

Legal Reform in Ukraine: Life in the Trenches

CHRISTOPHER LEHMANN

In June 1998, I was offered the opportunity to go to Ukraine for one year as the Criminal Law Liaison for the American Bar Association's Central and Eastern European Law Initiative (CEELI). My assignment would be singlehandedly to assist the Ukrainians as they reformed their criminal justice system. I am now halfway through that year, having experienced every human emotion along the way save boredom. What follows are the real-life impressions of one foot soldier in America's ongoing foreign aid saga in the newly independent states (NIS).

The CEELI Program

The CEELI program was established in 1991 to offer assistance to the Eastern bloc countries as they moved from socialism toward democratic, Western models. It was later expanded to include the countries of the former Soviet Union. Today, CEELI has a variety of short- and long-term representatives working throughout both areas.¹ What distinguishes CEELI from many other development programs is that all of its in-country representatives are volunteers—lawyers who have left their American jobs, usually for a one-year period, to work pro bono on legal reform issues. Volunteers receive an adequate living stipend and housing, but no salary. “Legal Peace Corps” would not be a bad analogy.

The offer to go to Ukraine gave me some initial pause. The sheer size of the country and its government would limit the ability of a single individual, no matter how hard-working and well-intentioned, to have any significant impact on the problems facing the criminal justice system. Access to government officials and others in a position to effect change could potentially be hard to obtain. It is one thing to come into a country like Moldova or Georgia, where American assistance programs are, by default, a big deal, but quite another to come to a place like Ukraine or Russia, where Americans are, frankly, somewhat less welcome and where American aid programs simply are too small to have the same kind of relevance. I had been around the “development” world enough to know that you can-

Christopher Lehmann is currently working in Ukraine as criminal law liaison for the American Bar Association's Central and Eastern European Law Liaison Initiative.

not go to places as big as Moscow or Kyiv expecting that the red carpet will be rolled out or that the cabinet ministers will be waiting to greet you.

Nevertheless, the offer was simply too tempting, and the timing was right personally. So I obtained a one-year leave of absence from my “day job” as an assistant U.S. attorney in New York City and prepared to head east. I immediately began a self-styled crash course in all things Ukrainian—which was a surprisingly difficult task, given the dearth of published English language materials on this vast Slavic country, the second-largest in Europe. I arrived in Ukraine at the beginning of July 1998.

CEELI has had a liaison program in Ukraine since 1992, focused primarily on rule of law and environmental issues. At present, CEELI has five American lawyers working in Ukraine; in addition to me, there are two environmental attorneys, who are working with local advocacy groups that CEELI helped to create; a “rule of law” liaison, who is working on such issues as media law reform and the independence of the judiciary; and an associate rule of law liaison who is working with the law schools to help them develop clinical training programs. While CEELI funding comes from a variety of sources, the primary source is grants by the U.S. government. Most of these come from the U.S. Agency for International Development, but money for the criminal law reform programs comes primarily from the U.S. Department of Justice, through its Office of Overseas Prosecutorial Development, Assistance and Training.

CEELI and its in-country liaisons have an extremely ambitious, wide-ranging portfolio and provide legal reform assistance in a number of areas and ways. For example, CEELI liaisons provide advice to both governmental and nongovernmental organizations on a variety of substantive and technical legal matters, through seminars, workshops, speaking engagements, and written materials. CEELI’s “institution building” efforts include working with local judges, attorneys, and law students to create independent, self-sustaining professional associations. When requested, CEELI will provide advice on specific pieces of draft legislation and will prepare comprehensive analyses of them. CEELI will also provide advocacy grants to local organizations to assist them with specific projects, such as publishing legal materials. My work, by its nature, focuses primarily on training and the dissemination of information on criminal law issues—through speaking, writing, and workshops.

Particular examples of CEELI projects are instructive. In Georgia, the CEELI liaisons recently assisted the courts in implementing nationwide judicial qualification measures, including the administration of a standardized test that all of the country’s judges must now pass. In Ukraine, CEELI has taken responsibility for setting up clinical education programs in the law schools, for starting the first law students associations, and for administering, nationwide, the Jessup and Tilden International Moot Court competitions. Given such a broad agenda, individual CEELI liaisons have immense leeway to pick and choose topics and approaches. This requires, however, that they be disciplined and focused about their work. Indeed, the proper functioning of the CEELI program depends on the recruitment and assignment of individuals who can function independently and without much

external direction. If anything, liaisons are sent out by CEELI from Washington with surprisingly little advance preparation or briefing. There is enough wiggle room, frankly, for lazy or incompetent liaisons to coast through their year. Likewise, it would not be hard for an undisciplined or unfocused individual to spend the year spinning their wheels, just trying to figure out how to be useful. I will confess that despite all the well-intentioned rhetoric that I had absorbed about CEELI and my own mission, I arrived at Boryspil Airport in Kyiv still feeling unsure of my precise assignment, of what I was actually supposed to do when I sat down at my new desk for the first time, on my first day of work. This problem was solved for me by the office space crunch—it was three weeks before I actually got a desk. By that time, the work seemed to have pretty much taken care of itself, and I was already up to my elbows in new projects.

I am CEELI's first full-time resident criminal law liaison in Ukraine—with the result that I was starting the criminal law program there pretty much from scratch. There had been a few prior CEELI contacts in the criminal justice area—primarily with some of the judges on Ukraine's Supreme Court, for whom a workshop had been done by CEELI on economic crime in late 1997—but whatever momentum that program had generated had since subsided. Oddly, criminal law reform efforts by the United States generally have come late to the newly independent countries, compared with other types of U.S. government-funded projects. If anything, this makes our road harder, as we are trying to initiate new programs long after the honeymoon days of developmental assistance in the NIS—when both sides still believed that “quick fix” aid might lead to genuine economic and political reform and the creation of Western-style democracies—are over.

My first order of business was to hire a program assistant for the fledgling criminal law program. Here fortune smiled, and I was able to find a savvy, energetic young student from Kyiv State University's law program who was fully trilingual in Russian, Ukrainian, and English (right down to his American-sounding accent and large vocabulary of idioms, although he had never been west of Berlin). Like most CEELI liaisons, I am not fluent in the language(s) of the country in which I work. While this is a great handicap, it is also a fact of life—it would be almost impossible to run a program such as CEELI's if participating lawyers were also required to be fully proficient in the relevant language. Like many other development programs, CEELI must make a trade-off between the substantive expertise it seeks for its representatives and their language capabilities. Unfortunately, the two talents do not intersect with sufficient frequency. Because of this, it is critical to obtain competent, motivated local staff, and folly to think you can function effectively without them.

First Impressions of Ukraine

With a background in civil and criminal law and in international development (primarily electoral assistance work) rather than Slavic studies, I came to Kyiv as an NIS novice—I like to think of it as coming with a clean slate—and pretty much without preconceptions. My initial impressions of the city were probably the common Western ones. While it is a pretty place, with lots of parks and a sur-

prising amount of surviving pre-war architecture, the overwhelming sense is one of dilapidation. So much is literally crumbling away. The government may have spent a small fortune last summer to beautifully repave the city's main street, the Kreschatik, but it is at best only a stage set. Look beyond it and you will soon see a derelict civic infrastructure that barely seems to hold together. Emblematic are the packs of wild dogs that roam the city's streets, or the common areas of almost every apartment building in the city: dirty, unkempt, and abandoned.

As Americans, even unsalaried ones, we are well cared for. Central Kyiv, where we live and work, has adequate shopping and transportation and plenty of restaurants and cafes. There is heat and hot water and cable television. This is not a hardship post. And if most Ukrainians are living a hard-scrabble life, they certainly put a good face on it. Not only in Kyiv, but throughout the country, the population remains well dressed, the arts survive, and on the surface at least, an air of normality prevails.

But I quickly learned—the hard way—that I had to set aside Western notions of productivity in the NIS, or I would be overwhelmed by the frustrations. Computers crash, phone calls are routinely cut off in mid conversation, normal business supplies may or may not be available, and there are, of course, no “800” numbers. Banking is medieval. Our office manager's standard opening response to any inquiry was, “That is not possible.” After several weeks I received what remains the single best piece of advice I have heard on coping with life in Ukraine; I call it, variously, “the one-thing-a-day rule” or “Sean's rule” after its disseminator, the husband of one of the other CEELI liaisons. It goes like this: Plan on accomplishing one thing a day; once you have done it be satisfied and figure that everything else is gravy. I follow this rule religiously, and it often saves my sanity.

Our life line to home is through e-mail—almost all communication with the States is done this way. Its fast, cheap, and surprisingly reliable. The down side, of course, is that we are always at Washington's beck and call. Being a federal government contractor, CEELI and its liaisons are subject to all of the burdensome reporting requirements that come with such territory.

I also quickly learned that Ukraine is a lot more complex and a lot less homogenous than we in the West perceive it to be. That may be because much of what we know about it has been filtered through the nostalgic eyes of the “Ukrainian diaspora”—the large Ukrainian immigrant communities in the United States and Canada. This group is far more nationalist than the average Ukrainian citizen and not really representative of the current mindset. Ukrainian immigrants to North America—the parents and grandparents of the current generation of diaspora Ukrainians—tended to be primarily from western Ukraine, disproportionately Catholic (albeit Eastern Rite), and Ukrainian rather than Russian speaking (indeed, many had emigrated not from Russia, but from what was then Poland or Austria-Hungary). It is members of this group who are responsible for most of the English language books that are currently available on Ukraine. Accordingly, I arrived with the simplistic understanding that modern-day Ukrainians were euphoric to have finally thrown off the yoke of Russian domination, and were now eagerly re-creating their free Zaporozhian Cossack state.

It did not take long in Kyiv to get a sense of just how complicated the Ukrainian relationship with Russia really is. To digress briefly into Ukraine's extraordinarily complex history, it must be remembered that western Ukraine—cities such as Lviv, Lutsk, and Ivano-Frankivsk—had never been ruled from Moscow until they were given by Hitler to Stalin in the 1939 “partition” of Poland. With such a legacy, it is small wonder that the populations of those western oblasts today have no use for Russia or Russians. But it must also be remembered that for over a thousand years—since the days of the Kyiv Rus—Kyiv has been considered the mother city of Russian civilization. By comparison, Moscow is the upstart. Eastern Ukraine resonates with great sites of Russian history—from Poltava, where

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Peter the Great decisively turned back the Swedish invaders, to the monasteries of Chernihiv and Pechersk Lavra, where Russian Orthodoxy survived the Mongol and Tartar onslaughts.² Today, in fact, Ukraine's six largest cities (Kyiv, Kharkiv, Dnipropetrovsk, Donetsk, Odessa, and Zaporozhia) continue to be almost exclusively Russian

speaking. In short, it is far too simple to sum up Ukrainian history in terms of the “Ukrainians good, Russians bad” perspective now in vogue with many members of the Ukrainian diaspora.

To read the Ukrainian history of scholars such as Canadian Orest Subtelny (which I had) was to be handed a rather one-sided nationalist agenda and a somewhat distorted view of the reality of Ukrainian history.³ It did not prepare me for the reality I encountered. Unlike the Ukrainian diaspora, Ukrainians themselves seem far more ambivalent about their new state and their new identity. While Ukrainians voted overwhelmingly for independence in 1991, it was, for many, not so much an outpouring of Ukrainian nationalism as a vote against the continued rule of what was almost universally perceived to be a bankrupt Soviet government.⁴

Take the language issue, which is symptomatic of the sometimes split identity. Before coming to Ukraine, I had fully expected that I would study and learn Ukrainian. I loaded up at Barnes and Noble on Ukrainian language textbooks and phrase books. Landing in Kyiv, I found an effectively Russian-speaking city. It turned out that all of the past CEELI liaisons, at the Ukrainian staff's insistence, had studied Russian. Many Ukrainians still struggle with the Ukrainian language in official contexts (where its use is normally required) and immediately switch back to Russian for everyday communication. One of the more successful legal publishers in Ukraine operates a profitable business collecting the official publications of Ukrainian statutes and translating them back into Russian so that practicing advocates can use them. The court proceedings I have watched in Kyiv have been conducted in Russian, not Ukrainian. Indeed, the only people who have ever

chastised me for studying Russian instead of Ukrainian are diaspora Ukrainians from the United States. Everyone else considers it a perfectly logical move for a foreigner trying to negotiate the streets of Kyiv.

Getting to Work: The Continuing Legacy of the Soviet Criminal Justice System

As I settled into my work in Ukraine, I continued to be troubled by my initial and still lingering concerns about how a program consisting of two people could hope to effect any real changes in Ukraine's lumbering, decrepit, and corrupt criminal law system. The more I learned, the more cause I had for such worries. To characterize the Ukrainian legal system as one crippled by inertia is not an overstatement. Despite seven years of independence, Ukraine continues to use, in almost unchanged form, the criminal justice system it inherited from the Soviets. The criminal laws and the criminal procedure codes currently in effect are relics of Soviet times, as are many of the prosecutors, judges, and lawyers. A courtroom observer from the 1980s would notice few differences in the day-to-day operation of the system. Changes are proposed, of course. In keeping with the dictates of Ukraine's new constitution, enacted in 1996, there are pending before Ukraine's parliament, the Verkhovna Rada, proposals for a completely new Civil Code, Criminal Code, Criminal Procedure Code, and Law on the Judiciary—indeed, there are multiple draft versions of the codes that have been circulated and proposed. But the politicians in the Rada, and Ukraine generally, are presently distracted by the ongoing economic crisis from the hard but tedious work of code review and enactment. Even in the unlikely event that the economic situation stabilizes enough to allow the Rada time for other legislative pursuits, 1999 promises further political distraction in the form of presidential elections. In short, no knowledgeable observers expect passage of the new criminal law or criminal procedure codes—and the fundamental legal changes they could occasion—until some time into the next millennium.

A prime consequence of the continuation of the old Soviet justice system is, of course, the persistence of some of its more insidious features.⁵ For example, the system continues to be dominated by the prosecutors, who have long dictated what the results of criminal proceedings will be. The decision of the prosecutor to indict carried far more weight under the Soviet legal system than it does under either the European or American models. Acquittals in criminal cases in Soviet courts were rare, and the same continues to be true in Ukraine. In those few instances where a judge does acquit, the result is rarely a final one, as it would be in the United States (because of our double jeopardy rules). Rather, the prosecutor has many options; there may be an appeal, or the prosecutor may simply continue the investigation, and may refile the case with new or different charges. In the situations most offensive to Western sensibilities, the judge, rather than reach a decision in a case, may simply send it back to the prosecutor for further investigation and development (this is often done at the instigation of the prosecutor, particularly if the prosecution is looking weak, or the trial is not proceeding as expected); even worse, a prosecutor may seek to have the acquitted

defendant tried on the same charges but heard by a new judge. Judges are, therefore, not “independent” in the Western sense. They are fully aware that if they render a result that is unacceptable to the prosecutor, it will likely be overridden at a later date. Judges are also subject to regular ex parte contact and influence by prosecutors, so that judicial decisions are not limited to the courtroom record to the same degree as would be the case in the United States.

Soviet era pretrial procedures also largely persist. These, too, are designed to give the prosecutor control over the case from the beginning. Pretrial detention of accused defendants is common (the opposite of the American system), yet there is no equivalent of the American Speedy Trial Act. Indeed, defendants can languish for months or years waiting for trial, and the prosecutors can use the time to conduct further investigations and to strengthen their case. Even worse, throughout this period, prosecutors control access both to defendants and to the evidence, and may deny or limit access to either by a defendant’s lawyer.

Even the best defense attorneys have limited options under such a system. Obtaining a conviction on a lesser charge is normally considered a successful outcome. The same can be said for getting a lenient sentence. The very best a savvy lawyer can normally hope for is to convince the prosecutor informally to drop the charges and close the case (which again illustrates the subordinate role of the judge in the criminal law process).

Aside from its historic baggage, the Ukrainian criminal justice system today also suffers from a fundamental lack of resources. In a country as near economic bankruptcy as Ukraine, there is simply no public money available to run the courts or the prisons. Judges and court personnel often have not been paid in months. There frequently is no money for such simple things as pens and paper, let alone such Western “extravagances” as court reporters, transcripts, computers, copy machines, or even sufficient copies of the law codes themselves. Prison conditions, as anyone with knowledge will tell you, are horrific. Indeed, I have heard prosecutors themselves publicly beg for money for the prisons, with the admonition that the purpose of incarceration is to punish law breakers, not destroy them.

Finally, the profound degree of corruption that plagues the system is a fact of life. It stems partly from the inadequate—and frequently nonexistent—official pay of judges, prosecutors, and other law enforcement officers, and partly from a culture of cynicism that surrounds the justice system and that predates the collapse of the Soviet Union. The sad fact is that legal proceedings in Ukraine, whether civil or criminal, can be, and frequently are, resolved through payment of bribes and payoffs. This kind of assertion is, of course, difficult to document, and I must rely on variously acquired anecdotal evidence: the near-universal concurrence on this point by Ukrainian lawyers in private conversations and my own repeated observations of public law enforcement officers who have indiscreetly stepped into expensive, late model Mercedes sedans after our meetings, or who have queried me about the private schools in the United States and England to which they send their children. This level of corruption is, frankly, accepted—or at least tolerated as unavoidable. My protestations to Ukrainians that public

corruption on this scale simply does not exist in the West are generally met with polite disbelief.

How fast any of the above-described features of the existing criminal law system will change is anybody's guess. There is at least a rhetorical commitment in Ukraine to fundamental, top-to-bottom restructuring of the legal system. Occasionally, one will come across someone, such as Judge Vladimir Stefanuk, the First Deputy of Ukraine's Supreme Court, who will speak forcefully and passionately about the need for basic reforms. But no one seems to believe it will happen soon, or all at once.

“Doing” Law Reform

My first contacts with the Supreme Court were not encouraging and, moreover, confirmed my fears about “big country” syndrome. In typical American fashion, I was, of course, ready to roll up my sleeves and get to work. Things don't quite work that way in Ukraine. My initial meeting was with the Court's Chief of the Department of International Cooperation—that's right, the Supreme Court of Ukraine gets so much foreign assistance and aid from so many different public and private entities that they have set up an office to coordinate it all. In other words, before providing any kind of assistance to Ukraine's judges one must effectively take a number. In theory, any and all contacts with any of Ukraine's 5,000 judges should first go through this office.

Our first meeting was quite formal, held in the Supreme Court's ceremonial court room, with little Ukrainian and American flags on the table. I was informed that in order to work together we would first need to prepare a memorandum of understanding (MOU) outlining our mutual rights and obligations. Copies of MOUs with other organizations were produced as examples. These included not only the text of the MOUs themselves, but protocols and addenda that further explained what was actually understood by the parties. I left the court deflated.

As of this writing, I have been negotiating the terms of an MOU and its attendant protocol for five months with the Office of the Chief of the International Cooperation Department of the Supreme Court of Ukraine. We have exchanged numerous drafts and have had numerous formal meetings, most of which also included a representative of the United States embassy. I am told we are close to concluding a final agreement (although there are still two separate drafts of the agreement circulating) and a signing ceremony.

In spite of this lukewarm reception from the Supreme Court's administrative arm, I held off despairing for two reasons. First, our program's objectives were not limited to working with the courts of Ukraine, but included reaching out to both prosecutors and defense counsel as well. Second, I have learned, in true Ukrainian fashion, that life goes on and institutions function in spite of the bureaucracy. It is usually quite possible to conduct whatever business you need to do somewhat “to the side” of official channels. My assistant calls this “thinking like a Ukrainian.” Indeed, the whole MOU process has proved to be a bit of a red herring, and we have been able to proceed expeditiously with our judicial programs without having our status formally recognized by the Supreme Court.

In fact, and somewhat ironically, it was the Supreme Court that invited us to put on our first major program—for their Judicial Training Center in Kyiv—well in advance of having formalized our relationship.

Workshops on criminal procedure have been the nuts and bolts of CEELI's slightly older criminal law reform projects in Russia and the other East European countries in which it has operated. The basic drill has been to bring in one or two federal judges from the United States, along with a prosecutor, and take the audience (usually judges) through a one or two day review of American criminal procedural concepts. The idea is to plant seeds of change in the minds of influential members of the criminal law community. Then, as the countries move toward

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reform of their legal systems, their leadership will be more predisposed to look toward the Western models with their attendant emphasis on due process and procedural fairness. There is some evidence that the strategy can be successful; in Russia, for example, CEELI put a lot of work into programs that explained plea bargaining, a procedure

that did not exist under the Soviet system. Legislation to provide for plea bargaining has now been introduced into the Russian Duma, and the concept is clearly gaining popularity throughout the newly independent states.

Being a rookie, I wasn't about to stray too far from the basic CEELI text on my initial forays. We agreed to present a one-day overview of American criminal procedural concepts to assembled judges from the Kyiv oblast and to repeat the program for members of the Kyiv Bar Association (the criminal defense bar). We also agreed to do a series of half-day workshops with a small group of oblast judges from throughout Ukraine who were participating in a longer, more intensive criminal law training program being held at the Supreme Court's new Judicial Training Center. In keeping with CEELI's custom, and anxious to make a good impression with the Supreme Court in our first major criminal law program, we brought as lecturers not one, but two federal judges, as well as a federal prosecutor from the United States.

If nothing else, the experience gave me a new respect for people who plan and put on seminars. All logistical and substantive planning for these programs was left to me and my sole assistant. I have attended many conferences and workshops in my life without having any idea of just how much work goes into putting them on. The trick, apparently, is making it look easy. Every detail and contingency must be accounted for, from arranging for foolproof simultaneous interpretation to making sure the samovars are plugged in on time so that there's hot water at the coffee breaks. In addition, the program must be kept on track, relevant, and interesting. Finally, as a sometime federal prosecutor, used to keeping

judges happy, or at least mollified, I also instinctively rushed to make sure that the needs of my visiting federal judges were at all times attended to. I probably over-planned my first series of events, but they came off without a major hitch.

My debut programs were perhaps as much a learning experience for me as for my participants, if in different ways. For me, it was an opportunity to see what really resonated with the Ukrainians. To some topics the response was polite, but flat. For example, detailed explanations of the American grand jury system may help people better understand the Bill Clinton-Monica Lewinsky scandal (a subject about which I never fail to get questions, no matter what the program topic is) but simply do not have much direct relevance to the existing legal system in Ukraine or the problems facing it. In any event, grand juries are an esoteric and somewhat cumbersome American institution; they are not an indispensable component of the rule of law, and many legal systems more than adequately provide procedural safeguards to defendants without them. Their explanation may be marginally interesting to Ukrainian lawyers, but it is of little practical use to them.

On the other hand, some subjects elicited such visibly heated discussion and questioning, and such enthusiastic response, that I immediately felt confirmed in all the hard work and expense it had taken to bring about these exchanges. For example, a discussion of American procedures for obtaining search warrants—conditioning a prosecutor's power to conduct searches on his or her ability to first demonstrate to a judge that there is probable legal cause—is an excellent way to open a discussion on shifting powers from the prosecutors to a strengthened, independent judiciary.

Discussions of plea bargaining involved the most subtle, but perhaps the most profound shift in thinking. Plea bargaining was anathema in the post-Stalinist Soviet Union because it harked back to Stalin's show trials of the late 1930s, where the proceedings were frequently resolved simply by having the accused make a forced "confession." As a result, Ukraine remains saddled with a cumbersome system in which all criminal cases must proceed to trial, even when the defendant admits his guilt. Our own American system, which disposes of 90 percent of its criminal cases through plea bargaining, would soon be hopelessly clogged and overwhelmed without it. Nevertheless, the Ukrainian judges were initially skeptical that any procedure that permitted such abbreviated criminal proceedings would not open the door to abuse, most specifically in the form of forced confessions. During our discussion, they more than once referred to Stalin's trials by name. However, after a careful explanation of the protections built into the process of taking a plea—for example, the careful questioning by the court of all circumstances surrounding the plea, the defendant's right to back out of the plea and proceed with trial, the defendant's repeated opportunities to inform the court of any coercion by the prosecution, and the defendant's access to counsel at all stages of the plea process—the Ukrainian judges came around 180 degrees on the issue.⁶ By the end of the day they were insisting that the procedure must be brought to Ukraine.

Perhaps the single most relevant discussion concerned the use of bail. Under the Soviet system, bail, as we know it, did not exist. The accused were either held

in pretrial detention or in some less-serious cases released on their own recognition—there was no intermediate procedure. However, in 1996, Ukraine did enact a bail law.⁷ This came about largely through the initiative of the Supreme Court's criminal collegium and well in advance of the passage of the still-pending criminal procedure code. As its Ukrainian drafters will tell you, the bail law as finally enacted is flawed—for example, it still allows the prosecutor rather than the court to unilaterally make the decision on whether or not bail should be granted—but it is an important step toward recognition and adoption of the Western presumption that criminal defendants will not be held in pretrial detention absent a demonstrated necessity.

As often seems to be the case in the NIS, however, there is a great difference between enacting a progressive new law and actually implementing it. In typical fashion, the new bail law has languished on the books for the last two years largely unused. For example, when I queried the assembled judges attending our Kyiv workshop, none had as yet seen a bail application, and few seemed familiar with the statute. The reason for this is simple—there are few resources to publicize and disseminate information about changes and developments in the law. This is especially true of such fundamental changes as this one, which involve a departure from the business-as-usual procedures that have been in effect for decades. American lawyers would probably be just as resistant to such sweeping innovation and change unless it was clearly explained to them. For example, the innovative federal anti-racketeering statute (RICO)⁸ sat unused on the shelves for many years after its initial passage in 1970; it was only after creative prosecutors began using the statute in the 1980s that it gradually became the major crime-fighting tool it is today.

Accordingly, as a follow-up to our first series of workshops, I set to work developing a program that would focus solely on bail and pretrial detention issues. The subject seemed tailor-made for CEELI. The topic was easily explainable back in the States, even to noncriminal lawyers (the kind who run CEELI, and to whom I report). It would provide the Ukrainians with practical information that they could immediately put to use. It had a genuine “do good” component and was consistent not only with my criminal law program objectives but with CEELI's broader human rights goals. Indeed, the presumption against pretrial confinement is so firmly established in Western law that it is embodied both in the Eighth Amendment to our Constitution, and in Article 5 of the European Convention on Human Rights.

For once, I found everyone I approached about the program completely receptive. Money for such education simply does not exist in the budgets of Ukrainian government organs. Printing and distributing 5,000 copies of the bail law would be a luxury beyond the means of the hard-pressed courts, let alone holding a series of seminars designed to really examine and explain the new statute and its conceptual framework. The Ukrainian judges and lawyers I spoke with also saw that this would be a program of immediate practical benefit—unlike many of the more generalized, academic topics that foreign aid donors sometimes propose.

In putting together a program panel it made sense, of course, to rely heavily on Ukrainian experts, rather than on Americans. I was extremely fortunate in finding Judge Petro Pilipchuk, of Ukraine's Supreme Court, who is one of the authors of the bail law, and Professor Valeriy Podipliy, of the Law Faculty of Kyiv State University. Both have already written about the new law, and Professor Podipaliy had himself actually used it on several occasions in his own law practice. Both men eagerly agreed to participate. Ultimately, we developed a program that was primarily Ukrainians speaking to Ukrainians about a Ukrainian issue. Although we did bring in an American judge to discuss the comparative experience, that formed only one component of the larger workshop.

To date, we have put this program on in Lviv, Ternopil, and Kharkiv. Other oblasts throughout Ukraine are now clamoring to be added to our schedule. I have found that the program serves not only as a means of educating legal professionals about the new law but as a forum for discussing the Supreme Court's proposed rules on its implementation. These rules were recently issued by the court in draft form, and the court is actively soliciting comments on them. Clearly, this is a formula that is effective; we are offering a product that people want (information) at a price they can afford (free). At the same time, we are fulfilling our own program goals, which are to develop and support projects that promote the rule of law.

Conclusion

My work in Ukraine may ultimately help to strengthen the rule of law in some concrete, specific ways. It may assist Ukraine in bringing its legal system into consistency with Western or international "norms." It may even help to create some better options for handling eighteen-year-old bicycle thieves. But it will not help to resolve the fundamental questions that plague Ukraine. It will not end the pervasive corruption, it will not stabilize the teetering economy, and it will not force an ambivalent Ukraine onto a path of reform. It will not even solve the more mundane deficiencies of the legal system—such as the lack of a truly independent judiciary. The longer I am here, the more I question whether Ukraine and its citizens really have the will or the desire to profoundly reshape their society. This is not a Poland or Estonia, which would do almost anything to secure its place in NATO or the European Community. Indeed, if you ask Ukrainians if they are Europeans, they do not know how to answer. I have found Ukraine to be a stubborn, stoic, pessimistic place that will not blindly or cooperatively follow the paths that the West, or its institutions, would like to set for it.

There is little vision here, but much nostalgia. Ukraine today still cannot decide if it wants to go forward or back, if it wants to look to the West or the East. For every Lenin statue that was pulled down, huge ones still loom from the central squares of cities large and small. The anniversary of the Russian Revolution, 7 November, is still a national holiday here. Nothing was more emblematic of this sense of confusion than a trip I made to a conference being held for a group of collective farm bosses in a Vovchansk, a small city about an hour from Kharkiv. The conference was on how to effect land privatization, but to get there, we first had to drive through a series of villages still named, consecutively, Revolution,

Proletariat, October, and Red Army. And that is the problem. Until Ukraine decides for itself just what course it wants to follow, it won't know where it is going or how to get there.

NOTES

1. Further information on CEELI's programs can be obtained from its Washington, D.C. headquarters, located at 740 15th Street, NW, Washington, D.C. 20005-1022, telephone (202) 226-1959, e-mail: ceeli@abanet.org, website: <http://www.abanet.org/ceeli>.

2. The Battle of Poltava (1709) is an interesting example of how historical events in Ukraine's history are perceived in fundamentally different ways by different groups of Ukrainians. Because Cossack leader Ivan Mazepa had allied himself with the Swedes, some Ukrainians (including several of the Diaspora Ukrainian-authored materials I consulted) view the battle as a terrible defeat for the Ukrainian people. However, if you visit the battlefield today, in eastern Ukraine, you will find fresh flowers laid at the memorial to Russian war dead, workmen busy restoring the nearby nineteenth century Russian Orthodox Church, and a well-maintained, state run museum that continues to present the battle from an overwhelmingly Russian perspective. The memorial to the Swedish dead and their allies lies in a bleak and deserted field some distance away.

3. Orest Subtelny, *Ukraine: A History* (Toronto: University of Toronto Press, 1988).

4. It should also be noted that modern Ukrainians do not hold Russians responsible for the terrible famines, purges, and mass deportations of the 1930s—a Ukrainian holocaust that left perhaps as many as 14 million persons dead. In Ukraine today, these crimes are very clearly laid at the feet of Joseph Stalin. A more detailed examination of these events can be found in Robert Conquest, *Harvest of Sorrow* (New York: Oxford University Press, 1986).

5. An excellent discussion of the day-to-day functioning of the Soviet Union's judicial system in the late 1980s can be found in Robert Rand's *Comrade Lawyer: Inside Soviet Justice in an Era of Reform* (Boulder, CO: Westview Press, 1991).

6. The procedures for accepting guilty pleas in the federal court system are more thoroughly set forth at Rule 11 of the Federal Rules of Criminal Procedure.

7. Article 154-1, Criminal Procedural Code of Ukraine.

8. 18 U.S.C. 1961 *et seq.*