SUGGESTED READINGS

Study Abroad and Legal Issues
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PRELUDE
Earlham, and specifically a program I direct, has recently been involved in litigation attracting considerable national attention. Regarding that process I am authorized to state the following:

"The parties have reached an agreement to resolve and end their litigation. In the interest of the parties involved, the parties have agreed to keep the terms of their resolution of the litigation confidential and not to revisit the particulars of this litigation. The parties agree, however, that Earlham College and each of the educational institutions involved are committed to the safety of their students who participate in foreign study programs."

INTRODUCTION
Anthony Giddens has suggested that with modernity our ways of trusting each other have evolved: we have moved from trust being embedded in local communities, kinship groupings, and religious cosmologies to trust as embedded in dyadic personal relations, in friendship, on the one hand, and in impersonal abstract systems, in bureaucratic safeguards, on the other.1 A glance at the response to the current debates about safety in study abroad suggests that the field is caught up in this transition. I fear this transition marks a shift to a world where educational practice abroad is safeguarded not by trust in local peoples, wherever they reside, but rather in formal bureaucratic processes within this country. As this process has unfolded an unease has settled over study abroad offices across the United States and they have begun to examine their procedures typically with an eye towards avoiding, limiting, or shifting liability.

In commenting on this I would like to do three things:
• First I'd like to discuss some of the bigger issues shaping the conversation;
• then I'd like to make an argument for study abroad;
• and finally I'll make practical suggestions for those of you involved in managing study abroad programs.

ORIGINS OF THE CONCERN WITH SAFETY AND RESPONSIBILITY
In the past five years we have seen the creation of a new risk management industry for study abroad. We have seen several articles in The Chronicle of Higher Education, and both DateLine and USA Today have devoted issues to this topic. NAFSA (Association of International Educators) has spent considerable time creating guidelines for the field.2 Several factors shape this conversation. They fall into two areas. The first deals with issues intrinsic to the field of study abroad.

1 I don't think we can avoid acknowledging that there is risk. We live in a tremendously diverse world where unpredictable things happen. We live in a world where even though we might do our best to limit risk we often cannot have sufficient knowledge to avoid it.

2 We also send very diverse students into that world. Our students are young Americans and this means that, almost by definition, they are risk prone. They are young. They think they will live forever. And they have been socialized to be skeptical of distant truths and to believe that their immediate experience is their best teacher. Some take medical and emotional issues with them as they go abroad—when you put the diversities of the world and our students
together there is unavoidable risk. Unfortunately this can and has lead to tragic situations.

Along with this it is worth stressing that study abroad is still a new field. Among our fellow educators and the public there are strong financial and emotional incentives to see our institutions as located in a single place: the campus is perceived as a bounded unit made up of buildings and grass. In part for this reason study abroad remains an under-financed and under-theorized field. Debates rage and fashions come and go in second language acquisition, but we have yet to create significant debates within the academy on second cultural acquisition. Our students, and ourselves, are strangely absent in discussions of hybridity and borderland communities. Because of these tendencies in the United States study abroad tends to be poorly understood and not well positioned to defend itself. Of course, there are many liberal arts colleges where study abroad has become an integral part of the curriculum—such institutions constitute a notable exception to this general situation.

A second set of issues shaping this conversation spring from the nature of our institutional and legal structures in this country.

We have a powerful adversarial legal industry. It and the press rarely distinguish between risk and the perception of risk. Unfortunately distant cultures seem to be perceived as riskier than nearby ones. I suspect this is not likely to change.

We also have a powerful insurance industry playing a role, often behind the scenes, in shaping our risk management practices. In addition to appropriate legal practice, insurance is the key way we manage risk. And these methods for responding to risk, and to perceptions of risk, often combine to foster conflict in our courts.

I fear that the concern with safety and responsibility is already, in small but incremental ways, discouraging institutions from engaging in foreign study, or, at least, discouraging them from rethinking the boundaries of their campuses and their collaborative ties with other institutions. The argument here is that while we talk of globalization another set of forces is at work to keep our students on our campuses, forces that often also include encroaching fiscal constraints and a misplaced emphasis on credentialing among students. The liberal arts college and the study of Asia are in many ways at the forefront of this conversation. The liberal arts college has a rich tradition of study abroad and Asia presents the most distant and still only marginally incorporated object of study.

RESPONSES TO THIS SITUATION

I think there are two appropriate responses to this situation:

1) We need to become better at adopting the representations, and in some cases the practices, preferred by our legal industry. Some of these practices are likely to improve the quality of the educational services we provide. For example, NAFSA has put together a series of guidelines emphasizing the contractual relations between ourselves, our students and their parents. I think such guidelines are helpful. They encourage us to see students as legal individuals with both contractual rights and obligations. I think we should follow up on these insights and stress that study abroad is a privilege. It is a privilege that students can lose if they do not live up to our expectations of them—in effect if they do not live up to their contractual obligations. Approaching students in this way can, I think, encourage some of them to mature more quickly as legal individuals who enter into contracts, acquire obligations, and are held accountable for their actions.

2) Secondly, we need to mount an argument for the educational merit of study abroad and we need to devote more resources to it. This would permit us to take advantage of the tremendous educational opportunities awaiting our students abroad, especially in non-traditional destinations. I would like to comment on this last area first.

THE EDUCATIONAL CHALLENGE

This moment strikes me as an important one for clarifying our educational goals and for advocating taking our students to Asia as we bring Asian students to this country.

As we think about study abroad we need to recognize there is no single or preferred model. Study abroad programs can and have easily been shaped to fit the multiple goals, constituencies, and collaborating institutions that comprise them. My own experience is with language based cultural immersion programs in Japan.

As we think about study abroad it is important that we primarily approach it as educators. John Dewey taught us long ago that educational processes and socialization processes go hand in hand. He said this was true of all education and that effective pedagogy had to speak to the condition of students. It needs to link educational lessons with the prior experience of students while anticipating their future experiences.

My sense is that no field within the academy more successfully blends the two, educational processes and socialization processes, than study abroad. We are in the job of recreating our students, re-socializing them as we educate them. We teach them how to bow in other people's homes while we introduce them to discourses on the nature of benevolence, or if you prefer, of hegemonic practice. It is worth stressing that study abroad as a field links the body, performance, and reflection with apprenticeship-style learning processes. It is a field, especially in cultural immersion programs, that introduces the life-worlds of local peoples to our students and gives them, in some real sense, a second home elsewhere in the world. This is an incredibly rich field for educational institutions to explore.

I should also stress that if we pursue the pragmatic insights of Dewey, then foreign student pedagogy in nearby cultures is distinct from foreign study in distant cultures. Our students and the local peoples and faculty who teach them need to negotiate much greater distances in Asia to acquire mutual understanding than I suspect is the case for
comparable students in Europe. This means that the challenges of study abroad in Asia will often be distinct from those of Europe and that the field itself is, to that extent, a unique and particularly interesting one. It also means that as we think about study abroad in Asia we are better off planning longer sojourns abroad for our students. In this context it is worth noting that the current trend is toward shorter periods abroad.

Finally, I think it is also important to state that well-crafted foreign study is the single best method for fostering the development of mature citizenship in our global society. Universities are meant to lead national communities in developing such citizenship. As a mode of social organization we precede the nation state and it is, I think, important that we keep the bigger picture in mind while we work on what is increasingly coming to be referred to as issues of safety and responsibility.

THE MANAGEMENT CHALLENGE

As we think about managing foreign study programs it is important to stress that there are a number of ways to limit risk, even if it can’t be avoided altogether. To help in thinking about this, I will try to quickly list a number of strategies. Some involve activities you can do abroad, many involve activities you can do in this country. This is because as we stress contractual relations with students the jurisdiction of these contracts or putative contracts is likely to fall in the United States.

OUTSIDE OF THE U.S.

If you actively manage programs abroad it is important to:

1) Put your educational goals and ethical concerns first. For example, one could argue that by placing students in dorms you can limit your liability, that host families or other arrangements are riskier. All of my experience suggests that host families are tremendously educational. I think we should resist any advice that limits the educational goals of our programs. To the extent that we don’t put our educational goals first the logic of limiting risk is likely to constrain them.

2) If you manage a program abroad it is crucially important that you trust your common sense and don’t be reluctant to use your authority as an older and wiser person. This is your job. For example, the pros and cons of disclosing confidential information is an often-discussed area. My sense is that we should not be reluctant to disclose what might be perceived as confidential information when we feel the situation demands it. Such things will always be judgement calls. But I don’t think we should fear making them.

The general point here is that we should challenge the law to follow us rather than lead us.

3) Invest in staff. Study abroad is always a hybrid activity. Ideally you should have staff who know your students and are intimately familiar with the world they are coming from as well as staff who know and are intimately familiar with the world they are entering. We need to link educational processes and staffing in this country with comparable processes and staffing in Asia. We need to spend more time establishing collaborative programs with local institutions in Asia and establishing faculty and student exchanges. We also need to spend more time leading students abroad and returning to our campuses with them after lengthy sojourns away.

4) In all of this it is important to recognize that students are “out of place” creatures. They are continually walking on uneven ground. It is important to explain risks, but also to be there as students learn to dwell in another cultural setting. As much as possible, surround your students with a thick human interface. Teach them to understand and trust local people. Don’t let them be alone.

IN THE U.S.

1) Incorporate. Be sure you have a clear legal home. Be sure your institutions are behind you. They are the legal/corporate players, not yourselves.

2) Sign Collaboration Agreements. If you work with other institutions, especially in the U.S., be clear about your respective duties and obligations.

3) Buy Insurance. If you collaborate with other U.S. institutions be sure they also have insurance or that they are named beneficiaries of your policy. If several institutions jointly own a program be sure this is spelled out. If not, should you be pulled into litigation, you might find yourself and your partner institutions caught in the middle of acrimonious discussions between your respective insurance companies.

4) Build Reserve Funds. Don’t assume all expenses will be covered by insurance.

5) Periodically read through the core documents used by other programs. These include waivers, health forms, program evaluations and the like. These are a rich source of ideas for shaping your own program and its core documents.

6) Monitor the conversations in the field, especially at NAFA & SECUSSA (Section on U.S. Students Abroad).

7) Periodically read and discuss with your staff the NAFA guidelines and other pertinent publications. How well do your programs fit whatever standards or recommendations you find in such literature?

8) Some of you will have already noticed that I have not suggested you consult with a lawyer. Instead, I do suggest that as questions occur to you, you consult closely with your Provost or Academic Dean, your Dean of Students, and the person who handles insurance on your staff. These are your in-house legal experts. They also are the appropriate people to pass your concerns on to the college’s counsel or to set up appointments for you to speak directly with counsel.

9) If you manage foreign study programs or teach about Asia and are concerned with this new field, I think you will find that entering it is much like teaching a new course. You will be forced over and over to view familiar material from novel perspectives. Its good to remember that you are well qualified to enter into this process. If you view it as an educational one I think you will find it both intellectually interesting for yourself and very much worthwhile for your college or university.
10) If you are concerned with your potential personal liability contact professional organizations whose members frequently lead students on field trips like the American Anthropological Association or the American Geological Association. Ask these organizations about their suggestions for personal liability insurance. If you own a home there is a good chance you already have personal liability insurance. In most cases, should you be pulled into litigation, the plaintiff will target the assets of your college or university, rather than your more limited ones.

11) As you become schooled in this area you are also likely to become the interpreter of American legal and institutional practice to your foreign collaborating institutions. If we are not sure how to shape our practices to conform to emerging standards they are at an even greater loss to figure out what we are doing.

As you engage in this process you also gain a new appreciation of American democracy and the necessary tensions between institutions, courts, and legislators. In closing let me give a couple of examples of this tension and of why I began by stating that an unease has fallen over study abroad offices across the country.

12) As you move into this new area, you are likely fairly quickly to encounter a variety of the self-help guides currently being published often by lawyers or people with extensive legal training. In reviewing this literature it is important to recognize the conundrums of all specialists—including ourselves. What constitutes an explanation? And especially, what constitutes an explanation when a clinician is speaking with a client? In preparing a self-help guide, should specialists explain things in great depth? Should they make general recommendations? Should they make a checklist of things to do? Should they recommend that every one consult their own specialists?

I think a lot of the anxiety in the field comes from our own misgivings when dealing with specialist knowledge in the hands of others. Often this results in an urge on our part to turn to legal professionals and say: “Just tell me what to do.” Let me close with a couple of examples of different ways they might, and have, responded.

A key question regarding the participation of American institutions in study abroad concerns the applicability of U.S. federal statutory laws abroad. In managing our study abroad programs do we need to comply with Title IX, FERPA, and the like? One approach is found in a document published by United Educators as part of their managing liability monograph series. It assumes that all study abroad programs should have a risk assessment committee including in-house legal counsel and a risk or safety management officer in addition to study abroad professionals. It presents a checklist of statutory laws that might be applicable abroad and asks program administrators, with the aid of committee members, to state their action plans for each of the laws. Such laws include: ERISA, OSHA, Title VII, Title IX, ADA, FERPA, Campus Security Act, Drug Free Schools and Communities Act, among others. Blank columns are left for administrators to list all applicable local laws at the program site and for counsel to list additional U.S. laws that apply. A series of queries follow, including:

- “For each area above, does the program have separate policies in place...?”
- “For each area above, has legal counsel reviewed and approved the overseas policy?”
- “Has a foreign attorney been retained or consulted?”
- “If so, does that attorney review all agreements and legal documents for compliance with local law?”

A very different approach to the same issue is found in Managing Liability and Overseas Programs by Kent M. Weeks. He reviews potentially applicable federal statutes and discusses each. In most cases he states that the courts have not yet decided the applicability of the statute beyond the borders of the United States. He encourages institutions to consider voluntary compliance and to look closely at the specific character of their study abroad programs in thinking about the potential applicability of such statutes.

This text draws the reader into thinking about questions of law rather than deferring such questions to a legal expert. I suspect most academics, especially those who are specialists in study abroad or who regularly take students abroad, might prefer this approach. It enhances the capacity of such staff to exercise informed judgement. In the long run, the training of staff in this area is, I suspect, one of the growth points for study abroad, especially within the institutional settings provided by liberal arts colleges. Both methods are effective in doing this. Should you opt for the latter approach, please note that the text is almost two hundred pages. It contains multiple examples of problems that have occurred abroad, applicable laws, and their competing interpretations. My sense is that this is not particularly difficult material to read and understand, but that staff working their way through the text would be well served to have opportunities for discussing it and its applicability to their programs with others.

13) Let me give a second example. It has become fashionable to have students sign waivers when engaging in off-campus activities. This is particularly true of foreign study. The legal merit of a waiver, however, can only be determined in court. And, as you enter into this process, you will soon discover that there is considerable difference of opinion both among legal experts and in different jurisdictions. This becomes even more complex as you enter into contractual relations with foreign institutions. Waivers, for example, are rarely used in Japan where they tend to be seen as a corruption of public morals: how can one be forced to waive a legal right? Similar opinions exist in this country and indeed courts will not recognize waivers that limit your human or civil rights. They also often will not recognize waivers that are not specific, do not use key terms, are hard to read, and the like. Should you become involved in litigation, all of these issues, I suspect, would be contested in court. For example, I work with four institutions on two continents and am currently balancing six legal opinions about the nature and content of waivers.

The point is that even an apparently simple thing
like a waiver quickly can become quite complex. And I think the point is also that we should not look to lawyers to treat our educational or even administrative practices abroad. Their advice will rarely be grounded in the customs of the study abroad site. Rather it will almost always be strategic and will almost always be situated within the context of American legal practice. Most of us have spent considerable time translating between distant languages, between, for example, Hindi or Chinese and English. We have grown comfortable handling the considerable slippage that occurs as we ferry thoughts back and forth between the worlds reflected in these languages. This new conversation on safety and responsibility challenges us to engage in a similar process as we learn to ferry ideas between the educational possibilities of different settings in Asia and the emerging concerns of the American public and our legal institutions. I think this should add interest and excitement to our jobs — it calls on us to see and defend our educational missions in a new and, I believe, compatible light.


Teaching Asia in World History
Panel Presentation
J. Megan Greene Richard S. Horowitz
Daniel Meissner Heidi Roupp

Bringing Asia into World History through
Memoir, Literature and Oral History
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INTRODUCTION
At Gettysburg College we have devised a way of teaching world history to first- and second-year students that allows us to teach from our strengths and to focus our courses on a manageable period of time. Rather than teaching a huge semester or year-long survey that covers the world from the beginning of time to the present, we have developed a series of courses that cover one or two centuries and that touch on at least three continents. Each of these courses has a thematic focus that is developed by the instructor. As part of this series I have been teaching a course on the history of the twentieth century world that focuses on the theme of empire and nation or imperialism and nationalism. It begins in the late nineteenth century and ends in the late twentieth century and is currently divided into the following five segments:

late nineteenth century imperialism: theory and practice; empire and the world wars; decolonization; the cold war as imperialism; and late twentieth century imperalisms.

Because I believe that it is exceptionally important to encounter the world, especially in the context of discussions of empire and imperialism, through the eyes of a variety of actors from around the world, I assign a lot of primary texts. Below is a list of novels, memoirs, and oral histories that deal with Asia and that I have used for this course. Not all of them fit into the theme that I have described above. I have arranged them in accordance with topics or themes that they deal with.

IMPERIALISM
Charles Allen, Plain Tales from the Raj.

In the early 1970s the BBC put together an extensive oral history of British rule in India by interviewing seventy or eighty British who had lived in British India. This book is based on these interviews. It is divided into a large number of chapters on varied topics pertaining to Anglo-Indian society, government, military and culture. As an oral history,