

Welcome to America

Following my retirement as a Vermont trial judge, I served as a Legal Specialist with the American Bar Association Rule of Law Initiative in Tbilisi, in the country of Georgia, from April 2008 through April 2009. Georgia is a developing democracy, and its leadership is attempting to bring about reforms within the judiciary and other parts of government to comply with international standards and hopefully gain admission to the European Union and NATO. I have been involved in several of the judicial reform efforts, and while the country has made considerable progress, there is much work yet to be done.

A proposal is pending in Parliament to establish an American-style adversarial system in the criminal courts, including jury trials in serious cases. This is a significant piece of legislation that would completely remove the vestiges of the former Soviet-style, prosecutor-dominated institution so familiar in years past. The proposal has the support of all key Georgian and international officials and organizations, but has been stalled because of various extraneous events, such as the war between Georgia and Russia last summer.

During the fall of 2008, I escorted a group of ten Georgian judges, none of whom had ever visited the United States or spoke English, to Boston, Massachusetts, and Providence, Rhode Island, for a "study tour" of the American legal system. Accompanying us were three Georgian attorneys, all of whom were fluent in English, who served as interpreters. The trip was an opportunity to introduce the Georgians to adversarial proceedings, and they were keenly interested in seeing an actual criminal jury trial. During our first three days in Boston, the judges observed various courtroom proceedings, but were disappointed that there were no jury trials to watch. In Providence, we were informed that a criminal jury trial was in progress, and that we would be able to watch the case from the back of the courtroom following a recess. The presiding judge would meet us during the recess to explain the case before we took our seats. There was great anticipation among the group; this is what they had been waiting for.



Hon. Dean B. Pineles (right) and ABA Country Director from Georgia, Gary Ledbetter (left), presenting a framed poster of the Georgian Code of Judicial Ethics to Chief Justice Constantine Kubashvili.

After a short wait in the hallway, the judge emerged from the courtroom to greet us. He patiently explained that the case involved an allegation of sexual assault of a child. The incident had occurred a couple of years earlier, and the putative victim, a girl now about eleven, was about to testify. The alleged perpetrator was the girl's former stepfather, whom she had not seen since the incident.

We were ushered to seats among the other spectators, close to the table where the defendant sat with his attorney. Soon the recess ended, and the bailiff intoned, "All rise for the jury." Everyone stood as the twelve jurors strode to the jury box and took their seats. The Georgians were fascinated since they had never seen a jury before. The judge kindly informed the jury about the guests from Georgia, and the jurors all smiled and nodded in our direction. I was quite proud to be part of this experience; the Georgians were getting a first-hand view of one of the hallmarks of our democracy and they

were being treated very respectfully by the court.

The prosecutor then called the girl to the witness stand and questioned her about the incident. As the Georgians listened attentively through an interpreter, she testified in an unemotional monotone that she had been sexually assaulted by her stepfather, known as Carlos, one day after school while her mother was at work.

The prosecutor then followed standard procedure and asked the girl to look around the courtroom to see if she could identify Carlos. These trial mechanics, including the in-court identification of the defendant, were all new to the Georgians and I was very pleased that my guests were actually getting to see the real guts of a criminal jury trial. They would certainly have a better appreciation of the adversarial system, and they would certainly have a story to tell when they returned home.

The girl gazed around the room and came to focus on the defendant's table. She then pointed across the room towards her former stepfather. The prosecutor asked her what he was wearing and she responded that he was wearing a suit, which he was. What color? "Dark blue," she answered correctly. The prosecutor then perfunctorily requested that the record reflect that the witness had identified the defendant.

As the presiding judge was about to grant the prosecutor's request, the defense attorney stood and addressed the court. She pointed out that the witness stand was some distance from the defense table, and wanted to be sure that the girl had identified her client. Would the court allow the girl to step down from the stand and approach the person she had identified? The judge agreed.

The girl walked slowly across the courtroom towards the defendant. All eyes in the courtroom were glued to her every movement. She had verbally identified her stepfather from the witness stand, but now she would stand directly in front of him and leave no doubt about the person who had sexually assaulted her. Courtroom drama at its best!

As she arrived in front of the defendant's table, the prosecutor, from the other side of the courtroom, addressed her again. She shifted her weight in his direction as he asked her to point to the person who did this terrible thing to her. She then leaned back towards the defendant, straightened out her arm, extended the index finger of her right hand and slowly began to swing her arm directly towards the defendant as he sat motionless and tense.

But wait. Her arm kept swinging slowly, and her finger passed by the defendant. When her arm came to rest, her finger pointed directly at one of the Georgian judges who was seated just behind the defendant and attired in a dark blue suit. "That's him," she said as she continued to point at the Georgian, "that man right there."

The courtroom fell into an awkward silence. The Georgians were stunned. The presiding judge was speechless. The jurors were obviously confused. Nobody seemed to know what to do. After what seemed like an eternity, but was probably only a matter of moments, the defense attorney gathered herself, rose to her feet and said, "Your honor, may the record reflect that the witness has *not* identified the defendant." The

judge acceded and immediately called a recess.

The Georgians shuffled out of the courtroom and lingered in the hallway. Several of them began to laugh nervously. The judge who had been identified as the perpetrator attempted what we would call a bad news-good news joke: "Although I've been identified as a sexual perpetrator, at least I'm not in Georgia where I would have been arrested on the spot."

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Postscript. Upon our return to Georgia, word of this event spread fast, and has become part of local folklore. The judge is now referred to by members of the Georgian judiciary, including the Chief Justice, as Carlos. The verdict in the case was not guilty.

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