to the State Department. In regards of Ambassador Stevens, there is a "huge gulf" that takes place. And I'm prepared to discuss

with you why the Taliban, in a sense, is able to implement the Jirga System.⁸

I think this transition of power today places people with a terrible responsibility. It can be orderly or it can be brutal. In our American system this transition is made easier because under the Constitution we transfer power swiftly and, usually, quite easily. We take for granted how fundamental this commitment is to governmental institutions. It's not so much that the American military has not attempted to take control, which in most countries it does occur. It's that no one in the military has ever questioned the assumption of military control because of their support of the Constitution. Epitomized by George Washington handing his sword back to the Continental Congress.

The rule of law concept that you've spoken about, with nodding acquiescence, is very elusive. I hope to point that out to you, and I'm prepared to take you to the following places . . . I've come today with some of the slides of Armenia and Georgia to show you how transition takes place and, often, how it doesn't. I'm prepared to take you up to the Syrian refugee camps if you want to discuss human rights, women's rights, the Jirga System, or the Hudûd statutes.⁹ We can discuss what happens to you if you run from a husband who's beating you, and show you what is currently occurring in Syrian camps and to the refugees. I'm prepared to take you to Bosnia, if you'd like, to show you the ethnic cleansing that took place and what that really means to have a corrupt judiciary. I have graphic slides of Afghanistan, and going north into a Taliban prison to show you how the military is going through sorting out whether they take you to the right side or the left side. If you're a petty thief, or somebody who's committed a crime, you're going to the left side and you will have some kind of due process. Finally, I'm prepared to take you to Pakistan, prepared to take you up into the tribal areas if you want to ask questions about it, and show you slides about working with the tribal chiefs up there. Maybe a story about being there when Osama Bin Laden was killed that week, and demonstrate our pleasure, as judges, of hav-

8. See Francois Tanguay-Renaud, *Post-Colonial Pluralism, Human Rights & the Administration of Criminal Justice in the Federally Administered Tribal Areas of Pakistan*, 6 *SING. J. OF INT'L & COMP. L.* 541, 557 (2002) ("A jirga in its simplest form is merely an assembly. Practically all community business, both public and private, is subject to its jurisdiction . . . It exercises executive, judicial, and legislative functions, and yet frequently acts as an instrument for arbitration and conciliation.").

9. See *Hadd*, *OXFORD ISLAMIC STUD. ONLINE*, <http://www.oxfordislamicstudies.com/article/opr/t125/e757> (last visited Sept. 1, 2016) ('Hûdud' is plural for the word 'Hadd'); Michael Skjelderup, *Hudud Punishments in the Forefront: Application of Islamic Criminal Law by Harakat Al-Shabaab Al-Mujahideen*, 29 *J. OF L. & RELIGION* 317, 320 (2014).

ing to declare gifts. I want to show you a cobra that was given as a gift by my colleagues along the tribal area if you give me the opportunity, because that's a gift I didn't know how to declare. Thank you.

BRYANT GARTH: Thank you. Our first four panelists were all from the Central District, which should give you a sense of the outreach of our locals. Now we have Judge Rothstein, who has been the Director of the Federal Judicial Center to give you a Washington-centered perspective.

JUDGE ROTHSTEIN: The Federal Judicial Center has as part of its mandate—in addition to the education and training of federal judges—the spreading of the rule of law across the globe, and educating judges in other countries. For the eight years that I was with the Center, I had the opportunity to travel, I won't say to every country in the world, but certainly many of them. It's a very interesting experience.

We would always begin by asking, "What do you want us to talk about?" and we'd get the same requests over and over again. They wanted us to talk about judicial ethics, case management, and how to move cases and prevent delay. They also wanted us to talk about writing. Now it's one thing to give somebody instructions on how to write a good opinion, but we found that you had to start one tier lower than that. You had to explain the importance of writing an opinion and further explain that a reasoned opinion was an element to the judiciary that would explain their reasoning to the people. That it wasn't just an arbitrary outcome, "Yeah, he won, he lost," but that there was a reason behind it.

In addition to case management, they would also ask about the role of a judge. Most of us believe that a judge's ability to control a courtroom is an important way of moving a case along. However, this was a concept that was foreign to many judges because in most countries, judges are not chosen in the same way our judges are chosen. They haven't had enough experiences with lawyers, and they're not about middle age or getting there. Becoming a judge is instead a choice when they go to law school. They have the option of taking a prosecutorial, private practice, or a judicial track. This may mean that at the age of 22 or 23 they will come out a judge. You may have access to a low-level judge to help get you through, but nobody is teaching you the things that judges learn in the U.S. By being a lawyer for years before becoming a judge, you learn the fundamentals, such as how a courtroom works, and what makes a trial work and move along.

One of the issues when you're teaching ethics in a foreign country is that at least half of the judges you are talking to are taking bribes. It's a given, it's a given in many judicial systems. Of course you don't know which judges are taking you seriously and which ones are just sort of sitting there nodding very carefully at everything you're saying. But I will tell you a powerful instance that I think will illustrate this point.

So the way we would teach ethics very often is with clickers, those electronic polling devices that show you the percentages and distribution of the group's chosen answers. Many foreign judges were absolutely fascinated by this. They absolutely loved it. The idea that first of all, they had adopted a judicial code of conduct similar to the one that we have,¹⁰ but of course, that they were not aware of that. They were responding on an instinctive basis, and of course, their answers were all over the map, which incidentally happens in our judicial exercises too. Before breaking for lunch, they asked, when we come back, instead of beginning with your prepared questions, can we start with our questions? I thought, "Yes! We've made it, they really love this, and they're going to give us really good questions because we'll be geared to their system." We said, "of course."

When we came back from lunch, we started with the first question that somebody had written out, which asked, "After you've made a decision, you have decided that the plaintiff's going to win. You ask the parties to come back in an hour while you prepare your decision for them. Your secretary comes in with an envelope and it's full of cash from the plaintiff's attorney. Question, since you were going to rule for the plaintiff anyway, the money is not influencing your decision, can you take the money?"

My assistant and I looked at each other; we thought we did something this morning, but now we're talking about something totally different. Don't ask me how we answered the question, we obviously didn't answer it, but went on with something else a little more basic.

That should give you an idea as to how you should be very careful when you go into a different system. You have to be very careful about superimposing. What we're bringing with us from our system is extremely basic. We once went to a clerk's office in Uganda. First of all, these clerks had, I would say, not even the equivalent of a junior high education. They were paid a mere pittance. How do you expect somebody to perform in a job like that? This is the staff of somebody

10. See ABA MODEL CODE OF JUDICIAL CONDUCT (2011).

who's going to be bringing the files to the judges. The files were on the floor and went up to the ceiling. They were not alphabetized in any way. I figured the best advice I could give to the State Department was to buy these people some filing cabinets and that would help a lot.

Okay, so here are these files, how did the judges know which cases to hear? There's a very simple answer. The guy who came in with money and subtly handed it to the clerk with the file in hand. Well there's the file to the case that the judge got to hear that day. Here I am talking about case management and about how you need to set a date for the motion to be filed and for the reply briefs as well, and that you need to tell them the number of pages in the brief. They just look at you like you're joking.

I just wanted to make a point that, when we as judges go to other countries, we can't just walk in and say, you've got to do it our way, you know, it works our way. It doesn't transplant unless you have a very good understanding of the system and people that you're talking to.

III. QUESTIONS AND ANSWERS

BRYANT GARTH: Thank you all, and thanks for providing me with a difficult hypothetical for my legal profession class. I want to pick up on your point with a question, and I want to get the audience involved as well. All of you have long experience doing this and it's not easy to learn how to bring the rule of law to places that don't have a strong tradition. How did you learn how to do this and what have you learned in the time that you've been doing this?

JUDGE ROTHSTEIN: I think one of the most important things is to learn about the country before you go. Learn as much as you possibly can. The State Department is very helpful. They usually have a lot of information, at least, sometimes, official information. The other thing is to spend a few days there before you do your talk. My trip to that clerk's office changed everything that I had prepared because I realized what I was going to talk about no longer made sense. When I went to Ghana, and saw exactly what Judge Baird said—that people were sitting in jail way beyond their maximum sentence—it changes everything you wanted to say.

JUDGE LEW: I have a few points to make about the successes and the failures of the program I've been involved in. You go over to a country for a particular program. They have asked directly, specifi-

cally, what they want to hear from you, whether it's a subject matter or a procedure. You prepare the programs by bringing speakers over and implementing your program.

Over the years I've noticed that once the program is over, I would give them my opinion and say, "This program has been pretty good, but you don't have all the proper people here to listen to our presentation. You need the prosecutors. You need the lawyers. You need the administration. If you were to have such a program again, ask for some other input, because your problems are created by these other agencies. Everybody should be on the same page and hear our presentation."

What are some of the successes? There are too many to mention, but I have one in particular. One day I received a call from Justice O'Connor. China invited her to attend a two-week program with the People's Court as part of a Supreme Court exchange. They had a host of problems that they wanted to discuss privately with other international Supreme Court members. Even though I'm not on the Supreme Court, Justice O'Connor invited me to join her because I have a reputation for knowing how to work with China. I was one of five judges selected for the program.

We had a tremendous program in China. We identified their problems. Because there were so many, we prioritized them. We informed China that we would focus on ten. The highest priority, which as Judge Rothstein just mentioned, was the corruption overseas. Corruption was the underpinning of many of China's problems, so we attacked that by recommending that China raise its judge's salaries.

The President of the Supreme Court of China accepted all ten of our recommendations. Before we left, we had a meeting with the President of China about our list of recommendations and they implemented every one of those programs. That was the year that China was entering the World Trade Organization (WTO). I also made a personal recommendation: Prepare for your anticipated business litigation with regard to intellectual property rights and the patent litigation that's going on. Your judges are not trained for this program, so you better start training your judges. The President said that *all* the judges would be trained. I said, "I'm sorry, but you have a problem. You need to tailor it down to a specific court." Two days later he said, "We will, we'll give it to the intermediate [court]."

That's an example of a success, but I also want to isolate the failures. We go to a country and we try to do work. In Indonesia we

wanted to import the rules of the Code of Conduct¹¹ to the countries around the world. Indonesia asked for help, but we knew we could not go there and say, “Look at our codes of conduct.” It will not work. They would never accept it. So another judge from the Netherlands and myself went to Indonesia to try to get them to implement the rule of law and the judicial rule of conduct.

We said, “Don’t look at Netherlands, and don’t look at our system. Adopt the international accord on the rule of conduct based on your country’s principles.” We spent three days discussing why their Supreme Court should implement the rule of conduct. On the third day discussions stalled. “We will never accept it,” they said. “What can’t you accept? The rules of conduct are very simple,” I asked . . . “Let me just pick a simple rule: You have to have the appearance of impartiality.” I said, “If a judge in court had a litigant come in, and they’re all Muslims, who wanted to give some fruits to the judge, would the judge accept it?”

He said, “Of course, all the time.” I said, “How about if the judge was in court before the proceeding, and they handed the fruit to the judge?” The judge says, “I will accept it.” I said, “Even if the other party didn’t give you anything?” He said, “Of course.” I said, “Why is that? Don’t you think there’s an appearance of impartiality?” He says, “Of course not, we’re Muslims, you just don’t understand us. These are our rules. We will not offend another Muslim; we will always accept a gift.” I said, “Despite the fact that the judge is going to make a ruling on the case?” He said, “Yes, therefore we will never accept the rules of conduct. End of story.” That is an example of a failure.

BRYANT GARTH: Thank you. Does anyone have a question?

AUDIENCE MEMBER: Yes, actually. It’s directed to Judge Carter. It’s one thing to go into a relatively calm region, for lack of better terms, but I’m curious about how it’s like to go into the areas of conflict. How do you use and apply U.S. law in places such as in the Syrian camps?

JUDGE CARTER: Okay, that’s a great question. First of all, I don’t work for the State Department, I’m a judge. Oftentimes, in overseas training, there’s a very fine line. Picture a situation where a judge that you trained in America is accused of taking a bribe, but

11. CODE OF CONDUCT FOR UNITED STATES JUDGES, INTRODUCTION (2014), <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>.

he's being held in the Taliban prison. The Ambassador of the State Department cannot go into that facility without being asked for something. In terms of human rights, I can enter these regions. Bush can talk to Putin, or maybe I can talk to the general, but my country wouldn't have their fingerprints on it. I call that partial rule of law.

BRYANT GARTH: I've got one more question. Do you find this type of work to be complementary or does it compete with work as a judge, that is, do you bring anything from abroad back into your judging at home?

JUDGE REID O'CONNELL: Absolutely. You bring back everything. Patience, expectations, and great ideas you can have a conversation with someone about. It has enriched my life significantly to learn how to be a better judge by just talking with people all over the world.

JUDGE LEW: Many civil law countries already have great programs for mediation and ADR. Many of the countries immediately want to start transitioning their system to be like ours when they hear what we present to them. On one occasion, I stood up and said, "We always learn from each other. You like what we present, and I like what you have here already." So in one country, I said, "You have such a great mediation program already and you're going to do away with it so you can have a so-called rule of law adversarial system. Please don't get rid of that system. We learn from you. In our country we are now implementing mediation and ADR to supplement our system." It works as a two-way street.

AUDIENCE MEMBER: The profundity of the cultural and historical challenges is really staggering. One of the panelists used the phrase of being "missionaries for the rule of law." I'm curious about the partnerships that may be established with all the work you're doing with groups like NGO's or other groups that have experience on the ground, as opposed to or in addition to the State Department, U.S. military, or USAID. Are there connections to other groups that may have deep cultural appreciation with the challenges?

JUDGE ROTHSTEIN: There are resident people from organizations like the ABA in these countries for months and years at a time. They are invaluable because they know the country very well. To disregard them would be foolish, because you need to know as much as

possible before you go. We note the differences they have with some of our ideas. For instance, there are many countries that cannot understand our love of the jury system. There's practically no other country that I know of where the jury system works. They're really amused by it. You know immediately a lot of the things are not going to go over very well, so you have to be very careful.

For instance, I already mentioned this in talking about writing opinions and coming out with opinions, but one thing we realized very quickly, is that if you don't have a reporter system, no one can ever find those opinions, and they have no precedential value. Now of course we're talking case law where precedential values support you. But even under a non-common law system, whatever system you're judging in, precedence still makes a difference. You don't want the judge down the hall coming up with a totally different decision than what you're coming up with. How do you define it? How difficult would it be and how would you go about establishing a recorder system? Every time you attack one portion of it, it gets more and more complicated, but that doesn't mean you can't do it.

JUDGE LEW: It's very interesting that you pick up on a phrase, "missionary for the rule of law." That implies that we're carrying a message over there for someone else and that someone else is the funding agency. We are all judges. Somebody else funds the programs, and it's never us. The courts have no money for this. Either we do it on our own account, with our own money, or we're funded by a source. The sources have a message to promote. If the source is the ABA for instance, they have their own agenda. It could be the USPTO's office; they have their own message that they want to carry across. It could be the World Bank. In sum, the funding agency is going to want to be involved. The State Department is always involved as well.

When you go to any country, there will always be an economic officer waiting for you in our U.S. Consulate. He has his mission that he wants too. There's a representative from the USPTO's office in many of the major U.S. Consulates around the world, and they too have their message. You have to remember that we are all judges; we carry our own message. We will deal with the rule of law, but we stand apart from what their mission is.

We only carry the court's message, pure and simple. These representatives have other goals. For instance, when I went to Dubai, the economic officer was basically funding my trip under auspices of some

work in the U.S. on the IPR. When I found out what the real mission was, I said, “I can’t do it.” We went undercover and had our meetings and I said, “Listen, that’s your mission. You deal with it, but you can’t tie the court to that. You have to recognize that you’re talking to the judges only with respect to the rule of law, with regard to the legal systems, and the infrastructure within the courts.”

JUDGE CARTER: Just to follow up, most of these programs are funded through the State Department. Though there are some peculiar situations worth mentioning. For instance, we just got done with a session between the North Koreans and the South Koreans. If you just happened to be in Bangkok conducting a counter terrorism seminar for three days and you happen to wander down the hallway on a Wednesday afternoon, and you find the judges from Mongolia, Japan, North Korea, and South Korea sitting in a room. Do you drop in to participate even though the State Department might disown this? But where did that money come from? It came from the South Korean government. Let me repeat that. We are faced with, on occasion, some very potentially peculiar decisions that we have to make, and one of the individual decisions you have to make is whether you want to participate. Do you believe that your humble efforts can somehow modify or change a system for the better?

From my perspective, I think that all of my colleagues here are missionaries. They are missionaries for peace, humanity . . . whether we move to change a system (which is arrogant), or gently push and modify a system, and get in there at dinnertime or breakfast, talk and live with these folks—that’s the change you make over a period of time and it’s relational.

BRYANT GARTH: Thank you. I have a question about the history of the Central District. We have a sense of when this started, but are rule of law activities by federal judges increasing in more recent years? Do you have any idea as to the number of judges that undertake these activities?

JUDGE LEW: I believe it to be very popular from the Administration Office and the Committee on International Judicial Relations. Judges are always interested in submitting their name for this kind of work.

BRYANT GARTH: Do you think most of them do it?

JUDGE LEW: Most of them do indeed do it, but the other problem is the workload in the federal courts. The workload is so heavy, that it becomes very difficult for us to find the time to get away to do the work. Judge Carter and myself think alike and we squeeze our time out and people do not know when we're gone. Lawyers do their work, settle their case, and do whatever they have to do. But we're on a very tight schedule. I think a lot of judges are interested in this work, and I think there's a lot of great interest in the work. But you have to remember that it's a lot of effort for us to travel to other countries. We've also encouraged many of the countries now to bring people over. We have, through the Federal Judicial Center and the USPTO's office, grand arenas and facilities to educate these people.¹² I remember judges from the Supreme Court had sent young judges over from Korea and Japan to be trained here in my court for two to three months at a time on specific missions. One such mission was how to create a jury system and the other was to report back recommendations on how to create a magistrate judges system to augment the judicial work. They spend money to bring people over here as well.

JUDGE REID O'CONNELL: As a newer judge to the federal bench, I would like to make one last point. Judge Carter seeks you out if you have any interest at all to continue this rule of law effort. I think that's very important because at some point it's going to be on the newer judges to later carry this on. I would just like to give kudos to Judge Carter for constantly identifying people and offering to get them involved.

BRYANT GARTH: Kudos to you all for sharing your time in this very crowded room. Thank you.

12. See Hon. Barbara Rothstein, *The Federal Judicial Center Offers Training and Research*, *The Federal Lawyer*, Oct. 2009, at 36, 38-39; *Global Intellectual Property Academy*, USPTO, <http://www.uspto.gov/learning-and-resources/global-intellectual-property-academy> (last modified Apr. 19, 2016).