

Responding To and Preventing Cases Involving International Students

There are approximately 4.5 million international students worldwide—more than one million in the U.S. alone—and while most will graduate and return home to promising futures, a percentage of those students attending school outside their home countries will encounter problems serious enough to lead to legal proceedings and, in some cases, serious enough to rise to the level of embassy attention. Many of those cases, however, can be prevented. Those that cannot be prevented should be responded to quickly and comprehensively.

Briefing and Orientation

Many universities, cultural missions, embassies, and ministries of higher education produce briefing materials and orientation programs for their international students. Some discuss either the law of the receiving country, meaning the country where the student will be attending school, or the law of the sending country, meaning the student's home country. Briefings and orientations notwithstanding, students are still arrested, in some cases for conduct that is universally unlawful, but in other cases for conduct the student might not have realized was illegal.

Briefing materials and orientation programs can be improved by considering how the law and culture of the home country and the receiving country intersect. By way of example, students from countries with a liberal attitude toward alcohol tend to treat the presence of alcohol differently than students from countries with a more conservative attitude toward alcohol. And, while it is easy to imagine alcohol as a factor in cases of driving under the influence or disorderly intoxication, alcohol has also been conspicuously present in cases alleging sexual misconduct and even attempted murder.

While in no way an exhaustive list, law and culture intersect in the different ways countries approach alcohol, drugs, relationships between men and women, pornography, driving, the treatment of law enforcement and public officials, and even in how problems should be handled and resolved. Materials and programs that are updated to take these real world differences into account can help international students avoid problems.

Crisis Response and Case Management

In any important case, the sooner the right professionals are involved, and the faster they can move, the greater the likelihood of a positive outcome.

The consequences for international students arrested abroad are serious and multifaceted. Students can be sentenced to prison by the Court, removed from the country by immigration authorities, and/or forbidden from obtaining a visa in the future. For embassies and consulates, cases involving international students can be an ongoing matter of concern.

An effective response requires an understanding of criminal law, immigration law, the intersection of law and culture, and, in some cases, diplomacy, as well as an understanding of the urgency of the situation.

Some embassies and consulates support the legal defense of their citizens, including their international students. Others provide limited support. Still others provide a list of attorneys who have expressed an

interest in representing that embassy or consulate's citizens. Irrespective of the level of support that will eventually be provided, international students should be aware of certain internationally recognized protections.

The *Vienna Convention on Consular Relations* provides, in pertinent part:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

Convention on Consular Relations. Done at Vienna April 24, 1963. Entered into force March 19, 1967; for the United States December 24, 1969. 21 UST 77; TIAS 6820; 596 UNTS 261.

In general, a student who has been arrested abroad should be aware that he has the right to communicate with his consulate and that, upon his request, his consulate has the right to communicate with him.

Any case involving an individual arrested abroad is inherently more complex than a case involving an individual arrested in his home country. By improving briefing materials and orientation programs, many of those cases involving international students can be prevented. In those cases that cannot be prevented, a rapid response that takes into consideration the legal, immigration, cultural and, in some instances, diplomatic, issues involved, should be encouraged.

This client advisory is intended to highlight certain issues and is not intended to be comprehensive or to provide legal or other professional advice. If you have questions, you should contact your counsel or other advisors and, on matters related to our work, we welcome you or them contacting us.