INSTITUTIONAL VULNERABILITY TO LIABILITY FOR STUDENT INJURY AND DEATH DURING STUDY ABROAD

*Legal Audit: A Tool to Review Current Policies and Procedures*

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Study abroad programs are seen as one of the primary areas for institutions to "internationalize" their academic offerings. Students and parents are looking at study abroad program offerings in reviewing where they will attend a college or university. The numbers participating in programs is increasing. "A total of 84,400 US students went abroad in 1995-95, a record number and an increase of 10.6 percent over 1993-94, according to a survey by the Institute of International Education. The total was almost twice that of nine years earlier, when 48,500 students went abroad (Rubin, December 6, 1996, p. A66)."

Students are also taking part in more programs in non-traditional locations. Although most students go to Europe (65.6 percent), "many more students than in past years went to countries in Africa, Asia, Eastern Europe, and Latin America. (Rubin, December 6, 1996, p. A68)." And "...as record numbers of US students go abroad and their destinations become more exotic, study abroad advisers are taking a serious look at how to insure the safety of their charges overseas - and how to limit their institution's liability, if something should go wrong (Rubin, May 10, 1996, p. A49)."

One would think that with this large number of participants, there would be generalized methods for effective programming and that information would be available to support these models. NAFSA: Association of International Educators (NAFSA) is the professional organization supporting the work of those in the field of international student exchange. In the past, NAFSA national conferences and some regional conferences, have offered a workshop entitled "Study Abroad 101", intended as a basics workshop. Over that past year, through a professional development initiative, NAFSA has brought this to a higher level, with a workshop entitled "Foundations of International Education Workshop: Study Abroad Advising." NAFSA has also published a Guide to Education Abroad for Advisers and Administrators with an accompanying resource book entitled Forms of Travel. The next volume of the Guide to Education Abroad for Advisers and Administrators will include a chapter on legal issues.

There is a body of written information: books, newsletters and articles about study abroad programming which focus on issues of crossing cultures, orientation programming, financial aid, program evaluation, and other aspects of study abroad. However useful these written materials, conferences and workshops are, they provide neither consistent nor complete information, regarding minimum standards of professional practice. Since there is no guide to ensure that programs include the same policies and procedures, which would represent an agreed-upon standard for "reasonable and prudent actions", each institution is left to develop its own policies and procedures.

With no basic agreement on policies and procedures in the field, the most difficult part of any research is to find the "right" solutions which point to assuring "reasonable and prudent" actions on the part of an institution and its administrators. Study abroad is a field where guidelines are generally developed and practiced at individual institutions.
through the support of and reflection about what other institutions are doing through meetings, conferences, electronic mail networks, and individual consultation and research.

EXAMPLES OF INJURY AND DEATH IN STUDY ABROAD

The legal cases that provide the greatest cost to institutions are those that result from death and injury to students. Although the likelihood of actual litigation is low, a single lawsuit could conceivably jeopardize the future of the entire program in terms of cost and diminished good will. Moreover, uncontrollable events, such as the threats of terrorism and civil unrest can seriously hobble an international program's future. In 1986 alone, in the wake of the Achille Lauro cruise ship hijacking and the murder of innocent American tourists in the Rome and Vienna airports, both by terrorist attacks, at least three international programs were subsequently discontinued or interrupted by several universities. Two years later, programs were halted in the Middle East, South America and China, when violence erupted in these troubled areas. The death of a group of study abroad students on their return to the US in the terrorist bombing of Pan Am Flight 103 brought these issues to the forefront. Many administrators will remember live TV interviews from Israel of study abroad students while the with Gas masks on, during the "War in the Gulf".

The general experience of students taking part in international study programs is positive. There are a limited number of actual legal cases that relate to US college and university study abroad programs. Many cases have been settled out of court. In the past few years, the following events took place which could have resulted (and may result) in future legal suits for college and university study abroad programs:

- Four students and the spouse of an administrator died in India when a bus overturned late at night during a program excursion.

- A student drowned while taking part in a study abroad program in Costa Rica.

- A student died in Russia while taking part in a study abroad program: although not confirmed, it is possible that the student was hung and thrown from a dorm room.

- A student died in Spain while taking part in a study abroad program: The student was dancing at a nightclub during an excursion and died while on the dance floor. There was some question about drug abuse and the student being "slipped a mickey" as the student had no history of drug use. The parents blame the program and the sponsoring institution for their child's death.

- A student fell off a cliff and died in China during an excursion program. The student had no repatriation coverage. The university paid $15,000 out of their own budget to cover the cost of the repatriation of remains. The institution decided not to ask the parents of the student to refund the cost.
• A student became ill with malaria after being bitten by a mosquito while on a study abroad program in Kenya. The student is back in the US and believes that the sponsoring institution is partially responsible for suggesting preventative pills against malaria because that strain of malaria was resistant to those pills in the region where he studied.

• Students on a program in England were robbed and physically abused while taking part in a study abroad program. The students claimed that the sponsoring institution never made them aware of the “realities” of the urban setting where the program took place. The students claimed that the image presented represented the England of queens and palaces. When students arrived, they found their own apartment in the “bad part” of town and the realities became those of theft and physical violence.

The author served as a consultant and “expert witness”, on behalf of a consortium which was being sued (along with a college and a resident director) by a student who became ill with leishmaniasis while taking part in an independent study project during study abroad. It is important to note that the expert witnesses supporting the case of the student included two well respected study abroad administrators. The case was settled out of eventually settled out of court.

There are a limited number of cases involving study abroad programming at colleges and universities in the US. Following are two cases which deal specifically with the issue of liability and study abroad programs:

• In the case of Furrh v. Arizona Board of Regents [676 p. 2d 1141 (Ariz. App. 1983)], a student with chronic mental disorders and under the care of a psychiatrist for several years had to be physically restrained while on a study program to Mexico. Upon his return, the student sued the professor and the Board of Regents of the university for false imprisonment (Aalberts & Ostrand, 1987, p. 59).

• In Sipple v. the Board of Governors of the University of North Carolina (318 S.E. 2d 256), a faculty member and this university were sued for deposit money after the travel agency which was promoting his overseas study program went bankrupt after receiving many of the participants’ money (Aalberts & Ostrand, 1987, p. 60).

The following are a number of other incidents that could have resulted in liability claims with attached legal issues from the literature:

• Fifteen American students crowded into their Austrian student dormitory elevator marked “for occupancy by eight persons only”; the elevator inscription was in German. The elevator plunged several stories but was
restrained by an emergency cable. What would the American university’s legal obligations have been had the elevator crashed (Aalberts, p. 59)?

- An American student in a foreign studies program goes mountain climbing by himself in the Alps. He had been warned not to go alone. He subsequently lost his bearings in a thick fog and was stranded for over 24 hours. Eventually he was found and rescued by a shepherder. he suffered from exhaustion and frostbite. Was a simple warning sufficient enough to shield the university from liability or must a university do more to protect students from known dangers (Aalberts, p. 60)?

Additional incidents that could have resulted in liability claims are mentioned in the literature or in newspaper articles:

- The vulnerability of group travel was realized in December 1988, when a terrorist bomb killed thirty-five (35) Syracuse students over Lockerbie, Scotland (Evans, 1991, p. 306).

- In December 1987, a University of Nevada, Las Vegas student was killed and another seriously injured in a traffic accident in England. Both students were part of an American Institute of Foreign Studies program in London (Evans, 1991, p. 306).

- A private university in California is being sued because a student caught a skin disease while working at a jungle iguana reserve in a remote Indian village. The consortium supporting the program is also named in the lawsuit (Rhodes & Aalberts, 1994, p. 65).

- A mother of a student who drowned in a Third World country recently sent letters to the presidents of colleges and universities who had students participating in the program in which her son had drowned (the mother claimed that the program administrators were to blame for the death of her son)(Rhodes & Aalberts, 1994, p. 65).

- Four years ago, a University of Florida student doing research in Bolivia was severely burned when a kerosene lamp exploded. her medical insurance didn’t cover her in Bolivia, and she had no of coverage for emergency evacuation. The university chartered a plane to bring her back to the United States at a cost of $50,000 (Chronicle, 1996, p. A50).

- (Brandeis University student) died yesterday in Israel of injuries she suffered in a bomb attack on Sunday. (Student) was riding a bus in the Gaza Strip when the attack occurred. The Brandeis flag was lowered to half-staff and
friends gathered outside the administration building to comfort each other (Boston Globe, April 10, 1995).

The cited incidents and cases (and potential cases) do not present a large body of legal precedent in the area of study abroad. Evans (1991) discusses the challenge that working with limited legal precedent presents to the field in terms of guidelines:

- Because the issue (study abroad) has not yet been litigated, colleges and universities still do not know how far their responsibilities to protect students in foreign-study programs extend (see New York Times Article, June 25, 1986 by Eric N. Berg. “Study Abroad Seen as Falling Victim to Terrorism) (Evans, 1991, p.310).

There are probably many other cases settled out of court or which never were presented as legal suits, although legal issues and the possibility of a law suit may have been raised. Aalberts, Ostrand and Fonte (1986, p. 60) view these issues with real concern:

- …such (study abroad) administrators need to view such incidents not as isolated aberrations but rather as the tip of a growing iceberg upon which their institution’s ship could not only flounder but even go under in a legal disaster of titanic proportions Aalberts, Ostrand & Fonte, 1986, p. 60).

Although the last ten (10) years have not brought forth such a legal disaster, there continue to be incidents which raise the same issues and the same potentialities. Each study abroad administrator has a list of “horror stories” and institutional crisis abroad that did or could have resulted in injury or death to students while abroad.

**RESPONDING TO VULNERABILITY**

Over the past five years, the author has participated in many presentations and workshops about legal issues and study abroad. Four main concerns continue to make study abroad administrators and institutions vulnerable:

1. Knowledge that the complexities of study abroad programs keep each administrator on the edge and potentially in danger of being in the next headline “horror story”.

2. Lack of minimum standards providing clear guidance of how to develop and support effective programming environment, following US and international law, in order to effectively support students and limit liability.

3. Lack of sufficient staff, resources, and interaction with university legal counsel, risk management, and relevant student affairs administrators in order
to provide sufficient guidance in support of consistent support in the US and abroad.

4. Program office Directors in the US and Resident Directors abroad to whom study abroad advisers and administrators report change regularly and may not be properly trained in both the academics and service components, integral to study abroad. Many times these are faculty with neither administrative expertise nor any interest in supplying the resources necessary for effective program support.

5. Study abroad administration is a complex task, which involves many of the responsibilities of an entire college or university in the US (while implementing these programs abroad). Although the number of participants is reduced abroad, many of the programmatic support requirements are increased.

The information provided in this presentation is intended to assist institutional legal counsel, risk management, and student affairs administrators in working with their study abroad program administrators in the development of effective policies and programming procedures in limiting liability.

The following reflections from attorney Tyrone Maho, Esq., who worked in defense of the consortium and resident director, come after working on a case where a student got leishmaniasis while on a study abroad program in Costa Rica:

Regardless of what one considers to be the merits of such a legal action, colleges and programs have a strong interest in avoiding these lawsuits, even if they are ultimately proven non-negligent. The costs and legal fees associated with defending claims such as these can be prohibitive.

To avoid being named as a defendant is the goal; and, to that end, I believe colleges and programs should adopt a comprehensive and pro-active approach toward identifying health and safety concerns abroad, and to fully advise prospective student participants of these...

The bottom line in evaluating liability is whether the study-abroad program acted reasonably towards the student with respect to his or her own safety and health considerations. Twelve jurors will often decide what is "reasonable" behavior, so the more preparatory work that can be done and documented, the better off the program will be when its standard of care is judged.

The striking feature of these events is that even though the chances of Americans being attacked by terrorists or being caught in civil disturbances are virtually infinitesimal, the factor of fear compounded by vivid news reports can quickly impair and even destroy years of hard work and dedication to international
education. For these reasons, it is incumbent on international studies administrators and faculty, to be aware of the law in this area and to plan accordingly to manage and mitigate these risks.

RESPONSIBILITIES OF A STUDY ABROAD PROGRAM ADMINISTRATOR

The following chart provides a guide to the various responsibilities of a study abroad program administrator. Why is this relevant? On college campuses around the country, there are full-time positions with administrators responsible for effective administration of the programmatic details. Effective program administration in these areas include the following relevant legal issues. For instance, a Registrar, Admissions Officer, and Student Conduct Judicial Officer needs to understand and follow the Buckley Amendment. All administrators need to be aware of issues like sexual harassment as a legal issue. Housing administrators need to concern themselves with liability related to placing people in a safe environment (rooms, electricity, stairs, etc.).

The development and support of study abroad programs include the same responsibilities of the various administrators and faculty on US college campuses, with the additional complexity of providing those services both in the US and in countries around the world:

- Academic Freedom Advocate
- Admissions and Enrollment Officer
- Budgetary Officer
- Computer Center Manager
- Course Development Review
- Crisis and Emergency Manager
- Currency Exchange Expert
- Equipment Manager
- Evacuation and Repatriation Liaison
- Grades Department Administrator
- Insurance Counselor
- International Law Expert
- Librarian
- Minority Student Advocate
- Orientation Program Administrator
- Parental Liaison
- Personnel Administrator
- Public Relations Officer
- Risk Manager
- Student Conduct Judicial Officer
- Student Health Professional
- Textbook Manager
- Transportation Supervisor
- Visa and Immigration Specialist

- Academic Program Developer/Advisor
- Academic Records Officer
- Bursar
- Contract Developer
- Course Evaluation Administrator
- Cross-Cultural Issues Counselor
- Drug and Alcohol Counselor
- Program Evaluation Officer
- Financial Aid Officer
- Housing Rental Agent
- International Communications Expert
- Internship Program Developer and Sponsor
- Loan Officer
- Non-Traditional Major Participation Promoter
- Paralegal
- Personal and Professional Counselor
- Program Developer and Closer
- Recruiter
- Student Affairs Administrator
- Students With Disabilities Manager
- Testing Administrator
- Translator
- Travel Agent and Tour Operator
- Women’s Issues Advocate
A study abroad administrator should be familiar with the basic concepts effective administrative practice in the above areas. A study abroad administrator should do their best to understand how the above areas are handled on the home campus so as to support consistent handling of students in the US and abroad and take advantage of the expertise of other administrators on their home campus. A study abroad administrator can’t be expected to be an expert in US law in addition to the laws of each country where the college or university maintains study abroad programs. Susan Thompson, Director of International Programs at the University of Nevada at Las Vegas thinks it is important for administrators not to fear that they will can be experts in every area:

"International program staff should not be concerned if they are not experts in every area related to study abroad. The key to a successful program is knowing who the experts are and working with them to create viable policies and practices".

An administrator should be able to look at the list of responsibilities and match them to relevant administrators on their campus. This should assist in understanding which offices have responsibilities that are similar to many of those of a study abroad program administrator. Consistent policies and procedures on-campus and abroad are important and only through continuing communication with the many administrative arms of an institution can a study abroad program operate effectively (whether it be with legal counsel, risk manager, registrar, financial aid office, housing, etc.).

According to Rhodes and Millington (1994):

The increasing scope and scale of study abroad programs adds to the challenge. Programs in the developing world, participation of nontraditional students without previous travel experience, and political instability and terrorism are headaches unique to the study abroad office.

With this as a backdrop, Rhodes and Millington (1994) suggested the “legal audit” as a strategy to review current programmatic policies and procedures to avoid future liability in order to assist an institution to act in a “reasonable and prudent” manner, and at the same time, improve the quality of study abroad programs. Faced with limited legal precedent, this broad set of issues and possible areas for liability and limited legal precedent, some institutions have taken part in a “legal audit” of their study abroad programs.

LEGAL POLICIES AND PROCEDURES AND US HIGHER EDUCATION WITH RELEVANCE TO STUDY ABROAD:

It is important to consider the broad range of US laws and legal issues that are relevant to the study abroad program administrator. In considering the different laws and legal issues, it is important to consider the necessity of including effective legal consultation into the institutional development of effective policies and procedures. The following list is a list of
relevant US law (an earlier version appeared in the March 1994 NAFSA Newsletter), for a study abroad program administrator to consider:

<table>
<thead>
<tr>
<th>Age Discrimination in Employment Act</th>
<th>Affirmative Action Policy</th>
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<tbody>
<tr>
<td>Alternative Dispute Resolution</td>
<td>Alcohol Liability</td>
</tr>
<tr>
<td>Americans with Disabilities Act of 1990</td>
<td>Assumption of Risk</td>
</tr>
<tr>
<td>Campus Assault Victims Bill of Rights</td>
<td>Choice of Forum and Choice of Law Clause</td>
</tr>
<tr>
<td>Communications Act</td>
<td>Comparative Negligence</td>
</tr>
<tr>
<td>Constitutional Law</td>
<td>Conflict of Interest</td>
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<tr>
<td>Contract Law</td>
<td>Defamation of Character and Libel</td>
</tr>
<tr>
<td>Drug Free Schools &amp; Communities Act of 1989</td>
<td>Drug-Free Workplace</td>
</tr>
<tr>
<td>Duty of Care</td>
<td>Duty of Landowner to Maintain Safe Premises</td>
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<tr>
<td>Duty to Protect Invitees</td>
<td>Duty of Landowner to Control Third Persons</td>
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<tr>
<td>Duty of Reasonable Standard of Care</td>
<td>Duty to Supervise</td>
</tr>
<tr>
<td>Family Educational Rights and Privacy Act</td>
<td>Due Process: Procedural and Substantive</td>
</tr>
<tr>
<td>Foreign Laws</td>
<td>Unreasonable Search and Seizure</td>
</tr>
<tr>
<td>Harassment: Sexual and Racial</td>
<td>High-Risk vs. Risk-Limited Activities</td>
</tr>
<tr>
<td>Higher Education Act of 1965</td>
<td><em>In Loco Parentis</em> and Special Relationship</td>
</tr>
<tr>
<td>Individual vs. Institutional Liability</td>
<td>Insurance: Medical, Evacuation, Repatriation</td>
</tr>
<tr>
<td>Internships and Experiential Learning</td>
<td>International Agreements/Treaties</td>
</tr>
<tr>
<td>Legal Audit</td>
<td>NAFSA Code of Ethics</td>
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<tr>
<td>Negligence</td>
<td>Nonprofit Organization Tax Status</td>
</tr>
<tr>
<td>Off-Campus Programming</td>
<td>Personal Injury</td>
</tr>
<tr>
<td>Potential Dangers and Risks</td>
<td>Prior Restraint</td>
</tr>
<tr>
<td>Private vs. Public Institution Regulations</td>
<td>Rehabilitation Act of 1973 (Section 504)</td>
</tr>
<tr>
<td>Relationships (Sexual) Between Staff &amp; Students</td>
<td>Student Disciplinary Process and Procedure</td>
</tr>
<tr>
<td>Student Right to Know and Campus Security Act Title IX Requirements</td>
<td></td>
</tr>
<tr>
<td>Title VI of the Civil Rights Act of 1964</td>
<td>Title VII of the Civil Rights Act of 1964</td>
</tr>
<tr>
<td>Tort Liability</td>
<td>Transportation Liability</td>
</tr>
</tbody>
</table>

The above list shows that there is a significant body of relevant US law. On the other hand, for a study abroad administrator to try to become an expert on US law would be an overwhelming task. This does not mean that an administrator is helpless in trying to develop and support effective programs.

LEGAL AUDIT: TOOL FOR DEVELOPMENT AND SUPPORT OF EFFECTIVE POLICIES AND PROCEDURES:

To follow this background in US higher education law, it is important to view the various issues and their relevance in a more practical basis for study abroad program administrators and policy-makers at colleges and universities in the United States. In developing a guide for such use, the use of a legal audit of study abroad programming can be seen as a tool for individual institutions to review current policies and procedures to determine what parts of their programs are following a "reasonable and prudent" standard of care, and which need to be updated to a better standard of care in support of the institutional and its students.
The following are perceptions of the Office of General Counsel and University Risk Manager at the University of Southern California, and a Regional Director of the University of California Education Abroad Program Systemwide Office illustrate the rationale behind the legal audit as a method for updating institutional policy and procedure (as the author led a legal audit review of study abroad policies and procedures at the University of Southern California and has assisted other institutions as they worked on reviewing the policies and procedures at their institutions):

In a large university you tend to have different schools, who are independently administering study abroad programs, which have different needs. It is important for the General Counsel’s Office to review the written brochures and materials describing the programs to ensure appropriate legal protection for both the students involved in the programs and for the University. Through such a review we hope to achieve some commonality among the documents of the various overseas programs so they are consistent from a legal perspective and that all programs are adequately addressing issues of concern (Robert Lane, Esq., General Counsel and Ms. Karen Lee, Paralegal).

A university should first review its current policies and procedures regarding overseas study programs, because you can’t manage a risk until you identify it. I think many universities would be surprised at just how many exposures exist overseas. Once identified, the various procedures associated with overseas study programs should be centralized, clarified, streamlined and otherwise made manageable. Each possible problem that can arise should be dealt with individually, so that the overseas study program as a whole becomes a safer, more predictable experience.”

(Mr. Douglas J. Moore, ARM)

According to Rodney Sangster, Regional Director for the University of California System Education Abroad Office, these “legal issues should be studied before they become problems, ‘so that university counsel can be engaged in a timely manner, and not be put in the position of having to bail the study abroad office out of a situation that might have been foreseeable...Rather than being separate and different, we should strive to make our offices as compatible as possible with all areas of the institution on which our mission impinges (Rhodes & Millington, 1994).”

Susan Thompson, Director of International Programs at the University of Nevada at Las Vegas reiterated the importance of integrating your legal counsel in the process. "Liability issues and risk management must be handled in a proactive manner. The time to develop a good working relationship with your system legal counsel is before any problems occur".
LEGAL AUDIT PROCEDURES

The legal audit procedures comes out of the preventative law literature, where the focus is limiting liability and avoiding legal action. The lawyer then becomes involved in an administrative process of reviewing the current policies and procedures to identify existing policies and procedures that may not be effective, areas where new policies and procedures should be developed through a focus on limiting institutional vulnerability to future legal action. Brown and Kandel (1991) focus on the process as an analysis: “Analysis should be made to detect, within reasonable limits, compliance with the law in the operations of the enterprise including all record keeping and recording requirements. Legal risks are minimized whenever some legal noncompliance is identified and, consequently, correctable (Brown & Kandel, 1991).”

As an understanding of the legal issues in study abroad programs do not come from clear guidelines based on legal precedent, the legal audit can become a guide to develop and review institutional policies and procedures. By using the following legal audit guide or checklist, an institution can develop a clear review of policies and procedures in order to develop a priority list of areas that need immediate, short-term, and long-term action.

Following is the current form of the legal audit for study abroad, as developed by Rhodes (Rhodes, 1994):
Legal Audit Checklist for Study Abroad

I. Mission
   ____ Suggestion 1: Development of Mission for Institutional Study Abroad
   ____ Suggestion 2: Provide Leadership for Regional Accreditation Guidelines
   ____ Suggestion 3: Integrate Study Abroad Into Curriculum

II. Administration of Programs
    ____ Suggestion 4: Limited or Full Centralization of Program Administration

III. Insurance
     ____ Suggestion 5: Insurance Requirement with Limitations and Options
     ____ Suggestion 6: Additional Insurance Options and Information for Students
     ____ Suggestion 7: Tuition Insurance

IV. Release, Hold-Harmless, or Indemnification Agreement
    ____ Suggestion 8: Release Form: Review by Legal Counsel & Risk Manager

V. Contracts with Consortia, Colleges, Universities, Travel Providers, etc.
    ____ Suggestion 9: Centralized Records of Contracts and Linkage Agreements
    ____ Suggestion 10: Contracts for Linkage Agreements and Travel Providers
    ____ Suggestion 11: Accurate Publications and Advertising

VI. Conditions of Participation
    ____ Suggestion 12: Develop Conditions of Participation Form

VII. Health and Safety Issues and Emergency Policies and Procedures
     ____ Suggestion 13: Development of Health and Safety Guidelines and Resources
     ____ Suggestion 14: Develop a Study Abroad Emergency Response Team
     ____ Suggestion 15: Obtain Student Signature Agreeing to Cancellation Policy

VIII. New Program Development and Evaluation
      ____ Suggestion 16: New Program Academic and Student Services Review
      ____ Suggestion 17: Development of Evaluation Forms
      ____ Suggestion 18: Development of Evaluation Procedures

IX. Program Suspension and Cancellation
    ____ Suggestion 19: Develop Program Suspension and Cancellation Policy

X. Linkage of All Study Abroad Program Administrators
    ____ Suggestion 20: Working Group of Study Abroad Administrators
    ____ Suggestion 21: International and Domestic Personnel Policy

XI. Application Procedures
     ____ Suggestion 22: Comprehensive Application Form
     ____ Suggestion 23: Appropriate and Consistent Application Standards

XII. Participant Acceptance, Denial and Appeal
     ____ Suggestion 24: Develop Acceptance and Screening Guidelines
     ____ Suggestion 25: Special Considerations: Consistent Support

XIII. Student Conduct
      ____ Suggestion 26: Development of Study Abroad Student Conduct Policy
      ____ Suggestion 27: Require Applicant to Release Student Conduct Records
XIV. Maintenance of Appropriate Records and Transfer Credit Articulation
   ______ Suggestion 28: Maintain Appropriate Records
   ______ Suggestion 29: Document Articulation Process
   ______ Suggestion 30: Require Academic Advisement Form Signed by Advisors
   ______ Suggestion 31: Include Grades on Transcript if Institution Not Accredited
   ______ Suggestion 32: Develop Policy for Non-Approved Program Participation
XV. Program Pre-Departure, On-Site and Re-Entry Meetings
   ______ Suggestion 33: Develop Policy on Necessary Support Programming
XVI. Electronic Mail Communication
   ______ Suggestion 34: Develop Electronic Mail Form
XVII. Language Level Evaluation
   ______ Suggestion 35: Develop Foreign Language Evaluation Form
   ______ Suggestion 36: Evaluate Foreign Language Knowledge and Learning
XVIII. Medical and Psychological Evaluation
   ______ Suggestion 37: Use of Medical and Psychological Approval Form
   ______ Suggestion 38: Emergency Medical Information
   ______ Suggestion 39: Approval for Emergency Medical Care
XIX. Parental Information and Approval
   ______ Suggestion 40: Develop Clear Guidelines for Parental Involvement
   ______ Suggestion 41: Develop Parental Approval of Participation Policy
XX. Budget Preparation and Record Keeping
   ______ Suggestion 42: Develop Appropriate Budget Procedures
XXI. Financial Support and Advisement
   ______ Suggestion 43: Students Should Sign Program-Related Charges Form
   ______ Suggestion 44: Require Financial Aid Meeting for All Students
   ______ Suggestion 45: Include All Relevant Costs in Program Cost
   ______ Suggestion 46: Students Should Sign Financial Aid Responsibilities Form
XXII. Immigration Requirements and International Law
   ______ Suggestion 47: Require Registration at US Embassy or Consulate
   ______ Suggestion 48: Develop Basic International Law Guidelines
XXIII. International Air Transportation and In-Country Travel Arrangements
   ______ Suggestion 49: Develop Basic Travel Policies
   ______ Suggestion 50: Possibility for Charging Tickets to Credit Cards
   ______ Suggestion 51: Appropriate Air and Ground Carriers
   ______ Suggestion 52: Use of Personal and Rental Cars
   ______ Suggestion 53: Develop Policy on Risk-Limited Activities
   ______ Suggestion 54: Have Travel Professionals Support Travel Arrangements
XXIV. Alcohol Policy
   ______ Suggestion 55: Develop Policy on Program Payment for Alcohol
   ______ Suggestion 56: Develop Policy on Use of Alcohol at University Events
XXV. Resident Director and Faculty Training
   ______ Suggestion 57: Develop Resident Director and Faculty Training Manual
XXVI. Special/Other Policies
   ______ Suggestion 58: Review Special Issues for Your Institution (Religion, etc.)
I. Mission

*Suggestion 1:* Development of Mission for Institutional Study Abroad

To develop appropriate policies and procedures, it is important to follow institutional goals. Institutions should develop a mission statement for international programs which provides guidelines for policies and procedures for undergraduate and graduate study abroad programming. If study abroad specifically fits into the institutional mission, it should be articulated throughout the university and especially to administrators in charge of study abroad. Without a distinct mission, there is no agreed upon direction. Without a clear direction for study abroad programming, program administration is provided no clear guidelines. When challenged, as a result, it will be more difficult to provide proof of the integrated academic necessity for supporting the programs in place.

*Suggestion 2:* Provide Leadership for Regional Accrediting Agencies

In reviewing and updating its policy on international study programming, institutions can provide leadership in the development and implementation of effective programming. At the same time, institutions could prepare for the next accreditation review by developing clearer policy on international programming. As in many areas, if institutions develop adequate guidelines and take part in regular review, there will be improved programs and an ability to respond to crisis situations with confidence that programs are following agreed-upon minimum standards. As Regional Accrediting Agencies are the only continuous independent review mechanisms in place for colleges and universities in the U.S, having study abroad programming included in their institutional review may assist in reviewing program effectiveness.

*Suggestion 3:* Integrate Study Abroad Into Institutional Curriculum

If one part of the study abroad mission is to integrate "international" into the undergraduate and/or graduate curriculum, this idea should be linked to the mission statement and supported through programs on campus. This includes courses focusing on international issues, an international or intercultural issues study abroad preparatory course, international teaching and research, re-entry programming and support, etc., Phi Beta Delta (the International Honor Society), including returned study abroad students into programming for international students on the home campus and including international students in study abroad support programming. By integrating international programming as a university function, institutions can make a statement that study abroad is not promoted only for recruitment or generation of income, but rather for well-defined academic purposes.
II. Administration of Programs

*Suggestion 4: Limited or Full Centralization of Program Administration*

Currently, many different departments operate programs on the same college or university campus. Are they following the same health and safety standards? Are the program directors as well trained? Are they using effective publications? Are they leaving the institution vulnerable?

In court, however, it would be necessary to show that actions are of a "reasonable and prudent" nature. If programs are being administered differently on campus and communications between units was limited, it would be difficult to prove that there was an agreed upon standard for study abroad at even one institution. Each institution should be able to confirm that each academic unit is using "reasonable and prudent" policies and procedures: Without agreement on what are "reasonable and prudent" policies and procedures, institutions may be vulnerable.

Some of the best study abroad programs are administered by multi-campus systemwide offices. At the same time, some of the campuses within that system have limited resources and may be operating programs that, when held to the standard of the systemwide program, could come up very short.

III. Insurance

*Suggestion 5: Development of Minimum Insurance Standards*

"Mandatory student health and accident insurance is being adopted by many institutions. Although most institutions offer optional insurance, student participation is not high. Many times, sub-units of the institution also require medical insurance for participation in field trips, sports, or study abroad. Unless such policies are enforced, such requirements are useless and may even put the institution in a situation where liability will be found on the basis of nonenforcement of its own rules (Delworth, 1988)."

How will your institution support students and faculty when abroad. Can they confirm major medical coverage that will support ease of payment for care abroad? In the case of a severe illness or injury, is there sufficient medical evacuation coverage? In the event of medical evacuation to the US, will there be sufficient coverage for care in the US? In the case of death, is there sufficient repatriation of remains coverage?

Does the information about insurance leave a clear message about the policy and its limitations, including a deductible, maximum coverages and reimbursement provisions (requiring students to pay in advance depending on the occurrence), pre-existing limitations, among other restrictive clauses. Is the policy is presented in such a way that
it appears to be all-inclusive (to students and parents)? If insufficient information about the policy is given to students, is your institution limiting their opportunity to make an educated choice about their insurance while abroad (in many cases, students may only receive specific information about the policy after they are already abroad, at which time it may be too late to purchase additional insurance).

Issues that should be considered are:

   a. Major Medical Coverage
   b. Medical Evacuation Coverage
   c. Repatriation of Remains Coverage
   d. Insurance as required or optional
   e. Confirmation of coverage outside program country
   f. Clarification of which companies and policies are appropriate as options
   g. Option for student to extend coverage
   h. Clarification of what will be covered once student returns to US
   i. Institutional liability coverage
   j. Personal liability coverage for program faculty and administrators

**Suggestion 7: Tuition Insurance**

Tuition insurance is currently available to many students when they register on a home campus. Has your institution clarified whether it is available for study abroad and what separate guidelines should be used?

IV. Release, Hold-Harmless, or Indemnification Agreement

**Suggestion 8: Revise Release Form for Increased Effectiveness**

A second method of risk transfer is a “hold-harmless” or indemnification agreement. In a broad sense, the term “indemnification” refers to any compensation for loss or damage. Insurance is thus one method of indemnifying someone. But in the narrower sense used here, indemnification refers to an arrangement whereby one party (for example, the institution) agrees to hold another party (for example, an individual officer or employee) harmless from financial liability for certain acts or omissions of that party which cause damage to another (Kaplin & Lee, 1996, p. 139).

A third method of risk transfer is the release or waiver agreement. This type of arrangement releases one or two related parties from liability to the other for injuries arising from the relationship. In postsecondary education, this mechanism is most likely to be used in situations such as intercollegiate athletics, provision of medical services, student field trips, and tours of construction sites,
where the participant or recipient is required to execute a release or waiver as a precondition to participation or receipt (Kaplin & Lee, 1996, p. 140).

As noted above, use of a release may assist in releasing the institution from liability. Currently many institutions use a "Release Form". It is important that legal counsel be involved in the development of the study abroad "Release Form", ensuring that it is comprehensive, including a consideration of the following specific issues:

a. The form should state that students release the institution and its contractors from liability both for themselves and from families and dependents.

b. Parental Signature: The form should be signed by the parent or guardian if the student is a dependent and/or under a certain minimum age (supporting institutional guideline on what age).

c. Choice of Forum and Form of Law Clauses: The form should clarify which law should be used (state, country) as well as where a suit would take place (city, state, country).

d. Arbitration Clause: "A foreign studies program may want to add an arbitration clause...to create even more efficiencies and predictability in this program's legal environment. To survive, a program must avoid litigation if possible; submitting disputes to arbitration may accomplish this (Aalberts & Evans, 1995, p. 41)."

e. Risks: The form should note the risks that are inherent in study abroad and that the student understand these risks when agreeing to take part in the program.

f. Confirmation of Voluntary Nature of Program: The form should state that study abroad is optional for students.

The release will generally hold the institution and the administrator harmless "if the individual (administrator) believed that their actions were in good faith that his actions were lawful and within his institutional authority and responsibility (Aiken, 1976)." However, it is important to realize that a release form will not release an institution from negligent actions:

"An institution's ability to transfer risk is limited by the law to situations that do not contravene 'public policy.' When financial liability is incurred as a result of willful wrongdoing, it is generally considered contrary to public policy to protect the institution or individual from responsibility for such behavior through insurance or indemnity. Wrongdoing that is malicious, fraudulent, immoral, or criminal will often fall within this category; thus, insurance companies may decline to cover such action, or provisions in insurance policies or
indemnification agreements that do cover it may be void and unenforceable under state law (Kaplin, 1985)."

"Public policy may also prohibit agreements insuring against financial loss from punitive damage awards. Jurisdictions differ on whether such insurance coverage is proscribed. Some courts have prohibited coverage because it would defeat the two purposes served by punitive damages: punishment for egregious wrongdoing and deterrence of future misconduct (Kaplin, 1985)."

One of the considerations in developing an effective release form is to have take into account that the student or parent will read and take into account the message in the form, which assists in making them consider that they are responsible for their actions. Students may sign a release form and not sue because they don’t think they can. As a legal form, institutional counsel should be involved in the development and review of the form, a critical document for limiting institutional liability.

V. Contracts with Consortia, Colleges, Universities, Travel Providers, etc.

*Proposal 9: Centralized International Contracts and Linkage Agreement Records*

Copies of all agreements and contracts with international entities with which an institution is linked from all units on campus involved in study abroad programming should be consolidated for review by legal counsel to ensure that all linkages are appropriately developed and supported though appropriate agreements developed pursuant to US and international law.

Institutions are taking part in programs that follow various models and are located in many different regions of the world. Along with the challenge of program location, there is a wide variety of the risks inherent in programs. A program that included scuba diving brings to light immediate health risks. Institutions should take these very seriously and develop contracts with those who provide on-site administration and supervision. What institution will provide a defense in the case of legal action.

*Proposal 10: Contracts for Linkage Agreements and Travel Providers*

It is important to confirm that there is consistency among agreements between an institution and the different programs and sponsors with which it is linked. Institutions should develop linkage contracts that consistently and uniformly limit institutional liability, without overly restricting programming.

Institutions can protect themselves not only from the damages resulting from a lawsuit, but also, and equally important, from legal costs associated with defending itself from a lawsuit. To do so, agreements with other institutions should include such "hold-harmless" clauses. As noted by Kaplin:
"...the institution can sometimes also be an "indemnitee," the party protected from liability loss. The institution could negotiate for "hold harmless" protection for itself, for instance, in contracts it enters with outside contractors and lessees. In an illustrative case, Bridston v. Dover Corp. and University of North Dakota v. Young Men's Christian Association, 352 N.W. 2d 194 *N.D. 1984), the university had leased a campus auditorium to a dance group. One of the group's members was injured during practice, allegedly due to the negligence of a university employee, and sued the university for damages. The university invoked an indemnity clause in the lease agreement and successfully avoided liability by arguing that the clause required the lessee to hold the university harmless even for negligent acts of the university's own employees (Kaplin, 1985)."

As is the case in student "hold-harmless" agreements, "an indemnification agreement often does not cover liability resulting from intentional or malicious action or from action violating the state's penal laws, because such actions are considered contrary to public policy (Kaplin, 1985)."

**Suggestion II: Accurate Publications and Advertising**

Advertising of all kinds becomes a formal or informal agreement regarding the amount and kind of support that will be provided as a part of the program. For example, students should be informed of the realities of travel and lodging. As long as accommodations are safe, they don't need to be first class. However, if students are promised that they are paying and will receive first class lodging, travel, etc. and then are given 4th class support, institutions can be vulnerable for displaying dishonesty in advertising.

According to Burling, "...courts have found that some admissions materials distributed by colleges promise a safer than normal campus and have found the colleges liable to student victims of campus crime (See Mullins v. Pine Manor College, 389 Mass 47, 53-54 (1983)) (Burling, 1992, p. 5)."

If there is death or serious injury abroad, the prosecution will try to show a pattern of problems on the program. Written materials will be the first to be reviewed. An area of particular concern involves the question of whether institutions are required to provide information on the numbers and types of crimes on and near the study abroad programs.

The Campus Security Act, as amended by the Higher Education Amendments of 1992, requires colleges to report, on an annual basis,

statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies-
(I) murder;
(II) sex offenses, forcible or nonforcible;
(III) robbery;
(IV) aggravated assault;
(V) burglary; and
(VI) motor vehicle theft

The law requires that colleges report the number of arrests for liquor law violations, drug abuse violations, and weapons possessions as well. The law also requires colleges to develop and distribute to students, prospective students and their parents, and the secretary of education,

(1) a statement of policy regarding-
    (I) such institution’s campus sexual assault programs, which shall be aimed at prevention of sex offenses; and
    (II) the procedures followed once a sex offense has occurred.

The law also requires colleges to include in their policy (1) educational programs to promote the awareness of rape and acquaintance rape, (2) sanctions that will follow a disciplinary board’s determination that a sexual offense has occurred, (3) procedures students should follow if a sex offense occurs, and (4) procedures for on-campus disciplinary action in cases of alleged sexual assault.

The Campus Security Act also requires colleges to provide information on their policies regarding the reporting of other criminal actions and regarding campus security and campus law enforcement. They must also provide a description of the type and frequency of programs designed to inform students and employees about campus security.

In one of its most controversial provisions, the law defines “campus” as

(I) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or
(II) any building or property owned or controlled by student organizations recognized by the institution (Kaplin & Lee, 1996, pp. 589-590).

Although currently, study abroad programs are not responding to the Campus Security Act. Institutions should consider whether they should be for programs abroad. Institutions should consider both the resources necessary to carry out the requirements of the Campus Security Act and vulnerability to future legal action if they do not.
VI. Conditions of Participation

Suggestion 12: Develop Conditions of Participation Form

A form that other institutions use that serves an important purpose is one that confirms what is expected of each student and specifies issues of importance. One of the strengths of this form (different from a release form) is that the student would be entering into a contract to follow the rules and regulations specified. A student could then be held responsible to do so, as long as the requirements were reasonable. Parental signature could be required for dependent children.

Information to include in Conditions of Participation Form:

a. Financial responsibilities of student
b. Policy on suspension and expulsion from programs
c. Early withdrawal policy (emergencies, etc.)
d. Independent travel policy
e. Air transportation
f. Identification: passport, visa, registered at embassy, etc.
g. Changes in program fees (exchange rates, etc.)
h. Program changes and cancellation
i. Billing
j. Cancellation Fees
k. Transcripts and Evaluations
l. Approval for emergency medical treatment when student is physically unable to give consent
m. Agreement: Conclude with an agreement similar to the following:

"In anticipation of acceptance, and as considered for participating in its program, I agree to the terms of the 'Conditions of Participation' and acknowledge that I have read them and understand them thoroughly. I also agree to the payment schedule and cancellation fees stated herein. The terms under which I agree to participation in this program cannot be changed or amended except in writing and signed by an authorized officer or agent. I certify that I am (*) years of age or older."

VII. Health and Safety Issues and Emergency Policies and Procedures

Suggestion 13: Develop Health and Safety Guidelines and Resources

Students are participating in programs in other countries where health and safety issues and conditions may be very different than in the US. As this is a primary issue when considering illness and death of students, it is an area where institutions should develop health and safety guidelines and resources for students.
More than 80 percent of study-abroad offices provide their students with health care information, but it usually amounts to no more than a one-page sheet on immunizations and what to pack in a first-aid kit, said Ms. Scullard, a former study abroad adviser who works for a public-health agency in Minnesota.

“We’re doing some things,” she said, “but are we doing the right things. (Rubin, June 16, 1996, p. A37).”

Administrators and students have easier access to predeparture information with the Centers for Disease Control and Prevention (CDC) health and safety travel information on the World Wide Web as well as resources through travel health clinics. Institutions should include Health Center Doctors and Administrators on campus and abroad to develop sufficient materials before departure and preparations for assistance abroad. In the case of an emergency both at the program site or during a field trip, it is important that program administrators are aware of locations for appropriate medical care.

Students have a right to expect and safe and healthy experience during their time abroad, but they sometimes bring poor health habits with them and may act more foolishly overseas than at home. Moreover, the world beyond US borders is sometimes filled with health and crime problems and political instability unlike any found at home. There is no way that all dangers and risks can be eliminated, nor will students always act in their best interests. Your responsibility to your students is to ensure that they receive all the information and assistance they need and that they understand their own responsibility for maintaining their health and well-being. Your responsibility to your institution is to see that your program complies with relevant statutes and regulations and that institutional liability is minimized through careful planning (Gore, 1993, p. 136).

**Suggestion 14:** Develop a Study Abroad Emergency Response Team

Colleges and universities should develop a method for immediate contact between members of the administering office, the central study abroad office, general counsel, and risk manager in the case of an emergency. This should include emergency contacts for weekends and holidays, 24 hours per day.

**Suggestion 15:** Refund and Cancellation Policy

Institutions should develop a general policy for when a program would be suspended or canceled. During the war in the gulf, many institutions developed an ad-hoc policy. However, institutions may find themselves faced with a lawsuit when there were unwritten agreements made in the arrangements between a student and study abroad program administrators which can’t be followed through on. Institutions should follow US State Department Travel Advisories, the NAFSA Electronic Mail Emergency
Network suggestions and relevant lines of communication for each country where students study abroad.

Written confirmation from students should be required so that programs can be revised or canceled due to political, health, environmental, or other conditions that are considered by an institution to be unsafe. Conditions about what fees would be charged to students and whether they would able to enroll in another study abroad program or at the home campus should be clarified in advance.

VIII. New Program Development and Evaluation

_Suggestion 16: New Program Academic and Student Services Review_

Current procedures for development of new programs and evaluation may be insufficient. Has an administrator from your institution visited every site where programs are available to students? Should they? It makes it difficult for an institution to confirm that endorsed programs are administered effectively (it is important to remember that students may remain registered on the home campus while abroad, confirming certain institutional responsibility.

It is important that there are consistent processes in place for reviewing course and program evaluations once they are completed. Because programs may be administered through different academic units, the process of evaluation and program revision may not be consistent. If over the past two years, students have noted a safety concern in evaluations and action is not taken. If that safety violation has resulted in injury or death to a student, forseeability without response to previous concerns will leave an institution vulnerable.

It is important that an appropriate evaluation form be used by all of an institutions programs so that the programs are evaluated in a consistent manner. When an institutional mission is developed for study abroad programming, it is important that programs be developed and evaluated in terms of their support of this academic mission. This evaluation should focus on both academic and administrative support issues. Without reviewing the support services for programs, an institution is leaving itself vulnerable for not knowing how various study abroad programs are administered and not ensuring that recognized problems are corrected. If an incident were to occur and later there were to be a finding that the problem was noted on a previous evaluation that an institution had failed to rectify (unsafe transportation, unsafe housing, sexual harassment, etc.), the case would, subsequently, clearly be problematic. As many review panels at a college or university are primarily academic, led by Professors, there may be a need for a separate panel of experts, with knowledge of study abroad to be involved in the review and approval of study abroad programs.
Suggestion 17: Development of Evaluation Forms

Institutions should develop guidelines, following the University's mission statement, about what is important to evaluate to ensure the effectiveness both in terms of academics and of student support for its study abroad programs. This includes a review of the effectiveness of both academic and student services support.

The following forms should be developed:

a. Student participant course evaluations
b. Student participant support services evaluation
c. The administrative director's monthly, mid-semester and final program evaluations including a review of academic and support services
d. An administrative visitor on-site evaluation
e. A review based on other program/consortium written evaluation

Suggestion 18: Development of Evaluation Procedures

Institutions should develop appropriate procedures to ensure that effective program evaluations are taking place. If a student's injury could be attributed to a situation or condition should have been identified in a program evaluation, but was not, or did come up in a program evaluation, but was ignored, as noted above, the institution could be found negligent in its role to ensure the safety of its study abroad programming. In the same sense, if evaluations reflect poor teaching and no action is taken to improve the situation, the institution is not fulfilling its role to provide support for teaching and learning.

It is recommended that the evaluation procedures include the following:

a. Require study abroad program on-site evaluations: Institutions should take a look at the importance of on-site evaluations of programs, including frequency of visits. Are there visits for only some programs? Why? When there is a formal or informal evaluation visit, there should be common evaluation guidelines should be utilized by evaluators.

b. Frequency of evaluations: How often should formal evaluations by central administration, by departments, by on-site evaluation, etc., take place? There should be policy developed and implemented to regularize this process.

c. Confirmation of student anonymity (possibly optional for students) of evaluation forms: Institutions should ensure that at a minimum, the guidelines for course evaluations on the home campus are followed (student collection of evaluations, evaluations not reviewed prior to decisions on grades, etc.).
d. Specific documents from other institutions should be required on a regular basis: This practice would serve to determine how effective the academic and support services were especially for linkage programs. It would be important to also set up a method to ensure that all necessary documents were reviewed and responded to by the institution.

e. Availability of evaluations for interested students: Other institutions find that when students review evaluations completed by students that took part in the same program previously (with names and personal data deleted), they obtain information (both positive and negative) that assists in both their decisions to take part in programs and their preparation for the program itself.

f. Involvement of academic and administrative directors in evaluation: Institutions should ensure that for each program, there is both an academic and administrative expert reviewing programs. For instance, for the programs in Germany, both administrators in the German Department and the Study Abroad may be responsible for program review.

IX. Program Suspension and Cancellation

*Suggestion 19: Develop Program Suspension and Cancellation Policy*

Colleges and universities should develop clear guidelines, with information given to students (on the conditions of participation form) pointing out that programs may be suspended due to various situations which may occur, such as:

a. Permanent discontinuation of support for program

b. Financial or administrative restraint: For instance: If the enrollment is too low to cover costs or if an international summer session administrative director becomes ill and can not take part in the program

c. Emergency: War, political upheaval, environmental crisis (example: the war in the gulf resulted in the suspension of support for programs in Israel by many institutions). General guidelines should be created for programs where students are already on-site and those that are yet to begin (this includes developing effective communications between relevant departments as noted in the emergency preparation section).
X. Linkage of All Study Abroad Program Administrators

_Suggestion 20:_ Working Group of Study Abroad Administrators

Administrators of all study abroad programs should be required to attend an orientation on the administration of study abroad programs. This should include all issues as noted that are necessary in supporting effective study abroad programming in the US and abroad. As many administrators are experienced in program administration, they should be included in the development of new policies and procedures. Information sharing should be included in all support programming.

_Suggestion 21:_ International and Domestic Personnel Policy

Institutions should develop a policy on the hiring and support of program administrators in the US and overseas for study abroad. This should include a guideline on what background information is necessary prior to employment. Analysis of what academic and student support background (should they have a Ph.D., be certified in CPR and first aid?, etc.).

XI. Application Procedures

_Suggestion 22:_ Review Application Form

The application forms should include relevant information regarding policies and procedures for both students and administrators. Institutions should consider including the following information:

a. General Student Information (data-base friendly)

b. Program Requirements (GPA, year in school, maturity, language, etc.).

c. Screening: The method of screening should be reviewed. At many institutions, students meeting the minimum GPA requirements are virtually guaranteed admission, even if there were psychological questions about the student. There is also limited and inconsistent involvement of faculty. Even when a faculty member assists in screenings, they may not be clear about what institutional priorities are (beyond GPA) for allowing students to take part in programs. Faculty interviewers should be included in program support beyond showing up for interviews when needed.

d. Special Students: Institutions should decide whether affirmative action and support for students with disabilities should enter into decisions about program acceptance.
e. Exceptions: Students should receive clarification about what exceptions can be made regarding GPA, year in school and language requirements.

f. Accessibility to Student Conduct File: All program administrators should obtain written approval to review each student’s conduct file prior to accepting the student into any program. For example, allowing a student with a record of sexual harassment or abuse into a program who then sexually harasses any other student in the program (when there was clear warning about this behavior) could be seen as negligent.

g. Accessibility to Student Records: Institutions should get the permission to allow screeners to have access to relevant records (including student conduct) and then to have access to transcripts from linkage programs where applicable (transcript, etc.).

h. Forms Checklist: The application form should include a checklist of all forms that are required for the specific program to which the student is applying.

i. Parental Approval: Parental approval should be required for students. Some programs require a parental signature for students under "21", others for students under "18". Institutions should develop a policy on parental involvement.

j. Emergency Contact Information: Students should include emergency contacts so that in case of exceptional need, the student would have given prior approval for contact.

_Suggestion 23: Review Application Standards_

GPA and language requirements should be reviewed to confirm that study abroad GPAs do not maintain an unfair bias. The requirements should also be reviewed to ensure that they do not unfairly discriminate against students with particular majors that do not have the flexibility to take a significant amount of language coursework. This is not to imply that standards should be reduced to a point where students will not succeed on the program.

_XII. Participant Acceptance, Denial and Appeal_

_Suggestion 24: Develop Acceptance and Screening Guidelines_

To ensure both that programs follow institutional guidelines and that students meet the academic and personal standards required of participants in programs, the selection process should serve to screen students according to institutional guidelines (supporting the study abroad programs mission). All guidelines for all programs should be clearly noted in written materials.
The pressure to accept students to meet minimum enrollments can weigh heavily on screeners to accept students that may become increasingly problematic in terms of both their academic and personal conduct. The guidelines should include a process by which students can appeal participation denials.

**Suggestion 25: Special Considerations**

Institutions should support the institutional commitments on affirmative action, support for students with disabilities and for others who deserve special consideration for study abroad program acceptance. "The proportion of US students abroad who were members of minority groups - about 14 percent - changed very little from 1993-94 (Rubin, December 6, 1996, p. A67)." There are currently efforts for increasing minority participation, including scholarships limited to certain minority groups. Institutions should be aware of affirmative action practices in making efforts to increase participation by under-represented groups.

Supporting students with disabilities is of special concern to study abroad administrators.

Colleges are bound by the Americans with Disabilities Act of 1990 to "make reasonable accommodations to insure full education opportunity for students with disabilities." No federal court has ruled on colleges' responsibility to help disabled students study abroad, but a 1992 ruling from the US Department of Education's Office for Civil Rights suggests that institutions are required to pay for disability services when a student is in a foreign-study program.

**VIOLATION FOUND**

That ruling involved a deaf involved a deaf student at the College of Saint Scholastica, who filed a complaint when the college refused to pay for an interpreter to accompany her to its program in Ireland. College officials, putting the cost as much as $7,000, said it would be a financial burden.

But the Office for Civil Rights said the institution had come up with the cost estimate only after turning the student down. In rejecting her request, the college violated Section 504 of the Rehabilitation Act of 1973, the office found; institutions that get Education Department funds are forbidden to keep a student from participating in a program because of a physical or mental handicap. The section specifically requires those institutions to insure that students are not excluded because the lack "auxiliary aids" that would allow them to participate (Rubin, September 27, 1996, p. A47).

The United States Information Agency recently gave a $450,000 grant to Mobility International, in order to establish a clearing house of information of disabled students’
resources and programs for study abroad. This should result in a rapid increase of information for administrators and students. As discussed by Rubin above, the Department of Education found that procedures for responding to student requests was an important part of the process.

The ADA specifies ten areas in which colleges and universities may not discriminate against a qualified individual with a disability: eligibility criteria, modifications of policies, practices, and procedures; auxiliary aids and services; examinations and courses; removal of barriers in existing facilities; alternatives to barriers in existing facilities; personal devices and services; assistive technology; seating in assembly areas; and transportation services (21 C.F.R. 36.301-310). The law also addresses accessibility issues for new construction or renovation of existing facilities (28 C.F.R. 36.401-406) (Kaplin & Lee, 1996, pp. 397-398).

There is no agreement on what levels of support are necessary abroad and what is considered as a “reasonable accommodation” for study abroad. “Berkeley’s (ADA/504-compliance officer) Mr. Newmeyer says if there is any possibility that his university is legally obligated to pay for a service, he recommends that it do so. “If there is a question mark,” he says, “I assume we do not want to be the first lawsuit.” (Rubin, September 27, 1996, pp. A47, A48).” Providing physically-accessible building raises many questions when dealing with building in countries where there are no similar requirements for accommodation and many buildings may have historical significance, limiting the ability for structural change.

XIII. Student Conduct

**Suggestion 26: Development of Study Abroad Student Conduct Policy**

Inform students that appropriate conduct is expected while taking part in a study abroad program and that specified procedures will be taken in cases of misconduct. There should also be clarification that students must follow home policy, the linkage program policy, as well as the laws of the host country in the “Terms and Conditions of Participation” section.

In the case of a severe conduct violation, it may be necessary for the Resident Director to suspend a student from a program immediately. As this may violate the due process requirements on the home campus, it is important that institutions consider articulating these to students in writing.

**Suggestion 27: Require Release of Student Conduct Records**

Having all administrators of study abroad review conduct records could inform program directors of possible past problematic histories and current violations that may be important issues prior to acceptance into a program. This should be done by all
departments administering study abroad programs. It is far easier to deny participation in the first place than it is to remove students from a program after initial acceptance.

XIV. Maintenance of Appropriate Records and Transfer Credit Articulation

*Suggestion 28: Maintain Appropriate Records*

Institutions should confirm what records should be maintained in which office and for what length of time. As noted in the discussion of Suggestion 11: Accurate Publications and Advertising, it is important that institutions consider responding to the Campus Security Act for their study abroad programs in maintenance of records and informing students of relevant health and safety risks abroad.

*Suggestion 29: Document Articulation Process*

Study abroad documents should be articulated by the institution in a consistent way that other US and international transcripts are reviewed and approved. This process should be used by all units administering study abroad programs.

*Suggestion 30: Advisement Form:*

As students are completing requirements for their general course of study, it is important that they are properly advised about major courses, general education courses, and language courses, where relevant. As faculty and administrators come and go, it is important that written documentation of advisement is made. The following issues should be clarified on the academic advisement form:

a. Number of units that can be earned in a program;

b. Clause about possible changes in course offerings: Clarify on the form that the course offerings may be revised and that students should receive both specific course advisement and general information so that if a course is not available, how other courses might or might not satisfy requirements.

c. Confirm how courses will be applied to the home campus transcript: Include how the program title and specific courses will appear, and whether letter grades or "credit/no credit" will appear.

d. Special requirements: Any special requirements should be specified;

e. Preregistration Issues: Clarify what advisement will be available and what preregistration assistance for the semester a student returns will be given by other units that administer study abroad programming. Since students will be out of the
US, it is important that they obtain appropriate advisement before going overseas to prepare them to return to the home campus.

**Suggestion 31**: Grades Should Be Included on Transcript for Non-Accredited Programs

As some study abroad programs are led by institutions that are not accredited in the US, it is important that the home institution transcript include relevant documentation, including grades.

**Suggestion 32**: Non-Approved Programs Policy

Rules and regulations for students taking part in non-approved programs should be developed. This would clarify for students who are considering non-approved study abroad programs for academic, GPA, or other reasons. Some institutions actually have a sticker on information available that is not a formally approved institutional program. This is important as clarification on when there is no duty of care for the student by the institution. Because study abroad program administrators are entrepreneurial, it is also important that the relationship is clarified to individual departments that may host administrators or faculty of programs, giving the appearance of certification of program effectiveness.

XV. Program Pre-Departure, On-Site and Re-Entry Meetings

**Suggestion 33**: Develop Policy on Necessary Support Programming

Colleges and universities should review what programming is necessary to enhance the study abroad experience before departure, on-site and after students return to assist in making the experience academically and personally stimulating, in turn linking it to a students undergraduate or graduate curriculum on campus.

The University of the Pacific's requires all study abroad students to enroll in a "Cross Cultural Training" course (for credit) which begins the semester prior to taking part in a study abroad program and concludes the semester after the student returns. This would certainly serve to integrate the cross-cultural component of study abroad into the campus curriculum.

At the meetings, there should be some way to regularize content. It would be important, in a court of law, to be able to support the issue that the institution has made specific efforts to prepare students to enter the foreign countries.

Components to be emphasized might include:

a. Consistent Written Information: Although some information is country specific, information on entering into a foreign country, violation of laws
(including drug penalties, avoiding political demonstrations, etc.) and safe travel abroad could be generalized. General guidelines (including copies of important forms) should be given to all students taking part in study abroad programs.

b. Consistent meetings and programming requiring attendance by participants: As discussed above, all students should be required to attend all program meetings, including the following:

1. Information Meeting
2. Cross-Cultural Meeting and/or Course
3. Financial Meeting
4. Acceptance Form/Packet Meeting
5. Specific Program Pre-Departure Orientation Meeting
6. Specific Program On-Site Orientation Meeting
7. Re-Entry Meeting

c. Consistent information at meetings: Currently, there are different people leading the various meetings supporting study abroad. Institutions should create a general checklist of information that should be discussed at different meetings.

XVI. Electronic Mail Communication

Many students use electronic mail for communication on the home campus. Colleges and universities are creating policies to support use and discourage abuse. These policies should be brought abroad.

*Suggestion 34:* Electronic Mail Form

This can assist students to keep their campus Electronic Mail account open and clarify the availability of Electronic mail abroad.

XVII. Language Level Evaluation

*Suggestion 35:* Develop Foreign Language Evaluation Form

Language requirements should be evaluated to confirm that they are sufficient to ensure both the success on the program and the ability to effectively communicate at a level where students will be able to integrate as appropriate into the local population and culture. If students are not able to do so, institutions should be aware of issues related to the doctrine of *in loco parentis*, when the student may not be capable of acting as an intelligent adult.

Students should be required to complete both a language evaluation in addition to a general academic recommendation if they are taking part in a program where a language
other than English is spoken. This form would also support a confirmation of students
language skills beyond just course information on the student transcripts.

_Suggestion 36: Institutions Should Evaluate Foreign Language Knowledge and Learning_

Institutions should include questions on student evaluations confirming whether students
were able to act as intelligent adults abroad, based on their language skills at the
beginning of the program. This would assist institutions in deciding for both academic
and student support purposes, what minimum requirements should be and whether they
affect the respective "duty of care" that the institution has in support of the student.
Institutions should consider developing a method to pre-test and post-test students to
assess whether the study abroad programs are improving students language skills.

_XVIII. Medical and Psychological Evaluation_

_Suggestion 37: Use of Medical and Psychological Approval Form_

Institutions should ensure that students' medical and psychological well-being confirm
their capabilities to take part in each program. Part of the form could be self-reported by
the student. Part of the form may be completed by a physician. In the case of issues
being raised that may require special assistance, review by an appropriate expert is
important.

This is a sensitive area because of Section 504 and the Americans with Disabilities Act.
The challenge is to screen students out of study abroad if they cannot be effectively
served abroad. However, it is impossible to be able to confirm all that students are of
medical and psychological health appropriate to each program. Changes can be made in
some program sites, however, it may not be possible to effectively support students with
special needs in all programs without unreasonable cost.

_Suggestion 38: Emergency Medical Information_

Institutions should consider including a form for students and program directors to take
with them that includes relevant "vital statistics" in the case of an emergency (blood type,
allergies, vaccinations, medications, etc.). Some programs do require that students turn in
a medical form. However, students and administrators may not be clearly oriented about
the importance of being prepared in the case of an injury or death abroad. It is important
that institutions include preparations for emergency medical care abroad at the program
site and during excursions.

_Suggestion 39: Approval for Emergency Medical Care_

Students should be required to approve that the relevant program directors be able to
approve medical treatment in the case that a student is incapacitated. This could enable
directors to take appropriate action and students who desire not to have medical care (Christian Scientists, etc.) to specify their personal issues in this area (this issue is also raised for the "Conditions of Participation" form). This, however, also passes along a special responsibility by the study abroad administrator on behalf of the student. As a result, it is important that the administrator be effectively trained and prepared in supporting medical care needs for students.

XIX. Parental Information and Approval

*Suggestion 40: Develop Clear Guidelines for Parental Involvement*

Institutions should develop clear guidelines on what information should be available to parents of students taking part in study abroad programs. Guidelines should include:

a. Financial information about program
b. Contact information for overseas
c. Ability to contact appropriate parent or guardian in the case of an emergency
d. Program dates and address overseas

*Suggestion 41 Develop Parental Approval of Participation Policy*

Institutions should develop clear guidelines for when parents should have to sign off to confirm their approval for student participation

a. Age of student: under 18, 19, 20, or 21?
b. Financial status of student (dependent to parent)

XX. Budget Preparation and Record Keeping

*Suggestion 42 Develop Appropriate Budget Procedures*

Administrators of study abroad programs should be responsible for keeping accurate and appropriate records for study abroad programming. This becomes particularly important with the additional complexities of international currency exchange rates.

XXI. Financial Support and Advisement

This an area for particular attention. The importance of charging correct fees and having students be aware of what charges will be incurred is vital. Ensuring that students could maintain their financial assistance (federal, state, institutional, etc.) is also necessary given the large percentage of students that would not be able to attend without this support. Violating state or federal guidelines for financial aid could put the university in a vulnerable position.
**Suggestion 43** Students Should Sign Program-Related Charges Form

Institutions should create a form clarifying all charges and requiring student (and possibly also parents for students who are claimed as dependents if appropriate) signature and approval.

**Suggestion 44:** Financial Aid Meeting for Students

Have all offices involved in study abroad approve a financial information meeting prepared in consultation with program administrators and the financial aid office.

**Suggestion 45:** Include All Relevant Costs in Program Cost

Study abroad offices should interact with the financial aid office to revise student need based on actual program costs. Each program administrator should ensure that all costs associated with study abroad (which are allowable by law) should be taken into account for a students financial aid package. For instance, as the passport cost is significant, it should be reviewed for inclusion in the program expenses for participation.

**Suggestion 46:** Students Should Sign Financial Aid Responsibilities Form

Have all students with financial aid sign a form specifying their responsibilities regarding financial aid for the following year. These forms are due spring semester and if they are abroad, it becomes more challenging to complete them and ensure that their parents send tax forms. This information should be given to students in writing, with the student signing off on all relevant. This could clarify all student responsibility in this area.

**XXII. Immigration Requirements and International Law**

In order to study in another country, it is necessary for students to obtain passports and visas. Information should be provided to ensure that students who are not US nationals understand that they may have different visa requirements and need a re-entry permit to ensure their return to the US following the completion of the program. This becomes even more complicated as many study abroad students are not US citizens.

**Suggestion 47:** Require Registration at Embassy or Consulate

Students should be required (this could be included in the "Conditions of Participation" form) to register in the US embassy or consulate (or other if foreign national) when overseas.


**Suggestion 48: Develop Basic International Law Guidelines**

Institutions should develop basic information and guidelines to inform program directors and students taking part in study abroad programs or administrators developing linkages. The legal status of programs will vary depending on the laws of the country where the program takes place. Will the institution need to become a legal entity abroad, separate from the home campus (paying taxes, social security to faculty, etc.)? It is important to have effective legal counsel about the implications of operating a program abroad.

Students should be oriented to the issues of legal status in other countries. Students can get the false impression of special status, which could result in imprisonment or expulsion from a country for violation of law. In the United States, one is innocent until proven guilty, that may not be the case abroad. Making students aware of penalties for drug violations and other laws may be important as well during orientation in the US and abroad.

**XXIII. International Air Transportation and In-Country Travel Arrangements**

**Suggestion 49: Develop Basic Travel Policies**

International Flights: For all programs that do not use an institutional travel agency, a waiver should be required from the travel agents as well as some insurance companies to guarantee their ability to deliver tickets as promised. Although group flights are offered, they should all be voluntary with students supported for independent travel (the more individual choice, the less "in loco parentis"). Following the death of Syracuse University study abroad students on Pan Am flight 103, most institutions have eliminated group itineraries on the return portion of study abroad program flights.

**Suggestion 50: Possibility for Charging Tickets to Credit Cards**

Since credit card companies are offering various insurance and other credits if a flight is booked through a credit card, students should have the option to arrange group travel using a credit card.

**Suggestion 51: Appropriate Air and Ground Carriers**

Institutions should confirm that for flights, whether group travel should be only on regularly scheduled airlines with positive records. For bus and other in-country transportation, institutions should confirm that the company with which it contracts has an appropriate safety record that the drivers have appropriate credentials. Institutions should also confirm the liability insurance of the transportation companies as a part of the release agreement. There should also be confirmation that program hotels maintain appropriate safety records.

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The death of four Semester at Sea program students on a bus in India has accentuated the need for additional information about the safety of transportation abroad. The importance of knowing local traffic conditions prior to allowing for group transportation is vital. Institutions should consider limiting the ability of director and student use of rental cars for program-related travel. In cases where it is approved, it is necessary to ensure that the director or student have appropriate supervision and sufficient automobile insurance.

**Suggestion 52: Use of Personal and Rental Cars**

Institutions should develop guidelines for the use of personal and rental cars by program administrators and students overseas. As the home campus could be found liable in the case of an accident, the following issues should be considered:

a. Driving record of proposed drivers  
b. Minimum car insurance  
c. Release of liability by driver to home campus  
d. Distinction of usage that is and is not "program-related"

**Suggestion 53: Develop Policy on Risk-Limited Activities**

Institutions should develop a policy to confirm that it will not support "high-risk" activities, such as skiing, mountain climbing, tackle football, etc. This should be clarified to confirm with program directors that if they or students take part in these "high-risk" activities, it will not be as a part of the study abroad program.

While the first step in risk management is the elimination of advertising language which promises too much, another important step is the inclusion of appropriate disclaimers in the information packets. The wise institution will be uncomfortably candid about the risks of the program and explicit about its inability to shield participants from those risks. It goes without saying that an institution should not consider offering a program which is fundamentally unsafe (Burling, 1992, p. 5).

In the cases where the institution knows of significant risk that is part of a program, the institution should be doing what it can to limit negative outcomes, have students accept liability, and review whether the activity is academically necessary on a regular basis.

**Suggestion 54: Have Travel Professionals Support Travel Arrangements**

Institutions should involve travel professionals in the US and abroad to ensure that the choice of transportation arrangements are appropriate in terms of cost and safety abroad.

Burling looks at a similar area of law: travel agents and foreign travel programs.
The contractual basis for liability may be particularly attractive to a court considering a case involving foreign travel programs because of the easy analogy to travel agent cases involving brochures and package deals. Through courts generally have not found travel agents liable for mishaps befalling travelers, especially when the accident was caused by a hotel or transportation company independent of the travel agent, some courts have required travel agents to reimburse their clients losses when a contractual relationship can be found in their brochures. For example in a case where a travel agent contracted to arrange a tour of Mexico, which required him to secure hotel accommodations, tour guides, and drivers, the court held the travel agency liable for a customer’s injuries caused by the negligent driving of a Mexican bus driver (Casey v. Sanborn’s Inc. of Texas, 478 S.W. 2d 234 (Ct. App. Tex. 1972)). The court relied in part on the brochures and itinerary provided by the travel agency to find that the agency had agreed to act on behalf of the travelers who booked through it. Since the agency was aware of the very poor safety record of Mexican bus lines, it had an obligation to warn its clients (Casey v. Sanborn’s Inc. of Texas, 478 S.W. 2d 234 (Ct. App. Tex. 1972) See also Rookard v. Mexicoach, 680 F. 2d 1257 10th Cir. 1982) (Reversing summary judgment for defendant bus company which, if it acted as a travel agent for passenger in arranging for Mexican bus travel, could be found liable for failure to warn of danger inherent in bus travel in Mexico); Walton v. Fujita Tourist Enterprises, 380 N.W. 2d 198 (Ct. App. Minn. 1986) (upholding finding of liability based on contractual relationship with travel agent which had arranged a tour of Japan, for injuries sustained by plaintiff who fell on stairs in hotel). The lesson to be learned from this case is that warnings of risks are just as important as not offering more than can be provided.

Colleges should be aware of this potential for contractual liability when preparing brochures and other documents related to its study abroad programs. While the first step in risk management is the elimination of advertising language which promises too much, another important step is the inclusion of appropriate disclaimers in the information packets (Burling, 1992, p. 5).”

XXIV. Alcohol Policy

Suggestion 55: Develop Policy on University Program Payments for Alcohol

More students may be of legal alcohol drinking age abroad than they would be in the US. However, review whether the institution should pay for alcohol when supplying meals or hosting a reception when students who are minors in the US may be legally drinking alcohol abroad. What liability does the institution occur if a student or administrator leaves after becoming intoxicated and suffers injury or death?
Suggestion 56: Develop Policy on Use of Alcohol at University Events

Although the institution may not be paying for alcohol, institutions should review policy on whether it should be available to students at sponsored events. What liability does the institution occur if a student or administrator leaves after becoming intoxicated and suffers injury or death? What if there is death or injury from an automobile accident caused by someone at the event?

XXV. Resident Director and Faculty Training

Suggestion 57: Develop Resident Director and Faculty Training Manual

It is important to have policies in place that will be followed. If an institution makes a claim to have policies and procedures in place and does not follow them, institutions will be vulnerable to claims of negligence. Having policies and procedures in writing also assists in maintaining consistent support and different sites and then holding administrators accountable. This should clarify that consistent and appropriate communication take place between the institution and its administrators and students. In the case of a student getting a tropical illness in Costa Rica, the administrator abroad had sent a letter to students including information that could have led them to believe that there were no health or safety risks in Costa Rica.

XXVI. Special/Other Policies

Suggestion 58. Review Special Issues for Your Institution (Religion, Public/Private, etc.)

With over 3,000 institutions of higher education in the US, there are many with unique missions. What are the parts of your institutional mission that make your institution distinct from others. As a result, policies and procedures should take into account those issues (religion, etc.). Will your students have the same freedom of religious practice abroad as they have in the US. Other issues raised earlier include considerations of whether your institution is public or private, applicable state and local laws, etc.

CONCLUSION

On the home campus, parents and students generally expect students to take care of themselves. Students are given choices about housing, meals, transportation, courses and other aspects of student life. For study abroad programs, choices are generally limited while abroad. The institution will pick a program and a site. The housing may be arranged by the program and excursions supervised by a study abroad administrator. This could be seen to increase the "duty of care" on the part of the institution. Many parent's and student's expectations are that "the program will take care of me" in study abroad. Part of the responsibility for an increased "duty of care" rests upon the program administrators themselves. The limitation of program choices along with written
information and advertising materials may suggest that students will be "taken care of" on study abroad could be seen to pass along a message that reaches towards a "special relationship."

The above list provides a checklist, enabling an administrator to review each item and review their individual institution policies to see if they are at the level that is desired. It is up to each institution to prioritize issues, deciding which issues need to be looked at first and who should be involved in the review process. As there are no basic guidelines or minimum standards supplied by the field, it is up to each institution to develop individual standards that are satisfactory. As these are legal issues, it is important for institutions to include the legal counsel in on the review as well as the risk manager, as limiting risks and insurance are major issues.

If an administrator can go through the above checklist and check off each issue as being at a satisfactory level for that institution, that would be extraordinary. Most institutions can use this as a method to find the areas of particular effectiveness and the other areas where the most work is needed, and then to prioritize those efforts. If an administrator looked at each item in conjunction with the relevant administrators on their campus, that administrator would be able to feel confident that the institution would be behind them in that their policies and procedures were supported by relevant administrators on campus.

The process of the legal audit itself should also be reviewed by institutional counsel. Any written report pointing out possible institutional weaknesses could be used in litigation to show previous knowledge of a potential problem by the institution (the legal audit report may or may not be seen as privileged information during discovery).

Kaplin & Lee (1996, pp. 65-66) suggest the following seven steps for administrators and legal counsel seeking to implement a preventative law system, like the legal audit:

1. Review the institution's current organizational arrangement for obtaining legal counsel
2. Develop a teamwork relationship between administrator and counsel; both should be substantially involved in legal affairs, cooperating with one another on a regular basis, for preventative law to work best.
3. To assist teamwork relationships, arrange for training for administrators that focuses on the legal implications of their administrative responsibilities.
4. Have the lawyer-administrative team perform legal audits periodically.
5. To supplement legal audits, develop an early warning system that will apprise counsel and administrators of potential legal problems in their incipiency.
6. Using the data obtained through legal audits, an early-warning system, and other devices, engage in a continuing course of legal planning.
7. For the inevitable percentage of potential legal problems that do develop into actual disputes, establish internal grievance mechanisms. These mechanisms
may utilize various techniques for dispute resolution, form informal consultation, to mediation or arbitration, to hearing before panels drawn from the academic community.

"...our legal system is a major force for justice and productive change-to be used rather than ignored or opposed (Millington, 1979)." It is important to be pro-active in supporting the continued increase in programs effectively from both an academic and student service standpoint in the US and abroad.

"The road to hell is paved with policy"
- William Rideout, Jr.

Beyond developing appropriate policy, it is important that institutions develop strong administrative practice to implement those efforts which support the institutional mission. Institutions have the opportunity to look at study abroad programming to insure that it is protecting itself, as an institution, from future liability. At the same time, institutions can more effectively support the academic experience of students taking part in its programming.

Following are thoughts from one attorney who has recently defended an institution from legal action. Tyrone Maho, Esq. suggests that:

"To avoid being named as a defendant is the goal; and, to that end, I believe colleges and programs should adopt a comprehensive and pro-active approach toward identifying health and safety concerns abroad, and to fully advise prospective students of these. First, someone on-campus (US based institution) should be in "regular" contact with the CDC (Centers for Disease Control and Prevention) regarding health risks for any geographical region of any country that it is anticipated the student will visit as part of that student’s study abroad. Second, this information should be supplemented with regular contact between the abroad "host" campus, and the respective Ministry of Health, to discover additional health risks in foreseeable areas of student travel. Any brochures being made available to students about the program should encompass a brief synopsis of these risks, with additional follow-up prior to the student’s formal acceptance into the program. Finally, the student should also be strongly advised to seek out his or her own information regarding health and safety risks by reviewing selected literature on the subject, consulting with a physician knowledgeable about overseas travel, and to contact the CDC directly.

The bottom line in evaluating liability is whether the study-abroad program acted reasonably toward the student with respect to his or her own safety and health considerations. Twelve jurors will often decide what is "reasonable" behavior, so the more preparatory work that can be done and documented, the better off the program will be when it's standard of care is judged." It is also
important to have an idea what other institutions are doing in this area as the standard of care will many times be judged by what other institutions are doing.

The worst-case scenarios may occur. However, if they do, you should be able to say AND document that both you, your institution AND any linkage institutions did what was “reasonable and prudent” to both provide effective support and give students sufficient information to be the “adult decision-maker” in the situation, able to make good decisions (whether or not they did) with sufficient insurance to support any problems that could have occurred.

Since there is no guide to provide a “minimum standard of reasonable and prudent practice,” an administrator must develop his or her own guidelines for effective practice. In the same way, institutions must either work with or depend on administrators to be developing guidelines which reflect “reasonable and prudent” programming. In other words, since there is no guide to ensure that these programs include the same policies and procedures (which would represent and agreed-upon standard for “reasonable and prudent” practice), each institution must develop its own policies and procedures. The most difficult part of institutional decision-making is trying identify the important issues and then to find the “right” solutions which point to ensuring that program policies and procedures followed “reasonable and prudent” guidelines.

Looking at the issue from a legal standpoint, it was initially difficult to develop a format for looking at limiting future liability with being able to look at previous legal decisions (principle of *stare decisis*). While looking through legal journals, the idea of “legal audit” was discussed. Since that time, it has been principles of legal audit that have guided work in trying to support effective programming and “limit future liability.”

Prior to using the legal audit technique in study abroad, there was no process in place to analyze the issues. This led administrators to view legal issues with greater fear and less action. Fear leads to avoidance of both the issues and legal counsel and risk managers, rather than the development of a regular working group. By looking more logically at the various issues, administrators and lawyers can work together to provide more effective programming and limit future legal liability.
BIBLIOGRAPHY


