Eastern European Diary

Constitution-Building in the Former Soviet Union

Ronald D. Rotunda

In early January of 1996 I received an unusual e-mail message from Kiev, Ukraine. It was a request that I travel to Eastern Europe, to first assist the Ukrainian Government in drafting a democratic constitution, and then to consult with the six Justices of the newly-created Supreme Constitutional Court of Moldova. In both cases, the relevant officials approached the United States Agency for International Development (AID). AID funds the Rule of Law program, which provides assistance to the former Soviet republics in their transition to independent, democratic, market-based states.

Ukraine, the second largest of the former Soviet republics, has a population of 55 million and an area comparable to France. The Ukrainians were having a Convention to complete drafting their new Constitution. Less than 100 delegates participated, primarily members of the Ukrainian executive branch, Parliament, and the Judiciary. I was honored to be one of the few Westerners invited to attend.

From Ukraine, I traveled by train to Chisinau, Moldova to consult with the six members of the new Moldovan Constitutional Court. Moldova, which used to be a part of Romania, is situated between that country and Ukraine. Since becoming an independent country, Moldova has been engaged in legal and constitutional reforms in an attempt to create a democratic country and an independent judiciary. The members of the newly formed Constitutional Court said that they lacked the knowledge of how a constitutional court should function, so they asked the Rule of Law Program to provide American expertise. As one Justice later told me, "We know very little about your system because the Communists kept us in the dark. But we do know that the American judicial system is the one that we want to emulate."

Law professors by nature often engage in law reform. In my own case, law reform is often the focus of my writings in legal ethics. In contrast, professors of Constitutional Law

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normally have substantially less opportunity for such activities because our Constitution is amended so infrequently. The break-up of the Soviet Union has changed all that.

The fact that both Moldova and Ukraine wanted American help in constructing a new constitutional system says something very special about the United States. When the Moldovans and Ukrainians seek to establish the rule of law, when they seek to create an independent judiciary, when they seek to protect human rights, they turn to America. When politicians and economists talk about our exports, they often refer to mundane things such as wheat, cars, machine tools, movies, and software. But the Moldovans and Ukrainians were interested in our most important export: the Bill of Rights.

The few days between the receipt of my e-mail message and my departure were quite busy as I arranged to travel a third of the way around the world. What follows is based on diary jottings of my experiences in Ukraine and Moldova. They were recorded in the present tense, but transposed to the past tense. In doing so, I came to realize that some of the entries, particularly the early ones, scarcely read like an ode to the glories of freedom. They were more like a dirge about the cold – something that might have been written by one of Napoleon's grenadiers freezing to death on the retreat from Moscow. Other entries deal with miscarriages in planning, with ethnic vanities, and with the legacies from the communist past that still affect the relationships between the governors and the governed. Yet for all this, other entries reflect my own hope that while Ukrainians and Moldovans in striving may stray, in striving they may nonetheless come close to the kind of state and society that they aspire to be. There is still chaos in this section of the world, but, as the first lines of Genesis remind us, it takes a great deal of chaos to create a world.

January 10, the first day

I was scheduled to take American Airlines from Chicago to Frankfurt, and then fly, via Lufthansa, to Kiev, where I would join the other delegates in taking a special Ukrainian charter flight to Ivano-Frankivsk. From there, we were scheduled to take a bus to an out-of-the-way resort in the mountains, where the old commissars used to relax and where the Constitutional Convention would be held. It did not exactly work out that way.

The travel arrangements allowed for only a 45 minute layover in Frankfurt. To make life more exciting, the American flight arrived 45 minutes late. Fortunately, the Lufthansa flight left 10 minutes late, and, after running like a banshee, I reached the Lufthansa gate only minutes after the plane had left. The sign at the gate had already been taken down and the plane door was closed, but a sympathetic flight agent, at whom I hurled my story, stopped the plane. I was told that my baggage would be sent on the next flight. I boarded and enjoyed breakfast, not knowing that (because of a series of fortuities) it would be my last meal for about 30 hours.

In Kiev I learned that the next flight from Frankfurt would not arrive until the following day. However, by then, I was scheduled to be in Ivano-Frankivsk. Hence my luggage, after traveling with all deliberate speed, did not catch up with me until a week later. I had planned for delayed luggage, but only for a day, not a full week. I had only two shirts, the one I slept in while on the plane, and a clean one in my hand luggage. (When I eventually arrived at the resort, I tried to have the hotel clean my laundry, but the resort, new to the entrepreneurial spirit, had never thought of a laundry service and had no interest in starting one. I tried to buy a shirt, but the only available were embroidered peasant shirts.)

I was met at the Kiev airport and speedily moved through customs. I had about 5 hours

before my next flight, and so I took a tour of the main tourist attraction in Kiev, the Cave Monastery. Centuries ago, monks had caves cut into the mountains, and generations of them lived and meditated there. When the Communists took over in 1918, they closed it down and turned it into a museum. Now, it is back in business as a working monastery.

The tour was mainly outside, in bone-chilling weather, but there was no escape from the icy air, even when we visited the unheated, damp interior. I had prepared for cold, but not for what I was told later was one of the worst winters in 30 years. I did not envy the monks.

As we saw the monks working, my guide volunteered that her mother had secretly baptized her as an infant and withheld the fact from her father, a member of the Communist Party. He eventually found out and was furious. Now with the downfall of Communism, the guide explained, it is fashionable to be a believer and many former Communists are claiming that they really had been closet true believers all along. The guide greeted these politicians' assertions with cynicism.

Not only the politicians are embracing religion. Since the fall of Communism, there has been a religious revival in Ukraine. The museum shop was selling copies of religious icons, which not too long ago would have been impossible. Likewise, the sidewalk vendors on the cold streets: Not an unusual sight in the United States, but such self-employment was illegal under the Communist system.

After the monastery tour, I was driven to the airport to take the 500 mile charter flight to Ivano-Frankivsk, where, I was told, a reception and dinner were awaiting the delegates. For reasons that were not explained, we waited about three hours for the plane in an unheated, dark airport. I was getting hungry, but a fellow traveler (no, not a Communist, just another traveler on the flight) told me that I should wait because we would be served dinner on the plane. Most of the other passengers on this flight were either Ukrainian dignitaries or representatives from the American, Canadian, French, and German embassies. Regular flights within Ukraine would not be as luxurious as ours. Indeed, sometimes people transport live animals in the passenger compartment, and it is not unknown for pilots to sell "standing room only" places to passengers, who then position themselves in the aisles.

Finally, we boarded the plane, for what turned out to be a comedy of errors. The promised meal never materialized. In the open, overhead luggage rack, people placed heavy suitcases that could easily have fallen during the flight but, fortunately, did not. When I entered the men's room on the plane, my feet stuck to the floor like glue. The door's lock was broken and the room looked like what you might imagine had existed in an 1880's saloon in Tombstone, Arizona, although not as elegant. This was the VIP flight.

After several hours, the flight attendant announced that we had landed … at the wrong airport. She offered no explanation, no apology. In America, we would not expect the passengers to greet this message in stoic silence, but people here were strangely quiet. Later, a rumor floated that the other airport was fogged in, but there never was official word. As a novitiate fatalist, I joined the VIP's in milling around the dark and unheated airport terminal, waiting for a bus to take us to Ivano-Frankivsk. Although it was only about 120 miles away, the narrow roads and icy conditions meant that the trip would take anywhere from three to six hours. A Samaritan saw that I looked cold and offered some hot tea from a nearby stand, but I told him that, as a seasoned traveler, I did not think it was a good idea to drink hot tea before a bus ride of several hours. "Yeah, good point," he replied in perfect English. Then I tried to use some Chapstick, but it had frozen.

About 10:30 p.m., we learned that the bus would not arrive until 3 or 4 a.m., because the

driver had been waiting at the wrong airport. About 11:30 p.m. we checked into the airport hotel. While my room did have its own toilet, it had no toilet paper, but that did not matter because there also was no heat, which had been turned off to save money. There was no danger of the water freezing, because it was turned off too. Oh, well.

I remember the energy crisis of the mid 1970's, but that was a picnic compared to this. In the communist system, houses and buildings don't have their own furnaces. Each area or sector of the city is heated by the same heating source. When it is broken, no one gets heat. Now, it is not broken, but the officials have decreed that less should be spent on energy. One doesn't have the choice to spend more on heat and less on food or gas. The commissars are no longer in power, but the heating system is one of their legacies.

Thursday, January 11

I was told to board the bus by 7 a.m., so I did. Over an hour later we left. The bus ride ended up taking about six hours, not counting one stop. We were led by a squad card and followed by two other squad cars, all with lights flashing. Other cars had to move off the road to make room for us. All this pomp and circumstance was hardly necessary, but it is another legacy of the communists. The leaders of the people's government emphasized symbols to distinguish themselves from the vox populi. (In fact, during the failed coup d'état against Gorbachev, one of the first things that the new leaders did while in temporary control of the U.S.S.R. was to fight over who got the corner offices in the Kremlin.)

Capitalist America has much less ostentation. I recalled a story of Harry S Truman's race for the Presidency. At each stop of his railroad tour, supporters would yell, "Give 'em hell, Harry." At one point, a visiting dignitary, the deposed king of a former European monarchy who was traveling with Truman, said to him, "I'm surprised that you let your subjects call you by your first name." Harry replied, "If your people called you by your first name, you might still be king."

Our bus almost had an accident, and the incident reaffirmed the decision not to drive here during the night. The slippery and narrow road winds through the mountainous terrain with little room to spare. When we drove through the confined streets of a small little town, the huge bus started to spin. It lunged for a building, the passengers screamed, and the driver, pumping the brakes, was able to stop it just inches before it hit the sidewalk lamp post, with a building only about two feet behind that. I was sitting right behind the driver so I had a front row seat. It kept me awake and helped me adjust to the eight hour time difference.

The bus driver had pasted on his dashboard a rosary and several photographs of religious icons. When the Communists were in control, that would have been taboo. The Communists continually discouraged the practice of religion. During the big holidays, like Easter, the authorities would call the kids to school to watch a movie or to go on an outing so as to interfere with family gatherings. If you were active in practicing your religion, the Communists made sure that you worked on Sundays. But now, the bus driver posts his religious icons without fear, and we miss hitting the building.

At about 12:30 p.m. we stopped. I felt like a little kid asking, "Are we there yet?" No, we are going to have breakfast. The building had been owned by the Communist Party, but now it was the town hall. I was introduced to my interpreter. The first thing she said was, "How would you like to be addressed?" I responded, "What should I call you?" She said, "Olga." So I said, "Please call me Ron." "O.K., Mr. Ron." "No, I said, just 'Ron.' 'Ron' is my first name. If I call you by your first name, then

you must call me by my first name; otherwise we have a master-slave relationship." The egalitarianism confused her.

Then we were ushered into another room, where a feast was waiting. I mentioned to Olga that she could begin work, but she said that the meal was only for the VIP's and so none of the interpreters were allowed to attend. It made little sense to bar interpreters from the meal, but the exclusion was necessary to preserve the pomp. The two officials from the American embassy spoke fluent Russian, but they also needed interpreters because everyone else was speaking Ukrainian. (Now that Ukraine is separate from Russia, it is politically incorrect to speak Russian.) While the two languages are related, they are different enough, so that even the Americans who knew Russian were hard pressed to understand Ukrainian.

During this meal, the first one for me since I had arrived in Ukraine, people offered one vodka toast after another. Without my interpreter, I could not understand what was said, but I joined all the toasts anyway. Vodka for breakfast? Why not. It sounded like a good idea.

At 3:30 p.m. we finally arrived at the hotel, which used to be a health resort reserved for the Communist elite. My room actually had a shower, and the hot water worked. The room was a little chilly but it could have been a lot worse,

Someone then said that we must go downstairs for our lunch, which was only about two hours after our breakfast. By this time, I had decided that whenever food was placed in front of me, I should eat. Of course, a few more vodka toasts were essential, but this time I made sure that my interpreter was available. Lunch is the main meal in Ukraine. One of the dishes was borscht, a beet soup with potatoes, which my hosts told me are an essential ingredient. I mentioned that potatoes were a gift from the new world. Before Columbus, there could be no borscht. My hosts were surprised.

After lunch, we began our deliberations as any group of politicians and delegates would begin: there were speeches. Then, we turned to less formal working groups. That evening we had a reception, with more vodka toasts, sparkling wine, folk dancers, and gaiety. The Orthodox Christmas is celebrated later than the Western Christmas, so the live entertainment sang Christmas Carols, with references to Jesus Christ. Several Ukrainians marveled that, only a few years ago, singing Christmas Carols in a public place was illegal religious propaganda. Now, people are seeking to renew the old ways. In fact, people in other parts of the Ukraine (particularly Eastern Ukraine, where the Communists were more successful) are calling up their relatives in Western Ukraine to find out what are the proper ways to perform the old traditions.

During the festivities, I talked to several of the younger Ukrainian aides accompanying the Constitutional Convention delegates. They generally thought that the central government was too corrupt, and the coming years would not bring them prosperity. Political scientists often talk about the revolution of rising expectations. These people's expectations were not rising.

There are reasons to be optimistic, I argued. The people are educated and their salaries are low. The exchange rate makes their salaries appear lower still. Foreign investment should bring in employment and opportunities. Look at West Germany after the war, bombed out and occupied. A half century later it is one of the world's economic superpowers. And it did that while being armed to the teeth because of the Communist threat. (American aid helped too.) Ukraine also will improve, and it may take no more than 20 years to begin to feel it. "You are an optimist," said one, and the others agreed.

The musicians then played *Hava Nagila*,

and two dancers appeared, sporting big fake noses and pretending to be Jewish. Frankly, the scene appeared discriminatory and anti-semitic. The time of pogroms is over, and Jews may now practice their religion with the same freedom as Christians, but I was still surprised by the way dancers were portrayed. The scene was not comic, though it was intended to be: I left the reception early.

My room was heated but getting colder. One reason I often felt so cold is that it was hard ever to get warm. I asked an attendant for an extra blanket and got this strange look, like I was a decadent American. Then she gave me an extra sheet (not a blanket), which she simply liberated from another room. Oh, well.

Friday, January 12

I thought it was cold when I went to bed, but I learned what real cold was the next morning, when I tried to shower. I later asked one of the Americans how to adjust the heat. He said, "Just open the window." It turned out that his room was overheated. My room very cold, and his room over-heated: the hotel could brag that the average temperature was just right.

At lunch today, I had the first meal since I have been to Ukraine that did not include pickled herring. Pepsi Cola and Fanta are also served at every meal, along with vegetables and cheese. There does not seem to be a big distinction between the type of food offered at breakfast, lunch, and dinner. About the only thing that is not normally served at breakfast is vodka – except, of course, for my first meal in Ukraine.

Today I participated in a major discussion on the judiciary. One of the big problems in Ukraine is that the judges are not being paid, in violation of the temporary Constitution. This has made a lot of the judges consider quitting. A lawsuit seeking to force the state to pay the judges was filed. It is hard to make the judiciary an independent branch if its members are not assured of being paid.

One participant made a comment in Russian, and another speaker complained: "Why are you speaking Russian? Speak Ukrainian." There is a strong sense of pride about the native language. I spoke in English, but no one minded that. Everyone expects Americans to be ignorant of any foreign language. However, those who spoke Russian (even though they were not Russian but only spoke it) were not treated as tolerantly.

The participants were interested in learning about American experiences with our judicial system. I answered some questions and was aided by Judge Bohdan A. Futey, one of the few other Americans there, who helped explain, in Ukrainian, some of the more technical legal points that I was making. He is a Judge on the United States Court of Federal Claims. He was born in Ukraine, immigrated to the United States with his parents, and speaks flawless Ukrainian and English. His presence here also tells the Ukrainians something very important about America: it is the land of opportunity, the land of immigrants.

That evening, we had another reception, accompanied by toasts. The first speaker, who had been a leader of the local resistance against the Communist Party, talked about the fight against the old government and how it was important that the people, in drafting this new Constitution, preserve their freedom. The second speaker, an official in the old government, felt obliged to talk about the glories of socialism. The audience did not respond as well to the second toast.

During the reception one individual told me that he would love to visit London. I remarked that it must difficult for him to go because London was so expensive. No, he responded. He had saved enough money, but his government would not give him a visa, because he is single and there is a concern that, if he left, he would never come back. Another person, who was not such a risk, had been

allowed to visit London. She was amazed at what she saw – a vibrant, clean, exciting city, full of ordinary people attending the theater, going to restaurants, buying things, enjoying themselves. London works. She could not believe that it was so wonderful. The Communists had tried to keep the people in the dark, and she had expected London to be better than the Communists had pictured it, but it was so much better than she had ever imagined.

The reception displayed various local dishes. One of the basic foods here is bacon fat. Basically, it is bacon without the meat. It is a square or rectangular piece of pork fat, about three eighths of an inch thick. When I visited Moldova, at a restaurant frequented by foreigners, I saw it translated as "grease with garlic." I remarked that it must be a mistranslation. No. It is a correct literal translation. Often it is eaten raw (or lightly smoked) or fried. It is frequently served in this hotel's restaurant, although it bills itself as a health resort. I was told that "grease with garlic" is very healthy: "The fat helps to lubricate the body."

Saturday, January 13

In the morning we participated in another series of speeches concerning various constitutional issues. During a break one of the people asked me, "Why are people arguing so much about the words?" "Because the courts are supposed to follow this Constitution, not like the one you had under the Communists. We write down the Constitution, and we debate the words, because the words matter, just like the words in a statute matter." He was intrigued.

That evening, our last in Ivano-Frankivsk, we celebrated New Year under their Orthodox calendar. The party, called the Old New Year, includes a series of twelve dishes, plus dancing and singing until the wee hours. During the party I talked to more of the participants. Though they tend to be envious of the United States, they are more jealous than spiteful. They despair of ever rising to our level of economic development, and are cynical about their government. One person explained that if you had an idea for a product, and wished to become an entrepreneur, you had to jump through a lot of hoops to secure the necessary government licenses. Then, if you are successful, you have to worry about paying protection money to the mafia. He used the word "mafia," but he meant the homegrown variety, not the Italian mafia.

The people at this Constitutional Convention – ranging from the hired help to the main dignitaries – have been some of the most pleasant people that I have met anywhere in the world. Before I left, I was given a traditional wooden box, beautifully carved. Inside, there was a note, which said, "Thank you." I enjoyed my time here, but I was anxious to see my suitcases, so that I could put on a clean shirt. My current shirt was getting to be pretty ripe.

Sunday, January 14

I left in the early morning, because it is a ninety-minute trip to the train station. There I was to catch the train for my fourteen-hour train ride to Chisinau, the capital of Moldova, to engage in a series of face-to-face conferences with the six Justices who make up the new Court. In typical Ukrainian tradition, I was sent to the train station with a police escort and flashing lights to clear the road. My driver told me that if things broke in his police car, he often had to pay out of his own salary to fix the car. That's why things sometimes are just not fixed, like the two big cracks in his windshield. Earlier, one American from the embassy looked at all the items in disrepair and remarked, "It's a wonder that we used to be afraid of these people." And we were afraid … but, of course, they had THE BOMB.

At the train station, I found Bob Bayer (the American who would accompany me to

Moldova) and my wandering luggage, and put on clean clothes. I had been warned that the train would not be up to American sanitary conditions, and so I was not surprised at what I saw. People in the United States often envy European trains. They are talking about *Western* Europe.

About 1:30 a.m., we crossed over into Moldova, and the customs official came on board, woke us up (he seemed to take great pleasure in that) and acted self-important. However, Bob flashed his diplomatic card and we were promptly allowed to go back to sleep. We arrived in Chisinau sometime after 3 a.m., and then hired a taxi to the hotel. Taxis here represent raw capitalism. They are not regulated; you simply bargain with the driver and agree on a price before you enter.

Monday, January 15

Moldova is the second smallest of the former Soviet republics, with an area of less than 34,000 square kilometers. It's biggest export is wine, accounting for 10% of the total national output of the nation. Vines were planted there over 7,000 years ago. The people consider themselves a Romance country, with a Romance (and not a Slavic) language. However, many of the people no longer speak their native language very well.

We arrived at the Seabeco Hotel about 4 a.m. It is considered a luxury hotel. It certainly has luxury prices, $155 per day, posted in American dollars. To put that in perspective, the average person here earns only about $35 per month. We paid my Moldovan interpreter, Luda, a very good wage of $35 per day. The typical skilled worker earns lower wages than those paid to mainland Chinese.

What makes this hotel luxurious? First, I appreciated the mirror in the bathroom. That made it easier to shave. Second, the restaurant is considered the best in the city – because it is heated. This hotel is the only one in town with its own furnace. That is the main reason that it is luxurious. The hotel was the central gathering place of all Western Europeans in Chisinau, who, being as decadent as I, wanted heat. Moldova, like Ukraine, has heating by sectors of the town. AID regulations on per diem expenditures are greatly exceeded by the expensive rates of the Seabeco. However, decadent Americans like heat and pay for it out of their own purse. (The hotel, by the way, also has a casino. This gambling place only accepts hard, *i.e.*, "Western," currency. However, as a dull professor I never visited it.)

Each room in this hotel also has a telephone, which is also a luxury in this country. There are no switchboards, because the Communist system did not use them. Each phone has a direct outside line. Similarly, each desk at an important government office has several phones. In the old days, the judges used to have a phone that went directly to Communist Party headquarters. That way, they would know which phone always had to be answered. I was assured that that doesn't happen anymore.

My room also had a television. The movies and television shows are often American with the language dubbed into Russian or Moldovan. (The native Moldovans actually speak Romanian, but it is politically more correct to refer to it as Moldovan. Indeed, the Constitution provides that the national language is "Moldovan.") The dubbing is a little strange: one male actor, speaking in a monotone, typically supplies the voices for all the parts, male, female, child, adult. One can hear the original voices in the background, with the louder voice of this one person speaking all parts in a monotone. There were also two English language channels, a British news channel and CNN International. Until now I had been completely incommunicado from news. My entire time in Ukraine and Moldova I was never able to find a recent English language newspaper. (Price Waterhouse, with offices in my hotel,

had American newspapers, but they were so old that they had been published before I had left the United States.)

That afternoon, I had my first meeting with the Justices of the Supreme Constitutional Court. The Chief Justice and four of the other Justices showed up. The sixth could not make it that day, but all six attended every other day. The first part of our meeting was covered by the national news media.

We met in a room that had no lights on, and was cold. The Justices picked this room, which was in the Presidential Building, because it had some natural lighting and was warmer than their own offices. It also had a large bookshelf containing a few books, some of which were in English. There was also a Moldovan copy of the Bible, a photo of John Paul II, and a book about his travels. Six years ago none of that would have been allowed.

The Chief Justice of the Court, Pavel Barbalat, is called the Chairman. He was selected by his five colleagues on the Court, through a secret ballot. Barbalat will keep this position for three years. The Moldovans decided to adopt the Western European model, rather than the American model, and create a separate Constitutional Court that only decides constitutional issues. Ironically, Barbalat had opposed the creation of a separate Constitutional Court. My first meeting, like the subsequent ones, was conducted entirely in Russian. Chairman Barbalat apologized that the meeting could not be held in Moldovan, but explained that the judges did not know enough legal terms in Moldovan.

I asked what the six-member Court would do if the decisions were evenly divided. Many people don't realize that our Constitution does not stipulate what the size of the Supreme Court should be. The original United States Supreme Court also had six members, but our Justices complained about the problem of an evenly divided court. For over a century, we have had a nine member Court. Chairman Barbalat said that the Moldovan Court decided to give him two votes in case of a tie. Some members complained that such a rule made him "more equal" than the others.

We spent a lot of time talking about the First Amendment – the flag burning case and the right of people in the United States to criticize the government even in time of war – and the deliberative process of the United States Supreme Court. The Justices were very interested in the rights that America gives to non-citizens. America is unique in giving many constitutional rights to non-citizens, even illegal aliens, because most of the important clauses in our Constitution refer to "persons," not "citizens." In addition, after one generation the children of illegal aliens automatically become citizens (because all persons born in the United States have a constitutional right to U.S. citizenship) and thus have a stake in our country.

The Justices were very aware of the McCarthy years in the 1950's, when Communists were imprisoned. (The Communists were careful to educate them about that.) America now gives a lot more free speech rights than it had granted then. My translator, Luda, was also interested in our free speech discussion. It turns out that she was born in the Crimea, because her father had been imprisoned there for reading books by Andrei Sakharov.

The Justices were surprised that Americans have a constitutional right to burn our flag. I quoted Sakharov, who said that we should never punish people for what they think or what they say, when the words do not incite immediate violence. I also referred to a recent opinion of the German Constitutional Court, which upheld the right of people to defame members of the German Army as "murderers." People have the right of free speech, even if that speech is offensive.

Before I left the Chairman gave me a formal portrait of the Justices, and we took photographs. The Justices then asked if "Rotunda"

is a Romanian name. I explained that it's an Italian name. Both of my parents came from Italy, but I was born in the United States. However, I added, Romania was settled by the Romans (hence the name, "Romania") and so we are all distant cousins. They laughed and we adjourned until the following day.

As we walked back to the hotel, the roads and sidewalks seemed particularly slippery, as slick as glass. It was not unusual for people to fall and seriously injure themselves. In the United States, both the city and the store owners would encounter the tort system; here, in this former workers' paradise, there was little legal sympathy for the average person.

Tuesday, January 16

I had the morning free so I took a walking tour of the city. I visited various shops, where everybody used the abacus. Everything is done slowly, by hand. Most the people working in the stores kept their coats and hats on, because the unheated buildings were so cold.

I spent all afternoon with the Supreme Constitutional Court. All six Justices were present the entire time. The television crew came again and recorded the first few minutes of our conversations. I was also interviewed for Moldovan national television.

The presence of the media was unusual, because the Moldovan Justices, as a matter of protocol, do not normally give press interviews. But this situation was different. The Court did not feel reluctant to admit that it had sought foreign help in creating an independent judiciary. Quite the contrary; the Justices wanted to publicize that they were seeking foreign assistance. And not just any foreign assistance. The fact that the Justices were turning to America was important, because they believed that it demonstrated to the average Moldovan that they were really serious about creating an independent judiciary, dedicated to the rule of law. As one of the reporters left, she turned to me, spoke in English, and said, "Thank you." That night, the story was broadcast twice, once in Russian and once in Moldovan.

After the press left, we discussed the veto power of the President, and studied the "political question" or nonjusticiability doctrine of the U.S. Supreme Court. We also focused on other techniques that the U.S. Supreme Court uses to limit its decisions. We spent a lot of time on the distinction between statutes that are unconstitutional on their face versus statutes that are unconstitutional as applied. This concept is particularly important for the Moldovan Constitutional Court because it, unlike our own Court, can rule on statutes immediately after they are passed. I explained that, although the Justices might find a statute constitutional on its face when it is first enacted, that would not preclude them from later finding unconstitutional applications of the statute. They were very interested in this concept.

We also talked about situations where statutes are void for vagueness. We spent some time on due process. The Justices were also interested in property, and the concept of ownership of property, utilization of property, disposition of property, and the zoning of property. I discussed all of those issues, and my students in the United States would be astounded to learn how clear I can be if I really want to be.

We then talked about voting and our secret ballot. They mentioned that, as an exercise in democracy, they had conducted a straw poll and held a secret ballot to "vote" in the 1992 American Presidential election. George Bush may be surprised to learn that he easily won in Moldova.

The Justices were all aware of Watergate and, when they learned that I had been assistant majority counsel to the Senate Watergate Committee, they were very interested in discussing President Nixon. I explained that Wa-

tergate illustrated the importance of an independent judiciary. It highlighted the need for Congress to ferret out and publicize corruption and problems in the Executive Branch. It demonstrated the importance of a free press in making people aware of the scandal. But most of all, Watergate emphasized the need for an ever-vigilant people. Had the people ignored the scandal, had they not been interested in it, not much would have happened. Before I left this topic, the Justices said to me, "Talk to us abut the Hillary problem." They knew at least as much about the various issues involving the Whitewater investigation (such as her grand jury testimony, missing billing records mysteriously appearing in the President's private quarters, etc.) as I did. I explained that, in America, everyone – even the President's wife – is under the law.

We spent a lot of time discussing a particular issue that I later learned involved a case that they had already decided. A legislator had changed his political party. The question was whether his former party, the majority party, could then throw him out of Parliament. They wanted to know how the U.S. Supreme Court would rule. Based on an analogous decision, I said that our Court would rule that the political party could not exclude him from Congress/Parliament (because he had been elected by the people), but could take away this legislator's committee chairmanship and those other perks that relate, not to the election, but to those things that are within the control of the political party. The U.S. Supreme Court would not interfere with who has the chairmanship of a committee, because that is a political question. Although the Moldovan Justices had already decided the case that raised that issue, they questioned me about it in detail because, I was later told, they sought comfort in the knowledge that the United States Supreme Court would rule the same way that they had. By the way, the Moldovan Parliament actually obeyed this first decision of the Constitutional Court.

When I met with the Constitutional Court, two of the Justices sat separately from the other four. One of the Justices is from the area called the Gagauz, an area in the south. The other Justice is from an area called the Transdnestr. Both two regions tried to break away in 1990. There was an armed conflict in 1992, and hundreds of people died. Moldova, which already is quite small, does not want to give up these regions. There is an uneasy truce in these unstable areas, and it is typical that armed guards will search visitors. (My train from Ukraine to Chisinau had passed through this region, fortunately without incident.)

The two judges who sat separately were basically representatives of, or drawn from, these two particular regions. The Russian 14th Army also occupied the Transdnestr Region. This area is full of ethnic Russians, who do not speak Moldovan and would like to be united with Russia. The problem is, Ukraine is in the way.

Wednesday, January 17

I again had the morning free, so I visited the Art Museum. The building was not heated, and nearly as cold inside as it was outside. There were no other visitors; the employees were wearing hats and overcoats. I was not only the first visitor in the museum that day; I was also the first visitor that year. They were happy to see me, and gave me an extensive tour. As I entered a room, they switched on the lights; when I left, they immediately turned them off to save money.

The museum contained many beautiful religious icons. While some of the very early ones were in fairly good condition, many of the twentieth-century ones were damaged. I asked why the icons hundreds of years old were in better shape than the modern ones. They explained that the later icons were easier to access, and when the revolution came, and

the Communists took over, they took hammers and bashed in these icons, aiming particularly for the faces.

That afternoon I met with the Supreme Court, which is different than the Supreme *Constitutional* Court. The Supreme Court is the Court of last resort for non-constitutional issues. Once again, the building lights were off, and there was no heat. Some of the Justices kept their hats and coats on. The Court is large, with over 25 Supreme Court Justices. About a third were women. (All of the Constitutional Court Justices were men.) The Judges mentioned that they had all seen me on television the previous evening. I was a minicelebrity.

The Judges appeared surprised at the independence of American judges, and the inability of the President to interfere with the decision of cases. They were also amazed that other judges in the Court system may not interfere in a case unless it comes to them in the normal appellate process. In their system, if a judge is presiding over a case, and a more senior judge does not like what is going on, the more senior judge can pull the case away.

The justices were frustrated that their Constitution takes away from the them the right to decide constitutional questions, and gives that power solely to the Supreme Constitutional Court. I explained to them that, even if they cannot decide constitutional issues, they should interpret statutes *in light of the* Constitution, and favor the interpretation that would avoid the constitutional issue. They were very interested in that concept.

The entire meeting was conducted in Russian because, the Judges explained apologetically, they did not know enough Moldovan. When Moldova was part of the U.S.S.R., Russian was taught in all of the schools, and if anyone wanted to become a lawyer or other professional they had to know Russian well. Consequently, they are not familiar with the proper Moldovan terms for matters of science and law. Now they are getting this information from Romania. Of course, those people whose native language is Russian are upset with the introduction of the Latin alphabet in the school system.

At the meeting we discussed private property, and privacy. When the Communists were in control, the use of the word "private" was discouraged. Sometimes people had "personal" things that the state allowed them to use, but one would not talk about the "privacy" of one's home, or "private" tools, or "private" property. Privacy was just something that was not discussed (at least publicly).

Moldova now protects private property, and two-thirds of state property is scheduled to be privatized. Official Moldovan policy guarantees the right to intellectual property, and Moldova is a member of the World Intellectual Property Organization. Nonetheless, I saw a video store openly selling pirated videos on the city streets.

Thursday, January 18

In the late morning I met with Dr. Nicolae Osmochercu, a Professor of Law who is now one of the six Justices on the Supreme Constitutional Court. We met separately so that we could discuss legal education in Moldova. He showed me that he had one of my books on his office shelf, and (modest though I am) I was pleased. His unpretentious office was heated with a space heater. Masking tape covered the windows to keep out the cold air. The Supreme Constitutional Court does not even have a fax machine. Down the hall was the unassuming office of the President of Moldova.

The Justice offered me some tea, and we discussed legal education. The first students of the Law College in Moldova were graduated in 1989. Graduates actually practice law, write wills and arrange the transfer of property. Private law firms were not allowed in Moldova until after 1990.

The judge and his son, who is also a lawyer, were writing a book on Comparative Constitutional Law. The judge recalled that, in 1978, when he was doing his dissertation, he wanted to examine the Yugoslavian Constitution, but he could not do so because it was kept under lock and key at the University of Moscow. The Yugoslavian Constitution was considered too liberal, even though it was the Constitution of another Communist country. Eventually, he secured special permission to look at it, and, he confided, it wasn't really all that liberal.

The judge turned to criminal matters. He said that, when criminal cases were tried under the Communists, it was very unusual for the defendant to ever win. "Typically out of 100 cases, the defendant would be found guilty 100 percent of the time." Even if the judge thought the evidence was not true, the judge would find the defendant guilty because the judge would be punished if he improperly voted to acquit. I mentioned our requirement that the prosecutor turn over exculpatory evidence to the accused. He was proud that, since August 1, 1995, it has been the Moldovan rule that the prosecutor must now also turn over exculpatory evidence to defendants.

When it was discovered that I taught legal ethics in the United States as well as Constitutional Law, I was asked to speak to the College of Advocates, and I did so that afternoon. The College of Advocates is the group of lawyers that the Communists set up to control the legal profession. The College still exists, but the members now want to assert their independence.

This was the only group that I addressed in a formal manner. The auditorium was unheated and, despite any hot air that I contributed, it got to be quite cold by late afternoon when we finished. There were no lights on and it got darker as the sun met the horizon. The audience numbered about 80 people, most wearing their overcoats, hats, and scarves. There was two translators present, one for Russian and one for Moldovan, but the audience reluctantly preferred Russian because not everyone knew enough Moldovan.

The members of the audience were each given a copy of the ABA Model Rules of Professional Responsibility, translated into Russian. I spoke for about an hour, but formal questions continued for an additional two and a half hours. Even after the meeting was officially over, people stayed in the dark room and continued asking questions. They were intrigued with the American concept that the lawyer is independent of the state, with a duty to his or her client that overrides any obligation to the state.

Several of the people asked about the O.J. Simpson trial. Everyone seemed familiar with the case, all thought that he was guilty, and none understood why he was acquitted. I explained that, if you have an independent judge and an independent jury, that means that sometimes they will come up with results that you may not like. But that is the price of an independent judiciary and jury.

While walking from my hotel to my speech, I had seen several workers supposedly clearing ice from the sidewalk; they were watching the one worker who was actually using a tool. After the meeting, while returning to my hotel, I passed these same workers, who had made almost no progress. Labor is incredibly cheap in this country, but it is also incredibly inefficient. Everything is done by hand. Workers use hand saws, not electric ones, even when building houses. The old saying is, "The Government pretends to pay us, and we pretend to work."

Friday, January 19

In the morning, I walked to the U.S. Embassy, where the Ambassador debriefed me for about 40 minutes. After that, I checked out of the hotel, which took about an hour, because the entire process was so incredibly inefficient. Why did I choose this hotel? Oh yes, I re-

member: it has heat.

I finally made it to the airport. Customs was simple, followed by the real hassle conducted by the Moldovan Airline employees. They weighed all my luggage (including my carry-on bag) and claimed that I (or rather, my luggage) was 20 kilos overweight, for which they wanted $65 in American money. It was hard to believe that my luggage was overweight, because I'd had no weight problem coming over and I had given away many pounds of books after I had arrived.

I explained that I had little cash left, because I had spent most of it while checking out of the hotel. (Everything here is done with cash, not credit cards.) We ended up bargaining back and forth, and they asked me to give them all the cash that I had. In an effort to settle this little shake-down, I offered $20, and explained that I wanted to keep some cash for Frankfurt. I later learned that, if I were Moldovan, they probably would have charged me about 45 cents a kilo.

They got the $20, I got no receipt, and they let me board the plane. A few hours later, I was in Frankfurt, and stayed in a hotel that was both more luxurious and less expensive than the Seabeco. The next day I flew home on American Airlines. Mysteriously, my baggage was no longer overweight, though I had added some German chocolate to it.

Will my work in Ukraine and Moldova bear fruit? Only time will tell. As Peter Maggs – an Illinois Law Professor and a Consultant to the Rule of Law program – told me, "It's like reforming a drunk. The odds are poor and you can't help unless the person wants to be helped. All you can do is try."