

International Career Alternatives: An Orange County Lawyer in Morocco
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While poring over yet another batch of interrogatory responses, all of which contained those boring boilerplate objections, I was interrupted by a phone call from a “beltway bandit” in Bethesda, Maryland. The term refers to the many hundreds of consultancy firms lying in wait on the outskirts of our nation’s capital for the next contract opportunity to implement government programs. The consultant “producer” was both excited and relieved that the drudgery of her Martindale-Hubble search had finally come to an end. She had found someone who fit her profile of the ideal person for the job: A commercial law reform consultant in Morocco. Morocco is an Islamic constitutional monarchy, once a French protectorate, located in North Africa near Spain.

Apparently my experience as a Peace Corps volunteer in my younger days, coupled with an 18-year business litigation practice, added up to my qualification for the position. She proposed that I abandon my Santa Ana practice and move to Morocco to manage the Project to Modernize Commercial Law and the Judiciary for the State Department’s United States Agency for International Development (USAID). Two months later, my wife and I found ourselves standing in awe at the foot of the Koutoubia mosque in Marrakech. By way of the experience that followed, this article is intended to offer a glimpse of a relatively unknown career path that practitioners would likely find both refreshing and unusually interesting.

The International Legal Consultancy Business- Short and Long Term

Like it or not, it has been a fact of American diplomacy since the end of World War II that the United States is in the business of nation building. USAID, through various contracting vehicles, provides “technical assistance” to emerging nations throughout the world. Much of this aid has now evolved to develop government institutions by way of, among other things, legal and judicial reform. The policy as applied to Middle East countries such as Morocco advances the belief that stable democratic governments, and a healthy commercial environment, will yield nations that are good trading partners with the US and will not fall haven to terrorists.

State Department expenditures for USAID contracts are distributed through an open bidding process wherein international consultancy firms compete for one to five year contracts. Some of these firms specialize in legal and judicial consultancy. They bid to perform in-country services, for example, to integrate new legislation, modernize judicial administration, train the judiciary and introduce ADR.

Notwithstanding the sophistication of these sometimes huge corporate entities, however, it is the long term and short term professional “technical advisor” from the US who engages in the day-to-day hands-on work “on the ground”. That’s where we come in. Many attorneys, judges, court administrators and law professors have discovered an alternative way to apply their experience and skill sets to the mission of the United States in emerging nations all over the world. They do so by advising both the donor agency

like the USAID mission, and local foreign government officials, for periods of a few weeks to several years in the host country. Other donor agencies such as the United Nations Development Program (UNDP), Middle East Partnership Initiative (MEPI) and World Bank fund similar efforts.

Orange County Lawyering in Arabia?

So how does an Orange County business litigator fit into this paradigm? As a first assignment, I was asked to execute a multi-faceted “task order” that called for all of modernizing the technical aspects of court administration, elevating the competency of the judiciary by CLE, revising bankruptcy law to reflect the American Chapter 11 model, and rewriting intellectual property laws to allow statutory and punitive damages for infringement violations. The larger objective was to create a business climate in the country that would raise the comfort level of US businesses to invest there. Theoretically, they would be more inclined to do so knowing that laws and regulations were well balanced, and that court processes were fair and efficient.

As “chief of party”, or project director, I was authorized to hire local office staff as well as local consultants within the constraints of a well defined budget to implement the work plan. I also hired US attorneys, judges and legal scholars on a short-term basis to execute specific tasks in furtherance of the overall objective of the project. These short-term technical advisors, or “STTAs”, were drawn from a database of US legal professionals who were experienced in specific subjects of legal practice, procedure and court administration.

Developing Judicial Competency Abroad

As a first step to developing judicial competency, we conducted a survey of the presiding judges of the various civil jurisdictions to ascertain localized issues of judicial competency. Unlike the US, judges in Morocco are appointed directly out of post-graduate training without any experience whatsoever in the practice of law. They are trained to make decisions based on the strictures of the Napoleonic code system, and not based on their professional experience or even case precedence. Judges rely heavily on court-appointed expert witnesses who report written conclusions on the merits of a case without an opposing opinion or the critique of an adversary. Accordingly, in Morocco, judges lacked proficiency in specialty areas of commercial law, leaving the decision making to the experts. We sought to recover the decision making role of the judge from the expert through judicial training.

We therefore set up a series of CLE-style training sessions for groups of 35-40 judges in Casablanca, Fes, Marrakech and Rabat that treated banking law, intellectual property, enterprise financing, bankruptcy and basic principles of accounting. We hired trainers among the local private sector financial community which included a banker, accountant and bankruptcy trustee. These trainers were “tag-teamed” with US practitioners and judges who were experienced in these areas of American law. Each judge-trainee was awarded a certificate that reflected the number of hours attended. The

certificates proved to be recognized nationwide as a CLE qualification for judicial career advancement. Next, we set about to attempt a reform of the Moroccan intellectual property laws.

Tackling Piracy of Copyrighted and Trademarked Goods

Concurrent with my consultancy was the ongoing negotiation and implementation of a free trade agreement between Morocco and the US. Not surprisingly, The US Trade Representative (USTR) required that the terms of any free trade agreement with Morocco include provisions to protect the intellectual property interests of US companies. Convincing the local government of the need for US style law would not prove to be difficult inasmuch as the American legal system's treatment of intellectual property is regarded as the fairest and most sophisticated in the world. Morocco, however, had a high profile problem with the import and sale of pirated DVDs, trademarked clothing, and computer software in the "alternative" marketplace. The market had become dependent on this illicit stream of pirated goods which originated abroad, notably in places like China and Turkey. The lack of a strong civil remedy structure resulted in an unchecked assault on rights owned by companies like Microsoft, Nike, Levis, Rolex, and Swatch, as well as member companies of the Motion Picture Association of America (MPAA).

The Free Trade Agreement as proposed by the USTR called for Morocco to enact provisional remedies and civil penalties similar to those found in US laws. The concepts of flat-rate statutory damages and punitive damages, as well as provisional seizure of pirated goods by customs without court order, however, had never been heard of in the legal community. We therefore drafted proposed legislation roughly reflecting US law, particularly Title 17 of the US Code, to bring Morocco into compliance with the intellectual property terms of its agreement with the US.

Working in tandem with the Moroccan trademark and copyright offices, we hammered out specific amendments to current law and drew upon the input of local stakeholders by way of working group sessions. These working groups were comprised of members of government agencies such as customs, trademark officials, judicial officers, and members of the private sector such as representatives from the Business Software Association and the American Chamber of Commerce. Once a final proposal was distilled from the entirety of input, the director of the trademark office initiated the procedure for its enactment into law. He did so by introducing the proposed legislation to the parliament through a committee process dubbed the "circuit of adoption." The US style amendments were passed by the Moroccan parliament in January of 2006. We continue to conduct training programs for judges and customs officers in cooperation with the USPTO.

Chapter 11 Style Solutions to Corporate Insolvency

Essential to the confidence of foreign investors in Morocco is the assurance that their investment will not be lost to illegitimate claims of insolvency. In 1997, Morocco passed reform measures of its bankruptcy code to a level of sophistication just beyond

simple liquidation with a stay of execution. Prior to the reforms, companies simply declared they were insolvent and creditors were left to pick over whatever remaining assets the debtor chose to reveal. This system was derived from the French Napoleonic code imposed on Morocco during its occupation in the early part of the 20th century. The early reform measures of the '90s sought to bring the code closer to the American Chapter 11 concept of reorganization, but fell far short. A trend to mimic the American example was begun in Europe and continues to this time. Like intellectual property, American bankruptcy law is accepted as the prime international model of fairness and efficiency in handling corporate insolvency.

Notwithstanding Morocco's prior attempts at reform, we were asked to assess the current strengths and weaknesses of the Moroccan bankruptcy system. We once again hosted a series of working groups, colloquia and town hall meetings wherein we invited presentation and comment from stakeholders. These included bankers, accountants, judges, trustees, legal scholars, business associations and labor interests. We also invited the participation of bankruptcy law experts from the US, France and Egypt.

After having reported the results, we interviewed trial, appellate and Supreme Court justices on the specific points derived from the outreach effort. These responses yielded a road map for bankruptcy law reform. Concerns included: (1) A lack of debtor candidness in financial documents, (2) a lack of power in the creditors' committee to control the management of companies in reorganization, (3) the absence of a mediation process to allow workouts among creditors and debtors, and (4) a lack of competency among bankruptcy court clerks and the judiciary to understand accounting and financial documents. Once the data was complete, we attacked the problem on two fronts.

We resolved these issues first by providing on-the-job training of bankruptcy judges and clerks by experienced private sector trustees with strong accountancy backgrounds. The trustees administered on-site classroom training in the courthouse coupled with practical hands on guidance in the handling of real case files. The mysteries of financial documentation, and the missives they contained, were thereby revealed to the newly elevated competency of the bankruptcy administrators. Bankruptcy law reform followed roughly the same technique as intellectual property reform. With the assistance of local and US attorney experts, we crafted a point-by-point critique of the current code with recommendations for its amendment. These recommendations are slated to be placed into the "circuit of adoption" through the Moroccan Ministry of Justice.

Getting Started

Every step in the process of international legal reform calls on the experience and skill of seasoned attorneys, judges, administrators and legislators. Because the American justice system is held in highest esteem worldwide, a demand has arisen for US legal professionals to participate. Any interested attorney or jurist should identify himself to any of a number of consultancy firms and organizations in the international legal and judicial reform business.

A good starting point is the American bar Association's Central and East European Law Initiative (CEELI) at www.abanet.org/ceeli. Notwithstanding its name, this unit of the ABA is engaged in legal and judicial reform not just in Eastern Europe, but also Central Asia, Africa and the Middle East. ABA/CEELI relies heavily on a pool of US attorneys and judges for its short term and long term assignments. Other resources for development jobs that include legal and judicial positions are the Development Executive Group at www.developmentex.com, the World Bank at www4.worldbank.org/legal/leglr/consultants.html, the National Center for State Courts' International Division at www.ncscinternational.org, and DPK Consulting of San Francisco at www.dpkconsulting.com. A major consideration in choosing this career path is of course the availability to travel on a short term or long term basis. Long term assignments include a right to be accompanied by family, housing and relocation assistance. Although foreign language proficiency is preferred, it is not always necessary. Many developing countries have adopted English as an official second language. Simultaneous interpretation is provided to short term consultants in countries where English is not predominant.

Get Packing

While some would say such a career shift is radical if not risky, it was in fact the easiest career decision I have ever made. Nothing can compare to the opportunity to share one's professional experience and point of view with legal counterparts in other countries. Likewise, learning how our profession is viewed and applied elsewhere in the world gives a whole new perspective to how we practice law at home. Some practitioners may prefer a short-term sampler of weeks or months to the long term commitment that I made. Either way, this story is relayed in the hope that other members of the bench and bar will also discover a whole new field of opportunity that at least adds an interesting dimension to their livelihood, and allows them to make a difference beyond the county courthouse.

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