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The ABA Rule of Law Initiative Celebrating 25 Years of Global Initiatives

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ARTICLE

**THE ABA RULE OF LAW INITIATIVE:
CELEBRATING 25 YEARS OF
GLOBAL INITIATIVES**

*The Honorable M. Margaret McKeown**

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INTRODUCTION

The rule of law should not be perceived simply as a catchy, feel-good phrase that is bandied about in government circles, academic forums, or convocations of nongovernmental organizations (NGOs). It is much more. The rule of law matters because it serves as a foundation for justice, economic opportunity, and human dignity.

Imagine a rape trial, with high-ranking military officers as defendants, held in a mobile court under a tent in a remote area of the Democratic

* Judge, United States Court of Appeals for the Ninth Circuit. Judge McKeown is the Chair of the American Bar Association’s (ABA) Rule of Law Initiative (ROLI) Board. Judge McKeown is grateful to Thomas Kadri, law clerk 2016–2017 (Michigan 2015), for his substantial research and participation in the article. She also thanks her other clerks—Alexander Chen (Harvard 2015), Bevan A. Dowd (Berkeley 2015), and Brian J. Springer (Penn 2015)—and the following individuals at ROLI for their research assistance: Elizabeth (Betsy) Andersen, Director of ABA ROLI; Linda Bishai, Director of Research, Evaluation and Learning; Salome Tsereteli-Stephens, Monitoring & Evaluation Manager; Alexandra (Sasha) Belenkaya, Director of Europe and Eurasia Division; Ashley Martin, Senior Technical Advisor; Mary Greer, Senior Criminal Law Advisor; and Jeanette Asencio Tocol, Monitoring & Evaluation Senior Program Officer. Finally, she pays tribute to the many volunteer judges and lawyers, DC-based and overseas staff, and consultants for their service to ABA ROLI over the past 27 years.

Republic of the Congo with villagers seeing the justice system up close for the first time.¹

Picture the jurors awaiting opening statements in Georgia's maiden jury trial² or the indigent defendants receiving support from China's first independent criminal legal aid center.³

Consider the critical role of lawyers in Turkey advising Syrian refugees about their legal rights and protections⁴ or the importance of forensics training to process evidence from clandestine mass graves in El Salvador.⁵

These examples illustrate the real-world impact of the American Bar Association's (ABA) Rule of Law Initiative (ROLI), which recently celebrated a milestone worthy of attention. For a quarter of a century, the ABA has been leading programs in more than one hundred countries to promote the rule of law around the world.⁶ But what is the rule of law?

Although the term is referenced in many contexts, curiously there is no uniform definition.⁷ The phrase was first popularized by a British constitutional law scholar, A. V. Dicey, in the nineteenth century.⁸ Dicey argued that the rule of law meant three "kindred concepts": "a government limited by law; equality under the law for all citizens; and the protection of human and civil rights."⁹

Importantly, rule of law does not mean rule *by* law, as simply having a legal system or a set of laws on the books does not guarantee access or fair and independent adjudication.¹⁰ Key concepts undergirding the principle are transparency of laws, accountability, access to justice, protection of fundamental rights, and a fair and independent system for dispute resolution.

1. See generally Michael Maya, *Mobile Courts in the Democratic Republic of Congo: Complementarity in Action?*, in *INNOVATIONS IN RULE OF LAW: A COMPILATION OF CONCISE ESSAYS* 33–36 (Juan Carlos Botero et al., eds., 2d ed. 2012); AM. BAR ASS'N, *ABA RULE OF LAW INITIATIVE* 23–24 (2015) [hereinafter 2015 PROGRAM BOOK].

2. See AM. BAR ASS'N, *ABA RULE OF LAW INITIATIVE* 36 (2009) [hereinafter 2009 PROGRAM BOOK].

3. See *ABA ROLI at a Glance* (Am. Bar Ass'n Rule of Law Initiative, Washington D.C.) July 2015 (on file with author).

4. See 2015 PROGRAM BOOK, *supra* note 1, at 117.

5. See *id.* at 89–90.

6. *Id.* at 2.

7. RACHEL KLEINFELD, *ADVANCING THE RULE OF LAW ABROAD* 7 (2012) [hereinafter KLEINFELD *ADVANCING*] ("For decades, rule-of-law reform took place without much of a definition at all, based on the idea that 'you'll know it when you see it.'"); Symposium, *The History of CEELI, the ABA's Rule of Law Initiative, and the Rule of Law Movement Going Forward*, 18 MINN. J. INT'L L. 304, 341 (2009) [hereinafter Symposium] (statement of Mark S. Ellis).

8. John V. Orth, *The Rule of Law*, 19 GREEN BAG 2D 175, 179 (2016).

9. KLEINFELD *ADVANCING*, *supra* note 7, at 13; see also ALBERT V. DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* 175–84 (8th ed. 1915) (1885).

10. See Josh Chin, 'Rule of Law' or 'Rule by Law'? In China, a Preposition Makes All the Difference, WALL STREET J.: CHINA REAL TIME REP. (Oct. 20, 2014, 2:03 PM HKT), <https://blogs.wsj.com/chinarealtime/2014/10/20/rule-of-law-or-rule-by-law-in-china-a-preposition-makes-all-the-difference/>.

Groups seeking to define the concept are diverse. The United Nations sets out the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”¹¹ In its Rule of Law Handbook for judge advocates, the U.S. Army proclaims that the rule of law “exists when a society administers (or aspires to administer) itself through a set of transparent, ostensibly fair rules applied by impartial adjudicators.”¹² More recently, the World Justice Project, which created a Rule of Law Index that measures adherence to the rule of law, has captured the concept through four universal principles: accountability; clear and transparent laws that are applied evenly to protect fundamental rights; accessible, fair, and efficient process; and timely delivery of justice via independent representatives and neutrals.¹³

Relying on extensive reports, program documentation, and interviews with important actors in the rule of law movement, this article will explore how one key player in the international-development field—the ABA—has furthered rule of law values through its global programs. The first half of the article surveys the ABA’s involvement in rule of law initiatives. Part I explores the origins of the ABA’s work in this field, which date back to the organization’s founding and took shape after the demise of the former Soviet Union. Part II surveys the expansion of the ABA’s programs beyond Eastern Europe to other regions—a growth that ultimately led to the birth of the global initiative known as ABA ROLI. Part III then looks at ROLI’s latest work to show how the ABA’s programs have evolved in recent years.

The second half of the article draws lessons from this historical study. Part IV discusses three key pillars that the ABA’s experiences have revealed are fundamental in advancing the rule of law. Part V pays special attention to one key characteristic of the ABA’s work: the complementary roles that volunteers and professionals play in fostering the rule of law. Finally, Part VI forecasts the challenges and opportunities that ROLI will face in the years ahead.

11. U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* ¶ 6, U.N. Doc. S/2004/616 (Aug. 23, 2004).

12. THE JUDGE ADVOCATE GEN.’S LEGAL CTR. & SCH., U.S. ARMY CTR. FOR LAW & MILITARY OPERATIONS, *RULE OF LAW HANDBOOK: A PRACTITIONER’S GUIDE FOR JUDGE ADVOCATES 1* (2015), <https://tjaglcpublic.army.mil/documents/27431/38018/2015+Rule+of+Law+Handbook/1a80c8f8-85c6-46f9-af75-7f3735d4d8c3?version=1.0>.

13. WORLD JUSTICE PROJECT, *WORLD JUSTICE PROJECT RULE OF LAW INDEX 2016*, at 9 (2016), https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf.

I. THE ORIGINS OF ROLI

The ABA's rule of law work traces back to the organization's founding nearly 140 years ago.¹⁴ One of the ABA's first seven committees focused on international law, and that committee, now called the Section of International Law, has been a focal point for key international legal issues over the years.¹⁵

In the late 1950s, as the Cold War deepened fissures between East and West, the ABA began to champion the rule of law as a way to counteract Soviet militarism.¹⁶ While May Day parades in Moscow's Red Square drew crowds to witness the Eastern Bloc's latest military marvels, the ABA chose that same spring day to champion the rule of law at high schools and bar associations across the United States.¹⁷ These "Law Day" celebrations, which continue today, laid the foundation for the ABA's formal programs that would follow.¹⁸

The ABA dipped its toe in the waters of development assistance in 1963 when it teamed up with the Peace Corps "to enlist lawyer volunteers for legal service in Africa."¹⁹ The ABA's House of Delegates gave "overwhelming approval" to a pilot program to help "meet the requests from developing nations for Americans trained in the legal profession" as a way to "promote world peace and friendship."²⁰ By assisting in local courts, codifying customary law, and teaching in law schools, the program helped three African countries "strengthen their legal and judicial systems."²¹ Sylvester C. Smith, Jr., then-president of the ABA, hailed the volunteer lawyers as "architects of the free societies" in which they served.²²

These early forays into international development paved the way for the ABA's current programs. In a sense, the ABA built these programs from the rubble of the Berlin Wall. After the Wall fell in 1989, a "renaissance" in legal and political reform spread through Eastern Europe and the former Soviet states.²³ In response, and with critical seed funding from

14. See Victor C. Folsom, *History of the Section of International Law: The First Thirty-Five Years*, 16 INT'L LAW. 119, 119 (1982).

15. *Id.*; see also James R. Silkenat, *The American Bar Association and the Rule of Law*, 67 SMU L. REV. 745, 745-46 (2014).

16. Vincent A. Romano, *Law Day After the Cold War: Same Mission, New Focus*, 77 MICH. B.J. 292, 292-93 (1998); Symposium, *supra* note 7, at 307 (statement of Talbot "Sandy" D'Alemberte).

17. Symposium, *supra* note 7, at 307 (statement of Talbot "Sandy" D'Alemberte); see also Silkenat, *supra* note 15, at 748 (discussing American celebration of "Law Day"); Romano, *supra* note 16, at 292-94.

18. Symposium, *supra* note 7, at 307 (statement of Talbot "Sandy" D'Alemberte); Romano, *supra* note 16, at 292-94.

19. *Peace Corps Lawyer Volunteers: "Architects of the Free Societies,"* 49 A.B.A. J. 275, 275 (1963).

20. *Id.*

21. *Id.*

22. *Id.*

23. Jennifer Rasmussen, *A Short History of the American Bar Association Rule of Law Initiative's Technical Assistance Approach*, 31 WIS. INT'L L.J. 776, 776 (2013).

the Section of International Law, the ABA founded the Central and East European Law Initiative (CEELI) in 1990.²⁴ Homer E. Moyer, Jr., and Talbot “Sandy” D’Alemberte were the co-founders and intellectual drivers behind the initiative.²⁵ Their collaboration grew out of D’Alemberte’s experience with an early Caribbean law project sponsored by Florida State University and Moyer’s spearheading of a major international conference in Moscow with the Section of International Law.²⁶

After years of Law Day preaching, CEELI gave practical life to the ABA’s emphasis on the rule of law. Instead of merely talking about the importance of the rule of law, CEELI provided on-the-ground technical assistance to implement law reforms.²⁷ Despite a wave of international enthusiasm for these measures, pervasive domestic distrust of communists and the Soviet states meant the ABA had to tread carefully on its “extra-territorial adventure.”²⁸ The plan was to extend the hand of the American legal profession to colleagues in the legal community in Eastern Europe and the former Soviet Union as they undertook democratic change and related law reform. The notion of promoting the rule of law abroad was

24. Silkenat, *supra* note 15, at 746–47. The ABA later renamed CEELI as the Central European and Eurasian Law Initiative. *Id.* at 747.

25. CEELI’s first Executive Director was Mark S. Ellis, and its founding Executive Board featured an impressive cast of characters, including former president of the ABA, L. Stanley Chauvin, Jr.; former White House Counsel, Lloyd N. Cutler; renowned American diplomat, Max M. Kampelman; Justice Sandra Day O’Connor of the U.S. Supreme Court; and Judge Abner J. Mikva of the U.S. Court of Appeals for the D.C. Circuit. *See* HOMER E. MOYER, CEELI’S FIRST DECADE 4 (2008) (on file with author) (collecting excerpts from CEELI Annual Reports); Telephone Interview with Homer E. Moyer, Jr., Member, Miller & Chevalier (July 27, 2017).

26. Telephone Interview with Homer E. Moyer, Jr., *supra* note 25; Telephone Interview with Talbot “Sandy” D’Alemberte, President Emeritus and Professor, Fla. State Univ. Coll. of Law (July 26, 2017); *see generally* HOMER E. MOYER, JR., THE MOSCOW CONFERENCE ON LAW AND BILATERAL ECONOMIC RELATIONS: SEPTEMBER 1990, THE KREMLIN, MOSCOW 7 (James R. Silkenat & Paul B. Stephan III eds., 1990) (describing the “unprecedented” and “extraordinary” event where 700 American lawyers and judges met with 2,000 of their counterparts in Moscow at “the largest legal conference ever held in the Soviet Union.”).

27. MOYER, *supra* note 25, at 2 (quoting D’Alemberte as saying that CEELI’s “massive volunteer effort . . . replaces the rhetoric about the rule of law with action . . .”); Silkenat, *supra* note 15, at 746–47.

28. Symposium, *supra* note 7, at 308 (statement of Homer E. Moyer, Jr.); *see also* Telephone Interview with Homer E. Moyer, Jr., *supra* note 25 (reporting that there was “major skepticism at the State Department and the ABA” that this project would merely “flood the region with a bunch of lawyers trying to hustle business.”); Silkenat, *supra* note 15, at 747; Telephone Interview with James R. Silkenat, Dir. & Vice President, World Justice Project (June 6, 2017) (“Even the ABA Board wasn’t initially enamored with helping these countries. Why was it important? Why should the American legal community play a role in their development?”). Moyer recounts that “the secret of the early years was that we kept our heads down and actively avoided publicity, which allowed CEELI’s credibility to grow from the bottom up.” Telephone Interview with Homer E. Moyer, Jr., *supra* note 25. The quiet approach worked: according to Moyer, “after four or five years, there was a sea change; all of a sudden people, particularly ABA leadership, knew and were excited about CEELI, so we went from being intentionally anonymous to being quite celebrated!” *Id.*

seen as radical, though we can now appreciate it as the start of a quiet revolution that would shape ABA's work globally.²⁹

The plan was a success; CEELI was soon besieged with requests for support.³⁰ Before long, countries across the region solicited CEELI to help draft constitutions and statutes, build legal institutions, and promote a culture of law.³¹ These early efforts cultivated a consultative approach and mindset that are reflected in the ABA's programs today.³²

Some critics of law-reform efforts of the 1990s have suggested that the programs too often lacked appreciation of the country context and imposed ill-fitting models on unreceptive counterparts.³³ But from its early days, CEELI worked to avoid this pitfall, adopting principles that dictated a consultative and comparative law approach. Instead of advocating for American-centric, cookie-cutter solutions, CEELI let its host-country partners take the lead in shaping the programs, with CEELI sharing a variety of models and best practices.³⁴ As Mark Ellis, CEELI's first Executive Director, has noted: "[W]e would never draft a constitution; we would require each country to provide us with a first draft of their constitution. . . . The CEELI team would simply be a sounding board."³⁵ Above all, CEELI pledged neutrality: host countries could rely on its expertise and resources, but the process ultimately empowered these new governments to chart their own courses on how to structure their systems and laws.³⁶

CEELI thrived by using an unusual model to implement its programs. Temporary volunteers partnered with CEELI staff and various govern-

29. Symposium, *supra* note 7, at 308 (statement of Homer E. Moyer, Jr.); Silkenat, *supra* note 15, at 747.

30. Symposium, *supra* note 7, at 309 (statement of Mark S. Ellis); Silkenat, *supra* note 15, at 748.

31. Silkenat, *supra* note 15, at 748.

32. *Id.* at 749.

33. See, e.g., THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* 10–12, 255–80 (1999).

34. See Telephone Interview with Talbot "Sandy" D'Alemberte, *supra* note 26 (re-marking that CEELI's co-founders believed you "shouldn't develop program to take on a silver platter to hand to judges and lawyers in these countries; it's better to figure out what they wanted and to try help deliver."); Interview with Mary Noel Pepys, Former Liaison, CEELI (May 15, 2017) (explaining that "what *their* needs were was the guiding principle" in CEELI's early work in Eastern Europe); Silkenat, *supra* note 15, at 749; Am. Bar Ass'n, *ABA Rule of Law Programs Have Global Impact*, 41 *ARK. LAW.* 14, 14 (2006) [hereinafter *ARKANSAS LAWYER*]; AM. BAR. ASS'N, *ABOUT THE ABA RULE OF LAW INITIATIVE 2* (2008) [hereinafter *ABOUT THE ABA RULE OF LAW INITIATIVE*] (on file with author) (identifying as one of ROLI's "core principles" that it should employ "a highly consultative approach to the delivery of technical assistance that is responsive to the requests and priorities of the Initiative's local partners").

35. Symposium, *supra* note 7, at 310 (statement of Mark S. Ellis).

36. *ARKANSAS LAWYER*, *supra* note 34, at 14; Symposium, *supra* note 7, at 308–09 (statement of Homer E. Moyer, Jr.); *ABOUT THE ABA RULE OF LAW INITIATIVE*, *supra* note 34, at 2 (identifying as another one of ROLI's "core principles" that it should "[p]rovid[e] technical assistance and advice that is neutral and apolitical.").

mental and nongovernmental participants in each host country.³⁷ These volunteer lawyers “lined up row after row to participate in this historic mission”³⁸ and became CEELI’s lifeblood in its formative years.³⁹ Not only did they agree to work for free, but they also obeyed strict—arguably “draconian”⁴⁰—conflict-of-interest standards to assure that they were not leveraging their volunteer positions for business purposes. These twin pledges built the volunteers’ credibility in the communities they served and prevented CEELI from becoming “a subterfuge for American lawyers . . . to develop business.”⁴¹

The volunteers undertook at least a yearlong commitment,⁴² creating a kind of “legal Peace Corps”⁴³ far beyond what had been envisioned in the ABA’s early efforts in the 1960s. CEELI co-founder Homer Moyer captured the spirit of the endeavor, which “tapped into an extraordinary part of the DNA of the American legal profession.”⁴⁴ The massive volunteer effort was dubbed “one of the ABA’s finest hours”⁴⁵ and prompted former Attorney General Janet Reno to describe CEELI as “the worthiest pro bono project that American lawyers have ever undertaken.”⁴⁶ Justice Sandra Day O’Connor also lauded the volunteers as “splendid, dedicated, talented, and selfless lawyers who have interrupted their lives and careers to make a difference in the world in which we live.”⁴⁷ “As a result of their efforts,” she said, “every American should stand a bit taller.”⁴⁸

Pairing CEELI volunteers’ pro bono spirit with the commitment and expertise of its local staff was CEELI’s “secret sauce.” The local staff, often among the best and the brightest young attorneys in each country, provided pro bono experts with local understanding, and, in turn, they were mentored by their American colleagues.⁴⁹ Many went on to senior

37. ARKANSAS LAWYER, *supra* note 34, at 14.

38. Symposium, *supra* note 7, at 325 (statement of Mark S. Ellis).

39. Sandy D’Alemberte has described the substantial sacrifices that some volunteers made during these early years: “People were going to places that were not exactly vacation spots, they were standing in line to get food, dealing with logistical problems and small apartments in awful high-rise buildings with no elevators and often no heat or lights.” Telephone Interview with Talbot “Sandy” D’Alemberte, *supra* note 26.

40. Symposium, *supra* note 7, at 309 (statement of Homer E. Moyer, Jr.).

41. *Id.*; see also Silkenat, *supra* note 15, at 749–51 (summarizing conflict-of-interest standards); ARKANSAS LAWYER, *supra* note 34, at 14.

42. Silkenat, *supra* note 15, at 751.

43. Symposium, *supra* note 7, at 305 (statement of Robert Stein).

44. Am. Bar Ass’n Rule of Law Initiative, *Interview with ABA ROLI Co-founder Homer Moyer*, YouTube (Dec. 30, 2016), https://www.youtube.com/watch?v=8-C5h_n7GOA&feature=youtu.be.

45. Silkenat, *supra* note 15, at 751 (quoting CEELI founder, Talbot “Sandy” D’Alemberte).

46. Rasmussen, *supra* note 23, at 777 n.5.

47. AM. BAR ASS’N, CENTRAL & EAST EUROPEAN LAW INITIATIVE: SPECIAL ANNIVERSARY ANNUAL REPORT, 1990–2000, at 5 (2000) [hereinafter ANNIVERSARY REPORT].

48. *Id.*

49. Telephone Interview with Homer E. Moyer, Jr., *supra* note 25.

positions in their governments, judiciaries, civil society, and international organizations.⁵⁰

In concert with this organization backdrop, CEELI ran its first program in Czechoslovakia in 1990 and opened its maiden office in Bulgaria in 1991.⁵¹ Once CEELI was up and running, the ABA began its work in six Eastern European countries.⁵² In the early years—in what might be characterized as the first phase of the modern rule of law development era—CEELI, like others in the field, prioritized legal and institutional reform, building the “supply side” of rule of law. Programs focused on promoting legal reforms and identifying partners to build long-term relationships.⁵³ While initial programs focused on judicial restructuring and constitutional and criminal law,⁵⁴ early efforts also included a major program on reforming commercial law.⁵⁵

In the former Czechoslovakia, for example, CEELI established a program aimed at reforming criminal laws.⁵⁶ True to CEELI’s mantra, this effort emerged in response to local initiative.⁵⁷ After two of CEELI’s founders asked the new Czechoslovakian Chief Justice what his country’s priorities should be, he responded that a strong economy was essential to the young government’s survival.⁵⁸ This led the founders to suggest beginning with a new commercial code, but the Chief Justice disagreed. To get the economy going, he said, “you’ve got to start with the *criminal law*.”⁵⁹ When the founders seemed confused, he explained: “[W]hat you call entrepreneurship, we call speculation and we prosecute it. And until you let people know that they are not going to be prosecuted for the kinds of things that are necessary in order to make a market economy work, you

50. Telephone Interview with Christopher Lehmann, Exec. Dir., CEELI Inst. (May 17, 2017).

51. See generally WILLIAM D. MEYER, CEELI BULGARIA FINAL REPORT 1–57 (1992) (on file with author) (providing in-depth review by CEELI’s Bulgaria liaison of the first year’s work in the country); see also MOYER, *supra* note 25, at 1; Symposium, *supra* note 7, at 310 (statement of Mark S. Ellis); Rasmussen, *supra* note 23, at 776–77. The existence of these CEELI “liaisons”—who would live in the host country—ran afoul of one of the two stipulations imposed by the ABA before the governors would approve CEELI’s creation: “No one would live outside of the United States.” Telephone Interview with Homer E. Moyer, Jr., *supra* note 25. Although Moyer “can’t recall the lawyering we went through to justify our first liaison,” it obviously worked. *Id.*; see also Telephone Interview with Talbot “Sandy” D’Alemberte, *supra* note 26 (“We made a presentation to the ABA and pledged we wouldn’t have offices in other countries where the ABA would be exposed to liability; we managed to break that commitment in such a way!”).

52. Symposium, *supra* note 7, at 315 (statement of Homer E. Moyer, Jr.).

53. ANNIVERSARY REPORT, *supra* note 47, at 6 (statement of Robert Stein).

54. *Id.*; Paul Moxley, CEELI: A Pro Bono Project of the ABA, UTAH B.J., Dec. 1996, at 27, 27.

55. E-mail from Angela Conway, Dir. of the Middle East & N. Afr. Div., Am. Bar Ass’n Rule of Law Initiative, to Thomas Kadri (Aug. 11, 2017) (on file with author).

56. Silkenat, *supra* note 15, at 751.

57. Symposium, *supra* note 7, at 318 (statement of Talbot “Sandy” D’Alemberte).

58. *Id.*

59. *Id.* (emphasis added).

know you're not going to get the energy that you need to have in the economy.”⁶⁰ This experience, like many others during CEELI's early years, underscored the importance of collaboration when nurturing the rule of law.

As the new states developed, so too did CEELI's role. Volunteers led programs on gender issues⁶¹ and helped draft laws related to property, land use, media, and NGOs.⁶² CEELI also played a crucial monitoring role as several newly formed states held their first elections.⁶³ In the Central Asian republics, for example, CEELI engaged in media outreach to educate citizens on how to vote and what to do if their rights were denied.⁶⁴

After only two years, more than 600 American lawyers and judges had flocked to Europe and Central Asia to assist in the effort.⁶⁵ By 1993, volunteers from all fifty states had assessed more than 120 draft laws and led twenty-seven workshops across the region.⁶⁶ CEELI also stationed forty-six legal specialists and long-term liaisons in the field, hosted European law school deans at 120 “sister law schools” in the United States, and placed students from the former Soviet Union in American LLM programs.⁶⁷ By the time CEELI celebrated its tenth anniversary in 2000, over 5,000 volunteers had helped to promote the rule of law across the globe.⁶⁸

CEELI earned plaudits from all corners of the United States government, a testament to its nonpartisan foundation. Senator Richard Lugar declared that CEELI “is what technical assistance should be all about,”⁶⁹ while Senator Patrick Leahy called CEELI “a model program exemplifying the best of the American legal community [and] the very best of our foreign aid initiatives.”⁷⁰ Former U.S. Ambassador to Yugoslavia Jack Scanlon said that he “def[ie]d anyone to come up with an historical or current example of any foreign assistance program which delivers more genuine aid for the dollar as CEELI does.”⁷¹ United States Agency for

60. *Id.*

61. Silkenat, *supra* note 15, at 753.

62. ANNIVERSARY REPORT, *supra* note 47, at 6 (statement of Robert Stein); Moxley, *supra* note 54, at 27.

63. *See* Symposium, *supra* note 7, at 332 (statement of Robert Stein).

64. *Id.*; *see also* CEELI Institute, *Annual Meeting 2015 Video*, YOUTUBE (June 28, 2016), <https://www.youtube.com/watch?v=tkREzt4Mqg> (discussing the “know your rights, know your defenders” initiative in Moldova, where CEELI volunteers went around the country spreading information about the rights citizens had acquired under the new government).

65. Silkenat, *supra* note 15, at 751–52.

66. *Id.*; MOYER, *supra* note 25, at 4.

67. Silkenat, *supra* note 15, at 751–52.

68. ANNIVERSARY REPORT, *supra* note 47, at 4 (statement of ABA President, Martha Barnett); *see also* Silkenat, *supra* note 15, at 753.

69. MOYER, *supra* note 25, at 4.

70. *Id.*

71. *Id.*

International Development (USAID) Administrator Tom Dine agreed: “I say this unhesitatingly—CEELI is the ABA’s best face.”⁷²

Even as CEELI experienced early success, it was becoming clear that developing the rule of law would not be as easy as perhaps assumed in the heady early post-Soviet days.⁷³ It became apparent that many institutions did not have the capacity to absorb technical assistance or take on new responsibilities and sustain reform efforts, prompting CEELI to add institutional capacity building to substantive legal-reform assistance. CEELI supported institutional assessments, strategic planning, and training in budgeting and financial management through a cadre of “Regional Institution Building Advisors.”⁷⁴

To respond to the complexity of rule of law reform and the need to thoroughly understand the local context, specialists also developed a series of assessment methodologies.⁷⁵ These tools provided an in-depth diagnostic of the justice system, highlighting areas of needed reform and providing a basis for discussions with donors and partners about the path forward.⁷⁶ Finally, the conflicts in the Balkans drove home that rule of law development would not be a linear path, and that conflict and other exogenous forces could undermine even the most effective program.⁷⁷ Again, CEELI adapted, developing new programs to support civil-society partners in war-crimes documentation and to strengthen the capacity of national actors to adjudicate atrocity crimes.⁷⁸

II. THE GROWTH OF ROLI

Building on its success in Europe and Central Asia, the ABA broadened its horizons. In 1998, the ABA established the Asia Law Initiative to coordinate an expanding international presence throughout the continent.⁷⁹ Led by Roberta Cooper Ramo, the ABA’s first female president, and assisted by Justice Anthony Kennedy and the generosity of the Ford Foundation, the ABA launched programs in China, Cambodia, the Philip-

72. *Id.* at 5.

73. *See* Telephone Interview with Homer E. Moyer, Jr., *supra* note 25 (“A lot of people thought it would be a dandy two- or three-year project, that we would finish up and do other things. But the fact is that this involves generational change—change in public attitudes, in institutions. Nobody got that early on.”).

74. AM. BAR. ASS’N, REGIONAL INSTITUTION BUILDING ADVISOR PROGRAM 1 [hereinafter RIBA PROGRAM] (on file with author).

75. E-mail from Elizabeth Andersen, Dir., Am. Bar Ass’n Rule of Law Initiative, to author (July 27, 2017) (on file with author).

76. *Id.*

77. *Id.*

78. *Id.* CEELI also soon realized that “arguably the single greatest threat to the rule of law is official corruption.” Telephone Interview with Homer E. Moyer, Jr., *supra* note 25. Moyer reports that this was “not on the agenda for the first several years when people were busy with commercial law, constitutions, and fundamental rights, but corruption concerns emerged over time, in part because you had these new free markets.” *Id.* “That was something we did not foresee,” he admits. *Id.*

79. Rasmussen, *supra* note 23, at 778.

piners, and Thailand, as well as several short-term projects in other countries in Asia.⁸⁰

Only two years later—in 2000—the ABA founded the Africa Law Initiative and the Latin America and Caribbean Law Initiative to further expand its reach.⁸¹ In Africa the ABA created environmental programs in Uganda and supported post-genocide justice initiatives in Rwanda,⁸² and in Latin America early projects included HIV/AIDS-prevention training in Brazil and an anti-corruption study in Costa Rica.⁸³ Meanwhile, back in Europe, CEELI helped establish a constitutional court for the Federation of Bosnia and Herzegovina; assisted war-crimes tribunals in the former Yugoslavia; and trained prosecutors, judges, and police to curb crime and corruption across the region.⁸⁴ CEELI also spearheaded a “mini-Marshall Plan” to improve the movement of goods and transport in southeastern Europe⁸⁵ and won the *Pacem In Terris* Award for its “justice initiatives in former Soviet bloc countries.”⁸⁶ As the twentieth century drew to a close, promotion of the rule of law was becoming one of the ABA’s key initiatives.

Recognizing the growing importance of the Middle East and North Africa, the ABA began working in the region in 2003 and established the Middle East and North Africa Law Initiative four years later.⁸⁷ The programs grew dramatically over the next decade, with an emphasis on judicial development, women and the law, legal education, the legal profession, and anti-corruption.⁸⁸ In addition to many national initiatives, the ABA helped to form a regional Arab Women’s Legal Network, which from its headquarters in Jordan promotes advancement of women in the legal profession throughout the region.⁸⁹

By 2006, the ABA’s rule of law initiatives spanned over forty countries on five continents, and its volunteers’ in-kind contributions had ex-

80. *Id.*

81. AM. BAR ASS’N, PROMOTING THE RULE OF LAW: 2010, at 1 (2010) [hereinafter 2010 PROGRAM BOOK].

82. ANNIVERSARY REPORT, *supra* note 47, at 4 (statement of ABA President, Martha Barnett).

83. 2010 PROGRAM BOOK, *supra* note 81, at 61.

84. ANNIVERSARY REPORT, *supra* note 47, at 4 (statement of ABA President, Martha Barnett).

85. MOYER, *supra* note 25, at 7.

86. James Podgers, *Praise for Peace Work*, 84 A.B.A. J. 99, 99 (1998); MOYER, *supra* note 25, at 7. CEELI was also honored in 2000 at the Rededication of the ABA Memorial to the Magna Carta at Runnymede. *Id.* at 8.

87. AM. BAR ASS’N, PROMOTING THE RULE OF LAW: 2012, at 98 [hereinafter 2012 PROGRAM BOOK]; *see also* 2010 PROGRAM BOOK, *supra* note 81, at 1; 2010 PROGRAM BOOK, *supra* note 81, at 65–76; Telephone Interview with Elizabeth Andersen, Dir., Am. Bar Ass’n Rule of Law Initiative (May 31, 2017).

88. 2012 PROGRAM BOOK, *supra* note 87, at 98.

89. *Id.*; *see also About Us*, ARAB WOMEN’S LEGAL NETWORK, http://qanouniyat.org/?page_id=706 (last visited July 24, 2017).

ceeded \$200 million in pro bono assistance.⁹⁰ Local staff had gone onto lofty government positions, becoming ministers of justice and members of the judiciary.⁹¹ The scale of this “global effort”⁹² and the desire to “share expertise and experience”⁹³ led the ABA to merge its five regional programs under one umbrella in 2007.⁹⁴ And so was born “ABA ROLI.” Under this new moniker, the programs in Europe and Eurasia, still called CEELI,⁹⁵ were incorporated with the ABA’s programs covering Africa, Asia, Latin America and the Caribbean, and the Middle East and North Africa.⁹⁶ Together they thrived thanks to unified internal support systems, expert staff dedicated to international development, and committed volunteers on the ABA ROLI Board.⁹⁷

As the scope and scale of the ABA’s rule of law programs grew, the organization’s approaches also evolved to reflect ongoing learning about what works in rule of law development. In particular, following a decade of focus on “top-down” institutional reform efforts, there was a growing awareness, both within the ABA and in the broader rule of law develop-

90. ARKANSAS LAWYER, *supra* note 34, at 14; ABOUT THE ABA RULE OF LAW INITIATIVE, *supra* note 34, at 1; Richard Turbin, *Lawyers Spreading the Rule of Law Around the Globe*, HAW. B.J. July 2006, at 20, 21.

91. Telephone Interview with Christopher Lehmann, *supra* note 50.

92. Telephone Interview with Elizabeth Andersen, *supra* note 87.

93. *Id.*

94. Rasmussen, *supra* note 23, at 778–79; Silkenat, *supra* note 15, at 753–54.

95. A legacy project of the ABA’s efforts is the CEELI Institute, which was founded by Homer Moyer in 2000. Headquartered in Prague, Czech Republic, it was spun off from the ABA and is “an independent, non-profit organization dedicated to providing training, exchanges, and education to legal professionals.” CEELI INSTITUTE PRAGUE: ADVANCING THE RULE OF L., <http://ceeliinstitute.org/> (last visited June 19, 2017); *see also* Telephone Interview with Talbot “Sandy” D’Alemberte, *supra* note 26 (describing the CEELI Institute as a “wonderful afterlife” for CEELI).

96. Rasmussen, *supra* note 23, at 779. Not long after the birth of ROLI, in 2008, the ABA resolved that one of its four core “Goals”—Goal IV—would be to “Advance the Rule of Law,” though the ABA first acknowledged the “rule of law” as an organizational objective as far back as 1983 when it adopted Goal VII, “To Advance the Rule of law in the World.” *See* AM. BAR ASS’N, RECOMMENDATION (Aug. 11–12, 2008), https://www.americanbar.org/content/dam/aba/directories/policy/2008_am_121.authcheckdam.pdf; REPORT OF THE AD HOC COMMITTEE ON PLANNING AND MANAGEMENT SYSTEMS, JULY 28, 1983 – JULY 29, 1983, BOARD OF GOVERNORS MINUTES 6–7 (1983); *ABA Mission and Goals*, AM. BAR ASS’N, https://www.americanbar.org/about_the_aba/aba-mission-goals.html [hereinafter *ABA Goals*]. To accomplish Goal IV, the ABA identifies five objectives: (1) “Increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world”; (2) “Hold governments accountable under law”; (3) “Work for just laws, including human rights, and a fair legal process”; (4) “Assure meaningful access to justice for all persons”; and (5) “Preserve the independence of the legal profession and the judiciary.” *ABA Goals, supra*.

97. Following this consolidation, Board chairs included William H. Taft IV (2007–2009), former Legal Advisor of the Department of State and former Deputy Secretary of Defense, among other government positions; two former ABA Presidents, Robert J. Gray, Jr. (2009–2011) and Stephen N. Zack (2011–2015); and the author, Judge McKeown (2015–present). *See* E-mail from Jill Sandor, Library/Info. Servs., Am. Bar Ass’n, to author (Aug. 15, 2017) (on file with author).

ment community, that this approach would need to be paired with “bottom-up” strategies to strengthen civil society and to educate and engage the public—in short, to build demand for rule of law.

By the early 2000s, a growing portion of the ABA’s rule of law work complemented technical assistance and institution-building with such bottom-up approaches, developing law school clinics and legal-aid centers to expand access to justice, supporting broad-based public rights awareness campaigns, and developing the capacity of civil society partners to undertake sophisticated advocacy and impact litigation to hold governments accountable. And, at the urging of the USAID, the principal donor, the ABA began shifting to a professional development staff, anchoring each country office with the leadership of a professional country director to ensure consistency in programming and institutional memory over time.⁹⁸

III. ROLI AROUND THE WORLD

Twenty-five years after the ABA formally initiated its programs to promote the rule of law abroad, ROLI has undertaken projects in over one hundred countries and currently has around 500 professional staff who coordinate programs in more than fifty countries.⁹⁹ ROLI is not a generalist in the development arena. Instead, given its historical expertise and longstanding relationships with lawyers, judges, and courts, ROLI focuses on a specialized niche—the justice sector and its connection with civil society. To implement these programs, ROLI organizes its efforts around four substantive areas: strengthening governance and justice systems; human rights and access to justice; inclusive and sustainable development; and transitions, conflict mitigation, and peacebuilding.¹⁰⁰

These four program areas reflect the evolution in ROLI’s programming and the rule of law field as a whole. “Governance and justice system strengthening” are first-generation approaches, which ROLI soon learned must be complemented by grassroots efforts to promote “human rights and access to justice.”¹⁰¹ ROLI projects carried out in its “transitions, conflict mitigation, and peacebuilding program” reflect lessons learned in the Balkans and later in Africa and the Middle East.¹⁰² And its “inclusive and sustainable development program” reflects a contemporary understanding of the necessity of integrating rule of law and governance efforts in all development assistance.¹⁰³ Thus ROLI’s programs today reflect its learning over its twenty-five-year history, and the lessons gleaned from these endeavors continue to teach us a lot about how to protect and promote the rule of law.

98. See Symposium, *supra* note 7, at 325 (statement of Homer E. Moyer, Jr.).

99. AM. BAR ASS’N, ABA RULE OF LAW INITIATIVE PROGRAM BOOK 3–4 (2016) [hereinafter 2016 PROGRAM BOOK].

100. *Id.* at 10–25.

101. E-mail from Elizabeth Andersen to author, *supra* note 75.

102. *Id.*

103. *Id.*

A. *Strengthening Governance and Justice Systems*

An essential component of ROLI's work is the strengthening of governance and justice systems. These efforts extend across the justice sector, from the bench to the bar, the public square, and the classroom.

Judges worldwide are increasingly under attack—for example in Pakistan, Poland, Turkey, and Venezuela—and efforts to undermine judicial independence threaten many countries' justice systems.¹⁰⁴ As part of its work with courts, ROLI advocates for reforms that promote independence, accountability, and transparency in the judiciary.¹⁰⁵ ROLI has helped to draft and implement codes of judicial ethics, as well as to train judges in subjects from environmental law to human rights to sexual and gender-based violence.¹⁰⁶ ROLI recognizes that simply having an ethics code on the books is not sufficient. Judges need training and ongoing support, as well as structural guarantees and incentives for ethical and accountable conduct. Working with judges to integrate ethics and transparency into their decision-making is an important step. Not only has ROLI initiated intensive ethics training—for example, a weeklong course in Egypt—but the ethics component is built into other programs for judges and lawyers.¹⁰⁷

ROLI recently cosponsored with the Wayamo Foundation an international symposium for East African high court justices and judges: “Judicial Independence – A Foundation for Combatting International and Transnational Crimes.”¹⁰⁸ The forum featured, among others, Justice Sotomayor of the U.S. Supreme Court; the Acting Chief Justice of Tanzania; the former Chief Justice of Tanzania; the Chief Justice of Zanzibar; and members of the Supreme Courts of Rwanda and Uganda.¹⁰⁹

ROLI has also worked on enhancing court administration and efficiency through procedural reforms and court automation. In the Philippines, for example, ROLI supported nationwide implementation of small-claims procedures in first-level courts.¹¹⁰ The courts resolved seventy per-

104. See Harris Khaliq, *How Power Works in Pakistan*, N.Y. TIMES (July 24, 2017), <https://www.nytimes.com/2017/07/24/opinion/pakistan-sharif-khan.html>; Patrick Kingsley, *Over 1,000 People Are Detained in Raids in Turkey*, N.Y. TIMES (Apr. 26, 2017), <https://www.nytimes.com/2017/04/26/world/europe/turkey-1000-coup-gulen.html>; Rick Lyman, *Polish Parliament Approves Law Curtailing Courts' Independence*, N.Y. TIMES (July 21, 2017), <https://www.nytimes.com/2017/07/21/world/europe/poland-courts-independence.html>; Patricia Torres & William Neuman, *Venezuela's Departing Legislature Approves 13 New Justices*, N.Y. TIMES (Dec. 23, 2015), <https://www.nytimes.com/2015/12/24/world/americas/venezuelas-departing-legislature-approves-13-new-justices.html>.

105. 2016 PROGRAM BOOK, *supra* note 99, at 11.

106. *Id.* at 11, 16–17, 22, 27.

107. *Id.* at 102.

108. Press Release, Wayamo Found., Afr. Grp. for Justice & Accountability, and Am. Bar Ass'n Rule of Law Inst., *Judicial Indep. – A Found. for Combatting Int'l & Transnational Crimes* (Aug. 8, 2017) (on file with author).

109. *Id.*

110. See generally Rasmussen, *supra* note 23, at 782–84; 2016 PROGRAM BOOK, *supra* note 99, at 51, 54; 2015 PROGRAM BOOK, *supra* note 1, at 50–52; 2012 PROGRAM BOOK, *supra*

cent of their initial 5,414 cases during the eight-month trial period¹¹¹—a feat that caught the eye of the Philippine Supreme Court, which in 2009 implemented the program nationwide.¹¹² These tribunals offered easy and inexpensive access to the court system and caused the average filing-to-completion time to plummet from around four years to four months by 2010,¹¹³ and to merely two months by 2014.¹¹⁴

Underscoring the importance of a long-term commitment, ROLI continued to work with the Philippine Supreme Court to address court congestion. A pilot project in Quezon City, one of the most backlogged courts, resulted in vast improvements in the reduction of caseloads.¹¹⁵ But these improvements are not just a numbers game. They have resulted in litigants' increased confidence in the system and the reduction of clerical burdens on judges, who in turn can focus on case management and deliberation.¹¹⁶ For criminal defendants, the impact has been tangible—they have received release orders during hearings instead of waiting for weeks while in detention.¹¹⁷ Following this success, and with support from USAID, ROLI installed a court automation system in the Philippines to address docket congestion.¹¹⁸ Thanks to this initiative, judges on the Philippine Court of Appeals began to resolve cases that had been sitting on their dockets since the 1980s.¹¹⁹ As of October 2015, the automation initiative had helped to handle 16,518 of the 95,025 cases pending in the court

note 87, at 49, 51, 53; AM. BAR ASS'N, PROMOTING THE RULE OF LAW: 2011, at 39–40 (2011) [hereinafter 2011 PROGRAM BOOK]; 2010 PROGRAM BOOK, *supra* note 81, at 36–37; 2009 PROGRAM BOOK, *supra* note 2, at 36; The Rule of Procedure for Small Claims Cases, A.M. No. 08-8-7-SC (S.C., Oct. 27, 2009) (Phil.), <http://sc.judiciary.gov.ph/jurisprudence/2009/august2009/08-11-7-SC.htm>.

111. SUPREME COURT OF THE PHIL., FINAL REPORT ON THE IMPLEMENTATION OF THE RULE OF PROCEDURE FOR SMALL CLAIMS CASES 1 (2010) (on file with author); *see also* 2012 PROGRAM BOOK, *supra* note 87, at 49 (reporting that in “the first year small claims courts were fully operational, 3,136 small claims cases were filed, and 3,080 were adjudicated.”).

112. Rasmussen, *supra* note 23, at 784.

113. *Id.* at 783–84.

114. AM. BAR ASS'N RULE OF LAW INITIATIVE, LIMITED STUDY ON THE APPLICATION OF THE RULES OF PROCEDURES FOR SMALL CLAIMS CASES, AS AMENDED, IN THE REPUBLIC OF THE PHILIPPINES 21 (2015) [hereinafter PHILIPPINES STUDY] (on file with author).

115. For example, in 2014, case-processing time plummeted in first-level courts (from an average of 365 days to 141 days in civil cases, and 429 days to 171 days in criminal cases) and second-level courts (from an average of 524 days to 252 days in civil cases, and 734 days to 252 days in criminal cases). JEANETTE TOCOL, JUDICIAL STRENGTHENING TO IMPROVE COURT EFFECTIVENESS (JUSTICE) PROJECT: INTERNAL MID TERM EVALUATION 32 (2016) (on file with author). These vast improvements in filing-to-completion time have contributed to the reduction of pending caseloads of fifty-four Quezon City courts—from 50,194 at the end of 2008 to 33,594 cases at the end of 2014. *Id.* at 31–33; *see also* Rasmussen, *supra* note 23, at 784.

116. PHILIPPINES STUDY, *supra* note 114, at 26–38.

117. TOCOL, *supra* note 115, at 44.

118. 2012 PROGRAM BOOK, *supra* note 87, at 49; 2016 PROGRAM BOOK, *supra* note 99, at 54.

119. 2012 PROGRAM BOOK, *supra* note 87, at 49.

branches—a success rate that is more than double the project’s original target.¹²⁰

Elsewhere, ROLI has promoted criminal-justice reform as a way to fortify governance and justice systems. One way to do this is to ensure access to an effective criminal defense. In Russia, ROLI has trained defense attorneys to improve representation, with a particular emphasis on encouraging pro bono work.¹²¹ And in Lebanon, with help from the Dutch and Danish governments, ROLI opened a center to provide legal aid to juvenile and indigent defendants.¹²² As with many ROLI programs, this project involved collaboration with local organizations. Lawyers at the center have handled scores of individual cases and engaged in community outreach to great effect.¹²³

As many countries in Europe, Eurasia, and Latin America have shifted over the last decade from the inquisitorial to the adversarial or accusatorial model in criminal justice,¹²⁴ the ABA has partnered with ministries of justice, local courts, law schools, national training centers, bar associations, and lawyers to assist in the monumental process of retraining.¹²⁵ The shift—for example, from a primarily written system to advocacy conducted in public courtrooms using sophisticated evidentiary presentations—has been challenging for legal professionals trained and practiced in a different system.¹²⁶ To confront this challenge, intensive and interactive training in trial skills and advocacy has been the hallmark of the programs in the Balkans, Ukraine, Moldova, the Caucasus, Central Asia, Peru, Ecuador, Panama, and Mexico.¹²⁷

120. 2016 PROGRAM BOOK, *supra* note 99, at 51. In some areas, the success was even more dramatic. For example, ROLI reports that 94% of the pending cases in Quezon City have been disposed or archived. 2015 PROGRAM BOOK, *supra* note 1, at 51.

121. 2011 PROGRAM BOOK, *supra* note 110, at 61–62; 2010 PROGRAM BOOK, *supra* note 81, at 51–52.

122. 2011 PROGRAM BOOK, *supra* note 110, at 90.

123. *Id.*

124. See generally Allegra M. McLeod, *Exporting U.S. Criminal Justice*, 29 YALE L. & POL’Y REV. 83, 84 (2010) (discussing the U.S. government’s “legal transplant project” to promote “U.S. criminal justice techniques, criminal procedures, and transnational crime priorities” abroad); Gerald S. Reamy, *Innovation or Renovation in Criminal Procedure: Is the World Moving Toward a New Model of Adjudication?*, 27 ARIZ. J. INT’L & COMP. L. 693, 693 (2010) (observing that “[t]he adversarial adjudicative approach of most common law countries now can be found in the most unlikely places . . .”). Although this transition to an adversarial or accusatorial model has received support from the U.S. government through USAID funding, in Latin America at least it was largely driven by domestic forces. See McLeod, *supra*, at 119–20.

125. See, e.g., AM. BAR ASS’N RULE OF LAW INITIATIVE, PROGRAM TO SUPPORT THE CRIMINAL JUSTICE SECTOR IN PERU: FINAL REPORT 4–5 (2016) [hereinafter FINAL PERU REPORT] (on file with author); AM. BAR ASS’N RULE OF LAW INITIATIVE, SUPPORT FOR LAW SCHOOLS AND BAR ASSOCIATIONS IN MEXICO: FINAL REPORT 4–5 (2016) [hereinafter FINAL MEXICO REPORT] (on file with author).

126. *E.g.*, FINAL MEXICO REPORT, *supra* note 125, at 5.

127. 2016 PROGRAM BOOK, *supra* note 99, at 15, 62, 84, 88, 95–97; E-mail from Elizabeth Andersen to author, *supra* note 75. In Peru, for example, over 4,300 participants were

Despite the value of these programs, their impact is diminished if citizens have no confidence in the judiciary. To meet this challenge, ROLI has gained expertise in building community trust in the courts.¹²⁸ In Georgia, for example, where media plays an important role in forming public perceptions, ROLI improved judges' relationships with the media by developing and distributing to hundreds of judges a Judicial Media Guide instructing on the ethical bounds of judges' relationships with the media.¹²⁹ ROLI's "Road to Justice" program in Mexico provides community leaders with tours of their local courts to learn about the reformed justice system.¹³⁰ And in a similar program in Morocco, ROLI has worked with a broad network of judges, judicial clerks, lawyers, NGOs, and the national anti-corruption agency to promote transparency and combat corruption by educating citizens about how to seek redress for corruption, including information about the rights of victims, witnesses, whistleblowers, and suspects.¹³¹ Outreach events, including "open courthouse days" and information caravans, have reached more than 40,000 citizens directly, while radio programs have reached another one million.¹³²

In Panama, local needs required something else entirely. Public confidence in the justice sector had plunged due to actual or perceived corruption, so ROLI organized workshops to promote a positive image of various justice-sector entities and trained police on ethical investigative

trained between 2012 and 2016 to support the country's transition to an accusatorial system. One participant praised ROLI's approach, saying that the training was helping everyone apply the new Criminal Procedure Code "with practicality, management, and control," which helps deal the reality that "often things are different in theory than in practice." FINAL PERU REPORT, *supra* note 125, at 17. And in Mexico, a survey of lawyers from five bar associations receiving ROLI support revealed that 88% agreed or strongly agreed that bar associations have improved in the last two years in addressing "issues relevant to the implementation of the new penal justice system." FINAL MEXICO REPORT, *supra* note 125, at 38.

128. See, e.g., 2016 PROGRAM BOOK, *supra* note 99, at 54 (reporting that "[t]he respect for [the courts] has improved . . . [b]ecause people see and feel the process" thanks to ROLI's implementation of automated hearings in the Philippines).

129. AM. BAR ASS'N RULE OF LAW INITIATIVE, GEORGIA RULE OF LAW PROGRAM DECEMBER 2006 – JANUARY 2010: FINAL REPORT 4 (2010) (on file with author).

130. ABA ROLI Promotes Citizen Participation in Local Mexican Justice Systems, AM. BAR ASS'N (Jan. 2017), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/latin_america_caribbean/mexico/news/news-mexico-citizen-participation-local-justice-systems-0117.html.

131. Long-term ABA ROLI Program Combats Corruption in Morocco, AM. BAR ASS'N (Dec. 2016), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/middle_east/morocco/news/news-morocco-program-combats-corruption-1216.html.

132. *Id.*; 2016 PROGRAM BOOK, *supra* note 99, at 107. ROLI's recent evaluation found that 84% of the surveyed attendants of one of the "open courthouse days" reported that they had learned something about their rights in the criminal-justice system that they did not know before, while 79% of the respondents felt that they now had knowledge to help them report corruption. E-mail from Salome Tsereteli-Stephens, Monitoring & Evaluation Manager, Am. Bar Ass'n Rule of Law Initiative, to Thomas Kadri (Aug. 1, 2017) (on file with author).

techniques that respected due process.¹³³ Liberia also faced a public-perception challenge. Confidence in the judiciary had been low because magistrates traditionally had no formal legal education; responding to an unmet need, ROLI provided support to develop a curriculum to train the incoming cohort of magistrates.¹³⁴

Last, ROLI has worked to build a strong legal profession through professional development of lawyers, technical assistance to bar associations, and reforms to legal education.¹³⁵ These efforts are both national and regional. In Mexico, the focus has been domestic, with ROLI supporting a nationwide effort to strengthen the legal profession by promoting mandatory bar membership and lawyer certification.¹³⁶ By contrast, ROLI's Balkans Regional Rule of Law Network brings together bar associations and other groups from Albania, Bosnia and Herzegovina, Kosovo, Macedonia, and Serbia as a way to share ideas and best practices among practitioners across the region.¹³⁷ The Network recently supported intensive trainings for advocates and civil society on how to represent victims of gender-based violence.¹³⁸

One immediate result of the training came in Macedonia, where a lawyer who had attended the course undertook pro bono representation of a victim of gender-based violence in the conservative city of Bitola.¹³⁹ The domestic-abuse victim faced local resistance when she sought protection from court staff and social services.¹⁴⁰ The lawyer and his fellow students from the training consulted and shared advice.¹⁴¹ When the local agency refused to issue a protective order, the group counseled the lawyer to threaten media attention—a move that ultimately forced the agency to issue the order. In the end, the lawyer won protective orders for the victim and her children and assisted in divorce proceedings to obtain alimony and child support.¹⁴² As the lawyer later said, “[T]he success is not just mine, it is a result of strong teamwork and advice from the entire team.”¹⁴³

133. 2011 PROGRAM BOOK, *supra* note 110, at 80; 2012 PROGRAM BOOK, *supra* note 87, at 94–96.

134. 2012 PROGRAM BOOK, *supra* note 87, at 34.

135. *Id.* at 13–15.

136. 2016 PROGRAM BOOK, *supra* note 99, at 95.

137. 2016 PROGRAM BOOK, *supra* note 99, at 15.

138. AM. BAR ASS'N RULE OF LAW INITIATIVE ET AL., BALKANS REGIONAL RULE OF LAW NETWORK GENDER BASED VIOLENCE REGIONAL TRAINING PROJECT FINAL REPORT, JUNE – SEPTEMBER 2016, <https://www.americanbar.org/content/dam/aba/directories/roli/balkans/balkans-regional-combating-gender-based-violence-project-report-0717.authcheckdam.pdf>.

139. *Id.* at 7.

140. *Id.*

141. *Id.*

142. *Id.*

143. ABA ROLI Training Allows Balkan Lawyer to Represent Domestic Violence Victim, BALKANS REGIONAL RULE OF LAW NETWORK (Nov. 15, 2016, 2:49 PM), <http://brrln.org/http/record.php?id=167&mv=44>.

B. Human Rights and Access to Justice

The Universal Declaration of Human Rights proclaims that “all human beings are born free and equal in dignity and rights.”¹⁴⁴ One of ROLI’s principal aims is to bridge the gap between this proclamation and reality, particularly for women, children, and marginalized populations. ROLI’s approach is both global and local: it promotes international standards through transnational strategies while also shaping national programs to meet specific needs in particular countries.¹⁴⁵

Mali provides an illustrative example. ROLI organized community and international dialogues to promote transitional justice after a 2012 *coup d’état* resulted in massive abuses of human rights.¹⁴⁶ With ROLI’s financial and technical support, Malian citizens were able to file claims in local courts.¹⁴⁷ When those courts stalled in dispensing justice for over three years, ROLI offered strategic-litigation courses, established a victim-support fund, and engaged in advocacy to highlight the need for speedy and just resolution of the cases.¹⁴⁸ Meanwhile, in Nepal, ROLI created a network of advocates to identify, investigate, and document abuses of human rights following the conflict between insurgents and the state.¹⁴⁹ And in Moldova, Armenia, and Russia, ROLI trained defense attorneys in using remedies afforded by the European Convention of Human Rights to protect their clients’ rights.¹⁵⁰

144. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

145. 2016 PROGRAM BOOK, *supra* note 99, at 16–19.

146. 2015 PROGRAM BOOK, *supra* note 1, at 34, 36; *see also* 2016 PROGRAM BOOK, *supra* 99, at 37. In one creative approach to conflict resolution, ROLI promoted reconciliation and peacebuilding by organizing a soccer tournament that brought together nearly 6,000 people in Northern Mali. *ABA ROLI Supports Football Tournament to Promote Peace, Reconciliation, and Social Cohesion in Mali*, AM. BAR ASS’N (Oct. 2016), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/mali/news/news-mali-football-tournament-promotes-peace-reconciliation-1016.html. Abdramane Cissé, regional director of a local youth group, captured the spirit of the event: “Men and women from ethnic groups who could not see eye to eye were embracing one another for each goal scored. . . . Who would have thought that a simple goal could have such an effect on people?” *Id.* But this is more than just fun and games; by strengthening community bonds, ROLI is helping to guard against violent outbreaks in the future.

147. 2016 PROGRAM BOOK, *supra* note 99, at 37; 2015 PROGRAM BOOK, *supra* note 1, at 34, 36.

148. 2016 PROGRAM BOOK, *supra* note 99, at 37; *see also* 2015 PROGRAM BOOK, *supra* note 1, at 34, 36.

149. 2015 PROGRAM BOOK, *supra* note 1, at 46–47.

150. *Id.* at 59–60; 2011 PROGRAM BOOK, *supra* note 110, at 48, 61–62; 2010 PROGRAM BOOK, *supra* note 81, at 51–52. Legal-advocacy NGOs and legal clinics in Moldova worked between 2000 and 2010 to develop strategic litigation programs, which have resulted in clients receiving compensation from the European Court of Human Rights and the Moldovan government altering policies and practices to comply with European human-rights standards. MELANIE C. PEYSER, EVALUATION OF THE USAID-FUNDED AMERICAN BAR ASSOCIATION MOLDOVA RULE OF LAW INITIATIVE PROGRAM (2000–2010) vii (2011) (on file with author). Likewise, ROLI-trained defense attorneys helped bring six cases from Armenia to the European Court of Human Rights between 2012 and 2016. AM. BAR ASS’N RULE OF LAW INITIATIVE, ARMENIA CRIMINAL LAW REFORM PROGRAM: APRIL 15, 2012 – OCTOBER 14, 2016:

In recent years, ROLI has increasingly devoted itself to preventing and addressing violence based on sex, gender, and sexual orientation. Each country has posed difficult challenges that have called for different strategies. In El Salvador, the lesbian, gay, bisexual, and transgender (LGBT) community has been disproportionately targeted for violence and discrimination.¹⁵¹ Because much of the problem stems from a lack of sensitivity toward the LGBT community and limited recognition of the violence perpetrated, ROLI has concentrated on informing relevant actors and supporting LGBT advocacy.¹⁵² By contrast, a key issue in Turkey has been domestic violence. ROLI has worked to assist victims and increase public consciousness by training professionals to offer support, building legal capacity to support victims, and offering in-person and online events to sway public attitudes.¹⁵³

ROLI has consistently prioritized improving access to justice for the particularly vulnerable. During the last two years in the Central African Republic, ROLI-supported legal clinics provided assistance to over 4,000 clients.¹⁵⁴ ROLI helps the clients file cases with the police, and has seen seventy-two percent of the investigated cases get a referred for prosecution in that time period.¹⁵⁵ And in the Democratic Republic of the Congo, ROLI supports twelve legal-aid clinics that help survivors of gender-based violence.¹⁵⁶ From 2008 to 2015, ROLI clinics have advised 20,125 survivors and helped file 11,306 cases with 1,924 trials and 1,336 convictions.¹⁵⁷

FINAL REPORT 48 (2017) (on file with author). These kinds of programs have thrived outside of Europe, too. After a study in Haiti revealed that 100 percent of detainees at the Pétion-Ville police station were held for longer than the 48-hour legal time limit, ROLI helped local law-enforcement authorities implement new procedures to promote inter-institutional coordination and accountability. AM. BAR ASS'N RULE OF LAW INITIATIVE, ANNUAL REPORT 2016–2017: A MISSION THAT MATTERS 11 (2017) [hereinafter 2016–17 ANNUAL REPORT]. In less than a year, the number held beyond 48 hours dropped by 95 percent. *Id.* In the words of Me Jean Danton Leger, chief prosecutor of Port-au-Prince, “This initiative is so successful that it has to be implemented in the entire country.” *Id.*

151. 2016 PROGRAM BOOK, *supra* note 99, at 90–92.

152. *Id.* ROLI has promoted similar advocacy efforts elsewhere. In China, ROLI supported social-media campaigns that received more than 19 million views, bringing greater awareness and protections for LGBT people. *See* E-mail from Vanessa Hunsberger, Senior Program Officer, Asia Division, ABA ROLI, to Thomas Kadri (Aug. 9, 2017) (on file with author). And ROLI also helped win victories in eighteen strategic cases on behalf of the LGBT community in Moldova. 2016–17 ANNUAL REPORT, *supra* note 150, at 5. The cases advanced transgender rights, reduced hate crimes and hate speech, and protected the right to assemble at annual pride marches with full police protection. *Id.*; *see also* AM. BAR ASS'N RULE OF LAW INITIATIVE, MOLDOVA: NATIONAL PARTNERSHIP FOR EQUAL RIGHTS (NPER) PROGRAM 4 (June 17, 2016) (on file with author).

153. 2012 PROGRAM BOOK, *supra* note 87, at 118–19.

154. E-mail from Salome Tsereteli-Stephens, *supra* note 132.

155. *Id.*

156. *See generally* 2016 PROGRAM BOOK, *supra* note 99, at 30; 2015 PROGRAM BOOK, *supra* note 1, at 23–24; 2012 PROGRAM BOOK, *supra* note 87, at 25; 2011 PROGRAM BOOK, *supra* note 110, at 24; 2010 PROGRAM BOOK, *supra* note 81, at 22–23; 2009 PROGRAM BOOK, *supra* note 2, at 22.

157. 2016 PROGRAM BOOK, *supra* note 99, at 30.

ROLI also helped establish innovative mobile courts to create a forum to hold assailants responsible for atrocities committed in eastern Congo.¹⁵⁸ The courts exemplified the notion of bringing justice directly to the community. As one victim who testified said, “Thanks to the mobile court at Kamituga I am beginning to believe there is justice.”¹⁵⁹

ROLI has also been very active on issues of human trafficking, which remains a global challenge.¹⁶⁰ It harms an estimated 20.9 million victims each year¹⁶¹ and adversely affects stable democracies, countries in transition, and war-torn societies alike.¹⁶² Whether viewed as a “contemporary form of slavery” or “a crime against humanity,” it is heinous and must be eradicated.¹⁶³ ROLI has established regional and local initiatives, such as in the Solomon Islands, where ROLI has worked to address a gap in legislation by hosting conferences that focused on using the country’s constitution and the existing penal code to more effectively combat the horrors of human trafficking.¹⁶⁴ A recent case in Haiti illustrates the importance of training and education. At the beginning of the trial that led to the country’s first conviction in a trafficking case, the judge noted that the case was “made possible by the trainings and mentoring provided by ABA ROLI.”¹⁶⁵

These efforts have been supplemented by ROLI’s Human Trafficking Assessment Tool, which measures countries’ compliance with the United Nations Trafficking Protocol and other pertinent international legal standards by targeting “the ‘four Ps’ paradigm: prevention, protection, prosecution and partnerships.”¹⁶⁶ Through this tool, ROLI analyzes a country’s progress in combating human trafficking, identifies gaps in anti-trafficking

158. Mary McGowan Davis, *Justice under a Tent*, OPEN SPACE, Feb. 2012, at 54–57. A banner inside one of the tents announced that a military tribunal, “in Partnership with the American Bar Association, is Holding Trials Before a Military Court at Kamituga . . . Everyone Welcome.” *Id.* at 54. As retired Judge Mary McGowan Davis observed, “[T]he unremarkable reminder [is] that the real measure of the justice on offer, whether in a secure courtroom in The Hague or on a hilltop in Kamituga, is the quality of the legal process.” *Id.* at 57.

159. *Id.* (citation omitted).

160. See generally U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (June 2016), <https://www.state.gov/documents/organization/258876.pdf> (providing exhaustive study of human trafficking worldwide); *The Facts*, POLARIS, <https://polarisproject.org/facts> (last visited July 25, 2017) (collecting statistics related to human trafficking).

161. Int’l Labor Org. [ILO], *New ILO Global Estimate of Forced Labour: 20.9 million victims*, (June 1, 2012), http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang-en/index.htm.

162. 2016 PROGRAM BOOK, *supra* note 99, at 118.

163. *Id.*

164. 2012 PROGRAM BOOK, *supra* note 87, at 56; 2011 PROGRAM BOOK, *supra* note 110, at 43.

165. *ABA ROLI Helps Reach the First Conviction of a Trafficking Case in Haiti*, AM. BAR ASS’N (May 2016), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/latin_america_caribbean/haiti/news/news-haiti-first-conviction-human-trafficking-case-0516.html.

166. 2016 PROGRAM BOOK, *supra* note 99, at 119.

efforts, and gathers information vital to shaping legislation and programming in this area.¹⁶⁷

C. *Inclusive and Sustainable Development*

When countries grow rapidly, it is essential that the newfound wealth and opportunities are equitably distributed in a way that takes account of social and environmental concerns.¹⁶⁸ ROLI's approach reflects a belief that "there is a fundamental connection between rule of law and human rights, on the one hand, and public health, climate change and environmentally sustainable and socially responsible business, on the other."¹⁶⁹

The programs in this area focus on public health; environmental, land, and natural-resource governance; corporate social responsibility; and reforms of commercial laws and practices.¹⁷⁰ In China, ROLI has trained grassroots organizations on environmental legal advocacy, empowering them to bring groundbreaking litigation and promote legislative reforms.¹⁷¹ Thanks to a training program about using Chinese law to obtain public environmental records, the leader of a preeminent grassroots organization was able to take action to stop pollution by proving that certain factories were operating illegally.¹⁷² Similarly, in Guinea, ROLI developed a toolkit for communities affected by industrial mining to help protect locals' rights and improve dialogue between the communities and the mining companies.¹⁷³ And in Ukraine, a country besieged by corruption, ROLI has conducted a "You Have Power to Stop Bribery" campaign to raise public awareness, while also working directly with owners of local businesses to help them identify and combat bribery.¹⁷⁴ As with many of ROLI's programs, this initiative is multifaceted, combining public forums with television advertisements and even anti-bribery pledges.¹⁷⁵

D. *Transitions, Conflict Mitigation, and Peacebuilding*

Finally, ROLI offers assistance to countries in transition, particularly societies that are emerging from conflict.¹⁷⁶ At these crucial turning points, countries are often at their most eager to advance the rule of law

167. *See id.* at 119–20.

168. *Id.* at 20.

169. *Id.*

170. *Id.* at 21.

171. *Id.* at 22; Telephone Interview with Tom Lindley, Of Counsel, Perkins Coie (June 7, 2017).

172. *Empowering Chinese Advocates to End Pollution*, AM. BAR ASS'N (Apr. 2017), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/china/news/news-china-empowering-advocates-end-pollution-0416.html.

173. 2016 PROGRAM BOOK, *supra* note 99, at 22, 35.

174. *Id.* at 22, 85.

175. *Id.* at 85.

176. *See id.* at 23–25.

and yet also at their most vulnerable to sliding back into violence.¹⁷⁷ ROLI works to ensure that the former prevails.

At the heart of ROLI's programs in this area is a firm conviction that responses should be situated "as close to the affected communities as possible."¹⁷⁸ This is especially important when pursuing transitional justice and accountability for gross violations of human rights, a pursuit that depends on the transitioning community buying into the process.¹⁷⁹ Helping to engage and empower civil society, as well as to strengthen and protect electoral and political processes, are two crucial tools.¹⁸⁰

These principles are at work in both Libya and the Central African Republic, where ROLI works with local organizations to represent community interests as the countries recover from prolonged civil wars.¹⁸¹ Meanwhile, in El Salvador and Guatemala, ROLI's approach was more technical: cooperating with police, crime-scene technicians, scientists, prosecutors, and judges to use forensic science as a way to fight impunity in the wake of longstanding crime and civil conflict.¹⁸² Many of these forensic training tools were then suggested for use on the other side of the world when Nepal faced similar challenges.¹⁸³ Serving as a catalyst for dialogue following the conflict in Mali, ROLI trained community organizers to lead transitional-justice efforts and brought together victims to ensure their voices would be understood by the country's Truth Justice and Reconciliation Commission.¹⁸⁴ Before this effort, the victims risked not being included in the process.¹⁸⁵

IV. RULE OF LAW MATTERS: TAKING THE LONG VIEW

The vignettes above provide a flavor of ROLI's programs and their geographic expanse, giving ROLI a powerful insight into global trends and challenging it to work in diverse political and cultural settings. Of course, this sampling, while representative, hardly does justice to the depth of ROLI's global programs. However, judging these programs' success is much harder than describing the programs themselves. As a number of scholars have argued, the increasing number of rule of law initiatives has not been accompanied by reliable metrics to evaluate the effectiveness of different reform programs.¹⁸⁶ They attribute this deficit to many factors,

177. *Id.*

178. *Id.* at 23.

179. *Id.* at 24.

180. *See id.*

181. *Id.* at 25.

182. *See id.* at 88–89.

183. Telephone Interview with Elizabeth Andersen, *supra* note 87.

184. *See* 2015 PROGRAM BOOK, *supra* note 1, at 35.

185. *Id.*

186. *See, e.g.,* Erik G. Jensen, *The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses*, in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW* 336, 361–65 (Erik G. Jensen & Thomas C. Heller eds., 2003); David Marshall, *Introduction*, in *THE INTERNATIONAL RULE*

including the challenge of gathering comparable data across different countries and legal systems; the lack of funding for monitoring and evaluating rule of law initiatives; the difficulties of ascertaining causality, developing meaningful measures of impact, and documenting impact; and a lack of agreement regarding measurements.¹⁸⁷

Others argue that the change in the rule of law, as in all processes of social and political change, is not linear, but complex, and may often take decades.¹⁸⁸ As a result, approaches to evaluate these programs require a mix of quantitative and qualitative data and measurements that consider short-term, medium-term, and long-term effects.¹⁸⁹ ROLI has evolved along with the community of development practitioners and is implementing cutting-edge, interdisciplinary approaches to capture change in program implementation and measure the effectiveness and impact of programs.

Over the years, ROLI has developed robust tools to benchmark progress in key areas.¹⁹⁰ ROLI's tools—such as the Judicial Reform Index, the Legal Profession Reform Index, the Legal Education Reform Index, and the Analysis of Criminal Defense Advocacy methodology—are supplemented by monitoring and evaluation methods that can be used to assess programs on an ongoing basis.¹⁹¹

As its title suggests, the Judicial Reform Index assesses judicial reform and independence using comparative analyses of legal traditions, interna-

OF LAW MOVEMENT: A CRISIS OF LEGITIMACY AND THE WAY FORWARD xiv (David Marshall ed., 2014).

187. See Thomas Carothers, *The Problem of Knowledge*, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 15, 26–28 (Thomas Carothers ed., 2006); LINN HAMMERGREN, ENVISIONING REFORM: IMPROVING JUDICIAL PERFORMANCE IN LATIN AMERICA 241–70 (2007); Jensen, *supra* note 186, at 364–65; Wolfgang Merkel, *Measuring the Quality of Rule of Law: Virtues, Perils, Results*, in RULE OF LAW DYNAMICS IN AN ERA OF INTERNATIONAL AND TRANSNATIONAL GOVERNANCE 21, 21–47 (Michael Zürn et al., eds., 2012); Telephone Interview with Gerald Hyman, Senior Associate (Non-resident), Office of the President, Center for Strategic & International Studies (July 28, 2017) (asserting that a big challenge to measuring the efficacy of development programs is lack of common ground about what constitutes “success”).

188. RACHEL KLEINFELD, IMPROVING DEVELOPMENT AID DESIGN AND EVALUATION: PLAN FOR SAILBOATS, NOT TRAINS 4–5 (2015), available at http://carnegieendowment.org/files/devt_design_implementation.pdf [hereinafter KLEINFELD IMPROVING]; see also KRISHNA KUMAR, EVALUATING DEMOCRACY ASSISTANCE 165 (2012).

189. See KLEINFELD IMPROVING, *supra* note 188, at 57; KUMAR, *supra* note 188; Telephone Interview with Gerald Hyman, *supra* note 187 (“You could succeed in a lot of little projects and not necessarily succeed in the larger effort.”).

190. Of note, ROLI publishes annual reports that provide statistical data on the achievements of various programs over time. See, e.g., 2016 PROGRAM BOOK, *supra* note 99, at 51, 54; 2015 PROGRAM BOOK, *supra* note 1, at 23–24; 2012 PROGRAM BOOK, *supra* note 87, at 25, 51–52; 2011 PROGRAM BOOK, *supra* note 110, at 24; 2010 PROGRAM BOOK, *supra* note 81, at 22–23, 36–37; 2009 PROGRAM BOOK, *supra* note 2, at 22 (documenting trial convictions obtained by survivors of sexual- and gender-based violence in the Democratic Republic of Congo with ROLI assistance); *id.* at 36 (documenting reduced caseloads in the Philippines as the result of ROLI assistance in installing a court automation system).

191. 2016 PROGRAM BOOK, *supra* note 99, at 12–15.

tional standards, and regional norms.¹⁹² Since 2001, ROLI has undertaken forty assessments in twenty countries, helping to inform both national strategies and donor priorities in this area.¹⁹³ In 2006, then-ABA President Bill Neukom worked with ROLI to undertake a presidential initiative to develop a “rule of law index” to systematically measure the rule of law around the world on a regular basis.¹⁹⁴ That initiative was later spun off as a separate organization, the World Justice Project, and its annual index is widely hailed as a valuable measurement tool.¹⁹⁵

Searching for reliable metrics of achievement is a worthy goal, but we should be mindful that it can come at a cost. Reducing the rule of law to a statistical survey can mask both progress and stagnation. As Christopher Lehmann, Executive Director of the CEELI Institute, has remarked, “It might be easier to measure success if you’re fighting malaria—for example, how many nets have you distributed?—but success is harder to quantify when you get into rule of law, democracy, and governance.”¹⁹⁶ So, despite the need to document the efficacy of programs, providers should sound a note of caution about substituting statistics for success and reducing evaluation to a bean-counting exercise. In this arena, investing in people and providing a sustainable partnership that lasts beyond a specific program are important measures that are the foundation of a long-term effort.

Along with available quantitative evidence, we can draw valuable lessons from the ABA’s experiences in the field. Indeed, the ABA is well placed to offer *qualitative* insight into the efficacy of rule of law programs because its sustained presence in so many countries has allowed it to take the long view. So what does it take to cultivate the rule of law? In surveying the ABA’s programs across the years, three fundamental pillars emerge: strengthening institutions, investing in individuals, and developing civil society.

Strong rule of law relies on institutions that are independent, accountable, and transparent.¹⁹⁷ As a result, the “first wave” of the ABA’s rule of law work prioritized a “top-down, institution-building” approach to ad-

192. *Id.* at 12.

193. *Id.*

194. *See About Us*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/about-us> (last visited July 31, 2017).

195. *See id.*; *Our Approach*, WORLD JUSTICE PROJECT, <https://worldjusticeproject.org/about-us/overview/our-approach> (last visited July 31, 2017).

196. Telephone Interview with Christopher Lehmann, *supra* note 50; *see also* E-mail from Lisa Dickieson, Senior Vice President, Programs, Freedom House, and Former Dir. of the ABA Asia Law Initiative, to Thomas Kadri (Aug. 9, 2017) (on file with author) (“Defining ‘success’ is extremely difficult in this context, because ‘big picture’ change in [rule of law] systems takes decades.”).

197. *See* KLEINFELD ADVANCING, *supra* note 7, at 86–90, 111–15, 156–58.

vancing the rule of law.¹⁹⁸ Volunteers focused on creating ministries, law schools, and bar associations, often entirely from scratch.¹⁹⁹

At their best, these institutions can protect human rights, combat corruption, and instill confidence in the rule of law through their actions.²⁰⁰ But change in these institutions does not come quickly; it requires a sustained and focused effort to learn about needs from stakeholders, create buy-in, and support change. All of this is to say that programs tailored to specific countries, institutions, and needs are critical.²⁰¹ And cross-pollinating lessons learned from different regions and countries is essential in maximizing limited rule of law funding.

As important as institutions can be, investing in people is the only way to ensure that positive change “sticks.” Part of the ABA’s work with local organizations has been to identify and promote key individuals through direct education, professional training programs, professional development opportunities, and work experience.²⁰² These “alumni” then use their experiences with the ABA to tackle new challenges.²⁰³ They become

198. Telephone Interview with Elizabeth Andersen, *supra* note 87; ABOUT THE ABA RULE OF LAW INITIATIVE, *supra* note 34, at 2 (identifying as a “core principle” of ROLI that it should help in “[b]uilding local capacity by strengthening institutions in both the governmental and non-governmental sectors”).

199. Telephone Interview with Elizabeth Andersen, *supra* note 87. Mary Noel Pepys tells an illustrative story about the need for institutional support to protect the rule of law. When she was a CEELI liaison in Europe in the 1990s, she learned that “laws and amendments to laws are not systematically distributed to the judiciary,” so “judges actually have to go to the local newsstand to buy the law or the amendment to the law.” Videotape: Mary Noel Pepys, Speech at the ABA Annual Meeting (1997) (on file with author). When she visited one Latvian judge’s chambers and began discussing an issue of criminal law with him, he brought out his criminal code in which “he had pasted the newspaper version of the amendments to the code.” *Id.* According to Pepys, “his code looked more like an accordion than a legal text, and he could not even assure me it was up to date—but it’s all he had.” *Id.* As this story shows, even the wisest jurist cannot hope to administer the law in a fair and just manner without basic institutional support.

200. See, e.g., *supra* notes 128–136 and accompanying text.

201. Lisa Dickieson, former director of the ABA’s Asia Law Initiative, elaborated:

In my experience, many countries appear at first glance to face the same challenges. However, when you dig deeper, you find that the solutions to similar challenges across countries differ greatly. The solutions must be individualized, taking into account a range of factors such as history, culture, economy, demographics, political issues, etc. I fear that too often, in our zeal to support change, we’ve overlooked the deep complexity of the challenges.

E-mail from Lisa Dickieson, *supra* note 196.

202. See, e.g., *supra* notes 135–136 and accompanying text. Typical of the relationship of volunteers with local participants, William D. Meyer, CEELI’s first liaison in Eastern Europe, cited his mentorship of three young lawyers in Bulgaria. His family “help[ed] two of them receive LLMs from Harvard, and the third spent a summer at the Southwestern Legal Institute in Dallas.” E-mail from William D. Meyer, Of Counsel, Hutchinson Black and Cook, LLC, to author (Aug. 12, 2017) (on file with author). Meyer reports that “[o]ne of them is now a judge on the European Court of Human Rights, one runs the biggest law firm in Sofia, and one runs a private equity firm.” *Id.*

203. Telephone Interview with Christopher Lehmann, *supra* note 50.

the change-makers and the champions of the rule of law.²⁰⁴ We see an example of this phenomenon in the Democratic Republic of Congo, where ROLI's Legal Scholarship Fund for Congolese Women provides financial support to female law students committed to fighting for women's rights and Congolese empowerment.²⁰⁵ ROLI's mentorship of these students is promoting the next generation of advocates and leaders.²⁰⁶

The final piece of the puzzle is civil society. Strong institutions and dedicated individuals may be the driving forces behind the rule of law, but they will quickly run out of steam without broad-based societal support in the host country, public demand for rule of law, and institutional accountability.²⁰⁷ Mark Ellis recalls one early example that demonstrated the importance of involving civil society right from the get-go. In Romania, shortly after the collapse of the Soviet Union, the new leaders "failed to engage civil society in the drafting process" of the new constitution—a decision that "caused real concerns because citizens were not able to truly say that the Constitution was theirs."²⁰⁸ Lessons like these are why the ABA's "second wave" placed more emphasis on "bottom-up" approaches to foster resilient civil societies.²⁰⁹ Thanks to the ABA's work, groups of passionate and skilled individuals have developed both the tools and the critical mass they need to serve as watchdogs against government corruption.²¹⁰ This support has empowered them to be a voice for those who need it most.

As noted above, one of the ABA's early programmatic innovations, the Regional Institution Building Advisor Program, brought together all three of these pillars. The initiative placed people in regions around the world to serve as "roving advisors to ROLI's civil-society partners."²¹¹ A local organization that teamed up with ROLI could rely on one of these advisors to help with "strategic planning, fundraising, and operational is-

204. See *supra* note 91 and accompanying text; KLEINFELD IMPROVING, *supra* note 188, at 32 ("External funding rarely lasts long enough to weather the inevitable multiple fights that must be battled to attain any goal. Outsiders simply don't have the staying power for long-term political change: only locals do."); E-mail from William D. Meyer, *supra* note 202 ("The agents of change may not be the governmental, judicial or Bar leadership. Instead, change may ultimately come when young men and women—today's students, young judges and street lawyers—begin moving into positions of authority."); E-mail from Lisa Dickieson, *supra* note 196 ("[W]ithout local staff, it's virtually impossible to navigate or develop impactful activities abroad. The local staff bring the knowledge and understanding of the local context that are key to designing, carrying out, and evaluating programs in their home countries.").

205. 2016 PROGRAM BOOK, *supra* note 99, at 32.

206. *Id.*

207. See KLEINFELD ADVANCING, *supra* note 7, at 115–25, 158–62.

208. Symposium, *supra* note 7, at 322 (statement of Mark S. Ellis).

209. Telephone Interview with Elizabeth Andersen, *supra* note 87.

210. For more on the importance of enhancing public and professional cultures that support the rule of law, see KLEINFELD ADVANCING, *supra* note 7, at 98–108.

211. Telephone Interview with Elizabeth Andersen, *supra* note 87.

sues.”²¹² This support became essential “as development assistance flooded countries” where local organizations struggled to absorb resources and become sustainable.²¹³

By helping these organizations tackle the “day-to-day minutia,” the advisors helped to “promote the[ir] long-term stability” and their ability to “adapt[] to change.”²¹⁴ For example, advisors helped the Association of Judges and Prosecutors of Republika Srpska establish a mechanism that automatically collected membership dues through payroll deductions, which increased dues collection to one hundred percent.²¹⁵ Thanks to the resulting increase in available funds, within a year the Association was able to sustain its office and pay a full-time Executive Secretary.²¹⁶ In one fell swoop, the program thus strengthened institutions (the judiciary and prosecutors’ office), supported individuals (the new Executive Secretary, for one), and promoted a civil-society organization (the Association).

V. VOLUNTEERS IN ACTION: A HYBRID APPROACH

ROLI’s approach is distinctive in the rule of law field in one important respect: its reliance on volunteers for a global program of this magnitude.²¹⁷ Although volunteers have played an integral role in the ABA’s work from the very start, their role has shifted over time.²¹⁸ The early years were characterized by an almost-all volunteer corps, but over time the scope and sophistication of the ABA’s programs demanded development professionals.²¹⁹ Partnerships with local organizations and on-site implementation through local offices in each country mean that this professional staff has grown from a handful to more than 500 people. Even so, volunteer lawyers, judges, and other experts have remained at the core of ROLI’s programs.

The role of volunteers in rule of law initiatives has been the subject of much debate. Though many volunteers themselves report great success and feelings of personal accomplishment,²²⁰ and volunteers have been

212. *Id.*

213. *Id.*

214. RIBA PROGRAM, *supra* note 74, at 1.

215. *Id.* at 2.

216. *Id.*

217. It bears noting that several other programs, though substantially smaller in scope, have also made effective use of volunteers. Among them are Lawyers Without Borders, the International Association of Women Judges, the International Bar Association, and International Senior Lawyers Project. *See* LAWYERS WITHOUT BORDERS, <http://www.lwob.org/> (last visited July 31, 2017); INTERNATIONAL ASSOCIATION OF WOMEN JUDGES, <http://www.iawj.org/> (last visited July 31, 2017); INTERNATIONAL BAR ASSOCIATION, <https://www.ibanet.org/>; INTERNATIONAL SENIOR LAWYERS PROJECT, <http://islp.org/> (last visited July 31, 2017).

218. Symposium, *supra* note 7, at 325 (statement of Homer E. Moyer, Jr.).

219. Rasmussen, *supra* note 23, at 778; Symposium, *supra* note 7, at 325 (statement of Homer E. Moyer, Jr.).

220. *See* Interview with Mary Noel Pepys, *supra* note 34 (reporting the work she did with CEELI “became my passion and still is my passion today”); Telephone Interview with James R. Silkenat, *supra* note 28 (“When you meet with senior government leaders in Bulga-

able to foster lasting relationships, including ongoing mentorship, some observers have discussed the dangers of relying on a purely volunteer force. These critiques generally observe three areas where volunteers sometimes fall short: regional expertise, experience in implementing rule of law initiatives, and proficiency in local languages.²²¹

These concerns have merit. If volunteers are inadequately prepared for the intricacies of their region or country, they may not develop an effective and nuanced understanding of the local environment until it is too late to contribute meaningfully.²²² David Tolbert, former Executive Director of CEELI, has quipped, “If you’re going to be effective in Europe, you need to know about the European Convention on Human Rights!”²²³

Thus, as worthy as volunteering surely is, it must be effective to be worthwhile. It can be difficult for volunteers to effect systemic change during their tenures because their time commitment is so limited²²⁴ and there are “so many complexities in these societies.”²²⁵ Language barriers can also impede a volunteer’s effectiveness. Translating rule of law fundamentals to the broader population requires more than direct translation into the local language.²²⁶ Conveying the subtleties of abstract legal concepts

ria and other countries in the region and tell them your relationship to the ABA, they will say ‘wow, what a wonderful thing you did.’ That personal impact of ABA members on legal life in those countries has been profound.”); CEELI Institute, *Annual Meeting 2015 Video*, *supra* note 64 (Cynthia Aikon: “[A]s CEELI liaisons, it was a life-changing experience, and from that life-changing experience a lot of us have gone out and continue to do work in rule of law development And I think we had a huge impact on the people who worked with us as local staff: the local lawyers, the law students, the interpreters”); Interview with Michael Maya, Director, North America Office, International Bar Association (May 26, 2017) (“The reason that alums feel so attached to ABA ROLI is probably twofold: first, they find themselves surrounded by wonderful, inspiring people who leave a deep mark on them, with many becoming lasting friends. Second, most lawyers feel deep satisfaction when they help others achieve justice or realize their basic rights.”); Kim Matthews & William H. Coogan, *Kenya and the Rule of Law: The Perspective of Two Volunteers*, 60 ME. L. REV. 561, 574 (2008) (“Sensing that one is playing a role in the promotion of democracy and the rule of law, no matter how attenuated, is one of the highlights of a legal career.”); Jean C. Berman, *Volunteer Lawyers and Nation-Building: Using Experience to Serve the World Community*, 60 ME. L. REV. 533 (2008); Linda C. McGill, *Measuring the Rule of Law in India: A Volunteer Lawyer’s Experience*, 60 ME. L. REV. 537 (2008); Charles H. Norchi, *The Legal Architecture of Nation-Building: An Introduction*, 60 ME. L. REV. 281, 305 (2008).

221. See Blake K. Puckett, “We’re Very Apolitical”: *Examining the Role of the International Legal Assistance Expert*, 16 IND. J. GLOBAL LEGAL STUD. 293, 302–10 (2009).

222. See *id.* at 303.

223. Telephone Interview with David Tolbert, President, International Center for Transitional Justice (June 9, 2017).

224. Puckett, *supra* note 221, at 302; Matthews & Coogan, *supra* note 220, at 574 (“Promoting the rule of law in an emerging democracy is hard, frustrating work, and volunteers step in and out of what is often a very long-term project. There are stops and starts, delays and failures.”). Relatedly, volunteers’ effectiveness can be further limited because their brief tenures mean they are not expected to integrate fully into the local partner or workforce. *Id.* at 574.

225. Telephone Interview with David Tolbert, *supra* note 223.

226. See Puckett, *supra* note 221, at 306–08.

requires close attention to detail and a real command of the native dialect.²²⁷ For example, the term “lawyer” is directly translated into “advocat” in Russian, but “advocat” is not a catch-all term for all legal professionals because it describes only civil litigators and defense attorneys, not prosecutors or transactional lawyers.²²⁸ This significant detail could lead to confusion in a session about the responsibility of the “advocat” to use criminal charges as a way to fight corruption.

Despite these potential pitfalls, there are clear benefits to a volunteer force in rule of law programs. The individuals that ROLI has sent abroad have “had such an energizing and inspiring effect in a host of countries.”²²⁹ They bring fresh talent and ideas to a task that is, in many ways, intractable, for the work needed to preserve the rule of law has no real end date.²³⁰ Volunteers can also bring “practical knowledge and experience,” both of which “are key to strengthening the rule of law.”²³¹ The variety of “issues that now arise in most countries is so complex and so dynamic” that it can be immensely helpful to bring in people “who work on those issues on a daily basis and who have familiarity with specific country laws and cross-border legal problems.”²³²

What’s more, there are ways to address the challenges associated with volunteer assistance. Gaps in volunteers’ country-specific or regional knowledge can be mitigated through sequential visits and supplemented by the expertise of in-country partners and specialists. Many ROLI volunteers have developed expertise over the years, returning to the same countries or regions dozens of times and developing deep ties to their counterparts in the legal profession there. My colleague on the Ninth Circuit, Judge J. Clifford Wallace, has become an expert in judicial training in Asia thanks to his longstanding involvement in judicial administration and his repeat visits to the continent,²³³ and Judge John M. Walker on the Second Circuit has similarly devoted himself to justice-sector reforms in Eastern and Central Europe.²³⁴ As Judge Wallace aptly put it: “Assisting judiciaries is not a sprint, but a marathon. It starts with interest in helping

227. *See id.* at 308.

228. *Id.*

229. Telephone Interview with James R. Silkenat, *supra* note 28.

230. *See* Telephone Interview with Christopher Lehmann, *supra* note 50 (“The work of supporting rule of law efforts is like the work of doing anti-corruption: it’s never finished. You don’t start and then you’re done; it’s something you have to do in every country, every year.”).

231. *Q&A: Former ABA President Jim Silkenat Discusses Pro Bono Opportunities, Upcoming Study Tour and Commercial Law Practices with ABA ROLI*, AM. BAR ASS’N (Feb. 2017), https://www.americanbar.org/advocacy/rule_of_law/newsroom_events/general_news/news-staff-jim-silkenat-discusses-aba-rol-pro-bono-opportunities-0217.html [hereinafter *Silkenat Q&A*].

232. *Id.*

233. E-mail from Judge J. Clifford Wallace, United States Court of Appeals for the Ninth Circuit, to author (Aug. 2, 2017) (on file with author).

234. *See, e.g., U.S. Senior Judge Visits Republic of Georgia*, AM. BAR ASS’N (Oct. 10, 2007), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/

with no motive other than friendly assistance. It is nurtured by time, concern, interaction, trust, and a motive only to be of help in [their] goals.”²³⁵

Volunteer support can also enhance the integrity of a rule of law initiative. Because ROLI volunteers do their work “as a public service,” they approach their task “without agendas, but as collaborators and partners to work with people in these countries.”²³⁶ As a result, the programs have gained “credibility by virtue of the fact that people were doing this for the right reasons,”²³⁷ not for financial gain or self-interest. What’s more, the volunteers helped make these ambitious programs more economical. When USAID evaluated some of the ABA’s early projects, it “noted how much more cost-effective they were with highly skilled volunteers as opposed to highly paid consultants.”²³⁸

The volunteer component of the ABA’s programs has also been “important for generating support for the project” both internally and externally.²³⁹ Once word about the programs began to spread, they gained bipartisan support in Congress and widespread support in the ABA, which helped to generate funding and practical support.²⁴⁰ And finally, it is worth noting that being a volunteer is “a transformative experience”²⁴¹ and provides “a great educational benefit to the lawyers themselves.”²⁴² The nature of the work generally “increase[s] understanding of cross-cultural issues” and “expands a lawyer’s understanding of a challenging and changing world.”²⁴³ The practice of law is becoming increasingly globalized, and lawyers are challenged to understand the intersection of law, economics, politics, and trade in their practices. The benefits for ROLI are a two-way street: these lawyers bring increasingly sophisticated expertise to ROLI, while ROLI provides lawyers with a platform to meaningfully share their expertise.

georgia/news/news_georgia_us_judge_walker_visit.html (reporting on the activities of Judge John M. Walker, Jr. during his visit to Georgia on July 16–23, 2007.).

235. E-mail from Judge J. Clifford Wallace, *supra* note 233.

236. ABA Rule of Law Initiative, *Interview with ABA ROLI Co-founder Homer Moyer*, *supra* note 44.

237. *Id.*; see also Telephone Interview with Homer E. Moyer, Jr., *supra* note 25 (re-marking that the fact that CEELI was “truly a public service project without ulterior motives provided great credibility” in the host countries); E-mail from Judge J. Clifford Wallace, *supra* note 233 (“Being a selfless friend and giving no cause to doubt your motives is essential to real progress.”).

238. ABA Rule of Law Initiative, *Interview with ABA ROLI Co-founder Homer Moyer*, *supra* note 44.

239. *Id.*

240. *Id.*

241. Interview with Michael Maya, *supra* note 220; see also Telephone Interview with Christopher Lehmann, *supra* note 50 (“My experience with CEELI changed me more than I changed Ukraine.”); MOYER, *supra* note 25, at 7 (noting that CEELI was “named in the Harcourt Brace book as one of *America’s Greatest Places to Work with a Law Degree*”).

242. *Silkenat Q&A*, *supra* note 231.

243. *Id.*

To account for the different strengths that professionals and volunteers can bring to the table, the ABA has adopted a hybrid approach. Beginning in 2000, the ABA's model for its rule of law programs began to shift.²⁴⁴ Whereas at the outset CEELI and the various regional initiatives initially relied overwhelmingly on volunteers, the ABA later implemented an approach that combined the volunteers with professional staff.²⁴⁵ This move not only harnessed the qualities of both groups, it also alleviated donor concerns about the "revolving door" of short-term helpers and the "lack of institutional memory in programing" in this field.²⁴⁶ Under the new model, a country director resided in a particular country for at least two years, and often much longer.²⁴⁷ The director worked alongside permanent local staff who had a "mastery of the local legal system"²⁴⁸ and temporary volunteers who brought "kinetic energy"²⁴⁹ to the programs and would stay for around six months to a year.²⁵⁰ These volunteers were often chosen as specialists in their own right, armed with expertise in a particular area that would benefit the country.²⁵¹

The ABA's hybrid approach has been successful and endures to this day. It provides "the best of both worlds"—permanent staff who know how to manage grants and implement programs are complemented by experienced practitioners²⁵² and volunteers with "enthusiasm and energy."²⁵³ The hybrid approach also provides the degree of continuity that donors increasingly demand,²⁵⁴ and the volunteer component promotes a

244. Telephone Interview with David Tolbert, *supra* note 223; Telephone Interview with Elizabeth Andersen, *supra* note 87.

245. Telephone Interview with Elizabeth Andersen, *supra* note 87.

246. *Id.*

247. *Id.*

248. Telephone Interview with Patrick Del Duca, Partner, Zuber Lawler & Del Duca, and Former Member, ABA ROLI Latin America and Caribbean Council (June 6, 2017).

249. Telephone Interview with David Tolbert, *supra* note 223.

250. Telephone Interview with Elizabeth Andersen, *supra* note 87.

251. *Id.*; see also Telephone Interview with Christopher Lehmann, *supra* note 50 (explaining that, by contrast, CEELI liaisons in the 1990s were "often generalists and not subject-matter experts," though occasionally CEELI would bring in "specialists" for short-term projects).

252. For example, ROLI gave its 2016 Pro Bono Champion Award to Tom Lindley, who helped ROLI "address China's critical environmental problems and their threat to citizens' basic health and safety, especially that of disadvantaged citizens living in low-income and rural areas." Elizabeth Andersen, *Celebrating International Pro Bono*, AM. BAR ASS'N (July 2016), https://www.americanbar.org/advocacy/rule_of_law/newsroom_events/general_news/news-staff-director-celebrating-international-pro-bono-0716.html. Lindley is an expert in environmental law, and ROLI recruited him specifically for his expertise. *Id.* He worked closely with ROLI's Beijing-based staff "to develop curricula and materials for eleven international technical exchange activities with Chinese counterparts," served as a panelist at a three-day workshop in Chengdu City, and took part in technical discussions in Beijing with "leading environmental scholars engaged in drafting China's key environmental laws and policies." *Id.*; see also Telephone Interview with Tom Lindley, *supra* note 171.

253. Telephone Interview with Elizabeth Andersen, *supra* note 87.

254. *Id.*

diversity of perspectives that are shared with local communities.²⁵⁵ As Homer Moyer has said, the volunteers came “in all shapes and sizes: young lawyers, mid-career, sabbaticals, retired lawyers.”²⁵⁶ The ABA is perhaps uniquely positioned to sustain this approach because it can “tap[] into the knowledge, talent and experience of the many ABA members who are active in private legal matters, in the judiciary and in legal education.”²⁵⁷

VI. LOOKING AHEAD: CHALLENGES AND OPPORTUNITIES

Despite the success of the last twenty-five years, ROLI cannot rest on its past. Looking ahead, the challenges are not necessarily unique to ROLI. Other rule of law providers face similar issues: the changing political landscape worldwide; a backlash against rule of law; closing space for NGOs; expanding needs in the face of shrinking and competitive funding; and the challenges and opportunities of technology.

The world has changed dramatically since the ABA launched this initiative in 1990.²⁵⁸ The period following the fall of the Berlin Wall was seen as a celebration of democracy that opened the world to new opportunities.²⁵⁹ Just three months later, Nelson Mandela was released from prison and South Africa began its transition to democracy.²⁶⁰ The year 1991 marked the opening talks in the conflict between Israel and Palestine.²⁶¹ In his controversial essay, *The End of History?*, Francis Fukuyama proclaimed the end of the Cold War and optimistically declared that there was no viable competition to liberal democracy.²⁶² Now, nearly three decades later, we are seeing threats to the state system, economic globalization, the rise of violent extremism, tumultuous refugee flows, an increase in inequality, and dramatic changes in alliances, such as Britain’s “Brexit” vote to exit the European Union.

ROLI is constantly trying to adapt to these changes. Despite the strength of ROLI’s position, it will surely need to grapple with the growing backlash we are seeing against the rule of law in countries across the

255. E-mail from Lisa Dickieson, *supra* note 196 (explaining that “volunteers bring invaluable technical knowledge and comparative perspectives”).

256. ABA Rule of Law Initiative, *Interview with ABA ROLI Co-founder Homer Moyer*, *supra* note 44.

257. *Silkenat Q&A*, *supra* note 231; *see also* ABOUT THE ABA RULE OF LAW INITIATIVE, *supra* note 34, at 2 (noting the benefits to ROLI that come from the “resources and convening power of the ABA and its more than 400,000 members in the United States and abroad”).

258. *See supra* notes 23–24 and accompany text.

259. *Id.*

260. *See* Roger Ormond, *Mandela Free after 27 Years*, *GUARDIAN* (Feb. 12, 1990), <https://www.theguardian.com/century/1990-1999/Story/0,,112389,00.html>.

261. Youssef M. Ibrahim, *The Middle East Talks; Palestinians Look to Modest Goals at Madrid Talks*, *N.Y. TIMES* (Oct. 28, 1991), <http://www.nytimes.com/1991/10/28/world/the-middle-east-talks-palestinians-look-to-modest-goals-at-madrid-talks.html?pagewanted=all>.

262. Francis Fukuyama, *The End of History?*, *THE NAT’L INTEREST*, Summer 1989; *see also* FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

world.²⁶³ Freedom House has reported that, by its metrics, sixty-seven countries suffered net declines in political rights and civil liberties last year, marking the eleventh consecutive year of recession in global freedom.²⁶⁴ ROLI Director Elizabeth Andersen believes that ROLI must “think creatively” about how to respond to “the rise of populist nationalism, the widespread and systematic closing of space for civil societies, and the negative reaction to international civil society and organizations like ROLI.”²⁶⁵ Similarly, David Tolbert has warned that “the dynamics in the world are not moving in the direction of human rights and the rule of law.”²⁶⁶

ROLI must be prepared to confront this “narrowing political space” in many countries, as well as the fact that “the strong man is back.”²⁶⁷ Closing of space for civil societies has direct implications for NGOs like ROLI.²⁶⁸ As governments perceive the work of outsiders as a threat, we have seen the emergence of restrictive NGO laws. For example, China’s new law, effective January 2017, places oversight of these organizations under the security forces rather than the civil-affairs bureau.²⁶⁹ Egypt’s law subjects NGOs to risk of criminal prosecution,²⁷⁰ and NGOs operating in Russia may be required to register as “foreign agents” and be subject to draconian fines.²⁷¹ Groups as diverse as the American Chamber of Commerce and Amnesty International may fall under these restrictions.²⁷²

Equally important is how organizations will respond to the effects of globalization on the rule of law. While much rule of law work has focused on internal challenges within particular countries, ROLI must increasingly

263. Telephone Interview with Elizabeth Andersen, *supra* note 87; Telephone Interview with Homer E. Moyer, Jr., *supra* note 25 (“We have seen some great successes, we have seen backsliding, we have seen drift. That underscores the long-term effort needed here.”).

264. FREEDOM HOUSE, FREEDOM IN THE WORLD 2017—POPULISTS AND AUTOCRATS: THE DUAL THREAT TO GLOBAL DEMOCRACY 1 (2017), https://freedomhouse.org/sites/default/files/FH_FIW_2017_Report_Final.pdf.

265. Telephone Interview with Elizabeth Andersen, *supra* note 87; *see also* Telephone Interview with Christopher Lehmann, *supra* note 50 (warning that the “rise of populism” in Europe could pose serious challenges to the rule of law); Telephone Interview with Homer E. Moyer, Jr., *supra* note 25 (“What’s the next breaking of the mold? We have to be creative and innovative in how we provide technical legal assistance, how we do training; because there’s a recipe people follow, and we have to continue to question ourselves.”).

266. Telephone Interview with David Tolbert, *supra* note 223.

267. *Id.*

268. *See* THOMAS CAROTHERS, THE CLOSING SPACE CHALLENGE: HOW ARE FUNDERS RESPONDING? 9 (2015).

269. Zheping Huang, *NGOs Are under Threat in China’s Latest Crackdown Against “Foreign Forces,”* QUARTZ (Jan. 4, 2017), <https://qz.com/873489/ngos-are-trying-to-stay-alive-in-chinas-latest-crackdown-against-foreign-forces/>.

270. *Egypt’s Sisi Approves Controversial NGO Law*, AL JAZEERA (May 29, 2017), <http://www.aljazeera.com/news/2017/05/egypt-sisi-approves-controversial-ngo-law-170529182720099.html>.

271. *Russia: Government vs. Rights Groups*, HUMAN RIGHTS WATCH (July 24, 2017), <https://www.hrw.org/russia-government-against-rights-groups-battle-chronicle>.

272. *See id.*

“focus on global problems and global legal frameworks that must be coordinated across borders.”²⁷³ Issues related to health pandemics, environmental degradation, cybersecurity, and violent extremism (to name a few) require regional and possibly global solutions.²⁷⁴ Isolationism, and even bilateralism, will not do the trick.²⁷⁵

To face these challenges, civic education is critical.²⁷⁶ ROLI must explain “why the rule of law matters” and “why it is integral to so many things we care about as societies and as a global society.”²⁷⁷ As former Deputy Director of ROLI Michael Maya has said, “We appear to be hard-wired to oppose the rule of law. . . . It takes enormous work and several generations to undo that hard-wiring even in the best of cases, such as where there is sustained political will.”²⁷⁸ In Maya’s view, “[t]hat’s where the ABA Rule of Law Initiative comes in: to explain how the absence of the rule of law deprives people of prosperity and justice, two very compelling goals.”²⁷⁹

ROLI’s mission is grounded in a belief that promoting the rule of law “is the most effective long-term antidote to the most pressing problems facing the world community today.”²⁸⁰ To administer this antidote, ROLI increasingly plays the role of “convener” or “connector” from one country in transition to another.²⁸¹ This kind of exchange in expertise, particularly

273. Telephone Interview with Elizabeth Andersen, *supra* note 87.

274. *Id.*; NICHOLAS ROBINSON & CATHERINE LENA KELLY, RULE OF LAW APPROACHES TO COUNTERING VIOLENT EXTREMISM 2 (May 2017), <https://www.americanbar.org/content/dam/aba/directories/roli/misc/rule-of-law-approaches-to-countering-violent-extremism-2017.authcheckdam.pdf>.

275. Telephone Interview with Elizabeth Andersen, *supra* note 87.

276. Orth, *supra* note 8, at 185 (“If it is to endure, the rule of law must strike deep roots in the society at large. . . . The rule of law can exist only if supported by a deep social consensus that respects proper procedure, that values equal treatment and fundamental fairness, and that fears the corrupting influence of power unrestrained by law.”); Telephone Interview with Christopher Lehmann, *supra* note 50 (“You can’t take it for granted that people understand the value of the rule of law. It’s civic education that requires each generation to learn it. Sometimes we underestimate that.”).

277. Telephone Interview with Elizabeth Andersen, *supra* note 87.

278. Interview with Michael Maya, *supra* note 220.

279. *Id.*

280. ABOUT THE ABA RULE OF LAW INITIATIVE, *supra* note 34, at 1.

281. Telephone Interview with Elizabeth Andersen, *supra* note 87 (discussing the example of where ROLI’s forensic work on mass graves in El Salvador helped with its initiatives in Nepal, where some of the same experts were used). Another interesting example of ROLI bringing groups together to share expertise came in August 2016, when ROLI brought legal professionals from Central Asia to Brownsville, Texas, to witness the United States’ response to drug trafficking on the U.S.–Mexico border. See *Central Asia Stakeholders Explore Best Practices in Prosecuting Drug Crimes on US-Mexico Border*, AM. BAR ASS’N (Dec. 2016), https://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/regional-central-asia/news/news-central-asia-best-practices-prosecuting-drug-crimes-1216.html. The delegation met federal judges, prosecutors, and border agents, as well as state prosecutors and even the Brownsville mayor’s office. *Id.* The cross-regional experience showcased best practices that the delegation could bring back to implement in their own countries. *Id.*; 2016–17 ANNUAL REPORT, *supra* note 150, at 10.

between actors outside of the northern hemisphere, provides another way for ROLI to advance its mission. As one ROLI council member has said, “it takes a village” to protect the rule of law.²⁸² Few if any other organizations are as well placed to play this part, given the extensive “experience, presence, and relationships” that the ABA has developed in so many countries: “[B]y dint of the ABA’s convening power to bring together so many actors, it has an important role to play.”²⁸³

Additionally, it has become increasingly important to build broad constituencies—at home and abroad—to support this work.²⁸⁴ The ABA is well placed to fill this role: as a bar association with more than 400,000 members, convening groups to pursue common goals is at its core.²⁸⁵ Emblematic of this effort is ROLI’s rule of law issue-paper project. This effort was launched in spring 2017 with a white paper on “Rule of Law Approaches to Countering Violent Extremism,” coupled with a symposium—co-sponsored by Georgetown University Law Center—with experts ranging from political and military analysts to development professionals.²⁸⁶

Although ROLI is a nonprofit organization, money does not grow on trees, and annual and periodic support from the U.S. government, foreign governments, and foundations remains a critical and continuing challenge. As Chief Judge John R. Tunheim has said about the future of the ABA’s programs, “we need to be nimble.”²⁸⁷ Nonetheless, ROLI is an advocate of cooperation with other organizations. If ROLI finds an approach that works, it will share its methods with other organizations to benefit the rule of law.²⁸⁸ This mindset is essential to sustain the long-term approaches that make rule of law initiatives truly successful.²⁸⁹ “The rule of law is anchored in certain values—values that can’t be driven entirely by a bottom line and that don’t turn on profit.”²⁹⁰

Technology, especially the internet, is a game changer in terms of challenges and opportunities for freedom of speech, community organizing, and public discourse. ROLI must ready itself to harness the positive aspects of technology while addressing its negative implications. In particular, ROLI must adapt to the fact that the internet—and especially social media—is the tool that young people most often use to create change in

282. Telephone Interview with Patrick Del Duca, *supra* note 248.

283. Telephone Interview with Elizabeth Andersen, *supra* note 87.

284. *Id.*

285. *Id.*; ABOUT THE ABA RULE OF LAW INITIATIVE, *supra* note 34, at 2.

286. ROBINSON & KELLY, *supra* note 274, at 16.

287. Telephone Interview with Chief Judge John R. Tunheim, United States District Court for the District of Minnesota and former chair of ROLI’s Central European and Eurasian Council (June 27, 2017); *see also* Telephone Interview with James R. Silkenat, *supra* note 28 (“What in a sense CEELI started has blossomed into many different groups, and more good work is being done. But new hurdles appear every other day.”).

288. Telephone Interview with Elizabeth Andersen, *supra* note 87.

289. *Id.*; *see also* Telephone Interview with David Tolbert, *supra* note 223 (extolling the “esprit de corps that comes from working for a nonprofit entity”).

290. Telephone Interview with David Tolbert, *supra* note 223.

their communities. For example, young citizens in Côte D'Ivoire who felt smothered by a repressive regime established networks using cellphones that allowed them to communicate outside of the government's watchful eye and, ultimately, to "create a demand for accountability and for justice."²⁹¹ If ROLI can play a role in facilitating positive initiatives like the one in Côte D'Ivoire, it will help to create "a more dynamic civil society."²⁹²

ROLI is already laying the groundwork in this area. Not only has it empowered the next generation by helping to establish "Young Lawyers' Associations" in various countries,²⁹³ but ROLI has increasingly been involved in harnessing the crucial role that technology can play in access to justice. Following the mass migration of Syrian refugees into Turkey, ROLI initiated a system to provide legal information and advice by text message.²⁹⁴ The system is open twenty-four hours a day, receiving questions that are categorized and translated by ROLI and then sent to Turkish lawyers, who provide real-time advice.²⁹⁵ ROLI translates the answers back into Arabic and securely sends them back to the refugees.²⁹⁶ This back-and-forth exchange is then supplemented by "blast" text messages that contain quick tips on basic rights.²⁹⁷ In less than a year since the program's inception, over 2,500 Syrians signed up to receive these tips and hundreds more refugees received personal legal advice.²⁹⁸

At the same time, some governments are using technology to clamp down on citizens' freedom and to monitor their activities.²⁹⁹ In response, ROLI recently launched its Internet Freedom initiative. Recognizing that "the internet has become a key platform for information sharing, civic mobilization, and promoting human rights," ROLI is partnering with local civil-society organizations and experts in eighteen countries "to foster freedom of expression, association and flow of information on the internet."³⁰⁰ These programs aim to enhance legal capacity in this area by connecting local lawyers who work in the area of internet freedom; by

291. *Id.*

292. *Id.*

293. *E.g.*, 2011 PROGRAM BOOK, *supra* note 110, at 52 (discussing ROLI's support in establishing the Georgian Young Lawyers' Association).

294. 2016 PROGRAM BOOK, *supra* note 99, at 110; SALOME TSERETELI-STEPHENS, EVALUATION OF THE AMERICAN BAR ASSOCIATION'S PROGRAM TO SUPPORT LEGAL NEEDS OF SYRIAN REFUGEES IN TURKEY 12 (2017).

295. 2016 PROGRAM BOOK, *supra* note 99, at 110.

296. *Id.*

297. *Id.*

298. *Id.*

299. Seth F. Kreimer, *Censorship by Proxy: The First Amendment, Internet Intermediaries, and the Problem of the Weakest Link*, 155 U. PA. L. REV. 11, 18–21 & n.19 (2006) (discussing internet censorship in countries around the world, including China, Pakistan, Yemen, and Singapore).

300. *Internet Freedom*, AM. BAR ASS'N, https://www.americanbar.org/advocacy/rule_of_law/what-we-do/internet-freedom.html.

drafting model legislation; and by conducting workshops for lawmakers, government officials, and actors in the private sector.³⁰¹ ROLI will also provide grants to local and regional civil-society organizations as a way to strengthen grassroots capacity in this space, and, in conjunction with George Washington University Law School, ROLI has developed a series of trainings based on a specialized curriculum that will be offered without charge to lawyers and activists around the world.³⁰² Technology offers the opportunity for low-cost, instantaneous communication that will enhance access to justice.

ROLI recognizes that the many challenges ahead demand an analytical, creative long-term commitment. As it has done in the past, ROLI is committed to taking the long view.

CONCLUSION

The first twenty-five years of ABA ROLI's work has had an impact in over 100 countries around the world.³⁰³ In the process, ROLI has "lit a match on rule of law as a profession"³⁰⁴ and "nurtured a whole generation of rule of law professionals who continue to be involved in the work to today."³⁰⁵

It is easy to take the rule of law for granted, particularly in countries where the justice system runs quite smoothly. But experience has shown that appearances can be deceiving and the absence of the rule of law is felt more strongly than its presence. Even in the United States, we must be vigilant. We may be progressive, but we are not perfect. Transparency and judicial independence remain under siege throughout the world. We must not be complacent if we are to ensure that the rule of law not only prevails but endures.

301. *Id.*

302. *Id.*

303. 2015 PROGRAM BOOK, *supra* note 1, at 2.

304. CEELI Institute, *Annual Meeting 2015 Video*, *supra* note 64.

305. Telephone Interview with Christopher Lehmann, *supra* note 50 (discussing the importance of the playfully dubbed "CEELI Mafia" and the "huge boost of human capital" that the ABA brought to this field).