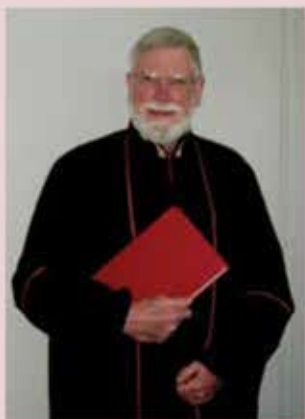


Justice *the* Kosovo Way



Judge Jim Hargreaves

Local Judges Not Allowed

Because the Serbians would not allow any of the local judges to go to the courthouse in the north of Mitrovica, all of the three-judge trial panels involving EULEX cases (European Rule of Law Mission) were made up entirely of EULEX judges. There was not even the

token one local judge on the panel as there normally would be in the rest of Kosovo. Obviously, this impacted the ability of EULEX to even vaguely carry out its stated mission of mentoring, monitoring and modeling with the locals. In Mitrovica, three foreign judges — having no contact with or input from local judges — were left to read, interpret and apply the Kosovo criminal and criminal procedure codes the best they could while managing cases and trying Kosovo citizens for very serious criminal offenses. While most of the EULEX judges were very conscientious in attempting to discern and follow the Kosovo law, there were frequent disagreements among the EULEX judges about what the law was and how to follow it. It was truly a case of the blind leading the blind.

A Different Judicial Role

United States judges are fairly isolated from the evidence that is collected to be used by both sides in criminal cases. Not so under the Kosovo criminal code. The Kosovo prosecutor files an indictment with the court and simultaneously provides to the assigned trial panel's presiding judge numerous big, three-ring binders containing all of the witness statements, investigative reports and any other

materials, such as bank records, video recordings, transcripts of intercepted telephone calls, etc., upon which the prosecution is intending to rely at trial. The court gets the whole prosecution case, as do the defense attorneys.

The presiding judge is expected to read and understand all of the materials provided in preparation for trial. While trials are mostly adversarial proceedings, ultimately the judge in charge is required under the law to see to it that justice is done. So as the case progresses to trial — and at trial — it is the judge's responsibility to see that all witnesses and all relevant evidence on both sides of the case are discovered and introduced at trial. It is not unusual for the Court of Appeals in Kosovo to send cases back for retrial with an admonition to the judge that he or she should have required that certain other witnesses or evidence be introduced at trial and taken into account by the trial panel in reaching its decision. For a judge who had spent his career trying to keep himself willfully ignorant of anything prior to it being admitted into evidence, this new role was quite a stretch.

And what evidence is allowed under the Kosovo code? The general rule is that unless something is just so inherently unreliable on its face that no conceivable value could be seen in it, the "evidence" is admissible. It is then up to the trial panel to sort out what, if any, weight to give it in arriving at a verdict.

I think the final big difference to which I had to adapt concerned case verdicts. In Kosovo, the whole legal and factual basis for any verdict has to be contained in an excruciatingly detailed written opinion. Not only was it necessary for me to explain what evidence was relied upon in reaching the verdict, but also why it was relied on, what weight that evidence had been given in reaching the verdict and why other evidence was not relied on. Of course all of this also had to be tied to the specific elements of the crime charged. And, if there were multiple defendants — which there most always was — this process had to be explained as to each of them individually. In some additional work I did sitting on the Kosovo Court of Appeals, I found it not unusual to see opinions that ran well past 50 pages.

— *Jim Hargreaves*