

# Pepperdine Law Review

---

Volume 34

Issue 2 *A Tribute to Judge Byrne & Symposium:  
Balancing Career & Family: A Work/Life Symposium*

---

Article 2

1-20-2007

## "Momentous Changes Taking Place" Matt Byrne's Leadership Role in Dialogue with the U.S.S.R.

Weyman I. Lundquist

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/plr>



Part of the [Judges Commons](#)

---

### Recommended Citation

Weyman I. Lundquist *"Momentous Changes Taking Place" Matt Byrne's Leadership Role in Dialogue with the U.S.S.R.*, 34 Pepp. L. Rev. 2 (2007)

Available at: <http://digitalcommons.pepperdine.edu/plr/vol34/iss2/2>

This Tribute is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# **“Momentous Changes Taking Place”<sup>1</sup>**

## **Matt Byrne’s Leadership Role in Dialogue with the U.S.S.R.**

Weyman I. Lundquist \*

A warm and exciting chapter of my life involved the Cold War, cold places, and the Honorable William Matthew Byrne. “The Judge’s” warm and understated but powerful Irish presence played an important role in a legal diplomatic success that began during the Cold War.

A number of Americans think of Matt Byrne as a close friend. Less well known is that a number of Russians, ranging from the former Procurator General of the Russian Federation, Alexander Sukharev, to the current Chief Justice of the Russian Supreme Court, Vyacheslav Lebedev, to Veniamin Yakovlev, Head of the Russian High Court of Arbitration, also regard Matt Byrne as a close friend in America and the exemplar, for Russians, of what an independent judge should be. How did this come about?

Our adventure started in the early 1980’s. It ended in a culminating conference bringing together a United States Supreme Court and Russian High Court Justices in Hanover, New Hampshire in 1996.<sup>2</sup> From the outset,

---

1. This phrase is taken from President George Bush’s greeting letter to the 700 American and 2,000 Soviet lawyers attending the Moscow Conference of Law and Bilateral Relations held at the Moscow Kremlin in September 1990. Judge Byrne was a delegate to that conference. By that time he had been working on dialogue with Soviet judges and lawyers for five years.

\* Weyman I. Lundquist is a Senior Partner, of Counsel, with the Heller Ehrman law firm. He is admitted to practice in Massachusetts, Alaska, California, and Vermont. Mr. Lundquist is also a Senior Fellow at Dartmouth College Dickey Center for International Understanding. He was a Founder and Past Chair of the American Bar Association, Section of Litigation. From 1983 through 1996 Mr. Lundquist was Chairman of the ABA Soviet Dialogue Committee. In this capacity he led the dialogue between lawyers and judges of the U.S.S.R and U.S. In 1990, at the Moscow Kremlin, he was singled out by the ABA President elect, Talbert D’Alembert, as the American lawyer most deserving of credit in promoting exchanges between the lawyers and judges of the U.S. and U.S.S.R. The counterpart U.S.S.R. lawyer Mr. D’Alembert cited was Soviet lawyer Mikhail Gorbachev, then President of the Union of Soviet Socialist Republics.

2. The United States Supreme Court Justice was David Souter. The Russian Justices were Tamara G. Morshchakova, Deputy Chair of the Constitutional Court of the Russian Federation, and Veniamin F. Yakovlev, Chairman of the Court of Arbitration of the Russian Federation. Other participants were Frederic W. Allen, Harold Berliner Esq., Lee C. Bollinger, David A. Brock,

we had sought peaceful legal dialogue with our Soviet peers. Our travels took us into important parts of Russia, Georgia, and Ukraine and covered the length and breadth of America, from New Hampshire to Alaska. The “Warm Judicial Warrior” accomplishments of Judge Byrne were central to what was achieved.

Soon after Ronald Reagan became President in 1980, he declared the Soviet Union an “Evil Empire.”<sup>3</sup> My former partner, Caspar Weinberger, Reagan’s Secretary of Defense, ordered a massive buildup of American arms.<sup>4</sup> American foreign policy put defense and military might before diplomacy, in an era when both the U.S. and U.S.S.R. had the nuclear ability to annihilate each other. The acronym for such a defense approach was appropriately MAD, for Mutual Assured Destruction.<sup>5</sup> American lawyers and judges, Matt Byrne a leader among them, dissatisfied with a life or death approach to resolve problems with an adversary, sought a different path. For some, even to suggest talking with the Soviets was unpatriotic and un-American. “Better dead than Red.” Matt, from the outset, was not intimidated and decided to help me establish dialogue with Soviet lawyers and judges, even in the face of opposition from the United States Government. He had traveled government opposition paths before, not the least of which was his dismissal of the Ellsberg, Russo prosecutions in 1971 for governmental misconduct.<sup>6</sup>

It was my good fortune to chair the American Bar Association’s Steering Committee responsible for promoting dialogue with Soviet judges and lawyers. Its initial charge was to cooperate with the Association of Soviet Lawyers (ASL) in advancing dialogue between the legal systems of the two countries. I quickly enlisted the assistance of Judge Byrne. The credibility this distinguished lifetime federal district court judge, respected among his peers and well-known to many outstanding conservative Republicans, gave us was immeasurable. Supporting this Committee, however, was not for the faint of heart. Judge Byrne was a known gourmet; his affection for the shared enjoyment of good food and wine is legendary. Matt’s Soviet endeavors gave a new savoir-faire to this reputation. For perhaps the only time in his life, Matt and his ABA colleagues were accused of breaking bread with The Devil!<sup>7</sup>

---

William Matthew Byrne, James O. Freeman, Weyman I. Lundquist, Esq., Gene M. Lyons, Mikhail N. Marchenko, Ekaterina A. Mishina, Roberta Cooper Ramo, Gordon A. Silverstein, Kate Stith-Cabranes, Vasily A. Vlashinin, and Daniel E. Wathen.

3. See Wikipedia, “Evil Empire,” [http://en.wikipedia.org/wiki/Evil\\_empire](http://en.wikipedia.org/wiki/Evil_empire) (last visited Sept. 19, 2006).

4. See Wikipedia, “Caspar Weinberger,” [http://en.wikipedia.org/wiki/Caspar\\_Weinberger](http://en.wikipedia.org/wiki/Caspar_Weinberger) (last visited Sept. 19, 2006).

5. See Wikipedia, “Mutual Assured Destruction,” [http://en.wikipedia.org/wiki/Mutual\\_assured\\_destruction](http://en.wikipedia.org/wiki/Mutual_assured_destruction) (last visited Sept. 19, 2006).

6. See *United States v. Ellsberg*, 687 F.2d 1316 (10th Cir. 1982).

7. See *ABA is ‘Dining with the Devil,’* WALL ST. J., Aug. 31, 1987, at 16 (the Journal’s editor noting strong opposition to Soviet Dialogue). There were at least several other media sources for

With such press, not surprisingly, the American Bar Association was split over the question of involvement with the ASL. For two years, 1986 and 1987, a faction within the ABA House of Delegates tried to terminate this endeavor. Were it not for the support of judges, with Matt Byrne joined by the late Robert Peckham, then Chief Judge of the Northern District of California, Judge Frank Kaufman of Baltimore and Judge John Coughenour of Seattle, dialogue with the Russian Judiciary and our Rule of Law, conversations with Soviet lawyers might have been stopped in their tracks.

Shortly after the ABA House of Delegates vote in 1986, the first major dialogue achievements took place in Hanover, New Hampshire. In this signal event, Judge Matt Byrne presided over a mock jury trial. The seminar venue was at Dartmouth College, alma mater of Daniel Webster.<sup>8</sup> The Soviet lawyers and judges traveling to America to participate had difficulties. The State Department did not clear them through normal channels, but they were allowed to come. They landed in Montreal, Canada. Even as they were arriving, Newsweek reporter Nick Daniloff was arrested in Russia for spying.<sup>9</sup>

My partner Bob Rosenfeld and I met the Russians in Montreal and brought them to Hanover, New Hampshire by bus.<sup>10</sup> At a Vermont-Canada customs border crossing, the men's restrooms had graffiti on the walls. The English-literate Soviet delegates were amazed and heartened, for the graffiti read "Burlington has a Commie Mayor", referring to Bernie Sanders, now Vermont's Independent Party United States Congressman and currently running for the United States Senate.<sup>11</sup>

No one could better put the Soviets at ease than Judge Matt Byrne. Even their political officers (probably KGB officials on that first trip) smiled when he would chide them about defecting, as we dined together enjoying vodka, lobster, and wine. Russian Chief Justice Lebedev would comment in

---

this opposition. The Boston Herald, in an editorial, compared the endeavor to inviting the American Nazi Committee to join a holocaust memorial committee. See *ABA Legitimizes Soviet 'Law'*, BOSTON HERALD, June 5, 1987, at 26. Not to be outdone, in August 1987, an editorial stated: "The Association of Soviet Lawyers sounds as though it could be the Russian equivalent of the American Bar Association. It can't. The ASL is instead an elite organization of Soviet operatives, a KGB controlled propaganda monster that plays a prominent role in human rights abuses." Editorial "facts" and reality were not one and the same.

8. See *Daniel Webster: Dartmouth's Favorite Son*, <http://www.dartmouth.edu/~dwebster/index.html> (last visited Oct. 16, 2006).

9. Alberta I. Cook, *Spy Arrests Give ABA-Soviet Parley Uneasy Edge*, NAT'L L.J., Sept. 29, 1986, at 6.

10. Bob Rosenfeld, a young partner of mine, had clerked for Chief Justice Warren Burger. He too shared my views of the importance of having federal judges support this project. Bob and Matt became great friends as Bob joined us on most of our travels.

11. See *Bernie Sanders: Vermont's Independent Congressman*, <http://bernie.house.gov/> (last visited Oct. 16, 2006).

the years to come that while Judge Byrne did not understand Russian, he understood Russians. The seeds of that first meeting—our discussions, the hypotheticals used to frame legal points, the give and take between American lawyers and Soviet lawyers in private practice, and particularly the mock jury trial—started dialogue. At first testy and guarded, it became increasingly open, and friendships that lasted Matt’s lifetime began. The National Law Journal’s September 29, 1986 report by Alberto J. Cook captured both the tensions of the times and the contributions of Matt Byrne:

‘Spy’ Arrests Give ABA-Soviet Parley an Uneasy Edge – It was an ironic turn of events that a Soviet United Nations employee faced espionage charges in the United States, and an American journalist sat in a Moscow jail, as Soviet and American lawyers gathered at Dartmouth College on September 12-13 to participate in a comparison of both legal systems. The sessions, with 20 lawyers from each country on hand, came just over a month after the American Bar Association’s agreement with the Association of Soviet Lawyers (ASL) survived a strong challenge from some members at the ABA’s annual meeting.

But while Soviet lawyers were queried privately many times about the possible fate under Soviet law of U.S. News & World Report’s Moscow bureau chief, Nicholas S. Daniloff, the issue was not raised publicly at the seminar until the afternoon of the second day. In general, Soviet lawyers demonstrated an unending curiosity about the inner workings of the American legal system. During question-and-answer sessions, several seemed to have a hard time understanding some of its features – particularly the notion of separation of powers among the branches of government.

They initially found it difficult to believe that the U.S. president theoretically could not influence a federal judge’s decision.

U.S. District Judge William Matthew Byrne Jr., of Los Angeles emphasized that the separation of powers in the U.S. system allows federal judges to remain independent of political influence from the executive branch.

"In our system", he said "a judge can tell the president of the United States – or the government – to get away, if you will, to 'Go to hell – you are not going to interfere with my decision.'"<sup>12</sup>

If there was a lesson that stood out to the Russian/Soviet lawyers it was the respect and power that federal district court judges had. Its exemplar was Judge William Matthew Byrne. He was obviously a decent human being. He was independent, with a lifetime tenure to uphold the Rule of Law. While beyond the reach of the Executive or Legislative branches, he was in contact with people. The importance of independent judicial power in America is hard to explain. It is exemplified by my Norwegian friend's explanation of how the royals in Norway walk the streets, ride public transportation, and talk with people. They are friendly with all, and yet command, not demand, respect. Their King is special. Matt showed them how federal district court judges are special.

The 1986 conference at Dartmouth was a strong beginning. By December 1986 The ABA Steering Committee Report to the House of Delegates was able to report the following:

- a. The Soviets have announced regulations dealing with the emigration process.
- b. The Soviets have entered into private agreements with a U.S. group (The Natural Resources Defense Council) concerning on-site verification of nuclear testing.
- c. The Soviets have changed economic laws relating to privatization of small businesses and facilitation of large joint ventures with foreign business.
- d. The Soviets have released several prominent dissenters, including Yuri Orlov and Andrei Sakharov.
- e. The Soviets have agreed to expanded cooperative efforts on environmental issues.

---

12. See Cook, *supra* note 9, at 6.

- f. The Soviets have agreed to further conferences on human rights.<sup>13</sup>

In 1983, The ABA House of Delegates set a long-range goal for the Association “to advance the Rule of Law in the world.”<sup>14</sup> An administrative agreement in 1985 and a Declaration of Cooperation in 1986 committed the ABA and ASL to professional exchanges in pursuit of knowledge of each others’ legal systems and “to advance the rule of law in the world.”<sup>15</sup> To those of us active in this endeavor this did not mean “force feeding” American values or imposing the American system on other nations. The first step was to learn about one another as a prerequisite to change. No one was more credible in articulating this than Judge Byrne, and no one was better at explaining America’s jurisprudence from the theatre of a contemporary federal courtroom. Judge Byrne gave life to the workings of the common law and its constitutional evolution, which gives vitality to American justice. It was, as he well knew, a process that ebbed and flowed.

Tenacious, continuing personal involvement was another important facet of Judge Byrne’s contribution. ABA leaders have many responsibilities. Its presidents have one-year terms of office.<sup>16</sup> Getting elected involves politics that, politely put, require time and travel that is inevitably wearing. To keep a project of international legal diplomacy on track, committed lawyers and, when possible, judges are needed. Lawyers’ involvement, at times, springs from self-interest. However, in the dialogue adventure with the Soviets, the lawyers principally involved were litigators—moved more by Abraham Lincoln’s charge that the highest calling of the lawyer is as peacemaker than the likelihood of being paid to appear in a Russian courtroom. Matt Byrne stayed ten years with this project, from 1986 to 1996. To the Soviets (and after December 31, 1989, the Russians), he was “The American Judge.”

After a strong floor fight at its New York Annual meeting in 1986, the ABA House of Delegates voted to continue dialogue with the Association of Soviet Lawyers. Further opposition and another floor fight were anticipated for the San Francisco convention in 1987. It was important that progress be shown in the interim.

Gorbachev, the first lawyer to lead the Soviet Union since Lenin, made the restructuring of its legal system a top priority of his regime. Many in

---

13. Weyman I. Lundquist, A.B.A. STEERING COMM. ON ABA/ASL SEMINARS, REPORT TO THE HOUSE OF DELEGATES (December 1986).

14. American Bar Association, International Liaison Office, <http://www.abanet.org/liaison/visitors/home.html> (last visited Sept. 20, 2006).

15. A.B.A., DECLARATION OF COOPERATION: THE AMERICAN BAR ASSOCIATION AND THE ASSOCIATION OF SOVIET LAWYERS (July 1986); *see also* A.B.A., ADMINISTRATIVE AGREEMENT BETWEEN THE AMERICAN BAR ASSOCIATION AND THE ASSOCIATION OF SOVIET LAWYERS (May 1985).

16. History of the American Bar Association, <http://www.abanet.org/about/history.html> (last visited Sept. 20, 2006).

America did not take him at his word when he called for changes in the Soviet laws – to have them “designed to protect society from abuses of power and guarantee citizens and their work collectives their rights and freedoms.”<sup>17</sup>

On May 27, 1987, six ABA representatives—William Falsgraf (President), Eugene Thomas (President-elect), Allan Benneke (Chairman of the House of Delegates), myself, and ABA staff members Tom Gonser and David Hayes—met with the President of the Russian Federation, Andrei Gromyko, and Alexander Y. Sukharev, ASL President and Minister of Justice of the Russian Federation. Our agenda was to discuss the Rule of Law and to plan legal meetings. That meeting was held in Queen Anne’s Room in the Moscow Kremlin. In his concluding remarks President Gromyko stated:

Both associations [ABA and ASL] are very large and should serve the goals of peace and the aim of the elimination of nuclear war. For lawyers to stand for such goals is good. If the lawyers speak on these issues only the mountains won’t hear. The issue of peace and of preventing nuclear war as President Reagan himself once said is the issue of all issues. While in practice our policies are different, life is the greatest value. No one wants cemetery quietness for the world. We Soviets favor legal activities without barriers. Great policy issues center on that. Lawyers’ words and declarations should come together and guide actions for other areas of life. The dome over the arena of our legal systems is peace. Gorbachev stands for a summit without preconditions. I sense that there is in your group a wide spectrum of thinking and values but all realize the importance of better legal relations for both political systems.<sup>18</sup>

Alexander Sukharev, then the ASL President and Minister of Justice of the Russia Soviet Federated Socialist Republic, came to America for a weeklong visit in June of 1987. Matt Byrne took him fishing in Wyoming and arranged for his friends, Barry and Audrey Sterling, to host a dinner for him at their Iron Horse Vineyards home. Ambassador Peter Dailey and his

---

17. MIKHAIL SERGEEVICH GORBACHEV, *PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD* 105 (1987).

18. At that time we thought that Gromyko, as President of the Russian Federation, held but a nominal post, with little say in the Gorbachev government. It has later come to light that Gromyko was the leading supporter in Gorbachev’s selection as President of the Union of Soviet Socialist Republics. In hindsight it also appears that ASL President, Alexander Sukharev, who went on to become Procurator General of the U.S.S.R. and then Russia, had a stronger position in the government than we realized.



wife, Jackie, hosted a reception for Minister Sukharev at their home in Los Angeles. Sukharev attended Matt's court a number of times, had a picture of himself taken sitting on the bench, and met United States Deputy Marshals and many judges. He also agreed on this trip to sign an agreement permitting the free and open observation of trials and other proceedings by American and Soviet Lawyers while in each others' nations.<sup>19</sup>

In early August of 1987, at the ABA Annual Meeting in San Francisco, the ABA House of Delegates again refused to abrogate its commitment to promote the Rule of Law exchanges with Soviet Lawyers.

On August 31, 1987 a contingent of American lawyers with Judges Matt Byrne, Robert Peckham and John Coughenour as its judicial leaders, arrived in Moscow for a four-day Human Rights Conference. Tired, bedraggled, maybe even belligerent, ABA members began a three-day Human Rights Conference at the Friendship House, the Headquarters of the Association of Soviet Lawyers. Our agenda had been developed in our earlier meetings in San Francisco and Los Angeles with ASL President, Minister of Justice Sukharev.

At this meeting, an aroused Sukharev is adamant that bridges between legal systems will be built.<sup>20</sup> Time and again our message to colleagues was that we need to understand the Soviets, even as we try to change them. Matt Byrne—settler of a thousand hard cases—is a virtuoso at bringing people together. Sukharev excitedly confides to us that, “Three seminars are going on – one between the Soviets, one between the Americans [The Americans openly differed about admitting problems in the American legal system] and one between Americans and Soviets.” In marked contrast to the timidity at the Dartmouth Conference, the Soviets were now expressing personal views and freely disputing one another. Sukharev exhorted his colleagues “to be bold, to speak up – like the Americans.”

---

19. There was an ironic twist to Sukharev's visit. With him as advisor and interpreter was Dr. Vasily Vlashinin of the Institute of U.S.A. and Canada. Vasily, debonair and Harvard Law School educated, had been, on more than one occasion, said to be a KGB agent – a fact I can personally refute. One evening, Sukharev, Vlashinin, Judges Byrne and Peckham met at my home for a quiet dinner. Matt looking out the window saw an unmarked car with two men in it. He was sure they were F.B.I. agents. The very next day the late Tom Hennigan, then San Francisco's F.B.I. agent in charge of international matters, came by my office to make inquiries of the prior night's events. We knew each other from playing squash at the Olympic Club. I told Tom I would love to give him a report, but with two federal district court judges present, I would feel presumptuous to take the lead in telling him what we talked about. I suggested he go directly to Judges Byrne and Peckham for the facts. End of inquiry.

20. Auspiciously, the newspaper Pravda, which spoke for the leadership of the U.S.S.R., had earlier published the remarks of M. Bogolyubov, twice Hero of Socialist Labor and a Deputy of the Supreme Soviet of the U.S.S.R., stating, “The prestige of the bar is the prestige of justice as a whole. The institution of legal defense should be an effective mechanism for preventing legal violation and judicial errors. Our whole society has a stake in such an approach.” Pravda, Moscow, U.S.S.R., April, 1987.

The Soviet participants were more surprised than we Americans to see the Soviet press give such positive coverage to lawyer activities. More and more, Judge Byrne and I believed that Alexander Sukharev was sincere in his beliefs and efforts to reform the Soviet legal system.

The ringing endorsement for Matt Byrne and the other federal judges, however, came from Professor August Mishin of Moscow State University – a one-armed hero of the Great War. He called for a Soviet judiciary with lifetime tenure, selected—not elected—talented, experienced, and independent. This, he said, is the critical component of a justice system that develops respect.

Following the lively Moscow meeting we traveled to Tbilisi, Kiev, and Leningrad (now St. Petersburg). That trip is a *mélange* of Judge Byrne travel memories. A cab driver in Moscow found him so charming he refused to be paid. In Kiev, an Academician suggested to Matt – “You Americans should put Robert Bjork on the U.S. Supreme Court. It will bring our systems closer together.” Matt and Bob Peckham posed with a wooden old-man totem in Georgia, describing themselves as the Three Judges. And very memorable – a nightclub in Leningrad where an attractive mother and daughter – the mother in her early forties and the daughter in her early twenties – danced the night away with the charming Judge. We all shed tears at the Hali Yar Monument in Kiev, marking the grave of 100,000 Soviets, 30,000 of them Jews killed by Nazis, and at the Victory Monument in Leningrad, with its stark black and white movies of the 900 day siege. We felt the deep scar imposed on the Soviet psyche, marked by the over twenty million Soviets who perished in World War II.

This visit strengthened the bridge between our legal systems. There was more to come. Harold Berliner, longtime District Attorney of Nevada County in California, a rare book printer and fellow Jesuit, in talking about our “We the People” tour with Matt, mentions Saint Paul the Apostle and his “Carpe diem” – “Seize the day” approach as a parallel to our ABA activity. “We,” says Harold, “are seizing our day for change in the Soviet legal system.”

A third seminar with the Soviets took place at the ABA headquarters in Chicago in October of 1988. This one was led by Venyamin F. Yakovlev, then Director of the Institute of Soviet Legislation and a law professor who later became Chairman of the Russia High Court of Arbitration. Yakovlev talked of the Soviets restructuring state power and revising their constitution. Felix Khefity, vice chairman of the Moscow State Bar, was there, as was our constant friend, Dr. Vlashinin, from the Institute of U.S.A. and Canada. Each of these men considered themselves friends of Matt. Each of them moved up in the Soviet judicial legal hierarchy. Several of them continue in these posts today.<sup>21</sup>

---

21. Most notable are Chief Justice of the Russian High Court Vyacheslav M. Lebedev and Veniamin Yakovlev, Chairman of the Russian High Court of Arbitration.

While exchanges continued with bar officials on a regular basis, even more important was an arrangement to back the Gorbachev liberalization reforms by an ABA Soviet lawyer intern program. Under its auspices, young Soviet lawyers came to the United States to work for American law firms from New York to Washington, D.C. to Los Angeles, and San Francisco. Matt met with many of the young Soviet lawyers, never sparing of his time, industry, and effort. He enjoyed the fact that the bilingual ability of these young Soviets permitted him directly to understand their words as well as their psyches.

Exchanges of particular significance were the California meetings in the early 1990's that led to Matt's enduring friendships with the Chief Justice of the Russian Federation, Vyacheslav Lebedev, and the former Dean of the Moscow University School of Law, Mikhail Marchenko. Lebedev was especially impressed by Matt Byrne – who he often said was “born to be a judge.” Chief Justice Lebedev talked with me about Matt's judicial presence on several occasions – the most memorable at halftime of a Spartica-Dynamo soccer match in Moscow. “Judge Byrne,” he said to me, “is not what I expect our Russian Judges to be – that is too much to ask. He is however the model – the gold standard for what I should like to be as Chief Justice.” Matt was soon to become the Chief Judge of the Central District of California. Lebedev, Chief of the Russian Supreme Court, found the federal district court the most interesting of American courts. It was a court Lebedev identified with for the functions of the Russian Supreme Court, whose appellate processes involve a mixture of de novo trial, application of precedent, and a concern for people.

With his love of the outdoors, it was fitting that Matt was invited by the Alaska Bar Association to play a key role in its memorable 1990 Northern Justice Conference. The Conference brought together an array of talented judges from America, Canada, and Russia.

Fred Friendly, television commentator and former head of P.B.S., moderated a panel on “The Problem of Justice and Law Enforcement in the North.” It was conducted in the style of his P.B.S. television series called “The Constitution.”

The Honorable Wm. Matthew Byrne Jr. was every bit Friendly's match in conducting his session on “Native Populations and The Law.” This panel explored the conflicts that arose when the legal system of a dominant culture was imposed on native populations with far older cultures. Those of us who had been involved with the dialogue with Soviet law could not help but see parallels arising when nations seek to tell and impose Rules of Law when common understanding is thin and common culture distant.<sup>22</sup> One of the fascinating lessons imparted was that Soviets, Americans, and Canadians all

---

22. The author cannot resist observing that the complexities inherent in imposing American cultural values on other cultures does not come easily to the American mind.

faced the same issues and made the same mistakes in their dealings with Native Cultures common to their northern regions.

The decade of the nineties had brought us from Cold War to warm colloquy with our Russian colleagues. Ironically, Americans had come to like the Russian's first lawyer leader since Lenin – Gorbachev – better than the Russians did. Gorbachev enjoyed America and enjoyed changing Russia. To this end, in 1990, Americans and Russians were invited to participate in an International Conference on Law and Bilateral Economic Relations at the Moscow Kremlin. The President of the Union of Soviet Socialist Republics, Mikhail Gorbachev, and President George Bush, of the U.S., signed the invitation letters! Matt and I would attend as delegates and for a few other festivities. Matt brought along his nephew Mark Foster and Mark's wife Claudia as guests.

Procurator General Sukharev held a special reception for us. By now, I had seen Gorbachev many times. For Matt and me it was in many ways a culminating trip – with another extraordinary life encounter.

Matt and I managed an evening away from our colleagues. Of course we were looking for a special place to dine – the newest and best. I learned of a Russian Mafia restaurant with dazzling décor, housed in a barracks type building. The cuisine was Armenian and the entertainment consisted of belly dancers. We found our way there and gained entry. We checked the restaurant's pricing policy with the maitre d' – no credit cards, only rubles or dollars, and established the exchange rate pricing. The food was good and the wine adequate. We became friendly with a man and his family from Azerbaijan celebrating his son's twelfth birthday – with food, wine and belly dancers. They come of age early in Azerbaijan.

The man was in his middle forties, bald, and sinewy, with a brave mustache and strong gold teeth. He was in Moscow on a holiday. He was interested in Americans. He spoke good English and was delighted to learn we were from California. He told us he had friends from there. Gregarious about every thing else, he seemed shy to talk about them.

When our check came the waiter had developed amnesia. Now he told us the check had to be paid in dollars. One dollar equaled one ruble, even though the exchange rate was forty rubles to the dollar! Only Russians could pay in rubles. We used one of the Russian words we knew well, "Nyett." The waiter was now joined by a soldier, AK-47 rifle at the ready, and the maitre d'. We stood firm on our rights. Suddenly our Azerbaijani friend joined the fray. "My guests" he said – "and I pay for you in rubles." He did. Thanking him profusely as we were about to leave, he said, "My friends from California were Richard and Arthur Carlsberg. I guided them on the trip in the Caucus Mountains when Arthur shot his trophy Tur mountain goat, and on the way back he fell from the mountain and died. I

recovered his body after the fall.” Matt embraced him. Tears welled in his eyes, for Arthur and Dick Carlsberg were Matt’s dear friends. Thus we spent our last night in Moscow with food, wine, conversation, adventure, a new friend, and an extraordinary encounter with an old and dear one.

In 1996, ten years after we first “Dined with the Devil,” we returned to Dartmouth College, in Hanover, New Hampshire. Representatives of the Russian High Courts, Chief Justices from the Supreme Courts of Maine, New Hampshire, and Vermont as well as America’s own Supreme Court Justice David Souter assembled for a Conference on “Law, the Courts and Society, Russia and America”. Again, Judge Byrne was a key participant. While the conference’s official schedule was for two days, Matt came early to greet old Russian friends - Mikhail Marchenko, now Vice Regent of Moscow State University, former Minister of Justice of Russia and now Chief Justice Veniamin Yakovlev of the Russian High Court of Arbitration, Mme Tamara Georgievna Morshchakova, First Deputy Chairman of the Russian Federation Constitution Court, and Vasily Vlashinin, Director of the Institute of U.S.A. and Canada.

No one can gainsay that great progress has not been made over the past ten years. MAD we no longer are. Russia and America are now closer than at any time in their existence. The U.S.S.R. is gone. Did Judge Matt Byrne contribute to this? Dozens of us, judges and lawyer professionals in America, judges and lawyer professionals from the Soviet Union, and the emerging Russia attest that he did. He did it by making us reach out beyond being lawyers. He was a judge who found people and made friends. Gregoriously shy, within he bubbled with human goodness. Great wealth did not impress him. Great values were important: companionship, food, wine, and conversation. He loved the grandeur of far places and the outdoors. A cocktail with ice from a glacier could be a loving cup for friends. Matt believed in honesty, decency, and justice, but he held to no single way of achieving these. He was Catholic, but Jews, Muslims, and Atheists were close and valued friends. Small wonder then that he was so effective in our relations with the Soviets – with what the Wall Street Journal had called in August of 1987 the ABA’s “Dining with the Devil.”<sup>23</sup> But it wasn’t so much a Devil we dealt with. It was, rather, for our time, a devilish issue. Could the people and leaders of the Soviet/Russian legal systems and our own be convinced that communication was a better way to deal with the potential for nuclear annihilation than distrust? Matt’s way, with all his style, can be summed up like Daniel Webster’s oratory in winning his argument with the Devil:

---

23. See *ABA is 'Dining with the Devil,'* WALL ST. J., Aug. 31, 1987, at 16.

[H]e [Webster] wasn't pleading for any one person . . . . He was telling the story and the failures and the endless journey of mankind. They got tricked and trapped and bamboozled, but it was a great journey. And no demon that was ever foaled could know the inwardness of it . . . it took a man to do that.<sup>24</sup>

The Honorable William Matthew Byrne, Jr. was such a man.

---

24. STEPHEN VINCENT BENET, *THE DEVIL AND DANIEL WEBSTER* 50, available at <http://tarlton.law.utexas.edu/lpop/etext/devil/devil.htm>.

