2010

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PROMOTING COMMERCIAL LAW REFORM IN EASTERN EUROPE

Hon. Samuel L. Bufford*

I. INTRODUCTION

At the end of World War II, the United States and some of its allies undertook to reconstruct the economies (as well as the political structures) of Germany and Japan, its principal opponents in that war.¹ This program was very expensive,² and not particularly popular at the time in the United States.³ However, it was fantastically successful.⁴ The economies of both Germany and Japan were rebuilt and integrated into the world economic order.⁵ This integration is so complete and the benefits to those countries,⁶ as well as the rest of the global economy,⁷ are so great that it is unthinkable that either country should go to war against the United States in the imaginable future.

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In contrast, some parts of the world devastated by that war did not enjoy rebuilt economies. An "iron curtain" fell across Central Europe, to adopt Winston Churchill's phrase, and the countries on the far side of the curtain were dominated by the Soviet Union for some four decades. Their economies languished, and their standards of living were left far behind those in the United States and Western Europe. Reconstruction efforts in Africa and Latin America were much weaker, and those economies also languished.

Thus, it appeared in 1991, when I began to advise governments and to teach commercial law programs for judges in Eastern Europe, that there was much unfinished work to be done to integrate the countries of that part of the world into the global economy. There was much to be done to develop their economies and improve the living standards of their citizens, and to take away the incentives for further wars and promote world peace.

In the last twenty years, a number of U.S. judges, especially bankruptcy judges, have spent substantial amounts of time in Eastern Europe (and, more recently, in many other parts of the world) helping to develop commercial law systems.

We especially focused our attention on teaching seminars for local judges on how commerce ought to function, so that they can make better judicial decisions to promote the development of commerce in their countries. Judges want to learn from other judges: thus, as judges, we were uniquely in position to train other judges, and to promote their background and understanding of the laws governing and regulating commerce.


12. See id.


14. An experience I had in Morocco when teaching a seminar there especially highlights this principle. We had three faculty members, a professor from a U.S. law school, the dean of a major Canadian law school, and me. The professor arrived a week in advance and had no success in developing an agenda for the seminar. The dean arrived two days in advance, and likewise had no success. I arrived in the afternoon before the seminar started, and in two hours the program was arranged. I claim no superior skills in bringing this about, only that I wore a black robe and the other faculty members did not.
The main purpose of this Article arises from the fact that, while many judges have worked in this field, very little has been published to memorialize what we have done. In consequence, our successors frequently are challenged to find traces of our footsteps, when they should be standing on our shoulders to push progress forward.

Thus, it is important to memorialize what we have done, so that our successors can build on our work and make substantial progress. This is my account of what I did in a decade of advising governments and teaching judicial seminars on commercial law matters in Central and Eastern Europe, beginning in 1991.

This Article contains my individual reflections on more than a dozen visits to developing countries in Central and Eastern Europe to advise governments and to educate their judges, and several visits of judges from some of those countries to the United States. In many ways, my experiences are typical of United States judges who have done the same kind of work in developing countries. In some ways, my experiences are unique. A review of these experiences offers a window on the legal development of developing countries for the past ten or twelve years and on what United States bankruptcy judges have contributed to that effort.

My efforts described in this Article have not been carried out in isolation. With occasional exceptions, all of my work abroad has involved a team effort by several United States judges or lawyers, and frequently local judges in the country as well. On each occasion, every team member has made important contributions to the effort.


16. In more recent years, I have spent more time teaching in other areas of the world, especially in the Middle East and North Africa (the “MENA” countries). I have also drafted a bankruptcy law (with a team of two lawyers) for Ecuador on a World Bank project, and have taught a seminar for commercial law court and administrative law court judges in Morocco. These experiences fall outside the scope of this Article. As judges on limited salaries, we go to countries where funding is available to cover our travel expenses.
II. BACKGROUND

The countries needing economic development and integration into the world economic order are described as “developing countries,” where per capita income is much lower than in the developed countries, living standards are much lower, and individual opportunities for advancement or improvement are usually quite limited.\(^7\) Trade with other countries is frequently limited, and tends to be conducted by the government rather than private enterprise.\(^8\) Large portions of the economic structure are frequently state-owned, and business decisions tend to be made on political grounds rather than economic conditions.\(^9\) Legal systems in these countries are usually not well developed, and frequently are in need of modernization.\(^20\) Local judges typically lack training or adequate facilities, and inadequate salaries invite them to supplement their incomes in ways that subvert the integrity of the judicial system.\(^21\) A system of rule of law is sporadic at best.

All of these conditions discourage private foreign businesses from investing in such countries or doing business with entities in them. There is much work to do in each such country to modernize their laws, privatize their businesses, train their judges, and encourage the development of the rule of law.

In addition, there are interesting places to go and interesting people to meet. Working with a government, its leaders and its judges in trying to improve their legal and economic structures provides a very different view of a foreign country from visiting it as a tourist. Such activity also leads to the development of friendships that lead to further interactions and can last a long time.


\(^9\) See QUANYU ET AL., BUSINESS DECISION MAKING IN CHINA 139, 141-42 (1997).


III. MY CENTRAL AND EASTERN EUROPEAN VISITS

Los Angeles—July 1991

Many people have asked, “How do you get started doing international work?” Each of us who has done this kind of work has a different story to tell. I have not discerned any particular pattern. Here is my story.

For me, it started with a questionnaire that the Federal Judicial Center (“FJC”) sent to all federal judges in September, 1990. The Communist governments had fallen in the last half of 1989 in the entire tier of countries west of the Soviet Union (which was then still intact), from Poland in the north to Bulgaria in the south. The State Department started receiving requests for assistance in legal development in those countries and referred the requests to the FJC. In response, the FJC sent its single-page questionnaire to all federal judges nationwide. The FJC stated that it would forward the completed questionnaires to the State Department, which would create a database and would call when assistance was needed. The questionnaire asked for relevant background, including travel in that part of the world and knowledge of foreign languages.

In answering the questionnaire, I reported that I had traveled twice to Central and Eastern Europe in the 1970s. I also reported varying knowledge of several foreign languages—French, Spanish, Italian and German—but not including any Central or Eastern European language. I knew French best—after law school I had spent a year in Geneva, Switzerland on a research grant, and had taken several law courses in French at the university there. I had also taught (in French) three weeks of a course there on the common law. However, I had spoken little French for some seventeen years.

Given that there are nearly two thousand federal judges and I did not have a high profile in Washington, I expected that I likely would never hear from the State Department.

Some nine months later, the State Department did call. The United States Information Agency (which has since been folded into the State Department) was sending six judges on a two-week trip to Romania to teach a seminar for sixty Romanian judges. My name came to the top of its list, I learned, because French was then the second language in Romania: among the sixty Romanian judges who attended the conference, only one

could speak enough English to carry on a conversation, but all knew enough French to converse about law without an interpreter.23

How does one prepare for teaching a law program in a developing country? What does one teach, and how much sophistication in commercial law generally can one assume that the local judges and lawyers possess? I had to start thinking about this problem as I prepared for my first Romanian seminar. These are delicate questions with no general answers. For this program each U.S. judge prepared a short statement (five pages, double-spaced), which was translated into Romanian (and later Russian). However, translation of written materials usually takes substantial time, more than is available, and the accuracy of the translation is often questionable. Usually we do not prepare written materials.

Poiana Brașov, Romania—August 1991

“Did you hear about the coup in Moscow?” Judge Frank Kaufman from Baltimore asked me as I appeared at the bottom of the stairs in Bucharest on Monday morning. I had just completed a call to my wife, Julie Metzger, who had not heard this news (it was still Sunday evening in Los Angeles).24 Mikhail Gorbachev, President of the Soviet Union, had been detained incommunicado since the night before by the Soviet army in his dacha on the Black Sea in Crimea,25 and the Soviet army had taken over Moscow.26 The detente negotiated by President Ronald Reagan, which had led to the downfall of the communist governments in the tier of countries west of the Soviet Union (including Romania) a year and a half earlier, now appeared to be very much at risk. Romania shared a long border with the Soviet Union, and appeared to be most at risk to lose its reforms.

After breakfast we loaded up our minibus and headed for Poiana Brașov in the Carpathian Mountains in the Transylvania region. The Romanians who accompanied us were extremely worried about

23. The dominance of French as the second language in Romania has changed dramatically in the intervening years. English has essentially become Romania’s second language in place of French.

24. It was more than a week later before I had another chance to communicate with her. There were only two international telephone lines available in Eastern Transylvania, and the wait to make a call was more than five hours.

25. While Crimea was part of the Soviet Union from its founding, and was part of Russia for several centuries theretofore, the very next week Ukraine declared independence and took Crimea with it.

developments in the next country, which had dominated their region for nearly half a century. At the conference hotel in Poiana Brașov, the television in the bar was crowded with people watching the latest news from Moscow. At least the latest news from Moscow was available—until the then-recent fall of the Ceaușescu government it was almost impossible to get news from outside Romania.

We were not even sure that the Communist era had been consigned to history in Romania. At a State Department briefing in Washington on our way to Romania, the Romanian experts told us that all of the government officials from the Communist era below the very top were still at their desks in Bucharest. While President Nicolae Ceaușescu and his wife had been executed (after a hasty trial on Christmas day a year and a half earlier), nothing else appeared to have changed to any substantial degree.27

In contrast, even against the backdrop of the Moscow coup, we found a very different picture in Poiana Brașov. Seated around a large rectangular table on Monday afternoon, each Romanian judge introduced him or herself and told us what he or she was looking for in the conference. Time and again we heard, “We expected the Americans to come and liberate us at the end of World War II, but you did not come. You are forty-five years late. But we are very glad that you have finally arrived.”

We also heard repeatedly, “Democracy began for us a year and a half ago, and we know hardly anything about how to make it work. But we are eager to learn. Tell us what we need to know.” As I became acquainted with the sixty judges from various parts of Romania, and talked extensively with them during the next week, it became obvious that they had a fierce determination to make democracy work in their country, and to resist very strongly any return to the ways of the old regime.

“Freedom is over for us and we will not see it again in my lifetime,” the Romanian Supreme Court judge told me. It was our first coffee break that Monday afternoon. The judge’s law clerk had approached me before the conference began and invited me to have coffee with him. This judge was much more pessimistic about the political future than his colleagues around the table that afternoon. Fortunately, he was wrong. But it was two days later before that became apparent.

The determination to begin a new order was greatly assisted on Wednesday morning, when Boris Yeltsin, then mayor of Moscow, stood on a Soviet tank outside the Soviet parliament and stared down the Soviet army. Within hours, a two-day standoff in Moscow had ended, the coup

was over, and the threat of reintroducing Soviet hegemony in the region disappeared. Local television showed footage of the event within an hour, and the judges in Romania (including us Americans) felt much more at ease.

We wanted to make sure that the Romanian judges had an opportunity to participate in the program, and that we did not treat them only as an audience for our lectures. Thus we structured the program so that, on each subject, we had a talk by a United States judge and then a talk by a Romanian judge. Unlike the United States judges, the Romanian judges were not accustomed to public speaking. Apart from the chief justice of the Supreme Court (who was a seasoned politician), each came with a prepared text that was typewritten. The presentation consisted of reading the text, usually without much expression.

A judge from a region where the population is ethnic Hungarian took a different approach. “Let us face it,” he said. “In our country there are many violations of the rights of prisoners. They are held without being charged with crimes, they are mistreated, and they are denied the right to appear in court.” The judge presented details of numerous cases where the rights of those accused or convicted of crimes, as provided in existing law, were not respected. Many of the other judges disagreed audibly with him.

At the end of this judge’s presentation, a five-year woman judge from Sighișoara took the podium. “I cannot stand for you to tell of so much wrongdoing in Romania,” she said. “We do not tolerate such conduct in our courts or in our cities. You should take the responsibility to put a stop to this improper conduct. You have the power to do it.”

All of the formal sessions of the conference were translated from English to Romanian or vice versa. However, the State Department suspected (correctly) that there might be a shortage of interpreters for informal conversations with the Romanians during coffee breaks, at mealtime and in the evenings. Thus it recruited United States judges (like me) who could speak directly with the Romanian judges in French without the need of an interpreter. In addition, the Romanian judges felt freer to speak their minds without an interpreter present, because they still could not be sure that an interpreter was not a government agent who might report them to the authorities.

Translation did not solve all of the language problems in Poiana Brașov. I had the assignment to teach the concept of due process of law. In addition to procedural regularity, I also wanted to explain substantive due process. Beforehand, I consulted with Professor Erwin Chemerinsky, a well-known constitutional law scholar then teaching at the University of
Southern California, to ask how to teach this concept to judges in Romania. "The fundamental concept to explain," he said, "is that due process is fairness." I organized my talk around this fundamental theorem.

As I was sitting at the head table in the conference about forty-five minutes before I was to begin my presentation on due process, I received an urgent message that the interpreter wanted to talk with me. There was a problem with the translation, she explained. She could not translate "due process is fairness." Only one word in the entire sentence could be translated into Romanian: there were no Romanian words for any word except "is." The success of the session on due process was doubtful.

Separation of powers was also a difficult concept to explain in Romania. The Romanian government follows the French tradition, where judges come under the Ministry of Justice. They are part of the system of magistrates, which includes judges and prosecutors. In addition, sometimes judges are brought into the Ministry of Justice itself to perform administrative duties.

Judges have a career path leading from minor courts to appellate court assignments. A new judge just out of law school typically receives a small claims court or traffic court type of assignment. Advancement, including increase in salary, results from successful service in lower courts. Judicial service is typically a life-time career. The most successful judges advance in due course to appellate courts, and eventually to the Supreme Court.

Except for the lowest courts, Romanian trial judges typically sit in pairs, rather than alone like United States trial judges. The more experienced judge in a pairing will typically serve as a mentor for the more junior judge. In addition, a judicial decision requires the concurrence of both judges. This provides a level of quality control that is important for judges who begin their judicial careers directly after finishing law school.

The Romanian judges were particularly interested in learning the salary of a United States judge. "It would take us ten years to make that much money," one said after we told them the salary range for our judges. We

28. Professor Chemerinsky is now the Dean of UC Irvine, Irvine School of Law.
30. See Bufford, supra note 29, at 252.
32. Id.
33. Id.
34. Scott, supra note 29, at 818.
had to explain that simply converting the numbers at the foreign exchange rates gave no clue to the real income of a United States judge, because costs of living are extremely different.

In fact, in 1991 the Romanian judges were generally pleased with their salaries, because they had recently received a substantial increase. However, this changed dramatically over the next several years, as relentless double-digit inflation ate deeply into their incomes.

One of the highlights of the Poiana Brașov program was a cocktail party featuring a special tea concoction prepared by Judge Frank Kaufman, a well-known district judge from Baltimore. We invited all of the Romanian judges and their spouses (if in town with us) to the reception on Tuesday evening, the second evening of the seminar. Judge Kaufman and his wife brewed up a large quantity of tea mixed with vodka. It turned out to be a very popular beverage, and the event was a good opportunity to get acquainted with the Romanian judges.

Television crews and newspaper reporters covered the opening session on Monday afternoon. Indeed, almost every program that I have taught in Central and Eastern Europe has been covered by the press. Frequently, the press appears for a short period of time to record some interviews and shoot a few images of the seminar in progress. This usually results in an article in the local newspaper, and a two-minute segment on the local (and sometimes national) television evening news. Why would our seminar be important enough to show on television? Perhaps it is to show that local officials are receiving attention from important Western countries.

The highest-ranking ministry of justice official accompanying us in Poiana Brașov was Dr. Lucian Stângu, who was later appointed to the Romanian Constitutional Court. He stayed at our hotel and had the responsibility of assuring that we were properly cared for. He joined us for all of our meals. He spoke French quite well, but almost no English. His wife, an official in the Romanian Academy of Science, spoke fluent French and quite good English. She has also served as a visiting law professor in France.

To explain why he did not speak English, Dr. Stângu told us a rather chilling story that took place in the early days of the Ceaușescu regime. A good friend of his was tried and convicted, and served a criminal sentence of three years, for wanting to leave the country. The only evidence against him was that he was studying English and that he was seen in the shipyards in Constanța. The only witness against him was his fiancée.

The Poiana Brașov seminar has taken on a legendary status in Romania. During the Communist era, the Romanian judges had never had an opportunity to talk with each other (not to mention with foreign judges)
about their profession. One judge explained to me that this was a legacy of the Ceaușescu era. During that time, judicial meetings were rare. When meetings did occur, each judge sat with his or her head down, did not say a word, and left without even greeting the other judges in attendance. There was such a climate of fear that nobody dared even talk to another, because anything a person said could lead to adverse action by the police.

Cristian Dumitru, the husband of Mariana Dumitru (a trial judge and later a court of appeals judge in Bucharest) came as a spouse and attended the first session of the program. Unlike the judges, he was dressed informally, wore sandals, and carried a knapsack. I wondered whether he even belonged at the conference. I noticed, however, that a number of the Romanian judges seemed to be paying him special deference. I later learned that he was the Ministry of Justice official responsible for all judicial appointments and promotions in the country.

One night several Romanian judges invited me to join them to go dancing at a private club in Poiana Brașov. The Romanian group included Vicki Costiniu (the only Romanian judge who spoke enough English to carry on a conversation and later, the president of the Romanian Judges Association), her husband Florin Costiniu (Secretary of State and Deputy Minister of Justice for Administration in the Ministry of Justice), and Cristian and Mariana Dumitru.

After dancing until after midnight, Cristian Dumitru invited me to see the cabin where his family was staying. It was, he said, the Ceaușescu cabin at Poiana Brașov. For a Romanian it was great luxury, he said, but he hastened to add that I would not think it impressive. Indeed, by United States standards it looked more like a college student apartment. We spent half of the night talking in French about life in the Ministry of Justice and political and economic conditions in Romania.

"You must come visit us in Los Angeles," I said to Cristian. "It is very nice of you to invite me, but that will not be possible in my lifetime," he responded. In fact, only one of the sixty Romanian judges who attended the seminar had ever traveled outside of Romania—Judge Ion Pop from Cluj had visited Scotland for a week.

Six months later, Cristian Dumitru was visiting in Los Angeles. Judge Vicki Costiniu, the judge who spoke English, has also visited us in Los Angeles, and her husband Florin Costiniu, the number three official at the Ministry of Justice (and later a law professor and Secretary General of the Romanian parliament) has visited several times.
On the Road in Romania—August 1991

After spending a week teaching the seminar in Poiana Brașov, we took to the road to meet with judges and lawyers in several Romanian cities and towns. As we traveled, frequently the driver would turn on the radio to obtain the latest news or to listen to the local popular music.

One day in the middle of the next week, an event appeared on the radio that the Romanians found absolutely remarkable. It was on the station broadcasting from Chișinău, Moldova.\textsuperscript{35}

The unicameral parliament in Moldova was taking a vote on declaring independence from the Soviet Union. It had 450 members, quite a large number for a land of some three or four million people. The vote took a substantial amount of time because it was by roll call, so that every member would have to take a stand for or against independence.\textsuperscript{36}

To the Romanians, this event was astounding. Just a week earlier, their own independence from Moscow was under serious threat, and they had not thought it possible that a vote for independence could occur in their lifetimes.

The stakes were enormous. If the Moscow coup of the previous week were to be renewed successfully, those voting for independence would probably all pay with their lives, as well as their fortunes, and their families would also suffer for the rest of their lives. If the independence move were to succeed, on the other hand, those voting against independence could lose their parliamentary positions and likely their livelihoods also. The clerk of the Moldovan parliament called the roll one by one as we drove across Romania and listened in. Most of the votes were “pentu” (“for”). There were occasional abstentions, mainly by deputies elected by the Russians living in Moldova (who constituted some thirty-five percent of the population). Nobody was voting “no.” As midday passed, it became apparent that independence was passing by a monumental margin. The Communist era in Moldova, which had started in 1940, came to an end that day as we drove on the Romanian highway some two hundred miles away.\textsuperscript{37}

\textsuperscript{35} Moldova was the southwest corner of the Soviet Union that abutted Romania, and its language was also Romanian.


Very similar events transpired just to the east of Moldova, where Ukraine declared its independence from Moscow the same week.\textsuperscript{38} This was a more momentous event for the Soviet Union—Ukraine had been a part of Russia and the Soviet Union (after it was formed in 1920) for more than 300 years.\textsuperscript{39} The Crimea, where Gorbachev had been detained in his dacha just the previous week, was now part of an independent country.

Transylvania is said to be Dracula country. It is the setting for the well-known gothic novel Dracula published by the Irish novelist Bram Stoker in 1897.\textsuperscript{40} In fact, the book has a kernel of historical background in Vlad Țepeș, know as “Vlad the Impaler,” a fifteenth century Romanian leader who is a national hero for his successful opposition to the invading Turks.\textsuperscript{41} Vlad was best known for impaling captured Turk soldiers on sharpened sticks, and staking them along the road to die so that their corpses would deter other invading Turkish soldiers.\textsuperscript{42} According to legend, he once skewered twenty thousand victims in a single day.\textsuperscript{43} The Turks never captured Transylvania, but bypassed it on the way to invade further into central Europe, including the capture of Vienna and Budapest.

The Sighișoara judge who spoke up at the Poiana Brașov conference invited us to visit her town and courthouse, and to have lunch at a restaurant in the old building where Vlad Țepeș was born and grew up. Sighișoara is a very well-preserved thirteenth century town built by German settlers from Cologne (known as Saxons because Germany did not exist as a country until the late nineteenth century). It sits on a hill with thirty-foot walls featuring nine defensive towers built by the nine major professional guilds of that time. The judge’s husband, an engineer, gave a lecture on Vlad Țepeș, and told how Romanians are unhappy that a genuine national hero has been converted into a monster in the Stoker novel.

After a long lunch in Sighișoara, we traveled on to Cluj, which was founded as a Roman fort and is now the center of the ethnic Hungarian population in Romania. There we had dinner with a number of the local judges at the hotel restaurant. As we gathered around a very long table for a dinner banquet, the Romanian judges explained to us that, under the old


\textsuperscript{40} BRAM STOKER, DRACULA: A MYSTERY STORY (New York, W.R. Caldwell & Co. 1897).

\textsuperscript{41} RAYMOND T. MCNALLY & RADU FLORESCU, IN SEARCH OF DRACULA: THE HISTORY OF DRACULA AND VAMPIRES 3 (1994).

\textsuperscript{42} Id. at 206.

regime, the applicable standards required that secret listening devices for the secret police (securitate) be hidden every meter (thirty-nine inches) along the table.

While the judges thought that the listening devices were no longer there and were no longer being monitored, they told us that this could resume if the old regime came back. The listening facilities for the securitate were still in place, and had merely been turned off. For instance, they told us that in Bucharest the entire thirteenth floor of the Intercontinental Hotel (the newest hotel at that time in Bucharest) was devoted to securitate activities. The securitate personnel still worked for the government, mostly in other assignments, and could be recalled if needed. Eventually, however, the equipment would deteriorate and become obsolete.

I also learned of an intriguing situation about the Romanian automobile industry in 1991. Virtually every automobile in Romania was manufactured in a single factory purchased from France (and its state-owned Renault manufacturer) in the late 1960s. The factory made a single model of automobile, the Renault R12, which in Romania was called a “Dacia.” This model had long been obsolete in France. Thus, except for color (and body damage), every car looked like every other car. A large number of automobiles (fifty percent to eighty percent, according to the various estimates I heard) were inoperable. This came about because there was no spare parts factory in Romania. The same parts tended to break on all of the cars, because they were all the same, so one car could not be cannibalized to repair several others. Romania always intended to build a parts factory for its automobiles, but this project never rose high enough on the government’s five-year economic plan to be built. The trucking industry was in the same condition. There seemed to be a vast opportunity for someone to develop a market in Romania for spare car and truck parts.

Budapest, Hungary—March 1993

Nearly two feet of new snow had just fallen in Vienna when my wife Julie Metzger and I arrived on a Friday at the end of February for a two-day stop on our way to Budapest to teach a seminar for Hungarian banking lawyers. We planned to recover from jet lag and collect our thoughts for the seminar before picking up our rental car to drive to Budapest.

Julie was included on the faculty because she is a specialist in banking and commercial law. She has spent a large portion of her professional career as in-house counsel at banks. In addition, she spent more than a year closing banks and running closed banks as part of the legal team at the Federal Deposit Insurance Corporation. In addition, for the last fifteen years she has been an adjunct professor at several universities, where she teaches business law and Uniform Commercial Code courses.

In Vienna we wandered by the famous opera house, the Staatsoper, and learned the ticket office would open at 9:00 a.m. the next morning, that tickets could be purchased no more than a week in advance of a performance, that Mozart's *Magic Flute*, one of the most popular operas in Vienna, was playing, and that the tickets were very expensive. The timing was perfect, however—we would return to Vienna the next weekend before flying back to Los Angeles. At 9:30 the next morning only the most expensive tickets were still available. However, we got box seats next to the emperor's box in the center of the first balcony. The performance the following Saturday night was outstanding.

Some twenty-five Hungarian banking lawyers came to the seminar in Budapest, which was co-sponsored by the European Bank for Reconstruction and Development and the International Law Institute (a spinoff of the Georgetown University Law School). Except for one who was a professor, all of the Hungarians attending the conference were less than forty years old. Most of the lawyers worked in-house at retail banks, which had been set up in the previous four years since the Communist government had fallen in Hungary.

We had been invited to participate for the entire week. We were both scheduled to make presentations on Monday and Friday, and attended the rest of the week to participate as commentators on the presentations of other speakers, both Hungarian and foreign, who would rotate in and out.

As in Romania in 1991, at the beginning of the program we had each participant introduce himself or herself and explain what he or she hoped to learn from the program. From the introductions it became apparent that most hoped to learn about bank insolvencies. Three Hungarian banks had failed in the previous year, and the participants wanted to know how to deal with such failures.
This subject was not on the program, and none of the speakers had prepared to teach it. We took a short recess and decided that we should cover this issue, and that the best time to bring it into the program was immediately. With only a recess to prepare the briefest outline, Julie launched into a ninety-minute lecture on bank closings.

From events like this, we learned that we could never predict with any confidence what subjects we would be called upon to teach in developing countries. Even when we knew the subjects, we often would not be able to predict the depth of knowledge or the level of interest of the audience. We learned that the ideal speaker to bring from the United States is someone who teaches well and has a vast array of knowledge, and who has the flexibility to craft a program on a moment's notice to respond to the situation and the requests that emerge after we arrive in the country for the program.

The Hungarian bankruptcy law had two distinctive features. First, an amendment that became effective at the beginning of 1992 made it mandatory to file an insolvency case if a business was not paying its debts regularly for a period of more than ninety days. In the first week of April, 1992 some 3,500 new cases were filed. In rather short order, more than twenty percent of the Hungarian economy passed through the insolvency system. After this process was completed, the mandatory provision was repealed.

Second, the Hungarian law at the time required unanimous consent of all creditors for a plan of reorganization. This consent was determined at a meeting of creditors to consider the plan: only those present could vote. The Hungarians developed a unique technique to deal with holdouts who unreasonably voted against a reorganization plan. If the creditors at the meeting thought that a particular creditor was holding out unreasonably,
they grabbed him by the lapels and threw him out of the meeting room. In his absence, they took the vote.

Unlike the Romanian judges in 1991, all of the Hungarian banking lawyers in our seminar had traveled abroad, and most had traveled extensively. While none had traveled to the United States, many had traveled in Western Europe, and a number to Moscow and Beijing. While the Moscow trips were often for education, the Western European trips were all for business.

“What kind of business?” we asked. We learned that, throughout the last decade of communism in Hungary, the Central Bank had been sending bankers and lawyers to Western Europe to learn Western banking systems and methods, on the assumption that the communist era would eventually end and Hungary would then need to adopt Western European banking systems. The Central Bank had sent its youngest bankers and lawyers, because it was difficult to predict when this knowledge would be needed. By educating the youngest professionals, the Hungarian banking system would be prepared for this eventuality, even if it took three or four decades for the communist government to disappear and for this investment to pay off. The Hungarian Central Bank surely did not do this covertly. It could not be done without approval at the highest level of government, most likely Janos Kadar himself. Kadar was installed as Secretary General of the Communist Party by the Soviets in 1956 after forcibly putting down a substantial civil uprising that threatened to dislodge Hungary from the Soviet Empire. Quietly, while the Soviets were not paying close attention, Kadar had been preparing the banking system for the world that Hungary would face after the end of the Soviet era.

We had lunch every day in Budapest with some of the conference participants. We asked what languages they knew. Nobody admitted to speaking Russian. We coaxed the admission from some when we learned that they had studied in Moscow. “But I have forgotten the Russian that I had learned,” was the universal response. It was apparent that Russian was a language that they no longer wanted to use.

56. See Jung, supra note 54, at 681.
Bucharest, Romania—March 1994

“I know what is wrong with bankruptcy law,” said the professor. “You are raping contracts. In our legal tradition, we respect contracts.” The occasion was a national summit in Romania on bankruptcy law in 1994. Romania had applied to the International Monetary Fund (“IMF”) for a $25 million loan, a modest amount for the IMF, particularly in view of the fact that Romania had no international debt.57 The IMF had offered to make the loan on condition that Romania improve its laws in four areas, including bankruptcy.58 Romania decided to make bankruptcy law its first priority for improvement, because it had already planned a seminar with the American Bar Association’s Central and East European Law Initiative (CEELI, now known as the Rule of Law Initiative) on this subject, and the Ministry of Justice had drafted a new bankruptcy law and sent it to Parliament.59

The American faculty for this conference was Professor David Epstein, who was then practicing law at King & Spalding in Atlanta in between teaching at numerous well-respected American law schools. Julie was the third American lawyer in our group, who came to present the perspective of creditors in the bankruptcy process. The Minister of Justice sat at the far end of the head table in the stuffy room at the bar association headquarters in Bucharest. David Epstein and I sat at the other end. Next to me sat Senator Ion Predescu, Chair of the Senate Commission on Legal Reform. Further down the table sat the deputy director of the Council on Economic Reform, a professor of commercial law at the University of Bucharest, and the head of the CEELI office in Bucharest. The audience of perhaps a hundred people included the Minister of Finance, the entire commercial law panel of the Romanian Supreme Court, several other top level officials in the Ministry of Justice and Ministry of Finance, several more legislators and their top aides, all the commercial law professors and some of the economics professors from the University of Bucharest, several trial court judges, and other administrative officials. The print and the broadcast news services were well represented. Images of our deliberations appeared nationwide on the evening news every day. The whole nation was listening. This was the time, if ever there was one, to deliver one’s profoundest thoughts on the subject of bankruptcy.

57. Romania had obtained an international loan early in the Ceaușescu regime, and had paid it off at great sacrifice to the Romanian people when the lender started putting pressure on the government with respect to its human rights record.
58. The other three areas were intellectual property, tax, and property law.
59. See Bufford, supra note 49, at 465.
At this conference, David Epstein and I repeatedly stated the fundamental axiom of law development abroad: "you need to draft a law that fits your legal system and your historical traditions, and that is tailored to the present state of your economic development. Our laws in the United States may provide some useful ideas. However, this is your country, and you must decide what works for you."

We learned a fundamental fact of legal systems in countries controlled by communist governments in that era: with rare exceptions, the pre-communist legal regime was left entirely in place. The laws only fell into disuse. Thus, Romania already had a bankruptcy law: the final quarter of the Romanian Commercial Code, an 1887 translation and adoption of the Italian Commercial Code of 1884.\footnote{Italy had revised its commercial code in 1932, but the events of World War II overtook Romania's efforts to make similar revisions.}

The new bankruptcy draft law, which was inspired most strongly by the Italian bankruptcy law, needed substantial refinement. It assigned all administrative responsibilities to the bankruptcy judges, who would be existing trial court judges specially designated in each county to handle bankruptcy cases. There were no trustees, because there was no group of professionals with this kind of training, and neither the government nor the public trusted business people with this responsibility.

There was an English translation of the draft law, but we were alerted by the local CEELI office at our first meeting after we arrived that the translation had many inaccuracies. Because this is a recurring problem, we have learned that it is better to concentrate on concepts rather than specific terminology in a translation.

Romania also had bankruptcy cases. After spending three days teaching the seminar in Bucharest, we traveled some fifty miles north to Ploiesti, an oil center that the United States had bombed late in World War II. All seventy-two judges of the various trial and appellate courts in that city attended our two-day symposium on bankruptcy law. We learned that they had some fifteen bankruptcy cases pending under the old law, all of which had been filed after 1989 (the end of the Ceaușescu era), but none had been closed.

Part of our program in Ploiesti was a presentation of a mock relief from stay hearing. We prepared a hypothetical involving a ski resort in the Carpathian Mountains with financial difficulties resulting from insufficient snow during the last winter. Julie represented the bank that wanted relief from the automatic stay provided under the draft Romanian law (which was similar to the American law provision), and David Epstein took the role of
counsel for the debtor in possession that wanted further time to try to reorganize. I played the role of the judge.

After the completion of the hearing, the Romanian judges wanted to know how I would rule in the United States on a similar case. I announced a decision to deny the motion and to give the ski resort another six months to try to reorganize. "It is always a pleasure," David Epstein said afterwards, "to travel all of the way to Romania to lose yet again to a debtor-in-possession that does not want to pay its bank debt."61 The Romanian judges almost unanimously thought that I should have ruled in favor of the creditor. Perhaps this attitude contributes to the difficulty in reorganizing businesses in Romania.

Liquidation was problematic in Romania, because nobody in Romania had capital to invest except the members of the former securitate, the secret police, and foreign capital was limited.62 Of all people, it seemed particularly ironic to the Romanians that the secret police should lead the way to a new economic order. By 1996, when I returned to Romania, it appeared that the Romanians had reconciled themselves to this situation.

The reorganization of businesses posed its own set of problems. Because all businesses were state-owned, they needed to be privatized. Privatization itself was an enormously complex process, which took a number of years. In fact, virtually all of the state-owned businesses in Eastern Europe were deeply insolvent. In many countries, such insolvent businesses constituted a large portion of the economy. Hungary's insolvency problems, which led to some twenty-two percent of the economy going into bankruptcy, were comparatively rather mild.63 In Ukraine, in contrast, more than ninety percent of the businesses were insolvent.64 It was neither economically nor politically possible to liquidate or shut down such a large part of the economy.

61. We also presented this demonstration at the Magistrates School in Bucharest after the Bucharest seminar one afternoon. The Magistrates School is a post-graduate law program for budding judges and prosecutors who have been appointed to these positions from law school but have not yet received their first assignments. The school admits the best students graduating from law school in the country, and they become judges immediately upon completing the program. A typical Romanian judge (like a typical judge anywhere where the common law system is not in force) has no law practice experience before becoming a judge.


63. See Bufford supra note 49, at 469.

64. In Ukraine, I attended a bankruptcy seminar in Kyiv in 1997, where one of the speakers was the head of the Central Bank. He opined in his speech that more than ninety percent of the businesses in Ukraine were insolvent at the time.
Restructuring a balance sheet of a privatized business posed unique problems as well. Where all businesses are state-owned, all creditors are state-owned enterprises. Most countries have laws that prohibit a governmental claimant, including a state-owned enterprise, from accepting less than 100 percent payment on a debt. In addition, it is typically a crime in such a country for a government official (including an official in a state-owned enterprise) to accept less than 100 percent as payment in full on a debt. Even where such restructuring is not a crime or otherwise illegal, accepting less than 100 percent as full payment of a debt usually ends the career of the official agreeing to such a payment. Debts cannot be restructured by reducing them unless laws and practices of this kind are changed.

There is a further impediment to the reorganization of a business in a country where most businesses are state-owned. A standard model for financial reorganization in the United States is to cancel the stock and issue new stock to the creditors in exchange for canceling the debt owing to them. The business winds up with new stockholders (the old creditors) and no debt. Variations on this model (leaving existing shareholders with a minor portion of the outstanding stock and leaving some outstanding debt) are common today in the United States.

Where most businesses are state-owned, this model is unworkable. To the extent that a reorganization plan follows this model, privatization is reversed because state-owned entities again become the shareholders. Operational causes of insolvency are also difficult to solve. A typical state-owned business has far too many employees. Many may be phantom employees, who never show up at work. The payroll is bloated because hiring (like all other decisions) is a political decision, not an economic decision. Where the government covers losses, managers are not required to produce profits by reducing employment. Furthermore, reducing employment creates its own political problems, because there are rarely enough spare jobs in the community to take up the employment slack, and a significant group of former employees become unemployed.

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65. See Bufford, supra note 62, at 843; see also Bufford, supra note 49, at 466.
67. See id.
69. See Bufford, supra note 49, at 471.
In a state-run economy, unemployment typically imposes substantially larger burdens than in a market economy. \textsuperscript{70} A large state-owned business enterprise typically provides more than jobs. \textsuperscript{71} It also provides schools, medical facilities, vacation facilities and retirement homes. A worker who is laid off typically loses all of these benefits as well. \textsuperscript{72} Furthermore, where the principal economic units are state-owned, everyone is provided a job, and there are few or no jobless benefit programs.

"Economic blockage" is yet another condition that develops in a system of state-owned enterprises, such as we found in Romania. \textsuperscript{73} Where a business is unprofitable in such a system, it may fail to pay its suppliers. \textsuperscript{74} The suppliers in turn may not be able to pay their suppliers or workers. \textsuperscript{75} Instead of payments in real money, payments are made by debiting and crediting accounts in the office of a government ministry. \textsuperscript{76} Such practices can lead to a system of inability to pay, and of adjusting accounts in place of making payments. \textsuperscript{77} The whole economy, or a substantial portion thereof, becomes a "debit and credit" economy, where real payments do not take place. \textsuperscript{78} The effect is to permit deeply insolvent businesses to continue to operate at a deficit, with no real day of reckoning, and the whole economic system becomes a house of cards. \textsuperscript{79}

Most of the large Romanian state-owned enterprises were vastly insolvent and lacked investment capital or effective management. \textsuperscript{80} They were not likely to be able to rejuvenate themselves sufficiently to compete effectively in a market economy. We concluded that the real economic future of Romania, and most other similarly situated countries, was in their new small businesses. While most perish before they grow very large in every country, a few survive and grow to be effective competitors in the marketplace and crowd out the inefficient state-owned enterprises. \textsuperscript{81}

\textsuperscript{70} See id. at 472.
\textsuperscript{71} See Kikeri, supra note 68, at 30.
\textsuperscript{72} See Bufford, supra note 49, at 472.
\textsuperscript{73} See Christine E. Moore & Patricia M. Petersen, Investment in Romania: Some Points of Interest, 13 INT’L L. PRACTICUM 14, 17 (2000).
\textsuperscript{74} See Bufford, supra note 49, at 471.
\textsuperscript{75} See id.
\textsuperscript{76} See id.
\textsuperscript{77} See id.
\textsuperscript{78} See id.
\textsuperscript{79} See id.
\textsuperscript{80} See Bufford, supra note 49, at 468-70.
\textsuperscript{81} In fact, this kind of development has largely solved the automobile problem described supra. Foreign-made automobiles have been imported in large numbers (mostly used automobiles imported from Germany, Austria, and Switzerland), and a parts supply system has grown to
In the meantime, the inefficient state-owned businesses are needed to keep the economy going until the new businesses are ready to take over. Then it will be time to terminate the old businesses. How can the correct time be determined? What government will have the courage to terminate the old businesses when the time has arrived?

There was a rather eerie feature that we saw repeatedly in the Bucharest skyline. Rows of cranes towered atop a long double row of half-built buildings for nearly a decade without ever being moved at all. The Ceaușescu regime had cleared an old section of the city nearly two miles long and a half a mile wide, and had begun the construction of some thirty large new government, commercial, and apartment buildings. At the north end, the new People's Palace (for the legislature and many government offices) was well along toward completion. Toward the south, the buildings were less and less completed.

Construction had stopped in late 1989, when the workers left everything in place to go home for the Christmas weekend. That weekend the Ceaușescu regime was deposed, and construction did not resume on many of the buildings for nearly a decade. In the meantime, the cranes remained in place. One would have thought that some other use for the cranes would have led to their removal. Finally, in approximately 1998 construction recommenced on a building-by-building basis, and the cranes gradually disappeared.

One of the participants in the Bucharest conference was Cristian Dumitru, who in 1991 was responsible for all judicial appointments in Romania. He had recently left the Ministry of Justice and gone into private practice as a lawyer. After the end of the conference, Julie and I spent three days traveling with him and his three children in the Carpathian Mountains. We visited Brașov, hiked in the mountains, and visited Bran Castle again.

"You must come visit us in Los Angeles," Julie told them. "If you cannot all come, perhaps you would like to send one of your children to spend a summer or a school term with us." In early July that year, we received a letter from the Dumitrus. "Alina (the fourteen-year old) drew the long straw in the family," it said. "If you are serious about your invitation to visit the United States, she would like to come spend a year there." Alina did come and live with us while she attended ninth grade in Los Angeles. Our adventures with her would fill a book. The following June, her entire

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service these automobiles. The domestically manufactured Dacias (obsolete Renault models) are disappearing.

82. We were told that this building was the third largest in the world, after the Pentagon outside Washington, D.C. and a large building in North Korea. After visiting North Korea, Ceaușescu had decided to build a similar building in Bucharest.
family came for her graduation from junior high school. We traveled to the Grand Canyon and Yosemite, and stopped for an afternoon on July 5 at a casino in Las Vegas (the temperature outside was 115 degrees Fahrenheit, but it was cool inside). More recently, in October 2009 we were invited to her wedding in Bucharest and treated as members of the family.

Kyiv, Ukraine—December 1995

“The ground temperature is minus five degrees,” the pilot announced as the airplane approached the airport in Kyiv. It was an afternoon in the middle of December, and all of Europe was covered with a huge cloudbank. Doing the math, I calculated that the temperature converted to twenty-three degrees Fahrenheit, and that it was the warmest part of the day.

I had purchased a good pair of Australian boots two weeks before traveling to Kyiv. I took them off only to get into bed at night, and put them on first thing in the morning. The temperature in my hotel room hovered around fifty degrees Fahrenheit. At least there was hot water for a shower every night (bathtubs were apparently unknown, at least in hotels in Kyiv). I stayed at the Continental Hotel, which had served as a private accommodation for visiting Party and government officials during the communist era, and was in essentially the same condition as in those days.

My assignment for the week was to meet with the drafting committee working on a revision of the Ukrainian bankruptcy law. Its parliament, the rada, had hastily enacted a seven-page bankruptcy law in early 1992 shortly after Ukraine obtained its independence from Russia (for the first time in more than 300 years).

While the 1992 bankruptcy law did not function well in the bankruptcy context, I learned that it served a function quite unexpected, but not unusual in that part of the world. Ukraine’s law on the enforcement of judgments was very weak. A creditor could enforce a judgment only by applying to a bank to attach any funds that might be in the judgment debtor’s account. If there were no funds, the creditor’s remedy was limited to trying again, perhaps at another bank. Judgment debtors quickly learned to change banks

83. Known also by its Russian name, Kiev.

so that they could stay ahead of their creditors. Judgment liens and seizure of assets to enforce judgments were unknown.

Involuntary bankruptcy provided a much more powerful alternative for the collection of a judgment. If a bankruptcy case was opened, a trustee would be appointed, the assets liquidated and the creditors (including the petitioning creditors) would be paid, at least in part. This gave a petitioning creditor much greater leverage in an involuntary bankruptcy case than the creditor would have in a collection action. Most involuntary bankruptcy cases were settled before the court made a decision on whether to open the case.

Indeed, voluntary bankruptcy cases are uncommon in much of Central and Eastern Europe. There are no market forces pushing management to file a voluntary case. Employees may work for months, and on occasion for years, without receiving wages, and no government office closes the business for failure to pay employees. Foreclosure procedures are so weak that secured creditors do not invoke them in an uncertain effort to recover their collateral. Litigation fees are so high (e.g., fifteen percent of the prayer for relief) that even filing a lawsuit was often prohibitively expensive.

Furthermore, businesses in Ukraine, like those throughout the Eastern European countries emerging from communism, tended to be extremely large. Communist governments did not see a need for multiple factories making the same product, or multiple businesses delivering the same services. Each country tended to have a single automobile factory, a single aluminum factory, a single telephone company, etc. If the existing factory or business was not large enough, it was simply enlarged.

Uniformly, these businesses suffered from three huge problems. First, they were all state-owned. Thus any decision to close a business, for any reason, was more a political question than an economic question. Second, virtually no business had been permitted to close during the entire communist era (which lasted some seventy-five years in Ukraine, which was then part of the Union of Soviet Socialist Republics). The economic landscape was filled with dinosaurs badly in need of extinction. Third, almost every business, and especially every large business, was hopelessly insolvent.

85. It frequently took the court several weeks to decide whether to open a bankruptcy case. Almost all cases were involuntary cases filed by creditors.
86. See Bufford, supra note 49, at 472.
87. See id.
88. See id. at 482.
89. See id. at 469.
The experience that week was very frustrating. I spent it meeting with four commercial law professors from the University of Kyiv, the best and the brightest that Ukraine had to offer. I found that they had no concept whatever of how a market economy is supposed to work. Thus they had no context in which to understand bankruptcy principles and concepts.

I found one professor, newly arrived in Kyiv and newly added to the drafting team, who had an understanding of bankruptcy law. He was Alex Biryukov, a graduate school professor at the University of Kyiv who had recently arrived from teaching at the University of Odessa. His education was principally in Moscow, and he had also studied in Beijing. He understood English fairly well, and also understood fairly well how a market economy ought to work. At his invitation, I taught a 7:30 a.m. session of his graduate seminar on United States bankruptcy law, after which he invited me to his apartment for breakfast with his Russian wife and infant daughter.

Kyiv has a well-known old opera house. In 1911 (when the Ukraine was part of Russia before the communist revolution), the Russian foreign minister was assassinated on the floor of the opera house during an intermission in a performance of Tchaikovsky’s ballet Sleeping Beauty. While we were there, the ballet company was again performing Sleeping Beauty. Because of the severe hyperinflation that Ukraine had suffered, the tickets cost less than a dollar at the exchange rate. The performance of the dancers was outstanding. The orchestra, however, was less than inspired because it had suffered from the loss of many of its best performers to the West.

My successors had better success than I in Ukraine. Within a few years, both Judge Frank Conrad of Vermont and Judge Leif Clark of San Antonio spent considerable time in Kyiv working on revisions to the bankruptcy law. Ukraine ultimately adopted a law that is much better than the seven-page law that was in force when I was there.

Mamaia, Romania—February 1996

It was snowing as I arrived in Bucharest in February 1996, and more than a foot of new snow covered the city. Judge George Paine of Nashville and I were in Romania to teach a weeklong seminar on the analysis of financial statements to a group of twenty-five Romanian judges. The

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90. Professor Biryukov has since spent three years studying in the United States (alternating a year at a time between the United States and Ukraine), and attended the 2000 meeting of the National Conference of Bankruptcy Judges in Boston.
PROMOTING LAW REFORM

A seminar was scheduled in Mamaia, on the Black Sea near Constanța, some 200 miles to the east. Fortunately, we were scheduled to travel by train—the highways were closed by the snow. While the judges who attended the program mostly came from eastern Romania, some came from farther away, including one who made a fourteen-hour train trip across the country to attend.

Financial accounting was a challenging subject to teach to Romanian judges (indeed, it is a challenging subject for United States judges). Most Romanian judges have no business background of any sort, and they are not accustomed to handling business or accounting issues. “You must be able to understand accounting,” we told them, “to determine whether a business in bankruptcy is reorganizable or should be liquidated.”

Deloitte & Touche, the international accounting firm, had the USAID contract to teach such accounting courses in thirteen Central and East European countries, and ours was the first of three in Romania. Local Deloitte & Touche accountants taught the fundamentals of accounting, which included the conversion of the statutory accounting practices in Romania to international standards. Judge Paine and I helped in breakout sessions to teach what the numbers on a financial statement meant. He and I also taught several sessions on how the accounting statements are used in the context of business reorganization cases.

We learned that standardized judicial forms were virtually unknown in Romania. We added a program unit on the drafting and use of forms for such documents as civil complaints, bankruptcy petitions and motions, and discussed the substantial time savings for both the judges and the parties that the use of standardized forms would provide. We divided the judges into three groups, and assigned each group the task of devising a form for one common proceeding in a Romanian trial court. After discussion, we arrived at several forms that the judges could take back to their courts to use.

While in Mamaia we visited the courthouse for the tribunale (the general jurisdiction court) in Constanța, the Romanian seaport on the Black Sea. We visited the courtroom of the chief judge (subsequently an appellate court judge) and had our pictures taken sitting with him on the bench in Romanian judicial robes. Compared to judicial robes in the United States, the robes of many other countries are more ornate. Romanian judicial robes are on the simpler side—they are black, with a white collar.

We also visited the clerk’s office, a room somewhat smaller than the courtroom, where four clerks were working. The files were all kept by hand and pleadings were sewn into the files. The dockets were hand-
written. The most recent technological innovation in use was the fountain pen.

Mamaia, and the seaside of the Black Sea generally, are summer resorts. Most hotels and restaurants close in the middle of September and reopen the following June. Our hotel was the only one open in February, and many restaurants and other facilities were closed. However, the casino next to the hotel enjoyed a brisk business.

The public areas of the hotel were finished in marble and looked impressive. However, we had to move the conference from the conference room to the hotel restaurant because of insufficient heat. Unlike the public rooms, the hotel rooms were unimpressive. Hot water was also a sometime convenience—many of the judges wound up with cold showers. Judge Paine slept in his clothes and socks, and reported that he had never been so cold in his life (even though he grew up mainly in Cambridge, Massachusetts). While each room was supposed to have a television, apparently there was none in the entire hotel that worked. At Judge Paine’s insistence, Deloitte & Touche was able to pressure the hotel into finding a working model for him to obtain the news for us.

This was an unusually cold winter in Romania. For the first time since 1951, the Black Sea had frozen—it was covered with ice extending a thousand yards out from the beach, and the Constanța port (one of the ten largest in the world) was closed. Judge Paine and I decided one morning to take a walk on the Black Sea. In hindsight, this was not a good idea. While the ice held for us, three days later it had melted in the beginning of a spring thaw.

**Cluj, Romania—March 1996**

Judge Leif Clark and I taught the second Romanian financial analysis program in March, 1996 in Cluj, the “capital” of Transylvania in the northwestern part of the country. Cluj is an ancient city, dating from Roman times, and has one of the world’s oldest universities. Cluj is also the center of the Hungarian ethnic community in Romania, which constitutes approximately three million of the twenty-three million Romanians.

I planned to meet my wife Julie Metzger for dinner in Bucharest on Saturday evening before traveling on to Cluj for the conference. She was

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91. I was unable to teach the final financial analysis program in Bucharest, because of a schedule conflict.
working on a two-week program to develop the banking system in Moldova, the next country to the east of Romania (and a part of the Soviet Union until it broke up in 1991). However, she was unable to meet me there because there were no flights from Chișinău, the capital of Moldova, to Bucharest on Saturdays. She arrived late Sunday morning, but I had to leave at 6:45 a.m. on the Orient Express for an eight-hour trip to Cluj. Again we did not travel by air, this time because of uncertain winter travel conditions in Cluj.

I was bringing Julie’s winter coat for her. She had not taken it, on my erroneous advice that spring would be arriving in late March in Eastern Europe, and she would not need it. In fact, winter was still in full force in Moldova, and she nearly froze before arriving in Bucharest. I left her coat with the Dumitrus, whose daughter had spent a year with us in Los Angeles, since I could not meet her for dinner.

Like Moldova, the Carpathian Mountains that we crossed on the way to Cluj were covered with snow. Cluj was cold and rainy most of the week, but not snowy.

We worked from the same materials for the program in Cluj that we had used in Mamaia. The judges from western Romania who attended this workshop had somewhat more sophistication in business matters than their colleagues to the east who had attended the Mamaia workshop. They understood the business and accounting concepts more easily, and we were able to teach the program at a more advanced level.

One of the participants in the Cluj program was Judge Ion Turcu, the leading commercial law scholar in Romania. In addition to serving as a judge on the court of appeals in Cluj, he also taught commercial law courses (including bankruptcy) at three universities in Cluj and had published several books on these subjects. It was necessary to do all of this work, he explained, to make ends meet because judicial salaries were so low. The judges who attended the Cluj workshop estimated that their salaries were approximately a third of the average income in Romania.

Romanians are very proud of Țuică, their local plum liqueur (similar to slivovitz). While commercial Țuică is available in stores, a typical Romanian purchases Țuică by taking a trip to the countryside and purchasing home brew in a plastic bottle from a farmer. In addition to serving it at many lunches and dinners, they also usually give a bottle to visitors to take home. By executive fiat, we banned it (and all other alcoholic beverages) from the group luncheons that we provided for the participating judges in both Mamaia and Cluj. The Romanian judges invited us to join them the last afternoon in Cluj to celebrate the end of the
conference with a round of Țuică. Bottles of Țuică started collecting at my home until I learned that it is ideal for making bananas flambé.

Bucharest, Romania—July 1996

Romania was in the middle of a banking crisis in July of 1996. The National Bank wanted to close one of the largest banks, Dacia Felix Bank, which a few months earlier had held ten percent of the nation’s bank deposits. Two more banks, much smaller, were insolvent and needed to be closed. But there were no procedures for liquidating banks, or for protecting depositors when banks failed.

The Romanian National Bank needed help, and asked for United States assistance. I was sitting at my desk in my chambers when the call came from Bob Fiedler at the American Bankruptcy Institute in Alexandria, Virginia on Wednesday, June 28.

“We understand that your wife is a banking expert,” Bob said. “Romania has a banking crisis, and the National Bank needs her help. We are putting on a seminar for the National Bank next week. We would be happy to have you come along and join the effort.”

Such short notice is usually a difficult problem for me as a federal bankruptcy judge—at any given time a substantial calendar usually looms for the next several weeks. Given a month’s notice, on the other hand, I can usually block off a week with rather little need to move hearings already scheduled. But the next week was the week of July 4, and my calendar was light.

Julie’s schedule was a little different, however. She was teaching a summer class at California State University Los Angeles. Her best strategy, she decided, was to teach her Monday class and then rush to the airport to catch an overnight flight to Europe to join us a day late.

I arrived in Bucharest on Monday noon after an eighteen-hour plane trip from Los Angeles. It was the hottest day in Bucharest since 1918—102° F (this was only five months after we had encountered the coldest weather in Romania in half a century). Most buildings lacked air conditioning. I checked into the Hilton Hotel, which did have air conditioning, shortly after noon. Immediately I went into a meeting to plan the seminar with Bob and a National Bank director who was also head of the Romanian Bankers’ Association. Julie arrived the next day and came directly to the seminar from the airport.

92. See Bufford, supra note 49, at 481 n.105.
On Tuesday and Wednesday the principal seminar participants were retail bankers and staff members of the National Bank. The National Bank staff reported back to headquarters on our presentations and advice. On Thursday we were invited to the National Bank headquarters to meet with the general counsel, his staff and the economics staff to discuss the bank closing problem.

At 4:00 p.m. on Thursday the general counsel ended the session, invited us to return the next morning at 10:30, and asked that we make no preparations for more presentations. The bank wanted to think about what we had discussed with its staff, and to have a general discussion on Friday. It appeared that important decisions were under serious consideration.

We arrived at 10:30 the next morning, and none of the senior staff was present. However, after about a half hour of general discussion, the director general of the National Bank came into the room, followed by the general counsel, the chief economist and several members of the board of directors. They came down to the front of the meeting room and sat in the front row. The director general said, “We do not need an interpreter. We all speak English. Let us talk.” We summarized the previous discussions with the bank staff about the value of a system of deposit insurance, a system to evaluate the solvency of open banks, and a procedure to liquidate the assets of insolvent banks. “There need to be limits to the size of a deposit that is protected by deposit insurance,” I said. “Deposit insurance should be designed primarily to protect modest depositors. It should be no more than ___.” I paused. “One million lei (about $3,000),” the director general interjected. The appropriate amount of deposit insurance had already been decided.

The assistant to the director general of the National Bank took us to a late lunch on Friday at the Banker’s Club in Bucharest. The director general and the general counsel excused themselves on the grounds of pressing business.

That afternoon our delegation met with an official at the USAID office in Bucharest to report on the results of the seminar. “What can we tell Congress that you have accomplished here in Bucharest?” the USAID official asked. “They want to know if United States money is well spent in sponsoring seminars like this.” I summarized the advice that we had given to the Romanian National Bank. “If the National Bank adopts any of these proposals in the near future, USAID should take credit for it,” I said. “The Bank may decline to act, for political or other reasons beyond our control. But if it does act, tell Congress that our advice was effective.”

The next morning I found a copy of the local Bucharest newspaper under our hotel room door. The lead article at the top of the front page
described decisions announced the previous afternoon by the National Bank, which included closing the three problem banks and adopting a deposit insurance system—results remarkably similar to our recommendations the day before.

Back in Los Angeles on Monday morning, I called Bob Fiedler to report what I had read in the Saturday Bucharest newspaper, and to recommend that he report to Congress to take credit for the decisions by the Romanian National Bank. “We already have,” Bob said.

Did our efforts really produce these changes in Romanian banking practice? Not directly, in my judgment. The decisions were made too soon after our presentations (the afternoon of our meeting with the top Romanian National Bank officials) to believe that the decisions rested entirely on our advice. My sense is that the banking officials had already received similar advice from others, and that they had largely decided how they thought they should respond. However, there probably was some opposition to taking the appropriate measures within the government, and perhaps within the National Bank itself, and perhaps some uncertainty as to whether these steps were the way to proceed. I think that our principal role was to reinforce the belief that these steps were correct, and to help neutralize opposition inside the government to taking the medicine that was needed. We put the director general in a position to say, “The United States experts have agreed with the others on how we should handle these problems. Now is the time to move forward and adopt the recommended solutions.”

*Bucovina, Romania—September 1996*

One of the side benefits of teaching in developing countries is the opportunity to visit places that one might never see otherwise. “You must come back to Romania again,” Cristian Dumitru told Julie and me in 1994, “and spend at least a week visiting the monasteries in the North.” Unfortunately, we were unable to do this during Cristian’s lifetime: he had died of cancer on June 10, 1995, barely three weeks before Julie and I arrived to teach the seminar for the Romanian National Bank. While in Bucharest for that conference, we visited with Mariana, Alina, and the rest of his family, who had hardly begun to recover from Cristian’s death. However, Mariana asked whether we could possibly come back and spend a week with the family in September to visit the monasteries with them. We quickly accepted the invitation.

The remarkable feature of the dozen monasteries in Bucovina, the region located in the northeastern corner of Romania on the eastern edge of
the Carpathian Mountains near the Ukrainian border is that they are covered, both outside and inside, with fresco paintings made at approximately the same time that Michelangelo was painting his famous frescoes on the ceiling of the Sistine Chapel in the Vatican. Some of the monastery frescoes are badly weathered, even to the point where they are unintelligible. Many, however, are in surprisingly good condition.

We visited virtually all of the monasteries in Bucovina that week. After spending several days visiting the Bucovina monasteries, we crossed the mountain pass to the Maramureș region, where there were several simple wooden monasteries, very different in style from those in Bucovina.

Accommodations in Bucovina and Maramureș were less than spectacular, even by the standards of our Romanian friends. The first night we stayed at the Suțeni Monastery (actually a convent) in the home of a nun. It lacked heating (the weather was cold and rainy in the mountains) and had floors only in the bedrooms. The next night we had reservations at a local hotel, apparently the only one in the region. However, our Romanian hosts decided that the hotel was unacceptable because it had no heat or running water. However, we found a suitable bed and breakfast facility a block away. Our Romanian hosts negotiated the room rate on the spot for our group, including dinner and breakfast.

Early on I adopted a simple rule of thumb on accommodations that has served me well in developing countries. My expectations as to accommodations are low enough that I am never disappointed, and frequently I am surprised at their quality. While frequently the accommodations have been modest, some of the hotels in Bucharest rival the best that I have seen in the United States.

Food, on the other hand, has uniformly exceeded expectations. The food that I have eaten in developing countries has been uniformly excellent. Judges and other officials in those countries have always made special efforts to assure that we eat well.

_Târgu Jiu, Romania—March 1998_

In March, 1998 I was again in Romania, this time to teach judicial seminars in Craiova and Brașov sponsored by the Romanian Insolvency Institute. I was invited by Judge Edita Lovin, a court of appeals judge in Craiova (and now a Romanian Supreme Court judge) who was president of the Romanian Bankruptcy Institute (which the American Bankruptcy Institute had helped found). I was the only foreigner on the program.
By this time the new bankruptcy law had been in force for more than two years. However, successful reorganizations were rare, and voluntary bankruptcy cases were almost as rare. The system was not working well.

Judge Lovin invited me to arrive a few days early, so that we could relax a bit in the mountains. I thought we would have a day or two for hiking before our programs began. I was mistaken.

After stopping overnight at Craiova, up the Danube plain from Bucharest, I donned my blue jeans and a red sports shirt for the trip to the mountains. We arrived at about noon at Târgu Jiu, a city of some 50,000 in the Carpathian Mountains with a substantial local court. We should stop to visit the court, Judge Lovin said.

As we walked up the steps to the courthouse (I was still in my traveling clothes) Judge Lovin told me that a meeting with the local judges was planned, and that indeed the meeting was scheduled to start within a few minutes. We went directly to the meeting room, where some forty local trial judges had gathered to discuss the Romanian bankruptcy law and its application to their cases. I apologized for my inappropriate attire (and ignored my growling stomach), and we had a lengthy discussion on how the bankruptcy law was supposed to work. After a discussion of an hour and a half, the Romanian judges went back to their afternoon calendars and we headed to lunch.

We did fit in some sightseeing that afternoon before returning to Craiova for a two-day bankruptcy law program for the local judges. Craiova has a court of appeals (where Judge Lovin sat at the time), and several appellate court judges joined our conference. A local lawyer with fair English skills translated for me.

Brașov, Romania—March 1998

Immediately after completing the second day of our seminar in Craiova, we hit the road for Brașov, which is located at the top of the Transylvania valley (its eastern end) some five miles down the mountain from our 1991 conference. Transylvania is essentially a broad mountain valley located between two east-west ranges of the Carpathian Mountains. The weather is typically cooler in Transylvania, which makes it temperate in the summers when it can be quite hot on the Danube plain where both Craiova and Bucharest are located.

93. See supra text accompanying notes 12-14.
We were crossing the mountains in March, and a winter storm lay on our path. We set out from Craiova about 4:00 p.m., and skipped dinner in an effort to beat the storm to Brașov. We mostly succeeded, and arrived dinnerless at 11:00 p.m. The next morning Brașov was covered with a new layer of snow—it was clearly still winter in Transylvania. As in Târgu Jiu, almost all of the trial and appellate court judges in Brașov attended our two-day conference.

A lawyer with the Brașov Chamber of Commerce (who had written a book on Romanian bankruptcy law) spoke English at least as well as the official interpreter, and corrected the translation frequently enough that the interpreter left in a huff at the morning recess. The lawyer translated for me for the rest of the morning, but was unable to attend the afternoon session. Again, I was left without an interpreter for the entire afternoon. However, I was mostly able to follow the discussion, and to make contributions from time to time.

That evening the local judges arranged for us to have dinner at Poiana Brașov, the ski resort seven kilometers (five miles) up the mountain from Brașov and the site of my first seminar in Romania. The scene this time was a rustic ski resort—deep snow and a cabin restaurant where the chief judge had arranged a private dinner for us. The owner had baked a pig for us in traditional fashion in an outdoor pit in the snow, and we had a sumptuous dinner.

Los Angeles—March, 1999

In January, 1999 Milo Stevanovich called from Bucharest to say that USAID wanted to send six Romanian judges to the bankruptcy court in Los Angeles for a three-week study tour. I agreed to host it and to put together the program.

I knew Milo from Los Angeles: several years earlier, he had served as both an extern and a law clerk to my colleague Judge Barry Russell. In those days he had occasionally joined me for lunch to discuss how to get involved in international law practice. After practicing for several years with Los Angeles law firms, he had taken a job with a USAID contractor in Bucharest.

In addition to the six judges, Romania sent Ion Chiper, a Ministry of Justice official who was in charge of drafting revisions to the Romanian bankruptcy law. I knew him from prior visits to Romania—he was very bright, spoke at least three languages (including English) and was hardly old enough to be a law school student in the United States.
To qualify for the tour, each Romanian judge was supposed to have a working knowledge of English, so that the judge could understand the proceedings in court and read pleadings and court files without an interpreter. As it turned out, only two Romanian judges (and Mr. Chiper) knew English well enough to manage without an interpreter. We paired these two together. Two more, who needed some help but did not need full translations, were paired with Mr. Chiper. The final two really needed an interpreter. Milo hired a Loyola law school student (who had been an extern of mine) who was Romanian to translate for them.

The program was ambitious. We devoted the first week to general introduction and orientation to the bankruptcy court and bankruptcy procedures. This included a tour of the bankruptcy clerk's office in Los Angeles, a demonstration of our computerized docketing and calendar program, a visit with the United States Trustee Maureen Tighe (now a colleague of mine on the bankruptcy court), meetings with several Chapter 7 panel trustees, and attendance at meetings of creditors that are required by the Bankruptcy Code. 94

For the next weeks, each pair of Romanian judges shadowed a Los Angeles bankruptcy judge for a week. For the final week we rotated assignment so that each Romanian pair would shadow another judge.

Los Angeles bankruptcy judges typically have half a dozen calendars every week, with five to fifty hearings per calendar. For each calendar, we picked one case for which a pair of Romanian judges received copies of all of the papers and studied the prior materials in the case file. The Los Angeles judge discussed the cases in advance with the pair of Romanian judges, and then debriefed with them after each set of hearings.

This exposed the Romanian judges to a variety of cases and hearings. They also gained an appreciation for the files and the information available therein for the judge and the parties to work with. Most important, they saw how our judges rule from the bench in every case (except those matters not ripe for determination), and take virtually nothing under submission. We tried to impress on them the importance of making a decision on a case immediately at the conclusion of a hearing, when we are most familiar with the case. It is more important, we told them, to decide cases immediately and move them along than to agonize over a decision later, after we have forgotten what the case is about.

We also arranged several social occasions for the Romanian judges. One night they all came to our house for dinner. Milo took them to his Palm Springs house for a Saturday night party. We took them to the Palm

Springs Desert Museum, which they found highly interesting because there are no deserts in Europe. We also took them to Disneyland, which they found extremely interesting.

Early in the third week we had a misadventure in connection with a reception at a law firm in Century City. While walking to the elevator in the underground parking area for the law firm, Judge Carmen Stancu fell and broke her leg, and had to have surgery at the Century City Hospital. Fortunately, USAID had purchased medical insurance for the Romanian judges for the trip, and the medical insurance covered the entire medical bill.

The surgeon advised that it was not safe for Judge Stancu to travel back to Romania until several days after the study tour was completed. While USAID was willing to pay the expense for her to stay at a hotel, we did not want to leave her alone in bed in her hotel room. She did not speak English very well, but spoke French quite well. Julie and I decided that she should stay at our home until she was able to travel. We found it helpful for another Romanian judge (who spoke both French and English) to remain with her also at our house. Thus, we had two Romanian judges as unexpected house guests for five days until Judge Stancu could return to Romania.

Timișoara, Romania—May 1999

The North Atlantic Treaty Organization ("NATO") was bombing Yugoslavia in May, 1999, in connection with the conflict arising in Kosovo. The United States was conducting most of the bombing on behalf of NATO.

While the NATO bombing was in progress, Romania decided to schedule a judicial training seminar on bankruptcy in Timișoara, in the southwest corner of Romania. The Serbian border lies some twenty-five miles to the south of Timișoara, and some fifteen miles to the west. Although Kosovo is in the southern part of Serbia, the bombing included locations near the Romanian border.

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95. In August, 2009 Century City Hospital fell on hard times and filed its own Chapter 7 bankruptcy case. By random assignment, I was assigned to the case.


97. Serbia was at that time still part of the Federal Republic of Yugoslavia, renamed "Serbia and Montenegro" in 2003.
We had to fly in a smaller airplane than usual from Bucharest to Timișoara. The usual air approach is from the south, over Serbia. Not wanting to risk being shot down over Serbia, Tarom Airline (the Romanian national airline) used much smaller airplanes for that route that could land downwind, if necessary. For our return flight we flew in a converted Soviet troop transport plane. The tenseness of the situation in Timișoara was apparent as we landed at the airport. As we touched down on the runway, we saw a number of American-made fighter planes, each sitting next to a camouflaged hangar adjacent to the runway.

"Can you hear the bombs dropping in Serbia?" we asked the judges from Timișoara. "Not in Timișoara," the local judges told us, "but several kilometers closer to the border they can be heard." We also learned of an attack two months earlier on a chemical factory in a Serbian town west of Timișoara. The fumes from the released chemicals made it very difficult to breathe for several days in Timișoara. In addition, many of the local residents were either ethnic Serbs or refugees from Serbia. Local sympathies lay with the Serbs, not the NATO countries or the United States.

Inside the conference it was hard to tell that we were so close to a war zone. However, I did think more than once of the United States missile that had recently landed in the suburbs of Sophia, Bulgaria, much further from Serbia than we were in Timișoara.

A number of judges whom I knew from other trips to Romania or who had visited my court here in Los Angeles came to the Timișoara conference. Judge Carmen Stancu, who had broken her leg in Los Angeles, came from Arad wearing her cast, and reported that her leg was healing well. One judge made the long trip by train from Bucharest only to attend my part of the program, he said.

Judge Giorgi Giorgiu, from Cluj, spent an entire afternoon telling about his administration of the insolvency of the Dacia Felix Bank, which was closed immediately after our seminar for the Romanian National Bank in 1996, and especially about the international problems that he had to handle in the case. Under the Romanian bankruptcy law up to that time, a Romanian judge was required to handle all of the administrative duties in a bankruptcy case: the bankruptcy law did not provide for a trustee or other official to handle the administrative responsibilities. Thus the judge had the responsibility of chasing down assets that had been transferred abroad. In the Dacia Felix case, this required the judge to deal with a number of difficult international law problems. This was probably the first bankruptcy case where a Romanian judge was required to unwind international transactions.
The day before I arrived in Romania for the conference, the Romanian parliament made revisions to the bankruptcy law. I taught a session on these revisions: while some of the judges had heard that a revision was in process, none of them knew anything about their substance. We provided them copies of the revised law, and I discussed its major changes. Notably, the statutory revisions provided for the appointment of an administrator in a liquidation case, so that the judge would no longer have to do all the work alone that Judge Giorgiu had done in the Dacia Felix Bank case.

Milo Stevanovich, who coordinated the conference in Timișoara, is an art aficionado. After the session one afternoon, I was sightseeing in the central square and he called me over to see some paintings in a local art gallery. Several paintings by one artist, Viorel Cosor, particularly interested us, and Milo arranged to have him meet us at the shop the next day. He took us to his studio, where he had more paintings, some much larger than those in the gallery. He also took us to the studio of his girlfriend, who had several hundred canvases to show us. We Americans purchased enough art that day to provide half a year's income for the artist. I bought an impressive abstract painting that is 1.5 meters (59 inches) square, which I rolled up and brought back on the airplane to the United States. It now occupies a large wall in my living room (in a frame that cost three times as much as the painting).

Herceg Novi, Montenegro—September 11, 2001

Nobody will ever forget when he or she learned of the attacks on the World Trade Center on September 11, 2001 and what he or she was doing at that moment. It was the defining moment of a generation, like learning of the death of President John F. Kennedy was for the prior generation in 1962, or learning of the attack on Pearl Harbor on December 7, 1941 for the next earlier generation.

Julie and I were teaching a four-day seminar for judges and lawyers on commercial law and bankruptcy in Herceg Novi, Montenegro during the second week of September that year. Montenegro is located just north of Albania, south of Bosnia and west of Kosovo, all recent trouble spots in the Balkans. Herceg Novi is a small seaside resort on Boka Kotorska, a fjord-like arm of the Adriatic Sea in the northwest corner of Montenegro.

Montenegro was in the process of separating from Serbia and becoming a separate country. It was also in the process of developing its own internal legal system, and its own banking and monetary system.
Montenegro was largely spared from the NATO bombing resulting from the Kosovo problems in 1999.

We left Los Angeles on September 9 and arrived the next evening in Podgorica, the capital of Montenegro. There we met Milo Stevanovich, who was then working at the local office of PricewaterhouseCoopers ("PWC"), the USAID contractor for our program. We had dinner, and the next day we drove through the mountains to the seashore and Herceg Novi.

Julie taught the program on September 11, which was on secured transactions. Montenegro was in the process of adopting its own commercial law, and had a draft law modeled on Article 9 of our Uniform Commercial Code (the version before the 2001 revisions).

We finished the program for the day at about 4:00 p.m. local time. When the local PWC staff members turned on their cell phones, they had urgent messages to call Podgorica, whereby they learned about the attacks that had just occurred on the World Trade Center. Immediately we went upstairs to the bar in our conference center to check on the CNN television coverage. We spent the next three hours watching events unfold in the United States on live television, including the collapse of the World Trade Center towers, the crash of the flight into the Pentagon, and the flight that crashed in the field in Western Pennsylvania when the passengers prevented it from hitting the Capitol Building in Washington. We also learned of the shutdown of all domestic air travel in the United States and the suspension of all international air travel.

When we realized the immensity of what had just occurred in the United States, we had to assess whether we were safe in Montenegro, and whether we should continue our seminar. Julie’s first thought was of the last place that the United States had bombed, the very country where we were teaching.

The Montenegrins were as appalled as we were at what we saw on the news report on the attacks. People stopped us repeatedly to say, “Are you from the United States? I am so sorry about what has happened in New York.”

The PWC staff checked with United States officials in Podgorica, and we discussed to the local situation. We concluded that there did not appear to be any special risk in Herceg Novi. Indeed, it appeared that we were out of the line of fire, so to speak, and perhaps were safer there than in the United States.

In addition, there was no place to go. While a United States military base would provide us protection because I am a federal official, we did not know of any within driving distance. The only city within reasonable driving distance was Dubrovnik, Croatia, some thirty miles away and across
the next border. Our only realistic alternative was to cancel the seminar and go lie on the beach. We decided that it appeared reasonably safe to continue our program in Herceg Novi and to keep a low profile.

I was the first speaker the next morning and was uncertain whether any recognition of the prior day’s events would be appropriate. When we opened the session, a commercial court judge from Podgorica stood up and said, “We cannot simply ignore the events of yesterday. I propose that we all stand and observe a moment of silence for those who lost their lives in the attacks in the United States.” During the week, we watched as much as we could of the events unfolding as they were reported on CNN, just as everyone did in the United States. We also tried to contact relatives at home. The telephone system in Montenegro is very poor—even the local people use cell phones for local telephone service. Fortunately, we were issued cell phones when we arrived in Montenegro, and with some effort were able to make connections with the United States.

Julie and I were particularly eager to reach Liz Goodman, a girl for whom I had been guardian while she was in high school. She was attending graduate school at New York University and living near the World Trade Center. On Wednesday afternoon, September 12, we were able to reach her, and the relief that she felt was very audible in her voice. From her front steps, she had watched the first World Trade Center tower fall, and was living with a gas mask and large quantities of fine dust. But she was safe, she assured us. Bill Phelps was able to reach his wife late Tuesday night in Arlington, Virginia. Milo had less difficulty reaching his family in Chicago.

We completed the seminar at noon on Friday. We had originally planned to stay in Herceg Novi until Saturday afternoon, when we were scheduled to fly from Dubrovnik to Rome. We had further planned to spend three days in Rome and return to the United States on September 18. We made one change in our schedule—we booked a room for Friday night in Dubrovnik and spent a day touring that city, which is a beautiful walled fortress built entirely of granite after it had been leveled by an earthquake in 1667.

Our flight to Rome departed on schedule on Saturday. Once we arrived in Rome, we were less concerned. We thought that it was a good place to spend an extended period of time if we were delayed in our return to the United States. As it happened, our return flight to Los Angeles on September 18 (for which we connected through London) departed on schedule, with extremely heavy security, and was one of the first international flights to land in the United States after September 11. We appreciated the Fly America Act, which requires that all overseas travel
paid for by the United States government be on United States carriers. United Airlines, our carrier, was one of the first to be cleared for international flights to the United States.

IV. CONCLUSION

Have these efforts been successful? Success in these matters is hard to measure, especially at the level of an entire country. In addition to the personal benefits of traveling the world and developing new friends in other countries, I believe that we achieved important tangible results of several kinds.

A. Judicial Education

Collectively, we bankruptcy judges (together with several attorneys and law professors) who have worked in Central and Eastern Europe have taught seminars attended by substantially more than a thousand judges in those countries. In Romania, for example, several hundred judges (out of a total of 1500) have attended seminars that I personally have taught. My American colleagues have taught hundreds more. We have brought educational opportunities that did not exist at all in those countries. We have been surprised to learn that a typical developing country has no system whatever of continuing education for judges.

Especially we have taught business law and the market economy context in which business law operates. We think that our counterparts there can now make better decisions in these kinds of cases than they could before. We have also taught them various ways to improve the efficiency of handling their caseloads.

My first program, the 1991 conference in Poiana Brașov now has legendary status as the source of judicial improvement in Romania. Romanian judges look to this event as the turning point for the abandonment of the communist mentality of the role of the judge and the beginning of their role as the guardians of freedom and of the protection of the marketplace. It also marks the beginning of judicial education in their country.

B. Role Model

One of the most important achievements in judicial training is giving the local judges a role model or image of a judge. In the common law system, we think of judges as important officials with a distinctive role as the guardians of freedom and the protection of the marketplace. We also view the judiciary as a separate branch of government, with an important role in imposing checks and balances on governmental power.

In the developing world, the power of a judge in the United States, especially a federal judge, appears awesome. The Romanian judges who attended the Poiana Brașov conference, for example, were enormously impressed with the power of an American judge. In stark contrast, the Romanian judges thought of themselves as middle level civil servants. Today they are beginning to see themselves as guardians of civil liberty and arbiters of the balance between governmental power and individual freedom.

How can this difference in status and power of U.S. judges be explained? It is certainly not because our judiciary has armies or police available to enforce our orders and judgments. Probably the most important factor is the culture of the rule of law in the United States. In addition, the power and status of our judges in large part derives from the status of the lawyers that we appoint as judges. In the Continental European tradition, judges are appointed directly from law school, and judging is their entire professional career. In contrast, we appoint judges in the United States only from lawyers who have had a successful career in law practice before their appointment, and who usually are able to return to private practice if they wish.

This image has had consequences in Romania. After the Poiana Brașov seminar in 1991, Judge Mariana Dumitru was assigned the case of the Romanian president who wanted to run for a third term, contrary to the requirements of the Romanian constitution. Judge Dumitru ruled that he was not eligible. This decision, the first by a Romanian trial court against the government in such an obvious fashion, received substantial national press attention.99 In due course, the government took an appeal and obtained a reversal of the decision. However, the important point is that the government respected the decision, honored the judicial process that produced it, and pursued its remedies within the judicial system.

99. In retaliation, the telephone service at Judge Dumitru’s home was cut off. Through private discussions with the Ministry of Justice, her husband Cristian (a former high Ministry of Justice official) was able to persuade the government to restore telephone service.
C. Building a Judicial Community

Another very important contribution of our work is to create a sense of judicial community that extends across national boundaries. A judge sitting in Ost, Romania, Podgorica, Montenegro or Kyiv, Ukraine now feels that he or she is part of an international judicial network, where we all deal with similar problems of difficult cases, insufficient resources and political pressures. Help and reassurance is available from international colleagues overnight on the Internet. Providing support and training for judges, so that they can understand and perform their work more effectively, and so that they can have more confidence in the work that they perform, marks a substantial degree of progress.

D. Tailoring Bankruptcy Law to Local Legal Systems

Virtually everyone knows that the United States Constitution (including the Bill of Rights), the oldest constitution in force in the world, is our most popular legal export. Because of the need for business reorganization in developing countries, and especially those emerging from communism, Chapter 11 of our bankruptcy code has become the second most popular legal export.

However, the United States Bankruptcy Code cannot simply be translated and transplanted into another country with a different legal system, a different economy and different traditions. There is no common law system in Eastern Europe. Its legal tradition (like that generally found in the non-English speaking world) is based on the civil law system, also sometimes called the Roman law system. A working knowledge of the civil law system is a very helpful for working on law reform and judicial education in Central and Eastern Europe.

Indeed, there are portions of the United States bankruptcy law that do not translate well or are not needed for a developing world country. For example, the extensive provisions throughout the United States bankruptcy code to provide for consumer bankruptcies are not needed, because at present there is little consumer debt in the developing countries and little need to provide for consumer debtors. Special provisions for the reorganization of railroads or farms may not be necessary.100

100. We did find a substantial need for a provision for farmer reorganization in Ecuador, however, when we undertook a World Bank project to draft a bankruptcy law for that country. While that law has not been enacted in Ecuador, it is used in Latin America as a model insolvency law, partly because it is the only model law on insolvency available in Spanish.
In contrast, there may be other distinctive entities that need special provisions in a particular country. The privatization of state-owned businesses, for example, is a complex process that usually requires its own legislation. While most state-owned entities in developing countries are insolvent, the solvency problem needs to be addressed in the context of privatization, so that a newly privatized entity can compete in a market economy as a solvent entity.

Our 1994 seminar in Bucharest, when Romania was drafting its new bankruptcy law (enacted on August 26, 1995) contributed substantially, in my judgment, to developing an understanding in that country of the role and importance of bankruptcy law, and of various concepts that needed to be codified to provide for an effective law for both the reorganization and orderly liquidation of businesses. As Senator Predescu promised, the draft law was revised to reflect important results of our conference before it was enacted.101

E. Our Own Education

We also must not convey the impression that the benefits of international judicial education are one-sided. We judges who engage in international education also learn a great deal. We have learned that our colleagues in other parts of the world, even where the cultures are quite different from ours, deal with the same kinds of problems as we do day after day. While their laws are sometimes somewhat different, they also must also make decisions in particular cases by applying their laws to the facts of the case. Like us, they must deal with heavy caseloads and insufficient resources. Like us, they must worry about reversal on appeal. Like us, they work hard and they care greatly about performing their jobs in a proper fashion. In short, they are much like us, and their jobs are much like ours. The main difference is that their training, resources and working conditions are often far inferior to ours, which makes it much harder to perform their jobs adequately.

We have also learned of rich cultural traditions and histories in other parts of the world that we only dimly appreciated, if at all, beforehand. The Central and Eastern European countries have spent most of their histories as parts of empires controlled in far-off places where they had little influence.

101. The revisions did not take place as quickly as the Senator had predicted, because of the press of other parliamentary business. However, in due course the parliament revised and enacted the draft law. See Law 64-1995 respecting the procedure for judicial reorganization and bankruptcy (as amended).
They have found themselves caught between great world powers, and in the
way when these powers had conflicts. When the great powers went to war,
their countries frequently became the battlefields. We learned of colorful
native cultures that are still alive but dying out as Western civilization is
taking over. Most important, we learned of people who are proud of their
countries and their traditions, and who are trying very hard to improve their
conditions of life. We came to respect and honor them.

Teaching abroad is demanding work. For a typical program, I arrive
just in time for the beginning of the program, typically the night before.
Getting a good night’s sleep is problematic, because the time change from
Los Angeles is usually eight to eleven hours. We typically teach all
morning and afternoon, and spend most of our free time socializing with the
local judges and other officials. At some time in the evening we usually
meet to work on our program for the next day. As soon as the seminar is
finished, I catch the next flight back to the United States.

At the same time, teaching in a developing country is exciting work.
We have developed close friends with whom we visit, both in the United
States and in their countries, and with whom we continue to communicate
regularly.

Finally, each such experience is unforgettable. When I called David
Epstein to inquire whether he was interested in teaching the 1994 Bucharest
seminar (and learned that he was), I told him, “you will have an experience
that you will remember for the rest of your life.” He has not forgotten, and
neither have the rest of us. These memories enrich our lives immeasurably.