

14 April 1988  
OCA 88-1179

MEMORANDUM FOR THE RECORD

SUBJECT: Second Hearing on Diplomatic Immunity, H.R. 3036

1. On 13 April 1988, the Subcommittee on International Operations, House Committee on Foreign Affairs, held a second hearing on a bill to limit diplomatic immunity in certain instances (H.R. 3036). Members attending were Representatives Mica, Snowe and Smith. Copies of the available prepared testimony are attached.
2. Representative Solarz, the sponsor of the bill, testified first. He said the bill was designed to "square the circle" protecting rights of U.S. diplomats abroad and citizens in the U.S. against the wrongs of foreign diplomats. The consensus is that more legislation is needed here. Between 1982 and 1988, foreign diplomats in the U.S. committed 147 crimes. Forty-four were committed in New York City. These include rape, murder and assault.
3. Solarz refuted several arguments made by the Department of State against various provisions in the bill. With respect to the need to leave the names of diplomats out of reports on crimes, these crimes have generally been given much publicity in the press anyway. There is no reason to protect a rapist or murderer from public exposure.
4. Regarding the section 3(c) objection prohibiting interference with prosecution, Solarz said he can craft language to allow State to communicate information to law enforcement officials while precluding interference.
5. Concerning State's argument about the reentry provision, there is no guarantee now that a PNG'd person cannot return in the future. State cannot keep track of non-immigrant visas once issued. Better coordination is needed, as is required by the study.

6. Section 8 pertains to victim compensation and Solarz stated that he has learned that 99 percent of all auto claims fall within the required insurance amount. He agreed that additional insurance would be unduly burdensome. He expressed the same views with respect to section 9, which concerns catastrophic insurance.

7. Section 10 mandates a review of the treatment of pouches with a view towards ways to prevent the use of items fostering terrorism. Solarz assumes the U.S. does not use the pouch to ship explosives, weapons and the like, so that the U.S. need not fear embarrassment from disclosure. He does believe other countries use the pouch to transport such items. It may be that the study will show no way to improve this situation, but Solarz finds this hard to believe. The second part of the section does not require the President to impose procedures unilaterally, but to seek changes in the Vienna Convention consistent with what is learned from the review. State's argument that the U.S. uses the pouch more than anyone, so it should ignore the problem, is no good.

8. Snowe suggested using the word "impede" to replace "interfere" with regards to the interference with prosecution issue. Solarz said this is similar to what he has in mind.

9. Gillian Sorensen, New York City Commissioner for the United Nations and Consular Corps, testified next. She was accompanied by Barry Koch, legal counsel. She said that to her knowledge no murder has been committed by a diplomat within the last 15 years. It may be that manslaughter has been committed. Of the 44 crimes committed in New York, a good many were domestic incidents and several others were misdemeanors. Only a handful of diplomats have taken advantage of the system, but the bill provides an opportunity to remedy the problems with that handful.

10. With respect to the accuracy of the State reports, she said that there are numerous occasions when the initial report is wrong and is corrected, but the press story containing the inaccurate information persists. She also said that the pouch should not be used to transport weapons or contraband and suggested that the section 10 review continue.

11. Snowe asked what the Commission's relationship with State is in these matters. Sorensen said there is discussion between the two. The Commission is a mediator on a person-to-person basis, but the police and State handle infractions of the law. Koch said the Commission plays a secondary role to State regarding who is entitled to immunity and so forth, and that the

Commission has some role in liaison with the police. The relationship has generally worked well. Sorensen said that the one persistent problem is debt collection from certain countries, although the debts are usually paid within a reasonable time.

12. Snowe asked if efforts to educate law enforcement officials are successful. Sorensen said they are helpful and extremely important. The police in the outer areas (boroughs and counties of New York) are not as aware as those with closer ties.

13. Mica asked if the Commission has ever intervened before a driving under the influence charge has been filed. Koch answered no; the police almost always send them home. Sorensen said that speeding tickets come to her office. To be dismissed, certain criteria must be met. If there are a large number of moving violations, the issue is taken up with State. The Commission has never been told by State not to pursue a matter, but State may move slowly on a matter because of political concerns.

14. Steven Stein, chairman of the New York Bar Committee on International Law testified next, accompanied by David van Hoogstratten, a member of the same committee. Stein first pointed out that the broad and unqualified grant of immunity according to customary international law has been narrowed greatly by the Vienna Convention. The problem is serious, but not as large as the press portrays. State's statistics on this are not accurate, however.

15. Stein went on to say that H.R. 3036 is a partial legislative solution to a difficult problem. Section 2 has the potential to be the most significant change. States have the primary role in compensating victims, but it is really a Federal job. Stein suggested establishing a Federal fund to take care of victims in the 13 states having no victim compensation program.

16. Stein also suggested that the language of the bill be broadened to include diplomats with immunity per bilateral and multilateral agreements beyond the Vienna Convention, especially the Soviet Union, China and bloc countries. He, too, is concerned with the interference with prosecution provision.

17. Stein is also concerned with the second part of section 10. The Vienna Convention states that the diplomatic pouch cannot be opened or detained. On balance, national security interests outweigh any interest in searching pouches.

18. Snowe asked if Stein has any cost estimates on the Federal victim compensation system. Stein said he will work with Congress on this. He anticipates there must be some savings if the 37 programs now operating were condensed into one.

19. Smith asked if a nonintrusive, noninvasive examination of the pouch is illegal, using for example dog-sniffing for drugs and explosives. Stein thinks dog-sniffing is sensible and suitable. Van Hoogstratten pointed out the problem of reciprocity. Smith asked if it would be useful for State to publish the names of perpetrators of crimes. Stein said there is no harm in exposing wrongdoers. Mica noted that the U.S. is about to build a new Moscow embassy by sending it through the diplomatic pouch. Everyone has abused the pouch, but the abuse has suddenly reached a new level.

20. Dennis Martin, President of the American Federation of Police, then testified, followed by Perry Shankle, President of the American Foreign Service Association and Susan Donnelly, President of the Association of American Foreign Service Women.

21. Mica asked Shankle if he understands the subcommittee's balancing problem vis-a-vis the pouch. Shankle said there is no problem with the diplomatic pouch for the Foreign Service. Martin said they know that drugs are coming through the pouches and cannot do anything about this. Snowe asked if the U.S. can refuse entry of the pouch. Martin said no.

22. Snowe asked if anything in the legislation is violative of the Vienna Convention or would invite reciprocity. Shankle said no, except for the insurance provisions. The interference with prosecution provision is a bit of a problem, but he understands it is being dealt with. Donnelly said nothing in the bill takes away immunity. The problem is that if the U.S. takes unilateral action, this may prompt other countries to say they are just protecting their citizens. One cannot believe that justice will prevail under other countries' legal systems. Some interpretations of section 6 may allow reciprocity. Snowe asked Shankle if he would recommend that the U.S. waive immunity when similar legal systems are involved, such as in Canada and Europe. Shankle said no and does not think the U.S. has ever waived immunity.

23. Snowe asked what the U.S. does to ensure that its citizens obey foreign laws. Shankle said people are sent home if they have problems with drinking or misbehaving. He does not know if State has reports on this. He does not think the U.S. receives regular complaints, for Americans generally comply with

the law. It is not so much the specifics of the language that pose a problem, but the perception that the U.S. is weakening the system of immunity that creates the reciprocity problem.

24. Because of the number of witnesses questioned in a short period of time, Mica indicated there may be more questions submitted for the record.



Legislation Division  
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Attachments (4)

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