

INTERACTING WITH COURTS IN GHANA, WEST AFRICA

Hon. Mark C. Dillon *

I have been privileged to be part of a group that travels every summer to Sunyani, Ghana, in West Africa, on behalf of the Giving to Ghana Foundation. The group is comprised mainly of volunteers primarily associated in some manner with Fordham Law School and St. John's Law School, including their professors, students, and alumni.

Ghana was the first African nation south of the Sahara to become independent from British colonialism, occurring there on March 6, 1957. Its early independent history included various dictatorships that prompted a series of military coups, but which eventually led to the current constitutional government that became effective January 7, 1993. Today, the nation has a free-market economy and a democratic government. Ghana adopted a constitution loosely similar to our own, that includes a separation of powers between a executive, legislative, and judicial branches and a division of power between its federal government and individual regions headed by local governors. The nation's election day is held every four years. Political power is almost evenly divided between two national parties, the National Democratic Congress (NDC), which currently holds power and is somewhat left of center, and the New Patriot Party (NPP), which is somewhat right of center. "Left" and "right" in the country are not necessarily understood in the same terms as used in the United States. Unlike our country, there is little separation in Ghana between church and state. The government gives education money to churches, mosques, and private organizations that are then used by those institutions to provide schools to the young. The country is 69% Christian, 16% Muslim, and 15% "other." There is no shortage of clergy, and both Catholicism and Islam are growing with particular rapidity. Religion is open and central to many people's lives, as demonstrated by the vibrancy and attendance of religious services and by the number of religious symbols visible on Ghanaian vehicles. The country is mostly bilingual, speaking good English with a distinct tropical accent.

Ghana is a country at peace. The population is 25 million people comprised of 75 separate ethnic groups. It is bordered by Ivory Coast to the west, Togo to the east, Burkina Faso to the north, and the Atlantic Ocean to the south. The west quadrant of Africa is generally at peace with the exception of civil violence occurring in neighboring Ivory Coast.

Economically, Ghana is severely underdeveloped. Bank credit is limited and the rates of interest are what New Yorkers would define as usurious. People therefore use only savings for the construction of residences or commercial buildings or to expand their businesses. This has the effect of capping the rate of economic growth, though during the past year, economic growth on a national basis was in the double-digits. But by the same token, the lack of addiction to credit insulates the country from economic recession as we have experienced here. Oil has recently been discovered off of Ghana's Atlantic coast, and the country has entered into long-term contracts with China for the development of its oil reserves.

The branch of government that may be the most ineffectual is Ghana's judiciary, which is the reason for this article. Federal courthouses are located in approximately two dozen locations throughout the country which is 92,100 sq. miles in size. Ghanaian judges wear white wigs, a tradition inherited from its British colonial influence. Many people find themselves long distances from the closest courthouse, without the financial means or transportation of getting to court, much less having the money for hiring attorneys and financing litigation. The courts, therefore, are inaccessible to a large percentage of the Ghanaian population. The courts are so backlogged that it typically takes many years for cases to reach conclusion. A typical day for a Ghanaian judge includes 150 cases on a docket, many of which cannot be reached because of time constraints. When there are common disputes that require resolution – such as a breach of contract, an inheritance disagreement, or a dispute over the ownership of real or personal property – many people avoid the courts by turning to their local tribal chiefs, Catholic priests, Protestant ministers, Islamic imams, and private organizations for dispute resolution. Local civil and religious leaders are happy to help resolve these disputes, but to be effective, they require training in Alternative Dispute Resolution. A nationwide ADR initiative is supported by the country's Chief Judge, Her Ladyship Georgina T. Woods. That is where the Giving For Ghana Foundation entered the picture. In 2010, 2011, and 2012, and with Chief Judge Wood's support, the Foundation has tasked volunteers to Ghana to educate tribal chiefs, priests, imams, and private individuals in ADR. Educational programs take place in an auditorium-style classroom at the Catholic University of Ghana in Sunyani, which is approximately 250 miles inland through impoverished jungle terrain. The law school at the university is still under construction and the law building appears to be several years from completion.

During this summer's program, I and my colleague at the Appellate Division, Justice Daniel Angiolillo, and Nyack Village Justice Dennis Lynch, split off from the main ADR group for part of our time in Ghana, in order to teach seminars to Ghanaian judges on "Decision Writing." Judges of Ghana's High Court, which is equivalent to the U.S. District Courts, and of Ghana's Court of Appeals, which is equivalent to the U.S. Circuit Courts, do not have clerks or law secretaries, and therefore, the handling of case files and the researching and writing of decisions falls entirely upon the individual judges. The judges that we met from Ghana's courts are educated, professional people. We did not endeavor to lecture at them, but instead, conducted give-and-take seminars where we were able to share with them our techniques for defining the record, organizing decisions, finding facts, applying law, reaching conclusions, setting a proper tone, providing clear decretals, reaching or not reaching alternative arguments, using proper legalese, and managing time. Humbly, we gained insights from our Ghanaian colleagues just as they hopefully learned from us.

Photographs of our judicial colleagues in Ghana accompany this article, the smaller group being from Sunyani region of the country and the larger group being from the city of Kumasi.

The Giving to Ghana Foundation also dispatched a team of nurses associated with the College of New Rochelle and Pace University to medical clinics and a nursing school, to assess matters of academic accreditation, and to discuss possible Skype and internet exchanges where medical knowledge may be exchanged for the delivery of better health care to Ghanaian patients.

By happenstance, our teams were in Ghana during the week that the country was

mourning the recent death of its elected President, John Atta-Mills. Atta-Mills' death is a test of the country's 1993 constitution. All political parties joined the mourning in a spirit of bi-partisanship which, from an American's viewpoint, was quite refreshing. The Vice President became the President and nominated a new Vice President, who was then confirmed by the national legislature with overwhelming bi-partisan support. The country's handling of its President's death speaks well for its future, as businesses and governments may deal with Ghana in the years ahead knowing that the nation is of proven political and constitutional stability. This could not necessarily have been said twenty, ten, or even five years ago.

At the time of my first of two departures for Ghana, a contractor was at my house installing hard wood flooring. Before leaving for the airport, we were engaged in a debate about whether the floor boards in a particular room needed to run north/south or east/west. The issue was resolved to everyone's satisfaction. Several days later while in Ghana, I was speaking with a man who worked as a night watchman at a local high school and whose annual pay is a pittance. He explained to me that if his chicken did not lay an egg the next morning, he would not have any breakfast. His story is not unusual. There are worlds far apart from our own. My problem in life that week was which direction flooring should run in my four-bedroom home. My Ghanaian friend's problem in life, among other problems, was whether he could expect to eat from day to day. The experience underscores that those of us in affluent nations not only be mindful of the needs of our fellow men and women, but where possible, to provide services for them to the extent that we can. Attorneys in particular are uniquely situated to provide services to those in need, whether here or abroad, by means of *pro bono* efforts and financial and academic assistance. While judges are prohibited from performing *pro bono* court services, we are permitted to provide educational services here and abroad, which is why the Giving to Ghana Foundation, and organizations like it, provide a means toward worthwhile ends. I know that the people we have interacted with in Ghana are grateful for the interaction that we provide each year, and expect to be seeing them yet again in the years ahead.

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