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Representing Foreign Clients in US Litigation

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Some Thoughts From Europe

“As a moth is drawn to the light, so is a litigant drawn to the United States. If he can only get his case into their courts, he stands to win a fortune...These [juries] are prone to award fabulous damages... and are notoriously sympathetic.”

– Lord Denning, in: *Smith Kline & French Laboratories Ltd. v. Bloch* (England 1984)

A Second Thought From Europe: “Witness Coaching”

**“There is no place for witness training in this country,
we do not do it. It is unlawful.”**

–R v. Momdou and others, England 2005

Three Concerns to Distinguish

- **Institutional Differences**
 - Juries
 - Class Actions
 - Discovery and Depositions: “Nuisance Value”
- **Political Concerns: Infringements of National Sovereignty**
 - Extraterritorial Jurisdiction
 - Litigating Foreign National Politics
 - Alien Tort Act, RICO, Human Rights Litigation
- **Mechanical Differences**
 - Notice Pleading and Legal Argument
 - Roles of the Parties (Bipolar v. Triangular Litigation Structure)
 - Testimonial v. Documentary Evidence

A Highly Concerned Foreign Client Upon Arrival

- **Who is Forced to Litigate Far Away From Home**
- **Who Really Does Not Like (or Understand) the US Legal System**
- **Who is Not Used to Actively Participate in Litigation**

Testimonial Evidence

“The common law tends to be skeptical that the sun has risen unless a witness can be found to testify under oath that he saw it to do so.”

– Professor Dr. Siegfried Elsing, LL.M. (Yale)



The Two Worlds of Testimonial Evidence

Effective Counseling

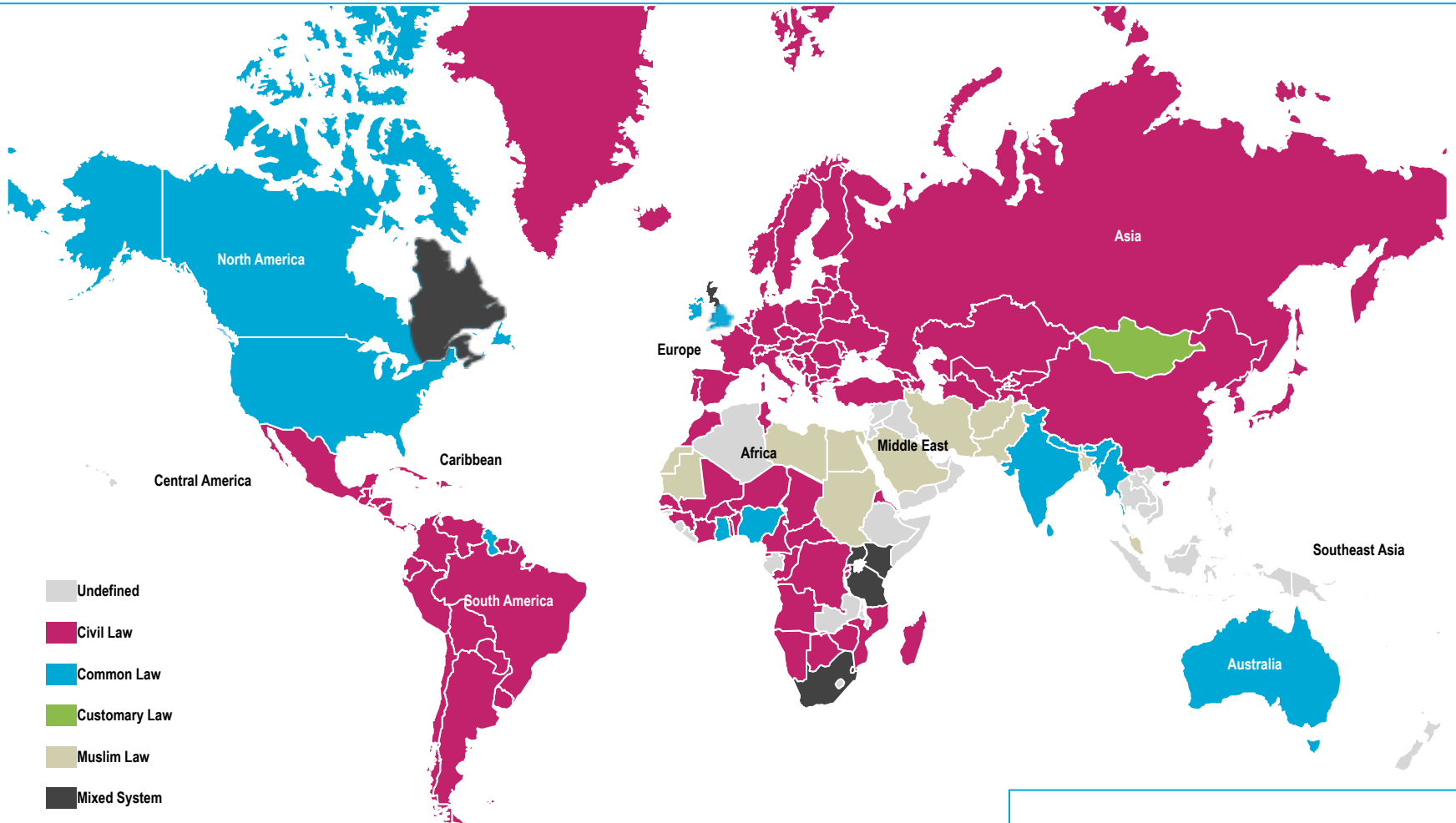
- **Allow More Time for Preparation**
- **Provide Profound Factual and Legal Explanations**
- **Improve the Communication Process with Client**
- **Do Not Treat Foreign Clients like Domestic Clients**
- **Respect their Different Legal, Cultural, Linguistic, Ethnical Background**
- **But: Insist on Forum-Specific Preparation**

Good News for the Client

“The available data indicate that foreigners do very well in the federal courts. They win a higher percentage of their cases, whether as plaintiff or as a defendant, than do their domestic counterparts. Thus, the data offer no support for the existence of xenophobic bias in American courts.”

– Kevin Clermont & Theodore Eisenberg, *Xenophilia in American Courts*, 109 Harv.L.Rev. 1122, 1143 (1996)

Civil v. Common Law





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