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PERSPECTIVE

The Mongolia Connection

By Howard B. Miller

In October 2013, the State Bar of California received a call from the government of Mongolia asking if the State Bar could help with the implementation of Mongolia's recently passed Law on Lawyers, which created for the first time a unified bar association in Mongolia. As in California the Mongolian Bar Association would govern the admission of lawyers to practice law and would manage the lawyer discipline system. The admission of lawyers would require the development of a new bar examination, and a functioning discipline system had to be created and implemented.

The call came from Mongolia's consul general in San Francisco, whose father was a former chief justice of the Mongolian Supreme Court. The consul general, who is also a lawyer, said he called because he understood the State Bar was not only the largest regulator of lawyers in the world, but the "gold standard," because its discipline system was objective and firmly based on the rule of law.

The request was that the State Bar arrange for a delegation to visit Mongolia to begin a training program for the leadership of the Mongolian Bar Association.

Under the direction of State Bar President Luis Rodriguez, and discussions with CEO/Executive Director Joseph Dunn, it was decided since a sovereign state had asked for help in the administration of justice in a unique area of its expertise, the State Bar would designate representatives to visit and work with Mongolia, so long as no bar funds were used, and the State Bar would simply be acting as a facilitator and advisor.



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Courtesy Photo

From the left, Batsukh Dorjsuren, president of the Mongolian Bar Association, and Howard B. Miller of Girardi Keese, past president of the State Bar of California, at a public ceremony in April in Ulaan Bataar.

With that understanding, three of us, including Dunn and Thomas Layton, law enforcement liaison for the State Bar, went to Ulaan Bataar, Mongolia in January. The warmth with which we were greeted by the Mongolian Bar Association was inverse to the outside temperature: minus 30 degrees Fahrenheit.

For three days we met and presented lectures, taught a class at the Mongolian University National Law School, and met with senior government officials, including the Minister of Justice, law enforcement figures, and leadership of parliament and its judiciary committees. We presented materials and spoke of bar association governance, lawyer qualification, and especially discipline issues, including the staffing and professionalism needed in those areas.

At the conclusion of our three-day visit the Mongolian Bar officials indicated an interest in a longer term relationship. To clarify the facilitating role of the State Bar, a memorandum of understanding was agreed upon and signed by Batsukh Dorjsuren, CEO of the Mongolian Bar Association, and Dunn.

The announcement of the memorandum of

understanding in a public ceremony on April 7 in Ulaan Bataar received widespread coverage in the Mongolia media. The next evening, to celebrate the signing of the memorandum, the U.S. embassy in Ulaan Bataar hosted a reception for the State Bar and Mongolian representatives. The distinguished deputy chief of mission at the embassy, Kirk McBride, who practiced law for several years in Monterey, spoke glowingly of the State Bar and the importance of its relationship with the Mongolian Bar Association.

Under the memorandum of understanding the State Bar and its representatives will facilitate advice and consultation on issues of bar admissions and tests; ethics and rules of professional responsibility; rules and management of the discipline system; rules of governance; continuing legal education; regulation of law schools, and also on law practice, international arbitration, environmental laws, and the administration of justice. Dunn, Layton and I each were also designated senior advisors on law reform to the Mongolian Bar Association.

The memorandum is already being imple-

mented, with the participation and support of the International Academy of Trial Lawyers, for a visit of a delegation of Mongolian Bar officers to the U.S., including to the Library of Congress in Washington, and later for a larger delegation of lawyers to visit Mongolia for consultations and presentations on bar issues and U.S. legal procedures including jury trial presentations. All of this will occur without the use of bar funds.

The challenge presented by this effort should be placed in context.

Mongolia is a country of 5,000 lawyers, in a population of 2.9 million, 40 percent of whom still live as nomads on the steppe, all landlocked between China and Russia in an area roughly equivalent in size to that in the U. S. between the front range of the Rocky Mountains and the Pacific Coast.

As recently as five years ago the per capita GDP of Mongolia was about \$1,000. Last year it was about \$5,000, thanks to the recent development of a small amount of its astonishing mineral wealth. Though some major mines already have been developed, the total amount of Mongolia's potential mineral wealth has been estimated to exceed a trillion dollars.

But Mongolia must deal with the "natural resource curse" and its own reputation for corruption. The "curse" is derived from the history of poor natural resource-rich countries

becoming kleptocracies, with corruption permeating all branches of government. There is recognized evidence of this for Mongolia. See Brent T. White, "Rotten to the Core: Project Capture and the Failure of Judicial Reform in Mongolia," 4E. Asia L. Rev 209 (2009), an article widely known and discussed within the government of Mongolia.

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The development of a reliable investment and dispute resolution regime could potentially accelerate a development schedule. Though there is a dispute about whether legal systems based on the rule of law follow or precede economic development, it is possible unlocking the full mineral wealth of Mongolia could be materially aided by its legal system. Mongolia may be a test case for the importance of a functioning legal system that includes an independent integrated bar association as well as a court system based on the rule of law.

According to White, and some in Mongolia, language of the rule of law when used by political victors is simply the language of a Potemkin village to dress political revenge in a

cloak of respectability. But there may be a real constituency for a rule of law based society in Mongolia, with honesty in dispute resolution and distributional justice of the enormous potential wealth. The future will depend on contingent factors, leadership, generational change, and the randomness of unpredictable events.

The process we are engaged in can also have an effect. At the class we taught at the National Law School, we posed the question whether Mongolia should have jury trials (it now does not). After a vigorous debate the class voted in favor of jury trials, mainly because students said they understood it was a check on arbitrary government power.

And in the last session of the January visit, someone asked whether judges should be members of the bar association, which the Mongolian law calls for. I pointed out that in California judges upon their appointment are no longer members of the State Bar, and there is a risk if judges were subject to discipline by a bar association — an organization of practicing lawyers — judicial independence might be compromised by a fear of arbitrary disciplinary proceedings.

I emphasized a truly independent judiciary, immune from all outside influences, was the bedrock of a just society. The response was spontaneous, widespread, sustained applause. On such slender reeds hope can be borne.