

ESSAY

MAKING THE WORLD A SMALLER PLACE: HOW YOUNG PA. ATTORNEYS CAN ADVANCE RULE OF LAW DEVELOPMENT

By Joseph M. Moyer

In early 2010, I volunteered to deploy to Afghanistan and serve as a staff attorney at Combined Joint Interagency Task Force (CJIATF) 435. During my year-long deployment, I had the honor to work on rule of law development with a focus on governance and courts. In this essay, I discuss my observations about the situation in Afghanistan and propose methods by which young Pennsylvania attorneys can help. My proposals apply not only to Afghanistan but to all countries with underdeveloped legal systems.

Ten years after the fall of the Taliban regime, Afghanistan faces many challenges from decades of war and internal strife. As frequently reported in the media and elsewhere, the Afghan people have little confidence in a central government that they perceive to be ineffectual. Sadly, the best young minds eschew public service and seek to emigrate. Of particular concern is the weakness of the legal system. In a mostly agrarian economy, land disputes in southern Afghanistan have been a particularly troubling source of violence.

The Afghan people have historically adjudicated their disputes through one of two distinct systems: an informal justice system and a formal justice system. The informal justice system, which consists of local *jirgas* ("councils") composed of male village elders, resolves disputes using local norms and customs. The formal justice system, mostly developed in the mid-20th century, consists of courts, prosecutors and prisons. The Afghan government, however, has never been able to fully integrate the two systems. The Afghan people primarily prefer the informal justice system because they distrust the central government.

For the United States, this

reluctance poses serious challenges as the informal justice system may dispense justice in accordance with Taliban norms. As one senior Afghan minister explained to me, the informal justice system undermines the formal justice system. Manifold weaknesses plague the formal justice system, including poor case management and a dearth

equipment, leaving inoperable computers covered in dust. The law students lacked textbooks and basic writing implements.

The deans of both schools described the challenges they faced, including inadequately-educated faculty members and female matriculates who drop out of the Shar'ia school because they

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of minimally qualified attorneys. The corrections system is barely compliant with Afghan law, let alone international law. An Afghan legal official informed me that judges often issue one-line opinions with no analysis. These enormous structural deficiencies can be disheartening to all observers.

A new generation of young Afghan attorneys, unaffected by decades of war, could provide the answer to these challenges. I, therefore, became extremely interested in Afghan legal education, which surprisingly has a rich and vibrant history. Kabul University has two law schools — a Faculty of Shar'ia Law and a Faculty of Law and Political Science. The former teaches Shar'ia Law, while the latter focuses on the secular legal system. Sadly, when I visited them, both schools were in deplorable physical condition. The classrooms hadn't been painted in decades, and the light fixtures did not work. Computer labs lacked networking

are not taught Arabic when young. The chancellor explained that the central government has very little funding for higher education. When I asked him, "What do you need?", he responded by picking up a pencil, saying, "If you can just give me one pencil, give me one pencil." I did considerably better and put together a project that renovated classrooms, installed working computer labs with software, and provided paper and pens.

Because of my efforts, Dean Kenneth Holland of Ball State University invited me to speak at a conference on Afghan education. It was the first gathering of its kind, bringing together Afghan educators and American organizations engaged in assistance to Afghan higher education. I left the conference convinced that much more could be done to tap the broader resources available in the United States. While commendable, most efforts with

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respect to Afghan legal education lack involvement by American law schools and bar associations. These institutions constitute a vast, untapped resource in assisting rule of law development in Afghanistan and other underdeveloped countries.

Pennsylvania attorneys have a particularly useful heritage to share with Afghan attorneys.

Like Afghanistan, colonial Pennsylvania struggled to reconcile the Quaker meeting, a form of informal justice, with the formal colonial government authorized by the English king and the Penn proprietors. The norms of the Quaker meeting house, however, eventually found their way into the early Pennsylvania codes. Indeed, because of this melding of culture and crown, Pennsylvania was at the forefront of the development of American criminal law statutes and penal reform. Our own unique history could be a valuable model for the Afghan people.

Young Pennsylvania attorneys can do a great deal. I propose the following:

1. Be proactive within the Pennsylvania bar:

Ask the Pennsylvania bar to partner with the Afghan Independent Bar Association and similar institutions in other countries. Engage in dialogues with Afghan law students, many of whom speak English. Modern technology facilitates this valuable global discourse. Not only will you assist a young Afghan attorney, but you will be enriched by the perspective of an ancient culture and noble people. For those who work with Pennsylvania judges, encourage them to correspond with Afghan judges about judicial ethics and decision-making.

2. Organize donations to legal education in the developing world:

Young attorneys working at large firms should encourage donations or scholarships for young attorneys in developing parts of the world. By studying at law schools in Europe or the United States, future lawyers and government officials from nations such as Afghanistan will be exposed to progressive legal system and create vital proposals for reform.

3. Stay engaged at your law school:

Some U.S. law schools have formed partnerships with law schools around the world. Encourage your law school to form a partnership, particularly with a law school in underdeveloped countries in Africa and Asia. Building an exchange program where law professors from foreign nations can study here for a year will transform legal education.

4. Follow international affairs:

Although Afghanistan is on the other side of the world, events there affect each of us here in the United States. Today, a revolution of rising expectations is toppling dictatorships across the Arab world. The opportunities for progress are immense, but the risks of instability are equally as great. We must seize this golden opportunity to transform a dangerous region into stable democracies.

Young Pennsylvania attorneys can make a substantial difference in Afghanistan and around the world. By empowering a young female prosecutor or future judge, we enable the Afghan people to develop their own Wythes, Marshalls and Cardozos. Without ever leaving your law office, and with minimal time and expense, you can enable other

nations to embrace progress and stability.

In 1963, President Kennedy welcomed the then-king of Afghanistan, Mohammad Zahir Shah, to Washington, D.C, and said: "Even though Afghanistan and the United States are separated by a good many thousands of miles, by history, by culture, by religion, I do think, Your Majesty, that we share one great, overriding, overarching conviction, and that is the strong desire of both of our peoples to maintain their independence, to live in freedom, and to look to the future with hope." Kennedy added, "It seems to me that it is possible for us to make the world a much smaller place."

What Kennedy said then remains true today. It is possible for each of us to make the world a smaller and a more hopeful place, and I encourage you to do so. ■

Joseph M. Moyer is a lifelong Pennsylvanian. He graduated from Temple University Beasley School of Law and passed the Pennsylvania bar in 2008. He is still a Navy judge advocate and is currently serving as a law clerk at the Navy-Marine Corps Court of Criminal Appeals. His views are entirely his own and do not reflect those of the Department of the Navy.



Joseph M. Moyer (left) is shown with Nasrullah Stanikzai, legal adviser to President Karzai and law professor at Kabul University.