

WRITTEN TESTIMONY OF STEPHEN K. MOORE

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BEFORE THE HOUSE FOREIGN AFFAIRS SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS  
HEARING "THE U.S. STATE DEPARTMENT'S INADEQUATE RESPONSE TO HUMAN RIGHTS CONCERNS IN BOLIVIA: THE  
CASE OF AMERICAN JACOB OSTREICHER"

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Chairman Smith, distinguished members of the committee, I sincerely appreciate your efforts on this matter and your interest in my observations on this case.

My name is Steve Moore and in 2008, I retired from the FBI after a 25 year career during which time I served as both a Special Agent and a Supervisory Special Agent. After the attacks of 9/11 I was put in charge of Al Qaeda investigations in Los Angeles and within a year I was asked to stand up an extra-territorial investigations squad in Los Angeles with the mandate to rapidly deploy to the site of any terrorist attack against the United States or its citizens or interests throughout Asia and Pakistan. During this assignment, I worked out of at least six U.S. embassies throughout Asia and Pakistan, and regularly briefed ambassadors, staff and host-country officials on the progress of the investigations. I worked closely with the State Department and CIA, and even investigated the car bombing of the U.S. Consulate at Karachi, Pakistan which resulted in the deaths of 12 people.

Following this assignment I took a short-term position as the Assistant Legal Attaché at the United States Embassy in Nassau, The Bahamas. The Legal Attaché to whom I reported was stationed approximately one thousand miles away in Bridgetown, Barbados. I served as the de facto Legal Attaché for the territory from Bermuda to Grenada. During this time I became very familiar with Embassy protocol, priorities, and strategies. As Legal Attaché for the Bahamas, I sat in on all high-level embassy meetings regarding security and safety of personnel, narcotics strategy and enforcement and most specifically, was responsible for dealing with host government law enforcement agencies regarding the arrest of Americans in the Bahamas and the other Caribbean islands within my jurisdiction.

After my retirement from the FBI, I was made aware of the Amanda Knox case; the American student studying in Italy who was wrongly accused and convicted of the murder and rape of a female roommate. For the next two years, I devoted much of my time to that case. During this investigation I interacted with the state department and had much opportunity to witness their involvement or lack of same in her case. My personal opinion (and I am not representing Amanda Knox or her family) is that the State Department's inaction was inexcusable.

After the reversal of Amanda's conviction and exoneration by an Italian appeals court (after she spent four years in prison), I was contacted by the Ostreicher family and asked to review Jacob's case. I think it is germane to explain that in the cases which I have worked involving Americans wrongly incarcerated overseas, I have not requested or accepted a fee. Only in the Ostreicher case have I even been compensated for expenses. To put it candidly, I am not in these cases for the money. I am here simply because I have become aware of the surprising number of Americans who have been wrongly accused and/or convicted overseas, and I have a unique skill set and experience base with which to help people who have no way of helping themselves. (I should also say that it is my belief that 95% of the Americans incarcerated in foreign prisons have earned their way there. I am not here to plead their cases.)

I am not being paid to testify here today. I am not in the service of the Ostreicher family in any way. I am acutely aware that my only stock in trade is my veracity. Accepting money for providing a professional opinion devalues that opinion in some people's eyes and that is a risk I am unwilling to take. I realize that if I ever mistakenly advocate for a person who is actually guilty of a crime, I will have no future value to those who have been wrongly convicted. I have been contacted by at least half a dozen individuals and groups, asking for my involvement in their particular cases. I have taken on only those where the individual is demonstratively and provably innocent and has no other recourse.

Jacob Ostreicher is one of those few people. I have seen all the Bolivian's self-described "evidence" against him, and I have seen the evidence which supports his innocence. In Jacob's case there is a complete absence of any concrete, tangible evidence on even a microscopic scale which would indicate that he had in any way shape or form participated in a crime in Bolivia. Nor is there even evidence that a crime has even been committed. The entire "prosecution" against Mr. Ostreicher has been a form of the game "Six degrees of separation," a game by which in six sets of acquaintances, anyone in the United States can be connected to anyone else. The Bolivian case, brought to its most basic elements is simply this: Jacob Ostreicher hired someone to buy land for his company. That person knew someone who years before had been accused of drug dealing. Jacob had money. Therefore, Jacob was a drug money

launderer. In the Knox case, we had rooms full of tainted and fabricated evidence to argue. But in the Ostreicher case, we have no valid evidence to even argue against.

My investigation in Bolivia included the interview of attorneys actively involved in “advocating” for their clients in Palmasola Prison, as well as members of the former government who are now in prison in Bolivia for unstated and uncharged crimes, as well as other prisoners, at least one of which asked me to smuggle a video out of the prison showing him making a cash payment to a Bolivian judge. One prominent attorney told me, and I quote: “Jacob is in this prison for four reasons: One; he is an American. Two; he is white. Three; he is Jewish, and Four; he has money.”

The State Department, for their part, have simply watched and “raised the issue” with the Bolivian government. One can only imagine the fear that strikes in the heart of Evo Morales. The embassy seems to be relying on the validity and fairness of the Bolivian justice system, saying that they do not have the right to interfere in a country’s legitimate justice system. However, Bolivia’s system is neither just nor is it legitimate. It is inconceivable that the State Department in Bolivia is unaware of the total corruption of the “Justice System.” Yet, they use its legitimacy as their excuse not to act.

Without going into intricate detail in my opening statement, I will say simply that the Morales socialist regime has taken the Al Capone model of government and perfected it. The Bolivian judicial system is best described as a pyramid scheme where each political appointee must buy his or her appointment, and then continue to make ongoing payments to keep their position. The people at the top of the pyramid make the most money, and the people at the bottom of the pyramid are the lowly prosecutors. The money for all the payments they send toward the pointy end of the pyramid, of course originates with the accused; which makes it crucial that those with money are accused regularly. Charging only the poor is a sure way to lose your job.

Trials are not so much held as purchased in Bolivia. If you do not pay for trial you will not receive the trial. You may stay in prison for three years under Bolivian law without being charged. And then a series of canceled hearings can keep you imprisoned indefinitely after that. It is curious that in a country where most crimes involve drug trafficking, there are no, NO, major drug traffickers in prison. Simply, they can pay their way out.

What has happened to Jacob Ostreicher is little more than a state-sponsored kidnapping for ransom. In very simple terms, his capitalist success in growing more rice on one individually owned farm complex than the Bolivian government could manage in the entire country was about to embarrass the Morales government and the threat needed to be eliminated. What a

fabulous turn of fortune for the Bolivians that not only could they solve their political problem, and at the same time potentially infuse the justice “system” with a significant windfall.

I spent three days with Jacob in the Palmasola Prison in Bolivia. Palmasola is a Kafkaesque nightmare. It is Lord of the Flies on crack cocaine – – literally. In a move as incomprehensible as it is irresponsible, the Bolivian government has ceded control of the day-to-day operation of the prison—to the prisoners. This enlightened philosophy has resulted in a prison completely run by a group of hard-core violent criminals who actually earned their way into the prison. (History teaches that it is very important to put enough real criminals into a Gulag to establish its legitimacy). The prison is run by a council of prisoners who were not so much elected as they were the winners of a turf war. These “leaders” provide lodging, food and “order” for the prisoners—at least for those prisoners who have money to pay for it. Prisoners are not issued cells; new prisoners have to rent or buy their own cells. If they do not have money to rent or buy quarters, they sleep outside in the sewage. If a prisoner does not have money to buy protection, he is at the mercy of any other prisoner with a desire for their blanket, or any person with a grudge or mental issue, and is therefore in great physical danger.

If a prisoner does not have enough money for food, he must eat the gruel provided by the prison daily, the greasy, soupy mixture of vegetables and questionable meat which is created in the prison kitchen/garbage dump. I'm not making this up. Sewage runs through open channels on every street, and yes I said street. Palmasola Prison is a squalid village of small neighborhoods all within an approximately two square acre tract of swampy and uneven land surrounded by 20 foot concrete walls topped with concertina wire. There are small stores within the walls where beverages can be bought and cocaine is also sold openly through a storefront. The price of a single hit of cocaine, notches equally between the price of a bottle of water and a bottle of Coca-Cola, making water the only substance cheaper to purchase in Palmasola than Cocaine.

Gangs of security thugs called “Securita Interna” patrol the grounds and mete out “justice”. They also serve as spies for the cartel of prisoners running Palmasola. The justice administered by the “Interna” ranges from severe beatings to confinement without food or water, to the occasional cut throat. Murders within the prison occur at the rate of about a dozen a year, and indeed, a body had been found the day before I arrived. All members of the Interna are required to be “lifers” so that they will be loyal to the prison hierarchy, and also ensuring that all enforcement personnel are immensely violent murderers and rapists. Into this you throw Jacob Ostreicher, a conservative Jew from New York who has never hurt a fly. The fact that Jacob survived this long is to me a miracle. But it is not a miracle which can be attributed to the State Department.

I need to say at this point that I have worked with the State Department extensively in my time with the FBI and I find individual members of the State Department to be, for the most part, wonderfully compassionate people, and in some cases brave and heroic people. I enjoyed my time working at the Embassy in Nassau and I admired the people there. However flaws in the diplomatic system were immediately apparent even to me.

In a written statement to congress last year, Secretary of State Clinton declared:

*“The State Department has no greater responsibility than the protection of U.S. citizens overseas – particularly when Americans find themselves in the custody of a foreign government, facing an unfamiliar, and at times unfair, legal system.”*

However, there seems to be an endemic, massive and catastrophic disconnect between Secretary Clinton’s rhetoric and the actions of the State Department in the field, which is tragically illustrated in the case of Jacob Ostreicher. Regardless of the comforting words, I have never seen the State Department go out on a limb for any person or persons except when they felt that it would be politically advantageous.

The first and foremost problem is the very real disincentive for career State Department executives to involve him or herself in the plight of a wrongly accused American. State Department diplomats are evaluated not on initiatives which have resulted in justice for the wrongly accused, but by the quality of their relationship(s) with the host government.

Not surprisingly, confronting and accusing a foreign government which is abusing an innocent American does not improve the relationship with that government, which means that it is a potential career ender. I know from a quarter century in the federal government that advancement depends little on great achievements and much more on lack of embarrassing failures. The number of successes listed in the resume of a federal executive is irrelevant if there is a single, noted failure. State Department careers are in some way analogous to the Hindu belief that if you’re doing the right thing, each subsequent life you will be reincarnated in a more exalted position. A poor evaluation by host country diplomats is a career ender, or at best, will reroute the next transfer from Rome to Djibouti. The only sane career strategy is risk aversion. In this case, it appears that attempts are being made to appease Jacob and his family until Charges Creamer and Consular Section Chief Flachsbart transfer out.

One of the first briefings I received as an embassy staffer was to advise me that my main responsibility was maintaining cordial relationships with host country law enforcement organizations. I quickly learned that advocating for an American arrested in The Bahamas was something that would not help in maintaining a cordial relationship with Bahamian law

enforcement. Fortunately for me this never became a serious problem, because inevitably, the US citizens arrested by the Bahamian authorities during their cruise ship stops in Nassau, were invariably engaged in what the embassy called “stupid American tricks.” Usually it was going too far off the beaten track in search of prostitution or drugs and falling afoul of gangs of criminals who lived off the Americans in search of vices. Usually, the victim would be lured to an alley where they were relieved of their money, their consciousness and their recent memory. Others simply woke up from a drinking binge in a Bahamian jail, hours after their ship had sailed. But still, the message was clear, advocating for arrested Americans was not a career builder.

According to the embassy website, Charges d’affaires John Creamer in Bolivia has conducted extensive, admirable attempts to improve relations with the Bolivian government, including string quartets brought to Bolivia to tour, education initiatives, soccer games between the embassy and a Bolivian team, even participation in Bolivian indigenous celebrations. However, nothing concrete has ever been ventured in the name of Jacob Ostreicher. Jacob is not mentioned on the website, and it begs the question of embassy priorities.

As an example of what I consider egregiously bad and disingenuous behavior by the Bolivian embassy happened recently. Jacob Ostreicher is now on the seventh week of a hunger strike and should be hospitalized. However, the US Embassy has said that they will not pressure the Bolivians to get Jacob into a hospital until he sees the prison doctor. It was quite a while before they would acknowledge that there is no such thing as a prison doctor at Palmasola. Yet they still require that Jacob see a person in the facility for a medical evaluation prior to their recommendation. I realize that there may be a diplomatic reason behind it but in this case common sense has to at least outweigh that silliness. I have seen the medical facilities at the prison, and would prefer to remain in my own cell and suffer to contracting whatever extra illnesses I might contract in the “care” of the pseudo medical personnel in the prison. Because Jacob will not subject himself to amateur medical care in the prison, he has now been deemed by the State Department to be “uncooperative,” and Kathryn Flachsbar, Consular Section Chief decries his lack of cooperation because he has expressed his disappointment and anger at his feeling of abandonment. This is an obscene Catch-22. “We are not going to do anything for you and if you get angry about it we will use that as justification for not doing anything else for you.”

The State Department’s lack of assistance for wrongly incarcerated Americans is more than a joke; it’s a sick joke because just about every American traveling overseas believes that if they are wrongly arrested, the U.S. government will come to their aid. Yesterday, I posed a question to a former Los Angeles Times crime reporter as to what would happen if he was arrested on

trumped-up charges in a foreign country. His answer? “The State Department would get me out.”

Thank you for your examination of this issue. I have found in the cases I have worked that innocence is rarely enough. The court of final appeal is almost always the free press of the United States and the elected representatives who take up their cause. YOU are Jacob’s last hope.





