

UNITED STATES COMMISSION ON SECURITY AND COOPERATION IN EUROPE
(HELSINKI COMMISSION) HOLDS HEARING:
HUMAN RIGHTS IN PUTIN'S RUSSIA

MAY 20, 2004

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ADDITIONAL SPEAKERS:

✓ U.S. REPRESENTATIVE CURT WELDON (R-PA)

WITNESSES:

AMBASSADOR STEVEN PIFER
DEPUTY ASSISTANT SECRETARY OF STATE
BUREAU OF EUROPEAN AND EURASIAN AFFAIRS

GARRY KASPAROV
FORMER WORLD CHESS CHAMPION AND CHAIRMAN
COMMITTEE 2008: FREE CHOICE

EDWARD LOZANSKY
PRESIDENT
AMERICAN UNIVERSITY IN MOSCOW AND RUSSIA HOUSE

REVEREND IGOR NIKITIN
CHAIRMAN
ASSOCIATION OF CHRISTIAN CHURCHES IN RUSSIA

NICHOLAI BUTKEVICH
RESEARCH AND ADVOCACY DIRECTOR
UNION OF COUNCILS FOR JEWS IN THE FORMER SOVIET UNION

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SMITH: Welcome to this Helsinki Commission hearing on "Human Rights in Putin's Russia," the latest in a series of hearings and

And I'll be, again, raising issues, as I have, since I first went to the Soviet Union back in the mid-'80s with the National Council On Soviet Jewry to raise the issue of the plight of Jews throughout the Soviet Union, my first involvement with that nation.

① I come today to support the efforts of the commission. And you have friends of mine testifying: Garry Kasparov is a long-time friend, and so is Ed Lozensky. They do outstanding work in this country in trying to help us understand what's happening in Russia.

② But I come, Mr. Chairman, today, with some, unfortunately very negative, statements, about our State Department.

③ And I know that that's not what you were expecting, but I think for us to be able to hold accountable Russia for its human rights violations, we have to hold also ourselves accountable.

④ Since 1998 there's been a case in Russia that now has appeared on over 35 major Russian media outlets.

⑤ WELDON: I would ask for the record, Mr. Chairman, that you include 21 specific instances in the Russian media. This is TV; this is radio; this is newspapers.

⑥ The case involves an incident on October 27th of 1998 where the highest ranking American diplomat in Vladivostok, while allegedly driving under the influence of alcohol, rammed a vehicle containing a young 20-year-old Russian by the name of Alexander Kashin. Kashin was made a quadriplegic as a result of that accident.

⑦ The response by our State Department was to give diplomatic immunity to the individual involved from State, his name was Douglas Kent, remove him out of Russia on the grounds of diplomatic immunity. When he came back to America, he was again provided support by the State Department, even though he had changed names on a number of occasions and refused to be served papers to be held accountable for the actions against this young Russian individual.

⑧ In the course of this, a relative of Alexander Kashin's lives in Philadelphia, right near our districts, Mr. Chairman. And this individual went to a very prominent Russian lawyer in Philadelphia by the name of John Gallagher who represents a lot of interests in Russia and who is probably the largest lawyer, certainly in the East, on Russian immigration cases.

⑨ John agreed to represent Alexander Kashin pro bono. John Gallagher I know very well. Steny knew John, on many occasions we met. And he came to me and gave me descriptions of this case and asked the question, "Why wasn't America willing to live up to its responsibility and acknowledge that an American representative had caused the young Russian to become a quadriplegic who was confined to a wheel chair?"

⑩ I took up the case, got involved. And over the past several years have asked our State Department continuously about the response. We have been lied to, and we have been deceived.

⑪ And so I come today in a human rights hearing about the violations in Russia, and I ask the commission to also consider the response of our State Department officially on the case of Alexander

Kashin.

WELDON: Now, furthermore, I will submit for the record material that will be in the court proceedings in the fall of this year, where two current State Department employees on the record in official documents have testified, that when they worked with Douglas Kent in the State Department, he was a known drinker. No one would drive with him. And he had narcolepsy.

These two sworn affidavits are a part of the Kashin file.

When I raised these issues with the State Department in Moscow and over here, I would get no response. And so finally, Mr. Chairman, I had the deputy secretary of state in my office, about a year and a half ago; you know Rich Armitage, he's a fine and decent leader. We were talking about Russia, we were talking about the Middle East, North Korea.

And at the end of the conversation, I said, "You know, Mr. Secretary, please, resolve this issue with Alexander Kashin. This is a young Russian citizen who's become a symbol of America throughout Russia. And the fact that we haven't responded in a way that would allow this young man to be able to live out a normal life -- all he asks for is rehabilitation.

I've met Kashin twice.

The response by our deputy secretary of state was: Well, Congressman Weldon, I probably shouldn't talk to you about this, because I've been briefed by our State Department employees in Moscow that John Gallagher is a relative of yours. And since he represents Kashin, we shouldn't discuss it.

Mr. Chairman, I have no relation to John Gallagher, familial or otherwise. It just so happens my wife's maiden name is Gallagher. And someone in the Moscow office of our State Department briefed the deputy secretary of state that the only interest Congressman Weldon had must be that his wife is related to John Gallagher.

I raised this issue in front of Secretary Powell just one month ago, when I got back from Libya on a bipartisan trip that I led with Rich Armitage in the room. And Rich Armitage acknowledged, in front of Secretary Powell, that that was exactly the case.

WELDON: Furthermore on one of our CODELS in Moscow, the protocol officer at the embassy told my staff director on the Armed Services Committee, who was a retired Air Force officer, Roche, in a meeting held at the evening in the control room: "Well, you know, Congressman Weldon has this conflict because John Gallagher is his relative."

So a protocol officer in our embassy in Moscow said the same thing that was briefed to the deputy secretary of state. And my assistant, Roche, went down his throat and said, "You're absolutely outrageous as a protocol officer in stating that."

When I asked our ambassador the next day, Ambassador Vershbow, about this, his response was, "Well, you know, Congressman, I can't control all of my employees."

So I come, Mr. Chairman, today, Mr. Ranking Member, asking to have it put on the record the incident involving Douglas Kent, an incident that embarrasses the country.

I included a letter sent to me on March 28, 2001, by Ambassador Ushakov. And I say to my friends on the Helsinki Commission, "I'm with you."

As a member of the Human Rights Caucus, I want to know what's happening with Khodorkovsky. As a member of the Human Rights Caucus, I want to continue to press the issue of religious prosecution. I want to get at the heart of the problems and concerns that are being raised by ethnic minorities throughout Russia.

But I want to know what our State Department's doing. Because if we have a double standard, which we have, then how can we stand up, Mr. Ambassador, and hold Russia accountable for human rights problems?

Now, I talked to the ambassador before this hearing began. And the ambassador said he really wasn't versed on the case.

To me, Mr. Chairman, that's an outrage.

If we violate human rights of a young Russian and we hide a State Department employee and lie about the status of that employee, and this will all come out if this case is not resolved, in fact, I'll spur it on the record for you commission, then how can we expect Russia and Putin to be sincere and to be honest with us about human rights?

WELDON: It reminds me of a hearing that I co-chaired with my friend Solomon Ortiz 10 years ago. A Navy official -- when Solomon was chairman -- was criticizing the Russians because they weren't giving us access to a sunken Russian nuclear submarine called the Komsomolsk. The Navy official was criticizing the Russians and saying, they're not giving us access; we don't know if it's contaminating the environment. And therefore we need to criticize the Soviet Union.

I agreed with him when he finished, and so did Solomon.

And then I asked the question of the Navy official: Would you talk to me about the Thresher and the Scorpion? The Navy official said, "Congressman, I can't talk about those two cases. They're both classified."

And, by the way, if you're not on the Defense Committee of the Congress, as I am, there are two nuclear ships that went down with our crews on board, both involving nuclear capability.

So here was the American official, testifying as to Russia's lack of transparency and accountability on the Komsomolsk, yet denying the ability at a public hearing to tell the American people about the Thresher and the Scorpion.

Mr. Chairman, Mr. Ranking Member, my friends and colleagues, this issue is about transparency and it's about consistency. If we're going to support the efforts of people like Garry Kasparov and Ed Lozansky and others, then we better be prepared to be transparent and honest ourselves. And, in this case, we have not been.

So Mr. Chairman, I ask you to use your good influence to have your staff investigate. I will make anyone available, including the two current State Department employees who have issued sworn affidavits about the status of Douglas Kent and about the problems he's had during his career as a State Department employee.

And I thank you.

SMITH: Mr. Weldon, thank you very much for your testimony or your statement.

Ambassador Pifer, if you wanted to responded to that during your testimony, I would invite that. We certainly would like a written response. I think Mr. Weldon raises a number of very, very important issues here, and I'd like to follow up on it personally, myself.

So I do thank you, Mr. Weldon.

I'd like to now recognize Mr. Aderholt for an opening -- Aderholt, but he left. OK.

Mr. McIntyre, please?

CARDIN: Mr. Chairman, if I may, I just would like to welcome Mr. McIntyre to our commission. He was recently appointed as a new commissioner on the Helsinki Commission and it's wonderful to have you on the commission.

MCINTYRE: Thank you so much, Mr. Cardin.

And thank you, Mr. Chairman, for the opportunity. And thank Mr. Weldon, with whom I serve on the Armed Services Committee, for joining us.

I will be brief, because I know we want to hear the testimony. But I'm happy to be on this commission. I am very grateful for the opportunity and the support of both parties in my being able to obtain this appointment through the speaker.

Also, I had a brief visit to Russia en route to Afghanistan a little over a year ago, so I've always been intrigued by the events going on in Russia.

Both of my boys are in college, but one of them spent a month in Russian last summer and studied there at MGIMO, the Moscow State University for International Relations, former diplomats' school for the Soviet Union. And he had quite an interesting experience. So we kind of lived Russia there for the bulk of last summer.

So I'm very happy to be here today, particularly with those of you that will be testifying. And I'm very happy in a broader sense to have this chance to serve on the Helsinki Commission.

Thank you, Mr. Chairman.

SMITH: Thank you, Mr. McIntyre. We do welcome you to the commission. I know that you have a great wealth of talent and look forward to your joining us when we go to Scotland for the parliamentary assembly. And I'm so glad you're on the commission.

MCINTYRE: I'm very excited about that. Thank you very much.

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALEKSANDR NIKOLAEVICH KASHIN,
Plaintiff-Appellee,
and
UNITED STATES OF AMERICA,
Defendant-Appellee,
v.
DOUGLAS BARRY KENT,
Defendant-Appellant.

No. 04-56703

D.C. No.
CV-02-02495-
LAB/WMC
OPINION

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted
June 7, 2006—Pasadena, California

Filed August 10, 2006

Before: Stephen Reinhardt, Stephen S. Trott, and
Kim McLane Wardlaw, Circuit Judges.

Opinion by Judge Trott

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COUNSEL

J. Michael Hannon, Thompson O'Donnell, LLP, Washington, D.C., for the defendant-appellant.

Dana J. Martin, United States Attorney and United States Department of Justice, Washington, D.C., for the defendant-appellee.

Sharon L. Papp, General Counsel American Foreign Service Association, Washington, D.C., for Amicus Curiae American Foreign Service Association.

OPINION

TROTT, Circuit Judge:

Appellant, Douglas Barry Kent, is a senior foreign service officer seeking to avoid exposure to personal liability for an automobile accident that occurred in Russia while he was driving home from work in his personal vehicle. Kent sought certification from the Department of Justice that he was acting

within the scope of employment at the time of the accident, which, if granted, would substitute the United States for Kent as the defendant in the action. The Department of Justice refused to grant the certification. Kent also petitioned the district court for certification. The district court, applying the Restatement (Second) of Agency, concluded that Kent was not acting within the scope of employment, and denied Kent's petition for certification.

We have jurisdiction pursuant to 28 U.S.C. § 1291, and we reverse. We conclude in this interlocutory appeal that District of Columbia law governs the question of whether Kent was acting within the scope of employment. Applying District of Columbia law, we hold that Kent was acting within the scope of employment when he was involved in the automobile accident. We therefore grant Kent's petition for certification.

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In October 1998, Kent served as the Consul General of the United States to the Republic of Russia in the Far East Consular District—the largest consular district in Russia. As the Consul General, Kent was the highest ranking United States representative in that district. He was fully accredited as a diplomat and entitled to the fullest extent of consular immunity, including immunity from criminal prosecution.

The United States Department of State leased an apartment for Kent and provided him with a private driver and vehicle that Kent could use for any purpose, whether work or personal. When Kent first arrived in Russia, he used the private driver for all transportation. However, the budget and fiscal officer at the Moscow Embassy informed Kent that the Department of State wished to reduce the expenses of its missions overseas and indicated that the overtime expenses for Kent's personal driver were high due to Kent's late hours at work. Complying with the request that he reduce expenses, Kent had his personal vehicle shipped to Russia. The Depart-

Drug Enforcement Admin., 111 F.3d 1148, 1155 (4th Cir. 1997).

[11] Claiming that he is a victim of political circumstance, Kent requested an evidentiary hearing to explore the government's actual motivation underlying its denial of his request for certification. Even if Kent were correct that the Attorney General was influenced by political pressure from Russia, both the district court and this court review de novo the Attorney General's decision, making the Attorney General's actual motivation irrelevant.

CONCLUSION

This is not a scope of employment case where the employee was off-duty, assaulted an individual in a fit of rage, or violated company policy. It is also far from the standard case involving an employee commuting in a company vehicle. Instead, this case involves a Consul General whom the Department of State assigned to work in Eastern Russia and who was on duty at all times. Although Kent could have utilized his government-provided private vehicle and driver, he chose to act in the Department of State's best interests by shipping his personal vehicle to Russia to reduce the overtime expenses incurred by his driver.

Now that Kent has been sued in the United States, the Department of State has not only stopped fighting for a Consul General—who has served the Department of State in places such as Panama, Albania, Kosovo, Tajikistan, and Liberia—but it has joined the other team and is litigating for the benefit of the plaintiff. Although we cannot answer why the Department of State and the United States Attorney spent their precious and scarce resources opposing this petition for certification, *see Lamagno*, 515 U.S. at 428, we do answer the legal question involved. Applying District of Columbia law, we conclude that Kent was acting within the scope of employ-

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ment when he was involved in the automobile accident. We therefore grant Kent's petition for certification.

REVERSED.

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(282)