

# Reflections on Time Spent in Distant Places

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The members of the University of Wisconsin Law School faculty have remarkably extensive experience in working in foreign environments. In the last couple of years, for example, Larry Church has lectured in Australia, Germany and Taiwan and, as you read this, he may be lecturing in Russia; Gordon Baldwin has been a visiting professor in Germany and Japan; Marc Galanter has given lectures in Canada, Germany, Israel, India, Wales, England and Australia; Jim Jones gave a paper in England; Margo Melli delivered a paper in Belgium; Gerry Thain delivered an address in England; Joe Thome has taught and consulted in Brazil, Panama, Haiti and Colombia; and Zig Zile has been lecturer and/or commentator in Germany, Sweden and Italy. Even the Dean, Cliff Thompson, has found time in his crowded schedule for professional travel to Israel, the Sudan, Germany and England.

Further, Professors Baldwin, Church, Dickey, Tuerkheimer, Whitford, Dean Thompson, and I all have spent a fair amount of time working in Africa, and Professors Zile, Macaulay, Trubek and Thome have devoted considerable parts of their lives to teaching or advising in Latin America. Professor Dick Bilder, however, is the only faculty member I know of who has been to Antarctica (although several of us are always looking for reasons to go there).

So, what is a law professor doing on foreign working trips? The answer undoubtedly is as varied as there are law professors on foreign working trips. In my case, the majority of my overseas travel has involved working with foreign governments either directly or through the intermediation of international or regional agencies, such as the UN Centre on Transnational Corporations or the Organization of Eastern Caribbean States. In most cases, the focus of my work has been on international tax issues affecting foreign investment in less developed or newly industrialized countries. A perennial concern of the governments in these countries is that their tax systems neither

discourage foreign investment nor be excessively generous toward the foreign investors, and the bulk of my work has involved trying to help the governments strike a balance between the bite of taxes and the lure of fiscal incentives.

In the course of my work, a few lessons have emerged (sometimes, to my chagrin, the emergence has been delayed by the cranial density of the receptor).

## **Listen long before speaking.**

When we conjure up the image of an American consultant in a foreign place, we tend to think about people who tell others how to structure or restructure their activities in a different (and possibly, but not necessarily, better) fashion. One of the surprising things I learned fairly early on in this work is that foreign consulting involves much more listening than speaking. In this respect, foreign consulting is really no different from domestic lawyering—in both instances, the person to whom advice is being directed oftentimes will have given a great deal of thought about the problems, possibly even more thought than the hot shot advisor.

Several years ago, I was asked to draft a sales tax for Zambia. I devoted the better part of 6 weeks to the project, at the end of which I introduced the draft to the Attorney General and the Minister of Finance. I had structured the sales tax so that it applied at the wholesale level, rather than at the more traditional retail level. As I was explaining how the sales tax would work at the wholesale level, the frown on the Attorney General's face became deeper and deeper. In the end, he threw the entire draft out because he was adamantly opposed to a sales tax at the wholesale level. Active listening thus is indispensable in defining the parameters of the problems on which advice is sought and in identifying the more subtle pitfalls in the project (such as the quiet, but strong opposition of a high ranking official to one plan or another).



## **Things may not be as they appear.**

A while back, I was in Dominica working on rewriting the country's tax laws applicable to capital expenditures. As you might imagine, this is a topic most of the business people in Dominica had given a great deal of thought to and so, at an early stage in the project, the Prime Minister of Dominica, Eugenia Charles, arranged a day long discussion with the leaders of the business community. At the discussion, I was seated next to the Prime Minister at a large table with an oversized tablecloth that hung down over the table. As the meeting droned on through the morning and into the afternoon and the themes grew more and more repetitious, I became fidgety, and when I become fidgety I also become kind of itchy. Being itchy, I sought some quiet solace by rubbing my leg against the solid object just to my right, which I assumed to be the leg of the table. But when the solid object moved and the Prime Minister directed a withering look in my direction, I realized the error in my assumption.

### What flies in Peoria may crash in Ouagadougou.

One of the more difficult tasks facing a foreign advisor is to set aside the preconceptions the advisor inevitably brings from his or her home environment. Successful resolution of the problems put before a foreign advisor usually depends in large part on the advisor's ability to fashion the resolution to fit the context in which it arises, not the social, economic or political setting out of which the advisor springs.

A couple of years ago, I was invited to lecture on international tax issues affecting capital importing countries in the Middle East. The lecture was in Khartoum, the Sudan, and was attended by senior tax administrators from many of the countries in the Middle East. The lecture was scheduled for 6 or 7 hours and I used all of my allotted time in what I considered to be a rather clear and possibly even erudite discourse on the topic. (My wife Anne has told me that anybody who expects somebody else to listen to him or her for 6 or 7 hours has a severe ego problem—and, somewhat grudgingly, I suspect she is correct.)

After the lecture, the Sudanese hosts put on a delightful banquet at an old hotel on the banks of the Nile. At the banquet, I was seated next to the Commissioner of Taxes from North Yemen. During the early stages of the banquet, we chatted about various topics quite removed from international taxation; but about midway through the meal, he looked at me and said: "Professor. I am certain that what you said today was accurate and very important. Unfortunately, I understood not a word." It turned out that he had about eight years of formal education and was largely self-taught.

At least as to that listener and probably others, I had missed the boat, in part because I had applied a Western stereotype as to the level of education of senior level tax administrators. I had failed to

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take into account, for example, the economic and educational dislocations caused by North Yemen's long standing hostilities with South Yemen. I also have had the experience (an even more painful experience, I might add) of seriously underestimating the level of an audience—the most notable instance in recent memory being when I gave a talk on state taxation of multinational corporations to an economic study group under the sponsorship of Kenriden in Tokyo. Thus, it really is important to gain some understanding of the milieu in which advice is to be given.

### Sometimes even simple things are hard.

A while back, I gave a series of lectures on tax treaties and fiscal incentives to attract foreign investment in Nuku'alofa, Tonga. The audience consisted of tax and finance people from the governments of many of the small countries in the South Pacific. To get to Nuku'alofa, I first flew to Honolulu, where I took a left turn and flew south for about 2000 miles to Apia, Western Samoa. About noon on a Sunday, I boarded an old propeller driven plane and then flew for about 3 hours south to Nuku'alofa. On the flight from Apia to Nuku'alofa, we never changed time zones, but we crossed the international dateline, so that we arrived in Nuku'alofa about 3:00 on Monday afternoon (which was fortunate because Tonga is a kingdom of devout Christians who honor the Sabbath to such an extent that planes do not fly on Sunday).

After the lectures, I went to a place I dimly recollect was named "Harry's Bar" where I met up with several chiefs and their associates from Pago Pago who happened to be visiting Nuku'alofa at the same time. I had met the chiefs on the flight from Apia and they were very nice and generous in spite of my apparent low social standing—in that part of the world, social standing is heavily influenced by one's height and girth, two attributes it was clear I lacked. After a while in Harry's Bar, several of us were sitting on the floor discussing our upcoming travels out of Nuku'alofa. It turned out that one of us was leaving the next day for Fiji. To get to Fiji, which is about 400 miles northwest of Nuku'alofa, she had to fly first to Apia, Western Samoa, where she would spend the night and then leave the next morning for Fiji. We figured out that when she left Nuku'alofa tomorrow, she would arrive in Apia today. But after spending the night in Apia and then flying back across the international dateline to Fiji, we were stumped as to whether it

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would be today, tomorrow or yesterday when she arrived in Fiji.

### With remarkably few exceptions, people around the world are friendly, generous and curious.

Apart from the people overcome with religious fanaticism or facing desperate poverty, it is remarkable how friendly and warm people are—whether in Egypt or Ghana, Taiwan or Indonesia, Kenya or Denmark. Not surprising, a healthy curiosity about foreigners also seems almost universal and in my experience the curiosity has almost been the undoing of a couple of the unsuspecting locals on whom I have imposed my presence.

A short while ago I was walking out the front door of a hotel in the Pescadores, a group of islands in the Taiwan Strait. Not many occidentals get to the Pescadores and as I walked out the hotel door, a middle-aged man passing by on a bicycle was so intent on looking me over that he crashed into the rear of a parked car. There was no serious physical damage to body or machine, but his friends and neighbors were rather merciless in teasing him about his crash.

In another instance, I was at a public bath at a resort north of Osaka, Japan. The bath was two tiered, with the women's bath on a slightly higher level than the men's. Visual separation was achieved with the placement of various plants on the women's bath where it looked out over the men's bath. Since I was the only non-Japanese in the bath, there was considerable curiosity about my presence: Was this bald-headed, bearded occidental anatomically correct? The curiosity extended to the women's bath where an old woman was caught climbing through foliage to get a glimpse at the strange sight below her. Again, there was no serious damage, except possibly to my ego since my presence seemed to generate more chuckles than sighs of awe.