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# BOSNIA JUSTICE SECTOR DEVELOPMENT PROJECT II

# Report of Short-Term Judicial and Prosecutorial Ethics Expert as per USAID JSDP II Year 3 Work Plan Section 3.2.4

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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**Table of Acronyms**

| | |
|---|---|
| **AALJ** | Association of Administrative Law Judges |
| **ABA** | American Bar Association |
| **AJA** | American Judicial Association |
| **BiH** | Bosnia and Herzegovina |
| **EU** | European Union |
| **FAQ** | Frequently Asked Questions |
| **HJPC** | High Judicial and Prosecutorial Counsel |
| **JSDP II** | Justice Sector Development Project II |
| **MP** | Members of Parliament |
| **SOW** | Scope of Work |
| **USAID** | United States Agency for International Development |

## Introduction

Judges and prosecutors received training from USAID in 2011 regarding limits to their freedom of speech as dictated by their ethics codes and how to deal with increased media attention. The focus of this consultant, as per the SOW, was upon permissive and encouraged advocacy, with emphasis upon practical implications for encouraging the judiciary and the prosecution in BiH to advocate for the improvement of the administration of justice, for the preservation of judicial/prosecutorial independence and integrity, and for judicial reform.

Accordingly, this consultant was tasked with: 1) conducting peer consultations through two roundtable meetings of judges and prosecutors in Sarajevo and Banja Luka respectively, by presenting US and European models as to permissive advocacy, moderating a semi-structured discussion, and negotiating conclusions; 2) develop instructions/guidelines for the HJPC`s Disciplinary Counsel and Ethics Committee when such or similar ethics questions are posed to them.

## Executive Summary

The paradox of encouraged advocacy being a new concept in BiH, and such advocacy already regarded as a given in the US and in the EU, necessitated the creation of original training materials (see Annex 2) which were specifically tailored to the practical concerns within BiH. Judges and prosecutors at both roundtables responded quite positively to the notion of advocacy rights which they already had, but it was clear that this was a relatively new concept for them.

The participants participated in a series of hypothetical discussions, felt free to express their specific questions upon the subject, and received a series of handouts which were meant as practical references for their long-term use.

In response both to the roundtables and conferences with the HJPC, a Frequently-Asked Questions guideline (see Annex 1) was developed to facilitate future efforts in strengthening encouraged advocacy. All concerned agreed that the proper future course of action was similar roundtable and seminar activities to reinforce such advocacy, rather than further amendments to the Codes. It is recommended that these programs be scheduled anew within a year or two.

## Task 1: The roundtable discussions and their training materials

In 2011, judges and prosecutors in BiH received training from USAID regarding limitations on their free speech. Such training regarded matters which are routinely addressed in the US and the EU nations as proper matters for ethical training. In contrast, the issue of permissive and encouraged advocacy is barely, if at all, the subject of ethical training in these nations because it involves rights already presupposed within the possession of those professions. Thus, with the crucial, thorough and BiH-specific assistance of JSDP II team, training materials and roundtable presentation outlines had to be created from the ground

level. Further, case studies and hypotheticals were all based upon actual events in the US, the EU nations, and in BiH.

Based upon the above considerations, at both roundtables, all participants received a series of handouts, which were meant to serve as long-term references. These handouts were, among other matters, intended to reinforce the notion that permissive advocacy in the pursuit of judicial integrity and independence is not even a matter of significant controversy in the US and EU nations. The presentations and handouts also emphasized the preferred route of judicial advocacy via professional associations, as recommended in the Commentaries to both the Judicial and Prosecutorial Codes of Ethics. To that end, representatives from various professional associations gave presentations regarding the activities of their organization.

The participants in Sarajevo reflected a more 'activist' approach to encourage advocacy than did their counterparts in Banja Luka. Nonetheless, participants at both conferences were uniformly positive on the issue, and agreed that if judges and prosecutors do not speak out on matters directly affecting their independence, integrity, and efficiency, then they certainly cannot expect any other stakeholder to effectively do so.

## Task 2: The HJPC conferences and guidelines for future treatment of encouraged advocacy

Both before and after each roundtable discussion, this consultant, together with Ms. Ahmetaj-Hrelja or Mr. Meyerman, engaged in conferences with Disciplinary Counsel and with the Ethics Committee as to proper focus upon encouraged advocacy training, both present and future. Disciplinary Counsel emphatically lent his support to the concept that encouraged advocacy is not a matter of concern to his office, and, in fact, was a subject which had the whole support. Indeed, Mr. Murtezic agreed to be a conduit for future training in this area. All agreed with the participants at the roundtables that amendments to the Codes and complicated guidelines were not only unnecessary, but counter-productive.

As a result of the conferences and the discussions in the roundtables themselves, this consultant prepared a basic Frequently Asked Questions ('FAQ') as a template for the HJPC to expand upon as it deemed proper for future training.

Based both upon the conferences and upon the comments made during the roundtables, current enthusiasm for encouraged advocacy needs to be nurtured in order for it to be sustained. Judges and prosecutors have a fairly good idea already as to impermissible advocacy, and now they are beginning to grasp and embrace the idea of permissive and encouraged advocacy. However, this emerging acceptance of advocacy rights which they already possess should be sustained by similar activities within the next one, or two years at the latest.

## Annex 1 – Frequently Asked Questions on Permissive and Encouraged Judicial and Prosecutorial Advocacy

Question 1: Other than making a public statement, what do you mean by 'public advocacy'?

Answer 1: Although advocacy certainly includes public statements, it includes every effort made by a judge or prosecutor to inform the public about matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice. It clearly includes your taking an active role within your own profession in addressing such issues, including participating in group efforts at strengthening your profession, and actively working within your professional association in presenting a unified position on proposed, pending, or enacted legislation. It includes working with Parliament on drafting or commenting upon legislation affecting the judiciary, as requested by Parliament. It also includes the writing of scholarly legal articles or written commentary. Finally, and just as important, it includes simply explaining to your non-judicial friends the problems and challenges affecting you daily, and making yourself available to schools and other educational institutions for similar presentations. The important point is to use whatever method best suits your own personality, in pursuing this encouraged form of advocacy, always taking into account the views of your colleagues and the generous limits of encouraged activities as contemplated by the Judicial and Prosecutorial Codes.

Question 2: Is this encouraged advocacy present in other European and North American countries?

Answer 2: Yes, absolutely. The Codes in those countries are concerned only with improper comments regarding pending cases, or with intemperate comments which would tend to demean your profession. A judge or prosecutors' freedom of speech in addressing matters directly affecting the integrity, independence, and efficiency of the profession is not even an issue within the Codes of those countries. This encouraged advocacy simply reflects the rights and responsibilities judges and prosecutors have had in other jurisdictions for a long time.

Question 3: If I choose to be involved in such encouraged efforts, what are the possibilities of my being investigated by Disciplinary Counsel?

Answer 3: Disciplinary Counsel is not concerned with advocacy which is both permissive and encouraged within the Codes and, in fact, also supports judges and prosecutors exercising the proper powers of advocacy which they already have. Unless your advocacy involves pending cases, or comments which would be clearly outrageous to your colleagues, this should not even be a source of worry for you.

Question 4: I think that my comments are 'political' and therefore forbidden. Am I right?

Answer 4: No. In a real world, every comment involving your profession is 'political'. Rules 2.2.3 (d) of both the Judicial and Prosecutorial Codes of BiH only forbid comments which involve 'controversial political discussions' EXCEPT 'in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice'. Therefore, even if your comments are politically controversial, if

they fit within this very broad exception, you are free to exercise your encouraged freedom of speech.

Question 5: A colleague of mine is being unfairly attacked by the media and I want to defend him/her. What should I do?

Answer 5: While you are permitted under the Codes to publically defend your colleague, an individual effort is neither recommended nor efficient. When a colleague is being attacked, you should seriously consider voicing your concerns to the judge or prosecutor to whom you directly report. In general, attacks on individual judges or prosecutors are best handled by his/her Chief Judge/Prosecutor, while media attacks on your profession as a whole should be handled by a statement from your professional association, or by an institutional statement from the President of the Court or Chief Prosecutor.

Question 6: I have seen other judges make public statements which were proper, encouraged advocacy, but then no other judges publically supported him/her. Why should I put myself into a similarly uncomfortable situation?

Answer 6: The idea of encouraged advocacy by judges and prosecutors in BiH is a new one, and it takes time for both professions to feel comfortable with the freedom of speech which they already have. Some judges are willing to make public statements, while others do not wish to do so. It is a matter of individual personality. This is why professional associations, if properly used by their members, are the best means for proper advocacy. This method is not only specifically recommended in the Commentaries to the Codes, but affords the opportunity for the profession to advocate a unified proper position. Professional associations are effective when their leadership and members actively decide to use them as effective tools for advocacy. If a professional association, or your profession as an institution, shares your individual concerns on a topic, you are far less likely to feel isolated or vulnerable.

Question 7: Before I engage in any advocacy, what should I take into consideration?

Answer 7: First, ask yourself, 'How will the general public be served by my activity?' After all, your primary purpose is to educate the public and to mobilize public opinion behind your profession. Second, ask yourself, 'What do my colleagues think about the subject on which I am about to comment?' In other words, is this a matter of profession-wide concern, or is this just a personal concern which may not be shared with any of your colleagues? Third, ask yourself whether your matter is politically controversial. If it is, then ask yourself whether it fits within the significant exception of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice. Fourth, ask yourself whether you should attempt to have your professional association or your profession as an institution take up your cause in lieu of just an individual effort. While this is only recommended, rather than required, by the Codes, you should be certain that there is a valid reason for you to pursue individual advocacy instead of turning to associations/institutions. You may well have such valid reasons, but it is better practice to make such an analysis first. Finally, for common sense reasons (rather than ethical ones) inform your supervising judge/prosecutor as to what you propose to do. He/she may become your ally and support your cause, and, in any event, no supervising judge likes to be uninformed of any public advocacy made by you. It is also wise, in cases of individual

advocacy, to make clear that the views you express are purely yours, and are not necessarily the views of your court/office of your profession as a whole.

## Annex 2 – Roundtable materials

### a) International Examples of Codified Treatments of Proper Judiciary or Prosecutorial Professional Advocacy, all of which are within International Norms

European countries of comparable size to BiH, which are in the EU or about to be

Common emphasis upon the prohibition of comments regarding pending cases, but expressly or implicitly permits advocacy relating to matters of the operation of the courts, independence of the judiciary, or fundamental aspects of the administration of justice. For examples, see the following:

Croatian Judicial Code of Ethics, Article 12, Relation to the Public:

'…A judge may participate in public discussions on the law, the legal system and the functioning of the justice system.'
'When appearing in public, or when commenting on social phenomena through the public media, written articles, radio or TV programmes, at public conferences, lectures, etc. a judge shall endeavor to ensure that his or her appearance is based on regulations, and that the views the judge expresses and that his or her overall conduct is in conformity with the provisions of this Code' (emphasis added).

Estonian Judges' Code of Ethics:

'4. A judge may be engaged in law creation and improvement of the legal and judicial system, and in teaching and research.'
'7. A judge shall refrain from political activities and statements reflecting his or her political countenance' (please remember that 'political countenance' is not the same as 'political controversy').
'19. A judge shall not inform the public of the conflicts between colleagues or other internal affairs of the judiciary.'

Slovenian Code of Judicial Ethics, Article VI, Compatibility:

'A judge shall be included in activities that strengthen the functioning of the judiciary, guarantees legal progress and development, and contributes to improving the legal system, provided this does not give rise to doubts about his impartiality in decision-making.'

Croatian Code of Ethics for Public Prosecutors and Deputy Public Prosecutors (only addresses comments on pending cases-see Article 7)

Advantage to this approach: Wide latitude given for participation; indeed, in Slovenia, participation appears to be assumed (note the 'shall' language above).

Disadvantage to this approach: Fails to consider or encourage the unified approach through professional associations; judges must consult additional regulations, assuming that those regulations have even been enacted (Croatia).

Public expectations: In countries such as the above, advocacy by judges only began with the fall of Communism, and the public needs to becomes more confident that the judiciary/prosecution is now truly independent ;the more judges/prosecutors responsibly uses advocacy rights, the more convinced the public will be. For other countries in Europe, none of these concepts are new and are rarely or never a source of controversy.

The United States:

Codes reflect the international restriction of, and emphasis upon, comments as to pending cases. They permit comments made regarding the matters we are discussing. Therefore, unless the advocacy is intemperate, poorly reflects upon the court's dignity, or improperly attacks other judges by name (such examples of advocacy are forbidden in virtually every Code worldwide), they are not considered as potential disciplinary matters. For examples, see the following:

New York Code of Judicial Conduct, Article (B)(8):

'A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories…This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.'

American Bar Association ('ABA') Model Code of Judiciary Conduct, Commentary to Rule 3.1 Extrajudicial Activities in General:

'[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects…'

Advantage to this approach: Maximizes the presumption of judicial freedom of speech

Disadvantages to this approach: Fails to encourage the unified approach by professional associations and is vague about what constitutes acceptable activities, other than in generalities. Such an approach sometimes encourages judges to make public comments, which, while not in any ethical violation, result in publicity which reduces their reputations

Practical Implementations and Public Expectations: The public expects the judiciary to comment upon such matters, particularly through professional organizations and/or Chief Judges. It expects the same from Chief Prosecutors. The weight of each individual judge's opinion very much depends upon his/her general reputation for integrity and competence, as well as whether the judge has a negative 'political' reputation. Individual prosecutors actively work on advocacy projects within their own associations, but face very severe 'office culture' consequences if they make public statements without the prior consent of the Chief Prosecutor.

Codes and Commentaries Which Address and Define Proper Advocacy of Such Matters

The Bangalore Principles of Judicial Conduct, Commentaries 138 and 139 (2002):

Judge may speak out on matters that affect the judiciary

138. There are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice, or the personal integrity of the judge. However, even with respect to these matters, a judge should act with great restraint. While a judge may properly make public representations to the government on those matters, the judge must not be seen as 'lobbying' government or as indicating how he or she would rule if particular situations were to come before the court. Moreover, a judge must remember that his or her public comments may be taken as reflecting the views of the judiciary; it may sometimes be difficult for a judge to express an opinion that will be taken as purely personal and not that of the judiciary generally.

Judge may participate in discussion of the law

139. A judge may participate in discussion of the law ...in pointing out weaknesses in the law. In certain special circumstances, a judge's comments on draft legislation may be helpful and appropriate, provided that the judge avoids offering informal interpretations or controversial opinions on constitutionality. Normally, judicial commentary on proposed legislation or on other questions of government policy should relate to practical implications or drafting deficiencies and should avoid issues of political controversy. In general, such judicial commentary should be made as part of a collective or institutional effort by the judiciary, not that of an individual judge. '

The BiH Judiciary and Prosecutorial Codes of Ethics, With Commentaries (much of the language is adopted from the Bangalore Commentary).

Advantage to this Approach: Offers to the judge/prosecutor a comprehensive view of what does, and what does not, constitute appropriate advocacy.

Disadvantage to this Approach: Is premised upon the assumption of strong and directed collective and institutional will of the profession's leadership and individuals, which may not exist.

Practical Implementation in BiH: Everything depends upon whether the judiciary/prosecution determines to strengthen both their institutional capacity and their professional associations to effectively advocate for the profession.

Public Expectations: Public expectations are low, if not outright cynical, given the fact that the possibilities as to effective judicial/prosecutorial advocacy is still a relatively new idea, as well as the fact that expectations from reform do not often occur in reality. Public confidence will rise as the judiciary becomes more involved in active, encouraged advocacy.

## b) Hypos

I - Case Backlogs

Frustrated by the case backlogs you and your colleagues share, you, (1) write a letter to a newspaper pointing out how mediation has been underused as a tool for disposing appropriate cases and, (2) urge the President of your Court to use her connections to encourage legislation or regulations which would clearly designate further cases for mediation, based upon both subject matter and the amount of money in question.

II - Budgeting Problems

Proposed legislative budget reductions are currently pending before Parliament, which you, as an experienced judge or prosecutor, know will have a substantial negative impact upon your office's ability to fairly and timely process each case filed before your office. You feel that there is something you could and should do to encourage defeat of the proposal. Next, now assume that the proposal has already been enacted and the predicted negative impact has already occurred. You want to create and publicize a formal report, either by yourself or by a group of your colleagues, which describes in detail how the reductions have impacted upon your work.

III - Inefficiency of the Judicial Process

You are having a coffee with a journalist friend of yours. You complain to him that judicial reform based on foreign systems has made each case go on longer, unfairly shifts the burden of producing evidence, and are against principles which courts in BiH have successfully relied upon in the past. The journalist asks if he can write an article based upon your comments. You tell him that you do not care. Now, assume the same scenario, only this time you are a Chief BiH Court Judge.

IV - Modernization of Judicial and Prosecutor Offices

No one in your profession is more technologically sophisticated than you. You submit an article, which is published, that describes how greater reliance upon computerization will enhance the performance of your office. Your article does not criticize your office, but merely suggests how things can be made better. Afterwards, the judge/prosecutor above you angrily complains to you about how you failed to check with him first about your article, and how your article implies that you are speaking on behalf of the entire judiciary/prosecution.

V - Poor Advocacy by Counsel before the Court

You have noticed a decline in the quality of defense counsel before you; indeed, certain individual attorneys are exceptionally unprepared. In the meantime, both the press and the public also see this happening often during open proceedings. You ask your colleagues if they are seeing the same problem in their courts. They are. You collectively recommend to the HJPC that any attorney whose conduct has been referred by you to the Bar be required to attend additional hours of ethics and practical training, even where the Bar determines not to take further action.

VI - Proposed Legislation Affecting the Judiciary/Prosecution

You understand that MPs are considering an entire administrative remake of your court system. Although the proposal does not appear to be politically motivated, you want to make certain that judges have a voice in the drafting of the legislation, because you will be the ones who will live with the consequences. Your administrative ability is recognized by your colleagues and you want to be consulted by Parliament to assist in drafting and commenting upon the proposed legislation.

VII - Threats to Judicial/Prosecutorial Independence and Integrity

Parliament is considering legislation that would empower the Executive branch to appoint all judges and prosecutors, subject to ratification by Parliament. It further proposes Parliament's right to 'recertify' you every five years based upon your 'performance'. Of course, you are very dismayed. Your Court President/Chief Prosecutor has already made repeated comments on how this legislation seriously threatens the independence and integrity of your profession. Nonetheless, you and your colleagues are seeking further ways to inform both individual MPs and the public of the extent of this threat.

VIII - Judicial/Prosecutorial Pay and Quality of Life

You are angry about your perceived inadequate pay and the fact that your work leaves you no time for anything else. Your colleagues feel the same way. You email a suggestion to all of them that your judicial/prosecutor's professional association should be used as a 'trade union' with respect to better pay and the need for more judges/prosecutors than are currently in office.

IX – Participation of Judges or Prosecutors in Advocacy

On a topic on which you possess expert knowledge, you are called to: 1) write an article for legal publication, 2) give an interview for newspaper, TV, radio, or write an article for newspaper, 3) participate in a working group for legislative drafting. You consult the code of ethics to help you make the decision if you can and wish to accept the invitation. Does you code of ethics offer answers to your questions? If not, what additional guidelines would you find useful in decision making? What would be your main concern while deciding on this invitation?

### c) Skit for Group Case Study

Newscaster: With us for tonight's news broadcast is BiH Court Judge Nada (or Nicola) Nadic who has announced her resignation from the Court effective next month. Judge Nadic is resigning because of the continuous frustrations she has faced while serving on the bench. Judge, what are some of the frustrations which resulted in your decision to resign?

Nadic: Thank you for having me here tonight. First, the case backlog I have been dealing with is overwhelming. You cannot dispense fair justice from the bench, when the budget does not reflect the true caseload I face every day. Here I am working day and night trying to be a conscientious judge and what do I get? I get an inadequately computerized office, having to entertain numerous applications for case adjournments and feeling like I have to grant them. There is outrageous and disrespectful conduct of counsel before the Court. I have to listen to incompetent counsel try very serious cases before me. There are so many

matters before the Parliament today that will impact upon my court, and the politicians are running everything. And no matter what I do, the public thinks I'm not doing my job and that I'm subject to all sorts of political pressure and connections. I don't want to live like this anymore.

Newscaster: But, Judge, matters involving case backlog, judicial independence, inadequate budgeting, and incompetent counsel have been addressed by your judicial colleagues, your professional association, and the President of the Court. None of them are resigning. Why are you?

Nadic: Because there is much more to this. I think the pay rate for judges is deplorable. My children want to go to study in Vienna, and I can't afford that on a judge's salary. I already had to sell my summer home on the coast because it was just too expensive to maintain. I feel like I am on a road leading to nowhere. I haven't had a pay raise that matches the rising cost of living. I think being a Judge is an honorable calling, but I have to be true to me and try to earn a better living.

Newscaster: Am I correct in that you are planning to open a new restaurant?

Nadic: Yes!

Newscaster: Well, good luck to you and thank you.

<u>The audience should be divided into 7 groups based upon the following 7 issues</u>:

1. Negative budgetary impact on the court;
2. inefficiency of the system and the need for further modernization;
3. judicial problems with disrespectful or incompetent counsel;
4. comments on proposed judicial legislation currently before Parliament;
5. real or perceived threats to judicial independence by politics or veza;
6. judicial pay,
7. personal problems in being a judge.

<u>Questions for groups to address:</u>

I - Political Controversy

Were the judge's comments on your topic 'politically controversial?

If so, please state what exactly in the comments made it 'politically controversial' in BiH.

If not, please state your reasons why such comments would not generate any political argument in BiH.

Assume that the judge is a Chief Judge, rather than an individual one. Does this change your opinion solely on the 'political controversy' issue? Please explain your reasons.

Assume that the speaker was a prosecutor rather than a judge. Does this change any of your answers? Does it make a difference in your answer if the speaker is a Chief Prosecutor or an individual one?

II - Matters Directly Affecting the Operation of the Court, Independence of the Judiciary or the Administration of Justice

Regardless of your answers to the 'political controversy' issue, did the judge's comments on your topic comply with the subject matter requirements of the Codes as stated above?

If so, please be specific in connecting the comment to the permissive subject matter above.

If not, please state why there is no reasonable argument that the comment fulfills the subject matter requirement.

III - Code Violations and 'Office Culture' Violations

Did the judge's comment on your topic violate the Code?

If so, please state the specific violation.

If not, please explain how the comment fell within the permissive range of the Code.

Did the judge's comment violate the recommended course of conduct contained in the Commentary?

If so, please explain precisely why the comment is not recommended under the Commentary. Can you think of any circumstances which may justify the making of the comment, even if it was not done under the 'recommended' way?

Did the comment go outside the range of what is acceptable in your own office's milieu? Does your answer change if the speaker was a Chief Judge or Chief Prosecutor?

What would you think of a colleague who made such a comment? Why? What would your other colleagues think? Why?

IV - Efficiency and Safety

Based upon the collective experience within your group, does the comment related to your topic reflect any actual concern faced by your profession which needs to be changed?

If so, can you think of better and more efficient ways with which the judge could have expressed herself? Does your answer change if the speaker is a prosecutor?

**d) Professional Associations as means for proper advocacy**

<u>Professional Associations are effective means for proper advocacy because</u>:

1. Profession-wide opinions are always more persuasive to the public, Parliament, and the BiH Presidency than individual ones.

2. Individual risks of code or ‘office culture’ violations are eliminated.

3. They, in a unified way, inform agencies, such as the HJPC, of professional issues of concern, and the agency transmits these concerns to the legislative and executive branches. For example, the New York State Judicial Association and the eight other judicial associations in the State, transmit group concerns and opinions to the Chief Judge of the highest court in the state of NY (court of appeals) and the Office of Court Administration, who then directly communicate with the executive and legislative branches.

4. They mobilize individual members to become collectively involved in reviewing and commenting upon proposed legislation or regulations directly affecting the judiciary/prosecutor’s office, engaging in direct dialogue with all other stakeholders on any matter affecting your profession, and publicizing correctable problems which threaten their efficiency.

5. Sufficiently funded associations can hire lobbyists to represent their views before the legislative branch. See, for example, the American Judicial Association (AJA) and the Association of Administrative Law Judges (AALJ). USE WITH CAUTION - This American lobbying tradition is currently being considered by such organizations as the Kosovo Judicial Association.

6. Professional associations often combine efforts with bar associations (such as the American Bar Association

7. They serve as primary sources of continuing professional education for their members and provide ethics roundtable discussions such as ours. See, for example, the Schleswig-Holstein (Germany) Ethics Roundtable 2006.

8. They serve as convenient forums for members to share their individual complaints and concerns. The more an individual member understands that her concerns are shared by her colleagues, the more likely she will participate in encouraged, collective advocacy.

<u>Professional Associations are ineffective when</u>:

1. The leadership and members are too passive and are too inhibited to take advantage of the opportunities of encouraged advocacy which the association offers. The association itself exists in name only, and fails even to be active.

2. Members, at their own risk, fail to consider the association’s format and conduct their own individual advocacy, without taking into consideration the views of their colleagues or how their individual comments may reflect upon their entire profession.

3. The leadership and members use the association for personal agendas, useless arguments and factionalism. ‘Personalities’ become more important than ‘principles’.

4. Associations lack sufficient funds and thus discontinue lobbying activities. This has happened to one American association, and subsequent member interest in the association’s activities declined.

### e) Agenda (Roundtable discussion in Sarajevo)

| **Wednesday, March 14, 2012** | |
|---|---|
| 09:30 – 10:00 | Registration |
| 10:00 – 10:15 | Introductory Remarks<br>Ismet Trumic, FBiH JPTC, Director<br>Gerald Meyerman, USAID JSDP II, Chief of Party |
| 10:15 – 11:15 | Permissive Advocacy by Judges and Prosecutors - Preliminary Professional and Practical Considerations Faced by Judges and Prosecutors Both in BiH and Worldwide<br>*Presentation and discussion* |
| 11:15 – 11:30 | Coffee Break |
| 11:30 – 13:00 | Rules and Commentaries Regarding Permissible Advocacy: What Can You Advocate and When<br>*Presentation, discussion and the assignment of a group case study* |
| 13:00 – 14:00 | Lunch (*the lunch will be served on the 2nd floor of FBiH JPTC*) |
| 14:00 – 15:00 | Case Study Presentations by Groups |
| 15:00 – 16:00 | The Professional Association as the Recommended Means for Advocacy<br>*Presentation, discussion and concluding remarks*<br>*Presentations of the Professional Associations (5-10 minutes each presentation):*<br>▪ *Association of Judges in BiH*<br>▪ *Association of Women Judges in BiH*<br>▪ *Association of Prosecutors in FBiH*<br>▪ *Association of Expert Associates and Advisors in Courts and Prosecutors Offices in BiH* |

## f) Agenda (Roundtable discussion in Banja Luka)

| **Tuesday, March 20, 2012** | |
|---|---|
| 09:30 – 10:00 | Registration |
| 10:00 – 10:15 | Introductory Remarks<br>Drago Seva, RS JPTC, Director<br>Gerald Meyerman, USAID JSDP II, Chief of Party |
| 10:15 – 11:15 | Permissive Advocacy by Judges and Prosecutors - Preliminary Professional and Practical Considerations Faced by Judges and Prosecutors Both in BiH and Worldwide and the professional association as the recommended means for advocacy<br>*Presentation by Andral Bratton and BiH professional associations followed by discussion* |
| 11:15 – 11:30 | Coffee Break |
| 11:30 – 13:00 | Rules and Commentaries Regarding Permissible Advocacy: What Can You Advocate and When<br>*Discussion on your practical concerns stemming from the application of the Ethics Codes through hypothetical exercises* |
| 13:00 – 14:00 | Lunch (the organizer provided lunch in the nearby Catering School restaurant) |
| 14:00 – 15:00 | Assignment of a group case study and presentations by groups |
| 15:00 – 16:00 | Conclusions and Recommendations |