

House Bill 2469
Comments – Recommendation
House Judiciary Committee
Thursday, February 9, 2012

LATE TESTIMONY

Good Afternoon Chair Keith-Agaran, Vice Chair Rhoads, members of the Judiciary Committee

I am here today as the only person in the room who has been convicted in a foreign country on a child abuse charge. While in the Philippines in 1994 I was set up by the police in a false child abuse charge. The chief investigator of the police wanted a round trip ticket to Hawaii to drop the charge. Knowing I was innocent I refused to pay. I believed that my innocence would be proven in court and the police officers extortion attempt would be exposed.

In court the alleged victim NEVER appeared to testify to his identity, age or the offense charged. Neither his parents nor his birth certificate were ever presented to prove his alleged minority. The judge convicted me anyway and sentenced me to 10-17 years in prison.

I know that some of you may be saying that can't be true, that I must be lying to cover up the something. Well, I appealed the conviction to the United Nations Human Rights Committee, which is authorized under the United Nations International Covenant on Civil and Political Rights to determine whether a person has received a fair trial and due process of law.

The Covenant establishes the internationally recognized minimum requirements that are necessary for due process to exist.

Article 14 of the Covenant sets forth that all persons shall be equal before the courts, entitled to a fair and impartial tribunal, to be presumed innocent, right to an attorney, to know the charge against them, to have adequate time to prepare a defense, to be represented by an attorney, to be present during the trial, to be tried without undue delay, to an interpreter if they don't speak the language, to cross-examine their accuser in a court of law, and the right to appeal a verdict.

In my case the Committee ruled unanimously that:

“...the author had to overcome doubtful evidence and even evidence that was not presented in court (the youthful looks of the 21 year old witness, as well as the minor age of the alleged victim). The Committee finds that the court's choice of admissible evidence, in particular in the absence of any evidence confirmed by the alleged victim, as well as its evaluation thereof, were clearly arbitrary, in violation of article 14, paragraph 1 of the Covenant.”

The Committee went on to rule that I had been arbitrarily arrested and illegally detained for 8 years, during which time I was a victim of cruel and inhuman treatment by prison authorities.

On August 31, 2001 the U.S. State Department sent a letter to U.S. Senator Rick Santorum concerning his inquiry into the lack of due process in my case. Part of their letter read:

“Dear Senator Santorum... One of the most important task of the Department of State is to provide assistance to U.S. citizens arrested and incarcerated abroad. The Department is

committed to ensuring fair and humane treatment for Americans imprisoned overseas. We provide assistance to these Americans and their families within the limits of our authority and in accordance with international law.”

The Foreign Affairs Manual which is issued by the Department of State for our embassies to follow reads:

“If the legal and human rights of U.S. citizens and nationals arrested abroad are to be adequately protected, the Department must be prepared to protest substantiated violations of those rights including impressing on the host government that the U.S. Government will not tolerate a violation of its citizens rights”.

So now, you have heard what the United National Human Rights Committee ruled in my case in the Philippines. You have heard from the Department of State in their letter to Senator Rick Santorum that they are committed to ensuring fair treatment of our citizens incarcerated overseas in accordance with international law, you have heard that the U.S. Department of State, through its Foreign Affairs Manual that the embassy must protest violations of its citizens legal rights and will not tolerate their violation by host governments, now listen to what the U.S. Embassy wrote in their letter to Congress Jim Davis, who sat on the Foreign Relations Committee of the U.S. House of Representatives:

“Dear Mr. Davis, Mr. Rouse has requested the Embassy to file a diplomatic note protesting the conduct of the judge during his trial. However, we are not aware of any evidence of misconduct or discrimination on the part of the Government of the Philippines that would provide a basis for a diplomatic note of protest.”

I filed a charge against the U.S. Department of State for failure to keep acquire records relating to their obligation to protest the violation of my due process rights by the Philippine courts. On November 24, 2008 the Ninth Circuit Court of Appeals issued its ruling that although the Foreign Affairs Manual states that the Embassy must protest violations of the legal rights Americans are entitled to abroad there is no federal statute that provides such a right. In other words our embassies don't have to protest when Americans are being treated unfairly overseas. They can legally remain silent and let our citizens be abused.

Now to the issue before you today. In HB 2469 it reads:

"Foreign conviction" means a conviction under the laws of:

“(2) Any other foreign country, if the United States Department of State, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.”

In Black's Law Dictionary the terms “generally” is defined this way:

“**Generally** – 1. Popularly; widely: 2. (a) As a rule; usually: (b) For the most part: 3. Without reference to a particular instance or details; not specifically.”

The words “generally” “usually” “not specifically” or “for the most part” mean not always. If this bill passes in its current form it will mean that the State of Hawaii will punish persons convicted of child abuse in a foreign country even if that country cannot be relied upon to always uphold our citizen’s right to a “fair trial”. In Hawaii we insist that an accused shall always receive due process and a fair hearing regardless of the offense, before we punish them if found guilty. Are we willing to set into law a policy that we in the State of Hawaii will punish our citizens who are convicted in foreign countries even if they don’t always receive a fair hearing and due process of law?

Why would we allow a foreign country to use a lesser standard when it comes to judging the guilt of our citizens then we require in our own country?

I urge you to strike out the words “generally or” in section 1 subsection (2).

Thank you for your time and attention to this important matter.

Regards,

A handwritten signature in cursive script that reads "Leon R. Rouse".

Leon R. Rouse