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Front Line Lawyers



Ballots Not Bullets: ONE ATTORNEY'S EXPERIENCE AS AN ELECTION SUPERVISOR IN BOSNIA

BY MICHAEL MILLER

Recently, I returned from an almost one-month stay in Bosnia as an Election Supervisor for the Organization for Security and Cooperation in Europe (OSCE). It was an extraordinary, exciting, stimulating, gratifying and troubling experience. While I had read a great deal about the disintegration of Yugoslavia and the ensuing war, nothing prepared me for the haunting devastation and suffering that I saw.

Before I left, many had asked me why I had volunteered for a problematic mission to a war zone. I was unable to answer the question without resorting to ideological clichés. I was embarrassed to say that I wanted to help nurture democracy; that I wanted to help put an end to human suffering; that participating in history was enticing; and that those who are privileged always carry a moral debt. However hackneyed the phrases, the sentiments were accurate. Bosnia presented a unique opportunity to reduce that debt.

Shortly after my arrival in Bosnia, Tom Hutson, the Deputy Director of the Tuzla Regional Centre for OSCE, put our role in context: "Your presence matters. Make no mistake about it. A few short months ago people were being slaughtered here.... Now there is a process in which you are key players and people are no longer being slaughtered...."

Many moments made lasting impressions: a conversation with a man who, at the height of the war, traded his car for a sack of flour; a trip to the circus with 40 war orphans; speaking with victims of the grotesque brutality and systematic rape that characterized the war; walking through a bombed out residential neighborhood near the airport at

Sarajevo; the elderly and infirm who waited long hours on equally long lines to cast their ballots; the pride Bosnians took in voting; my splendid colleagues.

54 Applicants — 8 Selected

In late June, a notice in the *New York Law Journal* announced that the New York State Bar Association was seeking members to serve for almost a month as volunteer supervisors for the impending elections in Bosnia-Herzegovina beginning in late August. I got some particulars from Bill Carroll, the Association's Executive Director, who referred me to Ed Mattes, co-chair of the Association's United Nations Committee and a representative of the United Nations Volunteers. After we spoke, I faxed my résumé to Ed and a few days later Elizabeth Velandier, another representative of the U.N. Volunteers, called and interviewed me at length.

After several more discussions with Elizabeth and Trish Heady of the Peace Corps, I was notified that of the 54 New York lawyers who had applied, I was one of only eight selected. Understandably, my wife Cindy was not enthusiastic about my trip but as usual, she was a very good sport. Seven-year old Danielle and four-year old Max could not quite understand my impending lengthy absence. I told them that I was going to a place where children had suffered and I was going to try and make things better.

Off We Go

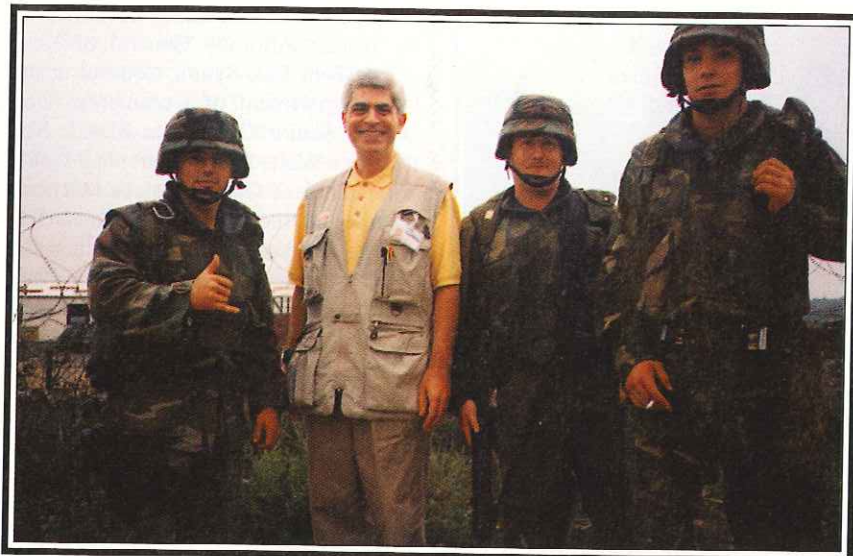
After getting my tetanus, typhoid, hepatitis and polio (yes, polio) vaccinations, I and my fellow volunteers were off to Bosnia. Precisely where I would be assigned, I did not know. We flew, via commercial airline, to Vienna. Before going to the hotel where we would spend the night,

we received a 2,000 deutsche mark (approximately \$1,400) advance of our *per diem* allowance. Why German currency? During the first two years of the war, the dinar was Bosnia's coin of the realm and inflation was rampant. When the deutsche mark, a very stable currency, was adopted, inflation was nearly eliminated although the war still raged.

At 6:30 the following morning, a charter flight took us to what had once been the jewel of the Balkans — Sarajevo. Balkan is the Turkish word for mountain. It was a beautiful sunny morning and the flight was extraordinary. I couldn't help remembering Secretary of Commerce Ron Brown, whose plane crashed into these majestic mountains on a day of foul weather a few weeks earlier.

In Sarajevo, we were immediately greeted by grim reminders of the recent fighting. The Serb's had made the city a major target, and it was under siege for nearly four years. Its international airport had suffered enormous damage from bombings, shellings and sniper fire. The main terminal was more than a mess: rubble was everywhere and boards replaced windows. There were watchtowers and foxholes full of British military personnel, armored vehicles sporting 50-millimeter machine guns. Soldiers in full battle gear were our security force. The airport had reopened only four days before our arrival; the British and French troops guarding it were clearly edgy. I found the atmosphere unsettling in the extreme.

After being processed in a large dark area — there was no electricity — in what had once been a terminal, we received our destination assignments. My good friend Steve Shapiro and I had hoped to be assigned together, but I was assigned to Tuzla, he to Bijelina, 30



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miles from Tuzla in Serb occupied territory. We were unsuccessful in getting one of our assignments changed.

Those of us bound for the Tuzla region were ushered into a C-130 Hercules transport plane. Its tail folds down so that both cargo and people can be loaded via a long, wide ramp. It was not only the plane's Brobdingnagian interior that made the flight memorable. The plane had no windows and we were strapped facing inward into fold-down seats along the plane's walls. As soon as the engines roared into action, I understood why ear plugs had been distributed — the noise was deafening. It was also *extremely* cold; even the adrenaline that coursed through my veins during the 30-minute flight couldn't warm me up.

Orientation

We landed at Eagle Base, American military headquarters for the region, and marched off the plane past a military color guard and brass band in full battle dress playing "Stars and Stripes Forever" while M-16s hung from their shoulders. A formidable array of military vehicles escorted our buses to the rather large tent that served as our orientation hall. Here we were assigned partners and given our assignments. Nancy Kreider from Columbus, Ohio, a Peace Corps alumna in her mid-sixties, became my partner in Tuzla Team 18.

We attended lectures on medical problems — five different poisonous snakes call Bosnia home — radio use and mine awareness. We were told never, ever, to drink the water. "Do not — repeat — do

not drink the water... all the water in Bosnia is unfit for consumption. Do not eat the meat unless it is very well cooked — it is best not to eat meat at all." We were also warned against eating most fruits and vegetables. Perhaps man can indeed live by bread alone, but I had brought 40 pounds of dried food with me. As my daughter might say, it was a cool move.

We were reminded of the international holy trinity cry for help: Mayday, Mayday, Mayday. That was disconcerting, but the sergeant giving the mine awareness lecture quickly refocused our attention by showing a grisly video about the peril of land mines and booby traps. He underscored the video's message by telling us to "never — repeat — never leave the paved roads. There are still an estimated six million active land mines in Bosnia.... If nature calls, do it in the road; man or woman, do it in the road. And, there are booby traps. If it is not yours, do not pick it up. If it is not yours, do not pick it up. Repeat (loudly) — if it is not yours, do not pick it up."

Tuzla

Once we were sufficiently terrified, orientation was over and we were bussed to Tuzla to meet our interpreters and drivers, young people delighted to be involved with their elections and to meet Americans. Adis Tirić, my driver, and Nedim Jahić, my interpreter, were eager to please. They drove Nancy and me to the house we would call home for the next month.

Adis, a big, strapping 18-year old with an infectious laugh, spoke almost no English. Outgoing and charming, he was an expert driver who knew the roads and towns of his country as well as any cartographer. In contrast, Nedim spoke beautiful, virtually unaccented English. A high school exchange student in the United States during his senior year, 1992, when the war began, he stayed here, supporting himself with odd jobs while attending the University of New Mexico. He spoke of his concern for his family's survival while he was safe and described his fears and loneliness — his only sources of news were the *New York Times* and television — with exquisite eloquence. He is truly an exceptional young man.

Tuzla, a northern Bosnian city nestled in a valley, is home to 130,000 people, 20,000 of whom are refugees.



Most Americans were assigned in or around Tuzla. On the corner of the street where Nancy and I would be staying, there was a small, two-story house that had been hit by an artillery shell, its downstairs walls completely blown away, although the chimney was intact. Much to my amazement, a diminutive old man still lived there. "How can he live in that rubble?" I asked. "It's his rubble," Nedim said. "Besides, where can he go?"

I was relieved to discover that although very modest, our accommodations were clean and we always had running water, though it was mostly cold. Most of the time we had electricity; the telephone was less reliable. Not all my colleagues were so well situated. Leah Hanlon, an AT&T attorney, had been billeted in a Bosnian bed and breakfast. She got the bed and the bugs got her for breakfast.

Tuzla, predominantly Muslim, is a town long known for its religious and ethnic tolerance. It is a town full of small, charming coffee houses (*kapijas*) and restaurants with limited menus. An old part of the city with narrow, winding streets reminded me of Greenwich Village or Little Italy. Although the buildings were pock-marked from fragmentation shells, the colorful political posters pasted on atop one another made for a colorful collage. An almost festive air, accompanied by the music of reconstruction, prevailed.

The streets of the old town would swell with young people during the evenings. I would often sit at my favorite *kapija* and observe them. The young people were like kids anywhere: they strode arm in arm, the boys in blue jeans and sneakers and the girls in contempo-

rary clothes, with lots of makeup. About 20 yards from the *kapija* was a well known open area where young people congregated. This was the site of a terrible tragedy on May 25, 1995, when artillery shells fired from the hills by Serbs killed 71 young people and wounded 141. Flowers placed at a memorial to those slain were a constant reminder of those innocent lives that were lost there.

The town shuts down rather early as there is a loosely enforced 10:00 p.m. curfew. The curfew did not apply to me as I had diplomatic immunity by virtue of my position as an Election Supervisor, however, there were few places to go after curfew. Once Adis and Nedim felt at ease with me, they took me to the few places that were open past curfew. By New York standards, these were very tame places but there was a feeling of excitement inherent in clandestine activity — probably similar to the *gestalt* of Prohibition Era speakeasies. The people partied with an intensity borne of having lived with the fear, terror, and uncertainty that war brings. Contributing to the eerie night atmosphere was the absence of working street lights. It was a bit spooky, but I soon got used to it.

The Election Process

There were 48 Election Supervisors assigned to Tuzla separated into three teams of 16. My partner, Nancy Kreider, and I were selected co-leaders of a team which was responsible for 64 of Tuzla's 149 polling stations. The Election Supervisors were on the front lines of the peace process. There were several attorneys from the public and private sectors, academicians and Peace Corps gradu-

ates on my team, including: Fred Cowan, the former Attorney General of Kentucky; Tom Ehr, Senior Counsel at the U.S. Department of Commerce; Don Daikin, Senior Counsel at Mobil; Kae Daikin, a White House staffer and Don's wife; Karalene Gayle, Assistant General Counsel at the New York Stock Exchange; Professor Cornell Fleischer, the director of the Islamic and Middle Eastern Studies Department of the University of Chicago; Kay Fleischer, a management consultant and Cornell's wife; Leah Hanlon, Counsel at AT&T; Professor Ann Henderson, a scholar in Eastern European affairs; and two other New York attorneys, Marilyn Hochfield of Buffalo, and Professor Joe Martino of Siena College. They are excellent professionals and very fine people who were extremely dedicated to the effort; I am proud to have been a part of the team.

The Election Supervisors worked directly with Local Election Committees (LECs) and made certain that everyone knew the rules, regulations and protocols, although our role as Election Supervisors was ambiguous. We coordinated with OSCE and the LECs about procedural issues and problems. We were more than mere monitors or observers, yet we were not really in charge. OSCE was reluctant to assert its authority under the Dayton Accords. We were instructed to use the art of persuasion when we had problems with the LECs and were discouraged from giving orders to the Bosnians. As a rule, this did not pose a problem; the Bosnians wanted us to be satisfied with their performance and went to great lengths to show us their seriousness and dedication.

Although OSCE was in charge of the elections, we relied on local officials for the preparation and administration of the polling stations. The LEC chairmen (there were no chairwomen), many of whom were attorneys, judges and former communist *apperatchiks*, were generally very serious and dedicated, as were the LEC members. They were responsible for management of the polling sites, verification of voter registration, distribution of ballots, and the general administration of the elections under our supervision and support. Needless to say, there were organizational challenges coordinating an election for a people used to one party totalitarianism.



Sarajevo

Sarajevo lies three hours south of Tuzla via narrow, winding mountain roads of breathtaking scenery. Shortly after my arrival in Bosnia I took a day trip to Sarajevo. It was the rainy season and the rains had so covered the land with lush greenery that it was almost impossible to believe that war had enveloped these slopes a scant few months earlier. As we neared Sarajevo, reminders of the war overwhelmed the senses; the closer we got, the more grotesque reminders of the war we saw. One village looked idyllic from above, but as we descended, we could see the shadow of death hanging over the little valley. Every house had been shot through by artillery fire. A community that had sustained families and farms had been abruptly, prematurely ended. If there were any survivors, they could not go home again; the land was littered with land mines.

The valley was merely a prelude to the awesome devastation of Sarajevo. Building after building had been damaged during the four year siege; The International Red Cross Building was a wreck, the once grand Hotel Intercontinental a burned out shell and Sarajevo's exquisite library, a shell with holes blown through its walls.

Election Day Preparations

The complicated elections were scheduled for September 14. Anxiety and excitement commingled as the day approached. There were complex issues concerning: dual citizenship; three major entities (Bosnia, Croatia, and *Republika Srpska*); inter-entity boundaries within 49 municipalities; where displaced persons could vote; a language with two alphabets (Roman and Cyrillic); 49 registered political parties. The Dayton Accords mandated four separate, differently colored ballots. The ballots were for the national election of the three-member presidency of Bosnia-Herzegovina, the president of the "entity" (i.e., governor), the house of representatives of the federation (Bosnia-Herzegovina and Croatia), and the cantonal assemblies.

Integrity was a major concern. Even before the first vote was cast, the parties were hurling charges of fraud at each other. A few days before the election, 149 boxes with materials for distribution to each polling station were deliv-

ered to the ballot counting center, a high school basketball court. Many of the boxes, we discovered, had items missing. The boxes for the 17 absentee (refugee/displaced persons) polling stations were significantly more deficient than the others. After much work, I generated a master inventory list and my superiors were able to obtain most of the missing items from Sarajevo, thus averting potential crises.

Election Day

We were up by 4:30 a.m. on election day, September 14. Before the polls opened at 7, my partner and I went to each of our six polling stations to certify that the cardboard ballot boxes were empty before they were sealed. People were lined up outside the polling station by 6; the air crackled. It quickly became clear that the names of many people, including LEC members and political party election observers, which should have appeared on the Voter Registration List, did not. People were understandably confused, disappointed and often angry. They perceived OSCE as the responsible party and since I was an OSCE Election Supervisor, I was frequently the object of their scorn.

Through Nedim, I told people who were ineligible to vote for whatever reason, that were it up to me, I would let them vote. I explained that I had no authority to bend the rules, even slightly. Understandably, this did not satisfy everyone. One woman, tears streaming down her face, screamed at me. Her husband and sons had died in the war and I should be ashamed for refusing her permission to vote. I was particularly upset at having to turn away a soldier who had lost a leg.

We had been instructed to send all those whose names did not appear on the voter registration list to City Hall where the Local Election Committee was supposed to solve these problems. Some people were sent back to the polling station with the wrong forms or forms that had not been certified. Again, we were required to turn them away. Others came back with forms we had never seen before, printed in Bosnian, stating that the bearer was eligible to vote. I found a working telephone and called headquarters. After much confusion, I was told to honor the form. Two hours later, I received word that the form was no longer valid!

The Bosnian officials staffing the polling stations were hard working and dedicated to making the elections a success. They were very troubled by the fact that so many people's names did not appear on the Voter Registration List; the importance of casting a ballot was incalculable. It is almost impossible for Americans to understand what democracy means to people who have known only totalitarianism and the chaos of war. While the Dayton Accords are clearly flawed, there is now peace, however fragile it might be, and people are not being killed and raped. We should be proud of this accomplishment and America's commitment to peace.

Processing and Counting Ballots

Once the polls were closed, ballots had to be transported to the counting center. This sounds simple but it was the source of considerable anxiety; until the day before the election, it was unclear who would transport the ballots. We were alternately told that IFOR would do it, that the local election officials would do it, and finally, that the supervisors had to transport some ballots. We supervisors had signed on to administer an election, not to transport ballots in the dark of night without security. The issue was finally resolved — the Local Election Committees transported most of the ballots to the counting center.

Closing the polls required the presence of supervisors. The cardboard boxes holding the ballots were too large to fit into the tiny Yugos and other European cars and so the boxes had to be unsealed in a supervisor's presence and the ballots transferred to tamper-proof plastic bags which were then sealed with numbered fasteners. Supervisors scurried from one polling station to another, to observe the transfer process, but some Local Election Committee members, exhausted after more than 12 hours at the polls, didn't wait for them to arrive, another source of serious concern.

I arrived at the counting center at 9:30 p.m. and was astonished to find a long line of 50 to 75 Bosnians huddled near the outside building wall in an effort to avoid the bone chilling rain. Inside were another 30 to 40 Bosnians, eager to deliver their plastic bags of ballots and be gone, shouting at the few OSCE supervisors who were there. Two Bosnian police



officers who sat in their car smoking cigarettes were the only security at the center. OSCE had devised no system for processing the ballots and forms from the polling stations, nor had they instructed any of us to assist in the processing of the 500,000 ballots.

Fred Cowan, the former Attorney General of Kentucky, was at the front door behind two tables placed across the doorway, feverishly recording the intake of ballots. He was confronted by several tired and some drunken Bosnians yelling at him to process their ballots so they could leave. I sent my driver to OSCE headquarters to tell them that we had serious security concerns and desperately needed assistance. Fred told me to take charge. "There's going to be a riot if we don't get this thing under control."

Fred remained at the door while I ran outside to the two Bosnian policemen with Nedim, my translator. I told Nedim to translate what I said *verbatim* and then shouted "Get the hell out of that car and stand guard at the doorway." I stated in unambiguous terms that if any more people got inside the building without my permission there would be hell to pay. The officers snapped to attention and ran to the doorway where their presence immediately calmed those waiting outside.

Inside, the situation was increasingly chaotic. A few supervisors had arrived and I tried to get them to start processing the ballots. We were improvising a system while the Bosnians were progressively out of control. One rather large, particularly loud fellow was telling his colleagues that they should just throw the ballots down and leave without going through the processing. Things were very nearly out of control. I grabbed Nedim by the sleeve and pushed our way through the crowd towards Mr. Loudfellow while shouting "out of our way" quite dramatically. Several Bosnians surrounded us and watched intently.

I again told Nedim to translate *verbatim*. I went right up to Mr. Loudfellow and in as strong a voice as I could muster said, "Back off mister. We're on your side. You're right to be angry and if you give me a few minutes we'll get a system organized and we can process your ballots so you can leave." He said he had had enough and he was going to throw his ballots down and leave. This tired, half-drunk, angry crowd scared me; we

had no security inside the building. Instinct told me that the only way a riot might be prevented was if I confronted Mr. Loudfellow, so I moved very close to him, looked him in the eye and through Nedim I told him that if he attempted to leave without processing his ballots I would have him arrested. We stared at each other for a long moment as adrenaline raced through my veins and my heart pounded. He backed off and sat down, as did his colleagues.

Soon, American IFOR troops in full battle dress delivered ballots from the absentee polling stations. To me, they were like the Cavalry in a Western. "God Bless America" I said, and explained the need for a security presence to the commanding officer. The troops stayed until the processing was running smoothly; their presence made a huge difference. The Bosnians were restrained and the sword of Damocles which had been dangling over our heads vanished. A number of supervisors arrived contemporaneously with the troops and together we established an efficient processing system. By 1:30 a.m. we had completed processing the 500,000 ballots.

Counting the ballots was a grueling 48 hour job. The Local Election Committee hired some 100 young Bosnians to assist in the counting under OSCE supervision. We worked 8 hour shifts, first counting the bagged ballots then separating them by party. The results were entered on forms which had to be certified by local election officials. On the final night of counting just a few of us supervisors were still at the counting center at 2 a.m.; counting was coming to an end. The results had to be certified by two OSCE officials and two members of the Local Election Committee. Though senior Local Election Committee Members were still present, none of our OSCE superiors who were authorized to certify were there, so after reviewing documentation, I certified the results for Tuzla with Melline Owen, a colleague from New Mexico, by signing the tally sheets.

The Ride Home

At midnight, an announcement had been made at the counting center that the following evening a "5 star bus" would take us to Vienna. This was a joke, I thought; it was no joke. The 12 to 14 hour trip on narrow, winding mountain roads

across dangerous checkpoints in Bosnia, *Republika Srpska*, Croatia, and Slovenia turned out to be anything but amusing. I couldn't believe that OSCE was treating us this way, but there was nothing to do but board the bus — an hour late.

Crossing the borders was unsettling. At each checkpoint IFOR troops waited to make certain that there was no trouble. A Croatian border guard was particularly intimidating. Clad in a uniform reminiscent of that of World War II movie SS officers, he had an attitude to match. Though we had diplomatic immunity and he had no legal authority to do so, he insisted on seeing our passports.

Shortly after he boarded the bus, an American colonel followed. He cracked a big smile and uttered a classic southern "How y'all doing?" His presence defused the situation as did the U.S. tank and Hummer vehicles with 50 millimeter machine guns at the side of the road. Once again the Cavalry saved us and the trip redefined words like "freedom" and "democracy" for me.

Thirteen hours later, we arrived at the Vienna airport hotel where OSCE was supposed to pay us the balance of our *per diems*. They were unprepared so I had breakfast in the hotel dining room and chatted with some Swedish supervisors who had been stationed near Sarajevo. They too had the problems we had in Tuzla.

After finally receiving the balance of my *per diem* and completing other bureaucratic routines, I went to the hotel health club, took a hot, hour-long shower followed by a sauna and another long hot shower. It was glorious. I had five hours before my flight home, so I went into town and treated myself to a sublime lunch at the Hotel Sacher. As I sat in the exquisitely appointed dining room eating my superbly prepared meal accompanied by a velvety wine, I was struck by the extraordinary contrast of having left the Stygian darkness and come into crystalline light.

At the start of this incredible experience, when Steve Shapiro, Andy Bratton and I had walked through the Vienna airport, we found ourselves humming the theme from "Mission Impossible." I found it both ironic and amusing that of all the films in the world, "Mission Impossible" was shown on the flight home. ◀