
Unique DIILS Program: Mongolian Supreme Court Justice and Lawyer from the Constitutional Court of Russia Preside Over U.S. Jury Trials

By

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Justice Gombosuren Ganzorig of the Supreme Court of the Peoples Republic of Mongolia co-presided over an actual felony criminal jury trial last April in a State court in Hawaii. This experience was repeated in December for Dr. Bakhtiyar R. Tuzmukhamedov, international law expert with the Constitutional Court of Russia. Both Justice Ganzorig and Dr. Tuzmukhamedov were guests in my trial court in Maui, Hawaii.

This program, dubbed a Court Observer Program, is a follow-on to a training seminar about the U.S. military justice system conducted by a team from the Defense Institute of International Legal Studies (DIILS) for judges and lawyers in Mongolia in August, 1997 at Ulaanbaatar. I served as a member of the DIILS team. Justice Ganzorig coordinated the seminar program from the Mongolian side. During the Seminar Justice Ganzorig expressed his interest in personally observing the U.S. justice system and especially the manner in which a jury trial is conducted. In April of last year I met Dr. Tuzmukhamedov at the annual Pacific Command International Law Conference which he attended as a member of the Russian delegation to the Conference. Dr. Tuzmukhamedov also expressed interest in observing first hand an American jury trial. Trial by jury has recently been adopted on a "pilot project" basis in certain locations near Moscow. Interestingly, the government of Japan is currently seriously considering the adoption of trial by jury.

I serve as an adjunct faculty member with DIILS, which is headquartered at the Naval Justice School in Newport, Rhode Island. DIILS currently conducts training seminars on a wide range of subjects (more than 20-200) related to the rule of law, justice and human rights and has presented programs to over 9,800 military and civilian personnel in 68 countries worldwide since 1992. I also serve as a Commander in the U.S. Navy Reserve and as a Military Judge. I am able to provide this type of Court Observer training experience because in civilian life I am the Chief Circuit Court Judge and Senior Family Court Judge for the Second Judicial Circuit (Maui County), State of Hawaii. In my court I preside over trials in felony criminal cases and civil cases of unlimited jurisdiction.

I am committed to providing this type of Court Observer training experience to interested law professionals from other nations because I believe that trial by jury, a singular characteristic of the U.S. justice system both civilian and military, is an important institution and concept that nations seeking to perfect their democracies will want to observe first hand and consider for adoption. Together with free speech and freedom of the press it is the jury system of justice that has perpetuated democracy in the U.S., the longest lasting government in the world in its present form, for over 223 years. In addition, these institutions enhance public trust and belief in the rule of law and reduce corruption and injustice. Dialog between law professionals of different nations about how justice is manifested in their societies is crucial to international understanding and, ultimately, world peace.

Mongolia, like all other post cold-war, Soviet nations adopted the civil law system of justice when it adopted its new constitution. In its new system criminal cases are decided either by a judge or a judge assisted by two citizen judges. Cases involving members of the military are tried in the civilian courts and there is no separate system of military justice. There is no right to trial by a jury of one's peers or fellow citizens as in the U.S. system.

The jury system, in which twelve citizens who are untrained in the law decide the facts of the case and then apply the law as instructed by the judge to arrive at a verdict, is unique to the common law system, derived from the English legal system, and is only utilized in a few nations in the world. Trial by jury is available more extensively in the U.S. than in any other nation. Across the U.S. each Monday morning, thousands of citizens who have no legal training gather to participate directly in the justice process --- actually creating justice. The author believes that it is the jury system that accounts for the high level of belief in the rule of law in the U.S. and is the reason that citizens in the U.S. do not fear their government. Criminal charges brought by the government against individual citizens are decided by other citizens, not representatives of the government. The government has no right to appeal a "not guilty" decision by the jury. This aspect of U.S. democracy represents the best example of government "of the people, by the people and for the people" as envisaged by President Abraham Lincoln.

The Constitutions adopted by many post cold-war nations, including Mongolia and Russia, guarantee many and often more of the same individual rights to their citizens than does the U.S. Constitution. These rights include such rights as the right against self-incrimination. Often, because these constitutions are so new few judges and lawyers in these nations have any academic training in constitutional law as it applies in a democracy in democratic constitutional traditions. Therefore, they face important, new questions of what those promises of individual rights should and will mean in their nations. It is in the interests of all democracies that their law professionals learn about methods and legal institutions utilized by other democratic nations and assist each other to learn and implement concepts and ideas that have been proven to enhance Democracy, strengthen democratic institutions and promote public confidence in the rule of law.

In the U.S. legal system individual constitutional rights are often the very first rights asserted by a citizen or soldier charged with a criminal offense. Lawyers in the U.S. justice system routinely fashion legal arguments for the accused based on individual constitutional rights specifically guaranteed under our Constitution. These rights are often decided in my court and are issues dealt with in jury trials. Thus, a foreign law professional will have the opportunity to observe the manner in which these issues arise and are addressed in my court.

These issues and ideas were among those discussed with the Mongolian judges and lawyers at the DIILS seminar in Ulaanbaatar. As a result of our discussions Justice Ganzorig and I struck upon the idea of him traveling to my court in Maui, Hawaii to personally observe and experience how a jury of citizens functions in our jury system and how individual constitutional rights are determined in a criminal proceeding. I have often heard judges and lawyers in other nations say that the reason the jury system is not considered for use in their nations is because their citizens do not understand the law sufficiently. This misses the point: jurors in the U.S. are selected without any knowledge of the law and if they should happen to have any legal training they are carefully instructed to disregard it because the judge will advise them about the law necessary to decide the case when the appropriate time comes during the trial.

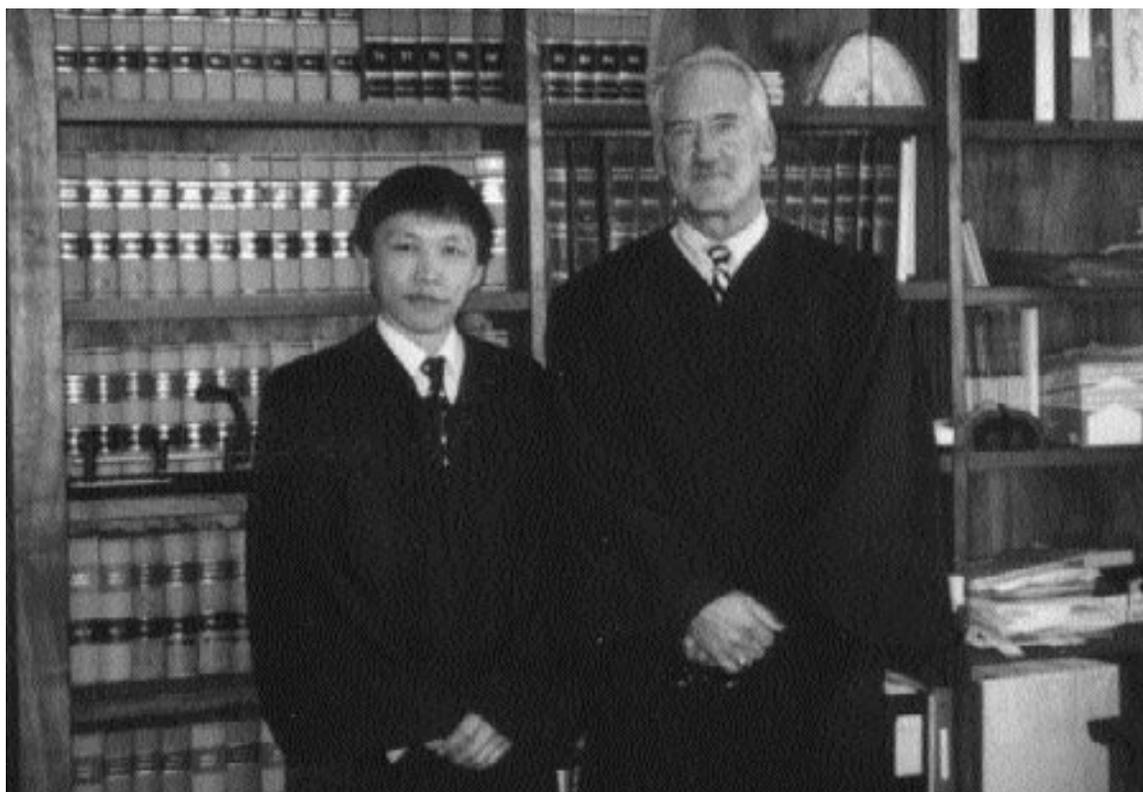
In order to implement the Observer Program for Justice Ganzorig I worked with Ms. Barbara Billips, then Security Assistance Officer at the U.S. Embassy in Beijing where the E-IMET program planning was handled for Mongolia at the time, to develop the Program and obtain E-IMET funds to bring Justice Ganzorig to Hawaii for three weeks. During the first week Justice Ganzorig visited U.S. military justice facilities on Oahu at Pearl Harbor and observed a court martial. He also visited the Hawaii state courts, including a meeting with Chief Justice Ronald Moon of the Hawaii Supreme Court. He met with the Dean of the University of Hawaii Law School and also visited the East-West Center and the Asia Pacific Center and met a number of lawyers and judges in Honolulu.



The DILS training team in Mongolia. Justice Ganzorig (center) with (left to right) Capt. Lawrence Eppler, USCG, Col. John Atkinson, USMCR, Ms. Otgonbayar, Member of Parliament of the Great Hural of the Peoples Republic of Mongolia, and CDR Raffetto at the Government Palace, Ulaanbataar, Mongolia. A reproduction of the Standards of Genghis Khan can be seen in the background.

After his week in Honolulu, Justice Ganzorig traveled to Maui and spent two weeks as my guest observing proceedings in my Court. The court in which I preside is the Second Circuit Court. It is a court of unlimited jurisdiction and I handle all types of felony criminal jury trials, civil jury trials, motions, sentencing and other judicial proceedings. In fact, because all types of proceedings are handled in the Second Circuit Court, it is ideal for a court observer program. To make the experience of a U.S. jury trial as effective as possible I obtained a black robe for Justice Ganzorig (traditionally worn by judges in the U.S.) and he sat next to me on the Bench throughout the entire trial, including the jury selection process, arguments and jury instructions. Having

Justice Ganzorig sitting next to me was especially effective because he was able to hear all of the conferences held with the lawyers at the Bench which are outside the hearing of the jury. During the jury selection part of the trial these conferences included discussions with individual citizens who discussed their qualifications to serve as jurors in the case. Justice Ganzorig and I discussed each stage of the jury trial as it progressed and various points of law and evidence that came up during the trial. One point which was of special interest to Justice Ganzorig was the issue of the admissibility in the trial for consideration by the jury of "prior bad acts" of the defendant. "Prior bad acts" are generally not admissible in evidence and the jury does not learn of them under U.S. rules of evidence because of the presumed tendency by the jury to convict the accused based upon his or her prior bad conduct rather than the facts of the current case. By comparison such prior bad acts are considered by the judge in Mongolia. Justice Ganzorig and I spoke extensively with the jurors after the trial was completed and they had rendered their verdict. He was keenly interested in their comments and perceptions of the evidence in the trial and how they went about applying the law given by the judge to the facts of the case in order to reach a verdict. I am certain that as a result of this experience Justice Ganzorig now has a thorough understanding of how the U.S. legal system works and undoubtedly will keep what he learned in mind for possible use in the future development of the legal system in Mongolia, both in civilian and military trials.

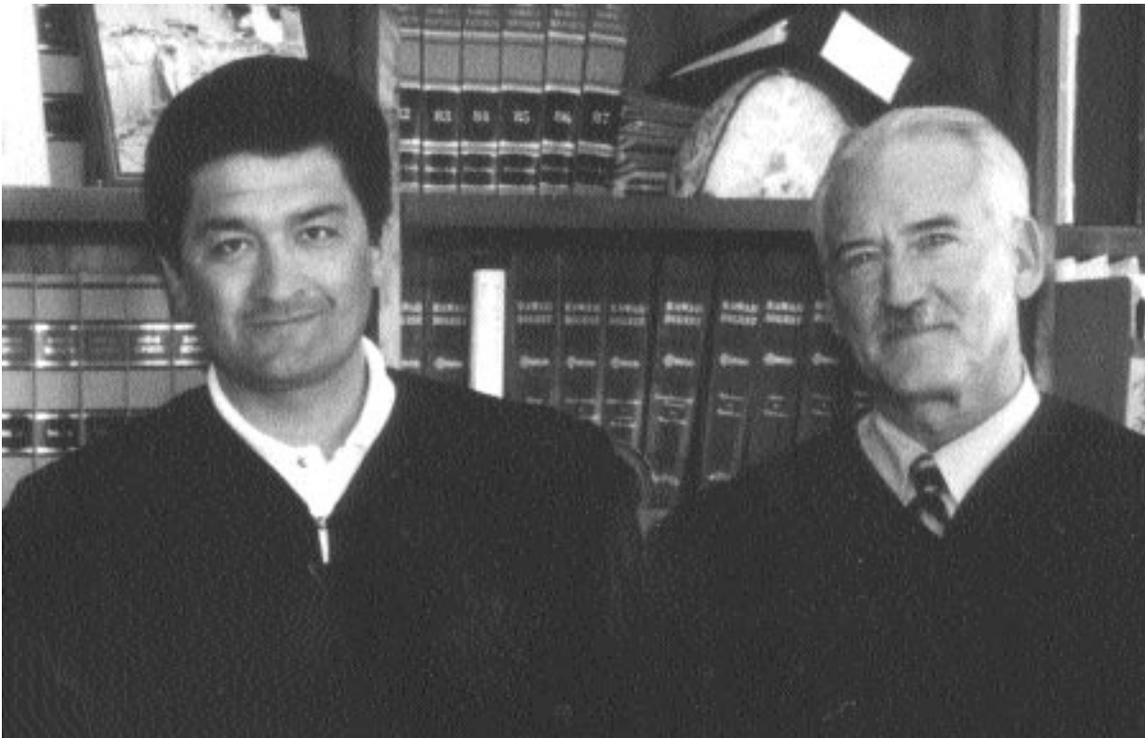


Justice Ganzorig and Judge Raffetto in the latter's chambers wearing traditional U.S. judges' black robes.

Similarly, Dr. Tuzmukhamedov observed an entire criminal jury trial "at my right hand" and we spoke to the jury afterwards so he could discuss with them directly their experience as jurors. Dr. Tuzmukhamedov found the jury selection process particularly interesting and told me he believes it has great potential for educating citizens in Russia about the legal system and the rule

of law. I worked with LTCOL Tania Bublick, Security Assistance Officer at the U.S. Embassy in Moscow to arrange for the E-IMET funding and planning for his Court Observer Program.

Two additional factors enhance the Court Observer Program. The first is that Hawaii is a place of great natural beauty with many cultural and tourist attractions. Both Justice Ganzorig and Dr. Tuzmukhamedov were able to sightsee and experience the beauty and charm of Hawaii. I believe that the success of the program is enhanced substantially by the collegiality and friendship that develops from sharing leisure activities as well as court room experiences. The second is that Hawaii is a multi-cultural state with almost every ethnic and racial group represented. There is no "majority" race in Hawaii. Foreign law professionals, especially those from Asian nations, will see familiar looking faces and hear familiar sounding names of the citizens on the jury. I believe this helps to personalize the experience and shows that the successful functioning of the jury system is not specific to any particular ethnic group. The justices of the Hawaii Supreme Court, for instance, represent ethnic groups including Korean, Japanese, Hawaiian, European and Philippine.



Dr. Tuzmukhamedov with Judge Raffetto

It is important to stress, however, that it is not the purpose of the Court Observer Program to convince law professionals from other nations to adopt the U.S. model, but rather to enhance the dialog between law professionals about concepts of justice, the rule of law and due process of law that the DIILS Seminars have so effectively established. Judges and lawyers in all nations perform the same task -- the functioning and administration of justice in their respective societies. There are many different approaches, some better than others, but what is of great importance is that as each nation develop its own vision of democracy and that all democratic nations share their ideas and experiences with each other. Citizens of all nations have a great stake in the success of the global democracy movement that is currently expanding in most nations. There is no

guarantee that democracy or citizen-oriented government will endure. It never existed prior to being adopted as the basis for the U.S. government after our Revolutionary War, as a result of which the U.S. gained its freedom from British colonial rule. As noted above, the U.S. system of democratic government is the longest lasting government of any nation. But, whether democracy will continue in the future depends upon the efforts of law professionals who have the stewardship of the process of justice. It is the genius of the DIILS program that it provides a forum for, supports and enhances this important dialog. And, it is hoped by the author, that the Court Observer Program outlined here will be a valuable adjunct to the DIILS teams and their seminars.

I am very interested in expanding the Court Observer Program and offering a similar experience to judges and lawyers from other nations as a follow-on to DIILS training seminars.

I invite anyone interested in further information about this Program or who may be interested in sending a law professional from their nation to my court to contact Mr. Walter W. Munroe, DIILS Academic Director, Defense Institute of International Legal Studies, 360 Elliot Street, Newport, Rhode Island 02841-1523, telephone (401) 841-1524, DSN 948-1524, Fax (401) 841-4570, DSN 948-4570 Message (401) 841-4570, e-mail: MunroeWW@jag.navy.mil or riwalt@aol.com. Or, if you wish, contact me directly at Second Circuit Court, Courtroom No. 2, 2145 Main Street, Wailuku, Hawaii 96793 or Telephone: 808-244-2980, Fax: 808-244-2819, e-mail: Jsraffetto@aol.com.

About the Author

CDR Raffetto is the Chief Circuit Court Judge of the Second Judicial Circuit Court in the State of Hawaii. He is also the Senior Family Court Judge. He is a Certified Military Trial and Defense counsel and Military Judge. In his capacity in the Naval Reserve, he serves as an adjunct faculty member of the Defense Institute of International Legal Studies.