

# The Star of the Rule of Law Shines Brightly In The Arabian Gulf

by John Hermina

The Arabic word "Bahrain" means the two seas. It refers to two bodies of water: one is its wealth of fresh water springs, which have been its most important assets, and the other the salty sea which surrounds its archipelago. While decades of ecological change and rapid development have caused this island nation to lose much of its sweet water, it has adapted and used new technology to replace its fading natural resource. Likewise, its people stand as an example of how citizens of a nation can remain true to their traditions while becoming a model for sensible and necessary institutional change in a part of the world where change does not come easily, if at all. In his May 31, 2004, *Newsweek* piece, "The Good, the Bad, the Ugly," Fareed Zakaria highlights Bahrain's commitment to change by listing it as one of the exceptions to the general observation that in the Arab World, "reform is more in the air than on the ground."

At the center of the revolution for legal and judicial reform in Bahrain is Jawad Al-Arayed, a graduate of the United Kingdom's prestigious Leeds University School of Law, and a member of the British Gray's Inns of Court. Since the late 1960s, Al-Arayed has been busy serving in a variety of ministerial posts within the Government of Bahrain having little to do with the legal profession, while somehow managing to keep his legal skills sharp as a knife. When his country called upon him to be in charge of a border dispute case before the International Court of Justice ("ICJ"), Al-Arayed heeded the call and provided the representation of his life. He utilized world-renowned experts and advanced arguments that would make any trial lawyer proud. Some say that Al-Arayed's work at the ICJ

resulted in his being summoned to serve as the Bahrain's Minister of Justice where, upon taking the post, he began to assess the status of his department. This assessment was part of a broad set of initiatives instituted by the King and the Prime Minister, which called for governmental process review and reform, in order to ensure that Bahrain's institutions are poised to meet the challenges of the new millennium.

Bahrain had a functioning adjudicatory system, but like so many other judicial regimes in the region, the system failed to keep pace with an ever-evolving world. The Minister set out to revolutionize the system, summoning to the task some of Bahrain's finest legal minds and calling on Bahrain's allies and friends, including Egypt, France, and the United States, to provide technical collaboration. As a representative of the American Bar Association Central European and Eurasian Law Initiative ("ABA/CEELI"), I had the distinct honor to observe, first-hand, some of the reforms undertaken by the Minister. The reforms touched upon such diverse areas as the prosecutorial function and judicial selection.



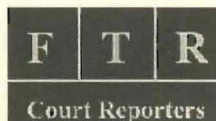
John Hermina  
"had the distinct honor to observe, first-hand, some of the reforms undertaken by the Minister" of Justice of Bahrain.

## The Prosecutorial Function:

Prior to accepting his post as a Minister of Justice, Al-Arayed and others in the legal profession in Bahrain recognized the problems inherent in a system where the function of prosecuting crimes rested in the hands of the police within the Ministry of the Interior. A change in the law was proposed and promptly enacted. Today the job of prosecution rests with the newly formed Public Prosecutor's Office where it rightfully belongs and where professional prosecutors act as investigating magistrates exercising independent judgment.

The work on the prosecution side was just beginning. The prosecutorial system in Bahrain today closely resembles that of the French system and other Napoleonic Code jurisdic-

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# AROUND THE BAR

tions of the Middle East, in particular, Egypt. Thus, in devising a plan to train the newly appointed prosecutors, who under the Bahraini system hold the rank of judges, France's National School of the Judiciary (L'Ecole Nationale de la Magistrature or "ENM") was a natural training venue for some of the Bahraini Judges.

## Bahraini, French, and American Cooperation

The French training at ENM and the courts was held in Paris, Bordeaux, and Fontainebleau during January of 2004. The judges and instructors who participated in the training were open to programmatic changes that tailored the training to the needs of the Bahraini Judges. The modified program focused on practical areas rather than theory, to ensure that court proceedings emulated what prosecutors were likely to encounter in Bahrain.

The French Seminar's timing could not have been better. While the training was in progress, the French legal community was debating the impact of adopting a significant number of changes to the criminal procedural code. Among the changes was the use of *plaider coupable*, or plea bargaining, to assist in addressing case backlogs. The Bahraini prosecutors heard arguments - for and against plea bargaining - made by prosecutors and court presidents. It is expected that *plaider coupable* will be implemented in France in September. Some Arab countries, particularly Egypt, use a form of plea bargaining. During a recent study visit to Egypt, Bahrain Ministry of Justice personnel reviewed, first hand, the Egyptian version of plea bargaining. Ultimately, it will be up to Bahrainis to determine whether this tool will work in their country.

## Judicial Announcements and Training:

In an effort to make judicial selection more transparent, and to encourage diversity among the applicants for bench positions, Minister

Jawad Al-Arayed launched the first judicial vacancy announcement in the Arab World. The announcement was a major topic of discussion for the bar and the bench of Bahrain, and a large number of applicants came forward to be considered for the positions of judges and prosecutors, including some qualified women applicants.

While planning for a permanent judicial institute, the Ministry commenced general training for sitting judges in banking, torts, criminal law, insurance, as well as modern areas such as money laundering and internet crimes. Today, this training is reviewed and analyzed to insure that the legal content, lecture material and speakers are sufficient to make the training seminars as productive and educational as possible.

## Changes To The Code:

In addition to training the judges, the Ministry is drafting judicial ethical codes to augment the ethical laws it presently has in place. The Ministry is also presently studying the prospect of drafting a uniform commercial code in addition to criminal procedural laws that will insure a defendant's right to a speedy trial, among other changes. The adoption of a uniform commercial code will serve to enhance the spirit and the letter of the Free Trade Agreement between Bahrain and the United States.

## Alternative Dispute Resolution:

Civil alternative dispute resolution ("ADR") has also come to the fore as an attempt to assess ways to reduce the Court's backlog, and improve flow through the judicial system. The Minister intends to open the Kingdom's first mandatory mediation office in the Spring of 2005. Civil cases falling within a specific jurisdictional amount will be mediated and domestic relations cases will be addressed and added later.

While the changes already effected in Bahrain's judicial system are

clear and visible, challenges lie ahead for maintaining the pace of change, and in setting in place the necessary mechanisms for insuring continued success. Like other nations in the Middle East, Bahrain must find ways to modernize its Sharia courts, so that it may effectively handle today's complex family issues, while adhering to Islamic traditions. Bahrain must continue to strive to provide the best training possible in automated systems and in technology in general. It must continue to modernize its ethical codes to keep up with more prevalent issues of judicial misconduct, and it must further advance the rights of the accused while adopting methods that insure fair and expeditious justice, such as the adoption of a right to a speedy trial. It must differentiate between the standards of proof in civil and criminal cases. It must transform its method of transcription from the old practice of dictation to stenography, or its equivalent. Bahrain should also encourage the creation of a bar association after the comprehensive attorney ethical rules have been adopted.

Bahrain should be applauded for its efforts to meet international standards for its judges and its courts, to catch up and then to set the pace in the Arab world for efficient and effective judicial administration, while at the same time it holds true to the spirit of the traditions which define its uniqueness as a country between two bodies of water.

*John Hermina is a member of the bars of New York, Pennsylvania, the District of Columbia, and Maryland. He is a law partner at the Washington firm of the Hermina Law Group, which handles international law and civil rights litigation, among other areas. His trial experience includes arguing cases before the Egyptian Courts. He is the Vice Chairman of the Maryland Commission on Human Relations and is a member of the Association of Trial Lawyers of America and the American Inns of Court. He has participated in several rule of law programs, and, most recently, he served as an American Bar Association/CEELI Liaison in the Kingdom of Bahrain.*