

Spring Break in Kiev

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Spring break brings to mind ocean beaches and warm weather. But this past spring break I traveled to a part of the world that was colder than my hometown in Ohio. On February 24 I left Ohio bound for Kiev, Ukraine. Fourteen hours later, after a bleary eyed stopover in Amsterdam, I landed in Kiev.

My visit to Kiev was at the invitation of the Rule of Law Program which is a cooperative venture between the Ukrainian and Ohio Supreme Courts. The program is operated under the auspices of USAID, an agency of the federal government. Its mission in Ukraine is to assist this newly independent country in developing a democratic government. Part of their approach includes working with the court system to develop an independent judiciary. In furtherance of this goal I was asked, as a law professor at Ohio Northern University Pettit College of Law, to spend a week lecturing members of the Ukrainian Higher Arbitration Court on Intellectual Property law. The lectures were taped and will be shown to other judges throughout Ukraine.

The Higher Arbitration Court, despite its name, does not engage in arbitration. It is a traditional court with jurisdiction limited to commercial disputes which can include Intellectual Property matters. I spoke on Trade Secret, Patent, Trademark and Unfair Competition law. The judges were unaccustomed to the Socratic teaching method I utilized. Straight lecturing without questions or interruptions is the typical Ukrainian teaching style. Undaunted, I roamed the audience asking questions and listening to answers from the judges.

I was asked to speak on Intellectual Property law because the Ukrainian government recognizes the need for strong laws in this area. This was evident from simply looking at some of the downtown stores. Numerous *bootleg* copies of virtually all major software programs sold in the U.S. were available in both english and russian language versions for a few dollars each.

During my visit I attended a meeting with the head of the Ukrainian Higher Arbitration Court and some of his senior staff members. They discussed the new Ukrainian draft constitution and the importance of creating an independent judiciary. I was genuinely impressed by their understanding of the importance of an unfettered judiciary as an element of a democratic state. Although the ultimate structure of their judiciary is not finalized it appears they may adopt concepts from the U.S. and from the civil law systems used throughout most of Europe. This will likely include a separate Constitutional Court plus the continuation of specialized courts such as the Arbitration Courts for resolving commercial disputes.

The one issue that intrigued the judges more than any other was unrelated to Intellectual Property law. The fact that an American judge could issue a ruling that was followed generally by both the government and by individuals was *amazing* to Ukrainian judges. They pointed out how in Ukraine, under Soviet rule, judicial decisions were generally ignored at the whim of the government. Some judges wanted to know if American judges commanded an army or a militia to force compliance with the court's rulings! I explained the independent nature and power of the American judiciary and the separation of power among the branches of our government. As an example, I was able to use an experience I had the second day in Kiev. Unknowingly, I broke Ukrainian law by crossing the street in the wrong place. I quickly learned that in Kiev there is no separation of power among various governmental branches. The police officer who stopped me acted as both policeman, judge and jury on the spot. He determined my guilt and set a fine payable immediately to him. With a degree of *chutzpa*, I bargained over the fine, arriving at a penalty of 200,000 Ukrainian dollars (which was about 2 U.S. dollars).

During my free time I explored as much of Kiev as possible since I knew it would be unlikely I would visit this intriguing city of 3.5 million people again. During the 30 minute trip from the airport to downtown Kiev, along a poorly maintained road, it was common to see disabled cars whose occupants were attempting repairs. One striking sight was the sheer number of partially constructed apartment buildings that stood vacant and unfinished in the snow. The gray, partially constructed concrete shells gave me an eerie and dismal feeling. After spending many hours walking around Kiev I was struck with the *sameness* of everything. Despite being one of the oldest cities in eastern Europe most of the construction appeared to be post WW II. The oldest part of the city, the Podil region, contained structures that were predominantly from the mid-1800's. The only buildings predating these structures were some of the ornate Orthodox Christian churches and monasteries. Almost no variety existed among the modern buildings. Building after building were the same both inside and out. Everything was functional or utilitarian with no attempt at ornamentation.

The future of Ukraine as a free democratic state is unclear. Nevertheless, the beginnings of a market economy were visible in the form of familiar American and foreign trademarks such as Coca-Cola, Xerox and Sony. Additionally, a thriving indoor farmer's market which was well stocked with many types of foods was functioning in downtown Kiev.