

Working With Juvenile Court Judges in Morocco



When Dr. Shawn Marsh, NCJFCJ Chief Program Officer, Juvenile and Family Law, called and asked if I was interested in going to Morocco to train juvenile court judges, I did not hesitate. One of the advantages of being retired is that I have some control over my schedule. I said yes, despite the fact that the trip was complex and only a month away. My contact in Rabat, Morocco, (the capital) was Vasantha Rao, an American attorney working in the United States Department of Justice (DOJ). From her, I learned that I would be joined by Melodee Hanes, the Acting Director of OJJDP, and Dr. Rodney Erwin, a neuro-psychiatrist from Marin County, California.

The training project was organized by the DOJ. Apparently, the Moroccan judiciary wanted to learn about juvenile justice in the United States. Moroccan judicial leaders contacted the DOJ and arranged for this three day training in Rabat.

Morocco has strong ties with France, having been under French control during much of the 20th Century. The Moroccan legal system is modeled on the French civil law. Morocco, a North African kingdom of approximately 32,500,000, is a predominantly Muslim country, with a rich history dating back 5,000 years. Its most famous cities include Casablanca, Marrakesh, Rabat and Fes. Arabic and French are the primary languages, although some speak English. Moroccans use Arabic script often sub-titled with French. While the traditional Islamic family

structure means that some women remain covered (hijab) and live a limited public life, many younger women work outside the home and dress in Western clothing. I found the people friendly and gracious. Several judges invited me to stay in their homes while I was visiting.

My first question about the training revolved around the differences between the civil law system and our common law. Would our American laws and practices be useful to a country with different legal procedures? The civil law dates back to Roman times. The Roman codes were unified in the sixth century during the reign of Justinian, an Emperor of the Eastern Roman Empire. Legal scholars in many European countries refined the civil law over the centuries that followed. One of most significant codifications was the Napoleonic Code created when Napoleon ruled France. The Napoleonic Code has been very influential and has helped shape the civil law systems now in place in approximately 150 countries including most of Southern Europe, Northern Africa, Russia, Japan, and South America. The civil law has also left traces in the United States, namely in Louisiana.

The significant differences between the civil and common law systems include the following:

1. Judges in the civil law tradition select their profession at the time they start law school. They are appointed to their position fresh from school. As a result, a judge will ordinarily begin his or her career earlier in life than a judge in the common law country.
2. Civil law judges look to the codes and legal principles for answers to all legal questions. They do not look to case law. Cases are rarely reported or read by judges as they have no authority for a sitting judge. The concept of stare decisis (a lower court being bound to follow the rulings of a higher court) is unknown in the civil law.
3. The judicial branch in civil law countries is not as independent or powerful as judges in common law countries. The legislative and executive branches of civil law countries are the primary policy makers. As a result judges have limited power to interpret the law. Judges cannot declare that a law to be unconstitutional. Judges resemble bureaucrats rather than members of a separate, co-equal branch of government. As Professor Merryman writes, “[t]hey are civil servants, functionaries.”[1]

4. A juvenile court judge in a civil law country is expected to investigate the facts of cases appearing in court. The judge can gather evidence, interview witnesses, and still preside as decision maker in the case before the court. These are characteristics of an inquisitorial system as opposed to our adversarial system.

5. A juvenile court judge does not have the independence that a common law judge has. The role of the juvenile court judge seems confined to investigation, decision making, and running the calendar. Juvenile judges do not understand their role to be a community leader on behalf of the children who appear in their court.

Despite these differences, we met with 40-50 of the most enthusiastic and dedicated young judges and prosecutors that we could imagine. Seated in a large room with 5 to 7 judges and prosecutors at a table along with translators and modern technology, we engaged in a vigorous dialogue for three days. My presentation included outlining hypothetical fact situations and asking the judges at each table to discuss their approach to each problem. A volunteer from one or more tables would discuss the problem. At the outset the volunteer would make a speech –indeed, we heard many 5-10 minute speeches about how eager the judges were to learn about best practices from the United States, how they were conscious of international law, how they followed the United Nations Convention on the Rights of the Child, and how they were eager to redirect and rehabilitate young law breakers. I have never encountered a group of judges more committed to rehabilitation.

At the same time, the judges did not seem comfortable becoming active in the community. I suspect the idea that they might convene meetings, encourage the creation of volunteer groups, speak out about the needs of children, or other “off the bench” activities were foreign to them. We suggested CASA as a model they might be interested in, but they were not interested in the idea of being a catalyst for the creation of such an organization. It was too different from their perceived role as a juvenile court judge.

Dr. Erwin spoke about children’s brain development and lack of maturity. He reviewed both brain structure and development and recent United States Supreme Court cases on children’s accountability. The judges showed both interest and knowledge about these issues, several of them referring to the Quran (Koran) and its discussion of brain development. Director Hanes discussed the work of OJJDP and focused in particular on its deinstitutionalization project. Morocco

has many fewer children in custody than in comparable areas in the United States, but some mixing of adults and children occurs.

Some of our suggestions included separating incarcerated children from adults, including defense attorneys in future trainings, connecting with community groups that might provide support for the children and families appearing in the juvenile court, and bringing together professionals working within the juvenile court system for meetings to identify and implement best practices.

Our visit included a meeting with the United States Ambassador to Morocco, Samuel Kaplan, and his wife. Ambassador Kaplan hails from Minnesota and knows that state's judicial leaders including former Chief Justice Kathleen Blatz and former President of the NCJFCJ, Lindsey Arthur. The Ambassador is an attorney and has strong views on how the Moroccan judiciary could improve its juvenile court. Those views were similar to our suggestions.

The judges and prosecutors enjoyed the training. The original schedule included 5 days, but the judges could not be absent from court for that length of time. As a result, we were unable to discuss some important issues including judicial ethics. Some asked if we would return, or, if possible, could they visit the United States. We are hopeful that our meeting will only be the beginning of a productive relationship.

[1] Merryman, John H., *The Civil Law Tradition*, (3rd ed.), Stanford University Press, Stanford, 2007, at p. 35.

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